

FILE COPY

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

DEPARTMENT NO. 101

COURT OF APPEAL - SECOND DIST.
HON. STEPHEN CZULEGER, JUDGE

FILED

MAY 01 1997

JOSEPH HUNT

Z. HERRERA

Clerk NO. A 090435

Deputy Clerk

IN RE

JOSEPH HUNT

ON HABEAS CORPUS.

REPORTERS' DAILY TRANSCRIPT

VOLUME 8

TUESDAY, MAY 7, 1996

PAGE 1181 THROUGH 1301, INCL.

APPEARANCES:

FOR THE PETITIONER
JOSEPH HUNT:

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

FOR THE RESPONDENT
THE PEOPLE OF THE
STATE OF CALIFORNIA:

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

COPY

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



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2 FOR THE COUNTY OF LOS ANGELES

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|---|---------------|--------------|-----------------|----------------|------------------------|
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| <u>WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR</u> |
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RESPONDENT'S VOIR
WITNESSES DIRECT CROSS REDIRECT RECROSS DIRE VOL

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| RESPONDENT'S EXHIBITS | FOR | | IN | | WITHDRAWN OR REJECTED | |
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| | IDENTIFICATION VOL. | PG. | EVIDENCE VOL. | PG. | VOL. | PG. |
| (NONE) | | | | | | |

2
1 LOS ANGELES, CALIFORNIA, TUESDAY, MAY 7, 1996

2 9:07 A. M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

6 THE PETITIONER, JOSEPH HUNT, WITH HIS COUNSEL,
7 MICHAEL CRAIN, BAR PANEL APPOINTMENT; AND ROWAN
8 KLEIN, 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 (PAUL RUNYON, CSR #8797, OFFICIAL REPORTER.)

16
17 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
18 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
19 PRESENT.

20 MR. KLEIN: CAN I BE EXCUSED TO PREPARE THE
21 WITNESS? I NEED TWO MINUTES.

22 MR. CRAIN: I HAVE A COUPLE OF MATTERS, TOO, I CAN
23 TAKE UP.

24 THE COURT: WE HAVE GOT SOMEBODY BACKED UP AT 9:30
25 AND SOMEONE AFTER THAT. PREPARE YOUR WITNESSES OUTSIDE OF
26 THE COURTROOM. LET'S GO.

27 MR. MC MULLEN: WE WOULD BE ASKING FOR AN OFFER OF
28 PROOF WITH RESPECT TO THEIR WITNESS.

2
1 THE COURT: LET'S PUT THE WITNESS ON THE STAND --

2 MR. CRAIN: CAN WE TAKE UP A DISCOVERY MATTER THAT
3 IS VERY, VERY CRITICAL?

4 THE COURT: NO. CALL THE WITNESS.

5 MR. CRAIN: IT INVOLVES MR. BARENS AND A STATEMENT
6 WE WERE GIVEN TWO AND A HALF WEEKS LATE. IT INVOLVES A
7 VERY CRITICAL MATTER.

8 THE COURT: LET'S GET THE WITNESS ON THE STAND.

9 MR. CRAIN: COULD THE COURT HEAR A PREVIEW ABOUT IT
10 WHILE THE WITNESS IS COMING IN?

11 WE WERE TOLD ABOUT IT YESTERDAY, THAT ON THE
12 19TH THE DISTRICT ATTORNEY'S OFFICE INTERVIEWED
13 MR. BARENS.

14 FOR THE FIRST TIME APPARENTLY MR. BARENS MADE
15 THIS STATEMENT YESTERDAY THAT MR. HUNT ORIGINALLY AT THE
16 HALL OF JUSTICE MADE THIS STATEMENT TO HIM, WHICH IS THE
17 FIRST TIME WE BECAME AWARE OF IT. THIS COURT HAS ORDERED
18 THE PEOPLE TO FORTHWITH TURN OVER DISCOVERY. WE GOT THIS
19 AFTER --

20 THE COURT: WHY DIDN'T YOU TURN THE STATEMENT OVER
21 EARLIER --

22 MR. CRAIN: WE WANT SANCTIONS, AND I WOULD LIKE TO
23 ADDRESS THAT --

24 THE COURT: EXCUSE ME.

25 WHY DIDN'T YOU TURN THE STATEMENT OVER
26 EARLIER?

27 MR. MC. MULLEN: YOUR HONOR, THERE WAS A PREHEARING
28 INTERVIEW WITH MR. BARENS. IT WAS VERY BRIEF. HE

2
1 BASICALLY MENTIONED WHAT WE FIGURED ALL ALONG, READING
2 BETWEEN THE LINES, THAT MR. HUNT HAD BASICALLY TOLD HIM
3 ABOUT HIS INVOLVEMENT IN THE MURDER OF RON LEVIN.

4 MR. SIMPSON, OUR INVESTIGATOR, PREPARED
5 NOTES, TOOK NOTES DURING THAT INTERVIEW AND NEVER PREPARED
6 A REPORT. WE WERE IN -- IN SUCH A SITUATION THERE
7 PREPARING FOR THE HEARING THAT WE WERE NOT REALLY CONCERNED
8 ABOUT --

9 THE COURT: I'LL ENTERTAIN A MOTION FOR SANCTIONS
10 AT A LATER TIME.

11 CALL THE WITNESS.

12 MR. CRAIN: COULD WE PERHAPS --

13 THE COURT: IT'S GOING TO BE MONEY SANCTIONS.

14 MR. CRAIN: WE ARE GOING TO BE ASKING FOR ANOTHER
15 SANCTION AS WELL. THERE WOULD BE A MOTION TO STRIKE. I
16 WOULD LIKE TO ADDRESS THAT. I THINK WE CAN RESOLVE THAT
17 AFTER THE WITNESS IS --

18 THE COURT: PUT THE WITNESS ON THE STAND. HE WAS
19 LATE GETTING HERE, AND IT'S NOW NINE AFTER 9:00. LET'S
20 GET GOING.

21 MR. CRAIN: WHILE HE IS APPROACHING THE STAND,
22 COULD I ASK THE COURT IF THE COURT HAD AN OPPORTUNITY TO
23 READ THE WRITTEN OFFER OF PROOF THAT THE COURT ASKED ME TO
24 FILE?

25 THE COURT: I DID

26 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

27 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
28 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL

2
1 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
2 SO HELP YOU GOD?

3 THE WITNESS: YES.

4 THE CLERK: PLEASE BE SEATED.

5 STATE YOUR NAME FOR THE RECORD AND SPELL YOUR
6 FIRST AND LAST NAME, PLEASE.

7
8 DANIEL AARON DOBRIN, +
9 CALLED AS A WITNESS BY THE PETITIONER, WAS SWORN AND
10 TESTIFIED AS FOLLOWS:

11
12 THE WITNESS: DANIEL AARON, D-O-B-R-I-N.

13 THE COURT: YOU MAY INQUIRE.

14 MR. CRAIN: JUST A MINUTE, YOUR HONOR.

15
16 (PAUSE.)

17
18 DIRECT EXAMINATION +

19
20 BY MR. KLEIN:

21 Q MR. DOBRIN, WHAT IS YOUR OCCUPATION?

22 A I'M AN ATTORNEY.

23 Q WHAT WAS YOUR OCCUPATION BACK IN 1987?

24 A I WAS AN ATTORNEY. I WAS MAINLY HANDLING
25 CRIMINAL APPEALS AT THAT TIME.

26 Q AND AT SOME POINT DID YOU HAVE SOME
27 CONNECTION WITH THE JOE HUNT CASE?

28 A I WAS JOE HUNT'S COURT APPOINTED LAWYER ON

2
1 APPEAL FROM JANUARY OF 1988 UNTIL 1994.

2 Q NOW --

3 THE COURT: YOU SAY "ON APPEAL." DO YOU MEAN YOU
4 ALSO REPRESENTED HIM IN THE HABEAS CORPUS APPLICATION?

5 THE WITNESS: YES. AT THAT TIME I ALSO REPRESENTED
6 HIM ON THE HABEAS CORPUS.

7 BY MR. KLEIN:

8 Q WHEN DID YOUR REPRESENTATION END?

9 A WHEN CERTIOARI WAS DENIED BY THE SUPREME
10 COURT ON OCTOBER 13TH, 1994, IS WHEN I DETERMINED IT TO
11 TERMINATE.

12 Q NOW, HOW IS YOUR MEMORY OF EVERYTHING YOU DID
13 IN CONNECTION WITH THIS MATTER?

14 A I TRIED TO REFRESH MYSELF TO SOME EXTENT ON
15 THE MATTERS THAT I UNDERSTOOD I WOULD BE QUESTIONED ABOUT,
16 BUT I DON'T HAVE ANY OF THE DOCUMENTS PERTAINING TO THIS
17 CASE, HAVING TURNED THEM OVER TO HIS PRESENT LAWYER. SO
18 IT WAS A BIT DIFFICULT TO DO THAT. AND WITHOUT
19 REFRESHING, MY MEMORY IS SPOTTY.

20 Q OKAY.

21 WOULD REVIEWING YOUR DECLARATION THAT YOU
22 SIGNED, WHICH IS EXHIBIT 1-C TO THE PETITION, HELP REFRESH
23 YOUR MEMORY?

24 A I REVIEWED THAT RECENTLY, BUT I MIGHT WANT TO
25 LOOK AT IT AGAIN AT SOME APPROPRIATE POINT.

26 MR. KLEIN: MAY I LEAVE IT WITH THE WITNESS --

27 THE COURT: YES.

28 MR. KLEIN: -- WHILE I EXAMINE THE WITNESS?

2

1 BY MR. KLEIN:

2 Q NOW, IN CONNECTION WITH REVIEWING THE CASE
3 DID YOU ATTEMPT TO CONTACT PREVIOUS COUNSEL?

4 A I HAD NUMEROUS CONVERSATIONS WITH THEM AND
5 NUMEROUS LETTERS.

6 Q AND WHO WERE THE PREVIOUS COUNSEL?

7 A THE -- THERE WERE SEVERAL, BUT THE MAIN ONES
8 THAT I CONTACTED WERE RICHARD CHIER AND ARTHUR BARENS.

9 THE COURT: WHY DON'T YOU PULL THAT MICROPHONE UP
10 UNDERNEATH YOUR CHIN.

11 THE WITNESS: OKAY.

12 BY MR. KLEIN:

13 Q DID YOU HAVE SOME CONVERSATIONS WITH
14 MR. BARENS ABOUT HOW HE BECAME APPOINTED ON THE CASE?

15 A YES, I DID.

16 Q AND WAS A DECLARATION PREPARED AS A RESULT OF
17 THOSE CONVERSATIONS?

18 A YES, IT WAS.

19 Q WHO PREPARED THAT DECLARATION, IF YOU
20 REMEMBER?

21 A TO MY BEST RECOLLECTION, I DID BASED ON MY
22 CONVERSATIONS WITH HIM.

23 Q AND WHAT HAPPENED THEN?

24 A MAY I SEE -- IS IT IN THIS DOCUMENT?

25 Q THE DECLARATION ITSELF?

26 A YES, YES.

27 Q NO. I'LL SHOW YOU THE DECLARATION.

28 A I WOULD LIKE TO SEE WHETHER IT LOOKS LIKE

3
1 SOMETHING THAT CAME FROM MY COMPUTER.

2 MR. KLEIN: THE DECLARATION IS EXHIBIT 11-A TO THE
3 PETITION. I DON'T KNOW THAT WE COPIED IT YET, YOUR HONOR.
4 WE DID MARK IT.

5 THE COURT: IS THAT YOUR 201 AND 202?

6 MR. KLEIN: COULD BE. MAY BE WE DID MARK IT.

7 NO, THOSE ARE THE FEE DECLARATIONS, YOUR
8 HONOR. THESE ARE TWO DECLARATIONS THAT MR. BARENS
9 EXECUTED IN 1988. SO IT WOULD PROBABLY BE AT THE END OF
10 YOUR --

11 THE COURT: WHICH EXHIBITS ARE THEY?

12 MR. KLEIN: 11-A.

13 THE COURT: THEY'RE PETITIONER'S EXHIBITS 269 AND
14 270.

15 MR. KLEIN: COULD I HAVE A MINUTE. THANK YOU.

16

17 (PAUSE.)

18

19 BY MR. KLEIN:

20 Q WERE TWO DECLARATIONS EXECUTED BY MR. BARENS
21 DURING THAT TIME FRAME?

22 LET ME SHOW YOU EXHIBITS 269 AND 270 AND SEE
23 IF THAT REFRESHES YOUR MEMORY AS TO WHOM WAS THE AUTHOR.

24

25 (WITNESS REVIEWING EXHIBITS.)

26

27 A YES, I BELIEVE IT DOES.

28 Q AND WHO ORIGINALLY DRAFTED THE DOCUMENTS?

3
1 A EXHIBIT 12-B, WHICH IS DATED JULY 21ST OF
2 1988, WAS A DOCUMENT THAT I DRAFTED, TO THE BEST OF MY
3 RECOLLECTION, IN SUPPORT OF THE AUGMENTATION APPLICATION.

4 EXHIBIT 11-A, WHICH IS DATED NOVEMBER 30TH OF
5 '88 WAS MOST LIKELY DRAFTED BY BARENS. POSSIBLY IT WAS A
6 REVISION OF A DOCUMENT WHICH I SENT HIM. I THINK THAT'S
7 PROBABLY WHAT HAPPENED.

8 THE COURT: PLEASE DON'T USE THE PETITION EXHIBITS
9 BECAUSE WE HAVE MARKED THEM SEPARATELY.

10 MR. KLEIN: I THINK THEY'RE MARKED ON THE BACK OF
11 THE DOCUMENT.

12 THE WITNESS: EXHIBIT 269 APPEARS TO HAVE BEEN
13 PREPARED BY ARTHUR BARENS, THOUGH FROM A DRAFT PREPARED BY
14 ME, POSSIBLY.

15 AND 270 APPEARS TO HAVE BEEN DRAFTED BY ME.

16 MR. MC MULLEN: WE WOULD OBJECT ON THE GROUNDS OF
17 RELEVANCY AS TO ANY --

18 THE COURT: I'LL SEE WHERE THE NEXT QUESTION IS
19 GOING.

20 MR. MC MULLEN: THANK YOU.

21 MR. KLEIN: COULD I JUST HAVE A MINUTE, YOUR HONOR?

22 THE COURT: YES.

23
24 (A CONFERENCE WAS HELD BETWEEN COUNSEL
25 AND THE PETITIONER, NOT REPORTED.)

26
27 BY MR. KLEIN:

28 Q NOW, DURING THE COURSE OF PREPARING THE CASE

3

1 WITH MR. BARENS YOU SAID YOU HAD TELEPHONE CONVERSATIONS
2 WITH HIM; RIGHT?

3 A I HAD QUITE A NUMBER OF THEM, YES.

4 Q DID YOU TAKE NOTES OF THESE CONVERSATIONS?

5 A FOR THE MOST PART, YES.

6 Q AND THEN DID YOU LATER REDUCE THOSE NOTES TO
7 TYPED MEMOS TO THE FILE?

8 A I DID IN THE EARLY STAGES OF THE CASE. IN
9 THE LATER STAGES, I DIDN'T.

10 Q AND IN THE EARLY STAGES OF THE CASE, DID YOU
11 ASK MR. BARENS WHAT MR. HUNT TOLD YOU WITH RESPECT TO THE
12 SEVEN-PAGE LIST?

13 A I'M NOT SURE THAT I EXPLICITLY ASKED HIM
14 THAT. I DID ASK HIM ABOUT WHY HUNT DIDN'T TESTIFY, AND I
15 BELIEVE AT THAT POINT BARENS TALKED ABOUT THE SEVEN PAGES.

16 Q AND HE PROVIDED YOU WITH SEVERAL DIFFERENT
17 EXPLANATIONS OF WHAT HUNT HAD TOLD HIM ABOUT THE SEVEN
18 PAGE LIST?

19 A TO THE BEST OF MY RECOLLECTION, HE SAID
20 GENERALLY THAT HE HAD GOTTEN MORE THAN ONE EXPLANATION.

21 Q AND DID YOU REDUCE TO NOTES AND THEN
22 TYPEWRITTEN MEMORANDUM -- THAT CONVERSATION WITH
23 MR. BARENS, WHICH I THINK OCCURRED ON NOVEMBER 22ND, 1988?

24 A JUDGING BY WHAT YOU ARE HOLDING IN YOUR HAND
25 I WOULD EXPECT THAT I PROBABLY DID.

26 MR. KLEIN: COULD I MARK, YOUR HONOR, AS NEXT IN
27 ORDER, IT'S THREE PAGES -- FOUR PAGES, TWO PAGES OF NOTES,
28 TWO PAGES OF HANDWRITING.

3
1 THE COURT: 274

2
3 (MARKED FOR ID = PETITIONER'S 274,
4 DOCUMENT.)

5
6 BY MR. KLEIN:

7 Q IS THIS A DOCUMENT THAT YOU CREATED,
8 MR. DOBRIN?

9 A YES, IT IS.

10 Q DID YOU CREATE IT AT OR NEAR THE TIME OF THE
11 CONVERSATION?

12 A YES, I DID.

13 Q IS YOUR BEST MEMORY NOW BASED ON THAT, THAT
14 THE CONVERSATION HAPPENED ON NOVEMBER 22ND, 1988?

15 A I HAVE NO INDEPENDENT RECOLLECTION, BUT I
16 BELIEVE IT HAPPENED ON OR ABOUT THAT DATE FROM LOOKING AT
17 THE MEMO.

18 Q NOW, PRIOR TO ASKING MR. BARENS WHY MR. HUNT
19 DIDN'T TESTIFY, HAD YOU OBTAINED ANY WRITTEN WAIVER OF THE
20 ATTORNEY-CLIENT PRIVILEGE THAT YOU HAD FORWARDED TO
21 MR. BARENS?

22 A NO, I HAD NOT.

23 Q IN RESPONSE TO YOUR QUESTION ABOUT WHY
24 MR. HUNT DIDN'T TESTIFY DID MR. BARENS PROVIDE YOU WITH
25 SOME INFORMATION ABOUT THE SEVEN-PAGE LIST?

26 A I BELIEVE HE DID, YES.

27 Q AND WOULD READING YOUR TYPED REPORT REFRESH
28 YOUR MEMORY?

4
1 A YES, IT WOULD.

2 Q AS TO WHAT MR. HUNT -- I MEAN, WHAT
3 MR. BARENS TOLD YOU.

4 A YES, I BELIEVE IT WOULD.

5 Q WHY DON'T YOU READ YOUR REPORT AND THEN TELL
6 THE COURT WHAT MR. BARENS TOLD YOU.

7 MR. MC MULLEN: YOUR HONOR, MAY I APPROACH? I'M
8 NOT FAMILIAR WITH THESE NOTES.

9 THE COURT: YES.

10

11 (WITNESS REVIEWING EXHIBITS.)

12

13 THE WITNESS: IT DOES REFRESH MY RECOLLECTION. CAN
14 I ADD SOMETHING ABOUT THE PREPARATION OF IT?

15 BY MR. KLEIN:

16 Q PLEASE.

17 A IT APPEARS TO HAVE BEEN PREPARED FROM A TAPE
18 THAT I DICTATED. I WOULDN'T THINK I WOULD HAVE SPELLED
19 LEVIN L-O-V-V-O-N. I USED VARIOUS INDEPENDENT TYPISTS. I
20 BELIEVE THIS WAS TYPED FROM A TAPE THAT I DICTATED.

21 Q NOW, YOU ASKED MR. BARENS WHAT WERE THE --

22 THE COURT: MR. KLEIN, WHY DON'T YOU GO BACK TO THE
23 LECTERN.

24 MR. KLEIN: EXCUSE ME, YOUR HONOR.

25 BY MR. KLEIN:

26 Q WOULD YOU TAKE A LOOK AT YOUR HANDWRITTEN
27 NOTES THAT ARE ATTACHED TO THAT AND SEE IF THEY APPEAR TO
28 BE ACCURATE AS TO WHAT MR. BARENS TOLD YOU.

4

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

2 THE COURT: I THINK YOU ALREADY LOOKED AT THAT.

3 THE WITNESS: WHEN I TALK TO PEOPLE I KEEP SORT OF
4 A RUNNING LOG WITH MY PEN. I COULDN'T SAY THAT ANYTHING
5 THERE WAS PARTICULARLY ACCURATE. IT'S JUST WHAT I WROTE
6 DOWN WHILE I WAS TALKING AND USED TO REFRESH MY
7 RECOLLECTION. I THINK IT MAY PROVIDE SOME GUIDANCE, BUT I
8 WOULD TRUST THE TYPEWRITTEN VERSION OVER WHAT I WROTE WHEN
9 I WASN'T THINKING ABOUT WHAT I WAS WRITING.

10 Q HOW SOON DID YOU PREPARE THE DICTATED NOTES
11 AFTER YOUR HANDWRITTEN NOTES?

12 A I TRY DO IT AS SOON AS POSSIBLE. IT WOULD
13 USUALLY BE WITHIN A WEEK.

14 Q YOU DID THAT AFTER YOUR MEMORY OF WHAT
15 MR. BARENS TOLD YOU WAS REFRESHED?

16 A I USED THESE NOTES TO PREPARE THE MEMO, YES.

17 Q WHEN YOU ASKED MR. BARENS WHY MR. HUNT DIDN'T
18 TESTIFY WHAT DID HE TELL YOU?

19 A MAY I LOOK AT THIS?

20 Q SURE.

21

22 (WITNESS REVIEWING EXHIBIT.)

23

24 A HE SAID THEY DID A MOCK CROSS-EXAMINATION. I
25 BELIEVE THIS WAS THE SUNDAY BEFORE THEY HAD STARTED THE
26 DEFENSE CASE OR THE SUNDAY BEFORE THEY WERE GOING TO HAVE
27 JOE TESTIFY, AND HE WASN'T HAPPY WITH THE WAY THAT JOE DID
28 ON THAT. AND THEN BARENS PROCEEDED TO EXPOUND ON THE

4
1 SEVEN PAGES AND THE PROBLEMS THAT THIS PRESENTED TO HIM IN
2 THE CASE.

3 Q WHAT DID HE TELL YOU?

4 A HE SAID IT WAS VERY -- A VERY DIFFICULT PIECE
5 OF EVIDENCE TO OVERCOME, AND THAT JOE HAD GIVEN A NUMBER
6 OF EXPLANATIONS, NONE OF WHICH HE FOUND SATISFACTORY OR
7 THAT --

8 Q WHAT WERE THE EXPLANATIONS THAT HE SAID JOE
9 HAD GIVEN HIM?

10 A IF I COULD MODIFY THAT SLIGHTLY. I BELIEVE
11 HE SAID THAT JOE PROMISED A GREAT EXPLANATION OR WOULD
12 REFER TO POSSIBLE EXPLANATIONS.

13 Q WHAT EXPLANATIONS DID MR. HUNT GIVE?

14 A WELL, IN REFERRING TO THE MEMO, THAT THEY
15 WERE -- NOTES THAT LEVIN LEFT BEHIND TO EXPLAIN HIS
16 DISAPPEARANCE OR NOTES THAT JOE HAD PREPARED WHILE TALKING
17 TO SOME MAFIA PEOPLE ABOUT HOW THEY WERE GOING TO DO IN
18 LEVIN. I DON'T RECALL ANYTHING ELSE. IN FACT, JUST WHAT
19 I SAID NOW IS -- IS FROM REFERRING TO MY NOTES.

20 Q NOW, WHEN YOU WERE TALKING TO MR. BARENS, IT
21 WAS CLEAR TO HIM THAT YOU WERE MR. HUNT'S APPELLATE
22 ATTORNEY?

23 A DEFINITELY.

24 Q AND THAT YOU WERE SEEKING INFORMATION TO
25 ASSIST YOU IN PREPARING MR. HUNT'S APPEAL?

26 A YES.

27 Q AND DID YOU ASK HIM FOR ALL OF THE
28 EXPLANATIONS THAT MR. HUNT HAD GIVEN HIM WITH RESPECT TO

4 1 THE SEVEN-PAGE LIST?

2 A I DON'T BELIEVE THAT I DID. I -- HE WAS
3 GOING ON ABOUT IT, AND I LISTENED TO HIM. I'M NOT SURE --
4 I COULDN'T TELL YOU ONE WAY OR THE OTHER.

5 Q OKAY.

6 BUT IN TERMS OF PREPARING, YOU WOULD HAVE
7 WANTED ALL OF THE EXPLANATIONS SO YOU'D HAVE ALL THE
8 INFORMATION AVAILABLE TO EVALUATE; CORRECT?

9 A I WAS -- EVALUATING HIM AS FAR AS INEFFECTIVE
10 ASSISTANCE, YES, I WAS AT THAT TIME.

11 Q YOU WOULD HAVE WANTED TO KNOW ALL THE
12 INFORMATION THAT HE HAD WITH RESPECT TO THE SEVEN-PAGE
13 LIST?

14 A WE TALKED ABOUT IT FOR SOME TIME.

15 Q OKAY.

16 MR. BARENS DIDN'T OFFER ANY OTHER VERSIONS
17 THAT MR. HUNT OFFERED OTHER THAN THE ONES THAT ARE STATED
18 IN YOUR NOTES?

19 A CAN I LOOK AT IT FOR A SECOND?

20 Q SURE.

21 A OKAY.

22
23 (WITNESS REVIEWING EXHIBIT.)

24
25 A HE COULD HAVE OFFERED OTHERS, BUT I DON'T
26 RECALL ANY RIGHT NOW.

27 Q MR. BARENS NEVER TOLD YOU THAT HE HAD AN
28 ETHICAL PROBLEM PUTTING MR. HUNT ON THE STAND BASED UPON

5

1 ANY OF THE EXPLANATIONS THAT MR. HUNT HAD GIVEN HIM WITH
2 RESPECT TO THE SEVEN-PAGE LIST, DID HE?

3 A HE NEVER TOLD ME THAT.

4 Q AFTER YOU INTERVIEWED MR. BARENS ON THE
5 TELEPHONE, DID IT BECAME INCREASINGLY AND INCREASINGLY
6 DIFFICULT TO TALK WITH HIM OVER THE TELEPHONE ABOUT YOUR
7 PERPARATION OF THE CASE?

8 A THE POINT AT WHICH IT BECAME DIFFICULT WAS IN
9 APPROXIMATELY JANUARY OF 1991 WHEN I CALLED HIM TO
10 EXPLICITLY ASK HIM ABOUT INEFFECTIVNESS ISSUES. AFTER
11 THAT I DIDN'T GET MUCH COOPERATION FROM HIM.

12 Q OKAY.

13 ON APRIL 30TH, 1991, DID YOU SEND HIM A
14 DETAILED LETTER IN RESPONSE TO A TELEPHONE CALL FROM HIM?

15 A YES. I BELIEVE HE HAD WANTED ME TO PUT MY
16 INQUIRIES IN WRITING, AND AT CONSIDERABLY LENGTH AND
17 CONSUMING CONSIDERABLE TIME I DID THAT.

18 Q LET ME SHOW YOU THIS, EXHIBIT 203, AND ASK
19 YOU IS THIS THE CORRESPONDENCE THAT YOU SENT TO
20 MR. BARENS?

21 A YES, IT IS WITH SOME MINOR DELETIONS.

22 Q WHAT WAS THE PURPOSE OF SENDING HIM THIS
23 CORRESPONDENCE?

24 A WHENEVER YOU CHARGE SOMEBODY WITH -- SOMEBODY
25 WITH INEFFECTIVE ASSISTANCE IT'S GOOD PRACTICE TO GIVE
26 THEM AN OPPORTUNITY TO RESPOND BEFORE YOU PRESENT YOUR
27 POSITION TO THE COURT, WHICH I WAS TRYING TO DO THAT.

28 Q IS THERE A COVER LETTER ATTACHED TO THAT,

5

1 THAT, WHICH IS EXHIBIT 204?

2 MR. MC MULLEN: AT THIS POINT WE'D OBJECT TO THAT
3 AS IRRELEVANT.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES, THERE WAS.

