

CP 79-04-1246.11

IN THE MUNICIPAL COURT OF PHILADELPHIA

COMMONWEALTH

: 79-03-2740

Vs.

:

IRA EINHORN

:

BAIL HEARING

Tuesday, April 3, 1979

Room 625, City Hall
Philadelphia, Pa.

BEFORE: THE HONORABLE WILLIAM M. MARUTANI, J.

APPEARANCES:

JOSEPH MURRAY, ESQUIRE,
Assistant District Attorney,
for the Commonwealth.

ARLEN SPECTER, ESQUIRE,
for the Defendant.

CERTIFICATION OF BAIL AND DISCHARGE		No. 505910		POLICE CASE NO.		M.C. NO. 2740	
COMMONWEALTH VS. (Defendant Name and Address) IRA EINHORN 3411 RACE ST				CHARGES SURETY CHANGED BOND REPLACEMENT		DATE OF CHARGES	
<input type="checkbox"/> ROR (No surety) <input type="checkbox"/> Nominal Bail <input checked="" type="checkbox"/> Bail (Total amount set, if any) \$ 40000 <input type="checkbox"/> Conditions of Release (Aside from appearing at court when required): Defendants are released on bail subject to fingerprinting, photographing and identification as well as a court bail agency, interview prior to being released. (Attach addendum, if necessary)				NEXT COURT ACTION DATE AND TIME 5-14 LOCATION 613			
SECURITY OR SURETY (IF ANY) <input type="checkbox"/> Cash in full amount of bail <input type="checkbox"/> Surety Company <input checked="" type="checkbox"/> Percentage cash bail <input type="checkbox"/> Professional Bondsman <input type="checkbox"/> Money furnished by CODE NO. <input type="checkbox"/> Realty <input type="checkbox"/> Defendant <input type="checkbox"/> Other <input checked="" type="checkbox"/> 3rd Party 97				TO: <input type="checkbox"/> Detention Center <input type="checkbox"/> Other I hereby certify that sufficient bail has been entered <input type="checkbox"/> By the defendant <input type="checkbox"/> On behalf of the defendant by: BEATRICE EINHORN (Name & Address of Surety) (License No.) • Refund of cash bail will be made within 20 days after final disposition (Pa.R.Cr.P. 4015(b)). • Refund of all other types of bail will be made promptly after 20 days following final disposition (Pa.R.Cr.P. 4015(a)). • Bring Cash Bail Receipt to Clerk of Court.			
JUDGE OR ISSUING AUTHORITY MARUTANI				DISCHARGE THE ABOVE-NAMED DEFENDANT FROM CUSTODY IF DETAINED FOR NO OTHER CAUSE THAN THE ABOVE STATED. Given under my hand and the Official Seal of this Court, this 4 day of MAY , 19 79 [Signature] (Clerk of Court or Issuing Authority)			

WE, THE UNDERSIGNED, defendant and surety, our successors, heirs and assigns, are jointly and severally bound to pay to the Commonwealth of Pennsylvania the sum of **Forty Thousand** dollars (\$ **40000.00**).

The CONDITIONS of this bond are that the defendant will:

- (1) Appear before the issuing authority and in the Courts of the County of Philadelphia, Pennsylvania, at all times as his presence may be required, ordered or directed, until full and final disposition of the case, to plead, to answer and defend as ordered the aforesaid charge or charges.
- (2) Submit himself to all orders and processes of the issuing authority or Court.
- (3) The DEFENDANT and the SURETY must give written notice to the issuing authority, Clerk of Courts, Room 685 City Hall, the District Attorney AND Court Bail Agency, 219 N. Broad St., telephone number MU 6-7421, of any change in his address within forty-eight hours of the date of his address change.
- (4) Comply with any specific requirement of release imposed by the issuing authority or Court, such as a satisfactory participation in a designated program.
- (5) Obey such other conditions as the Court, or Court Bail Agency with leave of issuing authority or Court, may impose.

If defendant performs the conditions as set forth herein, then this bond is to be void, otherwise the same shall remain in full force and this bond in the full sum thereof shall be forfeited.

And further, in accordance with law, we do hereby empower any attorney of any court of record within the Commonwealth of Pennsylvania or elsewhere to appear for us at any time, and with or without declarations filed, and whether or not the said obligation be in default, to confess judgment against us, and in favor of the Commonwealth of Pennsylvania for use of the aforesaid County and its assigns, as of any term or session of a court of record of the aforesaid County for the above sum and costs, with release of all errors, without stay of execution, and inquisition on and extension upon any levy or real estate is hereby waived, and condemnation agreed to, and the exemption of personal property from levy and sale on any execution hereon is also hereby expressly waived, and no benefit of exemption is claimed under and by virtue of any exemption law now in force or which may be passed hereafter.

And for so doing this shall be sufficient warrant. A copy of this bond and warrant being filed in said action, it shall not be necessary to file the original as a warrant of attorney, any law or rule of the Court to the contrary, notwithstanding.

TO BE USED ONLY FOR PERCENTAGE CASH BAIL: The undersigned about to become Surety in the case cited herein, being duly sworn (or affirmed), deposes and says:		
1. I reside at Cedarbrook Hill Apts my phone number is 372-1102 and my occupation is Housewife and I work for N-A		
2. I have no undisposed of criminal cases against me pending in the Courts of the aforesaid County, except as follows: None		
3. I am not Surety on any bond of any kind except as follows: DATE NONE AMOUNT NONE DEFENDANT NONE		
4. I have read carefully the foregoing affidavit and know it is true and correct. yes		

I ACKNOWLEDGE THAT I AM LEGALLY RESPONSIBLE FOR THE FULL AMOUNT OF THE BAIL The following acknowledgement is also applicable if Percentage Cash Bail is used.	
THIS BOND IS SIGNED ON MAY 4 19 79 at PHILADELPHIA, PENNSYLVANIA.	
Signed and acknowledged before me this 4 day of MAY 19 79 [Signature] (Clerk of Court or Issuing Authority)	X Ira Einhorn (SEAL) Signature of Defendant Beatrice Einhorn (SEAL) Signature of Surety (May be Bondsman, Bail Agency, or private individual or organization). Except when defendant is released on his own recognizance (ROR), this must be signed in all bail situations, including nominal bail. Cedarbrook Hill Apts Address of Surety, Surety Company or Defendant 97 Surety No. or Professional Bondsman License No. & Expiration
IF CASH BAIL IS NOT USED, APPLICABLE PORTION OF REVERSE SIDE MUST BE COMPLETED	

MR. ROBINSON: The next case is Commonwealth versus Ira Einhorn, represented by Mr. Specter. Mr. Murray is here for the Commonwealth.

MR. MURRAY: Your Honor, good morning, sir.

THE COURT: This is the case of Commonwealth versus Ira S. Einhorn, March Term, 1979, No. 2740, Municipal Court. Is that correct?

MR. MURRAY: That's correct.

THE COURT: It is a petition for bail?

MR. MURRAY: Yes, sir.

If it please Your Honor, good morning. My name is Joseph Murray, and I am at the present time assigned to this particular case.

I received yesterday afternoon a bail petition which has been filed by Mr. Specter on behalf of the defendant in this particular matter, Ira Einhorn.

I would ask Mr. Specter at this time if he's entering his appearance on behalf of Mr. Einhorn with the court.

THE COURT: Has he entered his appearance, among other things.

MR. SPECTER: Judge Marutani, I have not entered my appearance. I have filed the petition

for bail along with Bernard L. Siegel, Esquire, and have noted on the application that Mr. Siegel and I appear here specially for the purpose of this bail application.

I have had only a limited amount of time to confer with Mr. Einhorn last Sunday night in the Detention Center, and the issue of an appearance for Mr. Einhorn can be decided only after there is a very extensive opportunity to consult with Mr. Einhorn. That's one of the reasons why I am anxious to have this early bail hearing, so I may consult with him and Mr. Siegel may consult with him so that issue of appearance can be decided.

THE COURT: Let me ask you this, though, Mr. Specter. If it should get down, as they say, to the nitty-gritty, question later on, was Mr. Specter authorized to speak for defendant Ira S. Einhorn, and he disavows it, where are we when you don't have a marriage license, so to speak, in the file?

MR. SPECTER: I'm appearing at this bail hearing for Mr. Einhorn. I'm authorized to do that.

THE COURT: Did you wish to enter your appearance marked specially, or whatever the

relationship is?

MR. SPECTER: Judge Marutani, I think I have done that by virtue of the bail petition that I have filed; but if Your Honor would like me to sign an entry of appearance for purpose of this hearing, I would be glad to do that in addition.

THE COURT: To put in a piece of paper, I guess it wouldn't harm --

MR. SPECTER: I'm glad to do that.

THE COURT: All right.

Mr. Murray, I guess that will take care of that problem.

MR. MURRAY: Yes, Your Honor. I just wanted to clarify the record in that regard.

At this time I would like to give you a brief factual statement of the case. Back on March --

THE COURT: Excuse me. Just a moment. You did get a copy of the petition?

MR. MURRAY: Yes, sir, I do have a copy of the petition.

THE COURT: All right. Can we go over the factual allegations to see whether or not the Commonwealth agrees or disagrees.

How about the allegations in Paragraph 1?

MR. MURRAY: Admitted, sir.

THE COURT: He was taken into custody on March 28th.

MR. MURRAY: Admitted.

THE COURT: Charge of murder, --

MR. MURRAY: Admitted.

THE COURT: -- committed sometime in 1977?

MR. MURRAY: Admitted.

THE COURT: Number 2, he is currently held in custody at the Detention Center?

MR. MURRAY: Admitted.

THE COURT: All right.

Number 3, set forth in Paragraph 4 -- we'll get that --

MR. MURRAY: Your Honor, I don't know about Your Honor's petition, but my petition does not contain an affidavit. I'm wondering if Your Honor's does.

THE COURT: Well, no, it doesn't.

MR. ROBINSON: That's just a copy, Your Honor; it's not the original.

THE COURT: Well, for one that's just a copy, it has an official Quarter Sessions stamp on it.

MR. SPECTER: Judge Marutani, that's my copy.

MR. ROBINSON: I borrowed this from Mr. Specter.

THE COURT: Here's the original in the file, gentlemen. Feel free to look at it.

MR. MURRAY: Your Honor, I would note at this time there is no affidavit attached to the bail application, and I think that should -- there should be an affidavit attached to it.

MR. SPECTER: Judge Marutani, I did not attach an affidavit deliberately, because I don't think any is required.

THE COURT: You don't think --

MR. SPECTER: I don't think an affidavit is required on a petition for bail.

THE COURT: Well, would it be harmful?

MR. SPECTER: It could be.

THE COURT: I guess it depends on whose bull is being gored.

MR. SPECTER: I don't file an affidavit with the petition because I think it preferable, from Mr. Einhorn's point of view, that he say nothing either by way of affidavit or in any other manner at this stage of the proceeding even though the petition is very innocuous. We're citing only background factors on his life.

THE COURT: Well, of course, he doesn't sign this anyway, defendant himself does not sign this

anywhere.

