

1 VAN NUYS, CALIFORNIA; WEDNESDAY, FEBRUARY 14, 1996

2 9:40 A.M.

3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6

7 (THE FOLLOWING PROCEEDINGS WERE

8 HELD IN OPEN COURT OUT OF THE

9 PRESENCE OF THE JURY:)

10

11 THE COURT: OKAY. THE PARTIES ARE HERE WITHOUT

12 THE JURY.

13 ARE THERE MATTERS THAT YOU WANT TO DISCUSS?

14 MS. NAJERA: YOUR HONOR, THERE IS ONE MATTER I

15 WOULD LIKE TO DISCUSS WITH THE COURT.

16 DR. KOKOTOVIC IS HERE FROM THE CHARITY IN

17 SANTA BARBARA, AND MR. LEVIN HAD TOLD ME HE WAS GOING TO

18 ELICIT FROM HER TESTIMONY THAT CRAIG CIGNARELLI HAD TOLD

19 HER THAT HE WAS MAKING A CHARITABLE CONTRIBUTION TO HELP

20 ENHANCE HIS POLITICAL CAREER.

21 SO MS. KOKOTOVIC -- I ASKED -- THAT WAS MY

22 UNDERSTANDING OF HIS OFFER OF PROOF.

23 SO I ASKED MS. KOKOTOVIC SPECIFICALLY ABOUT

24 THAT. AND SHE IS IN COURT RIGHT NOW, AND SHE SAID NO,

25 THAT WASN'T HOW SHE UNDERSTOOD IT; THAT HE WAS TALKING

26 ABOUT HIS POLITICAL CAREER WHEN HE MADE THE

27 CONTRIBUTION, BUT HE NEVER PUT THE TWO OF THEM TOGETHER.

28 AND NOW I THINK MR. LEVIN IS SAYING THAT

1 ISN'T THE OFFER OF PROOF.

2 MR. LEVIN: NO, IT'S PRECISELY WHAT THE WITNESS
3 WOULD TESTIFY TO. I AM NOT GOING TO ASK HER TO MAKE
4 ASSUMPTIONS OR SPECULATION. I AM GOING TO ASK HER TO
5 RELATE A CONVERSATION AS SHE RECALLS IT BETWEEN HER AND
6 MR. CIGNARELLI. THAT'S ALL I AM GOING TO DO. THAT'S
7 WHAT I TOLD MS. NAJERA, AND I THINK PERHAPS SHE
8 MISUNDERSTOOD AND NOW SEEKS TO LIMIT THE TESTIMONY.

9 MS. NAJERA: I DON'T THINK IT'S APPROPRIATE TO
10 ELICIT TESTIMONY THAT -- I THINK THEY'RE TRYING TO RAISE
11 IN THE JURY'S MIND THE ASSUMPTION MR. CIGNARELLI MADE
12 THIS CHARITABLE CONTRIBUTION TO ENHANCE HIS POLITICAL
13 FUTURE, AND THERE IS NO EVIDENCE OF THAT.

14 MS. ABRAMSON: WE INTEND TO PROVE THAT, ANYWAY,
15 BUT THROUGH THE PEOPLE THROUGH PARAMOUNT TELEVISION,
16 BECAUSE HE SPECIFICALLY SAID IT TO THEM.

17 THE COURT: AS FAR AS THIS PARTICULAR WITNESS,
18 THEN YOU ARE NOT ASKING THAT QUESTION OF --

19 MR. LEVIN: NO, I AM ASKING HER TO RELATE THE
20 CONVERSATION.

21 THE COURT: JUST THE ACTUAL WORDS THAT WERE USED?

22 MR. LEVIN: THE ACTUAL WORDS AS SHE RECALLS IT.

23 THE COURT: ASSUMING THAT'S TRUE, DO THE PEOPLE
24 HAVE AN OBJECTION, IF THAT'S THE OFFER?

25 MS. NAJERA: YES, WE WOULD, YOUR HONOR, BECAUSE

26 THAT WOULDN'T GO TO REBUTTAL. ONCE AGAIN, THAT ISN'T
27 REBUTTAL OF WHAT CRAIG CIGNARELLI STATED IN HIS
28 TESTIMONY.

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1 THE COURT: I DON'T KNOW WHAT IT IS SHE WILL SAY.

2 MS. ABRAMSON: FIRST OF ALL, THIS ISN'T EVEN THE
3 FIRST WITNESS.

4 THE COURT: ONE PERSON AT A TIME.

5 MR. LEVIN: IT IS REBUTTAL, YOUR HONOR, IN THAT
6 THE CONVERSATION BETWEEN THE WITNESS AND MR. CIGNARELLI
7 WOULD -- IS CIRCUMSTANCIAL TO THE FACT THAT IT IMPEACHES
8 MR. CIGNARELLI'S STATED MOTIVE FOR THE CONTRIBUTION, AND
9 THE CONVERSATION AS RECALLED BY THIS WITNESS IS
10 INCONSISTENT WITH THE TESTIMONY OF CRAIG CIGNARELLI.

11 THE COURT: WHAT IS IT THAT HE SAID?

12 MR. LEVIN: WELL, ESSENTIALLY THAT MR. CIGNARELLI
13 INDICATED TO THE WITNESS THAT HE HAD POLITICAL
14 ASPIRATIONS; THAT THEY HAD A DISCUSSION ABOUT THAT; THAT
15 SHE REFERRED HIM TO OTHER ORGANIZATIONS IN THE AREA
16 WHERE HE MAY RUN FOR POLITICAL OFFICE.

17 AND IT'S JUST INCONSISTENT WITH MR.
18 CIGNARELLI'S TESTIMONY HERE THAT HE WAS MAKING A
19 CHARITABLE CONTRIBUTION TO SO-CALLED REAL VICTIMS OF
20 CHILD ABUSE.

21 THE COURT: WELL, THE FACT HE HAD A CONVERSATION

22 ABOUT HIS ASPIRATIONS HAS NOTHING TO DO WITH IMPEACHING
23 HIM.

24 MR. LEVIN: PARDON ME?

25 THE COURT: THAT DOESN'T IMPEACH HIM IN ANY WAY.

26 MR. LEVIN: WELL, I THINK IT DOES. IT SHOWS,
27 NUMBER ONE, THAT IF MR. CIGNARELLI'S DISCUSSING
28 POLITICAL ASPIRATIONS, WHICH WOULD ESSENTIALLY BE

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1 IRRELEVANT TO THE ORGANIZATION, WHAT DIFFERENCE WOULD IT
2 MAKE TO THEM THAT MR. CIGNARELLI HAS POLITICAL
3 ASPIRATIONS? THE JURY COULD INFER FROM THAT THAT
4 MR. CIGNARELLI WAS PUTTING THEM ON NOTICE, THAT THIS WAS
5 HIS REASON FOR MAKING THE DONATION, AND SOMEHOW IT WOULD
6 FURTHER HIS POLITICAL CAREER. HE WASN'T SITTING
7 THERE --

8 THE COURT: WHAT IF HE WAS TALKING ABOUT THE
9 LOCATION OF THE NEAREST GAS STATION OR SOMETHING?

10 MR. LEVIN: THAT'S NOT WHAT HE WAS TALKING ABOUT.

11 THE COURT: I DON'T SEE HOW IT RELATES.

12 MR. LEVIN: ALL RIGHT.

13 THE COURT: I DON'T SEE HOW A CONVERSATION ON AN
14 UNRELATED SUBJECT PROVES ANYTHING.

15 MR. LEVIN: WELL, THERE WILL BE TESTIMONY, AS I
16 UNDERSTAND IT.

17 THE COURT: UNLESS HE SAID, "THIS IS MY PURPOSE

18 FOR MAKING THIS CONTRIBUTION."

19 MS. NAJERA: HE DID NOT.

20 MR. LEVIN: THERE WILL BE TESTIMONY OFFERED BY
21 THE DEFENSE FROM PARAMOUNT CONCERNING MR. CIGNARELLI'S
22 INTENT TO MAKE A -- TO DO THIS FOR POLITICAL PURPOSES
23 AND TO FURTHER HIS POLITICAL AMBITION, AND THIS
24 CORROBORATES THEM AS WELL, ALL THE PEOPLE IN THE LOOP
25 CONCERNING THE "HARD COPY" INTERVIEW AND THE PAYMENT
26 THAT HE RECEIVED.

27 THE REASON THAT HE WAS DOING THE INTERVIEW
28 IN THE FIRST PLACE WAS SO THAT "HARD COPY" WOULD, AT THE

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1 END OF IT, GIVE A TRAILER SAYING HE MADE A SIGNIFICANT
2 CONTRIBUTION, TALKING TO THE PEOPLE FROM THE
3 ORGANIZATION ABOUT HIS POLITICAL ASPIRATIONS. IT ALL
4 FITS INTO THE PUZZLE OF DECEPTION THAT HAS BEEN PUT
5 TOGETHER THROUGH MR. CIGNARELLI'S PERJURY.

6 THANK YOU, YOUR HONOR. JOHNNIE COCHRAN, I
7 THINK HE SAID SOMETHING SIMILAR.

8 MS. ABRAMSON: GO TO ANOTHER SCHOOL.

9 THE COURT: NO MATTER HOW POETIC YOU ARE, IT
10 STILL DOESN'T TIE TOGETHER.

11 MR. LEVIN: PROPHETIC.

12 MS. ABRAMSON: THEN, YOUR HONOR, WHAT WE WILL DO
13 IS, WE WON'T CALL THESE WITNESSES UNTIL AFTER WE CALL

14 THE PARAMOUNT ONES.

15 SO IF THE PARAMOUNT WITNESSES ARE
16 CHALLENGED, THEN THESE WITNESSES WOULD CORROBORATE THAT
17 MR. CIGNARELLI HAD POLITICS AND NOT CHILD ABUSE ON HIS
18 MIND WHEN HE'S CARRYING HIS \$3,000 TO THIS ORGANIZATION.

19 THE COURT: UNLESS HE SAID THAT WAS HIS REASON
20 FOR MAKING THE CONTRIBUTION, IT DOESN'T PROVE ANYTHING.

21 MS. ABRAMSON: JUDGE, YOU CAN NEVER LINK THE TWO
22 TOGETHER. WHO WOULD GO TO A CHARITY AND TALK ABOUT
23 POLITICAL ASPIRATIONS IN A CHARITY UNLESS HE IS LINKING
24 THE TWO IN HIS MIND?

25 THE COURT: IF HE LINKED THEM TOGETHER IN HIS
26 CONVERSATION, IT MIGHT HAVE SOME PROBATIVE VALUE. BUT
27 THE FACT THAT HE DECIDED TO TALK TO SOMEBODY ABOUT
28 POLITICS DOESN'T MEAN ANYTHING.

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1 MS. ABRAMSON: I THINK WE HAVE TO HEAR IT IN THE
2 CONTEXT -- IN THE CONTEXT IT DOES HAVE MEANING,
3 PARTICULARLY WITH WHAT HE SAID TO THE PEOPLE AT "HARD
4 COPY".

5 WE WILL HOLD THESE WITNESSES UNTIL AFTER
6 THE PEOPLE FROM "HARD COPY" TESTIFY AND SEE IF IT'S MADE
7 RELEVANT BY THE SLASHING CROSS-EXAMINATION.

8 THE COURT: AT THIS POINT I DON'T SEE IT PROVING
9 ANYTHING. ALL IT AMOUNTS TO IS A CHARITABLE

10 CONTRIBUTION, QUITE FRANKLY.

11 MS. ABRAMSON: I THINK THE MOTIVE IS THE BIG

12 ISSUE. THIS IS NOT OUR FIRST WITNESS.

13 THE COURT: FROM WHAT YOU'RE SAYING, IT DOESN'T

14 SEEM THIS WOULD SHOW ANY MOTIVE AS FAR AS CONTRIBUTION.

15 LET'S STOP ON THAT.

16 YOU WANTED SOMEONE ELSE TO TESTIFY FIRST.

17 WHAT IS THE SITUATION NOW WITH THE PEOPLE FROM

18 PARAMOUNT?

19 MS. ABRAMSON: THEY'RE HERE WITH THEIR LAWYERS.

20 THE COURT: WITH SOME OBJECTION.

21 MS. ABRAMSON: BUT THEY'RE NOT FIRST, YOUR HONOR.

22 I WOULD LIKE TO PUT THE METEOROLOGIST ON.

23 THE COURT: HE'S GOING TO BE ON HOW LONG?

24 MS. ABRAMSON: VERY BRIEF. HE JUST CHARTED THE

25 WEATHER FOR '88.

26 THE COURT: HOW LONG IS THE LITIGATION GOING TO

27 TAKE REGARDING THE PARAMOUNT PEOPLE?

28 MS. ABRAMSON: I HAVE NO IDEA.

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1 THE COURT: LET ME GET AN IDEA WHAT IT IS THAT'S

2 GOING TO BE LITIGATED, SO WE'LL SEE IF WE NEED TO BRING

3 THE JURY UP OR NOT.

4 MS. NAJERA: I THINK THE ISSUE -- MY

5 UNDERSTANDING OF THE ISSUE -- AND EVERYONE'S HERE, SO

6 MAYBE IF I GET THIS WRONG THEY CAN SET IT STRAIGHT --
7 BUT MY UNDERSTANDING OF THIS ISSUE IS THERE WAS A
8 CONVERSATION BETWEEN MS. ELLMAN AND MR. CIGNARELLI, AND
9 MR. CIGNARELLI SAYS MS. BELL -- MS. ELLMAN IS HERE.
10 MS. BELL IS NOT HERE. MS. BELL HAS INDICATED THROUGH
11 HER ATTORNEY THAT SHE DOESN'T RECALL ANY CONVERSATIONS.
12 MS. ELLMAN IS HERE, I SPOKE TO HER
13 PREVIOUSLY, AND MY UNDERSTANDING FROM MY CONVERSATION
14 WITH HER WAS THAT SHE DID NOT RECALL THE CONVERSATION IN
15 DETAIL, AND SHE DID NOT RECALL -- I BELIEVE SHE TOLD ME
16 EVEN THE AMOUNT -- UNTIL SHE LOOKED AT THE CONTRACT.
17 NOW, WHETHER SHE'S RECALLING MORE NOW OR
18 NOT, I DON'T KNOW. AND THAT IS PERHAPS SOMETHING WE
19 NEED TO TAKE TESTIMONY ON.
20 BUT OUR POSITION IS IF THAT IS WHAT IS
21 RECALLED BY MS. ELLMAN, THEN WE HAVE A RIGHT TO GO INTO
22 THE WHOLE ISSUE OF HOW THEY CONDUCT THESE NEGOTIATIONS
23 TO DETERMINE WHAT WAS DONE IN HIS NEGOTIATION.
24 THE COURT: OKAY. I DON'T SEE THAT, AND THE
25 FIRST ISSUE HAS TO DO WITH THE SUBPOENA DUCES TECUM
26 SUBMITTED BY -- OR SERVED BY THE PROSECUTION ON THE T.V.
27 SHOW.
28 I REVIEWED THAT, I REVIEWED THE MATERIALS,

1 AND THE SUBPOENA IS OVERBROAD, AND I AM SATISFIED THAT

2 IT'S NOT RELEVANT, SEEKING RELEVANT MATERIAL IN THIS
3 CASE.

4 AND THEREFORE, THE MOTION BY THE COUNSEL
5 FOR THE ORGANIZATION SERVED WITH THE SUBPOENA TO QUASH
6 THE SUBPOENA IS GRANTED.

7 MS. NAJERA: YOUR HONOR, IN THAT CASE --

8 THE COURT: I JUST DON'T SEE THAT THE PEOPLE HAVE
9 A RIGHT TO THIS MATERIAL.

10 MS. NAJERA: WHAT OUR CONCERN IS, YOUR HONOR, IS
11 I BELIEVE MR. CIGNARELLI TESTIFIED THAT EITHER MS.
12 ELLMAN OR MS. BELL TOLD HIM THAT THEY HAD PAID AS MUCH
13 AS HALF A MILLION DOLLARS, AND IF THAT IS DISPUTED IN
14 SOME WAY AND THERE ARE RECORDS WHICH PROVE THAT THEY
15 HAVE PAID AS MUCH AS HALF A MILLION DOLLARS, WE HAVE A
16 RIGHT TO THAT DOCUMENTATION.

17 THE COURT: I DON'T SEE THAT. IT DOESN'T PROVE
18 ANYTHING. IT DOESN'T PROVE ANYTHING. IT HAS NOTHING TO
19 DO WITH CIGNARELLI.

20 MS. NAJERA: WELL, IF THEY DENY THAT THAT
21 STATEMENT WAS EVER MADE AND MR. -- BY MR. CIGNARELLI,
22 AND THERE IS SOME OBJECTIVE EVIDENCE THAT IN FACT THAT
23 WAS THE TRUTH, THEN WE WOULD HAVE A RIGHT TO THAT.

24 THE COURT: I DON'T SEE IT. IT DOESN'T MAKE
25 SENSE.

26 MS. NAJERA: HOW WOULD HE HAVE KNOWN THAT IF THEY
27 DIDN'T TELL HIM?

28 THE COURT: WHAT DOES THAT HAVE TO DO WITH THE

1 IMPEACHMENT OF CIGNARELLI ON A VERY LIMITED ISSUE?

2 MS. NAJER: I THINK THEY ARE PLANNING TO IMPEACH
3 HIM ON A MUCH BROADER ISSUE, YOUR HONOR.

4 THE COURT: BUT WHAT YOU'RE TRYING TO DO IS
5 ATTACK THE EVIDENCE OFFERED BY THE DEFENSE TO IMPEACH
6 CIGNARELLI. I DON'T SEE HOW ONE RELATES TO THE OTHER.
7 YOU CAN ASK FOR THINGS, BUT IT DOESN'T NECESSARILY MEAN
8 THAT YOU ARE ENTITLED TO IT.

9 MS. NAJERA: WELL, THEN, MAYBE WHAT I'M A BIT
10 FUZZY ON IS WHAT EXACTLY ARE THEY OFFERING FROM
11 MS. ELLMAN? MY UNDERSTANDING FROM MS. ELLMAN IS SHE
12 DIDN'T REMEMBER THE SPECIFICS OF THE CONVERSATION. IF
13 I'M WRONG, THAT'S FINE

14 THE COURT: IF YOU HAVE SOME DOUBT ABOUT WHAT HER
15 TESTIMONY WILL BE, PERHAPS WE WILL HAVE TO TAKE SOME
16 TESTIMONY. I SUGGESTED THAT SHE BE INTERVIEWED FIRST
17 AND NO ONE HAS PROVIDED ME WITH ANY OFFER.

18 MS. ABRAMSON: YOUR HONOR, THEY DIDN'T INTERVIEW,
19 SO THEY ARE ENTITLED TO A FREE DEPOSITION?

20 THE COURT: NO. THEY SAID THE PROSECUTION
21 INTERVIEWED THE WITNESS, AND THE WITNESS --

22 MS. ABRAMSON: THE --

23 THE COURT: THE PROSECUTION SAID THEY
24 INTERVIEWED -- I'M TALKING. BELIEVE IT OR NOT, I AM
25 TALKING.

26 THE WITNESS WAS INTERVIEWED BY THE

27 PROSECUTION, AND THE PROSECUTOR TELLS ME WHAT THE
28 WITNESS TOLD THE PROSECUTION.

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1 NOW YOU'RE TELLING ME THAT THE WITNESS
2 TELLS YOU THAT SHE TOLD THE PROSECUTION SOMETHING
3 DIFFERENT. YOU DON'T KNOW ONE WAY OR ANOTHER. ALL YOU
4 KNOW IS WHAT THE WITNESS TOLD YOU.

5 SO AS A RESULT OF ALL THIS, THEN WE WILL
6 HAVE TO DO A HEARING.

7 MS. TOWERY: CAN I INTERJECT SOMETHING?

8 MS. ABRAMSON: I INTERVIEWED THE WITNESS. I MADE
9 A DETAILED OFFER OF PROOF.

10 THE PROSECUTION INTERVIEWED THE WITNESS.
11 IF THEY THINK THEY HAVE A DIFFERENT ANSWER, THEY CAN
12 IMPEACH HER WITH IT. THAT'S WHAT CROSS-EXAMINATION IS
13 FOR. SHE MADE IT PERFECTLY CLEAR. MISS TOWERY WAS
14 PRESENT, MR. GESSLER WAS PRESENT, MR. BRAM, HER LAWYER
15 WAS PRESENT, THAT SHE HEARD THE NEGOTIATIONS WITH CRAIG
16 CIGNARELLI. THE ONLY THING SHE DIDN'T REMEMBER WAS THE
17 SPECIFIC AMOUNT OF MONEY HE WAS DEMANDING. BUT SHE DID
18 RECALL WITH NO DOUBT THAT HE NEVER TURNED DOWN MORE
19 MONEY THAN WHAT THEY PAID HIM.

20 THE COURT: SINCE THIS IS AN ISSUE THAT RELATES
21 TO ASSERTION OF SHIELD LAW AND THE SCOPE OF THE
22 EXAMINATION OF THE WITNESS; AND SINCE THE SCOPE OF THE

23 EXAMINATION OF THE WITNESS, ESPECIALLY THE
24 CROSS-EXAMINATION, WOULD DETERMINE WHETHER OR NOT THE
25 WITNESS WOULD BE PERMITTED TO TESTIFY AT ALL, THE ONLY
26 PROPER WAY OF DEALING WITH THIS IS TO DO IT OUTSIDE THE
27 PRESENCE OF THE JURY.

28 AND THAT IS WHAT THE COURT PROPOSES TO DO,

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1 AND THAT IS WHAT IS GOING TO BE DONE.

2 MS. ABRAMSON: THEY ARE NOT ASSERTING THE SHIELD
3 AS TO ANY CONVERSATIONS.

4 THE COURT: THAT'S HOW I UNDERSTAND THE DOCUMENTS
5 THEY FILED.

6 MS. TOWERY: THERE IS ANOTHER ISSUE RELATING TO
7 THIS PARTICULAR WITNESS, AND CORRECT ME IF I'M WRONG,
8 BUT MY RECOLLECTION IS THE COURT ORDERED THE PROSECUTION
9 TO PREPARE A POLICE REPORT.

10 THE COURT: I DID.

11 MS. TOWERY: I ASKED MS. NAJERA THIS MORNING IF
12 WE COULD HAVE THAT REPORT, AND SHE INDICATED SHE WANTED
13 TO ADDRESS THE COURT ON THAT, SO I DON'T HAVE IT.

14 THE COURT: OKAY. I TOLD THE PROSECUTION AND
15 DETECTIVE ZOELLER, SINCE HE WAS PRESENT FOR THE
16 INTERVIEW, HE SHOULD PREPARE A REPORT.

17 MS. NAJERA: WE HAVE THE REPORT, YOUR HONOR. MY
18 ONLY CONCERN IS I DON'T BELIEVE THAT'S DISCOVERY. IT'S

19 THEIR WITNESS.

20 I'VE GOT THE REPORT, THOUGH. IF THE COURT

21 WANTS ME TO TURN IT OVER, IT'S DONE.

22 THE COURT: ALL RIGHT. WHY DON'T YOU DO THAT.

23 MS. NAJERA: IT'S DONE.

24 THE COURT: BUT WE WILL HAVE TO TAKE TESTIMONY.

25 AND HOW LONG IS THE WEATHERMAN'S TESTIMONY SUPPOSED TO

26 BE?

27 MS. ABRAMSON: HOW LONG COULD IT BE? I INTEND TO

28 MAKE IT VERY BRIEF. I HAVE NO IDEA WHAT THEY INTEND TO

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1 DO WITH IT. HE HAS A CHART FOR THE WEATHER CONDITIONS

2 FROM THE MONTH OF DECEMBER 1988 THAT HE GOT FROM THE

3 OFFICIAL PUBLICATION FROM THE WEATHER SERVICE. I DON'T

4 KNOW IF THEY WANT ME TO GO THROUGH THE POOR MAN'S

5 CREDENTIALS. HE IS A METEOROLOGIST; HE HAS BEEN HIS

6 WHOLE CAREER. IF THEY INSIST I DO THAT, I WILL.

7 OTHERWISE IT WILL BE EXTREMELY BRIEF.

8 THE COURT: HOW LONG DO YOU THINK THE CROSS WILL

9 BE?

10 MS. NAJERA: I DON'T IMAGINE IT WILL BE VERY

11 LONG, YOUR HONOR, I REALLY DON'T. IN OTHER WORDS,

12 BRIEF.

13 THE COURT: ALL RIGHT. JUST TO ACCOMMODATE THE

14 WITNESS' SCHEDULE AND PERMIT HIM TO GET HIS TESTIMONY

15 COMPLETED HERE, I WILL TAKE IT AND HAVE THE JURY HERE.

16 BUT AS SOON AS THAT'S OVER, WE WILL HAVE TO COMMENCE THE

17 HEARING IN REGARD TO THE TESTIMONY FROM "HARD COPY".

18 ALSO, THE COURT DID RECEIVE MATERIAL FROM

19 THE PROSECUTION REGARDING MRS. COHEN, AND THE DEFENSE

20 HAD CONCERNS ABOUT WHETHER OR NOT THIS TESTIMONY WOULD

21 POTENTIALLY OPEN THE DOOR TO REFERENCE BY MR. CIGNARELLI

22 TO THE SCREENPLAY.

23 AND HAVING REVIEWED THE MATERIAL, WHAT I

24 CAN SAY IS THAT IF THE PROSECUTION SEEKS TO REFUTE THE

25 TESTIMONY OF MS. COHEN IN THE WAY THEY PROPOSE, THERE IS

26 CERTAINLY A POSSIBILITY THAT THAT WOULD BRING FORTH

27 TESTIMONY ABOUT THE SCREENPLAYS. I CAN'T SAY IT WOULD.

28 IT WOULD ALL DEPEND ON THE NATURE OF THE EXAMINATION,

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1 BUT THERE CERTAINLY IS THAT POTENTIAL.

2 MS. SAGER, DO YOU WANT TO SAY ANYTHING AT

3 THIS POINT?

4 MS. SAGER: NO, YOUR HONOR. THE ONLY THING I

5 WOULD HAVE, YOUR HONOR, IS WITH RESPECT TO MS. ELLMAN

6 AND HER PAPERS. WE ALSO DISCUSSED THE SCOPE OF

7 CROSS-EXAMINATION, AND I ASSUME FROM THE COURT'S ORDER

8 THE CROSS-EXAMINATION WILL BE LIMITED, AS WE REQUESTED,

9 NOT TO GET INTO OTHER PEOPLE AND OTHER SOURCES AND OTHER

10 AMOUNTS OF MONEY.

11 THE COURT: I CAN'T SAY THAT UNTIL I HEAR EXACTLY
12 WHAT SHE SAYS ON DIRECT EXAMINATION. THAT'S WHY I WANT
13 TO DO A HEARING OUTSIDE THE PRESENCE OF THE JURY
14 MS. SAGER: I UNDERSTAND, YOUR HONOR.
15 THE COURT: TO ASCERTAIN WHETHER OR NOT THERE
16 WOULD BE A POTENTIAL GOING BEYOND THE SCOPE OF WHAT
17 TESTIMONY YOU FEEL IS NOT PROTECTED OR YOU'RE NOT
18 ASSERTING THE SHIELD.
19 MS. SAGER: CERTAINLY, YOUR HONOR.
20 MS. ELLMAN IS -- AS I AM SURE THE COURT
21 KNOWS, IS NOT A LAWYER, AND I WOULD ASK YOUR PERMISSION
22 TO INTERPOSE OBJECTIONS ON HER BEHALF AS WE THINK ARE
23 NECESSARY.
24 THE COURT: SURE, SURE.
25 LET'S GET JURY HERE.
26 MR. GESSLER: YOUR HONOR, WE DO HAVE ONE MORE
27 MATTER.
28 WE DO HAVE IN OUR POSSESSION, OR AT LEAST A

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1 WITNESS HAS IN HER POSSESSION, THE 1996 FAILURE ANALYSIS
2 CALENDAR, WHICH IS NEWLY DISCOVERED TO US. I BELIEVE IT
3 HAS JUST BEEN RELEASED IN THE LAST WEEK TO 10 DAYS.
4 THE COURT: HOT OFF THE PRESSES.
5 MR. GESSLER: I'M SORRY?
6 THE COURT: HOT OFF THE PRESSES.

7 MR. GESSLER: HOT OFF THE PRESSES. AND TO A
8 LIMITED CLIENTELE FROM WHOM THEY SEEK TO GET BUSINESS.
9 WE HAVE IN OUR POSSESSION THE AUGUST PAGE
10 FROM THAT CALENDAR, AND THE AUGUST PAGE FOR DISASTER OF
11 THE MONTH IS -- HAVE YOU SEEN THIS, MR. CONN?
12 MR. CONN: I HAVE SEEN IT. YES, I'VE SEEN IT.
13 MR. GESSLER: THE DISASTER OF THE MONTH IS THE
14 MENENDEZ BROTHERS' MURDER TRIAL WITH -- I THINK IT'S
15 THEIR DIAGRAM NO. 1-A, AND SAYING "FAILURE ANALYSIS
16 RECONSTRUCTED THE MURDERS AND TESTIFIED IN THE RETRIAL
17 ABOUT THE MEDICAL AND BALLISTICS EVIDENCE IN THE CASE."
18 WE HAVE THE PERSON WHO HAS GONE TO FAILURE
19 ANALYSIS AND GOTTEN A CALENDAR IN ORDER TO AUTHENTICATE
20 THAT. IT IS TRULY FROM FAILURE ANALYSIS AND CONTAINS
21 THIS AUGUST DISASTER OF THE MONTH.
22 WE WANT TO OFFER THIS -- THIS PAGE OF THE
23 CALENDAR, OR THE ENTIRE CALENDAR IF NECESSARY, AS
24 SHOWING BIAS, ECONOMIC BIAS AT LEAST, ON BEHALF OF
25 DR. MC CARTHY AND FAILURE ANALYSIS ASSOCIATES, WHO ARE
26 INDEED USING THE WORK THEY DID TO ADVERTISE THEIR
27 SERVICES TO BIG COMPANIES FROM WHOM THEY CAN GET MONEY.
28 WE HAVE PREPARED -- THE WITNESS IS PREPARED

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1 TO FLY DOWN HERE AT NOON, BRINGING THE ACTUAL CALENDAR
2 RECEIVED FROM FAILURE ANALYSIS, IF IT IS FELT THAT'S

3 NECESSARY FOR FOUNDATION.

4 IF NOT, IF THE PEOPLE ARE WILLING TO

5 STIPULATE TO FOUNDATION, THEN WE CAN ARGUE IT ON

6 ADMISSIBILITY GROUNDS AND MARK THIS PAGE, WHICH IS THE

7 MAJOR ONE WE'RE INTERESTED IN, AS AN EXHIBIT.

8 THE COURT: OKAY. CAN I SEE IT?

9 MR. GESSLER: SURE.

10 THE COURT: YOU MENTIONED IT YESTERDAY, BUT YOU

11 DIDN'T HAVE IT YESTERDAY.

12 MR. GESSLER: WE HAD THAT, BUT --

13 THE COURT: YOU DIDN'T HAVE IT IN THE COURTROOM.

14 MS. TOWERY: WE DIDN'T HAVE IT IN THE COURTROOM,

15 RIGHT.

16 THE COURT: OKAY.

17 MR. GESSLER: YOU MIGHT NOTE THAT AUGUST 20TH --

18 THE COURT: I JUST WANT TO LOOK AT THE OTHER

19 MONTHS TO SEE WHAT THE DISASTER WAS.

20 MR. LEVIN: LOOK AT THE DATES. DIDN'T HE LIST

21 THE AMERICAN BAR ASSOCIATION FOUNDING AS A DISASTER?

22 MR. GESSLER: AUGUST IS THE MENENDEZ KILLINGS, ON

23 AUGUST 20TH, AND THE FOUNDING OF THE AMERICAN BAR

24 ASSOCIATION IS A COMPARABLE DISASTER.

25 THE COURT: MOUNT VESUVIUS ERUPTED THE 24TH.

26 MS. ABRAMSON: THEY WERE THERE FIRST, JUDGE.

27 THEY RECONSTRUCTED MOUNT VESUVIUS.

28 THE COURT: THE RED CROSS WAS THERE FIRST.

1 ALL RIGHT. DO THE PEOPLE WISH TO BE HEARD?

2 MR. CONN: WELL, I WOULD ASK THAT COUNSEL, IN
3 ORDER TO LAY THE PROPER FOUNDATION, DOES, IN FACT,
4 PROVIDE A WITNESS WHO CAN HAVE THE COMPLETE CALENDAR SO
5 THAT WE CAN EXAMINE IT AND MAKE AN ARGUMENT AT THAT
6 TIME.

7 MR. GESSLER: WE WILL BRING IT DOWN.

8 THE COURT: DON'T YOU HAVE THE WHOLE CALENDAR?

9 MR. CONN: NO, I DON'T HAVE THE CALENDAR. I
10 HEARD ABOUT IT, AND I THINK I SAW A SMALL COPY OF IT AT
11 ONE POINT, BUT I DON'T THINK I HAVE SEEN THE WHOLE
12 CALENDAR.

13 MS. TOWERY: YOUR HONOR, THE LAST FLIGHT IS AT
14 NOON, SO IF THE COURT WANTS HER TO COME TODAY, WE NEED
15 TO GET HER ON THAT FLIGHT VERY QUICKLY, OTHERWISE WE
16 WILL HAVE TO CALL HER IN THE MORNING.

17 (BRIEF PAUSE IN PROCEEDINGS)

18

19 MR. GESSLER: THANK YOU, YOUR HONOR. WE WILL
20 BRING THE WITNESS DOWN.

21 THE COURT: THIS IS FROM MENLO PARK?

22 MR. GESSLER: IT'S ACTUALLY FROM, I BELIEVE, SAN
23 JOSE, SO THEY DON'T HAVE THE HOURLY FLIGHTS THAT SAN
24 FRANCISCO DOES. WE HAVE TO GET HER ON THE NOON PLANE TO
25 BRING HER DOWN, SO THAT WE CAN HAVE THE FULL CALENDAR
26 HERE THIS AFTERNOON.

27 MS. TOWERY: PERHAPS WE CAN INQUIRE AS TO WHETHER

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1 ORDER, IF NECESSARY, YOUR HONOR, IF WE BRING HER DOWN
2 TODAY. OTHERWISE, WE COULD BRING HER IN THE MORNING.

3 MS. ABRAMSON: YOUR HONOR, I WOULD PREFER WE
4 BRING HER IN THE MORNING, ONLY BECAUSE I DON'T THINK I
5 CAN MAKE IT IN THIS AFTERNOON TODAY BASED ON MY FLU.

6 MR. GESSLER: I THINK HER TESTIMONY WILL TAKE ALL
7 OF TWO MINUTES TO AUTHENTICATE IT, AND I HATE TO HAVE
8 THE JURY COME IN FOR THAT ALONE.

9 MS. ABRAMSON: YOU DON'T UNDERSTAND. IF I CAN'T
10 WORK THIS AFTERNOON, DR. VICARY'S GOING TO BE TOMORROW.

11 MR. GESSLER: THAT'S TRUE.

12 MS. ABRAMSON: IF THE COURT IS GOING TO RELEASE
13 ME. I DON'T KNOW IF HE WILL OR NOT.

14 THE COURT: HOW LONG IS IT -- IF SHE LEAVES AT
15 NOON, THE PERSON WILL BE HERE AT 1:00 O'CLOCK, OR WILL
16 GET HERE BY 2:00 O'CLOCK?

17 MR. GESSLER: YES.

18 THE COURT: WHERE IS SHE FLYING, INTO BURBANK?

19 MR. GESSLER: SHE WILL PROBABLY FLY TO L.A.X.

20 MS. TOWERY: I DON'T KNOW. I HAVEN'T MADE THE
21 ARRANGEMENTS.

22 MR. GESSLER: I THINK THE FLIGHT IS TO L.A.X.

23 MS. TOWERY: IT PROBABLY IS L.A.X.

24 THE COURT: I WOULD LIKE TO SEE IF WE CAN RESOLVE
25 THIS THING TODAY. IF MS. ABRAMSON CAN'T BE HERE, I AM
26 SURE MR. LEVIN CAN FILL IN FOR HER.
27 MS. ABRAMSON: ON THAT ISSUE, CERTAINLY.
28 MR. LEVIN: THANK YOU, LESLIE.

-15300

1 THE COURT: OKAY. WE WILL WAIT FOR THE JURY TO
2 COME OVER. THEY'RE EN ROUTE.

3 DO YOU WANT THIS BACK, MR. GESSLER?

4 MR. GESSLER: YES, PLEASE, YOUR HONOR.

5 THE COURT: WE'LL BE IN RECESS FOR THE JURORS.

6 (A RECESS WAS TAKEN FROM
7 10:05 A.M. TO 10:20 A.M.)

8

9 THE COURT: OKAY. WE'LL HAVE THE JURY OUT,
10 PLEASE.

11 MS. ABRAMSON: YOUR HONOR, CAN I CALL DR. VICARY
12 FOR THIS AFTERNOON?

13 THE COURT: LET'S FINISH THIS, AND WE WILL TALK
14 ABOUT IT.

15 (THE JURY ENTERS THE COURTROOM
16 AND THE FOLLOWING PROCEEDINGS
17 WERE HELD:0

18

19 THE COURT: THE JURY IS IN THE COURTROOM.

20 GOOD MORNING, LADIES AND GENTLEMEN. WE ARE
21 NOW READY TO RESUME WITH THE TESTIMONY.
22 THE DEFENSE MAY CALL ITS NEXT WITNESS.
23 MS. ABRAMSON: WE CALL IRWIN CAUPER, YOUR HONOR.
24
25
26 ///
27
28 ///

-15299

1 IRWIN CAUPER,
2 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
3 TESTIFIED AS FOLLOWS:
4 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
5 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
6 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
7 NOTHING BUT THE TRUTH, SO HELP YOU GOD?
8 THE WITNESS: I DO.
9 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR
10 NAME FOR THE RECORD.
11 THE WITNESS: MY NAME IS IRWIN K. CAUPER.
12 THE CLERK: WOULD YOU SPELL YOUR LAST NAME,
13 PLEASE.
14 THE WITNESS: C-A-U-P-E-R.
15

17 BY MS. ABRAMSON:

18 Q. MR. CAUPER, WHAT DO YOU DO FOR A LIVING?

19 A. I AM A METEOROLOGIST.

20 Q. AND WHAT DOES A METEOROLOGIST DO?

21 A. WATCHES, STUDIES AND FORECASTS THE WEATHER.

22 Q. AND HOW LONG HAVE YOU BEEN A METEOROLOGIST?

23 A. SINCE 1944.

24 Q. AND WHERE WERE YOU TRAINED IN METEOROLOGY?

25 A. I GOT MY TRAINING AT U.C.L.A. I HAVE A

26 DEGREE IN PHYSICS AND METEOROLOGY.

27 Q. AND DID YOU AT ONE POINT IN YOUR CAREER

28 WORK FOR THE U.S. WEATHER SERVICE?

-15298

1 A. AFTER I GOT OUT OF THE SERVICE IN 1946 I

2 WENT TO WORK FOR THE -- IN THOSE DAYS THE U.S. WEATHER

3 BUREAU AT BURBANK AND LOS ANGELES INTERNATIONAL AIRPORT.

4 Q. AND HOW LONG WERE YOU EMPLOYED BY THE

5 GOVERNMENT?

6 A. APPROXIMATELY NINE YEARS.

7 Q. AND THEN WHAT DID YOU DO?

8 A. I WENT TO WORK FOR LOS ANGELES COUNTY AS A

9 METEOROLOGIST FOR THE AIR POLLUTION CONTROL DISTRICT.

10 Q. AND HOW LONG WERE YOU EMPLOYED BY THE

11 COUNTY?

12 A. ELEVEN YEARS.

13 Q. AND THEN WHAT DID YOU DO?

14 A. OH, I WENT TO -- I GOT KIND OF BORED WITH
15 L.A. COUNTY AND WENT TO WORK FOR METEOROLOGY RESEARCH,
16 INC., WHICH WAS THEN IN ALTA DENA, AND WE DID FIELD
17 STUDIES FOR VARIOUS GOVERNMENT AGENCIES, MAINLY THE
18 CHEMICAL WARFARE SERVICE IN VARIOUS AREAS IN THE WORLD.

19 Q. AND WAS THAT YOUR LAST EMPLOYMENT BY
20 ANOTHER BEFORE YOU WENT INTO YOUR OWN BUSINESS?

21 A. I DID WORK FOR AN ORGANIZATION IN EAGLE
22 ROCK -- AN AIR POLLUTION ENGINEERING FIRM FOR A SHORT
23 TIME, AND THEN I FORMED MY OWN CONSULTING SERVICE.

24 Q. NOW, MR. CAUPER, IF ONE WANTED TO DISCOVER
25 OR FIND OUT WHAT THE WEATHER CONDITIONS WERE LIKE FOR A
26 PARTICULAR DAY OR MONTH OR YEAR IN THE PAST, HOW WOULD
27 ONE GO ABOUT DOING THAT?

28 A. THE EASIEST WAY WOULD BE TO FIND THE

-15297

1 PUBLICATIONS PUT OUT BY THE NATIONAL WEATHER SERVICE.
2 THE NATIONAL CLIMATIC DATA CENTER IN ASHVILLE, NORTH
3 CAROLINA, HAS THE ARCHIVES OF ALL THE WEATHER DATA.
4 THEY CAN EASILY -- THEY CAN EITHER BE GOTTEN AS
5 PHOTOCOPIES OF THE ACTUAL OBSERVATIONS DONE BY WEATHER
6 OBSERVERS, OR THE OTHER ALTERNATIVE IS TO LOOK AT THEIR
7 PUBLICATIONS, WHICH SUMMARIZE REPORTS FOR VARIOUS MONTHS

8 FOR VARIOUS STATES.

9 Q. NOW, IN LOS ANGELES COUNTY, ARE THERE
10 ACTUAL OBSERVATION STATIONS THAT MEASURE AND TRACK THE
11 CLIMATIC CONDITIONS FOR EVERY DAY?

12 A. THERE ARE.

13 Q. AND WHAT ARE THE MAJOR ONES IN LOS ANGELES
14 COUNTY BY WHICH THE WEATHER OF THIS COUNTY IS MEASURED
15 AND OBSERVED?

