

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BLACKBURN: Your Honor, it seems

that the Defense seems to try Helena Stoeckley rather than the Defendant Dr. MacDonald. Under Rule 804(b)(3), which I understand he seeks to come in under, and I will not---

THE COURT: (Interposing) And a host of others.

MR. BLACKBURN: I am going to address my comments primarily to (b)(3) because I think that will take care of most of the others. Frankly, Your Honor, we would argue as we argued Friday afternoon that statements by Helena Stoeckley are not trustworthy. They simply are not credible. She has continued to do over the weekend as she has done before. That is, go from "A" to "Z." I am not saying she went from "A" to "Z" on Saturday or Sunday. I am simply saying this is no more than an extension of that.

As you will recall the testimony in the lengthy voir dire Friday, she told Brisentine, "I did it. I was there. I wasn't there. I know who did it. I don't know who did it. I think I know who did it. I suspect who might have done it." She also named the Defendant as one of those whom she thought did it.

THE COURT: Right there, let me interrupt to ask you about the value of evidence as



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

impeachment when the witness has testified both ways.

MR. BLACKBURN: I would agree with that.

I don't know which way---

THE COURT: (Interposing) Don't

agree with me. I am asking you.

MR. BLACKBURN: What I am saying is I

would agree that she testified both ways.

THE COURT: Who is to say whether or

not it is impeaching and whether it is corroborating?

MR. BLACKBURN: That is exactly my point,

Your Honor. She has gone both ways. If I recall her

Direct testimony on Friday, she doesn't know where

she was for four or five hours. She still doesn't know

where she was for those four or five hours. Not one

thing she said over the weekend changed that fact.

She is still worried about it. The fact that--it

doesn't show consciousness of guilt it seems to me when

she says that she doesn't know where she was and that

she might have been there and that she would like to

take either hypnosis or a truth drug to find out. That

is certainly not consciousness of guilt.

Mr. Segal said a moment ago that she was

very calm. We know from testimony, I think, of Mr.

Underhill that she was anything but calm when he saw her.

The rule on 804(b)(3) states that it has got to be so

1 far contrary to her penal interests that a reasonable
2 person would not make it unless he believed it to be
3 true. That does not come within that statute. "A
4 statement tending to expose the declarant to criminal
5 liability," she has not exposed herself to criminal
6 liability by saying she doesn't know where she was.
7 I don't think we could get a grand jury to indict
8 Helena Stoeckley on probable cause of anything.

9 THE COURT: Well, just as a point of
10 interest, I seem to recall that when this Indictment
11 was returned against this Defendant, and you correct
12 me if I am wrong, that it was within maybe less than a
13 month prior to the time when any prosecution would have
14 been barred by the five-year statute of limitations; is
15 that correct?

16 MR. BLACKBURN: That is correct.

17 MR. SEGAL: That is my understanding.

18 THE COURT: Now, there is authority
19 which came to my attention during the weekend when I
20 was giving a little attention to this matter to the
21 effect that one no longer subject--that statements
22 of this kind are not against their penal interests.
23 I noted a case or two like that, but now, on the
24 question of whether or not it is barred, I am just
25 inquiring.



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

14
-23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BLACKBURN: As I recall, the Saturday before this trial began, we had a lengthy debate and argument among counsel on both sides as to challenges, you recall, as to whether or not this was a capital case. If it is not a capital case, as I think His Honor was led to believe by the research, then, of course, the five-year statute of limitations applies. It would not be against her penal interests because she or no one else, I assume, other than Dr. MacDonald---

THE COURT: (Interposing) Against my better judgment, I let you have those 20 challenges just to head off at the pass at least one ground of error.

MR. BLACKBURN: I would also say, Your Honor, with respect to the "reasonable man" thing, she stated that the candle was dripping not wax but dripping blood. Candles, of course, don't drip blood. There is not one bit of evidence in this trial---

THE COURT: (Interposing) I don't know--with Helena, they may.

MR. BLACKBURN: If that be true, Your Honor, that is precisely the point that these statements are inherently unbelievable or unreasonable because whatever drugs she has been on in the past or present or still on--we would seek to OBJECT to the introduction

1 of this testimony because it does not come within
2 the rule. It is prejudicial--unfairly prejudicial--to
3 the Government. It is not against interest. It is not
4 reasonable. It does not expose her to any criminal
5 liability.