MR. SPECTER: I have signed it as his attorney, --

THE COURT: Yes.

MR. SPECTER: -- and it might be possible for me to sign an affidavit, which I think is a bad idea for a lawyer to do, injects him into the case as a potential witness. It is possible that I could have an affidavit signed by Mr. Einhorn's parents as to those factors, but having seen him Sunday night and having prepared it on Monday morning --

MR. MURRAY: Let me say this, Judge, --

THE COURT: Let me cut through all this, gentlemen, and let me state that since Mr. Specter has indeed signed this, that he makes these recommendations as an officer of the court.

MR. SPECTER: Yes, sir, I do.

MR. MURRAY: As an officer of the same court I make the following representations to Your Honor, that back on March 28, 1979, --

THE COURT: Have we finished going through the petition?

MR. MURRAY: Does Your Honor wish me to go through ad seriatim?

THE COURT: Let's do it in an orderly fashion

rather than skipping around. How about allegations in Paragraph 3; --

MR. MURRAY: The Commonwealth, I would answer --

THE COURT: -- he's been a life-long resident in Philadelphia, resided at 3411 Race for approximately seven years?

MR. MURRAY: I would admit that in part, Your Honor. I would admit that he's lived at 3411 Race Street for approximately the past seven years. The Commonwealth has insufficient information at this point to indicate to Your Honor whether or not he has been a life-long resident of Philadelphia or whether or not he has lived at the other residences stated in Paragraph 3 and for the times that he indicates that he lived there, so that that's a partial admission on the part of the Commonwealth.

THE COURT: How about the allegation that he lived at 218 North 35th Street?

MR. MURRAY: As I indicated to Your Honor, I have insufficient information at this time to make an indication one way or the other.

THE COURT: How about 1712 Wynsam Street?

MR. MURRAY: Same with that address, Your

Honor.

THE COURT: All right.

And then finally I see here 6603 North 20th.

MR. MURRAY: I have insufficient information to answer that, Your Honor.

THE COURT: So you're denying that --

MR. MURRAY: Yes.

THE COURT: -- except for that one part.

MR. MURRAY: Yes, that's correct.

THE COURT: Paragraph 4, that from September 28th to December 28th, resided in Massachusetts. First of all, how about that part?

MR. MURRAY: I have insufficient information at this time to admit or deny, Your Honor; therefore, I deny.

THE COURT: Does that apply to all of Paragraph 4?

MR. MURRAY: Yes, it does.

THE COURT: Paragraph 5, gainfully employed as consultant, self-employed since graduating from U. of Pa. -- of course I'm summarizing all of this -- '61.

MR. MURRAY: Again, Your Honor, I have insufficient information at this time to admit or deny that particular fact.

THE COURT: Paragraph 6, his parents, brother, have been life-long residents of Philadelphia.

MR. MURRAY: Again, Your Honor, I've insufficient information to admit or deny.

THE COURT: And he's unmarried.

MR. MURRAY: I would agree with that from all the information that I have.

THE COURT: You admit that.

Paragraph 7?

MR. MURRAY: I have insufficient information at this time, Your Honor, to admit or deny.

THE COURT: I must say that the allegations in Paragraph 7 sound more like conclusions than factual allegations, at least in part.

MR. MURRAY: I would agree with that, Your Honor.

THE COURT: Well, which is not a criticism. Counsel very often do that, and properly so.

MR. MURRAY: I agree, sir.

THE COURT: All right.

MR. MURRAY: I would indicate further that Paragraph 8 is the same conclusion of law, which does not require an answer by the Commonwealth.

THE COURT: All right.

MR. MURRAY: Your Honor, as Mr. Specter made

his assertions in this petition as an officer of the court, I make the following assertions to Your Honor for purposes of Your Honor setting bail.

Back on March 28, 1979, police, armed with a search and seizure warrant, went to the rear second floor apartment, apartment C, 3411 Race Street, went inside that premises, searched the premises and found in a trunk in the rear closet a body. The body was pronounced dead at the scene by Dr. Fillinger. Body was removed to the office of the medical examiner, examined by Dr. Fillinger on March 29, 1979. After his examination, both internal and external, he determined that the cause of death in this case was multiple craniocerebral injuries.

The investigation at this particular time indicates that Miss Maddux met her death sometime in 1977, as is alleged, and has been admitted by the Commonwealth in the defendant's bail application, and that defendant is responsible for the injuries inflicted on the decedent as discovered by Dr. Fillinger.

That is all the Commonwealth would have at this time.

THE COURT: All right.

Anything further, gentlemen?

MR. SPECTER: Yes. I would like to see Dr. Fillinger's report.

THE COURT: There has been a request for the doctor's report.

MR. MURRAY: Yes. It is not yet ready, Your Honor.

MR. SPECTER: I would like to examine Dr. Fillinger then.

MR. MURRAY: It please Your Honor, just as counsel in his petition made assertions to Your Honor as an officer of the court, I too have made assertions as an officer of this particular court; and I would expect Your Honor to accept them the same way you've accepted counsel's.

MR. SPECTER: Judge Marutani, I'm prepared to prove the good character of Mr. Einhorn and have witnesses here for that purpose and am prepared, through his parents, to prove the allegations. The burden of proof on the issue of bail is on the Commonwealth, and I would submit to Your Honor that assertions of Mr. Murray are insufficient to establish anything. There has been no showing here of a homicide or a death. There has been no showing of a cause of death, and there has been

no showing which links Mr. Einhorn to any such cause of death. On the basis of what Mr. Murray has asserted, with his bare assertions only, Mr. Einhorn is entitled to walk out of here without bail.

MR. MURRAY: If it please Your Honor, --

THE COURT: Excuse me. Just hold it.

Paragraph 1 of your petition, that is on behalf of the defendant, reads in part as follows: That he was taken in custody on a charge of murder which allegedly was committed sometime in 1977; and they've admitted it. It doesn't go quite as far as he now contends, about the body being in a trunk and that sort of thing and the identity of the victim and all that.

MR. SPECTER: Judge, I don't -- I'm not saying there was a murder in 1977. I'm saying that Mr. Einhorn was taken into custody on the charge of murder, which allegedly was committed sometime in 1977; but I don't know that there was a murder except for what I've read in the newspapers, and I think there has to be a showing, before the Commonwealth can ask for any bail, that there was in fact a murder. There has to be a showing as to cause of death and a showing as to some reason

this man has to post any bail.

MR. MURRAY: If it please Your Honor, what counsel is saying, we ought to put two preliminary hearings on in this case; and I don't think that's required of the Commonwealth. I think Your Honor, having sat on these particular matters, is aware that this is the way these matters are handled. We do not put on at the time of the bail hearing extensive evidence. We state to Your Honor a statement of the facts, and Your Honor sets the bail after hearing whatever evidence the defendant wishes to present in whichever way he wishes to present it.

MR. SPECTER: Your Honor, I'm not totally unfamiliar with the bail hearing in a homicide case, and there is a practice that I'm familiar with, not that my familiarity governs the matter, it is the law which governs the matter; but there has to be, as a matter of law, a showing that there has been a homicide or a murder and that there is some connection to this man as a basis for the Commonwealth's asking for bail. Mr. Einhorn's --

MR. MURRAY: I'm not asking for bail, Your Honor. The defendant is asking for bail.

THE COURT: Well, first of all, let's take

these a step at a time.

I realize that -- well, I'll skip that. It's alleged here that a body was discovered at 3411 Race Street, apartment C-3. The petition refers to the fact that defendant was a life-long resident of Philadelphia, et cetera, at 3411 Race Street; so it would appear there's at least some connection here. It's not as if we're talking about 4912 Lancaster Avenue when the body was found at 3411, or vice versa.

MR. SPECTER: Judge, my concern goes to the baldness of Mr. Murray's statement.

THE COURT: I understand.

MR. SPECTER: Hearsay may come in at a bail hearing.

THE COURT: Sure.

MR. SPECTER: I would like to see the police report after I see the medical examiner's report. I think, as counsel for Mr. Einhorn, that I am entitled to see that there is some official document, albeit in the nature of hearsay, which recites the commission of a homicide.

THE COURT: What about that, Mr. Murray?

MR. MURRAY: If it please Your Honor, -if Your Honor wishes hearsay to be admitted, I will

be sworn and I will testify concerning my information in this case and my discussions with the various police officers and medical examiner in this matter. Mr. Specter can examine me.

MR. SPECTER: I'd be glad to start there, Judge. If Mr. Murray has referred to any documents, I'm entitled to see the documents.

MR. MURRAY: That's a matter for Your Honor to decide.

MR. SPECTER: It's all a matter for Your Honor, Judge. I submit to that.

THE COURT: Gentlemen, I certainly want to be wary and protective of the defendant's rights, any defendant's rights; and, Mr. Specter, you're entirely right in doing it. Obviously, the mere fact that in the past someone did it in a certain way doesn't mean that's the way we're going to do it forever, otherwise we'd never have progress and justice cannot be refined. At the same time, however, I don't think it's proper for this court or any court, for that matter, to simply pay homage to pure form without using a little bit of common sense, in other words bring some balance into the situation.

A bail hearing is not a trial, certainly; it's

not even a preliminary hearing, and so it does not rise quite to that; but certainly it doesn't mean that we abandon all rules of procedure, otherwise we run the risk of a totally innocent individual being dragged into jail and dragged into court and being held without bail. So I'm prepared to proceed whichever way you gentlemen are willing to pitch your ball.

MR. MURRAY: I would ask to be sworn, Your Honor.

THE COURT: I'll call the balls and strikes as I see them.

MR. MURRAY: I would ask to be sworn.

THE COURT: Mr. Specter?

MR. SPECTER: Fine as a starter.

Judge Marutani, I have a number of witnesses. One of the witnesses here, Stephen Harmelin, an attorney at law, has another commitment.

THE COURT: Do you want to take some of your witnesses out of order?

MR. SPECTER: That's my request.

THE COURT: Do you have any objection, Mr. Murray?

MR. MURRAY: No, sir.

THE COURT: All right, fine.

DEFENDANT'S EVIDENCE

STEPHEN J. HARMELIN (Attorney at Law), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Mr. Harmelin, are you a life-long resident of the Philadelphia area?

A Yes, I am.

Q How long have you practiced law in Pennsylvania?

A Since May of 1965.

Q What law firm af any are you associated with?

A Dilworth, Paxson, Kalish, Levy & Kauffman.

Q As a partner?

A Yes.

Q Do you know Mr. Einhorn?

A Yes, sir, I do.

Q How long have you known him?

A My best judgment is roughly 1952, -3, somewhere in that area.

Q Tell His Honor, Judge Marutani, generally how you have known him during the course of the years since that time.

A My first recollection is Ira Einhorn and I were friends just about the time I was entering high school. My recollection is that he lived generally in the area of Washington Lane and Stenton -- I may be somewhat

wrong -- and he was part of a group of friends who played basketball in the playground, subsequently became friends during high school.

Q And have you seen him intermittently and continuously since that time?

A Yes, I have.

