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

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

IN RE)
)
JOSEPH HUNT)
)
)
ON HABEAS CORPUS.)

NO. A 090435

REPORTERS' DAILY TRANSCRIPT
VOLUME 7
MONDAY, MAY 6, 1996
PAGE 970 THROUGH 1180, INCL.

COURT OF APPEAL - SECOND DIST.
FILED
MAY 10 1996
Clerk
Deputy Clerk

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OFFICIAL COURT REPORTER

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

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6	Reporter's Transcript of Proceedings, 05/06/96, Vol. 7, Evidentiary Hearing, Testimony of A. Barends	Rcv'd 05-07-96

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1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 6, 1996

2 9:15 A.M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

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

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

15
16 THE BAILIFF: REMAIN SEATED, COME TO ORDER, THIS
17 COURT IS AGAIN IN SESSION.

18 THE COURT: IN THE CASE OF IN RE JOSEPH HUNT, THE
19 RECORD WILL REFLECT THAT ALL COUNSEL ARE PRESENT,
20 PETITIONER IS NOT PRESENT.

21 WHAT'S GOING ON?

22 MR. CRAIN: YOUR HONOR, WE ALL WORKED LIKE 15 OR
23 MORE HOURS OVER THE WEEKEND EACH DAY. MR. HUNT NEEDS LIKE
24 FIVE MORE MINUTES WITH US TO FINISH OUR DISCUSSION, AND
25 THEN I WILL BE READY TO GO.

26 THE COURT: WE GOT TO GET GOING. YOU HAD A
27 THREE-DAY WEEKEND. I KNOW YOU ARE WORKING HARD. THIS IS
28 COURT TIME.

1 MR. KLEIN: I UNDERSTAND. I NEED LIKE THREE TO
2 FIVE MORE MINUTES WITH MR. HUNT.

3 THE COURT: WHY?

4 MR. CRAIN: BECAUSE WE WORKED ON THINGS THIS
5 WEEKEND. WE HAVEN'T BEEN TO THE JAIL. IT IS NOT OPEN ON
6 SUNDAY NIGHT. THERE IS NO OTHER TIME TO DO IT.

7 THE COURT: I CAN'T USE COURT TIME FOR THAT
8 PURPOSE. COME ON, ARE YOU GUYS READY TO GO OR NOT?

9 MR. KLEIN: AFTER I HAVE THREE TO FIVE MINUTES WITH
10 MR. HUNT.

11 THE COURT: I WILL GIVE YOU FIVE MINUTES, THEN WE
12 GOT TO GO.

13 MR. KLEIN: THANK YOU.

14 THE COURT: WE GOT TO GO.

15 MR. KLEIN: I UNDERSTAND. THANK YOU.

16

17 (RECESS.)

18

19 THE BAILIFF: REMAIN SEATED, COME TO ORDER,
20 DEPARTMENT 101 IS AGAIN IN SESSION.

21 THE COURT: IN THE CASE OF IN RE JOSEPH HUNT, THE
22 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
23 PRESENT.

24 YOU MAY CALL YOUR NEXT WITNESS.

25 MR. CRAIN: YOUR HONOR, BEFORE WE DO, WE ARE READY
26 TO PROCEED. MAY WE JUST APPROACH THE BENCH FOR ABOUT A
27 MINUTE?

28 THE COURT: ON THE RECORD OR OFF THE RECORD?

1 ON WHAT SUBJECT?

2 MR. CRAIN: ON A MOTION.

3 MR. KLEIN: THE PROPOSED TESTIMONY OF THE NEXT
4 WITNESS.

5 THE COURT: COUNSEL, ARE THESE THINGS THAT WE CAN
6 TAKE CARE OF AT OTHER TIMES?

7 MR. CRAIN: WE HAVE TO DO IT BEFORE HE TESTIFIES,
8 THAT'S THE PROBLEM.

9 THE COURT: WHY DO WE NEED TO DO IT AT SIDE BAR?

10 MR. CRAIN: BECAUSE OF THE NATURE OF THE MOTION,
11 THAT'S WHY.

12 THE COURT: COME TO SIDE BAR WITH THE REPORTER.

13

14 (THE FOLLOWING PROCEEDINGS WERE HELD
15 AT THE BENCH:)

16

17 THE COURT: WHAT?

18 WE ARE READY. WE ARE WIRED.

19 MR. CRAIN: I DON'T WANT -- I THINK WE NEED THE
20 REPORTER.

21 THE COURT: WE GOT THE REPORTER.

22 MR. KLEIN: EXCUSE ME.

23

24 (PAUSE.)

25

26 MR. CRAIN: THIS IS A MOTION TO, ASKING THE COURT
27 TO REQUIRE THAT MEMBERS OF THE PUBLIC AND THE PRESS BE
28 EXCLUDED DURING MR. BARENS' TESTIMONY, AND THE REASON IS

1 THAT WE ARE HAVING SOME FAMILIARITY WITH MR. BARENS AND
2 PARTICULARLY IN VIEW OF HIS PERFORMANCE AT THE DEPOSITION,
3 I THINK MR. BARENS IS LIABLE TO SAY ANYTHING, AND I
4 BELIEVE THAT IN THE EVENT MR. HUNT WERE TO BE GIVEN A NEW
5 TRIAL THAT HE IS LIABLE TO SAY THINGS THAT MIGHT PREJUDICE
6 MR. HUNT'S ABILITY TO GET A FAIR TRIAL BEFORE A JURY THAT
7 HASN'T HEARD THINGS.

8 I DON'T KNOW WHAT HE IS GOING TO SAY. I AM
9 JUST TELLING THE COURT THAT HE IS LIABLE TO SAY ANYTHING.
10 HE HAS NO FILE. HE HAS NO SPECIFIC RECOLLECTION OF MANY
11 THINGS, AND I THINK OUT OF HIS OWN DESIRE TO PRESERVE HIS
12 REPUTATION AND SUCH AS IT IS AND NOT TO HAVE BEEN FOUND
13 INCOMPETENT THAT HE IS LIABLE TO SAY DAMAGING THINGS
14 AGAINST MR. HUNT OF A VERY POISONESS AND PREJUDICIAL
15 NATURE.

16 THAT'S THE MOTION.

17 THE COURT: PEOPLE WISH TO BE HEARD?

18 MR. MC MULLEN: WE DON'T REALLY TAKE ANY POSITION
19 ON THIS, YOUR HONOR.

20 THE COURT: YOU DON'T CARE ABOUT THE PEOPLE'S RIGHT
21 TO A PUBLIC HEARING?

22 MR. MC MULLEN: I DON'T --

23 THE COURT: I HAVE NO AUTHORITY TO CLOSE THE
24 HEARING. AND I CAN'T SEE BASED ON THE PROPOSITION THAT
25 SOMETHING MAY COME OUT I HAVE ANY GROUNDS TO CLOSE THE
26 HEARING.

27 MR. KLEIN: MR. HUNT'S POTENTIAL RIGHT TO A FAIR
28 TRIAL IN THE FUTURE.

1 MR. CRAIN: UNDER THE DUE PROCESS CLAUSE.

2 MR. KLEIN: VERSUS --

3 THE COURT: HOW DOES THAT DIFFER FROM PUTTING ON
4 EVIDENCE THAT MR. LEVIN IS STILL ALIVE AND IS OUT THERE
5 HIDING SOMEWHERE? PEOPLE HAVE A RIGHT TO A FAIR TRIAL.
6 SHOULD I CLOSE THE HEARING TO THAT?

7 MR. CRAIN: THEY DIDN'T ASK FOR IT, SO I GUESS
8 THAT'S A MOOT POINT.

9 THE COURT: THE REQUEST IS DENIED.

10

11 (THE FOLLOWING PROCEEDINGS WERE
12 HELD IN OPEN COURT:)

13

14 THE COURT: CALL YOUR WITNESS.

15 MR. KLEIN: BEFORE WE DO THAT I HAVE A QUESTION FOR
16 THE COURT. HAS THE COURT MADE ANY FURTHER DETERMINATION
17 CONCERNING THE SUPPLEMENTAL PLEADING THAT WE FILED ON
18 MARCH 29TH?

19 THE COURT: NO.

20 MR. KLEIN: DOES THE COURT INTEND TO DO THAT?

21 THE COURT: AS SOON AS I CAN READ IT. I HAVE BEEN
22 BUSY ON OTHER THINGS.

23 I READ 9,000 PAGES OF GRAND JURY TRANSCRIPT
24 IN THE ORANGE COUNTY CASE LAST WEEK FOR THE -- I FINISHED
25 READING THEM LAST THURSDAY NIGHT AT 9:30. I WENT DOWN TO
26 ORANGE COUNTY AND I HELD THE ORANGE COUNTY HEARINGS, AND I
27 WAS SICK ALL WEEKEND LONG. SO WHEN I GET TO IT, I WILL
28 GET TO IT.

1 MR. KLEIN: AGAIN, THE PROBLEM --

2 THE COURT: I UNDERSTAND.

3 MR. KLEIN: IF THIS HEARING ENDS, IT RAISES ANOTHER
4 LEGAL ISSUE THAT SHOULD NOT HAVE TO EXIST WITH RESPECT TO
5 MR. HUNT. I MEAN, THE QUESTION THEN IS, THE COURT FEELS
6 THAT IT CAN'T DO IT IN THE NEXT FEW DAYS, MAYBE WE SHOULD
7 WITHDRAW THE PLEADING AND FILE IT IN DEPARTMENT 100.

8 THE COURT: WELL, A, YOU CAN'T DO THAT. YOU CAN'T
9 WITHDRAW SOMETHING THAT HAS BEEN FILED.

10 B, DEPARTMENT 100 WILL SIMPLY TURN AROUND AND
11 SEND IT TO ME.

12 SO CALL YOUR WITNESS.

13 MR. KLEIN: WE CALL MR. BARENS, YOUR HONOR.

14

15 ARTHUR BARENS, +
16 CALLED AS A WITNESS BY THE PETITIONER, WAS SWORN AND
17 TESTIFIED AS FOLLOWS:

18

19 THE CLERK: RAISE YOUR RIGHT HAND.

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

24 THE WITNESS: SO HELP ME GOD.

25 THE CLERK: HAVE A SEAT, PLEASE.

26 STATE YOUR FULL NAME, PLEASE, AND SPELL YOUR
27 LAST NAME FOR THE RECORD.

28 THE WITNESS: ARTHUR BARENS, B-A-R-E-N-S.

1 THE COURT: HOW DO YOU SPELL ARTHUR?

2 THE WITNESS: A-R-T-H-U-R.

3 THE COURT: ALL RIGHT.

4 AND THE RECORD WILL REFLECT YOU ARE
5 REPRESENTED BY COUNSEL.

6 WOULD COUNSEL STATE HIS NAME FOR THE RECORD.

7 MR. BRODEY: JEFFREY, J-E-F-F-R-E-Y, BRODEY,
8 B-R-O-D-E-Y.

9 THE COURT: ALL RIGHT.

10 YOU MAY INQUIRE.

11 MR. KLEIN, ARE YOU TAKING THIS WITNESS?

12 MR. KLEIN: I AM GOING TO DO THAT.

13 YOUR HONOR, I WOULD ASK THE COURT TO EXCLUDE
14 MR. BRODEY. MR. BRODEY IS A POTENTIAL WITNESS ON MANY, IF
15 NOT ALL, OF THE ISSUES THAT MR. BARENS IS GOING TO TESTIFY
16 TO, AND HE IS ALSO PROBABLY OUR NEXT WITNESS ON SOME
17 ISSUES THAT MR. BARENS IS GOING TO TESTIFY.

18 THE COURT: THAT'S WHY I ASKED LAST WEEK, "WHY
19 DON'T YOU CALL MR. BRODEY FIRST?" YOU SAID YOU DIDN'T
20 WANT TO DO THAT.

21 MR. KLEIN: I CAN'T DO IT BECAUSE OF THE COURT'S
22 RULING WITH RESPECT TO CASEY COHEN.

23 THE COURT: I WILL ALLOW MR. BRODEY TO STAY.

24

25 DIRECT EXAMINATION +

26

27 BY MR. KLEIN:

28 Q MR. BARENS, WHAT IS YOUR OCCUPATION?

1 A I AM A LAWYER.

2 Q ARE YOU LICENSED TO PRACTICE IN THE STATE OF
3 CALIFORNIA?

4 A YES, SIR.

5 Q AND WHAT WAS YOUR OCCUPATION BACK IN THE MID
6 '80'S?

7 A PRACTICING ATTORNEY.

8 Q AT SOME POINT DID YOU HAVE SOMETHING TO DO
9 WITH THE LOS ANGELES CASE OF PEOPLE VERSUS JOSEPH HUNT?

10 A YES.

11 Q AND WHEN WAS THAT?

12 A IN THE MID '80'S, SIR.

13 DID YOU SAY WHEN WAS THAT?

14 Q YES, SIR.

15 A ROUGHLY, I BELIEVE, 1984 TO 1985. ALTHOUGH I
16 MAY NOT BE ACCURATE ABOUT THAT.

17 Q AND INITIALLY WERE YOU PRIVATELY RETAINED TO
18 REPRESENT MR. HUNT?

19 A YES, SIR.

20 Q AND AT SOME POINT DID YOU ASSOCIATE COUNSEL
21 EARLY ON?

22 A YES, SIR.

23 Q AND WHO WAS THE FIRST COUNSEL THAT YOU
24 ASSOCIATED?

25 A RICHARD CHIER, C-H-I-E-R.

26 Q WELL, ISN'T IT TRUE, MR. BARENS, THAT AT THE
27 TIME OF THE PRELIMINARY HEARING EXAMINATION IN THIS CASE
28 YOU WERE ASSISTED BY MR. LEWIS TITUS?

1 A MR. TITUS WAS NOT ASSOCIATED BY MY OFFICE.
2 HE WAS AN EMPLOYEE OF MY OFFICE.

3 Q OKAY.

4 WAS HE THE FIRST ATTORNEY THAT WORKED ON THE
5 CASE WITH YOU?

6 A NOT WORKED ON THE CASE WITH ME. HE RAN SOME
7 ERRANDS FOR ME, SIR.

8 Q MR. CHIER WAS NOT ASSOCIATED WITH THIS CASE
9 DURING THE PRELIMINARY HEARING PROCEEDINGS THAT WERE IN
10 THE MUNICIPAL COURT?

11 A I MAY HAVE HAD DISCUSSIONS WITH MR. CHIER
12 ABOUT THIS CASE AT THAT POINT IN TIME, BUT I DO NOT
13 BELIEVE HE APPEARED IN THE MUNICIPAL COURT PROCEEDING AS
14 OPPOSED TO ACCOMPANY ME IN THE MUNICIPAL COURT PROCEEDING
15 IN REDWOOD CITY.

16 THE COURT: DID YOU REPRESENT MR. HUNT IN
17 CONNECTION WITH THE REDWOOD CITY CASE AS WELL?

18 THE WITNESS: I REPRESENTED HIM AT THE PRELIMINARY
19 HEARING ON THE ESLAMINIA MATTER.

20 MR. KLEIN: EXCUSE ME, YOUR HONOR.

21 BY MR. KLEIN:

22 Q ISN'T IT TRUE THAT MR. TITUS DID QUESTIONING
23 DURING THE COURSE OF THE PRELIMINARY HEARING EXAMINATION
24 IN THIS CASE?

25 A NOT THAT I RECALL, AND I DO NOT BELIEVE
26 THAT'S ACCURATE.

27 Q IF THE RECORD REFLECTS OTHERWISE, ARE YOU
28 WRONG?

1 MR. MC MULLEN: OBJECTION. IRRELEVANT.

2 THE COURT: WELL, IT IS AN IMPROPER QUESTION. IT
3 IS ARGUMENTATIVE.

4 BY MR. KLEIN:

5 Q AT THE TIME THAT MR. HUNT RETAINED YOU, YOU
6 WERE PRIMARILY A CIVIL ATTORNEY?

7 MR. MC MULLEN: RELEVANCY. OBJECTION ON THAT
8 GROUND.

9 THE COURT: OVERRULED.

10 THE WITNESS: I HAD BOTH A CRIMINAL AND CIVIL
11 PRACTICE, SIR. TO USE -- TO QUANTIFY BY WAY OF PRIMARY IS
12 HARD FOR ME TO EVALUATE.

13 BY MR. KLEIN:

14 Q OKAY.

15 BUT YOUR BEST EXPERIENCE IS AS A PRACTICING
16 LAW RELATED TO CIVIL CASES RATHER THAN CRIMINAL CASES?

17 A I COULDN'T AGREE WITH THAT, SIR. I HAD MORE
18 TIME AS A TRIAL LAWYER IN CRIMINAL MATTERS THAN I DID IN
19 CIVIL MATTERS.

20 Q DURING THE COURSE OF THE PROCEEDINGS IN THE
21 MUNICIPAL COURT WHAT WAS THE MANNER IN WHICH YOU RECEIVED
22 DISCOVERY IN THIS CASE?

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: OVERRULED.

25 THE WITNESS: I BELIEVE DISCOVERY WAS SENT BOTH TO
26 MY OFFICE AND HANDED TO ME IN COURT.

27 BY MR. KLEIN:

28 Q DID YOU EVER HAVE TO ACKNOWLEDGE RECEIPT OF

1 THE DISCOVERY?

2 A I CANNOT RECALL SPECIFICALLY, SIR.

3 Q AND IN TERMS OF ORGANIZING THE FILES DURING
4 THE PROCEEDINGS IN MUNICIPAL COURT HOW DID YOU DO THAT?

5 A TWO WAYS, SIR. I ORGANIZED FILES BASED ON
6 WITNESSES THAT WERE IDENTIFIED AND MATERIALS RELATED TO A
7 WITNESS, AND I ALSO HAD TOPICAL FILES.

8 Q AN EXAMPLE OF TOPICAL FILES WOULD BE, SAY,
9 MICROGENESIS OR ATTRITION MILLS?

10 A I BELIEVE I WOULD HAVE HAD A FILE UNDER
11 MICROGENESIS.

12 Q AND YOU PUT THESE FILES IN BLACK NOTEBOOKS
13 LIKE THE NOTEBOOKS THAT ARE SITTING ON THE COUNSEL TABLE
14 HERE?

15 MR. MC MULLEN: OBJECTION. RELEVANCE.

16 THE COURT: INDICATING THREE-RING NOTEBOOKS?

17 MR. KLEIN: YES, YOUR HONOR.

18 THE COURT: YOU MAY ANSWER IT.

19 THE WITNESS: ALL RIGHT.

20 THE CURT: OVERRULED.

21 BY MR. KLEIN:

22 Q HOW DID YOU DO IT, SIR?

23 A AT TIMES I UTILIZED THREE-RING BINDERS, AND
24 AT TIMES PLACING THEM IN A FOLDING MANILA TYPE LEGAL FILE,
25 AND AT TIMES PUTTING THEM IN A RED, WHAT I CALL, EXPANDO
26 FILE.

27 Q WHERE DID YOU MAINTAIN THESE FILES?

28 A AT VARIOUS LOCATIONS THROUGHOUT MY OFFICE.

1 Q NOW, IN TERMS OF PREPARING FOR THIS TESTIMONY
2 HERE TODAY WHAT DID YOU DO?

3 THE COURT: WHAT DID HE DO TO PREPARE FOR THE
4 TESTIMONY?

5 MR. KLEIN: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MR. KLEIN: THANK YOU.

8 THE WITNESS: WHAT DID I DO WHEN, SIR?

9 BY MR. KLEIN:

10 Q IN THE RECENT PAST?

11 A I REREAD MY DECLARATION. I BELIEVE I LOOKED
12 AT A DEPOSITION I TOOK IN YOUR OFFICE.

13 Q ANYTHING ELSE?

14 A I LAID IN THE SUN.

15 Q DID THAT HELP?

16 A YES, IT DID.

17 Q I WISH I HAD THAT LUXURY.

18 MR. KLEIN: MAY I APPROACH, YOUR HONOR?

19 THE COURT: TO LAY IN THE SUN OR TO GIVE SOMETHING
20 TO THE WITNESS?

21 MR. KLEIN: SHOWING SOMETHING TO THE WITNESS.

22 THE COURT: YES.

23 MR. KLEIN: I DON'T THINK I AM GOING TO ASK TO LAY
24 IN THE SUN IN THE COURTROOM.

25 BY MR. KLEIN:

26 Q BUT SHOWING YOU A DECLARATION JUNE 29, 1995.
27 IT APPEARS TO BE HAVE YOUR SIGNATURE ON IT. I AM GOING TO
28 PUT A "G" ON IT BECAUSE THIS WAS THE RESPONDENT'S EXHIBIT

1 G.

2 MR. MC MULLEN: RESPONDENT'S G. WE WOULD ASK THAT
3 BE MARKED FOR IDENTIFICATION AS --

4 MR. KLEIN: I JUST DID.

5 THE COURT: IT WILL BE MARKED AS G.

6

7 (MARKED FOR ID = RESPONDENT'S G,
8 DECLARATION.)

9

10 BY MR. KLEIN:

11 Q IS THAT THE DECLARATION THAT YOU LOOKED AT TO
12 PREPARE FOR YOUR TESTIMONY TODAY?

13 A I BELIEVE SO.

14 Q WELL, IT IS, ISN'T IT, MR. BARENS?

15 A I BELIEVE THAT IS CORRECT, YES.

16 Q NOT BELIEVE. IT IS THE DOCUMENT THAT YOU
17 LOOKED AT? ISN'T IT?

18 THE COURT: DON'T QUIBBLE.

19 PUT ANOTHER QUESTION.

20 BY MR. KLEIN:

21 Q DID YOU LOOK AT SOME OTHER DOCUMENT,
22 MR. BARENS, RATHER THAN EXHIBIT G TO PREPARE FOR YOUR
23 TESTIMONY TODAY?

24 A I BELIEVE I REREAD THE DEPOSITION TAKEN IN
25 YOUR OFFICE, SIR.

26 Q NOW, THE TERMS OF A DECLARATION DID YOU READ
27 SOMETHING OTHER THAN EXHIBIT G, WHICH YOU JUST LOOKED AT
28 IT?

1 A NO, SIR.

2 Q OKAY.

3 THAT'S THE DOCUMENT THAT YOU LOOKED AT?

4 A I BELIEVE SO.

5 MR. MC MULLEN: ASKED AND ANSWERED, YOUR HONOR.

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

7 BY MR. KLEIN:

8 Q WOULD YOU TAKE A MINUTE AND LOOK AT EXHIBIT G
9 AND MAKE SURE THAT IS THE DOCUMENT THAT YOU READ IN THE
10 RECENT PAST TO PREPARE FOR YOUR TESTIMONY?

11
12 (WITNESS COMPLIES.)

13
14 A I HAVE LOOKED AT IT, SIR.

15 Q THIS IS THE DOCUMENT THAT YOU LOOKED AT?

16 A I BELIEVE SO.

17 Q DO YOU HAVE SOME DOUBT IN YOUR MIND?

18 THE COURT: LET'S MOVE ON.

19 MR. KLEIN: YOUR HONOR, I HAVEN'T MARKED A COPY OF
20 THE DEPOSITION. I HAVE A COPY OF THE DEPOSITION. I GAVE
21 YOUR CLERK ANOTHER ATTEMPT AT COMPLYING WITH THE COURT'S
22 ORDER FOR THE EXHIBIT LIST.

23 THE COURT: YES.

24 MR. KLEIN: I HOPE IT IS BETTER NEXT TIME.

25 THE COURT: I DON'T HAVE MY REGULAR CLERK, BUT I
26 BELIEVE IT IS WHAT SHE NOW NEEDS.

27 IS THIS ON THE EXHIBIT LIST.

28 MR. KLEIN: COULD IT BE --

1 THE COURT: COULD WE MARK IT AS 265?

2 SINCE WE HAD A DIFFERENT FORM LAST WEEK WE
3 MIGHT HAVE MARKED SOMETHING AFTER 264. I DON'T KNOW.

4 MR. MC MULLEN: I THINK COUNSEL IS RIGHT. THERE
5 WAS SOMETHING, I BELIEVE, THAT WAS MARKED AS 265.

6 THE COURT: YES. WE HAVE MARKED, USED 265. WE
7 HAVE ALREADY USED 266. THEN THIS WOULD BEEN 267, THE
8 DEPOSITION, MR. BARENS.

9 MR. KLEIN: I AM GOING TO MARK IT ON THE LAST WHITE
10 PAGE, YOUR HONOR, AS 267.

11 THE COURT: ALL RIGHT.

12

13 (MARKED FOR ID = PETITIONER'S 267,
14 DEPOSITION OF ARTHUR BARENS.)

15

16 BY MR. KLEIN:

17 Q I DON'T KNOW WHETHER THIS IS THE FORMAT WHICH
18 YOU SAW IT, BUT THIS IS A SMALLER FORMAT OF THE NORMAL
19 DEPOSITION DOCUMENT. WHY DON'T YOU TAKE A LOOK AT THIS,
20 MR. BARENS, AND SEE IF THAT'S THE DOCUMENT THAT YOU LOOKED
21 AT TO PREPARE FOR YOUR TESTIMONY.

22 MR. KLEIN: I KNOW WE HAVE SUBMITTED THIS TO THE
23 COURT PREVIOUSLY UNDER, POSSIBLY THE NEW PLEADING. MAYBE
24 AT THE BREAK WE CAN MAKE A COPY SO THE COURT HAS IT. IF I
25 ASK QUESTIONS CONCERNING IT --

26 THE COURT: BECAUSE WE WILL NEED IT AS AN EXHIBIT.

27 MR. KLEIN: THE ORIGINAL IS GOING TO BE WITH THE
28 COURT, BUT WE CAN MAYBE MAKE A COPY FOR THE COURT.

1 BY MR. KLEIN:

2 Q IS THIS THE DOCUMENT THAT YOU LOOKED AT,
3 MR. BARENS?

4 A I LOOKED AT A DOCUMENT, NOT IN THAT FORMAT,
5 BUT I BELIEVE THAT IT CONTAINS THE SAME MATERIALS.

6 Q THANK YOU.

7 THE COURT: WHEN YOU SAY "NOT THE SAME FORMAT," I
8 ASSUME THIS IS ONE OF THOSE TRANSCRIPTS THAT HAS BEEN
9 REDUCED PUTTING FOUR PAGES ON ONE PAGE?

10 MR. KLEIN: YES, YOUR HONOR, I WILL SHOW IT TO YOU.

11 THE COURT: IS THAT ABOUT RIGHT, MR. BARENS.

12 THE WITNESS: YES, SIR.

13 THE COURT: THAT'S WHAT WE HAD SUBMITTED TO THE
14 COURT. THAT'S WHAT I THINK I SAW ON YOUR EXHIBITS TO THE
15 NEW HABEAS.

16 MR. KLEIN: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 BY MR. KLEIN:

19 Q NOW, AT SOME POINT, MR. BARENS, AFTER THE
20 PRELIMINARY HEARING YOU DECIDED TO ASSOCIATE ANOTHER
21 ATTORNEY WITH YOU ON THIS CASE?

22 A YES, SIR.

23 Q AND WHO WAS THAT?

24 A RICHARD CHIER.

25 Q AND WHAT WERE THE TERMS OF THE ARRANGEMENT IN
26 WHICH YOU ASSOCIATED MR. CHIER?

27 MR. MC MULLEN: OBJECTION. RELEVANCE.

28 THE COURT: I WILL ALLOW IT.

1 MR. KLEIN: IT IS JUST PRELIMINARY.

2 THE WITNESS: WE -- TO JOINTLY PREPARE AND PRESENT
3 THE CASE.

4 BY MR. KLEIN:

5 Q TERMS OF THE FINANCIAL ARRANGEMENTS --

6 MR. MC MULLEN: OBJECTION. RELEVANCY.

7 THE COURT: I WILL ALLOW SOME PRELIMINARY INQUIRY
8 INTO THAT, THIS AREA, NOT A WHOLE LOT.

9 THE WITNESS: WE WERE TO JOINTLY PAY THE OVERHEAD
10 ASSOCIATED WITH THIS AND DIVIDING THE REMAINDER.

11 BY MR. KLEIN:

12 Q NOW, IN TERMS OF, AGAIN, PREPARING FOR THIS
13 TESTIMONY, THE ONLY TWO DOCUMENTS THAT YOU LOOKED AT WERE
14 YOUR DECLARATION AND YOUR DEPOSITION DOCUMENTS THAT I
15 SHOWED YOU?

16 A YES, SIR.

17 Q SO YOU DIDN'T LOOK AT A REPORT OF AN
18 INTERVIEW THAT YOU HAD WITH A DISTRICT ATTORNEY PRIOR TO
19 THE TIME THAT YOU SIGNED YOUR DECLARATION?

20 A NO, SIR. I AM NOT EVEN FAMILIAR WITH WHAT
21 YOU ARE DESCRIBING.

22 Q HAVE YOU EVER SEEN THAT DOCUMENT?

23 A NO, SIR.

24 WHAT IS IT YOU ARE DESCRIBING, SIR?

25 Q A REPORT BY A REPRESENTATIVE OF THE DISTRICT
26 ATTORNEY'S OFFICE RELATING TO AN INTERVIEW THAT YOU HAD
27 WITH THE DISTRICT ATTORNEY PRIOR TO THE TIME THAT YOU
28 SIGNED YOUR DECLARATION?

1 A I DON'T RECALL EVER SEEING SUCH A DOCUMENT.
2 MR. KLEIN: IS THAT MARKED AS ONE OF YOUR EXHIBITS?

3 MR. MC MULLEN: NO.

4 MR. KLEIN: YOUR HONOR, I HAVE A SIX-PAGE DOCUMENT,
5 WHICH SAYS "INVESTIGATOR'S REPORT." IT HAS A DATE OF
6 MAY 11, 1995, AND IT SAYS, "ATTORNEY ARTHUR BARENS
7 INTERVIEWED REGARDING HIS REPRESENTATION OF JOE HUNT."
8 MAY THIS BE MARKED --

9 THE COURT: 268.

10 I ASSUME YOU DON'T HAVE IT ON YOUR LIST?

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

12

13 (MARKED FOR ID = PETITIONER'S 268,

14 DOCUMENT.)

15

16 BY MR. KLEIN:

17 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE,
18 MR. BARENS?

19 A NO, SIR.

20 Q NOW, THE DECLARATION THAT WAS MARKED AS
21 EXHIBIT G WHO PREPARED THE DRAFT OF THAT DOCUMENT?

22 A I BELIEVE I DID.

23 Q AND THEN YOU WENT OVER IT WITH YOUR ATTORNEY,
24 MR. BRODEY?

25 A I BELIEVE AT SOME POINT IN TIME.

26 Q AND THEN YOU SIGNED IT?

27 A YES, SIR.

28 Q AND WAS THAT PREPARED AT THE REQUEST OF THE

1 DISTRICT ATTORNEY?

2 A I FRANKLY DON'T RECALL.

3 Q WELL, IN TERMS OF HOW IT APPEARED IN THIS
4 CASE, IT WAS ATTACHED TO A PLEADING THAT THE DISTRICT
5 ATTORNEY PRESENTED TO THE COURT. DOES THAT REFRESH YOUR
6 MEMORY?

7 A NO, SIR.

8 Q THE DECLARATION WAS SIGNED JUNE 29, 1995.
9 THIS REPORT SAYS THAT YOU WERE INTERVIEWED ON APRIL 28,
10 1995 IN THE D.A.'S OFFICE AT 849 SOUTH BROADWAY. DID THAT
11 HAPPEN?

12 A AT A POINT IN TIME I WAS AT THE DISTRICT
13 ATTORNEY'S OFFICE ON BROADWAY.

14 Q AND YOU ANSWERED QUESTIONS TO THE DISTRICT
15 ATTORNEY AND TO OTHER PEOPLE THAT WERE PRESENT?

16 A THAT IS CORRECT, SIR.

17 Q YOUR ATTORNEY, MR. BRODEY, WAS PRESENT?

18 A YES, SIR.

19 Q WAS THAT TAPE RECORDED, THAT INTERVIEW?

20 A I HAVE NO IDEA WHETHER IT WAS OR WAS NOT.

21 Q DID ANYBODY TELL YOU IT WAS TAPE RECORDED?

22 A NOT TO MY KNOWLEDGE.

23 Q AND WHY DID YOU GO TO THE DISTRICT ATTORNEY'S
24 OFFICE THAT DAY?

25 A I WAS REQUESTED TO DO SO, I BELIEVE.

26 Q AND AT SOME POINT PRIOR TO THE TIME THAT YOUR
27 DEPOSITION WAS TAKEN IN THIS CASE WERE YOU INFORMED THAT I
28 AND MR. CRAIN WOULD LIKE TO INTERVIEW YOU IN THE SAME

1 MANNER THAT THE DISTRICT ATTORNEY DID?

2 A I DON'T RECALL THAT, SIR.

3 Q MR. BRODEY NEVER TOLD YOU THAT?

4 A I RECALL THAT I HAD DISCUSSIONS WITH MY
5 COUNSEL CONCERNING YOUR INTEREST IN SPEAKING TO ME.

6 Q AND YOU TOLD MR. BRODEY THAT YOU DIDN'T WANT
7 TO BE INTERVIEWED BY MR. HUNT'S REPRESENTATIVES?

8 MR. MC MULLEN: OBJECTION AT THIS POINT AS
9 IRRELEVANT. THERE MIGHT BE A PRIVILEGE HERE.

10 THE COURT: WELL, IT IS NOT FOR YOU TO ASSERT THE
11 PRIVILEGE AT THIS POINT.

12 I WILL ALLOW THE QUESTION.

13 THE WITNESS: I WILL ASSERT THE PRIVILEGE. I
14 BELIEVE, YOUR HONOR, I HAVE THE PRIVILEGE TO MY
15 COMMUNICATIONS WITH MY COUNSEL. IF YOUR HONOR WISHES TO
16 RECOGNIZE IT.

17 THE COURT: MY POINT WAS THAT HE CANNOT RAISE IT,
18 YOU OR YOUR ATTORNEY CAN RAISE IT.

19 THE WITNESS: IT IS RAISED.

20 BY MR. KLEIN:

21 Q MR. BARENS, DID YOU REFUSE TO BE INTERVIEWED
22 BY MR. HUNT'S REPRESENTATIVE PRIOR TO THE TIME THAT YOUR
23 DEPOSITION WAS TAKEN?

24 A NO.

25 Q WHAT HAPPENED?

26 A THAT WOULD BE THE SUBJECT OF DISCUSSIONS I
27 HAD WITH MR. BRODEY, WHICH I DECLINE TO DISCUSS WITH YOU
28 AT THIS TIME, SIR.

1 Q DID SUCH AN INTERVIEW OCCUR PRIOR TO THE TIME
2 THAT YOU WERE ORDERED BY THE COURT TO HAVE YOUR DEPOSITION
3 TAKEN?

4 THE COURT: "SUCH AN INTERVIEW" MEANING?

5 MR. KLEIN: INTERVIEW MEANING WITH MR. HUNT'S
6 ATTORNEYS. THANK YOU

7 THE WITNESS: NO SUCH INTERVIEW OCCURRED.

8 BY MR. KLEIN:

9 Q THAT WAS BECAUSE YOU DIDN'T WANT IT TO OCCUR?

10 A THAT IS NOT A CORRECT STATEMENT, SIR.

11 Q WHAT IS A CORRECT STATEMENT?

12 A THAT'S THE REASON FOR MY NOT MEETING WITH
13 YOU, SIR, WERE THE PRODUCT OF DISCUSSION I HAD WITH
14 MR. BRODEY, WHICH I WILL NOT DISCUSS AT THIS TIME.

15 Q DOES THAT RELATE TO A PRIVILEGE THAT YOU
16 ASSERTED DURING THE TIME THAT YOUR DEPOSITION WAS TAKEN?

17 A IT RELATES TO A PRIVILEGE THAT I ASSERTED AT
18 THIS TIME.

19 MR. BRODEY: I WILL OBJECT TO THAT BECAUSE THAT'S
20 PRIVILEGE.

21 THE COURT: LET'S MOVE ON. YOU MADE THE POINT THAT
22 HE TALKED TO THE DISTRICT ATTORNEY'S OFFICE, DIDN'T TALK
23 TO YOU. GO, MOVE ONTO SOME IMPORTANT STUFF.

24 BY MR. KLEIN:

25 Q AFTER MR. HUNT'S TRIAL IN THIS CASE YOU HAD A
26 FILE; IS THAT RIGHT?

27 A IN THE COLLECTIVE SENSE I HAD FILES.

28 Q WHAT DID YOU DO WITH THE COLLECTIVE FILE

1 AFTER MR. HUNT'S CASE WAS CONCLUDED?

2 MR. MC MULLEN: OBJECTION. RELEVANCY.

3 THE COURT: OVERRULED.

4 THE WITNESS: PROVIDED IT TO BOBBY ROBERTS.

5 BY MR. KLEIN:

6 Q BOBBY ROBERTS WAS WHO?

7 A IT WAS A SUPPORTER OF MR. HUNT.

8 Q AND HE WAS ONE OF THE PEOPLE THAT HELPED PAY
9 YOUR FEE INITIALLY?

10 A THAT'S CORRECT, SIR.

11 Q AND AFTER YOU PROVIDED THE FILE TO BOBBY
12 ROBERTS YOU WERE CONTACTED BY MR. HUNT'S APPELLATE
13 ATTORNEY, MR. DOBRIN; IS THAT RIGHT?

14 A YES.

15 Q AND THAT WAS IN 1988?

16 A I DON'T RECALL SPECIFICALLY.

17 Q AND IN 1988 YOU PROVIDED MR. DOBRIN WITH TWO
18 DECLARATIONS; IS THAT CORRECT?

19 A I MAY HAVE. I DON'T RECALL.

20 MR. KLEIN: YOUR HONOR, I DON'T HAVE COPIES OF
21 THESE ALSO RIGHT NOW. BUT DOES THE COURT HAVE THE
22 PETITION AND EXHIBITS?

23 THE COURT: NOT UP HERE, NO.

24 MR. KLEIN: EVENTUALLY I WILL MAKE REFERENCE TO
25 THESE. WE CAN EITHER MAKE COPIES OR THEY ARE CONTAINED IN
26 THE PETITION.

27 THE COURT: IF YOU ARE GOING TO MARK SOMETHING AS
28 AN EXHIBIT WE NEED TO HAVE IT SEPARATE.

1 MR. KLEIN: I WILL DO THAT.

2 BY MR. KLEIN:

3 Q SHOWING YOU EXHIBIT 11-A TO THE PETITION,
4 WHICH I WILL MARK AS --

5 THE COURT: THIS IS NOT ON YOUR EXHIBIT LIST?

6 MR. KLEIN: NO, YOUR HONOR.

7 -- 269.

8 THE COURT: 269?

9 MR. KLEIN: 269.

10 AND IT IS 11-A TO THE PETITION.

11

12 (MARKED FOR ID = PETITIONER'S 269,
13 DOCUMENT.)

14

15 BY MR. KLEIN:

16 Q LET ME SHOW YOU THIS DOCUMENT AND ASK YOU IF
17 IT REFRESHES YOUR MEMORY THAT THIS IS SOMETHING THAT YOU
18 HAVE PREPARED AND SIGNED.

19

20 (PAUSE.)

21

22 A YES, SIR.

23 MR. KLEIN: YOUR HONOR, JUST FOR THE RECORD, IT IS
24 A DECLARATION DATED NOVEMBER 30, 1988, SIGNED BY
25 MR. BARENS, THREE PAGES.

26 THE COURT: MAKE SURE WE HAVE A COPY FOR THE CLERK.

27 MR. KLEIN: WE WILL.

28 THREE PAGES.

1 BY MR. KLEIN:

2 Q ALSO, IN 1988 DID YOU ALSO EXECUTE ANOTHER
3 DECLARATION FOR MR. DOBRIN, WHICH IS FOUR PAGES, DATED
4 JULY 21, '88.

5 MR. KLEIN: AND THIS IS EXHIBIT 12-B TO THE
6 PETITION, YOUR HONOR. I WILL MARK THAT AS 270.

7 THE COURT: IT WILL BE MARKED AS 270.

8

9 (MARKED FOR ID = PETITIONER'S 270,
10 DOCUMENT.)

11

12 BY MR. KLEIN:

13 Q WOULD YOU TAKE A LOOK AT THIS DOCUMENT,
14 MR. BARENS?

15

16 (WITNESS COMPLIES.)

17

18 A YES, SIR.

19 MR. KLEIN: YOUR HONOR, THIS IS A FOUR-PAGE
20 DOCUMENT EXECUTED JULY 21, 1988.

21 THE COURT: THAT'S BEEN MARKED AS 270.

22 MR. KLEIN: WHICH IS 12-B TO THE PETITION.

23 BY MR. KLEIN:

24 Q NOW, DURING THIS TIME FRAME, 1988, YOU WERE
25 HAVING TELEPHONE CONVERSATIONS WITH MR. DOBRIN,
26 MR. BARENS' APPELLATE ATTORNEY?

27 A I HAD MORE THAN ONE PHONE CALL WITH HIM.

28 MR. KLEIN: I THINK I MISSPOKE. I MEANT TO SAY

1 MR. HUNT'S APPELLATE ATTORNEY.

2 THE WITNESS: I UNDERSTOOD YOU, SIR.

3 BY MR. KLEIN:

4 Q OKAY.

5 YOU HAD MORE THAN ONE?

6 A YES, SIR.

7 Q AND AT THIS TIME WERE YOU CONSULTING YOUR
8 ATTORNEY, MR. DOBRIN -- LET ME TRY THAT AGAIN.

9 AT THIS TIME WERE YOU CONSULTING YOUR
10 ATTORNEY, MR. BRODEY, ABOUT RESPONDING TO MR. DOBRIN'S
11 QUESTIONS?

12 A NO, SIR.

13 Q NOW, AT SOME POINT YOU STARTED TO RECEIVE
14 SOME WRITTEN COMMUNICATIONS FROM MR. DOBRIN; IS THAT
15 CORRECT?

16 A I DON'T RECALL COMMUNICATIONS, PLURAL. I
17 RECALL A COMMUNICATION.

18 MR. KLEIN: I HAVE A SERIES OF DOCUMENTS, YOUR
19 HONOR, I WOULD LIKE TO SHOW MR. BARENS STARTING WITH THE
20 DOCUMENT, WHICH IS EXHIBIT 203 TO THE EXHIBIT LIST. IT IS
21 EXHIBIT 1 OF THE PETITION.

22 THE COURT: 203?

23 MR. KLEIN: MAY IT BE MARKED AS EXHIBIT 203, YOUR
24 HONOR?

25 THE COURT: JUST ONE SECOND.

26 YES.

27

28 (MARKED FOR ID = PETITIONER'S 203,

1 DOCUMENT.)

2

3 MR. KLEIN: FOR RESPONDENT'S' REFERENCE IT IS
4 EXHIBIT 1-F TO THE PETITION. IT IS A LETTER DATED APRIL
5 30, 1991. AND IT IS RATHER LENGTHY, ENDS AT PAGE 26.
6 BY MR. KLEIN:

7 Q COULD I ASK YOU, MR. BARENS, IF YOU RECEIVED
8 THAT DOCUMENT?

9 MR. BRODEY: MAY I APPROACH AND LOOK OVER
10 MR. BARENS'S SHOULDER?

11 THE COURT: SURE.

12 HOW MANY OF THESE TYPE OF THINGS DO YOU HAVE
13 TO SHOW TO MR. BARENS?

14 MR. KLEIN: ABOUT FIVE. THIS IS THE LONGEST ONE,
15 YOUR HONOR.

16 THE COURT: LET'S MAKE SURE PEOPLE SEE THESE
17 THINGS, SO THE WITNESS DOESN'T HAVE TO TAKE COURT TIME TO
18 REVIEW THEM.

19 MR. KLEIN: HE GOT THEM, YOUR HONOR, BUT HE WAS
20 NEVER AVAILABLE TO US TO DO THAT SO --

21

22 (A CONFERENCE WAS HELD BETWEEN THE
23 WITNESS AND HIS COUNSEL, NOT REPORTED.)

24

25 MR. KLEIN: CAN THE RECORD REFLECT THAT THEY ARE
26 HAVING A BRIEF CONFERENCE, MR. BRODEY AND MR. BARENS. IT
27 IS NOT BEING REPORTED.

28 THE COURT: I BELIEVE MR. BRODEY ALREADY INDICATED

1 THAT HE WAS ASKING FOR PERMISSION TO COME UP.

2 MR. KLEIN: BUT THEY ARE COMMUNICATING.

3 THE COURT: LOOKS LIKE LIPS ARE MOVING.

4 MR. BRODEY: YES. FOR THE RECORD, WE HAVE SPOKEN,
5 AND I INDICATED TO MR. BARENS THAT I HAVE NOT SEEN THIS
6 DOCUMENT BEFORE AND --

7 THE COURT: ALL RIGHT.

8 WELL, LET'S HEAR A QUESTION.

9 BY MR. KLEIN:

10 Q IS THAT A DOCUMENT THAT MR. DOBRIN SENT YOU
11 AND THAT YOU RECEIVED?

12 A I DO NOT RECALL RECEIVING THAT DOCUMENT.

13 THE COURT: ARE YOU DONE WITH EXHIBIT 203,
14 MR. KLEIN?

15 MR. KLEIN: YES, YOUR HONOR.

16 THE COURT: LET ME SEE IT. I DON'T KNOW WHAT IT
17 IS.

18 MR. KLEIN: OH, I AM SORRY.

19 THE COURT: GO AHEAD. YOU CAN MOVE ON TO THE NEXT
20 QUESTION.

21 BY MR. KLEIN:

22 Q SHOWING YOU EXHIBIT 204.

23 MR. KLEIN: YOUR HONOR, MAY IT BE SO MARKED?

24 THE COURT: IT WILL BE MARKED AS 204. LETTER FROM
25 DOBRIN TO BARENS DATED 4-24-91.

26

27 (MARKED FOR ID = PETITIONER'S 204,
28 DOCUMENT.)

1 MR. KLEIN: YES.

2 THE COURT: DID YOU SEE THIS DOCUMENT BEFORE?

3 MR. BRODEY: MAY I APPROACH, YOUR HONOR?

4 THE COURT: YES.

5

6 (A CONFERENCE WAS HELD BETWEEN THE
7 WITNESS AND HIS COUNSEL, NOT REPORTED.)

