

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

NO. 15-7136

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JEFFREY R. MACDONALD,

*Defendant-Appellant.*

---

**JOINT APPENDIX  
VOLUME III of VII**

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
AT WILMINGTON

John Stuart Bruce  
Acting United States Attorney  
Leslie K. Cooley  
Jennifer P. May-Parker  
Assistant United States Attorneys  
310 New Bern Avenue, Suite 800  
Raleigh, NC 27601  
(919) 856-4530

Counsel for Appellee

Joseph E. Zeszotarski, Jr.  
Gammon, Howard & Zeszotarski, PLLC  
115 ½ West Morgan Street  
Raleigh, NC 27601  
(919) 521-5878

Counsel for Appellant

# TABLE OF CONTENTS

## Volume I of VII

### Appendix Page

Docket Entries.....1

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

    Testimony of Richard D. Tevere .....42

    Testimony of Kenneth C. Mica .....80

    Testimony of William F. Ivory .....135

    Testimony of Robert Shaw .....396

    Testimony of Dr. Edward Gammel .....474

    Testimony of Dr. George E. Hancock .....514

    Testimony of Michael Newman .....548

    Testimony of Paul Connolly .....563

    Testimony of Elizabeth Ramage.....568

    Testimony of Dr. Severt H. Jacobson.....576

    Testimony of Robert Caverly .....594

    Testimony of Dr. Frank Gemma.....614

    Testimony of Bennie Hawkins .....617

    Testimony of Hilyard Medlin .....626

Testimony of Mildred Kassab .....646

Testimony of Dr. Craig Stanley Chamberlain.....669

Testimony of Terry Laber.....690

Testimony of Janice Glisson.....702

**TABLE OF CONTENTS**

Volume II of VII

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

Testimony of Dillard Browning .....745

Testimony of Charles Michael Hoffman .....798

Testimony of Paul Stombaugh .....810

Testimony of Shirley Green .....891

Testimony of Jack B. Crawley, Jr.....945

Testimony of Vincent P. Guinn.....982

Testimony of John I. Thorton .....1023

Testimony of Dr. George Podgorny .....1040

Testimony of James Milne.....1041

Discussion on missing witnesses .....1047

Testimony of Helena Stoeckley.....1051

Argument to Court.....1342

Bench Conference.....1343

Testimony of P.E. Beasley .....1359

Testimony of Jane Zillioux.....1404

Testimony of Charles Underhill .....1426

**TABLE OF CONTENTS**

Volume III of VII

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

Testimony of Wendy Rouder .....1465

Testimony of William Posey .....1520

Testimony of Carmine Welch.....1569

Testimony of James Gaddis.....1572

Testimony of Jeffrey R. MacDonald .....1582

Bench Conference.....1658

Government Exhibit 1153 marked .....1693

Government Closing Argument.....1694

Defendant’s Closing Argument.....1699

Government Trial Exhibits

Exhibit 1 (photo).....1700

Exhibit 2 (photo).....1703

Exhibit 24 (photo).....1704

Exhibit 24b (photo).....1705

Exhibit 27 (photo).....1706

Exhibit 40 (photo).....1707

Exhibit 40a (photo).....1708

Exhibit 41 (photo).....1709

Exhibit 42 (photo).....1710

Exhibit 43 (photo).....1711

Exhibit 43a (photo).....1712

Exhibit 44 (photo).....1713

Exhibit 45 (photo).....1714

Exhibit 54 (photo).....1715

Exhibit 55 (photo).....1716

Exhibit 56 (photo).....1717

Exhibit 57 (photo).....1718

Exhibit 58 (photo).....1719

Exhibit 59 (photo).....1720

Exhibit 62 (photo).....1721

Exhibit 64 (photo).....1722

Exhibit 65 (photo).....1723

Exhibit 70 (photo).....1724

Exhibit 71 (photo).....1725

Exhibit 71a (photo).....1726

Exhibit 72 (photo).....1727

Exhibit 73 (photo).....1728

Exhibit 74 (photo).....1729

Exhibit 75 (photo).....1730

Exhibit 76 (photo).....1731

Exhibit 77 (photo).....1732

Exhibit 78 (photo).....1733

Exhibit 80 (photo).....1734

Exhibit 81 (photo).....1735

Exhibit 100 (photo).....1736

Exhibit 210 (photo).....1737

Exhibit 211 (photo).....1738

Exhibit 211a (photo).....1739

Exhibit 212 (photo).....1740

Exhibit 214 (photo).....1741

Exhibit 422 (photo).....1742

Exhibit 424 (photo).....1743

Exhibit 425 (photo).....1744

Exhibit 428 (photo).....1745

Exhibit 430 (photo).....1746

Exhibit 597 (photo).....1747

Exhibit 606a (photo).....1748

Exhibit 607 (photo).....1749

Exhibit 608a (photo).....1750

Exhibit 609 (photo).....1751

Exhibit 610 (photo).....1752

Exhibit 611 (photo).....1753

Exhibit 612 (photo).....1754

Exhibit 638 (ABO Blood Factors: Colette, Kimberly, Jeffrey, Kristen)...1755

Exhibit 644 (Summary of Blood Analyses) .....1756

Exhibit 654 (Location of Threads and Yarns).....1757

Exhibit 763 (photo).....1758

Exhibit 764c (photo) .....1759

Exhibit 768 (photo).....1760

Exhibit 771 (photo).....1761

Exhibit 772 (photo).....1762

Exhibit 776 (photo).....1763

Exhibit 777 (photo).....1764

Exhibit 787a (photo) .....1765

Exhibit 789a (photo) .....1766

Exhibit 790 (photo).....1767

Exhibit 791 (photo).....1768

Exhibit 792 (photo).....1769

Exhibit 793 (photo).....1770

Exhibit 794 (photo).....1771

Exhibit 795 (photo).....1772

Exhibit 796 (photo).....1773

Exhibit 808 (photo).....1774

Exhibit 809 (photo).....1775

Exhibit 811 (photo).....1776

Exhibit 812 (photo).....1777



Exhibit 952 (photo).....	1778
Exhibit 967 (Map of Corregidor Courts).....	1779
Exhibit 968 (photo).....	1780
Exhibit 978 (Items Found in Pile on Floor of Master Bedroom) .....	1781
Exhibit 983 (South Bedroom – Kimberly MacDonald) .....	1782
Exhibit 1070 (photo).....	1783
Exhibit 1077 (photo).....	1784
Exhibit 1078 (photo).....	1785
Exhibit 1135 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume I).....	1786
Exhibit 1136 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume II) .....	1887
Exhibit 1141 (Table of Contents Subject Matter of Statements) .....	1892
Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence, filed January 17, 2006 .....	1932
Memorandum in Support of Jeffrey R. MacDonald’s Motion Under 28 U.S.C. Section 2255 To Set Aside His Sentence, filed January 17, 2006.....	1954
Exhibit 1 (Affidavit of Jimmy Britt).....	2006
Exhibit 3 (Affidavit of Lee Tart) .....	2010
Exhibit 7 (Affidavit of Everett Morse, Bryant Lane, Donald Buffkin).....	2012

Petitioner’s Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction – Namely Newly Discovered DNA Evidence, filed March 22, 2006 .....	2020
Memorandum of Evidence and Points and Authorities in Support of Petitioner’s Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction, filed March 22, 2006 .....	2026
Petitioner’s Motion, Pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, to Expand the Record to Include the Itemized Authenticated Evidence, filed March 23, 2006.....	2033
Petitioner’s Statement of Itemized Material Evidence- With Citations to the Record or to Authenticated Proofs- In Support of his Motion Under 28 U.S.C. § 2255 to Vacate his Sentence, filed March 23, 2006 .....	2038
Excerpts of Reply in Response to Motion to Vacate, Set Aside or Correct Sentence, filed May 8, 2006 .....	2064
Excerpt of Notice of Death, filed October 28, 2008.....	2068
Excerpts of Order Denying Motion for Leave to File Successive 2255 Motion; Denying Motion to Amend or Correct; Denying Motion to Expand the Record; Granting Motion to; Denying Motion to Supplement Itemized Evidence, filed November 4, 2008 .....	2069
Petitioner’s Motion for Hearing Attachment, Letter from Lee Tart to Counsel, filed September 20, 2011.....	2078
Order as to Petitioner’s Motion Under the IPA, filed September 21, 2011 .....	2079
Affidavit of Craig S. Chamberlain, filed December 12, 2011.....	2081
Supplemental Affidavit of Craig S. Chamberlain, filed December 12, 2011 .....	2088
Affidavit of Dillard O. Browning, filed December 12, 2011 .....	2098
Affidavit of Grant D. Graham, Sr., filed December 12, 2011 .....	2105

Affidavit of Janice S. Glisson, filed December 12, 2011 .....2114

Affidavit of Joseph A. Dizinno, filed December 12, 2011 .....2130

Affidavit of Robert Fram, filed December 12, 2011 .....2145

Order Granting Motion to Continue Evidentiary Hearing as to Jeffrey MacDonald,  
filed July 16, 2012.....2165

**TABLE OF CONTENTS**

Volume IV of VII

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 17, 2012.....2166

    Testimony of Wade Smith .....2185

    Testimony of Mary Britt.....2386

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 18, 2012.....2395

    Testimony of Mary Britt.....2398

    Testimony of Eugene Stoeckley .....2431

    Testimony of Wendy Rouder .....2509

    Testimony of Laura Redd .....2565

    Testimony of Sara McMann .....2582

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 19, 2012.....2629

    Testimony of Frank Mills .....2635

    Testimony of Dennis Meehan.....2680

    Testimony of Janice Meehan .....2701

    Testimony of Eddie R. Sigmon .....2708

    Testimony of William I. Berryhill, Jr. ....2727

    Testimony of Maddie Reddick .....2736

    Testimony of J. Rich Leonard .....2748

    Testimony of James L. Blackburn.....2759

**TABLE OF CONTENTS**

Volume V of VII

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 20, 2012.....2867

    Testimony of Jack B. Crawley, Jr.....2877

    Testimony of William Ivory .....2923

    Testimony of Raymond Madden, Jr. ....3045

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 21, 2012.....3071

Testimony of Raymond Madden, Jr. ....3073

Testimony of Joe McGinniss.....3114

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 24, 2012.....3224

Testimony of Joe McGinniss.....3227

Testimony of Jerry Leonard. ....3271

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 25, 2012.....3406

Petitioner’s Closing Argument. ....3408

Government’s Closing Argument.....3462

Petitioner’s Rebuttal. ....3561

**TABLE OF CONTENTS**

Volume VI of VII

Government Exhibits Introduced at September 2012 Evidentiary Hearing

Government Exhibit 2000 (Warrant for Arrest of Witness Helena Stoeckley)  
.....3588

Government Exhibit 2001 (Wire Document of August 1979).....3589

Government Exhibit 2002 (FBI Report of August 14, 1979 Interview of Helena Stoeckley).....	3592
Government Exhibit 2003 (Report of Arrest of Helena Stoeckley).....	3595
Government Exhibit 2006 (Fingerprint Card).....	3597
Government Exhibit 2007 (Fingerprint Card).....	3599
Government Exhibit 2008 (Helena Stoeckley Booking Report).....	3602
Government Exhibit 2009 (Helena Stoeckley Booking Photo) .....	3608
Government Exhibit 2010 (Sworn Statement of Vernoy Kennedy) .....	3609
Government Exhibit 2011 (Court Reporter Certification Vernoy Kennedy) .....	3624
Government Exhibit 2053 (Helena Stoeckley Prisoner, Detention and Disposition Record).....	3626
Government Exhibit 2054 (Helena Stoeckley Disposition Sheet).....	3627
Government Exhibit 2055 (Helena Stoeckley Prisoner, Detention and Disposition Record).....	3628
Government Exhibit 2056 (Helena Stoeckley Commitment) .....	3629
Government Exhibit 2057 (Helena Stoeckley Commitment) .....	3630
Government Exhibit 2058 (Helena Stoeckley Commitment) .....	3631
Government Exhibit 2059 (Helena Stoeckley Release).....	3632
Government Exhibit 2060 (Helena Stoeckley Release).....	3633
Government Exhibit 2061 (Helena Stoeckley Release).....	3634

Government Exhibit 2062 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3635

Government Exhibit 2063 (Helena Stoeckley Disposition Sheet).....3636

Government Exhibit 2064 (Helena Stoeckley Commitment) .....3637

Government Exhibit 2065 (Helena Stoeckley Commitment) .....3638

Government Exhibit 2066 (Helena Stoeckley Release).....3639

Government Exhibit 2067 (Photo of Pickens County Law Enforcement Center) .....3640

Government Exhibit 2068 (1977 Jail Book) .....3641

Government Exhibit 2069 (1977 Jail Book) .....3642

Government Exhibit 2070 (1977 Jail Book) .....3643

Government Exhibit 2071 (1977 Jail Book) .....3644

Government Exhibit 2072 (1977 Jail Book) .....3645

Government Exhibit 2073 (1977 Jail Book) .....3646

Government Exhibit 2074 (News & Observer Article, August 17, 1979)  
.....3647

Government Exhibit 2085 (Statement of Facts of Jimmy Britt, February 23, 2005).....3648

Government Exhibit 2086 (Interview Under Oath of Jimmy Britt, February 24, 2005).....3649

Government Exhibit 2087 (Affidavit of Jimmy Britt, October 26, 2005)  
.....3684

Government Exhibit 2088 (Affidavit of Jimmy Britt, November 3, 2005)  
 .....3688

Government Exhibit 2089 (Addendum to Affidavit of Jimmy Britt, February  
 28, 2006) .....3692

Government Exhibit 2100 (North Carolina-South Carolina Driving  
 Distances).....3694

Government Exhibit 2103a (Raleigh Map) .....3695

Government Exhibit 2104 (South Carolina Map) .....3696

Government Exhibit 2138 (Sketch of MacDonald Home).....3698

Government Exhibit 2201 (Fatal Vision Book Excerpt).....3699

Government Exhibit 2318 (Tale of the Green Beret Excerpt) .....3709

Government Exhibit 2332 (FBI Report of September 17, 2007 Interview of  
 Helena Stoeckley Sr.) .....3718

Government Exhibit 2333 (Notes of FBI Interview of Helena Stoeckley  
 Sr.).....3722

Government Exhibit 2334 (FBI Agent Madden Summary of Interview of  
 Helena Stoeckley Sr.) .....3726

Government Exhibit 2357 (Sketch).....3730

Government Exhibit 2367 (Government Summary Exhibit- Jimmy Britt) .....  
 .....3731

Government Exhibit 3499 (Government Summary Exhibit- Unsourced Hairs  
 75A, 91A and 58A (1)).....3749

Government Exhibit 3500 (Government Summary Exhibit- Q-137 and 91A)3871



Government Exhibit 3501 (Government Summary Exhibit- DNA Results of Government’s Trial and New Evidence).....3889

Government Exhibit 4000 (MacDonald Handwritten Notes) .....3935

Government Exhibit 4002 (Fatal Vision Book Excerpt).....3953

Government Exhibit 6001 (Military Police Receipt) .....3958

Government Exhibit 6002 (Inventory) .....3962

Government Exhibit 6073 (Government Summary of MacDonald Trial Testimony).....3964

Government Exhibit 6076 (FBI Report of March 21, 2006 Interview of Jerry Leonard).....4011

Government Exhibit 7000 (A Wilderness of Error Book Excerpt).....4013

Government Exhibit 7001 (A Wilderness of Error Book Excerpt).....4021

Government Exhibit 7010 (Excerpt of In Re Leonard, 339 N.C. 596 (1995))... .....4024

Government Exhibit 7015 (NC State Bar Ethics Inquiry) .....4027

Government Exhibit 7017 (May 21, 2007 Letter from Jerry Leonard to Court) .....4031

Petitioner’s Exhibits Introduced at September 2012 Evidentiary Hearing

Petitioner’s Exhibit 5004 (Candle Wax Trial Testimony) .....4033

Petitioner’s Exhibit 5021 (Declaration of Jimmy Friar) .....4045

Petitioner’s Exhibit 5023 (Declaration of Ann Sutton Cannady) .....4048

Petitioner’s Exhibit 5024a (Declaration of Norma Lane) .....4053

Petitioner’s Exhibit 5024b (Declaration of Bryant Lane) .....4055

Petitioner’s Exhibit 5027 (Affidavit of Ellen Dannelly) .....4057

Petitioner’s Exhibit 5048 (FBI Report of May 23, 1984 Interview of Norma Lane) .....4060

Petitioner’s Exhibit 5051 (Affidavit of Helena Stoeckley Sr.) .....4063

Petitioner’s Exhibit 5057 (Jimmy Britt Polygraph Examination) .....4066

Petitioner’s Exhibit 5058 (Affidavit of Jimmy Britt) .....4069

Petitioner’s Exhibit 5059 (Affidavit of Jimmy Britt) .....4073

Petitioner’s Exhibit 5060 (Picture of Jimmy Britt with Helena Stoeckley in Courthouse).....4077

Petitioner’s Exhibit 5069 (Lee Tart Interview Under Oath) .....4078

Petitioner’s Exhibit 5080 (Affidavit of Wendy Rouder, Esq.) .....4090

Petitioner’s Exhibit 5084 (Kay Reibold Statement) .....4095

Petitioner’s Exhibit 5113 (Affidavit of Jerry Leonard) .....4098

Petitioner’s Exhibit 5115 (Letter from Judge Dupree to Wendy Rouder)  
 ... .....4102

**TABLE OF CONTENTS**

Volume VII of VII

Stipulations, filed September 17, 2012 .....4103

Excerpts of Government’s Post-Hearing Memorandum, filed July 1, 2013 .....4219

Excerpts of Government’s Post-Hearing Sur-Reply, filed September 23, 2013  
 .....4311

Order Denying Petitioner’s Motion to Vacate Under 28 U.S.C. § 2255,) filed July  
 24, 2014 .....4389

Petitioner’s Motion to Alter or Amend Judgment and Incorporated Memorandum  
 of Law, filed August 21, 2014 .....4558

Excerpts of Government’s Memorandum in Opposition of Petitioner’s Motion to  
 Alter or Amend Judgment, filed February 12, 2015.....4570

Order Denying Motion to Alter or Amend Judgment as to Jeffrey MacDonald, filed  
 May 18, 2015 .....4605

Petitioner’s Notice of Appeal, filed July 16, 2015 .....4631

dml  
C-17

5928

FURTHER PROCEEDINGS 2:30 p.m.

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

THE COURT: Did I understand that you had some witness whose testimony would be of the same character as this?

MR. SEGAL: It is the same character; more important, I think, more direct statements here, more detail going out of the same episode, Your Honor.

THE COURT: Well, call that witness.

(Whereupon,

WENDY PHYLIS ROWDER

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 2:32 p.m.

BY MR. SEGAL:

Q Ms. Rowder, are you an attorney admitted to practice law in the State of California?

A I am.

Q Do you also hold some other degree other than a J.D. Degree in Law?

A Yes, I do.

Q What other degree do you hold?

XXX

dm2  
C-17

5929

1 A I hold a Doctor of Philosophy in Speech.

2 Q You are associated with the defense in  
3 this case on behalf of Dr. MacDonald; are you not?

4 A Yes, I am.

5 Q On yesterday, on Sunday, did you have  
6 occasion to see Helena Stoeckley here in Raleigh?

7 A I did.

8 Q When was the first time--approximately at  
9 what time and at what place?

10 A It was approximately 11:00 or 11:30 a.m.  
11 at the Journey's End Motel.

12 Q Would you tell His Honor briefly why and  
13 how you came to go to the Journey's End Motel?

14 A Mr. Segal had informed me that Ms. Stoeckley  
15 had been beaten and possibly had been subjected to  
16 a drowning. He asked me to check into her well-being.  
17 The rumor or the hearsay as you might say had been that  
18 her fiance had inflicted this attack upon her and it  
19 would be best if in some way I could help separate them  
20 for her own safety.

21 Q Did you then go down to the Journey's End  
22 Motel?

23 A I did.

24 Q Did you go with "Red" Underhill at that time?

25 A Yes.

dm3  
C-17

5930

1 Q Did you see Ms. Stoeckley at the motel?

2 A Yes, I did.

3 Q Was someone else in the room when you  
4 arrived there besides Ms. Stoeckley?

5 A Yes, Mr. Ernest Davis.

6 Q Did Ms. Stoeckley say anything about  
7 whether she wanted or did not want Mr. Davis present  
8 while you talked with her or Mr. Underhill talked  
9 with her?

10 A Yes. I managed to ask Mr. Davis to step  
11 out of the room for a moment. I said, "Helena, do you  
12 want him to leave or not?" She said, "I want him to  
13 go."

14 Q Did she do anything else to indicate whether  
15 she wanted Mr. Davis to stay or not?

16 A Well, while he was out of the room, she  
17 immediately packed his suitcase including a few ash trays

18 Q That was his suitcase or her suitcase?

19 A I don't know who owned the suitcase, but  
20 it was his belongings.

21 Q She put his belongings in a suitcase?

22 A Yes.

23 Q Did you stay with Ms. Stoeckley at that  
24 motel for some period of time?

25 A Yes, I did.

**RGT.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

im4  
-17

5931

1 Q About how long were you there?

2 A Several hours.

3 Q What did you talk with her about--well,  
4 back up for one second. Was there any particular  
5 reason why you stayed with her at that motel?

6 A She requested that somebody stay with her.  
7 This was a solicited request. I said, "Helena, would  
8 you be all right, or would you like somebody to stay  
9 with you?" She said, "I would like somebody to stay  
10 with me."

11 Q Did you make some suggestion to her as to  
12 who might stay with her?

13 A Yes. She asked, "Who would it be?" I  
14 said, "How about a college student? There are some at  
15 State." She said, "Could you stay?"

16 Q Speaking to you?

17 A Speaking of me, yes.

18 Q Did you, in fact, stay then as a result of  
19 that statement that she made?

20 A Yes, I did.

21 Q What topics did you talk with her about  
22 during the course of these next several hours you  
23 were with her?

24 A The range of topics was very broad. It  
25 was what I would characterize as banter, small talk.

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

MAIN OFFICE, RALEIGH, 832-9085

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

1m5  
2-17

5932

1 That is the best I can do.

2 Q At any point, did you talk about her  
3 involvement with the murders of the MacDonald family  
4 in 1970?

5 A Yes. This followed a pause in the  
6 conversation--a conversation framed by small talk.  
7 There was a pause, and she brought up the subject.

8 Q Did you make notes--at my request, did you  
9 make notes of what she said to you at that time?

10 A Yes.

11 Q Do you have those with you?

12 A I do.

13 Q Do you want to read to us your best  
14 recollection as you recorded it in your memorandum  
15 there as to what she said to you this first time that  
16 she made an observation about the MacDonald case?

17 A After a pause, she said to me, "I still  
18 think I could have been there that night." I then  
19 asked, "What makes you think so?" She said, "I don't  
20 know." There was a pause, and then she said, "That  
21 rocking horse." There was another pause, and she  
22 added, "You know, Kristen, Kristen Jean. Those  
23 pictures, when I looked at those pictures, I knew I  
24 had seen her somewhere before." Another pause, and she  
25 added, "And that driveway, I remember being in that



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



dm6  
C-17

5933

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

driveway."

Q Was that the end of her remarks about the  
MacDonald case at that juncture?

A Specifically, placing herself on something  
concrete, yes. There were more allusions to her  
involvement, though, in that particular conversation.

5934

1 BY MR. SEGAL:

2 Q Later on in the conversation, did she have  
3 occasion to be specific about some connection or  
4 involvement with the MacDonald case?

5 A The specificity was I had said to her,  
6 "Helena"--well, let me read. I am sure I could say it.  
7 At one point I asked her if the guilt over all these  
8 years has ever left her, and she said, "No, what do  
9 you think I have taken all these damn drugs for?"

10 I later asked her if drugs help relieve  
11 this memory, and she said, "No, because you always have  
12 to come down." I volunteered that the guilt must be  
13 awful trying to live with, and she said, "Yes."

14 Q All right, now, did this conversation  
15 continue until some point when she made some further  
16 statements about the MacDonald case or relative to the  
17 killing of the MacDonald family?

18 A There was another conversation about guilt.  
19 I asked her, "If MacDonald were convicted, could you  
20 live with that guilt too?" She said, "I don't think so."  
21 I asked, "Isn't there anything you think you can do to help  
22 get rid of the guilt?" And she said, "I just want to  
23 take sodium pentothol or hypnosis or something."

24 Q Now, did you have some further discussion  
25 with her when she indicated whether she would make such

#18  
cks  
1



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5935

1 statements or repeat these remarks in court or make  
2 some statements as to her knowledge about this case in  
3 court?

4 A The statements that she made about that  
5 were in a different setting.

6 Q All right, did the statements that you have  
7 read to us so far represent those that you consider to  
8 be significant during her stay at the Journey's End  
9 Motel?

10 A Yes.

11 Q What was the reason why Ms. Stoeckley left  
12 the Journey's End Motel?

13 A She was asked to leave by the manager.

14 Q Now, as a result of that, how did it come  
15 about that she went to the Hilton Inn?

16 A She was worried about where she would go,  
17 and I assured her there must be a place, and your  
18 secretary arranged for a motel room, phoned back, and  
19 said, "The Hilton will accept you."

20 Q Did she explain what had happened to the  
21 witness money that she had been paid in regard to the  
22 subpoena that had been served on her?

23 A She said that they had put advance deposits  
24 down on several nights, and she never got the money back.

25 Q I see. All right, at that point, did she

#18  
cks  
2

5936

1 indicate to you that she had any money at all on her?

2 A She said that there was very little money,  
3 and Ernie had to take whatever there was.

4 Q As a result of that, did you drive her over  
5 to the Hilton Inn?

6 A Yes; I did.

7 Q And did you remain there for some period of  
8 time?

9 A Not initially, no.

10 Q Well, who stayed at the hotel at that time?

11 A Mr. Underhill and myself checked her in,  
12 deposited her clothing in her room, and then she asked  
13 to accompany me and him back to the Downtowner Motel so  
14 that he could retrieve his clothing and fully check in.

15 Q And was Mr. Underhill checked into a  
16 different room?

17 A At the Hilton?

18 Q The Hilton motel.

19 A Yes.

20 Q And at whose request--well, just tell us  
21 what you know about how he came to be staying at the  
22 hotel and what were the circumstances?

23 A She repeatedly asked me if I would stay with  
24 her at the hotel, and I said I didn't think that that  
25 would be such a good idea but Red would stay with her if

#18  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5937

1 that was okay. "Would you feel comfortable with Red?"

2 She said, "Oh, yeah. I would trust him any day."

3 Q All right, now, at some later time then at  
4 the Hilton Inn, did she make some statement to you in  
5 regard to her knowledge of the MacDonald case or the  
6 killings that took place in February of 1970?

7 A The first statements she made were not at  
8 the Hilton. They were down at the Downtowner Motel.

9 Q How did that take place?

10 A Mr. Underhill had gone upstairs to get his  
11 clothes. Again, our conversation was predominantly  
12 small talk. There was a pause. She said, "I still  
13 think I was there in that house that night." And I  
14 said, "Helena, is it a feeling you are having or a  
15 memory?" She said, "It's a memory. I remember standing  
16 at the couch, holding a candle, only--you know--it wasn't  
17 dripping wax. It was dripping blood."

18 Q Is that the last conversation you had with  
19 her yesterday that related to this case?

20 A My follow-up to that was, "Helena, why don't  
21 you just go and say that in court," and she said, "I  
22 can't with those damn prosecutors sitting there."

23 MR. SEGAL: I have no further questions.

24 THE COURT: Any questions of this  
25 witness.

#18  
cks  
4



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5938

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

#18  
cks  
5

MR. BLACKBURN: Yes, sir. I would be  
the prosecutor.

CROSS - EXAMINATION 2:40 p.m.

BY MR. BLACKBURN:

Q Ms. Rowder, I believe you said--was it  
Saturday or yesterday morning when you first saw her?

A Yes.

Q About 11:00 or 11:30?

A Yeah.

Q At the Journey's End?

A Yes.

Q She said at this first meeting, as I  
understand your testimony--she said she could have been  
there. She did not know at that point yesterday  
morning whether or not she was there; is that correct?

A Her statement was, "I could have been in  
the house that night."

#19 pl

58311

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

BY MR. BLACKBURN:

Q Did she say, "I don't know"?

A I did not ask her, and she didn't say,  
"I don't know."

Q Okay, I put that down.

THE COURT: Well, she said, "I still  
think I could have been there." That was her exact  
words, wasn't it?

THE WITNESS: No, there's two---

THE COURT: (Interposing) But  
the first time, did you not say, "I still think I could  
have been there," is what you said.THE WITNESS: Well, if I were reading---  
yeah, "I still think I could have been there that  
night," right.

BY MR. BLACKBURN:

Q And she said that was because she said  
she remembered a rocking horse?

A She said a rocking horse.

MR. BLACKBURN: Your Honor, at this point  
I want to hand up to the witness the August issue,  
the front page, of Detective magazine, and turn to page  
19. It purports to be a story about this murder, and if  
you would look, please, on page 19, the top photograph,  
if you would tell us what you see in it?PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#19 p2

1 A I clearly see a rocking horse.

2 Q And would you read what is written under-  
3 neath?

4 A "Dramatic photo through the window of slain  
5 children's room keynoted tragedy initially.  
6 It was accented again as Green Berets car-  
7 ried coffins of victims to funeral services  
8 in chapel at Fort Bragg."

9 Q Ms. Rowder, do you have any personal know-  
10 ledge as to whether or not that particular photograph  
11 ever appeared in either the Fayetteville or Raleigh  
12 newspapers shortly after the murders?

13 A Absolutely no idea.

14 Q Now, you stated I believe at this time this  
15 morning that she remembered something about being in the  
16 driveway, is that correct?

17 A That's correct.

18 Q Did she say which driveway?

19 A No.

20 Q Have you heard any of her testimony?

21 A Yes.

22 Q Do you recall that testimony--do you recall  
23 her testifying anything about the driveway?

24 A No.

25 Q You don't recall anything about her standing



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



#19 p3

5941

1 in the driveway with Greg Mitchell?

2 A I recall that, I believe, from hearing what  
3 Mr. Posey said. I don't recall her saying that. I was  
4 not taking notes.

5 Q Then you stated that you all had a subsequent  
6 discussion about guilt, is that correct?

7 A Yes.

8 Q When did that occur specifically?

9 A It occurred shortly after the comments,  
10 rocking horse, "Kristen Jean, I've seen her," in that  
11 same general context in the motel room.

12 Q This was at the Journey's End still?

13 A Yes.

14 Q And she said she couldn't live with the  
15 guilt, is that correct?

16 A I said to her, "It must have been difficult  
17 living with the guilt all these years"; and she said,  
18 "yes."

19 Q And I said, "Has the guilt ever left you in  
20 all this time"; and she said, "No; why do you think I've  
21 taken all those damned drugs?"

22 Q Now, of course, you knew that she had taken  
23 drugs before that?

24 A Yes; I knew that.

25 Q Now, when she was talking about guilt, did



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#19 p4

5942

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

she ever say definitely, "I was there."

A She never said any more than what I have just repeated here.

Q So her guilt was about the fact that she could have been there I suppose, is that correct?

A Could have been.

Q Was it at that particular time or was it subsequent to that time that she wanted to take some sort of truth drug or something like that or be under hypnosis?

A It was in that conversation.

Q How long did this conversation take, if you recall?

A You misunderstand; I was with her for several hours, and---

Q (Interposing) This was on and off?

A This was on and off. Two--what I would say --two segments, maybe one of ten minutes and one of a minute and a half.

iml  
3-20

5943

1 BY MR. BLACKBURN:

2 Q Now, was Mr. Underhill with you at this

3 time?

4 A Neither one.

5 Q The two of you were alone?

6 A Uh-huh.

7 Q When did you go to the Hilton specifically?

8 A I can't give you the time, but when her

9 nose stopped bleeding.

10 Q Was that early afternoon?

11 A Yeah, I would say around 2:00--1:30 or

12 2:00. It is a guess.

13 Q Excuse me?

14 A That is a guess.

15 Q You were with her, then, I guess, about

16 two -- two and a half hours at the Journey's End; is

17 that correct?

18 A Yes.

19 Q And then you and Mr. Underhill took her to

20 the Hilton?

21 A Uh-huh.

22 Q How long did you stay with her at the

23 Hilton?

24 A We just went up to the room to check her in

25 and then we went downstairs to get Mr. Underhill's

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 26183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm2  
C-20

5944

1 belongings from the Downtowner.

2 Q So, he checked into the Hilton?

3 A Yes.

4 Q After that took place, did you go back and  
5 see her again?

6 A I drove her back to the Hilton and dropped  
7 her off with Mr. Underhill and proceeded to do personal  
8 business. Shortly after I commenced my activity, maybe  
9 15 or 20 minutes later, I received a phone call saying  
10 she had decided to have her nose treated and could I  
11 provide transportation.

12 Q Did she tell you how her nose got hurt--  
13 her injury?

14 A Yes.

15 Q She fell in the bathroom; is that accurate?

16 A She said that she cut the corner of the  
17 bathroom door too closely and started bleeding.

18 Q She talked to you again last night about  
19 her guilt; is that correct?

20 A No.

21 Q When did she next talk to you?

22 A In the car at the Capital Motor Inn.

23 Q She stopped and you asked her about whether  
24 or not this was a feeling or a memory?

25 A Yes, when she brought up the conversation.

**R&T.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

dm3  
C-20

5945

1 Q She said it was memory; is that correct?

2 A Uh-huh.

3 Q That she could remember standing there at  
4 the edge of the couch holding a candle which was  
5 dripping blood?

6 A "Only it wasn't dripping wax, it was  
7 dripping blood."

8 Q Did she ever tell you that she had ever  
9 had dreams or nightmares like this in the past?

10 A No.

11 Q Was this the first time you ever heard any  
12 story to that effect?

13 A I have heard testimony alluding to it, I  
14 don't know, out of her mouth or somebody else's. This  
15 is not the first time I have heard that imagery.

16 Q Did she tell you that she definitely was  
17 there, or did she only tell you she thought she was  
18 there?

19 A She said, "It's a memory. I remember  
20 standing."

21 Q I believe she stated, "The blood was coming  
22 from the candle"?

23 A "Only it wasn't dripping wax, it was  
24 dripping blood."

25 MR. BLACKBURN: No further questions, Your

dm4  
C-20

5946

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

Honor.

MR. SEGAL: Does Your Honor have any questions of this witness?

THE COURT: Well, I do. Are you through?

MR. SEGAL: Yes, Your Honor; I am.

E X A M I N A T I O N 2:48 p.m.

BY THE COURT:

Q I understand that you are associated with defense counsel in the defense of this case?

A I am, Your Honor.

Q And that you are from California?

A I am now, yes.

Q Where do you live in California?

A In San Francisco.

Q Are you associated with Mr. Bernard Segal there in the practice of law?

A Only in reference to this case.

Q Just this one case?

A Uh-huh.

Q Have you been occupied since he came to Raleigh, I suppose, sometime in July of this year and today is August 20th, in the preparation of pleadings and briefs in that kind of capacity?

XXX

?



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm5  
C-20

5947

1 A Yes. I am a clerk. I am basically  
2 functioning as a law clerk.

3 Q I see. Did you prepare some of these  
4 briefs yourself?

5 A Yes.

6 Q Well, I want to commend you on having  
7 done a very good job.

8 A Thank you.

9 Q Have you, other than the relationship to  
10 Mr. Segal in this case, have you had any relationship  
11 with Mr. Wade Smith as a lawyer?

12 A No.

13 Q In California, is it usual and customary  
14 and the ordinary practice for attorneys to go and  
15 spend all of this time like you spent with this witness  
16 yesterday between time when she has testified one time  
17 and has been placed under subpoena to testify again?

18 A I can't answer whether it is usual or  
19 customary. I will say that I think perhaps the time  
20 I spent with her, I was responding more as a person  
21 concerned about her physical well-being. That was  
22 sort of the impetus for the time.

23 Q Did you consider it to be in the interest  
24 of her well-being--I assume that you did--when you  
25 asked her, "Why don't you go ahead and just tell

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm6  
C-20

5948

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

everybody about these things that you are telling  
me and get this off your mind so to speak?"

A Yes. I considered that to be not  
antithesis to her well-being.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



5949

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

#21  
cks  
1

BY THE COURT:

Q I assume it is not unreasonable to say that if she had said, "Well, I've carried this thing long enough. I done it, and I want everybody to know about it," you would have been receptive to that; wouldn't you?

A Of course.

Q But she never did say that?

A She never said that and--you know--in what I thought was my responsibility I never initiated any kind of interrogation.

Q Oh, yeah. Were you here the other day when she testified?

A Yes; I was.

Q Did you consider that the questions that you asked her and the responses that she gave--some of them spontaneously--yesterday were any different in terms of equivocation from what she gave on the stand here the other day?

A I think so, because she did not back into a "I don't remember" stance at any point, but again my conversations about the crimes were very limited--as you can see, out of six hours or so--a few sentences.

THE COURT: Well, does that trigger further interrogation from any lawyer? If so, it is

5950

1 open season.

2 MR. SEGAL: I have nothing further of

3 this witness, Your Honor.

4 THE COURT: How about you, Mr.

5 Blackburn?

6 MR. BLACKBURN: I don't think so.

7 MR. SEGAL: Ms. Rowder, you may step

8 down.

9 THE COURT: Let the witness step down.

10 (Witness excused.)

11 MR. SEGAL: Now, at this point, Your

12 Honor, there are two things: one, I want to make a

13 brief representation to the Court on the record as time

14 meant to ask very briefly to be heard by Your Honor in

15 regard to the significance, if any, to be given to the

16 testimony of the last two witnesses taken on voir dire.

17 THE COURT: Before you begin, are

18 there more other witnesses of this particular character

19 that you will be bringing in?

20 MR. SEGAL: Pardon me, Your Honor.

21 (Pause.)

22 MR. SEGAL: I think not, Your Honor.

23 This represents to the best of my knowledge---

24 THE COURT: (Interposing) The reason

25 I inquire is because I think that argument relative to

#21  
cks  
2

5951

1 this kind of testimony would better come in after  
2 you have had it all in; but if this is all of it, I  
3 will hear you now.

4 MR. SEGAL: I want to first make a  
5 representation to the Court in regard to the circum-  
6 stances under which Ms. Rowder saw Ms. Stoeckley.  
7 At the conclusion of her testimony on Friday, Your  
8 Honor, at that time, you may recall, I served the  
9 witness a subpoena and I handed her a check for witness  
10 fees in accordance with the statutes and told her to be  
11 back here on Monday in this courtroom.

12 I made no other arrangements with her to  
13 contact her to see her; did not ask her where she was  
14 going, where she was going to stay. My interest was  
15 then what it is now: in her potential testimony as a  
16 witness under circumstances which would be inappropriate.  
17 She left here and I had no knowledge of where she was  
18 going.

19 I received a telephone call, however, on  
20 Friday evening from Ms. Stoeckley in which she called me  
21 to tell me where she was staying. She said that she had  
22 checked into the Downtowner Motel. At that time I said  
23 to her that I was surprised she had gone there and that  
24 it would be inappropriate to stay there because all of  
25 the Defense witnesses and the Defense lawyers were going

#21  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5952

1 to move the next day to that motel. Our lease at the  
2 place where we had been staying throughout the summer  
3 had expired and we had made, some weeks ago, arrangements  
4 to stay at the hotel.

5 There were some other brief inquiries--oh,  
6 I should add that the reason for the conversation  
7 specifically was that she called about a television  
8 story she said she had heard and wanted to ask whether  
9 people really had said those things about her that the  
10 television reporter had commented on.

11 I told her that I hadn't seen it and  
12 responded to it generally, and then she told me where  
13 she was. I had no further contact with her except that  
14 on Saturday morning, I spoke with her and told her at  
15 that time--Mr. Davis called me--not Ms. Stoeckley.

16 Mr. Davis called me. I said to him, "It is  
17 imperative that they leave the motel. I do not want  
18 them in the same motel where we are staying. I consider  
19 that to be uncomfortable circumstances at best." And  
20 he said they were going to leave. He did not tell me  
21 where they were going.

22 I had no further knowledge. Later that day,  
23 I received a telephone call from Mr. Underhill which you  
24 now know the circumstances essentially. He had gone to  
25 the Journey's End, learned what he did about her

#21  
cks  
4



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5953

1 condition--that she had a black eye and that  
 2 apparently something had happened at the swimming pool  
 3 which in the view of the manager of that motel--that  
 4 person is here as a matter of fact, Your Honor, if you  
 5 desire to hear from her--but in the view of the manager  
 6 of the motel it was not a friendly incident.

#21  
cks  
5

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

#22 pl

5954

1 MR. SEGAL: (Continuing) At that  
2 point, my concern is that having spent so long and so  
3 much effort to locate Helena Stoeckley, I was not about  
4 to let anyone harm her if I could avoid that.

5 At that point I asked Ms. Rowder to go over  
6 and see what were the circumstances and let me know.  
7 Essentially that is the genesis of what was going on  
8 here.

9 That is all I wish to say as a representa-  
10 tion to this Court as to the background of our contacts  
11 with her. If it had been anything other than her own  
12 acts, her own calls and contacts with me, we would  
13 probably never have spoken to her or had any contact  
14 with her over that weekend.

15 I don't know whether the Government has anything  
16 further to add. I do wish to be heard when it is appropriate, Your  
17 Honor, in regard to what further evidence the jury in  
18 this case should hear.

19 MR. BLACKBURN: We don't have anything.

20 THE COURT: You don't have anything  
21 in response to that?

22 MR. BLACKBURN: No.

23 MR. SEGAL: I think it places a  
24 needless, unwanted and undesirable pall over the entire  
25 trial of this case, if the testimony in regard to



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#22 p2

1 Helena Stoeckley as said over the years; and her  
2 most recent statements to Mr. Underhill and Ms. Rowder  
3 were kept from the jury.

4 THE COURT: Tell me what rule or  
5 rules you propose to introduce this testimony?

6 MR. SEGAL: I think the most recent  
7 statement, Your Honor--impeach her direct testimony in  
8 which she denied knowledge about the murders.

9 Her statements are so clearly statements  
10 of consciousness of guilt that I think that there  
11 should be--they should be admissible as that.

12 I also do believe, Your Honor, that those  
13 statements taken together in the total context of all  
14 her other statements read together may fairly be deemed  
15 by a jury to be statements that a person would not have  
16 made, except knowing that they had the possibility of  
17 incriminating that person. The fact that--declaration  
18 against---

19 THE COURT: (Interposing) That's  
20 Rule 804(b)(3)?

21 MR. SEGAL: Yes, Your Honor. I think  
22 her statement---

23 THE COURT: (Interposing) You will  
24 not seek to introduce it under (b)(5)?

25 MR. SEGAL: We have noticed the



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#22 p3

5956

1 Government under (b) (5), Your Honor---

2 THE COURT: (Interposing) Well, that  
3 was for something that took place some time ago. You  
4 haven't---

5 MR. SEGAL: (Interposing) Yes, sir,  
6 prior--at this time I would certainly, as a third  
7 basis for it, ask the Court, within its discretion that  
8 it has in this matter under 804(b) (5) to consider the  
9 circumstances under which the statements were made.

10 There is no indication of hysteria, no  
11 indication of drug abuse. There is no indication of  
12 anything other than the fact that these statements were  
13 made because they weighed heavily on the mind of this  
14 person.

15 I have not tried to burden the record with  
16 the hours of conversation surrounding it. Ms. Rowder  
17 described it--the bantering, the pauses, Ms. Stoeckley  
18 saying something relevant to this case, I think.

19 It is her initiative. It seems to me it so  
20 clearly reflects on her state of mind that it ought to  
21 be again heard now.

22 I think if that testimony is heard, the  
23 jury in this case would be in a far better position to  
24 make a determination as to evaluating Ms. Stoeckley's  
25 testimony, which we all struggled so hard to get.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



#22 p4

5957

1                   And I do just, in concluding, say to  
2                   Your Honor, I know your feeling that it would be a  
3                   tragedy for all concerned for this case, with all the  
4                   years that have gone by and all the effort that has  
5                   gone into it, to not properly and fully resolve the  
6                   issues that are here.

7                   I say to Your Honor that in 1970, it was  
8                   one of the only two findings of the Article 32 proceed-  
9                   ings in this case--the two findings at the conclusion  
10                  of five months of legal proceedings, of which there was  
11                  a 2,200-page record, a 90-page report by Colonel Rock--  
12                  and he made two findings.

13                  One of those findings, of course Your Honor  
14                  knows, was that the charges in Colonel Rock's view on  
15                  the record were not true. The other finding was that  
16                  Helena Stoeckley should be investigated by the civilian  
17                  authorities for possible complicity in the murders.

18                  If it is not to be done now in some small  
19                  portion, without necessarily going into every single  
20                  detail--if some small portion of it is not treated  
21                  in this trial, it just seems to me, Your Honor, that  
22                  these again, perhaps in perpetuity and needlessly in  
23                  doubt, what is the proper disposition of this case?

24                  I think Your Honor clearly has the power  
25                  to do it. I think that all the instincts that surround



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#22 p5

5958

1 this case--you know, I would say--let us know what  
2 Helena Stoeckley has said.

3 She has said that she is afraid to stay in  
4 this courtroom -- the thing that she said outside, and  
5 she has provided an explanation.

6 In part she feels naming persons will  
7 endanger her. In part she has some fear of the prose-  
8 cution. Whether they are well-grounded or not, I don't  
9 mean anything personal, since I mean the prosecution  
10 as an institution--the possibility that the prosecution  
11 poses a danger, not necessarily for indictment or  
12 charges in this case--that it would be statements that  
13 would be adverse to the prosecution.

14 Those are reasons that we have all heard.  
15 They are common enough to our experience as lawyers in  
16 criminal cases to know they have the ring of reality.  
17 They have been said before in instances where we have  
18 accepted them.

19 That is why people are willing to make out-  
20 of-court statements.

21 Your Honor, I am sure, is faced with the  
22 situation where a witness testifies favorably for the  
23 Government in front of the Grand Jury and won't say it  
24 here in the courtroom, and we know why--fear of outside  
25 forces.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#22 p6

5959

1 This case is--one of the unique factors  
2 is that we have a reversal of roles. Here is the  
3 Defendant doing something which the military proceedings  
4 in 1970 said should have been done.

5 It was a virtual direction of the Government  
6 to do it. What we have here is six witnesses we put  
7 on Friday, including the CID agent Brisentine who  
8 interviewed her and had a formal statement, which I  
9 think is so complete and explicit in detail that it was  
10 in fact the response to the direction of the military  
11 proceedings in 1932 (sic).

12 That I recall Mr. Brisentine's testimony  
13 and that when he took that statement and when he put  
14 those words out, he was not talking to somebody who was  
15 non compos. He was not talking to somebody who didn't  
16 know what she was saying.

17 I think not only what he said, but what  
18 the other witnesses said should also come in to give  
19 the jury the total and fair picture.

20 We are giving, I think, to the jury a view  
21 which is taken from such an angle that it precludes any  
22 sense of confidence that they could properly decide this  
23 case.

24 THE COURT:

Any response?

25

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

dml  
C-23

5960

1 MR. BLACKBURN: Your Honor, it seems  
2 that the Defense seems to try Helena Stoeckley rather  
3 than the Defendant Dr. MacDonald. Under Rule 804(b)(3),  
4 which I understand he seeks to come in under, and I  
5 will not---

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

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

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

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

dm2  
C-23

5961

1 impeachment when the witness has testified both ways.

2 MR. BLACKBURN: I would agree with that.

3 I don't know which way---

4 THE COURT: (Interposing) Don't  
5 agree with me. I am asking you.

6 MR. BLACKBURN: What I am saying is I  
7 would agree that she testified both ways.

8 THE COURT: Who is to say whether or  
9 not it is impeaching and whether it is corroborating?

10 MR. BLACKBURN: That is exactly my point,  
11 Your Honor. She has gone both ways. If I recall her  
12 Direct testimony on Friday, she doesn't know where  
13 she was for four or five hours. She still doesn't know  
14 where she was for those four or five hours. Not one  
15 thing she said over the weekend changed that fact.

16 She is still worried about it. The fact that--it  
17 doesn't show consciousness of guilt it seems to me when  
18 she says that she doesn't know where she was and that  
19 she might have been there and that she would like to  
20 take either hypnosis or a truth drug to find out. That  
21 is certainly not consciousness of guilt.

22 Mr. Segal said a moment ago that she was  
23 very calm. We know from testimony, I think, of Mr.  
24 Underhill that she was anything but calm when he saw her.  
25 The rule on 804(b) (3) states that it has got to be so



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH: 832-9085

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

dm3  
C-23

5962

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

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

16 MR. BLACKBURN: That is correct.

17 MR. SEGAL: That is my understanding.

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

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm4  
C-23

5963

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

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

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

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

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

dm5  
C-23

5964

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

6 MR. SEGAL: May I, Your Honor?

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

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

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

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

MAIN OFFICE, RALEIGH, 832-9085

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



lm6  
-23

5965

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

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

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

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

3m7  
C-23

5966

1 statements made to Ms. Zillioux as to Allen Mazzarole  
 2 as a person that she is afraid of and that she would  
 3 not last five minutes on the street if she testified.  
 4 She said that she knew the three names according to  
 5 Ms. Zillioux. That seems to me as very much impeachment  
 6 of her testimony which this jury has heard. I think  
 7 we are allowed to do it that way.  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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

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

5967

#24  
cks  
1

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

MR. SEGAL: (Continuing) In addition,

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

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

"When the declarant testifies..."

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

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

and she was

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

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

5968

1 only issue remains for this Court is, is it relevant.

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

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

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

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

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

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

#24  
cks  
2

5969

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

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

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

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

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

#24  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5970

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

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

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

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

#24  
cks  
4



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#24  
cks  
5

5971

1 The question was whether or not the case  
2 could go to the jury even because, when the prosecution  
3 rested, what they had was original testimony that said  
4 nothing happened and cross-examination for the purpose,  
5 I suppose, of impeachment which said something happened.

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

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

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

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

MAIN OFFICE, RALEIGH, 832-9085

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

5972

#24  
cks  
6

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

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



5973

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

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

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

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

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

#24  
cks  
7

#25 pl

5974

1 MR. SEGAL: I think that is true,

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

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

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

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

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#25 p2

5975

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

MR. BLACKBURN: Your Honor, since that is somewhat new matter, may I be heard now?

MR. SEGAL: I won't argue any more after then, Your Honor.

THE COURT: Well, I thought about that, but you see, you may open up something else; and we've got a jury cooped up back here. Go on and say it.

MR. BLACKBURN: It won't take long. With respect to 801(d)(1)(A)---

THE COURT: (Interposing) Don't tell me about that.

MR. BLACKBURN: I won't then. I will sit down. That was all I was going to address, Your Honor.

THE COURT: You were going to say that it was not applicable?

MR. BLACKBURN: Right.

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

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5976

#25 p3

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

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

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

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

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

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#24 p4

5977

1 testimony.

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

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

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

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

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5978

#25 p5

BENCH CONFERENCE

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

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

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

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

THE COURT: Well, I just raised the question.

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

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



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5979

#25 p6

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

2 But I just---

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

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

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

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

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

25 THE COURT: Oh, yeah, sure.

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

MAIN OFFICE, RALEIGH, 832-9085

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

#25 p7

5980

1 MR. MURTAGH: I think Helena feels in  
2 her mind that in effect she is in custody here.

3 THE COURT: Oh, I am glad you men-  
4 tioned that because I had neglected, just completely  
5 overlooked it, to tell you, but I want you to know that  
6 among others called by Helena, she called me twice  
7 Saturday night stating that she was living in mortal  
8 dread of physical harm by Bernard Segal, counsel for  
9 the Defendant, and that she wanted a lawyer to represent  
10 her.

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

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

21 MR. SMITH: (Interposing) That is  
22 incredible.

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



5981

#25 p 8

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

Jerry Leonard.

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

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

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

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

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

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

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

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

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



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#25 p9

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

THE COURT: Oh, you've got her

here?

(Bench conference terminated.)

THE COURT: Good afternoon, ladies

and gentlemen, this is the case of United States against  
Jeffrey R. MacDonald.

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

Do you have another witness?

MR. SEGAL: Yes, Your Honor.

THE COURT: Call your witness.

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

5983

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

(Whereupon,

WILLIAM EDWARD POSEY

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

DIRECT EXAMINATION 3:36 p.m.

BY MR. SEGAL:

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

A William Edward Posey, Pell City, Alabama.

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

A Well, off and on all my life.

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

A Yes, sir.

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

A About a year.

Q What did you do for a living?

A Paint--worked in the paint field.

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

A Clark Street--1108 Clark Street.

Q What particular section of Fayetteville was

#26jb1

xxx



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5984

1 that?

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

4 Q What were you doing back in 1970?

5 A I was working in air-conditioning construction.

6 Q Who was your employer at that time?

7 A Bass Air-Conditioning.

8 Q And they were located in Fayetteville?

9 A Yes, sir. They still are.

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

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

13 Q When did she move in next door to you?

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

16 Q December, 1969, or January of '70?

17 A Yes, sir; somewhere in there.

18 Q What address was she living at?

19 A I don't know the exact number. It was either  
20 1106 or 1110. I don't know the exact address. It was  
21 right across from my front door.

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

24 A Yes, sir; a lot of times.

25 Q What was the nature of your relationship? Were

#26jb2

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

MAIN OFFICE, RALEIGH, 832-9085

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

5985

1 you on good terms, bad terms?

2 A We were just friends, neighbors.

3 Q By the way, were you married at that time,

4 Mr. Posey?

5 A Yes, sir.

6 Q Are you still married to the same woman?

7 A No, sir.

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

10 A Myra.

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

13 A Yes, sir.

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

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

19 Q Her own style?

20 A Yes, sir.

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

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

| #26jb3

5986

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

3 Q When would she go barefoot?

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

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

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

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

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

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

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

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

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

#26jb4



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

5987

1 Q About shoulder length?

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

5 Q You mean straight down?

6 A Yes, sir.

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

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

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

16 A Yes, sir.

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

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

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

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

#26jb5



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28153  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

5988

1 they went by.

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

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

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

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

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

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

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

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

23 BY MR. SEGAL:

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#26jb6



#26jb7

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

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

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

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

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

A Yes, sir.

Q Do you know the name of that particular person?

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

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

MR. MURTAGH: OBJECTION.

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

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

Go ahead and ask the question.

BY MR. SEGAL:

5990

1 Q If you don't remember, I won't ask you.  
2 Maybe it will come to you later on, Mr. Posey; all right?  
3 Now, did you have occasion to see Helena Stoeckley on  
4 the early morning hours of February 17, 1970?

5 A Yes, sir.

6 Q Where were you on that morning?

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

8 Q And what time did you see Helena Stoeckley?

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

10 Q In the a.m.?

11 A Yes, sir.

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

13 A Well, I was going to the rest room, which I  
14 have done for years, around the same time, between  
15 4:00 and 5:00 o'clock every morning. I go to the rest  
16 room. And I was going and I heard a car whip in. I  
17 went to the door to look because I had been having  
18 trouble with them blocking my driveway and stuff like  
19 this.

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

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

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

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

#26jb8

5991

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

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

9 A Yes, sir. It was a Mustang.

10 Q A Mustang?

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

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

14 A Yes, sir.

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

17 A It was one of those Mach Mustangs.

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

19 A Yes, sir.

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

22 A Yes. It was blue.

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#26jb9

5992

1 A There was some other people in there. But  
2 I could not see who they were.

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

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

8 Q Coming from the car?

9 A Yes, sir, as they backed out.

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

12 A Yes, sir.

13 Q How was she dressed?

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

19

20

21

22

23

24

25

#26jb10

dml  
C-27

5993

1 BY MR. SEGAL:  
2 Q Let me ask you: you say this purple  
3 thing, was that a vest or a blouse you are talking  
4 about?  
5 A It was a blouse.  
6 Q A blouse?  
7 A Yes, sir.  
8 Q Could you see her hair at that time?  
9 A I didn't take note of it. I didn't take  
10 note of her hair.  
11 Q Are you saying you do or you don't know  
12 whether she had the blond wig on?  
13 A No, sir; I don't.  
14 Q What did she have in her hand?  
15 A I don't know. I couldn't say.  
16 Q Did you see what she had on her legs?  
17 A No, sir.  
18 Q What was it, if anything, that attracted  
19 your attention to that whole scene that made it stand  
20 out in your mind in some way?  
21 A Well, her girlfriends were painting the  
22 apartment at that time of the night.  
23 Q At 4:30 in the morning or 5:00 o'clock in  
24 the morning?  
25 A Yes, sir.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 25163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm2  
C-27

5994

1 Q Is that right?

2 A Yes, sir.

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

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

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

17 A No, sir.

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

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

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

22 A No, sir; never again.

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

25 MR. BLACKBURN: OBJECTION.

**R&T.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

jm3  
C-27

5995

1 MR. SEGAL: It is offered for  
2 impeachment purposes on the subject of the disposition  
3 of the items.

4 THE COURT: Did you ask her?

5 THE WITNESS: Yes, sir.

6 THE COURT: He says "yes."

7 BY MR. SEGAL:

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

10 A Yes, sir.

11 Q What did she say?

12 MR. BLACKBURN: OBJECTION.

13 THE COURT: SUSTAINED.

14 BY MR. SEGAL:

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

18 A Yes, sir.

19 Q Did you see Ms. Stoeckley on that day?

20 A Yes, sir.

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

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH. 832-9085

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

lm4

-27

5996

1 sat there all day like she was in mourning all day  
2 long.

3 Q How many wreaths did you say she got?

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

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

8 A No, sir; never.

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

11 A No, sir.

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

15 A No, sir.

16 Q Did you ever talk to her about that?

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

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

20 A No, sir.

21 Q Did you ever ask Ms. Stoeckley whether she  
22 had been at the MacDonald house on February 17th,  
23 1970?

24 MR. BLACKBURN: OBJECTION.

25 THE COURT: SUSTAINED.

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374



dm5  
C-27

5997

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

BY MR. SEGAL:

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

A No, sir.

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

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

Q Did you thereafter see her in Fayetteville, any place?

A Yes, sir.

Q Where did you see her?

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

Q Did you have some conversations with her in Haymont?

A Yes, sir.

Q About February 17th, 1970?

A Yes, sir.

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

A No, sir; I wasn't.

Q Where had you moved to?

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

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm6  
C-27

5998

1 Q Why had you moved and changed your  
2 address?

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

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

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

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

14 MR. MURTAGH: OBJECTION.

15 THE COURT: SUSTAINED.

16 BY MR. SEGAL:

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

19 MR. BLACKBURN: OBJECTION.

20 THE COURT: SUSTAINED.

21 BY MR. SEGAL:

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



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm7  
C-27

5999

1 MR. BLACKBURN: OBJECTION.

2 THE COURT: I will let him tell

3 the subject.

4 BY MR. SEGAL:

5 Q Tell us what the subject of that conversation

6 was?

7 A About the MacDonald murder and the morning

8 I had seen her come in.

9 Q Had you told her that you had seen her

10 coming home that morning?

11 A Yes, sir.

12 Q What, if anything, did she say to you

13 when you told her that you had seen her arrive home--

14 did you tell her the time you had seen her?

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

16 real nervous.

17 MR. BLACKBURN: OBJECTION.

18 MR. ANDERSON: OBJECTION.

19 THE COURT: Don't answer the question

20 until there has been a ruling when there has been an

21 OBJECTION. The OBJECTION is SUSTAINED.

22 BY MR. SEGAL:

23 Q Were you called and testified as a witness

24 at the military proceedings in this case in August of

25 1970?

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm8  
C-27

6000

1 A Yes, sir.

2 Q And after you testified at the proceedings,  
3 did anything happen to you or to your home?

4 A Yes, sir. About a day or two later, my  
5 house was broken into one night.

6 Q Did you make a complaint to the police  
7 about that?

8 A Yes, sir.

9 Q As a result of that, did you do anything  
10 else about your address or where you lived?

11 A Yes, sir. I moved out of state.

12 Q You moved out of state? Where did you move  
13 to?

14 A Back to Alabama.

15 Q Now, during the period of time that you  
16 knew Helena Stoeckley, did you ever have occasion  
17 to hear her talk about the subject of witchcraft?

18 A Yes, sir; quite a few times.

19 Q Did you ever have occasion to see her do  
20 anything which she said was related to witchcraft?

21 A Yes, sir. One time, she made a love potion  
22 for my sister-in-law and her boyfriend.

23 Q Did you see her engaged in any kind of  
24 ceremonies or procedures in regard to the use of a cat?

25 MR. BLACKBURN: Your Honor, we would OBJECT



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm9  
C-27

6001

1 to this on relevancy.

2 THE COURT: Well, I will OVERRULE  
3 the OBJECTION.

4 BY MR. SEGAL:

5 Q Yes, Mr. Posey, go ahead.

6 A They killed a cat one time when they were  
7 having one of their seance-type things. They killed a  
8 cat for sacrifice.

9 Q Who is the "they" you are referring to?  
10 Is it Ms. Stoeckley?

11 A Yes, and her friends and Paul Bowman's  
12 wife. Paul Bowman's wife was like the head of them.

13 Q The last thing I want to talk to you about  
14 is this picture I asked you before to take a look at.  
15 That man, you say, was a boyfriend or the boyfriend at  
16 that time of Helena Stoeckley?

17 A Yes, sir.

18 Q Do you know what he did for a living or an  
19 occupation?

20 A He was in the Army.

21 Q You say he was in the Army?

22 A Yes, sir.

23 Q How did you know that?

24 A Just from, you know, conversation with him.

25 Q Did you ever--now that I have brought it up

**RGT.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

Jm10  
C-27

6002

1 again, have you thought of the name of that person?

2 Has it come to your attention again?

3 A He was parked in the alley the night---

4 THE COURT: (Interposing) He wants  
5 to know if you remember his name.

6 BY MR. SEGAL:

7 Q The name of that man?

8 A No.

9 Q Does the name "Allen" sound familiar to  
10 you?

11 A No.

12 Q I want to show you another picture. Oh,  
13 before I show you that, did you ever see a black man  
14 with Helena and her other friends visiting at the  
15 house next to you?

16 A Yes, sir; a couple of times.

17 Q Was that a young man, a middle-aged man, an  
18 older man?

19 A He was about 20, I guess, somewhere in  
20 there. He wasn't old.

21 Q I want to show you a drawing and ask whether  
22 this resembles anyone you have ever seen before.

23 (Defendant Exhibit 91 was marked  
24 for identification.)

25 BY MR. SEGAL:

dm11  
C-27

6003

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

Q Let me show you for your own vision only  
at this time an artist drawing marked Defendant Exhibit  
91.

(Witness examines exhibit.)

6004

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

BY MR. SEGAL:

Q I will ask you to examine that and tell me whether that depicts a person that you may or may not have seen in 1970.

A You know--the only thing--I never looked at his face. I always looked at the way he was dressed because the way he was dressed was different, but I can't say that it looked like him in the face because I didn't really ever take--you know--note of his face that much.

Q What about the dress of this particular man? What did you notice about that?

A He wore a jacket--you know--it had stripes on it--you know--but it was like a Confederate type jacket. It was---

Q (Interposing) When you say a jacket, was it any particular type of jacket?

THE COURT: Were you through?

THE WITNESS: Yes, sir.

MR. SEGAL: I'm sorry.

THE COURT: I thought he was still answering the question.

MR. SEGAL: I beg your pardon.

THE WITNESS: I was through.

BY MR. SEGAL:

Q I wanted to ask you if you could tell us

#28  
cks  
1



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



6005

1 anything about what type of jacket it was.

2 A It was a military--you know--type jacket.

3 Q What color was it supposedly?

4 A It wasn't green. It was kind of--I don't  
5 know what kind--the greyish type of color. But he  
6 always dressed real neat, and then he put that jacket  
7 on. That's why I noticed him.

8 Q Did the jacket have any insignia or markings  
9 on it of any sort?

10 A Sergeant's stripes on the sleeves of it.

11 Q How many stripes were there; do you recall?

12 A No, sir; there were several I think.

13 Q How often did you see that particular--the  
14 man you are talking about--the man who wore this  
15 military type jacket with the stripes on it? How often  
16 did you see him around the house where Ms. Stoeckley  
17 lived?

18 A I only seen him a few times around.

19 Q Did you see Helena Stoeckley here last week?

20 A Yes, sir.

21 Q Did you have occasion to see her at that  
22 time and talk to her?

23 A Yes, sir.

24 MR. SEGAL: All right, I have no

25 further questions at this time of this witness, Your

#28  
cks  
2

6006

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

Honor.

THE COURT: All right, will there be any cross-examination of this witness?

MR. BLACKBURN: Yes, sir.

THE COURT: We will take a recess then and we will come back at 4:15, members of the jury. Don't talk about the case. I know it is a little early for your recess, but it is a little late for the court reporter. So, we'll come back at 4:15. Don't talk about the case.

(The proceeding was recessed at 3:58 p.m., to reconvene at 4:15 p.m., this same day.)

#28  
cks  
3

6007

1 FURTHER PROCEEDINGS 4:15 p.m.

2  
3 (The following proceedings were held in the  
4 presence of the jury and alternates.)

5 THE COURT: All right, any questions  
6 on cross-examination of this witness?

7 MR. BLACKBURN: Yes, sir, Your Honor.

8 (Whereupon,

9 WILLIAM EDWARD POSEY

10 the witness on the stand at the time of recess, resumed  
11 the stand, and testified further as follows:)

12 CROSS - EXAMINATION 4:16 p.m.

13  
14 BY MR. BLACKBURN:

15 Q Mr. Posey, the night that you got up to  
16 go to the men's room--the restroom--you do this about  
17 every night; is this right?

18 A Yes, sir.

19 Q At between about 4:00 and 5:00 o'clock?

20 A Yes, sir; I have been doing it ever since  
21 before I can remember.

22 Q Now, this particular time, do you recall  
23 whether or not you looked at your clock or watch or  
24 anything?

25 A No; I didn't look at my clock--you know--I

**P&T.**

PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#29  
cks  
1

6008

1 just know that I get up around that time between  
2 4:00 and 5:00--you know--and go to the bathroom. I mean  
3 people that has known me all my life--you know--I didn't  
4 sit there and specifically look, no, but see I had to  
5 be at work.

6 THE COURT: That is what you set your  
7 watch by; isn't it? Ask him something else.

8 BY MR. BLACKBURN:

9 Q Do you recall when you saw Helena get out  
10 of the car?

11 A Yes, sir.

12 Q And do you recall some other individuals  
13 in the car?

14 A Yes, sir.

15 Q You said there were how many other people  
16 in the car besides Helena?

17 A I didn't say how many there was. I don't  
18 know.

19 Q More than one?

20 A More than one; yes, sir.

21 Q Do you recall seeing them very closely?

22 A No, sir.

23 Q Could you identify them if you saw them?

24 A No, sir; you know I know the guy who drove  
25 the Mustang all the time--you know--because I had seen

#29  
cks  
2



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6009

1 him over there before.

2 Q Did you see him that particular night?

3 A No, sir; I didn't. I didn't take note.

4 Q You just saw the blue Mustang?

5 A Yes, sir.

6 Q Were there men or women in the car or do  
7 you know?

8 A It sounded like men's voices. It didn't  
9 sound like women's voices at all.

10 Q Could you hear them talking?

11 A They were like giggling and stuff--laughing.

12 Q They laughed and giggled like men; is that  
13 correct?

14 A Yes, sir; it was men's voices.

15 Q Where were you standing in your apartment  
16 when you saw this?

17 A At my front door.

18 Q At your front door?

19 A Yes, sir.

20 Q And why had you gone to your front door?

21 A See, when I heard the car whip in, it kind  
22 of like slid in--you know--and I had problems with them--  
23 you know--like keeping us up at night and stuff like  
24 this, and I had called the police a lot of times on them.  
25 And like--my car--I parked right by the porch. Well,

#29  
cks  
3

6010

1 they would fill up their driveway. Then they would  
2 start filling up my driveway and like they would fall  
3 asleep or something over there, and I would get ready to  
4 go to work and there might be two or three cars parked  
5 behind mine.

6 I couldn't get out. That was the only way  
7 out was to back out.

8 Q In other words, they had come in before and  
9 woken you up; is that correct? Or gotten in your  
10 driveway?

11 A They had not woke me up at that time of the  
12 morning--you know--they used to party until about 12:00,  
13 1:00, or 2:00 o'clock in the morning, and you couldn't  
14 get to sleep because of them partying and stuff--you  
15 know--loud noise and stuff.

16 Q Any number of cars would be in the driveway;  
17 is that what you are saying?

18 A Yes, sir.

19 Q Now, when you saw Helena, did you see  
20 anything on her head?

21 A No, sir.

22 Q You did not see a floppy hat on her head?

23 A No, sir.

24 Q You said she was carrying something in her  
25 hand; is that correct?

#29  
cks  
4



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6011

1 A Yes, sir.

2 Q She had on a purple blouse?

3 A That is the only thing that I took notice.

4 Q You don't know what she had on her feet?

5 A No, sir.

6 Q You didn't see any boots?

7 A No, sir; I'm not saying I didn't see any or

8 I did because I didn't take notice of it.

9 Q You just don't know?

10 A No; what she had on her feet I couldn't

11 tell you specifically; no.

12 Q Now, did she have any white bedsheet or

13 anything with her?

14 A No, sir; you know--I don't know what she

15 had in her hand.

16 Q She was carrying something?

17 A She was carrying an object in her hand.

18 Q Did she walk into her house or did she run

19 in?

20 A No, sir; she did not bust into a run but it

21 was at a fast pace--you know--walking at a fast pace.

22 Q Was it raining about this time or do you

23 know?

24 A I know it was cold, but I can't remember if

25 it was raining or if it was wet.

#29  
cks  
5

dml  
C-30

6012

1 BY MR. BLACKBURN:

2 Q Now, I believe you testified that she had  
3 dark hair but had a blond wig; is that right?

4 A Yes, sir. She had brunette hair.

5 Q And a floppy hat?

6 A Yes, sir.

7 Q Did you ever see more than one floppy hat  
8 or was it always the same one?

9 A The hat she wore was always the same one.  
10 It was a white floppy hat. The brim would flop around.

11 Q You never saw her wear a black floppy hat?

12 A No, sir.

13 Q Do you recall the color of her hair the  
14 night you saw her?

15 A No, sir.

16 Q You don't know whether or not she had her  
17 blond wig on or not?

18 A I just noticed it was her and that her  
19 roommates were in the apartment. See, it was a one-  
20 bedroom apartment there.

21 Q You were living at this time in the Haymont  
22 section which you described as the hippie section?

23 A Yes, sir.

24 Q Did you ever see anybody else in that  
25 section have floppy hats during this year or the year

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

MAIN OFFICE, RALEIGH, 832-9085.

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



dm2  
C-30

8013

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

preceding?

A I never took notice of any; no. The way she wore her hat was like a trademark of hers, you know. She wore it all the time.

Q Did you ever know someone by the name of Greg Mitchell?

A She showed me a picture--well, no, I did not know them all by their full names and stuff.

Q Now, I believe you testified that after the 17th of February, 1970, you never saw her wear these particular items again; is that correct?

A No, sir; she never did.

Q To your knowledge, you did not see her wear them on the 17th of February; did you?

A No, sir.

Q Now, how long after the 17th, did someone move from Clark Avenue--either you or she?

A She left right after the funeral, you know, a day or so after that was the last time I seen her--in fact, the day of the funeral, you know.

Q So, it was about a week or so later?

A Somewhere in that neighborhood.

Q Did there come a time when you also moved from Clark Avenue?

A Yes, sir.



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

lm3  
-30

6014

1 Q How long afterwards from the 17th was  
2 that?

3 A I think--I am not for sure, but it was  
4 within two or three weeks. It was when my rent ran  
5 out that month. My wife got scared and so we moved.

6 Q Now, you testified that it was not unusual  
7 for you to see a black man over there; is that correct?

8 A I had seen him only a few times over there,  
9 you know. No, it wasn't ordinary because there weren't  
10 there many blacks that came to her house--that came  
11 over there.

12 Q What I mean to say was that it was not  
13 unusual for you to see this particular black man over  
14 there?

15 A No, sir; I seen him a couple of times over  
16 there.

17 Q Now, during the time period that you  
18 observed what was going on next door, did you generally  
19 see--how many did you generally see there if you can  
20 recall or if you can take note? Was it about five or  
21 ten or what?

22 A Do you mean that stayed there regular?

23 Q Well, that would come off and on?

24 A Oh, there would be no telling how many.

25 Mr. Archibelle (phonetic), an older man that was retired



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

lm4  
2-30

6015

1 and lived on the corner, him and I sat on the porch  
2 one night and just counted the people. In about a  
3 three-hour span, there was over 30 people coming in  
4 there.

5 Q Did they have parties on a regular basis?

6 A Fairly regular.

7 Q And kept you up at night?

8 A Fairly regular.

9 Q Now, this black man that you said that you  
10 weren't sure you observed his face or recognized his  
11 face but you saw how he dressed; is that correct?

12 A Yes. It was funny the way that he dressed,  
13 you know.

14 Q Tell us a little bit more if you will about  
15 that?

16 A It was like a Confederate jacket with  
17 stripes on it. I thought it was unusual for a black man  
18 to be wearing something like that.

19 Q You noticed this gray jacket pretty closely;  
20 I take it?

21 A The first time I ever seen him with it--  
22 the first time I saw him.

23 Q Did you ever see the front of it?

24 A I didn't take no special note of it. It  
25 wasn't like an Army jacket, you know. It was like a



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm5  
C-30

6016

1 Confederate-type jacket.

2 Q What length was the jacket if you can  
3 recall?

4 A It was about down to his waist--maybe a  
5 couple of inches past his waist.

6 Q You don't know whether it buttoned up the  
7 front or zipped up at the front I don't guess; do you?

8 A I can't remember, but I believe it  
9 buttoned. I can't remember for sure, but I know he  
10 wore nice clothes underneath it.

11 Q Now, you stated that on the day of the  
12 MacDonald funeral, she had wreaths in her yard?

13 A Yes, sir.

14 Q Did you ever observe any other time that  
15 she had flowers in her yard or anything?

16 A Before that, she never had wreaths, you know,  
17 the grave-type, for a graveyard. She never had those  
18 before.

19 Q But did she ever have flowers other than  
20 wreaths?

21 A Not outside. She had them into her  
22 apartment, you know, just flowers but not wreath-like.

23 Q There was a florist nearby where you all  
24 lived; is that correct?

25 A Yes, right up in Haymont.

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

6017

1 BY MR. BLACKBURN:

2 Q Now, I believe you stated that she wore  
3 black all that day; is that correct?

4 A Yes, sir, solid black.

5 Q Was it fairly common or was it uncommon for  
6 Helena to dress in the dark purple or black?

7 A She didn't dress in solid black like that  
8 before--not with no black veil and all that.

9 Q Just dark purple, I guess?

10 A She wore that dark purple quite a bit. But  
11 she didn't wear black like--no.

12 Q What did you do during the day of the  
13 MacDonald funeral?

14 A What did I do?

15 Q Yes, sir?

16 A I just carried on my regular day routine,  
17 you know.

18 Q Did you work and so forth?

19 A Yes, sir.

20 Q What were your hours at work, if you can  
21 recall?

22 A No.

23 Q I know that has been a long time ago.

24 A I know that my wife--the reason I noticed  
25 her, my wife and I were going somewhere that afternoon.

#31jbl



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6018

1 And as we were coming out, you know, there she--you  
2 know, there she was, sitting on a step and these  
3 wreaths and the black dress and everything around  
4 her.

5 See, I didn't even know that it was the day  
6 of the funeral until that evening. We was watching  
7 the news, and it told about the funeral.

8 Q Didn't you testify on direct examination  
9 that Helena Stoeckley sat out in front of her house  
10 all day long?

11 A When I said that--the way I said it, I seen  
12 her, you know. Like, I don't know how to say it. I  
13 seen her that afternoon. I can't swear that I seen  
14 her from sun-up to sun-down. I didn't say that; no.

15 But I seen her, you know. It was said by  
16 the other neighbors in the neighborhood that she was  
17 there all day, you know. And I seen her from that  
18 afternoon on up, you know, until it got late.

19 Q But to your own personal knowledge, you only  
20 know she was there when you saw her, I guess; is that  
21 correct?

22 A Yeah. When we returned, she was still there.  
23 That was two or three hours.

24 Q But you of your own personal knowledge don't  
25 know that she was sitting out front all day long; do

#31jb2

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

MAIN OFFICE, RALEIGH, 832-9085

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

6019

1 you?

2 A No. I couldn't swear that she was there from  
3 sun-up to sun-down.

4 Q Now, I believe you testified at the Article  
5 32 proceeding; is that correct?

6 A Yes, sir.

7 Q Is it correct that you testified essentially  
8 to what you have said this afternoon, that you saw  
9 Helena come in that night?

10 A Yes, sir.

11 Q When was the first time that you ever told  
12 law enforcement officers or any law enforcement agency  
13 what you have testified to?

14 A One afternoon at work, Mr. Thompson of the--  
15 I believe that was his name--from the prosecutor, come  
16 by and talked to me, you know. And I told him what I  
17 seen. He was a tall man that the Army had.

18 Q Would that have been in August of 1970?

19 A Yes, sir, right before I testified at the  
20 hearing.

21 Q Right before you testified?

22 A Yes, sir.

23 Q How did you decide to testify at the Article  
24 32 proceeding? How did that come about?

25 A Well, they had--in the newspaper, they had

#31jb3

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

MAIN OFFICE, RALEIGH, 832-9085

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

6020

1 a hotline, you know, where like if you had a problem  
2 or something that was on your mind, you call and tell  
3 what your problem was. They put the answer in the  
4 paper.

5 So, I had called the hotline and explained,  
6 you know, what I saw and what I had discussed with  
7 her and stuff, and you know, looked for an answer.  
8 And I quit at Bass Air-Conditioning over the period  
9 of time, and I went to work for a linen service. My  
10 wife--my wife and I had discussed going forth and  
11 telling it, you know. I just didn't want to get  
12 involved in the thing.

13 And the more it went on, we discussed it over  
14 and over. And so, we was delivering linen to the Heart  
15 of Fayetteville Motel. And Mr. Segal and Mr. Eisman  
16 was staying there. I just decided that I had held it  
17 in long enough.

18 Q Who is Mr. Eisman?

19 A He is an attorney, I believe.

20 Q With Mr. Segal?

21 A Yes.

22 Q So, I take it you told them what you knew?

23 A Yes, sir.

24 Q Now, up until that time, had you told any  
25 law enforcement agency?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#31jb4



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

#31jb<sup>5</sup>

A No, sir, other than the hotline--other than my wife and her immediate family, nobody.

Q Did there come a time in your discussions with Counsel for the Defense, Mr. Eisman in specifics, that any discussion of a financial reward was mentioned?

A They had printed in the newspaper that there was a reward. But the day I talked to Mr. Segal, I told him that I was not there for the reward.

#32 pl

6022

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

BY MR. BLACKBURN:

Q Do you recall how much the reward was?

A No, sir; not exactly. There was two or three, I believe, wasn't there? I don't know for sure how much it was.

Q Do you recall a \$5,000 reward?

A Yes, sir; an ad that had it in the newspaper had \$5,000.

Q Did you tell Mr. Segal or Mr. Eisman what you knew prior to or after you read about the reward?

A Well, I didn't even--no, I didn't--we didn't discuss reward or anything like that. I just told them what I know, you know.

Q That's not exactly what I asked. What I wanted to know was whether or not you spoke about what you knew to Dr. MacDonald's Defense attorneys prior to or after you read about the reward in the newspaper?

A Well, I knew about the reward, you know, before I talked to him; yes, sir.

Q Now, I believe you testified that there came a time when you left North Carolina rather quickly, is that correct?

A Yes, sir.

Q Is this after you testified at the Article 32 proceedings?

6023

#32 p2

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

A Yes, sir..

Q How long after?

A It was a day or two. It wasn't very long at all, just within a couple of days.

Q Did there come a time when you received \$150.00 to leave?

A Yes, sir; to help pay for the truck, you know, that I had--see, I had furniture. I had my whole house--I had furniture--and I helped--you know, they paid for the truck, to rent the truck, to move my furniture.

Q Do you recall who gave you the money?

A It was an Army--Army Captain or Lieutenant or something. It was a military man.

Q Do you recall whether or not he was connected with the Defense?

A I didn't know that, you know, that he was connected with Mr. MacDonald, no. But I know that he was in that hearing thing, yeah.

Q Do you recall receiving the \$150.00 from a Lieutenant Malley?

A Yes, sir; yes, sir.

Q Now, where was the \$150.00 that was given to you by Lieutenant Malley given to you, if you can recall?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6024

1 A It was out there where the hearing was.

2 Q Well, can you tell us a little bit--did you  
3 ask for the money or was it volunteered to be given to  
4 you?

5 A No; see, after they broke into my house, my  
6 wife and I--we were scared, you know; and I didn't--I  
7 had some money, you know, to pay it--but, like, the truck  
8 rented for like \$100.00, you know, to move out.

9 And I called them and told them what had  
10 happened and everything, and, you know, he said that--  
11 come out there, you know, and I went out there; and he  
12 gave me \$150.00.

13 Q It was shortly after that you left  
14 Fayetteville?

15 A I left that same day; you know, we rented  
16 a truck and moved right then.

17 MR. BLACKBURN: Your Honor, just a moment.

18 (Pause.)

19 BY MR. BLACKBURN:

20 Q With respect to the breaking in to your  
21 house as opposed to an apartment---

22 A (Interposing) It was a house.

23 Q This was the house on Clark Avenue?

24 A No, sir.

25 Q This was another house?

#32 p4

6025

1 A The new house I moved into.

2 Q You didn't learn who broke into the house,  
3 did you?

4 A No; but see, what happened, we had locked  
5 our cat--we had a cat--and we had locked him up inside  
6 when we left to go to dinner with my father-in-law and  
7 mother-in-law; and when we come back the cat was outside  
8 wanting to come inside.

9 And I said to my wife that we had, you know,  
10 we realized then that something was wrong because there  
11 was no way the cat could get out.

12 And when we looked at the right side of  
13 the house, you could see where the screen was, you  
14 know, out; so we left right then. John took us to the  
15 police station. But her boyfriend that drove the  
16 Plymouth was right down in an alley about two blocks  
17 down, you know.

18 When we passed by he followed us to the  
19 police station.

20 Q Whose boyfriend, Helena Stoeckley's?

21 A Yes.

22 Q When you moved from your address on Clark  
23 Avenue, did you tell Helena Stoeckley where you were  
24 moving to?

25 A I told her a phony address. I wouldn't tell



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6026

#32 p5

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

her my real address.

Q Did there come a time subsequent to 1970 when you were interviewed by Mr. Brisentine?

A Yes, sir.

Q Do you know who Mr. Brisentine is or was?

A Yeah; he is the man in there. I know. Yes.

Q Do you whom he was connected with?

A The Government.

Q Do you recall telling Mr. Brisentine that you could not remember the specific date of the night that you saw Helena get out of the car?

A No.

Q You did not say that to Mr. Brisentine?

A No, sir; I did not.

6027

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

#33jb1

BY MR. BLACKBURN:

Q Do you recall ever telling Mr. Brisentine that you might have had a dream about seeing Helena go to her house?

A No, sir.

MR. BLACKBURN: Your Honor, that concludes our cross-examination.

MR. SEGAL: I have just a very brief matter on redirect, Your Honor.

THE COURT: Yes, sir.

R E D I R E C T E X A M I N A T I O N 4:37 p.m.

BY MR. SEGAL:

Q Mr. Posey, when you came back to your house and found the cat was outside and you became concerned about the house, did you find anything inside the house that disturbed you?