Q Do you know whether or not Mr. Einhorn has been a life-long resident in the Philadelphia area?

A It is my understanding that he has been.

Q Do you know others in the community who know Mr. Einhorn?

A Yes, I do.

Q And what is his reputation as a peaceful, law-abiding citizen?

MR. MURRAY: Objected to, Your Honor.

THE COURT: On what basis?

MR. MURRAY: On the basis that's not before Your Honor at this particular time, his reputation for being a peaceful, law-abiding citizen.

THE COURT: What about that, Mr. Specter?

MR. SPECTER: I think it is, Judge. One of the issues as to bail is the character of the defendant, and that is the essential question as to his character. I think the bail rule is 4,000 --

THE COURT: I have it; Rule 4,000,V, does

use the word "character." I'll permit it. Proceed.

BY MR. SPECTER:

Q What's his character, Mr. Harmelin?

A Mr. Specter, I'm not aware of any prior incidents of Mr. Einhorn being arrested, nor am I aware over the course of my relationship with Mr. Einhorn of his ever having been involved in acts of violence. It is on that basis, as well as various meetings with him over the years in which he has come to me concerned about the violence of --

MR. MURRAY: This is objected to, Your Honor.

MR. SPECTER: Testifying about his character, Your Honor.

THE COURT: Technically it's not correct.

I would have to sustain that objection. I think your question is what is his reputation or character in the community.

MR. SPECTER: I started with character, Judge.

I'm going to go to reputation next.

BY MR. SPECTER:

Q Would you say his character is poor, mediocre, excellent?

A I would say he has a good, excellent character, Mr. Specter.

Q How would you characterize his reputation?

A His reputation is that of an intellectual activist in the community and as a good citizen.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q You indicated you've known, Mr. Harmelin, Mr. Einhorn for how long, how many years?

A Since, as I say, roughly the year -- middle 1950s, early 1950s.

Q Approximately twenty-nine years then?

A Yes.

Q How often do you see him during -- or how often have you seen him during those twenty-nine years?

A Not as much in the last few years as when we were close in high school, but I spent two hours with him three weeks ago.

Q What's he do for a living?

A My understanding is that he acts as a consultant to various institutions in Philadelphia.

Q Like what?

A The last time we discussed what he did for a living, my recollection is that he was doing some consulting work for the Bell Telephone Company.

Q Do you know what kind of consulting work he did for Bell Telephone?

A Mr. Einhorn seemed to be able to bring to the attention of corporate executives the kind of broad spectrum information which they otherwise generally wouldn't have available to them.

Q Like what?

A He was in touch with a wide variety of the community that generally are not frequented by corporate executives.

Q Such as?

A City activist groups; Earth Week, which he was involved with; Sun Week, which he was involved with; sponsored, as I recall, by the Chamber of Commerce.

Q From your understanding, then, he would supply information about the circles in which he moved to the telephone company?

A Not just the individuals but what he perceived to be on the minds of the various elements in the community, yes.

Q Do you know whether or not Mr. Einhorn provided information to the Bell Telephone Company concerning possible plots to damage Bell Telephone property by people that may have moved in the same community he moved in?

MR. SPECTER: Objection. Beyond the scope of the direct examination.

MR. MURRAY: Your Honor, he says he knows him.
I'm testing his knowledge of whether or not he does
know him.

THE COURT: I'll overrule the objection.

THE WITNESS: No.

BY MR. MURRAY:

Q Have you ever discussed with him his providing
information concerning subversive activities on Bell
Telephone property?

A No.

MR. MURRAY: I don't have anything further,
Your Honor.

MR. SPECTER: Thank you very much, Mr. Harmelin.
(The witness stepped down.)

THE COURT: Any other witnesses you would like
to call out of turn at this point?

MR. SPECTER: Professor Stuart Samuels.

DR. STUART SAMUELS (Lecturer in History,
University of Pennsylvania), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Professor Samuels, by whom are you employed?

A Employed by the University of Pennsylvania.

Q In what capacity?

A Lecturer, history.

Q How long have you been so employed?

A Ten years.

Q Do you know Mr. Einhorn?

A Yes, I do.

Q How long have you known him?

A Very well for three years.

Q Will you tell His Honor generally how you've come to know Mr. Einhorn, to what extent?

A Ira and I have shared interests, his interest in both politics, both his interest in futurism, interest in information systems, and we've discussed lots of things, from Einstein to practically anything. We've talked a lot about things, shared a lot of things together.

Q Do you know others in the community who know him?

A Yes, I do.

Q And what would you say as to his reputation?

A He has the highest level of integrity, a man who goes out of his way to help people, a man who keeps his word, a man who, in his feelings, compassionate and loving.

Q Would you say his character is poor, fair, good, what?

A His character is very good.

MR. SPECTER: Cross-examine.

MR. MURRAY: No questions.

MR. SPECTER: Thank you very much.

(The witness stepped down.)

THE COURT: Anybody else?

MR. SPECTER: Your Honor, I think we do not need to take anybody else out of turn at this time.

THE COURT: All right.

MR. MURRAY: I would like to be sworn, Your Honor.

THE COURT: Who is going to conduct the direct examination?

MR. MURRAY: I am, Your Honor.

THE COURT: You're going to ask questions of yourself?

MR. MURRAY: No. I'm going to relate to Your Honor in a narrative, and Mr. Specter can cross-examine as he wishes.

COMMONWEALTH'S EVIDENCE

JOSEPH C. MURRAY (Assistant District Attorney, County of Philadelphia), sworn.

MR. SPECTER: Your Honor, that somewhat limits my opportunity as counsel for the defendant to make objections. I do not wish to be --

THE COURT: That's correct. Not only that,

but it's a little awkward. It does put Mr. Specter at somewhat of a disadvantage.

MR. MURRAY: Your Honor, I'll make an offer of proof as to what I am about to say, and counsel can object.

MR. SPECTER: There are problems generally with counsel being a witness in a proceeding under the canons of professional guidance. I do not wish to raise those or get into that thicket.

There is also a problem as to an offer of proof.

I wonder, seeing others from the district attorney's office here, if it might not be convenient from Mr. Murray's point of view. If it is not convenient from his point of view, I will proceed as he suggests.

MR. MURRAY: Your Honor, let me just say in order for me to sit down with somebody now and explain everything I think should be brought out would further take up the Court's time.

THE COURT: Let me ask you this for a moment. Let's assume we follow this procedure and Mr. Specter seizes advantage of the situation, begins to ask a lot of improper questions and in improper form, et cetera; who's going to object?

MR. MURRAY: I am, sir.

THE COURT: You are?

MR. MURRAY: Yes.

THE COURT: The witness objecting?

MR. MURRAY: Yes.

THE COURT: That's a little unusual.

MR. MURRAY: I agree, it's highly unusual,
Judge.

THE COURT: We're not going to abandon procedure
in this courtroom just because we have a difficult
situation. How do I handle that; you object and
then --

MR. MURRAY: Then Your Honor rules.

THE COURT: Well, I won't do that.

MR. SPECTER: Judge, what Mr. Murray is going
to now raises --

THE COURT: You have a number of very highly
-- extremely competent D.A.s in the room. You can
take your pick of a number of them. And I'm sure
they can fly by the seat of their pants and do an
admirable job.

MR. MURRAY: Your Honor, I won't ask somebody
to fly by the seat of their pants.

THE COURT: Even if they do it admirably?

MR. MURRAY: Even if they do it admirably.

If Your Honor rules that I cannot testify and object and Your Honor rule on those objections --

THE COURT: That's very awkward. I can see that you would be placing Mr. Specter at a disadvantage because you're going to testify, and he doesn't know what the question is going to be, which would give him some idea of what the answer is going to be, whether it's going to be hearsay. No, I think it puts counsel at a disadvantage. If we're going to do it, we're going to do it right.

MR. SPECTER: What Mr. Murray is going to raises the issue I broached before, that is Mr. Murray is properly the attorney for the Commonwealth. What we need is not another attorney. What we need are witnesses, a detective or medical examiner.

MR. MURRAY: I will ask somebody if Your Honor will give me a moment.

THE COURT: Sure. Let's do it properly if we're going to do it.

Gentlemen, do you want to take a very short recess.

(Recess was taken to the call of the crier.)

THE COURT: Are we ready?

MR. MURRAY: Your Honor, based on my

discussions just now with counsel, Mr. Canuso, and Your Honor's ruling in this particular case that I cannot proceed in a certain way, I would ask Your Honor for a continuance in this matter until tomorrow morning so that I can bring in the assigned detective in the case. He is out of town today investigating this particular case. In fact, he's out of state investigating this particular case, so I would ask Your Honor for a continuance.

Mr. Specter has evidence that he wishes to present out of turn. I don't have any objection to that.

THE COURT: So, in convenience to his witnesses, get them out of the way today if he wishes.

MR. MURRAY: Yes. I would ask Your Honor for a continuance to tomorrow.

THE COURT: Mr. Specter?

MR. SPECTER: I'm opposed to a continuance if it means Mr. Einhorn is to remain in custody. If Mr. Einhorn is not to remain in custody, I'm available. I have problems tomorrow, but I could be available tomorrow.

MR. MURRAY: We're here for a bail hearing, Your Honor; that's the purpose for the hearing, and I'm requesting that Your Honor put off till

tomorrow the Commonwealth's testimony in this case. because of the unavailability of the witness.

THE COURT: How long has Mr. Einhorn been in custody?

MR. SPECTER: Been in custody since last Wednesday.

THE COURT: Last Wednesday. Well, any day is too long for anybody, for that matter.

Well, I'm inclined to permit the Commonwealth to have a continuance for several reasons. Number one, I think, as you recognize, it's somewhat unusual to go to this degree, and I have no criticism of that, and so the Commonwealth perhaps, not without some justification, was caught off guard, so to speak, to some extent.

MR. SPECTER: Your Honor, I have no alternative, if the suggestion is that Mr. Einhorn is to remain in custody until tomorrow, but to withdraw my request and put on my evidence and proceed with the showing he has made because a day in jail is something not to be -- not to be continenced if it can be avoided.

MR. MURRAY: Your Honor, I'm not playing cat and mouse with Mr. Specter. If he will agree to me stating the facts and Your Honor setting the

bail, I have no desire of a man to be deprived of his right to bail for one day, one more hour, and I don't think a man should be deprived of his constitutional rights. However, I don't think that we're sacrificing anything by doing by practice what we do every day over here in 675 and 613 on bail hearings. That was the way that I expected this particular hearing to proceed. If Mr. Specter will agree to me stating the facts, as I have done, and Your Honor setting bail, brief statement of the facts, I think we can do it today.

THE COURT: Well, you both really have each other in a Catch-22 situation. Mr. Specter is willing to have a continuance if Mr. Einhorn is released; and you're saying, well, that is what the ball game is all about.

MR. MURRAY: That's why we're here, Judge.

THE COURT: On the other hand, you are putting Mr. Specter in a Catch-22 situation in the sense that you said, well, if he gives up his objections to the way you're proceeding, then we'll proceed.

