

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

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

UNITED STATES OF AMERICA .
 .
 v. .
 . September 20, 2012
 JEFFREY R. MACDONALD, . Wilmington, NC
 Defendant/Movant .

***** CORRECTED TRANSCRIPT *****

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

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P R O C E E D I N G S

9:57 A.M.

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(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, EVERYONE. PLEASE BE SEATED. MR. BRUCE.

MR. BRUCE: MAY COUNSEL APPROACH THE BENCH?

THE COURT: SURELY.

(BENCH CONFERENCE ON THE RECORD.)

THE COURT: GOOD MORNING.

MR. BRUCE: GOOD MORNING. YOUR HONOR, I KNOW YOUR HONOR HAS RULED ON THIS MATTER OF JERRY LEONARD, BUT I JUST WANTED TO BRING IT UP ONE MORE TIME BECAUSE I WAS A LITTLE CONCERNED ABOUT THE STATE OF THE RECORD.

WE'RE A LITTLE CONCERNED -- WE'RE CONCERNED ABOUT FOOTNOTE THREE IN THE SUPREME COURT OPINION, WHICH SEEMS TO LEAVE -- RIGHT THERE, WHERE IT'S HIGHLIGHTED IN GREEN.

(PAUSE.)

THE COURT: WELL, AGAIN, I DON'T KNOW REALLY WHAT'S AT ISSUE.

MR. BRUCE: WELL, I DON'T EITHER, YOUR HONOR, BUT -- BECAUSE I DON'T THINK MR. WEST IS SAYING TO THE COURT THAT THIS IS A SITUATION WHERE HE'S PROFFERING THAT THERE'S A CONFESSION HERE THAT WOULD SUPPOSEDLY EXONERATE THE DEFENDANT. HE'S JUST SAYING THAT HE -- HIS CLIENT DOESN'T FEEL LIKE -- HIS CLIENT DOESN'T FEEL LIKE HE CAN DISCLOSE WHAT WAS SAID.

AND SO I WAS JUST OFFERING THE SUGGESTION THAT

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1 SOMETIME BEFORE THIS HEARING CLOSES, IF PERHAPS, EITHER IN
2 WRITING OR ORALLY THROUGH MR. WEST, MR. LEONARD COULD GIVE AN
3 IN CAMERA PROFFER SO WE'D HAVE SOMETHING FOR THE RECORD GOING
4 UP TO THE FOURTH CIRCUIT.

5 MR. WIDENHOUSE: WELL, I MEAN, WE MADE OUR ARGUMENT
6 TO YOU ABOUT THAT. IF YOU WANT TO TAKE A PROFFER IN CAMERA, I
7 THINK IT WOULD BE HELPFUL TO HAVE DEFENSE COUNSEL THERE. IT'S
8 OUR RIGHT TO COMPULSORY PROCESS, NOT THEIRS. AND WE WOULD BE
9 THE ONES WHO WOULD BE ABLE TO ASK THE QUESTIONS THAT MIGHT
10 ELICIT HELPFUL INFORMATION. OF COURSE, IF YOU WANT TO DO IT
11 YOURSELF, THAT'S FINE AS WELL. I MEAN, BUT WE BROUGHT
12 FOOTNOTE TWO TO YOUR ATTENTION -- OR FOOTNOTE THREE TO YOUR
13 ATTENTION WHEN WE MADE OUR ARGUMENT.

14 THE COURT: WELL, I READ THE *MILLER* CASE AND I ALSO
15 HAVE A LAW REVIEW -- LET'S SEE HERE.

16 (PAUSE.)

17 THE COURT: LET ME SEE IT AGAIN, JOHN.

18 MR. BRUCE: ALL RIGHT.

19 (PAUSE.)

20 MR. BRUCE: YOUR HONOR, I THINK IN CAMERA MEANS JUST
21 TO YOU, AND I EVEN THINK IT COULD BE IN WRITING, JUST A
22 SUMMARY OF WHAT MR. LEONARD WOULD SAY IF ASKED THE QUESTION
23 WHAT DID HELENA STOECKLEY TELL HIM DURING THAT -- YOU KNOW,
24 ABOUT HER PARTICIPATION, IF ANYTHING, AND ALSO IF HE EVEN
25 REMEMBERS IT BECAUSE BASED ON OUR INTERVIEW WITH MR. LEONARD

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1 AND SOME OTHER MATERIALS IN THE CASE, I DON'T -- I DON'T EVEN
2 KNOW IF HE HAS A CLEAR MEMORY OF IT. NOW, HE'S NEVER TOLD US
3 THE CONTENT OF STOECKLEY'S CONVERSATION.

4 THE COURT: SHE'S MADE SO MANY STATEMENTS. IF SHE
5 CONFESSED, IT WOULDN'T BE -- THE PRIVILEGE WOULD HAVE BEEN
6 WAIVED. I MEAN, SHE SAID IT OVER AND OVER AGAIN.

7 MR. WEST: YOUR HONOR, IF I COULD BE HEARD ON THE
8 RECORD ABOUT A COUPLE OF THINGS. IS THAT ALL RIGHT, YOUR
9 HONOR?

10 THE COURT: SURE.

11 MR. WEST: FIRST OF ALL, AT THE OUTSET I WANT TO BE
12 REALLY CLEAR THAT OUR POSITION IS THAT JERRY LEONARD HAS NEVER
13 REVEALED ANYTHING THAT WAS ATTORNEY-CLIENT PRIVILEGE AND --

14 THE COURT: NO, BUT I MEAN SHE'S MADE OTHER
15 STATEMENTS TO OTHER PEOPLE.

16 MR. WEST: YES, SIR. BUT I GUESS THE OTHER THING I
17 WANT TO SAY, I KNOW BOTH SIDES HAVE SORT OF WANTED US TO SORT
18 OF TRY TO -- AND I UNDERSTAND WHY, MIGHT WANT TO KNOW WHAT IT
19 IS, BUT WE HAVE JUST TRIED TO BE REALLY CLEAR THAT WE CAN'T.

20 HOWEVER, IF YOUR HONOR DECIDES THAT, YOU KNOW, FOR
21 SOME REASON THE COURT SHOULD TAKE IT IN, WE AGREE THAT IT DOES
22 NEED TO BE DONE WITH CERTAIN PROCEDURES IN PLACE, WHETHER IT'S
23 IN CAMERA OR BY AFFIDAVIT EITHER ONE.

24 THE COURT: WELL, WHY DON'T YOU PREPARE A WRITING IN
25 CAMERA AND THEN SUBMIT IT TO ME IN WRITING IN CAMERA.

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1 MR. WEST: OKAY. IN AN AFFIDAVIT?

2 THE COURT: YEAH.

3 MR. WEST: ALL RIGHT.

4 THE COURT: AS I MENTIONED, YESTERDAY, GORDON,
5 WITHOUT KNOWING WHAT'S INVOLVED, I DON'T KNOW WHETHER IT'S
6 EXCEPTIONAL CIRCUMSTANCES OR NOT, BUT I'LL TRY TO FIND THAT
7 LAW REVIEW, BUT THE RULE, IT FAVORS SUSTAINING THE PRIVILEGE
8 AFTER DEATH. OF THAT, I'M CERTAIN, COMMON LAW AND OTHERWISE.
9 BUT, I MEAN, IT WOULD HAVE TO BE SOMETHING EXCEPTIONAL. BUT
10 I'LL LET YOU -- YOU CAN GIVE ME SOMETHING IF YOU ALL AGREE.

11 MR. WIDENHOUSE: IF THAT'S WHAT -- THE COURT PREFERS
12 TO DO IT THAT WAY THAT'S --

13 THE COURT: WELL, I MEAN, I DON'T WANT -- IF YOU --
14 THAT'S THE ONLY WAY I KNOW HOW TO APPROACH IT.

15 MR. WEST: THE ONLY THING I WOULD REQUEST, YOUR
16 HONOR, IS I THINK I NEED A SPECIFIC ORDER FROM YOU ORDERING
17 MR. LEONARD, JUST TO PROTECT HIM WITH THE STATE BAR, YOUR
18 HONOR, ORDERING HIM TO DO THE AFFIDAVIT.

19 THE COURT: WELL, IF YOU'LL PREPARE THE ORDER.

20 MR. WEST: YES, SIR.

21 THE COURT: AND LET ME TAKE A LOOK AT IT AND IF IT'S
22 -- WE CAN DO IT. BUT IT'S A VERY DIFFICULT SITUATION.

23 MR. WIDENHOUSE: AND WE DON'T DISAGREE THAT THE LAW
24 IS THE PRIVILEGE SURVIVES DEATH AND IT WOULD REQUIRE AN
25 EXCEPTIONAL CIRCUMSTANCE REALLY ONLY AVAILABLE TO A CRIMINAL

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1 DEFENDANT LOOKING FOR MATERIAL OR POSSIBLY EXCULPATORY
2 EVIDENCE THAT WOULD HELP HIM. I MEAN, THAT'S WHAT THE
3 FOOTNOTE REFERS TO.

4 THE COURT: WELL, IF SHE MADE THE CONFESSION, SHE'S
5 ALREADY SAID THAT. SHE'S DISCUSSED IT WITH OTHER PEOPLE.

6 MR. WIDENHOUSE: BUT THIS WOULD BE A CONFESSION
7 UNDER CIRCUMSTANCES WHERE THE GUARANTEES OF TRUSTWORTHINESS
8 WOULD BE FAR ABOVE ANY STATEMENTS SHE MADE ANYWHERE ELSE.
9 SHE'D BE TALKING TO HER ATTORNEY IN CONFIDENCE AND THERE WOULD
10 BE, I THINK, AN AMBIT OF TRUSTWORTHINESS THAT WOULD SURROUND
11 THAT STATEMENT.

12 THE COURT: WELL, YOU CAN -- WHEN A PERSON GOES TO A
13 LAWYER, IT'S NOT JUST -- IT'S NOT JUST THE PRESENT HE'S
14 WORRIED ABOUT. IN THE FUTURE NOBODY KNOWS WHAT'S GOING TO
15 HAPPEN. I THINK HE'S ENTITLED TO ASSUME IT'S NOT GOING TO BE
16 REVEALED.

17 MR. WIDENHOUSE: I DON'T DISAGREE WITH THAT.

18 THE COURT: I MEAN --

19 MR. BRUCE: YOUR HONOR, JUST TO MAKE SURE THE
20 GOVERNMENT'S POSITION IS CLEAR, YOU KNOW, WE DON'T REPRESENT
21 HELENA STOECKLEY, SO WE'RE SORT OF NEUTRAL ON WHETHER -- WE
22 UNDERSTAND THE COURT HAS TO PROTECT HER PRIVILEGE.

23 THE IN CAMERA SUBMISSION THAT YOU PROPOSED WOULD
24 ALLOW THE COURT TO -- AS YOU SAY, YOU DON'T -- HOW CAN YOU
25 MAKE A DECISION ON WHETHER THERE'S EXCEPTIONAL CIRCUMSTANCES

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1 UNLESS YOU SEE THE CONTENT OF WHATEVER IT IS JERRY WOULD SAY
2 ABOUT THAT AND THEN YOU MAY REACH THE SAME DECISION THAT
3 YOU --

4 THE COURT: THAT'S RIGHT.

5 MR. BRUCE: -- DID BEFORE, BUT AT LEAST WE HAVE A
6 RECORD.

7 THE COURT: OKAY.

8 MR. BRUCE: THE LOSING PARTY IS GOING TO APPEAL THIS
9 CASE AND -- I FEEL SURE EITHER SIDE WILL APPEAL IF IT LOSES.

10 MR. WEST: I DON'T CONSIDER MYSELF A SIDE.

11 MR. BRUCE: I'M TALKING ABOUT --

12 MR. WEST: OKAY. OKAY.

13 MR. BRUCE: -- MACDONALD AND THE GOVERNMENT. SO, I
14 THINK THAT WOULD GIVE US A BETTER APPELLATE RECORD.

15 THE COURT: WELL, IF YOU WILL GIVE THAT TO ME, I'D
16 APPRECIATE IT.

17 MR. WEST: YES, SIR.

18 THE COURT: GIVE ME THE ORDER AND THEN YOU CAN WORK
19 UP A STATEMENT.

20 MR. WEST: YES, SIR. AND JUST SO YOU KNOW, JERRY'S
21 IN RALEIGH. HE WAS WAITING ON THIS. BUT I'LL TRY TO GET HIM
22 DOWN HERE AND WE CAN TRY TO WORK ON IT SOME TODAY AND TRY TO
23 GET IT TO YOUR HONOR EXPEDITIOUSLY.

24 THE COURT: OKAY.

25 MR. BRUCE: WELL, I THINK WE WOULD NEED IT -- I

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1 Q. AND HOW ARE YOU PRESENTLY EMPLOYED?

2 A. PRESENTLY, I AM UNEMPLOYED.

3 Q. ALL RIGHT. IN YOUR CAREER WERE YOU AN ATTORNEY?

4 A. YES, I WAS.

5 Q. CAN YOU TELL US WHERE YOU WENT TO COLLEGE AND LAW SCHOOL?

6 A. I ATTENDED COLLEGE AND GRADUATED FROM THE UNIVERSITY OF
7 NORTH CAROLINA IN CHAPEL HILL. THEN I ATTENDED LAW SCHOOL AND
8 GRADUATED FROM LAW SCHOOL AT THE UNIVERSITY OF NORTH CAROLINA
9 SCHOOL OF LAW.

10 Q. AT CHAPEL HILL?

11 A. IN CHAPEL HILL.

12 Q. AFTER YOUR GRADUATION FROM LAW SCHOOL, WHAT WAS YOUR
13 FIRST JOB?

14 A. MY FIRST JOB WAS AS A LAW CLERK TO THE HONORABLE FRANKLIN
15 T. DUPREE, JUNIOR, WHO WAS A UNITED STATES DISTRICT JUDGE AT
16 THAT TIME. AND I REMEMBER THAT I FINISHED MY LAST LAW SCHOOL
17 EXAM ONE AFTERNOON AND THEN I REPORTED TO WORK FOR JUDGE
18 DUPREE THE NEXT MORNING.

19 Q. AND WHAT YEAR WAS THAT?

20 A. THAT WAS IN JANUARY OF 1971.

21 Q. AND HOW LONG DID YOU CLERK FOR JUDGE DUPREE?

22 A. I CLERKED FOR JUDGE DUPREE FOR A LITTLE OVER A YEAR. MY
23 LAST DAY WITH HIM WAS ON FEBRUARY 4TH, 1972.

24 Q. AND WHAT WAS YOUR NEXT JOB AFTER THAT?

25 A. THEN I JOINED THE UNITED STATES ATTORNEY'S OFFICE AS AN

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1 ASSISTANT UNITED STATES ATTORNEY, AND I WAS SWORN IN TO THAT
2 OFFICE ON MONDAY, FEBRUARY THE 7TH, 1972.

3 Q. AND WORKING WITH THE U.S. ATTORNEY'S OFFICE, DID YOU
4 PROSECUTE CRIMINAL CASES?

5 A. YES, I DID.

6 Q. ALL RIGHT. DO YOU REMEMBER THE JEFFREY MACDONALD CASE?

7 A. YES, I DO.

8 Q. WHAT WAS YOUR ROLE IN THE JEFFREY MACDONALD CASE?

9 A. I WAS A PART OF THE PROSECUTION TEAM. MY FUNCTION WAS TO
10 -- WAS AS AN ADVISOR ON PROCEDURE AND EVIDENCE BECAUSE I HAD
11 MORE TRIAL EXPERIENCE THAN THE OTHERS.

12 Q. AND DID YOU SIT IN THE COURTROOM DURING THE TESTIMONY?

13 A. I SAT IN THE COURTROOM FOR ALL OF THE TESTIMONY EXCEPT
14 FOR TWO DAYS, WHEN JUDGE DUPREE EXCUSED ME TO HANDLE TWO
15 ARGUMENTS IN THE UNITED STATES COURT OF APPEALS IN RICHMOND,
16 AND THOSE HAPPENED TO BE THE TWO DAYS THAT DR. MACDONALD
17 TESTIFIED. BUT I RETURNED ON MONDAY AND WAS THERE FOR THE
18 REST OF THE TRIAL EXCEPT I MISSED THE RETURN OF THE VERDICT.
19 I WAS SITTING IN MY OFFICE AND I DIDN'T GET THE WORD THAT THE
20 JURY WAS BACK. BUT I WAS THERE -- EXCEPT FOR THAT, I WAS
21 THERE EVERY DAY.

22 Q. OKAY. NOW, DO YOU RECALL THAT HELENA STOECKLEY WAS
23 BROUGHT TO RALEIGH FOR PURPOSES OF BEING A POTENTIAL DEFENSE
24 WITNESS?

25 A. YES, I DO.

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1 Q. AND DO YOU RECALL -- DO YOU KNOW ANYTHING ABOUT HOW SHE
2 WAS TRANSPORTED TO RALEIGH?

3 A. NO, I HAVE NO IDEA.

4 Q. DO YOU RECALL THAT THE PROCEEDINGS IN COURT WERE
5 SUSPENDED ON THURSDAY AUGUST 16TH, FOR BOTH THE DEFENSE AND
6 PROSECUTION TO INTERVIEW HER?

7 A. YES.

8 Q. AND LET ME REFER YOU -- PUT UP ON THE SCREEN TRIAL DAY
9 20, PAGE THREE. IT'S RIGHT IN FRONT OF YOU, MR. CRAWLEY.

10 A. I'M THERE.

11 Q. DO YOU SEE IT?

12 A. YES.

13 Q. DO YOU SEE AT THE TOP RIGHT-HAND CORNER IT SAYS 1:00
14 P.M.?

15 A. YES.

16 Q. AND STARTING AT LINE TEN -- THEY'RE GOING TO HIGHLIGHT IT
17 FOR YOU. AND IF YOU WOULD JUST READ THOSE TWO PARAGRAPHS.

18 A. THE COURT -- THIS WAS JUDGE DUPREE OF COURSE --
19 GENTLEMEN, I WILL ENTERTAIN A REPORT FROM YOU ON THE STATUS OF
20 YOUR INTERROGATION OF A WITNESS WHO WAS NOT AVAILABLE TO
21 EITHER SIDE UNTIL THIS MORNING AT NINE O'CLOCK AND THE
22 QUESTION OF WHICH WITNESS NOW APPARENTLY BY ONE SIDE OR THE
23 OTHER OR BOTH SEEMS TO BE IN AND ABOUT ITS THIRD HOUR. ARE
24 YOU READY TO PROCEED IN THIS CASE?

25 Q. PLEASE READ WHAT MR. SMITH SAID TOO.

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1 A. MR. SMITH -- THAT BEING WADE SMITH -- YOUR HONOR, LET ME
2 EXPRESS THE THANKS OF THE DEFENSE FOR THE COURT'S INDULGENCE
3 AND THE JURY'S INDULGENCE THIS MORNING AS WE HAVE HAD AN
4 OPPORTUNITY TO TALK WITH THIS WITNESS WHO HAS, INDEED, BEEN
5 UNAVAILABLE TO EITHER SIDE FOR A LONG PERIOD OF TIME.

6 Q. ALL RIGHT. AND DO YOU RECALL THAT -- WELL, READ ON TO
7 THE NEXT PARAGRAPH, IF YOU WOULD, OVER TO THE NEXT PAGE, AND
8 THEN I'LL ASK YOU A QUESTION.

9 A. WE HAVE ALMOST CONCLUDED OUR DISCUSSIONS WITH THE WITNESS
10 AND WILL BE IN A POSITION VERY SHORTLY TO TURN THE WITNESS
11 OVER TO THE GOVERNMENT IF THE GOVERNMENT DESIRES TO TALK WITH
12 THE WITNESS. WE WILL LEAVE ANY REMARKS TO MR. BLACKBURN --
13 THAT BEING JIM BLACKBURN -- ABOUT THAT.

14 Q. AND DO YOU RECALL THAT THE GOVERNMENT DID WANT TO TALK TO
15 HELENA STOECKLEY?

16 A. OH, YES.

17 Q. AND WHY WAS THAT?

18 A. I'M SORRY?

19 Q. WHY DID THE GOVERNMENT WANT TO TALK TO HELENA STOECKLEY?

20 A. WELL, SHE WAS POTENTIALLY A VERY IMPORTANT WITNESS AND WE
21 HAD NO IDEA AS TO WHAT SHE WAS GOING TO SAY AND WE WANTED AN
22 OPPORTUNITY TO SPEAK WITH HER PRIOR TO HER TESTIMONY TO GET AN
23 IDEA OF WHAT KNOWLEDGE SHE HAD AND AN IDEA AS TO WHAT SHE
24 MIGHT TESTIFY ABOUT.

25 Q. NOW, LET ME MOVE FORWARD TO TRIAL DATE 20, PAGE 12. DO

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1 YOU SEE AT THE VERY BOTTOM WHERE IT SAYS MR. BLACKBURN, I
2 MIGHT ASK COUNSEL, I KNOW?

3 A. OKAY. YES.

4 Q. AND THEN WE'LL GO OVER TO THE NEXT PAGE FOR THE REST OF
5 THAT SENTENCE. JUST READ THE LAST TWO -- THE FIRST TWO LINES.

6 A. YOU HAVE SAID THAT I COULD SEE HER SHORTLY, BUT CAN YOU
7 BE MORE SPECIFIC AS TO WHEN SHORTLY MIGHT COME?

8 AND AS I RECALL, THIS WAS MR. BLACKBURN'S RESPONSE
9 TO MR. SMITH.

10 Q. OKAY. NOW, READ WHAT MR. SEGAL SAID IN REPLY TO THAT.

11 A. I NEED TO DEFINE A COUPLE OF MATTERS, MR. BLACKBURN, BUT
12 I WOULD SAY BY TWO O'CLOCK. I JUST WANT TO ADD FOR THE
13 RECORD, YOUR HONOR, THE REQUEST IN REGARD TO WHETHER MS.
14 STOECKLEY SHOULD BE RELEASED OR NOT WAS THE REQUEST THAT I
15 CONVEYED AT HER INSISTENCE. IT IS NOT NECESSARILY MY REQUEST,
16 YOUR HONOR.

17 Q. ALL RIGHT. NOW, WE'LL PUT UP THE REST OF THE PAGE AND DO
18 YOU SEE DOWN AT LINE 14 WHERE IT SAYS THE COURT? CAN YOU READ
19 THAT?

20 A. JUDGE DUPREE: TAKE A RECESS UNTIL TOMORROW MORNING AT
21 NINE O'CLOCK A.M.

22 Q. AND WHAT DID THE COURT REPORTER ADD THERE?

23 A. AND THE COURT REPORTER ADDED THE PROCEEDING WAS ADJOURNED
24 AT 1:17 P.M., TO RECONVENE AT 9:30 A.M., ON FRIDAY, AUGUST
25 17TH, 1979.

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1 Q. ALL RIGHT. SO, WAS THERE ANYMORE COURT THAT DAY ON
2 THURSDAY?

3 A. THERE WAS NO MORE COURT, NO.

4 Q. NOW, AS STATED EARLIER, MR. SEGAL, SAYS HE WILL TURN THE
5 WITNESS OVER AT TWO O'CLOCK. DO YOU KNOW WHETHER THAT TIME
6 ESTIMATE PROVED TO BE CORRECT OR NOT?

7 A. I DON'T. I DON'T HAVE ANY RECOLLECTION AS TO WHAT THE
8 TIME WAS WHEN THE WITNESS WAS AVAILABLE TO US FOR INTERVIEW.

9 Q. BUT THE WITNESS WAS MADE AVAILABLE?

10 A. YES, SHE WAS.

11 Q. LET ME -- AND DO YOU KNOW HOW THE WITNESS, HELENA
12 STOECKLEY, GOT FROM THE SEVENTH FLOOR TO THE EIGHTH FLOOR FOR
13 THE PROSECUTION INTERVIEW?

14 A. NO.

15 Q. LET ME PUT UP GOVERNMENT EXHIBIT 2082. DO YOU RECOGNIZE
16 THAT AS A -- I'M SORRY. THAT'S -- YEAH, THAT'S RIGHT. DO YOU
17 RECOGNIZE THAT AS A DIAGRAM OF THE EIGHTH FLOOR?

18 A. YES, I DO.

19 Q. OF THE FEDERAL BUILDING IN RALEIGH?

20 A. YES.

21 (GOVERNMENT EXHIBIT NUMBER 2082
22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. AND DO YOU SEE WHERE THE U.S. ATTORNEY'S OFFICE IS SHOWN?

24 A. YES, IN THE BOTTOM RIGHT CORNER.

25 Q. WELL, FIRST, I NEED TO BE PRECISE. THE OFFICE OF THE

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1 U.S. ATTORNEY GENERALLY, THE WHOLE OFFICE, IS SHOWN HOW? THE
2 OFFICE OF THE -- ALL THE LAWYERS WHO WORKED FOR THE U.S.
3 ATTORNEY IS SHOWN ON THIS DIAGRAM HOW?

4 A. YES, THAT'S SHOWN BY -- THEY'RE BROKEN DOWN INTO OFFICES
5 AND --

6 Q. AND DO YOU SEE THE YELLOW BORDER?

7 A. I SEE THE YELLOW BORDER, YES.

8 Q. OKAY. WAS THAT THE EXTENT OF THE U.S. ATTORNEY'S OFFICE
9 IN '79? AND BY THAT, I MEAN THE OFFICE OF EVERYBODY WHO
10 WORKED FOR THE U.S. ATTORNEY?

11 A. YES.

12 Q. ALL RIGHT. NOW, YOU WERE POINTING OUT THE ACTUAL UNITED
13 STATES ATTORNEY'S OWN PERSONAL OFFICE?

14 A. YES.

15 Q. AND WHERE IS THAT?

16 A. IT IS IN THE BOTTOM RIGHT-HAND CORNER, WHICH I WOULD -- I
17 BELIEVE WOULD BE THE NORTHWEST CORNER OF THE COURTHOUSE.

18 Q. OKAY. LET'S PUT UP 2082 -- OH, I'M SORRY. DO YOU SEE
19 THE YELLOW BORDER ON 2083?

20 A. YES, I DO.

21 Q. AND WHOSE OFFICE WAS THAT?

22 A. I BELIEVE THAT WAS THE OFFICE OF THE FIRST ASSISTANT
23 UNITED STATES ATTORNEY, WHO, AT THAT TIME, WAS MR. BLACKBURN.

24 (GOVERNMENT EXHIBIT NUMBER 2083

25 WAS IDENTIFIED FOR THE RECORD.)

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1 Q. OKAY. AND LET'S LOOK AT THE NEXT ONE, 2084. DO YOU SEE
2 THIS IS AN ENLARGEMENT OF THE DIAGRAM THAT WE WERE JUST
3 LOOKING AT, A PORTION OF IT?

4 A. YES.

5 (GOVERNMENT EXHIBIT NUMBER 2084
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. ALL RIGHT. NOW, WHAT OFFICE NUMBER ON 2084 IS THE ACTUAL
8 PERSONAL OFFICE OF THE U.S. ATTORNEY?

9 A. 839.

10 Q. OKAY. AND THAT WAS WHO AT THE TIME?

11 A. THAT WAS MR. GEORGE ANDERSON.

12 Q. OKAY. WHEN HELENA STOECKLEY WAS BROUGHT TO THE EIGHTH
13 FLOOR U.S. ATTORNEY'S OFFICE FOR HER INTERVIEW, WHERE WAS THE
14 INTERVIEW?

15 A. THE INTERVIEW WAS IN MR. ANDERSON'S OFFICE, 839 ON THIS
16 DIAGRAM.

17 Q. OKAY. NOW, TO THE BEST OF YOUR RECOLLECTION, IN 1979,
18 WHERE WAS YOUR OFFICE?

19 A. WELL, MY OFFICE WOULD HAVE BEEN TO THE -- TO THE LEFT,
20 845. IT WAS FURTHER -- DOWN FURTHER DOWN THE HALL.

21 Q. OKAY.

22 A. BUT FOR A NUMBER OF YEARS, 843 HAD BEEN MY OFFICE, RIGHT
23 BESIDE THE U.S. ATTORNEY'S OFFICE.

24 Q. OKAY. BUT YOU HAD MOVED FURTHER DOWN THE HALL BY THIS
25 TIME?

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1 A. YEAH, I HAD MOVED FURTHER DOWN THE HALL AT THIS TIME.

2 Q. ALL RIGHT. WHO WAS PRESENT IN ROOM 839 FOR THE INTERVIEW
3 OF HELENA STOECKLEY BY THE PROSECUTION?

4 A. I DO NOT HAVE A RECOLLECTION OF ALL THE SPECIFICS OF THAT
5 INTERVIEW, BUT I'M SURE THAT I WAS THERE, MR. ANDERSON WAS
6 THERE, MR. BLACKBURN WAS THERE, MR. MURTAGH WAS THERE AND, OF
7 COURSE, MS. STOECKLEY WAS THERE.

8 Q. DO YOU REMEMBER ANYBODY ELSE BEING THERE?

9 A. NO.

10 Q. TO YOUR RECOLLECTION, WAS THERE A DEPUTY UNITED STATES
11 MARSHAL THERE?

12 A. NO. NO.

13 Q. IN YOUR EXPERIENCE AS ASSISTANT UNITED STATES ATTORNEY IN
14 THE '70S, WOULD IT HAVE BEEN TYPICAL FOR AN AUSA TO ASK A
15 DEPUTY MARSHAL TO SIT IN ON AN INTERVIEW WITH A WITNESS?

16 A. NO.

17 Q. DO YOU KNOW JIM BRITT?

18 A. YES, SIR.

19 Q. WAS JIM BRITT IN THAT INTERVIEW?

20 A. TO MY RECOLLECTION, NO. I BELIEVE IT WAS -- IT WAS JUST
21 THOSE FIVE PEOPLE AND NO DEPUTY MARSHAL.

22 Q. DO YOU KNOW WHETHER JIM BRITT WAS THE DEPUTY MARSHAL THAT
23 ESCORTED HELENA STOECKLEY TO THE EIGHTH FLOOR?

24 A. NO, I DO NOT.

25 Q. YOU JUST DON'T KNOW WHO DID IT?

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1 A. I DON'T KNOW WHO DID IT.

2 Q. OKAY. DURING THE INTERVIEW OF HELENA STOECKLEY, WAS SHE
3 ASKED ABOUT POSSIBLE INVOLVEMENT OR PRESENCE AT THE
4 MACDONALD MURDERS?

5 A. OH, YES.

6 Q. AND TO THE BEST OF YOUR RECOLLECTION, WHAT WERE HER
7 RESPONSES?

8 A. THAT SHE WAS NOT.

9 Q. AND THAT WAS THE KEY QUESTION, WASN'T IT?

10 A. THAT WAS THE KEY QUESTION. THAT REALLY WAS WHAT OUR
11 WHOLE IDEA WAS IN INTERVIEWING HER. AND WE WERE ALL ON PINS
12 AND NEEDLES AS TO EXACTLY WHAT SHE WAS GOING TO SAY AND
13 FEARFUL THAT SHE WOULD ADMIT OR CONFESS TO HAVING BEEN IN THE
14 RESIDENCE ON THAT MORNING.

15 Q. AND YOU SAY FEARFUL BECAUSE THAT WOULD HURT YOUR CASE?

16 A. YES. YES. IT WOULD HAVE -- IT WOULD HAVE -- I REALLY
17 DON'T KNOW WHAT EFFECT IT WOULD HAVE HAD, BUT WE BELIEVED IT
18 WOULD HAVE DAMAGED OUR CASE.

19 Q. WELL, IF HELENA STOECKLEY HAD CONFESSED TO INVOLVEMENT IN
20 THE MACDONALD MURDERS DURING THE INTERVIEW, WHAT WOULD YOU
21 HAVE DONE?

22 A. THAT'S SOMETHING THAT I WOULD HAVE -- THAT'S SOMETHING I
23 WOULD HAVE REMEMBERED.

24 Q. AND WOULD YOU HAVE HAD ANY DUTY TO DO ANYTHING ABOUT IT?

25 A. YES. I WOULD HAVE, UNDER THE *BRADY* DECISION, HAD A DUTY

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1 TO DISCLOSE THAT TO THE DEFENSE TEAM.

2 Q. AND YOU WOULD HAVE HAD THAT DUTY, IS THAT RIGHT?

3 A. YES. YES.

4 Q. AND MR. BLACKBURN WOULD HAVE HAD THAT DUTY?

5 A. YES.

6 Q. AND MR. MURTAGH WOULD HAVE HAD THAT DUTY?

7 A. YES.

8 Q. AND MR. ANDERSON WOULD HAVE HAD THAT DUTY?

9 A. YES.

10 Q. DID ANYBODY REPORT ANYTHING TO THE DEFENSE ABOUT THE
11 PROSECUTION INTERVIEW TO YOUR KNOWLEDGE?

12 A. NO.

13 Q. DO YOU KNOW WHETHER MR. BLACKBURN TALKED TO MR. SMITH
14 ABOUT IT LATER THAT DAY?

15 A. NO.

16 Q. WHAT'S YOUR BEST RECOLLECTION OF HOW LONG THE INTERVIEW
17 TOOK IN THE U.S. ATTORNEY'S OFFICE THAT DAY?

18 A. AN HOUR OR TWO.

19 Q. AND THEN AFTER THAT IT WAS A MATTER OF GETTING READY FOR
20 COURT THE NEXT DAY?

21 A. (NO RESPONSE.)

22 Q. YOU DIDN'T HAVE ANYMORE COURT THAT DAY IS WHAT I MEAN.

23 A. NO, NO, WE DID NOT. WE DID NOT.

24 Q. OKAY. NOW, WERE YOU PRESENT IN COURT WHEN HELENA
25 STOECKLEY TESTIFIED?

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1 A. YES.

2 MR. BRUCE: ONE MOMENT, PLEASE, YOUR HONOR.

3 (PAUSE.)

4 BY MR. BRUCE:

5 Q. DO YOU RECALL DURING THE -- DO YOU RECALL DURING THE
6 TESTIMONY OF HELENA STOECKLEY THAT SHE WAS NOT ADMITTING ANY
7 INVOLVEMENT IN THE MACDONALD CASE?

8 A. YES, THAT'S CORRECT.

9 Q. AND DO YOU RECALL AT SOME POINT THAT MR. SEGAL ASKED TO
10 APPROACH THE BENCH TO DISCUSS AN ISSUE REGARDING HER TESTIMONY
11 WITH JUDGE DUPREE?

12 A. YES.

13 Q. DID YOU -- WERE YOU ABLE TO LISTEN IN ON THE SIDE BAR
14 CONVERSATIONS OR THE AT THE BENCH CONVERSATIONS DURING THE
15 TRIAL?

16 A. YES, I WAS INVOLVED IN EVERY ONE -- I WAS PRESENT AT
17 EVERY ONE OF THEM.

18 Q. DO YOU REMEMBER WHAT BERNIE SEGAL TOLD THE JUDGE ABOUT
19 THE DEFENSE INTERVIEW?

20 A. MR. BRUCE, I DO NOT HAVE A SPECIFIC RECOLLECTION OF THAT.

21 Q. OKAY. WELL, LET'S SKIP RIGHT TO WHAT MR. BLACKBURN SAID
22 ABOUT IT. LET'S LOOK AT TRIAL DAY 21, PAGE 110.

23 A. OKAY.

24 Q. START READING AT LINE ONE, PLEASE.

25 A. THIS IS BY MR. BLACKBURN; OF COURSE, I WAS NOT THERE WHEN

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1 SHE TALKED WITH THE DEFENSE YESTERDAY, BUT IN HER INTERVIEW
2 WITH THE GOVERNMENT NONE OF THOSE STATEMENTS WERE MADE. SHE
3 SPECIFICALLY TOLD US --

4 AND THEN JUDGE DUPREE INTERRUPTING, DID YOU ASK HER
5 ANY?

6 MR. BLACKBURN: YES, SIR. SHE SPECIFICALLY TOLD US
7 THAT SHE HAD BEEN SHOWN THE PHOTOGRAPHS AND WE ASKED HER, DID
8 YOU RECOGNIZE ANY OF THE SCENES IN THOSE PHOTOGRAPHS? THE
9 ANSWER WAS NO.

10 I ASKED HER HAVE YOU EVER BEEN IN THAT HOUSE? SHE
11 SAID NO. I SAID DO YOU KNOW ANYTHING ABOUT THAT? NO. WHO DO
12 YOU THINK DID IT? DR. MACDONALD. YOU KNOW, IT IS JUST -- IT
13 JUST WENT ONE RIGHT AFTER THE OTHER.

14 Q. ALL RIGHT. WE'LL MOVE THE SCREEN A LITTLE BIT.

15 A. I DISCUSSED -- I TOLD MR. SMITH LAST NIGHT WHAT SHE TOLD
16 US. I WAS UNDER THE IMPRESSION TO THIS VERY MOMENT THAT WHAT
17 SHE TOLD US WAS ESSENTIALLY WHAT SHE TOLD HIM.

18 IT IS DIFFICULT FOR ME -- YOU KNOW, I AM NOT SAYING
19 THAT THEY ARE NOT SAYING WHAT SHE SAID. I JUST DON'T KNOW
20 WHICH WAY IT IS BECAUSE SHE HAS NOT INDICATED ANYTHING TO THE
21 GOVERNMENT.

22 Q. ALL RIGHT. HAVING READ THAT OVER, WOULD YOU SAY THAT MR.
23 BLACKBURN'S DESCRIPTION TO JUDGE DUPREE ABOUT THE PROSECUTION
24 INTERVIEW WAS ACCURATE?

25 A. YES.

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1 Q. NOW, AFTER THE MACDONALD TRIAL, HOW LONG DID YOU STAY
2 WITH THE U.S. ATTORNEY'S OFFICE?

3 A. THE MACDONALD TRIAL CONCLUDED IN AUGUST OF 1979, AND MY
4 LAST DAY IN THE U.S. ATTORNEY'S OFFICE WAS DECEMBER 13TH,
5 1979.

6 Q. ONE MORE QUESTION ABOUT THE MACDONALD TRIAL. DURING THE
7 TRIAL DID JIM BRITT BRING TO YOUR ATTENTION ANYTHING OUT OF
8 THE ORDINARY?

9 A. NO.

10 Q. HE DIDN'T BRING ANY CONCERNS TO YOUR ATTENTION ABOUT
11 HELENA STOECKLEY?

12 A. NO.

13 Q. HE DIDN'T TELL YOU THAT HELENA STOECKLEY CONFESSED TO
14 HIM?

15 A. NO.

16 Q. AND YOU KNEW JIM BRITT, DID YOU NOT?

17 A. YES, I DID.

18 Q. ALL RIGHT. AND WHEN YOU LEFT THE U.S. ATTORNEY'S OFFICE,
19 YOU SAID WHAT YEAR?

20 A. IT WAS IN DECEMBER OF 1979.

21 Q. SO, IT WAS NOT LONG AFTER THE MACDONALD TRIAL?

22 A. OH, NO. RIGHT. JUST A FEW MONTHS.

23 Q. AND WHAT DID YOU DO AFTER THAT?

24 A. I JOINED THE LAW FIRM OF SPRUILL, TROTTER, LANE AND
25 MCCOTTER IN ROCKY MOUNT, NORTH CAROLINA. I WAS THERE UNTIL

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1 DECEMBER 31ST, 1986. AND THAT WAS THE PREDECESSOR FIRM TO THE
2 FIRM THAT NOW IS POYNER AND SPRUILL.

3 Q. DID YOU WORK FOR THEM FOR A TIME AFTER THE MERGER?

4 A. YES. I THINK THE MERGER WAS COMPLETED OR EFFECTIVE
5 SOMEWHERE AROUND JANUARY 1ST OF 1985.

6 Q. OKAY. AND WHAT WAS YOUR NEXT JOB AFTER THAT?

7 A. WELL, I SET ABOUT TRYING TO PERSUADE THE GOVERNOR TO
8 APPOINT ME TO A SPECIAL SUPERIOR COURT JUDGESHIP.

9 Q. AND DID YOU GET APPOINTED EVENTUALLY?

10 A. YES. IN FACT, I WAS APPOINTED TWICE. THE FIRST TIME
11 GOVERNOR MARTIN APPOINTED ME WAS IN NOVEMBER OF 1987, AND SO I
12 HAD THE COMMISSION FROM THE GOVERNOR NAMING ME A SPECIAL
13 SUPERIOR COURT JUDGE. I TOOK THAT TO THE ADMINISTRATIVE
14 OFFICE OF THE COURTS. AND JUDGE LAMAR GUDGER OF ASHEVILLE WAS
15 A SUPERIOR COURT JUDGE, A SPECIAL SUPERIOR COURT JUDGE, AT
16 THAT TIME AND IT WAS JUDGE GUDGER'S CONTENTION THAT HE WAS THE
17 OCCUPANT OF THAT SEAT AND THAT THERE WAS NO VACANCY.

18 SO, THEN THE ADMINISTRATIVE DIRECTOR OF THE COURTS,
19 WHO WAS FRANKLIN FREEMAN, TOOK THIS TO THE CHIEF JUSTICE OF
20 THE SUPREME COURT OF NORTH CAROLINA, WHO, AT THAT TIME, WAS
21 JIM EXUM AND CHIEF JUSTICE EXUM HAD TO DECIDE. HE HAD TWO
22 PEOPLE CLAIMING THE SAME JUDGESHIP AND HE HAD TO DECIDE WHICH
23 ONE WOULD HAVE IT AND HE CHOSE JUDGE GUDGER.

24 Q. ALL RIGHT. AND THEN YOU WERE EVENTUALLY APPOINTED TO A
25 DIFFERENT SLOT?

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1 A. YES, I WAS. IN FEBRUARY OF 1988, THERE WAS A REAL
2 VACANCY, I WOULD SAY, AND I WAS APPOINTED THEN.

3 Q. AND HOW LONG DID YOU SERVE?

4 A. I SERVED AS A SPECIAL SUPERIOR COURT JUDGE FROM EARLY
5 FEBRUARY OF 1988, UNTIL DECEMBER 31ST OF 1988.

6 Q. AND WHAT DID YOU DO AFTER THAT? WELL, FIRST OF ALL,
7 EXPLAIN WHY YOUR TENURE WAS SO SHORT.

8 A. WELL --

9 A. BRIEFLY.

10 A. AT THAT TIME THE GENERAL ASSEMBLY WAS CONTROLLED BY THE
11 DEMOCRATIC PARTY. JUDGE -- I MEAN, Y GOVERNOR MARTIN WAS A
12 REPUBLICAN. AND MY UNDERSTANDING WAS THAT THE DEMOCRATIC
13 LEGISLATURE WAS NOT GOING TO GIVE A REPUBLICAN GOVERNOR EIGHT
14 JUDGESHIPS FOR APPOINTMENT TO REPUBLICAN LAWYERS.

15 ALSO AT THIS TIME, THERE WAS A QUESTION ABOUT THE
16 RACIAL MAKEUP OF THE SUPERIOR COURT BENCH IN THE STATE OF
17 NORTH CAROLINA.

18 AND I BELIEVE EVENTUALLY -- I BELIEVE THE
19 LEGISLATURE CONVERTED THE EIGHT SPECIAL JUDGESHIPS THAT WERE
20 APPOINTED BY THE GOVERNOR INTO EIGHT NEW RESIDENT JUDGESHIPS
21 IN AREAS WHICH VIRTUALLY ASSURED THAT MINORITY JUDGES WOULD BE
22 ELECTED TO THOSE SEATS.

23 Q. SO --

24 A. AND THE LEGISLATURE PROVIDED THAT THIS WOULD TAKE EFFECT
25 ON JANUARY 1ST, 1989.

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1 Q. ALL RIGHT. SO, AS OF DECEMBER 31ST OF '88, YOU WERE OUT
2 OF A JOB IN TERMS OF THE JUDGESHIP?

3 A. YES, MY TERM JUST FLAT EXPIRED.

4 Q. DID YOU CONTINUE PRACTICING LAW?

5 A. YES. AND DURING THAT TIME I WAS SEEKING APPOINTMENTS
6 WITH VARIOUS FIRMS.

7 Q. AND SO WHERE DID YOU WORK?

8 A. IN APRIL, I JOINED JOE CHESHIRE'S FIRM. IT WAS CHESHIRE,
9 PARKER, HUGHES AND MANNING, I BELIEVE.

10 Q. OKAY. AND DID YOU MOVE ON TO ANOTHER FIRM SITUATION
11 LATER?

12 A. YES. I WAS THERE UNTIL THE END OF -- I THINK IT WAS THE
13 END OF JULY OF 1990. AND THEN I JOINED THE FIRM -- I JOINED
14 TOM MCNAMARA'S FIRM AND TOM HAD BEEN THE U.S. ATTORNEY WHEN I
15 WAS THERE AND NOW, OF COURSE, HE'S THE FEDERAL PUBLIC
16 DEFENDER. AND THE NAME OF THE FIRM WAS CHANGED TO MCNAMARA,
17 PIPKIN, KNOTT -- JOE KNOTT -- CARRUTH AND CRAWLEY, WHICH WAS
18 ME, OF COURSE.

19 Q. AND YOU CONTINUED PRACTICING LAW THROUGH THE '90S?

20 A. YES. BUT IT WAS EFFECTIVE JULY 1ST, 1971 -- NO, EXCUSE
21 ME, 1991, I LEFT THAT FIRM. PAUL WAS LEAVING AND THERE WAS
22 SOME REORGANIZATION AND I LEFT THAT FIRM AND OPENED MY OWN
23 OFFICE.

24 Q. OKAY. AND IS THAT -- OKAY. DID THERE COME A TIME WHERE
25 YOU RAN INTO SOME PROBLEMS IN YOUR LAW PRACTICE?

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1 A. YES, THERE DID.

2 Q. CAN YOU TELL US ABOUT THAT?

3 A. I WAS REPRESENTING A STATE INMATE AND I WAS PREPARING A
4 MOTION FOR APPROPRIATE RELIEF, POST-CONVICTION RELIEF, AND HE
5 THOUGHT IT WAS TAKING ME TOO LONG AND FILED A GRIEVANCE WITH
6 THE BAR. AND THE BAR LATER FILED A COMPLAINT AGAINST ME
7 CHARGING THAT I HAD FAILED TO ACT WITH REASONABLE DILIGENCE
8 WITH RESPECT TO MR. TOVES' CASE AND ALSO WITH RESPECT TO
9 ANOTHER CASE, WHICH WAS A PERSONAL INJURY CASE.

10 Q. AND WHAT WAS THE RESULT OF THOSE BAR COMPLAINTS?

11 A. I WAS -- THERE WAS A HEARING ON DECEMBER THE 15TH OF
12 1975.

13 Q. DO YOU MEAN '95?

14 A. I'M SORRY. YES. FOR SOME REASON, I JUST GO BACK TO THE
15 '70S. IT'S PROBABLY MY AGE. BUT, YES, IT WAS DECEMBER THE
16 15TH, 1995.