A Yes, sir. In our bedroom at the window that they had went into, there was a butcher knife behind the door laying on the floor.

Q A butcher knife?

A Yes, sir. The policeman and them found it when they came in.

Q You called the Fayetteville Police?

A Yes, sir.

xx



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 26163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

1 Q They came down and investigated?

2 A They sent a man and a car over; yes, sir.

3 Q Did that butcher knife belong to you or any  
4 member of your family?

5 A It belonged to us. But it was kept in the  
6 kitchen with the dishes.

7 Q That was the last time where you had seen it?

8 A Yes, sir.

9 Q It wasn't kept behind the bed; was it?

10 A No, sir. It was not.

11 Q As a result of that episode, did you and your  
12 wife become frightened?

13 A Yes, sir, extremely.

14 Q And what did you do when the episode had  
15 taken place? What did you do about deciding where you  
16 were going to live?

17 A The only thing I could do, you know, is go  
18 back to my home in Alabama. I wanted to get away from  
19 there--get out of there. I felt like it wasn't safe  
20 for me or my wife either one.

21 Q When did that all happen?

22 A Right after I testified at the Army hearing.

23 Q Had you had any problems with people breaking  
24 into your place before then?

25 A No; never.

#33jb2



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



6029

1 Q Now, let's go back to the first time that  
2 you ever met me or saw me. Do you recall where that  
3 was?

4 A It was at the Heart of Fayetteville Motel  
5 or hotel.

6 Q Do you recall when you came to see me? Was  
7 anybody else there besides myself?

8 A There was that Mr. Eisman.

9 Q Did you ask for a reward at that time?

10 A No.

11 Q Did anybody mention reward to you at that  
12 time?

13 A No; not at that time.

14 Q Did anyone ever connected with the Defense  
15 ever offer you a reward to tell something that wasn't  
16 so or to tell anything?

17 A No. When I left my home, you know, I left  
18 a good job and we had a nice house and everything. And  
19 you know, I had to get completely re-established, you  
20 know, on my own.

21 Q That was because of that episode that  
22 happened right after you testified; is that right?

23 A Yes, sir.

24 Q What did you say about a reward when you  
25 talked to Mr. Eisman and myself?

#33jb3

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

MAIN OFFICE, RALEIGH, 832-9085

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

6030

1 A That I was not there for a reward. I was  
2 not concerned, you know, for money. I was just  
3 concerned for telling what I knew.

4 Q After that, was the subject of reward ever  
5 brought up by anybody?

6 A No, sir.

7 Q When you called and you told the lawyers for  
8 Dr. MacDonald about the breaking in at your house, who  
9 offered to help you move?

10 A Mr.--that Mr. Malley.

11 Q Mr. Malley?

12 A Yes, sir.

13 Q Did you ask for anything or tell them that  
14 they were going to give you some money or something?

15 A I just told them I had to get out of there;  
16 that I did not feel like I was safe.

17 Q That was all as a result of your testifying  
18 at the Article 32 proceeding?

19 A Yes, sir.

20 MR. SEGAL: I have nothing further of  
21 this witness, Your Honor.

22 MR. BLACKBURN: I have just one last  
23 question, if I might.

24 R E C R O S S - E X A M I N A T I O N 4:39 p.m.  
25

#33jb4

xxx

6031

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

BY MR. BLACKBURN:

Q Mr. Posey, do you recall telling Mr. Brisentine that your wife might have kept on occasion that knife in the bedroom?

A No, sir. I owned a pistol.

Q But you don't recall telling Mr. Brisentine that?

A No, sir; I do not.

MR. BLACKBURN: No further questions.

MR. SEGAL: Thank you, Mr. Posey. You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. SEGAL: Yes, Your Honor. The Defense calls Ms. Carmen Welch.

#33jb5



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dml  
C-34

6032

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

(Whereupon,

CARMINE TAYLOR WELCH

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 4:41 p.m.

BY MR. SEGAL:

Q Ms. Welch, would you be good enough to tell us your full name, please, and your present address?

A Carmine Taylor Welch; 512 Temple Avenue; Long Beach, California.

Q If you would, would you use that microphone a little bit because you have a very soft voice. Ms. Welch, have you been connected with the St. Mary's Hospital in Long Beach, California?

A Yes; since 19--well, since 1967.

Q Are you still currently connected with St. Mary's Hospital?

A No; I retired in April of this year.

Q During the period of time that you were at St. Mary's Hospital, what sort of work did you do?

A I was Admitting Clerk.

Q Will you just tell us briefly what an Admitting Clerk did--what your responsibilities were?

A Admitting Clerk is taking the biostatistics



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm2  
C-34

6033

1 of patients coming into our hospital either for  
2 general admission or for Emergency Room care.

3 Q Prior to going to work at St. Mary's  
4 Hospital, what had you done for a living? What sort of  
5 occupation did you have?

6 A I was a school teacher--primary school  
7 teacher.

8 Q Primary school teacher--and where did you  
9 teach?

10 A I taught at St. Matthew's Parochial School in  
11 Long Beach.

12 Q How long were you at St. Matthews'?

13 A Twenty-two years.

14 Q As a primary school teacher?

15 A Yes, second grade.

16 Q During the time that you were working at  
17 St. Mary's Hospital, did you come to know Dr. Jeffrey  
18 MacDonald, the Defendant in this case?

19 A Yes, I did, when he came there in 1971.

20 Q That was the first time you came in contact  
21 with him?

22 A Yes.

23 Q Were you working--well, what department  
24 did he start to work in when he came to the hospital?

25 A I remember him in the Emergency Department.

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm3  
C-34

1 Q Were you attached to that department at 6034  
2 that time?

3 A Not at that time. I was with the General  
4 Admissions.

5 Q Did you come to work with him later on in  
6 the Emergency Department?

7 A Yes, I did, about 1973.

8 Q Did you stay in the Emergency Department  
9 until the time you retired at the hospital?

10 A Yes, I did.

11 Q When Dr. MacDonald first came to St. Mary's  
12 Hospital, did you hear anybody talk about the fact  
13 that he had been charged in 1970 with the murders of  
14 his family?

15 A No; I truthfully never did hear that until  
16 I read it in the newspaper later.

17 Q When did you read it in the newspapers--  
18 in '75, you mean?

19 A Approximately around that time; yes.

20 Q Did you work frequently with Dr. MacDonald  
21 from the time that you went to the Emergency Department  
22 where he was?

23 A Yes, or generally, if something traumatic  
24 came in, the Clerk would have to go back to obtain a  
25 name or some type of identification of a patient. At

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

6068

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

#2  
cks  
1

MR. SEGAL: May we call our witness?

We are ready to call our witness, Your Honor.

THE COURT: Call him.

MR. SEGAL: Mr. James Gaddis, please.

(Whereupon,

JAMES THEODORE GADDIS

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

DIRECT EXAMINATION 10:41 a.m.

BY MR. SEGAL:

Q Mr. Gaddis, would you state your full name, please, and your residence?

A James Theodore Gaddis; residence--Nashville, Tennessee.

Q And what is your occupation, Mr. Gaddis?

A I am a police officer in Nashville.

Q Are you employed by the city and county in Nashville?

A Yes, sir.

Q And how long have you been a Nashville policeman?

A Almost 14 years, sir.

Q And what is your current assignment, Officer Gaddis?

6069

1 A I'm in the Patrol Division on routine  
2 patrol work.

3 Q And were you in the Patrol Division also in  
4 1970 and '71?

5 A No, sir; I was on special assignment in the  
6 Attack Squad.

7 Q And just very briefly, what was that as far  
8 as your work in '70 and '71?

9 A We were involved on special patrol--I with  
10 15 other officers--hunting for an assault--a person who  
11 was pulling off assaults in an area around Portland  
12 Avenue who was assaulting women, and we were just  
13 patrolling the area in unmarked patrol cars.

14 Q And what was the Portland Avenue area like?  
15 What kind of a neighborhood was that?

16 A It was an area where there was a lot of  
17 hippie people living there. It was a high drug area--  
18 quite a few drug dealers in the area. There was a lot  
19 of promiscuous things going on in that area.

20 Q Now, did you have occasion at any time in  
21 1970 or early '71 to meet a woman whose name you learned  
22 to be Helena Stoeckley?

23 A Yes, sir; I did.

24 Q Would you tell us when and under what  
25 circumstances you first encountered Ms. Stoeckley?

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374



6070

1           A       Our first encounter was--we were patrolling  
2           routine in the area. We were in unmarked cars and  
3           plain clothes and we heard a call over our radio that  
4           some officers were in foot pursuit. We went to the  
5           scene where the foot pursuit had taken place and what it  
6           was--Ms. Stoeckley, whom I didn't know was Ms. Stoeckley  
7           at that time, and another gentlemen had been walking  
8           down the street when a patrol car pulled up to stop  
9           them, and the boy jumped and ran.

10                   He spooked the police very easily. He was  
11           holding drugs at the time. That's why he ran, and we  
12           met her at this time. She called us off to the side and  
13           said she'd like to tell us some of what's going on in  
14           the area.

15           Q       Do you recall about what month and what year  
16           that was when you first contacted her?

17           A       I can tell you exactly, sir.

18           Q       Do you have a report you want to refer to?

19           A       Yes, sir; this is a report--a statement  
20           which I wrote the Army CID, April the 29th of '71.

21           Q       All right, would it refresh your recollection  
22           to look at that report right now?

23           A       Yes, sir; our first incident happened  
24           February 25 at 4:00 a.m. in the morning 1971.

25           Q       Now, did you have occasion to come to know

#2  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6071

1 or have any contact with Ms. Stoeckley after that  
2 first incident you just described?

3 A Yes, sir; I did.

4 Q Would you please describe for us the nature  
5 of your contact with her and what, if any, work you did  
6 with her?

7 A During the time from the 25th of February  
8 on through sometime in April, we developed an informant  
9 relationship. The second night I ever met her, she  
10 showed us the houses of five drug dealers. The next  
11 night, with search warrants, we busted two of the  
12 places and we made a sizable amount of drug busts--  
13 a sizable drug bust at the residences where she had  
14 showed us where they were living and quite a few arrests.

15 From time to time she would come to me and  
16 state that someone in the area had moved in, and she  
17 had heard about them and she would find out what  
18 information she could about the people because she had  
19 heard that they were of a criminal nature.

20 We did make several criminal arrests--  
21 felony arrests--during this time.

22 Q What kind of drugs were there found in that  
23 first set of arrests that Helena Stoeckley had directed  
24 you to?

25 A There was some heroin, cocaine, marihuana,

#2  
cks  
4

6072

1 and a few unidentifiable pills.

2 Q How could you describe for us whether she  
3 was a reliable or unreliable informant in drug matters?

4 A Well, I have had several informants, and she  
5 is, by far, the best informant I have ever had.

6 Q And how do you decide that informants are  
7 good informants--the basis, I guess, or the criteria  
8 you use?

9 A The basis would be how smooth she is with  
10 the people she works with, the information she comes  
11 across with, the reliability or percentage of good  
12 busts we make with her. I say the percentage of busts  
13 we made with her were about 90 to 95 percent correct.

14 Q That means that 95 percent of the time you  
15 actually found drugs at the place that she indicated to  
16 you?

17 A Yes, sir.

18 Q How long did you continue to work with  
19 Ms. Stoeckley in that relationship as using her and  
20 working with her as an informant?

21 A We used her for approximately four months,  
22 sir. Then she left Nashville and went to Florida for  
23 Drug Rehab.

24 Q Now, at some time did you learn that she had  
25 previously lived in the Fayetteville, North Carolina,

#2  
cks  
5

6073

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

area?

A Yes, sir; I did.

Q And when did you learn that, Officer Gaddis?

A Well, it was--I don't know the exact date when I learned that she lived in Fayetteville, but she came up to me one night and asked me if I could find out, through contacting the Fayetteville police, if she was still wanted in connection---

MR. BLACKBURN: (Interposing) OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q All right, the result of--without telling us what she said, the result of whatever conversation you had with her at that time--did you take any action as a result of that conversation? Did you make any inquiries?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED. Members of the jury, the evidence now apparently sought to be elicited by counsel is evidence which this Court has heard in your absence. The Court has ruled that the evidence is not admissible. I am instructing you at this time that you should not draw any inference whatever from the fact that the question itself has been asked. I will instruct counsel not to repeat such questions. I also

#2  
cks  
6

6074

1 inform you that it is the duty of counsel for either  
2 side, when it is perceived that objectionable testimony  
3 is sought to be introduced or elicited from a witness,  
4 to register an objection and that you are not under any  
5 circumstances to draw any inference adverse to counsel  
6 making such an objection, whether it be the Government  
7 or the Defendant or anyone. Proceed.

8 MR. SEGAL: If Your Honor please, in  
9 regard to the last question I asked was: what this  
10 officer did. I did not ask him to repeat any statements--

11 MR. ANDERSON: (Interposing) OBJECTION.

12 MR. SEGAL: ---made by the person. I  
13 ask to be permitted to ask what action he took. I don't  
14 understand that to be beyond the scope of the Government's  
15 objection.

16 THE COURT: Ask your question.

17 BY MR. SEGAL:

18 Q After you talked to Ms. Stoeckley, did you  
19 make any inquiries or take any action yourself at that  
20 time?

21 MR. ANDERSON: OBJECTION.

22 THE COURT: SUSTAINED.

23 BY MR. SEGAL:

24 Q Did you have occasion to talk with Ms.  
25 Stoeckley about Fayetteville, North Carolina, on any

#2  
cks  
7



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6075

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

#2  
cks  
8

other time than the one you just talked to us--  
mentioned to us now?

MR. BLACKBURN: OBJECTION.

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Can you describe for us the emotional state--  
that is, what you observed about her emotional state  
when you talked to Ms. Stoeckley about her contacts and  
relationship with Fayetteville, North Carolina?

MR. BLACKBURN: OBJECTION.

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: What was wrong with that,  
Your Honor?

THE COURT: I SUSTAINED the objection.

BY MR. SEGAL:

Q Did you ever ask Ms. Stoeckley to give you  
a set of fingerprints and some hair samples?

A Yes, sir; I did.

MR. BLACKBURN: OBJECTION.

THE COURT: Well, he's already  
answered that. I'll let it stand.

BY MR. SEGAL:

Q Was your answer that you did get it?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

6076

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

A Yes, sir.

THE COURT: I will instruct the witness, however, not to answer the question if there is an objection until I have ruled. Proceed.

BY MR. SEGAL:

Q Did you, in fact, ever obtain from her a set of fingerprints and hair samples?

A Yes, sir.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did you ever, together with an agent--Agent Brisentine--from the CID interview Ms. Stoeckley in regard to events in Fayetteville, North Carolina?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did you have occasion to speak with Ms. Stoeckley on or about April the 23rd and 24th of 1971?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Following--when was the last time you spoke with Ms. Stoeckley in any formal capacity--in any official capacity?

#2  
cks  
9



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6077

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

A The last of April in '71.

Q Following that conversation with her, what, if any, action did you take?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: In view of Your Honor's ruling, I have nothing further of this witness at this time. He may be cross-examined.

THE COURT: Call your next witness.

MR. BLACKBURN: We have no questions.

THE COURT: Call your next witness.

MR. SEGAL: Officer Gaddis, thank you very much.

THE WITNESS: Thank you.

(Witness excused.)

#2  
cks  
10



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



6513

2km6

1 6th interview, Caverly's interview and his voluntary  
2 testimony on behalf of the Defendant, his examination by  
3 the investigating officer, they have now additional  
4 testimony from the Grand Jury--again, voluntarily given.  
5 That is new in this case.

6 Finally, Your Honor, what they have are the  
7 famous--or perhaps, some people might refer to them as  
8 infamous--Stombaugh experiments, you know, as to how many  
9 fibers fall from a torn garment provided you never do any  
10 experiments and find out how they work--the experiments  
11 which were designed not by scientists, but by lawyers.

12 Your Honor has heard that. The jury has  
13 heard that. But this is otherwise the same physical evi-  
14 dence, the same case, in all significant ways.

15 One other thing: I have been negligent in  
16 not pointing this out. One of the strictures about the  
17 speedy trial rule, Your Honor, has been the terrible fear  
18 of manipulation of witness memory. It is one of the  
19 things mentioned in the majority opinion of the Court of  
20 Appeals in this case, when the Court ordered this case  
21 dismissed for denial of speedy trial.

22 Pamela Kalin Cochran is exactly the kind of  
23 nightmare that the Court was talking about, and the  
24 Supreme Court in earlier cases. Five years after the  
25 fact--four and a half years after the fact--having been



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

2km7

6514

1 interviewed, having been interviewed about certain  
2 things, and which she had seen these things and knew  
3 them, she denied any identification of the knives and  
4 all the rest of it--denied any knowledge of the ice pick  
5 being in the MacDonald house.

6 And then she sits here on the stand, having  
7 been--you know--processed through the Grand Jury--no one  
8 else was there--sits there and says, "Yes; I had this  
9 vision four and a half years later, staring at a picture  
10 outside of the Grand Jury room of Dr. MacDonald."

11 Your Honor, if there is ever an area of  
12 testimony which ought to be viewed with the gravest of  
13 doubt and suspicion, it is that kind of testimony. That  
14 is what they have added. That is the new part of the  
15 case.

16 Now, aside from that, the case is similar,  
17 but the evidence has been changed in terms of what wit-  
18 nesses are called. Neal hasn't been called in here, sir.  
19 Other witnesses--you know--M.P.'s who have facts. There,  
20 personnel have not been called. They are all covered  
21 there.

22 But, most importantly, you have the findings  
23 and evaluation from a military standpoint. We, as lay  
24 people and non-military people, don't have to pass judg-  
25 ment on whether the CID did a good job or not. That was



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH; 832-9085

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

6518

1 not going to be allowed to scream, Your Honor, "Unfair,  
2 unfair." These rules were not written by Defense lawyers,  
3 Your Honor. Your Honor, if you will look at the roster  
4 of the membership of this committee, you will know who  
5 wrote the rules.

6 They weren't designed by Defendants to defeat  
7 the Government. The other way around is the structure  
8 of these rules. But the Government should be hoisted on  
9 its own petard here. What is sauce for them is sauce  
10 for us here, and the sauce we wish to serve the Govern-  
11 ment is their report--their finding.

12 In that crash case, Your Honor, there can't  
13 be any doubt that the Government, although it is trying  
14 to defend that it was not negligent maintenance of the  
15 aircraft, is going to see marching in against it the  
16 findings of the National Transportation Safety Board.

17 It will say what? It will say, "The  
18 Government was negligent." The Government says, "Oh,  
19 unfair. We are trying to try the same issue in front  
20 of the jury." The answer is the Court will instruct the  
21 jurors: "This is an official investigation. You have  
22 also heard witnesses. You make your decision, but it is  
23 part of the facts of this case." We are in no signifi-  
24 cant way different. In our last submission, we point  
25 out a number of other cases that are similar situations.

#3  
cks  
2



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6518

1                   The trouble is that the Government doesn't  
2 like the taste of the rules when it doesn't work its way.  
3 I think simply in fairness to the Defendant that he ought  
4 to be entitled to offer a report which the rule makes so  
5 clearly his right to offer.

#3  
cks  
3

6                   THE COURT:            Have you found a case  
7 in any jurisdiction in which the findings of the  
8 officer conducting an Article 32 proceeding, or any other  
9 inquiry the object of which is to determine probable  
10 cause for the institution of a criminal action, in which  
11 such findings have been admitted in evidence under  
12 803(8)(c) or any other rule of evidence?

13                   MR. SEGAL:            803(8)(c) is too new to  
14 have produced much appellate review.

15                   THE COURT:            Like we say to the  
16 witnesses, you just answer my question yes or no. I'll  
17 let you explain.

18                   MR. SEGAL:            Certainly, Your Honor. We  
19 have set forth the cases that we---

20                   THE COURT:            (Interposing) There are  
21 several cases. There are several cases. I said in a  
22 criminal prosecution.

23                   MR. SEGAL:            These are the only cases  
24 that we are aware of.

25                   THE COURT:            You never have found one;

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

have you?

#3  
cks  
4

MR. SEGAL: We have no other cases to offer, but I must say that because the context is novel, the rule isn't. I mean the rule could not be more plain. It says you can introduce an official investigation and finding against the Government in a criminal case. I mean I hope we are not reduced to another situation now where we decide that both Congress and the drafters and the Supreme Court had their backs turned on the possibility that MacDonald might make use of the rules.

They weren't making it for him. They didn't know that he might wake up and see the rules laying there. I think we are in a situation here because there will be few criminal cases ever where this will come up, Your Honor.

There is no doubt that the nature of the Article 32--you don't have to take our word for it. It is not just a preliminary hearing. It is a different beast. And the Government's briefs galore castigating the heck out of us about it explains it is an investigation.

This statute which creates it--in those terms, Your Honor--Your Honor has used that term in referring to prior memoranda in this case that it is an investigation.--Supreme Court in its argument, We set that all out.

6549

8km3

1 attitude toward it and how she expressed her feelings?

2 A We were both happy about the pregnancy. I  
3 think there was some concern on Colette's part because  
4 she had had Caesarean sections. I think that was a nor-  
5 mal, rational fear. We discussed it. We obtained com-  
6 petent gynecology help. We had discussed with Mildred---

7 Q (Interposing) Mildred Kassab?

8 A That's right--that she would come down and be  
9 available to help at the time of the birth. And we both  
10 felt that it would be the last pregnancy, but neither of  
11 us were unduly afraid about it.

12 Q Now, when would that child have been due to  
13 be born?

14 A Well, we weren't sure. It was approximately  
15 late June or July.

16 Q Of 1970?

17 A Of 1970, right.

18 Q Were you planning to be away from Fayette-  
19 ville and Fort Bragg at the time that the child would  
20 have been born?

21 A No; I was not.

22 Q There has been some talk in some of the  
23 Government evidence about a trip that you might have been  
24 planning with one of the athletic teams at Fort Bragg.  
25 Could you tell us about that and whether that would have

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

MAIN OFFICE, RALEIGH, 832-9086

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

8km4

6550

1 interfered in any way?

2 A Sergeant Sherridale Morgan of the Fort Bragg  
3 Boxing Club had asked me if I would be a physician to  
4 attend the boxers from Fort Bragg, who happened to be  
5 very prominent in boxing. I believe they won the Con-  
6 tinental United States Championship, and were going to  
7 Russia for a 30-day trip that was scheduled to go in  
8 mid-March and return in mid-April. He asked me if I  
9 would be willing to be the physician for the trip.

10 I advised him that because of my current  
11 security clearance I could see problems obtaining a visa  
12 with a boxing team. He said he would clear that for me  
13 if I got permission from my commanding officer.

14 I discussed it with Colette. We both felt  
15 that a 30-day trip to Russia was an advantage and sort of  
16 a privilege, and a good time, and an honor. And we both  
17 agreed I should do it.

18 Q Was she reluctant at all at the idea you  
19 might be away in March of 1970?

20 A She was not reluctant in the least.

21 Q Now, I would like to move you, if I could,  
22 to the weekend of February 14, 1970. We talked a little  
23 bit about the fact that you said you went with your  
24 family to Hamlet Hospital. Did you work at that hospital  
25 with the permission of the Army--and if you did, what



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

8km5

6551

1 were the circumstances that you were able to both be  
2 an Army doctor and also work at a civilian hospital?

3 A The Army allowed Army physicians to moonlight  
4 at the civilian hospitals with written permission from  
5 your commanding officer. It was a standing policy on  
6 Fort Bragg that Army physicians could work at community  
7 hospitals. It essentially was a reciprocal arrangement.  
8 The communities in the surrounding area did not always  
9 have enough physicians, especially in emergency depart-  
10 ments.

11 The Army felt that it did not injure the  
12 image of the Army at all. As a matter of fact, they felt  
13 it was positive for the Army to have Army physicians  
14 moonlighting with permission from your commanding officer.

15 And I obtained several jobs--one of which was  
16 at Hamlet, one of which was at Cape Fear Valley Memorial  
17 Hospital. As a matter of fact, I was to shortly start  
18 at a third hospital, Lumberton.

19 Q All of this--you actually had permission from  
20 Colonel Kane, who was your commanding officer at the  
21 time?

22 A That is correct.

23 Q You say you took your family on Valentine's  
24 Day over to the hospital? Had they never been to that  
25 particular place before?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



8km6

6552

1 A No; they had never seen Hamlet. They won-  
2 dered what it was like and I told them it was an unusual  
3 hospital, but they were great people and they were fun.  
4 And I would like to have them see it.

5 So we drove over. It was about 60 miles from  
6 Fort Bragg. Colette and Kimmie and Krissie and I drove  
7 over.

8 Q What did you do at the hospital when you got  
9 there with your family?

10 A We stopped into the Emergency Department and  
11 said hello to everyone. I introduced my wife and kids  
12 to whoever was on duty. I do not remember who was on  
13 duty. And I showed them through Hamlet, and we drove  
14 home.

15 Q What about the next day, which would have  
16 been Sunday the 15th? Tell us something about what you  
17 did on that day?

18 A I worked at Hamlet Hospital. I got up,  
19 probably 4:30 in the morning, showered, shaved, drove the  
20 60 miles to Hamlet Hospital and went on duty at 6:00  
21 o'clock in the morning.

22 Q Do you have any recollection of what that  
23 particular Sunday was like? What significant events, if  
24 any, happened? Was it quiet or peaceful or busy that  
25 weekend, or that Sunday?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6553

8km7

1 A The Emergency Department was relatively  
2 quiet. I saw approximately 20--maybe 25--patients over  
3 24 hours, only one patient past midnight. I was busier,  
4 actually, inside the hospital than I was in the Emer-  
5 gency Department.

6 Q When you say "inside the hospital," do you  
7 mean in the wards and the departments other than the Emer-  
8 gency Department?

9 A Hamlet Hospital is a small hospital. There  
10 very frequently were not other physicians in the hospi-  
11 tal. There was one very sick patient that day in the  
12 hospital, and I essentially attended that patient  
13 throughout the day, as well as covering the Emergency  
14 Department.

15 Q Did you get any sleep during Sunday or Sunday  
16 evening?

17 A I probably napped Sunday morning, and I  
18 probably slept five or five and a half hours after mid-  
19 night Sunday night.

20 Q Was that a normal night's sleep for you?

21 A Five hours was almost a normal night for me;  
22 yes.

23 Q What time did you get up on Monday morning,  
24 and where did you go?

25 A I got up, I believe--as a matter of fact, the



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

8km8

6554

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

nurse awakened me--at about ten of 6:00. I got up and showered and shaved and drove back to Fort Bragg through the fog.

Q When you got back, did you go to your home or did you report to your duty station?

A No; I went home and had breakfast with Colette and Kim.

Q What happened at that breakfast--anything unusual happen?

A No.

Q What did you and Colette talk about?

A Hamlet Hospital--I told them what had happened to the patient I had been treating the prior day. It was a memorable patient. We discussed, I guess, normal things. Kimmie was getting ready to go to school. I believe Kristie was still in bed.

6555

1 BY MR. SEGAL:

2 Q You mentioned that the patient you talked  
3 about was memorable. Why was it a memorable episode at  
4 Hamlet Hospital?

5 A I believe that it was a 12-year-old girl  
6 who had a ruptured appendix and she had had surgery for  
7 that ruptured appendix and during the day--she had either  
8 been operated on the night before or in the middle of the night  
9 before I arrived at Hamlet Hospital, and she began  
10 hemorrhaging internally which is a little unusual  
11 following an appendectomy; and we have to transfuse her  
12 several times. And we eventually located her physician  
13 who could not be made available to come into the  
14 hospital to continue her treatment.

15 Q Was any other doctor available then when he  
16 couldn't come in?

17 A No, so she needed to be re-operated upon.  
18 She needed another surgery to stop the hemorrhaging and,  
19 after a rather lengthy series of patient interventions  
20 and encounters with her family, I got her transferred to  
21 another hospital where she was re-operated on.

22 Q What do you mean when you say there were  
23 "encounters with her family"?

24 A Well, her mother was very bright and wasn't  
25 missing much of what was going on, and she was trying to

#9  
cks  
1



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6556

1 figure out where the surgeon was who had operated on  
2 her daughter and so was I. But I didn't tell the mother  
3 that. I explained to the mother I was attempting to  
4 reach him and he was out of touch at the present, but  
5 we were transfusing the child, and I would obtain  
6 another surgeon if necessary.

7 I eventually told the mother that I felt  
8 it was best if I arranged for surgery at another hospital  
9 and I did do that.

10 Q After you had breakfast with your wife and  
11 your daughter Kimberly, what did you do next?

12 A I went to work at my duty office at the  
13 Sixth Special Forces Group.

14 Q Could you tell us a little bit about what you  
15 did that day and what were your responsibilities and  
16 duties at that time?

17 A At that time I was second in command in  
18 the Group Surgeon's office. There was a Group Surgeon  
19 who was superior to myself in position. I was his  
20 second in command, and my title was Preventive Medicine  
21 Officer. I had a wide range of duties, but Preventive  
22 Medicine Officer in the Army means several things one  
23 of which is checking latrines, making sure the mess halls  
24 are orderly and the check list is made in each mess hall.  
25 I had duties for training Special Forces medics. I had

#9  
cks  
2

6557

1 duties regarding dog lab classes, how to teach Special  
2 Forces medics to do surgical emergencies in the field.

3 I also had duties--Captain Heestan (phonetic),  
4 the Group Surgeon, had delegated the counseling--all of  
5 the counseling duties to myself, not just the drug  
6 counseling duties so I was essentially the counselor for  
7 problem patients.

8 Q Did you have any counseling sessions with a  
9 patient that day--any that still stand out in your mind?

10 A I believe there was one that day--I believe  
11 there was one that day; yes.

12 Q Can you tell us anything about that  
13 particular session? What, if anything, stayed out in  
14 your mind?

15 A The session was involving a soldier who was  
16 a known chronic heroin abuser, and he had come to me  
17 and asked if I could get him out of the service. I  
18 explained to him that there was a boarding procedure that  
19 had to be followed. I couldn't just sign a slip of paper  
20 and get him out of the Army.

21 This had been over--we had been meeting over  
22 at least a week and probably two weeks by now. There had  
23 been several interactions with this particular soldier.  
24 He was irate at this particular meeting and felt that I  
25 wasn't doing what I could do to get him out of the



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6558

#9  
cks  
4

1 service. I explained to him that it required  
2 psychiatric consultation. He was afraid of the Special  
3 Forces psychiatrist. He did not want to see the Special  
4 Forces psychiatrist. He wanted me to sign his papers  
5 and I said that I was unable to. I was not authorized  
6 to board him out of the service.

7 We had a mild disagreement and altercation  
8 in the office and then he left the office.

9 Q Was that usual or unusual to have an  
10 altercation in the office when you were counseling a  
11 soldier or a patient?

12 A It was unusual.

13 Q What time did you finish work on February  
14 the 16th?

15 A Probably five minutes to 4:00--4:00 o'clock.  
16 We had developed a physical therapy program for the  
17 troops and it started at 4:00 o'clock--4:00 to 5:00.

18 Q And did you participate in that?

19 A Yes; I did. I directed it.

20 Q Well, tell us what happened then, just so we  
21 have a fair chronology of that evening.

22 A That particular evening the schedule called  
23 for basketball so we went over to the JFK Gym and we  
24 played basketball. It was a mixture of officers, NCO's,  
25 and enlisted personnel, and we had a basketball game for

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

MAIN OFFICE, RALEIGH, 832-9085

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

6559

1 about 45 or 50 minutes.

2 Q And that was one of the rotating series of  
3 physical activities that were planned as part of this  
4 program that you were working on?

5 A That's correct.

6 Q After the basketball game, what did you do?

7 A I went home and picked up Kimberly.

8 Q Where was she and what was she doing?

9 A She was at home. She had gotten home from  
10 school, and I think Kris went along also, but we went  
11 down to see Trooper, the pony, and Kimmie rode her very  
12 briefly because it was cold and wet out and she really  
13 didn't want to ride that night so we came back fairly  
14 quickly.

15 We fed Trooper and came back. We were  
16 probably back about a quarter to six.

17 Q When you came back, was Colette still at  
18 home?

19 A Yes.

20 Q What happened in your home at that time?

21 A We had dinner.

22 Q That was the last time the four of you ate  
23 together, I assume.

24 A That's right.

25 Q How did dinner go? Any special problems or

#9  
cks  
5



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



6560

1 any difficulty occur at dinner?

2 A Dinner went fine like it always went. We  
3 had no problems.

4 Q After dinner, was that the evening that  
5 Colette went to school?

6 A That's correct.

7 Q Could you tell us how the dinner ended and  
8 what your wife went off to do and what you then did?

9 A I think she was a little late for school  
10 because I was a little late coming back from feeding  
11 Trooper so we had dinner, and she had to rush off to  
12 school, and I believe she was picking up her friend who  
13 I did not know at that time.

14 Q Was that the lady who testified here earlier--  
15 Elizabeth Krystia Ramage now?

16 A I believe so. I did not know it at that time.  
17 I told her I would take care of the dishes, and she  
18 kissed me, and she said, "Thank you," and she left.

19 Q Would that have been unusual for you to do  
20 any of the housework or the kitchen work?

21 A No.

22 Q Did you and Colette have some kind of agree-  
23 ment of how to provide for those things?

24 A If she was busy, I would do the dishes. I  
25 would not iron.

**P&T.**

PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

#9  
cks  
6

6581

12 p3

1 nearby?

2 A There was a light on in the kitchen. It  
3 was left on every night.

4 Q Tell us about--in your own words now, go  
5 ahead. Describe to us the events as best that you  
6 recall them that took place. That is, you started to  
7 get up in response to the cries of Kimmie and Colette?

8 A I saw some people at the foot of the couch.

9 Q Could you tell, at that first instance when  
10 you saw the people, how many were there?

11 A I could not. I eventually saw three males  
12 and one female.

13 Q What was your reaction? What did you say,  
14 what did you do, when you saw people there and you  
15 heard the voices of your family?

16 A I either thought or said, "What the hell is  
17 going on here?"

18 Q Go on and tell us what happened?

19 A I also either thought or said, "What's  
20 going on here? What are you assholes doing in my  
21 house?"

22 Q Go ahead?

23 A At the same time that I was sitting up,  
24 there was a black male to the left of the three people  
25 right in front of me. He started to swing something



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#12 p4

6582

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

at me.

Q Could you see what it was?

A I could not.

Q Go on and tell us in your own words what happened at that point?

A I raised my left arm.

Q Show us?

A I raised my left arm, and I got hit, I believe partially on the arm and my head at the same time; then I was knocked back down on the couch.

Q Could you feel the impact of the blow on your head?

A I could.

Q Do you recall what you felt when you received that blow?

A You can't really explain it unless you've been hit in the head. You see stars. That's exactly what you see; and you can't--there is a pain and there's light--it is a light burst; and it is not clear then what happens.

Q What is the next thing you remember doing or was happening there in that room?

A Trying to get back up.

Q You say you went back after that blow. Were you fully back on the sofa at that point?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dml  
C-13

6586

1 BY MR. SEGAL:

2 Q All right, go ahead.

3 A So, I kept thinking, "If I let go of his  
4 arm, he is going to be able to hit me with the club  
5 again." At some point in this struggle, my arms were  
6 bound up in my pajama top.

7 Q Now, can you describe for us in any more  
8 detail perhaps how the pajama top and your arms became  
9 entwined?

10 A I had a pain in my head. I was hit at least  
11 once in the head, possibly twice by now. I was holding  
12 onto someone's arm. Two other people were punching me.  
13 I was trying to think, "What the fuck is going on here?"  
14 I could hear Colette, and I couldn't make any sense  
15 out of what was happening. At some point, my hands were  
16 bound up in the pajama top. I do not know how it  
17 happened. I have tried to figure out how it happened.  
18 I did not hear a ripping sound. I thought that it was  
19 either--it had to have either been pulled over my head  
20 or ripped from around my back. I do not know which. I  
21 have never known which, and I have never made any  
22 statements about which.

23 Q As far as the logic of the situation, you  
24 have tried to figure it out, though? Now, in hindsight,  
25 you have tried to figure it out?

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm2  
C-13

6587

1 A That is correct.

2 Q But as far as having any precise memory,  
3 are you telling us you do or you don't have a memory  
4 as to how the pajama top got over your arms?

5 A I do not recall how the pajama top got over  
6 my arms.

7 Q Go on and tell us in your own words what  
8 else you remember about the episode and what else was  
9 going on at that time?

10 A At some point during the struggle, I got  
11 what I perceived to be a sharp pain in my right chest.  
12 My immediate thought was--as a matter of fact, my exact  
13 thought was--it is one of the few things that is clear--  
14 was that, "He throws a hell of a punch."

15 Q That was a mental statement you made to  
16 yourself?

17 A I don't know if I said it, but my recollection  
18 is that I thought to myself as I was holding on, at  
19 this time the club, and he was jerking me toward the  
20 end of the couch trying to get the club free. Someone  
21 else hit me in the right side, and I said, "That was a  
22 hell of a punch." We struggled--at this point, somehow  
23 he got free. He pulled the club back free. I said to  
24 myself, "I'm in deep shit."

25 Q What do you mean? What did you mean then?

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

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

dm3  
C-13

6588

1 A I meant that he now had the club free.

2 I felt that I would probably be hit again very shortly.

3 I, at one point, had a hold of someone's hand in which

4 I saw a blade.

5 Q Did you feel anything else or see anything  
6 else at that time?

7 A I thought to myself, "That probably wasn't  
8 a punch. It was probably a stab." I thought to  
9 myself that there was a distinct possibility that I was  
10 going to be killed.

11 Q Were you frightened?

12 A I was not thinking fright, but I am sure I  
13 was.

14 Q What else do you remember was going on at  
15 that time?

16 A It was somewhere in here I saw a person that  
17 I perceived to be a girl and still think it was a girl.

18 Q What did you see about that person?

19 A I saw a white, floppy hat, blond hair. She  
20 did not appear heavy. She appeared to be 115 or 120  
21 pounds. She did not appear very tall, but I say that  
22 relative to the men that were in front of me. She was  
23 shorter than the men that were in front of me. I saw  
24 her for a period of a second or two between, I believe,  
25 the two white men that were at the end of the couch.

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm4  
C-13

65811

1                   The only other vision that I had of her  
2                   at all was of a knee and the top of a boot.

3                   Q           How did you get that vision?

4                   A           I remember the floor coming up and me going  
5                   down, and I saw in an instant--literally, an instant--I  
6                   saw a bare knee and the top of a boot.

7                   Q           What else do you recall of the fight--  
8                   struggle--of your own activities--your own observations  
9                   at that time?

10                  A           I remember receiving what I thought were  
11                  multiple--what I thought to be not very effectual--  
12                  punches to the abdomen and to the chest, some of which  
13                  later turned out to be puncture wounds or stab wounds.

14                  Q           Did you know at that time that that was  
15                  what was happening?

16                  A           I did not.

17                  Q           What else did you see about the appearance  
18                  of these people? Did you get any other sight of what  
19                  they were wearing?

20                  A           The white male in the middle had something  
21                  behind his neck which I took to be a hooded sweatshirt.  
22                  The male on the right-hand side, he was taller than the  
23                  male in the middle and had on what appeared to be a  
24                  lightweight nylon jacket waist-length style--lightweight  
25                  windbreaker-style jacket.

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

MAIN OFFICE, RALEIGH, 832-9085

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

im5  
3-13

6590

1 Q Anything else about the third man--the  
2 one with what looked like a fatigue jacket with stripes  
3 on it?

4 A None of the men had long hair. They had  
5 haircuts consistent with military personnel. I did not  
6 and never have called them hippies. The black male  
7 appeared fairly heavysset and muscular.

8 Q What was the black male wearing?

9 A The black male--all I knew was a fatigue  
10 jacket with E-6 stripes.

11 Q That would be the man that you said you  
12 thought had the instrument he was hitting you with--the  
13 club or stick or whatever it was?

14 A That is the man who did have the club.

15 Q Now, you said that you grabbed a hold of  
16 that at some point--that instrument?

17 A That is correct.

18 Q You also said you had a hold of a hand at  
19 some point. Is that the same hand that had the  
20 instrument?

21 A I had a hold of hands several times during  
22 the struggle. It is very disconnected in my mind. I  
23 had a hold of a hand at one time in which I  
24 thought I saw a blade and at which time I said to  
25 myself, "I have just been stabbed," referring back to the



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



m6  
-13

6591

1 pain in the chest. At another time, I had my hands  
2 wrapped around another hand that I believe--that I  
3 believe were the hands of the black male holding the  
4 club.

5 Q Did you feel anything on or about the hands  
6 of any of these people?

7 A He appeared to have gloves on.

8 Q That is the black male?

9 A That is correct.

10 Q Excuse me--go ahead.

11 A I think.

12 Q Do you have any sense of what you were  
13 feeling? Did you have any sense of the texture or the  
14 quality of what you were touching?

15 A It was a rough feel. It was not a feel like  
16 surgeon's gloves. It was not smooth. It was like  
17 rubber gardening gloves with like little bumps all over  
18 them--like pimples--like work gloves or gardening gloves.  
19 That is my sense--that is my recollection of the hand  
20 that I was holding which I believed to be around the  
21 club.

22 Q Now, you say you described another hand in  
23 which you saw some kind of instrument?

24 A That is right.

25 Q Did you see anything in the hand of the woman

lm7  
-13

6592

1 with the floppy hat?

2 A I never saw her hands. I saw a light on  
3 her face.

4 Q Where was that light coming from as far as  
5 you could tell?

6 A It appeared to be coming from in front of her--  
7 from her hands, but I never saw her hands. There is a  
8 difference. I saw what appeared to be a light coming  
9 up from in front of her.

10 Q Can you tell us anything about the light--  
11 the kind of light? How did it appear to you?

12 A It appeared wavering or flickering. I  
13 just remember distinctly remembering in that brief instant  
14 that it seemed like it was a light from a candle, but I  
15 did not see a candle.

16 Q Do you have any other recollection at this  
17 moment--at this time--about what went on in that  
18 episode other than what you have told us? If not, then  
19 tell us how did this episode end for you?

20 A The next thing I knew, I was lying on the  
21 floor and the house was very quiet. My next recollec-  
22 tions--(pause)---

23 THE COURT: All right, we will take  
24 our morning recess and come back today at 11:50, members  
25 of the jury. Don't talk about the case among yourselves

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

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

6595

1. the first thing that occurred to you?

2. A My teeth were chattering and I thought that  
3. I was going into shock.

4. Q Tell us what you did and what you experienced  
5. at that point.

6. A Then the sounds of my wife and Kim came  
7. sort of like flooding back and so I realized the house  
8. was quiet and I didn't hear Colette so I got up to go  
9. to see Colette.

10. Q Were you in the living room at that point--  
11. on the floor of the living room?

12. A Probably halfway in the living room and on  
13. the steps, and my best recollection was my chest was on  
14. the end of the hallway above the steps.

15. Q Was that the first or second riser up?

16. A Right.

17. Q Was there any sound at all that you could  
18. hear at that time?

19. A I heard no sounds.

20. Q You decided to go see whether Colette was  
21. all right or not. What did you do?

22. A I got up and walked into our bedroom.

23. Q Down the hallway?

24. A That's right.

25. Q What did you see when you got there?

#14  
cks  
2

6596

1 A Colette was on the floor.

2 Q Was there any light in the room at that  
3 time?

4 A I don't know.

5 Q Do you know whether you turned lights on or  
6 off?

7 A I have no idea.

8 Q Let me show you some pictures and ask whether  
9 you recognize the scenes. Let me show you, Dr. MacDonald,  
10 a series of photographs that have been marked previously  
11 in evidence as G-39, 40, and 41, 42, 43, 44 and ask you  
12 to look at the first picture, please, Dr. MacDonald, and  
13 tell us what the scene shows as far as you know.

14 A It shows Colette on the floor.

15 Q Is that where she was when you first saw her?

16 A No.

17 Q All right, we'll come back to that. Would  
18 you look at the next picture, please, and tell us whether  
19 you recognize that photo?

20 A That's Colette on the floor.

21 Q Is that how you saw her? I don't mean the  
22 position now but is that the way she appeared to you the  
23 first time you saw her?

24 A All I remember is a lot of blood. I don't  
25 remember her arm positions. She was leaning against the

#14  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6597

1 green chair, and she is not in these pictures.

2 Q All right, would you look at the next  
3 picture, please, and tell us whether you recall that  
4 scene at any time?

5 A Yes.

6 Q Is that another picture of Colette also on  
7 the floor?

8 A Yes.

9 Q Now, in this picture that's marked G-41, is  
10 that the green chair you are talking about here?

11 A Yes, it is.

12 Q The picture doesn't show how you saw her at  
13 first, though; is that right?

14 A No, it does not.

15 Q Can you tell us perhaps a little bit about  
16 how her position was when you--to the best you can recall--  
17 when you first saw her there?

18 A Her right shoulder was up against the green  
19 chair. She was leaning more on her left side.

20 Q Now, did you come close to Colette at that  
21 point?

22 A Yes, I did.

23 Q Did you see anything about her injuries at  
24 that time, Dr. MacDonald?

25 A All I could see was a lot of blood.

#14  
cks  
4

6598

1 Q Let me show you G-44 and ask if this  
2 perhaps depicts how your wife appeared to you at that  
3 time?

4 A That's how she appeared.

5 Q Look at G-43, please, if you will, and tell  
6 us if that also reflects the blood as you saw it at that  
7 time? Please look at it.

8 A She looked bloodier than that to me.

9 Q What did you do when you saw your wife there?

10 A I took the pajama top off my wrists and I  
11 took a knife out of her chest.

12 Q Would you show us, please, on your own body--  
13 just point if you would--where this knife was?

14 A It was somewhere in the central chest. I  
15 don't specifically remember. Roughly in the middle of  
16 the sternum.

17 Q What did you do with the knife?

18 A Threw it away.

19 Q When you say you "threw it away," you mean  
20 in the room some place?

21 A I really don't recall. I just remember  
22 taking it out and throwing it.

23 Q Were you down on your hands and knees at  
24 that time?

25 A Either right then or immediately thereafter.

#14  
cks  
5



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6599

1 Q All right, you described coming into the  
2 room and finding your wife and taking out the knife.  
3 Tell us whatever else you recall doing at that time in  
4 the bedroom.

5 A I gave her mouth-to-mouth resuscitation but  
6 the air was coming out of her chest.

7 Q You mean out of the stab wounds in her chest?

8 A That's right.

9 Q Please go on and tell us what you did then.

10 A I checked her pulse.

11 Q Were you trying to see whether there were  
12 any signs of life left in her?

13 A That's right.

14 Q Did you detect any sign of life in your  
15 wife's body?

16 A I did not.

17 Q Go on and tell us what happened then.

18 A I remembered I heard Kimmie so I went to see  
19 Kimmie.

20 Q Where was your pajama top at that time?

21 A I have no idea.

22 Q You walked out of the bedroom into the  
23 other bedroom in the house where you heard Kimberly.  
24 What did you see there?

25 A Kimmie.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 29163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6600

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

Q Was the light on or off in her room?

A I don't recall but I think it was off. I  
couldn't see her well but I could see her.

Q Was she in her bed?

A She was in her bed.

Q Did you move toward her bed?

A I went to the right side of her bed.

Q What did you see?

A She had a lot of blood on her.

#14  
cks  
7



dml  
C-15

6601

1 BY MR. SEGAL:

2 Q I would like you to look at three other  
3 photographs, Dr. MacDonald. These have been marked  
4 Government Exhibits 56, 57, and 58 in this case. Would  
5 you look at Government 56, please. Do you recognize  
6 the scene there?

7 A That is Kimmie, but that is not how I  
8 remember seeing her.

9 Q Would you look at Government 57, Dr.  
10 MacDonald, perhaps, does that reflect any of the things  
11 you saw at that time?

12 A Yes.

13 Q Would you say she was bloody?

14 A She was covered with blood.

15 Q I ask you to look at Government 58, please.  
16 I must ask you to look and tell us whether that looks  
17 like the way you saw your daughter?

18 A Yes.

19 Q Do you remember anything else that you did  
20 in Kimberly's room going in there and observing her  
21 condition? Did you try any life-saving--were you able  
22 to try any life-saving procedures with her?

23 A At some point, I gave her mouth-to-mouth.  
24 I don't know if it was now or later. I also checked her  
25 for pulses.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm2  
C-15

6602

- 1 Q I am sorry?
- 2 A I also checked Kim for pulses.
- 3 Q And you say you are not sure whether it
- 4 was at that time or some later time that you tried to
- 5 give her mouth-to-mouth resuscitation; is that right?
- 6 A That is correct.
- 7 Q Well, whatever time it was, what was the
- 8 effect? What did you learn? What did you find out?
- 9 A The air was coming out of her upper chest.
- 10 Q Was there any sign of life at all when you
- 11 checked her pulse?
- 12 A No.
- 13 Q What did you do at that point?
- 14 A I went to see Kristie.
- 15 Q You went out and across the hall?
- 16 A That is right.
- 17 Q Did you go into her bedroom at that point?
- 18 A Yes.
- 19 Q Do you remember whether the light was off
- 20 or on in that room?
- 21 A I do not recall.
- 22 Q What could you first see when you went into
- 23 Kristen's room?
- 24 A I could see her lying in bed.
- 25 Q Could you see whether any blood was on her at

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm3  
C-15

6803

- 1           that time?
- 2           A     When I got closer.
- 3           Q     How close did you come to Kristen?
- 4           A     I gave her mouth-to-mouth.
- 5           Q     Let me show you again some photographs
- 6           marked Governments 59, 61, and 70. I ask you, please,
- 7           to take a look at G-59 and tell us whether that looks
- 8           like the scene as you first saw it when you entered
- 9           her room?
- 10          A     It is close.
- 11          Q     What, if anything, do you think is different
- 12          in this photograph than what you first saw besides the
- 13          fact that there is light on here?
- 14          A     I remember her as being more on her back.
- 15          Q     More on her back. Please look at G-61.
- 16          Is that the way you first saw her?
- 17          A     No.
- 18          Q     Again, was she more on her back?
- 19          A     I remember her as being more on her back.
- 20          Q     Finally, look at G-70, and if you would,
- 21          examine this. Do you recall seeing the bottle in the
- 22          position--the baby bottle--as shown in the position in
- 23          this photograph?
- 24          A     No. I do not remember seeing the baby bottle.
- 25          Q     Do you remember giving her the bottle, though?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm4  
C-15

6604

1 A I gave her the bottle.

2 Q When you last had seen her alive, what  
3 position was she lying in?

4 A On her back but towards the wall, I believe,  
5 facing towards the wall. Her bottle was sort of on the  
6 right side of the bed. She was facing the wall when I  
7 left her last.

8 Q But when you walked in this time, she was  
9 not in the position as shown in the photographs, though?  
10 She was not in that position when you walked in?

11 A She was not in that position.

12 Q What, if anything else, did you do in her  
13 room--Kristen's room?

14 A At that time?

15 Q Yes, please.

16 A I believe I checked her pulses.

17 Q I assume you found nothing there at that  
18 time either?

19 A I found no pulses.

20 Q Tell us where you went and what you did  
21 after that?

22 A It is not really clear what I did next.  
23 My best recollection, at some point, I was standing in  
24 the hallway and I went into the bathroom, but I also  
25 went to Colette again, and I don't know which came first.

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm5  
C-15

6605

1 After I went to Colette the second time, I believe,  
2 I picked up the phone in the master bedroom and called  
3 for help.

4 Q Before you tell us this, can you describe  
5 what went on when you went to see your wife, Colette,  
6 the second time?

7 A I don't know if I gave her mouth-to-mouth  
8 again. I was down next to her, and I believe I, at some  
9 point, covered her with my pajama top and something else,  
10 and I don't remember what the something else was.

11 Q Do you know where it came from--this other  
12 item that you covered her?

13 A Probably from the green chair. I recall  
14 reaching across her and pulling something off the green  
15 chair towards her. I do not know what it was.

16 Q Could you tell us why you were covering  
17 her at that time?

18 A I didn't--I didn't---

19 Q (Interposing) Well, let me---

20 A (Interposing) I didn't know what else to  
21 do. I don't know.

22 Q You, in fact, in reality, I suppose if that  
23 word applies, knew she was dead then?

24 A Probably.

25 Q Did you have any other idea of what you could

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

dm2  
C-20

6647

1 "What is he still doing here?"

2 MR. SMITH: I talked to Jerry Leonard  
3 at great length, Your Honor, this morning--talked to him  
4 for a long time, and this woman continues to say things  
5 that tie her to this case. I will be frank with Your  
6 Honor, we have no plans to use her at this moment, but  
7 we have got too much at stake. It is too important a  
8 case, and she has said too much for us to just, you know,  
9 out of hand say, "Oh, sure, go on. Go away. We will  
10 never see you again. Go back in hiding and let the  
11 years roll by." She is here. The Defendant is on the  
12 stand, and we feel that we need to be able to talk with  
13 Jerry and have her available at least for this afternoon.

14 THE COURT: Well, today is shot  
15 anyway. Go on.

16 (Bench Conference terminated.)

17 (Whereupon,

18 DR. JEFFREY R. MACDONALD

19 the witness on the stand at the time of recess, resumed  
20 the stand and testified further as follows:)

21 THE COURT: Any further questions  
22 of this witness?

23 MR. SEGAL: Yes, Your Honor.

24 THE COURT: Very well.  
25



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm3  
C-20

6648

1 DIRECT EXAMINATION 2:33 p.m.  
2 (resumed)

3 BY MR. SEGAL:

4 Q Dr. MacDonald, you described right before  
5 lunch some of the events after your release from the  
6 hospital, your return to active duty with your unit,  
7 and up until the fact that you were formally charged  
8 on May 1st, 1970. Let me ask you, did you give any  
9 thoughts from the time when you were in the hospital  
10 on February 17th--thereafter, all the way through the  
11 time you were charged--did you give any thoughts to why  
12 this had happened to you or who had done these acts to  
13 you and your family?

14 A Certainly.

15 Q Would you share with us, please, what you  
16 concluded for yourself about how and why this had  
17 happened to you and your family?

18 A Well, that is a big topic. I spent a lot  
19 of time trying to figure out what happened to me and  
20 what happened to my family and why. The only logical  
21 conclusion that I could come to would be that someone  
22 either had a grudge against me or it was by chance--one  
23 of the two--a chance occurrence.

24 Q Let me ask you in that regard: we have heard  
25 some testimony here in regard to some responsibilities

**P&T.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm4  
C-20

6649

1 you had toward treating soldiers who had problems  
2 with drug abuse or drug addiction. When did you first  
3 become involved with that area?

4 A As soon as I joined the unit.

5 Q You mean joined the Sixth Special Forces  
6 Unit?

7 A Well, also with the Third when I first  
8 came to Fort Bragg in September of 1969. It was a  
9 problem on Post. I also had problems with drug  
10 patients in Cape Fear Valley Emergency Department.

11 Q Let me talk to you a bit, please, about  
12 your dealings with any soldiers who may have had  
13 problems with drug abuse or drug addiction whether  
14 they were with the Third Special Forces or when you  
15 were with the Sixth Special Forces. How frequently did  
16 you have contact with men who were having drug  
17 problems?

18 A Most of my contact was in the Sixth Special  
19 Forces.

20 Q All right, tell us about that, please.

21 A And I joined the Sixth Special Forces just  
22 shortly after December 1st, 1969. The Third was  
23 disbanded, and I had become the Preventive Medicine  
24 Officer and was, in fact, the counselor not only for  
25 drugs but for other problems as well, and I saw all the



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



lm5

2-20

6650

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

drug problems, most of which were not Special Forces soldiers. They were from different groups that we had some responsibility for, but there were some Special Forces soldiers.

#21 pl

BY MR. SEGAL:

Q How did it come to be that you as a doctor with the Special Forces were nevertheless counseling or treating soldiers who were in units other than the Green Berets?

A Well, there were PSYOPS--Psychological Operations--soldiers attached to our units who were not Green Berets who were regular troops.

There was a higher incidence of drug abuse among regular troops than there was among Berets.

Q Have you any idea why that apparently was so, based upon your experience in dealing with the soldiers?

A My experience was the general level of the troop was---

MR. BLACKBURN: (Interposing) Your Honor, we would object to his impressions; of course, if what he knows---

THE COURT: You object, what?

MR. BLACKBURN: We would OBJECT to his impressions; if he knows, of course---

THE COURT: (Interposing) Oh, I'll let him answer that.

BY MR. SEGAL:

Q Yes, Dr. MacDonald?

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 26183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6652

#21 p2

1           A       Well, my impression has always been  
2           that the Special Forces were outstanding troops. They  
3           have a higher motivation, they were all volunteers,  
4           they were better educated for the most part, and they  
5           did not seem to have the same incidence of drug abuse  
6           as say for instance the 82nd Airborne, and more speci-  
7           fically the PSYOPS Battalion that was attached to us.

8           Q       Now, what did you do with men who came to  
9           you with drug abuse problems? What was the nature of  
10          your work with them; how did you handle this problem?

11          A       Well, it was a difficult line to tread in  
12          the Army at that time, because basically I was a  
13          civilian-trained physician, and our responsibility in  
14          the civilian world was to the patient.

15                   In the military world you have two masters.  
16          You have the patient, but you also command responsibil-  
17          ity.

18                   In other words, I wouldn't consider  
19          sending--and you are not supposed to send a soldier  
20          out for duty, the bottom line being a battle situation,  
21          who is unfit for duty.

22                   Drug abuse certainly means that, so we  
23          had two decisions always to make. There were no clear  
24          guidelines in 1969-70, yet; and we were essentially  
25          plumbing new waters, so to speak, as to how to handle

#21 p3

6653

1 the rising drug abuse problem.

2 We had to decide whether to tell their  
3 commanding officer or not tell their commanding officer.  
4 I suppose there were even physicians who were at that  
5 time calling the CID, although I was unaware of that.

6 Q May I interrupt you and ask you, you say  
7 you had a choice as to whether to tell the commanding  
8 officer or not--what do you mean by that--what would  
9 you tell the commanding officer?

10 A Well, I can tell you what I did. I made a  
11 decision based on my interview and feeling about the  
12 patient as to whether he was truly a drug abuser of  
13 some proportion that would reflect on (a), his health;  
14 and (b), his performance in the field, and if it did  
15 meet those requirements--that is, it would injure his  
16 health and/or it would affect his performance in the  
17 field--I would tell him--but then I would notify his  
18 commanding officer--I would tell him I was going to  
19 notify his commanding officer and I would.

20 Many times there were what I would charac-  
21 terize as casual drug use that did not appear to affect  
22 either his health or his performance in the field, did  
23 not think the person had a major problem, and counseled  
24 him and attempted to get him to not use drugs.

25 Q Now, did you have occasion to do any

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

MAIN OFFICE, RALEIGH, 832-9085

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

6654

#21 p4

1 educational work with the troops that you were  
2 assigned to work with in regard to drug abuse in  
3 December or January, 1969 and '70?

4 A Surely; we were, you know, we were getting  
5 lectures on the use and abuse of drugs -- specifically,  
6 to Special Forces personnel but also to these attached  
7 units.

8 Q Were you aware of the lecture which Major  
9 Williams testified to the other day, at which some  
10 statements were made to the troops about whom you  
11 could talk in confidence with about drug problems and  
12 whom you could not talk in confidence with?

13 A My best recollection is that I gave  
14 personally several lectures on drug abuse in December-  
15 January. The lecture to which Major Williams referred--  
16 I have to honestly say I don't remember being there.  
17 I may have been there and been part of the program,  
18 because we were doing this constantly.

19 I spoke in JFK auditorium on drug abuse  
20 several times. I became aware in January that there  
21 was a general feeling that the physician-client-  
22 patient--patient in the Army--relationship was not  
23 privileged.  
24  
25

6657

1 MR. SEGAL: The persons who were  
2 referring--making those remarks. This is not offered for  
3 the truth or falsity of those remarks. It is a belief  
4 they shared, and they shared that belief with the  
5 Defendant.

6 MR. MURTAGH: Your Honor, we would  
7 OBJECT. We think it is being offered for the truth or  
8 falsity of the statement.

9 THE COURT: I'll OVERRULE. Let it go.

10 BY MR. SEGAL:

11 Q Would you please tell us the discussions you  
12 were having with Captain Heestan (phonetic), Major  
13 Williams and the others?

14 A That the doctors, myself included, and  
15 specifically as the person doing the counseling, were  
16 suspected of being finks.

17 Q Is that the term that was used--"finks"?

18 A That's right.

19 Q And what did you understand that to imply  
20 or mean at the time?

21 A Turning troops in to either commanding  
22 officers or the CID for drug abuse.

23 Q In fact, was that true? Had you turned  
24 anyone in to at least the CID or the MP's on the basis  
25 of having received some information in your relationship

#22  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6765

#2 p9

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

Q When was the baby due?

A July--May, June, or July, we thought. We really didn't know.

Q Now, you testified yesterday that--I think-- that you and Sherridale Morgan had discussed a proposed boxing trip to Russia?

A That's right.



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 929-9815

PITTSBORO 542-3374

6766

1 BY MR. BLACKBURN:

2 Q And that you were going to be the team  
3 physician?

4 A That's correct.

5 Q And that would be a 30-day trip in March of  
6 1970?

7 A Right.

8 Q Are you sure? Are you positive?

9 A Of what?

10 Q That Mr. Morgan and you did, in fact,  
11 discuss such a boxing trip?

12 A I discussed the boxing trip. I thought it  
13 was with Mr. Morgan; yes.

14 Q He was the boxing coach?

15 A Right.

16 Q Are you positive that you were planning to go  
17 to Russia with the boxing team for 30 days in March of  
18 1970?

19 A No.

20 Q Let me ask you this question: are you  
21 positive that it was being discussed or considered that  
22 you might go---

23 A (Interposing) Yes.

24 Q ---with the boxing team?

25 A That's what occurred. It was being discussed.

**P&T.**

PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374



6767

1 Q Who did you discuss it with, if you can  
2 recall?

3 A Captain Heestan (phonetic), my immediate  
4 superior at the Group Surgeon's office, and Colette, and  
5 I don't know yet if we had discussed it with Colonel  
6 Kane. I think we had. I'm not sure. And Mr. Morgan--  
7 Sergeant Morgan.

8 Q Now, I think you said yesterday that in your  
9 discussions with Colette she thought it was okay. She  
10 did not object to your going.

11 A That's correct.

12 Q Didn't it bother her that you were going to  
13 be gone for 30 days while she was--I guess--would be  
14 seven months pregnant--six months pregnant?

15 A I'm sure it did. We had discussed it. It  
16 didn't seem like that traumatic an event for me to be  
17 gone for that amount of time not really close to delivery  
18 date.

19 Q Well, traumatic to who--you or Colette or  
20 both?

21 A To both of us.

22 Q Well, do you recall the testimony of Mrs.  
23 Elizabeth Krystia Ramage and Mrs. Kassab also that  
24 Colette expressed some concern about the fact that you  
25 might be away for a long period of time while she was



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6768

1 pregnant?

2 A I don't remember Mrs. Elizabeth Krystia (sic)  
3 saying that. She may have said it, but I don't recall  
4 sitting here and hearing that testimony. I thought that  
5 she stated that we had a nice relationship and Colette  
6 was proud of me and---

7 Q (Interposing) I'm not disputing that point  
8 that that's what she said. I think that is correct and  
9 this is what she said. What I am saying is: do you  
10 recall her testimony that at one time in their visits  
11 with each other, going to or from class or at class,  
12 Colette was concerned about your possible absence at  
13 some time?

14 A I am not struck with any remembrances of that  
15 testimony. It may have occurred.

16 Q What about Mrs. Kassab; do you recall that?

17 A Yes.

18 Q Do you recall her saying that?

19 A Vaguely.

20 Q Now, as I recall, you stated and some of  
21 your character witnesses also stated, as I recall, and  
22 your mother that this was a time of happiness for you  
23 all, that you had more money than you had had previously;  
24 that's correct I would assume?

25 A That's right.

**P&T.**

PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#3 p4

5808

1 Q Do you know where it was ripped?

2 A No.

3 Q Did you rip it?

4 A I may have.

5 Q Did you ever hear any ripping sounds?

6 A No; I do not recall ever hearing a ripping

7 sound.

8 Q Either from the intruders or from you?

9 A That is right.

10 Q How did these holes get in this pajama top?

11 A From the assailants.

12 Q Where was it when it got holes in it from

13 the assailants?

14 A My recollection is that it had to have

15 been around my wrists.

16 Q What were you doing with it?

17 A I was fending off blows--trying to get my

18 hands out.

19 Q You don't know whether it was torn at that

20 time?

21 A I have no idea.

22 Q You don't know whether it was pulled over

23 your head?

24 A I do not.

25 Q Well, I take it, it was either ripped or it

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28163  
Raleigh, North Carolina 27611MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#8 p5

6809

1 was pulled over your head to get around your wrists,  
2 would you agree with that?

3 A I would agree with that.

4 Q And you see that it is ripped?

5 A Yes, I do.

6 Q I know this pajama top was torn, but just  
7 for the sake of partial demonstration, what part of  
8 the wrists was it around, if you can say?

9 A Initially it was around my wrists, and  
10 then it was involved with my hands and wrists.

11 Q Well, so everyone can see, is this about  
12 accurate or would you want to change something?

13 A I have no recollection of it at all.

14 Q But it was around your wrists?

15 A It was around my wrists.

16 Q Had that around your hands as you were  
17 trying to get it out?

18 A That is right.

19 Q Well, I want to do a little demonstration  
20 with this, and you tell me whether I am doing it right  
21 or wrong, as best you can recall?

22 A Right.

23 MR. SEGAL: Your Honor, I really don't  
24 understand how we can have a demonstration when there  
25 is no factual foundation for it. The witness is unable



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#8 p6

6810

1 to give an informative demonstration on it.

2 MR. BLACKBURN: Your Honor, this---

3 THE COURT: (Interposing) I will

4 let him show us what he proposes to do, and if there is

5 objection on it I'll rule.

6 MR. SEGAL: All right.

7 BY MR. BLACKBURN:

8 Q How were you fending off the blows from the

9 intruders when this was on your wrists? Was it like

10 that or like that? Am I right or wrong?

11 A I don't recall.

12 Q But you were using this around your wrists

13 or hands to fend off the blows of the intruders, is that

14 correct?

15 A That's correct.

16 Q Was it between your hands?

17 A Part of it must have been between my hands

18 because my hands were not touching each other.

19 Q And all 48 puncture holes got in here, in this

20 pajama top, at that time?

21 A That's what I would have to presume, yes.

22 Q Can you tell us why those are circular,

23 round holes and not tearing holes?

24 A Can I tell you that?

25 Q Yes, sir.

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28163  
Raleigh, North Carolina 27611MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#8 p7

6811

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

A I was fending off blows that were coming straight at me, and I was pushing out against them. I see no reason why the fabric should be torn and not have circular holes.

It was not at all like the demonstration that you showed the jury.

9kml

6812

1 BY MR. BLACKBURN;

2 Q Well, that being the case, assume for a  
3 moment that this is around your wrists, and assume for  
4 the moment that I am an intruder. Was I overhanded or  
5 was I underhanded or was I sideways--or what was I doing?

6 A I would have to say that the blows were  
7 coming at me straight and I was almost in a sitting posi-  
8 tion, so I would have to--my assumption has always been  
9 that they were waist-high, just like you are doing now.

10 Q Like that (indicating)?

11 A That's right.

12 Q And I would have done like that (indicating)?

13 A That is what I remember--fending off blows  
14 like that, which I initially thought were punches.

15 Q Well, did you ever, if you can recall, during  
16 this time, move the pajama top to the right or the left?

17 A Did I ever during the struggle?

18 Q Yes?

19 A I'm sure I did. I had hold of a shirt one  
20 time. I had hold of a hand. There was movement during  
21 the struggle. I am sure it had moved. I did not hold  
22 this stationary.

23 Q That is what I am getting at. In other  
24 words, the whole time you had the pajama top around your  
25 wrists and somebody was stabbing at you, it was not just

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

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 933-3754

PITTSBORO 542-3374

9km2

6813

1 straight on.

2 A No; but my recollection is that the majority  
3 of my movement was out against that.

4 Q Was all of your movement out against it?

5 A I do not recall.

6 Q I take it, Dr. MacDonald, that when this was  
7 taking place and this was between your hands as you have  
8 just testified, was it next to your chest or was that  
9 away from your chest?

10 A I think for the most part it was away from my  
11 chest.

12 Q Like so (indicating)?

13 A Yeah; I was using it more or less as a  
14 shield, and trying to pull my hands out and push away at  
15 the same time.

16 Q Am I correct in saying, then, that during  
17 part of the struggle with the intruders--when they were  
18 striking at you and you had this around your wrists--that  
19 it was not at all times supported by your body or some  
20 body weight?

21 A That is correct.

22 Q Now, when the two white males were at the end  
23 of the sofa, do you know whether both of them had weapons  
24 or just one of them?

25 A I do not know.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



#11 p3

6829

1 Q I think you said yesterday that you  
2 recall being shown a photograph of Helena Stoeckley  
3 at the Article 32 proceedings; do you recall that?

4 A Yes.

5 Q Do you recall what you said when you were shown it?

6 A No.

7 Q From page 141 of the transcript of the  
8 Article 32 testimony:

9 "Question: Very good. Now, I show you a  
10 photograph marked G-105, and ask you to  
11 examine it closely.

12 Have you had sufficient opportunity?

13 Answer: Yes. Question: Do you think  
14 you have ever seen the girl that that  
15 represents before? Answer: No."

16 Do you recall that testimony?

17 A Not specifically; but I will accept the  
18 court reporter's version.

19 Q I believe you stated that yesterday the  
20 photograph that you saw of Ms. Stoeckley at the  
21 Article 32 was not a full front picture, am I stating  
22 that correctly?

23 A That is my recollection.

24 Q It was more of a side view?

25 A That is correct.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 929-9815

PITTSBORO 542-3374

6830

#11 p4

1 Q Let me hand you what has been marked  
2 for identification as Government Exhibit 952, and ask  
3 you to take a look at it. I want to ask you if that is  
4 the same picture that you saw at the Article 32?

5 A I don't recall.

6 Q What is-- excuse me.

7 A It could have been; but I don't recall.

8 Q Well, for the record, would you read what  
9 is in the bottom right hand column, the numbers?

10 A The bottom number in the column?

11 Q The bottom right hand portion.

12 MR. SEGAL: May I see that, please?

13 THE COURT: He wants to see it.

14 MR. BLACKBURN: Certainly.

15 MR. SEGAL: Okay; the identification  
16 number. All right.

17 MR. BLACKBURN: Let me let you see it  
18 anyway.

19 BY MR. BLACKBURN:

20 Q If you would, Dr. MacDonald, read from the  
21 bottom right hand part of that photograph, what that is?

22 A G-105.

23 Q Do you recall being shown a photograph of  
24 Helena Stoeckley in early 1971, by CID Agents Kearns  
25 and Jack Pruette?

PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28183  
Raleigh, North Carolina 27611MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#11 p5

6831

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

A Not specifically; no.

Q Were you ever shown any photographs by Kearns and Jack Pruette?

A Yeah; I believe he showed me Corporal Badger's photograph, and he showed me a few other photographs.

Q Did you make any identification of those photographs?

A I don't believe so.

Q The photograph which I just showed you, Dr. MacDonald--is that a front picture or a side picture of the person that is portrayed in that photograph?

A That is a front picture.

#14 p3

6848

1 when they moved myself or Colette. I have--you know,  
2 there were probably ten people in that room at one  
3 time.

4 I have no idea how it got there. I think  
5 there are a lot of possibilities.

6 Q It didn't get on there during the struggle  
7 with you and Colette?

8 A I'll repeat: Colette and I did not have  
9 a struggle.

10 Q Do you know whether or not the pocket had  
11 Type A blood on it or any other blood on it, when it  
12 was deposited in the position that it was found?

13 A I have no idea.

14 Q That night, did you ever touch the bedsheet  
15 and the bedspread depicted in that photograph behind  
16 you?

17 A I have no recollection at all.

18 Q Are you saying you did or you didn't?

19 A I am saying neither.

20 Q I am reading from page 22 of the pamphlet  
21 given to counsel for the defense in your January, 1975  
22 Grand Jury testimony, with respect to the blue sheet:

23 "Question: But I am going to ask you again:  
24 did you handle that sheet that night? Did  
25 you touch it? Did you have anything to do

6849

#14 p4

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

with it?

Answer: Not that I remember."

Is that a fairly accurate statement?

A That is a fairly accurate statement.

Q Can you tell us, Dr. MacDonald, how a fabric impression or contact print matching the right cuff of your blue pajama top got on that sheet?

MR. SEGAL: That is OBJECTED to, Your Honor, because that is a fact that has not been proven in this case.

It is a fact that has been proven to the contrary, I suggest.

MR. BLACKBURN: Your Honor, that---

THE COURT: (Interposing) Well, come up here.

BENCH CONFERENCE

THE COURT: I did not hear that entire--tell me that question again. I am not sure that I got the full import of it.

MR. BLACKBURN: The question was, "Can you tell us how a fabric impression or contact print matching the right cuff of your blue pajama top got on that sheet?"

THE COURT: Now, Jim, that assumes



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6881

1 you know where it came from?

2 A I presume from doing mouth-to-mouth.

3 Q You did not have an injury around your  
4 mouth?

5 A No.

6 Q The blood on your hands: where did that  
7 come from?

8 A I presume from my wife and my children.

9 Q Dr. MacDonald, suppose the Jury should find  
10 from the evidence that the blood in the bathroom sink  
11 is that of Type B, your blood; and assuming further or  
12 supposing further that the Jury should find that it was  
13 not Type A, Type AB, or Type O: do you have an explana-  
14 tion for that?

15 A No.

16 Q Dr. MacDonald, at any time, did you in any  
17 way, either by standing on something or just standing  
18 there--you know--in the bathroom, did you at any time  
19 take a scalpel or any instrument and inflict any injury  
20 on yourself while at the bathroom sink?

21 A I did not.

22 Q Suppose, sir, that the Jury should find,  
23 from the evidence, that no Type B blood--your type  
24 blood--is found in the living room area where the  
25 struggle with the intruders allegedly occurred, and you

#21  
tdb  
2



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6882

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

were allegedly stabbed: do you have any explanation for that?

A Nothing other than the obvious ones. The wounds weren't bleeding very much.

Q Suppose the Jury finds from the evidence that you were stabbed and the wounds weren't bleeding very much, and that you did not go into the bathroom until, say, number 6, as designated by you on that chart, and that B Type blood is found in the sink, on the outside of the sink and around the basin: do you have any explanation for that?

MR. SEGAL: Your Honor, I OBJECT to the form of the question. It is compound, confusing.

THE COURT: OVERRULED.

THE WITNESS: Do I have an explanation why there was B type blood on the sink? Is that the question?

MR. BLACKBURN: Let me ask you again, if you want me to.

THE WITNESS: Fine.

BY MR. BLACKBURN:

Q Suppose the Jury should find from the evidence that your blood is Type B, and that the reason that there is no B Type blood in the living room is because the wounds don't bleed very much, as you have

#21  
tdb  
3



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

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

6883

1           stated, and that you do not go into the bathroom until  
 2           number 6, as you referred to on that diagram, and that  
 3           they find from the evidence that there is B Type blood  
 4           both on the inside and the outside of that sink: do you  
 5           have any explanation for that?

#21  
tdb  
4

6           A           Well, when I checked myself, I saw my own  
 7           chest wound that was bubbling. When I looked at the  
 8           wound, I presume I got some blood on my hands from that,  
 9           but that is the only obvious answer that I can give.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



dml  
C-22

6884

1 BY MR. BLACKBURN:

2 Q Dr. MacDonald, suppose the jury should  
3 find from the evidence that there is no blood or was  
4 no blood that was sufficient to be typed--sufficient  
5 quantities to be typed--on either the telephone in  
6 the master bedroom or the kitchen and that they should  
7 find from the evidence that you went there and  
8 used the phone as you have indicated: do you have any  
9 explanation for why there would be no blood?

10 A No. There was blood on my hands. I used  
11 the phone. I have no explanation for that lack of  
12 finding.

13 Q Dr. MacDonald, when were you first married?  
14 I say, when were you married?

15 A 1963.

16 Q In September?

17 A That is right.

18 Q Dr. MacDonald, the summer of 1964, did you  
19 have sexual relations with a female by the name of  
20 Gloria Lloyd?

21 A Yes.

22 Q Now, you testified yesterday, as I recall,  
23 at the close of the day on Direct Examination, that  
24 you had had a very brief sexual encounter with a  
25 girl in Texas, I believe, in mid-summer; is that correct?

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

MAIN OFFICE, RALEIGH, 832-9085

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

lm2  
-22

6885

1 A That is correct.

2 Q And that, I believe, the last thing or last  
3 part of your testimony yesterday related to a card  
4 that was written to you from your wife, Colette; do  
5 you recall that?

6 A That is correct.

7 Q Do you recall the date of the card?

8 A I know it was when I was in jump school  
9 at Fort Benning, Georgia.

10 Q Was it during the summertime?

11 A It was during the latter weeks in August.

12 Q This, then, would have been the same  
13 summer that you had the brief encounter in Texas; is  
14 that correct?

15 A That is correct.

16 Q Dr. MacDonald, after the murders occurred  
17 on the 17th of February, 1970, within approximately a  
18 two-month span after that, did you have occasion to  
19 have sexual relations with a girl by the name of  
20 Gerry Carpenter?

21 A I did not.

22 Q Do you recall when that was?

23 A When what was?

24 Q Did you ever have sexual relations with a  
25 girl by that name?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

lm3  
3-22

6886

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

A I did.

Q Do you recall when it was?

A November.

Q November?

A That is correct.

Q After the Article 32?

A That is correct.

Q You are not referring to Linda Matthews?

A No.

MR. BLACKBURN: Just a moment, Your Honor.

(Pause.)



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6887

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

BY MR. BLACKBURN:

Q Now, I think you testified on direct examination yesterday that from 1971 to 1974 you primarily dated one individual; is that a correct statement?

A Yes.

Q Did you ever have an occasion to see or date anyone else during that time?

A Yeah, we were both dating other people for the first year of that relationship.

Q Well, I guess what I am getting at is this: from the period of 1971 to 1974, is it an accurate statement that you had sexual relations with a number of girls?

A From 1971 until 1974?

MR. SEGAL: If Your Honor pleases, I think that we have gone about as far as a decent prosecution should go in a matter after the discharge and the end of the case?

THE COURT: Do you object?

MR. SEGAL: I OBJECT most assuredly, Your Honor.

THE COURT: Do you want to be heard on that?

MR. BLACKBURN: Yes, Your Honor.



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9816  
PITTSBORO 542-3374

#23  
cks  
1

6888

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

THE COURT: Come up.

BENCH CONFERENCE

---

MR. BLACKBURN: Sir, Your Honor, I am not going any further into this than I have gone right now. The point was that yesterday on direct they tried to make the point that he is a one--you know--female person. The Grand Jury destroyed this in 1975.

The only thing we wanted to show was that that is not accurate, that he was just tied down to one person during this time.

THE COURT: I had the impression that you probably opened up the door to that by leaving the impression that he was tied to one woman. I am going to let him answer. He says that is the last one, and we will let it go.

MR. SEGAL: Your Honor, let me be heard on this matter just a moment.

THE COURT: Yes.

MR. SEGAL: First of all, I think my own question was pretty clear in my own mind--was that a special relationship and what happened to it, why it did not result in marriage. The reason was to show that the memory of his family was so strong that when he considered this, it was not something he could do. It did not have

#23  
cks  
2



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE. RALEIGH. 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6889

1 anything to do with sex or with frequency of sex. It  
2 had to do with commitment. I would suggest to Your Honor  
3 you exercised 403 a number of times to exclude Defense  
4 evidence. I could not think of a better time to put an  
5 end to this very collateral pursuit to exercise under  
6 403 your discretion to keep it out because its probative  
7 value is far outweighed by the prejudice and confusion.

8 THE COURT: Well, he says that's the  
9 last one he is going to ask. He has already got his  
10 question in now.

11 MR. SEGAL: If Your Honor pleases, I  
12 ask you to give a cautionary instruction as to the limited  
13 value to the matters taking place that late after the  
14 crimes. I think in fairness to the Defendant he is  
15 entitled to that.

16 MR. BLACKBURN: That might be so, had the  
17 door not been opened yesterday.

18 THE COURT: Well, I will OVERRULE this  
19 objection. He said that is the last one.

20 (Bench conference terminated.)

21 THE COURT: Ask your question.

22 BY. MR. BLACKBURN:

23 Q Dr. MacDonald, do you recall the last  
24 question or would you like for me to repeat it?

25 A You had better repeat it.

#23  
cks  
3



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6890

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

Q From 1971 to January 1975 or the end of 1974, during the time that the Grand Jury was meeting, is it a correct statement that you had sexual relations with a number of girls?

A With several, yes.

#23  
cks  
4



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 477-3528  
CHAPEL HILL 920-9815  
PITTSBORO 542-3374

#24 p1

6891

1 BY MR. BLACKBURN:

2 Q Dr. MacDonald, suppose the jury should find  
3 from the evidence that Type B blood, the same type as  
4 yours, is found in only one place on the blue pajama  
5 top belonging to you. Do you have any explanation for  
6 that, sir?

7 A No; just pure conjecture.

8 MR. BLACKBURN: Just a moment, Your Honor.

9 (Pause.)

10 BY MR. BLACKBURN:

11 Q Dr. MacDonald, yesterday on direct examina-  
12 tion, you were shown photographs of some drawings, do  
13 you recall that?

14 A That is correct.

15 Q Some that were done in 1970. And when was  
16 the latest group done, sir?

17 A In June of 1979.

18 Q Why was it necessary to do, if you know,  
19 a second set of drawings?

20 A I think we had a better technique and a  
21 better artist, and we were able to get more detail  
22 through lengthy, more professional type sessions.

23 Q Well, I noticed in one of the recent drawings  
24 that there was a cross around one of the fellows?

25 A That's correct.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374



#24 p2

6892

1 Q That was not around there on the  
2 original drawings?

3 A That is correct.

4 Q Why was that not around on the original  
5 drawings?

6 A Because with the Identokit it was never  
7 asked. The specific question was never asked. I had  
8 never really offered it, did not think it was that  
9 important.

10 Q So, you just didn't think of it until 1979?

11 A No, I thought of it; but it came sharply  
12 back into focus in 1979.

13 Q Were you or anyone working with you in the  
14 drawings--the second set of drawings in 1979--given  
15 photographs of either Mr. Mazzarole, whom we have heard  
16 mentioned in Court, or of Helena Stoeckley?

17 A Absolutely not; but I think I probably  
18 should explain about the mechanism of doing the drawings.

19 Q Certainly.

20 A To clear up, you know, your confusion.

21 Q I am not confused. You go right ahead.

22 A The drawings were done in a physician's  
23 office in Los Angeles. The artist who did the  
24 drawings was a police artist for the Los Angeles Police  
25 Department and for the FBI office in Los Angeles.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#24 p3

6893

1 The questioner was an FBI agent of 28  
2 years' experience, and I was under hypnosis from the  
3 physician and the FBI agent.

4 And we had some recall under hypnosis that  
5 was not available to us before.

6 Q Now, this second set of drawings was done  
7 after you had seen the photograph of Helena Stoeckley,  
8 was it not?

9 A The one that I had seen in Mr. Woerheide's  
10 hand in 1974?

11 Q Well, any of them?

12 A Yes.

13 MR. BLACKBURN: Just a moment, Your Honor.

14 (Pause.)