MR. MURRAY: It's an alternative, Judge. I don't suggest --

THE COURT: If he insists upon standing on his position that it ought to be done as he sees

it, in a proper fashion -- and I advisedly say "as he sees it, not necessarily making a decision on that -- then his man is going to have to stay in jail another day. That's the way I see it.

MR. MURRAY: It's made as a suggestion, Your Honor, to cut the Gordian knot in this case. That's merely where we are at this point.

My request, if we cannot proceed in that way, is for a continuance until tomorrow.

THE COURT: Recognizing that Catch-22 situation, I don't think there's a happy answer to it either way. I'm willing to continue the matter one more day.

MR. SPECTER: I'm not willing to continue it, Judge, so that what I would ask leave to proceed at this time is on the showing that Mr. Murray has already made, which he had concluded at one point until I pressed him for more.

THE COURT: You're willing to have him -- I'm not clear what your wish is.

MR. SPECTER: He had already made a few comments about the nature of the case.

THE COURT: Right.

MR. SPECTER: And at that point he concluded, and I said there should be more; and now the cost

to the defense is another day in jail to have more, which the defense is unwilling to do; so that at this point I would offer my character witnesses to show that issue, going to the amount of the bail.

THE COURT: Right.

MR. SPECTER: That's what I'm prepared to do.

MR. MURRAY: Fine. That's agreeable to me.

MR. SPECTER: What I had sought to do, we have a preliminary hearing scheduled in this matter for Thursday in any event, so that there will be a report available at that time.

THE COURT: All right.

MR. SPECTER: I would -- I do not think that Mr. Murray has played cat and mouse, haven't suggested it. I have total confidence in Mr. Murray's integrity. As a defense lawyer, I would like to see the police report.

THE COURT: I'm sure you will see that very shortly.

MR. MURRAY: The rules of discovery are very clear, very specific about what counsel is entitled to.

I might say to Your Honor that defendant has approximately -- I don't know exactly the number of pages -- twenty-some pages of a search warrant

that was served on him at the time the body was discovered.

THE COURT: He is not limited to that.

MR. MURRAY: I agree with that, but at this time he has much more than counsel generally has in these proceedings.

THE COURT: I know, but he's still not limited to that.

MR. SPECTER: Mr. Mahler, please.

DEFENDANT'S EVIDENCE (RESUMED)

EDWARD MAHLER (59 Todmorden Drive, Walingford, Pennsylvania), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q By whom are you employed, Mr. Mahler?

A Bell Telephone Company of Pennsylvania.

Q What is your title there?

A I'm assistant vice president, personnel relations.

Q How long have you been assistant vice president for Bell Tel.?

A This particular assignment, since September 1st of this year.

Q How long have you worked for Bell Tel. altogether?

A Twenty-nine years.

Q Do you know Mr. Einhorn?

A Yes, I do.

Q How long have you known him?

A I would say since 1972, '73, early '70s.

Q Would you tell His Honor in a general way the contacts which you've had with Mr. Einhorn?

A Okay. They started, as I say, in '72 or '73. I was in another personnel job at the time, doing personnel manager for the City of Philadelphia for Bell, and at that time we were, among other business, trying to meet influential people in the community to get feed-back as to what was going on. We wish to be responsive to the needs of the community. I think all business was attempting to do that. In that context I was introduced by a friend to Ira, and that started our relationship.

Q And how many contacts, what nature, have you had with Mr. Einhorn since that time?

A I've had many, many. I -- I became, as it were, the contact with Mr. Einhorn. We would meet regularly. I think I would dare to say we would meet two to three times a month, except for the summertimes when he went away on vacation, since '74 or '75, so I would have had a number of occasions and mostly -- mostly at lunchtime, other times also, and --

Q And --

A Excuse me. I was going to say and we would talk about fundamentally things related to -- to the community, community reaction to what Bell was doing. I would discuss with him different things that we are proposing, different kinds of practices, and he would respond to them. And then we talked, of course, of a myriad of things that had nothing to do with the telephone company.

Q And did Mr. Einhorn have contacts with other key executives of Bell Tel.?

A Yes, he did, from time to time.

Q Such as?

A Such as our president and former president.

Q And your former president is?

A Former president is William Cashell (phonetic), who is now an executive vice chairman of AT&T.

Q And your president is?

A William Mobraaten, who is president of Bell of Pennsylvania now.

Q And in addition to Mr. Cashell and Mr. Mobraaten, do you know others in the community who know Mr. Einhorn?

A Yes, I do.

Q What is Mr. Einhorn's reputation in the community?

A Well, it's excellent, it's excellent. He's just been --

MR. MURRAY: Objection.

THE COURT: What's the objection?

MR. MURRAY: Objection is, Your Honor, leading, again, a narrative. The question asked a very limited area, what his reputation is. I think it can be answered very simply.

THE COURT: I think he said it's excellent.

MR. MURRAY: He was continuing with the narrative which I contend is inappropriate.

THE COURT: Gentlemen, just hold it.

Would you read his answer back.

(The last answer was read back by the court reporter.)

MR. MURRAY: I think he answered the question, Your Honor. I think the continuing --

THE COURT: No, I'll allow it. Excellent may mean one thing to you, it may mean something else to someone else. If he wants to expound on what he means by that, proceed.

THE WITNESS: I was starting to say he's been very reliable, very dependable, you know, very helpful, just very -- very people oriented, which is exactly what we were concerned about, is how people were reacting.

BY MR. SPECTER:

Q With respect to his character as distinguished from his reputation, would you say it was good, poor, what?

A I again would say, from my knowledge of Ira, his character is excellent.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q Mr. Mahler, are you the person with whom Ira Einhorn deals in the phone company when he gives information?

A I would say primarily yes.

Q Did he ever give you information concerning the activity of possible subversive plots against destroying some telephone company equipment?

A Not -- not that I recall.

Q Did he ever give you any information indicating that he knew of some plans to do some damage to telephone company equipment?

A I honestly do not believe so. We have talked so many -- so many times; we were concerned about violence in 19- -- Ira was, in 1976 possibly, and in talking about what business -- was the business community going to be ready for things that might happen, but, no, I do not recall anything specific about that.

Q Do you keep records of things he tells you?

A No, I don't.

Q How much is he paid for his work?

A Nothing in cash.

Q What in check?

A No, no, nothing, nothing like that; no money changes hands.

Q He has never received, from your information, any checks from Bell Telephone Company?

A Yes, I know of one recently. He wrote an article in our Bell System publication, and I believe he received a check, I assume he did receive a check for that. I understand he did. He has never received one from me or --

Q Do you know if he received any from anybody else at Bell Telephone?

A I do not know of one, of any that he received.

MR. MURRAY: No further questions.

MR. SPECTER: Thank you very much.

THE COURT: I have a question; frankly, it's a question of curiosity. Either side should feel completely free to object. I want you to know that I will understand you're simply doing your job.

BY THE COURT:

Q Do I understand, Mr. Mahler, that you would meet

with Mr. Einhorn, you say, two to three times a month?

A Yes.

Q And since 1973, early '73?

A '75 would be the more regular; periodically before then.

Q And what -- would these be, what; you just happened to bump into each other?

A Oh, no, no, no; excuse me, Your Honor. No. These would be planned. Quite candidly, the feeling was that we have the natural contacts, whether it's the Union League or the Chamber of Commerce or the V.I.P. list, or those in political influence, and we, you know, -- or business people, and we have a commentary with them; and here Ira represented a group in the community that we -- that we did not hear from or it seemed to us that he could represent their point of view, and it was not one that we had been as aware of as we thought we might and we are -- consumer groups. I think it's a natural process. At least that was the reason for maintaining regular contact.

Q Was this a public relations venture by the Bell Telephone?

THE COURT: I want counsel to understand this has nothing really to do with it. I'm just kind of curious.

THE WITNESS: Oh, okay. I would say community relations, Judge.

BY THE COURT:

Q The thing that sort of surprised me was that apparently it was not a chance meeting, so that it would require Mr. Einhorn and others of his class, whomever you're making contact with, to meet with you on a regular, scheduled interval?

A Yes.

Q And that Bell Telephone, with all its wealth, never gave him a dime?

A No, sir; no, sir. We did -- we did do one thing for him. Represented by his -- I feel I should mention it to explain in part what went on. As represented by the people that are here and the many others that are not, the network, it seems that Ira represented the people in the community, like the professor you heard, the lawyer, the physicist, the futurist and on and on and on it would go. We would reproduce articles that Ira would find or others would find and mail them to members of the group. Now, that cost Bell Telephone Company some money and not a considerable amount, but it was not cash to Ira but it was a service we performed, you could say, for Ira. He was very appreciative of it. But, again, it was in line with our communicating with

this broader network, Judge.

Q That perhaps answers the question I was not going to ask you, that would be what would be in it for people such as Ira to go to all this trouble?

A That is what seemed to be happening.

THE COURT: All right.

THE WITNESS: Thank you.

MR. SPECTER: Thank you very much.

(The witness stepped down.)

MR. SPECTER: Reverend Gracie.

DAVID GRACIE (Priest in the Episcopal Church),
sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Reverend Gracie, do you know Mr. Einhorn?

A Yes, I know him.

Q How long have you known Mr. Einhorn?

A About ten years.

Q Would you tell His Honor Judge Marutani the background and basis for your knowledge of Mr. Einhorn?

A I was employed as urban missionary for the Episcopal Diocese of Pennsylvania for about ten years, up until a few years ago, and it was my job, on behalf of the bishop, to attempt to relate the church to some

of the concerns in the community. At that time it meant maintaining a relationship with a lot of groups that were activist groups, a lot of groups that were involved in the peace movement, civil rights activities, where the church had values that they shared with those who were involved in such activity. I came to know Ira in that context and introduced him to my bishop, and he began to meet quite regularly with my bishop as a consultant.

Q Your bishop is?

A My bishop was at that time the Right Reverend William L. DeWitt.

So that our relationship was -- became a relationship of friendship, a consultant, co-worker on community projects; and there was a similar kind of relationship between Ira and my bishop.

Q Over how long a period of time did you have this relationship with Mr. Einhorn?

A From almost the time I met him.

Q Which was ten years ago?

A Which was about ten years ago, yes.

Q How frequently did you have contacts with him?

A That has varied tremendously from one year to the next, depending on what the issues were and what the projects were. During some of the stormiest years of

peace movements, civil rights movements in Philadelphia we would meet weekly; some weeks we would meet every day of the week. In recent years we've been meeting every other month for lunch, something like that.

Q Did you know Mr. Einhorn to be a resident of Philadelphia continuously during that period of time?

A Yes, I did. I visited in his apartment, and he visited in my home.

Q Do you know others in the community who know Mr. Einhorn?

A Yes, I do.

Q What is his reputation as a peaceful, law-abiding citizen?

A It's excellent. He's a man of nonviolence. That's the way he's known throughout the community.

Q What do you mean by that?

A Whenever there's a possibility of violence involved in activities of the movement, Ira was the person most concerned, was looking for ways to defuse that violence, to keep peace on the streets. And I've worked with him on projects like that so I know the extent of his commitment there.

