Manie P. Currin and Associates

GENERAL COURT REPORTING SERVICES RALEIGH • DURHAM • OXFORD NORTH CAROLINA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

CIVIL ACTION FILE NO. 75-26-CR3

UNITED STATES OF AMERICA,

Plaintiff;

-v-

JEFFREY R. MACDONALD,

Defendant.

TRANSCRIPT

OF THE

HEARING

BEFORE: THE HONORABLE F. T. DUPREE, JR. Judge Presiding

VOLUME 1 OF 2

PAGES 1 - 254

At Raleigh, North Carolina.

Wednesday, September 19, 1984.

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Vol. 1, p. 5 1 The hearing in the matter of United States of America, 2 Plaintiff, versus Jeffrey R. MacDonald, Defendant, was held 3 at the United States Post Office and Courthouse, Magistrate's Courtroom, Sixth Floor, 310 New Bern Avenue, Raleigh, North Carolina, on Wednesday, September 19, 1984, at 10:00 A.M., before the Honorable F. T. Dupree, Jr. 7 The proceedings were reported and transcribed by 8 Ellen T. Oakley, Court Reporter in and for the State of 9 North Carolina. 10 The following proceedings were had, to wit: 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Colloguy

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THE COURT: Good morning, ladies and gentlemen. Good morning, Mr. Smith. Hello, Annie. Well, we've got a few people present I see.

The first case we're hearing this morning is entitled United States of America against Jeffrey

R. MacDonald, and the Court understands that this is here on some motions, post-trial motions filed by the defendant MacDonald.

Is the defendant ready?

MR. SMITH: Yes, sir, Your Honor, the defendant is ready. Your Honor, if I may, my name is Wade Smith for the record, and I'm appearing today with Myrna Greenberg who is on my left and Brian O'Neill, also on my left. They are both admitted to practice before the Federal Courts in the State of California, each licensed by the State of California as attorneys, and I would move that Your Honor permit them to participate in this hearing with me today.

THE COURT: Thank you, Mr. Smith. Ms. Greenberg and Mr. O'Neill, we're pleased to have you.

MR. O'NEILL: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

Colloguy Vol. 1, p. 7 1 MS. GREENBERG: Thank you, Your Honor. 2 THE COURT: Now the Court will hear you. Mr. 3 Murtagh, I suppose you represent the Government and 4 Mr. Currin, the United States Attorney? 5 MR. MURTAGH: The Government is ready, Your 6 Honor. 7 THE COURT: All right. 8 MR. O'NEILL: Your Honor, I don't know the 9 format in Your Honor's courtroom, and I don't know 10 whether the Court prefers counsel to stand when 11 speaking to the Court or operate from the tables. 12 THE COURT: That's a local option here. 13 believe our Rules provide that it's not necessary to 14 stand, but if you are accustomed to standing in the 15 Courts in which you regularly appear, then we want 16 you to feel at home and you may stand here. 17 MR. O'NEILL: Thank you very much. 18 THE COURT: But you don't have to. 19 MR. O'NEILL: Thank you very much, Your Honor. 20 THE COURT: All right. I'll hear you. 21 MR. O'NEILL: Your Honor, we have three (3) 22 motions here today, motion for a new trial based on 23 newly discovered evidence, a motion to vacate the 24 sentence based upon the unlawful, unconstitutional 25

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intrusion into Dr. MacDonald's right to counsel, and a motion to dismiss the indictment by reason of Brady violations.

Your Honor, it seems to me in speaking with co-counsel, Mr. Smith, that probably the appropriate order in which these might be heard is to take the motion for a new trial first. It remains a criminal case. The other two are new civil numbers. And, moreover, the motion for a new trial has some evidence which we would hope to introduce, and I believe Mr. Murtagh and Mr. Currin might be introducing evidence on that one as well.

So, if it would suit the Court, I believe it would probably be to the convenience of the Court and to all others to take that motion first as it is the one upon which evidence will be introduced.

THE COURT: Counsel would be more familiar with that than I, and any order that's agreeable to counsel will be agreeable with the Court.

MR. O'NEILL: All right. Thank you.

MR. MURTAGH: Your Honor, may it please the Court, I certainly have no objection to the order proposed by Mr. O'Neill, but I would ask as a preliminary matter, Mr. O'Neill has filed, I believe,

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two motions, one to strike most of the affidavits filed in response to the Government's -- or as appended to the Government's motion for a new trial response and the others I believe with the 2255 motion. We have responded, and I would ask, if the Court pleases, if we could have a ruling on that at this time before we proceed further --

THE COURT: (Interposing) Well --

MR. MURTAGH: -- in the interest of judicial economy.

THE COURT: -- I'll hear you on those motions. There are two of those, I believe.

MR. MURTAGH: Yes, Your Honor.

THE COURT: And I have read them. Let me say also that I have read your motions and some of the supporting material in each of your three motions that are for hearing this morning; that involved only about a day and a half of work just reading the motions.

I have not read your evidentiary material, or much of it I have not read, comprising the other sixteen inches of filings that you have made. So that you'll be acquainted with where I am in the case, I'm familiar with your motions and some of the

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supporting -- all of the attached evidentiary material to the motions themselves. And I'll hear you on the motions to strike.

MR. O'NEILL: Very well, Your Honor. I think the motion to strike the affidavits supporting the Brady response are motions as to which the Government's position is well taken, and that is to say we don't contest the Government's position there and for that reason we'll withdraw the motion.

THE COURT: That's with respect to the Brady -MR. O'NEILL: (Interposing) The Brady motion,
the motion to dismiss the indictment as I believe
that it's styled.

THE COURT: Unh-hunh (yes). All right, sir.

MR. O'NEILL: With respect, however, to the motion to strike affidavits or declarations supporting the Government's response to the motion for a new trial; that is, the affidavits in the new trial motion --

THE COURT: (Interposing) Unh-hunh (yes).

MR. O'NEILL: -- it's our position, Your

Honor, not that affidavits or declarations -- and,

by the way, I think I owe Mr. Murtagh or possibly the

25

Colloguy

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Court an apology. Our practice in our district is to use declaration pursuant to Title 28, I think it's 1726, and I know there was some problem in the beginning because that is not the customary practice here. But, with that apology --

THE COURT: (Interposing) Well, your declarations were submitted pursuant to --

MR. O'NEILL: (Interposing) Title 28.