15 BY MR. BLACKBURN:

16 Q Dr. MacDonald, let me show you Government  
17 Exhibit 608(a), purporting to be the blue pajama top.  
18 Suppose that the jury should find from the evidence  
19 that one, there are approximately 17 puncture holes  
20 in the back of that pajama top, and secondly, that  
21 you had no injuries, puncture or otherwise, in your  
22 back.

23 Do you have any explanation for that?

24 A Well, I know why I don't have any puncture  
25 wounds in my back. I was being stabbed from the front.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#24 p4

6894

1 Q With respect to my question, sir, do you  
2 have any explanation for how those holes got in the  
3 back of that pajama top?

4 A Just that it had to have been when it was  
5 around my wrists and hands and fending off blows.

6 Q Would your answer be the same with respect  
7 to the number of holes--over 30 more in this right  
8 general area of the pajama top?

9 A That is correct.

10 (Pause.)

11 Q Dr. MacDonald, suppose the jury should find  
12 from the evidence that Colette MacDonald was beaten  
13 and stabbed a multiple number of times, that Kristen  
14 was stabbed a number of times, and that Kimberly was  
15 stabbed and beaten a number of times.

16 And suppose, sir, that the jury further  
17 finds that the injuries that you sustained were not  
18 consistent in degree of seriousness that they  
19 sustained, and that you are quite obviously still  
20 alive. Do you have any explanation for that?

21 MR. SEGAL: Your Honor, that is  
22 OBJECTED to as argumentative. That is not a question  
23 at all.

24 THE COURT: I will SUSTAIN the  
25 objection to that question.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

dml  
C-25

6895

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

BY MR. BLACKBURN:

Q Dr. MacDonald, should the jury find from the evidence that what has come in the Courtroom to become known as the FBI reconstruction of the blue pajama top, suppose the jury with respect to that, should find from the evidence that the 48 puncture holes in your blue pajama top correspond or match up with the 21 puncture holes in Colette's chest: do you have any explanation for that?

A No.

MR. BLACKBURN: Your Honor, that concludes the Government's Cross-Examination.

THE COURT: Any Redirect?

MR. SEGAL: No, Your Honor. The Defense has no further questions of Dr. MacDonald.

THE COURT: Call your next witness.

(Witness excused.)

MR. SEGAL: In that regard, as far as scheduling matters, may counsel see the Court at the Bench, please?

THE COURT: Yes.

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

MR. SEGAL: We have Dr. Neal on the way, Your Honor. He was just served this morning. We

dm2  
C-25

6896

1 just got his phone call. The U.S. Marshal found  
2 him, but he is coming 6,000 miles. We will not have  
3 him until Monday. We have one or two other witnesses  
4 also who are not here today. We have no further  
5 evidence that I know of at this time except to offer  
6 again the reading of the testimony of Mrs. Thoesen  
7 from the 1970 Article 32. She is the woman who just  
8 gave birth to a baby by Caesarean Section and could  
9 not be here herself to testify. Otherwise, we have no  
10 further evidence ready to go at this time.

11 THE COURT: How about Stoeckley?

12 MR. SMITH: Maybe the Government  
13 would like to call her.

14 THE COURT: You do not?

15 MR. SMITH: At least at this moment,  
16 we do not.

17 THE COURT: Well, now, listen, enough  
18 of the thing is enough, Wade. If you are going to ever  
19 call her, you call her right now or I am going to  
20 release her from her subpoena.

21 MR. SMITH: Judge, I understand  
22 what you are saying. Let me just say this: that woman  
23 made the most outrageous statements to a lady at the  
24 hospital when she got her nose fixed that you have ever  
25 heard.

dm3  
C-25

6897

1 THE COURT: They could not be  
2 any more outrageous than the ones she has made.

3 MR. SMITH: They are. They are more  
4 outrageous. They are more incriminating, and, Judge,  
5 we don't know what she is going to do. We don't know  
6 what she is going to say.

7 THE COURT: Well, call her.

8 MR. SMITH: We don't want to.

9 MR. BLACKBURN: Don't say that.

10 MR. SMITH: We don't want to do  
11 that and waste the Court's time, but we have a feeling  
12 that the chapter on Helena Stoeckley may not be over.  
13 We don't want to call her unless there is something  
14 for her to say. There may ultimately be something.

15 MR. MURTAGH: That doesn't change the  
16 Court's previous finding as to her mental state. I  
17 think we should not go to the wire or to the jury for  
18 that matter with Helena Stoeckley still lurking in  
19 the wings. I think they have had ample opportunity to  
20 put her on. I think this is about the third time that  
21 it has come up, "Are you going to put her on or not,"  
22 and, I think, Judge, that we are entitled--everybody  
23 is entitled--the Court, the jury, and all concerned--that  
24 we don't have to sit on the edge of the chair and  
25 wonder whether Ms. Stoeckley is going to have another

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

MAIN OFFICE, RALEIGH, 832-9085

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

dm4  
C-25

6898

1 hallucination.

2 THE COURT: Why would you, if you  
3 are so confident about Helena, why would you be sitting  
4 on the edge of your chair?

5 MR. MURTAGH: Judge, I don't know  
6 what she is going to say.

7 MR. SMITH: Of course not.

8 THE COURT: Well, if I am any judge  
9 of witnesses at all, no one besides the Almighty  
10 Himself will know until she has said it.

11 MR. SEGAL: Your Honor, I don't think  
12 it is any of the Government's business, as long as we  
13 obey the law, with what we do with our witnesses.  
14 Your Honor has never really been informed by the  
15 Government how they flew in witnesses 10,000 miles  
16 round-trips---

17 THE COURT: (Interposing) Don't  
18 tell me all that stuff. Listen, I am not caring  
19 whether he wants her called or not. The only thing I  
20 am caring about is you have got a witness here that  
21 you have had all the whole week. I have been paying a  
22 lawyer to sort of caddy for her at Government expense,  
23 and I am at the end of my rope with that.

24 MR. SMITH: I will say this, Judge.  
25 The Defense doesn't have much money, but we will



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm5  
C-25

6899

1 reimburse the Government for any attorney's fees  
2 that may be required to keep Helena Stoeckley here  
3 until Monday.

4 MR. SEGAL: That is right, Your Honor.  
5 We will agree to that.

6 MR. MURTAGH: I don't see how you  
7 can do that.

8 MR. SMITH: The more the Government  
9 complains about her being here, the more interested we are  
10 in her. If they would stop talking about it, we might  
11 lose interest.

12 THE COURT: He thinks you are  
13 afraid of something.

14 MR. SMITH: I do.

15 MR. MURTAGH: What I am afraid of  
16 is another set of witnesses like Jane Zillioux and  
17 going through this whole number another time.

18 MR. SEGAL: Your Honor will handle  
19 that if we ever should come to that juncture. I don't  
20 think the Government need anticipate any more about  
21 this matter. Their anticipation has largely been, as  
22 far as what we were doing, not terribly correct.

23 THE COURT: How much longer will it  
24 take the Defendant to finish putting on his evidence?

25 MR. SEGAL: No more than half a day

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

MAIN OFFICE, RALEIGH, 832-9085

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



im6  
3-25

6900

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

and we could conceivably rest.

MR. BLACKBURN: Right now, the Government  
has very little rebuttal.

THE COURT: Hold just a minute.  
This is just scheduling.

(Discussion off the record.)

(Bench Conference terminated.)

6901

1 THE COURT: You'll never believe  
2 where they said the next witness is. He is in an  
3 airplane somewhere between here and Texas, with the  
4 upshot being that since this previous witness'  
5 testimony was somewhat shorter than had been antici-  
6 pated, they don't have another witness right now.

#26  
tdb  
1

7 They have told me that early Monday  
8 morning they can complete the testimony in the case.  
9 Since we have to go over anyway, I am going to let this  
10 jury go and give you a little bonus this afternoon.

11 I ask you, please, to be back Monday  
12 morning at 10:00 o'clock, and in the meantime, do not  
13 discuss this case with anyone. Don't let it be  
14 discussed in your presence. Don't read, look at, or  
15 listen to anything about it, and keep open minds about  
16 it.

17 You have not heard all the evidence in  
18 the case yet. Following that, there will be the argu-  
19 ments of counsel and the instructions of the Court, so  
20 it is imperative that you keep open minds about it.

21 You have just been such a good jury that  
22 it would be most disappointing if anything should  
23 happen to mar the record you have made up to now. It  
24 is just beautiful, so I am going to let the jury retire  
25 now. Have a good weekend, a safe trip home and back,



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE: RALEIGH, 832-9085

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

6992

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

and we will reconvene Monday morning at 10:00 o'clock  
for the jury.

(Jury exits at 2:27 p.m.)

THE COURT: Anything else to come  
before the Court this afternoon?

MR. SEGAL: No, Your Honor.

THE COURT: Does the Government have  
anything else?

MR. BLACKBURN: No, sir.

THE COURT: Take a recess until  
Monday morning at 10:00 o'clock, please.

(The proceeding was adjourned at 2:30 p.m.,  
to reconvene at 10:00 a.m. on Monday,  
August 27, 1979.)

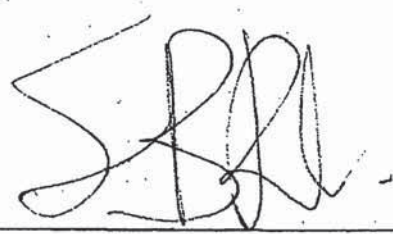
#26  
tdb  
2

6903

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

C E R T I F I C A T E

I, Ervin B. Bush, Jr., do hereby  
certify that the preceding 155 pages  
represent a true and accurate transcript  
of the proceedings held in Raleigh,  
North Carolina, on Friday, August  
24, 1979.



ERVIN B. BUSH, JR., CVR-CM  
OFFICIAL REPORTER  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 26183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6904

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION

SEP 2 1979

UNITED STATES OF AMERICA, )

U. S. COURT OF APPEALS  
FOURTH CIRCUIT

v. )

NO. 75-26-CR-3

JEFFREY R. MacDONALD, )

Defendant, )

LEONARD CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. 1

TRIAL BEFORE

THE HONORABLE FRANKLIN T. DUPREE, JR.

UNITED STATES CHIEF DISTRICT JUDGE

AND A JURY

AT RALEIGH:

MONDAY, AUGUST 27, 1979

PAGES 6904-7049

TRIAL DAY TWENTY-SEVEN



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28183  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 929-9815

PITTSBORO 542-3374

6905

A P P E A R A N C E S

On Behalf of the United States:

GEORGE M. ANDERSON  
United States Attorney  
By: JAMES L. BKACKBURN  
Assistant United States Attorney  
and  
JACK B. CRAWLEY, JR.  
Assistant United States Attorney  
Post Office Box 26897  
Raleigh, North Carolina 27611  
(919) 755-4530

BRIAN MURTAGH, Attorney  
Criminal Division  
United States Department of Justice  
Washington, D. C. 20530

On Behalf of the Defendant MacDonald:

BERNARD L. SEGAL, Attorney  
SARA SIMMONS, Attorney  
536 Mission Street  
San Francisco, California 94105  
(514) 543-2512

WADE M. SMITH, Attorney  
Tharrington, Smith & Hargrove  
300 Branch Bank Building  
Post Office Box 1151  
Raleigh, North Carolina 27602  
(919) 821-4711



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6906

T A B L E O F C O N T E N T S (Continued)

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

BENCH CONFERENCES

Pages. 6948-6949

6958-6964

7025-7029

DEFENSE RESTS

7038

E X H I B I T S

NUMBER

DESCRIPTION

MARKED

RECEIVED

DEFENDANT

109-111

6958

7041

112

6951

7041

113

7040

7040

114

7041

7041

(All Defendant Exhibits previously marked)

7041

GOVERNMENT

1153

7042

7042



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6907

T A B L E O F C O N T E N T S

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

WITNESSES                      DIRECT   CROSS   REDIRECT   RE CROSS   EXAM

FOR THE DEFENDANT

DR. WILLIAM NEAL

By Mr. Smith	6908-6927			
By Mr. Murtagh		6927-6946		
By The Court				6947

JOHN MYERS

By Mr. Segal	6949-6952	6956-6958		
By Mr. Murtagh		6952-6956		

JERRY JUGHES

By Mr. Segal	6966-7012			
By Mr. Murtagh		7012-7022		7022-7024

<u>MARY THOESEN</u> (by previous testimony)				7031-7037
---	--	--	--	-----------



690A

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

FURTHER PROCEEDINGS 10:00 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Monday, August 27, 1979, at Raleigh, North Carolina.

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

THE COURT: Good morning, ladies and gentlemen. Any further evidence for the Defendant in this case?

MR. SMITH: Yes, sir, Your Honor.

THE COURT: Call your witness.

MR. SMITH: The Defendant calls Dr. William Neal to the witness stand.

THE COURT: Let him come up.

(Whereupon,

WILLIAM PAUL NEAL

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 10:01 a.m.

xxx

6909

1 BY MR. SMITH:

2 Q State your name, please, sir.

3 A William Paul Neal.

4 Q What do you do, Mr. (sic) Neal?

5 A I am Vice Chairman of the Department of  
6 Pediatrics at the North Texas State University, Texas  
7 College of Osteopathic Medicine, Health Science Center,  
8 Fort Worth, Texas.

9 Q So, you are a medical doctor?

10 A I am a doctor of Osteopathy, yes, sir.

11 Q Yes, sir. Dr. Neal, how long have you been  
12 in your present position?

13 A Three years, sir.

14 Q Where were you prior to that time?

15 A I was in private practice in Fort Worth,  
16 Texas for four years prior to that.

17 Q Dr. Neal, at any time were you stationed at  
18 Fort Bragg, North Carolina?

19 A Yes, sir; I was.

20 Q Do you recall about what month and what year  
21 that would have been?

22 A It was in the latter part of 1969, through  
23 October of 1970.

24 Q What were your duties at Fort Bragg?

25 A I was assigned to Womack Army Hospital as a

#ljb2



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6910

1 General Medical Officer, sir.

2 Q Would you state whether or not you received  
3 any call on or about the 17th of February, 1970?

4 A Yes, sir; I did.

5 Q Do you recall where you were and what you  
6 were doing when you received that call?

7 A I was on duty in the Emergency Room as  
8 Professional Officer of the Day at Womack Army Hospital.

9 Q Do you remember who telephoned you?

10 A No, sir; I don't.

11 Q What was the nature of the call?

12 A It was a call concerning the request for my  
13 presence at a home on Post to examine some bodies for  
14 death.

15 Q All right. In response to that telephone  
16 call, Dr. Neal, what did you do?

17 A Initially I refused to respond to the call  
18 because my position was in the Emergency Room. I  
19 subsequently received a call from the Provost Marshal's  
20 Office who stated that they were requesting me to come  
21 out and examine bodies that were thought to be murdered.

22 Because of the nature of the business, I  
23 proceeded to the home and examined the bodies.

24 Q Dr. Neal, I take it at that time you had  
25 received no training in pathology or forensic pathology?

**PRT.**

PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#1jb3

911

1 A That is correct.

2 Q What was your purpose, then, in going to the  
3 home?

4 A Really to determine whether there was death  
5 indeed.

6 Q So, actually you were then to just pronounce  
7 the bodies dead; is that correct?

8 A That is right.

9 Q Do you remember about what time you received  
10 the telephone call?

11 A It was after--approximately 3:30 in the  
12 morning.

13 Q And what time did you arrive at the home?

14 A Approximately 4:30.

15 Q Was anyone with you when you arrived at the  
16 home?

17 A Yes, a driver of some sort.

18 Q Military personnel?

19 A Yes, sir.

20 Q What did you observe when you first arrived  
21 at the home at Castle Drive?

22 A What did I--well, I was taken to the door.  
23 And I was introduced to a CID investigator who proceeded  
24 to take me into the bedrooms of the home and show me  
25 the bodies.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

6912

1 Q All right. Now, when you went to the  
2 bedrooms in the home, what did you do initially?

3 A Initially I made a cursory examination. The  
4 CID asked me not to touch any of the materials in the  
5 house. I did a cursory examination of all three bodies  
6 to determine if there were any signs of life.

7 I was then taken out into another area of  
8 the house and asked to wait until pictures were taken  
9 of the bodies before proceeding with a more thorough  
10 examination.

11 Q All right. Now, after--well, first, let me  
12 ask you this question: did you see photographs taken?

13 A No, sir; I did not.

14 Q You were informed that photographs were going  
15 to be taken or were being taken; is that correct?

16 A That is correct.

17 Q After that, what did you do, Dr. Neal?

18 A After--later, another investigator came in  
19 and informed me that the photographs were completed  
20 and I could now proceed with the examinations.

21 Q All right. Now, do you recall whether there  
22 were other people in that home on the occasion in which  
23 you were there other than the ones you have described  
24 already? That is, some one person or two people in  
25 charge?

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

MAIN OFFICE, RALEIGH, 832-9085

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

6913

1 A Yes, sir. There were several--many people  
2 in the house actually.

3 Q Did you see any people who were not in  
4 uniform?

5 A Yes, sir; I did.

6 Q And did you see people who were in uniform?

7 A Yes, sir; I did.

8 Q Do you recall approximately how many people  
9 you saw in the home?

10 A Not by exact number; no, sir.

11 Q How many would you say were there?

12 A Greater than 15.

13 Q Greater than 15?

14 A Yes, sir.

15 Q And they were in the house at the time you  
16 were there?

17 A Yes, sir.

18 Q All at one time?

19 A Yes, sir.

20 Q All right. Now, to which bedroom did you  
21 go first, if you recall?

22 A During the cursory examination, I don't recall,  
23 sir. No, sir.

24 Q After the cursory examination and when you  
25 went back for the second time, to which bedroom did you



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

0914

1 go first, if you recall?

2 A We went to the rear bedroom, which was a  
3 child's bedroom.

4 Q The youngest child's bedroom?

5 A Yes, sir.

6 Q All right. In our discussions to date, have  
7 you and I referred to that as the north bedroom?

8 A Yes, sir; we have.

9 Q You call it the rear bedroom?

10 A That is correct, sir.

11 Q At any rate, Dr. Neal, was that the bedroom  
12 of the youngest child, as you recall?

13 A Yes, sir; it was.

14 Q Now, when you went back to the bedroom for  
15 the second time, that being the bedroom of the youngest  
16 child, what was your purpose this time in going there?

17 A To pronounce the bodies dead--to actually  
18 determine if there was death and to try and determine  
19 a cursory cause of death.

20 Q All right. Now, in order to accomplish that  
21 purpose, Dr. Neal, would it be necessary to touch the  
22 bodies?

23 A Yes, sir; it would.

24 Q What things would you do ordinarily to make  
25 a determination that a body is dead?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

#1jb7

6915

#1jb8

1           A     We would feel for pulses in the peripheral  
2           areas. We would listen to the heart and lungs, and  
3           we would examine the eyes for pupil dilatation.

4           Q     In making those examinations, what parts of  
5           the body of the young child did you touch?

6           A     We would have touched the head and the eye-  
7           lids to determine the pupil dilatation. I would have  
8           checked one of the radial pulses on the extremities of  
9           the arms. I would have touched the neck. And I would  
10          have rolled the body to check the back side of the  
11          body. And I honestly don't know which portion of the  
12          body I would have touched to do that--probably the  
13          shoulders and chest area.

14          Q     All right. Now, in rolling the body, will you  
15          describe what you did with the young child?

16          A     Yes, sir. I was standing at the--and it is  
17          difficult for me to describe it. The bed was against  
18          the wall, as I recall. And I rolled the child out  
19          towards the room, whichever the position was. I  
20          honestly don't recall.

21          Q     All right. Did you pull any bedclothing back?

22          A     Yes, sir; we did.

23          Q     Did you actually look at the skin on the  
24          chest so that you had to lift the pajamas or any other  
25          garments?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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



6916

1 A Yes, sir; we did.

2 Q Now, did you touch the child's face?

3 A Yes, sir; I did.

4 Q After touching the body and rolling the body  
5 as you have described, Dr. Neal, did you make any  
6 effort to return that body to the position in which you  
7 found it?

8 A No, sir; I did not.

9 Q Dr. Neal, would you state whether or not you  
10 have reviewed your testimony of the Article 32  
11 proceeding?

12 A I have reviewed it; yes, sir.

13 Q Did you, in touching the body of the youngest  
14 child, Kris, get any blood on your hands?

15 A I testified to that in my Article 32 hearing.  
16 But at this point, I really do not recall that.

17 Q Do you have any reason to disagree with your  
18 Article 32 testimony?

19 A No, sir; I do not.

20 Q Now, Dr. Neal, you have had an opportunity, I  
21 believe, to look at that testimony?

22 A Yes, sir; I have.

23 Q Will you permit me to read that testimony  
24 to you now?

25 A Certainly.

6917

#ljb10

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

Q ". . .Question: Do you recall specifically any time noting that you did receive blood on your hands during this examination? Answer: Yes, I did." Do you have any reason to disagree with that?

A No, sir; I do not.

MR. SMITH: Let me inform Counsel. That is page 345 of Dr. Neal's testimony.

". . .Question: Do you recall specifically in reference to the first bedroom you went to in your examination receiving blood? Answer: Yes; I did." Do you have any reason to disagree with that?

A No, sir.

Q ". . .Question: Did you have occasion to wash your hands or scrub your hands after you did that? Answer: Not at the house; no. Question: Did you feel it necessary or of importance to wash your hands in reference to what your primary responsibilities were? In other words, your primary responsibilities were to determine death. Was it necessary to wash your hands in making the determination



PRECISION REPORTING AND TRANSCRIBING, INC. P. O. Box 25163 Raleigh, North Carolina 27611

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

6918

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

between the bodies? Answer: No; it  
wasn't."

You have no reason, I take it, then, to  
disagree with any of that testimony concerning the  
blood on your hands?

A No, sir; I have not.

#ljb11

# pl

BY MR. SMITH:

6919

1 BY MR. SMITH:  
2 Q Now, Dr. Neal, after you examined the body  
3 of Kris, the youngest child, do you recall to which  
4 bedroom you went next?

5 A We went to the master bedroom in the home,  
6 sir.

7 Q Now, when you went to the master bedroom  
8 what did you observe, if you recall?

9 A I observed a body of an adult female  
10 lying on the floor, and the bed in the corner--the  
11 usual room furnishings, et cetera.

12 Q Dr. Neal, do you recall anything about a  
13 blue pajama top on that body?

14 A Yes, sir; I do.

15 Q Thinking back about the scene that you  
16 observed, do you remember the location of that blue  
17 pajama top?

18 A It was somewhere in the vicinity of the  
19 chest on the adult female.

20 Q Do you remember any towel on the body of  
21 Colette MacDonald?

22 A Yes, sir; it was over the--I'm sorry.

23 Q Go ahead. I was going to ask you next  
24 where you recall seeing it?

25 A It was over the abdomen and the pelvic



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#2 p2

6920

1 area of the female.

2 Q Now, do you have any recollection as to  
3 the exact location of those items?

4 A No, sir.

5 Q What did you do with the body of Colette  
6 MacDonald?

7 A I again went through the procedure of  
8 checking for the dilatation of the pupils, palpating  
9 for the carotid pulse, the radial pulse, and listening  
10 to the heart and lungs.

11 Q Now, Dr. Neal, directing your attention  
12 to the floorarea around the body of Colette MacDonald,  
13 do you any recollection of observing an outline that  
14 would have been made by any kind of a marking instru-  
15 ment around her body on the rug?

16 A No, sir; I do not.

17 Q What did you do with respect to the hands  
18 of Colette MacDonald, if you recall?

19 A I moved one of the arms to palpate the  
20 radial pulse, and I believe that was her left hand.  
21 I was standing on her left side.

22 Q And in order to palpate that pulse--if that  
23 is what you call it?

24 A Yes, sir.

25 Q How far up did you lift the hand?

**RPT.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28163  
Raleigh, North Carolina 27611MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#2 p3

6921

1 A Just a few inches off the floor, sir.

2 Q Now, what did you do next with Colette's  
3 body.

4 A After determining that there were no  
5 visible signs of life, I tried to determine as best as  
6 possible, clinically, what the causes of death might  
7 have been.

8 Q And how did you do that?

9 A Observed wounds on the body, in addition to  
10 rolling the body and checking for wounds on the backside  
11 of the body.

12 Q How did you observe the wounds on her chest,  
13 do you remember -- that is, what physically you did to  
14 anything over her chest in order to enable you to see  
15 wounds?

16 A Yes, sir; we just removed what clothing  
17 there was over there, lifting it and then replacing it,  
18 and then later rolling the body towards me, which would  
19 have been touching the right shoulder and rolling the  
20 body and checking over the back side.

21 Q All right, sir. Dr. Neal, I take it, then,  
22 what you are saying is that you picked up the blue  
23 pajama top and moved it; would that be correct?

24 A Yes, sir; that is correct.

25 Q Do you recall what you did with it when



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#3 p4

1 you picked it up and moved it; that is, where you  
2 placed it physically?

3 A I really just--I believe I just held it in  
4 my hand. I couldn't testify to it--it has been fairly  
5 long.

6 Q When you placed the blue pajama top back  
7 on the body of Colette MacDonald, did you make any  
8 effort to replace it in exactly the same position it  
9 was in when you found it?

10 A No, sir; I did not.

11 Q Did you move the white towel in any way?

12 A Not by necessarily touching the towel; no,  
13 sir. I did roll the body and the towel may have moved  
14 during the rolling of the body; yes, sir.

15 Q Now, Dr. Neal, would you describe for the  
16 jury the manner in which you rolled the body?

17 A I believe I kneeled beside the body because  
18 of the cumbersome position that we were in, and grasped  
19 the right arm and shoulder, and rolled the body towards  
20 me, which would have been up on the body's left side.

21 Q How far did you roll the body up?

22 A To the lateral position which--far enough  
23 to a lateral position up on its side, in order to  
24 observe the entire back area of the body.

25 Q Did anyone assist you in holding the body

6923

#3 p5

1 up while you looked at the back area?

2 A Not that I recall, sir.

3 Q In order to look at the back area, was it  
4 necessary for you to pull up any garment on Colette's  
5 body?

6 A I don't recall that, sir.

7 Q Now, after you were finished examining the  
8 back of that body, did you let the body just roll back  
9 down in a natural sort of way?

10 A Yes, sir; I just let the body roll. Yes,  
11 sir.

12 Q Did you make any effort then, Dr. Neal, to  
13 return that body to the exact position it was in when  
14 you first saw it?

15 A No, sir; I did not.

16 Q Did you notice, Dr. Neal, whether any of  
17 the blood you got on your hands from Kris's room got on  
18 the body or any of the garments of Colette MacDonald?

19 A I don't recall, sir.

20 Q What did you do next, Dr. Neal?

21 A I then proceeded to the front bedroom,  
22 where another child was found dead in bed.

23 Q All right, now, I take it that you do not  
24 recall washing your hands at any point on the way from  
25 Colette MacDonald's room to the room of Kim?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE: RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374



#3 p6

6924

1 A That is correct, sir.

2 Q When you got to the room of Kim, what did you  
3 observe?

4 A The child was lying, I believe, on her back,  
5 somewhat in an awkward position with her head lying over  
6 the side of the bed.

7 Q Yes, sir; and would you describe for the  
8 jury what things you did to her body?

9 A Similar to what I did with the other bodies.  
10 I touched her eyes to check to see what the pupilar  
11 dilatation was; I checked a radial pulse, and checked for  
12 heart and lung signs again.

13 Q Did you roll her body in any way?

14 A Yes, sir; I did.

15 Q And was that necessary for you to examine  
16 her chest or her back?

17 A Yes, sir; it was.

18 Q And in examining her body, was it necessary  
19 to pull up any garments to actually look at the skin  
20 area of her chest and back?

21 A Yes, sir; it was necessary to move those.

22 Q And when you completed your examination of  
23 Kim, did you make any effort to replace that body  
24 exactly in the same location it was when you found it?

25 A No, sir; I did not.



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#3 p7

6925

1 Q After you had completed that examination,  
2 Dr. Neal, what did you do?

3 A I was escorted to the door, and I returned  
4 to my duty post.

5 Q All right; now, did you make any written  
6 notations at the request of the CID as to what you did  
7 with the bodies in any way?

8 A No, sir; I did not.

9 Q You were never requested to do that?

10 A No, sir.

11 Q At any time during your examination of the  
12 bodies of the children, did you observe any body  
13 outline made with a marking pencil of any kind?

14 A No, sir; I do not recall them.

15 Q Dr. Neal, you have mentioned that there  
16 were several people in the apartment. Did you see from  
17 time to time a number of people walking around in the  
18 living room?

19 A As I recall, sir, there were a number of  
20 people in the--as you entered the front door to the  
21 left away from the bedroom area--there were a number  
22 of people in what appeared to be some sort of cordoned  
23 area, although there was no rope.

24 They were apparently at bay of some sort,  
25 and appeared to be rather spectators. Then there were

**RGT.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28163  
Raleigh, North Carolina 27611MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

#3 p8

6926

1 other uniformed people walking around the apartment,  
2 apparently doing some sort of work.

3 Q Now, I take it, Dr. Neal, that you made no  
4 effort to replace hands and arms that you lifted in  
5 your examination in the place where you first found  
6 them?

7 A No, sir; I didn't.

8 Q And you made no effort to replace bed cloth-  
9 ing that you had to move from the children in the place  
10 you originally found them?

11 A No, sir.

12 Q And you made no effort to replace body  
13 clothing in the place you originally found them?

14 A That is correct.

15 Q And you made no effort to replace the blue  
16 pajama top to its original location?

17 A That is correct.

18 Q And you made no effort to replace the white  
19 towel in its original location?

20 A That is correct, sir.

21 Q And you made no effort to replace the  
22 bodies in their original location?

23 A That is correct.

24 Q And you made no effort to avoid transferring  
25 blood from one body to another?



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH 832-9085  
DURHAM 471-3528  
CHAPEL HILL 926-9815  
PITTSBORO 542-3374

#3 p9

6927

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

A That is correct.

MR. SMITH: You may examine the  
witness.

CROSS - EXAMINATION 10:19 a.m.

BY MR. MURTAGH:

Q Dr. Neal, let me ask you, how long had you  
been in the Army as of February 17, 1970?

A I would have been in for 15 months, sir.

Q And during the course of that time, how  
many crime scenes had you responded to?

A Zero.

Q Would it be accurate to say this was the  
first one?

A I'm sorry; I didn't hear the question.

Q This was the first one?

A That is correct, sir.

Q Now, I believe you were met at the door,  
is that correct?

A That is correct.

Q Do you recall the name of the agent who  
met you at the door?

A I'm sorry; I don't.

Q Could you describe him?

A No; I couldn't.

**P&T.**PRECISION REPORTING  
AND TRANSCRIBING, INC.P. O. Box 28163  
Raleigh, North Carolina 27611MAIN OFFICE, RALEIGH, 832-9085  
DURHAM 471-3528  
CHAPEL HILL 929-9815  
PITTSBORO 542-3374

6928

#3 p10

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

Q Does he wear glasses?

A I could not describe any feature of him.



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528

CHAPEL HILL 929-9815

PITTSBORO 542-3374

3kml

6929

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

BY MR. MURTAGH;

Q All right; and I believe you testified that you had to wait while the bodies were photographed?

A That is correct, sir.

Q Do you know which photographer that was?

A No, sir; I don't remember.

Q Do you know how many photographers were on the scene?

A No, sir; I never saw the photographers.

Q All right; but at any rate, you had to wait while the bodies were being photographed; is that correct?

A I was told to wait; yes, sir.

Q How did you feel about that?

A I don't recall any feeling at all one way or the other, sir.

Q Let me ask you--I believe you said you were a Doctor of Osteopathy?

A That is correct, sir.

Q As opposed to a medical doctor?

A Yes, sir.

Q Did you feel that that was perhaps endangering the life or lives of anybody at the crime scene?

A No, sir; a cursory examination had already been done and the bodies had been pretty well---

3km2

6930

1 Q (Interposing) Sir, I can't hear you?

2 A A cursory examination for physical signs of  
3 life had already been performed without touching the  
4 bodies, and there appeared to be no life. I was not dis-  
5 turbed.

6 Q So you looked at them first and they looked  
7 dead; is that correct?

8 A Yes.

9 Q You did not touch them when you were doing  
10 this cursory examination?

11 A That is correct.

12 Q You went to Kristen's room--the north bed-  
13 room--first?

14 A I don't recall, during the cursory examina-  
15 tion. After I was told the photographs were taken, yes,  
16 sir; I did start.

17 Q Do I understand--well, let me ask you--I will  
18 back up. At the door, what instructions, if any, were  
19 you given?

20 A I was, I believe, instructed not to touch  
21 anything in the house until I was told to do otherwise.

22 Q Now, how did you get from the front door to  
23 the north bedroom?

24 A We walked through the living room and down  
25 the hallway.

17km3

7042

1 MR. BLACKBURN: Yes, sir; not in the  
2 nature of testimony. Your Honor, at this time, we would  
3 offer into evidence--I don't know the next exhibit number  
4 for the Government--this would be 1153, which is a certi-  
5 fied copy of a portion of the Fayetteville Observer on  
6 Wednesday, February 18, 1970, which purports to show--  
7 along with a continuation of the article about the Mac-  
8 Donald murder--two photographs, one of which shows a  
9 hobby horse taken through the window, with a camera into  
10 the window into Kristen's bedroom. We would move this  
11 into evidence.

12 (Government Exhibit 1153 was  
13 marked for identification and  
14 received in evidence.)

15 MR. MURTAGH: Your Honor, at this time--  
16 Your Honor, I believe the Defense wishes to approach the  
17 Bench on this.

18 THE COURT: Well, come up.

19 B E N C H C O N F E R E N C E  
20

21 MR. SEGAL: We are asking for an offer  
22 of proof as to the relevance of these two items, Your  
23 Honor.

24 THE COURT: These two here?

25 (Court examines exhibits.)



dm71

7123

1 here, how come he bled a lot more over here? You know,  
2 he said that he lay unconscious for how long he did  
3 not know right there. How much blood of Type B was  
4 found on his pajama top which he said was under his  
5 wrists? Very little. How much Type B blood, if any,  
6 was found here?

7 Ladies and gentlemen, I suggest to you that  
8 the reason and the explanation why there is no Type B  
9 blood in the living room, why there are no splinters  
10 in the living room, why there are no threads and  
11 yarns is really a very easy answer there I suggest  
12 to you. You can infer from the evidence. What you  
13 can infer from the evidence is: one, the pajama top  
14 wasn't torn then; two, a club did not splinter there;  
15 three, nobody bled there; and, four, you can infer  
16 from the evidence that no struggle took place there.

17 Now, I am not about to suggest in what I  
18 am getting ready to say in the next few minutes that  
19 the burden of proof ever shifts to the Defendant because  
20 it doesn't. It stays with us. You recall on Friday  
21 that we asked a lot of questions that if the jury  
22 should find this and that, did he have an explanation of  
23 that. You recall essentially his testimony: "It  
24 would be pure conjecture," or "No," or "I can't recall."  
25 Perhaps, he does not have to explain, but think for a

dm86

7138

1 threads in the kitchen? Why didn't they drop some  
2 threads in the hall? Why didn't they drop some threads  
3 in the bathroom or the utility room? Isn't it interes-  
4 ting that they don't drop threads where the pajama top  
5 dropped threads?

6 Ladies and gentlemen, I have talked to you  
7 a long time about all this type of evidence in the  
8 story. What does it all mean? How could this have  
9 happened? We know from the evidence that the De-  
10 fendant, as we have said before, was a good doctor.  
11 We know that his family loved him. We know that from  
12 the Valentine cards. We know that from the card  
13 that he read from the witness stand shortly before  
14 the end of Direct Examination that Colette loved him  
15 very much.

16 I suggest to you, of course, that what the  
17 Defense tried to do was to prove the Defendant's love  
18 and character through Colette and not from himself.  
19 We know that the Defendant had been unfaithful in his  
20 marriage. We know from the evidence that he had worked  
21 the weekend before; he was perhaps tired.

22 We know from the evidence that there was a--  
23 maybe it is a minor problem--the problem of Kristen  
24 coming to the bed. We know that he, according to his  
25 story, went to bed late that night and found that the

**P&T.** PRECISION REPORTING  
AND TRANSCRIBING, INC.  
P. O. Box 26163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm87

7139

1 bed was wet. I am not by any stretch of the  
2 imagination suggesting that the slaughter took place  
3 over any one thing. I don't think so, but I think  
4 that you can infer from the evidence that a fight  
5 developed in the master bedroom between Colette and  
6 the Defendant--a struggle--an altercation. We know  
7 that Colette was bruised--perhaps she was struck.

8 You know those words--you heard them in  
9 Wade Smith's Opening Argument--"Daddy, Daddy, Daddy,  
10 Daddy." I believe those words were said, but not from  
11 fear of intruders, but I think that you can infer from  
12 the evidence that they were said as Kimberly came to  
13 the master bedroom to find out what was going on from  
14 her father and mother. We know that she was there.  
15 We know from the evidence that her blood was found  
16 on the sheet, on the floor, and in the hall--or at  
17 least her blood type. I suggest that you can find from  
18 the evidence that it was her blood.

19 We suggest, perhaps, that Colette MacDonald,  
20 in an attempt to save herself or to fight back, got  
21 the old dull Geneva Forge knife that perhaps struck  
22 the Defendant that was sitting around for what purpose  
23 we don't know. We know from Dr. Gammel that Colette  
24 MacDonald had a bruise in this area of the chest  
25 (indicating). I suggest that the Defendant, perhaps in



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

dm88

7140

1 a frenzy, perhaps mad, perhaps disgusted, perhaps  
2 exhausted, perhaps tired, he knew that he was going  
3 to be away for 30 days in March if he could while his  
4 wife was six or seven months pregnant--maybe to fend  
5 off his wife, he hit like that; but I think you can  
6 infer from the evidence, ladies and gentlemen, that  
7 the Defendant, in one tragic, brief moment--so brief--  
8 lost control and came back with that club, and as he  
9 did, he struck Kimberly and struck his wife--perhaps  
10 not originally trying to hit Kimberly--perhaps she  
11 walked into the club.

12 At that point, ladies and gentlemen, the  
13 future is at stake. It may be too late at that point  
14 to undo that which is done. You know how hard it is  
15 to un-ring the bell. You know the words, "Jeff, Jeff,  
16 Jeff, why are they doing this to me?" Think how close  
17 that is to, "Jeff, Jeff, Jeff, why are you doing this  
18 to me?"

19 You remember Pamela Kalin who said that  
20 she didn't hear anything that night? You remember  
21 Pamela Kalin and Mildred Kassab who said that they did  
22 not smile as much as they used to, but she still gave  
23 Colette some money because all money problems weren't  
24 over.

25 After Kimberly was struck, we suggest that



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

m89

7141

1 you can find from the evidence that Kimberly was  
2 picked up and carried back to her room and struck  
3 with this club again and that Colette, because we  
4 know that Dr. Gammel said that she would not have  
5 died from these club injuries, went to protect or  
6 see what was happening to Kristen, and while she was  
7 in there, Kristen had the misfortune to see or know  
8 what was going on and Colette was struck again and  
9 carried back to the master bedroom.

10 Then, of course, again, ladies and gentlemen,  
11 you must understand that I think you can find from  
12 the evidence, again, things had simply gone beyond  
13 repair. You can't go back and make the family happy  
14 again, drink liqueur, and watch Johnny Carson. It  
15 has gone too far.

16 An Old Hickory paring knife, we suggest,  
17 was located. While there is no direct evidence that  
18 that knife came from that house, there is evidence  
19 that that was a common knife around Fort Bragg and  
20 that the MacDonalds had paring knives and that that  
21 knife was taken and Colette MacDonald was stabbed  
22 16 times and Kimberly was stabbed in the neck at least  
23 eight to ten times.

24 I think that you can infer from the  
25 evidence that--you know, you remember the Esquire



PRECISION REPORTING  
AND TRANSCRIBING, INC.

P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

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

lm214

7266

1 intruders in this case. There is no proof of  
2 intruders in this case. The list of evidence that  
3 supports Jeff's story will surprise you when we pull  
4 it all together right now.

5 First of all, the latex glove. I stand on  
6 Dr. Guinn's testimony. I stand on the gauntlet that  
7 he threw down to the Government as to, "Why, if you  
8 think that I am wrong, you don't go out today in '79,  
9 and check my findings?" It is an unanswered challenge.  
10 Where did they come from? They came from some other  
11 source than Jeff MacDonald's home.

12 What about the fiber found on Jeff's  
13 glasses in the living room? They have tried and tried  
14 and tried and they cannot find any source from within  
15 the MacDonald house where that fiber came from. Where  
16 do they think it came from? It flew in the window?  
17 Nonsense. You have a right to believe that that fiber  
18 is one more piece of physical evidence that supports an  
19 opposite inference from what the Government wants.

20 Unidentified hair--there is hair in this  
21 case. The Government has found and they have had  
22 MacDonald's sample which was given to them and they  
23 still, to this day, cannot ascribe it to any member  
24 of the family.

25 There are fingerprints. We talked about the



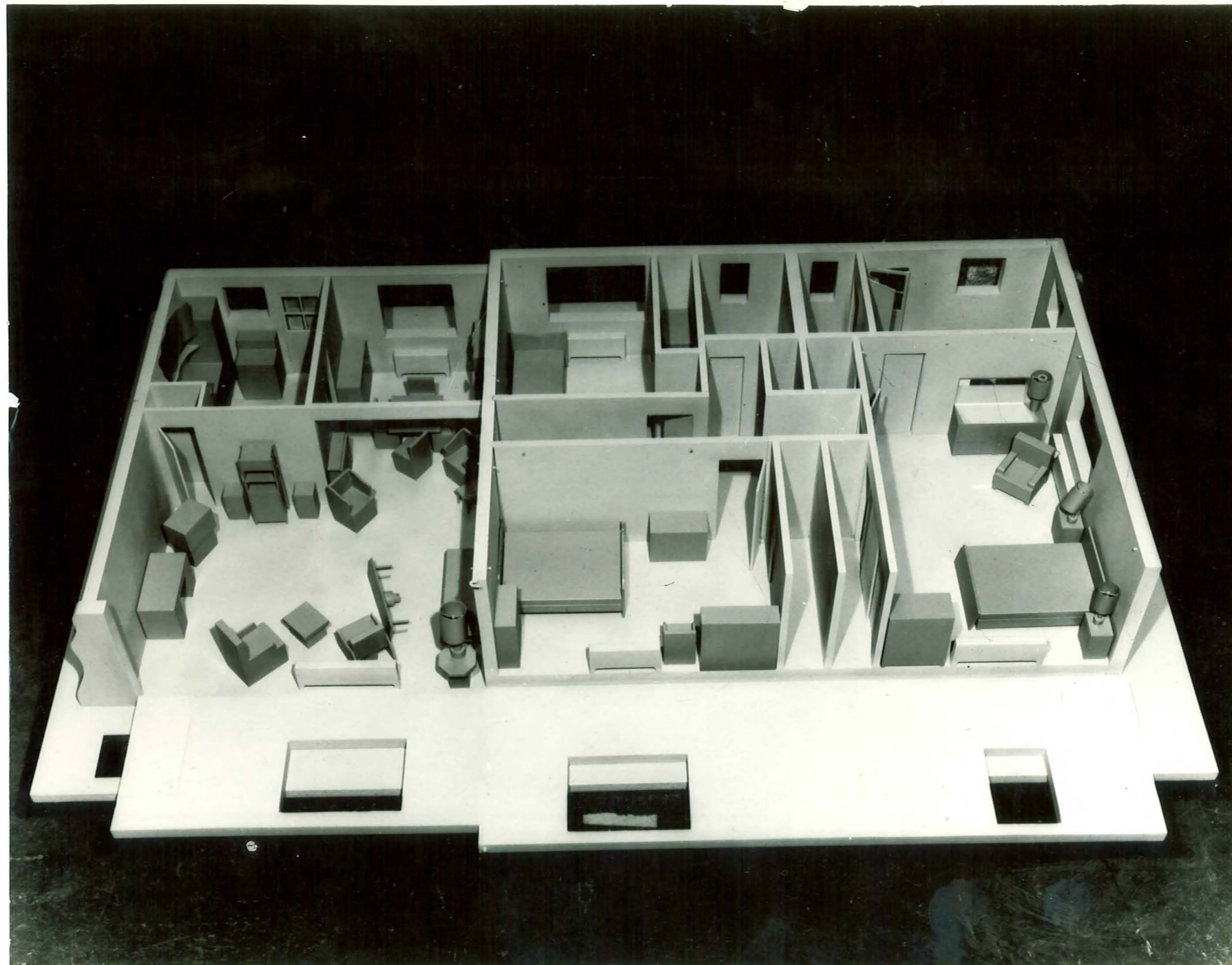
PRECISION REPORTING  
AND TRANSCRIBING, INC.

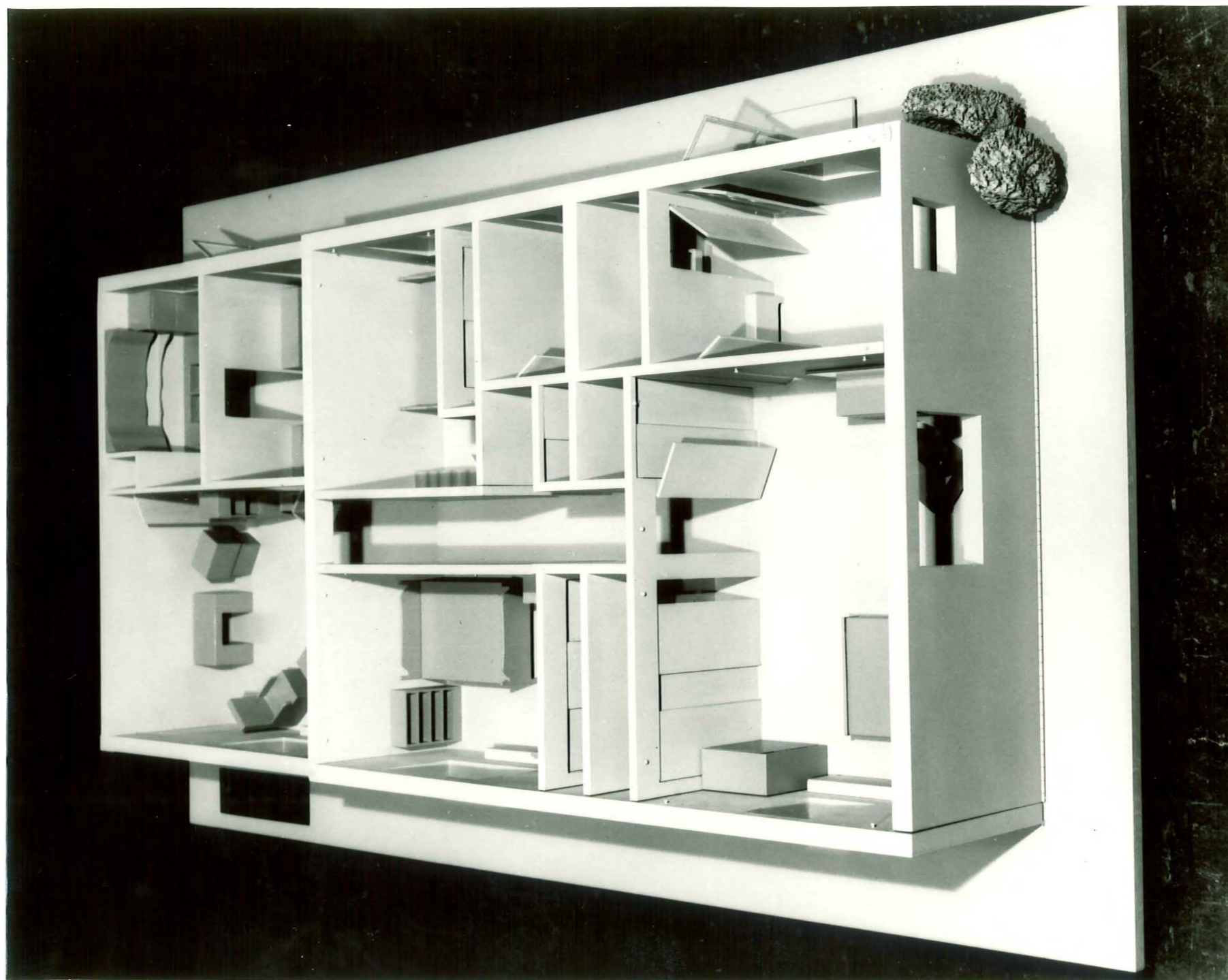
P. O. Box 28163  
Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

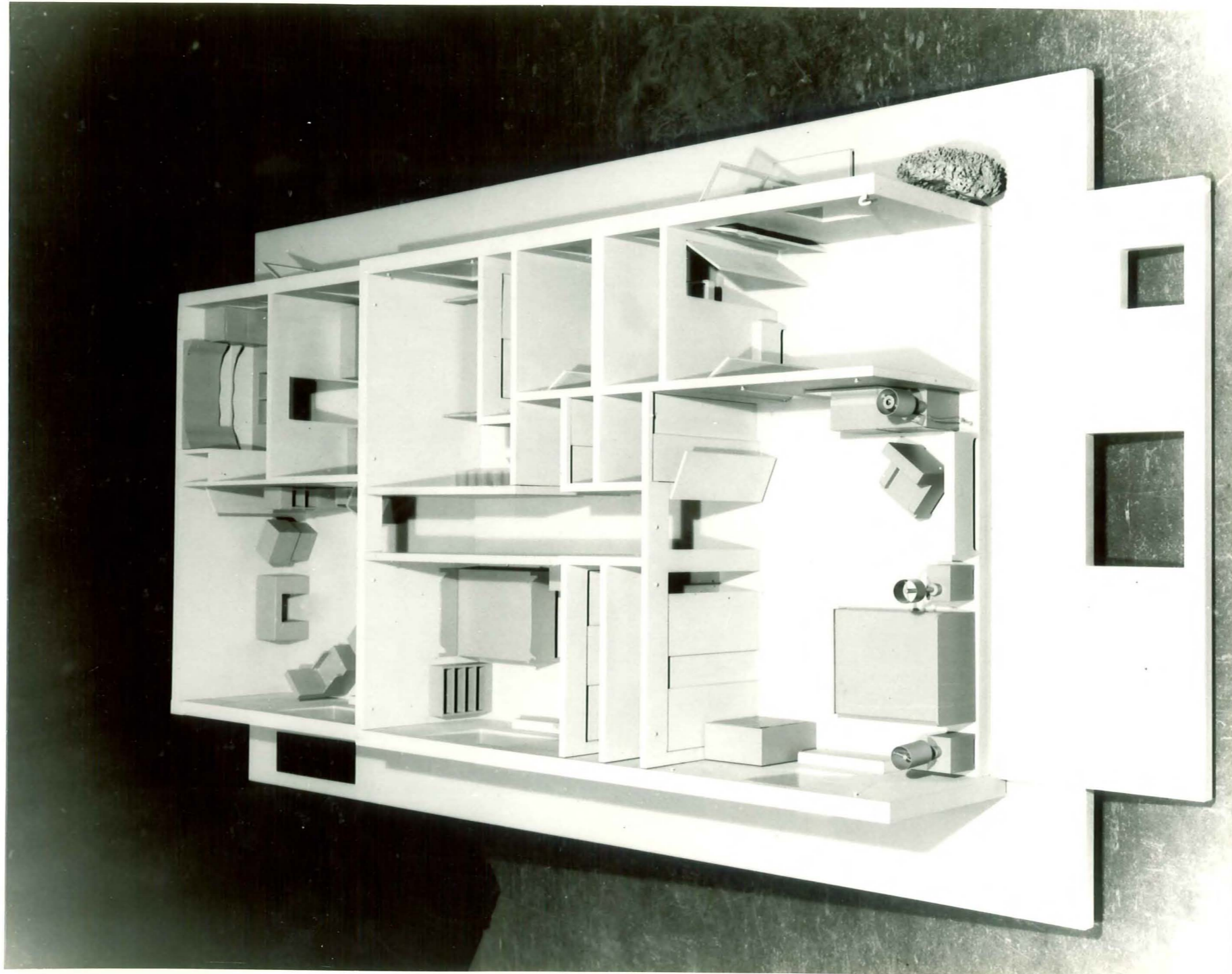
DURHAM 471-3528  
CHAPEL HILL 933-3754  
PITTSBORO 542-3374

PHOTOS OF GOVERNMENT EXHIBIT 1











-1703-

GOVERNMENT  
EXHIBIT  
2  
3:75-CR-26-F

PERGID-Bryenne, N. J.  
**GOVERNMENT  
EXHIBIT**  
24  
75-26-CL-3



PERICAD - Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
24 B  
75-26-CR-3



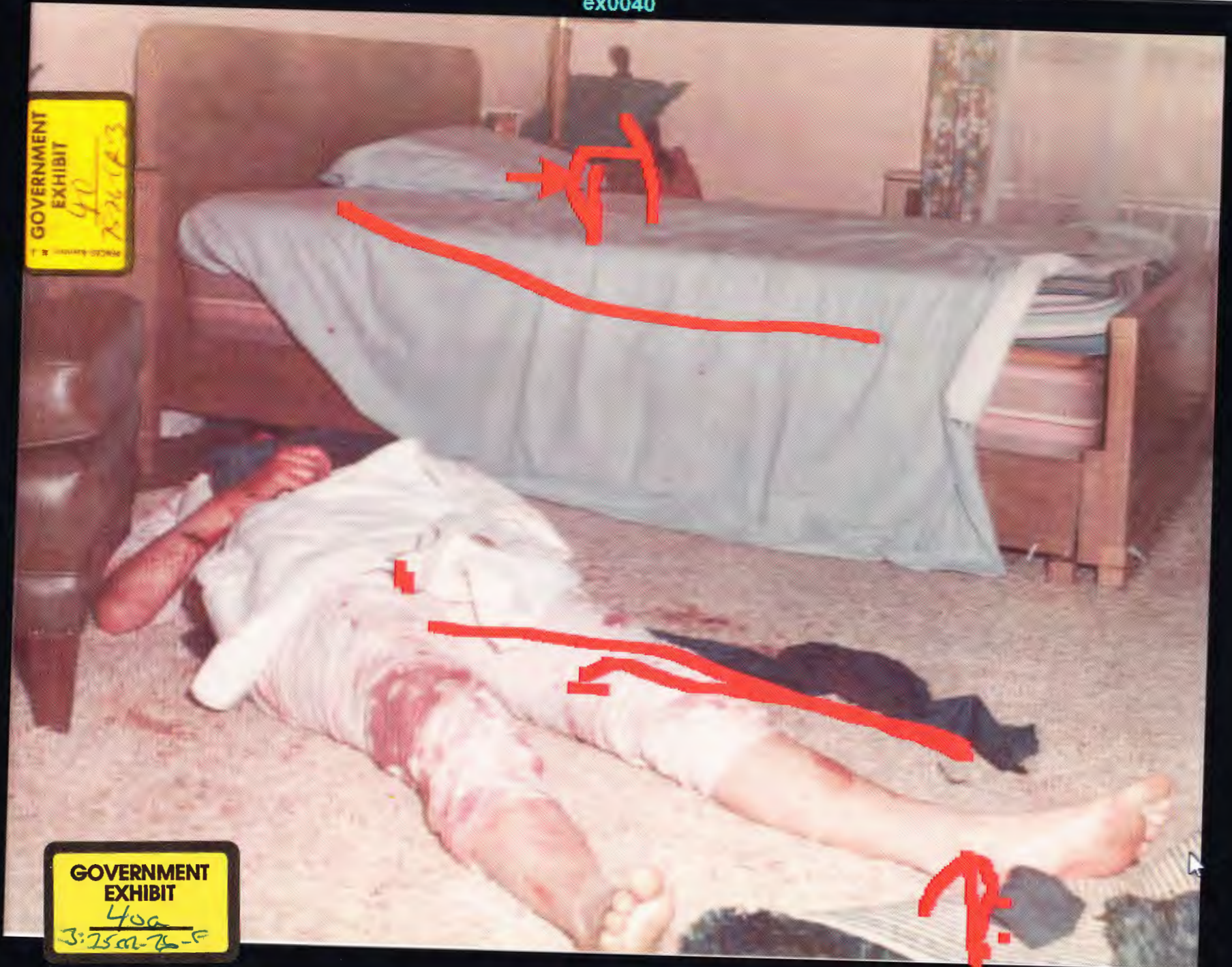


PPH/CAD-Beynon, M. J. **GOVERNMENT EXHIBIT**  
27

GOVERNMENT  
EXHIBIT  
40  
75-26-CP-3  
PENGAD-Bayonne, N. J.



ex0040



GOVERNMENT  
EXHIBIT  
40  
7-26-83

GOVERNMENT  
EXHIBIT  
400  
3:25a-76-F

GOVERNMENT  
EXHIBIT  
44  
7576-003  
PENGAD-Bayonne, N. J.





NGAD - Bayonne, N.J.  
**GOVERNMENT EXHIBIT**  
42  
75-260-3



EXHIBIT  
43  
75-26 CR-3  
PENGAD-Bayonne,



ex0043



GOVERNMENT  
EXHIBIT  
43a  
3:75:00 26-F



PENGAD-Bayonne, N. J.  
GOVERNMENT  
EXHIBIT  
49  
75-26-CR-3



EXHIBIT

GOVERNMENT EXHIBIT  
45  
75-26-1B-3  
PENGAD-Bayonne, N. J.

TOP OFFICIAL USE ONLY



GOVERNMENT  
EXHIBIT  
54  
7576-CA-3  
PENGAD-Bayonne, N. J.



GOVERNMENT  
EXHIBIT  
55  
7576-12-3  
PENGAD-Bayonne, N. J.





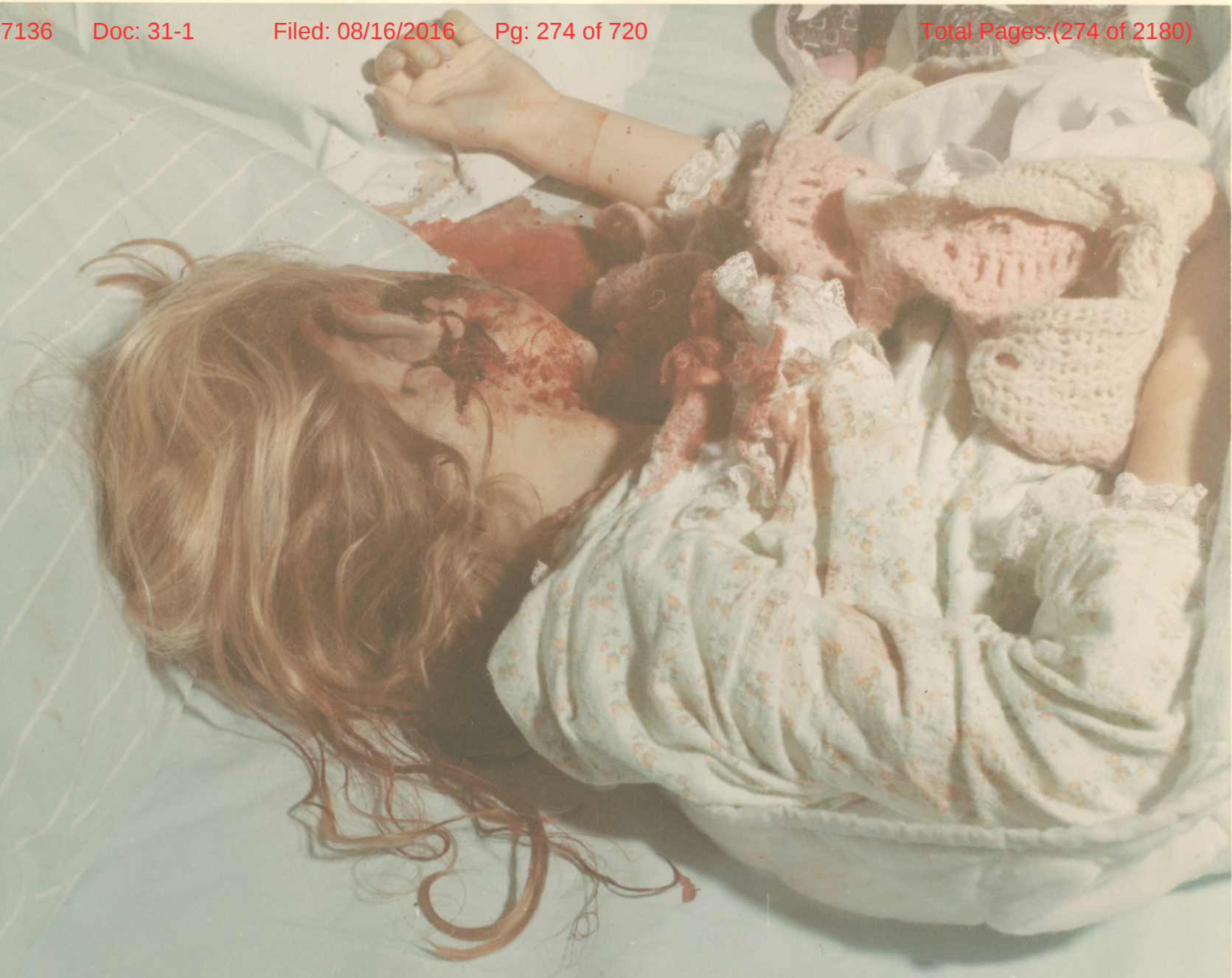
PENGAD-Bayonne, N. J.  
GOVERNMENT  
EXHIBIT  
56  
75-26-CR-3



GOVERNMENT  
EXHIBIT  
67  
75-26-88-3  
PENGLAD-Bayonne, N. J.



GOVERNMENT  
EXHIBIT  
58  
75-26-CP-3  
PENGLAD-Bayonne, N. J.



PERICAD-Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
59  
75-26 CR-3



GOVERNMENT EXHIBIT  
P7

GOVERNMENT EXHIBIT  
62  
75-76-CF-3  
PENGAID-Bayonne, N. J.



GOVERNMENT  
EXHIBIT  
64  
75-26-CR-3  
PEN.GAD-Bayonne, N. J.





FOR OFFICIAL USE ONLY

PENGAD-Bayonne, N. J.  
75-16-CR-3  
65  
GOVERNMENT  
EXHIBIT

PEIGAD-Bayonne, N.J. (Gov. 15-7136)  
**GOVERNMENT EXHIBIT**  
70  
TS26-CP3





FOR OFFICIAL USE ONLY

GOVERNMENT  
EXHIBIT  
71  
15-7136-103



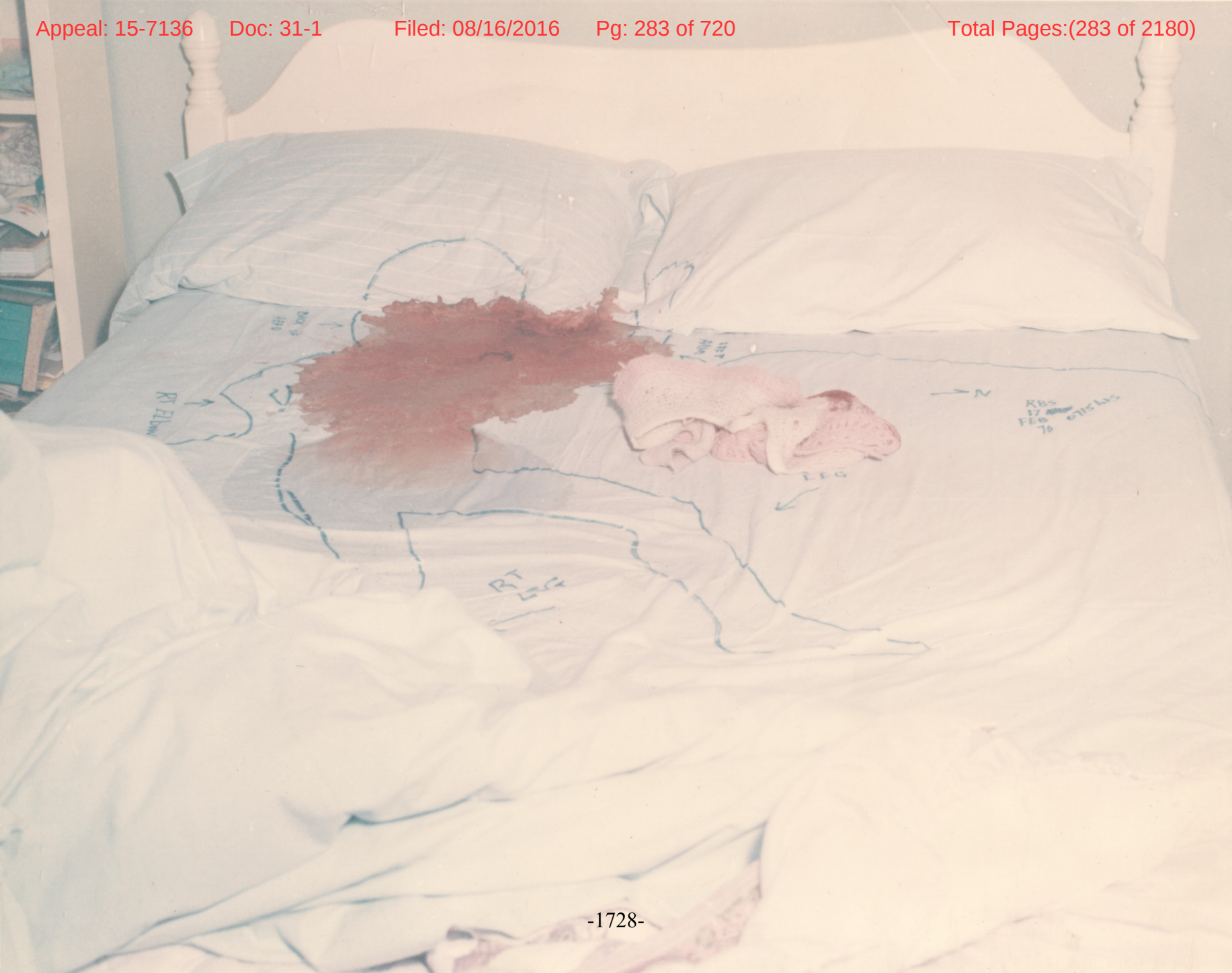
ex0056

ex0071



GOVERNMENT  
EXHIBIT  
72  
75-26-12  
PENCAD-Byonne, M. J.





PERGAD-Bayonne, N. J.  
**GOVERNMENT EXHIBIT**  
74  
75-76-2-3



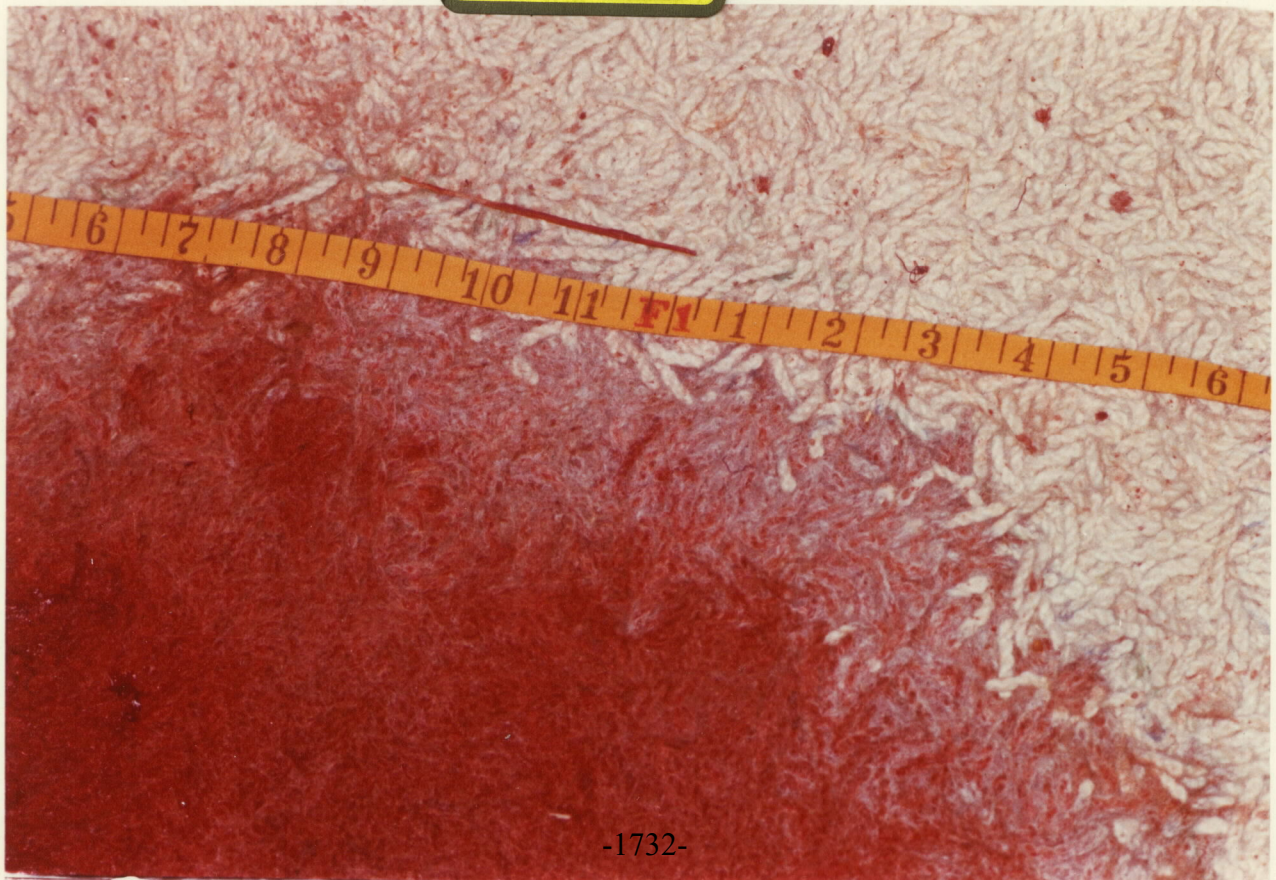
PERCQAD-Bayonne, N.J.  
**GOVERNMENT EXHIBIT**  
75  
75-26-CR-3

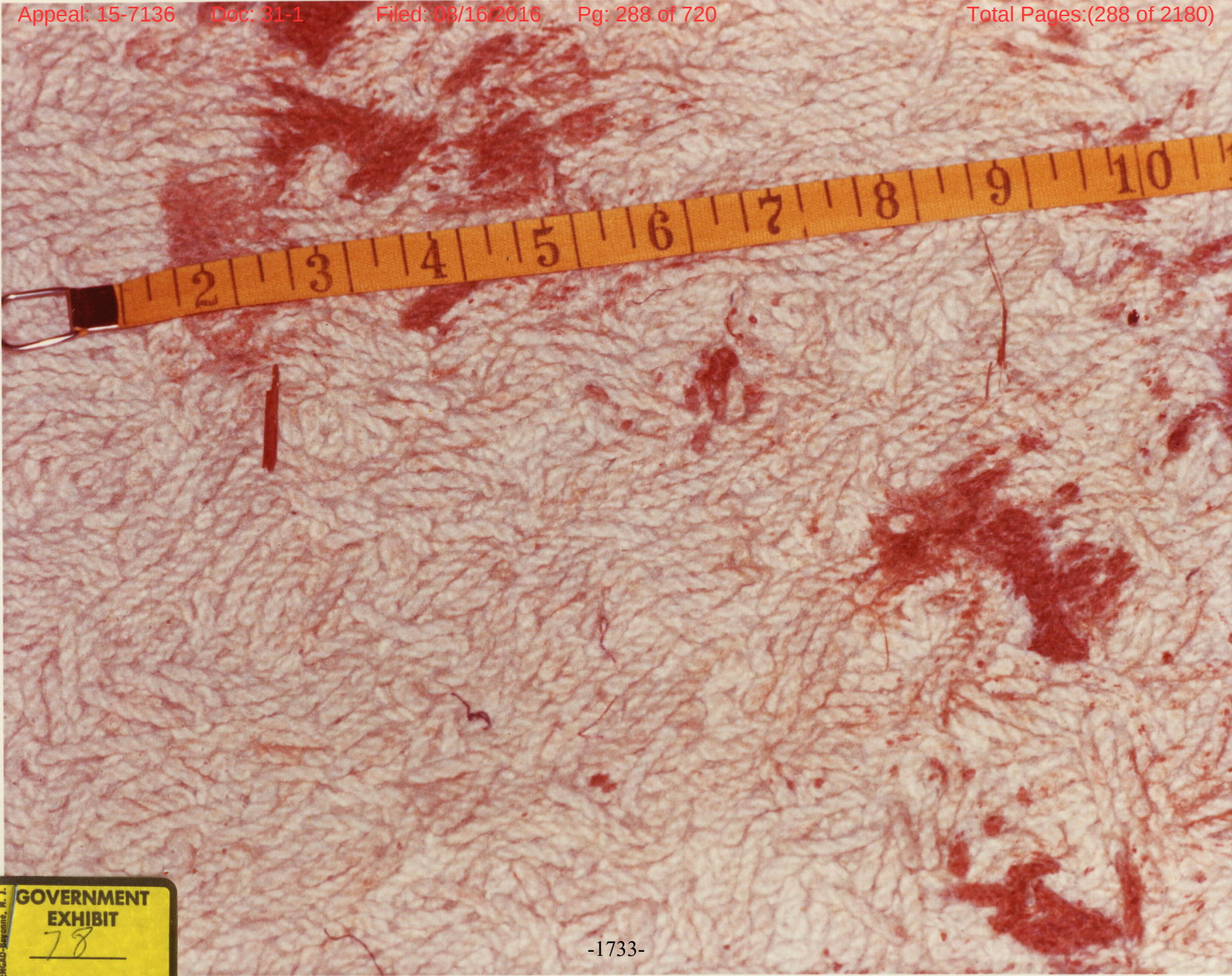


PERICAD-Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
76  
15-76-Q-3



PENGAD-Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
77  
75-26 C103





PERCLO-Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
78



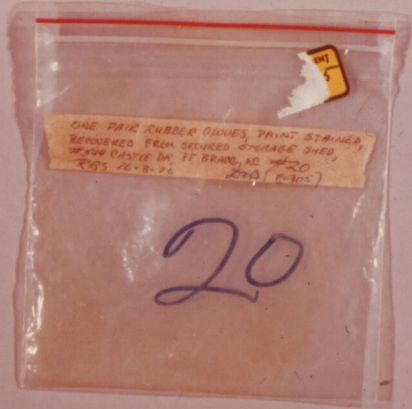
PENICAP-Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
80  
75-76-02-3



GOVERNMENT  
EXHIBIT  
871  
75-16-02-3  
PENGAD-Bayonne, N. J.



PERICAD-Bayonne, N.J.  
**GOVERNMENT EXHIBIT**  
100  
75-26-CR-3



GOVERNMENT  
EXHIBIT  
F10-98-56  
F10-98-56  
FENGAD-Beyonce, K. J.



GOVERNMENT EXHIBIT 75-26-002 211

FOR OFFICIAL USE ONLY



ex0211



GOVERNMENT EXHIBIT  
211a  
3:75-11-26-F

GOVERNMENT EXHIBIT  
211a  
3:75-11-26-F

FOR OFFICIAL USE ONLY

GOVERNMENT  
EXHIBIT  
212  
75-26-00-3  
PENGAD-Bayonne, N.J.



GOVERNMENT EXHIBIT  
214  
75-26-R-3

EXHIBIT

FOR OFFICIAL USE ONLY

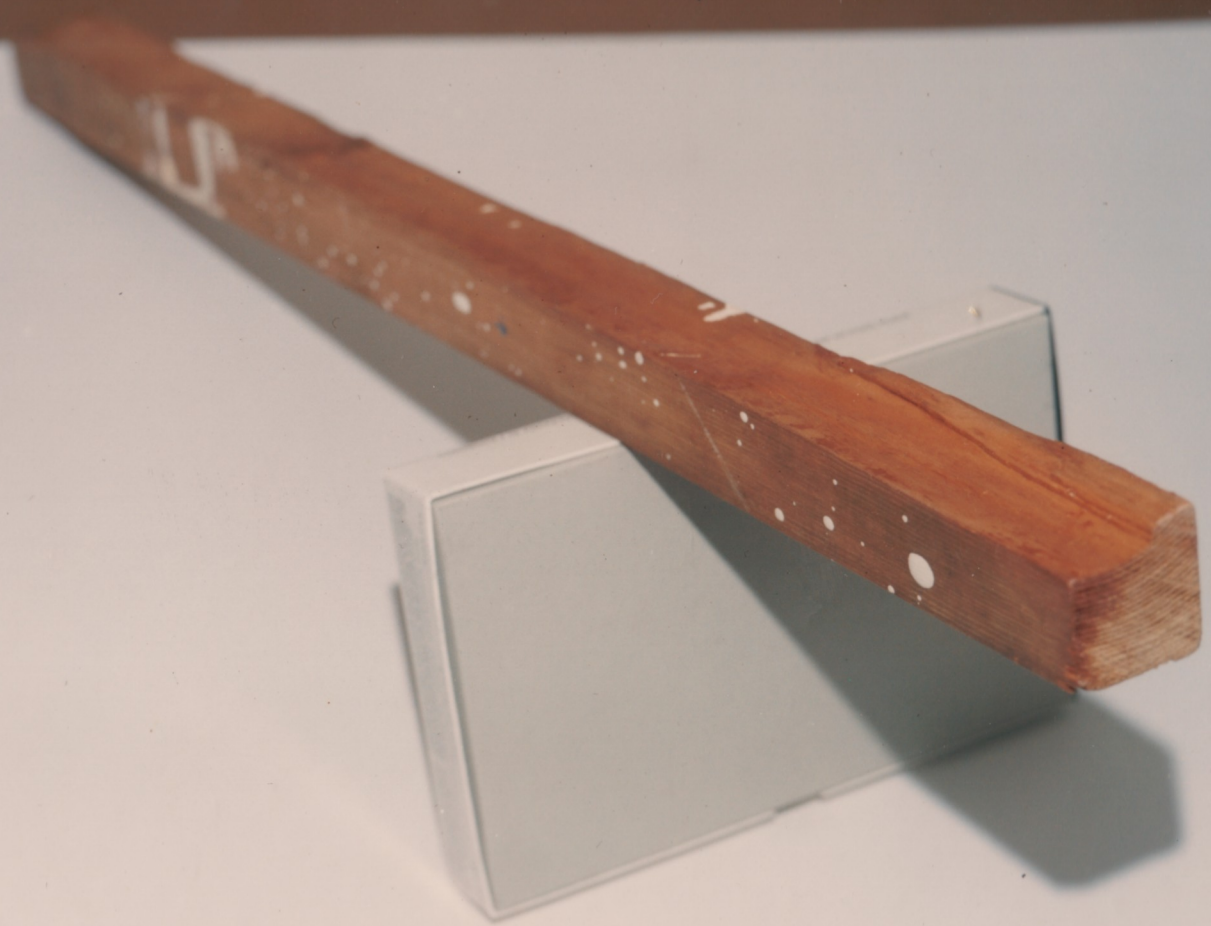


-1741-

71-CID011-00015



PERCIB - Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
422  
75'26-CR-3



Piece of wood 31 3/4" x 1 1/4" x 1 1/2" GA D-P-C-PP-82-70 Hoot

PENGAD - Bayonne, N.J.  
**GOVERNMENT  
EXHIBIT**  
424  
75-2642-3

Ex. A-12  
P-FA-D-C-FP-82-70R24  
DOB.

CID LAB FT GORDON GA  
PHOTO LOG NO  
285-71

HEAD

Ex. A.  
DOB.