Q And what do you know of Mr. Einhorn with respect to his reliability to keep commitments or dates or obligations of that sort?

A I learned to rely on him absolutely. If he said he'd be someplace, he's been there. If he said he'd do something, he'd do it.

Q With respect to his character, would you say it's fair, poor, what?

A I'd say it's fine, very good.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q Reverend, you indicated that you visited Mr. Einhorn in his apartment, is that correct?

A Yes, uh-huh.

Q Would that be at 3411 Race Street?

A I don't think I've ever been to 3411 Race. It was when he was living on I think it was 35th.

Q 35th and what?

A It was in that general Powelton area, 200 block I think, but I'm not positive.

Q During the time that you knew Ira Einhorn did you know Holly Maddux, a girl that he went out with?

A I had occasion to meet her several times, yes.

Q Did you know he was living with her?

A Yes, I was aware of their relationship, yes.

MR. MURRAY: No further questions.

MR. SPECTER: Thank you very much, Reverend

Gracie.

(The witness stepped down.)

MR. SPECTER: Professor Henderson.

CARTER HENDERSON (60 Hodge Road, Princeton,
New Jersey; economist), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Are you employed by anyone in your professional capacity as an economist, Professor Henderson?

A No, I'm not. I might say I'm not a professor. I'm self-employed, have been for the past ten years.

Q You know Mr. Einhorn?

A Yes, I do.

Q How long have you known him?

A Nine years.

Q Will you tell His Honor the way you have come to know him, indicating the extent of the contacts and nature of the contacts?

A Be happy to.

Ira is a close friend of our family, my wife Hazel, my daughter Allie and myself; and we see or talk to him I'd say once every two or three weeks. He is frequently a guest in our home.

Q Do you know others who know Mr. Einhorn?

A Yes, indeed.

Q What is his reputation with respect -- what is his reputation to being a law-abiding citizen?

A The finest as far as I'm aware.

Q And what is his reputation with respect to reliability, keeping appointments, maintaining commitments?

A Extraordinarily reliable. I cannot remember a single instance where Ira promised to do something that he didn't do it.

Q And have you had personal experience with him on such promises which he has kept?

A Yes, we have.

Q How would you evaluate his character, poor, good, excellent, what?

A Excellent.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q Over the last few months have you ever visited Mr. Einhorn at his home, Mr. Henderson?

A No, I have not.

Q Did you ever visit him at his home?

A I think we did once but I can't remember when, nor can I remember exactly where. It was quite some time ago.

Q Did you know the deceased in this case, Holly Maddux?

A Yes.

Q How long did you know her?

A Oh, that's difficult to recollect, but I'd say possibly a year-and-a-half or two years.

Q Did you know that Ira Einhorn was living with her?

A Yes.

MR. MURRAY: No further questions.

MR. SPECTER: Mrs. Samuels, please.

Thank you very much.

(The witness stepped down.)

JULIE SAMUELS (Kenilworth at Alden Park),
sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Mrs. Samuels, are you employed?

A I free lance. I'm a skin analyst.

Q What does that involve in a general way?

A What that involves is working with plastic surgeons in a postoperative procedure, involving new tissue and skin care, makeup.

Q Do you know Mr. Einhorn?

A Very well.

Q For how long?

A I've known him very well for three years. However, I've known him intermittently my whole life -- well, my whole adult life.

Q And at the risk of prying, how long has that been?

A Well, let's see. I'd say since the '50s, since the late '50s.

Q And have you known Mr. Einhorn to be a resident of Philadelphia since the late '50s?

A Yes.

Q Will you tell His Honor the way you have come to know Mr. Einhorn, indicating the frequency of your meetings and how you've come to know him?

A Yes. Ira is a member of our family. We have two children. I am married to Stuart Samuels, who was here previously, and I have two children, three cats and a dog, and Ira also is a member of our family and spends much time with us, both in our house in Woodstock and Philadelphia; and I've been to his residence frequently, and he is one of my closest friends.

Q Do you know others in the community who know him?

A Yes.

Q What is his reputation?

A Excellent, excellent. I mean Ira can be counted on. His reputation is that of being loving, compassionate,

definitely nonviolent, and he can be counted on always, always, and his integrity is beyond question.

Q What is the basis for your saying he's nonviolent, Mrs. Samuels?

A Well, the first thing -- the first thing that springs to my mind is an incident we had in Woodstock with my son.

MR. MURRAY: Your Honor, this is objected to. She's given his reputation. Now she's going into specific incidents.

THE COURT: What about that, Mr. Specter? Isn't that a justifiable objection?

MR. SPECTER: Sir, I think on a limited basis, on a key issue, that it ought to be permitted. I think it's a discretionary matter with Your Honor.

MR. MURRAY: Your Honor, --

THE COURT: I think I'll sustain the objection, otherwise we may have a lot of key issues coming up.

MR. SPECTER: Well, I think there are just two, Judge, that one and reliability.

BY MR. SPECTER:

Q What is his reputation with respect to being reliable and keeping his commitments?

A Always I've known him to do that, both with my

children, myself and my husband, absolutely.

Q With respect to his character, would you say it's good, poor, fair?

A Excellent.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q Mrs. Samuels, you indicated you have been a friend of Mr. Einhorn's since the late 1950's, is that correct?

A I've known him intermittently, but I've known him well for the last three years, well meaning seeing him frequently.

Q Over the last three years you indicated you have been to his residence, is that correct?

A Yes.

Q At 3411 Race Street?

A Wherever Powelton is. I'm not sure. Wherever he has been living.

Q Okay.

A I don't ever look --

Q Did you go inside his living quarters?

A Yes.

Q As you go in the door and up the steps and straight back into the apartment?

A That's right.

Q How many times have you been in there?

A Over the past year, I'd say about a half a dozen times.

Q When did you first begin going into his residence?

A Well, Ira has dinner with my husband and myself frequently, either at our home or at LaTerrasse, and we usually either talk before dinner or after dinner. He's always anxious for us to spend a little more time with him, so we usually go up to his apartment and --

Q My question to you -- perhaps it wasn't clear, Mrs. Samuels. My question to you is, you indicated over the last three years you have become particularly friendly with Mr. Einhorn, --

A Yes.

Q -- correct?

Now, my question to you is when did you first begin, during this blossoming, so to speak, of this friendship, when did you first begin during that time to go to his apartment?

A Three years ago.

Q All right.

So you have been there in 1976, 1977, on up to the present, correct?

A That's correct.

Q About how frequently would you go there?

A It's hard to say. There wasn't a regular basis for it. However, I would say in the last year, you know, perhaps once every couple of months.

Q Have you ever been to Mr. Einhorn's apartment when there was a terrible smell that you could smell?

A Absolutely not, never.

Q If you have known the defendant Einhorn over the last three years very well, you must have known Holly Maddux, did you not?

A Yes, I did.

Q Did you know her well?

A I knew Holly pretty well. I didn't see her as frequently as I saw Ira, and I knew her.

Q Did you know that she was living with Ira Einhorn?

A Yes.

Q And how long did you know she had been living with Ira Einhorn?

A Most of the time that I knew him.

Q Well, you indicated that you knew him from the '50s. Can you be more specific than that?

A I indicated I knew him well for the last three years and that I saw him intermittently during the previous years, so that I wasn't involved in his life prior to three years ago.

Q So when you say you know that she was living with

him, you're talking about since the time that you became more friendly?

A Yes.

Q Since 1976.

When was the last time that you can remember that you saw her?

MR. SPECTER: Your Honor, I object.

THE COURT: I think I'm going to have to sustain the objection. I'm not so sure this has any relevance to the matter of bail or the amount of it.

MR. MURRAY: Well, I think, Your Honor, it has relevance with regard to matters that she was questioned about on direct examination that I did not object to, that is she indicated that she knew this defendant very well over the last three years; and this is simply testing whether or not she did.

THE COURT: Well, but now you're going into how well she knows somebody else.

MR. MURRAY: That's correct, who she says she knows lived with the defendant.

THE COURT: All right. I'm going to sustain the objection.

MR. MURRAY: Very well, sir. No further questions.

MR. SPECTER: Thank you very much.

THE COURT: Excuse me. Again, both sides should feel completely free to object to any questions the Court may ask.

BY THE COURT:

Q You stated that you would see Mr. Einhorn for the last three years, say, once every couple of months?

A Approximately, at least -- at least that.

Q And you would see him in the Powelton Village address, is that correct?

A Well, sometimes we were there and sometimes we were at our home.

Q Oh, all right.

Now, during this period of the last three years, to your knowledge, was Mr. Einhorn's residence or his presence always in the Philadelphia area?

A Yes.

Q All right.

He never went outside the country, for example?

A Oh, yes, he went outside the country but he didn't live outside the country. He had vacations or business dealings outside of the country.

Q Do you happen to know where he went, what countries?

A I know some of them.

Q Could you tell us?

A I know that he was in London for quite a while,
and recently --

Q How long is "quite a while"?

A I think the summer, the summer of '77.

Q All right.

And where else?

A I don't know why Yugoslavia comes to mind, but I
know it's something like that. Recently he has been
back and forth two times, very recently; and I don't
remember the names of the countries, but this is within
the past month, I think, or six weeks he's been to
Europe twice.

THE COURT: In light of that are there any
questions from either side.

REDIRECT EXAMINATION

BY MR. SPECTER:

Q When he goes to Yugoslavia he always comes home
to Philadelphia?

A Always.

Q And London?

A Yes.

RECROSS-EXAMINATION

BY MR. MURRAY:

Q Since you've known him very well since 1976, how
many trips are you aware of that he has taken which

require him to leave this country?

A I really wouldn't know that offhand.

Q Can you estimate for us?

A No, I couldn't estimate either.

Q When he went you indicated in the summer of 1977 on this trip that took him to London, how long was he out of the country, if you know?

A I believe it was for the summer, that is approximately two-months' time.

Q And since then is it fair to say that he has been outside the country fairly frequently since then?

A No.

Q About how many times?

A He has been outside of the country, but I don't know -- I would never say frequently. He has been here more than there.

Q All right.

Would you say he's taken more than one trip since the summer of 1977?

A Yes.

Q More than five?

A I don't know that. I don't think so.

MR. MURRAY: I have no further questions.

THE WITNESS: I'm fairly certain no; however, I couldn't swear to that.

MR. SPECTER: Thank you very much.

(The witness stepped down.)

MR. SPECTER: Mr. Fink.

THEODORE SAUL FINK (248 West Harvey Street,
Philadelphia, Pennsylvania), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Are you a businessman, Mr. Fink?

A Repeat that.

Q Are you a businessman?

A Yes.

Q And what business are you in?

A Seafood export.

Q Tell His Honor a little bit about your business.

MR. MURRAY: It please Your Honor, --

THE COURT: Will you adjust that microphone
so it's right up to your mouth.

MR. MURRAY: -- I can't hear what Mr. Fink
is saying.

BY THE COURT:

Q The question was what line of business.

A I'm in the seafood export business. We have
several trucks. We roll up and down the coast buying
seafood and exporting it to European countries.