8

9 MR. KLEIN: AGAIN, CAN THE RECORD REFLECT THAT
10 MR. BRODEY AND MR. BARENS ARE HAVING A CONVERSATION, YOUR
11 HONOR.

12 THE COURT: IT ALREADY DID.

13 MR. KLEIN: THAT IS NOT BEING REPORTED?

14

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

17

18 BY MR. KLEIN:

19 Q DID YOU RECEIVE THAT DOCUMENT, MR. BARENS?

20 A I DO NOT RECALL.

21 Q IS IT JUST BECAUSE YOUR MEMORY IS FAILING, OR
22 YOU JUST DON'T REMEMBER?

23 A I DON'T BELIEVE MY MEMORY IS FAILING, SIR. I
24 SAID I DIDN'T RECALL RECEIVING THAT LETTER.

25 Q OKAY.

26 WELL, THIS LETTER STARTS OUT (READING):

27 "AS WE HAD DISCUSSED OVER

28 THE" -- "DEAR ARTHUR, AS WE

1 DISCUSSED OVER THE PHONE, I INTEND
2 TO SEND MY PRIMARY LETTER CONCERNING
3 THE LABORIOUS INVESTIGATION INCLUDED
4 HERewith TO BOTH YOURSELF AND
5 RICHARD CHIER.

6 HOWEVER, THERE ARE A COUPLE
7 OF MATTERS THAT I FELT SHOULD BE
8 DEALT WITH MORE CONFIDENTIALLY BY
9 MEANS OF A SEPARATE COVER LETTER."

10 DOES THAT REFRESH YOUR MEMORY THAT YOU
11 RECEIVED BOTH EXHIBIT 203 AND EXHIBIT 204, WHICH ARE THE
12 TWO DOCUMENTS THAT I HAVE JUST SHOWED YOU?

13 A NO, SIR.

14 Q BUT YOU DO REMEMBER TALKING TO MR. DOBRIN
15 DURING THIS TIME FRAME; IS THAT CORRECT?

16 A ON MORE THAN ONE OCCASION.

17 MR. KLEIN: YOUR HONOR, I HAVE A DOCUMENT. MAY IT
18 BE MARKED EXHIBIT 205. IT IS EXHIBIT 1-H TO THE PETITION.

19 THE COURT: THE UPS DOCUMENTS?

20 MR. KLEIN: YES, YOUR HONOR.

21

22 (MARKED FOR ID = PETITIONER'S 205,
23 DOCUMENT.)

24

25 MR. BRODEY: MAY I APPROACH AGAIN, YOUR HONOR?

26 THE COURT: YES.

27 MR. KLEIN: IT IS COMPOSED OF A COVER PAGE AND THEN
28 THREE PAGES, AND THE LAST PAGE HAS A NOTICE SHIPPING FROM

1 DAN DOBRIN TO ARTHUR BARENS, AND THEN IT HAS A SIGNATURE
2 AT THE BOTTOM, CUSTOMER SIGNATURE.

3 BY MR. KLEIN:

4 Q I WOULD ASK YOU IF THIS REFRESHES YOUR MEMORY
5 AS TO WHETHER OR NOT YOU RECEIVED EXHIBITS 203 AND 204,
6 MR. BARENS. TAKE A LOOK AT THE LAST PAGE.

7

8 (WITNESS COMPLIES.)

9

10 THE COURT: IS THIS UPS DOCUMENT ONE OF THE
11 EXHIBITS TO THE PETITION?

12 MR. KLEIN: IT IS, YOUR HONOR. IT IS EXHIBIT 1-H.

13 THE COURT: 1-H?

14 MR. KLEIN: YES, YOUR HONOR.

15

16 (WITNESS COMPLIES.)

17

18 BY MR. KLEIN:

19 Q DOES THAT REFRESH YOUR MEMORY?

20 A NO, SIR.

21 Q YOU STILL DON'T RECALL WHETHER YOU RECEIVED
22 EXHIBITS 203 AND 204?

23 A I DON'T SEE MY SIGNATURE ON THERE, SIR.

24 MR. KLEIN: YOUR HONOR, THIS IS --

25 THE COURT: I KNOW WHAT YOU ARE LOOKING AT.

26 MR. KLEIN: OKAY.

27 MR. KLEIN: YOUR HONOR, I HAVE A DOCUMENT. MAY IT
28 BE MARKED AS EXHIBIT 206? IT IS EXHIBIT 1-I TO THE

1 PETITION.

2 THE COURT: 1-I.

3 MR. KLEIN: YES, YOUR HONOR.

4 THE COURT: THAT'S THE DOBRIN LETTER TO BARENS
5 DATED MAY 20, '91.

6 MR. KLEIN: YES, YOUR HONOR.

7 THE COURT: IT WILL BE MARKED 206.

8

9 (MARKED FOR ID = PETITIONER'S 206,
10 DOCUMENT.)

11

12 BY MR. KLEIN:

13 Q MR. BARENS, DID YOU RECEIVE THIS DOCUMENT
14 FROM MR. DOBRIN?

15 MR. KLEIN: MAY THE RECORD REFLECT THAT MR. BRODEY
16 IS THERE WITH MR. BARENS AGAIN, YOUR HONOR.

17

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

20

21 THE COURT: YES.

22 MR. KLEIN: THANK YOU.

23 BY MR. KLEIN:

24 Q DID YOU RECEIVE THAT CORRESPONDENCE,
25 MR. BARENS?

26 A I DON'T RECALL.

27 THE COURT: LET ME SEE THAT ONE, MR. KLEIN.

28 MR. KLEIN: YES, YOUR HONOR.

1 (PAUSE.)

2

3 BY MR. KLEIN:

4 Q AFTER MR. DOBRIN SENT YOU THE LETTER THAT WAS
5 MARKED AS EXHIBIT 206, DID YOU CONTACT MR. BRODEY FOR
6 LEGAL ADVICE?

7 A I DON'T BELIEVE SO.

8 Q IN THE MIDDLE OF THE YEAR, OF THE SPRING OF
9 SAY, MAY, 1991, DID YOU CONTACT MR. BRODEY FOR LEGAL
10 ADVICE WITH RESPECT TO YOUR STATUS IN THIS CASE AND
11 QUESTIONS FROM MR. DOBRIN?

12 MR. MC MULLEN: OBJECTION. RELEVANCY.

13 THE COURT: SUSTAINED.

14 BY MR. KLEIN:

15 Q OKAY.

16 DID YOU AND MR. BRODEY HAVE ANY CONVERSATIONS
17 CONCERNING YOUR REPRESENTATION OF MR. HUNT IN THE SPRING
18 OF 1991?

19 MR. MC MULLEN: OBJECTION. RELEVANCY.

20 MR. BRODEY: PRIVILEGE.

21 MR. KLEIN: I AM NOT ASKING FOR THE CONTENTS, YOUR
22 HONOR.

23 THE COURT: THE QUESTION DISCLOSES THE CONTENTS.

24 BY MR. KLEIN:

25 Q OKAY.

26 DID YOU SEEK THE ASSISTANCE OF MR. BRODEY AS
27 YOUR ATTORNEY IN MAY OF 1991 REGARDING THIS CASE?

28 MR. MC MULLEN: OBJECTION. RELEVANCY.

1 THE COURT: WHAT'S THE RELEVANCE?

2 MR. KLEIN: IT IS FURTHER CORROBORATION CONCERNING
3 THE PREVIOUS LETTERS, YOUR HONOR.

4 I HAVE ANOTHER DOCUMENT --

5 THE COURT: LET'S JUST GET TO THE CORE.

6 MR. KLEIN: I WOULD LIKE TO ESTABLISH THAT HE --

7 THE COURT: WE ARE NOT TAKING A DEPOSITION HERE.

8 LET'S MOVE ON. WE HAVE SOME ISSUES THAT NEED TO BE
9 RESOLVED. LET'S MOVE TO THOSE ISSUES.

10 BY MR. KLEIN:

11 Q SHOWING YOU EXHIBIT 207. HAVE YOU SEEN THIS
12 LETTER BEFORE?

13 THE COURT: YOU WANT TO MARK THAT AS 207?

14 MR. KLEIN: YES. MAY 31, 1991 --

15 THE COURT: DOBRIN LETTER TO BRODEY, 5-31-91.

16

17 (MARKED FOR ID = PETITIONER'S 207,

18 DOCUMENT.)

19

20 BY MR. KLEIN:

21 Q IT STARTS OUT (READING):

22 "THIS LETTER WILL CONFIRM

23 THAT YOU ARE AS OF TODAY

24 REPRESENTING ARTHUR BARENS IN

25 CARETAKER STATUS UNTIL SUCH TIME AS

26 OTHER COUNSEL CAN BE FOUND, RE,

27 I.A.C. QUESTIONS, ETC.."

28 HAVE YOU SEEN THAT LETTER BEFORE, MR. BARENS.

1 MR. MC MULLEN: AGAIN, YOUR HONOR, I WOULD JUST
2 OBJECT ON RELEVANCY GROUNDS.

3 THE COURT: I WILL ALLOW THIS QUESTION.

4 MR. BRODEY: THIS IS A LETTER DATED, WRITTEN TO ME
5 BY DOBRIN. IF THIS WERE -- IF MR. BARENS SAW THIS LETTER,
6 IT WOULD HAVE TO HAVE BEEN THROUGH A CONVERSATION BETWEEN
7 HIMSELF AND MYSELF. THIS WOULD BE A PRIVILEGED DOCUMENT.

8 THE COURT: WELL, IT IS NO LONGER PRIVILEGED
9 BECAUSE IT IS OUT THERE. SO HE CAN ANSWER THAT QUESTION
10 WHETHER OR NOT HE HAS SEEN IT OR NOT.

11 THE WITNESS: NO. NOT THAT I RECALL.

12 MR. BRODEY: ARE THERE OTHER DOCUMENTS?

13 MR. KLEIN: THIS IS EXHIBIT 1-J TO THE PETITION
14 ALSO, YOUR HONOR.

15 THE COURT: THANK YOU.

16 MR. KLEIN: DOES THE COURT WANT TO SEE THIS?

17 THE COURT: YES.

18
19 (PAUSE.)

20
21 THE COURT: I DID NOT SEE 269, 270, THE DECLARATION
22 OF BARENS. WERE THOSE SIGNED BY MR. BARENS?

23 MR. KLEIN: THE TWO THAT WERE ATTACHED TO THE
24 ORIGINAL PETITION?

25 THE COURT: EXACTLY.

26 MR. KLEIN: YES, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 GO AHEAD.

1 MR. KLEIN: THANK YOU.

2 MR. KLEIN: I CAN SHOW THEM TO THE COURT TOO.

3 THE COURT: THAT'S OKAY. I WILL ACCEPT YOUR
4 REPRESENTATION THAT THEY WERE SIGNED.

5 BY MR. KLEIN:

6 Q AFTER YOU SIGNED THE TWO DECLARATIONS IN 1988
7 FOR MR. BARENS -- EXCUSE ME -- AFTER YOU SIGNED THE TWO
8 DECLARATIONS FOR MR. DOBRIN IN 1988, THOSE WERE
9 EXHIBITS --

10 THE COURT: 269 AND 270.

11 BY MR. KLEIN:

12 Q -- 269 AND 270, THE TWO THAT WERE ATTACHED TO
13 THE PETITION, MR. BARENS, YOU REFUSED TO SIGN ANY OTHER
14 DOCUMENTS ON BEHALF OF MR. HUNT FROM MR. DOBRIN; IS THAT
15 CORRECT?

16 MR. MC MULLEN: OBJECTION. RELEVANCY.

17 THE COURT: OVERRULED.

18 THE WITNESS: I DO NOT RECALL.

19 BY MR. KLEIN:

20 Q NOW, AT SOME POINT IN THIS CASE AFTER YOU AND
21 MR. CHIER WERE WORKING ON THE CASE YOU DECIDED TO SEEK
22 COURT APPOINTMENT RATHER THAN BEING PRIVATELY RETAINED;
23 CORRECT?

24 A YES.

25 Q AND WHEN WAS THAT --

26 MR. MC MULLEN: OBJECTION. RELEVANCY.

27 THE COURT: WHAT'S THE EXACT QUESTION? WHEN WAS
28 THAT, OR WHY WAS THAT?

1 MR. KLEIN: WHEN WAS THAT, YOUR HONOR.

2 THE COURT: I WILL ALLOW THAT QUESTION.

3 THE WITNESS: I DON'T RECALL, SIR.

4 BY MR. KLEIN:

5 Q WELL, AN ORDER WAS SIGNED DATED JANUARY 15,
6 1987, BY JUDGE RITTENBAND. DOES THAT REFRESH YOUR MEMORY?

7 A NO, SIR.

8 Q LET ME SHOW YOU EXHIBIT 198.

9 MR. KLEIN: MAY THAT BE MARKED EXHIBIT 198, YOUR
10 HONOR. IT IS THE ORDER APPOINTING MR. BARENS AND
11 MR. CHIER.

12 THE COURT: IT IS ENTITLED ORDER APPOINTING SECOND
13 COUNSEL.

14 MR. KLEIN: WELL, THAT'S WHAT IT SAYS, YES, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT.

17 IT WILL BE MARKED AS 198.

18
19 (MARKED FOR ID = PETITIONER'S 198,
20 DOCUMENT.)

21

22 BY MR. KLEIN:

23 Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

24 A I BELIEVE SO.

25 Q ACTUALLY, YOU PREPARED IT, DIDN'T YOU,
26 MR. BARENS? IT HAS YOUR NAME IN THE UPPER LEFT-HAND
27 CORNER OF THE PLEADING, DOESN'T IT?

28 A I DID NOT PREPARE THIS DOCUMENT, SIR.

1 Q WHO PREPARED IT?

2 A I BELIEVE IT WOULD HAVE BEEN MR. CHIER.

3 Q SO IT IS YOUR POSITION THAT ON OR PRIOR TO
4 JANUARY 15, 1987, MR. CHIER WAS AWARE OF THE ORDER BY
5 JUDGE RITTENBAND APPOINTING YOU AND MR. CHIER AT THE RATES
6 DESCRIBED IN THIS ORDER, WHICH IS EXHIBIT 198?

7 MR. MC MULLEN: OBJECTION. SPECULATION AND
8 RELEVANCE.

9 THE COURT: SUSTAINED ON BOTH GROUNDS.
10 BY MR. KLEIN:

11 Q WERE YOU AWARE OF THE FACT THAT SOMETIME ON
12 OR BEFORE JANUARY 15, 1979, JUDGE RITTENBAND AGREED TO
13 APPOINT YOU AT THE RATE OF \$75 AN HOUR AND MR. CHIER AT
14 THE RATE OF \$35 AN HOUR?

15 MR. MC MULLEN: OBJECTION. RELEVANCY.

16 THE COURT: SUSTAINED. ISN'T THIS REALLY GOING TO
17 NEW PETITION STUFF OR TO AN ISSUE THAT WE ALREADY
18 RESOLVED, THE 188-PAGE OPINION?

19 MR. KLEIN: NO, YOUR HONOR. IT IS FOUNDATIONAL TO
20 THE WORK THAT MR. BARENS PERFORMED IN THIS CASE, AND THERE
21 IS A FEW MORE DOCUMENTS THAT RELATE TO THIS AND --

22 THE COURT: LET'S JUMP TO THE CHASE SCENE. WE HAVE
23 GOT SOME AREAS ON THE O.S.C. WE NEED TO RESOLVE. LET'S GO
24 TO THAT.

25 MR. KLEIN: I NEED TO ESTABLISH THE WORK THAT
26 MR. BARENS DID IN THIS CASE, AND THIS IS THE FOUNDATIONAL
27 DOCUMENT FOR THAT. THEN I AM GOING TO MOVE --

28 THE COURT: I READ THE ENTIRE TRANSCRIPT OF THE

1 TRIAL. ALL THIS IS ABOUT HOW HE WAS APPOINTED. THE
2 ARGUMENT OVER MR. CHIER BEING THERE, NOT BEING THERE. HOW
3 IS ALL THIS -- I DON'T NEED THIS. LET'S GO TO THE O.S.C..

4 MR. KLEIN: WOULD THE COURT TAKE JUDICIAL NOTICE OF
5 EXHIBIT 198 THAT'S CONTAINED IN THE COURT FILE.

6 THE COURT: WILL YOU STIPULATE THAT 198 IS IN THE
7 COURT'S FILE? THAT'S THE ORDER APPOINTING COUNSEL.

8 MR. MC MULLEN: FINE, YOUR HONOR.

9 THE COURT: GREAT.

10 MR. MC MULLEN: I WILL SO STIPULATE.

11 THE COURT: LET'S GET TO THE ISSUE.

12 BY MR. KLEIN:

13 Q AFTER YOU WERE APPOINTED BY JUDGE RITTENBAND
14 YOU SUBMITTED THREE BILLS TO HIM FOR YOUR WORK IN THIS
15 CASE?

16 MR. MC MULLEN: OBJECTION. RELEVANCY.

17 THE COURT: SUSTAINED.

18 MR. KLEIN: YOUR HONOR, I HAVE THREE BILLS BY
19 MR. BARENS. MAY THIS BE MARKED 197, 201 AND 202? AND I
20 WOULD ASK THE COURT TO TAKE JUDICIAL NOTICE THAT THESE ARE
21 THE BILLS THAT MR. BARENS SUBMITTED STARTING FROM JANUARY
22 16, 1987 TO THE CONCLUSION OF THE CASE -- WELL, ACTUALLY
23 THROUGH APRIL 28, 1987.

24 THE COURT: COUNSEL, AS I SAID BEFORE, I DON'T LIKE
25 TO TAKE JUDICIAL NOTICE. I ASSUME THAT YOU GUYS CAN WORK
26 OUT STIPULATIONS AS TO FOUNDATION. THEN THE ONLY ISSUE IS
27 WHETHER THEY ARE RELEVANT OR NOT.

28 MR. KLEIN: I JUST HAVE ONE MORE FOUNDATIONAL

1 QUESTION. THAT WILL BE RELEVANT, I BELIEVE.

2 THE COURT: WELL -- FIRST --

3 MR. KLEIN: DO YOU STIPULATE THESE ARE DOCUMENTS
4 THAT ARE CONTAINED IN THE COURT FILE?

5 MR. MC MULLEN: YOUR HONOR, TO FORESHORTEN THIS
6 RATHER THAN GOING INTO THE COURT FILE AND VERIFYING, WE
7 WILL STIPULATE THAT MR. BARENS SUBMITTED BILLS TO JUDGE
8 RITTENBAND FOR REIMBURSEMENT PURSUANT TO HIS COURT
9 APPOINTMENT. THEY ARE IN THE COURT'S FILE. BUT, HOWEVER,
10 WE WOULD SUBMIT THAT THEY ARE IRRELEVANT TO THIS
11 PROCEEDING.

12 THE COURT: WELL, THE FIRST ISSUE IS FOUNDATION.
13 THAT'S WHY I SAID SEVERAL MONTHS AGO I ASKED BOTH COUNSEL
14 TO SIT DOWN AND WORK OUT STIPULATIONS AS TO FOUNDATION SO
15 DURING, IN THE MIDDLE OF THE HEARING WE WOULDN'T HAVE
16 CONFLICTS OVER WHETHER A DOCUMENT IS WHAT IT PURPORTS TO
17 BE. YOU HAVEN'T DONE IT.

18 ARE YOU NOW STIPULATING THOSE ARE IN FACT THE
19 DOCUMENTS?

20 MR. CRAIN: I THOUGHT WE HAD WORKED OUT SUCH AN
21 UNDERSTANDING WITH MR. MC MULLEN MANY MONTHS AGO THAT
22 ANYTHING THAT IS PART OF THE COURT FILE BOTH SIDES WOULD
23 NOT HAVE ANY FOUNDATIONAL OBJECTIONS TO. SO PERHAPS I
24 MISUNDERSTOOD THE CONVERSATION THAT WE HAD. I THOUGHT IT
25 WAS QUITE CLEAR.

26 MR. MC MULLEN: YOUR HONOR, WE WILL STIPULATE THAT
27 THESE APPEAR TO BE COURT DOCUMENTS FILED IN THIS CASE,
28 THAT IS THE THREE EXHIBITS THAT COUNSEL HAS IDENTIFIED AS

1 197, 201 AND 202.

2 WE AGAIN SUBMIT THAT THEY ARE IRRELEVANT TO
3 THESE PROCEEDINGS.

4 THE COURT: WELL, THERE IS NO QUESTION PENDING
5 RIGHT NOW. THERE IS AN ATTEMPT TO MARK AN EXHIBIT.

6

7 (MARKED FOR ID = PETITIONER'S 197,
8 DOCUMENT.)

9

10 (MARKED FOR ID = PETITIONER'S 201,
11 DOCUMENT.)

12

13 (MARKED FOR ID = PETITIONER'S 202,
14 DOCUMENT.)

15

16 BY MR. KLEIN:

17 Q OKAY.

18 AS YOU WORKED ON THE CASE, YOU BILLED THE
19 COURT FOR THE HOURS THAT YOU WORKED; IS THAT CORRECT?

20 MR. MC MULLEN: OBJECTION. IRRELEVANT.

21 THE COURT: SUSTAINED.

22

23 THESE ARE ISSUES THAT YOU, AT LEAST FROM MY
24 READING OF THE PETITION, IT SEEMS TO BE THE FOCUS OF YOUR
25 NEW PETITION. THEY ARE OUTSIDE THE SCOPE OF THE O.S.C.
26 THEY ARE IRRELEVANT TO THIS PROCEEDING. MOVE TO THE SCOPE
27 OF THE O.S.C..

28 MR. KLEIN: EXCUSE ME, YOUR HONOR, BUT THE FIRST
SENTENCE OF ISSUE 2 OF THE O.S.C. TALKS ABOUT WHAT

1 MR. BARENS DID IN THE CASE. THE COURT HAS READ THE
2 TRANSCRIPT OF THE CASE. WHAT MR. BARENS DID HAS TO BE
3 MEASURED WITH RESPECT TO THE ISSUE AND THE OVERALL WORK IN
4 ORDER TO MAKE THE COURT'S DETERMINATION WHETHER MR. BARENS
5 PROVIDED REASONABLY COMPETENT COUNSEL AND WHETHER IT
6 PREJUDICED MR. HUNT. I AM SIMPLY STATING THE AMOUNT OF
7 WORK THAT HE DID ON THE CASE. THE COURT IS THEN GOING TO
8 EVALUATE THAT.

9 THE COURT: WHY DON'T YOU JUMP TO THE ISSUE ON THE
10 O.S.C..

11 MR. KLEIN: I WILL AS SOON AS I GET THE --

12 THE COURT: LOOK, I DON'T CARE IF MR. BARENS WAS
13 GIVEN A WHOLE LOT OF MONEY OR NOT A WHOLE LOT OF MONEY. I
14 DON'T CARE IF HE BILLS TOO MANY HOURS OR TOO LITTLE HOURS.
15 I AM NOT PAYING HIM.

16 MY CONCERN IS IS THE CONCERN THAT IS RAISED
17 BY THE O.S.C., DID HE KNOW ABOUT CERTAIN FACTS, OR DID HE
18 OR SHOULD HE REASONABLY HAVE KNOWN ABOUT CERTAIN FACTS?
19 AND HAD HE EITHER KNOWN OF THOSE FACTS OR UTILIZED THEM IN
20 AN APPROPRIATE FASHION WOULD IT HAVE MADE A DIFFERENCE
21 THEREBY PROVING THAT HIS ACTIONS IN THE HUNT CASE WERE
22 INCOMPETENT. LET'S JUMP TO THOSE. LET'S GET AWAY FROM
23 ALL --

24 MR. KLEIN: MAYBE I CAN ASK A LEADING QUESTION THAT
25 WILL END THIS AREA OF INQUIRY.

26 BY MR. KLEIN:

27 Q ISN'T IT TRUE, MR. BARENS, THAT YOU BASICALLY
28 DID ABOUT 20 OR 30 PERCENT MORE WORK ON THIS CASE THAN IS

1 REFLECTED ON YOUR BILLS THAT YOU SUBMITTED TO THE COURT?

2 MR. MC MULLEN: OBJECTION. LEADING AND IRRELEVANT.

3 THE COURT: I WILL ALLOW THE QUESTION.

4 THE WITNESS: I DID A SUBSTANTIAL AMOUNT OF WORK IN
5 EXCESS TO THAT WHICH WAS BILLED.

6 THE COURT: PARENTHETICALLY, MR. KLEIN, THAT IS
7 PROBABLY THE ONLY TIME YOU WILL HEAR ME SAY I DON'T CARE
8 WHAT A LAWYER IS BEING PAID.

9 MR. KLEIN: I WASN'T GOING TO MAKE ANY COMMENT
10 ABOUT THAT.

11 THE COURT: IF YOU WANT TO MAKE AN APPLICATION TO
12 SEAL THAT PORTION OF THE TRANSCRIPT I WILL ENTERTAIN IT.

13 THE WITNESS: I FEEL BETTER HEARING THAT.

14 MR. KLEIN: MAY I JUST HAVE ONE SECOND, YOUR HONOR?
15
16

17 (PAUSE.)
18

19 MR. KLEIN: DID I GIVE THE COURT MY COPY OF THE
20 DEPOSITION?

21 THE COURT: I DON'T THINK SO.

22 MR. KLEIN: NO, I HAVE IT HERE. I APOLOGIZE.

23 THE COURT: NO, I HAVE NONE.

24 BY MR. KLEIN:

25 Q MR. BARENS, WHEN YOU TOOK YOUR DEPOSITION IN
26 MY OFFICE, DID YOU GIVE THIS ANSWER TO THIS QUESTION, IT
27 IS PAGE 78, LINES 13 THROUGH 17 (READING):

28 "DO YOU HAVE ANY IDEA HOW

1 MUCH TIME YOU DIDN'T BILL THE COUNTY
2 FOR THAT YOU WORKED ON THE CASE?

3 A I WOULD SAY, 25 TO 30 PERCENT
4 MORE THAN GOT BILLED."

5 DID YOU GIVE THOSE ANSWERS?

6 MR. MC MULLEN: I WOULD OBJECT. THIS IS NOT
7 INCONSISTENT WITH HIS TESTIMONY.

8 THE COURT: SUSTAINED.

9 MOVE ON.

10 BY MR. KLEIN:

11 Q NOW, WHEN YOU EXECUTED THE DECLARATION,
12 NOVEMBER 30, 1988, WHICH IS EXHIBIT 269, YOU WERE TRUTHFUL
13 IN YOUR DECLARATION; CORRECT, MR. BARENS?

14 A I BELIEVE SO.

15 Q AND YOUR MEMORY ABOUT WHAT TRANSPIRED
16 CONCERNING THE HUNT CASE AND YOUR BACKGROUND WAS FRESHER
17 IN YOUR MIND IN 1988 THAN IT IS NOW; IS THAT CORRECT?

18 MR. MC MULLEN: OBJECTION. LEADING, YOUR HONOR.

19 THE COURT: I DIDN'T HEAR THE QUESTION.

20 RESTATE IT. I AM SORRY.

21 BY MR. KLEIN:

22 Q YOUR MEMORY OF WHAT TRANSPIRED IN THE HUNT
23 CASE WAS BETTER IN 1988 THAN IT IS NOW; ISN'T THAT TRUE?

24 THE COURT: I WILL ALLOW THE QUESTION.

25 THE WITNESS: NOT NECESSARILY.

26 BY MR. KLEIN:

27 Q WAS YOUR MEMORY BETTER ABOUT YOUR BACKGROUND,
28 CIVIL VERSUS CRIMINAL, WHEN YOU EXECUTED THAT DECLARATION

1 IN 1988 THAN IT IS NOW?

2 A NO, SIR.

3 Q NOW, WHEN JUDGE RITTENBAND APPOINTED YOU IN
4 THIS CASE, YOU TOLD US THAT -- IN YOUR DEPOSITION THAT YOU
5 HAD NO EX PARTE COMMUNICATION WITH JUDGE RITTENBAND
6 CONCERNING THAT APPOINTMENT; IS THAT TRUE?

7 MR. MC MULLEN: OBJECTION. IRRELEVANT.

8 THE COURT: I WILL ALLOW THAT QUESTION TO SEE WHERE
9 IT IS GOING.

10 THE WITNESS: I BELIEVE I SAID THAT IN MY
11 DEPOSITION IN ERROR.

12 BY MR. KLEIN:

13 Q YOU HAD AN OPPORTUNITY TO CORRECT ANYTHING
14 THAT YOU SAID IN YOUR DEPOSITION BEFORE YOU SIGNED IT, DID
15 YOU NOT?

16 A YES, SIR.

17 Q YOU DID NOT MAKE ANY CORRECTIONS, DID YOU?

18 A NO, SIR.

19 Q AND AT PAGE 21 STARTING AT LINES 2 THROUGH 23
20 YOU GAVE THESE ANSWERS, DID YOU NOT (READING):

21 "Q THE FIRST WRITTEN, THE FIRST
22 TRANSCRIPT OF ANY PROCEEDING
23 DISCUSSING THE SUBJECT IS A HEARING
24 THAT OCCURRED ON JANUARY 29, 1987."

25 MR. KLEIN: JUST SO THE RECORD IS CLEAR, THIS IS
26 ABOUT THE APPOINTMENT, YOUR HONOR.

27 BY MR. KLEIN:

28 Q (READING):

1 "WHERE IT APPEARS THAT YOU
2 HAD SOME UNREPORTED CONTACT WITH
3 JUDGE RITTENBAND WHERE HE AGREED TO
4 APPOINT YOU AT THE RATE OF \$75 PER
5 HOUR AND MR. CHIER AT THE RATE OF
6 \$35 PER HOUR WITH A COMMITMENT FROM
7 YOU THAT MR. CHIER WOULD NOT SPEAK
8 IN FRONT OF THE JURY."

9 AND YOU GAVE THIS ANSWER (READING):

10 "I DO NOT BELIEVE AT ANY TIME
11 I HAD UNREPORTED CONFERENCE WITH
12 JUDGE RITTENBAND, NOR DO I BELIEVE I
13 EVER HAD A CONVERSATION WITH JUDGE
14 RITTENBAND THAT WAS NOT ATTENDED BY
15 CO-COUNSEL, THE DISTRICT ATTORNEY
16 AND MR. HUNT.

17 THERE MAY HAVE BEEN. THERE
18 MAY HAVE BEEN A MOMENT LATE IN THE
19 TRIAL WHERE THERE WERE CONVERSATIONS
20 BETWEEN MYSELF AND THE JUDGE IN OPEN
21 COURT WITHOUT MR. CHIER BEING
22 PRESENT, BUT IT WAS IN OPEN COURT
23 AND PROPERLY REPORTED. BUT THAT
24 WOULD HAVE BEEN THE ONLY TIME THAT I
25 RECALL HAVING DIALOGUE WITH THE
26 JUDGE WHEN MR. CHIER WAS NOT PRESENT
27 ALONG WITH MR. HUNT, MR. WAPNER AND
28 THE COURT REPORTER."

1 DID YOU GIVE THAT ANSWER TO THAT QUESTION AT
2 THE DEPOSITION?

3 MR. MC MULLEN: OBJECTION, YOUR HONOR. THAT'S
4 INCONSISTENT WITH HIS TESTIMONY?

5 THE COURT: OVERRULED.

6 THE WITNESS: I BELIEVE AT THE TIME I GAVE THAT
7 ANSWER AS I SAID IN THE ANSWER THAT WAS THE BEST OF MY
8 RECOLLECTION.

9 BY MR. KLEIN:

10 Q OKAY.

11 YOU WERE WRONG WHEN YOU GAVE THAT ANSWER AT
12 THE DEPOSITION ON NOVEMBER 7, 1995?

13 A BASED ON THE DECLARATION YOU HAVE SHOWN ME
14 THIS MORNING I MUST HAVE BEEN WRONG AND FORGOTTEN THAT
15 THAT MEETING WAS NOT REPORTED. I BELIEVE IT HAD BEEN
16 REPORTED WHEN I GAVE MY DEPOSITION.

17 Q OKAY.

18 SO YOUR POSITION NOW IS THAT YOUR DECLARATION
19 DATED NOVEMBER 30, 1988, WHICH IS EXHIBIT 269, IS ACCURATE
20 WHERE IT STATES THAT YOU HAD AN EX PARTE COMMUNICATION
21 WITH JUDGE RITTENBAND CONCERNING YOUR APPOINTMENT AND
22 MR. CHIER'S APPOINTMENT?

23 A I AM NOT SURE AS I SIT HERE THIS MORNING,
24 COUNSEL. I HAVE CONFUSION IN MY MIND AS TO WHICH
25 STATEMENT ON MY BEHALF IS ACCURATE. I AM NOT SURE WHETHER
26 THAT CONFERENCE WITH THE JUDGE WAS REPORTED OR NOT
27 REPORTED. I HAVE SEEN THE DECLARATION FROM MR. DOBRIN
28 THIS MORNING IN WHICH I SIGNED A DECLARATION SAYING THAT

1 IT WAS NOT REPORTED. AT THE TIME OF MY DEPOSITION MY BEST
2 RECOLLECTION WAS THAT IT WAS REPORTED. I AM NOT SURE AS I
3 SIT HERE THIS MORNING.

4 Q NOW, AT THE TIME THAT YOU WERE REPRESENTING
5 MR. HUNT CONCERNING THIS CASE YOUR BACKGROUND WAS
6 PRIMARILY IN CIVIL, NOT CRIMINAL LAW; IS THAT CORRECT?

7 MR. MC MULLEN: OBJECTION. IRRELEVANT.

8 THE COURT: OVERRULED.

9 THE WITNESS: THE MAJORITY OF THE MATTERS THAT I
10 HAD HANDLED WERE PRIMARILY CIVIL. THE MAJORITY OF THE
11 TIME I HAD SPEND IN COURT AND IN TRIAL WAS PRIMARILY
12 CRIMINAL.

13 BY MR. KLEIN:

14 Q SO WHEN YOU SIGNED A DECLARATION, WHICH IS
15 EXHIBIT 269, AND YOU SAID (READING):

16 "AT THE TIME I WAS QUITE
17 RELUCTANT TO RISK LOSING MR. CHIER'S
18 ASSISTANCE IN THIS MATTER. MY
19 BACKGROUND WAS PRIMARILY IN CIVIL,
20 NOT CRIMINAL LAW, AND I FELT
21 MR. CHIER'S GREATER EXPERTISE IN THE
22 AREA OF CRIMINAL LAW WOULD BE
23 INDISPENSABLE IN THE COURSE OF
24 HUNT'S MURDER TRIAL."

25 YOU WERE STATING SOMETHING THAT WAS TRUE; IS
26 THAT CORRECT?

27 A THAT'S CORRECT.

28 Q NOW, THERE WAS A DISCUSSION ABOUT THIS

1 COURT'S APPOINTMENT AND MR. CHIER'S ROLE IN THE CASE ON
2 JANUARY 29, 1987. BASICALLY IT WAS YOUR POSITION THAT YOU
3 WERE THE ONE THAT WAS RESPONSIBLE FOR DEFENDING MR. HUNT
4 FROM THAT TIME ON; IS THAT CORRECT?

5 A NO, SIR.

6 MR. MC MULLEN: OBJECTION. IRRELEVANT.

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

8 BY MR. KLEIN:

9 Q YOU WERE NOT GOING TO RELY ON MR. CHIER IN
10 TERMS OF PREPARING WITNESSES, EXAMINING WITNESSES FROM
11 JANUARY 29, 1987, WERE YOU?

12 A THAT IS NOT A CORRECT STATEMENT, SIR.

13 Q DID YOU EVER TELL THE COURT AT ANY POINT
14 DURING THE TRIAL THAT YOU WERE THE ONE THAT WAS SOLELY
15 RESPONSIBLE FOR THE CASE, AND YOU WERE NOT GOING TO RELY
16 ON MR. CHIER?

17 MR. MC MULLEN: OBJECTION. RELEVANCY.

18 THE COURT: SUSTAINED.

19 BY MR. KLEIN:

20 Q WAS IT NOT YOUR POSITION THAT FROM
21 JANUARY 29, 1987, THAT YOU WERE THE ONE THAT WAS
22 RESPONSIBLE FOR THE CASE --

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: SUSTAINED.

25 BY MR. KLEIN:

26 Q IF THAT'S NOT TRUE, MR. BARENS, AFTER
27 JANUARY 29, 1987, WHO WAS GOING TO DO THE QUESTIONING OF
28 WITNESSES IN THE CASE?

1 MR. MC MULLEN: OBJECTION. RELEVANCY.

2 THE COURT: SUSTAINED. THIS HAS ALL BEEN
3 SPECIFICALLY PRECLUDED IN THE PORTIONS OF THE APPEAL IN
4 THE O.S.C. ORDER. IF YOU ARE TALKING ABOUT LIMITATIONS
5 PLACED ON BY MR. CHIER, THE FINANCIAL ARRANGEMENT IMPOSED
6 BY THE COURT, ALL OF THIS WAS SPECIFICALLY ADDRESSED BY
7 THE COURT OF APPEALS IN THEIR O.S.C. ORDER AND
8 SPECIFICALLY PRECLUDED.

9 I WILL SUSTAIN IT.

10 LET'S MOVE ON TO AREAS COVERED BY THE O.S.C..

11 MR. KLEIN: EXCUSE ME, YOUR HONOR, BUT I MEAN, IF
12 MR. BARENS WAS GOING TO RELY ON MR. CHIER FOR ANYTHING
13 RELATED TO ANY OF THE ISSUES IN THE O.S.C. --

14 THE COURT: THEN JUMP TO THOSE ISSUES AND ASK THEM.
15 WE HAVE SPECIFIC IDENTIFIED ISSUES.

16 MR. KLEIN: I UNDERSTAND THAT, BUT I WANT TO GET
17 THE GENERAL DIVISION OF LABOR.

18 THE COURT: I DON'T. LET'S MOVE TO THE ISSUES.
19 BY MR. KLEIN:

20 Q AFTER JANUARY 29, 1987, WHAT WAS YOUR
21 RESPONSIBILITY IN THE CASE?

22 MR. MC MULLEN: OBJECTION. RELEVANCY.

23 THE COURT: SUSTAINED.

24 LET'S MOVE TO THE ISSUES OF THE O.S.C..

25 BY MR. KLEIN:

26 Q DO YOU KNOW WHAT THE ISSUES ARE IN O.S.C.,
27 MR. BARENS?

28 MR. MC MULLEN: OBJECTION. RELEVANCY.

1 THE COURT: OVERRULED.

2 THE WITNESS: I BELIEVE THAT I KNOW SOME OF THE
3 ISSUES. I HAVE HEARD THE COURT MAKE REFERENCE TO SOME
4 THIS MORNING.

5 BY MR. KLEIN:

6 Q WHAT ARE SOME OF THE ISSUES THAT YOU ARE
7 AWARE OF, MR. BARENS?

8 A REFERENCABLE TO WHY CERTAIN WITNESSES WERE OR
9 WERE NOT CALLED AND WHY CERTAIN TESTIMONY WAS OR WAS NOT
10 SOLICITED.

11 Q WITH RESPECT TO THOSE WITNESSES, WHAT WAS THE
12 DIVISION OF LABOR BETWEEN YOU AND MR. CHIER?

13 THE COURT: THE PROBLEM IS THE RECORD IS REAL
14 VAGUE. LOOK IT, WE HAVE PARAGRAPH 2 OF THE O.C.S.
15 SPECIFICALLY SETS FORTH CERTAIN ISSUES. I HAVE SAID I
16 WILL TAKE TESTIMONY ON 2-A, 2-C, 2-F, 2-H OF THAT.

17 MR. KLEIN: AGAIN, I DON'T WANT TO BELABOR THINGS
18 IF THE COURT DOESN'T WANT ME TO GET INTO IT, BUT THERE ARE
19 A COUPLE MORE FOUNDATIONAL MATTERS.

20 BY MR. KLEIN:

21 Q WHO WAS YOUR INVESTIGATOR AT THE BEGINNING OF
22 THE CASE?

23 MR. MC MULLEN: OBJECTION. RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. KLEIN:

26 Q WAS MR. JENSEN YOUR -- MR. AND MRS. JENSEN
27 YOUR INVESTIGATORS AT THE BEGINNING OF THE CASE?

28 MR. MC MULLEN: SAME OBJECTION. RELEVANCE.

1 THE COURT: SUSTAINED.

2 YOU HAVE GOT TO FOCUS ON THE ISSUES THAT ARE
3 PART OF THE O.S.C..

4 MR. CRAIN: I THINK THEY ARE GOING TO BE WITNESSES
5 IN THE CASE. IF THE WITNESS CAN SIMPLY ESTABLISH THAT
6 FACT SO THERE IS NO DISPUTE IF THEY COME IN TO TESTIFY.

7 THE COURT: I DOUBT IF THERE IS GOING TO BE A
8 DISPUTE. I ASSUME THAT THEY WERE WITNESSES -- IF THEY
9 WERE THE INVESTIGATORS, IT WILL BE IMPORTANT THAT THAT
10 COME OUT IN SOME FASHION.

11 BUT WHAT I AM CONCERNED ABOUT IS THE
12 PARTICULAR ISSUES THAT NEED TO BE ADDRESSED. AND I WANT
13 TO ADDRESS THOSE. WE HAVE SPENT AN HOUR AND TEN MINUTES
14 NOW DOING PRELIMINARIES. IF YOU WANT, I WILL TAKE OUR
15 MORNING RECESS NOW, GIVE YOU A CHANCE TO PREPARE AND GO
16 RIGHT TO THOSE.

17 DO YOU WANT TO DO THAT, OR YOU WANT TO GO
18 RIGHT TO THEM NOW?

19 MR. KLEIN: I DON'T WANT TO GO RIGHT -- I WANT TO
20 DO ABOUT FIVE MORE MINUTES OF MATERIAL THAT I THINK THE
21 COURT WILL OBJECT TO.

22 THE COURT: LET'S HEAR WHAT IT IS.

23 BY MR. KLEIN:

24 Q AT THE TIME THAT YOU MADE YOUR OPENING
25 STATEMENT IN THIS CASE, WHAT DID YOU UNDERSTAND YOUR
26 ETHICAL OBLIGATION AS TO WHAT YOU COULD REPRESENT TO THE
27 COURT --

28 MR. MC MULLEN: OBJECTION. RELEVANCY.

1 THE COURT: I AM NOT SURE I UNDERSTAND THE
2 QUESTION.

3 MR. KLEIN: I THINK MR. BARENS DOES.

4 THE COURT: BUT I AM THE TRIER OF FACT. IF I DON'T
5 UNDERSTAND -- THE TWO OF YOU CAN HAVE A WONDERFUL
6 CONVERSATION, BUT IT DOESN'T DO A BIT OF GOOD TO ME.

7 BY MR. KLEIN:

8 Q AT THE TIME THAT YOU MADE YOUR OPENING
9 STATEMENT, DID YOU UNDERSTAND THAT YOU COULD REPRESENT TO
10 THE COURT ETHICALLY THAT WHICH YOU REASONABLY BELIEVED TO
11 BE TRUE?

12 MR. MC MULLEN: OBJECTION. RELEVANCY.

13 THE COURT: I WILL ALLOW THE QUESTION.

14 THE WITNESS: THE QUESTION IS: COULD I REPRESENT
15 TO THE JURY THAT WHICH I REASONABLY BELIEVED TO BE TRUE?

16 MR. KLEIN: YES.

17 THE WITNESS: I BELIEVE SO.

18 BY MR. KLEIN:

19 Q OKAY.

20 SO AT THE TIME THAT YOU MADE YOUR OPENING
21 STATEMENT, YOU BELIEVED THAT YOU COULD ETHICALLY REPRESENT
22 TO THE COURT THAT MR. HUNT WOULD TESTIFY --

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: WHAT'S THE RELEVANCE?

25 MR. KLEIN: I REALLY DON'T WANT TO STATE THE
26 RATIONAL FOR ANY OF THIS IN FRONT OF THE WITNESS BECAUSE
27 IT IS GOING TO GO TO ANSWERS THAT HE MAY PROVIDE LATER ON.

28 THE COURT: I TOLD YOU GUYS THAT THERE WERE GOING

1 TO BE NO SECRETS EITHER.

2 STATE YOUR GROUNDS.

3 MR. KLEIN: IT GOES TO THE SEVEN-PAGE LIST, YOUR
4 HONOR. KAREN MARMOR SAID THAT THE SEVEN-PAGE LIST WAS AT
5 RON LEVIN'S SOMETIME PRIOR TO JUNE 6, 1984, THAT IS O.S.C.
6 ISSUE UNDER I-C.

7 THE COURT: RIGHT.

8 MR. KLEIN: IT RELATES TO CONVERSATIONS THAT
9 MR. HUNT --

10 THE COURT: PUT YOUR QUESTION NOW.

11 BY MR. KLEIN:

12 Q OKAY.

13 AT THE TIME THAT YOU MADE YOUR OPENING
14 STATEMENT, YOU ETHICALLY BELIEVED YOU COULD REPRESENT TO
15 THE JURY THAT MR. HUNT WOULD TESTIFY?

16 MR. MC MULLEN: AGAIN, RELEVANCY AND VAGUENESS.

17 THE COURT: I WILL ALLOW THE QUESTION.

18 DO YOU UNDERSTAND THE QUESTION.

19 THE WITNESS: I UNDERSTAND IT.

20 BUT I DID NOT EVALUATE MY COMMENT IN TERMS OF
21 ETHICS, COUNSEL.

22 BY MR. KLEIN:

23 Q WHAT DID YOU EVALUATE IT IN TERMS OF?

24 A PROVIDING MY SERVICES AS AN ATTORNEY.

25 Q BUT YOU ALSO BELIEVED THAT WHEN YOU MADE
26 STATEMENTS TO THE JURY YOU HAD TO UTILIZE WHAT YOU
27 ETHICALLY BELIEVED TO BE CORRECT?

28 MR. MC MULLEN: OBJECTION. RELEVANCE.

1 THE COURT: I WILL ALLOW IT.

2 THE WITNESS: SEEING AS YOU AND I PROBABLY COULD
3 NEVER AGREE ON A DEFINITION OF ETHICS, COUNSEL, ITS HARD
4 FOR ME TO RESPOND IN THOSE TERMS.

5 MY ANSWER REMAINS THAT I MADE SUCH COMMENTS
6 AS I DID TO THE JURY BASED ON MY BEST UNDERSTANDING OF THE
7 PERFORMANCE OF MY ROLE AS AN ATTORNEY.

8 BY MR. KLEIN:

9 Q YOU ALSO BELIEVED THAT YOU COULD ETHICALLY
10 CALL ALIBI WITNESSES AT THE TIME THAT YOU MADE YOUR
11 OPENING STATEMENT?

12 MR. MC MULLEN: OBJECTION. RELEVANCY.

13 THE COURT: SUSTAINED.

14 BY MR. KLEIN:

15 Q DURING THE COURSE OF THE TRIAL YOU ETHICALLY
16 BELIEVED THAT YOU COULD PRESENT WITNESSES THAT SAY THAT
17 RON LEVIN WAS ALIVE SOMETIME AFTER JUNE 6, 1987?

18 MR. MC MULLEN: AGAIN, THERE IS A RELEVANCY
19 OBJECTION.

20 THE COURT: OVERRULED.

21 YOU MAY ANSWER.

22 THE WITNESS: YES.

23 BY MR. KLEIN:

24 Q NOW, DURING THE COURSE OF YOUR PREPARATIONS
25 FOR THIS CASE AND DURING THE TIME THAT THE CASE WAS IN
26 TRIAL, MR. HUNT REPEATEDLY PROVIDED YOU WITH MEMOS;
27 CORRECT?