PERIOD: Beyond, N. J.  
**GOVERNMENT EXHIBIT**  
 425  
 75-26-4B3

285.71  
 PHOTO LOG NO  
 CID LAB FT GORDON GA



PENGAD - Bayonne, N. J.  
**GOVERNMENT EXHIBIT**  
 428  
 75-26-023

1 2 3 4 5 6 7  
 P-C-FP-82-70  
 23 March 70  
 32 1 2 3

Ex A

Ex. A-4

-1745-

FOR OFFICIAL USE ONLY

PENGAD Bayonne, N.J.  
**GOVERNMENT  
EXHIBIT**  
430  
75-26-CR-3

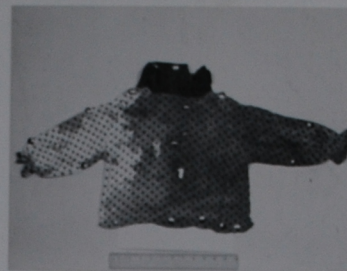


A-A  
E

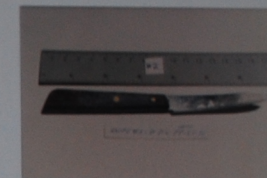
**Ex. 273 [D-212] , (Q-4), KRISTEN'S PAJAMA TOP**

FRONT VIEW

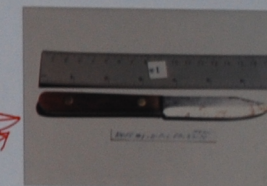
BACK VIEW



**"GENEVA FORGE"  
Ex. 311 (B-1,Q-1)**



**"OLD HICKORY"  
Ex. 313 (B-2,Q-2)**

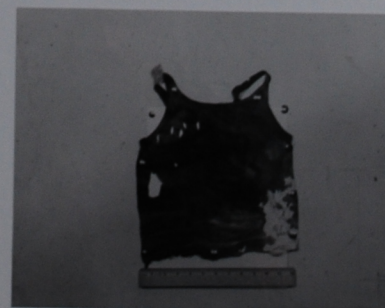
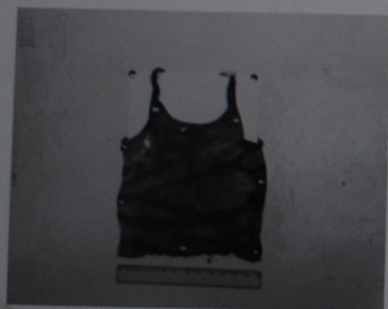


PUNCTURES	<del>0</del> 0	0
CUTS	18	7

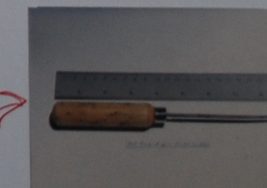
**Ex. 275 [D-212],(Q-7), KRISTEN'S T SHIRT**

FRONT VIEW

BACK VIEW



**ICE PICK  
Ex. 312 (C,Q-3)**



PUNCTURES	7	4
CUTS	3	6



PERCUDO-Bayonina, Jr. | **GOVERNMENT EXHIBIT**  
607  
75-26-CR-3





GOVERNMENT  
EXHIBIT  
608A  
75-26-CE3





PENGLAD-Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
610  
75-26-CP3



PERICAD-Bayonne, N. J.  
GOVERNMENT  
EXHIBIT  
611  
75-26-12-3



PERIOD-Bygone 1. **GOVERNMENT EXHIBIT**  
612  
75-26-OR-3



638

# ABO BLOOD FACTORS

<b>FAMILY MEMBER</b>	<b>GROUP</b>	<b>ANTIBODY</b>	<b>ANTIGEN</b>
<b>COLETTE</b>	<b>A</b>	<b>ANTI B</b>	<b>A</b>
<b>KIMBERLY</b>	<b>AB</b>	<b>NONE</b>	<b>AB</b>
<b>JEFFREY</b>	<b>B</b>	<b>ANTI A</b>	<b>B</b>
<b>KRISTEN</b>	<b>O</b>	<b>ANTI A AND ANTI B</b>	<b>H</b>

# SUMMARY OF BLOOD ANALYSES









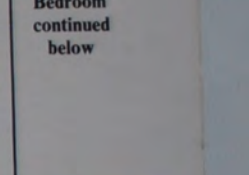
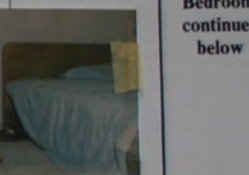
## MASTER BEDROOM












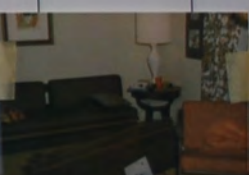
COURT EXHIBIT NUMBER	LOCATION EXHIBIT NUMBER DESCRIPTION	STAIN NUMBER +	CRUST ANTIBODY	ABSORPTION-ELUTION ANTIGEN/FACTOR	CONCLUSION	SAME GROUP AS: +	CONSISTENT WITH SAME GROUP AS:	INCONSISTENT WITH GROUP OF:	
103	Pile of bedding Ex. [D-211] (Q-15) Blue sheet	1	anti B		Ind A		Colette	Kim, Jeff	
		2	anti B		Ind A		Colette	Kim, Jeff	
		3	anti B		Ind A		Colette	Kim, Jeff	
		4	anti B		Ind A		Colette	Kim, Jeff	
		5	anti B		Ind A		Colette	Kim, Jeff	
		6	anti B		Ind A		Colette	Kim, Jeff	
		7	anti B		Ind A		Colette	Kim, Jeff	
		8	anti B		Ind A		Colette	Kim, Jeff	
		9	anti B		Ind A		Colette	Kim, Jeff	
		10	anti B		Ind A		Colette	Kim, Jeff	
		11	NR		AB	AB	Kimberly		Colette, Jeff, Kris
		12	anti B		Ind A		Colette		Kim, Jeff
		13	NR		AB	AB	Kimberly		Colette, Jeff, Kris
		14	anti B		Ind A		Colette		Kim, Jeff
		15	anti B		A	A	Colette		Kim, Jeff, Kris
		16	anti B		Ind A		Colette		Kim, Jeff
		17	anti B		Ind A		Colette		Kim, Jeff
		18	anti B		Ind A		Colette		Kim, Jeff
		19	anti B		Ind A		Colette		Kim, Jeff
		20	anti B		Ind A		Colette		Kim, Jeff
		21	anti B		Ind A		Colette		Kim, Jeff
		22	anti B		Ind A		Colette		Kim, Jeff
		23	anti B		Ind A		Colette		Kim, Jeff
		24	anti B		Ind A		Colette		Kim, Jeff
		25	anti B		Ind A		Colette		Kim, Jeff
		26	anti B		Ind A		Colette		Kim, Jeff
		27	anti B		Ind A		Colette		Kim, Jeff
		28	anti B		Ind A		Colette		Kim, Jeff
105	Inside sheet Ex. I-21 (25277) Piece of rubber		anti B	A	A	Colette		Kim, Jeff, Kris	
104	Inside sheet Ex. [D-229] (Q-110) Multi-colored bedspread								
108	Vial [D-229(3)]		anti B	A	A	Colette		Kim, Jeff, Kris	

GWC(1) CSC  
GWC(2) GWC(3)

LOCATION OF THREADS & YARNS IDENTICAL TO JEFFREY MAC DONALD'S TORN BLUE PAJAMA TOP

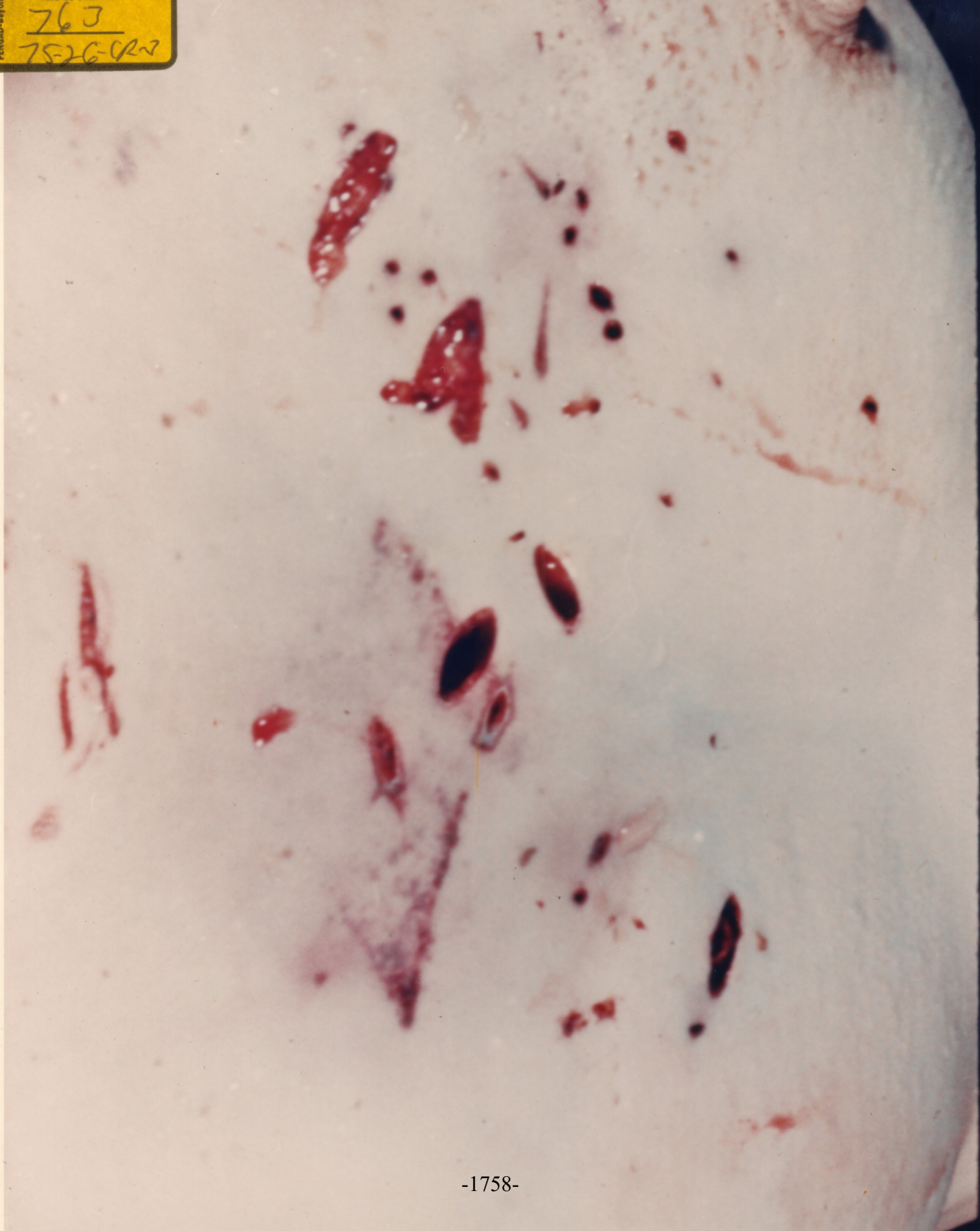
ABO BLOOD GROUP	OUTSIDE REAR				EAST (MASTER) BEDROOM										
	COLETTE'S GROUP "A"	KIMBERLY'S GROUP "AB"	JEFFREY'S GROUP "B"	KRISTEN'S GROUP "O"	EX. 308 AIG-14 PIECE OF WOOD 31 3/16" x 1 5/8" x 1 1/2" ITEMS REMOVED FROM EX. A EX. 307 [E-204] (Q-88)	EX. 123 [D-23] (Q-84) "SPLINTERS AND THREADS FROM NEAR LARGEST BLOODSTAIN"	EX. 102[D-232] (Q-13) BLUE MATERIAL (SHAPE LIKE A POCKET)	EX. 118 [E-14] (Q-85) "FIBERS FROM UNDERSIDE OF THROW RUG"	EX. 325 [E-301] (Q-78) DEBRIS FROM VICINITY OF LEFT HAND AND ARM IN MASTER BEDROOM	EX. 126 [E-24] (Q-81) DEBRIS FROM UNDER HEAD OF CADAVER	EX. 327[E-303] (Q-79) DEBRIS FROM UNDER TRUNK, AND LEGS AREA OF RUG UNDER BODY	EX. 324 [E-302] (Q-101) FIBERS FROM RUG AREA OF NORTH CORNER OF FOOTBOARD	EX. 324 [E-300] (Q-88) BLUE FIBER FOUND ON FLOOR BY EAST WALL BY HEADBOARD OF BED	EX. 119 [E-194] (Q-85) DEBRIS FROM SHEET ON BED	
EX. 101 [D-210] (Q-12) TORN BLUE PAJAMA TOP FOUND ON COLETTE MAC DONALD'S CHEST															
A. BLOOD GROUPS PRESENT															
B. COMPOSITION															
1. FABRIC-BLUE POLYESTER/COTTON															
2. IN-BEAM THREAD-PURPLE COTTON															
3. CUFF'S DECORATION (a) WHITE COTTON BEADING (b) THREAD BLUE-BLACK COTTON															
4. NO POCKET															
1. PURPLE COTTON THREADS						x 2	x 3		x 3	x 12	x 3	x 15	x 2	x 1	x 15
2. BLUE POLYESTER/COTTON YARNS															
3. BLUE/BLACK COTTON THREADS															2 FIBERS

East (Master) Bedroom continued below

ABO BLOOD GROUP	EAST (MASTER) BEDROOM (Continued)				SOUTH (KIMBERLY'S) BEDROOM			NORTH (KRISTEN'S) BEDROOM			LIVING ROOM				
	COLETTE'S GROUP "A"	KIMBERLY'S GROUP "AB"	JEFFREY'S GROUP "B"	KRISTEN'S GROUP "O"	EX. 121 [E-204] (Q-87) DEBRIS FROM PILLOW CASE ON BED	EX. 187 [E-238] (Q-86) DEBRIS FROM MULTICOLORED BEDSPREAD	EX. 348 [D-118] (Q-122) SPLINTER AND DEBRIS FROM NORTH PILLOW	EX. 345 [E-116] (Q-121) DEBRIS FROM PULLED BACK BEDDING	EX. 347 [E-119] (Q-123) DEBRIS FROM BOTTOM SHEET OF BED	EX. 356 [E-123] (Q-86) DEBRIS FROM PURPLE BEDCOVER	ROOM TOTAL	COUCH	RUG	FLOOR	ROOM TOTAL
EX. 101 [D-210] (Q-12) TORN BLUE PAJAMA TOP FOUND ON COLETTE MAC DONALD'S CHEST															
A. BLOOD GROUPS PRESENT															
B. COMPOSITION															
1. FABRIC-BLUE POLYESTER/COTTON															
2. IN-BEAM THREAD-PURPLE COTTON															
3. CUFF'S DECORATION (a) WHITE COTTON BEADING (b) THREAD BLUE-BLACK COTTON															
4. NO POCKET															
1. PURPLE COTTON THREADS					x 4	x 2	x 4	x 1	x 2	x 10					x 1
2. BLUE POLYESTER/COTTON YARNS															
3. BLUE/BLACK COTTON THREADS															



PERCADO-Reynolds, N. J.  
**GOVERNMENT  
EXHIBIT**  
763  
75-26-027



GOVERNMENT  
EXHIBIT  
764  
15-26-CA-3



**GOVERNMENT EXHIBIT**  
768  
75-26-CR-3





75-26-00013  
771  
75-26-02-3  
GOVERNMENT  
EXHIBIT

GOVERNMENT  
EXHIBIT  
272  
75-2602-3



PERICARDIUM, N. J.  
GOVERNMENT  
EXHIBIT  
776  
75-268R-3



PERGALD-Bayonne, N. J.  
GOVERNMENT  
EXHIBIT  
777  
75-26-CR-3



EXHIBIT

GOVERNMENT  
EXHIBIT  
797A





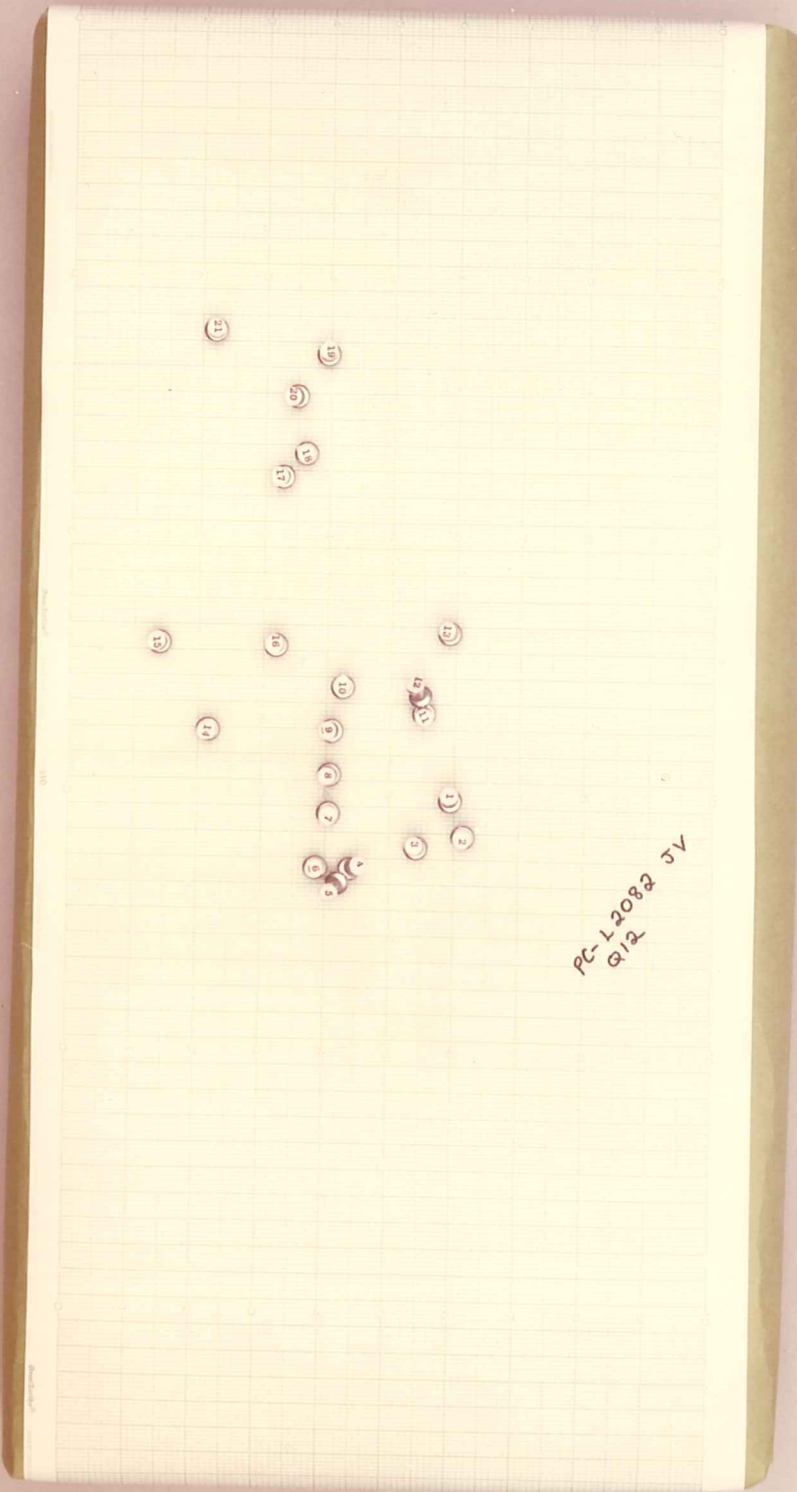




PENGAD - Bayonne, NJ  
**GOVERNMENT EXHIBIT**  
291  
75-26-CR3



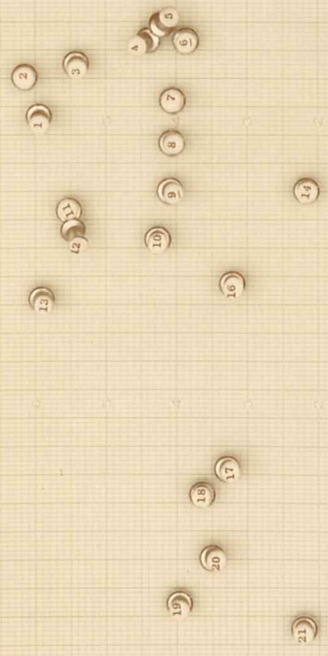
**GOVERNMENT**  
**EXHIBIT**  
792  
3:75-CR-26-F



**GOVERNMENT**  
**EXHIBIT**  
793  
**3:75-CR-26-F**



70 2802

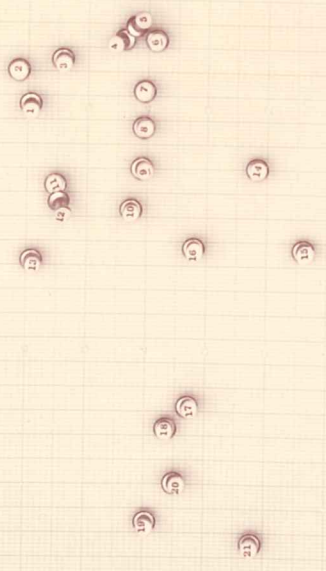


**GOVERNMENT  
EXHIBIT  
794**  
3:75-CR-26-F

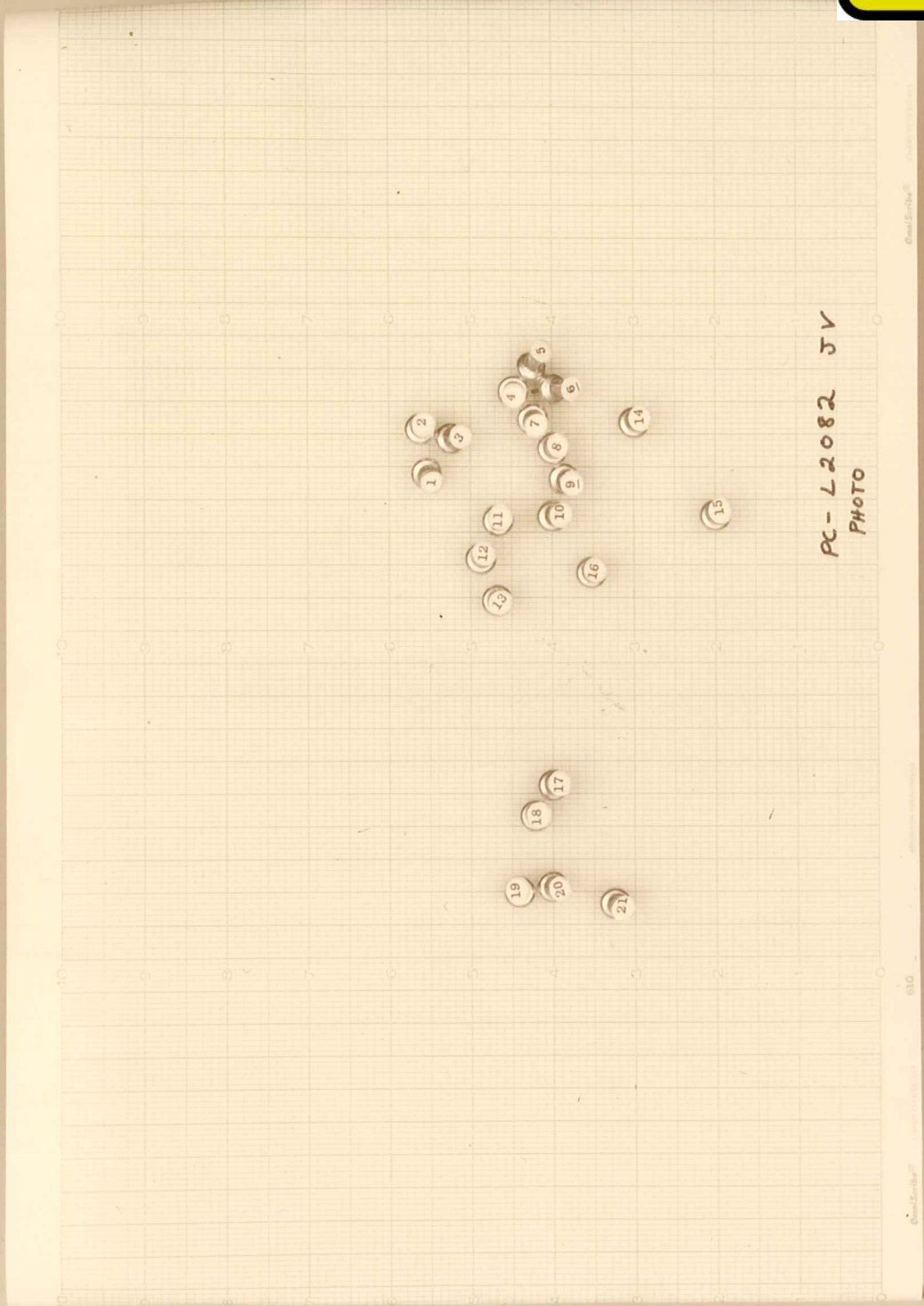


PC-L2082 JV  
PHOTO

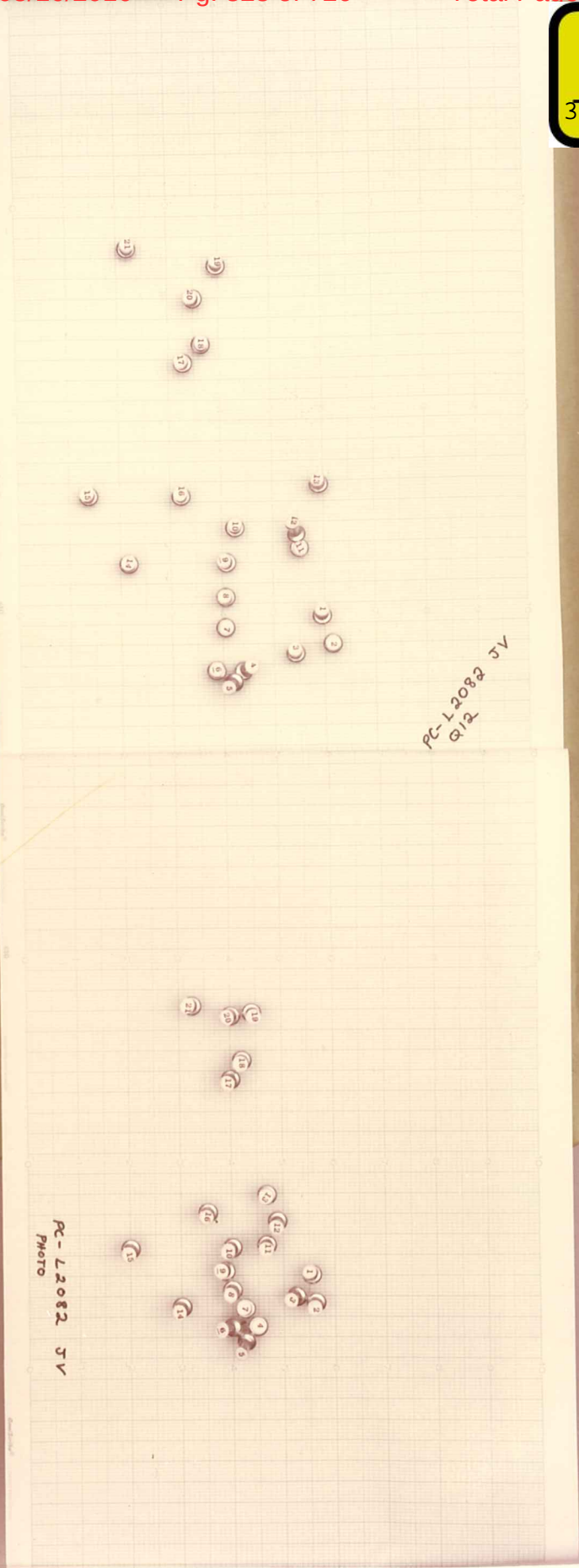
PC-L2082 JV



**GOVERNMENT**  
**EXHIBIT**  
795  
3:75-CR-26-F



GOVERNMENT  
EXHIBIT  
796  
3:75-CR-26-F





PENGAD - Bayonne, N. J.  
**GOVERNMENT  
EXHIBIT**  
808  
7576-CR-3





Mc Donald  
child arger

GOVERNMENT  
EXHIBIT  
811  
75-26-CR-3



PENGAD - Biregional - J.  
**GOVERNMENT  
EXHIBIT**  
812  
25-76-023

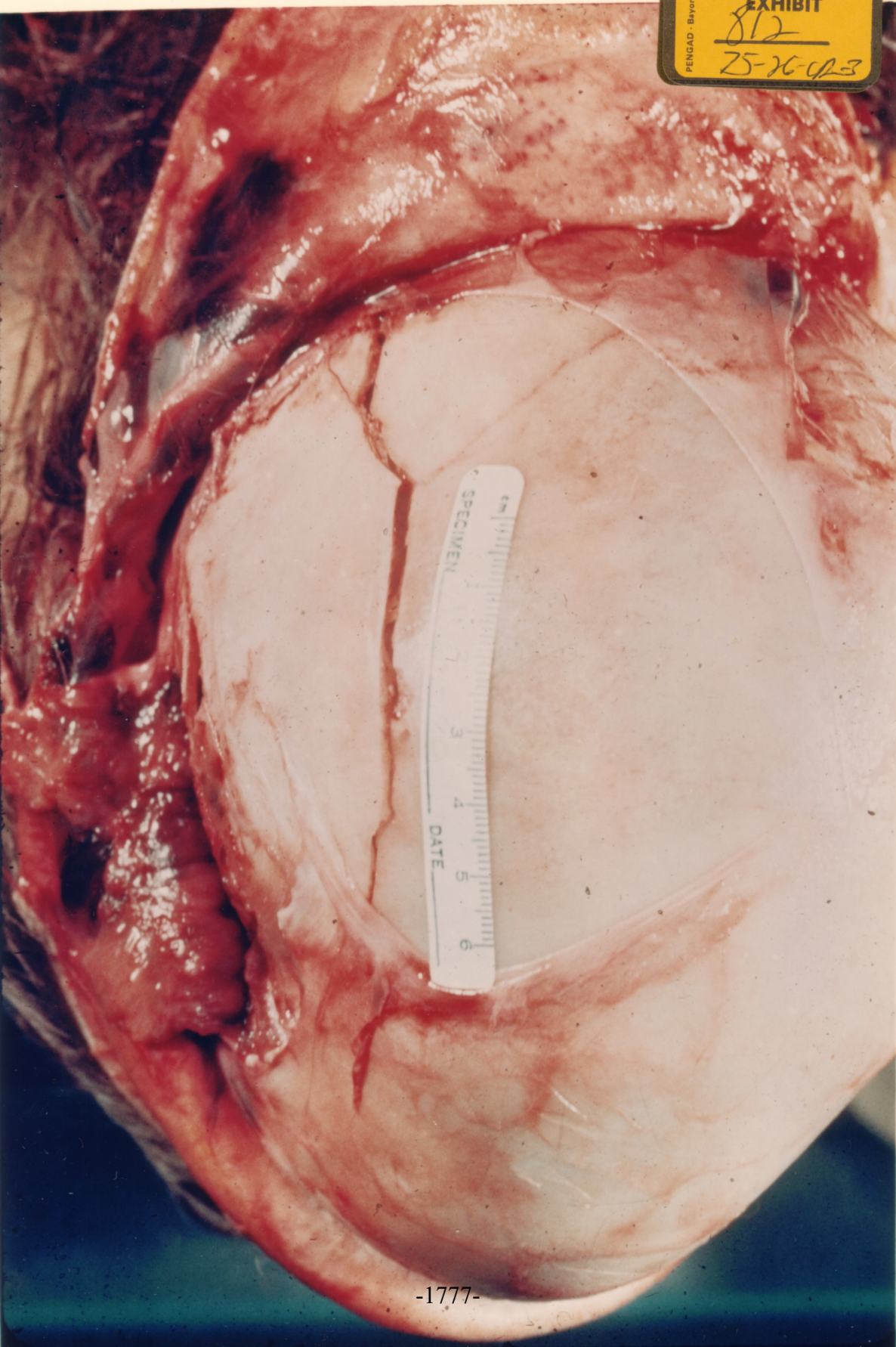
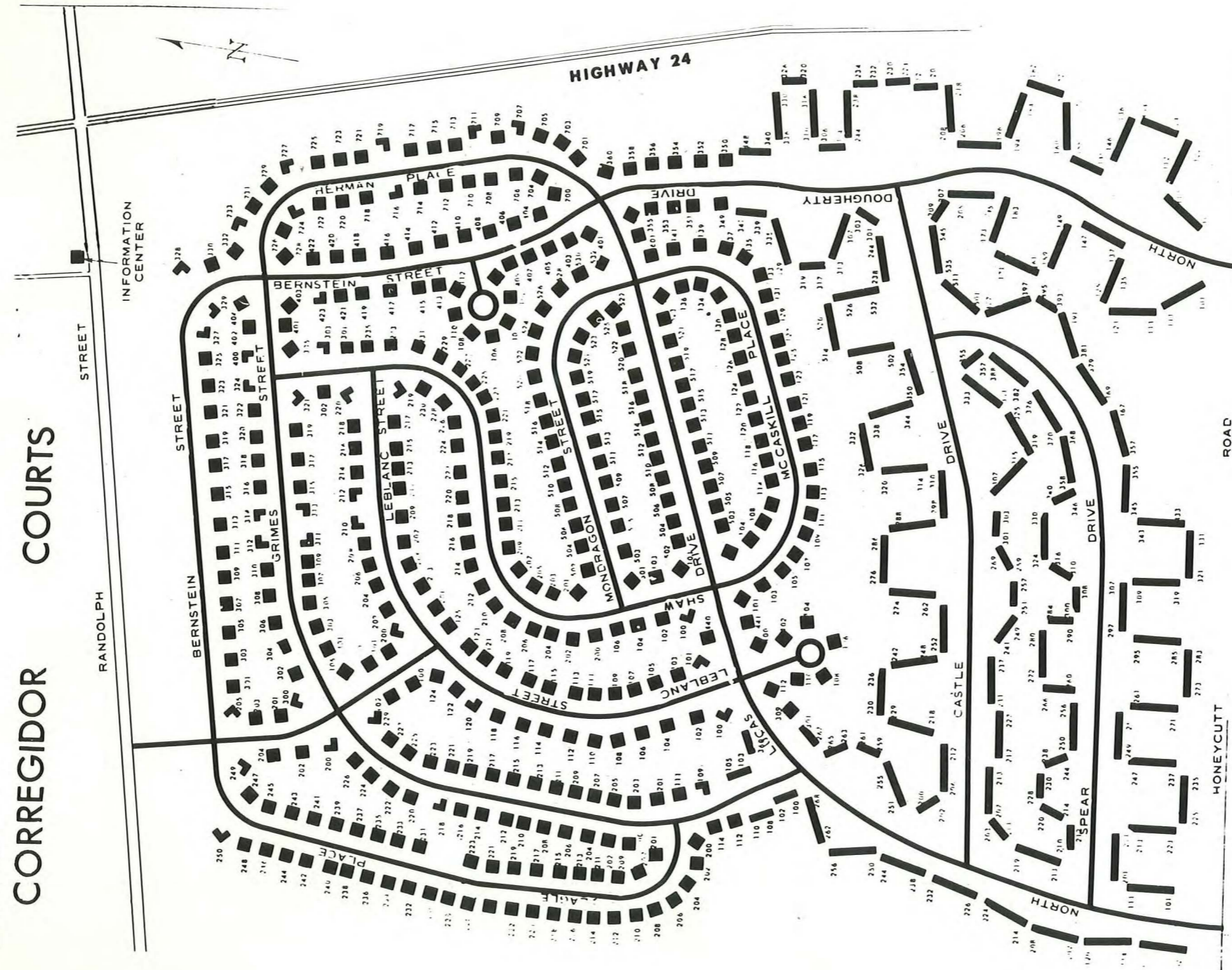




PHOTO-EXPRESS, N. J.  
**GOVERNMENT  
EXHIBIT**  
952  
75-26-C123



968



## Items found in pile of bedding on floor of master bedroom

EX. 103 [D-211] (Q-15)  
SHEET

### 1. BLOODSTAINS:

A = COLETTE'S GROUP  
AB = KIMBERLY'S GROUP

### 2. BLOOD PATTERNS

- a. EXTENSIVE SPATTERS
- b. CONTACT STAINS
  - (1) AREAS A & B = RIGHT SLEEVE OF BLUE PAJAMA TOP (EX. 101)
  - (2) AREAS C & D = LEFT AND RIGHT HAND PRINTS
  - (3) AREA E = BARE SHOULDER PRINT & TORN LEFT SLEEVE OF EX. 101
  - (4) AREA F = LEFT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)
  - (5) AREA G = RIGHT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)

### 3. DEBRIS REMOVED FROM SHEET

- a. PIECE OF RUBBER (EX. 105) BEARING TYPE A, (COLETTE'S TYPE) BLOOD = TRACE ELEMENTS IN PERRY BRAND PURE LATEX DISPOSABLE GLOVES FOUND UNDER SINK IN KITCHEN



EX. 104 [D-229] (Q-110)  
MULTICOLORED BEDSPREAD

### 1. BLOODSTAINS:

A = COLETTE'S GROUP  
EX. 107 (Q-96)

### 2. DEBRIS REMOVED FROM BEDSPREAD

- a. PURPLE COTTON THREADS = PURPLE COTTON SEAM THREADS OF BLUE PAJAMA TOP FOUND ON COLETTE MAC DONALD
- b. HAIR WHICH MICROSCOPICALLY MATCHES HEAD HAIR (EX.388) OF COLETTE MAC DONALD. THIS HAIR WAS FOUND ENTANGLED WITH ONE OF THE PURPLE COTTON THREADS



**SOUTH BEDROOM  
KIMBERLY MAC DONALD--  
ABO GROUP AB**

**EX-346 [D-118] (Q-122)**

SPLINTER and DEBRIS from NORTH  
PILLOW, SPLINTER, BEARING HUMAN  
BLOOD = EX -306 [A] (Q-14)  
PURPLE COTTON THREADS = PURPLE  
COTTON SEAM THREADS of BLUE  
PAJAMA TOP  
BLUE COTTON POLYESTER = BLUE  
COTTON POLYESTER of PAJAMA TOP

**EX-356 [E-123] (Q-86)**

DEBRIS from PURPLE BEDCOVER  
PURPLE COTTON THREADS = PURPLE  
COTTON SEAM THREADS of  
BLUE PAJAMA TOP  
BLUE COTTON/POLYESTER = BLUE  
COTTON/POLYESTER OF PAJAMA TOP

**EX-349 [D-136]**

STAINS from NORTH WALL, SOUTH  
BEDROOM, SEVEN FEET HIGH over BED  
TYPE A, (COLETTE'S TYPE)

**EX-345 [E-116] (Q-121)**

DEBRIS from PULLED BACK BEDDING  
SPLINTER = EX-306 [A] (Q-14)  
PURPLE COTTON THREAD = PURPLE  
COTTON SEAM THREAD of BLUE  
PAJAMA TOP  
BLUE COTTON POLYESTER = BLUE  
COTTON POLYESTER of PAJAMA TOP

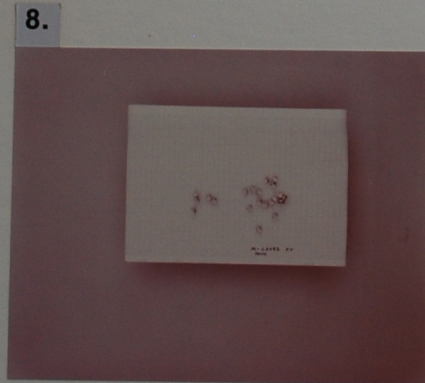
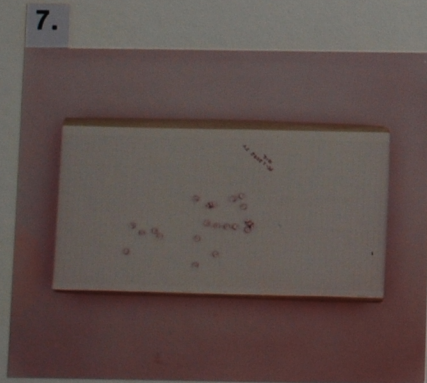
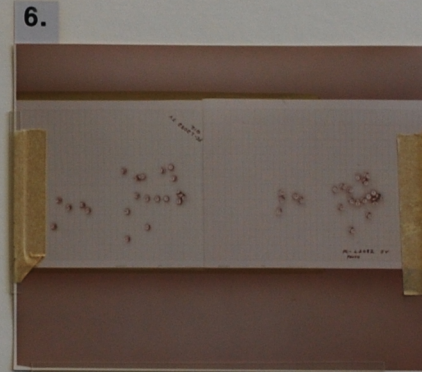
**EX-347 [E-119] (Q-123)**

DEBRIS from BOTTOM SHEET of BED  
SPLINTER = EX-306 [A] (Q-14)  
PURPLE COTTON THREAD = PURPLE  
COTTON SEAM THREADS of  
BLUE PAJAMA TOP

**EX-348 [D-134]**

STAINS from NORTH WALL  
SOUTH BEDROOM  
TYPE AB (KIMBERLY'S TYPE)





PENGAD - Bayonne, NJ, I.

BACK

Q12 (back)  
undersleeve seam  
(front)

fold

fold

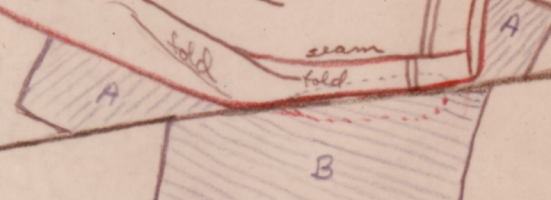
seam

fold

fold

fold

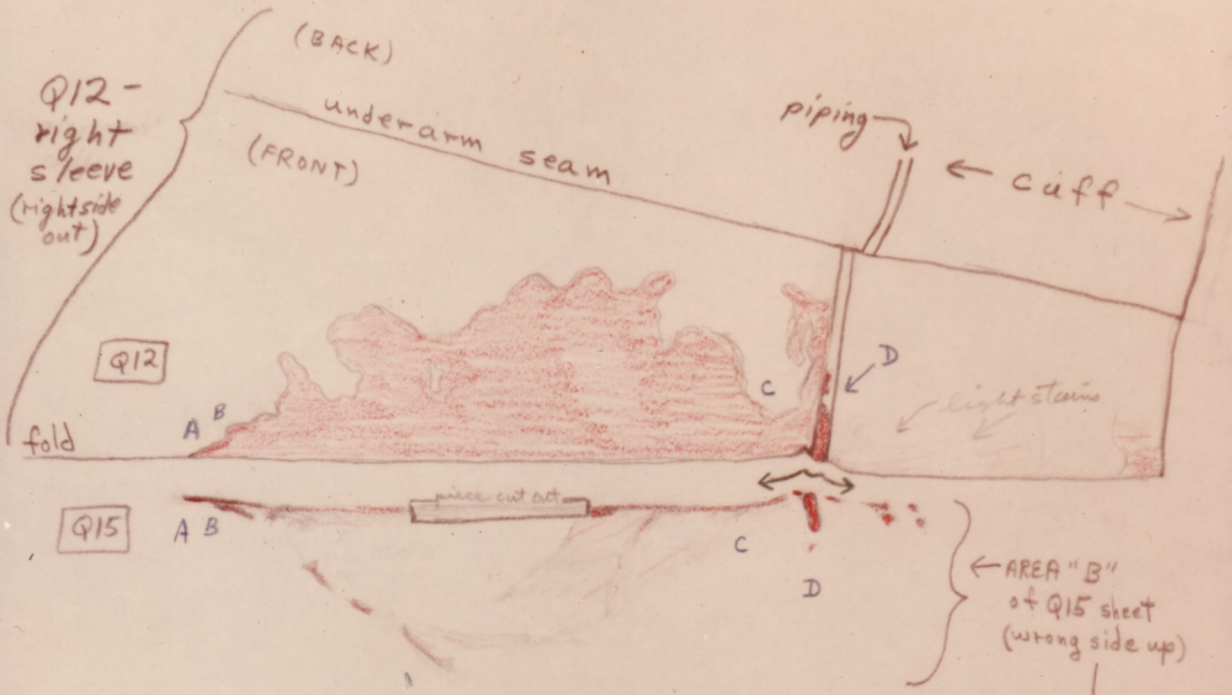
Q15



Area "B" stain on Q15 folded up to area "A" stain  
- together these stains correspond in shape to the lower bottom front area of the Q12 rt. sleeve, if it is placed on Q15 sheet in above manner and the sleeve extending partially over area B



GOVERNMENT EXHIBIT 1078 752643



Areas A, B, C + D correspond in both  
 Distance from A to D (approx. 4") is the same

"Curvature"  $\longleftrightarrow$  (caused by piping to sleeve fabric)  $\xrightarrow{x\text{-sect}}$  thickness in relation  
 at the piping area is the same  
 - pressure from an arm against this would tend to make this type impression

"Piping" (D) corresponds in both

$\therefore$  above area of the Q12 rt. sleeve could have made the "area B" impression on the Q15 sheet, in the position indicated above



TRANSCRIPTION OF INTERVIEW

OF

CPT. JEFFREY R. MACDONALD

6 APRIL 1970

PERSONS PRESENT:

CPT. JEFFREY R. MACDONALD  
CW3 FRANZ J. GREBNER, CHIEF, CID  
WO1 ROBERT B. SHAW, CRIM. INVES.  
SP7 WILLIAM F. IVORY, CRIM. INVES.

VOLUME I

AT: CID OFFICE  
FORT BRAGG, N.C.

*6X1116 Type  
1135 transcript*



**Court  
Reporting  
Services**

P.O. Box 1729  
Raleigh, N.C. 27602  
(919) 832-4114

2100 Radcliffe Ave.  
Charlotte, N.C. 28207  
(704) 375-5133

P.O. Box 110  
Laurel Springs, N.C. 28644  
(919) 359-2289

NCNB Bldg.  
Durham, N.C. 27702  
(919) 683-8656

1736

1 MR. MACDONALD

PAGE 2

2 (TRANSCRIPTION OF TAPE 1)

3 MR. GREBNER: WE'VE DONE A GREAT DEAL OF WORK AND COLLECTED  
4 A LOT OF INFORMATION (INAUDIBLE) AND I  
5 WANT TO HEAR YOUR STORY. YOU'VE TOLD IT TO OTHER  
6 PEOPLE (INAUDIBLE) BUT, AGAIN, YOU'VE  
7 (INAUDIBLE) YOU KNOW, AND (INAUDIBLE)  
8 THE INFORMATION MORE CLEARLY.

9 MR. MACDONALD: OKAY.

10 MR. GREBNER: HOWEVER, BEFORE I DO, I WOULD LIKE TO ADVISE  
11 YOU OF YOUR RIGHTS.

12 MR. MACDONALD: IT'S SOUNDING VERY OMINOUS.

13 MR. GREBNER: YOU HAVE THE RIGHT TO REMAIN ABSOLUTELY  
14 SILENT. YOU DON'T HAVE TO ANSWER ANY QUESTIONS OR DO  
15 ANYTHING. HOWEVER, IF YOU DO ANSWER ANY QUESTIONS OR  
16 DO ANYTHING THAT WOULD TEND TO INCRIMINATE YOU, THAT  
17 COULD BE USED AGAINST YOU.

18 NOW, YOU HAVE THE RIGHT TO CONSULT WITH COUNSEL  
19 BEFORE ANSWERING ANY QUESTIONS; AND THAT CAN BE  
20 CIVILIAN COUNSEL OR MILITARY COUNSEL. CIVILIAN, IT  
21 WOULD BE AT YOUR OWN EXPENSE. IF IT'S MILITARY, IT  
22 CAN BE OF YOUR OWN CHOOSING.

23 EVEN IF YOU DECIDE TO ANSWER QUESTIONS AT THIS  
24 TIME, THAT DOESN'T MEAN THAT YOU CAN'T STOP AT ANY  
25 TIME.

1 MR. MACDONALD

PAGE 3

2 NOW, DO YOU DESIRE COUNSEL AT THIS TIME?

3 MR. MACDONALD: NO.

4 MR. GREBNER: JUST GO AHEAD AND TELL US YOUR STORY.

5 MR. MACDONALD: LET'S SEE. MONDAY NIGHT MY WIFE WENT TO  
6 BED, AND I WAS READING. AND I WENT TO BED ABOUT---SOMEWHERE  
7 AROUND TWO O'CLOCK. I REALLY DON'T KNOW; I WAS READING  
8 ON THE COUCH, AND MY LITTLE GIRL KRISTY HAD GONE INTO  
9 BED WITH MY WIFE.

10 AND I WENT IN TO GO TO BED, AND THE BED WAS WET.  
11 SHE HAD WET THE BED ON MY SIDE, SO I BROUGHT HER IN HER  
12 OWN ROOM. AND I DON'T REMEMBER IF I CHANGED HER OR NOT;  
13 GAVE HER A BOTTLE AND WENT OUT TO THE COUCH 'CAUSE MY  
14 BED WAS WET. AND I WENT TO SLEEP ON THE COUCH.

15 AND THEN THE NEXT THING I KNOW I HEARD SOME  
16 SCREAMING, AT LEAST MY WIFE; BUT I THOUGHT I HEARD  
17 KIMMIE, MY OLDER DAUGHTER, SCREAMING ALSO. AND I SAT  
18 UP. THE KITCHEN LIGHT WAS ON, AND I SAW SOME PEOPLE AT  
19 THE FOOT OF THE BED.

20 SO, I DON'T KNOW IF I REALLY SAID ANYTHING OR I  
21 WAS GETTING READY TO SAY SOMETHING. THIS HAPPENED REAL  
22 FAST. YOU KNOW, WHEN YOU TALK ABOUT IT, IT SOUNDS LIKE  
23 IT TOOK FOREVER; BUT IT DIDN'T TAKE FOREVER.

24 AND SO, I SAT UP; AND AT FIRST I THOUGHT IT WAS---  
25 I JUST COULD SEE THREE PEOPLE, AND I DON'T KNOW IF I---

1 MR. MACDONALD

PAGE 4

2 IF I HEARD THE GIRL FIRST--OR I THINK I SAW HER FIRST.  
3 I THINK TWO OF THE MEN SEPARATED SORT OF AT THE END OF  
4 MY COUCH, AND I KEEP---ALL I SAW WAS SOME PEOPLE REALLY.

5 AND THIS GUY STARTED WALKING DOWN BETWEEN THE  
6 COFFEE TABLE AND THE COUCH, AND HE RAISED SOMETHING  
7 OVER HIS HEAD AND JUST SORT OF THEN---SORT OF ALL  
8 TOGETHER---I JUST GOT A GLANCE OF THIS GIRL WITH KIND  
9 OF A LIGHT ON HER FACE. I DON'T KNOW IF IT WAS A  
10 FLASHLIGHT OR A CANDLE, BUT IT LOOKED TO ME LIKE SHE  
11 WAS HOLDING SOMETHING. AND I JUST REMEMBER THAT MY  
12 INSTINCTIVE THOUGHT WAS THAT "SHE'S HOLDING A CANDLE.  
13 WHAT THE HELL IS SHE HOLDING A CANDLE FOR?"

14 BUT SHE SAID, BEFORE I WAS HIT THE FIRST TIME,  
15 "KILL THE PIGS. ACID'S GROOVY."

16 NOW, THAT'S ALL---THAT'S ALL I THINK I HEARD  
17 BEFORE I WAS HIT THE FIRST TIME, AND THE GUY HIT ME IN  
18 THE HEAD. SO I WAS KNOCKED BACK ON THE COUCH, AND THEN  
19 I STARTED STRUGGLING TO GET UP, AND I COULD HEAR IT  
20 ALL THEN---NOW I COULD---MAYBE IT'S REALLY, YOU KNOW---  
21 I DON'T KNOW IF I WAS REPEATING TO MYSELF WHAT SHE JUST  
22 SAID OR IF I KEPT HEARING IT, BUT I KEPT---I HEARD,  
23 YOU KNOW, "ACID IS GROOVY. KILL THE PIGS."

24 AND I STARTED TO STRUGGLE UP; AND I NOTICED THREE  
25 MEN NOW; AND I THINK THE GIRL WAS KIND OF BEHIND THEM,



1 MR. MACDONALD

PAGE 5

2 EITHER ON THE STAIRS OR AT THE FOOT OF THE COUCH BEHIND  
3 THEM. AND THE GUY ON MY LEFT WAS A COLORED MAN, AND HE  
4 HIT ME AGAIN; BUT AT THE SAME TIME, YOU KNOW, I WAS  
5 KIND OF STRUGGLING. AND THESE TWO MEN, I THOUGHT, WERE  
6 PUNCHING ME AT THE TIME. THEN I---I REMEMBER THINKING  
7 TO MYSELF THAT---SEE, I WORK OUT WITH THE BOXING GLOVES  
8 SOMETIMES. I WAS THEN---AND I KEPT---"GEEZE, THAT GUY  
9 THROWS A HELL OF A PUNCH," BECAUSE HE PUNCHED ME IN  
10 THE CHEST, AND I GOT THIS TERRIFIC PAIN IN MY CHEST.

11 AND SO, I WAS STRUGGLING, AND I GOT HIT ON THE  
12 SHOULDER OR THE SIDE OF THE HEAD AGAIN, AND SO I TURNED  
13 AND I---AND I GRABBED THIS GUY'S WHATEVER IT WAS. I  
14 THOUGHT IT WAS A BASEBALL BAT AT THE TIME. AND I HAD---  
15 I WAS HOLDING IT. I WAS KIND OF WORKING UP IT TO HOLD  
16 ONTO IT.

17 MEANWHILE, BOTH THESE GUYS WERE KIND OF HITTING  
18 ME, AND ALL THIS TIME I WAS HEARING SCREAMS. THAT'S  
19 WHAT I CAN'T FIGURE OUT, SO---LET'S SEE, I WAS HOLDING---  
20 SO, I SAW THE---AND ALL I GOT A GLIMPSE WAS, WAS SOME  
21 STRIPES. I TOLD YOU, I THINK, THEY WERE E6 STRIPES.  
22 THERE WAS ONE BOTTOM ROCKER AND IT WAS AN ARMY JACKET,  
23 AND THAT MAN WAS A COLORED MAN, AND THE TWO MEN, OTHER  
24 MEN, WERE WHITE.

25 AND I DIDN'T REALLY NOTICE TOO MUCH ABOUT THEM.

1 MR. MACDONALD

PAGE 6

2 AND SO I KIND OF STRUGGLED, AND I WAS KIND OF OFF  
3 BALANCE, 'CAUSE I WAS STILL HALF WAY ON THE COUCH AND  
4 HALF OFF, AND I WAS HOLDING ONTO THIS. AND I KEPT  
5 GETTING THIS PAIN, EITHER IN---YOU KNOW, LIKE SORT OF  
6 IN MY STOMACH, AND HE KEPT HITTING ME IN THE CHEST.

7 AND SO, I LET GO OF THE CLUB; AND I WAS GRAPPLING  
8 WITH HIM AND I WAS HOLDING HIS HAND IN MY HAND. AND  
9 I SAW, YOU KNOW, A BLADE. I DIDN'T KNOW WHAT IT WAS;  
10 I JUST SAW SOMETHING THAT LOOKED LIKE A BLADE AT THE TIME.

11 AND SO, THEN I CONCENTRATED ON HIM. WE WERE KIND  
12 OF STRUGGLING IN THE HALLWAY RIGHT THERE AT THE END OF  
13 THE COUCH; AND THEN REALLY THE NEXT DISTINCTIVE THING,  
14 I THOUGHT THAT---I THOUGHT THAT I NOTICED THAT---I SAW  
15 SOME LEGS, YOU KNOW, THAT---NOT COVERED---LIKE I'D SAW  
16 THE TOP OF SOME BOOTS. AND I THOUGHT THAT I SAW KNEES  
17 AS I WAS FALLING.

18 BUT IT WASN'T WHAT WAS IN THE PAPERS THAT I SAW  
19 WHITE BOOTS. I NEVER SAW WHITE, MUDDY BOOTS. I SAW---  
20 SAW SOME KNEES ON THE TOP OF BOOTS, AND I TOLD, I THINK,  
21 THE INVESTIGATORS I THOUGHT THEY WERE BROWN, AS A  
22 MATTER OF FACT.

23 AND THE NEXT THING I REMEMBER, THOUGH, WAS LYING  
24 ON THE HALLWAY---AT THE END OF THE HALLWAY FLOOR, AND  
25 I WAS FREEZING COLD AND IT WAS VERY QUIET. AND MY

1 MR. MACDONALD

PAGE 7

2 TEETH WERE CHATTERING, AND I WENT DOWN AND---TO THE  
3 BEDROOM.

4 AND I HAD THIS---I WAS DIZZY, YOU KNOW. I WASN'T  
5 REALLY---REAL ALERT; AND I---MY WIFE WAS LYING ON  
6 THE---THE FLOOR NEXT TO THE BED. AND THERE WERE---THERE  
7 WAS A KNIFE IN HER UPPER CHEST.

8 SO, I TOOK THAT OUT; AND I TRIED TO GIVE HER  
9 ARTIFICIAL RESPIRATION BUT THE AIR WAS COMING OUT OF  
10 HER CHEST. SO, I WENT AND CHECKED THE KIDS; AND---JUST  
11 A MINUTE---AND THEY WERE---HAD A LOT OF---THERE WAS A  
12 LOT OF BLOOD AROUND.

13 SO, I WENT BACK INTO THE BEDROOM; AND I---THIS  
14 TIME I WAS FINDING IT REAL HARD TO BREATHE, AND I WAS  
15 DIZZY. SO I PICKED UP THE PHONE AND I TOLD THIS ASSHOLE  
16 OPERATOR THAT IT WAS---MY NAME WAS CAPTAIN MACDONALD  
17 AND I WAS AT 544 CASTLE DRIVE AND I NEEDED THE M.P.'S  
18 AND A DOCTOR AND AN AMBULANCE. AND SHE SAID, "IS THIS  
19 ON POST OF OFF POST?"---SOMETHING LIKE THAT. AND I  
20 STARTED YELLING AT HER. I SAID---FINALLY, I TOLD HER  
21 IT WAS ON POST, AND SHE SAID, "WELL, YOU'LL HAVE TO CALL  
22 THE M.P.'S."

23 SO, I DROPPED THE PHONE; AND I WENT BACK AND I  
24 CHECKED MY WIFE AGAIN; AND NOW I WAS---I DON'T KNOW.  
25 I ASSUME I WAS HOPING I HADN'T SEEN WHAT I HAD SEEN OR

1 MR. MACDONALD

PAGE 8

2 I'D---OR I WAS STARTING TO THINK MORE LIKE A DOCTOR.  
3 SO, I WENT BACK AND I CHECKED FOR PULSES. YOU KNOW,  
4 CAROTID PULSES AND STUFF; AND I---THERE WAS NO PULSE  
5 ON MY WIFE, AND I WAS---I FELT I WAS GETTING SICK TO  
6 MY STOMACH AND I WAS SHORT OF BREATH, AND I WAS DIZZY  
7 AND MY TEETH WERE CHATTERING 'CAUSE I WAS COLD. AND SO  
8 I DIDN'T KNOW IF I WAS GOING---I ASSUME I WAS GOING  
9 INTO SHOCK BECAUSE I WAS SO COLD. THAT'S ONE OF THE  
10 SYMPTOMS OF SHOCK; YOU START GETTING SHAKING CHILLS.

11 SO, I GOT DOWN ON ALL FOURS; AND I WAS BREATHING  
12 FOR A WHILE. THEN I REALIZED THAT I HAD TALKED TO THE  
13 OPERATOR AND NOTHING REALLY HAD HAPPENED WITH HER. BUT  
14 IN ANY CASE, WHEN I WENT BACK TO CHECK MY WIFE, I THEN  
15 WENT TO CHECK THE KIDS. AND A COUPLE TIMES I HAD TO---  
16 THINKING THAT I WAS GOING INTO SHOCK AND NOT BEING ABLE  
17 TO BREATHE.

18 NOW I---YOU KNOW, WHEN I LOOK BACK, OF COURSE, IT'S  
19 MERELY A SYMPTOM, THAT SHORTNESS OF BREATH. IT ISN'T---  
20 YOU WEREN'T REALLY THAT BAD, BUT THAT'S WHAT HAPPENS  
21 WHEN YOU GET A PNEUMOTHORAX. YOU---YOU THINK YOU CAN'T  
22 BREATHE.

23 AND I HAD TO GET DOWN ON MY HANDS AND KNEES AND  
24 BREATH FOR A WHILE, AND THEN I WENT IN AND CHECKED THE  
25 KIDS AND CHECKED THEIR PULSES AND STUFF. AND---I DON'T

1 MR. MACDONALD

PAGE 9

2 KNOW IF IT WAS THE FIRST TIME I CHECKED THEM OR THE  
3 SECOND TIME I CHECKED THEM, TO TELL YOU THE TRUTH; BUT  
4 I HAD ALL---YOU KNOW, BLOOD ON MY HANDS AND I HAD LITTLE  
5 CUTS IN HERE AND IN HERE (POINTING TO HIS MID-SECTION),  
6 AND MY HEAD HURT.

7 SO, WHEN I REACHED UP TO FEEL MY HEAD, YOU KNOW,  
8 MY HAND WAS BLOODY. AND SO I---I THINK IT WAS THE  
9 SECOND CIRCUIT 'CAUSE IT---BY THAT TIME, I WAS---I WAS  
10 THINKING BETTER, I THOUGHT. AND I WENT INTO THAT---I  
11 WENT INTO THE BATHROOM RIGHT THERE AND LOOKED IN THE  
12 MIRROR AND DIDN'T---NOTHING LOOKED WRONG. I MEAN THERE  
13 WASN'T REALLY EVEN A CUT OR ANYTHING.

14 SO, I---THEN I WENT OUT IN THE HALL. I COULDN'T  
15 BREATHE, SO I WAS ON MY HANDS AND KNEES IN THE HALL,  
16 AND I---AND IT KEPT HITTING ME THAT REALLY NOTHING HAD  
17 BEEN SOLVED WHEN I CALLED THE OPERATOR.

18 AND SO I WENT IN AND---THIS WAS IN THE---YOU KNOW,  
19 IN THE MIDDLE OF THE HALLWAY THERE. AND I WENT THE  
20 OTHER WAY. I WENT INTO THE KITCHEN, PICKED UP THAT  
21 PHONE AND THE OPERATOR WAS ON THE LINE. MY OTHER PHONE  
22 HAD NEVER BEEN HUNG UP.

23 AND SHE WAS STILL ON THE LINE, AND SHE SAID, "IS  
24 THIS CAPTAIN MACDONALD?" I SAID, "YES, IT IS." AND  
25 SHE SAID, "JUST A MINUTE." AND THERE WAS SOME DIAL

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

MR. MACDONALD

PAGE 10

TONES AND STUFF AND THEN THE SERGEANT CAME ON. AND HE SAID, "CAN I HELP YOU?" SO, I TOLD HIM THAT I NEEDED A DOCTOR AND AN AMBULANCE AND THAT SOME PEOPLE HAD BEEN STABBED, AND THAT I THOUGHT I WAS GOING TO DIE.

AND HE SAID, "THEY'LL BE RIGHT THERE." SO, I LEFT THE PHONE; AND I REMEMBER GOING BACK TO LOOK AGAIN. AND THE NEXT THING I KNEW, AN M.P. WAS GIVING ME MOUTH-TO-MOUTH RESPIRATION NEXT TO---NEXT TO MY WIFE.

NOW, I REMEMBER I SAW---I DON'T KNOW IF IT WAS THE FIRST OR SECOND TRIP INTO THE BEDROOM TO SEE MY WIFE--- BUT I SAW THAT THE BACK DOOR WAS OPEN; BUT THAT'S IMMATERIAL, I GUESS.

THAT'S IT.

BY MR. GREBNER

Q WHEN YOU WOKE UP, WHAT---THERE WERE THREE MEN THERE?

A THE FIRST TIME? YOU MEAN WHEN I WAS ON THE COUCH?

Q YES.

A RIGHT. WELL, I---YEAH. NOW I---SIR, YOU KNOW, LET ME SAY ONE THING NOW. YOU KNOW, WHEN YOU SAY SOMETHING, IT SOUNDS CUT AND DRIED, BUT THIS THING HAPPENED---I'M SURE IT DIDN'T TAKE MORE THAN EIGHT OR TEN SECONDS WHEN I THINK BACK ABOUT IT.

YOU KNOW, I MEAN I'VE BEEN IN FIGHTS BEFORE AND CHRIST, YOU THINK IT'S AN ETERNITY. AND WHEN IT'S

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2094

1 MR. MACDONALD

PAGE 11

2 OVER, IT'S LESS THAN A MINUTE. BUT I'M SURE THIS WAS  
3 A MATTER OF SECONDS, AND I'D JUST WOKEN UP AND IT WAS  
4 DARK. AND I THINK IT WAS THREE MEN, RIGHT; BECAUSE I  
5 REMEMBER STRUGGLING SPECIFICALLY WITH THREE PEOPLE IN  
6 FRONT OF ME AND SEEING A FOURTH---SEEING THE GIRL.  
7 AND, REALLY, ALL I SAW OF HER WAS SOME LONG, STRINGY  
8 BLONDE HAIR AND---AND A BIG HAT.

9 Q YOU SAY THIS MAN WITH THE SERGEANT STRIPES ON CAME TOWARD  
10 TOWARD YOU? WHERE DID HE STRIKE YOU FIRST? ON THE  
11 HEAD?

12 A RIGHT. RIGHT. I MEAN I WAS JUST SITTING---I WAS JUST  
13 SITTING IN BED. I WAS JUST GETTING READY TO SAY SOME-  
14 THING LIKE, "WHAT THE HELL ARE YOU---WHAT'S GOING ON  
15 HERE?" WHEN I COULD HEAR THE SCREAMING.

16 AND REALLY, IT ISN'T A MATTER OF LIKE RUNNING AT  
17 ME OR ANYTHING 'CAUSE IT WAS ONLY A STEP. THE POINT IS,  
18 HE WAS CLOSER THAN THE OTHERS; AND I REMEMBER THINKING  
19 THAT HE WAS RAISING SOMETHING AND I REALLY DIDN'T EVEN  
20 DEFEND MYSELF. I MEAN IT WAS REALLY TOO---TOO FAST. I  
21 JUST SORT OF SAT UP; AND AS I LOOKED AND SAW THESE  
22 PEOPLE, HE WAS DOING THIS AT, REALLY, THE SAME TIME;  
23 AND HE HIT ME.

24 AND---I MEAN THEY WEREN'T SHOUTING OR ANYTHING.  
25 THERE WASN'T ANY---I MEAN SHE WASN'T JUMPING UP AND DOWN

1 MR. MACDONALD

PAGE 12

2 AND SCREAMING, YOU KNOW, "KILL THEM." THE POINT WAS,  
3 IT ALL SEEMED---YOU KNOW, WHEN YOU SEE IT LIKE IN  
4 "EASY RIDER." I MADE THE MISTAKE OF GOING TO SEE THAT  
5 FILM. YOU KNOW, THEY HAVE ALL THESE STOP-ACTION  
6 THINGS. WELL, THAT'S WHAT IT SEEMED LIKE.

7 ALL I REALLY SEE IS THESE REAL FAST GLIMPSES OF  
8 WHAT HAPPENED.

9 BY MR. SHAW

10 Q CAPTAIN MACDONALD, YOU TOLD ONE OF THE OTHER INVESTIGATORS  
11 EARLIER THAT YOU WERE WEARING A PAJAMA TOP THAT WAS  
12 PULLED OVER YOUR HEAD, OR SOMETHING LIKE THAT.

13 A RIGHT. WELL, ALL I KNOW IS THAT---WELL, WHEN I WAS  
14 STRUGGLING NOW---AFTER I HAD BEEN HIT THE FIRST TIME,  
15 I WAS STRUGGLING WITH THESE GUYS; AND MY---SOMEHOW, MY  
16 PAJAMA TOP---I DON'T KNOW IF IT WAS RIPPED FORWARD OR  
17 PULLED OVER MY HEAD. I DON'T THINK IT WAS PULLED OVER MY  
18 HEAD. I DON'T REMEMBER ACTUALLY---LIKE BACKING MY HEAD  
19 THROUGH IT.

20 BUT ALL OF A SUDDEN, IT WAS ALL AROUND MY HANDS  
21 AND IT WAS IN MY WAY. AND I REMEMBER THAT I WAS HOLDING  
22 THIS THING IN MY HAND---THE GUY'S HAND---THAT---THAT I  
23 COULDN'T MANUEVER VERY WELL. MY HANDS WERE KIND OF  
24 WRAPPED UP IN THE THING.

25 AND AS THEY WERE PUNCHING ME, I WAS KIND OF USING



1 MR. MACDONALD

PAGE 13

2 THAT A LITTLE BIT, YOU KNOW, HOLDING IT---RIGHT,  
3 EXACTLY---'CAUSE THIS GUY, I THOUGHT, WAS REALLY  
4 PUNCHING ME IN THE CHEST, YOU KNOW, AND IN THE STOMACH  
5 'CAUSE I---I WAS GETTING HIT ACROSS HERE (POINTING TO  
6 THE MID-SECTION OF HIS BODY).

7 SO, IN EFFECT, I WAS BLUNTING EVERYTHING BY, YOU  
8 KNOW, HOLDING THIS UP; AND I COULDN'T GET MY HANDS FREE  
9 OUT OF THIS THING. AND I REMEMBER I ENDED UP, WHEN  
10 I WAS LAYING ON THE FLOOR---I FORGOT TO SAY THAT---WHEN  
11 I WOKE UP ON---IT WAS STILL AROUND MY HANDS AND EVERY-  
12 THING, AND I TOOK IT OFF AS I WAS GOING IN THE BEDROOM.  
13 AND AFTER I TOOK THIS KNIFE OUT OF MY WIFE'S CHEST, I---  
14 YOU KNOW, KEEPING HER WARM. YOU KNOW, TO TREAT SHOCK,  
15 THAT WOULD BE (INAUDIBLE) AND KEEP THEM WARM.

16 Q WAS COLLETTE ALIVE THEN?

17 A I---I DON'T THINK SO, SIR, BECAUSE MEDICALLY, I DON'T  
18 THINK SHE COULD HAVE BEEN BECAUSE WHEN I GAVE HER  
19 MOUTH-TO-MOUTH, I REMEMBER DISTINCTLY THE BUBBLES WERE  
20 COMING OUT OF HER CHEST. SO, HER CHEST WALL WASN'T---  
21 IF IT'S NOT INTACT---YOU KNOW, YOU BREATHE BY EXPANDING  
22 YOUR CHEST WALL AND IT PULLS YOUR LUNG OUT BY A VACUUM  
23 AND IF THE VACUUM IS BROKEN, YOU CAN'T BREATHE.

24 I MEAN I DIDN'T THINK OF ALL THAT THEN. I'M JUST  
25 SAYING THAT---I DON'T THINK SHE WAS ALIVE BECAUSE SHE

1 MR. MACDONALD

PAGE 14

2 WAS JUST LYING THERE, VERY STILL, AND MADE NO RESPONSE  
3 AT ALL; AND I DIDN'T CHECK HER PULSE INITIALLY. ALL I  
4 DID WAS SEE HER AND TAKE THE KNIFE OUT OF HER CHEST AND--  
5 AND BREATHE INTO HER MOUTH, REALLY.

6 SO, I DON'T KNOW; BUT I ASSUME NOT. SHE JUST---  
7 YOU KNOW, I'VE SEEN A LOT OF DEAD PEOPLE AND YOU CAN  
8 (INAUDIBLE).

9 Q DID YOU TRY TO MOVE HER ANY PLACE? YOU SAID SOMETHING  
10 ABOUT ELEVATING HER FEET. WOULD YOU GO THROUGH THAT?

11 A GEEZE, I DON'T KNOW, SIR. I DON'T THINK SO. I MEAN  
12 MAYBE---THERE'S A GREEN CHAIR THERE. MAYBE SHE WAS  
13 LEANING AGAINST IT. I DON'T REMEMBER SPECIFICALLY, NO.

14 BUT, YOU KNOW, IF SHE WAS LYING A LITTLE CROOKED,  
15 IN MY COMPULSIVE MANNER I MIGHT HAVE STRAIGHTENED HER  
16 OUT OR SOMETHING. BUT I HONESTLY DON'T REMEMBER THAT.  
17 I CAN'T---I CAN'T SAY YES TO THAT. I DON'T REMEMBER  
18 MOVING HER.

19 I REMEMBER, YOU KNOW, LATER ON, WHEN I WAS CHECKING  
20 FOR PULSES AND STUFF---YOU CHECK FEMURALS AND CAROTIDS  
21 AND WRIST---AND, YOU KNOW, SO I HAD TO MOVE HER LIMBS,  
22 PROBABLY. BUT I DON'T THINK I MOVED HER BODY AT ALL.

23 Q DO YOU HAVE ANY IDEA HOW LONG YOU WERE LYING THERE  
24 UNCONSCIOUS?

25 A GEEZE, NO.

1 MR. MACDONALD

PAGE 15

2 Q NOTHING

3 A NO, I HAVE NO IDEA. ALL I KNOW IS, WHEN I LOOKED AT MY,  
4 YOU KNOW, MEDICAL RECORDS AND STUFF AND THEY TOLD ME  
5 WHAT MY BLOOD PRESSURE WAS, I COULDN'T HAVE BEEN  
6 UNCONSCIOUS FROM SHOCK. IT HAD TO BE FROM A, YOU KNOW,  
7 BLOW ON THE HEAD.

8 AND, SO, IN OTHER WORDS, THIS CHILLING THAT I WAS  
9 GOING---I MEAN THE SHAKING CHILLS WAS NOT FROM SHOCK  
10 AND IT MUST HAVE BEEN FROM THE TEMPERATURE. SO, IT  
11 MUST HAVE COOLED OFF. THAT'S ALL I CAN TELL YOU.

12 YOU KNOW, AS I GO OVER IT MYSELF IN MY OWN MIND,  
13 IT HAD TO TAKE AWHILE TO GET ME COLD ENOUGH TO HAVE  
14 SHAKING CHILLS SO MY TEETH WERE SHAKING. THAT'S A  
15 REAL---THAT'S A REAL CHILL, YOU KNOW, IN CONTRAST TO  
16 PEOPLE WHEN THEY SAY THEY'RE CHILLY.

17 SO, IF I WASN'T IN SHOCK, THE ONLY THING I CAN SAY  
18 IS---AS I'VE WORKED IT OVER 6 MILLION TIMES---THAT IT  
19 MUST HAVE GOTTEN COLD ENOUGH IN THERE THAT I WAS COLD  
20 JUST FROM THE COLD. IT PROBABLY WOULD BE---

21 Q DO YOU THINK IT WAS FROM THE DOOR BEING OPEN?

22 A RIGHT, THAT'S WHAT I MEAN.

23 Q HOW DO YOU CONTROL THE TEMPERATURE IN THIS HOUSE,  
24 BECAUSE IT WAS REAL WARM WHEN WE GOT THERE.

25 A OH, JESUS, I DON'T---WELL, THE HEAT'S ALWAYS ON. WE

1 MR. MACDONALD

PAGE 16

2 JUST TURN SOME OF THE RADIATORS OFF IF IT GETS TOO HOT.

3 Q YOU JUST TURN THE RADIATORS OFF---(INAUDIBLE)

4 TO CONTROL THE TEMPERATURE?

5 A RIGHT. RIGHT, AND OPEN WINDOWS, YOU KNOW. AND WE DON'T

6 HAVE ANY THERMOSTAT IN THE HOUSE. IF THE WINDOWS ARE

7 KEPT CLOSED AND THE RADIATORS ARE LEFT ON, IT GETS

8 UNBEARABLE IN THERE. IT'S TOO HOT.

9 BY MR. IVORY

10 Q WHAT PART OF THE HALLWAY WERE YOU LAYING IN?

11 A ORIGINALLY?

12 Q YEAH.

13 A DOWN NEAR THE END. DOWN NEAR THE COUCH END.

14 BY MR. GREBNER

15 Q WHEN YOU WERE---WHERE DID THE STRUGGLE ACTUALLY TAKE  
16 PLACE WHEN YOU WERE STRUGGLING WITH THESE THREE MEN?

17 A RIGHT---RIGHT AT THE END; RIGHT AT THE FOOT OF THE  
18 COUCH.

19 Q RIGHT AT THE FOOT OF THE COUCH?

20 A THIS WASN'T A BIG DEAL, YOU KNOW. I WASN'T JAMES BOND  
21 LIKE---LIKE ALL MY READINGS. IT DIDN'T WORK OUT THE WAY  
22 IT'S SUPPOSED TO WORK OUT---COME CHARGING THROUGH.

23 BY MR. IVORY

24 Q WERE THE THREE MEN INVOLVED IN THIS INITIAL ASSAULT?

25 A YEAH, WELL, THEY WERE---YEAH. I MEAN IT WAS NOT---I

1 MR. MACDONALD

PAGE 17

2 REMEMBER, YOU KNOW, IT WAS JUST KIND OF A SCENE AROUND  
3 ME THAT I WAS GRABBING THINGS AND HOLDING ON, BASICALLY.  
4 AND I REMEMBER AT ONE TIME, WHEN I LET GO OF THE---THIS  
5 CLUB THAT---YOU KNOW, I TRIED TO HIT A COUPLE PEOPLE;  
6 AND I THINK I HIT THE GUY WITH THE CLUB ONCE, BUT  
7 NOTHING VERY SPECTACULAR, LET ME TELL YOU.

8 BY MR. SHAW

9 Q DO YOU THINK YOU HIT HIM WITH YOUR FISTS, TOO?

10 A FISTS---I REALLY GRABBED. YOU KNOW, I GOT GRABBING;  
11 AND I THOUGHT AT THE TIME THAT---THAT, YOU KNOW, I WAS  
12 GRABBING HIM ON THE---

13 Q ---RIGHT THERE AT THAT SPOT. WE HAVE TO REAL CLINICAL  
14 WITH YOU, CAPTAIN MACDONALD.

15 A RIGHT.

16 Q DO YOU UNDERSTAND THAT? BECAUSE THIS BRINGS BACK  
17 PAINFUL MEMORIES TO YOU, I KNOW. BUT WE HAVE TO BE  
18 SPECIFIC AS LONG AS YOU CAN.

19 WE FOUND SOME DISTURBANCE THERE, AND IT LOOKED  
20 LIKE SOME KIND OF A STRUGGLE HAD PROBABLY GONE ON. IF  
21 I REMEMBER RIGHT, YOU JUST SAID THAT YOU WERE SITTING  
22 DOWN, HALF STANDING, HALF SITTING THERE AT THE COUCH  
23 AND STRUGGLING AT ONE POINT. IS THAT RIGHT?

24 A RIGHT.

25 Q SO THAT WOULD PUT A MAN BETWEEN YOU AND THE COFFEE

1 MR. MACDONALD

PAGE 18

2 TABLE, SO TO SPEAK, RIGHT THERE OR SOMETHING.

3 A YEAH, RIGHT.

4 Q SO THIS WOULD PROBABLY ACCOUNT FOR THE COFFEE TABLE  
5 BEING IN THE POSITION THAT IT WAS IN---KNOCKED OVER AND  
6 MOVED AROUND---

7 THERE WAS SOMETHING ELSE I WANTED TO ASK YOU, TOO.  
8 YOU WENT TO THE BATHROOM TO CLEAN YOURSELF UP A LITTLE  
9 BIT. IS THAT RIGHT?

10 A YEAH, I ASSUME SO. THAT SEEMS A LITTLE RIDICULOUS,  
11 DOESN'T IT?

12 Q NO, IT DOESN'T.

13 A BUT, YEAH.

14 Q DID YOU CHECK YOURSELF TO SEE IF YOU WERE HURT?

15 A WELL, ORIGINALLY, YEAH, YOU KNOW. I WENT TO SEE WHAT  
16 KIND OF A HEAD INJURY I HAD, 'CAUSE I REMEMBER MY HEAD  
17 HURT LIKE CRAZY. AND THEN I WENT---I KNEW I WASN'T  
18 THINKING ENTIRELY CORRECTLY, 'CAUSE I'M ALWAYS---YOU  
19 KNOW, IN THE EMERGENCY ROOM. I KNOW I'M GOOD IN THE  
20 EMERGENCY ROOM. I NEVER, YOU KNOW, LOSE MY COOL, SO  
21 TO SPEAK.

22 Q WHAT KIND OF A HEAD INJURY DID YOU HAVE?

23 A OH, I JUST SEEMED TO HAVE A LITTLE---A LITTLE BUMP ON  
24 THIS HEAD, AND I HAD A PAIN BACK HERE AND A LITTLE LUMP  
25 BACK HERE (MOTIONING TO THE BACK OF HIS HEAD). IT

1 MR. MACDONALD

PAGE 19

2 WASN'T VERY EXCITING. IT WASN'T WHAT I, YOU KNOW,  
3 EXPECTED.

4 Q DID YOU CHECK YOUR SIDE THERE?

5 A YEAH, I---THAT WAS BUBBLING. YOU KNOW, THAT WAS---

6 Q BUBBLING?

7 A YEAH, THERE WAS BUBBLES COMING OUT OF THAT; AND I HAD  
8 TO TELL THE IDIOT OVER IN WOMACK FOR THREE TIMES.

9 I MEAN, YEAH---NEVERTHELESS, AND THAT'S NOT---NOT  
10 IMPORTANT.

11 Q GO AHEAD AND TELL US.

12 A WELL, WHEN I WAS IN---I KEPT SAYING I COULDN'T BREATHE,  
13 AND HE SAYS, "YOU CAN BREATHE." SO, I SAID, "I'M  
14 TELLING YOU I CAN'T BREATHE. IT HURTS TO BREATHE."  
15 AND---AND I WAS SHORT OF BREATH. I KNEW I WAS BREATHING,  
16 YOU KNOW (INDICATING).

17 NOW, THAT IS A---THAT SOMETIMES IS A---IS A---WHAT,  
18 YOU KNOW, A SYMPTOM RATHER THAN FOR REAL. IN OTHER  
19 WORDS, YOU MIGHT NOT BE THAT SHORT OF BREATH BUT YOUR  
20 BODY REACTS AS THOUGH IT IS. AND WHEN YOU GET A  
21 PNEUMOTHORAX, THAT'S ONE OF THE THINGS THAT HAPPENS.  
22 EVEN THOUGH IT'S A LITTLE PNEUMOTHORAX, YOU BREATHE  
23 FAST AND YOU FEEL AS THOUGH YOU CAN'T BREATHE IN---YOU  
24 CAN'T BREATHE.

25 SO, I SAID TO HIM, "I CAN'T BREATHE. I NEED---I

1 MR. MACDONALD

PAGE 20

2 NEED OXYGEN. I CAN'T BREATHE." AND, SO THEY WERE  
3 LOOKING ME OVER, AND THERE WAS JUST A LITTLE TRICKLE  
4 OF BLOOD HERE AND A WHOLE BUNCH OF LITTLE PUNCTURE  
5 MARKS ACROSS MY ABDOMEN. AND I GUESS WE ENDED UP WITH  
6 FOURTEEN OF THEM, OR SOMETHING LIKE THAT; AND THERE WAS  
7 A LITTLE---A LITTLE CUT HERE (MOTIONING TO HIS ARM).

8 Q WAS THIS FROM THESE ASSAILANTS? THESE PEOPLE THAT WERE  
9 IN THE HOUSE?

10 A WELL, I ASSUME SO.

11 Q YOU DIDN'T DO IT YOURSELF, DID YOU?

12 A NO. SO, THEY SAID TO ME, "WELL, YOU KNOW, WE'LL HAVE  
13 TO GET AN X-RAY." SO, WE GOT AN X-RAY; AND HE CAME  
14 BACK AND SAID, "THE X-RAY LOOKS GOOD." AND WHEN YOUR  
15 CHEST IS BUBBLING, YOU HAVE A PNEUMOTHORAX.

16 I MEAN, IF YOU TAKE A BREATH AND BUBBLES COME OUT---  
17 I MEAN IT'S VERY SIMPLE. ANY SPECIAL FORCES MEDIC KNOWS  
18 THAT AND ANY NURSE KNOWS THAT, AND THEY'LL PUT A CHEST  
19 TUBE IN. IN CAPE FEAR VALLEY THEY KNOW WHEN A CHEST  
20 TUBE HAS TO GO IN BEFORE---BEFORE YOU EVEN SEE THE  
21 PATIENT.

22 AND I SAID, "WELL," I SAID, "I DON'T KNOW ABOUT  
23 YOU GUYS," I SAID, "BUT MY CHEST HURTS LIKE HELL AND  
24 I CAN'T BREATHE AND IT'S BUBBLING." NOW, THAT TO ME---  
25 THAT MEANS I HAVE A PNEUMOTHORAX WITH A PUNCTURE IN THE



1 MR. MACDONALD

PAGE 21

2 LUNG.

3 IN OTHER WORDS, IT WON'T BUBBLE UNLESS THE LUNG  
4 HAS BEEN PUNCTURED. AND SO, DR. JACOBSON CAME OVER AND  
5 HE SAYS, "TAKE A DEEP BREATH." AND I TOOK A DEEP  
6 BREATH AND IT WAS BUBBLING, AND HE SAYS, "HEY, YOU  
7 NEED A CHEST TUBE." SO I SAID, "DICK TRACY," YOU KNOW;  
8 BUT THAT'S BESIDE THE POINT. HE'S OKAY; HE'S A GOOD  
9 GUY.

10 Q WHEN YOU CAME OUT OF THE BATHROOM, YOU HAD PROBABLY  
11 GONE BACK TO YOUR BEDROOM. I SAID "PROBABLY." IS  
12 THAT WHAT YOU DID?

13 A I ASSUME SO, RIGHT.

14 Q WHILE YOU WERE AT IT, DID YOU TAKE THIS BATH MAT OUT  
15 OF THE LINEN CLOSET THEN? THERE WAS A BATH MAT  
16 LAYING OVER YOUR WIFE, PARTIALLY.

17 A A BATH MAT?

18 Q A HEAVY TOWEL OR A BATH MAT. IT DEPENDS ON WHAT YOU  
19 WANT TO USE IT FOR. IT'S FROM THE HILTON HOTELS.

20 A OH, WE HAVE SOME BATH---WE HAD SOME TOWELS FROM THE  
21 HILTON HOTEL. I DIDN'T---I DON'T---I DON'T REMEMBER  
22 THAT AT ALL.

23 Q YOU DON'T REMEMBER SEEING IT?

24 A I DON'T---YOU KNOW, WHEN I WAS COVERING HER UP, THERE  
25 WERE PROBABLY SOME THINGS. THERE'S USUALLY A PILE OF

1 MR. MACDONALD

PAGE 22

2 LAUNDRY RIGHT IN THAT GREEN CHAIR RIGHT THERE. MY  
3 WIFE DOESN'T---ISN'T AS COMPULSIVE AS I AM ABOUT KEEPING  
4 THINGS STRAIGHT, AND I DON'T---I SPECIFICALLY DON'T  
5 REMEMBER THAT, NO. A BATH MAT OR A HILTON TOWEL, BUT  
6 I KNOW I WAS COVERING HER UP WITH THINGS. I ASSUMED  
7 IT WAS JUST NIGHT CLOTHES THAT WERE LAYING THERE OR---  
8 AND MY PAJAMA TOP. I DON'T SPECIFICALLY REMEMBER THE  
9 HILTON TOWEL.

10 BUT, IF IT WAS LAYING THERE, YOU KNOW, I PICKED IT  
11 UP AND PUT IT OVER HER 'CAUSE I WAS GETTING HER WARM.

12 BY MR. IVORY

13 Q WHEN YOU TOOK THIS FEMURAL PULSE ON YOUR WIFE, DID YOU  
14 REMOVE HER CLOTHING AT ALL OR WAS IT THROUGH HER  
15 PAJAMAS?