BY MR. SPECTER:

Q Do you own your business?

A With two partners.

Q You are a principal?

A Yes.

Q Do you know Mr. Einhorn?

A Yes.

Q How long have you known him?

A Twenty-seven years.

Q How did you come to know him?

A We met when we were kids and we just remained friendly ever since.

THE COURT: You'll have to speak up a little more loudly, sir.

THE WITNESS: We met when we were kids.

MR. SPECTER: I don't think the microphone is working.

THE WITNESS: This better?

THE COURT: No wonder. Somebody turned it off.

THE WITNESS: We met when we were children.

BY MR. SPECTER:

Q Even though the microphone is working, you're still going to have to speak up. I understand you've been traveling for several hours and you're tired.

A Yes.

Q We won't keep you very long.

During the course of your knowing Mr. Einhorn for twenty-seven years, do you know whether or not he has been a resident of the Philadelphia area for all of that time?

A He has always considered Philadelphia his home.

Q Has he always lived here, as well as considering it his home?

A Yes.

Q How do you know that?

A Because whenever he returned from a trip, he always returned to his home and contacted me, talked to me.

Q Have you had frequent contact with him over the course -- or some contacts with him over the course of the past twenty-seven years?

A We lost contact for a brief period, from the time I was eighteen to maybe twenty-two, but after that we've been friendly, very friendly. We've had frequent contacts.

Q How long has it been since you were twenty-two?

A Approximately eighteen years.

Q Do you know others in the community who know him?

A I do.

Q What is his reputation as a law-abiding citizen?

A An excellent one.

Q And why do you say that?

A Because he is a nonviolent person. He's a person --

MR. MURRAY: That's objected to, Your Honor.

MR. SPECTER: He's not giving specifics.

THE COURT: I'm going to allow some latitude.

I think your objection is technically correct; but, counsel, we've got to face up to the fact that the lay-people may not quite understand all the refinements. I'll allow it for whatever it's worth.

BY MR. SPECTER:

Q What is his reputation with respect to fulfilling his commitments, keeping appointments, fulfilling his obligations?

A He's always on time and always chided me for being late.

Q And what is his reputation, good, poor, fair, excellent, what?

A His reputation is excellent.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q Mr. Fink, you indicated in response to one of Mr. Specter's questions that whenever he returned from one of his trips he always came back to Philadelphia, is that correct?

A That's correct.

Q What trips did you know him to take?

A Ira was always traveling. It's part of his lifestyle. And whenever he returned home, he contacted a friend and said "I'm back in town."

Q Where was he always traveling to?

A You name it.

Q Frequently to Europe?

A Yes.

Q Frequently to Canada?

A I suppose.

Q South America?

A I haven't heard about South America.

Q Mexico?

A Nor Mexico.

Q Is it safe to say that during your period of knowing the defendant he was frequently out of this country?

A Yes.

Q Now, you indicated that when he returned he would always return to his residence in Philadelphia. You've known him for some eighteen years you've indicated, correct?

A Overall twenty-seven years.

Q Twenty-seven years; I'm sorry.

Over the last seven or eight years do you

know where his residence was?

A Yes.

Q Where? Is it at 3411 Race Street?

A Yes.

Q Second floor rear apartment?

A Yes.

Q Did you know Holly Maddux?

A Yes.

Q Did you know that she lived with him?

A Yes.

Q How long did she live with him, do you know?

A I would say five or six years.

MR. MURRAY: No further questions.

MR. SPECTER: Thank you, Mr. Fink.

(The witness stepped down.)

MR. SPECTER: Mr. Thomas Bissinger.

THOMAS NEWTON BISSINGER (County Park Road,
R.D. 4, Pottstown, Pennsylvania), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Mr. Bissinger, what is your profession or occupation?

A I'm a theatrical producer, Widener.

Q Do you know Mr. Einhorn?

A Yes, sir.

Q How long have you known him?

A Since 1969.

Q And how frequent have your contacts been with him?

A Frequent.

Q Would you describe in a general way the extent of your knowledge of him.

A Well, we have worked together. I was one of his managers when he ran for mayor in 1971.

Q Did he win or lose that contest?

A I believe he lost it.

I've traveled with him, and socially I've known him often.

Q Do you know him closely?

A Yes.

Q During 1979 do you know whether or not he has been a resident of the Philadelphia area?

A To the best of my knowledge, he has always been a resident.

Q Do you know others in the community who know him?

A Yes, sir.

Q What is his reputation for being a law-abiding citizen?

A A good one.

Q What is his reputation for being punctual, fulfilling his commitments and obligations?

A I'd say it's very good.

Q With respect to character, would you say it's good, fair, poor, what?

A It's good.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q You indicated, Mr. Bissinger, you've traveled with him. Where have you traveled to with him?

A I've traveled to western and eastern Canada with him during the summer of -- well, I think 1971 and 1974, and I've also gone to Europe with him.

Q When?

A I think 1973.

Q Where did you go when you were in Europe?

A Scandinavia and London and France.

Q Do you know where he lived for the last six or seven years?

A Yes, sir.

Q Where?

A He lived at 3411 Race Street.

Q Second floor rear apartment?

A Yes, sir.

Q Did you know Holly Maddux, the girl who lived with him there?

A Yes, sir.

Q How long did she live with him there, do you know?

A Well, roughly I guess five years.

MR. MURRAY: No further questions.

MR. SPECTER: Thank you very much.

(The witness stepped down.)

MR. SPECTER: Mr. Kubiak.

CURTIS KUBIAK (1623 Haworth Street,
Philadelphia, Pennsylvania), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Mr. Kubiak, what is your occupation, profession
or business?

A I'm an architect.

Q Do you know Mr. Einhorn?

A Yes.

Q How long have you known him?

A About fifteen years.

Q Do you know others in the community who know him?

A Yes.

Q What is his reputation for being a law-abiding
citizen?

A Good.

Q What is his reputation for keeping his appointments

and fulfilling his obligations?

A Fine.

Q And what is his character, good, fair?

A Good.

Q Good?

A Good.

MR. SPECTER: Cross-examine.

CROSS-EXAMINATION

BY MR. MURRAY:

Q Have you been a good friend of Ira Einhorn for the last six or seven years?

A Yes.

Q In fact, would you consider yourself one of his closest friends?

A Yes.

Q Did he ever tell you that Holly Maddux was missing from his apartment?--

MR. SPECTER: Objection.

MR. MURRAY: -- in 1977?

MR. SPECTER: Objection.

THE COURT: I'm going to have to sustain that.

MR. MURRAY: All right. Let me back-track,
Judge.

BY MR. MURRAY:

Q Did you know Holly Maddux?

A Yes.

Q When was the last time you saw Holly Maddux?

MR. SPECTER: Objection.

THE COURT: What's the relevance of that for the purpose of this hearing?

MR. MURRAY: Your Honor, the relevance is this man indicates he knows the defendant, that he knows that this girl has lived with the defendant; and I'm testing his credibility concerning his knowledge of these people and whether or not he is aware of different time sequences when different people were present, just how really well he does know him. He indicates he knows them very well, and I think his credibility is at issue in this hearing.

THE COURT: A lot of people know me but don't know my wife.

MR. MURRAY: He has indicated he does know Holly Maddux, Your Honor.

THE COURT: They may know my wife, they may know me well; but the mere fact they may not know my wife well, do not see her very often, has no relevance.

I'm going to sustain the objection.

BY MR. MURRAY:

Q How long did Ira Einhorn live with Holly Maddux?

A Four or five years I believe. That was off and on. I don't believe he lived steadily for the last four or five years.

Q When was the last time you knew that he lived with her?

MR. SPECTER: Objection to anything that goes to her loca. I haven't objected to the living with but with respect to what happened to her, I think that's beyond the scope.

MR. MURRAY: Your Honor, again, this man says he knows the man, he knows about his relationship and whatnot. I'm testing his credibility.

THE COURT: You're presupposing that this lady by the name of Holly Maddux in fact was living constantly, was in the presence of Mr. Einhorn; --

MR. MURRAY: No, I'm not, Judge.

THE COURT: -- therefore, this witness, if he knew Einhorn that well, must have known Holly Maddux.

MR. MURRAY: That's not a presupposition at all, Judge. That's what he testified to.

THE COURT: I didn't hear that. He said he

knew the defendant, he knew Holly.

MR. MURRAY: Right.

THE COURT: Some people know my wife.

MR. MURRAY: Judge, I'm only asking him those questions that he can answer. If he can't answer it, he can't answer it.

THE COURT: I know, but whether he happens to know Holly well or how often he saw her, I'm going to sustain the objection. Please remember that this is merely for fixing bail.

MR. MURRAY: Judge, I tell you I'm trying to remember that.

THE COURT: Let's have our actions carry that out; and I might add, that applies to both sides.

MR. MURRAY: I understand.

BY MR. MURRAY:

Q Do you know whether the defendant has lived in Philadelphia for the last six or seven years?

A I know where he has lived for the last fifteen years.

Q Where?

A 35th and Powelton or 3411 Race.

Q Second floor rear apartment at 3411 Race?

A Yes.

Q Did Holly Maddux live with him there?

A I've seen her there.

Q How many times?

A I designed -- at one point I met with him and acted professionally for him to expand his back porch, to extend his living room for Holly Maddux. I was aware they were living there. At one point they were going to extend the back porch for a living room. I made drawings for that.

Q When was that?

A Three or four years ago.

Q 1976?

A Something like that.

MR. MURRAY: No further questions.

MR. SPECTER: Thank you very much.

(The witness stepped down.)

MR. SPECTER: Judy Wicks, please.

JUDITH A. WICKS (3420 Sansom Street,
Philadelphia, Pennsylvania), sworn.

DIRECT EXAMINATION

BY MR. SPECTER:

Q We won't detain you too long, Mrs. Wicks. You may have a more important engagement.

What is your business?

A I'm co-owner of LaTerrasse Restaurant, 34th and

Sansom Street.

Q Do you know Mr. Einhorn?

A Yes, I do.

Q How long have you known him?

A About eight years.

Q How well have you known him during that time?

A I've known him both as a personal friend and because he's been a regular customer at the restaurant.

Q Do you know other people in the community who know him?

A Yes, I do.

Q What is his reputation for being a law-abiding citizen?

A Very good.

Q And what is his reputation for fulfilling his commitments?

A Excellent. He has a charge account at the restaurant. He always pays his bills on time..

Q Has he been in Philadelphia during the full course of the eight years that you've known him?

A He has traveled but, as far as I know, he has always maintained his residence in Philadelphia.

Q What is his character, good, excellent, fair, poor, what?

A Excellent.

MR. SPECTER: Cross-examine.

MR. MURRAY: No questions.

(The witness stepped down.)

MR. SPECTER: Father Moore, Reverend Moore.

RALPH M. MOORE, JR. (Director of Christian Association, University of Pennsylvania; instructor of Humanities Communication, Drexel University), affirmed.

DIRECT EXAMINATION

BY MR. SPECTER:

Q Do you know Mr. Einhorn?