16 A. THE -- THERE ARE TWO TYPES OF WEATHER
17 STATIONS; THE KIND THAT ARE MANNED CONTINUOUSLY, AND
18 THEY WOULD BE PLACES LIKE LOS ANGELES AIRPORT AND LONG
19 BEACH AIRPORT AND BURBANK AIRPORT. THE OTHER STATIONS
20 THAT ARE USED TO PROVIDE DATA ARE THE SO-CALLED
21 COOPERATIVE STATIONS THAT THE NATIONAL WEATHER SERVICE
22 HAS REPORTS FROM INDIVIDUALS OR ORGANIZATIONS THAT
23 REPORT NOT HOURLY DATA, PERHAPS, BUT DATA SUCH AS
24 MAXIMUM AND MINIMUM TEMPERATURE AND THE AMOUNT OF
25 PRECIPITATION EACH DAY.

26 Q. NOW, WERE YOU REQUESTED BY US TO OBTAIN THE
27 OFFICIAL DATA FOR THE MONTH OF DECEMBER, 1988?

28 A. YES.

-15296

1 Q. AND IN WHAT FORM DID YOU OBTAIN THE
2 OFFICIAL DATA ON WEATHER IN LOS ANGELES COUNTY FOR THAT
3 MONTH?

4 A. I USED THE DATA THAT'S IN THE PUBLICATION
5 CALLED NATIONAL CLIMATICAL DATA FOR CALIFORNIA,
6 DECEMBER, 1988, PUBLISHED BY THE NATIONAL WEATHER
7 CENTER.

8 Q. AND IS THAT CONSIDERED A RELIABLE SOURCE BY
9 EXPERTS IN THE FIELD OF METEOROLOGY?

10 A. IT IS.

11 Q. AND DID YOU BRING THAT DATA WITH YOU? IS
12 THAT A LITTLE PAMPHLET YOU HAVE THERE?

13 A. YES.

14 Q. OKAY. AND DID YOU EXAMINE THE DATA IN THAT
15 PAMPHLET AND PREPARE A CHART THAT INDICATES THE WEATHER
16 CONDITIONS FOR THE ENTIRE MONTH OF DECEMBER, 1988 HERE
17 IN LOS ANGELES COUNTY?

18 A. I DID FOR THE STATIONS IN THE WESTERN PART
19 OF THE LOS ANGELES BASIN.

20 Q. YOU UNDERSTOOD WE WERE CONCERNED WITH THE
21 CLIMATIC CONDITIONS AS THEY WOULD BE EXPERIENCED IN
22 BEVERLY HILLS, DID YOU NOT?

23 A. YES.

24 Q. AND SO YOU LOOKED AT ALL THE STATIONS THAT
25 RING BEVERLY HILLS?

26 A. YES.

27 Q. AND WHAT ARE THE STATIONS THAT SURROUND
28 BEVERLY HILLS?

1 A. I USED CULVER CITY, U.C.L.A. AND L.A.X, AND
2 THEN I THREW IN, AS A FREEBIE, THE CIVIC CENTER READINGS
3 FOR DOWNTOWN LOS ANGELES.

4 Q. AND DO YOU HAVE WITH YOU THE CHART THAT YOU
5 PREPARED THAT INDICATED THE WEATHER CONDITIONS BASED ON
6 THOSE FOUR STATIONS?

7 A. YES.

8 MS. ABRAMSON: YOUR HONOR, I'D LIKE TO MARK THIS
9 MATERIAL WHICH IS ON GRAPH PAPER NEXT IN ORDER.

10 THE COURT: 439.

11 MS. ABRAMSON: 439?

12 THE COURT: YES.

13 MS. ABRAMSON: THANK YOU, YOUR HONOR.

14 Q. NOW, WHEN YOU PUT THE DATA TOGETHER,
15 MR. CAUPER, DID YOU NOTICE A DRAMATIC FEATURE TO THE
16 WEATHER CONDITIONS FOR DECEMBER, 1988?

17 A. YES. THE MONTH OF DECEMBER WAS QUITE
18 DISTINCT IN THAT THE FIRST HALF OF THE MONTH WAS TYPICAL
19 WINTER TOURIST WEATHER FOR SOUTHERN CALIFORNIA, AND THE
20 SECOND HALF WAS -- WOULD BE CALLED RAINY, MORE A RAINY
21 SEASON BEGAN.

22 Q. WHEN YOU SAY TYPICAL WINTER TOURIST, WARM
23 AND BALMY, SUMMERY, SPRING-LIKE WEATHER?

24 A. YES.

25 Q. AND THAT WAS UP UNTIL THE 15TH, CORRECT?

26 A. THE 15TH THE RAIN STARTED.

27 Q. AND FROM THE 15TH TO THE END OF THE MONTH
28 IT WAS COLDER AND RAINIER THAN NORMAL, CORRECT?

1 A. YES. THE OVERALL AVERAGE FOR THE MONTH WAS
2 BELOW NORMAL TEMPERATURE AND ABOVE NORMAL PRECIP.

3 Q. ABOVE NORMAL RAIN. IS THAT WHAT "PRECIP"
4 MEANS, PRECIPITATION?

5 A. YES.

6 Q. AND COULD YOU, WITH RESPECT TO THAT WHOLE
7 SECOND HALF OF THE MONTH FROM THE 15TH ON, DO THE CHARTS
8 INDICATE THAT EVEN THE HIGHEST NEVER GOT ABOVE 60?

9 A. THAT'S CORRECT.

10 Q. AND THE LOWEST WENT HOW LOW?

11 A. I THINK WE HAD A LOW OF 38 AS THE LOWEST
12 LOW.

13 Q. AND ON WHAT DAYS WAS THERE MEASURABLE
14 PRECIPITATION? WHAT DATES?

15 A. THE 15TH, THE 16TH, THE 18TH, THE 20TH,
16 21ST, 23RD, 24TH, 25TH AND 28TH AND THE 31ST.

17 Q. AND OF THOSE DAYS, WHICH ONE HAD THE
18 GREATEST AMOUNT OF MEASURED RAIN?

19 A. THE GREATEST AMOUNT WAS ON THE 21ST.

20 Q. AND WAS THERE WELL OVER AN INCH OF RAIN
21 MEASURED ON THAT DAY?

22 A. YES, THERE WAS.

23 Q. AND FOR THE LOS ANGELES BASIN, IS AN INCH
24 OF RAIN A LOT IN A GIVEN DAY?

25 MS. NAJERA: OBJECTION. CALLS FOR SPECULATION.

26 THE COURT: OVERRULED.
27 THE WITNESS: YOU MIGHT SAY IT'S MORE THAN A
28 NOTICEABLE RAINSTORM.

-15293

1 Q. BY MS. ABRAMSON: AND WHEN YOU HAVE A
2 CLUSTER OF RAINY DAYS SUCH AS THIS, DOES THAT INDICATE
3 TO YOU AS A METEOROLOGIST THAT THERE ARE STORM FRONTS
4 MOVING THROUGH THE LOS ANGELES BASIN OVER THIS PERIOD OF
5 TIME?

6 A. YES. IN THIS CASE IT WAS A SERIES OF
7 STORMS COMING IN OFF OF THE PACIFIC.

8 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR
9 HONOR.

10 THE COURT: CROSS?

11

12 CROSS-EXAMINATION

13 BY MS. NAJERA:

14 Q. MR. CAUPER, LET ME ASK YOU, SIR.

15 WE HAD A WITNESS WHO TESTIFIED IN THIS
16 COURT THAT SHE WAS HERE IN DECEMBER AND IT WAS PLEASANT.

17 NOW, CAN YOU LOOK ON THAT CHART AND TELL US
18 WHICH DAYS IN DECEMBER IN 1988 WERE PLEASANT?

19 MS. ABRAMSON: I AM GOING TO OBJECT, YOUR HONOR.
20 CALLS FOR SPECULATION ON HIS PART AS TO WHAT THE WITNESS
21 MEANT BY "PLEASANT."

22 THE COURT: PERHAPS YOU CAN REPHRASE THE
23 QUESTION.
24 Q. BY MS. NAJERA: WELL, IS THERE A WAY THAT
25 THE WEATHER SERVICE HAS OF MEASURING DAYS IN TERMS OF
26 PLEASANT, UNPLEASANT?
27 A. NOT THAT I'M AWARE OF.
28 Q. AND WHEN SOMEONE SAYS THAT THE DAYS ARE

-15292

1 PLEASANT, THERE IS NO PARTICULAR TEMPERATURE RANGE THAT
2 YOU KNOW OF THAT IS USED AMONG THE SCIENTISTS TO
3 DETERMINE WHAT THIS MEANS REALLY, IS THERE?
4 A. PLEASANT IS NOT A SCIENTIFIC TERM.
5 Q. OKAY. AND YOU WOULD AGREE, PLEASANT IS NOT
6 A SCIENTIFIC TERM; IS THAT RIGHT?
7 THE COURT: HE JUST SAID THAT.
8 Q. BY MS. NAJERA: OKAY.
9 NOW, HAVE YOU -- SIR, HAVE YOU EVER BEEN IN
10 PITTSBURGH IN DECEMBER?
11 MS. ABRAMSON: OBJECTION. IRRELEVANT.
12 THE COURT: OVERRULED.
13 YOU CAN ANSWER THE QUESTION.
14 THE WITNESS: NO.
15 Q. BY MS. NAJERA: ARE YOU AWARE OF WHAT THE
16 WEATHER IS LIKE IN PITTSBURGH IN DECEMBER?
17 A. YES.

18 Q. IS IT CONSIDERABLY COLDER THAN IT IS HERE
19 IN CALIFORNIA IN DECEMBER?
20 MS. ABRAMSON: OBJECTION, YOUR HONOR. I THINK
21 THAT'S CALLING FOR SPECULATION ON HIS PART, UNLESS HE
22 HAS THE DATA FOR PITTSBURGH.
23 THE COURT: ARE YOU ASKING A PARTICULAR YEAR, OR
24 JUST GENERALLY OVER TIME?
25 BY MS. NAJERA: JUST GENERALLY.
26 THE COURT: OVERRULED.
27 THE WITNESS: GENERALLY THE CONDITIONS IN
28 DECEMBER ARE COLDER IN PITTSBURGH THAN THEY ARE IN

-15291

1 SOUTHERN CALIFORNIA.
2 Q. BY MS. NAJERA: AND WHEN YOU SAY COLDER,
3 WOULD YOU SAY CONSIDERABLY COLDER?
4 A. I WOULD JUST SAY COLDER.
5 Q. AND DO YOU THINK THAT WHAT ONE MIGHT
6 CONSIDER PLEASANT BY LOS ANGELES STANDARDS MIGHT BE
7 DIFFERENT FROM WHAT ONE MIGHT CONSIDER PLEASANT BY
8 PITTSBURGH STANDARDS?
9 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS FOR
10 SPECULATION.
11 THE COURT: SUSTAINED.
12 Q. BY MS. NAJERA: WELL, CALLING YOUR
13 ATTENTION TO YOUR CHART, LET'S START WITH DECEMBER 24TH,

14 THE DAY BEFORE CHRISTMAS.

15 NOW, I HAVE IN THE FIRST COLUMN OF YOUR

16 CHART THAT THE TEMPERATURE IN CULVER CITY WAS 59

17 DEGREES, HIGH. THAT'S YOUR HIGH; IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. AND YOU HAVE AS PRECIPITATION -- BY

20 PRECIPITATION, DO YOU MEAN -- DID IT RAIN THAT DAY?

21 A. PRECIPITATION STANDS FOR RAIN OR SNOW OR

22 ANYTHING ELSE THAT'S FALLING OUT OF THE SKY.

23 Q. NOW, WHEN IT SAYS PRECIPITATION .32, WHAT

24 DOES THAT MEAN?

25 A. 32 HUNDREDTHS OF AN INCH TOTAL

26 PRECIPITATION MEASURED IN A RAIN GAUGE.

27 Q. AND WHAT DOES THAT MEAN IN TERMS OF HOW

28 MUCH IT RAINED?

-15290

1 A. IT MEANS THAT THAT'S HOW MUCH IT RAINED

2 IN -- AT THAT WEATHER STATION.

3 Q. SO, IT WAS 32 HUNDREDTHS OF AN INCH?

4 A. THAT'S CORRECT.

5 Q. OKAY.

6 AND STAYING WITH THE -- WELL, WE'LL DOWN TO

7 THE U.C.L.A. -- WELL, LET'S GO DOWN TO THE CIVIC CENTER,

8 SINCE THAT IS -- THE PRECIPITATION ON THE 24TH ON THAT

9 DAY WAS .87.

10 HOW MUCH RAIN IS THAT, ACTUALLY?

11 A. IT'S ALMOST AN INCH.

12 Q. IS THAT 87 --

13 A. SHORT OF AN INCH.

14 Q. OKAY.

15 A. MORE THAN THREE-QUARTERS OF AN INCH.

16 Q. NOW, THE CIVIC CENTER HAS THREE-QUARTERS OF

17 AN INCH, WE'LL SAY CLOSE TO, AND CULVER CITY HAS .32,

18 WHICH IS 32 HUNDREDTHS OF AN INCH.

19 SO APPARENTLY IT WASN'T RAINING THE SAME

20 ALL THROUGHOUT THE CITY OR THE COUNTY; IS THAT RIGHT?

21 A. THERE WILL BE VARIATION FROM ONE PLACE TO

22 ANOTHER, YES.

23 Q. SO THERE WAS LIGHT RAIN IN SOME AREAS AND

24 HEAVIER RAIN IN OTHER AREAS?

25 MS. ABRAMSON: I AM GOING TO OBJECT TO THE USE OF

26 THE WORD "LIGHT," YOUR HONOR. ASSUMES FACTS NOT IN

27 EVIDENCE.

28 THE COURT: REPHRASE THE QUESTION.

-15289

1 Q. BY MS. NAJERA: WELL, WAS IT RAINING LESS

2 IN SOME AREAS OF THE CITY THAN IT WAS IN OTHER AREAS OF

3 THE CITY?

4 A. FROM THE DATA, THAT'S TRUE.

5 Q. THAT'S TRUE. AND DO YOU KNOW -- FIRST OF

6 ALL, DO YOU KNOW FOR SURE WHETHER OR NOT IT WAS RAINING
7 IN BEVERLY HILLS?

8 A. 99.9 PERCENT SURE, LOOKING AT THE DATA.

9 Q. DO YOU KNOW HOW MUCH IT WAS RAINING?

10 A. I COULD MAKE A METEOROLOGICAL JUDGMENT ON
11 THAT.

12 Q. WOULD THAT BE THE SAME AS GUESSING THE
13 WEATHER?

14 A. NO. THIS IS GOING BACK AND LOOKING AT WHAT
15 HAPPENED. GUESSING THE WEATHER, I THINK YOU'RE
16 REFERRING TO FORECASTING.

17 Q. SO YOU CAN MAKE A JUDGMENT.

18 WELL, CAN YOU TELL US WHETHER IT WAS
19 RAINING LIGHTLY OR HEAVILY IN BEVERLY HILLS?

20 A. ON WHICH DAY?

21 Q. LET'S START WITH -- FIRST LET ME ASK YOU,
22 HOW WOULD YOU KNOW WHETHER OR NOT IT WAS RAINING LIGHTLY
23 OR HEAVILY ON DECEMBER 24TH IN 1988?

24 A. FROM LOOKING AT THE REPORTS FROM THE
25 ASSEMBLAGE OF WEATHER STATIONS, IT'S QUITE APPARENT THAT
26 THIS WAS NOT AN ISOLATED SHOWER OR ONE CLOUD
27 PRECIPITATING, BUT IT WAS A WIDESPREAD RAIN OCCURRENCE,
28 WHICH IS RELATED TO THE -- A FRONTAL SYSTEM MOVING

-15288

1 ACROSS THE SOUTHERN CALIFORNIA AREA FROM THE WEST.

2 Q. YOU SAID SOMETHING VERY INTERESTING, SIR.

3 YOU SAID THAT IT WAS A WIDESPREAD RAIN OCCURRENCE, WHICH

4 MEANS THAT IT WAS RAINING IN VARIOUS AREAS ALL OVER THE

5 CITY AND AT DIFFERENT RATES OF RAINING, I GUESS WE'LL

6 CALL IT?

7 A. AT DIFFERENT RATES, AND IN SOME PLACES THE

8 PRECIPITATION LASTED LONGER THAN OTHER PLACES.

9 Q. SO IN SOME PLACECS IT ONLY RAINED FOR A

10 VERY SHORT TIME, AND IN OTHER PLACES IT RAINED FOR A

11 LONG TIME?

12 MS. ABRAMSON: OBJECTION. ASSUMES FACTS NOT IN

13 EVIDENCE.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T KNOW THAT. I THINK THAT WE

16 WOULD EXPECT THAT THE PRECIPITATION GENERALLY INCREASES

17 AS YOU GO INLAND, BECAUSE OF THE TERRAIN EFFECTS, SO

18 THAT COASTAL COMMUNITIES WOULD GENERALLY SEE LESS

19 PRECIPITATION THAN INLAND COMMUNITIES UNTIL YOU GET FAR

20 INLAND INTO WHERE THE -- PAST THE MOUNTAIN BARRIERS AND

21 GET INTO THE DESERT.

22 Q. WHAT I ASKED YOU, SIR, WAS WOULD YOU AGREE

23 THAT IT WAS RAINING LONGER IN SOME PLACES IN SOUTHERN

24 CALIFORNIA THAN IN OTHER PLACES?

25 MS. ABRAMSON: I AM GOING TO OBJECT TO THE FORM

26 OF THE QUESTION, YOUR HONOR. IT'S NOT WHAT SHE ASKED

27 BEFORE, AND IT'S ARGUMENTATIVE.

28 THE COURT: PERHAPS YOU CAN REPHRASE THE

1 QUESTION.

2 Q. BY MS. NAJERA: WOULD YOU -- BASED ON THIS
3 DATA, IS IT CLEAR THAT IT WAS RAINING LONGER IN SOME
4 PLACES THAN IT WAS IN OTHER PLACES?

5 A. NO, THAT'S NOT CLEAR FROM THE DATA.

6 Q. WELL, WOULD IT -- WELL, APPARENTLY IT
7 DIDN'T RAIN AS HARD IN CULVER CITY AS IT DID IN THE
8 CIVIC CENTER; IS THAT RIGHT?

9 A. MAYBE WE COULD CLARIFY. THERE IS -- THESE
10 ARE 24 HOUR TOTALS THAT WE'RE TALKING ABOUT RIGHT NOW.
11 THE 24 HOUR TOTAL CAN BE MADE UP IN TWO -- THE
12 VARIATIONS CAN BE EXPLAINED IN TWO WAYS; THAT IT RAINED
13 FOR MORE HOURS AT ONE STATION THAN ANOTHER; IT RAINED
14 HARDER IN CERTAIN PLACES THAN IN OTHERS.

15 SO EITHER LONGER DURATION OR HIGHER
16 INTENSITY OR BOTH WOULD EXPLAIN THE DIFFERENCES.

17 Q. AND AS YOU SIT HERE TODAY, YOU CANNOT TELL
18 US IN BEVERLY HILLS ON DECEMBER 24TH, 1988, WHETHER IT
19 WAS RAINING HARDER THAN ANYPLACE OUT IN THE CITY OR
20 WHETHER IT WAS RAINING IN LONGER DURATION THAN ANYPLACE
21 OUT IN THE CITY; IS THAT A FAIR STATEMENT?

22 A. THAT'S TRUE. I COULD GO INTO ANOTHER FORM
23 OF DATA, WHICH WOULD BE HOURLY PRECIPITATION, WHICH WE
24 DID NOT HAVE, WHICH WOULD TELL US WHAT THE HOURLY
25 PRECIPITATION WAS AT A PLACE LIKE LOS ANGELES
26 INTERNATIONAL AIRPORT.

27 HOWEVER, THAT DOESN'T -- THAT ISN'T ALL
28 THAT CLOSE TO BEVERLY HILLS. BUT WE COULD GET INTO THAT

-15286

1 IF THAT WAS NECESSARY.

2 Q. WAS THAT DONE FOR MRS. ABRAMSON?

3 A. NO.

4 Q. SO YOU DON'T HAVE ANY OF THAT DATA
5 AVAILABLE TO YOU RIGHT NOW AS YOU SIT THERE?

6 A. NO.

7 Q. SO AS YOU SIT HERE RIGHT NOW, YOU CANNOT
8 TELL THIS JURY WHETHER OR NOT -- WHETHER IT WAS RAINING
9 HARDER IN BEVERLY HILLS, LIGHTER IN BEVERLY HILLS,
10 LONGER IN BEVERLY HILLS OR LESS LONG IN BEVERLY HILLS?

11 A. COMPARED TO WHAT?

12 Q. COMPARED TO ANY PLACE ELSE IN THE COUNTY.

13 A. WELL, I CAN MAKE A COMPARISON OF THE TOTAL
14 RAINFALL.

15 Q. AND --

16 A. DO YOU WANT IT SPLIT UP INTO WHETHER IT'S
17 LONGER OR HARDER? AND I CAN'T DO THAT.

18 Q. THAT'S WHAT I AM ASKING YOU. YOU CAN'T --
19 I AM SORRY. I'LL ASK MY NEXT QUESTION.

20 SO YOU'RE TELLING US THAT YOU CAN'T TELL US
21 WHETHER IT WAS LONGER, HARDER, SHORTER OR FASTER?

22 A. WITH THIS DATA, I CAN TELL YOU WHAT THE

23 TOTAL ACCUMULATION WAS AT THE VARIOUS PLACES.

24 Q. AND THAT'S ALL YOU CAN TELL US; IS THAT

25 RIGHT?

26 A. YES.

27 Q. OKAY.

28 WELL, FROM DECEMBER 1ST TO DECEMBER 14TH,

-15285

1 STARTING WITH YOUR FIRST LITTLE CULVER CITY CHART, LET'S

2 GO WITH THAT LINE OF ROWS. APPARENTLY THE WEATHER WENT

3 FROM 80 DEGREES TO 62 DEGREES AS A HIGH; IS THAT RIGHT?

4 A. OVER THAT PERIOD, YES.

5 Q. OKAY. AND AT U.C.L.A. IT WENT FROM 80 --

6 81 TO 64; IS THAT RIGHT?

7 A. YES.

8 Q. AND THEN IN L.A.X. IT WENT FROM 81 TO 61.

9 HAVE I GOT THAT RIGHT?

10 A. YES.

11 Q. AND THEN AT THE L.A. CIVIC CENTER IT WENT

12 FROM 80 TO 61; IS THAT RIGHT?

13 A. THAT'S RIGHT.

14 Q. AND IN BETWEEN, BASICALLY, THE TEMPERATURES

15 WERE APPARENTLY IN THE 70S AND 80S; IS THAT RIGHT?

16 A. YES.

17 Q. DO I HAVE THAT RIGHT?

18 AND THEN YOU SAID THAT IT WAS ONE, TWO,

19 THREE, FOUR, FIVE -- LET'S GO TO THE -- LET'S GO TO THE
20 22ND. FROM THE 15TH TO THE 22ND, THAT'S -- IN FACT,
21 LET'S TAKE THAT WEEK, THE 15TH TO THE 21ST, SEVEN DAYS.

22 THERE WERE ONE, TWO, THREE, FOUR, FIVE DAYS
23 OF RAINFALL; IS THAT RIGHT?

24 A. THAT'S CORRECT.

25 Q. AND THE RAINFALL WENT IN -- STAYING JUST
26 WITH THAT FIRST ONE FOR A MOMENT, THE RAINFALL WAS AS
27 LIGHT AS .05 TO AS MUCH AS .10; IS THAT RIGHT?

28 A. YES. FOR CULVER CITY, THAT'S CORRECT.

-15284

1 Q. OKAY, AND GOING WITH CULVER CITY,
2 APPARENTLY IN CULVER CITY ON THE 18TH THERE WAS .05
3 RAINFALL.

4 WHAT DOES THAT MEAN? HOW MUCH IS THAT?

5 A. THAT'S FIVE HUNDREDTHS OF AN INCH OF RAIN
6 THAT FELL OVER AN AREA THAT WAS COLLECTED FROM A RAIN
7 GAUGE.

8 Q. AND IN L.A.X., APPARENTLY THERE WAS ALSO
9 FIVE HUNDREDTHS OF AN INCH OF RAIN; IS THAT RIGHT?

10 A. YES.

11 Q. NOW, AT U.C.L.A. THERE WAS .28. WOULD THAT
12 BE 28 HUNDREDETHS OF AN INCH?

13 A. YES.

14 Q. AND FINALLY AT THE L.A. CIVIC CENTER IT WAS

15 .11. SO THAT WOULD BE 11 HUNDREDTHS OF AN INCH?

16 A. YES.

17 Q. SO THAT WOULD INDICATE THAT IT DIDN'T RAIN
18 MUCH THAT DAY; IS THAT A FAIR STATEMENT?

19 A. COMPARED TO -- YEAH, THAT WOULD BE LIGHT
20 RAIN, UH-HUH.

21 Q. AND WHAT DO YOU CONSIDER HEAVY RAIN?
22 WHAT'S CONSIDERED HEAVY RAIN BY PEOPLE IN YOUR
23 PROFESSION?

24 A. THE DEFINITION OF HEAVY RAIN IS THAT IT HAS
25 TO EQUAL OR EXCEED .30 INCHES PER HOUR.

26 Q. IS THIS CHART BROKEN UP IN A PERFECT
27 HOURLY -- IS THIS A PERFECT HOURLY AMOUNT OR IS THIS THE
28 AMOUNT OF PRECIPITATION FOR THE DAY?

-15283

1 A. THIS IS A 24-HOUR ACCUMULATION.

2 Q. OKAY. SO, HOW MUCH ARE THESE
3 PRECIPITATIONS PER HOUR?

4 A. AS I EXPLAINED, WE HAVEN'T DONE -- WE
5 HAVEN'T PROCURED THAT DATA.

6 Q. SO IF NONE OF THESE WERE -- IF NONE OF
7 THESE ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT,
8 NINE, TEN DAYS OF RAIN THAT WE'RE TALKING ABOUT; AND
9 ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT DAYS OF
10 RAIN FROM THE 28TH ON, IF NONE OF THEM WERE GREATER THAN

11 .30 INCHES PER HOUR, THEY WOULD NOT BE CONSIDERED HEAVY

12 RAIN; IS THAT RIGHT?

13 A. THAT WOULD BE THE TECHNICAL DEFINITION OF

14 HEAVY RAIN, IS .30 PER HOUR.

15 Q. DID YOU EVER DETERMINE FROM MS. ABRAMSON

16 WHAT DAYS WERE HEAVY RAIN?

17 A. NO, I HAVE NOT.

18 Q. DID SHE EVER ASK YOU TO DO THAT?

19 A. NO.

20 MS. ABRAMSON: I AM GOING TO OBJECT, YOUR HONOR.

21 THIS ALL ASSUMES FACTS NOT IN EVIDENCE.

22 THE COURT: OVERRULED.

23 THE ANSWER WILL STAND.

24 Q. BY MS. NAJERA: SO BASED ON THE DATA THAT

25 YOU WERE ASKED TO ACCUMULATE, YOU CANNOT TELL THIS JURY

26 WHETHER OR NOT IN DECEMBER ON ANY SPECIFIC DAY WHETHER

27 IT WAS A HEAVY RAINFALL OR A LIGHT RAINFALL; WHETHER IT

28 WAS A LONG RAINFALL OR A SHORT RAINFALL; AND WHETHER IT

-15282

1 WAS, BY YOUR STANDARDS OF .30 INCHES PER HOUR, A -- WHAT

2 YOU GUYS -- WHAT PEOPLE IN THE METEOROLOGY PROFESSION

3 CONSIDER A HEAVY RAINFALL; IS THAT RIGHT?

4 A. I GAVE YOU THE TECHNICAL DEFINITION OF

5 HEAVY RAIN USED BY THE NATIONAL WEATHER SERVICE

6 OBSERVERS TO MAKE THAT OBSERVATION. I THINK WE CAN SAY

7 THAT A DAY WITH AN INCH OR MORE OF RAIN IS A NOTICEABLE
8 RAINY EVENT IN SOUTHERN CALIFORNIA.

9 Q. AND FROM DECEMBER 1ST TO DECEMBER 24TH, IF
10 I AM READING THIS CHART CORRECTLY, THERE WERE ONLY TWO
11 DAYS, AM I RIGHT, THAT HAD WHAT YOU WOULD CONSIDER
12 NOTICEABLE RAINFALL? AM I RIGHT ABOUT THAT?

13 A. OBVIOUSLY EVERY DAY THAT IT RAINS HAS
14 NOTICEABLE RAINFALL.

15 Q. WHAT YOU JUST DESCRIBED TO THIS JURY AS
16 HEAVY RAINFALL.

17 A. IT WAS A SERIOUS RAIN EVENT.

18 Q. A SERIOUS -- OKAY.

19 A. I DON'T KNOW HOW YOU WANT TO DEFINE THAT.

20 Q. OKAY. WE WILL USE YOUR TERMS, "A SERIOUS
21 RAIN EVENT." WOULD YOU AGREE WITH ME THAT THERE WERE
22 ONLY TWO DAYS THAT QUALIFY, ACCORDING TO YOUR DATA HERE?

23 A. NO.

24 Q. THERE IS MORE THAN TWO DAYS THAT HAVE MORE
25 THAN ONE INCH OF RAIN?

26 A. I WOULD SAY A RAINFALL OF -- FOR INSTANCE,
27 CULVER CITY HAD POINT -- WELL, THEY HAD A .70. A
28 POINT -- ANYTHING THAT TO ME THAT IS A HALF INCH OR MORE

-15281

1 WOULD BE A PRETTY GOOD RAIN EVENT.

2 Q. WELL, DIDN'T YOU JUST TESTIFY IN RESPONSE

3 TO MY QUESTION WHEN I ASKED YOU ABOUT WHAT WOULD BE
4 CONSIDERED A RAIN EVENT THAT IT WOULD BE SOMETHING THAT
5 MEASURED AN INCH OR MORE?

6 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

7 THE COURT: OVERRULED.

8 Q. BY MS. NAJERA: DID YOU JUST SAY THAT, SIR?

9 A. I THOUGHT IT WAS A SERIOUS RAIN EVENT.

10 Q. OKAY. LET'S STICK WITH SERIOUS RAIN EVENT,
11 WHICH YOU JUST TESTIFIED WOULD BE ONE INCH OR MORE.

12 WAS THERE ONLY TWO DAYS, FROM DECEMBER 1ST
13 TO DECEMBER 24TH, THAT FIT THAT CATEGORY BASED ON THE
14 DATA THAT YOU HAVE PUT IN FRONT OF US?

15 A. THAT'S TRUE.

16 Q. AND YOU WOULD AGREE, SIR, THAT WHEN PEOPLE
17 DESCRIBE THE WEATHER AS PLEASANT OR NICE OR WHATEVER,
18 THAT'S PRETTY MUCH A SUBJECTIVE OPINION AS OPPOSED TO
19 SOMETHING THAT HAS A SCIENTIFIC DEFINITION.

20 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT CALLS
21 FOR SPECULATION AS TO WHAT PEOPLE ARE DESCRIBING.

22 THE COURT: OVERRULED.

23 Q. BY MS. NAJERA: IS THAT CORRECT, SIR?

24 A. THERE'S -- THERE'S NO METEOROLOGICAL
25 DEFINITION THAT FITS YOUR TERMINOLOGY.

26 Q. SO THAT'S CORRECT.

27 THE COURT: WHAT'S YOUR NEXT QUESTION?

28 Q. BY MS. NAJERA: MY QUESTION TO YOU, SIR,

1 IS: WOULD YOU AGREE THAT WHEN PEOPLE DEFINE WEATHER IN
2 TERMS OF IT IS PLEASANT OR IF IT IS NICE, THAT IS A
3 SUBJECTIVE STANDARD AS OPPOSED TO SOMETHING THAT IS
4 SIGNIFICANT, SOMETHING THAT YOUR FIELD RECOGNIZES?

5 A. I IMAGINE THAT'S CORRECT.

6 MS. NAJERA: THANK YOU, SIR.

7 I HAVE NOTHING FURTHER.

8 THE COURT: REDIRECT?

9

10 REDIRECT EXAMINATION

11 BY MS. ABRAMSON:

12 Q. ARE "WARM" AND "SUNNY" TERMS THAT ARE
13 UNDERSTOOD AND ACCEPTED IN THE METEOROLOGICAL COMMUNITY?

14 A. YES, I THINK WE CAN ACCEPT THOSE TERMS.

15 Q. NOW, IF YOU WANTED TO DRAW CONCLUSIONS FROM
16 THE DATA IN FRONT OF YOU CONCERNING RAINFALL IN THE
17 BEVERLY HILLS AREA BETWEEN THE 15TH AND THE 31ST, WHAT
18 WEATHER STATIONS WOULD YOU LOOK TO?

19 A. THE CLOSEST STATION.

20 MS. NAJERA: I WOULD OBJECT TO THE 15TH TO THE
21 31ST AS IRRELEVANT TO HIS TESTIMONY.

22 THE COURT: OVERRULED.

23 MS. ABRAMSON: GO AHEAD.

24 THE WITNESS: THE CLOSEST STATION TO BEVERLY
25 HILLS WOULD BE THE U.C.L.A. STATION. IT HAS THE SAME
26 TERRAIN CONFIGURATIONS CLOSE TO THE SANTA MONICA
27 MOUNTAINS, SO IT PROBABLY HAS MORE -- IS MORE LIKELY TO

28 BE CLOSEST TO BEVERLY HILLS THAN THE OTHER STATIONS THAT

-15279

1 I HAVE ON MY LIST HERE.

2 Q. AND WOULD YOU TELL US WHAT THE

3 PRECIPITATION WAS AT THE U.C.L.A. STATION FOR THE DAYS

4 BETWEEN THE 15TH AND THE 24TH?

5 A. TO READ OFF THE DAILY AMOUNTS?

6 Q. PLEASE, FOR THE U.C.L.A. STATION, THE ONE

7 CLOSEST TO BEVERLY HILLS.

8 A. STARTING ON THE 15TH AT U.C.L.A, IT WAS .63

9 ON THE 15TH.

10 ON THE 16TH IT WAS 1.14.

11 THEN THE NEXT RAIN WAS ON THE 18TH, WHICH

12 WAS .28.

13 ON THE 20TH IT WAS .06.

14 21ST WAS 1.56 INCHES.

15 Q. ONE AND A HALF, OVER ONE AND A HALF INCHES

16 OF RAIN?

17 A. THAT'S CORRECT.

18 Q. AND ON THE 23RD, .11. 24TH, .53.

19 MS. ABRAMSON: OKAY. THAT'S ENOUGH.

20 THANK YOU, MR. CAUPER.

21 I HAVE NOTHING FURTHER.

22 THE COURT: ANYTHING ELSE?

23

24 RECROSS-EXAMINATION

25 BY MS. NAJERA:

26 Q. JUST ONE LAST QUESTION.

27 WITH REGARDS TO THE NUMBERS YOU JUST READ

28 OFF TO US FROM THE U.C.L.A. STATION, THOSE NUMBERS

-15278

1 REPRESENT, FROM WHAT I UNDERSTAND YOU'RE TELLING US, THE

2 PRECIPITATION FOR THE DAY; IS THAT RIGHT?

3 A. YES.

4 Q. ACCUMULATED OVER A 24-HOUR PERIOD; IS THAT

5 RIGHT?

6 A. YES.

7 Q. SO THERE IS NO WAY FROM TELLING FROM THIS

8 DATA WHEN THIS RAINING TOOK PLACE, IF IT WAS ALL AT

9 NIGHT, IF IT WAS ALL DURING THE DAY, IF IT WAS SPREAD

10 OVER THAT 24-HOUR PERIOD OR IF IT WAS ALL A RAINBURST;

11 IS THAT RIGHT, FROM THE DATA IN FRONT OF YOU?

12 A. WELL, IT CERTAINLY WASN'T JUST ONE

13 RAINBURST. BUT THE NUMBER OF HOURS OF RAIN I DON'T HAVE

14 THE DATA FROM HERE.

15 MS. NAJERA: THANK YOU.

16 I HAVE NOTHING FURTHER.

17 MS. ABRAMSON: ONE THING, YOUR HONOR.

18

19 REDIRECT EXAMINATION

20 BY MS. ABRAMSON:

21 Q. MR. CAUPER, BEFORE YOU CAME INTO COURT THIS
22 MORNING A LITTLE BEFORE 9:00 O'CLOCK, HAVE I EVER TALKED
23 TO YOU?

24 A. NO.

25 Q. HAVE WE EVER MET?

26 A. NO.

27 Q. WERE YOU CONTACTED BY A INVESTIGATOR FROM
28 THE PUBLIC DEFENDER'S OFFICE, MR. LOVE?

-15277

1 A. YES.

2 THE COURT: THANK YOU. YOU MAY STEP DOWN.
3 YOU'RE EXCUSED.

4 WE'LL TAKE A BREAK NOW. I HAVE TO TALK TO
5 THE LAWYERS ABOUT AN ISSUE. WE WILL ASK THAT YOU GO TO
6 THE JURY ROOM.

7 DON'T DISCUSS THE MATTERS AMONG YOURSELVES.
8 DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND WE WILL HAVE
9 YOU OUT AS SOON AS WE CAN.

10 (THE JURY EXITS THE COURTROOM
11 AND THE FOLLOWING PROCEEDINGS
12 WERE HELD:)

13

14 THE COURT: DO YOU HAVE YOUR EXHIBIT TO GIVE TO
15 THE CLERK?

16 MS. ABRAMSON: GOOD IDEA. GOOD THINKING, YOUR
17 HONOR.
18 THE COURT: OKAY. LET'S PROCEED WITH THE HEARING
19 IN REGARD TO THE PEOPLE FROM PARAMOUNT.
20 WHO'S GOING TO TESTIFY?
21 MS. ABRAMSON: FROM PARAMOUNT?
22 THE COURT: YES.
23 MS. ABRAMSON: LINDA ELLMAN.
24 THE COURT: OKAY. LET'S PUT HER ON THE WITNESS
25 STAND.
26 MS. ABRAMSON: WE ARE ALSO GOING TO CALL ADAM
27 BRAM CONCERNING THE CONTRACT, BUT WE CAN CALL HER FIRST.
28

-15276

1 LINDA ELLMAN,
2 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
3 TESTIFIED AS FOLLOWS:
4 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
5 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
6 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
7 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
8 THE WITNESS: I DO.
9 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR
10 NAME FOR THE RECORD.
11 THE WITNESS: MY NAME IS LINDA ELLMAN,

12 E-L-L-M-A-N.

13 THE COURT: OKAY. COULD YOU SWING THAT

14 MICROPHONE AWAY FROM YOU? JUST SWING IT AWAY. THAT'S

15 FINE. OKAY.

16 THE WITNESS: THANK YOU.

17

18 DIRECT EXAMINATION (402)

19 BY MS. ABRAMSON:

20 Q. MS. ELLMAN, IN FEBRUARY OF 1994, WERE YOU

21 AN EXECUTIVE PRODUCER FOR THE TELEVISION SHOW "HARD

22 COPY"?

23 A. I WAS.

24 Q. IN THAT MONTH DID YOU EXECUTE A CONTRACT

25 THAT WAS BETWEEN PARAMOUNT PICTURES CORPORATION AND

26 CRAIG CIGNARELLI?

27 A. YES, I DID.

28 Q. AND IF I COULD SHOW YOU A COPY -- I'LL TAKE

-15275

1 OFF THE FAX COVER SHEET -- AND INDICATE WHETHER OR NOT

2 YOU RECOGNIZE THAT DOCUMENT AS A COPY OF THE CONTRACT

3 THAT YOU SIGNED BETWEEN PARAMOUNT PICTURES CORPORATION

4 AND CRAIG CIGNARELLI?

5 A. IT IS.

6 Q. AND DID YOU MEET WITH AND DISCUSS THE TERMS

7 OF THAT CONTRACT WITH CRAIG CIGNARELLI?

8 A. YES, I DID.

9 Q. AND DO YOU RECALL HOW MANY TIMES YOU
10 ACTUALLY MET WITH HIM IN PERSON?

11 A. AT LEAST ONE TIME, PROBABLY ON ANOTHER
12 OCCASION. I DON'T RECALL.

13 Q. AND WHEN YOU MET WITH HIM, WAS THERE A
14 DISCUSSION ABOUT -- NUMBER ONE, WAS THERE A DISCUSSION
15 ABOUT HOW MUCH HE WOULD BE PAID FOR HIS SERVICES TO
16 "HARD COPY"?

17 A. YES. WE DREW UP A CONTRACT WITH HIM TO BE
18 PAID FOR EXCLUSIVITY. AND THE CONTRACT IS THIS
19 CONTRACT, AND THIS IS THE AMOUNT HE WAS TO BE PAID.

20 Q. AND THE CONTRACT INDICATES THAT HE WAS TO
21 BE PAID \$20,000 FOR INTERVIEW SERVICES AND \$5,000 FOR
22 SOME PHOTOGRAPHS THAT HE TURNED OVER TO "HARD COPY"?

23 A. YES. THE PAYMENT WAS FOR THE EXCLUSIVITY
24 RELATED TO THE INTERVIEW SERVICES AND THE EXCLUSIVE USE
25 OF THE PHOTOGRAPHS.

26 Q. OKAY. AND IS HE STILL UNDER THE TERMS OF
27 THAT CONTRACT? IS HE STILL CONTRACTED TO PARAMOUNT FOR
28 EXCLUSIVITY CONCERNING THIS CASE?

-15274

1 A. HE IS. I AM NOT AN ATTORNEY, BUT ACCORDING
2 TO MY UNDERSTANDING OF THE TERMS OF THE CONTRACT AND THE
3 AGREEMENT THAT WE MADE WITH HIM AT THE TIME, YES.

4 Q. AND DOES THE CONTRACT PROVIDE THAT HIS
5 SERVICES MAY BE CALLED UPON AFTER THE CONCLUSION OF THIS
6 TRIAL?

7 A. IT DOES.

8 Q. AND DOES THAT LEAVE OPEN THE AMOUNT OF
9 COMPENSATION THAT HE MIGHT RECEIVE FOR FUTURE EXERCISE
10 OF THE EXCLUSIVITY RIGHTS UNDER THAT CONTRACT?

11 A. YES, IT DOES.

12 Q. SO HE COULD MAKE MORE MONEY UNDER THAT
13 CONTRACT?

14 A. ACCORDING TO WHAT IS WRITTEN HERE, THAT IS
15 A POSSIBILITY.

16 Q. ALL RIGHT. NOW, DID HE REQUEST A SPECIFIC,
17 UNUSUAL TERM TO THAT CONTRACT?

18 A. HE DID. HE ASKED THAT "HARD COPY"
19 BROADCAST ON THE AIR THAT HE MADE A SUBSTANTIAL
20 CONTRIBUTION TO A CHARITY, AND WANTED TO DETAIL EXACTLY
21 HOW THAT WOULD BE SAID ON THE AIR.