16 A I DIDN'T REMOVE ANY CLOTHING. IT WAS EITHER THROUGH  
17 THE PAJAMAS OR---OR, YOU KNOW, I JUST PULLED THEM APART---  
18 PULLED THEM ASIDE AND FELT FOR IT. I DON'T THINK IT  
19 WAS---I DIDN'T REMOVE ANY CLOTHING. I MIGHT HAVE JUST  
20 FELT THROUGH. YOU CAN FEEL IT RIGHT THROUGH. I CAN  
21 FEEL MY OWN.

22 BY MR. SHAW

23 Q IT'S A BIG ARTERY THERE, ISN'T IT---FEMURAL ARTERY?

24 A FEMURAL ARTERY. THAT'S WHERE YOU FEEL THE PULSES.

25 Q WAS THERE A PULSE?

1 MR. MACDONALD

PAGE 23

2 A NO.

3 BY MR. IVORY

4 Q CAPTAIN MACDONALD, CAN YOU GO BACK OVER THE SEQUENCE  
5 OF YOUR MOVEMENTS THROUGH THE HOUSE FOR ME? FROM THE  
6 LIVING ROOM, THROUGH THE HALLWAY, AND THEN WHAT? YOU  
7 SAY YOU WERE UNCONSCIOUS AT THE END OF THE HALLWAY.

8 A OKAY.

9 Q CAN YOU TRACE THE SEQUENCE OF YOUR MOVEMENTS FROM THAT  
10 POINT?

11 A I WENT DOWN INTO THE BEDROOM, THE FIRST THING, SAW MY  
12 WIFE, TOOK OUT THE KNIFE. THAT STUFF, AND THEN---THEN  
13 I---I CHECKED THE KIDS BEFORE I MADE THE FIRST PHONE  
14 CALL, ONCE; BUT IT WAS REAL BRIEF. I REALLY---PROBABLY  
15 ONLY LOOKED AT THEM. AND---

16 Q DO YOU KNOW WHICH BEDROOM YOU WENT IN FIRST?

17 A WHICH ONE I WENT IN FIRST? PROBABLY KIMMIE'S.  
18 KIMMIE'S, THE OLDER ONE. THE FRONT BEDROOM AND WENT  
19 BACK INTO THE---NOW, I DON'T KNOW IF I WENT IN THE  
20 BATHROOM ON MY FIRST OR SECOND TRIP. I WENT AROUND  
21 THIS LITTLE CIRCUIT A COUPLE TIMES, OKAY? BUT I THINK  
22 I TOLD THE GUYS THEN, TOO; BUT I'M NOT SURE IF I TOLD  
23 THEM THAT OR NOT.

24 BUT I DON'T REMEMBER WHICH---WHICH TIME I WENT IN  
25 THE BATHROOM. I WENT BACK AND THEN I USED THE PHONE.

1 MR. MACDONALD

PAGE 24

2 --- (INAUDIBLE) AT ONE TIME, I AT LEAST WALKED  
3 INTO THE---THE LAUNDRYROOM AND LOOKED OUT THE BACK DOOR.  
4 I REMEMBER---GEEZE, I DON'T KNOW WHAT---YOU KNOW, WHAT  
5 WAS FIRST AND WHAT WAS SECOND ON THESE TRIPS. I DID,  
6 YOU KNOW, A COUPLE THINGS---INTO THE BATHROOM AND  
7 THEN OUT THE BACK DOOR.

8 I DON'T---I THINK IT WAS ALL ON THE SECOND TRIP.  
9 I THINK THE FIRST TRIP I WENT INTO MY---THAT'S THE WAY  
10 IT SOUNDS TO ME---SOUNDS RIGHT.

11 I WENT IN AND SAW MY WIFE; WENT AND CHECKED THE  
12 KIDS; CAME BACK IN THE MASTER BEDROOM AND USED THE  
13 PHONE. AND THEN I HAD---I WAS GETTING ON MY HANDS AND  
14 KNEES AND GETTING SHORT OF BREATH. I KEPT THINKING  
15 THAT "I'M NOT DOING ANYTHING THAT I'M SUPPOSED TO BE  
16 DOING, AND NO ONE KNOWS ABOUT IT." AND THEN I REALIZED  
17 I HADN'T REALLY CHECKED---AND I DON'T KNOW IF---IF, YOU  
18 KNOW, THERE WAS ANY PULSE OR ANYTHING.

19 AND SO, I CHECKED MY WIFE AND I WENT INTO---  
20 PROBABLY TO KIMMIE'S BEDROOM FIRST AGAIN, AND KRISTY'S  
21 BEDROOM.

22 BY MR. SHAW

23 Q WHAT KIND OF PULSE DID YOU CHECK FOR? WAS IT THE WRIST  
24 OR FEMURAL?

25 A WELL, THE EASIEST, USUALLY---USUALLY YOU FEEL IN AN

1 MR. MACDONALD

PAGE 25

2 INJURED PATIENT---YOU KNOW, I USUALLY FEEL THE CAROTID  
3 FIRST 'CAUSE THE PERIPHERAL ONES SOMETIMES---SOMETIMES  
4 GO INTO SPASM; AND IF THEY HAVE A LOW BLOOD PRESSURE,  
5 YOU CAN'T FEEL IT ANYWHERE.

6 SO, I USUALLY CHECK THIS---THESE, SO I'M SURE I  
7 CHECKED THAT FIRST. IT'S JUST INSTINCTIVE. AND---

8 Q I'M SORRY I INTERRUPTED YOU.

9 A WELL, I DON'T KNOW---WELL, I REALLY DON'T KNOW IF I  
10 CHECKED THE FEMURALS ON BOTH OF THE KIDS, QUITE  
11 HONESTLY. I PROBABLY CHECKED HERE (POINTING TO THE  
12 THROAT) AND PICKED UP THEIR WRISTS AND POSSIBLY CHECKED  
13 THE FEMURAL, BUT I'M NOT SURE.

14 SO, THEN I WAS STANDING IN THE MIDDLE---MIDDLE OF  
15 THE HALLWAY AFTER THIS KIND OF SECOND TRIP, AND I DIDN'T  
16 KNOW WHAT TO DO. I KEPT SAYING TO MYSELF, YOU KNOW,  
17 "WHAT---WHAT COMES NOW?" AND I REMEMBER I---IT  
18 FLASHED THROUGH MY MIND TO GO NEXT DOOR TO MY IDIOT  
19 NEIGHBOR, BUT I REALIZED THAT WOULD BE FUTILE, AND---

20 BY MR. IVORY

21 Q WHY WAS THAT?

22 A WELL, OUR NEIGHBORS ARE---SHE'S THE KIND OF A LADY THAT  
23 SITS IN HER WINDOW WITH BINOCULARS AND WATCHES THE GIRL  
24 ACROSS THE STREET UNDRRESS AND STUFF LIKE THAT, YOU  
25 KNOW. AND SHE COMES OVER AND SHE SAYS, "NOW, DON'T

1 MR. MACDONALD

PAGE 26

2 LEAVE YOUR WINDOWS OPEN BECAUSE THERE'S A LOT OF RAPISTS  
3 AND PEOPLE AROUND HERE."

4 WE WERE AT A COCKTAIL PARTY ONE NIGHT, AND---AND  
5 SHE SAID THAT AND EVERYONE STOPPED. AND I SAID TO HER---  
6 SO I WAS KIND OF PULLING HER CHAIN. SO I SAID, "WELL,  
7 HOW---HOW DO YOU KNOW THAT PEOPLE LOOK IN WINDOWS?"

8 I MEAN---YOU KNOW, YOU SEE TYPES OF PEOPLE AND  
9 RIGHT AWAY THIS WOMAN HAD---SO, SHE SAID, "WELL, 'CAUSE  
10 I SEE HER EVERY NIGHT, THE BLONDE ACROSS THE STREET."  
11 AND I SAYS, "HOW DO YOU SEE HER EVERY NIGHT?" SHE  
12 SAID, "I GO UP IN MY WINDOW AND WATCH." AND I SAID,  
13 "WHY DO YOU DO THAT?" AND SHE SAID, I SWEAR TO GOD,  
14 SHE SAID, "BECAUSE," YOU KNOW, "IT'S UNNATURAL FOR A  
15 GIRL TO UNDRRESS WITH THE BLINDS UP. AND I JUST WANT  
16 TO"---YOU KNOW, "I JUST WANT TO MAKE SURE I KNOW WHAT'S  
17 GOING ON IN THE NEIGHBORHOOD."

18 BUT THAT'S BESIDE THE POINT. SO, THAT'S THE TYPE  
19 OF PERSON THAT---THAT, YOU KNOW, I JUST---I SAID,  
20 "SHALL I GO NEXT DOOR OR SHOULD I TRY TO CALL AGAIN?"  
21 AND I DECIDED I SHOULD TRY TO CALL AGAIN.

22 Q HOW DID YOU MANEUVER YOUR WAY DOWN TO THE PHONE THE  
23 SECOND TIME?

24 A HOW DID I MANEUVER MY WAY DOWN?

25 Q YES, HOW DID YOU GET THERE? WERE YOU ON YOUR HANDS AND

MR. MACDONALD

PAGE 27

KNEES GETTING THERE OR WERE YOU---

A NO, I NEVER REALLY---I DON'T THINK I REALLY EVER LIKE WALKED ANYWHERE ON MY HANDS AND KNEES. I GOT DOWN ON MY HANDS AND KNEES A COUPLE TIMES IN THE HALLWAYS TO BREATHE AND ONCE NEXT TO MY WIFE. I PROBABLY WALKED DOWN AND---

Q DID YOU FALL AT ANY TIME?

A I DON'T REMEMBER IT. I DON'T REMEMBER IT. AND PICKED UP THE PHONE AND, LIKE I SAID, SHE WAS ON THE PHONE. AND THEN AFTER I TALKED TO THIS SERGEANT SMITH, OR WHATEVER HIS NAME WAS, ON THE PHONE; AND HE SAID THAT THEY WERE COMING A.S.A.P. THEN I REMEMBER I STARTED GOING BACK DOWN THE HALL AGAIN.

NOW, LOOK, TO BE HONEST WITH YOU, I MIGHT HAVE--- LIKE I MIGHT HAVE GONE IN THE BATH---IF IT'S IMPORTANT. I DON'T SEE HOW IT CAN BE IMPORTANT---BUT I MIGHT HAVE GONE INTO THE BATHROOM ON THIS TRIP, THE LAST TRIP. BUT I DON'T THINK SO. I THINK IT WAS WHEN I WAS GOING THROUGH THE BEDROOMS THE SECOND TIME.

AND I REMEMBER STARTING---YOU KNOW, I STARTED TO GO DOWN THE HALL AND REALLY, THE NEXT THING THAT'S CLEAR IS THAT THIS M.P. WAS---M.P. OR MEDIC, I DON'T KNOW---WAS GIVING ME RESPIRATION---ARTIFICIAL RESPIRATION, WHICH I APPARENTLY DIDN'T NEED.

1 MR. MACDONALD

PAGE 28

2 BY MR. SHAW

3 Q YOU CAME TO WHERE HE WAS DOING IT?

4 A RIGHT.

5 Q IS THAT IT?

6 A RIGHT.

7 Q YEAH, WELL, IT'S KIND OF IMPORTANT, CAPTAIN MACDONALD,  
8 BECAUSE WE HAVE TO ELIMINATE OTHER PEOPLE FROM WHAT YOU  
9 DID---WHAT YOU DID FROM OTHER PEOPLE, THE TRACES THAT  
10 WERE LEFT IN THE HOUSE, YOU KNOW.

11 A RIGHT.

12 Q THIS IS WHY I ASKED YOU ABOUT THE BATH MAT OR TOWEL---  
13 HILTON HOTEL TOWEL---BECAUSE IT'S IMPORTANT WHETHER YOU  
14 PUT IT THERE OR SOMEBODY ELSE PUT IT THERE.

15 A GEE, I CAN'T---I HONESTLY DON'T---ALL I REMEMBER IS DOING  
16 MYSELF SPECIFICALLY WAS MY OWN---TAKING MY OWN THING  
17 OFF THE FIRST TIME IN---TAKING MY OWN PAJAMA TOP OFF  
18 MY ARMS AND STUFF AND KIND OF LAYING IT ACROSS HER---  
19 AND, YOU KNOW, KIND OF A STUPID ATTEMPT TO---

20 Q YOU DIDN'T MOVE IT AGAIN AFTER THAT?

21 A I DON'T THINK SO, NO.

22 Q IT WAS FOUND THERE.

23 A IT WAS?

24 Q YES.

25 BY MR. IVORY



1 MR. MACDONALD

PAGE 29

2 Q IF THERE WERE---SAY, THIS BATH MAT OR TOWEL. WHICH DO  
3 YOU WANT TO CALL IT? A TOWEL OR A BATH MAT?

4 A WHAT? A TOWEL. I MEAN THE HILTON HOTEL---OH, I KNOW  
5 WHAT YOU MEAN. IT LOOKS LIKE IT'S A TOWEL, A TERRY  
6 CLOTH; BUT IT'S A BATH MAT THING. IT'S FROM THE HOTEL.

7 Q YEAH.

8 A NO, I DON'T REMEMBER DOING THAT. I'M JUST SAYING I  
9 REMEMBER WHAT IT IS NOW.

10 Q IF IT WERE ACROSS YOUR---SAY, YOUR WIFE'S ABDOMEN,  
11 YOU WOULD HAVE NOTICED IT IN TAKING THE FEMURAL PULSE?

12 A GEEZE, I THINK I WOULD HAVE. IT WOULD HAVE BEEN HARD  
13 TO MISS. YOU KNOW, THIS IS A PRETTY EXCITED TIMES AND  
14 I---I'M ALMOST SURE I WOULD HAVE NOTICED IF A TOWEL WAS  
15 ACROSS HER.

16 BY MR. SHAW

17 Q WELL, THIS TOWEL WAS LAYING RIGHT ACROSS HER ABDOMEN,  
18 THE ABDOMEN AND UPPER THIGHS AREA.

19 A WELL, THEN I MUST HAVE---EITHER I PUT IT THERE OR THE  
20 MEDIC PUT IT THERE. BUT I---MAYBE I DID AS I WAS  
21 COVERING MY WIFE. I REALLY DON'T---

22 Q I DON'T WANT TO TALK YOU INTO ANYTHING.

23 A NO, NO, THAT'S---I KNOW. YOU SEE, THAT'S WHAT  
24 HAPPENED NOW.

25 Q I DON'T WANT TO DO---

1 MR. MACDONALD

PAGE 30

2 A ---EVERYONE---EVERYONE---I MEAN I'VE TALKED---WELL,  
3 ONLY---REALLY, ONLY TWO PEOPLE KNOW THE WHOLE STORY  
4 ASIDE FROM YOU PEOPLE.

5 BUT IN TELLING THEM, SOME THINGS, YOU KNOW, SOUND  
6 FUNNY AFTER A WHILE; AND I'M NOT SURE WHAT---YOU KNOW,  
7 WHETHER---LIKE ONE TIME I REMEMBER, RON HARRISON, WHO  
8 GOT INVOLVED WITH THIS THING AND WAS AROUND ALL THE  
9 TIME, HE---HE HEARD MOST OF IT, AND HE ASKED ME A  
10 COUPLE OF THINGS ABOUT IT. I REMEMBER WHEN I TOLD HIM,  
11 THAT MY MOTHER SAID THAT IT WASN'T EXACTLY WHAT I,  
12 YOU KNOW---

13 Q MIGHT HAVE SAID TO HER?

14 A RIGHT. AND I, YOU KNOW---SHE---IN OTHER WORDS, THEY  
15 REACTED A LITTLE DIFFERENT. AND SO I REALLY DON'T KNOW  
16 HOW MANY TIMES I'VE BEEN TALKED INTO IT AND---OF COURSE,  
17 THE NEWSPAPER HAD SUCH---THEY HAD ME SAYING THINGS THAT---  
18 EVERYONE SAID TO ME, "WELL, NOW, THEY---THEY KEPT  
19 SAYING, 'HIT HIM AGAIN'" AND STUFF LIKE THAT.

20 I'M NOT EVEN---I'M NOT SURE. I DON'T THINK I EVER  
21 HEARD THAT. I DON'T THINK I EVER SAID THAT.

22 Q WELL, WE'RE ON THE SAME TRACK BECAUSE I HAVEN'T READ  
23 THE NEWSPAPERS ABOUT IT, SO I'M NOT---I'M NOT COMING  
24 INTO THIS WITH ANY PRECONCEIVED IDEAS ABOUT WHAT'S BEEN  
25 SAID OR NOT SAID BECAUSE I DON'T KNOW. SO, THIS IS WHY

1 MR. MACDONALD

PAGE 31

2 WE'RE---WE'RE ASKING YOU TO BE AS SPECIFIC AS YOU CAN.

3 A RIGHT.

4 BY MR. IVORY

5 Q THESE---THE MALE ASSAILANTS, DID THEY MAKE ANY  
6 (INAUDIBLE)SOUNDS OR WORDS?

7 A I DON'T KNOW. I DON'T REMEMBER.

8 BY MR. SHAW

9 Q BY THE WAY, HOW DID THEY ACT? WHAT---WHAT WAS THEIR  
10 MOTIVATION?

11 A WHAT WAS THEIR MOTIVATION?

12 Q YEAH. WHAT DO YOU THINK?

13 A WHAT DO I THINK?

14 Q YEAH.

15 A HOW MANY TIMES HAVE I THOUGHT ABOUT THIS? I CAN'T---  
16 THE ONLY THING I CAN POSSIBLY COME UP WITH IS THAT THIS  
17 WAS---AND I'M NOT A BELIEVER IN THE FAITH. I MEAN, I  
18 JUST---IT JUST SEEMS TO ME THAT IT HAD TO BE A CHANCE  
19 THING.

20 YOU KNOW, THE "IFS" ARE WHAT'S KILLING ME NOW. IF---  
21 IF---IF I HAD CHECKED THAT BACK DOOR MAYBE. I DON'T  
22 KNOW---EVEN KNOW IF IT WAS PRIED OR WHETHER IT WAS  
23 OPEN. USUALLY IT'S LOCKED.

24 Q IT'S NORMALLY LOCKED?

25 A OH, YEAH. AND WE'RE NOT REAL STRICT ABOUT THAT. LIKE

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2094

1 MR. MACDONALD

PAGE 32

2 MY MOTHER HAD NEVER LOCKED A DOOR EVER IN HER WHOLE  
3 LIFE. AND SO, I'M ALWAYS REAL CASUAL ABOUT IT; BUT  
4 COLLETTE USUSALLY LOCKS THE DOOR.

5 AND SOMETIMES I KNOW, LIKE AT LATE AT NIGHT, IF I  
6 GET UP AND USE THE LITTLE BATHROOM AND JUST CHECK THE  
7 DOOR, IT WILL BE OPEN. THE KIDS HAVE GONE IN AND OUT  
8 DURING THE DAY WHEN SHE WAS DOING WASH IN THERE AND  
9 DIDN'T BOTHER LOCKING IT AGAIN.

10 SO, IF I HAD CHECKED THE DARN DOOR MAYBE AT 2:00  
11 O'CLOCK WHEN I WENT TO BED, WHO'S TO SAY, YOU KNOW. I  
12 DON'T KNOW.

13 Q YOU DIDN'T CHECK IT?

14 A NO. NORMALLY, I DON'T---YOU KNOW, I DON'T MAKE A ROUND  
15 AND CHECK DOORS AND WINDOWS AND STUFF LIKE THAT. I  
16 NEVER EVEN THINK LIKE THAT.

17 Q WHAT WERE YOU DOING BEFORE COLLETTE WENT TO BED? WHAT---  
18 WHAT TRANSPIRED IN THE HOUSE THAT EVENING? SHE WENT  
19 TO SCHOOL.

20 A RIGHT.

21 Q DID YOU HAVE ANY---ANY WORK THAT NIGHT OR HOBBIES OR  
22 ANYTHING THAT YOU DID OUTSIDE THE HOUSE?

23 A NO, THE KIDS AND I WERE LYING ON THE LIVING ROOM FLOOR  
24 WATCHING T.V.; AND, WHEN THEY WENT TO BED, I JUST READ  
25 FOR A WHILE. NOTHING---I THINK I WAS READING ONE OF MY

1 MR. MACDONALD

PAGE 33

2 MYSTERIES, A MIKE HAMMER MYSTERY, I THINK.

3 Q WHAT TIME DID COLLETTE COME HOME?

4 A SHE GOT HOME ABOUT---IT WAS A LITTLE LATE. USUALLY,  
5 SHE'D COME HOME ABOUT TEN AFTER NINE. I THINK IT WAS  
6 ABOUT TWENTY-FIVE TO TEN, OR SOMETHING. I DON'T KNOW.  
7 SHE HAD TO DROP OFF A---ONE OF THE GIRLS IN THE CLASS  
8 OR SOMETHING. I'M NOT---

9 Q WERE THE GIRLS STILL UP?

10 A NO, I THINK THEY'D JUST GONE TO BED. IT'S LATE, I KNOW,  
11 BUT KIMMIE---KIMMIE STAYED UP LATE SOMETIMES WITH ME.

12 Q SO WHAT---WHAT HAPPENED? WHAT TRANSPIRED ON THIS  
13 EVENING?

14 A NOTHING SPECTACULAR. I MEAN, SHE CAME HOME AND PROBABLY  
15 HAD A---USUALLY, MY WIFE WOULD HAVE A---A LITTLE BRANDY  
16 OR---OR ONE---ONE LIQUEUR OR SOMETHING WHILE WE SAT  
17 THERE. YOU KNOW, IT WAS OUR TIME OF THE DAY SORT OF,  
18 AND WE JUST USUALLY SAT THERE AND WATCHED T.V. OR READ  
19 OR SOMETHING IN THE LIVING ROOM TOGETHER.

20 THAT'S ALL I REMEMBER. I MEAN, I DON'T---NOTHING  
21 SPECTACULAR HAPPENED.

22 Q DID YOU HAVE A DRINK THAT NIGHT?

23 A I DON'T REMEMBER, HONESTLY. I DON'T---I USUALLY DIDN'T  
24 BY MYSELF. YOU KNOW, ONCE IN AWHILE MY WIFE DID BY  
25 HERSELF; BUT I NEVER DID BY MYSELF. I MIGHT HAVE HAD A

1 MR. MACDONALD

PAGE 34

2 LIQUEUR WITH HER, BUT I DON'T REMEMBER. AND IF IT WAS,  
3 IT WAS A---YOU KNOW, A KAHLUA OR SOMETHING LIKE THAT,  
4 ONE OF THE SWEET LIQUEURS.

5 BUT I DON'T REMEMBER HAVING ONE, SO I PROBABLY  
6 DIDN'T.

7 Q DO YOU KNOW WHAT TIME THIS HAPPENED? THIS IS WHAT I  
8 WANT, TO BUILD EVENTS HERE---

9 A RIGHT.

10 Q ---IF I CAN. NOW, SHE CAME HOME AT TWENTY-FIVE TO TEN?

11 A RIGHT. ROUGHLY THEN.

12 Q AND THE KIDS WERE PROBABLY IN BED.

13 A RIGHT. I REMEMBER SHE CAME HOME A LITTLE LATE BECAUSE  
14 SHE HAD MISSED HALF OF---HALF THE SHOW THAT'S---THE  
15 SHOW THAT'S ON AT 9:00 O'CLOCK. IT ISN'T TOM JONES.  
16 IT'S SOME SHOW THAT'S ON A MON---A MONDAY NIGHT AT  
17 9:00 O'CLOCK.

18 Q GLEN CAMPBELL?

19 A GLEN CAMPBELL? ONE---WE EITHER WATCH GLEN CAMPBELL OR  
20 JOHNNY CASH OR TOM JONES. THOSE THREE SHOWS DURING THE  
21 WEEK, SO ONE OF THOSE THREE, WHICHEVER IS ON MONDAY  
22 NIGHT.

23 I REMEMBER TELLING HER THAT SHE HAD MISSED THE BEST  
24 PART OF IT, AND SHE SAID SHE HAD TO DROP SOMEONE OFF OR  
25 SOMETHING. "I STOPPED AT THE SEVEN-ELEVEN," OR SOMETHING,

1 MR. MACDONALD

PAGE 35

2 AND THAT WAS IT. WE DIDN'T DO ANYTHING UNUSUAL.

3 Q DID YOU WATCH ANY OF THE LATE SHOWS?

4 A AH---PROBABLY NOT. I THINK JUST UP TO THE NEWS. I  
5 TURNED I OFF. I USUALLY DON'T WATCH T.V., EXCEPT THE  
6 SPORTS OR THOSE THREE SHOWS I WAS TELLING YOU.

7 Q WELL, TRY TO THINK. TRY TO THINK ABOUT THIS. DID YOU  
8 WATCH THE JOHNNY---

9 A OH, YEAH. I WAS WATCHING THE JOHNNY CARSON---

10 Q JOHNNY CARSON?

11 A THAT'S RIGHT.

12 Q DID YOU WATCH IT?

13 A YEAH, I WAS WATCHING JOHNNY CARSON. THAT'S RIGHT.

14 Q WAS COLLETTE THERE WITH YOU?

15 A NO. SHE STARTED WITH ME. THAT'S---THAT'S RIGHT. SHE  
16 STARTED IT WITH ME AND SHE WENT TO BED. SHE DIDN'T  
17 FINISH. I FINISHED WATCHING THE JOHNNY CARSON SHOW  
18 AND THEN---SHE WAS ALREADY IN BED BY THE TIME IT WAS  
19 OVER. SHE JUST WATCHED THE BEGINNING.

20 Q ANY PARTICULAR REASON WHY SHE DIDN'T STAY THERE WITH  
21 YOU?

22 A SHE WAS PREGNANT AND SHE---SHE'S GETTING MORE SLEEPY---  
23 MORE SLEEP WHEN SHE'S PREGNANT.

24 Q DID---DID SHE HAVE ANY PROBLEMS SLEEPING?

25 A NO.

1 MR. MACDONALD

PAGE 36

2 Q THERE WAS SOME TALK EARLIER ABOUT HER HAVING TAKEN  
3 SOME MEDICATION OF SOME KIND.

4 A BENEDICTIN FOR NAUSEA.

5 Q WHAT WAS IT AGAIN?

6 A BENEDICTIN.

7 Q BENEDICTIN?

8 A RIGHT. IT'S JUST A NAUSEA PILL FOR PREGNANT WOMEN. SHE  
9 TOOK ONE EVERY NIGHT.

10 Q BEFORE GOING TO BED?

11 A RIGHT.

12 BY MR. IVORY:

13 Q WHAT'S THE MAJOR COMPONENT? WHAT'S IN IT?

14 A I THINK A MECLAZINE DERIVATIVE. I DON'T KNOW. IT'S ONE  
15 OF THE SAFE ONES FOR PREGNANT WOMEN, AND ALL THE O.B.  
16 MEN HERE GIVE IT AND THAT'S WHAT I USED FOR HER. I  
17 THINK IT'S A MECLAZINE DERIVATIVE, WHICH DOESN'T MEAN  
18 ANYTHING TO ME.

19 Q HOW MANY OF THESE DID SHE USE?

20 BY MR. SHAW:

21 Q WOULD SHE HAVE TAKEN ANYTHING ELSE?

22 A I DON'T THINK SO. NOW, I USUALLY---SOMETIMES, IF SHE---  
23 IF SHE COULDN'T SLEEP, SHE'D TAKE A BENEDRIL, WHICH IS  
24 AN ANAHISTAMINE. IT'S REALLY FOR RASHES AND HIVES, BUT  
25 IT'S SAFE AND IT MAKES PEOPLE A LITTLE SLEEPY. AND SHE



1 MR. MACDONALD

PAGE 37

2 MIGHT HAVE---SHE MIGHT HAVE TAKEN ONE OF THOSE, BUT I  
3 DIDN'T KNOW ABOUT IT IF SHE DID 'CAUSE WE USUALLY HAD  
4 SOME IN A SMALL MEDICINE CABINET FOR THAT REASON, 'CAUSE  
5 IT'S A SAFE SLEEPING PILL.

6 Q SHE MIGHT HAVE, BUT YOU DON'T KNOW IF SHE DID.

7 A RIGHT.

8 Q IS THAT RIGHT?

9 A RIGHT.

10 Q OKAY. WELL, SHE WENT TO BED. WHAT---WHAT TIME DID SHE  
11 GO TO BED?

12 A WELL, PROBABLY 11:30---NO, 12:00 O'CLOCK 'CAUSE I  
13 REMEMBER SHE STARTED WATCHING JOHNNY---NOW THAT YOU  
14 MENTION IT---THE JOHNNY CARSON SHOW WITH ME.

15 Q DO YOU KNOW WHAT TIME THAT COMES ON---MIDNIGHT?

16 A NO, IT COMES ON, I THINK, AT 11:30; AND SHE WATCHED THE  
17 BEGINNING OF IT. AND I THINK SHE WAS PROBABLY IN BED  
18 BY 12:00.

19 Q SHE WAS IN BED BY 12:00?

20 A RIGHT.

21 Q NOW, HAD SHE CHANGED CLOTHES PRIOR TO GOING TO BED?

22 A YEAH. SHE ALWAYS COMES OUT AND SITS AROUND WITH ME IN---  
23 IN HER PAJAMAS. I MEAN, I SAY "YEAH." I---YOU KNOW,  
24 THIS IS JUST 'CAUSE SHE DID IT EVERY NIGHT. I DON'T  
25 REMEMBER HER WALKING IN AND CHANGING CLOTHES 'CAUSE I

1 MR. MACDONALD

PAGE 38

2 WAS SITTING THERE READING. LIKE ALL HUSBANDS DO---THEY  
3 FORGET TO NOTICE A LOT OF THINGS, BUT SHE ALWAYS CAME  
4 OUT AND SAT DOWN IN HER PAJAMAS AND HAD---USUALLY HAD A  
5 LIQUEUR AND THEN GO TO BED. THAT WAS HER ROUTINE.

6 Q SO SHE WAS IN BED BY MIDNIGHT?

7 A YEAH.

8 Q AND MAYBE SHE TOOK A BENEDIC---WHAT WAS THIS?

9 A BENDECTIN, B-E-N-D-E-C-T-I-N.

10 Q BENDECTIN. THAT, YOU KNOW ABOUT---

11 A RIGHT.

12 Q ---BECAUSE SHE TOOK IT EVERY NIGHT?

13 A RIGHT.

14 Q AND SHE MIGHT HAVE TAKEN A BENEDRIL?

15 A RIGHT.

16 Q SHE MIGHT HAVE HAD A LIQUEUR AND PROBABLY DID?

17 A RIGHT.

18 Q SO SHE WENT TO BED. DID YOU FINISH WATCHING THE JOHNNY  
19 CASH SHOW?

20 A JOHNNY GARSON, RIGHT.

21 Q JOHNNY CARSON, I'M SORRY.

22 A RIGHT.

23 Q AND THEN WHAT DID YOU DO?

24 A I READ MY MIKE HAMMER MYSTERY.

25 Q WHAT ELSE DID YOU DO?

1 MR. MACDONALD

PAGE 39

2 A NOTHING.

3 Q DID YOU WASH DISHES?

4 A YEAH, I DID. I WASHED THE DISHES FOR HER.

5 Q OKAY. I'M NOT SHARPSHOOTING YOU NOW.

6 A NO, NO, NO. I UNDERSTAND THAT. BUT THAT'S RIGHT, I  
7 DID. I---ONCE IN AWHILE---SHE HATED DISHES. THE ONLY  
8 THING SHE HATED MORE WAS IRONING; AND IF SHE LEFT  
9 THEM, SHE'D FEEL TERRIBLE THE NEXT DAY 'CAUSE SHE'S  
10 LEFT THEM. AND SHE USUALLY LEAVES THEM AGAIN UNTIL  
11 NIGHT, AND THEY'D JUST PILE UP. SO, EVERY ONCE IN  
12 AWHILE, WHEN I'M FEELING GOOD, I DO THEM FOR HER; AND  
13 SHE THINKS I'M A BIG HERO THE NEXT MORNING. SO, I DID  
14 THEM. THAT'S RIGHT.

15 Q DID YOU DO ANYTHING ELSE? DID YOU LISTEN TO ANY MUSIC  
16 OR ANYTHING LIKE THAT, OR DID YOU READ?

17 A NOW, I USUALLY PLAYED SOME RECORDS WHEN I WAS READING  
18 LIGHT STUFF, AND THIS WAS LIGHT STUFF. THEY ASKED ME  
19 THAT IN THE HOSPITAL. I DON'T---I DON'T REMEMBER  
20 PLAYING ANYTHING. WHEN I'M LAZY, I JUST PUT THE F.M.  
21 ON; AND I PROBABLY HAD THE F.M. ON. I DON'T REMEMBER  
22 PLAYING ANY RECORDS SPECIFICALLY.

23 Q DID YOU GET UP AND TURN IT OFF BEFORE YOU WENT TO  
24 SLEEP?

25 A YEAH. I MEAN, I USUALLY DIDN'T GO TO SLEEP WITH IT ON.

1 MR. MACDONALD

PAGE 40

2 I FELL ASLEEP ON THE FLOOR OFTEN WITH IT ON; BUT WHEN  
3 I GO TO SLEEP ON THE COUCH OR IN THE BED, I TURN IT OFF.

4 AS A MATTER OF FACT, IT WAS F.M. BECAUSE I REMEMBER  
5 I HAD GOT UP SEVERAL TIMES TO GET A STATION THAT KEPT  
6 FADING OUT. MY THING THAT'S SUPPOSED TO STICK THE  
7 CHANEL IN WASN'T WORKING, OR DOESN'T WORK, ON MY \$700  
8 SET. AND I GOT UP SEVERAL TIMES AND HAD TO GET A NEW  
9 STATION BECAUSE IT'D KEEP FADING. THAT'S RIGHT, SO I WAS---  
10 I WAS LISTENING TO F.M.

11 Q AND NOT RECORDS?

12 A AND NOT RECORDS, RIGHT.

13 Q I'D LIKE TO GET DOWN TO SOME OTHER THINGS HERE THAT  
14 MIGHT---MIGHT BE A LITTLE BIT MORE CLOSE TO HOME. I'M  
15 SORRY, BUT I HAVE TO ASK YOU ABOUT THEM.

16 AND THAT'S THESE---WE FOUND SOME WEAPONS AND SOME  
17 THINGS THAT WE THINK WERE USED AROUND THE HOUSE, AND WE  
18 NEED TO KNOW IF THEY'RE YOURS BECAUSE THEY'RE---IF THEY  
19 COME FROM YOUR HOUSE.

20 A UH-HUH (YES).

21 Q WE MUST KNOW IF---BECAUSE IF THEY DON'T COME FROM YOUR  
22 HOUSE, WE HAVE TO KNOW WHERE THEY DID COME FROM. YOU  
23 UNDERSTAND THAT?

24 A UH-HUH (YES).

25 Q OKAY. NOW, WE FOUND A---THIS---THIS KNIFE YOU TOOK OUT

1 MR. MACDONALD

PAGE 41

2 OF YOUR WIFE'S CHEST IS CURVE BLADED. IN FACT, IT WAS---  
3 I DON'T THINK IT'S A MANUFACTURED KNIFE. I THINK IT  
4 WAS CURVED BECAUSE SOMEBODY USED IT TO PRY SOMETHING  
5 OPEN OR STEPPED ON IT OR SOMETHING ALONG THAT LINE.

6 DOES THIS SEEM LIKE SOMETHING YOU MIGHT HAVE HAD  
7 AROUND THE HOUSE? A PARING KNIFE.

8 A WITH A CURVED BLADE?

9 Q YEAH

10 BY MR. GREBNER:

11 A A BENT BLADE.

12 BY MR. SHAW:

13 Q BENT OR CURVED.

14 A NO. I MEAN, NOT---NOT THAT I KNOW OF, NO. I DIDN'T  
15 KNOW OF ANYTHING LIKE THAT. IT WOULD STAND OUT IF IT  
16 WAS, YOU KNOW---

17 Q LET ME SHOW YOU A PICTURE.

18 A ALL RIGHT.

19 IT DOESN'T---YOU KNOW, MY WIFE HAD SOME PARING  
20 KNIFES. I DON'T RECOGNIZE THIS ONE IN PARTICULAR,  
21 ESPECIALLY THAT WOULD HAVE BEEN---I KNOW WE DIDN'T HAVE  
22 ONE LYING AROUND BECAUSE, YOU KNOW, I WOULD THROW  
23 SOMETHING LIKE THAT OUT. I WOULDN'T---GEEZE, MY WIFE  
24 WOULD KEEP IT FOREVER; BUT I WOULDN'T. AND IF WE HAD  
25 A KNIFE WITH A BENT BLADE, I DIDN'T KNOW ABOUT IT. I

1 MR. MACDONALD

PAGE 42

2 DIDN'T SEE IT, AND I DON'T RECOGNIZE THIS.

3 Q YOU SAY YOUR WIFE HAD SOME AROUND.

4 A WELL, SURE. SHE WOULD---YOU KNOW, SHE'D COOK IN THE  
5 KITCHEN, AND SHE HAD PLENTY OF KNIVES LYING AROUND.

6 Q HOW MANY---HOW MANY PARING KNIVES DID SHE HAVE THAT YOU  
7 KNOW?

8 A OH, A COUPLE. SHE HAD ONE WITH A FUNNY TWO POINTS ON  
9 THE END OF THE BLADE THAT---AND I COULD NEVER FIGURE  
10 OUT WHAT IT WAS FOR---WITH A SERRATED EDGE. NOT A  
11 SERRATED, A WAVY---AND SHE HAD A LONG ONE WITH ONE OF  
12 THOSE WAVY THINGS, AND SHE HAD A COUPLE LITTLE---YOU  
13 KNOW, LITTLE SHORT PARING KNIVES.

14 Q WELL, I MEAN SPECIFICALLY PARING KNIVES. YOU SAY A  
15 COUPLE. MIGHT SHE HAVE HAD THREE OR FOUR OR---

16 A WELL, YOU KNOW, I'D JUST GRAB A STEAK KNIFE IN THE  
17 DRAWER. I---I DON'T KNOW, QUITE HONESTLY, BECAUSE ONE  
18 OF HER DRAWERS SHE JUST KEPT ALL FULL OF JUNK.

19 AND---NO, NOT THREE OR FOUR. SHE---SHE PROBABLY  
20 HAD THIS WHITE-HANDLED ONE. THERE'S A LONG WHITE-  
21 HANDLED ONE AND PROBABLY ONE OR TWO OTHERS OF THE  
22 STEAK KNIFE TYPE.

23 USUALLY---I USUALLY WENT AND USED A STEAK KNIFE.  
24 I NEVER COULD FIND A PARING KNIFE.

25 Q THERE WAS ANOTHER ONE THAT WE FOUND. THAT WOULD BE

1 MR. MACDONALD

PAGE 43

2 THIS ONE HERE (SHOWS PICTURE). YOU SEE, NOW, THAT'S  
3 PRETTY DISTINCTIVE. IT SAYS "OLD HICKORY" ON THERE.

4 A I DON'T KNOW THIS ONE. I'D HAVE SEEN THE "OLD HICKORY"  
5 SIGN IF WE HAD THAT AROUND. I DON'T KNOW THAT ONE.

6 HOW BIG IS THAT? SEVENTEEN CENTIMETERS?

7 Q YEAH.

8 A NO, I DON'T---WELL, I DIDN'T SEE ANY WITH AN "OLD  
9 HICKORY" SIGN ANYWAY.

10 Q WELL, IT'S ALMOST SEVEN INCHES LONG. THE BLADE'S THREE  
11 INCHES.

12 A I DON'T KNOW.

13 Q DO YOU KNOW---CAN YOU SPECIFICALLY---CAN YOU SAY THAT  
14 IT IS NOT FROM YOUR HOUSE? LET ME ASK YOU THAT.

15 A YEAH, UNLESS SHE GOT A NEW KNIFE OR SOMETHING THAT I  
16 DIDN'T KNOW ABOUT, BUT I DON'T THINK---I NEVER SAW THAT.

17 AND, USUALLY, YOU KNOW, I HAD A ROUGH IDEA OF WHAT  
18 WAS THERE AND I---I WOULD HAVE SEEN A KNIFE WITH "OLD  
19 HICKORY" ON IT. I DIDN'T SEE THAT; I NEVER SAW THAT.  
20 SO I CAN SAY THAT THAT'S NOT FROM MY HOUSE.

21 Q DID YOU---YOU DID SOME BUILDING AROUND THERE, DIDN'T  
22 YOU?

23 A RIGHT.

24 Q SOME SHELVES AND THAT SORT OF THING.

25 A YOU SAW MY ABORTIONS.

1 MR. MACDONALD

PAGE 44

2 Q DIDN'T YOU---DIDN'T YOU BUILD A SHED FOR YOUR PONY OUT  
3 THERE TOO?

4 A I DIDN'T BUILD THE WHOLE THING. MOST OF IT WAS THERE.  
5 I RENOVATED IT A LITTLE BIT, RIGHT.

6 Q IS THAT THE ONE THAT SITS NEAREST TO THE DRIVE?

7 A THE LITTLE ONE IN THE PASTURE. IT'S JUST FOR ONE HORSE,  
8 AND IT HAS A LOW DOORWAY---A LOW DOORWAY FOR THE PONY,  
9 RIGHT.

10 Q YEAH, I GUESS THAT'S THE ONE. JUST RIGHT CLOSE TO THE  
11 HOUSE THERE, ALL THAT BUSINESS OUT THERE IS THE BARN?

12 A NO, NO. IF YOU HAVE A SHEET OF PAPER, I'LL SHOW YOU  
13 WHERE IT IS. YOU MEAN THERE WHERE THE HORSE IS KEPT?

14 Q YEAH.

15 A OKAY. ALL RIGHT. YOU COME IN THE---THIS IS THE FENCE.  
16 YOU COME IN THE DRIVEWAY THIS WAY. HERE'S THE GUY'S  
17 TRAILER.

18 Q RIGHT.

19 A HERE'S HIS HOUSE.

20 Q OKAY.

21 A THE FIRST PASTURE ON THE RIGHT, IT'S RIGHT HERE, AND  
22 THE SHED'S HERE. THIS IS THE GUY'S BARN.

23 Q YEAH, OKAY. THAT'S ---THAT'S THE ONE.

24 A RIGHT.

25 Q SO YOU HAD SOME SCRAP LUMBER AROUND THERE AND---



1 MR. MACDONALD

PAGE 45

2 A RIGHT.

3 Q WE THINK THAT---THAT THIS CLUB THAT YOU ORIGINALLY  
4 THOUGHT WAS A BASEBALL BAT OR SOMETHING MIGHT HAVE  
5 COME FROM AROUND THE HOUSE OR SOMETHING LIKE THAT. IN  
6 FACT, I'LL SHOW IT TO YOU. I DON'T KNOW IF PIECES OF  
7 WOOD WILL MEAN ANYTHING TO YOU FROM A PHOTOGRAPH, BUT  
8 THERE IS---WELL, THERE'S PAINT ON IT. IN FACT, WE  
9 HAD THE IDEA THAT YOU MIGHT HAVE USED THIS AROUND THE  
10 HOUSE.

11 A I NEVER SAW IT.

12 Q PEOPLE USE PIECES OF WOOD TO PRY OPEN DOORS---

13 A RIGHT.

14 Q ---AND WINDOWS---

15 A RIGHT.

16 Q ---FOR ONE THING AND ANOTHER.

17 A I DON'T, YOU KNOW, RECOGNIZE THIS. NOW, I HAD---I  
18 ALWAYS HAD SOME EXTRA LUMBER LAYING AROUND IN THE LITTLE  
19 WELL OUTSIDE THE BACK OF MY HOUSE, BUT I DON'T---HOW  
20 LONG IS THIS? ONE---IT'S ABOUT THREE FEET?

21 Q YEAH, UH-HUH (YES), ABOUT THREE FEET.

22 A NOT SPECIFICALLY, NO, I DON'T RECOGNIZE THIS.

23 Q WELL, THINK ABOUT THE STOCK YOU USED TO MAKE THIS---  
24 THIS SHELVING FROM. THERE WAS A---

25 A WHAT SIZE LUMBER IS THIS?

1 MR. MACDONALD

PAGE 46

2 Q IT'S ABOUT ONE BY---ONE AND FIVE-EIGHTHS BY ONE AND A  
3 HALF.

4 A A TWO BY TWO.

5 Q RIGHT.

6 A I DIDN'T HAVE ANY TWO BY TWO'S. I USED FOUR---TWO BY  
7 FOUR'S THAT I TOOK OUT OF THE OLD THIRD MED SUPPLY  
8 AREA. WHEN WE BROKE IT UP, WE---THEY WERE GOING TO  
9 BURN IT ALL AND SEND IT---YOU KNOW, SEND IT TO THE  
10 TRASH, AND I JUST USED MY TWO BY FOUR'S AND CUT THEM  
11 DOWN.

12 Q DID YOU USE THE---DID YOU MAKE THE SHELVING IN  
13 KIMMIE'S CLOSET?

14 A RIGHT.

15 Q DOWN BELOW THERE?

16 A RIGHT.

17 Q THERE'S A PIECE OF WOOD THERE VERY SIMILAR TO THIS,  
18 VERY SIMILAR.

19 A MAYBE IT WAS AROUND. I---I, YOU KNOW, DON'T SPECIFICALLY  
20 RECOGNIZE IT FROM THIS---YOU KNOW, FROM THE PHOTOGRAPH.

21 Q DID YOU HAVE AN ICE PICK?

22 A I DON'T THINK I HAD ANY TWO BY TWO'S, AND THIS IS A  
23 TWO BY TWO. I---I KNOW I DIDN'T HAVE ANY TWO BY TWO'S  
24 SPECIFICALLY CUT THAT WAY. THERE WAS FOUR BY FOUR'S,  
25 I THINK, IN SCRAPS. TWO BY FOUR'S AND JUST SCRAPS OF

1 MR. MACDONALD

PAGE 47

2 LUMBER.

3 Q DID YOU HAVE AN ICE PICK AROUND THE HOUSE? IS THAT  
4 YOUR ICE PICK (SHOWS PHOTOGRAPH)?

5 A NO, I DIDN'T HAVE AN ICE PICK.

6 Q YOU DID NOT HAVE AN ICE PICK AROUND THE HOUSE?

7 A NOT THAT I KNOW OF, NO.

8 BY MR. IVORY:

9 Q DID YOU GO INTO THE---THE DRAWERS WITH THE SILVERWARE  
10 THAT MORNING?

11 A ANY TIME DURING THAT MORNING? OH, YOU MEAN THE MORNING  
12 THAT IT HAPPENED?

13 Q YES.

14 A NOT THAT I REMEMBER.

15 Q DID YOU CLEAN YOURSELF UP IN THE SINK THERE---THE  
16 KITCHEN SINK OR ANYTHING THERE?

17 A I DON'T THINK SO. I REMEMBER WASHING MY HANDS OFF, YOU  
18 KNOW, IN MY COMPULSIVE MANNER. BUT I---I THOUGHT IT  
19 WAS IN THE BATHROOM WHERE I WAS DOING THAT FROM.

20 BY MR. SHAW:

21 Q IT LOOKS LIKE IT WAS IN THE BATHROOM.

22 A I DON'T THINK I USED THE KITCHEN SINK AT ALL. I USED  
23 THE PHONE IN THERE, AND MAYBE WHEN I WAS TALKING ON  
24 THE PHONE----

25 BY MR. IVORY:

1 MR. MACDONALD

PAGE 48

2 Q WHAT IS THE DEEPEST YOU WENT INTO THE KITCHEN?

3 A CHRIST, I DON'T KNOW. I WAS JUST---I PROBABLY JUST  
4 STAYED THERE TO TALK ON THE PHONE. I---THAT'S ALL I  
5 REMEMBER, JUST TALKING ON THE PHONE.

6 Q IF WE CAN DRIFT BACK AGAIN, YOU SAY DURING THE INITIAL  
7 ASSAULT YOU HEARD SCREAMS. WERE THEY JUST SCREAMS OR  
8 WERE THEY---

9 A WORDS?

10 Q YEAH.

11 A YEAH.

12 Q LIKE WHAT?

13 A MY WIFE WAS SAYING, "JEFF, WHY ARE THEY DOING THIS TO  
14 ME?"

15 Q WERE YOU STILL ON THE COUCH THEN?

16 A RIGHT.

17 Q DID THESE SCREAMS CONTINUE, OR WHEN DID THEY CUT OUT?

18 A I---I DON'T KNOW. THEY ASKED ME IN THE HOSPITAL, AND  
19 I DON'T---I CAN'T, YOU KNOW---I DON'T REMEMBER ANY  
20 CUT-OFF TIME SPECIFICALLY. THEY COULD OR COULD NOT  
21 HAVE CONTINUED THEM, YOU KNOW, WHILE I WAS WRESTLING.  
22 I REALLY DON'T REMEMBER ONCE THIS---REALLY THE STRUGGLE  
23 WAS ON.

24 I REMEMBER SITTING UP AND HEARING THEM. I REMEMBER  
25 HEARING MY WIFE SAY, YOU KNOW, "JEFF, JEFF, WHY ARE

1 MR. MACDONALD

PAGE 49

2 THEY DOING THIS TO ME? HELP ME." AND I HEARD HER  
3 SCREAMING, AND I THINK I HEARD KRISTY---KIMMIE, THE  
4 OLDER GIRL, SAID, "DADDY"---SAYING, "DADDY, DADDY,  
5 DADDY."

6 Q YOU FOUGHT YOUR WAY TO THE ENTRANCE TO THE HALLWAY?

7 A YEAH, YOU ASKED ME THAT FIFTEEN TIMES, RIGHT.

8 Q COULD YOU SEE DOWN THE HALLWAY? DID YOU SEE ANYTHING  
9 GOING ON DOWN AT THE END OF THE HALLWAY WHERE YOU WERE  
10 AT?

11 A NO.

12 BY MR. SHAW:

13 Q WHAT LIGHTS WERE ON IN THE HOUSE? KITCHEN LIGHT?

14 A KITCHEN LIGHT WAS ON, I LEFT THAT ON. AND  
15 USUALLY, WE LEFT THE---THE BATHROOM LIGHT ON ---THE BIG  
16 BATHROOM IN THE HALLWAY SO IT'S SHINING---SO, THE HALL-  
17 WAY WAS A LITTLE LIT FOR THE KIDS; AND THAT WAS---I  
18 THINK THAT WAS ON, TOO---WHEN THEY WOKE UP IN THE NIGHT,  
19 AND (INAUDIBLE).

20 Q YOU SAID THAT WHEN YOU WOKE UP, YOU COULD SEE YOUR WIFE.

21 A WELL, I COULD SEE---YEAH.

22 Q YOU COULD SEE IN THERE?

23 A RIGHT.

24 Q YOU COULD SEE YOUR WIFE. WAS THAT BECAUSE THAT LIGHT  
25 WAS ON IN THERE?

1 MR. MACDONALD

PAGE 50

2 A WELL, I---I DIDN'T SAY THAT I COULD SEE MY WIFE WHEN I  
3 WOKE UP.

4 Q WELL, AGAIN, I'M NOT---I'M NOT---

5 A NO.

6 Q ---SHARPSHOOTING. I JUST WANT TO KNOW.

7 A WHEN I WOKE UP, THE FIRST THING I THOUGHT OF WAS---  
8 YOU KNOW, I'M ASHAMED TO SAY MYSELF---I MEAN, WHEN I  
9 WOKE UP, I SAID, "CHRIST, I'M GOING INTO SHOCK."

10 AND THEN I REALIZED THAT EVERYTHING WAS QUIET, AND  
11 I START---YOU KNOW, I KNEW I STARTED TO REMEMBER THAT I  
12 HEARD SCREAMING, SO I WAS---I REALLY DIDN'T EVEN LIKE  
13 LOOK AHEAD. I---I WENT INTO THE BEDROOM AND THEN I SAW  
14 MY WIFE.

15 IN OTHER WORDS, I DIDN'T LAY ON THE FLOOR AND LOOK  
16 UP, IF THAT'S WHAT YOU MEAN, AND SEE HER. I REMEMBER,  
17 AS I GOT UP---I WAS LYING THERE AND I WAS THINKING,  
18 "CHRIST, I'M GOING INTO SHOCK." AND---SEE, THAT'S THE  
19 FIRST THING THAT HITS---HIT ME WHEN I WAS CHILLING.  
20 YOU KNOW, MY TEETH WERE ACTUALLY---LITERALLY CHATTERING.

21 AND THE LIGHT WAS ON, AND---IT ISN'T REAL BRIGHT  
22 WHEN JUST THE BATHROOM LIGHT IS ON.

23 Q WAS IT THE OVERHEAD LIGHT THAT WAS ON?

24 A I DON'T THINK SO. I THINK IT WAS JUST THE BATHROOM  
25 LIGHT. NOW, YOU KNOW, MAYBE I TURNED THE OVERHEAD

1 MR. MACDONALD

PAGE 51

2 LIGHT ON. I DON'T REMEMBER.

3 BUT THEN I WENT INTO THE BEDROOM AND---IN OTHER  
4 WORDS, I---OBVIOUSLY, AS I GOT IN THE BEDROOM, YOU  
5 KNOW, I COULD SEE MY WIFE REAL WELL. (INAUDIBLE)

6 BUT I DIDN'T---YOU KNOW, I DON'T REMEMBER  
7 LYING IN THERE AND LOOKING UP AND SEEING MY WIFE IN THE  
8 BEDROOM.

9 Q CAN YOU GIVE US ANY BETTER DESCRIPTION OF THESE PEOPLE  
10 THAT YOU SAW?

11 A I WISHED I HAD A POLAROID. YOU KNOW, THIS---ALL I CAN  
12 SAY IS EVERYONE SEEMED MODERATE HEIGHT. YOU KNOW, THIS  
13 IS RIDICULOUS, I KNOW, TO YOU; BUT EVERYONE  
14 SEEMED NORMAL---HEIGHT. THE MIDDLE---THE MIDDLE  
15 GUY, I REMEMBER, WAS SHORTER. NOT ABNORMALLY SHORTER,  
16 BUT THE MIDDLE PERSON WAS THE SHORTEST OF THE THREE  
17 PEOPLE.

18 NOW, AGAIN, THIS IS SO QUICK THAT IT MIGHT HAVE  
19 JUST BEEN THE WAY HE WAS STANDING THERE OR HE WAS BENT  
20 FORWARD. HE SEEMED SHORTER THAN THE OTHER TWO. MAYBE  
21 FIVE-EIGHT INSTEAD OF FIVE-TEN, SOMETHING LIKE THAT.

22 I DON'T REALLY REMEMBER ANYTHING DISTINCTIVE. I  
23 DON'T REMEMBER LONG HAIR ON THESE PEOPLE, AND THIS IS A  
24 LITTLE HARD FOR ME TO FIGURE OUT. I DON'T UNDERSTAND,  
25 YOU KNOW, WHO, WHY OR WHAT WAS THERE AND FOR WHAT

1 MR. MACDONALD

PAGE 52

2 REASON; AND IF THEY WERE ON, YOU KNOW, L.S.D., OR  
3 SOMETHING---THEY'RE SUPPOSED TO BE HIPPIES. THEY'RE  
4 NOT ALWAYS. I MEAN I'VE SEEN A LOT OF CLEAN-CUT SPECIAL  
5 FORCES GUYS.

6 Q HOW DO---HOW DO HIPPIES REACT---NOT HIPPIES, BUT PEOPLE.  
7 HOW DO PEOPLE REACT WHEN THEY ARE UNDER THE INFLUENCE  
8 OF L.S.D.?

9 A WELL, ANYBODY---

10 Q ARE THEY CAPABLE OF CARRYING OUT SOMETHING LIKE THIS?  
11 COMING TO YOUR HOUSE, OUT OF ALL THESE OTHER HOUSES.  
12 AS YOU SAY, IT'S A---

13 A WELL, NOW YOU'RE GETTING---NOW, SEE, YOU'RE GETTING TO  
14 WHY THEY CAME TO MY HOUSE. IF THEY---

15 Q WELL, I'M NOT INTERESTED IN WHY THEY CAME TO YOUR HOUSE  
16 JUST FOR THE MOMENT. LET'S SAY IT WAS A MATTER OF FATE,  
17 OKAY?

18 A ALL RIGHT.

19 Q IT HAD TO BE SOME HOUSE---

20 A RIGHT.

21 Q WHY NOT YOURS? WHY NOT---

22 A RIGHT. OKAY. ALL RIGHT. IN OTHER WORDS, CAN THEY DO  
23 THIS?

24 Q CAN THEY CARRY THIS OUT, ALL THIS BUSINESS?

25 A I'VE SEEN MANY PATIENTS THAT I FELT WERE---NOW, YOU DON'T



1 MR. MACDONALD

PAGE 53

2 ALWAYS KNOW WHAT THEY'VE TAKEN.

3 Q WELL, LET'S SAY L.S.D. FOR THE MOMENT.

4 A OKAY. WELL, AGAIN, NOW, A PERSON WILL COME IN THE  
5 EMERGENCY ROOM AND SAY HE'S TAKEN L.S.D. AND HE'S  
6 HAVING AN ACUTE ANXIETY REACTION, PARANOID, AND HE'S,  
7 YOU KNOW, SEEING PEOPLE THAT HE'S AFRAID OR ANYTHING.  
8 THAT COULD BE L.S.D.; IT COULD BE SPEED; IT COULD BE  
9 MESC---YOU KNOW, ANY OF THE---ANY OF THIS AMPHETAMINE-  
10 TYPE THINGS---OR MESCALINE.

11 AND VERY OFTEN THE KIDS DON'T KNOW WHAT THEY'VE  
12 TAKEN, SO YOU HAVE NO WAY OF KNOWING. BUT THEY ALWAYS  
13 SAY L.S.D.

14 AND LIKE I TREATED ONE TWO NIGHTS AGO AT CAPE FEAR,  
15 AND THIS GUY WAS---NOT TWO NIGHTS AGO---LAST WEEK, AND  
16 THIS GUY WAS CAPABLE OF ANYTHING, I'M SURE. HE WAS  
17 EXTREMELY AGITATED AND WILD; AND ALL YOU HAD TO DO WAS  
18 MOVE AND, YOU KNOW, HE'D JUMP UP AND HE WAS VERY  
19 PARANOID. YOU KNOW, PEOPLE WERE ATTACKING HIM AND HE  
20 HAD TO DEFEND HIMSELF.

21 Q DO MOST---OKAY, LET'S BRANCH AWAY FROM THAT FOR JUST A  
22 MINUTE. THE PEOPLE THAT ARE TAKING AMPHETAMINES,  
23 UPPERS---

24 A RIGHT.

25 Q WE'VE GOT FOUR OF THEM NOW THAT WE KNOW ABOUT IN YOUR

1 MR. MACDONALD

PAGE 54

2 HOUSE. THEY'RE ON SOMETHING, WE THINK. THIS GIRL WAS  
3 TALKING ABOUT ACID---

4 A RIGHT.

5 Q --- (INAUDIBLE).

6 A L.S.D., RIGHT.

7 Q IT COULD BE, AS YOU SAY, ANYTHING. COULD BE EVEN PEYOTE  
8 BUTTONS FOR ALL WE KNOW, RIGHT?

9 A RIGHT. WELL, I DON'T KNOW WHAT THAT MEANS. THEY'LL---  
10 YEAH, I'VE HEARD ABOUT THEM.

11 Q THEY'RE EXCITED; THEY'RE DOING SOMETHING THAT'S  
12 EMOTIONALLY EXCITING TO THEM. THEY'D BE JUMPING AROUND  
13 WILD, WOULDN'T THEY? THERE'D BE A LOT OF HYPERACTION  
14 HERE. IS THIS CORRECT?

15 A YEAH, YOU---MOST OF THE---I AGREE WITH YOU. MOST OF  
16 THE PEOPLE I'VE SEEN ON THESE DRUGS, YOU KNOW, THEY  
17 DON'T---THEY'RE NOT STEADY AND COOL BY ANY MEANS.  
18 USUALLY, THEY'RE PARANOID AND ANXIOUS AND---

19 Q WHEN THEY DO SOMETHING, IT'S SORT OF IN A FRENZY KIND  
20 OF WAY, ISN'T IT?

21 A WELL, I DON'T KNOW. THAT'S KIND OF A---I DON'T KNOW.  
22 I MEAN, YOU KNOW, THIS GUY'S WALKED OUT OF WOMACK NINTH  
23 FLOOR WINDOW. APPARENTLY, JUST WALKED OUT THE WINDOW.  
24 HE WASN'T IN ANY FRENZY. HE JUST---HE WAS GOING TO GO  
25 FOR A WALK.

1 MR. MACDONALD

PAGE 55

2 Q NO, HE JUMPED OUT. HE WAS VERY FRIGHTENED, AND---

3 A WAS HE?

4 Q HE THOUGHT THE DOCTOR WAS---

5 A THAT---WELL---

6 Q AND HE JUMPED OUT THE WINDOW.

7 A THAT SOUNDS MORE LIKE L.S.D., RIGHT.

8 OKAY---YEAH, USUALLY, YOU DON'T LOOK NORMAL. I MEAN,  
9 ANYONE CAN TELL WHEN SOMEONE---NOT ANYONE---BUT ALMOST  
10 ANYONE CAN TELL WHEN SOMEONE'S HAVING A BAD REACTION,  
11 RIGHT.

12 Q OKAY, THIS IS THE POINT. THIS IS WHY I'M ASKING YOU  
13 FOR YOUR OPINION ON THIS.

14 A RIGHT.

15 Q YOU WOKE UP, CAPTAIN MACDONALD, AND YOU SAW FOUR PEOPLE  
16 AND YOU HEARD YOUR WIFE SOMEWHERE.

17 A RIGHT.

18 Q YOU HEARD YOUR DAUGHTER, RIGHT?

19 A RIGHT.

20 Q THERE MUST HAVE BEEN AT LEAST TWO MORE.

21 A WELL, THIS IS WHAT I---THIS IS WHAT I CAN'T FIGURE OUT.  
22 NOW, I'VE GONE OVER THIS HUNDREDS OF TIMES IN MY OWN  
23 MIND, YOU KNOW, LITERALLY ALL NIGHT LONG MANY NIGHTS;  
24 AND I---I DON'T---THERE'S SO MANY UNANSWERED QUESTIONS  
25 TO ME.

1 MR. MACDONALD

PAGE 56

2 IF THEY---I ASSUME THEY CAME IN THAT BACK DOOR.  
3 THEY HAD TO COME THROUGH THERE---YOU KNOW, THROUGH MY  
4 WIFE'S BEDROOM---OUR BEDROOM. AND I DON'T UNDERSTAND  
5 WHY, YOU KNOW, BY THE TIME THEY GOT TO ME, THAT I  
6 STILL HEARD SCREAMING. OR WERE THERE MORE PEOPLE  
7 INVOLVED THAN FOUR?

8 Q IF THERE WAS THIS---FOUR PEOPLE ARE A LOT OF PEOPLE.  
9 FOUR STRANGERS---

10 A I KNOW.

11 Q ---IN A HOUSE YOUR SIZE ARE A LOT OF PEOPLE.

12 A I KNOW.

13 Q SIX, A MINIMUM OF SIX---

14 A I KNOW.

15 Q ---OR THAT MUCH MORE, AND THERE SHOULD BE---

16 A I KNOW.

17 Q ---IN MY EXPERIENCE, HIS EXPERIENCE AND HIS, THERE  
18 SHOULD BE A MESS IN YOUR HOUSE. NOT---

19 A RIGHT.

20 Q ---NOT A LIVING DAY-TO-DAY MESS. I DON'T MEAN THAT.

21 A NO, I KNOW WHAT YOU MEAN.

22 Q THERE SHOULD BE BUSTED FURNITURE AND BROKEN MIRRORS AND  
23 BASHED-IN WALLS AND---

24 A OH, WELL---

25 Q LOTS OF THIS. THERE SHOULD BE LOTS OF---

1 MR. MACDONALD

PAGE 57

2 A YOU PEOPLE HAVE MORE EXPERIENCE THAN I DO, BUT I  
3 WOULDN'T NORMALLY---I MEAN I WOULDN'T NECESSARILY EXPECT  
4 THAT, IF SOMEONE IS ATTACKED WHEN THEY'RE SLEEPING, I---  
5 YOU KNOW, YOU MIGHT NOT GET BROKEN---

6 Q ---HEAVY THINGS KNOCKED OFF THE TABLE. YOU KNOW, IT'S  
7 VERY---THERE AREN'T THINGS OUT OF PLACE.

8 A WELL, I DON'T KNOW. WHAT---

9 Q DOES THIS SUGGEST ANYTHING TO YOU? LIKE MAYBE THIS  
10 GROUP OF PEOPLE---

11 A KNEW THE INSIDE OF THE HOUSE?

12 Q ---EITHER KNEW THE INSIDE OF THE HOUSE OR WEREN'T---

13 A OR WEREN'T---YEAH, WERE BEING CAREFUL, SURE. WELL,  
14 THIS WAS, YOU KNOW, BROUGHT UP TO ME BEFORE, AND I  
15 DON'T KNOW.

16 THE IN---THE INCONGRUOUS THING TO ME ARE A COUPLE  
17 THINGS. FIRST OF ALL, I HEARD SCREAMING; AND I WOULD  
18 ASSUME IF THEY CAME IN THAT WAY, THEY WOULD HAVE DONE  
19 THESE THINGS AS THEY CAME DOWN. AND I SHOULD HAVE BEEN  
20 AWAKENED EARLIER, EVEN BEFORE THEY GOT TO ME. THAT'S  
21 ONE THING.

22 AND THE SECOND THING IS THE NUMBER OF PEOPLE  
23 INVOLVED. IF---YOU KNOW, WHEN I WOKE UP AND I HEARD  
24 SCREAMING---NOW, MAYBE---MAYBE SHE WAS ALREADY WOUNDED.  
25 MAYBE---YOU KNOW, MAYBE THEY ASSUMED SHE WAS DEAD. OKAY,

1 MR. MACDONALD PAGE 58

2 JUST ASSUME THAT, AND THEN THEY LEFT AND CAME DOWN THE  
3 HALLWAY. AND THEN, YOU KNOW, SHE WAS ABLE TO START  
4 SCREAMING. THAT'S---THAT'S WHAT I THOUGHT. THAT'S ONE  
5 POSSIBILITY.

6 AND THE OTHER THING IS---WAS---THESE PEOPLE SEEMED,  
7 YOU KNOW---IN THE LITTLE WHILE THAT I SAW THEM, THEY  
8 DIDN'T---THEY WEREN'T HYPER OR ANYTHING. NOW, THAT'S A  
9 DRUG REACTION SOMETIMES, THOUGH. I MEAN SOME OF THESE  
10 PEOPLE HAVE VERY DULL AFFECTS.

11 AND, AS A MATTER OF FACT, WHEN YOU INTERVIEW  
12 PEOPLE, IT'S ONE OF THE THINGS YOU LOOK FOR---PEOPLE  
13 THAT DON'T SEEM TO GET ANY RISE EITHER WAY, YOU KNOW,  
14 JUST SORT OF PLOD ALONG.

15 BUT IF YOU TAKE AN AMPHETAMINE'S OR A BAD L.S.D.  
16 REACTION, THEY SHOULDN'T BE APATHETIC. THEY---THEY  
17 SHOULD BE, YOU KNOW, PSYCHOTIC IN NATURE AND A---A  
18 LITTLE WILDER.

19 SO THERE ARE---THOSE ARE THE THREE THINGS THAT  
20 I CAN'T FIGURE OUT IN MY OWN MIND.

21 Q WELL, THE OTHER---THE OTHER PROBLEM I HAVE, IMMEDIATE  
22 PROBLEM, IS A MOTIVE.

23 A RIGHT.

24 Q WE'VE GOT TO ESTABLISH A MOTIVE FOR THIS THING, AND---

25 A RIGHT.

1 MR. MACDONALD PAGE 59

2 Q ---I DON'T SEE ONE. THERE'S NOTHING MISSING FROM YOUR  
3 HOUSE, NOT EVEN---NOT EVEN VANDALISM---

4 A RIGHT.

5 Q ---CAPTAIN MACDONALD. THERE'S NOTHING MISSING. YOU  
6 HAVE A LOT OF THINGS IN YOUR HOME THAT PEOPLE WOULD  
7 LIKE TO STEAL.

8 A THAT WERE NICE, I KNOW.

9 Q NICE TO TAKE, NO MATTER WHAT THEIR REASON WAS, IF THERE  
10 WAS. DO YOU KNOW WHAT I MEAN?

11 A WELL, YEAH. THEY COULD HAVE COME IN FOR---FOR THAT  
12 REASON AND THEN REALIZING WHAT THEY'D DONE, JUST LEFT.  
13 BUT IT'S---I KNOW, I AGREE WITH YOU. IT'S NOT VERY  
14 LIKELY. I DON'T KNOW.

15 Q CAN YOU GIVE US ANY HELP ALONG THIS LINE AT ALL?

16 A GEEZE, I WISH I COULD. I JUST CAN'T IMAGINE THAT I'VE  
17 EVER OFFENED ANYONE ENOUGH---UNLESS, THEY'RE PYSCHOTIC,  
18 YOU KNOW; OR, IN OTHER WORDS, AN ABNORMAL RESPONSE---TO  
19 HAVE SOMETHING LIKE THIS HAPPEN.

20 Q AND THEN THAT ONE PERSON COMMITS AT LEAST FIVE OTHERS  
21 TO HIS CAUSE.

22 A I---RIGHT. RIGHT. OTHER PEOPLE AND TO---AND TO HAVE NO---  
23 TO NO ONE BREAK DOWN, YOU KNOW, IN THE CASE. NO ONE  
24 COME FORTH AND FEEL BAD OR READ THE NEWSPAPERS AND SAY,  
25 "JESUS, I KNOW OF," YOU KNOW, "I KNOW SOME PEOPLE AND I

1 MR. MACDONALD

PAGE 60

2 SAW THEM TUESDAY MORNING AND THEY WERE ALL BLOODY," OR  
3 SOMETHING.

4 SO, I AGREE WITH YOU. I DON'T KNOW. I'D SLEEP A  
5 LITTLE EASIER, I'LL TELL YOU THAT.

6 Q CAPTAIN, YOU HAVE A LOT OF---A LOT OF DRUGS IN YOUR  
7 HOUSE.

8 A I KNOW.

9 Q WHY? WHY DO YOU HAVE A LOT OF DRUGS THERE?

10 A OH, I JUST GOT SOMETHING OF EVERYTHING IN CASE ANYONE  
11 EVER ASKS ME AND---JOHNNY-ON-THE-SPOT. YOU KNOW, VERY  
12 OFTEN I'D SUTURE PEOPLE; AND I TOOK CARE OF HALF THE  
13 NEIGHBORHOOD, YOU KNOW, AND---NOTHING THERE WAS  
14 CONTROLLED.

15 I WAS CAREFUL ABOUT THAT, YOU KNOW. I DIDN'T HAVE  
16 ANY CONTROLLED DRUGS OR ANYTHING LIKE THAT. EVERYTHING  
17 WAS STUFF THERE WOULDN'T BE ANY PROBLEM WITH AND NO ONE  
18 SHOULD BE AFTER FOR ANY REASON.

19 AND I JUST HAD---LIKE, FOR INSTANCE, IF WE WERE  
20 GOING TO GO ON A CAMPING TRIP, I WAS ALL READY TO MAKE  
21 UP A NICE LITTLE M3A KIT WITH THAT---YOU KNOW, ALL THE  
22 POSSIBILITIES INVOLVED; BUT THAT WAS THE ONLY REASON.

23 ALL THIS CAME ABOUT WHEN THE THIRD DISBANDED, AND  
24 THEY HAD BOXES AND BOXES OF STUFF THEY WERE JUST GOING  
25 TO BURN. AND I THOUGHT THAT WAS STUPID, SO I JUST TOOK



1 MR. MACDONALD

PAGE 61

2 A COUPLE BOTTLES OF EVERYTHING AND WAS GOING TO MAKE UP  
3 MY OWN AID KIT, YOU KNOW, FOR MY CAR AND CAMPING AND  
4 STUFF.

5 BUT I KNOW, IT LOOKED A LITTLE---A LITTLE  
6 EXCESSIVE, I'M SURE.

7 Q IT LOOKED MORE THAN A LITTLE EXCESSIVE. IT LOOKED REAL  
8 EXCESSIVE, FRANKLY. I'M BEING FRANK WITH YOU AS YOU'RE  
9 BEING FRANK WITH ME, I HOPE.

10 A YEAH, WELL---

11 Q AND WE UNDERSTAND THAT YOU WERE SENDING THESE THINGS  
12 TO PEOPLE, TOO.

13 A RIGHT, TO MY IN-LAWS.

14 Q OKAY, WERE YOU SENDING ANYTHING TO ANYBODY AROUND HERE  
15 THAT WOULD SUGGEST---

16 A HUH-UH (NO).

17 Q ---TO SOMEONE THAT---

18 A THE ONLY PEOPLE I---THE ONLY PEOPLE I DID THAT FOR WAS  
19 MY MOTHER---MY GRANDMOTHER AND MILDRED KASAB, MY  
20 MOTHER-IN-LAW, AND HER SISTER, HELEN---HELEN MADISON.

21 Q WHAT KIND OF DRUGS WERE YOU SENDING?

22 A OH, THYROID MEDICINE, DIURETICS---TO MAKE THEM LOSE  
23 FLUID. QUINAMINE---IT'S A HEART PILL. MY GRANDMOTHER  
24 HAS PARKINSON'S. SHE WAS TAKING PARKINSON'S PILLS.  
25 AND HIGH BLOOD PRESSURE PILLS.

1 MR. MACDONALD

PAGE 62

2 MY---MY MOTH---MY MOTHER-IN-LAW WAS ON DIET PILLS,  
3 BUT THAT'S CONTROLLED IN THE ARMY SO I HAVEN'T GOT  
4 MANY THROUGH THE ARMY FOR HER.

5 Q WHAT KIND OF PILLS WAS---

6 A AMPHETAMINE SULPHATE, 15 MILLIGRAMS. BUT, YOU KNOW, YOU  
7 GOT TO SIGN YOUR LIFE AWAY IN THE ARMY SO I---SHE'S HAD  
8 TO GET HER OWN SINCE I GOT IN THE ARMY.

9 LET'S SEE, HIGH BLOOD PRESSURE, PARKINSON'S---  
10 THAT'S IT BASICALLY. A COUPLE DIFFERENT TYPES OF  
11 HIGH BLOOD PRESSURE. MY AUNT TAKES ONE TYPE. MY---  
12 COLLETTE'S AUNT, HELEN MADISON, TAKES ONE TYPE; AND  
13 MILDRED TAKES ANOTHER TYPE. MY GRANDMOTHER TAKES  
14 ANOTHER TYPE, SO IT INVOLVED A LOT. AND MY MOTHER-IN-  
15 LAW TAKES A HORMONE, ESTROGEN.

16 Q MOST OF THE PILL HEADS I KNOW---

17 A WHAT'S THAT?

18 Q ---PILL HEADS---TAKE ANYTHING. I HAD ONE GUY TELL ME,  
19 "IF I DON'T WHAT IT IS, I TAKE EIGHT AND I GET SOMETHING  
20 OUT OF IT, EITHER AN UPPER OR A DOWNER." THAT'S THE  
21 WAY HE THINKS. (INAUDIBLE)---HOW I MET THE GENTLEMAN.

22 A UH-HUH (YES).

23 Q (INAUDIBLE)---ORNAIDS, AS I RECALL. HE GOT A REACTION.  
24 I DON'T WHAT IT DID FOR HIM, BUT HE WAS HAPPY.

25 A PRETTY HARD FROM ORNAIDS. IT MAKES YOU A LITTLE SLEEPY.

1 MR. MACDONALD PAGE 63

2 Q SO, AGAIN, THIS---THIS POINTS BACK TO THESE PEOPLE  
3 BEING IN THE HOUSE, PERHAPS WITH---

4 A ULTERIOR MOTIVE.

5 Q --- (INAUDIBLE)

6 A YEAH. NOT MANY PEOPLE KNEW I HAD THAT. ONLY A COUPLE  
7 PEOPLE KNEW THAT---YOU KNOW, THAT I HAD A---SO FAR AS  
8 MY NEIGHBOR, KNEW THAT---WHENEVER SHE NEEDED PILLS, I  
9 GAVE THEM TO HER.

10 BUT I---IDON'T THINK SHE KNEW THAT I HAD THEM IN  
11 THE HOUSE. SHE PROBABLY THOUGHT I GOT THEM OUT OF  
12 THE DISPENSARY AT THE TIME---STUFF LIKE THAT.

13 BUT I CAN'T THINK OF ANYONE, EXCEPT ONE GUY WHO'S  
14 IN VIETNAM THAT---HE BROUGHT HIS GIRLFRIEND OVER ONE  
15 TIME, AND I WENT THROUGH THE DRUG COLLECTION TRYING TO  
16 FIND SOMETHING FOR HER PSORIASIS.

17 Q WAS HE THERE?

18 A YEAH.

19 Q WHO WAS THAT?

20 A GEEZE, I CAN'T REMEMBER. LET ME SEE NOW. HE'S---  
21 HOFFMAN. LARRY HOFFMAN. PLAYED QUARTERBACK FOR OUR  
22 FOOTBALL TEAM.

23 Q WHERE MIGHT HE BE NOW?

24 A HE'S ON HIS WAY TO VIETNAM.

25 Q SO HE'S STILL IN THE SERVICE?

1 MR. MACDONALD

PAGE 64

2 A RIGHT.

3 Q IS HE---IS HE A MEDICAL OFFICER?

4 A NO, HE WAS IN THE---EITHER CIVIL AFFAIRS OR PSYOPS,  
5 SOMETHING LIKE THAT. INTELLIGENCE---ONE OF THE  
6 ANCILLARY THINGS FOR THE THIRD.

7 AND HE BROUGHT HIS---AFTER A FOOTBALL GAME ONE  
8 NIGHT, HE BROUGHT HIS GIRLFRIEND OVER AND SHE HAD A  
9 REACTION ON HER HANDS. SO I TOOK OUT---I HAD A OLD  
10 BOX OF---A BIG BOX IN THE BOTTOM OF MY CLOSET. THEY WERE  
11 ALL SAMPLES THAT WE HAD BROUGHT FROM CHICAGO, AS A  
12 MATTER OF FACT---CHICAGO TO NEW JERSEY TO HERE.

13 AND I WENT THROUGH THE WHOLE THING AND COULDN'T  
14 FIND ANY. AND I THINK HE WAS STANDING THERE WITH ME.  
15 PROBABLY DIDN'T KNOW WHAT I HAD, BUT---YOU KNOW, I TOLD  
16 HIM THEY WERE JUST SAMPLES. THERE WAS VITAMINS AND  
17 GARBAGE, YOU KNOW.

18 BUT HE'S CERTAINLY STRAIGHT. HE'S NO---NO PILL  
19 HEAD AND---

20 Q WHAT ABOUT HIS GIRLFRIEND?

21 A THEY WERE LIVING IN A TRAILER THEN ON BRAGG BOULEVARD,  
22 AND SHE WENT AWAY. SHE WENT TO WISCONSIN OR MARYLAND,  
23 OR SOMEPLACE.

24 Q DO YOU REMEMBER HER NAME?

25 A IT WASN'T HIS GIRLFRIEND. IT WAS HIS WIFE---HIS BRAND

1 MR. MACDONALD

PAGE 65

2 WIFE, RIGHT.

3 Q IT WASN'T HIS GIRLFRIEND; IT WAS---

4 A NO, IT WAS HIS WIFE. RIGHT. I REMEMBER HER NOW---  
5 MRS. HOFFMAN.

6 Q (INAUDIBLE) LARRY HOFFMAN?

7 A RIGHT.

8 NOW, SOME OF THE GUYS IN THE UNIT, OF COURSE,  
9 KNOW WHAT I TOOK OUT OF THE THIRD, YOU KNOW. THEY---  
10 THEY GAVE THEM TO ME, BUT---

11 Q YOU WOULD RECOGNIZE THEM?

12 A WHAT'S THAT?

13 Q YOU WOULD RECOGNIZE THEM?

14 A OH, YEAH, ANYONE THAT I'D WORKED WITH, SURE. I DIDN'T  
15 SEE ANYONE I KNEW. YOU KNOW, MY SUPPLY OFFICER AND  
16 CAPTAIN WARREN AND PEOPLE I WORKED IN THE OFFICE WITH  
17 WHO KNEW THAT I TOOK THEM.

18 Q HOW ABOUT THE ENLISTED PEOPLE THAT YOU'VE WORKED WITH?

19 A WELL, LIKE I SAID, THE ONLY PEOPLE THAT WOULD KNOW WERE  
20 THE---WERE THE SUPPLY PEOPLE. MEDICAL SUPPLY, NOT S4.  
21 MEDICAL SUPPLY FOR THE THIRD BECAUSE IT WAS RIGHT---WE  
22 WERE IN THE SAME OFFICE---SAME BUILDING; AND SO THEY'D  
23 BRING IT TO ME AND PUT IT ON MY DESK, AND I'D PUT IT  
24 IN A BOX NEXT TO MY DESK AND TAKE IT HOME THAT NIGHT,  
25 YOU KNOW.

1 MR. MACDONALD

PAGE 66

2 Q YEAH.

3 A BUT, I'D SEE HIM ALL THE TIME AND THAT'S, YOU KNOW---  
4 HE'S WORKING IN CENTER NOW, SERGEANT SPEARS, BUT HE  
5 JUST---HE KEPT TELLING ME THE C.I.D. WAS GOING TO GET  
6 ME BECAUSE I HAD O.D. COLORED NAP SACKS. BUT THEY WERE  
7 GOING TO BURN THEM, AND I SAID, "IT WAS RIDICULOUS."

8 AS A MATTER OF FACT, HE CAME TO SEE ME AFTER---AFTER  
9 THIS WAS ALL OVER AND HE SAID, "I'LL---I'LL BET YOU  
10 OPENED A FEW EYES WHEN THEY WENT INTO MY STORAGE SHED,"  
11 THAT'S IN THE BACK BECAUSE I HAD AN, YOU KNOW, O.D.  
12 MEDICAL CHEST AND THOSE NAP SACKS.

13 Q YEAH, WELL, IT---IT WAS AN EYE OPENER.

14 A IT SURE WAS.

15 Q CAPTAIN MACDONALD, THERE ARE SOME OTHER THINGS THAT WE  
16 FOUND HERE IN THE HOUSE---SOME OTHER QUESTIONING WE  
17 HAVE. WE'LL PRESENT THEM TO YOU; AND IF YOU CAN EXPLAIN  
18 SOME OF THESE THINGS, FINE. IF YOU CAN'T, WE'LL JUST  
19 HAVE TO WORRY ABOUT THAT. I WANT TO GET---WANT TO GET  
20 WITH YOU ON THIS THING BECAUSE THIS IS---THIS IS LIKE  
21 MONEY IN THE BANK TO YOU. THIS IS REAL IMPORTANT TO  
22 YOU.