A Yes, I do.

Q How long have you known him?

A About eleven years.

Q How have you come to know him?

A I've always been working in projects in the field of communications, performing arts and in connection with two partners with whom I was working on a project back in '68, '69, I came to know him and have since stayed in close contact with him.

Q Do you know whether or not Mr. Einhorn has been a resident of Philadelphia during the eleven years that you have known him?

A He has been.

Q Do you know others in the community who know him?

A Yes, I do.

Q What is his reputation for being a law-abiding citizen?

A Excellent.

Q What is his reputation for fulfilling his commitments, appointments and obligations?

A Excellent.

Q What is his character?

A Excellent.

MR. SPECTER: Cross-examine.

MR. MURRAY: No questions.

(The witness stepped down.)

MR. SPECTER: Your Honor, I have a number of other people but, for purposes of the record, I would just like to have them step forward. The balance would be cumulative, not that some of it hasn't been cumulative.

THE COURT: Would you stipulate to that, that's in effect what they would testify to.

I guess you are seeking really a stipulation.

MR. SPECTER: Yes.

MR. MURRAY: Yes.

MR. SPECTER: Would Cathy Keegan come forward, Professor Fiderer come forward and anyone else

who is here.

THE COURT: Do you want to state their full names?

MS. KEEGAN: Catherine Keegan, K-e-e-g-a-n, 209 Catherine Street, Philadelphia.

MR. FIDERER: Gerald Fiderer, F-i-d-e-r-e-r, 7203 Creshiem Road, Philadelphia.

THE COURT: All right. Is that it?

MR. SPECTER: I would like the record to show that Mr. and Mrs. Einhorn, the parents of Ira Einhorn, are here today. Would you please just stand. (Pause.) Thank you.

THE COURT: All right.

Gentlemen, is that it for today?

MR. SPECTER: Yes, sir.

THE COURT: What time tomorrow?

MR. MURRAY: Your Honor, I believe we've agreed to proceed on the record as we have it before Your Honor today, for Your Honor to fix a sum.

Your Honor, the record of the defendant in this particular case indicates that he has no convictions. He has one prior arrest for possession of dangerous drugs which resulted in a discharge.

THE COURT: No convictions?

MR. MURRAY: No convictions that the Commonwealth is aware of at this time.

Judge, I think we have, by way of my statement, an indication of a case, a very, very serious case, indicating that the decedent in this matter met her demise back in 1977, that she has been in the defendant's closet in this particular matter, in fact was found hidden there, back on March 28th of this particular year.

I think you have a case that indicates planning, I think you have a case that indicates intention. I think you have all the earmarks of a very, very serious first degree murder case. You have testimony with regard to the defendant's roots. You've heard testimony that the defendant has lived in Philadelphia. You've also heard testimony I think you should take into consideration when you set bail that the defendant travels -- I think it's fair to say, characterizing the testimony -- frequently. He travels outside the country. He travels to Canada. He travels to Europe. Not that that in a sense is to be held against a particular person if he is able, by means that he has, monetary means to travel. However, Your Honor, it does give an indication that these

places are accessible to the defendant.

I would ask, as a result of all of the factors that have come out in this case, for Your Honor to hold this defendant in \$100,000 bail for trial in this matter.

MR. SPECTER: Your Honor, I think that a request of \$100,000 bail is excessively excessive. The standards --

THE COURT: Could you or will you be prepared to translate what you think it ought to be?

MR. SPECTER: Yes, sir.

THE COURT: Could you translate excessive into a dollar figure --

MR. SPECTER: Yes, sir, I can.

THE COURT: -- which is non-excessive?

MR. SPECTER: Yes, sir. I would prefer to do that, if it please the Court, after I have --

THE COURT: Surely.

MR. SPECTER: -- said a few things by way of preliminary as to how I get there and set the stage.

The requirements for the setting of bail are set forth in Rule 4004 and, as often as we all read them, they are good to re-focus on when you think about a specific case. And the rule says that in setting bail, bail shall be such as to

insure the presence of the defendant, okay.

One is the nature of the offense charged; two, employment status; three, family relationships; four, past and present residences; five, age, character, reputation, mental condition, record of relevant convictions, whether addicted to alcohol or drugs; next, previously released on bail and any other relevant factors.

Now, there has been in this case, Your Honor, very little presented by the Commonwealth with respect to the nature of the offense, very, very little. I do not have to ask --

THE COURT: What about Mr. Murray's contention that there was a body found in the back --

MR. MURRAY: In the rear closet of 3411 Race Street, Your Honor.

THE COURT: Is that before me?

MR. SPECTER: Yes, sir.

I think --

THE COURT: Did you say in a trunk?

MR. MURRAY: Yes.

MR. SPECTER: I think it is before you, and I think you have minimal factual references with respect to cause of death. I think the record is very --

THE COURT: Aside from cause of death, Mr. Specter, I believe the allegation here was 1977. Isn't it a little unusual to have a dead body -- I guess it would have to be dead -- in a trunk in one's own residence, let alone even a dead cat or dead dog but a dead human being. Isn't that -- doesn't that raise some eyebrows?

MR. SPECTER: Judge, there has been no showing of that body being there since 1977.

THE COURT: Well, no; the body apparently was said to have been -- expired its life since 1977.

MR. SPECTER: Well, there's an allegation --

THE COURT: Right.

MR. SPECTER: -- of having been missing since '77.

THE COURT: Even if it were fresh -- I guess if it were fresh it's even worse.

MR. SPECTER: Well, the allegation is bad, however it's made.

THE COURT: Sure.

MR. SPECTER: But with respect to the presence of a body, that is a problematic allegation; but if Your Honor is referring to its being there from 1977 to the present time, I don't think there's any showing to raise an inference

for that period of time. That would be perhaps a worse inference to be raised.

Mrs. Samuels testified on cross-examination, not a factor that I'd brought out, that she had been there many times over the past year, she said every two months; she said there was no odor. To the extent that is an issue here, the evidence would suggest that the body was not there.

All I'm suggesting to Your Honor is that, aside from the very heavy newspaper accounts and media accounts of the matter, which I have no way of knowing and no intent to inquire into what Your Honor knows about them, but aside from that overtone --

THE COURT: I've read of it. I think it was in -- the first time I bought the Sunday Inquirer in many a moon, and it was in there.

MR. SPECTER: Well, aside --

THE COURT: I had nothing else to read, so I read the Inquirer.

MR. SPECTER: Aside from -- aside from the newspaper accounts and the heavy publicity, there is nothing to distinguish this homicide from many, many homicides in Philadelphia, of which there are hundreds each year.

THE COURT: I have to make a decision not

based on any newspaper accounts, --

MR. SPECTER: Of course.

THE COURT: -- on the basis of what is presented here. That's my duty.

However, let me ask you this, Mr. Specter: Should the Court make a distinct distinction in assessing this particular allegation as between glassine packets being back there, which could have been brought in by anybody, as opposed to -- and I don't know the size of this trunk, have no idea, but if it contains a body, and I assume it's a normal adult body, it has to be of some size that you couldn't sneak it in at night or sneak it in and out very easily; and, therefore, would it be reasonable for me as a fact-finder to determine -- fact-finder only for this purpose, to determine that it didn't get there by pure chance, that somebody just didn't bring it in and forgot it there when they went home?

MR. SPECTER: I'm not saying that it didn't get there by pure chance.

THE COURT: In particular since it was brought out that he was single, I think someone said he was single.

MR. SPECTER: Yes. There's an allegation

that he's unmarried.

THE COURT: So it couldn't have been his wife or any of his children who may have brought home some strange object; and, therefore, some one person, it's only one person, you know, the question is how did it get there.

MR. SPECTER: The point -- the point that I am making, Judge, is that where there is a contention of planning or there is a contention of duration, that there is nothing to support that. There is nothing in this limited record on the limited showing that the Commonwealth has made about the nature of an offense, except that you have a body, you have a homicide. I don't minimize that. You have certain minimal presentations made by Mr. Murray with respect to the cause of death. So that as to the nature of the offense, aside from the great publicity, there is very little by way of -- to distinguish this case there is very little by way of aggravation. There's a homicide. It's a serious situation. I don't minimize that for a minute.

THE COURT: I think it's safe for me to assume from the evidence presented here that it was Holly Maddux who was living with the defendant five to

six years in the past and whose body is now found in a trunk, as I understand it, the evidence would sustain, would justify finding, in a trunk in the back section of the apartment of defendant at 3411 Race Street, second floor. So it's not some completely unknown corpse that's found there. Or is that unjustified for me to reach that conclusion for this -- for purposes of this hearing only?

MR. SPECTER: Your Honor, I think that you have accurately stated the matter. The presence of someone known might raise a great many inferences of lesser culpability. It was not a robbery case, it was not a burglary case, it was not a rape-murder, not a felony murder. There will be a submission at an appropriate time as to the defense. But it was many categories of lesser -- 70 per cent of the homicides are committed one person knowing another.

THE COURT: I did mean to raise this with you, Mr. Murray, because I do have some questions for you. Let us assume that all the evidence indicates what I've just alluded to; however, isn't this the kind of a case where the defendant indeed would not present a general threat to the community. I'm referring now to Rule 4032 or -3, poses no threat

for immediate physical harm to himself or to others. I recognize that's under R.O.R., but it is a factor. In other words, if all of this is true, unless there is another Holly Maddux lurking around, it's unlikely, assuming everything in the Commonwealth's favor, that this particular defendant is not about to commit another murder as opposed to some mad dog running around the street.

MR. MURRAY: Judge, let me say this to you. I'm not a psychiatrist, I'm not a psychologist. There is no way I can tell. All I can say to Your Honor --

THE COURT: Mr. Murray, Mr. Murray, you've been around, I'm sure, long enough so that you do exercise some common sense and claim to exercise some.

MR. MURRAY: I try to, Judge.

THE COURT: Psychiatrists do not have a monopoly on common sense. I don't know whether there are any psychiatrists in the courtroom, but I frankly look askance on psychiatrists as to their findings, totally inconsistent with what I self-servingly declare to be my common sense.

Isn't that so in this case?

MR. MURRAY: Judge, I would say, because of

the highly unusual surroundings, let's say, for want of a better word, in this particular case, the unusual trappings in this case, very frankly, Judge, I can't answer your question. I do not know. I think this case smacks with the --

THE COURT: If it were Richard Speck, that fellow in Chicago that killed those seven or eight nurses, I'd have no problems.

MR. MURRAY: Judge, let me say to you we have a very serious allegation. Mr. Specter has been going through -- and obviously it's his duty to do the job he can for his client, but to say this is one of 70 per cent in Philadelphia where a person may kill a person that they know, Judge; this is a case where a woman's body is found in a trunk after having been there -- we've admitted that she was killed sometime in 1977 -- it's been in that particular trunk or it's been dead since that time, so this is a highly unusual case. Maybe it's not Richard Speck, but it certainly has an unusual aura about it of its own.

THE COURT: I have to agree, can't disagree with that; but does Ira Einhorn pose a threat of immediate physical harm to himself -- and I'll skip -- to others?