6 MR. SEGAL: May I, Your Honor?

7 THE COURT: Yes, sir, you may
8 conclude. You have the burden on this one.

9 MR. SEGAL: I do. I accept that
10 burden, Your Honor. I want to say that I think the
11 Government makes a sham out of Rule 403 when it says
12 it will be prejudiced by this. It is the same
13 Government that brought the Article 32 proceeding. It
14 is the same Government's findings in that case. They
15 have no right to come in and argue that they are
16 prejudiced by a finding in their own case. It was
17 their official investigation in this case that said
18 Helena Stoeckley was a person who should be investigated
19 by the civilian authorities.

20 Here we are nine years later, and it looks
21 like the Defense would do that job by bringing out the
22 witnesses, some of which are Government witnesses and
23 many of which are just ordinary civilians doing their
24 job. The Government should not be permitted to hide
25 behind 403 and cry "Prejudice" when its official



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 investigations said, "Do this. Bring it out."

2 Let us put that aside for a moment, then, Your Honor.

3 Secondly, as to this matter of declaration
4 against interest, I say to the Court that the testimony
5 of Mr. Underhill, Ms. Zillioux, earlier, and Ms.
6 Rowder do two things. First, in and of themselves,
7 they ought to be heard by the jury; and secondly, they
8 tend to add weight to our contention that all of the
9 testimony of her prior statements made in '70, '71, and
10 '72, should come in. This is strong circumstantial
11 evidence. The Government thinks that because she
12 also at some times would like to ignore her involvement
13 in this case, that only goes to the matter of weight.
14 But this Government has no right to claim prejudice
15 because it investigated--it commenced proceedings and
16 its investigation said, "Go do the job that we are
17 trying to do here."

18 I think, however, Your Honor, the problem
19 may be solved two ways. If we don't stay focussing only
20 on the declaration against interests, but consider this,
21 I think--well, three ways, certainly, as impeaching.
22 Her testimony was that she did not know what happened
23 between midnight and 5:00 on February 17th. Her
24 testimony also was that she didn't know who was
25 involved. I cannot find anything clearer than her

7
23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

statements made to Ms. Zillioux as to Allen Mazzarole
as a person that she is afraid of and that she would
not last five minutes on the street if she testified.
She said that she knew the three names according to
Ms. Zillioux. That seems to me as very much impeachment
of her testimony which this jury has heard. I think
we are allowed to do it that way.

R&T. PRECISION REPORTING
AND TRANSCRIBING, INC.
P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

MR. SEGAL: (Continuing) In addition,

#24
1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Your Honor, I think it is not hearsay entirely under 801(d)(1); 801(d)(1) is one of those many interesting changes in the Federal Rules of Evidence which allows the jury to hear an inconsistent out-of-court statement and receive it as substantive evidence in this case because it defines as not being hearsay anything within the set of these rules--801(d)(1), Your Honor.

It provides that we may receive those out-of-court statements of Ms. Stoeckley as substantive evidence in this case. The jury can choose whether they believe Ms. Stoeckley's denials of being--having knowledge of what happened on February 17th, of being there on February 17th. 801(d)(1) says:

"When the declarant testifies..."

the declarant, of course, being the same person who made an out-of-court statement,

"...and is subject to cross-examination concerning the statement..."

and she was

"and the statement being either inconsistent with his or her testimony was given under oath, subject to penalty or perjury..."

The rest of it is not relevant. That is defined as not being hearsay. If it is non-hearsay, Your Honor, the

1 only issue remains for this Court is, is it relevant.
 2 I cannot conceive--I really cannot fathom any argument
 3 that would say that a statement by a witness that he or
 4 she was at the scene of this crime and knows the persons
 5 would not be relevant.

6 I think under 801(d) (1) she was here, she
 7 testified on the subject, she was subject to cross-
 8 examination. Whether they exercise it or not is a matter
 9 of indifference to us. It is not hearsay. The
 10 only question can be relevance; and I would submit
 11 it is very relevant.

12 The Government would not protest so much if
 13 they didn't realize that if this testimony is heard, it
 14 has potentially considerable weight in the outcome of
 15 this case.

16 THE COURT: In addition to the rules
 17 that you cited first, you now want to introduce this
 18 under 801(d) (1) (a); is that correct?

19 MR. SEGAL: Yes, Your Honor. That is
 20 additional grounds.

21 THE COURT: That seems to require as
 22 a condition to admissibility under that section that the
 23 statements ought to be proved, should have been given
 24 under oath, subject to a penalty of perjury at a trial
 25 here in or at other proceedings or in a deposition.

CNS
2

1 The statement which you seem to want this
2 witness to tell was one that was given in a motel here
3 in Raleigh on yesterday.

4 MR. SEGAL: That is not my reading of
5 the rule, Your Honor. Let me just read the rule again
6 if I may go through it on a line by line basis. It
7 defines it as not being hearsay and therefore eliminates
8 that obstacle entirely and leaves only the issue of
9 relevance.