22 Q. AND WAS THAT SOMETHING THAT HE REQUESTED OR
23 WAS IT SOMETHING THAT "HARD COPY" SUGGESTED?

24 A. NO, IT WAS SOMETHING THAT HE SPECIFICALLY
25 REQUESTED.

26 Q. AND DO YOU REMEMBER HIM ASKING FOR THAT?

27 A. I DO.

28 Q. AND DO YOU REMEMBER DISCUSSING THAT WITH

1 HIM FACE-TO-FACE?

2 A. I DO.

3 Q. AND DID HE INDICATE TO YOU WHY HE WANTED

4 THAT BROADCAST OF HIS CHARITABLE CONTRIBUTION?

5 A. HE SAID THAT HE WAS GOING TO BE RUNNING FOR

6 POLITICAL OFFICE IN THE -- SOMETIME IN THE FUTURE, AND

7 HE DIDN'T WANT ANY FINANCIAL DEALINGS WITH "HARD COPY"

8 TO BE SEEN AS A BLACK MARK IN HIS POLITICAL CAREER, AND

9 HE WANTED TO SEE THAT MONEY WAS GIVEN TO GENUINELY -- HE

10 WANTED IT TO BE ANNOUNCED TO THE PUBLIC THAT MONEY FROM

11 THIS WAS GIVEN TO GENUINELY ABUSED CHILDREN.

12 Q. AND HE THOUGHT THAT ANNOUNCING A CHARITABLE

13 CONTRIBUTION, DID HE INDICATE HE THOUGHT THAT WOULD

14 FURTHER HIS POLITICAL CAREER?

15 A. HE THOUGHT THAT WOULD KEEP THIS FROM --

16 WHAT HE SAID TO ME IS THAT BY GIVING MONEY TO A CHARITY,

17 IT WOULD KEEP IT FROM LOOKING LIKE HE WAS DOING

18 SOMETHING BAD BY TAKING MONEY FROM "HARD COPY".

19 Q. DID HE EVER TURN DOWN ANY MONEY OFFERED TO

20 HIM BY "HARD COPY"?

21 A. ABSOLUTELY NOT.

22 Q. DID HE EVER SAY, "I DON'T NEED 35, I ONLY

23 NEED 25"?

24 A. ABSOLUTELY NOT.

25 Q. NOW, DO YOU REMEMBER EVER TELLING HIM --

26 WELL, STRIKE THAT.

27 DO YOU REMEMBER EVER OFFERING HIM MORE THAN

28 THE \$25,000 MENTIONED IN THE CONTRACT?

1 A. ABSOLUTELY NOT.

2 Q. DO YOU REMEMBER EVER TELLING HIM THAT HIS
3 STORY COULD BE WORTH \$50,000?

4 A. ABSOLUTELY NOT.

5 Q. DO YOU REMEMBER TELLING HIM HIS STORY WAS
6 WORTH \$35,000?

7 A. NO, ABSOLUTELY NOT.

8 Q. NOW, WAS THERE A DISCUSSION ABOUT
9 WHETHER -- WELL, STRIKE THAT.

10 DID HE INDICATE THAT "HARD COPY" WANTED TO
11 MAKE THE CHARITABLE CONTRIBUTION DIRECTLY?

12 A. YES. WHEN HE ASKED -- WHEN HE SAID THAT HE
13 WANTED US TO STATE THAT HE WAS GOING TO MAKE A DONATION
14 TO CHARITY, I SAID TO HIM, "WHY DOESN'T 'HARD COPY' MAKE
15 THE DONATION TO CHARITY?"

16 Q. AND WHAT DID HE SAY TO THAT?

17 A. HE SAID NO, HE WANTED TO MAKE THE DONATION
18 PERSONALLY, AND --

19 Q. OKAY. NOW, WAS THERE SOME CONCERN -- DID
20 YOU HAVE SOME CONCERN AS THE EXECUTIVE PRODUCER OF THIS
21 PROGRAM ABOUT BROADCASTING THE FACT THAT HE HAD MADE A
22 CHARITABLE CONTRIBUTION WHEN YOU WEREN'T THE PERSON
23 ACTUALLY GUARANTEEING THE CONTRIBUTION?

24 A. AND I MADE -- YES, I DID HAVE A CONCERN.

25 Q. AND SO BEFORE THE PROGRAM WAS BROADCAST,

26 DID YOU HAVE CONTACT WITH MR. CIGNARELLI TO GET
27 VERIFICATION AS TO HIS CHARITABLE CONTRIBUTION?
28 A. YES.

-15271

1 Q. AND WHAT DID YOU DO IN THAT REGARD?
2 A. WE ASKED HIM TO SEND US A LETTER OR
3 SOMETHING -- A RECEIPT CONFIRMING THAT HE HAD INDEED
4 MADE A CHARITABLE CONTRIBUTION TO AN ORGANIZATION NAMED
5 C.A.L.M., AND WE CONTACTED HIM ON AT LEAST THREE
6 OCCASIONS. MY ASSISTANT TRIED TO CONTACT HIM ON AT
7 LEAST THREE OCCASIONS TO GET THE PAPERWORK SENT TO US.
8 FINALLY, PRIOR TO OUR BROADCAST, THE
9 PAPERWORK WAS SENT TO US. IT WAS FROM C.A.L.M.
10 INDICATING THAT HE HAD MADE A CONTRIBUTION TO THAT
11 CHARITY.
12 MS. ABRAMSON: THAT'S ALL I HAVE, YOUR HONOR.
13 THE COURT: OKAY. CROSS-EXAMINATION.
14 Q. BY MS. ABRAMSON: OH, ONE OTHER THING.
15 DID HE BUG YOU FOR THE MONEY?
16 A. FOR THE PAYMENT THAT WE OWED HIM?
17 Q. YES.
18 A. YES. WE HAD TO GO TO -- AS I RECALL, WE
19 HAD TO HIRE A COURIER TO DRIVE TO SANTA BARBARA TO
20 DELIVER THE CHECK TO HIM, RATHER THAN US MAILING IT TO
21 HIM, WHICH WOULD BE NORMAL PROCEDURE.

22 SO WE DELIVERED IT SPECIFICALLY TO HIM.

23 MS. ABRAMSON: THANK YOU.

24 I HAVE NOTHING FURTHER.

25 THE COURT: CROSS.

26

27

28

-15270

1 CROSS-EXAMINATION

2 BY MS. NAJERA:

3 Q. MS. ELLMAN, YOU SAID THAT YOU MET WITH

4 MR. CIGNARELLI AT LEAST ONCE; IS THAT RIGHT?

5 A. YES.

6 Q. AND DO YOU WORK -- DID YOU AT THAT POINT

7 WORK WITH A WOMAN NAMED LINDA BELL?

8 A. I --

9 Q. MS. LINDA BELL?

10 A. LINDA BELL -- I WAS EXECUTIVE PRODUCER OF

11 "HARD COPY" AND LINDA BELL WAS THE OTHER EXECUTIVE

12 PRODUCER OF "HARD COPY".

13 Q. DID YOU INTRODUCE LINDA BELL TO CRAIG

14 CIGNARELLI?

15 A. YES, I DID.

16 Q. DO YOU KNOW WHETHER OR NOT THEY HAD ANY

17 MEETINGS?

18 A. THEY MET WHEN I -- WHEN CRAIG CAME TO THE
19 OFFICE, WE WENT INTO LINDA'S OFFICE. I INTRODUCED CRAIG
20 TO LINDA. AS I RECALL, THEY SHOOK HANDS AND SHE HANDED
21 HIM A BUSINESS CARD, AND WE SAT AND VISITED IN LINDA'S
22 OFFICE FOR A LITTLE WHILE. AND AS I RECALL, LINDA LEFT
23 THE OFFICE TO GO HANDLE SOME MATTERS RELATED TO THAT
24 DAY'S BROADCAST AND I HELD THE REST OF THE DISCUSSION
25 WITH HIM ALONE.

26 Q. AND IS THIS THE MEETING THAT YOU REFERRED
27 TO AS THE ONE IN THE OFFICE?

28 A. YES.

-15269

1 Q. NOW, YOU SAID THAT YOU RECALL AT LEAST ONE
2 IN THE OFFICE. COULD THERE HAVE BEEN MORE THAN ONE
3 FACE-TO-FACE MEETING WITH CRAIG CIGNARELLI IN YOUR
4 OFFICE?

5 A. I DON'T RECALL. THERE MAY HAVE BEEN ONE
6 OTHER TIME HE CAME INTO THE OFFICE, AND I JUST DON'T
7 RECALL WHETHER --

8 Q. IS IT POSSIBLE THAT HE TALKED TO MS. BELL?

9 A. I HAVE NO IDEA. IN TERMS OF THE
10 NEGOTIATIONS, I HAVE -- I DON'T KNOW. I AM NOT LINDA,
11 AND I DON'T KNOW ALL THE MEETINGS THAT SHE'S HAD.

12 Q. SO IN TERMS OF NEGOTIATIONS, YOU CAN'T TELL
13 US WHETHER OR NOT MS. BELL AND MR. CIGNARELLI HAD ANY;

14 IS THAT CORRECT?

15 A. I CAN TELL YOU THAT I CONDUCTED THE
16 NEGOTIATIONS WITH MS. BELL (SIC). I HAD NO
17 CONVERSATIONS WITH MISS BELL ABOUT ANY CONVERSATIONS,
18 AND I CONDUCTED THE DEAL.

19 Q. YOU CONDUCTED THE DEAL?

20 A. I CONDUCTED THE NEGOTIATIONS AND MADE THE
21 DEAL.

22 Q. BUT YOU DO NOT KNOW WHETHER OR NOT MISS
23 BELL HAD MADE ANY COMMENTS TO MR. CIGNARELLI CONCERNING
24 HIS BEING ON "HARD COPY" OR ANYTHING INVOLVED IN HIS
25 RECOMPENSE FOR IT?

26 A. THE ONLY KNOWLEDGE I HAVE OF ANY TIME THAT
27 LINDA BELL WAS IN THE ROOM WITH MYSELF WAS WHEN I WAS
28 THERE WITH HER AND CRAIG TOGETHER.

-15268

1 Q. THAT'S THE ONLY TIME THAT YOU'RE AWARE OF,
2 AND YOU REALLY CAN'T SAY WHETHER OR NOT THERE WERE OTHER
3 TIMES; IS THAT A FAIR STATEMENT?

4 A. YEAH. I ONLY BELIEVE THAT HE WAS THERE
5 WITH HER WHEN I WAS THERE.

6 Q. AND IS IT YOUR UNDERSTANDING THAT MS. BELL
7 NOW HAS NO MEMORY WHAT TRANSPIRED OF ANY NEGOTIATIONS
8 WITH MR. CIGNARELLI?

9 MS. ABRAMSON: THIS IS NOW CALLING FOR HEARSAY.

10 THE COURT: SUSTAINED.

11 Q. BY MS. NAJERA: NOW, GOING BACK TO -- DID
12 YOU HAVE ANY TELEPHONE CONVERSATIONS WITH
13 MR. CIGNARELLI?

14 A. I MAY HAVE. YES, I DID.

15 Q. HOW MANY?

16 A. MAYBE A COUPLE, TWO OR THREE. I DON'T
17 REMEMBER SPECIFICS.

18 Q. AND DURING THESE CONVERSATIONS DID YOU
19 DISCUSS THE CONTRACT AND NEGOTIATIONS?

20 A. I REMEMBER WE HAD SENT HIM A COPY OF THE
21 CONTRACT, AND HE WANTED THE CHARITABLE -- THE FACT THAT
22 WE WERE GOING TO MAKE THE ANNOUNCEMENT ON THE AIR THAT
23 HE WAS MAKING A DONATION TO CHARITY, HE WANTED THAT AS A
24 TERM OF THE CONTRACT. SO HE CALLED BACK TO MAKE SURE
25 THAT THAT WAS WRITTEN IN AS A TERM OF THE CONTRACT.

26 Q. AND WAS IT?

27 A. AND HE WAS SUBSEQUENTLY SENT A NEW DRAFT OF
28 THE CONTRACT.

-15267

1 Q. NOW, GOING BACK TO -- LET'S START WITH THIS
2 CONVERSATION AT THE OFFICE.

3 WHAT WAS THE FIRST THING YOU SAID TO
4 MR. CIGNARELLI?

5 A. I DON'T RECALL EXACTLY WHAT I SAID TO HIM.

6 Q. AND WHAT WAS THE GIST OF WHAT YOU STARTED
7 THE CONVERSATION WITH?

8 A. "HI, HOW ARE YOU," PROBABLY. "NICE TO MEET
9 YOU." BUT I DON'T RECALL THE SPECIFICS OF THE
10 CONVERSATION.

11 Q. WELL, DO YOU REMEMBER ANYTHING YOU SAID?

12 A. I DON'T RECALL ANY OF THE SPECIFICS OF THE
13 CONVERSATION. THERE WERE GENERAL SOCIAL HELLOS, AS I
14 GENERALLY SAY HELLO TO SOMEBODY IF I MEET THEM, SO I AM
15 ASSUMING THAT I DID THAT, AND --

16 Q. OKAY. WHAT I WANT TO KNOW IS, FOCUSING IN
17 ON THE NEGOTIATIONS, WHAT DO YOU REMEMBER YOU TOLD HIM
18 FIRST TO GET THE NEGOTIATIONS GOING?

19 A. I REMEMBER THE CONVERSATION STARTED WITH A
20 DISCUSSION ABOUT HIS RELATIONSHIP TO THIS STORY -- TO
21 THE STORY THAT WE WERE TALKING TO HIM ABOUT.

22 THE COURT: HOW DID THE PRICE OF \$25,000 COME
23 ABOUT?

24 THE WITNESS: I DON'T RECALL THE SPECIFIC
25 DISCUSSION OF HOW WE CAME UP -- WHAT I DON'T RECALL IS
26 HIM SAYING TO ME: "I WANT A CERTAIN AMOUNT OF MONEY."

27 I DO KNOW THAT AT NO POINT DID I OFFER HIM
28 ANY MORE MONEY THAN THE AMOUNT OF MONEY THAT WE SETTLED

1 ON, BECAUSE I WAS NOT AUTHORIZED TO OFFER ANY MORE

2 MONEY. I HAD NO MORE MONEY TO SPEND. SO I KNOW I

3 DIDN'T OFFER HIM ANY MORE MONEY.

4 THE COURT: WAS ANY OTHER AMOUNT OF MONEY

5 MENTIONED, WHETHER IT WAS OFFERED OR NOT?

6 THE WITNESS: I NEVER MENTIONED ANY AMOUNT OF

7 MONEY THAT I HAD PAID FOR ANY STORY OR ANYTHING LIKE

8 THAT.

9 THE COURT: I'M NOT SAYING THAT. WAS ANY OTHER

10 AMOUNT OF MONEY MENTIONED TO MR. CIGNARELLI IN ANY

11 CONTEXT OTHER THAN THE 20 TO \$25,000?

12 THE WITNESS: THE ONLY THING THAT I RECALL COMING

13 UP IN DISCUSSION WAS THAT IT HAD BEEN IN THE NEWSPAPER

14 THAT PEOPLE HAD -- ON OTHER TELEVISION SHOWS HAD PAID A

15 LOT OF MONEY FOR STORIES, AND HE ASKED -- I REMEMBER HIM

16 ASKING ME IF WE PAID THAT KIND OF MONEY.

17 THE COURT: HOW MUCH MONEY DID HE MENTION?

18 THE WITNESS: I DON'T REMEMBER THERE BEING A

19 SPECIFIC -- A SPECIFIC AMOUNT.

20 THE COURT: AND WAS IT MORE OR LESS THAN THE

21 AMOUNT THAT WAS THE -- THE AMOUNT OF THE CONTRACT?

22 THE WITNESS: CONSIDERABLY, CONSIDERABLY MORE.

23 THE COURT: AND WHAT DID YOU SAY?

24 THE WITNESS: I THINK I LAUGHED.

25 THE COURT: WHAT DID MS. BELL SAY? WAS SHE

26 PRESENT WHEN IT WAS SAID?

27 THE WITNESS: YOU KNOW, I DON'T RECALL.

28 THE COURT: DO YOU KNOW IF SHE SAID ANYTHING?

1 THE WITNESS: NO, I DON'T RECALL HER BEING
2 PRESENT WHEN IT WAS SAID. BUT IT WAS IN THE INDUSTRY AT
3 THE TIME, THE ARTICLES THAT WE'RE TALKING ABOUT, THESE
4 EXTREMELY LARGE SUMS OF MONEY, RIDICULOUSLY LARGE SUMS
5 OF MONEY WERE A MATTER OF LAUGHTER AROUND OUR OFFICE.

6 THE COURT: WHY DID YOU SETTLE ON THIS PARTICULAR
7 AMOUNT?

8 THE WITNESS: I HAD AUTHORIZATION TO SPEND ONLY
9 THIS AMOUNT OF MONEY.

10 THE COURT: WELL, WOULDN'T YOU HAVE LIKED TO HAVE
11 SPENT LESS?

12 THE WITNESS: ABSOLUTELY.

13 THE COURT: WHY DID YOU SETTLE ON THIS AMOUNT?

14 THE WITNESS: BECAUSE THIS WAS THE AMOUNT THAT HE
15 WAS WILLING TO TAKE, I SUPPOSE. ALL I KNOW IS I WAS
16 AUTHORIZED TO OFFER THIS AMOUNT OF MONEY, AND NO MORE
17 THAN THIS AMOUNT OF MONEY, AND I PROBABLY SAID -- AND I
18 DON'T REMEMBER EXACTLY HOW IT WAS SAID TO HIM, BUT I
19 PROBABLY SAID TO HIM, "THIS IS ALL THAT WE CAN PAY FOR
20 THIS. THIS IS AS MUCH MONEY AS WE HAVE TO PAY FOR THIS
21 EXCLUSIVITY."

22 THE COURT: DID HE EVER ASK FOR MORE?

23 THE WITNESS: I DON'T RECALL.

24 THE COURT: YOU CAN'T SAY HE ASKED FOR ANYTHING
25 MORE THAN THAT?

26 THE WITNESS: I CAN'T SAY HE ASKED FOR "X" NUMBER

27 OF DOLLARS AND I SAID, "NO, NO, NO, I CAN'T PAY IT. ALL
28 I HAVE IS THIS." I DON'T RECALL THAT AT ALL. I DON'T

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1 RECALL THERE BEING A BACK-AND-FORTH NEGOTIATION AT ALL
2 OVER AMOUNTS OF MONEY. TO MY RECOLLECTION -- MY
3 STRONGEST RECOLLECTION IS THAT HE WAS TRYING TO GET A
4 SENSE OF WHAT KIND OF -- I HAVE A SENSE THAT HE WANTED
5 TO KNOW WHAT KIND OF MONEY GOT PAID FOR STORIES IN
6 GENERAL. WE WERE LAUGHING ABOUT WHAT WAS IN THE PAPERS,
7 BECAUSE HE HAD BEEN READING ABOUT THINGS IN THE PAPER,
8 AND WE HAD ALL BEEN READING ABOUT THINGS IN THE PAPER,
9 AND I SAID -- I KNOW I SAID TO HIM, "THIS IS ALL WE HAVE
10 TO OFFER."

11 THE COURT: AND DID HE EVER ASK FOR MORE?

12 THE WITNESS: NOT THAT I -- NOT THAT I RECALL.

13 THE ONLY THING HE ASKED FOR WAS TO MAKE SURE THAT HE
14 MADE THE DONATION TO THE CHARITY.

15 THE COURT: BUT OTHER AMOUNTS WERE MENTIONED IN
16 THE CONVERSATION AS FAR AS THINGS THAT OTHER SHOWS WERE
17 PAYING, AT LEAST WHAT HAD BEEN REPORTED IN THE PAPERS?

18 THE WITNESS: YES, I THINK THERE WAS A
19 DISCUSSION, IF IT WAS TRUE THAT ANOTHER TELEVISION SHOW
20 HAD PAID \$500,000 FOR SOMETHING.

21 THE COURT: AND WHO ASKED THAT QUESTION?

22 THE WITNESS: I DON'T REMEMBER WHETHER HE

23 DIRECTLY ASKED IT THAT WAY, OR HE SAID SOMETHING LIKE,
24 "WELL, HEY, COME ON. TELEVISION SHOWS PAY \$500,000."
25 AND WE ALL LAUGHED. I DON'T RECALL WHETHER IT WAS A
26 SPECIFIC QUESTION OR WHETHER IT WAS JUST A GENERAL
27 DISCUSSION OF WHAT WAS IN THE MEDIA.
28 THE COURT: OKAY. YOU'RE SAYING THAT HE SAID

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1 THAT, OR YOU'RE JUST SAYING THAT MIGHT HAVE BEEN SAID
2 AND YOU DON'T KNOW?

3 THE WITNESS: I RECALL A CONVERSATION ABOUT
4 OUTRAGEOUS AMOUNTS OF MONEY THAT PEOPLE PAID.

5 THE COURT: RIGHT.

6 THE WITNESS: BUT I DON'T RECALL WHETHER HE SAID
7 IT SPECIFICALLY. I CERTAINLY DID NOT -- I DID NOT BRING
8 IT UP.

9 THE COURT: WAS THIS BROUGHT UP IN THE CONTEXT OF
10 A QUESTION OF MR. CIGNARELLI AS TO HOW MUCH YOU WOULD BE
11 WILLING TO PAY, OR IN SOME OTHER CONTEXT?

12 THE WITNESS: AS I RECALL, IT WAS BEING DISCUSSED
13 IN THE CONTEXT OF THAT IT WAS IN THE PAPERS.

14 THE COURT: WHO BROUGHT UP THE PAPERS?

15 THE WITNESS: THAT PEOPLE GOT PAID A LOT.

16 THE COURT: YES. WHO BROUGHT IT UP?

17 THE WITNESS: HE WAS THERE TO MAKE A DEAL FOR
18 EXCLUSIVITY.

19 THE COURT: YES. WELL, DID YOU --
20 THE WITNESS: I DID NOT BRING IT UP.
21 THE COURT: DID YOU OR MISS BELL SAY, "WELL, YOU
22 MIGHT HAVE HEARD ABOUT THESE AMOUNTS IN THE NEWSPAPERS,
23 BUT WE DON'T PAY THAT AMOUNT"?
24 OR DID HE SAY, "I READ ABOUT THIS IN THE
25 NEWSPAPER AND I WONDER IF YOU PAY THIS AMOUNT"?
26 THE WITNESS: I DON'T RECALL, YOUR HONOR.
27 THE COURT: SO YOU DON'T RECALL WHICH PARTY
28 BROUGHT UP THE AMOUNTS IN THE NEWSPAPERS?

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1 THE WITNESS: NO, I DON'T RECALL.
2 THE COURT: ANYTHING ELSE?
3 MS. NAJERA: I HAVE NOTHING MORE.
4 THE COURT: ALL RIGHT. ANYTHING ELSE, MS.
5 ABRAMSON?
6 MS. ABRAMSON: NO -- ONE, ONE THING.
7
8 REDIRECT EXAMINATION
9 BY MS. ABRAMSON:
10 Q. DID HE SEEM INTERESTED IN GETTING MONEY FOR
11 HIS STORY?
12 A. ABSOLUTELY.
13 Q. AND AFTER YOU HAD THIS ONE MEETING WITH
14 HIM, DID YOU SEND THE CONTRACT OUT AFTER THAT MEETING?

15 A. YES.

16 Q. AND IT WAS AFTER THAT YOU HAD A
17 CONVERSATION WITH HIM WHERE HE WANTED THE CHARITABLE
18 PART WRITTEN INTO THE CONTRACT?

19 A. YES.

20 Q. DID YOU SEND HIM BASICALLY A STANDARD
21 CONTRACT BEFORE THAT, A FORM?

22 A. WE SENT HIM A CONTRACT THAT WAS REFLECTIVE
23 OF THE AGREEMENT THAT WE HAD MADE WITH HIM, SPECIFIC
24 AGREEMENT WE MADE WITH HIM, AND WHEN HE CALLED -- WHEN
25 HE RECEIVED IT -- FAXED IT TO HIM, AND WHEN HE RECEIVED
26 IT, HE CALLED BACK TO SAY THAT IT WAS -- THAT WE NEEDED
27 TO PUT IN ITEM -- WHICH IS NOW ITEM NO. 11 IN THE
28 CONTRACT THAT SAYS WE SHALL ANNOUNCE ON THE AIR THAT IT

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1 WAS CRAIG CIGNARELLI'S REQUEST THAT A CHARITABLE
2 DONATION BE MADE TO A CHILD ABUSE CHARITY.

3 Q. AND THAT WAS THE END OF THE NEGOTIATIONS
4 DURING THAT MEETING?

5 A. YES.

6 Q. AND AS FAR AS YOU RECALL, LINDA BELL DID
7 NOT ENGAGE IN THOSE NEGOTIATIONS YOU HAD?

8 A. YES.

9 Q. AND THE \$25,000 WAS ARRIVED AT AND
10 NEGOTIATED IN THAT MEETING?

11 A. YES.

12 THE COURT: ANYTHING ELSE?

13 MS. NAJERA: NO, YOUR HONOR.

14 THE COURT: THANK YOU. YOU MAY STEP DOWN.

15 OKAY. LET ME HEAR WHATEVER ARGUMENT THERE

16 IS ON THE SUBJECT, IF THERE IS ANY.

17 MS. NAJERA: YOUR HONOR, OUR -- I GUESS OUR

18 POSITION IS THAT WE ARE OBJECTING TO THIS BECAUSE THE

19 BULK OF THIS DOESN'T APPEAR TO GO WITH WHAT COUNSEL'S

20 OFFER OF PROOF WAS. IT DOES NOT IMPEACH CRAIG

21 CIGNARELLI.

22 SHE SAID THAT MS. ELLMAN WAS GOING TO COME

23 IN HERE AND SAY THAT CRAIG CIGNARELLI CAME IN AND

24 DEMANDED THESE -- I BELIEVE THOSE WERE HER EXACT WORDS,

25 THESE OUTRAGEOUS SUMS OF MONEY, AND THAT IS NOT WHAT

26 MS. ELLMAN IS TESTIFYING TO. THIS IS NOT IMPEACHING

27 MR. CIGNARELLI. APPARENTLY NO ONE REALLY HAS A CLEAR

28 IDEA OF WHAT -- AS I SAID YESTERDAY -- OF WHAT WAS

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1 ACTUALLY SAID DURING THESE NEGOTIATIONS.

2 AND SPECIFICALLY WHAT MS. ELLMAN TELLS US

3 IS SHE WOULD NEVER HAVE OFFERED MORE THAN WHAT SHE WAS

4 QUALIFIED TO OFFER, AND THAT WAS ONE OF THE REASONS WE

5 WANTED TO KNOW WHAT HAD HAPPENED IN PAST NEGOTIATIONS,

6 BECAUSE APPARENTLY SHE DOES NOT HAVE A PAST

7 RECOLLECTION. THAT'S WHY I STARTED ASKING HER WHAT WAS
8 ACTUALLY SAID, WHAT CAME OUT OF EVERYONE'S MOUTH. SHE
9 DOESN'T HAVE A RECOLLECTION OF THAT, SO I DON'T BELIEVE
10 THIS IS PROPER IMPEACHMENT OF MR. CIGNARELLI.

11 THE COURT: OKAY. WHAT IS IT THAT YOU WANT TO
12 ACCOMPLISH BY THIS TESTIMONY?

13 MS. ABRAMSON: TO SHOW THAT HIS CONTRIBUTION TO
14 CHARITY WAS TO MAKE HIM LOOK GOOD, AND NOT BECAUSE HE
15 REALLY CARED ABOUT CHARITY;

16 TO SHOW THAT HE WAS NEVER OFFERED MORE THAN
17 \$25,000. HE TESTIFIED, DEPENDING ON AT WHAT POINT IN
18 HIS TESTIMONY -- BECAUSE HE KEPT SLIDING ALONG ON THE
19 ISSUE -- BUT ORIGINALLY HE SAID HE WAS OFFERED 50,000,
20 35 FOR HIM. THEN HE -- WELL, LET'S GO BACK TO GROUND
21 ZERO.

22 FIRST HE TESTIFIED HE WASN'T PAID \$25,000.
23 HE TESTIFIED HE WAS ONLY PAID 20. IN THE END IT CAME
24 OUT THAT HE WAS PAID 25, AND HE CLAIMED HE MADE A \$5,000
25 CHARITABLE CONTRIBUTION.

26 HE TESTIFIED EARLY IN HIS TESTIMONY THAT HE
27 WAS OFFERED 50, 35 TO HIM, THE IMPLICATION BEING 15
28 WOULD GO TO CHARITY.

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1 THEN HE CLAIMED HE WAS OFFERED 35. THEN HE
2 CLAIMED HE WAS TOLD HIS STORY WAS WORTH 35. NONE OF

3 THAT IS TRUE. MS. ELLMAN REMEMBERS DISTINCTLY AND KNOWS
4 HER OWN PRACTICE AND KNOWS THAT CONTRACT. HE WAS NEVER
5 OFFERED MORE THAN \$25,000.

6 I HAVE IN FRONT OF ME THE FAX THAT I
7 OFFERED IN MY OFFER OF PROOF. I NEVER SAID ANYTHING
8 ABOUT OUTRAGEOUS AMOUNTS OF MONEY. I DON'T KNOW WHERE
9 MS. NAJERA IS GETTING THAT FROM. BUT I THINK IT'S
10 IMPORTANT THAT HE IS TYING HIS CHARITABLE CONTRIBUTION
11 TO HIS POLITICAL CAREER. HE WANTS IT TO MAKE HIM LOOK
12 GOOD, AND I THINK HE RECOGNIZES YOU DON'T LOOK GOOD WHEN
13 YOU'RE GRABBING MONEY OFF OF "HARD COPY" FROM YOUR
14 FRIEND'S TRAGEDY. SO HE WAS GOING TO PAPER IT OVER WITH
15 A CHARITABLE CONTRIBUTION.

16 THE FACT THAT HE WAS VERY INTERESTED IN THE
17 MONEY -- THE FACT THAT HE WAS SO INTERESTED IN THE
18 MONEY, THEY HAD TO SEND THE CHECK BY COURIER TO SANTA
19 BARBARA, I THINK ALL OF THOSE THINGS DIRECTLY IMPEACH.
20 THE FACT THAT HE'S STILL UNDER CONTRACT, HE FLAT OUT
21 LIED AND SAID THAT HE WAS -- WELL, NO -- WAS NOT IN A
22 POSITION TO MAKE ANY FURTHER MONEY ON THIS, AND HERE'S
23 THE CONTRACT WHERE HE STILL HAS AN EXCLUSIVITY
24 AGREEMENT.

25 THE COURT: WELL, THAT JUST MEANS IF HE WANTED TO
26 SELL HIS STORY TO SOMEONE ELSE, HE'D HAVE TO SELL IT TO
27 THEM FIRST, OR OFFER IT TO THEM FIRST. THAT DOESN'T
28 MEAN HE'S GOING TO MAKE ANY MONEY.

1 MS. ABRAMSON: NO, IT'S MORE SPECIFIC THAN THAT.

2 DID YOU TAKE THE CONTRACT OFF THE DESK?

3 THE COURT: I HAVE IT.

4 MS. ABRAMSON: THANK YOU.

5 LOOK AT THE EXCLUSIVITY CLAUSE IN THAT
6 CONTRACT, YOUR HONOR. IT'S MORE SPECIFIC THAN THAT. IT
7 SHOWS HIM THAT HE HAS THE POTENTIAL TO MAKE MORE MONEY
8 FROM THIS AFTER A VERDICT, AND IT SHOWS, THEREFORE --
9 THIS IS ONLY -- WAIT A MINUTE.

10 THIS MEANS THAT DURING THIS EXCLUSIVITY
11 PERIOD, OKAY, IT SHOWS THAT HE HAS -- THAT "HARD COPY"
12 HAS THE RIGHT OF FIRST REFUSAL, AND HAS NEGOTIATIONS TO
13 DO A SUBSEQUENT INTERVIEW THROUGHOUT THE PERIOD FOR ONE
14 WEEK AFTER THE VERDICTS ARE ISSUED IN THE MENENDEZ
15 BROTHERS' NEXT TRIAL, WHICHEVER IS LATER.

16 SO HE ALSO HAS A STAKE IN THE OUTCOME HERE.
17 I MEAN, HE GETS TO BE THE WITNESS FOR THE PROSECUTION,
18 AND IF THE DEFENDANTS ARE CONVICTED, HE CAN BE A BIG
19 HERO ON TELEVISION AND MAKE MORE MONEY.

20 THE COURT: NO. IF HE WANTS TO BE INTERVIEWED,
21 THEN HE WILL GIVE THEM THE FIRST OPPORTUNITY FOR
22 INTERVIEW. THAT'S ALL IT SAYS.

23 MS. ABRAMSON: BUT IT SHOWS IN THE TERMS OF THIS
24 CONTRACT THAT HE HAS AN EXPECTATION THAT HE COULD MAKE
25 MORE MONEY BY GIVING ANOTHER INTERVIEW AFTER VERDICTS IN
26 THIS CASE.

27 THE COURT: IT REALLY SHOWS THAT THE PRODUCER

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1 WORTH IF HE WENT OUT AND DID SOME OTHER INTERVIEW, THAT
2 THEY WOULD BE THERE FIRST.

3 MS. ABRAMSON: THIS NOT FOR THE SAME MONEY.

4 THE COURT: I UNDERSTAND THAT.

5 MS. ABRAMSON: HE HAS AN OPPORTUNITY HERE WRITTEN
6 INTO THIS CONTRACT TO MAKE MORE MONEY AFTERWARDS. THIS
7 ACKNOWLEDGES ---

8 THE COURT: WELL, IT DOESN'T SAY THAT. ALL IT
9 SAYS IS HE COULD DO WHAT ANYBODY COULD DO, TALK TO
10 SOMEONE AFTER THE TRIAL IS OVER AND TRY TO SELL HIS
11 STORY.

12 MS. ABRAMSON: BUT HE MADE --

13 THE COURT: THAT DOESN'T GIVE HIM A GUARANTEE
14 THAT THEY ARE GOING TO PAY HIM ANYTHING. IT JUST SAYS
15 THEY HAVE THE FIRST --

16 MS. ABRAMSON: BUT THAT IS AN OPPORTUNITY, AND
17 MOREOVER, IT'S AN OPPORTUNITY THAT COMES AFTER THE
18 VERDICTS.

19 THE COURT: OKAY. YOU'RE MAKING SOMETHING OUT
20 OF -- IT DOESN'T SAY THAT, AND IT DOESN'T PROVE THAT.

21 MS. ABRAMSON: WELL, IT SAYS WHAT IT SAYS.

22 THE COURT: WELL, IT DOESN'T SAY WHAT YOU'RE
23 SAYING IT SAYS. HE'S NOT GETTING ANY GUARANTEE OF

24 ANYTHING OFF THIS,

25 MS. ABRAMSON: NO. BUT HE GOT PAID TO GIVE THEM

26 EXCLUSIVITY THROUGH THE END OF THE TRIAL, THROUGH

27 VERDICT.

28 THE COURT: YEAH.

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1 MS. ABRAMSON: HE GOT PAID TO GIVE THEM THAT

2 RIGHT.

3 THE COURT: YEAH, HE'S GOTTEN PAID. THAT'S THE

4 ISSUE, THAT HE'S GOTTEN PAID, AND YOU WANT TO PROVE THAT

5 HE GOT MONEY, WHICH HE HAS ADMITTED. SO THIS

6 EXCLUSIVITY ASPECT OF IT DOESN'T PROVE WHAT YOU SAY IT

7 DOES.

8 MS. ABRAMSON: WELL, I THINK IT DOES SHOW THAT

9 HE CAN HAVE IN MIND THAT HE CAN MAKE MORE MONEY UNDER

10 THE TERMS OF THIS CONTRACT. THEY BOUGHT AN OPTION FOR

11 THE FUTURE INTERVIEW, AS WELL AS PAYING FOR THE

12 INTERVIEW THAT HE GAVE.

13 SO HE HAD TO HAVE REALIZED AT THE TIME THAT

14 HE SIGNED THIS THAT THEY COULD CALL UPON HIM AGAIN. HE

15 COULDN'T GO TO SOMEONE ELSE FIRST, AND THAT THERE WOULD

16 BE INTEREST -- THIS SUGGESTS THERE WOULD BE INTEREST IN

17 INTERVIEWING HIM AGAIN AFTER THERE'S A VERDICT.

18 NOW, THAT'S ALL IT SHOWS. BUT IT SHOWS AT

19 LEAST THAT, THAT HE IS THEREFORE AWARE THAT HE COULD

20 MAKE MORE MONEY AFTER A VERDICT, AND OBVIOUSLY A VERDICT
21 THAT RUNS COUNTER TO HIS PERSONAL BIASES WOULD NOT MAKE
22 HIM AS VALUABLE A COMMODITY.

23 SO IN ANY EVENT, YOUR HONOR, WE INTEND TO
24 PROVE HIS MOTIVATION BEHIND THE CHARITABLE CONTRIBUTION
25 TO REFUTE HIS LIES ABOUT HOW MUCH HE WAS PAID AND HOW
26 MUCH HE WAS OFFERED; HIS INTEREST IN OBTAINING THE
27 MONEY.

28 THOSE ARE THE THINGS WE WANT TO PROVE.

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1 THE COURT: OKAY. AS FAR AS THE OFFER TO HAVE
2 THIS WITNESS TESTIFY IN SURREBUTTAL, IT SEEMS BASED UPON
3 THE TESTIMONY OF MR. CIGNARELLI AND HOW HE PRESENTED IT
4 TO THE JURY AND HIS MOTIVATIONS IN THIS REGARD, AND HOW
5 IT WAS DISCLOSED, THAT HE HAD A CONTRACT AND WAS PAID
6 FOR HIS STORY, THAT THE DEFENSE IS ENTITLED TO ESTABLISH
7 THE SPECIFICS OF WHAT OCCURRED TO IMPEACH HIS TESTIMONY.
8 IF IT DOES IMPEACH.

9 AND TO THE EXTENT THAT HE SAID THAT HIS
10 MOTIVATION AS FAR AS CHARITY WAS PURELY FOR THE PURPOSE
11 OF CONCERN FOR ABUSED CHILDREN AND THAT WAS HIS
12 MOTIVATION INSTEAD OF AS ARTICULATED TO THIS WITNESS, IT
13 WOULD BE IMPEACHMENT OF HIS TESTIMONY, ALBEIT ON A
14 COLLATERAL ISSUE. IT DOES TEND TO BE AN ATTACK ON HIS
15 CREDIBILITY, AND LIKEWISE, THE DOLLAR AMOUNT THAT WAS

16 CONTINUALLY OFFERED WOULD TEND TO REFUTE OR IMPEACH HIS
17 TESTIMONY.

18 SO THE TESTIMONY WILL BE PERMITTED ON THOSE
19 AREAS. I DON'T FIND THAT THIS EXCLUSIVITY ASPECT OF IT
20 PROVES ANYTHING OTHER THAN WHAT IS OBVIOUS.

21 MS. TOWERY: YOUR HONOR, CAN I ADDRESS THE COURT
22 BRIEFLY ON THAT ISSUE?

23 THE COURT: YES.

24 MS. TOWERY: I THINK THE IMPORTANCE OF THE
25 EXCLUSIVITY CLAUSE IS THAT UNLESS THE JURY IS AWARE OF
26 THE EXISTENCE OF THAT CLAUSE, THEY WILL BE UNDER THE
27 IMPRESSION THAT MR. CIGNARELLI GAVE AN INTERVIEW, IT WAS
28 AIRED ON TELEVISION IN 1994, AND THAT WAS IT. AND NOW

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1 HE COMES INTO COURT AND HE HAS NO FURTHER BIAS OR
2 INTEREST RELATING TO THE SALE OF HIS STORY, AND THAT'S
3 NOT TRUE.

4 PART OF WHAT HE SOLD TO "HARD COPY" IN
5 ADDITION TO THE INTERVIEW AND IN ADDITION TO THE AIRING
6 OF THAT PARTICULAR TELEVISION SHOW WAS HE SOLD "HARD
7 COPY" THE RIGHT OF FIRST REFUSAL. HE SOLD THEM AN
8 OPTION.

9 THE COURT: I KNOW THAT. I'VE HEARD THAT. I'VE
10 HEARD ALL THIS. WE'VE BEEN TALKING ABOUT THAT FOR FIVE
11 MINUTES.

12 MS. TOWERY: BUT THE POINT IS, YOUR HONOR, HIS
13 BIAS HAS NOT ENDED. HE TESTIFIED IN THIS COURTROOM, AND
14 HE'S STILL UNDER OPTION TO "HARD COPY". HE STILL STANDS
15 TO BENEFIT FINANCIALLY.

16 THE COURT: I UNDERSTAND. BELIEVE ME, WE'VE BEEN
17 TALKING ALL ABOUT THAT JUST A LITTLE WHILE AGO. BUT THE
18 ISSUE IS IF THERE WAS AN AGREEMENT THAT THEY WERE GOING
19 TO PAY HIM AND OBLIGATED HIM TO TALK TO "HARD COPY" AND
20 IN EXCHANGE FOR THAT THEY WOULD PAY HIM "X" NUMBER OF
21 DOLLARS, OBVIOUSLY THAT WOULD BE SOMETHING. END OF
22 STORY.

23 MS. TOWERY: BUT THEY HAVE PAID HIM FOR THAT
24 OPTION.

25 THE COURT: BUT THE OPTION IS IF HE CHOOSES TO
26 TALK. THERE IS NO REQUIREMENT THAT HE TALK.

27 MS. TOWERY: BUT HE DIDN'T TELL THE JURY ABOUT
28 THAT OPTION. HE DIDN'T TELL THE JURY HE SOLD THEM AN

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1 OPTION TO TALK TO THEM LATER, OR RIGHT OF FIRST REFUSAL.
2 HE ONLY TOLD THE JURY THAT HE GAVE AN INTERVIEW, AND HE
3 DEMANDED AT THE END OF THE INTERVIEW THAT THE PUBLIC BE
4 NOTIFIED HE IS MAKING A CHARITABLE CONTRIBUTION.