17 Q. AND WHAT WAS THE ULTIMATE OUTCOME?

18 A. THE ULTIMATE OUTCOME WAS THE DISCIPLINARY HEARING PANEL
19 FOUND AS A FACT AND CONCLUDED -- ENTERED FINDINGS OF FACT AND
20 CONCLUSIONS OF LAW, WHICH DETERMINED THAT I HAD VIOLATED THE
21 RULES OF PROFESSIONAL RESPONSIBILITY BY FAILING TO ACT WITH
22 REASONABLE DILIGENCE WITH RESPECT TO MR. TOVES' CASE AND THE
23 PERSONAL INJURY CASE. I'M SORRY, I DON'T KNOW THE SPECIFIC
24 RULE. IT WAS SET FORTH IN THE ORDER. AND THERE WAS SOME
25 OTHER VIOLATIONS, BUT THE PRIMARY VIOLATION WAS THE FAILURE TO

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1 ACT WITH REASONABLE DILIGENCE.

2 Q. AND WHAT WAS THE PENALTY?

3 A. THE PENALTY -- THE PANEL THEN CONDUCTED A SEPARATE
4 PENALTY PHASE OR DISCIPLINE PHASE AND ENTERED AN ORDER OF
5 DISCIPLINE SUSPENDING ME FOR THREE YEARS WITH THE PROVISION
6 THAT AT THE END OF ONE YEAR I COULD PETITION FOR REINSTATEMENT
7 AND THEN THERE WERE SOME OTHER CONDITIONS THAT WERE IMPOSED
8 THAT I WOULD HAVE TO SATISFY BEFORE I COULD PETITION FOR
9 READMISSION.

10 Q. NOW, WAS THERE ANOTHER ORDER THAT THE BAR ENTERED IN
11 CONNECTION WITH YOU?

12 A. YES. IN JUNE OR JULY OF 1986 (SIC), THE BAR FILED
13 ANOTHER COMPLAINT AGAINST ME AND THEY WERE ALLEGING TRUST
14 ACCOUNT IRREGULARITIES. AND AT THAT TIME I WAS -- I WAS
15 COMPLETELY DISABLED AS A RESULT OF A MENTAL CONDITION THAT I
16 HAD AND STILL HAVE. AND I SOUGHT TWO EXTENSIONS OF TIME TO
17 RESPOND TO THAT COMPLAINT. AND BASED ON THE MATTERS SET FORTH
18 TO SUPPORT MY MOTIONS TO ENLARGE THE TIME, THE HEARING -- THE
19 PANEL FOUND THAT I HAD RAISED THE ISSUE OF MY -- OF WHETHER I
20 WAS DISABLED TO PRACTICE LAW.

21 Q. AND SO THE RESULT WAS?

22 A. THE BAR HAD A HEARING AND DETERMINED THAT I WAS -- I WAS
23 DISABLED FROM THE PRACTICE OF LAW AND TRANSFERRED ME --
24 ENTERED AN ORDER IN MAY OF 1997, TRANSFERRING ME TO DISABILITY
25 INACTIVE STATUS.

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1 Q. AND THE TRUST ACCOUNT IRREGULARITY WAS MONEY THAT HAD
2 BEEN MISAPPROPRIATED FROM YOUR TRUST ACCOUNT BY YOU?

3 A. WELL, I HAD HANDLED A CIVIL FORFEITURE CASE ARISING OUT
4 OF A DRUG CASE. AND WE HAD -- AS THAT CASE PROCEEDED -- AS
5 THAT FORFEITURE CASE PROCEEDED, WE REACHED A COMPROMISE
6 SETTLEMENT IN WHICH THE MONEY WAS DIVIDED UP. AND THERE WAS A
7 CLAIM PENDING BY THE NEW JERSEY EMPLOYMENT SECURITY COMMISSION
8 OR THE EQUIVALENT -- WHATEVER THEIR EQUIVALENT IS TO OUR
9 EMPLOYMENT SECURITY COMMISSION -- AND THEY WERE SEEKING TO
10 RECOVER SOME MONEY FROM THE CLIENT. AND SO WE AGREED TO
11 WITHHOLD THAT MONEY, AND IT WAS PLACED IN MY -- OR I PUT IT
12 INTO MY -- I DEPOSITED IT INTO MY TRUST ACCOUNT. AND THE
13 ORDER THAT WAS SIGNED BY JUDGE BRITT PROVIDED THAT I WOULD
14 KEEP THE \$4,500 IN MY TRUST ACCOUNT UNTIL THE NEW JERSEY
15 MATTER WAS RESOLVED AND THEN I WOULD DISBURSE THE MONEY IN
16 ACCORDANCE WITH THE DECISION OF THE NEW JERSEY AGENCY.

17 Q. AND WHEN THE TIME CAME, THE MONEY HAD GONE SOMEWHERE
18 ELSE?

19 A. THE MONEY WAS NOT THERE.

20 Q. OKAY. SO, YOU WERE RESPONSIBLE FOR THAT?

21 A. OF COURSE. I MEAN, THAT WAS MY RESPONSIBILITY. I WAS
22 RESPONSIBLE FOR THAT MONEY AND IT WAS MY TRUST ACCOUNT.

23 Q. AND SO YOU HAVEN'T PRACTICED LAW SINCE THEN?

24 A. I HAVE NOT PRACTICED LAW SINCE MARCH 18TH, 1996.

25 Q. ALL RIGHT. AND WHAT HAVE YOU BEEN DOING?

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1 A. WELL, AT THAT TIME I WAS COMPLETELY DISABLED AS A RESULT
2 OF A MENTAL CONDITION THAT I HAD THEN AND THAT I STILL HAVE
3 NOW, BUT IT'S MUCH, MUCH BETTER NOW.

4 AND FINALLY TOWARDS THE END OF THAT YEAR, I DECIDED,
5 WELL, YOU KNOW, I SHOULD BE ABLE TO DO SOMETHING. SO, I WENT
6 TO THE RAMADA INN ON BLUE RIDGE ROAD THERE IN RALEIGH, AND I
7 APPLIED FOR A POSITION AS A NIGHT AUDITOR. I WAS HIRED AND I
8 BEGAN TO HAVE GREAT DIFFICULTY IN DOING THAT. AND EVENTUALLY
9 I HAD TO -- I WORKED THERE FOR TWO OR THREE YEARS, BUT IN JULY
10 OF 1999 I HAD TO STOP.

11 Q. ALL RIGHT. DID YOU ALSO WORK FOR A TIME FOR N.C. STATE?

12 A. YES.

13 Q. WHAT WAS YOUR POSITION THERE?

14 A. WELL, TO BEGIN WITH, IN AUGUST OR SEPTEMBER, I STARTED
15 WORKING FOR THE N.C. STATE TEMPS, AND THEY WOULD GIVE VARIOUS
16 ASSIGNMENTS. AND EVENTUALLY THEY GAVE ME AN ASSIGNMENT TO DO
17 CLERICAL WORK FOR PROFESSOR KERRY SMITH, WHO WAS AN
18 ENVIRONMENTAL ECONOMICS PROFESSOR. AND DR. SMITH WAS A VERY
19 PROLIFIC WRITER, AND HE WROTE ALL OF HIS PAPERS OUT, THE FIRST
20 DRAFT, IN HANDWRITING IN PENCIL, ON AN EIGHT AND A HALF BY
21 FOURTEEN INCH LEGAL PAD. SO, WHAT I STARTED DOING WAS
22 TRANSCRIBING HIS HANDWRITING INTO WORD PROCESSING.

23 Q. OKAY. WELL, LET ME ASK YOU THIS, WHAT WAS THE DATE OF
24 THE CONDUCT THAT GOT YOU IN TROUBLE? WHEN DID IT START?

25 A. IT WAS -- IT WAS SOME TIME -- DO YOU MEAN THE CONDUCT

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1 ITSELF OR --

2 Q. THE CONDUCT THAT RESULTED IN YOUR SUSPENSION FROM THE
3 ABILITY TO PRACTICE LAW.

4 A. OKAY. THE CASE, THE MAIN GRIEVANCE, BEGAN IN 1990.
5 THAT'S WHEN I STARTED REPRESENTING THAT CLIENT. A GRIEVANCE
6 WAS FILED AGAINST ME IN EARLY 1995, AND THE COMPLAINT BY THE
7 STATE BAR WAS FILED IN SEPTEMBER OF 1996.

8 Q. OKAY. SO, THIS STARTED AT LEAST 11 YEARS AFTER YOU LEFT
9 THE U.S. ATTORNEY'S OFFICE?

10 A. YES. YES.

11 Q. NOW, I WANT TO GO BACK TO THE TIME PERIOD WHERE YOU WERE
12 WORKING, PRACTICING LAW, AFTER YOU LEFT THE U.S. ATTORNEY'S
13 OFFICE. DID YOU RUN INTO JIM BRITT FROM TIME TO TIME?

14 A. YES, OVER THE YEARS I DID. I REPRESENTED A -- DEFENDED A
15 NUMBER OF CLIENTS WHO WERE HOUSED IN THE WILSON COUNTY JAIL
16 AND JIM -- MR. BRITT WAS THE ADMINISTRATOR OF THE WILSON
17 COUNTY JAIL. AND FROM TIME TO TIME, I WANTED TO SEE THE --
18 SEE MY CLIENTS --

19 Q. ARE YOU SURE IT WAS THE WILSON COUNTY JAIL?

20 A. NO. IT WAS THE JOHNSON COUNTY JAIL. I'M SORRY. THANK
21 YOU. AND HE WOULD ACCOMMODATE ME TO GO IN AND SEE THE CLIENTS
22 WHENEVER I NEEDED TO.

23 Q. SO, YOU WOULD SEE HIM FROM TIME TO TIME?

24 A. YES.

25 Q. AND DID HE EVER BRING UP ANYTHING ABOUT THE MACDONALD

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1 CASE OR THE STOECKLEY INTERVIEW?

2 A. NO.

3 Q. AND DID THERE COME A TIME WHERE YOU ACTUALLY REPRESENTED
4 HIM IN A MATTER?

5 A. YES. YES, I DID REPRESENT MR. BRITT.

6 Q. AND WHAT WAS THAT?

7 A. IT WAS A PERSONAL INJURY CASE. I BELIEVE IT WAS A SLIP
8 AND FALL ON SOME STEPS IN THE APARTMENT COMPLEX WHERE HE WAS
9 LIVING.

10 Q. AND WAS THE CASE RESOLVED?

11 A. EVERYTHING GOT CAUGHT UP IN THE END AND I DON'T KNOW
12 WHETHER THAT CASE WAS RESOLVED. I DON'T KNOW WHETHER I
13 RESOLVED IT OR WHAT REALLY HAPPENED.

14 Q. WELL, MR. BRITT DIDN'T FILE ANY COMPLAINTS AGAINST YOU,
15 DID HE?

16 A. OH, NO, NO.

17 Q. SO, YOU GOT ALONG WELL WITH HIM?

18 A. YEAH, MR. BRITT AND I GOT ALONG VERY WELL.

19 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

20 THE COURT: CROSS.

21 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

22 C R O S S - E X A M I N A T I O N 10:48 A.M.

23 BY MR. WIDENHOUSE:

24 Q. MR. CRAWLEY, I'M GORDON WIDENHOUSE. I THINK WE'VE MET
25 SOMEWHERE ALONG THE WAY. WHEN DID YOU FIRST HEAR THAT JIM

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1 BRITT HAD COME FORWARD IN THIS MATTER?

2 A. I BELIEVE IT WAS IN -- SOMETIME IN 2005, BECAUSE I WAS
3 LIVING IN AN APARTMENT IN CARY AT THAT TIME AND THEN IN MAY OF
4 2006, I MOVED TO WHERE I'M LIVING NOW. AND THE CALL -- I GOT
5 THE CALL FROM WADE -- FROM MR. SMITH WHILE I WAS LIVING IN MY
6 CARY APARTMENT.

7 Q. MR. SMITH CALLED YOU ABOUT THAT?

8 A. YES. YES, HE CALLED ME.

9 Q. AND DID YOU CONTACT THE UNITED STATES ATTORNEY'S OFFICE?

10 A. NO.

11 Q. HAVE YOU DONE AN AFFIDAVIT FORMALIZING YOUR
12 RECOLLECTIONS?

13 A. NO.

14 Q. HAVE YOU GIVEN A DEPOSITION?

15 A. NO.

16 Q. A STATEMENT UNDER OATH?

17 A. NO.

18 Q. HOW MANY TIMES HAVE YOU MET WITH ANYBODY TO PREPARE FOR
19 YOUR TESTIMONY TODAY?

20 A. THREE OR FOUR TIMES.

21 Q. AND WHO HAVE YOU TALKED TO?

22 A. MR. BRUCE.

23 Q. JUST MR. BRUCE?

24 A. WELL, THERE WERE OTHER PEOPLE PRESENT, BUT MR. BRUCE WAS
25 IN CHARGE AND HE'S THE ONE WHO ASKED THE QUESTIONS.

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1 Q. OTHER PEOPLE FROM THE U.S. ATTORNEY'S OFFICE OR DO YOU
2 RECALL?

3 A. THERE WAS -- I KNOW THERE WERE FBI AGENTS AT ONE OF THE
4 MEETINGS AND THEN THERE WAS AN FBI AGENT AND AN ASSISTANT U.S.
5 ATTORNEY, THE YOUNG LADY AT THE GOVERNMENT TABLE.

6 Q. AND DO YOU REMEMBER THE LAST TIME YOU TALKED TO ANYBODY
7 ABOUT YOUR TESTIMONY BEFORE COMING TO COURT TODAY?

8 A. TWO OR THREE WEEKS AGO.

9 Q. AND DO YOU REMEMBER WHERE PEOPLE WERE SITTING IN THE
10 MEETING IN MR. ANDERSON'S OFFICE THAT YOU'VE TESTIFIED ABOUT?

11 A. I THINK THAT -- WE HAD A SOFA DIRECTLY ACROSS FROM THE
12 U.S. ATTORNEY'S DESK. AND THE U.S. ATTORNEY'S DESK FACED
13 PERSON STREET. AND THE SOFA WAS ON THE WALL -- WAS NEXT TO
14 THE WALL NEAR OR TOWARDS PERSON STREET. AND THERE WERE SOME
15 OTHER CHAIRS. I REALLY DON'T REMEMBER. MR. ANDERSON WAS
16 SITTING IN HIS CHAIR BEHIND THE DESK, BUT I DON'T REMEMBER
17 WHERE OTHERS WERE SEATED.

18 Q. ALL RIGHT. IF HE WAS SITTING IN A CHAIR AT HIS DESK THAT
19 FACED PERSON STREET, WAS HE LOOKING OUT THE WINDOW?

20 A. HE COULD HAVE.

21 Q. YOU JUST DON'T RECALL?

22 A. I MEAN, I DON'T RECALL, YOU KNOW, WHETHER HE WAS LOOKING
23 OUT THE WINDOW WHILE THE INTERVIEW WAS GOING ON, NO.

24 Q. AND I BELIEVE YOU SAID ON DIRECT IT WAS TO YOUR
25 RECOLLECTION MR. BRITT WASN'T THERE?

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1 A. YES.

2 Q. BUT YOU'RE NOT POSITIVE ABOUT THAT?

3 A. NO, I'M NOT.

4 Q. AND --

5 A. I DON'T THINK HE WAS THERE, BUT I CANNOT SAY WITH
6 ABSOLUTE CERTAINTY.

7 Q. OKAY. WHO WAS TAKING NOTES AT THE MEETING? WERE YOU
8 TAKING NOTES?

9 A. I THINK I PROBABLY WAS.

10 Q. DO YOU HAVE YOUR NOTES?

11 A. NO.

12 Q. HAVE YOU SEEN YOUR NOTES?

13 A. I DON'T THINK SO.

14 Q. OKAY. AND WAS ANYBODY ELSE TAKING NOTES? WAS MR.
15 MURTAGH TAKING NOTES?

16 A. I THINK SOMEBODY ELSE WAS AND IT COULD HAVE BEEN MR.
17 MURTAGH.

18 Q. COULD IT HAVE BEEN MR. BLACKBURN?

19 A. I THINK IT WOULD PROBABLY HAVE BEEN MR. MURTAGH. I'M NOT
20 -- AGAIN, NO, I CAN'T --

21 Q. BUT YOU HAVEN'T SEEN ANYBODY ELSE'S NOTES?

22 A. NO. NO. I HAVEN'T SEEN ANYBODY ELSE'S NOTES. IN FACT,
23 I HAVEN'T SEEN ANY NOTES OF THAT MEETING.

24 Q. FAIR ENOUGH. DID YOU LEAVE THE MEETING TO GET A SODA OR
25 A SANDWICH FOR MS. STOECKLEY?

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1 A. I DON'T KNOW. I DON'T HAVE ANY RECOLLECTION.

2 Q. OKAY. DO YOU KNOW IF MR. MURTAGH LEFT THE MEETING TO GET
3 A SANDWICH?

4 A. NO, I DON'T REMEMBER.

5 Q. I ASSUME YOU DON'T REMEMBER IF MR. BLACKBURN LEFT THE
6 MEETING TO GET ONE EITHER?

7 A. OH, NO. NO. NO.

8 Q. OKAY. HOW MANY WITNESS INTERVIEWS DURING THE
9 MACDONALD TRIAL OR PREPARATION OF TRIAL DID YOU -- WERE YOU
10 PRESENT AT?

11 A. ALL OF THEM DURING THE TRIAL AND I DON'T RECALL ANY --

12 Q. SO, YOU WERE PRESENT EVERY TIME THE GOVERNMENT
13 INTERVIEWED A WITNESS OR THE U.S. ATTORNEY'S OFFICE
14 INTERVIEWED A WITNESS, YOU WERE PRESENT?

15 A. I THINK SO BECAUSE, AS I SAID, I WAS PART OF THE TEAM AND
16 WE ALWAYS DID THINGS TOGETHER AS A TEAM. SO, I DON'T BELIEVE
17 -- AND I DON'T RECALL INTERVIEWING ANY OTHER.

18 Q. HOW MANY WITNESSES DID YOU QUESTION DURING THE TRIAL?

19 A. I DID NOT QUESTION ANY WITNESSES.

20 Q. OKAY. DID YOU MAKE ANY COMMENTS AT ANY BENCH CONFERENCE
21 THAT YOU RECALL?

22 A. I DON'T RECALL. I GENERALLY LEFT IT TO MR. MURTAGH AND
23 MR. BLACKBURN AND IF I HAD ANYTHING THAT I WANTED TO ADD I
24 WOULD GO THROUGH -- I WOULD TELL THEM AND THEN THEY COULD
25 DECIDE WHAT THEY WANTED TO DO WITH IT.

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1 Q. SO, YOUR CONTRIBUTION, IF YOU HAD SOME THOUGHTS OR
2 SUGGESTIONS, YOU WOULD PASS IT ON TO MR. BLACKBURN OR MR.
3 MURTAGH?

4 A. YES.

5 Q. AND THEY WOULD MAKE A DECISION ABOUT WHAT TO DO WITH IT,
6 IF ANYTHING?

7 A. YES. AND I HAD ONE OTHER ROLE IN THAT TRIAL.

8 Q. AND WHAT WAS THAT?

9 A. WELL, A NUMBER OF MAGAZINES THAT HAD BEEN FOUND ON THE --
10 IN THE TABLE AREA OF THE MACDONALD RESIDENCE AT THE TIME OF
11 THE CRIMES I BELIEVE WERE INTRODUCED INTO EVIDENCE. AND I
12 BELIEVE ONE OF THEM WAS AN *ESQUIRE* MAGAZINE AND IT HAD A
13 NUMBER OF WHAT I WOULD CLASSIFY AS STRANGE ARTICLES IN IT
14 AND I WAS ASKED TO READ ONE OF THOSE ARTICLES.

15 AND THE ARTICLE I WAS ASKED TO READ WAS ABOUT A
16 BLACK SWAN AND I BELIEVE THE BLACK SWAN WAS FORNICATING WITH
17 SOMEBODY. AND I STARTED READING THE MAGAZINE ARTICLE, AND I
18 DIDN'T GET TOO FAR, AND JUDGE DUPREE DECIDED THAT WE DIDN'T
19 NEED -- I DIDN'T NEED TO DO THAT ANYMORE.

20 Q. SO, YOU RECALL READING AN ARTICLE, I GUESS FROM THE
21 WITNESS STAND --

22 A. YES. IT WAS FROM --

23 Q. -- AS PART OF THE EVIDENCE IN THE CASE?

24 A. IT WAS PART OF AN ARTICLE.

25 Q. ALL RIGHT. YOU HAVE A DIRECT RECOLLECTION OF THAT?

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1 A. YES.

2 Q. CLEARLY RECALL THAT?

3 A. YES. YES, I DO.

4 Q. OKAY. I WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT THE
5 BAR GRIEVANCE.

6 A. OKAY.

7 Q. YOU SAID YOU WERE HIRED BY, IS IT, A MR. TOBIES?

8 A. TOVES, T-O-V-E-S

9 Q. OKAY. TO DO A MOTION FOR APPROPRIATE RELIEF?

10 A. WELL, I WAS HIRED BY HIS PARENTS, HIS MOTHER AND HIS
11 STEPFATHER.

12 Q. OKAY. SO, YOU WERE PAID TO DO A MOTION FOR APPROPRIATE
13 RELIEF FOR MR. TOVES?

14 A. WELL, LET ME -- LET ME ANSWER IT A LITTLE DIFFERENT WAY
15 BECAUSE IT'S HARD TO SAY YES OR NO. MR. ROLAND WILLIAMS, AND
16 I DON'T REMEMBER HIS WIFE'S NAME, BUT THEY CAME TO ME AND THEY
17 HAD A REPORT FROM A PRIVATE INVESTIGATOR IN THE JACKSONVILLE
18 AREA AND THEY WANTED TO DISCUSS TRYING TO DO SOMETHING FOR MR.
19 TOVES.

20 MY RECOLLECTION IS THEY HAD BEEN TO OTHER ATTORNEYS
21 AND THOSE ATTORNEYS WERE NOT INTERESTED IN IT. AND I TOLD
22 THEM THAT I WOULD -- I WOULD DO A LITTLE INVESTIGATION. I
23 WOULD READ THE -- I WOULD READ THE REPORT, THE INVESTIGATOR'S
24 REPORT, AND REVIEW THE COURT RECORDS, AND THAT I WOULD GO OVER
25 TO CENTRAL PRISON AND MEET WITH MR. TOVES.

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1 AND I DID THAT AND I WAS PAID A THOUSAND DOLLARS TO
2 DO THAT. AND I CAME BACK AND ASKED THEM TO COME BACK IN TO
3 SEE ME AND I TOLD THEM THAT I THOUGHT THAT THERE WAS A
4 REASONABLE LIKELIHOOD THAT MR. TOVES COULD PREVAIL ON A MOTION
5 FOR APPROPRIATE RELIEF.

6 Q. SO, YOU TOLD THEM THERE WAS -- YOU THOUGHT, IN YOUR
7 PROFESSIONAL OPINION, THERE WAS POSSIBLE MERIT FOR A MOTION
8 FOR APPROPRIATE RELIEF?

9 A. YES.

10 Q. AND AT THAT POINT YOU WERE RETAINED TO PREPARE A MOTION
11 FOR APPROPRIATE RELIEF?

12 A. AT THAT POINT I WAS RETAINED, YES.

13 Q. AND DID YOU WRITE THEM A LETTER -- WELL, HOW LONG DID IT
14 TAKE -- DID IT TAKE A COUPLE OF YEARS BEFORE YOU HAD THE
15 MOTION FOR APPROPRIATE RELIEF READY?

16 A. IT WAS MORE THAN A COUPLE OF YEARS, MR. WIDENHOUSE.

17 Q. SO, IT WAS AWHILE?

18 A. IT WAS AWHILE.

19 Q. AND THEY CONTACTED -- DID THEY CONTINUE TO CONTACT YOU
20 WANTING A STATUS REPORT OF WHEN IT MIGHT BE READY?

21 A. THEY CONTACTED ME INFREQUENTLY. I VISITED WITH MR.
22 TOVES. HE WAS IN THE HARNETT COUNTY CORRECTIONAL FACILITY AND
23 I VISITED HIM MANY, MANY TIMES. MAYBE 20, 25 TIMES I MET WITH
24 HIM. AND THEN THERE WAS ONE TIME WHEN MR. WILLIAMS AND MR.
25 TOVES' MOTHER CAME -- I THINK THEY LIVED IN TEXAS OR SOMEWHERE

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1 OUT OF STATE, BUT THEY CAME TO VISIT WITH MR. TOVES, AND THEY
2 LET ME KNOW THEY WERE COMING AND I TOLD THEM THAT I WOULD
3 ARRANGE TO COME OVER AND VISIT WITH THEM WHILE THEY WERE AT
4 THE CORRECTIONAL FACILITY WHILE THEY WERE DOWN VISITING.

5 Q. SO, YOU MET THE CLIENT 25 OR SO TIMES TO TALK ABOUT A
6 MOTION FOR APPROPRIATE RELIEF?

7 A. YES.

8 Q. OKAY. AND DID YOU -- DO YOU REMEMBER WRITING A LETTER
9 TELLING THEM IT WOULD BE FILED BY NOVEMBER 2ND, 1992?

10 A. I REMEMBER WRITING A LETTER, PERHAPS MORE THAN ONE, AND I
11 HAD BEEN TELLING MR. TOVES AND HIS FAMILY THAT I INTENDED TO
12 HAVE IT BROUGHT BEFORE THE COURT FOR A HEARING AT VARIOUS
13 TIMES AND THAT SOUNDS LIKE ONE OF THE TIMES THAT I REMEMBER
14 WRITING THEM A LETTER.

15 Q. WELL, NOW --

16 A. NOW, I DON'T --

17 Q. THERE'S A DIFFERENCE BETWEEN SAYING I'M GOING TO GET YOU
18 A HEARING AND I'M GOING TO FILE YOUR MOTION FOR APPROPRIATE
19 RELIEF FIRST, ISN'T THERE?

20 A. OF COURSE.

21 Q. I MEAN, YOU HAVE TO FILE THE M.A.R. FIRST?

22 A. RIGHT. I HAD TO FILE THE MOTION BEFORE THERE COULD BE
23 ANY HEARING.

24 Q. CORRECT. AND THE MOTION FOR APPROPRIATE RELIEF HADN'T
25 BEEN FILED YET?

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1 A. NO.

2 Q. OKAY.

3 A. BUT MY BELIEF WAS THAT THE HEARING WOULD BE SCHEDULED
4 PROMPTLY AFTER I FILED THE MOTION.

5 Q. OKAY. DO YOU RECALL WRITING THEM A LETTER SAYING I WILL
6 FILE THE MOTION FOR APPROPRIATE RELIEF BY NOVEMBER 2ND, 1992?

7 A. I DO NOT SPECIFICALLY RECALL THAT, BUT IF YOU SAY I DID,
8 I AGREE, YEAH, I DID THAT.

9 Q. OKAY. AND YOU DIDN'T FILE IT BY NOVEMBER 2ND?

10 A. NO. NO, I DID NOT.

11 Q. AND DO YOU REMEMBER PROMISING THEM YOU WOULD HAVE A COURT
12 HEARING SCHEDULED --

13 A. YES.

14 Q. -- BY OCTOBER 15TH, 1993?

15 A. AGAIN, I DON'T REMEMBER THE DATES, BUT I PROMISED THEM I
16 WOULD GET A HEARING SCHEDULED.

17 Q. AND YOU DIDN'T GET THEM A HEARING SCHEDULED?

18 A. NO.

19 Q. SO, THE STATEMENTS THAT YOU WOULD FILE THE MOTION FOR
20 APPROPRIATE RELIEF BY A CERTAIN DATE AND GET A HEARING BY A
21 CERTAIN DATE TURNED OUT TO BE FALSE?

22 A. WELL, YES, BUT AT THE TIME I MADE THOSE STATEMENTS TO
23 THEM I THOUGHT THAT -- I MEAN, I HAD EVERY INTENTION OF DOING
24 THAT AND I JUST -- I JUST DIDN'T --

25 Q. DIDN'T GET IT DONE?

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1 A. I DIDN'T GET IT DONE.

2 Q. ALL RIGHT. IF YOU VISITED THE CLIENT 20 OR 25 TIMES, WHY
3 WOULD THE -- IS IT NOT TRUE THAT THE BAR FOUND AS A FACT THAT
4 YOU DIDN'T VISIT THE CLIENT IN PRISON EXCEPT TWICE?

5 A. NO.

6 Q. THAT'S NOT ACCURATE?

7 A. NO, THAT IS NOT ACCURATE. AT THE HEARING ON DECEMBER
8 15TH, 1995, THE BAR INTRODUCED A LOG FROM THE HARNETT COUNTY
9 CORRECTIONAL INSTITUTION AND THAT LOG PURPORTED TO BE A RECORD
10 OF MY VISITS WITH MR. TOVES. AND AS PART OF THE PRETRIAL
11 ORDER, I STIPULATED THAT THAT LOG WAS AUTHENTIC AND CORRECT.
12 I DISCOVERED LATER THAT IT WAS NOT CORRECT.

13 I HAD MY RECORDS OF EVERY VISIT WITH MR. TOVES, AND
14 I WENT BACK AND COMPARED IT AND THERE WERE DATES FOR SOME
15 VISITS WHEN I DID NOT GO AND THEN THERE WERE DATES -- THERE
16 WERE NO DATES FOR VISITS WHEN I DID GO.

17 AND, I MEAN, I DON'T UNDERSTAND HOW THAT HAPPENED
18 BECAUSE I RECALL THE PEOPLE AT THE CORRECTIONAL FACILITY WERE
19 VERY, VERY NICE TO ME AND ACCOMMODATING TO ME IN VISITING MR.
20 TOVES AND GETTING DONE WHAT I THOUGHT WE NEEDED TO DO.

21 Q. SO, WHAT YOU'RE SAYING IS YOUR RECORDS WERE DIFFERENT
22 FROM THE VISITATION RECORDS -- LOG AT THE PRISON?

23 A. FROM THE VISITATION LOG THAT WAS INTRODUCED INTO EVIDENCE
24 AT THE BAR HEARING, YES.

25 Q. WHICH YOU STIPULATED WAS AUTHENTIC?

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1 A. I DID. I STIPULATED IT WAS AUTHENTIC AND CORRECT.

2 Q. SO, THERE WAS A CONFLICT BETWEEN YOUR RECORDS AND THE
3 VISITATION LOG AT THE PRISON?

4 A. YES, THAT'S CORRECT.

5 Q. ALL RIGHT. AND --

6 A. MR. WIDENHOUSE, MAY I SAY THIS, WHEN I WAS PRACTICING
7 LAW, I HAD A LITTLE POCKET DAY CALENDAR THAT I ALWAYS HAD WITH
8 ME AND EVERY DAY WHEN I -- WHEN I WAS PRACTICING LAW, WHEN I
9 LEFT MY HOME IN THE MORNING I RECORDED THE MILEAGE IN MY CAR
10 AND THE TIME I LEFT, RECORDED THE TIME I GOT TO MY OFFICE. I
11 RECORDED THE TIME FOR EVERY ONE OF MY VISITS TO MR. TOVES IN
12 LILLINGTON AT THAT FACILITY. AND IF ALL OF MY RECORDS WERE
13 PUT TOGETHER, THEY WOULD ALL BE CONSISTENT WITH THE MILEAGE
14 READINGS IN MY CAR.

15 SO, I HAD SOLID EVIDENCE THAT -- OF MY VISITS. AND
16 I JUST UNFORTUNATELY, ILL-ADVISEDLY, STIPULATED TO THE RECORD
17 OF THOSE VISITS. I HADN'T EVEN READ IT. I JUST ASSUMED --
18 YOU KNOW, THEY WERE ALWAYS NICE TO ME. SEEMED TO ALWAYS SIGN.
19 AND I JUST ASSUMED THEIR RECORDS WOULD BE CORRECT.

20 Q. SO, YOU DIDN'T -- ARE YOU SAYING YOU DIDN'T PAY ATTENTION
21 TO THE RECORDS BEFORE YOU AGREED THEY WERE AUTHENTIC?

22 A. NO. NO. I MEAN, THESE WERE STATE RECORDS FROM AN
23 OFFICIAL PRISON FACILITY AND I SAW NO NEED -- NO REASON TO
24 QUESTION ANYTHING. I JUST ASSUMED THEY WERE CORRECT.

25 Q. YOU ASSUMED THEY WERE CORRECT, RIGHT?

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1 A. YES.

2 Q. AND YOU HAVE METICULOUS NOTES -- YOU WOULD KEEP
3 METICULOUS NOTES OF EVERYTHING YOU WERE DOING WHEN YOU WERE IN
4 PRIVATE PRACTICE?

5 A. YES. YES.

6 Q. AND YET YOU DON'T HAVE THE NOTES FROM YOUR INTERVIEW WITH
7 THIS MOST IMPORTANT WITNESS DURING THE MACDONALD TRIAL?

8 A. (NO RESPONSE.)

9 Q. WELL, THAT'S YES OR NO. YOU EITHER HAVE THE NOTES OR YOU
10 DON'T.

11 A. I DON'T HAVE THE NOTES. I LEFT EVERYTHING. ALL OF MY
12 NOTES WERE LEFT IN THE U.S. ATTORNEY'S OFFICE WHEN I RESIGNED.
13 AND I ASSUME, YOU KNOW, WHATEVER RECORDS I HAD WOULD BE WITH
14 THE OFFICIAL GOVERNMENT FILE.

15 Q. ALL RIGHT. WAS ANOTHER FINDING OF THE BAR GRIEVANCE
16 COMMITTEE THAT YOU FAILED TO COMPLY WITH THEIR REQUEST TO
17 PRODUCE DOCUMENTS THAT THEY ASKED FOR?

18 A. YES.

19 Q. OKAY. AND DID YOU COMPLY WITH THE REQUIREMENT OF FILING
20 A FULL AND COMPLETE ANSWER TO THE GRIEVANCE?

21 A. MR. WIDENHOUSE, I CONTACTED THE BAR COUNSEL, WHO WAS, I
22 THINK, HANDLING THE GRIEVANCE, HIS NAME WAS DAVID AND, I'M
23 SORRY, I DON'T RECALL HIS LAST NAME, BUT I WAS VERY BUSY
24 DURING THAT TIME AND I DIDN'T REALIZE IT THEN, BUT I WAS
25 BEGINNING TO FEEL THE EFFECTS OF MY MENTAL CONDITION. AND I

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1 WAS BEGINNING TO SLOW DOWN AND GRADUALLY I JUST BEGAN TO WORK
2 IN SLOW MOTION AND I WAS ENTERING OR HAD ENTERED THAT PHASE AT
3 THAT TIME. AND SO -- AND THAT'S --

4 Q. I'M JUST TRYING TO GET CLARIFICATION. DID YOU GIVE THEM
5 THE RECORDS THEY ASKED FOR?

6 A. YES, I DID.

7 Q. SO, IT'S NOT ACCURATE THAT THEY FOUND AS A FACT AS PART
8 OF THE REASON FOR THE DISCIPLINE THAT YOU FAILED TO PROVIDE
9 THE REQUESTED ACCOUNTING RECORDS FROM YOUR FIRM?

10 A. I AGREE THEY FOUND THAT, BUT, HONESTLY, I CANNOT AGREE
11 THAT THAT IS CORRECT.

12 Q. SO, THE BAR GRIEVANCE COMMITTEE WAS WRONG IN MAKING THAT
13 FINDING OF FACT?

14 A. NO, NO, NO. MR. WIDENHOUSE, I AM NOT SAYING THE BAR
15 GRIEVANCE -- OR THE BAR HEARING COMMITTEE WAS WRONG. WHAT I
16 AM SAYING IS THAT I SPOKE WITH THE ATTORNEY SEVERAL TIMES AND
17 ASKED HIM TO GIVE ME A LITTLE WHILE LONGER TO RESPOND TO THE
18 GRIEVANCE. EVENTUALLY, I RESPONDED TO THE GRIEVANCE.

19 NOW, APPARENTLY, THE BAR WAS NOT SATISFIED WITH MY
20 RESPONSE AND MY UNDERSTANDING IS WHEN THEY'RE NOT SATISFIED,
21 WHEN THEY DON'T THINK THE ANSWER TO THE GRIEVANCE IS
22 RESPONSIVE, THEN THEY DETERMINE THAT THE ATTORNEY HAS FAILED
23 TO DO THAT.

24 NOW, THAT SAME ATTORNEY SUBPOENAED MY RECORDS IN
25 THAT CASE AND ANOTHER CASE. AND I HAD THEM IN SEVERAL

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1 BANKER'S BOXES, WHICH WE LAWYERS ARE FAMILIAR TO USE AND
2 ACCUMULATE AS MUCH PAPER IN THEM AS WE CAN, AND I TOOK THOSE
3 BOXES FOR ALL THE FILES IN MR. TOVES' CASE DOWN TO HIS OFFICE.

4 I MET WITH HIM AND WITH AN INVESTIGATOR, DON JONES,
5 AND THEY HAD COMPLETE OPPORTUNITY TO GO THROUGH EVERYTHING,
6 ALL OF MY RECORDS, CONCERNING MY REPRESENTATION OF MR. TOVES.

7 INSTEAD, THEY SAW WHAT I HAD AND THEY DECIDED NOT TO
8 GO THROUGH IT. AND THEY ASKED ME -- YOU KNOW, THEY SAID,
9 WELL, YOU KNOW, THAT'S SUFFICIENT WHAT YOU'VE GOT HERE. YOU
10 BROUGHT STUFF. YOU KNOW, THAT'S SUFFICIENT. BUT THEY DID ASK
11 ME TO GIVE THEM A -- TO FURNISH THEM A RECORD OF THE TIME THAT
12 I HAD SPENT ON MR. TOVES' CASE.

13 Q. AND DID YOU FURNISH THAT RECORD?

14 A. NO, I NEVER FURNISHED THAT RECORD.

15 Q. DESPITE THE FACT THAT YOU KEEP THESE METICULOUS NOTES IN
16 YOUR COAT POCKET?

17 A. MR. WIDENHOUSE, THAT IS ENTIRELY CORRECT. HOWEVER, ONE
18 OF THE FEATURES OF MY ILLNESS, I HAVE HAD A VERY DIFFICULT
19 TIME WRITING THINGS, ORGANIZING MY MATERIALS AND PUTTING THEM
20 INTO A FORM OR WHATEVER IS NEEDED FOR THAT INFORMATION. AND I
21 HAD THAT DIFFICULTY THEN AND IT WAS GETTING WORSE AND I NEVER
22 DID THAT.

23 THERE WERE MANY OTHER FORMS, INCLUDING MANY CRIMINAL
24 JUSTICE ACT VOUCHERS, THAT WERE NEVER SUBMITTED FOR THOUSANDS
25 OF DOLLARS, WHEN I HAD THE RECORDS, ALL MY TIME RECORDS,

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1 EXPENSE RECORDS, AND IT WAS JUST A MATTER OF TAKING THAT
2 INFORMATION AND PUTTING IT IN THOSE FORMS. AND I CANNOT
3 EXPLAIN TO YOU OR TO ANYBODY ELSE WHY I WAS NOT ABLE TO DO
4 THAT. AND IF YOU WILL LOOK AT THE ORDER TRANSFERRING ME TO
5 DISABILITY INACTIVE STATUS, SPECIFIC REFERENCE IS MADE TO
6 THOSE CJA FORMS AND MY INABILITY TO COMPLETE THEM.

7 Q. OKAY. AND THE \$4,500 YOU TOLD MR. BRUCE ABOUT IN YOUR
8 TRUST ACCOUNT THAT JUST DISAPPEARED?

9 A. WELL, YES.

10 Q. DID ANYBODY HAVE ACCESS TO YOUR TRUST ACCOUNT CHECKS BUT
11 YOU?

12 A. NO, I WAS THE ONLY ONE WHO HAD ACCESS TO SIGN CHECKS ON
13 MY TRUST ACCOUNT.

14 Q. AND YOU HAVE NO IDEA WHERE YOU WROTE THE \$4,500 CHECK TO?

15 A. I DID NOT WRITE A \$4,500 CHECK.

16 Q. SO, IT WAS SMALLER CHECKS COMING OUT OF THE TRUST --

17 A. WELL, IT WAS SOMETHING. AND I MET WITH MR. JONES, DON
18 JONES, AGAIN, WITH THE STATE BAR, AND I GAVE HIM ALL MY TRUST
19 ACCOUNT RECORDS AND HE WENT THROUGH AND HE ORGANIZED
20 EVERYTHING AND THEN HE ASKED ME QUESTIONS. AND HE SAID -- HE
21 TOLD ME HE DID NOT KNOW WHERE THAT \$4,500 WENT. IT SEEMED TO
22 HIM THAT IT JUST DISAPPEARED.

23 Q. IT DISAPPEARED OUT OF A CHECKING ACCOUNT THAT WAS A TRUST
24 ACCOUNT?

25 A. THAT WAS HIS CHARACTERIZATION, NOT MINE.

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1 Q. I UNDERSTAND. IT JUST DISAPPEARED OUT OF A TRUST
2 ACCOUNT?

3 A. WELL, IT WASN'T THERE WHEN IT WAS SUPPOSED TO BE THERE.
4 AT THE TIME, MY TRUST ACCOUNT RECORDS WERE NOT IN ACCORDANCE
5 WITH THE BAR REGULATIONS. I HAD A RECORD OF EVERYTHING I HAD
6 DONE. I HAD COPIES OF ALL OF MY DEPOSIT SLIPS FOR DEPOSITS
7 INTO THE ACCOUNT WITH THE CLIENT ON WHOSE BEHALF THE FUNDS
8 WERE DEPOSITED LISTED ON THAT DEPOSIT SLIP. AND EVERY PENNY
9 THAT CAME OUT OF THE TRUST ACCOUNT WAS ON A CHECK. I HAD
10 RECORDS OF ALL OF THE CHECKS, THE DATES AND THE AMOUNTS OF THE
11 CHECKS AND THE NAME OF THE CLIENT ON WHOSE BEHALF THE FUNDS
12 WERE DISBURSED.

13 Q. SO, EVEN WITH ALL OF THOSE RECORDS, \$4,500 GOES IN AND
14 DISAPPEARS, OR WE CAN'T TELL WHERE IT CAME OUT?

15 A. RIGHT.

16 Q. BUT IT DIDN'T GET HELD FOR THE CLIENT IT WAS SUPPOSED TO
17 BE HELD FOR?

18 A. NO. NO, IT DID NOT.

19 Q. OKAY.

20 A. IT WAS NOT. BUT I WAS NOT VERY DILIGENT IN MY RECORD
21 KEEPING WITH RESPECT --

22 Q. YOU HAVE THESE NOTES IN YOUR COAT POCKET THAT YOU SAY
23 DOCUMENT EVERY TIME YOU WENT EVERYWHERE, MILEAGE, ET CETERA,
24 AND THE RECORDS FOR THE TRUST ACCOUNT AREN'T THAT GOOD?

25 A. MR. WIDENHOUSE, THIS IS FOR THE MONTH OF SEPTEMBER 2012.

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1 I HAVE ONE OF THESE FOR EVERY MONTH OF THE YEAR AND THOSE ARE
2 STORED AWAY.

3 I MADE A TERRIBLE MISTAKE WHEN I OPENED MY OWN
4 OFFICE ON, I THINK IT WAS, JUNE -- JULY 1ST OF 1991. I WAS AT
5 THAT TIME VERY, VERY BUSY AND I DID NOT SIT DOWN AND WRITE
6 OUT, YOU KNOW, A LEDGER OR A JOURNAL, YOU KNOW, OF WHAT WAS
7 HAPPENING WITH MY TRUST ACCOUNT.

8 SO, MY -- I KEPT UP WITH MY TRUST ACCOUNT IN MY
9 HEAD. I HAD AN IDEA OF WHAT HAD BEEN PUT IN AND WHAT HAD COME
10 OUT AND SOMEWHERE -- BUT, YOU KNOW, I DID NOT PUT THAT DOWN IN
11 THE FORM THE BAR REQUIRES.

12 Q. SO, THE TRUST ACCOUNT LEDGER WAS IN YOUR HEAD, ALL THE
13 OTHER RECORDS ARE IN YOUR COAT POCKET, AND YOU SAVE ALL OF
14 THOSE?

15 A. NO, NO, NO, NO. THEY WERE NOT IN MY -- I HAD A CHECKBOOK
16 FOR MY TRUST ACCOUNT AND THE RECORDS OF ALL THE CHECKS WERE
17 RECORDED IN THAT CHECKBOOK. I ALSO HAD A DEPOSIT SLIP FOLDER
18 AND ALL OF THE DEPOSIT SLIPS FOR EVERY ITEM DEPOSITED INTO
19 THAT ACCOUNT WERE KEPT THERE. SO, YOU KNOW, THE BASIC RECORDS
20 I HAD. I HAD JUST NOT TRANSFERRED THAT INFORMATION TO A
21 LEDGER FOR EACH CLIENT AND A TOTAL. I HAD THAT IN MY MIND
22 THAT -- YOU KNOW, I KNEW WHAT HAD BEEN PUT IN, WHAT HAD BEEN
23 TAKEN OUT, AND IT JUST GOT AWAY FROM ME.

24 MR. WIDENHOUSE: NO FURTHER QUESTIONS, YOUR HONOR.
25 THANK YOU, MR. CRAWLEY.

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1 THE COURT: ANY REDIRECT?

2 MR. BRUCE: YES, YOUR HONOR.

3 R E D I R E C T E X A M I N A T I O N 11:15 A.M.

4 BY MR. BRUCE:

5 Q. MR. CRAWLEY, YOU TESTIFIED THAT YOU AND I MET WITH SOME
6 OTHER FOLKS TO PREPARE FOR THIS ABOUT TWO OR THREE WEEKS AGO?

7 A. YES.

8 Q. DID WE NOT ALSO MEET IN THE CONFERENCE ROOM OF A LOCAL
9 HOTEL ONE NIGHT THIS WEEK?

10 A. OH, YES. I'M SORRY. YES, WE DID.

11 Q. YOU TESTIFIED THAT YOU SAT IN ON THE INTERVIEWS DURING
12 THE TRIAL OF THE MACDONALD CASE, IS THAT RIGHT?

13 A. THAT'S CORRECT.

14 Q. BUT I BELIEVE YOU ALSO TESTIFIED ON CROSS-EXAMINATION
15 THAT THERE WEREN'T THAT MANY INTERVIEWS DURING THE TRIAL?

16 A. THAT'S MY RECOLLECTION. I DON'T RECALL ANY INTERVIEWS
17 DURING THE TRIAL.

18 Q. AND MS. STOECKLEY WAS NOT A PROSECUTION WITNESS, IS THAT
19 RIGHT?

20 A. NO, SHE WAS NOT.

21 Q. AND --

22 A. I DON'T BELIEVE SHE WAS ANYBODY'S WITNESS. SHE WAS JUST

23 A --

24 Q. BUT IN ANY CASE -- WELL, LET'S JUST CALL HER A DEFENSE
25 WITNESS.

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1 A. WELL, I MEAN, THE DEFENSE -- THEY WERE THE ONES WHO
2 WANTED HER AND THEY WERE THE ONES WHO HAD HER BROUGHT FROM
3 WHEREVER SHE WAS APPREHENDED IN SOUTH CAROLINA, TO THE
4 COURTHOUSE IN RALEIGH.

5 Q. AND THEY WERE THE ONES THAT CALLED HER TO THE STAND?

6 A. YES.

7 Q. AND SO WERE THERE ANY OTHER DEFENSE WITNESSES THAT THE
8 PROSECUTION TEAM INTERVIEWED DURING THE TRIAL?

9 A. NOT THAT I RECALL.

10 Q. AND MS. STOECKLEY WAS A PRETTY IMPORTANT WITNESS TO THE
11 DEFENSE, WASN'T SHE?

12 A. OH, YES, PERHAPS, THE MOST.

13 Q. SO, THIS INTERVIEW, WAS IT A DRAMATIC MOMENT FOR THE
14 PROSECUTION DURING THE TRIAL?

15 A. YES, BECAUSE NOBODY WAS SURE EXACTLY WHAT THAT LADY WAS
16 GOING TO DO OR SAY AT ANY GIVEN TIME.

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

18 THE COURT: YES, SIR.

19 (PAUSE.)

20 BY MR. BRUCE:

21 Q. DID YOU ASSIST IN THE PREPARATION OF THE BENCH WARRANT
22 FOR HELENA STOECKLEY?

23 A. NO.

24 Q. NOW, CONCERNING THE ARTICLE THAT YOU READ DURING THE
25 TRIAL, THIS WAS IN EVIDENCE, IS THAT RIGHT?

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1 A. YEAH, THE MAGAZINE WAS IN EVIDENCE.

2 Q. SO, YOUR ROLE IN READING IT WAS JUST TO GET IT BEFORE THE
3 JURY?

4 A. JUST TO GET IT BEFORE THE JURY.

5 Q. NOW, THE INTERVIEW THAT WE'VE BEEN TALKING ABOUT WITH MS.
6 STOECKLEY OCCURRED IN 1979?

7 A. YES, I THINK IT WAS AUGUST OF 1979.

8 Q. AND WADE SMITH CALLED YOU ABOUT JIMMY BRITT COMING
9 FORWARD IN 2005?

10 A. ABOUT -- IT WAS AROUND -- I BELIEVE IT WAS 2005, BUT I
11 KNOW IT WAS AROUND THAT TIME.

12 Q. OKAY. THAT'S 26 YEARS, IS IT NOT?

13 A. YES, IT IS.

14 Q. AND SO YOU'RE BEING ASKED AS TO WHETHER YOU HAVE NOTES OF
15 AN INTERVIEW THAT TOOK PLACE 26 YEARS BEFORE THE MATTER CAME
16 UP AGAIN?

17 A. YES.

18 Q. NOW, LET'S LOOK AT GOVERNMENT EXHIBIT 2082. LET'S GO TO
19 2083 -- 2084. OKAY. YOU WERE ASKED ON CROSS-EXAMINATION
20 ABOUT SOME OF THE FURNITURE IN THIS U.S. ATTORNEY'S OFFICE,
21 MR. ANDERSON'S OFFICE. DO YOU REMEMBER THAT?

22 A. YES.

23 Q. CAN YOU INDICATE AS BEST YOU CAN -- IF YOU TOUCH YOUR
24 FINGER -- CAN YOU INDICATE WHERE MR. ANDERSON'S DESK WAS AND
25 WHICH WAY IT FACED?

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- 1 A. MR. ANDERSON'S DESK WAS IN THIS AREA AND IT FACED --
- 2 Q. WHATEVER YOU'RE DOING IS NOT SHOWING UP.
- 3 A. WELL, THAT WAS WITH MY FINGER.
- 4 Q. TOUCH WITH YOUR FINGER AND SEE IF YOU CAN GET IT TO --
- 5 A. (WITNESS COMPLIES.)
- 6 Q. OKAY. ALL RIGHT.
- 7 A. IT WAS IN APPROXIMATELY THAT AREA AND IT FACED OUT ON --
- 8 Q. DID IT FACE TO THE RIGHT AS WE'RE LOOKING AT THE SCREEN?
- 9 A. (NO RESPONSE.)
- 10 Q. AS YOU LOOK AT THE SCREEN, I'M JUST TRYING TO --
- 11 A. YES. YES, IT DID. YOU KNOW, THE DESK WAS ORIENTED SO
- 12 THE BACK WAS NEXT TO THE BACK WALL.
- 13 Q. ALL RIGHT.
- 14 A. AND THEN THE FRONT, IT WAS, YOU KNOW, IT WAS TURNED THAT
- 15 WAY.
- 16 Q. OKAY.
- 17 A. AND I'M SORRY IT WAS HARD --
- 18 Q. MR. WIDENHOUSE ASKED IF MR. ANDERSON COULD LOOK OUT THE
- 19 WINDOW AND SO HE WOULD BE LOOKING OUT WHICH WINDOW?
- 20 A. HE WOULD BE LOOKING OUT THE WINDOW AT -- TOWARDS NEW BERN
- 21 AVENUE, DIRECTLY ACROSS FROM THE DESK.
- 22 Q. TOWARD NEW BERN AVENUE?
- 23 A. NO. I'M SORRY.
- 24 Q. WELL, IF HE WAS SEATED --
- 25 A. I'M SORRY. TOWARDS PERSON STREET.

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1 Q. OKAY.

2 A. TOWARDS PERSON STREET.

3 Q. IF HE WAS SEATED BEHIND HIS DESK?

4 A. HE WAS SEATED BEHIND HIS DESK AND --

5 Q. IF HE LOOKED STRAIGHT OUT, WHERE WOULD HE BE LOOKING?

6 A. IF HE LOOKED STRAIGHT OUT, HE WOULD BE LOOKING TOWARDS
7 THE GOVERNOR'S MANSION, BUT, YOU KNOW, SITTING THAT FAR BACK
8 AND ON THE EIGHTH FLOOR, YOU KNOW, HE WOULD HAVE HAD A LONG
9 DISTANCE VIEW, BUT NOTHING AS TO WHAT WAS HAPPENING ON THE
10 STREET BELOW.

11 Q. OKAY.

12 A. OR ON THE GROUND LEVEL.

13 Q. BUT HE COULD LOOK OUT WEST OR HE COULD TURN AND LOOK OUT
14 NORTH?

15 A. RIGHT.

16 Q. BUT THE DESK WAS NOT SITTING AT AN ANGLE, WAS IT?

17 A. NO. NO.

18 Q. DID YOU EVER SEE IT PLACED LIKE THAT?

19 A. NO.

20 MR. BRUCE: NO FURTHER QUESTIONS.

21 THE COURT: ANY RECROSS?

22 MR. WIDENHOUSE: NO, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN.

24 THE WITNESS: THANK YOU.

25 THE COURT: YOUR NEXT WITNESS.

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1 Q. AND AT THE TIME OF THE MACDONALD CASE, WERE YOU IN THE
2 ARMY?

3 A. SAY THAT AGAIN, PLEASE.

4 Q. AT THE TIME OF THE MACDONALD CASE, WERE YOU IN THE ARMY?

5 A. YES, I WAS.

6 Q. OKAY. HOW LONG HAD YOU BEEN IN THE ARMY AT THAT POINT?

7 A. AT THAT POINT, I HAD BEEN SINCE 1958.

8 Q. AND WHEN YOU FIRST JOINED THE ARMY, WHAT WAS YOUR STATUS?

9 A. I'M SORRY?

10 Q. WHEN YOU FIRST JOINED THE ARMY, WHAT WAS YOUR STATUS?

11 A. WHEN I FIRST JOINED THE ARMY, I WENT INTO TRAINING AS A
12 MILITARY POLICEMAN AT THE M.P. SCHOOL IN FORT GORDON, GEORGIA.
13 AND FROM THERE WAS TRANSFERRED TO FORT BRAGG, WHERE I SERVED
14 AS A PATROLMAN FOR A YEAR. FROM THERE I WAS TRANSFERRED TO A
15 UNIT IN AUGSBURG, GERMANY, WHERE AGAIN I WAS A PATROLMAN AND A
16 HIGHWAY PATROLMAN DOING TRAFFIC ACCIDENT INVESTIGATIONS. AND
17 FROM THERE I TOOK A QUICK BREAK FROM THE ARMY WHEN I RETURNED
18 IN 1962 TO THE UNITED STATES.

19 AND IT WAS ABOUT THE TIME OF THE CUBAN MISSILE
20 CRISIS AND I WAS JUST KIND OF MOTIVATED TO GO BACK INTO THE
21 ARMY. AND I WENT BACK IN AND I WENT TO KOREA, AGAIN SERVING
22 AS A PATROLMAN AND ALSO AS THE BODY GUARD AND DRIVER FOR THE
23 EIGHTH ARMY CHIEF OF POLICE OR THE PROVOST MARSHAL.

24 I TRANSFERRED FROM THERE TO FRANCE AND TO A MILITARY
25 POLICE UNIT THERE. AND WHILE THERE, I GOT CAUGHT UP IN THE

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1 IDEA OF BEING AN INVESTIGATOR AND I PUT IN AN APPLICATION WITH
2 THE PROVOST MARSHAL GENERAL OF THE ARMY AND WAS ACCEPTED AS AN
3 APPRENTICE CRIMINAL INVESTIGATOR IN 1964 OR '65.

4 IN 1967, WE WERE KIND OF POLITELY ASKED TO LEAVE
5 FRANCE, AND I TRANSFERRED TO BAMBURG, GERMANY, TO A CID OFFICE
6 THERE. I WORKED CRIMINAL INVESTIGATIONS FOR ALMOST A YEAR AND
7 THEN TRANSFERRED BACK TO FORT BRAGG AND STAYED THERE UNTIL
8 1971, '72, WHEN I TRANSFERRED TO THE REPUBLIC OF VIETNAM.

9 AND FROM THERE I WENT BACK TO GERMANY AND WORKED AT
10 THE HEADQUARTERS OF THE SECOND CID REGION IN HEIDELBURG, WHERE
11 I WAS DEPUTY CHIEF AND THEN CHIEF OF AN UNDERCOVER NARCOTICS
12 UNIT THERE. AND FROM THERE I WAS TRANSFERRED TO FORT HOOD,
13 TEXAS, FOR A SHORT PERIOD. AND SHORTLY AFTER THAT, I RETIRED.

14 Q. SO, HOW LONG DURING YOUR CAREER WITH THE ARMY WERE YOU A
15 CID INVESTIGATOR?

16 A. FROM 1964 UNTIL 1980, '81.

17 Q. AND WHEN YOU RETIRED FROM THE ARMY, WHAT WAS YOUR FINAL
18 RANK?

19 A. I WAS A CHIEF WARRANT OFFICER, CW-3.

20 Q. AND TO BECOME A CID INVESTIGATOR, DID YOU HAVE TO GO
21 THROUGH TRAINING?

22 A. OH, YES. I ATTENDED THE BASIC CRIMINAL INVESTIGATION
23 COURSE, AGAIN, AT FORT GORDON, GEORGIA. AGAIN, FROM THERE, I
24 WENT BACK TO FORT BRAGG.

25 Q. AND WAS IT A PREREQUISITE THAT YOU SPENT TIME AS AN M.P.

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1 BEFORE BECOMING A CID AGENT?

2 A. AT THAT TIME, YES.

3 Q. AND YOU MENTIONED THAT YOU SERVED IN VIETNAM --

4 A. YES.

5 Q. -- IS THAT RIGHT? AND DO YOU HAVE A PURPLE HEART?

6 A. YES, MA'AM.

7 Q. AND THAT'S FROM YOUR SERVICE IN VIETNAM?

8 A. I'M SORRY?

9 Q. AND THAT'S FROM YOUR SERVICE IN VIETNAM?

10 A. YES.

11 Q. DURING YOUR CAREER, ABOUT HOW MANY CASES WOULD YOU SAY
12 YOU'VE BEEN INVOLVED IN INVESTIGATING?

13 A. I'D HAVE TO SAY IN THE HUNDREDS. THAT'S ALL I CAN SAY.
14 I CAN'T BE MORE SPECIFIC THAN THAT.

15 Q. AND IN 1970, YOU WERE INVOLVED IN THE MACDONALD CASE, IS
16 THAT RIGHT?

17 A. YES, I WAS.

18 Q. AND THAT WAS ACTUALLY ON FORT BRAGG?

19 A. YES.

20 Q. AND AT THAT TIME, WHAT WAS YOUR MILITARY GRADE?

21 A. AT THAT TIME?

22 Q. AT THAT TIME.

23 A. AT THE TIME THE INCIDENT HAPPENED, I WAS A SPECIALIST
24 SEVEN OR AN E-7, SERGEANT FIRST CLASS, MAYBE YOU MIGHT WANT TO
25 CALL IT.

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1 Q. AND FOR THOSE NOT IN THE KNOW, WHAT DOES THAT MEAN? WHAT
2 DOES THAT MEAN AS FAR AS YOUR RANK?

3 A. WELL, AN E-7 IS -- IN THE CID IS A SENIOR ENLISTED AGENT.
4 THE RANKS RUNNING THEREFROM WITHIN CID RUN FROM SPECIALIST
5 FOUR, E-4, TO SPECIALIST SEVEN, E-7, AND THEN INTO THE WARRANT
6 RANKS.

7 Q. AND DURING THE TIME OF THE MACDONALD CASE, WERE YOU
8 PRIMARILY RESPONSIBLE FOR ORGANIZING THE CRIME SCENE
9 INVESTIGATION?

10 A. YES, I WAS. YES.

11 Q. AND AS A PART OF THAT INVESTIGATION, WERE THERE CRIME
12 SCENE PHOTOS TAKEN?

13 A. I'M SORRY, I DIDN'T CATCH THE LAST PART.

14 Q. AS A PART OF THE INVESTIGATION, THERE WERE A LOT OF
15 DIFFERENT CRIME SCENE PHOTOS TAKEN, IS THAT RIGHT?

16 A. OH, YES. YES, MA'AM.

17 Q. AND SOME OF THOSE WERE TAKEN BEFORE YOU STARTED TO
18 COLLECT THE EVIDENCE, IS THAT RIGHT?

19 A. YES.

20 Q. AND SOME WERE TAKEN DURING THE COLLECTION OF THE
21 EVIDENCE?

22 A. THAT'S CORRECT.

23 Q. AND SO SOME OF THE PHOTOS DEPICT THE MARKINGS THAT YOU
24 USED TO COLLECT THE EVIDENCE AT THE CRIME SCENE, IS THAT
25 RIGHT?

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1 A. WOULD YOU GO OVER THAT ONE MORE TIME? I HAVE SOME
2 HEARING LOSS, AGAIN, FROM VIETNAM, SO I CAN'T QUITE CATCH
3 EVERYTHING YOU'RE SAYING.

4 Q. SURE. SOME OF THE CRIME SCENE PHOTOS HAVE MARKINGS THAT
5 YOU MADE OR THE OTHER INVESTIGATORS MADE WHEN TRYING TO
6 COLLECT THE EVIDENCE AT THE CRIME SCENE?

7 A. THAT IS CORRECT.

8 Q. AND --

9 MS. FAULK: SIR, THERE'S A SPEAKER RIGHT HERE THAT
10 MAY HELP YOU HEAR THINGS.

11 BY MS. COOLEY:

12 Q. AND FAIR TO SAY THAT THERE WERE A LOT OF CRIME SCENE
13 PHOTOS THAT WERE TAKEN?

14 A. YES. YES.

15 Q. AND YOU'VE HAD A CHANCE TO REVIEW THOSE PHOTOS SINCE THE
16 1970S, DURING THE PERIOD OF THE INVESTIGATION AND TRIAL, IS
17 THAT RIGHT?

18 A. YES, MA'AM, I HAVE.

19 Q. RECENTLY YOU'VE HAD A CHANCE TO REVIEW THOSE?

20 A. YES, I HAVE.

21 Q. AND I'M GETTING READY TO SHOW YOU A COUPLE OF THOSE
22 PHOTOS, CERTAINLY NOT ALL OF THEM. HOW MANY --

23 MADAM CLERK: THIS MAY HELP YOU AS WELL. THIS MAY
24 HELP YOU AS WELL.

25 THE WITNESS: I'M SORRY?

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1 MADAM CLERK: THIS MAY HELP YOU AS WELL IF YOU WANT
2 TO TRY THOSE.

3 THE WITNESS: OKAY. MAYBE WE CAN GET ALONG WITH
4 THIS.

5 MADAM CLERK: OKAY.

6 THE WITNESS: THANK YOU.

7 BY MS. COOLEY:

8 Q. SUFFICE IT TO SAY, THERE WERE A LOT OF CRIME SCENE PHOTOS
9 TAKEN?

10 A. YES, THERE WERE.

11 Q. AND HOW MANY PHOTOGRAPHERS WERE THERE?

12 A. THERE WERE THREE.

13 Q. AND EACH ONE OF THEM TOOK THEIR OWN SET OF PHOTOS?

14 A. YES. THE FIRST PHOTOGRAPHER THERE WAS THE -- HE WAS A
15 PHOTOGRAPHER ASSIGNED TO THE CID OFFICE. I BROUGHT HIM OUT.
16 IN FACT, HE WAS ONE OF THE FIRST PEOPLE THAT WAS NOTIFIED THAT
17 WE HAD A CRIME SCENE THAT WE NEEDED PHOTOGRAPHED. AND WHEN HE
18 ARRIVED AT THE SCENE, HE DIDN'T HAVE ANY COLOR FILM WITH HIM
19 FIRST OF ALL AND --

20 Q. AND WHY WAS THAT IMPORTANT?

21 A. I WANTED A TRUE REPRESENTATION OF WHAT I SAW IN THAT
22 HOUSE THAT NEEDED TO BE CARRIED ON AND I NEEDED AND REALLY
23 WANTED COLOR FILM. I THOUGHT IT WAS IMPERATIVE TO HAVE IT.

24 THE PHOTOGRAPHER STARTED TAKING SOME PHOTOGRAPHS AND
25 HE WAS NOT A VERY SEASONED PHOTOGRAPHER IN DEALING WITH

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1 VIOLENT CRIMES. HE HAD NOT SEEN MANY OF THEM.

2 AND WHEN HE SAW WHAT WAS AT THAT CRIME SCENE IT GOT
3 TO HIM AND HE WAS FEELING ILL. SO, I GOT HIM OUT OF THE HOUSE
4 RIGHT AWAY BECAUSE I DIDN'T WANT ANYTHING HAPPENING IN THE
5 CRIME SCENE PROPER.

6 Q. AND WHAT WAS HIS NAME?

7 A. JAMES ALEXANDER. HE WAS A STAFF SERGEANT. WHEN I SAW
8 THAT THIS WAS THE SITUATION, I THEN CALLED THE DUTY OFFICER AT
9 HEADQUARTERS FOR FORT BRAGG AND REQUESTED THAT HE NOTIFY THE
10 CHIEF OF THE PHOTO LAB THERE THAT I NEEDED A PHOTOGRAPHER OUT
11 AT THE CRIME SCENE.

12 AND WITHIN 10 TO 15 MINUTES, THE GENTLEMAN LIVED
13 NEARBY, HE WAS THERE. HIS NAME WAS MR. SQUIRES. AND THE
14 THIRD PHOTOGRAPHER WAS THE PHOTOGRAPHER FROM THE CRIME
15 LABORATORY. WE HAD REQUESTED A TEAM COME UP FROM THE CRIME
16 LAB --

17 Q. AT FORT GORDON?

18 A. AT FORT GORDON, YES, TO HELP US WITH THE PROCESSING AND
19 THE COLLECTING OF EVIDENCE.

20 Q. AND SO A COMBINATION OF THOSE THREE PHOTOGRAPHERS
21 PRODUCED A GREAT MANY PHOTOS, IS THAT CORRECT?

22 A. A GREAT MANY, YES, MA'AM.

23 Q. AND AT THE TRIAL OF THIS CASE YOU TESTIFIED TO A LOT OF
24 THOSE PHOTOS, IS THAT CORRECT?

25 A. YES, SIR -- YES, MA'AM, I DID.

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1 Q. IT'S ALL RIGHT. AND I WANT TO PUT A FEW UP ON THE SCREEN
2 AND HAVE YOU WALK US THROUGH THE IMPORTANCE OF THE PHOTOGRAPH
3 WITH RESPECT TO THE COLLECTION OF THE EVIDENCE THAT WAS
4 REPRESENTED IN THAT PHOTOGRAPH.

5 A. YES, THEY HAD TO COMPLEMENT ONE ANOTHER. YES.

6 Q. IF I COULD HAVE GOVERNMENT EXHIBIT 161. AND, MR. IVORY,
7 IF YOU COULD JUST EXPLAIN WHAT WE'RE LOOKING AT IN THIS
8 PHOTOGRAPH.

9 A. IT IS THE RESIDENCE WITHIN THE HOUSING AREA OF FORT
10 BRAGG. IT'S THE RESIDENCE OF THE MACDONALD FAMILY AND ALSO
11 THE KALIN FAMILY.

12 (GOVERNMENT EXHIBIT NUMBER 161
13 WAS IDENTIFIED FOR THE RECORD.)

14 Q. AND WHICH RESIDENCE WAS THE MACDONALD RESIDENCE AND WHICH
15 RESIDENCE WAS THE KALIN RESIDENCE?

16 A. I'M SORRY. PLEASE, AGAIN.

17 Q. WHICH -- THERE'S A RED OUTLINE IN THIS PHOTO, IS THAT
18 RIGHT?

19 A. YES. YES.

20 Q. WHAT RESIDENCE IS OUTLINED?

21 A. THAT OUTLINES THE APARTMENTS. THE UPPER FLOOR IS THE
22 APARTMENT OR PART OF THE APARTMENT OF THE KALIN FAMILY WHO
23 LIVED NEXT DOOR. AND THAT SECTION IN THE LOWER PART, DOWN
24 HERE, THAT IS THE MACDONALD RESIDENCE.

25 Q. OKAY. AND I'M GOING TO ASK YOU TO SPEAK INTO THE

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1 MICROPHONE, IF YOU WOULD.

2 A. YEAH. THAT IS -- WHAT I JUST OUTLINED THERE IS OR WAS
3 THE MACDONALD RESIDENCE AT 544 CASTLE DRIVE.

4 Q. AND IF I COULD HAVE GOVERNMENT 164.

5 A. THAT IS ANOTHER SHOT OF THE FRONT OF THE MACDONALD
6 QUARTERS.

7 (GOVERNMENT EXHIBIT NUMBER 164
8 WAS IDENTIFIED FOR THE RECORD.)

9 Q. SO, FAIR TO SAY THEY WERE DUPLEXES?

10 A. YES.

11 Q. AND GOVERNMENT 165?

12 A. THAT SHOT DEPICTS THE REAR OF THE BUILDING AND THE REAR
13 OF THE MACDONALD QUARTERS. THE DOORWAY THERE, RIGHT THERE, IS
14 THE DOORWAY THAT LEADS INTO A UTILITY ROOM, WHICH WAS A WASH
15 OR LAUNDRY ROOM, AND ON IN TO THE HOUSE ITSELF, THE MASTER
16 BEDROOM AND THE HOUSE PROPER.

17 (GOVERNMENT EXHIBIT NUMBER 165
18 WAS IDENTIFIED FOR THE RECORD.)

19 Q. SO, THAT DOOR LEADS INTO THE UTILITY ROOM THAT LEADS TO
20 THE MASTER BEDROOM?

21 A. EXACTLY.

22 MS. COOLEY: IF WE COULD PRESERVE THAT AS 165A.

23 (GOVERNMENT EXHIBIT NUMBER 165A
24 WAS IDENTIFIED FOR THE RECORD.)

25 (PAUSE.)

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1 MADAM CLERK: IT'S DONE.

2 MS. COOLEY: THANK YOU.

3 BY MS. COOLEY:

4 Q. AND IF WE COULD HAVE GOVERNMENT 652. AND IF YOU COULD
5 JUST WALK US THROUGH WHAT WE'RE LOOKING AT HERE.

6 A. THAT IS THE FLOOR PLAN OF THE MACDONALD QUARTERS SHOWING
7 THE LOCATION OF THE MASTER BEDROOM, THE SOUTH BEDROOM OF
8 KIMMY, THE NORTH BEDROOM OF KRISSY, AND THE LIVING ROOM,
9 DINING ROOM AND KITCHEN. THAT IS A REPRESENTATION OF THE
10 MACDONALD QUARTERS.

11 (GOVERNMENT EXHIBIT NUMBER 652
12 WAS IDENTIFIED FOR THE RECORD.)

13 Q. AND THE DOOR THAT WE WERE JUST LOOKING AT IN GOVERNMENT'S
14 165, THE DOOR THAT YOU JUST MARKED, WHERE IS THE DOOR TO THE
15 UTILITY ROOM TO THE OUTSIDE?

16 A. IT'S RIGHT THERE.

17 MS. COOLEY: IF WE COULD PRESERVE THAT AS 652A.

18 (GOVERNMENT EXHIBIT NUMBER 652A
19 WAS IDENTIFIED FOR THE RECORD.)

20 (PAUSE.)

21 MADAM CLERK: IT'S DONE.

22 MS. COOLEY: THANK YOU.

23 BY MS. COOLEY:

24 Q. GOVERNMENT 2138, PLEASE. AND IF YOU COULD EXPLAIN, IT
25 LOOKS LIKE THIS IS THE SAME OUTLINE OF THE HOUSE, BUT THERE IS

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1 SOME ADDITIONAL INFORMATION THERE. IF YOU COULD EXPLAIN WHAT
2 WE'RE LOOKING AT.

3 A. THIS PARTICULAR PHOTO DEPICTS THE BLOOD DISTRIBUTION
4 THROUGHOUT THE HOUSE. WE HAD A KIND OF UNIQUE SITUATION IN
5 HERE WHERE FOUR MEMBERS OF THE FAMILY EACH HAVING THEIR OWN
6 DISTINCT BLOOD TYPE. AND SO THAT MADE IT SOMEWHAT EASIER TO
7 TRACK THROUGH THE HOUSE ACTIVITIES AS WE PERCEIVED THEM TO
8 HAVE HAPPENED THAT MORNING. IT ALSO SHOWS THE FINAL RESTING
9 PLACES OF THE BODIES OF KRISSY, KIMMY AND COLETTE.

10 (GOVERNMENT EXHIBIT NUMBER 2138
11 WAS IDENTIFIED FOR THE RECORD.)

12 Q. DOES IT ALSO REPRESENT EACH FAMILY MEMBER'S BLOOD TYPE AT
13 THE BOTTOM?

14 A. YES, IT DOES. COLETTE MACDONALD HAD BLOOD TYPE A.
15 JEFFREY MACDONALD WAS BLOOD TYPE B. KIMMY WAS BLOOD TYPE AB
16 AND KRISSY WAS TYPE O. AND THERE'S ALSO -- IT INDICATES HERE
17 SOME EVIDENCE THAT WE COLLECTED. THESE WERE THE WEAPONS THAT
18 WERE USED.

19 Q. AND THOSE ARE OUTSIDE OF THE HOUSE, IS THAT RIGHT?

20 A. THEY WERE. YES, THEY WERE FOUND OUTSIDE OF THE HOUSE.
21 WELL, NOT ALL OF THEM. TWO OF THE SHARP INSTRUMENTS WERE
22 FOUND OUT THERE AND THE CLUB THAT WAS USED WAS ALSO FOUND JUST
23 OUTSIDE THE BACK DOOR.

24 Q. DOES THIS DIAGRAM ALSO REPRESENT WHERE MR. MACDONALD WAS
25 FOUND BY THE M.P.'S WHO RESPONDED?

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1 A. YES, IT DOES. RIGHT THERE IN THE MASTER BEDROOM.

2 Q. IF I COULD HAVE GOVERNMENT 21, PLEASE. AND WHAT ARE WE
3 LOOKING AT HERE?

4 A. THIS PHOTO DEPICTS THE LIVING ROOM OF THE HOUSE, TAKEN
5 FROM PRETTY CLOSE TO WHERE THE FRONT DOOR WAS, SHOOTING TO THE
6 NORTH, SHOOTING TO THE NORTH. THE TELEVISION SET IS THERE AND
7 A SPEAKER WITH A PLANT ON IT IS HERE. AND THAT'S ALL OF WHICH
8 WAS IN THAT PHOTO.

9 (GOVERNMENT EXHIBIT NUMBER 21
10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. NOW, THE FRONT DOOR AT THE TIME OF THE MURDERS, WAS THAT
12 LOCKED?

13 A. YES, THAT WAS MY UNDERSTANDING IT WAS LOCKED.

14 Q. AND IN THIS PHOTO, ON TOP OF THE TELEVISION IS THERE ALSO
15 A CLIPBOARD THERE?

16 A. YES, THERE IS.

17 Q. AND IS THAT ARTIFACT, MEANING WAS THAT BROUGHT IN TO THE
18 CRIME SCENE BY THE CID OR ANOTHER AGENT?

19 A. THAT WAS BROUGHT IN EITHER BY AN M.P. OR ONE OF THE CID
20 GUYS. I SAY THAT BECAUSE YOU SEE A TRAFFIC ACCIDENT TEMPLATE
21 ON THE CLIPBOARD.

22 Q. IF I COULD HAVE GOVERNMENT 22.

23 A. THIS IS A CONTINUATION OF A 360 DEGREE COVERAGE OF THAT
24 ROOM AND IT JUST FOLLOWS FROM WHERE THE OTHER PHOTO LEAVES OFF
25 AND IT SHOWS THE AREA THAT LEADS TO THE DINING ROOM OF THE

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1 HOUSE.

2 (GOVERNMENT EXHIBIT NUMBER 22
3 WAS IDENTIFIED FOR THE RECORD.)

4 Q. FAIR TO SAY IT'S FAIRLY TIGHT QUARTERS?

5 A. OH, YES. OH, YES.

6 Q. IF I COULD HAVE GOVERNMENT 28.

7 A. THIS IS A PHOTOGRAPH OF THE DINING ROOM AND IT WAS AS I
8 FOUND IT WHEN I FIRST ARRIVED.

9 (GOVERNMENT EXHIBIT NUMBER 28
10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. I WANT TO DRAW YOUR ATTENTION TO THE SIDEBOARD THERE WITH
12 THE LAMP ON IT.

13 A. YES, MA'AM.

14 Q. WHAT'S NOTABLE ABOUT THE CONTENTS OF THAT SIDEBOARD?

15 A. THERE IS A NUMBER OF GREETING CARDS, I THINK VALENTINES
16 OR SOME SORT OF GREETING CARDS ON THE SIDEBOARD.

17 Q. AND ARE THEY STANDING UPRIGHT?

18 A. I BEG YOUR PARDON?

19 Q. ARE THEY STANDING UPRIGHT?

20 A. YES, THEY'RE STANDING UPRIGHT. AND OVER ON THE RIGHT
21 SIDE OF THE PHOTOGRAPH YOU CAN SEE PART OF THE CHINA CABINET
22 WHERE IT HAD CRYSTAL, I BELIEVE, OR SILVER PLATED TRAYS IN
23 THERE.

24 Q. AND IS THE CANDLE -- ONE OF THE CANDLES ON THE DINING
25 ROOM TABLE THERE, IS IT TILTED?

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1 A. YES. THERE WERE CANDLES ALL OVER THE HOUSE. APPARENTLY,
2 THEY LIKED THE FRAGRANCES FROM THE CANDLES BECAUSE THERE WAS A
3 LOT OF CANDLES AND CANDLE WAX.

4 Q. IF I COULD HAVE GOVERNMENT 30. AND WHAT ARE WE LOOKING
5 AT HERE?

6 A. THIS IS A SHOT FROM THE DINING ROOM DOOR INTO THE
7 KITCHEN. IT'S JUST A -- A CABINET AND SINK HERE.

8 (GOVERNMENT EXHIBIT NUMBER 30
9 WAS IDENTIFIED FOR THE RECORD.)

10 Q. AND IF I COULD HAVE GOVERNMENT 33.

11 A. AND RIGHT THERE IS A NUMBER OF DROPLETS OF BLOOD. AND IN
12 THIS CABINET HERE, WHEN WE WENT IN THERE AND WE SEARCHED IT WE
13 FOUND SOME UTILITY MATERIALS, YOU KNOW, FOR CLEANING THE HOUSE
14 AND RUBBER GLOVES AND WE ALSO FOUND SOME BOXES OF PERRY BRAND
15 LATEX SURGEON'S GLOVES.

16 Q. UNDER THAT SINK RIGHT THERE?

17 A. YES.

18 Q. AND IF I COULD HAVE 33.

19 A. THIS IS A CLOSE UP OF THE BLOOD SPATTERS THAT WERE ON THE
20 FLOOR RIGHT IN FRONT OF THE KITCHEN CABINET.

21 (GOVERNMENT EXHIBIT NUMBER 33
22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. THAT YOU HAD JUST CIRCLED ON THE PREVIOUS EXHIBIT?

24 A. YES. NOW, THESE BLOOD TYPES WHEN THEY WERE LOOKED AT BY
25 THE BLOOD EXPERTS THAT CAME UP FROM THE LABORATORY, MR.

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1 CHAMBERLAIN, HE HAD ALSO STUDIED BLOOD PATTERNS OR BLOOD
2 SPATTER PATTERNS, AND IT WAS HIS OPINION THAT HE TOLD ME THAT
3 THESE BLOOD DROPS FELL FROM A HEIGHT OF MAYBE 18 INCHES AND
4 WASN'T -- DID NOT COME FROM A BODY OR ANYTHING THAT WAS
5 MOVING. THEY DROPPED FROM A STATIONARY PERSON OR --

6 Q. MEANING IT WASN'T SOMETHING LIKE AN ARTERIAL SPRAY?

7 A. YES, OR A MOVING BODY.

8 Q. AND DO YOU KNOW WHAT TYPE OF BLOOD WAS IN THOSE BLOOD
9 SPATTERS?

10 A. THAT WAS THE BLOOD TYPE OF JEFFREY MACDONALD.

11 Q. JEFFREY MACDONALD?

12 A. YEAH, TYPE B.

13 Q. AND IF I COULD HAVE GOVERNMENT'S 75. AND WHAT ARE WE
14 LOOKING AT HERE?

15 A. THIS IS AGAIN A PART OF THE CONTINUING 360 DEGREE
16 COVERAGE OF THE LIVING ROOM. IT DEPICTS A COUCH, AN
17 OVERTURNED COFFEE TABLE, SOME CLOTHING HERE IN THE HALLWAY.
18 AND DOWN HERE AT THE END OF THE HALLWAY, YOU CAN SEE -- BARELY
19 SEE THE BODY OF COLETTE MACDONALD AS SHE LAID IN THE MASTER
20 BEDROOM.

21 (GOVERNMENT EXHIBIT NUMBER 75

22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. SO, THIS IS BEFORE THE EVIDENCE WAS COLLECTED AND THE
24 BODIES REMOVED?

25 A. YES.

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1 Q. IF I COULD HAVE GOVERNMENT 26.

2 A. CONTINUING WITH THE 360 DEGREE COVERAGE OF THE LIVING
3 ROOM. IF WE LOOK AT THE BACK SIDE OF THAT OVERTURNED COFFEE
4 TABLE, YOU SEE A PAIR OF GLASSES HERE THAT WERE SHOWN TO BE --
5 BELONG TO JEFFREY MACDONALD, AND ON THE OUTER LENS OF IT IT
6 HAD A DROP OF BLOOD OF TYPE O OR THAT OF KRISTEN.

7 (GOVERNMENT EXHIBIT NUMBER 26
8 WAS IDENTIFIED FOR THE RECORD.)

9 Q. TYPE O BLOOD YOU SAID?

10 A. BEG YOUR PARDON?

11 Q. TYPE O BLOOD YOU SAID ON THE GLASSES?

12 A. YES. YES, MA'AM, TYPE O. ALSO NOTEWORTHY HERE IS THE
13 WAY THESE MAGAZINES, AND THIS WAS A CHILD'S GAME HERE, WERE
14 LAYING THERE. THERE WAS A MAGAZINE, AN *ESQUIRE* MAGAZINE, THAT
15 HAD AN ARTICLE IN IT ABOUT THE MANSON/TATE/LABIANCA MURDERS IN
16 LOS ANGELES AND IT WAS COVERED PARTLY BY -- I DON'T WANT TO
17 USE THAT -- THE CHILD'S GAME SORT OF LAID ACROSS PART OF THAT
18 MAGAZINE, THE COVER. AND THERE WAS ANOTHER PHOTO LATER ON AND
19 MAYBE I CAN REFER TO THAT ONE AND GO A LITTLE FURTHER IN WHAT
20 I'M TRYING TO DISCUSS NOW.

21 Q. OKAY.

22 A. IT'S THE ONE THAT SHOWED THE *ESQUIRE* MAGAZINE WITH THE
23 GAME ON IT.

24 Q. IF I COULD HAVE GOVERNMENT EXHIBIT 25.

25 A. ACTUALLY, THE POINT BEING THAT THE -- ON THE TITLE OF THE

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1 MAGAZINE, THE *ESQUIRE*, THE E-S, AS YOU CAN SEE, IS VISIBLE,
2 BUT OVER THE TWO LETTERS Q-U, THERE WAS A CONFIGURATION OF
3 WHAT LOOKED LIKE A FINGER, A BLOODY FINGER, AND I THINK THE
4 TYPES THERE WERE A AND AB.

5 (GOVERNMENT EXHIBIT NUMBER 25
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. A AND AB TYPES?

8 A. YES, A MIXTURE OF BLOOD THERE.

9 Q. AND WHO ARE TYPES A AND AB?

10 A. A WAS COLETTE AND AB WAS KIMMY.

11 Q. AND IF I COULD HAVE GOVERNMENT 27.

12 A. THAT'S A CLOSE UP OF THE EYE GLASSES I MENTIONED EARLIER.
13 AGAIN, ON THE OUTER LENS THERE WAS A BLOOD TYPE O.

14 (GOVERNMENT EXHIBIT NUMBER 27
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. AND GOVERNMENT 23?

17 A. THIS IS THE COUCH WITHIN THE MASTER BEDROOM. AND ONE OF
18 THE FIRST STORIES WE HEARD ABOUT THE OCCURRENCES THERE IN THE
19 HOUSE WAS THAT THIS WAS WHERE JEFFREY MACDONALD WAS SUPPOSED
20 TO HAVE BEEN LAYING SLEEPING.

21 Q. NOW, YOU JUST SAID THE COUCH IN THE MASTER BEDROOM. WAS
22 THIS THE LIVING ROOM?

23 A. EXCUSE ME. YES, THE LIVING ROOM.

24 (GOVERNMENT EXHIBIT NUMBER 23
25 WAS IDENTIFIED FOR THE RECORD.)

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1 Q. WHERE MR. MACDONALD SAID HE WAS ASLEEP?

2 A. MA'AM?

3 Q. WHERE MR. MACDONALD SAID THAT HE WAS ASLEEP?

4 A. YES. AND THAT'S ALSO WHERE HE SAID THAT HE HAD BEEN
5 ATTACKED BY A NUMBER OF MEN. WE DID SOME PRETTY EXTENSIVE
6 CRIME SCENE PROCESSING HERE LOOKING FOR DEBRIS WITHIN THAT
7 AREA BETWEEN THE COFFEE TABLE AND THE COUCH TRYING TO FIND
8 SOMETHING TO SUPPORT WHAT JEFFREY MACDONALD WAS TELLING US
9 AND WE FOUND NOTHING.

10 WE ACTUALLY GOT DOWN, MYSELF AND ONE OF THE
11 TECHNICIANS FROM THE CRIME LAB, YOU MIGHT EVEN SAY DICK TRACY
12 TYPE STUFF, WE WERE THERE WITH MAGNIFYING GLASSES AND WENT
13 THROUGH -- ACTUALLY WENT THROUGH THE PILE IN THE CARPET TRYING
14 TO FIND ANYTHING THAT COULD HAVE COME FROM THE ACTIVITIES
15 THERE IN THAT HOUSE AND WE COULD FIND NOTHING.

16 Q. AND THE LAMP'S UPRIGHT, THE PICTURES ARE STRAIGHT?

17 A. SAY THAT AGAIN.

18 Q. THE LAMP IS UPRIGHT, THE PICTURES ON THE WALL --

19 A. YES. YES.

20 Q. -- ARE HANGING STRAIGHT?

21 A. YES. YES.

22 Q. WITH RESPECT TO YOUR COLLECTION OF EVIDENCE BETWEEN THE
23 COUCH AND THE COFFEE TABLE, WERE THERE ANY THREADS?

24 A. THAT'S SPECIFICALLY WHAT WE WERE LOOKING FOR BECAUSE HE
25 HAD MENTIONED THAT HIS SHIRT HAD BEEN RIPPED ASUNDER FROM HIM

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1 AND ENDED UP AROUND HIS WRISTS. AND WHILE WE FOUND A
2 SIGNIFICANT AMOUNT OF THREADS ELSEWHERE IN THE HOUSE, WE
3 DIDN'T FIND ANY -- ANYTHING AT ALL HERE IN THIS AREA.

4 Q. NO THREADS AT ALL, PURPLE OR BLUISH?

5 A. NONE.

6 Q. AND IF I COULD HAVE GOVERNMENT 38.

7 A. THIS IS THE HALLWAY LEADING FROM THE LIVING ROOM TO THE
8 MASTER BEDROOM. YOU CAN SEE DOORS ON EITHER SIDE HERE. ONE
9 IS THE NORTH BEDROOM AND THE OTHER ONE IS THE SOUTH BEDROOM OF
10 THE TWO CHILDREN. AND STRAIGHT AHEAD IS THE MASTER BEDROOM
11 AND THEN YOU CAN SEE A LITTLE BIT BETTER THE BODY OF COLETTE
12 MACDONALD.

13 (GOVERNMENT EXHIBIT NUMBER 38

14 WAS IDENTIFIED FOR THE RECORD.)

15 Q. AND IN THE FOREGROUND OF THE PICTURE AT THE BOTTOM THERE,
16 WHAT'S THAT?

17 A. THAT'S -- THEY WERE SOME CHILDREN PAJAMA-TYPE ROBE THINGS
18 THAT YOU PUT THEM ON TO WATCH TV OR MAYBE GO TO BED, BUT THEY
19 LAY THERE IN THAT HALLWAY. AND, IN FACT, THE MEDICS, WHEN
20 THEY ROLLED A GURNEY OUT WITH JEFFREY MACDONALD LAYING ON IT
21 THEY HAD TO STEP OVER IT SO THEY WOULDN'T DISTURB IT OR IT
22 WOULDN'T GET CAUGHT UP IN THE GURNEY. AND SO BASICALLY THAT
23 IS WHAT THEY ARE.

24 Q. NOW, IF YOU COULD TELL US -- YOU MENTIONED THE NORTH AND
25 SOUTH BEDROOMS. CAN YOU SHOW US ON THIS DIAGRAM WHICH BEDROOM

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1 WAS KIM'S AND WHICH BEDROOM WAS KRISSY'S.

2 A. THIS WAS KRISSY'S BEDROOM ON THIS SIDE AND THIS WAS
3 KIMBERLEY'S.

4 Q. IF I COULD HAVE GOVERNMENT 39. AND WITH RESPECT TO THIS
5 PHOTO, WHAT ARE WE LOOKING AT?

6 A. THIS DEPICTS A LITTLE BIT CLOSER THE BODY OF COLETTE
7 MACDONALD AS IT WAS FOUND AND AS IT LAY IN THE MASTER BEDROOM.
8 YOU CAN SEE A THROW RUG HERE AND SOME BLUE MATERIAL THERE.
9 THIS WAS A PART OF THIS, WHAT WAS LATER IDENTIFIED AS A PAJAMA
10 SHIRT OR THE PAJAMA SHIRT OF JEFFREY MACDONALD. LAYING ACROSS
11 THE ABDOMEN OF COLETTE MACDONALD WAS WHAT WE CALLED THE HILTON
12 BATH MAT. IT HAD MARKINGS ON IT, A CONFIGURATION OF WHERE --
13 OF WHAT LOOKED LIKE A SHARP INSTRUMENT HAD BEEN WIPED CLEAN ON
14 IT. AND HER PAJAMAS WERE QUITE BLOODSTAINED. AND RIGHT HERE
15 BY HER FOOT THERE WAS THE POCKET OF THE PAJAMA SHIRT.

16 (GOVERNMENT EXHIBIT NUMBER 39
17 WAS IDENTIFIED FOR THE RECORD.)

18 Q. BY HER FOOT WAS THE POCKET OF A PAJAMA SHIRT?

19 A. PAJAMA SHIRT. YES, THAT WAS THE POCKET.

20 Q. AND IN THE BOTTOM -- IF YOU'RE FACING THE PICTURE, BOTTOM
21 RIGHT CORNER, IT LOOKS LIKE TO BE A PILE OF SOMETHING. CAN
22 YOU SEE THAT THERE?

23 A. YES. YOU CAN BARELY SEE IT, BUT THAT'S A PILE OF BEDDING
24 THAT WAS PULLED FROM THE MASTER BED AND LATER ON THE FLOOR
25 THERE WAS A SHEET. I THINK THERE WAS A BEDSPREAD IN THERE AS

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1 WELL. THERE ARE OTHER PHOTOS THAT SHOW IT A LOT CLEARER.

2 AND WHEN WE STARTED PROCESSING THE CRIME SCENE AND
3 PICKING UP EVIDENCE, I STARTED OPENING UP THE SHEET. AND WHEN
4 I DID, I NOTICED A NUMBER OF HAIRS AND THREADS, THE DARK
5 THREADS THAT LATER WERE IDENTIFIED AS COMING FROM THE BLUE
6 PAJAMA SHIRT. AND ONE THING THAT STRUCK ME IN PARTICULAR WAS
7 A WHOLE FINGER SECTION OF A LATEX SURGEON'S GLOVE, WHICH WAS
8 BLOODIED.

9 Q. AND IN A LITTLE BIT WE'LL TALK ABOUT THE COLLECTION OF
10 THAT BEDDING, BUT WE'LL GET TO THAT IN A DIFFERENT PICTURE.
11 IN THIS PHOTOGRAPH, CAN YOU ALSO SEE THE LAMP SHADE?

12 A. YES, THAT'S A LAMP SHADE THAT IS SITTING ON THE BEDSIDE
13 TABLE. YES, IT IS, SOMEWHAT ASKANCE, TIPPED.

14 Q. AND IF I COULD HAVE GOVERNMENT 40.

15 A. THIS IS A CLOSER VIEW OF THE BODY OF COLETTE MACDONALD.
16 YOU CAN MORE READILY SEE THAT HILTON BATH MAT AND YOU CAN SEE
17 THE TATTERED OR THE RIPPED PAJAMA SHIRT AS IT TRAILS OFF HER
18 BODY AND RIGHT THERE IS THE POCKET.

19 THIS IS THE WAY WE FOUND THE BED. NOW, OVER HERE
20 THERE WAS A URINE STAIN WHERE ONE OF THE CHILDREN HAD WET THE
21 BED. I BELIEVE IT WAS KIMMY'S BLOOD TYPE WAS FOUND THROUGH
22 THE URINE.

23 (GOVERNMENT EXHIBIT NUMBER 40
24 WAS IDENTIFIED FOR THE RECORD.)

25 Q. AND I'M GOING TO ASK YOU TO MAKE SURE TO KEEP YOUR VOICE

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1 UP CLOSE TO THE MICROPHONE SO THAT EVERYONE CAN HEAR.

2 A. YES, MA'AM.

3 Q. IF YOU COULD -- DOWN WHERE THE POCKET IS, IF YOU COULD
4 MAKE A P WITH YOUR FINGER?

5 A. ON THE POCKET?

6 Q. DOWN BESIDE THE POCKET, SO THAT WE CAN MARK THAT FOR THE
7 RECORD.

8 A. (WITNESS COMPLIES.)

9 MS. COOLEY: AND IF WE COULD PRESERVE THAT AS 40A.

10 (GOVERNMENT EXHIBIT NUMBER 40A

11 WAS IDENTIFIED FOR THE RECORD.)

12 THE WITNESS: NOW, THERE'S SOMETHING ELSE THAT WAS
13 NOTABLE ABOUT THAT POCKET. WHILE THE REST OF THE PAJAMA SHIRT
14 WAS JUST SOAKED IN BLOOD AND DISCOLORED WITH BLOOD, THIS WAS
15 RELATIVELY CLEAN, THE POCKET WAS.

16 BY MS. COOLEY:

17 Q. AND WHEN YOU SAY CLEAN YOU MEAN WITHOUT BLOOD?

18 A. YES, WITHOUT BLOOD -- NOT WITHOUT BLOOD, BUT WITH VERY
19 LITTLE.

20 Q. IF I COULD HAVE GOVERNMENT 41.

21 A. THIS IS ANOTHER VIEW OF THE BODY OF COLETTE MACDONALD AS
22 I FIRST SAW HER AND YOU CAN MORE CLEARLY SEE THE BLUE PAJAMA
23 SHIRT AS IT TRAILS OFF THE BODY. THIS PART OF THE CHAIR WAS
24 DISCOLORED WITH BLOOD.

25 (GOVERNMENT EXHIBIT NUMBER 41

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1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. AND UNDERNEATH THE WINDOW?

3 A. MA'AM?

4 Q. UNDERNEATH THE WINDOW?

5 A. YES. YEAH, THERE WERE BLOOD SPECKS HERE -- RIGHT IN HERE

6 AS BLOOD WAS SPLATTERED ON THE WALL.

7 Q. AND IS THERE ALSO SOMETHING VISIBLE UNDERNEATH THE

8 DRESSER?

9 A. YES. I WAS JUST GOING TO POINT IT OUT. THAT WAS

10 IDENTIFIED AS ONE OF THE MURDER WEAPONS. IT WAS UNIQUE IN

11 THAT IT HAD A CURVED BLADE. IT WASN'T MANUFACTURED WITH A

12 CURVED BLADE, BUT THE BLADE HAD BEEN BENT.

13 Q. AND DO YOU KNOW WHICH KNIFE THAT WAS?

14 A. THERE WERE TWO KNIVES FOUND. ONE WAS AN OLD HICKORY AND

15 I DON'T RECALL WHAT THE OTHER BRAND NAME WAS RIGHT NOW, BUT

16 THAT --

17 Q. GENEVA FORGE --

18 A. GENEVA FORGE, YES.

19 Q. -- DOES THAT RING A BELL?

20 A. THAT WAS THE GENEVA FORGE KNIFE.

21 Q. THIS ONE WAS THE GENEVA FORGE KNIFE?

22 A. YES, MA'AM.

23 THE COURT: LET'S TAKE A RECESS TILL 1:30.

24 (LUNCHEON RECESS FROM 11:59 A.M., UNTIL 1:29 P.M.)

25 (DEFENDANT PRESENT.)

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1 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE
2 SEATED AND WE'LL CONTINUE. YOU'RE STILL UNDER OATH, MR.
3 IVORY. THE WITNESS IS WITH MS. COOLEY.

4 MS. COOLEY: THANK YOU, YOUR HONOR.
5 BY MS. COOLEY:

6 Q. IF I COULD HAVE GOVERNMENT EXHIBIT 41, PLEASE. MR.
7 IVORY, IF YOU'D EXPLAIN THE EVIDENCE THAT WE'RE LOOKING AT IN
8 THIS PHOTO.

9 A. THIS IS THE BODY OF COLETTE MACDONALD AS SHE LAY ON THE
10 FLOOR, AS I FIRST OBSERVED HER WHEN I ARRIVED AT THE HOUSE.
11 WE HAVE THE PAJAMA SHIRT THAT'S ACROSS HER CHEST AND TRAILING
12 ON DOWN ACROSS THE FLOOR. WE HAVE THE PARING KNIFE THAT'S
13 OVER NEAR -- UNDERNEATH THIS DRESSER, WHICH WAS IDENTIFIED AS
14 ONE OF THE WEAPONS USED IN THE MURDERS. AND RIGHT HERE -- I'M
15 TRYING TO FIND EXACTLY WHICH ONE. IT MAY BE THERE. THERE'S
16 ANOTHER PIECE OF A LATEX SURGEON'S GLOVE, WHICH IS BLOODIED.

17 THERE ARE BLOOD SPATTERS ON THE -- I DON'T KNOW IF
18 IT'S ON THE HEATER. YEAH, I GUESS IT IS ON THE HEATER, WHICH
19 IS ON THE WALL. AND THERE'S ALSO BLOOD ON THE FRONT OF THE
20 CHAIR HERE.

21 THE HILTON BATH MAT IS OVER HER ABDOMEN AND, AS I
22 MENTIONED BEFORE, IT HAD SOMETHING IN THE CONFIGURATION OF
23 WHAT LOOKED LIKE A BLADED OBJECT HAD BEEN WIPED CLEAN.

24 HERE ON THE FOOTBOARD OF THE BED THERE IS A BLOODY
25 SMUDGE. YOU COULDN'T IDENTIFY IT AS A HAND PRINT. I DIDN'T

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1 SEE, NOR DID THE FINGERPRINT EXAMINER, SEE ANY RIDGE LINES IN
2 IT, BUT IT LOOKED LIKE THE CONFIGURATION OF A HAND ON THAT
3 FOOTBOARD. AND BASICALLY THAT'S WHAT THIS PHOTO SHOWS.

4 Q. IF I COULD HAVE GOVERNMENT 50. WHAT ARE WE LOOKING AT
5 HERE?

6 A. THIS IS THE PARING KNIFE, THE GENEVA FORGE PARING KNIFE,
7 WITH THE BENT BLADE THAT WAS FOUND THERE UNDERNEATH THAT
8 DRESSER.

9 (GOVERNMENT EXHIBIT NUMBER 50
10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. AND THAT'S THE MASTER BEDROOM?

12 A. MA'AM?

13 Q. MASTER BEDROOM?

14 A. IN THE MASTER BEDROOM, YES.

15 Q. IF I COULD HAVE GOVERNMENT 43. IS THIS A CLOSE UP OF
16 WHAT YOU WERE DESCRIBING EARLIER WITH THE PAJAMA TOP AND THE
17 HILTON BATH MAT VISIBLE?

18 A. SAY THAT AGAIN.

19 Q. IS THIS A CLOSE UP OF THE BODY OF COLETTE MACDONALD WITH
20 THE PAJAMA TOP AND THE HILTON BATH MAT VISIBLE?

21 A. YES, IT IS.

22 (GOVERNMENT EXHIBIT NUMBER 43
23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. NOW, IN THIS PICTURE -- YOU HAD POINTED OUT TO US IN THE
25 OTHER PICTURE. IN THIS PICTURE CAN YOU SEE THE PIECE OF THE

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1 LATEX GLOVE THAT WAS FOUND NEAR COLETTE'S BODY?

2 A. IT'S RIGHT THERE.

3 Q. AND DOES IT APPEAR THAT HER ARM IS RESTING ON TOP OF HER
4 HAIR THERE IN THIS PHOTO?

5 A. HER ARM IS RESTING ON HER HAIR? SAY THAT AGAIN.

6 Q. FROM THE PHOTO, CAN YOU TELL IF HER ARM IS RESTING ON TOP
7 OF HER HAIR?

8 A. WELL, THE BICEP, YES. YES, THE BICEP AREA IS.

9 MS. COOLEY: IF WE COULD PRINT THAT AS 43A, PLEASE.

10 (GOVERNMENT EXHIBIT NUMBER 43A

11 WAS IDENTIFIED FOR THE RECORD.)

12 BY MS. COOLEY:

13 Q. AND IF WE COULD HAVE 46.

14 MADAM CLERK: WAIT ONE SECOND.

15 (PAUSE.)

16 MADAM CLERK: OKAY. THANK YOU.

17 BY MS. COOLEY:

18 Q. IF WE COULD HAVE 46. AND WHAT'S DEPICTED IN THIS PHOTO?

19 A. THIS, AGAIN IN THE MASTER BEDROOM, IS THE HEADBOARD OF
20 THE BED WITH THE INSCRIPTION P-I-G OR PIG WRITTEN IN A
21 SIDEWAYS ANGLE. THERE ARE BLOOD SPATTERS ON THE WALL. AND
22 AGAIN, I WOULD NOTE, DOWN BEHIND THE HEADBOARD ON THE FLOOR,
23 BETWEEN THE HEADBOARD AND THE WALL, WE FOUND MORE OF THESE
24 BLUE PAJAMA FIBERS OR THREADS THAT WE HAD BEEN FINDING ALL
25 OVER THIS PART OF THE HOUSE.

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1 (GOVERNMENT EXHIBIT NUMBER 46

2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. AND IS THERE ALSO SOME BLOOD VISIBLE THERE ON THE BED, ON
4 THE SHEETS?

5 A. YES, THERE'S BLOOD THERE. YES. AND JUST OUT OF THE
6 FRAME IS WHERE THE URINE STAIN WAS ON THAT BED.

7 Q. FROM KIMBERLEY?

8 A. FROM KIMBERLEY, YES.

9 Q. IF I COULD HAVE GOVERNMENT'S 71. NOW, IN THIS PICTURE
10 COLETTE'S BODY HAS BEEN REMOVED FROM THE CRIME SCENE, IS THAT
11 RIGHT?

12 A. THAT'S RIGHT.

13 (GOVERNMENT EXHIBIT NUMBER 71

14 WAS IDENTIFIED FOR THE RECORD.)

15 Q. WERE YOU PRESENT WHEN HER BODY WAS REMOVED FROM THE
16 MASTER BEDROOM?

17 A. YES, I WAS PRESENT AND VERY CLOSE. YES.

18 Q. AND AS HER BODY WAS LIFTED UP, WHAT HAPPENED AT THAT
19 POINT?

20 A. WHEN THEY STARTED TO MOVE THE BODY TO PUT IT ON A GURNEY
21 TO TAKE IT OUT --

22 COURT REPORTER: I'M SORRY, SIR. I'M SORRY. CAN
23 YOU JUST BACK UP JUST A LITTLE BIT FROM THE MIC.

24 THE WITNESS: OKAY.

25 COURT REPORTER: THANK YOU.

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1 THE WITNESS: LET ME REGROUP HERE. WHEN THE MEDICS
2 STARTED TO MOVE HER BODY TO PUT IT ON THE GURNEY TO TAKE IT
3 OUT TO THE AMBULANCE, I WANTED TO SEE WHAT WAS UNDER THE BODY.
4 AND I WAS DOWN ON ONE KNEE, I WAS LOOKING REALLY CLOSELY AT
5 IT, AND WHEN THEY LIFTED IT UP, I SAW THERE WAS A BLOOD CLOT
6 UNDER HER HEAD, YOU CAN SEE IT THERE, AND STICKING OUT OF THIS
7 WAS ANOTHER ONE OF THE BLUE PAJAMA THREADS.

8 AND SO THAT DREW MY ATTENTION TO -- WE HAD ALREADY
9 OUTLINED THIS BODY. IT'S DIFFICULT TO SEE THE OUTLINE BECAUSE
10 IT WAS A SHAG CARPET AND IT'S DIFFICULT TO MAGIC MARK AROUND A
11 SHAG CARPET, BUT YOU CAN SEE A GENERAL BODY OUTLINE THERE.

12 AND AFTER THEY HAD REMOVED THE BODY, I WENT RIGHT --
13 IMMEDIATELY RIGHT TO THAT BODY OUTLINE AND FOUND SCATTERED
14 THROUGHOUT THE BODY OUTLINE ON THE FLOOR MORE OF THESE BLUE
15 THREADS AND SPLINTERS AND JUST DEBRIS THAT WAS NORMALLY ON THE
16 FLOOR, BUT WHAT GOT MY ATTENTION WAS THE AMOUNT OF THE BLUE
17 THREADS THAT I WAS FINDING THERE.

18 Q. AND HOW DID YOU COLLECT THOSE?

19 A. I COLLECTED -- WE HAD IN OUR CRIME SCENE PROCESSING KITS
20 SOME LITTLE PILL VIALS THAT WE GOT FROM THE HOSPITAL AND WHAT
21 WE DID IS -- WE ALSO HAD TWEEZERS AND WE WOULD GO TO WHATEVER
22 WE WANTED TO PICK UP, SO WE WOULDN'T CONTAMINATE IT OR CROSS-
23 CONTAMINATE IT, PICK IT UP, PUT IT IN THE BOTTLE. AND THAT'S
24 WHAT I WAS DOING WITH THE THREADS AND THE SPLINTERS AND THE
25 OTHER DEBRIS THAT WE WANTED TO COLLECT.

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1 MS. COOLEY: IF WE COULD PRESERVE THIS AS 71A.

2 THE WITNESS: AND IF I MAY, AFTER WE HAD PUT THESE
3 THINGS IN THE PILL BOTTLES, WE MARKED EITHER ON THE BOTTLE OR
4 ON A PIECE OF MASKING TAPE EXACTLY WHAT IT WAS WE WERE PICKING
5 UP, WHO WAS THERE PICKING IT UP, AND I WOULD PUT MY INITIALS
6 AND MR. SHAW WHO WAS ALSO WORKING IN THAT ROOM WITH ME PUT HIS
7 INITIALS, AND THAT'S HOW WE COULD IDENTIFY IT FROM OTHER
8 SAMPLES TAKEN IN OTHER PARTS OF THE HOUSE.

9 MADAM CLERK: OKAY.

10 MS. COOLEY: THANK YOU.

11 (PAUSE.)

12 BY MS. COOLEY:

13 Q. MR. IVORY, I'M GOING TO SHOW YOU WHAT IS ALREADY IN THE
14 RECORD OF THIS CASE FROM THE MALONE AFFIDAVIT AT NUMBER 32.
15 IT'S A PHOTOGRAPH. CAN YOU SEE THAT?

16 A. YES.

17 Q. AND I'M GOING TO ASK YOU TO DESCRIBE -- OR, RATHER, DO
18 YOU RECOGNIZE THE ITEMS IN THIS PHOTOGRAPH?

19 A. YES, I DO RECOGNIZE IT. THIS WAS A PIECE OF MASKING TAPE
20 THAT I PERSONALLY MARKED ON. I RECOGNIZE MY HANDWRITING. IT
21 SAYS FIBERS AND DEBRIS FROM AREA ON THE TRUNK AND LEGS OF THE
22 BODY IN THE MASTER BEDROOM. MY INITIALS AND THE DATE IT WAS
23 PICKED UP. THIS IS 16 MARCH. IT WAS LATER -- WE HAD THAT
24 CRIME SCENE LOCKED DOWN FOR MONTHS. AND SO WE KEPT GOING BACK
25 AND CONTINUOUSLY PROCESSING AND PICKING UP MORE EVIDENCE. AND

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1 THIS WAS PICKED UP ON THE 16TH OF MARCH AND IN PARENTHESES IS
2 THE NUMBER 14. THAT NUMBER 14 INDICATES THAT IT'S THE 14TH
3 ITEM IN THAT PARTICULAR DAY'S COLLECTION AND IT WAS SO NOTED
4 WHEN WE MADE THE PROPERTY RECEIPTS PRIOR TO SUBMITTING THEM TO
5 THE LAB. SO, THAT NUMBER 14 REFLECTS THIS PILL VIAL AND THE
6 CONTENTS AND IT MAKES IT DIFFERENT FROM ALL THE OTHERS THAT WE
7 HAD PICKED UP.

8 Q. AND SO WAS THE EVIDENCE ALL COLLECTED AND PACKAGED IN A
9 MANNER SIMILAR TO THIS ITEM --

10 A. YES.

11 Q. -- WHEN YOU COLLECTED IT AT THE CRIME SCENE?

12 A. YES. IT'S VERY TYPICAL.

13 Q. NOW, AT THE CRIME SCENE ON THE 17TH OF FEBRUARY OF 1970,
14 YOU MENTIONED THAT YOU COLLECTED SOME OF THE THREADS AND
15 FIBERS FROM THE BODY OUTLINE ON THAT DAY, IS THAT RIGHT?

16 A. YES, THAT'S CORRECT.

17 Q. AND THEN AT SOME POINT DID YOU COME BACK AND COLLECT
18 ADDITIONAL FIBERS OR OTHER DEBRIS FROM THIS SAME CRIME SCENE?

19 A. YES, I DID.

20 Q. AND HOW DID THAT COME ABOUT?

21 A. IT SEEMED ALMOST EVERY TIME WE WENT BACK INTO THE HOUSE,
22 WE WOULD GO BACK IN THAT ROOM, WE WOULD SEE MORE WITHIN THE
23 PILE CARPET. THE PILE WOULD MOVE AND ALL OF A SUDDEN WE'D SEE
24 ANOTHER BLUE THREAD STICKING UP OUT OF IT.

25 Q. FAIR TO SAY THAT SHAG CARPET CAN BE RELATIVELY LONG?

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1 A. OH, YES. IT WAS ABOUT AN INCH, INCH AND A HALF.

2 Q. AND SO THIS PARTICULAR ITEM WAS COLLECTED NOT ON THE DAY
3 AFTER THE MURDERS?

4 A. NO, IT WAS NOT. IT WAS ON THE 16TH OF MARCH.

5 Q. AND THIS IS GOVERNMENT EXHIBIT E-303 ALSO MARKED AS Q79.
6 DO YOU SEE THAT STICKER THERE?

7 A. YES, SIR -- YES, MA'AM, THAT'S WHAT IT IS.

8 Q. I'M GOING TO SHOW YOU NUMBER 33 FROM THE MALONE AFFIDAVIT
9 THAT IS ALREADY IN THE RECORD AND CAN YOU READ THAT?

10 A. I KEEP LOSING CONNECTION. AGAIN, THIS IS A PIECE OF
11 MASKING TAPE WITH MY HANDWRITING ON IT, WHICH I RECOGNIZE,
12 AGAIN, WITH FIBERS AND DEBRIS FROM AREA OF TRUNK AND LEGS OF
13 RUG UNDER BODY IN THE MASTER BEDROOM. AGAIN, WITH MY
14 INITIALS, THE INITIALS OF ROBERT SHAW, THE DATE OF THE 16TH OF
15 MARCH AND, AGAIN, THE NUMBER 14.

16 Q. AND E-303 AND Q79, THESE ARE THE SAME ITEMS THAT WE WERE
17 JUST LOOKING AT IN THE PREVIOUS PHOTO, IS THAT RIGHT?

18 A. YES, IT IS.

19 Q. AND THEN HAVE THE ITEMS THAT WERE PREVIOUSLY IN THE BAG
20 IN THE OTHER PHOTO NOW BEEN REMOVED?

21 A. I'M SORRY. I KEEP LOSING CONNECTION.

22 Q. HAVE THESE ITEMS BEEN REMOVED FROM THE BAG THAT HAS YOUR
23 MASKING TAPE ON IT?

24 A. YES. YES.

25 Q. AND THIS PARTICULAR PACKAGING THAT WE'RE LOOKING AT RIGHT

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1 NOW, YOU DID NOT PACKAGE IT THIS WAY?

2 A. NO, I DID NOT.

3 Q. ARE YOU AWARE WHO DID OR THIS HAPPENED AFTER YOU HAD IT?

4 A. SAY AGAIN, PLEASE.

5 Q. ARE YOU AWARE WHO DID THIS PACKAGING OR DID THIS HAPPEN
6 AFTER YOU WERE INVOLVED?

7 A. I'M LOOKING AT THE INITIALS. NO, I CAN'T SAY. I'M
8 SORRY.

9 Q. AND ONCE YOU COLLECTED AND PACKAGED ITEMS AT THE CRIME
10 SCENE, DID YOU ALSO MAINTAIN A LIST OF THOSE ITEMS?

11 A. OH, YES. YES, WE DID. AND THE MASTER LIST OF ALL THE
12 ITEMS THAT WE COLLECTED WOULD HAVE BEEN REFLECTED ON A
13 DEPARTMENT OF THE ARMY FORM 31, WHICH WAS AN EVIDENCE RECEIPT.

14 Q. IF I COULD HAVE GOVERNMENT 3033. AND DO YOU RECOGNIZE
15 WHAT THIS DOCUMENT IS?

16 A. THAT'S WHAT I WAS JUST MENTIONING. THIS IS THE MILITARY
17 POLICE RECEIPT FOR PROPERTY OR AS WE CALL IT THE EVIDENCE
18 RECEIPT.

19 (GOVERNMENT EXHIBIT NUMBER 3033
20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. AND PAGE TWO, PLEASE. AND THE ITEM THAT WE WERE JUST
22 LOOKING AT, THE PHOTOGRAPH OF, THAT WAS ITEM 14?

23 A. ITEM 14, YES.

24 Q. AND IS ITEM 14 ALSO REFLECTED ON THIS PROPERTY RECEIPT?

25 A. YES, IT'S ITEM NUMBER 16, QUANTITY OF ONE, A VIAL

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1 CONTAINING FIBERS AND DEBRIS. YES, THAT'S WHAT WAS REFLECTED
2 IN THE PHOTO.

3 Q. AND SO IT'S ITEM 16 ON THIS LIST, BUT IT REFERS TO
4 PARENTHESSES VIAL 14?

5 A. NO. NO. IT'S THE FIRST ONE, ITEM 14, THE VIAL
6 CONTAINING SCRAPINGS OF SUSPECTED BLOOD ON THE FOOTBOARD OF
7 THE BED.

8 Q. NOW, WE WERE JUST LOOKING AT E-303, IS THAT RIGHT?

9 A. YES.

10 Q. DO YOU SEE BESIDE NUMBER 16 THAT IT SAYS E-303 THERE?

11 A. ITEM NUMBER 16 IS A VIAL CONTAINING FIBERS AND DEBRIS
12 FROM THE RUG LOCATED UNDER THE TRUNK AND LEGS OF CADAVER, WITH
13 MY INITIALS, BOB SHAW'S INITIALS, THE DATE 16 MARCH '70, THE
14 DAY WE PICKED IT UP, AND ITEM NUMBER 14.

15 Q. AND THAT IS THE SAME AS YOUR MASKING TAPE ON THE ITEM
16 THAT WE JUST LOOKED AT IN THE PHOTOGRAPH?

17 A. YES, IT IS.

18 Q. THANK YOU. IF I COULD HAVE GOVERNMENT 55, PLEASE. NOW,
19 WE'RE IN A DIFFERENT ROOM NOW. WHICH ROOM IS THIS?

20 A. THIS IS THE SOUTH BEDROOM OR THE BEDROOM OF KIMMY
21 MACDONALD.

22 Q. AND TELL US WHAT WE'RE LOOKING AT.

23 A. WE'RE LOOKING AT THE BED FROM ROUGHLY NEAR THE DOOR TO
24 THE HALLWAY TO THE BEDROOM, LOOKING IN AN EASTERLY DIRECTION
25 -- NO, EXCUSE ME, A WESTERLY DIRECTION. YOU CAN'T SEE IT, BUT

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1 UNDER THE COVERS HERE IS THE BODY OF KIMBERLEY MACDONALD.

2 (GOVERNMENT EXHIBIT NUMBER 55

3 WAS IDENTIFIED FOR THE RECORD.)

4 Q. AND IS THAT A RECORD PLAYER IN THE FOREGROUND OF THIS
5 PHOTOGRAPH?

6 A. YES, IT IS.

7 Q. MAY I HAVE GOVERNMENT 56. AND THIS PHOTOGRAPH?

8 A. THIS IS THE PHOTOGRAPH TAKEN OF KIMBERLEY MACDONALD AS
9 SHE LAY IN HER BED. YOU SEE THE BEDDING IS TUCKED UNDERNEATH
10 HER BODY AND IT'S MADE TO LOOK LIKE SHE NEVER WOKE UP, LIKE
11 SHE WAS KILLED IN HER SLEEP.

12 THERE ARE A NUMBER OF THINGS THAT GET YOUR ATTENTION
13 WHEN YOU ACTUALLY SEE IT. FOR INSTANCE, THERE IS ALL THESE --
14 THE HAIRS HERE WERE SOAKED IN BLOOD, BUT, YET, THERE IS NO
15 CORRESPONDING WOUND REALLY CLOSE TO THOSE HAIRS.

16 WELL, BEHIND THIS PILLOW -- WHEN WE REMOVED THE
17 BODY, WE FOUND, AGAIN, MORE OF THESE BLUE THREADS UNDERNEATH
18 THE BEDDING WHEN WE PULLED IT DOWN. AND BEHIND THIS PILLOW WE
19 FOUND A LONG, BLOODY SPLINTER, WHICH CAME FROM THE CLUB THAT
20 WE FOUND LATER OUTSIDE OF THE HOUSE.

21 (GOVERNMENT EXHIBIT NUMBER 56

22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. AND YOU SAID THAT WAS UNDER THE PILLOW?

24 A. YES, DOWN THE BACK SIDE OF THE PILLOW. YES, BASICALLY,
25 THAT'S IT.

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1 Q. GOVERNMENT 57, PLEASE.

2 A. THIS IS A PHOTOGRAPH OF A DIFFERENT ANGLE OF, AGAIN, OF
3 THE BODY OF KIMMY. YOU CAN SEE THE WOUNDS TO THE SIDE OF HER
4 FACE. THAT WAS INFLICTED BY BLOWS FROM A WOODEN CLUB. AND,
5 AGAIN, IT LOOKS LIKE SHE HAD BEEN KILLED IN HER SLEEP AND HAD
6 NEVER WOKEN UP.

7 (GOVERNMENT EXHIBIT NUMBER 57
8 WAS IDENTIFIED FOR THE RECORD.)

9 Q. GOVERNMENT 215, PLEASE. AND IF YOU COULD EXPLAIN WHAT
10 WE'RE LOOKING AT HERE.

11 A. WE'RE LOOKING AT THE BED OF KIMBERLEY MACDONALD AFTER THE
12 BODY HAD BEEN REMOVED, AFTER THE SHEETS HAD BEEN PULLED DOWN
13 AND THE BODY HAD BEEN REMOVED AND PUT ON A STRETCHER AND TAKEN
14 TO THE HOSPITAL.

15 WHEN WE UNCOVERED THIS, THE SHEET -- BEFORE THE BODY
16 WAS MOVED, WE OUTLINED THE BODY, AND IT WAS A LITTLE EASIER TO
17 DO WITH THIS ON THE SHEET AS OPPOSED TO THE SHAG CARPET, AND
18 INDICATED THE RIGHT LEG, LEFT LEG, THE PILLOW LINES, AND AGAIN
19 IT WAS INITIALED BY MYSELF AND ALSO BOB SHAW.

20 (GOVERNMENT EXHIBIT NUMBER 215
21 WAS IDENTIFIED FOR THE RECORD.)

22 Q. AND MAY I HAVE GOVERNMENT 59. NOW, WE'RE IN A DIFFERENT
23 BEDROOM NOW ALSO.

24 A. MA'AM?

25 Q. WE'RE IN A DIFFERENT BEDROOM NOW?

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1 A. WE ARE. WE'RE NOW IN THE -- IT'S THE BEDROOM OF KRISSY
2 MACDONALD. I'M TRYING TO THINK. THE NORTH BEDROOM.

3 Q. AND --

4 A. AND IT SHOWS THE BODY LAYING ON THE BED. AGAIN, IT WAS
5 AS I HAD FIRST SEEN IT. OTHER ITEMS IN THERE WERE THIS
6 STUFFED -- GREAT BIG STUFFED TOY AND THERE WAS A LOT OF BLOOD
7 ON THE BED. THERE WAS OTHER BLOOD BACK DOWN HERE BEHIND THAT
8 BLANKET AND A BIG PUDDLE OF BLOOD HERE. THE MAJORITY OF THAT
9 BLOOD WAS FROM KRISSY. AND I THINK THERE'S ANOTHER PICTURE
10 THAT SHOWS THIS BLOOD STAIN HERE, WHICH WAS THE BLOOD STAIN OF
11 COLETTE MACDONALD. OH, AND THIS WAS A ROCKING HORSE. IT WAS
12 ALSO ONE OF THE TOYS SHE HAD. SHE HAD A GOOD ASSORTMENT OF
13 TOYS IN HER ROOM.

14 (GOVERNMENT EXHIBIT NUMBER 59
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. NOW, WHILE WE'RE ON THIS PICTURE, LET ME ASK YOU ABOUT
17 THE WINDOW, THE SHADES ON THE WINDOW. DO YOU NOTICE THAT
18 THEY'RE SOMEWHAT OPEN?

19 A. YES, IT IS. THE VENETIAN BLINDS ARE SOMEWHAT OPEN, YES.

20 Q. NOW, WERE YOU EVER AWARE OF A PHOTOGRAPH OR DID YOU SEE A
21 PHOTOGRAPH THAT HAD BEEN TAKEN FROM THE OUTSIDE OF THE WINDOW
22 LOOKING INTO THIS ROOM?

23 A. YES, I DID. IT WAS TAKEN BY A REPORTER FROM THE
24 *FAYETTEVILLE OBSERVER*, AND IT APPEARED IN, I THINK, THE NEXT
25 EDITION OF THE -- OF THAT NEWSPAPER.

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1 Q. AND DID --

2 A. AND WHEN IT DID, IT SHOWED FROM THE BEDROOM THIS HOBBY
3 HORSE OR WHATEVER YOU MIGHT WANT TO CALL IT, THE SPRING HORSE,
4 WONDER HORSE OR WHATEVER. YOU CAN SEE IT VERY CLEARLY THERE.

5 Q. IN THE PHOTOGRAPH THAT WAS IN THE PAPER?

6 A. YES.

7 Q. THANK YOU. MAY I HAVE GOVERNMENT 60. NOW, THIS IS
8 CLOSER UP. CAN YOU EXPLAIN TO US THE EVIDENCE THAT YOU WERE
9 JUST TRYING TO INDICATE IN THE PREVIOUS PHOTOGRAPH.

10 A. THE BLOOD STAIN OF COLETTE MACDONALD THAT I WAS
11 INDICATING EARLIER IS THIS BLOOD STAIN HERE. AND IT WAS
12 CONSIDERABLE BLOOD, WHERE SOMEONE HAD LAID AND BLED
13 EXTENSIVELY ON THAT SHEET. AGAIN, THIS IS HOW THE BODY LOOKED
14 WHEN I FIRST SAW IT WHEN I ARRIVED AT THE SCENE.

15 (GOVERNMENT EXHIBIT NUMBER 60
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. AND THEN WAS THERE ALSO BLOOD FOUND ON THE WALL THERE?

18 A. OH, YES. THERE WAS SPRINKLED BLOOD. IT WAS OPINED BY
19 THE PEOPLE WHO LOOKED AT IT FROM THE LABORATORY THAT IT WAS
20 CAUSED BY THE SWINGING OF AN OBJECT LIKE A CLUB THAT HAD BLOOD
21 ADHERING TO IT AND THAT SPLATTERED ON THE WALL. AND YOU CAN
22 SEE THE TRACKS, IN WHICH DIRECTION IT WAS GOING. IT WAS GOING
23 FROM CEILING TO THE BED.

24 Q. AND ARE YOU AWARE OF WHOSE BLOOD THAT THAT WAS?

25 A. IT WAS THE BLOOD, I BELIEVE, OF COLETTE MACDONALD.

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1 Q. IF I COULD HAVE GOVERNMENT'S 70. NOW, YOU WERE TALKING
2 TO US EARLIER ABOUT THE BLOOD THAT'S ON THE FLOOR HERE. IS
3 THAT --

4 A. YES, THIS IS THE BLOOD THAT WAS ON THE FLOOR. IT'S THE
5 BLOOD OF KRISSY. NOW, IN THIS PICTURE YOU CAN SEE IT'S A
6 LITTLE BIT DIFFERENT FROM THE PICTURE BEFORE. THIS WAS TAKEN
7 AFTER -- THERE WAS A DOCTOR FROM THE HOSPITAL THAT CAME DOWN.
8 WE HAD HIM BROUGHT DOWN TO THE SCENE TO MAKE AN OFFICIAL
9 PRONOUNCEMENT OF DEATH. THEY HAD ALREADY BEEN LOOKED AT BY
10 MEDICAL PERSONNEL WHO HAD SAID, YOU KNOW, THESE FOLKS ARE ALL
11 DEAD. HE WAS -- NOW, THIS DOCTOR WAS TOLD DON'T TOUCH
12 ANYTHING, NOTHING AT ALL.

13 AND WE BROUGHT HIM IN THIS ROOM FIRST, AND HE WENT
14 TO THE BODY AND HE STARTED MOVING IT AND I SHUT HIM DOWN
15 THERE, I SAID STOP MOVING THE BODY. HE SAID, WELL, I HAVE TO
16 MOVE THE BODY SO I CAN SEE WHAT CAUSED THE DEATH. AND I TOLD
17 HIM, RIGHT AT THIS POINT, I DON'T NEED TO KNOW THE CAUSE OF
18 DEATH I JUST NEED TO KNOW IF DEATH IS PRESENT. AND HE SAID,
19 OH, OKAY. AND HE GOT THE PICTURE THEN THAT WE WOULD FIND OUT
20 THE CAUSE OF DEATH WHEN AN AUTOPSY WAS CONDUCTED.

21 (GOVERNMENT EXHIBIT NUMBER 70
22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. AND THE PREVIOUS PHOTOGRAPH, THAT WAS BEFORE HE HAD MOVED
24 THE BODY?

25 A. YES.

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1 Q. MAY I HAVE GOVERNMENT 63. NOW, IS THIS THE END OF
2 KRISTEN'S BED?

3 A. YES. THIS IS THE END OF THE BED AND THE SPACE BETWEEN IT
4 AND A SERIES OF SHELVES THAT HAD A LOT OF HER TOYS IN IT.

5 (GOVERNMENT EXHIBIT NUMBER 63
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. AND VISIBLE IN THE VERY FOREGROUND AT THE BOTTOM, CAN YOU
8 SEE THE BACK OF THE HORSE THAT WAS IN THE PREVIOUS PHOTOGRAPH?

9 A. YES, YOU CAN SEE THE BACK OF THE HORSE. YOU CAN SEE THE
10 SPRING AND ANOTHER SPRING OVER HERE.

11 Q. AND IN THIS PICTURE, DO ANY OF THOSE SPRINGS APPEAR TO BE
12 BROKEN TO YOU?

13 A. NO, THEY DON'T. NONE OF THE SPRINGS WERE BROKEN. IT WAS
14 INTACT.

15 Q. AND MAY I HAVE GOVERNMENT 145. AND IS THIS THE FRONT OF
16 THAT SAME HORSE?

17 A. YES, THIS IS THE FRONT. AGAIN, YOU CAN SEE THE SPRINGS
18 AND THE ENTIRE TOY WAS INTACT.

19 (GOVERNMENT EXHIBIT NUMBER 145
20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. GOVERNMENT 72, PLEASE. AND WHAT ARE WE LOOKING AT HERE?

22 A. THIS IS AFTER THE BODY OF THE BABY HAD BEEN TAKEN AND PUT
23 IN THE AMBULANCE. NOW, AGAIN, BEFORE IT WAS MOVED, THE BODY
24 WAS OUTLINED AND THE SHEET LINE WAS OUTLINED, YEAH, AND IT WAS
25 INITIALED BY MYSELF AND AGENT PAUL CONNELLY.

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1 (GOVERNMENT EXHIBIT NUMBER 72

2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. AND THOSE SHEETS WERE LATER COLLECTED. THEY WEREN'T LEFT
4 AT THE CRIME SCENE?

5 A. MA'AM?

6 Q. THOSE SHEETS WERE LATER COLLECTED. THEY WERE NOT LEFT AT
7 THE CRIME SCENE?

8 A. OH, NO. EVERYTHING HERE WAS COLLECTED. EVERYTHING.

9 Q. GOVERNMENT 65, PLEASE. WHAT ARE WE LOOKING AT HERE?
10 WELL, FIRST OF ALL, CAN YOU ORIENT US TO WHICH ROOM WE'RE IN?

11 A. WE'RE STILL IN THE BEDROOM OF KRISSY MACDONALD. IT'S THE
12 FLOOR JUST BEYOND THE BED ON THE WAY BACK TO THE DOORWAY.
13 THERE'S THE DOORWAY. I THINK THERE WERE TWO FOOTPRINTS HERE
14 AND ONE THAT -- ANOTHER THAT LED OUT TO THE HALLWAY.

15 (GOVERNMENT EXHIBIT NUMBER 65

16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. NOW, WE'RE GOING TO BLOW IT UP. NOW, IS THIS THE
18 FOOTPRINT TO WHICH YOU WERE JUST REFERRING?

19 A. SAY AGAIN, PLEASE.

20 Q. IS THIS THE FOOTPRINT TO WHICH YOU WERE JUST REFERRING?

21 A. YES, IT IS.

22 Q. AND DO YOU KNOW WHAT SUBSTANCE MADE THE FOOTPRINT?

23 A. IT'S HUMAN BLOOD. I'D HAVE TO REFER TO A CHART OR
24 SOMETHING TO TELL YOU WHAT THE TYPE OF BLOOD IT WAS, BUT I
25 BELIEVE IT -- I BELIEVE IT WAS TYPE A.

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1 Q. AND THAT WAS -- THAT ANALYSIS WAS CONDUCTED TO DETERMINE
2 WHICH KIND OF BLOOD IT WAS?

3 A. OH, DEFINITELY, YES. THE ENTIRE FOOTPRINT WAS COLLECTED.

4 Q. WAS THE FOOTPRINT EVER ABLE TO BE IDENTIFIED?

5 A. NO, THERE WAS AN ABSENCE OF RIDGE LINES IN IT SO THEY
6 COULD NOT MAKE POSITIVE IDENTIFICATION OF WHOEVER LEFT IT.
7 HOWEVER, THEY SAID IT WAS AN ADULT MALE. THERE WAS SOME --
8 YOU CAN SEE HERE THERE IS SOMETHING LIKE AN H PATTERN. AND
9 THAT SAME H PATTERN WAS REFLECTED ON THE RECORD FOOTPRINT THAT
10 WE TOOK FROM JEFFREY MACDONALD, BUT THERE WERE NO RIDGE LINES
11 SO WE COULD NOT SAY THIS WAS HIS FOOTPRINT.

12 Q. BUT THAT H PATTERN MATCHED ON BOTH HIS FOOT --

13 A. YEAH.

14 Q. -- AND THIS PRINT?

15 A. YES.

16 Q. AND WAS THIS PRINT COLLECTED FROM THE BOARDS?

17 A. YES, IT WAS COLLECTED. THE MANNER OF COLLECTION WAS THE
18 TECHNICIAN FROM THE LABORATORY FRAMED IT IN WOOD AND THEN CUT
19 IT OUT. SO, HE TOOK THE ENTIRE THING. HE TRIED IT ON ANOTHER
20 ONE TOO AND THE FOOTPRINT KIND OF FELL APART, BUT HE DIDN'T --
21 HE GOT AT LEAST ONE, BUT HE GOT ALL OF THE BLOOD.

22 Q. MAY I HAVE GOVERNMENT 211, PLEASE. NOW, WE'RE BACK IN
23 THE MASTER BEDROOM NOW?

24 A. YES, WE ARE.

25 Q. AND NOW WE'RE LOOKING OUT INTO THE HALLWAY?

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1 A. EXACTLY.

2 (GOVERNMENT EXHIBIT NUMBER 211
3 WAS IDENTIFIED FOR THE RECORD.)

4 Q. WOULD THE PHOTOGRAPHER BE STANDING SOMEWHERE BEHIND THE
5 CHAIR NEAR THE WINDOW, THAT BROWN LEATHER CHAIR?

6 A. HE'S STANDING NEXT TO THE BROWN LEATHER CHAIR, YES.

7 Q. AND CAN YOU DESCRIBE WHAT WE'RE LOOKING AT IN THIS
8 PHOTOGRAPH?

9 A. IN THE CENTER OF THE PHOTO IS THE BUNDLE OF THE SHEET AND
10 THE BEDSPREAD THAT I HAD MENTIONED EARLIER AND YOU CAN SEE
11 BLOOD STAINS ON IT. AND I THINK SOME OF THE BLOOD STAINS ON
12 IT WERE IN THE CONFIGURATION OF SOMEONE HAVING CARRIED
13 SOMETHING, PROBABLY A BODY, WHICH WAS TRANSFERRING BLOOD ON TO
14 THE SHEET. AND AT LEAST PART OF THIS BLOOD STAIN SHOWED WHAT
15 LOOKED LIKE THE RIVING OF THE BLUE PAJAMA SHIRT THAT WE FIND
16 ON COLETTE'S BODY.

17 Q. NOW, YOU MENTIONED EARLIER THAT YOU, AT SOME POINT, WENT
18 TO COLLECT THIS BEDDING?

19 A. YES.

20 Q. WHAT HAPPENED AS YOU WENT TO COLLECT THE BEDDING?

21 A. WHEN I WENT TO COLLECT IT, I OPENED IT TO START LOOKING
22 THROUGH IT TO SEE WHAT WAS IN IT, AND I FOUND AGAIN MORE
23 FIBERS FROM THE PAJAMA SHIRT AND ALSO AN ENTIRE FINGER SECTION
24 OF A SURGEON'S RUBBER GLOVE.

25 Q. AND SO JUST TO BE CLEAR, THE CID DIDN'T TAKE THAT PILE OF

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1 BEDDING OFF THE BED AND SET IT ON THE FLOOR?

2 A. NO, THAT'S WHERE IT WAS WHEN WE FIRST ARRIVED.

3 Q. AND THEN THE BOTTOM OF THAT PHOTOGRAPH, THAT IS THE
4 BOTTOM PART OF THE TRUNK AND LEGS OUTLINE OF COLETTE
5 MACDONALD?

6 A. EXACTLY. AND THIS WAS ABOUT THE THROW RUG THAT WAS THERE
7 AS WELL.

8 Q. AND THAT WAS ALSO COLLECTED?

9 A. YES.

10 Q. IF I COULD HAVE GOVERNMENT 51. WHAT ROOM ARE WE LOOKING
11 AT HERE?

12 A. COULD WE GO BACK TO THAT PICTURE?

13 Q. COULD WE HAVE 211 AGAIN, PLEASE?

14 A. THESE BLOOD STAINS HERE WERE THE BLOOD STAINS OF
15 KIMBERLEY MACDONALD AND IT --

16 Q. AND THOSE ARE ON THE FLOOR OF THE MASTER BEDROOM AT
17 THE --

18 A. IT'S ON THE SHAG RUG.

19 Q. AT THE ENTRANCE NEAR THE HALLWAY?

20 A. AT THE ENTRANCE TO THE MASTER BEDROOM. AND IT APPEARED
21 THAT SHE HAD BLED PRETTY EXTENSIVELY THERE.

22 Q. KIMBERLEY?

23 A. YES.

24 Q. THANK YOU.

25 MS. COOLEY: IF WE COULD PRESERVE THIS AS 211A.

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1 (GOVERNMENT EXHIBIT NUMBER 211A
2 WAS IDENTIFIED FOR THE RECORD.)

3 (PAUSE.)

4 MADAM CLERK: OKAY.

5 MS. COOLEY: THANK YOU.

6 BY MS. COOLEY:

7 Q. IF WE COULD HAVE GOVERNMENT 51. WHAT ROOM IS THIS?

8 A. THIS IS TAKEN FROM THE MASTER BEDROOM LOOKING INTO THAT
9 UTILITY OR LAUNDRY ROOM AND THAT IS THE EXTERIOR DOOR LEADING
10 OUT INTO THE BACK YARD.

11 (GOVERNMENT EXHIBIT NUMBER 51
12 WAS IDENTIFIED FOR THE RECORD.)

13 Q. THAT YOU POINTED OUT TO US ON THE OUTDOOR PHOTO?

14 A. EXACTLY.

15 Q. AND IF I CAN HAVE GOVERNMENT 79. WHAT ARE WE LOOKING AT
16 IN THIS PHOTO?

17 A. THIS, AGAIN, IS THAT DOOR LEADING INTO THE UTILITY OR
18 LAUNDRY ROOM. YOU CAN SEE IT HAD BEEN RAINING EARLIER IN THE
19 EVENING AND BECAUSE IT WAS RAINING -- WELL, WE CAUSED A SEARCH
20 TO BE MADE OF THE EXTERIOR OF THE BUILDING TO SEE WHAT WAS
21 THERE AND WHAT WE FOUND WAS A 31 INCH PIECE OF WOOD, TWO BY
22 TWO, WHICH WAS LAYING HERE WHERE THESE POPSICLE STICKS ARE
23 STICKING IN THE GROUND. NOW, WE TOOK THOSE POPSICLE STICKS,
24 AGAIN, FROM OUR CRIME SCENE KIT AND PLACED IT THERE AND PICKED
25 THAT UP RIGHT AWAY AND PUT IT IN A PLASTIC BAG.

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1 (GOVERNMENT EXHIBIT NUMBER 79
2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. NOW, WHY DID YOU DO THAT RIGHT AWAY?

4 A. WELL, WE HAD TO BECAUSE THE RAIN WAS COMING DOWN AND IT
5 WAS GETTING HEAVIER AND WE DIDN'T WANT ANY EVIDENCE THAT MIGHT
6 HAVE BEEN ON THE CLUB TO BE WASHED OFF. SO, WE -- TO PROTECT
7 IT, WE PICKED IT UP AND PUT IT IN A PLASTIC BAG.

8 Q. AND GOVERNMENT 80.

9 A. THIS LARGE BUSH IS JUST OUTSIDE OF THAT UTILITY ROOM
10 DOOR, WITH THE CLUB BEING FOUND OVER HERE AND -- I CAN'T GET
11 MY CIRCLES TO GO WHERE THEY SHOULD. THERE WAS AN ICE PICK
12 HERE AND CLOSE BY THAT IS THE OLD HICKORY PARING KNIFE.

13 (GOVERNMENT EXHIBIT NUMBER 80
14 WAS IDENTIFIED FOR THE RECORD.)

15 Q. IF WE CAN HAVE GOVERNMENT 81. IS THIS AN EASIER
16 PHOTOGRAPH TO FIND THOSE WEAPONS?

17 A. YEAH. THERE'S THE OLD HICKORY PARING KNIFE AND THERE'S
18 THE ICE PICK.

19 (GOVERNMENT EXHIBIT NUMBER 81
20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. NOW, IF YOU LOOK AT THE OLD HICKORY KNIFE, IS IT
22 UNDERNEATH SOMETHING IN THIS PHOTOGRAPH?

23 A. IT'S UNDER JUST SOME DEBRIS THAT WOULD BE FALLING OFF THE
24 BUSH.

25 Q. AND SO IT'S UNDERNEATH THAT DEBRIS?

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1 A. IT WAS UNDERNEATH THE BUSH.

2 Q. AND THE DEBRIS? IT WAS UNDERNEATH THIS PIECE OF DEBRIS?

3 A. SAY AGAIN.

4 Q. IT WAS UNDERNEATH THIS PIECE OF DEBRIS?

5 A. YES.

6 Q. THANK YOU.

7 (PAUSE.)

8 AS A PART OF YOUR INVESTIGATION, IS IT FAIR TO SAY
9 THAT THIS CONTINUED AFTER THE ARTICLE 32 HEARING OF DR.
10 MACDONALD?

11 A. OH, YES, IT DID. YES.

12 Q. AND IN COMPLETING YOUR INVESTIGATION, DID YOU HAVE
13 OCCASION TO INTERVIEW A MAN BY THE NAME OF GREG MITCHELL?

14 A. YES, I DID.

15 Q. AND WHEN DID THAT COME ABOUT?

16 A. I WOULD HAVE TO SEE THE STATEMENT THAT I TOOK TO SEE THE
17 DATE, BUT IT WAS OUT AT --

18 Q. MAY I HAVE GOVERNMENT 2199?

19 A. IT WAS OUT AT A RURAL SHERIFF'S OFFICE IN NORTH CAROLINA.

20 Q. COULD WE PUT UP 2199? DO YOU RECOGNIZE THIS DOCUMENT?

21 A. YES. THIS IS A STATEMENT I TOOK ON THE 25TH OF MAY IN
22 WADESBORO, NORTH CAROLINA, IN THE COUNTY SHERIFF'S OFFICE.

23 Q. AND THIS WAS THE 25TH OF MAY 1971?

24 A. 1971.

25 Q. AND IS THIS A TYPICAL FORM THAT YOU WOULD USE?

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1 A. YES, IT IS. THIS WOULD BE THE STATEMENT OF ACCUSED OR
2 SUSPECTED PERSON.

3 Q. AND IS YOUR SIGNATURE THERE?

4 A. (NO RESPONSE.)

5 Q. IS YOUR SIGNATURE THERE ON THE FRONT OF THIS DOCUMENT?

6 A. YES. MY NAME AND SIGNATURE APPEAR THERE, YES.

7 Q. AND ALONG WITH GREGORY MITCHELL'S?

8 A. NO. THIS IS DAVE REED. HE WAS A MAJOR FROM CID COMMAND.

9 Q. AND THEN ABOVE THAT IS THERE A SIGNATURE OF THE PERSON TO
10 BE QUESTIONED?

11 A. YES. RIGHT THERE. THIS IS THE ADVISEMENT OF HIS RIGHTS
12 AND HE SIGNED THERE TO ACKNOWLEDGE THAT HE DID, IN FACT, HAVE
13 HIS RIGHTS READ TO HIM AND THAT HE DID NOT WANT COUNSEL.

14 (GOVERNMENT EXHIBIT NUMBER 2199
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. AND THEN AFTER YOU READ HIM HIS RIGHTS AND HE
17 ACKNOWLEDGED THEM, DID YOU PROCEED TO QUESTION HIM?

18 A. YES, I DID.

19 Q. IF WE COULD BLOW UP THE PORTION OF THE QUESTIONS. AND IF
20 YOU COULD JUST READ INTO THE RECORD THE QUESTIONS AND ANSWERS.

21 A. QUESTION: DO YOU REMEMBER THE DATE OF THE MACDONALD
22 MURDERS ON FORT BRAGG, NORTH CAROLINA?

23 ANSWER: NO.

24 QUESTION: WHERE WERE YOU ON THE NIGHT OF 16 TO 17
25 FEBRUARY 1970?

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1 ANSWER: I DON'T KNOW. THAT IS A LONG TIME BACK.

2 QUESTION: WHERE WERE YOU LIVING AT THAT TIME?

3 AND THE ANSWER IS HE WAS AT -- AND IT'S REDACTED --
4 IN EVERGREEN ESTATES IN FAYETTEVILLE, NORTH CAROLINA.

5 WITH WHOM WERE YOU LIVING AT THAT TIME IS THE NEXT
6 QUESTION.

7 AND THE ANSWER, WITH MY PARENTS. A FRIEND WOULD
8 ALSO STAY WITH ME. HIS NAME IS DON HARRIS. EARLIER I HAD
9 BEEN LIVING WITH HIM IN A TRAILER NEAR MURCHISON ROAD WITH A
10 GUY NAMED RICK TAYLOR. AND MURCHISON ROAD BEING IN
11 FAYETTEVILLE, NORTH CAROLINA.

12 WITH WHOM WERE YOU ASSOCIATING ABOUT THAT TIME?

13 HELENA STOECKLEY, CATHY SMITH, CHARLIE BROWN AND
14 J.C. CONKLIN. HELENA WAS MY GIRLFRIEND. I KNOW THAT HELENA
15 WAS NOT WITH ME ON THE NIGHT OF THE MURDERS OF THE MACDONALD
16 FAMILY.

17 QUESTION: HOW DO YOU KNOW THAT SHE WAS NOT WITH YOU
18 ON THAT NIGHT?

19 ANSWER: I REMEMBER TALKING TO HER ABOUT IT THE NEXT
20 DAY OR SHORTLY AFTER IT HAPPENED.

21 Q. MAY WE HAVE THE NEXT PAGE. TOP HALF, PLEASE. IF YOU
22 WOULD CONTINUE.

23 A. THE NEXT QUESTION, WHERE WERE YOU THAT NIGHT?

24 ANSWER: I DON'T KNOW. I WAS USUALLY HOME IN BED BY
25 9:00 P.M. AT MY FOLKS' PLACE. I HAD TO BE AT WORK EARLY.

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1 QUESTION: WHERE WERE YOU WORKING AT THAT TIME?

2 AND THE ANSWER: AT HEADQUARTERS -- AND HEADQUARTERS
3 COMPANY ABBREVIATED HERE HHC -- THIRD BRIGADE, 82ND AIRBORNE
4 DIVISION AT FORT BRAGG, NORTH CAROLINA.

5 WHEN YOU TALKED TO HELENA ABOUT THE MURDERS, WHAT
6 DID SHE SAY? THIS BEING THE NEXT QUESTION.

7 SHE WAS -- THE ANSWER: SHE WAS SCARED TO DEATH
8 ABOUT BEING QUESTIONED ABOUT IT. I THINK SHE TOLD ME THAT SHE
9 WAS WITH CATHY SMITH THAT NIGHT.

10 QUESTION: HAD SHE ALREADY BEEN QUESTIONED BY THE
11 POLICE ABOUT IT WHEN SHE TOLD YOU THIS?

12 ANSWER: I DON'T THINK SO. I THINK SHE SAID THAT A
13 POLICEMAN NAMED BEASLEY TOLD HER THAT SHE WAS GOING TO BE
14 QUESTIONED AND FINGERPRINTED.

15 BEASLEY WAS A NARCOTICS OFFICER FROM THE
16 FAYETTEVILLE POLICE DEPARTMENT AND HELENA STOECKLEY WAS A
17 PART-TIME INFORMANT FOR HIM.

18 THE NEXT QUESTION: DID HELENA EVER TELL YOU THAT
19 SHE WAS OR WAS NOT INVOLVED IN THE MACDONALD MURDERS?

20 SHE TOLD ME -- THE ANSWER IS SHE TOLD ME THAT SHE
21 WAS NOT.

22 WERE YOU INVOLVED IN ANY WAY IN THE MACDONALD
23 MURDERS, BEING THE NEXT QUESTION.

24 NO, I WAS NOT.

25 DO YOU KNOW WHO WAS INVOLVED IN THESE MURDERS?

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1 THE ANSWER: I THINK MACDONALD DID IT HIMSELF IS MY
2 OPINION FROM WHAT I HAVE READ.

3 THE NEXT QUESTION: WERE YOU EVER ACQUAINTED WITH
4 CAPTAIN MACDONALD?

5 THE ANSWER IS NO.

6 WHERE WAS -- THE NEXT QUESTION IS WHERE WAS HELENA
7 LIVING AT THE TIME OF THE MURDERS?

8 SHE WAS EITHER LIVING -- THE ANSWER: SHE WAS EITHER
9 LIVING WITH HER PARENTS OR IN AN APARTMENT ON CLARK STREET
10 WITH CATHY SMITH.

11 Q. AND IF I COULD HAVE THE NEXT PAGE, PLEASE. IF I COULD
12 HAVE THE TOP HALF. AND IF YOU COULD START AT THE TOP THERE.

13 A. NEXT QUESTION: IF I TOLD YOU THAT HELENA SAID THAT SHE
14 WAS WITH YOU ON THE NIGHT OF THE MURDERS, WHAT WOULD YOU SAY?

15 HIS ANSWER: I AM ALMOST POSITIVE THAT SHE WASN'T.
16 I THINK DON HARRIS AND I WERE TOGETHER AT MY HOUSE. IF I WAS
17 WITH HER IT WOULD HAVE BEEN AT EITHER THE VILLAGE SHOP OR THE
18 DUNKIN' DONUTS SHOP IN FAYETTEVILLE.

19 THE NEXT QUESTION: WAS HELENA USING DRUGS AT THAT
20 TIME?

21 THE ANSWER IS YES. SHE WAS USING LSD, MESCALINE AND
22 MARIJUANA. SHE WASN'T USING HEROIN AT THAT TIME. SHE STARTED
23 ON THAT LATER IN THAT YEAR.

24 Q. OKAY. CAN I HAVE THE NEXT PAGE, PLEASE. IS IT FAIR TO
25 SAY THAT YOUR INTERVIEW WITH GREG MITCHELL WENT ON AND YOU

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1 TALKED ABOUT HELENA'S DRUG USE AND SOME OF HER FRIENDS THERE
2 AND WHERE SHE WAS LIVING IN FAYETTEVILLE?

3 A. YES.

4 Q. OKAY. NOW, THIS LAST PAGE AT THE TOP THERE IT NOTES THAT
5 THIS IS THE STATEMENT OF GREGORY MITCHELL TAKEN IN WADESBORO
6 ON MAY 25TH OF 1971?

7 A. YES.

8 Q. WHAT IS THE BOTTOM PART OF THIS LAST PAGE OF HIS
9 STATEMENT?

10 A. THIS IS THE CLOSING PAGE OF THE STATEMENT WHERE HE
11 ACKNOWLEDGED THAT HE HAS HAD HIS RIGHTS READ TO HIM AND HE
12 UNDERSTANDS THE CONTENT OF THE ENTIRE STATEMENT. HE HAS READ
13 IT AND THE STATEMENT IS TRUE, MADE WITHOUT COERCION AND --

14 Q. AND SO IT'S A SWORN AFFIDAVIT?

15 A. -- WITHOUT HOPE OF BENEFIT OR REWARD.

16 Q. AND SO IT'S A SWORN AFFIDAVIT OF GREG MITCHELL?

17 A. YES. AND HIS SIGNATURE AND THEN THE SIGNATURE OF DAVE
18 REED, ON THE 25TH OF MAY 1971, AT WADESBORO, NORTH CAROLINA,
19 AND THEN MY SIGNATURE.

20 Q. NOW, AS AN INVESTIGATOR, AFTER YOU INTERVIEW SOMEONE
21 WOULD IT ALSO BE CUSTOMARY TO SOMETIMES POLYGRAPH THEM?

22 A. OH, YES. YES.

23 Q. NOW, WHAT IS THE PURPOSE OF A POLYGRAPH AS A LAW
24 ENFORCEMENT TOOL?

25 A. IF YOU'RE IN A COMPLEX CASE SUCH AS THIS, YOU'RE TALKING

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1 TO A LOT OF PEOPLE, SOME OF WHO ARE TRUTHFUL TO YOU AND SOME
2 OF WHO ARE NOT TRUTHFUL TO YOU.

3 TO WEED THEM OUT, TO SEPARATE THEM, YOU WOULD OFFER
4 THEM A POLYGRAPH. THE POLYGRAPH IS USED TO DETECT DECEPTION.
5 AND IT'S -- THE TEST ITSELF IS NOT WHAT WE'RE LOOKING FOR.

6 WHEN YOU GET A PERSON IN A POSITION WHERE HE'S
7 GETTING READY TO TAKE A POLYGRAPH, IT'S THE TALENT OF THE
8 POLYGRAPH OPERATOR IN INTERROGATION THAT IS REALLY WHAT YOU'RE
9 LOOKING FOR.

10 IN THE PRETEST QUESTIONING HE'LL TRY TO GET AN
11 ADMISSION FROM HIM OR TRY TO ESTABLISH IF HE IS, IN FACT, SORT
12 OF TELLING THE TRUTH.

13 AND THEN THE POST-TEST IS THE CRITICAL PHASE WHERE
14 THE TRAINED -- THE POLYGRAPH MAN WAS ALSO A TRAINED
15 INTERROGATOR, WOULD THEN SIT DOWN WITH THIS PERSON AND GO OVER
16 THE TEST AND SAY, LOOK, I KNOW YOU'RE LYING HERE. I KNOW
17 YOU'VE LIED THERE. LET'S GET SOMETHING TOGETHER AND TELL ME
18 EXACTLY WHAT HAPPENED.

19 SO, THAT'S BASICALLY WHAT THAT TOOL IS FOR. IT'S TO
20 HELP YOU ELIMINATE AS MANY PEOPLE AS YOU CAN WHEN YOU'RE
21 TRYING TO FOCUS ON THE PERPETRATOR.

22 Q. AND SO IS IT FAIR TO SAY THAT GOING OVER THE RESULTS OF A
23 POLYGRAPH WITH A SUSPECT OR AN INDIVIDUAL WHO'S BEING
24 QUESTIONED WILL SOMETIMES CAUSE THEM TO MAKE ADMISSIONS OR
25 STATEMENTS?

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1 A. YES, EXACTLY.

2 Q. NOW, DID YOU HAVE GREG MITCHELL POLYGRAPHED?

3 A. YES, I DID.

4 Q. NOW, YOU, YOURSELF, ARE NOT A POLYGRAPH OPERATOR?

5 A. NO, I AM NOT. NO.

6 Q. MAY I HAVE GOVERNMENT 2200, PLEASE. AND IF YOU COULD
7 BLOW UP THE TOP PORTION. DO YOU RECOGNIZE THIS DOCUMENT?

8 A. THIS IS THE POLYGRAPH EXAMINATION REPORT OF GREGORY
9 HOWARD MITCHELL. THE POLYGRAPH EXAMINATION WAS RECEIVED, IT
10 SAYS HERE, 26 MAY OF 1971, AND TO DETERMINE IF HE WAS TRUTHFUL
11 WHEN HE DENIED BEING INVOLVED AS A PRINCIPAL OR ACCESSORY TO A
12 TRIPLE MURDER ON 17 FEBRUARY AT FORT BRAGG.

13 (GOVERNMENT EXHIBIT NUMBER 2200
14 WAS IDENTIFIED FOR THE RECORD.)

15 Q. NOW, IF WE COULD GO BACK OUT TO THE FULL VIEW. NOW, DOWN
16 HERE AT THE BOTTOM OF THIS POLYGRAPH FORM THERE ARE AREAS
17 WHERE THE POLYGRAPH EXAMINER GOES OVER THE PERSONAL HISTORY OF
18 A SUBJECT, ARRESTS, CONVICTIONS, EMPLOYMENT, PREVIOUS MILITARY
19 ASSIGNMENT, OTHER THINGS LIKE THAT.

20 IS IT STANDARD FOR THE POLYGRAPH EXAMINER TO GATHER
21 THOSE DETAILS BEFORE BEGINNING AN EXAMINATION?

22 A. YES, THAT IS VERY TYPICAL BECAUSE FROM THESE FACTS THAT
23 HE'S GATHERED HE CAN FORMULATE, WHAT THEY CALL, CONTROL
24 QUESTIONS WHERE HE KNOWS THE ANSWER THAT WAS GIVEN ACCORDING
25 TO THIS INFORMATION HE'S BEEN COLLECTING. IT WILL SHOW THAT

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1 THE INDIVIDUAL IS TRUTHFUL. IT GIVES HIM SORT OF A BENCHMARK
2 WHEN HE'S STARTING HIS POLYGRAPH.

3 Q. AND IF I MAY HAVE THE NEXT PAGE. IS THIS A FAIRLY
4 STANDARD POLYGRAPH FORM USED IN THE ARMY?

5 A. YES, IT IS. THAT IS A STANDARD FORM.

6 Q. AND SO THIS ON PAGE TWO, WHAT WOULD BE HAPPENING IN THIS
7 PART OF THE EXAM?

8 A. THESE ARE THE QUESTIONS THAT WERE ASKED DURING THE ACTUAL
9 TEST. WERE YOU BORN IN THE UNITED STATES? YES. THAT'S A
10 CONTROL QUESTION. HE KNOWS WHAT THE ANSWER SHOULD BE, THE
11 OPERATOR.

12 Q. NOW, WHEN YOU SAY A CONTROL QUESTION, WHAT DO YOU MEAN?

13 A. BOTH THE QUESTION AND THE ANSWER HAVE ALREADY BEEN ASKED.
14 THE ANSWER IS KNOWN TO BOTH THE PERSON TAKING THE TEST AND THE
15 OPERATOR. SO, THAT IS THE CONTROL SITUATION. THEY KNOW WHAT
16 THE ANSWER IS OR WHAT IT SHOULD BE TO BE TRUTHFUL.

17 Q. AND IF YOU COULD BLOW UP THE TOP OF THIS JUST QUICKLY.
18 WHO WAS THE INDIVIDUAL WHO CONDUCTED THIS POLYGRAPH OF GREG
19 MITCHELL?

20 A. SAY AGAIN, PLEASE.

21 Q. WHO WAS THE INDIVIDUAL WHO CONDUCTED THIS POLYGRAPH OF
22 GREG MITCHELL?

23 A. IT WAS ROBERT BRISENTINE.

24 Q. AND WHO IS THAT?

25 A. HE IS THE GURU OF POLYGRAPH EXAMINERS. HE IS THE

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1 PRESIDENT OF THE POLYGRAPH ASSOCIATION. HE IS THE CHIEF
2 POLYGRAPH OPERATOR FOR THE DEPARTMENT OF THE ARMY. HE HAS
3 TAUGHT POLYGRAPH TO MORE PEOPLE THAN YOU CAN IMAGINE. HE'S
4 JUST THE TOP OF THE LINE POLYGRAPH OPERATOR.

5 Q. AND AT THIS TIME IN 1971, WERE YOU USING HIM REGULARLY AS
6 A POLYGRAPH EXAMINER?

7 A. NO. IN THIS CASE, YES, BECAUSE IT WAS A HIGH PROFILE
8 CASE. AND THEN, YEAH, WE GOT BOB TO COME DOWN AND DO THE
9 POLYGRAPH. BUT ON A NORMAL CASE, NO, HE WOULD SEND SOMEBODY
10 -- IF WE DIDN'T HAVE A POLYGRAPH OPERATOR THAT WAS ORGANIC TO
11 THE UNIT, HE WOULD SEND SOMEBODY ELSE DOWN TO RUN IT. HE
12 WOULD NOT COME OUT NORMALLY IN THE FIELD TO CONDUCT SOME
13 TESTS.

14 Q. NOW, IT HAS THE DATE THERE AT THE TOP THAT THIS POLYGRAPH
15 WAS GIVEN ON MAY 27TH OF 1971?

16 A. EXACTLY.

17 Q. AND THAT WAS TWO DAYS AFTER YOU HAD INTERVIEWED GREG
18 MITCHELL, IS THAT RIGHT?

19 A. YES, IT IS.

20 Q. NOW, IF YOU WOULD READ FOR US, PLEASE, THE QUESTIONS AND
21 ANSWERS ON MR. MITCHELL'S POLYGRAPH.

22 A. QUESTION NUMBER ONE: WERE YOU BORN IN THE UNITED STATES?

23 THE ANSWER WAS YES.

24 REGARDING THE CUTTING AND STRIKING OF THE MACDONALD
25 FAMILY, DO YOU INTEND TO ANSWER TRUTHFULLY EACH QUESTION ABOUT

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1 THAT?

2 YES.

3 ARE YOU COMPLETELY CONVINCED THAT I WILL NOT ASK YOU
4 A QUESTION ON THIS TEST THAT HAS NOT ALREADY BEEN REVIEWED?

5 THE ANSWER IS YES.

6 PRIOR TO AGE 16, DID YOU EVER INTENTIONALLY INJURE
7 ANYONE?

8 THE ANSWER IS NO.

9 FIVE: DID YOU CUT OR STRIKE ANY MEMBER OF THE
10 MACDONALD FAMILY?

11 THE ANSWER IS NO.

12 BETWEEN THE AGES OF 16 AND 18, DID YOU EVER
13 INTENTIONALLY TRY TO INJURE OR KILL ANYONE?

14 THE ANSWER IS NO.

15 PRIOR TO AGE 18, DID YOU EVER TELL A LIE THAT CAUSED
16 INJURY TO ANYONE?

17 HE SAID NO.

18 SIX: DID YOU STEAL MACDONALD'S WALLET?

19 THE ANSWER IS NO.

20 NUMBER SEVEN: DID YOU CUT OR STRIKE ANY MEMBER OF
21 THE MACDONALD FAMILY AT FORT BRAGG, NORTH CAROLINA?

22 THE ANSWER IS NO.

23 NUMBER EIGHT: IS THERE SOMETHING ELSE YOU ARE
24 AFRAID I WILL ASK A QUESTION ABOUT, EVEN THOUGH I HAVE TOLD
25 YOU I WOULD NOT?

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1 THE ANSWER IS NO.

2 NINE: PRIOR TO THE YEAR 1970, DID YOU EVER DESIRE
3 TO SERIOUSLY INJURE OR KILL ANYONE IN THE U.S.?

4 THE ANSWER IS NO.

5 NUMBER TEN: WERE YOU PHYSICALLY PRESENT WHEN ANY
6 MEMBER OF THE MACDONALD FAMILY WAS CUT OR STRUCK?

7 THE ANSWER IS NO.

8 NUMBER 11: DO YOU SUSPECT ANYONE IN PARTICULAR OF
9 CUTTING OR STRIKING ANY MEMBER OF THE MACDONALD FAMILY?

10 THE ANSWER IS NO.

11 DO YOU KNOW FOR SURE WHO CUT OR STRUCK ANY MEMBER OF
12 THE MACDONALD FAMILY?

13 THE ANSWER IS NO.

14 THIRTEEN: DID YOU CUT OR STRIKE ANY MEMBER OF THE
15 MACDONALD FAMILY?

16 AND THE ANSWER IS NO.

17 Q. MAY I HAVE PAGE FOUR, PLEASE. NOW, AFTER THESE QUESTIONS
18 ARE ASKED BY THE EXAMINER, DOES THE EXAMINER THEN MAKE A
19 DETERMINATION ABOUT WHAT THEY THOUGHT ABOUT THE RESULTS?

20 A. IT'S NOT IMMEDIATE. WHAT HE DOES IS GO AND STUDY THE
21 CHARTS, MOVE THE SUBJECT OUT OF THE ROOM WHERE THE POLYGRAPH
22 HAD BEEN ADMINISTERED, LET HIM SIT ALONE AND STEW A LITTLE
23 BIT. AND WHILE HE'S DOING THAT, HE WILL BE SITTING IN ANOTHER
24 OFFICE JUST REVIEWING ALL THE CHARTS. HE HAS A MATHEMATICAL
25 PLAN THAT HE GOES BY TO SCORE THE TEST.

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1 AND THEN WHEN -- AFTER HE HAS THAT AND THEN HAS MADE
2 HIS DECISION AS TO THE VERACITY OR NON-VERACITY OF THE
3 SUBJECT, HE WILL THEN GO OUT AND DO A POST-TEST INTERVIEW AND
4 AT THAT TIME HE WOULD MAKE HIS RESULTS KNOWN TO HIM. AND THEN
5 IF IT WAS NECESSARY, IT WOULD ENTER INTO A HARD CORE
6 INTERROGATION.

7 Q. COULD YOU BLOW UP THE TOP OF THIS, PAGE FOUR, PLEASE.
8 NOW, UP HERE, THIS IS THE RESULT OF EXAMINATION BLOCK FOR THE
9 POLYGRAPH OF GREG MITCHELL. IF YOU WOULD JUST READ THAT INTO
10 THE RECORD, PLEASE.

11 A. BASED ON THE POLYGRAPH EXAMINATION CONDUCTED ON 27 MAY
12 1971, IT IS CONCLUDED THAT MR. MITCHELL WAS TRUTHFUL WHEN HE
13 DENIED INVOLVEMENT IN THE MURDER OF COLETTE, KIMBERLEY AND
14 CHRISTINE MACDONALD. IT IS FURTHER CONCLUDED THAT MR.
15 MITCHELL WAS TRUTHFUL WHEN HE DENIED KNOWING THE IDENTITY OF
16 THE PERPETRATOR OR PERPETRATORS OF THESE MURDERS. NO
17 ADMISSIONS WERE MADE BY MR. MITCHELL DURING THIS EXAMINATION.
18 NO ABNORMAL PHYSIOLOGICAL RESPONSES WERE NOTED IN THE
19 POLYGRAPH TRACINGS. MR. MITCHELL COOPERATED DURING THE ENTIRE
20 EXAMINATION. ALL PARTS OF THE EXAMINATION WERE COMPLETED AS
21 WITNESSED BY, AGAIN, BY DAVE REED, THE MAJOR FROM CID COMMAND
22 HEADQUARTERS, AND SIGNED AND MADE OFFICIAL BY ROBERT A.
23 BRISENTINE.

24 Q. MAY I HAVE PAGE FIVE. NOW, THIS IS A DEPARTMENT OF THE
25 ARMY REVIEW, IS IT NOT, OF THE PROCEDURES THAT MR. BRISENTINE

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1 USED IN HIS --

2 A. YES.

3 Q. -- IN CONDUCTING THE POLYGRAPH OF GREG MITCHELL?

4 A. EVERY POLYGRAPH THAT'S ADMINISTERED, NO MATTER WHERE IT
5 IS ADMINISTERED OR BY WHOM, THE TEST IS SENT TO A QUALITY
6 CONTROL OFFICE IN WASHINGTON, D.C., WHERE IT'S REVIEWED FOR
7 PROPER TECHNIQUES AND PROPER SCORING OF THE CHARTS AND THAT'S
8 WHAT THIS FORM IS REFLECTING.

9 Q. AND DID THIS FIND ANY OF THE PROCEDURES TO BE
10 UNSATISFACTORY THAT MR. BRISENTINE USED?

11 A. ALL THE BLOCKS THAT ARE CHECKED HERE ARE SATISFACTORY.

12 Q. NOW, ON LETTER F, POST-TEST INTERROGATION, THAT SAYS N/A.
13 SO, THERE WAS NO POST-TEST INTERROGATION, IS THAT RIGHT?

14 A. YES, THERE WAS NO POST-TEST INTERROGATION.

15 Q. MAY I HAVE GOVERNMENT EXHIBIT 2331. NOW, 2331 HERE, THIS
16 IS THE SAME FORM THAT WE WERE JUST LOOKING AT WITH RESPECT TO
17 MR. MITCHELL, IS THAT RIGHT?

18 A. YES, IT IS.

19 Q. THE POLYGRAPH EXAMINATION REPORT?

20 A. YES, IT IS.

21 Q. AND WHO IS THE INDIVIDUAL WHO IS POLYGRAPHED HERE? IF WE
22 COULD BLOW UP THE TOP PART, PLEASE.

23 A. WILLIAM EDWARD POSEY.

24 (GOVERNMENT EXHIBIT NUMBER 2331
25 WAS IDENTIFIED FOR THE RECORD.)

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1 Q. NOW, DO YOU KNOW WHO MR. POSEY IS?

2 A. HE WAS ONE OF THE HELENA STOECKLEY TAG ALONGS. HE WAS
3 INVOLVED SOMEWHERE WITH THE DRUG GROUP DOWN IN FAYETTEVILLE.

4 Q. AND, AGAIN, IF WE COULD BACK OUT TO THE FULL VIEW. NOW,
5 AGAIN, THIS IS -- ALL THE QUESTIONS HAVE BEEN GONE OVER WITH
6 HIM, WITH HIS HISTORY, ARRESTS, EMPLOYMENT, JUST AS THEY WERE
7 WITH MR. MITCHELL, IS THAT CORRECT?

8 A. YES.

9 Q. OKAY. IF I MAY HAVE PAGE TWO. NOW, AT THE TOP HERE, WAS
10 THE POLYGRAPH EXAMINER FOR MR. POSEY ALSO MR. BRISENTINE?

11 A. YES, IT WAS.

12 Q. AND THIS POLYGRAPH WAS CONDUCTED ON JUNE 13TH OF 1971?

13 A. YES.

14 Q. OKAY. AND IF YOU WOULD READ THOSE QUESTIONS AND ANSWERS.

15 A. WERE YOU BORN IN THE UNITED STATES?

16 THE RESPONSE WAS YES.

17 DO YOU HAVE BROWN HAIR?

18 WHICH, AGAIN, THE RESPONSE IS YES.

19 DID YOU LIE TO MR. MAHON CONCERNING HELENA

20 STOECKLEY?

21 HE SAID NO.

22 ARE YOU WEARING A TERRY CLOTH SHIRT?

23 YES.

24 DID YOU LIE IN YOUR STATEMENTS AT THE MACDONALD

25 HEARING?

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1 NO.

2 PRIOR TO YOUR 19TH BIRTHDAY, DID YOU EVER TELL A LIE
3 THAT CAUSED AN INJURY TO ANYONE?

4 NO.

5 BEFORE THE YEAR 1969, DID YOU EVER LIE ABOUT
6 ANYTHING REALLY IMPORTANT?

7 NO.

8 ARE YOU WEARING BROWN TROUSERS?

9 YES.

10 DID YOU LIE WHEN YOU STATED YOU THOUGHT YOUR HOUSE
11 WAS BROKEN INTO DURING AUGUST 1970?

12 NO.

13 DO YOU KNOW WHO KILLED THE MACDONALD FAMILY?

14 NO.

15 OTHER THAN WHAT YOU HAVE TOLD ME, BETWEEN THE AGES
16 OF 16 AND 18, DID YOU EVER LIE TO SOMEONE WHO TRUSTED YOU?

17 NO.

18 PRIOR TO 1970, DID YOU EVER TELL A SERIOUS LIE TO
19 ANYONE?

20 NO.

21 Q. MAY I HAVE PAGE FIVE, PLEASE. I'M SORRY, PAGE FOUR. AND
22 IF YOU WOULD PLEASE READ THE RESULTS OF HIS EXAMINATION.

23 A. DURING TESTIMONY AT THE ARTICLE 32B HEARING IN AUGUST
24 1970, AT FORT BRAGG, NORTH CAROLINA, AND DURING INTERVIEWS
25 WITH CID INVESTIGATORS ON 19 AND 22 MARCH 1971, POSEY RELATED

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1 THAT HE -- THAT BETWEEN 0300 AND 0430, 17 FEBRUARY 1970, THE
2 DATE OF THE MACDONALD MURDERS, HE OBSERVED HELENA STOECKLEY
3 DISMOUNT FROM A BLUE MUSTANG AUTOMOBILE AND ENTER HER
4 APARTMENT.

5 POSEY FURTHER STATED THAT DURING CONVERSATIONS WITH
6 STOECKLEY AFTER 17 FEBRUARY 1970, HE, POSEY, FORMED THE
7 OPINION THAT STOECKLEY WAS INVOLVED IN THE MURDER OF MRS.
8 MACDONALD AND HER CHILDREN.

9 POSEY ALSO INFORMED CID THAT ON 16 AUGUST 1970,
10 FOLLOWING HIS TESTIMONY AT THE ARTICLE 32B HEARING, HIS HOME
11 IN FAYETTEVILLE, NORTH CAROLINA, WAS UNLAWFULLY ENTERED BY
12 UNKNOWN PERSONS AND THAT HE WAS OF THE OPINION THAT STOECKLEY
13 OR HER FRIENDS WERE THE PERPETRATOR OR PERPETRATORS OF THIS
14 INCIDENT.

15 Q. NOW, BEFORE WE MOVE ON TO THE NEXT PAGE, UP AT THE TOP
16 ARE THERE BOXES WHERE IT CAN BE INDICATED WHETHER THERE WAS
17 DECEPTION?

18 A. THE BOX SAID DECEPTION WAS INDICATED AND POST-TEST
19 CONFESSION/ADMISSION WAS OBTAINED.

20 Q. AND IF WE COULD GO ON TO THE NEXT PAGE, PLEASE. AND IF
21 YOU WOULD CONTINUE READING.

22 A. CONCLUSIONS: BASED ON THE POLYGRAPH EXAMINATION
23 CONDUCTED ON 13 JUNE 1971, IT IS CONCLUDED THAT POSEY WAS NOT
24 TRUTHFUL WHEN HE DENIED GIVING FALSE INFORMATION IN HIS
25 TESTIMONY AT THE ARTICLE 32B HEARING AND WHEN HE MADE

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1 STATEMENTS TO CID INVESTIGATORS.

2 IT IS FURTHER CONCLUDED THAT POSEY WAS NOT TRUTHFUL
3 WHEN HE STATED THAT HE IS OR OF THE OPINION THAT HIS RESIDENCE
4 WAS UNLAWFULLY ENTERED ON 16 AUGUST 1970.

5 SUBSEQUENT TO THE POLYGRAPH EXAMINATION, POSEY MADE
6 ADMISSIONS AS FOLLOWS:

7 A) THAT HE DID NOT BELIEVE HIS RESIDENCE WAS
8 UNLAWFULLY ENTERED ON 16 AUGUST 1970, AND IS OF THE OPINION
9 THAT HIS CAT CAUSED DAMAGE TO A WINDOW SCREEN IN THE HOUSE.

10 B) THAT A BUTCHER KNIFE FOUND IN THE BEDROOM OF HIS
11 RESIDENCE FOLLOWING THE ALLEGED HOUSEBREAKING INCIDENT HAD
12 PROBABLY BEEN LEFT IN THE BEDROOM BY HIS WIFE WHO KEPT THE
13 KNIFE IN THE BEDROOM FOR PROTECTION. POSEY HAD PREVIOUSLY
14 STATED TO CID INVESTIGATORS THAT THE KNIFE WAS ALWAYS KEPT IN
15 THE KITCHEN.

16 C) THAT HE DID NOT OBSERVE STOECKLEY DISMOUNT FROM
17 AN AUTOMOBILE ON THE MORNING OF 17 FEBRUARY 1970, AND ONLY
18 OBSERVED HER WALKING FROM AN AUTOMOBILE TOWARDS HER RESIDENCE.

19 D) THAT HE DOES NOT KNOW THAT THE AUTOMOBILE
20 OBSERVED NEAR STOECKLEY'S RESIDENCE WAS A MUSTANG MODEL
21 VEHICLE. POSEY EXPLAINED THAT ABOUT ONE OR TWO MONTHS AFTER
22 THE HOMICIDES HE DREAMED ABOUT THE INCIDENT AND IN HIS DREAMS
23 HE OBSERVED A MUSTANG AND THIS IS THE REASON HE REPORTED THE
24 VEHICLE TO BE A MUSTANG.

25 E) THAT HE IS NOT POSITIVE THAT THE MORNING HE

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1 OBSERVED STOECKLEY WALKING TO HER RESIDENCE FROM THE DIRECTION
2 OF A PARKED AUTOMOBILE WAS THE DATE OF THE HOMICIDES.
3 FURTHER, THAT HE DID NOT FORM AN OPINION THAT STOECKLEY WAS
4 INVOLVED IN THE HOMICIDES UNTIL AT LEAST A WEEK FOLLOWING THE
5 INCIDENT, AT WHICH TIME HE ALSO FORMED THE OPINION THAT THE
6 DAY, 17 FEBRUARY 1970, HE OBSERVED STOECKLEY WAS THE DATE OF
7 THE HOMICIDES.

8 F) THAT THE BASIS FOR HIS, POSEY'S, OPINION THAT
9 STOECKLEY WAS INVOLVED IN THE HOMICIDES WAS THE MANNER
10 STOECKLEY TALKED ABOUT THE INCIDENT, HER STATEMENT TO THE
11 EFFECT THAT SHE WAS UNDER THE INFLUENCE OF DRUGS THE NIGHT OF
12 THE MURDERS AND COULD NOT ACCOUNT FOR HER ACTIONS, AND HER
13 MANNER OF DRESS.

14 Q. SO, SUFFICE IT TO SAY, WITH RESPECT TO THIS POLYGRAPH
15 EXAMINATION, THE ADMISSIONS THAT YOU HAVE JUST READ TO US,
16 THOSE ARE NOT PART OF THE POLYGRAPH QUESTIONING AND HE'S NOT
17 HOOKED UP TO THE MACHINE AT THAT POINT?

18 A. NO, HE IS NOT. THIS IS THE POST-TEST, AFTER THE SLATE
19 HAS BEEN CLEANED AND THE RESULTS HAVE BEEN DISCUSSED WITH,
20 THEN THE INTERROGATION STARTS AND THIS IS THE RESULT OF THE
21 INTERROGATION BY BOB BRISENTINE.

22 Q. SO, REGARDLESS OF THE ACTUAL TECHNICAL RESULTS OF THE
23 POLYGRAPH EXAMINATION, THESE ADMISSIONS WERE MADE AS PART OF A
24 STANDARD INTERROGATION?

25 A. YES.

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1 Q. IF I COULD HAVE GOVERNMENT EXHIBIT 63, PLEASE. NOW, WE
2 LOOKED AT THIS EARLIER. AND I'LL DIRECT YOUR ATTENTION TO THE
3 BOTTOM HALF OF THIS PHOTO. ORIENTING US ONCE AGAIN, THIS IS
4 KRISTEN'S BEDROOM, CORRECT?

5 A. YES, THIS IS KRISTEN'S BEDROOM.

6 Q. AND IN THE BOTTOM HALF OF THIS PHOTO, THE BACK END OF THE
7 HORSE IS VISIBLE --

8 A. YES, IT IS.

9 Q. -- AS ARE THE SPRINGS, AS YOU POINTED OUT TO US EARLIER?

10 A. YES, IT IS.

11 Q. MAY I HAVE GOVERNMENT 2320? NOW, THIS IS A CLOSE UP OF
12 WHAT WE WERE JUST LOOKING AT. AND AGAIN, DO EITHER ONE OF
13 THESE SPRINGS APPEAR BROKEN TO YOU?

14 A. NO, THEY DO NOT. THEY'RE INTACT.

15 (GOVERNMENT EXHIBIT NUMBER 2320
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. AND IN THE PHOTO THAT WE VIEWED AS GOVERNMENT 63, THAT
18 WAS PART OF THE ORIGINAL CRIME SCENE PHOTOGRAPHS USED AT THE
19 TRIAL, CORRECT?

20 A. YES, IT IS.

21 Q. AND MAY I HAVE GOVERNMENT 145? AND AGAIN, THIS IS THE
22 FRONT OF THAT SAME HORSE IN KRISTEN'S BEDROOM?

23 A. YES, IT IS.

24 Q. AND THESE SPRINGS DO NOT APPEAR TO BE BROKEN, IS THAT
25 FAIR TO SAY?

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1 A. NO, THEY'RE NOT BROKEN.

2 Q. AND GOVERNMENT 2321, PLEASE. AND THEN THIS IS THE BLOW
3 UP TO SHOW THAT?

4 A. YES.

5 (GOVERNMENT EXHIBIT NUMBER 2321
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. NOW, LOOKING AT THE BLOW UP, THEY STILL DO NOT APPEAR
8 BROKEN, DO THEY?

9 A. NO, THEY DO NOT.

10 Q. AND MAY I HAVE 2332? I'M SORRY.

11 (PAUSE.)

12 WELL, LET ME ASK YOU THIS, THAT HORSE THAT WE HAVE
13 SEEN IN THE PHOTOGRAPHS, THAT WAS IN KRISTEN'S BEDROOM,
14 CORRECT?

15 A. YES, IT WAS.

16 Q. FROM THE TIME THAT YOU ENTERED THE HOUSE, WAS THAT HORSE
17 EVER IN THE LIVING ROOM?

18 A. NO. NEVER. IT WAS ALWAYS IN THAT BEDROOM.

19 Q. NOW, AT SOME POINT, DID YOU DO AN INVENTORY OF THE ITEMS
20 THAT WERE IN THE HOUSE?

21 A. YES, WE DID.

22 Q. MAY I HAVE 2324? AND DOES THIS LOOK LIKE YOUR INVENTORY?

23 A. IT APPEARS TO BE.

24 (GOVERNMENT EXHIBIT NUMBER 2324
25 WAS IDENTIFIED FOR THE RECORD.)

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1 Q. OKAY. AND DOES IT SAY 544 CASTLE DRIVE, FORT BRAGG,
2 NORTH CAROLINA?

3 A. YES, THE PROPERTY INVENTORY, 544 CASTLE DRIVE, FORT
4 BRAGG, NORTH CAROLINA, CONDUCTED 9 NOVEMBER 1970.

5 Q. AND THEN IT LISTS THE LIVING ROOM AND DINING ROOM
6 CONTENTS?

7 A. YES.

8 Q. AND IF I MAY HAVE THE NEXT PAGE. AND THEN THE KITCHEN,
9 HALLWAY, NORTH BEDROOM?

10 A. YES. AGAIN, IT INDICATES HERE IN THE KITCHEN SIX PAIR OF
11 PERRY LATEX SURGEON'S GLOVES THAT WE FOUND THERE UNDER THE
12 SINK.

13 Q. UNDER THE SINK?

14 A. YEAH.

15 Q. AND IF YOU COULD BLOW UP THE NORTH BEDROOM.

16 A. SAY AGAIN. I KEEP LOSING CONNECTIVITY.

17 Q. NOW, HERE IN THE NORTH BEDROOM, DOES IT ALSO INDICATE ONE
18 TOY HORSE ON SPRINGS?

19 A. YES, IT DOES.

20 Q. AND THAT DOESN'T INDICATE THAT THE TOY HORSE IS IN ANY
21 WAY BROKEN, IS THAT RIGHT?

22 A. NO, IT DOES NOT INDICATE THAT AT ALL.

23 Q. AND MAY I HAVE GOVERNMENT 2325? DID MR. MACDONALD MAKE A
24 CLAIM FOR THE INVENTORY OF HIS HOUSE, THAT HE WANTED TO GET
25 HIS ITEMS FROM INSIDE THE HOUSE?

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1 A. SAY THAT AGAIN.

2 Q. IF WE COULD BLOW UP THE TOP OF THIS, PLEASE. DID MR.
3 MACDONALD MAKE A CLAIM FOR THE ITEMS INSIDE HIS HOUSE?

4 A. YES, HE DID.

5 Q. OKAY. AND DOES THIS LOOK LIKE THE CLAIM FORM THAT HE
6 WOULD HAVE USED?

7 A. YES, THIS IS THE FORM HE WOULD HAVE USED.

8 (GOVERNMENT EXHIBIT NUMBER 2325
9 WAS IDENTIFIED FOR THE RECORD.)

10 Q. AND HIS NAME IS ON THERE?

11 A. YES, JEFFREY R. MACDONALD --

12 Q. AND IF YOU'D SCROLL DOWN.

13 Q. -- AND THE P.O. BOX AT FORT BRAGG, YES.

14 Q. AND THEN HE HAS TO MAKE A STATEMENT ABOUT WHY HE'S MAKING
15 THE CLAIM, IF WE CONTINUE DOWN?

16 A. DO YOU WANT ME TO READ THAT?

17 Q. NO, THAT'S OKAY.

18 A. YES, IT DOES STATE THAT.

19 Q. AND THEN IF YOU CAN BLOW IT BACK OUT. AND THEN AT THE
20 BOTTOM HE HAS SIGNED THE CLAIM FOR THESE ITEMS?

21 A. YES, HE DID.

22 Q. AND THE NEXT PAGE, PLEASE. AND THEN IT LISTS THE ITEMS
23 THAT HE CLAIMED FOR, IS THAT RIGHT?

24 A. YES, HE DID.

25 Q. AND IF WE COULD HAVE THE NEXT PAGE, PLEASE. AND THE NEXT

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1 PAGE. AND THE NEXT. AND THE NEXT. AND THE NEXT PAGE. AND
2 IT APPEARS AS THOUGH WE'RE RUNNING THROUGH THE DIFFERENT
3 ROOMS. THE FIRST IS THE LIVING ROOM AND THEN THE DINING ROOM
4 WITH THE DIFFERENT ITEMS THAT ARE BEING REQUESTED AND THEN
5 WE'VE GONE THROUGH THE KITCHEN.

6 NOW, HERE, WE START TO GET INTO THE CHILDREN'S
7 ROOMS. AT THE BOTTOM, DO YOU SEE DOLLS, CHILDREN'S BOOKS AND
8 RECORDS?

9 A. DOLLS, TOYS, CHILDREN'S RECORDS, YES.

10 Q. IF I MAY HAVE THE NEXT PAGE. AND THEN UP THERE AT THE
11 VERY TOP AT ITEM 121 --

12 A. THE ROCKING HORSE ON SPRINGS.

13 Q. AND, AGAIN, IT'S NOT NOTED THAT -- THERE'S A COLUMN THERE
14 THAT SAYS LOST, DAMAGED, DESTROYED.

15 A. EXACTLY.

16 Q. AND THERE'S NO NOTATION THAT IT HAS BEEN LOST OR DAMAGED?

17 A. NONE WHATSOEVER.

18 Q. AND IF YOU COULD GO BACK OUT TO THE FULL VIEW. NOW, YOU
19 MENTIONED EARLIER THAT YOU HAD SEEN THE PHOTOGRAPH THAT
20 APPEARED IN THE *FAYETTEVILLE OBSERVER* THAT WAS TAKEN THROUGH
21 THE VENETIAN BLINDS IN KRISTEN'S BEDROOM.

22 A. EXACTLY, YES.

23 Q. IF I MAY HAVE GOVERNMENT 2318.4, AND THE TOP HALF,
24 PLEASE. DOES THIS SCENE LOOK FAMILIAR TO YOU?

25 A. YES. IT'S A SHOT OF THE FOOTBOARD OF THE BED AND THE

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1 TOYS AND THE ROCKING HORSE.

2 (GOVERNMENT EXHIBIT NUMBER 2318.4
3 WAS IDENTIFIED FOR THE RECORD.)

4 Q. AND THE ROCKING HORSE, DOES IT APPEAR TO BE TILTED IN ANY
5 WAY?

6 A. NO, IT APPEARS TO BE STURDY. NO.

7 Q. AND DOES IT IN ANY WAY APPEAR TO BE BROKEN?

8 A. NO, IT DOES NOT APPEAR TO BE BROKEN.

9 Q. AND WHEN YOU SAW IT IN PERSON, DID IT IN ANY WAY APPEAR
10 TO BE BROKEN TO YOU?

11 A. NO, IT DID NOT.

12 Q. MAY I HAVE 2119? NOW, THIS IS A MUCH MORE RECENT PHOTO.
13 IS THIS HORSE A SIMILAR HORSE TO THE ONE THAT WAS IN KRISTEN'S
14 BEDROOM?

15 A. YES, IT IS VERY SIMILAR.

16 (GOVERNMENT EXHIBIT NUMBER 2119
17 WAS IDENTIFIED FOR THE RECORD.)

18 Q. AND THE CONSTRUCTION OF THIS HORSE?

19 A. THE CONSTRUCTION IS THE SAME.

20 Q. IT'S SUSPENDED ON FOUR SPRINGS?

21 A. ON FOUR -- YES, FOUR SPRINGS. YES.

22 Q. AND SO IT DOESN'T ROCK OR IT DOESN'T ROLL, IT KIND OF
23 BOUNCES?

24 A. YES.

25 Q. OKAY. AND IN THIS PICTURE, DOES THE ORIENTATION OF THIS

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1 HORSE APPEAR TO BE SIMILAR TO THE ONE IN KRISTEN'S ROOM IN
2 TERMS OF IS IT UPRIGHT?

3 A. YES. YES. IT IS UPRIGHT AS THE ONE IN THE BEDROOM
4 LOOKED, YES, OR WAS.

5 Q. SO, IT DOES NOT APPEAR BROKEN TO YOU?

6 A. MA'AM?

7 Q. IT DOES NOT APPEAR BROKEN TO YOU?

8 A. NO.

9 Q. MAY I HAVE 2121? NOW, THIS HORSE, DOES APPEAR IT APPEAR
10 THE SAME AS THE ONE WE JUST LOOKED AT AND THE ONE IN KRISTEN'S
11 BEDROOM?

12 A. YES, IT DOES.

13 Q. OKAY. IS ITS ORIENTATION DIFFERENT?

14 A. YES, THIS IS LISTING TO THE LEFT -- OR TO THE RIGHT, I
15 GUESS. IT APPEARS THAT A SPRING HAS BEEN REMOVED FROM THE
16 RIGHT SIDE OF THE HORSE OR THE LEFT SIDE IN THE PHOTO.

17 (GOVERNMENT EXHIBIT NUMBER 2121
18 WAS IDENTIFIED FOR THE RECORD.)

19 Q. AND SO THE REMOVAL OF THAT SPRING HAS CAUSED THE HORSE TO
20 LIST TO THE SIDE?

21 A. YES, THAT'S NORMALLY WHAT IT WOULD DO. YES.

22 Q. AND MAY I HAVE 2122. AND THIS IS A VIEW FROM BEHIND.
23 DOES IT ALSO APPEAR TO BE LISTING TO THE SIDE?

24 A. YES, IT DOES.

25 (GOVERNMENT EXHIBIT NUMBER 2122

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1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. AND THE HORSE IN THE PHOTOGRAPHS IN KRISTEN'S BEDROOM AS
3 WELL AS WHEN YOU SAW IT IN PERSON, IT WAS NOT LISTING LIKE
4 THIS?

5 A. NO, IT WAS NOT.

6 MS. COOLEY: AND, YOUR HONOR, MAY I APPROACH THE
7 WITNESS?

8 THE COURT: YES, MA'AM.

9 MS. COOLEY: THANK YOU. AND, YOUR HONOR, MAY THE
10 WITNESS STEP DOWN?

11 THE COURT: YES, MA'AM.

12 MS. COOLEY: THANK YOU.

13 BY MS. COOLEY:

14 Q. MR. IVORY, DOES THIS APPEAR TO BE A HORSE SIMILAR TO THE
15 ONE IN KRISTEN'S BEDROOM?

16 A. YES, IT'S SIMILAR.

17 Q. OKAY. IS IT SIMILAR IN CONSTRUCTION?

18 A. IT IS SIMILAR IN CONSTRUCTION, YES.

19 Q. IN THAT IT IS SUSPENDED ON FOUR SPRINGS?

20 A. SUSPENDED ON FOUR SPRINGS.

21 Q. OKAY. NOW, THIS, I'LL NOTE FOR THE RECORD, IS MARKED AS
22 GOVERNMENT'S 2118. NOW, IF YOU WOULD, WILL YOU REMOVE ONE OF
23 THE FRONT SPRINGS?

24 A. IT'S STURDY BUILT.

25 (GOVERNMENT EXHIBIT NUMBER 2118

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1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. SO, IT DOES APPEAR TO BE STURDY?

3 A. BEG YOUR PARDON?

4 Q. FAIRLY STURDY?

5 A. YES. LET'S SEE IF WE CAN GET IT OFF. THERE WE GO.

6 Q. AND SO FOR THE RECORD, I'LL NOTE THAT YOU HAVE REMOVED
7 THE RIGHT FRONT SPRING, TO THE RIGHT OF THE HORSE'S HEAD.

8 A. THAT'S CORRECT.

9 Q. OKAY. AND NOW, DOES THAT CHANGE THE ORIENTATION OF THIS
10 HORSE?

11 A. YES. AGAIN, IT IS LISTING TO THE RIGHT-HAND SIDE.

12 Q. AND IS THIS SIMILAR TO THE PHOTOGRAPH THAT WE JUST LOOKED
13 AT FOR THE RECORD WHERE THE SPRING HAD BEEN REMOVED?

14 A. EXACTLY.

15 Q. OKAY. AND DOES THIS APPEAR SIMILAR TO THE HORSE IN THE
16 PHOTOGRAPH IN KRISTEN'S BEDROOM?

17 A. SAY THAT AGAIN.

18 Q. DOES THIS APPEAR SIMILAR TO THE HORSE IN THE PHOTOGRAPH
19 IN KRISTEN'S BEDROOM?

20 A. YES.

21 Q. OKAY.

22 A. OH, NO, IT DOES NOT BECAUSE --

23 Q. IT DOES NOT BECAUSE OF THE LISTING?

24 A. NO, BECAUSE THIS IS LISTING. THE OTHER ONE WAS NOT. IT
25 WAS UPRIGHT AND THE SPRING WAS INTACT.

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1 Q. AND WHEN YOU SAW IT IN KRISTEN'S BEDROOM, IT WAS NOT
2 LISTING LIKE THIS?

3 A. NO, IT WAS NOT.

4 MS. COOLEY: I HAVE NO FURTHER QUESTIONS, YOUR
5 HONOR.

6 THE COURT: CROSS.

7 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

8 C R O S S - E X A M I N A T I O N 2:47 P.M.

9 BY MR. WIDENHOUSE:

10 Q. IS IT AGENT IVORY?

11 THE COURT: YOU CAN HAVE A SEAT.

12 THE WITNESS: OH, YES, SIR.

13 BY MR. WIDENHOUSE:

14 Q. IS IT AGENT IVORY, IS THAT THE CORRECT DESIGNATION? IS
15 IT AGENT IVORY?

16 A. IT WAS.

17 Q. OKAY. YOU WERE NOT THE FIRST PERSON TO ARRIVE AT THE
18 SCENE IN THE EARLY MORNING HOURS OF FEBRUARY 17TH, WERE YOU?

19 A. NO, I WAS NOT.

20 Q. THERE HAD BEEN A NUMBER OF OTHER PEOPLE THAT HAD GOTTEN
21 INTO THE HOUSE OR COME INTO THE HOUSE BEFORE YOU ARRIVED?

22 A. THERE HAD BEEN SOME, YES.

23 Q. AND THAT WOULD MEAN THAT A NUMBER OF PEOPLE HAD GOTTEN
24 INTO -- HAD COME INTO THE HOUSE BEFORE YOUR PHOTOGRAPHER
25 ARRIVED?

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1 A. YES.

2 Q. I MEAN, HOW LONG AFTER YOU GOT TO THE HOUSE DID YOUR
3 FIRST PHOTOGRAPHER GET THERE?

4 A. I'D SAY WITHIN TEN MINUTES.

5 Q. OKAY. AND DO YOU KNOW HOW MANY PEOPLE -- I MEAN, HOW
6 MANY MEDICS HAD MADE IT INTO THE HOUSE OR APARTMENT BEFORE YOU
7 ARRIVED?

8 A. THAT I KNOW OF, THREE.

9 Q. ALL RIGHT. AND HOW MANY MILITARY POLICE HAD ARRIVED
10 BEFORE YOU DID?

11 A. PERHAPS, FIVE OR SIX.

12 Q. AND HOW MANY AMBULANCE DRIVERS?

13 A. NOT THAT THEY ALL WENT INTO THE HOUSE.

14 Q. WELL, I'M ASKING HOW MANY WERE IN THE HOUSE BEFORE YOU
15 ARRIVED?

16 A. I CAN'T SAY FOR SURE.

17 Q. OKAY. WELL, DO YOU REMEMBER HOW MANY WERE IN THE HOUSE
18 WHEN YOU GOT THERE?

19 A. BASICALLY, YES. THERE WERE -- THERE WERE THREE MEDICS.

20 Q. AND MILITARY POLICE?

21 A. THERE WAS THE FRONT DOOR AND THE BACK DOOR -- THERE WAS
22 THREE M.P.'S INSIDE.

23 Q. AND AMBULANCE DRIVERS?

24 A. WELL, THE AMBULANCE DRIVERS AND MEDICS I'M LUMPING THEM
25 TOGETHER.

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1 Q. ALL RIGHT. SO, THERE WERE AT LEAST SIX PEOPLE IN THE
2 HOUSE -- IN THE APARTMENT BEFORE YOU ARRIVED?

3 A. YES, SIR.

4 Q. NOW, YOU LOOKED AT A NUMBER OF GOVERNMENT EXHIBITS THAT
5 DEPICTED THE BODY OF COLETTE MACDONALD IN THE BEDROOM, DIDN'T
6 YOU?

7 A. YES, I DID.

8 Q. ON THE FLOOR?

9 A. YES, I DID.

10 Q. THE BODY WAS ON THE FLOOR. AND AS YOU DESCRIBED HER
11 BODY, YOU MADE REFERENCE TO THE PAJAMA TOP THAT WAS ON TOP OF
12 HER AND ALSO DRUG OFF TO THE SIDE, CORRECT?

13 A. THAT'S CORRECT.

14 Q. NOW, THAT PAJAMA TOP WASN'T ON HER BODY WHEN THE FIRST
15 RESPONDERS GOT TO THE APARTMENT, WAS IT?

16 A. IT WAS MY UNDERSTANDING THAT IT WAS.

17 Q. AND SO IF MILITARY POLICEMEN ROBERT DUFFY AND DENNIS
18 MORRIS TESTIFIED THAT WHEN THEY GOT THERE AHEAD OF YOU AND SAW
19 AN EXPOSED BREAST OF COLETTE MACDONALD, YOU WOULDN'T KNOW THAT
20 THAT WAS INCORRECT, WOULD YOU?

21 A. I'M SORRY, I DON'T FOLLOW YOU ON THAT.

22 Q. IF TWO MILITARY -- IF MILITARY POLICE ARRIVED AHEAD OF
23 YOU --

24 A. YES.

25 Q. -- AND SAID THAT WHEN THEY ARRIVED THE PAJAMA TOP WASN'T

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1 ON THE BODY, YOU WOULD HAVE NO REASON TO KNOW THAT TO BE FALSE
2 IF THEY GOT THERE AHEAD OF YOU, WOULD YOU?

3 A. NOT REALLY, NO.

4 Q. OKAY. AND IF THEY SAID THAT ONE OF HER BREASTS OR PART
5 OF HER BREAST WAS EXPOSED, YOU WOULDN'T HAVE ANY REASON TO
6 THINK THAT WAS -- OR KNOW THAT WAS FALSE, WOULD YOU?

7 A. I JUST DON'T KNOW WHY THEY DIDN'T REPORT IT THERE AT THE
8 SCENE. IT WAS NOT MADE KNOWN TO ME --

9 Q. ALL RIGHT. BUT YOU DIDN'T --

10 A. -- OR ANY OTHER AGENT THERE.

11 Q. SO, YOU DIDN'T KNOW?

12 A. NO.

13 Q. ALL RIGHT. AND YOU WOULD HAVE NO WAY OF KNOWING IF
14 SOMEONE LAID THE PAJAMA TOP ON TOP OF HER BODY BEFORE YOU GOT
15 THERE TO COVER UP AN EXPOSED BREAST, WOULD YOU?

16 A. NO.

17 Q. YOU WEREN'T THE FIRST ONE THERE?

18 A. THAT'S TRUE.

19 Q. OKAY. AND YOUR PHOTOGRAPHER WAS THERE AFTER YOU WERE?

20 A. EXACTLY.

21 Q. SO, ALL THESE PHOTOGRAPHS DISPLAY OR SHOW IS THE SCENE AT
22 THE TIME YOU GOT THERE AT THE EARLIEST?

23 A. (NO RESPONSE.)

24 Q. THESE PHOTOGRAPHS THAT YOU'VE SPENT A CONSIDERABLE AMOUNT
25 OF TIME DESCRIBING --

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1 A. YES.

2 Q. -- ONLY DEPICT THE SCENE, AT THE EARLIEST, AFTER YOU GOT
3 THERE?

4 A. YES, THAT'S TRUE.

5 Q. AFTER OTHER PEOPLE HAD BEEN IN THE APARTMENT?

6 A. THAT'S TRUE.

7 Q. ALL RIGHT. NOW, YOU TALKED ABOUT THE DESCRIPTION OF, I
8 BELIEVE IT WAS, THE DINING ROOM AND YOU MENTIONED OR NOTED THE
9 VALENTINES THAT WERE, IN YOUR WORDS, IF I'M CORRECT, IF I
10 HEARD YOU CORRECTLY, STANDING UPRIGHT ON THE SIDEBOARD?

11 A. YES, OPENED AS IN A BOOK.

12 Q. AND YOU SEEM TO INDICATE YOU FOUND THAT TO BE UNUSUAL?

13 A. IF, IN FACT, A RUCKUS HAD TAKEN PLACE IN THAT HOUSE, YES,
14 I WOULD THINK THAT WOULD BE UNUSUAL.

15 Q. BUT THE RUCKUS WOULD HAVE HAD TO HAVE TAKEN PLACE NEXT TO
16 AND HIT THE SIDEBOARD, WOULDN'T IT?

17 A. NO. WE'RE TALKING ABOUT SOME PRETTY OLD QUARTERS. IN
18 FACT, THAT CHINA CABINET THAT I DESCRIBED THAT HAD THE
19 SILVERWARE AND CRYSTAL IN IT, WHEN WE TRIED TO DO A
20 REENACTMENT OF WHAT WE THOUGHT COULD HAVE BEEN A RUCKUS
21 BETWEEN JEFFREY MACDONALD AND A GROUP OF ASSAILANTS, WE HAD TO
22 STOP BECAUSE THESE THINGS -- THE CABINET ALMOST FELL OVER.

23 Q. OKAY. DID THE SIDEBOARD ALMOST FALL OVER?

24 A. NO, IT DIDN'T.

25 Q. DID YOU DO THE REENACTMENT WITH THE CARDS SITTING ON THE

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1 SIDEBOARD?

2 A. YES, WE DID.

3 Q. AND THEY FELL?

4 A. I DON'T -- I'D HAVE TO GO BACK AND RE-LOOK AT MY NOTES.

5 I DON'T RECALL.

6 Q. SO, IF THEY DIDN'T FALL, THEN THERE WOULD BE NOTHING
7 UNUSUAL OR INTERESTING ABOUT YOU OBSERVING THOSE VALENTINES
8 STANDING UPRIGHT ON THE SIDEBOARD?

9 A. WELL, NO.

10 Q. NO, THERE WOULDN'T BE ANYTHING UNUSUAL ABOUT IT?

11 A. IT WOULD BE UNUSUAL IN THAT THERE WERE BLOOD STAINS ON
12 THE FLOOR RIGHT NEXT TO THAT SIDEBOARD, BLOOD STAINS IN THE
13 KITCHEN, WHICH INDICATED TO ME THAT THERE WAS SOME SORT OF
14 ACTIVITY GOING ON THERE, AND I'M SURE THEY WOULD HAVE BEEN
15 KNOCKED OVER.

16 Q. AND WHAT WAS THE -- YOU DIDN'T POINT OUT ANYTHING WHEN
17 YOU LOOKED AT THAT PHOTOGRAPH THAT SHOWED EVIDENCE OF ACTIVITY
18 ADJACENT TO THE SIDEBOARD?

19 A. I'M NOT FOLLOWING YOU.

20 Q. YOU MADE A POINT ABOUT THE SIGNIFICANCE TO YOU OF THESE
21 VALENTINES STANDING UPRIGHT AT THE SIDEBOARD?

22 A. YES.

23 Q. WHEN YOU LOOKED AT THAT PHOTOGRAPH, YOU POINTED OUT
24 NOTHING, DID YOU, THAT SHOWED A STRUGGLE ADJACENT TO THE
25 SIDEBOARD?

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1 A. NO, I DIDN'T.

2 Q. SO, YOU'RE ASSUMING THAT IF THERE'S A STRUGGLE SOMEWHERE
3 ELSE IN THE APARTMENT IT WOULD HAVE CAUSED THE VALENTINES TO
4 FALL?

5 A. WHEN I MENTIONED THAT CABINET, IT WAS WIGGLING, IT WAS
6 NOT BECAUSE THEY WERE BUMPING -- PEOPLE WERE BUMPING UP
7 AGAINST THIS CABINET, WHAT WAS HAPPENING IS THE FLOOR WAS
8 UNDULATING.

9 Q. I UNDERSTAND THAT. MY QUESTION -- BUT THE CABINET --
10 ISN'T IT POSSIBLE, CERTAINLY, FOR ONE PIECE OF FURNITURE TO
11 ROCK, WHERE ANOTHER PIECE OF FURNITURE ON THE SAME FLOOR,
12 THAT'S BUILT AND CONSTRUCTED DIFFERENTLY, WOULDN'T ROCK?

13 A. THAT'S POSSIBLE.

14 Q. OKAY. SO, THERE'S NOTHING OF SIGNIFICANCE TO THESE
15 VALENTINES STANDING UP, IS THERE?

16 A. TO ME, THERE WAS. TO YOU, PERHAPS, NOT.

17 Q. OKAY. SO, IT'S A WASH --

18 A. IT'S A MATTER OF OPINION.

19 Q. -- DIFFERENT PEOPLE COULD LOOK AT IT AND COME TO A
20 DIFFERENT CONCLUSION ABOUT WHAT IT MEANT, COULDN'T THEY?

21 A. YES.

22 Q. ALL RIGHT. YOU MENTIONED -- AND, AGAIN, DESCRIBING THE
23 PHOTOGRAPH OF THE DINING ROOM, YOU TALKED ABOUT CANDLE WAX
24 THAT YOU FOUND IN THE HOUSE.

25 A. YES.

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1 Q. OKAY. AND THERE WAS CANDLE WAX ALSO IN KIMBERLEY'S ROOM,
2 WASN'T THERE?

3 A. YES, THERE WAS ON THE ARMS OF THE CHAIR. YES, THERE WAS.

4 Q. CANDLE WAX ON THE BEDSPREAD IN KIMBERLEY'S ROOM, CANDLE
5 WAX ON THE COFFEE TABLE, CANDLE WAX IN ALL OF THESE PLACES,
6 CORRECT?

7 A. CORRECT.

8 Q. AND NONE OF THAT CANDLE WAX MATCHED ANY OF THE CANDLES IN
9 THE HOUSE?

10 A. I'D HAVE TO DIFFER WITH YOU ON THAT.

11 Q. WELL, WHICH ONES DID THEY MATCH?

12 A. WE COLLECTED EVERY CANDLE WE COULD FIND IN THE HOUSE AND
13 SENT THEM OFF TO THE LABORATORY TO BE EXAMINED. AS FAR AS I
14 KNOW, ALL THE SAMPLES WE COLLECTED HAD BEEN IDENTIFIED OR
15 ASSOCIATED WITH ANOTHER CANDLE OR OTHER CANDLE WAX.

16 Q. OKAY.

17 A. NOW -- OKAY. GO ON.

18 Q. NO. GO AHEAD.

19 A. I'M FINE.

20 Q. BUT THERE WAS CANDLE WAX THAT DIDN'T MATCH CANDLE
21 DRIPPINGS IN THE HOUSE IN SEVERAL OF THESE PLACES INCLUDING
22 THE CHAIR IN KIMBERLEY'S ROOM AND THE BEDSPREAD IN KIMBERLEY'S
23 ROOM THAT DID NOT MATCH ANY CANDLES IN THE HOUSE, ISN'T THAT
24 ACCURATE?

25 A. I DON'T KNOW. I DON'T KNOW IF THAT'S ACCURATE OR NOT. I

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1 DON'T RECALL HAVING SEEN --

2 Q. SO, IF THE TRIAL TRANSCRIPT REVEALED THAT THAT IS
3 ACCURATE --

4 A. IF YOU CAN SHOW ME IN A LAB REPORT THEN I'LL SAY, YEAH,
5 YOU'RE A HUNDRED PERCENT CORRECT.

6 Q. ALL RIGHT. WELL, IF AN EXPERT TESTIFIED TO THAT AT TRIAL
7 THAT WOULD SATISFY YOU AS WELL, WOULDN'T IT?

8 A. YES, IT WOULD.

9 Q. ALL RIGHT. ARE YOU AWARE OF THE RESULT OF THE ARTICLE 32
10 INQUIRY?

11 A. YES, I AM.

12 Q. AND THAT WAS DONE AFTER THE CRIME SCENE HAD BEEN
13 EXAMINED?

14 A. YES.

15 Q. EVIDENCE COLLECTED?

16 A. YES.

17 Q. EVIDENCE PRESERVED? EVIDENCE --

18 A. YES.

19 Q. -- PRESERVED? EVIDENCE TESTED?

20 A. I DON'T THINK ALL THE EVIDENCE HAD BEEN TESTED AT THAT --
21 I DON'T RECALL THE DATES. COULD YOU GIVE ME THE DATES OF THE
22 ARTICLE 32, THAT WOULD KIND OF ORIENT ME TO TIME AND SPACE
23 HERE?

24 Q. WASN'T THE ARTICLE 32 REPORT ENTERED OR FILED ON 13
25 OCTOBER 1970?

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1 A. IT COULD HAVE BEEN, YES.

2 Q. OKAY.

3 A. IF YOU SAY SO, YES.

4 Q. ALL RIGHT. WELL, ASSUMING THAT THE ARTICLE 32 REPORT,
5 THE ROCK REPORT AS IT'S SORT OF -- AS IT'S REFERRED TO, WAS
6 FILED ON OCTOBER 13TH, 1970, THAT WOULD HAVE BEEN AFTER MOST
7 OF THE CRIME SCENE HAD BEEN PROCESSED, WOULDN'T IT?

8 A. YES.

9 Q. AND MOST OF THE EVIDENCE COLLECTED?

10 A. YES.

11 Q. AND MOST OF THE EVIDENCE ANALYZED?

12 A. AT LEAST SUBMITTED TO THE LABORATORY. I DON'T KNOW IF IT
13 HAD BEEN ANALYZED.

14 Q. ALL RIGHT. AND YOU KNOW THE RESULT OF THE ARTICLE 32
15 INQUIRY, DON'T YOU?

16 A. YES.

17 Q. ALL RIGHT. IF I COULD TAKE YOU TO EXHIBIT -- WELL, I'M
18 GOING TO SHOW YOU ON THE SCREEN --

19 MR. WIDENHOUSE: I CAN'T GET IT ON THE SCREEN, YOUR
20 HONOR.

21 BY MR. WIDENHOUSE:

22 Q. LET ME READ TO YOU THE RECOMMENDATION OF THE ARTICLE 32
23 REPORT AND SEE IF THIS REFRESHES YOUR RECOLLECTION AS TO THE
24 RECOMMENDATION; ALL CHARGES AND SPECIFICATIONS AGAINST CAPTAIN
25 JEFFREY R. MACDONALD MUST BE DISMISSED BECAUSE THE MATTERS SET

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1 FORTH IN ALL CHARGES AND SPECIFICATIONS ARE NOT TRUE.

2 THAT'S AFTER ALL OF THIS EVIDENCE THAT WAS COLLECTED
3 AND EXAMINED AND PRESENTED WAS REVIEWED, IF IT WAS RENDERED ON
4 OCTOBER 13TH, 1970. SO, SOMEBODY EXAMINED ALL THE EVIDENCE
5 THAT YOU'VE TAKEN US LABORIOUSLY THROUGH IN THESE PHOTOGRAPHS
6 AND SAID THE CHARGES AGAINST DR. MACDONALD ARE NOT TRUE,
7 CORRECT?

8 A. IF THAT'S WHAT IT SAYS. NOW, THAT WAS NOT THE MISSION OF
9 COLONEL ROCK TO FIND OUT IF IT WAS TRUE OR NOT TRUE. IT WAS
10 JUST TO FIND OUT IF THERE WAS REASONABLY ENOUGH EVIDENCE TO GO
11 AHEAD WITH A CRIMINAL TRIAL.

12 THE COURT: WE'RE GOING TO TAKE A RECESS TILL 3:15.

13 (RECESS TAKEN FROM 3:00 P.M., UNTIL 3:21 P.M.)

14 (DEFENDANT PRESENT.)

15 THE COURT: PLEASE BE SEATED, EVERYONE. WE'LL
16 CONTINUE. PLEASE BE SEATED. COUNSEL, LET ME SEE YOU JUST
17 SECOND.

18 (BENCH CONFERENCE ON THE RECORD.)

19 THE COURT: I INTEND TO ANNOUNCE THAT I'M GOING TO
20 RECEIVE THIS SUBMISSION UNDER SEAL, THAT I WILL REVIEW IT, AND
21 IF I THINK IT'S PERTINENT I'LL ALLOW MR. LEONARD TO TESTIFY.
22 IF I THINK IT'S NOT, HE WON'T.

23 MR. WIDENHOUSE: THAT'S FINE.

24 THE COURT: AND THE PUBLIC WILL KNOW THAT. ALL
25 RIGHT. THANK YOU.

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1 MR. BRUCE: THANK YOU.

2 MR. WEST: YOUR HONOR, DO YOU WANT ME TO HAND IT
3 DIRECTLY TO YOU OR TO THE CLERK?

4 THE COURT: GIVE IT TO THE CLERK.

5 (BENCH CONFERENCE CONCLUDED.)

6 THE COURT: COUNSEL. COUNSEL. THAT'S ALL RIGHT.
7 YOU CAN GO BACK TO YOUR SEATS.

8 THE ISSUE HAS BEEN RAISED AS TO WHETHER OR NOT THE
9 ATTORNEY-CLIENT PRIVILEGE PRECLUDES MR. LEONARD FROM
10 TESTIFYING AS TO WHAT MRS. MACDONALD -- MS. STOECKLEY TOLD
11 HIM.

12 THE LAW IS SOMEWHAT IN A STATE OF FLUX ON THAT, AND
13 THE FOOTNOTE IN THE CASE OF *SWIDLER AND BERLIN VERSUS HAMILTON*
14 READS AS FOLLOWS; PETITIONERS WHILE OPPOSING WHOLESALE
15 ABROGATION OF THE PRIVILEGE IN CRIMINAL CASES CONCEDE THAT
16 EXCEPTIONAL CIRCUMSTANCES IMPLICATING A CRIMINAL DEFENDANT'S
17 CONSTITUTIONAL RIGHTS MIGHT WARRANT BREACHING THE PRIVILEGE.
18 WE DO NOT, HOWEVER, NEED TO REACH THIS ISSUE SINCE SUCH
19 EXCEPTIONAL CIRCUMSTANCES CLEARLY ARE NOT PRESENT HERE.

20 THIS COURT CANNOT SAY WHETHER SUCH EXCEPTIONAL
21 CIRCUMSTANCES ARE PRESENT. I HAVEN'T HEARD -- SEEN THE
22 STATEMENT.

23 I'M GOING TO HAVE THE STATEMENT OF MR. LEONARD
24 SUBMITTED FOR IN CAMERA REVIEW BY THE COURT. AT THAT POINT, I
25 WILL MAKE A DETERMINATION AS TO WHETHER OR NOT SUCH

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1 EXCEPTIONAL CIRCUMSTANCES EXIST WHICH WARRANT ABROGATING THE
2 CLIENT PRIVILEGE PRINCIPAL IN WHICH CASE -- PRIVILEGE IN WHICH
3 CASE I'LL LET MR. LEONARD TESTIFY, BUT I HAVE TO MAKE THAT
4 DECISION AFTER I CONSIDER ALL OF THE CIRCUMSTANCES INCLUDING
5 THE CONTENT OF WHAT SHE'S DISCLOSED TO MR. LEONARD.

6 NOW, COUNSEL, I'M GOING TO RECEIVE THAT THIS
7 AFTERNOON FROM MR. WEST. MR. WEST, CAN HAND IT UP TO THE
8 CLERK. IT WILL BE KEPT UNDER SEAL. I WILL TAKE A LOOK AT IT.
9 I WILL ADVISE YOU TOMORROW AS TO WHETHER OR NOT I WILL LET MR.
10 LEONARD TESTIFY.

11 IS THERE ANY QUESTION ABOUT THAT, COUNSEL?

12 MR. BRUCE: NONE FROM THE GOVERNMENT, YOUR HONOR.

13 THE COURT: MR. WIDENHOUSE?

14 MR. WIDENHOUSE: I GUESS I WOULD JUST ASK IF YOU
15 DECIDE YES, ARE YOU GOING TO UNSEAL THE DOCUMENT SO THAT I
16 MIGHT REVIEW IT BEFORE I CALL HIM AS A WITNESS.

17 THE COURT: IF I'M GOING TO LET HIM TESTIFY, YOU CAN
18 CALL HIM AS A WITNESS CERTAINLY.

19 MR. WIDENHOUSE: I GUESS MY QUESTION IS, CAN I --
20 WOULD I BE ALLOWED TO SEE THE MATERIAL THAT'S UNDER SEAL IF
21 YOU DECIDE I'M GOING TO BE ABLE TO CALL HIM AS A WITNESS
22 BEFORE I CALL HIM?

23 THE COURT: YES.

24 MR. WIDENHOUSE: THANK YOU.

25 MR. WEST: YOUR HONOR, JUST AS A PRACTICAL MATTER,

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1 IS IT OKAY IF I RELEASE MR. LEONARD JUST FOR THIS AFTERNOON?

2 THE COURT: YES, SIR.

3 MR. WEST: IS THAT OKAY WITH YOU ALL?

4 MR. BRUCE: YES.

5 MR. WEST: THANK YOU, YOUR HONOR.

6 THE COURT: THANK YOU. ARE WE READY TO GO FORWARD
7 NOW?

8 MR. BRUCE: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. LET'S SEE. YOU'RE STILL
10 UNDER OATH, MR. IVORY. THE WITNESS IS WITH MR. WIDENHOUSE.
11 BY MR. WIDENHOUSE:

12 Q. ALL RIGHT. AGENT IVORY, WHEN WE BROKE I WAS ASKING YOU
13 ABOUT THE ROCK REPORT AND I BELIEVE YOU TOLD ME THAT YOU
14 DIDN'T THINK HIS -- THAT THE COLONEL'S TASK WAS TO DETERMINE
15 WHETHER MR. MACDONALD WAS GUILTY, BUT WAS MORE TO DETERMINE
16 WHETHER THERE WAS PROBABLE CAUSE OR SOMETHING SIMILAR TO THAT
17 FOR THE CASE TO MOVE FORWARD, IS THAT --

18 A. YES. YES.

19 Q. THAT WAS YOUR POSITION ON THAT. WELL, I'M NOW ABLE TO
20 TAKE YOU TO THE ROCK REPORT, WHICH IS EXHIBIT 5076. AT LEAST
21 I THINK I'M ABLE TO. YES. AND I'D LIKE FOR YOU TO READ THE
22 HIGHLIGHTED PORTION FOR THE RECORD.

23 A. ALL CHARGES AND SPECIFICATIONS AGAINST CAPTAIN JEFFREY R.
24 MACDONALD BE DISMISSED BECAUSE THE MATTERS SET FORTH IN ALL
25 CHARGES AND SPECIFICATIONS ARE NOT TRUE. THERE ARE NO LESSER

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1 CHARGES AND/OR SPECIFICATIONS WHICH ARE APPROPRIATE.

2 (DEFENSE EXHIBIT NUMBER 5076

3 WAS IDENTIFIED FOR THE RECORD.)

4 Q. ALL RIGHT. AND COLONEL ROCK HAD THE MATERIAL, THE
5 EXHIBITS, THE EVIDENCE, THAT YOU DESCRIBED AS YOU WALKED
6 THROUGH THOSE PHOTOGRAPHS AT THE TIME OF THE ARTICLE 32
7 INQUIRY?

8 A. HE DID NOT HAVE THEM ALL. ALL OF THE ITEMS HAD NOT BEEN
9 ANALYZED AND REVIEWED AT THE LABORATORY.

10 Q. ARE ANY OF THOSE PHOTOGRAPHS PHOTOGRAPHS THAT WERE MADE
11 AFTER OCTOBER 13, 1970?

12 A. PHOTOGRAPHS, NO.

13 Q. OKAY. SO, WHAT YOU WERE TESTIFYING TO ON DIRECT
14 EXAMINATION WAS WHAT THE PHOTOGRAPHS DEPICTED, CORRECT?

15 A. YES.

16 Q. HE WOULD HAVE HAD ALL OF THOSE PHOTOGRAPHS AT HIS
17 DISPOSAL AT THE TIME HE MADE HIS RECOMMENDATION, WOULDN'T HE?

18 A. THE PHOTOGRAPHS, YES.

19 Q. AND WHAT EVIDENCE DID HE -- ALL RIGHT, THAT'S FINE. WE
20 ALSO HAD TALKED ABOUT SOME UNMATCHED WAX DRIPPINGS. IN OTHER
21 WORDS, DRIPPINGS IN THE HOUSE OR THE APARTMENT THAT DIDN'T
22 MATCH THE CANDLES THAT WERE SEIZED FROM THE APARTMENT. AND
23 YOU SAID, WELL, I'M NOT SO SURE, BUT IF SOMEBODY TESTIFIED TO
24 THAT PERHAPS THAT WOULD MAKE SENSE --

25 A. I HAVE NO PERSONAL KNOWLEDGE OF IT.

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1 Q. ALL RIGHT. I'M GOING TO TAKE YOU TO SEVERAL PAGES OF THE
2 TRIAL TRANSCRIPT IN THIS CASE. THE FIRST ONE THAT'S GOING TO
3 COME UP IS PAGE 3841, AND I'D LIKE YOU TO START READING AT
4 LINE 16 AND CONTINUE READING THE HIGHLIGHTED PORTIONS, AND
5 WE'LL GO TO PAGE AFTER PAGE UNTIL WE FINISH THIS. AND READ IT
6 OUT LOUD FOR THE RECORD, PLEASE.

7 A. YES, I'M TRYING TO GET IT IN CONTEXT A MINUTE.

8 Q. THAT'S FINE.

9 A. AND AS A RESULT OF THE COMPARISON THAT YOU MADE, WERE YOU
10 ABLE TO ESTABLISH THAT, FIRST OF ALL, THE WAX THAT WAS FOUND
11 ON THE CHAIR IN KIMBERLEY'S ROOM, WAS THAT WAX THE SAME OR
12 SIMILAR TO THE WAX WHICH WAS FOUND ELSEWHERE IN THE MACDONALD
13 HOME?

14 THE ANSWER WAS, NO, IT WAS NOT.

15 AND THEN AGAIN, IT WAS NOT. WHAT ABOUT THE WAX THAT
16 WAS FOUND ON THE BEDSPREAD IN KIMBERLEY'S ROOM? WAS THAT THE
17 SAME AS THE KNOWN SAMPLE OF WAX TAKEN FROM THE MACDONALD
18 HOUSE?

19 NO, IT WAS NOT.

20 WHAT ABOUT THE WAX THAT WAS FOUND IN THE LIVING
21 ROOM, WAS THAT THE SAME AS THE KNOWN SAMPLES OF WAX IN THE
22 MACDONALD HOUSE?

23 NO, ALL THREE SAMPLES DIFFERED.

24 NOW, WERE THE THREE SAMPLES -- THE THREE UNKNOWN --
25 WERE THEY IDENTICAL TO EACH OTHER; THAT IS, DID THEY COME FROM

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1 THE SAME SINGLE SOURCE, A SINGLE CANDLE, OR SOME SINGLE
2 PARAFFIN SOURCE?

3 NO, THEY DID NOT.

4 Q. THANK YOU. THAT TESTIMONY WOULD INDICATE, WOULD IT NOT,
5 THAT THERE WERE THREE WAX SAMPLE DRIPPINGS IN THE HOUSE,
6 CORRECT?

7 A. CORRECT.

8 Q. IN THREE DIFFERENT LOCATIONS, CORRECT?

9 A. CORRECT.

10 Q. THAT DIDN'T MATCH ANY CANDLES THAT WERE IN THE HOUSE,
11 CORRECT?

12 A. CORRECT.

13 THE COURT: LET ME JUST ASK A QUESTION. WERE THEY
14 DISSIMILAR FROM EACH OTHER?

15 THE WITNESS: YES, SIR, THAT'S WHAT I WAS READING.

16 THE COURT: IN OTHER WORDS, THE VARIOUS -- THE WAX
17 IN THE HOUSE DIDN'T MATCH ALL -- IT WASN'T THE SAME WAX ALL
18 OVER?

19 THE WITNESS: NO, IT WASN'T THE SAME WAX ALL OVER.
20 IT WAS DIFFERENT SAMPLINGS OF DIFFERENT WAX FROM AROUND THE
21 HOUSE.

22 THE COURT: AND THEY DIFFERED FROM EACH OTHER?

23 THE WITNESS: YES.

24 THE COURT: AS WELL AS THE CANDLES IN THE HOUSE.

25 THANK YOU.

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1 BY MR. WIDENHOUSE:

2 Q. AND IF I COULD TAKE YOU TO THE BOTTOM OF THE PAGE WE WERE
3 ON, LINE 24, AND ASK YOU TO START READING THERE.

4 A. THE CONCLUSION WAS, MR. BROWNING, WAS THAT THE THREE
5 UNKNOWNNS WERE, FIRST OF ALL, UNLIKE THE EIGHT KNOWN WAX
6 SAMPLES IN THE MACDONALD HOUSE, IS THAT RIGHT, FIRST OF ALL?

7 THE ANSWER IS YES.

8 AND THAT THE THREE UNKNOWNNS WERE NOT SIMILAR TO EACH
9 OTHER, IS THAT ALSO CORRECT?

10 THIS IS CORRECT.

11 NOW, LATER ON, AFTER THIS INITIAL EXAMINATION OF
12 WAX, WERE YOU NOT ASKED TO MAKE SOME FURTHER COMPARISONS OF
13 THESE THREE UNKNOWNNS WITH OTHER SAMPLES THAT MAY HAVE BEEN
14 TAKEN IN THE MACDONALD HOUSE?

15 YES, I RECEIVED SIX MORE CANDLES. IF I REMEMBER
16 CORRECTLY, THREE OF THOSE WERE UNBURNED, UNBURNED CANDLES OR
17 UNUSED CANDLES. THE OTHER THREE HAD BEEN USED.

18 Q. AND GO ON TO THE NEXT PAGE. I'M SORRY. OH, I'M SORRY.
19 GO TO THE NEXT PAGE AND PICK UP AT LINE 18.

20 A. SO, THEN, AS I UNDERSTAND YOUR TESTIMONY, YOU COMPARED 14
21 DIFFERENT WAXES, CANDLES OR OTHER SIMILAR PARAFFIN MATERIALS
22 KNOWN TO HAVE COME FROM THE MACDONALD HOUSE WITH THE THREE
23 UNIDENTIFIED WAXES FOUND IN THE MACDONALD HOUSE?

24 YES.

25 AND THAT NONE OF THESE 14 KNOWN WAXES, CANDLES OR

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1 PARAFFIN FROM THE MACDONALD HOUSE WERE THE SAME AS THE THREE
2 UNIDENTIFIED?

3 THIS IS CORRECT.

4 Q. ALL RIGHT. NOW, ANOTHER ITEM THAT YOU IDENTIFY IN THE
5 PHOTOGRAPHS WAS A PAIR OF GLASSES --

6 A. YES.

7 Q. -- THAT WERE ON THE FLOOR AND I BELIEVE YOU SAID THAT
8 THERE WAS A SPOT OF BLOOD ON THE GLASSES THAT WAS TYPE O,
9 WHICH WAS THE SAME AS THE BLOOD TYPE OF ONE OF THE MACDONALD
10 FAMILY MEMBERS?

11 A. YES, THE BABY.

12 Q. OKAY. AND WERE YOU AWARE THAT DR. MACDONALD -- WELL, YOU
13 KNOW HE'S A DOCTOR, WAS A DOCTOR, OBVIOUSLY, CORRECT?

14 A. CORRECT.

15 Q. WORKED IN AN EMERGENCY ROOM, CORRECT?

16 A. CORRECT.

17 Q. HAD BEEN WORKING IN THE EMERGENCY ROOM THAT VERY WEEKEND,
18 CORRECT?

19 A. CORRECT.

20 Q. AND YOU KNOW THAT, IN FACT, THE FBI DETERMINED THAT THAT
21 WEEKEND HE HAD TREATED FIVE PATIENTS AT THE EMERGENCY ROOM
22 WITH TYPE O BLOOD, CORRECT? DO YOU KNOW THAT?

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

24 Q. BUT YOU HAVE NO REASON TO DISBELIEVE IT IF AN FBI AGENT
25 SAID THAT THAT WAS TRUE?

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1 A. ABSOLUTELY NOT.

2 Q. ALL RIGHT. AND ONE OF THOSE PATIENTS HAD, IN FACT, CUT
3 HIS FOOT -- RIPPED HIS --

4 A. EXCUSE ME.

5 Q. I'M SORRY.

6 A. I'M LOSING CONNECTABILITY WITH THE -- OKAY. I'VE GOT YOU
7 NOW.

8 Q. YOU GOT ME NOW?

9 A. YES.

10 Q. OKAY. IF I TALK TOO FAST OR YOU NEED TO SEE MY LIPS,
11 JUST LET ME KNOW AND I'LL DO THE BEST I CAN SO WE CAN
12 COMMUNICATE.

13 ONE OF THOSE FIVE PATIENTS THAT HE TREATED AT THE
14 EMERGENCY ROOM HAD RIPPED HIS FOOT IN AN ACCIDENT, OKAY, AND
15 THAT PATIENT HAD TYPE O BLOOD. YOU HAVE NO REASON TO
16 DISBELIEVE THAT?

17 A. NO.

18 Q. AND CERTAINLY COULD HAVE GOTTEN A SPECK OF TYPE O BLOOD
19 FROM WORKING WITH FIVE PATIENTS THAT WEEKEND IN THE EMERGENCY
20 ROOM WITH TYPE O BLOOD, CORRECT?

21 A. CORRECT.

22 Q. OKAY. NOW, WITH RESPECT TO THESE GLASSES, THERE WAS ALSO
23 A PINK FIBER FOUND ON THE GLASSES, WAS THERE NOT?

24 A. I DON'T RECALL. I REALLY DON'T RECALL.

25 Q. OKAY. BUT YOU WOULDN'T -- IF THE LABORATORY REPORTS

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1 SHOWED THAT A PINK FIBER HAD BEEN FOUND ON THOSE GLASSES, YOU
2 WOULDN'T DISPUTE THAT THAT WAS ACCURATE --

3 A. NO.

4 Q. -- IF THE LAB REPORT SHOWED THAT --

5 A. IF IT SAYS IT, NO.

6 Q. -- THE INVESTIGATIVE REPORT SHOWED THAT?

7 A. NO.

8 Q. AND IN THE SAME RESPECT, IF THE INVESTIGATIVE REPORT
9 SHOWED THAT SEVERAL GOVERNMENT AGENTS HAD COMPARED THAT TO A
10 NUMBER OF SAMPLES OF ITEMS THAT THEY HAD TAKEN FOR -- OR
11 DEBRIS THAT THEY HAD TAKEN FROM THE HOUSE AND IT DIDN'T MATCH
12 ANY OF THOSE SAMPLES, YOU WOULDN'T DISPUTE THAT EITHER, IF
13 THAT'S WHAT THE INVESTIGATIVE REPORT SHOW?

14 A. IF THAT'S WHAT IT SHOWED, NO.

15 Q. ALL RIGHT. AND IF THEY LOOKED AT THE EVIDENCE IN THE
16 EVIDENCE LOG AND DETERMINED THAT THERE WAS NO SOURCE FOR THAT
17 PINK FIBER FROM ANY OF THE EVIDENCE THAT HAD BEEN TAKEN FROM
18 THE CRIME SCENE, YOU WOULDN'T DISPUTE THAT EITHER?

19 A. I WOULDN'T, NO.

20 Q. OKAY. WOULDN'T IT BE IMPORTANT IF THERE WAS AN UNMATCHED
21 FIBER THAT COULD NOT BE TRACED TO ANY ITEM IN THE HOUSE ON DR.
22 MACDONALD'S GLASSES? AS AN INVESTIGATOR, WOULDN'T IT BE
23 IMPORTANT TO YOU IF THERE WAS AN UNMATCHED FIBER ON HIS
24 GLASSES THAT COULD NOT BE SOURCED TO ANY OTHER EXHIBIT THAT
25 HAD BEEN COLLECTED DURING THE INVESTIGATION?

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1 A. IT WOULD BE OF INTEREST. I DON'T KNOW WHAT YOU'RE TRYING
2 TO GET AT.

3 Q. I'M JUST ASKING YOU AS A TRAINED INVESTIGATOR. YOU SAID
4 YOU GOT DOWN ON THE FLOOR AND PULLED THE CARPET FIBERS APART
5 AND USED THE TWEEZERS TO TRY AND GET ANY AVAILABLE EXHIBITS OR
6 INFORMATION TO TRY AND DETERMINE HOW THE CRIMES OCCURRED.
7 WOULDNT'T IT BE IMPORTANT IF THERE WAS A FIBER ON HIS GLASSES?

8 A. IT WOULD CERTAINLY BE OF INTEREST.

9 Q. OKAY.

10 A. I DON'T KNOW IF IT WOULD BE IMPORTANT BECAUSE OF THE --

11 Q. IF YOU WERE TRYING TO DETERMINE WHETHER THE ACCOUNT OF A
12 STRUGGLE WAS ACCURATE, WOULDNT'T IT BE IMPORTANT TO SEE WHAT
13 FOREIGN MATERIALS WERE ON THE GLASSES THAT YOU FOUND ON THE
14 FLOOR?

15 A. IN A SENSE, YES. IN A SENSE, NO.

16 Q. WELL, WHY WOULD IT --

17 A. FROM THE STORY THAT WE HEARD OF WHAT WAS SUPPOSED TO HAVE
18 HAPPENED THERE, HE DIDN'T HAVE HIS GLASSES ON.

19 Q. BUT IF THE GLASSES WERE IN THE AREA WHERE A STRUGGLE
20 OCCURRED --

21 A. EXACTLY.

22 Q. -- AND YOU FOUND THEM UP AGAINST THE WALL AND THE FLOOR,
23 SORT OF IN THE CORNER, THAT WOULD NOT BE IN YOUR EXPERIENCE A
24 TYPICAL PLACE FOR SOMEONE TO PUT THEIR GLASSES WHEN THEY TAKE
25 THEM OFF?

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1 A. NO.

2 Q. YOU WOULDN'T PUT THEM ON THE FLOOR, YOU KNOW, NEXT TO A
3 WALL?

4 A. HUH-UH. WELL --

5 Q. SO, IT WOULD BE SOME INDICATION THAT PERHAPS THOSE
6 GLASSES ENDED UP THERE IN A STRUGGLE?

7 A. YES, PROBABLY KNOCKED OFF A TABLE OR SOMETHING.

8 Q. OR KNOCKED OFF HIS -- THE TOP OF HIS HEAD, IF HE HAD THEM
9 THERE?

10 A. (NO RESPONSE.)

11 Q. YOU DON'T KNOW WHERE THEY CAME FROM, BUT YOU THOUGHT IT
12 WAS SIGNIFICANT THAT THERE WAS A SPOT OF TYPE O BLOOD ON HIS
13 GLASSES.

14 A. UH-HUH. YES.

15 Q. AND ALL I'M ASKING IS WOULDN'T IT HAVE BEEN -- MAYBE YOU
16 DON'T LIKE THE WORD SIGNIFICANT -- INTERESTING --

17 A. INTERESTING, YES.

18 Q. -- TO DETERMINE IF THERE WAS A FIBER ON HIS GLASSES THAT
19 COULD NOT BE SOURCED TO ANY ITEM IN THE APARTMENT?

20 A. YES. OF INTEREST, YES.

21 Q. I'M SORRY?

22 A. IT WOULD BE OF INTEREST.

23 Q. NOW, YOU MENTIONED THE PRINTS ON THE *ESQUIRE* MAGAZINE
24 THAT I THINK YOU SAID WAS UNDER -- SORT OF WEDGED UNDER THE
25 COFFEE TABLE AND PART OF IT IS UNDER THE TOP OF A CHILDREN'S

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1 GAME OR A BOARD OF A CHILDREN'S GAME OR SOMETHING LIKE THAT.

2 ISN'T IT TRUE THAT WHEN THAT *ESQUIRE* MAGAZINE WAS
3 EXAMINED THAT THERE WERE FINGERPRINTS FROM SOME OF THE
4 INVESTIGATING AGENTS ON THE PART OF THE MAGAZINE THAT WAS
5 UNDER THE BOARD FROM THE CHILD'S GAME?

6 A. I BELIEVE I HEARD SOMETHING LIKE THAT, YES.

7 Q. ALL RIGHT. I'D LIKE TO TAKE YOU TO TRIAL TRANSCRIPT
8 PAGE 3149 -- IT'S GOING TO SHOW UP IN FRONT OF YOU -- AND ASK
9 YOU TO BEGIN READING AT LINE 15 AND READ THE HIGHLIGHTED
10 PORTIONS.

11 A. DID YOU FIND THE FINGERPRINT OF ANY OF THE INVESTIGATORS
12 IN THIS CASE ALSO ON THE MAGAZINE?

13 MAY I EXPLAIN YOUR ANSWER?

14 PLEASE ANSWER YES OR NO, AND THEN YOU MAY EXPLAIN.

15 DID I FIND OTHER PRINTS OTHER THAN THE MEMBERS OF
16 THE MACDONALD AND MR. HARRISON? YES.

17 FIRST OF ALL, DID YOU FIND THE PRINTS OF ANY
18 INVESTIGATORS IN THIS CASE?

19 YES. YES, SIR.

20 DID YOU FIND THEM?

21 Q. NEXT PAGE. I'M SORRY. JUST KEEP READING. WE'RE GOING
22 TO COME UP A COUPLE MORE PAGES.

23 A. YES.

24 HOW MANY PRINTS OF INVESTIGATORS DID YOU FIND?

25 TO THE BEST OF MY MEMORY, THREE, SIR.

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1 ONE OR MORE OF THOSE THE FINGERPRINT OF -- THE
2 QUESTION WAS, WAS ONE OR MORE OF THOSE FINGERPRINTS OF MR.
3 WILLIAM IVORY?

4 YES, SIR.

5 WHO ELSE DID YOU FIND A FINGERPRINT OF WHO WAS AN
6 INVESTIGATOR?

7 AN FBI AGENT.

8 WHO WAS THAT AGENT?

9 I DON'T REMEMBER HIS NAME, SIR.

10 Q. BEFORE YOU PICK UP AT LINE 13, SO, IN FACT, YOUR
11 FINGERPRINT WAS FOUND ON THE *ESQUIRE* MAGAZINE --

12 A. YES.

13 Q. -- THAT WAS UNDER THE CHILD'S GAME BOARD?

14 A. YES.

15 Q. OKAY. NOW, PICK UP WITH LINE 13.

16 A. WERE YOU ABLE TO IDENTIFY WHO IT WAS BACK AT THAT TIME,
17 THOUGH, BASED UPON THE CARDS YOU GOT FROM THE FBI?

18 YES, SIR, WE RECEIVED CARDS.

19 WOULD YOU LOOK IN YOUR NOTES, PLEASE, AND TELL US
20 WHO THAT FBI AGENT WAS WHO HANDLED THIS MAGAZINE?

21 I CAN'T FIND IT IMMEDIATELY, SIR, BUT I BELIEVE IT
22 WAS MR. GARDNER.

23 I'M SORRY?

24 A MR. GARDNER.

25 MR. GARDNER?

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1 YES, SIR.

2 HE WAS AN FBI AGENT FROM WHAT OFFICE, AS FAR AS YOU
3 KNEW? DOES THAT MEAN YOU DON'T KNOW WHERE HE IS FROM, MR.
4 MEDLIN?

5 MR. SEGAL, WE HAD FBI'S FROM EVERY PLACE IN NORTH
6 CAROLINA, I BELIEVE; FAYETTEVILLE, CHARLOTTE, WINSTON-SALEM,
7 GREENSBORO.

8 HOW MANY OF THEM WERE IN THE HOUSE AT 544 CASTLE
9 DRIVE?

10 TWO THAT I KNOW OF.

11 Q. OKAY. THAT'S FINE. SO, THERE ARE FINGERPRINTS FROM A
12 NUMBER OF AGENTS ON THE *ESQUIRE* MAGAZINE THAT HAPPENED TO BE
13 FOUND UNDER THE CHILD'S GAME BOARD?

14 A. YES, I AGREE.

15 Q. OKAY. AND THERE WERE UNIDENTIFIED PRINTS AS WELL,
16 CORRECT?

17 A. I DON'T KNOW.

18 Q. OKAY. WELL, THEN, I NEED YOU TO READ -- IF YOU'D LOOK AT
19 LINE 21 ON THE PAGE THAT'S IN FRONT OF YOU AND READ FROM
20 THERE.

21 A. I'M LOSING YOU AGAIN.

22 Q. I'M SORRY. IF YOU WOULD LOOK AT LINE 21 ON THE SCREEN
23 AND BEGIN READING THERE.

24 A. 21.

25 YOU NEVER DID IDENTIFY THE THIRD PRINT AS TO WHICH

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1 INVESTIGATOR IT CAME FROM, IS THAT RIGHT?

2 NO, SIR. THERE WAS ONE UNIDENTIFIED FINGERPRINT.

3 HOW DO YOU KNOW IT CAME FROM AN INVESTIGATOR? DID
4 IT COME FROM ANYBODY ELSE?

5 I DON'T KNOW, SIR.

6 NOW, THERE WAS, ON THE COVER OF THE *ESQUIRE*
7 MAGAZINE, A BLOODY FOOTPRINT -- A BLOODY FINGERPRINT, WAS
8 THERE NOT?

9 BY THE TOP, DO YOU REFER TO THE FRONT EDGE, THE TOP
10 EDGE?

11 COVER OR EDGE; YES, PLEASE?

12 YES, SIR. WHAT APPEARED TO BE A FINGERPRINT,
13 REDDISH IN COLOR, WAS LOCATED IN THIS POSITION HERE ON THE
14 MAGAZINE.

15 THAT WOULD BE ALONG WHAT WE WOULD CALL THE TOP EDGE
16 OF THE MAGAZINE, IS THAT CORRECT?

17 YES, SIR.

18 NOW, WHEN YOU SAW THAT, YOU WERE INTERESTED IN
19 TRYING TO IDENTIFY THAT AS TO WHO IT MIGHT BELONG TO, WERE YOU
20 NOT?

21 YES, SIR.

22 BUT AS A MATTER OF FACT, YOU WERE NEVER ABLE TO MAKE
23 AN IDENTIFICATION BECAUSE OF THE LAB HANDLING OF THAT
24 MAGAZINE, ISN'T THAT RIGHT?

25 NO, SIR.

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1 Q. ALL RIGHT. SO, THERE'S NOW AN INDICATION THAT IN
2 ADDITION TO YOUR FINGERPRINT AND THE FINGERPRINTS OF AT LEAST
3 ONE OTHER AGENT ON THE *ESQUIRE* MAGAZINE, THERE'S AN
4 UNIDENTIFIED FINGERPRINT AS WELL?

5 A. OKAY.

6 Q. AND THAT WOULD CERTAINLY BE SOME INDICATION THAT AN
7 INTRUDER WAS IN THE HOUSE AT SOME POINT?

8 A. NO, I WOULDN'T THINK SO.

9 Q. WELL --

10 A. IT COULD HAVE BEEN THE FINGERPRINT OF A NEXT DOOR
11 NEIGHBOR OR SOMEBODY WHO CAME BY FROM WORK OR --

12 Q. CORRECT. AND --

13 A. -- ANYBODY WHO HAD BEEN IN THE HOUSE.

14 Q. AND IT COULD HAVE BEEN A FINGERPRINT FROM SOMEBODY WHO
15 WAS IN THE HOUSE THAT NIGHT AS WELL?

16 A. IF THERE WAS EVER ANYBODY IN THAT HOUSE, YEAH, BUT THERE
17 WASN'T.

18 Q. IT WOULD BE SOME EVIDENCE THAT AN UNIDENTIFIED PERSON
19 COULD HAVE BEEN IN THE HOUSE THAT NIGHT?

20 A. NO, IT WOULDN'T INDICATE THAT TO ME. IT WOULD INDICATE
21 TO ME THAT SOMEBODY TOUCHED THAT MAGAZINE. IT COULD HAVE BEEN
22 THE PERSON WHO SOLD THE MAGAZINE TO HIM OR DELIVERED IT IF IT
23 WAS THE MAILMAN.

24 Q. ALL RIGHT. IN YOUR SEARCH OR EXAMINATION OF THE HOUSE,
25 YOU DISCOVERED, DID YOU NOT, A NUMBER OF FINGERPRINTS THAT YOU

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1 WERE NOT ABLE TO IDENTIFY?

2 A. THERE WERE A NUMBER. I DON'T KNOW THE EXACT NUMBER, BUT,
3 YES.

4 Q. ALL RIGHT. I'M GOING TO TAKE YOU TO DEFENSE EXHIBIT
5 5005, AND IT'S A TRANSCRIPT PAGE, AND I'D ASK IF YOU WOULD
6 READ THE HIGHLIGHTED PORTION THERE.

7 A. MR. MEDLIN, WITH RESPECT TO THE TIME THAT YOU FINALLY
8 LEFT THE ARMY, OF THE PRINTS THAT YOU DUSTED OR TESTED AT THE
9 MACDONALD APARTMENT, IF YOU WOULD TELL US, SIR, HOW MANY
10 FINGERPRINTS AND PALM PRINTS YOU WERE ABLE TO IDENTIFY AS
11 BELONGING TO SOME UNNAMED INDIVIDUAL?

12 MAY I REFER TO MY NOTES HERE? AND THIS TIME THESE
13 ARE THE CORRECT NOTES, SIR. OF THE LATENT PRINTS THAT WE
14 DEVELOPED AND PROCESSED IN THE APARTMENT, WE IDENTIFIED 26
15 FINGERPRINTS AND 11 PALM PRINTS. NOT IDENTIFIED WERE 17
16 FINGERPRINTS AND 14 PALM PRINTS.

17 (DEFENSE EXHIBIT NUMBER 5005
18 WAS IDENTIFIED FOR THE RECORD.)

19 Q. ALL RIGHT. SO, THERE WERE A NUMBER OF FINGERPRINTS AND
20 PALM PRINTS AT THE CRIME SCENE THAT COULD NOT BE IDENTIFIED?

21 A. YES.

22 Q. OKAY.

23 A. BUT I WOULDN'T THINK THAT BEING UNUSUAL.

24 Q. WELL, WHETHER IT'S UNUSUAL OR NOT, WOULD IT NOT BE SOME
25 EVIDENCE THAT THERE WAS ANOTHER PERSON IN THE HOUSE THAT

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1 NIGHT BESIDES THE MACDONALD FAMILY?

2 A. NO, NOT PARTICULARLY THAT NIGHT. NO. IT COULD HAVE BEEN
3 FROM A MAINTENANCE CREW THAT HAD COME IN THE DAY BEFORE OR A
4 WEEK BEFORE OR COULD HAVE BEEN --

5 Q. OR THAT NIGHT?

6 A. YEAH. OR COULD HAVE BEEN --

7 Q. OR THAT NIGHT?

8 A. OR THAT NIGHT.

9 Q. ALL RIGHT. THAT'S ALL I'M ASKING. IT'S SOME EVIDENCE
10 THAT SOMEBODY MIGHT HAVE BEEN THERE THAT NIGHT OTHER THAN THE
11 MACDONALD FAMILY, CORRECT?

12 A. YOU COULD PROBABLY STRETCH IT TO SAY THAT, YEAH.

13 Q. WELL, WHY IS IT A STRETCH, AGENT IVORY, TO SAY THEY MIGHT
14 HAVE BEEN PUT THERE THAT NIGHT AS OPPOSED TO TWO WEEKS BEFORE?

15 A. SAY THAT AGAIN.

16 Q. WHY IS IT A STRETCH TO SAY THEY MIGHT HAVE BEEN PUT THERE
17 THAT NIGHT AS OPPOSED TO MIGHT HAVE BEEN PUT THERE TWO DAYS
18 BEFORE?

19 A. I STILL DON'T KNOW WHAT YOU'RE TRYING TO GET AT.

20 Q. WELL, YOU SAID IT WOULD BE A STRETCH --

21 A. YEAH.

22 Q. -- TO SAY THAT AN UNIDENTIFIED FINGERPRINT AT A CRIME
23 SCENE MIGHT HAVE BEEN PLACED AT THE TIME OF THE CRIME. YOU
24 SAID THAT WOULD BE A STRETCH.

25 A. YEAH.

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1 Q. WHY WOULD IT BE A STRETCH ANYMORE TO SAY IT WAS THEN THAN
2 TWO WEEKS BEFORE AS YOU SUGGESTED?

3 A. IT COULD HAVE BEEN EITHER.

4 Q. THAT'S FINE. THAT'S ALL I WAS -- IT COULD HAVE BEEN
5 EITHER. THAT'S FINE. NOW, YOU TALKED ABOUT INVESTIGATING OR
6 TALKING TO GREG MITCHELL, CORRECT?

7 A. YES.

8 Q. AND YOU TALKED TO HIM BECAUSE YOU THOUGHT HE MIGHT HAVE
9 HAD INFORMATION ABOUT THE CRIME?

10 A. YES.

11 Q. MIGHT HAVE BEEN THERE?

12 A. YES.

13 Q. POSSIBLE SUSPECT?

14 A. YES.

15 Q. ALL RIGHT. AND HE, OF COURSE, DENIED BEING THERE?

16 A. YES.

17 Q. NOT UNUSUAL FOR SOMEBODY TO DENY BEING AT A CRIME SCENE?

18 A. (WITNESS NODS HEAD.)

19 Q. AND HE SAID HIS GIRLFRIEND, HELENA STOECKLEY, WASN'T
20 THERE EITHER.

21 A. (WITNESS NODS HEAD.)

22 Q. NOT UNUSUAL FOR SOMEBODY TO DENY THAT SOMEONE THEY'RE
23 ASSOCIATED WITH OR FOND OF WASN'T AT A CRIME SCENE?

24 A. I WOULD SAY SO. PROBABLY.

25 Q. AND YOU RELIED ON A POLYGRAPH EXAMINATION AND THAT

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1 BECAUSE OF THAT YOU ELIMINATED HIM AS A SUSPECT?

2 A. YES.

3 Q. OKAY. AND IF HE MADE STATEMENTS TO OTHER PEOPLE SAYING
4 HE WAS THERE, WOULD YOU NECESSARILY DISCOUNT THOSE STATEMENTS
5 BECAUSE OF A PAST POLYGRAPH?

6 A. WELL, THAT'S WHY WE POLYGRAPHED HIM.

7 Q. SO, ARE YOU TAKING THE POSITION THAT A POLYGRAPH
8 EXAMINATION IS ALWAYS A HUNDRED PERCENT ACCURATE?

9 A. NOT ALWAYS A HUNDRED PERCENT ACCURATE, BUT THE POLYGRAPH
10 EXAMINATION WITH HIS SUBSEQUENT POST-TEST INTERVIEW OR
11 INTERROGATION, I THINK, IS ENOUGH TO CLEAR HIM.

12 Q. BUT IT DEPENDS A LOT IN PART ON THE PHYSIOLOGICAL
13 REACTIONS OF THE PERSON WHO'S BEING QUESTIONED?

14 A. EXACTLY.

15 Q. OKAY. AND DIFFERENT PEOPLE HAVE DIFFERENT PHYSIOLOGICAL
16 REACTIONS WHEN THEY TELL A FALSEHOOD, DON'T THEY?

17 A. I DON'T KNOW.

18 Q. OKAY. AND IT DEPENDS ON THE ABILITY OF THE EXAMINER TO
19 ASK THE QUESTIONS CORRECTLY, TO HAVE THE PERSON WHO IS BEING
20 INTERROGATED IN AN APPROPRIATE FRAME OF MIND, CORRECT?

21 A. CORRECT.

22 Q. TO READ THE CHARTS CORRECTLY?

23 A. CORRECT.

24 Q. ALL RIGHT. SO, THERE IS CERTAINLY THE POSSIBILITY OF
25 HUMAN ERROR SOMEWHERE ALONG THE WAY IN ANY SITUATION?

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1 A. IN ANY SITUATION.

2 Q. OKAY. AND IF I COULD TAKE YOU TO DEFENSE EXHIBIT 5029,
3 AND DOES THAT APPEAR TO BE AN AFFIDAVIT OF AN EVERETT MORSE?

4 A. YES, IT IS.

5 (DEFENSE EXHIBIT NUMBER 5029
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. OKAY. AND WOULD YOU READ THE HIGHLIGHTED PORTION OF
8 PARAGRAPH TWO?

9 A. FROM IN OR ABOUT AUGUST 1972 TO 1974, WHILE I WAS A
10 STUDENT AT THE UNIVERSITY OF NORTH CAROLINA IN CHARLOTTE,
11 NORTH CAROLINA, I RESIDED AT 6400 COUNTRYSIDE DRIVE, APARTMENT
12 NUMBER TWO, LOCATED IN THE CITY OF CHARLOTTE.

13 Q. THANK YOU. COULD YOU READ THE HIGHLIGHTED PORTION OF
14 PARAGRAPH THREE?

15 A. DURING THE TIME I LIVED AT COUNTRYSIDE APARTMENTS A MAN
16 BY THE NAME OF GREG MITCHELL LIVED ACROSS THE STREET.

17 Q. AND COULD YOU READ THE HIGHLIGHTED PORTION OF PARAGRAPH
18 FIVE?

19 A. A FEW DAYS AFTER I MENTIONED THAT I NEEDED GOLF BALLS,
20 MITCHELL PRODUCED A CASE OF NEW GOLF BALLS AND DEMANDED THAT I
21 PAY HIM FOR HIM. I WAS IN HIS APARTMENT AT THE TIME. WHEN I
22 STATED THAT I DID NOT WANT THE GOLF BALLS AND WOULD NOT PAY
23 FOR THEM MITCHELL BECAME VERY ANGRY AT ME. HE TOLD ME, YOU
24 NEED TO TAKE THESE, REFERRING TO THE GOLF BALLS, AND TOLD ME
25 THAT IF I DID NOT TAKE AND PAY FOR THE GOLF BALLS HE WOULD

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1 MURDER ME AS HE MURDERED JEFFREY MACDONALD'S FAMILY. I BECAME
2 EXTREMELY FRIGHTENED WHEN MITCHELL MADE THIS THREAT BECAUSE I
3 HAD OBSERVED THE GUNS AND KNIVES IN HIS APARTMENT ON NUMEROUS
4 OCCASIONS. AFTER THREATENING ME, MITCHELL ISSUED ANOTHER
5 THREAT TELLING ME THAT IF I EVER MENTIONED HIS INVOLVEMENT IN
6 THE MACDONALD MURDERS TO ANYONE HE WOULD KILL ME.

7 Q. ALL RIGHT. AND CAN YOU READ THE SIGNATURE LINE? DOES IT
8 APPEAR TO BE SIGNED BY EVERETT MORSE?

9 A. EVERETT MORSE, YES.

10 Q. AND DOES IT APPEAR TO BE NOTARIZED BY A NOTARY PUBLIC?

11 A. YES.

12 Q. WHICH, IN YOUR EXPERIENCE, WOULD MEAN HE WAS SWORN BEFORE
13 HE MADE THE STATEMENT?

14 A. I DON'T KNOW.

15 Q. WELL, IN YOUR EXPERIENCE, IS THAT WHAT A NOTARY DOES
16 BEFORE THEY WITNESS A SIGNATURE OR DO YOU NOT KNOW?

17 A. NO. ALL HE SAYS IS THIS YOUR SIGNATURE? CAN YOU SHOW ME
18 SOMETHING THAT HAS YOUR SIGNATURE ON IT? AND HE CAN VERIFY IT
19 FROM THERE. HE DOESN'T HAVE TO --

20 Q. ALL RIGHT. WELL, COULD YOU READ THE NOTARIZATION LINE
21 RIGHT UNDER EVERETT MORSE'S NAME? DOES IT NOT SAY SWORN TO
22 BEFORE ME?

23 A. SWORN ON THIS 25TH DAY OF JULY 2003.

24 Q. AND THAT WOULD INDICATE TO YOU, WOULD IT NOT, THAT HE WAS
25 UNDER OATH WHEN HE SIGNED THIS AFFIDAVIT?

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1 A. YES.

2 Q. IF I COULD GO TO EXHIBIT 5030 AND ASK YOU IF THAT APPEARS
3 TO BE AN AFFIDAVIT OF A BRYANT LANE? IT APPEARS TO BE AN
4 AFFIDAVIT?

5 A. YES.

6 (DEFENSE EXHIBIT NUMBER 5030
7 WAS IDENTIFIED FOR THE RECORD.)

8 Q. AND I'M GOING TO READ THIS TO MOVE THINGS ALONG A LITTLE
9 BIT. HE SAID -- DOESN'T HE SAY IN PARAGRAPH ONE I'VE BEEN
10 EMPLOYED FOR OVER 15 YEARS AS A DRIVER AT YELLOW FREIGHTS AND
11 THEN SAYS I MET AND BECAME A GOOD FRIEND OF GREGORY MITCHELL
12 WHEN MY WIFE NORMA AND I BEFRIENDED GREG AND HIS WIFE. IT
13 SAYS THAT?

14 A. YES.

15 Q. OKAY. AND HE'S 62 YEARS OLD, AT THE END OF PARAGRAPH
16 ONE, CORRECT?

17 A. YES.

18 Q. ALL RIGHT. THEN I'M GOING TO SCROLL DOWN A LITTLE BIT
19 AND ASK YOU IF YOU WOULD READ PARAGRAPH TEN, THE HIGHLIGHTED
20 PORTION.

21 A. GREGORY MITCHELL STATED TO ME THAT HE KILLED JEFFREY
22 MACDONALD'S FAMILY. HIS WORDS WERE WE KILLED THEM. MITCHELL
23 BECAME AWARE THAT HE HAD KILLED -- MITCHELL BECAME AWARE THAT
24 HE HAD KILLED THE FAMILY, AND JEFFREY MACDONALD WAS FOUND
25 ALIVE, AFTER THE MURDERS WERE COMMITTED. I AM NOT CERTAIN OF

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1 THE DATE OF THESE FINAL ADMISSIONS, BUT I BELIEVE IT WAS ABOUT
2 TWO WEEKS BEFORE HIS DEATH. I DO KNOW THAT GREGORY MITCHELL
3 WAS AWARE THAT HE WAS DYING AT THE TIME HE MADE THE ABOVE
4 STATEMENTS. I TOLD GREG THAT THE DOCTOR THOUGHT HE MIGHT BE
5 ABLE TO STAY ALIVE FOR AT LEAST SIX MORE MONTHS IF HE WOULD
6 STOP DRINKING. HE STATED TO ME THAT HE COULD NOT QUIT
7 DRINKING BECAUSE OF HIS GUILT OVER THE MURDERS HE HAD
8 COMMITTED.

9 Q. ALL RIGHT. AND I'M GOING TO SCROLL DOWN TO THE BOTTOM OF
10 THE AFFIDAVIT AND ASK YOU IF IT DOESN'T APPEAR TO BE SIGNED BY
11 BRYANT LANE, CORRECT?

12 A. YEAH, THE SIGNATURE OF BRYANT LANE IS THERE.

13 Q. AND IT IS NOTARIZED BY A NOTARY PUBLIC?

14 A. YES.

15 Q. AND APPEARS TO HAVE BEEN SIGNED AND SWORN UNDER OATH, THE
16 HIGHLIGHTED PORTION?

17 A. IT APPEARS TO BE.

18 Q. ALL RIGHT. OKAY. AND I WANT TO TAKE YOU BACK TO THE
19 CRIME SCENE AND ASK YOU ONE QUESTION. ISN'T IT TRUE THAT
20 THERE WAS A BURNT MATCH FOUND IN KRISTEN'S BEDROOM?

21 A. I DON'T KNOW. I DO NOT RECALL.

22 Q. ALL RIGHT. IF THERE WAS -- IF THERE WAS EVIDENCE THAT IT
23 WAS SEIZED FROM KRISTEN'S BEDROOM YOU WOULDN'T DOUBT THAT IT
24 ACTUALLY CAME FROM THERE?

25 A. IF YOU CAN FIND IT IN THE EVIDENCE RECEIPTS, I WOULD HAVE

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1 NO ARGUMENT WITH IT.

2 Q. ALL RIGHT. AND ARE YOU AWARE -- I MEAN, YOU HAVE READ
3 THE POLYGRAPH REPORT AND THE SUBSEQUENT STATEMENT OF GREG
4 MITCHELL TALKING ABOUT HE HADN'T SEEN HELENA STOECKLEY GETTING
5 OUT OF HER CAR OR SOMETHING LIKE THAT OR MR. POSEY SAID HE SAW
6 THAT AND HE SAID THAT WASN'T TRUE.

7 A. THAT WASN'T TRUE, YES.

8 Q. ARE YOU AWARE THAT HELENA STOECKLEY WAS SEEN AT A DUNKIN'
9 DONUTS ABOUT 11:00 P.M. ON THE NIGHT OF THE EARLY MORNING
10 HOURS THAT THE MEMBERS OF THE MACDONALD FAMILY WERE KILLED?

11 A. ABOUT ELEVEN O'CLOCK THAT NIGHT?

12 Q. YES.

13 A. IT'S VERY POSSIBLE.

14 Q. OKAY. AND SHE WAS WITH TWO WHITE MEN, CORRECT?

15 A. I DON'T KNOW.

16 Q. OKAY.

17 A. I DON'T KNOW.

18 Q. YOU DIDN'T HEAR THAT?

19 A. I HEARD IT, BUT I DON'T KNOW ALL THE PARTICULARS OF IT.

20 Q. OKAY. SO, YOU DON'T DENY THAT THERE IS AN INDICATION
21 THAT HELENA STOECKLEY WAS AT A DUNKIN' DONUTS AT 11:00 P.M.,
22 BEFORE THE MACDONALD FAMILY WAS KILLED, WITH TWO WHITE MEN AND
23 A BLACK MAN?

24 A. I CAN'T ARGUE WITH YOU BECAUSE I DON'T KNOW.

25 Q. AND, OF COURSE, DR. MACDONALD'S ACCOUNT OF THE INCIDENT

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1 WAS THAT A WOMAN IN A FLOPPY HAT AND BLONDE HAIR, A BLONDE
2 WIG, WITH TWO WHITE MALES AND A BLACK MALE CAME IN THE HOUSE
3 AND ASSAULTED HIM AND KILLED HIS FAMILY. THAT WAS HIS
4 ACCOUNT, WASN'T IT?

5 A. THAT WAS HIS ACCOUNT.

6 Q. AND HELENA STOECKLEY WAS CONSIDERED A SUSPECT AT ONE TIME
7 BY INVESTIGATORS, WASN'T SHE?

8 A. A PERSON OF INTEREST, YES.

9 Q. OKAY. A PERSON OF INTEREST. IS THAT A LOT DIFFERENT
10 FROM A SUSPECT?

11 A. I WOULD SAY YES.

12 Q. OKAY. SHE WAS CONSIDERED A PERSON OF INTEREST, OKAY.
13 NOW, THE LAST THING I WANT TO ASK ABOUT WITH REGARD TO THE
14 CRIME SCENE WAS THE COFFEE TABLE IN THE LIVING ROOM. IT WAS
15 TURNED UPSIDE DOWN?

16 A. YES.

17 Q. DID YOU TESTIFY ABOUT THAT AT THE ARTICLE 32 HEARING?

18 A. I MAY HAVE. I MAY HAVE. I'M NOT SURE. THERE WAS A LOT
19 OF TESTIMONY THERE.

20 Q. WELL, DO YOU RECALL WHETHER YOU TALKED ABOUT OR TESTIFIED
21 AT ANY POINT THAT YOU ATTEMPTED TO MAKE THE COFFEE TABLE TURN
22 OVER AND LAND THAT WAY?

23 THE COURT: I'M SORRY. WHAT WAS YOUR QUESTION
24 AGAIN?

25 BY MR. WIDENHOUSE:

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1 Q. DID YOU -- HAVE YOU TESTIFIED BEFORE THAT YOU STOOD THE
2 COFFEE TABLE UPRIGHT AND ATTEMPTED TO KNOCK IT OVER TO SEE IF
3 IT FELL IN THE SAME WAY THAT YOU SAW IT WHEN YOU CAME TO THE
4 HOUSE?

5 A. I MAY HAVE TESTIFIED TO THAT, I'M NOT SURE, BUT I KNOW
6 THAT I HAVE TRIED THAT.

7 Q. AND WHAT WAS THE RESULT OF YOUR TRYING?

8 A. THAT THE COFFEE TABLE, BEING SO TOP HEAVY, NO MATTER HOW
9 YOU TRIED TO DO ANYTHING BUT SET IT DOWN ON ITS SIDE, IT WOULD
10 ROLL OVER AND LAND ON ITS TOP, LEGS UP.

11 Q. OKAY. I'M GOING TO TAKE -- SO, YOUR POSITION WAS YOU
12 WERE NEVER ABLE TO GET IT TO DO THAT?

13 A. NEVER.

14 Q. ALL RIGHT. I'M GOING TO TAKE YOU TO THE ROCK REPORT
15 AGAIN, WHICH IS EXHIBIT 5076, AND DIRECT YOUR ATTENTION TO THE
16 HIGHLIGHTED PORTION THAT'S GOING TO COME UP ON THE SCREEN,
17 LET'S PULL IT UP FOR YOU, AND ASK YOU TO READ PARAGRAPH 12,
18 WHICH IS THE HIGHLIGHTED PORTION.

19 A. DURING THE COURSE OF THE HEARING, CID AGENTS IVORY AND
20 SHAW TESTIFIED THAT THEY HAD KICKED, PUSHED AND/OR KNOCKED
21 OVER THE COFFEE TABLE IN THE LIVING ROOM AND IT HAD NOT -- DID
22 NOT COME TO REST ON ITS EDGE.

23 Q. OKAY. HOLD ON ONE SECOND BEFORE YOU READ THE REST OF IT.
24 SO, YOU DID TESTIFY THERE THAT YOU TRIED TO DO IT AND YOU
25 COULDN'T MAKE IT HAPPEN?

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1 A. DEPENDING ON WHERE THIS CAME FROM, YEAH.

2 MADAM CLERK: WHAT WAS THAT DOCUMENT NUMBER?

3 MR. WIDENHOUSE: IT'S THE ROCK REPORT.

4 THE WITNESS: OKAY. THIS WAS PART OF THE ROCK
5 REPORT?

6 MR. WIDENHOUSE: YES.

7 BY MR. WIDENHOUSE:

8 Q. OKAY. AND WOULD YOU READ THE NEXT LINE?

9 A. ON THE INVESTIGATING OFFICER'S SECOND VISIT TO THE
10 MACDONALD APARTMENT, HE KNOCKED OVER THE COFFEE TABLE IN THE
11 LIVING ROOM, THE TABLE STRUCK THE ADJACENT CHAIR AND LANDED ON
12 ITS EDGE.

13 Q. SO, APPARENTLY, ACCORDING TO THE ROCK REPORT, COLONEL
14 ROCK WAS ABLE TO GO TO THE HOUSE AND DO WHAT YOU WERE UNABLE
15 TO DO?

16 A. I DON'T KNOW HOW HE SET UP THE FURNITURE FOR THE TEST,
17 BUT I KNOW THERE WAS AN APPRECIABLE DISTANCE BETWEEN THAT
18 ROCKING CHAIR AND THE EDGE OF THAT TABLE.

19 Q. BY THE TIME YOU GOT THERE THAT NIGHT?

20 A. YES.

21 Q. OKAY. AND AGAIN, YOU WEREN'T THE FIRST PERSON THERE?

22 A. NO, I WAS NOT.

23 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER
24 QUESTIONS.

25 THE COURT: REDIRECT.

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1 MS. COOLEY: YES. THANK YOU, YOUR HONOR.

2 R E D I R E C T E X A M I N A T I O N 3:59 P.M.

3 BY MS. COOLEY:

4 Q. NOW, MR. IVORY, THE ROCK REPORT, THAT WAS AFTER THE
5 ARTICLE 32 HEARING IN 1970, RIGHT?

6 A. IN THE -- YEAH.

7 Q. SO, WAY BEFORE THE TRIAL IN 1979?

8 A. OH, YES.

9 Q. AND MR. MACDONALD TOLD YOU THAT HE WAS NOT WEARING HIS
10 GLASSES WHEN HE WAS ATTACKED, CORRECT?

11 A. YES. HE HAD STATED HE'D BEEN READING EARLIER AND
12 FINISHED X NUMBER OF PAGES OF A BOOK AND THEN DECIDED TO GO TO
13 SLEEP AND PUT THE BOOK DOWN AND THAT WAS IT.

14 Q. AND TOOK HIS GLASSES OFF?

15 A. YES.

16 Q. NOW, YOU DIDN'T PUT THE *ESQUIRE* MAGAZINE UNDERNEATH THE
17 COFFEE TABLE, DID YOU?

18 A. NO, MA'AM, I DIDN'T.

19 Q. IF I COULD HAVE GOVERNMENT 43. IF YOU COULD ZOOM IN ON
20 THE BREAST AREA. NOW, WE'RE LOOKING AT GOVERNMENT 33. DOES
21 THAT APPEAR EXPOSED TO YOU?

22 A. NO, NOT REALLY.

23 Q. I'M SORRY, 43. OKAY. NOW, YOU INTERVIEWED -- THANK YOU.
24 YOU INTERVIEWED MR. MACDONALD ON APRIL 6TH OF 1970, CORRECT?

25 A. YES, I DID.

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1 Q. AND THAT WAS ALONG WITH MR. SHAW AND MR. GREBNER?

2 A. YES.

3 Q. OKAY. AND IN THAT INTERVIEW DIDN'T MR. MACDONALD TELL
4 YOU THAT HE'S THE ONE WHO COVERED HIS WIFE WITH THE PAJAMA
5 TOP?

6 A. YES, HE DID.

7 Q. AND --

8 A. I THINK HE SAID SOMETHING ABOUT HE COULD HEAR AIR COMING
9 THROUGH HER CHEST AND HE PUT IT OVER HER, I GUESS, TO SEAL IT.
10 I DON'T KNOW.

11 Q. AND SO HE TOLD THE THREE OF YOU THAT HE, IN FACT, PUT
12 THE --

13 A. YEAH. YEAH, HE DID. YES, HE DID.

14 Q. AND --

15 A. AND IF I CAN ADD. WHEN THE FIRST M.P.'S ARRIVED THERE, I
16 BELIEVE IT WAS MILITARY POLICE PATROLMAN MICA, WHO WENT TO
17 JEFFREY MACDONALD TO SEE IF HE COULD GIVE HIM SOME FIRST AID
18 AND THERE WAS NO ROOM FOR ANYBODY TO GET BETWEEN HIM AND
19 COLETTE MACDONALD. SO, I CAN'T IMAGINE HOW THESE PEOPLE SAY
20 THAT THEY SAW IT LAYING SOMEWHERE ELSE AND THEN THREW IT OVER
21 THE BODY, IT JUST DOESN'T RING.

22 Q. AND WHEN YOU SAY BETWEEN HIM YOU MEAN BETWEEN MR.
23 MACDONALD AND COLETTE?

24 A. YES.

25 Q. YOU SAID THAT DOESN'T RING TRUE TO YOU?

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1 A. NO.

2 Q. NOW, HOW MUCH WAX WAS THERE IN THIS HOUSE?

3 A. IT WASN'T COVERED, BUT IT WAS ON CHAIRS WHERE, YOU KNOW,
4 LIKE A CANDLE HAD BEEN SET. A LOT OF THE WAX THAT WE PICKED
5 UP AND SENT TO THE LAB HAD BEEN ON FURNITURE FOR QUITE AWHILE.
6 YOU COULD SEE HOUSEHOLD DEBRIS IN IT. SO, IT WAS NOT LIKE THE
7 CANDLES WERE JUST BURNT THAT NIGHT.

8 Q. AND WHEN YOU BURN A CANDLE OUT, YOU THROW IT AWAY?

9 A. YES.

10 THE COURT: EXCUSE ME. YOU SAY THAT THE CANDLE WAS
11 SET. DO YOU MEAN IT WAS PUT DOWN ON IT?

12 THE WITNESS: NO, THE CANDLE WAX WERE AS IF SOMEBODY
13 HAD SET A CANDLE ON THE EDGE OF A CHAIR OR ON THE TABLE OR
14 SOMETHING AND LET IT BURN DOWN AND THEN IT WAS TAKEN OFF AND
15 THROWN AWAY.

16 THE COURT: ALL RIGHT. THANK YOU. I'M SORRY.

17 BY MS. COOLEY:

18 Q. IF I COULD HAVE GOVERNMENT 542 AND IF YOU COULD FLIP
19 THAT. DOES THIS SHOW WHAT YOU WERE TALKING ABOUT, MR. IVORY?

20 A. THAT'S EXACTLY WHAT I'M TALKING ABOUT.

21 Q. AND THAT CHAIR IS ONE OF THE DINING ROOM CHAIRS?

22 A. YES, BUT IT WAS IN THE BEDROOM.

23 Q. IN THE BEDROOM. AND THAT CIRCLE, THE RED CIRCLE THAT'S
24 ON THIS PHOTOGRAPH, WHAT IS CIRCLED?

25 A. WAX, HOUSE WAX OR CANDLE WAX.

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1 (GOVERNMENT EXHIBIT NUMBER 542
2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. AND THESE ARE FROM THE CRIME SCENE PHOTOS?

4 A. YES, THEY ARE.

5 Q. MAY I HAVE TRIAL DAY 28, PAGE 217. AND IF YOU COULD
6 START READING -- IF YOU COULD BLOW UP AT LINE 12.

7 A. WHAT ABOUT THE FIBER FOUND ON JEFFREY'S GLASSES IN THE
8 LIVING ROOM? THEY HAVE TRIED AND TRIED AND TRIED AND THEY
9 CANNOT FIND ANY SOURCE FROM WITHIN THE MACDONALD HOUSE WHERE
10 THAT FIBER CAME FROM. WHERE DO THEY THINK IT CAME FROM? IT
11 FLEW IN THE WINDOW? NONSENSE. YOU HAVE A RIGHT TO BELIEVE
12 THAT THAT FIBER IS ONE MORE PIECE OF PHYSICAL EVIDENCE THAT
13 SUPPORTS AN OPPOSITE INFERENCE FROM WHAT THE GOVERNMENT WANTS.

14 Q. CONTINUE.

15 A. UNIDENTIFIED HAIR -- THERE IS HAIR IN THIS CASE. THE
16 GOVERNMENT HAS FOUND AND THEY HAVE HAD MACDONALD'S SAMPLE
17 WHICH WAS GIVEN TO THEM AND THEY STILL, TO THIS DAY, CANNOT
18 ASCRIBE IT TO ANY MEMBER OF THE FAMILY.

19 THERE ARE FINGERPRINTS. WE TALKED ABOUT THE --

20 Q. NEXT PAGE, PLEASE.

21 A. WE TALKED ABOUT THE ONES THAT WERE FOUND AND THAT WERE
22 NOT LIFTED PROPERLY, THE ONES THAT WERE FOUND AND WERE NOT
23 IDENTIFIED OR PARTIALLY OR NOT COMPLETE, THE ONES THAT WERE
24 NEVER FOUND WERE BECAUSE THEY DID NOT PROCESS THE CRIME SCENE.

25 WHAT ABOUT THE CANDLE WAX? THREE DIFFERENT CANDLES

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1 PRODUCED THREE DIFFERENT TYPES OF WAX. THEY WENT AND THEY
2 ROUNDED UP EVERYTHING IN THE MACDONALD HOUSE. THEY FOUND 14
3 CANDLES. THEY TOOK IT TO THE LAB. WHEN THEY GOT DONE WITH
4 THEIR BEST EFFORTS, WHAT DID THEY FIND? THAT THAT WAX THAT
5 WAS FOUND IN THE MACDONALD HOUSE -- IN THE LIVING ROOM -- JEFF
6 SAYS THAT HE REMEMBERS A WOMAN WITH A FLICKERING LIGHT --
7 WHICH I THINK IS A REASONABLE CONCLUSION WHERE THEY ARE
8 TALKING ABOUT A WOMAN WITH A CANDLE. THE REASONABLE
9 CONCLUSION FROM ALL THIS IS THAT IF EVIDENCE OF -- THAT THAT
10 IS EVIDENCE OF THE TRUTH. NOW, WHAT DID THE GOVERNMENT DO
11 ABOUT THAT?

12 Q. OKAY. LET ME STOP YOU THERE. AND THAT'S FROM MR.
13 SEGAL'S CLOSING ARGUMENT. SO, THERE WERE MAYBE THREE MEDICS
14 WHEN YOU GOT THERE?

15 A. YES.

16 Q. AND YOU TESTIFIED ABOUT THAT AT TRIAL?

17 A. YES.

18 Q. AND YOU TESTIFIED ABOUT THE M.P.'S THAT ARRIVED AT THE
19 SCENE BEFORE YOU AT TRIAL?

20 A. YES, I DID.

21 Q. AND AT TRIAL THERE WAS EVIDENCE PRESENTED THAT THERE WERE
22 FINGERPRINTS ON THE *ESQUIRE*, YOUR FINGERPRINTS, ANOTHER
23 AGENT'S AND THEN SOME THAT WERE UNIDENTIFIED?

24 A. YES.

25 Q. THERE WAS EVIDENCE PRESENTED AT TRIAL THAT THERE WERE

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1 UNIDENTIFIED FINGERPRINTS IN THE HOUSE?

2 A. YES.

3 Q. THERE WAS EVIDENCE PRESENTED AT TRIAL THAT THERE WAS A
4 FIBER ON MR. MACDONALD'S GLASSES?

5 A. I'M NOT SURE.

6 Q. OKAY. OR FROM THE TRANSCRIPT YOU JUST READ?

7 A. FROM THE TRANSCRIPT, I'D SAY A HUNDRED PERCENT, YES.

8 Q. THERE WAS EVIDENCE THAT THERE WAS UNMATCHED WAX?

9 A. YES.

10 Q. AND THERE WERE A NUMBER OF OTHER UNIDENTIFIED
11 FINGERPRINTS IN THE HOUSE, IS THAT RIGHT?

12 A. YES.

13 Q. AND A JURY OF 12 CONSIDERED ALL OF THAT AND STILL FOUND
14 HIM GUILTY?

15 A. OH, YES.

16 Q. OKAY. NOW, LET ME ASK YOU ABOUT FIBERS. YOU SAID THAT
17 THERE WAS DEBRIS ALL OVER ANY HOUSE, REGULAR HOUSEHOLD DEBRIS?

18 A. OH, YES. EVERY HOUSE HAS ITS DEBRIS.

19 Q. OKAY. AND YOU CAN'T DATE THAT DEBRIS, CAN YOU?

20 A. NO. NO, YOU CAN'T.

21 Q. WHY NOT?

22 A. IT COMES AND GOES. IT BLOWS IN WHEN YOU OPEN A DOOR OR A
23 WINDOW. THERE'S JUST NO WAY OF SAYING THIS WAS HERE LAST WEEK
24 OR THIS CAME HERE TODAY.

25 Q. NOW, YOU ALSO TESTIFIED THAT THERE WERE FIBERS OVER --

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1 THROUGHOUT THE HOUSE IN CERTAIN LOCATIONS?

2 A. YES.

3 Q. FIBERS FROM THE PAJAMA TOP OF DR. MACDONALD?

4 A. YES.

5 Q. OKAY. AND YOU ARE ABLE TO DATE THOSE FIBERS, CORRECT?

6 A. YES.

7 Q. WHY?

8 A. BECAUSE OF THE BLOOD AND THE OTHER EVIDENCE THAT WENT
9 ALONG WITH THAT, WE COULD SAY THAT -- AND WITH THE TESTIMONY
10 OF JEFFREY MACDONALD WHEN WE INTERVIEWED HIM THAT HE WAS
11 WEARING THAT SHIRT AND IT WAS RIPPED OPEN WE KNEW THAT THERE
12 SHOULD HAVE BEEN SOME DEBRIS FROM THAT SHIRT IN THAT HOUSE
13 THAT NIGHT.

14 Q. AND YOU'RE AWARE, AREN'T YOU, THAT THE CID
15 REINVESTIGATION AND THE FBI INVESTIGATION RAN THE UNKNOWN
16 FINGERPRINTS IN THE HOUSE AGAINST GREG MITCHELL AND DIDN'T
17 MATCH THEM TO HIM, IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. AND YOU'RE ALSO AWARE, AREN'T YOU, THAT IN THE DNA TEST
20 CONDUCTED ON THE SAMPLES THAT WERE COLLECTED FROM THE
21 MACDONALD CRIME SCENE, THAT NONE OF THE SAMPLES THAT WERE
22 TESTED CAME ACROSS AS A MATCH TO GREG MITCHELL, IS THAT
23 CORRECT?

24 A. THAT'S CORRECT.

25 MS. COOLEY: I HAVE NO FURTHER QUESTIONS.

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1 R E C R O S S - E X A M I N A T I O N 4:08 P.M.

2 BY MR. WIDENHOUSE:

3 Q. BUT THERE WERE TWO OTHER ALLEGED INTRUDERS THAT WERE
4 MALES BESIDES GREG MITCHELL?

5 A. I HAVE SEEN NO INDICATION AT ALL OF ANY INTRUDERS --

6 Q. THAT WAS THE ACCOUNT OF WHAT HAPPENED, ISN'T IT?

7 A. NO.

8 THE COURT: EXCUSE ME, MR. WIDENHOUSE. LET ME SEE
9 YOU JUST A SECOND. COME HERE, COUNSEL.

10 (BENCH CONFERENCE ON THE RECORD.)

11 THE COURT: I THINK YOUR QUESTION IMPLIED THAT MR.
12 MACDONALD IDENTIFIED GREG MITCHELL IN THE HOUSE.

13 MR. WIDENHOUSE: I'M SORRY?

14 THE COURT: I THINK YOUR QUESTION IMPLIED THAT MR.
15 MACDONALD HAD IDENTIFIED GREG MITCHELL AS AN INTRUDER.

16 MR. WIDENHOUSE: OH, I'M SORRY.

17 THE COURT: THANK YOU.

18 MR. WIDENHOUSE: OKAY.

19 (BENCH CONFERENCE CONCLUDED.)

20 BY MR. WIDENHOUSE:

21 Q. SO, MY QUESTION, AGENT IVORY, IS DR. MACDONALD'S ACCOUNT
22 OF THE INCIDENT WAS THAT THERE WAS A FEMALE AND THREE MEN WHO
23 BROKE INTO OR GOT INTO HIS HOUSE THAT NIGHT, THREE MEN, NOT
24 JUST ONE?

25 A. IS THAT A QUESTION?

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1 Q. TELL US HOW YOU CAME TO BE EMPLOYED BY THE FBI AND TAKE
2 US THROUGH YOUR CAREER THERE.

3 A. I STARTED WITH THE FBI IN 1968 IN TRAINING SCHOOL. I WAS
4 SUBSEQUENTLY TRANSFERRED FOR ABOUT A YEAR TO TAMPA, FLORIDA.
5 AFTER THAT, I WAS TRANSFERRED TO CHARLOTTE, NORTH CAROLINA, IN
6 FEBRUARY OF 1970, WHERE I SPENT SEVERAL MONTHS AND THEN WAS
7 SUBSEQUENTLY TRANSFERRED TO RALEIGH, WHERE I SPENT MOST OF MY
8 CAREER.

9 Q. AND WHAT ARE YOU DOING NOW?

10 A. I'M RETIRED.

11 Q. AND WHEN DID YOU RETIRE?

12 A. AT THE END OF 1997.

13 Q. NOW, YOU WERE EMPLOYED BY THE FBI IN THE '80S?

14 A. YES, MA'AM.

15 Q. NOW, WERE YOU INVOLVED AT ALL IN THE JEFFREY MACDONALD
16 TRIAL DURING TRIAL?

17 A. NO, MA'AM.

18 Q. OKAY. HOW DID YOU BECOME TO BE INVOLVED IN THE CASE?

19 A. AFTER POST-CONVICTION OF DR. MACDONALD, AN INVESTIGATION
20 WAS CONDUCTED BY VARIOUS PRIVATE INVESTIGATORS THAT WAS
21 SUBMITTED TO THE DEPARTMENT OF JUSTICE. THE DEPARTMENT OF
22 JUSTICE REVIEWED THE MATERIAL, SUBSEQUENTLY SENT IT TO THE FBI
23 FOR INVESTIGATION CONCERNING THE INTERVIEWS THAT HAD BEEN
24 CONDUCTED.

25 Q. NOW, THOSE INTERVIEWS THAT WERE CONDUCTED, THEY WERE

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1 INVESTIGATORS HIRED BY THE MACDONALD DEFENSE TEAM?

2 A. THAT'S CORRECT.

3 Q. AND TWO OF THOSE PRINCIPAL INVESTIGATORS WERE TED
4 GUNDERSON AND PRINCE BEASLEY?

5 A. YES, MA'AM.

6 Q. NOW, WHEN YOU GOT THE INFORMATION FROM THE DEPARTMENT OF
7 JUSTICE AND WERE ASSIGNED TO THE CASE, HOW DID YOU GO ABOUT
8 YOUR INVESTIGATION?

9 A. BASICALLY WE TRIED TO LOCATE THE INDIVIDUALS THAT WERE
10 NAMED DURING THE INVESTIGATION TO RUN THEM DOWN, TO
11 SUBSEQUENTLY INTERVIEW THEM, AND DETERMINE WHAT THEY WERE
12 SAYING.

13 Q. AND WHEN YOU SAY THE INDIVIDUALS, WHO DO YOU MEAN?

14 A. SUSPECTS NAMED IN THE CASE BY HELENA STOECKLEY.

15 Q. AND DID YOU, IN FACT, LOCATE THOSE INDIVIDUALS AND
16 INTERVIEW THEM?

17 A. YES. WE LOCATED, I THINK, FIVE TOTAL INDIVIDUALS AND ONE
18 WAS AN INDIVIDUAL ONLY BY THE NICKNAME OF WIZARD THAT WE COULD
19 NEVER IDENTIFY AND LOCATE TO INTERVIEW.

20 Q. BUT THE OTHER FOUR YOU DID LOCATE AND INTERVIEW THEM?

21 A. YES, MA'AM.

22 Q. AND THEY WERE GREG MITCHELL?

23 A. YES, MA'AM.

24 Q. AND EDDIE SMITTY, LATER DETERMINED TO BE DWIGHT EDWIN
25 SMITH?

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1 A. YES, MA'AM.

2 Q. SHELBY DON HARRIS?

3 A. YES.

4 Q. AND BRUCE JOHNNY FOWLER?

5 A. YES, MA'AM.

6 Q. AND THEN DID YOU ALSO LOCATE ALLEN MAZEROLLE --
7 MAZEROLLE?

8 A. YES, THE FBI -- WHEN I SAY THEY WERE LOCATED, SOME OF THE
9 INDIVIDUALS WERE LOCATED BY OTHER FBI AGENTS, BUT THE MAJORITY
10 OF THEM I DID.

11 Q. AND THAT WAS ALL AS A PART OF THIS INVESTIGATION IN THE
12 EARLY 1980S?

13 A. YES, MA'AM.

14 Q. AND THAT INFORMATION THAT YOU AND THE OTHER FBI AGENTS
15 COMPILED DURING THAT INVESTIGATION WAS TURNED OVER TO THE
16 DEPARTMENT OF JUSTICE FOR APPELLATE PROCEEDINGS IN 1984 AND
17 '85, IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. NOW, YOU ALSO HAD OCCASION YOURSELF DURING THIS
20 INVESTIGATION TO INTERVIEW HELENA STOECKLEY?

21 A. YES, MOTHER AND DAUGHTER.

22 Q. MOTHER AND DAUGHTER?

23 A. YES.

24 Q. OKAY. LET'S TALK FIRST ABOUT DAUGHTER HELENA.

25 A. YES, MA'AM.

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1 Q. THE HELENA WHO IS ALLEGED TO HAVE BEEN INVOLVED IN THE
2 MACDONALD MURDERS. WHEN YOU HAD OCCASION TO INTERVIEW HER HAD
3 SHE ALREADY BEEN INTERVIEWED BY ANYONE ELSE?

4 A. YES, BY PRIVATE INVESTIGATORS.

5 Q. GUNDERSON AND BEASLEY?

6 A. YES, MA'AM.

7 Q. AND AFTER YOU INTERVIEWED HELENA, DID YOU ALSO ATTEMPT TO
8 GET IN CONTACT WITH TED GUNDERSON AND PRINCE BEASLEY AND
9 INTERVIEW THEM?

10 A. YES.

11 Q. AND DID YOU -- TELL ME ABOUT THAT.

12 A. WE RECEIVED A REPORT OF THE INTERVIEW OF HELENA STOECKLEY
13 BY TED GUNDERSON AND PRINCE BEASLEY AND IN ORDER TO VERIFY
14 THAT REPORT WE WANTED TO INTERVIEW HER.

15 Q. MAY I HAVE FROM THE JOINT APPENDIX TO THE FOURTH CIRCUIT
16 PAGE 903. NOW, AFTER YOU CONDUCTED THE INTERVIEWS OF HELENA
17 STOECKLEY -- DID THOSE HAPPEN ON MORE THAN ONE DAY IN
18 SEPTEMBER OF '81?

19 A. YES, IT'S MY RECOLLECTION THAT I INTERVIEWED HER WITH
20 SPECIAL AGENT FRANK MILLS ON TWO OCCASIONS, THE FIRST DAY AND
21 THEN THE VERY NEXT DAY WE RE-INTERVIEWED HER AGAIN.

22 Q. AND DID YOU PREPARE AFFIDAVITS MEMORIALIZING THE CONTENT
23 OF THOSE INTERVIEWS?

24 A. YES, MA'AM, I DID.

25 Q. AND IF YOU WOULD TAKE A LOOK AT PAGE 903 THAT'S ON THE

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1 SCREEN HERE. DO YOU SEE THE CAPTION? WHAT'S THE TITLE OF
2 THIS DOCUMENT?

3 A. YES. I'M SORRY. UNITED STATES DISTRICT COURT FOR THE
4 EASTERN DISTRICT OF NORTH CAROLINA --

5 Q. I'M SORRY, BUT IS IT -- WHO'S AFFIDAVIT IS IT?

6 A. THIS IS MY AFFIDAVIT.

7 Q. AND IF WE COULD GO TO PAGE 922. AND IS THAT YOUR
8 SIGNATURE AT THE END OF THIS?

9 A. YES, MA'AM.

10 Q. OKAY. AND IT'S SWORN AND SUBSCRIBED BEFORE A NOTARY?

11 A. YES.

12 Q. OKAY. AND IF I COULD DIRECT YOUR ATTENTION BACK ON PAGE
13 903 TO PARAGRAPH TWO. NOW, WHAT WAS THE EXACT DATE OF THIS
14 INTERVIEW WITH HELENA?

15 A. SEPTEMBER 9TH, 1981.

16 Q. OKAY. AND IF WE CAN TAKE A LOOK AT PARAGRAPH TWO. IN
17 PARAGRAPH TWO YOU'RE TALKING ABOUT AN ENCOUNTER THAT HELENA
18 HAD WITH PRINCE BEASLEY, IS THAT FAIR TO SAY?

19 A. YES.

20 Q. OKAY. NOW, WHAT DID SHE TELL YOU GENERALLY ABOUT THAT
21 ENCOUNTER WITH BEASLEY?

22 A. SHE HAD MANY ENCOUNTERS WITH PRINCE BEASLEY OVER THE
23 YEARS. I'M NOT SURE SPECIFICALLY WHAT YOU'RE REFERRING TO
24 HERE.

25 Q. WITH THIS PARTICULAR ENCOUNTER, WHO WAS SHE WITH WHEN AND

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1 WHERE WERE THEY WHEN THEY CAME INTO CONTACT WITH BEASLEY?

2 A. SHE WAS APPROACHED BY PRINCE BEASLEY, A RETIRED
3 FAYETTEVILLE DETECTIVE, AND OFFICER FRED MASSEY OF THE
4 WALHALLA, SOUTH CAROLINA, POLICE DEPARTMENT.

5 Q. AND WAS SHE WITH ERNEST DAVIS AT THAT POINT IN TIME?

6 A. YES.

7 Q. NOW, DID BEASLEY AND ERNEST -- OR DID BEASLEY HAVE
8 OCCASION TO ARREST ERNEST ON THAT OCCASION?

9 A. YES. BEASLEY WAS A FORMER POLICE OFFICER FROM
10 FAYETTEVILLE, NORTH CAROLINA, WHO ARRESTED HELENA WITHOUT
11 POLICE AUTHORITY FROM NORTH CAROLINA BECAUSE HE WAS IN A
12 RETIRED STATUS AT THAT TIME.

13 Q. NOW, WAS IT HELENA HE ARRESTED OR DID HE ARREST ERNEST ON
14 THIS PARTICULAR OCCASION?

15 A. HE ARRESTED ERNEST.

16 Q. AND WHERE DID HE TAKE HIM?

17 A. EVENTUALLY, THEY TOOK BOTH OF THEM BACK, HELENA AND HER
18 HUSBAND, ERNEST DAVIS, BACK TO FAYETTEVILLE, NORTH CAROLINA.

19 Q. AND WHAT WAS THE REASON FOR HIS ARREST?

20 A. I THINK THAT THE REASON WAS THAT PRINCE BEASLEY HAD
21 POSTED BOND FOR ERNEST DAVIS IN THE AMOUNT OF \$200 AND THAT HE
22 HAD VIOLATED HIS BOND AGREEMENT AND WAS RETURNED BY --
23 ALLEGEDLY BY BEASLEY TO FAYETTEVILLE, NORTH CAROLINA.

24 Q. AND WAS IT HELENA THAT WAS TELLING YOU ABOUT THIS?

25 A. EITHER HELENA AND/OR ERNEST, YES.

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1 Q. NOW, DID HELENA GO WITH BEASLEY AND ERNEST ON THAT
2 PARTICULAR INCIDENT?

3 A. WOULD YOU REPEAT THAT, PLEASE?

4 Q. DID HELENA GO WITH PRINCE BEASLEY AND ERNEST ON THAT
5 OCCASION?

6 A. YES. YES. THAT IS CORRECT. SHE ACCOMPANIED HER
7 HUSBAND, ERNEST DAVIS, AND PRINCE BEASLEY AND THE POLICE
8 OFFICER FROM WALHALLA.

9 Q. NOW, ONCE ERNEST WAS RETURNED TO JAIL, WHERE DID BEASLEY
10 AND HELENA GO?

11 A. THEY LEFT IMMEDIATELY, DROVE TO RALEIGH, NORTH CAROLINA,
12 TO THE AIRPORT, WHERE THEY IMMEDIATELY FLEW TO LOS ANGELES,
13 CALIFORNIA.

14 Q. WHAT WAS IN CALIFORNIA?

15 A. I'M SORRY?

16 Q. DID SHE TELL YOU WHAT WAS IN CALIFORNIA? WHY THEY WERE
17 GOING THERE?

18 A. TED GUNDERSON'S OFFICE. HE WAS A PRIVATE INVESTIGATOR IN
19 LOS ANGELES.

20 Q. AND DID BEASLEY TELL HELENA ANYTHING WITH REGARD TO
21 ERNEST'S BAIL IF SHE WOULD GO WITH HIM TO CALIFORNIA?

22 A. I DON'T SPECIFICALLY RECALL THAT, BUT I --

23 Q. CAN I HAVE PARAGRAPH FOUR, PLEASE. IF YOU WOULD READ
24 PARAGRAPH FOUR FROM YOUR AFFIDAVIT?

25 A. AFTER BEASLEY PLACED ERNEST IN JAIL, THEY TALKED AT THE

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1 LAW ENFORCEMENT CENTER IN FAYETTEVILLE, NORTH CAROLINA, AT
2 WHICH TIME BEASLEY ENCOURAGED HER TO TALK ABOUT THE MACDONALD
3 CASE.

4 BEASLEY USED HER -- I'M SORRY, BEASLEY USED
5 PERSUASION ON HER, SAYING THINGS TO HER LIKE THE PEOPLE IN
6 CALIFORNIA NEED YOU AND IF YOU COOPERATE BEASLEY COULD HELP
7 ERNEST.

8 BEASLEY TOLD HELENA THAT IF SHE WENT TO CALIFORNIA
9 THE MATTER WOULD BE CLEARED UP ONCE AND FOR ALL. BEASLEY ALSO
10 PROMISED HELENA THAT HE WOULD DO EVERYTHING POSSIBLE TO HELP
11 HER OUT.

12 Q. NOW, ONCE THEY GOT TO CALIFORNIA, WAS SHE, IN FACT,
13 INTERVIEWED BY TED GUNDERSON AND PRINCE BEASLEY?

14 A. YES, MA'AM, SHE WAS.

15 Q. DID THEY MAKE ANY OTHER PROMISES TO HER IN ORDER TO
16 INTERVIEW HER?

17 A. THEY PROMISED HER THAT THEY WOULD LOCATE HER, AND
18 POSSIBLY HER HUSBAND ERNEST, TO CALIFORNIA, WOULD ATTEMPT TO
19 PROVIDE THEM WITH EMPLOYMENT AND HELP THEM WITH FINANCING AND
20 A NEW IDENTITY IF POSSIBLE.

21 Q. AND AFTER THOSE PROMISES, DID SHE CONSENT TO BE
22 INTERVIEWED BY THEM?

23 A. YES.

24 Q. AND WHAT DID SHE TELL YOU ABOUT HER INTERVIEW WITH
25 GUNDERSON AND BEASLEY?

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1 A. SHE TOLD ME THAT SHE WAS INTERVIEWED FOR THREE OR FOUR
2 DAYS IN A ROW FROM EARLY MORNING HOURS TO LATE IN THE EVENING,
3 SOMETIMES 12 TO 15 HOURS A DAY, AND THE QUESTIONING SEEMED
4 NONSTOP.

5 Q. NOW, YOU WERE AN INVESTIGATOR WITH THE FBI FOR HOW MANY
6 YEARS?

7 A. I WAS AN AGENT FOR ALMOST 30 YEARS.

8 Q. AND DURING THAT TIME I'M SURE YOU CONDUCTED MANY, MANY
9 INTERVIEWS?

10 A. YES, MA'AM.

11 Q. AND DID YOU EVER CONDUCT INTERVIEWS FOR DAYS AND HOURS ON
12 END?

13 A. NO, MA'AM.

14 Q. WHY NOT?

15 A. BECAUSE I THINK IT WOULD BE UNETHICAL, POSSIBLY ILLEGAL.
16 IT JUST WOULDN'T BE PROPER PROCEDURE FOR THE FBI TO CONDUCT AN
17 INVESTIGATION IN THAT MANNER.

18 Q. WHAT'S THE EFFECT OF THAT MANNER OF INVESTIGATION OR
19 INTERROGATION ON SOMEONE?

20 A. WOULD YOU REPEAT THAT, PLEASE?

21 Q. WHAT IS THE EFFECT OF THAT MANNER OF INVESTIGATION OR
22 INTERROGATION UPON SOMEONE?

23 A. I THINK A PERSON AFTER SO MANY HOURS WOULD HAVE A
24 TENDENCY POSSIBLY TO SAY THINGS THAT WERE UNTRUE.

25 Q. AND DID HELENA TELL YOU WHEN DURING THAT INTERROGATION

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1 SHE GAVE A STATEMENT TO GUNDERSON AND BEASLEY?

2 A. I THINK AT THE END OF THE -- I MEAN, SHE GAVE -- SHE WAS
3 INTERVIEWED BY THEM FOR SEVERAL DAYS, BUT I THINK AT THE END
4 OF HER LAST DAY THERE SHE PROVIDED A STATEMENT THAT WAS
5 PREPARED BY GUNDERSON AND HIS SECRETARIES.

6 Q. NOW, WAS SHE INTERVIEWED BY THEM ON ANY OTHER OCCASION
7 THAT YOU'RE AWARE OF?

8 A. YES, I'M SURE. WHEN YOU SAY INTERVIEWED MEANING
9 TELEPHONE CALLS, DISCUSSIONS, THOSE SORTS OF THINGS.

10 Q. OKAY. NOW, WHEN YOU WENT AND INTERVIEWED HELENA ON
11 SEPTEMBER 9TH OF 1981, SHE TOLD YOU ABOUT THESE INTERVIEWS
12 WITH GUNDERSON AND BEASLEY, IS THAT RIGHT?

13 A. YES, MA'AM.

14 Q. DID YOU ALSO INTERVIEW HER YOURSELF AND ASK HER ABOUT THE
15 ALLEGATIONS THAT HAD BEEN MADE BY THE MACDONALD TEAM
16 INVESTIGATORS?

17 A. I INTERVIEWED HER ON TWO SUCCESSIVE DAYS WITH SPECIAL
18 AGENT FRANK MILLS.

19 Q. AND DID YOU ASK HER ABOUT HER INVOLVEMENT IN THE
20 MACDONALD MURDERS?

21 A. YES, MA'AM.

22 Q. AND WHAT WAS HER RESPONSE TO YOU?

23 A. SHE SAID SHE WAS NOT INVOLVED IN THE MACDONALD MURDERS.

24 Q. DID SHE GIVE A FORMAL STATEMENT TO YOU? DID SHE SIGN A
25 STATEMENT?

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1 A. YES, MA'AM.

2 Q. MAY I HAVE PAGE 923. NOW, THE TOP OF THIS SAYS I, HELENA
3 DAVIS, DO HEREBY MAKE THIS FOLLOWING VOLUNTARY STATEMENT, IS
4 THAT RIGHT?

5 A. YES, MA'AM.

6 Q. AND THE DATE IS SEPTEMBER 9TH OF 1981?

7 A. YES.

8 Q. NOW, WHOSE HANDWRITING IS THIS?

9 A. THAT'S MY HANDWRITING.

10 Q. NOW, IF I COULD GO TO THE BOTTOM OF PAGE 924. DO YOU SEE
11 WHERE IT SAYS HELENA DAVIS, 9/9/81?

12 A. YES, MA'AM.

13 Q. WHOSE HANDWRITING IS THAT?

14 A. I'M SORRY?

15 Q. WHOSE HANDWRITING IS THAT?

16 A. THAT IS HER WRITING.

17 Q. OKAY. AND THEN UNDERNEATH WHO WITNESSED THIS?

18 A. I DID AS WELL AS SPECIAL AGENT FRANK MILLS AND ERNEST
19 DAVIS, HER HUSBAND.

20 Q. AND THAT WAS ON SEPTEMBER 9TH, IS THAT RIGHT?

21 A. YES, MA'AM.

22 Q. NOW, YOU SAID YOU ALSO INTERVIEWED HER THE NEXT DAY --
23 WELL, ACTUALLY, IF I COULD HAVE PAGE 915, PLEASE. AND AT THE
24 BOTTOM, IF YOU WOULD JUST READ HELENA'S STATEMENT THAT SHE
25 GAVE TO YOU THAT DAY.

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1 A. IF YOU COULD BLOW IT UP, I WOULD APPRECIATE IT. I,
2 HELENA DAVIS, DO HEREBY MAKE THE FOLLOWING VOLUNTARY STATEMENT
3 TO SPECIAL AGENTS RAYMOND MADDEN, JR., AND FRANK MILLS, WHO
4 HAVE IDENTIFIED THEMSELVES TO ME AS SPECIAL AGENTS -- AS FBI
5 SPECIAL AGENTS. NO THREATS OR PROMISES WERE MADE TO ME TO
6 INDUCE THIS STATEMENT AND IT IS ENTIRELY OF MY OWN FREE WILL.

7 I CURRENTLY RESIDE IN SENECA, SOUTH CAROLINA, WITH
8 MY HUSBAND ERNEST DAVIS.

9 I HAVE PREVIOUSLY FURNISHED A SIGNED STATEMENT
10 REGARDING THE MACDONALD MURDERS TO MR. TED GUNDERSON, A
11 PRIVATE INVESTIGATOR IN LOS ANGELES, CALIFORNIA, DATED OCTOBER
12 25TH, 1980, AND ON DECEMBER 4TH, 1980.

13 THESE STATEMENTS ARE BASICALLY ACCURATE. HOWEVER,
14 THE STATEMENTS AND THE FACTS OF THE STATEMENTS ARE WHAT I
15 THINK HAPPENED OR DREAMED AND ARE NOT A POSITIVE RECOLLECTION
16 OF EVENTS ON FEBRUARY 16TH DASH 17TH, 1970.

17 THE FACT REMAINS AND THE TRUTH OF THE MATTER IS THAT
18 I DO NOT ACTUALLY KNOW WHERE I WAS DURING THE EARLY MORNING
19 HOURS OF FEBRUARY 17TH, 1970, AND I DO NOT KNOW IF I WAS
20 PRESENT OR PARTICIPATED IN THE MACDONALD MURDERS.

21 Q. AND THEN SHE SAYS THAT SHE HAS READ AND AGREES WITH THIS
22 AND SIGNED IT?

23 A. SAID SHE'S READ THE STATEMENT, THE TWO PAGE STATEMENT,
24 AND INITIALED EACH PAGE AND SIGNED IT BECAUSE IT WAS TRUE AND
25 CORRECT TO THE BEST OF HER KNOWLEDGE.

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1 THE COURT: WE'RE GOING TO TAKE A RECESS TILL NINE
2 O'CLOCK TOMORROW MORNING. MR. WIDENHOUSE, I'D LIKE TO SEE YOU
3 FOR A SECOND.

4 (BENCH CONFERENCE ON THE RECORD.)

5 THE COURT: I JUST WANTED TO ASK YOU WOULD YOU LIKE
6 ME TO ASK MR. MACDONALD WHETHER HE WOULD LIKE TO TESTIFY OR
7 NOT?

8 MR. WIDENHOUSE: WHETHER HE WOULD?

9 THE COURT: LIKE TO TESTIFY OR NOT. IN OTHER WORDS,
10 I HAVE PEOPLE COME UP ALL THE TIME IN CRIMINAL MATTERS AND SAY
11 MY LAWYER --

12 MR. WIDENHOUSE: NO, YOU DON'T NEED TO ASK HIM.

13 THE COURT: OKAY. THANK YOU. I JUST WANTED YOUR --
14 IT'S NOT FOR -- I'M THINKING ABOUT YOU. THANK YOU.

15 MR. BRUCE: THANK YOU.

16 MR. WIDENHOUSE: THERE WAS SOME DISCUSSION ABOUT
17 QUITTING AT 1:30 TOMORROW, BUT I DIDN'T KNOW WHAT YOU HAD
18 DECIDED.

19 THE COURT: COUNSEL, HOW LONG DO YOU THINK YOU'VE
20 GOT TO GO?

21 MR. BRUCE: WE'VE GOT ONLY ONE WITNESS AFTER THIS
22 ONE, BUT I THINK HE'S GOING TO BE ON THE STAND ANOTHER HOUR ON
23 DIRECT AND THEN YOU'VE GOT CROSS OF HIM. AND THEN THE LAST
24 WITNESS WE HAVE IS JOE MCGINNISS. AND THEN, OF COURSE, THE
25 JERRY LEONARD THING. DEPENDING ON WHAT HAPPENS ON THAT, I

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1 DON'T KNOW WHETHER -- DO YOU WANT TO INTERRUPT OUR CASE TO PUT
2 HIM ON OR PUT HIM ON IN REBUTTAL OR HOW DO YOU WANT TO DO
3 THAT?

4 MR. WIDENHOUSE: I MEAN, I DON'T KNOW WHETHER I'M
5 EVEN GOING TO PUT HIM ON. I DON'T -- I'M NOT TO THAT POINT --
6 WE'RE NOT TO THAT POINT YET.

7 MR. BRUCE: OKAY.

8 THE COURT: WELL, IF I DECIDE HE'S GOING TO BE
9 EXAMINED I'M GOING TO LET BOTH OF YOU LOOK AT THE STATEMENT.

10 MR. WIDENHOUSE: OKAY.

11 THE COURT: I MEAN, THAT'S THE ONLY WAY I KNOW HOW
12 TO DO IT.

13 MR. WIDENHOUSE: I'M NOT QUIBBLING.

14 MR. BRUCE: I'VE GOT HIM UNDER SUBPOENA TOO, BUT
15 HE'S ON THEIR WITNESS LIST.

16 THE COURT: WELL, I'LL TRY TO LET YOU KNOW ABOUT
17 THAT TOMORROW MORNING.

18 MR. WIDENHOUSE: ABOUT JERRY LEONARD?

19 THE COURT: YEAH.

20 MR. WIDENHOUSE: OKAY. MY QUESTION WAS I'M JUST
21 TRYING TO PLAN WHAT I NEED TO BE HERE ON ALL DAY TOMORROW. I
22 MEAN, WE'RE GOING TO GO TILL MONDAY, I THINK, UNDER ANY
23 CIRCUMSTANCES.

24 THE COURT: WELL, DO YOU THINK WE'LL GET THROUGH
25 WITH IT NEXT WEEK?

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1 MR. WIDENHOUSE: I THINK WE'LL GET THROUGH ON
2 MONDAY.

3 MR. BRUCE: YES. I MEAN, WE EXPECT TO BE THROUGH
4 WITH OUR EVIDENCE -- YOU KNOW, WE'VE GOT ONE WITNESS AFTER
5 THIS ONE, WHICH COULD BE FAIRLY LENGTHY, DEPENDING UPON CROSS.
6 IT'S JOE MCGINNISS. I DON'T THINK THE DIRECT WILL TAKE THAT
7 LONG. AND THEN THE JERRY LEONARD THING. AND THEN THAT'S ALL
8 THE WITNESSES THERE ARE.

9 NOW, AS I'VE STATED IN MY OPENING STATEMENT, WE
10 WOULD LIKE A SUBSTANTIAL AMOUNT OF TIME FOR CLOSING ARGUMENT.

11 THE COURT: OH, SURE. ALL YOU WANT.

12 MR. BRUCE: BUT I THINK THAT WE CAN -- I DON'T SEE
13 WHY WE COULDN'T BE FINISHED MONDAY, MAYBE OVER TO TUESDAY, BUT
14 I'M THINKING MONDAY, AREN'T YOU?

15 MR. WIDENHOUSE: YEAH. I THINK IF WE QUIT AT 1:30
16 TOMORROW WE'LL FINISH ON MONDAY.

17 THE COURT: WELL, I'LL STOP -- WE'LL WORK TOMORROW
18 TILL ONE O'CLOCK.

19 MR. WIDENHOUSE: ALL RIGHT.

20 THE COURT: ALL RIGHT.

21 MADAM CLERK: AND IT'S GOING TO BE STRAIGHT THROUGH,
22 NO LUNCH BREAK, CORRECT? WE'LL JUST GO STRAIGHT THROUGH.

23 THE COURT: NO LUNCH BREAK, BUT WE'LL TAKE A BREAK
24 MIDWAY THROUGH THE MORNING. YES, SIR.

25 MR. WEST: I'M JUST TRYING TO FIGURE OUT SCHEDULING

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1 FOR MR. LEONARD AND MYSELF.

2 COURT REPORTER: MR. WEST, COME DOWN HERE, PLEASE.

3 MR. WEST: HE NEEDS TO BE IN COURT IN WAKE COUNTY,
4 IF AT ALL POSSIBLE, IN THE MORNING, BUT, OBVIOUSLY, THIS TAKES
5 PRECEDENCE AND HE'LL BE HERE IF YOU TELL HIM TO. I JUST
6 DIDN'T KNOW IF THERE WAS A FEELING ABOUT --

7 THE COURT: WELL, I'M GOING TO TRY TO MAKE A
8 DECISION ABOUT THE PRIVILEGE TONIGHT AFTER I REVIEW THAT
9 INFORMATION THAT YOU PROVIDED. I DON'T KNOW HOW I'M GOING TO
10 DECIDE THAT.

11 MR. WEST: YES, SIR.

12 THE COURT: IT DEPENDS ON WHETHER I THINK IT'S
13 IMPORTANT OR NOT.

14 MR. WEST: THEN I WILL TELL HIM TO BE HERE IN THE
15 MORNING. THE OTHER THING THAT I WAS GOING TO REQUEST, YOUR
16 HONOR, IS THAT IF YOUR HONOR DOES DECIDE TO SHARE THIS WITH
17 THE OTHER PARTIES AND HAVE SOME SORT OF EXAMINATION OF MR.
18 LEONARD, WE WOULD LIKE TO BE HEARD ABOUT THE FACT THAT WE
19 THINK THAT SHOULD BE DONE IN CAMERA AND THAT THE RULES REQUIRE
20 THAT, YOUR HONOR.

21 IF YOU DECIDE THAT YOU WANT THEM TO HAVE THE
22 OPPORTUNITY TO EXAMINE MR. LEONARD AND THEM TO HAVE THE
23 OPPORTUNITY TO EXAMINE MR. LEONARD, WE WOULD ASK THAT THAT BE
24 DONE IN CAMERA ON THE RECORD, YOUR HONOR.

25 WE THINK THAT RULE 1.6 REQUIRES US TO REQUEST THAT

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1 FOR THE COURT TO TAKE APPROPRIATE MEASURES BECAUSE EVEN IF THE
2 ATTORNEY-CLIENT PRIVILEGE DOES NOT APPLY, THE DUTY OF
3 CONFIDENTIALITY STILL DOES. AND I AT LEAST HAVE TO REQUEST
4 YOUR HONOR TO DO THAT. NOW, WHAT YOUR HONOR DECIDES IS UP TO
5 YOU, BUT I'M DUTY BOUND ON HIS BEHALF TO DO THAT, YOUR HONOR.
6 OBVIOUSLY, YOU MAY NOT GET TO THAT POINT.

7 MR. BRUCE: YOUR HONOR, SPEAKING FOR THE GOVERNMENT,
8 WE WOULD OPPOSE THAT. I THINK IF THE COURT DETERMINES THAT
9 THE EXCEPTIONAL CIRCUMSTANCES ARE PRESENT AND THAT THE
10 PRIVILEGE IS OVERCOME, THEN IT OUGHT TO BE PUBLIC TESTIMONY AS
11 PART OF THIS PUBLIC HEARING.

12 THE COURT: MR. WIDENHOUSE.

13 MR. WIDENHOUSE: I HATE TO SAY I DON'T KNOW BECAUSE
14 I'M ALWAYS SUPPOSED TO KNOW EVERYTHING, BUT I DON'T DISPUTE
15 WHAT MR. WEST IS SAYING. ON THE OTHER HAND, IF WE'RE GOING TO
16 HAVE -- IF YOU LIFT THE PRIVILEGE, I THINK YOU'VE LIFTED ANY
17 CONFIDENTIALITY PRIVILEGE.

18 THE COURT: YES, I DO TOO.

19 MR. WEST: YOUR HONOR, AGAIN, ALL I REQUEST IS TO BE
20 HEARD AND THEN IF THERE'S AN ORDER, OBVIOUSLY, MY CLIENT IS
21 MORE THAN WILLING TO COMPLY WITH IT. AND I WANT YOUR HONOR TO
22 UNDERSTAND WE ARE IN NO WAY TRYING TO BE OBSTRUCTIONISTS OR
23 ANYTHING LIKE THAT. WE ARE JUST TRYING TO DO WHAT WE ARE
24 SUPPOSED TO DO.

25 THE COURT: I UNDERSTAND. BUT IT SEEMS TO ME IF YOU

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1 WAIVE THE -- IF THE PRIVILEGE DOESN'T APPLY THAT THE
2 CONFIDENTIALITY DOESN'T APPLY. I MEAN, THEY'RE BOTH --
3 THEY'RE CONFLATED AS I SEE IT.

4 MR. WEST: AND THE ONLY THING I WILL SAY TO YOUR
5 HONOR, IN MY READING OF ONE OF THE COMMENTARY OR NOTES IN 1.6
6 I'M AT LEAST SUPPOSED TO ASK ON MR. LEONARD'S BEHALF THAT YOU
7 TAKE MEASURES TO TRY TO REDUCE -- THAT EVEN IF THE PRIVILEGE
8 DOES NOT APPLY, THE NORTH CAROLINA BAR RULES, AS I READ THEM,
9 SAY THAT THEY ARE NOT QUITE THE SAME THING.

10 MR. VARNUM: AND, YOUR HONOR, I HAVE THAT.

11 THE COURT: THANK YOU.

12 MR. VARNUM: YOU'RE WELCOME. ON THE SECOND PAGE I
13 HIGHLIGHTED THE COMMENT THAT MR. WEST IS REFERRING TO.

14 MR. WEST: AND, AGAIN, YOUR HONOR, WE WANT TO BE
15 REALLY CLEAR THAT MR. LEONARD WILL COMPLY WITH WHATEVER THE
16 COURT ORDERS.

17 (PAUSE.)

18 THE COURT: WELL, THE CLIENT IS NOT GOING TO
19 CONSENT, MS. STOECKLEY BEING DEAD.

20 MR. WEST: I'M SORRY, YOUR HONOR?

21 THE COURT: IT SAYS A LAWYER SHALL NOT REVEAL
22 INFORMATION ACQUIRED DURING PROFESSIONAL RELATIONSHIP WITH THE
23 CLIENT UNLESS THE CLIENT GIVES INFORMED CONSENT. OBVIOUSLY,
24 THAT'S NOT GOING TO HAPPEN.

25 MR. WEST: CORRECT.

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1 THE COURT: WELL, I THINK THAT THE -- I THINK I'LL
2 HAVE HIM TESTIFY IF I THINK IT'S IMPORTANT. NOW, LISTEN, IF I
3 THINK THAT THIS IS EXCULPATORY, I'M GOING TO CERTAINLY LET IT
4 COME IN. IF I DON'T THINK IT'S EXCULPATORY, I'M NOT GOING TO
5 LET IT COME IN.

6 MR. WIDENHOUSE: I UNDERSTAND.

7 THE COURT: ALL RIGHT. HAVE YOU HANDED IT TO SUE?

8 MR. WEST: OH, YES, SIR.

9 MADAM CLERK: YES, SIR. I'VE GOT IT RIGHT HERE.

10 MR. WEST: YES, SIR.

11 THE COURT: ALL RIGHT. LET ME SEE IT.

12 MADAM CLERK: YES, SIR.

13 THE COURT: THANK YOU VERY MUCH.

14 MR. WEST: THANK YOU, YOUR HONOR.

15 MR. BRUCE: THANK YOU, YOUR HONOR.

16 (BENCH CONFERENCE CONCLUDED.)

17 THE COURT: I'LL SEE IF I CAN TELL YOU RIGHT NOW.

18 (COURT REVIEWS DOCUMENT.) (PAUSE.)

19 THE COURT: COUNSEL.

20 (BENCH CONFERENCE ON THE RECORD.)

21 THE COURT: I THINK THIS IS A SITUATION WHICH THE
22 PRIVILEGE SHOULD BE -- NOT APPLY AND HE CAN TESTIFY.

23 NOW, SUE, IF YOU'LL MAKE COPIES OF THIS FOR COUNSEL.

24 MADAM CLERK: YES, SIR.

25 THE COURT: AND PUT THIS IN THE FILE. GIVE A COPY

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1 TO MR. WIDENHOUSE AND TO MR. BRUCE.

2 LAW CLERK: IS THAT UNSEALED OR DOES IT REMAIN --

3 THE COURT: IT'S GOING TO BE UNSEALED, THAT'S
4 CORRECT. THEY'RE GOING TO PREPARE FOR TESTIMONY TOMORROW.

5 MR. WIDENHOUSE: TOMORROW?

6 THE COURT: WELL, WHENEVER.

7 MR. WIDENHOUSE: WHENEVER.

8 MR. WEST: YOUR HONOR, AS A REMEDIAL MEASURE, COULD
9 WE ASK THE COURT TO AT LEAST ORDER THE PARTIES TO ONLY KEEP IT
10 WITH THEMSELVES RIGHT NOW AND IT NOT BE RELEASED TO ANYBODY OR
11 THE WORLD OR ANYTHING LIKE THAT?

12 THE COURT: YES, SIR.

13 MR. WEST: AGAIN, I THINK WE'RE REQUIRED TO ASK THAT
14 OF THE COURT, BUT, AGAIN, I'M NOT TRYING TO BE DIFFICULT,
15 JUDGE.

16 THE COURT: NO, I UNDERSTAND, BUT I THINK I'M GOING
17 TO LET HIM TESTIFY.

18 MR. BRUCE: WELL, WAIT A MINUTE. I WANT TO MAKE
19 SURE I UNDERSTAND THE GROUND RULES. IS THIS DOCUMENT GOING TO
20 BE UNSEALED?

21 THE COURT: I'M GOING TO LET YOU ALL LOOK AT IT SO
22 YOU CAN PREPARE FOR THE EXAMINATION.

23 MR. BRUCE: RIGHT, YOUR HONOR.

24 THE COURT: AND THEN I'M GOING TO HAVE IT -- I DON'T
25 SEE WHY IT SHOULD NOT BE UNSEALED.

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1 MR. BRUCE: I BELIEVE SO. WE'LL NEED TO USE IT TO
2 PROBABLY EXAMINE HIM WITH.

3 THE COURT: I THINK SO.

4 MR. WIDENHOUSE: HE JUST DOESN'T WANT US DISCLOSING
5 IT TO ANYBODY TONIGHT.

6 THE COURT: THAT'S RIGHT. THAT'S FINE.

7 MR. WEST: AND AGAIN, I GUESS THE WAY I READ THE
8 RULES, I FEEL LIKE I'M SUPPOSED TO ASK THE COURT. ONCE THE
9 COURT RULES, THEN IT'S WHATEVER.

10 THE COURT: I'VE RULED.

11 MR. WEST: YES, SIR.

12 MADAM CLERK: ALL RIGHT. SO, IF YOU WANT TO WAIT,
13 I'LL RUN AND MAKE YOU COPIES RIGHT NOW.

14 THE COURT: GORDON, DID YOU EVER PRACTICE BEFORE
15 JUDGE WALTER J. BOWEN?

16 MR. WIDENHOUSE: NO.

17 THE COURT: GOSH, HE WAS A GREAT GUY. HE WOULD LOOK
18 DOWN AT YOU AND THEN HE'D POINT HIS FINGER AND SAY I'VE RULED.

19 MR. WEST: MESSAGE RECEIVED, YOUR HONOR.

20 MR. BRUCE: THANK YOU, YOUR HONOR.

21 THE COURT: COUNSEL --

22 MADAM CLERK: OKAY. AND WE WILL NOT ACTUALLY FILE
23 IT UNTIL AFTER THEY'VE REVIEWED IT --

24 THE COURT: THAT'S RIGHT. THAT'S RIGHT.

25 MADAM CLERK: -- BECAUSE IF I DO IT, IT'S GOING TO

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1 GO ON THE WEBSITE.

2 THE COURT: NO.

3 MADAM CLERK: OKAY.

4 THE COURT: YOU FILE IT AFTER HE'S TESTIFIED.

5 MADAM CLERK: AFTER THEY'VE REVIEWED IT. OKAY.

6 MR. WEST: AND AGAIN, DID YOU DETERMINE WHETHER OR
7 NOT THAT'S IN CAMERA OR NOT, YOUR HONOR?

8 THE COURT: I'VE LOOKED AT IT IN CAMERA.

9 MR. WEST: YES, SIR. OKAY.

10 THE COURT: AND I'M GOING TO RULE THAT THE PRIVILEGE
11 DOESN'T APPLY.

12 MR. WEST: I GOT YOU.

13 MADAM CLERK: AND I'M MAKING AN ENTRY THAT STATES
14 THAT IT WAS IN CAMERA.

15 MR. WEST: OKAY. THAT'S ALL I'M ASKING.

16 MR. BRUCE: OKAY. NOW, JERRY WAS ON THEIR CASE IN
17 CHIEF, SCHEDULED TO BE ON GORDON'S CASE IN CHIEF ON BEHALF OF
18 MACDONALD, SO MY PROPOSAL WOULD BE AS SOON AS WE GET THROUGH
19 WITH MADDEN TO LET HIM DO THAT, AND THEN I'LL WIND UP WITH MY
20 LAST WITNESS.

21 MR. WIDENHOUSE: I'D RATHER WAIT.

22 THE COURT: I'M SORRY?

23 MR. WIDENHOUSE: I THINK I'M ENTITLED TO SOME TIME
24 TO THINK ABOUT THIS AND PREPARE FOR IT AND I DON'T THINK
25 OVERNIGHT IS LEGITIMATE. YOU CAN FINISH WITH MCGINNISS

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1 TOMORROW AND GET HIM BACK TO CALIFORNIA AND THEN WE CAN --

2 THE COURT: NOW, LOOK, I'M GOING TO LET -- AFTER YOU
3 GET THE MAN FIRST, OF COURSE, HE CAN COME BACK AND EXAMINE
4 HIM.

5 MR. WIDENHOUSE: THAT'S FINE. YEAH. I JUST --

6 THE COURT: IF HE WANTS TO COME FORWARD WITH FURTHER
7 EVIDENCE IN THAT REGARD HE CAN.

8 MR. WIDENHOUSE: ABSOLUTELY. ABSOLUTELY.

9 MR. BRUCE: OKAY. SO, I'LL FINISH MY CASE, WHICH IS
10 BUTCH MADDEN AND JOE MCGINNISS, THEN YOU WILL EITHER PUT ON
11 JERRY LEONARD OR YOU WON'T.

12 MR. WIDENHOUSE: CORRECT.

13 MR. BRUCE: AND THEN I HAVE AN OPPORTUNITY TO BRING
14 UP ANYTHING IN RESPONSE TO THAT?

15 THE COURT: THAT'S RIGHT.

16 MR. WEST: SO, DOES THAT MEAN MR. LEONARD HAS TO BE
17 HERE AT 9:00 OR HE CAN BE HERE LATER IN THE MORNING, YOUR
18 HONOR?

19 MR. WIDENHOUSE: I DON'T THINK WE'LL GET TO HIM
20 TOMORROW.

21 THE COURT: WELL, IF COUNSEL DOESN'T THINK WE'LL GET
22 TO HIM HE DOESN'T HAVE TO BE HERE UNTIL MONDAY.

23 MR. WEST: I THINK THAT WOULD BE GREAT FOR MR.
24 LEONARD IF AT ALL POSSIBLE.

25 MR. WIDENHOUSE: DO YOU?

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1 MR. BRUCE: WE'RE GOING ONLY TO 1:00 TOMORROW, IS
2 THAT RIGHT?

3 THE COURT: YES.

4 MR. BRUCE: I DON'T THINK WE'LL GET TO HIM TOMORROW.

5 MR. WIDENHOUSE: AND THAT WOULD GIVE ME THE WEEKEND
6 TO MEET HIM AND THEN PUT HIM UP MONDAY MORNING.

7 THE COURT: OKAY. OKAY.

8 LAW CLERK: LOGISTICALLY, ARE YOU UNSEALING THIS FOR
9 THE PUBLIC AT THIS TIME --

10 THE COURT: NO.

11 LAW CLERK: -- OR TOMORROW? NOT UNTIL --

12 THE COURT: I'M GOING TO UNSEAL IT AFTER HE'S
13 TESTIFIED.

14 LAW CLERK: THANK YOU. I'M SORRY.

15 MR. WIDENHOUSE: WHICH IS MONDAY.

16 THE COURT: THAT'S RIGHT.

17 MR. BRUCE: AND, OF COURSE, ACTUALLY DURING THE
18 TESTIMONY WE'LL HAVE TO USE IT.

19 THE COURT: THAT'S FINE.

20 MR. BRUCE: ALL RIGHT. AND, OF COURSE, I CAN SHARE
21 IT WITH MY TRIAL TEAM?

22 THE COURT: SURE.

23 MR. BRUCE: THANK YOU.

24 THE COURT: YOU BOTH CAN.

25 MR. WIDENHOUSE: THANK YOU.

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1 THE COURT: NOW, THAT MAY BE WRONG, BUT THAT'S THE
2 BEST I KNOW.

3 MR. WIDENHOUSE: WELL, THAT'S WHY YOU GET PAID THE
4 BIG BUCKS.

5 THE COURT: BIG BUCKS, YEAH.

6 (BENCH CONFERENCE CONCLUDED.)

7 THE COURT: OKAY. WE'LL TAKE A RECESS TILL 9:00
8 A.M. TOMORROW MORNING.

9 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 4:47 P.M.,
10 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 21, 2012.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT OF SAID PROCEEDINGS.

/s/ STACY SCHWINN, CCR, CVR-M
STACY SCHWINN, CCR, CVR-M

11/19/12
DATE

September 20, 2012