6 BY MR. KLEIN:

7 Q DID YOU RECEIVE A RESPONSE TO THAT
8 CORRESPONDENCE?

9 A NOT FROM MR. BARENS.

10 Q SUBSEQUENTLY DID YOU LEARN THAT -- LET ME
11 SHOW YOU ONE MORE DOCUMENT, EXHIBIT 205.

12 THE COURT: DID YOU GET A RESPONSE FROM SOMEONE
13 OTHER THAN BARENS?

14 THE WITNESS: YES, I DID.

15 THE COURT: WHO?

16 THE WITNESS: JEFF BRODEY.

17 MR. KLEIN: I'LL GET TO THAT IN A MINUTE, YOUR
18 HONOR.

19 BY MR. KLEIN:

20 Q SHOWING YOU EXHIBIT 205, IS THIS PROOF THAT
21 204 AND 203 WERE RECEIVED BY MR. BARENS?

22 THE COURT: WELL --

23 BY MR. KLEIN:

24 Q THE MANNER IN WHICH YOU SENT IT TO
25 MR. BARENS.

26 A I CONSIDER IT TO BE PROOF, YES.

27 Q WELL, WHAT IS IT?

28 A TO ME IT'S THE EQUIVALENT OF A CERTIFIED MAIL

5
1 RECEIPT. IT'S A SIGNATURE FROM UPS SHOWING THE DOCUMENT
2 THAT I SENT WAS IN FACT RECEIVED BY THE ADDRESSEE.

3 MR. MC MULLEN: OBJECTION. INAPPROPRIATE OPINION
4 OF THE WITNESS.

5 THE COURT: SUSTAINED.

6 MR. MC MULLEN: MOVE TO STRIKE.

7 THE COURT: LAST ANSWER WILL GO OUT.

8 BY MR. KLEIN:

9 Q WHAT IS THE DOCUMENT IN FRONT OF YOU?

10 A DOCUMENT IS A UPS RECEIPT.

11 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

12 THE COURT: OVERRULED.

13 IS THIS A DOCUMENT THAT YOU USE IN THE COURSE
14 OF YOUR BUSINESS IN SENDING OUT MATERIAL?

15 MR. KLEIN: IT'S MORE THAN THAT --

16 THE WITNESS: I'M SORRY, YOUR HONOR, THERE ARE
17 SEVERAL DOCUMENTS.

18 THE COURT: UPS RECEIPT YOU JUST TESTIFIED ABOUT
19 THAT, DOES YOUR OFFICE USE THAT --

20 THE WITNESS: NOT -- THIS IS THE RECEIPT SHOWING
21 THAT I SENT IT, AND THEN -- I HOPE I'M ANSWERING YOUR
22 QUESTION, YOUR HONOR.

23 THEN AFTER THAT I ASKED THEM TO SEND ME PROOF
24 THAT IT WAS IN FACT RECEIVED. I HAVEN'T DONE THAT VERY
25 OFTEN AS FAR AS THE PROOF OF RECEIPT. IT'S NOT SOMETHING
26 I DO VERY OFTEN, BUT IT IS WHAT UPS GAVE ME.

27 THE COURT: IS THIS WHAT YOU USED TO SEND THIS PACK
28 OF MATERIAL TO MR. BARENS THROUGH UPS?

5
1 THE WITNESS: YES.

2 THE COURT: GO AHEAD.

3 BY MR. KLEIN:

4 Q OKAY.

5 SOMETIME AFTER BEING CONTACTED BY MR. --

6 WELL, LET ME ASK YOU THIS, DID YOU SEND ANOTHER FOLLOW-UP
7 LETTER TO MR. BARENS DATED MAY 20, 1991, EXHIBIT 206?

8 A YES, I DID.

9 Q DID YOU GET A RESPONSE TO THAT?

10 A I DID FROM JEFF BRODEY ABOUT A DAY OR TWO
11 LATER.

12 Q DID YOU THEN SEND A LETTER TO JEFF BRODEY
13 DATED MAY 31ST, WHICH IS EXHIBIT 207?

14 MR. MC MULLEN: OBJECTION. IRRELEVANT.

15 THE COURT: OVERRULED.

16 THE WITNESS: YES, I DID.

17 BY MR. KLEIN:

18 Q DID YOU GET A RESPONSE TO THAT LETTER?

19 A I DON'T RECALL RIGHT NOW.

20 Q TAKE A LOOK AT THE DECLARATION AND SEE IF
21 THAT REFRESHES YOUR MEMORY AS TO WHETHER YOU RECEIVED IT.

22

23 (WITNESS REVIEWING EXHIBIT.)

24

25 A IT REFRESHES MY MEMORY THAT SHORTLY AFTER
26 THAT OR -- EXCUSE ME.

27

28 (PAUSE.)

5
1 A I -- THIS SHOWS THAT I CALLED BRODEY ON MAY
2 31ST, AND I ALSO -- THERE WAS CONTACT ON JUNE 18TH. THE
3 ONLY TIME THAT I RECALL BRODEY CALLING ME WAS ON MAY 22ND
4 OF '91.

5 Q BUT DID YOU EVER GET A RESPONSE FROM ANYBODY
6 TO THE QUESTIONS THAT YOU ASKED IN YOUR LENGTHY LETTER,
7 WHICH IS -- WE'LL FIND IT HERE -- EXHIBIT 203?

8 A NO, I DID NOT. NOT FROM BARENS OR ANYBODY
9 WHO -- WHO TO MY KNOWLEDGE WAS REPRESENTING BARENS.

10 Q NOW, DID YOU CONDUCT A SEARCH OF THE DISTRICT
11 ATTORNEY'S FILES IN THE HUNT CASE IN ORDER TO PREPARE FOR
12 THE APPEAL OR THE WRIT?

13 MR. MC MULLEN: OBJECTION. IRRELEVANT.

14 THE COURT: WHERE ARE YOU GOING?

15 MR. KLEIN: ON PROGRESSIVE, YOUR HONOR.

16 THE COURT: WHERE ARE YOU GOING, THOUGH?

17 MR. KLEIN: HE'S THE ONE WHO FOUND THE DOCUMENTS IN
18 THE D. A.'S FILE THAT MR. BARENS CLAIMS HE NEVER SAW.

19 MR. MC MULLEN: AGAIN, YOUR HONOR, RELEVANCY. THIS
20 IS PART OF ISSUE 5 IN THE ORDER TO SHOW CAUSE WHICH HAS
21 BEEN EXCLUDED BY YOUR HONOR ON MARCH 29TH.

22 THE COURT: IT'S ALSO PART OF 2.

23 MR. KLEIN: RIGHT.

24 MR. MC MULLEN: WITH RESPECT TO 2, IT'S WHETHER OR
25 NOT THERE IS INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE
26 MR. BARENS DID NOT UTILIZE THAT EVIDENCE. WHAT WERE --
27 WHAT COUNSEL IS ATTEMPTING TO ELICIT FROM THE WITNESS
28 IS --

6
1 THE COURT: WHICH PARAGRAPH 2 IS IT?

2 MR. CRAIN: 2-E, YOUR HONOR.

3

4 (COURT REVIEWING FILE.)

5

6 THE COURT: I'LL ALLOW A QUICK INQUIRY INTO THIS.
7 VERY QUICK INQUIRY.

8 BY MR. KLEIN:

9 Q AS PART OF YOUR PREPARATION, WERE YOU ALLOWED
10 TO REVIEW THE DISTRICT ATTORNEY'S FILES IN THE HUNT CASE?

11 A YES. I WAS ACTUALLY ACTING ON BEHALF OF THE
12 HUNT CASE UP NORTH, BUT IT OBVIOUSLY SERVED A DUAL
13 PURPOSE.

14 Q AND HOW MANY BOXES DID YOU LOOK THROUGH?

15 A I DON'T REMEMBER EXACTLY, BUT IT WAS OVER A
16 DOZEN.

17 Q DID YOU INVENTORY THESE BOXES?

18 A I DICTATED NOTES, WHICH SUMMARIZED WHAT WAS
19 IN THE BOX. I WOULDN'T SAY THAT I ACTUALLY INVENTORIED
20 EACH DOCUMENT.

21 Q DID YOU DISCOVER A SERIES OF DOCUMENTS
22 RELATING TO AN F.B.I. INVESTIGATION INTO MR. LEVIN
23 RELATING TO PROGRESSIVE SAVINGS & LOAN?

24 A YES, I DID.

25 Q THIS IS EXHIBIT 230 OR EXHIBIT 19-B TO THE
26 PETITION.

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

28 THE COURT: YES.

6

1 BY MR. KLEIN:

2 Q IS THIS THE SET OF DOCUMENTS THAT YOU FOUND
3 IN THE DISTRICT ATTORNEY'S FILES?

4

5 (WITNESS REVIEWING EXHIBITS.)

6

7 A I BELIEVE THAT IT IS.

8 Q WAS DISTRICT ATTORNEY RICHARD STONE PRESENT
9 WHEN YOU FOUND THOSE DOCUMENTS?

10 A YES, HE WAS.

11 Q AFTER YOU FOUND THOSE DOCUMENTS, YOU SENT
12 THOSE DOCUMENTS TO MR. BARENS BY WAY OF A LETTER, WHICH IS
13 EXHIBIT 209, AND GET THIS RESPONSE FROM MR. BARENS, WHICH
14 IS DATED OCTOBER 16, 1990?

15 MR. MC MULLEN: WE WOULD RENEW OUR RELEVANCY
16 OBJECTION, YOUR HONOR.

17 THE COURT: OVERRULED.

18 WHICH EXHIBIT NUMBER IS THAT AGAIN?

19 MR. KLEIN: 209, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 THE WITNESS: I'M SURE THAT I DID GET THIS
22 RESPONSE.

23 BY MR. KLEIN:

24 Q DURING THE COURSE OF PREPARING THE WRIT IN
25 THIS CASE, DID YOU COME ACROSS A PERSON BY THE NAME OF
26 NEIL ADELMAN AND A CONNECTION TO MICROGENESIS AND A 200
27 MILLION DOLLAR DEAL WITH WILLIAM KILPATRICK?

28 A YES, I DID.

6

1 MR. MC MULLEN: OBJECTION. RELEVANCY.

2 THE COURT: WHAT IS THE RELEVANCE OF THIS?

3 MR. KLEIN: HE IS THE ONE THAT FOUND IT, YOUR
4 HONOR.

5 THE COURT: THERE IS NO ALLEGATIONS THAT MR. BARENS
6 DIDN'T KNOW ABOUT IT. MR. BARENS SAID THAT HE KNEW ABOUT
7 IT, BUT HE INTENTIONALLY DID NOT UTILIZE THE INFORMATION.

8 MR. KLEIN: EXCUSE ME. IT'S OUR POSITION THAT
9 MR. BARENS LIED UNDER OATH.

10 THE COURT: THAT HE DID NOT KNOW ABOUT IT?

11 MR. KLEIN: THAT HE SAID THAT HE KNEW MR. ADELMAN
12 BECAUSE MR. ADELMAN TESTIFIED AT THE TRIAL AND HE
13 INTERVIEWED HIM AT THE COURTHOUSE DURING THE TRIAL.

14 MY POSITION IS -- IS HE WAS ON NOTICE ABOUT
15 ADELMAN. ADELMAN ALSO TESTIFIED THAT HE NEVER TALKED TO
16 BARENS. I BELIEVE THE EVIDENCE, WHEN IT'S ALL IN, WILL BE
17 THAT BARENS WAS ON NOTICE ABOUT ADELMAN, BUT MADE NO
18 EFFORTS TO FIND HIM.

19 THERE IS GOING TO BE SOME EVIDENCE ABOUT
20 ATTEMPTS BY THE INVESTIGATOR TO FIND MR. ADELMAN, AND THEN
21 EVIDENCE OF HOW EASY IT WAS TO FIND HIM THROUGH
22 MR. DOBRIN.

23 THE COURT: WASN'T MR. BARENS' POSITION PRETTY
24 CLEAR THAT HE HAD NO INTENTION OF UTILIZING ANY OF THIS
25 INFORMATION BECAUSE HE CALLED IT SNAKE OIL.

26 MR. KLEIN: MR. BARENS TESTIFIED TO HIS POSITION ON
27 IT. OUR ARGUMENT IS THAT MR. BARENS DIDN'T UNDERSTAND OUR
28 OFFER OF PROOF AS TO WHY WE THINK THIS INFORMATION WOULD

6 1 HAVE BEEN IMPORTANT FOR THE JURY.

2 MR. BARENS REPEATEDLY TALKED ABOUT THE FACT
3 THAT, "WHY WOULD RON LEVIN SIGN A CHECK FOR A MILLION AND
4 A HALF DOLLARS AND TURN IT OVER AS AN INVESTMENT IN
5 MICROGENESIS?" THAT IS NOT THE THRUST OF THE TESTIMONY OF
6 NEIL ADELMAN ABOUT THE CONTRACTS AND NEGOTIATIONS. IT HAD
7 NOTHING TO DO WITH RON LEVIN'S PARTICIPATION.

8 THE COURT: UNDERSTAND.

9 SUSTAIN THE OBJECTION.

10 MR. KLEIN: SO THE COURT IS NOT GOING TO ALLOW ME
11 TO PUT ON EVIDENCE THAT MR. DOBRIN --

12 THE COURT: FOUND MR. ADELMAN.

13 MR. KLEIN: -- FOUND MR. ADELMAN IN 20 MINUTES?

14 THE COURT: YES, THAT'S CORRECT.

15 MR. KLEIN: THE COURT DOESN'T THINK IT'S RELEVANT
16 AS TO WHETHER OR NOT MR. BARENS COULD HAVE FOUND
17 MR. ADELMAN AT THE TIME THAT HE -- THAT HE SHOULD HAVE
18 LOOKED FOR HIM.

19 THE COURT: I HAVE RULED. MOVE ON.

20 MR. KLEIN: THE OFFER OF PROOF, IT WOULD HAVE TAKEN
21 10 MINUTES.

22 THE COURT: ANY FURTHER QUESTIONS?

23 BY MR. KLEIN:

24 Q DURING THE COURSE OF YOUR INVESTIGATION DID
25 YOU DISCOVER THE NAME OF A PERSON BY THE NAME OF OLIVER
26 WENDELL HOLMES?

27 A YES.

28 MR. MC MULLEN: OBJECTION, RELEVANCY.

7
1 THE COURT: SUSTAINED.

2 MR. KLEIN: WELL, AGAIN, YOUR HONOR, MR. DOBRIN IS
3 THE ONE THAT DISCOVERED THE EVIDENCE THAT LED TO
4 MR. HOLMES' DECLARATIONS AND HIS TESTIMONY, AND HE ALSO
5 FOUND MR. HOLMES IN 10 OR 15 MINUTES BY PICKING UP THE
6 TELEPHONE.

7 THE COURT: ALL RIGHT.

8 SUSTAIN THE OBJECTION.

9 MOVE ON.

10 BY MR. KLEIN:

11 Q NOW, WHEN YOU WERE TAKING TO MR. BARENS ABOUT
12 IF MR. HUNT WERE TO TESTIFY, DID MR. BARENS ALWAYS SAY TO
13 YOU THAT -- THAT IF MR. HUNT WERE GOING TO TESTIFY HE WAS
14 GOING TO TESTIFY TO THE FACT THAT THE SEVEN-PAGE LIST WAS
15 USED AS A SCRIPT AND THAT THE MAFIA WAS GOING TO PUT
16 PRESSURE ON MR. LEVIN?

17 MR. MC MULLEN: OBJECTION. LEADING AND RELEVANCE.

18 THE COURT: SUSTAINED ON LEADING GROUNDS.

19 BY MR. KLEIN:

20 Q OKAY.

21 WHAT WAS THE THEORY THAT MR. BARENS TOLD YOU
22 THAT HE WOULD PRESENT TO THE COURT IF MR. HUNT WERE TO
23 HAVE TESTIFIED IN THE CASE?

24 MR. MC MULLEN: OBJECTION. FOUNDATION.

25 THE COURT: OVERRULED.

26 DID YOU HAVE A CONVERSATION LIKE THAT WITH
27 HIM?

28 THE WITNESS: I BELIEVE THAT AS MUCH CONVERSATION

7
1 AS I HAD WITH HIM WAS IN THAT MEMO, AND HE MENTIONED THOSE
2 POSSIBLE THEORIES. I CAN'T RECALL ANY OTHERS RIGHT NOW.
3 BY MR. KLEIN:

4 Q COULD YOU TAKE A LOOK AT THE MEMO AND SEE IF
5 IT REFRESHES YOUR MEMORY?

6 MR. MC MULLEN: MAY I APPROACH? I DON'T HAVE A
7 COPY OF THAT MEMCRANDUM --

8 THE COURT: YES.

9
10 (WITNESS REVIEWING EXHIBIT.)

11
12 THE COURT: DO YOU HAVE A PARTICULAR PORTION YOU
13 WANT TO REFER HIM TO, MR. KLEIN?

14 THE PETITIONER: IT'S LIKE THE THIRD PARAGRAPH,
15 YOUR HONOR.

16 THE WITNESS: I AM SORRY, WHAT WAS THE QUESTION?
17 BY MR. KLEIN:

18 Q DID MR. BARENS TELL YOU WHAT THEORY MR. HUNT
19 WERE TO TESTIFY ON IF HE WERE TO TESTIFY?

20 A OTHER THAN THE TWO THAT HE MENTIONED, I CAN'T
21 RECALL A SPECIFIC THEORY ABOUT THE SEVEN PAGES.

22 Q OKAY.

23 MR. KLEIN: THAT'S ALL I HAVE AT THIS MOMENT.

24 THE COURT: CROSS-EXAMINATION.

25 MR. MC MULLEN: YES.

26 MAY I JUST HAVE A MOMENT TO REVIEW THIS, IF I
27 MIGHT, YOUR HONOR?

28 THE COURT: YES.

7
1 (PAUSE.)
2

3 MR. KLEIN: MAY I BORROW THE EXHIBIT TO LOOK AT IT
4 FOR A MINUTE, YOUR HONOR?

5 THE COURT: I BELIEVE MR. MC MULLEN HAS IT. HE
6 HASN'T SEEN IT YET.

7 MR. CRAIN: I THINK THAT WAS GIVEN TO MR. MC MULLEN
8 QUITE SOME TIME AGO IN DISCOVERY.

9 THE COURT: I WOULD HOPE IT HAS.
10

11 (PAUSE.)
12
13

14 CROSS-EXAMINATION @
15

16 BY MR. MC MULLEN:

17 Q SIR, WITH RESPECT TO YOUR TESTIMONY ABOUT
18 EXHIBIT 277, I NOTICED ON DIRECT EXAMINATION YOU WERE
19 REFERRING TO THIS MEMO, TO FILE MEMO, I TAKE IT, QUITE A
20 BIT?

21 A YES, I WAS.

22 Q IS IT FAIR TO SAY THAT YOU DON'T HAVE AN
23 INDEPENDENT RECOLLECTION TODAY AS YOU TESTIFY ABOUT THE
24 CONTENTS OF THIS EXHIBIT, PETITIONER'S EXHIBIT 277?

25 A I DO HAVE AN INDEPENDENT RECOLLECTION OF THAT
26 CONVERSATION, BUT I DON'T RECALL EVERYTHING THAT WAS SAID
27 INDEPENDENTLY.

28 Q I TAKE IT THAT PRIOR TO YOUR CONVERSATION

7

1 WITH MR. BARENS THAT'S MEMORIALIZED IN THIS PETITIONER'S
2 EXHIBIT 277 YOU HAD OTHER CONVERSATIONS WITH MR. BARENS?

3 A YES, I HAD.

4 Q AND DID MR. BARENS -- ISN'T IT TRUE THAT
5 MR. BARENS WAS RELUCTANT TO DISCUSS WITH YOU WHAT HE FELT
6 WERE ATTORNEY-CLIENT -- ATTORNEY-CLIENT PRIVILEGED
7 COMMUNICATIONS WITH HIS CLIENT, MR. HUNT?

8 A I DON'T BELIEVE IT WAS, NO. I WAS THE
9 APPELLATE LAWYER. I THINK WE HAD A COMMON INTEREST.

10 Q SO YOUR TESTIMONY IS HE NEVER EXPRESSED
11 CONCERN ABOUT REVEALING TO YOU COMMUNICATIONS THAT HE HAD
12 WITH HIS CLIENT, MR. HUNT?

13 A I THINK SOMETIMES HE WOULD SAY THAT HE WANTED
14 THINGS TO BE QUOTE, "OFF THE RECORD", UNQUOTE, BUT THAT
15 DEALT WITH A LOT OF THINGS AND NOT JUST CONVERSATIONS WITH
16 HUNT.

17 Q WITH RESPECT TO DISCUSSES THAT CENTERED
18 AROUND THE SEVEN-PAGE TO-DO LIST, DID YOU EVER ASK HIM --
19 DID YOU EVER ASK MR. BARENS WHETHER HE HAD -- HE FELT HE
20 HAD ANY ETHICAL PROBLEMS WITH RESPECT TO PUTTING
21 MR. HUNT ON THE WITNESS STAND WITH RESPECT TO THAT LIST?

22 A I'M NOT -- I DON'T RECALL.

23 Q SO HE MAY HAVE EXPRESSED SOME CONCERN?
24 MR. KLEIN: OBJECTION. CALLS FOR SPECULATION.

25 MR. MC MULLEN: I'LL WITHDRAW THE QUESTION.

26 THE COURT: ALL RIGHT.

27 BY MR. MC MULLEN:

28 Q DID YOU EVER ASK HIM ABOUT ANY GENERAL

8 1 ETHICAL CONCERNS HE MIGHT HAVE WITH RESPECT TO THE
2 SEVEN-PAGE LIST?

3 A NO. THE CONCERNS HE EXPRESSED WERE PRIMARILY
4 STRATEGIC, AND THAT'S WHAT I WAS INTERESTED IN WAS
5 STRATEGIC REASONS.

6 Q YOU SAY IT BECAME INCREASINGLY DIFFICULT TO
7 TALK TO MR. BARENS. WHY IS THAT?

8 A I HAD A CONVERSATION WITH HIM IN EARLY 1991
9 AT WHICH POINT IT BECAME CLEAR THAT I HAD FOCUSED IN ON AN
10 INEFFECTIVE ASSISTANCE INQUIRY. I BELIEVE AFTER THAT TIME
11 WE HAD MORE OR LESS AGREED THAT THE INQUIRIES WOULD BE
12 EITHER BY LETTER OR IN PERSON. BEFORE THAT I HAD NO REAL
13 PROBLEM.

14 Q WELL, ISN'T IT TRUE THAT WITH RESPECT TO
15 EXHIBIT 277, THIS MEMO DATED NOVEMBER 22, '88, THAT YOU
16 WERE FOCUSING ON MR. BARENS AT THAT PARTICULAR POINT FOR A
17 POTENTIAL INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM?

18 A IT'S ALWAYS A POTENTIAL ISSUE WHEN YOU ARE AN
19 APPELLATE LAWYER.

20 Q IN FACT, YOU WERE ASKING HIM QUESTIONS WITH
21 RESPECT TO STATEMENTS MR. BARENS MADE IN HIS OPENING
22 STATEMENT TO THE JURY WITH REFERENCE TO HIS CLIENT TAKING
23 THE WITNESS STAND. YOU WERE ASKING QUESTIONS ABOUT THAT,
24 WHY HE DIDN'T CALL MR. HUNT TO THE WITNESS STAND; ISN'T
25 THAT CORRECT?

26 A MAYBE IF I CAN CLARIFY MY LAST RESPONSE, I
27 THINK IT WENT FROM SORT OF A CASUAL AND ROUTINE FOCUS TO A
28 SERIOUS FOCUS THAT BECAME CLEAR TO MR. BARENS IN '81.

8
1 WHENEVER I WOULD HANDLE AN APPEAL I WOULD ASK TRIAL
2 LAWYERS QUESTIONS LIKE THAT, BUT I HAD PRETTY FREE
3 COMMUNICATION WITH THEM.

4 Q PRIOR TO THIS CASE HAD YOU HANDLED OTHER
5 INEFFECTIVE ASSISTANCE CLAIMS?

6 A YES, I HAD.

7 Q IS IT YOUR EXPERIENCE IN TALKING TO THE TRIAL
8 ATTORNEYS THAT THERE IS SOME DEFENSIVE POSTURE ON THE PART
9 OF THE TRIAL ATTORNEY WHEN YOU ARE TALKING TO THAT TRIAL
10 ATTORNEY ABOUT POTENTIAL INEFFECTIVE ASSISTANCE OF COUNSEL
11 CLAIMS?

12 MR. KLEIN: I HAVE A COMMENT, BUT POSSIBLY AN
13 OBJECTION.

14 THE COURT: I DON'T CARE ABOUT COMMENTS.

15 DO YOU HAVE AN OBJECTION?

16 MR. KLEIN: YES, YOUR HONOR, IT'S IRRELEVANT.

17 THE COURT: SUSTAINED.

18 BY MR. MC MULLEN:

19 Q ISN'T IT A FACT THAT MR. BARENS, WHEN YOU
20 TALKED TO HIM WITH REFERENCE TO EXHIBIT 277, MEMO -- DATED
21 NOVEMBER 22, 1988, WHEN YOU ASKED HIM ABOUT THE OPENING
22 STATEMENT THAT HE HAD GIVEN, AND HE SAID HIS CLIENT WOULD
23 TESTIFY AND IN FACT HE DIDN'T, ISN'T IT TRUE THAT
24 MR. BARENS WAS SOMEWHAT DEFENSIVE ABOUT THAT IN HIS
25 ANSWERING QUESTIONS WITH REGARD TO THAT?

26 A HE IS VERY GLIB, SO IT WAS VERY HARD FOR ME
27 TO TELL IF HE WAS BEING DEFENSIVE OR NOT. I SUPPOSE HE
28 COULD HAVE BEEN BECAUSE IT WAS OBVIOUSLY A QUESTION ABOUT

8
1 HIS TACTICAL CHOICES.

2 Q IN THIS EXHIBIT 277, THIS MEMO, IS IT PRETTY
3 MUCH THE WAY -- THE WAY IT'S WRITTEN, IS IT IN
4 CHRONOLOGICAL ORDER WITH RESPECT TO THE SUBJECTS YOU
5 TALKED ABOUT IN YOUR CONVERSATION?

6 A THE TYPEWRITTEN MEMO ISN'T. THE HANDWRITTEN
7 MEMO ALMOST CERTAINLY IS AS FAR AS I KEPT A RUNNING PEN.

8 Q SO HOW DID YOU ORGANIZE THE TYPEWRITTEN MEMO?

9 A JUST LOOKED AT MY HANDWRITTEN NOTES AND
10 DICTATED IT.

11 Q SO IS IT FAIR TO SAY THAT ON THE FIRST
12 PAGE --

13 MR. MC MULLEN: WELL, MAY I APPROACH THE WITNESS?

14 THE COURT: YES.

15 BY MR. MC MULLEN:

16 Q IF YOU WILL LOOK AT PARAGRAPH THREE ON THE
17 FIRST PAGE. THAT REFERENCES A DISCUSSION WITH MR. BARENS
18 WITH RESPECT TO THE OPENING STATEMENT; IS THAT CORRECT?

19 A YES.

20 Q AND THAN THEREAFTER IN THE NEXT PARAGRAPH
21 THERE IS A DISCUSSION ABOUT THE SEVEN-PAGE LIST?

22 A YES.

23 Q IS IT -- WOULD IT BE A CORRECT ASSUMPTION,
24 THEN -- YOU HAD A DISCUSSION WITH HIM ABOUT THE OPENING
25 STATEMENT FIRST, AND THEN THE SEVEN-PAGE LIST?

26 A COULD I LOOK AT MY HANDWRITTEN NOTES?

27 Q PLEASE, IF THAT WILL REFRESH YOUR
28 RECOLLECTION.

8 1 THE COURT: WHERE ARE WE GOING?

