

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO.: 3:75-CR-26-3
NO.: 5:06-CV-24-F

UNITED STATES OF AMERICA .
 .
 v. .
 . September 17, 2012
 JEFFREY R. MACDONALD, . Wilmington, NC
 Defendant/Movant .

***** REDACTED TRANSCRIPT *****

EVIDENTIARY HEARING
BEFORE THE HONORABLE JAMES C. FOX
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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P R O C E E D I N G S

8:55 A.M.

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(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, PLEASE BE SEATED.

AT THE OUTSET, I'D LIKE BECOME ACQUAINTED AND REACQUAINT MYSELF WITH COUNSEL. IF YOU'LL COME UP TO THE BENCH, PLEASE. COUNSEL, IF YOU'D COME UP TO THE BENCH, PLEASE.

(BENCH CONFERENCE NOT REPORTED.)

THE COURT: LADIES AND GENTLEMEN, I WANT TO BEGIN BY SAYING I GUESS EVERYBODY'S RECEIVED A COPY OF THE COURT'S ORDER THAT'S IN EFFECT REGARDING THE TRIAL.

IT'S MY INTENTION TO START EACH MORNING SESSION AT NINE O'CLOCK AND WORK TILL 12 O'CLOCK AND THEN I THINK WE'LL TAKE A RECESS FOR LUNCH AND WE'LL COME BACK AT 1:30.

THAT'S A LITTLE LONGER THAN I USUALLY TAKE FOR LUNCH, BUT I WANT TO GIVE YOU TIME TO FIND A PLACE TO EAT AND ALSO I KNOW COUNSEL AND THE COURT ALSO HAVE THINGS TO ATTEND TO. THEY HAVE TO KEEP THEIR CASES GOING.

I NOTICE YOU ALL HAVE SIGNED THE PROPOSED HEARING -- JOINT HEARING ORDER, IS THAT CORRECT? YOU'VE SIGNED IT?

MR. WIDENHOUSE: YES, SIR.

THE COURT: THE COPY I HAD HADN'T BEEN SIGNED WHICH WAS BROUGHT IN THIS MORNING. THE PROPOSED JOINT HEARING ORDER, THERE'S BEEN NO AMENDMENTS TO IT OF ANY KIND, IS THAT CORRECT?

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1 MR. WIDENHOUSE: NOT THAT I'M AWARE OF.

2 THE COURT: THANK YOU.

3 MR. BRUCE: YOUR HONOR, THE STIPULATION THAT IS
4 PROPOSED THAT WAS ATTACHED TO THE PREHEARING ORDER, WE HAVE A
5 SIGNED COPY BY ALL COUNSEL TO HAND UP AT THIS TIME.

6 THE COURT: THANK YOU. THANK YOU VERY MUCH.

7 NOW, COUNSEL, THERE'S SOME QUESTION AS TO WHETHER
8 WE'RE GOING TO HEAR THIS THING ON -- THIS MATTER ON THE MERITS
9 OR WHETHER IT'S A -- THE COURT IS EXERCISING ITS GATEKEEPING
10 FUNCTION.

11 I RECEIVED YOUR PROPOSED JOINT HEARING ORDER ON
12 THURSDAY MORNING AND I WAS AMAZED FRANKLY AT THE NUMBER OF
13 EXHIBITS -- MATERIAL THAT WAS THERE. AND IT SEEMED TO ME THAT
14 WHAT YOU ANTICIPATE DOING IS ADDRESSING THIS ISSUE ON THE
15 MERITS. IS THAT RIGHT, MR. WIDENHOUSE?

16 MR. WIDENHOUSE: WELL, I THINK -- IF I UNDERSTAND
17 THE FOURTH CIRCUIT'S DIRECTIVE, I THINK TO SOME EXTENT YOU
18 HAVE TO AT LEAST TAKE A PEEK AT THE MERITS TO DO THE
19 GATEKEEPING STEP.

20 THE COURT: WELL, IT SEEMED -- THE TWO SEEMED TO BE
21 SOMEWHAT CONFLATED.

22 MR. WIDENHOUSE: I AGREE AND I THINK THE FOURTH
23 CIRCUIT'S ORDER IS A LITTLE BIT CONFUSING. I HATE TO SAY THAT
24 BECAUSE I GET UP THERE OFTEN AND THEY MAY NOT LIKE HEARING
25 THAT I SAID THAT.

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1 BUT IT DOES SEEM THAT THE GATEKEEPING FUNCTION
2 REALLY REQUIRES THE COURT TO LOOK AT THE EVIDENCE THAT WE
3 PRESENT IN THE CONTEXT OF THE EVIDENCE AS A WHOLE WHICH IS WHY
4 THE EXHIBIT LIST IS AS LONG AS IT IS.

5 THE COURT: WELL, I KIND OF AGREE WITH THAT. WHAT
6 DO YOU THINK, MR. BRUCE?

7 MR. BRUCE: YOUR HONOR, I AGREE. AS YOU MAY RECALL,
8 AT THE STATUS CONFERENCE LAST SEPTEMBER WE SUGGESTED SKIP OVER
9 GATEKEEPING MOMENTARILY AND GO TO THE MERITS OF THE BRITT
10 CLAIM BECAUSE WE THOUGHT THAT MIGHT BE EASIER IN LIGHT OF THE
11 EVIDENCE AS A WHOLE MANDATE FROM THE FOURTH CIRCUIT.

12 BUT THE WAY THINGS HAVE DEVELOPED, YOU KNOW, THE
13 COURT HAS ASKED US TO BE HERE FOR THE BRITT CLAIM AND
14 UNSOURCED HAIR CLAIM.

15 AND FROM OUR POINT OF VIEW, IF THERE'S EVER GOING TO
16 BE EVIDENCE AS A WHOLE PRESENTED NOW WOULD BE THE TIME TO DO
17 IT. AND PRESUMABLY, AT THE CLOSE OF THIS HEARING, THAT WOULD
18 JUST CLOSE THE EVIDENCE.

19 SO, OUR APPROACH HAS BEEN TO MARSHAL OUR EVIDENCE
20 FOR THE BRITT CLAIM, UNSOURCED HAIR CLAIM, AND EVIDENCE AS A
21 WHOLE. THE ONLY THING -- AND, OF COURSE, THEY HAVE THE BURDEN
22 OF PROOF SO THEY WOULD GO FIRST AND PRESENT THEIR WITNESSES
23 AND THEN WE'LL PRESENT OUR WITNESSES.

24 THE ONLY THING THAT I THINK THAT LEAVES AS A
25 QUESTION MARK IS SORT OF THE BREADTH OF THE EVIDENCE AS A

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1 WHOLE. I NOTICE THAT THEY HAVE SOME OBJECTIONS TO SOME OF OUR
2 EVIDENCE SAYING IT'S BEYOND THE SCOPE OF EVIDENCE AS A WHOLE.

3 ONE WAY TO LOOK AT THAT, I THINK, IF THE MOVANT IS
4 TAKING THE POSITION THAT EVIDENCE AS A WHOLE IS LIMITED TO
5 THOSE THINGS THAT ARE ENUMERATED IN THE FOURTH CIRCUIT'S
6 OPINION, WHICH ARE THE DNA TEST RESULTS, THE AFFIDAVIT OF THE
7 ELDER HELENA STOECKLEY, THE BLONDE SYNTHETIC HAIR LIKE FIBERS,
8 AND THE THREE AFFIDAVITS DESCRIBING CONFESSIONS MADE BY GREG
9 MITCHELL, THEN IF THE COURT LIMITS IT TO THAT THEN WE WILL --
10 OF COURSE, WE'LL SO LIMIT IT TOO.

11 BUT IF THE PARTIES ARE INTRODUCING SOME ADDITIONAL
12 EVIDENCE FOR THE COURT TO CONSIDER AS EVIDENCE AS A WHOLE THEN
13 WE HAVE SOME TOO.

14 BUT MY READING OF THEIR WITNESS LIST AND OUR WITNESS
15 LIST, I THINK MOSTLY WE'RE GOING TO BE -- THE TIME IS GOING TO
16 BE TAKEN ON THE BRITT CLAIM AND NOT SO MUCH ON THE EVIDENCE AS
17 A WHOLE. THEY MAY HAVE A DIFFERENT VIEW.

18 THE COURT: WELL, I WAS GOING TO ASK IF WE'RE GOING
19 TO HEAR THE EVIDENCE ON A WHOLE, THAT WOULD INCLUDE MORE THAN
20 JUST THE BRITT CLAIM AND THE UNSOURCED HAIRS. IT WOULD
21 INCLUDE THE SARAN THREAD THAT WAS FOUND AND THE VARIOUS
22 AFFIDAVITS OF THE STOECKLEY WITNESSES.

23 ARE YOU PREPARED TO GO FORWARD ON THE EVIDENCE AS A
24 WHOLE?

25 MR. WIDENHOUSE: WELL, I THINK SO, YOUR HONOR. I

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1 MEAN WE HAVE COPIES OF ALL THE EXHIBITS THAT WE LISTED IN THE
2 PRETRIAL ORDER AND OUR RATIONALE FOR LISTING THAT MANY
3 EXHIBITS WAS TO SORT OF CABIN FOR THE COURT WHAT WE THINK,
4 FROM OUR PERSPECTIVE IN SUPPORT OF OUR CLAIMS OR OUR
5 CONTENTIONS ON THESE TWO CLAIMS, WHAT THE EVIDENCE AS A WHOLE
6 IS.

7 I MEAN, THE FOURTH CIRCUIT WAS CLEAR IT'S EVERYTHING
8 THAT'S ADMISSIBLE AND INADMISSIBLE AND ALL THAT KIND OF STUFF.
9 I MEAN, IT'S SORT OF AN INTERESTING DOCTRINE BECAUSE IT'S
10 DIFFERENT FROM EVERY OTHER KIND OF EVIDENCE EXAMINATION I'VE
11 SEEN BEFORE.

12 BUT WHAT WE -- WHAT I THINK IF THERE'S A LIMIT ON
13 THE EVIDENCE AS A WHOLE -- AND OUR OBJECTION WAS BASED ON SOME
14 THINGS THAT I THINK ARE SIMPLY OUT OF THE CHAIN OF THE
15 CRIMINAL PROSECUTION.

16 BUT I THINK ANYTHING, IF I READ THE FOURTH CIRCUIT
17 CORRECTLY, ANYTHING THAT'S BEEN INTRODUCED IN THE COURT RECORD
18 OF THIS PROCEEDING FROM THE TIME OF THE INDICTMENT OR ACTUALLY
19 THE INVESTIGATION UP UNTIL TODAY AND THE END OF THIS HEARING I
20 THINK IS THE EVIDENCE AS A WHOLE.

21 MY BIGGEST OBJECTION TO THEIR LISTING WAS THE
22 TRANSCRIPTS OF THE CIVIL TRIAL BETWEEN DR. MACDONALD AND JOE
23 MCGINNIS, WHICH JUST SEEMS TO ME DOESN'T QUITE FIT IN THAT
24 DIRECTIVE OR THE DIRECTION OF THE CRIMINAL PROSECUTION AND THE
25 CHALLENGES TO THE PROSECUTION AFTER THE VERDICT.

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1 BUT I DON'T KNOW WHAT THE EVIDENCE AS A WHOLE IS
2 OTHER THAN WHAT THE FOURTH CIRCUIT PUT IN ITS OPINION.

3 THE COURT: WELL, IT WOULD SEEM TO ME THAT THE
4 EVIDENCE AS A WHOLE IS ANYTHING THAT'S RELEVANT -- THAT ONE
5 SIDE CLAIMS IS RELEVANT.

6 I'VE NEVER BEEN IN A -- TRIED A CASE THAT DIDN'T
7 HAVE THE PARAMETERS OF EVIDENCE, YOU KNOW, PUT TO IT, BUT THIS
8 IS A BRAND NEW VENTURE I GUESS FOR ALL OF US. EVERYTHING
9 COMES IN, AS I SEE IT, EVEN IF IT'S SOMETHING YOU COME UP WITH
10 DURING THE COURSE OF THE TRIAL YOU COULD INTRODUCE IT.

11 BUT I'D LIKE TO HAVE THE SCOPE SO BROAD THAT THIS
12 WILL ADDRESS ALL ISSUES THAT COULD BE CONCEIVED OF AMONG
13 COUNSEL BECAUSE YOU DON'T WANT TO COME BACK 42 YEARS LATER AND
14 DO THIS AGAIN.

15 NOW, I HAVE TO SAY BY WAY OF EXPLANATION, I'M NOT
16 SAYING IT BY WAY OF APOLOGY, BUT JUDGE DUPREE TRIED THIS CASE
17 AND I DIDN'T. AND I AM NOT FAMILIAR WITH -- I HAVEN'T SEEN
18 THE WITNESSES, I HAVEN'T HEARD THEM, I HAVE MADE NO ASSESSMENT
19 AS TO THEIR CREDIBILITY OR RELIABILITY.

20 AS I SEE IT, I THINK YOU ALL, MR. MURTAGH
21 PARTICULARLY AND MR. BRUCE, ARE FAR MORE FAMILIAR WITH THE
22 CASE THAN I AM.

23 NOW, MR. WIDENHOUSE, YOU'VE COME INTO THE CASE
24 FAIRLY RECENTLY. I MEAN, IT'S BEEN HANDLED BY A NUMBER OF
25 DIFFERENT ATTORNEYS.

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1 AND I DID NOT PERCEIVE INITIALLY EXACTLY THE
2 RATIONALE OF MR. MILES' REQUEST FOR AN EVIDENTIARY HEARING. I
3 THOUGHT WE WERE KIND OF LOOKING AT THE SECOND GATEKEEPING
4 FUNCTION.

5 BUT I FRANKLY THINK THAT THE SECOND GATEKEEPING
6 FUNCTION WOULD BE SOMEWHAT SUPERFLUOUS IN THE SENSE THAT THE
7 FOURTH CIRCUIT HAS RECOGNIZED THAT MACDONALD HAS MADE A
8 SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT WITH
9 RESPECT TO BOTH THE BRITT CLAIM AND THE DNA CLAIM, I'M READING
10 FROM THEIR OPINION.

11 SO, I THINK FROM THE STANDPOINT OF A SECOND
12 GATEKEEPING FUNCTION THAT I WOULD BE INCLINED TO SAY THAT MR.
13 MACDONALD HAS PASSED THROUGH THAT GATE.

14 MR. BRUCE: WELL, YOUR HONOR, WE WOULD RESPECTFULLY
15 DISAGREE WITH THAT. WE THINK THAT -- WHAT WE PROPOSE IS BOTH
16 PARTIES PUT ON THEIR EVIDENCE AND THEN WE ANTICIPATE ARGUING
17 TO THE COURT AT THE END OF THE HEARING THAT HE HASN'T MET
18 GATEKEEPING.

19 WE'VE HEARD THE EVIDENCE AS A WHOLE BY THAT TIME SO
20 YOU CAN MAKE A DETERMINATION THAT HE HAS FAILED TO PROVE BY
21 CLEAR AND CONVINCING EVIDENCE THAT THE NEW EVIDENCE, IF
22 PROVEN, WOULD ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT
23 NO FINDER OF FACT WOULD FIND THE DEFENDANT GUILTY.

24 AND THEN WE WOULD ASK IN THE ALTERNATIVE FOR THE
25 COURT TO SAY AND, OF COURSE, THEY'LL BE ASKING THE OPPOSITE,

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1 BUT WE WOULD ASK THE COURT TO SAY IN THE ALTERNATIVE THAT THEY
2 HAVEN'T PROVEN THE MERITS OF THEIR BRITT CLAIM BECAUSE WE
3 THINK THE PREPONDERANCE OF THE EVIDENCE WILL SHOW THAT IT'S
4 NOT TRUE AND THE SAME WITH THE UNSOURCED HAIR CLAIM.

5 SO, WE VIEW SORT OF GATEKEEPING TO BE IN TEMPORARY
6 SUSPENSION UNTIL THE END OF THE HEARING AND THE COURT CAN RULE
7 ON THE MERITS AND GATEKEEPING BECAUSE HE HAS NOT GOTTEN OVER
8 THAT HIGH BAR OF CLEAR AND CONVINCING EVIDENCE. AND YOUR
9 HONOR CAN'T REALLY DETERMINE THAT PER THE FOURTH CIRCUIT UNTIL
10 YOU'VE HEARD THE EVIDENCE AS A WHOLE.

11 THE COURT: WELL, I THINK YOU'RE PROBABLY CORRECT ON
12 THAT. BUT I THINK THE TWO ARE SO INTERTWINED, THE MERITS AND
13 THE GATEKEEPING FUNCTION, I REALLY DON'T SEE HOW IN MY MIND
14 YOU CAN SEPARATE IT OUT. THE ISSUE IS, AS I SAY, CONFLATED.
15 THEY'RE ALL ONE IN THE SAME ISSUE.

16 WELL, COUNSEL, WE'LL JUST GO FORWARD AND LET THE
17 MOVANT BEGIN WITH HIS EVIDENTIARY PRESENTATION.

18 MR. BRUCE: YOUR HONOR, CAN I SAY ONE MORE THING? I
19 KNOW WE'RE DOING THIS UNDER CIVIL RULES, WHICH I'M NOT USED
20 TO, BUT MY UNDERSTANDING IS THAT ALL EXHIBIT LISTED BY BOTH
21 PARTIES IN THE PRETRIAL ORDER TO WHICH THERE WERE NO
22 OBJECTIONS NOTED ARE IN ALREADY, IS THAT RIGHT?

23 THE COURT: THAT'S CORRECT. THAT'S CORRECT.

24 MR. BRUCE: SO, WE DON'T HAVE TO OFFER THEM TO GET
25 THEM ADMITTED AGAIN?

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1 THE COURT: NO. NO. YOU'RE CORRECT.

2 MR. BRUCE: OKAY. AND WE'LL JUST DEAL WITH THE --
3 YOUR HONOR, IS IT YOUR HONOR'S PLEASURE TO DEAL WITH THE FEW
4 OBJECTIONS THAT EACH PARTY DOES HAVE AS THEY COME UP?

5 THE COURT: YES.

6 MR. BRUCE: OKAY.

7 THE COURT: FRANKLY, I DIDN'T RECEIVE YOUR PROPOSED
8 JOINT PREHEARING ORDER UNTIL THURSDAY MORNING OF LAST WEEK
9 AND I WENT THROUGH IT AS BEST I COULD, BUT IT'S QUITE LENGTHY.
10 AND ALSO, I THINK I MADE AN ESTIMATE OF SOMETHING LIKE 500
11 EXHIBITS LISTED.

12 NOW, I THINK THIS IS GOING TO TAKE A LOT MORE TIME
13 THAN THIS WEEK AND NEXT WEEK. DO YOU THINK WE CAN GET THROUGH
14 IT IN TWO WEEKS?

15 MR. BRUCE: YES, YOUR HONOR, I THINK WE'LL GET
16 THROUGH. I THINK THAT BOTH PARTIES DID A LOT OF SORT OF BELT
17 AND SUSPENDERS IN THEIR EXHIBITS LISTS, WANTED IT IN THERE IN
18 CASE THEY NEEDED IT. I THINK WE'LL ONLY ACTUALLY BE CALLING
19 UP A FRACTION OF THOSE AS THE EVIDENCE IS PRESENTED.

20 THE COURT: ALL RIGHT, SIR. WELL --

21 MR. WIDENHOUSE: AND, YOUR HONOR, I DON'T MEAN TO
22 INTERRUPT, BUT JUST TO SORT OF GIVE YOU OUR PERSPECTIVE ON
23 THIS, THE REASON THAT WE PUT ALL THE EXHIBITS TOGETHER, AT
24 LEAST FROM OUR PERSPECTIVE, AND WE HAVE THEM IN NOTEBOOKS FOR
25 YOU AND EVERYBODY, IS BECAUSE AT THE END OF THE HEARING WHEN

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1 YOU GO BACK TO MAKE A DECISION ABOUT THE CASE, YOU'RE GOING TO
2 HAVE TO MAKE IT IN THE CONTEXT OF THE EVIDENCE AS A WHOLE.

3 I DON'T THINK THAT MEANS YOU'RE GOING TO HEAR EVERY
4 DROP OF THE EVIDENCE AS A WHOLE IN THE COURTROOM BECAUSE WE'RE
5 NOT GOING TO READ 500 EXHIBITS TO YOU. YOU KNOW, WE FIGURE
6 YOU'RE CAPABLE OF READING THAT. AND THERE'S A LOT OF
7 TRANSCRIPTS AND A LOT OF OTHER THINGS.

8 AND THAT'S ALSO WHY WE'LL BE ASKING AT THE END OF
9 THE HEARING TO BE GIVEN AN OPPORTUNITY TO PREPARE A MEMORANDUM
10 SUMMARIZING THE EVIDENCE AS A WHOLE --

11 THE COURT: CERTAINLY.

12 MR. WIDENHOUSE: -- FROM OUR PERSPECTIVE TO ASSIST
13 YOU, AND I'M SURE THE GOVERNMENT WOULD LIKE TO DO IT AS WELL.

14 THE COURT: CERTAINLY.

15 MR. WIDENHOUSE: I DON'T THINK WE'RE GOING TO BE
16 SITTING HERE FOR TWO WEEKS MOVING IN 500 EXHIBITS. I THINK
17 THEY'RE GOING TO BE, AT LEAST FROM OUR PERSPECTIVE, A HANDFUL
18 THAT WE'LL USE IN THE HEARING AND THE OTHER TWO OR 300 ARE PUT
19 THERE FOR YOU TO SHOW YOU WHAT WE THINK IS THE EVIDENCE AS A
20 WHOLE. AND I SUSPECT THAT'S PROBABLY TRUE FOR THE GOVERNMENT
21 AS WELL.

22 MR. BRUCE: WE AGREE WITH THAT, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR. WELL, LET ME SAY AT THE
24 OUTSET, ON THURSDAY MORNING AT NINE O'CLOCK I HAVE A SHOW
25 CAUSE HEARING THAT WILL TAKE ABOUT AN HOUR AND SO WE'LL START

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1 AT TEN O'CLOCK ON THURSDAY MORNING. I DON'T THINK IT WILL
2 TAKE LONGER THAN THAT, BUT YOU NEVER CAN TELL.

3 ALL RIGHT, COUNSEL, IF YOU WANT -- DO YOU WANT TO
4 START OFF, MR. WIDENHOUSE, WITH YOUR EVIDENTIARY ISSUES?

5 MR. WIDENHOUSE: YES, SIR. CAN I MAKE A BRIEF
6 OPENING STATEMENT --

7 THE COURT: YES, SIR.

8 MR. WIDENHOUSE: -- TO SORT OF LAY OUT WHERE WE
9 THINK WE'RE GOING TO GO?

10 AS YOU KNOW, YOUR HONOR, WE'RE HERE TODAY ON TWO
11 MAJOR CLAIMS, WHAT WE CALL THE BRITT CLAIM AND THE DNA CLAIM
12 OR WHAT WE'VE NOW RELABELED THE UNSOURCED HAIRS CLAIM WITHIN
13 THE AMBIT OF THE EVIDENCE AS A WHOLE.

14 IN DIRECTING THE CONTEXT OF THE HEARING, THE FOURTH
15 CIRCUIT REMINDED US OF THE SOBERING WORDS OF THE LATE JUDGE
16 FRANCIS MURNAGHAN IN HIS CONCURRING OPINION OF THE DIRECT
17 APPEAL OF THIS CASE WHERE HE SAID THIS CASE PROVOKES A STRONG
18 UNEASINESS IN ME. THE WAY IN WHICH A FINDING OF GUILT IS
19 REACHED IS, IN OUR ENDURING SYSTEM OF LAW, AT LEAST AS
20 IMPORTANT AS THE FINDING OF GUILT ITSELF. MACDONALD WOULD
21 HAVE HAD A FAIRER TRIAL IF THE STOECKLEY RELATED TESTIMONY HAD
22 BEEN ADMITTED.

23 I WOULD SUGGEST SURELY HIS UNEASINESS SHOULD NOT BE
24 LOST ON THE COURT AS IT EMBARKS ON THE TASK AT HAND.

25 OUR POSITION AND CONTENTION IS THAT BOTH THE BRITT

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1 CLAIM AND THE UNSOURCED HAIRS CLAIM VIEWED SEPARATELY AND
2 VIEWED TOGETHER IN THE CONTEXT OF THE EVIDENCE AS A WHOLE,
3 WHATEVER WE DECIDE THAT MEANS OR YOU DECIDE THAT MEANS, WILL
4 SHOW THAT NO REASONABLE JUROR WOULD HAVE FOUND JEFFREY
5 MACDONALD GUILTY HAD IT HEARD THIS EVIDENCE.

6 STATED ANOTHER WAY, THE EVIDENCE SUPPORTING THESE
7 CLAIMS IN LIGHT OF THE EVIDENCE AS A WHOLE WILL COMPELLINGLY
8 DEMONSTRATE REASONABLE DOUBT AS TO JEFFREY MACDONALD'S GUILT.

9 THE MATERIAL EVIDENCE IN THIS CASE WILL COME FROM
10 OUR PERSPECTIVE FROM SEVERAL SOURCES; LIVE TESTIMONY OF
11 WITNESSES WHO WILL TESTIFY IN THIS HEARING PRIMARILY ABOUT THE
12 BRITT CLAIM, STIPULATIONS THAT THE PARTIES HAVE AGREED TO
13 REGARDING THE FACTS ABOUT THE UNSOURCED HAIRS, AND MATERIALS
14 THAT WILL BE OFFERED INTO THE RECORD AS PART OF THE EVIDENCE
15 AS A WHOLE, THE NOTEBOOKS THAT ARE SURROUNDING THE WELL OF THE
16 COURT.

17 THE BRITT CLAIM ENCOMPASSES THREE PARTS. FIRST,
18 HELENA STOECKLEY MADE ADMISSIONS TO THE LATE MARSHAL JIMMY
19 BRITT THAT SHE WAS IN THE MACDONALD HOUSE ON THE NIGHT OF THE
20 MURDER AND THAT HE DID NOT KILL HIS FAMILY.

21 SECOND, MR. BRITT HEARD HELENA STOECKLEY TELL THE
22 PROSECUTOR THE SAME THING WHEN SHE WAS INTERVIEWED, THAT SHE
23 WAS IN THE MACDONALD HOUSE ON THE NIGHT OF THE MURDER.

24 THIRD, THE PROSECUTOR TOLD MS. STOECKLEY THAT IF SHE
25 WENT INTO COURT AND SAID THAT, THAT SHE WAS IN THE HOUSE ON

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1 THE NIGHT OF THE MURDERS, SHE WOULD BE INDICTED FOR MURDER.

2 MS. STOECKLEY FELT THREATENED BY THAT STATEMENT
3 WHICH CAUSED HER TO CLAIM SHE DID NOT REMEMBER THE NIGHT IN
4 QUESTION WHEN SHE WAS CALLED TO TESTIFY.

5 AND BASED ON HER CLAIMED LACK OF MEMORY, NOT ONLY
6 DID SHE NOT TESTIFY, BUT AT LEAST SIX WITNESSES WHO WERE
7 PREPARED TO TESTIFY ABOUT THE STATEMENTS SHE HAD MADE TO THEM,
8 THAT SHE WAS IN THE HOUSE, WERE ALSO NOT ALLOWED TO TESTIFY.
9 AND THAT IS THE STOECKLEY RELATED TESTIMONY TO WHICH JUDGE
10 MURNAGHAN REFERS.

11 IT'S IMPORTANT TO RECALL AS YOU EMBARK ON THIS
12 PROCESS THAT HELENA STOECKLEY WAS NOT A STRANGER TO LOCAL
13 POLICE AND LAW ENFORCEMENT IN THE LATE '60S AND EARLY '70S.

14 SHE OFTEN FUNCTIONED AS AN INFORMANT FOR THEM WHICH
15 MEANS THEY, THE POLICE, RELIED ON HER. THEY DEEMED HER
16 TRUSTWORTHY SO HER STATEMENT SHOULD CARRY SOME WEIGHT WITH THE
17 COURT.

18 WHEN WE PRESENT OUR EVIDENCE, YOU'LL HEAR FROM WADE
19 SMITH, ONE OF JEFFREY MACDONALD'S LAWYERS. HE WILL RELATE HOW
20 JIMMY BRITT CAME TO HIM IN EARLY 2005, BECAUSE MR. BRITT
21 WANTED TO GET A HEAVY BURDEN OFF OF HIM.

22 HE TOLD MR. SMITH ABOUT HELENA STOECKLEY'S
23 ADMISSIONS TO HIM, THAT SHE WAS IN THE MACDONALD HOUSE, AND
24 THAT JEFFREY MACDONALD DID NOT KILL HIS FAMILY.

25 HE TOLD MR. SMITH ABOUT BEING IN THE ROOM WITH THE

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1 PROSECUTOR WHEN THE INTERVIEW HAPPENED. THE PROSECUTOR TOLD
2 HER IF SHE TESTIFIED THAT WAY SHE WOULD BE INDICTED FOR
3 MURDER.

4 YOU'RE GOING TO HEAR FROM MARY BRITT WHO WAS MARRIED
5 TO JIMMY BRITT AT THE TIME OF THE MACDONALD TRIAL. SHE WILL
6 RELATE THAT MR. BRITT TOLD HER HE WAS GOING TO SOUTH CAROLINA
7 TO GET AN IMPORTANT WITNESS AND THAT WHEN HE RETURNED HE TOLD
8 HER THE WITNESS SAID SHE WAS IN THE HOUSE. WHEN HE CAME BACK
9 FROM COURT THE FOLLOWING DAY HE WAS DISAPPOINTED BECAUSE MS.
10 STOECKLEY WAS NOT ALLOWED TO TESTIFY.

11 YOU'RE GOING TO HEAR FROM GENE STOECKLEY, WHO IS
12 HELENA STOECKLEY'S BROTHER. HE'S GOING TO TESTIFY ABOUT WHAT
13 HIS MOTHER TOLD HIM ABOUT HELENA -- HIS SISTER'S CONFESSIONS
14 TO THE MOTHER INCLUDING ONE MADE WHEN SHE KNEW SHE WAS DYING.
15 HE WILL RELATE THE CIRCUMSTANCES SURROUNDING THE AFFIDAVIT
16 THAT HIS MOTHER GAVE THAT'S PART OF THE RECORD OF THIS CASE.

17 THIS AFFIDAVIT CORROBORATES HELENA'S STATEMENTS THAT
18 SHE WAS IN THE MACDONALD HOUSE ON THE NIGHT IN QUESTION, THAT
19 JEFFREY MACDONALD DID NOT KILL HIS FAMILY, AND THAT SHE HAD
20 BEEN AFRAID TO TELL THE TRUTH.

21 YOU'RE GOING TO HEAR FROM LAURA REDD WHO WAS THE
22 NOTARY WHO WITNESSED THIS AFFIDAVIT. AND YOU'LL HEAR FURTHER
23 CORROBORATING TESTIMONY ABOUT STOECKLEY'S PRESENCE IN THE
24 HOUSE AND FEAR OF PROSECUTION.

25 WE ALSO HOPE TO PRESENT EVIDENCE FROM JERRY LEONARD

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1 WHO WAS APPOINTED TO REPRESENT MS. STOECKLEY AFTER SHE WAS NOT
2 -- SHE DID NOT TESTIFY.

3 WE BELIEVE HE'LL INVOKE THE ATTORNEY-CLIENT
4 PRIVILEGE, BUT WE'RE GOING TO ASK THE COURT TO LIFT THE
5 PRIVILEGE AND HEAR HIS TESTIMONY AT LEAST IN CAMERA TO HEAR
6 WHAT HE HAS TO SAY ABOUT WHAT MS. STOECKLEY TOLD HIM ABOUT
7 THIS INCIDENT.

8 WE BELIEVE OUR EVIDENCE WILL SHOW THAT MR. BRITT
9 HEARD MS. STOECKLEY ADMIT BEING IN THE HOUSE, ADMIT SHE WAS IN
10 THE HOUSE, AND WAS AFRAID AND DID NOT TESTIFY. ALL OF THIS
11 BEING, OF COURSE, NEWLY DISCOVERED EVIDENCE NOT AVAILABLE TO
12 THE DEFENSE AT TRIAL.

13 WITH REGARD TO THE DNA CLAIM, I SIMPLY WANT TO SAY
14 WHAT YOU'RE GOING TO MOSTLY HEAR ARGUMENT ABOUT IS THREE
15 UNSOURCED HAIRS, EXHIBIT -- OR SPECIMEN 58A1, WHICH WAS A HAIR
16 FOUND ON THE BEDSPREAD IN KRISTEN MACDONALD'S ROOM; SPECIMEN
17 75A, WHICH IS A TWO AND A QUARTER INCH BODY OR PUBIC HAIR WITH
18 ROOT AND FOLLICLE INTACT RETRIEVED AT THE CRIME SCENE FROM OFF
19 OR UNDER THE BODY OF COLETTE MACDONALD; AND SPECIMEN 91A,
20 WHICH IS A HAIR WITH THE ROOT INTACT FOUND ALONG WITH SOME
21 BLOOD RESIDUE, WE CONTEND, UNDERNEATH THE FINGERNAIL OR IN THE
22 FINGERNAIL SCRAPINGS OF KRISTEN MACDONALD.

23 THOSE THREE SPECIMENS, THOSE THREE HAIRS, ARE SOME
24 EVIDENCE OF INTRUDERS IN THE MACDONALD HOUSE ON THE NIGHT IN
25 QUESTION.

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1 DR. MACDONALD'S ACCOUNT OF THE INCIDENT HAS BEEN
2 CONSISTENT FROM THE VERY BEGINNING, THAT THERE WERE FOUR
3 INTRUDERS IN THE HOUSE.

4 WE THINK THOSE UNSOURCED HAIRS ARE SOME EVIDENCE
5 THAT SUPPORTS THE DEFENSE THEORY OF THE CASE, INFORMATION THAT
6 THE JURY DID NOT HEAR ABOUT, INFORMATION THAT THE JURY COULD
7 HAVE USED TO BELIEVE THE DEFENSE THEORY AT TRIAL, AND FIND
8 THAT THERE WAS REASONABLE DOUBT AS TO DR. MACDONALD'S GUILT.

9 WE CONTEND THE EVIDENCE HERE, IN LIGHT OF THE
10 EVIDENCE AS A WHOLE, VALIDATES JUDGE MURNAGHAN'S CONCERN AND
11 WILL CONVINCED THE COURT THAT IT'S APPROPRIATE TO GRANT DR.
12 MACDONALD A NEW TRIAL.

13 THE COURT: WOULD YOU LIKE TO MAKE AN OPENING
14 STATEMENT, MR. BRUCE?

15 MR. BRUCE: YOUR HONOR, WE WOULD LIKE TO RESERVE OUR
16 OPENING STATEMENT UNTIL THE BEGINNING OF OUR EVIDENCE.

17 THE COURT: SURELY.

18 MR. BRUCE: THANK YOU.

19 THE COURT: ALL RIGHT, SIR. CALL YOUR FIRST
20 WITNESS.

21 MR. WIDENHOUSE: WE CALL WADE SMITH.

22 MR. WILLIAMS: YOUR HONOR, WE HAVE A WITNESS ROOM
23 THAT'S AT THE END OF THE LONG HALLWAY AND I HAVE AN ASSISTANT
24 WHO'S HERE TO GET THE WITNESSES.

25 THE COURT: SURE.

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1 MR. WILLIAMS: IF WE CAN HAVE JUST A MOMENT.

2 THE COURT: FINE.

3 MR. WILLIAMS: AND, YOUR HONOR, IF I COULD APPROACH
4 WITH OUR NOTEBOOKS OF THE EXHIBITS FOR THE COURT.

5 THE COURT: THANK YOU.

6 (PAUSE.)

7 THE COURT: MR. WIDENHOUSE, I JUST WANT TO MENTION
8 ONE OTHER THING. AT OUR LAST MEETING WHEN MR. MILES WAS HERE
9 WE HAD SOME DISCUSSION AS TO THE BURDEN OF PROOF.

10 SECTION 2255(h)(1) SAYS CLEAR AND CONVINCING
11 EVIDENCE THAT NO REASONABLE FACT FINDER COULD HAVE FOUND
12 MACDONALD GUILTY OF THE OFFENSES.

13 DO YOU AGREE THAT THAT'S THE BURDEN?

14 MR. WIDENHOUSE: I THINK THAT'S THE ULTIMATE BURDEN,
15 YES, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. DO YOU
17 AGREE, MR. BRUCE?

18 MR. BRUCE: YES, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH.

20 **WADE SMITH, DEFENSE WITNESS, SWORN**

21 THE COURT: GOOD MORNING, WADE.

22 THE WITNESS: GOOD MORNING, YOUR HONOR.

23 THE COURT: NICE TO SEE YOU AGAIN.

24 THE WITNESS: GOOD TO SEE YOU AGAIN.

25 D I R E C T E X A M I N A T I O N 9:22 A.M.

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1 BY MR. WIDENHOUSE:

2 Q. GOOD MORNING, MR. SMITH. WOULD YOU STATE YOUR NAME AND
3 TELL THE COURT WHERE YOU LIVE?

4 A. MY NAME IS WADE SMITH AND I LIVE IN RALEIGH.

5 Q. AND WHAT DO YOU DO FOR A LIVING?

6 A. I'M A LAWYER.

7 Q. WHAT KIND OF LAW DO YOU PRIMARILY PRACTICE?

8 A. I'M A TRIAL LAWYER, BUT I WOULD SAY 60 TO 70 PERCENT
9 CRIMINAL AND THE OTHER CIVIL.

10 Q. AND I HATE TO ASK, BUT HOW LONG HAVE YOU BEEN A LAWYER?

11 A. FIFTY YEARS THIS YEAR.

12 Q. OKAY. AND DO YOU KNOW JEFFREY MACDONALD?

13 A. I DO.

14 Q. AND HOW DO YOU KNOW HIM?

15 A. WELL, HE ASKED ME TO ASSIST IN THE TRIAL IN 1979, HE AND
16 HIS COUNSEL AT THAT TIME, MR. SEGAL, AND I AGREED TO DO THAT.
17 THAT'S HOW I MET HIM AND KNEW HIM.

18 Q. AND CAN YOU TELL US WHAT THE BASIC THEORY OF THE DEFENSE
19 WAS FOR THE TRIAL?

20 A. I THINK THE BASIC THEORY OF THE DEFENSE WAS THAT DR.
21 MACDONALD WAS IN HIS HOME SLEEPING ON THE COUCH IN FEBRUARY OF
22 1970, INTRUDERS CAME INTO THE HOUSE AND KILLED HIS FAMILY AND
23 WOUNDED HIM.

24 Q. AND WHAT WAS THE IMPORTANCE OF THE CRIME SCENE WITH
25 REGARD TO THE DEFENSE THEORY?

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1 A. WELL, IT WAS OUR THEORY THAT INTRUDERS CAME INTO THE
2 HOUSE. AND IN ORDER TO SHOW THAT INTRUDERS CAME INTO THE
3 HOUSE WE NEEDED THE CRIME SCENE TO BE AS PRISTINE AS POSSIBLE.
4 WE NEEDED THE WALLS AND THE FLOORS TO TELL THE STORY THAT
5 INTRUDERS HAD COME.

6 Q. AND WHAT EFFORTS DID THE DEFENSE TAKE REGARDING INTRUDERS
7 AND FINDING EVIDENCE BEYOND THE CRIME SCENE AS TO INTRUDERS?

8 A. WHAT EVIDENCE DID WE FIND IN THE HOUSE?

9 Q. YES. YES.

10 A. WELL, WE, OF COURSE, WERE ALERT TO ANYTHING WE COULD
11 FIND. THERE WERE PROBABLY OTHER THINGS THAN THOSE I REMEMBER
12 NOW, BUT I REMEMBER THAT ONE OF THE THINGS THAT WE FOUND WERE
13 PIECES OF RUBBER IN THE KITCHEN, PIECES, TINY PIECES. THERE
14 WERE RUBBER GLOVES UNDER THE SINK.

15 WE SUBMITTED THOSE PIECES OF RUBBER GLOVES TO A
16 NEUTRON ACTIVATION ANALYSIS SO THAT WE COULD IDENTIFY THE
17 PARTICULAR PARTS OF THE MATERIAL IN THOSE RUBBER GLOVES AND WE
18 COULD SHOW THAT THAT RUBBER DID NOT COME FROM THE RUBBER IN
19 THE GLOVES UNDER THE SINK.

20 AND THAT'S ONE THING THAT WE HAD THAT WE FELT WOULD
21 HELP US TO SHOW THAT INTRUDERS WERE THERE, BUT WE WERE HUNGRY
22 AS WE COULD BE FOR EVIDENCE OF INTRUDERS AND LOOKED AS MUCH AS
23 COULD.

24 Q. IN YOUR SEARCH FOR EVIDENCE OF INTRUDERS, DID YOU COME
25 ACROSS PARTICULAR NAMES OF PEOPLE THAT YOU THOUGHT MIGHT HAVE

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1 BEEN INVOLVED?

2 A. WELL, YES. HELENA STOECKLEY WAS IMMEDIATELY A SUSPECT.
3 SHE WAS A PERSON WELL KNOWN IN THAT COMMUNITY. AND THE
4 DEFENSE AND I THINK THE PROSECUTION ALSO FOCUSED ON HER AND A
5 GROUP OF PEOPLE THAT SHE RAN AROUND WITH AS BEING VERY LIKELY
6 THE PEOPLE WHO DID IT.

7 THE COURT: LET ME ASK A QUESTION, IF I MIGHT. MR.
8 SMITH, THE RUBBER PIECES, DID YOU FIND THAT THEY WERE
9 DIFFERENT FROM THE GLOVES THAT WERE IN THE HOUSE, THE RUBBER
10 GLOVES THAT WERE IN THE HOUSE?

11 THE WITNESS: WE DID, YOUR HONOR. WE FOUND THAT
12 THOSE PIECES DID NOT COME FROM THE SAME BATCH THAT WAS UNDER
13 THE SINK AND THAT WAS -- THAT WAS IMPORTANT TO US.

14 THE COURT: THANK YOU.

15 BY MR. WIDENHOUSE:

16 Q. DID THE DEFENSE ATTEMPT TO FIND MS. STOECKLEY BEFORE THE
17 TRIAL?

18 A. EXCUSE ME?

19 Q. DID THE DEFENSE ATTEMPT TO FIND MS. STOECKLEY BEFORE THE
20 TRIAL?

21 A. WE DID. WE LOOKED FOR HER. WE COULDN'T FIND HER. WE
22 DIDN'T KNOW WHERE SHE WAS. I HAD NEVER SEEN HER, OF COURSE,
23 AND NEVER INTERVIEWED HER IN MY LIFE. AND WE WERE HOPING WE
24 COULD FIND HER AND INTERVIEW HER BECAUSE WE THOUGHT SHE WOULD
25 BE A WITNESS.

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1 Q. OKAY. AND DO YOU KNOW JIMMY BRITT?

2 A. I DO, YES, SIR.

3 Q. AND HOW DID YOU KNOW HIM?

4 A. HE WAS ON THE MARSHAL STAFF IN THE COURTHOUSE. HE WAS
5 ALWAYS AROUND THE COURTROOM VISITING OR WORKING AS A MEMBER OF
6 THE MARSHAL STAFF WOULD DO. HE WAS VERY GOOD. AND I KNEW HIM
7 BEFORE THE MACDONALD TRIAL FROM CASES I'VE HAD THERE. AND
8 THEN I FELT A KINSHIP WITH HIM EVEN BEFORE THAT. I LIKED HIM
9 A LOT AND I ADMIRER HIS WORK IN THE MACDONALD CASE.

10 Q. DID THERE COME A TIME WHEN HE CONTACTED YOU AFTER THE
11 MACDONALD TRIAL ABOUT THE MACDONALD CASE?

12 A. YES.

13 Q. CAN YOU TELL US THE CIRCUMSTANCES SURROUNDING THAT
14 CONTACT?

15 A. I HAD NOT SEEN MR. BRITT IN YEARS. I PROBABLY HAD NOT
16 TALKED WITH HIM IN FIVE OR TEN YEARS, BUT HE CALLED ME ONE
17 DAY, AND I BELIEVE IT WAS JANUARY OF 2005, AND TOLD ME THAT
18 SOMETHING HAD WORRIED HIM AND HAD BEEN HEAVY ON HIS MIND AND
19 HEART FOR ALL THE YEARS SINCE THE MACDONALD CASE AND HE NEEDED
20 TO TALK TO ME ABOUT IT AND SORT OF UNLOAD HIS SOUL. AND I
21 TOLD HIM I'D WELCOME HIM TO COME TO MY OFFICE.

22 Q. AND DID THAT MEETING OCCUR AT YOUR OFFICE?

23 A. IT DID.

24 Q. OKAY. AND DO YOU REMEMBER WHO WAS AT THE MEETING? WAS
25 IT --

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1 A. I BELIEVE THAT IT'S VERY POSSIBLE THAT MR. LEE TART, WHO
2 ALSO WAS A MARSHAL, A U.S. MARSHAL, I THINK MR. TART MAY HAVE
3 COME WITH HIM, BUT I WAS THE ONLY LAWYER WHO WAS THERE WHEN
4 MR. BRITT CAME. AND IT'S POSSIBLE THAT MR. BRITT WAS ALONE
5 WHEN HE CAME.

6 Q. OKAY. AND CAN YOU TELL US WHAT MR. BRITT TOLD YOU IN
7 THAT INITIAL CONVERSATION?

8 A. HE TOLD ME THAT HE HAD BEEN DISPATCHED TO SOUTH CAROLINA
9 TO GET HELENA. AND, OF COURSE, I REMEMBER WHEN THE JUDGE
10 ENTERED AN ORDER REQUESTING OR REQUIRING HELENA TO BE BROUGHT
11 BACK TO NORTH CAROLINA.

12 AND HE TOLD ME THAT HE PICKED HER UP AND ON THE WAY
13 BACK VOLUNTARILY SHE MADE STATEMENTS THAT WOULD INDICATE THAT
14 SHE WAS VERY FAMILIAR WITH THE CASE AND WAS IN THE MACDONALD
15 HOUSE WHEN THIS EVENT OCCURRED. AND THAT WHEN HE BROUGHT HER
16 HERE AND HE BROUGHT HER TO OUR ROOM, THE DEFENSE LAWYERS'
17 ROOM, AND THEN AFTER WE MET WITH HER HE TOOK HER TO MEET WITH
18 THE PROSECUTION.

19 Q. AND DID HE TELL YOU ANYTHING ABOUT THE MEETING WITH THE
20 PROSECUTION?

21 A. YES. HE TOLD ME THAT HE WAS INVITED TO SIT IN THE ROOM
22 AND HE SAT THERE. AND HE SAID THAT HELENA TOLD THE PROSECUTOR
23 THAT SHE WAS IN THE HOUSE AND THAT THE PROSECUTOR TOLD HER
24 THAT IF SHE WENT DOWN TO THE COURTROOM AND MADE THOSE
25 STATEMENTS HE WOULD INDICT HER FOR FIRST DEGREE MURDER.

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1 Q. AND WHEN HE TOLD YOU THAT -- WAS WHAT HE TOLD YOU
2 IMPORTANT TO YOU?

3 A. WELL, IT WAS VERY IMPORTANT TO ME. I KNEW THAT WE HAD
4 LOOKED DESPERATELY FOR EVIDENCE OF INTRUDERS. I KNEW THAT IF
5 THE TRUTH WAS THAT HELENA WAS THERE THAT WOULD CONFIRM THE
6 STORY AND THE THEORY THAT WE HAD IN THE CASE ALL ALONG AND
7 THAT IT COULD BE VERY IMPORTANT AND THAT IT WAS CERTAINLY SO
8 IMPORTANT, WHAT HE WAS SAYING, THAT I NEEDED TO DO MY BEST TO
9 BE RESPONSIBLE AND VET THAT STORY AS I COULD AND THEN TURN
10 THAT INFORMATION OVER TO DR. MACDONALD AND HIS PEOPLE.

11 Q. DID YOU TAKE SOME EFFORTS THEN TO MEMORIALIZE WHAT MR.
12 BRITT TOLD YOU IN YOUR OFFICE?

13 A. I TRIED TO DO EVERYTHING I COULD THAT A RESPONSIBLE
14 LAWYER WOULD DO. SO, ONE OF THE FIRST THINGS I DID -- I'M NOT
15 SURE I REMEMBER THE ORDER OF THIS, MAYBE I DO, WAS TO BRING IN
16 A COURT REPORTER AND PUT HIM UNDER OATH.

17 Q. ALL RIGHT. WELL, LET ME --

18 A. AND --

19 Q. -- SHOW YOU --

20 A. GO AHEAD. YES, SIR.

21 Q. DEFENSE EXHIBIT 5055. MR. WILLIAMS IS THE TECHNOLOGICAL
22 MARVEL ON THE DEFENSE TEAM. AND CAN YOU SEE THAT ON THE
23 SCREEN?

24 A. I SEE IT, YES, SIR.

25 Q. ALL RIGHT. AND DO YOU RECOGNIZE IT?

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1 A. I DO.

2 Q. AND WHAT IS IT?

3 A. IT'S THE STATEMENT UNDER OATH GIVEN BY MR. BRITT ON, I
4 BELIEVE, THE 24TH OF FEBRUARY 2005.

5 (DEFENSE EXHIBIT NUMBER 5055

6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. OKAY. AND PRIOR TO COMING TO TESTIFY TODAY, HAVE YOU
8 REVIEWED A HARD COPY OF HIS STATEMENT UNDER OATH, EXHIBIT
9 5055?

10 A. YES, I HAVE.

11 Q. ALL RIGHT. AND DOES IT FAIRLY AND ACCURATELY REFLECT THE
12 QUESTIONS AND ANSWERS THAT MR. BRITT GAVE IN YOUR OFFICE ON
13 FEBRUARY 24TH OF 2005?

14 A. I THINK IT DOES.

15 Q. I'D LIKE TO TAKE YOU THROUGH SOME OF THAT EXHIBIT IF I
16 COULD. FIRST, LET ME DIRECT YOUR ATTENTION TO PAGE SEVEN
17 LINE TEN THROUGH PAGE EIGHT LINE FIVE.

18 A. SO, LINE TEN ON PAGE SEVEN.

19 Q. I THINK WE'VE GOT IT IN YELLOW.

20 A. YOU DO. YES, SIR, I'VE LOOKED AT IT.

21 Q. OKAY. IN REVIEWING THAT, WHAT DID MR. BRITT TELL YOU
22 ABOUT WHY HE CAME FORWARD TO YOU?

23 A. HE SAID THAT HE HAD BEEN BURDENED HEAVILY, MORALLY, BY
24 SOMETHING THAT HAD HAPPENED, THAT HE CALLED ME TO ASK IF HE
25 COULD COME AND SEE ME. HE SAID IT WAS SOMETHING THAT HAPPENED

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1 IN THE MACDONALD TRIAL AND THAT HE WANTED TO TALK WITH ME
2 ABOUT IT.

3 Q. AND WHEN HE WAS SPEAKING TO YOU, DID YOU HAVE A SENSE
4 THAT HE HAD A CONCERN, A NEED TO TALK TO YOU ABOUT WHAT HAD
5 HAPPENED?

6 A. YES, ALL OF HIS FACIAL EXPRESSIONS, THE TONE OF HIS
7 VOICE, ALL INDICATED TO ME THAT THIS WAS EXTRAORDINARILY
8 SERIOUS TO HIM.

9 Q. AND DID YOU ASK MR. BRITT -- THE TRIAL WAS 1979, IS THAT
10 CORRECT?

11 A. YES, SIR.

12 Q. AND HE CAME TO SEE YOU IN 2005, IS THAT CORRECT?

13 A. YES, SIR.

14 Q. SO, A FAIRLY SUBSTANTIAL --

15 A. TWENTY-FIVE YEARS OR SO.

16 Q. DID YOU ASK HIM WHY HE WAITED SO LONG TO COME FORWARD?

17 A. YES, I DID.

18 Q. AND WHAT DID HE TELL YOU?

19 A. HE SAID HE HAD HIGH REGARD FOR THE JUDGE, THAT HE
20 RESPECTED HIM, JUDGE DUPREE, RESPECTED HIM ENORMOUSLY, AND HE
21 JUST PUT IT OFF AND PUT IT OFF BECAUSE HE DIDN'T WANT TO FEEL
22 THAT HE WAS BEING DISLOYAL TO LAW ENFORCEMENT. HE WAS DEVOTED
23 TO LAW ENFORCEMENT, IT WAS HIS LIFE.

24 Q. LET ME DIRECT YOUR ATTENTION TO PAGE NINE, LINES 12
25 THROUGH 23 OF THAT EXHIBIT. AND DOES THAT REFLECT WHAT MR.

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1 BRITT TOLD YOU ABOUT WHY HE WAITED TO COME FORWARD WITH THE
2 INFORMATION HE HAD?

3 A. YES, IT DOES.

4 Q. OKAY. AND WHAT DID MR. BRITT TELL YOU ABOUT HIS OFFICIAL
5 ACTIVITIES DURING THE MACDONALD TRIAL?

6 A. HE SAID HE WAS ASKED TO GO TO SOUTH CAROLINA TO GET MS.
7 STOECKLEY.

8 Q. OKAY. LET ME TAKE YOU TO PAGE 11 LINE 23 THROUGH PAGE 12
9 LINE THREE OF THAT EXHIBIT. AND WHAT DID MR. BRITT TELL YOU
10 ABOUT THIS PARTICULAR ASSIGNMENT?

11 A. HE SAID HE WAS ASKED TO GO TO SOUTH CAROLINA TO PICK UP
12 HELENA STOECKLEY.

13 Q. AND WHAT DID HE TELL YOU ABOUT THE TRIP?

14 A. HE SAID --

15 Q. ACTUALLY, LET ME --

16 A. EXCUSE ME.

17 Q. EXCUSE ME. LET ME TAKE YOU TO PAGE 11 LINE 17 THROUGH
18 PAGE 12 LINE THREE.

19 A. ALL RIGHT. I'VE LOOKED AT THE BOTTOM OF THE FIRST PAGE.
20 IF YOU CAN --

21 Q. AND WHAT DID MR. BRITT TELL YOU?

22 A. THAT HE WAS ASSIGNED TO GO TO SOUTH CAROLINA TO TAKE
23 CUSTODY OF A WITNESS BY THE NAME OF HELENA STOECKLEY.

24 Q. AND WHAT DID HE TELL YOU ABOUT THE SIGNIFICANCE OF THE
25 TRIP?

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1 A. WELL, HE SAID THAT SHE VOLUNTARILY ON THE WAY BACK, ON
2 THE WAY UP TO NORTH CAROLINA, MADE STATEMENTS ABOUT THE HOBBY
3 HORSE THAT WAS IN THE HOUSE AND ABOUT THE FACT THAT SHE WAS IN
4 THE HOUSE WHEN THE MURDERS OCCURRED.