28 A YES.

1 Q HE PROVIDED YOU WITH AGENDAS FOR MEETINGS
2 THAT YOU HAD WITH HIM AND MR. CHIER?

3 MR. MC MULLEN: OBJECTION. RELEVANCY.

4 THE COURT: OVERRULED.

5 THE WITNESS: I AM NOT SURE I WOULD USE THE WORD
6 AGENDAS. I BELIEVE THAT WE WERE PROVIDED WITH TOPICAL
7 MATERIAL AND REFERENCES.

8 BY MR. KLEIN:

9 Q OKAY.

10 AND EITHER DURING THE COURSE OF THESE
11 MEETINGS OR PRIOR TO THE MEETING YOU WOULD REVIEW THE
12 MATERIAL THAT MR. HUNT SUBMITTED TO YOU?

13 A ON MOST OCCASIONS.

14 Q AND YOU WOULD DISCUSS THE MATERIAL THAT
15 MR. HUNT PROVIDED YOU IN THESE MEETINGS THAT YOU HAD WITH
16 HIM AND MR. CHIER?

17 MR. MC MULLEN: OBJECTION. RELEVANCY.

18 THE COURT: OVERRULED.

19 THE WITNESS: NOT ON EVERY OCCASION.

20 MR. KLEIN: OKAY.

21 IS THIS A GOOD TIME, YOUR HONOR?

22 THE COURT: ALL RIGHT.

23 15 MINUTES.

24 DEFENDANT AND COUNSEL AND THE WITNESS ARE
25 ORDERED BACK.

26
27 (RECESS.)

28

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD IN OPEN COURT:)

3
4 THE BAILIFF: REMAIN SEATED, COME TO ORDER,
5 DEPARTMENT 101 IS AGAIN IN SESSION.

6 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
7 RECORD WILL REFLECT ALL COUNSEL AND PETITIONER ARE
8 PRESENT, MR. BARENS IS STILL ON THE STAND.

9 YOU MAY CONTINUE.

10 MR. KLEIN: CAN I ASK THE COURT A QUESTION ABOUT
11 BRINGING OUT A WITNESS THAT IS UNRELATED, IT IS ABOUT
12 MONEY. THE JENSENS ARE ONE OF THE INVESTIGATORS THAT
13 WORKED ON THE CASE.

14 THE COURT: RIGHT.

15 MR. KLEIN: THEY ARE GOING TO GIVE RELEVANT
16 TESTIMONY ABOUT WHAT THEY DID TO TRY TO FIND INFORMATION
17 OR A WITNESS THAT IS ON THE ISSUE. THEY ARE IN TEXAS.

18 THE COURT: WOULD THAT BE THE ATTORNEY?

19 MR. KLEIN: HOLMES AND ADELMAN.

20 THE COURT: ALL RIGHT.

21 WHAT'S THE QUESTION?

22 MR. KLEIN: IT IS LIKE -- THEY ARE A HUSBAND AND
23 WIFE TEAM, THE PLANE FARE IS LIKE \$500, AND ONE NIGHT'S
24 HOTEL AND CAR, SO IT IS LIKE ABOUT \$650 FOR THE TWO OF
25 THEM. IF THEY COME OUT TOMORROW AND LEAVE WEDNESDAY, I
26 TOLD MR. MC MULLEN THAT WE NEED TO PUT THEM ON MAYBE ABOUT
27 HALF HOUR ON WEDNESDAY.

28 THE COURT: DO WE NEED TO PUT THEM BOTH ON?

1 MR. KLEIN: I ASKED MR. JENSEN THAT QUESTION, AND
2 THEY BOTH NEED TO LOOK AT THEIR RECORDS, WHICH IS ABOUT
3 ONE INCH THICK, AND HE SAID THAT HE THOUGHT THAT HIS WIFE
4 DID SOME OF THE WORK AND THAT HE DID SOME OF THE WORK, AND
5 THAT HE COULDN'T TESTIFY TO WHAT SHE DID.

6 MR. KLEIN: THE EXTRA TICKET IS \$100. CAN I JUST
7 CALL MY OFFICE TO TELL MY SECRETARY TO CALL THEM TO GO
8 AHEAD AND MAKE --

9 THE COURT: WHY DON'T YOU HAVE MR. CRAIN DO IT.

10 MR. KLEIN: GOOD IDEA.

11 THE COURT: MR. MC MULLEN?

12 MR. MC MULLEN: AGAIN, YOUR HONOR, WITH THE OFFER
13 OF PROOF THAT HAS BEEN PROVIDED BOTH IN WRITING TO US AND
14 WHAT MR. KLEIN HAS OFFERED RIGHT NOW, WE WOULD BE
15 OBJECTING TO THE JENSENS AS BEING OUTSIDE OF THE SCOPE OF
16 YOUR MARCH 29TH ORDER.

17 THE COURT: WOULD IT BE RELEVANT TO THE LOCATING
18 OF -- WERE THERE ANY ATTEMPTS MADE TO LOCATE THE
19 WITNESS -- I HAVE FORGOTTEN THE WITNESSES' NAMES.

20 MR. KLEIN: ADELMAN AND HOLMES ARE TWO OF THE
21 WITNESSES ON THE LIST, YOUR HONOR, ADELMAN, MICROGENESIS.

22 THE COURT: I AM THINKING -- HOLMES, I DON'T HAVE A
23 RECOLLECTION AS TO HOW THAT IS GOING TO PLAY IN. REFRESH
24 MY RECOLLECTION. I JUST DON'T RECALL.

25 MR. KLEIN: HE IS THE WITNESS THAT TESTIFIED ABOUT
26 INFORMATION ABOUT LEVIN WANTING TO KNOW ABOUT EXTRADITION
27 TO BRAZIL AND MAYBE LEAVING --

28 MR. MC MULLEN: IT IS ISSUE 2-F.

1 THE COURT: HOW WOULD THE JENSENS ASSIST ON THAT,
2 THOUGH?

3 MR. KLEIN: THEY ARE GOING TO TESTIFY THAT THEY HAD
4 INFORMATION TO -- THAT LED THEM TO LOOK FOR THESE
5 INDIVIDUALS.

6 THE COURT: I AM SORRY.

7 MR. MC MULLEN.

8 MR. MC MULLEN: THAT DOESN'T SEEM TO BE THE ISSUE.
9 THE ISSUE IS WITH REGARD TO 2-F, WHETHER MR. BARENS WAS
10 AWARE OF THAT, AND IF HE WAS WHY DIDN'T HE UTILIZE THAT
11 INFORMATION, IF HE WASN'T AWARE OF IT, AND I ASSUME HE
12 WOULD HAVE BEEN, WOULD HE HAVE USED IT, AND THEN THE
13 STRICKLAND ANALYSIS AFTER THAT.

14 THE COURT: GIVE ME ONE SECOND TO SEE ADELMAN'S
15 TESTIMONY AGAIN.

16 MR. KLEIN: WHAT ADELMAN SAID, YOUR HONOR, IS THAT
17 HUNT TOLD HIM THAT MR. BARENS WOULD GET IN TOUCH WITH HIM.
18 THAT'S WHAT HIS TESTIMONY WAS. HOLMES TESTIFIED THAT HE
19 WAS IN THE LOS ANGELES AREA AND EASILY FINDABLE.

20 THE COURT: SEE IF YOU CAN TIE IT UP TO MR. BARENS
21 HERE. LET'S SEE IF THERE IS REALLY ANY NEED.

22 MR. KLEIN: I ALREADY TRIED THAT, YOUR HONOR, BY
23 GIVING HIM THE MEMOS. ACCORDING TO MR. BRODEY HE DOESN'T
24 REMEMBER ANY OF THE MEMOS THAT MR. HUNT GAVE HIM. SO
25 MR. HUNT IS GOING TO HAVE TO TESTIFY TO THE MEMOS THAT HE
26 PROVIDED MR. BARENS, AND THEN THE WITNESSES, THE
27 INVESTIGATORS ARE GOING TO HAVE TO TESTIFY, YOU KNOW, THAT
28 THEY LOOKED FOR THESE WITNESSES AND WERE NOT ABLE TO FIND

1 THEM.

2 THE COURT: I AM SORRY.

3 MR. MC MULLEN: WITH RESPECT TO THE ISSUE THAT YOUR
4 HONOR HAS OUTLINED FOR US TO LITIGATE IN THIS EVIDENTIARY
5 HEARING, MR. BARENS HAS BEEN QUITE CLEAR IN HIS
6 DECLARATION ON HOW HE APPROACHED THESE THINGS AND WHY HE
7 DID OR DID NOT DO CERTAIN THINGS. I THINK THAT HIS
8 TESTIMONY TODAY WILL MAKE THE NEED FOR INVESTIGATORS'
9 TESTIMONY WITH RESPECT TO NEIL ADELMAN AND OLIVER WENDELL
10 HOLMES NOT RELEVANT.

11 THE COURT: ALL RIGHT.

12 LET'S HOLD ON THEN IN CALLING THEM UNTIL
13 FURTHER ALONG THE WAY. "CALLING THEM," MEANING ON THE
14 TELEPHONE.

15

16 ARTHUR BARENS, +
17 CALLED AS A WITNESS BY THE PETITIONER, HAVING BEEN
18 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER
19 AS FOLLOWS:

20

21 DIRECT EXAMINATION RESUMED +

22

23 BY MR. KLEIN:

24 Q NOW, WHEN YOU MADE YOUR OPENING STATEMENT,
25 YOU HAD IN MIND THAT YOU INTENDED TO PRESENT TESTIMONY
26 THAT MR. HUNT COULDN'T HAVE COMMITTED THE CRIME THROUGH
27 THE TESTIMONY OF BROOKE ROBERTS, THAT HE WAS OVER AT THE
28 MANNING SOMETIME AFTER 9 O'CLOCK ON JUNE 6, 1984; CORRECT?

1 MR. MC MULLEN: OBJECTION. RELEVANCE.

2 THE COURT: JUST REFRAME THE QUESTION. YOU LOST ME
3 SOMEWHERE IN THERE.

4 BY MR. KLEIN:

5 Q OKAY.

6 WHEN YOU MADE YOUR OPENING STATEMENT, YOU HAD
7 IN MIND THAT YOU INTENDED TO PRESENT AN ALIBI DEFENSE THAT
8 MR. HUNT COULD NOT HAVE COMMITTED THE CRIME BECAUSE HE WAS
9 OVER AT THE MANNING SOMETIME AFTER 9 O'CLOCK ON JUNE 6,
10 1984; CORRECT?

11 MR. MC MULLEN: OBJECTION. LEADING AND NOT
12 RELEVANT TO THE ISSUE.

13 THE COURT: OVERRULED. LET'S SEE WHERE IT IS
14 GOING.

15 THE WITNESS: I WAS AWARE OF HER PROPOSED
16 TESTIMONY.

17 BY MR. KLEIN:

18 Q WELL, YOU INTENDED TO PRESENT IT; CORRECT?

19 A I SAID I WAS AWARE OF THAT PROPOSED
20 TESTIMONY.

21 Q YOU PRESENTED SUCH TESTIMONY; CORRECT?

22 MR. MC MULLEN: OBJECTION. RELEVANCY. YOUR HONOR
23 HAS READ THE TRANSCRIPT.

24 THE COURT: OVERRULED.

25 I ASSUME IT IS PREPARATORY TO SOMETHING ELSE.
26 LET ME --

27 THE WITNESS: BROOKE ROBERTS TESTIFIED DURING THE
28 TRIAL.

1 BY MR. KLEIN:

2 Q YOU ETHICALLY BELIEVE THAT YOU COULD PRESENT
3 HER TESTIMONY.

4 MR. MC MULLEN: OBJECTION -- EXCUSE ME.

5 BY MR. KLEIN:

6 Q YOU TOLD THE JURY IN YOUR OPENING STATEMENT
7 THAT BROOKE ROBERTS WAS GOING TO TESTIFY TO THE FACTS THAT
8 I JUST STATED; CORRECT?

9 MR. MC MULLEN: RELEVANCY.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T RECALL.

12 BY MR. KLEIN:

13 Q IF YOU TOLD THE JURY THAT IN YOUR OPENING
14 STATEMENT, YOU ETHICALLY BELIEVED THAT YOU COULD DO THAT;
15 CORRECT?

16 MR. MC MULLEN: OBJECTION. RELEVANCY.

17 THE COURT: SUSTAINED.

18 BY MR. KLEIN:

19 Q WHEN YOU PRESENTED SUCH TESTIMONY TO THE
20 JURY, YOU ETHICALLY BELIEVED THAT YOU COULD PRESENT IT;
21 CORRECT, MR. BARENS?

22 MR. MC MULLEN: OBJECTION. VAGUE AND RELEVANCY.

23 THE COURT: SUSTAINED ON RELEVANCE GROUNDS.

24 MR. KLEIN: IT IS RELEVANT, YOUR HONOR, TO WHETHER
25 OR NOT HE WOULD PRESENT OTHER EVIDENCE THAT THE SEVEN-PAGE
26 LIST WAS LEFT AT MR. LEVIN'S PRIOR TO JUNE 6, 1987.

27 THE COURT: ASK HIM.

28

1 BY MR. KLEIN:

2 Q YOU ETHICALLY BELIEVED THAT YOU COULD PRESENT
3 EVIDENCE THAT THE SEVEN-PAGE LIST WAS LEFT AT MR. LEVIN'S
4 HOUSE PRIOR TO JUNE 6, 1987; CORRECT?

5 A AT WHAT POINT IN TIME, SIR?

6 Q AT THE TIME THAT YOU MADE YOUR OPENING
7 STATEMENT?

8 A I DID NOT ENTERTAIN A BELIEF IN SPECIFIC
9 SUBJECTS AT THE TIME THAT I MADE MY OPENING STATEMENT.

10 Q WELL, MR. BARENS, IN YOUR OPENING STATEMENT
11 YOU TOLD THE JURY THAT MR. HUNT WOULD EXPLAIN EVERYTHING,
12 WHICH INCLUDED HOW THE SEVEN-PAGE LIST GOT TO MR. LEVIN'S
13 HOUSE SOMETIME PRIOR TO JUNE 6, 1987?

14 A I DID NOT SAY THAT, COUNSEL.

15 Q BUT YOU HAD THAT IN MIND; DIDN'T YOU?

16 A I DID NOT SAY THAT, SIR, AND I DO NOT RECALL
17 SPECIFICALLY WHAT I HAD IN MIND, BUT AS I HAVE TESTIFIED
18 EARLIER TODAY, I DID NOT HAVE A SPECIFIC BELIEF ON THAT
19 SUBJECT AT THE TIME THAT I MADE MY STATEMENT.

20 Q BUT YOU DID HAVE A SPECIFIC BELIEF THAT YOU
21 COULD TELL THE JURY THAT MR. HUNT WOULD EXPLAIN EVERYTHING
22 IN YOUR OPENING STATEMENT; CORRECT?

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: OVERRULED.

25 THE WITNESS: YES, SIR.

26 BY MR. KLEIN:

27 Q AND AT THE TIME THAT YOU MADE YOUR OPENING
28 STATEMENT, YOU WERE AWARE THAT THE PROSECUTION INTENDED TO

1 PRESENT EVIDENCE THAT MR. HUNT LEFT THE SEVEN-PAGE LIST AT
2 MR. LEVIN'S ON JUNE 6, 1987?

3 A I WAS AWARE OF THAT, YES, SIR.

4 Q SO YOU ETHICALLY BELIEVED DURING THE COURSE
5 OF THE TRIAL THAT YOU COULD PRESENT EVIDENCE THAT
6 INDIVIDUALS SAW MR. LEVIN ALIVE AFTER JUNE 6, 1987?

7 MR. MC MULLEN: OBJECTION. RELEVANCY.

8 THE COURT: OVERRULED.

9 BY MR. KLEIN:

10 Q LET ME SHOW YOU YOUR OPENING STATEMENT.

11 THE COURT: ARE YOU WITHDRAWING YOUR QUESTION?

12 MR. KLEIN: I AM GOING TO ASK ANOTHER QUESTION.

13 THE COURT: THEN YOU ARE WITHDRAWING THIS QUESTION.

14 MR. KLEIN: YES, YOUR HONOR.

15 BY MR. KLEIN:

16 Q WITH RESPECT TO WHAT YOU MEANT WHEN YOU TOLD
17 MR. HUNT, WHEN YOU TOLD THE JURY THAT MR. HUNT WAS GOING
18 TO EXPLAIN EVERYTHING AND YOU SAID YOU DIDN'T HAVE IN MIND
19 THE SEVEN-PAGE LIST, LET ME SHOW YOU PAGE 6376 OF THE
20 REPORTER'S TRANSCRIPT AND ASK YOU IF THIS REFRESHES YOUR
21 MEMORY ABOUT WHAT YOU HAD IN MIND, MR. BARENS,
22 SPECIFICALLY REFERRING TO LINE 5 AND 6.

23 MR. MC MULLEN: MAY I APPROACH?

24 THE COURT: YES.

25

26 (WITNESS REVIEWING TRANSCRIPT.)

27

28 THE WITNESS: LINES 5 AND 6 SAY (READING): "THIS

1 LIST MEANS WHAT IT SAYS, AND HUNT IS GOING TO TALK TO YOU
2 ABOUT THAT." I HAD IN MIND TO SAY THAT, AND I SAID THAT.
3 BY MR. KLEIN:

4 Q WHAT YOU HAD IN MIND THAT MR. HUNT -- WELL,
5 WHAT YOU HAD IN MIND WAS THAT ETHICALLY YOU COULD PRESENT
6 TO THE JURY AN EXPLANATION OF HOW THE SEVEN-PAGE LIST WAS
7 AT MR. LEVIN'S PRIOR TO JUNE 6, 1984; CORRECT?

8 MR. MC MULLEN: OBJECTION. IRRELEVANT, AND IT
9 ASSUMES FACTS NOT IN EVIDENCE.

10 THE COURT: OVERRULED.

11 YOU MAY ANSWER.

12 THE WITNESS: I'D ACTUALLY PREFER MY TESTIMONY TO
13 YOURS, SIR. MY TESTIMONY IS EXACTLY WHAT I SAID THERE.
14 THAT I WOULD -- THAT THERE WOULD BE EVIDENCE PRESENTED
15 FROM MR. HUNT TO EXPLAIN THE SEVEN-PAGE LIST. THAT'S WHAT
16 I SAID. THAT'S WHAT I MEANT TO SAY.

17 BY MR. KLEIN:

18 Q AND AS PART OF THAT, YOU HAD IN MIND THAT YOU
19 COULD ETHICALLY PRESENT EVIDENCE THAT THE SEVEN-PAGE LIST
20 WAS LEFT AT MR. LEVIN'S PRIOR TO JUNE 6, 1987?

21 MR. MC MULLEN: OBJECTION. LEADING.

22 THE COURT: OVERRULED.

23 THE WITNESS: I HAD IN MIND THAT I COULD ETHICALLY
24 PRESENT MR. HUNT TO TESTIFY AND SAY WHAT HE HAD TO SAY.

25 BY MR. KLEIN:

26 Q WHICH WOULD INCLUDE AN EXPLANATION THAT THE
27 SEVEN-PAGE LIST WAS LEFT AT MR. LEVIN'S PRIOR TO JUNE 6,
28 1987?

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

2 MR. KLEIN: '84. I SORRY.

3 THE COURT: OVERRULED.

4 THE WITNESS: NOT NECESSARILY.

5 BY MR. KLEIN:

6 Q OKAY.

7 AND IN YOUR OPENING STATEMENT, AGAIN, LET ME
8 SHOW YOU PAGE 6380, LINES 21 THROUGH 24, AND ASK YOU IF
9 THIS REFRESHES YOUR MEMORY ABOUT WHAT YOU COULD ETHICALLY
10 TELL THE JURY ABOUT AN ALIBI DEFENSE?

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

12 THE WITNESS: I AM SORRY. WHAT LINES DID YOU SAY,
13 COUNSEL?

14 MR. KLEIN: THE LINES THAT ARE MARKED.

15 THE WITNESS: 21 THROUGH 24?

16 MR. KLEIN: YES, SIR.

17

18 (WITNESS REVIEWING TRANSCRIPT.)

19

20 THE WITNESS: I SEE THAT THOSE TWO SENTENCES
21 ACTUALLY --

22 MR. MC MULLEN: YOUR HONOR, I WOULD OBJECT TO THAT
23 QUESTION ON FOUNDATIONAL GROUNDS.

24 BY MR. KLEIN:

25 Q DOES THIS REFRESH YOUR MEMORY --

26 THE COURT: YOU GUYS HAVE ALL SEEN THE TRANSCRIPT,
27 I HAVEN'T.

28 MR. MC MULLEN: THE FOUNDATION I AM REFERRING TO IS

1 THAT HE HAS LAPSE OF MEMORY. I DON'T THINK THAT'S BEEN
2 ESTABLISHED ON THIS PARTICULAR QUESTION.

3 MR. KLEIN: I AM GOING TO ASK THE NEXT QUESTION.

4 THE COURT: PUT A QUESTION.

5 BY MR. KLEIN:

6 Q DOES THIS REFRESH YOUR MEMORY THAT YOU TOLD
7 THE JURY IN THE OPENING STATEMENT (READING):

8 "THE DEFENSE WILL BRING
9 FORWARD WITNESSES THAT WILL VERIFY
10 FOR YOU WHERE JOE HUNT WAS THE NIGHT
11 IN QUESTION AND WHAT HE WAS DOING.
12 JOE HUNT IS NOT GOING TO TRY TO HIDE
13 FROM YOU. HE IS NOT GOING TO TRY TO
14 DISAPPEAR."

15 A I MADE THAT STATEMENT.

16 Q AND WHEN YOU MADE THAT STATEMENT YOU HAD IN
17 MIND THAT YOU COULD ETHICALLY PRESENT AN ALIBI DEFENSE
18 THAT MR. HUNT WAS AT THE MANNING SOMETIME AFTER 9 O'CLOCK
19 ON JUNE 4TH, 1984?

20 MR. MC MULLEN: OBJECTION. IRRELEVANT.

21 THE COURT: WE ARE REALLY OUTSIDE THE SCOPE OF THE
22 O.S.C. AT THIS POINT. I HAVE ALLOWED YOU TO PUT ON
23 EVIDENCE THAT HE KNEW HE HAD A RIGHT OR OBLIGATION OR
24 ETHICAL DUTY TO PUT ON EVIDENCE THAT MR. LEVIN WAS ALIVE
25 AND ELSEWHERE OR THAT HE HAD EVIDENCE CONCERNING THE
26 EXISTENCE OF THE TO-DO LIST AT SOME OTHER TIME OR PLACE,
27 BUT WHAT HAS THIS GOT TO DO WITH AN ALIBI DEFENSE, WHICH
28 IS THE FOCUS OF THAT QUESTION?

1 MR. KLEIN: THAT WOULD ALSO SHOW CORROBORATIVE THAT
2 THE SEVEN-PAGE LIST COULD HAVE BEEN LEFT AT MR. LEVIN'S
3 PRIOR TO JUNE 6, 1984, AND THAT HE COULD ETHICALLY PRESENT
4 THAT DEFENSE ALSO.

5 THE COURT: SURE A LONG WAY TO GET THERE. I WILL
6 ALLOW THE QUESTION, BUT YOU ARE GOING TO HAVE TO TIE IT UP
7 TO THIS.

8 MR. KLEIN: I WILL.

9 BY MR. KLEIN:

10 Q DOES THAT MEAN THAT YOU BELIEVED YOU
11 ETHICALLY COULD PRESENT AN ALIBI DEFENSE?

12 A I BELIEVED I COULD, YES, SIR.

13 Q AND DID YOU ALSO TELL THE JURY THAT
14 (READING):

15 "ACCORDING TO MR. HUNT HE IS
16 GOING TO ANSWER ALL OF THE
17 QUESTIONS. THERE WILL BE NO
18 EVIDENCE IN THIS COURTROOM THAT WILL
19 EVER SUGGEST DIRECTLY OR INDIRECTLY
20 THAT HUNT EVER RESORTED TO OR
21 SUGGESTED VIOLENCE AS A WAY TO
22 RESOLVE PROBLEMS."

23 MR. MC MULLEN: OBJECTION. I AM SORRY.

24 BY MR. KLEIN:

25 Q DID YOU TELL THE JURY THAT?

26 A I MADE THAT STATEMENT.

27 MR. MC MULLEN: OBJECTION. RELEVANCY.

28 THE COURT: OVERRULED.

1 THE ANSWER WILL STAND.

2 MR. KLEIN: EXCUSE ME, YOUR HONOR.

3 BY MR. KLEIN:

4 Q YOU ALSO UNDERSTOOD WHEN YOU MADE THESE
5 STATEMENTS TO THE JURY THAT YOUR ETHICAL OBLIGATION
6 PRECLUDED YOU FROM PRESENTING EVIDENCE THAT YOU BELIEVED
7 TO BE FALSE; CORRECT?

8 A I BELIEVED THAT IF I HAD A DOUBT IN MY MIND
9 AS TO THE ACCURACY OF EVIDENCE I WOULD DEFER TO THE
10 PARTICIPANTS.

11 THE COURT: MEANING TO THE CLIENT?

12 THE WITNESS: YES.

13 BY MR. KLEIN:

14 Q SO YOU HAD NO INFORMATION FROM MR. HUNT THAT
15 WOULD ALLOW YOU TO PRESENT EVIDENCE THAT MR. LEVIN WAS
16 ALIVE AFTER JUNE 6, 1987?

17 MR. MC MULLEN: OBJECTION. RELEVANCY.

18 THE COURT: OVERRULED.

19 THE WITNESS: DOES THE COURT INSTRUCT ME TO ANSWER
20 THAT QUESTION?

21 THE COURT: YES, PLEASE.

22 THE PETITIONER: THE QUESTION IS NOT BEING --

23 THE COURT: EXCUSE ME, MR. HUNT.

24 THERE IS A QUESTION PENDING.

25 THE PETITIONER: I AM THE HOLDER OF THE PRIVILEGE,
26 AND AS THE HOLDER OF THE PRIVILEGE I HAVE THE RIGHT TO
27 ASSERT THE PRIVILEGE, AND THEN YOU WOULD HAVE TO RULE ON
28 IT, AS I UNDERSTAND IT.

1 THE COURT: THE PRIVILEGE HAS BEEN WAIVED. I HAVE
2 RULED ON THIS PREVIOUSLY, MR. HUNT.

3 THE PETITIONER: TO RELEVANT MATTERS.

4 THE COURT: MR. HUNT, PLEASE BE QUIET.

5 WE ARE GOING TO HEAR THE ANSWER TO THE
6 QUESTION.

7 PLEASE ANSWER THE QUESTION.

8 THE WITNESS: COULD I HAVE THE QUESTION READ BACK,
9 YOUR HONOR.

10 THE COURT: READ BACK THE QUESTION.

11
12 (RECORD READ.)

13
14 MR. KLEIN: YOUR HONOR, I WISH TO WITHDRAW THE
15 QUESTION AND TO REPHRASE IT, YOUR HONOR.

16 THE COURT: YOU CAN WITHDRAW THE QUESTION.

17 MR. KLEIN: THANK YOU

18 BY MR. KLEIN:

19 Q DID MR. HUNT EVER TELL YOU ANYTHING THAT PUT
20 YOU ON NOTICE THAT WOULD REASONABLY PREVENT YOU FROM
21 PRESENTING ALIBI WITNESSES OR SIGHTING WITNESSES AS FALSE
22 EVIDENCE IN THIS CASE?

23 THE COURT: REPHRASE THE QUESTION. THAT'S
24 COMPOUND. ALIBI WITNESSES AND --

25 MR. KLEIN: EXCUSE ME.

26 THE COURT: WAIT A SECOND. I AM RULING.

27 THERE IS A DIFFERENCE BETWEEN ALIBI WITNESSES
28 AND SIGHTING WITNESSES. IT IS COMPOUND. REFRAME IT.

1 MR. KLEIN: ALL RIGHT.

2 BY MR. KLEIN:

3 Q AT THE TIME THAT YOU MADE YOUR OPENING
4 STATEMENT DID MR. HUNT TELL YOU ANYTHING THAT WOULD PUT
5 YOU ON NOTICE THAT WOULD PREVENT YOU FROM PRESENTING ALIBI
6 WITNESSES AS FALSE EVIDENCE?

7 THE COURT: DO YOU UNDERSTAND THE QUESTION?

8 THE WITNESS: I BELIEVE I DO, YOUR HONOR.

9 THE COURT: YOU MAY ANSWER.

10 MR. KLEIN: CAN I TRY TO REPHRASE IT, BECAUSE I AM
11 AFRAID THAT I DID MISSTATE IT, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 YOU MAY WITHDRAW THAT QUESTION AS WELL.

14 MR. KLEIN: THANK YOU.

15

16 (PAUSE.)

17

18 BY MR. KLEIN:

19 Q AT THE TIME THAT YOU MADE YOUR OPENING
20 STATEMENT, MR. BARENS, HAD MR. HUNT TOLD YOU ANYTHING THAT
21 WOULD PREVENT YOU FROM PRESENTING -- LET ME TRY AGAIN. IT
22 IS JUST NOT COMING OUT RIGHT.

23

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

26

27 THE COURT: LET ME SUGGEST WE ARE GOING TO GET ALL
28 THE INFORMATION OUT AT SOME POINT, SO WHY DON'T WE JUST

1 GO.

2

3

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

4

5

6

MR. KLEIN: LET'S TRY AGAIN, YOUR HONOR.

7

8

THE COURT: THAT'S THE PROBLEM OF HAVING TOO MANY
LAWYERS IN THE COURTROOM. I THINK WE ARE REACHING
CRITICAL MASS.

9

10

BY MR. KLEIN:

11

12

13

14

Q AT THE TIME THAT YOU MADE YOUR OPENING
STATEMENT, MR. BARENS, HAD MR. HUNT TOLD YOU ANYTHING THAT
PUT YOU ON NOTICE THAT PRESENTING SIGHTING EVIDENCE WOULD
BE FALSE OR PERJURED TESTIMONY?

15

16

MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION,
AND IT IS IRRELEVANT.

17

18

19

THE COURT: OVERRULED.

THE WITNESS: DOES THE COURT INSTRUCT ME TO ANSWER
THE LAST QUESTION?

20

21

22

THE COURT: YES, PLEASE. YOU ARE SO INSTRUCTED.

THE WITNESS: I HAD CONFLICTING INFORMATION.

23

24

25

Q SO IN YOUR MIND YOU BELIEVED THAT YOU COULD
ETHICALLY PRESENT EVIDENCE OF SIGHTING WITNESSES BASED ON
WHAT YOU HAD BEEN TOLD BY MR. HUNT?

26

27

28

A IN MY MIND I BELIEVED THAT IN THE EVENT I HAD
CONFLICTING DATA THAT I WOULD DEFER TO THE CLIENT.

Q AND THE SAME ANSWER FOR ALIBI WITNESSES?

1 A YES.

2 Q AND THE SAME ANSWER FOR PRESENTING MR. HUNT'S
3 TESTIMONY?

4 A NO.

5 Q HOW IS THAT DIFFERENT?

6 A PRESENTING MR. HUNT'S TESTIMONY AND WHETHER
7 OR NOT HE WOULD TESTIFY WAS A MATTER ULTIMATELY TO BE
8 DECIDED BY MR. HUNT AT THAT TIME IN THE CONTEXT OF THE
9 TRIAL WHERE HE WOULD BE CALLED AS THE NEXT WITNESS.

10 Q BUT AT THE TIME THAT YOU MADE YOUR OPENING
11 STATEMENT YOU ETHICALLY BELIEVED THAT YOU COULD TELL THE
12 JURY THAT MR. HUNT WAS GOING TO EXPLAIN EVERYTHING?

13 A GIVEN THE SAME ANSWER TO THE QUESTIONS I GAVE
14 PREVIOUSLY, YES, SIR.

15 Q OKAY.

16 MR. KLEIN: NOW, JUST A SERIES OF DOCUMENTS, YOUR
17 HONOR, THAT I WANT TO ASK MR. BARENS IF HE HAS SEEN. IT
18 WILL GO VERY QUICKLY, AND THEN I WILL MOVE ON.

19 MR. MC MULLEN: MAY I APPROACH SO I CAN SEE WHAT
20 THESE ARE?

21 THE COURT: YES.

22 MR. BRODEY, IF YOU WANT TO COME ON UP, TOO,
23 YOU CAN.

24 MR. BRODEY: THANK YOU, YOUR HONOR.

25 BY MR. KLEIN:

26 Q SHOWING YOU A NOTE FROM --

27 THE COURT: LET ME GET MY EXHIBIT LIST.

28 MR. KLEIN: IT IS EXHIBIT NO. 239, YOUR HONOR.

1 MAY IT BE SO MARKED?

2 BY MR. KLEIN:

3 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

4 A I DON'T KNOW.

5 THE COURT: HOLD ON. HOLD ON. HOLD ON.

6 239 WILL BE MARKED.

7

8 (MARKED FOR ID = PETITIONER'S 239,

9 DOCUMENT.)

10

11 THE WITNESS: I DON'T KNOW.

12 BY MR. KLEIN:

13 Q DO YOU RECOGNIZE THE HANDWRITING ON THAT

14 DOCUMENT?

15 A IT APPEARS TO BE THE HANDWRITING OF JOSEPH

16 HUNT.

17 Q IS THAT THE KIND OF MEMO OR NOTE THAT HE

18 WOULD SEND YOU DURING THE COURSE OF THE CASE?

19 MR. MC MULLEN: OBJECTION. RELEVANCY.

20 THE COURT: OVERRULED.

21 THE WITNESS: IT IS ONE TYPE OF A NOTE I RECEIVED

22 FROM HIM.

23 BY MR. KLEIN:

24 Q THAT'S YOUR NAME "ARTHUR"; RIGHT?

25 A I BEG YOUR PARDON?

26 Q THAT'S YOUR NAME, ARTHUR?

27 A YOU DON'T REALLY WANT ME TO ANSWER THAT?

28 THE COURT: COUNSEL, PLEASE DON'T ARGUE. LET'S

1 MOVE ON.

2 BY MR. KLEIN:

3 Q SHOWING YOU A SERIES OF DOCUMENTS.

4 MR. KLEIN: MAY IT BE MARKED 241, YOUR HONOR? IT
5 IS A HANDWRITTEN --

6 THE COURT: HUNT'S NOTES.

7 IT WILL BE MARKED AS 241.

8

9 (MARKED FOR ID = PETITIONER'S 241,
10 DOCUMENT.)

11

12 THE COURT: I AM ASSUMING YOU ARE PLACING 241 ON --

13 MR. KLEIN: I DID, YOUR HONOR.

14 BY MR. KLEIN:

15 Q I HAVE PREVIOUSLY SHOWN YOU THIS DOCUMENT.

16 HAVE YOU SEEN THAT BEFORE?

17 A I AM NOT SURE, SIR.

18 Q OKAY.

19 DOES THAT LOOK LIKE MR. HUNT'S PRINTING?

20 A PARTIALLY.

21 Q AND IS THIS THE KIND OF DOCUMENT THAT HE
22 WOULD PROVIDE YOU DURING THE COURSE OF THE TRIAL?

23 A YES.

24 THE COURT: JUST SO WE GOT A RECORD, APPROXIMATELY
25 HOW MANY PAGES DO WE HAVE THERE? THESE ARE THE ORIGINALS;
26 CORRECT? I MEAN, THE ORIGINALS FOR THE PURPOSES OF MAKING
27 THE RECORD.

28 MR. KLEIN: YES, YOUR HONOR.

1 THE COURT: SO WE GOT TO MAKE SURE THAT THE --
2 MR. KLEIN: ONE, TWO, THREE, FOUR, FIVE, SIX,
3 SEVEN, EIGHT, NINE.

4 THE COURT: ALL RIGHT.

5 BY MR. KLEIN:

6 Q SHOWING YOU A DOCUMENT THAT SAYS (READING):
7 "CHRONOLOGY, HUNT'S RELATIONSHIP TO LEVIN. MILESTONES."

8 MR. KLEIN: MAY THAT BE MARKED EXHIBIT 244, YOUR
9 HONOR?

10 THE COURT: 244.

11

12 (MARKED FOR ID = PETITIONER'S 244,
13 DOCUMENT.)

14

15 BY MR. KLEIN:

16 Q THIS IS A TYPEWRITTEN DOCUMENT, 23 PAGES.
17 HAVE YOU SEEN THIS DOCUMENT BEFORE?

18 A I AM NOT SURE, SIR.

19 Q DIDN'T MR. HUNT PROVIDE YOU WITH A CHRONOLOGY
20 RELATING TO MR. LEVIN IN TERMS OF PREPARATION FOR THIS
21 CASE?

22 A I BELIEVE HE PROVIDED ME WITH SEVERAL
23 DIFFERENT CHRONOLOGIES, SIR.

24 Q YOU ARE NOT SURE WHETHER THIS IS ONE HE
25 PROVIDED YOU?

26 A WELL, I HAVE NO INDEPENDENT RECOLLECTION. I
27 AM LOOKING AT SOME 12 OR 13 YEARS LATER NOW. I CAN'T BE
28 CERTAIN AS I SIT HERE UNDER OATH.

1 Q OKAY.

2 SHOWING YOU A DOCUMENT THAT'S ONE, TWO,
3 THREE, FOUR, FIVE, SIX, IT IS 25 PAGES, 1 TO 20, THEN IT
4 HAS FIVE PAGES IN FRONT OF IT.

5 MR. KLEIN: MAY IT BE MARKED EXHIBIT 245, YOUR
6 HONOR?

7 THE COURT: YES.

8
9 (MARKED FOR ID = PETITIONER'S 245,
10 DOCUMENT.)

11
12 BY MR. KLEIN:

13 Q THE COVER SHEET HAS SOMETHING THAT LOOKS LIKE
14 IT HAS YOUR OFFICE CUT OFF AND HAS MR. HUNT ON IT AT THE
15 JAIL, AND THEN IT HAS SOMETHING ON IT, THE SECOND PAGE, IT
16 SAYS (READING) "CHRISTINA."

17 DO YOU KNOW WHO THAT IS?

18 A NOT OFFHAND, NO, SIR.

19 Q IS THAT SOMEBODY THAT WORKED FOR YOU DURING
20 THE TIME THAT YOU WERE REPRESENTING MR. HUNT?

21 A I DON'T KNOW.

22 Q YOU DON'T REMEMBER?

23 A NO, I DON'T REMEMBER.

24 Q OKAY.

25 AND THEN IT HAS GOT A LETTER DATED JULY 3,
26 1985, AND SAYS, (READING) "DEAR ARTHUR AND RICHARD," AND
27 IT IS SIGNED (READING) "FOND REGARDS FROM THE CATACOMBS,"
28 AND IT IS SIGNED JOSEPH HUNT.

1 IS THAT SOMETHING THAT YOU RECEIVED FROM
2 MR. HUNT?

3 MR. MC MULLEN: AGAIN, YOUR HONOR, WE WOULD OBJECT
4 ON RELEVANCY GROUNDS.

5 THE COURT: WELL, THESE ARE NOT PART OF THE
6 PETITION. THESE ARE NOT EXHIBITS THAT ARE ATTACHED TO THE
7 PETITION.

8 MR. KLEIN: YES, YOUR HONOR, THEY ARE NOT ATTACHED
9 TO THE PETITION.

10 THE COURT: I HAVE NOT SEEN THEM, SO I DON'T KNOW.

11 MR. KLEIN: THEY ARE PART OF THE DOCUMENTS THAT ARE
12 GOING TO CONNECT UP THE ISSUE 2.

13 THE COURT: I WILL SEE WHERE IT IS GOING.

14 THE WITNESS: I DON'T KNOW WHETHER I DID OR I
15 DIDN'T AS I LOOK AT THESE TODAY.

16 BY MR. KLEIN:

17 Q MR. HUNT WAS IN JAIL JULY OF 1985?

18 A EVIDENTLY.

19 Q WELL, DO YOU REMEMBER?

20 A I BELIEVE HE WAS IN JAIL.

21 Q OKAY.

22 MR. KLEIN: I HAVE ANOTHER SERIES OF DOCUMENTS.

23 MAY IT BE MARKED EXHIBIT 243. IT IS 20 PAGES. THIS
24 PROBABLY SHOULDN'T BE THERE, SO I WILL MARK -- IT IS 20
25 PAGES. MAY IT BE MARKED 243?

26 THE COURT: IT WILL BE MARKED 243.

27

28

(MARKED FOR ID = PETITIONER'S 243,

1 DOCUMENT.)

2

3 BY MR. KLEIN:

4 Q IT SAYS (READING) "EVIDENCE DEFENSE," AND
5 THEN IT HAS GOT A LETTER DATED AUGUST 2ND, 1985.

6 (READING) "DEAR ARTHUR AND RICHARD."

7 A DO YOU MIND IF I SEE THAT?

8 Q SURE. TAKE A LOOK.

9

10 (WITNESS REVIEWS LETTER.)

11

12 A I HAVE SOME RECOLLECTION.

13 Q OF RECEIVING IT AND REVIEWING IT?

14 A YES.

15 Q THANK YOU.

16 THE COURT: I AM SORRY. WHICH ONE WAS THAT, 243?

17 THE WITNESS: YES.

18 MR. KLEIN: ANOTHER DOCUMENT, IT IS 18 PAGES. MAY
19 THAT BE MARKED 252, YOUR HONOR.

20 BY MR. KLEIN:

21 Q IT SAYS (READING), "INDEX TO HUNT'S FILES,"
22 ON THE FRONT AND ROMAN NUMERAL ONE, "CURRENT AGENDA."

23 DO YOU RECALL SEEING THIS DOCUMENT FROM
24 MR. HUNT?

25 THE COURT: IT WILL BE MARKED 252.

26 MR. KLEIN: THANK YOU

27

28 (MARKED FOR ID = PETITIONER'S 252,

1 DOCUMENT.)

2

3 (PAUSE.)

4

5 THE WITNESS: I AM NOT SURE, SIR.

6 BY MR. KLEIN:

7 Q WHOSE HANDWRITING IS THAT IN?

8 A IT APPEARS TO BE JOE HUNT'S HANDWRITING IN
9 MOST PART.

10 Q THANK YOU.

11 MR. KLEIN: I HAVE ANOTHER DOCUMENT. MAY IT BE
12 MARKED 253? IT HAS GOT THE DATE, SUNDAY, JANUARY 4, 1987.
13 IT HAS GOT THREE PAGES AND IT APPEARS TO BE A
14 COMPUTER-GENERATED DOCUMENT.

15 THE COURT: I AM SORRY.

16 HOW MANY PAGES AGAIN?

17 MR. KLEIN: THREE, YOUR HONOR.

18 THE COURT: IT WILL BE MARKED AS 253.

19

20 (MARKED FOR ID = PETITIONER'S 253,
21 DOCUMENT.)

22

23 BY MR. KLEIN:

24 Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

25 A I DO NOT BELIEVE SO.

26 Q MR. HUNT DID SEND YOU A COMPUTER-GENERATED
27 DOCUMENT OR GIVE THEM TO YOU DURING THE COURSE OF
28 PREPARING FOR TRIAL; CORRECT?

1 MR. MC MULLEN: OBJECTION. RELEVANCY.

2 THE COURT: OVERRULED.

3 THE WITNESS: I BELIEVE SO, BUT I DO NOT RECALL ONE
4 SIMILAR TO THAT, SIR.

5 MR. KLEIN: I HAVE THREE MORE TO BE -- NOT THAT
6 I -- I HAVE THREE MORE THAT AREN'T MARKED, YOUR HONOR, AND
7 THEY ARE NOT ON MY EXHIBIT LIST. COULD I MARK THEM AS
8 NEXT IN ORDER?

9 THE COURT: NEXT IN ORDER WILL BE 271.

10

11 (MARKED FOR ID = PETITIONER'S 271,
12 DOCUMENT.)

13

14 MR. KLEIN: I WILL PUT 271 ON THE BACK, YOUR HONOR.
15 IT IS ONE, TWO, THREE, FOUR PAGES.

16 BY MR. KLEIN:

17 Q AND IT SAYS (READING): "AUGUST 6, 1985,
18 ABOVE ALL, OVERALL ATTITUDE TO PROJECT" --

19 A PROJECT.

20 THE COURT: AUGUST 6, 1987?

21 MR. KLEIN: '85, YOUR HONOR.

22 THE COURT: '85.

23 BY MR. KLEIN:

24 Q IS THIS SOMETHING THAT YOU HAVE EVER SEEN
25 BEFORE?

26 A I HAVE SOME RECOLLECTION OF THIS, YES.

27 Q THIS IS SOMETHING THAT MR. HUNT PROVIDED YOU
28 IN THE COURSE OF PREPARING FOR TRIAL?

1 A HE WELL MAY HAVE.

2 MR. KLEIN: I HAVE ANOTHER DOCUMENT. IT IS ONE,
3 TWO, THREE PAGES, AND IT SAYS, "CLIENT ATTORNEY
4 COMMUNICATION AGENDA." MAY THAT BE MARKED 272, YOUR
5 HONOR?

6 THE COURT: 272.

7 MR. KLEIN: 272.

8

9 (MARKED FOR ID = PETITIONER'S 272,
10 DOCUMENT.)

11

12 BY MR. KLEIN:

13 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

14 A I AM NOT SURE, SIR.

15 Q AND THE LAST ONE IS, IT HAS GOT AUGUST 3, '85
16 IT SAYS (READING) "AGENDA." IT IS THREE PAGES. IT SAYS
17 "CLIENT" --

18 MR. KLEIN: IT IS FOUR PAGES. MAY IT BE MARKED
19 273?

20 THE COURT: YES.

21

22 (MARKED FOR ID = PETITIONER'S 273,
23 DOCUMENT.)

24

25 THE COURT: I AM SORRY.

26 WHAT DID YOU END UP SAYING THREE OR FOUR
27 PAGES?

28 MR. KLEIN: FOUR.

1 EXCUSE ME.

2 BY MR. KLEIN:

3 Q (READING): "CLIENT/ATTORNEY PRIVILEGE,
4 BARENS, CHIER," HAVE YOU SEEN THIS DOCUMENT BEFORE?

5 A I DO NOT RECALL THIS DOCUMENT.

6 Q THIS IS THE KIND OF DOCUMENT THAT MR. HUNT
7 PROVIDED YOU DURING THE COURSE OF PREPARING FOR TRIAL,
8 THOUGH, IS IT NOT?