2 MR. MC MULLEN: I'M ALMOST DONE WITH THIS. IN
3 FACT, THIS WILL BE THE LAST QUESTION ON THIS.

4 THE COURT: GOOD.

5

6 (WITNESS REVIEWING EXHIBIT.)

7

8 THE WITNESS: HE -- ACCORDING TO MY HANDWRITTEN
9 NOTES, WHICH WERE OBVIOUSLY TAKEN IN CHRONOLOGICAL ORDER,
10 AS THE CONVERSATION PROGRESSED HE TALKED ABOUT THE
11 EXPLANATION BEFORE HE TALKED ABOUT -- OR HE TALKED ABOUT
12 THE OPENING STATEMENT BEFORE HE TALKED ABOUT THE
13 EXPLANATIONS HE CLAIMED THAT JOE GAVE HIM ABOUT THE SEVEN
14 PAGES.

15 MR. MC MULLEN: THANK YOU.

16 NOTHING FURTHER.

9 17 THE COURT: ANY FURTHER QUESTIONS?

18 MR. KLEIN: I NEED TO LOOK AT THE DOCUMENT FOR A
19 MINUTE, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21

22 (PAUSE.)

23

24 THE COURT: MR. KLEIN?

25 MR. KLEIN: YES, YOUR HONOR.

26 THE COURT: ANY QUESTIONS?

27 MR. KLEIN: I NEED ONE MORE MINUTE.

28

9
1 (A CONFERENCE WAS HELD BETWEEN COUNSEL
2 AND THE PETITIONER, NOT REPORTED.)
3

4 REDIRECT EXAMINATION +
5

6 BY MR. KLEIN:

7 Q TO THE BEST OF YOUR MEMORY THE NOTES AND THE
8 TYPED MEMO CONTAIN ALL THE VERSIONS THAT MR. BARENS TOLD
9 YOU THAT JOE OFFERED WITH RESPECT TO THE SEVEN-PAGE LIST?

10 A NOTHING ELSE STANDS OUT IN MY MIND.

11 Q AND YOU WOULD HAVE WANTED TO RECORD ALL OF
12 THE DIFFERENT VERSIONS ON THIS MEMO AS THAT WAS SOMETHING
13 THAT WAS IMPORTANT IN YOUR PREPARATION?

14 A I THINK IT WAS, YES.
15

16 (A CONFERENCE WAS HELD BETWEEN COUNSEL
17 AND THE PETITIONER, NOT REPORTED.)
18

19 BY MR. KLEIN:

20 Q IN YOUR CONVERSATION WITH MR. BARENS DID HE
21 TELL YOU THAT JOE HAD PROVIDED SOME SORT OF MAFIA STORY
22 WITH RESPECT TO THE SEVEN-PAGE LIST?

23 A YES.

24 Q WHAT WAS THAT?

25 MR. MC MULLEN: OBJECTION. BEYOND THE SCOPE OF
26 CROSS. AND I BELIEVE IT'S BEEN ASKED AND ANSWERED.

27 THE COURT: IT HAS BEEN ASKED AND ANSWERED.

28 MR. KLEIN: NOT ABOUT MAFIA, YOUR HONOR.

9
1 THE COURT: YES, I HAVE GOT IT IN MY NOTES.

2 HE GAVE TWO STORIES, THAT LEVIN LEFT THE NOTE
3 BEHIND, AND THAT THE MAFIA WAS BEHIND THE NOTE THAT WAS
4 GIVEN TO HUNT TO GET HIS ATTENTION.

5 BY MR. KLEIN:

6 Q WELL, IF THAT -- IN THAT VERSION THAT
7 MR. HUNT TOLD MR. BARENS, DID MR. HUNT SAY THAT THE
8 SEVEN-PAGE LIST WAS USED AS A PROP OR A PLAN TO INTIMIDATE
9 MR. LEVIN?

10 A I BELIEVE SO, THAT -- I BELIEVE ONE OF THE
11 VERSIONS WAS THAT HUNT WAS TAKING NOTES WHILE HE WAS
12 TALKING TO THESE MAFIA PEOPLE.

13 Q AND IT WAS LEFT AT LEVIN'S HOUSE, LEFT BEHIND
14 TO INTIMIDATE MR. LEVIN?

15 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.
16 BEYOND THE SCOPE OF CROSS.

17 THE COURT: I'LL ALLOW THE ANSWER.

18 IS THE ANSWER "YES"?

19 THE WITNESS: I'D HAVE TO LOOK AT MY --

20 THE COURT: NEED TO REFRESH YOUR RECOLLECTION?

21 THE WITNESS: YES.

22

23 (WITNESS REVIEWING EXHIBIT.)

24

25 THE WITNESS: RIGHT, YES.

26 MR. KLEIN: THAT'S ALL I HAVE.

27 THE COURT: ANYTHING FURTHER?

28 MR. MC MULLEN: NOTHING FURTHER.

9
1 THE COURT: MAY THE WITNESS BE EXCUSED?

2 MR. KLEIN: NO OBJECTION.

3 THE COURT: ANY OBJECTION?

4 MR. MC MULLEN: NO OBJECTION EXCEPT -- WE WOULD
5 REQUEST THAT HE REMAIN ON CALL FOR IMPEACHMENT PURPOSES.

6 THE COURT: SUBJECT TO SUFFICIENT SHOWING.

7 YOU MAY STEP DOWN AT THIS TIME.

8 THE WITNESS: I APOLOGIZE FOR BEING LATE. IT WAS
9 REALLY HORRENDOUS, THE TRAFFIC.

10 THE COURT: YOU DON'T WANT TO BE LATE TO THIS
11 COURT, TRUST ME.

12 THE WITNESS: I KNOW.

13 THE COURT: MR. BARENS IS HERE. I SAW HIM WALK IN
14 A MOMENT AGO.

15 BUT YOU WANTED TO BRING UP SOMETHING IN
16 DISCOVERY, MR. CRAIN?

17 MR. CRAIN: YES. MR. KLEIN HAD A CONVERSATION WITH
18 THE DISTRACT ATTORNEY YESTERDAY. HE INQUIRED AS TO
19 WHETHER OR NOT THERE WERE ANY REPORTS OF ANY CONVERSATIONS
20 WITH ARTHUR BARENS IN WHICH MR. BARENS RELATED THAT
21 MR. HUNT HAD MADE THE -- THE FIRST STATEMENT THAT WAS
22 REFERRED TO YESTERDAY, AND WAS TOLD THAT THERE HAD BEEN
23 SUCH A MEETING, AND THAT NOTES WERE TAKEN AND NO REPORT
24 HAD BEEN PREPARED, AND MY UNDERSTANDING IS HE WAS TOLD
25 THAT -- WHATEVER THEY HAD WOULD BE TURNED OVER TODAY.

26 THIS WAS THE FIRST THAT WE LEARNED OF SUCH A
27 MEETING, FIRST WE LEARNED OF SUCH NOTES, AND IT APPEARS --
28 IT WAS ONLY BY HAPPENSTANCE AND FORTUNATE THAT WE LEARNED

9

1 OF IT AT ALL.

2 THIS TESTIMONY OF MR. BARENS, I'M SURE THE
3 DISTRICT ATTORNEY IS GOING TO PUT EMPHASIS ON IT IN THEIR
4 FINAL ATTEMPT TO PERSUADE THE COURT THAT MR. HUNT WAS NOT
5 RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL.

6 THE COURT HAS HAD LONG-STANDING DISCOVERY
7 ORDERS. I'M NOT ASKING TO HAVE THE PROSECUTION SANCTIONED
8 MONETARILY. I DON'T REALLY --

9 THE COURT: WHAT OTHER REMEDY IS THERE?

10 MR. CRAIN: THE REMEDY IS TO STRIKE MR. BARENS'
11 TESTIMONY. MR. BARENS -- WITH REGARD TO MR. -- --

12 THE COURT: HE IS YOUR WITNESS, THOUGH.

13 MR. CRAIN: YES. BUT IT CAME OUT ON
14 CROSS-EXAMINATION. WE WENT ALL THROUGH DIRECT
15 EXAMINATION. WE HAVE ATTEMPTED TO GET COOPERATION FROM
16 MR. BARENS. WE HAD TO TAKE HIS DEPOSITION ORDERED BY THIS
17 COURT. OTHERWISE HE WASN'T GOING TO COOPERATE WITH US IN
18 ANY FASHION. HE STONEWALLED US WITH REGARD TO CRITICAL
19 QUESTIONS AT THE DEPOSITION, AND THIS COURT HAD TO ORDER
20 HIM TO ANSWER INTERROGATORIES, WHICH WE BELIEVE HE DID NOT
21 ANSWER FULLY AND COMPLETELY, AND IN FACT, IS PLAYING A
22 GAME WITH THE COURT. SO WE WENT THROUGH ALL OF HIS DIRECT
23 EXAMINATION WITH REGARD --

24 THE COURT: HASN'T EVERYONE KNOWN THAT THIS WAS
25 GOING TO COME OUT AT SOME POINT?

26 MR. CRAIN: NO, YOUR HONOR.

27 THE COURT: YOU WERE TELLING ME ABOUT THE SITUATION
28 MONTHS AGO. ONE OF THE REASONS THAT I GAVE YOU THE

9
1 DEPOSITION, I ASSUMED THAT THERE WAS SOMETHING HIDING IN
2 THE WOODSHED SOMEWHERE, AND IT WAS GOING TO COME OUT AT
3 SOME POINT, AND THAT WAS RE-EMPHASIZED WHEN YOU CAME BACK
4 AND ASKED FOR FURTHER DEPOSITION BECAUSE MR. BARENS
5 REFUSED TO ANSWER THE QUESTIONS ABOUT WHAT HUNT TOLD HIM.

6 AND THEN WE AGREED THAT WE WOULD DO THAT BY
7 WAY OF INTERROGATORIES, AND THEN THE APPLICATION WAS MADE
8 THAT I FILE THE ANSWERS UNDER SEAL, WHICH I GRANTED.

9 I MEAN, WE HAVE ALL KNOWN THAT THIS WAS
10 PRETTY MUCH OUT THERE AND GOING TO COME.

11 MR. CRAIN: NO, YOUR HONOR, I DID NOT --

12 THE COURT: AM I THE ONLY ONE THAT FIGURED IT OUT?

13 MR. CRAIN: NO, YOUR HONOR, BECAUSE I BELIEVED THAT
14 WHEN MR. BARENS ANSWERED COURT ORDERED INTERROGATORIES
15 THAT HE WASN'T GOING TO PERJURE HIMSELF.

16 ALTHOUGH I BELIEVE THAT HE DID PERJURE
17 HIMSELF IN HIS RESPONSE TO THE QUESTION THAT HE WAS
18 SPECIFICALLY ASKED ABOUT IN MR. KLEIN'S EXAMINATION OF HIM
19 ON REDIRECT YESTERDAY, AND THAT WOULD BE HIS RESPONSE TO
20 INTERROGATORY NUMBER 15.

21 SO AFTER WE RECEIVED MR. BARENS -- YES, WE
22 WERE INTERESTED IN KNOWING WHAT MR. BARENS WOULD SAY ON
23 THIS PARTICULAR SUBJECT, AND THAT'S WHY WE ATTEMPTED TO
24 TAKE HIS DEPOSITION. AND WHEN HE WOULDN'T ANSWER THOSE
25 QUESTIONS AT THE DEPOSITION, THAT'S WHY WE ASKED TO HAVE
26 HIS INTERROGATORIES TAKEN.

27 AND WHEN WE RECEIVED HIS ANSWERS SUPPOSEDLY
28 UNDER PENALTY OF PERJURY WITH REGARD TO QUESTION NUMBER

10 1 15, AND KNOWING THAT MR. BARENS HAD A BACKGROUND TO SOME
2 EXTENT IN CRIMINAL LAW, AND THAT ANYBODY WHO HAS BEEN IN
3 LAW SCHOOL FOR THE FIRST MONTH OR SO KNOWS THE LIABILITY
4 IN THIS STATE OF AIDERS AND ABETTORS AS PRINCIPALS, THAT
5 WE COULD TAKE HIS ANSWER TO QUESTION 15 AS BEING A DENIAL.
6 AND SO THE POINT IS, NEVERTHELESS -- SO WE PROCEEDED
7 THROUGH THE DIRECT EXAMINATION OF MR. BARENS.

8 THEN MR. MC MULLEN WAS ALLOWED TO ELICIT THIS
9 TESTIMONY FROM MR. BARENS. THEN MR. KLEIN RESUMED HIS
10 DIRECT EXAMINATION, WHICH WAS INTERRUPTED BY THE
11 CONCLUSION OF THE COURT DAY.

12 AND THEN AND ONLY THEN, DUE TO MR. KLEIN'S
13 INQUIRING OF MR. MC MULLEN AS TO WHETHER OR NOT THERE WAS
14 SUCH A STATEMENT EVER MADE TO THE PROSECUTION, WE LEARN
15 THAT ON APRIL 19TH IN AN INTERVIEW WITH MR. MC MULLEN AND
16 MR. SIMPSON, THE INVESTIGATOR, AND PERHAPS OTHERS, WHO ARE
17 HERE, HE PURPORTEDLY MADE THE STATEMENT, AND THAT
18 MR. SIMPSON MADE NOTES OF IT. SO THE SANCTION --

19 THE COURT: I'M AGREEING YOU SHOULD HAVE GOTTEN
20 THAT STATEMENT.

21 MR. CRAIN: YES.

22 THE COURT: HOW CAN I -- THE SANCTION I CAN'T SEE
23 IS TAKING THAT PORTION OF THE TESTIMONY AND STRIKING IT
24 BECAUSE IT'S RESPONSIVE TO THE DIRECT EXAMINATION. IT IS
25 THE ENTIRE MOTIVATION FOR MR. BARENS CONDUCTING PART OF
26 THE DEFENSE THAT HE DID.

27 MR. CRAIN: LET ME JUST SAY THIS, I BELIEVE THAT I
28 WOULD HAVE CONSIDERED AND PERHAPS -- BECAUSE -- THIS HAS

10 1 COME UP SINCE THE END OF THE COURT DAY YESTERDAY.

2 FIRST OF ALL, I DON'T BELIEVE THAT
3 MR. BARENS' STRANGE VIEW OF ETHICS, EVEN IF HE -- IF WHAT
4 HE SAID TO THIS COURT YESTERDAY WERE TRUE, WOULD HAVE
5 PRECLUDED HIM IN ANY WAY, SHAPE OR FORM FROM PRESENTING
6 EVIDENCE OF THE -- THE KAREN MARMOR EVIDENCE, ANY MORE
7 THAN IT PREVENTED HIM FROM PRESENTING EVIDENCE OF THE
8 SIGHTING WITNESSES AND PRESENTING THE -- THE ALIBI
9 EVIDENCE THAT HE DID.

10 BUT BE THAT AS IT MAY, WE WOULD HAVE --
11 CONSIDERED, AND I HAVE TO CONSULT FURTHER WITH MR. KLEIN
12 AND MR. HUNT, I CERTAINLY WOULD HAVE CONSIDERED THE
13 WITHDRAWAL OF THAT I.A.C. ISSUE. IT DOESN'T RELATE TO ANY
14 OF THE OTHER ISSUES.

15 MR. BARENS' CLAIM THAT THIS STATEMENT WAS
16 MADE DOESN'T RELATE TO THE OTHER I.A.C. ISSUES. IT ONLY
17 GOES TO THE KAREN MARMOR ISSUE. ARGUABLY I WOULD HAVE
18 CONSIDERED WITHDRAWING IT, AND WE WOULDN'T HAVE HAD THIS
19 TESTIMONY IN THE RECORD.

20 WHAT IT IS, YOUR HONOR, IS REALLY AN ATTEMPT
21 TO POISON THE WELL HERE AND TO TAKE SOMETHING THAT REALLY
22 HAS NO LEGAL BEARING ON WHETHER OR NOT MR. BARENS COULD
23 ETHICALLY PRESENT THE KAREN MARMOR TESTIMONY IN AN ATTEMPT
24 TO PUT SOMETHING INFLAMMATORY BEFORE THIS COURT, I BELIEVE
25 TO COLOR THIS COURT'S VIEW OF THE ENTIRE MATTER WITH
26 REGARD TO ISSUES 1 AND 2.

27 I ASK THAT THE SANCTION BE THAT -- WE WERE
28 AMBUSHED.

10 1 THE COURT: WAIT. CAN YOU REALLY SAY THAT? I
2 FIGURED THIS OUT MONTHS AGO, THAT THIS MUST BE COMING.
3 YOU GUYS ARE MUCH CLOSER TO IT THAN I, AND YOU ARE DEALING
4 WITH MR. HUNT. YOU MUST HAVE KNOWN IT WAS COMING. I
5 CAN'T BELIEVE THAT I AM THAT SMART, THAT I COULD FIGURE
6 THIS --

7 MR. CRAIN: I BELIEVE MR. BARENS' TESTIMONY IS
8 FALSE. I BELIEVE IT'S WILLFULLY FALSE. I DON'T BELIEVE
9 ANY SUCH STATEMENT WAS EVER MADE.

10 MR. BARENS CONVENIENTLY IS ONE OF THOSE
11 ATTORNEYS WHO WHEN THE I.A.C. CLAIM STARTS COMING BEHIND
12 HIM HE NO LONGER HAS ANY FILE, HE HAS NO WITNESSES, HE HAS
13 NO NOTES OF ANY SUCH CONVERSATION, HE HAS NOTHING.

14 HE HAS ONLY HIS ATTEMPT TO DEFEND HIS
15 REPUTATION TO PREVENT HIMSELF FROM BEING SUED AND PREVENT
16 HIS NAME FROM GOING BEFORE THE STATE BAR AS AN INCOMPETENT
17 ATTORNEY. THAT'S WHAT HE HAS.

18 THE COURT: I ASSUME MR. HUNT WILL TESTIFY AND
19 PERHAPS SAY SOMETHING DIFFERENTLY. THE STATE OF THE
20 RECORD RIGHT NOW IS THAT MR. HUNT CONFESSED TO HIM. THAT
21 IS THE REALITY.

22 MR. CRAIN: THE POINT IS THAT THIS ISSUE MIGHT WELL
23 HAVE NOT BEEN PRESENTED TO THE COURT BECAUSE IT IS -- IT'S
24 AN INFLAMMATORY EVIDENCE. I KNOW WE ARE NOT DEALING WITH
25 A JURY HERE, BUT NEVERTHELESS, IT'S AN -- IT'S
26 INFLAMMATORY EVIDENCE. IT'S FALSE EVIDENCE.

27 AND HOW IN THE WORLD THE PEOPLE CAN JUSTIFY
28 SITTING ON THIS -- YOU SAY YOU SAW IT COMING. AS I SAY

11 1 FOR THE LAST TIME, I SAW IT AS A POTENTIAL PROBLEM BECAUSE
2 I DIDN'T KNOW, BECAUSE MR. BARENS WAS UNCOOPERATIVE, WHAT
3 MR. BARENS WOULD EVER SAY UNTIL HE ANSWERED THE
4 INTERROGATORIES UNDER OATH.

5 AT THAT POINT I DIDN'T BELIEVE THAT
6 MR. BARENS WOULD HAVE THE TEMERITY TO COME INTO COURT AND
7 GIVE THE -- I MEAN, SOMETHING ABOUT THE OATH, YOUR HONOR,
8 A WITNESS IS SUPPOSED TO TELL THE TRUTH, THE WHOLE TRUTH
9 AND NOTHING BUT THE TRUTH, THAT MR. BARENS WOULD GIVE
10 THE -- THE VERY CRAFTY AND CLEVERLY CONSTRUCTED ANSWER
11 THAT HE GAVE YESTERDAY TO ATTEMPT TO AVOID BEING FOUND A
12 PERJURER. HIS ANSWER TO NO. 15 --

13 THE COURT: YOU KNOW, HE DID EVERYTHING HE COULD TO
14 AVOID LAYING YOUR CLIENT OUT.

15 MR. CRAIN: THAT IS HIS CLAIM.

16 THE COURT: JUST LOOKING AT THE RECORD RIGHT NOW, I
17 MEAN, I HAVE TO TELL YOU WHEN I READ THE
18 INTERROGATORIES -- I DIDN'T GET THE INTERROGATORIES UNTIL,
19 I DON'T KNOW, A MONTH OR TWO AGO. I SAT THERE, AND I
20 COULD SEE IT, THAT HE WAS -- HE WAS ANSWERING LIKE A
21 LAWYER AND NOT LIKE A HUMAN BEING, AND THAT HE WAS PLAYING
22 LAWYER GAMES, AND THAT THERE WAS SOMETHING THAT I THOUGHT
23 WAS -- WAS LYING THERE, AND I DIDN'T KNOW IF ONE SIDE OR
24 THE OTHER WAS GOING TO RAISE IT, BUT IT CERTAINLY CAME
25 OUT.

26 MR. CRAIN: AS I SAID THE OTHER DAY IN ANOTHER
27 CONTEXT WHEN THE COURT WAS CHASTISING ME FOR ALLEGEDLY
28 SHOWING UP TWO MINUTES LATE TO COURT, I BELIEVE ALL OF US

11

1 ARE HUMAN BEINGS AND, NEVERTHELESS, THAT INCLUDES LAWYERS,
2 I'M PROUD TO SAY.

3 AND I THINK MR. BARENS HAS LEGAL
4 RESPONSIBILITY TO NOT GIVE PERJURED ANSWERS EITHER IN THIS
5 COURT OR IN INTERROGATORIES. WE TOOK HIS ANSWER WITH
6 REGARD TO THE INTERROGATORIES AS A STATEMENT THAT WAS --
7 THAT WAS IN DIRECT CONTRADICTION TO WHAT MR. BARENS'
8 CLAIMED YESTERDAY.

9 THE FACT OF THE MATTER IS WHY WASN'T THIS
10 TURNED OVER? I'M NOT ASKING FOR MONETARY SANCTIONS.
11 THAT'S MEANINGLESS. AND I DON'T THINK THAT ANY OF US HERE
12 WHO ARE STANDING BEFORE YOU -- YOU KNOW, MONEY -- CONTRARY
13 TO WHAT THE COURT MAY BELIEVE, MONEY DOESN'T COME EASY --

14 THE COURT: IF YOU CAN GIVE ME ANOTHER APPROPRIATE
15 SANCTION, I'LL CONSIDER IT.

16 MR. CRAIN: WELL --

17 THE COURT: THE ONLY ONE I CONSIDER THAT IS
18 APPROPRIATE IS MONETARY UNDER THE FACTS OF THIS CASE.

19 MR. CRAIN: THE SANCTION I'M ASKING FOR -- PERHAPS
20 MR. KLEIN HAS SOME OTHER IDEA HERE IS -- COULD I CONSULT
21 WITH HIM? THE SANCTION THAT I AM PROPOSING IS THAT HIS
22 TESTIMONY BE STRICKEN FROM THE RECORD.

23 THE COURT: I WON'T DO THAT.

24 MR. MC MULLEN?

25 MR. MC MULLEN: MAY I BE HEARD?

26 FIRST OF ALL, IT WAS NOT MY INTENT TO OPERATE
27 OR BEHAVE CONTRARY TO THE COURT'S ORDER. IT'S MY
28 UNDERSTANDING THAT WE WERE DIRECTED TO TURN OVER --

11

1 THE COURT: THAT WAS THE EFFECT; RIGHT?

2 MR. MC MULLEN: NO, YOUR HONOR --

3 THE COURT: YOU HAD A STATEMENT OF A WITNESS. YOU
4 TURNED IT OVER TO THEM YESTERDAY. YOU KNEW BARENS WAS
5 GOING TO TESTIFY. YOU INTERVIEWED HIM.

6 THE FIRST THING YOU SHOULD HAVE DONE IS GONE,
7 TO YOUR INVESTIGATOR AND SAY, "DID YOU WRITE ANYTHING
8 DOWN," AND YOUR INVESTIGATOR WOULD HAVE SAID YES OR NO.

9 AND IF THE INVESTIGATOR HAD SAID YES, YOU
10 SHOULD HAVE SAID, "GIVE IT TO ME, I BETTER TURN IT OVER TO
11 THE OTHER SIDE BECAUSE IT'S A STATEMENT OF A WITNESS."

12 YOU HAD ASKED TO CALL MR. BARENS --

13 MR. MC MULLEN: IT DID NOT RELATE TO THIS ISSUE.

14 THE COURT: LET'S NOT PLAY LAWYER GAMES. IT'S A
15 STATEMENT OF A WITNESS.

16 WHY DIDN'T YOU TURN OVER THE STATEMENT?

17 MR. MC MULLEN: BECAUSE I DIDN'T THINK IT WAS
18 NECESSARY BECAUSE IT WASN'T REDUCED TO A REPORT. I
19 APOLOGIZE TO THE COURT. I WAS MISTAKEN, OBVIOUSLY. I
20 WOULD LIKE TO MAKE IT CLEAR, THOUGH --

21 THE COURT: IF YOU GOT THAT UNDERSTANDING OF
22 DISCOVERY, I SUGGEST YOU READ THE DISCOVERY RULES.

23 MR. MC MULLEN: YES, YOUR HONOR.

24 THE COURT: DOESN'T HAVE TO BE TYPED IN A
25 PARTICULAR FASHION, DOESN'T HAVE TO BE IN A PARTICULAR
26 FORMAT. IT IS A STATEMENT OF THE WITNESS. IT DOES NOT
27 HAVE TO SAY "REPORT."

28 MR. MC MULLEN: I UNDERSTAND.

12 1 I WANT TO MAKE ONE THING PERFECTLY CLEAR AND
2 THAT IS WHAT OCCURRED DURING THE INTERVIEW OF MR. BARENS.

3 I WAS TALKING TO HIM ABOUT HIS TESTIMONY AND
4 THE ISSUES THAT HAD BEEN NARROWED. DURING THE
5 CONVERSATION HE TOLD MR. SIMPSON AND MYSELF THAT HIS
6 CLIENT HAD CONFESSED TO THE LEVIN MURDER. HE DID NOT
7 ELABORATE ON THE WITNESS STAND AS TO HOW IT RELATED TO THE
8 SEVEN-PAGE LIST.

9 IN FACT, IN RESPONSE TO INTERROGATORY NO. 9
10 MR. BARENS SAID THAT, "EARLY IN OUR RELATIONSHIP ON
11 SEVERAL OCCASSIONS MR. HUNT DESCRIBED THE TO-DO LIST AS A
12 LIST THAT HE PREPARED AS A GUIDE FOR HIMSELF."

13 I THINK THAT PUTS THE OTHER SIDE ON SOME
14 NOTICE THAT THIS IS COMING. I WAS NOT AWARE OF THE
15 DETAILED INFORMATION THAT OCCURRED ON THE WITNESS STAND
16 WITH MR. BARENS.

17 QUITE FRANKLY, MR. BARENS HAS STEADFASTLY
18 THROUGH ALL OF OUR INTERVIEWS WITH HIM CHOOSE ON MOST --
19 IN ALL INSTANCES, VIRTUALLY ALL INSTANCES NOT TO REVEAL
20 THINGS THAT WOULD VIOLATE WHAT HE PERCEIVES TO BE AN
21 ATTORNEY/CLIENT PRIVILEGE.

22 THE COURT: ALL RIGHT.

23 MR. KLEIN: CAN I ADD ONE THING?

24 THE COURT: YES.

25 MR. KLEIN: I BELIEVE THAT THERE IS OTHER
26 INFORMATION THAT WAS CONVEYED IN THE INTERVIEW WITH
27 MR. BARENS AND THE DISTRICT ATTORNEY THAT'S NOT CONTAINED
28 IN THOSE NOTES. I WANT EVERYTHING REDUCED TO WRITING SO

12 1 THAT I COULD PROPERLY CROSS-EXAMINE MR. BARENS.