23 FOR EXAMPLE, LET'S START WITH ONE THING. THIS  
24 PAJAMA TOP YOU WERE WEARING, OKAY? NOW, LET ME BACK  
25 UP JUST A LITTLE AND GIVE YOU SOME DEPTH HERE---SOME

1 MR. MACDONALD

PAGE 67

2 BACKGROUND.

3 WE HAD A TEAM OF LABORATORY TECHNICIANS IN YOUR  
4 HOUSE FOR FIVE DAYS. THESE PEOPLE ARE VERY THOROUGH  
5 AND THEY'RE VERY PROFESSIONAL. WE GAVE THEM THE  
6 BENEFIT OF ALL OF OUR EXPERIENCE---

7 A RIGHT.

8 Q ---BUT NOT KNOWING ANYTHING ABOUT WHAT MIGHT HAVE  
9 HAPPENED IN THERE, AS FAR AS WHAT YOU SAW OR DIDN'T SEE  
10 OR---

11 A RIGHT.

12 Q ---WHETHER YOU WERE THERE OR NOT. WE JUST TOOK EVERY-  
13 THING WE COULD FIND OF AN APPARENT EVIDENTUARY VALUE.

14 A OKAY.

15 Q ALL RIGHT? SO, WHEN I SAY SOMETHING IS SO, I WANT YOU  
16 TO KNOW THAT I'M---I'M RIGHT.

17 A OKAY.

18 Q IF I'M NOT RIGHT, IF I DON'T KNOW I'M RIGHT, I WON'T  
19 SAY IT.

20 A ALL RIGHT.

21 Q OKAY? NOW, AGAIN, YOUR JACKET.

22 A PAJAMA TOP?

23 Q PAJAMA TOP. NOW, WE'VE TAKEN THIS THING AND WE'VE  
24 EXAMINED IT UNDER LABORATORY CONDITIONS. WE KNOW WHAT  
25 IT'S MADE OF. WE KNOW WHAT KIND OF FIBER IS IN IT. WE

1 MR. MACDONALD

PAGE 68

2 KNOW WHAT KIND OF THREADS ARE IN IT. WE KNOW HOW---  
3 THAT'S IT OLD.

4 A RIGHT.

5 Q IT'S BEEN AROUND A LONG TIME. WE KNOW THAT IT HASN'T  
6 BEEN REPAIRED TO THE EXTENT THAT THERE ARE FOREIGN  
7 THREADS IN IT. THAT'S---

8 A RIGHT.

9 Q OKAY, NOW, WE HAVE FOUND FIBERS AND THREADS IN VARIOUS  
10 PLACES IN THE HOUSE. AND ONE OF THE MOST PUZZLING  
11 THINGS TO ME, PERSONALLY, IS THAT WE FOUND FIBERS FROM  
12 THIS JACKET UNDER COLLETTE'S BODY---STRUNG OUT UNDER  
13 HER BODY---AND I'M INTERESTED IN HOW THEY CAME TO BE  
14 THERE.

15 A SHAKEN OFF. I DON'T KNOW. MAYB---DO THESE THINGS  
16 SHED? ARE THEY LAYING ALL AROUND THE HOUSE? I MEAN  
17 I DON'T KNOW.

18 Q NO, IT DOESN'T---

19 A YOU MEAN THEY'RE BIG FIBERS?

20 Q YEAH.

21 A NOT---

22 Q NOT MICROSCOPIC.

23 BY MR. IVORY:

24 Q NOT A FUZZ.

25 A NOT A FUZZ?



1 MR. MACDONALD

PAGE 69

2 Q NO. IT WOULD BE FIBERS AND THREADS.

3 A I DON'T KNOW.

4 BY MR. SHAW:

5 Q OKAY.

6 A I CAN'T ANSWER THAT.

7 Q ALL RIGHT, MOVING ALONG A LITTLE BIT FURTHER WITH THIS  
8 THING. HOW DOES IT HAPPEN THAT THE POCKET FROM THIS  
9 PAJAMA TOP HAS A LITTLE BIT OF YOUR WIFE'S BLOOD ON IT,  
10 VERY, VERY MINUTE THING; BUT IT'S LAYING IN THE  
11 BEDROOM. THE REST OF IT---OF THE JACKET IS SOAKED WITH  
12 HER BLOOD---

13 A I LAID IT---I LAID IT OVER HER.

14 Q AND WITH KIMMIE'S BLOOD? NOW, HOW DOES THAT HAPPEN?

15 A WELL, I'M SURE I HAD BLOOD ALL OVER MY HANDS FROM  
16 EVERYONE, WHEN I WAS CHECKING FOR PULSES AND STUFF.

17 Q YEAH.

18 A AND WELL, IN FACT, YOU SEE, MY WIFE, I---I DON'T  
19 KNOW HOW MUCH---JESUS, I DON'T KNOW. IT I HAD BLOOD ON  
20 MY HANDS AND I WENT BACK AND TOUCHED THIS---THIS PAJAMA  
21 TOP, COULD IT HAVE GOTTEN ON IT FROM THAT WAY?

22 Q THIS WOULD CONTAMINATE IT TO A CERTAIN EXTENT.

23 A I MEAN, I HAD BLOOD ALL OVER ME, YOU KNOW. I MEAN I  
24 CHECKED---I KNOW I CHECKED CAROTID PULSES IN EVERYONE,  
25 AND I'M SURE I GOT SOME BLOOD ON ME FROM EVERYONE. AND

1 MR. MACDONALD

PAGE 70

2 I WENT BACK IN TO SEE MY WIFE AGAIN.

3 Q THAT WOULD SEEM TO BE LOGICAL, YOU KNOW.

4 A RIGHT.

5 Q OKAY.

6 BY MR. IVORY:

7 Q WELL, WE'RE TALKING ABOUT THE POCKET THAT IS  
8 COMPLETELY SEPARATED AND APART FROM THE REST OF THE  
9 SHIRT.

10 BY MR. SHAW:

11 Q LET ME SHOW IT TO YOU, IF I CAN. LIKE I SAY, THIS IS  
12 IMPORTANT TO YOU AND I WANT YOU TO---

13 A OKAY.

14 Q ---UNDERSTAND WHAT WE'RE TALKING ABOUT. NOW, WE'VE  
15 GOT A---GOT YOUR PAJAMA TOP. (SHAW DRAWS PICTURE OF  
16 THE TOP) A VERY CRUDE, RUDE DRAWING, BUT THAT'S THE  
17 WAY IT IS. AND THIS IS THE FRONT OF IT. KIND OF A  
18 V-NECK AFFAIR?

19 A RIGHT.

20 Q ALL RIGHT, IT'S TORN DOWN HERE.

21 A OKAY.

22 Q AND YOUR POCKET WAS OVER HERE, OKAY?

23 A UH-HUH (YES).

24 Q AND THAT'S SINCE BEEN TORN OFF.

25 A UH-HUH (YES).

1 MR. MACDONALD PAGE 71

2 Q NOW, THIS HAD A COUPLE OF SPOTS OF BLOOD ON IT  
3 (POINTING TO THE POCKET)---

4 A UH-HUH (YES).

5 Q ---AS WE SAID, COLLETTE'S BLOOD. THE REST OF THIS  
6 AREA (POINTING TO THE TOP WHERE THE POCKET HAD BEEN  
7 REMOVED) IS DRENCHED WITH BLOOD---

8 A UH-HUH (YES).

9 Q ---AS IS THIS, BUT THAT'S ANOTHER STORY. THIS IS OVER  
10 IN---IN THE MASTER BEDROOM---IN YOUR BEDROOM---

11 A UH-HUH (YES).

12 Q WAY OVER HERE SOMEPLACE, AWAY FROM COLLETTE.

13 A COULD IT HAVE BEEN TORN OFF ME, I MEAN IN THIS  
14 STRUGGLE AND---

15 Q YEAH, THAT'S WHAT I'M---

16 A ---SOMEONE ELSE DROPPED IT?

17 A THAT'S WHAT WE THINK, THAT IT WAS TORN OFF THE---OFF  
18 THE JACKET THERE DURING THE STRUGGLE. BUT WE HAVE TO  
19 FIND A WAY TO GET IT TO THE BEDROOM.

20 A I DON'T KNOW. MAYBE SOMEONE---MAYBE IT HAS HANGING ON  
21 THIS; AND WHEN I WALKED IN, IT FELL OFF. YOU KNOW, I  
22 MEAN---I JUST---THERE'S A COUPLE WAYS I COULD PICTURE  
23 IT.

24 EITHER---SAY THAT, WHEN WE WERE STRUGGLING, IT WAS  
25 TORN OFF---

1 MR. MACDONALD

PAGE 72

2 Q OKAY, WE'LL SAY THAT.

3 A ---AND THE PERSON ON THE WAY OUT THE DOOR DROPPED IT.  
4 IS THAT POSSIBLE?

5 Q WELL, ANYTHING IS POSSIBLE.

6 A RIGHT, OKAY.

7 Q SOME THINGS ARE LESS POSSIBLE.

8 A SO WHEN IT WAS HANGING ON ME---WHEN IT--- IT WAS  
9 HANGING ON MY JACKET, WHEN I TOOK IT OFF MY ARMS AND---  
10 WHEN I WAS IN THE BEDROOM AND I WAS TAKING IT OFF, AND  
11 IT DROPPED OFF THEN. I DON'T KNOW.

12 I WOULD ASSUME THAT IT WAS RIPPED OFF AND DROPPED  
13 BY THAT---BY THEM OR THAT WHEN I TOOK THE SHIRT OFF---  
14 YOU KNOW, I OPENED IT UP TO PUT IT OVER MY WIFE AND IT  
15 DROPPED OFF THEN. AND MAYBE IT WAS KICKED AWAY FROM  
16 THE BODY OR SOMETHING BY THE PEOPLE---YOU KNOW, THE  
17 MEDICS OR THE M.P.'S THAT WERE GIVING ME ARTIFICIAL  
18 RESPIRATION.

19 AND THEN THE BLOOD---THIS PART GOT SOAKED BECAUSE,  
20 YOU KNOW, I PUT IT OVER MY WIFE. I REALLY DON'T KNOW.  
21 I JUST---YOU KNOW. IT JUST SEEMS TO ME THAT THERE'S  
22 SOME WAY TO EXPLAIN IT.

23 Q IN ADDITION, WE FOUND FIBERS FROM THIS JACKET IN  
24 KRISTY'S ROOM AND IN KIMMIE'S ROOM---BOTH.

25 A HOLY CHRIST.

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

MR. MACDONALD

PAGE 73

Q AGAIN, I'M NOT SHARPSHOOTING YOU NOW---

A NO, I KNOW.

Q ---BUT YOU TOLD US THAT YOU---

A RIGHT.

Q ---TOOK THIS OFF---

A TOOK IT OFF, RIGHT.

Q ---IN THE MASTER BEDROOM.

A WELL, NOW, HOW ABOUT MY HANDS AND STUFF? COULD IT---  
COULD IT BE COMING FROM MY HANDS AS I WAS TAKING IT  
OFF AND WALKING DOWN THE HALL WHEN---

Q IF THERE WERE A CORRESPONDING BLOOD SMEAR WHERE THIS  
THREAD WAS FOUND, YES. BUT THERE WASN'T. YOU---YOU  
SEE WHAT I MEAN?

A RIGHT.

Q YOU JUST (INAUDIBLE) YOUR HAND AND WIPE SOMETHING AND  
THERE'S BLOOD AND (INAUDIBLE) IS GOOD THAT IT'S  
(INAUDIBLE).

A WELL, POSSIBLY, IT'S---I DON'T KNOW. YOU KNOW, WHEN I---  
I MEAN, DOES IT HAVE TO BE SMEARED WITH BLOOD AND WIPED?  
COULDN'T IT---COULDN'T IT HAVE BEEN ATTACHED TO THE  
HAIRS ON MY ARM OR SOMETHING AND, YOU KNOW, RIPPED IN  
THE---IN THE STRUGGLE AND FALL OFF?

Q MAYBE, MAYBE. YEAH.

A I DON'T KNOW.

SEARCHED  
SERIALIZED  
INDEXED  
FILED

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2094

1 MR. MACDONALD

PAGE 74

2 Q THESE ARE---

3 A I'M SURE I TOOK THE THING OFF.

4 Q --- (INAUDIBLE), YOU KNOW.

5 A I'M SURE I TOOK THIS THING OFF THE FIRST TIME. I  
6 DON'T---I DIDN'T MAKE A CIRCUIT WITH THIS JACKET ON, I  
7 DON'T THINK. I CAME DOWN THE HALLWAY---I KNOW THAT---  
8 AND I WENT IN, AND I TOOK IT OFF TO GET MY HANDS FREE---

9 Q YEAH.

10 A ---BASICALLY---

11 Q OKAY.

12 A ---AND SOMETIME WHILE I WAS IN THERE THE FIRST TIME, I---  
13 YOU KNOW, I PUT IT OVER MY WIFE. ALL I CAN SAY IS THAT  
14 IT MIGHT HAVE BEEN ON MY ARMS OR---I DON'T HAVE MUCH  
15 HAIR ON MY CHEST. THAT'S NOT A HELP, ANYHOW---BUT IT  
16 MUST HAVE FALLEN FROM ME. IT'S THE ONLY WAY I CAN SAY.

17 OR THESE PEOPLE INVOLVED THAT HAD IT ON THEM WHEN  
18 THEY LEFT ME FROM THE STRUGGLE, YOU KNOW. AND THEY---  
19 KIMMIE WAS STILL---WAS STILL SCREAMING AND SO WAS  
20 COLLETTE WHEN I WAS UNDERGOING THE STRUGGLE. AND,  
21 POSSIBLY---IF THESE FOUR WERE THE ONLY PEOPLE INVOLVED,  
22 THEY HAD TO GO BACK TO THESE ROOMS TO FINISH DOING WHAT  
23 THEY WERE DOING. THEY BROUGHT THEM IN THEN.

24 BY MR. IVORY:

25 Q WELL, WE'RE NOT TALKING ABOUT A, SAY, STRAY THREAD OR

1 MR. MACDONALD

PAGE 75

2 A FIBER HERE AND THERE. WE'RE TALKING ABOUT A  
3 PROFUSION.

4 A WELL, IT DOESN'T MAKE ANY SENSE TO ME, A PROFUSION.  
5 I DON'T KNOW.

6 BY MR. SHAW:

7 Q WELL, HE DOESN'T MEAN LIKE THE AUTUMN LEAVES---

8 A RIGHT.

9 Q ---BUT I MEAN, WE'RE TALKING ABOUT BIG THREADS.

10 A UH-HUH (YES).

11 Q HE---(INAUDIBLE).

12 A ALL I CAN SAY IS THAT---I DON'T KNOW WHAT THIS---YOU  
13 KNOW, HOW RIPPED THIS JACKET LOOKS. I DON'T EVEN  
14 REMEMBER IT, TO TELL YOU THE TRUTH. I JUST REMEMBER  
15 TAKING---TAKING IT OFF MY HANDS.

16 BUT IF IT WAS RIPPED UP, IT SEEMS TO ME THAT  
17 THREADS COULD BE ON THEM AND ON ME. IT COULD HAVE  
18 FALLEN ON THEM. THAT'S ALL I CAN HONESTLY SAY.

19 NOW, WHEN I WENT TO CHECK THEM AND CHECK THEIR  
20 PULSES, I COULD HAVE DROPPED IT OR AFTER I WAS UNCONSCIOUS  
21 IN THE HALL, THEY COULD HAVE HAD THEM ON THEIR CLOTHES,  
22 OR ON THEIR HANDS, OR WHATEVER, AND DROPPED THEM WHEN  
23 THEY WENT BACK.

24 BUT I DON'T---WHEN YOU SAY "FIBERS," DO YOU MEAN  
25 THESE FIBERS HAD TO COME FROM THIS JACKET---

1 MR. MACDONALD

PAGE 76

2 Q YES.

3 A ---NO, NO, NO. NO, I---I UNDERSTAND THEY'D HAVE TO  
4 COME FROM THAT JACKET. BUT THESE ARE NOT FROM JUST  
5 ROUTINE USE?

6 Q NO.

7 A OH, WELL, THEN I HAVE TO SAY IT WAS FROM AFTER IT WAS  
8 RIPPED WHEN I WAS STRUGGLING. IT WAS EITHER THEM OR  
9 ME THAT LEFT THEM---LEFT THE TRAIL.

10 IS THAT WHY YOU ARE SO INTERESTED ABOUT WHICH  
11 ROOMS I WENT INTO---

12 Q YEAH, SURE.

13 A ---WHEN I---

14 Q AMONG OTHER THINGS, BUT THAT'S---THAT'S ONE OF THE  
15 THINGS.

16 NOW, IN ADDITION TO ALL THIS, WE FOUND A FIBER  
17 FROM THAT JACKET UNDER KIMMIE'S FINGERNAIL; AND IT HAD  
18 BLOOD ON IT, WHICH WOULD INDICATE SOMEWHERE SHE---

19 A UNDER KIMMIE'S?

20 Q ---SHE GOT HER---

21 A I DON'T KNOW. IT'S PRETTY OBVIOUS WHAT YOU'RE---I  
22 DON'T KNOW.

23 Q WELL, THIS IS WHY I'VE SAID, CAPTAIN MACDONALD, WE'VE  
24 GOT THESE SPECIFIC THINGS WE'VE GOT TO TALK ABOUT---

25 A RIGHT.



1 MR. MACDONALD

PAGE 77

2 Q ---BECAUSE YOU ARE THE ONLY PERSON WHO KNOWS WHAT  
3 HAPPENED IN THAT HOUSE.

4 A LISTEN, I KNOW ALL ABOUT THAT AND---LOOK, ALL---JESUS  
5 CHRIST. ALL I CAN SAY IS THAT IT SEEMS TO ME THESE  
6 FIBERS IN A STRUGGLE COULD HAVE GOTTEN ON EVERYONE---  
7 ME OR THEM---AND AS THEY GO BACK INTO A ROOM, AND IF  
8 KIMMIE WAS STILL ALIVE AT THIS TIME AND---AND WAS  
9 STRUGGLING OR FIGHTING OR PUSHING OFF SOMEONE, THAT  
10 SHE COULD GET A FIBER, YOU KNOW, IN HER FINGERNAIL; OR  
11 THE POCKET COULD FALL FROM MY JACKET WHEN I OPENED IT  
12 UP.

13 I DON'T KNOW. I---I MEAN, I WISH---I CAN'T GIVE  
14 YOU THE ANSWERS SPECIFICALLY. I CAN'T SAY I SAW THE  
15 POCKET FALL WHEN---

16 Q WELL, THIS IS WHAT WE WANT.

17 A I KNOW. I KNOW.

18 Q WE WANT TO KNOW IF YOU CAN SAY THAT OR NOT.

19 A I KNOW. NO, I---I CAN'T SPECIFICALLY SAY WHAT  
20 HAPPENED TO THE POCKET, AND ALL I CAN DO IS MAKE  
21 CONJECTURES ABOUT THE FIBERS---THAT THEY WERE ON THEIR  
22 HANDS AND MINE, AND THEY WERE DROPPED DURING MY CIRCUIT  
23 OF THE ROOMS OR WHEN THEY WENT BACK IN THE ROOMS  
24 BECAUSE THEY WERE STILL SCREAMING.

25 Q DID YOU TAKE ANYTHING THAT WOULD HAVE MADE YOU SLEEP?

1 MR. MACDONALD

PAGE 78

2 A ANYTHING TO MAKE ME SLEEPY?

3 Q YEAH, OR SLEEP HARD. DID YOU SLEEP HARD?

4 A WELL NOW, WHEN I SLEEP AT HOME, I SLEEP HARD.

5 Q DID YOU TAKE A SLEEPING PILL?

6 A NO.

7 Q DID YOU TAKE ANYTHING THAT WOULD MAKE YOU SLEEP? A  
8 COLD PILL?

9 A GEEZE, I DIDN'T TAKE---

10 Q AN ANTIHISTEMINE? DID YOU TAKE AN ANTIHISTEMINE WITH  
11 YOUR WIFE?

12 A I MIGHT HAVE TAKEN AN ANHISTEMINE. I DON'T REMEMBER  
13 IT. I DON'T THINK SO.

14 Q WHY WOULD YOU HAVE TAKEN ONE IF YOU DID?

15 A WELL, THIS'LL SOUND RIDICULOUS COMING FROM A DOCTOR,  
16 BUT I DON'T REMEMBER TAKING ONE THAT NIGHT, AND I'D  
17 PROBABLY REMEMBER IT. SO I DON'T THINK I DID.

18 BUT, YOU KNOW, I'VE TAKEN ANTIHISTEMINES AND A  
19 COUPLE TETRACYCLINES, WHICH IS AN ANTIBIOTIC, WHEN I  
20 FEEL A COLD COMING ON. NOW, IT'S NOT SUPPOSED TO WORK,  
21 AND I KNOW IT'S NOT SUPPOSED TO WORK, BUT I DON'T GET  
22 COLDS. YOU KNOW, WHEN I TAKE THESE THINGS, IT SEEMS  
23 TO PREVENT THE COLD.

24 I DON'T REMEMBER TAKING ONE THAT NIGHT, NO. I  
25 DON'T REMEMBER TAKING ANYTHING TO MAKE ME SLEEP.

1 MR. MACDONALD

PAGE 79

2 NOW, WHEN I'M ON AT WORK, I---I HARDLY SLEEP. I  
3 MEAN THE NURSES CAN TELL YOU THAT AT CAPE FEAR. THEY  
4 JUST CALL ME AND, YOU KNOW---AND I'M THERE LIKE THAT.

5 BUT WHEN I'M AT HOME AND I RELAX, IT'S DIFFERENT.  
6 I SLEEP HEAVY THEN BECAUSE I'M USUALLY TIRED. AND NOT  
7 REAL TIRED, AS I USED TO BE; BUT I SLEEP HEAVY AT  
8 HOME. MY WIFE HAS A HARD TIME GETTING ME UP, AS A  
9 MATTER OF FACT.

10 Q DID YOU---YOU WENT IN THE BATHROOM ONE TIME TO WASH  
11 YOURSELF A LITTLE BIT---

12 A RIGHT.

13 Q ---AND CLEANED (INAUDIBLE)---

14 A RIGHT.

15 Q ---AND CHECKED YOURSELF. OKAY AND THEN, IF I RECALL  
16 WHAT YOU SAID CORRECTLY---CORRECT ME IF I'M WRONG---  
17 BUT YOU SAID THAT YOU REALIZED THAT YOU DIDN'T REALLY  
18 KNOW WHAT HAD HAPPENED TO YOUR CHILDREN. YOU HADN'T FELT  
19 THEIR PULSES OR ANYTHING, SO YOU WENT BACK TO DO THIS  
20 AGAIN. IS THIS THE CHAIN OF EVENTS HERE?

21 A NO, I THINK THAT I DID MY WASHING AND STUFF AFTER I  
22 MADE THIS CHAIN. THAT'S WHAT---THAT'S WHAT I WAS  
23 SAYING BEFORE. I THINK THAT THIS WAS THE SECOND  
24 CIRCUIT. I'M NOT SURE ABOUT THAT, HONESTLY; BUT I  
25 THINK THAT I HAD ALREADY CHECKED THEM AND THEN---THEN

1 MR. MACDONALD

PAGE 80

2 CHECKED MYSELF. I DON'T THINK I EVER WASHED---WASHED  
3 MY HANDS OR ANYTHING BEFORE, YOU KNOW, OR---OR SPONGED  
4 MYSELF OFF OR ANYTHING BEFORE I WENT TO SEE THEM THE  
5 SECOND TIME, I THINK.

6 BECAUSE I MADE THE CIRCUIT---MADE THE CIRCUIT, MADE  
7 THE PHONE CALL, AND MADE THE CIRCUIT AGAIN; AND THEN I  
8 THINK THAT I---I WAS IN THE BATHROOM THEN. I DON'T  
9 THINK THAT I DID THE WASHING IN THE MIDDLE, IF YOU KNOW  
10 WHAT I MEAN. I MIGHT HAVE, BUT I DON'T THINK SO.

11 BY MR. IVORY:

12 Q SO WHAT KIND OF CONDITION WERE YOU IN WHEN YOU WENT TO  
13 MAKE THE SECOND PHONE CALL?

14 A WELL, I WAS IN THE SAME CONDITION I WAS IN ALL NIGHT.  
15 WHAT DO YOU MEAN, "WHAT KIND OF CONDITION"?

16 BY MR. SHAW:

17 Q CLEANLINESS. DID YOU HAVE BLOOD ON YOUR HANDS OR BLOOD  
18 ON YOUR PERSON?

19 A OH, LISTEN, HEY, THERE WAS BLOOD ALL OVER---EVERYWHERE.  
20 I MEAN I WASN'T---I WASN'T CLEAN BY ANY MEANS. I  
21 WASN'T---I WAS DABBING AND TRYING TO THINK OF WHAT TO  
22 DO AND THIS WAS A CURSORY THING, YOU KNOW. I THINK I  
23 USED SOME TISSUES OR SOMETHING AND RINSED MY HANDS OFF,  
24 BUT I DON'T EVEN KNOW IF I USED SOAP---(INAUDIBLE)

25 Q AT ANY POINT DURING THE NIGHT, DURING THIS CHECKING

1 MR. MACDONALD

PAGE 81

2 BEFORE THE MILITARY POLICE ARRIVED AND THE MEDICS GOT  
3 THERE, DID YOU WEAR A PAIR OF GLOVES?

4 A DID I WEAR A PAIR OF GLOVES?

5 Q YEAH, YOU.

6 A OH, YEAH, TO DO THE DISHES.

7 Q WHAT KIND OF GLOVES WERE THEY?

8 A SHE USUALLY HAD TWO PAIRS LAYING THERE. A YELLOW, THICK  
9 DISH GLOVES AND---AND A PAIR OF MY SURGEON'S GLOVES.  
10 I DON'T KNOW WHICH ONES I USED. I DON'T REMEMBER.

11 Q BUT YOU DID USE---

12 A RIGHT.

13 Q ---GLOVES TO WASH THE DISHES?

14 A YEAH.

15 Q OKAY. AFTER YOU REALIZED---YOU HAD BEEN ATTACKED  
16 YOURSELF WHEN YOU WOKE UP AND YOU REALIZED THAT THERE  
17 HAD BEEN HARM DONE IN THIS HOUSE---ALL RIGHT, YOU WERE  
18 ALONE NOW---DID YOU WEAR GLOVES AT ANY TIME?

19 A NO.

20 Q NOT TO TAKE PULSES OR ANYTHING LIKE THAT?

21 A NO, HUH-UH (NO).

22 Q OKAY. WELL, WE HAVE A---WE HAVE A LACK OF BLOOD IN  
23 SOME PLACES WHERE THERE SHOULD BE. CAPTAIN MACDONALD,  
24 THERE SHOULD BE A LOT OF BLOOD. AS YOU SAY, THERE WAS  
25 BLOOK EVERYPLACE AND YOU WERE WONDERING WHAT TO DO AND---

1 MR. MACDONALD

PAGE 82

2 A RIGHT. IT SEEMED---IT SEEMED LIKE THAT TO ME. I  
3 SEEMED TO SEE BLOOD EVERYWHERE.

4 Q YEAH, THERE SHOULD BE A LOT OF BLOOD ON THE TELEPHONE  
5 IN YOUR BEDROOM; AND THERE SHOULD BE A LOT OF BLOOD ON  
6 THE TELEPHONE IN YOUR KITCHEN. BUT THERE ISN'T.  
7 THERE WAS SOME BLOOD ON THE TELEPHONE IN THE KITCHEN.  
8 AND IT WAS ABOUT THE SIZE OF A GRAIN OF SALT,  
9 YOU KNOW---

10 A UH-HUH (YES)

11 Q ---IF YOU CAN VISUALIZE THAT. IT'S NOT A LOT OF BLOOD  
12 (INAUDIBLE). I THINK YOU USED IT---

13 A UH-HUH (YES).

14 Q ---I MEAN I'M GOING ALONG WITH YOU HERE---

15 A UH-HUH (YES).

16 Q ---THE PHONE IS DOWN; IT'S OFF THE HOOK---

17 A RIGHT.

18 Q ---WHEN YOU LEFT THE LINE, AND WE KNOW WHAT THE  
19 OPERATOR HAS TOLD US AND ALL THAT.

20 A UH-HUH (YES).

21 Q WHERE'S THE BLOOD? DID YOU WIPE YOUR HANDS OFF  
22 SOMEPLACE?

23 A MAYBE ON MY WIFE'S NIGHTGOWN OR SOMETHING; OR WHEN I  
24 WAS CHECKING THE PULSES, I WAS---WHAT ARE MY PAJAMA  
25 BOTTOMS LIKE? I---YOU KNOW, I MIGHT'VE JUST BEEN GOING

1 MR. MACDONALD

PAGE 83

2 LIKE THAT. I DON'T REMEMBER. MAYBE MY HANDS WERE  
3 RELATIVELY DRY WHEN I PICKED UP THE PHONE, BUT I DON'T---

4 Q WELL, YOU KNOW---

5 A NOT BEFORE THE FIRST CALL, UNLESS IT WAS ON THE RUGS  
6 OR---YOU KNOW, MY WIFE --- ON THE NIGHTGOWN AND STUFF,  
7 YOU KNOW. BUT I DON'T KNOW. I DIDN'T---I DIDN'T---

8 Q NO, I'M NOT SAYING---

9 A I DIDN'T CLEAN BEFORE THE FIRST PHONE CALL, I KNOW.

10 Q YOU'VE WORKED IN THE EMERGENCY ROOM A LOT.

11 A RIGHT.

12 Q IT'S YOUR PROFESSION. AND YOU DON'T GET YOUR HANDS  
13 FULL OF BLOOD AND WIPE THEM OFF AND---AND NOT  
14 CONTAMINATE WHAT YOU TOUCH. YOU GET BLOOD ON WHAT  
15 YOU TOUCH.

16 A RIGHT.

17 Q YOUR---

18 A RIGHT, UNLESS IT'S DRY. I MEAN, YOU KNOW, IF---NOW,  
19 WHEN---YOU KNOW, WHEN I WOKE UP ON THE FLOOR, IF I HAD  
20 BEEN THERE FOR A WHILE, IT COULD HAVE BEEN DRY AND NOT  
21 LEAVE TOO MUCH.

22 Q IT WASN'T DRY WHEN WE GOT THERE.

23 A OKAY, THAT SHOOTS THAT DOWN. I DON'T KNOW. I MIGHT  
24 HAVE WIPED THEM OFF ON THIS TERRY CLOTH THING THAT I DON'T  
25 EVEN REMEMBER, OR I MIGHT EVEN HAVE WIPED LIKE THAT ON

1 MR. MACDONALD

PAGE 84

2 MY PANTS, OR THE RUG, OR ANYTHING BEFORE I USED THE  
3 PHONE. BUT I DON'T SPECIFICALLY REMEMBER DOING THAT.

4 Q DID YOU LOOK AROUND ANYPLACE TO SEE WHAT HAD HAPPENED,  
5 OTHER THAN JUST LOOKING AT YOUR FAMILY? IN GOING TO  
6 LOOK AT THEM OR GOING TO USE THE PHONE, DID YOU---

7 A I LOOKED OUT THE BACK DOOR ONCE.

8 Q WAS IT OPEN, THE DOOR OPEN?

9 A THE DOOR WAS OPEN.

10 Q HOW WAS IT?

11 A THE DOOR WAS OPEN.

12 Q DID YOU OPEN THE CURTAIN TO LOOK OUT?

13 A GEEZE, I THINK THE DOOR WAS OPEN.

14 Q WAS THE LIGHT ON OR OFF?

15 A THE BACK PORCH?

16 Q YEAH.

17 A I DON'T REMEMBER. I COULD SEE. IT MUST HAVE BEEN ON.  
18 I MEAN I COULD SEE OUT, AND IT WAS EITHER LIGHT FROM  
19 THE BEDROOM OR THE PORCH LIGHT. I DON'T KNOW. I DON'T  
20 KNOW IF THE PORCH LIGHT WAS ON OR NOT, BUT I COULD SEE  
21 OUT.

22 Q DID YOU GO ANY OTHER PLACE TO---TO LOOK? YOU KNOW, DID  
23 YOU BACK TO THE LIVING ROOM AND LOOK AROUND IN THERE  
24 OR---

25 A WELL, AS I WAS USING THE PHONE, YOU KNOW, I---I WALKED



1 MR. MACDONALD

PAGE 85

2 THROUGH IT AND STUFF, BUT---NO, I DIDN'T GO OUT THE  
3 FRONT DOOR.

4 Q ANY---ANY PARTICULAR REASON WHY NOT?

5 A WHY? I MEAN WHY WOULD I GO OUT THE FRONT DOOR?

6 Q WHY DID YOU GO OUT THE BACK DOOR?

7 A BECAUSE IT WAS OPEN. YOU KNOW WHAT I MEAN, EVERYTHING  
8 WAS OPEN AND MAYBE---

9 Q IS THAT WHY YOU DIDN'T GO OUT THE FRONT DOOR AND LOOK  
10 BECAUSE IT WAS CLOSED?

11 A YEAH, I MUST HAVE SEEN---BUT YEAH, I DIDN'T EVEN THINK  
12 ABOUT IT, TO TELL YOU THE TRUTH.

13 Q ALL RIGHT.

14 A I MEAN I WAS WALKING, YOU KNOW, TO USE THE PHONE; AND  
15 I CAME BACK AND I NEVER THOUGHT ABOUT THE FRONT DOOR.

16 Q DID YOU SEE ANYTHING OUT OF THE BACK DOOR?

17 A NO.

18 Q DID YOU SEE YOUR NEIGHBOR'S LIGHTS ON?

19 A I DIDN'T NOTICE. USUALLY, THE ONLY LIGHTS ON THAT---  
20 WELL, IF THE COUPLE'S PORCH LIGHT IS ON---OUR NEIGHBOR  
21 RIGHT NEXT DOOR TO US ALWAYS HAS THEIR LIGHT ON, BUT I  
22 DIDN'T NOTICE IT. I MEAN---

23 Q IT'S QUITE A WAYS DOWN?

24 A YEAH. I MEAN I---I DIDN'T NOTICE THAT OR ANYTHING.

25 I DIDN'T---ALL I DID WAS LOOK OUT THE DOOR AND---PROBABLY

1 MR. MACDONALD

PAGE 86

2 AND GO RIGHT BACK IN. I DON'T REMEMBER ANY SPECIFICS  
3 AT ALL. I DIDN'T SEE ANYBODY, AND THAT'S WHAT I WAS  
4 LOOKING FOR.

5 Q BUT YOU DIDN'T---YOU DIDN'T SEE ANYTHING REMARKABLE AT  
6 ALL OR---APPARENTLY?

7 A NO.

8 Q WAS IT RAINING?

9 A I---IT WAS WET. I DON'T KNOW IF IT WAS RAINING. IT  
10 LOOKED WET OUT.

11 Q DID YOU PUT ON THAT TERRY CLOTH ROBE THAT YOU HAVE AT  
12 ANY POINT THAT EVENING?

13 A THE BROWN ONE?

14 BY MR. IVORY:

15 Q THE SAUNA ROBE.

16 BY MR. SHAW:

17 Q THE WHITE ONE.

18 A THE WHITE ONE?

19 Q UH-HUH (YES).

20 A I HAVE THREE OF THEM.

21 Q OKAY, THERE WAS A KNIT WHITE TERRY CLOTH ROBE---

22 A YEAH, I KNOW WHAT IT IS, MY SHOWER ROBE. NO.

23 Q DID THAT NORMALLY HANG THERE ON THE DOORWAY?

24 A SOMETIMES.

25 Q WAS IT THAT NIGHT?

1 MR. MACDONALD

PAGE 87

2 A I DON'T REMEMBER. I'D HAVE---I DON'T REMEMBER SEEING  
3 IT. I PROBABLY WOULD HAVE SEEN THAT. I DON'T KNOW.

4 YOU KNOW, MY WIFE PROBABLY USED THAT FOR THE  
5 SHOWER, AND WE JUST THROW IT OVER THE DOOR TO LET IT  
6 DRY, SO IT MIGHT HAVE BEEN.

7 Q DID COLLETTE TAKE A SHOWER THAT NIGHT?

8 A I DON'T REMEMBER IT. I DON'T THINK SO.

9 Q YOU DON'T THINK SO?

10 A NO.

11 Q WHEN SHE WENT TO BED, DID SHE CLOSE THE DOOR?

12 A THE BEDROOM DOOR?

13 Q YEAH.

14 A NO. SHE HARDLY EVER DID.

15 Q SHE LEFT IT STANDING OPEN? WELL, THE REASON I'M ASKING  
16 IS TO TRY TO HELP YOU REMEMBER---

17 A YEAH.

18 Q ---TO BRING THE SITUATION BACK THE WAY IT WAS.

19 A YEAH. NO, IT'S ALMOST---ONLY RARELY WOULD SHE EVER  
20 CLOSE THE DOOR WHEN SHE---WHEN I WAS PLAYING MY RECORDS  
21 A LITTLE TOO LOUD AND SHE HAD TO---YOU KNOW, WANTED TO  
22 GO TO SLEEP OR SOMETHING; BUT THAT WASN'T THE CASE THAT  
23 NIGHT.

24 Q IT WASN'T?

25 A SO, I'M PRETTY POSITIVE THAT SHE JUST LEFT IT CLOSED---

1 MR. MACDONALD

PAGE 88

2 OR LEFT IT OPEN ALL THE WAY.

3 Q NOW, CHANCES ARE THAT ROBE WAS HANGING ON THE DOOR---

4 A RIGHT.

5 Q ---FROM THE LAST TIME IT HAD BEEN USED?

6 A RIGHT. IT'S EITHER---IT'S USUALLY THERE OR THE HOOK  
7 NEXT TO HER CLOSET, ONE OF THE TWO PLACES. AND ABOUT  
8 FIFTY-FIFTY.

9 Q NOW, THAT'S WHAT THIS ROBE WAS USED FOR---THE SHOWER?

10 A RIGHT.

11 Q TO GET FROM THE SHOWER TO THE BEDROOM?

12 A WELL, YEAH, TO LOUNGE AROUND SOMETIMES, BUT THE SHOWER  
13 USUALLY.

14 Q DID YOU EVER WEAR THAT OUTSIDE?

15 A THE ROBE?

16 Q YEAH.

17 A WELL, MAYBE TO RUN TO GET SOMETHING OFF THE LINE, YOU  
18 KNOW, OR PICK UP---PICK UP THE PAPER EVERY MORNING, BUT  
19 NOT SPECIFICALLY, NO.

20 NOW, SOMETIMES, YOU KNOW, MAYBE THE---THE KIDS  
21 WOULD DRESS UP IN THOSE THINGS AND GO OUTDOORS AND PLAY  
22 FOR A MINUTE; BUT THAT WAS CONSIDERED GOOD STUFF AND MY  
23 MOTHER---MY MOTHER, THAT'S A FREUDIAN SLIP---MY WIFE  
24 WOULD HAVE, YOU KNOW, CALLED THEM BACK IN AND TAKEN IT  
25 OFF. BUT NOT THAT I KNOW OF, NO, I NEVER WORE IT OUT.

1 MR. MACDONALD

PAGE 89

2 BY MR. IVORY:

3 Q DO YOU REMEMBER IN THE---IN THE MASTER BEDROOM, WHAT  
4 DISARRAY WAS THERE WHEN YOU WENT IN THERE?

5 A WHAT DISARRAY?

6 Q UH-HUH (YES).

7 A NO.

8 BY MR. SHAW:

9 Q YOU STARTED TO SAY SOMETHING BEFORE AND YOU DIDN'T LET  
10 YOURSELF SAY IT BECAUSE YOU WEREN'T SURE. WE WERE  
11 TALKING ABOUT HOW YOU FOUND YOUR WIFE, IF SHE'D BEEN  
12 MOVED. YOU SAID SOMETHING ABOUT SHE MIGHT HAVE BEEN  
13 LEANING UP AGAINST THE CHAIR, AND YOU DECIDED NOT TO  
14 SAY THAT. NOW, YOU---

15 A WELL, I DECIDED NOT TO SAY IT BECAUSE I'M NOT SURE.  
16 I'M---

17 Q DOES IT SEEM LIKE SHE MIGHT HAVE BEEN?

18 A I REMEMBER WE WERE RIGHT NEXT TO THE CHAIR; AND, YOU  
19 KNOW, I AT LEAST MOVED HER LIMBS TO---YOU KNOW, TO---TO  
20 LOOK AT HER, REALLY, AND---AND TO SEE HER CHEST AND TO  
21 GIVE HER ARTIFICIAL RESPIRATION.

22 NOW, I MIGHT HAVE ADJUSTED HER SHOULDERS, OR  
23 SOMETHING LIKE THAT, TO LAY HER FLAT, YOU KNOW, TO GIVE  
24 ARTIFICIAL RESPIRATION AND---HEART MASSAGE, YOU HAVE TO  
25 HAVE THEM LYING FLAT.

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

MR. MACDONALD

PAGE 90

I HONESTLY DON'T SPECIFICALLY SEE MYSELF SHIFTING HER. BUT I WAS MOVING HER AND BEING EXCITED AND BEING THE WIFE, YOU KNOW, I MIGHT VERY WELL HAVE SHIFTED HER AN INCH OR TWO---A COUPLE OF INCHES---TO LAY HER FLAT AND THEN, YOU KNOW, TAKEN THE KNIFE OUT AND, YOU KNOW, GIVING HER MOUTH-TO-MOUTH OR SOMETHING. THAT'S PERFECTLY CONCEIVABLE WITHOUT ME EVEN REMEMBERING IT, BUT I DON'T---I DON'T REMEMBER IT.

Q DO YOU KNOW WHY YOU TOOK THE KNIFE OUT?

A NO, UNLESS IT WAS, YOU KNOW, MAYBE INSTINCTIVELY. I MEAN IF---YOU CAN'T DO ANYTHING WITH IT IN THERE. YOU CAN'T GIVE HER CLOSED CHEST BECAUSE IT WOULD JUST INCREASE DAMAGE; OR IF---WELL, I DIDN'T THINK ABOUT IT. I JUST TOOK IT OUT, YOU KNOW.

Q YEAH. IN OTHER WORDS, IT WAS JUST AN INSTINCTIVE REACTION?

A YEAH, I MEAN IT DOESN'T DO ANY GOOD IN. IT CAN HURT. IT CAN'T HELP.

Q DID YOU SEE THE INSCRIPTION THAT WAS WRITTEN ON YOUR HEADBOARD?

A ~~JUST READ ABOUT IT.~~

Q ~~YOU NEVER SAW IT? (INAUDIBLE)~~

A ~~EIGHT INCHES HIGH: THAT IT WAS "PIG."~~ THAT'S WHAT I READ. I DON'T---I DIDN'T SEE IT, NO.

PIG  
-1875-

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2094

1 MR. MACDONALD

PAGE 91

2 Q SOMETHING THAT PUZZLES US ABOUT THAT, FRANKLY, IS THE  
3 FACT THAT THE WORD IS IN THE SINGULAR AND NOT IN THE  
4 PLURAL. OF COURSE, A GREAT DEAL CAN BE READ INTO THINGS  
5 THAT DON'T MEAN MUCH.

6 A YEAH.

7 Q AND THIS MIGHT BE THE FIRST---THE FIRST REACTION---

8 A UH-HUH (YES).

9 Q ---BUT---

10 A WELL, SHE WAS ALONE IN THE BED, YOU KNOW, AT FIRST AND---  
11 I DON'T KNOW. AND I HAVE REALLY NO THOUGHTS ON THAT.  
12 THAT SEEMS LIKE PRETTY MUCH CONJECTURE.

13 BY MR. IVORY:

14 Q YOU DIDN'T NOTICE IT OR GO UP AND EXAMINE IT OR  
15 ANYTHING?

16 A NO.

17 BY MR. SHAW:

18 Q WHEN YOU WENT IN TO GO TO BED, I TAKE IT YOU FOUND  
19 YOUR---FOUND KRISTY IN BED AND SHE HAD URINATED IN BED,  
20 WET THE BED. IS THAT RIGHT?

21 A RIGHT.

22 Q WHAT---WHAT KIND OF BED CLOTHES WERE ON THE BED? WHAT  
23 KIND OF LINEN? WERE THERE BLANKETS?

24 A I DON'T REMEMBER. I DON'T KNOW. WE USUALLY HAD, YOU  
25 KNOW---I DON'T EVEN KNOW IF THERE WAS A BLANKET ASIDE

1 MR. MACDONALD

PAGE 92

2 FROM THE BEDSPREAD. THE BEDSPREAD WAS AN UGLY GREEN  
3 AND WHITE AND PURPLISH COLORED THING.

4 Q WITH FLOWERS ON IT?

5 A YEAH.

6 Q LIKE THE CURTAINS?

7 A YEAH.

8 Q IT MATCHED THE CURTAINS?

9 A I THINK THAT WAS THE ONE THAT WAS ON THERE THEN, BUT  
10 I DON'T REMEMBER, HONESTLY. I JUST REMEMBER PULLING  
11 BACK THE, YOU KNOW, THE STUFF AND THE SHEETS; AND THE  
12 BED WAS WET AND SO I MOVED KRISTY. I DON'T REMEMBER  
13 WHAT KIND OF SHEETS AND STUFF WERE ON IT.

14 Q BUT THEY WERE ON IT?

15 A THERE WERE SHEETS ON THE BED.

16 Q DID YOU TALK TO YOUR WIFE AT THAT TIME?

17 A HUH-UH (NO).

18 Q WAS SHE ASLEEP?

19 A YEAH.

20 Q YOU KNOW, I WAS JUST THINKING ABOUT THIS BIG WET SPOT  
21 THERE ON THE BED. WAS THERE A LOT---

22 A THIS HAPPENED ALL THE TIME. THAT---THAT'S---THAT'S  
23 NOT UNUSUAL, YOU KNOW, EVERY NIGHT KRISTY WAS IN  
24 THERE---JUST ABOUT EVERY NIGHT. I TRIED TO TELL MY  
25 WIFE THAT THE WAY TO DO IT IS TO KEEP HER IN HER BED



1 MR. MACDONALD

PAGE 93

2 ONE NIGHT, EVEN THOUGH SHE CRIES. AND WE DID IT WITH  
3 KIMMIE, AND IT WORKED. SHE NEVER AGAIN CAME IN, AND  
4 THERE WAS NO PROBLEM.

5 BUT COLLETTE, YOU KNOW, SAID IT WAS WORTH---WORTH  
6 GETTING UP FOR ONE MINUTE EVERY NIGHT, RATHER THAN TO  
7 HAVE TO GO THROUGH TWO OR THREE NIGHTS OF YELLING AND  
8 SCREAMING. SO, SHE USUALLY ALWAYS CAME IN. SHE WAS  
9 TWO AND A HALF AND STILL HAD A BOTTLE, YOU KNOW.

10 Q THAT'S KIND OF UNUSUAL, ISN'T IT?

11 A WE WERE REAL EASY GOING. AND IF KRISTY WANTED A  
12 BOTTLE, WELL, WE DECIDED THAT "LET HER HAVE A BOTTLE.  
13 NO BIG DEAL." KIMMIE HAD A BOTTLE A LONG TIME, AND  
14 SHE WAS FINE. I MEAN THERE DIDN'T SEEM TO BE ANY HARM,  
15 AND SHE WAS HAPPY. SHE WAS A GOOD KID; DIDN'T HAVE ANY  
16 PROBLEMS.

17 Q KRISTY WAS THE BABY OF THE FAMILY IN MORE WAYS THAN  
18 ONE, WASN'T SHE? SHE WAS PRETTY WELL TAKEN CARE OF IT  
19 SEEMS LIKE.

20 A WELL, THEY WERE BOTH TAKEN CARE OF. THERE WAS---I DON'T  
21 THINK EITHER OF THEM WERE REALLY FAVORED. THEY WERE  
22 TOTALLY DIFFERENT.

23 KIMMIE WAS REAL, YOU KNOW, EFFEMINATE AND REAL---A  
24 REAL FEMALE; AND KRISTY WAS A TOM BOY, YOU KNOW. THEY  
25 WERE TOTALLY DIFFERENT, BUT I DON'T THINK EITHER OF

1 MR. MACDONALD

PAGE 94

2 THEM---YOU KNOW, WE LOVED THEM BOTH FOR, YOU KNOW, FOR  
3 DIFFERENT---FOR DIFFERENT THINGS. EQUALLY, I'M SURE.

4 YOU COULD YELL AT KRISTY MORE BECAUSE IT DIDN'T  
5 AFFECT HER. YOU COULDN'T YELL AT KIMMIE. I MEAN, SHE  
6 GOT VERY UPSET IF SHE THOUGHT, YOU KNOW, YOU WERE DISAPPROVING  
7 OF HER.

8 Q SHE WAS BRIGHT AND CURIOUS?

9 A YEAH, THEY BOTH WERE. BUT KIM WAS MUCH MORE ACADEMIC  
10 TYPE. IN OTHER WORDS, SHE WOULD SIT AND READ FOR  
11 HOURS AT HER AGE, YOU KNOW, WHICH IS REAL UNUSUAL FOR  
12 A KID TO HOLD ATTENTION. AND VERY CURIOUS.

13 KRISTY WAS CURIOUS, BUT IN A---YOU KNOW, SHE'D  
14 GRAB SOMETHING AND LOOK AT IT AND THEN RUN AWAY AND  
15 DO SOMETHING ELSE. A DIFFERENT KIND OF OUTLOOK.

16 Q WHAT KIND OF CLASS WAS COLLETTE IN?

17 A WHAT THE HECK WAS THE LATEST ONE? I DON'T KNOW.  
18 SOMETHING LITERATURE. I MEAN I DON'T REALLY KNOW. SHE  
19 HAD JUST GOTTEN AN "A" IN HER 17TH CENTURY ENGLISH---I  
20 DON'T KNOW. IT WAS A---IT WAS---SHE WAS A ENGLISH  
21 MAJOR, AND IT WAS SOME KIND OF LITERATURE COURSE.

22 Q WHAT WAS SHE PURSUING? WAS SHE AFTER HER DEGREE OR  
23 SOMETHING?

24 A YEAH, IN ENGLISH. SHE WAS GOING TO END UP---WHEN I  
25 GO TO YALE, SHE'S GOING TO---SHE WAS GOING TO TRY TO,

1 MR. MACDONALD

PAGE 95

2 YOU KNOW, GET INTO YALE OR A COLLEGE NEARBY. YALE IS  
3 ACCEPTING GIRLS NOW, AND SHE ONLY NEEDED ABOUT A YEAR  
4 NOW. SHE HAD TWO YEARS AT SKIDMORE AND A WHOLE LOT OF  
5 COURSES SINCE WE'VE BEEN MARRIED, DIFFERENT PLACES; AND  
6 SHE WAS GOING TO TRY TO GET A, YOU KNOW, A BACHELOR'S  
7 IN ENGLISH.

8 Q TO WHAT END?

9 A I DON'T KNOW. I SUPPOSE THAT SHE WOULD---WOULD HAVE  
10 LIKED TO HAVE ENDED UP BEING SOME KIND OF AN INSTRUCTOR---  
11 EXCUSE ME---PREFERABLY IN A COLLEGE ATMOSPHERE, YOU  
12 KNOW, WHEREVER I WAS. I WAS PROBABLY GOING TO STAY AT  
13 A UNIVERSITY TO PRACTICE; AND SHE WOULD JUST PIDDLE,  
14 YOU KNOW, BE AN INSTRUCTOR, KIND OF A PART-TIME THING.

15 I DIDN'T WANT HER WORKING WITH THE KIDS, AND SHE  
16 DIDN'T WANT TO WORK VERY MUCH. AND IT WAS NICE, YOU  
17 KNOW, HAVING HER AROUND AND TAKING CARE OF THE KIDS  
18 AND TAKING CARE OF ME.

19 Q KIMMIE WAS IN YOUR BEDROOM, AND SHE GOT HURT IN THERE?

20 A SHE GOT HURT?

21 Q UH-HUH (YES).

22 A YOU MEAN THAT NIGHT?

23 Q THAT'S WHAT I'M SAYING.

24 A UNLESS SHE WENT IN---NOW, SHE HARDLY EVER DID ANY MORE.  
25 SHE DID REAL RARELY, BUT VERY RARELY WOULD SHE LEAVE

1 MR. MACDONALD

PAGE 96

2 HER BED. SHE WAS, YOU KNOW, AT THE POINT NOW WHERE  
3 SHE SLEPT IN HER OWN BED AND STAYED THERE. YOU KNOW,  
4 VERY RARELY SHE WOULD GO IN WITH COLLETTE AND MYSELF;  
5 BUT THAT WAS LIKE ONCE A MONTH THAT OCCURRED.

6 Q IF SHE HEARD SOMETHING, WOULD SHE HAVE---AND BEEN  
7 AWAKENED. IF SHE HAD BEEN AWAKENED, WAS SHE THE TYPE  
8 OF CHILD THAT WOULD GO AND INVESTIGATE TO SEE WHAT WAS  
9 GOING ON?

10 A WELL, KRISTY WOULD. EVEN AT TWO AND A HALF, PROBABLY.  
11 BUT I'M NOT SURE ABOUT KIMMIE. KIMMIE WAS LIKE A---YOU  
12 KNOW, SHE GOT BUCKED OFF THE NEW PONY I JUST GOT THEM  
13 ONCE AND SHE WASN'T---IT TOOK HER AWHILE TO GET BACK  
14 ON. YOU KNOW WHAT I MEAN? SHE WASN'T A TAKE-CHARGE  
15 AND THAT---I DON'T KNOW.

16 THAT'S CONJECTURE, BUT KIMMIE WAS---SHE WAS REAL  
17 EFFEMINATE AND REAL SOFT AND GENTLE, YOU KNOW; AND I---  
18 I DON'T---I DON'T KNOW.

19 BUT IF SHE HAD A NIGHTMARE, FOR INSTANCE, THE ONLY  
20 PARABLE I CAN DRAW---IF SHE'D WAKE UP CRYING FROM A  
21 NIGHTMARE, SHE'D JUST SIT THERE AND YELL UNTIL COLLETTE  
22 CAME IN, WHEREAS KRISTY WOULD COME CHARGING INTO THE  
23 BEDROOM AND DIVE INTO THE BED. YOU KNOW, A WHOLE  
24 DIFFERENT---DIFFERENT WAY OF DOING SOMETHING.

25 IF---IF KIMBERLY HEARD SCREAMING, I WOULD DOUBT IF

1 MR. MACDONALD

PAGE 97

2 SHE'D---IF SHE WOULD---IF SHE WOULD GO AND INVESTIGATE  
3 THAT. SHE'S BRIGHT AND CURIOUS, BUT SHE'S ALSO A VERY  
4 DEPENDENT TYPE CHILD, YOU KNOW.

5 Q YOU DON'T THINK SHE WOULD---

6 A WELL, SHE MIGHT. I KNOW---I MEAN, HOW DO YOU TELL WHAT,  
7 YOU KNOW, WHAT---REALLY, WHAT A FIVE-YEAR-OLD GIRL IS---  
8 BUT I WOULDN'T---IF YOU SAID TO ME, "WHAT WOULD I  
9 EXPECT?" I'D SAY, "NO."

10 KRISTY, YES. KRISTY WOULD GO CHARGING ANYWHERE,  
11 PARTIALLY BECAUSE SHE'S YOUNG ENOUGH SO SHE DOESN'T  
12 HAVE ANY FEAR YET; BUT---BUT KIMMIE---KIMMIE WAS ALWAYS  
13 DIFFERENT. SHE WAS ALWAYS, YOU KNOW---YOU HAD TO TAKE  
14 HER BY THE HAND, EXCEPT IN---EXCEPT IN ACADEMIC THINGS.

15 I MEAN SHE WAS THE ONE THAT CAME HOME AND KNEW  
16 HOW TO READ AND WRITE WAY TOO EARLY AND STUFF LIKE THAT.  
17 BUT LIKE SHE WOULD---SHE'D GET PUSHED AROUND BY OTHER  
18 KIDS, WHEREAS KRISTY---KRISTY WOULD DEFEND HER, BELIEVE  
19 IT OR NOT.

20 KIMMIE WOULD COME HOME CRYING, AND KRISTY WOULD  
21 RUN OVER AND CRACK SOMEONE, SO---GEEZE, THAT'S THE  
22 FIRST TIME I HEARD THAT. I---I DIDN'T---I HADN'T HEARD  
23 ANYTHING ABOUT---ABOUT KIMBERLY BEING INJURED IN THE  
24 MASTER BEDROOM. UMPH.

25 NOW, I DID HEAR THEM BOTH SCREAMING, SO, YOU KNOW,

1 MR. MACDONALD

PAGE 98

2 I THINK---I'M POSITIVE IT WAS KIMMIE, DEFINITELY, WITH  
3 COLLETTE BECAUSE SHE'S THE ONLY ONE WHO WOULD CALL ME  
4 JEFF; AND I KNOW HER VOICE. AND I'M SURE THE OTHER  
5 ONE WAS---WAS KIMBERLY. SO, YOU KNOW, BUT I DIDN'T  
6 KNOW THAT---WHAT YOU JUST SAID.

7 BY MR. IVORY:

8 Q WHEN YOU WENT IN TO CHECK KIMBERLY, ON WHICH SIDE OF  
9 THE BED WAS SHE ON?

10 A THE RIGHT SIDE. SHE ALWAYS SLEPT ON THE RIGHT SIDE, 'CAUSE  
11 SOMETIMES KIMMIE WOULD GO---KRISTY WOULD GO WITH HER.

12 Q TOWARDS THE MIDDLE OF THE HOUSE RATHER THAN THE  
13 WINDOWS?

14 A NO, ON THE WINDOW SIDE. HER---THE RIGHT SIDE OF THE  
15 BED. HER RIGHT SIDE OF THE BED. SHE USUALLY SLEPT ON  
16 THE WINDOW SIDE.

17 BESIDES, YOU HAD TO SQUEEZE THROUGH THAT HI-FI  
18 AND THE BED TO GO THE OTHER WAY. AND WE JUST WALKED---  
19 YOU KNOW, WALKED AROUND THE BED TO THE---THE OTHER  
20 SIDE.

21 BY MR. SHAW:

22 Q THERE IS ONE THING THAT I MIGHT ASK YOU TO COOPERATE  
23 WITH US. DON'T READ ANYTHING INTO THIS; BUT IF---IF  
24 IT COMES TO THIS, ARE YOU WILLING TO TAKE A POLYGRAPH  
25 EXAMINATION REFERENCE WHAT WE'VE TALKED ABOUT THIS

1 MR. MACDONALD

PAGE 99

2 MORNING?

3 A SURE.

4 Q SOMETIMES THESE THINGS HELP.

5 A SURE. ABSOLUTELY.

6 Q YOU ARE?

7 A YEAH.

8 Q OKAY, WELL, THAT'S---THAT'S FINE. WE WANTED TO GET  
9 THAT OUT IN THE OPEN AND TAKEN CARE OF BEFORE WE QUIT  
10 THIS. YOU REALIZE YOU DON'T HAVE TO?

11 A SURE, THAT'S FINE WITH ME.

12 Q WE MIGHT ASK YOU TO DO THAT, JUST TO CLEAR THE AIR  
13 HERE. THIS---THIS (INAUDIBLE).

14 HOW WOULD YOU LIKE TO HAVE A CUP OF COFFEE?

15 A THAT'S FINE WITH ME. WE'VE BEEN TALKING A LONG TIME.

16 Q BILL, WILL YOU TAKE CARE OF THAT? SHOW THE CAPTAIN  
17 WHERE THE COFFEE IS.

18 A I NEED TO CALL MY OFFICE; THEY'RE EXPECTING ME BACK.

19 (BREAK WAS TAKEN FOR COFFEE. INTERVIEW ENDED  
20 AT 1120 HOURS. IT BEGAN AT 0935 HOURS.)

21

22

23

24

25

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

PAGE 100

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

C E R T I F I C A T E

I, MARY M. RITCHIE, NOTARY PUBLIC, DO HEREBY CERTIFY  
THAT THE FOREGOING TRANSCRIPT IS A VERBATIM TRANSCRIPTION  
OF THE ORIGINAL TAPE RECORDINGS FURNISHED BY THE DEPARTMENT  
OF JUSTICE OF THE INTERVIEW OF CPT. JEFFREY MACDONALD.

THE WORD "INAUDIBLE" WAS SUBSTITUTED FOR ANY PORTION  
THAT COULD NOT BE TRANSCRIBED WITH CERTAINTY.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY  
NAME THIS 16TH DAY OF JULY, 1979.

*Mary M. Ritchie*  
\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOVEMBER 22, 1980

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2094



RECEIVED  
U.S. ATTORNEY

JUL 16 5 05 PM '79

RALEIGH, N.C.



RECEIVED  
U.S. ATTORNEY  
RALEIGH, N.C.

TRANSCRIPTION OF INTERVIEW

OF

CPT. JEFFREY R. MACDONALD

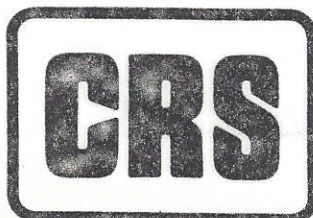
6 APRIL 1970

PERSONS PRESENT:

CPT. JEFFREY R. MACDONALD  
CW3 FRANZ J. GREBNER, CHIEF, CID  
WO1 ROBERT B. SHAW, CRIM. INVES.  
SP7 WILLIAM F. IVORY, CRIM. INVES.

VOLUME II

AT: CID OFFICE  
FORT BRAGG, N. C.



**Court  
Reporting  
Services**

P.O. Box 1729  
Raleigh, N.C. 27602  
(919) 832-4114

2100 Radcliffe Ave.  
Charlotte, N.C. 28207  
(704) 375-5133

P.O. Box 110  
Laurel Springs, N.C. 28644  
(919) 359-2289

NCNB Bldg.  
Durham, N.C. 27702  
(919) 683-8656

1 MR. MACDONALD

PAGE 9

2 I'VE THOUGHT ABOUT THIS. I'VE SPENT MANY SLEEPLESS  
3 NIGHTS IN THE LAST SIX WEEKS, YOU KNOW.

4 THE ONLY THING I CAN SAY IS I DID HEAR SOME  
5 SCREAMING, AND PERHAPS I WAS THE FIRST ONE, AND THEN  
6 THINGS GOT WORSE AND WORSE. I DON'T KNOW.

7 Q WELL, THAT MEANS THAT THERE HAD TO HAVE BEEN SOMEBODY  
8 IN THE BACK BEDROOM THERE WITH COLETTE, WOULDN'T THERE?

9 A UNLESS THEY HAD ALREADY HIT HER OR STABBED HER ONCE OR  
10 TWICE AND LEFT HER AND COME IN TO SEE ME, AND THEN SHE  
11 STARTED SCREAMING, AND THEN THEY WENT BACK ON THEIR  
12 WAY OUT. THAT'S THE ONLY WAY I COULD HAVE WORKED IT  
13 OUT.

14 Q AND THEN WE HAVE THE FIBERS FROM THE THREADS THAT  
15 SEWED YOUR PAJAMA POCKET ON DIRECTLY UNDERNEATH HER  
16 BODY.

17 A SIR, I TOLD YOU I CAN'T---I CAN'T EXPLAIN SOME OF THOSE  
18 FRIBERS. THAT'S---THAT'S BEYOND MY CAPABILITIES. I  
19 JUST TOLD YOU THE ONLY THINK I KNOW; AND, OBVIOUSLY,  
20 THE IMPLICATION IS REAL BAD FOR ME. BUT I CAN'T---HOW  
21 CAN I EXPLAIN THAT? I DON'T KNOW.

22 THEY HAD TO BE EITHER ON MY HANDS OR BODY OR---OR  
23 THE---THE AGRESSORS, AND THEY WERE DROPPED. THAT'S  
24 ALL I CAN TELL YOU.

25 Q AND AS WE ENTER THE BEDROOM, WE HAVE KIMBERLY'S BLOOD

1 MR. MACDONALD

PAGE 10

2 ON THE RUG---MAT. TO THE RIGHT OF THE DOOR, WE HAVE A  
3 SHEET AND THE COVERLET FOR THE BED; AND ON THE SHEET IS  
4 COLETTE'S BLOOD AND KIMBERLY'S. AND ON THE BEDSPREAD---  
5 ISN'T THIS CORRECT---ON THE BEDSPREAD IT'S COLETTE'S  
6 BLOOD, LARGE QUANTITIES---BOTH---THE HAIRS OF KIMBERLY.

7 NOW, HIPPIES DON'T---THEY LET BODIES FALL WHERE  
8 THEY MAY.

9 A RIGHT, I AGREE WITH YOU.

10 Q SO, IT IS ANOTHER STAGED SCENE PROBABLY. KIMBERLY WAS  
11 RETURNED TO HER BED---IT'S A POSSIBILITY---CARRIED IN  
12 THE SHEET.

13 A COULDN'T THAT BLOOD HAVE BEEN TRANSPORTED TO THAT BED  
14 ANY OTHER WAY? ON HANDS?

15 Q TOO MUCH OF IT---TOO MUCH BLOOD. IT COULDN'T HAVE BEEN  
16 TRANSPORTED BY HANDS---(INAUDIBLE)---BUT THERE'S BLOOD  
17 THERE.

18 THERE IS ABSOLUTELY NO EVIDENCE THAT COULD BE  
19 FOUND, EVEN THOUGH WE HAD TECHNICIANS FOR FIVE DAYS IN  
20 THERE, OF AN ALIEN BEING IN THAT HOUSE. THERE WOULD  
21 HAVE HAD TO HAVE BEEN FIVE PEOPLE BY YOUR STORY. YOU  
22 SAW FOUR OF THEM. YOU GET THAT MANY PEOPLE IN A HOUSE  
23 THAT SMALL, YOU'RE GOING TO HAVE EVIDENCE OF IT.

24 A YOU MEAN TO TELL ME THERE WAS NOTHING IN THAT HOUSE  
25 FROM ANYONE ELSE?

1 MR. MACDONALD

PAGE 11

2 Q NOT IN THOSE BEDROOMS.

3 A WHAT'S THAT?

4 Q NOT IN THOSE BEDROOMS.

5 A WELL, THERE'S BEEN PLENTY OF PEOPLE IN THOSE BEDROOMS.

6 I MEAN, EVEN IF THEY HADN'T BEEN THERE THAT NIGHT,

7 THERE WERE PEOPLE IN THOSE BEDROOMS; SO I DON'T UNDER-

8 STAND WHAT YOU ARE SAYING. THAT---THAT ISN'T---THAT

9 DOESN'T NECESSARILY HOLD TRUE TO ME, IN MY MIND.

10 Q WE ARE TALKING ABOUT PEOPLE IN THERE TO COMMIT A CRIME.

11 NOT PEOPLE---

12 A I KNOW.

13 Q ---THAT WERE TIPTOEING IN. THE KIDS WERE ASLEEP.

14 A I DON'T KNOW WHAT YOU EXPECT ME TO SAY HERE.

15 Q AT ONE TIME YOU TOLD I THINK IT WAS MR. HODGES THAT

16 THERE WAS AN ICE PICK IN THE HOUSE.

17 A NO, I NEVER SAID THAT. THAT'S ABSOLUTELY INCORRECT. I

18 WAS ASKED---

19 Q MR. CAVERLY AND MR. HODGES. THOSE TWO MEN. ONE WAS AN

20 F.B.I. MAN AND THE OTHER ONE WAS MY MAN.

21 A I NEVER SAID THERE WAS AN ICE PICK IN THE HOUSE. WE

22 HAD NO ICE PICK. I'M LAZY AND I BUY CUBES. THAT'S---

23 THAT'S INCORRECT, SIR, AND---(INAUDIBLE).

24 Q WELL, MOST OF US HAVE ICE PICKS. WE DON'T USE THEM AS

25 ICE PICKS QUITE OFEN. WE USE THEM FOR OPENING CANNED

1 MR. MACDONALD

PAGE 12

2 MILK.

3 THAT CLUB, YOU SAID YOU HAD NEVER SEEN THAT BEFORE  
4 DO YOU KNOW THAT THE PAINT ON THAT IS THE SAME AS PAINT  
5 THAT'S ON THE SIDEWALK OUT IN BACK OF THE HOUSE?

6 A LOOK---

7 Q IT IS THE SAME AS THE PAINT ON SCRAPS OF WOOD THAT YOU  
8 HAVE IN YOUR LOCKED STORAGE ROOM.

9 A UH-HUH (YES).

10 Q IT IS THE SAME AS THE PAINT ON A PAIR OF SURGICAL  
11 RUBBER GLOVES THAT WAS IN THE LOCKED STORAGE ROOM.  
12 THAT PIECE OF WOOD CAME FROM THE HOUSE.

13 A IT MIGHT HAVE BEEN. I HAVEN'T SEEN THE PIECE OF WOOD.  
14 YOU SAID IT WAS A TWO BY TWO AND I---I KNOW OF NO TWO  
15 BY TWO'S.

16 Q IT WAS CUT OFF OF PROBABLY A FOUR BY---TWO BY SIX, OR  
17 SOMETHING LIKE THAT.

18 A WELL, I DIDN'T RECOGNIZE IT FROM THE PICTURE, AND YOU  
19 SAID IT WAS A TWO BY TWO BEFORE, AND I KNOW OF NO TWO  
20 BY TWO'S THAT I HAVE, AND I DIDN'T RECOGNIZE IT FROM  
21 THE PICTURE.

22 JESUS CHRIST, THIS IS GETTING---WHAT'S THIS  
23 CALLED? CIRCUMSTANTIAL EVIDENCE THAT---YEAH. WELL,  
24 GO AHEAD. WHAT ELSE DO YOU HAVE?

25 Q I WAS JUST THROWING THINGS FOR YOU TO CONSIDER.

## TABLE OF CONTENTS

### SUBJECT MATTER OF STATEMENTS

1. WEARING PAJAMA TOP WHEN ATTACKED IN LIVING ROOM	
(a) APRIL 6, 1970 .....	p. 1
(b) AUGUST 13, 1970 .....	p. 2
(c) AUGUST 15, 1974 .....	p. 3
(d) JANUARY 21, 1975.....	p. 4
(e) JANUARY 21, 1975 .....	p. 5
2. ACTIONS UPON REGAINING CONSCIOUSNESS .....	p. 6
(a) AUGUST 13, 1970.....	p. 7
(b) AUGUST 15, 1970.....	p. 7
(c) JANUARY 21, 1975.....	p. 7
3. ACTIONS UPON FIRST ENTERING MASTER BEDROOM .....	p. 8
(a) APRIL 6, 1970 .....	p. 9
(b) AUGUST 13, 1970 .....	p. 10
(c) AUGUST 15, 1974 .....	p. 11
(d) JANUARY 21, 1975 .....	p. 12
(e) JANUARY 21, 1975 .....	p. 13
4. CONCERNING A PIECE OF WOOD, AN ICE PICK, AND TWO KNIVES .....	p. 14
(a) APRIL 6, 1970 (MORNING).....	p. 15
(b) APRIL 6, 1970 (AFTERNOON).....	p. 16
(c) AUGUST 15, 1970 .....	p. 17
(d) JANUARY 21, 1975 .....	p. 18
5. CONCERNING BLOODY FOOTPRINTS AND A BLOODY SHEET IN KRISTEN'S ROOM .....	p. 19
(a) JANUARY 21, 1975.....	p. 20
6. CONCERNING THE SHEET ON THE FLOOR OF THE MASTER BEDROOM .....	p. 21
(a) JANUARY 21, 1975 .....	p. 22
(b) JANUARY 21, 1975 .....	p. 23
(c) JANUARY 21, 1975 .....	p. 24
7. CONCERNING INJURIES SUSTAINED.....	p. 25
(a) APRIL 6, 1970 .....	p. 26
(b) AUGUST 15, 1970 .....	p. 27
(c) MARCH 20, 1971 .....	p. 28-30
(d) JANUARY 21, 1975	
(1) LOWER ABDOMEN .....	p. 31
(2) PNEUMOTHORAX .....	p. 32
(3) LEFT BICEP AND LEFT HAND .....	p. 33
(4) FOREHEAD AND BACK OF HEAD.....	p. 34
(5) BACK.....	p. 35
(6) SURGICAL SCARS.....	p. 36
(7) RIGHT SHOULDER.....	p. 37
(8) LEFT UPPER CHEST.....	p. 38

**1. WEARING PAJAMA TOP WHEN ATTACKED  
IN LIVING ROOM**



**NO. 1****(a) APRIL 6, 1970**

CID Agent Shaw:

Captain MacDonald, you told one of the other investigators earlier that you were wearing a pajama top that was pulled over your head, or something like that.

MacDonald:

Right. Well, all I know is that—well, when I was struggling now—after I had been hit the first time, I was struggling with these guys; and my—somehow, my pajama top—I don't know if it was ripped forward or pulled over my head. I don't think it was pulled over my head. I don't remember actually— like backing my head through it. But all of a sudden, it was all around my hands and it was in my way. And I remember that I was holding this thing in my hand—the guy's hand—that—that I couldn't maneuver very well. My hands were kind of wrapped up in the thing. And as they were punching me, I was kind of using that a little bit, you know, holding it—right, exactly—'cause this guy, I thought, was really punching me in the chest, you know, and in the stomach 'cause I—I was getting hit across here (pointing to the mid-section of his body). So, in effect, I was blunting everything by, you know, holding this up; and I couldn't get my hands free out of this thing. And I remember I ended up, when I was laying on the floor—I forgot to say that—when I woke up on—it was still around my hands and everything, and I took it off as I was going in the bedroom. And after I took this knife out of my wife's chest, I—you know, keeping her warm. You know, to treat shock, that would be (inaudible) and keep them warm.

*(Transcript of April 6, 1970, morning tape, at 4, Exhibit G-101, Art. 32 Rpt. Vol 1, pp 12 & 13).*

**(b) AUGUST 13, 1970****Q: BERNARD L. SEGAL****A: MAC DONALD**

**Q: Okay, Captain MacDonald, would you describe what else took place between you and this guy, if anything?**

**A: Right, so I started struggling with these people. Now sometime during this my hands were sort of bound up in my pajama top and I honestly don't know if it was ripped off or if it had been pulled over my head.**

**Q: I'm not sure the process involved is clear when you say my hands were bound in the pajama top.**

**A: I let go of the club and I was struggling with these two people and I realized that, you know, I couldn't really punch back and my hands were like bound up in my own pajama top. I couldn't get them out of the sleeves or something. It was just—and I had the impression that it had been ripped from around me or pulled over my head. I don't distinctly remember either.**

**Q: You don't recall doing that to yourself though?**

**A: No.**

**Q: Pulling the pajama top over your head?**

**A: No.**

**Q: Then what was the next happening, or what did you next become aware of?**

**A: Well, as I was struggling, I received another what seem like fairly impressive blow on the side of my arm, and saying to myself, what do I do now, really I was just struggling trying to get my hands free, and my hands themselves were still free. The pajama top was around my wrists and between my wrists and just around the part of my hands, really, and in the struggle I had a hold of one these, I don't know which one, hands, and in the hand I saw a blade.**

*(Transcript, Art. 32 Rpt., Vol. XIII, at M-31-32).*

**NO. 1****(c) AUGUST 15, 1974**

**Mac Donald:** "... and I couldn't breathe for a second, and I thought Jesus, he really punched me. And really the next clear thing, despite all the testimony and—you know—the way you have to take it in order—the next clear thing I remember is my hands were in front of me, and I was pushing at these guys.

And I couldn't use my hands well, because my pajama top was all around my hands. And I've been asked 50 million times, how did the pajama top get around your hands? I don't remember that. It could have been pulled over my head as I was struggling and let go of the guy's arm. It could have been ripped around my back. I don't know that. I just had—it was around my arms all of a sudden, and then now I'm trying to get my arms out, and these guys are punching me. I don't know, but what I really remember—you know—was the one—one—one sharp pain, you know, as I recollect, but at the time I didn't think pain. I thought, Jesus, I can't breathe for a second. That kind of a feeling.

and the next—the—I was hit—I remember I kept thinking, Jes—you know—I'm—you know—sort of like, what's happening? or I can't do anything.

And I was trying to punch and I couldn't get my arms out of my jacket. Like when you see in a hockey fight, when a guy pulls a shirt over the other hockey player—you know—I couldn't do anything.

*(Transcript Grand Jury Testimony, Vol. II, at 62-63, August 15, 1974).*

**(d) JANUARY 21, 1975**

**Victor C. Woerheide:** Where were you, Dr. MacDonald when you received all of these wounds?

**MacDonald:** You mean physically in the house?

**Woerheide:** Yeah.

**MacDonald:** In the living room.

**Woerheide:** Yeah, and were you wearing your pajamas at the time?

**MacDonald:** Right.

**Woerheide:** Now, somewhere in the fight the pajamas were ripped over the. I think you used the term ripped over your head. I was reading something this morning, I thought it was this particular one. But—how would you describe what happened so far as your pajamas tops were concerned during the course of the struggle?

**MacDonald:** I don't know how they got around my hands sir, you keep telling me I said they were ripped. I never said that I know of.

**Woerheide:** Well, I saw it in something that I was just read—

**MacDonald:** (Interposing) They were either pulled over my—over my head or was ripped from around my back. I don't know which. I have no idea.

**Woerheide:** Well, during what phase of the struggle was this. Right at the very end, sort of before you went down and hit the floor?

**MacDonald:** No, it seemed earlier than that because I remember my hands were bound up.

**Woerheide:** Oh, did you hear a ripping sound or tearing sound at that time?

**MacDonald:** No.

**Woerheide:** Well, do you know in what manner they were torn or—

**MacDonald:** I have no idea.

**Woerheide:** All that you knew was they got around your hands and wrists and they hampered you in your struggle?

**MacDonald:** That's right.

**Woerheide:** Then you fell unconscious?

**MacDonald:** Right.

*(Transcript Grand Jury Testimony, Vol. III, at 19-20, January 21, 1975).*

**(e) JANUARY 21, 1975**

**MR. WOERHEIDE:** This is Stombaugh Exhibit 15. It already has a number.

**Q:** (Mr. Woerheide) Dr. MacDonald, here is a photograph made in the F.B.I. lab of the back of the pajama top that you were wearing that night. And starting down here are a number of ice pick holes. One, two, three, four, five and it goes up through sixteen and seventeen, in the back now. You weren't stabbed in the back. You weren't injured in the back. Can you tell me how those ice pick holes got in there?

**A:** I presume when they were around my arms.

**Q:** I see. While they were around your arms, they were stabbing at your arms. Is that it, and they got in there then?

**A:** Yeah, we've talked about it at length, Mr. Woerheide.

*(Transcript Grand Jury, Vol. III at pp. 43-44).*

## **2. ACTIONS UPON REGAINING CONSCIOUSNESS**

**p. 6**

**NO. 2****(a) AUGUST 13, 1970**

**Segal:** What did you do when you began to gather your consciousness at that point?

**MacDonald:** Well the first thing I remember was my hands were squenched up sort of across my abdomen, still with the pajama top wrapped around them, and I was lying there and the first thing I remember was that my teeth were chattering, literally knocking together, and I said to myself. I was going into shock. So that—I don't want to—I don't want to try to mislead the investigating officer. I'm not saying that I was going into shock or that I was in shock. This was my impression at that time, simply because chattering teeth is one of the classic symptoms of shock.

*(Transcript Art. 32 Rpt., Vol. XIII, at M-34).*

**(b) AUGUST 15, 1974**

**MacDonald:** So, the next thing, I was lying on the floor. And I absolutely, distinctly remember I was lying there, and my teeth were chattering, and there was absolute silence, and I was laying on my—sort of my stomach with my arms under me, wrapped up in this pajama top.

*(Transcript Grand Jury Testimony, Vol. II at 64).*

**(c) JANUARY 21, 1975**

**Woerheide:** Then you came to and they were still around your wrists?

**MacDonald:** Right.

*(Transcript Grand Jury Testimony, Vol. III at 20).*

### **3. ACTIONS UPON FIRST ENTERING MASTER BEDROOM**

**p. 8**



**NO. 3****(a) APRIL 6, 1970**

**CID Agent Shaw:**

All right, moving along a little bit further with this thing. How does it happen that the pocket from this pajama top has a little bit of your wife's blood on it, very, very minute thing; but it's laying in the bedroom. The rest of it—of the jacket is soaked with her blood—

**MacDonald:**

I laid it—I laid it over her.

**CID Agent Shaw:**

These are—

**MacDonald:**

I'm sure I took the thing off.

**CID Agent Shaw:**

—(Inaudible), you know.

**MacDonald:**

I'm sure I took this thing off the first time. I don't—I didn't make a circuit with this jacket on, I don't think. I came down the hallway—I know that—and I went in, and I took it off to get my hands free—

**CID Agent Shaw:**

Yeah.

**MacDonald:**

—Basically—

**CID Agent Shaw:**

Okay.

**MacDonald:**

--And sometime while I was in there the first time, I—you know, I put it over my wife.

*(Transcript April 6, 1970, Interview, at 25, Exhibit G-101, Art. 32 Rpt., Vol. 1, pp 69& 74)*

**(b) AUGUST 13, 1970****Q:SEGAL****A: MAC DONALD****Q: Now what did you do when you started to get your foothold?****A: Well, my first impression was to see what Collete had been screaming about, and so I got up and walked towards the master bedroom.****Q: Did you see anything unusual in the hall at that point?****A: Not in the hallway, no. I wasn't paying any attention. I just was walking.****Q And describe what happened when you got to the master bedroom. Did you actually go in?****A: Yes.****Q: And what did you see?****A: My wife.****Q: Where was your wife?****A: She was lying on the floor.****Q: In what position?****A: Her right shoulder was a little bit against the green easy chair and her feet were facing somewhat towards the entrance that I was coming in from the hallway, but halfway between the entrance and the rear exit out the utility room.****Q: What did you do when you saw your wife there?****A: I took a knife out of her chest.****Q: Now can you indicate what portion of the chest the knife was?****A: It was the upper part of her chest towards the neck.****Q: Was any of the blade exposed when you first saw it?****A: I—I don't remember seeing any part of the blade, no.****Q: What did you do with the knife?****A: I just threw it away.****Q: What did you do next after you pulled the knife out of your wife's chest?****A: As I was walking towards my wife in the bedroom—I don't know whether or not—I must have. You just walk in the door, the light switch is on the right hand side of the door. Probably as I walked in—I put it on, and I was—and as I was looking at her I was taking off the pajama top that was around my hands, and I dropped it.****Q: Now did you take any other steps after you tried the mouth to mouth resuscitation?****A: I just tried to cover her up.****Q: What do you mean to cover her up?****A: I looked for something to cover her up, and I covered her up with my pajama top.****Q: Do you know where they were before you picked them up to cover your wife?****A: No, I remember I just tried to cover her with something and I must have grabbed it because I know I was putting it across her chest.****Q: Why did you do that?****A: Well, it doesn't make any sense in view of the injuries, but it is to treat shock.****Q: Now what portion of your wife's body did you cover?****A: Her chest.**

*(Transcript, Art. 32 Rpt., Vol. XIII, at M36-37).*

**(c) AUGUST 15, 1974**

**MacDonald:** And I remember laying there and then I remember thinking—Jesus, I heard all these screams and it's silent, and I got up and walked down the hall to the bedroom so, I walked in the bedroom, and I—I don't know if I turned the light on or not, but my wife was visible. I could see her clear as day. She was laying on the floor with her feet towards me.