5 Q. LET ME TAKE YOU TO PAGE 14 LINE 18 THROUGH PAGE 15 LINE
6 TWO. IF YOU'D TAKE A LOOK AT THAT.

7 A. OKAY. IF YOU'LL SHOW ME PAGE 15, PLEASE. YES, SHE SAID
8 THAT -- HE SAID THAT SHE MADE REFERENCE TO A HOBBY HORSE THAT
9 WAS IN THE MACDONALD LIVING ROOM AND INDICATED THAT SHE WAS IN
10 THE HOUSE.

11 Q. AND DID HE TALK TO YOU ABOUT THE IMPORTANCE IN HIS MIND
12 OF WHAT MS. STOECKLEY TOLD HIM DURING THAT TRIP?

13 A. WELL, HE HAD BEEN IN THE TRIAL. HE KNEW ABOUT THE TRIAL.
14 HE KNEW FROM HIS OWN EXPERIENCE IN THE COURTROOM WHAT THE
15 ISSUES IN THE TRIAL WERE. AND HE SAID THAT THIS WAS VERY,
16 VERY IMPORTANT WORDS. THESE WORDS WERE VERY, VERY IMPORTANT
17 AND THE THINGS THAT SHE WAS SAYING WERE OF ENORMOUS IMPORTANCE
18 AND HE KNEW IT.

19 Q. I'D LIKE TO TAKE YOU TO PAGE 15 LINE SEVEN THROUGH PAGE
20 16 LINE FIVE. AND IF YOU WOULD, I'D LIKE YOU TO READ THOSE
21 QUESTIONS AND ANSWERS INTO THE RECORD.

22 A. OKAY. BEGINNING AT LINE SEVEN?

23 Q. YES. PAGE 15 LINE SEVEN.

24 A. OKAY.

25 MR. SMITH: AND MR. BRITT, I HAVEN'T ASKED YOU THIS

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1 BEFORE, BUT I TAKE IT THAT SOMETHING THAT IMPORTANT YOU WERE
2 NOT ABOUT TO FORGET?

3 MR. BRITT: THAT'S CORRECT. YES, SIR.

4 MR. SMITH: DO YOU BELIEVE AS YOU SIT HERE NOW THAT
5 YOU REMEMBER HER WORDS PRETTY CLEARLY?

6 MR. BRITT: YES, SIR, I DO.

7 MR. SMITH: ARE THEY AMONG THE MOST IMPORTANT WORDS
8 YOU'VE EVER HEARD IN YOUR LIFE IN CONNECTION WITH ANY CASE OR
9 ANY OF YOUR OFFICIAL WORK?

10 MR. BRITT: YES, SIR, THAT'S CORRECT, AND ESPECIALLY
11 SPECIFICALLY THE JEFFREY MACDONALD TRIAL, YES, SIR.

12 MR. SMITH: NOW, IS THERE ANY DOUBT IN YOUR MIND
13 THAT SHE SAID ON THE WAY UP TO NORTH CAROLINA THAT SHE HAD
14 BEEN IN THE MACDONALD HOUSE?

15 MR. BRITT: NO DOUBT IN MY MIND, SIR.

16 MR. SMITH: IS THERE ANY DOUBT IN YOUR MIND THAT SHE
17 SAID TO YOU THAT SHE HAD SEEN A HOBBY HORSE IN THAT HOUSE?

18 MR. BRITT: NO DOUBT IN MY MIND, SIR.

19 Q. AND IS THAT WHAT MR. BRITT TOLD YOU UNDER OATH IN
20 FEBRUARY OF 2005?

21 A. IT IS.

22 Q. WERE THOSE WORDS SIGNIFICANT OR IMPORTANT TO YOU, MR.
23 SMITH, AS JEFFREY MACDONALD'S TRIAL LAWYER?

24 A. EXCUSE ME?

25 Q. WERE THOSE WORDS SIGNIFICANT OR IMPORTANT TO YOU AS ONE

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1 OF JEFFREY MACDONALD'S TRIAL LAWYERS?

2 A. OH, INDEED. YES, THEY WERE.

3 Q. CAN YOU TELL US WHY?

4 A. WELL, WE -- OUR THEORY OF THE CASE WAS THAT INTRUDERS
5 CAME INTO HIS HOUSE AND ATTACKED HE AND HIS FAMILY AND SHE WAS
6 SAYING TO MR. BRITT THAT SHE WAS AN INTRUDER INTO HIS HOUSE
7 AND IT WOULD CONFIRM OUR THEORY OF THE CASE. IT WAS OF
8 IMMENSE IMPORTANCE.

9 Q. ALL RIGHT. AND DID MR. BRITT TELL YOU ABOUT FURTHER
10 INVOLVEMENT WITH MS. STOECKLEY DURING THE TRIAL AFTER BRINGING
11 HER TO NORTH CAROLINA?

12 A. HE TOLD ME THAT HE TOOK HER TO THE DEFENSE ROOM --

13 Q. DID HE TELL YOU --

14 A. -- AND THEN --

15 Q. EXCUSE ME. LET ME INTERRUPT YOU A SECOND. DID HE TALK
16 ABOUT HOW SHE GOT FROM THE WAKE COUNTY JAIL TO THE COURTHOUSE
17 IN RALEIGH?

18 A. AS I RECALL, HE SAID HE COLLECTED HER AND TOOK HER TO THE
19 COURTHOUSE.

20 Q. ALL RIGHT. I'M GOING TO SHOW YOU EXHIBIT 5060. IT'S
21 JUST A PHOTOGRAPH. AND DO YOU RECOGNIZE THE PEOPLE IN THAT
22 PICTURE?

23 A. YES. I HAVEN'T SEEN THE PHOTOGRAPH, BUT IT ABSOLUTELY IS
24 HELENA STOECKLEY IN FRONT AND MR. BRITT BEHIND HER.

25 (DEFENSE EXHIBIT NUMBER 5060)

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1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. AND DOES THAT APPEAR TO BE COMING FROM A PLACE THAT
3 YOU'RE FAMILIAR WITH IN RALEIGH OR CAN YOU TELL FROM THE
4 PHOTOGRAPH?

5 A. I'M UNABLE TO TELL.

6 Q. OKAY. AND AFTER HE GOT HER TO COURT THE NEXT DAY, WHERE
7 DID HE TAKE HER OR DID HE HAVE FURTHER INVOLVEMENT WITH HER?

8 A. AS I RECALL, HE SAID HE BROUGHT HER TO THE DEFENSE ROOM.
9 I DON'T REMEMBER SEEING HIM AT THAT ROOM, BUT HE SAID HE WAS
10 THE ONE. AND I WOULDN'T HAVE SEEN HIM NECESSARILY BECAUSE I
11 WAS WAITING TO SEE MS. STOECKLEY.

12 Q. DID HE STAY IN THE DEFENSE ROOM WHILE THE DEFENSE LAWYERS
13 INTERVIEWED OR TALKED TO MS. STOECKLEY?

14 A. NO.

15 Q. AND WHAT DID HE DO THEN AFTER THE DEFENSE WAS FINISHED
16 WITH MS. STOECKLEY?

17 A. HE SAID HE THEN COLLECTED HER AND TOOK HER TO THE ROOM
18 OCCUPIED BY THE PROSECUTOR.

19 Q. AND WHEN HE TOOK HER INTO THE PROSECUTION ROOM, WHERE DID
20 MR. BRITT GO?

21 A. HE SAID HE WAS INVITED TO REMAIN IN THAT ROOM.

22 Q. LET ME DIRECT YOUR ATTENTION TO PAGE 17 LINE 24 THROUGH
23 PAGE 18 LINE SIX. IF YOU COULD LOOK AT THAT PART OF THE
24 TRANSCRIPT.

25 (PAUSE.)

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1 A. IF YOU COULD RAISE IT JUST A LITTLE FURTHER NOW. I CAN
2 SEE DOWN TO LINE 14, BUT I CAN TELL YOU WHAT I'VE SEEN SO FAR
3 AND THAT IS THAT HE SAID THAT HE WAS INVITED TO SIT IN THE
4 ROOM. HE SAT IN A CHAIR. HE DIDN'T SIT AT ANY TABLE. THAT
5 MR. BLACKBURN, WHO WAS THE PROSECUTOR, SAT AT A DESK AS I
6 RECALL AND HE SAT IN KIND OF A CORNER.

7 Q. ALL RIGHT. AND DID MR. BRITT FEEL ANYTHING OF
8 SIGNIFICANCE HAPPENED WHILE HE WAS IN THE ROOM WITH THE
9 PROSECUTOR?

10 A. HE DID.

11 Q. WHAT DID HE TELL YOU?

12 A. HE SAID THAT HELENA STOECKLEY THEN, IN THE PRESENCE OF
13 THE PROSECUTOR, SAID THE SAME THINGS IN EFFECT TO THE
14 PROSECUTOR THAT SHE SAID TO HIM ON THE WAY UP FROM SOUTH
15 CAROLINA, THAT SHE WAS IN THE HOUSE AND I THINK THAT SHE
16 REMEMBERED THE HOBBY HORSE, BUT THAT SHE WAS IN THE HOUSE.

17 Q. LET ME DIRECT YOUR ATTENTION TO PAGE 19 LINES NINE
18 THROUGH 17.

19 A. YES.

20 Q. AND IS THAT WHAT MR. BRITT TOLD YOU UNDER OATH ON
21 FEBRUARY 24TH OF 2005?

22 A. IT IS.

23 Q. DID YOU ASK MR. BRITT ABOUT THE IMPORTANCE OF WHAT HE
24 HEARD MS. STOECKLEY TELL THE PROSECUTOR?

25 A. I ASKED HIM IF HE UNDERSTOOD OR IF HE HAD ANY DIFFICULTY

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1 RECOGNIZING THE IMPORTANCE OF THOSE WORDS AND HE SAID, NO, IT
2 WAS NOT LOST ON HIM, THAT HE HAD NO DIFFICULTY UNDERSTANDING
3 THE IMPORTANCE OF THE WORDS.

4 Q. LET ME TAKE YOU TO PAGE 20 LINES 12 THROUGH 24 OF THAT
5 DOCUMENT.

6 A. YES, I RECOGNIZE THOSE WORDS.

7 Q. IF YOU WOULD, COULD YOU READ LINES 16 THROUGH LINE 24 FOR
8 THE RECORD?

9 A. YES, SIR.

10 MR. SMITH: AND, AGAIN, YOU WERE ABSOLUTELY -- YOU
11 WERE ABSOLUTELY AWARE AT THAT MOMENT OF THE IMPORTANCE OF
12 THOSE WORDS?

13 MR. BRITT: YES, SIR, I WAS.

14 MR. SMITH: AND -- AND ARE YOU SURE AS YOU SIT HERE
15 TODAY THAT SHE TOLD MR. BLACKBURN THAT SHE WAS IN THE
16 MACDONALD HOUSE?

17 MR. BRITT: YES, SIR, SHE ALONG WITH OTHERS.

18 Q. DID YOU ASK MR. BRITT WHETHER MR. BLACKBURN SAID ANYTHING
19 IN RESPONSE TO WHAT MS. STOECKLEY TOLD HIM?

20 A. I DID ASK HIM THAT.

21 Q. ALL RIGHT. LET ME TAKE YOU TO PAGE 21 LINES EIGHT
22 THROUGH 18.

23 A. YES, I RECOGNIZE THOSE WORDS.

24 Q. IS THAT WHAT HE TOLD YOU ON FEBRUARY 24TH?

25 A. IT IS.

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1 Q. AND COULD YOU READ LINES EIGHT THROUGH 18 FOR THE RECORD,
2 PLEASE?

3 A. YES, SIR.

4 MR. SMITH: ALL RIGHT. NOW, IN RESPONSE TO THAT DID
5 MR. BLACKBURN SAY ANYTHING TO MS. STOECKLEY?

6 MR. BRITT: AT THE CONCLUSION, MR. BLACKBURN STATED
7 TO HELENA STOECKLEY, AFTER SHE HAD GIVEN THE HISTORY OF HER
8 VISIT TO JEFFREY MACDONALD'S HOME, MR. BLACKBURN STATED TO
9 HELENA STOECKLEY THAT QUOTE IF YOU GO DOWNSTAIRS AND TESTIFY
10 BEFORE THE JURY AS TO WHAT YOU HAVE TOLD ME OR SAID TO ME HERE
11 IN THIS OFFICE I WILL INDICT YOU FOR MURDER.

12 Q. AND DID YOU ASK MR. BRITT ABOUT THE IMPORTANCE OF WHAT HE
13 HEARD MR. BLACKBURN SAY TO MS. STOECKLEY?

14 A. I DID.

15 Q. AND LET ME TAKE YOU TO PAGE 21 LINE 19 THROUGH PAGE 22
16 LINE FOUR, AND ASK YOU TO READ THOSE QUESTIONS AND ANSWERS
17 INTO THE RECORD.

18 A. ALL RIGHT.

19 MR. SMITH: NOW, MR. BRITT, THE IMPORTANCE OF THOSE
20 WORDS WAS NOT LOST ON YOU EITHER?

21 MR. BRITT: NO, SIR, THEY WERE NOT. HAVE NEVER
22 BEEN.

23 MR. SMITH: IS THERE ANY DOUBT IN YOUR MIND AS YOU
24 SIT HERE TODAY THAT THAT'S WHAT MR. BLACKBURN SAID?

25 MR. BRITT: NO DOUBT IN MY MIND, MR. SMITH. NONE.

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1 Q. AND WERE THOSE WORDS SIGNIFICANT OR IMPORTANT TO YOU AS
2 JEFFREY MACDONALD'S TRIAL LAWYER?

3 A. THEY WERE.

4 Q. AND WHY WAS THAT?

5 A. WELL, ONCE AGAIN, AS TO THE SPECIFIC WORDS HE WAS STATING
6 THAT HE HAD NO DOUBT IN HIS MIND I WANTED TO VET THIS AS BEST
7 I COULD. I MEAN, I WANTED TO TRY TO MEASURE THOSE WORDS AND
8 TO BE SURE THAT THIS MAN WAS REAL AND WAS TELLING ME THE TRUTH
9 AND SO I TRIED TO PUT IT AS BLUNTLY AS I COULD.

10 Q. AND WAS THE SUBSTANCE OF WHAT HE SAID, ASIDE FROM HIS
11 Demeanor, IMPORTANT TO YOU?

12 A. WELL, IT WOULD MEAN THAT POSSIBLY MS. STOECKLEY MIGHT
13 HAVE BEEN INCLINED TO GO DOWN TO THE COURTROOM AND TELL THE
14 TRUTH, BUT THAT SHE, PERHAPS, IN THIS SETTING, WAS THREATENED
15 AND AFRAID AND WOULD NOT TELL THE TRUTH.

16 Q. OKAY. AND ONCE YOU HAD THIS INFORMATION FROM MR. BRITT
17 IN THIS TRANSCRIPT ON FEBRUARY 24TH, WHAT DID YOU DO NEXT?

18 A. I THINK AT THAT TIME I MAY HAVE FELT THAT WE NEEDED TO
19 TRY TO DO A POLYGRAPH AND I'M NOT SURE IT'S AT THAT POINT, BUT
20 CERTAINLY THERE WERE THESE THINGS I STILL COULD DO.

21 Q. ALL RIGHT.

22 A. AND ONE IS TO POLYGRAPH HIM AND ANOTHER IS TO GET SWORN
23 STATEMENTS, AFFIDAVITS, FROM HIM.

24 Q. ALL RIGHT. AND SPEAKING OF THE POLYGRAPH, LET ME TAKE
25 YOU TO DEFENSE EXHIBIT 5057.

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1 MR. BRUCE: YOUR HONOR, AT THIS TIME WE WOULD LIKE
2 TO ADDRESS AN OBJECTION.

3 THE COURT: ALL RIGHT, SIR.

4 MR. BRUCE: WE NOTED AN OBJECTION UNDER THE FOURTH
5 CIRCUIT'S PER SE RULE AGAINST THE ADMISSION OF POLYGRAPH
6 EVIDENCE TO PROVE THE TRUTH OF THE MATTER ASSERTED BY THE
7 PERSON BEING POLYGRAPHED AND IT'S NOTED IN THE PRETRIAL ORDER.

8 THE DEFENSE NOTED -- APPARENTLY, THERE WERE TWO
9 INVOLVED IN THE DEFENSE EXHIBITS. THAT'S THIS ONE OF JIMMY
10 BRITT AND THERE'S ALSO ONE OF JEFFREY MACDONALD THAT WE
11 OBJECTED TO.

12 I BELIEVE IN THEIR OBJECTIONS THEY NOTED, WELL, IF
13 THOSE POLYGRAPHS ARE NOT ADMITTED -- THE GOVERNMENT ACTUALLY
14 HAS SOME POLYGRAPH EVIDENCE IN ITS SUBMISSIONS OF WILLIAM
15 POSEY AND GREG MITCHELL, WHERE THE GOVERNMENT POLYGRAPHED GREG
16 MITCHELL. SO, I ASSUME THE COURT IS GOING TO REACH THE SAME
17 RULING FOR BOTH SIDES.

18 THE COURT: YES, SIR.

19 MR. BRUCE: BUT AT THIS POINT, WE'RE OBJECTING TO
20 THEIR POLYGRAPH EVIDENCE.

21 THE COURT: WELL, I THINK THE FOURTH CIRCUIT WAS
22 CLEAR, THEY WANTED EVIDENCE THAT WAS ADMISSIBLE OR
23 INADMISSIBLE. THAT'S FOREIGN TO LAWYERS, I THINK, BUT I'M
24 GOING TO LET IT IN.

25 MR. BRUCE: THANK YOU. SO, ALL POLYGRAPHS ARE

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1 ADMISSIBLE, YOUR HONOR, RIGHT?

2 THE COURT: YES, SIR.

3 MR. BRUCE: THANK YOU.

4 THE COURT: WHAT'S SAUCE FOR THE GOOSE IS SAUCE FOR
5 THE GANDER.

6 MR. BRUCE: THANK YOU.

7 MR. WIDENHOUSE: THANK YOU, JUDGE.

8 BY MR. WIDENHOUSE:

9 Q. MR. SMITH, AGAIN, DEFENSE EXHIBIT 5057. CAN YOU TELL US
10 WHAT THAT IS? IT'S A THREE PAGE DOCUMENT. IF YOU NEED TO SEE
11 ALL THREE PAGES JUST LET ME KNOW.

12 A. IT IS A REPORT BY A POLYGRAPH OPERATOR NAMED STEVE
13 DAVENPORT.

14 (DEFENSE EXHIBIT NUMBER 5057
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. AND DID YOU CONTACT MR. DAVENPORT TO CONDUCT A POLYGRAPH
17 OF JIMMY BRITT?

18 A. YES, I DID.

19 Q. AND WHY DID YOU CONTACT STEVE DAVENPORT?

20 A. HE HAD DONE POLYGRAPH WORK AROUND RALEIGH FOR SOME TIME
21 AND WAS WELL KNOWN AND WELL REGARDED.

22 Q. ALL RIGHT. AND LET ME TAKE YOU TO PAGE THREE OF EXHIBIT
23 5057, AND ASK YOU IF THAT APPEARS TO BE THE RESUME OR
24 CURRICULUM VITAE, WHATEVER YOU WANT TO CALL IT, OF STEVE
25 DAVENPORT AT THE TIME HE CONDUCTED THIS POLYGRAPH?

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1 A. YES, IT DOES.

2 THE COURT: I JUST WANT TO READ IT. IF YOU'LL BACK
3 IT UP A LITTLE BIT.

4 MR. WIDENHOUSE: I'M SORRY?

5 THE COURT: I WANT TO READ THE POLYGRAPH.

6 MR. WIDENHOUSE: OKAY.

7 THE COURT: THANK YOU. JUST A MOMENT.

8 (PAUSE.)

9 THE COURT: ALL RIGHT, SIR.

10 BY MR. WIDENHOUSE:

11 Q. AGAIN, MR. SMITH, DOES THAT REFLECT MR. DAVENPORT'S
12 EXPERIENCE AND TRAINING AT THE TIME THAT YOU ASKED HIM TO
13 POLYGRAPH JIMMY BRITT?

14 A. YES, I THINK IT DOES.

15 Q. AND HAD HE BEEN AN SBI AGENT FOR A FAIRLY LONG TIME AND
16 THEN RETIRED AND WAS IN -- SORT OF IN PRIVATE PRACTICE AS A
17 POLYGRAPHER AND INVESTIGATOR?

18 A. YES.

19 Q. AND YOU WERE FAMILIAR WITH HIM FROM HIS WORK WITH THE SBI
20 AND THEN HIS WORK AFTERWARDS?

21 A. I WAS.

22 Q. ALL RIGHT. WERE YOU PRESENT WHEN THE POLYGRAPH
23 EXAMINATION WAS CONDUCTED?

24 A. OF COURSE, I WAS NOT IN THE ROOM, BUT I WAS IN THE
25 OFFICE. SO, I KNEW THAT MR. BRITT WAS WITH MR. DAVENPORT AND

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1 THAT A POLYGRAPH EXAMINATION WAS BEING GIVEN, BUT I WOULD NOT
2 BE PERMITTED TO BE IN THE ROOM.

3 Q. AND IS THAT, AS YOU UNDERSTOOD IT, STANDARD PRACTICE THAT
4 ONLY THE POLYGRAPHER AND THE PERSON BEING QUESTIONED WERE
5 ACTUALLY IN THE ROOM WHEN THE QUESTIONS WERE ASKED?

6 A. YES, SIR. I'VE NEVER BEEN ABLE TO BE IN THE ROOM WHEN
7 THE QUESTIONS WERE ASKED.

8 Q. ALL RIGHT. IF YOU COULD TAKE A LOOK AT PAGE TWO OF THE
9 EXHIBIT. ABOUT HALFWAY DOWN THE PAGE, DOES IT REFLECT THE
10 QUESTIONS THAT MR. DAVENPORT ASKED MR. BRITT?

11 A. YES, IT DOES.

12 Q. AND CAN YOU TELL US WHY -- WELL, LET ME ASK YOU THIS, DID
13 YOU HAVE SOME INPUT INTO THE QUESTIONS YOU WANTED MR.
14 DAVENPORT TO POSE TO MR. BRITT?

15 A. YES. I'M SURE THAT I HAD A PRETTY EXTENSIVE MEETING WITH
16 MR. DAVENPORT TO HELP HIM UNDERSTAND WHAT THE CASE WAS ABOUT
17 AND HE WOULD, AS A POLYGRAPHER, HELP TO FORMULATE QUESTIONS
18 THAT WOULD WORK AND THAT WOULD BE CLEAR AND CLEAN. AND SO,
19 YES.

20 Q. ALL RIGHT. AGAIN, LOOKING AT PAGE TWO OF EXHIBIT 5057,
21 WOULD YOU READ FOR THE RECORD THE FIRST QUESTION THAT WAS
22 ASKED OF MR. BRITT?

23 A. DID YOU HEAR HELENA STOECKLEY TELL JIM BLACKBURN SHE HAD
24 SEEN A BROKEN HOBBY HORSE WHILE SHE WAS INSIDE THE MACDONALD
25 HOME?

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1 ANSWER: YES.

2 Q. ALL RIGHT. AND WOULD YOU READ FOR THE RECORD THE SECOND
3 QUESTION?

4 A. DID YOU HEAR JIM BLACKBURN TELL HELENA STOECKLEY HE WOULD
5 HAVE HER INDICTED FOR MURDER IF SHE TESTIFIED SHE HAD BEEN
6 INSIDE THE MACDONALD HOME?

7 ANSWER: YES.

8 Q. AND WOULD YOU READ FOR THE COURT THE THIRD QUESTION AND
9 ANSWER THAT WAS ASKED OF MR. BRITT?

10 A. ARE YOU NOW LYING ABOUT THE CONVERSATION BETWEEN JIM
11 BLACKBURN AND HELENA STOECKLEY?

12 ANSWER: NO.

13 Q. AND CONTINUING ON PAGE TWO OF THE REPORT, DOES IT STATE
14 MR. DAVENPORT'S CONCLUSION AS TO THE RESULT OF THE POLYGRAPH?

15 A. YES. HE INDICATED THAT, IN HIS OPINION, THERE WAS NO
16 DECEPTION IN THE ANSWERS TO THOSE QUESTIONS.

17 Q. ALL RIGHT. WOULD YOU JUST READ FOR THE RECORD THE NEXT
18 TO THE LAST FULL PARAGRAPH OF PAGE TWO?

19 A. YES. AT THE CONCLUSION OF ALL TESTING I CONDUCTED --

20 THE COURT: WOULD YOU PUT PAGE TWO ON THE SCREEN?

21 MR. WIDENHOUSE: YES, YOUR HONOR. I'M SORRY.

22 THE WITNESS: AT THE CONCLUSION OF ALL TESTING, I
23 CONDUCTED AN ANALYSIS AND NUMERICAL EVALUATION OF MR. BRITT'S
24 PHYSIOLOGICAL REACTIONS WHEN HE ANSWERED THE ABOVE QUESTIONS
25 AS SHOWN. BASED ON THAT EVALUATION, IT IS MY OPINION THERE

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1 WERE NO REACTIONS INDICATIVE FOR -- OF DECEPTION TO THOSE
2 RELEVANT QUESTIONS.

3 BY MR. WIDENHOUSE:

4 Q. AND WHAT DID MR. DAVENPORT'S CONCLUSION MEAN TO YOU?

5 A. THAT MR. BRITT WAS TELLING THE TRUTH.

6 Q. AND WHY DID YOU FOCUS ON THE -- OF ALL MR. BRITT TOLD YOU
7 THAT HAD HAPPENED THAT HE THOUGHT WAS IMPORTANT, WHY DID YOU
8 FOCUS ON THE INQUIRY ABOUT WHAT HAPPENED IN THE PROSECUTION
9 ROOM WHEN THEY INTERVIEWED MS. STOECKLEY?

10 A. WELL, BECAUSE IT SEEMED TO ME THAT THAT WAS THE HEART OF
11 WHAT MR. BRITT HAD COME TO TELL ME, THAT MS. STOECKLEY HAD
12 BEEN THREATENED AND WAS AFRAID AND WOULD, THEREFORE, NOT TELL
13 THE TRUTH.

14 Q. DO YOU RECALL WHAT YOUR REACTION WAS WHEN MR. DAVENPORT
15 TOLD YOU THAT THE RESULTS OF THE POLYGRAPH SHOWED A LACK OF
16 DECEPTION ON THESE QUESTIONS?

17 A. WELL, IT CERTAINLY WAS A VERY IMPORTANT THING IN MY MIND.
18 AS A LAWYER, I FELT IT WOULD BE IRRESPONSIBLE TO CAST THIS
19 STORY OUT ONTO THE WORLD UNLESS I DID EVERYTHING I COULD TO
20 MAKE SURE THAT IT WAS TRUE AND THIS HELPED ME CONFIRM THAT I
21 NEEDED TO GO AHEAD AND MOVE FURTHER.

22 Q. AND I BELIEVE A FEW MINUTES AGO BEFORE WE STARTED LOOKING
23 AT THE POLYGRAPH AND YOU SORT OF JUMPED ME OFF MY
24 ORGANIZATION, YOU MENTIONED THAT YOU GOT SOME -- ATTEMPTED TO
25 GET AN AFFIDAVIT OR AFFIDAVITS FROM MR. BRITT, IS THAT

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1 CORRECT?

2 A. YES.

3 Q. IF I COULD TAKE YOU TO DEFENSE EXHIBIT 5058.

4 A. YES, I'M LOOKING AT THAT.

5 Q. AND DO YOU RECOGNIZE IT?

6 A. I THINK IT IS ONE OF THOSE AFFIDAVITS, YES.

7 Q. OKAY. AND IF YOU COULD LOOK AT PAGE TWO OF THE AFFIDAVIT
8 AT THE BOTTOM, DOES IT REFLECT THE DATE ON WHICH THAT
9 AFFIDAVIT WAS GIVEN? SORRY, PAGE THREE. MAYBE IT'S PAGE
10 FOUR.

11 A. YES, THIS IS AN AFFIDAVIT DONE OCTOBER THE 26TH, 2005.

12 (DEFENSE EXHIBIT NUMBER 5058

13 WAS IDENTIFIED FOR THE RECORD.)

14 Q. AND HAVE YOU REVIEWED THIS AFFIDAVIT BEFORE COMING TO
15 COURT TODAY?

16 A. YES.

17 Q. AND DOES IT FAIRLY AND ACCURATELY REFLECT THE BASIC
18 INFORMATION THAT MR. BRITT GAVE YOU IN YOUR OFFICE IN FEBRUARY
19 OF 2005?

20 A. YES, IT DOES.

21 Q. I'D LIKE TO TAKE YOU TO SEVERAL PARAGRAPHS IN THE
22 AFFIDAVIT. FIRST TO PARAGRAPH SEVEN, WHICH IS ON THE FIRST
23 PAGE.

24 (PAUSE.)

25 A. YES, I'VE READ IT.

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1 Q. ALL RIGHT. AND DOES THAT REFLECT PART OF WHAT MR. BRITT
2 TOLD YOU ABOUT THE FEELING HE WAS HAVING ABOUT THE NEED TO
3 COME TO YOUR OFFICE?

4 A. YES, IT DOES.

5 Q. AND WHAT DOES PARAGRAPH SEVEN TELL YOU? WHAT INFORMATION
6 IS IN THAT THAT HE GAVE YOU?

7 A. IT SAYS THAT HE HAD TWO REALLY GOOD FRIENDS, MR. GOINS
8 AND MR. TART, AND THAT HE TOOK A TRIP WITH THEM AND ON THE
9 TRIP HE LET THEM KNOW SOMETHING ABOUT A BURDEN HE HAD FELT FOR
10 A LONG TIME AND THAT HE SHARED THAT WITH THEM.

11 Q. ALL RIGHT. AND I'D LIKE TO TAKE YOU TO PAGE -- TO
12 PARAGRAPH NINE, WHICH IS ON THE NEXT PAGE, AND ASK YOU WHAT
13 THE INFORMATION IN THAT PARAGRAPH REVEALS?

14 A. IT REVEALS THAT IN JANUARY OF 2005, HE CALLED ME OF HIS
15 OWN ACCORD AND SAID HE WOULD LIKE TO MEET WITH ME REGARDING
16 SOMETHING ABOUT THE JEFFREY MACDONALD TRIAL.

17 Q. AND WAS IT IMPORTANT THAT HE CONTACTED YOU OF HIS OWN
18 ACCORD?

19 A. WELL, I FELT LIKE IT WAS. I HAD MOVED ON IN MY LIFE. I
20 HAD OTHER CASES. IT HAD BEEN 25 YEARS. I STILL THOUGHT ABOUT
21 THE MACDONALD CASE. I WAS NOT A LAWYER IN THE MACDONALD CASE.
22 I WAS NOT DOING INVESTIGATIONS IN THE MACDONALD CASE. I HAD
23 GONE ON. AND HE'S THE ONE WHO CAME FORWARD. IT WASN'T LIKE I
24 WAS CALLING AROUND SEEING IF I COULD FIND SOME PEOPLE WITH
25 INFORMATION.

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1 Q. AND DID HE GIVE YOU ANY INDICATION THAT ANYTHING CAUSED
2 HIM TO COME FORWARD OTHER THAN WHAT HE DESCRIBED AS THIS MORAL
3 BURDEN HE HAD BEEN CARRYING?

4 A. I DON'T THINK SO.

5 Q. NOW, I WOULD LIKE TO TAKE YOU TO PARAGRAPH TEN AND I
6 THINK I'D LIKE FOR YOU TO READ PARAGRAPH TEN INTO THE RECORD.

7 A. ALL RIGHT.

8 I DID NOT COME FORWARD PREVIOUSLY WITH THE
9 INFORMATION I SHARED WITH MR. SMITH AND WHICH I NOW SHARE WITH
10 THE COURT OUT OF RESPECT FOR THE LATE JUDGE FRANKLIN DUPREE
11 WHO PRESIDED OVER THE TRIAL AND OTHERS WHO WERE WITH THE
12 COURTS AT THE TIME OF THE MACDONALD TRIAL.

13 WORKING ON THE SIDE OF LAW ENFORCEMENT IN THE
14 COURTHOUSE WAS MY CAREER. I DID NOT WANT TO BETRAY OR APPEAR
15 TO BE BETRAYING THE PEOPLE I WORKED WITH AND RESPECTED.

16 I CONSIDERED MYSELF A LOYAL OFFICER OF THE COURT AND
17 I STILL DO, BUT ULTIMATELY I DECIDED THAT I HAD A DUTY TO COME
18 FORWARD.

19 Q. ALL RIGHT. AND I'D LIKE YOU TO TAKE A LOOK AT PARAGRAPH
20 11, AND TELL US WHAT INFORMATION THAT PARAGRAPH REVEALS.

21 A. HE SAID THAT -- HE TOLD ME THAT HE WAS ASSIGNED THE DUTY
22 OF GOING TO GREENVILLE, SOUTH CAROLINA, TO PICK UP HELENA
23 STOECKLEY, TO TAKE HER INTO CUSTODY, AND TO RETURN HER TO
24 RALEIGH.

25 Q. AND IS THAT CONSISTENT WITH WHAT HE HAD PREVIOUSLY SHARED

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1 WITH YOU IN YOUR OFFICE AND STATED UNDER OATH IN THE STATEMENT
2 UNDER OATH THAT YOU TOOK -- YOU HAD TAKEN?

3 A. IT IS, YES.

4 Q. I'D LIKE YOU TO TAKE A LOOK AT PARAGRAPH 15.

5 (PAUSE.)

6 A. I'VE LOOKED AT IT.

7 Q. AND WHAT DOES THAT INFORMATION REVEAL?

8 A. HE SAYS THAT MS. STOECKLEY, WITHOUT ANY PRODDING BY HIM,
9 BROUGHT UP THE ISSUE OF THE MACDONALD CASE, SAID SHE
10 REMEMBERED THE HOBBY HORSE IN HIS HOUSE AND THAT SHE WAS IN
11 HIS HOUSE ON THE NIGHT THAT THIS HAPPENED.

12 Q. NOW, IN LOOKING AT PARAGRAPHS 11 AND 15, THERE APPEARS TO
13 BE OR THERE IS AN INCONSISTENCY IN THE LOCATION WHERE MR.
14 BRITT SAID HE WENT TO GET MS. STOECKLEY.

15 A. YES.

16 Q. AND IN THE COURSE OF THE STATEMENTS AND AFFIDAVITS HE
17 GAVE YOU, WHERE DID HE MOST OFTEN SAY HE WENT IN SOUTH
18 CAROLINA?

19 A. WELL, SOMETIMES HE SAID CHARLESTON. SOMETIMES HE SAID
20 GREENVILLE. MY RECOLLECTION IS THAT IN THE NOVEMBER 2005
21 AFFIDAVIT HE SAID IT WAS GREENVILLE.

22 Q. AND WHEN YOU WERE TALKING TO HIM AND PREPARING THESE
23 AFFIDAVITS, WAS THE LOCATION IN SOUTH CAROLINA WHERE HE WENT
24 OF PARTICULAR SIGNIFICANCE OR NOT?

25 A. WELL, I'M SURE THAT I SHOULD HAVE BEEN -- HAD MY WITS

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1 ABOUT ME ENOUGH TO CATCH THAT, BUT I WASN'T THINKING ABOUT
2 WHAT TOWN IT WAS IN. I WAS -- I ONLY WAS THINKING ABOUT THE
3 FACT THAT HE WENT DOWN THERE TO GET HER AND SOUTH CAROLINA WAS
4 WHAT HE ALWAYS SAID.

5 AND SO IF I HAD BEEN SMART ENOUGH AT THAT TIME TO
6 CATCH THE FACT THAT HE SAID CHARLESTON ONCE OR TWICE OR EARLY
7 -- I MEAN IN THE OCTOBER AFFIDAVIT, I COULD HAVE STRAIGHTENED
8 IT OUT, AND I'M SORRY I DIDN'T, BUT I JUST DIDN'T CATCH IT.

9 Q. AND IF I COULD TAKE YOU TO PARAGRAPH 20 JUST ON THE NEXT
10 PAGE.

11 THE COURT: EXCUSE ME JUST ONE MOMENT. DID MR.
12 BRITT READ THIS?

13 THE WITNESS: I'M SURE HE DID, YOUR HONOR. BEFORE
14 HE SIGNED IT, I'M SURE HE DID.

15 THE COURT: SO, HE HAD AN OPPORTUNITY HIMSELF TO
16 CORRECT IT?

17 THE WITNESS: YES, SIR.

18 THE COURT: THANK YOU.

19 THE WITNESS: THANK YOU.

20 BY MR. WIDENHOUSE:

21 Q. AND IF I COULD TAKE YOU TO PARAGRAPH 20, WHICH IS ON THE
22 NEXT PAGE OF THE AFFIDAVIT.

23 (PAUSE.)

24 A. I'VE READ IT.

25 Q. AND ASK YOU WHAT INFORMATION PARAGRAPH 20 REVEALS.

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1 A. HE SAYS THAT WHEN HE TOOK HELENA STOECKLEY TO THE ROOM
2 THE PROSECUTORS WERE OCCUPYING, THEY ASKED HIM TO REMAIN IN
3 THERE AND THAT THAT WAS NOT AN UNUSUAL MATTER, THAT OFTEN THAT
4 HAPPENED.

5 Q. ALL RIGHT. AND IF YOU COULD LOOK AT PARAGRAPH 22, AND
6 TELL US WHAT INFORMATION IS CONTAINED IN IT.

7 (PAUSE.)

8 A. YES.

9 Q. AND WHAT INFORMATION IS --

10 A. HE SAYS THAT SHE TOLD MR. BLACKBURN THAT SHE -- SHE
11 MENTIONED THE HOBBY HORSE, SHE REMEMBERED THE HOBBY HORSE,
12 THAT SHE HAD BEEN IN THE MACDONALD HOUSE ON THE NIGHT OF THE
13 MURDERS AND THAT THE REASON SHE WENT WAS TO GET DRUGS.

14 Q. ALL RIGHT. AND I'D LIKE TO TAKE YOU TO PARAGRAPH 23, AND
15 ASK YOU TO READ THAT PARAGRAPH INTO THE RECORD FOR US?

16 (PAUSE.)

17 A. I HAVE.

18 Q. AND CAN YOU READ THAT PARAGRAPH INTO THE RECORD, PLEASE?

19 A. WHEN THESE STATEMENTS WERE MADE, I WAS ABSOLUTELY AWARE
20 OF THE IMPORTANCE OF MS. STOECKLEY'S WORDS TO MR. BLACKBURN.
21 THERE IS NO DOUBT IN MY MIND TODAY, I AM STILL ABSOLUTELY
22 CERTAIN THAT HELENA STOECKLEY TOLD JAMES BLACKBURN THAT SHE
23 WAS IN THE MACDONALD HOUSE ON THE NIGHT OF THE MACDONALD
24 MURDERS WITH OTHER PEOPLE.

25 Q. ALL RIGHT. AND I'D LIKE TO TAKE YOU TO THE NEXT

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1 PARAGRAPH, PARAGRAPH 24, AND I'M GOING TO ASK YOU TO READ THAT
2 PARAGRAPH INTO THE RECORD FOR US AS WELL.

3 (PAUSE.)

4 A. I'VE READ THAT.

5 Q. IF YOU COULD READ IT INTO THE RECORD, PLEASE?

6 A. YES. AFTER HELENA STOECKLEY HAD GIVEN THE HISTORY OF HER
7 VISIT TO JEFFREY MACDONALD'S HOME, MR. BLACKBURN STATED QUOTE
8 IF YOU TESTIFY BEFORE THE JURY AS TO WHAT YOU HAVE TOLD ME OR
9 SAID TO ME IN THIS OFFICE I WILL INDICT YOU FOR MURDER.

10 Q. AND I'D LIKE TO TAKE YOU NOW TO DEFENSE EXHIBIT 5059, AND
11 ASK YOU IF YOU RECOGNIZE THAT?

12 A. COULD I SEE THE DATE OF THAT? I THINK IT'S ONE OF THE
13 AFFIDAVITS. YES. THANK YOU. YES, THAT'S THE NOVEMBER
14 AFFIDAVIT OF MR. BRITT.

15 (DEFENSE EXHIBIT NUMBER 5059

16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. ALL RIGHT. AND HAVE YOU REVIEWED THAT AFFIDAVIT PRIOR TO
18 COMING TO TESTIFY TODAY?

19 A. I HAVE.

20 Q. AND DOES IT ACCURATELY AND FAIRLY REFLECT THE BASIC
21 INFORMATION MR. BRITT GAVE YOU IN YOUR OFFICE ON FEBRUARY
22 24TH?

23 A. YES.

24 Q. NOW, WERE THERE SOME DIFFERENCES BETWEEN THE TWO
25 AFFIDAVITS?

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1 A. WELL, I THINK HE SAYS GREENVILLE. IF I'M NOT MISTAKEN,
2 HE SAYS GREENVILLE ALWAYS IN THIS AFFIDAVIT.

3 Q. ALL RIGHT. AND WAS THERE ANOTHER CHANGE IN THIS
4 AFFIDAVIT?

5 A. I HAVEN'T READ IT THROUGH AGAIN ON THE SCREEN, BUT I
6 THINK MAYBE THE REFERENCE TO A CAKE HAS BEEN ELIMINATED.

7 Q. ALL RIGHT. AND WHAT WAS THE -- IS THAT A PARAGRAPH THAT
8 YOU REVISED FOR MR. BRITT?

9 A. IT IS.

10 Q. AND IF THERE WAS A CHANGE IN THE FIRST AFFIDAVIT AND THE
11 SECOND AFFIDAVIT REGARDING A CAKE BEING DELIVERED BY MR. BRITT
12 FROM A JURY PERSON TO JUDGE DUPREE, WHY WAS THAT OMITTED FROM
13 THE SECOND AFFIDAVIT?

14 A. I JUST FELT LIKE IT WAS UNIMPORTANT. I MEAN, IT WAS NO
15 BIG DEAL. IF THE JURORS WANTED TO BRING A CAKE TO JUDGE
16 DUPREE, THAT WAS FINE WITH ME. AND I THOUGHT THAT IT -- THE
17 FACT THAT IT WAS IN THE AFFIDAVIT, IN THE STORY, ERODED THE
18 IMPACT OF WHAT WAS IMPORTANT AND I FELT THAT IT WAS
19 UNDERWHELMING TO HAVE SOMETHING IN THERE ABOUT A CAKE.

20 Q. AND WAS THE IMPORTANT INFORMATION THAT MR. BRITT WANTED
21 TO SHARE WITH YOU THE INFORMATION ABOUT HIS CONTACT WITH MS.
22 STOECKLEY DURING THE MACDONALD TRIAL OR THE DELIVERY OF A CAKE
23 FROM A JUROR TO JUDGE DUPREE?

24 A. IT WAS ABOUT THE WORDS THAT MR. BLACKBURN SPOKE AND THE
25 CAKE ITSELF WAS SIMPLY EXTRANEIOUS.

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1 Q. OKAY. IN ALL OTHER RESPECTS, HAVING REVIEWED THE TWO
2 AFFIDAVITS, ARE THEY CONSISTENT WITH ONE ANOTHER?

3 A. I THINK THEY ARE.

4 Q. AND ARE THE AFFIDAVITS AND THE STATEMENT UNDER OATH
5 CONSISTENT WITH WHAT MR. BRITT TOLD YOU WHEN HE CAME TO YOUR
6 OFFICE?

7 A. THEY ARE.

8 Q. AND, AGAIN, WHAT'S THE IMPORTANCE OF THIS INFORMATION TO
9 YOU AS HAVING BEEN ONE OF JEFFREY MACDONALD'S TRIAL LAWYERS?

10 A. WE HAD TO ESTABLISH THAT THERE WERE INTRUDERS IN THE
11 HOUSE. THAT WAS OUR MISSION. WE NEEDED TO SHOW THAT PEOPLE
12 CAME IN THAT HOUSE AND DID THIS THING TO HIS FAMILY. AND THIS
13 IS -- THIS WOULD ESTABLISH IT OR COULD HELP ESTABLISH IT.

14 Q. SO, IT WAS IMPORTANT TO YOU TO HAVE SOMEONE LIKE HELENA
15 STOECKLEY TESTIFY THAT SHE WAS IN THE HOUSE?

16 A. IT WAS.

17 Q. NOW, TO YOUR KNOWLEDGE, DID MR. BRITT HAVE ANY PERSONAL
18 STAKE IN COMING FORWARD TO YOU WITH THIS INFORMATION?

19 A. NO, HE DIDN'T. I MEAN, HE MADE THAT CLEAR THAT HE HAD
20 ONE REASON AND THAT WAS HE WANTED THIS OFF HIS HEART AND HIS
21 SOUL.

22 MR. WIDENHOUSE: MAY I HAVE JUST A MOMENT, YOUR
23 HONOR?

24 THE COURT: YES, SIR.

25 (PAUSE.)

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1 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. THAT'S ALL
2 I HAVE.

3 THE COURT: CROSS.

4 MR. BRUCE: THANK YOU, YOUR HONOR.

5 C R O S S - E X A M I N A T I O N 10:15 A.M.

6 BY MR. BRUCE:

7 Q. GOOD MORNING, MR. SMITH.

8 A. MR. BRUCE, HOW ARE YOU, SIR?

9 Q. FINE. I HOPE YOU ARE. I WANT TO START WITH HELENA
10 STOECKLEY'S ATTENDANCE AT THE TRIAL IN 1979, IS THAT OKAY WITH
11 YOU?

12 A. THAT'S FINE.

13 Q. THE DEFENSE WANTED TO OBTAIN THE PRESENCE OF HELENA
14 STOECKLEY AT THE 1979 TRIAL, IS THAT CORRECT?

15 A. WE DID.

16 Q. AND TOWARD THAT END, YOU SUBPOENAED HELENA STOECKLEY'S
17 PARENTS, IS THAT CORRECT?

18 A. I VAGUELY REMEMBER THAT, BUT I THINK WE DID. THAT'S VERY
19 VAGUE TO ME, MR. BRUCE, BUT I THINK SO.

20 Q. ALL RIGHT. MAYBE WE CAN REFRESH YOUR RECOLLECTION. I'M
21 GOING TO -- FREQUENTLY DURING YOUR TESTIMONY I'M GOING TO
22 REFER YOU TO PAGES OF THE TRIAL TRANSCRIPT.

23 A. THAT'S FINE.

24 Q. AND IF EVERYTHING WORKS CORRECTLY, THEY'LL COME UP ON THE
25 SCREEN BEFORE YOU. I WANT TO START WITH TRIAL DAY 17, PAGE

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1 86. AND IF YOU SEE AT THE TOP OF THE PAGE, IT SAYS -- CAN YOU
2 READ THAT FIRST PARTIAL PARAGRAPH?

3 A. SECONDLY, WE HAVE HERE UNDER SUBPOENA THE PARENTS OF
4 HELENA STOECKLEY. WE'VE BEEN TRYING TO LOCATE HER. IN OUR
5 EFFORT TO LOCATE HER, WHICH HAS BEEN FUTILE UP TO NOW, WE HAVE
6 SUBPOENAED THEM AS TO THEIR KNOWLEDGE OF HER WHEREABOUTS.

7 Q. THANK YOU. NOW, SHOWING THE WHOLE PAGE, PLEASE. IT'S
8 FAIR TO INFER THAT THAT'S MR. SEGAL TALKING WHEN YOU LOOK AT
9 THE BOTTOM OF THE PAGE?

10 A. YES.

11 Q. ALL RIGHT. DOES THAT REFRESH YOUR RECOLLECTION ABOUT
12 SUBPOENAING MR. AND MRS. STOECKLEY?

13 A. JUST VERY VAGUELY, BUT IT DOES, AND I CERTAINLY WOULD
14 AGREE THAT WE MUST HAVE DONE THAT.

15 Q. ALL RIGHT. LET'S LOOK AT PAGE 89 OF TRIAL DAY 17.

16 MADAM CLERK: I'M SORRY, IS THERE AN EXHIBIT NUMBER
17 WITH THIS?

18 MR. BRUCE: NO, THERE IS NOT AN EXHIBIT NUMBER.

19 MADAM CLERK: THANK YOU.

20 MR. BRUCE: AND, YOUR HONOR, WE'RE USING PAGES THAT
21 OUR SCANNING ASSIGNED TO IT BECAUSE THE PAGE NUMBERS OF THE
22 TRIAL RECORD ARE SO HARD TO READ, THEY'VE FADED OVER THE
23 YEARS.

24 WHERE I CAN, I'LL ALSO GIVE THE TRIAL TRANSCRIPT
25 NUMBER. FOR INSTANCE, THE FIRST PAGE WE LOOKED AT IS TRIAL

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1 TRANSCRIPT 4846 AND THE ONE WE'RE LOOKING AT NOW IS 4849, BUT
2 WE'RE REFERRING TO THEM BY THE TRIAL DAY. THIS IS TRIAL DAY
3 17, PAGE 89.

4 BY MR. BRUCE:

5 Q. THIS WAS A LONG TRIAL, RIGHT, MR. SMITH?

6 A. ABOUT SIX WEEKS.

7 Q. ALL RIGHT. AND YOU HAD COURT GENERALLY FIVE DAYS A WEEK?

8 A. YES, WE DID.

9 Q. SO, THE COURT REPORTER NUMBERED THE TRIAL DAYS. FOR
10 INSTANCE, THE FIRST WEEK WOULD BE ONE THROUGH FIVE AND THEN
11 THE SECOND WEEK SIX THROUGH TEN AND SO FORTH?

12 A. I THINK THAT'S RIGHT, YES.

13 Q. ALL RIGHT. NOW, LOOKING AT PAGE 48 -- OR AT PAGE 89,
14 WOULD YOU LOOK DOWN AT LINE 18 AND READ WHAT MR. SEGAL SAYS IN
15 THAT FIRST PARAGRAPH?

16 A. DO YOU WANT ME TO READ IT ALOUD OR JUST READ IT TO
17 MYSELF?

18 Q. READ IT ALOUD, IF YOU WOULD, PLEASE.

19 A. MR. SEGAL: I DON'T THINK ANYBODY IS HIDING HER OUT. I
20 THINK SHE IS A DIFFICULT WITNESS TO FIND. THERE'S NO QUESTION
21 ABOUT IT. I THINK THE ADDRESS WE HAD BEEN GIVEN IN 1975 AND
22 '79, WAS HER PARENTS' ADDRESS AND THAT IS THE BEST ANYBODY
23 HAS.

24 DO YOU WANT ME TO READ ON?

25 Q. READ THE LAST THREE LINES IF YOU WOULD.

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1 A. WE HAVE HER BROTHER'S ADDRESS NOW. WE HAVE BEEN UP TO
2 HIS HOME. SHE'S BEEN IN AND OUT OF THERE. ALL I WANT TO DO
3 IS SIMPLY -- I THINK WE HAVE TO MAKE --

4 Q. NOW, WE'RE MOVING ON TO PAGE 90 OF TRIAL DAY 17.

5 A. -- SOME OTHER PROOFS ABOUT HER UNAVAILABILITY. I DON'T
6 CONSIDER THIS TO BE TOTAL AND COMPLETE. I INTEND TO MAKE SOME
7 OTHER PROOFS. I JUST WANT TO PUT IT ON THE RECORD SO THAT
8 EVERYBODY KNOWS THAT THERE HAS BEEN AN EFFORT MADE TO DO IT
9 RIGHT.

10 Q. NOW, THIS IS MR. SEGAL SPEAKING AND HE WAS YOUR CO-
11 COUNSEL AT THE MACDONALD TRIAL, IS THAT RIGHT?

12 A. HE WAS, YES.

13 Q. MR. BERNIE SEGAL, IS THAT RIGHT?

14 A. YES.

15 Q. AND IT SEEMS THAT HE IS TRYING TO ESTABLISH THE
16 UNAVAILABILITY OF HELENA STOECKLEY, IS THAT RIGHT?

17 A. YES.

18 Q. AND IS THIS BECAUSE HE WANTED TO TRY TO INTRODUCE OUT OF
19 COURT STATEMENTS THAT HELENA STOECKLEY HAD MADE AND FOR
20 PURPOSES OF LAYING THAT PREDICATE HE WANTED TO ESTABLISH HER
21 UNAVAILABILITY?

22 A. THAT CERTAINLY IS LOGICAL, MR. BRUCE. I DON'T REMEMBER
23 CONFERRING WITH HIM ABOUT THAT, MAYBE WE DID, BUT THAT MAKES
24 SENSE, YES.

25 Q. ALL RIGHT. NOW, BEFORE YOU HAD OBTAINED -- EVENTUALLY

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1 YOU WOULD OBTAIN THE PRESENCE OF HELENA STOECKLEY, IS THAT
2 RIGHT?

3 A. SIR?

4 Q. EVENTUALLY YOU WOULD BE ABLE TO OBTAIN THE PRESENCE OF
5 HELENA STOECKLEY?

6 A. WE DID.

7 Q. BEFORE WE GET TO THAT THOUGH, STICKING WITH HELENA
8 STOECKLEY'S PARENTS, WHILE THEY WERE IN RALEIGH, DID YOU AND
9 THE DEFENSE TEAM HAVE AN OPPORTUNITY TO INTERVIEW HER? I'M
10 TALKING ABOUT THE MOTHER OF HELENA STOECKLEY.

11 A. I HAVE NO RECOLLECTION OF WHETHER WE DID.

12 Q. DO YOU KNOW HER NAME TO ALSO BE -- THE MOTHER OF HELENA
13 STOECKLEY ALSO TO BE HELENA STOECKLEY?

14 A. I DON'T KNOW THAT.

15 Q. DO YOU RECALL EVER MEETING HER?

16 A. NO.

17 Q. IF THE BOOK BY JOE MCGINNISS SAYS THERE WAS A DEFENSE
18 INTERVIEW OF HELENA STOECKLEY'S MOTHER, WOULD YOU DISPUTE
19 THAT?