5 THE COURT: OKAY.

6 MS. TOWERY: THERE'S AN IMPORTANT ASPECT OF HIS
7 TESTIMONY THAT HE CONCEALED FROM THE JURY.

8 THE COURT: I DON'T THINK HE WAS ASKED.
9 MS. TOWERY: HE WAS ASKED, YOUR HONOR.
10 THE COURT: MY RULING IS AS ANNOUNCED. I AM NOT
11 GOING TO GO OVER THE SAME TERRITORY AGAIN. I DON'T SEE
12 ANY RELEVANCE TO THIS EXCLUSIVITY, AND THE WITNESS'
13 TESTIMONY DOES GO BEYOND SOME OF THE OFFER WITH REGARD
14 TO THE EXCLUSIVITY, AND THAT ASPECT OF IT WON'T BE
15 PERMITTED, BECAUSE I DON'T THINK IT'S IMPEACHING IN ANY
16 WAY.

17 ALL RIGHT. LET'S TAKE A BREAK UNTIL 25
18 MINUTES TO THE HOUR, AND THEN WE WILL HAVE THE WITNESS
19 TESTIFY WITH THE JURY IN THE BOX.

20 (A RECESS WAS TAKEN FROM
21 11:25 A.M. TO 11:45 A.M.)

22

23 THE COURT: OKAY. LET'S RESUME.

24 WE'LL HAVE THE JURY OUT, PLEASE.

25 (THE JURY ENTERS THE COURTROOM
26 AND THE FOLLOWING PROCEEDINGS
27 WERE HELD:)

28

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1 THE COURT: OKAY. WE'LL NOW HAVE THE NEXT
2 WITNESS.

3 MS. ABRAMSON: YES.

4 WE CALL LINDA ELLMAN, YOUR HONOR.

5

6 LINDA ELLMAN,

7 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND

8 TESTIFIED AS FOLLOWS:

9 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE

10 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE

11 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND

12 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

13 THE WITNESS: YES, I DO.

14 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR

15 NAME FOR THE RECORD.

16 THE WITNESS: MY NAME IS LINDA ELLMAN,

17 E-L-L-M-A-N.

18 THE COURT: OKAY.

19

20 DIRECT EXAMINATION

21 BY MS. ABRAMSON:

22 Q. MS. ELLMAN, WHAT'S YOUR OCCUPATION?

23 A. I AM A TELEVISION PRODUCER.

24 Q. IN 1994, DID YOU -- WERE YOU A PRODUCER FOR

25 THE TELEVISION PROGRAM "HARD COPY"?

26 A. YES, I WAS.

27 Q. AND IS "HARD COPY" ACTUALLY OWNED BY

28 PARAMOUNT PICTURES DOMESTIC TELEVISION?

1 A. IT IS.

2 Q. AND DID YOU NEGOTIATE A CONTRACT FOR "HARD
3 COPY" WITH AN INDIVIDUAL NAMED CRAIG CIGNARELLI?

4 A. YES, I DID.

5 Q. DID YOU MEET WITH MR. CIGNARELLI PERSONALLY
6 TO NEGOTIATE THE CONTRACT?

7 A. YES, I DID.

8 Q. DID YOU BRING WITH YOU TO COURT TODAY A
9 COPY OF THE CONTRACT THAT WAS NEGOTIATED BETWEEN
10 YOURSELF AND MR. CIGNARELLI?

11 A. YES, I DID.

12 MS. ABRAMSON: YOUR HONOR, JUST TO MAKE A RECORD,
13 I'D LIKE TO MARK A COPY OF THE CONTRACT THAT THE WITNESS
14 HAS BROUGHT.

15 THE COURT: EXHIBIT 440.

16 Q. BY MS. ABRAMSON: AND CAN YOU TELL US --
17 AND IF YOU NEED TO, LOOK AT THE CONTRACT TO REFRESH YOUR
18 RECOLLECTION -- WHAT WAS THE DATE UPON WHICH CRAIG
19 CIGNARELLI SIGNED THAT CONTRACT?

20 A. ON FEBRUARY 24TH, 1994.

21 Q. AND DO YOU REMEMBER WHAT THE DATE OF
22 BROADCAST OF THE "HARD COPY" PROGRAM IN WHICH HE
23 APPEARED WAS?

24 A. I BELIEVE IT WAS BROADCAST IN JUNE.

25 Q. AND DO YOU REMEMBER WHEN THE -- WHEN THE
26 PROGRAM WAS ACTUALLY TAPED OR FILMED? I AM NOT SURE --
27 I GUESS IT'S TAPED?

28 A. TAPED.

1 Q. YES.

2 A. I DON'T RECALL THE EXACT DATE.

3 Q. DO YOU REMEMBER WHAT MONTH?

4 A. I DON'T RECALL.

5 Q. SOMETIME BETWEEN FEBRUARY 24TH, '94 AND THE
6 BROADCAST DATE IN JUNE?

7 A. YES.

8 Q. NOW, WAS THERE A PARTICULAR TERM THAT
9 MR. CIGNARELLI BROUGHT UP IN THE NEGOTIATIONS THAT HE
10 WANTED IN THE CONTRACT WHICH MADE IT DIFFERENT THAN A
11 STANDARD CONTRACT?

12 A. IN RELATION TO THIS SPECIFIC CONTRACT?

13 Q. YES.

14 A. CRAIG CIGNARELLI ASKED THAT PARAMOUNT --
15 THAT "HARD COPY" ANNOUNCE ON THE AIR THAT AT CRAIG
16 CIGNARELLI'S REQUEST A DONATION WOULD BE MADE BY CRAIG
17 TO A CHARITY FOR GENUINELY ABUSED CHILDREN.

18 Q. AND DID HE DISCUSS WITH YOU AND INDICATE TO
19 YOU WHY IT WAS HE WAS ASKING FOR THAT ANNOUNCEMENT?

20 A. HE SAID THAT HE WAS INTERESTED IN GOING
21 INTO POLITICS, AND THAT HE DID NOT WANT THERE TO BE ANY
22 REFLECTION ON HIM BY TAKING MONEY FROM "HARD COPY" THAT
23 WOULD MAKE HIM LOOK BAD IN THE PUBLIC EYE, SO THAT HE
24 WANTED TO MAKE A DONATION TO A CHARITY FOR GENUINELY
25 ABUSED CHILDREN.

26 Q. AND HE WANTED "HARD COPY" TO PUBLICIZE THAT
27 NATIONWIDE ON TELEVISION, CORRECT?
28 MS. NAJERA: OBJECTION. LEADING.

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1 THE COURT: WELL, IT CALLS FOR SPECULATION ON THE
2 PART OF THE WITNESS AS WELL.

3 Q. BY MS. ABRAMSON: THE DISCUSSION WASN'T
4 JUST HE WAS GOING TO MAKE A DONATION, HE WANTED IT
5 WRITTEN IN THE CONTRACT, DID HE NOT, THAT "HARD COPY"
6 WOULD ANNOUNCE IT AS PART OF THE PROGRAM?

7 A. YES.

8 Q. AND WHEN THE PROGRAM WAS AIRED, WAS THERE,
9 IN FACT, THAT ANNOUNCEMENT BY THE "HARD COPY" ANCHOR
10 THAT HE HAD MADE SUCH A CONTRIBUTION?

11 A. YES.

12 Q. NOW, HOW MUCH WAS MR. CIGNARELLI PAID UNDER
13 THE TERMS OF THAT CONTRACT?

14 A. \$25,000.

15 Q. AND WAS THAT BROKEN DOWN INTO TWO
16 COMPONENTS?

17 A. YES. 20 --

18 Q. GO AHEAD.

19 A. \$20,000 FOR EXCLUSIVITY AND \$5,000 FOR
20 EXCLUSIVE USE OF PHOTOS OR CLIPS.

21 Q. AND DID HE TURN OVER TO YOU SOME

22 PHOTOGRAPHS FOR THAT \$5,000 EXCLUSIVE-USE PORTION OF THE
23 CONTRACT?

24 A. YES.

25 Q. AND THESE WERE PHOTOGRAPHS OF WHAT OR OF
26 WHOM?

27 A. I RECALL ONE SPECIFIC PHOTOGRAPH OF CRAIG
28 AND ERIK.

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1 Q. ERIK MENENDEZ?

2 A. MENENDEZ.

3 Q. AND WAS THERE ANOTHER PHOTOGRAPH OF ERIK
4 MENENDEZ WITH ANOTHER FRIEND?

5 A. THERE WAS ANOTHER PHOTOGRAPH. I DON'T
6 REMEMBER -- AND I REMEMBER ERIK BEING IN IT, AND I DON'T
7 REMEMBER -- I DON'T KNOW WHO THE OTHER -- I DON'T
8 REMEMBER NOW WHO THE OTHER PERSON WAS.

9 Q. DOES THE CONTRACT UNDER SOMETHING CALLED
10 "SCHEDULE A" DESCRIBE THE PHOTOGRAPHS THAT HE TURNED
11 OVER TO "HARD COPY" FOR EXCLUSIVE USE?

12 A. I'M NOT SURE WHICH PORTION OF THE CONTRACT
13 YOU'RE TALKING ABOUT.

14 Q. OKAY. THERE IS SOMETHING CALLED SCHEDULE
15 A. IT SHOULD BE THE NEXT PAGE.

16 A. I SEE IT HERE. I WAS LOOKING AT THE WRONG
17 SCHEDULE A.

18 OKAY. YES, IT DOES.

19 Q. WELL, LET ME SHOW YOU. I HAVE A DIFFERENT
20 COPY THAN YOU DO.

21 A. SCHEDULE A, HERE.

22 Q. DO YOU SEE "DOMESTIC T.V. LEGAL" ON THE TOP
23 OF THIS COPY OF THE CONTRACT?

24 A. ON THE COPY OF YOURS, YES.

25 Q. AND DOES THAT INDICATE "PARAMOUNT PICTURES
26 DOMESTIC TELEVISION LEGAL DEPARTMENT"?

27 A. YES.

28 Q. AND IS THE LAWYER FROM THAT ORGANIZATION,

-15247

1 MR. BRAM, PRESENT IN COURT?

2 A. YES.

3 Q. AND DOES THIS APPEAR TO BE THE INDICATION
4 OF A FAX TRANSMISSION FROM DOMESTIC T.V. LEGAL?

5 A. YES.

6 Q. AND LET ME SHOW YOU SCHEDULE A.

7 FIRST OF ALL, IS SCHEDULE A FULLY EXECUTED
8 ON THE COPY I HAVE?

9 A. YES.

10 Q. IT IS NOT FULLY EXECUTED ON YOUR COPY, IS
11 IT?

12 A. THAT'S CORRECT.

13 Q. YOUR COPY DOESN'T SHOW CRAIG CIGNARELLI'S

14 SIGNATURE, DOES IT?

15 A. ON THE SCHEDULE A PORTION, NO.

16 Q. OKAY. NOW, LET'S LOOK ON MY COPY, THEN, OF
17 SCHEDULE A.

18 DOES IT HAVE INITIALS NEXT TO "DESCRIPTION
19 OF CLIPS"?

20 A. YES.

21 Q. AND DO THEY APPEAR TO BE "CC"?

22 A. YES.

23 Q. FOR CRAIG CIGNARELLI?

24 A. YES.

25 Q. AND IS IT THERE DESCRIBED THAT THE TWO
26 PHOTOGRAPHERS, ONE IS OF HIMSELF AND ERIK MENENDEZ --

27 MS. NAJERA: I AM GOING TO OBJECT TO ANYTHING
28 DESCRIPTIVE AS HEARSAY.

-15246

1 THE COURT: OVERRULED.

2 Q. BY MS. ABRAMSON: AND THE OTHER IS ERIK
3 MENENDEZ AND A FRIEND?

4 A. YES.

5 MS. ABRAMSON: YOUR HONOR, I WOULD LIKE TO MARK
6 THE COPY OF THE FAX.

7 THE COURT: THAT WILL BE MARKED AS 440.

8 MS. ABRAMSON: EXACTLY, YOUR HONOR. THANK YOU.

9 Q. WHY DON'T YOU KEEP MY COPY. OH, YOU DID.

10 A. YES. THERE IS JUST AN EXTRA PAPER HERE.

11 Q. AND THE ONE I HAVE PREVIOUSLY MARKED 440,
12 YOU HAVE SEEN THERE IS A DUPLICATE SCHEDULE A?

13 A. YES.

14 Q. WHICH MATCHES THE ONE I SHOWED YOU?

15 A. YES.

16 MS. ABRAMSON: ALL RIGHT. WE CAN LEAVE THE
17 ORIGINAL EXHIBIT, YOUR HONOR.

18 Q. NOW, CONCERNING THE \$25,000, WAS THAT PAID
19 IN ONE CHECK TO MR. CIGNARELLI?

20 A. YES.

21 Q. AND DID HE MAKE CERTAIN REQUESTS OR DEMANDS
22 CONCERNING RECEIVING THAT CHECK?

23 A. YES.

24 MS. NAJERA: I AM GOING TO OBJECT. IT'S A
25 COMPOUND QUESTION.

26 THE COURT: OVERRULED.

27 Q. BY MS. ABRAMSON: AND WOULD YOU TELL US
28 WHAT HE BROUGHT UP CONCERNING GETTING THAT CHECK?

-15245

1 A. HE WAS IN A HURRY TO GET IT, AND HE ASKED
2 US TO HAVE IT PLEASE DELIVERED TO HIM BY COURIER.

3 Q. AND WAS HE INSISTENT ON THAT POINT?

4 MS. NAJERA: I AM GOING TO OBJECT AS LEADING.

5 THE COURT: REPHRASE THE QUESTION.

6 Q. BY MS. ABRAMSON: ORDINARILY, HOW WOULD YOU
7 DELIVER A CHECK TO SOMEONE IN MR. CIGNARELLI'S CAPACITY?

8 MS. SAGER: YOUR HONOR, I OBJECT TO THE QUESTION
9 AS INTRUDING IN THE AREA WE DISCUSSED.

10 THE COURT: SUSTAINED.

11 THIS LADY HERE IS A LAWYER REPRESENTING THE
12 WITNESS HERE. THAT'S WHY SHE SPOKE UP AT THIS POINT.

13 MS. ABRAMSON: MORE LAWYERS.

14 Q. HOW DID YOU INTEND TO PAY MR. CIGNARELLI?

15 MS. NAJERA: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED.

17 THE WITNESS: I INTENDED TO MAIL HIM A CHECK.

18 Q. BY MS. ABRAMSON: AND MAIL IT TO WHAT CITY?

19 A. TO WHEREVER HE WANTED IT MAILED, WHICH WAS
20 IN SANTA BARBARA.

21 Q. AND DID YOU HAVE A CONVERSATION WITH HIM
22 WHERE HE ASKED YOU TO DO SOMETHING OTHER THAN MAIL HIM
23 THE CHECK?

24 MS. NAJERA: OBJECTION. LEADING.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES.

27 Q. BY MS. ABRAMSON: AND WHAT DID HE ASK YOU
28 TO DO?

1 A. TO HAVE IT DELIVERED TO HIM.

2 Q. AND DID HE GIVE YOU A TIME WHEN HE WANTED
3 IT DELIVERED?

4 A. THE BEST OF MY RECOLLECTION WAS HE WANTED
5 IT RIGHT AWAY.

6 Q. AND WHAT DID YOU THEN DO IN ORDER TO GET
7 HIM HIS MONEY RIGHT AWAY?

8 A. I HAD A COURIER TAKE THE CHECK TO SANTA
9 BARBARA.

10 Q. FROM LOS ANGELES?

11 A. FROM LOS ANGELES.

12 Q. FROM HOLLYWOOD?

13 A. YES.

14 Q. NOW, WHO IS LINDA BLUE?

15 A. LINDA BLUE WAS MY CO-EXECUTIVE PRODUCER OF
16 "HARD COPY" AT THE TIME. WE WERE BOTH EXECUTIVE
17 PRODUCERS OF THE SHOW.

18 Q. IS SHE ALSO KNOWN AS LINDA BELL?

19 A. LINDA BELL-BLUE.

20 Q. LINDA BELL-BLUE.

21 AND BETWEEN THE TWO OF YOU, WHICH ONE OF
22 YOU NEGOTIATED THE CONTRACT WITH CRAIG CIGNARELLI?

23 A. I DID.

24 Q. AND DURING THE MEETING YOU HAD WITH
25 MR. CIGNARELLI DURING WHICH THE CONTRACT WAS NEGOTIATED,
26 WAS MS. BLUE PRESENT FOR A PORTION OF THAT MEETING?

27 A. YES.

28 Q. SHE WAS NOT THERE FOR THE WHOLE MEETING?

1 A. THAT'S CORRECT.

2 Q. AND AFTER THE MEETING THAT YOU HAD WITH
3 MR. CIGNARELLI, WAS THE \$25,000 TERM OF THE CONTRACT
4 DECIDED?

5 A. YES.

6 Q. AND FOLLOWING THAT MEETING, WAS A CONTRACT
7 DRAFTED BY PARAMOUNT PICTURES DOMESTIC TELEVISION AND
8 SENT TO MR. CIGNARELLI?

9 A. YES.

10 Q. AND SUBSEQUENT TO SENDING THAT CONTRACT TO
11 HIM, DID HE CONTACT YOU ASKING FOR SOME ADDITION TO THE
12 CONTRACT?

13 A. YES.

14 Q. AND WHAT WAS THE ADDITION THAT HE WANTED TO
15 THE CONTRACT WHEN HE CALLED YOU?

16 A. IT'S REFLECTED IN THIS COPY OF THE CONTRACT
17 AS ITEM NO. 11, WHICH IS THAT "HARD COPY" SHALL ANNOUNCE
18 ON THE AIR THAT AT MR. CIGNARELLI'S REQUEST A DONATION
19 WILL BE MADE TO C.A.L.M. CHILD ABUSE PROGRAM IN THE HOPE
20 THAT GENUINELY ABUSED CHILDREN WILL BENEFIT.

21 Q. AND HE WANTED THAT WRITTEN RIGHT INTO THE
22 CONTRACT; IS THAT CORRECT?

23 A. YES.

24 Q. NOW, DID YOU HAVE SOME CONCERNS ABOUT
25 MAKING THAT ANNOUNCEMENT ON TELEVISION WHEN HE, AND NOT
26 YOU, WERE MAKING THE CHARITABLE CONTRIBUTION?

27 A. YES.

28 Q. AND DID YOU DISCUSS WITH MR. CIGNARELLI --

-15242

1 WELL, FIRST OF ALL, DID YOU TRY TO GET HIM TO AGREE THAT
2 PARAMOUNT OR "HARD COPY" MAKE THE DONATION DIRECTLY?

3 A. YES.

4 Q. AND WHAT WAS HIS RESPONSE TO THAT?

5 A. HE WANTED TO MAKE THE DONATION HIMSELF.

6 Q. AND DID HE INDICATE TO YOU HOW MUCH HE
7 PLANNED TO DONATE?

8 A. NO. HE SAID IT WOULD BE A SUBSTANTIAL
9 DONATION.

10 Q. AND BEFORE YOU AIRED THE PROGRAM, DID YOU
11 SEEK SOME VERIFICATION FROM HIM THAT HE HAD ACTUALLY
12 MADE A DONATION?

13 A. YES. I CONTACTED HIM -- WE CONTACTED HIM
14 TO INFORM HIM THAT WE COULD NOT GO ON THE AIR AND STATE
15 THAT HE HAD MADE A DONATION UNLESS WE HAD PROOF THAT A
16 DONATION HAD BEEN MADE IN THE FORM OF A RECEIPT OR A
17 LETTER FROM THE CHARITY TO WHICH HE MADE THE DONATION.

18 Q. AND DID YOU REQUEST THAT HE SEND YOU SOME
19 PROOF?

20 A. YES.

21 Q. AND WAS -- ON HOW MANY OCCASIONS DID YOU
22 CONTACT HIM MAKING THAT SAME REQUEST?

23 MS. NAJERA: OBJECTION. IRRELEVANT.
24 THE COURT: OVERRULED.
25 THE WITNESS: ON -- HE WAS CONTACTED BY OUR
26 OFFICE ON THREE OCCASIONS. WE ATTEMPTED TO REACH HIM
27 AND GET HIM THE MESSAGE ON THREE OCCASIONS.
28 Q. BY MS. ABRAMSON: WELL, WAS HE REACHED MORE

-15241

1 THAN ONCE?

2 A. I DON'T KNOW HOW MANY TIMES HE WAS REACHED.
3 I DO KNOW THAT IT TOOK US AT LEAST A MONTH TO GET A
4 COPY, AFTER THREE PHONE CALLS, TO GET A COPY OF THE
5 VERIFICATION.

6 Q. NOW, IN THE COURSE OF YOUR DISCUSSIONS IN
7 THAT MEETING WITH MR. CIGNARELLI, DID YOU EVER OFFER HIM
8 MORE THAN THE \$25,000 PRICE CONTAINED IN THE CONTRACT?

9 A. NO.

10 Q. DID HE EVER TURN DOWN DURING THAT MEETING A
11 GREATER AMOUNT THAN \$25,00?

12 A. ABSOLUTELY NOT.

13 Q. DID YOU EVER OFFER -- DID YOU EVER TELL HIM
14 YOU WOULD PAY HIM \$50,000?

15 A. ABSOLUTELY NOT.

16 Q. DID YOU EVER TELL HIM YOU WOULD PAY HIM
17 \$35,000?

18 A. ABSOLUTELY NOT.

19 Q. DID HE EVER SAY TO YOU WORDS TO THE EFFECT
20 OF "OH, NO, I DON'T NEED \$35,000. \$25,000 IS ALL I
21 NEED"?

22 A. NO.

23 Q. DID HE SEEM, DURING THE COURSE OF THAT
24 MEETING, TO HAVE ANY -- TO SHOW ANY INTEREST IN MAKING
25 MONEY?

26 MS. NAJERA: OBJECTION. VAGUE. CALLS FOR
27 SPECULATION.

28 THE COURT: SUSTAINED.

-15240

1 Q. BY MS. ABRAMSON: DID HE SHOW ANY -- DID HE
2 EXPRESS INTEREST IN GETTING PAID BY "HARD COPY" FOR
3 GOING ON THE AIR ABOUT ERIK MENENDEZ?

4 MS. NAJERA: OBJECTION. IRRELEVANT AND CALLS FOR
5 SPECULATION.

6 THE COURT: WELL, THE NATURE OF THE TESTIMONY IS
7 THAT THAT'S WHAT OCCURRED, SO RIGHT NOW YOU'RE ASKING
8 FOR SPECULATION AND CONCLUSION ON THE PART OF THE
9 WITNESS.

10 MS. ABRAMSON: WELL, I WILL ASK THIS, YOUR HONOR.

11 Q. DID HE DISCUSS MONEY WITH YOU?

12 A. YES.

13 Q. YOU DIDN'T JUST SAY, "WELL, WE'RE GOING TO
14 PAY YOU FOR THIS," AND SURPRISE, HE SAID "YOU'RE GOING

15 TO PAY ME?" IT WASN'T LIKE THAT, WAS IT?

16 A. NO.

17 Q. IN FACT, DURING THE COURSE OF THE

18 DISCUSSION WITH HIM, WAS THERE A DISCUSSION ABOUT THE

19 FACT THAT THERE HAD BEEN MANY NEWSPAPER ARTICLES

20 INDICATING ENORMOUS AMOUNTS OF MONEY THAT WERE

21 SUPPOSEDLY BEING PAID BY OTHER TELEVISION TABLOID

22 PROGRAMS FOR INTERVIEWS WITH PEOPLE LIKE HIM?

23 A. YES.

24 Q. AND DID YOU INDICATE TO HIM THE POSITION OF

25 YOUR PROGRAM?

26 A. I DON'T RECALL HAVING THAT SPECIFIC

27 CONVERSATION. I RECALL LAUGHING ABOUT THE OUTRAGEOUS

28 AND RIDICULOUS AMOUNTS OF MONEY THAT WERE REPORTED ON IN

-15239

1 THE PAPER.

2 Q. WELL, YOU REMEMBER THAT THERE WAS A

3 CONVERSATION ABOUT THOSE RIDICULOUS AMOUNTS, CORRECT?

4 A. YES.

5 Q. AND YOU LAUGHED?

6 A. YES.

7 Q. AND TO THE BEST OF YOUR RECOLLECTION, WAS

8 HE LAUGHING?

9 A. TO THE BEST OF MY RECOLLECTION, HE SEEMED

10 TO BE INQUIRING TO SEE HOW MUCH MONEY HIS STORY MIGHT BE

11 WORTH.

12 MS. NAJERA: I AM GOING TO OBJECT AS CALLING FOR
13 SPECULATION, UNLESS SHE KNOWS WHETHER OR NOT HE DID, AS
14 OPPOSED TO WHAT HE SEEMED TO BE DOING.

15 THE COURT: WELL, THIS WAS HER BEST RECOLLECTION,
16 AS SHE SAID.

17 SO OVERRULED.

18 Q. BY MS. ABRAMSON: NOW, MS. ELLMAN, WERE YOU
19 AUTHORIZED TO OFFER HIM MORE THAN \$25,000?

20 A. NO.

21 Q. ARE PROGRAMS -- WELL, STRIKE THAT.

22 DID THIS PROGRAM OF "HARD COPY" HAVE A
23 BUDGET?

24 MS. SAGER: I AM GOING TO OBJECT TO THIS QUESTION
25 ON THE SAME GROUNDS, YOUR HONOR.

26 THE COURT: REPHRASE THE QUESTION.

27 Q. BY MS. ABRAMSON: DID THE PROGRAM "HARD
28 COPY", THE SEGMENT THAT YOU WERE NEGOTIATING WITH

-15238

1 MR. CIGNARELLI, DID YOU HAVE A BUDGET, A FIXED AMOUNT
2 THAT YOU COULD OFFER HIM?

3 MS. SAGER: SAME OBJECTION, YOUR HONOR.

4 THE COURT: SUSTAINED.

5 Q. BY MS. ABRAMSON: WERE YOU AUTHORIZED TO
6 OFFER HIM MORE THAN \$25,000?

7 A. NO.

8 Q. DID YOU EVER OFFER HIM MORE THAN \$25,000?

9 A. ABSOLUTELY NOT.

10 Q. DO YOU REMEMBER IF YOU TOLD HIM THAT YOU
11 COULD NOT GIVE HIM MORE THAN \$25,000?

12 A. YES.

13 Q. AND DID YOU?

14 A. DID I GIVE HIM MORE THAN --

15 Q. DID YOU TELL HIM, "I CAN'T GIVE YOU MORE
16 THAN \$25,000"?

17 A. YES.

18 Q. NOW, WAS THERE ANYTHING IN THE ARRANGEMENT
19 THAT YOU MADE WITH HIM IN THE CONTRACT AGREEMENT THAT
20 YOU NEGOTIATED WITH HIM THAT PRECLUDES HIM FROM MAKING
21 MONEY IN THE FUTURE BY GIVING INTERVIEWS TO TELEVISION
22 PROGRAMS?

23 MS. NAJERA: OBJECTION. IRRELEVANT.

24 THE COURT: SUSTAINED.

25 MS. ABRAMSON: I'D LIKE TO BE HEARD ON THAT
26 QUESTION, YOUR HONOR.

27 THE COURT: SURE.

28 OKAY, WE'LL TAKE OUR RECESS. WE WILL

-15237

1 RESUME AT 1:30.

2 MS. ABRAMSON: YOUR HONOR, COULD WE GO FOR

3 ANOTHER --

4 THE COURT: WE WILL RESUME AT 1:30. LET'S RESUME

5 AT 1:30. DON'T DISCUSS THE MATTER WITH ANYBODY. DON'T

6 FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME AT

7 1:30.

8 (JURY EXITS THE COURTROOM

9 AND THE FOLLOWING PROCEEDINGS

10 WERE HELD:)

11

12 THE COURT: OKAY. DO YOU WANT TO BE HEARD?

13 MS. ABRAMSON: I WANT TO BE HEARD ON TWO THINGS.

14 THE COURT: OKAY.

15 MS. ABRAMSON: THE FIRST THING I'D LIKE TO BE

16 HEARD ON IS WHY I CAN'T ASK A QUESTION SO THAT THE JURY

17 UNDERSTANDS THAT HE'S FREE TO MAKE MORE MONEY, AND HE

18 CAN MAKE MORE MONEY, SO THEY DON'T MISUNDERSTAND AND

19 THINK THAT THIS CONTRACT IS ALL THAT HE COULD EVER MAKE.

20 NOW, I AM NOT GETTING INTO THE TERMS OF

21 WHAT THEIR EXCLUSIVITY IS OR TRYING TO USE IT TO SHOW

22 THAT HE WAS TOLD IN WRITING THAT THEY MIGHT BE

23 INTERESTED IN HIM AFTER THE VERDICTS, WHICH I STILL

24 THINK IS RELEVANT, BUT I AM NOT DOING THAT BECAUSE THE

25 COURT SAID I COULD NOT.

26 BUT I DON'T THINK IT'S IMPROPER TO ASK IF

27 THERE'S ANYTHING IN THE CONTRACT THAT PREVENTS HIM FROM

28 MAKING FUTURE MONEY BY TALKING ABOUT THIS CASE.

1 THE COURT: AND IS THAT WHAT YOU EXPECT THE
2 WITNESS TO SAY?

3 MS. ABRAMSON: EXACTLY.

4 THE COURT: AND NOT REFER TO THE EXCLUSIVITY
5 ASPECTS OF IT, LIKE WE HAD DISCUSSED?

6 MS. ABRAMSON: YES.

7 THE COURT: OKAY.

8 AND WHAT WAS THE SECOND THING YOU WANT TO
9 TALK ABOUT?

10 MS. ABRAMSON: THE SECOND THING IS THE COURT
11 KNOWS I AM ILL. WHY COULDN'T WE COMPLETE THE WITNESS
12 THIS MORNING?

13 THE COURT: BECAUSE I DON'T KNOW HOW LONG THE
14 CROSS-EXAMINATION IS GOING TO GO. IT'S ALREADY 12:05.
15 I TOOK THE RECESS AND TOLD THE ATTORNEYS TO BE HERE 25
16 MINUTES TO THE HOUR, AND YOU WALKED IN AT A QUARTER TO.

17 MS. ABRAMSON: NO, YOUR HONOR. I WAS HERE AT 25
18 OF.

19 THE COURT: NOT ACCORDING TO THE CLERK. YOU AND
20 MS. TOWERY WERE WALKING IN AT A QUARTER TO, ACCORDING TO
21 WHAT SHE TOLD ME.

22 MS. ABRAMSON: I WALKED IN, NOTHING WAS
23 HAPPENING, AND I WENT TO THE BATHROOM AND CAME BACK.

24 THE COURT: THAT'S WHAT OCCURRED. WE ARE IN
25 RECESS UNTIL 1:00. YOU ASKED FOR AN EXPLANATION.

26 MS. ABRAMSON: SO IT'S PUNISHMENT BECAUSE I WAS
27 LATE.

-15235

1 PARTIES WEREN'T HERE AT THE TIME ALOTTED, SO WE WILL
2 RETURN AT 1:30.

3 MS. ABRAMSON: CAN I RELEASE DR. VICARY FOR THIS
4 AFTERNOON?

5 THE COURT: WHAT'S THE SITUATION WITH HIM AND
6 WITH --

7 MS. ABRAMSON: THE SITUATION WITH HIM I AM NOT
8 SURE OF. WE JUST CALLED HIS OFFICE, AND I DON'T KNOW IF
9 HE FINISHED IN SANTA ANA. WE DON'T EVEN KNOW IF HE WAS
10 DONE IN SANTA ANA WHEN WE CALLED AT 11:25.

11 THE SITUATION WITH ME IS I DON'T FEEL WELL
12 ENOUGH TO PUT ON SO IMPORTANT A WITNESS THIS AFTERNOON,
13 AND WHAT I WOULD DO IS I WOULD LIKE TO FINISH WITH
14 MS. ELLMAN AND BE EXCUSED THIS AFTERNOON, BECAUSE I DO
15 HAVE TO DO THE JURY INSTRUCTIONS, AND I AM NOT GOING TO
16 BE ABLE TO WORK UNTIL 3:00 O'CLOCK IN THE MORNING TO GET
17 BOTH THAT DONE AND BE PREPARED -- I AM PREPARED TO DO
18 DR. VICARY.

19 THE COURT: HOW LONG WILL DR. VICARY TAKE?

20 MS. ABRAMSON: I IMAGINE HIS DIRECT WILL BE ABOUT
21 THREE HOURS.

22 MR. LEVIN: WE STILL HAVE THE TWO WITNESSES FROM
23 THE CHARITY I WILL PUT ON THIS AFTERNOON.

24 THE COURT: HOW LONG WILL THE CROSS-EXAMINATION
25 TAKE OF DR. VICARY?
26 MR. CONN: WE WOULD OBJECT, FIRST OF ALL, TO
27 COUNSEL CALLING DR. VICARY. I THINK THAT COUNSEL HAS
28 NOT MADE AN OFFER OF PROOF AS TO WHAT DR. VICARY IS

-15234

1 GOING TO BE TESTIFYING TO. I THINK IT'S INCUMBENT UPON
2 COUNSEL TO SPECIFICALLY STATE TO THE COURT WHAT SPECIFIC
3 AREAS HE IS BEING OFFERED TO IMPEACH THE TESTIMONY OF
4 DR. DIETZ, AND ONCE WE HEAR THAT, I WOULD LIKE TO BE
5 HEARD FURTHER, BECAUSE I THINK IT'S CUMULATIVE AT THIS
6 POINT IF HE IS SIMPLY GOING TO TAKE AND STAND AND AGREE
7 WITH DR. WILSON. AND I WOULD LIKE TO GO OVER EVERYTHING
8 THAT DR. WILSON TESTIFIED TO. I THINK IT'S CUMULATIVE
9 AND THE COURT CAN EXCLUDE IT.

10 THE COURT: WE WILL TALK ABOUT THAT AT 1:30. MY
11 CONCERN IS THAT IF HE DOES TESTIFY, THAT HIS TESTIMONY
12 WILL CONSUME TIME THAT WILL THEN INTERFERE WITH YOUR
13 COMMENCING WITH ARGUMENT NEXT TUESDAY.

14 MS. ABRAMSON: WELL, YOUR HONOR, ALL I COULD TELL
15 THE COURT IS THAT MY HEALTH CONDITION MAY INTERFERE WITH
16 THAT ONE WAY OR THE ANOTHER IN ANY EVENT, PARTICULARLY
17 IF I GO FORWARD WHEN I AM FEELING ILL. I TEND TO STAY
18 SICKER LONGER. I HAVE THE FLU. I HAVE ALL THE SYMPTOMS
19 OF IT. AND AS THE COURT MAY OR MAY NOT REMEMBER, I HAVE

20 A TENDENCY TOWARDS BRONCHITIS AND PNEUMONIA, BOTH OF
21 WHICH I WOULD LIKE VERY MUCH TO AVOID, PARTICULARLY
22 BECAUSE I WOULD LIKE TO ARGUE THIS CASE NEXT WEEK AND
23 HAVE IT OVER WITH.

24 SO THAT'S ALL I CAN TELL THE COURT, YOU
25 KNOW. IF THE COURT INSISTS THAT WE GO FORWARD, I LEFT A
26 MESSAGE WITH HIS OFFICE FOR HIM TO PROCEED, IF HE IS
27 DONE IN SANTA ANA, BACK TO HIS OFFICE, WHICH IS 10
28 MINUTES AWAY.

-15233

1 THE COURT: WELL, LET'S FIND OUT WHERE HE IS.

2 MS. ABRAMSON: WE'LL FIND OUT WHERE HE IS. IF
3 THE COURT IS GOING TO ORDER ME TO PROCEED IN SPITE OF
4 HOW I FEEL, I WILL PROCEED.

5 THE COURT: LET'S FIND OUT WHAT HIS SITUATION IS
6 AND ALSO HEAR ARGUMENT ON THE SCOPE OF HIS EXAMINATION
7 THIS AFTERNOON.

8 MS. ABRAMSON: I THOUGHT WE ALREADY HAD THIS
9 ARGUMENT BEFORE, AND I WANTED TO CALL HIM IN MY
10 CASE-IN-CHIEF. THE COURT INDICATED THAT --

11 THE COURT: IS THE JURY READY?

12 THE BAILIFF: YES, SIR. WALKING.

13 (THE JURY EXITS THE COURTROOM

14 AND THE FOLLOWING PROCEEDINGS

15 WERE HELD:)

16

17 THE COURT: OKAY, THE JURY HAS LEFT.

18 YOU WERE SAYING SOMETHING, MS. ABRAMSON.

19 MS. ABRAMSON: YES, YOUR HONOR. WE HAD A

20 DISCUSSION UPON WHICH THE PEOPLE PREVAILED DURING MY

21 CASE IN CHIEF WHEN I WANTED TO CALL DR. VICARY, AND AT

22 THAT POINT THE COURT INDICATED THAT IF DR. DIETZ WERE

23 CALLED -- THE COURT SAID THE COURT DIDN'T EVEN KNOW IF

24 DR. DIETZ WAS GOING TO BE CALLED AT THAT POINT, AND THE

25 COURT INDICATED THAT IF DR. DIETZ WERE CALLED, THEN

26 DR. VICARY COULD BE CALLED IN REBUTTAL. AND I THINK

27 THAT'S PERFECTLY APPROPRIATE.

28 DR. DIETZ HAS OFFERED A DIAGNOSIS THAT IS

-15232

1 DIFFERENT THAN DR. VICARY'S. HE HAS IGNORED FACTORS

2 THAT DR. VICARY SAW FIRSTHAND. DR. DIETZ DIDN'T EVEN

3 BOTHER READING ALL OF DR. VICARY'S NOTES, AND ALSO

4 DOCTOR -- WE HAVE THE RIGHT IN SURREBUTTAL TO REBUT WHAT

5 THE PEOPLE PUT ON IN THEIR REBUTTAL, AND THEY PUT ON A

6 THEORY OF WHAT MY CLIENT'S MENTAL CONDITION WAS THAT DR.

7 VICARY INDICATES IS WRONG. SO I DO BELIEVE I HAVE A

8 RIGHT TO CALL HIM, AND HE ISN'T GOING TO SAY DR. WILSON

9 WAS RIGHT. HE IS GOING TO SAY WHAT DR. VICARY KNOWS.

10 HE DOESN'T HAVE TO RELY ON DR. WILSON.

11 THE COURT: OKAY.

12 THE PEOPLE WERE SUGGESTING THAT YOU HAD NOT
13 SUPPLIED AN OFFER OF PROOF, AND I DON'T RECALL THE
14 SPECIFICS OF WHAT HIS TESTIMONY WOULD BE WAS PRESENTED
15 TO THE COURT IN THE EARLIER DISCUSSIONS. IT COULD BE
16 THAT AT ONE POINT YOU INDICATED THAT YOU WOULD HAVE HIM
17 TESTIFY TO THE TOTALITY OF WHAT IT WAS THAT HE TESTIFIED
18 IN THE FIRST TRIAL. THAT WAS MY RECOLLECTION OF WHAT
19 YOU SAID.

20 MS. ABRAMSON: THAT IS WHAT I WAS PREPARED TO DO
21 WHEN I WAS CALLING HIM IN MY CASE IN CHIEF.

22 THE COURT: RIGHT.

23 MS. ABRAMSON: AND I HAD INDICATED THAT I WOULD
24 THEN HOLD PART OF HIS TESTIMONY ON MENTAL STATE AT THE
25 TIME OF THE OFFENSE UNTIL AFTER DR. DIETZ HAD TESTIFIED.

26 NOW, SINCE DR. DIETZ HAS TESTIFIED, IT
27 WOULD BE MY INTENTION TO GO BEYOND WHAT HE TESTIFIED TO
28 IN THE FIRST TRIAL, ALTHOUGH THAT WOULD INCLUDE THOSE

-15231

1 THINGS, TO ALSO TESTIFY WITH RESPECT TO THE BEHAVIORS
2 THAT DR. DIETZ HAS FOCUSED ON AND THE BEHAVIORS
3 DR. DIETZ HAS IGNORED AT THE TIME OF THE HOMICIDES WITH
4 RESPECT TO MENTAL STATE AT THE TIME OF THE HOMICIDES.

5 THE COURT: OKAY.

6 SO THEN YOUR OFFER OF PROOF IS NOT ONLY
7 WHAT HE TESTIFIED AT THE FIRST TRIAL, BUT ALSO

8 DR. VICARY'S OPINIONS, TO THE EXTENT ADMISSIBLE,
9 REGARDING THE DEFENDANT'S MENTAL STATE AT THE TIME OF
10 THE OFFENSE.

11 MS. ABRAMSON: YES, TO THE EXTENT THAT ANY OF THE
12 EXPERTS' OPINIONS HAVE BEEN ADMISSIBLE.

13 THE COURT: OKAY. THAT'S THE OFFER BY THE
14 DEFENSE, AND THEN WE'LL HEAR THE PEOPLE'S POSITION AS TO
15 WHY THIS IS IMPROPER REBUTTAL AT 1:30.

16 ALL RIGHT. WE WILL BE IN RECESS UNTIL
17 1:30.

18 MS. TOWERY: YOUR HONOR, WE ALSO HAVE THE PERSON
19 BRINGING THE CALENDAR DOWN, THE LAST I HEARD.

20 THE COURT: OKAY.

21 (AT 12:10 P.M. PROCEEDINGS

22 WERE ADJOURNED TO 1:30 P.M.

23 OF THE SAME DAY)

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1 VAN NUYS, CALIFORNIA; WEDNESDAY, FEBRUARY 14, 1996

2 1:40 P.M.