THE COURT: -- Title 28.

MR. O'NEILL: But I know it caused some problem in the beginning.

THE COURT: That's no problem.

MR. O'NEILL: Okay.

THE COURT: That's no problem.

MR. O'NEILL: With respect to the affidavits and declarations submitted by the Government in support of its opposition to the new trial motion, it is not our position that affidavits and declarations are not appropriate. They clearly are.

Our position is this, that when the affidavits or the declarations in effect comprise a report by an agent that the witness, Mrs. Jones, told me as follows, they are not really affidavits or declarations of the witness. The practice, of course, in

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post-trial proceedings is always affidavits. But customarily for the evidentiary controls that it provides, that affidavit or that declaration which is used in support of the motion is one which is to be subscribed by the declarant.

And that's our objection to it, Your Honor.

The problem we have is this. In the absence of somebody signing off on something, it is possible with the best of faith, and I have no problem at all with the good faith of the investigating officers, that he misses something or that he puts something down that he thought he heard but which the witness, not having signed the declaration, doesn't know is there and, perhaps, is wrong.

So, the absence of the evidentiary security which is provided by the declaration or the affidavit is missing, and that's our concern, Your Honor. And that's the basis of our motion.

And the statutory basis of our motion is the rule, I believe it's 1101; it's cited in our motion. The -- and that is that the Rules of Evidence are to apply in all criminal proceedings. And as the motion for a new trial is an adjunct to and a part of the criminal proceeding, it should apply.

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THE COURT: Well, where a fact is submitted or statement is submitted by way of affidavit or otherwise and is offered as proof of the truth of what it says, of course, the rule against hearsay would be applicable in that event. The fact that the statement was made or that the person maybe took action as a result of a statement being made would not.

I -- as I say, I have not read these voluminous affidavits, many of them I have not, so my initial reaction is that I would simply have to look at what is objected to and either rule it out at that time or overrule your objection, as the case may be.

MR. O'NEILL: Very well, Your Honor.

THE COURT: Of course, it is anticipated that findings of fact will be made, and to the extent that any finding of fact should later be based upon evidence found to be inadmissible, then, of course, it can be challenged by either side.

MR. O'NEILL: Very well.

THE COURT: Do you have anything you want to say about that, --

MR. MURTAGH: (Interposing) Just --

THE COURT: -- Mr. Murtagh?

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Vol. 1, p. 14

MR. MURTAGH: Thank you, Your Honor. Just briefly. Thank you. I understand that actually the motion filed by Mr. O'Neill is captioned motion to set aside judgment of conviction, the 2255 one, if that's the one he's talking about. I believe it And I also draw to the Court's attention that the motion for a new trial incorporates as newly discovered evidence that evidence which they allege was suppressed by the Government, so there's a -and vice versa -- so there's an interchange.

THE COURT: Well, I saw that and, really, I saw no necessity. It's thick enough now without putting it under two --

> (Interposing) No, I --MR. MURTAGH: THE COURT: -- covers.

MR. MURTAGH: -- have no quarrel, sir, with the incorporation by reference. I think it's just important that the procedural framework be clear at this time.

Your Honor, I would add that many of the affidavits that we filed are offered to show that a witness said such-and-such and not for the truth of the statement of the witness; in fact, far from it. Your Honor, I would only conclude by saying that the Colloguy

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observations of Mr. O'Neill are equally applicable to the declarations of Messrs. Gunderson, Shedlick, Beasley, and various other private investigators that would be employed, and that if Your Honor is inclined to strike the Government's affidavits, I think all affidavits should be struck.

But I would take the position that that is a tremendous waste of judicial time, and if there's a question of credibility, Mr. O'Neill is perfectly free to call any of the declarants to the stand and cross-examine them.

Thank you, Your Honor.

THE COURT: All right, sir. Then, I'll hear the defendant on the new trial motion.

MR. O'NEILL: Very well, Your Honor. At this time we have several witnesses whom I would propose to call at this time. They are, I believe three (3) in number, and they're pretty short in terms of the testimony which they will provide. And the nature of their testimony, Your Honor, is that it goes to the issue of newly discovered evidence and as to the identity of the assailants in this case.

And our first witness is Mrs. Dorothy Averitt.

THE COURT: Let me inquire, have you agreed

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Dorothy Averitt
                                 Direct
1
                                                  Vol. 1, p. 16
2
           that the witnesses would be segregated in this
3
           case or --
4
                 MR. O'NEILL: (Interposing) We have not
           agreed, but it seems to me to make perfectly good
5
6
           sense.
                 THE COURT: Well, of course, if anyone requests
7
           it, I'll have to, but if you're doing it voluntarily,
8
9
           then the record will so indicate.
          Whereupon,
10
11
                       DOROTHY GRAHAM AVERITT,
12
                 Having been first duly sworn,
13
                 was examined and testified as
14
                 follows:
15
16
   DIRECT EXAMINATION BY MR. O'NEILL:
17
          Good morning, Mrs. Averitt.
   Q.
18
          Good morning.
   A.
19
          Mrs. Averitt, could you tell the Court and counsel
   Q.
20
          where you live?
21
          I live in Fayetteville, North Carolina.
   A.
22
          Are you employed in Fayetteville?
   Q.
23
          I was born in Fayetteville, 1918.
   A.
24
          What's your job?
25
   Q.
```

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Dorothy Averitt
1
                                  Direct
                                                  Vol. 1, p. 17
           I work with the Fayetteville Observer.
2
3
           carrier, a contracted carrier, franchised.
           Is the Fayetteville Observer a newspaper?
    Q.
    A.
           It is.
           How long have you worked for them?
 7
    A.
           Twenty-seven (27) years.
           And what does your job require you to do as a
    Q.
8
           contract carrier?
 9
           Well, it requires me to try to get everybody to take
10
           the paper that wants it, that'll pay for it, and it
11
           requires me to give them good service and collect
12
           for it and carry them the money.
13
           Now, if you're a contract carrier, that means you
14
    Q.
           probably handle some of the Newspaper's money some
15
           of the time, doesn't it?
16
17
    A.
           Oh, all of it. All of it.
18
    Q.
           Does that require you to be bonded?
           Oh, yes, five thousand dollars ($5,000.00).
19
    A.
    Q.
20
           Now, tell me this, does the area that you serve
           include an area called Murchison Road?
21
22
    A.
           That's it.
    Q.
          And you live in that neck of the woods, don't you?
23
           Yes, I do.
    A.
24
25
    Q.
           Directing your attention to probably February of
```

```
Vol. 1, p. 18
                                 Direct
   Dorothy Averitt
1
           1970, do you recall finding out about a new
2
           customer deliver -- customer to whom to deliver
3
           papers at a place called the Hickory Trailer Park?
4
                 I got a order to start a paper out at 3840
   A.
5
           Hickory Trailer Park. It's on Murchison Road.
6
           3840 Murchison Road is where the -- the address of
   Q.
7
           the --
8
           (Interposing) Hickory Trailer Park.
   A.
9
           Okay. And do you have some practice which you
    Q.
10
           follow when you have a new order?
11
           Well, I have to go and contact this -- people in
    Α.
12
           person. I have to collect for it, and I have to
13
           tell them, you know, how many days they get it and
14
           when it comes around and collect for the paper.
15
           Now, when you got word that there was a new order
    Q.
16
           out at the Hickory Trailer Park, did you go out
17
           there at that time?
18
                 I took the order, and I went out to -- to
    Α.
19
           Hickory Trailer Park and to -- to contact these
20
           people. It was at, I believe it was Lot Number nine
21
           (9).
22
           Did you go out there by yourself or with somebody
    Q.
23
           else?
24
                I had a teenager with me.
           No.
25
```

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1
    Dorothy Averitt
                                  Direct
                                                  Vol. 1, p. 19
2
    Q.
           What do you use that teenager employee for?
3
    A.
           Well, I use them, kind of, you know, to -- to help
4
           run up to the -- to the door, you know, and see.
           And if they'll take and give it to them, why, I
5
6
           don't have to get out, and I can give the change
7
           there and go on. And it saves me time, because I
           have a lot of people.
8
9
                 I have -- I have right about a hundred (100)
           people to start and to stop every month, rotates.
10
    Q.
           On this morning of February in 1970 that you went
11
           out there, you went out there in your car, did you?
12
   A.
           Yes.
13
   Q.
           With this --
14
   A.
           (Interposing) Teenager;
15
           -- young fellow who was working for you?
   Q.
16
           Unh-hunh (yes).
17
   A.
18
           When you went out there, did you notice anything
   Q.
19
           unusual or see anything unusual at that time?
           Well, when I pulled up -- when I pulled up into the
   A.
20
21
           Park --
           (Interposing) That's into the trailer park?
22
   Q.
   A.
          Yeah, into the trailer park. There's several
23
           trailers there, see. There was about fifteen (15),
24
25
           I believe, or something like that. I haven't never
```

12

13

14

15

16

17

18

19

20

21

22

23

24

25

```
Dorothy Averitt
                                Direct
                                                 Vol. 1, p. 20
1
          counted them. There was about fifteen (15) trailers
2
          there. And there was a group of people out,
3
          standing out there, and a little dog and some
          children.
5
          (Interposing)
                        It looked what?
   Q.
6
          A little dog. There was a little dog out there and
7
          some children. And there was a black man and this
8
          black girl, and there was a white guy -- he looked
9
          to be about twenty (20).
10
```

But I didn't stare at them because when I went out there I saw them better, because I didn't notice them after they did to me what I did. I pulled up there, and I told the little boy to go up to the trailer.

- Q. This is the young boy who was working with you?
- A. Yeah, unh-hunh. See, I turned around. I turned around with my -- facing going out, and the boy went up; and he came back and he says -- he says, that guy, there's something the matter with him.

Well, I'm supposed to contact them, you know;
I can't depend on a child. And -- but just as the
boy came back from the trailer to get in my car,
there was a black man standing there, and he had a
baseball bat and he had a baseball. And he hit that

```
1
    Dorothy Averitt
                                  Direct
                                                  Vol. 1, p. 21
2
           ball, and he hit it real hard but he didn't hit it
3
           up in the air. He hit it and it went -- it liked
           to hit that boy.
5
                 And this girl, she was standing over there;
6
           she was a brunette; she was standing over there;
7
           she was young.
8
           Could you -- she was standing by where you were at
   Q.
9
           the time?
           With those group of people.
10
   A.
11
   Q.
           Okay.
           In front of my car. See, I could see them; they
12
           were in front of my car then, because I'd turned
13
14
           around.
   Q.
           Now, this boy came back to your car --
15
           (Interposing) Yes.
16
   A.
17
           -- and reports to you --
   Q.
18
   A.
           (Interposing) That there's --
19
           -- something that had been said up there?
   Q.
20
   A.
           Yeah.
21
           What did you do?
   Q.
22
           So, I got out of the car, and I went around the
   A.
23
           front of my car -- which they were at the front --
           and I went over, and this guy was laying there. And
24
25
           I'm very sure he was -- had a overdose, or something,
```

1	Dorothy	Averitt Direct Vol. 1, p. 22
2		because there were some lumps of old green stuff
3		where he had, you know, been nauseated?
4	Q.	As though he had vomited?
5	A.	Yeah, where he'd vomited. And and, so, I just
6		left when I saw that. He was half into he had
7	•	his feet on the steps, he had his he was laying
8		back, and I could see his mouth, though; and when I
9		saw him, I just came on back. And
10	Q.	(Interposing) Did you have a chance to observe
11		this young girl that you've described?
12	A.	Yes. Yes, I did. I'd say she was a right pretty
13		girl. She was a brunette. She weighed, I believe,
14		about a hundred and twenty-five (125) pounds. She
15		looked to be about eighteen (18) years old. But
16		what upset me was when I started around my car
17		one of the children had run and picked up the ball
18		and gave it to the black man, and the black man hit
19		that ball again. It looked like he was doing it
20		for spite, you know, to see what I'd do.
21		Anyhow, he didn't knock the ball up in the
22		air again. He hit that ball, and that ball went
23		right by me just as I started around my car to get
24		in on my side. And I didn't say a word, I didn't
25		look at them anymore; I didn't say anything to them.

```
1
   Dorothy Averitt
                                 Direct
                                                  Vol. 1, p. 23
                 But the girl, she was out there, and she
2
           seemed to be -- anyhow, both times when he hit the
3
           ball, she'd cackle. She cackled just like a witch.
          What do you mean "cackle"? Pardon?
   Q.
5
           She cackled and laugh -- laughing, kind of like a
6
           witch. If you don't mind, I'll show you how she
7
           cackled.
8
   Q.
           Sure.
9
   Α.
          Could I show him?
10
                 MR. MURTAGH: No objection, Your Honor.
11
           Can I show him?
   Α.
12
                 THE COURT: Yes, do.
13
           Well, she was out there and she says, (witness
   A.
14
           indicates cackling). She was just like that.
15
           And, so --
16
           (Interposing) What was your reaction to that?
   Q.
17
           -- she did it twice. She did it when he hit the
   A.
18
          ball and it went by the boy. She did it again.
19
           got in my car and I left, and I didn't go back.
20
           didn't go back.
21
          Tell me this, Mrs. Averitt, did you ever see this
22
   Q.
           girl or this young woman again?
23
          Well, it was about a week after then.
24
   A.
25
   Q.
          You did see her again?
```

```
Vol. 1, p. 24
   Dorothy Averitt
                                 Direct
1
          Yes, I saw --
    Α.
2
           (Interposing) About a week later?
    Q.
3
                I saw her about a week later.
    A.
          Do you remember where that was?
5
                MR. MURTAGH: Your Honor, may I just
6
           interrupt for a second here? Mr. O'Neill -- I'm
7
           sure it's inadvertent on his part -- but the witness
8
           is not finished with her answer, and a number of
9
           times Mr. O'Neill seems to be interjecting. And I
10
          wonder if --
11
                MR. O'NEILL: (Interposing) Sure.
12
                MR. MURTAGH: -- you could refrain from doing
13
           that?
14
                 MR. O'NEILL: My apologies, Your Honor.
15
                 THE COURT: That's all right. Go ahead.
16
           The next --
    A.
17
           (Mr. O'Neill) (Interposing) I'm sorry. Let me
18
    Q.
           rephra -- could I ask you a question?
19
           All right.
    A.
20
           Do you remember where it was you saw this young
    Q.
21
           girl or this young woman again?
22
                 There's a little grocery store -- see, I serve
23
           the stores, too, the grocery stores. And this man,
24
           he sold my papers on his counter. And each Monday
25
```

Dorothy Averitt Direct Vol. 1, p. 25 1 I would go by there and -- and collect from the 2 stores, from all the stores, you know, wholesale. 3 4 He sold them; and he bought them from me wholesale and he sold them. 5 Well, when I went around on Monday, he was 6 gone. He was not there, but his wife wouldn't pay 7 any bills to any of the wholesale men; she always 8 left that up to him. So, I had to go down to his store on Tuesday morning. 10 And I didn't live far from there, and, so, I 11 got in my car and I went down to the grocery store. 12 It's at 4625. 13 Murchison Road? Q. 14 Murchison Road. 15 So, it's just down several blocks from the trailer Q. 16 camp? 17 Oh, Lord, it's just about a block and a half or two 18 Α. blocks from the trailer park. And when I pulled up 19 to go it, he had a small place, you know, to park 20 there. There was a car parked, it was headed towards 21 town. 22 And when I parked, I pulled up beside of it 23 so, you know, I wouldn't be right in front of his 24 door. 25

Direct Vol. 1, p. 26 Dorothy Averitt Were you pointed in the same direction as that car Q. 2 or the other direction? 3 I was pointed towards -- see, I was coming from towards my house, and I was pointed towards Fort 5 Bragg. And the other car was -- their rearend was 6 towards Fort Bragg, and his front end was towards 7 the trailer park or towards -- you know, towards 8 town. 9 Is there anything unusual about the markings on your Q. 10 car? 11 Well, I have Fayetteville Observer signs on there. Α. 12 And when I went to get out of the car, there was two 13 (2) guys sitting in the back seat. It was an old 14 car. I never have been a person -- and still can't 15 tell you what one car is from another. I've owned a 16 lot of them, but I still can't tell you. But I've 17 got a great-grandson that can that's five years old. 18 But I went to -- when I got out of the car, 19 there was one guy, he was sitting there, and he was 20 all slumped over like this (witness indicates); 21 and the other guy, he was looking alert, and he 22 looked right in my face and he punched the other guy. 23 And the guy that was talking was on my side. 24 And I heard him say, straighten up, straighten up 25

20

21

22

23

24

25

for yourself.

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Dorothy Averitt
                                                 Vol. 1, p. 27
1
                                 Direct
           there, he says, there's the Fayetteville Observer.
2
           I just went on in the store. So, when I went on in
3
           the store, this woman, she was in there by herself
4
           and -- see, the man still -- her husband still was
5
        not there.
6
   Q.
           I'm sorry, ma'am. I got lost there. This woman
7
          who was by herself. Was that the woman who ran the
8
           store?
9
          Was running the store, the man's wife that run the
   A.
10
           store.
11
   Q.
          Okay.
12
          And she was about sixty-five (65) years old then.
13
          She says -- when I went in, she said, Lord, I'm so
14
          glad you came in here. She says, don't leave me in
15
          here with these people. She says, they give me the
16
          creeps. And I says, what's the matter? And she
17
          says, I don't know. And I thought she was upset
18
```

And I looked around -- I looked back there, and he was back there getting some stuff out there

because there was a girl standing up there -- she

was a white girl. And there was a black man back

the ball. And she says -- she says, you can see

there at the back; he's the same black man that hit

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Dorothy Averitt
                                 Direct
                                                 Vol. 1, p. 28
           at the back of the store, and the cooler was out --
2
           back there. But the little girl was standing there.
3
         She looked like she was in a fog.
         Was this the same woman you had seen or young woman
    Q.
5
           you had seen?
6
          Yeah, she was the same girl. I could tell because
    A.
7
           her brunette hair was under a wig. She had on a
8
           blond wig. She had on a blond wig, and it looked
9
           like that it had fell off her head and she didn't
10
           fix it up nice and hide all that brunette hair.
11
           Could you tell us what else she had on, what other
    Q.
12
           clothes she had on that you noticed?
13
                  She had on a -- she had on a wide-brim
14
           weather hat. It was kind of a light, real light,
15
           cream-colored weather hat, had a wide brim that shed
16
           water. She had on a plastic coat just like one I
17
           used to have a long time ago. She had on a skirt,
18
           a dark --
19
           Was it a full-length -- I'm sorry. Was it a full-
    Q.
20
           length coat?
21
                It was three-quarter length, because I used to
22
           have one just like it. That's why that I -- that I
23
           noticed it so well. And, so -- and she had on a --
24
           (Interposing) Did she have a skirt --
    Q.
25
```

Dorothy Averitt

Direct

Vol. 1, p. 29

A. -- pair of white go-go boots. They're supposed to have been white, but the back of them was the only way I could tell they were white.

Anyhow, the -- her coat -- I thinks to myself, well, I'm going to try to see what kind of person she is. I looked back there and saw the black guy and I saw her. She was a pretty girl. She had a small mouth; she had a little nose, and she was real pretty in the face, but she looked like she was in a fog.

And I says, honey, where did you get your coat?

And she didn't say anything. I says, honey, where
did you get your coat? Did you get it at Spiegel's?

She says, I don't know. I says, well, I used to
have one just like it. And I says, I liked it and
I'd like to have another one; did you get it at

Spiegel's? I don't know where I got it. I says,
well, I sure would love to have another one. I says,
you know, I had that and it lasted about two or
three years, and it was good and the water wouldn't
go through it.

And I looked down there at her boots. She had these -- back in 1970 -- in the seventies these go-go boots came around. They were white. All the

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6

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Dorothy Averitt Direct Vol. 1, p. 30 girls had them. And she had on a pair of go-go boots. And I looked down -- see, she had on a skirt; she g didn't have on pants. She had on a dark skirt. And I -- I said to her, I says, where in the world did you get that clay? And she was not talking.

- Her go-go boots were white, you said?
- A. Yeah. They were -- they were the white go-go boots, you know, like the girls wore.
 - And you just mentioned something else, the clay?
 - Yeah. And I -- I was wanting to get her to talk to me, see, to see why she was, you know, acting like she was. And I says, the go-go boots, whatcha got on them? I says, that looks like clay. And then I told this woman that runs the store, I says, that's not clay; there's no clay like that in Cumberland County. And I said, I don't believe there's any in Robeson County.

You know, my father moved down in Robeson County. I was born in Fayetteville, but he moved down in Robeson County. And I says, I don't believe there's any in Robeson County either. And that woman says, it's no telling what. And the repugnant odor. It was a --

(Interposing) Of the clay -- or the stuff on her Q.

```
Vol. 1, p. 31
                                Direct
  Dorothy Averitt
          boots?
2
          Well, the whole girl was -- had a terrible odor.
3
          She had a terrible odor. I was raised on a farm,
          you know, and we used to kill hogs. My father used
5
          to kill maybe eight or ten at one time and just cut
6
          them and their guts would come and have me to hold
7
          the hog, you know.
                It was a repugnant odor that she had about her.
9
          What did it smell like to you?
   Q.
10
          Huh?
   A.
11
          What did it smell like to you?
   Q.
12
          Well, it really -- I tell you, I had some thoughts
   A.
13
          and then, you know -- it smelled like it might have
14
          been in a hog-killing, is what it smelled really
15
          like. But it smelled like a woman that would take
16
          and maybe stay in the back room with about four men
17
          for maybe -- I've never smelled one like that, but
          that's what I thought about; if she'd been off with
19
          these men and maybe in a sexual way, and it was
20
          just terrible to think that she would do that.
21
                 'Cause the other two was out in the car, see.
22
          Anyhow, I says to her -- I says, what's that on your
23
          boots? Anyhow, the Johnson woman says -- she says, --
24
          the woman that, you know, run the store -- she says,
25
```

Vol. 1, p. 32 Direct Dorothy Averitt 1 that's awful. I said, yeah, that's not any clay, 2 not any clay in Cumberland County like that. I says, 3 you know, I was raised on a farm and my daddy used to make us clean out the cow stable, and he used 5 to make us clean out the mule stable; and I says, 6 it couldn't be mule stable manure. 7 And I said, and cow stable manure like that 8 is, you know, it gets wet and then plastered. Well, 9 it was all over her boots. It was dark brown; it 10 was real dark brown. I didn't think about it being 11 I don't know why I didn't think about it 12 being blood, but it was darker than any cow manure 13 that I've ever seen when I cleaned out the stable. 14 Did anything happen while you were talking to this Q. 15 woman? 16 Well, you mean the woman that owned the store? Α. 17 No, ma'am, the woman with the boots? Q. 18 No, nothing, only I got to -- was questioning her, 19 and this black man heard me questioning her and he 20 put what he had back in the cooler. And he came up 21 to her and he got her and he said, let's go. And she had just a few pieces of candy there, 23 and she says, I wanted this. And he laid the 24 candy -- he laid the money up there on the counter 25

```
1
   Dorothy Averitt
                                 Direct
                                                  Vol. 1, p. 33
           for the girl, and he got her and he got out of
2
3
           there. I didn't say anything to him, but he was
           the same black man that was down there that hit the
5
           ball.
6
   Q.
          Did you notice how he was dressed when he was at the
7
           store?
          He had on an Army field jacket. He had on a Army
8
   A.
9
          pair of pants and the black boots that goes with it.
           I felt like for sure he was a soldier.
10
   Q.
          Do you think you would recognize this woman if you
11
          were to see a picture of her?
12
                 I know I'd recognize her.
   A.
13
14
                 MR. O'NEILL: Your Honor, may -- after I show
           this picture to counsel, may I approach the bench --
15
          approach the witness?
16
17
                 THE COURT: (Nods affirmatively.)
18
19
                  (DEFENDANT'S EXHIBIT 1,
                  MARKED FOR IDENTIFICATION.)
20
21
           (Mr. O'Neill) Mrs. Averitt, I'm showing you a
22
   Q.
          picture which has been marked as an exhibit, as
23
          Exhibit number one for the defendant, and ask you
24
25
          to take a look at it and ask you whether you recognize
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Dorothy Averitt Direct Vol. 1, p. 34
that picture? (Counsel hands same to witness who
peruses same.)
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A. This is her, but she looked just a little bit younger, you know. She looks -- her skin looked good. But, now, the first time I saw her she was a brunette, but the next time I saw her she had on this wig and this hair -- I don't believe this hair -- her hair was quite this long either, but it was that long, down to there (indicating). And that hair, that brunette hair, was out from under that wig.