9 A IN THE SENSE THAT IT IS TYPED ON WHITE PAPER,
10 SIR, I SEE A DOCUMENT TYPED ON WHITE PAPER.

11 Q THAT'S THE KIND OF DOCUMENT, ONE OF THE KIND
12 OF DOCUMENTS THAT MR. HUNT WOULD PROVIDE YOU?

13 A WAS ONE OF THE TYPES OF DOCUMENTS THAT I HAVE
14 SEEN.

15 Q NOW, ONE OF THE ISSUES THAT IS IDENTIFIED AS
16 PART OF THIS PROCEEDING IS WHETHER OR NOT EVIDENCE THAT
17 MR. KARNY LIED IN THE CANTOR/FITZGERALD DEPOSITION. DO
18 YOU RECALL THAT ISSUE?

19 A I DO, SIR.

20 Q AND YOU RECALL WHAT YOU TOLD THE COURT IN
21 YOUR DECLARATION?

22 A I DO, SIR, GENERALLY SPEAKING.

23 Q YOU TOLD THE COURT THAT YOU REMEMBERED THAT
24 MR. HUNT TOLD YOU THAT HE TOLD MR. KARNY TO LIE IN HIS
25 DEPOSITION?

26 A YES, SIR.

27 Q SO YOU KNEW THAT MR. KARNY --

28 A BACK UP A MOMENT.

1 DOES THE COURT INSTRUCT ME TO ANSWER THE LAST
2 QUESTION?

3 THE COURT: YES.

4 THE WITNESS: YOUR ANSWER MAY STAND.

5 BY MR. KLEIN:

6 Q SO YOU KNEW THAT IF YOU OBTAINED THAT
7 DEPOSITION THAT IT WOULD CONTAIN INFORMATION THAT
8 MR. KARNY, THE KEY PROSECUTION WITNESS, HAD LIED IN A
9 DEPOSITION?

10 A I KNEW THAT IT WOULD CONTAIN INFORMATION THAT
11 WOULD READILY BE ADVISED TO A JURY THAT HE HAD LIED AT THE
12 DIRECTION AND THE REQUEST AND COACHING OF MY CLIENT.

13 Q NOW, YOU NEVER OBTAINED A COPY OF THE
14 DEPOSITION THAT MR. KARNY TOOK WITH RESPECT TO THE
15 CANTOR/FITZGERALD DEPOSITION, DID YOU?

16 A FOR THE REASONS I JUST STATED I DID NOT.

17 Q BUT YOU DIDN'T, DID YOU?

18 A FOR THE REASONS I JUST STATED I DID NOT.

19 Q NOW, WHEN YOU TOLD THE COURT IN YOUR
20 DECLARATION, WHICH IS EXHIBIT G, THAT YOU DIDN'T WANT TO
21 BRING OUT THE FACT THAT KARNY LIED IN HIS DEPOSITION, YOU
22 GAVE TWO REASONS; IS THAT CORRECT?

23 A WHATEVER THE DOCUMENT SAYS, SIR, IS WHAT I
24 SAID.

25 THE COURT: YOU WANT ME TO PUT G BEFORE HIM?

26 MR. KLEIN: THAT WOULD BE HELPFUL. THANK YOU

27 THE WITNESS: THANK YOU

28 MR. MC MULLEN: WOULD THE COURT LIKE A COPY OF THE

1 DECLARATION? I HAVE AN EXTRA COPY.

2 THE COURT: SURE.

3 MR. MC MULLEN: MAY I APPROACH?

4 THE COURT: YES.

5 BY MR. KLEIN:

6 Q TAKE A LOOK AT PAGE ONE, PARAGRAPH 2-A AND
7 2-B. SEE IF THAT REFRESHES YOUR MEMORY.

8

9 (WITNESS REVIEWING DOCUMENT.)

10

11 A IT DOES.

12 Q DOES THAT REFRESH YOUR MEMORY?

13 A YES.

14 Q WHAT WAS THE FIRST REASON THAT YOU GAVE FOR
15 NOT WANTING TO PRESENT EVIDENCE THAT MR. KARNY LIED IN A
16 DEPOSITION?

17 THE COURT: LET ME ASK YOU. DO WE NEED TO USE THE
18 DECLARATION? I MEAN, WE HAVE THE WITNESS HERE. WHY DON'T
19 WE JUST ASK HIM DIRECTLY.

20 MR. KLEIN: OKAY. THAT'S FINE.

21 THE COURT: IF HE SAYS SOMETHING DIFFERENT, THEN
22 YOU CAN IMPEACH HIM WITH THAT.

23 MR. KLEIN: THANK YOU

24 BY MR. KLEIN:

25 Q WHAT IS THE FIRST REASON THAT YOU USED IN
26 DECIDING NOT TO PRESENT EVIDENCE THAT MR. KARNY LIED IN
27 THE CANTOR/FITZGERALD DEPOSITION?

28 A I DID NOT WANT TO PUT BEFORE THE JURY THAT

1 MR. HUNT WAS OF A CHARACTER OR NATURE SUCH AS WOULD
2 MANIPULATE MR. KARNY OR ANYONE ELSE TO LIE.

3 Q AND, ALSO, THAT HE HAD THE ABILITY TO
4 PERSUADE OTHERS TO LIE?

5 A THIS WAS A CENTRAL THEME OF THE PROSECUTION,
6 THAT ON SOME BASIS MR. HUNT WAS SOME SORT OF A RASPUTIAN
7 CHARACTER WHO HAD MESMERIZED, ALLEGEDLY MESMERIZED ALL
8 THESE YOUNG MEN INTO DOING HIS BIDDING AND ENGAGE IN
9 ILLEGAL ACTIVITIES. I WANTED TO PUT AS MUCH DISTANCE
10 BETWEEN MY CLIENT AND THAT TYPE OF ALLEGATION AS POSSIBLE
11 AT ALL TIMES.

12 Q SO YOU DIDN'T WANT THE JURY TO KNOW THAT
13 MR. HUNT HAD THE ABILITY TO PERSUADE OTHERS TO DO HIS
14 BIDDING; IS THAT RIGHT?

15 A I DID NOT WANT THE JURY TO HAVE INFORMATION
16 OF A NEGATIVE SORT THAT MR. HUNT WOULD BE ABLE TO LEAD AN
17 INDIVIDUAL TO LIE OR CHEAT.

18 Q OKAY.

19 AND WERE YOU TELLING THE TRUTH WHEN YOU SAID
20 IN YOUR DECLARATION THAT YOU ALSO DIDN'T WANT THE JURY TO
21 HAVE THE UNDERSTANDING THAT MR. HUNT HAD THE ABILITY TO
22 PERSUADE OTHERS TO DO HIS BIDDING?

23 A IN THE CONTEXT IN WHICH IT IS STATED IN FULL
24 PARAGRAPH, COUNSEL, NOT OUT OF CONTEXT.

25 Q AND ALSO, THAT HE EXERTED CONTROL OVER OTHER
26 MEMBERS OF THE B.B.C. YOU DIDN'T WANT THE JURY TO KNOW
27 THAT EITHER; DID YOU?

28 A I DID NOT WANT THE JURY TO KNOW THAT IN A

1 NEGATIVE CONTEXT AS EXPLAINED IN THE ENTIRE PARAGRAPH THAT
2 YOU WERE MAKING REFERENCE TO, COUNSEL.

3 Q OKAY.

4 DO YOU REMEMBER WHO JEFF RAYMOND WAS?

5 A IN THE VAGUE ESSENCE.

6 Q HE WAS A MEMBER OF THE B.B.C., AND HE WAS A
7 WITNESS FOR THE PROSECUTION IN THE CASE. DO YOU REMEMBER
8 THAT?

9 A I REMEMBER HE WAS A WITNESS FOR THE
10 PROSECUTION. WHETHER OR NOT HE WAS A MEMBER OF THE B.B.C.
11 I DON'T RECALL.

12 Q OKAY.

13 NOW, WHEN YOU EXAMINED MR. RAYMOND IN
14 CROSS-EXAMINATION, ISN'T IT TRUE THAT YOU BROUGHT OUT THAT
15 MR. HUNT WAS A LIAR?

16 A THERE WERE TIMES IN THE TRIAL WHEN I INTENDED
17 TO SHOW THAT HE WOULD HAVE MISSTATED FACTS TO ACHIEVE
18 WORTHWHILE GOALS.

19 Q DIDN'T YOU IN FACT BRING OUT IN YOUR
20 CROSS-EXAMINATION OF MR. RAYMOND THAT MR. HUNT WAS A LIAR?

21 MR. MC MULLEN: OBJECTION. RELEVANCY.

22 THE WITNESS: I DON'T KNOW.

23 THE COURT: OVERRULED.

24 THE ANSWER WILL STAND.

25 THE WITNESS: I MEAN, WITHOUT READING THE TESTIMONY
26 AND THE CONTEXT IN WHICH I WAS TRYING TO ACHIEVE A POINT,
27 I DON'T KNOW.

28

1 BY MR. KLEIN:

2 Q DIDN'T YOU ALSO BRING OUT IN YOUR
3 CROSS-EXAMINATION OF MR. RAYMOND THAT MR. HUNT WAS A
4 LEADER?

5 A I DON'T KNOW, SIR.

6 Q DIDN'T YOU ALSO BRING OUT IN YOUR
7 CROSS-EXAMINATION OF MR. RAYMOND THAT MR. HUNT WAS A
8 SKILLED PERSUADER?

9 MR. MC MULLEN: OBJECTION, YOUR HONOR. THIS IS
10 IMPROPER IMPEACHMENT EVIDENCE.

11 THE COURT: SUSTAINED.

12 MR. KLEIN: EXCUSE ME, YOUR HONOR. I THINK IT IS
13 ABSOLUTELY PROPER.

14 THE COURT: THE PROBLEM, YOU CAN ARGUE IN CLOSING
15 ARGUMENT. I HAVE READ THE TRANSCRIPT. LOOKING AT MY
16 NOTES AT THE RAYMOND TESTIMONY, I ASSUME YOU ARE TRYING TO
17 GET AT PART OF THE THINGS THAT MR. HUNT BRAGGED ABOUT
18 DOING SOMETHING WHEN IN FACT HE HADN'T DONE IT. THAT IS
19 THE CONVERSATION ABOUT BRAGGING ABOUT KILLING LEVIN?

20 MR. KLEIN: NO, YOUR HONOR. JUST IN GENERAL.

21 THE COURT: THAT'S THE ONLY THING I CAN SEE
22 RELEVANT ABOUT IT.

23 MR. CRAIN: THE WITNESS HAS SAID THAT HE DIDN'T DO
24 CERTAIN THINGS. BECAUSE OF THIS TRIAL STRATEGY THAT HE
25 USED THE CANTOR-FITZGERALD DEPOSITION WOULD MAKE MR. HUNT
26 LOOK BAD IN THE WAYS THAT HE JUST DESCRIBED. THE RECORD
27 IN FACT WILL SHOW THAT THROUGHOUT THE TRIAL HE DID JUST
28 WHAT HE SAID HE DIDN'T WANT TO DO. SO IT REFUTES HIS

1 CLAIM. THAT'S WHAT THIS LINE OF QUESTIONING IS ABOUT.

2 THE WITNESS: I BELIEVE IF I COULD SPEAK TO MY
3 DEFENSE ON THAT.

4 THE COURT: ONE SECOND. I HAVE READ THE
5 TRANSCRIPT. IF THERE IS SOMETHING IN THE TRANSCRIPT, YOU
6 CAN DO IT, IF YOU GOT A PARTICULAR POINT THAT YOU HAVE IN
7 MIND. LET'S DO IT.

8 DO YOU WANT TO EXPLAIN AN ANSWER?

9 THE WITNESS: QUITE SO.

10 THE COURT: GO AHEAD.

11 THE WITNESS: COUNSEL WANTS TO MAKE ISSUE SAYING
12 THAT HE HAS IMPEACHED ME ON SOME BASIS BECAUSE I SAID I
13 DIDN'T WANT TO SHOW MR. HUNT TO BE A LIAR. CERTAINLY WHEN
14 WITNESS AFTER WITNESS CAME ON THE STAND TO SAY THAT
15 MR. HUNT STOOD BEFORE THEM AND SAID, "I KILLED," OR, "WE
16 KILLED RON LEVIN," YOU BETTER BELIEVE I WANTED TO TELL THE
17 JURY HE WAS LYING WHEN HE SAID THAT.

18 BY MR. KLEIN:

19 Q OKAY. LET ME SHOW YOU YOUR QUESTIONING OF
20 MR. RAYMOND AT PAGES 8082 TO 8084, AND ASK YOU IF THAT
21 REFRESHES YOUR MEMORY.

22 THE COURT: LET'S NOT MIX THINGS UP. LET ME GET
23 EXHIBIT G BACK.

24 THANK YOU

25 BY MR. KLEIN:

26 Q I ASK YOU IF THAT REFRESHES YOUR MEMORY THAT
27 YOU BROUGHT OUT THAT MR. HUNT WAS A LIAR AND A LEADER,
28 8082 TO 8084?

1 A IF YOU MIGHT GIVE ME THE OPPORTUNITY TO SEE
2 THE GENESIS OF THAT LINE OF QUESTIONING, COUNSEL. DO YOU
3 MIND SHOWING ME PAGES 80, SIR, AND THE PAGES THAT CAME
4 BEFORE THIS?

5 Q IT IS ALL THERE IN ORDER, MR. BARENS.

6

7 (WITNESS REVIEWING TRANSCRIPT.)

8

9 THE COURT: PUT A QUESTION.

10 THE WITNESS: WHAT IS YOUR QUESTION NOW?

11 BY MR. KLEIN:

12 Q DID YOU BRING OUT THROUGH CROSS-EXAMINATION
13 OF MR. RAYMOND THAT MR. HUNT WAS A LIAR AT PAGES 8082 TO
14 8083?

15 MR. MC MULLEN: YOUR HONOR, WE WOULD OBJECT AS
16 BEING IMPROPER IMPEACHMENT.

17 THE COURT: OVERRULED. BUT LET'S QUICKLY MOVE
18 THROUGH THIS.

19 THE WITNESS: RELEVANT TO THE PARADOX PHILOSOPHY, I
20 DID.

21 BY MR. KLEIN:

22 Q AND AT 8084 YOU BROUGHT OUT THAT MR. HUNT WAS
23 A LEADER IN CROSS-EXAMINATION, DIDN'T YOU?

24 MR. MC MULLEN: AGAIN, YOUR HONOR, I WOULD OBJECT
25 TO --

26 BY MR. KLEIN:

27 Q QUESTION AT PAGE 8084 (READING):

28 "Q AND HE TRIED TO MAKE HIMSELF

1 LOOK LIKE A LEADER?

2 A YES.

3 Q DID THAT SEEM IMPORTANT TO
4 HIM?

5 A TO JOE?

6 Q YES.

7 A YES.

8 Q DID IT SEEM REAL IMPORTANT TO
9 HIM?

10 A YES."

11 YOU BROUGHT THAT OUT IN CROSS-EXAMINATION OF
12 MR. RAYMOND.

13 THE WITNESS: I DID.

14 MR. MC MULLEN: EXCUSE ME. OBJECTION. IMPROPER
15 IMPEACHMENT.

16 THE COURT: OVERRULED.

17 BY MR. KLEIN:

18 Q AND YOU ALSO BROUGHT OUT WHEN YOU
19 CROSS-EXAMINED MR. RAYMOND THAT MR. HUNT WAS A SKILLED
20 PERSUADER OF OTHERS, DIDN'T YOU?

21 A QUITE. THERE WAS SOME CONSIDERABLE
22 DISCUSSION ABOUT HIS EXPERIENCE ON THE DEBATE TEAMS.

23 MR. KLEIN: REFERRING TO PAGES 8156 AND 8157, YOUR
24 HONOR.

25 BY MR. KLEIN:

26 Q AND WHEN YOU CROSS-EXAMINED MR. DICKER YOU
27 ALSO BROUGHT OUT THAT MR. HUNT WAS THE TEMPORAL AND
28 SPIRITUAL LEADER, DIDN'T YOU, THAT MR. DICKER WORSHIPPED

1 MR. HUNT?

2 MR. MC MULLEN: OBJECTION. IMPROPER IMPEACHMENT.

3 THE COURT: I AM GOING TO SUSTAIN IT.

4 LOOK, YOU CAN PUT IT IN ARGUMENT, YOU CAN
5 SHOW THAT IS ARGUMENT DURING THE TRIAL IS INCONSISTENT
6 WITH HIS TESTIMONY HERE.

7 MR. KLEIN: EXCUSE ME.

8 THE COURT: MR. MC MULLEN, WHY DON'T YOU PICK UP
9 THIS COPY AGAIN OF EXHIBIT G, SO WE DON'T HAVE MORE PAPER
10 THAN I NEED.

11 THANK YOU.

12 BY MR. KLEIN:

13 Q AND IN GOING BACK TO THE QUESTION OF
14 MR. RAYMOND, REALLY WHAT YOU WERE TRYING TO BRING OUT WAS
15 THAT MR. HUNT WAS A MANIPULATIVE LIAR; CORRECT?

16 A NO.

17 MR. MC MULLEN: OBJECTION. IMPROPER IMPEACHMENT.

18 THE COURT: SUSTAINED.

19 THE LAST ANSWER WILL GO OUT.

20 BY MR. KLEIN:

21 Q ISN'T THAT WHAT YOU DID BRING OUT --

22 THE COURT: SUSTAINED.

23 MOVE ON.

24 BY MR. KLEIN:

25 Q NOW, WHEN YOU CROSS-EXAMINED MR. DICKER, YOU
26 BROUGHT OUT THAT MR. HUNT WAS THE LEADER, THAT EVERYBODY
27 WAS DEFERENTIAL TO HIM; DIDN'T YOU?

28 MR. MC MULLEN: OBJECTION.

1 THE COURT: SUSTAINED.

2 AGAIN, YOU CAN ARGUE AT THE END THAT THERE IS
3 SOME POSITION THAT HE TOOK DURING THE TRIAL WHICH
4 IMPEACHES HIS TESTIMONY HERE, BUT GOING THROUGH THIS IS
5 NOT HELPFUL.

6 MR. KLEIN: WELL, YOUR HONOR, AFTER I EXAMINE
7 MR. BARENS I INTEND TO ASK HIM SOME QUESTIONS AGAIN ABOUT
8 WHY HE DID CERTAIN THINGS, AND I THINK I AM ENTITLED TO
9 BRING OUT THROUGH CROSS-EXAMINATION INFORMATION WHICH
10 IMPEACHES HIS CREDIBILITY, THEN ASK HIM ADDITIONAL
11 QUESTIONS WHY.

12 THE COURT: I HAVE READ THE ENTIRE TRANSCRIPT.
13 JUMP TO THE CHASE SCENE. ASK HIM THE RIGHT QUESTIONS.
14 BY MR. KLEIN:

15 Q WHEN YOU EXAMINED TOM MAY, DIDN'T YOU BRING
16 OUT THROUGH CROSS-EXAMINATION THAT MR. HUNT WOULD DEBATE
17 UNTIL ANYBODY WOULD CAPITULATE TO HIM?

18 MR. MC MULLEN: OBJECTION. SAME OBJECTION. THAT
19 IS INAPPROPRIATE.

20 THE COURT: SAME RULING. SUSTAINED.
21 BY MR. KLEIN:

22 Q DIDN'T YOU BRING OUT THROUGH --

23 MR. KLEIN: WELL, THIS WOULD BE AT PAGE 8880, YOUR
24 HONOR.

25 BY MR. KLEIN:

26 Q DIDN'T YOU ALSO BRING OUT THAT MR. HUNT WON
27 ALL THE DEBATES, AND HE WAS THE LEADER OF OTHERS?

28 MR. MC MULLEN: SAME OBJECTION. INAPPROPRIATE.

1 THE COURT: SUSTAINED.

2 MR. KLEIN: THERE IS PAGE 8889 AND 8890, YOUR
3 HONOR.

4 BY MR. KLEIN:

5 Q DIDN'T YOU BRING OUT --

6 THE COURT: MR. KLEIN, I TOLD YOU TO MOVE ON. YOU
7 GOT THE RECORD. I READ THE TRANSCRIPT. SAVE IT FOR YOUR
8 CLOSING ARGUMENT.

9 BY MR. KLEIN:

10 Q OKAY.

11 ISN'T IT TRUE, MR. BARENS, THAT IN YOUR
12 CROSS-EXAMINATION OF SOME OF THE KEY B.B.C. WITNESSES THAT
13 YOU TRIED TO SHOW THE JURY THAT MR. HUNT WAS IN FACT
14 MANIPULATIVE?

15 MR. MC MULLEN: SAME OBJECTION, YOUR HONOR.

16 THE COURT: OVERRULED.

17 I ASSUME THIS IS GETTING TO THE CHASE SCENE.

18 MR. KLEIN: I HOPE SO, YOUR HONOR.

19 THE COURT: OKAY.

20 THE WITNESS: ONLY FOR A POSITIVE END.

21 BY MR. KLEIN:

22 Q I AM SORRY?

23 A ONLY FOR A POSITIVE END. I WAS EXTREMELY
24 CAREFUL AT ALL TIMES TO SHOW THAT MR. HUNT WAS ONLY
25 MANIPULATIVE IN A POSITIVE MANNER TO ENHANCE THE
26 PERFORMANCE, ACHIEVEMENT OR GOALS OF THOSE PEOPLE HE WAS
27 SURROUNDED BY.

28 Q DIDN'T YOU ALSO BRING OUT THROUGH

1 CROSS-EXAMINATION OF KEY B.B.C. WITNESSES THAT MR. HUNT
2 WAS A LEADER?

3 MR. MC MULLEN: SAME OBJECTION, YOUR HONOR.

4 THE COURT: OVERRULED.

5 THE WITNESS: IN A POSITIVE SENSE ONLY.

6 BY MR. KLEIN:

7 Q NOW, WHAT WAS YOUR OTHER REASON THAT YOU USED
8 FOR NOT BRINGING OUT THAT MR. KARNY LIED UNDER OATH IN THE
9 CANTOR-FITZGERALD DEPOSITION?

10 A I DID NOT WISH TO SHOW THE JURY THAT MR. HUNT
11 OR THE B.B.C. COLLECTIVELY WOULD BE MOTIVATED BY FINANCIAL
12 NEED, THE ALLEGATION THE PROSECUTION USED WAS THAT
13 MR. LEVIN WAS KILLED BY MY CLIENT AS A MEANS OF ACHIEVING
14 MONEY. I DID NOT -- BECAUSE MR. HUNT AND HIS COLLEAGUES
15 WERE ALLEGEDLY FINANCIALLY DESPERATE, I DID NOT WANT TO
16 HAVE ANY EVIDENCE BEFORE THE JURY THAT I COULD AVOID THAT
17 WOULD SUPPORT THAT PROPOSITION.

18 Q OKAY.

19 NOW, YOU REMEMBER THE PROGRESSIVE SAVINGS &
20 LOAN MATTER, MR. BARENS?

21 A NOT IN GREAT DETAIL, NO, SIR.

22 Q WELL, YOU REMEMBER THAT MR. LEVIN WAS A
23 DEFENDANT IN THE PROGRESSIVE SAVINGS & LOAN MATTER, SOME
24 KIND OF A CHECK KITING SCHEME?

25 A I BELIEVE THAT MY CLIENT ALSO HAD
26 VULNERABILITY. HE WAS CONCERNED ABOUT BEING INVOLVED IN
27 THAT MATTER.

28 Q NOW, ISN'T IT TRUE THAT YOU BROUGHT OUT IN

1 YOUR OPENING STATEMENT TO THE JURY THAT MR. LEVIN WAS A
2 DEFENDANT IN THE PROGRESSIVE SAVINGS & LOAN CIVIL SUIT?
3 DIDN'T DO YOU THAT IN YOUR OPENING STATEMENT?

4 A I DON'T RECALL, SIR. I MAY HAVE. I MAY WELL
5 MAY HAVE.

6 Q LET ME SHOW YOU YOUR OPENING STATEMENT PAGE
7 6368, AND ASK YOU IF THAT REFRESHES YOUR MEMORY THAT YOU
8 WERE THE ONE THAT BROUGHT OUT THAT MR. LEVIN WAS A
9 DEFENDANT IN THE PROGRESSIVE SAVINGS & LOAN CIVIL SUIT?

10

11 (WITNESS REVIEWING TRANSCRIPT.)

12

13 A I SEE THAT STATEMENT, YES.

14 Q YOU DID THAT?

15 A YES.

16 Q NOW, DO YOU REMEMBER WHO LEN MARMOR WAS?

17 A NOT OFFHAND, NO, SIR.

18 Q DO YOU REMEMBER THAT RON LEVIN HAD SOME
19 NEIGHBORS, THEIR NAMES WERE THE MARMORS?

20 A I RECALL READING THAT IN THE PAST SEVERAL
21 MONTHS REFERABLE TO THIS MATTER.

22 Q OKAY.

23 DO YOU REMEMBER THAT LEN MARMOR TESTIFIED
24 DURING THE TRIAL, AND HE WAS LEVIN'S BEST FRIEND AND HAD
25 ALL KINDS OF INFORMATION ABOUT MR. LEVIN?

26 THE COURT: I AM SORRY. WAS THE QUESTION, DOES HE
27 REMEMBER READING THAT? I AM SORRY, I JUST LOST THE
28 QUESTION.

1 MR. KLEIN: LET ME REPHRASE THE QUESTION.

2 BY MR. KLEIN:

3 Q DO YOU REMEMBER THAT MR. MARMOR WAS
4 MR. LEVIN'S CLOSE FRIEND?

5 A I VAGUELY REMEMBER THAT, SIR.

6 Q DO YOU REMEMBER THAT MR. MARMOR WAS CALLED AS
7 A WITNESS ON BEHALF OF THE PEOPLE IN THIS CASE?

8 A I DON'T SPECIFICALLY RECALL. I REMEMBER -- I
9 BELIEVE I REMEMBER THAT HE TESTIFIED AT THE TRIAL.

10 Q OKAY.

11 AND ISN'T IT TRUE, MR. BARENS, THAT YOU WERE
12 THE ONE THAT BROUGHT OUT IN CROSS-EXAMINATION THAT
13 MR. HUNT ALSO WAS A DEFENDANT IN THE CIVIL SUIT IN
14 PROGRESSIVE SAVINGS & LOAN?

15 MR. MC MULLEN: OBJECTION. RELEVANCY.

16 THE COURT: OVERRULED.

17 THE WITNESS: I DON'T RECALL.

18 MR. MC MULLEN: MAY I APPROACH?

19 THE COURT: YES.

20 BY MR. KLEIN:

21 Q THIS IS EXAMINATION OF MR. MARMOR. MAYBE I
22 HAD BETTER GIVE YOU THE PREVIOUS PAGE TO PUT IT IN
23 CONTEXT.

24 LET ME SHOW YOU 6737 AND -39 AND ASK IF THAT
25 WAS NOT YOUR CROSS-EXAMINATION THAT BROUGHT OUT THAT
26 MR. HUNT WAS ALSO A DEFENDANT IN THIS CIVIL SUIT?

27 MR. CRAIN: YOUR HONOR, AT FIVE OF I WOULD LIKE TO
28 ADDRESS THE COURT WITH AN OFFER OF PROOF WITH REGARDS TO

1 CERTAIN MATTERS. I WOULD LIKE TO ADDRESS THE COURT AT
2 FIVE OF. I HAVE AN OFFER OF PROOF AS TO CERTAIN MATTERS.
3 I THINK IT IS GOING TO TAKE ABOUT FIVE MINUTES TO RESOLVE.

4 THE COURT: MATTERS REGARDING WHAT?

5 MR. CRAIN: PARDON ME?

6 THE COURT: REGARDING WHAT?

7 MR. CRAIN: REGARDING CERTAIN EXAMINATION OF THE
8 WITNESS -- REGARDING HIS CLAIM ABOUT CANTOR-FITZGERALD AND
9 WHY HE DID OR DIDN'T DO CERTAIN THINGS.

10 THE COURT: WHY DON'T YOU JUST ASK HIM THE
11 QUESTIONS.

12 MR. CRAIN: BECAUSE THE COURT SUSTAINED OBJECTIONS
13 TO THE QUESTIONS.

14 THE COURT: I HAVE ALREADY RULED.

15 MR. CRAIN: I WOULD LIKE TO MAKE AN OFFER OF PROOF.

16 THE COURT: NO.

17 MR. CRAIN: PARDON ME?

18 THE COURT: NO. I HAVE ALREADY RULED. I AM NOT
19 GOING TO REVISIT ISSUES. I HAVE RULED ON --

20 MR. KLEIN: YOU RULED ON --

21 THE COURT: MR. KLEIN, I HAVE ALREADY RULED. LET'S
22 MOVE ON.

23 MR. CRAIN: NO, YOUR HONOR, YOU DIDN'T. I AM GOING
24 TO ARGUE WITH YOU.

25 THE COURT: YOU CAN PUT IT IN WRITING.

26 MR. CRAIN: I WOULD LIKE A MINUTE OR TWO OF THE
27 COURT'S TIME.

28 THE COURT: PUT IT IN WRITING.

1 MR. CRAIN: I CAN'T PUT IN WRITING, YOUR HONOR, THE
2 WITNESS IS ON THE STAND.

3 THE COURT: THAT'S EXACTLY RIGHT, AND WE ARE NOT
4 GOING TO INTERRUPT IT ANY FURTHER.

5 MR. KLEIN, DO YOU HAVE A QUESTION?

6 MR. CRAIN: I AM GOING TO ASK THAT WE GO FIVE
7 MINUTES INTO THE LUNCH HOUR SO WE CAN RESOLVE SOME OF
8 THESE MATTERS. THE COURT IS GETTING OFF -- WE HAVE A
9 RIGHT TO MAKE A RECORD.

10 THE COURT: I HAVE RULED. I AM NOT HEARING YOU ON
11 SOMETHING THAT I HAVE ALREADY RULED ON. IF YOU -- IF IT
12 IS THAT IMPORTANT PUT IT IN WRITING.

13 MR. CRAIN: YOU HAVEN'T RULED ON THESE MATTERS.
14 LET'S PUT IT THAT WAY.

15 THE COURT: THEN IT SOUNDS LIKE YOU ARE TRYING TO
16 DO SOMETHING THAT IS OUTSIDE THE SCOPE OF THE --

17 MR. CRAIN: I HAVE A RIGHT TO MAKE A RECORD.

18 THE COURT: I AM GIVING YOU THAT RIGHT. PUT IT IN
19 WRITING.

20 PUT A QUESTION, MR. KLEIN.

21 THE WITNESS: YOUR HONOR, THE QUESTION PENDING, AS
22 YOU UNDERSTOOD IT, WAS COUNSEL MADE AN ALLEGATION THAT I
23 BROUGHT OUT MR. HUNT'S BEING A DEFENDANT IN THE
24 PROGRESSIVE SAVINGS MATTERS.

25 THE COURT: YES, ON CROSS-EXAMINATION. THAT YOU
26 ASKED HIM --

27 THE WITNESS: QUITE SO. AND HERE WE ARE, AND THE
28 SPECIFIC PAGE IS 6738. IT SAYS (READING):

1 "THE COURT: DID YOU EVER HAVE A
2 CONVERSATION WITH HIM ABOUT IT?

3 THE WITNESS: YES.

4 THE COURT: TELL US WHAT THE
5 CONVERSATION WAS.

6 THE WITNESS: I WANTED TO, BEING AS
7 A LAWSUIT WAS NOW I WAS HAVING TO
8 DEAL WITH IT. I WANTED TO GET
9 TOGETHER WITH HIM AND FIND OUT WHAT
10 IT WAS ALL ABOUT. WHAT TO DO ABOUT
11 IT.

12 THE COURT: WAS HE INVOLVED IN ANY
13 WAY?

14 THE WITNESS: HE WAS ALSO SUED IN
15 THE SAME CASE, AND HE AND THE MAY
16 BROTHERS AND MYSELF. THIS WAS
17 LEVIN'S PROBLEM, IT GRADED DOWN TO
18 US BECAUSE LEVIN IS NO LONGER
19 AROUND, AND I STILL WANT TO TALK TO
20 HIM ABOUT IT. I HAVE NOT TALKED TO
21 HIM YET."

22 THE COURT MADE ALL OF THE INQUIRIES.

23 THE COURT: IT WAS NOT YOUR QUESTION?

24 THE WITNESS: NO, SIR. AND COUNSEL KNEW THAT
25 BEFORE ASKING ME THE QUESTION.

26 THE COURT: PLEASE DO NOT EDITORIALIZE.

27 PUT ANOTHER QUESTION FOR THE WITNESS.

28 BY MR. KLEIN:

1 Q THE COLLOQUY OCCURRED DURING YOUR
2 CROSS-EXAMINATION OF MR. MARMOR; CORRECT, MR. BARENS?

3 MR. MC MULLEN: OBJECTION. RELEVANCY.

4 THE COURT: DID YOU JUST READ PORTIONS THAT
5 OCCURRED SOMETIME DURING YOUR CROSS-EXAMINATION?

6 THE WITNESS: YES, SIR.

7 THE COURT: ALL RIGHT.

8 MOVE ON.

9 MR. KLEIN: OKAY.

10 BY MR. KLEIN:

11 Q YOU KNOW WHO MR. OSTROVE WAS, DON'T YOU,
12 MR. BARENS?

13 A A CONSERVATOR, I BELIEVE.

14 Q YOU CROSS-EXAMINED HIM, DIDN'T YOU?

15 A I BELIEVE SO.

16 Q YOU BROUGHT OUT IN CROSS-EXAMINATION OF
17 MR. OSTROVE THAT MR. HUNT WAS A DEFENDANT IN THE
18 PROGRESSIVE SAVINGS & LOAN MATTER, DIDN'T YOU?

19 A THAT EVIDENCE WAS ALREADY BEFORE THE JURY. I
20 DID NOT BRING IT OUT, SIR.

21 Q ACTUALLY, AT 7427 YOU WERE ASKING HIM TO
22 LOCATE THE DOCUMENT RELATING TO PROGRESSIVE SAVINGS &
23 LOAN, AND YOU MARKED THE DOCUMENT REGARDING THE LAWSUIT,
24 AND THEN YOU SAID IT WAS PROGRESSIVE SAVINGS & LOAN, AND
25 THEN YOU ASKED SOME QUESTIONS TO BRING OUT THAT MR. HUNT
26 WAS A DEFENDANT IN THAT CASE; CORRECT?

27 MR. MC MULLEN: OBJECTION. IRRELEVANT. THIS IS
28 INAPPROPRIATE IMPEACHMENT EVIDENCE.

1 THE COURT: DO YOU HAVE ANY RECOLLECTION ABOUT
2 DOING THAT?

3 THE WITNESS: NO, SIR.

4 MR. KLEIN: I WOULD ASK THE COURT TO LOOK AT PAGES
5 7427, 7428.

6 THE COURT: PUT IT IN YOUR CLOSING BRIEF.

7 BY MR. KLEIN:

8 Q NOW, DURING THE EXAMINATION OF OTHER
9 PROSECUTION WITNESSES IN THIS CASE YOU BROUGHT OUT THAT
10 MR. HUNT OWED OTHER INDIVIDUALS MONEY; DIDN'T YOU?

11 MR. MC MULLEN: OBJECTION. RELEVANCY.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DON'T RECALL.

14 BY MR. KLEIN:

15 Q WELL, WHEN YOU WERE EXAMINING TOM MAY YOU
16 BROUGHT OUT THAT HE WAS GOING TO -- THAT MR. HUNT PROMISED
17 TO REPAY MR. MAY \$380,000, DIDN'T YOU?

18 A I DO NOT RECALL THAT, SIR. AND I WOULD NEED
19 TO SEE IT IN CONTEXT, IF YOU ARE SAYING THAT OCCURRED, IN
20 WHICH IT OCCURRED, SIR.

21

22 (PAUSE.)

23

24 Q LET ME SHOW YOU 8710 TO 8716. SEE IF THAT
25 REFRESHES YOUR MEMORY.

26

27 (WITNESS REVIEWING TRANSCRIPT.)

28

1 THE COURT: ALL RIGHT.

2 PUT A QUESTION.

3 THE WITNESS: I THINK THERE IS A QUESTION PENDING
4 THAT I WOULD LIKE TO RESPOND TO.

5 THE COURT: GO.

6 THE WITNESS: MY UNDERSTANDING IS THAT COUNSEL HAS
7 ASKED ME A QUESTION, "DID I BRING OUT THAT MR. HUNT WAS
8 INDEBTED FOR \$300 --

9 BY MR. KLEIN:

10 Q \$380,000?

11 A -- \$380,000 AND A PROMISE TO REPAY --

12 THE COURT: HOLD ON. HOLD ON.

13 THE WITNESS: THAT IS NOT EXACTLY WHAT WE SAID.

14 SO --

15 THE COURT: LET'S NOT TALK OVER EACH OTHER.

16 FINISH YOUR ANSWER.

17 THE WITNESS: HERE IS MY ANSWER: THERE IS A
18 COLLOQUY THAT GOES ON FOR SEVERAL PAGES WHERE MR. MAY
19 DESCRIBES THAT MR. HUNT TRUTHFULLY TOLD HIM THAT HE HAD
20 LOST MONEY TRADING COMMODITIES ON HIS BEHALF. THAT
21 MR. MAY WAS A -- SHORT IN HIS ACCOUNTS OF SOME \$70,000
22 BECAUSE THE MONEY HAD BEEN LOST IN TRADING. AND THE
23 QUESTION WAS PUT TO MR. MAY BY MYSELF: DID MR. MAY
24 BELIEVE THAT MR. HUNT HAD A LEGAL OBLIGATION TO REPAY HIM
25 ANY PART OF THAT MONEY? TO WHICH MR. MAY SAID, "NO."

26 THEREAFTER, THERE IS A COLLOQUY WHERE
27 MR. HUNT IS BEING SHOWN IN A LIGHT OF BEING A GOOD GUY
28 TELLS MR. MAY THAT HE IS GOING TO TRY TO MAKE UP THAT LOSS

1 TO HIM THROUGH OTHER BUSINESS THAT THEY ARE GOING TO DO
2 TOGETHER. THAT EVEN THOUGH HE DOESN'T HAVE A LEGAL
3 OBLIGATION AT THAT POINT TO REPAY IT HE IS GOING TO TRY TO
4 HELP HIM OUT, AND THEN HE GOES ON TO DESCRIBE THAT.

5 THE COURT: "HE" MEANING MR. HUNT HELPING OUT
6 MR. MAY?

7 THE WITNESS: MR. HUNT.

8 AND I WILL READ THIS TO YOUR HONOR SINCE
9 COUNSEL HAS PUT IT BEFORE ME, OF COURSE. AND MY QUESTION
10 (READING):

11 "AND AT THAT POINT IN TIME
12 BEFORE MR. HUNT SPOKE WITH YOU AFTER
13 YOU GOT THE CALL FROM
14 CANTOR/FITZGERALD DID YOU IN YOUR
15 OWN MIND BELIEVE THAT HUNT HAD A
16 LEGAL OBLIGATION TO YOU TO MAKE GOOD
17 ON THE LOSS?

18 A NO, I DON'T THINK SO.

19 Q AND WHEN MR. HUNT TOLD
20 YOU" -- QUESTION FROM MYSELF, YOUR
21 HONOR.

22 "AND WHEN MR. HUNT TOLD YOU
23 THAT HE WOULD GIVE YOU \$300,000 I
24 BELIEVE YOU SAID THAT THAT WAS TO
25 COME FROM THE LEVIN TRANSACTIONS?

26 YES.

27 Q DID THAT APPEAR TO BE A
28 GESTURE TO YOU WHERE HE WAS BEING A

1 GOOD GUY OR TRYING TO SAVE YOU,
2 'LISTEN, I WILL TAKE CARE OF YOUR
3 LOSS EVEN THOUGH I AM NOT OBLIGED
4 TO, BUT SINCE I GOT YOU INTO THIS I
5 WILL GET YOU OUT OF THIS.'"
6 A THAT IS WHAT IT SEEMED LIKE."
7 I TRUST THAT ANSWERS YOUR QUESTION, SIR.
8 THE COURT: LET'S TAKE OUR NOONTIME RECESS.
9 COUNSEL, PETITIONER AND WITNESS BE BACK AT
10 1:30.

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(AT 12:03 P.M. A RECESS WAS TAKEN
UNTIL 1:30 P.M. OF THE SAME DAY.)

1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 6, 1996

2 1:30 P.M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 (APPEARANCES AS HERETOFORE NOTED.)

6
7 THE COURT: ALL RIGHT.

8 IN THE CASE OF IN RE JOSEPH HUNT. THE RECORD
9 WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
10 PRESENT.

11 MR. KLEIN, YOU MAY CONTINUE.

12 THE WITNESS, MR. BARENS, IS STILL ON THE
13 STAND.

14 MR. KLEIN: FOR THE RECORD, YOUR HONOR, IN TERMS OF
15 HOW I WANTED TO CROSS-EXAMINE MR. BARENS RELATING TO THE
16 ISSUES AS HE EXPLAINED THEM, WHY HE DIDN'T RAISE MR. KARNY
17 LYING IN THE CANTOR-FITZGERALD DEPOSITION, THE PAGE
18 REFERENCES ARE AT PAGE 63- --

19 THE COURT: THIS IS WHAT I HAVE ALREADY RULED ON.

20 MR. CRAIN: YOU WANTED A WRITTEN OFFER OF PROOF AND
21 I AM GIVING ONE TO YOU.

22 THE COURT: NO, COUNSEL, MOVE ON. YOU MAY FILE
23 SOMETHING.

24 MR. KLEIN: IT IS FILED. I AM GIVING YOU THE PAGE
25 REFERENCE.

26 THE COURT: IF IT HAS ALREADY BEEN FILED, DON'T
27 WORRY.

28 MR. KLEIN: YOU SAID YOU HAVEN'T READ IT. THAT'S

1 WHY --

2 THE COURT: IF YOU ARE TALKING ABOUT THE TRANSCRIPT
3 OF THE TRIAL, I HAVE READ THE TRANSCRIPT OF THE TRIAL.

4 MR. KLEIN: BUT I WANTED TO GIVE THE COURT THE
5 SPECIFIC REFERENCE.

6 THE COURT: IF IT IS CRITICAL, YOU CAN PUT IT IN
7 YOUR CLOSING BRIEF AS WELL.

8 MR. KLEIN: THE OTHER PROBLEM THAT I HAVE --

9 THE COURT: COUNSEL, I AM NOT GOING TO REVISIT
10 PREVIOUS RULINGS. MOVE ON.

11 MR. KLEIN: I AM NOT ASKING YOU --

12 THE COURT: IN THIS CASE I DON'T CARE WHAT YOUR
13 PROBLEM IS WITH THE RULING. LET'S MOVE ON. COME ON.

14 MR. MC MULLEN: YOUR HONOR, COUPLE OF THINGS.
15 FIRST OF ALL, COUNSEL REFERRED TO HAVING MR. BARENS ON
16 CROSS-EXAMINATION. IT IS OUR UNDERSTANDING THAT HE IS ON
17 DIRECT, AND I AM A LITTLE UN- -- I AM CONCERNED.

18 DID YOU FILE SOMETHING, MR. KLEIN? IF YOU
19 DID, WE WOULD LIKE A COPY OF IT.

20 THE COURT: I ASSUME THAT YOU HAVE GIVEN COPIES OF
21 WHATEVER THEY FILED.

22 MR. CRAIN: CAN I ASK FOR SOME CLARIFICATION OF
23 THIS? IS THE COURT RULING THAT MR. BARENS CAN ASSERT A
24 REASON WHY HE DID SOMETHING AND THAT WE ARE NOT PERMITTED
25 TO EXAMINE HIM ON SPECIFIC INSTANCES DURING THE TRIAL
26 WHERE IT IS OUR BELIEF, OUR RECORDS SHOW THAT HE DID THE
27 EXACT OPPOSITE.

28 THE COURT: MR. CRAIN, I AM NOT GOING TO --

1 MR. CRAIN: THE FACT THAT IT IS IN THE RECORD AND
2 YOU READ THE TRANSCRIPTS --

3 THE COURT: WHEN I SPEAK, PLEASE STOP SPEAKING.
4 THE COURT REPORTER CAN ONLY TAKE DOWN ONE PERSON SPEAKING
5 AT A TIME.

6 I WILL SAY IT AGAIN. IF YOU WANT TO CITE A
7 PARTICULAR REFERENCE IN THE TRIAL TRANSCRIPT, THE TIME TO
8 DO THAT WOULD PROBABLY BE IN YOUR CLOSING BRIEF WHEREIN
9 YOU CAN POINT OUT THAT THERE IS INCONSISTENCIES BETWEEN
10 POSITIONS TAKEN BY MR. BARENS IN THE TRIAL AND HIS
11 TESTIMONY HERE IN THIS HEARING.

12 TO HAVE YOU GO THROUGH EACH AND EVERY ONE OF
13 THOSE WITH EACH AND EVERY WITNESS IS NOT PROBATIVE. IT IS
14 NOT HELPFUL. SO I HAVE RULED. THIS IS THE THIRD TIME NOW
15 I HAVE RULED. LET'S MOVE ON.

16 MR. CRAIN: I APPRECIATE THAT THE COURT IS STATING
17 THAT THERE -- WE WILL FILE SUCH A DOCUMENT, IF YOU WANT A
18 SEPARATE DOCUMENT APART FROM THE SETTING FORTH IN THE
19 SUPPLEMENTAL PETITION. WE WILL DO THAT. AND I APPRECIATE
20 THE COURT IS NOW SAYING THAT IT READ AND CONSIDERED THE
21 INCONSISTENT AREAS.

22 WHAT THE COURT IS DOING, HOWEVER, AND I WOULD
23 LIKE THE RECORD TO REFLECT WE ARE NOT ALLOWED TO QUESTION
24 THE WITNESS ABOUT IT SO THAT THE COURT CAN MAKE A COMPLETE
25 DETERMINATION OF THE WITNESS' CREDIBILITY ON THIS POINT.

26 SO, YOU KNOW THEY ARE THERE, BUT WE ARE NOT
27 ALLOWED TO USE THEM OTHER THAN THE FACT THAT THE COURT IS
28 GOING TO SAY, "I LOOKED AT THEM AND I SEE THE

1 INCONSISTENCIES, BUT THE WITNESS HAS STATED --"

2 THE COURT: HE HAS TESTIFIED TO SOMETHING ABOUT
3 PARTICULAR PROCEDURE, WHAT HE DID. THE WAY HE LOOKED AT
4 THE EVIDENCE AND THE WAY HE HANDLED IT.

5 IF YOU CAN POINT OUT IN THE TRIAL THAT WHAT
6 HE DID AT THE TRIAL IS COMPLETELY DIFFERENT THAN WHAT HE
7 TESTIFIED HERE TO, THEN MAYBE I WILL BELIEVE HE PERJURED
8 HIMSELF HERE, AND I WON'T BELIEVE HIS TESTIMONY.