10 In these rules the word "declarant," of
11 course, is used to refer to the person who makes the
12 statement outside the court. Here we are saying the
13 declarant--the person who also made an outside the
14 court statement--has testified; that means, was also
15 a witness.

16 "The declarant has testified at the trial...
17 We have had that--that is, Ms. Stoeckley made out of
18 court declarations, Your Honor. In those declarations
19 she is, of course, a declarant. She has also testified
20 at this trial. It would also require that she is
21 subjected to cross-examination. She was, in fact,
22 subject to cross-examination concerning the statement
23 that is being offered.

24 As a matter of fact, I presented her and
25 asked her certain matters that we believe she had stated

.4
cks
3



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH, 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 in the conference room. She denied them on the stand
2 and said she didn't say those things. They were the
3 final six points of my direct examination. Therefore,
4 with those conditions--and it is therefore argued it is
5 (a) it is inconsistent with the testimony given under
6 oath; that is, here in this courtroom.

7 We are then permitted as a matter of non-
8 hearsay to introduce that testimony. What this rule
9 does, Your Honor--may I offer an example that
10 Dean Labb (phonetic), one of the drafters of the rules,
11 has lectured on many times?

12 There is a famous case called State of
13 Arkansas v. Comer. In the Comer case, a young woman
14 was molested allegedly by her stepfather. There was
15 a charge of sexual abuse brought against him. The
16 young woman had given a statement to the police in which
17 she made out the charges.

18 At the trial when she was called to the
19 witness stand, she was asked by the prosecutor, "What,
20 if anything, happened between you and your stepfather?"
21 She said, "Nothing." The prosecutor, of course, found
22 that contrary to her prior statement and then proceeded
23 to cross-examine his own witness on her prior statement
24 in which she said there had been sexual molestation by
25 the stepfather.



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832 9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

24
cks
4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

#24
3
5

The question was whether or not the case

could go to the jury even because, when the prosecution rested, what they had was original testimony that said nothing happened and cross-examination for the purpose, I suppose, of impeachment which said something happened.

The prosecution argued before the State Supreme Court in the Comer case that the jury should choose which of the two statements that they wanted to have as the actual fact; namely, the out-of-court statement which was read to her or the in-court statement in which she denied anything happened.

The Arkansas Supreme Court, and we are referring to what Professor Wigmore said, "While we have never allowed this, all that we succeeded in doing by reading the statement of this woman was to cross out entirely her testimony." It was a null and void situation, there being no other evidence in the case.

Therefore, there was nothing for the jury to consider. It should have been dismissed. That was the rule that was extant in the Federal courts--that is, you either had to have your in-court testimony of the witness and if you were going to an out-of-court statement of the same witness, all you could do would be impeach, but you wouldn't have any substantive proof on that point left.

1 These rules have changed that. It is a
2 major--it is one of the two or three most significant
3 changes in these entire Rules. Under these Rules, in
4 the same situation I just described, the facts in the
5 Comer case, the result would be if the young woman had
6 gotten up in court and said, "Nothing happened between
7 me and my stepfather," the prosecutor either if he had
8 expressly called in a detective or just by cross-
9 examination, reading her her prior statement in which
10 she said something happened. If that was the situation,
11 that case, under these Rules, would go to the jury if
12 there is not a single word in evidence anywhere else
13 about these sexual acts, and the Defendant may be
14 convicted under these Rules because the jury may take
15 the out-of-court statement as substantive proof of the
16 facts contained, provided: one, that the person who
17 made the out-of-court statement was on the witness
18 stand--Ms. Stoeckley was--testified on the subject
19 matter--she did--and this statement is inconsistent with
20 what she said in the testimony here.

21 I submit, Your Honor, that these out-of-
22 court declarations are inconsistent. This is a very
23 definite change from what Your Honor and I, I'm sure,
24 both learned in law school and we both practiced under.
25 It is one of those things which is only barely felt and



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 26163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

#24

3

6

1 understood. There has been only a few cases yet where
 2 there has been an appellate review. I have not fully
 3 done this, but I would assure Your Honor--if you read the
 4 Comer case--the Arkansas case--it is in standard
 5 evidence textbooks as showing this point.

#24
cks
7

6 It is offered as a contrast point to what
 7 the Federal Rules now allow as substantive evidence.
 8 We have more than just impeachment under 801(d)(1)(a).
 9 We actually have substantive evidence. I care not on
 10 that point.

11 I think our issue is that we are entitled, I think,
 12 either under the impeachment rule or---

13 THE COURT: (Interposing) You believe,
 14 as all of the writers on the subject--a view which I share
 15 for whatever it is worth--is that once it is in there, a
 16 jury simply can't tell whether it is impeaching or
 17 substantive.