And she had on a blond wig with a white hat on top of it or a light hat, a weather hat.

- Q. Mrs. Averitt, did you ever come forward -- did you hear about the MacDonald murders at some time?
- A. Well, naturally. I carried the paper. But I didn't listen to my radio any at all that day. I went on down and got my papers, and I was coming on out -- I don't remember if it was in the paper that day or the next day, because my papers comes off at eleven o'clock, but it probably was in there that day.

And, anyhow, I can't read the paper until I get off and get my supper, and everything, and I probably read it that night. But I didn't -- I didn't see it, and I don't remember hearing about it

1	Dorothy	y Averitt I	Direct	Vol. 1, p. 35
2		until maybe the next da	ay.	
3	Q.	Did you at some time le	earn that there	was going to
4		be a trial of the MacDo	onald case?	
5	A.	Well, yes, I knew, you	know, that ther	e's been
6		several hearings and to	rials and things	, but I didn't
7		want to get involved.	•	
8	Q.	How come?		
9	A.	Well, I tell you, Judge	e, I've got a go	ood husband.
10		He's a real nice person	n, we've been ma	rried fifteen
11		years, and we work toge	ether. And he d	lidn't want me
12		to come up here 'cause	it's a danger.	We're out
13		delivering papers at -	- before day, al	out four
14		o'clock.		
15		There's been a lo	ot of killings.	We found one
16		dead man out there on o	our route; we fo	ound another
17		one that was beat up,	and we leaned hi	m up against
18		the pole until we could	d get the law or	it there. And
19		that is a bad section,	and my husband	didn't want me
20		to go because it would	liable to be hi	s life.
21		But it went on -	- it went on lik	e that, and he
22		begged me not to do it	, but this last	chance, I
23		said I felt very de	pressed that I h	ad never come
24		forward. And I have to	old some head of	ficials from
25		North Carolina about it	t, but at that t	ime they were

1	Dorothy Averitt Direct Vol. 1, p. 36
2	my lawyer, and I asked them not to tell it; and
3	they couldn't tell it, because I asked them not to
4	tell it. In fact, he's head of the he's
5	Secretary of Crime and Control right now.
6	Q. Thank you very much, Mrs. Averitt.
7	MR. O'NEILL: Your Honor, I have no further
8	questions.
9	MR. MURTAGH: No questions.
10	THE COURT: Do you have any cross-examination?
11	MR. MURTAGH: No, Your Honor. Thank you.
12	THE WITNESS: Do you want me to come down?
13	THE COURT: Well, I want to ask you a question.
14	THE WITNESS: Yes.
15	THE COURT: If you had come forward and had
16	come and testified, could you have testified to
17	anything more than what you've said this morning?
18	THE WITNESS: I don't think I could have
19	testified to another thing.
20	THE COURT: Stand aside.
21	(WITNESS EXCUSED: 10:37 A.M.)
22	MR. O'NEILL: Your Honor, our next witness is
23	Mr. Fred Bost.
24	
25	

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Direct
                                                  Vol. 1, p. 37
   Fred Bost
1
2
           Whereupon,
3
4
                              FRED BOST,
                 Being first duly sworn, was
5
                 examined and testified as
6
                 follows:
7
8
    DIRECT EXAMINATION BY MR. O'NEILL:
9
           Mr. Bost, could you tell the Court of your residence
    Q.
10
           and your employment?
11
           I'm a resident of Fayetteville, North Carolina.
                                                              At
    A.
12
           the moment I'm a free-lance writer.
13
           How long have you lived in Fayetteville?
    Q.
14
           I originally lived in Fayetteville in '54, '56 as
15
           an Army member. I came back to Fayetteville in
16
                  I'm a retired Army man. I've been in
17
           Fayetteville since 1963.
18
           Mr. Bost, during the course of your work as a writer,
    Q.
19
           did you come in contact with someone named Helena
20
           Stoeckley?
21
           Yes, I did.
    A.
22
           And how was it you came to meet Ms. Stoeckley?
    Q.
23
          I was a reporter for the Fayetteville Times at the
    A.
24
           time, and I had written the original story on
25
```

Direct Vol. 1, p. 38 Fred Bost 1 Helena Stoeckley's confession. I was trying to get 2 up with Helena Stoeckley. Mr. Prince Beasley was the 3 detective who could put me in contact with her. 4 Through him I assured her that if she would 5 talk to me that I would treat her story completely honestly without trying to embellish it in any way. And he introduced -- he took me to South Carolina and 8 introduced me to Helena Stoeckley on January the 2nd 9 of 1981. 10 And did you interview her at that time? Q. 11 Yes, I did. Α. 12 Did you interview her at any other time? Q. 13 I interviewed her later, not as a newspaper reporter Α. 14 but as an individual looking for a possible book 15 project on February the 6th of 1981. 16 Now, in your interviews with Ms. Stoeckley, did they Q. 17 concern the subject of the MacDonald murders? 18 Yes, they do. A. 19 And did you ask her questions and did she provide Q. 20 you answers concerning her knowledge of those murders? 21 Yes, she did. A. 22 Did you tape record either of those conversations? Q. 23 I tape recorded both conversations; the conversation A. 24 on January the 2nd, 1981 lasted approximately three 25 11 14