9 BUT GOING THROUGH EACH AND EVERY INCIDENT
10 WHERE YOU BELIEVE THERE IS AN INCONSISTENCY IS NOT
11 HELPFUL. CITING THAT TO ME IN YOUR CLOSING BRIEF AS A
12 REASON WHY I SHOULD DISBELIEVE HIS TESTIMONY IN THIS
13 HEARING IS HELPFUL.

14 NOW THAT WE HAVE GOT IT THE FOURTH TIME,
15 LET'S MOVE ON. GO.

16 MR. KLEIN: WHAT IF A WITNESS --

17 THE COURT: NO, COUNSEL, MOVE ON.

18 MR. KLEIN: ONE OTHER MATTER.

19 THE COURT: NO, MOVE ON.

20 MR. KLEIN: I AM NOT GOING TO INQUIRE ABOUT THAT
21 MATTER. THE QUESTION OF THE JENSENS NEEDS TO BE RESOLVED.

22 THE COURT: I CANNOT RESOLVE IT AT THIS TIME.

23 FINISH YOUR DIRECT EXAMINATION OF MR. BARENS.

24

25

26 ARTHUR BARENS, +
27 CALLED AS A WITNESS BY THE PETITIONER, HAVING BEEN
28 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER
AS FOLLOWS:

1 DIRECT EXAMINATION RESUMED +

2

3 BY MR. KLEIN:

4 Q WITH RESPECT TO MR. KARNY'S DEPOSITION IN THE
5 CANTOR-FITZGERALD MATTER, MR. HUNT TOLD YOU TO OBTAIN A
6 COPY OF IT?

7 A I DON'T RECALL.

8 MR. KLEIN: EXCUSE ME, YOUR HONOR.

9 BY MR. KLEIN:

10 Q SHOWING YOU EXHIBIT 253, DOES THIS REFRESH
11 YOUR MEMORY THAT MR. HUNT ADVISED YOU TO GET A COPY OF
12 MR. KARNY'S DEPOSITION IN THE CANTOR-FITZGERALD MATTER?

13 A EARLIER TODAY I TESTIFIED THAT I SPECIFICALLY
14 DID NOT RECOGNIZE OR RECALL THAT EXHIBIT, COUNSEL.

15 Q SO YOU MADE UP YOUR MIND NOT TO USE THE FACT
16 THAT MR. KARNY LIED IN THE CANTOR-FITZGERALD DEPOSITION
17 WITHOUT EVEN READING HIS DEPOSITION; IS THAT CORRECT,
18 MR. BARENS?

19 A I DID NOT TESTIFY TO THAT, SIR.

20 Q YOU DIDN'T EVER GET A COPY OF THE DEPOSITION
21 BY MR. KARNY IN THE CANTOR-FITZGERALD DEPOSITION, DID YOU?

22 A I DO NOT RECALL WHETHER I READ THAT OR NOT.
23 I READ THOUSANDS OF PAGES OF MATERIALS SOME 11 OR 12 YEARS
24 AGO, AND I CAN'T BE SURE WHETHER THAT WAS AMONG THE
25 DOCUMENTS OR NOT, SIR. I JUST DON'T RECALL.

26 Q THIS MORNING YOU TESTIFIED THAT YOU DIDN'T
27 OBTAIN A COPY OF THE DEPOSITION; DIDN'T YOU?

28 A NO, I DID NOT, SIR. I DO NOT RECALL BEING

1 ASKED THAT QUESTION.

2 MR. KLEIN: YOUR HONOR, I WOULD LIKE TO OFFER PAGE
3 116 STARTING AT LINE 4 TO LINE 12 AS FOLLOWS:

4 THE COURT: HOLD ON. THIS IS PETITIONER'S EXHIBIT
5 267?

6 MR. KLEIN: YES, YOUR HONOR, I APOLOGIZE. IT IS
7 MR. BARENS' DEPOSITION ON NOVEMBER 7, 1995. IT IS EXHIBIT
8 267.

9 BY MR. KLEIN:

10 Q (READING):

11 "Q AND WERE YOU AWARE THAT
12 DIFFERENT INDIVIDUALS HAD BEEN
13 DEPOSED AS PART OF THAT LITIGATION?

14 A YES, I WAS.

15 Q DID YOU OBTAIN THE DEPOSITION
16 TRANSCRIPT OF ALL THE WITNESSES THAT
17 WERE PARTICIPANTS IN THE HUNT TRIAL
18 THAT WERE DEPOSED IN THE
19 CANTOR-FITZGERALD LITIGATION?

20 A I DON'T BELIEVE SO."
21 CONTINUING, IF I MAY, SO THE RECORD IS CLEAR.

22 (READING):

23 "Q WHY NOT?

24 A I DON'T KNOW, SIR. I DON'T
25 BELIEVE WE DID.

26 Q NOW, PRIOR TO TRIAL WERE YOU
27 AWARE THAT MR. KARNY HAD BEEN
28 DISPOSED?

1 A YES.

2 Q WERE YOU AWARE THAT MR. KARNY
3 HAD LIED IN THE DEPOSITION?

4 A YES.

5 Q AND YOU STILL DIDN'T OBTAIN A
6 TRANSCRIPT OF MR. KARNY'S
7 DEPOSITION?

8 A I DID NOT."

9 A AS I SIT HERE TODAY, COUNSEL --
10 MR. KLEIN: EXCUSE ME. THERE IS NO QUESTION
11 PENDING.

12 THE COURT: PUT A QUESTION.

13 THE WITNESS: SORRY.

14 BY MR. KLEIN:

15 Q NOW, THE NEXT ISSUE THAT I --

16 MR. KLEIN: I DO OFFER THAT AS EVIDENCE, YOUR
17 HONOR.

18 THE COURT: IT COMES IN AS A PRIOR CONSISTENT OR
19 INCONSISTENT STATEMENT.

20 MR. KLEIN: YES.

21 THE COURT: DEAL WITH EVIDENCE IN THE CASE.

22 MR. CRAIN: CAN WE HAVE AN UNDERSTANDING THAT IF
23 SOMETHING IS READ FROM A DEPOSITION LIKE THAT IT IS IN
24 EVIDENCE? I MEAN, TECHNICALLY THERE COULD BE AN ARGUMENT
25 ABOUT IT LATER.

26 THE COURT: WE WILL TAKE UP EVIDENCE AT THE
27 CLOSING. IT COMES IN AS PART OF THE RECORD. IT WAS A
28 PRIOR, CLEARLY PRIOR INCONSISTENT STATEMENT WITH WHAT HE

1 SAID HERE, AND IS A STATEMENT GIVEN UNDER OATH. IT HAS
2 WHATEVER AFFECT IT HAS. WE WILL TAKE UP WHAT'S IN
3 EVIDENCE AND WHAT'S NOT AT THE END OF THE EVIDENTIARY
4 HEARING.

5 BY MR. KLEIN:

6 Q I WOULD LIKE TO MOVE ON TO THE QUESTION OF
7 WHETHER OR NOT YOU HAD A REASON NOT TO OFFER THE FACT THAT
8 NEIL ADELMAN WOULD HAVE TESTIFIED THAT 200 MILLION DOLLARS
9 COULD HAVE BEEN GENERATED FROM ATTRITION MILLS OR
10 MICROGENESIS? YOU ARE FAMILIAR WITH THAT ISSUE,
11 MR. BARENS?

12 A YES, I AM.

13 Q IN EXHIBIT G -- WERE YOU AWARE OF A PROPOSED
14 AGREEMENT THAT MR. KILPATRICK WAS GOING TO PURCHASE 200
15 MILLION DOLLARS OF ATTRITION MILLS FROM MR. HUNT'S
16 COMPANIES?

17 A I DON'T BELIEVE I WAS.

18 Q NOW, WHO IS NEIL ADELMAN?

19 A I BELIEVE NEIL ADELMAN WAS AN INDIVIDUAL WHO
20 WAS A LAWYER AT ONE TIME IN THE EMPLOY OF EITHER THE
21 B.B.C. OR JOE HUNT, ONE OR BOTH.

22 Q AND YOU WERE AWARE PRIOR TO TRIAL THAT THERE
23 WERE NEGOTIATIONS BETWEEN MR. KILPATRICK AND MR. HUNT'S
24 CORPORATION RELATING TO THE ATTRITION MILLS; CORRECT?

25 A I AM NOT SURE, SIR.

26 Q NOW, PRIOR TO TRIAL OR DURING TRIAL DID YOU
27 EVER INTERVIEW NEIL ADELMAN?

28 A I REMEMBER SPEAKING WITH NEIL ADELMAN. I

1 JUST CAN'T REMEMBER WHEN IT WAS. YOU HAVE ASKED ME WAS IT
2 PRIOR TO TRIAL. I BELIEVE THAT I HAD CONVERSATION WITH
3 MR. ADELMAN DURING THE TRIAL. UNLESS I AM MISTAKEN I
4 BELIEVE I HAD A CONVERSATION WITH HIM AT SOME TIME AFTER
5 THE COMMENCEMENT OF THE TRIAL.

6 Q AT THE COURTHOUSE?

7 A I BELIEVE IT WAS AT THE COURTHOUSE.

8 Q AND MR. ADELMAN TESTIFIED IN MR. HUNT'S TRIAL
9 IN WHICH YOU REPRESENTED HIM; CORRECT?

10 A AS I RECALL, YES.

11 MR. KLEIN: YOUR HONOR, I WOULD LIKE TO OFFER AT
12 PAGE 120 OF PEOPLE'S 267, PETITIONER'S 267 PAGE 120,
13 QUESTION AT LINE 22 TO LINE 25.

14 BY MR. KLEIN:

15 Q (READING):

16 "SO DURING YOUR INVESTIGATION
17 OF THIS SUBJECT YOU WERE AWARE THAT
18 THERE WAS A CONTRACT BETWEEN MR.
19 KILPATRICK AND MR. HUNT'S
20 CORPORATION?

21 A I BELIEVE I WAS."

22 NOW, WHEN YOU GAVE THAT ANSWER AT THE
23 DEPOSITION, MR. BARENS, YOU WERE REFERRING TO THE
24 FINANCIAL MATTERS RELATING TO MICROGENESIS; CORRECT?

25 A NO, I WAS NOT, SIR. IN THE CONTEXT YOU ASKED
26 ME FIVE MINUTES AGO I BELIEVE THAT YOU WERE ASKING ME IF I
27 WAS AWARE THERE WAS A 200 MILLION DOLLAR OFFER ON THE
28 TABLE FOR THE PURCHASE OF CERTAIN CYCLOTRON RELATED

1 TECHNOLOGY. MY ANSWER WAS: I WAS NOT AWARE OF SUCH AN
2 ITEM. I WAS IN FACT AWARE OF SOME GENERAL DIALOGUE
3 BETWEEN THE TWO ENTITIES, BUT NOT AS TO 200 MILLION
4 DOLLARS.

5 Q MY QUESTION TO YOU, MR. BARENS, WAS WHEN YOU
6 GAVE THE ANSWER THAT -- AT THE DEPOSITION THAT YOU WERE
7 AWARE THERE WAS A CONTRACT BETWEEN MR. KILPATRICK AND MR.
8 HUNT'S CORPORATION, AND YOU SAID, "I BELIEVE I WAS," YOU
9 WERE REFERRING TO FINANCIAL MATTERS ON MICROGENESIS; ISN'T
10 THAT TRUE?

11 A NO, SIR.

12 MR. KLEIN: YOUR HONOR, I WOULD LIKE TO OFFER PAGE
13 120 STARTING AT LINE 8 UP TO LINE 21.

14 THE COURT: OF THE SAME EXHIBIT?

15 MR. KLEIN: OF THE SAME EXHIBIT, YES, YOUR HONOR.

16 BY MR. KLEIN:

17 Q (READING):

18 "Q SO YOU KNEW -- YOU HAD THE
19 CONTRACTS RELATING TO ANY DEALINGS
20 THAT WERE GOING ON BETWEEN
21 MR. KILPATRICK WITH MR. HUNT OR HIS
22 CORPORATION?

23 A I AM NOT SURE, SIR. I CAN
24 ONLY SAY, AS I SAID EARLIER, I
25 BELIEVE I HAD ACCESS TO ALL OF THE
26 RELEVANT FINANCIAL MATTERS ON
27 MICROGENESIS.

28 Q AND DURING THE INVESTIGATION

1 OF THIS MATTER DID THE NAME NEIL
2 ADELMAN COME UP?

3 A YES, SIR.

4 Q HOW DID IT COME UP?

5 A I BELIEVE NEIL ADELMAN WAS A
6 LAWYER IN THE EMPLOY OF THE B.B.C..
7 I COULD BE WRONG, BUT THAT'S MY BEST
8 RECOLLECTION, COUNSEL."

9 MR. KLEIN: THAT'S OFFERED IN RESPONSE TO
10 MR. BARENS' QUESTIONS.

11 NOW -- YOUR HONOR, I WOULD LIKE TO ASK THE
12 COURT TO TAKE JUDICIAL NOTICE OF THE FACT THAT MR. ADELMAN
13 DID NOT TESTIFY DURING THE TRIAL OF MR. HUNT.

14 THE COURT: LET ME SUGGEST, AGAIN, I DON'T LIKE
15 TAKING JUDICIAL NOTICE. I LIKE TO GIVE NOTICE TO THE
16 OTHER SIDE AND SEE IF YOU CAN GET A STIPULATION. THAT WAY
17 EVERYONE IS WORKING FROM THE SAME SHEET.

18 I BELIEVE YOU ALSO HAVE TESTIMONY FROM
19 MR. ADELMAN THAT HE DID NOT TESTIFY.

20 MR. KLEIN: YES, YOUR HONOR.

21 MR. CRAIN: IT IS A HISTORICAL FACT.

22 MR. MC MULLEN: WE DON'T BELIEVE THAT MR. ADELMAN
23 TESTIFIED. WITHOUT EXACTLY GOING INTO THE TRANSCRIPT AND
24 MAKING SURE --

25 THE COURT: SO YOU --

26 MR. MC MULLEN: -- I AM RELUCTANT TO STIPULATE.

27 THE COURT: ALL RIGHT.

28 I WILL TAKE JUDICIAL NOTICE THAT MR. ADELMAN

1 DID NOT TESTIFY.

2 MR. KLEIN: THANK YOU

3 THE COURT: YOU SHOULD KNOW THE WITNESSES WHO
4 TESTIFIED FOR THE PROSECUTION AND THE DEFENSE.

5 BY MR. KLEIN:

6 Q NOW, ISN'T IT TRUE, MR. BARENS, THAT IF YOU
7 WERE AWARE OF NEGOTIATIONS FOR 200 MILLION DOLLAR
8 CONTRACTS WITH -- WITH MR. KILPATRICK RELATED TO
9 MICROGENESIS YOU WOULD HAVE PRESENTED THAT INFORMATION
10 DURING MR. HUNT'S TRIAL IF THAT WERE A VIABLE DEAL;
11 CORRECT?

12 A NO. IF IT WERE A VIABLE DEAL THAT I
13 PERSONALLY BELIEVED IN AND BELIEVED THAT THIS WAS NOT SOME
14 KIND OF A CON GAME, SIR.

15 Q OKAY.

16 A SIR, IS THAT YOUR QUESTION TO ME? THE ANSWER
17 TO THAT WOULD BE, YES, IF I HAD BELIEVED THERE WAS ANY
18 TRUSTFULNESS TO THE CONCEPT THAT I COULD HAVE CONVINCED A
19 JURY OR ANY SANE PERSON THAT RON LEVIN WOULD VOLUNTARILY
20 PUT A MILLION AND A HALF DOLLARS INTO THAT TECHNOLOGY, I
21 WOULD HAVE USED IT.

22 Q YOU ALSO WOULD HAVE PRESENTED IT IF YOU COULD
23 HAVE SHOWN THE JURY THAT THERE WERE OTHER MONIES THAT
24 MR. HUNT OR HIS CORPORATION WOULD HAVE OBTAINED THROUGH
25 THE NEGOTIATIONS WITH MR. KILPATRICK AND MICROGENESIS;
26 ISN'T THAT TRUE?

27 A THAT IS NOT THE CONTEXT IN WHICH WE ARE
28 DEALING, SIR, FOR THE TRIAL, AND I BELIEVE THIS INQUIRY

1 GOES TO MY CONDUCT DURING THE TRIAL. DURING THE TRIAL THE
2 RELEVANCY OF THE PRESENTATION OF THIS SECTION OF EVIDENCE
3 WAS WHETHER OR NOT ANY REASONABLE PERSON --

4 Q ISN'T IT --

5 THE COURT: LET HIM FINISH HIS ANSWER.

6 THE WITNESS: -- ANY REASONABLE PERSON COULD HAVE
7 BEEN CONVINCED THAT RON LEVIN WOULD HAVE VOLUNTARILY AND
8 KNOWINGLY INVESTED A MILLION AND A HALF DOLLARS INTO THIS
9 TECHNOLOGY. AND NOT ADDRESSING IT IN THAT CONTEXT IS NOT
10 TO TREAT THIS SUBJECT FAIRLY.

11 MR. KLEIN: I ASK TO MOVE TO STRIKE THE ANSWER AS
12 NONRESPONSIVE. THAT WAS NOT THE QUESTION I ASKED.

13 THE COURT: I WILL ALLOW THE QUESTION TO -- ANSWER,
14 TO REMAIN. THAT WAS THE QUESTION I WAS GOING TO ASK HIM,
15 AND HE HAS ANSWERED MY QUESTION.

16 BY MR. KLEIN:

17 Q OKAY.

18 ISN'T IT TRUE, MR. BARENS, THAT YOU WANTED TO
19 GET ALL THE INFORMATION YOU COULD ABOUT THE MICROGENESIS
20 DEALS BETWEEN MR. KILPATRICK AND MR. HUNT'S CORPORATION IN
21 ORDER TO PROPERLY PREPARE FOR TRIAL?

22 A I REVIEWED A SUFFICIENT AMOUNT OF THAT
23 MATERIAL TO COME TO A CONCLUSION ON WHETHER OR NOT I WISH
24 TO PURSUE THAT LINE OF EXAMINATION.

25 MR. KLEIN: I MOVE TO STRIKE THE ANSWER AS
26 NONRESPONSIVE AND --

27 THE COURT: THE LAST ANSWER WILL GO OUT.

28 MR. KLEIN: I ASK THE COURT IF YOU WOULD JUST ASK

1 THE WITNESS TO ANSWER THE QUESTION "YES" OR "NO".

2 THE COURT: PUT A QUESTION.

3 BY MR. KLEIN:

4 Q ISN'T IT TRUE, MR. BARENS, THAT YOU WANTED TO
5 REVIEW AS MUCH OF THE DOCUMENTATION RELATING TO ANY
6 NEGOTIATING BETWEEN MR. KILPATRICK AND MR. HUNT'S
7 CORPORATIONS RELATING TO THE ATTRITION MILLS?

8 THE COURT: YOU CAN ANSWER THAT "YES" OR "NO".

9 THE WITNESS: NO.

10 BY MR. KLEIN:

11 Q IN ORDER TO MAKE AN INFORMED DECISION ABOUT
12 WHETHER OR NOT THIS WAS A VIABLE DEAL BETWEEN
13 MR. KILPATRICK AND GENERATING MONEY FOR MR. HUNT'S
14 CORPORATION YOU WOULD NEED TO REVIEW DOCUMENTATION,
15 WOULDN'T YOU?

16 A THE FOCUS OF MY INQUIRY, SIR, AS I TESTIFIED
17 EARLIER, WAS WHETHER OR NOT I COULD USE ANY OF THAT
18 MATERIAL TO CONVINCING A REASONABLE, INTELLIGENT PERSON THAT
19 RON LEVIN WOULD HAVE VOLUNTARILY INVESTED ONE MILLION AND
20 A HALF DOLLARS IN THAT TECHNOLOGY, BUT FOR THAT RELEVANCY
21 I WOULD NOT HAVE MADE INQUIRY ON THAT SUBJECT. I REVIEWED
22 ENOUGH MATERIALS TO CONVINCING ME THAT I DID NOT WANT TO GO
23 DOWN THAT ROAD.

24 Q ISN'T IT TRUE, MR. BARENS, THAT YOU
25 REPEATEDLY CROSS-EXAMINED WITNESSES BY THE PROSECUTION
26 ABOUT WHETHER OR NOT MICROGENESIS, THE DEAL BETWEEN
27 MR. KILPATRICK AND MR. HUNT'S CORPORATION WOULD GENERATE
28 INCOME OTHER THAN THE MILLION AND A HALF DOLLAR CHECK THAT

1 RON LEVIN HAD?

2 A ONCE THE PROSECUTION STARTED ON THAT MATERIAL
3 I DID THE BEST I COULD TO NEUTRALIZE IT.

4 Q SO YOU TRIED TO BRING OUT THAT THERE MAY HAVE
5 BEEN VALUE TO THE MICROGENESIS DEAL TO MR. HUNT AND HIS
6 CORPORATIONS; DIDN'T YOU?

7 A YES, I DID.

8 Q SO IT WOULD HAVE BEEN IMPORTANT TO YOU TO
9 REVIEW ANY OTHER DOCUMENTS THAT EXISTED TO SUPPORT THE
10 PROPOSITION THAT THE MICROGENESIS DEAL WAS GENERATING A
11 SUBSTANTIAL INCOME OTHER THAN THE MILLION AND A HALF
12 DOLLAR CHECK THAT RON LEVIN HAD?

13 A I HAD SATISFIED MYSELF THAT I HAD REVIEWED
14 SUFFICIENT MATERIALS TO BE CONVERSANT AND KNOWLEDGEABLE ON
15 THAT SUBJECT, SIR.

16 Q OKAY.

17 YOU BROUGHT OUT IN CROSS-EXAMINATION THAT THE
18 CYCLOTRON DEAL WAS A VIABLE DEAL; DIDN'T YOU?

19 A YOU HAVE TO ASK THE JURY THAT. WHETHER
20 SOMEONE PROVED IT WAS A VIABLE DEAL OR NOT IS SOMETHING
21 THAT I CAN'T --

22 THE COURT: I THINK THE QUESTION IS PENDING.

23 HOLD ON, MR. BARENS.

24 BY MR. KLEIN:

25 Q IN YOUR CROSS-EXAMINATION OF MR. RAYMOND AT
26 PAGE 8156 YOU BROUGHT OUT THAT MR. RAYMOND SAID, "BECAUSE
27 I THOUGHT THAT CYCLOTRON MIGHT MAKE SOME MONEY, IT MIGHT
28 BE A GOOD BUSINESS"; DIDN'T YOU?

1 THE COURT: ARE YOU SHOWING HIM THE PAGE?

2 MR. KLEIN: 8156, YOUR HONOR.

3 THE WITNESS: NO. WHAT YOU STATED IS NOT CORRECT,
4 COUNSEL.

5 BY MR. KLEIN:

6 Q THAT IS WHAT THE RECORD SAYS, ISN'T IT?

7 A THAT'S NOT WHAT THE RECORD SAYS, COUNSEL.

8 Q AND YOU BROUGHT OUT --

9 A NO. NO. NO.

10 NOW, COUNSEL, DON'T TELL ME WHAT I BROUGHT
11 OUT. LETS'S JUST STICK WITH THE RECORD.

12 MR. CRAIN: WOULD THE COURT ORDER MR. BARENS TO --

13 THE WITNESS: TO ASSAIL ME UNFAIRLY --

14 THE COURT: NO ONE IS GOING TO TREAT YOU UNFAIRLY,
15 BUT YOU ARE NOT GOING TO TELL THE LAWYERS WHAT TO DO OR
16 NOT DO. I WILL DO THAT; ALL RIGHT?

17 OKAY. PUT A QUESTION.

18 THE WITNESS: EXCUSE ME, I AGREE WITH THAT.

19 THE COURT: GO.

20 BY MR. KLEIN:

21 Q IN EXAMINING MR. RAYMOND AT PAGES 8089 AND
22 PAGES 8090, YOU BROUGHT OUT IN CROSS-EXAMINATION THAT
23 MR. KILPATRICK WAS TALKING ABOUT 220 MILLION DOLLARS
24 RELATING TO THE MICROGENESIS TECHNOLOGY; DIDN'T YOU?

25 A IF I MIGHT SEE THE TRANSCRIPT, COUNSEL.

26 MR. KLEIN: I AM SHOWING HIM PAGES 8089 AND 8090,
27 YOUR HONOR.

28

1 (PAUSE.)

2

3 (WITNESS REVIEWING TRANSCRIPT.)

4

5 THE WITNESS: IF I MIGHT ANSWER THE QUESTION.

6 THE COURT: GO AHEAD.

7 BY MR. KLEIN:

8 Q SURE.

9 A THIS IS COLLOQUY ABOUT MONEY MR. KILPATRICK
10 WAS DESCRIBING, NOT INVOLVING THE CYCLOTRON. MR.
11 KILPATRICK WAS INVOLVED WITH RAISING MONEY FOR TAX
12 SHELTERS, UNRELATED QUESTION. MR. BARENS' QUESTION
13 (READING):

14 "HOW MUCH MONEY WAS
15 MR. KILPATRICK TALKING ABOUT?

16 A HE HAD RAISED ON HIS TAX
17 SHELTER SEVERAL MILLION DOLLARS.

18 Q WAS HE TALKING ABOUT 220
19 MILLION DOLLARS?

20 A THAT WAS THE END OF THE TAX
21 SHELTER."

22 THE COURT: SO WAS THIS MONEY THAT WAS MADE ON TAX
23 SHELTERS AVAILABLE FOR POTENTIAL INVESTMENTS?

24 THE WITNESS: I DON'T KNOW. IT NEVER GOT -- TO MY
25 RECOLLECTION IT WAS NEVER MADE CLEAR IN -- ALL I KNOW THAT
26 IS THIS WITNESS LAUNCHED A DESCRIPTION OF SOME TAX SHELTER
27 THAT ALLEGEDLY KILPATRICK HAD PUT TOGETHER THAT WAS NEVER
28 VERIFIED.

1 BY MR. KLEIN:

2 Q WASN'T THE NEXT QUESTION THAT YOU ASKED THE
3 WITNESS AT PAGE 8089 LINE 28 AFTER THE TAX SHELTER
4 MATTERS, MR. BARENS (READING):

5 "WAS THE RELATIONSHIP
6 INVOLVING YOUR BUILDING CERTAIN
7 POWER PLANTS FOR HIS UTILIZATION IN
8 CONJUNCTION WITH A TAX SHELTER?"

9 AND THE ANSWER WAS: "YES."

10 AND THEN YOU SAID: "WERE THERE TO
11 BE 44 POWER PLANTS?"

12 HE SAID: "YES."

13 AND THEN YOU SAID: "INVOLVING
14 MICROGENESIS TECHNOLOGY?"

15 AND HE SAID: "YES."

16 ISN'T THAT WHAT YOU DID, MR. BARENS?

17 A WHY DON'T WE FINISH THE COLLOQUY, SIR? THERE
18 IS ONLY A FEW LINES LEFT.

19 THE COURT: FIRST OF ALL, THE ANSWER TO THAT
20 QUESTION.

21 THE WITNESS: THE ANSWER IS HE IS READING FROM A
22 TRANSCRIPT INACCURATELY.

23 THE COURT: NOW, GO.

24 THE WITNESS: (READING):

25 "Q WAS HE SEEKING AN INCLUSIVE
26 MARKETING AGREEMENT WITH YOU FOLKS,
27 MEANING THE HUNT PEOPLE?

28 A I WAS NOT INVOLVED WITH THE

1 NEGOTIATIONS. I DON'T KNOW THAT.

2 Q YOU DIDN'T KNOW, YOU DIDN'T
3 KNOW, SIR?

4 A NO.

5 THANK YOU."

6 BY MR. KLEIN:

7 Q DO YOU REMEMBER CROSS-EXAMINING EVAN DICKER?
8 DO YOU REMEMBER WHO HE WAS? HE WAS ANOTHER MEMBER OF THE
9 B.B.C..

10 A I REMEMBER IN A GENERAL SENSE EVAN DICKER.

11 Q DO YOU REMEMBER OFFERING A DOCUMENT ENTITLED
12 "GOLDSON, LTD.," WHICH WAS EXHIBIT L IN THE TRIAL; AND
13 THEN ASKING MR. DICKER A SERIES OF QUESTIONS ABOUT
14 MICROGENESIS AND ATTRITION MILLS AND 200 MILLION DOLLARS
15 OR \$200,000 AND \$150,000 DOLLARS FOR AN OPTION? DO YOU
16 REMEMBER DOING THAT?

17 THE COURT: I DO NOT UNDERSTAND THE QUESTION.

18 MR. KLEIN: LET ME REPHRASE IT, YOUR HONOR. I
19 APOLOGIZE.

20 BY MR. KLEIN:

21 Q AFTER YOU MARKED THIS DOCUMENT, DID YOU ASK
22 MR. DICKER WHAT THIS DOCUMENT WAS AND HE TOLD YOU IT WAS
23 AN AGREEMENT FOR THE PURCHASE OF THE 20 CYCLOTRONS AT
24 \$200,000 EACH AND THAT \$150,000 WAS GOING TO BE PAID FOR
25 THE OPTION. DO YOU REMEMBER INTRODUCING THAT DOCUMENT
26 INTO EVIDENCE AT TRIAL?

27 A I DO NOT SPECIFICALLY REMEMBER DOING THAT
28 NOW.

1 Q LET ME SHOW YOU PAGES 85 THROUGH -26 THROUGH
2 8528 AND ASK YOU IF THAT REFRESHES YOUR MEMORY

3
4 (WITNESS REVIEWING TRANSCRIPT.)

5
6 A CAN I SEE THE NEXT PAGE, IF YOU WOULD,
7 COUNSEL, TO THE 8529.

8 Q SURE.

9
10 (WITNESS REVIEWING TRANSCRIPT.)

11
12 A ALL RIGHT. WHAT'S YOUR QUESTION?

13 Q DIDN'T YOU BRING OUT THROUGH
14 CROSS-EXAMINATION OF MR. DICKER THAT THERE WAS A CONTRACT
15 FOR 20 CYCLOTRONS AT \$200,000 EACH WITH AN OPTION AT
16 \$150,000?

17 MR. MC MULLEN: OBJECTION. INAPPROPRIATE
18 IMPEACHMENT EVIDENCE.

19 MR. KLEIN: THIS WAS RELATING TO CYCLOTRON.

20 THE COURT: I WILL ALLOW THE QUESTION.

21 THE WITNESS: MR. DICKER TESTIFIED AS TO THE
22 EXISTENCE OF AN OPTION. ON THE VERY NEXT PAGE HE
23 TESTIFIED FURTHER THAT THE MACHINES WERE NEVER DELIVERED,
24 AND IN RELEVANT PART TO WHAT I WAS TRYING TO EXAMINE AND
25 WHAT I WAS TRYING TO ESTABLISH HERE, AND WHY I SAID
26 EARLIER IN MY TESTIMONY TODAY I DECIDED TO STAY AWAY FROM
27 THIS QUESTION, AT PAGE 8529 (READING):

28 "DID YOU IN FACT EVER DO

1 ANYTHING TO SUPPLY LEVIN WITH THE
2 LEVEL OF TECHNOLOGY REQUIRED UNDER
3 THE OPTION HE SEEMED TO HAVE BEEN
4 BARGAINING FOR?

5 A NOT THAT I KNOW OF."

6 AT THAT MOMENT IN TIME I DECIDED I WAS BETTER
7 ADVISED TO STAY AWAY FROM THAT SEEING AS WE WERE BEING
8 TOLD THAT, THAT WHAT HE INVESTED A MILLION AND HALF
9 DOLLARS IN SUBSEQUENT TO NOT BEING GIVEN THE TECHNOLOGY
10 THE WITNESS SAID HE WAS BARGAINING FOR, COUNSEL.

11 BY MR. KLEIN:

12 Q BUT PRIOR TO ASKING HIM ABOUT THE TECHNOLOGY
13 BEING DELIVERED YOU WERE THE ONE AT 8526, 8527 THAT
14 BROUGHT OUT THAT THERE WAS IN FACT A CONTRACT FOR 20
15 CYCLOTRONS AT \$200,000 EACH WITH AN OPTION AT \$150,000
16 DOLLARS? YOU WERE THE ONE THAT DID THAT; RIGHT,
17 MR. BARENS?

18 A I DID THAT AT THE TIME PRIOR TO THE TIME I
19 REALIZED THAT MR. LEVIN, THAT I WAS GOING TO RECEIVE THE
20 ANSWER. AND THIS OLD "DON'T ASK A QUESTION YOU DON'T WANT
21 TO KNOW THE ANSWER TO," I DIDN'T REALIZE THAT THEY HAD
22 FAILED TO PROVIDE A LEVEL OF TECHNOLOGY SUITABLE FOR
23 MR. LEVIN'S DUE DILIGENCE STANDARD.

24 Q IF THERE WERE, WAS A CONTRACT TO GENERATE
25 MONEY RELATIVE TO THE CYCLOTRON OR ATTRITION MILLS FOR THE
26 B.B.C. THAT HAD NOTHING TO DO WITH RON LEVIN AND YOU
27 BELIEVED IT TO BE VIABLE, YOU WOULD HAVE PRESENTED TO THE
28 JURY; RIGHT, MR. BARENS?

1 A IF I WOULD HAVE BELIEVED IT TO BE VIABLE. IN
2 THE SAME PAGES YOU ARE MAKING REFERENCE TO, COUNSEL, THE
3 WITNESS TESTIFIED THAT NO MACHINES HAD BEEN BUILT. THEY
4 WERE INCAPABLE OF SATISFYING THE REQUIREMENTS OF THE
5 CONTRACT AS THE CONDITION PRECEDENT TO AN OBLIGATION.
6 THEREFORE, THE CONTRACT WAS AN ILLUSION.

7 Q IF YOU HAD EVIDENCE THAT DEMONSTRATED IT MAY
8 HAVE BEEN VIABLE FOR THE B.B.C. TO OBTAIN MONEY FROM MR.
9 KILPATRICK RELATIVE TO THE NEGOTIATIONS WITH THE ATTRITION
10 MILLS, THAT WOULD HAVE BEEN HELPFUL TO YOUR DEFENSE OF MR.
11 HUNT IN HIS TRIAL; CORRECT?

12 A IF SUCH EVIDENCE HAD OBJECTIVELY EXISTED IN
13 TRUTH AND IN FACT IT WAS CAPABLE OF PERFORMANCE.

14 Q OKAY.

15 YOU NEVER LOOKED AT ALL OF THE DOCUMENTATION
16 THAT WAS AVAILABLE RELATIVE TO MICROGENESIS BEFORE YOU
17 MADE THIS DECISION; CORRECT, MR. BARENS?

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

19 MR. KLEIN: HE SAID --

20 THE COURT: SUSTAINED.

21 YOUR QUESTION IS: DID YOU LOOK AT ALL OF IT.
22 WE DON'T KNOW IF HE HAD ACCESS TO ALL OF IT. SO YOU CAN
23 REFRAME THE QUESTION. HE HAS ALREADY INDICATED HE LOOKED
24 AT ENOUGH PAPERWORK TO SATISFY HIM. YOU CAN REFRAME THE
25 QUESTION.

26 MR. KLEIN: SURE, YOUR HONOR.

27 BY MR. KLEIN:

28 Q YOU DIDN'T LOOK AT ALL THE DOCUMENTATION

1 RELATIVE TO MICROGENESIS THAT WAS AVAILABLE TO YOU BEFORE
2 YOU MADE YOUR DECISION NOT TO PRESENT EVIDENCE REGARDING
3 THE VIABILITY OF THE ATTRITION MILLS GENERATING MONEY FOR
4 THE B.B.C.; CORRECT?

5 A I DO NOT KNOW THAT TO BE A CORRECT STATEMENT.

6 Q MR. HUNT DID TELL YOU TO LOCATE ALL THE
7 DOCUMENTATION YOU COULD RELATIVE TO MICROGENESIS; DIDN'T
8 HE?

9 A I BELIEVE THAT WE HAD BEEN PROVIDED WITH AN
10 EXTENSIVE AMOUNT OF MICROGENESIS MATERIAL BOTH FROM MR.
11 HUNT AND OTHER SOURCES THAT WAS REVIEWED. I RECALL HAVING
12 EXTENSIVE DISCUSSIONS ABOUT THIS SUBJECT AND TRYING TO
13 UNDERSTAND IT.

14 Q SHOWING YOU EXHIBITS 243 AND 245, MR. HUNT
15 DID ALERT YOU TO THIS SUBJECT IN THESE DOCUMENTS; DIDN'T
16 HE? THIS IS 243.

17 THE COURT: 243, AND WHICH WAS THE OTHER ONE?

18 MR. KLEIN: ACTUALLY, THAT'S NOT THE RIGHT ONE. I
19 AM SORRY, YOUR HONOR.

20 MR. KLEIN: 244 STARTING AT PAGE 17. THAT'S
21 EXHIBIT 244.

22 THE WITNESS: WHAT WAS THE QUESTION?

23 BY MR. KLEIN:

24 Q DID HE ALERT YOU TO THE SUBJECT OF THE
25 ATTRITION MILLS, MR. BARENS, IN THIS MEMO?

26 A I TESTIFIED EARLIER THAT I HAD NO
27 RECOLLECTION OF RECEIVING THAT MEMO, SO I DON'T KNOW WHAT
28 VALUE THAT IS TO ME.

1 Q OKAY.

2 A BUT I WILL SAY IN ALL CANDOR THAT THERE IS NO
3 QUESTION WE HAD EXTENSIVE DISCUSSIONS CONCERNING THIS
4 SUBJECT.

5 Q NOW --

6 THE COURT: WHEN YOU SAY "WE," YOU MEAN YOU AND
7 MR. HUNT?

8 THE WITNESS: MR. HUNT AND MYSELF HAD CONSIDERABLE
9 DISCUSSIONS ON THIS CYCLOTRON BUSINESS.
10 BY MR. KLEIN:

11 Q INCIDENTALLY, IN PREPARING FOR THE CASE YOU
12 HAD REGULAR MEETINGS WITH MR. HUNT AND MR. CHIER?

13 A YES.

14 Q AND ON OCCASION WERE THESE MEETINGS ATTENDED
15 BY MR. BRODEY?

16 A NO.

17 Q NEVER ATTENDED BY MR. BRODEY?

18 A THERE MAY HAVE BEEN A MEETING IN THE HALLWAY
19 AT THE COURTHOUSE, WHICH WOULD NOT HAVE BEEN A BUSINESS
20 TYPE MEETING, WHERE WE MAY HAVE JUST GENERALLY DISCUSSED
21 THE Demeanor OF THE COURT ON A SOMEWHAT SUPERFICIAL LEVEL,
22 BUT I DON'T HAVE ANY RECOLLECTION OF A SUBSTANTIVE
23 PREPARATION MEETING THAT INVOLVED MR. BRODEY.

24 Q WHEN YOU HAD THESE MEETINGS WITH MR. HUNT AND
25 MR. CHIER, THE INVESTIGATOR THAT YOU HAD WOULD ALSO
26 PARTICIPATE IN THE MEETING?

27 A ON OCCASION.

28 Q DID MR. BRODEY'S INVESTIGATOR, MR. ROHMAN,

1 R-O-H-M-A-N, DID HE ALSO SIT IN ON SOME OF THOSE MEETINGS?

2 A I DON'T RECALL. AS A MATTER OF FACT, I DO
3 RECALL MEETING MYSELF WITH MR. ROHMAN ON SOME OCCASIONS.
4 WHO ELSE MIGHT HAVE BEEN PRESENT DURING THOSE MEETINGS I
5 AM NOT SURE.

6 Q NOW, WE HAVE TALKED A LITTLE BIT ABOUT
7 PROGRESSIVE SAVINGS & LOAN, AND YOU WERE CERTAINLY AWARE
8 OF THE FACT THAT MR. LEVIN WAS A DEFENDANT IN THE
9 PROGRESSIVE LOAN MATTER AND YOU WERE AWARE THAT MR. HUNT
10 WAS ALSO A DEFENDANT IN THE CIVIL SUIT; CORRECT?

11 A YES.

12 Q NOW, YOU LATER FOUND OUT AFTER THE TRIAL WAS
13 OVER, AFTER BEING CONTACTED BY MR. HUNT'S APPELLATE
14 ATTORNEY, THAT THERE WERE SUBSTANTIAL DOCUMENTS RELATING
15 TO AN F.B.I. INVESTIGATION OF MR. LEVIN IN CONJUNCTION
16 WITH THE PROGRESSIVE SAVINGS & LOAN MATTER?

17 MR. MC MULLEN: OBJECT. LEADING.

18 THE COURT: OVERRULED.

19 THE WITNESS: I AM NOT SURE WHEN I -- OR FROM WHOM
20 I GARNERED THAT INFORMATION. SUFFICE IT THAT WAS AFTER
21 THE TRIAL THAT I BECAME AWARE OF THAT.

22 BY MR. KLEIN:

23 Q SO DURING THE TRIAL OR PRIOR TO THE TRIAL YOU
24 WERE NOT AWARE OF AN F.B.I. INVESTIGATION OF MR. LEVIN
25 RELATIVE TO PROGRESSIVE SAVINGS & LOAN?

26 A I DO NOT BELIEVE I WAS, SIR.

27 MR. KLEIN: MAY I JUST HAVE A MINUTE, YOUR HONOR?

28 THE COURT: YES.

1 (PAUSE.)

2

3 BY MR. KLEIN:

4 Q JUST GOING BACK TO THE MICROGENESIS MATTER
5 FOR A MOMENT, MR. BARENS. IN YOUR FINAL ARGUMENT DIDN'T
6 YOU ARGUE TO THE JURY THAT THE KILPATRICK DEAL WITH
7 MICROGENESIS MAY HAVE GENERATED AS MUCH AS 224 MILLION
8 DOLLARS IF CONSUMMATED?

9 A I BELIEVE I MIGHT HAVE SAID THAT, YES. IF
10 CONSUMMATED.

11 MR. KLEIN: I NEED A MINUTE TO FIND SOME DOCUMENT.
12 I AM SORRY. IT IS GOING SO QUICKLY THAT I DIDN'T HAVE
13 THEM ALL.

14 THE COURT: HOW MUCH LONGER DO YOU THINK YOU HAVE
15 ON DIRECT?

16 MR. KLEIN: HALF HOUR, AN HOUR AT THE MOST.

17 THE COURT: OKAY.

18 MR. KLEIN: I KNOW THIS IS ON MY MASTER EXHIBIT
19 LIST. IT IS EXHIBIT 209. IF I CAN MARK IT.

20 THE COURT: 209?

21 MR. KLEIN: YES, YOUR HONOR. IT IS EXHIBIT 1-B TO
22 THE PETITION. IT IS THREE PAGES.

23 THE COURT: ALL RIGHT.

24 IT WILL BE MARKED AS 209.

25

26 (MARKED FOR ID = PETITIONER'S 209,
27 DOCUMENT.)

28

1 BY MR. KLEIN:

2 Q IS THIS THE CORRESPONDENCE THAT YOU HAD WITH
3 MR. DOBRIN? IT IS A LETTER DATED OCTOBER 8TH, '90, 1990,
4 AND THEN YOUR RESPONSE OCTOBER 16, 1990, RELATIVE AS TO
5 WHETHER OR NOT YOU EVER HAD ANY OF THE F.B.I. MATERIALS
6 CONCERNING THE INVESTIGATION OF LEVIN AND PROGRESSIVE
7 SAVINGS & LOAN?

8 A YES.

9 THE COURT: LET ME SEE IT, MR. KLEIN.

10 MR. KLEIN: SURE, YOUR HONOR. I AM SORRY.

11

12 (PAUSE.)

13

14 MR. KLEIN: YOUR HONOR, I HAVE ANOTHER SERIES OF
15 DOCUMENTS. IT IS EXHIBIT 19-B TO THE PETITION. MAY THIS
16 BE MARKED 230?

17 THE COURT: THE UNDERWOOD PACKAGE OF MATERIAL?

18 MR. KLEIN: YES.

19 THE COURT: IT WILL BE MARKED AS 230. WHAT EXHIBIT
20 IS IT IN THE PETITION?

21

22 (MARKED FOR ID = PETITIONER'S 230,
23 DOCUMENT.)

24

25 MR. KLEIN: 19-B.

26 LET ME COUNT THE PAGES.

27 THE COURT: ALL RIGHT.

28 MR. KLEIN: I THINK IT 33 PAGES.

1 THE COURT: DID YOU SAY 33?

2 MR. KLEIN: YES, YOUR HONOR.

3 BY MR. KLEIN:

4 Q IS THIS THE MATERIAL THAT MR. DOBRIN SENT YOU
5 CONCERNING THE F.B.I. INVESTIGATION OF MR. LEVIN THAT YOU
6 NEVER SAW DURING TRIAL OR PRIOR TO TRIAL?

7 MR. MC MULLEN: YOUR HONOR, AT THIS POINT WE WOULD
8 OBJECTING AS BEING IRRELEVANT. THE ISSUE WHICH THIS --

9 MR. KLEIN: CAN WE DO THIS OUT OF THE PRESENCE OF
10 THE --

11 THE COURT: THE OBJECTION IS RELEVANCE?

12 MR. MC MULLEN: YES.

13 THE COURT: OVERRULED.

14 MR. KLEIN: THANK YOU

15 THE WITNESS: I CAN'T BE SURE. MR. ROHMAN. BUT
16 THIS MAY WELL HAVE BEEN THOSE MATERIALS. IT IS JUST HARD
17 TO RECALL ALL 33 PAGES.

18 THE COURT: ALL RIGHT.

19 ANY QUESTION?

20 THE WITNESS: THESE MAY WELL BE THOSE MATERIALS,
21 BUT I CANNOT BE SURE, SIR.

22 BY MR. KLEIN:

23 Q ISN'T IT TRUE, MR. BARENS, THAT AMONG THE
24 EARLIEST DISCOVERY THAT YOU RECEIVED IN THE CASE WAS A
25 REPORT BY DETECTIVE ZOELLER THAT HE CONTACTED -- THAT HE
26 WAS CONTACTED BY NANCY UNDERWOOD, AN F.B.I. AGENT,
27 RELATIVE TO THE F.B.I. INVESTIGATION OF MR. LEVIN? THIS
28 WAS LIKE IN A REPORT IN JULY OF 1984?

1 A IF IT WAS IN DETECTIVE ZOELLER'S REPORT, I
2 DON'T RECALL SEEING IT.

3 Q NOW, AS WE TALKED ABOUT EARLIER, YOU BROUGHT
4 OUT THAT MR. HUNT WAS A DEFENDANT IN THE PROGRESSIVE
5 MATTER. THE COURT DID THROUGH THE EXAMINATION OF MR.
6 MARMOR. YOU BROUGHT IT OUT THROUGH MR. OSTROVE.