18
19
20
21
22
23
24
25

1071

#25 pl

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SEGAL: I think that is true,

Your Honor. All that we can do is rely upon our usual mechanism of instructions to the jury; and in fact when we get done what we are really asking the jury to do is to take the totality of the case along with that one single fact that doesn't totally unbalance the case.

We will always live with our instructions as the way to protect it. It's a legal fiction. It is a convenient one; I think it works on the whole in most instances, except the more--you know, there are some egregious situations where not even an instruction will work. But we live with that.

Now, in this instance, I think if there is a need for instruction, then the Government ought to ask for it, but I think the rule lets us have it. I think not only the rule though.

I rely upon these rules. I think we are one hundred percent right in our right to offer it, but I do say to Your Honor there is a larger dimension to all of this.

The length of this case, the length of the pre-trial from 1970 on, the findings of the Article 32, which really tells us we should be doing this--all that urges upon Your Honor the wisdom at this time on this date saying, "Let this testimony be heard."

RGT. PRECISION REPORTING AND TRANSCRIBING, INC.
P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832 9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

25 p2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BLACKBURN: Your Honor, since that

is somewhat new matter, may I be heard now?

MR. SEGAL: I won't argue any more

after then, Your Honor.

THE COURT: Well, I thought about that,

but you see, you may open up something else; and we've got a jury cooped up back here. Go on and say it.

MR. BLACKBURN: It won't take long.

With respect to 801(d)(1)(A)---

THE COURT: (Interposing) Don't tell

me about that.

MR. BLACKBURN: I won't then. I will

sit down. That was all I was going to address, Your Honor.

THE COURT: You were going to say

that it was not applicable?

MR. BLACKBURN: Right.

THE COURT: Well, the Court will have

to agree with you. Inasmuch as the statement sought to be introduced under 801(d)(1)(A) is concerned, I read that rule to require that the inconsistent statements have been made under oath at some other proceeding or whatever.

This one was not--I think it does not meet that. I also remain of the opinion, gentlemen--let me



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28183 Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

#25 p3

1 say this: this Stoeckley girl I think is one of the
2 most tragic figures that I have ever had to appear in
3 court.

4 A girl coming out of high school at 15
5 years of age and going on into the drug culture, and
6 absolutely burning her mind out with opium, heroin,
7 mescaline, LSD, and marihuana, and having gone, now,
8 what must 11 or 12 years in this--one of the most
9 tragic figures that I have ever seen in a courtroom.

10 But the picture emerges, though, of a
11 person whose mind is so far impaired and distorted by
12 this drug addiction that she has become and remains in
13 an almost constant state of hallucination.

14 That she is extremely paranoid about this
15 particular thing, and that what she tells here in court
16 and what she tells witnesses, lawyers in a motel room,
17 simply cannot have attached to it any credibility at
18 all in my opinion.

19 I think it is not as required by 803(b)(3)
20 clearly trustworthy. It is perhaps the most clearly
21 untrustworthy evidence that I have had put before me.

22 So for the reasons that I gave in somewhat
23 brief form on the record this morning at a bench
24 conference, I will exclude--and to be more fully expli-
25 cated later in a written memorandum--I will exclude this



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE: RALEIGH 832 9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

#24 p4

1 testimony.

2 I don't think as far as subdivision (b) (5)
3 is concerned that it would ever be adequate notice that
4 it was given at 11:00 o'clock in the morning and the
5 evidence was thought to be introduced thereafter.

6 But the same trustworthy requisites are
7 applicable to both sections of that statute. And I
8 also think that having given the better part of three
9 days to the testimony of this girl and her bizarre--to
10 put it as charitably as I can--accounts of this thing
11 would only promote confusion and a waste of time, a
12 needless duplication of what she has already told us.

13 I think this jury having heard her for the
14 better part of a day would be in a good position now
15 to evaluate her and her story, and everything about it,
16 as they'll ever be if you brought not just these Friday's
17 six witnesses, or these three who have testified today,
18 but if you brought a wagon load of people--everybody
19 that you ever talked to about this thing.

20 I still think the jury has got and should
21 have a clear picture of this particular witness as they
22 will ever have. I will exclude the evidence. Let the
23 jury come in.

24 Let me see the lawyers here at the bench
25 just a moment while they are coming.

#25 p5

BENCH CONFERENCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Another thing that concerned me, and I just want to--this is not the basis for my ruling on the evidence--but I am, to say the least, surprised that any lawyer appearing in the case would allow themselves to become associated even on a request basis with a character like this over the weekend.

But suppose you wanted to put this girl on the stand to testify to all this stuff, then what does it do to you since she is your alter ego in this situation and your right to continue on as counsel in this case?

MR. SEGAL: I am certain--I am confident that it would not affect my right to appear. We have had many cases where associate counsel had to testify.

THE COURT: Well, I just raised the question.

MR. SEGAL: I understand what Your Honor is saying.

THE COURT: I would certainly commend to counsel the advisability of not even getting involved in this kind of thing. I do not say this critically of your young associate. I think that professionally--certainly her work product that I have seen, and I asked

#25 p6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

her about it--has been of the highest order.

But I just---

MR. SEGAL: Your Honor, you should be aware--it struck me to be a ghastly tragedy if something had happened to Ms. Stoeckley on this weekend after all the effort made to get her.

THE COURT: I think Helena herself is just a walking ghastly tragedy, and I am awful sorry about it; but it is just a part of the cumulative bizarre picture that has surrounded this whole thing right from the beginning.

But I really think to explore this further would be in effect beating a dead horse and taking time unnecessarily.

I think that having seen her as far as your jury argument and everything is concerned that you now--even by the questions you asked this morning, to which objection was sustained--you have as much developed the picture to the extent that you need to, if indeed you can make hay from this thing.

MR. SEGAL: There is this witness, Mr. Posey, who will not be asked about the conversation with her. He does relate to physical facts. He saw the clothing.

THE COURT: Oh, yeah, sure.



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MURTAGH: I think Helena feels in

her mind that in effect she is in custody here.

THE COURT: Oh, I am glad you men-

tioned that because I had neglected, just completely overlooked it, to tell you, but I want you to know that among others called by Helena, she called me twice Saturday night stating that she was living in mortal dread of physical harm by Bernard Segal, counsel for the Defendant, and that she wanted a lawyer to represent her.

I said, "Well, now, look, I cannot talk to you about this case, but somebody will call you tomorrow. Where will you be?"

That is the reason I knew this Journey's End thing. She gave me the Journey's End. Of course, what I wanted to do was to go to the Criminal Justice Act to see whether or not I could pay any lawyer under these circumstances, and amazingly I found an amendment to the Act, which is not even in the bound volume, which allows me to do it for a witness who is in---

MR. SMITH: (Interposing) That is incredible.

THE COURT: So I told Steve Coggins then--I said, "Find me a lawyer," and I think he called everybody in the book just about, but he finally got



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 26163 Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

#25 p 8

1 Jerry Leonard.

2 LAW CLERK: Have you ever tried to
3 find a lawyer on Sunday afternoon?

4 THE COURT: You can always find me.
5 Segal's always got me working on Sunday afternoon.

6 MR. MURTAGH: Judge, I guess we won't
7 have your testimony.

8 THE COURT: Thank God for that rule
9 that says that I am absolutely read out of this one.

10 MR. MURTAGH: What I am concerned about
11 is that this person is very susceptible to suggestion.
12 All of her past friends--Underhill, Zillioux--I detected
13 Beasley was hanging around.

14 THE COURT: Maybe I can shorten that
15 for you. I am going to order counsel for both sides
16 and all other witnesses to stay away from this woman
17 until this thing is over.

18 You can bring her back in her and testify
19 if she wants to, but I will just treat everybody alike
20 about that one, then we won't have that question to
21 arise.

22 MR. MURTAGH: I believe she is in the
23 witness room.

24 MR. LEONARD: She is in a separate
25 witness room from all the others.

#25 p9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Oh, you've got her

here?

(Bench conference terminated.)

THE COURT: Good afternoon, ladies and gentlemen, this is the case of United States against Jeffrey R. MacDonald.

We would like to invite you to participate in it for a while now. Let me say in all seriousness that we have not been wasting your time. We have been keeping you out there, but as a result of the things we have done, your time in court will be shortened at least correspondingly if not more.

Do you have another witness?

MR. SEGAL: Yes, Your Honor.

THE COURT: Call your witness.

MR. SEGAL: Mr. Posey, just take the stand if you will.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Whereupon,

WILLIAM EDWARD POSEY

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

D I R E C T E X A M I N A T I O N 3:36 p.m.

BY MR. SEGAL:

Q Would you state your full name and present address, please?

A William Edward Posey, Pell City, Alabama.

Q Mr. Posey, how long have you lived in Alabama?

A Well, off and on all my life.

Q Back in 1970, were you living in Fayetteville, North Carolina?

A Yes, sir.

Q How long had you been living in Fayetteville at that time?

A About a year.

Q What did you do for a living?

A Paint--worked in the paint field.