2 THE COURT: I CAN'T ORDER THE CREATION OF
3 DISCOVERY.

4 MR. KLEIN: OKAY.

5 THE COURT: ALL RIGHT.

6 MR. KLEIN: ALL RIGHT.

7 THE COURT: LET'S GET MR. BARENS IN HERE AND
8 CONTINUE.

9 THE PETITIONERS ARE NOT ASKING FOR SANCTIONS
10 THAT ARE PROPERLY -- PROPERLY THAT CAN BE DELIVERED FROM
11 THE RESPONDENT. THEREFORE, THERE IS NO REQUEST FOR A
12 MONETARY SANCTION AT THIS POINT.

13 MR. MC MULLEN: I WANT TO GET THIS TO COUNSEL AS
14 SOON AS I CAN.

15 ALONG THE LINES OF DISCOVERY, I GOT A CALL
16 THIS MORNING FROM MR. BILL PIERCE. MR. BILL PIERCE IS THE
17 MAN WHO SUPERVISED MR. IVAN WERNER. MR. PIERCE HAS BEEN
18 LOOKING THROUGH ALL THESE RECORDS THROUGH 1985 TO TRY TO
19 LOCATE THE MAN THAT WAS BURIED AS DESCRIBED BY MR. WERNER.

20 HE SAID HE WAS UNABLE TO LOCATE IT, BUT IN
21 TALKING TO ONE OF HIS EMPLOYEES HE DID -- THE EMPLOYEE DID
22 REMEMBER A SIMILAR KIND OF BURIAL INVOLVING A MR. JOHN
23 SAXON, S-A-X-O-N, WHO DIED BY ASPHYXIATION IN HIS -- IN
24 HIS JACUZZI.

25 MR. BAR -- MR. PIERCE DID HAVE A RECOLLECTION
26 OF THAT, AND HE DID PULL UP THAT NAME AND MR. SAXON WAS
27 BURIED BY THAT MORTUARY, BY THE WESTWOOD MORTUARY IN
28 OCTOBER OF 1983.

12

1 I JUST WANTED TO CONVEY THAT TO COUNSEL ON
2 THE RECORD.

3 THE COURT: PARENTHETICALLY, I WOULD HAVE IMPOSED
4 SANCTIONS IN THE AMOUNT OF \$250 AGAINST RESPONDENT, BUT
5 THEY ARE NOT BEING REQUESTED BY PETITIONER.

6 MR. CRAIN: I DO NOT WANT TO HIT MR. MC MULLEN IN
7 THE POCKET. I DON'T THINK THAT'S APPROPRIATE.

8 THE COURT SAID THIS MORNING, YOU WERE KIND OF
9 ACTING IN HASTE, THAT YOU DID READ THE OFFER OF PROOF THAT
10 I SUBMITTED THIS MORNING WITH REGARD TO THE PROPOSED
11 CROSS-EXAMINATION OF MR. BARENS.

12 THE COURT: YES.

13 MR. CRAIN: I GATHER THE COURT'S RULING IS THE SAME
14 AS YESTERDAY?

15 THE COURT: IT IS.

16 ALL RIGHT.

17 MR. KLEIN, YOU MAY CONCLUDE YOUR REDIRECT.

18

19 ARTHUR BARNES, +
20 CALLED AS A WITNESS BY THE PETITIONER, HAVING BEEN
21 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER
22 AS FOLLOWS:

23

24 THE COURT: COULD YOU STATE YOUR NAME FOR THE
25 RECORD?

26 THE WITNESS: ARTHUR BARENS.

27 THE COURT: YOU ARE REMINDED, SIR, YOU ARE STILL
28 UNDER OATH.

12

1 THE WITNESS: YES, SIR.

2 THE COURT: GO.

3

4 (COUNSEL CONFER.)

5

6 THE COURT: RECORD WILL ALSO HE REFLECT THAT
7 MR. BRODEY, MR. BARENS' COUNSEL, IS ALSO PRESENT.

8 MR. BRODEY: THANK YOU VERY MUCH, YOUR HONOR.

9

10 (PAUSE.)

11

12 THE COURT: MR. KLEIN, GO AHEAD.

13

14 REDIRECT EXAMINATION RESUMED +

15

16 BY MR. KLEIN:

17 Q NOW, AFTER THIS PURPORTED FIRST CONVERSATION
18 WITH MR. HUNT AT THE HALL OF JUSTICE ABOUT THE SEVEN-PAGE
19 LIST, YOU CAME TO BELIEVE THAT MR. HUNT WAS POSTURING, AND
20 THIS WAS DUE TO FACTORS PECULIAR TO YOUR OWN MIND AS WELL
21 AS MR. HUNT'S MAKE-UP; IS THAT RIGHT?

22 A YES.

23 Q AND YOU EXPLAINED TO HIM IN THIS SECOND
24 MEETING THAT YOU FELT HE WAS FALSELY -- HE WAS CAPABLE OF
25 FALSELY CLAIMING TO YOU THAT HE HAD PARTICIPATED IN THE
26 KILLING OF RON LEVIN?

27 A YES.

28 Q AND THAT YOU BELIEVED THAT HE HAD NOT

13

1 PARTICIPATED IN THE KILLING OF RON LEVIN?

2 A I BELIEVED HE HAD BEEN UNTRUTHFUL WITH ME IN
3 THE FIRST CONVERSATION.

4 Q COULD YOU ENUMERATE THE FACTORS THAT LEAD YOU
5 TO THAT CONCLUSION, PLEASE?

6 A SEVERAL THINGS, INCLUDING BUT NOT LIMITED TO,
7 YOU HAVE TO PLACE YOURSELF, COUNSEL, IN THE ENVIRONMENT
8 EXISTENT AT THE TIME THIS CRIME ALLEGEDLY OCCURRED IN
9 1984.

10 IT SEEMED INCONCEIVABLE TO ME THAT A YOUNG
11 MAN AS BRIGHT AND TALENTED AS JOE HUNT WOULD HAVE FOUND IT
12 NECESSARY TO BE INVOLVED IN A HOMICIDE.

13 SECONDARILY, IT SEEMED INCONCEIVABLE TO ME
14 THAT ANYONE THAT BRIGHT COULD HAVE A MEETING ON JUNE 24TH
15 AND TELL A WHOLE BUNCH OF KIDS THERE THAT HE AND A FELLOW
16 NAMED PITTMAN HAD JUST ASSASSINATED SOMEBODY.

17 I HAD A BELIEF IN MY OWN MIND TO SOME DEGREE
18 THAT THIS MAY HAVE BEEN A GRAND CONNING OF SOME KIND THAT
19 LEVIN AND HUNT WERE INVOLVED IN, AND THAT MR. LEVIN
20 ORCHESTRATED SOME SORT OF A CON THAT MR. HUNT WAS COVERING
21 UP FOR.

22 AND THAT I ALSO, TO BE FRANK WITH YOU,
23 THOUGHT MR. ROBERTS MAY HAVE BEEN INVOLVED IN IT, AND THAT
24 THEY WERE ALL HAVING SOME GREAT JOKE AT EVERYONE'S
25 EXPENSE. THAT LATER ON IT WOULD COME OUT.

26 Q AND THIS SECOND MEETING THAT YOU HAD AT THE
27 HALL OF JUSTICE, IT WASN'T TOO LONG AFTER THE FIRST
28 PURPORTED MEETING; RIGHT?

13 1 A I DON'T RECALL EXACTLY HOW LONG IT WAS, BUT
2 NOT A LONG TIME THE WAY I WOULD DESCRIBE A LONG TIME.

3 Q IT WAS STILL BEFORE THE PRELIMINARY
4 EXAMINATION?

5 A I BELIEVE SO.

6 Q AND WHEN YOU HAD THIS SECOND MEETING WITH
7 MR. HUNT HAD YOU TALKED TO MR. HUNT ABOUT SOME OF HIS
8 BACKGROUND?

9 A WE HAD.

10 Q AND HAD YOU TALKED TO HIM ABOUT SOME OF HIS
11 CHILDHOOD?

12 A TO SOME DEGREE.

13 Q AND HAD YOU LEARNED ABOUT THE FACT THAT HE
14 HAD A STRANGE RELATIONSHIP WITH HIS FATHER WHERE HIS
15 FATHER HAD MADE HYPNOTIC SUGGESTIONS TO MR. HUNT THAT
16 WOULD SUGGEST THAT THE TRUTH IS ONLY WHAT HE MIGHT WANT IT
17 OR CONCEIVE IT TO BE?

18 MR. MC MULLEN: OBJECTION. RELEVANCY.

19 THE COURT: SUSTAINED.

20 MR. KLEIN: IT GOES TO THE -- TO HIS BELIEF IN THE
21 SECOND CONVERSATION.

22 THE COURT: HIS BELIEF ACTUALLY IS NOT THAT
23 RELEVANT. WHAT HE HAS SAID IS THAT HE HAS CONFLICTING
24 INFORMATION. I'LL ALLOW SOME INQUIRY. I WILL ALLOW YOU
25 TO GO INTO THE DETAILS OF WHY HE TENDED TO DISBELIEVE THE
26 FIRST. BUT TO GET INTO SOME SORT OF PSYCHOLOGICAL PROFILE
27 OF MR. HUNT IS NOT RELEVANT.

28 MR. KLEIN: IF IT WAS PART OF HIS BELIEF THAT

13 1 MR. HUNT COULD -- PART OF HIS BELIEF THAT WAS NOT TRUE,
2 AND IT'S PART OF HIS RATIONALE FOR NOT BELIEVING IT WAS
3 TRUE, I THINK IT IS RELEVANT.

4 THE COURT: SUSTAINED.

5 BY MR. KLEIN:

6 Q AS YOU SAID YESTERDAY, AT THIS SECOND MEETING
7 AFTER YOU HAD THIS LONG CONVERSATION MR. HUNT MADE IT
8 CLEAR TO YOU THAT WHAT HE PURPORTEDLY SAID AT THE FIRST
9 MEETING WAS NOT TRUE AND HE RECANTED ANY RESPONSIBILITY IN
10 THE DEATH OF MR. LEVIN?

11 A SUFFICE IT THAT HE APPEARED TO WITHDRAW FROM
12 HIS EARLIER COMMENT WITHOUT FURTHER ELUCIDATION AT THAT
13 POINT.

14 Q NOW, IN MAKING THE DETERMINATION THAT YOU
15 BELIEVED MR. HUNT IN THIS SECOND MEETING --

16 A THAT'S YOUR TESTIMONY, COUNSEL. I SAID -- I
17 TESTIFIED THAT I HAD CONFLICTING POINTS OF VIEW, AND I
18 WASN'T SURE AT THAT POINT IN TIME WHAT TO BELIEVE.

19 Q AS A RESULT OF THE SECOND MEETING, YOU
20 ETHICALLY BELIEVED THAT YOU COULD GO FORWARD WITH AN ALIBI
21 DEFENSE OR PRESENTING WITNESSES THAT SAW MR. LEVIN ALIVE
22 AFTER JUNE 6, 1984; CORRECT?

23 A I DID.

24 Q AND WHEN IS IT THAT YOU WOULD BELIEVE THAT
25 YOU COULD NOT ETHICALLY PRESENT SUCH EVIDENCE OF AN ALIBI
26 DEFENSE OR A -- A DEFENSE THAT INDIVIDUALS HAD SEEN THE
27 SUPPOSED DEAD MAN AFTER HE WAS SUPPOSED TO BE KILLED?

28 MR. MC MULLEN: OBJECTION. COMPOUND.

13

1 THE COURT: YEAH.

2 BREAK IT DOWN.

3 BY MR. KLEIN:

4 Q WELL, IN YOUR MIND WOULD IT ETHICALLY MAKE
5 ANY DIFFERENCE THE TYPE OF DEFENSE THAT YOU WOULD PRESENT
6 TO SHOW THAT YOUR CLIENT WAS NOT GUILTY WHETHER IT BE
7 SIGHTINGS WITNESSES OR AN ALIBI DEFENSE?

8 MR. MC MULLEN: OBJECTION. VAGUE AND AGAIN
9 COMPOUND.

10 THE COURT: OVERRULED.

11 CAN YOU ANSWER THE QUESTION. DO YOU
12 UNDERSTAND IT?

13 THE WITNESS: I ACTUALLY DO NOT WITHOUT APPLYING
14 SPECIFIC ELEMENTS OF EVIDENCE THAT YOU ARE REFERRING TO,
15 COUNSEL. IF YOU COULD GIVE ME -- EITHER A HYPOTHETICAL OR
16 ACTUAL EVIDENTIARY EXAMPLE, I COULD BE OF ASSISTANCE.

17 BY MR. KLEIN:

18 Q OKAY.

19 AFTER YOU HAD THE SECOND CONVERSATION WITH
20 MR. HUNT YOU ETHICALLY BELIEVED THAT YOU COULD PRESENT A
21 DEFENSE OF ALIBI; CORRECT?

22 A NOT IN A THEORETICAL SENSE. I BELIEVED IT AS
23 I CONSIDERED EACH WITNESS, EACH PIECE OF EVIDENCE AS I
24 PROCEEDED. I HAD NO -- IF YOU ARE SAYING DID I HAVE SOME
25 SORT OF A PHILOSOPHICAL ORIENTATION AT THAT MOMENT, I HAD
26 A PHILOSOPHICAL ORIENTATION TO CONSIDER THE EVIDENCE ON AN
27 AD HOC BASIS.

14

28 Q WELL, BASED UPON THE TWO CONVERSATIONS -- LET

14 1 ME ASK YOU THIS, DID YOU HAVE ANY OTHER CONVERSATIONS WITH
2 MR. HUNT ABOUT THE SUBJECT OF THE SEVEN-PAGE LIST PRIOR TO
3 YOU MAKING AN OPENING STATEMENT?

4 A I'M NOT SURE.

5 Q YOU MAY HAVE?

6 A I MAY HAVE; I MAY NOT HAVE.

7 Q OKAY.

8 WHERE WOULD THE CONVERSATIONS HAVE TAKEN
9 PLACE?

10 A IT MAY HAVE -- IF SUCH A CONVERSATION TOOK
11 PLACE, AND I'M NOT SURE THAT IT DID, IT MIGHT HAVE
12 OCCURRED EITHER AT THE HALL OF JUSTICE OR AT THE
13 COURTHOUSE IN BEVERLY HILLS.

14 Q HOW ABOUT AFTER THE PRELIMINARY EXAMINATION.
15 DID YOU HAVE ANY OTHER CONVERSATIONS WITH MR. HUNT
16 CONCERNING THE SEVEN-PAGE LIST?

17 A YES.

18 Q AND THIS WAS PRIOR TO YOUR MAKING YOUR
19 OPENING STATEMENT?

20 A I BELIEVE SO, BUT AGAIN, I CANNOT BE CERTAIN
21 AS TO WHEN THESE CONVERSATIONS TOOK PLACE.

22 Q AND NOW, HOW MANY TIMES WOULD YOU SAY YOU
23 TALKED TO MR. HUNT ABOUT THE SUBJECT OF THE SEVEN-PAGE
24 LIST BETWEEN THE SECOND CONVERSATION HE ALLUDED TO AT THE
25 HALL OF JUSTICE AND PRIOR TO YOU MAKING AN OPENING
26 STATEMENT IN THIS CASE?

27 A I HAVE NO IDEA.

28 Q MORE THAN FIVE?

14

1 A I BELIEVE MORE THAN FIVE.

2 Q NOW, WHAT IS -- THE NEXT MATERIAL INFORMATION
3 THAT MR. HUNT RELATED TO YOU CONCERNING A POSSIBLE
4 EXPLANATION RELATING TO THE SEVEN-PAGE LIST?

5 A A DISCUSSION WHERE I WAS ADVISED THAT THIS
6 DOCUMENT WAS A -- A TOOL THAT WAS TO BE USED TO INTIMIDATE
7 MR. LEVIN TO PAY MONIES MR. HUNT RIGHTFULLY BELIEVED WERE
8 OWED TO HIM.

9 THE COURT: THIS IS WHAT HUNT TOLD YOU?

10 THE WITNESS: YES.

11 BY MR. KLEIN:

12 Q WAS ANYBODY PRESENT WHEN MR. HUNT TOLD YOU
13 THIS?

14 A I BELIEVE RICHARD CHIER WAS.

15 Q DID YOU TAKE ANY NOTES OF THIS CONVERSATION?

16 A I BELIEVE I DID.

17 Q WHAT HAPPENED TO THOSE NOTES?

18 A I BELIEVE THEY WERE TURNED OVER TO BOBBY
19 ROBERTS.

20 MR. CRAIN: COULD I HAVE JUST A MOMENT WITH
21 COUNSEL?

22 THE COURT: YES.

23

24 (COUNSEL CONFER.)

25

26 BY MR. KLEIN:

27 Q DID THIS CONVERSATION HAPPEN BEFORE OR AFTER
28 THE PRELIMINARY EXAMINATION?

14

1 A I BELIEVE THAT WAS AFTER THE PRELIM.

2 Q WAS IT BEFORE OR AFTER MR. HUNT WAS RELEASED
3 FROM CUSTODY?

4 A I BELIEVE IT WAS AFTER HE WAS RELEASED FROM
5 CUSTODY.

6 Q WAS THE MAFIA MENTIONED DURING THIS
7 DISCUSSION?

8 A I BELIEVE DURING THAT DISCUSSION AN ALTERNATE
9 EXPLANATION WAS POSED -- STRIKE THAT.

10 I BELIEVE THAT THERE WAS A DISCUSSION THAT
11 MR. HUNT WAS GOING TO SUGGEST THAT BASED ON HIS RELIANCE
12 OF MR. LEVIN TELLING HIM HE HAD MADE CERTAIN AMOUNTS OF
13 MONEY IN SECURITIES TRADING, THAT MR. HUNT HAD SOMEHOW
14 BECAME INDEBTED TO THE MAFIA, AND THAT MR. PITTMAN WAS A
15 REPRESENTATIVE OF THE MAFIA, AND THAT -- SOME BUSINESS
16 THAT PITTMAN WAS THERE, I THINK, TO COLLECT A DEBT ON
17 BEHALF OF THE MAFIA, AND HE WAS TO THREATEN HUNT AND HUNT
18 WOULD APPEAL TO LEVIN TO WRITE THE CHECK, AND IT WAS
19 SOMETHING ALONG THOSE LINES, COUNSEL.

20 Q DID HUNT TELL YOU WHEN, IF EVER, HE LEFT THE
21 SEVEN-PAGE LIST AT LEVIN'S HOUSE DURING THIS DISCUSSION?

22 A I BELIEVE THAT COULD HAVE EITHER BEEN ON -- A
23 TIME ON JUNE THE 6TH OR A TIME PRIOR THERETO.

24 Q WHEN IS THE NEXT TIME THAT YOU REMEMBER
25 HAVING A DISCUSSION WITH MR. HUNT REGARDING THE SEVEN-PAGE
26 LIST?

27 A AT THE SAME TIME.

28 Q OKAY.

14 1 WHAT DID MR. HUNT TELL YOU REGARDING THE
2 SEVEN-PAGE LIST?

3 A THAT THE SEVEN-PAGE LIST COULD HAVE BEEN A
4 SCRIPT OF SOME SORT FOR A THEATRICAL PRESENTATION THAT HE
5 WAS PREPARING WITH MR. LEVIN.

6 THE COURT: I'M SORRY, YOU LOST ME. WHEN WAS THIS
7 STORY?

8 THE WITNESS: AT THE SAME TIME.

9 THE COURT: AS THE MAFIA THREAT LIST?

10 THE WITNESS: YES, SIR.

11 THE COURT: OKAY.

12 BY MR. KLEIN:

13 Q AND WAS THIS KIND OF JUST A MUSING BY
14 MR. HUNT OR WAS THIS A SERIOUS DISCUSSION?

15 A IT IS DIFFICULT RETROSPECTIVELY FOR ME TO
16 EVALUATE THAT BASED ON EVENTS THAT HAVE HAPPENED IN THE
17 PAST DECADE, COUNSEL. I CANNOT CHARACTERIZE IT ONE WAY OR
18 ANOTHER. AT THE TIME I MAY HAVE HAD THE IMPRESSION THAT
19 MR. HUNT WAS MUSING. AS I SIT HERE TODAY, I CANNOT BE
20 CERTAIN.

21 Q WHEN, IF AT ANY TIME, DID MR. HUNT TELL YOU
22 WHEN HE DISCUSSED THIS SCRIPT IDEA WHEN THE SEVEN-PAGE
23 LIST WAS LEFT AT MR. LEVIN'S?

24 A ON JUNE 6TH OR AT SOME TIME PRIOR THERETO.

25 Q WHERE DID THIS CONVERSATION OCCUR, AGAIN?

26 A I DO NOT RECALL WHERE WE WERE SITUATED DURING
27 THAT CONVERSATION.

28 Q AND WHO ELSE --

15

1 A I BELIEVE -- I AM NOT SURE, SIR.

2 Q WHO ELSE WAS PRESENT?

3 A I BELIEVE MR. CHIER WAS PRESENT, BUT I'M NOT
4 100 PERCENT SURE OF THAT, BUT I THINK HE WAS.

5 Q OKAY.

6 WHEN IS THE NEXT TIME THAT YOU HAD A
7 CONVERSATION WITH MR. HUNT ABOUT THE SEVEN-PAGE LIST?

8 A I BELIEVE SUBSEQUENT TO THE CONVERSATION I'M
9 DESCRIBING THE SAME MATTERS WERE COVERED AGAIN.

10 Q HOW LONG AFTER THIS CONVERSATION?

11 A THIS CONVERSATION WOULD HAVE BEEN CLOSE TO --
12 CLOSE TO OR AT THE TIME THAT A DECISION WAS MADE THAT
13 MR. HUNT WOULD NOT TESTIFY.

14 Q SO THIS WOULD HAVE BEEN AFTER THE TRIAL
15 STARTED?

16 A YES, SIR. AS WAS THE CONVERSATION I JUST
17 DESCRIBED.

18 Q WERE THERE ANY OTHER CONVERSATIONS WITH
19 MR. HUNT PRIOR TO THE COMMENCEMENT OF TRIAL ABOUT THE
20 SEVEN-PAGE LIST?

21 A I DO NOT RECALL.

22 Q THERE COULD HAVE BEEN?

23 A COULD HAD BEEN; COULD NOT HAVE BEEN.

24 Q ACCORDING TO YOUR TESTIMONY YESTERDAY AND
25 TODAY, WE HAVE HEARD THREE POSSIBLE EXPLANATIONS RELATING
26 TO THE SEVEN-PAGE LIST. DID MR. HUNT EVER PROVIDE YOU
27 WITH ANY OTHER EXPLANATIONS ABOUT THE SEVEN-PAGE LIST?

28 A NOT THAT I RECALL.

15 1 Q AFTER MR. HUNT'S CASE WAS OVER WERE YOU EVER
2 CONTACTED BY HIS APPELLATE ATTORNEY?

3 A YES.

4 Q WHO WAS THAT?

5 A A MAN NAMED DOBRIN.

6 Q WHEN DID HE CONTACT YOU?

7 A I DON'T RECALL.

8 Q WHEN WAS THE TRIAL OVER?

9 A I DON'T SPECIFICALLY RECALL THAT, COUNSEL,
10 BUT I BELIEVE IT WAS SOMETIME IN THE SPRINGTIME.

11 Q HOW ABOUT 1987, DOES THAT REFRESH YOUR
12 MEMORY?

13 A IF YOU SAY SO, IT DOES.

14 Q HOW LONG AFTER THE TRIAL WAS OVER WERE YOU
15 CONTACTED BY MR. DOBRIN?

16 A I DON'T KNOW.

17 Q A YEAR, TWO YEARS?

18 A NO -- I DON'T KNOW, ACTUALLY. I'M SURE THERE
19 MUST BE SOME SORT OF RECORD OF THIS, COUNSEL.

20 Q DURING THE COURSE OF MR. DOBRIN'S CONTACT
21 WITH YOU, DID YOU REQUEST FROM HIM SOME KIND OF WAIVER OF
22 THE ATTORNEY-CLIENT PRIVILEGE FROM MR. HUNT BEFORE YOU
23 TALKED TO HIM ABOUT ANYTHING THAT MR. HUNT TOLD YOU?

24 A I DON'T RECALL THAT.

25 Q DID YOU?

26 A PERHAPS YOU DID NOT HEAR ME, SIR. I SAID I
27 DIDN'T RECALL.

28 Q YOU DON'T KNOW WHETHER HE DID OR DIDN'T?

15

1 A I DON'T RECALL, FOR THE THIRD TIME.

2 Q DURING THE COURSE OF ANY OF THE DISCUSSIONS
3 THAT YOU HAD WITH MR. DOBRIN -- INCIDENTALLY, WERE THEY
4 OVER THE TELEPHONE?

5 A YES, SIR, I HAVE NEVER MET MR. DOBRIN.

6 Q WERE ANY OF THESE DISCUSSIONS ABOUT WHAT
7 MR. HUNT TOLD YOU WITH RESPECT TO THE SEVEN-PAGE LIST?

8 A I DON'T RECALL THE SPECIFIC CONTENTS OF MY
9 CONVERSATIONS, BUT I DID HAVE AN OVERRIDING CONCERN THAT I
10 NOT VIOLATE WHAT I BELIEVED TO HAVE BEEN THE APPROPRIATE
11 ATTORNEY-CLIENT PRIVILEGE OF MR. HUNT.

12 Q LET ME ASK YOU THIS, MR. BARENS, DID
13 MR. DOBRIN ASK YOU WHY MR. HUNT DIDN'T TESTIFY IN THE
14 CASE?

15 A YES.

16 Q AND DID YOU TELL HIM WHY MR. HUNT DIDN'T
17 TESTIFY IN THE CASE?

18 MR. MC MULLEN: OBJECTION. RELEVANCY.

19 THE COURT: OVERRULED?

20 THE COURT: I'LL ALLOW IT.

21 THE WITNESS: I BELIEVE I GAVE HIM A PARTIAL REASON
22 AS TO WHY.

23 BY MR. KLEIN:

24 Q DIDN'T YOU UNDERSTAND YOU HAD CERTAIN ETHICAL
25 RESPONSIBILITIES TOWARDS MR. DOBRIN AS MR. HUNT'S
26 APPELLATE COUNSEL?

27 A I WAS NOT CLEAR ON ANY RESPONSIBILITIES I HAD
28 TO MR. DOBRIN, SIR.

15 1 Q WHAT DID YOU THINK YOUR ETHICAL
2 RESPONSIBILITIES WERE WITH RESPECT TO MR. DOBRIN?

3 MR. BRODEY: I'LL OBJECT TO THAT, YOUR HONOR.

4 MR. MC MULLEN: I'LL -- GO AHEAD.

5 THE COURT: WHAT IS THE RELEVANCE?

6 MR. KLEIN: IT GOES TO HIS STATE OF MIND AS TO HIS
7 RESPONSE TO MR. DOBRIN, AND I THINK IT ALSO GOES TO THE
8 COURT'S ABILITY TO DETERMINE HIS CREDIBILITY AS TO ANSWERS
9 ON THESE SUBJECTS.

10 THE COURT: I'LL SUSTAIN THE OBJECTION. IT'S
11 IRRELEVANT.

12 MR. KLEIN: EXCUSE ME.

13
14 (COUNSEL CONFER.)

15
16 BY MR. KLEIN:

17 Q SO MR. DOBRIN ASKED YOU WHY MR. HUNT DIDN'T
18 TESTIFY, AND YOU TOLD HIM WHAT MR. HUNT TOLD YOU ABOUT THE
19 SEVEN-PAGE LIST; RIGHT?

20 A I DID NOT SAY THAT, COUNSEL. THAT IS YOUR
21 TESTIMONY. MY TESTIMONY WAS THAT I GAVE HIM A PARTIAL
22 ANSWER AS TO WHY MR. HUNT DID NOT TESTIFY.

23 Q WHAT WAS THAT PARTIAL ANSWER, MR. BARENS?

24 A I TOLD HIM THAT THE DEFENSE HAD CONCERNS THAT
25 JUDGE RITTENBAND WOULD HAVE ATTEMPTED TO INJECT HIMSELF
26 INTO THAT PART OF THE PROCEEDINGS IN SUCH A WAY AS TO HAVE
27 A NEGATIVE IMPACT ON MR. HUNT.