```
Fred Bost
1
                                  Direct
                                                  Vol. 1, p. 39
           hours in the afternoon, it was tape recorded. And
2
           the conversation on February the 6th of 1981 was
3
           approximately the same time, also tape recorded.
5
    Q.
           Now, did you cause an excerpt to be prepared from
           the January 1 interview of Ms. Stoeckley?
7
           January 2 interview.
           I'm sorry. January 2 interview of Ms. Stoeckley?
    Q.
8
    A.
           Yes, I did.
    Q.
           And that was an excerpt from the larger three-hour
10
           tape?
11
           This was an excerpt from the January 2nd, 1981
12
           interview. I prepared it when I heard that there
13
           was going to be a hearing here on the idea that the
14
           defense might be able to use it and, subsequently,
15
           gave it to the defense, yes.
16
           And have you had occasion to listen to that excerpt
17
           to see that that which it reports accurately -- was
18
19
           accurately transcribed from the original to this
           excerpt?
20
21
                 This is the original excerpt right here, that
          I have here.
22
           Is it accurate?
23
   Q.
           It is accurate, yes, it is.
24
25
                 MR. O'NEILL: Your Honor, we have excerpted from
```

Fred Bost 1

2

3

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23

Direct

Vol. 1, p. 40

this larger tape approximately thirty minutes of tape which report parts of but not all of that interview. We have available the larger tape should the Court or counsel wish to have it.

This excerpt was selected for reasons -- our reasons, Your Honor, frankly, and those reasons are to permit a listener to listen to the nature of the discussion by Ms. Stoeckley for purposes of attempting to assess her knowledge of that which she's speaking about and whether or not she's speaking under any duress or coercion.

If the Court would like, we could play that tape now through Mr. Bost. Alternatively, we could leave that tape with the Court. We could get a copy, if we could use it for a day, for counsel. It's the only copy we have. If the Court is interested in hearing it now, we're prepared to play it.

THE COURT: Well, I'll leave that to you. put on your case.

MR. MURTAGH: Your Honor, may I be heard briefly on this?

THE COURT: Yes, sir.

MR. MURTAGH: Your Honor, we have no objection

Vol. 1, p. 41 Fred Bost Direct 1 to hearing the tapes, but I do think that, since 2 they've obviously had this for some time, that the 3 appropriate way to proceed would be for Mr. Bost to authenticate all of the tapes that he made with Ms. 5 Stoeckley and for counsel to serve upon the Court 6 and opposing counsel at a later time a transcript of 7 those tapes and that the Court could, at its leisure, 8 hear the whole statement. 9 I would object to the excerpt of the statement 10 on the grounds of the best evidence rule, Your 11 It seems to me that the whole statement 12 should come in. 13 And I don't know what Mr. Bost can add to it 14 except authenticating the tapes at this time. 15 that would be the Government's position, Your Honor. 16 MR. O'NEILL: Mr. Bost -- I think that's not a 17 bad idea, Your Honor. 18 (Mr. O'Neill) Mr. Bost, did you --Q. 19 THE COURT: All right. We're in agreement on 20 that, then. 21 (Mr. O'Neill) Mr. Bost, did you bring the -- the Q. 22 tapes in their entirety with you today? 23 adid not. Mr. Shedlick has them downstairs In the 24 van. 25

```
Fred Bost
                                  Direct
                                                  Vol. 1, p. 42
2
           Okay. Could we get those at a break and bring them
    Q.
           in at a time convenient to the Court --
3
4
           (Interposing) May --
    A.
           -- and to counsel?
5
    Q.
6
    A.
           May I correct that? He has the tape of the January
           2nd, 1981 thing in the van. The others are still
7
           being transcribed into a copy --
8
           (Interposing) Okay.
9
    Q.
           -- and they are not available at this moment.
10
    Α.
    Q.
           And transcriptions, that is, typed transcriptions
11
           are being prepared, aren't they?
12
   A.
           I imagine so.
13
           Okay.
    Q.
14
                 MR. O'NEILL: Your Honor, if we could, I would
15
           like Mr. Bost to play this excerpt at this time. I'm
16
           in agreement with him, and will stipulate with Mr.
17
18
           Murtagh that we will, having played this, bring Mr.
           Bost in at a break or -- so he can run down and get
19
           the originals -- and have him authenticate those
20
          originals.
21
                 THE COURT: He says he doesn't even have the
22
           original of the January 2, 1981 tape.
23
                 THE WITNESS: I'm sorry, Your Honor. I do have
24
25
           that, that one is downstairs. It is the February 6th,
```

Fred Bost Direct Vol. 1, p. 43

1981 tapes that are not downstairs.

THE COURT: All right.

MR. MURTAGH: Your Honor, it seems to me that the most expeditious way to go is we will agree that if Mr. O'Neill represents as an officer of the Court that he will file with the Court and serve upon counsel duplicate copies of all of the tapes and a transcript, that will be sufficient. I don't think there's any need to have Mr. Bost running back and forth.

But we would object again to an excerpt as opposed to the whole thing.

THE COURT: Yes. I -- if we're going to have to do it all eventually, we might as well do it all at one time rather than take it piecemeal and then come back.

MR. MURTAGH: Your Honor, if Mr. Bost can simply state for the record how many tapes there are and whether they were transcribed and approximately how long the transcripts are, that I think would be sufficient.

THE COURT: Suppose you do that? I thought he's already said there were two (2), two three-hour tapes or two sets of tapes lasting three hours each.

1	Fred Bost Direct Vol. 1, p. 44
2	THE WITNESS: That's correct, Your Honor.
3	THE COURT: And you have all those?
4	THE WITNESS: That's correct, Your Honor.
5	THE COURT: All right.
6	MR. MURTAGH: Your Honor, if I may ask of the
7	Court, are we talking about cassettes or reel-to-reel
8	tapes? I mean, how many cassettes or how many reels?
9	MR. O'NEILL: Your Honor I'm sorry. The
10	excerpt is in a cassette and the that cassette is
11	there and that is what we propose to play now. The
12	whole tapes are reel-to-reel. We Your Honor, for
13	the Court's convenience, I think we could undertake to
14	have those reduced to cassettes. I believe that
15	technology is readily available.
16	THE COURT: Well, I would prefer that you do it
17	that way because
18	MR. O'NEILL: (Interposing) Fine.
19	THE COURT: our equipment here is compatible
20	only with cassettes. We can't do reel-to-reel.
21	MR. O'NEILL: Very well. Very well. Your Honor,
22	may we play this excerpt now?
23	MR. MURTAGH: Your Honor, we would object.
24	THE COURT: Well, I just said that
25	MR. O'NEILL: (Interposing) Oh, I'm sorry.