Q What was your address in, say, oh, November or December of 1969?

A Clark Street--1108 Clark Street.

Q What particular section of Fayetteville was



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that?

A It was in the Haymont section. I wasn't into painting then.

Q What were you doing back in 1970?

A I was working in air-conditioning construction.

Q Who was your employer at that time?

A Bass Air-Conditioning.

Q And they were located in Fayetteville?

A Yes, sir. They still are.

Q Did you come to meet or see a woman by the name of Helena Stoeckley in the end of 1969?

A Yes, sir. She was my next door neighbor.

Q When did she move in next door to you?

A Some time in December, somewhere in there-- January.

Q December, 1969, or January of '70?

A Yes, sir; somewhere in there.

Q What address was she living at?

A I don't know the exact number. It was either 1106 or 1110. I don't know the exact address. It was right across from my front door.

Q Did you ever have occasion to talk to her prior to February 17th, 1970?

A Yes, sir; a lot of times.

Q What was the nature of your relationship? Were



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 26163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 you on good terms, bad terms?

2 A We were just friends, neighbors.

3 Q By the way, were you married at that time,
4 Mr. Posey?

5 A Yes, sir.

6 Q Are you still married to the same woman?

7 A No, sir.

8 Q You are not? In 1970, what was the name of
9 your wife?

10 A Myra.

11 Q And were you living with your wife, Myra, at
12 that time?

13 A Yes, sir.

14 Q Now, did you ever notice anything about the
15 way Ms. Stoeckley dressed from the time she moved in
16 up and through February 17th, 1970?

17 A Yes, sir. She dressed like, you know, like
18 a hippie. She had her own style, her own type of dress.

19 Q Her own style?

20 A Yes, sir.

21 Q All right. Could you describe for us what her
22 style looked like?

23 A Well, she wore a white hat a lot. That was
24 part of her dress. She wore some white boots--patent
25 leather-type boots. She wore a purple-type of a blouse



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28183
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 quite a bit. She would go barefooted a lot of
2 times.

3 Q When would she go barefoot?

4 A The only time she would wear her boots was
5 like when it would rain or something like that or when
6 she was going out, you know, like to something' special
7 or something.

8 Q And how high would those white boots, you say,
9 go on her legs?

10 A I guess about three inches below her knees;
11 somewhere in there.

12 Q Now, this hat you mentioned--I want to show
13 you a picture if I can locate it. This has been marked
14 as Defendant Exhibit 87 previously. I ask you to take
15 a look at this hat and tell me whether it resembles
16 anything you have seen before?

17 A Yes, sir. It resembles hers. It is the
18 floppy-type here like hers was.

19 Q Now, what color was Ms. Stoeckley's hair from
20 the time you first met her up and through February 17, 1970?

21 A It was brunette, you know. But she wore a
22 blond wig quite a bit too, with her hat.

23 Q And the blond wig--what length was that hair
24 on the wig?

25 A It come to about right here (indicating).



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 Q About shoulder length?

2 A Yes, sir. But it didn't flop out, you know.
3 It hung straight. It didn't go up on her shoulders,
4 you know. She would wear it down.

5 Q You mean straight down?

6 A Yes, sir.

7 Q While we are talking about that, let me ask
8 you to take a look at another picture. Let me show
9 you, please, the Exhibit marked Defendant 89, and ask
10 you whether this particular drawing by an artist
11 represents anything you have seen before?

12 A Yes, sir, except for the hat. It was more--
13 you know, it wasn't rounded like that.

14 Q A little more square on the top of the crown
15 of the hat?

16 A Yes, sir.

17 Q Aside from that, what does the picture look
18 like to you?

19 A It looks like Helena back then. It resembles
20 her a great deal.

21 Q You say that the hat and the hair--wearing
22 the boots when she did--was that part of her trademark?

23 A Yes, sir. Back then everybody that was
24 referred to as a hippie had their own little trade (sic),
25 you know, their own little dress code, you know, that

26ib5

5008

1 they went by.

2 Q Did you see Helena Stoeckley with any of
3 her friends or acquaintances?

4 A Yes. I seen a lot of her friends.

5 Q Did you have occasion to know whether any
6 particular people were seen with her more often than
7 others--people that she was more friendly with than
8 others?

9 A Yes, sir. She had--well, like, you know, a
10 boyfriend. He was with her a great deal.

11 Q All right. If you would, I would like you to
12 take a look at the other pictures lying up here on the
13 witness table: the one that has been marked D-90 for
14 identification, and ask whether or not---

15 MR. BLACKBURN: Your Honor, we would
16 OBJECT on publishing that photograph to the jury.

17 THE COURT: He would prefer that if
18 you ask him about that, you don't show it to the jury at
19 the same time. Just put it over with the back to the
20 jury.