28 Q UM-HMN.

15 1 THE COURT: I AM SORRY, "WOULD ATTEMPT TO INTERJECT
2 HIMSELF"? BY THAT YOU MEAN THAT JUDGE RITTENBAND WOULD
3 HAVE JUMPED ALL OVER HIM IN FRONT OF THE JURY?

4 THE WITNESS: PRECISELY.

5 I'M SURE THAT'S WHAT I SAID TO MR. DOBRIN, OR
6 WORDS TO THAT EFFECT I SAID TO MR. DOBRIN.

7 BY MR. KLEIN:

16 8 Q WHAT ELSE DID YOU TELL THEM ABOUT WHY
9 MR. HUNT DID NOT TESTIFY?

10 A ALTHOUGH I HAVE A SPECIFIC RECOLLECTION OF
11 THE LAST COMMENT I MADE TO YOU, I AM NOT AS CERTAIN OF THE
12 NEXT COMMENT. BUT I BELIEVE I ALSO INDICATED TO
13 MR. DOBRIN THAT ON MOCK CROSS-EXAMINATION THAT MR. HUNT
14 HAD DIFFICULTY DEALING WITH THE SEVEN PAGES.

15 Q BUT YOU -- BUT YOU -- EXCUSE ME.

16 THE REPORTER: EXCUSE ME, YOUR HONOR, I NEED TO
17 CHANGE PAPER.

18
19 (PAUSE.)

20
21 THE COURT: ALL RIGHT.

22 GO AHEAD.

23 BY MR. KLEIN:

24 Q WHY DID YOU THINK JUDGE RITTENBAND WOULD DO
25 THAT --

26 MR. MC MULLEN: OBJECTION. IRRELEVANT.

27 THE COURT: OVERRULED.

28 THE WITNESS: THROUGHOUT THE TRIAL JUDGE RITTENBAND

16 1 HAD ACTED IN AN ANTAGONISTIC AND PROTAGONISTIC MANNER
2 TOWARDS MR. HUNT, I BELIEVE, ON EVERY POSSIBLE OCCASION
3 AND INJECTED HIS POINT OF VIEW CONCERNING MR. HUNT'S
4 CULPABILITY THROUGHOUT THE TRIAL.

5 BY MR. KLEIN:

6 Q OKAY.

7 NOW, GOING BACK TO EXPLAINING TO MR. DOBRIN
8 WHY MR. HUNT DIDN'T TESTIFY, DID THIS HAPPEN ON ONE
9 OCCASION OR MORE THAN ONE OCCASION?

10 A I'M NOT SURE.

11 Q AND IN -- IN NONE OF THESE OCCASIONS IN WHICH
12 YOU TALKED TO MR. DOBRIN DID YOU RELATE YOUR SUPPOSED
13 CONVERSATION WITH MR. HUNT AT THE HALL OF JUSTICE EARLY ON
14 IN THE CASE, WHICH WE TERMED CONVERSATION ONE; CORRECT?
15 JUST "YES" OR "NO."

16 A I REFUSED TO DO SO.

17 Q DID HE ASK YOU TO DO THAT?

18 A HE ASKED ME QUESTIONS ABOUT COMMUNICATIONS I
19 HAD HAD WITH MR. HUNT SIMILAR TO THOSE ASKED ME ON MY
20 DEPOSITION THAT WERE MADE REFERENCE TO IN THIS COURTROOM
21 YESTERDAY, AND I GAVE HIM THE SAME ANSWER.

22 Q WELL, YOU DIDN'T TELL MR. DOBRIN IN ANY OF
23 THESE CONVERSATIONS THAT --

24 MR. KLEIN: EXCUSE ME, I NEED AN EXHIBIT.

25
26 (PAUSE.)
27
28

16

1 BY MR. KLEIN:

2 Q YOU NEVER TOLD MR. DOBRIN IN ANY OF THESE
3 CONVERSATIONS THAT HUNT TOLD YOU HE WOULD TESTIFY AND --
4 LET ME RESTATE THE QUESTION.

5 YOU NEVER TOLD MR. DOBRIN IN ANY OF THOSE
6 CONVERSATIONS THAT LEVIN TOLD JOE THAT HE WAS WRITING A
7 SCRIPT AND THAT HE HAD HUNT TAKE NOTES ABOUT A PLAN TO
8 CONCOCT THE PERFECT CRIME, AND THAT IN FACT LEVIN WAS ALL
9 ALONG GOING TO SPLIT AND LEAVE THE NOTES IN ORDER TO FRAME
10 HUNT FOR HIS MURDER? YOU NEVER TOLD MR. DOBRIN THAT?

11 A I'M NOT SURE.

12 Q ARE YOU SAYING NOW THAT YOU --

13 A WHAT DO YOU MEAN BY THE WORD "NOW," COUNSEL?
14 I DON'T UNDERSTAND YOUR QUESTION.

15 Q ARE YOU TESTIFYING THAT YOU NOW REMEMBER
16 TELLING MR. DOBRIN IN ANY ONE OF THESE CONVERSATIONS
17 SOMETHING MR. HUNT TOLD YOU ABOUT THE MURDER OF RON LEVIN?

18 MR. MC MULLEN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: I HAVE LOST THE QUESTION.

20 THE WITNESS: I DON'T -- I FRANKLY --

21 THE COURT: THERE IS NO QUESTION PENDING.

22 PUT A QUESTION.

23 MR. KLEIN: MAYBE THE REPORTER CAN READ IT BACK.

24 THE COURT: WE'RE ALL OVER THE PLACE.

25 PUT A QUESTION.

26 BY MR. KLEIN:

27 Q IS IT NOW YOUR TESTIMONY THAT YOU REMEMBER
28 TELLING MR. DOBRIN ABOUT COMMUNICATIONS FROM MR. HUNT

16

1 ABOUT EXPLANATIONS FOR THE SUPPOSED DISAPPEARANCE OF RON
2 LEVIN?

3 MR. MC MULLEN: OBJECTION. ARGUMENTATIVE AND
4 MISSTATES THE EVIDENCE.

5 THE COURT: OVERRULED.

6 THE WITNESS: I DON'T QUITE UNDERSTAND WHAT YOU
7 MEAN BY THE WORD "NOW" IN YOUR QUESTION, COUNSEL.

8 BY MR. KLEIN:

9 Q I THOUGHT A FEW MINUTES AGO THAT YOU
10 STEADFASTLY ASSERTED THE PRIVILEGE NOT TO TELL MR. DOBRIN
11 ANYTHING THAT MR. HUNT COMMUNICATED TO YOU. DID I MISS
12 WHAT YOU SAID?

13 A QUITE SO. YOU DID, COUNSEL. LET ME MAKE
14 SURE YOU HAVE A CLEAR GRASP ON THIS.

15 Q OKAY.

16 A MY STATEMENT WENT TO THE FACT THAT I WAS NOT
17 ABOUT TO TELL MR. DOBRIN, YOURSELF DURING MY DEPOSITION OR
18 ANYONE ELSE THAT MR. HUNT HAD EVER ADMITTED TO ME THAT HE
19 HAD ANY COMPLICITY IN THIS HOMICIDE --

20 Q EXCUSE ME --

21 A EXCUSE ME, COUNSEL. YOU ASKED ME A QUESTION.
22 I BELIEVE I'M ENTITLED TO ANSWER.

23 THE COURT: HOLD ON, MR. BARENS. I'LL LET YOU KNOW
24 IF YOU ARE ENTITLED TO ANSWER.

25 DON'T INTERRUPT THE ANSWER.

26 PLEASE FINISH YOUR ANSWER.

27 THE WITNESS: UNTIL I WAS DULY ORDERED BY A COURT
28 OF COMPETENT JURISDICTION. AS I SAID TO MR. DOBRIN, AND

17
1 AS I SAID TO YOU UNDER OATH, I WAS NOT ABOUT TO ADMIT TO
2 THAT CONVERSATION BETWEEN MR. HUNT AND MYSELF.

3 I AM OF A BELIEF THAT MORE LIKELY THAN NOT
4 THE EXPLANATIONS THAT WERE CONSISTENT WITH MR. HUNT'S
5 INNOCENCE I WOULD HAVE DISCUSSED WITH MR. DOBRIN AND MOST
6 LIKELY DID, SIR.

7 BY MR. KLEIN:

8 Q SO THEN, IT'S YOUR TESTIMONY NOW THAT IN
9 THIS -- IN YOUR CONVERSATIONS WITH MR. DOBRIN THAT YOU
10 WOULD HAVE DISCUSSED THE TWO OTHER STORIES OR TWO OTHER
11 VERSIONS, EXCUSE ME, THAT MR. HUNT RELATED TO YOU
12 REGARDING THE DISAPPEARANCE OF MR. LEVIN?

13 A MY BEST RECOLLECTION IS THAT I WOULD MOST
14 LIKELY HAVE DISCUSSED THOSE STORIES, BUT I CAN'T REMEMBER
15 WHETHER I DID OR DID NOT.

16 Q AND YOU WOULD AGREE WITH ME THAT IF MR. HUNT
17 TOLD YOU THAT INFORMATION THAT IT WAS A PRIVILEGED
18 COMMUNICATION?

19
20 (PAUSE.)

21
22 A I WOULD AGREE WITH YOU ONLY TO THE EXTENT
23 THAT I WOULD REPEAT TO MR. DOBRIN, AS I DID TO THE JURY
24 AND TO OTHER THIRD PARTIES, STATEMENTS THAT MY CLIENT MADE
25 THAT WAS CONSISTENT WITH HIS INNOCENCE.

26 Q THAT'S BECAUSE YOU BELIEVED THAT HE WAS
27 INNOCENT AFTER THE SECOND CONVERSATION THAT YOU HAD WITH
28 HIM AT THE COUNTY JAIL?

17 1 MR. MC MULLEN: OBJECTION. RELEVANCE.

2 THE COURT: SUSTAINED.

3 MR. KLEIN: WELL, I THINK IT'S --

4 THE COURT: COUNSEL, I HAVE RULED.

5 BY MR. KLEIN:

6 Q OKAY.

7 DO YOU REMEMBER ANY OTHER VERSIONS OF THE
8 DISAPPEARANCE OF RON LEVIN THAT MR. HUNT MAY HAVE EVER
9 RELATED TO YOU?

10 A AS I MENTIONED A FEW MOMENTS AGO, NONE THAT I
11 RECALL AT THIS POINT IN TIME.

12
13 (PAUSE.)

14
15 Q DO YOU REMEMBER BEING ASKED IN YOUR
16 DEPOSITION -- IN YOUR INTERROGATORIES AFTER IT WAS CLEAR
17 TO YOU THAT MR. HUNT HAD WAIVED ANY PRIVILEGE THE
18 FOLLOWING QUESTION (READING):

19 "WHAT DID JOE HUNT TELL YOU
20 ABOUT THE SEVEN-PAGE LIST?"

21 MR. MC MULLEN: MAY WE HAVE A PAGE REFERENCE,
22 COUNSEL?

23 MR. KLEIN: SURE. IT'S PAGE TWO, QUESTION 9 OF THE
24 INTERROGATORIES.

25 BY MR. KLEIN:

26 Q REMEMBER THAT QUESTION?

27 A YES.

28 Q DO YOU REMEMBER THE ANSWER THAT YOU GAVE?

17 1 A NO.

2 Q WOULD YOU LIKE TO LOOK AT IT TO REFRESH YOUR
3 MEMORY?

4 A THANK YOU.

5 Q IT'S QUESTION 9.

6

7 (WITNESS REVIEWING DOCUMENT.)

8

9 A I SEE THAT.

10 Q YOU INTENTIONALLY LEFT OUT --

11 A THAT'S TESTIMONY, COUNSEL. WHY DON'T YOU ASK
12 ME A QUESTION.

13 THE COURT: IF YOU HAVE A PROBLEM WITH THE
14 QUESTION, YOU DON'T UNDERSTAND IT, PLEASE ADVISE ME, AND
15 I'LL HAVE HIM REFRAME IT. DON'T QUESTION.

16 BY MR. KLEIN:

17 Q YOU INTENTIONALLY LEFT OUT THE ANSWER, THE
18 INFORMATION THAT YOU SAY MR. HUNT PURPORTEDLY PROVIDED TO
19 YOU IN THAT FIRST CONVERSATION AT THE HALL OF JUSTICE;
20 CORRECT?

21 A YOUR TESTIMONY IS INACCURATE, COUNSEL.

22 Q WHAT IS THE ANSWER, MR. BARENS?

23 A YOUR TESTIMONY IS INACCURATE. YOU ARE
24 TESTIFYING AND NOT ASKING ME A QUESTION, IN MY OPINION.

25 MR. KLEIN: WOULD THE COURT ASK MR. BARENS TO
26 ANSWER THE QUESTION.

27 THE COURT: PLEASE ANSWER THE QUESTION.

28 BEFORE YOU DO I NEED TO SEE THE INTERROGATORY

17 1 AND ANSWER. I DON'T RECALL THEM OFFHAND.

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

3 THE COURT: YES.

4 I DON'T NEED THE QUESTION. I JUST NEED TO
5 READ THE ANSWER.

6

7 (COURT REVIEWING DOCUMENT.)

8

9 THE COURT: READ BACK THE LAST QUESTION, WOULD YOU?

10

11 (THE QUESTION WAS READ.)

12

13 THE COURT: ANSWER THE QUESTION.

14 THE WITNESS: AS I UNDERSTAND THE QUESTION, I
15 CAN'T. I'M SORRY. BUT I'M NOT SURE WE'RE ON THE SAME
16 POINT HERE. MR. ROWAN --

17 THE COURT: MR. KLEIN

18 THE WITNESS: MR. KLEIN, RATHER, YOU ARE ASKING ME
19 IF I INTENTIONALLY LEFT OUT OF THAT ANSWER TO
20 INTERROGATORY THE -- THE COMMENT MR. HUNT TOLD ME AS TO
21 HIS CULPABILITY. IS THAT WHAT YOU ARE ASKING ME?
22 BY MR. KLEIN:

23 Q I'M ASKING YOU WHETHER YOU INTENTIONALLY LEFT
24 OUT THE PURPORTED CONVERSATION AT THE HALL OF JUSTICE THE
25 FIRST TIME WITH MR. HUNT, YEAH. WE'RE TALKING ABOUT THE
26 SAME THING, MR. BARENS.

27 DID YOU?

28 A IF YOU'D GIVE ME A MOMENT, COUNSEL.

17
1 Q SURE.

2
3 (WITNESS REVIEWING DOCUMENT.)
4

5 A COULD I SEE THE WRITTEN VERSION OF THE
6 QUESTION, COUNSEL?

7 MR. KLEIN: MAY I APPROACH?
8

9 (A CONFERENCE WAS HELD BETWEEN THE
10 WITNESS AND HIS COUNSEL, NOT REPORTED.)
11

12 THE WITNESS: THE ANSWER TO YOUR QUESTION IS NO.

13 THE COURT: HOW MUCH MORE DO YOU HAVE ON REDIRECT,
14 MR. KLEIN.

15 MR. KLEIN: 10 MINUTES.

16 THE WITNESS: I'M TRAILING IN 85.

17 THE COURT: THAT WAS MY NEXT QUESTION.

18 THE WITNESS: I'D SAID -- I HAD BEEN TOLD YESTERDAY
19 CERTAIN PARAMETERS FOR TODAY THAT I AM RELYING UPON.

20 THE COURT: DO YOU HAVE ANYTHING ON RECROSS?

21 MR. MC MULLEN: VERY LITTLE UP TO THIS POINT.

22 THE COURT: LET'S SEE IF WE CAN FINISH THIS UP.

23 BY MR. KLEIN:

24 Q AND YOU INTENTIONALLY LEFT OUT OF YOUR ANSWER
25 TO QUESTION 10, WHICH SAYS, FOLLOWING QUESTION 9
26 (READING):

27 "WHAT WAS THE CONTEXT OF SUCH
28 CONVERSATIONS?"

17
1 YOU INTENTIONALLY LEFT OUT YOUR CONVERSATION
2 WITH MR. HUNT THAT YOU SUPPOSEDLY HAD THE FIRST TIME AT
3 THE COUNTY JAIL; CORRECT?

18
4 MR. MC MULLEN: OBJECTION. ARGUMENTATIVE. ASKED
5 AND ANSWERED.

6 THE WITNESS: I DON'T KNOW WHAT HE'S TALKING ABOUT.
7 BY MR. KLEIN:

8 Q I'LL SHOW YOU YOUR ANSWER.

9 A COULD I SEE THE QUESTION, PLEASE, COUNSEL?

10 Q SURE.

11 A THE QUESTION I READ SAYS:

12 "WHAT WAS THE CONTEXT OF SUCH
13 CONVERSATIONS?"

14 THE ANSWER I READ SAYS:

15 "THESE STATEMENTS WERE MADE
16 DURING THE COURSE OF OUR
17 RELATIONSHIP. THEY TOOK PLACE
18 DURING CONVERSATIONS IN WHICH MR.
19 HUNT AND I WERE DISCUSSING HIS
20 DEFENSE.

21 "AS WE DISCUSSED HIS DEFENSE
22 QUITE OFTEN AND QUITE IN DEPTH, I
23 CANNOT RECALL THE EXACT CONTEXT IN
24 WHICH THESE STATEMENTS WERE MADE."
25 NOW, PRAY WHAT IS YOUR QUESTION, SIR?

26 Q YOU UNDERSTOOD WHAT MR. HUNT SUPPOSEDLY TOLD
27 YOU AT THAT FIRST INTERVIEW AT COUNTY JAIL, DIDN'T YOU?

28 A IN MY READING OF THE ENGLISH LANGUAGE,

18
1 COUNSEL, WHEN YOU ASK ME ABOUT CONTEXT HERE I PRESUMED YOU
2 TO MEAN THE CONTEXT OR SETTING IN WHICH THE DISCUSSION
3 TOOK PLACE, AND SINCE I DIDN'T RECALL THE CONTEXT OR
4 SETTING IN WHICH IT TOOK PLACE, I GAVE YOU THE MOST
5 ACCURATE AND COMPREHENSIVE ANSWER I COULD. IF YOU WISH TO
6 MAKE A DIFFERENT QUESTION AT THIS POINT, DO SO.

7 Q WELL, YOU ANSWERED THE INTERROGATORIES --

8 A A MOMENT IF YOU WOULD, COUNSEL.

9 MR. KLEIN: EXCUSE ME, THERE'S NO QUESTION PENDING,
10 YOUR HONOR.

11 THE COURT: HOLD ON.

12 PUT A QUESTION. LET'S GO.

13 BY MR. KLEIN:

14 Q MR. BARENS, BACK WHEN YOU ANSWERED THOSE
15 INTERROGATORIES YOU REMEMBERED WHAT MR. HUNT HAD
16 SUPPOSEDLY TOLD YOU BACK AT THE FIRST MEETING AT THE HALL
17 OF JUSTICE; CORRECT?

18 A I REMEMBERED WHAT HE HAD ACTUALLY TOLD ME.

19 Q AND YOU REMEMBERED ACTUALLY WHERE IT
20 HAPPENED; RIGHT?

21 A I REMEMBERED THAT WE HAD CONVERSATIONS IN
22 MORE THAN ONE LOCATION AND IN MORE THAN ONE CONTEXT AT
23 DIFFERENT POINTS IN TIME.

24 Q BUT YOU REMEMBERED WHEN YOU SIGNED THESE
25 INTERROGATORIES UNDER PENALTY OF PERJURY WHERE THIS
26 SUPPOSED FIRST CONVERSATION TOOK PLACE, DIDN'T YOU?

27 A I UNDERSTOOD WHERE THAT CONVERSATION TOOK
28 PLACE AND I ALSO UNDERSTOOD THE CONVERSATIONS TOOK PLACE

18

1 AT A VARIETY OF LOCATIONS, AND I READ THE QUESTION IN A
2 MANNER CONSISTENT WITH THE ANSWER I PROVIDED --

3 Q AND YOU INTENTIONALLY LEFT OUT THE
4 INFORMATION THAT YOU HAD A CONVERSATION WITH MR. HUNT AT
5 THE HALL OF JUSTICE? THE HALL OF JUSTICE DOESN'T APPEAR,
6 DOES IT, IN YOUR ANSWERS?

7 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

8 THE WITNESS: I DID NOT --

9 THE COURT: HOLD ON. HOLD ON.

10 HE READ THE ANSWER. IT SPEAKS FOR ITSELF.
11 IT'S IN THE RECORD. THE WORDS "HALL OF JUSTICE" DO NOT
12 APPEAR. LET'S WRAP THIS UP.

13 BY MR. KLEIN:

14 Q YOU INTENTIONALLY LEFT OUT THE REFERENCE TO
15 THE HALL OF JUSTICE, ISN'T THAT CORRECT?

16 A I DID NOT. THAT IS NOT CORRECT.

17 Q NOW, YOU KNEW THAT MR. CRAIN AND I WANTED TO
18 TALK TO YOU ABOUT ANY INFORMATION YOU HAD ABOUT WHAT
19 MR. HUNT TOLD YOU JUST LIKE THE DISTRICT ATTORNEY DID;
20 CORRECT?

21 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED. I
22 THINK THIS WAS COVERED.

23 THE COURT: OVERRULED. THERE WAS NEW DISCOVERY
24 TURNED OVER FOR THE FIRST TIME THIS MORNING.

25 MR. MC MULLEN: THANK YOU.

26 THE WITNESS: I FRANKLY HAD BEEN TOLD ONLY THAT --
27 IF I COOPERATED WITH YOU, FOLKS, IT WOULD BE LESS
28 EMBARRASSING FOR ME. THAT IS THE REFERENCE I WAS TOLD.

18

1 BY MR. KLEIN:

2 Q SO YOU DIDN'T KNOW AT THE TIME THAT YOU MADE
3 THIS MOST RECENT INTERVIEW WITH THE DISTRICT ATTORNEY ON
4 APRIL 19, 1996, THAT MR. CRAIN AND I WERE EQUALLY
5 INTERESTED IN ANY INFORMATION THAT YOU PROVIDE THE
6 DISTRICT ATTORNEY? YOU DID NOT KNOW THAT?

7 A MY SENSE OF IT, SIR, AS WAS BORNE OUT IN YOUR
8 EXAMINATION OF MYSELF, WAS THAT YOUR SOLE INTEREST WAS TO
9 INTIMIDATE AND EMBARRASS ME.

10 Q BUT YOU WEREN'T AWARE THAT MR. CRAIN AND I
11 WERE INTERESTED IN THE INFORMATION THAT YOU'RE GOING TO
12 PROVIDE THE DISTRICT ATTORNEY?

13 A MY KNOWLEDGE WAS THAT YOUR INTEREST WAS TO
14 EMBARRASS AND INTIMIDATE ME, SIR.

15 Q OKAY.

16 SO YOU WANTED TO MAKE SURE THAT THE DISTRICT
17 ATTORNEY HAD THE INFORMATION THAT YOU GAVE THEM ON APRIL
18 19TH AND NOT MR. CRAIN, MYSELF OR ANY REPRESENTATIVE OF
19 MR. HUNT?

20 A NO, SIR, THAT IS NOT A TRUTHFUL STATEMENT.

21 Q WELL, DID YOU OR -- DIRECT YOUR ATTORNEY TO
22 PROVIDE US WITH THAT INFORMATION?

23 A I DID NOT BELIEVE I HAD ANY OBLIGATION TO
24 ASSIST YOU IN EMBARRASSING AND INTIMIDATING ME ANY FURTHER
25 THAN YOU HAVE ALREADY OR WERE PLANNING TO DO SO ON YOUR
26 OWN WITHOUT MY HELP.

27 Q NOW, AT THE TIME THAT YOU MADE YOUR OPENING
28 STATEMENT YOU TOLD MR. -- YOU TOLD THE JURY THAT MR. HUNT

18 1 WAS GOING TO EXPLAIN EVERYTHING; CORRECT?

2 MR. MC MULLEN: OBJECTION. RELEVANCE.

3 THE COURT: I ASSUME --

19 4 MR. KLEIN: MOVING ONTO ANOTHER AREA OF THE
5 EXAMINATION BY MR. MC MULLEN. THANK YOU, YOUR HONOR. I'M
6 ACTUALLY TRYING TO FINISH IT.

7 THE COURT: THAT'S WHAT I WAS ABOUT TO SAY. I
8 WOULD HOPE IT'S PREPARATORY TO SOMETHING ELSE. YOU TOLD
9 ME IT IS, SO LET'S DO IT.

10 BY MR. KLEIN:

11 Q LET ME BACK UP ONE MORE LAST -- ONE MORE LAST
12 QUESTION -- ABOUT THE INTERROGATORY.

13 BASED ON THE HISTORY OF WHAT LEAD TO THOSE
14 INTERROGATORIES, MR. BARENS, YOU KNEW THAT MR. CRAIN AND I
15 WANTED TO KNOW THE INFORMATION THAT YOU ULTIMATELY
16 PROVIDED TO THE DISTRICT ATTORNEY ON APRIL 19TH, THAT'S
17 WHAT WE WANTED YOU TO PROVIDE US IN THOSE INTERROGATORIES;
18 CORRECT?

19 A NO. I COULD NOT READ YOUR MIND, COUNSEL.

20 Q ALL RIGHT.

21 NOW, BACK TO YOUR OPENING STATEMENT WHERE YOU
22 SAID MR. HUNT WAS GOING TO EXPLAIN THE SEVEN-PAGE LIST.
23 REMEMBER THAT?

24 A YES.

25 Q AT THAT TIME YOU HAD IN MIND WHAT MR. HUNT
26 HAD TOLD YOU SUPPOSEDLY AT THIS FIRST MEETING AND THEN
27 THESE TWO OTHER EXPLANATIONS THAT HE HAD PROVIDED TO YOU
28 ON NUMEROUS OCCASIONS; CORRECT?

19

1 A NO.

2 Q WHAT AM I MISSING?

3 THE COURT: WHY DON'T YOU REFRAME THAT QUESTION?

4 BY MR. KLEIN:

5 Q AT THE TIME YOU HAD YOUR -- YOU MADE YOUR
6 OPENING STATEMENT AND YOU SAID MR. HUNT WAS GOING TO
7 EXPLAIN THE SEVEN-PAGE LIST, YOU HAD IN MIND THE FIRST
8 CONVERSATION THAT YOU SUPPOSEDLY HAD WITH HIM AT THE HALL
9 OF JUSTICE; CORRECT?

10 A NO.

11 Q YOU DID NOT HAVE THAT IN MIND?

12 A NO.

13 Q WHY NOT?

14 A I HAD SOMETHING ELSE IN MIND.

15 Q WELL, YOU HAD THAT INFORMATION. IT WAS
16 AVAILABLE TO YOU?

17 A YOU ASKED ME, COUNSEL, IF I HAD IT IN MIND.
18 THE ANSWER IS NO. IF YOU ARE ASKING ME IF I WAS AWARE OF
19 THE CONVERSATION, THE ANSWER IS YES.

20 Q OKAY.

21 AND YOU WERE AWARE OF ANOTHER CONVERSATION
22 THAT YOU HAD WITH MR. HUNT WHERE HE TOLD YOU THAT THE
23 EXPLANATION FOR THE SEVEN-PAGE LIST WAS THAT, YOU KNOW, IT
24 WAS TO INTIMIDATE LEVIN AND THAT IT WAS TAKEN THERE
25 SOMETIME PRIOR TO JUNE 6TH AND THAT PITTMAN WAS A
26 REPRESENTATIVE OF THE MAFIA. YOU WERE AWARE OF THAT
27 INFORMATION?