3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6

7 THE COURT: ALL RIGHT. EVERYBODY IS HERE.

8 WE'LL HAVE THE JURY OUT, PLEASE.

9 (THE JURY ENTERS THE COURTROOM AND

10 THE FOLLOWING PROCEEDINGS WERE

11 HELD:)

12

13 THE COURT: OKAY. THE JURY IS BACK, AND YOU MAY

14 CONTINUE YOUR EXAMINATION OF THE WITNESS.

15

16 DIRECT EXAMINATION (CONTINUED)

17 BY MS. ABRAMSON:

18 Q. MS. ELLMAN, I HAVE ONE LAST QUESTION.

19 IS THERE ANYTHING IN THAT CONTRACT THAT

20 WOULD PREVENT OR PROHIBIT CRAIG CIGNARELLI FROM MAKING

21 MORE MONEY FROM SUBSEQUENT AND ADDITIONAL TELEVISION

22 INTERVIEWS?

23 A. NO.

24 MS. ABRAMSON: I HAVE NOTHING FURTHER.

25 THE COURT: CROSS-EXAMINATION.

26 MS. NAJERA: THANK YOU, YOUR HONOR.

27

28

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1 CROSS-EXAMINATION

2 BY MS. NAJERA:

3 Q. NOW, MS. ELLMAN, YOU TESTIFIED EARLIER THIS

4 MORNING THAT MR. CIGNARELLI WANTED TO MAKE A CHARITABLE

5 CONTRIBUTION; IS THAT CORRECT?

6 A. YES.

7 Q. AND I BELIEVE YOU TESTIFIED THAT HE SPOKE

8 TO YOU ABOUT THIS CHARITABLE CONTRIBUTION, AND HE
9 WANTED -- AND HE MENTIONED TO YOU THAT ONE OF THE
10 REASONS HE WANTED TO MAKE A CHARITABLE CONTRIBUTION WAS
11 BECAUSE HE WANTED TO GET INVOLVED IN POLITICS; IS THAT
12 RIGHT?

13 A. HE SAID HE -- I RECALL HIM SAYING TO ME
14 THAT HE WANTED TO -- HE WAS GOING TO BE GETTING INVOLVED
15 IN POLITICS, AND DIDN'T WANT THE FACT THAT HE HAD
16 RECEIVED PAYMENT FROM "HARD COPY" TO PUT A BAD OR BLACK
17 MARK ON HIS POLITICAL FUTURE.

18 SO HE THOUGHT IT WOULD BE IMPORTANT FOR HIM
19 TO MAKE A DONATION TO CHARITY TO HELP GENUINELY ABUSED
20 CHILDREN.

21 Q. OKAY. SO HE TOLD YOU THAT HE DID THIS
22 BECAUSE HE WANTED -- HE THOUGHT IT WAS IMPORTANT TO MAKE
23 A CONTRIBUTION TO CHARITY?

24 MS. ABRAMSON: OBJECTION, YOUR HONOR. MISSTATES
25 THE WITNESS' TESTIMONY.

26 THE COURT: OVERRULED.

27 Q. BY MS. NAJERA: IS THAT CORRECT?

28 A. HE DIDN'T WANT -- HE DID NOT WANT TO APPEAR

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1 THAT HE WAS TAKING MONEY -- HE DIDN'T WANT A BLACK MARK
2 ON HIS RECORD FOR TAKING MONEY FOR A STORY LIKE THIS, SO
3 HE WANTED TO MAKE A -- MAKE A DONATION, A SUBSTANTIAL

4 DONATION OF THAT MONEY TO CHARITY.

5 Q. SO HE WANTED TO MAKE A SUBSTANTIAL DONATION
6 TO CHARITY.

7 NOW, HE DIDN'T CHOOSE "SAVE THE SEALS" OR
8 HE DIDN'T CHOOSE ANY OTHER CHARITY, HE CHOSE A CHARITY
9 THAT HELPED ABUSED CHILDREN; IS THAT CORRECT?

10 MS. ABRAMSON: I AM GOING TO OBJECT, YOUR HONOR.
11 IT MIGHT TO BE BEYOND THE WITNESS' PERSONAL KNOWLEDGE.

12 THE COURT: SUSTAINED TO THE FORM OF THE
13 QUESTION.

14 Q. BY MS. NAJERA: DID YOU RECEIVE INFORMATION
15 THAT HE GAVE MONEY TO A CHARITY CALLED C.A.L.M.?

16 A. YES.

17 Q. AND IT WAS YOUR UNDERSTANDING FROM THE
18 RECEIPT THAT YOU RECEIVED THAT THIS WAS THE CHILD ABUSE
19 LISTENING AND MEDIATION CENTER?

20 MS. ABRAMSON: OBJECTION. CALLS FOR HEARSAY.

21 THE COURT: REPHRASE THE QUESTION.

22 Q. BY MS. NAJERA: DID YOU LEARN THE NAME OF
23 THE ORGANIZATION THAT HE GAVE THE CHARITABLE
24 CONTRIBUTION TO?

25 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
26 AGAIN. IT'S BEYOND HER PERSONAL KNOWLEDGE AS TO WHETHER
27 HE GAVE A CONTRIBUTION OR NOT.

28 THE COURT: OVERRULED.

1 YOU MAY ANSWER THE QUESTION.

2 THE WITNESS: YES.

3 EXCUSE ME. WILL YOU RESTATE THE QUESTION?

4 I'M SORRY.

5 THE COURT: OKAY. THE ANSWER IS STRICKEN.

6 YOU MAY ASK IT AGAIN.

7 Q. BY MS. NAJERA: DID YOU FIND OUT WHERE HE

8 GAVE THE CHARITABLE CONTRIBUTION TO?

9 A. HE NOTIFIED US -- HE FAXED ME A LETTER FROM

10 AN ORGANIZATION CALLED C.A.L.M. THAT SAID THEY HAD

11 RECEIVED A CONTRIBUTION FROM HIM.

12 Q. AND IN THAT LETTER DID IT TELL YOU THAT

13 C.A.L.M. WAS THE CHILD ABUSE LISTENING AND MEDIATION

14 CENTER?

15 MS. ABRAMSON: OBJECT TO THAT, YOUR HONOR. CALLS

16 FOR HEARSAY.

17 THE COURT: SUSTAINED, UNLESS YOU CAN ESTABLISH A

18 FOUNDATION.

19 Q. BY MS. NAJERA: WELL, DID YOU LEARN THAT HE

20 GAVE MONEY TO ABUSED CHILDREN?

21 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS FOR

22 THINGS BEYOND HER PERSONAL KNOWLEDGE.

23 THE COURT: SUSTAINED.

24 Q. BY MS. NAJERA: WELL, LET ME ASK YOU THIS.

25 YOU SAID THAT YOU ANNOUNCED ON "HARD COPY"

26 THAT CRAIG CIGNARELLI WAS MAKING A DONATION THAT WOULD

27 BENEFIT GENUINELY ABUSED CHILDREN.

28 DO YOU REMEMBER THAT?

1 A. WE DID SAY THAT.

2 Q. NOW, WOULD YOU HAVE SAID THAT IF YOU HADN'T
3 CHECKED OUT THE INFORMATION TO DETERMINE THAT HE GAVE IT
4 TO A FOUNDATION THAT HELPED GENUINELY ABUSED CHILDREN?

5 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE, AND
6 STILL CALLS FOR MATTERS BEYOND HER PERSONAL KNOWLEDGE.

7 THE COURT: OVERRULED.

8 YOU CAN ANSWER THE QUESTION.

9 THE WITNESS: I RECEIVED NOTIFICATION FROM HIM --
10 I RECEIVED NOTIFICATION, A FAX, THAT HE HAD DONATED
11 MONEY TO C.A.L.M., A LETTER -- A COPY OF A LETTER FROM
12 C.A.L.M. -- A LETTER THAT'S SUPPOSEDLY FROM C.A.L.M. TO
13 HIM SAYING THAT HE HAD MADE A DONATION TO C.A.L.M., AND
14 I DON'T OFF THE TOP OF MY HEAD REMEMBER EXACTLY WHAT
15 THAT LETTER STATES OF WHAT THAT ORGANIZATION IS.

16 Q. WELL, DID YOU GO ON THE AIR IN YOUR PROGRAM
17 THAT YOU PRODUCED AND ANNOUNCE THAT HE GAVE MONEY TO
18 HELP GENUINELY ABUSED CHILDREN?

19 A. WE DID.

20 Q. AND WOULDN'T YOU HAVE CHECKED THAT FACT
21 BEFORE YOU ANNOUNCED THAT?

22 A. ABSOLUTELY. AS I WAS TRYING TO EXPLAIN TO
23 YOU, WE WERE VERY -- AS I TESTIFIED TO BEFORE, WE WERE
24 VERY CONCERNED THAT HE HAD INDEED -- HE WOULD NOT ALLOW
25 US TO MAKE A DONATION. HE WANTED TO MAKE A DONATION. I

26 DIDN'T WANT TO GO ON THE AIR AND SAY HE MADE A DONATION
27 WITHOUT HAVING SOME SORT OF RECEIPT THAT HE HAD MADE A
28 DONATION.

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1 HE, AFTER -- AS I TESTIFIED BEFORE -- AFTER
2 THREE TIMES CALLING HIM, HE FINALLY SENT US A RECEIPT
3 THAT SAID HE HAD MADE A DONATION TO C.A.L.M.
4 Q. NOW, WHAT I'M ASKING YOU, AND THE QUESTION
5 I ASKED YOU ORIGINALLY IS WOULD YOU HAVE GONE ON THE AIR
6 STATING THAT HE GAVE MONEY FOR GENUINELY ABUSED CHILDREN
7 WITHOUT FIRST CHECKING TO MAKE SURE THAT HE HAD GIVEN
8 MONEY TO A CHARITY THAT HELPED GENUINELY ABUSED
9 CHILDREN?

10 MS. ABRAMSON: YOUR HONOR, NUMBER ONE, IT CALLS
11 FOR SPECULATION.

12 NUMBER TWO, IT'S STILL CALLING FOR MATTERS
13 BEYOND THE WITNESS' PERSONAL KNOWLEDGE.

14 AND NUMBER THREE, IT'S ARGUMENTATIVE.

15 THE COURT: WELL, AS PHRASED IT IS.

16 PERHAPS YOU CAN ASK WHETHER OR NOT SHE DID
17 DO THIS.

18 MS. NAJERA: OKAY.

19 Q. WELL, YOU REMEMBER THE --

20 THE COURT: NOT WHAT SHE WOULD HAVE DONE, WHAT
21 SHE DID DO.

22 Q. BY MS. NAJERA: YOU WERE THE EXECUTIVE

23 PRODUCER OF THIS SEGMENT; IS THIS CORRECT?

24 A. OF THE PROGRAM.

25 Q. OKAY, THIS PROGRAM THAT CRAIG CIGNARELLI

26 APPEARED IN; IS THAT CORRECT?

27 IS THAT A YES? YOU HAVE TO ANSWER OUT

28 LOUD.

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1 A. YES.

2 Q. NOW, AS THE EXECUTIVE PRODUCER, IT WAS YOUR

3 JOB AND YOU WERE VERY CONCERNED ABOUT MAKING SURE THAT

4 ALL OF THE FACTS WERE AS YOU TESTIFIED TO PREVIOUSLY;

5 THAT EVERYTHING WAS RIGHT BEFORE YOU WENT ON THE AIR; IS

6 THAT CORRECT?

7 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE. CALLS

8 FOR SPECULATION.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: YES.

12 Q. BY MS. NAJERA: AND ONE OF THE THINGS THAT

13 YOU'VE TESTIFIED YOU WERE VERY CONCERNED ABOUT IS THAT

14 WHEN YOU WENT ON THE AIR AND MADE THIS ANNOUNCEMENT

15 THAT CRAIG CIGNARELLI GAVE A CONTRIBUTION TO A

16 CHARITABLE ORGANIZATION, YOU WANTED TO MAKE SURE THAT

17 THAT INFORMATION WAS ACCURATE; IS THAT CORRECT?

18 A. YES. I WANTED TO MAKE SURE THAT I HAD
19 PROOF THAT HE HAD MADE -- SOME SORT OF RECEIPT THAT HE
20 HAD MADE A DONATION TO A CHARITABLE ORGANIZATION.

21 Q. AND WHEN YOU WENT ON THE AIR, YOU ANNOUNCED
22 THAT HE HAD MADE A DONATION IN THE HOPES OF HELPING
23 GENUINELY ABUSED CHILDREN; IS THAT CORRECT?

24 A. IT YES.

25 Q. AND DID YOU CHECK THAT FACT TO MAKE SURE
26 THAT WAS TRUE?

27 A. ACCORDING TO THE LETTER THAT WE RECEIVED
28 FROM AN ORGANIZATION CALLED C.A.L.M. IT WAS A CHILD

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1 ABUSE ORGANIZATION, ACCORDING TO THE LETTER.

2 Q. NOW, SO WHEN CRAIG CIGNARELLI MADE THIS
3 DONATION, HE MADE IT TO AN ORGANIZATION THAT HELPED
4 CHILDREN WHO HAD BEEN ABUSED; IS THAT CORRECT?

5 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT CALLS
6 FOR MATTERS BEYOND HER PERSONAL KNOWLEDGE.

7 THE COURT: SUSTAINED.

8 THE OBJECTION IS SUSTAINED.

9 Q. BY MS. NAJERA: DID YOU RELY UPON
10 INFORMATION THAT HE HAD MADE A CONTRIBUTION TO AN
11 ORGANIZATION THAT HELPED GENUINELY ABUSED CHILDREN?

12 MS. ABRAMSON: OBJECTION, YOUR HONOR.

13 THE COURT: WE'VE ALREADY GONE OVER THIS.

14 Q. BY MS. NAJERA: AND THE BOTTOM -- WELL,
15 STRIKE THAT.
16 HE DIDN'T GIVE A -- TO YOUR KNOWLEDGE, HE
17 DIDN'T USE THIS MONEY TO GIVE A CHARITABLE CONTRIBUTION
18 TO AN ORGANIZATION THAT SAVED THE WHALES OR HELPED THE
19 SEALS OR DID ANYTHING ELSE; IS THAT CORRECT?

20 MS. ABRAMSON: OBJECTION. THAT'S BEEN ASKED AND
21 ANSWERED. MOREOVER, SHE DOESN'T REALLY KNOW.

22 THE COURT: SUSTAINED.

23 IT'S BEEN ASKED AND ANSWERED.

24 Q. BY MS. NAJERA: SO, YOU TESTIFIED THE
25 REASON HE GAVE THE CHARITABLE CONTRIBUTION IN THE FIRST
26 PLACE WAS BECAUSE HE DIDN'T WANT THIS BLACK MARK AGAINST
27 HIM. BUT DID HE EVER TELL YOU THE REASON WHY HE CHOSE,
28 OF ALL THE CHARITIES OUT THERE, A CHARITY THAT INVOLVED

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1 ABUSED CHILDREN?

2 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
3 TO THE FORM OF THE QUESTION, AND OBJECT THAT IT'S
4 CALLING FOR HEARSAY.

5 THE COURT: OVERRULED.

6 Q. BY MS. NAJERA: THAT MEANS YOU CAN ANSWER
7 THAT.

8 A. NO. I AM TRYING TO REMEMBER.

9 CAN YOU RESTATE QUESTION AGAIN?

10 Q. OKAY. DID HE TELL YOU WHY HE CHOSE TO MAKE
11 THIS CHARITABLE CONTRIBUTION TO AN ORGANIZATION THAT
12 HELPED GENUINELY ABUSED CHILDREN, AS OPPOSED TO ALL THE
13 OTHER CHARITABLE ORGANIZATIONS OUT THERE?

14 A. ARE YOU ASKING ME WHY HE CHOSE THIS
15 SPECIFIC ORGANIZATION?

16 THE COURT: NO. DID HE SAY WHY.

17 Q. BY MS. NAJERA: DID HE TELL YOU WHY?

18 A. WHY HE CHOSE THIS SPECIFIC ORGANIZATION?

19 Q. WHY HE CHOSE --

20 A. WHY HE CHOSE THIS ONE?

21 Q. WHAT I AM ASKING IS WHY HE CHOSE TO GIVE
22 HIS MONEY TO AN ORGANIZATION THAT HELPED ABUSED
23 CHILDREN.

24 DID HE TELL YOU THAT?

25 A. YES. HE TOLD ME HE -- WHEN WE FIRST WERE
26 TALKING, HE SAID THAT HE WANTED TO MAKE IT -- HE WANTED
27 TO CLEAR HIS -- HE WANTED TO MAKE SURE HE DIDN'T HAVE A
28 BLACK MARK ON HIS NAME WHEN HE WENT INTO POLITICS, AND

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1 HE WANTED TO GIVE MONEY TO AN ORGANIZATION THAT HELPED
2 GENUINELY ABUSED CHILDREN.

3 HE DID NOT STATE AT ANY POINT TO ME, THAT I
4 RECOLLECT, WHY HE CHOSE THIS SPECIFIC ORGANIZATION.

5 Q. BUT HE DID TELL YOU THAT HE WANTED -- ONE

6 OF THE REASONS THAT HE CHOSE THIS TYPE OF ORGANIZATION

7 WAS HE WANTED TO HELP GENUINELY ABUSED CHILDREN?

8 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT, YOUR
9 HONOR. I DON'T THINK THAT'S WHAT SHE SAID. MISSTATES
10 HER TESTIMONY.

11 THE COURT: OKAY. I THINK THIS HAS ALL BEEN
12 ASKED AND ANSWERED.

13 MS. ABRAMSON: THAT, TOO, YOUR HONOR.

14 THE COURT: SO IT'S BEEN COVERED.

15 Q. BY MS. NAJERA: NOW, AT THE CONCLUSION OF
16 YOUR NEGOTIATIONS, IT WAS AGREED THAT "HARD COPY" WOULD
17 PAY MR. CIGNARELLI \$25,000; IS THAT CORRECT?

18 A. YES.

19 Q. NOW, AND FROM THAT \$25,000, MR. CIGNARELLI
20 WAS TO PAY HIS TAX ON THAT; IS THAT CORRECT?

21 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S
22 BEYOND THE SCOPE. MOREOVER, BEYOND HER PERSONAL
23 KNOWLEDGE.

24 THE COURT: WAS IT PART OF THE CONVERSATION OR
25 DISCUSSION WITH MR. CIGNARELLI?

26 THE WITNESS: I HAVE NO KNOWLEDGE.

27 THE COURT: GO AHEAD.

28 THE WITNESS: I HAVE NO KNOWLEDGE. I HAVE NO WAY

1 TO ANSWER THAT QUESTION.

2 Q. BY MS. NAJERA: WELL, IN THE CONTRACT THAT
3 YOU WRITE UP, YOU STATE THAT IF A SOCIAL SECURITY NUMBER
4 ISN'T GIVEN, YOU WITHHOLD 31 PERCENT FOR TAX; IS THAT
5 RIGHT?

6 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT, YOUR
7 HONOR, AS IRRELEVANT.

8 THE COURT: SUSTAINED AS TO THE FORM OF THE
9 QUESTION.

10 Q. BY MS. NAJERA: DO YOU ACKNOWLEDGE IN YOUR
11 CONTRACT THAT THE INDIVIDUAL WHO IS GETTING PAID THIS
12 MONEY HAS TO PAY THE TAXES ON IT, MS. ELLMAN?

13 A. I NEED A COPY OF THE CONTRACT AGAIN IN
14 FRONT OF ME.

15 Q. SHOWING YOU WHAT HAS BEEN PREVIOUSLY
16 MARKED.

17 A. SHOW ME WHAT YOU'RE TALKING ABOUT HERE.

18 YES. ACCORDING TO THE CONTRACT AS IT READS
19 HERE; THAT IS, THAT'S AS IT STATES IN THAT CONTRACT.

20 Q. AND WHAT IT STATES IS THAT --

21 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
22 TO THIS AS IRRELEVANT.

23 THE COURT: WELL, I DON'T KNOW WHAT THE WITNESS
24 MEANT BY "THAT'S AS IT STATES," WHAT SHE MEANT.

25 MS. ABRAMSON: I THINK IT'S CALLING FOR HEARSAY
26 FROM THE CONTRACT, NUMBER ONE.

27 THE COURT: OVERRULED.

28 WHAT DID YOU MEAN IN YOUR ANSWER?

1 THE WITNESS: WHAT I MEAN IN RESPONSE -- WHAT THE
2 TERMS OF THAT SPECIFIC CONTRACT ARE, ARE WRITTEN IN THAT
3 SPECIFIC CONTRACT, AND THAT'S WHAT IT SAYS THERE IN THAT
4 CONTRACT. THAT'S WHAT THE INTENT WAS AT THE TIME.

5 THE COURT: THAT IS WHAT WHAT SAYS THERE IN THE
6 CONTRACT?

7 THE WITNESS: I NEED A COPY OF THE CONTRACT BACK
8 AGAIN.

9 MS. ABRAMSON: YOUR HONOR, I WOULD OBJECT AND ASK
10 THAT THE COURT TAKE A LOOK AT PARAGRAPH 8. IT'S JUST
11 NOT RELEVANT TO THE QUESTION.

12 THE COURT: WELL, OKAY.

13 MS. ABRAMSON: DO YOU HAVE A COPY, JUDGE?

14 THE COURT: PARAGRAPH 8 IS WHAT YOU SAID.

15 YES, I HEARD YOU.

16 MS. NAJERA: AND FOR THE RECORD, YOUR HONOR,
17 THAT'S WHAT THE WITNESS WAS LOOKING AT.

18 THE COURT: ALL RIGHT.

19 YOU MAY SHOW IT TO THE WITNESS.

20 MS. NAJERA: THANK YOU, YOUR HONOR.

21 THE WITNESS: ACCORDING TO THE TERMS OF THIS
22 INDIVIDUAL CONTRACT, IT STATES THAT IF --

23 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
24 TO THIS AS NOT RESPONSIVE TO THE QUESTION.

25 THE COURT: OVERRULED.

26 MS. NAJERA: GO AHEAD.

27 THE WITNESS: IT SAYS IF THE SOCIAL SECURITY
28 NUMBER IS INCOMPLETE OR IS INCORRECT, THAT PARAMOUNT HAS

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1 THE OBLIGATION TO WITHHOLD 31 PERCENT FROM ALL PAYMENTS
2 DUE TO HIM FOR INCOME TAX PURPOSES.

3 MS. NAJERA: OKAY.

4 Q. NOW, LET ME ASK YOU, MS. ELLMAN.

5 SO IN OTHER WORDS, MR. CIGNARELLI WAS
6 OBLIGATED TO PAY INCOME TAX ON THIS MONEY; IS THAT
7 CORRECT? HE DIDN'T -- THIS WASN'T A \$25,000 GIFT FROM
8 "HARD COPY"?

9 MS. ABRAMSON: I AM GOING TO OBJECT TO THAT ALSO
10 AS IRRELEVANT, BUT BEYOND THAT SHE DOESN'T KNOW WHAT HIS
11 TAX STATUS IS.

12 THE COURT: SUSTAINED.

13 THE OBJECTION IS SUSTAINED.

14 Q. BY MS. NAJERA: NOW, YOU PAID HIM IN A
15 CHECK; IS THAT RIGHT?

16 A. YES.

17 Q. AND IT WAS A CHECK FOR \$25,000?

18 A. YES.

19 Q. AND MS. ABRAMSON ASKED YOU SOME QUESTIONS
20 ABOUT MR. CIGNARELLI. I BELIEVE HE WANTED YOU TO -- YOU
21 SAID THAT HE CALLED AND SAID IF YOU COULD PLEASE SEND
22 HIM HIS CHECK; IS THAT RIGHT?

23 MS. ABRAMSON: OBJECTION, YOUR HONOR. MISSTATES
24 HER TESTIMONY.
25 THE COURT: ALL RIGHT. IN GENERAL THAT WAS THE
26 NATURE OF THE EXAMINATION.
27 OVERRULED.
28 DO YOU RECALL THAT?

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1 THE WITNESS: YES. THAT HE WANTED HIS CHECK
2 RIGHT AWAY.
3 Q. BY MS. NAJERA: NOW, WAS THIS HIS MONEY?
4 MS. ABRAMSON: OBJECTION, YOUR HONOR.
5 Q. BY MS. NAJERA: WAS THIS CHECK HIS MONEY?
6 THE COURT: PERHAPS YOU CAN BE MORE CLEAR AS TO
7 WHAT YOU MEAN.
8 Q. BY MS. NAJERA: WELL, WHEN YOU SAY HE
9 WANTED -- HE WANTED THE CHECK RIGHT AWAY, WAS THE
10 CONTRACT COMPLETED? I MEAN, YOU HAD SIGNED ON ALL THE
11 PAPERS AND AGREED TO THE AMOUNT?
12 A. THAT IS TRUE.
13 Q. AND WAS THIS HIS \$25,000?
14 A. IT WAS THE AMOUNT THAT HAD BEEN AGREED TO
15 BE PAID, YES.
16 Q. AND WAS THERE ANYTHING WRONG WITH HIM
17 ASKING FOR HIS \$25,000?
18 A. I DON'T THINK SO, NO.

19 Q. OKAY. AND WHEN MS. ABRAMSON ASKED YOU
20 THESE QUESTIONS ABOUT HOW YOU DIDN'T MAIL IT, YOU SENT
21 IT TO HIM, WAS THERE ANYTHING IMPROPER WITH THAT?

22 A. HE WAS PRESSURING US TO GET IT TO HIM VERY
23 QUICKLY.

24 MS. NAJERA: I AM GOING OBJECT AS NONRESPONSIVE.
25 THE QUESTION I ASKED WAS IS THERE ANYTHING IMPROPER WITH
26 THAT.

27 MS. ABRAMSON: YOUR HONOR, I THINK THE WITNESS
28 SHOULD BE PERMITTED TO ANSWER THE QUESTION.

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1 THE COURT: OKAY. THE OBJECTION IS SUSTAINED AS
2 TO THE FORM OF THE QUESTION, AND ALSO THE OBJECTION IS
3 SUSTAINED TO THE ANSWER AS NONRESPONSIVE.

4 SO, REPHRASE THE QUESTION. IT REALLY CALLS
5 FOR A CONCLUSION ON THE PART OF THE WITNESS AS TO WHAT
6 IS PROPER OR IMPROPER.

7 Q. BY MS. NAJERA: EVERY TIME THAT YOU SEND
8 OFF MONEY, DO YOU ALWAYS MAIL IT?

9 MS. SAGER: OBJECTION, YOUR HONOR. CALLS FOR
10 INFORMATION PROTECTED BY THE PRIVILEGE.

11 THE COURT: SUSTAINED.

12 Q. BY MS. NAJERA: WAS THERE ANYTHING OUT OF
13 THE ORDINARY ABOUT SENDING -- WELL, STRIKE THAT.

14 WAS THERE ANYTHING ILLEGAL, IMMORAL, OR

15 WRONG ABOUT SENDING HIM THE CHECK BY WAY OF COURIER?

16 A. SENDING HIM THE CHECK VIA COURIER INCURRED

17 A COST TO US WHICH WAS NOT A COST WE HAD AN EXPECTATION
18 OF INCURRING IN THIS SPECIFIC CASE -- INCIDENT.

19 Q. WAS THERE ANYTHING ILLEGAL ABOUT IT?

20 A. THERE IS NOTHING ILLEGAL ABOUT IT.

21 Q. WAS ANYTHING THAT HE DID WRONG? WHAT WAS
22 WRONG ABOUT THIS?

23 A. IT WAS -- HE ASKED US TO SEND IT TO HIM IN
24 A FASTER FASHION THAN WAS ANTICIPATED BY US WHEN WE MADE
25 THE AGREEMENT.

26 Q. I UNDERSTAND THAT, AND I UNDERSTAND THAT
27 THAT MIGHT HAVE BEEN INCONVENIENT FOR "HARD COPY".
28 BUT WHAT I WAS ASKING YOU IS WAS THAT

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1 WRONG?

2 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
3 TO COUNSEL'S STATEMENT. THAT'S NOT A QUESTION.

4 THE COURT: ALL RIGHT.

5 RE-ASK THE QUESTION, PLEASE.

6 Q. BY MS. NAJERA: WHAT IS WRONG --

7 MS. ABRAMSON: I AM GOING TO OBJECT, YOUR HONOR,
8 AGAIN. "WRONG" IS VERY VAGUE.

9 THE COURT: SUSTAINED.

10 Q. BY MS. NAJERA: DID IT IRRITATE YOU THAT HE

11 ASKED FOR THE MONEY -- ASKED FOR YOU TO GET HIM THE
12 MONEY QUICKER THAN YOU NORMALLY DO; IS THAT CORRECT?
13 A. WELL, MY CONCERN IS ON THE PRIVILEGE --
14 REPORTER'S PRIVILEGE THERE ARE CERTAIN THINGS SPECIFIC
15 TO THIS CASE THAT I AM WILLING TO ANSWER. I DON'T WANT
16 TO GET INTO ROUNDS OF "ORDINARILY DO" AND ALL OF THAT.
17 SPECIFICALLY ON THIS CASE, SPECIFICALLY IN
18 THIS INCIDENT, WE HAD MADE AN AGREEMENT WITH HIM TO PAY
19 HIM.
20 IN THE NORMAL PROCESS OF PAYMENT, IT TAKES
21 TIME TO PROCESS A CHECK. WHEN I COMPLETED THIS
22 CONTRACT, IT TAKES A CERTAIN AMOUNT OF TIME FOR IT TO GO
23 THROUGH ITS CHANNELS FOR PAYMENT. HE WAS EXPECTING
24 PAYMENT PRIOR TO THE NORMAL CHANNELS THAT I GO THROUGH.
25 WHETHER I AM PAYING A PAY CHECK TO ONE OF
26 MY EMPLOYEES, OR TO ANYBODY, IT'S A CERTAIN -- THERE
27 IS -- YOU KNOW, I DON'T HAVE A CHECKBOOK SITTING THERE
28 AND I AM NOT WRITING CHECKS.

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1 AND SO IT WAS NOT -- HE WANTED IT SOONER
2 THAN THE NORMAL PAYMENT PROCESS THAT THIS CONTRACT WOULD
3 CALL FOR.

4 Q. WELL, HE WANTED IT AFTER IT WAS WRITTEN,
5 RIGHT?

6 A. THERE WERE -- THERE WAS NOTHING IN THE

7 TERMS OF THE CONTRACT THAT DEMANDED PAYMENT ON A CERTAIN
8 DAY.

9 Q. HAD HE GONE DOWN TO "HARD COPY" AFTER THE
10 CHECK WAS WRITTEN AND YOU HAD IT IN YOUR HAND BEFORE YOU
11 MAILED IT, WOULD YOU HAVE LET HIM PICK IT UP?

12 A. IF I HAD HAD IT IN MY HAND, I WOULD HAVE
13 GIVEN IT TO HIM, YES.

14 Q. SO THERE WAS NO SET WAY THAT YOU ABSOLUTELY
15 HAD TO MAIL IT TO HIM, AS OPPOSED TO GIVING IT TO HIM,
16 OR SENDING IT WITH A COURIER, OR HIM HAVING A FRIEND
17 PICK IT UP, OR HIM PICKING IT UP?

18 MS. SAGER: YOUR HONOR, I AM GOING TO OBJECT. I
19 THINK THIS HAS BEEN COVERED, AND IT'S ARGUMENTATIVE AND
20 HARASSING THE WITNESS.

21 THE COURT: CERTAINLY IT IS ARGUMENTATIVE AS
22 PHRASED.

23 ASK SOMETHING ELSE. ASK ANOTHER QUESTION,
24 PLEASE.

25 Q. BY MS. NAJERA: NOW, YOU HAVE TESTIFIED
26 THAT LINDA BELL-BLUE IS ANOTHER EXECUTIVE PRODUCER AT
27 "HARD COPY"; IS THAT CORRECT?

28 A. YES.

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1 Q. AND WHAT WERE HER DUTIES BACK IN -- ON THIS
2 SHOW THAT MR. CIGNARELLI WAS INVOLVED IN?

3 MS. ABRAMSON: OBJECTION, YOUR HONOR.

4 IRRELEVANT.

5 THE COURT: OVERRULED.

6 MS. SAGER: I AM GOING TO ADD AN OBJECTION, YOUR
7 HONOR, THAT IT'S WITHIN THE SCOPE OF THE PRIVILEGE WHAT
8 LINDA BELL-BLUE DID ON THE SHOW OTHER THAN HER TITLE.

9 THE COURT: AS TO WHAT SHE DID IN RELATIONSHIP TO
10 THIS TRANSACTION, IT'S CLEARLY WITHIN THE SCOPE.

11 OVERRULED.

12 MS. SAGER: I DON'T BELIEVE THE QUESTION WAS
13 LIMITED TO THIS TRANSACTION.

14 THE COURT: IT'S LIMITED TO THIS TRANSACTION

15 MS. ABRAMSON: THAT WASN'T THE QUESTION. THAT'S
16 WHY I OBJECTED.

17 THE COURT: THAT'S WHAT IT'S GOING TO BE LIMITED
18 TO.

19 THE WITNESS: OKAY. SO WOULD YOU RESTATE THE
20 QUESTION FOR ME, PLEASE.

21 MS. NAJERA: CERTAINLY.

22 Q. CAN YOU TELL ME ME WHAT LINDA BELL-BLUE'S
23 DUTIES WERE WITH REGARD TO THIS INCIDENT WE'RE TALKING
24 ABOUT, THIS "HARD COPY" PROGRAM?

25 A. WITH REGARDS TO CRAIG CIGNARELLI -- THE
26 NEGOTIATION OF THE CONTRACT WITH CRAIG CIGNARELLI?

27 Q. NO. WHAT I AM ASKING YOU IS WHAT WAS LINDA
28 BELL-BLUE'S JOB? WHAT WAS HER JOB, WHAT WERE HER DUTIES

1 WITH REGARD TO THIS SEGMENT OF "HARD COPY" THAT YOU
2 PRODUCED INVOLVING CRAIG CIGNARELLI?

3 MS. SAGER: SAME OBJECTION, YOUR HONOR. IT GOES
4 BEYOND THE SCOPE OF WHAT THIS WITNESS IS TESTIFYING
5 ABOUT.

6 THE COURT: NO, IT DOESN'T.

7 OVERRULED.

8 THE WITNESS: I WANT TO MAKE SURE I HAVE AN
9 UNDERSTANDING OF WHAT YOU MEAN BY THIS SEGMENT VERSUS
10 THE SHOW.

11 IN TERMS OF WHAT HER RESPONSIBILITY IS IN
12 TERMS OF THIS INDIVIDUAL ARRANGEMENT WITH CRAIG
13 CIGNARELLI; IS THAT WHAT YOU'RE ASKING ME, RELATED TO
14 THIS?

15 Q. BY MS. NAJERA: I'M ASKING YOU WHAT WERE
16 HER DUTIES WITH REGARD TO THE SHOW THAT CRAIG CIGNARELLI
17 WAS IN?

18 A. WHAT WERE HER DUTIES REGARDING THE SHOW
19 IS -- OKAY. SHE GOES INTO THE CONTROL ROOM --

20 MS. SAGER: YOUR HONOR, I MUST OBJECT TO WHAT
21 MS. BELL DID ON THE SHOW IN GENERAL AS OPPOSED TO WHAT
22 SHE DID IN REGARD TO MR. CIGNARELLI.

23 THE COURT: THAT'S YOUR WITNESS' PROBLEM. SHE IS
24 NOT ANSWERING THE QUESTION THAT'S BEEN ASKED.

25 MS. SAGER: I THINK SHE IS.

26 MS. ABRAMSON: YOUR HONOR, I MOVE TO STRIKE THE
27 ANSWER.

-15211

1 YOUR HONOR.

2 THE COURT: IT'S SIMPLE. WHAT WAS THIS LADY'S
3 JOB IN REGARDS TO THIS SHOW WE HAVE BEEN TALKING ABOUT?
4 PURELY THIS SHOW. NOT ANY OTHER SHOW. NOT ANY OTHER
5 SHOW, THIS ONE.

6 MS. ABRAMSON: YOUR HONOR, I THINK WE ARE TALKING
7 ABOUT A SEGMENT OF THE SHOW, AND THAT'S THE PROBLEM.

8 THE COURT: IF THERE WAS MORE THAN ONE SEGMENT
9 RELATED TO MR. CIGNARELLI, JUST MR. CIGNARELLI'S
10 INVOLVEMENT IN THIS SHOW.

11 WHAT WAS HER JOB? WHAT DID SHE DO?

12 THE WITNESS: SHE JOINED ME IN CONCEPTUALLY
13 APPROVING THE AMOUNT OF MONEY TO BE PAID. SHE WAS PART
14 OF MY CONSULTATION PROCESS.

15 I CONDUCTED THE NEGOTIATIONS.

16 Q. BY MS. NAJERA: AND WHAT DOES IT MEAN TO
17 CONCEPTUALLY APPROVE AN AMOUNT?

18 A. WE AGREED TOGETHER ON HOW MUCH WE WOULD
19 PAY. WE WERE A PARTNERSHIP, AND AS PARTNERS, I TOLD HER
20 WHAT I HAD -- ABOUT THE DEAL, AND SHE SAID FINE.

21 Q. NOW --

22 A. I COVERED HER OFF ON IT.

23 Q. NOW, WHEN YOU SAY -- WELL, DID MS. BLUE

24 MEET MR. CIGNARELLI?

25 A. YES.

26 Q. AND WHEN DID THEY MEET?

27 A. WHEN MR. CIGNARELLI CAME TO THE OFFICE, HE

28 CAME TO MEET WITH US. HE CAME INTO -- INTO THE OFFICE

-15210

1 COMPLEX, TO OUR OFFICES, TO THE EXECUTIVE SUITE.

2 I GREETED HIM. I TOOK HIM INTO LINDA'S

3 OFFICE TO INTRODUCE HIM TO LINDA, AS MY PARTNER. THEY

4 SHOOK HANDS. SHE GAVE HIM A BUSINESS CARD, AND WE DID

5 THE FRIENDLY HELLOS. SAID "HELLO, NICE TO MEET YOU,"

6 AND LINDA LEFT.

7 Q. NOW, HOW MANY TIMES DID MR. CIGNARELLI COME

8 INTO YOUR OFFICE?

9 A. I RECALL ONLY ONE TIME SPECIFICALLY THAT HE

10 WAS THERE. THERE MAY HAVE BEEN A SECOND TIME. I DON'T

11 REMEMBER WHETHER IT WAS A PHONE CONVERSATION OR A

12 CONVERSATION IN PERSON.

13 Q. WELL, HOW MANY PHONE CONVERSATIONS DID YOU

14 HAVE WITH MR. CIGNARELLI?

15 A. EITHER TWO OR THREE. SOMETHING LIKE THAT.

16 Q. DO YOU KNOW IF MS. BLUE -- MS. LINDA

17 BELL-BLUE MET WITH MR. CIGNARELLI WITHOUT YOUR BEING

18 PRESENT?

19 A. I HAVE NO KNOWLEDGE OF THAT.

20 Q. SO YOU HAVE NO KNOWLEDGE OF ANY MEETINGS

21 THEY MAY OR MAY NOT HAVE?

22 A. SHE NEVER TOLD ME SHE HAD ANY MEETING WITH

23 HIM OTHER THAN THE MEETING THAT I HAD.

24 Q. SO YOU DO NOT KNOW IF SHE MADE ANY OFFERS

25 TO HIM OR HAD ANY DISCUSSIONS WITH HIM CONCERNING

26 NEGOTIATIONS?

27 TO THE BEST OF YOUR KNOWLEDGE, YOU DON'T

28 KNOW?

-15209

1 A. OTHER THAN WHEN I WAS PRESENT IN THE ROOM

2 AT THE SAME TIME, I HAVE NO KNOWLEDGE.

3 Q. AND WHEN YOU WERE DISCUSSING EVENTS WITH

4 HIM CONCERNING THE NEGOTIATIONS AS TO HOW MUCH HE WAS

5 GOING TO BE PAID, DO YOU RECALL WHAT YOU SAID TO START

6 OFF THE CONVERSATION, WHAT WAS SAID?

7 A. "HELLO."

8 Q. OKAY. WHAT WAS SAID ABOUT THE

9 NEGOTIATIONS?

10 A. I DON'T RECALL SPECIFICALLY, BUT IT WOULD

11 BE -- SPECIFICALLY WHAT DO YOU MEAN, IN REGARDS TO WHAT

12 ASPECTS OF THE NEGOTIATIONS?

13 Q. STARTING FROM THE BEGINNING OF THE

14 NEGOTIATIONS, AS TO HOW MUCH HE WOULD GET PAID, WHAT WAS

15 SAID?

16 DO YOU RECALL WHAT WAS SAID?

17 A. I RECALL -- I RECALL HAVING A SOCIAL

18 CONVERSATION WHERE HE WAS INQUIRING ABOUT THE NEWSPAPER

19 REPORTS, ABOUT HOW MUCH MONEY PEOPLE WERE GETTING PAID

20 FOR STORIES ON OTHER PROGRAMS, AND I RECALL LAUGHING

21 ABOUT THAT. I RECALL HAVING A GENERAL CONVERSATION WITH

22 HIM ABOUT THAT, ABOUT THOSE NEWSPAPER ARTICLES.

23 I RECALL -- WHAT I DON'T RECALL IS I DON'T

24 RECALL HOW MUCH MONEY HE INITIALLY ASKED FOR, OR IF HE

25 MADE AN INITIAL REQUEST FOR AN AMOUNT OF MONEY. I DO

26 NOT RECALL THAT.

27 Q. LET'S TAKE THAT -- THERE'S TWO THINGS

28 THERE.

-15208

1 FIRST OF ALL, WITH REGARDS TO INITIALLY

2 ASKING FOR MONEY, DO YOU REMEMBER IF CRAIG CIGNARELLI

3 EVER ASKED FOR AN AMOUNT?

4 A. I RECALL THAT HE SAID HE WANTED TO BE

5 COMPENSATED FOR EXCLUSIVITY.

6 Q. WHAT I ASKED IS DO YOU RECALL WHETHER OR

7 NOT HE ASKED FOR A PARTICULAR AMOUNT?

8 A. I DON'T RECALL THE AMOUNT HE ASKED FOR.

9 Q. DO YOU REMEMBER THAT HE EVEN ASKED FOR AN

10 AMOUNT?

11 A. I DON'T RECALL A SPECIFIC AMOUNT THAT HE

12 ASKED FOR. I DO RECALL THAT HE WANTED TO BE

13 COMPENSATED. HE EXPECTED TO BE COMPENSATED FOR

14 EXCLUSIVITY.

15 Q. AND WHAT I AM ASKING YOU, MS. ELLMAN, IS DO

16 YOU REMEMBER AS YOU SIT THERE WHETHER OR NOT CRAIG

17 CIGNARELLI EVEN CAME IN AND ASKED FOR A PARTICULAR

18 AMOUNT OF MONEY?

19 A. HE ASKED FOR MONEY. I DON'T REMEMBER THE

20 PARTICULAR AMOUNT.

21 Q. YOUR TESTIMONY NOW IS THAT HE ASKED FOR

22 MONEY?

23 A. HE WANTED TO BE COMPENSATED. HE WANTED TO

24 BE COMPENSATED.

25 Q. NO. I AM ASKING YOU A DIFFERENT THING.

26 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT

27 TO COUNSEL ARGUING.

28 THE COURT: OKAY. BOTH THE WITNESS AND COUNSEL

-15207

1 ARE TALKING AT THE SAME TIME.

2 SO ONE AT A TIME, AND JUST ASK A QUESTION

3 WITHOUT TRYING TO SUGGEST ANYTHING. JUST ASK A

4 QUESTION.

5 Q. BY MS. NAJERA: MS. ELLMAN, YOU TESTIFIED

6 EARLIER AT A HEARING IN THIS COURT THAT IT WAS YOUR

7 RECOLLECTION THAT YOU DID NOT RECALL -- AND THIS IS

8 UNDER QUESTIONING BY JUDGE WEISBERG -- WHETHER OR NOT
9 MR. CIGNARELLI CAME IN AND ACTUALLY ASKED FOR AN AMOUNT.

10 DO YOU REMEMBER THAT TESTIMONY?

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
12 MISSTATES THE PREVIOUS TESTIMONY.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DO NOT RECALL -- AS I TESTIFIED
15 BEFORE, I DON'T RECALL HIM ASKING FOR A SPECIFIC AMOUNT
16 OF MONEY. I DON'T KNOW HOW MUCH MONEY HE ASKED FOR. I
17 HAVE NO RECOLLECTION OF HOW MUCH MONEY HE CAME IN AND
18 ASKED FOR.