21 MR. SEGAL: I beg your pardon, Your
22 Honor. Yes.

23 BY MR. SEGAL:

24 Q Let me show you D-90, and ask whether this
25 depicts any person that you have ever seen before?

26jb6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It resembles her boyfriend, you know. He wore a cross all the time. He didn't wear it loose. He wore it tied to his neck. But his hair was short and everything. He was in the military.

Q Does the face on this particular drawing-- does that face resemble the man you say was her boyfriend?

A A lot, but not so much the nose. But the eyes and the face and everything does, and the hair.

Q You also say this picture depicts a cross worn around the neck of the man. Does that resemble the cross that you saw or along the style of the cross you saw on the neck of the man you saw with Helena?

A Yes, sir.

Q Do you know the name of that particular person?

A I can't--it was Jim--I can't remember, sir.

Q If I were to suggest a last name, would that help you at all?

MR. MURTAGH: OBJECTION.

MR. SEGAL: I will give him a list of ten.

THE COURT: I will make you book that it will.

Go ahead and ask the question.

BY MR. SEGAL:

26jb7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q If you don't remember, I won't ask you.

Maybe it will come to you later on, Mr. Posey; all right?
Now, did you have occasion to see Helena Stoeckley on
the early morning hours of February 17, 1970?

A Yes, sir.

Q Where were you on that morning?

A In my home--my house--next to hers.

Q And what time did you see Helena Stoeckley?

A It was between 4:00 and 4:30 in the morning.

Q In the a.m.?

A Yes, sir.

Q How did you happen to get up at that time?

A Well, I was going to the rest room, which I
have done for years, around the same time, between
4:00 and 5:00 o'clock every morning. I go to the rest
room. And I was going and I heard a car whip in. I
went to the door to look because I had been having
trouble with them blocking my driveway and stuff like
this.

So, I went to the door. She was out of the
car going to her apartment. And the two girls she
lived with were inside painting the apartment. She was
in a hurry to get to her apartment.

Q Let's back up a second. First of all, where
is this driveway located that you heard the car whip in?

26jb8



PRECISION REPORTING
AND TRANSCRIBING, INC.
P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH. 832-9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

#26jb9

1 A Well, my front door--I had my front door
2 and my porch was like this. There was a fence here--
3 a chain-link fence. Her apartment was right straight
4 across, about maybe 15 or 20 foot where you went in to
5 her apartment. It was just a little-bitty efficiency
6 apartment.

7 Q Now, did you see the automobile? Could you
8 tell what kind of car that was?

9 A Yes, sir. It was a Mustang.

10 Q A Mustang?

11 A Yes, sir. It had been over there before.

12 Q You had seen that car at that house on more
13 than one occasion?

14 A Yes, sir.

15 Q Besides being a Mustang, do you know by any
16 chance what model Mustang it might have been?

17 A It was one of those Mach Mustangs.

18 Q M-a-c-h in Mach? A Mach One?

19 A Yes, sir.

20 Q Do you recall the color of that particular
21 car?

22 A Yes. It was blue.

23 Q You say Ms. Stoeckley got out of the car.
24 Was there anybody else in the car as far as you could
25 see?

1 A There was some other people in there. But

2 I could not see who they were.

3 Q Could you tell whether there was one person
4 still in the car or more than one person?

5 A There was at least two because they were
6 laughing and giggling and everything. There was
7 noise, you know, conversation.

8 Q Coming from the car?

9 A Yes, sir, as they backed out.

10 Q You saw Ms. Stoeckley, you say, going in the
11 direction of her house at that time?

12 A Yes, sir.

13 Q How was she dressed?

14 A She had her purple thing on. But I did not
15 remember--I know she had her purple thing on. But I
16 can't remember what else she had on. She had something
17 in her hand. She was in a hurry to get in, you know.
18 I didn't take note.

19

20

21

22

23

24

25

ml
-27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q Let me ask you: you say this purple thing, was that a vest or a blouse you are talking about?

A It was a blouse.

Q A blouse?

A Yes, sir.

Q Could you see her hair at that time?

A I didn't take note of it. I didn't take note of her hair.

Q Are you saying you do or you don't know whether she had the blond wig on?

A No, sir; I don't.

Q What did she have in her hand?

A I don't know. I couldn't say.

Q Did you see what she had on her legs?

A No, sir.

Q What was it, if anything, that attracted your attention to that whole scene that made it stand out in your mind in some way?

A Well, her girlfriends were painting the apartment at that time of the night.

Q At 4:30 in the morning or 5:00 o'clock in the morning?

A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q Did you mention that to anybody after you
4 saw Helena come home at that time and the painting
5 going on next door?

6 A Well, the next day--we were working at
7 Southern Pines. It was on the other side of Fort
8 Bragg. When I was going to work, the man that I rode
9 with, as we were coming through Fort Bragg, he told me
10 that there had been a murder there that night, you know,
11 and that a band of hippies was supposed to have done
12 it. I mentioned that I had seen my neighbor come in,
13 you know, that morning; but other than that, that is the
14 only thing I ever mentioned.

15 Q Did you see Helena Stoeckley wear the
16 floppy hat, blond wig, and white boots after that night?

17 A No, sir.

18 Q Or after that date, February 17, 1970?

19 A No, sir; she didn't wear them at all.

20 Q Did you ever see her wear those particular
21 items?

22 A No, sir; never again.

23 Q Did you ever have occasion to ask her what
24 she had done with those items?

25 MR. BLACKBURN: OBJECTION.

3
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SEGAL: It is offered for

impeachment purposes on the subject of the disposition of the items.

THE COURT: Did you ask her?

THE WITNESS: Yes, sir.

THE COURT: He says "yes."

BY MR. SEGAL:

Q Did she tell you what had happened to the hat and the wig and the boots?

A Yes, sir.

Q What did she say?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Do you recall the day on which the funeral for the MacDonald family was held at Fort Bragg, North Carolina, February, 1970?

A Yes, sir.

Q Did you see Ms. Stoeckley on that day?

A Yes, sir.

Q What, if anything, did you see her doing?

A Well, she had dressed in a long black dress and she wore a black veil over her face, and she had went and got some of the wreaths like you put on a grave, you know, and put them all along her door. She



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832 9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

4
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

sat there all day like she was in mourning all day

long.

Q How many wreaths did you say she got?

A I don't know. There were several. I didn't count them.

Q Had you ever seen her dressed in black with a veil before?

A No, sir; never.

Q Did you ever see her display funeral wreaths in her house before?

A No, sir.

Q Did you ever have occasion to ask her why she had dressed that way and put out those funeral wreaths?

A No, sir.

Q Did you ever talk to her about that?

A Not about the wreaths and stuff; no, sir.

Q How about her dressing in black and wearing the veil? Did you talk to her about that?

A No, sir.

Q Did you ever ask Ms. Stoeckley whether she had been at the MacDonald house on February 17th, 1970?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

n3
-27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q Did Ms. Stoeckley remain living at the house next door to you very long after that?

A No, sir.

Q About how long after February 17th, 1970, did she move elsewhere?

A It was just a few days--a week, maybe. It wasn't long.

Q Did you thereafter see her in Fayetteville any place?

A Yes, sir.

Q Where did you see her?

A Up at Haymont where everybody used to hang out at. I saw her up there one night.

Q Did you have some conversations with her in Haymont?

A Yes, sir.

Q About February 17th, 1970?

A Yes, sir.

Q Did she have occasion--were you still residing at the same address at that time?

A No, sir; I wasn't.

Q Where had you moved to?

A I had moved to another section up above Haymont over off Fort Bragg Road.



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832 9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

5
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Why had you moved and changed your address?

A Well, I didn't feel like--see, Haymont, where I was living on Clark Street was mostly hippies all around. I just didn't feel like I was safe there, and I moved.

Q Did you have some discussions with Ms. Stoeckley about your address and where you were living?

A She wanted to know what my new address was, but I didn't tell her, you know. I told her a phony one.

Q Do you know of any reason why she wanted to know where you were living?

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did she tell you why she wanted to know where you were living?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q What had been the conversation--what was the last conversation about you had had before you moved--the last conversation with Ms. Stoeckley--what was the subject of that conversation?



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28183
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH: 832-9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BLACKBURN: OBJECTION.

THE COURT: I will let him tell

the subject.

BY MR. SEGAL:

Q Tell us what the subject of that conversation was?

A About the MacDonald murder and the morning I had seen her come in.

Q Had you told her that you had seen her coming home that morning?

A Yes, sir.

Q What, if anything, did she say to you when you told her that you had seen her arrive home-- did you tell her the time you had seen her?

A Yes, sir. Well, when I told her, she acted real nervous.

MR. BLACKBURN: OBJECTION.

MR. ANDERSON: OBJECTION.

THE COURT: Don't answer the question until there has been a ruling when there has been an OBJECTION . The OBJECTION is SUSTAINED.

BY MR. SEGAL:

Q Were you called and testified as a witness at the military proceedings in this case in August of 1970?



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374