28 A COUNSEL, AT THAT MOMENT IN TIME I WAS ALSO

19
1 AWARE OF THE SCORE OF THE 1961 U. S. C. VERSUS WISCONSIN
2 GAME IN THE ROSE BOWL, BUT I DIDN'T HAVE THAT IN MIND ANY
3 MORE THAN I DID THAT SECOND CONVERSATION AT THE TIME WHEN
4 I MADE MY OPENING STATEMENT.

5 Q AT THE TIME YOU MADE THE OPENING STATEMENT
6 YOU WERE AWARE OF THE INFORMATION THAT MR. HUNT PROVIDED
7 YOU THAT THE SEVEN-PAGE LIST COULD HAVE BEEN A SCRIPT AND
8 IT WAS TAKEN THERE PRIOR TO JUNE 6, 1984; CORRECT?

9 A I REFER TO MY PREVIOUS ANSWER, COUNSEL, AS
10 THE SAME FOR THIS.

11 Q SO THERE WOULD HAVE BEEN NO ETHICAL REASON
12 THAT YOU WOULD HAVE HAD NOT TO PRESENT EVIDENCE, IF YOU
13 HAD IT, OF KAREN MARMOR, THAT SHE SAW THE SEVEN-PAGE LIST
14 AT RON LEVIN'S SOMETIME PRIOR TO JUNE 6, 1984?

15 A I DID NOT HAVE EVIDENCE THAT SHE SUBMITTED
16 TWO YEARS AFTER THAT.

17 Q THE QUESTION WAS: IF YOU HAD THE
18 INFORMATION.

19 A I DON'T KNOW IF I WOULD HAVE OR I WOULDN'T
20 HAVE. I WOULD HAVE HAD SOME HESITATION.

21 THE COURT: WHY WOULD YOU HAVE HAD SOME HESITATION?

22 THE WITNESS: BECAUSE UNTIL SUCH TIME AS MR. HUNT
23 WAS GOING TO TESTIFY, WHICH I WASN'T SURE OF UNTIL THE
24 VERY END OF THE CASE, IT REMAINED POSSIBLE TO ME THAT
25 MR. HUNT'S ULTIMATE EXPLANATION OF THE FACTS WOULD HAVE
26 DIFFERED FROM WHAT I UNDERSTAND MS. MARMOR SOME TWO YEARS
27 LATER TESTIFIED TO.
28

19

1 BY MR. KLEIN:

2 Q SINCE MR. HUNT NEVER TESTIFIED THERE WOULD
3 HAVE BEEN NO ETHICAL IMPEDIMENT TO HAVE PRESENTED HER
4 TESTIMONY, IF YOU HAD IT, AT THE CONCLUSION OF THE TRIAL?

5 A BEG PARDON -- HOW COULD YOU ASK SUCH A THING?
6 HOW WOULD I KNOW HOW I WOULD HAVE REACTED TO TESTIMONY
7 THAT WAS NEVER GIVEN WHICH MAY HAVE CHANGED WHETHER MY
8 CLIENT TESTIFIED ULTIMATELY OR NOT, ET CETERA, ET CETERA.
9 IT IS PUTTING ONE PRESUMPTION ON ANOTHER PRESUMPTION AND
10 LEAVES ME UNABLE TO DRAW A LOGICAL COLLUSION.

11 MR. KLEIN: COULD I HAVE A MINUTE, YOUR HONOR?

12 THE COURT: VERY QUICKLY, THOUGH. WE HAVE GOT TO
13 FINISH UP HERE.

14 WHAT TIME ARE THEY EXPECTING YOU OVER IN 85?

15 THE COURT: IF YOUR CLERK COULD ASK THEM ASK IF
16 THEY STILL HAVE WANG ET AL. VERSUS ATTORNEY GENERAL.

17 THE COURT: MR. CLERK, IF YOU COULD APPROACH THE
18 WITNESS AND GET SOME INFORMATION TO ASK IF THEY HAVE
19 CALLED A CASE.

20 THE WITNESS: SORRY.

21 THE COURT: YOU CAN TELL THEM THAT HE'S STILL ON
22 THE STAND AND HE WOULD BE DONE QUICKLY.

20

23 RIGHT, MR. KLEIN?

24 MR. KLEIN: YEAH.

25 BY MR. KLEIN:

26 Q WITH RESPECT TO LOUISE WALLER, DO YOU
27 REMEMBER WHO SHE WAS?

28 A YES.

20 1 Q DID YOU PRESENT HER TESTIMONY IN THE CASE?

2 A I BELIEVE SHE TESTIFIED DURING THE GUILT
3 PHASE. I COULD BE WRONG, BUT I BELIEVE SHE TESTIFIED IN
4 THE GUILT PHASE.

5 Q AND WHO WAS YOUR INVESTIGATOR LATE IN THE
6 CASE?

7 A A GENTLEMAN NAMED HAP LEE.

8 MR. KLEIN: YOUR HONOR, I HAVE A -- A DOCUMENT
9 THAT'S EIGHT PAGES LONG. IT'S A REPORT BY MR. LEE OF AN
10 INTERVIEW OF LOUISE WALLER. MAY THAT BE MARKED AS NEXT IN
11 ORDER?

12 THE COURT: IT WOULD BE 275, BUT IS THIS RESPONSIVE
13 TO SOMETHING THAT CAME OUT ON DIRECT?

14 MR. KLEIN: YES, YOUR HONOR. MR. MC MULLEN
15 QUESTIONED THE WITNESS ABOUT ALL THE SIGHTING WITNESSES,
16 AND YOUR HONOR ALLOWED HIM TO DO IT --

17 THE COURT: ALL RIGHT.

18 THAT'S WHAT I AM ASKING.

19 MR. KLEIN: -- UNDER ISSUE 1.

20 THE COURT: ALL RIGHT.

21 THIS IS, AGAIN, A REPORT OF A PRIVATE
22 INVESTIGATOR?

23 MR. KLEIN: HAP LEE, LOUISE WALLER.

24 THE COURT: ALL RIGHT.

25

26 (MARKED FOR ID = PETITIONER'S 275,
27 DOCUMENT.)

28

20
1 BY MR. KLEIN:

2 Q IS THIS THE REPORT YOU USED TO PUT HER ON THE
3 STAND, MR. BARENS?

4
5 (WITNESS REVIEWING DOCUMENTS.)

6
7 A I'M NOT SURE WHETHER I EXAMINED HER OR
8 MR. CHIER DID. I NOTICE THE REPORT I'M LOOKING AT IS
9 ADDRESSED TO MR. CHIER. I DON'T RECALL. I BELIEVE THAT
10 MR. CHIER PUT HER ON THE STAND, BUT I'M NOT SURE.

11 Q BUT YOU SAW THAT REPORT IN CONNECTION WITH
12 THE PREPARATION OF HER TESTIMONY; CORRECT?

13 A I'M NOT SURE.

14 Q MR. CHIER WAS CO-COUNSEL AT THAT TIME?

15 A YES.

16 Q LET ME ASK YOU A HYPOTHETICAL QUESTION,
17 MR. BARENS.

18 LET ME JUST ASK YOU A QUESTION. IF YOU
19 PRESENTED LOUISE WALLER'S TESTIMONY AT THE PENALTY PHASE
20 AND HAD THE INFORMATION PRIOR TO THE TIME THAT THE JURY
21 WENT OUT OR WHEN THE JURY WAS DELIBERATING DURING THE
22 GUILT PHASE, WOULD YOU HAVE DONE SOMETHING TO USE HER
23 TESTIMONY?

24 MR. MC MULLEN: OBJECTION. RELEVANCY. IT'S
25 OUTSIDE OF THE SCOPE.

26 THE COURT: I DON'T UNDERSTAND THE QUESTION ASKED.

27 BY MR. KLEIN:

28 Q ASSUME THAT YOU HAD THE INFORMATION CONTAINED

20
1 IN MR. LEE'S REPORT ABOUT LOUISE WALLER AND ASSUME THAT
2 YOU CALLED HER AS A WITNESS IN THE PENALTY PHASE, BUT THAT
3 YOU HAD THAT INFORMATION PRIOR TO THE TIME THAT THE JURY
4 WENT OUT IN THE GUILT PHASE OR DURING THE TIME THAT THE
5 JURY WAS DELIBERATING IN THE GUILT PHASE, WOULD YOU HAVE
6 DONE SOMETHING TO ATTEMPT TO USE HER TESTIMONY?

7 MR. MC MULLEN: OBJECTION. RELEVANCY. OUTSIDE OF
8 THE SCOPE OF YOUR MARCH 29TH RULING WITH RESPECT TO ISSUE
9 1-A.

10 THE COURT: IS YOUR QUESTION: WOULD YOU HAVE USED
11 WALLER'S TESTIMONY IN THE GUILT PHASE IF YOU KNEW ABOUT
12 IT?

13 MR. KLEIN: COULD I JUST HAVE ONE MOMENT?

14 THE COURT: WE HAVE TO MOVE, MR. KLEIN.

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

18
19 MR. KLEIN: I'LL JUST WITHDRAW THE QUESTION.

20 THE COURT: OKAY.

21 MR. KLEIN: THIS WAS 275.

22 THE COURT: YES.

23 MR. KLEIN: I'D ASK THE INDULGENCE THE COURT TO GET
24 A COPY OF THIS BECAUSE THIS WAS MY LAST COPY.

25 THE COURT: JUST MAKE SURE THE CLERK HAS IT.

26 ANYTHING FURTHER?

27 MR. KLEIN: I HAVE A COUPLE OF MORE QUESTIONS.
28

20

1 BY MR. KLEIN:

2 Q NADIA GHALEB, G-H-A-L-E-B, YOU DON'T HAVE ANY
3 MEMORY OF HOW YOU FOUND OUT ABOUT HER?

4 A NOT SPECIFICALLY, BUT I BELIEVE I HEARD ABOUT
5 HER SECONDHAND.

6 Q AND YOU DON'T REMEMBER WHEN YOU FOUND OUT
7 ABOUT HER?

8 A I BELIEVE IT WAS AFTER THE CONCLUSION OF THE
9 TRIAL. PERHAPS DURING THE PENALTY PHASE, BUT I'M NOT
10 SURE.

11 Q AND YOU NEVER INTERVIEWED HER?

12 A I NEVER INTERVIEWED HER.

13 Q YOU NEVER CAUSED ANYONE TO INTERVIEW HER?

14 A I NEVER CAUSED ANYONE TO INTERVIEW HER.

15 Q WHAT IS THE SECONDHAND INFORMATION WE'RE
16 TALKING ABOUT AGAIN?

17 A I WASN'T TALKING ABOUT ANYTHING, SIR. I
18 SAID -- YOU ASKED ME HOW I KNEW ABOUT IT, AND I SAID I
19 BELIEVE I KNEW ABOUT HER ON SOME SECONDHAND BASIS SEEING
20 AS I HAD NEVER SPOKEN TO HER MYSELF.

21 MR. MC MULLEN: MR. KLEIN, IF YOU ARE ASKING FOR 13
22 AND 14, I HAVE THEM HERE.

23 MR. KLEIN: OH, THANK YOU.

24 YOU ARE READING MY MIND.

25 MR. MC MULLEN: I JUST OVERHEARD YOU.

26 BY MR. KLEIN:

27 Q SHOWING YOU EXHIBIT 13. HAVE YOU EVER SEEN
28 THAT DOCUMENT BEFORE?

20
1 (WITNESS REVIEWING EXHIBIT.)
2

3 A I AM NOT SURE WITH CERTAINTY THAT I SAW IT.

4 MR. KLEIN: YOUR HONOR, I WOULD LIKE TO OFFER FROM
5 EXHIBIT 267, PAGE 50, LINE 24.

6 BY MR. KLEIN:

7 Q (READING.)

8 "Q AFTER THIS DOCUMENT WAS
9 MARKED AS AN EXHIBIT DID YOU EVER
10 SEE THIS MAY 4, 1987, BEFORE?

11 A YES, SIR.

12 Q IN THIS" --

13 WELL, -- LET ME MOVE ON.

14 YOU TESTIFIED YESTERDAY YOU HAVE NO IDEA WHAT
15 INVESTIGATION WAS DONE CONCERNING IVAN WERNER; IS THAT
16 CORRECT?

17 A NO. I MEAN IT'S CORRECT IN THE SENSE THAT I
18 DON'T -- KNOW HANDS-ON WHAT WAS DONE. I DO KNOW THERE WAS
19 SOME INVESTIGATION MADE OF IVAN WERNER, ALTHOUGH I'M
20 SOMEWHAT FOGGY ON THAT AT PRESENT. I RECALL THERE WAS
21 SOME IMPEACHMENT OF HIS CREDIBILITY.

22 Q OKAY.

23 MR. KLEIN: I WOULD LIKE TO OFFER THESE ANSWERS
24 WHICH START ON PAGE 51 OF EXHIBIT 267 AFTER YES, SIR.

25 BY MR. KLEIN:

26 Q (READING.)

27 "DO YOU REMEMBER SEEING THIS
28 PERSON'S NAME IN THIS LETTER WHEN

1 YOU RECEIVED IT IN MAY OF 1988?

2 A I BELIEVE, YES, I DO RECALL
3 SEEING THAT NAME IN THAT LETTER.

4 Q WAS THAT THE FIRST TIME YOU
5 EVER SAW THAT NAME?

6 A I BELIEVE I HEARD SOMETHING
7 ABOUT THAT INDIVIDUAL BEFORE I SAW
8 IT IN THE LETTER.

9 Q WHEN DID YOU FIRST HEAR ABOUT
10 THAT INDIVIDUAL?

11 A I BELIEVE IT WAS IN COURT.

12 Q FROM WHOM?

13 A I'M NOT SURE. IT MIGHT HAVE
14 BEEN MR. WAPNER.

15 Q IS IT ON THE RECORD?

16 A I DON'T KNOW, SIR. AND
17 AGAIN, I'M NOT SAYING -- I'M NOT
18 EVEN SURE THAT COMMUNICATION
19 OCCURRED."

20 MR. MC MULLEN: OBJECTION. INAPPROPRIATE
21 IMPEACHMENT.

22 THE COURT: I'LL ALLOW THE ANSWER TO STAND, OR
23 QUESTION, RATHER.

24 BY MR. KLEIN:

25 Q SHOWING YOU PAGE 2 TO EXHIBIT 14, HAVE YOU
26 EVER SEEN THAT BEFORE?

27
28 (WITNESS REVIEWING DOCUMENT.)

1 A I MAY HAVE, MAY NOT HAVE.

2
3 (COUNSEL CONFER.)

4
5 MR. KLEIN: SORRY, YOUR HONOR.

6 I DON'T HAVE ANY OTHER QUESTIONS.

7 THE COURT: MR. MC MULLEN?

8 MR. MC MULLEN: IF I COULD JUST HAVE ONE MOMENT.

9
10 (PAUSE.)

11
12 MR. MC MULLEN: I HOPE THIS WON'T TAKE TOO LONG,
13 YOUR HONOR.

14 THE COURT: ME, TOO.

15 THE WITNESS: ME, THREE.

16
17 RE-CROSS-EXAMINATION @

18
19 BY MR. MC MULLEN:

20 Q ON CROSS EXAMINATION YOU TESTIFIED THAT
21 MR. HUNT GAVE A VERSION OF THE SEVEN-PAGE -- REGARDING THE
22 SEVEN-PAGE TO-DO LIST TO YOU THAT INVOLVED -- THAT
23 INCLUDED AN EXPLANATION THAT IT WAS A SCRIPT OR FOR A
24 THEATRICAL PRODUCTION THAT HE WAS WORKING ON WITH
25 MR. LEVIN. DO YOU RECALL TESTIFYING TO THAT?

26 A YES.

27 Q AND YOU TESTIFIED THAT THAT CONVERSATION
28 OCCURRED WHEN MR. HUNT WAS OUT OF CUSTODY; IS THAT

1 CORRECT?

2 A YES.

3 Q AND WAS THAT PRIOR TO THE TRIAL OR AFTER THE
4 TRIAL COMMENCED?

5 A TO THE BEST OF MY RECOLLECTION, AFTER THE
6 TRIAL COMMENCED.

7 Q DO YOU HAVE ANY IDEA HOW FAR ALONG THE TRIAL
8 HAD PROGRESSED WHEN THAT CONVERSATION OCCURRED?

9 A I CANNOT IDENTIFY ON THAT BASIS.

10 Q SIR, YOU TESTIFIED ABOUT DISCOVERING A
11 SIGHTING WITNESS BY THE NAME OF ROBBIE ROBINSON. WHY
12 DIDN'T YOU CALL ROBBIE ROBINSON --

13 MR. KLEIN: YOUR HONOR, THAT'S BEYOND THE SCOPE AND
14 IRRELEVANT.

15 THE COURT: I'LL ALLOW IT.

16 MR. CRAIN: YOUR HONOR, EXCUSE ME. IT'S NOT PART
17 OF ISSUE 2. WHETHER OR NOT -- ROBBIE ROBINSON ONLY
18 AFFECTS ISSUE 1. WHY HE DIDN'T CALL SOMEONE IS NOT PART
19 OF THE ISSUES EITHER DESIGNATED BY THE COURT OF APPEAL OR
20 CERTAINLY BY THIS COURT IN IT'S RULING ON MARCH 29TH -- SO
21 IT'S TOTALLY IRRELEVANT.

22 THE COURT: OVERRULED.

23 BY MR. MC MULLEN:

24 Q IF YOU CAN ANSWER.

25 A MY PRIMARY REASON WAS THAT I FOUND
26 MR. ROBINSON TO BE AN INCREDIBLE WITNESS, AND I DID NOT
27 WANT TO DO ANYTHING TO CHEAPEN OR DENIGRATE THE TESTIMONY
28 OF CANCHOLA AND LOPEZ, WHICH I FELT WAS EXTREMELY

1 CREDIBLE.

2 Q YOU BECAME AWARE OF MR. ROBINSON'S SIGHTING
3 ALLEGATIONS DURING THE DELIBERATIONS OF THE GUILT PHASE;
4 IS THAT CORRECT?

5 A YES.

6 Q DID YOU HAVE SOME CONCERNS ABOUT MOVING TO
7 REOPEN YOUR CASE DURING THAT PHASE WITH RESPECT TO ROBBIE
8 ROBINSON?

9 A YES.

10 Q AND WHAT WERE THOSE CONCERNS?

11 A I --

12 MR. KLEIN: AGAIN, OBJECTION. THIS IS AGAIN
13 IRRELEVANT.

14 THE COURT: ISN'T IT AT THIS POINT --

15 MR. MC MULLEN: SUBMITTED, YOUR HONOR.

16 THE COURT: IN THAT CASE, IT'S SUSTAINED.

17 BY MR. MC MULLEN:

18 Q WITH RESPECT TO MR. WERNER, WHY DIDN'T YOU
19 CALL MR. WERNER TO THE WITNESS STAND?

20 MR. CRAIN: OBJECTION. IRRELEVANT.

21 MR. KLEIN: OBJECTION. NO FOUNDATION.

22 MR. CRAIN: IT HAS NOTHING TO DO WITH ISSUE 2.

23 THE COURT: OVERRULED.

24 MR. KLEIN: THERE IS NO FOUNDATION THAT HE HAD ANY
25 INFORMATION TO --

26 THE COURT: MAYBE THAT WILL BE THE ANSWER.

27 MR. KLEIN: FIRST, HE SHOULD HAVE TO ESTABLISH IT.

28 THE COURT: COUNSEL, I HAVE RULED.

1 ANSWER THE QUESTION.

2 THE WITNESS: I LACKED SUFFICIENT INFORMATION TO
3 MAKE ME BELIEVE THAT MR. WERNER WOULD HAVE BEEN A
4 BELIEVABLE WITNESS OR A CREDIBLE ONE.

5 MR. MC MULLEN: IF I COULD HAVE JUST HAVE A MOMENT,
6 YOUR HONOR.

7
8 (PAUSE.)

9
10 BY MR. MC MULLEN:

11 Q DO YOU REMEMBER WHERE YOU FIRST HEARD ABOUT
12 MR. WERNER, WHO TOLD YOU?

13 A I BELIEVE IT WAS -- I BELIEVE, TO THE BEST OF
14 MY RECOLLECTION, IT WAS THROUGH A -- A COMMUNICATION WITH
15 MR. WAPNER.

16 Q DO YOU REMEMBER GETTING THE INFORMATION WITH
17 RESPECT TO MR. WERNER FROM MR. CHIER?

18 A I MAY HAVE -- I'M NOT SURE IN WHAT SEQUENCE I
19 RECEIVED THAT INFORMATION. I BELIEVE I HAVE BEEN
20 INCONSISTENT ON WHETHER I RECOGNIZED THE LETTER THAT I
21 RECEIVED FROM MR. WAPNER AT THAT POINT IN TIME IN 1987.
22 MY FIRST KNOWLEDGE OF WERNER MAY HAVE BEEN IN THAT LETTER,
23 OR IT MAY HAVE BEEN IN COMMUNICATION WITH MR. CHIER. I
24 JUST DON'T -- KNOW.

25 Q IS YOUR RECOLLECTION SOMEWHAT FOGGY ON THAT
26 ISSUE AT THIS POINT IN TIME?

27 A I WILL CONCEDE THAT I DID NOT SPEND MUCH TIME
28 FOCUSED ON MR. WERNER THEN OR SUBSEQUENTLY. I DID NOT,

2
1 FOR WHATEVER EXISTED IN MY MIND AT THAT TIME, FIND THAT TO
2 BE SIGNIFICANT.

3 MR. MC MULLEN: MAY I APPROACH THE WITNESS, YOUR
4 HONOR?

5 THE COURT: YES.

6 MR. MC MULLEN: REFERRING THE COURT AND COUNSEL TO,
7 I BELIEVE IT'S PETITIONER'S EXHIBIT 262, STARTING AT THE
8 BOTTOM OF PAGE 51.

9 BY MR. MC MULLEN:

10 Q WOULD YOU PLEASE READ STARTING AT LINE --

11 THE COURT: I AM SORRY, 262?

12 MR. MC MULLEN: I'M NOT SURE. IT'S THE DEPOSITION.

13 MR. KLEIN: 267.

14 MR. MC MULLEN: 267. I STAND CORRECTED.

15 MR. KLEIN: WHAT PAGE?

16 MR. MC MULLEN: STARTING AT PAGE 51, LINE 11.

17 BY MR. MC MULLEN:

18 Q IF YOU COULD READ TO THERE AND OVER TO THE
19 NEXT PAGE AT LINE 11. JUST TO -- TO YOURSELF TO SEE IF
20 THAT REFRESHES YOUR RECOLLECTION.

21
22 (WITNESS REVIEWING DOCUMENTS.)

23
24 A YES, SIR.

25 Q DO YOU REMEMBER NOW AFTER READING THAT HOW
26 YOU HEARD ABOUT IVAN WERNER?

27 A WELL, I SAID THROUGHOUT THIS TESTIMONY THAT I
28 WASN'T SURE, THAT BASICALLY IT COULD HAVE COME EITHER FROM

2
1 MR. CHIER MENTIONING IT TO ME OR FROM CONTACT WITH
2 MR. WAPNER, WRITTEN OR ORAL. I'M NOT SURE.

3 MR. MC MULLEN: MAY I JUST HAVE A MOMENT?

4 THE COURT: YES.

5
6 (PAUSE.)

7
8 BY MR. MC MULLEN:

9 Q DO YOU REMEMBER WHEN YOU MIGHT HAVE HAD THIS
10 CONTACT WITH MR. WAPNER, WHAT POINT IN TIME?

11 A NO.

12 MR. MC MULLEN: MAY I JUST HAVE ONE MOMENT?

13
14 (PAUSE.)

15
16 MR. MC MULLEN: NOTHING FURTHER, THEN.

17 THE COURT: JUST TWO QUESTIONS.

18 YOU INDICATED ON REDIRECT THAT YOU DID NOT
19 INTERVIEW MS. GHALEB OR CAUSE ANYONE TO INTERVIEW
20 MS. GHALEB. WHY WAS THAT?

21 THE WITNESS: WE HAD NO DIRECT KNOWLEDGE OF HER.
22 THE ONLY THING I EVER HEARD ABOUT MS. GHALEB, I BELIEVE,
23 WAS AFTER THESE PROCEEDINGS WERE CONCLUDED. I DON'T
24 RECALL CONTEMPORANEOUSLY HEARING THAT NAME.

25 THE COURT: ALL RIGHT.

26 YOU SAID THAT YOU GAVE A PARTIAL ANSWER TO
27 MR. DOBRIN AS TO WHY HUNT DIDN'T TESTIFY AND PART OF THAT
28 WAS YOUR REACTION TO THE TRIAL JUDGE AND COMMENTS TO -- AS

2
1 TO HOW HUNT HAD DONE IN A TRIAL CROSS-EXAMINATION OUTSIDE
2 OF COURT. WERE THERE MORE REASONS THAN THAT?

3 THE WITNESS: THERE WERE OTHER REASONS IN MY MIND
4 THAT -- YES, THERE WERE.

5 THE COURT: ALL RIGHT.

6 I HAVE TO ASK YOU WHAT ARE THOSE REASONS.

7 THE WITNESS: I HAD CONCERN -- I HAD CONCERN THAT
8 MR. HUNT ON EXAMINATION COULD HAVE OUTSMARTED HIMSELF.

9 THE COURT: ALL RIGHT.

10 ANY REDIRECT?

11 MR. KLEIN: JUST ONE MINUTE.
12

13 (COUNSEL CONFER.)
14

15 THE COURT: WHEN YOU SAY BY "OUTSMARTED HIMSELF,"
16 YOU MEAN HE WOULD HAVE COME ACROSS AS A CON?

17 THE WITNESS: I BELIEVE SO. AND I ALSO BELIEVE
18 THAT IF A -- IF A JURY FELT THAT HE WAS A LIAR AND HAD
19 COMMITTED A FIRST DEGREE MURDER FOR FINANCIAL GAIN, THEY
20 WOULD HAVE GIVEN HIM THE DEATH PENALTY. I DIDN'T VERY
21 WELL CONTENANCE THAT RISK.

22 THE COURT: ANYTHING FURTHER?
23

24 FURTHER REDIRECT EXAMINATION +
25

26 BY MR. KLEIN:

27 Q YOU DIDN'T PERSONALLY INTERVIEW MR. ROBINSON
28 OR CAUSE ANYBODY TO PERSONALLY INTERVIEW MR. ROBINSON;

2
1 CORRECT?

2 A I WAS PRESENT WHILE MR. ROBINSON WAS
3 INTERVIEWED.

4 Q IN COURT?

5 A YES. AND I BELIEVE -- I BELIEVE THAT I HAD
6 CONVERSATION WITH MR. ROBINSON, ALTHOUGH IT MAY BE
7 UNSTRUCTURED, BUT I BELIEVE I HAD SOME CONVERSATION WITH
8 HIM.

9 Q ACTUALLY, DIDN'T YOU TELL THE COURT, JUDGE
10 RITTENBAND, AT PAGE 13262 OF THE TRANSCRIPT WHEN THE
11 DISCUSSIONS ABOUT MR. ROBINSON WHEN HE WAS IN COURT WITH
12 YOU -- THE JUDGE SAID (READING), "DO YOU WANT TO TALK TO
13 ROBINSON," AND MR. BARENS SAID, "WELL, I AM NOT SAYING
14 THAT, YOUR HONOR. YOUR HONOR, COULD WE SPEAK OFF THE
15 RECORD?"

16 A WHY DON'T WE LOOK AT THE REST OF THE
17 TRANSCRIPT, COUNSEL. COULD YOU APPROACH ME AND SHOW ME
18 THE REST OF THAT TRANSCRIPT?

19 THE COURT: SHOW HIM THE REST OF THE TRANSCRIPT.

20 WHAT PAGE WAS IT?

21 MR. KLEIN: IT'S MARKED.

22 THE COURT: OKAY.

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

24 THE COURT: YES.

25

26 (WITNESS REVIEWING TRANSCRIPT.)