19 I DO RECALL THAT HE WANTED TO BE
20 COMPENSATED.

21 Q. NOW, WHEN YOU SAY HE WANTED TO BE
22 COMPENSATED, HE CAME IN THERE EXPECTING TO BE PAID FOR
23 HIS WORK ON "HARD COPY", CORRECT?

24 A. HE CAME IN --

25 Q. IS THAT A YES OR A NO? DID HE COME IN
26 EXPECTING TO GET PAID FOR HIS WORK ON "HARD COPY"?

27 MS. ABRAMSON: I AM GOING TO OBJECT TO THE FORM
28 OF THE QUESTION.

-15206

1 THE COURT: IT CALLS FOR A CONCLUSION ON THE PART
2 OF THE WITNESS AS TO WHAT HE EXPECTED.

3 MS. ABRAMSON: RIGHT.

4 THE COURT: THANK YOU FOR YOUR APPROVAL.

5 MS. ABRAMSON: THAT'S WHAT I MEANT TO SAY, YOUR
6 HONOR.

7 THE COURT: YOUR NEXT QUESTION, PLEASE.

8 Q. BY MS. NAJERA: IS IT YOUR TESTIMONY NOW
9 THAT HE CAME IN AND ASKED FOR MONEY?

10 A. I DIDN'T SAY HE ASKED FOR A SPECIFIC AMOUNT
11 OF MONEY. I SAID HE -- I RECALL THAT WE WERE TALKING
12 ABOUT DOING AN INTERVIEW WITH HIM, AND FOR EXCLUSIVITY
13 FOR THAT INTERVIEW HE WANTED TO BE COMPENSATED. I DON'T
14 RECALL THE EXACT AMOUNT. HE INDICATED THAT HE WOULD NOT
15 DO THIS INTERVIEW AND OFFER HIS EXCLUSIVITY WITHOUT
16 BEING COMPENSATED.

17 IT WAS NOT -- IT WAS A DISCUSSION ABOUT HOW
18 MUCH THE COMPENSATION WOULD BE, AND I DO NOT RECALL HOW
19 MUCH THE COMPENSATION -- HOW MUCH HE ASKED FOR.

20 Q. DO YOU KNOW IF HE EVEN ASKED FOR A SPECIFIC
21 AMOUNT?

22 A. I DON'T RECALL HIM ASKING FOR A SPECIFIC
23 AMOUNT.

24 Q. SO HE MAY VERY WELL HAVE COME IN AND TALKED
25 TO YOU ABOUT BEING COMPENSATED AND NEVER ASKED FOR A
26 SPECIFIC AMOUNT OF MONEY.

27 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS FOR
28 SPECULATION.

1 THE COURT: OVERRULED.

2 THE WITNESS: CAN YOU RESTATE THE QUESTION,
3 PLEASE.

4 MS. NAJERA: CAN YOU READ BACK THE QUESTION,
5 PLEASE.

6 THE COURT: JUST RESTATE IT.

7 MS. NAJERA: OKAY.

8 Q. MS. ELLMAN, IS IT YOUR TESTIMONY THAT YOU
9 DON'T RECALL WHETHER OR NOT HE CAME IN, OR IF HE CAME
10 IN -- LET ME RESTATE THAT AGAIN.

11 MR. CIGNARELLI CAME IN AND DISCUSSED
12 GETTING COMPENSATED FOR THIS STORY WITH YOU.

13 IS IT YOUR TESTIMONY YOU DON'T RECALL
14 WHETHER OR NOT HE EVEN SAID ANY AMOUNT THAT HE WOULD
15 WANT TO BE RECOMPENSATED FOR?

16 A. HE WANTED TO BE COMPENSATED FOR -- HE CAME
17 IN AND WANTED TO BE COMPENSATED FOR EXCLUSIVITY.

18 WE TALKED ABOUT IT. I DON'T RECALL HOW
19 MUCH. I DON'T -- -- I DON'T REMEMBER THE FIGURES THAT
20 WERE TOSSED AROUND OR DISCUSSED AT THE TIME. I HAVE NO
21 RECOLLECTION OF THAT. I APOLOGIZE. I'D LIKE TO BE ABLE
22 TO TELL YOU I REMEMBER HOW MUCH.

23 I JUST KNOW -- I DO REMEMBER HE WANTED TO
24 BE COMPENSATED, AND I KNOW THAT. I DON'T RECALL WHAT HE
25 ASKED FOR. I DON'T RECALL WHAT HE ASKED FOR.

26 Q. NOW, WHEN YOU SAY YOU DON'T RECALL HOW
27 MUCH, IT IMPLIES THAT HE -- THAT YOU RECALL THAT HE DID
28 ASK FOR A PARTICULAR AMOUNT.

1 NOW, YOU TESTIFIED PREVIOUSLY THAT YOU
2 DON'T RECALL WHETHER HE ASKED FOR A PARTICULAR AMOUNT.
3 IS THAT CORRECT OR NOT?

4 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT'S
5 COMPOUND AND ARGUMENTATIVE.

6 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

7 Q. BY MS. NAJERA: WHEN YOU SAY YOU DON'T
8 RECALL HOW MUCH, ARE YOU IMPLYING THAT HE DID COME IN
9 AND ASK FOR A PARTICULAR AMOUNT?

10 A. NO. I AM SAYING HE WAS THERE ASKING FOR
11 COMPENSATION, OR WE WOULDN'T BE ENTERING INTO -- WE
12 WOULDN'T HAVE ENTERED INTO AN EXCLUSIVITY AGREEMENT SUCH
13 AS THIS.

14 Q. OKAY. SO WHEN YOU SAY YOU DON'T RECALL HOW
15 MUCH, YOU DON'T MEAN TO IMPLY THAT HE CAME IN THERE AND
16 SAID: "I WANT 'X' AMOUNT OF DOLLARS" AT ANY TIME?

17 A. I AM SAYING HE WAS ASKING FOR DOLLARS. I
18 DON'T REMEMBER HOW MANY DOLLARS.

19 Q. SO NOW YOU'RE SAYING YOU RECALL HE WAS
20 ASKING FOR A PARTICULAR AMOUNT?

21 A. NO. I DON'T REMEMBER IF HE STATED A
22 PARTICULAR AMOUNT. WHAT I RECALL IS THAT HE WANTED --
23 HE WANTED MONEY TO BE COMPENSATED FOR THIS. I DON'T
24 RECALL WHETHER HE SAID HE WANTED \$500,000 OR \$25,000 OR
25 \$35,000. I DON'T RECALL HOW MUCH HE ASKED FOR.

26 BUT HE WAS ASKING FOR AN AMOUNT THAT -- HE
27 WAS -- HE WAS ASKING TO BE COMPENSATED FOR THE
28 INTERVIEW.

-15203

1 Q. AND YOU DON'T EVEN RECALL IF HE EVEN ASKED
2 FOR 30,000, 50,000 OR 100,000; IS THAT CORRECT?

3 A. I DON'T RECALL, AS I SAY, ANY OF THE
4 SPECIFICS OF HOW MUCH MONEY HE MAY HAVE ASKED FOR.

5 Q. SO YOU DON'T RECALL WHETHER HE -- YOU KNOW
6 HE ASKED -- THAT HE WAS IN THERE TO GET A CERTAIN
7 AMOUNT, BUT YOU DON'T RECALL IF HE EVER THREW OUT ANY
8 NUMBERS WHATSOEVER?

9 A. I DIDN'T SAY HE WAS IN THERE TO GET A
10 CERTAIN AMOUNT. I SAID HE WAS IN THERE ASKING FOR
11 COMPENSATION. I DON'T RECALL HOW MUCH COMPENSATION HE
12 WAS ASKING FOR.

13 Q. SO IS IT FAIR TO SAY THAT, AS FAR AS YOU
14 RECALL, HE MIGHT NOT HAVE MENTIONED ANY NUMBER AT ALL?

15 MS. ABRAMSON: CALLS FOR SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: I DON'T RECALL WHETHER HE ASKED FOR
18 A SPECIFIC AMOUNT OR NOT. BUT MY RECOLLECTION IS THAT
19 HE ASKED FOR AN AMOUNT ABOVE THE AMOUNT THAT WE SETTLED
20 ON. THAT WOULD BE MY RECOLLECTION.

21 Q. BY MS. NAJERA: WELL, HOW MUCH, IF YOU

22 RECALL?

23 A. I DON'T REMEMBER.

24 Q. IF YOU RECALL THIS, HOW MUCH?

25 A. I DON'T REMEMBER.

26 Q. DO YOU REMEMBER EARLIER TESTIFYING THAT YOU
27 DIDN'T RECALL A SPECIFIC AMOUNT, WHETHER IT WAS ABOVE OR
28 NOT?

-15202

1 A. I AM --

2 MS. ABRAMSON: OBJECTION, YOUR HONOR, TO THE FORM
3 OF THE QUESTION.

4 THE COURT: OVERRULED.

5 THE WITNESS: I REALLY -- I DON'T REMEMBER HOW
6 MUCH HE ASKED FOR. I KNOW HE WANTED TO BE COMPENSATED.
7 I KNOW THAT -- I KNOW THAT I DID NOT COMPENSATE HIM WITH
8 MORE MONEY THAN HE WAS ASKING FOR. THAT IS NOT -- I
9 KNOW I DIDN'T DO THAT.

10 Q. NOW, YOU KEEP SAYING YOU KNOW YOU DIDN'T
11 OFFER HIM MORE THAN HE WAS ASKING FOR, WHICH IMPLIES
12 THAT HE ASKED FOR A CERTAIN AMOUNT.

13 NOW, IS THAT WHAT YOU'RE TRYING TO SAY, IS
14 WHAT I'M ASKING YOU, OR ARE YOU --

15 A. WHAT I AM TELLING YOU IS I DON'T RECALL THE
16 FIGURES THAT WERE DISCUSSED AND HOW MUCH MONEY HE
17 WANTED. WHAT I DO KNOW IS THAT -- I JUST DON'T RECALL

18 THE FIGURES.

19 Q. WELL, YOU SAID THAT THE MOST YOU COULD PAY
20 WAS \$25,000; IS THAT RIGHT?

21 A. RIGHT.

22 Q. SO YOU WOULD HAVE LIKED TO HAVE PAID LESS
23 THAN \$25,000, CORRECT?

24 A. I DON'T -- SAY THAT AGAIN.

25 Q. YOU WOULD HAVE LIKED TO HAVE PAID HIM LESS
26 THAN \$25,000?

27 A. YES. I'M THINKING ABOUT IT, BUT YES.

28 Q. HOW --

-15201

1 A. I'M TRYING TO TAKE MYSELF BACK TO THE
2 MOMENT OF TIME IT WAS GOING ON. YES, I'D LIKE TO HAVE.
3 YES.

4 Q. AND THAT WOULD HAVE BEEN A GOOD BUSINESS
5 PRACTICE, IT WOULD HAVE SHOWN THAT YOU KNEW THAT YOU
6 WERE NEGOTIATING, AND IF YOU HAD NEGOTIATED LESS THAN
7 YOU HAD, I AM SURE YOUR BOSS AT "HARD COPY" WOULD HAVE
8 SAID "GOOD JOB," RIGHT?

9 MS. ABRAMSON: OBJECT TO THE FORM OF THE
10 QUESTION.

11 THE COURT: IT IS ARGUMENTATIVE AS PHRASED.

12 Q. BY MS. NAJERA: WOULD IT NOT HAVE BEEN
13 MORE -- WOULDN'T YOU HAVE LOOKED BETTER TO YOUR BOSS UP

14 AT "HARD COPY" IF YOU HAD MANAGED TO PAY HIM LESS THAN

15 YOU ABSOLUTELY HAD TO?

16 MS. ABRAMSON: OBJECTION. IRRELEVANT.

17 THE COURT: WHY DON'T YOU REPHRASE THE QUESTION.

18 Q. BY MS. NAJERA: WELL, YOU TESTIFIED THAT

19 YOU WOULD HAVE LIKED TO HAVE PAID HIM LESS THAN \$25,000;

20 IS THAT RIGHT?

21 A. MM-HMM.

22 Q. IS THAT A YES?

23 A. YES.

24 Q. OKAY. AND IF YOU HAD MANAGED TO DO THAT,

25 THAT WOULD HAVE LOOKED -- THAT WOULD HAVE MADE YOU LOOK

26 LIKE A BETTER NEGOTIATOR, CORRECT?

27 A. NOT NECESSARILY, NO. THAT'S NOT

28 NECESSARILY CORRECT.

-15200

1 Q. HOW DID YOU ARRIVE AT THE FIGURE OF \$25,000

2 WITH MR. CIGNARELLI? WHAT WAS THE NEGOTIATION THAT WENT

3 ON?

4 A. I DON'T RECALL THE SPECIFICS OF THE

5 NEGOTIATION WITH MR. CIGNARELLI.

6 I DO KNOW THAT I HAD NO MORE MONEY THAN

7 THAT TO SPEND, SO I KNOW THAT I COULDN'T GO ANY HIGHER

8 THAN THAT, BECAUSE I DIDN'T HAVE ANY MORE TO SPEND.

9 Q. SO, WHAT I AM ASKING YOU IS WHAT WAS --

10 WHAT DO YOU RECALL ABOUT THESE NEGOTIATIONS?

11 DID YOU START TALKING ABOUT WHAT YOU HAD

12 PAID OTHER PEOPLE? DID YOU START TALKING ABOUT HOW MUCH

13 THIS MIGHT BE WORTH, AND WHITTLE HIM DOWN TO \$25,000?

14 WHAT DID YOU DO?

15 A. I THINK I HAVE ALREADY ANSWERED THIS

16 QUESTION. THE CONVERSATION BEGAN. WE WERE KIDDING

17 AROUND ABOUT HOW MUCH MONEY IS BEING BANDIED ABOUT IN

18 THE PAPERS. THERE WAS CONVERSATION LIKE THAT.

19 I THINK THE -- I DON'T RECALL HIM ASKING

20 FOR ANY -- I DON'T RECALL THE SPECIFIC AMOUNT HE ASKED

21 FOR. I DO RECALL HE WANTED TO BE COMPENSATED. I KNOW

22 HE WANTED TO BE COMPENSATED. WE WANTED EXCLUSIVITY, HE

23 WANTED COMPENSATION.

24 I DO RECALL THAT BEFORE I COULD PAY HIM

25 ANY -- ENTER INTO AN AGREEMENT TO PAY HIM ANY KIND OF

26 MONEY, I HAD TO HAVE ANY KIND OF AMOUNT OF MONEY LIKE

27 THAT APPROVED. I HAD TO CHECK AND MAKE SURE I HAD THAT

28 KIND OF MONEY TO SPEND. AND SO -- AND I KNOW I DIDN'T

-15199

1 PAY HIM MORE THAN -- A PENNY MORE THAN I HAD TO IN ORDER

2 TO CLOSE THE DEAL.

3 Q. OKAY. SO WHEN YOU TALKED ABOUT SOME MONEY

4 WAS BANDIED ABOUT IN THE PAPERS, WHAT AMOUNTS ARE WE

5 TALKING ABOUT HERE?

6 A. I RECALL -- THIS IS GOING BACK TO THE
7 PAPERS IN FEBRUARY OR MARCH OF '94. IT WAS SOMETIME
8 AFTER THE TO TONYA HARDING -- TONYA HARDING HAD BEEN ON
9 ONE OF THE OTHER PROGRAMS, AND THERE WERE ALL SORTS OF
10 FIGURES BEING BANDIED ABOUT, AND HOW MUCH TABLOID
11 TELEVISION SHOWS HAD PAID OVER THE YEARS, AND WE WERE
12 LAUGHING ABOUT IT.

13 Q. WHAT WERE THE AMOUNTS THAT WERE BEING
14 BANDIED ABOUT?

15 A. I'D HAVE TO GO BACK -- I'D HAVE TO GO BACK
16 TO BE SPECIFIC, BUT MY RECOLLECTION IS SOMEWHERE IN THE
17 RANGE OF \$500,000.

18 Q. AND WHO BROUGHT UP THESE NUMBERS?

19 A. I DON'T REMEMBER WHETHER THEY WERE, WHETHER
20 IT WAS CONVERSATION OF WHAT I AM PAYING, OR
21 CONVERSATION -- IF HE ASKED US "HOW MUCH DO YOU PAY, HOW
22 MUCH DO PEOPLE PAY?"

23 IT COULD HAVE BEEN A SITUATION -- AND THIS
24 IS JUST MAYBE. I'M NOT ABSOLUTELY POSITIVE ABOUT THIS.

25 IT COULD HAVE BEEN A SITUATION SAYING:
26 "WELL, HOW MUCH DO PEOPLE PAY FOR THESE KIND OF THINGS"?

27 AND WE SAY, "WELL, YOU CAN READ IN THE
28 PAPERS THAT LAST WEEK IN THE PAPERS THEY SAID THEY PAID

2 Q. AND WERE THERE ANY OTHER NUMBERS MENTIONED?

3 A. NO. I REALLY -- OBVIOUSLY, IF I COULD

4 REMEMBER HOW MUCH MONEY HE ASKED FOR OR HOW MUCH MONEY

5 HE WAS DEMANDING, OR HOW MUCH MONEY HE ASKED FOR AT

6 FIRST, I WOULD TELL YOU. I DON'T REMEMBER.

7 Q. WHAT I AM ASKING YOU IS -- MY QUESTION TO

8 YOU IS: DO YOU RECALL ANY OTHER NUMBERS BEING

9 MENTIONED -- NOT HOW MUCH WAS PAID OR HOW MUCH WAS

10 EVENTUALLY AGREED UPON -- BUT WERE ANY OTHER NUMBERS

11 MENTIONED? YOU TALKED ABOUT A HALF MILLION WAS TALKED

12 ABOUT, AND YOU LAUGHED ABOUT IT.

13 AS YOU SIT THERE RECALLING IT, DO YOU

14 REMEMBER ANY OTHER NUMBERS MENTIONED?

15 A. I DON'T. I DON'T RECALL THE CONVERSATION

16 THAT CLEARLY.

17 Q. SO COULD OTHER NUMBERS HAVE BEEN MENTIONED

18 DURING THIS CONVERSATION?

19 A. I KNOW I NEVER OFFERED TO PAY HIM ONE PENNY

20 MORE THAN THE \$25,000.

21 Q. THAT'S NOT WHAT I'M ASKING YOU. WHAT I'M

22 ASKING YOU IS: DO YOU REMEMBER IF OTHER NUMBERS WERE

23 MENTIONED?

24 A. I HAVE NO RECOLLECTION OF ANY OTHER NUMBERS

25 BEING MENTIONED.

26 Q. CAN YOU SAY THAT THEY WEREN'T, OR THAT YOU

27 JUST DON'T REMEMBER?

28 A. I SAID I DON'T RECALL ANY OTHER NUMBERS

1 BEING MENTIONED.

2 Q. SO THEY COULD HAVE BEEN MENTIONED, YOU JUST
3 DON'T RECALL?

4 MS. ABRAMSON: OBJECTION. CALLS FOR SPECULATION.

5 THE COURT: IT'S BEEN COVERED ALREADY.

6 Q. BY MS. NAJERA: AND YOU SAID -- YOU STATED
7 NOW WHEN YOU WERE JUST TALKING RIGHT NOW THAT YOU DON'T
8 RECALL HIM -- YOU DON'T RECALL THE SPECIFIC AMOUNT HE
9 ASKED FOR; IS THAT CORRECT?

10 IS THAT A YES?

11 A. THAT'S CORRECT.

12 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.
13 THIS HAS BEEN ASKED AND ANSWERED ABOUT A DOZEN TIMES.

14 MS. NAJERA: IT'S FOUNDATIONAL.

15 THE COURT: LET'S GET ON TO SOMETHING DIFFERENT.

16 Q. BY MS. NAJERA: THE SECOND FOLLOW-UP
17 QUESTION IS BECAUSE YOU -- WHEN YOU ANSWERED THIS
18 QUESTION, YOU STOPPED YOURSELF AND CHANGED IT, AND YOU
19 ORIGINALLY SAID YOU DON'T RECALL HIM ASKING FOR A
20 SPECIFIC AMOUNT.

21 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
22 TO THAT AS ARGUMENTATIVE.

23 THE COURT: JUST ASK THE QUESTION. WHAT IS YOUR
24 QUESTION?

25 MS. NAJERA: OKAY.

26 Q. MY QUESTION TO YOU IS: DO YOU REMEMBER HIM

27 ASKING FOR A SPECIFIC AMOUNT?

28 MS. ABRAMSON: ASKED AND ANSWERED, YOUR HONOR.

-15196

1 THE COURT: OVERRULED.

2 YOU CAN ANSWER THE QUESTION.

3 THE WITNESS: I DON'T RECALL THE SPECIFIC AMOUNT

4 HE ASKED FOR. I DO RECALL HIM ASKING FOR COMPENSATION.

5 Q. BY MS. NAJERA: SO THE SPECIFIC AMOUNT HE

6 MIGHT HAVE ASKED FOR COULD HAVE BEEN \$25,000; IS THAT

7 CORRECT?

8 A. IF HE HAD ASKED FOR \$24,000 --

9 Q. TWENTY-FIVE?

10 A. \$25,000, I DON'T RECALL. I DON'T RECALL.

11 I COULD SPECULATE ON THE IF'S AND WHERE'S AND HOW'S AND

12 ALL THAT. I DON'T RECALL WHAT HE ASKED FOR.

13 Q. OKAY. AND I BELIEVE YOU TESTIFIED EARLIER

14 YOU DO NOT KNOW IF MS. LINDA BELL-BLUE HAD ANY

15 CONVERSATIONS WHERE OTHER AMOUNTS WERE MENTIONED; IS

16 THAT CORRECT?

17 A. NOT TO MY KNOWLEDGE. I MEAN, NOT TO MY

18 KNOWLEDGE OR RECOLLECTION. SHE -- IT WOULD HAVE COME UP

19 IN CONVERSATION.

20 Q. IS IT FAIR TO SAY THAT YOU DON'T KNOW?

21 A. WHEN WE WERE ALL SITTING THERE TOGETHER,

22 AND FROM WHEN I WAS SITTING THERE, I DON'T REMEMBER WHAT

23 SHE SAID WHEN I WAS SITTING THERE ANY MORE THAN WHAT I
24 SAID.

25 Q. OKAY. NOW, GOING BACK TO -- YOU STATED
26 THAT MR. CIGNARELLI HAD TOLD YOU HE WAS GOING TO MAKE A
27 CHARITABLE CONTRIBUTION; IS THAT CORRECT?

28 MS. ABRAMSON: OBJECTION. ASKED AND ANSWERED.

-15195

1 THE COURT: SUSTAINED.

2 LET'S MOVE ON TO SOMETHING THAT HASN'T BEEN
3 ASKED.

4 Q. BY MS. NAJERA: WELL, YOU SAID THAT HE WAS
5 CONTACTED ON SEVERAL OCCASIONS BECAUSE YOU WANTED TO GET
6 VERIFICATION THAT HE HAD ACTUALLY MADE THIS CHARITABLE
7 CONTRIBUTION; IS THAT CORRECT?

8 MS. ABRAMSON: YOUR HONOR, THAT'S BEEN ASKED AND
9 ANSWERED ALSO.

10 THE WITNESS: THAT'S CORRECT.

11 THE COURT: OVERRULED.

12 Q. BY MS. NAJERA: AND IN FACT MS. ABRAMSON
13 WENT INTO A LINE OF QUESTIONING WITH YOU CONCERNING WHAT
14 YOU HAD TO GO THROUGH TO GET THE AFFIRMATION THAT HE HAD
15 ACTUALLY GIVEN THIS CHARITABLE CONTRIBUTION.

16 DO YOU RECALL THOSE QUESTIONS?

17 Q. BY MS. ABRAMSON: OBJECTION. IRRELEVANT.
18 IMPROPER TO ASK WHAT SHE'S ALREADY BEEN ASKED.

19 THE COURT: SUSTAINED.

20 Q. BY MS. NAJERA: WELL, DID YOU, AFTER

21 TALKING TO -- AFTER TALKING WITH MR. CIGNARELLI, GET

22 SUBSTANTIATION THAT HE HAD MADE A DONATION?

23 MS. ABRAMSON: OBJECTION. CALLS FOR FACTS BEYOND

24 HER PERSONAL KNOWLEDGE.

25 THE COURT: REPHRASE THE QUESTION.

26 Q. BY MS. NAJERA: DID YOU GET PROOF THAT HE

27 HAD MADE A \$3,000 CONTRIBUTION TO A CHARITY?

28 A. HE SENT ME A LETTER -- HE FAXED ME A LETTER

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1 THAT HAD BEEN SENT TO HIM THANKING HIM FOR A \$3,000

2 DONATION TO C.A.L.M.

3 C.A.L.M. IS THAT CHARITY.

4 HE FAXED ME THIS LETTER. IT WAS A LETTER

5 FROM THE CHARITY THAT STATED THEY HAD RECEIVED --

6 THANKING CRAIG CIGNARELLI FOR A \$3,000 DONATION TO THE

7 CHARITY.

8 Q. AND DID THAT LETTER ALSO STATE THAT THERE

9 WAS A MATCHING CONTRIBUTION THAT MADE THE AMOUNT WORTH

10 \$6,000?

11 MS. ABRAMSON: I AM GOING TO OBJECT TO THIS, YOUR

12 HONOR, AS HEARSAY AND COMPLETELY IRRELEVANT.

13 THE COURT: SUSTAINED ON THE GROUNDS OF HEARSAY.

14 MS. NAJERA: I HAVE NOTHING FURTHER.

15 THE COURT: ANYTHING ELSE?

16

17 REDIRECT EXAMINATION

18 BY MS. ABRAMSON:

19 Q. ARE YOU AWARE, MS. ELLMAN, THAT CRAIG

20 CIGNARELLI SITTING IN THAT CHAIR UNDER OATH TESTIFIED

21 THAT HE CONTRIBUTED \$5,000 TO C.A.L.M.?

22 A. NO, I AM NOT.

23 MS. NAJERA: I WOULD OBJECT AS IRRELEVANT AT THIS

24 POINT, BASED ON THE LAST OBJECTION.

25 THE COURT: WELL, BASED UPON THE MERIT OF THE

26 QUESTION AND THE OBJECTION, THE OBJECTION IS SUSTAINED,

27 AND THE ANSWER IS STRICKEN.

28 Q. BY MS. ABRAMSON: DID YOU EVER HEAR THAT HE

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1 MADE ANY ADDITIONAL \$2,000 CONTRIBUTION TO THAT OR ANY

2 OTHER CHARITY?

3 A. I AM UNAWARE OF ANY OTHER CONTRIBUTION.

4 Q. AND ARE YOU AWARE OF ANY OTHER TIME IN HIS

5 LIFE WHEN HE CONTRIBUTED TO CHARITY?

6 MS. NAJERA: OBJECTION. CALLS FOR SPECULATION

7 FROM THIS WITNESS.

8 THE COURT: SUSTAINED.

9 THE WITNESS: I HAVE NO KNOWLEDGE.

10 THE COURT: SUSTAINED. WAIT, WAIT.

11 MS. ABRAMSON: DID HE EVER TELL YOU --
12 THE COURT: WAIT. AGAIN, THERE IS AN OBJECTION.
13 THE OBJECTION IS SUSTAINED.
14 MS. ABRAMSON: I KNOW. I HEARD THAT.
15 THE COURT: I KNOW THAT, BUT I HAVEN'T FINISHED
16 YET.
17 SO THE ANSWER IS STRICKEN.
18 NOW YOU MAY ASK YOUR NEXT QUESTION.
19 MS. ABRAMSON: THANK YOU, YOUR HONOR.
20 THE COURT: YOU'RE WELCOME.
21 Q. BY MS. ABRAMSON: DID MR. CIGNARELLI
22 INDICATE TO YOU WHEN HE WAS TALKING ABOUT MAKING THIS
23 "FOR SHOW" CONTRIBUTION WHETHER OR NOT HE HAD EVER MADE
24 A CONTRIBUTION TO CHARITY BEFORE IN HIS LIFE?
25 MS. NAJERA: I WOULD OBJECT TO THE FORM OF THE
26 QUESTION AS ARGUMENTATIVE.
27 THE COURT: REPHRASE THE QUESTION.
28 Q. BY MS. ABRAMSON: DID HE INDICATE TO YOU

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1 WHETHER OR NOT HE HAD EVERY DONATED TO CHARITY BEFORE?
2 MS. NAJERA: OBJECTION. IRRELEVANT.
3 THE COURT: SUSTAINED.
4 Q. BY MS. ABRAMSON: WELL, DID HE TELL YOU HE
5 HAD?
6 MS. NAJERA: OBJECTION. IRRELEVANT.

7 THE COURT: OVERRULED.

8 THE WITNESS: RESTATE THE QUESTION, PLEASE.

9 MS. ABRAMSON: YES.

10 Q. DID MR. CIGNARELLI SAY HE HAD DONATED TO
11 CHARITY PREVIOUSLY?

12 A. NOT THAT I RECALL.

13 Q. AND DID HE DISCUSS WITH YOU HOW THEATRICAL
14 OR DRAMATIC IT WOULD SOUND ON "HARD COPY" FOR HIM TO --
15 FOR IT TO BE ANNOUNCED THAT HE HAD DONATED TO A CHILD
16 ABUSE CHARITY?

17 MS. NAJERA: I AM GOING TO OBJECT. THAT'S
18 ARGUMENTATIVE.

19 THE COURT: SUSTAINED AS TO THE FORM OF THE
20 QUESTION.

21 Q. BY MS. ABRAMSON: DID HE DISCUSS THE
22 THEATRICALITY OR DRAMATIC IMPACT OF AN ANNOUNCEMENT OF
23 DONATING TO A CHILD ABUSE CHARITY?

24 MS. NAJERA: I AM GOING TO OBJECT. IN ASSUMES A
25 FACT NOT IN EVIDENCE.

26 THE COURT: OVERRULED.

27 THE WITNESS: HE SAID TO ME IT WAS IMPORTANT THAT
28 IT BE ANNOUNCED. IT WAS AN IMPORTANT PART OF THE

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1 NEGOTIATION AND THE DEAL THAT WE AGREED TO ANNOUNCE ON
2 THE AIR THAT HE MADE A DONATION TO A CHARITY THAT HELPED

3 GENUINELY -- THAT HE HAD MADE A SUBSTANTIAL DONATION TO
4 A CHARITY THAT HAD HELPED GENUINELY ABUSED CHILDREN.

5 HE THOUGHT THAT WAS IMPORTANT TO HIM SO
6 THAT HE WOULDN'T LOOK LIKE HE WAS TAINTED.

7 Q. BY MS. ABRAMSON: BUT DID HE SAY WHETHER OR
8 NOT HE THOUGHT THAT IT WOULD -- THAT A CHILD ABUSE
9 CHARITY IN PARTICULAR WOULD BE A GOOD IDEA, OR WOULD
10 HELP HIM?

11 A. IT WAS PART OF THE DEAL THAT IT HAD TO BE
12 THAT HE HAD MADE A DONATION SPECIFICALLY TO A CHILD
13 ABUSE CHARITY.

14 Q. RIGHT.

15 A. AND THAT WAS IMPORTANT.

16 Q. HE WANTED CREDIT FOR THAT?

17 A. HE WANTED CREDIT FOR THAT.

18 MS. NAJERA: I AM GOING TO OBJECT AS LEADING,
19 YOUR HONOR.

20 THE COURT: WELL, THE QUESTION HAS BEEN ASKED AND
21 THE ANSWER HAS BEEN GIVEN.

22 SO THE NEXT QUESTION, PLEASE.

23 Q. BY MS. ABRAMSON: DID HE TELL YOU WHY HE
24 DECIDED THAT HE NEEDED CREDIT FOR DONATING TO A CHILD
25 ABUSE CHARITY SPECIFICALLY?

26 THE COURT: OTHER THAN WHAT YOU'VE ALREADY SAID?

27 MS. ABRAMSON: YES. OTHER THAN WHAT YOU'VE
28 ALREADY SAID.

1 THE COURT: LET ME ASK THE QUESTION.

2 MS. ABRAMSON: ALL RIGHT, JUDGE.

3 THE COURT: OTHER THAN WHAT YOU'VE ALREADY
4 ANSWERED, DID HE SAY ANYTHING ELSE ABOUT WHY HE WANTED
5 THIS DONATION TO CHARITY, OR HAVE YOU TOLD US EVERYTHING
6 THAT WAS SAID IN THE CONVERSATION ABOUT THAT?

7 THE WITNESS: BEYOND HIS POLITICAL ASPIRATIONS,
8 THAT'S THE ONLY REASON THAT HE WANTED IT TO GO TO
9 GENUINELY ABUSED CHILDREN.

10 THE COURT: AND YOU HAVE TOLD US NOW EVERYTHING
11 HE SAID ABOUT THAT?

12 THE WITNESS: THAT'S ALL I RECALL, RIGHT.

13 THE COURT: OKAY.

14 Q. BY MS. ABRAMSON: NOW, IS IT YOUR BELIEF
15 THAT LINDA BLUE NEGOTIATED SOME DIFFERENT CONTRACT THAN
16 THE ONE THAT YOU HAVE BEFORE YOU AS AN EXHIBIT?

17 A. NOT TO MY KNOWLEDGE.

18 MS. NAJERA: I AM GOING TO OBJECT, YOUR HONOR.
19 CALLS FOR SPECULATION FROM THIS WITNESS.

20 THE COURT: OVERRULED. SHE SAID NOT TO HER
21 KNOWLEDGE.

22 MS. NAJERA: OKAY.

23 MS. ABRAMSON: THANK YOU.

24 Q. AND IF YOU ONLY HAD \$25,000 TO SPEND,
25 THAT'S ALL THAT LINDA BLUE WOULD HAVE HAD ALSO, CORRECT?

26 A. YES.

27 MS. ABRAMSON: NOTHING FURTHER.

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1 MS. NAJERA: YES, YOUR HONOR.

2

3 RECROSS-EXAMINATION

4 BY MS. NAJERA:

5 Q. MY UNDERSTANDING OF THIS, AND CORRECT ME IF
6 I'M WRONG, IS THAT IF YOU -- YOU'RE UNAWARE OF WHETHER
7 OR NOT MS. BELL-BLUE DID ANY NEGOTIATING -- DID ANY
8 NEGOTIATING WITH MR. CIGNARELLI WITH REGARDS TO THIS
9 \$25,000; IS THAT CORRECT?.

10 YOU HAVE NO WAY OF KNOWING, IN OTHER WORDS?

11 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
12 TO THAT NOW AS ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 Q. BY MS. NAJERA: DO YOU UNDERSTAND WHAT I AM
15 SAYING?

16 A. I AM PRIVY TO NO KNOWLEDGE THAT SHE DID ANY
17 NEGOTIATING WITH HIM. I DID THE DEAL WITH HIM, AND IT
18 WAS MY RESPONSIBILITY TO DO THE DEAL WITH HIM.

19 SO I AM UNAWARE OF ANY NEGOTIATING THAT
20 THEY DID, AND IT WAS NEVER BROUGHT TO MY -- NOTHING WAS
21 EVER BROUGHT TO MY ATTENTION OF ANY NEGOTIATING SHE DID,
22 AND SHE WOULD HAVE BROUGHT IT TO MY ATTENTION HAD SHE.

23 YOU KNOW, I DON'T KNOW ANYTHING.

24 MS. NAJERA: I AM GOING TO OBJECT AND MAKE A
25 MOTION TO STRIKE THE LAST LINE AS CALLING FOR
26 SPECULATION.

27 THE COURT: ALL RIGHT.

28 THE ANSWER WILL STAND AS STATED.

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1 Q. BY MS. NAJERA: MY QUESTION TO YOU IS WITH
2 REGARDS TO -- MS. BELL-BLUE WAS YOUR PARTNER; IS THAT
3 CORRECT?

4 A. YES.

5 Q. AND SHE HAD EQUAL AUTHORITY AS YOU TO
6 NEGOTIATE DEALS; IS THAT CORRECT?

7 MS. ABRAMSON: I'M GOING TO -- YOU SHOULD OBJECT.

8 MS. SAGER: YOU'RE REFERRING TO THIS PARTICULAR
9 INCIDENT, I PRESUME?

10 MS. NAJERA: YES.

11 MS. SAGER: I DON'T OBJECT TO THAT.

12 Q. BY MS. NAJERA: ON THIS PARTICULAR INSTANCE
13 SHE HAD EQUAL AUTHORITY WITH YOU TO NEGOTIATE; IS THAT
14 CORRECT?

15 A. YES, SHE HAD EQUAL AUTHORITY.

16 Q. AND WHILE YOU STATED THAT YOU ARE THE ONE
17 THAT FINALLY CAME UP WITH THE FINAL AMOUNT AND GOT THE
18 CONTRACT DONE, YOU ARE UNAWARE OF ANYTHING SHE MIGHT
19 HAVE TALKED TO MR. CIGNARELLI ABOUT CONCERNING AMOUNTS

20 TALKED ABOUT, AMOUNTS JOKED ABOUT, AMOUNTS KIDDED ABOUT,
21 OR WHAT MIGHT HAVE HAPPENED IN THE GIVE OR TAKE OF A
22 NEGOTIATION; IS THAT CORRECT?
23 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S
24 COMPOUND.
25 THE COURT: SUSTAINED.
26 MS. ABRAMSON: IT'S ARGUMENTATIVE.
27 MS. NAJERA: I HAVE NOTHING FURTHER.
28 THE COURT: THANK YOU. YOU MAY STEP DOWN.

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1 THE WITNESS: THANK YOU.
2 THE COURT: OKAY. YOUR NEXT WITNESS.
3 MR. LEVIN: YES, YOUR HONOR. THE DEFENSE CALLS
4 DR. ANNA KOKOTOVIC.
5
6 ANNA KOKOTOVIC,
7 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
8 TESTIFIED AS FOLLOWS:
9 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
10 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
11 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
12 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
13 THE WITNESS: I DO.
14 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR
15 NAME FOR THE RECORD.

16 THE WITNESS: ANNA KOKOTOVIC. K-O-K-O-T-O-V-I-C.

17 THE COURT: THANK YOU.

18 YOU MAY EXAMINE THE WITNESS.

19

20 DIRECT EXAMINATION

21 BY MR. LEVIN:

22 Q. IS IT DR. KOKOTOVIC?

23 A. IT IS.

24 Q. AND WHAT IS IT YOU ARE A DOCTOR OF?

25 A. PSYCHOLOGY.

26 Q. PERHAPS WE COULD USE THE MICROPHONE.

27 A. I COULD IF I CAN GET IT AROUND HERE.

28 Q. AND WHAT IS YOUR PRESENT OCCUPATION?

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1 A. I AM THE DIRECTOR OF C.A.L.M.

2 Q. AND WHAT DOES C.A.L.M. STAND FOR?

3 A. CHILD ABUSE LISTENING AND MEDIATION.

4 Q. WHERE IS THAT ORGANIZATION LOCATED?

5 A. IN SANTA BARBARA.

6 Q. AND WHAT IS THE ORGANIZATION'S PRIMARY DUTY
7 OR FUNCTION?

8 A. IT IS A PRIVATE, NONPROFIT AGENCY FOR
9 PREVENTION AND TREATMENT OF CHILD ABUSE.

10 Q. WHAT ARE YOUR RESPONSIBILITIES AND DUTIES
11 WITH THAT ORGANIZATION?

12 A. AS EXECUTIVE DIRECTOR, I AM RESPONSIBLE FOR
13 THE OVERALL MANAGEMENT OF THE AGENCY.

14 Q. NOW, DOES YOUR AGENCY RELY PRIMARILY ON
15 CHARITABLE CONTRIBUTIONS?

16 A. IT DOES.

17 Q. DO YOU HAVE ANY DUTIES WITH RESPECT TO
18 RECEIVING THOSE TYPES OF DONATIONS OR CONTRIBUTIONS?

19 A. I DO. WE HAVE A BOARD OF DIRECTORS AND WE
20 HAVE A DEVELOPMENT DIRECTOR, AND IT'S THEIR JOB
21 PRIMARILY TO MANAGE THAT. BUT A PART OF MY JOB IS TO
22 RAISE ALL THE MONEYS, GRANTS AND PRIVATE DONATIONS, ALL
23 OF IT.

24 Q. NOW, AS PART OF YOUR DUTIES, DOCTOR, DO YOU
25 FROM TIME TO TIME TALK WITH DONORS OR PROSPECTIVE DONORS
26 DIRECTLY?

27 A. I DO, AT TIMES.

28 Q. AND WOULD THAT BE BOTH TELEPHONICALLY AND

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1 IN PERSON?

2 A. WELL, WE DO THIS BY TELEPHONE AT TIMES. I
3 DO NOT DO THAT. WE HAVE VOLUNTEERS, AND OUR DEVELOPMENT
4 DIRECTOR DOES THAT. AT TIMES I TALK TO DONORS IN
5 PERSON.

6 Q. ARE YOU FAMILIAR WITH A PERSON NAMED CRAIG
7 CIGNARELLI?

8 A. I AM FAMILIAR WITH THAT NAME.

9 Q. AND DID YOU AT SOME TIME TALK ON THE
10 TELEPHONE WITH A PERSON WHO IDENTIFIED THEMSELF AS BEING
11 CRAIG CIGNARELLI?