```
Fred Bost
1
                                  Direct
                                                  Vol. 1, p. 45
                 THE COURT: -- if we're going to have to get it
2
           all in at one time, I don't want to have to duplicate
3
4
           thirty minutes of it if we're going to have to use
           six hours eventually.
5
6
                 MR. O'NEILL: Fine. Very well. I misunderstood
7
           the Court. Thank you, Mr. Bost.
                 MR. MURTAGH: May it please the Court.
8
9
10
    CROSS-EXAMINATION BY MR. MURTAGH:
11
           Mr. Bost, you said that you contacted Helena
   Q.
12
           Stoeckley, if I understood your testimony correctly,
13
           on February 6th, 1981 reference a book project?
14
   A.
           That's correct.
15
           Tell us about that, would you please? What was the
16
           nature of the project?
17
           I'm sorry. I misunderstood the ques -- I didn't hear
18
   Α.
           the question.
19
   Q.
           What was the nature of the project; what was the
20
21
           deal?
           I had become involved as a newspaper reporter in
   A.
22
           certain areas of the MacDonald case, it became very
23
           interesting to me. It was suggested to me that since
24
           I was learning quite a bit about it to write a book.
25
```

Fred Bost

Cross

Vol. 1, p. 46

I thought that -- I knew that there was a book underway by Joe McGinniss with Jeffrey MacDonald, but I thought if I could approach the story from the point of view of what the hippie life was like in Fayetteville, what the drug concerns were like in Fayetteville, that I might also be able to get an interesting book out in the market.

who had worked as a drug detective in Fayetteville at that time and asked him if he would like to go into a book with me. He said yes. I asked him if he thought there might be somebody else who I could get interested in it, get me to give information, and among all those he mentioned was Helena Stoeckley. And I said, well, do you think that she would? This was after my first interview with her.

He said that he believed that she might since she definitely trusted me or seemed to trust me and that we should approach her on that particular aspect of my venture. And that's how she -- I got down there to interview her, yes.

- Q. Did you have frequent contacts with Mr. Beasley as a result of your -- your project?
- A. I have had a number of contacts with Mr. Beasley, yes,

```
Fred Bost
                                  Cross
                                                   Vol. 1, p. 47
1
            I had.
2
    Q.
           Okay. And did you provide him with information from
3
            time to time?
           Did I provide him with information --
    A.
5
           (Interposing) That was my question, sir.
    Q.
           '-- from time to time? No, I was -- I was in the
    A.
7
           project with the idea of him providing me with
8
           information.
9
           You never provided Mr. Beasley with any information?
    Q.
10
           Have I never provided Mr. Beasley with any
11
           information? Perhaps in --
12
            (Interposing) No. Let me repeat the question.
    Q.
13
           you ever provide --
14
    A.
           (Interposing) Did I ever. To answer that one
15
           honestly, I would have to say I may have, but I don't
16
           recall ever specifically giving him any type of
17
           information, no.
18
           How about Mr. Gunderson?
    Q.
19
                 I provided Mr. Gunderson but not with a book
    A.
20
           project.
21
           Okay. No, I'm not -- I'm talking about information.
    Q.
22
    A.
           Oh, yes.
23
    Q.
           I mean, you had --
24
    Α.
           (Interposing) Yes, sir.
25
```

1 Fred Bost Cross Vol. 1, p. 48 2 -- you know, through your own investigation, I gather 3 you had developed certain facts, is that correct? 4 When I -- when I was the reporter with -- a reporter with the Fayetteville Times I covered Mr. Gunderson's 5 entrance into the MacDonald investigation. He was 7 "visiting Payetteville and I interviewed him at the time of the visit. I made a, I guess you would call 8 9 it a deal, with Mr. Gunderson. 10 0. Tell us about the deal. All right. The deal was that if I could give him Α. 11 some of the information that I had dug up about people 12 in Fayetteville; Greg Mitchell, for example, I 13 determined had had a muffler violation just three days 14 after the murder. There was supposed to be a loud 15 car involved in this case at the time. That was part 16 17 of the information that I provided to him. 18 The deal was that if anything heavy broke in 19 the case that I would be, if not the first, at least one of the first people in the newspaper industry to 20 be told of that. And that was what the deal was. 21 22 Q. Right. You didn't have any sort of deal with the Government, did you, by any chance? 23 24 A. Deal with the Government? 25 As distasteful as it sounds. I mean, did you offer to -

```
1
    Fred Bost
                                  Cross
                                                  Vol. 1, p. 49
           (Interposing) I've had no contact -- I've never even
 2
           been questioned by the Government.
 3
 4
    Q.
           Okay. Let me ask you, you mentioned Greg Mitchell.
 5
         Thow about Allen Patrick Mazerolie?
         Allen Patrick Mazerolle.
 6
    A.
          Does that name ring a bell?
7
        That name is - yes. What would you like to know
8
           about him, sir?
9
           Well, let me ask you, have you ever seen Mr.
    Q.
10
           Gunderson's report?
11
    A.
           Yes, I have.
12
           Good.
    Q.
13
                 MR. MURTAGH: I'd like to mark for identifica-
14
           tion, Your Honor, this is Volume I of the report
15
           entitled "Investigative Report, USA versus Dr. J. R.
16
           MacDonald," dated April 11th, 1980 nine (9) for
17
18
           identification. May it be so marked, Your Honor?
                 THE COURT: Yes, sir.
19
                 MR. MURTAGH: Thank you.
20
21
                  (GOVERNMENT'S EXHIBIT 9,
22
                  MARKED FOR IDENTIFICATION.)
23
24
           (Mr. Murtagh) Let me show you this, Mr. Bost.
25
```

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Fred Bost
                                  Cross
                                                  Vol. 1, p. 50
1
                 MR. MURTAGH: May I approach the witness, Your
2
           Honor?
3
                 THE COURT: Unh-hunh (yes).
           I don't have my reading glasses on me, but I think
5
           I can make it out.
6
           (Mr. Murtagh) Okay.
                                 Would you read that to yourself
7
           and then (pause) --
8
                 THE COURT: Try these. (Judge hands glasses to
9
           witness.)
10
           (Reading document) "On January 13, 1980 Fred H.
11
           Bost, supra, advised the following are suspects in
12
           this case based on the composite drawings by Dr.
13
           Jeffrey MacDonald and information he has developed as
14
           a reporter. The latest known addresses are also
15
                    The whereabouts of these individuals is not
16
           known as this time: Allen Patrick Mazerolle, white,
17
           male, 182nd Aviation Company, Fort Bragg, North
18
           Carolina, born in Fairfield, Maine; Robert Murray
19
           Sanders, black, male, attorney for J. Hendley, Jr.,
20
           Fayetteville, North Carolina.
21
                 At the time of the murders, both of these
22
           individuals lived at Lot five (5), Hickory Trailer
23
           Park, Murchison Road, Fayetteville. Gregory Howard
24
           Mitchell, born July 6th, 1950, home address, 130
25
```