27

28 THE WITNESS: ALL RIGHT, COUNSEL.

2
1 NOW, DIRECTLY BELOW THE QUOTE YOU JUST GAVE
2 TO THE COURT TO IMPUGN ME, COUNSEL, IT SAYS (READING):

3
4 "MR. BARENS: LET'S SAY FOR THE
5 RECORD THAT THE DEFENSE WILL MAKE
6 INQUIRY AND DO ALL THINGS INCUMBENT
7 UPON THE DEFENSE TO INVESTIGATE THIS
8 MATTER."

9 LATER ON THE COURT WILL, HAVING READ THIS
10 TRANSCRIPT, RECALL THAT I ASKED HIM FOR HIS TELEPHONE
11 NUMBER, AND STOOD BY WHILE HE HAD CONVERSATION WITH THE
12 COURT AND ASKED MY OWN QUESTIONS."

13 I ALSO REVIEWED AND MADE VIGOROUS OBJECTIONS
14 TO THE COURT'S INQUIRY WITH THE WITNESS, AND I REVIEWED
15 INVESTIGATION REPORTS THAT WERE MADE.

16 THE COURT: ANYTHING ELSE, MR. KLEIN?

17 MR. KLEIN: YES.

18 BY MR. KLEIN:

19 Q WHY DON'T -- LET ME READ IT TO YOU AT THE
20 END. CONTINUED AT 13263. THE COURT IS TALKING TO YOU AND
21 MR. WAPNER. WHERE MR. WAPNER IS ACTUALLY SUGGESTING HE
22 MIGHT CALL MR. ROBINSON --

23 A WAIT -- WHY DON'T WE READ IT --

24 THE COURT: PUT A QUESTION.

25 BY MR. KLEIN:

26 Q THEN YOU SAID (READING):

27 "I WILL OBJECT."

28 AND THE COURT SAYS: "I WILL SUSTAIN

3
1 THE OBJECTION."

2 THEN YOU SAY: "NOW THAT COMPELS ME
3 THAT I WOULD HAVE TO DO AN
4 INTERVIEW, INTERVIEW WITH THIS MAN
5 AND A BACKGROUND CHECK WITH THIS MAN
6 AND SPEND A LOT OF TIME WITH THIS
7 MAN AND DIGNIFY THIS MAN IN A MANNER
8 THAT I MAY NOT CHOSE TO DO SO."

9 THAT'S WHAT YOU SAID IN COURT; CORRECT?

10 A EXCUSE ME, COUNSEL. NOW WHILE WE'RE IN OUR
11 ZEAL TO IMPUGN --

12 THE COURT: THE ANSWER --

13 MR. CRAIN: CAN THE WITNESS BE ORDERED TO ANSWER
14 THE QUESTION?

15 THE COURT: EXCUSE ME. ONE AT A TIME, GUYS.

16 IF MR. KLEIN IS GOING TO DO THE EXAMINATION,
17 LET MR. KLEIN DO THE EXAMINATION.

18 IS THAT THE ANSWER TO THE QUESTION, THAT'S
19 WHAT YOU SAID AT THE TRIAL, MR. BARENS?

20 THE WITNESS: THOSE WORDS ARE THERE. BUT THEY'RE
21 OUT OF CONTEXT.

22 THE COURT: LET'S PUT IT IN CONTEXT. REALLY
23 GETTING INTO MINUTIA HERE.

24 THE WITNESS: THE CONTEXT WAS THAT WAPNER HAD
25 STRUCTURED THIS WITNESS TO EMBARRASS THE DEFENDANT, TO
26 SHOW THAT HE WAS AN INCREDIBLE WITNESS AND THAT HE WAS
27 THREATENING TO REOPEN WITH AND PUT BEFORE THE JURY.

28 I WAS NOT ABOUT TO HAVE THIS SIGHTING WITNESS

3
1 OR ANYONE ELSE WHO I THOUGHT WAS A FLAKE TESTIFY TO THE
2 JURY. MR. HUNT AGREED WITH ME AT THE TIME THAT
3 MR. ROBINSON WAS NOT A VERY CREDIBLE WITNESS --

4 MR. KLEIN: MOVE TO STRIKE.

5 THE WITNESS: YOU OPENED IT UP.

6 MR. CRAIN: MOVE TO STRIKE --

7 THE COURT: FINISH THE ANSWER.

8 THEN YOU CAN MAKE A MOTION TO STRIKE.

9 THE WITNESS: MR. HUNT AGREED WITH ME AT THE TIME.
10 I DID NOT WANT TO IMPUGN OR DENIGRATE OR CHEAPEN THE
11 TESTIMONY OF THE ARIZONA SIGHTING WITNESSES, WHICH I HAD
12 CONCLUDED MY CASE WITH. I HAD RELIED UPON THEM AT THE
13 VERY LEAST TO BRING OFF A HUNG JURY BECAUSE I WAS
14 CONCERNED ABOUT OUR FATE THERE IN GENERAL.

15 AND I FIGURED I WAS TRYING TO QUIT WHILE I
16 WAS DEFINITELY AHEAD AND NOT DENIGRATE MY OWN POSITION
17 WITH A GENTLEMAN WHO ADMITTED THAT HE HAD LIED TO THE
18 POLICE, ADMITTED THAT HE HAD LIED ABOUT HIS EMPLOYMENT,
19 ADMITTED THAT HE HAD LIED ABOUT HIS KNOWLEDGE CONCERNING
20 THE CASE. HE HAD ADMITTED TO THREE CATEGORIC LIES THAT
21 THE PEOPLE WERE AWARE OF, AND NOW THE PEOPLE WANT TO PUT
22 HIM ON AS A SIGHTING WITNESS?

23 THE COURT: ALL RIGHT.

24 ANYTHING ELSE?

25 MR. KLEIN: MOVE TO STRIKE THE PORTION OF THE
26 ANSWER THAT MR. HUNT AGREED WITH HIM.

27 THE COURT: DENIED.

28 MR. KLEIN: CAN I ASK THE COURT TO TAKE JUDICIAL

3
1 NOTICE OF THE FACT THAT MR. HUNT WAS NOT EVEN PRESENT
2 DURING THOSE PROCEEDINGS WHEN IT OCCURRED?

3 THE COURT: I TOLD YOU MY VIEWS ON JUDICIAL NOTICE.
4 ASK FOR A STIPULATION.

5 ANYTHING FURTHER?

6 LET'S WRAP IT UP.

7 MR. CRAIN: YOU SAID YOU READ THE CASE. THAT WAS
8 APPARENTLY A SEALED PORTION. THE COURT IS FAMILIAR AND
9 HAS READ THE TRANSCRIPT OF THE PROCEEDINGS THAT TOOK PLACE
10 WITH -- IN RELATION TO THE MATTERS THAT THE WITNESS HAS
11 JUST BEEN QUESTIONED ABOUT?

12 THE COURT: NO.

13 MR. KLEIN: THEN WE'LL LODGE IT WITH THE COURT.

14 MR. MC MULLEN: YOU MIGHT HAVE A COPY IF YOU HAVE
15 GOT THE TRANSCRIPT FROM THE COURT OF APPEAL. IT'S AN
16 AUGMENTED REPORTER'S TRANSCRIPT.

17 THE COURT: IT IS NOT THERE. I CAN TELL YOU I HAVE
18 GONE THROUGH EVERY PAGE OF THAT TRANSCRIPT.

19 MR. MC MULLEN: VERY WELL.

20 MR. CRAIN: IF WE LODGE IT WITH THE COURT, WOULD
21 THE COURT CONSIDER IT AND READ IT?

22 THE COURT: YES.

23 BY MR. KLEIN:

24 Q WHEN YOU SAID TO THE COURT, MR. BARENS, THAT,
25 "I WOULD HAVE TO DO AN IN-DEPTH INTERVIEW WITH THIS MAN
26 AND A BACKGROUND CHECK WITH THIS MAN AND SPEND A LOT OF
27 TIME WITH THIS MAN," WERE YOU BEING TRUTHFUL WITH JUDGE
28 RITTENBACK?

3
1 MR. MC MULLEN: OBJECTION. RELEVANCY.

2 THE COURT: SUSTAINED.

3 BY MR. KLEIN:

4 Q WAS THAT A TRUE STATEMENT, MR. BARENS?

5 MR. MC MULLEN: SAME OBJECTION.

6 THE COURT: SUSTAINED.

7 ANYTHING FURTHER?

8 MR. KLEIN: YOUR HONOR --

9 THE COURT: SUSTAINED.

10 ANYTHING FURTHER?

11 MR. KLEIN: YES.

12 THE COURT: WRAP IT UP, MR. KLEIN.

13 BY MR. KLEIN:

14 Q WITH RESPECT TO MR. WERNER, YOU CONDUCTED NO
15 INVESTIGATION, EITHER YOURSELF OR ON BEHALF OF ANYBODY --
16 OR ANYBODY ON YOUR BEHALF UPON WHICH YOU MADE ANY DECISION
17 CONCERNING CALLING HIM AS A WITNESS; CORRECT?

18 A I DON'T REMEMBER, RECALL WHAT INVESTIGATION
19 WAS AVAILABLE CONCERNING MR. WERNER.

20 MR. KLEIN: THAT'S ALL I HAVE.

21 THE COURT: ANYTHING FURTHER?

22 MR. MC MULLEN: NOTHING FURTHER.

23 THE COURT: MAY THE WITNESS BE EXCUSED?

24 MR. KLEIN: NO OBJECTION.

25 MR. MC MULLEN: LIKE EVERYONE.

26 THE COURT: SUBJECT TO SUFFICIENT SHOWING,
27 SUBSTANTIAL SUFFICIENT SHOWING.

28 YOU MAY STEP DOWN.

4 1 WE'RE GOING TO TAKE OUR MORNING RECESS.

2 WHAT IS YOUR CIRCUMSTANCE, MR. BRODEY?

3 MR. BRODEY: I HAVE AN AFTERNOON APPEARANCE.

4 THE COURT: THE AFTERNOON IS A LONG TIME. IT RUNS
5 FROM 12:00 TO 6:00.

6 MR. BRODEY: THE APPEARANCE BEGINS AT 1:30. IT'S A
7 TWO-HOUR APPEARANCE.

8 THE COURT: HOW LONG IS MR. BRODEY'S TESTIMONY ON
9 DIRECT?

10 MR. KLEIN: FIVE OR 10 MINUTES.

11 THE COURT: LET'S TAKE A TEN, OR FIFTEEN MINUTES
12 RECESS. LET'S GO MR. BRODEY -- PRIOR TO LUNCH OR INTO
13 LUNCH.

14 ALL RIGHT.

15 WE'LL SEE EVERYBODY BACK IN 15 MINUTES.

16

17 (RECESS.)

18

19

20

21

22

23

24

25

26

27

28

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

3 THE COURT: IN THE CASE OF JOSEPH HUNT, THE RECORD
4 WILL REFLECT THAT ALL COUNSEL AND PETITIONER ARE PRESENT.

5 YOU MAY CALL YOUR NEXT WITNESS.

6 MR. KLEIN: CAN I HAVE JUST HAVE A MINUTE. I AM
7 LOOKING FOR SOMETHING.

8 MR. MC MULLEN: YOUR HONOR, I CAN'T REMEMBER, I
9 DON'T THINK WE ASKED FOR AN OFFER OF PROOF WITH RESPECT TO
10 THIS WITNESS.

11 THE COURT: I THINK YOU DID, AND I SAID NO.

12 MR. MC MULLEN: OKAY.

13 THE COURT: MR. BRODEY'S NAME CAME UP IN CONNECTION
14 TO A WITNESS A DAY OR SO AGO.

15
16 (PAUSE.)

17
18 THE COURT: OKAY.

19 LET'S DO IT.

20 MR. KLEIN: ALL RIGHT.

21 THE COURT: COME ON, MR. BRODEY. GET UP HERE AND
22 LET'S SWEAR YOU IN.

23
24 JEFFREY BRODEY, +
25 CALLED AS A WITNESS BY THE PETITIONER, WAS SWORN AND
26 TESTIFIED AS FOLLOWS:

27
28 THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

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

5 THE WITNESS: I DO.

6 THE CLERK: PLEASE BE SEATED IN THE STAND.

7 STATE AND SPELL YOUR FULL NAME.

8 THE WITNESS: JEFFREY BRODEY, J-E-F-F-R-E-Y,
9 B-R-O-D-E-Y.

10 THE COURT: YOU MAY INQUIRE.

11

12

DIRECT EXAMINATION +

13

14 BY MR. KLEIN:

15 Q DURING THE TIME THAT THE HUNT TRIAL WAS ON
16 GOING IN SANTA MONICA BEFORE JUDGE RITTENBAND WERE YOU
17 REPRESENTING SOMEBODY ELSE IN THE CASE?

18 A YES. I REPRESENTED JIM PITTMAN.

19 Q AND WHEN DID YOU START REPRESENTING HIM?

20 A 1986, I BELIEVE.

21 Q DID YOU HAVE AN INVESTIGATOR THAT WAS WORKING
22 ON THE CASE WITH YOU?

23 A YES, I DID.

24 Q WHAT WAS HIS NAME?

25 A KEITH ROHMAN, R-O-H-M-A-N.

26 Q AND AT SOME POINT DID YOU BECOME AWARE OF A
27 WITNESS BY THE NAME OF LOUISE WALLER?

28 A YES, I DID.

1 Q AND DID YOU INSTRUCT MR. ROHMAN TO INTERVIEW
2 HER?

3 A YES, I DID.

4 Q DID YOU PERSONALLY INTERVIEW HER?

5 A I HAVE A RECOLLECTION OF SPEAKING TO HER OVER
6 THE PHONE, BUT I AM NOT SURE IF THAT'S CORRECT.

7 Q OKAY.

8 MR. KLEIN: I HAVE A REPORT. MAY THAT BE MARKED
9 NEXT IN ORDER?

10 THE COURT: NEXT NUMBER IS 276.

11

12 (MARKED FOR ID = PEO. 276, REPORT.)

13

14 MR. MC MULLEN: IS THAT APRIL 27TH? I AM SORRY,
15 COUNSEL.

16 MR. KLEIN: 22ND.

17 THE COURT: WE NEED TO PUT SOMETHING DOWN ON THE
18 EXHIBIT LIST. WHAT IS IT?

19 MR. KLEIN: IT IS A REPORT.

20 BY MR. KLEIN:

21 Q IS THIS MR. ROHMAN'S REPORT OF MS. LOUISE
22 WALLER?

23 A I DON'T HONESTLY KNOW. I SEE DOWN AT THE
24 BOTTOM OF THE SECOND PAGE THE INITIALS "K.R." AND A DATE,
25 BUT I DON'T HAVE AN INDEPENDENT RECOLLECTION OF
26 MR. ROHMAN'S REPORT OF LOUISE WALLER, SO I AM NOT SURE.

27 Q THOSE ARE HER INITIALS; CORRECT?

28 A YES, THEY ARE.

1 Q ALL RIGHT.

2 DO YOU REMEMBER WHETHER YOU TALKED TO
3 MS. WALLER BEFORE OR AFTER APRIL 22, 1987?

4 A I DON'T REMEMBER WHEN IT WAS, IF AT ALL, THAT
5 I SPOKE TO HER. I DO HAVE A VAGUE RECOLLECTION OF
6 SPEAKING TO HER ON THE TELEPHONE.

7 Q OKAY.

8 AND ACCORDING TO MR. ROHMAN'S REPORT OR
9 ACCORDING TO WHAT MS. WALLER TOLD YOU SHE FIRST CONTACTED
10 MR. BARENS' OFFICE. IS THAT WHAT HAPPENED?

11 A WELL, I DON'T HAVE ANY RECOLLECTION OF HER
12 TELLING ME THAT. APPARENTLY, IT IS IN THIS REPORT THAT
13 SHE CONTACTED BARENS' OFFICE.

14 Q DID YOU BECOME AWARE OF A WOMAN BY THE NAME
15 OF NADIA GHALEB AT SOME POINT?

16 A YES, I DID.

17 Q AND WAS THAT AROUND EARLY APRIL WHEN YOU HAD
18 CONTACT WITH A LAW CLERK OF YOURS IN EARLY '87?

19 A I DON'T REMEMBER THE DATE. I WAS TOLD BY MY
20 LAW CLERK, JULES BISHOP, THAT SHE HAD MET A WOMAN BY THE
21 NAME OF NADIA GHALEB.

22 Q LET ME SHOW YOU A REPORT AND DIRECT YOU TO
23 THE SECOND PAGE AND THE THIRD PAGE AND ASK YOU IF THAT
24 REFRESHES YOUR MEMORY OF ABOUT WHEN YOUR OFFICE GOT IN
25 TOUCH WITH NADIA GHALEB.

26

27 (PAUSE.)

28

1 A YES, IT DOES.

2 Q WHEN DID YOUR OFFICE GET IN TOUCH WITH NADIA
3 GHALEB?

4 A APRIL THE 11TH, 1987.

5 Q THAT WAS YOUR LAW CLERK?

6 A JULES, J-U-L-E-S, BISHOP, B-I-S-H-O-P.

7 Q AFTER SHE CAME IN CONTACT WITH NADIA GHALEB
8 YOU PERSONALLY INTERVIEWED HER?

9 A YES, I DID.

10 Q ON SEVERAL OCCASIONS?

11 A ON SEVERAL OCCASIONS.

12 Q YOU WERE WORKING TOGETHER WITH MR. BARENS AND
13 MR. CHIER ON THE HUNT CASE IN CONNECTION WITH YOUR WORK ON
14 THE PITTMAN CASE?

15 A THAT'S NOT EXACTLY CORRECT. THERE WAS SOME
16 SHARING AND I DID WORK WITH RICHARD CHIER. MR. BARENS AND
17 I -- I DON'T THINK WE EVER REALLY MET ABOUT THE CASE AT
18 ANY TIME.

19 Q AND DID YOU OBSERVE THE TRIAL FROM TIME TO
20 TIME?

21 A I DID OBSERVE THE TRIAL FROM TIME TO TIME.

22 Q DID YOU EVER TELL ANYBODY THAT BARENS DID
23 VERY LITTLE WORK ON THIS CASE EXCEPT WHEN HE WAS ACTUALLY
24 IN TRIAL.

25 MR. MC MULLEN: OBJECTION. CALLS FOR HEARSAY.
26 IRRELEVANT.

27 THE COURT: SUSTAINED.

28

1 BY MR. KLEIN:

2 Q BASED ON YOUR OBSERVATIONS, PARTICIPATION,
3 COOPERATION BETWEEN THE BARENS AND CHIER CAMP AND YOUR
4 CAMP DID BARENS DO VERY LITTLE WORK EXCEPT WHEN HE WAS
5 ACTUALLY IN TRIAL?

6 MR. MC MULLEN: OBJECTION. NOT RELEVANT.

7 THE COURT: WHAT'S THE RELEVANCE OF THIS PERSON'S
8 OBSERVATION.

9 MR. KLEIN: I THINK YOUR HONOR HAS TO DECIDE
10 WHETHER MR. BARENS TOLD THE TRUTH AND YOU HAVE TO DECIDE
11 WHETHER HE PROVIDED REASONABLY COMPETENT COUNSEL.

12 MR. BRODEY --

13 THE COURT: LET'S LIMIT IT TO SEVERAL ISSUES, WHICH
14 ARE SET FORTH. WE ARE ALL FAMILIAR WITH IT IN THE O.S.C..

15 MR. KLEIN: MR. BARENS DID VERY LITTLE WORK EXCEPT
16 WHEN HE WAS ACTUALLY IN TRIAL THAT WOULD BE CORROBORATIVE
17 OF THE FACT THAT HE, FOR EXAMPLE, NEVER FOLLOWED UP ON
18 LEADS TO FIND NEIL ADELMAN OR OLIVER WENDELL HOLMES, TO
19 FIND KAREN SUE MARMOR, AS EXAMPLES, YOUR HONOR.

20 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

21 THE COURT: LAY A FOUNDATION. I WILL ALLOW IT IF
22 THERE IS SUITABLE FOUNDATION LAID.

23 BY MR. KLEIN:

24 Q YOU HAD MEETINGS FROM TIME TO TIME WITH
25 MR. CHIER?

26 A YES, I DID.

27 Q YOU HAD MEETINGS FROM TIME TO TIME WHERE
28 MR. HUNT WAS ALSO PRESENT WITH MR. CHIER?

1 A I DON'T RECALL ANY.

2 Q AND YOU AUTHORIZED YOUR INVESTIGATOR TO
3 PARTICIPATE IN MEETINGS WITH MR. CHIER AND MR. HUNT AND
4 MR. BARENS?

5 A THERE WAS NOT A GENERAL AUTHORIZATION.

6 Q LET ME SHOW YOU A STATEMENT BY MR. ROHMAN,
7 SEE IF THAT REFRESHES YOUR?

8 A WHATEVER STATEMENT MR. ROHMAN MADE IT WAS NOT
9 A GENERAL AUTHORIZATION. IF IT HAPPENED -- I WOULD DO
10 THAT FROM TIME TO TIME, I WOULD APPROVE IT IF -- I WOULD
11 GIVE ADVANCE PERMISSION, BUT THERE WAS NOT A GENERAL
12 AUTHORIZATION. HE WAS NOT THEIR INVESTIGATOR, HE WAS
13 MINE.

14 Q BUT FROM TIME TO TIME YOU ALLOWED MR. ROHMAN
15 TO PARTICIPATE IN MEETINGS WITH THE HUNT CAMP TO SHARE
16 INFORMATION OR TO DISCUSS THE PROGRESS OF THE CASE?

17 A NO. I WOULD NOT ALLOW HIM TO DO THAT.

18 THE COURT: WHAT ARE YOU LOOKING FOR, MR. KLEIN?

19 MR. KLEIN: I AM LOOKING FOR EXHIBIT 11-B, YOUR
20 HONOR.

21 THE COURT: TO THE PETITION?

22 MR. KLEIN: YES.

23 THE COURT: WHAT IS IT?

24 MR. KLEIN: IT IS A DECLARATION.

25 THE COURT: IT IS A DECLARATION.

26

27

(PAUSE.)

28

1 THE COURT: MR. KLEIN, WHAT ARE WE LOOKING FOR?

2 MR. KLEIN: EXHIBIT 11-B TO THE PETITION.

3 THE COURT: DECLARATION OF?

4 MR. KLEIN: KEITH ROHMAN.

5 THE COURT: WHAT RELEVANCE IS THAT TO THIS WITNESS?

6 MR. KLEIN: IT MAY REFRESH HIS MEMORY.

7 THE WITNESS: I DON'T HAVE ANY DOUBT THAT I AM
8 BEING ACCURATE ABOUT WHAT THAT AUTHORIZATION WAS. I DON'T
9 CARE WHAT HE SAID IN HIS DECLARATION. I KNOW HOW -- I
10 WOULDN'T BE ALLOWING SOMEBODY TO GO AND PARTICIPATE AND
11 DIVULGING WHAT IS GOING ON WITH MY CASE. I WOULDN'T GIVE
12 UP THAT CONTROL.

13 BY MR. KLEIN:

14 Q LET ME SHOW YOU HIS DECLARATION, IT IS 11-B
15 TO THE PETITION.

16 THE COURT: MR. KLEIN, THERE HAS BEEN NO INDICATION
17 THAT HE HAS A FAILURE OF MEMORY. YOU ARE PLACING A
18 STATEMENT FROM ANOTHER WITNESS BEFORE THIS WITNESS WHEN HE
19 SAYS HE HAS NO FAILURE OF RECOLLECTION.

20 BY MR. KLEIN:

21 Q IS IT YOUR MEMORY THAT MR. ROHMAN MET FROM
22 TIME TO TIME WITH THE HUNT TEAM TO WORK ON THE CASE?

23 A NO. THAT'S NOT MY MEMORY.

24 Q OKAY.

25 TAKE A LOOK AT IT?

26 A IN THIS DECLARATION HE SAYS HE MET WITH ME
27 AND RICHARD CHIER. THAT'S NOT THE HUNT TEAM. AND I WAS
28 PRESENT AND WHEN WE MET WE TALKED ABOUT VARIOUS THINGS AND

1 MR. ROHMAN WAS NOT FREE TO DISCUSS AT WILL MY STRATEGY
2 WITH THE HUNT PEOPLE. ANYTHING THAT WAS SAID WAS SAID IN
3 THE COURSE OF OUR PREPARATION AND WAS CONFINED TO CERTAIN
4 AREAS.

5 Q OKAY.

6 AND DID YOU EVER TALK TO MR. BARENS FROM TIME
7 TO TIME ABOUT THE PREPARATION OF THE CASE?

8 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DON'T HAVE ANY RECOLLECTION OF
11 REALLY DISCUSSING PREPARATION WITH MR. BARENS.

12 BY MR. KLEIN:

13 Q OKAY.

14 DID YOU TALK TO MR. CHIER ON MORE THAN SAY
15 SIX TIMES THAT YOU MET WITH HIM WITH MR. ROHMAN?

16 A I SPOKE TO RICHARD A GREAT DEAL.

17 Q BASED ON ALL THESE CONVERSATIONS DID
18 MR. BARENS DO VERY LITTLE WORK ON THE CASE EXCEPT WHEN HE
19 WAS IN TRIAL?

20 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

21 THE COURT: SUSTAINED.

22 BY MR. KLEIN:

23 Q BASED ON THESE CONVERSATIONS DID MR. BARENS
24 NOT READ ANYTHING CONCERNING THE CASE?

25 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

26 THE COURT: SUSTAINED.

27 BY MR. KLEIN:

28 Q BASED ON THESE CONVERSATIONS AND MEETINGS DID

1 MR. CHIER DO MOST OF THE INVESTIGATION?

2 MR. MC MULLEN: OBJECTION. IRRELEVANT.

3 THE COURT: SUSTAINED.

4 BY MR. KLEIN:

5 Q MR. BARENS TESTIFIED TO THAT --

6 MR. MC MULLEN: OBJECTION.

7 THE COURT: COUNSEL, I HAVE RULED. SUSTAINED.

8 BY MR. KLEIN:

9 Q IN ADDITION TO THESE MEETINGS AND THESE
10 CONVERSATIONS BASED ON YOUR OBSERVATIONS DID BARENS DO
11 VERY LITTLE WORK EXCEPT WHEN HE WAS ACTUALLY IN TRIAL?

12 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

13 THE COURT: SUSTAINED.

14 MR. MC MULLEN: IRRELEVANT.

15 THE COURT: LET'S MOVE ON.

16 BY MR. KLEIN:

17 Q DID YOU EVER SEE MR. BARENS READ ANYTHING
18 CONCERNING THE CASE?

19 MR. MC MULLEN: OBJECTION. IRRELEVANT.

20 THE COURT: SUSTAINED.

21 MOVE ON.

22 BY MR. KLEIN:

23 Q DID MR. BARENS AND MR. CHIER RELY HEAVILY ON
24 YOUR INVESTIGATION?

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

26 THE COURT: SUSTAINED.

27 BY MR. KLEIN:

28 Q WERE MR. BARENS AND MR. CHIER QUITE

1 DISORGANIZED.

2 MR. MC MULLEN: OBJECTION. CALLS FOR CONCLUSION.

3 THE COURT: SUSTAINED.

4 COUNSEL, MOVE ONTO A DIFFERENT TOPIC. THIS
5 IS ALL IRRELEVANT AND SPECULATION.

6 BY MR. KLEIN:

7 Q BASED ON YOUR OBSERVATIONS DID MR. BARENS,
8 MR. CHIER NOT HAVE ANYTHING CROSS INDEXED?

9 MR. MC MULLEN: OBJECTION. NO FOUNDATION.

10 THE COURT: SUSTAINED.

11 DO YOU HAVE ANY FURTHER RELEVANT DIRECT
12 EXAMINATION?

13 MR. KLEIN: MR. BARENS TESTIFIED THAT --

14 THE COURT: COUNSEL, I HAVE RULED. DO YOU HAVE ANY
15 RELEVANT QUESTIONING? I AM NOT GOING TO ALLOW THIS
16 WITNESS TO OFFER SPECULATION OR OPINIONS AS TO HIS
17 OBSERVATIONS ABOUT THE HUNT DEFENSE TEAM.

18 MR. KLEIN: I DON'T HAVE ANY FURTHER QUESTIONS.

19 THE COURT: ANY CROSS EXAMINATION?

20 MR. MC MULLEN: I HAVE A FEW QUESTIONS, YOUR HONOR.

21

22

CROSS-EXAMINATION @

23

24 BY MR. MC MULLEN:

25 Q SIR, YOU WERE AWARE OF THE NADIA GHALEB
26 SIGHTING?

27 A YES, I WAS.

28 Q AND WERE YOU THE TRIAL ATTORNEY REPRESENTING

1 MR. HUNT DURING -- EXCUSE ME -- MR. PITTMAN DURING THE
2 JURY TRIAL?

3 A YES, I WAS.

4 Q DID YOU PREVENT -- EXCUSE ME. I WITHDRAW
5 THAT.

6 DID YOU PRESENT WITNESSES WHO HAD CLAIMED TO
7 HAVE SIGHTED RON LEVIN DURING THE COURSE --

8 MR. CRAIN: THAT'S TOTALLY IRRELEVANT.

9 THE COURT: WHERE ARE YOU GOING?

10 MR. MC MULLEN: I AM GOING TO ASK HIM WHETHER OR
11 NOT HE CALLED NADIA GHALEB, AND IF HE DIDN'T WHY NOT.

12 THE COURT: SO WHAT?

13 MR. CRAIN: IT IS ABSOLUTELY IRRELEVANT.

14 THE COURT: SO --

15 MR. CRAIN: EXCUSE ME. SORRY.

16 THE COURT: SO WHAT? WHETHER HE DID OR DIDN'T, SO
17 WHAT?

18 MR. MC MULLEN: IT GOES TO THE CREDIBILITY
19 ASSESSMENT WITH RESPECT TO MR. -- WITH RESPECT TO
20 ANALYZING THAT SIGHTING WITNESS.

21 THE COURT: WHAT DIFFERENCE DOES IT MAKE WHETHER
22 MR. BRODEY THOUGHT THAT SHE WAS THE MOST CREDIBLE OR MOST
23 INCREDIBLE WITNESS? THAT'S PRETTY IRRELEVANT TO THE HUNT
24 CASE.

25 MR. MC MULLEN: UNLESS HE COMMUNICATED TO THE HUNT
26 PEOPLE AND THEY USED THAT AS A FACTOR IN NOT CALLING HER.

27 THE COURT: DID YOU LAY A FOUNDATION WITH
28 MR. BARENS ON THAT?

1 MR. MC MULLEN: NO, YOUR HONOR.

2 I WOULD SUBMIT IT.

3 THE COURT: SUSTAINED.

4 MR. MC MULLEN: NOTHING FURTHER.

5 THE COURT: ANYTHING FURTHER?

6

7 REDIRECT EXAMINATION +

8

9 BY MR. KLEIN:

10 Q DID YOU COMMUNICATE TO ANYBODY REPRESENTING
11 MR. HUNT THAT YOU HAD INTERVIEWED NADIA GHALEB?

12 A I DID.

13 THE COURT: I AM SORRY. YOU DID?

14 THE WITNESS: I DID.

15 THE COURT: WOULD YOU PULL THE MICROPHONE UP A
16 LITTLE CLOSER.

17 BY MR. KLEIN:

18 Q WHO DID YOU COMMUNICATE IT TO?

19 A I DON'T RECALL WHO IT WAS.

20 Q AND WHEN DID YOU DO IT?

21 A SOMETIME AFTER MR. ROHMAN HAD INTERVIEWED
22 HER.

23 Q HOW LONG AFTER MR. ROHMAN INTERVIEWED HER?

24 A NO IDEA. I WOULD HAZARD A GUESS AND SAY
25 WITHIN A WEEK OR TWO AFTER HE INTERVIEWED HER. THAT'S THE
26 BEST I CAN DO.

27 Q COULD IT HAVE BEEN AS LONG AS A MONTH?

28 A IT COULD HAVE BEEN. I WAS IN NO RUSH TO GIVE

1 UP MY WITNESSES, IF I THOUGHT THEY WERE A GOOD WITNESS OR
2 IF I HAD SOME REASON TO PRESERVE THEM.

3 Q SHOWING YOU EXHIBIT P-13. HAVE YOU EVER SEEN
4 THAT OR DID YOU GET A LETTER LIKE THAT?

5 THE COURT: HAVE WE PREVIOUSLY MARKED THAT?

6 MR. KLEIN: YES.

7 THE WITNESS: I AM AWARE OF THIS INFORMATION AND I
8 DON'T REMEMBER WHETHER I GOT IT BY WAY OF THIS LETTER OR
9 SOME OTHER FASHION. I AM SURE IF MR. WAPNER HAD PROVIDED
10 IT TO MR. BARENS HE WOULD HAVE PROVIDED IT TO ME AS WELL.

11 THE COURT: HOLD ON ONE SECOND.

12 DO YOU HAVE PETITIONER'S 13 MARKED FOR
13 IDENTIFICATION?

14 MR. KLEIN: HERE IT IS, YOUR HONOR.

15 THE COURT: I HAVE GOT SEVERAL EXHIBIT LISTS I AM
16 TRYING TO COORDINATE.

17 BY MR. KLEIN:

18 Q SHOWING YOU THE SECOND PAGE OF PEOPLE'S 14
19 AND IT APPEARS TO BE, ACCORDING TO THE RECORD,
20 MR. WAPNER'S NOTES. HAVE YOU EVER SEEN THOSE BEFORE?

21 A I HAVE SEEN THESE BEFORE.

22 Q DID YOU SEE THEM DURING THE TIME THAT YOU
23 WERE REPRESENTING MR. PITTMAN WHEN MR. HUNT WAS IN TRIAL?

24 A YOU KNOW I DON'T REMEMBER THAT. I HAVE SEEN
25 THESE BECAUSE I WAS SHOWN THEM AT SOME POINT AFTER THE
26 TRIAL AND I REMEMBER THAT, BUT I DON'T REMEMBER FOR SURE
27 SEEING THESE WHILE WE WERE IN TRIAL OR PRIOR TO TRIAL.

28 Q YOU SAW THEM WHEN MR. BARENS WAS DEPOSED;

1 CORRECT?

2 A THAT'S CORRECT.

3 Q COULD THAT HAVE BEEN THE FIRST TIME THAT YOU
4 SAW THEM?

5 MR. MC MULLEN: OBJECTION. RELEVANCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I THINK I HAD SEEN THEM BEFORE THAT,
8 BUT AT THE TIME WHEN THEY WERE SHOWN TO ME AFTER THE TRIAL
9 I HAD NO RECOLLECTION OF THEM AND SO I DIDN'T KNOW -- I
10 HAD NO RECOLLECTION OF SEEING THEM BEFORE.

11 MR. KLEIN: THANK YOU.

12 THAT'S ALL I HAVE.

13 THE COURT: ANYTHING FURTHER, MR. MC MULLEN?
14

15 RE-CROSS-EXAMINATION @
16

17 BY MR. MC MULLEN:

18 Q JUST TO BE CLEAR, WHEN DID YOU -- WHEN DID
19 YOUR INVESTIGATOR INTERVIEW NADIA GHALEB?

20 A THE REPORT INDICATES MAY 11TH, I BELIEVE.

21 Q ALL RIGHT.

22 A THAT WAS MAY 11TH OF 1987.

23 Q YOU WERE ADVISED OF THAT INFORMATION HOW SOON
24 AFTER THAT, IF YOU REMEMBER?

25 A WELL, I WAS AWARE OF NADIA GHALEB BEFORE THAT
26 AND I INTERVIEWED HER A COUPLE OF TIMES AND I SENT MY
27 INVESTIGATOR OUT JUST TO CONFIRM WHAT I HAD INTERVIEWED SO
28 THAT WE HAD A RECORDED INTERVIEW. SO I WAS AWARE OF IT

1 BEFORE MAY 11TH, BUT I DIDN'T TURN ANYTHING OVER UNTIL
2 AFTER WE HAD FIRMED IT UP.

3 Q AND WHEN DID YOU FIRST -- I WITHDRAW THAT
4 QUESTION.

5 MR. MC MULLEN: NOTHING FURTHER.

6 THE COURT: GIVE ME ONE SECOND. I HAD A QUESTION.

7

8 (PAUSE.)

9

10 THE COURT: I GUESS NOT.

11 ANYTHING FURTHER?

12 MR. KLEIN: NO.

13 THE COURT: MAY THE WITNESS BE EXCUSED?

14 MR. KLEIN: YES, YOUR HONOR.

15 MR. MC MULLEN: YES.

16 THE COURT: THANK YOU, SIR.

17 THE WITNESS: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 WHO IS YOUR NEXT WITNESS?

20 MR. KLEIN: IT WAS GOING TO BE MR. HUNT.

21 MR. CRAIN: I WOULD LIKE TO ADDRESS THE COURT ON
22 THAT. THE COURT WAS ASKING ABOUT SANCTIONS THIS MORNING.
23 IT WAS GOING TO BE MR. HUNT. WAS THE COURT INTENDING TO
24 RECESS EARLY TODAY?

25 THE COURT: 3 O'CLOCK.

26 MR. CRAIN: I WOULD ASK IF WE COULD HAVE THE
27 AFTERNOON SO THAT WE CAN MEET WITH OUR CLIENT? WE HAD NO
28 OPPORTUNITY TO SINCE THE PEOPLE DROPPED THIS BOMBSHELL ON

1 US TWO AND A HALF WEEKS AFTER THEY INTERVIEWED MR. BARENS.
2 I HAD NO OPPORTUNITY TO CONSULT WITH MR. HUNT ABOUT IT,
3 AND I REALLY THINK THAT'S THE ONE SANCTION THAT OUGHT TO
4 BE IMPOSED IS THAT, ALTHOUGH IT IS ALSO ON THE COURT AS
5 WELL, I APPRECIATE THAT, BUT I DON'T KNOW HOW ELSE TO DEAL
6 WITH IT. IT IS A SERIOUS MATTER.

7 THE COURT: I DISAGREE WITH YOUR CHARACTERIZATION
8 OF BEING A BOMBSHELL. I THINK EVERYONE KNEW THIS WAS
9 LAYING OUT THERE WAITING TO BLOW UP.

10 LET ME ASK THIS: OTHER THAN HUNT WHO DO YOU
11 HAVE? I THOUGHT MR. CHIER WAS COMING ON NEXT.

12 MR. KLEIN: WE ARE NOT GOING TO CALL MR. CHIER.
13 THE JENSENS WILL BE HERE TOMORROW. WE WILL WORK THEM IN
14 THOUGH. THEY ARE WITNESSES THAT ARE GOING TO BE SHORT
15 WITNESSES. AND OTHER THAN MR. HUNT WE DON'T HAVE ANY
16 OTHER WITNESSES.

17 THE COURT: YOU HAVE GOT MR. CHIER?

18 MR. KLEIN: MR. CHIER IS NOT GOING TO BE CALLED.

19 MR. CRAIN: UNLESS HE IS A REBUTTAL WITNESS, BUT AT
20 THIS POINT I DO NOT ANTICIPATE IT.

21 THE COURT: YOU HAVE GOT MR. HUNT AND POSSIBLY THE
22 JENSENS?

23 WHAT HAVE YOU GOT WHO IS YOUR LEAD OFF
24 BATTER?

25 MR. MC MULLEN: TOMORROW MORNING WE WILL HAVE
26 AVAILABLE MR. KILPATRICK. WE ARE -- WE HAVE MR. PEARCE,
27 WE CAN BRING HIM IN EITHER IN THE MORNING OR IN THE
28 AFTERNOON. MR. DONALD STEIER IS SET TO COME IN AT 1:30.

1 WE HAVE MR. RAY, AND MR. EISENBERG WE HAVE BEEN TRYING TO
2 GET AHOLD OF AND WE ARE TRYING TO SET THEM UP FOR
3 TOMORROW.

4 THE COURT: MAYBE -- I AM SORRY. I SHOULD KNOW
5 THESE NAMES, BUT -- RAY AND EISENBERG ARE THESE NAMES I
6 SHOULD KNOW?

7 MR. MC MULLEN: MICHAEL RAY IS AN IMPEACHMENT
8 WITNESS WITH RESPECT TO CONNIE GERRARD.

9 THE COURT: ALL RIGHT.

10 MR. MC MULLEN: MR. EISENBERG WILL TESTIFY WITH
11 RESPECT TO THE CONTENTS OF HIS DECLARATION, WHICH IS --

12 THE COURT: ALL RIGHT.

13 I HAVE READ THE DECLARATIONS, I JUST DON'T
14 HAVE THE NAMES IN MIND.

15 MR. MC MULLEN: HIS TESTIMONY WILL BE ABOUT HIS
16 UNDERSTANDING OF THE NEGOTIATIONS THAT HE PARTICIPATED IN
17 WITH RESPECT TO THE CYCLOTRON.

18 THE COURT: HOW LONG IS MR. HUNT GOING TO BE ON
19 DIRECT, MR. CRAIN?

20 MR. CRAIN: COULD I HAVE A MOMENT?

21 THE COURT: YES.

22 MR. MC MULLEN: MR. KILPATRICK IS IN CUSTODY, SO WE
23 HAVE SOME FLEXIBILITY.

24 THE COURT: HE IS NOT GOING ANYWHERE.

25 THE BAILIFF: I NEED TO KNOW BECAUSE I NEED TO HAVE
26 A BACKUP IN HERE.

27 MR. CRAIN: AT LEAST HALF A DAY, PERHAPS
28 SIGNIFICANTLY MORE.

1 MR. KLEIN: I HAVE TALKED TO YOUR BAILIFF AND SHE
2 HAS GRACIOUSLY AGREED IF THE COURT GIVES US THE AFTERNOON
3 OFF WE CAN DO THE INTERVIEW RIGHT AFTER LUNCH RIGHT HERE
4 AND SO THAT --

5 THE COURT: I AM GOING TO HAVE TO GET MYSELF
6 ANOTHER BAILIFF.

7 THE BAILIFF: TRADE ME IN QUICK.

8 MR. CRAIN: WE LIKE THE BAILIFF, YOUR HONOR.

9 THE COURT: IN LIGHT OF THE LATE TURN OVER OF THE
10 DISCOVERY, ALTHOUGH I DON'T VIEW IT AS A BOMBSHELL AS
11 DESCRIBED, I WILL GIVE YOU THE AFTERNOON TO PREPARE
12 MR. HUNT. WE WILL START AT 9:00 TOMORROW MORNING ON
13 MR. HUNT.

14 MR. CRAIN: THANK YOU, YOUR HONOR. WE APPRECIATE
15 IT.

16 THE COURT: WHAT DO YOU THINK ON CROSS?

17 MR. MC MULLEN: I DON'T KNOW BECAUSE I DON'T REALLY
18 KNOW WHAT HE IS GOING TO TESTIFY TO.

19 THE COURT: YOU HAVE A FAIR IDEA.

20 MR. MC MULLEN: I DON'T THINK IT SHOULD TAKE TOO
21 LONG, BUT I AM SOMEWHAT FAMILIAR WITH THE MANNER IN WHICH
22 MR. HUNT TESTIFIES AND SO WITH ALL DUE RESPECT TO THE
23 COURT THERE IS A CERTAIN AMOUNT OF RAMBLING THAT GOES ON
24 SO I --

25 THE COURT: YOU ARE ALSO FAMILIAR WITH THE WAY I
26 RUN A HEARING.

27 MR. MC MULLEN: THAT'S TRUE, YOUR HONOR. I DON'T
28 EXPECT IT TO BE VERY LENGTHY.

1 THE COURT: I AM SURE MR. HUNT IS AWARE OF THAT AS
2 WELL.

3 ARE YOU GOING TO CALL CHIER?

4 MR. MC MULLEN: NO.

5 THE COURT: OKAY.

6 SO THE ONLY LONG WITNESS THEN WE HAVE IS
7 MR. HUNT; RIGHT?

8 MR. KLEIN: SO THE QUESTION IS --

9 THE COURT: THAT IS REMAINING?

10 MR. KLEIN: WE MAY CALL CHIER, BUT IF THEY WANT TO
11 PUT ON THE WITNESSES THAT THEY HAVE PLANNED FOR THIS WEEK
12 -- I MEAN --

13 THE COURT: LET ME --

14 MR. KLEIN: -- WE COULD PUT ON HUNT NEXT WEEK.

15 THE COURT: LET ME TELL YOU -- NO. I AM GIVING YOU
16 THE AFTERNOON OFF TO PUT --

17 MR. KLEIN: WE WOULD BE READY TO DO IT TOMORROW,
18 BUT IF THAT IS GOING TO INCONVENIENCE THEIR SCHEDULING OF
19 WITNESSES WE COULD PUT MR. HUNT WHENEVER IT IS CONVENIENT
20 TO COUNSEL AND THE COURT IS WHAT I AM SAYING.

21 MR. MC MULLEN: WE ARE PRETTY FLEXIBLE, YOUR HONOR.
22 RIGHT NOW WE HAVE BEEN SORT OF TRYING TO ANTICIPATE THAT
23 WE WILL BE STARTING TOMORROW AFTERNOON.

24 THE COURT: THE ONLY PROBLEM I SUPPOSE YOU HAVE,
25 YOU HAVE GOT THAT WITNESS WHO IS IN THE WITNESS PROTECTION
26 PROGRAM, WHOSE NAME IS KARNY?

27 MR. MC MULLEN: YES. BASED UPON YOUR HONOR'S
28 INFORMING US THAT YOU HAD SOME PROBLEM ON FRIDAY WE

1 MIGHT --

2 THE COURT: THAT'S WHAT I WAS GOING TO BRING UP
3 NEXT. THAT'S WHY I AM HESITATING GIVING THEM THE
4 AFTERNOON OFF. YOU WANT TO SET HIM UP FOR MONDAY?

5 MR. MC MULLEN: YES.

6 THE COURT: LET'S DO THIS:

7 COUNSEL? MR. CRAIN?

8 MR. CRAIN: OKAY.

9 THE COURT: I WILL GIVE YOU THIS AFTERNOON OFF. I
10 HAVE GOT ANOTHER PROBLEM, ITS NOT A CRITICAL PROBLEM, I
11 COULD GET OVER IT IF YOU GUYS HAVE A PROBLEM, AND THAT IS
12 FRIDAY IS A BIT PROBLEMATIC. IF YOU WANT TO GO ON FRIDAY
13 WE CAN DO THAT ON FRIDAY, IF YOU WANT I CAN GIVE YOU
14 FRIDAY OFF.

15 MR. KLEIN: WE WILL TAKE FRIDAY OFF.

16 MR. CRAIN: I HAVE A MATTER IN JUDGE PERRY'S COURT
17 THREE DEFENDANT SORT OF HAS A STRANGE ISSUE, AND I GOT
18 SOME OTHER THINGS THAT ARE FLOATING ABOUT. THURSDAY I
19 THOUGHT WE WERE BREAKING EARLY.

20 THE COURT: WE CAN GO UNTIL AT LEAST 4:00 IF NOT
21 4:30 ON THURSDAY.

22 MR. MC MULLEN: YOU INFORMED US OF THAT.

23 THE COURT: RIGHT. SO THEN WE WILL PLAN ON NOT
24 BEING IN SESSION ON FRIDAY. YOU CAN PLAN ON BRINGING
25 KARNY IN ON MONDAY AND MAKE WHATEVER ARRANGEMENTS WITH THE
26 WITNESS PROTECTION PEOPLE THAT THEY NEED.

27 MR. KLEIN: HUNT WILL GO ON TOMORROW MORNING?

28 THE COURT: HE WILL GO ON AT 9:00 TOMORROW MORNING.

1 MR. CRAIN: CAN I BRIEFLY ADDRESS THE COURT WITH
2 REGARDS TO SOMETHING THAT CROSSED MY MIND WHEN MR. BARENS
3 WAS COMPLETING HIS TESTIMONY, AT LEAST GET IT ON THE
4 RECORD AND THE COURT CAN CONSIDER IT AND RULE ON IT.

5 I KNOW THE COURT HASN'T READ THE SUPPLEMENTAL
6 PETITION.

7 THE COURT: I HAVE GOT TO TELL YOU, I AM ON PAGE
8 50. AS I RECALL IT IS 100 PAGES.

9 MR. KLEIN: 151.

10 THE COURT: I AM ON PAGE 50.

11 MR. CRAIN: I WROTE IT MYSELF.

12 I WOULD LIKE THE COURT TO -- THEN THE COURT
13 HAS READ THE BEGINNING AT PAGE 22, THE ALLEGATIONS THAT WE
14 WOULD LIKE TO INTRODUCE.

15 THE COURT: IS THAT THE BILLING STUFF, THE NUMBER
16 OF HOURS THAT HE WORKED?

17 MR. CRAIN: HAS TO DO WITH THE PLOT TO SUBORN
18 PERJURY, HIS FORMER ASSOCIATE, FORMER DEPUTY SHERIFF AND
19 LIEUTENANT WITH THE SHERIFF'S DEPARTMENT REPORTED TO, I
20 BELIEVE, MR. WAPNER HIMSELF THAT MR. BARENS ON HIS OWN HAD
21 COOKED UP THIS PLAN TO SEND ACTORS TO RIO DE JANIERO TO
22 CLAIM THAT THEY HAD SEEN MR. LEVIN AND WE WOULD LIKE TO
23 MAKE AN OFFER OF PROOF BECAUSE MR. TITUS IS NOT ON THE
24 WITNESS LIST, THAT HE BE ALLOWED TO TESTIFY AND MR. WAPNER
25 AGAIN TESTIFY AS TO THIS BECAUSE I THINK IT GOES TO
26 MR. BARENS' CREDIBILITY THAT HE HAS ATTEMPTED TO SELL TO
27 THE COURT AND IT WOULD BE BASICALLY, THE OFFER OF PROOF
28 WOULD BASICALLY BE AS SET FORTH AT PAGE 22 AND I GUESS 23

1 OF THE SUPPLEMENTAL PETITION.

2 THE COURT: ALL RIGHT.

3 MR. CRAIN: IN OTHER WORDS, I WOULD BE OFFERING IT
4 TO ADDRESS THE ISSUE THAT'S IN THE SUPPLEMENTAL PETITION
5 BECAUSE THE COURT HASN'T RULED THAT WE COULD DO, BUT IT
6 WOULD BE RELEVANT AS TO ISSUE TWO AND BARENS LACK OF
7 CREDIBILITY.

8 THE COURT: IT IS OUTSIDE THE SCOPE OF THE O.S.C..
9 I DON'T THINK IT IS PROBATIVE OF ANY MATERIAL ISSUE IN
10 THIS CASE. I WILL PRECLUDE IT.

11 ALL RIGHT.

12 MR. MC MULLEN?

13 MR. MC MULLEN: THERE IS ONE ADDITIONAL MATTER,
14 YOUR HONOR. WE HAVE A WITNESS THAT WE ARE ANTICIPATING
15 FLYING IN FROM COLORADO BY THE NAME OF DECLAN O'DONNEL. I
16 HAVE TALKED TO COUNSEL AND THEY ARE GOING TO OBJECTING AND
17 ASKING US TO MAKE AN OFFER OF PROOF WITH RESPECT TO HIS
18 TESTIMONY, WHICH IS AS FOLLOWS THAT MR. --

19 THE COURT: ARE THEY OBJECTING AND ASKING FOR AN
20 OFFER OF PROOF?

21

22 (PAUSE.)

23

24 THE COURT: MR. KLEIN, MR. CRAIN, WE ARE ON THE
25 RECORD.

26 MR. CRAIN: SORRY.

27 THE COURT: ARE YOU?

28 THE DEFENDANT: NO, THEY ARE NOT.

1 MR. CRAIN: SORRY.

2 THE COURT: ARE YOU OBJECTING AND ASKING FOR AN
3 OFFER OF PROOF?

4 MR. CRAIN: I WOULD LIKE AN OFFER OF PROOF.

5 MR. MC MULLEN: YES. THE OFFER OF PROOF PART OF
6 WHICH IS CONTAINED OR MOST OF WHICH IS CONTAINED IN HIS
7 DECLARATION, WHICH IS EXHIBIT X WITH THE COURT, HE WAS THE
8 LAWYER WHO REPRESENTED MR. KILPATRICK. HE DRAFTED SHORTLY
9 AFTER THEIR -- HE DRAFTED AN ORIGINAL OWNERSHIP AGREEMENT
10 WITH CYCLOTRON MILLS BETWEEN MR. KILPATRICK AND
11 MR. BROWNING. HE ALSO PARTICIPATED IN NEGOTIATIONS DURING
12 THE SUMMER OF '84 IN A REPRESENTATIVE CAPACITY TO
13 MR. KILPATRICK AND WAS RESPONSIBLE FOR DRAFTING DOCUMENTS
14 WITH RESPECT TO THE NEGOTIATIONS. WE HAVE --

15 THE COURT: WHAT'S THE PUNCH LINE?

16 MR. MC MULLEN: WELL, THE PUNCH LINE IS REALLY IN
17 THE DECLARATION.

18 THE COURT: I JUST DON'T REMEMBER. I REMEMBER
19 LOOKING AT THAT LAST YEAR. AND IT DIDN'T MAKE MUCH OF A
20 MARK ON ME SO --

21 MR. CRAIN: I DON'T HAVE ANY OBJECTION TO HIS
22 TESTIMONY.

23 THE COURT: WELL, IF THERE IS NO OBJECTION THEN NO
24 PROBLEM.

25 ALL RIGHT.

26 COUNSEL AND PETITIONER ARE ORDERED TO RETURN
27 AT 9:00 A.M. TOMORROW MORNING.

28 MR. CRAIN: THANK YOU, YOUR HONOR.

1 IS THERE ANYTHING THE COURT CAN DO TO
2 ENCOURAGE BEYOND OUR BAILIFF?

3 MR. KLEIN: SHE IS DOING WHAT WE CAN RIGHT NOW.

4 THE COURT: SHE IS VERY GOOD ABOUT DOING THINGS.

5 MR. CRAIN: I REALLY APPRECIATE THIS, YOUR HONOR.

6 MR. MC MULLEN: SO YOU ARE EXPECTING US TO HAVE
7 WITNESSES HERE AT 1:30?

8 THE COURT: WHY DON'T YOU GUYS TALK THIS AFTERNOON
9 AND GET A BETTER READ ON HOW LONG HUNT IS GOING TO BE ON
10 DIRECT, AND THEN YOU ARE GOING TO KNOW. ONCE MR. HUNT
11 STARTS I WOULD RATHER WE GO STRAIGHT THROUGH WITH
12 MR. HUNT.

13 MR. MC MULLEN: I WOULD AGREE. MY SUGGESTION IS
14 THAT YOU GUYS TALK THIS AFTERNOON AND SEE. ARGUABLY IT
15 COULD BE SHORT, ARGUABLY IT COULD BE LONG. IT DEPENDS ON
16 WHAT YOU GUYS WANT TO DO.

17 MR. KLEIN: IN LIGHT OF THE POTENTIAL PROBLEMS
18 GETTING BACK AND FORTH IT REALLY MIGHT BE MORE FEASIBLE IF
19 WE JUST PUT HIM ON ON MONDAY.

20 THE COURT: WHO?

21 MR. KLEIN: MR. HUNT?

22 THE COURT: NO. I AM GIVING YOU THIS AFTERNOON
23 OFF.

24 MR. KLEIN: I DON'T MIND DOING THAT, I AM JUST
25 SAYING WE MAY NOT BE ABLE TO GET ENOUGH TIME WITH HIM
26 TODAY.

27 THE COURT: THIS IS THE TIME. HE GOES ON AT 9
28 O'CLOCK TOMORROW MORNING.

1 MR. KLEIN: ALL RIGHT.

2

3

(AT 12:30 P.M. AN ADJOURNMENT WAS

4

TAKEN UNTIL WEDNESDAY, MAY 7, 1996

5

AT 9:00 A.M.)

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