12 A. YES, I DID.

13 Q. DO YOU REMEMBER APPROXIMATELY WHEN THAT
14 WAS?

15 A. APPROXIMATELY, ONLY THAT IT -- AS BEST AS I
16 CAN TELL, IT WAS SOMETIME BEFORE -- IT WAS EARLY IN
17 MARCH OF '94, OR BEFORE -- OR SLIGHTLY BEFORE THAT.

18 Q. AND WAS THIS CONTACT YOU HAD WITH THIS
19 INDIVIDUAL, MR. CIGNARELLI, ON THE TELEPHONE OR IN
20 PERSON?

21 A. THAT WAS ON THE TELEPHONE.

22 Q. HOW WAS IT THAT YOU BECAME INVOLVED IN A
23 TELEPHONE CONVERSATION?

24 A. THAT WAS -- I WAS WRITING A GRANT AT HOME,
25 AND A CALL CAME TO OUR AGENCY, TO THE RECEPTIONIST, FROM
26 A PERSON WHO INDICATED THEY WANTED TO MAKE A SIGNIFICANT
27 DONATION TO C.A.L.M. THESE PEOPLE CORRECTLY REFER SUCH
28 A CALL TO OUR -- EITHER OUR DEVELOPMENT DIRECTOR, WHO

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1 WAS OUT OF THE OFFICE, OR MYSELF.

2 SO THEY REFERRED THE CALL TO ME AT HOME.

3 Q. NOW, PRIOR TO YOUR SPEAKING WITH THAT

4 INDIVIDUAL AT HOME ON THE TELEPHONE, HAD YOU EVER MET OR

5 HEARD OF CRAIG CIGNARELLI?

6 A. NO.

7 Q. AND DO YOU REMEMBER IN SUBSTANCE THE

8 CONVERSATION THAT YOU HAD WITH MR. CIGNARELLI?

9 A. PROBABLY -- I RECALL SOME OF IT, IN

10 SUBSTANCE. I DON'T RECALL A LOT OF THE DETAILS, BUT I

11 DO RECALL THE GENERAL PHONE CALL.

12 Q. WAS THE DISCUSSION CONCERNING A

13 CONTRIBUTION THAT HE WISHED TO MAKE TO YOUR

14 ORGANIZATION?

15 A. IT WAS.

16 Q. COULD YOU RELATE TO THE JURY, AS BEST YOU

17 CAN, WHAT IT WAS THAT YOU AND CRAIG CIGNARELLI

18 DISCUSSED?

19 A. THAT HE --

20 MS. NAJERA: YOUR HONOR, I AM GOING TO OBJECT AS

21 CALLING FOR A NARRATIVE.

22 THE COURT: PERHAPS -- IS THIS FOCUSED ONLY ON

23 THE CONTRIBUTION; IS THAT WHAT YOU'RE ASKING?

24 MR. LEVIN: YES, YOUR HONOR.

25 THE COURT: OKAY.

26 YOU MAY ANSWER THE QUESTION. GO AHEAD.

27 THE WITNESS: WOULD YOU REPEAT THE QUESTION

28 AGAIN.

1 MR. LEVIN: YES.

2 Q. REGARDING THE CONTRIBUTION, THE SUBJECT
3 MATTER OF THAT PARTICULAR CONVERSATION, WHAT WAS IT THAT
4 CRAIG CIGNARELLI SAID TO YOU?

5 A. HE CALLED AND HE INDICATED THAT HE WAS
6 PREPARED TO MAKE A SIGNIFICANT CONTRIBUTION TO OUR
7 AGENCY, OR SOME -- OR SOME AGENCY, OUR AGENCY, AND THAT
8 IT -- HE DID INDICATE AT THAT TIME THAT IT WAS RELATED
9 TO THIS -- THE TRIAL GOING ON AT THE TIME.

10 MS. ABRAMSON: EXCUSE ME, YOUR HONOR.

11 (DEFENSE ATTORNEYS ABRAMSON AND
12 LEVIN CONFER SOTTO VOCE)

13

14 Q. BY MR. LEVIN: DID HE INDICATE TO YOU HOW
15 MUCH HE WISHED TO MAKE?

16 A. HE -- I -- I CAME AWAY REMEMBERING --
17 EXPECTING THAT THIS SHOULD BE IN THE REALM OF FIVE TO
18 \$10,000.

19 Q. AND DID CRAIG CIGNARELLI MENTION "HARD
20 COPY"?

21 A. HE DID.

22 Q. NOW --

23 A. DID HE MENTION IT AT THAT TIME? FOR SOME
24 REASON, I KNEW THAT THIS WAS CONNECTED WITH "HARD COPY",
25 SO I AM NOT CERTAIN IF IT WAS ON THAT PHONE CALL OR
26 LATER.

27 BUT I REMEMBER IN THE AGENCY WE KNEW THIS
28 WAS -- I THINK I KNEW AT THAT PHONE CALL THAT THIS WAS

1 CONNECTED WITH "HARD COPY".

2 Q. DID YOU AT SOME TIME LATER, DOCTOR, LEARN
3 THAT CRAIG CIGNARELLI HAD MADE A CONTRIBUTION TO
4 C.A.L.M.?

5 A. YES, I DID.

6 Q. AND HOW MUCH OF A CONTRIBUTION DID CRAIG
7 CIGNARELLI MAKE TO C.A.L.M.?

8 A. \$3,000.

9 Q. THE CONTRIBUTION THAT CRAIG CIGNARELLI
10 MADE, DID HE MAKE IT BY CHECK OR CASH, OR DO YOU KNOW?

11 A. BY CHECK.

12 Q. AND WAS THAT SENT IN OR BROUGHT IN?

13 A. I AM NOT CERTAIN OF THAT. I DON'T KNOW IF
14 IT WAS MAILED. I THINK IT MAY HAVE BEEN BROUGHT TO THE
15 AGENCY, BUT I AM NOT CERTAIN.

16 Q. DID CRAIG CIGNARELLI, OR A PERSON WHO
17 IDENTIFIED HIMSELF AS CRAIG CIGNARELLI, EVER APPROACH
18 YOU AND HAND YOU AN ENVELOPE?

19 A. I HAVE NO RECOLLECTION OF THAT HAPPENING.

20 Q. AND DO YOU EVER RECALL RECEIVING AN
21 ENVELOPE FROM AN INDIVIDUAL NAMED CRAIG CIGNARELLI AT
22 ANY TIME?

23 A. ME, PERSONALLY?

24 Q. YES.

25 A. I DON'T. I DON'T.

26 MR. LEVIN: THANK YOU.
27 I HAVE NOTHING FURTHER.
28 THE COURT: CROSS-EXAMINATION.

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1 THE WITNESS: MAY I HAVE A GLASS OF WATER?

2 THE COURT: CERTAINLY. SURE.

3

4 CROSS-EXAMINATION

5 BY MS. NAJERA:

6 Q. JUST BRIEFLY, DR. KOKOTOVIC.

7 A. YES.

8 Q. WHEN YOU SAID THAT YOU SPOKE TO

9 MR. CIGNARELLI AND YOU WENT AWAY BELIEVING THAT IT WOULD

10 BE BETWEEN FIVE AND \$10,000, DID HE EVER SAY THOSE

11 NUMBERS TO YOU?

12 A. HE -- WHEN WE STARTED THE CONVERSATION, I

13 SAID, "WHAT IS A SIGNIFICANT CONTRIBUTION?"

14 AND I ASKED HIM SEVERAL TIMES. AND HE KEPT

15 SAYING "IT'S SIGNIFICANT. IT WOULD BE LARGE."

16 "WHAT DOES THAT MEAN?"

17 AND THEN HE -- HE STATED, "WELL, IT'S FIVE

18 OR \$10,000." THAT'S TO THE BEST OF MY MEMORY. IT

19 HAPPENED IN THAT PHONE CALL.

20 THANK YOU. I AM JUST RECOVERING FROM SOME

21 OF THE FLU STUFF THAT MANY PEOPLE HAVE.

22 Q. AND YOU TESTIFIED THAT AT SOME POINT YOU
23 DID RECEIVE INFORMATION THAT HE HAD GIVEN A CONTRIBUTION
24 OF \$3,000; IS THAT CORRECT?

25 A. THAT'S RIGHT.

26 Q. IS THAT CONSIDERED A SIGNIFICANT
27 CONTRIBUTION BY YOUR ORGANIZATION?

28 MR. LEVIN: OBJECTION. IRRELEVANT.

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1 THE COURT: OVERRULED.

2 YOU MAY ANSWER THE QUESTION.

3 THE WITNESS: I MAY ANSWER IT?

4 THE COURT: YES.

5 THE WITNESS: THAT IS GOOD-SIZED CONTRIBUTION FOR
6 OUR AGENCY, YES.

7 Q. BY MS. NAJERA: AND WHEN MISTER -- YOU
8 INDICATED THAT YOU HEARD THAT YOU UNDERSTAND THAT A
9 CONTRIBUTION WAS MADE BY CHECK.

10 NOW, DO YOU REMEMBER HOW IT WAS THAT THAT
11 CHECK GOT TO YOU?

12 A. THAT'S -- I WISH I COULD ANSWER THAT. I AM
13 EMBARRASSED THAT I DON'T KNOW, BUT I DON'T. MOST -- WE
14 RECEIVE LOTS OF CONTRIBUTIONS. MOST OF THEM COME IN THE
15 MAIL. EVERY DAY WE RUSH TO THE MAIL AND OPEN THEM AND
16 ADD THEM AND INPUT THEM.

17 AND THIS -- SOME PEOPLE DO COME AND DELIVER

18 CHECKS BY HAND, AND WHEN THAT HAPPENS THEY ALMOST ALWAYS
19 GO TO THE RECEPTIONIST -- THIS IS A TYPICAL PROCEDURE --
20 WHO GIVES THEM TO THE DEVELOPEMENT DIRECTOR, WHO THEN
21 GOES THROUGH OUR REGULAR PROCEDURE OF PUTTING IT INTO
22 THE COMPUTER AND SENDING OUT THANK-YOU'S.

23 SO THAT COULD HAVE HAPPENED. IT EITHER
24 CAME BY MAIL, OR IT COULD HAVE BEEN DELIVERED BY HAND,
25 AND I HONESTLY DON'T KNOW FOR SURE.

26 Q. AND AT THE TIME THAT YOU RECEIVED THIS
27 CONTRIBUTION FROM MR. CIGNARELLI FOR \$3,000, WAS THERE
28 SOME KIND OF A MATCHING PROGRAM THAT MADE THE

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1 CONTRIBUTION WORTH \$6,000?

2 MR. LEVIN: OBJECTION. IRRELEVANT.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER THE QUESTION.

5 MS. NAJERA: YOU CAN ANSWER THAT, DOCTOR.

6 MR. LEVIN: YOUR HONOR, I WOULD ASK TO APPROACH.

7 THE COURT: ON THIS SUBJECT?

8 MR. LEVIN: ON THIS QUESTION.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: I CAN ANSWER THAT? OH.

12 DID WE HAVE A MATCHING PROGRAM; IS THAT THE
13 QUESTION?

14 WE DID. WE HAD A LARGE FOUNDATION THAT HAD
15 GIVEN US A CERTAIN AMOUNT, AND IF WE ARE TO RAISE SO
16 MUCH NEW MONEY, THAT THAT WOULD BE MATCHED.

17 DOES THAT ANSWER IT?

18 Q. BY MS. NAJERA: WELL I THINK THE SECOND
19 PART OF THAT QUESTION WAS AS A RESULT OF THIS \$3,000
20 CONTRIBUTION AND THE MATCHING PROGRAM, DID THIS MAKE THE
21 DONATION WORTH \$6000?

22 MR. LEVIN: OBJECTION. IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: IT COULD, YES. WE COULD COUNT THAT
25 AS \$6000.

26 MS. NAJERA: THANK YOU.

27 I HAVE NOTHING FURTHER.

28 THE COURT: ANY REDIRECT?

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1

2 REDIRECT EXAMINATION

3 BY MR. LEVIN:

4 Q. DID CRAIG CIGNARELLI GIVE YOU \$6000?

5 A. NO, HE DID NOT.

6 Q. DID HE GIVE YOU \$5,000?

7 A. HE DID NOT.

8 Q. DID HE GIVE YOU \$4,000?

9 A. NO.

10 MR. LEVIN: THANK YOU.
11 NOTHING FURTHER.
12 THE COURT: ANYTHING ELSE?
13 MS. NAJERA: NOTHING FURTHER.
14 THE COURT: OKAY. THANK YOU.
15 MR. LEVIN: JUST ONE MORE QUESTION, YOUR HONOR.
16 THE COURT: WHAT IS THAT?
17 Q. BY MR. LEVIN: ARE YOU AN ORGANIZATION, IF
18 A CONTRIBUTION IS MADE, IT'S TAX DEDUCTIBLE?
19 A. IT IS.
20 MR. LEVIN: THANK YOU.
21 NOTHING FURTHER.
22 THE COURT: THANK YOU. YOU MAY STEP DOWN.
23 THE WITNESS: IS THAT FOR ME?
24 THE COURT: NO. ACTUALLY, THAT WAS FOR ME, AND A
25 CUE FOR THE JURY THAT WE WILL TAKE A SHORT BREAK HERE,
26 AND GIVE ME A CHANCE TO TALK TO COUNSEL.
27 DON'T DISCUSS THE MATTER WITH ANYONE.
28 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL TAKE A

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1 SHORT RECESS.
2 (JURY ENTERS THE JURY ROOM
3 AND THE FOLLOWING PROCEEDINGS
4 WERE HELD:)
5

6 THE COURT: OKAY. MR. LEVIN.

7 MR. LEVIN: YES, YOUR HONOR.

8 THE COURT: YOU HAD ANOTHER WITNESS?

9 MR. LEVIN: YES, I HAVE ONE MORE WITNESS.

10 THE COURT: WHAT POSSIBLY COULD THAT WITNESS

11 TESTIFY TO?

12 MR. LEVIN: THIS IS MR. GIL PICCIOTTO, WHO IS THE

13 DIRECTOR OF DEVELOPEMENT AT C.A.L.M., AND HIS DUTIES AND

14 RESPONSIBILITIES INCLUDE BEING AWARE OF AND MAINTAINING

15 BUSINESS RECORDS OF THE ORGANIZATION.

16 THE COURT: YES.

17 MR. LEVIN: AND HE HAS DONE A SEARCH OF THE

18 RECORDS OF C.A.L.M., AND HE WILL IDENTIFY THE COMPUTER

19 GENERATED FORM WHICH VERIFIES THAT CRAIG CIGNARELLI MADE

20 A ONE-TIME, SINGLE DONATION OF \$3,000. WE WILL MARK

21 THAT EXHIBIT AND OFFER IT IN EVIDENCE AT A LATER TIME.

22 AND ALSO THAT THE DONATION WAS

23 UNRESTRICTED, WHICH MEANS THAT IT GOES INTO THE GENERAL

24 OFFICE FUND, OR THE GENERAL FUND, AND IT IS NOT

25 DESIGNATED TO GO TO A SPECIAL PROGRAM, WHICH COULD BE

26 DESIGNATED, WITHIN THE ORGANIZATION.

27 HE NEVER MET MR. CIGNARELLI.

28 THAT IF A DONATION IS MADE BY AN INDIVIDUAL

2 CHECKED THAT LIST. MR. CIGNARELLI'S NAME IS NOT ON IT.

3 FURTHER, THEY ARE REQUIRED TO NOTIFY THE
4 INTERNAL REVENUE SERVICE IF A DONATION OF \$5,000 OR MORE
5 IS MADE. MR. CIGNARELLI DOES NOT APPEAR ON THAT LIST AS
6 WELL.

7 AND ALSO THERE IS A CHECKS AND BALANCES
8 SYSTEM THAT THE ORGANIZATION HAS, WHERE WHEN A DONATION
9 IS MADE -- FOR EXAMPLE, I ASKED THE WITNESS HOW DO YOU
10 KNOW THAT IT WAS 3,000 AND NOT PERHAPS A MISTAKE WHERE
11 YOU HIT A THREE INSTEAD OF A FIVE, AND THEY HAVE A CHECK
12 AND BALANCE SYSTEM AGAINST THE COMPUTER-GENERATED FORM
13 WHICH -- WHEREIN IT CAN BE VERIFIED BY THIS WITNESS,
14 THAT INDEED IT WAS A ONE-TIME DONATION OF \$3,000.

15 THE COURT: OKAY. WELL, WE'VE ALREADY HAD THIS
16 WITNESS WHO JUST TESTIFIED SAY IT WAS \$3,000.

17 MR. LEVIN: WELL, I THINK WE ARE ENTITLED TO CALL
18 THE PERSON FOR THE ORGANIZATION.

19 MS. ABRAMSON: IF THEY WILL STIPULATE THAT'S ALL
20 IT WAS.

21 MR. LEVIN: IF THEY WILL STIPULATE THAT THERE'S
22 NO NEED TO, BUT I DON'T WANT THE JURY FEELING THAT
23 PERHAPS THEY MADE A MISTAKE. PERHAPS CRAIG CIGNARELLI
24 CAME IN LATER.

25 THE COURT: ARE THE PEOPLE GOING TO ARGUE THAT
26 THE WITNESS WHO JUST TESTIFIED IS INCORRECT AS TO HOW
27 MUCH THE CHARITY RECEIVED?

28 MR. CONN: NO.

1 MS. NAJERA: NO.

2 THE COURT: THEN IT'S CUMULATIVE AND IRRELEVANT.

3 MR. LEVIN: I RESPECTFULLY DISAGREE, YOUR HONOR.

4 WE ARE ENTITLED TO PROVE THAT THE RECORDS HAVE BEEN

5 CHECKED AND THAT NO OTHER DONATION HAS BEEN MADE BY

6 CRAIG CIGNARELLI. SHE'S NOT A PERSON WHO HAS CHECKED

7 THE RECORDS, AND SHE'S NOT THE PERSON WHO WAS IN CHARGE

8 OF MAKING SURE OF THESE DONATIONS BEING ACCURATE.

9 UNLESS THE PEOPLE ARE PREPARED TO

10 STIPULATE, THE JURY COULD SPECULATE THAT THE

11 ORGANIZATION MADE A MISTAKE.

12 THE COURT: YOU SHOULD HAVE CALLED THE OTHER

13 PERSON. THIS IS NOT THE TRIAL OF MR. CIGNARELLI, NO

14 MATTER HOW MUCH YOU WANT TO MAKE IT SUCH. WE HAVE A LOT

15 OF TESTIMONY ON THIS SUBJECT, AND WHAT YOU ARE PROPOSING

16 NOW IS COLLATERAL TO THE EXTREME FOR WHAT YOU'VE ALREADY

17 PUT ON. YOU HAVE ALREADY ESTABLISHED THE ISSUE OF

18 IMPEACHMENT.

19 MR. LEVIN: THEN I ASK TO RECALL THE WITNESS AND

20 AUTHENTICATE A DOCUMENT THAT I WISH TO OFFER INTO

21 EVIDENCE WHICH SHOWS THE AMOUNT OF THE DONATION.

22 THE COURT: THE PEOPLE HAVE INDICATED THEY ARE

23 NOT GOING TO CHALLENGE THE TESTIMONY OF THE PREVIOUS

24 WITNESS AS TO THE AMOUNT, SO I DON'T SEE ANY RELEVANCE

25 TO THIS.

26 SO THE REQUEST IS DENIED.

27 MS. TOWERY: YOUR HONOR, BEFORE --
28 MS. ABRAMSON: IT IS JUST A SURPRISE TO ME THAT

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1 WE HAVE A WITNESS WHO COMMITTED PERJURY RIGHT IN FRONT
2 OF YOU.

3 THE COURT: YES.

4 MS. ABRAMSON: AND BLATANTLY IGNORED THE
5 AUTHORITY OF THIS COURT.

6 THE COURT: YES. THAT'S YOU SAY IT.

7 MS. ABRAMSON: HE BLATANTLY LIED.

8 THE COURT: THAT'S HOW YOU SAY IT.

9 MS. ABRAMSON: JUDGE, HOW CAN YOU SAY --

10 THE COURT: I AM NOT PASSING JUDGMENT ON
11 CREDIBILITY HERE. I AM SAYING I UNDERSTAND WHAT YOU'RE
12 SAYING.

13 MS. ABRAMSON: HE TESTIFIED IN FRONT EVERYONE HE
14 MADE A \$5,000 DONATION ON BEHALF OF THIS CHARITY. AS I
15 RECALL, HE SAID HE ONLY GOT \$20,000 BECAUSE OF THE
16 \$5,000 THAT WENT TO CHARITY.

17 THE COURT: I RECALL HIS TESTIMONY.

18 MS. ABRAMSON: BLANTANT, BLATANT PERJURY. THIS
19 MAY NOT BE HIS TRIAL, BUT IT IS NOT SO OFTEN THAT A
20 WITNESS COMMITS SO BLATANT PERJURY. WE ARE NOT TRYING
21 TO DISPROVE SOME COLLATERAL MATTER. THIS GOES TO THE
22 HEART OF HIS BIAS, THAT HE LIES TO MAKE MONEY, AND THE

23 COURT KNOWS HE HAS BOASTED IN THE PAST ABOUT TRYING TO
24 MAKE MONEY OFF THIS CASE. WHETHER WE PUT THAT EVIDENCE
25 ON IN FRONT OF THE JURY OR NOT, THE COURT KNOWS THAT
26 EVIDENCE EXISTS.

27 SO HERE WE HAVE THE ABILITY, WHICH IS VERY
28 RARE, IN IMPEACHING A WITNESS, OF ACTUALLY PROVING THAT

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1 SOMEONE LIED TO THE JURY. SO ALL WE WANT TO DO NOW IS
2 GET IN THE DOCUMENT SO THERE IS SOME -- AND NOT HAVE TO
3 RELY ON THE GOOD WILL OF THE PROSECUTORS IN FINAL
4 ARGUMENT THAT THEY WILL OR WILL NOT DISPUTE THIS.

5 WE HAVE A DOCUMENT FROM THE CHARITY WE
6 WOULD LIKE TO PUT INTO EVIDENCE, AND THAT ENDS THE
7 ISSUE, SO THAT THE JURY ISN'T FREE TO SPECULATE THIS
8 WOMAN WHO DIDN'T SEE THE CHECK HERSELF MAY BE ERRONEOUS.

9 SO IF WE COULD JUST DO THE DOCUMENT, FINE.

10 THE COURT: THE CRITICAL AREA OF THIS EXAMINATION
11 WAS GONE INTO.

12 MS. ABRAMSON: THE REASON WE CALLED THIS WITNESS
13 IS BECAUSE HE CLAIMED HE MET WITH HER IN PERSON. THAT'S
14 WHY.

15 THE COURT: THAT'S FINE. THAT'S FINE.

16 BUT THE NATURE OF THE IMPEACHMENT REALLY
17 HAS DO WITH THE FACT THAT CIGNARELLI WAS WILLING TO
18 OBTAIN MONEY IN EXCHANGE FOR DISCLOSING HIS STORY, AND

19 YOU'VE DONE THAT.

20 MS. ABRAMSON: AND TO TRY TO MAKE HIMSELF LOOK
21 LIKE A BIG DEAL.

22 THE COURT: AND YOU HAVE DONE THAT, AND THAT IS
23 THE PURPOSE OF THE IMPEACHMENT.

24 MR. LEVIN: YOUR HONOR, THERE IS ONE ADDITIONAL
25 AREA, AND THAT HAS TO DO WITH MS. NAJERA'S INQUIRY
26 CONCERNING MATCHING FUNDS, WHICH I BELIEVED IS
27 IRRELEVANT. IT HAS ABSOLUTELY NOTHING TO DO WITH
28 REHABILITATING CRAIG CIGNARELLI, AND HAS NOTHING TO DO

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1 WITH ANY OF THE ISSUES THAT ARE RELEVANT TO THIS TRIAL.

2 THIS WITNESS CAN TESTIFY TO THE MATCHING
3 FUNDS PROGRAM, AND I WANT THIS JURY TO KNOW AT LEAST, AS
4 I PRETTY MUCH UNDERSTAND IT, THAT THE MATCHING FUNDS
5 PROGRAM IS MONEY WHICH IS POOLED, AND THE ONLY TIME THAT
6 THE FUND ITSELF IS SUBJECT TO BE MATCHED IS IF THE FUND
7 GROWS TO A CERTAIN DOLLAR AMOUNT.

8 AND I WANT TO CALL THIS WITNESS TO EXPLAIN
9 THAT MR. CIGNARELLI, IN FACT, DID NOT CONTRIBUTE FUNDS
10 WHICH CAUSED A MATCH WHERE THE ORGANIZATION GOT \$6000.

11 THE COURT: OKAY. AGAIN, WE'RE ON -- WE'RE INTO
12 COLLATERAL ISSUES HERE, AND AT THIS POINT THE COURT IS
13 DOING WHAT THE COURT SHOULD DO, IS TO CUT IT OFF.

14 MR. LEVIN: AND, YOUR HONOR, IN ADDITION, ONE

15 MORE POINT.

16 THIS WITNESS WOULD TESTIFY THAT HE,
17 MR. CIGNARELLI, WAS NEVER TOLD THAT HIS FUNDS WOULD BE
18 MATCHED.

19 MS. NAJERA: IT WAS IN THE LETTER.

20 THE COURT: HOW WOULD YOU KNOW THAT? HOW WOULD
21 HE KNOW THAT?

22 MR. LEVIN: HOW WOULD WHO KNOW THAT?

23 THE COURT: HOW WOULD ANYBODY KNOW WHAT
24 MR. CIGNARELLI WAS OR WASN'T TOLD?

25 MR. LEVIN: BECAUSE THESE ARE THE ONLY PEOPLE
26 THAT HAD ANY DEALINGS WITH MR. CIGNARELLI.

27 THE COURT: HOW WOULD THEY KNOW THAT?

28 MR. LEVIN: WELL, WHETHER OR NOT --

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1 THE COURT: HOW DO YOU KNOW THAT?

2 MR. LEVIN: BECAUSE, YOUR HONOR, I KNOW IT. I
3 FEEL IT. I CAN FEEL IT.

4 MS. ABRAMSON: HE KNOWS IT WHEN HE SEES IT, YOUR
5 HONOR.

6 MR. LEVIN: I FEEL IT, AND I FEEL VERY STRONGLY
7 ABOUT IT.

8 MS. ABRAMSON: THAT DOES IT. THAT'S THE
9 PROSECUTION ARGUMENT.

10 THE COURT: ALL RIGHT. I HAVE TOLD YOU MY

11 FEELINGS.

12 MR. LEVIN: SHE DIDN'T TELL HIM.

13 MS. NAJERA: IT WAS IN THE LETTER.

14 THE COURT: I'VE TOLD YOU MY FEELINGS. THIS IS
15 IT. YOU CAN LET YOUR WITNESS GO.

16 MR. LEVIN: ALL RIGHT.

17 MS. ABRAMSON: GREAT.

18 MS. TOWERY: YOUR HONOR, WE ALSO DON'T HAVE OUR
19 CALENDAR WITNESS. HER FLIGHT WAS DELAYED, AND SHE SAID
20 SHE COULDN'T GET HERE IN TIME FOR COURT TODAY, SO WE ARE
21 FLYING HER DOWN FIRST THING IN THE MORNING, I THINK.

22 THE COURT: THERE IS FEDERAL EXPRESS.

23 MS. TOWERY: IT WAS A MECHANICAL PROBLEM AND NOT
24 PRECIPITATION, IS MY UNDERSTANDING, SO --

25 MS. ABRAMSON: CAN'T YOU FED-EX PEOPLE? IT WOULD
26 BE GOOD IF YOU COULD.

27 THE COURT: YOU NEED A PERSON? I THOUGHT YOU
28 NEEDED A DOCUMENT.

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1 MS. ABRAMSON: THEY WON'T STIPULATE.

2 THE COURT: I THOUGHT YOU WANTED THE ENTIRETY OF
3 A DOCUMENT, NOT A PERSON TO AUTHENTICATE IT.

4 MS. ABRAMSON: THEY WANTED IT DOWN HERE. THEY
5 WERE OBJECTING TO FOUNDATION.

6 MR. CONN: I WANT THE ENTIRE DOCUMENT, NOT

7 NECESSARILY THE PERSON.

8 THE COURT: YOU ARE NOT CLAIMING THAT THIS IS NOT
9 A DOCUMENT PRODUCED BY AND DISTRIBUTED BY FAILURE
10 ANALYSIS?

11 MR. CONN: NO, I AM NOT.

12 THE COURT: AND YOU ARE NOT GOING TO CHALLENGE
13 ITS AUTHENTICITY, JUST YOU WANT THE ENTIRETY OF THE
14 DOCUMENT AND NOT JUST ONE PAGE?

15 MR. CONN: THAT'S CORRECT, YOUR HONOR.

16 MS. TOWERY: WE CAN FED-EX IT.

17 MS. ABRAMSON: YOU CAN FED-EX IT, BUT IT WILL GET
18 HERE LATE ANYWAY. SHE WILL BE HERE MUCH QUICKER THAN
19 FED-EX WILL COME.

20 THE COURT: FED-EX IS MUCH CHEAPER. WHY DON'T
21 YOU SEE IF YOU CAN WORK IT OUT.

22 MS. TOWERY: I WILL TRY.

23 THE COURT: WE BROKE AT THE NOON HOUR TALKING
24 ABOUT DR. VICARY, SO LET'S FINISH THAT CONVERSATION.

25 FIRST OF ALL, IS HE AVAILABLE TODAY?

26 MS. ABRAMSON: I AM NOT SURE WHERE HE IS RIGHT
27 NOW. I WILL HAVE TO CHECK AND SEE IF HE IS BACK IN HIS
28 OFFICE. HE WAS SOMEWHERE BETWEEN SANTA ANA AND NORTH

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1 HOLLYWOOD OVER THE LUNCH BREAK. I WAS INFORMED THAT HE
2 HAD FINISHED HIS TESTIMONY IN SANTA ANA WOULD BE BACK IN

3 HIS OFFICE IN THE AFTERNOON. I AM NOT SURE IF HE'S

4 LANDED YET.

5 THE COURT: OKAY.

6 MS. ABRAMSON: I CAN CALL AND FIND OUT.

7 THE COURT: LET ME HEAR THE PEOPLE'S POSITION AS

8 TO WHY YOU OPPOSE HIS TESTIMONY.

9 MR. CONN: YES.

10 UNLIKE PERCIPIENT WITNESSES WHO MIGHT HAVE
11 ADDITIONAL INFORMATION TO GIVE REGARDING MATTERS THAT
12 ARE IN DISPUTE, HERE WE ARE SPEAKING ABOUT EXPERT
13 WITNESSES, AND THE COURT HAS MORE DISCRETION TO -- IN
14 DETERMINING WHETHER OR NOT THE COURT WILL ALLOW AN
15 EXPERT WITNESS TO TESTIFY, AND AT WHAT POINT EXPERT
16 WITNESSES BECOME CUMULATIVE.

17 THE QUESTION BEFORE THE COURT IS REALLY
18 WHETHER DR. VICARY HAS ANYTHING TO SAY THAT HAS NOT
19 ALREADY BEEN COVERED BY DR. WILSON IN HIS TESTIMONY.

20 I DON'T THINK IT'S APPROPRIATE FOR COUNSEL
21 TO SIMPLY CALL ANOTHER WITNESS JUST FOR UPPING THE ANTE,
22 SO TO SPEAK, AND HAVING TWO WITNESSES TO TESTIFY TO OUR
23 ONE, BECAUSE THEN THAT WOULD ONLY PROVIDE THE
24 PROSECUTION WITH AN OPPORTUNITY TO CALL YET ANOTHER
25 WITNESS TO REAFFIRM SOME OF THE CONTENTIONS THAT WE HAVE
26 MADE THROUGH THE TESTIMONY OF DR. DIETZ. AND THAT CAN
27 GO ON AND ON UNTIL ONE SIDE OR THE OTHER GETS THE
28 NUMERICAL ADVANTAGE OVER THE OTHER.

1 SO I THINK AT THIS POINT, EVEN THOUGH THERE
2 WAS A CONFLICT BETWEEN DR. WILSON AND DR. DIETZ, I THINK
3 THAT THE COURT CAN MAKE A DETERMINATION THAT BOTH SIDES
4 HAVE ADEQUATELY AND FULLY REPRESENTED THEIR POSITIONS TO
5 THIS JURY CONCERNING THIS PARTICULAR SUBJECT MATTER, AND
6 THE TESTIMONY OF DR. VICARY IS SIMPLY FOR THE PURPOSE OF
7 SAYING "ME, TOO. I AGREE WITH DR. WILSON."

8 I BELIEVE THAT THE COURT SHOULD AT THIS
9 POINT EXERCISE ITS DISCRETION AND RULE THAT NO
10 ADDITIONAL EXPERT TESTIMONY MAY BE PRESENTED BY EITHER
11 SIDE.

12 BY BEYOND THAT, OUR POSITION IS BASED UPON
13 THE FAILURE OF A SPECIFIC OFFER OF PROOF CONCERNING THIS
14 SPECIFIC WITNESS.

15 NOW, I KNOW THAT COUNSEL, AS SHE HAS DONE
16 IN THE PAST, HAS MADE VAGUE REPRESENTATIONS CONCERNING
17 WHAT THIS WITNESS WILL TESTIFY TO, AND IT'S ONLY WHEN
18 THE WITNESS TAKES THE STAND THAT WE FIND OUT WHAT THE
19 WITNESS REALLY HAS TO SAY.

20 THE COURT WILL RECALL THAT THERE WAS AN
21 OFFER OF PROOF CONCERNING DR. VICARY BEFORE THE DEFENSE
22 RESTED, AND AT THAT TIME THE COURT EXCLUDED THE
23 TESTIMONY OF DR. VICARY.

24 NOW, IT WASN'T BECAUSE, AS COUNSEL IS
25 ALLEGING, THAT IT WAS EXCLUDED ONLY BECAUSE THE COURT
26 REPRESENTED TO COUNSEL THAT HE WILL NECESSARILY AND
27 INEVITABLY BE A WITNESS CALLED BY THE DEFENSE LATER IN

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1 DR. VICARY TESTIFIED IN REGARD TO SEVERAL DIFFERENT
2 AREAS IN THE FIRST TRIAL, AND THAT EACH OF THOSE AREAS
3 WERE, IN FACT, IRRELEVANT.

4 SO I THINK THAT MOST OF THE TESTIMONY OF
5 DR. VICARY IS, IN FACT, IRRELEVANT. THAT HE HAS -- HE
6 TESTIFIED, AS I RECALL, IN THE FIRST TRIAL, TOO. I
7 REMEMBER OPINIONS CONCERNING THE ASSESSING OF
8 CREDIBILITY, FOR EXAMPLE, AND THE FACTORS BY WHICH ONE
9 DETERMINES WHETHER OR NOT SOMEONE WAS TRULY ABUSED, AND
10 THERE IS SIMPLY NO FOUNDATION FOR THE ADMISSION OF SUCH
11 TESTIMONY.

12 SO -- COUNSEL HAS SAID THAT SHE IS GOING TO
13 BEGIN WITH HIS TESTIMONY FROM THE FIRST TRIAL. THE
14 COURT HAS ALREADY RULED THAT MUCH OF THAT TESTIMONY IS
15 IRRELEVANT AND INADMISSIBLE AND WOULD CALL FOR IMPROPER
16 EXPERT OPINION.

17 SO THAT'S THE FIRST PART OF THE INADEQUATE
18 OFFER OF PROOF BY THE DEFENSE IN THIS CASE.

19 SECONDLY, COUNSEL HAS INDICATED THAT
20 DR. VICARY WILL TESTIFY TO THE DEFENDANT'S MENTAL STATE.

21 WELL, WE HAVE NO REPORT FROM DR. VICARY AT
22 THIS TIME. WE KNOW THAT IN THE FIRST TRIAL HE DID NOT
23 TESTIFY TO THE DEFENDANT'S MENTAL STATE OR DIAGNOSE IT

24 AT THE TIME OF THE COMMISSION OF THE CRIME. SO WE HAVE
25 ABSOLUTELY NO DISCOVERY CONCERNING WHAT DR. VICARY IS
26 GOING TO BE TESTIFYING TO. AND IF HIS OPINION IS SIMPLY
27 THAT OF DR. WILSON; THAT IS, HE WAS SUFFERING FROM
28 POST-TRAUMATIC STRESS DISORDER AND BATTERED-PERSON'S

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1 SYNDROME, THEN HE HAS NO ADDITIONAL TESTIMONY TO OFFER
2 WHICH GOES BEYOND THE TESTIMONY OF DR. WILSON.

3 SO WE WOULD ALSO OBJECT ON THAT GROUND.

4 AND FINALLY, THE DEFENSE HAS INDICATED THAT
5 THEY WOULD WANT DR. VICARY TO TELL THE JURY WHAT
6 DR. DIETZ SHOULD HAVE CONSIDERED, THINGS HE SHOULD HAVE
7 TAKEN INTO CONSIDERATION.

8 WELL, I THINK THAT ONCE AGAIN THIS IS AN
9 IMPROPER AREA OF TESTIMONY FOR A COUPLE OF DIFFERENT
10 REASONS.

11 FIRST, I THINK THAT COUNSEL IS ONCE AGAIN
12 TRYING TO BACK DOOR INFORMATION WHICH IS INADMISSIBLE,
13 IMPROPER EXPERT OPINION CONCERNING VARIOUS FACTORS THAT
14 ONE CAN TAKE INTO CONSIDERATION IN DETERMINING WHETHER
15 OR NOT SOMEONE WAS MOLESTED.

16 AND IF THAT SUBJECT MATTER IS INADMISSIBLE
17 FOR ALL THE REASONS THAT THE PEOPLE HAVE ARGUED IN THE
18 PAST, AND BASED UPON THE BOWKER CASE LAW FOR WHICH WE
19 CITED THE PROPOSITION THAT IT IS IMPROPER EXPERT

20 TESTIMONY, I DON'T THINK THAT NOW COUNSEL CAN PRESENT
21 THAT SAME SUBJECT TO THE JURY IN THE GUISE OF IT WAS
22 SOMETHING THAT DR. DIETZ SHOULD HAVE TAKEN INTO
23 CONSIDERATION.

24 SO AGAIN, I THINK THAT WITHOUT A FURTHER
25 OFFER OF PROOF FROM COUNSEL, IT SEEMS LIKE THAT IS
26 PRECISELY WHAT SHE IS OFFERING TO DO, AND THAT WOULD
27 ALSO BE INADMISSIBLE UNLESS DR. VICARY IS GOING TO
28 TESTIFY TO WHAT HE FEELS DR. DIETZ SHOULD HAVE

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1 CONSIDERED.

2 AND IF THAT IS THE CASE, THEN THAT'S SIMPLY
3 AN ARGUMENT THAT SHOULD BE LEFT FOR COUNSEL WHEN SHE
4 ARGUES THIS CASE TO THE JURY.

5 SO IN TOTAL, WHAT I THINK WE HAVE HERE IS A
6 TOTALLY INADEQUATE OFFER OF PROOF. WE HAVE NO IDEA WHAT
7 DR. VICARY IS GOING TO BE TESTIFYING FOR. WE HAVE NO
8 REPORTS, NO DISCOVERY. I THINK IT IS CUMULATIVE AT THIS
9 POINT, AND I THINK IT SHOULD BE EXCLUDED.

10 THE COURT: OKAY.

11 AND WHAT IS THE DEFENSE RESPONSE??

12 MS. ABRAMSON: THAT'S RIDICULOUS IS THE DEFENSE
13 RESPONSE, RIDICULOUS.

14 THE COURT: OKAY. AND WHAT IS IT THAT DR. VICARY
15 IS GOING TO TESTIFY ABOUT?

16 MS. ABRAMSON: DR. VICARY IS GOING TO TESTIFY TO
17 MY CLIENT'S MENTAL STATE FIVE YEARS AND EIGHT MONTHS AGO
18 WHEN HE FIRST SAW HIM.

19 HE IS -- DR. DIETZ CLAIMS THAT A FORENSIC
20 PSYCHIATRIST CANNOT RENDER AN OPINION SIX YEARS LATER,
21 AND HE IS RIGHT, HE CAN'T. BUT DR. VICARY IS A FORENSIC
22 PSYCHIATRIST. HE IS A MEDICAL DOCTOR. HE MADE
23 OBSERVATIONS OF MY CLIENT. HE FORMULATED CERTAIN
24 DIAGNOSES OVER THE COURSE OF THE FIRST FOUR MONTHS OF
25 HIS OBSERVATIONS AND TREATMENT OF MY CLIENT. OVER THE
26 COURSE OF HIS TREATMENT, HE SAW CHANGES IN MY CLIENT
27 WHICH VALIDATED HIS DIAGNOSIS.

28 HE WILL TAKE EXCEPTION TO WAYS IN WHICH

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1 DR. DIETZ HAS CHARACTERIZED MENTAL STATE AT THE TIME OF
2 THE CRIME, AND HE WILL GIVE HIS OPINION AS TO THE
3 CONSISTENCY OR INCONSISTENCY OF BEHAVIORS BY MY CLIENT
4 WITH THE TYPE OF THOUGHT PROCESSES ONE ENGAGES IN WHEN
5 ONE IS AROUSED BY EXTREME EMOTION.

6 HE ALSO WILL REFUTE CERTAIN ASPECTS OF
7 DR. DIETZ'S PERSONALITY TRAIT LITANY, AND INDICATE THE
8 PERSONALITY TRAITS THAT HE OBSERVED IN MY CLIENT OVER A
9 MUCH LONGER PERIOD OF TIME, WITH FAR MORE INDEPENDENT
10 INTERVIEWING, FIVE YEARS AND EIGHT MONTHS BEFORE
11 DR. DIETZ EVER SAW MY CLIENT.

12 HIS INFORMATION IS PARTICULARLY RELEVANT
13 BECAUSE IT'S CLOSE IN TIME -- CLOSER IN TIME TO THE
14 HOMICIDES THAN ANY OTHER MENTAL HEALTH EXPERT WHO IS
15 INVOLVED IN THE CASE.

16 HE WILL REFUTE ON TECHNICAL, SCIENTIFIC AND
17 MEDICAL GROUNDS -- WELL, THAT, TOO.

18 HE WILL REFUTE ON TECHNICAL AND SCIENTIFIC
19 AND MEDICAL GROUNDS SOME OF DR. DIETZ'S STATEMENTS ABOUT
20 GENERAL ANXIETY DISORDER.

21 HE WILL REFUTE THE CONSTANT PROSECUTION
22 SUGGESTION THROUGHOUT THIS TRIAL THAT MR. LEVIN -- OR
23 MR. LEVIN AND I CONCOCTED A P.T.S.D. DIAGNOSIS SO WE
24 COULD UTILIZE THE SERVICES OF DR. WILSON.

25 HE WILL -- DR. DIETZ SNAPPED INTO ONE OF
26 HIS ANSWERS THE NOTION THAT SOMEONE MAY HAVE COACHED
27 ERIK MENENDEZ TO ANSWER QUESTIONS IN A PARTICULAR WAY.
28 THEREFORE, WE THINK IT IS ABSOLUTELY CRUCIAL THAT

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1 DR. VICARY, WHO WAS THE FIRST PERSON APART FROM
2 MR. MENENDEZ' PRIEST TO WHOM HE REVEALED THE FACTS OF
3 MOLESTATION, BE PERMITTED TO DESCRIBE THE WAY IN WHICH
4 THE STORY WAS TOLD, BECAUSE THE ACCUSATION IS
5 MALINGERING. THE ACCUSATION IS MY CLIENT IS LYING ABOUT
6 ALL THIS; THAT HE'S MAKING UP SYMPTOMS; THAT HE'S MAKING
7 UP EVENTS. DR. VICARY HAS TESTIFIED -- HAS TAUGHT

8 MALINGERING TO PSYCHIATRISTS. HE HAS ALSO -- WAS FOR
9 FIVE YEARS THE EVALUATOR FOR THE USC SEX OFFENDER
10 PROGRAM.

11 HE IS NOT INTENDING TO OFFER AN ULTIMATE
12 OPINION ON WHETHER OR NOT ERIK MENENDEZ WAS MOLESTED,
13 ALTHOUGH HE HAS SUCH AN OPINION, AND IT IS IN THE
14 AFFIRMATIVE.

15 HE IS, HOWEVER, I BELIEVE, ENTITLED TO
16 OFFER OPINIONS AS TO WHETHER OR NOT THE SYMPTOMATOLOGY
17 HE SAW IN ERIK MENENDEZ STARTING IN MAY OR JUNE OF 1990
18 AND CONTINUING ON FOR AT LEAST A YEAR THEREAFTER WERE
19 CONSISTENT WITH POST-TRAUMATIC STRESS DISORDER, WITH "A"
20 STRESSOR BEING SEXUAL MOLESTATION.

21 NOW, ALL OF THAT'S BEEN THROWN INTO -- ALL
22 OF DR. WILSON'S CONCLUSIONS WERE ATTACKED THROUGH THE
23 TESTIMONY OF DR. DEITZ. DR. VICARY WAS THERE FIRST.
24 ALL OF THE PEOPLE'S ACCUSATIONS OF RECENT AND OF MORE
25 RECENT, IF YOU WILL, FABRICATION, I THINK WE SHOULD BE
26 ENTITLED TO PUT ON THE MENTAL HEALTH EXPERT WHO FIRST
27 TREATED HIM AND WHO FIRST GOT THE STORIES. AND I THINK
28 THAT'S THE MOST IMPORTANT COMPONENT, THE WAY IN WHICH IT

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1 WAS TOLD.

2 I KNOW THE PEOPLE ARE GOING TO GET UP IN
3 THE END AND SCREAM THAT HE MADE IT ALL UP, AND THE FACT

4 OF THE MATTER IS THE WAY IN WHICH IT WAS TOLD, THE
5 FACTS, THAT THERE WERE HINTS DROPPED, THINGS SAID EARLY
6 ON IN THE SESSIONS THAT DIDN'T MAKE ANY SENSE UNTIL HE
7 STARTED TO REVEAL THE MOLESTATION STORY IS EXTREMELY
8 SIGNIFICANT.

9 MOREOVER, HE WAS VERY, VERY, VERY SICK
10 MENTALLY AND PSYCHOLOGICALLY IN THE SPRING AND SUMMER OF
11 1990, AND THIS JURY HAS SEEN HIM TESTIFY WITH VERY
12 BRUTAL CROSS-EXAMINATION FOR 15 DAYS, AND IT MAY BE HARD
13 FOR THEM TO UNDERSTAND HOW HE COULD HAVE BEEN SO SCREWED
14 UP AT THE TIME OF THE HOMICIDES AS TO HAVE THIS
15 OVERREACTION AND YET BE SO APPARENTLY COMPETENT NOW.

16 AND I THINK IT'S VERY SIGNIFICANT FOR
17 DR. VICARY TO TESTIFY WHAT HE WAS LIKE PSYCHIATRICALY
18 AND BY WAY OF PERSONALITY TRAITS IN THE SPRING OF 1990
19 AND INDICATE WHY IT IS HE'S BETTER NOW.

20 THE COURT: SOME OF WHAT YOU SAY -- LET ME HEAR
21 FROM THE PROSECUTION.

22 MR. CONN: THIS IS PRECISELY THE AREA THAT THE
23 COURT HAS ALREADY RULED INADMISSIBLE. WE FILED A MOTION
24 IN REGARD TO THE SUBJECT MATTER, AS TO WHETHER OR NOT IT
25 IS RELEVANT AS TO WHAT HIS STATE OF MIND WAS WHEN HE WAS
26 SITTING IN COUNTY JAIL FIVE YEARS AGO. IT IS ABSOLUTELY
27 IRRELEVANT.

28 AND I BELIEVE, AS WE WERE DISCUSSING BEFORE

1 THE DEFENSE RESTED, THE COURT RULED THAT THAT IS
2 SOMETHING WHICH IS NOT RELEVANT.

3 THE ISSUE IN THIS CASE IS THE DEFENDANT'S
4 STATE OF MIND AT THE TIME OF THE COMMISSION OF THE
5 CRIME, NOT WHETHER HE APPEARED TO BE UNDER STRESS AFTER
6 HE WAS ARRESTED ON A DOUBLE HOMICIDE AND HE'S SITTING IN
7 COUNTY JAIL AWAITING PROSECUTION FOR A CAPITAL OFFENSE.
8 IT IS ABSOLUTELY IRRELEVANT.

9 AND COUNSEL SIMPLY WANTS TO PRESENT THIS
10 TESTIMONY BEFORE THE JURY SIMPLY FOR THE PURPOSE OF
11 GETTING SYMPATHY FOR THE DEFENDANT BY HEARING HOW
12 STRESSED OUT AND HOW UPSET HE WAS THAT HE WAS SITTING IN
13 COUNTY JAIL AWAITING TRIAL ON A CAPITAL OFFENSE.

14 SO THERE IS NO WAY THAT THE EXPERT CAN
15 INFER FROM HIS BEHAVIOR AT THAT PARTICULAR TIME THAT THE
16 DEFENDANT WAS MOLESTED, AND IT IS SIMPLY NOT PROPER
17 EXPERT OPINION.

18 IT IS ALSO IMPROPER EXPERT TESTIMONY FOR
19 THE EXPERT TO SAY -- TO TELL THE JURY HOW THE STORY WAS
20 TOLD. THIS IS ANOTHER AREA OF OBJECTION FOR WHICH WE
21 FILED AUTHORITY WITH THIS COURT, AND THE COURT ALSO
22 RULED THAT THIS IS NOT ADMISSIBLE.

23 WHETHER OR NOT THE STORY CAME OUT IN BITS
24 AND PIECES, OR WHETHER OR NOT THE STORY CAME OUT ALL AT
25 ONCE, THAT DOES NOT CONFIRM OR PRECLUDE THE TRUTHFULNESS
26 OF THE STORY. IT IS SIMPLY IRRELEVANT, AND YET COUNSEL
27 SUGGESTS THAT THE WAY IN WHICH THE STORY IS TOLD PROVES
28 ITS TRUTHFULNESS. WELL, THAT CANNOT BE DETERMINED, AND

1 UNDER 801 OF THE EVIDENCE CODE, THAT TYPE OF EVIDENCE
2 SHOULD NOT BE PRESENTED BEFORE THIS JURY, BECAUSE IT IS
3 NOT PROPER EXPERT OPINION.

4 AND THEN COUNSEL SEEKS TO DO THE SAME THING
5 THROUGH TESTIMONY CONCERNING MALINGERING, TO USE AN
6 EXPERT WITNESS THAT HAS TAUGHT CONCERNING MALINGERING.
7 WHAT SHE WANTS TO GET BEFORE THIS JURY IS ONE THING AND
8 ONE THING ONLY, AN EXPERT WITNESS ON THE STAND TO SAY "I
9 BELIEVE THE DEFENDANT". THAT'S WHAT IT ALL COMES DOWN
10 TO, AND THAT IS A VERY TRANSPARENT EFFORT TO DO THAT, TO
11 PUT A PERSONAL OPINION BEFORE THIS JURY THAT HE BELIEVES
12 THE DEFENDANT.

13 SO TESTIMONY CONCERNING MALINGERING IS
14 ABSOLUTELY IRRELEVANT, AND DOESN'T REFUTE THE TESTIMONY
15 OF DR. DIETZ IN ANY WAY.

16 NOW, COUNSEL KEEPS GETTING BACK TO THE
17 ISSUE THAT THIS IS AN EXPERT WHO SAW THE DEFENDANT FIVE
18 YEARS AGO. WELL, COUNSEL HAD A CHOICE OF EXPERTS THAT
19 SHE COULD HAVE CALLED, AND ONE EXPERT THAT SHE COULD
20 HAVE CALLED WAS DR. VICARY, AND THE OTHER ONE SHE COULD
21 HAVE CALLED WAS DR. WILSON. AND SHE CHOSE INSTEAD TO
22 CALL THE EXPERT WHO JUST STARTED SEEING HIM, AND THEN
23 SAVE THE EXPERT WHO SAW HIM RIGHT FROM THE START FOR
24 LAST.

25 WELL, SHE SHOULD HAVE DONE JUST THE

26 OPPOSITE. IF SHE HAD CALLED DR. VICARY BECAUSE HE HAD
27 SEEN THE DEFENDANT FIVE YEARS AGO, IF SHE FEELS HE COULD
28 PRESENT THE MORE RELIABLE OPINION, THEN THAT'S SOMETHING

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1 SHE COULD HAVE DONE, AND SHE WOULD HAVE BEEN ON WEAKER
2 GROUND TO CALL ANOTHER EXPERT WHO STARTED SEEING HIM
3 RECENTLY.

4 SO I DON'T THINK THE COURT SHOULD BE
5 PERSUADED BY THE ARGUMENT THIS IS AN EXPERT WHO SAW THE
6 DEFENDANT FIVE YEARS AGO. AGAIN, SHE WANTS TO PRESENT
7 THAT EXPERT ONLY FOR THE PURPOSE OF SUGGESTING THAT THE
8 EXPERT WHO EXAMINED HIM CLOSE IN TIME IS NECESSARILY
9 MORE RELIABLE, AND THAT SIMPLY DOESN'T FOLLOW.

10 AND AS FAR AS THE DIAGNOSIS IS CONCERNED,
11 HE APPARENTLY IS, AS I SUSPECT, HE IS SIMPLY GOING TO
12 CONFIRM THE TESTIMONY OF DR. WILSON THAT THE DEFENDANT
13 IS SUPPOSEDLY SUFFERING FROM POST-TRAUMATIC STRESS
14 DISORDER WITH A STRESSOR OF HAVING BEEN MOLESTED.

15 THAT IS SOMETHING THAT DR. WILSON HAS
16 ALREADY TESTIFIED TO. THAT POINT OF VIEW HAS BEEN
17 ADEQUATELY PRESENTED TO THE JURY, AND THERE'S NO REASON
18 TO PRESENT ADDITIONAL EXPERT TESTIMONY IN REGARD TO
19 THAT.

20 MS. ABRAMSON: IT'S EXHAUSTING SOMETIMES TO TRY
21 AND FOLLOW THE MENTAL GYMNASTICS THAT THE PROSECUTION

22 JUST WENT THROUGH, BECAUSE THEY SIMPLY SWITCH POSITIONS
23 TO SUIT THEM.
24 I RECALL VERY DISTINCTLY WHEN WE WERE
25 HAVING RULINGS MONTHS AGO ABOUT THE SCOPE OF EXPERT
26 TESTIMONY, ADOPTING THE PROSECUTION'S ARGUMENT, HOW THIS
27 COURT SAID THAT ALL THAT MATTERED WAS WHAT WAS PRESENTED
28 BY WAY OF SYMPTOMS IN AN EVALUATION CONTEXT; THAT HOW

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1 THE DEFENDANT APPEARED TO THE EXPERT WITNESS FOR
2 EVALUATION AND THAT DIAGNOSIS IS ALL THAT MATTERED.
3 AND THAT IS PRECISELY WHAT WE ARE TRYING TO
4 DO WITH DR. VICARY AND NOW I AM BEING TOLD THAT MY
5 CLIENT'S DIAGNOSIS OF FIVE YEARS AND EIGHT MONTHS AGO
6 AND THE EXPERT'S OPINION AS TO WHAT HIS MENTAL CONDITION
7 OR DISORDER WAS A YEAR BEFORE THAT AND WHAT HIS MENTAL
8 CONDITION WAS AT THE TIME OF THE CRIME ARE NOT RELEVANT
9 SOMEHOW. NO ONE TOLD THEM THEY HAD TO BRING DR. DIETZ
10 IN HERE, OR DR. DIETZ HAD TO CLAIM WHAT IT IS THAT
11 FORENSIC PSYCHIATRISTS CAN AND CANNOT DO, OR HIS
12 REFUTING OF POST-TRAUMATIC STRESS DISORDER BECAUSE HE
13 DOESN'T WANT -- OBVIOUSLY HE NEVER COULD HAVE SAID
14 POST-TRAUMATIC STRESS DISORDER, OR THEY WOULD HAVE HAD
15 TO SUE HIM FOR THE \$40,000.
16 BUT I THINK IT'S RIDICULOUS FOR THEM TO
17 CLAIM ON THE ONE HAND OUR EXPERTS HAVE TO BELIEVE

18 LIMITED TO WHAT IS PRESENTED TO THEM ON INTERVIEW.

19 ON THE OTHER HAND, IF I WANT TO PUT ON AN

20 EXPERT TO DESCRIBE WHAT WAS PRESENTED TO HIM ON

21 INTERVIEW, SOMEHOW THAT'S A SYMPATHY THING. I DIDN'T

22 MAKE MY CLIENT CRY. IT'S NOT MY FAULT.

23 THE FACT OF THE MATTER IS, WHEN DR. VICARY

24 SAW HIM, HE WAS QUITE FLORIDLY SICK, AND THERE WERE

25 REASONS FOR THAT SICKNESS. AND FOR DR. DIETZ ON THE ONE

26 HAND TO SAY WELL, HE SAW MILD SYMPTOMS OF THIS AND MILD

27 SYMPTOMS OF THAT, AND MAYBE IT WAS THE MEDICATION.

28 AND WE WANTED TO BREAK THROUGH THAT

-15157

1 SPECULATION, AND WHAT HE IS TRYING TO CLAIM ARE MILD

2 SYMPTOMS OF ANXIETY, SO THAT THE WITNESS -- THE EXPERT

3 WHO SAW HIM EARLY CAN TALK ABOUT VERY FLORID SYMPTOMS OF

4 POST-TRAUMATIC STRESS DISORDER.

5 AND THIS IS NOT A SURPRISE TO THE PEOPLE.

6 I HAVE INDICATED -- I INDICATED BACK BEFORE THE 801

7 HEARING THAT DR. VICARY WOULD -- HAD RENDERED A

8 DIAGNOSIS OF POST-TRAUMATIC STRESS DISORDER ALL THE WAY

9 BACK IN 1990, AND THAT HAS ALWAYS BEEN HIS DIAGNOSIS.

10 THERE IS NOTHING NEW ABOUT THAT.

11 AND I COULD HAVE SWORN I JUST ARGUED THAT

12 HE WASN'T GOING TO GIVE A PERSONAL OPINION BECAUSE OF

13 THE COURT'S RULINGS UNDER SECTION 29 AND THE

14 CONVERSATIONS WE'VE HAD BEFORE ABOUT CHILD ABUSE
15 ACCOMMODATION SYNDROME. HE WASN'T GOING TO GIVE AN
16 OPINION ON WHETHER OR NOT MY CLIENT WAS, IN FACT,
17 MOLESTED. I COULD HAVE SWORN I SAID THAT.

18 THE COURT: WELL, I HAVE NEVER RELATED SECTION 29
19 OF THE PENAL CODE TO THAT PARTICULAR OPINION. OBVIOUSLY
20 IT DOESN'T APPLY.

21 MS. ABRAMSON: AND HE IS NOT GOING TO GIVE THE
22 OPINION --

23 THE COURT: BUT THERE ARE OTHER REASONS FOR IT
24 BEING INADMISSIBLE.

25 MS. ABRAMSON: -- AS A RESULT THAT MY CLIENT WAS
26 IN A STATE OF FEAR AT THE TIME OF THE CRIME, EVEN THOUGH
27 DR. DIETZ CAME AWFULLY, AWFULLY CLOSE TO SAYING HE
28 WASN'T BY SAYING ANYONE IN THE PANIC STATE WHO RUNS

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1 TOWARDS THE DANGER MUST HAVE OVERCOME THE PANIC, WHICH I
2 THOUGHT WAS DANCING ON THE EDGE OF THE WIRE.

3 THE COURT: DR. DIETZ DIDN'T COME NEAR AS CLOSE
4 TO THAT AS DR. WILSON DID IN HIS EXAMINATION.

5 MS. ABRAMSON: WELL, THE PEOPLE OBJECTED AND THE
6 COURT SUSTAINED IT.

7 THE FACT OF THE MATTER IS, GIVEN THE KIND
8 OF STATEMENTS DR. DIETZ MADE, WE HAVE A RIGHT TO REBUT
9 HIM.

10 NOW, I CAN BRING DR. WILSON BACK TO DO IT,
11 BUT I WOULD RATHER NOT DO THAT TO HIM AND THE TAXPAYERS.
12 DR. VICARY WE GET FOR FREE. WE DON'T HAVE TO FLY HIM
13 HERE. DR. WILSON WE HAVE TO ACTUALLY PAY TO BRING HIM
14 HERE, AND THERE IS A QUESTION -- I THINK I SHOULD BE
15 ABLE TO CALL WILSON BACK TO REFUTE CERTAIN THINGS THAT
16 DIETZ SAID. IN FACT, IT'S MY POSITION I SHOULD BE ABLE
17 TO CALL THEM BOTH; DR. VICARY BECAUSE HE IS A FORENSIC
18 PSYCHIATRIST, AND HE CAN DISPUTE SOME OF THE THINGS THAT
19 DR. DIETZ SAID ABOUT FORENSIC PSYCHIATRY; DR. WILSON TO
20 REFUTE OTHERS.

21 THE COURT: NORMALLY IN REBUTTAL ONE DOESN'T CALL
22 BACK WITNESSES TO REGURGITATE WHAT THEY SAID ON THEIR
23 DIRECT EXAMINATION, WHICH IS BASICALLY WHAT WOULD HAPPEN
24 IF YOU CALLED DR. WILSON BACK.

25 THE ISSUE OF REBUTTAL IS TO REBUT WHAT HAS
26 BEEN PUT ON BEFORE. YOU ARE REBUTTING -- ATTEMPTING TO
27 REBUT WHAT THE PEOPLE HAVE PUT ON IN THEIR REBUTTAL.
28 IT'S YOUR SURREBUTTAL AT THIS STAGE.

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1 SO THE QUESTION IS WHAT IS IT THAT VICARY
2 SAYS THAT REBUTS THE TESTIMONY OF DR. DIETZ, NOT HIS --
3 NOT VICARY'S TESTIMONY THAT YOU WOULD PROPOSE TO GIVE IN
4 THE CASE-IN-CHIEF, BUT WHAT IT IS THAT HE WOULD DO TO
5 IMPEACH OR REBUT DR. DIETZ. THAT IS THE QUESTION.

6 MS. ABRAMSON: HE IS GOING TO IMPEACH AND REBUT
7 THAT MY CLIENT SUFFERED FROM GENERAL ANXIETY DISORDER.
8 HE ABSOLUTELY DISAGREES WITH THAT DIAGNOSIS.
9 ABSOLUTELY, COMPLETELY WRONG.

10 THE COURT: OKAY.

11 MS. ABRAMSON: HE DISAGREES WITH DR. DIETZ'S
12 TESTIMONY WHAT THE ETIOLOGY OF IT IS. HE DISAGREES WITH
13 HIS TESTIMONY ABOUT MY CLIENT'S SO-CALLED PERSONALITY
14 TRAITS. HE DISAGREES WITH HIS TESTIMONY ABOUT WHETHER
15 MY CLIENT'S BEHAVIOR AT THE TIME OF THE CRIME WAS
16 CONSISTENT OR INCONSISTENT WITH HELPLESSNESS,
17 HOPELESSNESS AND HYPERVIGILANCE.

18 HE DISAGREES WITH MUCH, THOUGH NOT ALL, OF
19 WHAT DR. DIETZ SAID, AND HE DISAGREES WITH THE
20 SUGGESTION THAT MY CLIENT WAS SUGGESTED TO.

21 THE COURT: DID DR. DIETZ SAY THAT?

22 MS. ABRAMSON: YES. HE SAID HE WAS SUGGESTABLE.

23 THE COURT: WHAT DID HE SAY THAT SAID THINGS WERE
24 SUGGESTED TO YOUR CLIENT?

25 MS. ABRAMSON: I WILL FIND THE CITATION FOR YOU.

26 OH. I ASKED HIM IF HE HAD FOUND THE
27 EXAMINATION BY MR. CONN TO INDICATE SUGGESTABILITY, AND
28 HE SAID: "NO, I MEANT IT MORE IN HIS SENSE OF BEING

1 COACHED IN GIVING THE ANSWERS," AND THAT'S WHAT I ASKED

2 HIM WHO WAS HE ACCUSING OF MAKING THESE SUGGESTIONS, AND
3 THE COURT SUSTAINED A SERIES OF OBJECTIONS.

4 THEN I ASKED HIM IF HE WAS AWARE OF THE
5 METHOD BY WHICH DR. VICARY HAD CONDUCTED HIS
6 EXAMINATION, AND HE INDICATED WHAT MY CLIENT HAD TOLD
7 HIM ABOUT THAT.

8 BUT I THINK IT'S OBVIOUS THAT HE WAS
9 SUGGESTING THAT SOMEONE HAD COACHED MY CLIENT ON THE --
10 FOR INFORMATION IN HIS DEFENSE.

11 THE COURT: WAS THAT IN RELATIONSHIP TO HIS
12 PSYCHOLOGICAL TESTS?

13 MS. ABRAMSON: NO. IT HAD NOTHING DO WITH THE
14 PSYCHOLOGICAL TESTS. IT HAD TO DO WITH HIS PERSONALITY
15 TRAITS HE WAS DESCRIBING.

16 THE COURT: BUT THE NATURE OF YOUR EXAMINATION
17 HAD TO DO WITH THE PSYCHOLOGICAL TESTS.

18 MS. ABRAMSON: NO, IT DOESN'T. IT DIDN'T HAVE TO
19 DO WITH THE PSYCHOLOGICAL TESTS. I ASKED HIM IF HE
20 THOUGHT HE WAS A SUGGESTABLE PERSON. I ASKED HIM --
21 WELL, MY QUESTION -- WELL, I WILL LOOK IT UP, JUDGE,
22 OVER THE RECESS.

23 BUT MY QUESTION HAD TO DO WITH WHETHER HE
24 DISPLAYED SUGGESTABILITY DURING HIS EXAMINATION --
25 CROSS-EXAMINATION, AND HE SAID: "NO, I WAS -- I MEANT
26 MORE IN TERMS OF BEING COACHED TO GIVE THE ANSWER," AND
27 HE MEANT THE ANSWER ON CROSS-EXAMINATION, YOUR HONOR,
28 NOT THE ANSWER ON PSYCHOLOGICAL TESTING. THAT WAS NEVER

1 FRAMED.

2 THE COURT: DR. VICARY -- ALTHOUGH YOU HAVE
3 STATED THIS -- DID HE EVER DOCUMENT HIS DIAGNOSIS OF
4 POST-TRAUMATIC STRESS DISORDER IN ANY OF HIS NOTES?

5 MS. ABRAMSON: WHAT DO YOU MEAN? DO YOU MEAN --
6 YOU MEAN WRITE IN HIS NOTES "POST-TRAUMATIC STRESS
7 DISORDER"?

8 THE COURT: WRITE "MY DIAGNOSIS IS SUCH AND
9 SUCH."

10 MS. ABRAMSON: WELL, NO. NEITHER DID DR. DIETZ
11 IN HIS NOTES.

12 THE COURT: DR. DIETZ IS NOT A TREATING
13 PHYSICIAN. TREATING PHYSICIANS, NORMALLY, WHEN THEY
14 TREAT SOMEONE, THEY WRITE A DIAGNOSIS IN THEIR NOTES.

15 MS. ABRAMSON: HE TOLD ME.

16 THE COURT: WELL, WHEN DID HE COME UP WITH THAT
17 DIAGNOSIS?

18 MS. ABRAMSON: I WOULD SAY THAT HE CAME UP WITH
19 THAT DIAGNOSIS IN THE FALL OF 1990.

20 THE COURT: AND HE DIDN'T DOCUMENT IT IN HIS
21 NOTES?

22 MS. ABRAMSON: THERE WAS NO REASON TO DOCUMENT IT
23 IN HIS NOTES. HE WAS TALKING TO ME EVERY TWO WEEKS. HE
24 WAS WORKING --

25 THE COURT: WHAT WAS THE REASON FOR HIM TAKING
26 NOTES?

27 MS. ABRAMSON: TO KEEP TRACK OF THE INFORMATION
28 AND THE PROGRESS OF THE THERAPY, AND MAINLY TO KEEP

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1 TRACK OF THE SYMPTOMS THAT MY CLIENT WAS RELATING,
2 BECAUSE HE WAS MEDICATING HIM.

3 THE COURT: THERAPY FOR WHAT?

4 MS. ABRAMSON: FOR POST-TRAUMATIC STRESS
5 DISORDER.

6 THE COURT: WELL, HOW COULD HE BE GIVING THERAPY
7 FOR POST-TRAUMATIC STRESS DISORDER IF HE DIDN'T
8 DIAGNOSIS IT?

9 MS. ABRAMSON: JUDGE, IF YOU WANT TO RULE HE
10 DOESN'T TESTIFY, DO IT. BUT I DON'T WANT TO PLAY CAT
11 AND MOUSE WITH YOU.

12 THE COURT: I AM JUST ASKING A QUESTION.

13 MS. ABRAMSON: YOU HAVE BEEN EXTREMELY HOSTILE
14 TOWARDS ME TODAY. I AM NOT IN MY USUAL, FUN MOOD TO
15 DEAL WITH IT.

16 IF YOU'RE GOING TO STOP ME FROM CALLING THE
17 TREATING PSYCHIATRIST, DO IT. I DON'T FEEL LIKE PLAYING
18 CAT AND MOUSE.

19 THE COURT: THEN DON'T PLAY CAT AND MOUSE.

20 MS. ABRAMSON: AND I HAVE NEVER HEARD OF A
21 RULE -- YOU CAN CAST ASPERSIONS ON DR. VICARY'S
22 TRUTHFULNESS, AND THAT IS VERY DISTURBING TO ME. IF YOU

23 WANT TO ASK HIM WHY HE DIDN'T WANT TO PUT IT IN HIS
24 NOTES, ASK HIM.
25 THE COURT: COUNSEL, YOU ARE ALWAYS WILLING TO
26 CHARACTERIZE WHAT EVERYBODY SAID, AND ALL I AM DOING IS
27 ASKING QUESTIONS.
28 MS. ABRAMSON: YOUR HONOR, THE PEOPLE HAVE HIS

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1 NOTES.
2 THE COURT: THEN ANSWER MY QUESTION.
3 MS. ABRAMSON: DID HE WRITE P.T.S.D. IN HERE?
4 THE COURT: YES.
5 MS. ABRAMSON: NO. I DON'T SEE IT IN MY LIST.
6 THE COURT: WHAT ELSE WAS HE TREATING YOUR CLIENT
7 FOR?
8 MS. ABRAMSON: THESE EXTREME SYMPTOMS:
9 HALLUCINATIONS, HEARING VOICES AT ONE TIME, EXTREME
10 DEPRESSION, EXTREME ANXIETY. THAT'S WHAT HE WAS TELLING
11 ME HE WAS TREATING HIM FOR.
12 WE DISCUSSED WHETHER HE HAD FOUND THE
13 DIAGNOSTIC CRITERIA FOR POST-TRAUMATIC STRESS SYNDROME
14 IN 1990. HE SAID YES, AND HE JUST KEPT ON TREATING HIM.
15 AND DR. KUNZMAN AT THE JAIL IS ALSO PRESCRIBING
16 MEDICATION FOR ANXIETY AND DEPRESSION, THE TWO MAIN
17 COMPONENTS OF POST-TRAUMATIC STRESS SYNDROME.
18 SO NO, THE NOTES DON'T SAY P.T.S.D., JUST

19 AS DR. DIETZ'S NOTES DON'T SAY G.A.D. I DON'T EVEN
20 KNOW IF DR. WILSON'S NOTES SAID P.T.S.D. DR. WILSON'S
21 NOTES WERE NARRATIVE. DR. VICARY'S NOTES ARE BOTH A
22 COMBINATION OF A NARRATIVE AND A COMMENTARY OF HIS
23 CONDITION. HE PUTS IN NOTATIONS BECAUSE HE WAS
24 MARKING -- HE WAS VERY CONCERNED ABOUT DEPRESSION AND
25 SUICIDALITY IN THE BEGINNING, SO HE IS MARKING MY
26 CLIENT'S EMOTIONAL STATE. HE MAKES NOTES ABOUT WHEN
27 HE'S CRYING, WHEN HE'S HYSTERICAL. HE MAKES NOTES --
28 TRACKS THE WORST OF HIS DREAMS; THAT HE CAN'T SLEEP,

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1 THAT HE HAS -- IMAGINES THAT HE HEARS VOICES.
2 HE IS JUST MAKING NOTES SO HE CAN TRACK THE
3 UPS AND DOWNS OF HIS MENTAL STATE, BECAUSE HE IS
4 CONCERNED ABOUT HIS SURVIVING, AND HE'S GOT TO TRACK THE
5 EFFECTS OF MEDICATIONS.
6 SO HERE, FOR EXAMPLE IN HIS NOTES, HE
7 INDICATES WHEN HE STARTS HIM ON TRIAVIL. THEN HE TALKS
8 ABOUT WHEN HE REDUCES HIM BACK DOWN TO JUST XANAX.
9 THAT'S WHAT THE NOTES ARE LIKE. MUCH OF
10 THE INFORMATION IN THE NOTES IS A RECITATION OF HIS WORK
11 THROUGH HIS FEELINGS ABOUT HIS PARENTS OVER THE COURSE
12 OF THIS YEAR THAT THESE NOTES REFLECT. HE IS ALSO
13 TALKING ABOUT THE COURSE OF THE MOLESTATION HISTORY WITH
14 HIS FATHER.

15 HE IS TALKING ABOUT HIS FEARS DURING THE
16 WEEK BEFORE -- WELL, DURING HIS WHOLE LIFE -- BUT ALSO
17 THE WEEK BEFORE THE HOMICIDES.
18 THAT'S WHAT THE NOTES ARE LIKE. THEY ARE
19 NOT LIKE DR. DIETZ'S NOTES OR DR. WILSON'S NOTES, WHERE
20 IT'S CLEAR THAT THEY'RE GETTING NARRATIVE ANSWERS TO
21 QUESTIONS OF MY CLIENT ABOUT ASPECTS OF THE CASE,
22 BECAUSE HE IS THE FIRST PERSON TO GET THE INFORMATION,
23 AND IT'S COMING OUT IN THE SORT OF MORE TYPICAL,
24 FRAGMENTED FORM OF THERAPY, RATHER THAN AN INTERVIEW.
25 BOTH DR. DIETZ AND DR. WILSON CONDUCTED A MORE
26 INTERVIEWING STYLE.
27 SO THE NOTES -- THEIR NOTES ARE MORE
28 NARRATIVELY COHERENT.

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1 THESE ARE PSYCHIATRIST'S NOTES OF WHAT
2 THINGS ARE -- THEY'RE ACTUALLY MUCH MORE SIMILAR TO THE
3 OTHER NOTES IN THIS CASE FROM SUMMERFIELD AND COX, THE
4 ONES WHO WERE TREATING MRS. MENEDEZ. THEY'RE MORE LIKE
5 THERAPY NOTES, BECAUSE THEY'RE FRAGMENTED. THEY CAPTURE
6 SOME INFORMATION THAT HE THINKS IS IMPORTANT FOR
7 TRACKING SYMPTOMS AND FOR DIAGNOSIS PURPOSES AND FOR
8 TREATMENT PURPOSES, SO THAT'S WHAT THEY'RE LIKE.
9 I AM HAPPY TO GIVE THEM TO YOU, JUDGE.
10 THE COURT: I DON'T NEED THEM. I WAS ASKING

11 WHETHER OR NOT THERE WAS A DIAGNOSIS IN THEM, AND YOUR

12 ANSWER IS THERE IS NOT.

13 MS. ABRAMSON: NOT THAT I RECALL SPECIFICALLY.

14 THE COURT: ALL RIGHT.

15 AND THESE ARE THE STATEMENT NOTES THAT WERE

16 AVAILABLE TO DR. WILSON PRIOR TO HIS TESTIMONY, AND WHAT

17 HE CONSIDERED AND RELIED UPON IN HIS TESTIMONY?

18 MS. ABRAMSON: I DON'T KNOW TO WHAT EXTENT HE

19 RELIED UPON THEM, BUT I KNOW HE CONSIDERED THEM.

20 THE COURT: AS WELL AS THE TESTIMONY OF

21 DR. VICARY FROM THE FIRST TRIAL, AS HE TESTIFIED.

22 MS. ABRAMSON: BUT HE NEVER GOT INTO THE CONTENT

23 OF EITHER OF THESE.

24 IN FACT, I THINK WE WERE PROHIBITED FROM

25 GETTING INTO THE CONTENT OF EITHER DR. VICARY'S NOTES OR

26 DR. VICARY'S TESTIMONY. I KNOW, IN FACT, THERE WAS NO

27 TESTIMONY BY DR. WILSON CONCERNING THE CONTENT OF THESE

28 NOTES, EXCEPT, FOR A COUPLE OF EXAMPLES, LIKE ERIK

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1 FALLING ASLEEP DURING A DISCUSSION ABOUT SEX, OR WANTING

2 TO VOMIT DURING A DISCUSSION ABOUT SEX.

3 APART FROM THAT, THE CONTENT OF THESE NOTES

4 HAVE NEVER BEEN BEFORE THIS JURY, NOR HAS DR. VICARY'S

5 TESTIMONY, NOR ANY OF HIS OPINIONS OR CONCLUSIONS, NOR

6 ANY OF HIS OBSERVATIONS.

7 THE COURT: WELL, HIS OPINIONS AND CONCLUSIONS TO
8 THE EXTENT THAT QUESTIONS WERE ASKED OF DR. WILSON
9 WHETHER OR NOT ANY OF THE OTHER EXPERTS WHO EXAMINED THE
10 DEFENDANT CAME UP WITH ANY CONTRARY OPINIONS THAT WOULD
11 CAUSE HIM TO CHANGE HIS OPINION, THINGS OF THAT NATURE.

12 MS. ABRAMSON: WELL, I DON'T RECALL HIM BEING
13 ASKED THAT QUESTION.

14 THE COURT: OKAY. WELL, THINGS ALONG THOSE LINES
15 WERE CERTAINLY ASKED.

16 ALL RIGHT.

17 MS. ABRAMSON: THERE WERE A LOT OF PREVIOUS
18 EXPERTS, BUT THE FACT IS THERE IS A BRAND NEW DIAGNOSIS
19 HERE OF DR. DIETZ WHICH WE THINK IS MEDICALLY WRONG, AND
20 WE CAN POINT TO THE FACTS THAT MAKE IT MEDICALLY WRONG,
21 AND DR. DIETZ REFUSED TO READ THE MATERIALS THAT WERE
22 PROVIDED. HE NEVER READ DR. VICARY'S TESTIMONY, AND HE
23 SAID HE ONLY READ PART OF DR. VICARY'S NOTES.

24 THE COURT: AND WHAT WAS YOUR RESPONSE TO THE
25 PROSECUTION'S ARGUMENT THAT HAD YOU CALLED VICARY FIRST,
26 THEN YOU WOULDN'T BE IN A POSITION TO ARGUE NOW THAT
27 WILSON SHOULD BE PERMITTED TO TESTIFY?

28 MS. ABRAMSON: OH, I WOULD SAY THAT WILSON COULD

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1 BE CALLED TO REFUTE DIETZ. IF DIETZ IS GOING TO TESTIFY
2 TO GENERALIZED ANXIETY DISORDER, AND I HAVE THE LEADING

3 P.T.S.D. RESEARCHER IN THE COUNTRY AVAILABLE TO ME, I

4 THINK I COULD CALL WILSON TO REFUTE DIETZ.

5 I THINK I SHOULD BE ENTITLED -- FIRST OF

6 ALL, I THINK I SHOULD BE ENTITLED TO CALL A PSYCHIATRIST

7 TO REFUTE HIM ON THE BASIS OF WHAT IT IS FORENSIC

8 PSYCHIATRISTS SHOULD AND SHOULDN'T DO.

9 AND I THINK IT'S APPROPRIATE FOR ME TO CALL

10 A PSYCHOLOGIST EXPERT IN P.T.S.D. I THINK BOTH OR

11 EITHER I SHOULD HAVE BEEN ABLE TO CALL IN MY

12 CASE-IN-CHIEF, BUT IF I WERE LIMITED TO MY CASE-IN-CHIEF

13 TO ONE, ONCE THE PEOPLE HAVE CALLED A WITNESS OF THEIR

14 OWN WITH WHOM AN EXPERT OF MINE DISAGREES, I SHOULD BE

15 ENTITLED TO REFUTE THEIR REBUTTAL. IT'S RIDICULOUS FOR

16 DR. DIETZ TO SIT THERE AND SAY HE CAN'T DIAGNOSIS FOR

17 P.T.S.D. WHILE CONCEDED THAT IT'S DONE EVERY SINGLE

18 DAY.

19 AND I THINK I AM ENTITLED TO AT LEAST

20 REFUTE THAT NOTION THAT YOU CAN NEVER DIAGNOSIS FOR

21 P.T.S.D. IN A CRIMINAL CASE, AND HE SAYS WHEN IT'S SIX

22 YEARS AGO.

23 WELL, I HAVE SOMEBODY WHO MADE THE

24 DIAGNOSIS WHEN IT WAS ONLY ONE YEAR BEFORE, AND I SHOULD

25 BE ABLE TO SHOW THAT THAT CAN BE MADE, AND WAS MADE AT

26 THAT TIME, SO THE JURY DOESN'T GET THE SENSE THAT OH,

27 IT'S ALL WITHIN THE UNKNOWN.

28 THE COURT: AND THE PEOPLE'S RESPONSE WAS THAT

1 THEN THEY WOULD BE ABLE TO CALL A WITNESS WHO COULD SAY
2 JUST WHAT DR. DIETZ SAID, THAT THIS DIAGNOSIS COULD NOT
3 BE MADE.

4 MS. ABRAMSON: FINE. LET THEM DO IT.

5 THE COURT: SUCH AS THE WITNESS THEY CALLED
6 DURING THEIR HEARING THAT WE HAD.

7 MS. ABRAMSON: I WOULD BE MORE THAN HAPPY TO SEE
8 DR. GEIER AGAIN. THEY COULD CALL AS MANY WITNESSES AS
9 THEY CAN HONORABLY PUT ON. THAT'S BESIDE THE POINT.

10 THE COURT: NO. THE POINT IS HERE THAT THERE IS
11 AN OBJECTION, AND THE COURT HAS TO RULE UPON IT.

12 MS. ABRAMSON: FINE. RULE ON THE OBJECTION,
13 JUDGE. I DON'T FEEL LIKE PLAYING TODAY.

14 THE COURT: OKAY, COUNSEL.

15 WELL, IF THAT'S WHAT YOU WANT TO DO, THAT'S
16 WHAT YOU DO, IS PRESENT TO THE COURT YOU'RE PLAYING.

17 MS. ABRAMSON: I NEVER HEARD OF A COURT SERIOUSLY
18 CONSIDERING NOT -- AND MOREOVER, I AM REMEMBERING WHAT
19 YOU SAID AT THE CLOSE OF MY CASE-IN-CHIEF: "WELL, IF
20 DR. DIETZ IS GOING TO TESTIFY TO SOME OTHER DIAGNOSIS,
21 THEN IT WILL BE APPROPRIATE TO CALL DR. VICARY IN
22 REBUTTAL."

23 SO HERE WE ARE. IF YOU'VE CHANGED YOUR
24 MIND, FINE. I DON'T FEEL WELL. I AM SICK. I AM UPSET.

25 THE COURT: THEN WE WILL TAKE A RECESS.

26 LADIES AND GENTLEMEN, WE WILL TAKE A RECESS
27 THEN SO THAT COUNSEL CAN FEEL BETTER. WE WILL RESUME

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1 8:30.

2 YOU MAY EXCUSE THE JURY UNTIL TOMORROW AT 8:30.

3 (AT 3:45 P.M. PROCEEDINGS WERE

4 ADJOURNED UNTIL 8:30 A.M THE

5 FOLLOWING DAY)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3

4 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE

5

6 THE PEOPLE OF THE STATE OF)
7 CALIFORNIA,)

PLAINTIFFS,)

8)

VS.) NO. BA 068880

9)

ERIK GALEN MENENDEZ, AND)

10 JOSEPH LYLE MENENDEZ,)

DEFENDANTS.)

11 _____)

12

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

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1 APPEARANCES:

2 FOR THE PEOPLE: GIL GARCETTI

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3 BY: DAVID CONN, DEPUTY

AND

4 CAROL NAJERA, DEPUTY

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9 TERRI TOWERY, DEPUTY

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17 ALSO PRESENT FOR
PARAMOUNT: KELLI SAGER, ATTORNEY-AT-LAW

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23 MARY LU MURPHY
CSR NO. 5178
24 OFFICIAL REPORTER

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26 A = MS. ABRAMSON

C = MR. CONN

27 N = MS. NAJERA

T = MS. TOWERY

28 L = MR. LEVIN

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3 439 - WEATHER GRAPH 50241 296

4 440 - "HARD COPY" CONTRACT 50289 296
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