7 A NO, SIR.

8 THE COURT: THAT QUESTION IS ALL OVER THE PLACE.
9 START OVER AGAIN.

10 THE WITNESS: NO.

11 MR. KLEIN: OKAY.

12 THE COURT: I AM NOT SURE WHAT THE "NO" IS IN
13 RESPONSE TO, SO I AM STRIKING IT.

14 REFRAME THE QUESTION.

15 BY MR. KLEIN:

16 Q IF THE JURY WAS GOING TO KNOW THAT MR. HUNT
17 WAS ALSO A DEFENDANT IN THE CIVIL SUIT CONCERNING
18 PROGRESSIVE SAVINGS & LOAN, YOU HAD NO REASON NOT TO BRING
19 OUT THAT MR. LEVIN WAS A SUSPECT IN A F.B.I. INVESTIGATION
20 RELATING TO PROGRESSIVE SAVINGS & LOAN; DID YOU?

21 A NO, I DID NOT.

22 Q DO YOU KNOW WHO NANCY UNDERWOOD IS?

23 A I BELIEVE YOU JUST MENTIONED THAT SHE WAS
24 SOMEHOW AFFILIATED WITH THE F.B.I..

25 Q AND DID NANCY UNDERWOOD TESTIFY AT MR. HUNT'S
26 TRIAL, THE ONE THAT YOU REPRESENTED HIM ON?

27 A I AM NOT SURE.

28 Q DID SHE TESTIFY AT THE DEPOSITION THAT SHE

1 DID TESTIFY AT THE TRIAL?

2 A I AM NOT SURE IF SHE TESTIFIED. AS I SIT
3 HERE TODAY, I AM NOT SURE IF SHE TESTIFIED.

4 MR. KLEIN: YOUR HONOR, PAGE 125 OF THE DEPOSITION,
5 LINE 2, QUESTION --

6 THE COURT: WHEN YOU SAY "THE DEPOSITION," YOU ARE
7 REFERRING TO --

8 MR. KLEIN: 267. I AM SORRY, YOUR HONOR.

9 BY MR. KLEIN:

10 Q (READING):

11 "Q WERE YOU AWARE OF THE NAME
12 NANCY UNDERWOOD AT ANY TIME PRIOR TO
13 THE END OF TRIAL?

14 A I BELIEVE NANCY UNDERWOOD
15 TESTIFIED AT THE TRIAL."

16 A AND I AM SAYING TODAY I AM NOT SURE. SOMEONE
17 MUST KNOW THE ANSWER TO THAT.

18 MR. KLEIN: YOU WANT TO STIPULATE, MR. MC MULLEN?

19 MR. MC MULLEN: I WILL STIPULATE THAT SHE DIDN'T
20 TESTIFY.

21 THE WITNESS: SHE DID NOT.

22 THE COURT: HOLD ON.

23 THAT'S YOUR --

24 MR. MC MULLEN: THAT'S CORRECT. NANCY UNDERWOOD
25 DID NOT TESTIFY DURING THE SANTA MONICA TRIAL OF MR. HUNT.

26 THE WITNESS: THANK YOU.

27 BY MR. KLEIN:

28 Q AND AGAIN, IT IS YOUR TESTIMONY THAT PRIOR TO

1 THE TIME THAT MR. DOBRIN OR SOMEBODY, AFTER MR. HUNT'S
2 TRIAL WAS OVER WAS THE FIRST TIME THAT YOU SAW ANY F.B.I.
3 INVESTIGATION REPORTS CONCERNING MR. LEVIN AND PROGRESSIVE
4 SAVINGS & LOAN?

5 MR. MC MULLEN: OBJECTION. CUMULATIVE. ASKED AND
6 ANSWERED.

7 THE COURT: OVERRULED.

8 THE WITNESS: TO THE BEST OF MY RECOLLECTION THAT'S
9 A TRUE STATEMENT.

10 MR. KLEIN: YOUR HONOR, I WOULD LIKE TO OFFER PAGE
11 124 OF EXHIBIT 267, THE FOLLOWING QUESTION AND ANSWER
12 STARTING AT LINE 20.

13 BY MR. KLEIN:

14 Q (READING):

15 "Q AND HOW ABOUT THE FACT THAT
16 THE F.B.I. WAS INVESTIGATING RON
17 LEVIN IN CONNECTION WITH THE
18 PROGRESSIVE SAVINGS & LOAN MATTER.
19 WERE YOU AWARE OF THAT AT ANY TIME
20 PRIOR TO THE END OF THE TRIAL?

21 A NO, I NEVER SAW ANY F.B.I.
22 INVESTIGATION REPORTS, COUNSEL. I
23 CERTAINLY DON'T REMEMBER THEM IF I
24 DID."

25 MR. MC MULLEN: OBJECTION. INAPPROPRIATE
26 IMPEACHMENT.

27 THE COURT: THIS IS CONSISTENT WITH WHAT HE SAID,
28 ISN'T IT, MR. KLEIN.

1 MR. KLEIN: I AM SORRY?

2 THE COURT: ISN'T THAT CONSISTENT WITH WHAT HE JUST
3 SAID?

4 MR. KLEIN: IF IT IS, THE COURT IS GOING TO RULE
5 WHENEVER THE COURT TAKES UP THE RULING ON THIS MATTER.

6 THE COURT: I GUESS WHAT I AM ASKING, WHY DID YOU
7 ASK THE QUESTION IF IT IS ALREADY IN?

8 MR. KLEIN: I DIDN'T FEEL THAT HIS ANSWER WAS
9 CONSISTENT WITH THAT ANSWER. I THINK THAT ANSWER IS A
10 MUCH CLEARER ANSWER OF HIS STATEMENT THAN WHAT HE JUST
11 GAVE.

12 BY MR. KLEIN:

13 Q LET'S MOVE ONTO THE NEXT ISSUE THAT I WANT TO
14 TALK ABOUT. IT RELATES TO A PERSON BY THE NAME OF OLIVER
15 WENDELL HOLMES AND SOME TESTIMONY THAT RON LEVIN WAS GOING
16 TO FLEE ON JUNE 6, 1984, AND HE MAY HAVE CONSIDERED BRAZIL
17 BECAUSE HE HAD SOUGHT SOME INFORMATION ABOUT EXTRADITION
18 TO BRAZIL.

19 WERE YOU AWARE OF OLIVER WENDELL HOLMES AT
20 ANY TIME DURING THE TRIAL OR PRIOR TO THE COMMENCEMENT OF
21 THE TRIAL?

22 A I MAY HAVE HEARD THAT NAME.

23 Q WHO PREPARED YOUR DECLARATION, WHICH IS
24 EXHIBIT G TO THIS PROCEEDING?

25 THE COURT: DIDN'T HE ALREADY ANSWER, AND HE SAID
26 HE DID?

27 THE WITNESS: I BELIEVE I PREPARED IT IN
28 CONJUNCTION WITH THE DISTRICT ATTORNEY'S OFFICE, I

1 BELIEVE. I AM NOT SURE IN WHICH ORDER IT WENT AS FAR AS
2 WHO DID THE FIRST DRAFT AND WHO COMMITTED IT OR WHATEVER,
3 BUT IT WAS TO BE THE CONDUIT BUT I CAN'T REMEMBER WHETHER
4 I DID THE FIRST DRAFT AND THEY EDITED IT OR IF THEY DID
5 THE FIRST DRAFT AND I EDITED, BUT I BELIEVE IT WAS -- AND
6 THEN I BELIEVE EVENTUALLY IT WAS SENT OVER TO MR. BRODEY,
7 BUT I DON'T KNOW THE SEQUENCE ON WHO DID WHAT.

8 BY MR. KLEIN:

9 Q AT YOUR DEPOSITION YOU SAID THAT YOU WERE THE
10 ONE THAT DID THE FIRST DRAFT?

11 A I MAY WELL HAVE. AS AGAIN I HAVE BEEN WRONG
12 A COUPLE OF TIMES TODAY, AS YOU POINTED OUT, ADELMAN
13 TESTIFIED AND I COULDN'T RECALL WHETHER OR NOT THIS
14 UNDERWOOD PERSON TESTIFIED AT ALL. SO AS I SIT HERE
15 TODAY, I DON'T HAVE A SPECIFIC RECOLLECTION OF THAT
16 CHRONOLOGY.

17 Q SURE.

18 A OKAY.

19 Q YOU HAD AMPLE OPPORTUNITY TO REVIEW THE
20 DECLARATION, EXHIBIT G, BEFORE YOU SIGNED IT?

21 A YES, I DID.

22 Q YOU HAD AMPLE OPPORTUNITY TO MAKE ANY CHANGES
23 IN IT BEFORE YOU SIGNED IT?

24 A YES.

25 Q AND WHEN YOU SIGNED IT IT WAS TRUE TO THE
26 BEST OF YOUR ABILITY; CORRECT?

27 A YES.

28 Q AND AT PAGE 3, LINE 14 YOU WROTE (READING):

1 "AT THE TIME OF TRIAL I WAS
2 UNAWARE THAT PRIOR TO HIS
3 DISAPPEARANCE RON LEVIN HAD TALKED
4 TO OLIVER WENDELL HOLMES ABOUT THE
5 EXTRADITION LAWS IN BRAZIL OR THAT
6 HE WAS CONSIDERING LEAVING FOR NEW
7 YORK ON JUNE 6, 1984, RATHER THAN
8 THE 7TH."

9 CORRECT?

10 A THAT'S CORRECT?

11 Q BUT ALSO YOUR TESTIMONY IS YOU MAY HAVE HEARD
12 OF OLIVER WENDELL HOLMES?

13 A I MAY HAVE HEARD THE NAME MENTIONED. I
14 CERTAINLY CAN'T ASSURE YOU WHETHER IT WAS IN THE CONTEXT
15 OF THIS CASE OR SOME HOW OR OTHER I HAD LEARNED THE NAME
16 OLIVER WENDELL HOLMES IN MY LIFE SOME TIME BEFORE THAT
17 TRIAL.

18 Q COULD IT HAVE BEEN IN THE CONTEXT OF MR.
19 HOLMES WAS A PRACTICING ATTORNEY RATHER THAN IN THE
20 CONTEXT OF SOMETHING TO DO WITH THE HUNT CASE?

21 A I AM NOT SURE, SIR.

22 Q AND IF YOU KNEW THE INFORMATION THAT MR.
23 HOLMES HAD ABOUT MR. LEVIN RELATING TO LEAVING FOR NEW
24 YORK ON JUNE 6, 1984, AND SOME INFORMATION ABOUT THE
25 EXTRADITION LAWS OF BRAZIL, YOU CERTAINLY WOULD HAVE
26 PRESENTED THAT EVIDENCE TO THE JURY; CORRECT?

27 A I WOULD HAVE.

28 MR. KLEIN: I HAVE TWO DOCUMENTS, ONE IS A REPORT

1 BY DETECTIVE ZOELLER. MAY THAT BE MARKED 216?

2 THE COURT: 216?

3 MR. KLEIN: YES, YOUR HONOR.

4 THE COURT: YES.

5
6 (MARKED FOR ID = PETITIONER'S 216,
7 DOCUMENT.)

8
9 MR. KLEIN: I HAVE ANOTHER DOCUMENT THAT IS SOME
10 NOTES OF DETECTIVE ZOELLER. MAY THAT BE MARKED EXHIBIT
11 240?

12 THE COURT: YES.

13
14 (MARKED FOR ID = PETITIONER'S 240,
15 DOCUMENT.)

16
17 BY MR. KLEIN:

18 Q INCIDENTALLY, DURING THE TRIAL OR PRIOR TO
19 THE TRIAL DID YOU KNOW WHO A SCOTT FURSTMAN WAS?

20 A NOT THAT I RECALL. I MAY HAVE HEARD THAT
21 NAME DURING THE TRIAL, BUT PRIOR TO TRIAL I DON'T RECALL
22 THAT, SIR.

23 Q SHOWING YOU EXHIBIT 216, WHICH IS ALSO
24 EXHIBIT 3-C TO THE PETITION. I WOULD ASK YOU TO TAKE A
25 LOOK AT THAT REPORT AND SEE IF YOU EVER SAW IT THERE
26 BEFORE.

27
28 (WITNESS REVIEWING TRANSCRIPT.)

1 A I BELIEVE THAT AT SOME POINT IN TIME I SAW
2 THIS DOCUMENT.

3 Q WHEN, MR. BARENS? WAS IT DURING THE TRIAL
4 OR --

5 A MY BEST RECOLLECTION 11 YEARS LATER IS THAT I
6 SAW THIS DURING THE TRIAL.

7 Q DID YOU SEE IT PRIOR TO TRIAL?

8 A I JUST INDICATED THAT MY BEST RECOLLECTION 11
9 YEARS LATER IS THAT I SAW IT DURING THE TRIAL. NOW, I MAY
10 HAVE SEEN IT AFTER THE TRIAL, AND I DON'T WANT YOU TO
11 BELIEVE THAT I AM SAYING TO THE CONTRARY. I JUST DON'T
12 RECALL. AS I SIT HERE TODAY, MY BEST GUESS, AND THAT IS
13 EXACTLY WHAT I AM DOING, I AM GUESSING THAT I SAW THIS
14 DURING THE TRIAL.

15 THE COURT: LET ME SEE 216. THIS IS THE ZOELLER
16 POLICE REPORT?

17

18 (PAUSE.)

19

20 BY MR. KLEIN:

21 Q DID YOU SEE THAT DOCUMENT, EXHIBIT 216, PRIOR
22 TO THE COMMENCEMENT OF TRIAL?

23 A I BELIEVE I JUST ANSWERED THAT QUESTION,
24 COUNSEL.

25 MR. KLEIN: YOUR HONOR, COULD THE WITNESS --

26 THE COURT: HE SAID HIS BEST RECOLLECTION IS HE SAW
27 IT DURING TRIAL.

28 MR. KLEIN: I THINK -- WHETHER IT WAS DURING TRIAL

1 OR PRIOR TO THE COMMENCEMENT, I WOULD LIKE TO HAVE HIM
2 ANSWER THAT QUESTION. I THINK THERE IS A VERY IMPORTANT
3 DISTINCTION.

4 THE COURT: HE HAS ANSWERED THE QUESTION.
5 BY MR. KLEIN:

6 Q SHOWING YOU EXHIBIT 240. THESE ARE SOME OF
7 DETECTIVES ZOELLER'S NOTES. HAVE YOU EVER SEEN THAT
8 DOCUMENT, BEFORE?

9 A I DO NOT RECALL EVER SEEING THIS DOCUMENT
10 BEFORE.

11 Q DO YOU REMEMBER BEING INTERVIEWED BY
12 MR. SIMPSON, MR. MC MULLEN'S D.A. LAW CLERK BY THE NAME OF
13 MICHAEL YOCUM ON MAY 11, 1995, WHEN YOUR LAWYER,
14 MR. BRODEY, WAS PRESENT?

15 A I HAVE A GENERAL RECOLLECTION OF THAT, YES,
16 SIR.

17 Q AND YOU WERE ASKED ABOUT WHETHER YOU WERE
18 AWARE OF THE PERSON BY THE NAME OF OLIVER WENDELL HOLMES
19 DURING THAT INTERVIEW; WEREN'T YOU?

20 A I DON'T RECALL, SIR.

21 Q AND YOU TOLD THESE GENTLEMEN THAT YOU WERE
22 UNAWARE OF OLIVER WENDELL HOLMES, AND THAT YOU RECALLED
23 HOLMES WAS A NAME USED BY LEVIN AS A PSEUDONYM; ISN'T THAT
24 WHAT YOU TOLD THEM ON MAY 11TH?

25 A THAT IS QUITE WELL WHAT MY RECOLLECTION WAS
26 ON MAY 11TH. I WAS SUBSEQUENTLY CORRECTED. I BELIEVE
27 THAT THAT HAD -- THAT'S HOW I LOST I WAS ON MR. HOLMES. I
28 THOUGHT IT WAS A PSEUDONYM THAT WAS EMPLOYED ALONG WITH

1 OTHERS BY MR. LEVIN.

2 Q NOW, ANOTHER ISSUE THAT IS BEFORE THE COURT
3 IS WHETHER OR NOT YOU WOULD HAVE PRESENTED EVIDENCE THAT
4 KAREN SUE MARMOR SAW THE SEVEN-PAGE LIST AT MR. LEVIN'S
5 PRIOR TO JUNE 6, 1984. ARE YOU FAMILIAR WITH THAT ISSUE?

6 A YES.

7 Q PRIOR TO TRIAL YOU KNEW WHO LEN MARMOR WAS;
8 RIGHT?

9 A YES, I BELIEVE SO.

10 Q YOU KNEW HE WAS A NEIGHBOR OF MR. LEVIN?

11 A AT ONE POINT IN TIME HE WAS A NEIGHBOR. I
12 BELIEVE THAT CIRCUMSTANCE CHANGED.

13 Q YOU KNEW HE WAS A NEXT DOOR NEIGHBOR OF MR.
14 LEVIN AT ONE TIME; CORRECT?

15 A YES.

16 Q OVER AT THE LOCATION ON SOUTH PECK DRIVE
17 WHERE MR. LEVIN LIVED PRIOR TO HIS DISAPPEARANCE ON JUNE
18 6, 1984; CORRECT?

19 A YES.

20 Q AND YOU WERE AWARE THAT MR. LEVIN SPENT A LOT
21 OF TIME WITH MR. MARMOR?

22 A I KNOW THAT MR. MARMOR SAID THAT.

23 Q NOW, IT WOULD HAVE BEEN IMPORTANT FOR YOU OR
24 YOUR INVESTIGATOR TO INTERVIEW MR. MARMOR PRIOR TO TRIAL
25 ABOUT HIS KNOWLEDGE OF MR. LEVIN; CORRECT?

26 MR. MC MULLEN: OBJECTION. RELEVANCE.

27 THE COURT: OVERRULED.

28 I AM SORRY, ARE YOU TALKING ABOUT MR. MARMOR?

1 MR. KLEIN: EXCUSE ME.

2 YES, YOUR HONOR.

3 BY MR. KLEIN:

4 Q YOU KNEW WHO MR. MARMOR WAS PRIOR TO THE
5 COMMENCEMENT OF TRIAL; CORRECT?

6 A I BELIEVE I HAD BEEN TOLD THAT HE WAS -- THE
7 ANSWER IS, YES, I KNEW WHO HE WAS.

8 Q NOW, IT WOULD HAVE BEEN IMPORTANT TO HAVE AN
9 INVESTIGATOR OR YOURSELF INTERVIEW MR. LEVIN'S GOOD
10 FRIEND, HIS NEXT DOOR NEIGHBOR PRIOR TO TRIAL; CORRECT?

11 MR. MC MULLEN: OBJECTION. RELEVANCE.

12 THE COURT: WHAT'S THE RELEVANCE?

13 MR. KLEIN: IT IS FOUNDATIONAL, YOUR HONOR, TO THIS
14 VERY ISSUE. THE ISSUE IS WHETHER OR NOT MS. MARMOR SAW
15 THE PIECE OF PAPER. THAT'S GOING TO A QUESTION OR TWO
16 LATER, BUT THIS IS FOUNDATIONAL TO DISCOVERING MS. MARMOR,
17 YOUR HONOR.

18 THE COURT: I WILL ALLOW IT.

19 MR. KLEIN: THANK YOU.

20 BY MR. KLEIN:

21 Q YOU WANT TO HEAR THE QUESTION, MR. BARENS?

22 A I BELIEVE IT WAS SIGNIFICANT THAT WE SPEAK
23 WITH MR. -- THAT WE AS COUNSEL OR SOMEONE ON OUR BEHALF
24 SPEAK TO MR. MARMOR.

25 Q THAT NEVER HAPPENED; CORRECT?

26 A I DON'T KNOW THAT.

27 Q YOU WERE NEVER INFORMED THAT ANY
28 INVESTIGATION OR INTERVIEW OF MR. MARMOR --

1 A I AM NOT SURE AS TO WHETHER OR NOT AS I SIT
2 HERE TODAY MR. CHIER SPOKE WITH MR. MARMOR OR NOT. YOU
3 WILL HAVE TO ASK HIM.

4 Q BUT YOU WERE NEVER INFORMED THAT ANY, ANYBODY
5 ACTING ON YOUR BEHALF INTERVIEWED MR. MARMOR PRIOR TO
6 TRIAL?

7 A I AM NOT SURE ABOUT THAT, SIR.

8 Q OKAY.

9 NOW, YOU WERE TOLD PRIOR TO TRIAL -- IT IS
10 IMPORTANT IN TERMS OF AN INVESTIGATION TO INTERVIEW ANY
11 NEXT DOOR NEIGHBOR OF SOMEBODY WHO HAS DISAPPEARED SUCH AS
12 MR. LEVIN?

13 A IS THAT YOUR STATEMENT OR MINE?

14 Q I AM ASKING YOU IF THAT'S AN IMPORTANT
15 INVESTIGATIVE TOOL?

16 A I WOULD HAVE TO -- THAT WOULD DEPEND ON AN AD
17 HOC CASE-BY-CASE SITUATION.

18 Q IN THIS CASE WAS IT IMPORTANT TO INTERVIEW
19 NEXT DOOR NEIGHBORS IN ORDER TO PROPERLY PREPARE FOR THE
20 CASE?

21 MR. MC MULLEN: OBJECTION. RELEVANCE.

22 THE COURT: OVERRULED.

23 THE WITNESS: I DON'T THINK IT WOULD HELP TO
24 INTERVIEW DAVID SOUTER'S NEIGHBORS. I THINK IN THIS
25 INSTANCE IT WAS PROBABLY IMPORTANT.

26 BY MR. KLEIN:

27 Q YOU WERE TOLD PRIOR TO TRIAL THAT KAREN SUE
28 MARMOR HATED RON LEVIN AND KNOWS THE SKELETONS IN HIS

1 CLOSET. WEREN'T YOU TOLD THAT?

2 A NO, SIR. I DON'T RECALL BEING TOLD THAT.

3 MR. KLEIN: MAYBE I HAVE IT. I AM SORRY. I DO. I
4 AM SORRY.

5 BY MR. KLEIN:

6 Q SHOWING YOU EXHIBIT 244 AT PAGE EIGHT UNDER
7 NO. 21, LENNY MARMOR. MR. HUNT --

8 A WHAT IS IT YOU ARE READING FROM, COUNSEL.

9 Q EXHIBIT 244.

10 A WAS THE EXHIBIT --

11 Q DID MR. HUNT TELL YOU --

12 A WHAT IS THE EXHIBIT?

13 Q CAN I ASK THE QUESTION.

14 THE COURT: IS THIS THE EXHIBIT WHICH HE SAID HE
15 DOESN'T REMEMBER SEEING?

16 MR. KLEIN: YES.

17 MR. MC MULLEN: YES, YOUR HONOR.

18 THE COURT: HOW CAN YOU REFRESH THE RECOLLECTION
19 WITH SOMETHING --

20 MR. KLEIN: MAYBE AFTER I ASK HIM THIS QUESTION --

21 THE COURT: PUT A QUESTION, SEE IF IT SPARKS
22 SOMETHING.

23 HOLD ON. 2- --

24 MR. KLEIN: 244 "HUNT RELATIONSHIP TO LEVIN'S
25 MILESTONE."

26 THE COURT: THIS CHRONOLOGY HUNT TO BARENS?

27 THE WITNESS: THIS IS HUNT TO LEVIN CHRONOLOGY.

28 THE COURT: THIS IS --

1 MR. CRAIN: MY NOTES, "HUNT RELATIONSHIP TO LEVIN
2 MILESTONES," ON ITS FACE PAGE, YOUR HONOR.

3 MR. KLEIN: IT DOES, YOUR HONOR.

4 BY MR. KLEIN:

5 Q SHOWING YOU PAGE 8 UNDER 21 WHERE IT SAYS
6 (READING):

7 "LENNY'S WIFE HATES LEVIN,

8 KNOWS WHERE THE SKELETONS ARE."

9 DOES THAT REFRESH YOUR MEMORY THAT MR. HUNT
10 PROVIDED YOU WITH THAT INFORMATION PRIOR TO TRIAL?

11 A NO, IT DOES NOT. ODD CHOICE OF WORDS.

12 Q TO YOUR KNOWLEDGE PRIOR TO THE END OF THE
13 HUNT TRIAL YOU OR ANYBODY ON YOUR BEHALF NEVER INTERVIEWED
14 KAREN SUE MARMOR; ISN'T THAT TRUE?

15 A INTERVIEWED HER ABOUT WHAT, COUNSEL? ABOUT
16 SOMETHING SHE SAID TWO YEARS AFTER THE TRIAL?

17 MR. KLEIN: ABOUT ANYTHING?

18 THE COURT: JUST ANSWER THE QUESTION.

19 THE WITNESS: NO.

20 BY MR. KLEIN:

21 Q NOBODY EVER DID?

22 A I DON'T KNOW.

23 Q TO YOUR KNOWLEDGE, NOBODY DID; RIGHT?

24 A TO MY KNOWLEDGE, I DO NOT KNOW OF ANYONE WHO
25 SPOKE TO HER.

26 Q NOW, IF YOU HAD INFORMATION THAT KAREN SUE
27 MARMOR SAW THE SEVEN-PAGE LIST AT MR. LEVIN'S SOMETIME
28 PRIOR TO JUNE 6, 1984, YOU WOULD HAVE PRESENTED THAT

1 INFORMATION TO THE JURY; CORRECT?

2 A NOT NECESSARILY.

3 Q OR IF YOU HAD INTERVIEWED HER AND SHE HAD
4 THAT INFORMATION, YOU COULD HAVE ETHICALLY PRESENTED THAT
5 INFORMATION TO THE JURY, COULDN'T YOU?

6 A I SAID THAT I WOULD NOT NECESSARILY HAVE
7 INTRODUCED THAT EVIDENCE.

8 Q WELL, IF YOU THOUGHT AFTER INTERVIEWING HER
9 THAT SHE WAS A VIABLE WITNESS, THEN YOU COULD HAVE
10 ETHICALLY PRESENTED THAT INFORMATION TO THE JURY; COULDN'T
11 YOU?

12 A THAT WAS NOT THE QUESTION I WAS CONFRONTED
13 WITH, COUNSEL.

14 Q OKAY.

15 COULD YOU ANSWER THAT QUESTION, THEN,
16 MR. BARENS?

17 A I CAN'T.

18 Q I AM SORRY?

19 A I CAN'T ANSWER THAT AS A ISOLATED QUESTION,
20 COUNSEL.

21 Q WHY IS THAT, MR. BARENS?

22 A BECAUSE IT IS TECHNICALLY AT ODDS WITH THE
23 QUESTION THAT I CAN ANSWER.

24 Q AT THE TIME THAT YOU MADE YOUR OPENING
25 STATEMENT TO THE JURY MR. HUNT HAD PROVIDED YOU WITH
26 INFORMATION THAT THE SEVEN-PAGE LIST WAS A SCRIPT. IT WAS
27 USED TO INTIMIDATE MR. LEVIN, AND THAT IT WAS LEFT AT HIS
28 HOUSE PRIOR TO JUNE 6, 1984; CORRECT?

1 THE WITNESS: DOES THE COURT INSTRUCT ME TO ANSWER
2 THAT QUESTION?

3 THE COURT: YES.

4 THE WITNESS: NO.

5 BY MR. KLEIN:

6 Q DID HE TELL YOU SOMETHING CONSISTENT WITH
7 THAT?

8 A AT A TIME SUBSEQUENT TO MY OPENING STATEMENT.

9 MR. CRAIN: YOUR HONOR, CAN WE HAVE JUST A MOMENT
10 TO CLARIFY SOMETHING?

11 THE COURT: YES.

12

13 (PAUSE.)

14

15 THE COURT: DO YOU HAVE A 239? IN OTHER WORDS,
16 COULD THIS BE 239?

17 THE CLERK: YES, IT COULD BE.

18 THE BAILIFF: DOES THAT SOUND GOOD? I THINK IT MAY
19 BE 239. CHECK WITH COUNSEL AT THE END OF THE DAY. I HAVE
20 MEMORIZED EVERY ONE OF THEM.

21 THE COURT: COUNSEL, AT THE BREAK OR AT THE END OF
22 THE DAY BOTH SIDES SIT DOWN WITH THE CLERK. YOU SEEM TO
23 HAVE DUMPED HER WITH A LARGE STACK OF PAPERS. WE ARE
24 TRYING TO MAKE SURE WE KEEP HEADS OR TAILS OF IT.

25 MR. KLEIN, WE NEED TO MAKE SURE WE HAVE EVERY
26 EXHIBIT.

27 MR. KLEIN: WOULD THIS BE A GOOD TIME TO TAKE A
28 BREAK? NOT TOO MUCH, BUT I NEED TO GET SOME DOCUMENTS

1 TOGETHER.

2 THE COURT: OKAY.

3 WE WILL TAKE OUR AFTERNOON RECESS.

4 15 MINUTES.

5

6 (RECESS.)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD IN OPEN COURT:)

10

11 THE COURT: IN THE CASE OF IN RE JOSEPH HUNT, THE
12 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
13 PRESENT, WITNESS IS STILL ON THE STAND.

14 MR. KLEIN, YOU NEEDED AN ANSWER ON THE
15 JENSENS?

16 MR. KLEIN: YES.

17 THE COURT: MOVE THEM. GO AHEAD. WE WILL RESOLVE
18 HOW MUCH IS GOING TO COME IN OR WHATEVER.

19 MR. CRAIN: MAY I CALL MY SECRETARY AND GIVE HER
20 THE COURT'S MESSAGE?

21 MR. KLEIN: MAY I JUST TALK TO MR. CRAIN FOR ONE
22 SECOND?

23 THE COURT: ONE SECOND.

24

25 (PAUSE.)

26

27 THE COURT: WITH REFERENCE TO THE RESPONDENT'S
28 OBJECTIONS, I AM JUST NOT RULING ON WHAT WILL BE

1 ADMISSIBLE, BUT I DON'T WANT TO HAVE EITHER ADDITIONAL
2 COST OR ADDITIONAL DELAYS.

3 MR. MC MULLEN: MAY I APPROACH THE WITNESS FOR A
4 MINUTE AND ASK HIM ONE QUESTION?

5 THE COURT: YES. AND THEN LET'S GO. HOW LONG IS
6 YOUR CROSS-EXAMINATION?

7 MR. MC MULLEN: MY EFFORT -- IT WOULD BE -- MY GOAL
8 WOULD BE FOR US TO BE DONE WITH MR. BARENS TODAY. I AM
9 GOING TO REALLY PUSH FOR THAT.

10 THE WITNESS: I HAVE A LAW AND MOTION, I HAVE A
11 PRELIMINARY HEARING INJUNCTION HEARING TOMORROW.

12 THE COURT: WHAT TIME?

13 THE WITNESS: AT 8:30. JUDGE O'BRIEN TAKES THE
14 STAND AT 8:30 IN 85.

15 THE COURT: HE IS USUALLY DONE BY 8:45.

16 THE WITNESS: I SHOULD TRUST I HAVE AN OPPORTUNITY
17 TO PUT ON EVIDENCE AT THIS HEARING.

18 THE COURT: LET'S SEE WHERE WE ARE AT.

19 MR. KLEIN, GO AHEAD AND WRAP UP. I
20 UNDERSTAND YOU ARE WAITING FOR A DOCUMENT TO ARRIVE. I
21 WILL ALLOW YOU TO PICK IT UP AGAIN ON REDIRECT IF IT
22 DOESN'T ARRIVE BY THE TIME YOU CONCLUDE.

23 MR. KLEIN: THANK YOU.

24

25 ARTHUR BARNES, +
26 CALLED AS A WITNESS BY THE PETITIONER, HAVING BEEN
27 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER
28 AS FOLLOWS:

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DIRECT EXAMINATION RESUMED +

BY MR. KLEIN:

Q SO IT IS YOUR TESTIMONY, MR. BARENS, THAT SOMETIME PRIOR TO THE TIME THAT YOU RESTED THE DEFENSE IN THE HUNT TRIAL THAT MR. HUNT PROVIDED YOU WITH INFORMATION THAT THE SEVEN-PAGE LIST HAD BEEN LEFT AT MR. LEVIN'S HOUSE SOMETIME PRIOR TO JUNE 6, 1994, AND THAT IT WAS -- 1984, THAT IT WAS A SCRIPT TO INTIMIDATE MR. LEVIN?

A YES.

Q BASED UPON THE FACT THAT MR. HUNT HAD PROVIDED YOU WITH THAT INFORMATION SOMETIME PRIOR TO THE TIME THAT YOU RESTED YOUR CASE, YOU WOULD HAVE NO ETHICAL PROBLEM PRESENTING KAREN SUE MARMOR'S TESTIMONY THAT SHE SAW THE SEVEN-PAGE LIST AT RON LEVIN'S SOMETIME PRIOR TO JUNE 6, 1984?

A I CANNOT GIVE YOU A UNQUALIFIED ANSWER TO THAT, COUNSEL.

MR. CRAIN: EXCUSE US FOR ONE MINUTE, YOUR HONOR.

MR. KLEIN: YES, EXCUSE US.

(PAUSE.)

MR. KLEIN: THAT'S ALL I HAVE AT THIS TIME?

THE COURT: CROSS-EXAMINATION?

MR. MC MULLEN: YES, YOUR HONOR.

MR. KLEIN: JUST ONE OTHER QUESTION.

1 BY MR. KLEIN:

2 Q MR. HUNT NEVER TOLD YOU THAT INFORMATION THAT
3 I JUST RELATED -- THAT HE HAD LEFT THE SEVEN-PAGE LIST
4 SOMETIME PRIOR TO JUNE 6TH, IT WAS A SCRIPT TO INTIMIDATE,
5 MR. HUNT, HE NEVER GAVE YOU THAT INFORMATION PRIOR TO
6 OPENING STATEMENT?

7 A THAT'S CORRECT.

8 THE COURT: GO AHEAD, MR. MC MULLEN.

9 MR. MC MULLEN: THANK YOU

10 YOUR HONOR, I NOTICE YOUR CLERK ISN'T HERE.
11 THERE WAS SOME EXHIBITS I WAS GOING TO EXAMINE MR. BARENS
12 WITH AND STARTING OFF WITH HIS DECLARATION, WHICH IS G
13 AND --

14 THE COURT: I CAN GIVE HIM MY COPY, IF YOU WANT.

15 MR. MC MULLEN: I WAS GOING TO GIVE HIM MY COPY
16 BECAUSE I HAVE AN EXTRA COPY.

17 THE COURT: THAT'S OKAY. LET'S LET HIM USE IT. I
18 DON'T KNOW WHAT HAPPENED TO HER. I SEEM TO BE GOING
19 THROUGH CLERKS THESE DAYS.

20

21 CROSS-EXAMINATION @

22

23 BY MR. MC MULLEN:

24 Q REFERRING YOU TO RESPONDENT'S EXHIBIT G, IS
25 THAT YOUR DECLARATION?

26 A YES, SIR.

27 Q AND IS EVERYTHING IN THAT DECLARATION TO THE
28 BEST OF YOUR KNOWLEDGE ACCURATE?

1 A YES, TO THE BEST OF MY KNOWLEDGE CURRENTLY.

2 Q AND IS ALL THE INFORMATION THAT YOU PROVIDED
3 IN THAT DECLARATION TO THE BEST OF YOUR KNOWLEDGE
4 TRUTHFUL?

5 A YES.

6 MR. KLEIN: SUBJECT TO RELEVANCY OBJECTIONS I DON'T
7 HAVE A PROBLEM WITH GENERAL QUESTIONS LIKE THAT, BUT I AM
8 CERTAINLY NOT CONCEDING BY AUTHENTICATION OF THIS DOCUMENT
9 THAT EVERYTHING THAT IS IN IT IS RELEVANT OR ADMISSIBLE.

10 THE COURT: UNDERSTOOD.

11 MR. MC MULLEN: MAY I JUST HAVE A MOMENT?

12 BY MR. MC MULLEN:

13 Q SIR, DO YOU RECALL WITH RESPECT TO
14 RESPONDENT'S EXHIBIT G THAT THE DISTRICT ATTORNEY'S OFFICE
15 PROVIDED YOU WITH THE FIRST DRAFT OF THE DECLARATION AND
16 THEN THEREAFTER THERE WAS A PROCESS OF EDITING AND
17 REVISING YOUR DECLARATION? DO YOU RECALL THAT?

18 A AS I TESTIFIED EARLIER, I AM NOT 100 PERCENT
19 CERTAIN AS TO THE SEQUENCING, AS TO WHO DID WHAT IN WHAT
20 ORDER, SIR, BUT THAT MAY VERY WELL HAVE BEEN THE CASE AS
21 YOU EXPLAINED TO ME TODAY.

22 Q WITH RESPECT TO RESPONSIBILITIES IN THE CASE
23 BETWEEN -- THAT WERE DIVIDED BETWEEN YOU AND YOUR PARTNER,
24 MR. CHIER, IN THIS CASE, WHO WAS PRIMARILY INVOLVED IN
25 CONDUCTING THE INVESTIGATION OF THE CASE?

26 A MR. CHIER.

27 Q ON DIRECT EXAMINATION YOU TESTIFIED THAT YOU
28 WERE ASKED A QUESTION ABOUT WHETHER PRIOR TO THE OPENING

1 STATEMENT YOUR CLIENT, MR. HUNT, DID HE GIVE YOU ANY
2 INFORMATION THAT WOULD PROVIDE YOU NOTICE THAT YOU WOULD
3 HAVE AN ETHICAL PROBLEM PRESENTING SIGHTING WITNESSES IN
4 THE TRIAL. DO YOU REMEMBER YOUR TESTIMONY WITH RESPECT TO
5 THAT?

6 A YES.

7 Q AND YOU SAID THAT YOU -- YOU TESTIFIED THAT
8 YOU HAD CONFLICTING INFORMATION WITH RESPECT TO THAT
9 QUESTION.

10 A YES.

11 Q WHAT WAS THAT CONFLICTING INFORMATION?

12 MR. KLEIN: WELL -- I MEAN, IT IS SUCH A BROAD
13 QUESTION. I OBJECT.

14 THE COURT: OVERRULED.

15 IT WAS THE SAME QUESTION THAT I HAVE TO ASK
16 HIM.

17 THE WITNESS: DOES THE COURT INSTRUCT ME TO ANSWER
18 THAT QUESTION?

19 THE COURT: YOU ARE SO INSTRUCTED.

20 MR. CRAIN: EXCUSE ME.

21 COULD WE HAVE JUST A MOMENT.

22

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

25

26 MR. KLEIN: CAN WE APPROACH, YOUR HONOR? WE HAVE
27 AN OBJECTION THAT WE WOULD LIKE TO STATE.

28 THE COURT: NO.

1 ASK THE QUESTION, PLEASE.

2 MR. KLEIN: CAN WE STATE THE OBJECTION?

3 THE COURT: WHAT'S THE OBJECTION?

4 MR. CRAIN: I THINK THERE IS AN I.A.C.. ISSUE
5 BEFORE THE COURT, BUT A CLAIM OF PRIVILEGE AS TO MATTERS
6 THAT PROCEED THE TRIAL THAT REALLY DON'T RELATE TO
7 ANYTHING AT THE TIME THIS WITNESS ADDRESSED THE JURY
8 STATED THAT MR. HUNT WOULD TELL THEM EVERYTHING, EXPLAIN
9 EVERYTHING, SO THERE IS A QUESTION HERE UNDER THE IN RE
10 GRAY CASE, WHICH IS, THE CITATION ESCAPES ME AT THE
11 MOMENT, BUT ONE DOES NOT BY RAISING AN I.A.C. CLAIM WAIVE
12 THE PRIVILEGE AS TO EACH AND EVERY THING THAT MAY BE ASKED
13 OF THE FORMER ATTORNEY.

14 THE COURT: THAT'S TRUE. BUT IT HAS BEEN FRAMED IN
15 THIS CASE, GIVEN THE QUESTIONS THAT HAVE BEEN ASKED AND
16 ISSUES THAT BEEN RAISED THIS CERTAINLY HAS BEEN WAIVED.

17 PLEASE ANSWER THE QUESTION.

18 THE WITNESS: AGAIN, YOUR HONOR, I HAVE THE
19 GREATEST RESERVATION IN RESPONDING TO THIS QUESTION.

20 THE COURT: I UNDERSTAND.

21 THE WITNESS: THE COURT IS AWARE OF THAT, AND I AM
22 INSTRUCTED TO ANSWER?

23 THE COURT: ABSOLUTELY.

24 THE WITNESS: I HAD CONFLICTING INFORMATION
25 CONCERNING MR. HUNT'S INVOLVEMENT IN THE ALLEGED HOMICIDE.
26 BY MR. MC MULLEN:

27 Q WHAT WAS THE CONFLICTING INFORMATION?

28 A I HAD CONFLICTING INFORMATION AS TO WHETHER

1 OR NOT HE WAS A PARTICIPANT IN THE HOMICIDE OR NOT,
2 WHETHER HE HAD BEEN A PARTICIPANT, AND I HAD A CONFLICT IN
3 MY OWN JUDGMENT AS TO THE BELIEVABILITY OF ANY STATEMENT
4 HE MADE THAT HE WAS.

5 Q MAYBE IT WOULD BE SIMPLER, WHAT IS IT HE TOLD
6 YOU?

7 THE PETITIONER: FOR THE RECORD --

8 THE COURT: MR. HUNT, YOUR ATTORNEYS HAVE MADE THE
9 OBJECTION.

10 THE PETITIONER: THINK THERE IS SCOPE PROBLEM IN
11 SOME QUESTIONS THAT I HAVE BEEN TRYING TO ADDRESS.

12 THE COURT: YOU ARE TALKING ABOUT THE PEOPLE?

13 THE PETITIONER: NOT ONLY THE PEOPLE, BUT THE
14 DEFENSE. IT SEEMS TO ME THAT THESE QUESTIONS GO BEYOND
15 THE SCOPE OF WAIVER ON RELEVANT MATTERS ON KAREN SUE
16 MARMOR. SO FOR THE RECORD, I AM SAYING THAT I DON'T FEEL
17 THAT I WAIVED THE PRIVILEGE AS TO ANY CONVERSATIONS --

18 THE COURT: YOU ARE INCORRECT.

19 THE PETITIONER: -- AS TO ARTHUR BARENS, AS TO
20 ETHICAL PROBLEMS IN PRESENTING THE KAREN MARMOR TESTIMONY.

21 THE COURT: YOU ARE INCORRECT. IT HAS BEEN WAIVED.
22 WE ARE GOING TO GET THIS EVIDENCE OUT.

23 PLEASE ANSWER.

24 THE WITNESS: I HAD CONFLICTING INFORMATION, AS I
25 SAID, CONCERNING WHETHER OR NOT MR. HUNT HAD BEEN A PARTY
26 PARTICIPANT IN THE ALLEGED HOMICIDE OF MR. LEVIN, IF ONE
27 HAD ACTUALLY OCCURRED, AND I FURTHER HAD CONFLICT IN MY
28 OWN JUDGMENT AND, THEREFORE, CONCLUSIONS AS TO WHETHER OR

1 NOT I BELIEVED MR. HUNT IN THE EVENTS MR. HUNT TOLD ME HE
2 HAD IN FACT BEEN A PARTY PARTICIPANT.

3 BY MR. MC MULLEN:

4 Q AGAIN, SIR, WHAT IS IT THAT MR. HUNT TOLD
5 YOU?

6 THE COURT: PLEASE ANSWER THE QUESTION. THERE HAS
7 BEEN A WAIVER, AND I AM ORDERING YOU TO ANSWER.

8 THE WITNESS: THERE WAS A POINT IN TIME WHEN
9 MR. HUNT TOLD ME THAT HE HAD BEEN INVOLVED IN A CONSPIRACY
10 THAT INVOLVED THE HOMICIDE OF RON LEVIN.

11 BY MR. MC MULLEN:

12 Q AND WHAT ELSE DID HE TELL YOU?

13 A HE TOLD ME AT SUBSEQUENT OCCASIONS THAT THAT
14 WAS NOT TRUTHFUL, AND THAT HE -- THE SEVEN-PAGE LETTER HAD
15 BEEN MERELY INTENDED AS A SCRIPT TO INTIMIDATE MR. LEVIN
16 TO PAY MONIES THAT WERE RIGHTFULLY OWED TO MR. HUNT AND
17 THE B.B.C..

18 Q THE SECOND THING THAT YOU HAVE JUST NOW
19 TESTIFIED TO, DID THAT CONVERSATION OCCUR AFTER YOUR
20 OPENING STATEMENT?

21 A YES, SIR.

22 Q AND THE PRIOR STATEMENT THAT YOU ATTRIBUTED
23 TO YOUR CLIENT, MR. HUNT, DID THAT CONVERSATION OCCUR
24 PRIOR TO YOUR AN OPENING STATEMENT?

25 A IT DID, BUT AS I EARLIER TESTIFIED, I HAD
26 MANY AMBIGUITIES IN MY OWN JUDGMENT CONCERNING WHETHER
27 MR. HUNT WAS BEING TRUTHFUL WITH ME WHEN HE MADE THAT
28 STATEMENT?

1 THE COURT: WHICH STATEMENT, THE FIRST ONE OR
2 SECOND ONE?

3 THE WITNESS: THE FIRST STATEMENT.

4 BY MR. MC MULLEN:

5 Q WHAT AMBIGUITIES WERE THOSE?

6 A I FELT THAT TO SOME DEGREE BASED ON HIS
7 YOUTHFULNESS AND HIS SUBSCRIPTION TO A PARTICULAR
8 PHILOSOPHY AND ELEMENTS IN HIS BACKGROUND THAT MR. HUNT
9 MAY HAVE INTENDED TO MISLEAD ME INITIALLY.

10 Q WHAT DID MR. HUNT TELL YOU ABOUT HIS
11 PARTICIPATION IN THE CONSPIRACY THAT YOU MENTIONED?

12 A THAT HE HAD ARRANGED FOR MR. PITTMAN TO HAVE
13 ACCESS TO MR. LEVIN'S PLACE OF DWELLING AT WHICH TIME HE
14 WITNESSED MR. PITTMAN EXECUTE MR. LEVIN.

15 I HASTEN TO ADD, AGAIN, THAT AS CIRCUMSTANCES
16 EVOLVED I DID HAVE SOME DOUBTS ABOUT MR. HUNT'S STATEMENTS
17 IN THAT REGARD WHICH I RETAINED TO THE END OF THE CASE.

18 Q AND DID HE TELL YOU AT WHOSE DIRECTION THE
19 ACT WOULD BE CARRIED OUT WITH RESPECT TO MR. LEVIN?

20 A YES.

21 Q WHAT DID HE SAY?

22 THE WITNESS: DOES THE COURT INSTRUCT ME TO ANSWER
23 THAT QUESTION?

24 THE COURT: YES, I DO.

25 THE WITNESS: AT HIS DIRECTION.

26 BY MR. MC MULLEN:

27 Q YES?

28 A YES.

1 Q THANK YOU.

2 WITH RESPECT TO THE CANTOR-FITZGERALD
3 DEPOSITION AND USING -- AND THE DEPOSITION OF MR. DEAN
4 KARNY, IT IS MY UNDERSTANDING THAT YOU DID NOT WANT TO USE
5 THAT DEPOSITION TO IMPEACH MR. KARNY WHEN HE TESTIFIED; IS
6 THAT CORRECT?

7 A YES.

8 Q WHY IS THAT?

9 A BECAUSE I HAD EVIDENCE THAT PROBABLY
10 MR. KARNY WOULD HAVE TESTIFIED THAT HIS TESTIMONY WAS
11 COACHED AND STRUCTURED BY MY CLIENT AND UNTRUTHFUL.

12 Q WAS YOUR CLIENT, THAT IS MR. HUNT, CONCERNED
13 ABOUT HIS CIVIL EXPOSURE FROM A CIVIL LAWSUIT WITH RESPECT
14 TO CANTOR-FITZGERALD?

15 A YES.

16 Q WITH RESPECT TO THE SOME OF YOUR TESTIMONY
17 REGARDING THIS 200 MILLION DOLLAR NEGOTIATION BETWEEN HUNT
18 AND HIS ORGANIZATION AND MR. KILPATRICK, YOU TESTIFIED --
19 YOU TESTIFIED THAT YOU WOULD NOT HAVE PRESENTED THAT
20 EVIDENCE. WHY IS THAT, IF YOU WOULD HAVE KNOWN ABOUT IT?

21 A THE TESTIMONY THROUGHOUT THE TRIAL WAS THAT
22 MR. LEVIN, THOUGH, A CON MAN WAS EXTREMELY SOPHISTICATED.
23 IT WAS TOTALLY INCREDIBLE TO MYSELF, AND I FELT TO ANY
24 REASONABLE PERSON, THAT MR. LEVIN WOULD INVEST A MILLION
25 FIVE HUNDRED THOUSAND IN A TECHNOLOGY THAT HAD BEEN, BEEN
26 REDUCED TO PRACTICE, THAT HAD NOT BEEN DEMONSTRATED TO
27 HIM, THAT HAD NOT BEEN MARKETED, THAT HAD NOT BEEN TEST
28 MARKETED, THAT HAD NOT RECEIVED FINANCING, THAT HAD NOT

1 HAD AN END PURCHASER, AND THAT HAD NO TRACK RECORD
2 WHATSOEVER, NUMBER ONE.

3 AND, NUMBER TWO, MR. LEVIN'S SOLE INTEREST,
4 AS FAR AS I UNDERSTOOD FROM INVESTMENTS, WAS IN THE REAL
5 ESTATE AREA.

6 NUMBER THREE, TAKING THE MOST OPTIMISTIC VIEW
7 THAT ONE COULD HAVE OF THE LEVIN'S ESTATE AND BUYING INTO
8 THE BEST ARGUMENT THE PROSECUTION HAD THAT HE EVEN MIGHT
9 HAVE HAD A MILLION TWO IN GROSS ASSETS, WHICH ACTUALLY WAS
10 DECRIED AND CONTRADICTED BY MR. OSTROVE, IT WAS
11 INCONCEIVABLE THAT HE COULD INVEST ONE MILLION FIVE,
12 HAVING ASSETS OF A MILLION TWO.

13 NUMBER FOUR, THERE WAS ABSOLUTELY NO EVIDENCE
14 OF ANY DUE DILIGENCE UNDERTAKEN BY MR. LEVIN REFERABLE TO
15 THIS PRODUCT. IT WAS INCONCEIVABLE TO ME THAT I WOULD NOT
16 HAVE BEEN EATEN ALIVE BY THE PROSECUTION AND MADE TO LOOK
17 A FOOL TRYING TO SELL THAT BILL OF GOODS TO THE JURY. AND
18 I RESISTED IT.

19 Q DID YOU TALK TO YOUR CLIENT, MR. HUNT, ABOUT
20 THIS EVIDENCE, THIS EVIDENCE REGARDING CYCLOTRON ATTRITION
21 MILLS?

22 A YES.

23 Q AND DID YOU REACH AN AGREEMENT WITH HIM WITH
24 RESPECT TO WHETHER OR NOT THIS AREA SHOULD BE EXPLORED BY
25 YOU DURING THIS TRIAL, THAT IS CYCLOTRON?

26 MR. KLEIN: OBJECTION. IRRELEVANT.

27 THE COURT: OVERRULED.

28 THE WITNESS: WE HAD A DIFFERENCE OF OPINION DURING

1 THE TRIAL ON THIS SUBJECT, AND I HELD TO MY BELIEF.

2 BY MR. MC MULLEN:

3 Q AND DURING YOUR DIRECT TESTIMONY, YOU
4 INDICATED THAT AFTER REVIEWING THE MATERIAL YOU HAD WITH
5 RESPECT TO CYCLOTRON, YOU TESTIFIED THAT YOU DID NOT WANT
6 TO GO DOWN THAT ROAD, WHICH --

7 MR. CRAIN: OBJECTION. THAT MISSTATES THE
8 EVIDENCE. HE NEVER SAID HE WOULD NEED EVERYTHING. HE --

9 THE COURT: OVERRULED.

10 FINISH THE QUESTION.

11 BY MR. MC MULLEN:

12 Q AFTER YOU REVIEWED THE TESTIMONY THAT YOU DID
13 ABOUT CYCLOTRON, YOU SAID YOU DID NOT WANT TO GO DOWN THAT
14 ROAD. WHY IS THAT?

15 A I DID NOT WANT TO STAKE MY CLIENT'S FUTURE ON
16 CONVINCING THAT JURY THAT LEVIN WAS MAKING THAT
17 INVESTMENT.

18 Q AND, AGAIN, YOU TESTIFIED ON DIRECT THAT YOU
19 TRIED TO NEUTRALIZE THE PROSECUTION EVIDENCE WITH RESPECT
20 TO CYCLOTRON. WHY IS THAT?

21 A BECAUSE I FELT I HAD BEEN SET UP BY THAT
22 WHOLE CYCLOTRON BUSINESS, AND AS THE TRIAL UNFOLDED, THE
23 TRIAL TOOK DIMENSIONS I BECAME CONVINCED THAT MY CLIENT'S
24 BEST INTERESTS WERE NOT SERVED BY WEIGHING WITH THE
25 CYCLOTRON.

26 THE COURT: YOU FELT YOU WERE SET UP BY WHOM?

27 THE WITNESS: I THOUGHT THE PROSECUTION WAS
28 INVITING ME, THE DISTRICT ATTORNEY WAS INVITING ME TO BUY

1 INTO THE CYCLOTRON AS THE WAY OUT FOR THE DEFENSE, AND I
2 WASN'T GOING TO BUY.

3 BY MR. MC MULLEN:

4 Q WAS YOUR IMPRESSION ABOUT THE CYCLOTRON BASED
5 UPON THE MATERIAL THAT YOU DID REVIEW?

6 A I THOUGHT IT WAS SNAKE OIL.

7 Q WHY IS THAT?

8 A ASIDE FROM BEING A LAWYER FOR 28 YEARS I HAVE
9 BEEN A BUSINESS INVESTOR FOR 30 YEARS. IT IS
10 INCONCEIVABLE TO ME THAT SOMEONE IS GOING TO INVEST A
11 MILLION AND A HALF DOLLARS IN A TECHNOLOGY THAT HAS NEVER
12 BEEN REDUCED TO PRACTICE, LET ALONE HAD ANY OTHER MARKET
13 EXPERIENCE.

14 Q SO IT WAS YOUR IMPRESSION THAT CYCLOTRON HAD
15 NEVER BEEN TESTED?

16 A NOT TO AN EXTENT THAT WOULD ENCOURAGE SOMEONE
17 TO MAKE A MILLION AND A HALF DOLLAR INVESTMENT
18 REPRESENTING THEIR ENTIRE ESTATE. THAT'S TO SPECULATIVE.
19 IF ONE HAD 100 MILLION OR 200 MILLION DOLLARS THAT'S ONE
20 THING, BUT WHEN YOU THINK ABOUT IT SOMEONE IN LEVIN'S
21 RELATIVE POSITION, I MEAN, IT WAS ABSOLUTE -- IT WAS
22 ABSOLUTE AMATEURISH, FOOLISHNESS IN MY OPINION.

23 Q ON DIRECT EXAMINATION YOU WERE ASKED SOME
24 QUESTIONS REGARDING A WITNESS AT TRIAL BY THE NAME OF JEFF
25 RAYMOND, AND YOU WERE REFERRED TO PAGE 8156 OF THAT
26 WITNESS' TESTIMONY DURING TRIAL. AND MY RECOLLECTION IS
27 THAT YOU WERE NOT ABLE TO TELL US WHAT THE CONTEXT OF THE
28 QUESTIONING WAS WITH RESPECT TO THE REFERENCE.

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

2 THE COURT: YES.

3 BY MR. MC MULLEN:

4 Q SHOWING YOU A COPY OF MR. RAYMOND'S --

5 MR. CRAIN: I WOULD OBJECT IF MR. MC MULLEN IS NOW
6 GOING TO ABLE TO GO INTO THE EXAMINATION THAT THIS WITNESS
7 CONDUCTED WITH THE VERY WITNESSES THAT THE COURT WOULD NOT
8 ALLOW US TO INQUIRE IN DETAIL ABOUT ON DIRECT EXAMINATION.

9 THE COURT: I HAVE TO HEAR WHAT THE QUESTION IS. I
10 ASSUME THIS IS ON SOMETHING THAT HE WAS EXAMINED ON.

11 MR. MC MULLEN: YES, YOUR HONOR.

12 OUR REASON FOR ASKING HIM THIS QUESTION IS HE
13 WAS UNABLE TO EXPLAIN THE CONTEXT WHICH HE WAS EXAMINED IN
14 THIS PORTION OF THE TRANSCRIPT. I WOULD JUST LIKE HIM TO
15 EXPLAIN --

16 MR. KLEIN: I BELIEVE THE COURT ALLOWED ME TO MAKE
17 AN OFFER OF PROOF IN THE MIST OF THE EXAMINATION OF THIS
18 WITNESS ABOUT WHAT HE ELICITED FROM JEFF RAYMOND AT TRIAL.
19 THE COURT CUT OFF THE EXAMINATION AND WOULDN'T PERMIT ANY
20 FURTHER QUESTIONING ABOUT THIS VERY SUBJECT, SO THE COURT
21 HAS ONLY HEARD A LIMITED AMOUNT OF THE TESTIMONY OF THE
22 WITNESS IN THIS PARTICULAR AREA. SO I DON'T THINK IT IS
23 FAIR TO PERMIT THE PEOPLE TO NOW ALLOW THE WITNESS TO
24 REHABILITATE HIMSELF WHEN THE PETITIONER NEVER HAD A
25 CHANCE TO BRING OUT THE FULL CONTEXT OF IT ON DIRECT
26 EXAMINATION.

27 THE COURT: I WILL ALLOW THIS QUESTION.

28

1 BY MR. MC MULLEN:

2 Q WHAT -- IF YOU COULD SHARE WITH US WHAT THE
3 CONTEXT OF THE QUESTION WAS THAT YOU WERE BEING ASKED
4 ABOUT?

5 A AS I RECALL DEFENSE COUNSEL MADE A POINT THAT
6 I BROUGHT OUT ABOUT CYCLOTRON WITH THIS WITNESS. TO THE
7 CONTRARY, I DID NOT. THE COMMENT CONCERNING THE CYCLOTRON
8 AT PAGE 8156 WAS A ONE-LINE SPONTANEOUS REMARK BY THE
9 WITNESS THAT HE FELT THAT CYCLOTRON MIGHT HAVE A FUTURE.

10 I IMMEDIATELY WENT ON TO A NEW SUBJECT AFTER
11 THAT. I DID NOT PURSUE THAT LINE OF QUESTIONING AT ALL,
12 BUT RATHER THE WITNESS MADE A SPONTANEOUS ONE-LINE
13 COMMENT, AND I COMPLETELY DIVERTED THAT TOPIC WITH MY NEXT
14 QUESTION.

15 Q YOU ALSO TESTIFIED THAT, ON DIRECT WITH
16 RESPECT TO A PORTION OF YOUR FINAL ARGUMENT REFERENCE WAS
17 MADE THAT YOU MENTIONED THE 224 MILLION DOLLAR ATTRITION
18 MILL DEAL, 224 MILLION DOLLARS WOULD HAVE BEEN GENERATED
19 WITH RESPECT TO THE CYCLOTRON IF IT WAS CONSUMMATED. WHAT
20 DID YOU MEAN BY "IF IT WAS CONSUMMATED"?

21 A IF THE EQUIPMENT HAD BEEN MANUFACTURED AND
22 PERFORMED ACCORDING TO THE PROJECTED SPECIFICATIONS, WHICH
23 WERE CONDITIONS PRECEDENT TO THE VIABILITY OF THE ALLEGED
24 OPTION AGREEMENT, THAT COULD HAVE PROCEEDED, BUT SINCE
25 NONE OF THOSE CONDITIONS WERE EVER ACCOMPLISHED IT WAS
26 ACADEMIC.

27 Q YOU TESTIFIED WITH RESPECT TO OLIVER WENDELL
28 HOLMES THAT IF YOU WOULD HAVE KNOWN THAT OLIVER WENDELL

1 HOLMES WAS INQUIRING -- EXCUSE ME, THAT MR. LEVIN WAS
2 INQUIRING OF MR. HOLMES ABOUT THE EXTRADITION LAW OF
3 BRAZIL THAT YOU WOULD HAVE PRESENTED THAT; IS THAT
4 CORRECT?

5 A YES.

6 Q IF THE EVIDENCE BORE OUT WITH RESPECT TO
7 MR. HOLMES THAT THE CONVERSATION THAT HE HAD WITH
8 MR. LEVIN REGARDING THE EXTRADITION LAWS OF BRAZIL
9 PERTAINED TO A STCRY THAT MR. LEVIN WAS WORKING ON WITH
10 RESPECT TO TWO PEOPLE IN LAS VEGAS WHO HAD COMMITTED A
11 CRIME AND ABSCONDED WITH A LARGE AMOUNT OF MONEY AND FLED
12 TO BRAZIL, WOULD YOU HAVE PRESENTED THAT EVIDENCE?

13 MR. KLEIN: OBJECTION. MISSTATES THE RECORD.

14 THE COURT: OVERRULED.

15 MR. KLEIN: IT IS IRRELEVANT.

16 THE COURT: OVERRULED.

17 I WILL ALLOW IT.

18 THE WITNESS: BASED UPON THE HYPOTHETICAL YOU
19 PROJECT I WOULD NOT HAVE IN MOST LIKELIHOOD.

20 MR. MC MULLEN: YOUR HONOR, AT THIS POINT I WOULD
21 LIKE TO APPROACH THE WITNESS WITH PETITIONER'S EXHIBIT
22 216. HOWEVER, WE HAVE BEEN UNABLE TO LOCATE THE COURT'S
23 216. SO WE RECONSTRUCTED IT BASED UPON OUR KNOWLEDGE OF
24 WHAT THAT EXHIBIT IS. IF THAT IS ALL RIGHT.

25 THE COURT: WHAT HAS HAPPENED TO 216?

26 MR. MC MULLEN: I DON'T HAVE THE ANSWER TO THAT
27 QUESTION.

28 THE COURT: THIS ONE IS THE COURT'S.

1 IT HAS GOT A STICKER.

2 YOU MAY APPROACH WITH 216, IF MR. BARENS WILL
3 GIVE ME BACK EXHIBIT G.

4 THE WITNESS: I WOULD BE HAPPY TO.

5 BY MR. MC MULLEN:

6 Q DRAWING YOUR ATTENTION TO PETITIONER'S
7 EXHIBIT 216, A REPORT BY LES ZOELLER, COULD YOU JUST
8 REVIEW THE INFORMATION WITH RESPECT TO OLIVER WENDELL
9 HOLMES, PLEASE?

10 A ALL RIGHT.

11

12 (WITNESS REVIEWING DOCUMENT.)

13

14 Q ARE YOU DONE?

15 A YES.

16 Q IS THERE ANY REFERENCE IN THAT REPORT TO
17 MR. HOLMES TELLING DETECTIVE ZOELLER THAT LEVIN HAD
18 EXPRESSED INTEREST IN AN EXTRADITION TREATY WITH BRAZIL?

19 MR. KLEIN: OBJECTION. THE DOCUMENT SPEAKS FOR
20 ITSELF.

21 THE COURT: ARE YOU FAMILIAR WITH THE INFORMATION
22 THAT IS CONTAINED WITHIN THAT DOCUMENT AT THE TIME OF THE
23 TRIAL?

24 THE WITNESS: YES. DURING THE TRIAL, I BELIEVE, I
25 AM NOT SURE WHETHER IT WAS BEFORE OR DURING THE TRIAL, AS
26 I TESTIFIED EARLIER TODAY.

27 THE COURT: OVERRULED.

28 YOU CAN STATE YOUR UNDERSTANDING.

1 THE WITNESS: THERE IS NO REFERENCE IN THIS
2 DOCUMENT TO BRAZIL.

3 THE COURT: SO BEYOND THE DOCUMENT YOU HAD NO
4 INFORMATION ABOUT MR. HOLMES REFERRING TO BRAZIL AT ALL?

5 THE WITNESS: THAT'S CORRECT.

6 BY MR. MC MULLEN:

7 Q WITH RESPECT TO KAREN SUE MARMOR AND YOUR
8 ETHICAL DIFFICULTY WITH RESPECT TO PRESENTING EVIDENCE
9 THAT SHE SAW THE TO-DO LIST AT MR. LEVIN'S HOUSE PRIOR TO
10 JUNE 6, 1984, I GOT THE IMPRESSION ON YOUR DIRECT
11 EXAMINATION THAT YOU WERE TOLD DIFFERENT.

12 MR. CRAIN: OBJECTION. LEADING THE WITNESS. THIS
13 WITNESS IS A HOSTILE WITNESS TO US, SO HE CAN'T ASK
14 LEADING QUESTIONS, YOUR HONOR.

15 THE COURT: YES, HE CAN.

16 MR. MC MULLEN: THANK YOU.

17 BY MR. MC MULLEN:

18 Q DID YOUR CLIENT --

19 THE WITNESS: I DON'T FEEL HOSTILE.

20 MR. CRAIN: MOTION TO STRIKE, YOUR HONOR. IT IS
21 SELF-SERVING.

22 THE COURT: PLEASE DON'T EDITORIALIZE.

23 BY MR. MC MULLEN:

24 Q DID MR. HUNT GIVE YOU DIFFERENT VERSIONS BY
25 WAY OF EXPLANATION WITH RESPECT TO THE TO-DO LIST THAT WAS
26 FOUND AT MR. LEVIN'S APARTMENT?

27 A YES.

28 Q WHAT WAS THE FIRST VERSION THAT HE GAVE YOU,

1 AND WHEN WAS THAT IN RELATION TO YOUR OPENING STATEMENT?

2 THE WITNESS: DOES YOUR HONOR INSTRUCT ME TO ANSWER
3 THAT QUESTION?

4 THE COURT: YES. YOU HAVE A CONTINUING OBLIGATION.
5 I DO CONTINUE TO ORDER YOU ON THESE QUESTIONS TO ANSWER
6 THE QUESTIONS.

7 THE WITNESS: PRIOR TO TRIAL I WAS TOLD THAT IT WAS
8 A GUIDE FOR MR. HUNT.

9 BY MR. MC MULLEN:

10 Q WHAT WAS THE GUIDE -- WHAT WAS THE GUIDE FOR?
11 WHAT DID MR. HUNT TELL YOU THAT THE GUIDE WAS FOR?

12 A TO GUIDE HIM IN HIS ACTIVITY AT MR. LEVIN'S
13 PLACE OF RESIDENCE.

14 Q DID HE TELL YOU WHAT THOSE ACTIVITIES WERE AT
15 THAT, WITH RESPECT TO THAT FIRST EXPLANATION?

16 A YES.

17 Q WHAT DID HE TELL YOU?

18 A HE TOLD ME THAT, THAT THOSE ELEMENTS ON THAT
19 LIST WERE THINGS HE WISHED TO REMIND HIMSELF OF.

20 Q FOR WHAT PURPOSE, IF HE TOLD YOU --

21 A SO THAT HE WOULD NOT FORGET -- SO THAT HE
22 WOULD NOT FORGET THEM IN ACTING IN A CIRCUMSPECT MANNER.

23 Q AND DID HE TELL YOU WHAT HIS GOAL WAS ON THAT
24 FIRST OCCASION WHEN HE WENT TO MR. LEVIN'S WITH RESPECT TO
25 THE LIST?

26 A HIS GOAL WAS TO -- HIS GOAL WAS TO EXTRACT A
27 CHECK FROM MR. LEVIN FOR AN AMOUNT OF MONEY THAT HE FELT
28 HE WAS FAIRLY AND DUALY OWED BY MR. LEVIN.

1 Q ON THAT OCCASION DID HE TELL YOU WHEN HE TOOK
2 THE LIST OVER TO MR. LEVIN'S?

3 A CONTEMPORANEOUSLY WITH HIM THAT EVENING.

4 Q THAT BEING JUNE 6TH OF 1984?

5 A YES, SIR.

6 Q AND DID HE STATE ANOTHER PURPOSE WHEN HE TOLD
7 YOU THIS FIRST TIME WITH RESPECT TO THE USE OF THAT LIST
8 BESIDES THE EXTRACTING A CHECK FROM HIM, THAT'S MR. LEVIN?

9 A DIFFERENT REFERENCES ON THE LIST WERE TO
10 ACHIEVE DIFFERENT PURPOSES.

11 Q OKAY.

12 WHAT ADDITIONAL PURPOSE BESIDES EXTRACTING A
13 CHECK FROM MR. LEVIN DID MR. HUNT TELL YOU HE WENT OVER
14 THERE ON JUNE 6TH OF '84?

15 A TO OBSCURE HIS HAVING BEEN THERE AND
16 PARTICIPATED IN THE CONDUCT THERE.

17 Q AND DID HE TELL YOU WHAT THE CONDUCT THERE
18 WAS?

19 A YES.

20 Q WHAT WAS IT?

21 THE WITNESS: SAME ORDER, YOUR HONOR?

22 THE COURT: YES.

23 THE WITNESS: TO COMMIT A HOMICIDE. BUT, AGAIN, I
24 HASTEN TO ADD THAT LATER IN MY DELIBERATIONS CONCERNING
25 MR. HUNT I CAME NOT TO BELIEVE THOSE STATEMENTS OR AT
26 LEAST TO SUBSTANTIALLY QUESTION THOSE STATEMENTS.

27 BY MR. MC MULLEN:

28 Q DID HE LATER GIVE YOU ANOTHER EXPLANATION

1 WITH RESPECT TO THE MEANING OF THAT TO-DO LIST?

2 A YES.

3 Q WHEN WAS THAT, THE SECOND EXPLANATION?

4 A DURING THE TRIAL.

5 Q AFTER THE OPENING STATEMENT?

6 A YES.

7 Q WHAT DID HE TELL YOU WITH RESPECT TO THE
8 SECOND VERSION OR EXPLANATION?

9 A THAT HE HAD SIMPLY SHOWN THE LIST TO
10 MR. LEVIN AS SOMETHING THAT COULD OCCUR IF MR. LEVIN
11 FAILED TO HONOR HIS OBLIGATIONS TO HIM.

12 Q AT THAT PARTICULAR TIME DURING THE SECOND
13 VERSION OR SECOND EXPLANATION, DID YOUR CLIENT, MR. HUNT,
14 TELL YOU WHEN HE HAD TAKEN THE LIST, THE TO-DO LIST OVER
15 TO RON LEVIN'S?

16 A I BELIEVE AT A TIME PRIOR TO THE 6TH OF JUNE.
17 IT MAY HAVE BEEN ON THE 6TH OF JUNE, PRIOR TO THE 6TH OF
18 JUNE. I CAN'T BE CERTAIN.

19 Q WAS THERE A THIRD VERSION OR EXPLANATION AS
20 TO THE MEANING BEHIND THE TO-DO LIST?

21 A WELL, THE ONE THAT I CAME TO ADOPT FOR MY OWN
22 REASONING THAT I BELIEVED THAT THIS MIGHT WELL HAVE ALL
23 BEEN SOME SORT OF A CONSTRUCT BY A MISGUIDED YOUNG MAN
24 THAT WAS POSTURING FOR REASONS THAT WEREN'T CLEAR TO ME.
25 BUT AS I HAVE SAID LATER IN THE TRIAL, BASED ON THE
26 EVIDENCE THAT I WITNESSED, AND I WANT TO MAKE THIS COMMENT
27 TO ALL FAIRNESS TO ALL CONCERNED IN THIS ROOM, THAT BY THE
28 TIME I INTERVIEWED AND HEARD THE TESTIMONY OF CARMEN

1 CANCHOLA AND JESUS LOPEZ I BECAME CONVINCED THAT FOR
2 WHATEVER REASON IN THE FIRST INSTANCE, AND I THOUGHT I HAD
3 SOME, SOME INTERPRETATION OF THOSE REASONS, AT LEAST IN MY
4 OWN MIND, THAT MR. HUNT HAD NOT BEEN TRUTHFUL TO ME. I
5 BELIEVED THOSE WITNESSES, AND THAT HAD A STRONG IMPACT ON
6 MY STATE OF MIND.

7 THE COURT: I AM SORRY. YOU BELIEVED THOSE
8 WITNESSES. YOU -- THOSE SIGHTING WITNESSES FROM ARIZONA?

9 THE WITNESS: QUITE SO. I BELIEVED THAT WITNESS
10 CATEGORICALLY WAS TRUTHFUL IN EVERY RESPECT AND ACCURATE.
11 BY MR. MC MULLEN:

12 Q CORRECT ME IF I AM WRONG, BUT DURING THE
13 COURSE OF THE TRIAL MR. HUNT, YOUR CLIENT, GAVE YOU
14 DIFFERENT EXPLANATIONS FOR THE TO-DO LIST AS THE TRIAL
15 PROGRESSED; IS THAT CORRECT?

16 A YES.

17 Q HOW MANY DIFFERENT EXPLANATIONS WERE THERE TO
18 THE BEST OF YOUR RECOLLECTION?

19 A THERE ARE TWO THAT STAND OUT IN MY MIND.
20 THERE MAY HAVE BEEN MUSINGS ABOUT A THIRD.

21 THE COURT: WHEN YOU SAY "MUSINGS," WAS THAT A
22 MUSING ABOUT MR. HUNT OR --

23 THE WITNESS: NOT AMUSING, MUSING. THAT MR. HUNT
24 WAS, M-U-S-I-N-G, IN COLLOQUY WITH MYSELF CONCERNING THE
25 LIST.

26 BY MR. MC MULLEN:

27 Q DID HE EVER TELL YOU, THAT IS YOUR CLIENT,
28 DID YOUR CLIENT EVER TELL YOU THAT ONE EXPLANATION FOR THE

1 TO-DO LIST WAS THAT IT WAS SOME KIND OF A SCRIPT?

2 A THAT IS WHAT I REFERRED TO AS MUSING,
3 COUNSEL. I BELIEVED THAT WHEN MR. HUNT COMMUNICATED THAT
4 INFORMATION TO ME I THOUGHT HE WAS MUSING. THAT'S THE
5 BEST EDITORIAL I CAN GIVE ON MY STATE OF MIND ABOUT THAT.

6 Q WHEN YOU SAY "HE WAS MUSING," ARE YOU SAYING
7 THAT YOU DIDN'T BELIEVE WHAT HE WAS SAYING OR --

8 A HE DIDN'T DESCRIBE THAT WITH THE SAME
9 SERIOUSNESS OR DEDICATION HE HAD THE OTHER TWO VERSIONS.

10 Q WHEN I ASKED ABOUT THE SCRIPT VERSION, COULD
11 YOU EXPLAIN WHAT IT IS HE TOLD YOU ABOUT THE TO-DO LIST
12 WITH RESPECT TO THE SCRIPT VERSION OF HIS EXPLANATION?

13 A JUST SOME SORT OF A SCRIPT HE WAS
14 CONSTRUCTING TO SHOW LEVIN ABOUT SOME SORT OF A THEATRICAL
15 PRESENTATION OF SOME KIND. TO BE CANDID WITH YOU, IT WAS
16 DONE IN SUCH, FROM MY PROSPECTIVE, FROM MY PROSPECTIVE IN
17 SUCH A CASUAL MANNER THAT I DID NOT PAY PARTICULAR
18 ATTENTION TO IT, AS I DID NOT HAVE IN MIND TO FOLLOW UP
19 WITH THAT.

20 Q YOU TESTIFIED WITH RESPECT TO ETHICAL
21 CONCERNS REGARDING PUTTING, USING KAREN SUE MARMOR AS A
22 WITNESS WITH RESPECT TO HER CLAIMING TO HAVE SEEN THE
23 TO-DO LIST PRIOR TO JUNE 6, 1984, AND IN ANSWER TO A
24 QUESTION LIKE THAT ON DIRECT YOU SAID THAT YOU COULDN'T
25 GIVE AN UNQUALIFIED ANSWER TO THAT QUESTION. WHAT DID YOU
26 MEAN BY THAT?

27 A THE THINGS THAT I TESTIFIED TO BASED ON YOUR
28 EXAMINATION THIS AFTERNOON, COUNSEL.

1 Q WITH RESPECT TO THE DIFFERENT VERSIONS GIVEN
2 TO YOU BY YOUR CLIENT REGARDING THE LIST?

3 A YES, SIR.

4 Q WITH RESPECT TO THE PROGRESSIVE SAVINGS &
5 LOAN INFORMATION --

6 MR. MC MULLEN: MIGHT I JUST HAVE A MOMENT, YOUR
7 HONOR?

8 THE COURT: YES.

9

10 (PAUSE.)

11

12 BY MR. MC MULLEN:

13 Q WITH RESPECT TO THE PROGRESSIVE SAVINGS &
14 LOAN F.B.I. INVESTIGATION, IF YOU HAD KNOWN ABOUT THAT
15 DURING THE COURSE OF TRIAL, WOULD YOU HAVE PRESENTED THAT
16 EVIDENCE INSOFAR AS IT RELATED TO THE F.B.I.'S
17 INVESTIGATION OF MR. LEVIN?

18 A I WOULD HAVE. HAD THERE BEEN ANY EVIDENCE
19 THAT MY CLIENT WAS EQUALLY IN SOME RESPECT A TARGET OF THE
20 SAME INVESTIGATION.

21 Q NOW, DURING YOUR DIRECT EXAMINATION YOU
22 REFERRED TO AN EXHIBIT THAT CONTAINED A LOT OF F.B.I.
23 DOCUMENTS; IS THAT CORRECT?

24 A YES.

25 Q AND DID YOU NOTICE WHEN YOU WERE LOOKING
26 THROUGH WAS THERE REFERENCES TO YOUR CLIENT, MR. HUNT?

27 A YES.

28 Q SO I AM CLEAR, I UNDERSTAND THEN THAT YOU

1 WOULD HAVE AVOIDED THAT AREA WITH RESPECT TO MR. LEVIN AND
2 HIM BEING INVESTIGATED BY PROGRESSIVE SAVINGS AND BY THE
3 F.B.I. WITH REGARD TO PROGRESSIVE SAVINGS & LOAN
4 SITUATION, YOU WOULD HAVE AVOIDED THAT BECAUSE YOUR CLIENT
5 WAS ALSO A SUBJECT OF THAT INVESTIGATION; IS THAT CORRECT?

6 A I CAN'T BE CERTAIN OF THAT, NOT HAVING MADE A
7 COMPREHENSIVE ANALYSIS OF THAT 33 PAGES, COUNSEL, BUT I
8 CAN ONLY SAY THAT, AS I SAID A MOMENT AGO, IF THE EVIDENCE
9 SUGGESTED THAT MY CLIENT WAS IMPLICATED IN A CRIMINAL
10 CONDUCT IN THAT CONTEXT, I WOULD HAVE STAYED AWAY FROM IT.

11 Q WHY IS IT -- MY UNDERSTANDING OF YOUR DIRECT
12 TESTIMONY THAT, MY IMPRESSION IS THAT YOU WOULD HAVE PUT
13 ON YOUR CLIENT, MR. HUNT, WITH RESPECT TO THE SEVEN-PAGE
14 TO-DO LIST, BUT YOU WOULD NOT HAVE PUT ON KAREN SUE
15 MARMOR. WHY IS THAT?

16 MR. KLEIN: OBJECTION. MISSTATES THE RECORD.

17 THE COURT: SUSTAINED.

18 BY MR. MC MULLEN:

19 Q IS THERE SOME REASON THAT YOU WOULD NOT HAVE
20 CALLED KAREN SUE MARMOR TO TESTIFY WITH RESPECT TO -- LET
21 ME WITHDRAW THAT QUESTION.

22 THE COURT: AS I UNDERSTAND THE RECORD, HE DID NOT
23 KNOW OF KAREN SUE MARMOR.

24 MR. MC MULLEN: CORRECT.

25 THE COURT: SO I ASSUME THAT'S THE BASIS OF YOUR
26 OBJECTION, MR. KLEIN?

27 MR. KLEIN: I AM SORRY. I DIDN'T HEAR THE FIRST
28 PART OF THE COURT'S COMMENT.

1 THE COURT: THAT HE WAS NOT AWARE OF KAREN SUE
2 MARMOR'S TESTIMONY.

3 MR. KLEIN: ALSO, HE DIDN'T SAY THAT ETHICS
4 PRECLUDED HIM. HE WAS CRITICAL.

5 THE COURT: REFRAME THE QUESTION.

6 MR. MC MULLEN: THANK YOU

7 BY MR. MC MULLEN:

8 Q IF -- IT IS MY UNDERSTANDING THAT YOUR
9 TESTIMONY IS THAT IF YOU WOULD HAVE KNOWN ABOUT KAREN SUE
10 MARMOR'S STATEMENT THAT SHE SAW THE TO-DO LIST PRIOR TO
11 JUNE 6, 1984, YOU WOULD NOT HAVE CALLED HER TO TESTIFY
12 BECAUSE OF ETHICAL PROBLEMS; IS THAT CORRECT?

13 A THAT'S A CORRECT STATEMENT.

14 Q HOW DO YOU RECONCILE THAT WITH YOUR STATEMENT
15 DURING THE OPENING STATEMENT IN THE TRIAL THAT YOU WOULD
16 CALL MR. HUNT TO TESTIFY AND HE WOULD EXPLAIN EVERYTHING?
17 HOW DO YOU RECONCILE THAT?

18 A MR. HUNT HAD HIS VERY LIFE AT STAKE IN THESE
19 PROCEEDINGS. I BELIEVED ULTIMATELY THE DECISION ON
20 WHETHER SHE WOULD TESTIFY OR NOT WAS HELD ONLY BY HIM,
21 THAT HE HAD A CONSTITUTIONAL GUARANTEED AND RECOGNIZED
22 RIGHT TO TESTIFY ON HIS OWN BEHALF, AND THAT THERE WERE NO
23 OPINIONS THAT I HELD OR COULD HOLD THAT WOULD BE SUPERIOR
24 TO HIS RIGHT TO MAKE A DECISION INDEPENDENTLY.

25 Q AND AT SOME POINT DURING THE TRIAL WERE THERE
26 DISCUSSIONS ABOUT, ABOUT WHETHER OR NOT YOU WOULD CALL
27 YOUR CLIENT, MR. HUNT, TO THE WITNESS STAND?

28 MR. KLEIN: WAS THIS AFTER OPENING STATEMENT?

1 MR. MC MULLEN: YES, AFTER OPENING STATEMENT, YOUR
2 HONOR.

3 THE WITNESS: YES.

4 BY MR. MC MULLEN:

5 Q AND WHAT WAS THE ULTIMATE RESULT OF THOSE
6 DISCUSSIONS WITH RESPECT TO CALLING, MAKING A DECISION ON
7 WHETHER TO CALL HIM OR NOT?

8 MR. KLEIN: OBJECTION. THE RECORD SPEAKS FOR
9 ITSELF.

10 THE COURT: SUSTAINED.

11 MR. HUNT DIDN'T TESTIFY.

12 BY MR. MC MULLEN:

13 Q DURING THE COURSE OF TRIAL DID -- DID
14 MR. HUNT PROVIDE YOU WITH SUGGESTIONS WITH RESPECT TO HOW
15 THE CASE SHOULD BE HANDLED BOTH IN WRITING AND VERBALLY TO
16 YOU?

17 A YES.

18 Q AND DID THESE SUGGESTIONS EVER HAVE AN
19 INFLUENCE ON THE WAY YOU WOULD HANDLE THE CASE DURING
20 TRIAL?

21 MR. KLEIN: THIS IS WAY TOO BROAD, YOUR HONOR. I
22 OBJECT.

23 THE COURT: OVERRULED.

24 IT WAS GONE INTO ON DIRECT.

25 THE WITNESS: YES.

26 BY MR. MC MULLEN:

27 Q HOW WOULD THEY INFLUENCE YOU?

28 MR. KLEIN: OBJECTION. UNLESS IT IS RELEVANT TO

1 ONE OF THE ISSUES IT IS WAY THE TOO BROAD.

2 THE COURT: REFRAME THE QUESTION.

3 BY MR. MC MULLEN:

4 Q DURING THE COURSE OF YOUR DIRECT EXAMINATION
5 YOU HAVE BEEN SHOWN A LOT OF EXHIBITS THAT APPEAR TO HAVE
6 BEEN GENERATED BY MR. HUNT, AND YOU SAID THAT YOU DIDN'T
7 RECALL A LOT OF THOSE EXHIBITS. WHY IS THAT?

8 A THERE WAS A CONSTANT DELUGE OF MATERIALS THAT
9 MR. HUNT WAS PROVIDING THE DEFENSE. BOTH THAT HE AUTHORED
10 AND THAT HE GARNERED. AND IT WOULD BE IMPOSSIBLE, ALMOST
11 WITH A SINGLE EXCEPTION, I THINK, OF SOMETHING I SAW TODAY
12 THAT STOOD OUT IN MY MIND, TO BE ABLE TO SIT HERE AND IN
13 GOOD CONSCIOUS TELL YOU THAT I HAVE A SPECIFIC
14 RECOLLECTION OF ONE AS OPPOSED TO ANOTHER, OR TO VERIFY
15 THAT WHAT I AM SEEING TODAY IS ALLEGEDLY WHAT I SAW 11 OR
16 12 YEARS AGO OR 13 YEARS AGO.

17 MR. MC MULLEN: MAY I JUST HAVE A MOMENT, YOUR
18 HONOR?

19 THE COURT: YES.

20

21 (PAUSE.)

22 MR. MC MULLEN: YOUR HONOR, AT THIS POINT IN TIME
23 WE HAVE NO MORE QUESTIONS ON CROSS. ALTHOUGH THERE ARE A
24 FEW QUESTIONS ON DIRECT. IF WE MAY BE ALLOWED TO ASK HIM
25 AT THIS POINT IN TIME.

26 THE COURT: GO.

27 MR. MC MULLEN: THANK YOU.

28

1 THAT I JOINED IN ON.

2 THE COURT: ALL RIGHT.

3 ANY REDIRECT?

4 MR. KLEIN: I DO, YOUR HONOR. HOW LONG ARE WE
5 GOING TO DO TODAY?

6 THE COURT: WE SHOULD BE ABLE TO FINISH UP, I WOULD
7 ASSUME. HOW MUCH DO YOU HAVE?

8 MR. KLEIN: A WHILE.

9 THE WITNESS: I WOULD BE MOST OBLIGED, YOUR HONOR,
10 IF I COULD HAVE AN INDULGENCE TO COMPLETE TODAY AS MY
11 TRIAL --

12 THE COURT: YOU SHOULD BE ABLE TO WRAP THIS UP, I
13 WOULD THINK.

14 MR. KLEIN: I WILL TRY.

15 THE REASON I AM ASKING THE QUESTION IS I HAD
16 MR. DOBRIN COME DOWN, AND I THINK HE IS GOING TO NEED AN
17 ORDER FROM THE COURT TO COME BACK TOMORROW.

18 THE COURT: NOT A PROBLEM.

19 MR. KLEIN: HE IS THE ONE THAT HAS GOT A PROBLEM.
20 IF WE COULD DO THAT, AND THEN EXCUSE HIM.

21 THE COURT: YOU KNOW HOW SENSITIVE I AM TO
22 ATTORNEY'S NEEDS.

23 MR. CRAIN: YOU WANT ME TO BRING HIM IN, YOUR
24 HONOR?

25 THE COURT: YES.

26 IS HE THE NEXT WITNESS, OR IS IT MR. BRODEY?

27 MR. KLEIN: I NEED TO TALK TO -- I WILL CALL HIM
28 TOMORROW. I WILL PROBABLY NEED TO CALL MR. BRODEY

1 TOMORROW TO FILL UP THE COURT'S TIME.

2 THE COURT: I THINK I TOLD YOU TOMORROW WE NEED TO
3 BREAK PROBABLY ABOUT AROUND 3:00 OR 2:00.

4 MR. KLEIN: ARE WE GOING TO BE STARTING AT THE SAME
5 TIME?

6 THE COURT: 9 O'CLOCK. I THINK YOU HAD A PROBLEM.

7 MR. KLEIN: IT IS A REAL PROBLEM BECAUSE OF MY
8 WIFE. SHE IS INJURED, AND I HAVE TO DRIVE HER.

9 THE COURT: THURSDAY LOOKS LIKE WE ARE CLEARING UP.
10 WE WILL BE ABLE TO GO, RATHER WE CAN GO LATER IN THE
11 AFTERNOON THAN I ANTICIPATED, PROBABLY TO AT LEAST 4:00.
12 I WOULD SAY FRIDAY IS STILL PROBLEMATIC.

13 MR. MC MULLEN: TOMORROW ARE YOU GOING TO HAVE A
14 SHORTENED LUNCH RECESS?

15 THE COURT: WE MAY START AT 1:00. I DON'T KNOW. I
16 HADN'T THOUGHT THAT FAR YET.

17 MR. CRAIN: MR. DOBRIN IS HERE, YOUR HONOR. I WAS
18 JUST CONVERSING WITH HIM ABOUT HIS SCHEDULE, WHICH I AM
19 STILL NOT CLEAR ON.

20 MR. DOBRIN: YOUR HONOR, TUESDAY IF -- I WOULD
21 RATHER NOT DO IT TUESDAY, IF AT ALL POSSIBLE. I WOULD
22 MOST PREFER THURSDAY, BUT WEDNESDAY WOULD BE ACCEPTABLE.
23 TUESDAY I HAVE A HEARING WHICH IS MUCH MORE IMPORTANT THAN
24 ANYTHING ELSE GOING ON.

25 THE COURT: NOT MORE IMPORTANT THAN WHAT I AM
26 DOING, THOUGH.

27 MR. DOBRIN: I UNDERSTAND THAT.

28 THE COURT: WHERE IS YOUR HEARING?

1 MR. DOBRIN: IT IS POMONA TOMORROW AT 1:00.

2 THE COURT: YOU SHOULD BE ABLE TO -- IF WE PUT YOU
3 ON -- HOW LONG IS IT GOING TO BE?

4 MR. KLEIN: NOT MUCH MORE THAN ABOUT 15 MINUTES.

5 THE COURT: WHY DON'T WE DO YOU FIRST THING RIGHT
6 AT 9 O'CLOCK. YOU WILL BE DONE AND OUT OF HERE BY 9:30.

7 MR. DOBRIN: IF I COULD POSSIBLY DO IT WEDNESDAY,
8 YOUR HONOR. OF COURSE, I WILL DO WHATEVER YOU FEEL IS
9 BEST.

10 THE COURT: WHY DON'T WE SAY THAT I FEEL IT IS BEST
11 TO DO IT AT 9:00 TOMORROW MORNING. I THINK IT IS THE BEST
12 THING TO DO.

13 MR. DOBRIN: I HAVE A MEETING WITH A WITNESS AT
14 11:00.

15 MR. KLEIN: YOU SHOULD BE OUT OF HERE.

16 THE COURT: YOU ARE ORDERED BACK AT 9:00 A.M.
17 TOMORROW MORNING.

18 MR. DOBRIN: THANK YOU

19 THE COURT: OKAY.

20 WHY DON'T YOU WRAP UP YOUR REDIRECT, THEN.

21

22

PETITIONER

23

24

REDIRECT EXAMINATION +

25

26 BY MR. KLEIN:

27 Q YOU UNDERSTAND ONE OF THE ISSUES BEFORE THE
28 COURT, MR. BARENS, IS WHETHER OR NOT YOU COMPETENTLY

1 REPRESENTED MR. HUNT?

2 A I UNDERSTAND THAT.

3 Q AND YOU THINK YOU DID A COMPETENT JOB;
4 CORRECT?

5 A I DON'T THINK WHAT I THINK MATTERS TODAY.

6 Q BUT YOU DO; DON'T YOU?

7 A I DO.

8 MR. MC MULLEN: OBJECTION. IRRELEVANT.

9 THE WITNESS: I DON'T KNOW WHAT RELEVANCE IS
10 MYSELF.

11 THE COURT: YOUR OBJECTION ON RELEVANCY GROUNDS IS
12 NOT RELEVANT BUT THE PEOPLE'S IS, AND THAT IS SUSTAINED.
13 BY MR. KLEIN:

14 Q YOU DON'T WANT THIS COURT TO FIND YOU
15 INCOMPETENT; DO YOU, MR. BARENS?

16 A I WANT THIS COURT TO FIND THE TRUTH.

17 Q "YES" OR "NO", MR. BARENS.

18 A IF I WAS INCOMPETENT, I WANT THIS COURT TO
19 FIND ME INCOMPETENT. IF I WAS NOT, I WANT THE COURT TO
20 FIND ME NOT INCOMPETENT.

21 MR. MC MULLEN: OBJECTION. IRRELEVANT.

22 THE COURT: OVERRULED.

23 THE ANSWER WILL STAND.

24 BY MR. KLEIN:

25 Q YOU DON'T WANT THE COURT TO FIND YOU NOT
26 COMPETENT BECAUSE THAT MIGHT SUBJECT YOU TO CIVIL
27 LIABILITY; ISN'T THAT TRUE, MR. BARENS.

28 MR. MC MULLEN: OBJECTION. IRRELEVANT.

1 THE COURT: I ASSUME GOING TO THE ARGUMENT OF BIAS
2 AND MOTIVE?

3 MR. KLEIN: YES, YOUR HONOR.

4 THE COURT: I WILL ALLOW IT.

5 THE WITNESS: WE ARE PAST THE STATUTE OF
6 LIMITATION, AS COUNSEL IS WELL AWARE. I WANT THIS COURT
7 TO FIND THE TRUTH, PERIOD.

8 BY MR. KLEIN:

9 Q IT WOULD ALSO NOT BE GOOD PUBLICITY FOR YOU
10 AS AN ATTORNEY IF THIS COURT WERE TO FIND YOU INCOMPETENT.

11 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.
12 IRRELEVANT.

13 THE COURT: OVERRULED.

14 THE WITNESS: IT WOULD DEPEND ON WHAT THE VIEW --
15 WHAT YOU VIEWED IT AS. I WANT THIS COURT TO FIND THE
16 TRUTH AND MY BIAS IS SOLELY TOWARDS THE TRUTH.

17 BY MR. KLEIN:

18 Q YOU ARE AWARE THAT IF THE COURT FINDS YOU
19 INCOMPETENT THAT THE COURT WOULD HAVE TO REPORT YOU TO THE
20 STATE BAR FOR PROCEEDINGS; CORRECT?

21 A I AM AWARE OF THAT. AND I AM HERE FOR THAT
22 PURPOSE, IF THAT'S WHAT THE COURT WANTS.

23 Q NOW, MR. BARENS, YOU WERE ASKED SOME
24 QUESTIONS AT YOUR DEPOSITION THAT YOU REFUSED TO ANSWER ON
25 ETHICAL GROUNDS. DO YOU REMEMBER THAT?

26 A I RECALL THERE WAS A QUESTION OR TWO
27 QUESTIONS THAT I DECLINED TO ANSWER PENDING AN ORDER OF
28 THIS COURT.

1 Q THAT RELATED TO INFORMATION THAT MR. HUNT MAY
2 HAVE PROVIDED YOU?

3 A YES.

4 Q SUBSEQUENT TO THAT YOU CAME TO COURT AND
5 MR. HUNT WAIVED HIS ATTORNEY-CLIENT PRIVILEGE AND THE
6 JUDGE ORDERED YOU TO ANSWER ANY QUESTIONS ABOUT WHAT
7 MR. HUNT TOLD YOU. DO YOU REMEMBER THAT?

8 A I HEARD THE SAME THING TODAY YOU DID,
9 COUNSEL.

10 Q NO. NO. NO.

11 THE COURT: YOU ARE TALKING ABOUT --
12 BY MR. KLEIN:

13 Q AFTER YOUR DEP- --

14 THE COURT: -- THE INTERROGATORIES?

15 MR. KLEIN: YES.

16 BY MR. KLEIN:

17 Q AFTER YOUR DEPOSITION.

18 A I DID NOT COME TO COURT.

19 Q BUT YOU BECAME AWARE THAT MR. HUNT HAD WAIVED
20 HIS ATTORNEY-CLIENT PRIVILEGE AND THAT YOU WERE REQUIRED
21 TO ANSWER INTERROGATORIES?

22 A I BECAME AWARE THAT I WAS REQUIRED TO ANSWER
23 SPECIFIC INTERROGATORIES.

24 Q OKAY.

25 NOW, AT THE TIME THAT YOU ANSWERED THE
26 INTERROGATORIES HOW LONG HAD YOU BEEN AN ATTORNEY,
27 MR. BARENS?

28 A I THINK 27 OR 28 YEARS, COUNSEL.

1 Q OKAY.

2 AND YOU HAD CONSIDERABLE EXPERIENCE IN
3 CRIMINAL LAW AT THAT TIME?

4 A I BELIEVE SO.

5 Q YOU KNEW THE LAW ABOUT CONSPIRACY AND AIDING
6 AND ABETTING?

7 A IN A GENERAL SENSE, YES.

8 Q AND YOU KNEW THAT MR. HUNT'S LIABILITY IN
9 THIS CASE COULD BE AS A DIRECT PARTICIPANT OR AS AN AIDER
10 AND ABETTER OR CONSPIRATOR; CORRECT?

11 A I DID NOT VIEW IT THAT WAY, SIR.

12 Q YOU KNEW THAT AT THE TIME THAT YOU ANSWERED
13 THE INTERROGATORIES; DIDN'T YOU?

14 A I DON'T FRANKLY UNDERSTAND YOUR QUESTION. IF
15 YOU SAY AS AN ACADEMIC DID I KNOW OF THE EXISTENCE OF THAT
16 BODY OF LAW, THE ANSWER IS YES. DID I APPLY THAT BODY OF
17 LAW TO THE FACTS AS I UNDERSTOOD THEM OF PEOPLE VERSUS
18 HUNT THE ANSWER IS NO.

19 Q OKAY.

20 YOU KNEW THAT AN AIDER AND ABETTER WAS LIABLE
21 AS A PRINCIPAL AT THE TIME THAT YOU ANSWERED YOUR
22 INTERROGATORIES; DIDN'T YOU?

23 A IT WOULD DEPEND ON THE FACTS OF THE CASE.

24 Q YOU KNEW OF THAT CONCEPT; DID YOU NOT?

25 A I KNEW OF THAT AS A CONCEPT OF LAW, BUT I
26 ALSO KNOW THAT IS AN EXTREMELY DISPUTED CONCEPT THAT IS
27 NOT UNIFORMLY APPLIED IN THIS STATE.

28 Q AT THE TIME THAT YOU ANSWERED YOUR

1 INTERROGATORIES DID YOU CONSULT WITH YOUR COUNSEL ALSO?

2 A I BELIEVE I PROVIDED MY ANSWERS TO
3 MR. BRODEY.

4 Q DO YOU REMEMBER BEING ASKED QUESTION 15
5 (READING):

6 "DID JOE HUNT EVER TELL YOU
7 HE KILLED RON LEVIN?"

8 AND YOU ANSWERED AS FOLLOWS: "JOE
9 HUNT NEVER TOLD ME THAT HE KILLED
10 RON LEVIN."

11 A HE NEVER TOLD ME THAT HE KILLED RON LEVIN.
12 AS I TESTIFIED TO TODAY, SIR, MR. HUNT IN ONE VERSION TOLD
13 ME HE WITNESSED MR. PITTMAN KILL RON LEVIN.

14 Q WELL, BUT IN THAT VERSION THAT MR. HUNT
15 PURPORTEDLY TOLD YOU YOU UNDERSTOOD THAT HE WOULD HAVE
16 BEEN LIABLE AS A PRINCIPAL SINCE HE SUPPOSEDLY DIRECTED
17 WHAT TRANSPIRED?

18 A SIR, IN AN EFFORT TO SPARE YOUR CLIENT AS
19 MUCH AS I COULD, I ANSWERED THAT QUESTION AS PRECISELY AS
20 I FELT I LEGALLY COULD TO RESTRICT AND LIMIT THE AMOUNT OF
21 INFORMATION I CONVEYED BEFORE I CAME TO THIS COURT TODAY
22 AND WAS ORDERED BY HIS HONOR TO EXPAND UPON MY ANSWER.

23 Q BUT BASED UPON THE QUESTIONS YOU WERE ASKED
24 AT THE DEPOSITION AND BASED UPON THE QUESTIONS THAT YOU
25 WERE ASKED IN THE INTERROGATORIES, YOU KNEW THAT WAS
26 EXACTLY THE INFORMATION --

27 A NO, SIR. I DID NOT, SIR.
28 THE COURT: WAIT. WAIT.

1 BY MR. KLEIN:

2 Q THAT WAS EXACTLY THE INFORMATION --

3 A WELL, IN --

4 THE COURT: WAIT. WAIT. LET HIM FINISH THE
5 QUESTION FIRST.

6 BY MR. KLEIN:

7 Q -- THAT WE WERE SEEKING WHAT MR. HUNT TOLD
8 YOU ABOUT WHAT HE MAY OR MAY NOT HAVE DONE WITH RESPECT TO
9 MR. LEVIN?

10 THE COURT: YOU CAN ANSWER.

11 THE WITNESS: IN READING THE ENGLISH LANGUAGE, I
12 READ THE QUESTION: "DID MR. HUNT TELL YOU HE KILLED RON
13 LEVIN?" IN MY READING OF THE ENGLISH LANGUAGE, MY MIND
14 SAID TO ME THAT THAT QUESTION POSED TO ME: "DID MR. HUNT
15 EVER TELL ME THAT HE PERSONALLY EXECUTED MR. LEVIN," HE
16 NEVER TOLD ME ANY SUCH THING. AND THAT WAS MY ANSWER.

17 BY MR. KLEIN:

18 Q OKAY.

19 AND AT THE TIME THAT YOU ANSWERED THAT
20 QUESTION, YOU HAD IN MIND YOUR EXPERTISE IN CRIMINAL LAW
21 THAT AN AIDER AND ABETTER WAS EQUALLY LIABLE AS A
22 PRINCIPAL.

23 A I DID NOT HAVE THAT IN MIND WHATSOEVER.

24 Q YOU INTENTIONALLY LEFT THAT INFORMATION OUT
25 OF YOUR MIND SO THAT YOU COULD ANSWER THE QUESTION THE WAY
26 THAT YOU DID IN QUESTION 15?

27 A I INTENTIONALLY ANSWERED THAT QUESTION TO
28 MINIMIZE THE IMPACT IT WOULD HAVE ON YOUR CLIENT.

1 Q SO WHAT YOU ARE SAYING IS, MR. BARENS, THAT
2 WHEN YOU ANSWERED QUESTION 15 IN THE INTERROGATORIES, "JOE
3 HUNT NEVER TOLD ME THAT HE KILLED RON LEVIN," YOU WEREN'T
4 GIVING A TRUTHFUL ANSWER?

5 A I BEG TO DISAGREE AND TAKE VIGOROUS EXCEPTION
6 TO THAT ALLEGATION, SIR. I GAVE A LITERALLY TRUE ANSWER
7 TO A LITERALLY ACCURATE QUESTION. AND THE JUDGE CAN MAKE
8 HIS OWN MIND UP TO THAT.

9 Q SO YOU SLANTED YOUR --

10 A I DID NOT SLANT, COUNSEL.

11 THE COURT: HOLD ON. WAIT UNTIL THE QUESTION IS
12 OUT.

13 MR. KLEIN: THANK YOU.

14 BY MR. KLEIN:

15 Q SO YOU SLANTED YOUR ANSWER SO THAT THE WHOLE
16 TRUTH WOULD NOT COME OUT IN YOUR ANSWER TO QUESTION 15?

17 MR. MC MULLEN: OBJECTION. ARGUMENTATIVE.

18 THE COURT: SUSTAINED.

19 BY MR. KLEIN:

20 Q NOW, WHEN IS IT THAT YOU CLAIM MR. HUNT
21 PURPORTEDLY TOLD YOU THIS?

22 A TOLD ME WHAT, SIR.

23 Q THAT HE WAS PRESENT WHEN MR. PITTMAN KILLED
24 RON LEVIN?

25 A PRIOR TO TRIAL.

26 Q WHEN PRIOR TO TRIAL?

27 A AT A POINT IN TIME PRIOR TO TRIAL.

28 Q WHEN YOU WERE FIRST HIRED IN THIS CASE?

1 A I DON'T RECALL.

2 Q WAS IT 1984, 1985?

3 A I DON'T SPECIFICALLY RECALL, BUT MY
4 SPECULATION TELLS ME 1984, BUT I AM NOT SURE.

5 Q OKAY.

6 WHAT WAS MR. HUNT'S STATUS IN 1984? WAS HE
7 IN CUSTODY OR OUT OF CUSTODY?

8 A HE WAS IN CUSTODY. IF I AM CORRECT THE YEAR
9 WAS 1984. HE WAS IN CUSTODY.

10 Q DOES IT REFRESH YOUR RECOLLECTION THAT
11 SOMETIME IN THE FALL OF 1985 THE CASE WAS ASSIGNED TO --

12 A OCTOBER OF '85, COUNSEL.

13 Q FALL OF 1985 -- FALL OF 1985 THAT THE CASE
14 WAS ASSIGNED TO JUDGE RITTENBAND.

15 DOES THAT REFRESH YOUR MEMORY AS TO WHEN YOU
16 FIRST CAME ON THE CASE?

17 A AT A POINT IN TIME PRIOR TO THAT. BECAUSE I
18 HANDLED THE PRELIMINARY HEARING IN BEVERLY HILLS
19 SUBSTANTIALLY PRIOR TO THAT.

20 Q NOW, WHERE DID THIS CONVERSATION WITH
21 MR. HUNT TAKE PLACE WHERE HE PURPORTEDLY TOLD YOU THAT HE
22 WITNESSED MR. PITTMAN KILL MR. LEVIN?

23 A IN THE HALL OF JUSTICE.

24 Q AND WHO WAS PRESENT WHEN THIS INTERVIEW
25 OCCURRED?

26 A I WAS.

27 Q I AM SORRY?

28 A I WAS ALONG WITH MR. HUNT.

1 Q WHO ELSE WAS PRESENT?

2 A NO ONE THAT I AM AWARE OF.

3 THE COURT: WHEN YOU SAY "HALL OF JUSTICE," YOU
4 MEAN HALL OF JUSTICE --

5 THE WITNESS: THE 11TH FLOOR, H.O.J..

6 THE COURT: WHEN DID THAT BUILDING CLOSE DOWN?

7 THE WITNESS: I DON'T RECALL, SIR, BUT IN THE LAST
8 COUPLE OF YEARS.

9 MR. MC MULLEN: AFTER THE EARTHQUAKE, I THINK.

10 THE COURT: THEY WERE USING IT FOR A JAIL FACILITY.
11 I WAS THINKING IT WAS BEING USED FOR A COURT.

12 THE WITNESS: I DON'T THINK IT WAS USED FOR A COURT
13 IN MY CAREER.

14 THE COURT: THAT'S WHAT I WAS TRYING TO IMAGINE,
15 BUT I FORGOT IT WAS STILL USED AS A HOLDING CELL.

16 THE WITNESS: JUST AS A JAIL.

17 BY MR. KLEIN:

18 Q NOW, WHEN MR. HUNT TOLD YOU THIS AT THE,
19 SUPPOSEDLY TOLD YOU THIS AT THE HALL OF JUSTICE SOMETIME,
20 DID YOU TAKE ANY NOTES?

21 A NO.

22 Q AND NOBODY ELSE WAS PRESENT?

23 A NO.

24 Q DID YOU PAUSE FOR SOME REASON, MR. BARENS?

25 A WELL, CAN YOU IMAGINE BEING THERE WITH YOUR
26 CLIENT, HE IS TELLING YOU SOMETHING LIKE THAT, AND YOU GOT
27 SOMEBODY ELSE PRESENT WHEN YOU ARE INSIDE OF A PRIVILEGED
28 RELATIONSHIP. WHAT ELSE DO YOU THINK WE HAVE PRESENT,

1 COUNSEL, A WAITRESS AND A BARBER?

2 Q NOW, AFTER YOU SUPPOSEDLY HAD THIS INTERVIEW
3 WITH MR. HUNT WHEN HE TOLD YOU THIS, HOW MANY OTHER TIMES
4 DID YOU INTERVIEW MR. HUNT AT THE HALL OF JUSTICE?

5 A I DON'T RECALL.

6 Q WAS IT MORE THAN ONCE?

7 A I BELIEVE SO.

8 Q MORE THAN TWICE?

9 A I BELIEVE SO.

10 Q MORE THAN THREE TIMES?

11 A I DON'T KNOW. I BELIEVE I SAW MR. HUNT AT
12 THE H.O.J. ON TWO TO THREE OCCASIONS. I BELIEVE HE WAS
13 SUBSEQUENTLY RELOCATED. I AM NOT SURE, BUT I BELIEVE I
14 SAW HIM ON TWO TO THREE OCCASIONS AT H.O.J..

15 Q ON ANY OF THESE OCCASIONS WAS ANYBODY ELSE
16 PRESENT WITH YOU BESIDES MR. HUNT?

17 A I AM NOT SURE. I BELIEVE THERE MAY HAVE
18 BEEN. BUT, AGAIN, I COULD BE WRONG ON THIS BECAUSE IT MAY
19 HAVE BEEN AT A DIFFERENT LOCATION, BUT I BELIEVE -- I AM
20 NOT SURE.

21 Q NOW, WHEN IN RELATIONSHIP TO WHEN YOU SAW
22 MR. HUNT AT THE HALL OF JUSTICE AND HE SUPPOSEDLY TOLD YOU
23 THIS DID RICHARD CHIER BECOME INVOLVED IN THE CASE?

24 A SUBSEQUENTLY, AT A TIME SUBSEQUENTLY PAST
25 THAT TIME.

26 Q WAS IT AFTER THE PRELIMINARY HEARING?

27 A I BELIEVE SO. ALTHOUGH, AS I SAID, I MAY
28 HAVE DISCUSSED PEOPLE VERSUS HUNT WITH MR. CHIER AT OR

1 ABOUT THE TIME OF THE PRELIMINARY HEARING.

2 Q YOU NEVER TOLD RICHARD CHIER ABOUT THIS
3 SUPPOSED CONVERSATION YOU HAD AT THE HALL OF JUSTICE WITH
4 MR. HUNT WHERE HE TOLD YOU HE WAS PRESENT WHEN MR. PITTMAN
5 KILLED MR. LEVIN; ISN'T THAT TRUE, MR. BARENS?

6 A THAT IS NOT A TRUE STATEMENT.

7 Q THAT'S NOT TRUE?

8 A NO, SIR.

9 Q WHEN DID YOU EVER TELL RICHARD CHIER THIS?
10 MR. MC MULLEN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: ON MORE THAN ONE OCCASION MR. CHIER
13 AND I DISCUSSED THAT STATEMENT.

14 BY MR. KLEIN:

15 Q WAS ANYBODY PRESENT WHEN YOU DISCUSSED THAT
16 STATEMENT WITH MR. CHIER?

17 A MR. CHIER AND MYSELF.

18 Q I AM SORRY?

19 A MR. CHIER AND MYSELF.

20 Q WAS MR. HUNT EVER PRESENT WHEN YOU DISCUSSED
21 THAT HE SUPPOSEDLY MADE THIS STATEMENT WHEN YOU TALKED TO
22 MR. CHIER ABOUT IT?

23 A NO. NOT THAT I RECALL.

24 Q DID YOU HAVE THESE DISCUSSIONS WITH MR. CHIER
25 AFTER MR. HUNT WAS RELEASED FROM CUSTODY?

26 A I CAN'T RECALL. I KNOW I HAD HAD EXTENSIVE
27 DISCUSSIONS WITH MR. CHIER PRIOR TO THE TIME THAT MR. HUNT
28 WAS RELEASED, AS MR. CHIER AND I HAD DONE EXTENSIVE WORK

1 PREPARING THE BAIL MOTIONS.

2 Q THAT'S NOT THE QUESTION, MR. BARENS.

3 DID YOU DISCUSS WITH MR. CHIER ABOUT THIS
4 SUPPOSED STATEMENT THAT MR. HUNT MADE TO YOU IN THE HALL
5 OF JUSTICE PRIOR TO THE TIME THAT MR. HUNT WAS RELEASED ON
6 BAIL?

7 A I BELIEVE I DID.

8 Q ON MORE THAN ONE OCCASION?

9 A I BELIEVE I DID.

10 Q AND YOU DISCUSSED WITH MR. CHIER ON MORE THAN
11 ONE OCCASION AFTER MR. HUNT WAS RELEASED FROM CUSTODY?

12 A I AM NOT AS SURE ABOUT THAT AS I AM MY PRIOR
13 STATEMENT.

14 Q DID YOU EVER MAKE ANY NOTES OF ANY OF THESE
15 DISCUSSIONS WITH MR. CHIER?

16 A HARDLY.

17 Q DID YOU EVER OBSERVE MR. CHIER MAKING NOTES
18 OF ANY OF THESE DISCUSSIONS?

19 A NO.

20 Q APPROXIMATELY WHEN DID THE TRIAL START IN
21 THIS CASE?

22 A I WOULD -- I AM NOT SURE, SIR. I THOUGHT IT
23 WAS IN THE SPRINGTIME, BUT I AM NOT SURE. WINTER WOULD
24 HAVE BEEN TOO LATE.

25 Q IF THE JURY SELECTION OCCURRED IN JANUARY OF
26 1987, DOES THAT REFRESH YOUR RECOLLECTION?

27 A WELL, I DON'T BELIEVE THE ACTUAL TRIAL
28 PROCEEDING ITSELF COMMENCED UNTIL AT LEAST THREE TO FOUR

1 MONTHS LATER, COUNSEL. I BELIEVE THAT ALTHOUGH WE STARTED
2 JURY ACTIVITY IN THE BEGINNING OF THE YEAR, WE DIDN'T
3 START THE TRIAL PER SE UNTIL MARCH OR APRIL.

4 THE COURT: WHEN YOU SAY "PER SE," YOU MEAN OPENING
5 STATEMENTS?

6 THE WITNESS: OPENING STATEMENTS AND CALLING THE
7 FIRST WITNESS. I BELIEVE THE JURY IMPANELING AND HOVEY
8 VOIR DIRE TOOK -- I THINK IT TOOK THREE MONTHS OR MORE.

9 BY MR. KLEIN:

10 Q NOW, WHEN I ASKED YOU IN EXHIBIT 267 AT PAGE
11 62 --

12 A COULD YOU PLEASE IDENTIFY WHAT EXHIBIT. I
13 DON'T RECALL THE EXHIBIT BY THE NUMBER.

14 Q THIS IS YOUR DEPOSITION, MR. BARENS. AT PAGE
15 62 WHEN I ASKED YOU THE FOLLOWING QUESTION -- I WILL HAVE
16 A QUESTION AFTER I READ THE QUESTION. (READING):

17

18 "Q NOW IN ANY OF THE DISCUSSIONS
19 WITH MR. HUNT DID MR. HUNT EVER
20 ADMIT TO YOU THAT HE KILLED RON
21 LEVIN?"

22 WHEN I ASKED YOU THAT QUESTION --

23 A WHAT WAS MY ANSWER, ACTUALLY?

24 MR. KLEIN: YOUR HONOR, CAN I ASK THE QUESTIONS THE
25 WAY I WANT TO?

26 THE COURT: GO AHEAD AND ANSWER THE QUESTION.

27 THE WITNESS: CAN I SEE THE TRANSCRIPT, COUNSEL, AS
28 YOU ASK ME YOUR QUESTION?

1 THE COURT: SHOW HIM THE TRANSCRIPT.

2 MR. KLEIN: CAN I ASK THE QUESTION FIRST?

3 THE COURT: SHOW HIM SOME TRANSCRIPT. I ASSUME
4 YOUR -- THE NEXT QUESTION IS GOING TO BE MEAN, "WHAT DID
5 YOU MEAN?"

6 MR. KLEIN: THAT ISN'T GOING TO BE THE QUESTION.

7 THE COURT: SHOW HIM THE TRANSCRIPT.

8 THE WITNESS: COULD YOU POINT TO ME WHERE YOU ARE?

9 MR. MC MULLEN: CAN WE HAVE A LINE REFERENCE,
10 COUNSEL?

11 MR. KLEIN: I NEVER GOT TO -- WELL, THE QUESTION IS
12 ON LINE 3.

13 MR. MC MULLEN: THANK YOU.

14 MR. KLEIN: PAGE 62.

15 THE COURT: ALL RIGHT.

16 THE WITNESS: I SEE THAT QUESTION.

17 THE COURT: HOLD ON. THERE IS NO QUESTION PENDING.
18 PUT A QUESTION NOW.

19 BY MR. KLEIN:

20 Q WHEN I ASKED YOU THAT QUESTION IN THE
21 DEPOSITION --

22 A COULD I PLEASE HAVE THE DEPOSITION, COUNSEL,
23 WHILE YOU ARE QUESTIONING ME.

24 MR. CRAIN: IS THE WITNESS SAYING THAT HE DOESN'T
25 REMEMBER HIS ANSWER AT THE DEPOSITION, OR HAS TO REFRESH
26 HIS RECOLLECTION?

27 THE WITNESS: NO, BUT --

28 THE COURT: HOLD IT -- EXCUSE ME.

1 PUT A QUESTION.

2 I WILL ALLOW THE WITNESS TO HAVE THE EXHIBIT
3 BEFORE HIM.

4 BY MR. KLEIN:

5 Q DID YOU HAVE IN MIND AT THAT TIME THE LAW OF
6 AIDING AND ABETTING THAT AN AIDER AND ABETTER WAS EQUALLY
7 LIABLE AS A PRINCIPAL IN THE CRIME?

8 MR. MC MULLEN: OBJECTION. RELEVANCE.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DID NOT.

11 BY MR. KLEIN:

12 Q AND YOU GAVE THE FOLLOWING ANSWER; IS THAT
13 RIGHT, MR. BARENS? (READING):

14 "A I HAVE PREVIOUSLY GIVEN YOU
15 MY POSITION ON THAT TYPE OF
16 QUESTION, COUNSEL, AND MY POSITION
17 REMAINS THE SAME. I AM NOT GOING TO
18 DISCUSS THAT WITH YOU, SIR."

19 AND THEN I SAID:

20 "YOU REFUSE TO ANSWER THAT
21 QUESTION?"

22 YOU SAID: "YES."

23 IS THAT RIGHT, MR. BARENS?

24 A I BELIEVE I SAID I WOULD REQUIRE AN ORDER OF
25 THIS COURT BEFORE I WOULD ANSWER THAT QUESTION. IF I
26 DIDN'T SAY THAT IN THAT LINE, I SURE AS HECK SAID IT IN
27 THAT DEPOSITION. AND YOU KNOW IT.

28 Q THEN I ASKED YOU ON LINE 19 FOLLOWING THAT

1 SAME QUESTION, "DID MR. HUNT EVER ADMIT TO YOU THAT HE
2 KILLED RON LEVIN," I ASKED (READING):

3 "Q HAVE YOU EVER DISCUSSED IT
4 WITH MR. CHIER?"

5 AND YOU SAID:

6 "I THINK I DISCUSSED THE FACT THAT I
7 WON'T DISCUSS IT WITH MR. CHIER."

8 YOU GAVE THAT ANSWER; DIDN'T YOU, MR. BARENS?

9 A I SEE THAT RATHER INARTFUL EXPRESSION, YES.

10 Q SO YOU WERE TELLING US AT THAT TIME THAT YOU
11 NEVER DISCUSSED WITH MR. CHIER WHETHER MR. HUNT ADMITTED
12 THAT HE EVER KILLED RON LEVIN?

13 A NO. THAT IS NOT WHAT I WAS SAYING THERE.

14 Q PRIOR TO THE OPENING STATEMENT THAT YOU GAVE
15 IN THIS CASE DID YOU HAVE ANY ADDITIONAL DISCUSSIONS WITH
16 MR. HUNT ABOUT HIS INVOLVEMENT IN THIS PURPORTED CRIME?

17 A THE KILLING OF RON LEVIN. ARE YOU SAYING THE
18 PURPORTED CRIME, THE ENTIRE CASE? ARE YOU SAYING DID I
19 TALK TO MR. HUNT ABOUT THE CASE? ARE YOU TALKING ABOUT
20 SPECIFICALLY ABOUT THIS COMMENT THAT MR. HUNT MADE?

21 Q ABOUT WHAT MR. HUNT HAD TO DO WITH THE
22 PURPORTED KILLING OF RON LEVIN, IF IT HAPPENED AT ALL.

23 THE COURT: DO YOU UNDERSTAND THE QUESTION?

24 THE WITNESS: YES.

25 BY MR. KLEIN:

26 Q WHAT'S THE ANSWER?

27 A YES.

28 Q HOW MANY TIMES?

1 A MORE THAN ONE.

2 Q MORE THAN FIVE?

3 A I DON'T RECALL, SIR.

4 Q WHEN IS THE NEXT TIME AFTER THIS PURPORTED
5 CONVERSATION AT THE HALL OF JUSTICE THAT YOU DISCUSSED
6 THIS SUBJECT WITH MR. HUNT?

7 A ON ANOTHER OCCASION I BELIEVE AT THE HALL OF
8 JUSTICE.

9 Q WAS ANYBODY ELSE PRESENT?

10 A NO.

11 Q AND AT THIS TIME MR. HUNT TOLD YOU SOMETHING
12 DIFFERENT THAN WHAT HE SUPPOSEDLY TOLD YOU THE FIRST TIME;
13 CORRECT?

14 A NO. I TOLD MR. HUNT SOMETHING DIFFERENT.

15 Q I SEE.

16 AND AFTER WHAT YOU TOLD -- WELL, WHAT DID YOU
17 TELL HIM, MR. BARENS?

18 A I TOLD HIM THAT I HAD SOME DOUBTS ABOUT THE
19 STATEMENT HE HAD MADE EARLIER TO ME.

20 Q THAT'S BECAUSE YOU DIDN'T THINK IT WAS A TRUE
21 STATEMENT AS YOU TOLD US ON EXAMINATION; RIGHT?

22 A I HAVE GIVEN YOU MY POINT OF VIEW. AND I
23 ALSO GAVE IT TO MR. HUNT. I BELIEVED THAT MR. HUNT WAS
24 GOING TO RELIEVE ME THAT DAY, BECAUSE WE HAD A SOMEWHAT
25 DIFFICULT CONFLICT.

26 Q SO, AGAIN, JUST SO WE ARE CLEAR, WHAT DID YOU
27 TELL MR. HUNT ABOUT WHY YOU DIDN'T BELIEVE WHAT HE
28 SUPPOSEDLY SAID TO YOU IN THIS FIRST CONVERSATION IN THE

1 HALL OF JUSTICE?

2 A WE GOT INTO A WHOLE TO-DO ABOUT THE PARADOX
3 PHILOSOPHY AND HIS VIEW OF REALITY AND MY BELIEF ON HIS
4 RELIABILITY, ON HIS VIEW OF REALITY. WE GOT INTO A, FOR
5 WANT OF A BETTER EXPRESSION, A DISCUSSION WHERE WE TRIED
6 TO EVALUATE WHICH ONE OF US WAS SMARTER, COUNSEL, AND
7 ALTHOUGH I ADMITTED MR. HUNT WAS PROBABLY SMARTER I HAD
8 THE RESPONSIBILITY TO TRY THE CASE.

9 Q SO YOU ARE TELLING HIM THAT YOU DIDN'T
10 BELIEVE HIM -- YOU TOLD HIM THAT YOU THOUGHT HE WAS JUST
11 POSTURING WHEN HE MADE THAT FIRST STATEMENT TO YOU?

12 A I AM SURE I USED THAT EXPRESSION.

13 Q YOU BELIEVED THAT HE WAS POSTURING, THAT'S
14 WHY YOU SAID IT TO HIM?

15 A I TESTIFIED EARLIER THAT I HAD DEVELOPED
16 AMBIGUITIES IN MY EVALUATION OF HIS STATEMENT. I
17 DIDN'T -- I WAS NOT SURE AT THAT POINT IN TIME WHAT IN
18 FACT I BELIEVED, AND WHAT I IN FACT I BELIEVED CONTINUED
19 TO EVOLVE DURING THE COURSE OF THE TRIAL CULMINATING IN A
20 CONCLUSION I REACHED AFTER THE TESTIMONY OF CANCHOLA AND
21 LOPEZ.

22 THE COURT: I AM SORRY, OF WHO?

23 THE WITNESS: CANCHOLA AND LOPEZ, THE TUCSON
24 SIGHTING WITNESSES.

25 BY MR. KLEIN:

26 Q HOW LONG AFTER THE FIRST SUPPOSED
27 CONVERSATION ABOUT THIS SUBJECT AT THE HALL OF JUSTICE DID
28 THIS SECOND CONVERSATION TAKE PLACE?

1 A I DON'T KNOW.

2 Q WAS IT BEFORE OR AFTER THE PRELIMINARY
3 HEARING?

4 A I DON'T KNOW.

5 Q NOW, YOU WANTED MR. HUNT -- AT THIS TIME
6 BECAUSE YOU DIDN'T BELIEVE WHAT HE TOLD YOU AND YOU
7 THOUGHT HE WAS POSTURING, YOU WANTED HIM TO TELL YOU WHAT
8 REALLY HAPPENED; RIGHT, MR. BARENS?

9 A NOT NECESSARILY.

10 Q I MEAN, THAT'S WHAT YOU ASKED HIM, ISN'T IT?

11 A NO. I WANTED HIM TO WITHDRAW THE EARLIER
12 STATEMENT.

13 THE COURT: THE EARLIER STATEMENT WHERE HE SAID HE
14 WAS INVOLVED?

15 THE WITNESS: YES, SIR.

16 BY MR. KLEIN:

17 Q NOW, YOU THOUGHT, IN THIS SECOND CONVERSATION
18 WHEN YOU TOLD MR. HUNT THAT HE WAS POSTURING IN THE FIRST
19 CONVERSATION, YOU THOUGHT THAT BECAUSE OF YOUR
20 INVESTIGATION INTO THE CASE?

21 A IN PART.

22 Q WHAT ELSE?

23 A MY ASSESSMENT OF MR. HUNT AS A HUMAN BEING.

24 Q OKAY.

25 AND SO AT THE SECOND CONVERSATION MR. HUNT
26 TOLD YOU THAT, A DIFFERENT VERSION THAN OF WHAT HE TOLD
27 YOU THE FIRST TIME?

28 A NO.

1 Q HE DIDN'T YOU TELL YOU ANYTHING?

2 A HE APPEARED TO RECONT FROM HIS -- SUSTAINING
3 HIS EARLIER STATEMENT WITHOUT GIVING ME A DIFFERENT
4 VERSION AT THAT POINT IN TIME.

5 Q DID YOU MAKE ANY NOTES OF THIS CONVERSATION?

6 A NO.

7 Q DID YOU EVER TELL RICHARD CHIER OF THIS
8 CONVERSATION?

9 A I BELIEVE I DID.

10 Q HOW MANY TIMES?

11 A I AM NOT SURE. MORE THAN ONCE. AND I
12 BELIEVE I MADE IT CLEAR ON THOSE OCCASIONS THAT I THINK I
13 INTRODUCED BY SAYING, "FRANKLY, I JUST DON'T KNOW WHAT TO
14 BELIEVE AT THIS TIME."

15 Q YOU ARE TALKING ABOUT WHEN YOU WERE TALKING
16 TO MR. CHIER?

17 A AND MR. HUNT.

18 Q NOW, WHEN YOU SAY --

19 A I HASTEN TO ADD THAT I AM SURE I ALSO SAID,
20 "WHAT I BELIEVED ULTIMATELY DOESN'T MATTER."

21 Q NOW, WHEN YOU SAY MR. HUNT RECONTED, HE TOLD
22 YOU WHAT HE SAID SUPPOSEDLY THE FIRST TIME WASN'T TRUE; IS
23 THAT WHAT YOU MEAN?

24 A I THINK IT WAS MORE DONE BY WAY OF HIM
25 AGREEING WITH ME WHEN I DECRIED HIM AS A POSTURER AND
26 EXAGGERATOR AND A DISCIPLE OF THE PARADOX PHILOSOPHY THAT
27 HE COULD NOT EXPLAIN WITH ANY CONSISTENCY.

28 Q SO HE IN FACT TOLD YOU THAT HE WAS NOT

1 PRESENT AT RON LEVIN'S AND WATCHED MR. PITTMAN KILL HIM ON
2 JUNE 6, 1984, THAT'S WHAT HE TOLD YOU IN THIS SECOND
3 CONVERSATION?

4 A HE DID NOT SPEAK THOSE WORDS, COUNSEL. I
5 SAID EARLIER HE AGREED WITH ME WHEN I EXPRESSED MY
6 ASSESSMENT OF HIS EARLIER STATEMENT.

7 Q NOW, WHEN IS THE NEXT TIME THAT YOU AND
8 MR. HUNT EVER DISCUSSED THIS SUBJECT?

9 A AFTER -- I DON'T RECALL THE EXACT PERIOD OF
10 TIME, BUT IT WOULD HAVE BEEN AFTER THE TRIAL PROCEEDINGS
11 COMMENCED.

12 Q ARE YOU TELLING ME THAT -- WELL, WHAT DO YOU
13 MEAN BY THE COMMENCEMENT OF THE TRIAL PROCEEDINGS?

14 A THE IMPANELING OF THE JURY. IT WOULD BE AT A
15 TIME AFTER THE PRELIMINARY HEARING AND THE JURY WAS BEING
16 IMPANELED.

17 Q YOU MEAN WHILE YOU WERE PICKING THE JURY?

18 A I AM NOT SURE, SIR. I DON'T REALLY RECALL
19 THE OCCASION. THAT'S, THAT'S THE BEST ANSWER I CAN GIVE
20 YOU.

21 Q ARE YOU TELLING ME THAT FROM THE TIME THAT
22 YOU HAD THIS SUPPOSED SECOND CONVERSATION AT THE HALL OF
23 JUSTICE YOU NEVER DISCUSSED WITH YOUR CLIENT, MR. HUNT,
24 WHAT SUPPOSEDLY HAPPENED THAT LED TO THE CHARGES IN THIS
25 CASE THAT HE SUPPOSEDLY OBSERVED MR. PITTMAN KILL MR.
26 LEVIN?

27 A WE DISCUSSED ON A CONSTANT BASIS THE FACTS
28 SURROUNDING THIS CASE, BUT IN TERMS OF THE ULTIMATE

1 EXPLANATION AS TO WHAT OCCURRED ON JUNE 6, 1984, IT WAS
2 NOT DISCUSSED. WHAT WAS DISCUSSED WERE ALL OF THE
3 WITNESSES AND THE OTHER EVIDENCE, SUCH AS WAS GOING TO BE
4 PROVED BY THE PEOPLE IN SUPPORT OF THE PROSECUTION'S CASE
5 AND WHAT WE WERE GOING TO DO TO REBUT THAT.

6 Q WAS THERE SOME DISCUSSION AT THIS SUPPOSED
7 SECOND MEETING AT THE HALL OF JUSTICE WHERE MR. HUNT
8 AGREED WITH YOU THAT HE WAS JUST POSTURING AT THE FIRST
9 MEETING? WAS THERE SOME DISCUSSION THAT MR. HUNT MAY FIRE
10 YOU?

11 A I HAD A HEATED MOMENT WITH MR. HUNT. HE DID
12 NOT SAY THAT. I HAD IN MY MIND WHEN I LEFT THAT DAY -- I
13 HAD MADE A RATHER CAUSTIC COMMENT TO MR. HUNT AT THE
14 CONCLUSION OF THAT CONFERENCE, WHICH I REGRETTED MAKING TO
15 HIM. WHEN I DROVE BACK TO MY HOME, I AM NOT SURE WHETHER
16 I WENT TO THE HOME OR THE OFFICE, AS I LEFT, I THOUGHT TO
17 MYSELF, "THAT WAS INAPPROPRIATE TO SAY TO HIM, AND THAT
18 COULD GET YOU FIRED."

19 Q NOW, PRIOR TO THE TIME THAT YOU MADE YOUR
20 OPENING STATEMENT IT WAS IN YOUR MIND THAT YOU WERE GOING
21 TO BE THE ONE THAT WOULD EXAMINE MR. HUNT IF HE TESTIFIED;
22 CORRECT?

23 A YES.

24 Q THAT WAS ALWAYS THE CASE?

25 A ALWAYS. WELL, THERE WAS A POINT IN TIME WHEN
26 I HAD SOME BELIEF THAT PERHAPS BOTH MR. CHIER AND
27 MYSELF MIGHT HAVE THE OPPORTUNITY TO EXAMINE MR. HUNT, BUT
28 MY PRIMARY BELIEF IS THAT I WOULD CONDUCT THAT

1 EXAMINATION.

2 MR. KLEIN: EXCUSE ME, ONE MOMENT.

3 MR. CRAIN: YOUR HONOR, CAN WE HAVE JUST A SECOND?

4

5 (PAUSE.)

6

7 (A CONFERENCE WAS HELD BETWEEN COUNSEL

8 AND THE PETITIONER, NOT REPORTED.)

9

10 MR. KLEIN: JUDGE, IT IS -- EXCUSE ME, IT IS
11 GETTING LATE. I KNOW THAT I AM NOT GOING TO FINISH IN 10
12 OR 15 MINUTES.

13 THE COURT: HOW MUCH MORE DO YOU HAVE?

14 MR. KLEIN: THIS SUBJECT ALONE IS GOING TO
15 REQUIRE --

16 THE COURT: HAVEN'T WE DONE THIS SUBJECT PRETTY
17 THOROUGHLY ALREADY?

18 MR. KLEIN: NO. BECAUSE I HAVEN'T EVEN TOUCHED THE
19 TIP OF THE ICEBERG AND THERE ARE THE OTHER ISSUES THAT --

20 THE COURT: THIS IS REDIRECT.

21 MR. KLEIN: WHAT I MEANT TO SAY IS THE OTHER ISSUES
22 THAT MR. MC MULLEN BROUGHT UP THAT I AM GOING TO NEED TO
23 QUESTION HIM ABOUT. I MEAN, I AM STARTING TO GET TO THE
24 POINT WHERE I CAN'T THINK CLEARLY.

25 THE COURT: WHEN ARE YOU AVAILABLE AGAIN, TOMORROW
26 AFTERNOON?

27 THE WITNESS: WHAT I PREFER TO DO IS COME HERE IN
28 THE MORNING, YOUR HONOR, AND PUT MY OTHER MATTER TO THE

1 AFTERNOON.

2 THE COURT: TOMORROW MORNING, YOU MEAN?

3 THE WITNESS: YES, I WILL COME HERE. COULD YOUR
4 HONOR --

5 THE COURT: CALL JUDGE O'BRIEN?

6 THE WITNESS: WHAT I WILL DO IS I WILL HAVE
7 COUNSEL, THE FULBRIGHT'S PEOPLE TO MAKE AN APPEARANCE ON
8 THAT, HOLD IT FOR ME. I WOULD JUST LIKE TO RELY ON THE
9 REPRESENTATION THAT I CAN MAKE THAT APPEARANCE IN THE
10 AFTERNOON.

11 THE COURT: OH, YES. THAT'S RIGHT

12 MR. KLEIN: THAT SEEMS RIGHT.

13 THE WITNESS: TIP OF THE ICEBERG.

14 THE COURT: THE ONLY PROBLEM WE HAVE GOT, WE TOLD
15 MR. DOBRIN THAT WE WOULD --

16 MR. KLEIN: I THINK I COULD --

17 THE COURT: YOU WANT TO GO OVER AND APPEAR ON THAT
18 AND COME OVER HERE?

19 THE WITNESS: LET ME DO THE BEST I CAN. LET ME --

20 THE COURT: IF YOU WANT, I CAN EXCUSE YOU TO --

21 THE WITNESS: I WOULD PREFER TO GET OUT OF HERE AS
22 EARLY AS I CAN BEING A SOLE PRACTITIONER THIS IS ALREADY A
23 BIT OF AN ISSUE. I WANT TO BE AT COUNSEL'S DISPOSAL.

24 MR. KLEIN: EXCUSE ME, I APOLOGIZE TO MR. BARENS,
25 BUT I REALLY THINK AT LEAST ANOTHER HOUR.

26 THE WITNESS: WHY DON'T I ASSUME, I HOPE
27 ACCURATELY, THAT MR. DOBRIN WILL CONCLUDE AT 9:30, AND I
28 WILL PROCEED AT 9:30 AND HOPEFULLY BE OUT OF HERE AT

1 11:00.

2 MR. KLEIN: THAT'S FINE.

3 THE COURT: OR SOONER.

4 MR. KLEIN: LET'S TALK TO MR. BRODEY ABOUT WHAT'S
5 CONVENIENT TO HIS SCHEDULE.

6 THE COURT: DO WE REALLY CARE ABOUT MR. BRODEY?

7 MR. CRAIN: NOT PARTICULARLY.

8 MR. KLEIN: HE AND I TALKED ABOUT HIM COMING IN AT
9 9:30.

10 THE COURT: HE IS GOING TO BE HERE AT 9:30 IT LOOKS
11 LIKE, SO I GUESS HE COULD TESTIFY.

12 WHY DON'T WE DO MR. DOBRIN AT 9 O'CLOCK, GET
13 HIM OUT AT 9:30 GO BACK TO MR. BARENS, FINISH WITH HIM,
14 FINISH UP TO MR. BRODEY PRIOR TO LUNCH. THEN WHOEVER YOU
15 GOT ON AT 1:30.

16 MR. BRODEY: I DO HAVE A MATTER AT 1 O'CLOCK, A
17 CIVIL MATTER. THAT'S BEEN SETTLED FOR MONTHS. I WOULD
18 LIKE TO BE ALLOWED TO --

19 THE COURT: WE WILL HOPEFULLY HAVE YOU DONE BY
20 NOON.

21 HIS TESTIMONY IS GOING TO BE FAIRLY BRIEF;
22 CORRECT?

23 MR. KLEIN: WELL, YES, EXCEPT IN CERTAIN THINGS
24 THAT HAVE BEEN OPENED UP BY THE EXAMINATION OF THIS
25 WITNESS.

26 THE COURT: I AM NOT SURE WE WANT TO OPEN UP MUCH
27 MORE IN THIS AREA.

28 I WILL EXCUSE THE WITNESS TO 9:30 TOMORROW

1 MORNING. THE WITNESS BE WILL ORDERED TO RETURN AT 9:30
2 TOMORROW.

3 WE WILL DEAL WITH MR. DOBRIN AT 9 O'CLOCK.

4 MR. MC MULLEN, ARE YOU RISING FOR SOME
5 PARTICULAR REASON.

6 MR. MC MULLEN: WE HAVE ONE CONCERN, AND THAT IS WE
7 ARE FLYING IN A COUPLE OF WITNESSES FROM OUT-OF-STATE, AND
8 WE JUST WANTED TO KNOW IF -- AND THEY ARE BLANCHE STURKEY,
9 MR. O'DONNEL. WE JUST WANTED TO KNOW IF COUNSEL WAS GOING
10 TO BE OBJECTING TO THOSE WITNESSES. AND IF SO, MAYBE WE
11 COULD RESOLVE -- THE COURT COULD RESOLVE WHETHER OR NOT
12 YOU WILL HEAR EVIDENCE FROM THOSE WITNESSES BEFORE WE
13 INCONVENIENCE THEM AND GO THROUGH THE TROUBLE OF FLYING
14 THEM OUT.

15 MR. CRAIN: PERHAPS WE COULD HAVE SOME --

16 THE COURT: ALL RIGHT.

17 WHY DON'T YOU GUYS TALK AND WE CAN TALK ABOUT
18 IT AT AN APPROPRIATE TIME TOMORROW. IT IS QUARTER TO 5:00
19 AND THE STAFF IS PROBABLY -- THE COURT'S CLERK HAS RUN
20 AWAY ALREADY.

21 MAKE SURE WE HAVE ALL THE EXHIBITS.

22 ALL RIGHT.

23 IF YOU DON'T GIVE US THE EXHIBITS, WE WILL
24 ASSUME THAT YOU HAVE WITHDRAWN THEM, AND THEY WILL BE
25 DEEMED WITHDRAWN IF THE CLERK IS NOT GIVEN THEM BY
26 COUNSEL.

27 PETITIONER AND COUNSEL ARE TO APPEAR AT
28 9 O'CLOCK TOMORROW MORNING.

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(AT 4:45 P.M. AN ADJOURNMENT WAS
TAKEN UNTIL TUESDAY,
MAY 7, 1995, AT 9:00 A.M.)