20 A. NO.

21 Q. DO YOU RECALL HER SAYING THAT SHE DIDN'T KNOW HELENA, THE
22 DAUGHTER'S, ADDRESS AND DIDN'T WANT TO KNOW?

23 A. I DON'T REMEMBER THAT, NO, SIR.

24 Q. DID YOU SIT IN ON INTERVIEWS OF POTENTIAL DEFENSE
25 WITNESSES?

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1 A. MOST OF THE TIME.

2 Q. WELL, I'M GOING TO ASK YOU SOME OTHER QUESTIONS TO SEE IF
3 IT REFRESHES YOUR RECOLLECTION.

4 A. CERTAINLY. PLEASE DO.

5 Q. DO YOU RECALL MRS. STOECKLEY SENIOR SAYING ABOUT HELENA
6 THAT SHE CALLED UP, MUST HAVE BEEN A YEAR AND A HALF AGO, ALL
7 BEFUDDLED BECAUSE SHE HAD LOST HER CAR KEYS?

8 A. NO, SIR.

9 Q. DO YOU RECALL HELENA STOECKLEY'S MOTHER SAYING ABOUT
10 HELENA STOECKLEY THAT WHEN WE GOT HER HOME SHE WAS LIKE A
11 VEGETABLE. SHE COULDN'T TALK, SHE COULDN'T EAT, HER FACE
12 QUIVERED, SALIVA RAN OUT OF HER MOUTH?

13 A. NO, SIR.

14 Q. DO YOU RECALL HELENA STOECKLEY'S MOTHER SAYING ABOUT
15 HELENA STOECKLEY THAT WE PUT HER ON A STRICT DIET, BUT SHE WAS
16 STILL NOT QUITE RIGHT. SHE'S A PHYSICAL AND MENTAL WRECK. DO
17 YOU RECALL ANY WORDS LIKE THAT?

18 A. I DON'T. IT MAY BE THAT I WAS THERE AND HEARD THOSE
19 THINGS. IT'S VERY POSSIBLE THAT I WASN'T. AND SO I JUST
20 DON'T REMEMBER THAT.

21 Q. NOW, WHEN THE DEFENSE WAS DOING MID-TRIAL INTERVIEWS, THE
22 TEAM WAS USUALLY YOU AND BERNIE SEGAL?

23 A. AND PROBABLY OTHER PEOPLE, OTHER PARALEGAL PEOPLE, THINGS
24 LIKE THAT. IT WOULD RARELY HAVE BEEN JUST THE TWO OF US.

25 Q. ALL RIGHT. AND ONE PERSON WHO WAS FREQUENTLY, IF NOT

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1 ALWAYS, THERE WOULD BE JOE MCGINNISS?

2 A. JOE MCGINNISS WAS OFTEN THERE, YES.

3 Q. AND HE HAD BEEN SORT OF EMBEDDED IN THE TRIAL TEAM, IS
4 THAT RIGHT?

5 A. HE HAD.

6 Q. AND THAT WAS BECAUSE OF A BOOK DEAL BETWEEN MR. MACDONALD
7 AND MR. MCGINNISS?

8 A. I THINK THAT'S RIGHT.

9 Q. AND YOU KNEW THAT'S -- THAT WOULD EXPLAIN HIS PRESENCE?

10 A. YES. I MIGHT SAY THAT THAT WAS A LITTLE BIT OF A
11 HUMOROUS THING BECAUSE I MADE IT CLEAR TO JOE MCGINNISS, WHO
12 WOULD TELL YOU THIS, AND ALSO TO MR. SEGAL, THAT DOWN HERE IN
13 NORTH CAROLINA WE DIDN'T DO THAT, BUT NEVERTHELESS HE WAS
14 EMBEDDED AND WAS A PART OF THE TEAM.

15 Q. AND HIS PURPOSE THERE WAS TO RECORD WHAT WENT ON FOR
16 PURPOSES OF WRITING THIS LATER BOOK, IS THAT RIGHT?

17 A. I'M SURE THAT'S RIGHT, YES, SIR.

18 Q. NOW, DO YOU RECALL MRS. STOECKLEY SENIOR SAYING ABOUT HER
19 DAUGHTER SHE'S NOT EVEN A HUMAN BEING ANYMORE, YOU FIND HER
20 NOW, SURE, SHE'LL TALK, SHE'LL ALWAYS TALK, BUT I'M TELLING
21 YOU SHE'S GOING TO TALK ALL KINDS OF NONSENSE?

22 A. NO, SIR, I DON'T REMEMBER THAT.

23 Q. ARE YOU FAMILIAR WITH A MAN NAMED PRINCE BEASLEY?

24 A. YES, I WAS THEN. I REMEMBER HIS NAME.

25 Q. AND HE WAS A POLICE OFFICER IN THE FAYETTEVILLE AREA, IS

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1 THAT RIGHT?

2 A. HE WAS.

3 Q. AND HE HAD RETIRED BY THE TIME OF THE TRIAL?

4 A. I THINK SO.

5 Q. AND HE HAD A RELATIONSHIP WITH HELENA STOECKLEY IN TERMS
6 OF SHE WAS A DRUG INFORMANT, IS THAT RIGHT?

7 A. HE HAD CONTACTED HER -- WAS IN CONTACT WITH HER FROM TIME
8 TO TIME IN HIS WORK AS A FAYETTEVILLE POLICEMAN.

9 Q. GETTING BACK TO HELENA STOECKLEY SENIOR'S INTERVIEW WITH
10 THE DEFENSE, DO YOU RECALL HER SAYING THAT HELENA WAS A SOFT
11 HEARTED PERSON AND LOVED LITTLE CHILDREN?

12 A. I HAVE THE FAINTEST, VAGUEST RECOLLECTION OF SOMETHING
13 LIKE THAT, BUT IT'S HARDLY ENOUGH THERE TO CLING TO.

14 Q. AND DO YOU RECALL HER SAYING THAT HELENA STOECKLEY, AFTER
15 THE MACDONALD MURDERS, SAID THAT NO HIPPIE AROUND HERE WOULD
16 DO A THING LIKE THAT?

17 A. NO, I DON'T REMEMBER THAT.

18 Q. AND DO YOU RECALL HER SAYING THAT HER DAUGHTER HAD SAID
19 THAT EVERYBODY'S GOING TO PITCH IN AND FIND OUT WHAT HAPPENED?

20 A. NO, I DON'T REMEMBER THAT.

21 Q. AND REGARDING MR. BEASLEY, DO YOU RECALL MRS. STOECKLEY
22 SAYING ABOUT HER DAUGHTER THAT BEASLEY WAS HER DADDY IMAGE?

23 A. NO, I DON'T REMEMBER THAT.

24 Q. DO YOU RECALL HER SAYING THAT HE HAD A TERRIFIC AMOUNT OF
25 INFLUENCE OVER THE DAUGHTER, HELENA STOECKLEY?

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1 A. I DO NOT REMEMBER THAT.

2 Q. AND DO YOU RECALL HER SAYING THAT AS FAR AS HELENA
3 STOECKLEY SAYING ANYTHING ABOUT THE MACDONALD MURDERS THAT
4 DADDY BEASLEY HAD TALKED HER INTO IT?

5 A. I DON'T REMEMBER THAT.

6 Q. ALL RIGHT. SO, THE DEFENSE WAS ASKING FOR GOVERNMENT OR
7 COURT HELP IN LOCATING HELENA STOECKLEY?

8 A. YES.

9 Q. CAN WE PUT UP GOVERNMENT EXHIBIT 2000 ON THE SCREEN,
10 PLEASE? CAN YOU READ THAT, MR. SMITH?

11 A. YES. YES, I CAN.

12 Q. JUST TAKE A MINUTE TO READ THROUGH IT AND THEN TELL US
13 WHAT IT IS.

14 (PAUSE.)

15 A. I'VE READ IT.

16 Q. AND CAN YOU TELL ME WHAT IT IS?

17 A. IT'S AN ORDER SIGNED BY JUDGE DUPREE THAT HELENA BE
18 PICKED UP AND BROUGHT FORTHWITH TO THE TRIAL.

19 (GOVERNMENT EXHIBIT NUMBER 2000
20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. AND THIS IS PURSUANT TO DEFENSE REQUEST, IS THAT CORRECT?

22 A. YES.

23 Q. AND WAS THE GOVERNMENT ABLE TO LOCATE HER PRETTY QUICKLY?

24 A. THE GOVERNMENT DID LOCATE HER, YES.

25 Q. SO, THE UNITED STATES GOVERNMENT, YOUR ADVERSARY IN THE

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1 CASE, IS LOCATING WHAT YOU CONSIDERED TO BE A KEY WITNESS FOR
2 THE DEFENSE?

3 A. YES.

4 Q. NOW, LET'S TURN TO TRIAL DAY 19, PAGE 14. IS IT FAIR TO
5 SAY, MR. SMITH, THAT THERE WERE A LOT OF BENCH CONFERENCES
6 DURING THIS TRIAL?

7 A. THERE WERE.

8 Q. AND YOU CAN'T SEE THE SPEAKER IDENTIFIED UNTIL THE NEXT
9 PAGE SO LET'S GO ON TO PAGE 15 AND COME BACK. CAN YOU SEE
10 FROM THERE THAT IT LOOKS LIKE THE COURT WAS ADDRESSING
11 EVERYONE THERE AT THE TOP OF PAGE 15?

12 A. YES.

13 Q. ALL RIGHT.

14 A. IT APPEARS THAT THE COURT IS ADDRESSING EVERYONE.

15 Q. ALL RIGHT. WELL, THEN, LET'S GO BACK TO PAGE 14 AND GET
16 THE FULL THRUST OF IT. IF YOU LOOK DOWN AT LINE 12 WHERE
17 JUDGE DUPREE STARTS OUT BY SAYING WHAT I REALLY GOT YOU UP
18 HERE FOR, DO YOU SEE THAT?

19 A. I DO, YES.

20 Q. AND BY UP HERE, JUDGE DUPREE MEANS UP AT THE BENCH --

21 A. YES.

22 Q. -- SPEAKING WITH HIM?

23 A. YES.

24 Q. YOU HAVE THE JURY IN THE BOX SO IF YOU -- IF COUNSEL AND
25 THE JUDGE NEED TO TALK ABOUT SOMETHING THAT THE JURY CAN'T

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1 HEAR YOU APPROACH THE BENCH, IS THAT RIGHT?

2 A. YES, THAT'S TRUE.

3 Q. AND WOULD YOU, STARTING WITH THAT, WHAT I REALLY GOT YOU
4 UP HERE FOR, READ TO THE END OF THE PAGE?

5 A. WHAT I REALLY GOT YOU UP HERE FOR IS TO TALK ABOUT THIS
6 STOECKLEY PROBLEM.

7 THE COURT: EXCUSE ME. THAT'S NOT ON MY -- NOT ON
8 MY SCREEN.

9 MR. BRUCE: IT SHOULD BE TRIAL DAY 19, PAGE 14, LINE
10 -- IT STARTS WITH THE END OF LINE 12, WHAT I REALLY GOT YOU UP
11 HERE --

12 THE COURT: YES. THANK YOU. THANK YOU. I'M SORRY.
13 MR. BRUCE, LET'S TAKE OUR MORNING RECESS.

14 MR. BRUCE: ALL RIGHT.

15 THE COURT: WE'LL START BACK AT 10:45.

16 (RECESS TAKEN FROM 10:31 A.M., UNTIL 10:45 A.M.)

17 (DEFENDANT PRESENT.)

18 THE COURT: PLEASE BE SEATED. WE'LL CONTINUE. MR.
19 BRUCE.

20 MR. BRUCE: THANK YOU, YOUR HONOR.

21 BY MR. BRUCE:

22 Q. MR. SMITH, WHEN WE BROKE WE WERE LOOKING AT THE
23 TRANSCRIPT OF TRIAL DAY 19, PAGE 14, AND AT THE END OF LINE 12
24 IF YOU COULD BEGIN READING WITH WHAT I REALLY GOT YOU UP HERE
25 FOR.

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1 A. I WILL.

2 WHAT I REALLY GOT YOU UP HERE FOR IS TO TALK ABOUT
3 THIS STOECKLEY PROBLEM. I UNDERSTAND SHE IS IN CUSTODY. I
4 UNDERSTAND THAT SHE CAN BE KEPT LIKE THAT FOR 72 HOURS WITHOUT
5 BEING LET OUT.

6 DO YOU WANT ME TO READ ON?

7 Q. WELL, LET ME ASK A QUESTION ABOUT THAT. NOW, THIS IS THE
8 JUDGE TALKING, RIGHT?

9 A. YES.

10 Q. AND IN YOUR EXPERIENCE, WAS JUDGE DUPREE CAREFUL ABOUT
11 THE LAW?

12 A. VERY.

13 Q. AND SO IT SEEMS THAT HE HAD DONE SOME RESEARCH AND FOUND
14 OUT THAT A MATERIAL WITNESS COULD BE KEPT IN CUSTODY FOR 72
15 HOURS WITHOUT BEING LET OUT?

16 A. YES.

17 Q. ALL RIGHT. NOW, CONTINUE READING.

18 A. NOW, AS FAR AS FINDING HER AND MAKING HER AVAILABLE IS
19 CONCERNED, I THINK THE COURT HAS DONE ABOUT ALL IT CAN DO. I
20 SUGGEST TO YOU THAT YOU OUGHT TO GET YOUR EVIDENCE SO
21 SCHEDULED AS TO ACCOMMODATE THIS PARTICULAR THING RATHER THAN
22 RUN THE RISK THE NEXT TIME SHE GOES THAT SHE CAN'T BE FOUND BY
23 ANYBODY.

24 Q. JUST CONTINUE READING, PLEASE.

25 A. SO, NOW THAT SHE IS AVAILABLE I THINK THAT THAT MOOTS THE

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1 QUESTION OF WHETHER OR NOT WE CAN TAKE UP SECONDARY EVIDENCE
2 OF WHAT SHE WOULD HAVE SAID.

3 Q. LET ME STOP YOU RIGHT THERE.

4 A. OKAY.

5 Q. WE'LL GO ON TO THE NEXT PAGE IN A MOMENT. BUT MOOTING
6 THE QUESTION OF SECONDARY EVIDENCE, IS THE JUDGE SAYING HERE
7 NOW THAT SHE'S AVAILABLE, YOU DON'T HAVE AN ARGUMENT TO GET IN
8 OUT OF COURT STATEMENTS BY HER?

9 A. THAT WOULD BE THE WAY I WOULD INTERPRET IT, YES.

10 Q. ALL RIGHT. AND LET'S GO TO THE NEXT PAGE, PLEASE. AND
11 CONTINUE READING. I BELIEVE IT STARTED WITH I DON'T THINK.

12 A. I DON'T THINK IN THIS KIND OF CASE IF SHE IS AVAILABLE IT
13 OUGHT TO BE DONE. MY FEELING ABOUT THAT IS THAT, HAVING MADE
14 HER AVAILABLE, YOU MUST NOW AVAIL YOURSELF OF HER
15 AVAILABILITY.

16 Q. ALL RIGHT. AND THEN CAN YOU READ STARTING WITH LINE FIVE
17 WHAT MR. SEGAL SAID?

18 A. MR. SEGAL: I ABSOLUTELY AGREE THAT IT IS OUR DESIRE TO
19 DO THAT. WE NEED TO KNOW, HOWEVER, YOUR HONOR -- YOU SAY SHE
20 IS CUSTODY. IS SHE IN CUSTODY IN RALEIGH OR IS SHE IN
21 GREENVILLE?

22 Q. NOW, THE NEXT LINE IS SPOKEN BY A PERSON IDENTIFIED AS
23 THE LAW CLERK. DO YOU KNOW THAT TO BE STEVE COGGINS?

24 A. HE WAS THE LAW CLERK AT THAT TIME.

25 Q. ALL RIGHT. FOR JUDGE DUPREE?

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1 A. YES, THAT'S CORRECT.

2 Q. AND HE WAS DOING ALL OF THE LAW CLERK WORK AS FAR AS YOU
3 KNOW FOR THE MACDONALD TRIAL?

4 A. I DON'T REMEMBER ANY OTHER LAW CLERK BEING IN THERE.

5 Q. OTHER THAN STEVE COGGINS?

6 A. STEVE COGGINS.

7 Q. ALL RIGHT. READ WHAT THE LAW CLERK AND THE COURT SAY
8 ABOUT THE LOCATION THERE STARTING WITH LINE NINE.

9 A. ALL RIGHT.

10 LAW CLERK: SHE IS IN CUSTODY IN GREENVILLE --

11 THE COURT: (INTERPOSING.) GREENVILLE, SOUTH
12 CAROLINA.

13 LAW CLERK: -- AND THEY ARE READY TO TRANSPORT HER
14 HERE.

15 Q. ALL RIGHT. NOW, THIS IS A BENCH CONFERENCE, IS THAT
16 CORRECT?

17 A. AS FAR AS I CAN TELL, YES.

18 Q. AND SO THAT WOULD MEAN THAT THE LAWYERS WOULD BE --
19 BECAUSE REMEMBER JUDGE DUPREE EARLIER SAID I GOT YOU UP HERE?

20 A. YES.

21 Q. SO, THAT WOULD IMPLY THAT THE LAWYERS WERE UP AT THE
22 BENCH TALKING WITH THE JUDGE?

23 A. IT DOES, YES.

24 Q. SO, THAT MEANS THAT THE OTHER PEOPLE IN THE COURTROOM
25 COULD NOT HEAR THIS CONVERSATION?

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1 A. THAT'S RIGHT.

2 Q. ALL RIGHT. NOW, THE NEXT SPEAKER IS IDENTIFIED AS MR.
3 BLACKBURN?

4 A. YES.

5 Q. AND THAT WOULD BE JIM BLACKBURN, THE LEAD PROSECUTOR FOR
6 THE GOVERNMENT IN THE MACDONALD CASE?

7 A. YES.

8 Q. AND WHAT DOES HE SAY ON LINES 15 AND 16?

9 A. MR. BLACKBURN: PICKENS COUNTY JAIL IS WHAT I HAVE BEEN
10 TOLD.

11 Q. OKAY. AND THEN MR. SEGAL MAKES A STATEMENT. WOULD YOU
12 READ THAT ON 17 AND 18?

13 A. MR. SEGAL: WELL, GREENVILLE IS ABOUT THREE HOURS -- TWO
14 AND A HALF HOURS.

15 Q. ALL RIGHT. NOW, MR. SEGAL WAS NOT FROM NORTH CAROLINA OR
16 SOUTH CAROLINA, IS THAT CORRECT?

17 A. THAT'S RIGHT.

18 Q. HE WAS FROM WHERE?

19 A. HE WAS FROM PHILADELPHIA.

20 Q. OKAY. AND HIS NORTH CAROLINA GEOGRAPHY AND DRIVING TIMES
21 ARE A LITTLE OFF WOULD YOU SAY?

22 A. PERHAPS, YES.

23 Q. THE COURT RESPONDS. CAN YOU READ WHAT THEY SAY -- WHAT
24 THE COURT SAID IN 19 THROUGH 21?

25 A. THE COURT: MORE THAN THAT. IT IS THREE HOURS

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1 COMFORTABLY TO CHARLOTTE, AND GREENVILLE IS ALMOST THAT SAME
2 DISTANCE THE OTHER SIDE.

3 Q. SO, JUDGE DUPREE IS TELLING MR. SEGAL THAT YOU'RE LOOKING
4 LIKE A FIVE OR SIX HOUR DRIVE TO GREENVILLE?

5 A. YES.

6 Q. THE NEXT SPEAKER SAYS MR. MURTAGH. DO YOU KNOW THAT TO
7 BE MR. BRIAN MURTAGH?

8 A. I DO.

9 Q. HE'S SEATED TO MY RIGHT?

10 A. YES.

11 Q. AND HE WAS THE SECOND CHAIR IN THE MACDONALD TRIAL FOR
12 THE GOVERNMENT?

13 A. HE WAS, YES.

14 Q. AND HE TOOK AN ACTIVE PART?

15 A. VERY.

16 Q. AND HE SAYS WHAT IN LINE 22 AND 23?

17 A. MR. MURTAGH: DO YOU KNOW WHO RUNS THE POLICE DEPARTMENT
18 IN GREENVILLE? PAUL STOMBAUGH.

19 Q. WHO IS PAUL STOMBAUGH?

20 A. HE WAS A WITNESS IN THE MACDONALD TRIAL.

21 Q. ALL RIGHT. NOW, LET'S MOVE ON TO THE NEXT PAGE. WELL,
22 I'M SORRY, SKIP BACK TO WHERE WE WERE AND LET'S PICK UP MR.
23 SEGAL'S STATEMENT.

24 JUST READ WHAT MR. SEGAL SAID THERE ON THOSE FIRST
25 TWO LINES -- LAST TWO LINES AND THEN WE'LL GO ON TO THE NEXT

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1 PAGE.

2 A. MR. SEGAL: MAYBE HE WILL DRIVE HER DOWN FOR US. YOUR
3 HONOR, I UNDERSTAND SHE HAS BEEN TAKEN INTO CUSTODY PURSUANT
4 TO A WARRANT AS A MATERIAL WITNESS IN THIS CASE. I WOULD
5 REQUEST THAT SHE BE BROUGHT HERE FORTHWITH TO RALEIGH AND, AS
6 SOON AS SHE IS HERE AND WE HAVE A CHANCE TO INTERVIEW HER, WE
7 INTEND TO CALL HER AS A WITNESS. THAT IS MY REQUEST AND IF IT
8 CAN BE NOTIFIED.

9 Q. ALL RIGHT. THE COURT RESPONDS IN LINES SEVEN THROUGH
10 TEN. WOULD YOU READ THAT, PLEASE?

11 A. YES.

12 THE COURT: THAT IS ALL WE NEED TO KNOW. JUST TELL
13 THE MAGISTRATE THAT THERE IS NO BOND AND JUST BRING HER HERE
14 AND MAKE HER AVAILABLE TO THE DEFENSE COUNSEL.

15 Q. NOW, LET'S GO DOWN A COUPLE MORE LINES. AND MR. COGGINS,
16 THE LAW CLERK, SAYS WHAT?

17 A. HE IS AWAITING WORD FROM OUR OFFICE.

18 Q. MR. SMITH, IS IT A FAIR INFERENCE FROM THIS EXCHANGE THAT
19 HELENA STOECKLEY IS MAKING SOME SORT OF APPEARANCE, INITIAL
20 APPEARANCE, BEFORE A MAGISTRATE JUDGE IN SOUTH CAROLINA?

21 A. IT SOUNDS LIKE THAT.

22 Q. AND JUDGE DUPREE, AS A RESULT OF WHAT MR. SEGAL HAS
23 REQUESTED, SAYS THAT HE'S GOING TO TELL THE MAGISTRATE JUDGE
24 IN SOUTH CAROLINA NO BOND?

25 A. YES.

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1 Q. AND WHAT DOES NO BOND MEAN?

2 A. IT MEANS SHE WOULD NOT BE PLACED IN CONFINEMENT.

3 Q. AND THEN SHE WOULD BE PROMPTLY TRANSPORTED TO RALEIGH?

4 A. YES.

5 Q. AND THE LAW CLERK SAYS HE, MEANING THE MAGISTRATE JUDGE,
6 IS AWAITING WORD FROM OUR OFFICE AND BY OUR HE MEANS THE
7 JUDGE'S OFFICE?

8 A. YES.

9 Q. NOW, DO YOU KNOW ANYTHING ELSE ABOUT HELENA STOECKLEY'S
10 APPEARANCE BEFORE THE MAGISTRATE JUDGE IN SOUTH CAROLINA?

11 A. NO, SIR, I DON'T.

12 Q. SO, IT WOULD BE TYPICAL IN APPEARING BEFORE A MAGISTRATE
13 JUDGE THAT YOU WOULD BE ADVISED OF YOUR RIGHT TO COUNSEL AND
14 COUNSEL APPOINTED IF YOU COULD NOT AFFORD COUNSEL?

15 A. USUALLY THAT WOULD BE THE CASE.

16 Q. BUT YOU DON'T KNOW ANYTHING ABOUT WHAT ACTUALLY WENT ON?

17 A. NO, SIR.

18 Q. SO, IS IT FAIR TO SAY THIS IS A POSITIVE DEVELOPMENT FOR
19 THE DEFENSE THAT THEIR KEY WITNESS IS GOING TO BE BROUGHT TO
20 RALEIGH FOR AN INTERVIEW?

21 A. YES. I REMEMBER THAT WE WERE VERY GLAD THAT SHE HAD BEEN
22 LOCATED AND WE WERE GOING TO HAVE A CHANCE TO INTERVIEW HER.

23 Q. NOW, OF YOUR OWN KNOWLEDGE, DO YOU HAVE ANY IDEA HOW
24 HELENA STOECKLEY GOT FROM UP STATE SOUTH CAROLINA TO RALEIGH?

25 A. NO.

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1 Q. AND DO YOU KNOW WHAT I MEAN BY UP STATE SOUTH CAROLINA?

2 A. WELL, I ASSUME IT WOULD BE THE OPPOSITE OF DOWN STATE
3 SOUTH CAROLINA.

4 Q. WELL, MEANING IT TO REFER TO THE GREENVILLE AREA. CAN
5 YOU AGREE WITH ME ON THAT?

6 A. I WILL AGREE WITH YOU ON THAT, YES.

7 Q. NOW, DO YOU KNOW WHAT DAY THIS EXCHANGE ABOUT -- WELL,
8 LET ME ASK YOU THIS, IS IT CONSISTENT WITH YOUR RECOLLECTION
9 THAT THIS EXCHANGE ABOUT TRANSPORTING HELENA STOECKLEY FROM
10 GREENVILLE TO RALEIGH OCCURRED ON WEDNESDAY, AUGUST THE 15TH,
11 1979?

12 A. I WOULD NOT QUARREL WITH THAT, MR. BRUCE. IT SOUNDS
13 ABOUT RIGHT IN THAT WE WERE IN THE MIDDLE OF AUGUST AND TRYING
14 TO MOVE THIS CASE ALONG AND SO THAT MAKES SENSE, BUT I DON'T
15 REMEMBER THE SPECIFIC DATE IN AUGUST.

16 MR. BRUCE: MAY I HAVE A MOMENT, YOUR HONOR?

17 THE COURT: CERTAINLY. OUR SOUTH CAROLINA FRIENDS
18 REFER TO EASTERN SOUTH CAROLINA AS LOW COUNTRY.

19 THE WITNESS: YES, SIR. YES, SIR.

20 BY MR. BRUCE:

21 Q. ALL RIGHT. WELL, LET ME SEE IF I CAN GET THE DATES
22 ORIENTED BECAUSE WE'RE GOING TO BE DOING A LOT OF TALKING
23 ABOUT THOSE FEW DAYS.

24 DO YOU RECALL THAT HELENA STOECKLEY -- DO YOU RECALL
25 THAT HELENA STOECKLEY TESTIFIED IN THE TRIAL ON A FRIDAY?

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1 A. I THINK I DO AND I WILL ACCEPT THAT AS THE TRUTH.

2 Q. WELL, DO YOU RECALL THAT THE -- THAT AFTER HER TESTIMONY
3 IN COURT -- AND LET'S PUT UP GOVERNMENT EXHIBIT 2362, WHICH I
4 HOPE WILL BE A CALENDAR OF 1979. AND IF YOU WOULD LOOK AT
5 AUGUST.

6 A. I'M LOOKING AT AUGUST.

7 (GOVERNMENT EXHIBIT NUMBER 2362
8 WAS IDENTIFIED FOR THE RECORD.)

9 Q. ALL RIGHT. NOW, DO YOU RECALL THAT -- I'M JUMPING AHEAD
10 JUST TO ORIENT THE DATES, DO YOU UNDERSTAND?

11 A. YES, SIR.

12 Q. DO YOU RECALL THAT THE DAY AFTER -- THE DAY THAT HELENA
13 STOECKLEY TESTIFIED IN THE TRIAL THAT THEN SHE WAS RELEASED
14 FROM CUSTODY?

15 A. YES, SHE WAS.

16 Q. AND DO YOU RECALL THAT THERE IMMEDIATELY FOLLOWED A
17 WEEKEND, SATURDAY AND SUNDAY, WHERE SOME INTERESTING EVENTS
18 OCCURRED WITH REGARD TO HELENA STOECKLEY?

19 A. I REMEMBER.

20 Q. SO, DOES THAT FIX FOR US THE DATE OF HER TESTIMONY AS
21 BEING FRIDAY, AUGUST 17TH?

22 A. IT DOES, I THINK, YES.

23 Q. ALL RIGHT. AND DO YOU RECALL THAT THE PREVIOUS DAY TO
24 HER TESTIMONY WAS CONSUMED WITH THE DEFENSE AND PROSECUTION
25 INTERVIEWS OF HELENA STOECKLEY?

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1 A. YES.

2 Q. AND YOU'VE ALREADY TESTIFIED ON DIRECT EXAMINATION ABOUT
3 THOSE INTERVIEWS.

4 A. YES.

5 Q. AND SO THEN IT WOULD BE LOGICAL THAT THE TRANSPORTATION
6 OF HER TO RALEIGH OCCURRED ON AUGUST THE 15TH, WEDNESDAY?

7 A. IT WOULD BE.

8 Q. ALL RIGHT. NOW, JUDGE DUPREE RECESSED COURT -- THE TRIAL
9 ON THURSDAY, AUGUST 16TH, TO ALLOW FOR THIS DEFENSE INTERVIEW
10 OF HELENA STOECKLEY, IS THAT RIGHT?

11 A. I THINK SO.

12 Q. AND THE JURY WAS KEPT WAITING WHILE THAT INTERVIEW WAS
13 COMPLETED, IS THAT RIGHT?

14 A. THEY WERE, I REMEMBER THAT.

15 Q. AND THAT'S NOT SOMETHING THAT WOULD NORMALLY PLEASE JUDGE
16 DUPREE, IS THAT RIGHT?

17 A. NO, AND I REMEMBER THAT WE WERE VERY NERVOUS ABOUT IT AND
18 TENSE ABOUT IT.

19 Q. NOW, I WANT TO DIRECT YOUR ATTENTION TO GOVERNMENT
20 EXHIBIT 2077, WHICH I HOPE IS GOING TO COME UP ON THE SCREEN,
21 AND CAN YOU AGREE WITH ME THAT THIS IS A FLOOR PLAN OF THE
22 SEVENTH FLOOR OF THE FEDERAL BUILDING IN RALEIGH, NORTH
23 CAROLINA?

24 A. MAY I HAVE JUST A MOMENT?

25 Q. YES, YOU MAY. AND WHILE YOU'RE DOING THAT, I'LL ADVISE

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1 YOU THAT NEW BERN AVENUE IS AT THE TOP OF THE PAGE, WHICH IS
2 THE FRONT OF THE BUILDING. IT MIGHT SEEM A LITTLE REVERSED
3 FROM THE WAY IT OUGHT TO BE.

4 A. THAT WOULD MEAN THAT THE COURTROOM IN WHICH THIS CASE WAS
5 BEING TRIED WOULD BE THE COURTROOM ON THE RIGHT ON THIS
6 DOCUMENT, IS THAT CORRECT?

7 Q. I'M ASKING YOU.

8 A. I THINK THAT'S CORRECT. YES, IT WOULD BE THE COURTROOM
9 ON THE RIGHT OF THIS DOCUMENT.

10 Q. AND THAT'S JUDGE DUPREE'S COURTROOM?

11 A. THAT'S CORRECT.

12 (GOVERNMENT EXHIBIT NUMBER 2077
13 WAS IDENTIFIED FOR THE RECORD.)

14 Q. AND I BELIEVE IF YOU TOUCH THE SCREEN, YOU CAN MAKE A
15 LITTLE MARK THERE.

16 A. YES, SIR.

17 Q. NOW, YOU SEE WHAT'S HIGHLIGHTED IN YELLOW IN THE UPPER
18 RIGHT CORNER OF THE SCREEN?

19 A. I DO.

20 Q. AND WHAT'S THAT LOCATION?

21 A. I THINK -- I THINK THAT JUDGE DUPREE'S CHAMBERS.

22 Q. ALL RIGHT. AND NOW CAN YOU SHOW US ON THE SCREEN WHERE
23 THE DEFENSE INTERVIEW OF HELENA STOECKLEY TOOK PLACE?

24 A. AS I RECALL -- SHALL I TOUCH THE SCREEN?

25 Q. YES.

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1 A. I THINK IT'S DOWN THIS HALL AND IN ONE OF THESE ROOMS
2 ALONG THAT HALL.

3 Q. ALL RIGHT. NOW, DID THE DEFENSE HAVE AT THEIR DISPOSAL
4 DURING THE TRIAL MORE THAN ONE OF THESE ROOMS?

5 A. I THINK WE HAD TWO AT LEAST.

6 Q. AND THAT'S WHERE YOU DID YOUR WORK DURING RECESSES AND SO
7 FORTH?

8 A. WE COULD HAVE WITNESSES WAITING THERE, WE COULD DO OUR
9 WORK THERE AND SO ON, YES.

10 Q. ALL RIGHT. I'M GOING TO ASK OUR TECHNICIAN TO PRESERVE
11 THAT.

12 MR. BRUCE: CAN THE CLERK PRESERVE THOSE MARKINGS
13 FOR US AND CALL IT GOVERNMENT EXHIBIT 2077A?

14 (GOVERNMENT EXHIBIT NUMBER 2077A
15 WAS IDENTIFIED FOR THE RECORD.)

16 THE COURT: YES, SIR.

17 MADAM CLERK: DO YOU WANT IT PRINTED AS WELL OR YOU
18 JUST WANT IT SAVED?

19 MR. BRUCE: JUST SAVE IT WOULD BE FINE.

20 (PAUSE.)

21 MR. BRUCE: ARE WE READY?

22 MADAM CLERK: YES.

23 MR. BRUCE: THANK YOU.

24 BY MR. BRUCE:

25 Q. MR. SMITH, THIS INTERVIEW BY THE DEFENSE OF HELENA

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1 STOECKLEY WAS A VERY IMPORTANT MOMENT IN THE TRIAL, IS THAT
2 RIGHT?

3 A. IT WAS.

4 Q. IT WAS IMPORTANT BECAUSE YOU WERE HOPING THAT SHE WOULD
5 CONFESS TO INVOLVEMENT IN THE MURDERS, IS THAT RIGHT?

6 A. WE HOPED THAT SHE WOULD DO THAT.

7 Q. AND PRESENT FOR THE INTERVIEW WERE YOU AND MR. SEGAL AND
8 MR. MCGINNISS AND MS. STOECKLEY, IS THAT RIGHT?

9 A. YES.

10 Q. AND AT THE BEGINNING AT LEAST, THOSE WERE THE ONLY FOUR
11 PEOPLE?

12 A. THAT'S RIGHT.

13 Q. NOW, THERE WAS NO MARSHAL PRESENT, NO DEPUTY MARSHAL?

14 A. NO.

15 Q. AND DO YOU KNOW FROM YOUR PERSONAL KNOWLEDGE WHAT DEPUTY
16 MARSHAL MIGHT HAVE BROUGHT HELENA STOECKLEY TO THE DEFENSE
17 INTERVIEW?

18 A. NO, I HAVE NO RECOLLECTION.

19 Q. CAN YOU TELL US WHEN MS. STOECKLEY CAME INTO THE ROOM FOR
20 THE INTERVIEW JUST CAN YOU GIVE US HER APPEARANCE? DESCRIBE
21 HER APPEARANCE.

22 A. SHE WAS -- SHE LOOKED VERY, VERY UNHEALTHY, VERY SALLOW,
23 UNHEALTHY COMPLEXION. SHE SEEMED TO BE TOO HEAVY. AND THAT
24 WOULD BE -- THAT WOULD BE THE MAJOR THINGS I REMEMBER. I
25 DON'T REMEMBER WHAT DRESS SHE WOULD BE WEARING. I DON'T

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1 REMEMBER THAT.

2 Q. OKAY. WOULD YOU DISPUTE IT IF IT WAS SAID THAT SHE WAS
3 WEARING WHITE SHOES AND A FLORAL PRINT DRESS?

4 A. I WOULDN'T DISPUTE THAT, NO, SIR.

5 Q. SHE WAS NOT WEARING A FLOPPY HAT, WAS SHE?

6 A. NO.

7 Q. AND SHE WAS NOT WEARING A BLONDE WIG?

8 A. NO, SIR.

9 Q. AND DURING THE TIME THAT YOU SAW HER THAT WEEK IN RALEIGH
10 FOR THE TRIAL, DID YOU AT ANY TIME SEE HER WEARING A FLOPPY
11 HAT?

12 A. NO, SIR.

13 Q. WHO LED THE QUESTIONING OF HELENA STOECKLEY DURING THAT
14 INTERVIEW?

15 A. MR. SEGAL.

16 Q. BUT YOU WERE PRESENT?

17 A. I WAS.

18 Q. AND SO WAS JOE MCGINNISS?

19 A. YES.

20 Q. AND DO YOU RECALL HER ASKING FOR A DIET SODA?

21 A. I DO.

22 Q. AND WAS THAT PROVIDED FOR HER?

23 A. YES, IT WAS.

24 Q. NOW, DID MR. SEGAL START OUT WITH A VERY QUIET APPROACH
25 WITH MS. STOECKLEY?

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1 A. YES, HE DID.

2 Q. DID HE APPEAL TO HER DESIRE TO FREE WHAT MIGHT BE AN
3 INNOCENT MAN?

4 A. HE DID.

5 Q. CAN YOU SORT OF DESCRIBE HOW HE MADE THAT PLEA TO HER?

6 A. WELL, HE DID IT I THINK IN THE BEST WAY THAT HE COULD. I
7 HAD A SENSE THAT HE WAS -- HE RECOGNIZED THIS WAS A VERY
8 IMPORTANT MOMENT AND HE WANTED TO DO IT WELL AND HE SPOKE
9 SOFTLY TO HER AND HE TOLD HER THAT IT WAS RARE IN A HUMAN LIFE
10 THAT A PERSON WOULD HAVE AN OPPORTUNITY TO MAKE SUCH A
11 MARVELOUS CONTRIBUTION TO SOMEONE'S LIFE AND THIS WAS AN
12 OPPORTUNITY FOR HER TO DO SOMETHING REALLY GOOD.

13 Q. AND AFTER HE MADE THAT STATEMENT TO HER WAS THERE SORT OF
14 A DRAMATIC PAUSE FOR THE BIG MOMENT AS TO WHAT SHE WOULD SAY?

15 A. WELL, CERTAINLY IT WAS DRAMATIC TO US BECAUSE IT WAS
16 SOMETHING THAT WE HAD WANTED FOR A LONG TIME. FOR MYSELF, I
17 HAD WANTED TO SEE THIS WOMAN AND TO GIVE HER AN OPPORTUNITY TO
18 TELL US THE TRUTH, THAT SHE WAS THERE. AND SO THIS WOULD BE
19 AS IMPORTANT A MOMENT AS I CAN IMAGINE IN MY TRIAL EXPERIENCE.

20 Q. WELL, AFTER THAT PAUSE, DIDN'T SHE REPLY WITH WORDS TO
21 THE EFFECT I CAN'T HELP YOU, I WASN'T IN THE HOUSE, I DIDN'T
22 HAVE ANYTHING TO DO WITH ANY OF THIS?

23 A. I DON'T REMEMBER HER EXACT WORDS, BUT THEY WERE WORDS
24 THAT WERE NOT WHAT WE HOPED. THEY WERE NOT WORDS THAT
25 ACKNOWLEDGED THAT SHE WAS IN THE HOUSE AND IT WOULD BE

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1 SOMETHING LIKE WHAT YOU JUST SAID.

2 Q. AND DID MR. SEGAL ADOPT A MORE AGGRESSIVE APPROACH WITH
3 HER AFTER THAT?

4 A. SOMEWHAT MORE, BUT, AGAIN, YOU KNOW, YOU WOULD HAVE THE
5 FEELING THAT HE CONTINUED TO CALL UPON HIS BEST -- HIS BEST
6 IDEAS AND THOUGHTS TO HANDLE THIS IMPORTANT MOMENT WELL AND SO
7 HE WOULD HAVE MADE IT A LITTLE BIT MORE AGGRESSIVE, BUT HE
8 WASN'T -- CERTAINLY NOT SHOUTING OR ANYTHING LIKE THAT.

9 Q. AND STILL, TO THE MORE AGGRESSIVE QUESTIONS, SHE REPLIED
10 WORDS TO THE EFFECT I DON'T KNOW WHAT YOU WANT TO KNOW, I WAS
11 NEVER IN THAT HOUSE?

12 A. SOMETHING LIKE THAT.

13 Q. DO YOU RECALL MR. SEGAL TELLING HELENA STOECKLEY DURING
14 THAT DEFENSE INTERVIEW WORDS TO THIS EFFECT, HELENA, YOU WILL
15 NOT BE PROSECUTED, NOTHING WILL HAPPEN TO YOU. THAT I CAN
16 PROMISE YOU. THE STATUTE OF LIMITATIONS HAS EXPIRED?

17 A. I REMEMBER THAT.

18 Q. LET'S TALK A LITTLE BIT ABOUT THE STATUTE OF LIMITATIONS.
19 I WANT TO PUT ON THE SCREEN USING THE DOCUMENT CAMERA AND, MR.
20 SMITH, IF YOU TOUCH THE SCREEN IN THE BOTTOM RIGHT I THINK
21 THOSE MARKINGS WILL GO AWAY.

22 A. OKAY.

23 Q. I'M PUTTING ON THE DOCUMENT CAMERA A PORTION OF THE
24 UNITED STATES CODE, AND IF WE CAN ORIENT IT FOR A MOMENT HERE.
25 MR. MACDONALD WAS CHARGED WITH FIRST DEGREE MURDER, IS THAT

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1 RIGHT?

2 A. YES.

3 Q. OCCURRING ON A FEDERAL RESERVATION, TO-WIT, FORT BRAGG?

4 A. YES.

5 Q. AND THE STATUTE FOR THAT, IS IT NOT, IS 18 U.S. CODE
6 1111?

7 A. I THINK SO.

8 Q. ALL RIGHT. NOW, IF YOU LOOK AT, AND IT MAY BE A LITTLE
9 HARD TO READ, BUT I'M TRYING TO LOOK DOWN TO PART B WHERE IT
10 GIVES THE PENALTY FOR MURDER. DO YOU SEE THAT?

11 A. YES, I THINK SO. BEGINNING WITH WITHIN THE SPECIAL
12 MARITIME AND TERRITORIAL JURISDICTION, IS THAT RIGHT?

13 Q. THAT'S RIGHT.

14 A. OKAY.

15 Q. AND THAT'S WHAT THIS CASE WAS, RIGHT, BECAUSE FORT BRAGG
16 IS CONSIDERED SPECIAL MARITIME AND TERRITORIAL JURISDICTION?

17 A. IT WAS.

18 Q. ALL RIGHT. NOW, WHAT DOES IT SAY ABOUT THE PENALTY FOR
19 MURDER IN THE FIRST DEGREE?

20 A. THE PENALTY WOULD BE DEATH OR LIFE IMPRISONMENT.

21 Q. ALL RIGHT. NOW, AS AN ATTORNEY FOR MR. MACDONALD, YOU
22 WERE UP TO SPEED ON THE LAW APPLICABLE AT THAT TIME?

23 A. I WOULD HAVE BEEN, I THINK, YES.

24 Q. AND IT'S TRUE, ISN'T IT, THAT MR. MACDONALD WAS NOT
25 SUBJECT TO THE DEATH PENALTY?

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1 A. AS I RECALL, WE DID NOT BELIEVE HE WAS.

2 Q. AND THAT'S BECAUSE AT THE TIME THERE WAS NO FEDERAL DEATH
3 PENALTY DUE TO SUPREME COURT RULINGS, IS THAT RIGHT?

4 A. THAT'S RIGHT.

5 Q. AND IT WAS LATER AFTER 1979, PERHAPS 1984, THAT THE
6 FEDERAL GOVERNMENT PASSED PROCEDURES IN ORDER TO HAVE A DEATH
7 PENALTY?

8 A. YES.

9 Q. SO, THERE WAS NO DEATH PENALTY APPLICABLE TO JEFFREY
10 MACDONALD?

11 A. THAT'S RIGHT.

12 Q. OKAY. THE MOST PENALTY -- THE HARSHEST PENALTY HE COULD
13 RECEIVE WAS LIFE IN PRISON?

14 A. THAT'S CORRECT.

15 Q. ALL RIGHT. LET'S LOOK THEN AT THE STATUTE OF
16 LIMITATIONS. WE'LL PUT IT UP ON THE SCREEN. IT'S 18 U.S.
17 CODE SECTION 3281 AND 82. THIS MAY BE A LITTLE HARD TO READ
18 BECAUSE IT'S BEEN PRINTED ON A COPIER.

19 NOW, YOU NOTICE 3281 IS THE PENALTY -- OR STRIKE
20 THAT -- THE STATUTE OF LIMITATIONS FOR CAPITAL OFFENSES?

21 A. YES.

22 Q. AND WOULD YOU READ THAT?

23 A. AN INDICTMENT FOR ANY OFFENSE PUNISHABLE BY DEATH MAY BE
24 FOUND AT ANY TIME WITHOUT LIMITATION.

25 Q. ALL RIGHT. NOW, LET'S LOOK AT 3282, AND READ THAT FOR

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1 OFFENSES NOT CAPITAL.

2 A. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY LAW, NO PERSON
3 SHALL BE PROSECUTED, TRIED OR PUNISHED FOR ANY OFFENSE NOT
4 CAPITAL UNLESS THE INDICTMENT IS FOUND OR THE INFORMATION IS
5 INSTITUTED WITHIN FIVE YEARS NEXT AFTER SUCH OFFENSE SHALL
6 HAVE BEEN COMMITTED.

7 Q. NOW, THIS IS THE GENERAL FIVE YEAR STATUTE OF LIMITATIONS
8 THAT WE'RE USED TO IN THE FEDERAL SYSTEM, IS THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. MOST FELONIES THE STATUTE OF LIMITATIONS IS FIVE YEARS,
11 IS THAT RIGHT?

12 A. THAT'S RIGHT.

13 Q. AND WHAT MR. SEGAL MEANT THEN, WITH THE DEATH PENALTY NOT
14 APPLICABLE, THE FIVE YEAR STATUTE OF LIMITATIONS HAD RUN?

15 A. I WOULD ASSUME THAT THAT'S WHAT HE MEANT. I NEVER TOOK
16 THAT UP WITH HIM AND WE DIDN'T DISCUSS IT, BUT I AM ASSUMING
17 THAT THAT'S WHAT HE WOULD HAVE MEANT.

18 Q. THE MURDERS IN THE MACDONALD HOME TOOK PLACE ON THE EARLY
19 MORNING HOURS OF FEBRUARY 17TH, 1970, IS THAT CORRECT?

20 A. YES, NINE YEARS EARLIER.

21 Q. ALL RIGHT. NINE AND A HALF YEARS ABOUT --

22 A. YES. YES.

23 Q. -- BEFORE JULY AND AUGUST 1979, RIGHT?

24 A. YES.

25 Q. SO, IF THERE WERE A FIVE YEAR STATUTE OF LIMITATIONS, IT

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1 WOULD HAVE CERTAINLY RUN BY AUGUST OF 1979?

2 A. IT WOULD HAVE.

3 Q. AND, IN FACT, THE INDICTMENT OF JEFFREY MACDONALD IN THE
4 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH
5 CAROLINA WAS RETURNED JANUARY 25TH OF 1975?

6 A. THAT'S RIGHT.

7 Q. SO, IT WOULD APPEAR THAT THE GOVERNMENT WAS TRYING TO
8 BEAT THE FIVE YEAR STATUTE OF LIMITATIONS?

9 A. IT APPEARS THAT WAY. I DON'T KNOW THAT, BUT IT APPEARS
10 THAT WAY.

11 Q. IF THERE WERE A FIVE YEAR STATUTE OF LIMITATIONS, IT
12 WOULD HAVE RUN IN FEBRUARY OF 1975?

13 A. YES.

14 Q. SO, WHEN I SAY BEAT, I MEAN GET A TIMELY --

15 A. I UNDERSTAND.

16 Q. -- INDICTMENT SO THAT THE STATUTE WOULD NOT RUN?

17 A. YES.

18 Q. AND DID YOU EVER DISCUSS THAT WITH THE GOVERNMENT
19 LAWYERS, THAT THEY BROUGHT THE INDICTMENT IN JANUARY OF 1975
20 IN ORDER TO KEEP THE STATUTE OF LIMITATIONS FROM RUNNING?

21 A. NO, I DID NOT.

22 Q. OKAY. LET'S RETURN NOW TO THE INTERVIEW, DEFENSE
23 INTERVIEW. AFTER MR. SEGAL, WHICH YOU REMEMBER HIM POINTING
24 OUT TO HER THAT THE STATUTE OF LIMITATIONS HAD EXPIRED, IS
25 THAT CORRECT?

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1 A. I DO REMEMBER THAT.

2 Q. AND DID SHE REPLY WITH WORDS TO THE EFFECT OF I CAN'T
3 HELP YOU, I CAN'T TELL YOU THINGS I DON'T REMEMBER?

4 A. WORDS TO THAT EFFECT.

5 Q. NOW, THIS QUESTIONING BY MR. SEGAL CONSUMED SEVERAL --
6 WELL, LET'S DIVIDE IT INTO PARTS. AT ONE POINT AFTER
7 EXTENSIVE QUESTIONING, HE BROUGHT SOME OTHER FOLKS IN, IS THAT
8 RIGHT?

9 A. HE DID.

10 Q. IS IT FAIR TO SAY THAT THE PORTION OF THE QUESTIONING
11 WHERE SEGAL WAS DOING THE QUESTIONING WITH JUST THE FOUR OF
12 YOU IN THE ROOM LASTED ABOUT TWO HOURS?

13 A. IT IS VERY DIFFICULT, MR. BRUCE, FOR ME TO SAY, BUT I
14 CERTAINLY THINK IT COULD HAVE LASTED THAT LONG, YES.

15 Q. ALL RIGHT. AND YOU AGREE THAT DURING THAT TIME HE USED A
16 SOOTHING TONE SOMETIMES AND A HARSH TONE SOMETIMES?

17 A. YES. I DON'T THINK HE EVER USED A -- REALLY WHAT I WOULD
18 CALL A HARSH TONE, BUT A MORE -- MORE -- I THINK A STRONGER
19 TONE WOULD BE A BETTER WORD.

20 Q. DO YOU REMEMBER HIM TELLING HELENA THAT IN HIS VIEW THAT
21 PEOPLE HAD GONE TO THE ELECTRIC CHAIR WITH ONE-TENTH OF THE
22 EVIDENCE THAT HE HAD AGAINST HER ON THIS CASE?

23 A. I REMEMBER SOMETHING LIKE THAT.

24 THE COURT: WOULD YOU REPEAT THAT QUESTION, PLEASE?

25 MR. BRUCE: I'M SORRY.

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1 BY MR. BRUCE:

2 Q. DO YOU RECALL MR. SEGAL TELLING HELENA STOECKLEY THAT
3 PEOPLE HAD GONE TO THE ELECTRIC CHAIR WITH ONE-TENTH OF THE
4 EVIDENCE THAT MR. SEGAL SAID HE HAD AGAINST HER IN THE
5 MACDONALD CASE?

6 A. I DON'T REMEMBER THOSE EXACT WORDS, BUT I DO THINK THAT
7 THERE WAS SOMETHING LIKE THAT.

8 Q. ALL RIGHT. NOW, DID THERE COME A TIME WHEN MR. SEGAL
9 BROUGHT OTHER PEOPLE OR OTHER -- ONE BY ONE PERSONS INTO THE
10 ROOM?

11 A. THERE DID.

12 Q. AND ARE THESE SOME OF THE PEOPLE THAT CAME TO BE CALLED
13 IN THE TRIAL THE STOECKLEY WITNESSES?

14 A. YES.

15 Q. AND WOULD ONE OF THOSE BE JANE ZILLIOUX?

16 A. JANE ZILLIOUX.

17 Q. AND IS THAT Z-I-L-L-I-O-U-X?

18 A. YES.

19 Q. AND SHE WAS BROUGHT IN BY MR. SEGAL TO CONFRONT HELENA
20 STOECKLEY WITH ALLEGED PRIOR STATEMENTS TO MS. ZILLIOUX?

21 A. YES.

22 Q. AND EVEN AFTER THAT, HELENA STOECKLEY STILL SAID I DON'T
23 REMEMBER, I DON'T REMEMBER SAYING THOSE THINGS?

24 A. YES. MS. ZILLIOUX REMINDED HELENA OF A TIME WHEN I THINK
25 THEY WERE IN MEMPHIS -- WHEN HELENA WAS IN MEMPHIS, AND THAT

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1 HELENA HAD SAID THESE THINGS TO MS. ZILLIOUX THAT WOULD BE
2 LIKE I STILL THINK I WAS THERE, I STILL THINK I REMEMBER BEING
3 THERE AND SO ON, YES.

4 Q. ALL RIGHT. I KIND OF GOT MY QUESTIONS OUT OF ORDER. I
5 WANT TO BACK UP TO BEFORE MS. ZILLIOUX WAS BROUGHT IN THE
6 ROOM.

7 DO YOU RECALL MR. SEGAL SHOWING PICTURES OF THE
8 GRUESOME CRIME SCENE AND AUTOPSY PHOTOGRAPHS TO HELENA
9 STOECKLEY?

10 A. I REMEMBER THAT HELENA SAW THOSE AND I CAN'T REMEMBER
11 WHETHER MR. SEGAL SHOWED THEM TO HER, BUT I BELIEVE HE DID.

12 Q. DO YOU RECALL WHEN HELENA STOECKLEY VIEWED THOSE
13 PHOTOGRAPHS, MR. SEGAL SAID SOMETHING LIKE WHAT KIND OF FATHER
14 COULD DO THAT TO HIS OWN FLESH AND BLOOD?

15 A. I DON'T REMEMBER THAT SPECIFICALLY, BUT SOMETHING LIKE
16 THAT, YES.

17 Q. AND DO YOU RECALL MS. STOECKLEY RESPONDING SOMEONE ON
18 DRUGS COULD DO SOMETHING LIKE THAT, NOT ACID, MAYBE SPEED?

19 A. I DON'T REMEMBER THAT.

20 Q. YOU DON'T REMEMBER THAT?

21 A. NO.

22 Q. DO YOU RECALL HER SAYING SOMETHING LIKE ONLY SOMEBODY
23 CRAZY OR WHACKED OUT ON DRUGS COULD HAVE DONE SOMETHING LIKE
24 THAT?

25 A. I DO REMEMBER THAT.

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1 Q. AND DO YOU RECALL HER SAYING THAT SHE DOESN'T KNOW WHAT
2 ANYBODY ELSE IS CAPABLE OF, BUT SHE KNOWS SHE'S NOT CAPABLE OF
3 THAT?

4 A. I REMEMBER SOMETHING LIKE THAT, BUT THESE ARE -- THESE
5 ARE SOMEWHAT LOST IN THE MIDST OF TIME. I REMEMBER SOME OF
6 IT, YES.

7 Q. WELL, MY QUESTIONS ARE NOT INTENDED TO ASK YOU ABOUT
8 EXACT WORDS. WHEN I --

9 A. THANK YOU.

10 Q. WHEN I GIVE A PHRASE ASKING YOU WHETHER HELENA STOECKLEY
11 SAID IT, ASSUME I MEAN WORDS TO THAT EFFECT.

12 A. ALL RIGHT. THANK YOU.

13 Q. DID MR. SEGAL SAY SOMETHING TO HELENA STOECKLEY, WORDS TO
14 THE EFFECT, THAT NO ONE IS ASKING YOU TO SAY YOU DID IT, JUST
15 TO SAY THAT YOU WERE THERE HOLDING A CANDLE AND SO FORTH, AND
16 YOU DON'T REMEMBER HURTING ANYONE, YOU JUST RAN OUT THE BACK
17 DOOR?

18 A. I DON'T REMEMBER THAT.

19 Q. OKAY. SO, THEN YOU HAD ZILLIOUX AND OTHER WITNESSES
20 BROUGHT IN ONE BY ONE TO CONFRONT HELENA STOECKLEY WITH
21 ALLEGED PRIOR STATEMENTS, IS THAT A FAIR SUMMARY?

22 A. THAT'S CORRECT.

23 Q. AND THEY INCLUDED ZILLIOUX, IS THAT RIGHT?

24 A. YES.

25 Q. BEASLEY?

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1 A. I THINK THAT'S CORRECT, YES.

2 Q. AND THAT'S THE PRINCE BEASLEY WE'VE ALREADY SPOKEN ABOUT?

3 A. YES.

4 Q. AND JAMES GADDIS?

5 A. YES.

6 Q. G-A-D-D-I-S?

7 A. THAT'S CORRECT.

8 Q. AND HOW ABOUT A MAN NAMED RED UNDERHILL?

9 A. I REMEMBER RED UNDERHILL, YES.

10 Q. AND HOW ABOUT MR. POSEY?

11 A. I THINK I REMEMBER MR. POSEY, YES.

12 Q. AND HE WAS AN EX-NEIGHBOR OF HELENA STOECKLEY, IS THAT
13 RIGHT?

14 A. I THINK SO.

15 Q. AND THEN A MAN NAMED BRISENTINE WHO APPARENTLY HAD DONE A
16 POLYGRAPH?

17 A. YES.

18 THE COURT: EXCUSE ME. WHAT WAS THAT AGAIN?

19 MR. BRUCE: BRISENTINE.

20 THE COURT: THANK YOU.

21 MR. BRUCE: B-R-I-S-E-N-T-I-N-E. AND POSEY IS P-O-

22 S-E-Y. I BELIEVE IT'S WILLIAM POSEY. I DON'T KNOW

23 BRISENTINE'S FIRST NAME. IT MAY BE ROBERT.

24 BY MR. BRUCE:

25 Q. NOW, WOULD YOU AGREE THAT HER RESPONSE TO THESE WITNESSES

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1 AS THEY CAME IN ONE BY ONE WAS TO SAY I DON'T REMEMBER ANY OF
2 THAT?

3 A. YES, I THINK THAT IS CORRECT. I MEAN, I DON'T THINK SHE
4 ACKNOWLEDGED ANY OF THOSE STATEMENTS. CERTAINLY THE TONE OF
5 WHAT SHE WAS SAYING WOULD HAVE BEEN PRETTY MUCH CONSTANT.

6 Q. NOW, DID THERE COME A TIME WHERE YOU HAD TO GO BACK TO
7 COURT?

8 A. YES.

9 Q. LET ME CALL UP ON THE SCREEN TRIAL DAY 20, PAGE THREE.
10 AND THIS IS ON AUGUST -- WE'VE ALREADY AGREED THIS IS ON
11 AUGUST 16TH, 1979 --

12 A. YES.

13 Q. -- THURSDAY, THE DAY OF THE INTERVIEWS, IS THAT RIGHT?

14 A. YES.

15 Q. DO YOU SEE AT THE TOP OF THE PAGE THAT IT SAYS 1:00 P.M.?

16 A. YES.

17 Q. AND THE INTERVIEWS -- THERE HAD BEEN NO COURT THAT
18 MORNING, RIGHT, FOR PURPOSES OF THE INTERVIEW?

19 A. THAT'S RIGHT.

20 Q. AND IF MR. MCGINNISS CITES AS THE BEGINNING MOMENT OF THE
21 HELENA STOECKLEY INTERVIEW AS 10:04 A.M., WOULD YOU DISAGREE
22 WITH HIM?

23 A. NO, I WOULDN'T QUARREL WITH THAT.

24 Q. OKAY. SO, THE INTERVIEW HAD BEEN GOING ON FROM 10:04 TO
25 ABOUT 1:00 P.M. --

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1 A. YES.

2 Q. -- BEFORE THIS COURT PROCEEDING, IS THAT RIGHT?

3 A. YES.

4 Q. OKAY. NOW, LET'S GO DOWN TO LINE TEN. AND CAN YOU READ
5 US LINE TEN THROUGH 16, WHAT THE COURT SAYS TO THE PARTIES AND
6 THE ATTORNEYS?

7 A. WOULD YOU LIKE FOR ME TO READ IT?

8 Q. YES, PLEASE.

9 A. GENTLEMEN, I WILL ENTERTAIN A REPORT FROM YOU ON THE
10 STATUS OF YOUR INTERROGATION OF A WITNESS WHO WAS NOT
11 AVAILABLE TO EITHER SIDE UNTIL THIS MORNING AT NINE O'CLOCK
12 AND THE QUESTION OF WHICH WITNESS NOW APPARENTLY BY ONE SIDE
13 OR THE OTHER OR BOTH SEEMS TO BE IN AND ABOUT ITS THIRD HOUR.
14 ARE YOU READY TO PROCEED IN THIS CASE?

15 Q. AND THE PERSON WHO REPLIES IS YOU, IS THAT RIGHT?

16 A. YES.

17 Q. CAN YOU READ THAT, 17 THROUGH 22?

18 A. YES.

19 YOUR HONOR, LET ME EXPRESS THE THANKS OF THE DEFENSE
20 FOR THE COURT'S INDULGENCE AND THE JURY'S INDULGENCE THIS
21 MORNING AS WE HAVE HAD AN OPPORTUNITY TO TALK WITH THIS
22 WITNESS WHO HAS, INDEED, BEEN UNAVAILABLE TO EITHER SIDE FOR A
23 LONG PERIOD OF TIME.

24 Q. AND KEEP READING, IF YOU WOULD.

25 A. WE HAVE ALMOST CONCLUDED OUR DISCUSSIONS WITH THE WITNESS

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1 AND WILL BE IN A POSITION VERY SHORTLY TO TURN THE WITNESS
2 OVER TO THE GOVERNMENT IF THE GOVERNMENT DESIRES TO TALK WITH
3 THE WITNESS.

4 Q. JUST FOR THE RECORD, NOW WE'RE ON PAGE FOUR, IS THAT
5 RIGHT? YES. YES. WE'RE ON TRIAL DAY 20, PAGE FOUR. GO
6 AHEAD.

7 A. WE WILL LEAVE ANY REMARKS TO MR. BLACKBURN ABOUT THAT.

8 Q. AND THEN LINE THREE THROUGH SEVEN, IT'S FAIR TO SAY THAT
9 JUDGE DUPREE IS ASKING IF MR. BLACKBURN WANTS TO HAVE AN
10 OPPORTUNITY TO INTERVIEW AND HE DOES?

11 A. YES.

12 Q. IT'S ASKED IN SORT OF A DIFFERENT STYLE?

13 A. IT WAS IN THE -- KIND OF IN THE STYLE OF WILLIAM
14 FAULKNER.

15 Q. NOW, STARTING WITH LINE EIGHT, DO YOU SEE WHERE THE COURT
16 TURNS TO ADDRESS THE JURY?

17 A. YES.

18 Q. NOW, I'M NOT GOING TO ASK YOU TO READ ALL OF THAT ALOUD,
19 BUT YOU CAN READ IT SILENTLY IF YOU WANT TO, BUT IS THE GIST
20 OF THIS THAT HE'S APOLOGIZING TO THE JURY THAT THIS IS TAKING
21 SO MUCH TIME?

22 A. YES.

23 Q. AND DOWN AT LINE 19 OR SO, GOING ON DOWN, HE ASKS YOU A
24 QUESTION IS THAT SO, MR. SMITH? DO YOU SEE THAT?

25 A. YES, I DO.

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1 Q. AND YOUR REPLY?

2 A. YES, SIR.

3 Q. AND THEN HE SAYS WHAT? 23 AND 24.

4 A. I KNOW YOU WERE NOT PAYING ATTENTION, BUT IS THAT SO?

5 Q. AND YOU REPLY?

6 A. WHATEVER YOU SAY, YOUR HONOR.

7 Q. ALL RIGHT. SO, THEN HE GOES ON TO EXPLAIN TO THE JURY ON
8 LINES TWO THROUGH NINE ON PAGE FIVE OF TRIAL DAY 20 THAT HE'S
9 GOING TO SEND THEM HOME, IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. AND YOU NOTICE AT LINE SEVEN, THE JUDGE TELLS THE JURY
12 I'M GOING TO RECESS COURT UNTIL TOMORROW MORNING AT NINE
13 O'CLOCK?

14 A. YES.

15 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

16 A. IT IS.

17 Q. ALL RIGHT. AND HE GOES ON TO EXPLAIN THAT A LITTLE
18 FURTHER. LET'S MOVE ON DOWN. AND LET'S GO TO PAGE SIX. HE'S
19 REALLY REASSURING THE JURY ON THIS POINT, WOULD YOU AGREE?

20 A. YES.

21 Q. AND AGAIN AT LINE NINE THROUGH 11, HE ANNOUNCES THAT
22 COURT WILL BE RECESSED UNTIL TOMORROW MORNING AT NINE O'CLOCK,
23 IS THAT CORRECT?

24 A. YES.

25 Q. AND THEN, MR. SEGAL, READ LINE 12 THROUGH 14. MR. SMITH,

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1 READ WHAT MR. SEGAL SAID. I'M SORRY.

2 A. AFTER THE JURY'S EXCUSED I HAVE A BRIEF ADMINISTRATIVE
3 MATTER, YOUR HONOR.

4 Q. THIS IS MR. SEGAL APPARENTLY INDICATING THAT HE WANTS TO
5 TAKE UP SOMETHING WITH THE COURT OUT OF THE PRESENCE OF THE
6 JURY?

7 A. YES.

8 Q. AND CAN YOU READ JUDGE DUPREE'S REPLY AT 15 THROUGH 19?

9 A. OH, YES, THE COURT NEVER STOPS WORK, BUT I DON'T WANT TO
10 KEEP THESE JURORS HERE ANY LONGER SO WE WILL LET YOU RETIRE
11 UNTIL TOMORROW MORNING AT NINE O'CLOCK. WE WILL GO BACK ON
12 OUR REGULAR FRIDAY SCHEDULE, WITNESS OR NO.

13 Q. SO, THAT FURTHER INDICATES THAT THE NEXT DAY IS GOING TO
14 BE FRIDAY, AUGUST THE 17TH, JUST TO ORIENT OUR DATES AGAIN, IS
15 THAT RIGHT?

16 A. YES. YES.

17 Q. AND THE JURY LEAVES AT WHAT TIME?

18 A. 1:08.

19 Q. AND THEN THE JUDGE ENTERTAINS WHATEVER MR. SEGAL WANTS TO
20 BRING UP. I'M NOT SURE THERE IS A PAGE SEVEN, BUT LET'S GO TO
21 IT IN CASE. WE MIGHT NOT HAVE IT IN THIS EXCERPT. YES, WE
22 DO. WOULD YOU GO AHEAD AND READ WHAT MR. SEGAL SAYS AT LINES
23 TWO THROUGH EIGHT?

24 A. I CAN TELL YOUR HONOR AND THEN YOU CAN DECIDE HOW WE
25 SHOULD PROCEED. THE WITNESS WHOSE PROBLEMS HAVE CAUSED OUR

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1 DELAY TODAY WAS TAKEN INTO CUSTODY PURSUANT TO A MATERIAL
2 WITNESS WARRANT THAT WAS ISSUED UPON MY REQUEST. WE HAVE
3 INTERVIEWED THE WITNESS. THE GOVERNMENT INTENDS TO INTERVIEW
4 HER.

5 Q. NOW, HOLD ON BEFORE WE LEAVE THAT PARAGRAPH. MR. SEGAL
6 AGAIN IS CONFIRMING THAT IT WAS A MATERIAL WITNESS WARRANT
7 ISSUED UPON DEFENSE REQUEST, IS THAT RIGHT?

8 A. YES.

9 Q. AND HE ACKNOWLEDGES THAT HE'S INTERVIEWED THE WITNESS
10 STOECKLEY?

11 A. YES.

12 Q. AND THAT THE GOVERNMENT INTENDS TO INTERVIEW HER?

13 A. THAT'S RIGHT.

14 Q. AND MOVING ON TO LINE NINE. JUST READ NINE THROUGH 16,
15 PLEASE.

16 A. SHE AND A MAN WHO IDENTIFIES HIMSELF AS HER FIANCE ARE
17 CONCERNED ABOUT THE NECESSITY FOR HER CONTINUED CONFINEMENT
18 PENDING THE DISPOSITION OF HER APPEARANCE HERE. THEY HAVE
19 MADE A REQUEST OF ME AND I HAVE HAD OCCASION TO SPEAK TO A
20 WITNESS WHO I THINK MAY BE SOMEWHAT HELPFUL AND WHO KNOWS MS.
21 STOECKLEY WELL. THAT IS FORMER FAYETTEVILLE POLICE DETECTIVE
22 MR. P.E. BEASLEY. MR. BEASLEY IS HERE.

23 Q. NOW, DOES IT SEEM THAT MR. SEGAL IS PROPOSING THAT MS.
24 STOECKLEY BE RELEASED FROM CUSTODY? AND WE CAN READ ON DOWN.

25 A. I'M NOT SURE I TAKE THAT FROM THAT PARAGRAPH BUT --

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1 Q. WELL, READ 17 THROUGH 22.

2 A. ALOUD? READ IT ALOUD?

3 Q. YES, PLEASE.

4 A. OKAY.

5 WHAT MS. STOECKLEY HAS ASKED AND MR. DAVIS, HER
6 FIANCÉE, HAVE ASKED IS THAT WE CONSIDER ASKING THE COURT ON HER
7 BEHALF TO LIFT THE WARRANT. WE WILL SERVE HER WITH A SUBPOENA
8 AND THAT SHE WILL, IF BROUGHT INTO COURT OR OTHERWISE, SHE AND
9 HER FIANCÉE HAVE BOTH PROMISED THAT THEY WOULD APPEAR.

10 Q. ALL RIGHT. AND LET'S TALK ABOUT MR. DAVIS. DID YOU SEE
11 THE MAN MR. ERNEST DAVIS?

12 A. YES, I DID.

13 Q. AND HE APPEARED TO HAVE SOME SORT OF RELATIONSHIP WITH
14 HELENA STOECKLEY?

15 A. HE SEEMED -- HE SEEMED TO BE HER BOYFRIEND OR SOMETHING
16 LIKE THAT.

17 Q. AND WAS HE AROUND AND ABOUT ON THE SEVENTH FLOOR OF THE
18 FEDERAL BUILDING THE DAY OF THE HELENA STOECKLEY DEFENSE
19 INTERVIEW?

20 A. YES, AS I RECALL HE WAS, AND THAT'S THE ONLY TIME I THINK
21 I SAW HIM.

22 Q. AND IS IT TRUE THAT HE WAS NOT ALLOWED BY MR. SEGAL TO
23 SIT IN ON THE INTERVIEW WHEN THE FOUR OF YOU WERE IN THE ROOM;
24 SEGAL, SMITH, STOECKLEY, MCGINNIS?

25 A. HE WAS NOT THERE.

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1 Q. DID HE HAVE SORT OF A BEDRAGGLED APPEARANCE, MR. DAVIS?

2 A. HE DID. HE LOOKED UNKEMPT.

3 Q. DO YOU RECALL IF HE WAS BAREFOOT?

4 A. I THINK HE WAS, YES.

5 Q. NOW, IT SEEMS THAT IT IS BEING PROPOSED THAT STOECKLEY BE
6 LET OUT OF CUSTODY?

7 A. YES.

8 Q. AND IN MODERN DAY, WE WOULD CALL THAT, MR. BEASLEY BEING
9 OFFERED AS A THIRD PARTY CUSTODIAN, ALTHOUGH I DON'T SEE THESE
10 WORDS HERE, WOULD YOU AGREE?

11 A. YES.

12 Q. NOW, LET'S MOVE ON TO THE NEXT PAGE. READ LINES SEVEN
13 THROUGH 14, PLEASE, ALOUD.

14 A. THE COURT: LET ME JUST SAY IN THAT CONNECTION THAT I
15 WILL NOT RELEASE HER UNTIL BOTH SIDES HAVE HAD A FULL AND FAIR
16 OPPORTUNITY. THAT IS WHY WE ARE TAKING THIS DAY OFF THAT
17 STARTED OUT AS A 30 MINUTE REQUEST. I EXTENDED IT TO 45 AND
18 THEN AN HOUR AND 15 AND NOW IT'S ALL DAY. SURELY, WE ARE NOT
19 GOING TO LET THIS WITNESS GO UNTIL BOTH SIDES HAVE HAD AN
20 AMPLE OPPORTUNITY TO TALK WITH HER.

21 Q. SO, THE COURT WANTED TO MAKE SURE THAT BOTH SIDES HAD AN
22 AMPLE OPPORTUNITY TO INTERVIEW MS. STOECKLEY?

23 A. YES.

24 Q. NOW, DO YOU RECALL THAT MR. BEASLEY ACTUALLY TESTIFIES
25 BRIEFLY HERE ABOUT HIS ABILITY TO WATCH OVER MS. STOECKLEY IF

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1 SHE WERE LET OUT?

2 A. I VERY VAGUELY RECALL THAT, BUT I THINK THAT'S CORRECT.

3 Q. OKAY. LET'S SEE IF WE CAN GO TO PAGE 20 -- I'M SORRY,
4 TRIAL DAY 20, PAGE NINE. AND DO YOU SEE IN THE MIDDLE OF THE
5 PAGE WHERE P.E. BEASLEY WAS CALLED AS A WITNESS?

6 A. YES.

7 Q. AND LET'S BACK UP TO THE TOP HALF OF THAT PAGE A MINUTE.
8 A LITTLE MORE. I NOTICE -- DO YOU NOTICE THAT MR. SEGAL ASKS
9 IF HE SHOULD BE SWORN AS A WITNESS AND THE COURT SAYS NO? DO
10 YOU SEE THAT, MR. SMITH? LINE SIX THROUGH NINE.

11 A. THE COURT SAYS I'M GOING TO HEAR YOU.

12 Q. AND THEN MR. SEGAL SAYS?

13 A. MR. SEGAL SAYS SHALL WE SWEAR THE WITNESS, YOUR HONOR,
14 AND THE COURT SAYS NO.

15 Q. OKAY. I'M GOING TO SKIP OVER MR. BEASLEY'S TESTIMONY AND
16 LET'S GO TO PAGE 12. IF YOU'D PICK UP ON LINE TEN, IN THE
17 MIDDLE OF LINE TEN, IT APPEARS THAT SOMEONE ON BEHALF OF THE
18 GOVERNMENT IS SPEAKING.

19 CAN YOU READ THE SENTENCE THAT STARTS WITH I THINK
20 AND READ TO THE END OF THE PARAGRAPH?

21 A. I THINK THE GOVERNMENT IS CONCERNED THAT SO MUCH TROUBLE
22 WAS SPENT IN LOCATING HER AND BRINGING HER IN THE FIRST PLACE,
23 WE ARE VERY SKEPTICAL OF RELEASING HER AT THIS TIME.

24 Q. AND THE COURT SAYS WHAT IN LINE 14 AND 15?

25 A. I WILL NOT RELEASE HER AT THIS TIME.

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1 Q. AND SO MR. BLACKBURN THANKS THE COURT?

2 A. YES.

3 Q. SO, PRESUMABLY, IT WAS HIM SPEAKING ABOUT THIS --

4 A. YES.

5 Q. -- WOULD YOU AGREE?

6 A. (WITNESS NODS HEAD.)

7 Q. NOW, LET'S GO DOWN TO LINE 17, AND READ WHAT JUDGE DUPREE
8 SAYS FROM LINE 17 THROUGH 24.

9 A. I WILL LET YOU QUESTION THE WITNESS AND IT MAY BE THAT IT
10 WILL BE RESOLVED BY RELEASING HER FROM A SUBPOENA. IT COULD
11 BE. I DON'T KNOW ANYTHING ABOUT IT, BUT CONCEIVABLY SHE MIGHT
12 NOT EVEN BE A WITNESS IN THE CASE, BUT I'M NOT GOING TO
13 RELEASE HER UNTIL BOTH SIDES HAVE HAD A CHANCE TO TALK TO HER
14 AND THEN YOU MAY LET ME KNOW NOT LATER THAN 4:15 THIS
15 AFTERNOON.

16 Q. AND THEN MR. BLACKBURN MAKES THE STATEMENT THAT BEGINS ON
17 PAGE -- ON LINE 25. COULD YOU READ THAT AND THEN WE'LL TRY TO
18 SHOOT OVER TO PAGE 13.

19 A. MR. BLACKBURN: I MIGHT ASK COUNSEL, I KNOW YOU HAVE SAID
20 THAT I COULD SEE HER SHORTLY, BUT CAN YOU BE MORE SPECIFIC AS
21 TO WHEN SHORTLY MIGHT COME.

22 Q. AND WHAT DOES MR. SEGAL REPLY IN LINES THREE THROUGH
23 NINE?

24 A. MR. SEGAL: I NEED TO DEFINE A COUPLE OF MATTERS, MR.
25 BLACKBURN, BUT I WOULD SAY BY TWO O'CLOCK. I JUST WANT TO ADD

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1 FOR THE RECORD, YOUR HONOR, THE REQUEST IN REGARD TO WHETHER
2 MS. STOECKLEY SHOULD BE RELEASED OR NOT WAS THE REQUEST THAT I
3 CONVEYED AT HER INSTANCE. IT IS NOT NECESSARILY MY REQUEST,
4 YOUR HONOR.

5 Q. NOW, WHAT MR. SEGAL WAS PROPOSING WAS TO RELEASE HER FROM
6 CUSTODY AND PUT HER UNDER SUBPOENA, IS THAT RIGHT?

7 A. YES.

8 Q. AND THAT WOULD BE A SUBPOENA FROM THE DEFENSE?

9 A. YES.

10 Q. YOU WERE PUTTING ON YOUR CASE AT THIS TIME, IS THAT
11 RIGHT?

12 A. EXCUSE ME?

13 Q. THE DEFENSE WAS PUTTING ON THE DEFENSE CASE AT THE TIME?

14 A. WE WERE. YES, WE WERE.

15 Q. YOU WERE IN THE MIDST OF CALLING THE DEFENSE WITNESSES?

16 A. YES.

17 Q. THE PROSECUTION HAD ALREADY PUT ON ITS CASE FOR MANY
18 WEEKS?

19 A. YES.

20 Q. AND MR. MACDONALD WAS NOT AN INDIGENT DEFENDANT, IS THAT
21 RIGHT?

22 A. NO.

23 Q. HE DIDN'T HAVE APPOINTED COUNSEL?

24 A. NO.

25 Q. AND HE DIDN'T HAVE ACCESS TO COURT FUNDS TO PAY FOR

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1 THINGS LIKE WITNESSES --

2 A. NO.

3 Q. -- IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. HE WAS FUNDING HIS OWN DEFENSE?

6 A. HE WAS.

7 Q. HE WAS PAYING YOU AND MR. SEGAL?

8 A. HE WAS.

9 Q. AND IF YOU HAD TO SUBPOENA WITNESSES, HE HAD TO PAY FOR
10 THAT?

11 A. YES.

12 Q. AND WHEN YOU'RE A NON-INDIGENT DEFENDANT, WHEN YOU
13 SUBPOENA WITNESSES, YOU HAVE TO TENDER THEIR TRAVEL EXPENSES
14 AND WITNESS FEES, IS THAT CORRECT?

15 A. YES, SIR.

16 Q. SO, THAT'S WHAT WOULD HAVE HAD TO BE DONE IF MS.
17 STOECKLEY WAS RELEASED?

18 A. YES.

19 Q. NOW, MR. SEGAL SAYS THAT HE'S GOING TO DEFINE A COUPLE OF
20 MATTERS, BUT BY TWO O'CLOCK HE'LL CONCLUDE THE DEFENSE
21 INTERVIEW AND MAKE HER AVAILABLE TO THE PROSECUTION, IS THAT
22 HOW YOU READ IT?

23 A. THAT'S HOW I READ IT.

24 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

25 A. IT IS.

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1 Q. NOW, LET'S GO DOWN TO -- A FEW MORE LINES. LINE 14
2 THROUGH 18, PLEASE READ THAT ALOUD.

3 A. THE COURT: TAKE A RECESS UNTIL TOMORROW MORNING AT NINE
4 O'CLOCK. THE PROCEEDING WAS ADJOURNED AT 1:17 P.M., TO
5 RECONVENE AT NINE O'CLOCK ON FRIDAY, AUGUST 17, 1979.

6 Q. SO, COURT WAS OVER FOR THE DAY AT 1:17 P.M., IS THAT
7 RIGHT?

8 A. I THINK SO.

9 Q. AND DID MR. SEGAL AND YOU CONCLUDE YOUR INTERVIEW BY
10 APPROXIMATELY 2:00 P.M., AS FAR AS YOU RECALL?

11 A. I DO NOT REMEMBER PARTICIPATING IN THAT INTERVIEW AND IT
12 IS LIKELY THAT I DID, THOUGH, IT MAY BE THAT I HAD SOME OTHER
13 TASK BECAUSE I DON'T REMEMBER BEING IN THE ROOM THEN.

14 Q. OKAY. AND IS IT FAIR TO SAY THAT WHATEVER PORTION OF THE
15 INTERVIEW TOOK PLACE AFTER THIS COURT PROCEEDING, HELENA
16 STOECKLEY'S ANSWERS WERE NOT DIFFERENT THAN THEY HAD BEEN
17 BEFORE?

18 A. I DON'T THINK SO, NO.

19 Q. NOW, PRESUMABLY, SHE WAS TENDERED FOR A PROSECUTION
20 INTERVIEW AT THE CONCLUSION OF THE DEFENSE INTERVIEW?

21 A. YES.

22 Q. DO YOU KNOW -- THE U.S. ATTORNEY'S OFFICE IN THE FEDERAL
23 BUILDING IS ON THE EIGHTH FLOOR, IS THAT CORRECT?

24 A. IT IS.

25 Q. ONE FLOOR ABOVE THE SEVENTH FLOOR THAT WE HAD ON THE

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1 SCREEN A LITTLE WHILE AGO?

2 A. YES.

3 Q. YOU DON'T KNOW HOW MS. STOECKLEY GOT FROM THE SEVENTH
4 FLOOR TO THE EIGHTH FLOOR FOR A PROSECUTION INTERVIEW, DO YOU?

5 A. NO.

6 Q. AND YOU WERE NOT PRESENT DURING ANY PART OF THE
7 PROSECUTION INTERVIEW?

8 A. I WAS NOT.

9 Q. AND THERE WOULD BE NO NEED TO RETURN TO COURT THAT DAY --

10 A. NO.

11 Q. -- BECAUSE COURT HAD ADJOURNED, IS THAT RIGHT?

12 A. COURT WAS ADJOURNED.

13 Q. NOW, DO YOU RECALL BUMPING INTO JIM BLACKBURN LATER THAT
14 DAY IN THE FEDERAL BUILDING AFTER THE PROSECUTION INTERVIEW?

15 A. I DO.

16 Q. AND DO YOU RECALL THAT HE SAID WORDS TO THE EFFECT THAT
17 THE GOVERNMENT DIDN'T GET ANYTHING INTERESTING OUT OF MS.
18 STOECKLEY AND ASKING YOU THE SAME THING?

19 A. IT WAS A -- YES, I REMEMBER THAT VERY WELL. I REMEMBER
20 WHERE WE WERE STANDING. AND MR. BLACKBURN AND I OFTEN HAD
21 EXCHANGES LIKE THAT. I WAS VERY EAGER TO GAIN AS MUCH
22 INFORMATION AS I COULD.

23 Q. WHERE WERE YOU STANDING?

24 A. WE WERE STANDING AT THE EDGE OF THE COURTROOM. THERE WAS
25 A DOOR AND WE WERE STANDING ALMOST IN THAT DOORWAY AS I

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1 REMEMBER AND WE HAD A CONVERSATION THAT LASTED 15 SECONDS,
2 SOMEWHAT LIKE THAT.

3 Q. AND THE GIST OF THE CONVERSATION WAS THAT HE DIDN'T SEE
4 ANYTHING MEANINGFUL IN HIS INTERVIEW AND YOU SAID MUCH THE
5 SAME THING?

6 A. SOMEWHAT LIKE THAT, YES.

7 Q. DO YOU RECALL MAKING A STATEMENT IN 2006, THAT IF
8 STOECKLEY HAD CONFESSED IN THE DEFENSE INTERVIEW YOU WOULD
9 HAVE SKIPPED OUT OF THE ROOM?

10 A. I DON'T REMEMBER SAYING IT, BUT I PROBABLY WOULD HAVE.

11 Q. AND, IN FACT, YOU DID NOT SKIP OUT OF THE ROOM?

12 A. NO.

13 Q. MIGHT IT HAVE BEEN DANCED OUT OF THE ROOM?

14 A. I'M NOT MUCH OF A DANCER, I WOULD BE BETTER AT SKIPPING,
15 BUT ONE OR THE OTHER. THE POINT WOULD BE IS THAT I WOULD HAVE
16 BEEN VERY, VERY HAPPY.

17 Q. AND YOU DIDN'T SKIP OR DANCE OUT OF THE ROOM AFTER THE
18 DEFENSE INTERVIEW?

19 A. NO.

20 Q. AND THAT'S THE END OF HELENA STOECKLEY ON THURSDAY,
21 AUGUST 16TH, AS FAR AS YOU'RE CONCERNED. YOU DIDN'T SEE HER
22 AGAIN?

23 A. I THINK SO.

24 Q. SO, ON FRIDAY SHE TAKES THE STAND TO TESTIFY, IS THAT
25 CORRECT?

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1 A. I THINK THAT'S RIGHT.

2 Q. LET'S GO TO TRIAL DAY 21, PAGE SIX, PLEASE. DO YOU SEE
3 THAT ON THE SCREEN?

4 A. I DO.

5 Q. WOULD YOU READ LINES THREE THROUGH EIGHT SPOKEN BY MR.
6 BLACKBURN?

7 A. MR. BLACKBURN: THIS IS THE ONE, OF COURSE, WE ALL TALKED
8 TO YESTERDAY. I REMEMBER YOU TALKING ABOUT A VOIR DIRE. I
9 KNOW THAT WADE MENTIONED THIS MORNING THAT SHE HAD COMMENTED
10 ON THE NECESSITY OF WANTING AN ATTORNEY. I JUST WANTED TO BE
11 SURE BEFORE WE GOT STARTED HOW WE'RE GOING TO GO.

12 Q. SO, HE'S BRINGING UP THE ISSUE OF WHETHER OR NOT THERE'S
13 GOING TO BE AN ATTORNEY APPOINTED FOR HELENA STOECKLEY, IS
14 THAT RIGHT?

15 A. YES.

16 Q. AND THEN YOU REPLY IN LINES NINE THROUGH 12, AND PLEASE
17 READ THAT.

18 A. I THINK OUR POSITION, JUDGE -- OF COURSE, WE WILL DO
19 WHATEVER YOUR HONOR WISHES TO DO -- BUT I FEEL THAT WE WILL
20 JUST GO AHEAD WITH HER, IF WE CAN, AND SEE WHAT HAPPENS.

21 Q. AND APPARENTLY MR. BLACKBURN AND THE COURT ARE IN
22 AGREEMENT WITH THAT?

23 A. YES.

24 Q. SO, YOU'RE PROPOSING THAT THE TESTIMONY PROCEED WITHOUT
25 APPOINTING HER COUNSEL?

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1 A. YES.

2 Q. ALL RIGHT. NOW, IF WE'LL GO DOWN A FEW LINES, IT APPEARS
3 THAT SHE IS CALLED TO THE STAND AND IS IT TRUE THAT SHE BEGINS
4 HER DIRECT EXAMINATION, ACCORDING TO THE TRANSCRIPT, AT 9:03
5 A.M.?

6 A. YES.

7 Q. NOW, I'M NOT GOING TO TAKE YOU THROUGH EVERY LINE OF
8 THIS, BUT I WANT TO LOOK AT SOME OF PAGES 16 THROUGH 24.
9 LET'S GO TO TRIAL DAY 21, LINE 16. I'M SORRY, PAGE 16. I
10 DIDN'T MEAN TO SAY LINE 16. LET'S GO UP A LITTLE BIT, PLEASE.

11 DO YOU RECALL MR. SEGAL ASKING HER ABOUT HER DRUG
12 USE?

13 A. I DON'T HAVE AN INDEPENDENT RECOLLECTION OF IT, BUT I'M
14 SURE HE DID.

15 Q. ALL RIGHT. LET'S MAKE IT BIGGER FOR THE WHOLE PAGE.
16 LET'S START WITH LINE 12. BY THE WAY, DID MR. SEGAL HANDLE
17 THE EXAMINATION OF MS. STOECKLEY WHILE SHE WAS ON THE STAND
18 TESTIFYING FOR THE DEFENSE?

19 A. HE DID.

20 Q. AND THIS TESTIMONY WAS IN OPEN COURT BEFORE THE JURY, IS
21 THAT RIGHT?

22 A. YES.

23 Q. MS. STOECKLEY DID NOT TESTIFY OUT OF THE PRESENCE OF THE
24 JURY?

25 A. NO.

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1 Q. AND SHE WAS NOT PROHIBITED BY JUDGE DUPREE FROM
2 TESTIFYING?

3 A. NO.

4 Q. ALL RIGHT. AND WOULD YOU READ THE QUESTIONS AND ANSWERS
5 FROM MR. SEGAL AND MS. STOECKLEY STARTING ON LINE 12 AND GOING
6 DOWN TO LINE 21?

7 A. QUESTION: HOW OFTEN WOULD YOU SAY DURING THAT PERIOD
8 WERE YOU USING HEROIN? LET'S TALK ABOUT ON A DAILY OR WEEKLY
9 BASIS SO THAT WE CAN GET A BETTER FIX ON IT.

10 ANSWER: DURING THE DAY MAYBE SIX OR SEVEN TIMES.

11 QUESTION: YOU WOULD TAKE AN INTRAVENOUS INJECTION
12 OF HEROIN AND/OR OPIUM SIX OR SEVEN TIMES A DAY?

13 ANSWER: YES, SIR.

14 QUESTION: THAT WENT ON FOR HOW LONG? HOW LONG DID
15 YOU REMAIN ADDICTED TO THE USE OF HEROIN AND OPIUM?

16 ANSWER: OFF AND ON ABOUT NINE YEARS.

17 Q. NOW, LET'S SKIP OVER TO PAGE 22, AND IF YOU WOULD START
18 READING AT THE TOP, IT SAYS BY MR. SEGAL.

19 A. BY MR. SEGAL: QUESTION: DID YOU ALSO HAVE OCCASION TO
20 USE IN '69 OR '70 A DRUG KNOWN AS MESCALINE?

21 YES, SIR.

22 QUESTION: IS THAT ALSO ANOTHER HALLUCINOGEN LIKE
23 LSD?

24 ANSWER: IT IS MILDER.

25 QUESTION: IT IS A MILDER HALLUCINOGEN. DID YOU

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1 YOURSELF HAVE OCCASION TO USE IT IN '69 AND '70?

2 ANSWER: YES, SIR.

3 QUESTION: HOW OFTEN WOULD YOU SAY, MS. STOECKLEY,
4 YOU KNOW, YOU WOULD USE MESCALINE?

5 ANSWER: MAYBE TWICE A WEEK.

6 QUESTION: WHY WOULD YOU USE THAT AS OPPOSED TO LSD?
7 WAS THERE ANY DIFFERENCE? WOULD IT HAVE MADE A DIFFERENT
8 MEANING -- WOULD IT HAVE A DIFFERENT MEANING TO YOU?

9 ANSWER: I JUST DIDN'T LIKE LSD THAT MUCH. IT WAS
10 TOO HEAVY FOR ME. MESCALINE WAS A LOT EASIER.

11 QUESTION: WHEN YOU SAY THAT LSD WAS TOO HEAVY FOR
12 YOU, ARE YOU SAYING THAT THE EXPERIENCES THAT YOU HAD WHEN YOU
13 TOOK LSD WERE TOO DISTURBING OR UPSETTING, WOULD IT BE FAIR TO
14 SAY THAT?

15 ANSWER: I DIDN'T LIKE THE DRUG TAKING ME AND THAT'S
16 WHAT IT WOULD DO. WITH MESCALINE I COULD HANDLE IT USUALLY.

17 QUESTION: YOU SAY DRUG TAKING ME.

18 Q. THAT'S FAR ENOUGH, MR. SMITH. THANK YOU.

19 A. ALL RIGHT.

20 Q. NOW, LET'S -- IT SEEMS THAT MS. STOECKLEY HAS SOME
21 EXPERTISE IN ILLEGAL DRUGS?

22 A. YES, SHE HAD HAD SOME EXPERIENCE WITH IT.

23 Q. NOW, LET'S MOVE TO PAGE 46. LET'S LOOK AT LINE SIX.

24 A. ALL RIGHT.

25 Q. AND CAN YOU READ THAT THROUGH THE BOTTOM OF THE SCREEN?

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1 A. YES.

2 HAD YOU HAD ANY DRUGS DURING THE DAY OF FEBRUARY 16,
3 1970?

4 ANSWER: YES, SIR.

5 QUESTION: WOULD YOU TELL US, TO THE BEST OF YOUR
6 RECOLLECTION, MS. STOECKLEY, WHAT YOU HAD TAKEN -- WHAT TYPES
7 OF DRUGS YOU HAD TAKEN THAT DAY?

8 ANSWER: WELL, I HAD TAKEN FOR SURE THE OPIUM AND
9 THE HEROIN. I HAD SMOKED GRASS ALL DAY, AND THEN, WHEN GREG
10 LEFT, HE LEFT ME WITH A HIT OF MESCALINE WHICH I SWALLOWED
11 THERE AT THE CAR BEFORE HE BACKED OUT.

12 Q. ALL RIGHT. FEBRUARY 16TH, 1970, WAS THE DAY BEFORE THE
13 MACDONALD MURDERS AND BY THAT -- LET ME REPHRASE THAT
14 QUESTION. DID THE MACDONALD MURDERS OCCUR ON THE EARLY
15 MORNING HOURS OF FEBRUARY 17TH, 1970?

16 A. YES.

17 Q. IN THE MIDDLE OF THE NIGHT BASICALLY?

18 A. YES.

19 Q. AND SO THE DAY OF FEBRUARY 16TH, WOULD BE THE DAY
20 PRECEDING THE EVENING OF THE MURDERS?

21 A. YES.

22 Q. ALL RIGHT. LET'S GO ON TO TRIAL TRANSCRIPT DAY 21, PAGE
23 107. DO YOU SEE HERE THAT MR. SEGAL ASKS FOR A BENCH
24 CONFERENCE AT LINE TWO AND THREE?

25 A. I SEE IT.

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1 Q. AND BEGINNING AT LINE SIX -- READ LINES ALOUD, PLEASE,
2 SIX THROUGH 13.

3 A. AT THIS TIME, YOUR HONOR, I ASK FOR LEAVE OF COURT TO
4 TAKE THIS WITNESS AS ON CROSS, BECAUSE SHE IS A SURPRISE AND
5 HOSTILE WITNESS.

6 I REPRESENT TO THE COURT THAT DURING THE INTERVIEWS
7 WITH ME AND WITH OTHER PERSONS PRESENT SHE STATED THAT WHEN
8 SHE LOOKED AT THE PICTURES SHE HAD A RECOLLECTION OF STANDING
9 OVER A BODY HOLDING A CANDLE, SEEING A MAN'S BODY ON THE
10 FLOOR.

11 Q. LET'S MOVE DOWN AND KEEP READING.

12 A. I ALSO MAY SAY, YOUR HONOR, WE ARE NOW DOWN TO THE BOTTOM
13 FIVE OR SIX CRITICAL THINGS THAT SHE REVEALED YESTERDAY. I
14 HAVE A FEELING, BASED UPON HER ANSWER TO THIS ONE NOW, THAT
15 WHEN AND IF I ASK HER IN DIRECT FASHION, THAT I MAY GET
16 NEGATIVE ANSWERS.

17 I HAD NO ANTICIPATION OF THAT BECAUSE YESTERDAY
18 THROUGHOUT THE TIME THAT SHE MADE THESE STATEMENTS WE ACCEPTED
19 THEM, DID NOT EXPECT CONTRARY.

20 WE HAVE NOT HAD ANY DIFFERENT STATEMENTS FROM HER
21 AND WE FEEL THAT WE'RE ENTITLED TO A PLEA OF SURPRISE AS WELL
22 AS THE FACT, I THINK, AT THIS POINT THE EXTENT OF HER HOSTILE
23 RELATIONSHIP NOT IN TERMS OF MANNER BUT THE HOSTILITY OF HER
24 INTEREST TO THE DEFENDANT.

25 Q. OKAY. YOU CAN STOP. IT SEEMS THAT MR. SEGAL IS

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1 PROPOSING THAT HE BE ABLE TO QUESTION MS. STOECKLEY AS A
2 HOSTILE WITNESS --

3 A. YES.

4 Q. -- IS THAT RIGHT?

5 A. YES.

6 Q. AND THE EFFECT OF THIS WOULD BE TO BE ABLE TO ASK HER
7 LEADING QUESTIONS?

8 A. YES, THAT WOULD BE THE EFFECT.

9 Q. WHICH YOU WOULD NOT NORMALLY BE ABLE TO DO ON DIRECT
10 EXAMINATION?

11 A. CORRECT. YES, SIR.

12 Q. ALL RIGHT. LET'S MOVE DOWN AND START WITH LINE EIGHT.

13 A. SHE HAS ALREADY SAID SOMETHING, AND I DID NOT WANT TO
14 RAISE A SURPRISE QUESTION. I WANT TO DO IT ALL AT ONE TIME.
15 THE PHOTOGRAPH THAT I SHOWED HER OF THE BEDROOM OF KRISTEN
16 MACDONALD DURING THE INTERVIEW YESTERDAY SHE STATED THAT SHE
17 REMEMBERED RIDING THE ROCKING HORSE WHEN SHE LOOKED AT THAT
18 PICTURE.

19 Q. KEEP READING, PLEASE.

20 A. SHE ALSO STATED YESTERDAY SHE REMEMBERED STANDING AT THE
21 END OF THE SOFA HOLDING A CANDLE. SHE ALSO SAID WHEN SHE SAW
22 THE BODY OF KRISTEN MACDONALD, THE ONE WHEN SHE WAS CLOTHED
23 WITH THE BABY BOTTLE, THAT THAT PICTURE LOOKED FAMILIAR TO
24 HER. THAT SCENE LOOKED FAMILIAR.

25 SHE ALSO SAID WHEN SHE WAS SHOWN THE PHOTOGRAPH OF

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1 COLETTE MACDONALD, THE SAME ONE I SHOWED HER TODAY, THAT SHE
2 SAID THAT THE FACE IN THAT PICTURE LOOKED FAMILIAR, EXCEPT
3 THAT THE CHIN WAS BROKEN AND IT MADE IT A LITTLE HARD.

4 SHE ALSO STATED, AND I'M GOING TO GET TO IT --

5 Q. WE'RE ON TO PAGE 109.

6 A. -- SHE'S GOTTEN TO THE POINT WHERE SHE DOES NOT SOUND
7 LIKE SHE'S GOING TO COOPERATE FURTHER -- THAT SHE WAS STANDING
8 OFF THE CORNER OF HONEYCUTT ACROSS FROM MELONY VILLAGE.

9 Q. KEEP READING FIVE THROUGH TEN, PLEASE.

10 A. SHE HAS A RECOLLECTION OF STANDING THERE DURING THE EARLY
11 MORNING HOURS OF FEBRUARY 17, 1970. SHE FURTHER STATED
12 YESTERDAY, AND I INTEND TO ASK HER NOW, THAT SHE HAS A
13 RECOLLECTION OF STANDING OUTSIDE OF THE HOUSE LOOKING AT HER
14 HANDS AND SAYING, MY GOD, THE BLOOD; OH MY GOD, THE BLOOD.
15 SHE SAID THAT TOOK PLACE FEBRUARY 17, 1970.

16 THERE ARE WITNESSES TO EACH OF THESE THINGS. I MUST
17 SAY, YOUR HONOR, THERE WERE PERSONS PRESENT THE ENTIRE TIME
18 THIS TOOK PLACE.

19 I INTEND TO NOW ASK HER DIRECTLY EACH OF THESE
20 QUESTIONS. IF SHE REFUSES OR DENIES HER STATEMENTS I ASK FOR
21 LEAVE TO CONFRONT HER; DID YOU NOT SAY THAT YESTERDAY WHEN YOU
22 WERE CONFRONTED WITH THESE PHOTOGRAPHS OR PHOTOS?

23 IF SHE PERSISTS IN DENYING IT WE WILL OF COURSE
24 IMPEACH HER AS WE HAVE THE RIGHT TO IMPEACH HER UNDER THE
25 RULES. ALTHOUGH WE HAVE CALLED HER AS A WITNESS, THERE ARE

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1 RULES THAT PERMIT THAT TO BE DONE.

2 WHEN I AM DONE WITH THAT, I INTEND TO TURN HER OVER
3 FOR CROSS-EXAMINATION.

4 Q. OKAY. YOU CAN STOP READING.

5 A. ALL RIGHT.

6 Q. NOW, ON PAGE 110, AT THE TOP OF THE PAGE, THE VERY NEXT
7 COMMENT IS BY MR. BLACKBURN. PLEASE READ ONE THROUGH FOUR.

8 A. OF COURSE, I WAS NOT THERE WHEN SHE TALKED WITH THE
9 DEFENSE YESTERDAY, BUT IN HER INTERVIEW WITH THE GOVERNMENT
10 NONE OF THOSE STATEMENTS WERE MADE. SHE SPECIFICALLY TOLD
11 US -- AND THEN THE COURT INTERRUPTS, DID YOU ASK HER ANY?

12 MR. BLACKBURN: YES, SIR. SHE SPECIFICALLY TOLD US
13 THAT SHE HAD BEEN SHOWN THE PHOTOGRAPHS AND WE ASKED HER, DID
14 YOU RECOGNIZE ANY OF THE SCENES IN THOSE PHOTOGRAPHS? THE
15 ANSWER WAS NO.

16 I ASKED HER HAVE YOU EVER BEEN IN THAT HOUSE? SHE
17 SAID NO. I SAID DO YOU KNOW ANYTHING ABOUT THAT? NO. WHO DO
18 YOU THINK DID IT? DR. MACDONALD. YOU KNOW, IT'S JUST ONE
19 RIGHT AFTER THE OTHER.

20 I DISCUSSED -- I TOLD MR. SMITH LAST NIGHT WHAT SHE
21 TOLD US. I WAS UNDER THE IMPRESSION TO THIS VERY MOMENT THAT
22 WHAT SHE TOLD US WAS ESSENTIALLY WHAT SHE TOLD THEM.

23 Q. LET ME INTERRUPT YOU A MINUTE. IS THIS AN APPARENT
24 REFERENCE TO THE CONVERSATION WITH MR. BLACKBURN THAT YOU HAVE
25 PREVIOUSLY TESTIFIED ABOUT?

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1 A. I THINK SO, YES.

2 Q. ALL RIGHT. NOW, CONTINUE READING WITH LINE 20.

3 A. IT IS DIFFICULT FOR ME -- YOU KNOW, I AM NOT SAYING THAT
4 THEY ARE NOT SAYING WHAT SHE SAID. I JUST DON'T KNOW WHICH
5 WAY IT IS BECAUSE SHE HAS NOT INDICATED ANYTHING TO THE
6 GOVERNMENT.

7 Q. OKAY. NOW, YOU'RE THE NEXT SPEAKER?

8 A. YES.

9 Q. AND I WOULD LIKE FOR YOU TO READ LINES 24 AND 25 AND OVER
10 TO THE NEXT PAGE.

11 A. OKAY.

12 MR. SMITH: JUDGE, HERE I THINK IS WHERE WE ARE.
13 GENERALLY, SHE SAID TO US THE SAME THING AND THAT IS, I DON'T
14 REMEMBER. BUT IN TWO OR THREE OR FOUR INSTANCES, WHATEVER THE
15 LIST WOULD REVEAL, SHE SAYS SOMETHING WHICH WOULD GIVE AN
16 INTERESTING INSIGHT INTO HER MIND.

17 Q. ALL RIGHT. STOP RIGHT THERE. YOU'RE RESPONDING TO WHAT
18 MR. BLACKBURN HAS TOLD THE JUDGE ABOUT HIS UNDERSTANDING
19 HAVING TALKED TO YOU ABOUT THE TWO INTERVIEWS, IS THAT RIGHT?

20 A. YES.

21 Q. NOW, MR. SMITH, YOU HAVE A WELL DESERVED REPUTATION AS A
22 GENTLEMAN, DO YOU NOT?

23 A. I DON'T KNOW THE ANSWER TO THAT.

24 THE COURT: I DO.

25 THE WITNESS: THANK YOU.

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1 BY MR. BRUCE:

2 Q. ISN'T IT TRUE WHEN YOU MADE THIS STATEMENT TO JUDGE
3 DUPREE, WEREN'T YOU JUST TOO MUCH OF A GENTLEMAN TO SAY IT
4 OUTRIGHT THAT BERNIE SEGAL WAS EXAGGERATING WHAT HAD GONE ON
5 IN THE DEFENSE INTERVIEW?

6 A. I HAVE NOT READ MUCH OF THE TRANSCRIPT. I HAVE READ
7 THIS. AND I HAVE PUZZLED AND PUZZLED AND PUZZLED AND I
8 PUZZLED INTO THE NIGHT LAST NIGHT ABOUT WHAT I COULD HAVE
9 MEANT. AND AS YOU CAN SEE, MY WORDS ARE VERY VAGUE. I SAID
10 IT WOULD GIVE AN INTERESTING INSIGHT INTO HER MIND.

11 Q. AN INTERESTING INSIGHT INTO HER MIND IS NOT A CONFESSION,
12 IS IT, MR. SMITH?

13 A. IT WAS -- IT WAS CERTAINLY -- LET ME JUST PUT IT THIS
14 WAY, I WAS ABSOLUTELY DEVOTED TO THIS CASE AND UPHELD MY ROLE
15 AS COUNSEL AND I'M STILL DEVOTED TO THIS CASE, BUT I DID NOT
16 HEAR HELENA STOECKLEY SAY USEFUL THINGS FOR US. IT IS
17 CERTAINLY POSSIBLE. AND I MENTIONED WHILE AGO, MAYBE I WAS
18 OUT OF THE ROOM. I DO NOT KNOW THE ANSWER. BUT I CAN ONLY
19 SPEAK FOR MYSELF AND THAT IS THAT WHEN I WAS PRESENT SHE DID
20 NOT SAY THINGS THAT HELPED US.

21 Q. OKAY. LET'S MOVE ON DOWN TO -- WELL, JUST FOR
22 COMPLETENESS GO AHEAD AND READ WHAT YOU SAID AT LINES FIVE
23 THROUGH EIGHT.

24 A. I WOULD SUBMIT THAT WE HAVE A RIGHT TO CROSS HER ON
25 THOSE. IF SHE DENIES THEM, THEN THEY HAVE A RIGHT TO IMPEACH

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1 HER ON THE STATEMENTS OR SHOW THAT SHE DID NOT SAY ANYTHING
2 LIKE THAT.

3 Q. ALL RIGHT. AND THE COURT RESPONDS AT NINE THROUGH 12.

4 A. I'M NOT GOING TO CROSS THE HOSTILITY THING UNTIL THERE IS
5 A REASON SHOWN TO INDICATE IT, BUT I'M GOING TO ASK THE
6 WITNESS A QUESTION MYSELF.

7 Q. ALL RIGHT. SO, IT APPEARS THAT JUDGE DUPREE IS SAYING
8 THAT HE IS NOT GOING TO RULE ON MR. SEGAL'S REQUEST TO
9 QUESTION HER AS A HOSTILE WITNESS, IS THAT RIGHT?

10 A. YES.

11 Q. BUT HE WANTS TO QUESTION THE WITNESS HIMSELF?

12 A. YES.

13 Q. AND THAT'S PERMITTED UNDER THE RULES, JUDGES CAN ASK
14 QUESTIONS OF A WITNESS? I BELIEVE JUDGE FOX HAS ALREADY ASKED
15 A QUESTION OF YOU TODAY.

16 A. INDEED, IT IS.

17 Q. NOW, START READING WITH LINE 14, PLEASE.

18 A. THE COURT: MS. STOECKLEY, HOW LONG DID YOU SPEND
19 YESTERDAY TALKING TO DEFENSE COUNSEL IN THIS CASE, MR. SEGAL,
20 MR. SMITH AND OTHERS?

21 THE WITNESS: ABOUT THREE AND A HALF TO FOUR HOURS.

22 THE COURT: DID YOU THEREAFTER TALK TO THE
23 GOVERNMENT'S ATTORNEYS?

24 THE WITNESS: YES, SIR.

25 THE COURT: HAD YOU EVER SEEN THEM AND TALKED TO

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1 THEM BEFORE?

2 THE WITNESS: NO, SIR. ONE MEMBER I HAD BEFORE.

3 Q. KEEP READING AT THE TOP OF PAGE 112, PLEASE.

4 A. THE COURT: NOW, DID YOU TELL BOTH SIDES THE SAME STORY?

5 THE WITNESS: AS FAR AS I KNOW, YES, SIR.

6 THE COURT: ALL RIGHT, THAT WAS THE QUESTION I WAS
7 GOING TO ASK.

8 Q. SO, THE WITNESS, HELENA STOECKLEY, TESTIFIED THAT SHE
9 TOLD BOTH SIDES THE SAME STORY IN THE TWO INTERVIEWS THE
10 PREVIOUS DAY?

11 A. YES.

12 Q. AND THAT'S CONSISTENT WITH YOUR DISCUSSION WITH JIM
13 BLACKBURN AFTER BOTH INTERVIEWS ON THE PREVIOUS DAY?

14 A. YES.

15 Q. ALL RIGHT. NOW, LET'S MOVE ON TO PAGE 118. WELL, LET ME
16 ASK A MORE GENERAL QUESTION BEFORE WE LOOK AT ANY MORE
17 SPECIFIC EXCERPTS.

18 AS THE DIRECT EXAMINATION CONTINUED OF HELENA
19 STOECKLEY, IS IT FAIR TO SAY THAT SHE NEVER ADMITTED TO SAYING
20 THE THINGS ON WEDNESDAY THAT SEGAL WAS SAYING SHE HAD SAID?

21 A. THAT'S FAIR TO SAY.

22 Q. LET'S MOVE ON TO PAGE 118. WE'RE ALREADY THERE. OKAY.
23 START READING AT THE TOP OF THE PAGE.

24 A. MS. STOECKLEY, I'M GOING TO PUT HERE ON THE EASEL SO THAT
25 THE MEMBERS OF THE JURY CAN ALSO LOOK WITH YOU THE FIRST OF

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1 TWO PHOTOGRAPHS OR PHOTOS. ONE IS AN ENLARGEMENT MARKED G-
2 982. THEN THE OTHER IS MARKED G-145(a). CAN I IMPOSE UPON
3 YOU, PLEASE, TO PERHAPS STEP DOWN HERE NEXT TO THE WITNESS
4 STAND, LOOK AT THE PHOTOGRAPH AND TELL ME, HOW DOES IT APPEAR
5 TO BE BROKEN IN ANY FASHION. ANSWER --

6 Q. AND WHAT'S HER ANSWER?

7 A. ANSWER: THE PART GOING TO THE SPRING.

8 QUESTION: THAT LOOKS BROKEN TO YOU, IS THAT RIGHT?

9 WITNESS NODS AFFIRMATIVELY.

10 Q. SO, IT APPEARS HERE THAT MS. STOECKLEY IS TESTIFYING THAT
11 THE HOBBY HORSE LOOKS BROKEN IN THE PHOTOGRAPH?

12 A. YES.

13 THE COURT: MR. BRUCE, I THINK WE'LL STOP FOR OUR
14 LUNCHEON RECESS. WE'LL START BACK AT 1:30. TAKE A RECESS
15 TILL 1:30.

16 (LUNCHEON RECESS FROM 12:01 P.M., UNTIL 1:32 P.M.)

17 (DEFENDANT PRESENT.)

18 THE COURT: PLEASE BE SEATED. GOOD AFTERNOON,
19 EVERYONE. PLEASE BE SEATED.

20 MR. WIDENHOUSE, MAY I SEE YOU AND MR. WILLIAMS AT
21 THE BENCH, PLEASE? MAY I SEE YOU AT THE BENCH?

22 (BENCH CONFERENCE ON THE RECORD.)

23 THE COURT: I WANT TO UNDERSTAND WHAT KIND OF
24 EQUIPMENT YOU'VE GOT HERE THAT'S WIRELESS COMMUNICATION.

25 MR. WILLIAMS: YES, SIR, I WAS REMINDED OF THAT OVER

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1 THE LUNCH HOUR.

2 THE COURT: DID YOU READ THE ORDER? DID YOU READ
3 OUR ORDER?

4 MR. WILLIAMS: YES, SIR.

5 THE COURT: DOESN'T IT REFER TO WIRELESS
6 COMMUNICATIONS?

7 MR. WILLIAMS: YES, SIR, I THOUGHT I WAS AN EXEMPT
8 PERSON AND I FAILED TO BRING THAT TO THE ATTENTION OF THE
9 COURT EARLIER UNFORTUNATELY. I VERY SINCERELY APOLOGIZE, YOUR
10 HONOR.

11 THE COURT: WHAT ARE YOU USING IT FOR?

12 MR. WILLIAMS: I HAD MY WESTLAW SO I COULD LOOK AT
13 THE STATUTES AS PART OF THE LEGAL RESEARCH AND I HAD NO OTHER
14 COMMUNICATION OF ANY SORT AND I CAN TURN THAT OFF IF NEED BE.

15 THE COURT: WELL, I THINK THAT'S PERFECTLY ALL RIGHT
16 AS FAR AS LOOKING AT WESTLAW, BUT YOU'RE NOT COMMUNICATING
17 WITH ANYONE?

18 MR. WILLIAMS: NO, SIR.

19 MS. FAULK: DOES ANYONE ELSE HAVE THE PASSWORD TO
20 YOUR WIFI?

21 MR. WILLIAMS: NO. MY WIFE -- MY FAMILY MIGHT, BUT
22 THEY'RE NOT HERE. YOUR HONOR, I DO APOLOGIZE. I SHOULD HAVE
23 BROUGHT THAT TO THE COURT'S ATTENTION THIS MORNING, BUT WITH
24 THE RUSH OF EVERYTHING THIS MORNING IT JUST DIDN'T OCCUR TO
25 ME.

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1 THE COURT: THAT'S ALL RIGHT. I DON'T MIND YOU
2 USING IT TO CONTACT WESTLAW, BUT I DON'T WANT COMMUNICATIONS
3 WITH OTHER PEOPLE OUTSIDE THE BUILDING.

4 MR. WILLIAMS: YES, SIR. I HAVE NOT BEEN
5 COMMUNICATING WITH ANYONE, YOUR HONOR.

6 THE COURT: THANK YOU. WE'LL CONTINUE.

7 (BENCH CONFERENCE CONCLUDED.)

8 THE COURT: MR. SMITH, YOU'RE STILL UNDER OATH, OF
9 COURSE. MR. BRUCE, THE WITNESS IS WITH YOU.

10 MR. BRUCE: THANK YOU, YOUR HONOR.

11 BY MR. BRUCE:

12 Q. MR. SMITH, BEFORE WE GET STARTED WITH OTHER QUESTIONS,
13 YOU WERE MR. MACDONALD'S LAWYER, IS THAT RIGHT?

14 A. ONE OF THEM, YES.

15 Q. AND THIS IS NOT EASY FOR YOU TESTIFYING IN A PROCEEDING
16 INVOLVING HIM, IS IT?

17 THE COURT: I'M SORRY, WHAT WAS YOUR QUESTION?

18 BY MR. BRUCE:

19 Q. THIS IS NOT EASY FOR YOU TESTIFYING IN A PROCEEDING
20 INVOLVING HIM, IS IT?

21 A. IT DOES CAUSE ME TO STRUGGLE A LITTLE BECAUSE I HAVE -- I
22 HAD AN OBLIGATION TO HIM AS AN ADVOCATE AND I DO WANT TO
23 CONTINUE IN EVERY WAY THAT I CAN TO UPHOLD THE
24 RESPONSIBILITIES THAT I HAD, YES, INDEED.

25 Q. ALL RIGHT. WHEN WE BROKE FOR LUNCH, WE WERE TALKING

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1 ABOUT THE DIRECT EXAMINATION OF HELENA STOECKLEY IN THE TRIAL,
2 DO YOU RECALL THAT?

3 A. YES.

4 Q. AND, AGAIN, THIS WAS BEFORE THE JURY IN OPEN COURT, IS
5 THAT RIGHT?

6 A. YES.

7 Q. AND IT'S TRUE THAT THERE WAS NEVER ANY INSTRUCTION FROM
8 JUDGE DUPREE TO THE JURY TO DISREGARD OR DISCOUNT HER
9 TESTIMONY?

10 A. I DIDN'T HEAR ANYTHING LIKE THAT.

11 Q. NOW, I WANT TO DIRECT YOUR ATTENTION TO SOME MORE
12 TRANSCRIPT REFERENCES. LET'S LOOK AT TRIAL DAY 21, WHICH IS
13 FRIDAY, AUGUST 17TH, AT PAGE 121.

14 A. ALL RIGHT. I'M LOOKING AT THAT.

15 Q. ALL RIGHT. DO YOU SEE -- WOULD YOU READ STARTING BY MR.
16 SEGAL AT LINE THREE?

17 A. ALL RIGHT. SHALL I READ THAT?

18 Q. YES, READ THE QUESTION. YOU CAN SKIP THE OBJECTION AND
19 THEN GO ON.

20 A. DID YOU NOT SAY YESTERDAY WHEN YOU WERE SITTING IN THE
21 WITNESS ROOM THAT YOU RECALLED STANDING OUTSIDE ON FEBRUARY
22 17, IN THE EARLY MORNING HOURS IN THE RAIN AND LOOKING AT YOUR
23 HANDS?

24 THERE WAS AN OBJECTION. IT WAS OVERRULED.

25 AND THEN MR. SEGAL SAYS, DO YOU NOT RECALL SAYING

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1 THAT? AND THE ANSWER WAS NO, SIR.

2 SHALL I READ ON?

3 Q. YOU CAN KEEP READING TO LINE 12.

4 A. DO YOU RECALL LOOKING AT YOUR HANDS AT ANY TIME ON
5 FEBRUARY THE 17TH, 1970, IN THE EARLY MORNING HOURS?

6 ANSWER: NOT ON THAT DAY, NO.

7 QUESTION: WELL, I'M CONCERNED ABOUT THAT EARLY
8 MORNING.

9 ANSWER: NO, SIR.

10 QUESTION: DID YOU NOT SAY YESTERDAY WHEN YOU WERE
11 IN THE WITNESS ROOM THAT YOU HAD A RECOLLECTION OF LOOKING AT
12 YOUR HANDS AND SEEING SOMETHING ON THEM? DO YOU RECALL THAT?

13 Q. MOVE IT ON DOWN, PLEASE, AND GO TO PAGE 123.

14 A. THE ANSWER IS NO, SIR.

15 QUESTION: TO MR. UNDERHILL YESTERDAY?

16 QUESTION -- I MEAN ANSWER, NO, SIR.

17 QUESTION: WERE YOU ON THE CORNER OF HONEYCUTT AND
18 LUCAS NEAR MELONY VILLAGE ON THE MORNING OF FEBRUARY 17TH,
19 1970?

20 ANSWER: NOT THAT I KNOW OF.

21 QUESTION: DO YOU RECALL BEING ASKED ABOUT THAT
22 YESTERDAY?

23 YES, SIR.

24 DO YOU RECALL WHAT YOU SAID ABOUT THAT YESTERDAY?

25 ANSWER: I SAID I HAD BEEN ON THAT CORNER BEFORE,

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1 BUT I COULDN'T HAVE BEEN THERE THAT MORNING.

2 Q. THAT'S FINE. THANK YOU. DO YOU RECALL THE QUESTIONS AND
3 ANSWERS GOING LIKE THIS DURING THE DIRECT EXAMINATION OF
4 HELENA STOECKLEY?

5 A. IT'S VAGUE FOR ME, BUT I DO SOMEWHAT REMEMBER IT.

6 Q. LET'S MOVE TO PAGE 125 AND JUST START WITH HER ANSWER ON
7 LINE FOUR.

8 A. SHALL I READ IT?

9 Q. YES, PLEASE.

10 A. ANSWER: I SAID THE SOFA LOOKED FAMILIAR, BUT I'VE SEEN A
11 LOT OF SOFAS THAT LOOK LIKE THAT.

12 QUESTION: DO YOU RECALL SAYING SOMETHING ABOUT
13 SEEING A BODY THERE?

14 ANSWER: I SAID THERE WAS NOTHING ON THERE.

15 QUESTION: DO YOU RECALL YESTERDAY SAYING IN THE
16 WITNESS ROOM YOU RECALLED SEEING A BODY THERE ON THE SOFA OR
17 ON THE FLOOR WHEN YOU WERE HOLDING A CANDLE; DO YOU RECALL
18 MAKING THAT STATEMENT?

19 ANSWER: THAT WAS ONLY LIKE IN A DREAM OR SOMETHING
20 LIKE THAT.

21 Q. OKAY. THAT WAS ONLY LIKE IN A DREAM OR SOMETHING LIKE
22 THAT, IS THAT WHAT YOU REFERRED TO EARLIER AS AN INTERESTING
23 INSIGHT INTO HER MIND?

24 A. I'M NOT SURE. IT COULD VERY WELL BE.

25 Q. ALL RIGHT. NOW, AFTER DIRECT EXAMINATION, OF COURSE, THE

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1 GOVERNMENT CROSS-EXAMINED MS. STOECKLEY, IS THAT RIGHT?

2 A. YES.

3 Q. LET'S GO TO TRIAL DAY 21, PAGE 141, AND IF YOU WOULD
4 START READING AT LINE 19.

5 A. ALL RIGHT. TO YOUR OWN KNOWLEDGE, DID YOU PARTICIPATE IN
6 THE KILLINGS OF THE MACDONALD FAMILY?

7 ANSWER: NO, SIR.

8 QUESTION: HOW DO YOU FEEL TOWARDS CHILDREN?

9 ANSWER: I LOVE CHILDREN.

10 QUESTION: OF YOUR OWN PERSONAL KNOWLEDGE, DID YOU
11 KILL COLETTE MACDONALD?

12 Q. KEEP READING TO LINE 12 ON THE NEXT PAGE, IF YOU WILL.

13 A. ANSWER: NO, SIR.

14 QUESTION: HOW ABOUT KRISTEN?

15 ANSWER: NO, SIR.

16 HOW ABOUT KIMBERLEY?

17 ANSWER: NO, SIR.

18 DID YOU TRY TO KILL DR. MACDONALD?

19 ANSWER: NO, SIR.

20 DO YOU KNOW WHO DID?

21 ANSWER: NO, SIR.

22 QUESTION: DO YOU RECALL EVER BEING IN THE MACDONALD
23 APARTMENT CARRYING A CANDLE?

24 ANSWER: NO, SIR.

25 Q. ALL RIGHT. NOW, LET'S MOVE TO PAGE 163, AND YOU'LL SEE

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1 THAT MR. BLACKBURN IS RESUMING -- SEE AT 12 AND 13 WHERE IT
2 SAYS CROSS-EXAMINATION RESUMED?

3 A. YES.

4 Q. OKAY. LOOK AT -- LET'S GO TO THE NEXT PAGE ACTUALLY. I
5 JUST WANTED TO ORIENT YOU. LET'S GO TO PAGE 164 AND READ
6 LINES 12 THROUGH 19, PLEASE.

7 A. NOW, WHEN YOU CAME HOME AT ABOUT 4:30 OR FIVE O'CLOCK
8 THAT MORNING ON THE 17TH, YOU GOT OUT OF THE CAR, YOU RECALL
9 THAT?

10 ANSWER: YES, SIR.

11 QUESTION: DID YOU SEE ANY BLOOD ON YOUR HANDS?

12 ANSWER: NO, SIR.

13 QUESTION: DID YOU SEE ANY BLOOD ON YOUR CLOTHES?

14 ANSWER: NO, SIR.

15 Q. AND THEN MR. BLACKBURN SAYS NO FURTHER QUESTIONS?

16 A. YES.

17 Q. AND SO THAT -- THERE MAY HAVE BEEN SOME REDIRECT, BUT
18 AFTER THAT THE TESTIMONY WAS CONCLUDED, IS THAT RIGHT?

19 A. YES.

20 Q. ALL RIGHT. LET'S LOOK AT PAGE 179 OF THIS SAME DAY. IF
21 YOU'D LOOK AT LINE 13, WOULD YOU READ WHAT MR. SEGAL IS
22 SAYING?

23 A. YES.

24 YOUR HONOR, MS. STOECKLEY HAS BEEN PRESENT IN THE
25 COURT PURSUANT TO A WARRANT OF ARREST ISSUED FOR HER AS A

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1 MATERIAL WITNESS IN THIS MATTER AFTER I HAD FILED AN AFFIDAVIT
2 WITH THIS COURT AND MADE AN ORAL MOTION IN THAT REGARD.

3 I BELIEVE AT THIS TIME, IT IS APPROPRIATE TO
4 DISCHARGE THE WARRANT OF ARREST. IT WOULD EXPIRE, I THINK,
5 THIS EVENING ANYWAY.

6 HOWEVER, BECAUSE IT IS NOT CERTAIN IN MY MIND THAT
7 MS. STOECKLEY'S TESTIMONY MAY NOT BE NEEDED FURTHER IN THIS
8 CASE, AT THIS TIME I'M GOING TO TENDER HER A SUBPOENA AS A
9 WITNESS, A SUBPOENA TO BE HERE AT TWO O'CLOCK THIS AFTERNOON.

10 I WILL ASK THAT THEREAFTER SHE CAN BE EXCUSED AND I
11 WILL JUST MAKE ARRANGEMENTS TO LOCATE HER.

12 Q. IF YOU WOULD JUST KEEP READING.

13 A. I'M ALSO GOING TO TENDER HER THE STATUTORY WITNESS FEES
14 IN THAT REGARD. MY REQUEST OF THE COURT, THOUGH, IN VIEW OF
15 THE FACT THAT MS. STOECKLEY HAS FRANKLY STATED THAT SHE DID
16 NOT WANT TO BE HERE AND THAT SHE WAS SO DIFFICULT TO LOCATE, I
17 WOULD ASK THE COURT TO ADVISE MS. STOECKLEY OF THE IMPORTANCE
18 OF HONORING THE SUBPOENA AND THE FACT THAT THE COURT DOES
19 FULLY EXPECT HER TO RETURN HERE AS NEEDED PURSUANT TO THE
20 SUBPOENA.

21 Q. AND WE'LL SCROLL DOWN AND IF YOU'LL PLEASE READ WHAT THE
22 COURT ADVISES HER STARTING AT LINE 11.

23 A. THE COURT: WELL, I WILL SAY TO THE WITNESS, MS.
24 STOECKLEY, FIRST OF ALL, I HOPE YOU WILL UNDERSTAND THAT THE
25 COURT, WHEN CALLED UPON TO DO SO IN A CASE OF A WITNESS WHO IS

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1 APPARENTLY RELUCTANT TO COME TO COURT OR IS EVADING PROCESS OF
2 THE COURT, HAD TO, IN THIS INSTANCE, TAKE SOME NECESSARY
3 ACTION TO INSURE YOUR PRESENCE HERE.

4 READ ON?

5 Q. PLEASE READ ON.

6 A. INsofar AS THE COURT IS CONCERNED, OF COURSE, YOU HAVE
7 DISCHARGED THAT DUTY AND YOU WILL BE FREE FROM FURTHER ARREST
8 AT THIS TIME.

9 WHAT COUNSEL IS TELLING YOU, THOUGH, IS THAT
10 CONCEIVABLY HE MIGHT WANT YOU TO TESTIFY FURTHER AT SOME LATER
11 TIME IN THE TRIAL, AND IN THAT EVENT, HE IS SERVING YOU WITH A
12 SUBPOENA AT THIS TIME FOR YOUR CONTINUED APPEARANCE OR AT SUCH
13 TIME AS HE WILL LET YOU KNOW. OF COURSE, THAT IS THE --

14 Q. GOING TO THE NEXT PAGE.

15 A. -- PROCESS OF THE COURT AND FAILURE TO COMPLY WITH IT
16 COULD RESULT IN SANCTIONS OF ONE KIND OR ANOTHER AGAINST YOU,
17 SO YOU WILL UNDERSTAND THAT.

18 I AM SURE THAT COUNSEL WILL NOT CALL YOU UNLESS HE
19 FEELS THAT IT IS ESSENTIAL TO THE DEFENSE OF HIS CLIENT, BUT
20 IF HE DOES, OF COURSE, YOU WILL BE EXPECTED TO COMPLY.

21 Q. AND MR. SEGAL REPLIES?

22 A. MR. SEGAL: IS THAT CLEAR, MS. STOECKLEY?

23 MS. STOECKLEY: YES, SIR.

24 MR. SEGAL: DO WE HAVE YOUR WORD THAT YOU WILL
25 APPEAR AS REQUIRED?

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1 MS. STOECKLEY: YES, SIR.

2 MR. SEGAL: THANK YOU, YOUR HONOR.

3 Q. ALL RIGHT. SO, JUDGE DUPREE HAS DONE AS THE DEFENSE HAS
4 REQUESTED, RELEASED HER, AND NOW SHE'S UNDER SUBPOENA?

5 A. YES.

6 Q. AND FROM THAT POINT FORWARD, SHE IS THE FINANCIAL
7 RESPONSIBILITY OF THE DEFENSE TEAM, IS THAT RIGHT?

8 A. AS I UNDERSTAND IT, YES.

9 Q. AND YET SHE'D BE UNDER SUBPOENA AND SUBJECT TO RECALL AS
10 A WITNESS IF THE DEFENSE DECIDES TO RECALL HER?

11 A. YES.

12 Q. AND THE NEXT THING THAT THE JUDGE SAYS STARTING AT LINE
13 14, IS HE'S GOING TO GIVE YOU SOME TIME TO DO VOIR DIRE
14 EXAMINATION, IS THAT RIGHT?

15 A. YES.

16 Q. AND WHAT HE DID WAS GIVE YOU TIME TO DO VOIR DIRE
17 EXAMINATION OF WHAT SOME PEOPLE CALLED THE STOECKLEY
18 WITNESSES, IS THAT RIGHT?

19 A. YES.

20 Q. AND YOU WERE PUTTING UP THESE WITNESSES OUT OF THE
21 PRESENCE OF THE JURY TO TESTIFY TO STATEMENTS THAT HELENA
22 STOECKLEY HAD MADE TO THEM OUT OF COURT?

23 A. THAT'S RIGHT.

24 Q. AND YOUR HOPE WAS THAT THEY WOULD BE PERMITTED TO TESTIFY
25 TO STATEMENTS THAT SHE HAD MADE AT SOME PRIOR TIME OUT OF

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1 COURT ADMITTING SOME PRESENCE AT THE MACDONALD HOME?

2 A. BEFORE THE JURY, YES.

3 Q. AND YOU WANTED THAT TO HAPPEN BEFORE THE JURY --

4 A. YES.

5 Q. -- IS THAT RIGHT?

6 A. YES.

7 Q. BUT FIRST IT HAD TO BE DONE ON VOIR DIRE SO THE JUDGE
8 COULD MAKE HIS DECISION, IS THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. PAGE 244 -- I'M SORRY, IT'S 244 OF TRIAL DAY 21. YOU'RE
11 PUTTING UP THE VOIR DIRE TESTIMONY OF WILLIAM EDWARD POSEY, IS
12 THAT RIGHT?

13 A. YES.

14 Q. OKAY. I WANT TO SKIP FORWARD IN HIS TESTIMONY TO PAGE
15 253 AND STARTING AT LINE FOUR WOULD YOU READ DOWN TO LINE 16?

16 A. QUESTION: NOW, DID SHE EVER TALK TO YOU ABOUT SEEING
17 ANYTHING INSIDE OF ANY OF THE BEDROOMS IN THAT HOUSE?

18 ANSWER: SHE SAID THAT THERE WAS A KID'S HORSE
19 THING, BUT IT WOULDN'T -- IT WOULDN'T ROLL. IT WOULD JUST
20 STAY STILL. IT WOULDN'T ROLL, YOU KNOW.

21 QUESTION: IT WAS A HOBBY HORSE THING?

22 ANSWER: YEAH, LIKE, YOU KNOW, LIKE A LITTLE KID
23 HAS, YOU KNOW.

24 QUESTION: YES. WHAT DID SHE SAY ABOUT THAT?

25 ANSWER: IT WOULDN'T MOVE, YOU KNOW, IT WOULDN'T --

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1 QUESTION: ROCK?

2 ANSWER: NO. IT WOULDN'T ROLL, YOU KNOW, IT WAS
3 BROKE OR SOMETHING, IT WOULDN'T MOVE.

4 Q. SO, THIS IS MR. POSEY'S TESTIMONY ABOUT WHAT HELENA
5 STOECKLEY TOLD HIM ABOUT A HOBBY HORSE IN THE MACDONALD HOME,
6 IS THAT RIGHT?

7 A. YES.

8 Q. NOW, LET'S GO TO TRIAL DAY 22 AT PAGE 150. NOW, BEFORE I
9 GET TO THAT -- WELL, THIS TRIAL DAY 22 IS MONDAY, AUGUST 20TH.
10 21 HAVING BEEN FRIDAY.

11 A. YES.

12 Q. DOES THAT MAKE SENSE TO YOU?

13 A. YES.

14 Q. ALL RIGHT. LOOKING AT PAGE 150, READ LINES EIGHT THROUGH
15 11, OR WE MIGHT BETTER START IT UP AT LINE FOUR ACTUALLY WHERE
16 MR. SEGAL STARTS TALKING.

17 A. MR. SEGAL: I WANT TO FIRST MAKE A REPRESENTATION TO THE
18 COURT IN REGARD TO THE CIRCUMSTANCES UNDER WHICH MRS. ROUDER
19 SAW MS. STOECKLEY.

20 AT THE CONCLUSION OF HER TESTIMONY ON FRIDAY, YOUR
21 HONOR, AT THAT TIME, YOU MAY RECALL, I SERVED THE WITNESS A
22 SUBPOENA AND I HANDED HER A CHECK FOR WITNESS FEES IN
23 ACCORDANCE WITH THE STATUTES AND TOLD HER TO BE BACK HERE ON
24 MONDAY IN THIS COURTROOM.

25 Q. STOP RIGHT THERE. SO, THAT'S AGAIN HOW MRS. STOECKLEY

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1 WAS BEING COMPENSATED FOR HER WITNESS APPEARANCE, IS THAT
2 RIGHT?

3 A. YES.

4 Q. NOW, THAT SHE'S NO LONGER IN CUSTODY, RIGHT?

5 A. YES.

6 Q. ALL RIGHT. GO AHEAD READING AT LINE 12.

7 A. I MADE NO OTHER ARRANGEMENTS WITH HER TO CONTACT HER TO
8 SEE HER, DID NOT ASK HER WHERE SHE WAS GOING, WHERE SHE WAS
9 GOING TO STAY. MY INTEREST WAS THEN WHAT IT IS NOW, HER
10 POTENTIAL TESTIMONY AS A WITNESS UNDER CIRCUMSTANCES WHICH
11 WOULD BE INAPPROPRIATE. SHE LEFT HERE AND I HAD NO KNOWLEDGE
12 OF WHERE SHE WAS -- WHERE SHE WAS GOING.

13 I RECEIVED A TELEPHONE CALL, HOWEVER, ON FRIDAY
14 EVENING FROM MS. STOECKLEY IN WHICH SHE CALLED ME TO TELL ME
15 WHERE SHE WAS STAYING. SHE SAID THAT SHE HAD CHECKED INTO THE
16 DOWNTOWNER MOTEL.

17 AT THAT TIME I SAID TO HER THAT I WAS SURPRISED SHE
18 HAD GONE THERE AND THAT WOULD INAPPROPRIATE TO STAY THERE
19 BECAUSE ALL OF THE DEFENSE WITNESSES AND THE DEFENSE LAWYERS
20 WERE GOING TO MOVE THE NEXT DAY TO THAT MOTEL.

21 OUR LEASE AT THE PLACE WHERE WE HAD BEEN STAYING
22 THROUGHOUT THE SUMMER HAD EXPIRED AND WE HAD MADE, SOME WEEKS
23 AGO, ARRANGEMENTS TO STAY AT THE HOTEL.

24 Q. ALL RIGHT. MR. SMITH, LET ME ASK YOU, THE DEFENSE TEAM
25 HAD ARRANGED TO STAY DURING THE TRIAL AT A FRATERNITY HOUSE AT

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1 N.C. STATE?

2 A. YES.

3 Q. AND SO MR. SEGAL WAS STAYING THERE?

4 A. YES.

5 Q. AND MR. MACDONALD?

6 A. YES.

7 Q. BECAUSE MR. MACDONALD WAS NOT IN CUSTODY DURING THE
8 TRIAL, RIGHT?

9 A. HE WAS NOT, NO.

10 Q. AND SOME OF THE OTHER PEOPLE HELPING, MR. MCGINNISS FOR
11 INSTANCE?

12 A. YES.

13 Q. AND MS. WENDY ROUDER?

14 A. I THINK SHE WAS THERE.

15 Q. AND CAN YOU EXPLAIN WHAT HER ROLE WAS?

16 A. SHE WAS AN ADVISER TO OUR TEAM, A VERY IMPORTANT MEMBER
17 OF THE TEAM. VERY HELPFUL.

18 Q. WAS SHE A LAWYER?

19 A. I DON'T THINK SHE WAS A LAWYER AT THAT TIME, I COULD BE
20 WRONG, BUT SHE WAS VERY HELPFUL AND USEFUL.

21 Q. AND NOW YOU, OF COURSE, YOUR HOME IS IN RALEIGH?

22 A. I STAYED AT MY HOUSE.

23 Q. OKAY. BUT AT SOME POINT THE FRATERNITY HOUSE AT N.C.
24 STATE WAS NO LONGER AVAILABLE, IS THAT RIGHT?

25 A. THE LEASE EXPIRED, YES.

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1 Q. ALL RIGHT. AND SO THE MEMBERS OF THE DEFENSE TEAM WHO
2 DID NOT RESIDE IN RALEIGH HAD TO MOVE TO THE DOWNTOWNER HOTEL?

3 A. THAT'S CORRECT.

4 Q. LET'S SKIP DOWN TO LINE 22 THROUGH 25. CAN YOU READ THE
5 LAST FOUR LINES OF THAT PAGE?

6 A. BEGINNING AT LINE 22?

7 Q. YES.

8 A. I HAD NO FURTHER KNOWLEDGE. LATER THAT DAY, I RECEIVED A
9 TELEPHONE CALL FROM MR. UNDERHILL WHICH YOU NOW KNOW THE
10 CIRCUMSTANCES ESSENTIALLY.

11 HE HAD GONE TO THE JOURNEY'S END, LEARNED WHAT HE
12 DID ABOUT HER CONDITION, THAT SHE HAD A BLACK EYE AND THAT
13 APPARENTLY SOMETHING HAD HAPPENED AT THE SWIMMING POOL WHICH
14 IN THE VIEW OF THE MANAGER OF THE HOTEL -- THAT PERSON IS HERE
15 AS A MATTER OF FACT, YOUR HONOR, IF YOU DESIRE TO HEAR FROM
16 HER -- BUT IN THE VIEW OF THE MANAGER OF THE HOTEL IT WAS NOT
17 A FRIENDLY INCIDENT.

18 Q. ALL RIGHT. LET ME MOVE BACK TO PAGE 151. MAYBE LEAVING
19 OUT PART OF THE STORY WAS NOT A GOOD IDEA. HOW ABOUT STARTING
20 READING AT LINE FIVE ON PAGE 151. READ WHAT WE MISSED.

21 A. THERE WERE SOME OTHER BRIEF INQUIRIES -- OH, I SHOULD ADD
22 THAT THE REASON FOR THE CONVERSATION SPECIFICALLY WAS THAT SHE
23 CALLED ABOUT A TELEVISION STORY SHE SAID SHE HAD HEARD AND
24 WANTED TO ASK WHETHER PEOPLE REALLY HAD SAID THOSE THINGS
25 ABOUT HER THAT THE TELEVISION REPORTER HAD COMMENTED ON.

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1 I TOLD HER THAT I HADN'T SEEN IT AND RESPONDED TO IT
2 GENERALLY, AND THEN SHE TOLD ME WHERE SHE WAS. I HAD NO
3 FURTHER CONTACT WITH HER EXCEPT THAT ON SATURDAY MORNING, I
4 SPOKE WITH HER AND TOLD HER AT THAT TIME -- MR. DAVIS CALLED
5 ME -- NOT MRS. STOECKLEY.

6 MR. DAVIS CALLED ME. I SAID TO HIM IT IS IMPERATIVE
7 THAT THEY LEAVE THE MOTEL. I DO NOT WANT THEM IN THE SAME
8 MOTEL WHERE WE ARE STAYING. I CONSIDER THAT TO BE
9 UNCOMFORTABLE CIRCUMSTANCES AT BEST. HE SAID THEY WERE GOING
10 TO LEAVE. HE DID NOT TELL ME WHERE THEY WERE GOING.

11 Q. OKAY. SO, THE GIST OF THIS IS THAT MR. SEGAL DID NOT
12 WANT HELENA STOECKLEY STAYING AT THE DOWNTOWNER WHERE THE
13 DEFENSE TEAM WAS, IS THAT RIGHT?

14 A. THAT'S RIGHT.

15 Q. AND IT WOULD APPEAR THAT SHE WAS MOVED OR DID MOVE TO THE
16 JOURNEY'S END THERE AT LINE 25?

17 A. YES.

18 Q. OKAY. LET ME PUT UP ON THE SCREEN GOVERNMENT EXHIBIT
19 2377. DO YOU RECOGNIZE THIS AS A PICTURE OF A HOLIDAY INN IN
20 RALEIGH?

21 A. YES.

22 (GOVERNMENT EXHIBIT NUMBER 2377
23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. ACTUALLY, I THINK IT MAY BE THE CLARION INN NOW --

25 A. CLARION INN.

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1 Q. -- BUT IN 1979, IT WAS A HOLIDAY INN?

2 A. IT WAS.

3 Q. AND IT HAS A DISTINCTIVE ROUND ARCHITECTURE?

4 A. YES.

5 Q. AND DO YOU RECALL THAT THE HOLIDAY INN, NOW CLARION, IS
6 LOCATED ON HILLSBOROUGH STREET?

7 A. IT IS.

8 Q. NOW, THE DOWNTOWNER, WHERE THE DEFENSE TEAM WAS STAYING,
9 IS NO LONGER IN EXISTENCE, IS THAT RIGHT?

10 A. NO.

11 Q. DO YOU RECALL THAT IT DID EXIST PREVIOUSLY IN '79?

12 A. IT DID EXIST AT THAT TIME.

13 Q. AND WHERE WAS IT IN RELATION TO THE HOLIDAY INN THAT
14 WE'RE LOOKING AT IN THIS PICTURE?

15 A. PRETTY MUCH ACROSS THE STREET OR THE ROAD.

16 Q. ACROSS HILLSBOROUGH STREET?

17 A. VERY CLOSE.

18 Q. OKAY. NOW, LET'S LOOK AT 78 -- 2378. THAT'S JUST
19 ANOTHER VIEW OF THE HOLIDAY INN, IS THAT RIGHT?

20 A. IT IS.

21 Q. LET'S LOOK AT GOVERNMENT EXHIBIT 2368. DOES THIS PICTURE
22 -- DO YOU RECOGNIZE THIS PICTURE AS THE VIEW UP CAPITAL
23 BOULEVARD TOWARD A HOTEL OR MOTEL?

24 A. I PASS THAT PLACE FIVE DAYS A WEEK.

25 Q. ALL RIGHT.

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1 A. IT IS.

2 Q. AND CAPITAL BOULEVARD SPLITS INTO DAWSON STREET AND
3 MCDOWELL STREET, IS THAT RIGHT?

4 A. IT DOES, YES.

5 Q. AND THIS IS LOOKING UP DAWSON TOWARD THAT MOTEL, IS THAT
6 RIGHT?

7 A. YES, IT IS.

8 Q. AND IT SAYS -- THIS PICTURE, HAVING BEEN TAKEN THIS YEAR,
9 IT SAYS DAYS INN, IS THAT RIGHT?

10 A. IT SAYS THAT, YES.

11 Q. DO YOU RECOGNIZE THAT AS BEING THE SAME MOTEL THAT IN '79
12 WAS THE JOURNEY'S END?

13 A. I DO.

14 (GOVERNMENT EXHIBIT NUMBER 2368
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. AND THAT'S E-N-D, NOT I-N-N?

17 A. YES.

18 Q. ALL RIGHT. AND I BELIEVE SOMEWHERE ALONG IN ITS HISTORY
19 IT WAS ALSO A TRAVEL LODGE?

20 A. I THINK IT WAS.

21 Q. ALL RIGHT. SO, THIS WOULD BE THE MOTEL THAT HELENA
22 STOECKLEY WAS MOVED TO FROM THE DOWNTOWNER?

23 A. IT WOULD BE.

24 Q. ALL RIGHT. LET'S LOOK AT DAY 22, LINE 96. I'M SORRY,
25 PAGE 96. YOU CAN'T SEE THIS -- MAYBE IT WILL BECOME APPARENT

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1 FROM THE CONTEXT, BUT I WANT TO ASK YOU IF THIS IS THE
2 TESTIMONY OF RED UNDERHILL, BUT START READING AT ABOUT LINE
3 14.

4 A. QUESTION: NOW, DID YOU HAVE OCCASION TO SEE HELENA
5 STOECKLEY THIS WEEKEND OUTSIDE OF THE COURTHOUSE?

6 ANSWER: YES, SIR, I CERTAINLY DID.

7 QUESTION: ALL RIGHT. WHEN WAS THE FIRST TIME YOU
8 CAME IN CONTACT WITH HELENA STOECKLEY THIS WEEKEND?

9 ANSWER: I GUESS IT WAS SATURDAY ABOUT ONE O'CLOCK.

10 QUESTION: IN THE MORNING OR AFTERNOON?

11 ANSWER: IN THE AFTERNOON, P.M.

12 QUESTION: AND WHERE DID YOU SEE MS. STOECKLEY?

13 ANSWER: WHEN I FIRST SAW HER, SHE WAS -- IT LOOKS
14 LIKE AN OLD TRAVEL LODGE MOTEL. IT'S BEEN RENAMED.

15 Q. OKAY. SO, PRESUMABLY, HE'S REFERRING TO THE SAME PLACE?

16 A. YES.

17 Q. ALL RIGHT. NOW, LET'S LOOK AT TRIAL DAY 22, PAGE 134,
18 LINES 11 THROUGH 19.

19 A. QUESTION: WHAT WAS THE REASON WHY MS. STOECKLEY LEFT THE
20 JOURNEY'S END MOTEL?

21 ANSWER: SHE WAS ASKED TO LEAVE BY THE MANAGER.

22 QUESTION: NOW, AS A RESULT OF THAT, HOW DID IT COME
23 ABOUT THAT SHE WENT TO THE HILTON INN?

24 ANSWER: SHE WAS WORRIED ABOUT WHERE SHE WOULD GO,
25 AND I ASSURED HER THERE MUST BE A PLACE, AND YOUR SECRETARY

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1 ARRANGED FOR A MOTEL ROOM, PHONED BACK, AND SAID THE HILTON
2 WILL ACCEPT YOU.

3 Q. OKAY. KEEP READING.

4 A. DID SHE EXPLAIN WHAT HAD HAPPENED TO THE WITNESS MONEY
5 THAT SHE HAD BEEN PAID IN REGARD TO THE SUBPOENA THAT HAD BEEN
6 SERVED ON HER?

7 ANSWER: SHE SAID THAT THEY HAD PUT ADVANCE DEPOSITS
8 DOWN ON SEVERAL NIGHTS AND SHE NEVER GOT THE MONEY BACK.

9 Q. ALL RIGHT. NOW, I REPRESENT TO YOU THAT THIS IS MS.
10 ROUDER'S TESTIMONY. WOULD THAT SEEM LOGICAL TO YOU?

11 A. YES.

12 Q. ALL RIGHT. NOW, SHE REFERS TO THE HILTON AS THE PLACE
13 WHERE HELENA STOECKLEY WAS MOVED DURING THE WEEKEND, IS THAT
14 RIGHT?

15 A. YES.

16 Q. LET'S PUT UP GX-2373. NOW, AGAIN, THIS PICTURE IS TAKEN
17 IN 2012. DO YOU RECOGNIZE THAT HOTEL?

18 A. I DO.

19 Q. AND WHAT IS IT?

20 A. IT WAS NAMED THE HILTON THEN. IT ISN'T NAMED THAT NOW,
21 BUT IT'S THE HILTON.

22 (GOVERNMENT EXHIBIT NUMBER 2373
23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. ALL RIGHT. AND JUST TO ORIENT WHERE WE ARE, YOU KNOW
25 THIS INTERSECTION BECAUSE OF THE LOCATION OF YOUR CHURCH?

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1 A. PULLEN CHURCH IS ACROSS THE STREET.

2 Q. ALL RIGHT. AND I THINK WE HAVE ONE MORE PICTURE OF THIS,
3 2374. SAME PLACE?

4 A. SAME PLACE.

5 (GOVERNMENT EXHIBIT NUMBER 2374
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. ALL RIGHT. NOW, YOU DIDN'T HAVE TO STAY IN ANY OF THESE
8 HOTELS BECAUSE YOU HAVE A HOME IN RALEIGH?

9 A. THAT'S RIGHT.

10 Q. ALL RIGHT. AND SO MONDAY MORNING THE TRIAL RESUMED, IS
11 THAT CORRECT?

12 A. YES.

13 Q. AND THERE WAS MORE VOIR DIRE OF STOECKLEY WITNESSES ON
14 MONDAY MORNING, IS THAT RIGHT?

15 A. I THINK THAT'S RIGHT.

16 Q. NOW, AT SOME POINT JUDGE DUPREE -- LET ME ASK YOU THIS,
17 JUDGE DUPREE HAD TAKEN UNDER ADVISEMENT OVER THE WEEKEND THE
18 DEFENSE MOTION TO ADMIT THESE OUT OF COURT STATEMENTS OF
19 HELENA STOECKLEY, IS THAT RIGHT?

20 A. YES.

21 Q. AND HE REVEALED THAT HE HAD DONE A LOT OF RESEARCH ABOUT
22 IT?

23 A. HE DID.

24 Q. ALL RIGHT. LET'S LOOK AT TRIAL DAY 22, PAGE 175, AND
25 LOOK AT LINE 19 THROUGH 21, PLEASE, AND READ THAT FOR US.

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1 A. I THINK IT IS NOT AS REQUIRED BY 803(b) (3) CLEARLY
2 TRUSTWORTHY. IT'S PERHAPS THE MOST CLEARLY UNTRUSTWORTHY
3 EVIDENCE THAT I HAVE HAD PUT BEFORE ME.

4 SO FOR THE REASONS THAT I GAVE IN SOMEWHAT BRIEF
5 FORM ON THE RECORD THIS MORNING AT A BENCH CONFERENCE, I WILL
6 EXCLUDE -- AND TO BE MORE FULLY EXPLICATED LATER IN A WRITTEN
7 MEMORANDUM -- I WILL EXCLUDE THIS TESTIMONY.

8 Q. OKAY.

9 A. I DON'T THINK AS FAR AS SUBDIVISION (b) (5) IS CONCERNED
10 THAT IT WOULD EVER BE ADEQUATE NOTICE THAT WAS GIVEN AT 11
11 O'CLOCK IN THE MORNING AND THE EVIDENCE WAS THOUGHT TO BE
12 INTRODUCED THEREAFTER.

13 Q. YOU CAN STOP READING. THESE REFERENCES ARE TO THE RULES
14 OF EVIDENCE, IS THAT RIGHT?

15 A. THEY ARE.

16 Q. AND SO THE PARTIES HAD ARGUED THIS ISSUE AND JUDGE DUPREE
17 HAD MULLED IT OVER THE WEEKEND AND HE CAME TO THIS DECISION?

18 A. YES.

19 Q. AND THERE WAS SOME EFFORT TO CHANGE HIS MIND BASED ON THE
20 EVENTS OF THE WEEKEND, IS THAT RIGHT?

21 A. YES.

22 Q. INCLUDING YOU PUT UP WENDY ROUDER TO TESTIFY TO HER
23 CONTACT WITH HELENA STOECKLEY?

24 A. YES.

25 Q. ALL RIGHT. LET'S LOOK AT PAGE 176, LINE 22 AND 23. CAN

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1 YOU READ STARTING WITH I WILL EXCLUDE?

2 A. YES.

3 I WILL EXCLUDE THE EVIDENCE. LET THE JURY COME IN.
4 LET ME SEE THE LAWYERS HERE AT THE BENCH JUST A MOMENT WHILE
5 THEY'RE COMING.

6 Q. SO, THIS WAS HIS FINAL RULING THAT THE OUT OF COURT
7 STATEMENTS OF HELENA STOECKLEY WERE NOT GOING TO BE ADMITTED?

8 A. YES.

9 Q. ALL RIGHT. NOW, LET'S LOOK AT TRIAL DAY 22, PAGE 179,
10 AND START READING -- FIRST READ US THE COMMENT OF MR. MURTAGH
11 LINES ONE AND TWO.

12 A. MR. MURTAGH: I THINK HELENA FEELS IN HER MIND THAT IN
13 EFFECT SHE IS IN CUSTODY HERE.

14 THE COURT: OH, I AM GLAD YOU MENTIONED THAT BECAUSE
15 I HAD NEGLECTED, JUST COMPLETELY OVERLOOKED IT, TO TELL YOU,
16 BUT I WANT YOU TO KNOW THAT AMONG OTHERS CALLED BY HELENA, SHE
17 CALLED ME TWICE SATURDAY NIGHT STATING THAT SHE WAS LIVING IN
18 MORTAL DREAD OF PHYSICAL HARM BY BERNARD SEGAL, COUNSEL FOR
19 THE DEFENDANT, AND THAT SHE WANTED A LAWYER TO REPRESENT HER.

20 Q. AND THEN THE JUDGE CONTINUES AT LINE 11. WOULD YOU READ
21 THAT?

22 A. I SAID, WELL, NOW, LOOK, I CANNOT TALK TO YOU ABOUT THIS
23 CASE, BUT SOMEBODY WILL CALL YOU TOMORROW. WHERE WILL YOU BE?
24 THAT IS THE REASON I KNEW THIS JOURNEY'S END THING, SHE GAVE
25 ME THE JOURNEY'S END.

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1 OF COURSE, WHAT I WANTED TO DO WAS TO GO TO THE
2 CRIMINAL JUSTICE ACT TO SEE WHETHER OR NOT I COULD PAY ANY
3 LAWYER UNDER THESE CIRCUMSTANCES, AND AMAZINGLY I FOUND AN
4 AMENDMENT TO THE ACT, WHICH IS NOT EVEN IN THE BOUND VOLUME,
5 WHICH ALLOWS ME TO DO IT FOR A WITNESS WHO IS IN --

6 AND MR. SMITH SAYS THAT'S INCREDIBLE.

7 Q. MEANING THE JUDGE'S RESEARCH SKILLS?

8 A. YES, THAT HE WAS DOING THE WORK.

9 Q. ALL RIGHT. AND DID HE --

10 A. THAT THE LAWYERS SHOULD HAVE BEEN DOING.

11 THE COURT: SO I TOLD STEVE COGGINS THEN, I SAID
12 FIND ME A LAWYER, AND I THINK HE CALLED EVERYBODY IN THE BOOK
13 JUST ABOUT, BUT HE FINALLY GOT --

14 Q. NOW, WE'LL GO ON TO THE NEXT PAGE.

15 A. JERRY LEONARD.

16 LAW CLERK: HAVE YOU EVER TRIED TO FIND A LAWYER ON
17 SUNDAY AFTERNOON?

18 Q. AND THAT'S MR. COGGINS SPEAKING, RIGHT?

19 A. YES. YES.

20 THE COURT SAID YOU CAN ALWAYS FIND ME. SEGAL'S
21 ALWAYS GOT ME WORKING ON SUNDAY AFTERNOON.

22 Q. MEANING THE JUDGE IS WORKING ON MOTIONS THE DEFENSE HAS
23 FILED?

24 A. YES.

25 Q. ALL RIGHT.

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1 A. MR. MURTAGH: JUDGE, I GUESS WE WON'T HAVE YOUR
2 TESTIMONY.

3 THE COURT: THANK GOD FOR THAT RULE THAT SAYS I AM
4 ABSOLUTELY READ OUT OF THIS ONE.

5 READ ON?

6 Q. NO, THAT'S FINE. NOW, MR. MURTAGH RAISES A QUESTION
7 ABOUT PEOPLE TALKING TO HER. AND GO DOWN TO LINE 14 AND READ
8 WHAT THE COURT SAYS.

9 A. THE COURT: MAYBE I CAN SHORTEN THAT FOR YOU. I'M GOING
10 TO ORDER COUNSEL FOR BOTH SIDES AND ALL OTHER WITNESSES TO SAY
11 AWAY FROM THIS WOMAN UNTIL THIS THING IS OVER.

12 Q. AND WHAT DOES MR. MURTAGH SAY TO THAT?

13 A. I BELIEVE SHE IS IN THE WITNESS ROOM.

14 Q. WE SKIPPED A PARAGRAPH HERE.

15 A. OKAY. YES.

16 Q. LINE 18 THROUGH 21.

17 A. ALL RIGHT. YOU CAN BRING HER BACK IN AND TESTIFY IF SHE
18 WANTS TO, BUT I WILL JUST TREAT EVERYBODY ALIKE ABOUT THIS ONE
19 THEN WE WON'T HAVE THAT QUESTION TO ARISE.

20 Q. SO, THE STATUS OF IT IS THAT THE JUDGE -- SHE'S STILL
21 UNDER SUBPOENA, IS THAT RIGHT?

22 A. YES.

23 Q. AND SHE'S NOW BEEN APPOINTED A LAWYER?

24 A. YES.

25 Q. MR. JERRY LEONARD?

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1 A. THAT'S CORRECT.

2 Q. AND THE JUDGE IS ORDERING THAT NO ONE, OF COURSE, EXCEPT
3 HER LAWYER, MR. LEONARD, TALK TO HER, IS THAT RIGHT?

4 A. THAT'S CORRECT.

5 Q. AT LEAST THE PARTIES IN THE CASE AND THEIR
6 REPRESENTATIVES?

7 A. YES.

8 Q. AND THEN MR. MURTAGH SAYS AT LINE 22 AND 23 WHAT?

9 A. I BELIEVE SHE IS IN THE WITNESS ROOM.

10 Q. AND THEN MR. LEONARD, APPARENTLY MR. JERRY LEONARD,
11 SPEAKS AND SAYS WHAT?

12 A. SHE IS IN A SEPARATE WITNESS ROOM FROM ALL THE OTHERS.

13 Q. ALL RIGHT. I WANT TO READ ONE LINE FROM THE NEXT PAGE.

14 A. ALL RIGHT.

15 Q. WHAT DOES THE COURT SAY ABOUT THAT?

16 A. THE COURT SAYS, OH, YOU'VE GOT HER HERE.

17 Q. SO, THE JUDGE IS A LITTLE SURPRISED THAT SHE'S ACTUALLY
18 IN THE COURTHOUSE, IS THAT RIGHT?

19 A. YES.

20 Q. NOW, DESPITE THE JUDGE'S RULING, THE DEFENSE CALLED FOUR
21 OF THE STOECKLEY WITNESSES TO THE STAND ANYWAY, IS THAT RIGHT?

22 A. WELL, I DON'T REMEMBER IT WAS ANYWAY, BUT I DO THINK WE
23 CALLED THEM, YES.

24 Q. YOU CALLED MR. BEASLEY?

25 A. YES.

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1 Q. AND MS. ZILLIOUX?

2 A. YES.

3 Q. MR. UNDERHILL?

4 A. YES.

5 Q. AND MR. POSEY?

6 A. THAT'S RIGHT.

7 Q. OKAY. LET'S LOOK AT TRIAL DAY 22, LINE -- SORRY, PAGE
8 21, AND THIS IS JUST -- AS YOU CAN SEE IN THE MIDDLE OF THE
9 PAGE MR. BEASLEY IS TAKING THE STAND?

10 A. YES.

11 Q. AND THIS TIME HE'S TESTIFYING BEFORE THE JURY?

12 A. I THINK THAT'S RIGHT.

13 Q. ALL RIGHT. AND NOW LET'S MOVE FORWARD TO PAGE 66 AND YOU
14 SEE THERE THAT MS. ZILLIOUX IS BEING CALLED TO TESTIFY?

15 A. YES.

16 Q. AND LET'S MOVE TO PAGE 88. AND AT THE BOTTOM OF THE PAGE
17 AT LINE 20, DO YOU SEE THAT MR. UNDERHILL IS BEING CALLED TO
18 TESTIFY?

19 A. YES.

20 Q. NOW, LET'S LOOK AT PAGE 102 OF HIS TESTIMONY. START
21 READING WITH MR. SEGAL'S COMMENT AT PAGE FOUR -- I MEAN, LINE
22 FOUR.

23 A. LINE FOUR.

24 MR. SEGAL: SHE SAYS THAT SHE KNOWS WHO COMMITTED
25 THE CRIMES AND THE GOVERNMENT STANDS HERE.

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1 MR. BLACKBURN: SHE HAS SAID THAT BEFORE.

2 MR. ANDERSON: SHE IS STILL AVAILABLE.

3 MR. SEGAL: SHE DID NOT. WHEN WE ASKED HER DID SHE
4 KNOW WHAT SHE WAS OR WHO SHE WAS WITH --

5 MR. ANDERSON: NOW HE IS TALKING TO THE JURY.

6 BENCH CONFERENCE TERMINATED.

7 Q. BEFORE YOU GO ON LET'S IDENTIFY MR. ANDERSON. DO YOU
8 KNOW WHO THAT IS?

9 A. I DO.

10 Q. WHO IS IT?

11 A. GEORGE ANDERSON, HE WAS THE -- I THINK THE UNITED STATES
12 ATTORNEY FOR THE EASTERN DISTRICT AT THAT TIME.

13 Q. AND HE WAS ONE OF THE LAWYERS FOR THE GOVERNMENT IN THE
14 COURTROOM, IS THAT RIGHT?

15 A. HE WAS.

16 Q. BUT HE DIDN'T TAKE AN ACTIVE ROLE MUCH?

17 A. NOT A VERY ACTIVE ROLE.

18 Q. ALL RIGHT. NOW, READING AT LINE 13, READ WHAT THE COURT
19 SAYS.

20 A. THE COURT: I WOULD LIKE TO HEAR WHAT YOU HAVE TO SAY TO
21 THE JURY SO LET'S DON'T ALL TALK AT ONCE. HAVE YOU BEEN
22 TALKING TO THE JURY?

23 Q. AND THEN THE WITNESS.

24 A. READ?

25 Q. YEAH, THE WITNESS.

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1 A. THE WITNESS: YES, SIR, I ASKED THEM IF THEY WERE READY
2 FOR A REST HOME. I CERTAINLY DID. I KNOW THEY'RE AWFUL TIRED
3 AND GIVE OUT. I KNOW I SHOULDN'T HAVE SAID IT, BUT I DID.

4 Q. KEEP READING.

5 A. THE COURT: LOOK AT ME, PLEASE.

6 THE WITNESS: YES, SIR.

7 THE COURT: DON'T YOU SAY ANYTHING ELSE TO THIS JURY
8 UNLESS IT IS IN RESPONSE TO A QUESTION ASKED BY SOME LAWYER
9 APPEARING IN THE CASE.

10 THE WITNESS: YES, SIR.

11 Q. ALL RIGHT. SO, MR. UNDERHILL WAS TALKING TO THE JURY
12 DURING A BENCH CONFERENCE IT APPEARS?

13 A. APPARENTLY SO. I DON'T --

14 Q. DO YOU REMEMBER THAT?

15 A. I DON'T REMEMBER IT. NO, I DON'T REMEMBER IT.

16 Q. ALL RIGHT. LET'S LOOK AT PAGE 73 AND READ, PLEASE, LINES
17 FIVE THROUGH 25.

18 A. YOUR HONOR -- LET'S SEE. WAIT A MINUTE. GOVERNMENT
19 EXHIBIT G-60, YOUR HONOR, WHICH HAS PREVIOUSLY BEEN IDENTIFIED
20 HERE IN COURT AS A PHOTOGRAPH OF KRISTEN MACDONALD IN HER
21 PAJAMAS ON THE BED.

22 BY MR. SEGAL: QUESTION: NOW, WHAT, IF ANYTHING,
23 DID HELENA STOECKLEY SAY -- WELL, DID SHE SAY ANYTHING THE
24 FIRST TIME SHE LOOKED AT THE PICTURE?

25 MR. BLACKBURN: YOUR HONOR, WE OBJECT.

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1 THE COURT: SUSTAINED.

2 BY MR. SEGAL: DID HELENA STOECKLEY EVER INDICATE TO
3 YOU THAT SHE HAD EVER SEEN THE SCENE OF THE PERSON DEPICTED IN
4 THAT PICTURE PREVIOUS TO THE TIME THAT SHE LOOKED AT THE BOOK?

5 MR. BLACKBURN: OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MR. SEGAL: DID HELENA STOECKLEY IN ANY WAY
8 INDICATE FAMILIARITY WITH THE MATERIALS THERE?

9 MR. BLACKBURN: OBJECTION.

10 Q. OKAY. NOW, LET'S LOOK AT PAGE 75, LINES FOUR THROUGH 19,
11 OR YOU CAN START READING FROM THE TOP OF THE PAGE ON LINE ONE
12 IF YOU WANT TO GET THE CONTEXT.

13 A. MR. SEGAL: MAY THE RECORD REFLECT THAT THE WITNESS HAS
14 INDICATED A PHOTOGRAPH PREVIOUSLY MARKED AS G-59, WHICH WOULD
15 BE A LONGER RANGE PHOTOGRAPH OF THE BED OF KRISTEN MACDONALD
16 SHOWING THE CHILD IN THE BED AND IN THE LEFT FOREGROUND A
17 ROCKING HORSE.

18 BY MR. SEGAL: QUESTION: NOW, IN REGARD TO THIS
19 PARTICULAR PHOTO, WHAT, IF ANYTHING, DID MS. STOECKLEY SAY TO
20 YOU ABOUT THAT PHOTOGRAPH?

21 MR. ANDERSON: OBJECTION.

22 MR. MURTAGH: OBJECTION.

23 THE COURT: SUSTAINED.

24 BY MR. SEGAL: DID IN ANY WAY MS. STOECKLEY INDICATE
25 THAT SHE RECOGNIZED SEEING THAT SCENE HERSELF?

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1 MR. ANDERSON: OBJECTION.

2 MR. BLACKBURN: OBJECTION.

3 THE COURT: SUSTAINED.

4 Q. ALL RIGHT. NOW, LET'S MOVE TO PAGE 84, LINES 12 THROUGH
5 25.

6 A. QUESTION: DID MS. STOECKLEY SAY ANYTHING AT THAT TIME
7 ABOUT THE TOTALITY OF THE SCENES DEPICTED IN THERE? THAT IS,
8 DID SHE SAY ANYTHING INDICATING RECOGNITION AND PRIOR
9 KNOWLEDGE OF THE PLACES AND EVENTS DEPICTED IN THOSE
10 PHOTOGRAPHS?

11 MR. ANDERSON: OBJECTION.

12 MR. BLACKBURN: OBJECTION.

13 THE COURT: SUSTAINED.

14 BY MR. SEGAL: DID MS. STOECKLEY SAY ANYTHING TO YOU
15 WITHIN THAT -- THE TIME THAT YOU WERE IN THE ROOM, WITNESS
16 ROOM, WITH HER ABOUT HAVING CARRIED A LIGHTED CANDLE IN
17 FEBRUARY OF 1970?

18 MR. BLACKBURN: OBJECTION.

19 Q. OKAY. SO, IS IT FAIR TO SAY THAT THE DEFENSE WAS ABLE TO
20 GET AT LEAST PART OF ITS POINT ACROSS TO THE JURY THAT MS.
21 STOECKLEY MAY HAVE MADE SOME OUT OF COURT ADMISSIONS?

22 A. YES.

23 Q. ALL RIGHT. LET'S MOVE TO TRIAL DAY 23, WHICH WOULD BE
24 TUESDAY, PAGE NINE AND WOULD YOU READ LINES 21 THROUGH 25.

25 A. THE COURT: (INTERPOSING.) I THINK I HAVE GONE AS FAR

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1 AS I OUGHT TO GO IN LETTING YOU PUT ON WITNESSES AND ASK THEM
2 QUESTIONS, THE OBJECTIONS TO WHICH YOU KNOW ARE GOING TO BE
3 SUSTAINED, AND IF YOU THINK I'M WRONG ABOUT THAT TELL ME.

4 Q. ALL RIGHT. SO, THE JUDGE IS SAYING YOU'VE PUT ON A
5 NUMBER OF THESE WITNESSES WHERE THEY WERE ASKED QUESTIONS
6 ABOUT STATEMENTS, OUT OF COURT STATEMENTS, THE OBJECTIONS WERE
7 SUSTAINED AND HE WANTS TO CALL A HALT TO IT, IS THAT RIGHT?

8 A. YES.

9 Q. ALL RIGHT. NOW, LET'S LOOK AT PAGE 17, LINES 17 THROUGH
10 22, ON THAT SAME DAY.

11 A. MR. BLACKBURN: OBJECTION.

12 THE COURT: SUSTAINED.

13 MEMBERS OF THE JURY, THE EVIDENCE NOW APPARENTLY
14 SOUGHT TO BE ELICITED BY COUNSEL IS EVIDENCE WHICH THIS COURT
15 HAS HEARD IN YOUR ABSENCE. THE COURT HAS RULED THAT THE
16 EVIDENCE IS NOT ADMISSIBLE.

17 I'M INSTRUCTING YOU AT THIS TIME THAT YOU SHOULD NOT
18 DRAW ANY INFERENCE WHATEVER FROM THE FACT THAT THE QUESTION
19 ITSELF HAS BEEN ASKED. I WILL INSTRUCT COUNSEL NOT TO REPEAT
20 THOSE QUESTIONS -- SUCH QUESTIONS.

21 I ALSO INFORM YOU THAT IT IS THE DUTY OF COUNSEL FOR
22 EITHER SIDE WHEN IT IS PERCEIVED THAT OBJECTIONABLE TESTIMONY
23 IS SOUGHT TO BE INTRODUCED OR ELICITED FROM A WITNESS TO
24 REGISTER AN OBJECTION AND THAT YOU ARE NOT UNDER ANY
25 CIRCUMSTANCES TO DRAW ANY INFERENCE ADVERSE TO COUNSEL MAKING

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1 SUCH AN OBJECTION, WHETHER IT BE THE GOVERNMENT OR THE
2 DEFENDANT OR ANYONE. PROCEED.

3 Q. OKAY. SO, THE JUDGE IS EXPLAINING TO THE JURY THAT HE
4 HAS SUSTAINED THE OBJECTION AND THEY CAN'T HEAR THIS EVIDENCE,
5 IS THAT RIGHT?

6 A. YES. YES.

7 Q. NOW, DO YOU RECALL THAT HELENA STOECKLEY WAS MAINTAINED
8 UNDER YOUR DEFENSE SUBPOENA FOR THE ENTIRE WEEK?

9 A. I THINK THAT IS CORRECT.

10 Q. LET'S LOOK AT TRIAL DAY 25 AT PAGE 153 AND START READING
11 LINE 13 TO THE BOTTOM OF THE PAGE, PLEASE.

12 A. JUDGE -- MR. BLACKBURN: JUDGE, WE HAVE JUST INQUIRED,
13 I'VE JUST TALKED TO WADE, WE WANT TO INQUIRE ON THE SITUATION
14 WITH RESPECT TO HELENA STOECKLEY, WHETHER OR NOT SHE IS STILL
15 UNDER SUBPOENA HERE.

16 THE COURT: I KNOW NOTHING ABOUT IT. I KEEP ASKING.
17 I TOLD THEM LAST NIGHT IF THEY WERE GOING TO USE HER, THEY HAD
18 BETTER DO IT FIRST THING THIS MORNING OR I WAS GOING TO
19 RELEASE HER. THEY DIDN'T USE HER SO I ASSUME SHE'S RELEASED,
20 BUT I DON'T KNOW.

21 MR. BLACKBURN: HER LAWYER, JERRY, IS STILL AROUND.

22 THE COURT: I ASKED MR. SEGAL --

23 Q. ALL RIGHT. LET'S STOP BEFORE WE GO TO THE NEXT PAGE.
24 FIRST OF ALL, WE'RE ON TRIAL DAY 25. SO, IF MONDAY WAS TRIAL
25 DAY 22 AND TUESDAY 23, THAT WOULD MEAN THIS IS THURSDAY?

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1 A. YES.

2 Q. ALL RIGHT. AND HELENA STOECKLEY TESTIFIED ON THE
3 PREVIOUS FRIDAY?

4 A. YES.

5 Q. ALL RIGHT. AND THE REFERENCE TO WADE WOULD REFER TO YOU?

6 A. IT WOULD.

7 Q. AND WHEN MR. BLACKBURN SAYS AT LINE 23 HER LAWYER JERRY,
8 THAT'S REFERRING TO JERRY WHO?

9 A. IT WOULD BE JERRY LEONARD.

10 Q. ALL RIGHT. NOW, LET'S GO ON TO THE NEXT PAGE. THE LAST
11 PART, IF YOU READ LINE ONE, IS THE CONCLUSION OF JUDGE
12 DUPREE'S STATEMENT.

13 A. WHAT IS HE STILL DOING HERE?

14 Q. AND IF YOU'LL READ YOUR REPLY FROM LINE TWO THROUGH 13,
15 PLEASE.

16 A. MR. SMITH: I TALKED TO JERRY LEONARD AT GREAT LENGTH,
17 YOUR HONOR, THIS MORNING, TALKED TO HIM FOR A LONG TIME, AND
18 THIS WOMAN CONTINUES TO SAY THINGS THAT TIE HER TO THIS CASE.

19 I WILL BE FRANK WITH YOUR HONOR, WE HAVE NO PLANS TO
20 USE HER AT THIS MOMENT, BUT WE HAVE GOT TOO MUCH AT STAKE. IT
21 IS TOO IMPORTANT A CASE AND SHE'S SAID TOO MUCH FOR US TO
22 JUST, YOU KNOW, OUT OF HAND SAY, OH, SURE, GO ON, GO AWAY, WE
23 WILL NEVER SEE YOU AGAIN. GO BACK IN HIDING AND LET THE YEARS
24 ROLL BY.

25 SHE IS HERE. THE DEFENDANT IS ON THE STAND. WE

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1 FEEL THAT WE NEED TO BE ABLE TO TALK WITH JERRY AND HAVE HER
2 AVAILABLE AT LEAST FOR THIS AFTERNOON.

3 THE COURT: WELL --

4 Q. THE COURT SAYS?

5 A. I'M SORRY?

6 Q. THE COURT SAYS?

7 A. WELL, TODAY IS SHOT ANYWAY. GO ON.

8 Q. OKAY. LET'S GO BACK UP, PLEASE, TO WHERE HE WAS
9 READING. NOW, THE DEFENDANT IS ON THE STAND. THAT MEANS THAT
10 MR. MACDONALD IS TESTIFYING, IS THAT RIGHT?

11 A. THAT'S RIGHT. YES.

12 Q. AND THAT TESTIMONY TOOK SOME CONSIDERABLE AMOUNT OF TIME?

13 A. YES.

14 Q. DO YOU RECALL ABOUT HOW MUCH?

15 A. A NUMBER OF HOURS. A LOT OF HOURS. I DON'T RECALL HOW
16 LONG, BUT A LOT OF TIME.

17 Q. ALL RIGHT. NOW, YOU'RE PLEADING WITH THE JUDGE TO ALLOW
18 MS. STOECKLEY TO REMAIN UNDER SUBPOENA BECAUSE YOU STILL HOLD
19 OUT THE POSSIBILITY OF RECALLING HER TO THE STAND, IS THAT
20 RIGHT?

21 A. YES. MS. STOECKLEY HAD THE ABILITY TO SAY THE MOST
22 TANTALIZING THINGS. SHE HAD SAID THEM TO MANY PEOPLE AND WE
23 COULD NOT BEAR TO LET THAT GO.

24 Q. ALL RIGHT. AND THE JUDGE ACCEDES AT LEAST FOR THIS DAY
25 TO YOUR REQUEST TO LEAVE HER UNDER SUBPOENA?

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1 A. YES.

2 Q. BY SAYING, WELL, TODAY IS SHOT ANYWAY?

3 A. YES.

4 Q. ALL RIGHT. NOW, I WANT TO ASK YOU ABOUT THE COMMENT
5 ABOUT JERRY LEONARD. IT STATES THAT JERRY LEONARD TALKED TO
6 YOU THAT MORNING AND THEN YOU MAKE THE STATEMENT THAT THIS
7 WOMAN CONTINUES TO SAY THINGS THAT TIE HER TO THIS CASE.

8 THIS WOMAN REFERS TO HELENA STOECKLEY, IS THAT
9 RIGHT?

10 A. YES.

11 Q. ALL RIGHT. DO YOU RECALL TALKING TO JERRY LEONARD?

12 A. YES, BUT I DOUBT THAT JERRY LEONARD TOLD ME THINGS THAT
13 HELENA STOECKLEY HAD SAID. I THINK IT COULD VERY WELL BE THAT
14 I WAS REFERRING TO WENDY ROUDER AND WHAT WENDY HAD SAID. BUT
15 JERRY IS VERY PROFESSIONAL AND I DON'T THINK HE WOULD QUOTE
16 HIS CLIENT TO ME.

17 Q. ALL RIGHT. SO, THE TWO PARTS OF THAT FIRST SENTENCE ARE
18 NOT NECESSARILY CONNECTED IN THAT YOU WEREN'T SAYING TO THE
19 JUDGE THAT JERRY LEONARD HAD TOLD YOU THAT HELENA STOECKLEY
20 WAS SAYING THINGS TO TIE HER TO THE CASE?

21 A. NO, I DIDN'T MEAN TO BE SAYING THAT. NO.

22 Q. ALL RIGHT.

23 THE COURT: EXCUSE ME. WHO WAS SHE SAYING IT TO?

24 THE WITNESS: SHE, I BELIEVE, YOUR HONOR, HAD MADE
25 STATEMENTS TO THE WOMAN WHOSE NAME IS WENDY ROUDER THAT

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1 WEEKEND. I MAY BE WRONG, BUT I THINK SHE HAD. I DON'T KNOW
2 WHAT SHE EVER SAID TO JERRY LEONARD.

3 THE COURT: THANK YOU. I JUST WAS CURIOUS.

4 THE WITNESS: YES, SIR. YES, SIR.

5 BY MR. BRUCE:

6 Q. SO, IT'S YOUR TESTIMONY THAT JERRY LEONARD HAS NEVER
7 DISCLOSED TO YOU WHAT HIS CLIENT TOLD HIM IN CONFIDENCE, HIS
8 CLIENT HELENA STOECKLEY?

9 A. HE HAS NEVER -- HE HAS NEVER TOLD ME ANYTHING THAT SHE
10 SAID THAT I RECALL.

11 Q. IN FACT, DO YOU RECALL TALKING TO MR. MORRIS IN
12 CONNECTION WITH HIS BOOK?

13 A. I DO, YES.

14 Q. AND DIDN'T YOU TELL HIM THAT AFTER THE MACDONALD TRIAL
15 YOU WOULD SOMETIMES SEE JERRY LEONARD AND KID ABOUT THIS?

16 A. WELL, I WOULD TALK TO JERRY LEONARD WITH THE HOPE THAT
17 THERE WAS SOME -- SOMETHING THAT HE HAD THAT WOULD BE USEFUL
18 AND HELPFUL AND I WOULD KID HIM ABOUT IT AND SAY YOU CAN TELL
19 US NOW, BUT HE ALWAYS WAS FAITHFUL TO HIS PROMISE AND I
20 CERTAINLY DIDN'T MEAN TO TRY TO GET HIM TO BE UNPROFESSIONAL.
21 BUT I WOULD SEE HIM ONCE OR TWICE A YEAR WALKING DOWN THE
22 STREET AND I WOULD SAY SOMETHING TO HIM LIKE THAT IN A KIDDING
23 WAY.

24 Q. SOMETHING LIKE, JERRY, DON'T YOU HAVE SOMETHING DRAMATIC
25 TO TELL ME?

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1 A. SOMETHING LIKE THAT, BUT I WOULD SAY IT IN THE RIGHT
2 SPIRIT.

3 Q. ALL RIGHT. NOW, LET'S LOOK AT TRIAL DAY 26, PAGE 149,
4 AND LOOK AT LINE NINE THROUGH 20, PLEASE. STARTING WITH
5 OTHERWISE WE HAVE NO FURTHER EVIDENCE.

6 A. OTHERWISE, WE HAVE NO FURTHER EVIDENCE READY TO GO AT
7 THIS TIME.

8 THE COURT: HOW ABOUT STOECKLEY?

9 MR. SMITH: MAYBE THE GOVERNMENT WOULD LIKE TO CALL
10 HER.

11 THE COURT: YOU DO NOT?

12 MR. SMITH: AT LEAST AT THIS MOMENT WE DO NOT.

13 THE COURT: WELL, NOW, LISTEN, ENOUGH OF THE THING
14 IS ENOUGH, WADE. IF YOU'RE GOING TO EVER CALL HER, YOU CALL
15 HER RIGHT NOW OR I'M GOING TO RELEASE HER FROM HER SUBPOENA.

16 MR. SMITH: JUDGE, I UNDERSTAND WHAT YOU'RE SAYING.
17 LET ME JUST SAY THIS, THAT WOMAN MADE THE MOST OUTRAGEOUS
18 STATEMENTS TO A LADY AT THE HOSPITAL WHEN SHE GOT HER NOSE
19 FIXED THAT YOU HAVE EVER HEARD.

20 Q. OKAY. DO YOU REMEMBER WHAT THE LADY AT THE HOSPITAL HAD
21 SAID?

22 A. IT WOULD HAVE BEEN THE SAME KIND OF THINGS THAT SHE SAID
23 I ASSUME TO WENDY AND MAYBE THAT IS TO WENDY, BUT IT WOULD BE
24 THE SAME KINDS OF THINGS THAT SHE WAS ALWAYS SAYING.

25 Q. ALL RIGHT. AND SO THIS WOULD BE AN EXAMPLE OF WHAT YOU

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1 REFERRED TO IN THAT EARLIER STATEMENT WHEN YOU WERE TALKING
2 ABOUT JERRY LEONARD, BUT IT DIDN'T REALLY RELATE TO JERRY
3 LEONARD?

4 A. THAT'S RIGHT. YES.

5 Q. LET'S LOOK AT THE NEXT PAGE -- I'M SORRY, 151. LET'S GO
6 TO 151. AT LINE 17 THROUGH 23, READ WHAT THE COURT SAYS.

7 A. THE COURT: (INTERPOSING.) DON'T TELL ME ALL THAT STUFF.
8 LISTEN, I'M NOT CARING WHETHER HE WANTS HER CALLED OR NOT.
9 THE ONLY THING I'M CARING ABOUT IS YOU HAVE GOT A WITNESS HERE
10 THAT YOU HAVE HAD ALL THE WHOLE WEEK. I'VE BEEN PAYING A
11 LAWYER TO SORT OF CADDY FOR HER AT THE GOVERNMENT'S EXPENSE
12 AND I'M AT THE END OF MY ROPE WITH THAT. READ ON?

13 Q. YOUR REPLY?

14 A. MR. SMITH: I WILL SAY THIS, JUDGE, THE DEFENSE DOESN'T
15 HAVE MUCH MONEY, BUT WE WILL REIMBURSE THE GOVERNMENT FOR ANY
16 ATTORNEY'S FEES THAT MAY BE REQUIRED TO KEEP HELENA STOECKLEY
17 HERE UNTIL MONDAY.

18 MR. SEGAL: THAT IS RIGHT, YOUR HONOR, WE WILL AGREE
19 TO DO THAT.

20 MR. MURTAGH: I DON'T SEE HOW YOU CAN DO THAT.

21 MR. SMITH: THE MORE THE GOVERNMENT COMPLAINS ABOUT
22 HER BEING HERE, THE MORE INTERESTED WE ARE IN HER. IF THEY
23 WOULD STOP TALKING ABOUT IT, WE WOULD LOSE INTEREST.

24 Q. ALL RIGHT. NOW, THIS WAS TRIAL DAY 26 THAT WE'RE READING
25 FROM NOW. SO, THAT WOULD BE FRIDAY, RIGHT?

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1 A. YES, SIR, I THINK SO.

2 Q. AND SO AT LEAST WE KNOW FROM THE TRANSCRIPT THAT HELENA
3 STOECKLEY WAS AVAILABLE TO YOU MONDAY THROUGH FRIDAY OF THE
4 WEEK AFTER HER TESTIMONY?

5 A. YES, SIR.

6 Q. AND YOU DECIDED NOT TO RECALL HER?

7 A. YES, SIR.

8 Q. OKAY. I WANT TO DIRECT YOUR ATTENTION NOW TO THE
9 TESTIMONY YOU GAVE ON DIRECT EXAMINATION ABOUT YOUR THEORY OF
10 THE CASE WITH RESPECT TO INTRUDERS --

11 A. YES, SIR.

12 Q. -- DO YOU RECALL THAT?

13 A. YES, I DO.

14 Q. ALL RIGHT. YOU TESTIFIED, DID YOU NOT, ON DIRECT
15 EXAMINATION ABOUT SOME RUBBER GLOVE FRAGMENTS, IS THAT RIGHT?

16 A. I DID.

17 Q. AND I BELIEVE YOU SAID ON DIRECT EXAMINATION THAT THEY
18 WERE FOUND IN THE KITCHEN, BUT WEREN'T THEY REALLY FOUND IN
19 THE MASTER BEDROOM?

20 A. THEY WERE FOUND, I THOUGHT, SOME IN THE KITCHEN, BUT THEY
21 MAY HAVE BEEN IN THE MASTER BEDROOM. I MAY BE WRONG ABOUT
22 THAT.

23 Q. ALL RIGHT. NOW, THE GOVERNMENT HAD INTRODUCED TESTIMONY
24 AT THE TRIAL TRYING TO MATCH THESE FRAGMENTS TO A BOX OF
25 SURGICAL GLOVES THAT WAS IN THE HOUSE, IS THAT RIGHT?

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1 A. THEY WERE UNDER THE SINK IN THE KITCHEN.

2 Q. ALL RIGHT. AND THEIR EXPERT TESTIFIED USING NEUTRON
3 ACTIVATION ANALYSIS, IS THAT RIGHT?

4 A. THAT'S WHAT WAS USED.

5 Q. AND THE EVIDENCE THAT THE GOVERNMENT PRESENTED TENDED TO
6 SHOW THAT THERE WAS A MATCH, IS THAT RIGHT?

7 A. I THINK THAT'S RIGHT.

8 Q. AND THEN YOU TESTIFIED ON DIRECT EXAMINATION TODAY THAT
9 THE DEFENSE HAD ITS OWN NEUTRON ACTIVATION ANALYSIS DONE, IS
10 THAT CORRECT?

11 A. I BELIEVE THAT IS CORRECT.

12 Q. AND WAS THAT BY A MR. GUINN?

13 A. I DON'T REMEMBER.

14 Q. ALL RIGHT. BUT YOU INTRODUCED EVIDENCE TO THE EFFECT
15 THAT WITH HIS ANALYSIS HE HAD FOUND MORE TRACE ELEMENTS IN THE
16 FRAGMENTS THAT HE SAID DIFFERENTIATED THEM FROM THE OTHERS IN
17 THE BOX?

18 A. YES.

19 Q. BUT THE GOVERNMENT -- THIS WAS A DISPUTE BETWEEN THE
20 PARTIES, IS THAT RIGHT?

21 A. IT WAS. AND, OF COURSE, WE SAID OUR PEOPLE WERE RIGHT
22 AND THEY SAID THEIR PEOPLE WERE RIGHT.

23 Q. SO, THE JURY GOT CONFLICTING EVIDENCE ON WHETHER THE
24 GLOVE FRAGMENTS MATCHED THE BOX?

25 A. I THINK THAT'S RIGHT.

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1 Q. NOW, YOU TESTIFIED ON DIRECT EXAMINATION THAT YOUR SIDE
2 OF THE CASE NEEDED EVIDENCE OF INTRUDERS, IS THAT RIGHT?

3 A. WE DID.

4 Q. AND YOU WERE ARGUING TO THE JURY THAT IF SOMETHING WAS
5 FOUND THAT COULDN'T BE TRACED TO THE MACDONALD HOUSEHOLD THAT
6 WAS EVIDENCE THAT HELPED YOU?

7 A. YES, IT WAS SOMETHING THAT COULD HAVE BEEN BROUGHT INTO
8 THE HOUSE BY ALIEN TO THAT HOUSE, PEOPLE OF THAT HOUSE, IT
9 WOULD HELP US.

10 Q. ALL RIGHT. BUT YOU HAD QUITE A BIT OF THAT EVIDENCE TO
11 POINT TO IN THE TRIAL, DID YOU NOT?

12 A. THERE WAS SOME.

13 Q. LET ME REFER YOU TO TRIAL DAY 28, PAGE 217. AND I
14 REPRESENT TO YOU THIS IS PART OF THE CLOSING ARGUMENT GIVEN BY
15 MR. BERNIE SEGAL. DO YOU RECALL THAT CLOSING ARGUMENT?

16 A. I DO.

17 Q. AND IT'S PRETTY LEGENDARY IN RALEIGH, ISN'T IT?

18 A. YES.

19 Q. THE LEGENDARY PART BEING THAT HE TOOK ALL THE TIME AND
20 DIDN'T LEAVE YOU WITH ANY, IS THAT RIGHT?

21 A. YES.

22 Q. AND MR. BLACKBURN GAVE YOU SOME OF HIS TIME SO YOU COULD
23 MAKE SOME ARGUMENT TO THE JURY?

24 A. MR. BLACKBURN RETURNED A FAVOR I HAD DONE FOR HIM SOME
25 YEARS BEFORE WHEN HE NEEDED -- WHEN HE HAD A JUROR HE NEEDED

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1 TO DISMISS AND I GAVE HIM A PEREMPTORY.

2 Q. ALL RIGHT.

3 A. SO, IT WAS A FAIR TRADE.

4 Q. ALL RIGHT. SO, HE GAVE YOU SOME TIME SO THAT YOU COULD
5 MAKE AN ARGUMENT EVEN THOUGH MR. SEGAL HAD CONSUMED MOST OF
6 THE TIME?

7 A. YES.

8 Q. ALL RIGHT. NOW, THIS IS MR. SEGAL'S ARGUMENT. AND LET'S
9 LOOK AT PAGE 217. AND HE STARTS UP THERE IN THE MIDDLE OF
10 LINE ONE -- LET'S GO BACK TO THE PREVIOUS PAGE FOR CONTEXT.
11 LET'S START WITH THAT LAST LINE, LINE 25. THE GOVERNMENT --
12 DO YOU SEE WHERE IT SAYS THE GOVERNMENT SAYS ALSO THAT THERE
13 WERE NO --

14 A. THE GOVERNMENT SAYS ALSO THAT THERE WERE NO INTRUDERS IN
15 THIS CASE. THERE IS NO PROOF OF INTRUDERS IN THIS CASE. THE
16 LIST OF EVIDENCE THAT SUPPORTS JEFF'S STORY WILL SURPRISE YOU
17 WHEN WE PULL IT ALL TOGETHER RIGHT NOW.

18 Q. ALL RIGHT. AND THEN IN LINES FIVE THROUGH 11 HE
19 DESCRIBES THE LATEX GLOVE ABOUT WHICH YOU'VE ALREADY
20 TESTIFIED?

21 A. YES.

22 Q. ALL RIGHT. NOW, LOOK DOWN AT LINE 12 AND WHAT IS -- READ
23 THOSE FEW SENTENCES.

24 A. WHAT ABOUT THE FIBER FOUND ON JEFF'S GLASSES IN THE
25 LIVING ROOM? THEY HAVE TRIED AND TRIED AND TRIED AND THEY

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1 CANNOT FIND ANY SOURCE FROM WITHIN THE MACDONALD HOUSE WHERE
2 THAT FIBER CAME FROM.

3 Q. KEEP READING.

4 A. WHERE DO THEY THINK IT CAME FROM? IT FLEW IN THE WINDOW.
5 NONSENSE. YOU HAVE A RIGHT TO BELIEVE THAT THAT FIBER IS ONE
6 MORE PIECE OF PHYSICAL EVIDENCE THAT SUPPORTS AN OPPOSITE
7 INFERENCE FROM WHAT THE GOVERNMENT WANTS. READ ON?

8 Q. NO. I WANT TO ASK YOU DID -- THIS REFERS IN MR. SEGAL'S
9 ARGUMENT TO -- HE'S POINTING OUT TO THE JURY THAT THERE WAS A
10 FIBER FOUND ON MACDONALD'S GLASSES, IS THAT RIGHT?

11 A. YES.

12 Q. AND IT COULDN'T BE TRACED TO ANYTHING IN THE HOUSE?

13 A. YES.

14 Q. ALL RIGHT. AND NOW READ 20 THROUGH 24, PLEASE.

15 A. UNIDENTIFIED HAIR. THERE IS HAIR IN THIS CASE. THE
16 GOVERNMENT HAS FOUND AND THEY HAVE HAD MACDONALD'S SAMPLE
17 WHICH WAS GIVEN TO THEM AND THEY STILL, TO THIS DAY, CANNOT
18 ASCRIBE IT TO ANY MEMBER OF THE FAMILY.

19 Q. ALL RIGHT. SO, YOU WERE OR MR. SEGAL ON BEHALF OF THE
20 DEFENSE WAS ABLE TO ARGUE TO THE JURY THAT THERE WAS AT LEAST
21 ONE UNIDENTIFIED HAIR THAT HAD BEEN FOUND AT THE CRIME SCENE
22 AND WAS UNIDENTIFIED?

23 A. YES.

24 Q. ALL RIGHT. AND DO YOU KNOW IF THAT HAIR WAS -- ONE
25 MOMENT PLEASE.

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1 (PAUSE.)

2 DO YOU KNOW IF THE REFERENCE THERE TO THE HAIR WAS
3 TO A HAIR FOUND IN COLETTE MACDONALD'S LEFT HAND?

4 A. I THINK SO, BUT I'M JUST NOT SURE.

5 Q. OKAY.

6 A. I THINK SO.

7 Q. ALL RIGHT. NOW, LET'S LOOK AT -- STARTING AT LINE 25
8 WITH FINGERPRINTS, THERE ARE FINGERPRINTS.

9 A. YES.

10 Q. IF YOU'LL READ THAT, PLEASE.

11 A. THERE ARE FINGERPRINTS. WE TALKED ABOUT THE ONES THAT
12 WERE FOUND AND THAT WERE NOT LIFTED PROPERLY, THE ONES THAT
13 WERE FOUND THAT WERE NOT IDENTIFIED OR PARTIALLY OR NOT
14 COMPLETE, THE ONES THAT WERE NEVER FOUND BECAUSE THEY DID NOT
15 PROCESS THE CRIME SCENE.

16 Q. OKAY. SO, MR. SEGAL, ON BEHALF OF THE DEFENSE, IS
17 TELLING THE JURY THAT THERE WERE UNIDENTIFIED FINGERPRINTS IN
18 THE HOUSE?

19 A. YES.

20 Q. AND NOW IF YOU WOULD READ STARTING AT LINE SIX ABOUT THE
21 CANDLE WAX.

22 A. WHAT ABOUT THE CANDLE WAX? THREE DIFFERENT CANDLES
23 PRODUCED THREE DIFFERENT TYPES OF WAX. THEY WENT AND THEY
24 ROUNDED UP EVERYTHING IN THE MACDONALD HOUSE. THEY FOUND 14
25 CANDLES. THEY TOOK IT TO THE LAB. WHEN THEY GOT DONE WITH

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1 THEIR BEST EFFORTS, WHAT DID THEY FIND? THAT THE WAX THAT WAS
2 FOUND IN THE MACDONALD HOUSE -- IN THE LIVING ROOM -- JEFF
3 SAYS THAT HE REMEMBERS A WOMAN WITH A FLICKERING LIGHT --
4 WHICH I THINK IS A REASONABLE CONCLUSION WHERE THEY ARE
5 TALKING ABOUT A WOMAN WITH A CANDLE. THE REASONABLE
6 CONCLUSION FROM ALL THAT IS THIS, THAT THAT IS EVIDENCE OF THE
7 TRUTH. NOW, WHAT DID THE GOVERNMENT DO ABOUT THAT?

8 READ ON?

9 Q. YOU CAN READ ON. SURE.

10 A. THE WITNESS SAID, WELL, WE DIDN'T TAKE THAT SERIOUSLY
11 BECAUSE THE WAX WAS HARDEN. HOW LONG DID IT TAKE TO HARDEN,
12 I SAID TO THE WITNESS. THREE WEEKS. WHEN DID YOU EXAMINE THE
13 WAX? MARCH 6TH OF 1970. FROM FEBRUARY 17TH TO MARCH 6TH IS
14 THREE WEEKS. AND HE IS SURPRISED THAT THE WAX HAD HARDENED.
15 WHAT I AM SAYING TO YOU IS THAT THE REASONABLE CONCLUSION THAT
16 YOU OUGHT TO DRAW IS THAT THE WAX FOUND IN THAT HOUSE --

17 Q. THAT'S FAR ENOUGH.

18 A. ALL RIGHT.

19 Q. SO, HERE MR. SEGAL IS ARGUING TO THE JURY THAT THERE WAS
20 CANDLE WAX IN THE HOUSE AND IT DIDN'T MATCH TO ANY OF THE 14
21 CANDLES IN THE MACDONALD HOUSEHOLD, IS THAT RIGHT?

22 A. YES.

23 Q. NOW, LET'S MOVE FORWARD TO TRIAL DAY 28, PAGE 224. STILL
24 IN THE CLOSING ARGUMENT. IF YOU GO DOWN TO LINE 23, JUST READ
25 THAT.

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1 A. THERE'S MORE PROOF THAT THERE WERE INTRUDERS BESIDES THE
2 LATEX, THE FIBERS, THE HAIR, THE WAX, THE FINGERPRINTS AND THE
3 WEAPONS. THERE'S MORE.

4 Q. SO, IN SUMMARY, HE'S LISTING LATEX, FIBERS, HAIR, WAX,
5 FINGERPRINTS --

6 A. YES.

7 Q. -- AND THE WEAPONS --

8 A. YES.

9 Q. -- AS THINGS THAT MR. SEGAL ARGUES WERE FOREIGN TO THE
10 MACDONALD HOUSEHOLD?

11 A. YES.

12 Q. NOW, OF COURSE, THERE WAS A LOT OF DISPUTE ABOUT WHETHER
13 THE WEAPONS WERE AS FAR AS THE GOVERNMENT'S CONTENTION --

14 A. THERE WAS.

15 Q. -- AND THE DEFENSE CONTENTION, IS THAT RIGHT?

16 A. YES.

17 Q. OKAY. MR. SMITH, I'D LIKE TO NOW MOVE TO THE ISSUE OF
18 JIMMY BRITT.

19 A. ALL RIGHT.

20 Q. I WANT TO CALL UP GOVERNMENT EXHIBIT 285. I'M SORRY,
21 2085. 2085. I ASK YOU TO TAKE A LOOK AT THAT DOCUMENT, WHICH
22 IS IN EVIDENCE, AND SEE IF YOU'VE EVER SEEN IT BEFORE.

23 A. I DON'T THINK I'VE SEEN THAT BEFORE. IT MAY BE THAT I
24 HAVE.

25 Q. ALL RIGHT. NOW, IT APPEARS TO BE SIGNED BY JIMMY B.

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1 BRITT, IS THAT CORRECT?

2 A. YES.

3 Q. AND HE IDENTIFIES HIMSELF AS A RETIRED SUPERVISORY DEPUTY
4 U.S. MARSHAL?

5 A. YES.

6 Q. AND THE DATE HE SAYS IS 2/23/05?

7 A. THAT'S RIGHT.

8 (GOVERNMENT EXHIBIT NUMBER 2085
9 WAS IDENTIFIED FOR THE RECORD.)

10 Q. AND IT APPEARS TO BE NOTARIZED BY LEE TART, IS THAT
11 RIGHT?

12 A. IT APPEARS TO BE, YES.

13 Q. AND LEE TART YOU TESTIFIED ON DIRECT EXAMINATION WAS
14 ANOTHER RETIRED DEPUTY MARSHAL WHO ACCOMPANIED MR. BRITT TO
15 YOUR OFFICE?

16 A. YES.

17 Q. NOW, LOOKING AT THE FIRST PARAGRAPH -- JUST READ THE
18 FIRST PARAGRAPH ALOUD, IF YOU WOULD.

19 A. I, JIMMY B. BRITT, RETIRED SUPERVISORY DEPUTY U.S.
20 MARSHAL FOR THE EASTERN DISTRICT OF NORTH CAROLINA DO
21 VOLUNTARILY SUBMIT THIS STATEMENT OF FACTS REGARDING THE
22 IRREGULARITIES I OBSERVED DURING THE TRIAL OF JEFFREY
23 MACDONALD IN RALEIGH, NORTH CAROLINA, IN JULY 1979 AND AUGUST
24 1979.

25 Q. AND SKIP DOWN IF YOU WOULD AND READ PARAGRAPHS THREE AND

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1 FOUR.

2 A. THE SPECIFICS ARE TOO NUMEROUS TO LIST IN THIS STATEMENT
3 OF FACTS. HOWEVER, I WILL LIST THE NAMES OF THE PEOPLE
4 INVOLVED IN THE IRREGULARITIES THAT I OBSERVED WHILE ASSIGNED
5 AS A DEPUTY U.S. MARSHAL AT THIS TRIAL; THE LATE FRANKLIN
6 DUPREE, UNITED STATES DISTRICT JUDGE, PRESIDED OVER THE TRIAL;
7 RICH LEONARD AND JOHN EDWARDS, LAW CLERKS FOR JUDGE DUPREE;
8 AND JIM BLACKBURN, U.S. ATTORNEY; AND THE FOREMAN OF THE JURY.

9 Q. OKAY. SO, HERE MR. BRITT SEEMS TO BE SAYING THAT THERE
10 WERE IRREGULARITIES AT THE TRIAL AND AMONG THE PEOPLE
11 PARTICIPATING WERE JUDGE DUPREE, LAW CLERKS RICH LEONARD AND
12 JOHN EDWARDS, JIM BLACKBURN AND THE FOREMAN OF THE JURY, IS
13 THAT RIGHT?

14 A. IT APPEARS TO BE WHAT HE'S SAYING.

15 Q. ALL RIGHT. AND THEN READ THE LAST PARAGRAPH, IF YOU
16 WOULD.

17 A. I HAVE REQUESTED AS A WITNESS ON MY BEHALF LEE W. TART,
18 RETIRED INSPECTOR, WITNESS SECURITY DIVISION, U.S. MARSHAL
19 SERVICE, 30 YEARS SERVICE, TO BE PRESENT AT ANY AND ALL
20 MEETINGS AND POTENTIAL COURT HEARINGS.

21 Q. AND, IN FACT, THE NEXT DAY HE DID COME TO YOUR OFFICE TO
22 GIVE THE SWORN STATEMENT?

23 A. YES.

24 Q. NOW, RICH LEONARD AND JOHN EDWARDS WEREN'T THE LAW CLERKS
25 FOR JUDGE DUPREE DURING THE MACDONALD TRIAL, WERE THEY?

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1 A. NO. STEVE COGGINS WAS.

2 Q. NOW, WITH REGARD TO THIS STATEMENT ABOUT IRREGULARITIES,
3 DIDN'T JIM BRITT TELL YOU AS ONE OF THE ALLEGED IRREGULARITIES
4 THIS STORY ABOUT A CAKE BEING PROVIDED BY THE JURY AND GIVEN
5 TO JUDGE DUPREE?

6 A. YES.

7 Q. AND WOULD IT BE FAIR TO SAY THAT HE PUT AS MUCH EMPHASIS
8 ON THAT AS AN IRREGULARITY AS HE DID THE MATTER HE ALLEGED
9 ABOUT JIM BLACKBURN?

10 A. NO, I DON'T THINK THAT WOULD BE FAIR. HE PUT SOME
11 EMPHASIS ON IT, BUT THE REASON HE CAME TO SEE ME WAS THE
12 STATEMENT BY THE PROSECUTOR TO HELENA.

13 Q. DID HE TELL YOU CONCERNING THE CAKE THAT THE CAKE WAS
14 TAKEN INTO JUDGE DUPREE'S CHAMBERS AND THAT THE LAW CLERKS,
15 RICH LEONARD AND JOHN EDWARDS, ATE SOME OF IT?

16 A. I DON'T KNOW WHETHER HE SAID JOHN EDWARDS. I DON'T
17 REMEMBER. HE SAID THAT OTHER PEOPLE JOINED IN THE SHARING OF
18 THE CAKE.

19 Q. OKAY. IN ANY EVENT, THE NEXT DAY AFTER THIS STATEMENT,
20 MR. BRITT AND MR. TART CAME TO YOUR OFFICE AND GAVE THE SWORN
21 STATEMENT, IS THAT RIGHT?

22 A. YES, THEY DID.

23 Q. NOW, FEBRUARY 24TH, 2005, IS THE DATE OF THE SWORN
24 STATEMENT. LET'S PUT UP GOVERNMENT EXHIBIT 286, PLEASE.

25 2086. FORGIVE ME. I'M SORRY. AND THIS IS ALSO -- I BELIEVE

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1 IT'S DEFENSE EXHIBIT 5055, IS THAT RIGHT? OKAY.

2 SO, THIS GIVES THE DATE FEBRUARY 24TH. NOW, WAS
3 THIS THE FIRST TIME THAT MR. BRITT HAD COME TO YOUR OFFICE?

4 A. NO. NO.

5 (GOVERNMENT EXHIBIT NUMBER 2086
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. BECAUSE YOU HAD THE COURT REPORTER ALREADY THERE, RIGHT?

8 A. WELL, I DON'T THINK THIS IS THE DAY HE CAME TO MY OFFICE
9 AT ALL BECAUSE I THINK I HAD TIME TO LISTEN TO WHAT HE HAD TO
10 SAY AND REFLECT ON IT, THINK ABOUT IT SOME, AND DECIDED THAT
11 IT WOULD BE IMPORTANT TO HAVE A SWORN STATEMENT.

12 Q. ALL RIGHT. SO, HE CAME TO YOUR OFFICE AT SOME TIME --
13 SOME WEEKS BEFORE FEBRUARY 24TH --

14 A. YES.

15 Q. -- AND TOLD YOU THE GIST OF HIS ALLEGATIONS?

16 A. HE DID.

17 Q. ALL RIGHT. LET'S LOOK AT PAGE EIGHT OF THIS EXHIBIT AT
18 LINE TEN AND THE QUESTION STARTS AT LINE SIX. WOULD YOU READ
19 THE QUESTION AND ANSWER?

20 A. AND HAVE YOU HAD OCCASION DURING THAT PERIOD OF TIME TO
21 SPEAK WITH ANY OF YOUR FRIENDS ABOUT IT TO LET THEM KNOW THAT
22 YOU WERE WORRIED?

23 MR. BRITT: NOT UNTIL APPROXIMATELY TWO YEARS AGO.

24 Q. SO, HE'S SAYING APPROXIMATELY TWO YEARS AGO IS WHEN HE
25 FIRST SPOKE TO HIS FRIENDS ABOUT THIS MATTER?

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1 A. YES.

2 Q. BY THE WAY, MR. SMITH, I THINK IF YOU TAP THE LOWER
3 RIGHT-HAND CORNER OF THE SCREEN IT WILL GET RID OF THE --
4 LOWER LEFT IT WILL GET RID OF THE PINK ARROW.

5 A. I SEE THE PINK ARROW.

6 Q. OKAY.

7 A. THERE WE GO.

8 Q. WE GOT IT. WE GOT IT. LET'S MOVE TO PAGE NINE AND TEN.
9 AND AS WE SEE ON LINE -- I'M SORRY, PAGE NINE, LINE 12, YOU
10 ASK HIM A QUESTION. CAN YOU READ THAT QUESTION?

11 A. MR. SMITH: IF YOU WILL, WOULD YOU GIVE US SOME INSIGHT
12 INTO YOUR FEELINGS ABOUT WHY YOU WEREN'T ABLE TO COME FORWARD
13 UNTIL NOW?

14 Q. AND HIS ANSWER?

15 A. READ ON?

16 Q. HIS ANSWER?

17 A. WELL, OUT OF RESPECT FOR THE HONORABLE LATE FRANKLIN
18 DUPREE WHO WAS THE UNITED STATES DISTRICT JUDGE THAT PRESIDED
19 OVER THIS CASE AND RICHARD LEONARD, WHO IS A UNITED STATES
20 BANKRUPTCY JUDGE OVER IN WILSON, NORTH CAROLINA, AND I FEEL
21 LIKE THAT IT WAS THE LATE SENATOR -- I MEAN, JOHN EDWARDS, WHO
22 IS A FORMER UNITED STATES SENATOR FOR THE STATE OF NORTH
23 CAROLINA.

24 Q. SO, HE'S SAYING OUT OF RESPECT TO THOSE THREE PEOPLE HE
25 KEPT SILENT --

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1 A. YES.

2 Q. -- IS THAT RIGHT?

3 A. YES.

4 Q. LET'S LOOK AT -- I'M SORRY, LET'S READ ON. LET'S LOOK AT
5 LINE 24, READ THAT PART, AND THEN WE'LL GO TO THE NEXT PAGE,
6 PAGE TEN.

7 A. MR. SMITH: AND WERE THOSE PEOPLE WORKING IN THE COURTS
8 -- WITH THE COURTS OR WITH JUDGE DUPREE AT THE TIME OF THE
9 MACDONALD TRIAL?

10 MR. BRITT: YES, SIR, THEY WERE.

11 Q. ALL RIGHT. THANK YOU. NOW, LET'S LOOK AT PAGE 11, LINE
12 11 THROUGH 14. NOW, WE'LL START UP AT LINE EIGHT, MR. JUNKIN
13 INTERJECTS. CAN YOU TELL US WHO HE IS?

14 A. MR. JUNKIN WAS A LAWYER WHO HAD WORKED SOME ON THE
15 MACDONALD CASE IN SOME WAYS AND I INVITED HIM TO COME AND TO
16 BE THERE FOR THIS.

17 Q. OKAY. WOULD YOU READ LINES EIGHT THROUGH 14 WHERE
18 THERE'S A Q&A BETWEEN MR. JUNKIN AND --

19 A. MR. JUNKIN: I SEE. AND JUST TO BE SPECIFIC ABOUT WHEN
20 YOU FIRST CONTACTED MR. SMITH ABOUT THE MACDONALD CASE, CAN
21 YOU GIVE ME A MONTH? WAS IT -- WAS IT TODAY, FEBRUARY 25TH?
22 WAS IT WITHIN THE LAST SAY EIGHT WEEKS?

23 MR. BRITT: YES, SIR, IT WAS IN JANUARY. IT WAS IN
24 JANUARY OF 2005.

25 Q. OKAY. NOW, JIMMY BRITT IS SAYING THAT HE CAME FORWARD IN

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1 JANUARY OF 2005, TO YOU WITH THIS INFORMATION, IS THAT RIGHT?

2 A. YES. YES.

3 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

4 A. PRETTY CONSISTENT, YES.

5 Q. DO YOU KNOW -- CAN YOU BE MORE PRECISE THAN JUST THE
6 MONTH OF JANUARY?

7 A. NO. NO. I'M SORRY. I WISH I COULD, BUT I THINK IT WAS
8 IN JANUARY OF 2005.

9 Q. ALL RIGHT. DO YOU THINK IT WAS AFTER THE 17TH OF JANUARY
10 OR BEFORE?

11 A. I DON'T KNOW.

12 Q. AND DO YOU RECALL CALLING ANYONE TO FIND OUT ABOUT THE
13 HEALTH OF GERALDINE HOLDEN DURING THIS TIME PERIOD?

14 A. IT MAY BE I CALLED HER HOUSE. IT MAY BE I JUST MADE A
15 PHONE CALL TO SEE IF I COULD TALK WITH HER. I'M NOT SURE. I
16 REMEMBER SOMETHING ABOUT THAT.

17 Q. GERALDINE HOLDEN WAS AN EMPLOYEE IN 1979, WITH THE
18 MARSHAL SERVICE, IS THAT RIGHT?

19 A. YES.

20 Q. AND, OF COURSE, SHE BY THE TIME -- THE TIME FRAME WE'RE
21 TALKING ABOUT, 2005 TIME FRAME, SHE HAD RETIRED?

22 A. SHE HAD RETIRED.

23 Q. AND DID YOU LEARN THAT HER HEALTH WAS BAD OR GOOD?

24 A. I THINK I LEARNED THAT HER HEALTH WAS VERY BAD, THAT SHE
25 WAS AT THAT TIME QUITE ILL.

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1 Q. AND DID YOU MAKE THAT CALL IN THE YEAR 2004?

2 A. I CAN'T IMAGINE IT BECAUSE I NEVER TALKED TO MR. BRITT --
3 I HAD NOT TALKED TO MR. BRITT TILL 2005.

4 Q. SO, THE CALL WOULD HAVE BEEN AFTER YOU TALKED TO MR.
5 BRITT?

6 A. IF I EVER MADE THAT CALL AT ALL, IT WOULD BE AFTER I
7 TALKED TO MR. BRITT.

8 Q. BUT AS A RESULT OF THE CALL IF YOU MADE IT, YOU NEVER GOT
9 A CHANCE TO TALK TO MS. HOLDEN?

10 A. NO. IT SEEMS TO ME THAT I WAS TOLD THAT SHE WAS IN NO
11 CONDITION TO SPEAK. I MAY BE WRONG ABOUT THAT, BUT I THINK
12 THAT'S TRUE.

13 Q. ALL RIGHT. LET'S LOOK AT LINE 23 ON THE SAME PAGE, 23
14 AND 24, AND THEN WE'LL GO OVER TO THE -- I'M SORRY, 22 THROUGH
15 24, AND THEN WE'LL GO OVER TO THE NEXT PAGE. CAN YOU READ
16 THAT?

17 A. YES.

18 MR. SMITH: WHAT WERE YOU ASKED TO DO?

19 MR. BRITT: I WAS ASKED TO TRAVEL FROM RALEIGH,
20 NORTH CAROLINA, TO CHARLESTON, SOUTH CAROLINA, TO ASSUME
21 CUSTODY OF A PROTECTED WITNESS, A WITNESS BY THE NAME OF
22 HELENA STOECKLEY.

23 Q. NOW, AS FAR AS THE TOWN IN SOUTH CAROLINA THAT DEFINITELY
24 COMES FROM MR. BRITT AND NOT FROM YOU?

25 A. YES.

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1 Q. OKAY. LET'S GO DOWN TO LINE 13 ON PAGE 12, AND READ 13
2 THROUGH 16, PLEASE.

3 A. MR. SMITH: AND WHERE WAS SHE IN CHARLESTON?

4 MR. BRITT: SHE WAS AT THE UNITED STATES MARSHAL'S
5 OFFICE IN CHARLESTON, SOUTH CAROLINA.

6 Q. SO, MR. BRITT IS RECALLING TO YOU THAT HE PICKED UP
7 HELENA STOECKLEY AT THE UNITED STATES MARSHAL'S OFFICE IN
8 CHARLESTON, SOUTH CAROLINA, IS THAT RIGHT?

9 A. YES. YES.

10 Q. NOW, LET'S MOVE ON TO PAGE 13. EXCUSE ME A MINUTE.

11 (PAUSE.)

12 I'M SORRY, LET'S JUMP BACK TO PAGE 12, AND YOU
13 NOTICE 17 THROUGH 19 THE BOYFRIEND ERNEST IS MENTIONED?

14 A. YES.

15 Q. OKAY. NOW, LET'S GO ON TO PAGE 13 AND LOOK AT LINE THREE
16 THROUGH TEN. READ THOSE, PLEASE, QUESTION AND ANSWER.

17 A. MR. SMITH: DO YOU REMEMBER HOW SHE WAS DRESSED? I KNOW
18 IT'S BEEN 25 OR 30 YEARS, BUT DO YOU REMEMBER HOW SHE WAS
19 DRESSED?

20 MR. BRITT: YES, SIR. SHE HAD ON -- SHE HAD ON A --
21 SHE HAD ON THIS FLOPPY HAT THAT'S BEEN DESCRIBED PREVIOUSLY IN
22 THE COURSE OF THE INVESTIGATION AND TRIAL AND SHE WAS DRESSED
23 IN A LONG SKIRT, HIPPIE-TYPE LOOKING LADY.

24 Q. SO, MR. BRITT IS SAYING THAT WHEN HE PICKED HELENA
25 STOECKLEY UP SHE HAD ON THE FLOPPY HAT THAT'S BEEN THE SUBJECT

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1 OF THIS INVESTIGATION?

2 A. I DON'T KNOW WHETHER IT'S THE SAME ONE, BUT HE SAID THAT.

3 Q. ALL RIGHT. NOW, LOOK AT LINES 11 THROUGH 15, AND READ
4 THE QUESTION AND ANSWER THERE.

5 A. MR. SMITH: DID ANYONE ACCOMPANY YOU ON THE JOURNEY?

6 MR. BRITT: YES, SIR. GERRY HOLDEN, WHO WAS AN
7 ADMINISTRATIVE PERSON IN THE UNITED STATES MARSHAL'S OFFICE
8 HERE IN RALEIGH.

9 Q. AND THAT'S A FEMALE GERRY, IS THAT RIGHT?

10 A. YES.

11 Q. OKAY. NOW, IF YOU WOULD GO AHEAD AND READ THE REST OF
12 THE PAGE.

13 A. MR. SMITH: DID ANYONE ACCOMPANY YOU ON THE JOURNEY?

14 MR. BRITT: YES, SIR, GERRY HOLDEN AND SO ON.

15 MR. SMITH: NOW, WHEN YOU PICKED UP MS. STOECKLEY,
16 DID HER FRIEND ERNEST ACCOMPANY HER AND YOU BACK TO NORTH
17 CAROLINA?

18 MR. BRITT: YES, SIR, THEY DID.

19 MR. SMITH: WHERE DID MS. STOECKLEY RIDE IN THE CAR?
20 WHERE DID HER BOYFRIEND ERNEST RIDE?

21 MR. BRITT: THEY RODE IN THE BACK SEAT OF THE CAR.

22 Q. SO, MR. BRITT'S STATEMENT TO YOU UNDER OATH WAS THAT HE
23 -- THAT ERNEST DAVIS ALSO ACCOMPANIED THEM IN THE CAR RIDING
24 FROM CHARLESTON TO RALEIGH?

25 A. YES.

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1 Q. DID MR. BRITT TELL YOU WHAT HE KNEW ABOUT THE CURRENT
2 CONDITION OF GERALDINE HOLDEN?

3 A. I DON'T REMEMBER.

4 Q. BY CURRENT, I MEAN --

5 A. AT THAT TIME.

6 Q. FEBRUARY 24TH, 2005.

7 A. I DON'T REMEMBER.

8 Q. ALL RIGHT. LET'S LOOK AT PAGE 14, LINES TEN THROUGH 17,
9 IF YOU'D READ THAT, PLEASE.

10 A. MR. SMITH: DID SHE ON HER OWN, WITHOUT ANY PROMPTING
11 FROM YOU, ENDEAVOR TO TALK ANY ABOUT THE MACDONALD CASE?

12 MR. BRITT: YES, DURING THE COURSE OF THE TRAVELS
13 FROM CHARLESTON, SOUTH CAROLINA, TO RALEIGH, WITHOUT ANY
14 PROMPTING FROM ME WHATSOEVER, SHE BROUGHT UP THE MATTER OF THE
15 TRIAL OF MACDONALD.

16 MR. SMITH: AND WHAT DID SHE TELL YOU ABOUT THE
17 TRIAL?

18 MR. BRITT: SHE SPECIFICALLY TOLD ME IN THE PRESENCE
19 OF GERRY HOLDEN WHILE RIDING FROM CHARLESTON TO RALEIGH,
20 SPECIFICALLY MADE MENTION OF A HOBBY HORSE, THAT SHE IN FACT
21 -- THAT SHE IN FACT WAS AT JEFFREY MACDONALD'S HOME AND/OR
22 APARTMENT AND THAT SHE MADE REFERENCE TO A HOBBY HORSE IN
23 JEFFREY MACDONALD'S LIVING ROOM.

24 Q. ALL RIGHT. THANK YOU. NOW, THE HOBBY HORSE WAS NOT IN
25 THE LIVING ROOM WAS IT IN ACTUAL FACT?

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1 A. I DON'T REMEMBER.

2 Q. ALL RIGHT. LET'S GO ON TO PAGE -- SAME PAGE, PAGE 15.
3 15 THROUGH 21, IF YOU'D READ THAT QUESTION AND ANSWER, PLEASE.

4 A. MR. SMITH: ARE THEY AMONG THE MOST IMPORTANT WORDS
5 YOU'VE EVER HEARD IN YOUR LIFE IN CONNECTION WITH ANY CASE OR
6 ANY OF YOUR OFFICIAL WORK?

7 MR. BRITT: YES, SIR, THAT'S CORRECT, AND ESPECIALLY
8 SPECIFICALLY THE JEFFREY MACDONALD TRIAL, YES, SIR.

9 Q. SO, THE WORDS MOST IMPORTANT YOU'VE HEARD IN YOUR LIFE
10 ACTUALLY FIRST CAME FROM YOU, NOT HIM, IS THAT RIGHT?

11 A. INDEED. THAT'S RIGHT.

12 Q. NOW, LET'S MOVE TO PAGE 16 AND LOOK AT QUESTION AND
13 ANSWER SIX THROUGH -- LINE SIX THROUGH 16, IF YOU'D READ THAT,
14 PLEASE.

15 A. MR. SMITH: ALL RIGHT. NOW, WHAT HAPPENED NEXT? YOU
16 MADE IT TO NORTH CAROLINA, AND THEN WHAT HAPPENED?

17 MR. BRITT: I CHECKED HER IN AT THE HOLIDAY INN
18 HOTEL OVER ON HILLSBOROUGH STREET, AND SHE AND ERNEST DEPARTED
19 THE LOBBY -- I GAVE THEM THE KEY, AND THEY DEPARTED THE LOBBY
20 AND WENT UP TO THEIR ROOMS. AND I DIDN'T SEE HELENA OR ERNEST
21 UNTIL THE NEXT MORNING WHEN I WENT OVER TO THE MOTEL -- OR
22 EXCUSE ME, THE HOTEL TO PICK THEM UP AND BRING THEM TO COURT.

23 Q. LET'S PUT GX-2377 BACK ON THE SCREEN, GOVERNMENT EXHIBIT
24 2377. THAT'S THE HOLIDAY INN ON HILLSBOROUGH STREET, RIGHT?

25 A. YES, IT IS.

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1 Q. ALL RIGHT. GO BACK TO THE PAGE OF THE TRANSCRIPT,
2 PLEASE. I'M SORRY, GOVERNMENT EXHIBIT 2086 AT PAGE 16. SO,
3 HERE IS THE ANSWER YOU JUST READ AT LINES NINE THROUGH 16.
4 MR. BRITT IS SAYING THAT HE TOOK HELENA STOECKLEY AND ERNEST,
5 THE BOYFRIEND, TO THE HILLSBOROUGH STREET HOLIDAY INN AND THEY
6 CHECK IN AS HOTEL GUESTS?

7 A. YES.

8 Q. AND THAT HE WENT BACK THERE THE NEXT MORNING TO PICK THEM
9 UP TO TAKE THEM TO COURT?

10 A. YES.

11 Q. ALL RIGHT. LET'S LOOK AT PAGE 17 AT LINES 13 THROUGH 15.
12 IF YOU COULD READ THE QUESTION IN LINE 12 AND READ THE ANSWER
13 IN 13 THROUGH 15, PLEASE.

14 A. WHAT HAPPENED AFTER THAT?

15 MR. BRITT: I ESCORTED HER TO THE EIGHTH FLOOR TO
16 JIM BLACKBURN'S OFFICE, WHO WAS AT THAT TIME THE UNITED STATES
17 ATTORNEY.

18 Q. WAS MR. BLACKBURN THE UNITED STATES ATTORNEY?

19 A. MR. ANDERSON WAS THE U.S. ATTORNEY. MR. BLACKBURN WAS
20 HIS ASSISTANT.

21 Q. ALL RIGHT. LET'S LOOK AT -- HOLD ON A MINUTE. LET'S
22 LOOK AT LINE 24 ON PAGE 17, AND THEN YOU CAN CONTINUE READING
23 THROUGH LINE SIX ON THE NEXT PAGE.

24 A. LINE 24.

25 MR. SMITH: NOW, WHEN YOU -- WHEN YOU DELIVERED

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1 HELENA STOECKLEY TO MR. BLACKBURN, DID MR. BLACKBURN MAKE ANY
2 COMMENT TO YOU ABOUT REMAINING IN THE ROOM?

3 MR. BRITT: YES, SIR. HE ASKED ME TO REMAIN IN THE
4 ROOM AND HER BOYFRIEND ERNEST SAT OUTSIDE IN THE ADJOINING
5 OFFICE.

6 Q. ALL RIGHT. SO, MR. BRITT IS TELLING YOU UNDER OATH THAT
7 MR. BLACKBURN ASKED HIM TO COME INTO THE ROOM WHERE THE
8 INTERVIEW WAS GOING TO TAKE PLACE, BUT ERNEST COULD NOT COME
9 IN?

10 A. YES.

11 Q. NOW, JUMP DOWN TO LINE 15, AND READ YOUR QUESTION AND
12 ANSWER THROUGH LINE 18.

13 A. NOW, DO YOU REMEMBER ANYONE ALSO BEING IN THE ROOM?

14 MR. BRITT: NO, SIR, I DON'T RECALL ANYONE ELSE
15 BEING IN THE ROOM.

16 Q. AND SO JIM BRITT IS TELLING YOU UNDER OATH THAT THE ONLY
17 PEOPLE IN THE ROOM WERE HIM, JIM BLACKBURN AND HELENA
18 STOECKLEY?

19 A. YES.

20 Q. AND MOVE FORWARD TO PAGE 19, LINE FOUR, WITH THE QUESTION
21 AND THEN LINE NINE WITH THE ANSWER.

22 A. MR. SMITH: DO YOU RECALL WHETHER MS. STOECKLEY TOLD MR.
23 BLACKBURN THE SAME THING, EXPRESSED THE SAME IDEAS, THAT SHE
24 HAD EXPRESSED TO YOU ON THE WAY UP TO NORTH CAROLINA FROM
25 SOUTH CAROLINA?

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1 MR. BRITT: YES, SIR. SHE SPOKE FREELY, I THINK,
2 WITH MR. BLACKBURN. AND NOT HER -- AND HER -- HER TESTIMONY,
3 IF IT WAS TESTIMONY IN THE INTERVIEW OR WHATEVER, SHE TALKED
4 VERY FREELY TO MR. BLACKBURN. SHE SPECIFICALLY MENTIONED THIS
5 HOBBY HORSE AND VARIOUS OTHER THINGS, TOLD MR. BLACKBURN THAT
6 SHE HAD BEEN INSIDE OF MR. JEFFREY MACDONALD'S HOME AND/OR
7 APARTMENT. AND AS I RECALL, MR. BLACKBURN ASKED HER WHY SHE
8 WAS THERE.

9 Q. SO, IN THIS QUESTION AND ANSWER, YOU ASKED MR. BRITT IF
10 MS. STOECKLEY EXPRESSED THE SAME IDEAS TO MR. BLACKBURN THAT
11 SHE HAD TOLD HIM ON THE RIDE TO NORTH CAROLINA FROM SOUTH
12 CAROLINA?

13 A. YES.

14 Q. AND HE SAID, YES, SIR?

15 A. YES.

16 Q. LET'S LOOK AT PAGE 21. IF YOU WOULD START READING AT
17 LINE 11 AND GO TO LINE 23.

18 A. MR. BRITT: AT THE CONCLUSION, MR. BLACKBURN STATED TO
19 HELENA STOECKLEY -- AFTER SHE HAD GIVEN THE HISTORY OF HER
20 VISIT TO JEFFREY MACDONALD'S HOME, MR. BLACKBURN STATED TO
21 HELENA STOECKLEY THAT IF YOU GO DOWNSTAIRS AND TESTIFY BEFORE
22 THE JURY AS TO WHAT YOU HAVE TOLD ME OR SAID TO ME HERE IN
23 THIS OFFICE, I WILL INDICT YOU FOR MURDER.

24 Q. AND THEN YOUR NEXT QUESTION?

25 A. MR. SMITH: NOW, MR. BRITT, THE IMPORTANCE OF THOSE WORDS

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1 WAS NOT LOST ON YOU EITHER?

2 MR. BRITT: NO, SIR, THEY WERE NOT. HAVE NEVER
3 BEEN.

4 Q. OKAY. SO, ONCE AGAIN, THE IMPORTANCE OF THE WORDS COMES
5 FROM THE QUESTION, NOT THE ANSWER?

6 A. YES.

7 Q. ALL RIGHT. LET'S LOOK AT PAGE 22, STARTING AT LINE FIVE,
8 AND I'M GOING TO ASK YOU TO READ ALL THE WAY OVER TO PAGE 23,
9 LINE THREE. STARTING AT LINE FIVE, PAGE 22.

10 A. MR. BRITT: I TOOK HELENA STOECKLEY FROM THE EIGHTH FLOOR
11 BY ELEVATOR DOWN TO THE SEVENTH FLOOR, AND TOOK HER IN THE
12 HALLWAY DOWN IN THE DIRECTION OF JUDGE DUPREE'S CHAMBERS,
13 WHERE THERE IS A DOOR ON THE FRONT (SIC) THAT ENTERS THE
14 COURTROOM. AND I THINK -- AND I TOOK HELENA STOECKLEY INTO THE
15 COURTROOM, AND WHILE IN THE PROCESS OF THIS TAKING HER INTO
16 THE COURTROOM, WHILE IN THE PROCESS, MR. BLACKBURN WENT INTO
17 JUDGE DUPREE'S CHAMBERS.

18 MR. SMITH: ALL RIGHT. AND HOW LONG WOULD HE HAVE
19 BEEN IN THERE SO FAR AS YOU KNOW?

20 MR. BRITT: WELL, WHEN I TOOK HELENA STOECKLEY IN
21 THE COURTROOM, THERE WAS -- NONE OF THE JURORS WERE PRESENT;
22 THE JUDGE WAS NOT PRESENT. AND ONLY THE ATTORNEYS WERE
23 PRESENT, THAT IS, YOU AND THE OTHER ATTORNEY.

24 MR. SMITH: MR. SEGAL?

25 MR. BRITT: MR. SEGAL. IN A MATTER OF ABOUT TEN-

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1 PLUS MINUTES, MAYBE 15 MINUTES AT THE MOST, IS WHEN JUDGE
2 DUPREE AND THE U.S. ATTORNEY JIM BLACKBURN CAME BACK INTO THE
3 COURTROOM.

4 MR. SMITH: NOW, WHEN YOU ENTERED THE DOOR THAT MR.
5 BLACKBURN ENTERED GOING TOWARD OR INTO JUDGE DUPREE'S
6 CHAMBERS, IS THERE ANY OTHER ROOM INTO WHICH HE COULD HAVE
7 BEEN GOING OTHER THAN THE JUDGE'S OFFICE?

8 MR. BRITT: NO, SIR. NO, SIR.

9 MR. SMITH: IN OTHER WORDS, THERE'S NOT A HALLWAY
10 THERE HE COULD HAVE ENTERED AND --

11 MR. BRITT: THAT DOOR IS LOCKED.

12 MR. SMITH: ALL RIGHT.

13 MR. BRITT: THE DOOR IS LOCKED IN THE HALLWAY.

14 Q. OKAY. WELL, LET'S JUST KEEP READING DOWN THROUGH LINE
15 THREE ON THE NEXT PAGE AND THEN I'LL ASK YOU SOME QUESTIONS.

16 A. MR. BRITT: THAT DOOR IS LOCKED.

17 MR. SMITH: ALL RIGHT.

18 MR. BRITT: THE DOOR IS LOCKED IN THE HALLWAY.

19 MR. SMITH: YES.

20 MR. BRITT: THE HALLWAY DOOR IS LOCKED.

21 MR. SMITH: NOW, WHEN YOU ENTER THE COURTROOM AFTER
22 SEEING MR. BLACKBURN ENTER JUDGE DUPREE'S CHAMBERS, DID YOU
23 SEE MR. MACDONALD'S LAWYERS IN THE COURTROOM?

24 MR. BRITT: YES, SIR, I DID. YEAH.

25 MR. SMITH: SO, IS YOUR TESTIMONY -- YOUR TESTIMONY

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1 TODAY IS THAT THERE IS NO WAY THOSE LAWYERS WERE ALSO IN JUDGE
2 DUPREE'S CHAMBERS?

3 MR. BRITT: NO, SIR, THEY WERE NOT. THEY WERE NOT,
4 NO, SIR.

5 Q. ALL RIGHT. IS THE GIST OF THIS STATEMENT TO YOU BY MR.
6 BRITT UNDER OATH IS THAT HE SAW MR. BLACKBURN GO INTO JUDGE
7 DUPREE'S CHAMBERS APPARENTLY TO HAVE SOME EX PARTE
8 COMMUNICATION?

9 A. YOU KNOW, I DIDN'T FOLLOW UP ON THAT WITH MR. BRITT. IT
10 WAS A PART OF HIS STORY. I ASSUMED THAT'S WHAT HE WAS SAYING.

11 Q. SO, HE SAID IN ANY EVENT THAT AFTER THE PROSECUTION
12 INTERVIEW THAT HE HAD -- SAID HE SAT IN ON THAT'S WHEN THIS IS
13 HAPPENING?

14 A. YES.

15 Q. AFTER THE PROSECUTION INTERVIEW HE WAS TAKING HELENA
16 STOECKLEY BACK TO THE COURTROOM, IS THAT RIGHT?

17 A. YES.

18 Q. AND HE SAYS THAT WHILE HE WAS DOING THAT HE SAW JIM
19 BLACKBURN ENTER JUDGE DUPREE'S CHAMBERS, IS THAT RIGHT?

20 A. YES.

21 Q. AND THEN HE PROCEEDED INTO THE COURTROOM WHERE YOU AND
22 MR. SEGAL WERE WAITING ALREADY, IS THAT RIGHT?

23 A. YES. YES.

24 Q. AND THAT IT WAS TEN-PLUS, MAYBE 15 MINUTES, BEFORE JUDGE
25 DUPREE AND JIM BLACKBURN ENTERED THE COURTROOM?

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1 A. YES.

2 Q. THAT'S THE GIST OF WHAT HE WAS TELLING YOU THEN?

3 A. I THINK SO, YES.

4 Q. AND YET I BELIEVE THAT YOU TESTIFIED ON DIRECT
5 EXAMINATION THAT JIM BRITT TOLD YOU THAT HE RESPECTED JUDGE
6 DUPREE ENORMOUSLY?

7 A. HE DID.

8 Q. NOW, IF WE COULD TURN TO THE ISSUE OF THE POLYGRAPH.

9 A. YES.

10 MR. BRUCE: MAY I HAVE A MOMENT, PLEASE?

11 (PAUSE.)

12 BY MR. BRUCE:

13 Q. OKAY. THIS WOULD BE GOVERNMENT EXHIBIT -- I'M SORRY,
14 DEFENDANT EXHIBIT 5057, THE POLYGRAPH REPORT. WOULD YOU PUT
15 THAT UP? YOU TESTIFIED ABOUT THIS ON DIRECT EXAMINATION, IS
16 THAT RIGHT?

17 A. YES.

18 Q. AND THIS POLYGRAPH WAS DONE BY MR. STEVE DAVENPORT?

19 A. IT WAS.

20 Q. AND IT WAS DONE ON MAY 24, 2005, WHICH WOULD HAVE BEEN --

21 A. YES.

22 Q. -- A COUPLE OF MONTHS AFTER THE STATEMENT UNDER OATH IN
23 YOUR OFFICE?

24 A. THAT'S RIGHT.

25 Q. AND ARE YOU AWARE THAT SOMETIME PRIOR TO 2006, MR.

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1 DAVENPORT HAD A STROKE? HAVE YOU HEARD THAT?

2 A. YES.

3 Q. AND ARE YOU AWARE THAT WHEN GOVERNMENT AUTHORITIES TRIED
4 TO CONTACT HIM TO FOLLOW UP ON THIS AFTER IT HAD BEEN FILED HE
5 COULDN'T ANSWER ANY QUESTIONS?

6 A. I'M AWARE OF THAT.

7 Q. AND APPARENTLY HE DOESN'T HAVE ANY -- WELL, LET ME ASK
8 YOU THIS, DO YOU HAVE ANY BACK UP RECORDS OTHER THAN JUST THIS
9 REPORT?

10 A. NO.

11 Q. FREQUENTLY WHEN THERE'S A POLYGRAPH GIVEN, THE
12 POLYGRAPHER DEVELOPS CHARTS FROM THE EQUIPMENT, IS THAT RIGHT?

13 A. YES, AND I -- HE WAS VERY GOOD AND I'M ASSUMING THAT AT
14 ONE TIME HE HAD THOSE THINGS.

15 Q. BUT YOU DON'T HAVE THEM?

16 A. NO, I DON'T.

17 Q. AND AS FAR AS YOU KNOW, THE CURRENT MACDONALD LAWYERS
18 DON'T HAVE THEM?

19 A. NO.

20 Q. AND SO THERE'S NO WAY TO EXAMINE THE -- TO HAVE ANOTHER
21 EXPERT LOOK AT THE CHARTS --

22 A. NO.

23 Q. -- AND CHECK THE OPINION, IS THAT RIGHT?

24 A. NO.

25 Q. AND IN GIVING A POLYGRAPH, ISN'T IT CUSTOMARY TO

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1 ESTABLISH A BASELINE FOR TRUTHFULNESS?

2 A. YES, THAT'S CUSTOMARY. AND I DON'T KNOW WHETHER MR.
3 DAVENPORT DID THAT, BUT I ASSUME WHAT YOU MEAN IS SOME
4 QUESTIONS WOULD BE ASKED UNRELATED TO THE SUBJECT MATTER THAT
5 ARE SHOCKING OR TO TEST HOW YOU WOULD RESPOND AND I ASSUME HE
6 DID THAT, BUT I DON'T KNOW.

7 Q. SO, THE POINT IS THEN TO COMPARE THE NON-MACDONALD
8 QUESTIONS TO THE RESPONSES RELATED TO THE MACDONALD CASE?

9 A. YES.

10 Q. AND FROM THIS REPORT WE CAN'T TELL ANY OF THAT?

11 A. WE CANNOT, BUT I CERTAINLY WOULD BELIEVE MR. DAVENPORT
12 WAS EXCELLENT IN HIS WORK AND WOULD HAVE DONE IT RIGHT.

13 Q. NOW, THE SPECIFIC QUESTIONS THAT ARE REFLECTED IN THE
14 REPORT WERE, NUMBER ONE, AND THIS WOULD BE ON -- YOU CAN SHOW
15 HIM PAGE TWO. NUMBER ONE; DID YOU HEAR HELENA STOECKLEY TELL
16 JIM BLACKBURN SHE HAD SEEN A BROKEN HOBBY HORSE WHILE SHE WAS
17 INSIDE THE MACDONALD HOME?

18 A. YES.

19 Q. AND THE SECOND ONE WAS DID YOU HEAR JIM BLACKBURN TELL
20 HELENA STOECKLEY HE WOULD INDICT HER FOR MURDER IF SHE
21 TESTIFIED SHE HAD BEEN INSIDE THE MACDONALD HOME?

22 A. YES.

23 Q. AND THE THIRD ONE WAS ARE YOU NOW LYING ABOUT THE
24 CONVERSATION BETWEEN JIM BLACKBURN AND HELENA STOECKLEY?

25 A. YES.

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1 Q. AND SO HE WAS NOT POLYGRAPHED ON THE QUESTION OF WHETHER
2 HE TRANSPORTED HELENA STOECKLEY FROM SOUTH CAROLINA TO
3 RALEIGH?

4 A. NO.

5 Q. AND TO YOUR RECOLLECTION ON THE JIM BRITT STATEMENTS THAT
6 WE'VE LOOKED AT SO FAR, DID HE REALLY SAY THAT HELENA
7 STOECKLEY HAD SEEN A BROKEN HOBBY HORSE?

8 A. I DON'T REMEMBER WHETHER HE SAID BROKEN.

9 Q. AND HOW DID MR. DAVENPORT DECIDE ON THESE QUESTIONS TO
10 ASK?

11 A. WELL, I'M SURE THAT HE CONSULTED WITH ME AND I'M SURE HE
12 CONSULTED WITH MR. BRITT AND HE WOULD HAVE ASKED MR. BRITT THE
13 QUESTIONS THAT WERE THE KEY TO THE UNDERSTANDING OF THE TRUTH
14 THAT WAS BEING QUESTIONED.

15 Q. ALL RIGHT. LET'S MOVE FORWARD THEN TO GOVERNMENT EXHIBIT
16 287, WHICH I BELIEVE IS THE SAME AS DEFENSE -- 2087. I KEEP
17 MAKING THAT MISTAKE.

18 MR. BRUCE: I'M SORRY, YOUR HONOR.

19 BY MR. BRUCE:

20 Q. GOVERNMENT EXHIBIT 2087, WHICH IS THE SAME EXHIBIT AS
21 DEFENSE EXHIBIT 5058. AND LET'S START OUT BY LOOKING AT THE
22 LAST PAGE, 2087.4. JUST TO ORIENT YOU, THIS IS THE OCTOBER
23 26TH AFFIDAVIT.

24 A. YES.

25 (GOVERNMENT EXHIBIT NUMBER 2087

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1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. AND AT THE BOTTOM ON THAT PAGE, DO YOU KNOW THIS LADY
3 EARP THAT NOTARIZED THIS?

4 A. YES.

5 Q. DID SHE WORK IN YOUR OFFICE?

6 A. SHE WORKED IN MY OFFICE.

7 Q. OKAY. NOW, THE LAST STATEMENT APART FROM THE POLYGRAPH
8 BEFORE THIS ONE WAS ON FEBRUARY 24TH, IN THE SWORN STATEMENT
9 WE WENT THROUGH, RIGHT?

10 A. YES.

11 Q. IN BETWEEN FEBRUARY 24TH, 2005, AND OCTOBER 26TH, 2005,
12 DID YOU AND MR. JUNKIN INVESTIGATE FACTS RELATED TO BRITT'S
13 CLAIM?

14 A. I'M SURE WE DID SOME. I DON'T REMEMBER WHAT WE DID.

15 Q. FOR INSTANCE, DID EITHER YOU OR MR. JUNKIN READ TRIAL
16 TRANSCRIPTS, PORTIONS OF TRIAL TRANSCRIPTS?

17 A. NO, I DIDN'T. NO.

18 Q. DO YOU KNOW IF MR. JUNKIN DID?

19 A. I DON'T. NO.

20 Q. ALL RIGHT. LOOKING AT 2087, LET'S LOOK AT PAGE TWO,
21 PARAGRAPH TEN. IF YOU WOULD READ THAT, PLEASE.

22 A. I DID NOT COME FORWARD PREVIOUSLY WITH THE INFORMATION
23 SHARED WITH MR. SMITH AND WHICH I NOW SHARE WITH THE COURT OUT
24 OF RESPECT FOR THE LATE JUDGE FRANKLIN DUPREE, WHO PRESIDED
25 OVER THE TRIAL, AND OTHERS WHO WERE WITH THE COURTS AT THE

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1 TIME OF THE MACDONALD TRIAL.

2 WORKING ON THE SIDE OF LAW ENFORCEMENT IN THE
3 COURTHOUSE WAS MY CAREER. I DID NOT WANT TO BETRAY OR APPEAR
4 TO BE BETRAYING THE PEOPLE I WORKED WITH AND RESPECTED. I
5 CONSIDERED MYSELF A LOYAL OFFICER OF THE COURT AND I STILL DO,
6 BUT ULTIMATELY I DECIDED THAT I HAD A DUTY TO COME FORWARD.

7 Q. OKAY. SO, HERE, AGAIN, HE'S SAYING HE WAITED OUT OF
8 RESPECT FOR THE LATE JUDGE FRANKLIN DUPREE?

9 A. YES.

10 Q. ALL RIGHT. NOW, LET'S READ PARAGRAPH 11, PLEASE.

11 A. WHAT I SHARED WITH MR. SMITH IS THAT DURING THE JEFFREY
12 MACDONALD TRIAL IN MY CAPACITY AS THE UNITED STATES MARSHAL
13 ASSIGNED TO THE DISTRICT COURT WHERE MACDONALD WAS TRIED I WAS
14 ASSIGNED TO TRAVEL TO GREENVILLE, SOUTH CAROLINA, TO ASSUME
15 CUSTODY OF A WITNESS BY THE NAME OF HELENA STOECKLEY.

16 I PICKED MS. STOECKLEY UP AT THE COUNTY JAIL IN
17 GREENVILLE, SOUTH CAROLINA, AND DROVE HER BACK TO RALEIGH.

18 Q. NOW, I BELIEVE ON DIRECT EXAMINATION YOU TESTIFIED THAT
19 THIS WAS CONSISTENT WITH HIS STATEMENT IN GOVERNMENT EXHIBIT
20 2086, THE SWORN STATEMENT. DO YOU REMEMBER TESTIFYING TO
21 THAT?

22 A. I DON'T REMEMBER THAT I TESTIFIED TO IT OR NOT, BUT I
23 THINK THAT IT IS GENERALLY CONSISTENT. THAT IS, HE WENT TO
24 SOUTH CAROLINA AND PICKED UP HELENA STOECKLEY AND BROUGHT HER
25 BACK TO NORTH CAROLINA.

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1 Q. BUT THERE IS A MAJOR INCONSISTENCY IN THAT THIS SAYS
2 GREENVILLE --

3 A. YES.

4 Q. -- AND HIS PRIOR SWORN STATEMENT SAID CHARLESTON?

5 A. THAT'S RIGHT.

6 Q. AND THE LOCATION OF GREENVILLE, SOUTH CAROLINA, DOES NOT
7 APPEAR ANYWHERE IN THE SWORN STATEMENT?

8 A. YES.

9 Q. IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. NOW, LET'S SEE IF WE CAN PUT UP GOVERNMENT EXHIBIT 2102.
12 NO, LET'S TRY 2103. 2104. OKAY. DO YOU RECOGNIZE THIS AS A
13 MAP OF SOUTH CAROLINA?

14 A. I DO.

15 (GOVERNMENT EXHIBIT NUMBER 2104
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. ALL RIGHT. CAN YOU POINT OUT GENERALLY WHERE CHARLESTON
18 IS?

19 A. CHARLESTON WOULD BE DOWN ON THE RIGHT SIDE OF THE MAP
20 DOWN IN LOW COUNTRY SOUTH CAROLINA IS WHAT I WOULD CALL IT.

21 Q. OKAY. MAYBE WE CAN BLOW IT UP A LITTLE BIT. AND DO YOU
22 SEE CHARLESTON ON THE MAP DOWN THERE?

23 A. YES, I DO. YES.

24 Q. OKAY. AND IT'S ON THE COAST?

25 A. YES.

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1 Q. AND DO YOU SEE GREENVILLE IN THE UPPER LEFT-HAND CORNER?

2 A. I SEE IT, YES.

3 Q. AND WOULD YOU AGREE WITH ME THAT CHARLESTON AND
4 GREENVILLE ARE ABOUT AS FAR APART AS YOU CAN GET IN THE STATE
5 OF SOUTH CAROLINA?

6 A. I THINK IT IS. I THINK THEY ARE, YES.

7 Q. ALL RIGHT. NOW, LET'S LOOK AT PARAGRAPH 13. ONCE AGAIN
8 HE'S SAYING THAT GERRY HOLDEN ACCOMPANIED HIM ON THE TRIP BACK
9 TO RALEIGH, IT DOESN'T SAY --

10 A. YES.

11 Q. -- FROM WHERE, THOUGH, RIGHT?

12 A. YES.

13 Q. ALL RIGHT. LOOK AT PARAGRAPH 15 NOW AND READ THAT,
14 PLEASE.

15 A. DURING THE COURSE OF TRAVEL FROM CHARLESTON TO RALEIGH,
16 WITHOUT ANY PROMPTING FROM ME WHATSOEVER, MS. STOECKLEY
17 BROUGHT UP THE MATTER OF THE TRIAL OF MACDONALD. SHE TOLD ME
18 IN THE PRESENCE OF GERRY HOLDEN ABOUT A HOBBY HORSE IN THE
19 MACDONALD HOME AND THAT SHE, IN FACT, ALONG WITH OTHERS, WAS
20 IN JEFFREY MACDONALD'S HOME ON THE NIGHT OF THE MACDONALD
21 MURDERS.

22 Q. ALL RIGHT. SO, IN PARAGRAPH 15, WE'RE BACK TO BEING A
23 CHARLESTON TO RALEIGH TRIP, IS THAT RIGHT?

24 A. YES.

25 Q. ALL RIGHT. NOW, WOULD YOU READ PARAGRAPH 16, PLEASE?

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1 A. I KNEW AT THE TIME THAT WHAT MS. STOECKLEY HAD SAID WAS
2 VERY IMPORTANT AND IT WAS SOMETHING I WAS NOT ABOUT TO FORGET.
3 I REMEMBER HER WORDS CLEARLY AND THEY ARE AMONG THE MOST
4 IMPORTANT WORDS I'VE EVER HEARD IN MY LIFE IN CONNECTION WITH
5 ANY CASE OR ANY OF MY OFFICIAL WORK.

6 Q. SO, HERE, MR. BRITT HAS ESSENTIALLY ADOPTED THE WORDS OF
7 YOUR QUESTIONING IN A PREVIOUS STATEMENT AND MADE IT HIS
8 STATEMENT?

9 A. WELL, HE'S ADOPTED, I THINK, MY WORDS, BUT THOSE WORDS I
10 CHOSE WERE TO DESCRIBE WHAT HE WAS EXPRESSING TO ME.

11 Q. ALL RIGHT. LET'S GO FORWARD TO 2087.3, PAGE THREE, AND
12 READ PARAGRAPH 20.

13 A. WHEN I DELIVERED HELENA STOECKLEY TO THE U.S. ATTORNEY'S
14 OFFICE, MR. BLACKBURN ASKED ME TO REMAIN IN THE ROOM. THIS
15 WAS NOT AN UNUSUAL OCCURRENCE. I HAD BEEN ASKED TO SIT IN THE
16 ROOM BY GOVERNMENT ATTORNEYS MANY TIMES IN MY CAREER.

17 Q. SO, TWO THINGS HERE. MR. BRITT IS SAYING IN HIS
18 AFFIDAVIT THAT MR. BLACKBURN ASKED HIM TO REMAIN IN THE ROOM
19 DURING FOR THE INTERVIEW AND THAT THAT WAS NOT AN UNUSUAL
20 OCCURRENCE?

21 A. NOT AN UNUSUAL OCCURRENCE?

22 Q. RIGHT.

23 A. YES.

24 Q. NOT UNUSUAL FOR AN ASSISTANT U.S. ATTORNEY OR U.S.
25 ATTORNEY TO ASK HIM TO REMAIN IN THE ROOM DURING AN INTERVIEW?

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1 A. THAT'S RIGHT.

2 Q. NOW, WOULD YOU READ PARAGRAPH 21, PLEASE?

3 A. AS I RECALL, MR. BLACKBURN SAT DOWN AT A DESK THAT WAS
4 SET AT AN ANGLE IN THE NORTHEAST CORNER OF THE OFFICE. THERE
5 WERE SEVERAL CHAIRS POSITIONED IN FRONT OF THE DESK. HELENA
6 STOECKLEY SAT IN THE CENTER CHAIR IN FRONT OF THE DESK AND I
7 SAT OVER TO THE SIDE NEXT TO THE WINDOW.

8 Q. OKAY. AND YOU DON'T KNOW ANYTHING ABOUT HOW THE ROOM
9 LOOKED WHEN THEY WERE UP THERE, RIGHT?

10 A. I DON'T THINK I'VE EVER BEEN IN THAT ROOM. I MAY HAVE,
11 BUT I DON'T THINK SO.

12 Q. ALL RIGHT. NOW, LET'S MOVE FORWARD TO PARAGRAPH 26. I'M
13 SORRY, LET'S LOOK AT 22. READ 22, IF YOU WOULD.

14 A. AFTER MS. STOECKLEY WAS SETTLED IN THE ROOM MR. BLACKBURN
15 BEGAN TO INTERVIEW HER. MS. STOECKLEY TOLD MR. BLACKBURN THE
16 SAME THINGS SHE HAD STATED TO ME ON THE TRIP FROM CHARLESTON
17 TO RALEIGH.

18 SHE SPECIFICALLY MENTIONED A HOBBY HORSE AND VARIOUS
19 OTHER THINGS AND SPECIFICALLY TOLD MR. BLACKBURN THAT SHE,
20 ALONG WITH OTHERS, HAD BEEN INSIDE JEFFREY MACDONALD'S HOME ON
21 THE NIGHT OF THE MURDERS. SHE ALSO SAID THAT SHE HAD GONE TO
22 THE MACDONALD HOUSE TO ACQUIRE DRUGS.

23 Q. ALL RIGHT. SO, HERE, AGAIN, MR. BRITT'S STATEMENT SAYS
24 THAT WHAT HE TOLD -- WHAT HELENA STOECKLEY TOLD BLACKBURN WAS
25 THE SAME THING MS. STOECKLEY TOLD HIM TRAVELING FROM

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1 CHARLESTON TO RALEIGH?

2 A. YES.

3 Q. ALL RIGHT. LET'S SKIP TO PARAGRAPH 26 AND READ THAT,
4 PLEASE.

5 A. I'M NOT CERTAIN AS TO WHETHER OTHER ATTORNEYS BESIDES MR.
6 BLACKBURN WERE IN THE ROOM DURING THE STOECKLEY INTERVIEW. IT
7 IS POSSIBLE GEORGE ANDERSON, THE UNITED STATES ATTORNEY AT THE
8 TIME, AND/OR BRIAN MURTAGH, THE OTHER GOVERNMENT PROSECUTOR,
9 OR OTHERS ASSOCIATED WITH THE PROSECUTION WERE THERE EITHER
10 WHEN I ENTERED THE ROOM WITH MS. STOECKLEY OR AFTER I ENTERED
11 WITH HER. THEY MAY HAVE COME IN AND LEFT AT SOME POINT, TAKEN
12 A BREAK OR GONE OUT OF THE ROOM.

13 I HAVE A RECOLLECTION OF MS. STOECKLEY ASKING FOR A
14 SANDWICH DURING THE INTERVIEW AND SOMEONE OTHER THAN MYSELF
15 GOING TO SEE ABOUT IT.

16 Q. OKAY. READ ON TO THE END OF THE PARAGRAPH. IT WILL GO
17 OVER TO THE NEXT PAGE.

18 A. BUT MY CLEAR RECOLLECTION IS THAT ONLY MR. BLACKBURN, MS.
19 STOECKLEY AND I WERE IN THE ROOM AT THE TIME MR. BLACKBURN
20 SAID THESE WORDS TO MS. STOECKLEY.

21 Q. OKAY. SO, MR. BRITT IS SAYING IN THIS AFFIDAVIT THAT
22 THERE MAY HAVE BEEN OTHER ATTORNEYS AT TIMES IN THE ROOM
23 DURING THE INTERVIEW, IS THAT RIGHT?

24 A. YES.

25 Q. BUT AT THE CRUCIAL MOMENT WHERE THE WORDS FROM MR.

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1 BLACKBURN TO MS. STOECKLEY WERE MADE IT WAS JUST THE THREE OF
2 THEM IN THE ROOM?

3 A. THAT'S RIGHT.

4 Q. BLACKBURN, STOECKLEY AND BRITT?

5 A. YES.

6 Q. OKAY. NOW, JUMPING BACK TO THE DEFENSE INTERVIEW
7 EARLIER, DO YOU RECALL THAT AT SOME POINT TOWARD THE END OF
8 HELENA STOECKLEY'S INTERVIEW WITH THE DEFENSE THAT SHE WAS
9 BROUGHT A BOLOGNA SANDWICH TO EAT?

10 A. YES.

11 Q. OKAY. SO, SHE HAD ALREADY HAD A SANDWICH BEFORE THE
12 PROSECUTION INTERVIEW?

13 A. YES.

14 Q. NOW, WOULD YOU READ PARAGRAPH 27, PLEASE?

15 A. UPON THE CONCLUSION OF THE INTERVIEW, I TOOK HELENA
16 STOECKLEY FROM THE EIGHTH FLOOR BY STAIRWAY DOWN TO THE
17 SEVENTH FLOOR AND TOOK HER INTO THE COURTROOM.

18 Q. ALL RIGHT. NOW, WOULD YOU READ PARAGRAPH 28, PLEASE?

19 A. DURING THE COURSE OF THE TRIAL, I OBSERVED WHAT I FELT TO
20 BE UNETHICAL STANDARDS BY THE UNITED STATES DISTRICT COURT
21 JUDGE, FRANKLIN T. DUPREE. JURORS ASKED ME ON TWO OCCASIONS
22 TO TAKE CAKES TO JUDGE DUPREE. I TOOK THE CAKES AND PRESENTED
23 THEM TO JUDGE DUPREE AND TOLD HIM THEY CAME FROM THE JURORS.

24 JUDGE DUPREE CAME OUT OF HIS CHAMBERS AND THANKED
25 THE JURORS FOR THE CAKES. I OBSERVED THE JUDGE AND MEMBERS OF

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1 HIS STAFF EATING THE CAKES.

2 Q. SO, MR. BRITT IS SAYING HERE THAT HE OBSERVED UNETHICAL
3 STANDARDS BY JUDGE DUPREE, IS THAT RIGHT?

4 A. YES.

5 Q. BUT PREVIOUSLY HE STATED TO YOU THAT HE HAS THE UTMOST
6 RESPECT FOR JUDGE DUPREE?

7 A. HE HAS.

8 Q. ALL RIGHT. LET'S MOVE FORWARD TO GOVERNMENT EXHIBIT
9 2088, PLEASE, AND LET'S GO TO THE LAST PAGE, .4. DO YOU
10 RECOGNIZE THE NOTARY ON THIS AFFIDAVIT, MR. SMITH?

11 A. NO, I DON'T, BUT, YOU KNOW, IT COULD BE SOMEONE CONNECTED
12 WITH MY OFFICE AT THAT TIME. I JUST DON'T KNOW.

13 Q. OKAY. CAN YOU READ THE NAME?

14 A. IT LOOKS LIKE JUDY HAYES.

15 (GOVERNMENT EXHIBIT NUMBER 2088
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. ALL RIGHT. WELL, LET'S BACKUP. OCTOBER 26TH, YOU DO
18 RECALL THAT LEE TART CAME WITH JIMMY BRITT TO YOUR OFFICE TO
19 EXECUTE THAT AFFIDAVIT, IS THAT RIGHT?

20 A. I THINK HE DID. LEE TART USUALLY CAME.

21 Q. IN FACT, IF YOU REMEMBER WAY BACK UP WHEN WE STARTED THIS
22 IN THE FIRST SWORN STATEMENT, PUT UP 2085, PLEASE, IN THE LAST
23 PARAGRAPH JIM BRITT SAYS THAT HE REQUESTS LEE TART BE PRESENT
24 AT ANY AND ALL MEETINGS AND POTENTIAL COURT HEARINGS?

25 A. YES.

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1 Q. AND SO MR. BRITT AND MR. TART LEFT YOUR OFFICE ON OCTOBER
2 26TH. HOW DID IT COME ABOUT THAT THEY RETURNED OR SOMEBODY
3 RETURNED -- MR. BRITT RETURNED ON NOVEMBER THE 3RD?

4 A. I DON'T KNOW WHETHER I WAS CONCERNED ABOUT THE PARAGRAPH
5 INVOLVING THE CAKE, BUT I THINK I WAS, AND I THINK THAT I
6 WANTED MR. BRITT TO DO ANOTHER AFFIDAVIT AND NOT PUT THAT IN
7 THE AFFIDAVIT. AND I BELIEVE THAT WAS IT.

8 THOUGH, I DO NOTE THAT CHARLESTON IS NOT IN THIS
9 AFFIDAVIT, BUT GREENVILLE IS IN THIS AFFIDAVIT. AND IT COULD
10 VERY WELL BE THAT I DECIDED THAT I WANTED TO GET THAT CORRECT.
11 I JUST DON'T REMEMBER. BUT I DO REMEMBER NOT WANTING TO
12 ADVANCE THE IDEA OF THE CAKE.

13 Q. DO YOU REMEMBER THAT MR. TART DID NOT ACCOMPANY MR. BRITT
14 ON THIS NOVEMBER THE 3RD TRIP?

15 A. NO, I DON'T REMEMBER THAT.

16 Q. DO YOU KNOW IF MR. TART IS THE ONE WHO POINTED OUT TO MR.
17 BRITT THAT PARAGRAPH 15 SAID CHARLESTON?

18 A. I DO NOT.

19 Q. OKAY. WERE YOU PRESENT WHEN MR. BRITT RETURNED TO THE
20 OFFICE ON NOVEMBER 3RD, TO SIGN THE NEW AFFIDAVIT?

21 A. I DON'T REMEMBER.

22 Q. NOW, THE ONLY DIFFERENCES IN THIS AFFIDAVIT AS YOU
23 TESTIFIED ON DIRECT EXAMINATION, GOVERNMENT EXHIBIT 2088, PAGE
24 TWO, PARAGRAPH 15, CHARLESTON HAS BEEN CHANGED TO GREENVILLE?

25 A. YES, SIR.

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1 Q. AND WAS THAT YOUR SUGGESTION?

2 A. I DON'T REMEMBER.

3 Q. OKAY.

4 A. AND I THINK THE REFERENCE TO THE CAKE WAS REMOVED.

5 Q. ALL RIGHT. AND THEN ALSO IN PARAGRAPH 22, THIS SAID
6 CHARLESTON BEFORE IN THE PREVIOUS AFFIDAVIT, DID IT NOT?

7 A. I THINK THAT'S RIGHT.

8 Q. AND THIS ONE WAS CHANGED TO GREENVILLE?

9 A. YES.

10 Q. SOMETIME AFTER THE ORIGINAL SWORN STATEMENT ON FEBRUARY
11 24TH, DID SOMEONE TELL JIM BRITT THAT CHARLESTON WASN'T RIGHT
12 AND IT NEEDED TO BE GREENVILLE?

13 A. I DON'T -- I DON'T REMEMBER.

14 Q. ALL RIGHT. AND THEN THE ONLY OTHER CHANGE FROM THE
15 OCTOBER 26TH AFFIDAVIT TO THE NOVEMBER 3RD AFFIDAVIT IS
16 PARAGRAPH 28, WHICH USED TO BE ABOUT THE CAKE AND JUDGE
17 DUPREE. IT SAYS SOMETHING COMPLETELY DIFFERENT NOW?

18 A. YES.

19 Q. AND THAT WAS YOUR IDEA?

20 A. YES.

21 Q. NOW, I BELIEVE IT WAS YOUR TESTIMONY CONCERNING THE CAKE
22 AND JUDGE DUPREE THAT YOU FELT IT WAS UNIMPORTANT, NO BIG
23 DEAL?

24 A. I DID.

25 Q. BUT THAT WAS NOT JIMMY BRITT'S OPINION, WAS IT?

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1 A. WELL, HE OBVIOUSLY WANTED TO MAKE AN ISSUE OF IT AND FELT
2 THAT IT SHOULDN'T HAVE BEEN DONE, BUT MY SENSE OF IT WAS THAT
3 I DIDN'T -- IT DIDN'T BOTHER ME IN THE LEAST IF A JUROR
4 BROUGHT THE JUDGE A CAKE. I WANT THE JUROR TO BE HAPPY. I
5 WANT THE JURORS TO BE JOYFUL. I WANT THEM TO BE IN A GOOD
6 MOOD. HAPPY JURORS DON'T FIND PEOPLE GUILTY.

7 Q. NOW, IF IT'S -- IT WAS THE NOVEMBER 3RD AFFIDAVIT,
8 GOVERNMENT EXHIBIT 2088, THAT WAS ATTACHED TO JEFFREY
9 MACDONALD'S 2255 PETITION WHEN IT WAS FILED IN '06?

10 A. I DON'T -- I DON'T KNOW.

11 Q. OKAY. BECAUSE YOU WERE OUT OF THE CASE?

12 A. I WAS OUT OF THE CASE.

13 Q. OKAY. NOW, HAVE YOU SEEN ANOTHER STATEMENT THAT JIM
14 BRITT GAVE ON -- LET ME SEE THE DATE HERE. IT'S GOVERNMENT
15 EXHIBIT 2089.

16 A. YES, I HAVE SEEN THAT IN THE LAST FEW DAYS. IT MAY BE
17 THAT I HAD SEEN THAT BEFORE. I DON'T REMEMBER IF I DID.

18 Q. ONE LAST QUESTION ABOUT THE CAKE. WAS IT BRITT'S
19 STATEMENT THAT HE WAS THE ONE THAT CARRIED THE CAKE FROM THE
20 JURY INTO JUDGE DUPREE'S CHAMBERS?

21 A. I THINK WHAT HE SAID WAS THE JURORS HAD THE CAKE AND HE
22 DIRECTED THE JURORS SO THAT THEY COULD GIVE THE CAKE TO JUDGE
23 DUPREE. I BELIEVE THAT'S RIGHT.

24 Q. ALL RIGHT. NOW, LET'S LOOK AT GOVERNMENT EXHIBIT 2089,
25 WHICH YOU SAY YOU HAVE SEEN IN THE LAST FEW DAYS.

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1 A. AND IT MAY BE I SAW IT LONG AGO, I JUST DON'T REMEMBER.

2 Q. WELL, AGAIN, LET'S START WITH THE END OF IT SO WE CAN
3 GET THE DATE AND SO FORTH. IT'S THE NEXT PAGE. YOU SEE IT'S
4 DATED FEBRUARY 28TH, 2006?

5 A. YES, IT'S IN 2006. YES.

6 (GOVERNMENT EXHIBIT NUMBER 2089
7 WAS IDENTIFIED FOR THE RECORD.)

8 Q. AND DO YOU KNOW LAURA J. REDD, THE NOTARY PUBLIC?

9 A. NO.

10 Q. DO YOU THINK THAT'S MAYBE SOMEONE WHO WORKS WITH MR. HART
11 MILES?

12 A. I DO. I MEAN, I DON'T KNOW THAT FOR SURE, BUT I DON'T
13 THINK THAT PERSON WORKS FOR ME.

14 Q. SO, THIS WOULD BE AFTER THE FILING OF MR. MACDONALD'S
15 2255 PETITION, IS THAT RIGHT?

16 A. I'M ASSUMING SO.

17 Q. AND YOU'RE NOT IN THE CASE?

18 A. I'M OUT.

19 Q. OKAY. LET'S LOOK AT PAGE ONE OF GOVERNMENT EXHIBIT 2089,
20 AND I'M GOING TO GET YOU TO READ THIS, BUT DO YOU SEE WHERE
21 IT SAYS THAT ON AUGUST 14TH, BRITT WAS DIRECTED BY HUGH SALTER
22 TO TRAVEL TO GREENVILLE?

23 A. YES, I DO.

24 Q. AND DO YOU SEE IN THE MIDDLE OF THAT PARAGRAPH WHERE HE
25 SAYS HE TRAVELED TO THE GREENVILLE COUNTY JAIL, GREENVILLE,

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1 SOUTH CAROLINA?

2 A. I DO.

3 Q. AND THEN HE SAYS HE TOOK CUSTODY OF HELENA STOECKLEY ON A
4 MATERIAL WITNESS WARRANT?

5 A. YES.

6 Q. AND THEN HE SAYS HE TRAVELED BACK TO RALEIGH WHERE HE
7 COMMITTED HER TO THE WAKE COUNTY JAIL?

8 A. I DO.

9 Q. NO MENTION HERE OF TAKING HER TO THE HOLIDAY INN TO CHECK
10 IN, IS THAT RIGHT?

11 A. THAT'S RIGHT, YES.

12 Q. DO YOU SEE WHERE IT SAYS ON THE MORNING OF AUGUST 15TH,
13 '79, MS. HOLDEN AND I WENT TO THE WAKE COUNTY JAIL AND AGAIN
14 TOOK CUSTODY?

15 A. YES.

16 Q. IN THE SECOND PARAGRAPH. DO YOU SEE IN THE MIDDLE OF
17 THAT PARAGRAPH WHERE IT SAYS AT APPROXIMATELY 12:00 NOON AT
18 THE CONCLUSION OF THEIR INTERVIEW HE ESCORTED MS. STOECKLEY TO
19 THE U.S. ATTORNEY'S OFFICE?

20 A. YES.

21 Q. ACTUALLY, WE'VE SEEN FROM THE TRANSCRIPTS TODAY AND YOUR
22 RECOLLECTION THAT IT WAS CLOSER TO TWO O'CLOCK RATHER THAN
23 12:00 NOON, RIGHT?

24 A. PERHAPS.

25 Q. AND ALSO HAVEN'T WE ESTABLISHED THAT THE INTERVIEWS BY

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1 THE DEFENSE AND THE PROSECUTION TOOK PLACE ON THURSDAY, AUGUST
2 16TH, 1979?

3 A. I THINK SO.

4 Q. NOW, YOU SEE IN THE SECOND PARAGRAPH WHERE HE STATES THAT
5 MR. ANDERSON AND MR. BLACKBURN, WHO HE IDENTIFIES AS LEAD
6 PROSECUTOR, YOU SEE THAT?

7 A. WAS MR. BLACKBURN LEAD PROSECUTOR?

8 Q. I'M SAYING DOES MR. BRITT IN THIS STATEMENT IDENTIFY JIM
9 BLACKBURN AS THE LEAD PROSECUTOR?

10 A. YES, I THINK SO.

11 Q. AND HE STATES THAT MR. ANDERSON, JIM BLACKBURN AND BRIAN
12 MURTAGH WERE PRESENT?

13 A. YES. AND AS A MATTER OF FACT, I NEVER CONSIDERED MR.
14 BLACKBURN TO BE ANY MORE LEAD PROSECUTOR THAN MR. MURTAGH. I
15 MEAN, I ASSUMED THAT THEY SHARED IT EQUALLY, BUT THAT'S BESIDE
16 THE POINT.

17 Q. ALL RIGHT.

18 THE COURT: WE'RE GOING TO TAKE OUR AFTERNOON BREAK,
19 COUNSEL. WE'LL TAKE A RECESS UNTIL 3:45.

20 (RECESS TAKEN FROM 3:31 P.M., UNTIL 3:44 P.M.)

21 (DEFENDANT PRESENT.)

22 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.

23 MR. BRUCE.

24 MR. BRUCE: THANK YOU, YOUR HONOR.

25 BY MR. BRUCE:

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1 Q. WE'RE STILL TALKING, MR. SMITH, ABOUT GOVERNMENT EXHIBIT
2 2089.

3 A. YES.

4 Q. WHICH IS THE FEBRUARY 28TH, 2006, ADDENDUM OF JIMMY
5 BRITT, DO YOU RECALL THAT?

6 A. I REMEMBER.

7 Q. ALL RIGHT. LET'S LOOK AT THE THIRD UNNUMBERED PARAGRAPH
8 AND IF YOU COULD JUST READ THAT.

9 A. DURING THE COURSE OF THE INTERVIEW, MR. BLACKBURN IN MY
10 PRESENCE, AND MR. MURTAGH HAS STATED HE WAS PRESENT DURING THE
11 ENTIRE INTERVIEW, STATED TO MS. STOECKLEY IF YOU GO DOWNSTAIRS
12 AND TESTIFY THAT YOU WERE AT DR. JEFFREY MACDONALD'S HOUSE ON
13 THE NIGHT OF THE MURDERS, I WILL INDICT YOU AS AN ACCESSORY TO
14 MURDER.

15 Q. ALL RIGHT. NOW, JIM BRITT IS SAYING HERE THAT DURING THE
16 COURSE OF THE INTERVIEW BLACKBURN SAID IN HIS PRESENCE THE
17 STATEMENT, IS THAT RIGHT?

18 A. YES. MR. BLACKBURN IN MY PRESENCE.

19 Q. ALL RIGHT.

20 A. YES.

21 Q. AND THEN THERE'S THIS PHRASE INSERTED AND MR. MURTAGH HAS
22 STATED THAT HE WAS PRESENT DURING THE ENTIRE INTERVIEW. WHAT
23 DOES THAT MEAN? STATED TO WHOM?

24 A. I DON'T KNOW.

25 Q. OKAY. UNNUMBERED PARAGRAPH FOUR, WOULD YOU READ THAT,

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1 PLEASE?

2 A. ON AUGUST 17, I ESCORTED MS. STOECKLEY FROM THE WAKE
3 COUNTY JAIL TO THE U.S. DISTRICT COURT AND SHE TOOK THE
4 WITNESS STAND BEFORE THE JURY AND STATED, IN ESSENCE, THAT SHE
5 DID NOT KNOW ANYTHING ABOUT THE MURDERS. I MIGHT ADD THAT SHE
6 WAS SCARED TO DEATH.

7 Q. OKAY. DO YOU KNOW IF JIMMY BRITT WITNESSED THE TESTIMONY
8 OF HELENA STOECKLEY?

9 A. I DO NOT.

10 Q. ALL RIGHT. IN THE NEXT PARAGRAPH WOULD YOU READ THE
11 FIRST SENTENCE?

12 A. SHE WAS RELEASED ON AUGUST 17, AS A MATERIAL WITNESS BY
13 JUDGE DUPREE.

14 Q. ALL RIGHT. WELL, AUGUST 17TH WAS THE FRIDAY OF HER
15 TESTIMONY, IS THAT RIGHT?

16 A. YES.

17 Q. ALL RIGHT. AND THEN READ THE SECOND SENTENCE.

18 A. A SUBPOENA WAS ISSUED, WHICH I SERVED ON MS. STOECKLEY,
19 AND SHE WAS ADMONISHED BY THE COURT TO APPEAR WHEN AND IF SHE
20 WAS AGAIN CALLED AS A WITNESS.

21 Q. ALL RIGHT. THEN DO YOU SEE THE SENTENCE WHERE IT SAYS I
22 THEN TOOK MS. STOECKLEY?

23 A. YES.

24 Q. AND READ THAT SENTENCE.

25 A. I THEN TOOK MS. STOECKLEY TO A MOTEL IN RALEIGH CALLED

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1 THE JOURNEY'S END.

2 Q. ALL RIGHT. NOW, AT THIS POINT MS. STOECKLEY WAS NO
3 LONGER IN CUSTODY, IS THAT RIGHT, SHE HAD BEEN RELEASED AND
4 PUT UNDER SUBPOENA BY YOU?

5 A. I THINK THAT'S RIGHT.

6 Q. AND DO YOU RECALL MR. SEGAL'S STATEMENT TO THE COURT THAT
7 ORIGINALLY MS. STOECKLEY UPON BEING RELEASED WENT TO THE
8 DOWNTOWNER AND CHECKED IN?

9 A. I DO.

10 Q. AND ONLY LATER MOVED TO THE JOURNEY'S END?

11 A. I THINK SO.

12 Q. BECAUSE THE DOWNTOWNER WAS GOING TO BE THE DEFENSE
13 HEADQUARTERS HOTEL?

14 A. THAT'S RIGHT.

15 Q. WOULD YOU READ THE LAST SENTENCE OF THE LAST PARAGRAPH ON
16 THIS PAGE STARTING WITH CHIEF DEPUTY?

17 A. CHIEF DEPUTY U.S. MARSHAL EDDIE SIGMON CALLED ME AT MY
18 RESIDENCE AND ASKED ME TO GO TO THE JOURNEY'S END AND CHECK
19 MS. STOECKLEY OUT OF THE MOTEL AND TO REGISTER HER AT THE
20 HOLIDAY INN HILLSBOROUGH STREET, RALEIGH, NORTH CAROLINA,
21 WHICH I DID.

22 Q. OKAY. AND LET'S PULL UP GOVERNMENT EXHIBIT 2377. SO,
23 THAT WOULD BE A REFERENCE TO THAT STRUCTURE RIGHT THERE, IS
24 THAT RIGHT?

25 A. YES.

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1 Q. ALL RIGHT. LET'S GO TO THE NEXT PAGE OF THIS ADDENDUM.
2 WOULD YOU READ THAT FIRST UNNUMBERED PARAGRAPH, PLEASE?

3 A. ON MONDAY, AUGUST 20TH, JUDGE DUPREE OUTSIDE THE PRESENCE
4 OF THE JURY STATED AS A MATTER OF RECORD THAT HE WAS NOT GOING
5 TO PERMIT MS. STOECKLEY TO TESTIFY AGAIN, STATED THAT HER
6 BRAIN WAS SCRAMBLED LIKE AN EGG.

7 THE JURY WAS SUMMONED AND THEY WERE SEATED IN THE
8 JURY BOX. JUDGE DUPREE DIRECTED THE JURORS NOT TO CONSIDER
9 ANY EVIDENCE BY MS. STOECKLEY ON FRIDAY, AUGUST 17.

10 Q. NOW, AS YOU KNOW, JUDGE DUPREE DID NOT RULE THAT HE WAS
11 NOT GOING TO PERMIT MS. STOECKLEY TO TESTIFY AGAIN, IS THAT
12 RIGHT?

13 A. AS I RECALL, THAT'S RIGHT.

14 Q. BECAUSE SHE WAS LEFT UNDER YOUR SUBPOENA THAT ENTIRE WEEK
15 SUBJECT TO RECALL?

16 A. YES.

17 Q. AND AS LATE AS FRIDAY OF THE FOLLOWING WEEK OR THAT WEEK
18 YOU WERE STILL HOLDING OUT THE POSSIBILITY OF RECALLING HER?

19 A. YES.

20 Q. AND DID JUDGE DUPREE STATE THAT HER BRAIN WAS SCRAMBLED
21 LIKE AN EGG?

22 A. I DON'T REMEMBER IT IF HE DID.

23 Q. ALL RIGHT. NOW, IT ALSO SAYS IN THIS PARAGRAPH THAT
24 JUDGE DUPREE DIRECTED THE JURORS NOT TO CONSIDER THE TESTIMONY
25 BY MS. STOECKLEY ON FRIDAY, AUGUST 17. THAT'S NOT TRUE, IS

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1 IT?

2 A. I DON'T THINK SO.

3 Q. THE TESTIMONY WAS IN FRONT OF THE JURY AND THEY WERE ABLE
4 TO CONSIDER IT WHEN THEY CONSIDERED THEIR VERDICT, IS THAT
5 RIGHT?

6 A. I THINK SO.

7 Q. ALL RIGHT. WOULD YOU READ THE LAST PARAGRAPH, PLEASE?

8 A. HUGH SALTER, U.S. MARSHAL, ASKED ME TO GO TO THE U.S.
9 MARSHAL'S OFFICE AND SEE MRS. REDDICK AND THAT SHE WOULD GIVE
10 ME A CHECK FOR FOUR DAYS OF SUBSISTENCE.

11 HE ASKED ME TO CASH THE CHECK AND GO TO THE BUS
12 STATION AND PURCHASE MS. STOECKLEY A ONE-WAY TICKET TO
13 CHARLESTON, SOUTH CAROLINA, WHICH I DID, AND FOR ME TO GO TO
14 THE HOLIDAY INN, HILLSBOROUGH STREET IN RALEIGH, AND CHECK HER
15 OUT OF THE HOTEL AND TAKE HER TO THE BUS STATION AND MAKE SURE
16 SHE GOT ON THE BUS AND GIVE HER THE BALANCE OF HER
17 SUBSISTENCE.

18 THIS WAS ON AUGUST THE 20TH, 1979. I HAVE NOT SEEN
19 OR HEARD FROM HER SINCE.

20 Q. ALL RIGHT. NOW, AS WE'VE DISCUSSED, IT WAS A FACT THAT
21 AT THIS POINT MS. STOECKLEY'S SUBSISTENCE WAS THE
22 RESPONSIBILITY OF THE MACDONALD DEFENSE, IS THAT RIGHT?

23 A. YES.

24 Q. AND MS. STOECKLEY DID NOT TRAVEL ON A ONE-WAY TICKET TO
25 CHARLESTON, SOUTH CAROLINA, BECAUSE SHE REMAINED THERE THE

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1 REST OF THE WEEK UNDER YOUR SUBPOENA, IS THAT RIGHT?

2 A. I THINK THAT'S RIGHT.

3 Q. AND MS. STOECKLEY, AS FAR AS YOU KNOW, DOES SHE HAVE ANY
4 CONNECTION WHATSOEVER TO CHARLESTON, SOUTH CAROLINA?

5 A. NO, NOT THAT I -- NOT THAT I KNOW OF.

6 Q. AND MR. BRITT STATES THAT ALL THIS HAPPENED ON AUGUST
7 20TH, 1979, WHICH WOULD HAVE BEEN THE MONDAY FOLLOWING HER
8 FRIDAY TESTIMONY, RIGHT?

9 A. YES.

10 Q. AND THAT DAY YOU WERE IN COURT PRESENTING SOME OF THE
11 STOECKLEY WITNESSES, IS THAT RIGHT?

12 A. I THINK SO.

13 Q. AND MS. STOECKLEY WAS STILL SUBJECT TO RECALL THAT ENTIRE
14 WEEK?

15 A. I THINK SO.

16 Q. ALL RIGHT. LET ME PUT UP ON THE SCREEN GOVERNMENT
17 EXHIBIT 2074. DO YOU REMEMBER ON DIRECT EXAMINATION YOU WERE
18 SHOWN A PHOTOGRAPH AND YOU IDENTIFIED HELENA STOECKLEY, JIMMY
19 BRITT, AND HER BOYFRIEND ERNEST DAVIS?

20 A. I DIDN'T IDENTIFY ERNEST, BUT I NOW SEE ERNEST THERE.
21 BUT I REMEMBER WHAT -- YES, I DID.

22 (GOVERNMENT EXHIBIT NUMBER 2074

23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. OKAY. IS THIS PHOTOGRAPH IN GOVERNMENT EXHIBIT 2074
25 SHOWN IN THE NEWSPAPER ARTICLE THE SAME PHOTOGRAPH THAT YOU

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1 IDENTIFIED ON DIRECT EXAMINATION?

2 A. IT DOES APPEAR TO BE.

3 Q. ALL RIGHT. AND WOULD YOU READ THE CAPTION OF THE DATE OF
4 THE *NEWS & OBSERVER* ARTICLE?

5 A. AUGUST THE 17TH -- FRIDAY, AUGUST 17, 1979.

6 Q. JUST TAKE A MOMENT TO READ THROUGH THE ARTICLE. YOU
7 DON'T HAVE TO READ IT ALOUD. JUST READ IT AND I WANT TO ASK
8 YOU A QUESTION OR TWO ABOUT IT.

9 (PAUSE.)

10 A. ALL RIGHT.

11 Q. LET'S GO BACK TO THE FULL SCREEN, PLEASE. NOW, MY
12 QUESTION IS THIS PHOTOGRAPH SHOWING DEPUTY MARSHAL JIMMY BRITT
13 ESCORTING HELENA STOECKLEY -- THAT'S EVEN WHAT THE CAPTION
14 SAYS, IS THAT RIGHT?

15 A. YES.

16 Q. ALL RIGHT. THIS PHOTOGRAPH COULD WELL BE THE
17 TRANSPORTATION OF HELENA STOECKLEY TO OR FROM THE WAKE COUNTY
18 COURTHOUSE TO THE FEDERAL BUILDING ON AUGUST 16TH, 1979?

19 A. YES. I HAVE NO WAY TO KNOW. I MEAN, IT CERTAINLY -- IT
20 WAS IN THE PAPER THE NEXT DAY, AUGUST 17. SO, THAT WOULD TELL
21 YOU THAT IT WAS -- IT WAS A PHOTOGRAPH MAYBE TAKEN THE DAY
22 BEFORE.

23 Q. ALL RIGHT. AND YOU CANNOT IDENTIFY, I BELIEVE YOU
24 TESTIFIED, THE PLACE WHERE THIS PHOTOGRAPH WAS TAKEN?

25 A. LET ME JUST HAVE A SECOND TO LOOK AT IT AGAIN.

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1 Q. ALL RIGHT.

2 (PAUSE.)

3 A. THE ONLY PLACE THAT I COULD SAY IT LOOKS LIKE WOULD BE AT
4 THE BACK OF THE FEDERAL BUILDING, THE BACK AT THE LOADING
5 DOCK.

6 Q. THE BACK OF THE FEDERAL BUILDING IN RALEIGH?

7 A. YES, IT LOOKS LIKE THAT.

8 Q. ALL RIGHT. THANK YOU.

9 A. BUT I DON'T KNOW.

10 MR. BRUCE: THANK YOU. NO FURTHER QUESTIONS.

11 THE COURT: REDIRECT.

12 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

13 R E D I R E C T E X A M I N A T I O N 3:55 P.M.

14 BY MR. WIDENHOUSE:

15 Q. MR. SMITH, MR. BRUCE ASKED YOU ABOUT THE CONNECTION
16 BETWEEN PRINCE BEASLEY AND MS. STOECKLEY.

17 A. YES.

18 Q. I WANT TO SHOW YOU PAGE 5748 OF THE TRIAL TRANSCRIPT.

19 A. ALL RIGHT.

20 Q. WHICH WOULD HAVE -- APPEARS TO HAVE BEEN ON FRIDAY, THE
21 17TH?

22 A. YES.

23 Q. IT WAS DURING MR. BEASLEY'S TESTIMONY?

24 A. YES.

25 Q. ALL RIGHT. CAN YOU TAKE ME TO 5748? AND COULD YOU READ

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1 THE FIRST FOUR LINES?

2 A. YES.

3 Q. I'M SORRY, PAGE 5739.

4 A. ALL RIGHT.

5 BY MR. SMITH: QUESTION: DURING THE PERIOD OF TIME
6 IN WHICH YOU WERE A FAYETTEVILLE POLICE DETECTIVE WOULD YOU
7 SAY WHETHER OR NOT YOU EVER KNEW HELENA STOECKLEY?

8 ANSWER: YES, I DID.

9 QUESTION: WHEN DID YOU FIRST MEET HER?

10 ANSWER: IN 1968.

11 Q. AND NOW WOULD YOU LOOK AT PAGE 5740 OF THE TRANSCRIPT AND
12 READ THE HIGHLIGHTED PORTIONS THERE OF THE SAME DIRECT
13 EXAMINATION OF MR. BEASLEY?

14 A. QUESTION: LET ME INTERRUPT YOU JUST FOR A MOMENT IF I
15 MAY, MR. BEASLEY. I TAKE IT YOU HAD HAD MANY CONVERSATIONS
16 WITH MS. STOECKLEY PRIOR TO THAT DAY?

17 ANSWER: YES, I DID.

18 QUESTION: AND YOU FOUND HER TO BE A RELIABLE
19 PERSON?

20 ANSWER: THE MOST RELIABLE INFORMANT I EVER HAD.

21 Q. OKAY. AND MR. BEASLEY KNEW MS. STOECKLEY OBVIOUSLY?

22 A. YES, HE DID.

23 Q. NOW, WITH REGARD TO SOME QUESTIONS MR. BRUCE ASKED ABOUT
24 THE DEFENSE INTERVIEW AND WHETHER BERNIE SEGAL SAID ACCORDING
25 TO APPARENTLY SOME LANGUAGE OUT OF THE BOOK *FATAL VISION* ABOUT

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1 SHE WOULD NOT BE SUBJECT TO THE STATUTE OF LIMITATIONS,
2 DURING THAT INTERVIEW DID MS. STOECKLEY HAVE A LAWYER?

3 A. NO.

4 Q. SO, WAS ANYONE REPRESENTING HER AT THAT TIME?

5 A. NO.

6 Q. AND YOU WERE SHOWN A COPY OF 18 USC 3282 DURING CROSS-
7 EXAMINATION --

8 A. YES, I WAS.

9 Q. -- WHICH DEALS WITH THE STATUTES OF LIMITATIONS --

10 A. YES.

11 Q. -- FOR MURDER. DID MR. SEGAL SHOW MS. STOECKLEY DURING
12 THAT INTERVIEW A COPY OF 18 USC SECTION 3282?

13 A. NO.

14 Q. TO YOUR KNOWLEDGE, WOULD MS. STOECKLEY HAVE HAD ANY
15 REASON TO BELIEVE BERNIE SEGAL WHEN HE TOLD HER SHE WOULD NOT
16 HAVE ANY LIABILITY FOR A MURDER CHARGE IN FEDERAL COURT BASED
17 ON STATUTE OF LIMITATIONS?

18 A. WELL, I MEAN, I DON'T THINK SHE HAD ANY KNOWLEDGE OF THE
19 LAW, OF STATUTES OF LIMITATIONS. I WOULD SAY THAT SHE
20 WOULDN'T KNOW BEANS ABOUT STATUTES OF LIMITATIONS.

21 Q. WAS YOUR SENSE IN THE INTERVIEW THAT SHE WAS BEING
22 SOMEWHAT RELUCTANT AS A WITNESS?

23 A. SHE WAS BEING -- SHE WAS BEING TOTALLY UNCOOPERATIVE IN
24 EVERY WAY. SHE WASN'T GIVING US ANYTHING.

25 Q. AS A CRIMINAL DEFENSE LAWYER, ARE YOU FAMILIAR WITH THE

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1 CONCEPT OF CONCURRENT JURISDICTION BETWEEN STATE AND FEDERAL
2 COURT?

3 A. I'VE ALWAYS CALLED IT THE PETITE DOCTRINE, YES.

4 Q. CAN YOU TELL US BRIEFLY WHAT THAT IS?

5 A. WELL, IT MEANS THAT BOTH -- THERE ARE TWO SOVEREIGNS.
6 THERE'S A FEDERAL SOVEREIGN, WHICH WE MUST OBEY, AND THERE'S A
7 STATE SOVEREIGN. AND OFTEN -- WELL, YOU HAVE TO SATISFY BOTH
8 KINGS. YOU HAVE TO SATISFY THE STATE KING AND YOU HAVE TO
9 SATISFY THE FEDERAL KING AND EACH ONE CAN PROSECUTE YOU. AND
10 THE FACT THAT ONE PROSECUTES YOU DOESN'T MEAN THAT THE OTHER
11 CAN'T.

12 Q. AND WOULD THAT MEAN THAT MS. STOECKLEY, IF SHE ADMITTED
13 TO BEING IN THE MACDONALD HOUSE, COULD POSSIBLY HAVE BEEN
14 PROSECUTED IN THE STATE COURTS OF NORTH CAROLINA AS WELL AS IN
15 THE FEDERAL COURT?

16 A. SHE COULD HAVE. THERE IS NO STATUTE OF LIMITATIONS IN
17 NORTH CAROLINA FOR FELONIES AND THAT CERTAINLY WOULD INCLUDE
18 MURDER.

19 Q. SO, SHE WOULD NOT HAVE BEEN EXEMPT FROM STATE PROSECUTION
20 FOR MURDER BASED ON THE STATUTE OF LIMITATIONS?

21 A. NO, SHE WOULD NOT.

22 Q. NOW, THERE WAS A LOT OF DISCUSSION ABOUT THE COLLOQUY AT
23 THE BENCH WHICH -- WHERE MR. SEGAL WAS SAYING SHE TOLD US SHE
24 WAS IN THE HOUSE AND YOU SAID SHE GAVE US SOME INQUIRIES INTO
25 HER MIND --

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1 A. YES.

2 Q. -- WHATEVER THAT MEANS. HOW LONG HAD YOU KNOWN BERNIE
3 SEGAL BY THE TIME YOU GOT TO THAT POINT IN THE TRIAL?

4 A. ABOUT FOUR MONTHS.

5 Q. AND DID YOU HAVE A SENSE OF HIS REPUTATION AS A LAWYER
6 BEFORE YOU JOINED ON THE DEFENSE TEAM?

7 A. NO, NOT MUCH.

8 Q. DID YOU HAVE A SENSE OF IN YOUR MIND WHETHER HE WOULD
9 MISREPRESENT SOMETHING TO THE COURT?

10 A. WELL, I DIDN'T THINK HE WOULD. I DIDN'T THINK HE WOULD
11 AND I DON'T NOW.

12 Q. OKAY. MR. BRUCE ALSO ASKED YOU ABOUT THE SO-CALLED
13 STOECKLEY WITNESSES WHERE MR. SEGAL WAS ABLE TO ASK SOME
14 LEADING QUESTIONS WHERE OBJECTIONS WERE SUSTAINED.

15 A. YES.

16 Q. AND IN THAT SITUATION, WOULD THE JUDGE NOT HAVE AT SOME
17 POINT INSTRUCTED THE JURY NOT TO CONSIDER QUESTIONS OR ANSWERS
18 TO WHICH OBJECTIONS WERE SUSTAINED?

19 A. HE MIGHT HAVE. I DON'T REMEMBER, BUT HE MIGHT HAVE --
20 MIGHT WELL HAVE DONE THAT.

21 Q. AND, IN FACT, WHEN WE WERE LOOKING AT -- WHEN MR. BRUCE
22 WAS SHOWING YOU THAT TRANSCRIPT, DIDN'T JUDGE DUPREE TELL THE
23 JURY WHEN OBJECTIONS ARE SUSTAINED, YOU'RE NOT TO CONSIDER
24 THAT INFORMATION?

25 A. HE DID.

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1 Q. AND DO YOU THINK THE JURY WOULD HAVE LISTENED TO JUDGE
2 DUPREE?

3 A. I THINK THEY WOULD HAVE.

4 Q. NOW, THERE WAS A NUMBER OF QUESTIONS ABOUT RESPECT FOR
5 JUDGE DUPREE THAT MR. BLACKBURN SAID HE HAD -- I MEAN, NOT MR.
6 BLACKBURN, MR. BRITT SAID HE HAD AND THAT WAS WHY HE DELAYED
7 IN COMING FORWARD.

8 A. YES.

9 Q. YET SOME OF THE THINGS HE SAID WOULD HAVE SUGGESTED HE
10 THOUGHT JUDGE DUPREE HAD DONE THINGS IMPROPERLY.

11 A. YES.

12 Q. AND DO YOU THINK HE WOULD HAVE DELAYED UNTIL AFTER JUDGE
13 DUPREE PASSED AWAY TO BRING SOME OF THAT INFORMATION FORWARD
14 BECAUSE OF THE RESPECT HE HAD FOR JUDGE DUPREE GENERALLY AS A
15 JUDGE?

16 A. YES, I DO.

17 Q. NOW, MR. BRUCE ASKED YOU ABOUT SOME OF THE FAVORABLE
18 EVIDENCE TO THE DEFENSE THAT MR. SEGAL BROUGHT OUT IN HIS
19 CLOSING ARGUMENT. I THINK HE MENTIONED LATEX GLOVE TIPS,
20 FIBER ON MR. MACDONALD'S GLASSES, UNIDENTIFIED HAIR,
21 FINGERPRINTS, WAX THAT DIDN'T MATCH CANDLES IN THE HOUSE.

22 A. YES.

23 Q. WOULD THERE HAVE BEEN OTHER EVIDENCE OF INTRUDERS THAT
24 WOULD HAVE ASSISTED YOU IN MAKING YOUR THEORY OF THE CASE?

25 A. ARE YOU ASKING ME WAS THERE OTHER SUCH EVIDENCE?

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1 Q. IF THERE HAD BEEN OTHER EVIDENCE OF INTRUDERS BESIDES
2 THESE THINGS THAT HE MENTIONED IN CLOSING ARGUMENT, WOULD THAT
3 HAVE ASSISTED YOU IN THE CASE?

4 A. INCREDIBLY. I MEAN, WE WERE -- WE'RE DEALING WITH A
5 LITTLE FIBER FOUND ON HIS GLASSES --

6 THE COURT: EXCUSE ME. WAS IT A FIBER OR A SPOT OF
7 BLOOD?

8 THE WITNESS: EXCUSE ME?

9 THE COURT: I'M A LITTLE CONFUSED FROM SOMETHING I
10 READ. WAS IT A FIBER OR A SPECK OF BLOOD?

11 THE WITNESS: I THOUGHT, YOUR HONOR, THAT IT WAS A
12 SPECK OF BLOOD, BUT I YIELD TO THESE GENTLEMEN.

13 THE COURT: WELL, HE'S ASKED YOU THE QUESTION DO YOU
14 KNOW WHETHER IT WAS A SPECK OF BLOOD OR A FIBER.

15 THE WITNESS: I DO NOT. I DON'T KNOW WHETHER IT WAS
16 A FIBER OR A SPECK OF BLOOD. I REMEMBER A SPECK OF BLOOD.

17 THE COURT: THANK YOU. MR. WIDENHOUSE.

18 BY MR. WIDENHOUSE:

19 Q. BUT WHEN YOU WERE READING THE TRANSCRIPT OF THE CLOSING
20 ARGUMENT, DID THE CLOSING ARGUMENT MENTION A FIBER ON HIS
21 GLASSES?

22 A. I THINK SO.

23 Q. AND MY POINT IS, DESPITE HAVING THESE PIECES OF EVIDENCE,
24 DO YOU THINK IT WOULD HAVE BEEN HELPFUL TO HAVE HAD OTHER
25 EVIDENCE OF AN INTRUDER?

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1 A. VERY HELPFUL, YES.

2 Q. AND I TAKE IT THAT'S WHY YOU WERE MOST INTERESTED IN
3 SOMEONE LIKE HELENA STOECKLEY AND STATEMENTS THAT SHE HAD MADE
4 TO OTHER PEOPLE?

5 A. INDEED, YES.

6 Q. NOW, WHO DID YOU SAY WAS JUDGE DUPREE'S LAW CLERK DURING
7 THIS TRIAL?

8 A. STEVE COGGINS.

9 Q. DO YOU KNOW WHETHER RICH LEONARD WAS EVER A LAW CLERK FOR
10 JUDGE DUPREE?

11 A. HE WAS AT ONE TIME AS I RECALL.

12 Q. AND DO YOU KNOW WHETHER JOHN EDWARDS WAS EVER A LAW CLERK
13 FOR JUDGE DUPREE?

14 A. HE WAS AT ONE TIME.

15 Q. NOW, MR. BRUCE ASKED YOU ABOUT THE VARIOUS AFFIDAVITS,
16 THE ADDENDUM TO THE AFFIDAVIT, STATEMENT UNDER OATH.

17 A. YES.

18 Q. IN ALL OF THESE DOCUMENTS THAT MR. BRITT EXECUTED UNDER
19 OATH OR STATEMENTS HE MADE UNDER OATH TO YOU, WAS HE
20 CONSISTENT IN THE STATE THAT HE SAID HE DROVE TO TO GET HELENA
21 STOECKLEY?

22 A. HE WAS.

23 Q. AND WHERE WAS THAT?

24 A. SOUTH CAROLINA.

25 Q. AND WAS HE ALWAYS CONSISTENT ABOUT SAYING WHO WENT WITH

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1 HIM?

2 A. HE WAS, GERRY HOLDER -- HOLDEN.

3 Q. AND WAS HE ALWAYS CONSISTENT ABOUT THE STATEMENT THAT HE
4 SAID HE HEARD MS. STOECKLEY MAKE ON THE CAR TRIP BACK FROM
5 SOUTH CAROLINA?

6 A. HE WAS.

7 Q. AND WAS HE ALWAYS CONSISTENT ABOUT THE STATEMENT THAT HE
8 SAID HE HEARD JIM BLACKBURN MAKE TO HELENA STOECKLEY DURING
9 THAT INTERVIEW?

10 A. HE WAS.

11 Q. IN YOUR MIND AS DEFENSE COUNSEL FOR JEFF MACDONALD, WERE
12 THOSE TWO THINGS, THOSE LAST TWO THINGS, WHAT HE SAYS HE HEARD
13 IN THE CAR AND WHAT HE SAID HE HEARD IN THE U.S. ATTORNEY'S
14 OFFICE, THE IMPORTANT FEATURES OF WHAT HE HAD COME FORWARD
15 WITH?

16 A. THEY WERE.

17 Q. I TAKE YOU BACK TO THE BEGINNING OF THE CROSS. THERE WAS
18 SOME QUESTION ABOUT MR. MCGINNISS BEING IN THE ROOM DURING THE
19 INTERVIEW --

20 A. YES.

21 Q. -- AND I THINK YOU SAID YOU HAD TOLD MR. SEGAL WE DON'T
22 DO THAT IN NORTH CAROLINA?

23 A. I DID.

24 Q. WAS THERE, TO YOUR KNOWLEDGE, SOME SORT OF
25 CONFIDENTIALITY AGREEMENT THAT MR. MCGINNISS ENTERED WITH DR.

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1 MACDONALD AND MR. SEGAL?

2 A. WELL, I NEVER SAW ANY FORMAL DOCUMENT THAT MADE THAT --
3 THAT MADE IT OFFICIAL, BUT IT WAS ALWAYS MY IMPRESSION THAT HE
4 WAS A MEMBER OF THE DEFENSE TEAM.

5 THE COURT: EXCUSE ME. I'M A LITTLE CONFUSED. I
6 THINK MR. WIDENHOUSE ASKED YOU ABOUT AN AGREEMENT. ARE YOU
7 AWARE OF A WRITTEN OR ORAL AGREEMENT?

8 THE WITNESS: NO, SIR, I'M NOT.

9 BY MR. WIDENHOUSE:

10 Q. BUT YOU DID HAVE AN UNDERSTANDING THAT THERE WAS AN
11 AGREEMENT OF SOME SORT THAT HE WAS PART OF THE DEFENSE TEAM?

12 A. YES, I THOUGHT THERE MUST BE, BUT THAT WAS NOT SOMETHING
13 THAT I PARTICIPATED IN OR SHARED.

14 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. THAT'S ALL
15 I HAVE.

16 THE COURT: RE CROSS.

17 MR. BRUCE: JUST BRIEFLY, YOUR HONOR.

18 R E C R O S S - E X A M I N A T I O N 4:09 P.M.

19 BY MR. BRUCE:

20 Q. MR. SMITH, THESE MURDERS OCCURRED ON THE FORT BRAGG
21 MILITARY RESERVATION, IS THAT CORRECT?

22 A. THEY OCCURRED ON A FEDERAL RESERVATION, YES.

23 Q. IN THE BASE HOUSING AT FORT BRAGG?

24 A. YES.

25 Q. AND ISN'T IT A FACT THAT FORT BRAGG'S PERIMETER IS

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1 EXCLUSIVE FEDERAL JURISDICTION AND NOT CONCURRENT?

2 A. I DO NOT KNOW WHETHER THE STATE HAD CONCURRENT
3 JURISDICTION. I KNOW IT HAPPENED ON FEDERAL TERRITORY.

4 Q. WELL, AS A MATTER OF FACT, IN MACDONALD'S CASE INITIALLY
5 CHARGES WERE BROUGHT BY THE MILITARY AUTHORITIES, THE UNITED
6 STATES ARMY, IS THAT RIGHT?

7 A. YES, SIR. ARTICLE 32 PROCEEDING, YES.

8 Q. AND THEN CHARGES WERE BROUGHT BY THE CIVILIAN PROSECUTION
9 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
10 OF NORTH CAROLINA, IS THAT RIGHT?

11 A. THEY WERE.

12 Q. DO YOU KNOW OF ANY INVOLVEMENT WHATSOEVER BY THE STATE
13 AUTHORITIES IN THE PROSECUTION OF JEFFREY MACDONALD?

14 A. NO.

15 Q. WITH REGARD TO MR. MCGINNISS, YOU TESTIFIED ON DIRECT
16 EXAMINATION THAT THE PURPOSE OF MR. MCGINNISS BEING EMBEDDED,
17 IF YOU WILL, IN THE DEFENSE TEAM WAS TO GATHER INFORMATION TO
18 WRITE A BOOK?

19 A. YES.

20 Q. DO YOU MAINTAIN THAT TESTIMONY?

21 A. YES.

22 Q. WELL, THE BOOK WASN'T GOING TO BE CONFIDENTIAL, WAS IT?

23 A. NO.

24 Q. I MEAN, THE BOOK WAS A NATIONWIDE BEST SELLER, IS THAT
25 RIGHT?

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1 A. IT WAS.

2 Q. AND A TELEVISION MINI-SERIES WAS MADE OUT OF IT, RIGHT?

3 A. YES.

4 Q. AND ALL THE MATERIAL THAT MR. MCGINNISS GATHERED IN HIS
5 ASSOCIATION WITH THE DEFENSE TEAM OR MUCH OF IT WAS USED IN
6 THOSE TWO THINGS?

7 A. IT WAS.

8 Q. AND I BELIEVE YOU PURCHASED A NUMBER OF COPIES OF MR.
9 MCGINNISS'S BOOK, DID YOU NOT?

10 A. I DID NOT. I AM SURE THAT I GOT ONE COPY, BUT I DON'T
11 THINK I WOULD HAVE PURCHASED A LOT OF COPIES. I'VE NEVER READ
12 THE BOOK THROUGH.

13 MR. BRUCE: THANK YOU. NOTHING FURTHER.

14 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT
15 WITNESS.

16 MR. WIDENHOUSE: MARY BRITT.

17 THE WITNESS: YOUR HONOR, MAY I BE EXCUSED? AM I
18 RELEASED?

19 THE COURT: COUNSEL?

20 MR. BRUCE: YES, YOUR HONOR.

21 MR. WIDENHOUSE: (NODS HEAD.)

22 THE COURT: YES.

23 THE WITNESS: THANK YOU VERY MUCH.

24 MADAM CLERK: I'M SORRY, WHO WAS YOUR NEXT WITNESS
25 THAT YOU WERE CALLING?

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1 MR. WIDENHOUSE: I'M SORRY. MARY BRITT.

2 MADAM CLERK: THANK YOU.

3 (PAUSE.)

4 THE COURT: COUNSEL, I'D LIKE FOR YOU ALL TO FILE A
5 BRIEF ON THE PROPRIETY OF A JUDGE ACCEPTING A CAKE FROM A
6 JUROR AND I HOPE YOU COME OUT RIGHT.

7 YOU KNOW, OVER THE YEARS, I HAVE HEARD THAT JURORS
8 DEVELOP A REAL RAPPORT. THEY BRING EACH OTHER FOOD DURING THE
9 TRIAL BOTH SIDES.

10 (PAUSE.)

11 MR. BRUCE: JUST SO YOU KNOW, YOUR HONOR, AUSA
12 COOLEY IS GOING TO HANDLE THE CROSS-EXAMINATION OF THIS
13 WITNESS.

14 THE COURT: THANK YOU.

15 **MARY BRITT, DEFENSE WITNESS, SWORN**

16 D I R E C T E X A M I N A T I O N 4:14 P.M.

17 BY MR. WIDENHOUSE:

18 Q. WOULD YOU STATE YOUR NAME FOR THE RECORD AND TELL US
19 WHERE YOU LIVE?

20 A. MY NAME IS MARY WOOD BRITT. I LIVE IN SMITHFIELD, NORTH
21 CAROLINA.

22 Q. AND WERE YOU MARRIED AT ONE TIME TO JIMMY BRITT?

23 A. YES, I WAS.

24 Q. AND WHEN DID YOU ALL GET MARRIED?

25 A. JULY 30TH, 1957.

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1 Q. OKAY. NOW, DID YOU ALL LIVE IN SMITHFIELD THE WHOLE
2 TIME?

3 A. NO. WE LIVED IN BENSON, GREENSBORO, PINE TOPS AND
4 RALEIGH, AND THEN MOVED TO SMITHFIELD IN 1970.

5 Q. OKAY. AND WHERE DID MR. BRITT WORK WHILE YOU WERE
6 MARRIED? LET ME ASK IT THIS WAY, WHAT WAS HIS PRIMARY JOB
7 DURING THE TIME YOU WERE MARRIED?

8 A. HE WAS DEPUTY U.S. MARSHAL FOR MOST OF THE TIME THAT WE
9 WERE MARRIED.

10 Q. AND DID YOU ALL TALK ABOUT HIS WORK?

11 A. YES.

12 Q. DO YOU REMEMBER HEARING ABOUT THE MURDER OF DR.
13 MACDONALD'S FAMILY?

14 A. YES.

15 Q. LET ME BACK UP A SECOND. DID MR. BRITT LIKE WORKING AS A
16 MARSHAL?

17 A. YES, HE DID.

18 Q. AND DO YOU REMEMBER WHEN THE MACDONALD TRIAL STARTED IN
19 FEDERAL COURT IN RALEIGH?

20 A. YES, I DO.

21 Q. AND WHAT DO YOU REMEMBER ABOUT IT?

22 A. JIM WORKED THE TRIAL QUITE A BIT. I DON'T KNOW EXACTLY
23 WHAT -- COULD YOU BE MORE SPECIFIC IN YOUR QUESTION?

24 Q. WELL, I MEAN, I GUESS THE FACT THAT HE WORKED THE TRIAL.
25 DID HE TALK ABOUT THE TRIAL?

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1 A. YES. YES, HE DID.

2 Q. AND WHAT KINDS OF THINGS DID HE TALK ABOUT?

3 A. HE TALKED ABOUT DAILY THINGS. HE WENT TO -- I REMEMBER
4 THAT HE WENT TO SOUTH CAROLINA -- I REMEMBER HIM TELLING ME
5 THAT HE WAS GOING TO SOUTH CAROLINA TO PICK UP A WITNESS. I
6 REMEMBER THE EVENING THAT HE CAME IN FROM PICKING UP THE
7 WITNESS.

8 Q. OKAY. WELL, TELL ME ABOUT -- DID YOU KNOW WHO HE -- WHAT
9 WITNESS HE WAS GOING TO PICK UP IN SOUTH CAROLINA?

10 A. NOT WHEN HE WENT -- I DO NOT REMEMBER THAT. I DO NOT
11 REMEMBER KNOWING A NAME, JUST A WITNESS. BUT WHEN HE GOT HOME
12 THAT EVENING, WHEN HE CAME IN THE DOOR, HE WAS VERY EXCITED,
13 AND THAT'S THE ONLY WORD I KNOW TO DESCRIBE IT, BECAUSE HE
14 FELT THE WOMAN TALKED IN THE CAR COMING BACK ABOUT HER
15 INVOLVEMENT, THAT HE SAID, HIS WORDS, SHE DESCRIBED THE INSIDE
16 OF THE APARTMENT WHERE THE MACDONALDS LIVED, AND HE USED THE
17 TERM THAT SHE DESCRIBED IT TO A T EVEN TO THE FACT OF A
18 CHILD'S HOBBY HORSE THAT WAS BROKEN.

19 Q. OKAY. AND I TAKE IT THAT STICKS IN YOUR MIND AFTER --

20 A. YES.

21 Q. -- ALL THIS TIME?

22 A. YES. YES, IT DOES.

23 Q. AND THAT WAS DURING THE TRIAL ITSELF WHEN HE --

24 A. NO, NO, THAT WAS -- WELL, I'M NOT SURE FROM MY MEMORY IF
25 THE TRIAL HAD ACTUALLY STARTED, BUT IT WAS WHEN HE WENT TO

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1 SOUTH CAROLINA TO PICK UP THE WITNESS, IT WAS THAT EVENING
2 WHEN HE CAME IN.

3 Q. OKAY. AND WHAT WAS HIS ATTITUDE ABOUT -- DID HE HAVE AN
4 ATTITUDE OR DID YOU GET A SENSE OF HOW HE FELT ABOUT THE TRIAL
5 BEFORE HE MADE THE TRIP TO SOUTH CAROLINA?

6 A. NO, I DO NOT REMEMBER OTHER THAN, YOU KNOW, THAT HE WAS
7 WORKING, HE WAS IN THE COURTROOM. AND AT THIS POINT IN TIME,
8 SEQUENCE OF EVENTS ARE HARD.

9 ONE THING I DO REMEMBER THAT HAPPENED DURING THE
10 TRIAL WAS JIM WAS A PERSON THAT NEVER HAD PROBLEMS SLEEPING.
11 NO MATTER WHAT WAS GOING ON IN HIS LIFE HE COULD LAY DOWN AND
12 GO TO SLEEP AND I ALWAYS ENVIED THAT.

13 BUT I WOKE UP DURING THE NIGHT AND HE WAS NOT IN THE
14 BED AND I GOT UP AND WENT LOOKING FOR HIM AND HE WAS OUT IN
15 THE SIDE YARD UNDER A TREE IN A LAWN CHAIR AND I SAT DOWN ON
16 THE STEPS AND ASKED HIM, I SAID WHAT IS IT? AND HE DESCRIBED
17 -- HE WAS VERY, VERY EMOTIONAL AND VERY UPSET, AND HE
18 DESCRIBED PICTURES THAT WERE ON DISPLAY IN THE COURTROOM AND
19 HE -- PICTURES OF THE CHILDREN, OF THE MACDONALD CHILDREN.
20 AND HE SAID, MARY, I CAN'T GO BACK IN THERE. I JUST CAN'T.
21 AND HE SAID I EVEN TODAY WENT -- AFTER EVERYBODY LEFT I
22 UNLOCKED THE COURTROOM AND WENT IN THERE BY MYSELF. I THOUGHT
23 IF I SAT THERE BY MYSELF I COULD ADJUST, I COULD DO IT, BUT HE
24 SAID I CAN'T. AND I SAID, WELL, YOU NEED TO TALK TO MR.
25 SALTER AND TELL HIM THAT.

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1 AND THE NEXT DAY -- I DO NOT KNOW WHAT HE DID, BUT
2 THE NEXT DAY, I THINK IT WAS ON TV, AND I'M NOT SURE OF HOW I
3 GOT THIS INFORMATION, BUT I REMEMBER THAT ONE OF THE JURORS
4 WAS EMOTIONAL ABOUT THE PICTURES, I REMEMBER THAT, AND I
5 ASSUMED THE PICTURES WERE TAKEN DOWN.

6 Q. AND DO YOU RECALL AFTER ALL THIS TIME WHETHER THE EVENING
7 OR THE NIGHT THAT YOU FOUND HIM AWAKE ON THE LAWN CHAIR OUT IN
8 THE YARD WAS BEFORE OR AFTER THE TRIP TO SOUTH CAROLINA?

9 A. I'M SURE THAT IT WAS -- IT WAS AFTER. I'M PRETTY
10 POSITIVE ABOUT THAT BECAUSE IT WAS ON OVER INTO THE TRIAL.

11 Q. OKAY. AND DO YOU RECALL -- WELL, YOU SAID HE CAME BACK
12 FROM THE TRIP AND HE WAS SOMEWHAT EXCITED AND TALKED ABOUT
13 WHAT THE PERSON HAD SAID TO HIM. DO YOU RECALL THE NEXT DAY
14 AT THE TRIAL?

15 A. I WAS VERY ANXIOUS TO HEAR -- WELL, WE DIDN'T HAVE CELL
16 PHONES AND I NORMALLY DID NOT TALK WITH HIM DURING THE DAY,
17 BUT I WAS VERY EXCITED TO HEAR WHAT THE OUTCOME OF THE WOMAN'S
18 TESTIMONY WAS.

19 AND WHEN -- AS SOON AS HE WALKED IN THAT NIGHT, OF
20 COURSE, I ASKED HIM AND I KNOW VERY WELL THE WORDS THAT HE
21 USED TO TELL ME. HE SAID THEY SAY THEY CAN'T USE HER
22 TESTIMONY BECAUSE HER BRAIN IS FRIED FROM THE USE OF DRUGS. I
23 HAD NEVER HEARD THAT EXPRESSION BEFORE. AND THEN THERE JUST
24 WERE NOT THAT MANY DRUGS AROUND SMITHFIELD AND I WAS NOT THAT
25 FAMILIAR WITH IT. BUT I DO REMEMBER HIM TELLING ME THAT THEY

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1 SAID THEY COULD NOT USE HER TESTIMONY.

2 Q. DO YOU RECALL WHETHER ANYTHING UNUSUAL HAPPENED AT THE
3 END OF THE TRIAL?

4 A. YES.

5 Q. COULD YOU TELL US ABOUT THAT?

6 A. HE CAME HOME FROM WORK EARLY, WHICH WAS VERY UNUSUAL
7 BECAUSE MOST OF THE TIME HE WAS LATE, BUT HE CAME IN EARLY AND
8 I WAS IN THE KITCHEN AND HE CAME IN THE BACK DOOR AND I STOOD
9 AND LOOKED AT HIM AND I SAID, YOU KNOW, WHAT IS IT? AND I
10 ASKED HIM, YOU KNOW, WHY HE WAS HOME EARLY BECAUSE I KNEW THE
11 TRIAL WAS STILL GOING ON AND HE WAS WORKING IT. AND HE SAID
12 THAT THEY FOUND JEFFREY MACDONALD GUILTY AND THAT HUGH SALTER
13 -- AND HE -- JIM HAD A GREAT DEAL OF RESPECT FOR HUGH SALTER.
14 HE IS THE PERSON WHO HIRED HIM AS A DEPUTY MARSHAL AND HE WAS
15 VERY FOND OF HIM. AND HE SAID THAT MR. SALTER TOLD HIM TO
16 LOCK HIM UP. AND HE SAID I TOLD HIM THAT I WAS NOT DOING ANY
17 MORE OF THE DIRTY WORK, I WAS GOING HOME. AND HE SAID I LEFT
18 AND I CAME HOME.

19 AND I WAS JUST SHOCKED THAT HE WOULD TALK TO MR.
20 SALTER LIKE THAT ABOUT ANY -- YOU KNOW, AT ANY TIME. BUT THAT
21 WAS HIS RESPONSE. AND I DID ON TV THAT NIGHT I SAW MR. SALTER
22 ESCORTING JEFFREY MACDONALD.

23 Q. DID THERE COME A TIME AFTER THE TRIAL THAT YOU SAW THE TV
24 MOVIE OR MINI-SERIES OR WHATEVER IT WAS *FATAL VISION*?

25 A. YES. AND THERE AGAIN, I CANNOT TELL YOU WHEN, BUT IT WAS

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1 AFTER JIM AND I WERE DIVORCED AND THAT WAS IN FEBRUARY OF '89.
2 WE WERE AT LEAST SEPARATED, BUT I REALLY AM PRETTY SURE WE
3 WERE DIVORCED, AND I SAW THE MINI-SERIES ON TV. I WATCHED IT.

4 AND HE STOPPED BY MY HOUSE ONE EVENING AS HE DID
5 OCCASIONALLY. SOMETIMES IF HE -- HE WORKED IN SMITHFIELD AT
6 THE COURTHOUSE AND IF HE KNEW ONE OF THE GRANDCHILDREN WAS
7 THERE SOMETIMES HE WOULD STOP BY FOR A MINUTE. AND AS HE WAS
8 LEAVING I HAPPENED TO THINK ABOUT SEEING THE MINI-SERIES AND I
9 CALLED IT A MOVIE, BUT I ASKED HIM I SAID, JIM, DID YOU SEE
10 THE MOVIE ABOUT THE MACDONALD TRIAL ON TV? AND HE WAS
11 STANDING AT THE DOOR OF MY DEN AND HE HAD HIS HAND ON THE DOOR
12 KNOB, HE SAID, I DID, IT'S NOT ACCURATE. HE SAID THEY HAVE ME
13 STANDING IN THE HALL. I WAS IN THAT ROOM, I HEARD EVERY WORD
14 THAT WAS SAID, AND HE SAID THAT THROUGH GRITTED TEETH. HE WAS
15 ANGRY. AND HE WALKED OUT THE DOOR AND CLOSED THE DOOR BEHIND
16 HIM BEFORE I COULD RESPOND IN ANY WAY.

17 Q. AND DO YOU RECALL SEEING HIM PORTRAYED IN THE MOVIE? I
18 MEAN, DID YOU RECALL SEEING HIM PORTRAYED IN THE MOVIE?

19 A. I DID.

20 Q. AND IS THAT WHY YOU MENTIONED IT TO HIM?

21 A. NO. NO, NO. THE REASON I MENTIONED IT WAS I JUST
22 WONDERED OUT OF CURIOSITY IF HE HAD SEEN IT AND HE INDICATED
23 THAT, YES, HE HAD.

24 Q. AND HIS REACTION WAS WHAT YOU JUST DESCRIBED?

25 A. YES. YES. I'M SORRY. YES.

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1 Q. ALL RIGHT. THERE'S BEEN SOME TESTIMONY BEFORE THE COURT
2 THAT MR. BRITT CONTACTED WADE SMITH A NUMBER OF YEARS AFTER
3 THE MACDONALD TRIAL IN 2005 AND DISCUSSED SOME THINGS WITH
4 HIM. DID YOU KNOW MR. BRITT WAS GOING TO CONTACT WADE SMITH
5 BEFORE IT HAPPENED?

6 A. NO.

7 Q. HOW DID YOU COME TO LEARN ABOUT IT HAVING HAPPENED?

8 A. NOW, HERE AGAIN, SEQUENCE OF EVENTS. I'M NOT SURE IF
9 WADE SMITH CALLED ME ON THE PHONE AND ASKED -- HE CALLED AND
10 ASKED ME IF I COULD -- IF I WOULD BE WILLING TO ANSWER SOME
11 QUESTIONS ABOUT MY MEMORY TO CONFIRM THINGS THAT I GUESS THAT
12 JIM HAD TALKED AND DISCUSSED WITH HIM.

13 (PAUSE.)

14 I'M SORRY, I'M LOSING MY TRAIN OF THOUGHT. BUT WADE
15 SMITH CALLED ME AND TALKED WITH ME AND ALSO TWO FBI AGENTS
16 CAME TO MY HOUSE ONE MORNING AND THAT -- I'M NOT SURE WHICH
17 HAPPENED FIRST, IF IT WAS THE TWO FBI AGENTS THAT SHOWED UP AT
18 MY FRONT DOOR OR IF MR. SMITH CALLED ME BEFORE THEY CAME. I
19 JUST AM NOT SURE.

20 Q. WOULD YOU TELL US ABOUT THE AGENTS COMING TO VISIT?

21 A. I HAD BEEN TO AN EXERCISE -- MY EXERCISE CLASS EARLY THAT
22 MORNING AND CAME HOME AND WENT IN THE HOUSE AND WITHIN JUST A
23 VERY -- THREE, FOUR, FIVE MINUTES AT THE MOST THE FRONT
24 DOORBELL RANG AND I WENT AND THEY IDENTIFIED THEMSELVES AS FBI
25 AGENTS AND ASKED ME IF THEY COULD COME IN AND TALK WITH ME AND

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1 THEY DID.

2 AND I WAS -- I WAS MORE THAN SHOCKED. I WAS -- I
3 WAS UPSET. I WAS JUST SHOCKED. LAW ENFORCEMENT PEOPLE HAD
4 NOT BEEN TO MY HOUSE LIKE THAT AND I -- MAYBE I OVERREACTED, I
5 DON'T KNOW, BUT I EXPRESSED TO THEM THAT, YOU KNOW, I WISHED
6 THEY HAD CALLED ME AND THEY WERE VERY NICE. THEY WERE VERY
7 PROFESSIONAL. AND I DID EXPRESS TO THEM THAT I WISHED THEY
8 HAD CALLED ME BEFORE THEY JUST SHOWED UP.

9 Q. WHAT DID YOU TALK TO THEM ABOUT?

10 A. THEY ASKED ME QUESTIONS ABOUT WHAT I REMEMBERED ABOUT THE
11 JEFFREY MACDONALD TRIAL.

12 Q. AND DO YOU REMEMBER WHAT YOU TOLD THEM?

13 A. I TOLD THEM -- I MEAN, I HAD HAD NO REASON TO THINK ABOUT
14 IT AND I TOLD THEM I SAID I WILL TELL YOU THE HONEST TRUTH TO
15 THE BEST OF MY ABILITY WHAT I REMEMBER AND THEY SAID THAT'S
16 WHAT -- YOU KNOW, THAT'S WHAT THEY WANTED.

17 THE COURT: WE'RE GOING TO TAKE A RECESS UNTIL
18 TOMORROW MORNING AT NINE O'CLOCK. YOU MAY STEP DOWN.

19 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 4:30 P.M.,
20 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 18, 2012.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT OF SAID PROCEEDINGS.

/s/ STACY SCHWINN, CCR, CVR-M
STACY SCHWINN, CCR, CVR-M

11/19/12
DATE

September 17, 2012

I, STACY SCHWINN, CCR, CVR-M, CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE TRANSCRIPT ORIGINALLY FILED WITH THE CLERK OF COURT ON 11/19/12, AND INCORPORATING REDACTIONS OF PERSONAL IDENTIFIERS REQUESTED BY THE FOLLOWING ATTORNEYS OF RECORD: JOHN STUART BRUCE, IN ACCORDANCE WITH JUDICIAL CONFERENCE POLICY. REDACTED CHARACTERS ARE STREET ADDRESS OF WITNESS.

/s/ STACY SCHWINN, CCR, CVR-M
Signature of Court Reporter

1/14/13
Date

September 17, 2012