MR. MURRAY: Judge, you're asking me the same question that I tried to answer. If you believe the testimony of these people here, if these people really know him the way they say they know him, I don't know and I can't answer your question, Judge.

He has, according to the allegations of the Commonwealth, which they are at this point unproven at a preliminary hearing, according to the allegations, committed a very, very heinous offense.

THE COURT: Of course it is.

MR. MURRAY: I can't say whether --

THE COURT: When a spouse kills his or her own spouse, that's a heinous crime, no question about it. Unless he has some other spouses down the line, the question is does that -- if it's a crime of passion against another spouse and unless you have a number of other spouses, do you present a threat to the community in general?

MR. MURRAY: Judge, I would say any man that has killed does present a threat to the community in general.

THE COURT: Well, I -- all right.

MR. SPECTER: Your Honor, Mr. Murray says it's admitted since 1977. There's no admission

as to the date of death, and I've already made my argument to you with respect to the continuity there.

THE COURT: Let me ask you this, though, now that I've asked a few questions of him, Mr. Specter. Excuse me for interrupting you; that's one of the prerogatives of being a judge, you understand. What is the likelihood of conviction. That's one of the elements that I have to look at, do I not. Holly Maddux, knowing her for five or six years, she's gone, and they find her body in 3411 Race Street second floor rear, which is where Ira Einhorn lives, and, lo and behold, her body is in a trunk in the back. Now, I'm not asking you to admit anything; obviously you can't, and so on, but I'm just asking you a rhetorical question. Don't I have to weigh that, what is the likelihood of conviction; number two, the other standard under that is the possible penalty. What is the possible penalty here; life, death?

MR. SPECTER: The maximum penalty, Judge, would be life.

THE COURT: Could it be death?

MR. SPECTER: No, sir. There was no death penalty in Pennsylvania from November 30th of 1977 until mid June of 1978.

THE COURT: That's a pretty heavy penalty, isn't it?

MR. SPECTER: Yes, sir. Life is a heavy penalty.

THE COURT: Would it be unreasonable to say that a defendant faced with that kind of a possibility, he's going to face life, that he might not, as they say in the street jargon, split for parts unknown; and in this case, if he has familiarity with is it Norway and Scandinavian countries, Europe, et cetera, that he might just do that?

MR. SPECTER: Judge, I have to disagree with your last statement. Anybody is as likely to go to Norway as anybody else.

THE COURT: Go underground.

MR. SPECTER: There is no showing of underground. Judge, let me come back to your question as to the proof, the likelihood of conviction. I don't know as I stand here --

THE COURT: Remember, I'm not determining his guilt. Indeed, and I want to be candid with you, I think the Inquirer article quoted him as saying he was framed; and he may very well have been as far as I'm concerned. I mean he's not in his

apartment, twenty-four hours a day and somebody -- who knows. Strange things happen in life. So I'm not passing on his guilt or non-guilt at this point. I want to weigh that. Superficially, when I look at it, as I must, likelihood of conviction, you've a tough row to hoe.

MR. SPECTER: Judge, I would submit you have to decide this bail application on this bail application record. Under Commonwealth versus Truesdale it is plain, as it is under many other cases, as set forth on Page 337 of 449 Pa. Supreme Court Reports: The burden of proof is upon the Commonwealth. Now, on the showing which has been made in this case, there is no basis for a conclusion that the defendant has a tough row to hoe.

THE COURT: Oh, no, no; that's just my shorthand way of putting all these, Holly Maddux' body in a trunk in the back -- you know, I wouldn't want to have someone find my wife's body in a trunk in my home, particularly if I lived alone; I think I'd be in hot water.

MR. SPECTER: I would submit to Your Honor that on the basis of this record, upon the basis of, as the Supreme Court in Truesdale said, the

importance of the presumption of innocence, which I don't have to argue to Your Honor, that there is no reason to conclude that -- that it is likely that Mr. Einhorn is going to be convicted.

THE COURT: Well, yes, but the rule does say, 4004, it says likelihood of conviction and possible penalties.

MR. SPECTER: Well, you've got to make a decision on that, I agree. That's present in any case under the bail application. But I'm saying to you that in this case you practically have a tabula rasa on the question of likelihood of conviction. You just don't know enough about this case --

THE COURT: No question about it.

MR. SPECTER: -- sitting as the bail presiding judge --

THE COURT: No question about it.

MR. SPECTER: -- to make any judgment on that at all. Since the burden is on Mr. Murray, that factor does not weigh against us on the quantum of bail. I think that's a fairly direct argument on the bail issue.

THE COURT: Well, I can't ignore it and I can't abdicate it.

MR. SPECTER: But you can't weigh it against the defendant because there is no showing and the burden is on the Commonwealth.

THE COURT: There's no presumption of likelihood of conviction, clearly not.

MR. SPECTER: Absolutely not. And beyond the issue of presumption, the burden is upon the Commonwealth.

Judge, I think that the evidence we have put on here is very substantial in terms of the real purpose of bail is to guarantee the appearance of the defendant at the next stage of the proceeding. That's the real purpose of bail. We have had eleven witnesses who have testified and others who are in the courtroom who have given very explicit and I think very unusual testimony as to the issue of reliability and on the issue of non-violence. Yes, that has come in here and that is not perhaps directly related to reliability on appearing, but it has been put on on the issue of likelihood of conviction or is this man of a violent disposition.

This man, as the evidence has shown, he is a leader of an activist peace movement, noted for -- for his emphasis on nonviolence. The man from

1 Tel. testified about how when there was a period of unrest, Mr. Einhorn was at the forefront of the movement to defuse it and to avoid the implications and aspects of violence. That has some probative force in terms of whether he committed a violent act charged or the issue as to his likelihood of conviction. Not only has the Commonwealth not put on evidence to assume their burden but, to the extent there has been evidence, it has been by the defense and on the defendant's side.

Judge, let me come to the Truesdale case, which I think is an important case because that's the case, parenthetically where I was on the other side, which established the right to bail after Furman (phonetic), which eliminated the death penalty nationwide and in Pennsylvania. In the Truesdale case there was an allegation a woman was shot and killed in front of her home, and the defendant was then arrested and charged with murder and conspiracy. The bail set in Truesdale was \$10,000. And that is the case which has been the landmark case in Pennsylvania to uphold the constitutional right of a defendant in a charge even of murder in the first degree to bail. And I would submit to Your Honor that when you go down the list of critical

considerations, on the most important factor, will this man appear at his next hearing, there is no prior criminal record.

THE COURT: I agree, that clearly is the -- one of the prime governing considerations, no question about it.

MR. SPECTER: That is the purpose of bail. That probably occupies ninety-nine and forty-four one-hundredths per cent of consideration at bail, especially in light of what Truesdale says about, quote, the distaste for the imposition of sactions prior to trial and conviction and, quote, the desire to give the accused the maximum opportunity to prepare his defense, unquote.

And if you take a look at all the standards, the nature of family relationship, his past and present residences, the defendant's employment status or his reliability in the community, prior release on bail, well, there's nothing on that to show he hasn't shown up; and a man who has a very unique place and very respected position in the community, who may be suspected, is entitled the presumption he's going to meet this obligation he's going to fight this case in court and going to submit to the law on the subject.

Judge, aside from the -- from the notoriety of the case which has been occasioned by the unusual qualities as characterized in the press of Miss Maddux and the unusual role with which Mr. Einhorn had occupied in the community, that if it were a Truesdale case, it would have had \$10,000 bail set. I don't know what Truesdale's record was. If you had Mr. Einhorn's unique standing and the evidence that he can produce on reliability, that we would talk in terms of \$5,000 bail in this case. You asked me what I considered to be a reasonable figure. I would say \$5,000, and I would say to Your Honor very candidly that most of that is because of the public impact of this kind of a case and the wide kind of reporting. I think when Your Honor referred to R.O.R. I said to Mr. Murray, I said, Joe, will you take an R.O.R. application, when you went to subject two.

THE COURT: What was his answer?

MR. SPECTER: He didn't say no. He just laughed.

MR. MURRAY: That was my answer, Judge, the laugh.

MR. SPECTER: I'm glad I've accurately quoted

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Mr. Murray.

Well, I'm not talking about R.O.R., not because I wouldn't think it appropriate for a man like Mr. Einhorn but because I'm not unaware of the public impact of what bail figure is going to be set.

THE COURT: I can't decide these matters on what the newspapers or public impact are going to be, at least I hope not, otherwise we'll have the public and the press running the courts, determining what is just or unjust. We may agree that we may disagree, but I've got to call the balls and strikes as they come over the plate and not let the gallery up in the stands determine what the balls and strikes are.

MR. SPECTER: Judge, if I may say one more word, Mr. Einhorn has a limited amount of money available to him. He comes from a very modest background. The money which he has is going to have to be divided carefully between bail and investigation and, what may or may not be left, as to counsel fees. Now, this is going to be a complicated case to investigate in terms of scientific tests. There is not going to be an application, as best I understand it at the moment,

for court-appointed counsel in this case, which would place the burden on the Commonwealth. I do not make that representation. I want to make it clear that I'm not saying that in absolute terms but that is my expectation in the short contacts I have had with the case. But it is going to be a very, very expensive case to investigate and it is going to be a very, very expensive case to defend; and I think that, on the face of this record, Mr. Einhorn is entitled to a great many presumptions. And I would represent to Your Honor, as I did in the document that I submitted and signed, that he will appear; and I think that \$5,000 is the reasonable bail.

THE COURT: Well, I have taken into consideration the various factors here, and I must say, quite frankly, that the most troubling aspect of the entire matter is a possible likelihood of conviction. It's not a good picture, as we all, I'm sure, can easily recognize; and if it's not a good picture, that the possible consequences thereof, namely the possible penalty, may very well be life.

I've also kept in mind the fact that this is not a situation of some unsophisticated individual

who does not know quite how to get a passport, has never even gotten a passport; but, indeed, we are involved with an individual who has traveled to various areas outside the country. This is not to say he will. On the other hand, I'm also taking into consideration that this might be, to use a shorthand phrase, assuming the worst possible situation, possibly a so-called crime of passion, and that, therefore, even assuming the worst possibility, that this does not present a situation of an individual who is likely to repeat and aggravate the situation, that is repeat the offense.

Balancing all the factors, the Court hereby fixes \$40,000 bail.

I N D E X

<u>WITNESSES:</u>	<u>D.</u>	<u>C.</u>	<u>RD.</u>	<u>RC.</u>
Stephen J. Harmelin, Esq.	18	21	--	--
Dr. Stuart Samuels	23	--	--	--
Edward Mahler	34	38	--	--
Rev. David Gracie	42	45	--	--
Carter Henderson	46	47	--	--
Julie Samuels	48	51	56	56
Theodore Saul Fink	58	61	--	--
Thomas Newton Bissinger	63	65	--	--
Curtis Kubiak	66	67	--	--
Judith Wicks	71	--	--	--
Ralph M. Moore, Jr.	73	--	--	--

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Lain E. Hayfield
Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge