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but going in the back door with what they couldn't get in the front door with this type of question. We object to it of course, but they are asking questions that they know are going to be sustained because of the rulings.

I think it is prejudicial to the Government in that regard, to have to go through each of these six witnesses and ask the questions.

THE COURT: I don't think it is proper to ask a question if you know it is going to be sustained, simply to get in the evidence by the way of question; but I would hate to say that I could delve into counsel's mind and say that he knows what is going to be sustained and what ain't.

MR. SEGAL: I will also say, Your Honor, we have--I mean, assuming that Your Honor is going to rule the same on similar questions, we have not by my question tried to put the contents in.

That would clearly be--you know--I think that I should anticipate has to wait for a ruling. I also want to say, Your Honor, I don't understand how the Court can rule on my question when Mr. Murtagh insists upon objecting when I have said three words which haven't framed it.

My whole--maybe I was trained wrong, but

#10 p4

1 I was always told unless the questioner was saying
2 something that was totally outrageous---

3 THE COURT: (Interposing) Look, let
4 him get his question out.

5 MR. BLACKBURN: The basis of our problem
6 is this: we have told Your Honor before this witness
7 started that you can say barely say "Objection" before
8 she is giving the answer.

9 MR. SEGAL: I will instruct her. That
10 is fair. I will ask her.

11 MR. BLACKBURN: We also think it is
12 objectionable to keep on saying two or three times every
13 five minutes, "you can't answer that," because everybody
14 knows that.

15 MR. SEGAL: I will ask the witness
16 to wait before she answers any questions and see if the
17 Government is going to object; and I won't say it again.

18 THE COURT: You think that is a form
19 of evidence, too, don't you?

20 MR. BLACKBURN: It doesn't take much for
21 the jury to figure out what somebody is going to say.

22 THE COURT: Let's go.

23 (Bench conference terminated.)

24 THE COURT: Ms. Zillioux, the lawyers
25 exercising their prerogative in compliance with the

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duty to represent fully their clients occasionally
interpose objections to questions.

I verily anticipate, in view of the past
performances in this trial, that that will be repeated
before you leave the stand.

I ask you, please, at the end of every
question to wait until--and see whether or not there is
an objection. If there's not, go ahead and answer it;
and if there is, don't say anything until I can rule on
it.

THE WITNESS: Thank you.

BY MR. SEGAL:

Q Now, in regard to the artist's rendition of
the man that you have up there in front of you, when
that particular drawing was shown to Ms. Stoeckley, did
she indicate in any physical way a reaction to that
drawing?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did she indicate in any way that she knew
the person depicted there?

MR. BLACKBURN: OBJECTION.

THE COURT: I will OVERRULE that.

BY MR. SEGAL:



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Q Did she indicate whether she knew the

person who is depicted there?

A Yes, sir.

Q Did she state the name of the person that she believed is depicted in that photograph--that drawing?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you recall the name that she gave?

A Mazzarole.

Q Mazzarole? Did she state at that time the first name, or do you recall a first name?

A She called him--she said, "This is Mazzarole."

Q Did she say anything else about her knowledge of that man at that time?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, I would also like you to take a look at one other series of photographs that are contained in this book. I would ask you to look at the photographs that are marked Government 23, 24, 24(b), 26, which are four photographs which have been previously identified



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#10 p7

1 here in this trial as photographs of the MacDonald
2 living room. Would you look at those photographs, and
3 they have been marked with a clip?

4 (Witness complies.)

5 Q Have you had a chance to look at it?

6 (Witness nods affirmatively.)

7 Q I will have to ask you to say "yes" or "no"
8 for the stenographer?

9 A Yes, sir.

10 Q Did, at any time, if you recall, Ms. Stoeckley
11 examine that particular grouping of photographs of
12 the MacDonald living room?

13 A Yes, sir.

14 Q Did she in any way indicate that she
15 recognized anything depicted in those photographs?

16 MR. ANDERSON: OBJECTION.

17 THE COURT: SUSTAINED.

18 BY MR. SEGAL:

19 Q Did she say anything indicating that she
20 had knowledge about the physical facts depicted in that
21 scene?

22 MR. BLACKBURN: OBJECTION.

23 THE COURT: SUSTAINED.

24 BY MR. SEGAL:

25 Q Did Ms. Stoeckley say whether she had ever

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been at the scene depicted in those photographs?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, after Ms. Stoeckley looked at those photographs--can you tell us perhaps for how long she had the photographs and, you know, looked at them?

A Approximately an hour.

Q At the end of that period of time, were the photographs taken away or put aside in some fashion?

A Put aside.

Q Did Ms. Stoeckley say anything at that time about the totality of the scenes depicted in there; that is, did she say anything indicating recognition and prior knowledge of the places and events depicted in those photographs?

MR. ANDERSON: OBJECTION.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did Ms. Stoeckley say anything to you within the time that you were in the room--witness room with her--about having carried a lighted candle in February of 1970?

MR. BLACKBURN: OBJECTION.

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THE COURT: SUSTAINED.

MR. SEGAL: I have no further questions of Ms. Zillioux at this time, Your Honor.

MR. BLACKBURN: Just a moment, Your Honor.

(Pause.)

CROSS EXAMINATION 11:40 a.m.

BY MR. BLACKBURN:

Q Ms. Zillioux, do you recall how long you were in the witness room--the Defendant's witness room--with Ms. Stoeckley?

A Sir, I never wear a watch, but it was several hours.

Q Several hours?

A Yes, sir.

Q That was on Thursday of last week?

A Yes, sir.

Q Who else was in the witness room with you, if you recall?

A Various people at different times.

Q Mr. Beasley?

A Yes, sir.

Q At whose request were you there in the room?

A Helena's.



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1 Q At Helena's. What about Mr. Beasley,
2 do you know?
3 A I never saw Mr. Beasley before the other
4 day.
5 Q Besides the two of you, who else if anyone
6 was in the witness room with you?
7 A Various people at various times, in and out.
8 Q Was either Mr. Segal or one of his assistants
9 there in the room during this time?
10 A Not always.
11 Q Some of the time?
12 A Some of the time.
13 MR. BLACKBURN: No further questions,
14 Your Honor.
15 MR. SEGAL: Your Honor have any
16 questions of this witness?
17 (No response.)
18 MR. SEGAL: Thank you very much,
19 Ms. Zillioux, you may step down.
20 (Witness excused.)
21 THE COURT: All right, now we will
22 go take our recess and we will come back at 12:00 noon
23 today. Members of the jury, don't talk about the case.
24 (The proceeding was recessed at 11:42 a.m.,
25 to reconvene at 12:00 noon this same day.)



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(The following proceedings were held in
the presence of the jury and alternates.)

THE COURT: Any further evidence
for the Defendant?

MR. SEGAL: I am ready to call the
next witness.

THE COURT: Call him.

MR. SEGAL: Charles Underhill,
please.

MR. BLACKBURN: Your Honor, while we are
waiting, may we approach the Bench?

THE COURT: By all means.

THE CLERK: Mr. Underhill, you have
been previously sworn. You may just go around and
take a seat on the witness stand.

BENCH CONFERENCE

MR. BLACKBURN: At this time, we would
request, based on the examination of this previous
witness, that the Court instruct counsel for the
Defendant not to ask questions that he knows objections
are going to be sustained.

THE COURT: All right, I will so



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1 instruct him. Don't ask a question if you know that
2 the OBJECTION is going to be SUSTAINED.

3 MR. SEGAL: I was not here for part
4 of the earliest ruling. I gather Your Honor does not--
5 would not permit a witness to answer as to the contents
6 of a statement that Ms. Stoeckley made to him in
7 December of 1970, in Nashville. I may say he had a
8 conversation?

9 THE COURT: Yes.

10 MR. SEGAL: I have other matters.

11 MR. MURTAGH: Our OBJECTION would be to
12 questions in which photographs were shown because they
13 are obviously going to be OBJECTED to.

14 MR. SEGAL: There are no questions
15 about the photographs of this witness anyway.

16 MR. MURTAGH: Or any witness.

17 MR. SEGAL: We will get to that.

18 (Bench Conference terminated.)

19 (Whereupon,

20 CHARLES EDWARD UNDERHILL

21 was recalled as a witness, and having been previously
22 sworn, was examined and testified further as follows:)

23 D I R E C T E X A M I N A T I O N 12:02 p.m.

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25 BY MR. SEGAL:

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Q Would you state your full name and address for the record, please, Mr. Underhill?

A Certainly; Charles Edward Underhill; 2699 Lowell Avenue; Jacksonville; Florida 32205.

Q Mr. Underhill, did you ever live in Nashville, Tennessee, in the year 1970, or '71?

A Yes, sir; I certainly did.

Q Would you tell us what were the years of your residence in Nashville?

A 1967 through 1973.

Q In what particular part of town did you live in when you were in Nashville particularly in the year 1970?

A I lived over in the Belle Meade College area, which Belmont Boulevard runs parallel north and south to this college. That is, I would say, two and a half miles from right downtown in Nashville, Tennessee.

Q Could you tell us what kind of neighborhood that was in 1970?

A Well, that is really hard to describe because it is just like any older neighborhood. You get just the best of the first class citizen, you know, at this corner and then maybe the next corner, you have got what you call just plain-out trash. I know it sounds kind of confusing, but it is a mediocre



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neighborhood.

Q What was your address in 1970?

A Well, I lived out on Franklin Road, which is, I think, it was 26--this sounds awful ridiculous. I think it is 2615, I believe.

Q Did you know Jane McCampbell who is now Jane Zillioux in 1970?

A Yes, sir; I certainly did.

Q Did she live anywhere near you?

A Well, she lived about a mile and a half from where I lived on Portland Avenue.

Q Did you happen to meet at any time in 1970, a lady by the name of Helena Stoeckley?

A Yes, sir; I did.

Q Would you tell us under what circumstances you came to meet her--you know, when and where and how that took place?

A Well, I met her at the corner of Belmont Boulevard and Portland Avenue in the latter part of September, 1970, in a ladies' shoe store named Bonnie Hudgins. Bonnie and Helena were in the store whenever I walked in, and this is the first time I ever saw her. Bonnie Hudgins, the lady that owned the store, introduced me to her.

Q Did you know where Helena Stoeckley lived at

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1 that time?

2 A No, sir; I did not.

3 Q Did you ever find out where she lived?

4 A Yes, sir; I certainly did.

5 Q How did you learn that, and tell us if you
6 ever had occasion to go to her apartment or her place of
7 residence?

8 A Well, I went to her apartment one time in
9 the 15th or the 16th--approximately the middle of
10 December, 1970. I had been out of town and had
11 returned to Nashville and asked this lady, Jane, and
12 Bonnie about Helena because she had been sick with
13 hepatitis.

14 Q You say that Helena had been sick with
15 hepatitis?

16 A Helena, yes. They said, "Well, we haven't
17 seen her for a couple of days. I guess she may be mad
18 at us for some unknown reason," so I walked down and
19 knocked on her door and I heard a crying that was more
20 than normal. I knocked again and the voice that came
21 said, "Get away."

22 I said, "Helena, is that you in there crying?"
23 She said, "Get away. I don't want to see nobody." I
24 said, "Helena, open this door and let me in." She said,
25 "Who is it?" I said, "It is Underhill." She said,



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1 "No, go away." I said, "I am going to go down and
2 get Bonnie and Jane to see if they can't talk to you
3 or just see what is wrong with you or whatever, you
4 know, the problem is." She said, "No, don't get Bonnie."
5 She said, "I will let you in." She came to the door
6 and let me in, still crying, and sat down on the side
7 of her bed. Her bedroom was right in the very front
8 of this particular apartment, and just sobbing, just
9 like as if maybe a member of her family had just got
10 run over or something very drastically (sic) had
11 happened even to her best friend or something.

12 I asked her, I said, "What in the Lord's
13 world is wrong with you?"

14 MR. BLACKBURN: Your Honor, we would
15 OBJECT to anything the witness may have said.

16 THE COURT: I assume that he does not
17 propose to say what she said. If you do, then don't
18 say it.

19 BY MR. SEGAL:

20 Q Did you find out from her what was the
21 matter with her at that time?

22 A No, sir; I didn't find out at that time just
23 exactly what had her upset or what she was crying about;
24 at this time, no, sir, I did not.

25 Q Did you have a conversation with her,



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1 however, in that visit to her apartment?

2 A Well, I did have a very short conversation
3 at this particular time; yes, sir, I did.

4 Q Did it relate to anything that happened in
5 the State of North Carolina in Fayetteville, North
6 Carolina?

7 MR. ANDERSON: OBJECTION.

8 THE COURT: SUSTAINED.

9 BY MR. SEGAL:

10 Q Is that the one and only time that you had
11 ever been in her place of residence?

12 A Yes, sir.

13 Q Did you stay in contact with Helena
14 Stoeckley after that particular episode in mid-December
15 of 1970?

16 A Yes, sir; I certainly did--not by the means
17 of seeking her out on a continuous basis, but I just saw
18 her at various times because I visited Bonnie, this
19 lady that had the shoe store, and Bonnie was working
20 with Helena to help her in this drug program and so
21 forth; so naturally, if Helena was there present all the
22 time whenever I would visit Bonnie, naturally, I would
23 usually see Helena when I would stop by to visit with
24 Bonnie Hudgins.

25 Q Did Helena Stoeckley eventually move away



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from Nashville, Tennessee?

A Yes, sir; she did.

Q Do you know when approximately the month or the season and what year that happened in?

A Well, I am not sure. I think she left there in the very first of '73, or the last of '72. I would say in the winter area.

Q Had you seen her off and on after that one time you were at her apartment in December of '70, until the time you left in '73?

A No, sir; I did not see her at her apartment. I was only there one time at her apartment. I did see her in the area, you know, as the neighborhood at this particular block on Portland Avenue or inside of Bonnie Hudgins' store.

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BY MR. SEGAL:

Q Now, did you ever have any contact with Helena Stoeckley after '73 when she left Nashville?

A Yes, sir; I did--just by telephone. I did not visit with her in person. I was thinking about her, wondering what become of her, what happened to her, what her health turned out to be, and her dope problem--whatever--so, I made a long distance call from Jacksonville, Florida, to Nashville, Tennessee, and talked to Bonnie about how she was doing, how her mother was doing and so forth, then asked her about Helena, and she said, "Well, Red"--said, "I thought I told you"---

MR. MURTAGH: (Interposing) OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q When did this conversation take place with Bonnie Hudgins?

A In '74.

Q As a result of anything that you learned in that conversation, did you locate or find out where Helena Stoeckley was living?

A Yes, sir; I talked to her on the telephone in Daytona Beach, Florida.

Q You talked with Helena Stoeckley in Daytona?



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A Yes, sir; certainly did.

Q And about what year was that?

A That was in '74.

Q Did you have occasion to talk to her some other time after that?

A No, sir; I never have.

Q Did you have occasion to see her last week here in this courthouse?

A Yes, sir; I did.

Q And where was that?

A Well, just right on the seventh floor here in one of them rooms back there, room number--whatever I said would be a guess.

Q Now, did you have occasion to see Helena Stoeckley this weekend outside of the courthouse?

A Yes, sir; I certainly did.

Q All right, when was the first time you came in contact with Helena Stoeckley this weekend?

A I guess it was Saturday, about 1:00 o'clock.

Q In the morning or afternoon?

A In the afternoon--p.m.

Q And where did you see Ms. Stoeckley?

A When I first saw her, she was--it looks like an old Travelodge motel. It's been renamed.

Q It was here in downtown Raleigh?

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A Yes, sir; it was, but I just can't

remember the name of the motel. I think Journey's End
or Journey's Way or something of this nature.

Q And where was she when you saw her at that
motel?

A She was in Room 104.

Q What, if anything, did you observe about her
condition at that time?

A Well, she had a black eye.

MR. ANDERSON: OBJECTION, Your Honor.

MR. BLACKBURN: Your Honor, we would
OBJECT to this on grounds of relevancy.

MR. SEGAL: We'll get to the things
she said very shortly.

THE COURT: Well, I guess it is like
trying to unring a bell. He said she had a black eye
before there was any objection. I will let that stand.
Now, ask another question, and, Mr. Witness, I will let
you wait until after the question is asked against the
possibility that one of those lawyers out there may say
"Objection."

THE WITNESS: Yes, sir.

THE COURT: And if he does, then I
have to rule before you can answer.

THE WITNESS: Yes, sir.



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BY MR. SEGAL:

Q Now, did you observe anything else about her physical condition at that time that was unusual besides the black eye?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q In any way that you could observe, did she appear to be injured?

MR. BLACKBURN: OBJECTION.

THE COURT: Well, I believe he has answered that. SUSTAINED.

BY MR. SEGAL:

Q Did you have any conversation with Helena Stoeckley about how she came to be injured at that time?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, did you see Helena Stoeckley on Sunday; that is, yesterday?

A Yes, sir; I certainly did.

Q And where did you see her? At that same motel?

A No, sir; at the Hilton on--I believe that's West Hillsborough. Of course, I don't live here so I'm

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1 not that familiar with the streets. I believe that's
2 the street where the Hilton is.

3 Q The Hilton Inn is not far from this court-
4 house right here.

5 A Yes, sir; that's true.

6 Q And how long did you spend with Helena
7 Stoeckley?

8 A Well, I spent all day Sunday with her.

9 Q And at whose request was that? Was that
10 yours or hers?

11 A Well, it was hers.

12 Q Did she tell you why she wanted you to stay
13 with her?

14 MR. ANDERSON: OBJECTION.

15 THE COURT: SUSTAINED.

16 MR. SEGAL: I think it is unfair to
17 leave the implication of something--you know--improper
18 going on. I'll make an Offer of Proof if Your Honor
19 pleases. I would like to be heard on this matter at
20 the Bench.

21 THE COURT: All right, come up. I
22 will hear your Offer of Proof.

23 B E N C H C O N F E R E N C E

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25 MR. SEGAL: If Your Honor pleases,

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1 this witness will testify that her injuries--that she
2 was assaulted this weekend--Ms. Stoeckley was assaulted
3 not by him but by another person--and that he will--
4 because she was in such fear from the assault, she
5 asked him to stay with her because he is her friend.

6 THE COURT: Where was her boyfriend?

7 MR. BLACKBURN: It was her boyfriend.

8 MR. SEGAL: It was not her boyfriend.

9 MR. BLACKBURN: Wade Smith told me it was
10 her boyfriend.

11 MR. SEGAL: There was more than one
12 assault. Let me finish the Offer of Proof. She was
13 assaulted more than once. There are at least two
14 incidents over this weekend, one of which was her
15 boyfriend, and we chased him away, and told him to get
16 away and leave her alone.

17 The other was by a person whom she claimed
18 she did not know, who walked up and struck her.

19 THE COURT: What's this got to do with
20 this law suit?

21 MR. SEGAL: As a result of that, she
22 was in fear. She asked Mr. Underhill to stay with her.
23 While he was staying with her--and there is no sexual
24 connotation or anything--she said she knew the names of
25 the people who committed the MacDonald murders.

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But when he said, "Why don't you tell

them that in court," she offered the explanation of why she was afraid to say it in here. Now she testified here when she was a witness that she did not know where she was or what happened that night or who she was with.

She has made this statement. She has said that she knew the names. We are entitled to impeach her on that, Your Honor. Nothing could be more central to her testimony than her claim she didn't know where she was or what happened at the MacDonald house.

This man was with her at her request. I want these questions as preliminary. They are foundational that he wasn't there on some unreasonable basis-- because she was in fear. He will also testify she was not under the influence of drugs, that she was sober when she said these things.

I think it is about time we were allowed to get to that issue in this case.

MR. BLACKBURN: Your Honor, we would OBJECT totally on the grounds: one, it is already clear that she has been with the Defense team and the Defense witnesses all weekend. We know that she, as you said this morning, has gone all over the lot on these things. We don't think what happened or who assaulted her is relevant. This goes right back to what you ruled this

1 morning--that those statements by Helena--she has
2 spoken for herself and anything she has said to anybody
3 else ought to be excluded.

4 MR. SEGAL: She says that she knows
5 who committed the crimes and the Government stands here.

6 MR. BLACKBURN: She has said that before.

7 MR. ANDERSON: She is still available.

8 MR. SEGAL: She did not. When we
9 asked her did she know what she was or who she was with--

10 MR. ANDERSON: (Interposing) Now he is
11 talking to the jury.

12 (Bench conference terminated.)

13 THE COURT: I would like to hear what
14 you have to say to the jury so let's don't all talk at
15 once. Have you been talking to the jury?

16 THE WITNESS: Yes, sir; I asked them if
17 they was ready for a rest home. I certainly did. I
18 know they are awful tired and give out. I know I
19 shouldn't have said it but I did.

20 THE COURT: Look at me, please.

21 THE WITNESS: Yes, sir.

22 THE COURT: Don't you say anything
23 else to this jury unless it is in response to a question
24 asked by some lawyer appearing in the case.

25 THE WITNESS: Yes, sir.



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BENCH CONFERENCE

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MR. BLACKBURN: Regardless of whether she said this yesterday, from her testimony that you read from her it is clear that she said before that she knew who did it and another time she said she only suspected that she knew who did it. This goes right back-- flipflopping back and forth.

She has testified in court. It is a matter of her own credibility.

MR. SEGAL: I thought that part of the basis of Your Honor's excluding the statements made to Gaddis was you were not certain in your mind at that time whether she was under the influence of drugs or not or whether what her condition was.

Now, this witness--we will question him on this thing, but I was only trying to lay my first step foundation as to why he was with her--her fear. That is critical to explain why a witness has withheld information. If she lives in fear, that explains her equivocation. That explains why she vacillates a little bit. But here, knowing why she is in this town, the explanation has to do with the Government, Your Honor, as to why she is afraid to make her statement and they don't want to hear that.

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MR. BLACKBURN: Your Honor, I would also

say in response to that: it is not just on the basis of the drugs but also on the basis of trustworthiness. She has gone both ways on this issue.

MR. SEGAL: That is the weight--for the jury to decide.

MR. BLACKBURN: The Judge has already ruled on that.

THE COURT: All right, take your seat back out there.

(Bench conference terminated.)

(Pause.)

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THE COURT: Members of the jury,

we have another one of these knotty evidentiary questions that has come up. We let you go Friday afternoon so you would not have to be cooped up while they were being decided, but another one of a similar kind--not the same one, but a similar kind--has come up.'

So I am going to let you retire a little early today and come back today at 2:30, while we go into this battle here that has arisen.

Let me say that while it may appear to you that there is a lot of foot dragging in this case, these things are important; and when points are raised, they are doing so in the discharge of their duties and responsibilities to leave no stone unturned because the case is important.

Then you say additionally that you are really not wasting all this much time because except for the matters which were handled in your absence Friday afternoon, and the rulings which had been made subsequent to that, you were perhaps looking about two days of testimony in the face, which you will not have to hear now.

So, it is not--I just say this by way of letting you know that it is not a waste of time. It is important. So I am going to let you retire now and go



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quietly to your lunch, and come back today at 2:30,
and we will try to have these matters resolved so it'll
run a little smoother when you do get back.

Remember, in the meantime, you don't talk
about the case among yourselves or with others. Don't
let anything come to your attention from any outside
source concerning this case until you have heard it
all. Keep open minds about it. Come back at 2:30,
please.

(The jury exits at 12:26 p.m.)

(The following proceedings were held in
the absence of the jury and alternates.)

THE COURT: Now, gentlemen, with the
jury having retired and in their absence, under the
duty imposed upon the Court under Rule 104 of the
Federal Rules of Evidence, the Court will permit this
witness now to be examined on voir dire as to the
admissibility of the evidence, as to which there has
been an Offer of Proof here in the bench conference.

BY MR. SEGAL:

Q All right, Mr. Underhill?

A Yes, sir.

Q Let's go back if we may to the first motel
you saw Ms. Stoeckley at on Sunday. Now, when you saw
her there, you say she had a black eye?

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A Yes, sir.

Q Did she have any other injuries at that time that you could see?

A When I first saw her, only the black eye.

Q That was in room 104 you saw her?

A Yes, sir.

Q Was anybody else around at that time, in her room or with her?

A There was a lady there--Ms. Rowder--Wendy Rowder.

Q An attorney that works with me?

A Yes, that's true.

Q And was anybody else around at that point?

A Well, her boyfriend that she was supposed to get married to, Ernest--whatever his name is.

Q I think his name is Ernest Davis?

A Ernest, or something.

Q What was her emotional state--what was Helena Stoeckley's emotional state at that time?

A Well, she seemed to be very, very upset, and I guess probably five to seven minutes after I first saw her I went out--I was outside at the drink machine and Ernest--this fellow Ernest--came running out there, "Oh, my lord, she's trying to this, trying to do that."

So I had a bottle of Coke, and I set it down and



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#14 p4

1 I run in there, and she had fell. She told me she
2 had fell in the bathroom.

3 Anyway, she just bled all over the bed, and
4 it had dripped from the bathroom to the bed.

5 Q Did you question her about that injury--
6 whether she'd got it by falling or whether it happened
7 some other way?

8 A Well, she told me she fell, and she was in
9 there by herself at this particular time. She was by
10 herself. There was no one else in there with her.

11 And she--you know--I didn't question her
12 about her falling, because she had a couple of things
13 she was trying to rinse out on the shower-tub, you know,
14 and so---

15 THE COURT: (Interposing) Where was
16 she bleeding from?

17 THE WITNESS: From the nose, sir.

18 BY MR. SEGAL:

19 Q Now, let me ask you, did she move later on
20 that afternoon to the Hilton Inn down at the corner of
21 Hillsborough?

22 A Yes, sir, she did.

23 Q And do you know why she moved out there?

24 A Well, the lady from the motel said that she
25 didn't want her staying there any longer.

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Q And did you hear why--did you talk to the lady at the motel about that?

A Yes, I did.

Q What did the lady at the motel say?

A She just said she couldn't have this kind of carrying ons, you know, at the--that's a country saying--at the motel, and she preferred under all the circumstances--she preferred Helena not to be there in general.

Q Did she tell you what the circumstances were--the carrying on was--that took place?

A Well, one of the maids reported to her that in the room whenever she passed through the hallway there was--you know, she was hollering and carrying on like they was in a, you know, an argument, and a slight tussle, or something of this nature.

Q That is, talking about Helena and Ernest Davis?

A Right; yes, sir.

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BY MR. SEGAL:

Q All right, sir, she then moved out because the management asked her to leave that motel?

A Well, after this maid brought this to her attention, he and her was in the swimming pool and she had on a full-length shirt and a pair of cut-off jeans and he had on a pair of cut-off jeans and no shirt. Now, I was not there to see any of this, but the lady told me that it appeared that he was ducking her under the water and holding her under the water-- this Ernest was.

Q All right, as a result of all this---

MR. SEGAL: (Interposing) Your Honor, I really resent the Government's suggestion-- we are trying to lay a foundation of the context--that Mr. Murtagh has to carry on like this is ridiculous.

THE COURT: How is he carrying on?

MR. SEGAL: I think leaning back and laughing about the witness' testimony. If I were a witness, I would resent it very much being dragged into Court and being made to come back---

THE COURT: (Interposing) All right, now, look, you just sit down and ask your questions. That hasn't anything to do with it. There is no jury here. The rules of evidence don't apply, and I will let



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you ask your questions, but that is it.

MR. SEGAL: I appreciate that, Your Honor. I want it understood that one rule still applied even when the jury was not still here and that was a rule called decorum, and I resent the treatment of a witness being laughed at.

THE COURT: I will just say that I have not observed any decorum which was unprofessional, and I think you are mistaken to say so. I think you are reading more into it than it was. Go ahead with your questions.

BY MR. SEGAL:

Q Ms. Stoeckley went over to the Hilton Inn. Did you take her over there or do you know who took her over there?

A Well, I rode in the vehicle that Ms. Rowder drove over there, which Helena Stoeckley and I were both in the vehicle. I went because Helena asked me to go.

Q Why did she want you along, Mr. Underhill?

A Well, she told Ms. Rowder that she trusted me and that she would feel much safer if I was in the near whereabouts. As possible--the adjoining room, if possible, would even be better--she felt more safer (sic) if I was around.



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1 Q Did she tell you what she was worried
2 about--what made her think that she needed to be
3 concerned about her safety?

4 A Well, the girl was just scared to death--
5 not just yesterday afternoon but last night and this
6 morning--not one time but many times. She has repeated
7 time after time that her life is not worth five cents
8 out on the streets after this now. She is scared to
9 death.

10 Q These statements about Helena being scared--
11 they were made at the Hilton Inn last night and during
12 the night and in the morning?

13 A Yes, sir.

14 Q Were you staying in a room next to hers?

15 A Adjoining room; yes, sir.

16 Q Did you talk to her about what she was
17 afraid about--why she thought her life was not worth
18 anything on the streets here?

19 A Well, I don't know who the scum of the earth
20 scoundrels could be that she is referring to. I would
21 like to know them because I have got an axe handle that
22 would fit their head, I believe, but anyway, that is
23 another story.

24 THE COURT: I did not hear it the
25 first time. You have got a what?



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1 THE WITNESS: An axe handle I ought
 2 to hit them in the head with. The way she talked about
 3 them, she is scared to death--you know, I don't know
 4 who these people could be, Your Honor, folks, but she
 5 is scared to death that there are some many people
 6 somewhere that said that her life was not worth' five
 7 cents once she leaves this building and gets out on the
 8 streets. Now, who these people are, I can't tell you
 9 because I don't know.

10 BY MR. SEGAL:

11 Q Let me ask you this: did you talk with her
 12 last night and this morning about whether she knew
 13 who the persons were who killed the MacDonald family
 14 on February 17th, 1970?

15 A Well, let me say this, sir: last night and
 16 again this morning, she told me very distinctly and
 17 very plainly, she said, "I can name three people."

18 Q Did she say whether she would do it or not
 19 in Court?

20 A She said she would not because it would
 21 mean automatically death for her if she did.

22 Q She was talking about the names of the
 23 persons who killed the MacDonald family when she was
 24 saying that she could name three people?

25 A She did not say identically as these three

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people that I am talking about done this, but the questions and the conversation---

Q (Interposing) The subject---

THE COURT: (Interposing) Wait a minute. Let him answer the question now. It is a voir dire.

THE WITNESS: The conversation between her and I, you would not have to be too bright to realize who she is talking about.

THE COURT: I don't want to get into this thing, but it is my responsibility to make this ruling, and I want this witness' testimony and not that of counsel on the basis of which I make my ruling.

MR. SEGAL: I agree, Your Honor.

THE COURT: Just ask the next question, then.

BY MR. SEGAL:

Q Did this morning she mention to you the name of a man by the name of Greg Mitchell?

A Yes, sir; she did.

Q What did she tell you about Greg Mitchell?

A She made reference to Greg Mitchell that some years back--and she didn't name the year and I don't know myself--that the Government started a drug program pertaining to people in service and she said that



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1 this Mitchell fellow was the first one that they
2 treated in this drug program and he was in Time
3 magazine or U.S. News or something and this was at
4 Fort Bragg.

5 Q Did she in any way connect Greg Mitchell
6 with Dr. Jeffrey MacDonald, the Defendant in this case?

7 A Yes, sir. She said that Dr. MacDonald knew
8 this Mitchell fellow.

9 Q Did she tell you in what way Dr. MacDonald
10 knew Greg Mitchell or had come in contact with Greg
11 Mitchell?

12 A In this treating of this program, the
13 particular ward or hospital or whatever they had down
14 there, I don't have any idea.

15 Q Did she tell you that Greg Mitchell was or
16 was not a friend of hers?

17 A Oh, yes, sir. She wears a ring on her right
18 hand that he gave her many years ago. She was engaged
19 to him to get married at one time she told me, so she
20 must have knew him pretty well.

21 MR. SEGAL: That is what we propose
22 to offer, Your Honor.

23 THE COURT: Do you have any questions?

24 MR. MURTAGH: Yes, sir.
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CROSS - EXAMINATION 12:37 p.m.

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BY MR. MURTAGH:

Q Mr. Underhill, let me ask you: after you left Court on Friday afternoon, where did you go next?

A I went to the Downtowner Hotel.

Q Okay. Who had arranged for you to stay at the Downtowner?

A Who?

Q Yes.

A Well, I guess the defense here.

Q Were the other witnesses staying at the Downtowner?

A Other witnesses?

Q Yes; Ms. Zillioux who was here?

A I am the only one who stayed over this weekend. I think everybody else went to their respective homes, you know.

Q In other words, let me ask you: as of Friday or Friday morning, were the other witnesses staying at the Downtowner to your knowledge?

A What other witnesses?

Q Let's just take Ms. Zillioux, for example?

A Oh, she was not there Saturday---

MR. SEGAL: (Interposing) Pardon me.



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1 If the Government wants an answer, I can state
2 exactly the answer to that question. If you want the
3 answer from the witness, that's something else. Do you
4 want the answer to that?

5 MR. MURTAGH: Your Honor, I was
6 questioning the witness.

7 THE COURT: He prefers to get it from
8 the witness.

9 MR. MURTAGH: Yes, sir.

10 MR. SEGAL: All right.

11 BY MR. MURTAGH:

12 Q Let me ask you: at any rate, Mr. Underhill,
13 Ms. Stoeckley was not staying at the Downtowner on
14 Saturday morning; is that correct?

15 A I saw her late Friday afternoon over there.
16 She made the remark that she was staying there.

17 Q What was the name of the motel other than
18 the Hilton that you saw her at this weekend?

19 A It is on North McDowell here.

20 THE COURT: Journey's End. Go on.

21 THE WITNESS: Journey's End; yeah.

22 BY MR. MURTAGH:

23 Q My question is, Mr. Underhill, under what
24 circumstances you came to go from your motel, the
25 Downtowner, over to the motel, the Journey's End, where



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Ms. Stoeckley was staying? How did that come about?

A Well, I was staying at the Downtowner and they were not open Sunday for anyone to get anything to eat. Old Red right here was on foot. I seeked the nearest restaurant. I walked to the restaurant adjoining the motel, and in there, I heard the name "Helena Stoeckley" mentioned, and she was staying there.

Q That is basically my question, Mr. Underhill. Who told you where Helena Stoeckley was staying?

A Who?

Q Yes, sir.

A My friend, I have no idea. It was just somebody sitting there next to me while I was having breakfast. That consisted of a waffle and two eggs and coffee.



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