**She was—she was—she was all covered with blood. There was—there was—a knife in her chest—which I took out and threw away.**

**At sometime I checked her pulse. I don't know if it was now or later, but I was checking her pulse...**

**So I checked Colette again—sometime in there I had covered her with my pajama top that I think was still on my arms as I was coming in the room—coming in—and first—you know—as I was coming in the room the first time, I took it off and Colonel Rock was very interested in whether I dropped it or threw it.**

**Shit, I don't know if I dropped it or threw it. I think I threw it away. And then, I had picked it up again and I covered Colette with it, covered her chest.**

**So sometime in here I picked it up and looked at the wound again—I guess to see if it really—if I'd really seen what I'd seen. And I put it back on her, and I remember trying to cover her.**

*(Transcript Grand Jury Testimony, Vol. II, at 65-67, August 15, 1974).*

**(d) JANUARY 21, 1975**

**Q: WOERHEIDE**

**A: MAC DONALD**

**Q: Then you came to and they were still around you (sic) wrists?**

**A: Right.**

**Q: And you went back to the bedroom and you removed them from your wrists?**

**A: That's right.**

**Q: And do you recall how you did that?**

**A: No, I do not.**

**Q: Did you use any force?**

**A: Mr. Woerheide, I don't know.**

**Q: Well, did you—**

**A: (Interposing) Hear a ripping sound? No, I didn't hear a ripping sound.**

**Q: Well, how did you remove them?**

**A: I just pulled them over my hands. You know, it seemed like I was struggling to get my hands out of them.**

**Q: And then you say you dropped them on the floor?**

**A: Right.**

**Q: Went to your wife?**

**(no answer)**

**Took the knife out of her chest?**

**A: (nods affirmatively)**

**Q: And then reached out and picked up the pajamas and covered her?**

**A: Yeah, that's right.**

*(Transcript Grand Jury Testimony, Vol. III, at 21).*

**(e) JANUARY 21, 1975**

**Q: (Mr. Woerheide) Dr. MacDonald, you say you came to in the hall, you went down to the master bedroom, you took the pajama tops off from around your wrists, you threw them on the floor, and then you put them on Colette's body. And, obviously, Colette's body was bloody. And blood could have been transferred at that time to the pajama top. Now, until the time that you laid them on her body, was there anyway (sic) you can explain how blood would have gotten on them?**

**A: How blood would have gotten on them?**

**Q: Your pajama top, her blood.**

**A: Not unless there was blood from the assailants originally.**

**Q: In other words, they picked up blood from Colette and transferred them to your pajama top?**

**A: I'm just hypothesizing.**

**Q: Well, I want to make clear to you the information that's available to this Grand Jury in this matter. Now, one item of information is that Colette's blood was on your pajama top in a certain area that became torn. And it was there before it was torn, not after it was torn.**

**A: I have no idea what that means.**

**Q: Do you have any explanation for that?**

**A: Do I?**

**Q: Right.**

**A: I'm not a criminologist.**

*(Transcript Grand Jury, Vol.III, at pp. 51-52).*

**4. CONCERNING A PIECE OF WOOD, AN ICE PICK,  
AND TWO KNIVES**

**p. 14**

**(a) APRIL 6, 1970 (Morning)**

**Shaw:** We think that—that this club that you originally thought was a baseball bat or something might have come from around the house or something like that. In fact, I'll show it to you. I don't know if pieces of wood will mean anything to you from a photograph, but there is—well, there's paint on it. In fact, we had the idea that you might have used this around the house.

**A.** I never saw it.

**Q.** People use pieces of wood to pry open doors—

**A.** Right.

**Q.** —and windows—

**A.** Right.

**Q.** —for one thing and another.

**A.** I don't you know, recognize this. Now, I had—I always had some extra lumber laying around in the little well outside the back of my house, but I don't—how long is this? One—it's about three feet?

**Q.** Yeah, uh-huh (yes), about three feet.

**A.** Not specifically, no, I don't recognize this.

**Q.** Well, think about the stock you used to make this—this shelving from. There was a—

**A.** What size lumber is this?

**Q.** It's about one by—one and five-eighths by one and a half.

**A.** A two by two.

**Q.** right.

**A.** I didn't have any two by two's. I used four—two by four's that I took out of the old Third Med Supply area. When we broke it up, we—they were going to burn it all and send it—you know, send it to the trash, and I just used my two by four's and cut them down.

**Q.** Did you use the—did you make the shelving in Kimmie's closet?

**A.** Right.

**Q.** Down below there?

**A.** Right.

**Q.** There's a piece of wood there very similar to this, very similar.

**A.** Maybe it was around. I—I, you know, don't specifically recognize it from this—you know, from the photograph.

**Q.** Did you have an ice pick?

**A.** I don't think I had any two by two's, and this is a two by two. I—I know I didn't have any two by two's specifically cut that way. There was four by four's, I think, in scraps. Two by four's and just scraps of lumber.

**Q.** Did you have an ice pick around the house? Is that your ice pick (shows photograph)?

**A.** No, I didn't have an ice pick.

**Q.** You did not have an ice pick around the house?

**A.** Not that I know of, no.

*(Transcript, Vol 1., pp 45,46&47)*

**(b) APRIL 6, 1970 (Afternoon)**

**Inv:** At one time you told I think it was Mr. Hodges that there was an ice pick in the house.

**MacDonald:** No, I never said that. That's absolutely incorrect. I was asked—

**Inv:** Mr. Caverly and Mr. Hodges. Those two men. One was an F.B.I. man and the other one was my man.

**MacDonald:** I never said there was an ice pick in the house. We had no ice pick. I'm lazy and I buy cubes. That's—That's incorrect, sir, and—(inaudible).

**Inv:** Well, most of us have ice picks. We don't use them as ice picks quite often. We use them for opening canned milk.

That club, you said you had never seen that before. Do you know that the paint on that is the same as paint that's on the sidewalk out in back of the house?

**MacDonald:** Look—

**Inv:** It is the same as the paint on scraps of wood that you have in your locked storage room.

**MacDonald:** Uh-huh (yes).

**Inv:** It is the same as the paint on a pair of surgical rubber gloves that was in the locked storage room. That piece of wood came from the house.

**MacDonald:** It might have been. I haven't seen the piece of wood. You said it was a two by two and I—I know of no two by two's.

**Inv:** It was cut off of probably a four by— two by six, or something like that.

**MacDonald:** Well, I didn't recognize it from the picture, and you said it was a two by two before, and I know of no two by two's that I have, and I didn't recognize it from the picture.

Jesus Christ, This is getting—what's this called? Circumstantial evidence that—yeah. Well, go ahead. What else do you have?

*(Transcript, Vol II pp 11 & 12)*



**(c) AUGUST 15, 1970**

**Q: Now you—I show you Government Exhibit 83 and ask you to examine it. Except in the hands of an investigator or in this hearing room, have you ever seen that ice pick before?**

**A: No, sir.**

**Q: Could it have come from your house?**

**A: No.**

**Q: And you feel certain about that?**

**A: Yes.**

*(Transcript, Article 32, at M-139).*

**(d) JANUARY 21, 1975**

Well, for your information—well, let me say something else. As I recall, you said you didn't have an ice pick.

A: That I know of, right.

Q: Yeah, and you didn't recall either one of those knives?

A: That's right.

Q: As being in your house?

A: (No answer)

Q: Witnesses have testified before the Grand Jury that they have observed items that appeared to be the same in your house before February 17?

A: Unh-hunh(yes). Witnesses now, four years later. That's good. That's good police work. How much did you pay them? More than you paid for the grave robbers, fifty bucks a person they got.

*(Transcript Grand Jury, Vol. III, at 40-41).*

**5. CONCERNING BLOODY FOOTPRINTS AND A  
BLOODY SHEET IN KRISTEN'S ROOM**

**p. 19**

**JANUARY 21, 1975**

**Q: WOERHEIDE**

**A: MAC DONALD**

**Q: Dr. MacDonald, getting back to his diagram I'm told on the top sheet of the bed in Kris's bedroom they found a large amount of Colette's blood which indicated massive direct bleeding by Colette at that area. Do you have any idea how Colette's blood got in that location?**

**A: 'Nope, unless it was from my hands.**

**Q: You mean you may have put your hand over there and leaned against that point when you were administering aid to Kris, is that correct?**

**A: It's possible.**

**Q: I am also told that the footprints going out of the room were in Colette's blood?**

**A: I'm sure I had bloody feet.**

**Q: How did they get bloody?**

**A: From blood on the floor.**

**Q: Well, I'm told there was none of Colette's blood on the floor here. That blood was Kristy's blood?**

**A: Well, I had been in the master bedroom first, Mr. Woerheide.**

**Q: So, you think you picked up Colette's blood in the master bedroom? And you tracked those two footprints on the floor going out of Kris's bedroom? As a result of having blood from the master bedroom on your feet, is that correct?**

**A: I don't know. You're asking me for explanations that I can't give. I don't know.**

**Q: All right, now, if you picked the blood up in the master bedroom, where would you have gotten it? Was there a pool right around Colette there?**

**A: Seemed to me there was a lot of blood.**

**Q: So, your explanation would be that you had picked it up in the vicinity of Colette, you had it on your feet?**

**A: Either that or it's a lab error. I have no idea, Mr. Woerheide.**

**Q: Either that or it's a what?**

**A: A laboratory error. They mistyped the blood with their record I wouldn't see that as an unlikely possibility.**

*(Transcript Grand Jury, Vol. III, at pp. 34-36).*

**6. CONCERNING THE SHEET ON THE FLOOR OF  
THE MASTER BEDROOM**

**p. 21**

**(a) JANUARY 21, 1975**

**Q: But I am going to ask you again, did you handle that sheet that night? Did you touch it? Did you have anything to do with it?**

**A: Not that I remember.**

*(Transcript Grand Jury, Vol. III, at p. 45).*

**(b) JANAURY 21, 1975**

**Q: Dr. MacDonald, did you take Colette off the bed in Kris's room, lay her on top of the bedspread on the floor in Kris's room, cover her with this sheet, then pick her up and carry her out of Kris's room?**

**A: No, I did not do that.**

**Q: And lay her on the floor in the master bedroom?**

**A: No, I did not do that.**

*(Transcript Grand Jury, Vol.III at p. 47).*

**(c) JANUARY 21, 1975**

**Q: Now, that night there was no argument or quarrel between you and Colette?**

**A: None whatsoever.**

**Q: And all of this evidence that I have told you about is fabricated?**

**A: I don't know what to make of it, Mr. Woerheide. It doesn't make any sense to me. I have told you what I know to the best of my ability four years later.**

**Q: You didn't roll in the sheet on the floor?**

**A: Roll in the sheet?**

**Q: Yeah, to get your body prints all over it?**

**A: I don't even remember the sheet.**

**Q: And so far as you know, Colette was not in contact with that sheet?**

**A: I don't remember seeing the sheet. I was lying against Colette.**

*(Transcript Grand Jury, Vol.III, at pp. 50-51.)*



## **7. CONCERNING INJURIES SUSTAINED**

**p. 25**

**[a] APRIL 6, 1970**

**Shaw:** Did you check yourself to see if you were hurt?

**A:** Well, originally, yeah, you know. I went to see what kind of a head injury I had, 'cause I remember my head hurt like crazy. and then I went—I knew I wasn't thinking entirely correctly, 'cause I'm always—you know, in the emergency room. I know I'm good in the emergency room. I never, you know, lose my cool, so to speak.

**Shaw:** What kind of a head injury did you have?

**A:** Oh, I just seemed to have a little—a little bump on this head, and I had a pain back here and a little lump back here (motioning to the back of his head). It wasn't very exciting. It wasn't what I, you know, expected.

**Shaw:** Did you check your side there?

**A:** Yeah, I—that was bubbling. You know, that was—

**Shaw:** Bubbling?

**A:** Yeah, there was bubbles coming out of that; and I had to tell the idiot over in Womak for three times. I mean, yeah—nevertheless, and that's not—not important.

**Shaw:** Go ahead and tell us.

**A:** Well, when I was in—I kept saying I couldn't breathe, and he says, "you can breathe." So, I said, "I'm telling you I can't breathe. It hurts to breathe." And—and I was short of breath. I knew I was breathing, you know (indicating).

Now, that is a—that sometimes is a—is a—what, you know, a symptom rather than for real. In other words, you might not be that short of breath but your body reacts as though it is. And when you get a pneumothorax, that's one of the things that happens. Even though it's a little pneumothorax, you breathe fast and you feel as though you can't breathe in—you can't breathe.

So, I said to him, "I can't Breathe. I need—I need oxygen. I can't breathe." And, so they were looking me over, and there was just a little trickle of blood here and a whole bunch of little puncture marks across my abdomen. And I guess we ended up with fourteen of them, or something like that; and there was a little—a little cut here (motioning to his arm).

**Shaw:** Was this from these assailants? These people that were in the house?

**A:** Well, I assume so.

**Shaw:** You didn't do it yourself, did you?

**A:** No. So, they said to me, "well, you know, we'll have to get an x-ray." So, we got an x-ray; and he came back and said, "the x-ray looks good." and when your chest is bubbling, you have a pneumothorax.

I mean, if you take a breath and bubbles come out—I mean it's very simple. Any Special Forces Medic knows that and any nurse knows that, and they'll put a chest tube in. In Cape Fear Valley they know when a chest tube has to go in before—before you even see the patient.

And I said, "well," I said, "I don't know about you guys," I said, "but my chest hurts like hell and I can't breathe and it's bubbling." Now, that to me—that means I have a pneumothorax with a puncture in the lung.

In other words, it won't bubble unless the lung has been punctured. And so, Dr. Jacobson came over and he says, "take a deep breath." And I took a deep breath and it was bubbling, and he says, "hey, you need a chest tube." So I said, "Dick Tracy," you know; but that's beside the point. He's okay; he's a good guy.

*Transcript, April 6, 1970 Vol. 1 pp 18, 19, 20, 21 Tape, at 6.*

**[b] AUGUST 15, 1970**

**Q: CPT. SOMERS**

**A: CPT. MAC DONALD**

**Q: And describe the injuries on your body which -**

**A: Describe them again?**

**Q: Yes, please.**

**A: In the right chest area in the 7th intercostal space, roughly in the mid-clavicular line, there was a puncture wound.**

**Q: Would you point to that, please?**

**A: Yes, it is right here.**

**Q: Now you are pointing - what? Two inches above and three or four inches to the right of your belly button, if I may use that term?**

**A: Well, it would be easier to say it was roughly four inches lateral to the tip of my sternum.**

**Q: Go ahead.**

**A: There were several small puncture wounds of the left upper chest.**

**Q: How many?**

**A: I really don't specifically remember. Three or four.**

**Q: Go ahead.**

**CPT. BEALE: Captain Somers, what is the purpose of going back through all this again so far as the wounds goes? He has described them in great detail.**

**COL. ROCK: Also, I have plenty of testimony from the examining physician as well.**

**CPT. SOMERS: I want to be sure that I understand fully what injuries he's describing because I have a few questions with respect to them.**

**Q: Please, go ahead.**

**A: There were several, what appeared to me to be small, small puncture wounds, on the left of the chest and some scratches. On the abdominal area, there was sort of a Y shaped, with the Y down -**

**Q: You mean the opening -**

**A: The opening of the Y down, a laceration in the left upper quadrant, about three inches long. Lateral to that laceration, there were three puncture wounds, and to the right side of that laceration there were eight to ten puncture wounds and some minor scratches.**

**Q: Now several people, doctor, including Doctor Jacobson and one of the medics who attended you, have also described your injuries, as they saw them. None of them described any of these small puncture wounds on the abdomen, did they?**

**A: No.**

**Q: So none of the people who testified here saw what you are describing as the small puncture wounds, as far as we know. When did you first notice them?**

**A: As I was examining myself either late Tuesday afternoon or Wednesday, looking at my abdomen. These were closed and they weren't bleeding. It's not a matter of missing lacerations.**

*Transcript Article 32, at pp. 127-128.*

**[c] MARCH 20, 1971**

**BY COLONEL PRUETT:**

**Q: How about the other injuries, doctor?**

**A: What about them?**

**Q: The stabbing and so on. There was only one, correct?**

**A: Only one what?**

**Q: One stab wound that penetrated?**

**A: Only one stab wound?**

**Q: I am asking you. Is there only one or were there more? Are those records incorrect?**

**A: Yes, but I am sure you know that.**

**Q: That's why we are asking you. Do you say those other records are incorrect? We would like to know actually what were the injuries.**

**A: There was puncture wound of the right chest, not where Dr. Fish thought it was. It was in the midclavicular line on the anterior part of the chest, one inch below where my liver begins. That's a little significant. I had some puncture wounds in the left upper chest which appeared to be ice pick wounds. I can't say they were ice pick. I would say off the cuff they are ice pick, but physicians never say that. They say a penetrating would. (sic) wound. There was scratch on my left upper chest. There was one, what I would guess to be a knife stab would, (sic) and several, two or three ice pick would (sic) in the left bicep. There was an ice pick would (sic) in the right bicep. There was an incision type would (sic) in the left rectus muscle, left quadrant, which is not the same quadrant that is listed in the medical record. Just another example of how sloppy it is. In an assault case, you can't possibly have the wrong part of the abdomen diagnosed for a would. (sic) He had the one quadrant of my abdomen. There were a series of small puncture would (sic) ice pick would (sic) don't bleed much. So this they overlooked and the nurse already had bandaged it, he never picked up my bandage and looked at it. I had a series—I don't know how many'—eight or ten. I think I counted nine or ten. The day after, when Manson and McGinn were there and asked me, I looked down and counted. There were eight or ten on the abdomen.**

**p. 28**

**BY COLONEL PRUETT:**

**Q: Then your description of them is in conflict with what is on the medical record a bit?**

**A: In the number of wounds, right.**

**Q: The scratches then, you are saying, are on the side, the left, in which direction? The left portion of the chest?**

**A: Yes, but it wasn't on the outside. It was on the inside of the nipple.**

**BY MR. KEARNS:**

**Q: On the morning of the 17th, after they took you to the hospital, you recall talking to a criminal investigator Connelly when he came up there?**

**A: No.**

**Q: Do you recall talking to any criminal investigator?**

**A: Right, I didn't know their names.**

**Q: Connelly went to the hospital and talked to you. Did you display your chest area to Connelly? Do you recall doing this?**

**A: Not that I remember.**

**Q: You just do not remember?**

**A: I don't recall it, but I don't recall much from that morning.**

**Q: How about your hand; there was a discussion about your hands because you had fingernail scratches.**

**A: There were some cuts on my hand and he did look at those. He picked up both my hands.**

**Q: Based upon your previous discussion, we have to then presume, if you are telling the truth, that these records are in error. Did you have any wounds on your hands?**

**A: Yes, I did.**

**Q: Would you tell me what they were?**

**A: They were blade wounds in both webbed spaces between the thumb and forefinger on both hands. They weren't big, but they were there and he looked at them. I do remember that.**

**Q: This is Dr. Jacobson?**

**A: One of the investigators looked at my hands.**

**BY MR. SEGAL:**

**Q: You do not know if it was Connelly?**

**A: No, I don't.**

**BY MR. KEARNS:**

**Q: How about any pricks from the prick marks or stab wounds from the ice pick similar to the ones that you described?**

**A: No, I don't remember any on my hand.**

**Q: I presume that you would feel these are defense wounds in here that you sustained during your struggle?**

**A: Right.**

**Q: Were these wounds bleeding?**

**A: My left hand was, but not – it was a scratch really. It wasn't – it didn't require sutures.**

**Q: Not a real laceration?**

**A: Right.**

**Q: Were there any other wounds that haven't been brought up in the Article 32 or haven't been discussed before that you know you sustained, that you might have thought were not relevant?**

**A: There were a lot of bruises that were never mentioned. Then they tried to make it sound like they weren't there later, but they were there.**

**Q: It appears that everybody was interested from say your stomach area to the top of your head. How about below, your hips or your hip area?**

**A: I don't remember any. No. There were a lot, for instance, on my left arm. My left upper arm was very swollen. There was a bruise on this side of my forearm. You know, you see a patient in the emergency room. You don't write that down. The follow-up examination is supposed to.**

*(Transcript at pp. 34-38.)*

**JANUARY 21, 1975**

**Q: WOERHEIDE**

**A: MAC DONALD**

**Q: I have these pictures that were made in the F.B.I. premises of you to show the location of the wounds that you suffered during this assault. And just to illustrate your testimony to the Grand Jury now, I wonder if you, since these pictures are sort of close-up and it's not all that clear without a verbal explanation, just stand up and point to the various parts of your body where you suffered certain injuries? And to facilitate this I am sure you can explain these better than I can. But I take it the first one is of a wound in your lower abdomen but above the – not the lower abdomen your abdomen but above the waist, is that correct?**

**A: That's right.**

**Q: Would that be about here (Mr. Woerheide indicates portion of abdomen.)**

**A: That is correct.**

**Q: Now, the second one is pointing to an area to the right side of your navel and that is to indicate what, a series of ice pick–**

**A: They were puncture wounds there, right.**

**Q: Puncture wounds, do you recall how many?**

**A: No, not specifically. There was a number of them.**

**Q: All right, this shows the wound on the left side. This shows the area in which there are ice pick wounds.**

**MR. WOERHEIDE: Lets mark these as MAC DONALD Exhibits 1 and 2 of this date.  
(MAC DONALD EXHIBITS 1 AND 2, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) Now, the ice pick wounds to the right side of the navel didn't leave any scars, did they?**

**A: I don't think so, no.**

**Q: And this is another view of the same area and –with a pencil out of the way or the pointer it shows the fact that there are no visible scars, is that correct?**

**A: That's right.**

**MR. WOERHEIDE: Let's mark this as MAC DONALD Exhibit 3 of this date.  
(MAC DONALD EXHIBIT 3, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) And these next two pictures show you indicating where the wound in your chest was at the seventh intercostal space which resulted in the pneumothorax, is that correct And the one after that? correct?**

**A: (No answer)**

**Q: And the one after that shows the same view without a ruler and without a pointer, right?**

**A: Right.**

**MR. WOERHEIDE: All right, let's mark these 4 and 5.**

**(MAC DONALD EXHIBITS 4 AND 5, 1-21-75, MARKED FOR IDENTIFICATION.)**



**Q: (Mr. Woerheide) All right, the next view shows your left bicep where you suffered a wound that left a scar?**

**A: That's right.**

**MR. WOERHEIDE: Let's give this the next number.**

**(MAC DONALD EXHIBIT 6, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) Well, the reverse side is another view of the same arm, is it now?**

**A: Unh-hunh (yes).**

**Q: Showing the thing on a bigger scale?**

**MR. WOERHEIDE: Let's mark this, please.**

**(MAC DONALD EXHIBIT 7, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) And the next view shows a photograph of your left hand showing the area between the thumb and the forefinger and that is to illustrate the fact that you had some fine cuts in that area, is it not?**

**A: That's right.**

**Q: Did they leave any scars?**

**A: No.**

**MR. WOERHEIDE: All right, give these two the next numbers.**

**(MAC DONALD EXHIBITS 8 AND 9, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) All right, the next photograph shows first your full face and then your upper left forehead that is to indicate where you had the—a swelling and contusion, is it not?**

**A: That's right.**

**MR. WOERHEIDE: Let's mark these with the next two numbers.**

**(MAC DONALD EXHIBITS 10 AND 11, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) All right, the next photographs show your face, the right side, and a close-up of your forehead showing the right side. Is that to reflect some lump or swelling on the right side of your forehead, sir?**

**A: That's right.**

**Q: Is that abraded, too?**

**A: No, I don't think so. It was just a lump or bruise.**

**Q: Skin wasn't broken?**

**A: No, it wasn't.**

**Q: Just a sort of a swelling, is that correct?**

**A: Unh-hunh (yes).**

**Q: All right.**

**MR. WOERHEIDE: Let's give these the next two numbers.**

**(MAC DONALD EXHIBITS 12 AND 13, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) All right the—now, the next two photographs show the left rear part of the head to an area behind the ear and above the ear. I take it both these views shows the same area. Would you say that?**

**A: I can't tell what this shows. But I presume so. That's where I was holding the hair.**

**Q: Yeah, and what was this to indicate?**

**A: There were a couple of lumps back there.**

**Q: Unh-hunh-(yes), how large were they?**

**A: I don't know.**

**Q: Well, as large as a pea, or as large as a marshmallow, or as large as a potato, or—how big were they?**

**A: I would say, egg-size lumps.**

**Q: Egg size?**

**A: Unh-hunh (yes).**

**Q: MR. WOERHEIDE: Would you give those the next two number, Miss Reporter.**

**(MAC DONALD EXHIBITS 14 AND 15, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) The next two photographs are a back view. And show your back down to the waist and no one is pointing to anything. And I take it these were taken to illustrate the fact that you have no injuries on your back?**

**A: That's right, none that I am aware of.**

**MR. WOERHEIDE: Let's mark these please.**

**(MAC DONALD EXHIBITS 16 AND 17, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) The next is a view taken from the right side of your body and the pointer indicates a scar at approximately the seventh intercostal space. On the reverse side is an enlargement of the scar area. Is that the scar resulting from the surgery whereby a chest tube was inserted to relieve the pneumothorax?**

**A: That's right.**

**MR. WOERHEIDE: Let's mark these with the next two numbers.**

**(MAC DONALD EXHIBITS 18 AND 19, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) The next photo shows the upper right portion of your chest with a visible scar at about the second intercostal space, I take it. And the reverse side shows a close-up of that area. Is that where the second chest tube was inserted, Dr. MAC DONALD?**

**A: Yes, I believe it was.**

**MR. WOERHEIDE: Let's give these the next two numbers, please.**

**(MAC DONALD EXHIBITS 20 AND 21, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) The next photograph shows your upper left--well, your left shoulder, your upper left arm?**

**A: Right on.**

**Q: And on the first one there is a pointer used to indicate something on the reverse side. I really don't see any scar there, can you tell me what you had in this area?**

**A: That's the right shoulder, sir, that was the scratch there.**

**Q: A scratch?**

**A: And a bruise.**

**Q: I'm sorry, it is the right shoulder. I mis-spoke myself. Scratch and a bruise. Was it a long scratch, or a deep scratch, or could you describe it?**

**A: I don't really remember. It seemed like a superficial scratch, a couple of inches long.**

**MR. WOERHEIDE: Would you give these the next two numbers, please.**

**MAC DONALD EXHIBITS 22 AND 23, 1-21-75, MARKED FOR IDENTIFICATION.)**

**Q: (Mr. Woerheide) The next two photographs are of the frontal area. One being from the waist on up to the upper part of the chest. I see the scar here on the lower left side and the scar of the second chest tube that was inserted. I see the scar of the incision in the seventh intercostal space that caused the pneumothorax. Now, is there anything else in this area that you recall in the way of an injury?**

**A: There were some ice pick wounds in the left chest. But you can't see them. There are no scars.**

**Q: Well, I'll hold this up to the Jury. Did you indicate this area here?**

**A: Sir, as I remember it was a little bit higher.**

**Q: About here?**

**A: About there, Yeah. (Indicating)**

**Q: And how many were there?**

**A: Three or four.**

**Q: And you say they left no scars and they were superficial is that it?**

**A: Well, you can't tell how deep they are. But they left no scars.**

**Q: And the second of these two photographs is simply another photograph indicating the location of the—of the wound that you had just about here, is that correct? (Indicating)**

**A: That's correct.**

**Q: Do you recall when you were in the hospital, whether you got any special treatment for this wound on the left side of your chest?**

**A: (No answer)**

**Q: Did they do anything special for it? Apparently, it was not stitched or anything.**

**A: No, it was just bandaged up.**

**Q: They just put a Band-Aid on it?**

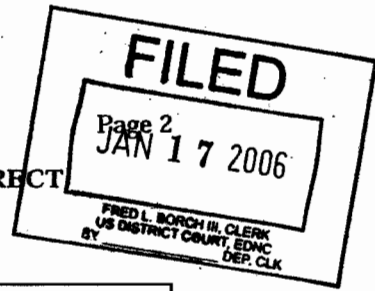
**A: A dressing, right.**

**Q: A dressing.**

**MR. WOREHEIDE: Could you give those the next two numbers.**

**(MAC DONALD EXHIBITS 24 AND 25, 1-21-75, MARKED FOR IDENTIFICATION.)**

*(Transcript Grand Jury, Vol. III, at pp. 9-18.)*



**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District East Dist. North Carolina	
Name (under which you were convicted): Jeffrey R. MacDonald		Docket or Case No.: 75-26-CR-3	
Place of Confinement: FCI, Unit C-2, Cumberland, MD 21501		Prisoner No.: 00131-177	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) Jeffrey R. MacDonald	
		v.	

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, Eastern District of North Carolina, Raleigh, North Carolina
- (b) Criminal docket or case number (if you know): 75-26-CR-3
2. (a) Date of the judgment of conviction (if you know): 8/29/79
- (b) Date of sentencing: 8/29/79
3. Length of sentence: 3 consecutive life terms
4. Nature of crime (all counts): 1 count first degree murder; 2 counts second degree murder
5. (a) What was your plea? (Check one)  
 (1) Not guilty       (2) Guilty       (3) Nolo contendere (no contest)   
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_
6. If you went to trial, what kind of trial did you have? (Check one)      Jury       Judge only

- 7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No
- 8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals Fourth Circuit
- (b) Docket or case number (if you know): 79-5253
- (c) Result: Reversed (speedy trial), reversed by the Sup.Ct.; judgment
- (d) Date of result (if you know): affirmed. 1983\*\* (see attachment/supplement #9.)
- (e) Citation to the case (if you know): 632 F. 2d 258; 456 U.S. 1; 688 F.2d 224
- (f) Grounds raised: denial of speedy trial.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): 459 U.S. 1103 (1983)
- (5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: U.S. Dist. Ct., Eastern District of N.C.
- (2) Docket or case number (if you know): 75-26-CR-3
- (3) Date of filing (if you know): 4/3/84



**\*\*Question #9 Supplement:** The court of appeals reversed the conviction on speedy trial grounds, 632 F.2d 258 (4th Cir. 1980); the Supreme Ct. reversed [456 U.S. 1 (1982)] and remanded the case to the court of appeals for disposition of the remaining issues. Thereafter, the court of appeals affirmed. U.S. v. MacDonald, 688 F.2d 224 (4th Cir.), cert. denied, 459 U.S. 1103 (1983).

(4) Nature of the proceeding: Motion for New Trial; Motion to Vacate Sentence;

(5) Grounds raised: Motion to Set Aside Conviction; and Motion for Recusal.

Newly discovered evidence that was exculpatory; govt. misconduct in suppressing exculpatory evidence tending to prove that others had committed the murders; government misconduct in violating defendant's right to counsel, and a relationship with the judge and prior government prosecutor who worked on the case.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No

(7) Result: Motions were denied.

(8) Date of result (if you know): March 1, 1985

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: U.S. Dist. Ct. for Eastern Dist. N.C.

(2) Docket or case number (if you know): 75-26-CR-3; 90-104-CIV-3-D

(3) Date of filing (if you know): 10/19/90

(4) Nature of the proceeding: Petition of Habeas Corpus to Vacate Sentence

(5) Grounds raised: The government suppressed exculpatory evidence, newly discovered by the defense per a FOIA request, including a blond wig hair and black fibers on the murder weapon that could not be matched with any fabric in the MacDonald home, which would have corroborated MacDonald's claim that intruders killed his family and were responsible for the crime.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes  No  Oral argument only, no evidentiary hearing.

(7) Result: Motion was denied.

(8) Date of result (if you know): 7/8/91

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

\*\* Please see attached supplement to this answer 11 (c).

**\*\*Question # 11(c) Supplement:** On 10/19/90, Petitioner filed a Motion to Vacate His Sentence based on newly discovered evidence, suppressed by the government. That motion was denied by the trial court on 7/8/91. U.S. v. MacDonald, 778 F. Supp. 1342 (E.D.N.C.). The order was affirmed on appeal, U.S. v. MacDonald, 966 F.2d 854 (4th Cir. 1992), cert. denied, 506 U.S. 1002 (1992).

In April, 1997, Petitioner filed a motion to reopen his previous 1990 Motion to Vacate, based on government fraud in responding to the prior motion. That 1997 motion also contained a request to have DNA tests run on certain evidence taken from the crime scene. On September 2, 1997, the district court denied the motion to reopen the prior motion, and transferred the remaining matters to the court of appeals as a petition for leave to file a successive habeas corpus petition. U.S. v. MacDonald, 979 F. Supp. 1057 (E.D.N.C. 1997). The court of appeals denied leave to file a successive habeas petition, but granted petitioner's motion to have DNA testing. In Re MacDonald, No. 97-713 (4th Cir. 1998, unpublished.) Per that order, the case was remanded to the United States District Court for the Eastern District of North Carolina, which has been supervising such DNA testing.

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: \*\* Please see the attached supplementary answer to Ground One.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \*\* Please see the attached supplementary statement to Ground One.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

This newly discovered evidence was not made known by the government officials to the defense until January 27, 2005.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

P. 5-a

**\*\* Ground One and Basis for Ground One Supplement:**

The Petitioner states, as required by 28 U.S.C. 2244, 2255, and 2241, *et seq.*, and as more specifically set forth in the supporting "Memorandum in Support of Jeffrey R. MacDonald's Motion Under 28 U.S.C. Section 2255 to Vacate His Sentence," filed herewith, (which he respectfully incorporates herein by reference along with its exhibits), that the Petitioner has newly discovered evidence that could not have been discovered previously through the exercise of due diligence which proves the existence of a constitutional error, and the newly discovered facts, viewed in light of the evidence taken as a whole, are sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense. This newly discovered evidence was, in fact, discovered January 27, 2005, less than one year from the filing of this motion, such that this motion is timely filed. This occurred as follows:

In January of 2005, counsel for Jeffrey MacDonald, Wade Smith, Esq., was first contacted by a former deputy United States Marshal, Jim Britt. Jim Britt provided information to the defense establishing that the federal prosecutor who led the prosecution of Jeffrey MacDonald in 1979, James Blackburn, violated the defendant's constitutional rights by secreting critical exculpatory evidence during defendant's trial, and committed a fraud on the court and on the jury by intimidating the key defense witness—a witness who was prepared to admit to the jury that she and others were involved in the murder for which the defendant was convicted—into changing her testimony the day before she appeared as a witness called by the defense. The prosecutor, Blackburn, then, at a critical juncture, misrepresented to the court and to the defense what the witness had told him during his interview of her, and then the same prosecutor elicited before the jury testimony from such key defense witness that he knew to be false and knew to be contrary to what she had told him during his interview of her the day before.

James Blackburn, the prosecutor involved, was later convicted in 1993 in the Superior Court of Wade County, North Carolina, in an unrelated matter following a guilty plea, of obstruction of justice and embezzlement. [See, Judgment and Commitment Order of James L. Blackburn, attached as Exhibit 10 to Petitioner's Memorandum in Support of this Motion, filed herewith.]

Jim Britt is the most reliable of sources. He served for twenty-two years with distinction as a deputy United States Marshal, assigned (for most of his tenure) to the courthouse of the United States District Court for the Eastern District of North Carolina. He is a retired government official who was present in James Blackburn's office when Blackburn interviewed the key defense witness in the case the day before she was to testify. [The sworn affidavit of Jim Britt is attached as Exhibit 1 to Petitioner's Memorandum in support of this Motion, filed herewith.]

Jim Britt, at the request of defense counsel, subjected himself to a polygraph examination, conducted on May 24, 2005, by Steve Davenport of Davenport Associates. The examiner concluded that Britt was truthful. [A copy of the c.v. of Davenport, and of

P. 5-b

the results of his examination are attached as Exhibit 2 to Petitioner's Memorandum in support of this Motion.]

The defendant, Dr. MacDonald, since the early morning hours of February 17, 1970, when his pregnant wife and two young daughters were brutally murdered, has consistently maintained that a group of strangers including a woman with long blond hair and a floppy hat had invaded his home and attacked him and his family the night of the crime. Within days of the murders, Helena Stoeckley was identified by police as a woman local to area, heavy into the drug scene, who routinely wore a long blond wig, a floppy hat, and was very likely to be the person MacDonald identified. Stoeckley, in fact, from early on developed a morbid fascination with the killings. She bought wreaths and hung them on a fence on the day the MacDonald family members were buried. She burned her blond wig, admitting she was afraid it might connect her to the crime. And over the nine years that passed before Jeffrey MacDonald was brought to trial, she made numerous incriminating statements to many neighbors, suggesting that she and her boyfriend, Greg Mitchell, had taken part in the killings.

After many weeks of trial the defense had convinced the trial judge to order that the government, which knew where Stoeckley was living, to produce her on a material witness warrant. Deputy Jim Britt received the assignment to fetch her. He traveled to Greenville, South Carolina to pick her up, and brought her back to Raleigh. During the ride to Raleigh, Stoeckley told Britt that she had been in the MacDonald house with others on the night of the MacDonald murders. She told him details that convinced him that she had, indeed, been there. The next day, Stoeckley was interviewed first by the defense attorneys. After her meeting with the defense lawyers, Deputy Marshal Britt escorted Stoeckley to the office of James Blackburn. Blackburn invited Britt into his office with Stoeckley to be a witness to the interview. Jim Britt witnessed Helena Stoeckley admit to James Blackburn that she had been in the MacDonald home with others the night of the murders, and that they had gone there to steal drugs, an admission that clearly she was prepared to testify to on the witness stand. Britt then specifically heard James Blackburn threaten Helena Stoeckley. He heard James Blackburn tell her that if she so testified, he would indict her for first-degree murder. The next morning in court, before the jury, called as a defense witness, Stoeckley denied knowing anything about the MacDonald murders or the MacDonald house and claimed to have amnesia as to her whereabouts or actions during the night of the MacDonald murders. During her testimony, Bernie Segal went to the bench and claimed surprise. He told the court that her testimony was contrary to what she had told him the day before during his interview of her, and that he was being spun. He provided to the court a detailed proffer of what Stoeckley had told him the day before. [Excerpt of Trial Transcript, August 17, 1979, pp. 5614-5618 attached as Exhibit 4 to Petitioner's Memorandum.]

The court then inquired of James Blackburn as to what she had told him the day before. Blackburn misrepresented to the court what had occurred, telling the judge that in his office she had denied having any knowledge of the MacDonalds. [See, Exhibit 4]. Blackburn, then on cross-examination, using leading questions, had Stoeckley affirm

P. 5-c

before the jury that she knew nothing of the MacDonald murders or the MacDonald house or family. Importantly, the very next day, Helena Stoeckley reiterated to Wendy Rouder, Esq., who was a young lawyer assisting with the MacDonald defense, that she had, in fact, been in the MacDonald home with others on the night of the murders, that she had lied to the jury because she was afraid, and that the people she was afraid of were the prosecutors. [See, Affidavit of Wendy Rouder, attached as Exhibit 5 to Petitioner's Memorandum.]

This newly discovered evidence, as it was concealed by government officials, could not have been discovered previously through due diligence. It consists of facts that unquestionably demonstrate egregious government misconduct of the most profoundly disturbing sort, actions that amount to a clear constitutional violation. Finally, and particularly when viewed in the context of the assortment of evidence that has been revealed since the trial, much of which was unknown to the defense during the trial, evidence such as a blond wig hair found inside the MacDonald house the night of the murders, black wool fibers on the murder weapon that do not match any fabric in the MacDonald home, and the numerous confessions before he died of Greg Mitchell to the MacDonald murders, these new facts, when taken in light of all of the facts that have now come to light, establish by clear and convincing evidence not just that there is a reasonable doubt as to MacDonald's guilt, not just that no fact-finder would find him guilty, but that Jeffrey MacDonald is actually innocent. Clearly, had Helena Stoeckley not been threatened and intimidated by James Blackburn, had she freely told the truth to the jury—that she had been inside the MacDonald house with others to steal drugs—there would never have been a verdict finding Jeffrey MacDonald guilty.

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: The grounds in this motion have never before been presented to a court because they were unknown to the defense until January 27, 2005. They were solely in the purview of government officials, and the information was wrongly withheld until revealed by a former deputy United States Marshal this past January.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. United States District Ct. for the Eastern District of North Carolina, No. 75-26-CR-3; 90-104-CIV-3-D; the case is on remand from the Fourth Circuit with an order to have certain evidentiary items from the crime scene tested for DNA analysis to determine whether there is corroboration for defendant's claim that intruders murdered his family.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Bernard Segal, 88 Kearny Street, Suite 1475 San Francisco, CA 94109

(b) At arraignment and plea: Same as above.

(c) At trial: Bernard Segal, and Wade M. Smith, Tharrington, Smith & Hargrove, 209 Fayetteville St., Mall, Raleigh, N.C. 27601.

(d) At sentencing: Same as above.

(e) On appeal: Bernard L. Segal, same address as above.

(f) In any post-conviction proceeding: (First) Brian J. O'Neill, 100 Wilshire Blvd., Santa Monica, CA 90401 \*\* (Second) See attached supplement to question 15,

(g) On appeal from any ruling against you in a post-conviction proceeding: Dennis H. Eisman, Robinson Bldg., Suite 1420, Philadelphia, PA. 19102  
\*\* See attached supplement to question 15.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

**\*\*Question 15 Supplement:** Counsel representing the Petitioner on his 1990 Motion to Vacate were as follows:

Norman B. Smith  
Smith, Patterson, Follin,  
Curtis, James, Harkavy  
& Lawrence  
BB&T Building  
101 South Elm Street  
Greensboro, NC 27401

Anthony P. Bisceglie  
Bisceglie & Walsh  
1130 17<sup>th</sup> St., N.W.  
Suite 400  
Washington, D.C. 20036

Harvey Silverglate  
Philip G. Cormier  
Andrew Good  
Thomas C. Viles  
Silverglate & Good  
83 Atlantic Ave.  
Boston, MA. 02110

Alan M. Dershowitz  
26 Reservoir St.  
Cambridge, MA. 02138

Roger C. Spaeder  
David A. Hickerson  
Zuckerman, Spaeder, Goldstein,  
Taylor & Kolker  
1201 Connecticut Ave., N.W.  
Washington, D.C. 20036

*Of Counsel:*

John J. E. Markham, II  
One Sansome Street, suite 2000  
San Francisco, CA 94104

Counsel to represent Petitioner in his 1997 Motion to Reopen were as follows:

Wade M. Smith  
Melissa Hill  
Tharrington, Smith L.L.P.  
209 Fayetteville Station Mall  
P.O. Box 1151  
Raleigh, N.C. 27602-1151

Harvey Silvergate  
Philip G. Cormier  
Andrew Good  
Thomas C. Viles  
Silvergate & Good  
83 Atlantic Ave.  
Boston, MA. 02110

Alan M. Dershowitz  
26 Reservoir St.  
Cambridge, MA. 02138

Roger C. Spaeder  
Bonnie Robin-Vergeere  
Zuckerman, Spaeder, Goldstein,  
Taylor & Kolker  
1201 Connecticut Ave., N.W.  
Washington, D.C. 20036

John J. E. Markham, II  
One Sansome Street, suite 2000  
San Francisco, CA 94104

*Of Counsel:*  
Anthony P. Bisceglie  
Bisceglie & Walsh  
1130 17<sup>th</sup> St., N.W.  
Suite 400  
Washington, D.C. 20036



18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\* As described previously, the newly discovered evidence on which this motion is based was suppressed by government officials until January 27, 2005 when it first came to light, and could not have been discovered previously through the exercise of due diligence. It was known only to the prosecuting authority, the deputy U.S. Marshal who witnessed the occurrence, and the key defense witness who was allegedly threatened into silence and who is now deceased. It came to the attention of the defense for the first time in January 2005 when the former deputy U.S. Marshal who witnessed the conduct that deprived petitioner of a fair trial, in violation of the U.S. Constitution, and which prevented the jury from hearing evidence that would have proven that petitioner is factually innocent came forward.

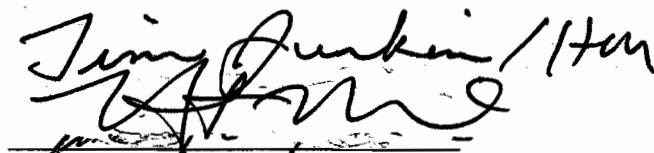
\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

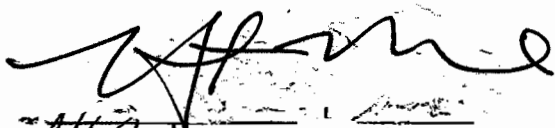
Therefore, movant asks that the Court grant the following relief: To Vacate and Set  
Aside His Conviction. Movant requests a hearing on this motion.

or any other relief to which movant may be entitled.

  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on 1/17/06 (date).

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. Attorney for movant, movant is in Cumberland, MD and motion needs to be filed immediately.

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

\*\*\*\*\*

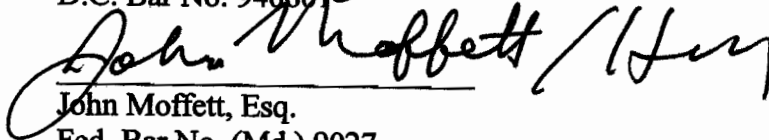
\*\*\*Petitioner respectfully incorporates herein by reference the attached Memorandum in Support of Jeffrey R. MacDonald's Motion Under 28 USC Section 2255 To Vacate His Sentence, and the accompanying exhibits.

15

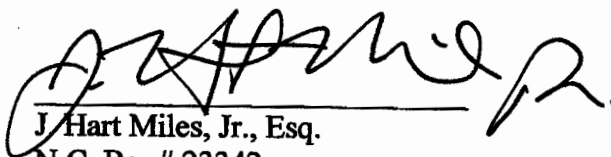
Respectfully submitted,



Timothy D. Junkin, Esq.  
D.C. Bar No. 940601



John Moffett, Esq.  
Fed. Bar No. (Md.) 9027  
Moffett & Junkin  
800 S. Frederick Ave., Suite 203  
Gaithersburg, Md. 20877  
Tel. (301) 987-0600  
Fax. (301) 987-0682



J. Hart Miles, Jr., Esq.  
N.C. Bar # 23342  
Hart Miles Attorney at Law, P.A.  
19 W. Hargett Street, Suite 805  
Raleigh, N.C. 27601  
Tel: (919) 834-8650  
Fax. (919) 834-9105

**Counsel for Jeffrey MacDonald**

## CERTIFICATE OF SERVICE

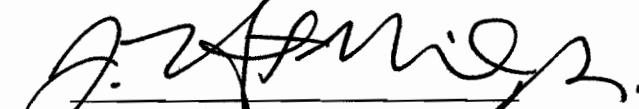
I hereby certify that a copy of petitioner's U.S.C. § 2255 motion and memorandum, appendices and exhibits were hand-delivered to the United States Attorney for the Eastern District of North Carolina at the following address:

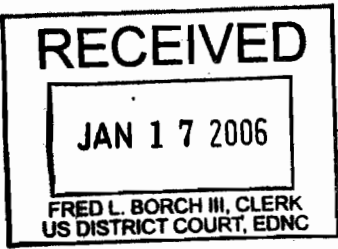
Honorable Frank D. Whitney  
United States Attorney  
310 New Bern Ave., Suite 800  
Raleigh, N.C. 27601

And mailed to the U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Esq.  
U.S. Department of Justice  
Domestic Security Section, Room 6746  
Criminal Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

This the 17 day of January, 2006.

  
\_\_\_\_\_  
J. Hart Miles, Jr.



UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JEFFREY R. MacDONALD, )  
 )  
 Applicant/Defendant, )

Crim. No. 75-26-CR-3

**MEMORANDUM IN SUPPORT OF JEFFREY R. MacDONALD'S MOTION  
 UNDER 28 U.S.C. SECTION 2255 TO VACATE HIS SENTENCE**

Timothy D. Junkin, Esq.  
 D.C. Bar No. 940601  
 Md. Bar No. 02217  
 John Moffett, Esq.  
 Fed. Bar No. (Md.) 9027  
 Moffett & Junkin, Chtd.  
 800 S. Frederick Ave., Suite 203  
 Gaithersburg, Md. 20877  
 Tel. (301) 987-0600  
 Fax. (301) 987-0682

J. Hart Miles, Jr., Esq.  
 N.C. Bar # 23342  
 Hart Miles, Attorney at Law, P.A.  
 19 W. Hargett Street, Suite 805  
 Raleigh, N.C. 27601  
 Tel: (919) 834-8650  
 Fax. (919) 834-9105

Counsel for Movant Jeffrey R. MacDonald

**TABLE OF CONTENTS**

- I. Introduction..... 2
- II. Relevant Procedural History..... 8
- III. Statement of Facts and Evidence . . . . .10
  - A. The Government’s Evidence At Trial.....10
  - B. The Contentions of Jeffrey R. MacDonald..... 14
  - C. The Defense Case and the Recent Revelations of Jim Britt..... 17
  - D. Evidence Discovered Post-Trial..... 21
    - 1. Items Described in MacDonald’s 1984 Post-Trial Motions..... 21
    - 2. Items Described in MacDonald’s 1990 Habeas Petition..... 25
    - 3. Additional New Evidence..... 26
- IV. Argument ..... 27
  - A. The Newly Discovered Evidence Could Not Have Been Discovered Previously Through the Exercise of Due Diligence..... 27
  - B. The Newly Discovered Facts, If Proven, and in Light of the Evidence as a Whole, Are Sufficient to Establish by Clear and Convincing Evidence That, But For the Constitutional Error, No Reasonable Factfinder Would Have Found the Applicant Guilty of the Underlying Offenses..... 29
- V. Conclusion..... 44

**TABLE OF AUTHORITIES**

**CASES**

*Alcorta v. Texas*, 355 U.S. 28 (1957)..... 31

*Brady v. Maryland*, 373 U.S.83 (1963)..... 30

*Dobbs v. Zant*, 506 U.S. 357 (1993)..... 28

*Fairchild v. Lockhart*, 979 F.2d 636 (8<sup>th</sup> Cir. 1992)..... 28

*Hamilton v. McCotter*, 772 F.2d 171, 182-83 (5<sup>th</sup> Cir. 1985)..... 28

*Kirkpatrick v. Whitley*, 992 F. 2d 491 (5<sup>th</sup> Cir. 1993).....28

*McCleskey v. Zant*, 499 U.S. 467 (1991)..... 44

*Miller v. Pate*, 386 U.S. 1 (1967)..... 31

*Murray v. Carrier*, 477 U.S. 478 (1986)..... 32

*Napue v. Illinois*, 360 U.S. 264 (1959)..... 31

*Paradis v. Arave*, 130 F. 3d 385, 394 (9<sup>th</sup> Cir. 1997)..... 28

*Price v. Johnston*, 334 U.S. 266 (1948)..... 28

*Sawyer v. Whitley*, 505 U.S. 333 (1992)..... 32

*Schlup v. Delo*, 513 U.S. 298 (1995)..... 21, 32

*Strickler v. Greene*, 527 U.S. 263 (1999)..... 28

*United States v. Biberfeld*, 957 F.2d 98 (3<sup>rd</sup> Cir. 1991).....28

*U.S. v. Lord*, 711 F.2d 887 (9<sup>th</sup> Cir. 1983).....30

*U.S. v. MacDonald*, 632 F.2d 258 (4<sup>th</sup> Cir. 1980).....2, 9, 21, 34, 43

*U.S. v. MacDonald*, 456 U.S. 1 (1982)..... 9

*U.S. v. MacDonald*, 688 F.2d 224 (4<sup>th</sup> Cir. 1983),  
*cert. denied*, 459 U.S. 1103 (1983)..... 9

*U.S. v. MacDonald*, 640 F. Supp. 286 (E.D.N.C. 1985)..... 9, 12, 23, 34

*U.S. v. MacDonald*, 779 F.2d 962 (4<sup>th</sup> Cir. 1985),  
*cert. denied*, 479 U.S. 814..... 9, 25

*U.S. v. MacDonald*, 778 F.Supp.1342 (E.D.N.C. 1991)..... 9, 14, 33

*U.S. v. MacDonald*, 966 F.2d 854 (4<sup>th</sup> Cir. 1992),  
*cert. denied*, 506 U.S. 1002 (1992)..... 9, 14

*U.S. v. MacDonald*, 979 F.Supp. 1057 (E.D.N.C. 1997)..... 10, 14

*U.S. v. MacDonald*, 161 F.3d 4 (4<sup>th</sup> Cir. 1998)..... 10, 14

*U.S. v. Pierce*, 62 F.3d 818, 832 (6<sup>th</sup> Cir. 1995)..... 30

*Washington v. Texas*, 388 U.S. 14 (1967)..... 30

*Webb v. Texas*, 409 U.S. 95 (1972)..... 30

**STATUTES**

28 USC § 2244..... 1, 21, 27, 32

28 USC § 2255..... 1, 27

**RULES**

Rule 804 (b)(3) Federal Rules of Evidence..... 20, 27

Rule 803, Federal Rules of Evidence..... 27

Books, Authors and Internet Web Sites

Insurance Project Home Page, <http://www.innocenceproject.org>..... 44

New York Defense Assn.; Wrongful New York State Homicide Conviction  
Since 1965 (May 30, 1990)..... 44



Miscellaneous

Newspaper Article: "Woman in MacDonald Case Claims He Was Victim Not Murderer," *The Register*, (Fayetteville, N.C.) 10 Jan. 1981 A20.....7

*Report and Conclusions: Proceedings under Article 32 Uniform Code of Military Justice*, by Colonel Warren V. Rock, October 13, 1970.....8

List of Attached Exhibits

Exhibit 1: Affidavit of Jim Britt

Exhibit 2: C.V. of Polygrapher Steve Davenport and Polygraph result of Jim Britt.

Exhibit 3: Affidavit of Lee Tart

Exhibit 4: Trial Transcript, *U.S. v. MacDonald*, Aug. 17, 1979 [Tr.5508-5799].

Exhibit 5: Affidavit of Wendy Rouder

Exhibit: 6: Newspaper Article: "Woman in MacDonald Case Claims He Was Victim Not Murderer," *The Register*, (Fayetteville, N.C.) 10 Jan. 1981 A20

Exhibit 7: Affidavits of Donald Buffkin, Everett Morse, and Bryant Lane.

Exhibit 8: FBI Report on Patients Jeff MacDonald had Treated Prior to the Murders.

Exhibit 9: Addendum to MacDonald's 1991 Reply Brief: Compilation and Analysis of Case Evidence.

Exhibit 10: Judgment and Commitment Order of James L. Blackburn, Superior Court of Wake County, N.C., *State v. Blackburn*, Nos. 93-CRS-37345, 43572, (1993).

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JEFFREY R. MacDONALD,
Applicant/Defendant,
Crim. No. 75-26-CR-3

MEMORANDUM IN SUPPORT OF JEFFREY R. MacDONALD'S MOTION
UNDER 28 U.S.C. SECTION 2255 TO VACATE HIS SENTENCE

Comes now, the applicant/defendant, Jeffrey R. MacDonald, through undersigned
counsel, and respectfully moves this court, pursuant to 28 U.S.C. Section 2255, and the
due process clause of the Fourteenth Amendment to the United States Constitution to
vacate and set aside his conviction.1

As grounds for this motion, defendant states, as required by 28 U.S.C. 2244, 2255,
and 2241, et. seq., and as more specifically set forth below, that the applicant has newly
discovered evidence that could not have been discovered previously through the exercise
of due diligence which proves the existence of a constitutional error, and the newly
discovered facts, viewed in light of the evidence taken as a whole, are sufficient to

1 Pursuant to an order of the U.S. Court of Appeals for the 4th Circuit, by Order dated October
17, 1997, in appeal No. 97-713, CR-75-26, this case was remanded to this court, specifically and
exclusively for the DNA testing of forensic crime-scene evidence. The testing has been ongoing
since then, and the case remains open for those purposes before this court. Because additional
newly discovered evidence has recently surfaced, and cognizant of the one year statute of
limitations to bring such evidence in a habeas petition (see, 28 U.S.C. Section 2255),
MacDonald requests that this court consider this new evidence, notwithstanding whatever results
are produced by the DNA testing.

establish by clear and convincing evidence that, but for the constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense. This newly discovered evidence was, in fact, discovered in January of 2005, less than one year from the filing of this motion, such that this motion is timely filed.

## I. INTRODUCTION

In 1980, in its opinion on MacDonald's first appeal, the United States Court of Appeals for the 4<sup>th</sup> Circuit wrote, that "**Had [key defense witness Helena] Stoeckley testified as it was reasonable to expect she might have testified, [admitting to participating in the crime] the injury to the government's case would have been incalculably great.**" *United States v. MacDonald*, 632 F.2d 258 at 264 (4<sup>th</sup> Cir. 1980) [bracketed language added]. MacDonald now has newly discovered evidence from a most reliable source, a former government official, that Helena Stoeckley, in fact, was prepared to testify at MacDonald's trial that she and other accomplices were responsible for murdering MacDonald's wife and children, but that the lead prosecutor, James Blackburn, when told by her of involvement in the crime, threatened Stoeckley into changing her testimony, and then misrepresented to the court and to the defense attorneys what Stoeckley had told him.

The newly discovered evidence consists of the following: In January of 2005, counsel for Jeffrey MacDonald, Wade Smith, Esq., was first contacted by a former deputy United States Marshal, Jim Britt, with information, previously concealed, about prosecutorial misconduct during the MacDonald trial. Britt, now retired, served with distinction for twenty-two years as a deputy United States Marshal entrusted with the security of the federal courts and judges in North Carolina. Britt was working at the

Raleigh courthouse during the 1979 MacDonald trial and was responsible for escorting the key defense witness, Helena Stoeckley, who was in custody on a material witness warrant. Jim Britt was present in the prosecutor's office when the lead prosecutor, James Blackburn, interviewed Helena Stoeckley, the day before she was to be called as a witness. As reflected in his sworn affidavit (attached hereto as Exhibit 1), Jim Britt avers that he personally witnessed Helena Stoeckley state to James Blackburn that she and others were present in the MacDonald home on the night of the MacDonald murders and that they had gone there to acquire drugs; Jim Britt further avers that he witnessed and heard James Blackburn, upon hearing this, directly threaten Helena Stoeckley, telling her that if she so testified in court he would indict her for first degree murder. This threat caused her to change her testimony, as the next day, when called to the witness stand by the defense, Stoeckley claimed to have amnesia as to her whereabouts from midnight until 5 a.m. the night of the MacDonald murders—the precise time-frame during which the crimes occurred. James Blackburn never disclosed to the court or defense counsel what Helena Stoeckley admitted to him in Jim Britt's presence. On the contrary, Blackburn, at a critical juncture in the trial, advised the court that Stoeckley, when he interviewed her, denied having any knowledge of the MacDonald family, the MacDonald home, or involvement in the MacDonald murders. Blackburn even went so far as to elicit from Stoeckley, through leading questions before the jury, testimony that was contrary to what she had told him during his interview of her the day before in the presence of Jim Britt.

Importantly, James Blackburn, the prosecutor involved, was later convicted in 1993 in the Superior Court of Wake County, North Carolina, in an unrelated matter

following a guilty plea, of obstruction of justice and embezzlement. [See, Judgment and Commitment Order of James L. Blackburn, attached as Exhibit 10 to Petitioner's Memorandum in Support of this Motion, filed herewith.]

Jim Britt is a witness of unimpeachable character. He served for twenty-two years with distinction as a deputy United States Marshal, assigned (for most of his tenure) to the courthouse of the United States District Court for the Eastern District of North Carolina. For over two decades he was entrusted with the very safety and security of the federal judges under his protection. He is now a retired government official. The words and actions of James Blackburn that he witnessed in August 1979 shocked and disturbed him at the time. He understood well their import. And as he states in his affidavit, they were words that he has never forgotten and will never forget. He has only come forward now as his conscience has required it.<sup>2</sup>

The defendant, Jeffrey MacDonald, since the early morning hours of February 17, 1970, when his pregnant wife and two young daughters were brutally murdered, has consistently maintained that a group of strangers, including a woman with long blond hair and wearing a floppy hat, had invaded his home and attacked him and his family on the night of the crime. Within days of the murders, Helena Stoeckley was identified by police as a woman local to the area, heavy into the drug scene, who routinely wore a

---

<sup>2</sup> Jim Britt, at the request of undersigned counsel, agreed to undergo a polygraph examination, which was conducted by Steve Davenport on May 24, 2005. Britt was found to be truthful. A copy of Davenport's resume and polygraph results are attached as Exhibit 2. The friend and former deputy U.S. Marshal that Britt first confided this information to several years ago, Lee Tart, has provided his own sworn affidavit confirming that what Jim Britt told him years ago is precisely what Jim Britt is saying now. (Lee Tart's affidavit is attached as Exhibit 3.) Importantly, Jim Britt, in his affidavit, declares that he knew at the time the import of Blackburn's words and actions. He states that what he witnessed has gnawed at him for twenty-five years. He was reluctant to come forward out of a sense of loyalty to the government he served, but the burden of what he knew and has suppressed simply became too great.

long blond wig, a floppy hat, and was very likely to be the person MacDonald described. Stoeckley, in fact, from the time of the murders developed a morbid fascination with the killings. She wore black and bought wreaths and hung them on a fence on the day the MacDonald family members were buried. She burned her blond wig, claiming she was afraid it might connect her to the crime. And over the nine years that passed between the murders and Jeffrey MacDonald's trial, she made numerous incriminating statements to many neighbors, implicating her and her boyfriend at the time, Greg Mitchell, in the killings.

Nine years after the murders, in August, 1979, Jeff MacDonald went on trial for these crimes. Six weeks into such trial, the defense convinced the trial judge to order that the government, which had learned where Stoeckley was living, produce her on a material witness warrant. Deputy U.S. Marshal Jim Britt received the assignment to fetch her. He traveled to Greenville, South Carolina to pick her up, and drove her back to Raleigh in his car. Britt specifically recalls that during the ride to Raleigh, Helena Stoeckley told Britt that she had been in the MacDonald house with others the night of the MacDonald murders. She told him other details that convinced him that she had, indeed, been there such as describing the hobbyhorse in the MacDonald home. Britt had no doubt that she was telling him the truth. The next day, Stoeckley was interviewed in the courthouse first by the defense attorneys.

After her meeting with the defense lawyers, Deputy Marshal Britt escorted Stoeckley to the office of James Blackburn to be interviewed. Blackburn invited Britt into his office with Stoeckley. Jim Britt witnessed Helena Stoeckley admit to James Blackburn that she had been in the MacDonald home with others on the night of the MacDonald

murders and that they had gone there to steal drugs. Britt then specifically heard James Blackburn threaten Helena Stoeckley. He heard James Blackburn tell her that if she so testified in court, he would indict her for first-degree murder. Jim Britt declares in his affidavit that he is absolutely certain that these words were spoken. The next morning in court, before the jury, called as a defense witness, Stoeckley denied knowing anything about the MacDonald murders or the MacDonald house. She, in fact, claimed to have amnesia concerning her whereabouts and activities during the specific five hour time-frame in which the crime occurred. In the middle of her direct testimony, Bernard Segal went to the bench and claimed surprise. He told the court that Stoeckley's testimony was contrary to what she had told him the day before. [The transcript of that entire day of trial, including Stoeckley's testimony, is attached as Exhibit 4 hereto.] Segal provided the court with a detailed proffer of what Stoeckley had told him the day before when he interviewed her. [Ex. 4, 5614-5618]. The court then inquired of prosecutor James Blackburn as to what Stoeckley had told him the day before. Blackburn represented to the court that in his office Stoeckley had denied having any knowledge of the MacDonalds or any involvement in the crimes. [Ex. 4, 5617]. This was contrary to what Jim Britt had witnessed. Blackburn, then on cross-examination, using leading questions, had Stoeckley affirm before the jury that she knew nothing of the MacDonald murders or the MacDonald house or family. [Ex. 4, 5642-5674].<sup>3</sup>

---

<sup>3</sup> Over the ensuing weekend, Helena Stoeckley, at the request of trial counsel, remained in Raleigh at a hotel. During that time she was chaperoned by a young attorney assisting with MacDonald's defense, Wendy Rouder. Helena Stoeckley told Rouder that she had been afraid to tell the truth to the jury. She told Rouder that she remembered being present in the MacDonald home during the MacDonald murders but was afraid to so testify. When Rouder inquired what it was that she was afraid of, Stoeckley answered that she was afraid of the prosecutor. Rouder testified to this at trial in *voir dire*, Tr. 5928-5945, and vividly recalls it in her affidavit. See, Affidavit of Wendy Rouder, attached as Exhibit 5 hereto. Over the years that followed, Stoeckley

This newly discovered evidence, because it was concealed by government officials, could not have been discovered previously through due diligence. It consists of facts that unquestionably demonstrate egregious government misconduct of the most disturbing sort, actions that amount to a clear constitutional violation. Finally, and particularly when viewed in the context of the whole of the evidence, that which was produced at trial and that which has come to light since the trial—evidence such as blond synthetic wig hairs found inside the MacDonald house the night of the murders, black wool fibers found on Colette MacDonald and on the murder weapon that did not match any fabric in the MacDonald home, and the direct confessions, before he died, of Greg Mitchell to the MacDonald murders which have never before been submitted to the court for consideration (*see*, section III (D) *infra*)—these new facts, when taken in light of all of the evidence now known, unquestionably establish by clear and convincing evidence not just that there is a reasonable doubt as to MacDonald's guilt, not just that no reasonable fact-finder would find him guilty, but that Jeffrey MacDonald is actually innocent. Clearly, had Helena Stoeckley not been threatened and intimidated by James Blackburn, had she freely told the truth to the jury—that she had been inside the MacDonald house with others during the murders—there would never have been a verdict finding Jeffrey MacDonald guilty.

The newly discovered evidence outlined herein is sufficient to require that Jeffrey MacDonald's conviction be vacated and set aside.

---

repeatedly affirmed that she was involved in the crime and that she had lied because she was afraid. *See, e.g.* "Woman in MacDonald Case Claims He Was Victim Not Murderer," *The Register*, (Fayetteville, N.C.) 10 Jan. 1981, A20 (attached as Exhibit 6 hereto).



## II. RELEVANT PROCEDURAL HISTORY

In the early morning hours of February 17, 1970, the pregnant wife and two young daughters of Jeffrey MacDonald were brutally murdered in their home located at Fort Bragg, North Carolina. Jeff MacDonald was severely wounded at the time suffering a collapsed lung, multiple stab and puncture wounds, and blunt face, head, and body wounds. MacDonald, from the very beginning, contended that a group of intruders had attacked him and his family while they were asleep, knocking him unconscious in the struggle that ensued.

Initially, the investigation was handled by the U.S. Army Criminal Investigation Division (CID). The army brought charges against MacDonald on May 1, 1970 and a Uniform Code of Military Justice Article 32 hearing commenced on May 15<sup>th</sup>. Witnesses were heard and evidence received for six weeks. On October 13, 1970, the presiding officer, Col. Warren V. Rock, filed his report recommending that all charges be dropped because as he wrote, "[T]he matters set forth in all charges and specifications are not true." (*Report and Conclusions: Proceedings Under Article 32 Uniform Code of Military Justice* by Colonel Warren V. Rock, October 13, 1970). Based on evidence presented at the hearing, Col. Rock in his report also urged the civilian authorities to investigate the alibi of Helena Stoeckley of Fayetteville, N.C. All military charges were dismissed against MacDonald on October 23, 1970, and he was thereafter honorably discharged.

Approximately nine years later, in August 1979, Jeffrey MacDonald went on trial in this court for the murders of his wife and daughters. The trial lasted twenty-nine days. MacDonald took the witness stand in his own defense. Also the defense sought to call,

and eventually did call, Helena Stoeckley as a witness, believing that she would admit to the jury, as she had to others, her involvement in the crime. Before the jury, though, Stoeckley denied any knowledge of the MacDonald murders. On August 29, 1979, MacDonald was convicted. He was sentenced to three consecutive life sentences.

MacDonald appealed. This United States Court of Appeals for the 4<sup>th</sup> Circuit reversed the conviction on speedy trial grounds, recognizing the unfair prejudice caused to MacDonald's defense as a result of the nine year interval between the crime and his trial. *U.S. v. MacDonald*, 632 F.2d 258 (4<sup>th</sup> Cir. 1980); the Supreme Court reversed and remanded the case, *U.S. v. MacDonald*, 456 U.S. 1 (1982); the 4<sup>th</sup> Circuit Court of Appeals affirmed the conviction, *U.S. v. MacDonald*, 688 F.2d 224 (4<sup>th</sup> Cir. 1983), *cert. denied*, 459 U.S. 1103 (1983).

In 1984, MacDonald filed post-trial motions to vacate his conviction and for a new trial based on newly discovered evidence and government misconduct. These were denied by the trial court after an evidentiary hearing. *U.S. v. MacDonald*, 640 F. Supp. 286 (E.D.N.C. 1985). The ruling was affirmed on appeal. *U.S. v. MacDonald*, 779 F.2d 962 (4<sup>th</sup> Cir. 1985), *cert. denied*, 479 U.S. 814 (1986).

In 1990, MacDonald filed a second *habeas corpus* petition based on newly discovered evidence and government misconduct. The district court, without an evidentiary hearing, denied relief. *U.S. v. MacDonald*, 778 F.Supp. 1342 (E.D.N.C. 1991). The order was affirmed on appeal. *U.S. v. MacDonald*, 966 F.2d 854 (4<sup>th</sup> Cir. 1992), *cert. denied*, 506 U.S. 1002 (1992).

In April 1997, MacDonald filed a motion to reopen his previous 1990 *habeas corpus* petition based on government fraud. The motion also contained a request to have DNA

tests run on certain evidence taken from the crime scene. On September 2, 1997, this court denied the motion to reopen the *habeas* proceeding and transferred the remaining matters to the United States Court of Appeals for the 4<sup>th</sup> Circuit as a petition for leave to file a successive *habeas corpus* petition. *U.S. v. MacDonald*, 979 F.Supp. 1057 (E.D.N.C. 1997).

Our appellate court denied leave to file a successive *habeas* petition, but granted defendant's motion for DNA testing. *In Re MacDonald*, No. 97-713 (4<sup>th</sup> Cir. October 17, 1997.) On appeal of this court's refusal to reopen the 1990 *habeas* motion, the 4<sup>th</sup> Circuit affirmed. *U.S. v. MacDonald*, 161 F.3d 4 (4<sup>th</sup> Cir. 1998, *unpublished*). Per the 4<sup>th</sup> Circuit's order regarding DNA testing, the case was remanded to this court, which has been supervising such DNA testing. The remanded issue regarding DNA testing remains open and pending before this court. It is expected that the DNA testing will be complete by year-end 2005.

By this Motion and Memorandum in support thereof, defendant requests that his conviction be vacated and set aside (notwithstanding whatever results the DNA testing produces) based on the newly discovered evidence, the constitutional violations, and the overwhelming evidence of the defendant's innocence as described herein.

### **III. STATEMENT OF FACTS AND EVIDENCE**

#### **A. The Government's Evidence At Trial**

At approximately 3:30 a.m. on February 17, 1990, military police were summoned to the apartment of Dr. Jeffrey R. MacDonald, a twenty-six-year-old army captain serving as a medical officer at Fort Bragg, North Carolina. Upon arrival, the police found that MacDonald's pregnant wife, Colette, and his two young daughters, Kristen age two, and

Kimberley age five, had been brutally murdered, and found Jeff MacDonald semi-conscious, seriously wounded, and in shock. Upon being revived, MacDonald told the military police that his family had been attacked by at least four intruders, three men and a woman. The woman he described as having long blond hair, wearing a floppy hat and boots, and bearing a flickering light such as a candle.

The government's theory at trial was that Jeff MacDonald, an army physician with no history of violence and no record of prior arrests, got into a fight with his pregnant wife because his youngest daughter, Kristen, had wet the bed, that he picked up a club to strike his wife and accidentally struck and killed his daughter, Kimberley, who was trying to intervene, and that then, in order to cover up his accidental misdeed, Dr. MacDonald killed his wife and then mutilated and killed his youngest daughter and tried to make it look like a cult slaying. [Tr. 7138-7141].<sup>4</sup> The government prosecutors further argued that MacDonald either wounded himself to defer suspicion or was wounded when fighting with his wife.

The evidence the government adduced at trial to support this bizarre theory was exclusively circumstantial physical evidence from the crime scene. It included evidence such as in what rooms certain blood types were found, where the murder weapons were found, where Jeffrey MacDonald's pajama fibers were and were not found, where a pajama pocket of the defendant was found and on which side it was bloodied, and evidence of possible ways the ice-pick holes were made in MacDonald's pajama top. Much of the evidence was speculative.<sup>5</sup> The evidence adduced by the government was

---

<sup>4</sup> MacDonald's daughters were stabbed and clubbed dozens of times, their small bodies physically destroyed.

<sup>5</sup> Two government experts, for example, testified about an analysis they had been asked by the prosecutors to conduct of the pajama top of MacDonald and the 48 various puncture or ice-pick

designed primarily to disprove the version of events given by Jeffrey MacDonald as to what happened on the night of the murders, thereby casting suspicion on him as the murderer. This government strategy was interwoven with its repeated theme that, given MacDonald's version of events, there should have been ample physical evidence of intruders, and the lack of such evidence of intruders proved MacDonald's guilt.<sup>6</sup>

Importantly, included in the physical evidence from the crime scene were wax drippings of three different kinds of wax, one taken from a coffee table in the living room, one from a chair in daughter Kimberley's bedroom, and one sample actually retrieved from the bedspread in Kimberley's bedroom. None of these samples matched any candles found in the MacDonald home. [Tr. 3837-43]. This evidence, of course, could have been seen as corroboration for MacDonald's contention that the intruder with the long blond hair appeared to be carrying one or more lit and dripping candles.

While the parties quarreled repeatedly at trial over whether the crime scene had been properly handled, and whether fingerprint evidence was properly obtained and tested, the

---

holes in it. They apparently sought to align the MacDonald pajama top with the 21 ice-pick wounds in Mrs. MacDonald's chest, (using photographs of her taken at autopsy) folding the pajama top this way and that to accomplish their goal. Their testimony, over two days during the trial, was to support the prosecutors' theory that MacDonald stabbed his wife through his pajama top. By their own admission, their tests failed to consider the directionality of the thrusts or threads, or the knife wounds in both the pajama top and Colette MacDonald's chest. And at the end of all of this effort all they could say was that their efforts showed that it was *possible* to line up the holes. Their key expert admitted that he was not opining that it happened as speculated, only *that it could have happened*. [Tr. 4371].

<sup>6</sup> In the district court's *Memorandum Decision of March 1, 1985*, denying MacDonald's initial post-trial Motions to Vacate and for a New Trial, the trial judge enumerated what he considered to be the most significant evidence against MacDonald at trial. The court listed the following as significant: 1) the murder weapons, 2) the pajama top and pajama top demonstration, 3) the pajama top pocket, 4) MacDonald's eyeglasses, 5) the bloody footprint, 6) the latex gloves, 7) the blood splatterings and the government's reconstruction of the crime scene, 8) the absence of physical evidence consistent with MacDonald's account. (*See, U.S. v. MacDonald*, 640 F. Supp. 286, 310-315.) This evidence is analyzed in detail in section IV (b) *infra*, however, and as discussed therein, each of these items of evidence is either consistent with the account given by MacDonald of the murders, or has been proven false by newly discovered evidence.

government did adduce testimony at trial, through its expert, Hilyard Medlin, that 44 useable latent fingerprints and 29 useable palm prints had been lifted from the scene of the crime, but of these, only 26 fingerprints and 11 palm prints were matched with MacDonald family members or other investigators or individuals whose prints were available for comparison. [Tr. 3116, 3141]. Again, these many unaccounted for finger and palm prints could have been viewed as corroboration of intruders.

Also, it is critically important to note that the government introduced evidence of two purple cotton fibers found on one of the murder weapons (an old wooden board found by police outside the house.) The government introduced expert testimony that the fibers on the club matched the fibers used to sew MacDonald's pajama top. [Tr. 3784]. While this is in no way inconsistent with MacDonald's story, as he claimed to have been repeatedly struck by a club or clubs and his pajama fibers could have stuck to the club while he was being struck, what is noteworthy, as set forth in section III D (2) *infra*, is that the government suppressed at trial the fact that FBI analysts in 1978 had reexamined the fibers from the club and determined that in addition to the purple cotton fibers there were black wool fibers—fibers that did not match any fabric in the MacDonald home. And not only were these inexplicable black wool fibers found on the murder weapon, similar black wool fibers were found on the mouth and body of Colette MacDonald. The government also did not disclose at trial that synthetic blond wig hairs of up to 22 inches in length were found in the MacDonald home. Again, had all of this evidence been known to the court and jury it likely would have been seen as significant corroboration of MacDonald's account.<sup>7</sup>

---

<sup>7</sup> These two items of newly discovered evidence were the predicate for MacDonald's 1990 *habeas* petition. Without an evidentiary hearing, the district court, relying in part on an affidavit

There were, of course, no eyewitnesses to the occurrence other than the perpetrators. There was no evidence of MacDonald's fingerprints or blood on the murder weapons. Repeatedly, during their closing arguments, the prosecutors asked the jurors to draw inferences of guilt from the ambiguous array of physical evidence, as opposed to inferences of innocence that were equally plausible. The government's case was entirely comprised of circumstantial evidence directed less at proving Jeff MacDonald's guilt, than at proving that MacDonald's version of events was flawed. Nonetheless, he was convicted.

B. The Contentions of Jeffrey R. MacDonald

Since the moment Jeff MacDonald was first revived by medics in the early morning hours of February 17, 1970, wounded and in shock, he has contended that intruders attacked his family. At his trial he testified that he awoke in his living room to the screams of his wife and one of his daughters, saw four strangers in his house, and was immediately set upon, attacked, and knocked down. [Tr. 6581-82].

As he was trying to get up again, MacDonald heard a female voice saying "Acid is groovy; kill the pigs." He attempted to fend off the next blow and grab the arm of the person using the club, which he did do at some point in the struggle; the man's sleeve had military E-6 sergeant stripes on what appeared to be an Army field jacket. While he was receiving what he thought were punches, MacDonald also heard the words "acid and rain." [Tr. 6513-14].

---

by FBI agent Michael Malone that the synthetic blond hairs were not used in wigs but only in dolls, denied the motion. *U.S. v. MacDonald, supra*, 778 F.2d 1342. This Court affirmed, solely on the basis that the petition was barred by the abuse of the writ doctrine. *U.S. v. MacDonald, supra*, 966 F.2d 854. In 1997, MacDonald sought to reopen the matter after learning that Malone's affidavit was false. The lower court ruled that MacDonald failed to show fraud by clear and convincing evidence. *U.S. v. MacDonald, supra*, 979 F.Supp. 1057. This Court affirmed. *U.S. v. MacDonald, supra*, 161 F.3d 4.

MacDonald testified that he continued to struggle with the intruders as he held onto the man's arm. At some point his hands became bound up in his pajama top. He did not know how this happened, although he thought it was either pulled over his head or ripped from around his back. [Tr. 6586]. MacDonald presumed that the holes in his pajama top got there when he was fending off blows from the assailants. [Tr. 6808]. The blows came straight at him, and he recalls using the pajama top "more or less as a shield." [Tr. 6811-13]. He felt a sharp pain in his right chest as he held onto the club, and he saw a blade, and realized that he had probably felt a stab, not a punch. [Tr. 6588].

MacDonald stated that the woman intruder had blond hair and was wearing a floppy hat. [Tr. 6588]. He only saw her for a second or two, standing between the two white men at the end of the couch. The only other thing MacDonald remembered about her was seeing a bare knee and the top of a boot. [Tr. 6588-89]. He testified that he remembered seeing a "wavering or flickering" light on the face of the woman with the blond hair and floppy hat, which appeared to be a light such as from a candle. [Tr. 6592].

At some point during the struggle, MacDonald believed he was knocked unconscious because his next memory was of awakening on the landing leading from the living room into the hall. The house was quiet when he awoke; his teeth were chattering, and he thought he was going into shock. He remembered walking into the master bedroom, where he found his wife, Colette, on the floor, and a lot of blood. He pulled a knife out of her chest, throwing it aside. Her right shoulder was leaning against a green chair. He took the pajama top off his wrists and tried to give aid to his wife. He thought he probably moved her away from the chair before frantically giving her mouth-to-mouth



resuscitation. Air came out of Colette's chest through the stab wounds; Jeff MacDonald observed no signs of life. [Tr. 6595-99]. MacDonald then recalled going through the house to check on his two daughters. He went first to Kimberley's room, then to Kristen's. MacDonald found them both in their beds, covered in blood, and he desperately attempted to revive each of them without success. [Tr. 6599-6603]. MacDonald testified that he was unsure of what he did next. At some point he went into the bathroom to check his head, which was hurting, and thought he rinsed his hands in the sink. [Tr. 6606-08]. He went back to Colette a second time and remembered covering her with his pajama top. [Tr. 6605]. Eventually he dialed the operator from the master bedroom telephone and asked for medics and MPs. He was unconscious when help finally came.

Once it did arrive, he recalled being given mouth-to-mouth resuscitation by an MP while lying on the master bedroom floor next to Colette. There was confusion all around him, and numerous MPs were inside the apartment. [Tr. 6615-17]. He remembered trying to push away the MP giving him mouth-to-mouth—telling him to go check his wife and kids, that he didn't need any help—and falling back onto Colette's body. MacDonald remembered describing the group of intruders to one of the MPs<sup>8</sup> before being taken out of the house on a stretcher. [Tr. 6518-20].

MacDonald was taken to the intensive care unit at Womack Army Hospital, where he was treated for a punctured lung and other life-threatening knife and puncture

---

<sup>8</sup> Kenneth Mica, one of the first MP's to arrive at the scene, was the person to whom MacDonald gave this description. [Tr. 1414]. Mica testified at trial that enroute to the MacDonald house at approximately 4 a.m. he saw a woman with shoulder-length hair, wearing a "wide-brimmed....somewhat 'floppy'" hat. [Tr. 1453-54]. Mica saw this woman at the corner of Honeycutt and South Lucas Road, "something in excess of a half mile" from the MacDonald home, thinking it strange that she would be out at that hour on a rainy night. [Tr. 1401, 1454].

wounds. [Tr. 5367]. He remained in the intensive care unit for nine days. After he recovered and was released, MacDonald said he had given a lot of thought to trying to figure out what happened to his family and why. He testified that he thought that either someone held a grudge against him or that it was a chance occurrence. [Tr. 6648]. He saw patients with drug problems in both his position as preventive medical officer at Fort Bragg and his work at the Cape Fear Valley Emergency Department. [Tr. 6649]. At times, MacDonald's responsibilities to the soldier he was counseling and to the soldier's commanding officer conflicted, and MacDonald had to decide whether to notify the officer about the soldier's drug problem. [Tr. 6652-53]. Some of the doctors providing drug counseling, himself included, were suspected of being "finks" for turning in troops for drug abuse. [Tr. 6657].

C. The Defense Case and the Recent Revelations of Jim Britt

In countering the government case, MacDonald's defense lawyers sought throughout the government's case-in-chief to underscore through cross-examination how equivocal and speculative the physical evidence put forth by the government was, and to expose how no real evidence of MacDonald's guilt actually existed. The defense presentation of evidence also sought to reinforce these themes. Character witnesses were called, and the defendant, himself, testified. The key and most important facet of the defense strategy, however, was to bring before the jury the significant evidence pointing to Helena Stoeckley's likely involvement in the crime. This included evidence of her possession of a blond wig, which she burned shortly after the crime [Ex. 4, Tr. 5602-04]; evidence of the clothes she routinely wore, which matched the clothes of the woman MacDonald described seeing in his house the night of the murders (a blond wig, floppy hat, and boots)

[Ex. 4, Tr. 5583-90]; evidence that she routinely wore black [Ex. 4, Tr. 5634]; evidence of her participation in an illegal drug cult that ingested LSD, worshipped the devil, used candles, and killed cats [Ex. 4, Tr. 5525, 5542-43]; evidence of her obsession with the MacDonald murders, such that she had bought and hung wreaths all along her fence the day of the burials [Ex. 4, Tr. 5633-34]; evidence that a woman matching her description had been seen by several people near the crime scene at or around the time of the murders [testimony of MP Kenneth Mica, Tr. 1453-54, testimony of James Milne, Tr. 5454-56]; and of critical importance, evidence that she had actually admitted to her participation in the crime to numerous people [Ex. 4]. Based on all of this, on her prior behavior, and on her obvious psychological connection to the crime, it was the belief of the defense that she would come to court and actually admit her involvement in the murders.

Regarding the many prior admissions that she had made concerning her involvement in the crime, the defense had placed under subpoena, and had present at the trial, six different individuals to whom Helena Stoeckley had made statements incriminating her in the MacDonald slayings. These included Jane Zilloux, James Gaddis, Charles Underhill, Robert Brisentine, P.E. Beasley, and William Posey. [Ex. 4]. Three of these were individuals involved in law enforcement. The defense intended to call Stoeckley as a witness, obtain from her admissions to the crime, and then call the other six witnesses to whom Stoeckley had also confessed.

It is apparent from the new evidence recently provided by former U.S. Deputy Marshal Jim Britt, that Helena Stoeckley was, in fact, prepared to admit to her involvement in the MacDonald crime to the court and jury. However, as Jim Britt bears witness, she was intimidated and threatened by the lead prosecutor into not doing so.

After James Blackburn heard what Stoeckley planned to testify to—that she was, indeed, in the MacDonald home with others on the night of the MacDonald murders—he secretly threatened to indict Stoeckley for first-degree murder if she went forward. Jim Britt saw and heard this and has never forgotten it.<sup>9</sup> The next day, Stoeckley, not surprisingly, capitulated to this intimidation and on the witness stand denied knowing anything about the MacDonald case and claimed to have amnesia concerning her whereabouts on the night of the murders. [Ex. 4].<sup>10</sup> This was not the end of the damage that Blackburn's perfidy did to the MacDonald defense, however. For even though Stoeckley denied knowing anything about the MacDonald murders, the defense still intended to call the six witnesses to whom Stoeckley had made incriminating statements.<sup>11</sup> The government, however, objected to these witnesses, and argued that their testimony was inadmissible because Stoeckley's admissions were not worthy of belief. The court during a bench conference had specifically asked Jim Blackburn what Helena Stoeckley had told him about the MacDonald murders when Blackburn interviewed her the prior day in his office. Blackburn told the court that Stoeckley had denied to him having any knowledge of the MacDonald crime or the MacDonald home. [Ex. 4, Tr. 5617]. This, of course, was directly contrary to what Jim Britt claims he specifically heard Stoeckley tell Blackburn.

---

<sup>9</sup> As his affidavit indicates, Britt has been bothered for twenty-five years over what he observed. He remained silent out of a sense of loyalty and duty to Judge Dupree and to the government, but confided in his wife and two closest colleagues at the U.S. Marshals Service. He came forward because the burden of carrying such important truths became too great.

<sup>10</sup> The very next day Stoeckley confided to Wendy Rouder, Esq. that she had been in the MacDonald home the night of the murders, and that she had not told the truth to the jury because she was afraid. When Rouder pressed her as to whom she was afraid of, she said she was afraid of the prosecutor. (Exhibit 5).

<sup>11</sup> While Stoeckley at trial denied having any knowledge about the MacDonald murders, she did testify that she had a floppy hat, wore a shoulder-length blond wig, owned a pair of boots, and that her appearance at the time of the murders was similar to the description MacDonald had given of one of the intruders. She also testified that she had ingested or injected multiple drugs the night of the crime and had no memory of events between midnight and 4 a.m. on the morning of the murders. [Ex. 4, 5513-5671].

Based certainly in part on the Blackburn misrepresentations, the court ruled that her out-of-court admissions to the six defense witnesses would not be heard by the jury because under Rule 804 (b)(3) of the Federal Rules of Evidence they were not trustworthy and not corroborated.<sup>12</sup>

It is only logical to conclude that had James Blackburn not threatened and intimidated Helena Stoeckley, she would have told the jury the truth—the same truth that she told Jim Britt during her ride up to Raleigh, the same truth she told Wendy Rouser over the ensuing weekend, and the same truth that she told James Blackburn in his office—admitting that she, indeed, had been involved in the MacDonald murders. Had she done so, the outcome of the trial would most definitely have been different. Moreover, had James Blackburn admitted to the trial judge that in his office the day before Helena Stoeckley had admitted that she had been in the MacDonald home on the night of the crime, with others, seeking out drugs, the judge would have been hard pressed to rule that she was inherently inconsistent and untrustworthy. He would have known that she had made incriminating statements to the prosecutor, consistent with the many incriminating statements that she had made to the six witnesses prepared to testify.<sup>13</sup> The court never learned this because as Jim Britt's conscience-driven revelations make clear, James Blackburn lied. As a result of the fraud on the court perpetrated by Blackburn, the court was denied critically important information necessary to make a just decision on the

---

<sup>12</sup> The government also argued in this regard that the admissions were not reliable because there was no physical evidence to corroborate that any intruders had been in the house. This was a particularly specious and sinister argument given the items that were suppressed by the government that indeed would have tended to corroborate the presence of intruders—the blond wig hairs and the unmatched black wool fibers, particularly, which only came to light years later through numerous Freedom of Information Act requests.

<sup>13</sup> Assuming she had not been threatened by the prosecutor, these statements all would have also been consistent with her trial testimony.

admissibility of Stoeckley's admissions. Consequently, the jury never heard the truth from Stoeckley herself, or from these other witnesses as to Stoeckley's involvement in the crime. Had such evidence come to the attention of the jury, as it unquestionably would have but for Blackburn's misconduct, it is clear that the jury would never have convicted Jeffrey MacDonald. As our court of appeals so pointedly wrote in *United States v. MacDonald*, 632 F.2d at 264 (4<sup>th</sup> Cir. 1980):

Stoeckley's statement on the stand at trial that she had no recollection of her whereabouts or activities during the critical period of midnight to 4:30 a.m. on the night of the crimes (although she remembered in detail events immediately prior and immediately subsequent to that crucial interval) had a great potential for prejudice to MacDonald, given the substantial possibility that she would have testified to being present in the MacDonald home during the dreadful massacre.

.....  
Had Stoeckley testified as it was reasonable to expect she might have testified, the injury to the government's case would have been incalculably great.

D. Evidence Discovered Post-Trial<sup>14</sup>

The MacDonald defense has discovered over the years since the trial that the government had suppressed at trial many additional pieces of evidence that would have supported the fact that there were intruders in the home that night, proved that the government's theory was not true, and would have further implicated Helena Stoeckley as one of the assailants. These items of evidence are described below:

1. Items Described in MacDonald's 1984 Post-Trial Motions

In 1984, MacDonald filed a *Motion to Set Aside His Conviction*, and a *Motion For a New Trial*. These motions were based on numerous items of new evidence discovered since the trial.

---

<sup>14</sup> In considering petitioner's claim of factual innocence, all of the evidence, even that which became available after the trial, is to be considered. *Schlup v. Delo*, 513 U.S. 298 (1995); 28 U.S.C. Section 2244.

In his *Motion to Set Aside His Conviction*, Jeff MacDonald claimed the government suppressed exculpatory evidence including 1) a bloody syringe half-filled with liquid found in a hall closet in the MacDonald house by a CID investigator which was destroyed and never tested; 2) photographs taken by police of the letter *G* written on the wall of Helena Stoeckley's apartment in 1970, the handwriting of which one government investigator believed matched the handwriting of the letter *G* in the word *PIG* found written in blood on the MacDonald headboard the night of the murders; 3) evidence that a Stoeckley friend, Cathy Perry, was given blood-stained clothing and boots by Stoeckley shortly after the murders which were destroyed; and, 4) skin found under Colette MacDonald's fingernail. The same judge who tried MacDonald held an evidentiary hearing on these matters in 1985.

Regarding the syringe, the court was presented with a statement made by a CID investigator, Hilyard O. Medlin, on February 21, 1970 (four days after the crime) that "a half-filled syringe that contained an as yet unknown fluid was located in a hall closet, which also contained some evidence of blood." Presented with contrary affidavits of other investigators by the government at the time of the hearing, (affidavits prepared in 1984, fourteen years after the investigation), the court ruled that the evidence of the existence of a bloody syringe was insufficient, and its exculpatory value was thus unproven.

Regarding the photographs of the letter *G*, the defense claim rested on a note written by a CID photographer, Frank Toledo, that the letter *G* in words written on Stoeckley's apartment walls resembled the letter *G* written in blood on the MacDonald headboard. Presented with evidence from an FBI analysis that the letters did not bear enough

individual characteristics for a meaningful comparison, the court ruled that the evidence was insufficient and thus not exculpatory.

Regarding the bloodstained clothes and boots, the government denied that any clothes ever came into the possession of the government, and denied that the boots turned over to the CID ever had any blood on them. The court agreed with the government and ruled that these items were thus not exculpatory.

Regarding the skin found under Colette's fingernail, the court found that based on the evidence produced against MacDonald at trial, the skin was probably his, and was not likely to exculpate him. *United States v. MacDonald*, 640 F. Supp. 286 (E.D.N.C. 1985).

In MacDonald's *Motion for A New Trial*, he asked the court to consider additional new evidence discovered post-trial. This evidence included, 1) an extensive detailed confession given by Helena Stoeckley to two law enforcement officers; 2) affidavits presented to the court of various witnesses, each who saw a group of people matching the description MacDonald had given of the intruders in close proximity to the MacDonald house either late the night of and just before the crime, or in the early morning hours just after the crime had occurred;<sup>15</sup> 3) the statement of a witness, Jimmy Friar, who telephoned the MacDonald home at 2 a.m. the night of the murders and spoke with an hysterical woman and also heard someone in the background ordering the woman to hang up the phone, (Stoeckley, during her many confessions admitted to having answered a ringing phone in the MacDonald home that night); 4) a declaration by Reverend Randy Phillips that a man

---

<sup>15</sup> One of these was from Joan Sonderson, a waitress, who arriving at work the morning following the murders saw a vehicle occupied by three sleeping people, including a white woman with blond hair and wearing a floppy hat and beige boots that were muddy, and a man wearing an army fatigue jacket. The woman in the floppy hat asked Sonderson if she knew that members of the MacDonald family had been murdered that night. Sonderson, of course, had no way of knowing about the murders. How, one must ask, would the woman in the floppy hat have known of them so early in the morning?



he identified from a photo array as Greg Mitchell had confessed to the murders; 5) a declaration by Ann Cannaday who also identified Greg Mitchell from a photo array that Mitchell told her he had been part of a cult in Fayetteville, North Carolina and had murdered people; and, 6) statements Greg Mitchell made to Bryant and Norma Lane that he had done something too horrible to talk about. (Greg Mitchell was Helena Stoeckley's boyfriend at the time of the murders and was implicated by Stoeckley in the crime).<sup>16</sup>

These confessions of Mitchell's were made years after he and Stoeckley had separated.

The trial judge, in regard to the new Stoeckley detailed confession, again found that even if believed by her to be true, her confession was unreliable as it was the product of a drug-addled mind. In so ruling, he stressed the importance of the fact that "no physical evidence was uncovered at the crime scene which would support Stoeckley's confessions."<sup>17</sup>

---

<sup>16</sup> Since 1984, additional witnesses have come forward to whom Greg Mitchell directly confessed. Affidavits from three of these witnesses are attached hereto as Exhibit 7. These include affidavits from Donald Buffkin, Everett Morse, and a new affidavit from Bryant Lane. (A previous affidavit of Lane submitted to the court was found to be vague. Lane has clarified in the attached 2005 affidavit that Greg Mitchell directly confessed to him that he committed the MacDonald murders, and that he so confessed within two weeks of his death while aware of his impending death.) **Unless they were actually the murderers of the MacDonalds, the fact that from this small group of four suspects matching the description given by MacDonald—suspects who lived close to the murder scene and were involved in drugs and cult-like activities—two directly and specifically confessed to numerous people of committing such a heinous crime, confessed independently of each other, years after they knew each other, and while geographically separated by several states, is an astonishing coincidence.**

<sup>17</sup> MacDonald seems to have been caught in the proverbial *Catch 22*. Having claimed from the outset that his family was attacked by intruders later shown to be drug addicts, the multiple confessions of one of these has never been considered on its merits for the principal reason that she was drug-addled. If the tables had been turned, if Helena Stoeckley had been indicted and tried for this crime, it is unlikely that any court would have excluded her many confessions because she was drug-addled or unreliable, or simply because she often repudiated her admissions of guilt. Many defendants only confess once, and repudiate their confessions thereafter. The confessions are nonetheless admitted.

Regarding the statements of the various corroborating witnesses, the judge ruled that the statements were no more than weak circumstantial evidence that Stoeckley and her cohorts were in the area of crime which was also the area where they lived.

As to the Greg Mitchell admissions, the judge ruled that they were "speculative and circumstantial." He ruled that there was insufficient proof that it was, in fact, Greg Mitchell who confessed to Reverend Phillips and Ann Cannaday and that the statements Mitchell made to the Lanes were unpersuasive because Mitchell made no specific reference to being involved in the MacDonald slayings. Not persuaded by this evidence, the court denied the motion. *Id.*

On appeal, the denial of these motions was affirmed by this Court. *United States v. MacDonald*, 779 F.2d 962 (4<sup>th</sup> Cir. 1985).

## 2. Items Described in MacDonald's 1990 Habeas Petition

In 1990, MacDonald filed a second post-trial motion seeking a reversal of his conviction based on newly developed evidence, gleaned from the over 10,000 documents obtained through numerous FOIA requests. Within these documents, the defendant found the following, never before turned over by the government: 1) Handwritten lab notes of CID investigator Janice Glisson (who testified at trial) which revealed that numerous blond synthetic hairs, up to 22 inches in length, had been found in a hairbrush in the dining room of the MacDonald home, and the hairs could not be matched to any known items in the MacDonald home;<sup>18</sup> 2) The results of a 1978 reexamination of critical fibers found on the body of Colette MacDonald and on the murder weapon. At the request of the prosecutor, in 1978 three FBI investigators had re-

---

<sup>18</sup> The government countered the 1991 motion by submitting an affidavit from an FBI agent, Michael P. Malone, that the blond synthetic hairs were not wig hairs. Later, defense lawyers learned that the affidavit was incorrect.

examined certain crime-scene evidence and found black wool fibers in the debris taken from around the mouth area of Colette MacDonald, on the bicep area of her pajama top, and on the club that the government believed was the murder weapon and which was found outside the home. FBI investigator Kathy Bond noted that the purple cotton fibers previously identified on the murder weapon as matching the sewing threads on MacDonald's pajama top were not such, in fact, but were black wool fibers. These black wool fibers were never matched to any known fabric in the MacDonald home.<sup>19</sup> (*See* footnote 7, *infra*).

### 3. Additional New Evidence

Additional witnesses have come forward to whom Greg Mitchell confessed to murdering the MacDonald family. Attached as Exhibit 7 are the affidavits of Everett Morse, Bryant Lane, and Donald Buffkin. Morse swears that he was told by Greg Mitchell that Mitchell murdered the MacDonald family. Lane, in an amplification of his earlier deposition, swears that he was told by Mitchell that Mitchell murdered the MacDonald family. And Buffkin swears that he was told by Mitchell that Mitchell murdered the MacDonald family. Mitchell died in 1982. Taken in conjunction with the Stoeckley confessions, the record now contains direct admissions made by two of the people identified as those most likely to have been the intruders that killed MacDonald's family. *Two of the four have confessed!* The statistical probability that each of these two somehow suffered independently from the same psychotic illusion—that they murdered the MacDonald family—is not believable. To argue such is patently ridiculous. They both confessed, independently, and long after their association ended, because they both

---

<sup>19</sup> Despite this reexamination in 1978, prosecutor's elicited testimony from selected experts at the 1979 trial that the murder weapon had on it the blue cotton fibers of MacDonald's pajama top without disclosing the presence of the black wool fibers.

were involved. Moreover, these statements of Greg Mitchell were declarations against interest and would be admissible in any future trial. *See*, Federal Rules of Evidence, 803, 804.

#### IV. ARGUMENT

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) as set out in 28 U.S.C. Sections 2244 and 2255, in order to obtain relief, petitioner must prove, 1) that the newly discovered evidence, or factual predicate for the claim, could not have been discovered previously through the exercise of due diligence, and 2) that the new facts underlying the claim, when viewed in light of the evidence as a whole, are sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense. 28 U.S.C. Section 2244. MacDonald submits that the newly discovered evidence outlined herein unquestionably meets these criteria.

##### A. The Newly Discovered Evidence Could Not Have Been Discovered Previously Through the Exercise of Due Diligence

The only people who had knowledge about the newly discovered evidence which is the predicate for MacDonald's new *habeas corpus* petition, are James Blackburn, a former prosecutor and government official, former Deputy United States Marshal Jim Britt, a former government official, and Helena Stoeckley, the intimidated witness, who was silenced by the threats of Jim Blackburn and who died in 1982. It is obvious that this constitutes new evidence that could not have been discovered previously through the exercise of due diligence.

Our federal courts have consistently held that evidence within the purview of government officials, secreted by them, or withheld by them, is evidence that could not

have been discovered through the exercise of due diligence. *See, e.g., Dobbs v. Zant*, 506 U.S. 357, 359 (1993) (*per curiam*) (transcript not discovered based on State's assertions that it had not been transcribed); *Price v. Johnston*, 334 U.S. 266, 289 (1948) (prosecutor's knowing use of perjured testimony); *Kirkpatrick v. Whitley*, 992 F. 2d 491, 495-96 (5<sup>th</sup> Cir. 1993) (information hidden in undisclosed police report); *Fairchild v. Lockhart*, 979 F.2d 636 (8<sup>th</sup> Cir. 1992) (prosecutor did not turn over sheriff's file containing exculpatory information); *United States v. Biberfeld*, 957 F.2d 98, 104-5 (3<sup>rd</sup> Cir. 1991) (government withheld information that testimony of witness was false); *Hamilton v. McCotter*, 772 F.2d 171, 182-83 (5<sup>th</sup> Cir. 1985) (newspaper report that prosecutor had forged indictment); *Paradis v. Arave*, 130 F. 3d 385, 394 (9<sup>th</sup> Cir. 1997) (prosecutor withheld exculpatory information at the time of the criminal trial and successfully quashed a subpoena for documents at the time of the first *habeas* petition.) *See, also, Strickler v. Greene*, 527 U.S. 263, 282, 289 (1999) (conduct by state in impeding access to exculpatory information provided cause for filing a successive petition.) *Strickler, supra*, stands for the proposition that any extraordinary obstructive circumstance beyond the control of the petitioner and his attorney, in which both were faultless, amounts to justification for a successive petition. Obviously, there is no way that the MacDonald defense could have forced Blackburn or Britt, two government officials, to reveal the information known to them of Blackburn's misconduct.

Regarding Helena Stoeckley, it is only logical to conclude that the threats made to her by prosecutor Blackburn caused her to testify falsely at the trial. She apparently was too frightened thereafter to ever disclose what had occurred in James Blackburn's office. Moreover, during the trial the court ruled, based on the misrepresentations of James

Blackburn, that Stoeckley was a witness with no credibility and not worthy of belief. Hence, even if the MacDonald defense team had learned post-trial from Stoeckley that she was threatened and intimidated by the prosecutor, and that she lied to the jury as a result of such threats and intimidation, such information would have been of no practical value or use given the court's ruling that she was not a credible or believable person.

Now, however, that this new information has been revealed by a former United States government court official, one with unimpeachable credibility, and with no reason whatsoever to prevaricate or embellish, it demands to be redressed by this court.

The information known to Jim Britt is new evidence that could never have been discovered by the defense through the exercise of due diligence.

**B. The Newly Discovered Facts, When Taken in Light of the Evidence as a Whole, Are Sufficient to Establish by Clear and Convincing Evidence That, But For the Constitutional Error, No Reasonable Fact-finder Would Have Found the Applicant Guilty of the Underlying Offenses**

The allegations of Jim Britt are credible. Britt is above impeachment and has no reason or motive to lie. His revelations, in fact, bring him nothing but unwanted stress and scrutiny. He passed a lie detector test. His disclosures to his fellow marshals are consistent with his affidavit. Moreover, his revelations are supported by substantial corroborative evidence including what Helena Stoeckley told Wendy Rouder during the trial, and what Helena Stoeckley said repeatedly after the trial referencing her fear of the prosecutors. Britt's new evidence demonstrates that James Blackburn unquestionably denied Jeffrey MacDonald his constitutional right to due process and a fair trial.

Blackburn, as Jim Britt attests, was told by Helena Stoeckley that she and others were in the MacDonald home on the night of the murders. Blackburn secreted this material exculpatory evidence from the defense and falsely denied having heard it to the court.

This was a clear constitutional violation denying the defendant due process of law under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The prosecutor's failure to disclose material exculpatory evidence violated MacDonald's right to a fair trial. *Brady v. Maryland, supra*; *U.S. v. Bagley*, 473 U.S. 667 (1985).

Blackburn then, as Jim Britt attests, threatened Helena Stoeckley with a first-degree murder indictment if she testified to what she told him, causing her to change her testimony, and then Blackburn hid her confession and hid his threats from the court and the defense. Under the circumstances, this also was a clear constitutional violation. It is axiomatic that the right of a criminal defendant to offer the testimony of witnesses is a fundamental element of due process of law. *Washington v. Texas*, 388 U.S. 14 (1967); *Webb v. Texas*, 409 U.S. 95 (1972). Where through the acts of government agents, a defense witness is threatened or intimidated into declining to truthfully testify, a defendant is deprived of due process. *Webb v. Texas, supra*. Where prosecutorial misconduct prevents a defense witness from giving relevant testimony, and thereby distorts the fact-finding process, a defendant is entitled to have his conviction vacated. *U.S. v. Lord*, 711 F.2d 887 (9<sup>th</sup> Cir. 1983). Prosecutorial actions that are aimed at discouraging a defense witness from testifying on a defendant's behalf deprive a defendant of the right of due process. *U.S. v. Pierce*, 62 F.3d 818, 832 (6<sup>th</sup> Cir. 1995). Moreover, Blackburn's conduct the next day in court amounted to a continuing constitutional violation. After Helena Stoeckley's direct testimony, during which she claimed to have had amnesia concerning her whereabouts and actions during the entire night that the MacDonald family was murdered, Blackburn never corrected this false testimony, but in fact, reinforced it during his cross-examination of her. Blackburn never advised the court of what she had told him

during his interview of her the day before. And, when directly asked by the court if Helena Stoeckley had disclosed to Blackburn any involvement in the MacDonald crime, Blackburn falsely stated to the court that she had not. [Ex. 4, Tr. 5617]. These actions of Blackburn, individually and taken in concert with what he had done the day before, violated the defendant's constitutional right to due process and a fair trial. As made clear in *Alcorta v. Texas*, 355 U.S. 28 (1957), when the government knowingly presents a false picture of the evidence to the court and jury a new trial is warranted. And it is axiomatic that a conviction obtained through false testimony is obtained in violation of due process. *Napue v. Illinois*, 360 U.S. 264 (1959); *Miller v. Pate*, 386 U.S. 1 (1967). When the prosecution misleads the court, the verdict should be invalidated, and when, as here, the government's fraud presents a deliberate scheme to directly subvert the judicial process, a reversal is mandated. *Alcorta v. Texas*, *supra*.

Here, prosecutor James Blackburn's threat to Helena Stoeckley, that he would indict her for murder if she testified to what she had told him, in fact intimidated her into testifying falsely, and denied Jeff MacDonald his constitutional right to due process. Blackburn's subsequent misrepresentations to the court about what she had told him during his interview of her further prejudiced the defendant as it is reasonable to assume that these misrepresentations were considered by the court in its important evidentiary ruling holding inadmissible the many confessions made by Stoeckley to others, on the grounds that she was not credible or trustworthy. In this regard the trial court stated, while announcing its evidentiary ruling, that the statements she had made out of court "were all over the lot." [Tr. 5808]. Importantly, had the trial judge known that Helena Stoeckley had come to the courthouse, and during her interview with the prosecutor had admitted to



having been inside the MacDonald home on the night of the murders, he would have had very little basis for finding her many admissions to the other defense witnesses who were present and prepared to testify untrustworthy or “all over the lot.” Not only would Helena Stoeckley have directly admitted her involvement in the crime to the jury, but the many other witnesses to whom she had made incriminating statements would probably have been heard by the jury as well. This undoubtedly would have changed the outcome of the trial.

Our Supreme Court has opined that credible claims of constitutional error that have caused the conviction of an innocent person are rare, but that when they are substantiated by new evidence not presented at trial, that is, when the evidence taken as a whole demonstrates that it is more likely than not that no reasonable juror would have found guilt beyond a reasonable doubt, a petitioner should be granted relief from his conviction, even in the face of procedural impediments. *Schlup v. Delo*, 513 U.S. 298, (1995); *Sawyer v. Whitley*, 505 U.S. 333 (1992); *Murray v. Carrier*, 477 U.S. 478 (1986). Such a determination requires a court to perform a complete review of the entire panoply of evidence, even that which was previously excluded from the trial. As the Court stated in *Schlup, supra* at 867:

[T]he *habeas* court must make its determination concerning the prisoner’s innocence in light of all the evidence, including that ... tenably claimed to have been wrongly excluded or to have become available only after trial.

The legal analysis of factual innocence under AEDPA also requires that all of the evidence be considered in a successive *habeas* claim. As set forth in 28 U.S.C. Section 2244, any analysis of new evidence and innocence must occur in the light of the *evidence as a whole*.

Importantly, Jeff MacDonald has never had the entire panoply of evidence supporting his innocence evaluated as a whole before.<sup>20</sup> Indeed, in light of the new evidence revealed by Jim Britt, this now must be done, and if it is fairly done, will lead to only one conclusion, i.e. that no reasonable juror could find Jeff MacDonald guilty beyond a reasonable doubt. The secret threats to Helena Stoeckley, the evidence that was suppressed by Blackburn, and the perjured and false picture that Blackburn presented to the jury and court through the witness Helena Stoeckley, amount to a corruption of the trial process at the most basic and fundamental level. The key defense witness, who was apparently prepared to confess before the jury to her role in a heinous multiple murder, and thereafter would have been forced to divulge the details of the crime and the names of her co-murderers, was secretly threatened by the prosecutor, intimidated away from telling the jury the truth, and that same prosecutor then misrepresented to the judge what the witness had said to him in his office, and then went even further and elicited testimony from the witness that the prosecutor knew to be contrary to what she had told him just the day before.

Had Helena Stoeckley told the jury that she had been inside the MacDonald house with others during the murders, and that she had seen the hobby horse in the MacDonald house, and described it to the jury, MacDonald would never have been convicted. This is most obvious. It is also the conclusion arrived at and forcefully stated by the 4<sup>th</sup> Circuit in its initial appellate opinion in this matter:

---

<sup>20</sup> As is manifest in the written opinion of Judge Dupree following MacDonald's 1990 *habeas* petition, even then the trial court only evaluated the post 1984 new evidence *piecemeal*, not the evidence as a whole, ruling that each piece of evidence was "separately insufficient." The court, of course, also discounted the value of the evidence based on the misleading affidavit of FBI agent Malone. *United States v. MacDonald*, 778 F. Supp. 1342, 1350-51 (E.D.N.C. 1991).

**Had Stoeckley testified as it was reasonable to expect she might have testified, the injury to the government's case would have been incalculably great.**

*United States v. MacDonald*, 632 F.2d at 264 (4<sup>th</sup> Cir. 1980). Moreover, had that testimony been given and considered in context along with the evidence as a whole, no reasonable juror could have found MacDonald guilty beyond a reasonable doubt.

There have been many myths that have grown up around this case over the past twenty-five years. One of these is that the government's circumstantial case proving guilt was overwhelming. To put this myth to the test, each of the significant pieces of evidence of guilt, as listed by the trial judge in his 1985 Memorandum Opinion [*U.S. v. MacDonald*, 640 F. Supp. 286 at 310-315 (E.D.N.C. 1985)] denying MacDonald's original post-trial motions, is examined below. As shown, not one piece of such evidence retains persuasive power when placed under scrutiny.

1. The Murder Weapons: As the lower court pointed out, the government investigators found a blood-stained piece of wood, a steel paring knife, and an ice-pick in the backyard, and another steel paring knife in the master bedroom. It sought to prove that these were the murder weapons. It also offered evidence that the weapons came from the MacDonald home. MacDonald denied any recollection of having an ice-pick in his home, and was contradicted by two government witnesses. All of this, however, proves little. Four intruders, relying on their numbers alone, may have entered the home without weapons and used what they found in the MacDonald home as weapons. Or, equally likely, they may have come with a weapon, such as a baseball bat, and then used, in addition to what they brought, items from inside the home that were clearly at hand. They could have then taken what they came with when they left, discarding the weapons they

found in the house. The fact that MacDonald had no recollection of an ice-pick proves nothing. In fact, had MacDonald committed the crime, and tried to cover it up, and had he thrown the ice-pick and other weapons into the backyard, why would he be so unwise as to deny having an ice-pick in the house? The fact that at least some of the weapons originated from the MacDonald home does not in any way tend to prove who committed the crime.

2. The Pajama Top and Pajama Top Demonstration: MacDonald claimed that he had used the pajama top at one point, as a shield. During his struggle, it had been pulled or ripped over his head and was partially bound around his wrists. Later, he put it on his wife's chest to keep her warm. The government introduced threads matching the pajama top that were found in the master bedroom, in the children's bedrooms, and on the club found outside, arguing that these proved the lie to his account. Similar threads were also found under Colette's body. Yet, the government contended, no threads were found in the living room where MacDonald was attacked. This, the trial court considered as strong evidence that MacDonald's story was fabricated. Perhaps overlooked in this conclusion, however, was the fact that MacDonald was wearing at all times in his home his pajama bottoms which were ripped from ankle to crotch. (See, trial testimony of medic Michael Douglas Newman, Tr. 2661-62.) The pajama bottoms were lost when MacDonald was being treated at the hospital. Certainly, it is reasonable to assume, and very likely, that the pajama bottoms were made of the same material, (similar threads), as the top. When MacDonald was trying to revive his wife, and moved her from against a chair and onto the floor, and gave her mouth-to-mouth resuscitation, and when he was frantically trying to breathe life back into his children, threads from his pajama bottoms would likely have

been scattered wherever he went. It is not surprising, thus, given MacDonald's account, that threads from his torn pajama bottoms would be in the children's beds, all around the house, and even under his wife. MacDonald moved his wife. So did Dr. Neal, who rolled her over to examine her. [Tr. 6921]. Moreover, his pajama threads could easily have been on the murder club because he was clubbed with it.

As to the trial court's conclusion that no pajama threads were found in the living room where MacDonald was attacked, this is contrary to the testimony of CID investigator Robert B. Shaw, who testified that he found a "tangled bunch or ball" of blue fibers in the hallway where it intersected the living room. [Tr. 2480, 2411-12]. The couch on which MacDonald was attacked was in the living room right where it abutted the hallway entrance. These fibers were found, thus, within a foot or two of where MacDonald said he struggled with the intruders, and precisely where he fell unconscious.

The government also relied heavily on its pajama top experiment, where government experts sought to prove that the holes in the pajama top could be lined up with the puncture marks in Colette's chest. This test was badly flawed. Any fair reading of the transcript shows that the experts failed to consider vitally important information in conducting their experiment. They failed to even try to line up the holes in the defendant's pajama top with the thirty-odd puncture holes in Colette MacDonald's pajama top. If MacDonald had laid his pajama top on top of her, and then stabbed her through it as the government contended, then the holes would have gone through both articles of clothing in the same pattern. The government experts also failed to line up the knife cuts in the pajama top with the knife cuts in Colette's torso. In this regard, if the knife holes were not lined up at the same time as the puncture holes, the experiment obviously was flawed.

These same experts also failed to consider the *directionality* of the thrusts, which could have been detected from the threads. Given that the experts claimed that the pajama top was folded when the stabbing occurred, according to their theory, depending on the folds of the garment, the thrusts or directionality would have to match up with the way the garment was folded. But they ignored the directionality of the threads. Even with all this, as mentioned earlier, the experts could not offer an opinion that the thrusts were made through the pajama top into Colette as the government contended. Their opinions were only that it was *possible* that this *could* have happened. Of course, it was equally possible that it did not happen that way. The testimony was no better than guesswork or speculation. Interestingly, the district judge, in his 1985 written memorandum opinion, stated that “MacDonald’s own pajama top was perhaps the most incriminating evidence offered against him during the trial.” *Id.* at 312. If this statement is accepted as true, it underscores just how incredibly weak the government evidence actually was.

3. The Pajama Top Pocket: MacDonald’s pajama top pocket was found at the feet of Colette MacDonald. Government expert testimony was offered to prove that the pocket was stained with Colette’s blood *prior* to the pocket being torn from the top. This evidence was offered to refute MacDonald’s version of events—that he placed the top on her torso—and to suggest that the pocket was torn during a struggle with his wife. Again, these deductions are speculative at best. It is no more or less likely that MacDonald, in a wounded state, stricken with unspeakable grief and emotion over the horror that had occurred, in shock, and frantically trying to save his family as any doctor would, used the pajama top while it was still bound around his wrists to staunch her bleeding, or try to aid her, hence the blood on the pocket. At precisely what moment he removed the pajama top

from around his wrists was never clear. Nor was it clear how the pocket got torn. He might very well have torn it off when frantically trying to remove the garment that was binding his hands. All of this is conjecture. None of it is probative of anything. The pajama top, simply, is not evidence of guilt.

4. MacDonald's Eyeglasses: The government adduced evidence that MacDonald's eyeglasses, which he was not wearing and which were found in the living room, had a speck of dried blood on them of the same blood type as that of his daughter, Kristen, blood Type O. MacDonald was an emergency room doctor. He treated wounded patients daily with various blood types. It is entirely plausible that the speck was blood from an earlier hospital patient.<sup>21</sup> Moreover, it is also possible that the intruders attacking MacDonald had already attacked and bloodied Kristen and their weapons, and a blood speck flew from their weapons to his glasses as they were swinging clubs and knives at him—weapons which had previously been used on her. Moreover, if MacDonald was wearing the glasses while struggling with and repeatedly stabbing his wife as the government suggested, why wouldn't Colette's blood be on the glasses? There are many explanations for that blood speck that are consistent with innocence. Again, the evidence is hardly probative of guilt.

5. The Bloody Footprint: One of MacDonald's footprints, stained with Colette's blood-type, was found leaving Kristen's bedroom, but no footprint was found entering the room. No other bloody footprints, in fact, were found anywhere, a rather strange phenomenon. [Tr. 3103, 3117]. This, the government argued, was evidence that MacDonald assaulted his wife in Kristen's bedroom, and stepped in her blood while

---

<sup>21</sup> Attached as Exhibit 8 hereto, is an FBI report, discovered as part of a FOIA request post-trial, indicating that the FBI had investigated the patients MacDonald had treated the day before the murders and discovered that several had Type O blood, including one patient treated for a puncture wound to his foot who would have been bleeding.

carrying her out back into the master bedroom. [Tr. 7133-34]. But what kind of selective logic is being employed here? Kristen's bedroom had puddles of blood in it and the CID investigators first on the crime scene were constantly asking people to watch where they stepped. [Tr. 2333]. Moreover, Colette's blood type, Type A was found in Kristen's bedroom. Rather than MacDonald assaulting Colette in Kristen's bedroom, why isn't it equally plausible that the intruders assaulted Colette in Kristen's bedroom? Either way, Colette would have bled in that bedroom leaving the blood, and MacDonald could have gotten the blood of Colette on his foot on his way out of that bedroom. Another, equally plausible explanation, is that Jeff MacDonald stepped in Colette's blood before being placed on the stretcher and gurney, and that when he was struggling at the entrance of Kristen's bedroom to get off the gurney to go to his child, he stepped once on the floor. This is consistent with the testimony at trial of CID officer Mica and is the only explanation of how just one bloody footprint would have been made. [Tr. 1419-21]. Once again, though, this evidence concerning a bloody footprint is no more probative of guilt than it is of innocence. It is equally consistent with both MacDonald's account and with the government's postulations. But it does not tend to prove either.

6. The Pieces of Latex Gloves: Four different torn pieces of rubber were found in the master bedroom. (Tr. 3911-12.) Government experts testified that they were "similar" in material to latex gloves found in packages under the kitchen sink in the MacDonald home. The government argued that this was proof that MacDonald used the latex gloves in covering up the crime by making it look like a cult slaying. The prosecutors suggested that he put the gloves on when he repeatedly stabbed his already dead family, and when he wrote words in their blood on the headboard of the bed in the master bedroom. This



evidence, however, was specious. First, when pressed on cross-examination, the government expert on this issue, Charles Michael Hoffman, acknowledged that his testing showed only that it was *possible* that the rubber pieces found in the master bedroom were made of the same material or made by the same manufacturer as the latex gloves found under the sink. He could not even say that a match was *probable*. (Tr. 3927-28.) Moreover, the government argument ignored the fact that latex gloves were prevalent at the time, and could easily have been acquired in drug stores. The intruders, concerned about fingerprints, might have brought them with them. Or, since latex gloves were there in the MacDonald house for the intruders to find and use if they became concerned about fingerprints, they might have made use of what was readily available. Finally, the government theory is nonsensical. Why would an educated man like Dr. MacDonald, had he intended to cover up this terrible crime, left pieces of latex gloves lying around? Why, if his family was already dead, would he have cut or torn up the latex gloves he used to cover up the crime, leaving pieces behind? Or why would he have left his own bloody footprint, for that matter? Or a pajama top where the holes could be lined up with the holes in Colette's chest? Whoever used the gloves must have had them on when struggling with Colette, which is why they were torn. This, of course, is contrary to the government's theory that MacDonald killed his wife before he put on the rubber gloves and only used them to stage a cult-murder-like crime scene. The pieces of rubber found in the master bedroom, if probative of anything, are probative of innocence.

7. The Blood Spatterings and the Government's Reconstruction of the Crime Scene:

The government relied on the fact that blood spatterings of Kimberley were found in the master bedroom, on the bathmat MacDonald had put on top of Colette's body, on the

murder weapon, and on the defendant's pajama top. This was used by the government to support its theory that Kimberley had been killed in the master bedroom by MacDonald. But, again, Kimberley could have come into the master bedroom while intruders were fighting with Colette. Kimberley's blood was all over. It could easily have gotten on MacDonald's pajama top when he took it from around his wrists and discarded it while trying to revive his wife. All of the blood evidence, in fact, and all of the physical evidence, as shown herein, was susceptible to an explanation consistent with the defendant's innocence.

8. The Absence of Physical Evidence Consistent with MacDonald's Account of the Murders: Lastly, the court relied, as apparently did the jury, on the government's recurrent theme that there was no physical evidence corroborating MacDonald's account of the murders. This, it turns out, was simply untrue. We know now that critical evidence of this sort was suppressed at the trial. There were, of course, the wax drippings, unmatched to any candles in the MacDonald home. There were unaccounted for fingerprints and palm prints. There were also the long blond synthetic fibers that did not match any fibers in the MacDonald home and that were suppressed by the government. Given the Stoeckley confessions, what more likely source could there be for these than her blond wig? There were the unmatched black wool fibers on Colette and on the murder weapon, also suppressed by the government. These constitute hard physical evidence of intruders.

The evidence presented against Jeffrey MacDonald was not just circumstantial but was, in fact, profoundly flawed. The jurors who heard it, moreover, were deprived of critically important exculpatory testimony and evidence. The trial judge, himself, who

was faced with difficult but profoundly important evidentiary rulings was deprived of critically important information. Had this not been case, the outcome would have been an acquittal.

No reasonable juror, hearing Helena Stoeckley's confession from the witness stand, and then hearing the abundant evidence corroborating the fact that she and other intruders were responsible for the murders, could possibly find Jeffrey MacDonald guilty beyond a reasonable doubt. Just a sampling of the other evidence that has been developed that supports MacDonald's innocence, and that would have corroborated Stoeckley's confessions, would have included:

1. The admissions made by Stoeckley to the six other individuals who were at the trial and prepared to testify [Ex.4];
2. The detailed admission made by Stoeckley to two law enforcement officials after the trial [Section III (D) (1) *infra*];
3. The synthetic blond wig hairs found in the MacDonald home and unmatched to any other fiber in the home, but consistent with Stoeckley's presence that night, wearing a long blond wig in the MacDonald home [Section III (D) (2) *infra*];
4. The fact that Stoeckley was wearing a blond wig and floppy hat the night of the murders and burned both the wig and the hat shortly after the murders [Ex. 4];
5. The fact that a woman matching Stoeckley's description was seen by MP Kenneth Mica at 4 a.m. in the rain the night of the murders a half-mile from the murder scene [Tr. 1453-54];
6. The fact that Stoeckley was fixated on the crimes and bought wreaths that she hung all along her fence during the funerals [Ex. 4, Tr. 5633-34];
7. The three different kind of wax drippings found on the coffee table where MacDonald saw the blond woman standing, and in Kimberley's bedroom that did not match any candles found in the home [Tr. 3837-43], taken in the context of Stoeckley's admitted use of candles in her LSD induced withcraft rituals [Ex. 4];
8. The statement of a witness (Jimmy Friar) who telephoned the MacDonald home at 2 a.m. the night of the murders and spoke with an hysterical woman and also heard someone in the background ordering the woman to hang up the phone, taken in the context

of Stoeckley's admission that she answered the phone while in the MacDonald home [Section III (D) (1) *infra*];

9. The statement, under oath, of Joan Sonderson, who saw a blond-haired woman in a floppy hat early the morning after the crime who asked her directly about the MacDonald murders, and who would have had no way of knowing about them unless she was involved [footnote 15 *infra*];

10. The black wool fibers found on the mouth and bicep of Colette MacDonald and on the murder weapon that were not matched to any fabric in the MacDonald home [Section III (D) (2) *infra*];

11. The fact that Greg Mitchell, years after the crime, and long after he had separated from Helena Stoeckley, confessed to committing the MacDonald murders to numerous different individuals [Ex. 7];

12. The testimony of the many witnesses, each who saw a group of people matching the description MacDonald had given of Helena Stoeckley and the intruders in close proximity to the MacDonald house either late the night of and just before the crime, or in the early morning hours just after the crime had occurred [Section III (D) (1) *infra*];

13. The 17 unmatched fingerprints and 11 unmatched palm prints [Tr. 3116, 3141].

At the risk of being repetitive, even as early as 1980, in its ruling on MacDonald's direct appeal, the United States Court of Appeals for the 4<sup>th</sup> Circuit stated, that **had evidence of Stoeckley's involvement been admitted, the government's case would have been incalculably damaged.** *United States v. MacDonald*, 632 F.2d at 264. With this new evidence from Jim Britt, it is clear that but for the prosecutor's misconduct, the evidence of Helena Stoeckley's involvement would have come to the jury from her own testimony. And as our court of appeals has opined, this would have destroyed the government's case. Moreover, as set forth above, the admissions of Helena Stoeckley have now been corroborated by additional facts. Taken together, these facts show egregious

prejudice to MacDonald resulting in a fundamental miscarriage of justice. *See, e.g. McCleskey v. Zant*, 499 U.S. 467 (1991).<sup>22</sup>

## V. CONCLUSION

It would be an understatement to point out that this case has had an overlong history in the courts. Jeff MacDonald, who has now served over 25 years in federal prison with dignity and without one incident of violence, continues to maintain and fight for his innocence. Perhaps it is worth keeping in mind that due to DNA testing, we as a society have learned over the last decade that there are many more innocent people wrongfully convicted and languishing in our prisons than we ever would have thought.<sup>23</sup>

If a life is evidence, is it not reasonable to juxtapose Jeffrey MacDonald's sixty-two years of living with no discernable mental instability or act of violence against the theory of the government that on one out-of-character night he pathologically and in cold blood not just murdered, but mutilated the bodies of his two-year-old daughter, five-year-old daughter, and wife who was pregnant with his unborn son? Jeff MacDonald was tried by the government on a totally circumstantial case. We know that he was convicted pursuant to a trial in which important evidence was suppressed by the government. Now it has come to light that the government prosecutor threatened the key defense witness into not telling

---

<sup>22</sup> An exhaustive critique of the evidence with citations to the record was prepared by MacDonald's attorneys and submitted with his 1991 habeas pleadings. This document, captioned *Addendum to MacDonald's Reply Brief: Compilation and Analysis of Case Evidence*, is attached hereto as Exhibit 9.

<sup>23</sup> *See, generally*, Innocence Project Home Page, <http://www.innocenceproject.org> (documenting over 150 recently exonerated individuals who were wrongfully convicted); and New York State Defenders Ass'n. *Wrongful New York State Homicide Convictions Since 1965* (May 30, 1990) (documenting 59 homicide cases in New York state between 1965 and 1988, in which a defendant was wrongfully convicted of homicide).

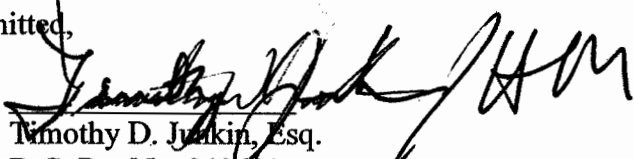
the jury of her involvement in the crime, and then misrepresented what she had previously stated to the court.

It is time for Jeffrey MacDonald's case to be reviewed in its entirety. This new evidence meets all of the criteria required for a federal prisoner to be entitled to have his sentence set aside. And importantly, justice and decency demand it.

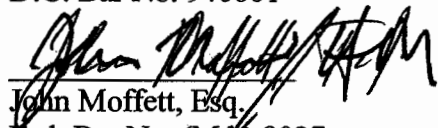
WHEREFORE, FOR THESE AND OTHER REASONS CONSIDERED BY THIS COURT, PETITIONER RESPECTFULLY REQUESTS THAT THIS MOTION BE GRANTED AND THAT THE SENTENCE AND CONVICTION OF JEFFREY R. MacDONALD BE VACATED AND SET ASIDE.

PETITIONER RESPECTFULLY REQUESTS A HEARING ON THIS MOTION.

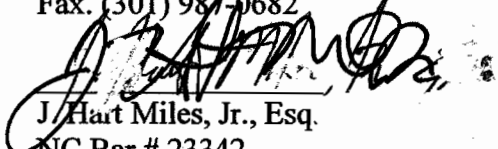
Respectfully submitted,



Timothy D. Junkin, Esq.  
D.C. Bar No. 940601



John Moffett, Esq.  
Fed. Bar No. (Md.) 9027  
Moffett & Junkin, Chtd.  
800 S. Frederick Ave., Suite 203  
Gaithersburg, Md. 20877  
(301) 987-0600  
Fax. (301) 987-0682



J. Hart Miles, Jr., Esq.  
NC Bar # 23342  
Hart Miles, Attorney at Law, P.A.  
19 W. Hargett Street, Suite 805  
Raleigh N.C. 27601  
Tel: (919) 834-8650  
Fax. (919) 834-9105

## CERTIFICATE OF SERVICE

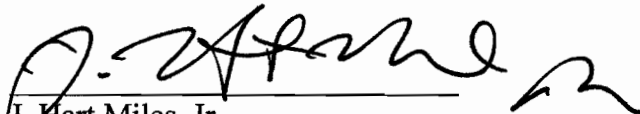
I hereby certify that a copy of petitioner's U.S.C. § 2255 motion and memorandum, appendices and exhibits were hand-delivered to the United States Attorney for the Eastern District of North Carolina at the following address:

Honorable Frank D. Whitney  
United States Attorney  
310 New Bern Ave., Suite 800  
Raleigh, N.C. 27601

And mailed to the U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Esq.  
U.S. Department of Justice  
Domestic Security Section, Room 6746  
Criminal Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

This the 17 day of January, 2006.

  
J. Hart Miles, Jr.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

NO.: 75-26-CR-3

5:06-CV-24 if

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	EXHIBITS TO JEFFREY MACDONALD'S
	)	MOTION UNDER 28 U.S.C. 2255 TO
v.	)	VACATE HIS SENTENCE
	)	
JEFFREY R. MacDONALD,	)	
	)	
Applicant/Defendant.	)	

- Exhibit 1: Affidavit of Jim Britt
- Exhibit 2: Polygraph Report, and Resume of Steve Davenport;
- Exhibit 3: Affidavit of Lee Tart
- Exhibit 4: Transcript of Trial, U.S. v. MacDonald, August 17, 1979;
- Exhibit 5: Affidavit of Wendy Rouder;
- Exhibit 6: Newspaper Article: "Woman in MacDonald Case Claims He Was Victim Not Murderer," *The Register*, (Fayetteville, N.C.) 10 Jan. 1981, A20;
- Exhibit 7: Affidavits of Everett Morse, Bryant Lane, and Donald Buffkin;
- Exhibit 8: FBI Report on Patients Jeff MacDonald had Treated Prior to the Murders;
- Exhibit 9: Addendum to MacDonald's 1991 Reply Brief: Compilation and Analysis Of Case Evidence;
- Exhibit 10: Judgment and Commitment Order of James L. Blackburn, Superior Court Of Wake County, N.C., *State of N.C. v. Blackburn*, Nos. 93-CRS-37345, 43572, (1993)





NORTH CAROLINA

WAKE COUNTY

**AFFIDAVIT OF JIMMY B. BRITT**

I, Jimmy B. Britt, of 616 Wimberly Road, Apex, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I began my career in law enforcement in February of 1960 with the Smithfield Police Department, and remained with them for four years.
2. In 1964 I was appointed by the County Commissioners and the Johnston County ABC Board as one of the first ABC officers for Johnston County. I remained with the Johnston County ABC Board for fourteen months.
3. After leaving service with the County, I then worked as an officer for the State ALE Office for approximately two-and-a-half years.
4. In February, 1968, I began full time service as a Deputy United States Marshal for the United States Marshal's Service. I remained with the Marshal's Service in the Eastern District of North Carolina for 18 years, performing the full scope of duties attached to the Marshal position. I was selected to go to the Federal Law Enforcement Training Center where I was an instructor for two years. I was reassigned to Raleigh, North Carolina to serve as Supervisor of Operations. For 18 of the 22 years of my tenure, I worked in several Federal District Courts throughout the United States, including North Carolina. I also had three years of military service. I performed 25 years of federal government service (including military service) in good standing, and retired November 30, 1990.
5. After retiring from the U.S. Marshal's service, I worked at the Johnston County Sheriff's office as the Jail Administrator. I worked there for six years and retired completely in September of 1996. In total, I have served nearly 40 years in law enforcement.
6. I was one of the United States Marshal's assigned to the proceedings of the trial of Jeffrey MacDonald in 1979.
7. In the summer of 2004, I took a trip with my friends, Lee Tart and Cecil Goins. Mr. Tart is a retired inspector with the United States Marshal's Service (30 years of service) and Mr. Goins is a retired Deputy United States Marshal who is now the Sergeant-at-Arms at the North Carolina Senate. During this trip, I shared a moral burden with Mr. Goins, one that I had shared previously with Mr. Tart. On the trip, I talked to both men about my being privy to some events that happened at the MacDonald trial. I also told them of the many years I had been carrying this moral burden, and how deeply it still troubled me.

8. Sharing my information and its effect on me with Mr. Goins and Mr. Tart did not ease my mind for long.

9. In January of 2005, I first contacted Mr. Wade Smith, Esq., of my own accord, and told him I would like to meet with him regarding the Jeffrey MacDonald trial.

10. I did not come forward previously with the information I shared with Mr. Smith, and which I now share with the court, out of respect for the late Judge Franklin Dupree, who presided over the trial, and others who were with the courts at the time of the MacDonald trial. Working on the side of law enforcement in the courthouse was my career. I did not want to betray, or appear to be betraying, the people I worked with and respected. I considered myself a loyal officer of the court, and I still do, but ultimately I decided that I had a duty to come forward.

11. What I shared with Mr. Smith is that during the Jeffrey MacDonald trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

12. In the course of my law enforcement career I have learned to identify persons who appear to be under the influence of alcohol or drugs. At no time, when Ms. Stoeckley was in my presence, did she appear to be under the influence of alcohol or drugs.

13. Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased.

14. It was clear that Ms. Stoeckley knew she was being brought to Raleigh in connection with the MacDonald trial.

15. During the course of the travel from Greenville, South Carolina to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the MacDonald murders.

16. I knew at the time that what Ms. Stoeckley had said was very important, and it was something I was not about to forget. I remember her words clearly, and they are among the most important words I've ever heard in my life in connection with any case or any of my official work.

17. I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car.

18. At the Courthouse, I first took Ms. Stoeckley to the office that was used by Jeffrey MacDonald's attorneys on the seventh floor of the Federal Building. I left her there with Mr. Smith and Mr. Bernard Segal. When the lawyers were finished, I escorted Ms. Stoeckley to the eighth floor to the U.S. Attorney's office.

19. I knew that Mr. James Blackburn, was one of the government attorneys trying Jeffrey MacDonald. I had seen Mr. Blackburn many times before. I also was aware of, and saw, Mr. Brian Murtagh and Mr. George Anderson during the course of the trial.

20. When I delivered Helena Stoeckley to the U.S. Attorney's office, Mr. Blackburn asked me to remain in the room. This was not an unusual occurrence – I had been asked to sit in the room by government attorneys many times in my career.

21. As I recall, Mr. Blackburn sat behind a desk that was set at an angle in the northeast corner of the office. There were several chairs positioned in front of the desk. Helena Stoeckley sat in the center chair in front of the desk and I sat over to the side next to the window.

22. After Ms. Stoeckley was settled in the room, Mr. Blackburn began to interview her. Ms. Stoeckley told Mr. Blackburn the same things she had stated to me on the trip from Greenville to Raleigh. She specifically mentioned the hobbyhorse and various other things, and specifically told Mr. Blackburn that she, along with others, had been inside Jeffrey MacDonald's home on the night of the murders. She also said that she had gone to the MacDonald house to acquire drugs.

23. When these statements were made, I was absolutely aware of the importance of Ms. Stoeckley's words to Mr. Blackburn. There is no doubt in my mind today, I am still absolutely certain, that Helena Stoeckley told James Blackburn that she was in the MacDonald house on the night of the MacDonald murders, with other people.

24. After Helena Stoeckley had given the history of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder."

25. The importance of Mr. Blackburn's words was not lost on me at the time, and never has been. I have no doubt that this is what Mr. Blackburn said to Helena Stoeckley in my presence.

26. I am not certain as to whether other attorneys besides Mr. Blackburn were in the room during the Stoeckley interview. It is possible George Anderson, the United States Attorney at the time, and/or Brian Murtagh, the other government prosecutor, or others associated with the prosecution were there, either when I entered the room with Ms. Stoeckley, or after I entered with her. They may have come in and left at some point, taken a break, or gone out of the room. I have a recollection of Ms. Stoeckley asking for a sandwich during the interview, and someone other than myself going to see about it. But

my clear recollection is that only Mr. Blackburn, Ms. Stoeckley and I were in the room at the time Mr. Blackburn said these words to Ms. Stoeckley.

27. Upon conclusion of the interview, I took Helena Stoeckley from the eighth floor by stairway down to the seventh floor, and took her into the Courtroom.

28. These events have remained with me. The interview with Mr. Blackburn and other conduct by representatives of the government which I felt was unethical all have moved me to take this action.

29. I do not have a personal or social relationship with Mr. Wade Smith, Mr. Tim Junkin, Mr. Bernard Segal, Mr. James Blackburn, Mr. Brian Murtagh, Mr. George Anderson, the late Judge Dupree, or any other officials or attorneys who were/are directly involved in the MacDonald case. After my initial meeting with Mr. Smith, I met again with him and Mr. Junkin, and was asked about pertinent parts of the MacDonald trial testimony, in which Mr. Blackburn stated in court that Helena Stoeckley had told him she had not been in the MacDonald house. I told Mr. Smith and Mr. Junkin that such testimony by Ms. Stoeckley before Judge Dupree was contrary to what she said to Mr. Blackburn in my presence.

30. Subsequently, Mr. Smith suggested that I submit to a polygraph examination regarding the events and conversations I witnessed, as outlined in this sworn affidavit, and I agreed. The polygraph, which I passed.

31. I am currently 67 years of age and felt compelled to clear my conscience and come forward with what I witnessed, as I decided I could not shoulder the burden any longer.

32. I came forward to Mr. Wade M. Smith of my own free will and accord. I have not been promised any compensation nor have I received any compensation.

  
Jimmy B. Britt

Sworn and subscribed to before me  
this 3<sup>rd</sup> day of November  
2005.

  
Notary Public

My Commission Expires: 9-4-2006

0194089

NORTH CAROLINA  
SAMPSON COUNTY



**AFFIDAVIT OF LEE W. TART**

I, Lee W. Tart, of 1451 Old Goldsboro Road, Newton Grove, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I am a retired Deputy United States Marshal with twenty-nine years service. Prior to my work with the United States Marshal's Service, I was a North Carolina Highway Patrolman for three years. My career in law enforcement totals thirty-two years.

2. I have known Jimmy B. Britt since 1957. We worked together with the U.S. Marshal's Service. I was with the Marshal's Service during the time of the Jeffrey MacDonald trial.

3. In the fall of 2002, I traveled with Jim Britt to Oxford, Mississippi. He told me that something was troubling him. He said it was something that he had observed during the MacDonald trial which was bothersome and irregular. He said that he had been sent to South Carolina to transport Helena Stoeckley to North Carolina and that during the journey she told him that she had been in the MacDonald house on the night of the murders. He said that Helena Stoeckley told Jim Blackburn, the prosecutor, these same things during his interview with her.

4. Mr. Britt told me that thereafter Jim Blackburn told Helena Stoeckley that if she testified to these things in the courtroom he would indict her for murder.

5. Jim Britt has since discussed the same thoughts and recollections with me and on each of these occasions, his words were consistent with the first time he told me these thoughts and recollections.

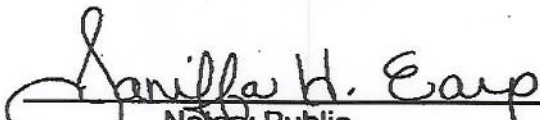
6. I have known Jim Britt for over three decades. I know his reputation for truthfulness and honesty in this community and in North Carolina. Jim Britt would tell nothing but the truth.

7. I have seen a definite change in the Jim Britt I know so well since he came forward and told Wade Smith what happened at the trial. He is at peace with his conscience now and feels very relieved.

This the 26<sup>th</sup> day of OCTOBER, 2005.

  
\_\_\_\_\_  
Lee W. Tart

Sworn and subscribed to before me this  
26<sup>th</sup> day of October, 2005.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 5-13-06

0194019





AFFIDAVIT OF EVERETT MORSE

I, Everett Morse, being first duly sworn, state under oath the following:

1. I reside at 251 North Sharon Amity Road, Charlotte, North Carolina 28211.

2. From in or about August 1972 to 1974, while I was a student at the University of North Carolina, in Charlotte, North Carolina, I resided at 6400 Countryside Drive, Apartment No. 2, located in the City of Charlotte. This residence was part of a complex called the Countryside Apartments, and was leased to my fraternity brother Dale Surrett.

3. During the time that I lived at Countryside Apartments, a man by the name of Greg Mitchell lived across the street in another building within the apartment complex. I became acquainted with Mitchell, and we later both worked for the same employment agency in Charlotte.

4. Sometime during the spring or summer of 1973, I mentioned during a conversation with Mitchell that I needed some golf balls. Mitchell was known at that time as someone who could procure many items, including contraband such as drugs. He had previously offered to obtain illicit drugs for me if I wanted, which I declined.

5. A few days after I mentioned that I needed golf balls, Mitchell produced a case of new golf balls and demanded that I pay him for them. I was in his apartment at the time. When I stated that I did not want the golf balls, and would not pay for them, Mitchell became very angry at me. He told me "you need to take these," referring to the golf balls, and told me that if I did not take and pay for the golf balls, he would murder me as he murdered Jeffrey MacDonald's family. I became extremely frightened when Mitchell made this threat because I had observed guns and knives in his apartment on numerous occasions. After threatening me, Mitchell issued another threat, telling me that

if I ever mentioned his involvement in the MacDonald murders to anyone, he would kill me.

6. After these threats were made to me, I did not tell anyone, including my roommate Dale Surrect. It was not until the spring of 1976, shortly before I was married on May 1, 1976, that I told my wife Carol about the threats Mitchell had made to me.

7. I was aware of MacDonald's murder trial in 1979. I did not come forward, however, because I feared for my safety.

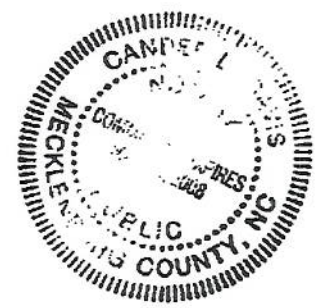
8. I have thought about coming forward for many years since I read about Mitchell's death in a news account. After reading Fatal Vision and visiting the MacDonald Defense organization's website, I decided to telephone Dr. MacDonald's counsel to inform them about Mitchell's threats.

*Everett Morse*  
Everett Morse

Sworn to before me this 25<sup>th</sup> day of July, 2003.

*Andee D Davis*  
Public

Commission expires May 04, 2008.





**AFFIDAVIT OF BRYANT LANE**

I, Bryant Lane, of 3127 Torrence Branch Drive, Fort Mills, South Carolina, state the following:

1. I have been employed for over fifteen years at Yellow Freights as a driver. I am 62 years old.

2. I met and became a good friend of Gregory H. Mitchell when my wife, Norma, and I befriended Greg and his wife, Patricia. Greg also frequented the Hule<sup>nbl</sup> Bar in Charlotte, North Carolina, where I was also a regular patron. I gave Greg Mitchell a Pekinese dog named Claudine. Greg changed the dog's name and it eventually had a puppy.

3. I knew Donald Buffkin because I frequented the Hule<sup>nbl</sup> Bar in Charlotte, North Carolina during the same time period Mr. Buffkin did (early 1980's).

4. I knew Brian Dineen at that time as well, but I have not heard from him in years and do not know where he is or if he is alive.

5. I knew Don Mills, Gregory Mitchell's partner at M&M Electric. Don Mills died of cancer over ten years ago at about age 50, in the Charlotte area. Don Mills told me that Gregory Mitchell had confessed to his involvement in the MacDonald murders on many occasions. Don Mills told me that he [Mills] didn't see any reason to "drag all that up now".

6. I recall Don Mills being interviewed by Ted Landreth for a BBC documentary on the MacDonald case. Don Mills told me he should have said more to Mr. Landreth about Gregory Mitchell, but that Mills felt "faithful to Greg", *DBI That was a statement that I made*

7. During the period 1980-81, Gregory Mitchell stated to me that he "personally knew MacDonald is innocent, because I was the one that killed the MacDonald family." I did not tell

anyone at the time because Mitchell asked me to keep this a secret so that he could try to get his life together. I promised not to say anything. Later, I became troubled about what Greg had told me and came forward.

8. Approximately six months before Greg Mitchell's death in 1982, he told me that in February, <sup>NBS ①</sup> 1970, he was addicted to heroin and that "MacDonald could have helped him". Mitchell thought MacDonald knew an intermediary who could supply Mitchell with methadone, in order to kick hard drugs. Mitchell stated to me that he and his friends went to the MacDonald home on <sup>B2</sup> February 17, 1970 to "teach him a lesson" and intended to "whup 'em". Mitchell told me he was high on at least four drugs: Mescaline, angel dust, PCP and one other) and said that "things got bad" and that "you don't realize what you're doing" when you are so high on drugs. <sup>NBS ③</sup> Mitchell told me that Jeff MacDonald being alive was simply "lucky" because the group "didn't know what they were doing" and "didn't mean to kill anyone".

9. Gregory Mitchell told me that he had tried to turn himself in on numerous occasions, and had confessed to a professor at a school he was attending, and a Fayetteville private investigator. I cannot recall the names of the professor or the investigator

10. Gregory Mitchell stated to me that he killed Jeffrey MacDonald's family. His words were "We killed them". Mitchell became aware that he had killed the family, and Jeffrey MacDonald was found alive, after the murders were committed. I am not certain of the date of these final admissions, but believe it was about two weeks before his death. I do know that Gregory Mitchell was aware that he was dying at the time he made the above statements. <sup>NBS ④</sup> I told Greg that the doctor thought he might be able to stay alive for at least six more months if he

would stop drinking. He stated to me that he could not quit drinking because of his guilt over the murders he had committed.

11. I have been contacted by the FBI and questioned by them previously. I offered to take any test they had to show that I am telling the truth about Gregory Mitchell's confessions, but they weren't interested in these statements. I was interviewed in by FBI Special Agent Brandon Battle on May 25, 1984.

12. I have given previous signed statements to the defense, via investigator Raymond Shedlick, dating back to the mid-1980's.

13. I am convinced that Gregory Mitchell's statements to me were truthful. I have heard of men going to their graves without confessing to something they did, but I never heard of one making a point of confessing that they did something they actually didn't do.

  
Bryant Lane

Signed and sworn to before me this 1 day of Mar, 2005.

  
\_\_\_\_\_

Notary Public

My commission expires 8-25-10.

AFFIDAVIT OF DONALD BUFFKIN

I, Donald Buffkin, of P.O. Box 403 Mount Airy NC 3650 affirm that the following statements are true and accurate to the best of my recollection:

1. I contacted Jeffrey MacDonald's defense counsel of my own accord via e-mail on May 22, 2003. The reason I did not contact them earlier is because, at the time Gregory Mitchell made these statements to me, I believed them to be "bar talk" and "exaggeration". However, over the years, I have seen television programs about the case, and Jeffrey MacDonald's naming of Gregory Mitchell as one of the assailants in this crime, and begin to think Mitchell's statements were true and worth reporting.

2. I knew Gregory H. Mitchell from 1980 until his death in 1982. During this time, he told me of his involvement in the MacDonald murders.

3. I grew up in Charlotte, North Carolina, and met Gregory Mitchell at the Hull Bar in Charlotte, sometime in 1980. At the time I knew Gregory Mitchell and frequented the Hull Bar, where Mitchell was also a regular patron, I lived at 601-F 26<sup>th</sup> Avenue South, North Myrtle Beach, Horry County, North Carolina. I built and owned a home at this address and lived with my (now ex) wife, Carol (Nemky) Buffkin of San Antonio there for 6 years. Gregory Mitchell and his wife, Patricia, attended my wedding to Carol in San Antonio in 1981.

4. My occupation at the time I knew Gregory Mitchell was working construction (Buffkin and Christinbury Constuction). I was 21 years old at that time. I moved from North Myrtle Beach to Wingate, North Carolina in 1986 or 1987. I traveled with my father's company (Coastal Industries) for about four years as a sales representative selling industrial cleaner. I did not complete high school

and I do not have a GED. My work has been in construction, sales, and the manufacture of waterslides. I have been divorced once, and I have two children, a girl who is now 16 and a boy who is now 18. I have been remarried since December 31, 1997.

5. The Hull Bar was approximately 3 and ½ hours from my home. The bar was located in a strip plaza. At one end was a barbershop. There was also a grocery called Harry Teeter in the strip plaza. I believe I was introduced to the Hull Bar by Gregory Mitchell's partner, Don Mills, of M&M Electric.

6. I spoke to Gregory Mitchell each time I was at the Hull Bar, which was usually once a month during the period 1980-82. Gregory Mitchell stated to me, on at least two occasions between 1980 and 1982, that he was "involved" in the MacDonald murders and that "he was there". Gregory Mitchell stated to me that "what they [the government] said about MacDonald isn't true". Gregory Mitchell also stated to me that his reason for being involved in the murders was that Jeffrey MacDonald "wouldn't do what they [Mitchell and his friends] wanted." His manner and affect were those of remorse. Gregory Mitchell also stated that he was "mad" at Jeffrey MacDonald because he and some friends from Vietnam were involved in sending heroin back to the United States in bodybags and that he believed MacDonald was "on the receiving end". He went to the MacDonald home to demand money or "dope". My impression of these statements was (at the time) not believing or disbelieving.

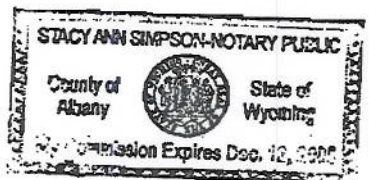
7. It was well known to me, and others who knew Gregory Mitchell, that he was "definite alcoholic and pot smoker" at the time I was acquainted with him. I recall him as being about age 31, not tall (5 foot 4 inches to 5 foot six inches), stocky build, sandy brown hair, full beard.

admissions to my mother, stepfather, father, and my current wife. I do not recall Jeffrey MacDonald's trial. The first program I saw about the case was the mini-series FATAL VISION, after Mitchell's death in 1982. I attended Mitchell's funeral.

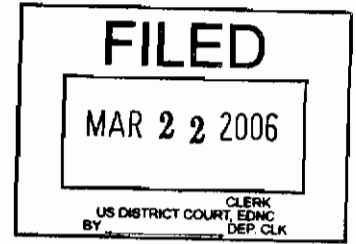
*Donald Buffkin*  
Donald Buffkin

Signed and sworn to this 4 day of June 2005  
*[Signature]*  
Notary Public

My commission expires Dec 12, 2005



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JEFFREY R. MacDONALD, )  
 )  
 Applicant/Defendant, )

Crim. No. 75-26-CR-3  
No. 5:06-CV-24-F  
Judge James C. Fox

**PETITIONER’S MOTION TO ADD AN ADDITIONAL PREDICATE TO HIS PREVIOUSLY FILED MOTION UNDER 28 U.S.C. SECTION 2255 TO VACATE HIS CONVICTION – NAMELY NEWLY DISCOVERED DNA EVIDENCE PROVING THE PRESENCE OF UNSOURCED HAIRS AT THE CRIME SCENE, INCLUDING ONE SUCH HAIR FOUND WITH BLOOD RESIDUE IN A CRITICAL LOCATION, UNDER THE FINGERNAIL OF KRISTEN MacDONALD, AND ONE TWO INCH HAIR WITH ROOT AND FOLLICLE INTACT FOUND UNDER THE BODY OF COLETTE MacDONALD**

Comes now, the petitioner/defendant, Jeffrey R. MacDonald, through undersigned counsel, and respectfully moves this court, in support of his Motion Pursuant to 28 U.S.C. Section 2255 to Vacate His Sentence, to add an additional predicate for that motion, namely newly discovered DNA evidence of three unidentified hairs found at the crime scene, one of which was found with its root intact along with blood residue under the fingernail of three-year-old Kristen MacDonald, who was murdered in her bed, and one of which was over two inches long with its root and follicle intact, and was found under the body of Colette MacDonald.

As grounds for this motion, the petitioner states as follows:

1. Petitioner, with leave from the U.S. Court of Appeals for the 4<sup>th</sup> Circuit, filed before this Court on January 17, 2006 a Motion Pursuant to 28 U.S.C. 2255 to Vacate His Conviction. The basis for that motion was newly discovered evidence that could not previously have been discovered through due diligence, and that when taken in light of the evidence as a whole, establishes the petitioner's innocence. The new evidence referred to in the motion concerns testimony by a retired deputy U.S. Marshal, Jim Britt, that alleges egregious prosecutorial misconduct that violated the petitioner's rights under the U.S. Constitution.

2. Petitioner now has learned of additional new evidence that could not previously have been discovered through due diligence, namely DNA results from tests ordered to be conducted by the U.S. Court of Appeals for the 4<sup>th</sup> Circuit, and conducted under the supervision of this Court.<sup>1</sup>

3. The petitioner submits that since these DNA tests were previously ordered by the U.S. Court of Appeals for the 4<sup>th</sup> Circuit, and since the matter was remanded to this Court to oversee and manage such testing, it is implicit in the 1997 Order from the 4<sup>th</sup> Circuit that this Court has been authorized to consider the effect of the results of such testing.

4. The DNA report from the Department of Defense Armed Forces Institute of Pathology [hereinafter "AFIP"] was issued on March 10, 2006. [It is attached hereto as

---

<sup>1</sup> As set forth previously in the petitioner's pleadings, in April 1997, MacDonald filed a motion to reopen his previous 1990 *habeas corpus* petition based on government fraud. The motion also contained a request to have DNA tests run on evidence taken from the crime scene. On September 2, 1997, this court denied the motion to reopen the *habeas* proceeding and transferred the remaining matters to the United States Court of Appeals for the 4<sup>th</sup> Circuit as a petition for leave to file a successive *habeas corpus* petition. *U.S. v. MacDonald*, 979 F.Supp. 1057 (E.D.N.C. 1997). The court of appeals granted defendant's motion for DNA testing. *In Re MacDonald*, No. 97-713 (4<sup>th</sup> Cir. October 17, 1997.) Per the 4<sup>th</sup> Circuit's order regarding DNA testing, the case was remanded to this Court, which has been supervising such DNA testing.



Appendix 1, tab 1.] As the report sets forth, 28 biological specimens were deemed by the AFIP laboratory sufficient for testing for DNA results to be matched against known exemplars from the MacDonald family members, as well as Helena Stoeckley and Greg Mitchell.<sup>2</sup> Of these 28 specimens tested, 9 specimens either produced no useable result or produced an inconclusive result.<sup>3</sup> Of the remaining 19 specimens, 13 specimens were consistent with members of the MacDonald family who were killed.<sup>4</sup> Of the 6 specimens remaining, three were consistent with the DNA of Jeffrey MacDonald.<sup>5</sup> The three remaining specimens, specimens 58A1, 75A, and 91A, provided DNA results that did not match any of the MacDonald family members or Helena Stoeckley or Greg Mitchell.

5. Regarding the unidentified specimens, specimen 58A1 was a hair found at the crime scene on the bedspread in Kristen MacDonald's room. Specimen 75A was a 63 mm. (2 ¼ inch) hair with root and follicle intact retrieved at the crime scene from off or under the body of Colette MacDonald. And also, most tellingly, specimen 91A was a hair with the root intact, found along with blood residue underneath the fingernail of three-year-old Kristen MacDonald, who at the crime scene was found murdered in her bed. (The genesis

---

<sup>2</sup> The following specimens were tested: 46A, 48A, 51A2, 52A, 58A1, 58A2, 71A1, 71A2, 71A3, 75A, 91A, 93A, 97A1, 98A, 101A1, 101A2, 104A1, 104A2, 112A1, 112A2, 112A3, 112A4, 112A5, 112A6, 112A7, 112A9, 112B, 113A.

<sup>3</sup> The following specimens produced no useable result or an inconclusive result: 48A, 71A2, 93A, 104A1, 112A1, 112A2, 112A6, 112B2, 113A.

<sup>4</sup> The following specimens were consistent with slain MacDonald family members: 46A, 52A, 71A1, 71A3, 97A1, 98A, 101A1, 101A2, 104A2, 112A4, 112A5, 112A7, 112A9.

<sup>5</sup> The following specimens were consistent with the DNA of Jeffrey MacDonald: 51A2, 58A2, 112A3. (One of these, #51A2, was a hair without a root found in or on Colette MacDonald's hand. The defense contends that this is in no way inculpatory given that Jeff MacDonald testified that he repeatedly tried to revive his injured wife, and gave her mouth to mouth resuscitation, moved her body, etc.)

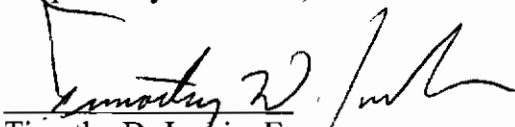
of these biological specimens is set forth in detail in the petitioner's Memorandum in Support of this Motion).

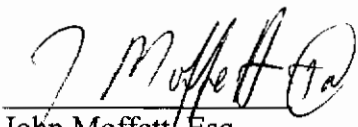
6. The petitioner submits that these unidentified hairs, and particularly the ones found in such critical places as underneath the fingernail (along with blood fragments) of a child who was murdered in her bed, and who clearly suffered other defensive wounds and was trying to defend herself at the time she was murdered, and a hair of over two inches in length with hair and follicle intact found under Colette MacDonald's body is profound new evidence that could not have previously been discovered through due diligence, and that when viewed in light of the other evidence taken as a whole, entitles the petitioner to have his sentence vacated. Further, the petitioner contends that this new evidence, irrespective of the new evidence submitted through witness Jim Britt, entitles the petitioner to have the entire panoply of evidence reviewed (both evidence adduced at trial, and developed post-trial), and to have a determination now made of whether of this evidence, analyzed in its entirety, proves the petitioner's innocence.


The petitioner respectfully submits herewith a Memorandum of Evidence and Points and Authorities in support of this motion, such to be incorporated herein by reference.

WHEREFORE, THE PETITIONER REQUESTS THAT THE NEW DNA EVIDENCE RECENTLY DISCOVERED BE ADDED AS A SECOND PREDICATE TO HIS MOTION UNDER 28 U.S.C. SECTION 2255 TO VACATE HIS SENTENCE.

Respectfully submitted,

  
Timothy D. Junkin, Esq.  
D.C. Bar No. 940601

  
John Moffett, Esq.  
Fed. Bar No. (Md.) 9027  
Moffett & Junkin, Chtd.  
800 S. Frederick Ave., Suite 203  
Gaithersburg, Md. 20877  
(301) 987-0600  
Fax. (301) 987-0682

  
J. Hart Miles, Jr., Esq.  
NC Bar # 23342  
Hart Miles, Attorney at Law, P.A.  
19 W. Hargett Street, Suite 805  
Raleigh N.C. 27601  
Tel: (919) 834-8650  
Fax. (919) 834-9105

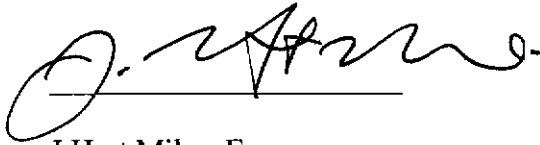
Certificate of Service

I hereby certify that a copy of this motion and accompanying memorandum were mailed by me, first class mail, postage pre-paid, on the 22 day of March, 2006, to the United States Attorney for the Eastern District of North Carolina, at the following address:

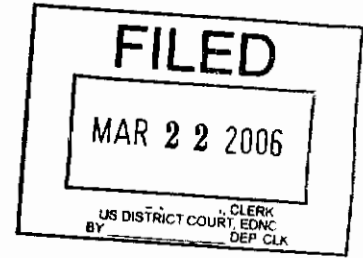
Honorable Frank D. Whitney  
United States Attorney  
Att. John Stuart Bruce  
Terry Sanford Federal Building  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601-1461

And to U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Senior Trial Attorney  
U.S. Department of Justice  
Domestic Security Section, Room 6747  
Criminal Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

A handwritten signature in black ink, appearing to read "J. Hart Miles", written over a horizontal line.

J.Hart Miles, Esq.



UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JEFFREY R. MacDONALD, )  
 )  
 Applicant/Defendant, )

Crim. No. 75-26-CR-3  
 No. 5:06-CV-24-F  
 Judge James C. Fox

**MEMORANDUM OF EVIDENCE AND POINTS AND AUTHORITIES IN  
 SUPPORT OF PETITIONER’S MOTION TO ADD AN ADDITIONAL  
 PREDICATE TO HIS PREVIOUSLY FILED MOTION UNDER 28 U.S.C.  
 SECTION 2255 TO VACATE HIS CONVICTION – NAMELY NEWLY  
 DISCOVERED DNA EVIDENCE PROVING THE PRESENCE OF  
UNSORCED HAIRS AT THE CRIME SCENE**

The petitioner, Jeffrey R. MacDonald, through undersigned counsel has moved this Court to supplement his Motion Under 28 U.S.C. Section 2255 to Vacate his Sentence, by adding an additional predicate for that motion, namely newly discovered DNA evidence of three unidentified hairs found at the crime scene, one of which was found along with blood residue under the fingernail of three-year-old Kristen MacDonald, who was murdered in her bed, and one of which was over two inches in length with root and follicle intact found under the body of Colette MacDonald.

As support for such motion, the petitioner sets forth the evidentiary basis and the legal basis as follows:

## **I. New Evidence: The Three Unidentified Hairs Found At the Crime Scene**

### **A. Specimen # 91A**

In the Armed Forces Institute of Pathology [hereinafter “AFIP”] DNA Report, p. 4 of 33, it lists Specimen 91A (CID or FBI Nos. D-237, Q137) as a “hair” that was “not consistent with any other samples tested. The samples tested, per the report, included DNA samples from each MacDonald family member, and DNA samples from Helena Stoeckley and Greg Mitchell. (The Report is attached as Appendix 1, tab 1, hereto.) On page 8 of the AFIP DNA Report, it indicates that Specimen No. 91A came off a slide. On page 15 of the AFIP DNA Report, it indicates that Specimen No. 91A was the same specimen as CID No. D-237, and FBI No. Q137, that it was a hair, and that it was consumed in the testing process.

Specimen 91A (CID item D-237) has a clear history. Initially, it is listed in the U.S. Army CID Preliminary Laboratory Report dated April 6, 1970, as “Fingernail scrapings from left hand of Christine [sic] MacDonald.” [Attached in Appendix 1, tab 2 (p.7).] In the undated U.S. Army Chart of Exhibit Findings, which exhibits underwent chemical analysis, item D-237 is listed as “Fingernail scrapings from the left hand of Kristen MacDonald,” and it is noted that the chemical analysis of the hair indicated a finding of blood on the hair. [Attached in Appendix 1, tab 3 (p. 34).] In the U.S. Army Consolidated Laboratory Report, item D-237 is listed as “Fingernail scrapings from the left hand of Kristen MacDonald. [Attached in Appendix 1, tab 4 p.4A-5).] Additionally, AFIP Exhibit 91A (CID Exh. D-237), after it was sent to the AFIP lab, was described by the lab technicians there as a human hair with the hair root in tact, measuring approx. 5 mm. (approx. ¼ inch) in length.

[AFIP/OAFME Trace Materials Analysis Laboratory Notes (see page 4), attached in Appendix 1, tab 5.]

Kristen MacDonald, by all accounts, was murdered in her bed where she was found. The doctor who performed the autopsy on her testified at the trial that she had numerous defensive wounds on and around her hands and fingers. [Trial Tr. at 2576-77, found in Appendix 1, tab 6.] Thus, to find an unidentified hair, mixed with blood residue, with the hair root intact, underneath one of her fingernails, strongly suggests that while she was defending herself against the blows from an intruder she grabbed at or scratched back at the intruder such that as a result, the intruder's hair came to reside under her fingernail. As such, it is an important piece of evidence that is strongly probative of the petitioner's innocence.

#### **B. Specimen # 75A**

In the AFIP DNA Report, Specimen #75A is listed on p. 4 as "not consistent with any other sample tested." Specimen #75A, is a "hair" that was previously identified as CID exhibit E-303, and FBI exhibit Q79. In the Army Consolidated Laboratory Report, and consistently thereafter, Ex. E-303 is described as containing fibers and debris and wood chips from the trunk and leg area of the rug under where Colette MacDonald's body was found. [Appendix 1, tab 4.] In U.S. Army CID laboratory technician Dillard Browning's handwritten notes (Browning collected the specimen), item Ex. E-303 is further described as fiber and debris from under the trunk and legs of Colette MacDonald, containing "one human pubic or body hair..." [Appendix 1, tab 7.] Specimen 75A was described by the laboratory technician at AFIP as a human hair with both hair root and follicular tissue attached. The hair was approx. 63 mm. (approx. 2 ¼ inches) long. [AFIP/OAFME Trace Materials Analysis Laboratory Notes (see page 3), attached in Appendix 1, tab 5.] Thus, it is clear that this

unidentified hair was found underneath where Colette MacDonald's body lay at the crime scene, and that it was a full length body or pubic hair. The fact that it had both the root and follicular tissue attached is indicative that it was pulled from someone's skin and lends great weight to this specimen as probative that there were unknown intruders in the home with whom Colette struggled and from whom she extracted a hair.

### **C. Specimen 58A1**

In the AFIP DNA Report, Specimen 58A1 (CID Ex. No E-52NB, FBI Ex. No. Q79) is also listed as not consistent with any other specimen tested. Looking to the original U.S.Army Consolidated Laboratory Report [Appendix 1, tab 4], Ex. E-52NB is listed as "hairs and fibers from bedspread on the bed in the north bedroom." The north bedroom, by all accounts, was the bedroom occupied by Kristen MacDonald. According to the AFIP laboratory notes, it is a hair with root intact, and measured approx. 5mm. in length. [Appendix 1, tab 5 (p. 3).] Thus, this unidentified hair was found on the bedspread on the bed where Kristen MacDonald was found murdered.

## **II. Argument**

Pursuant to 28 U.S.C. Section 2255, the petitioner has challenged his conviction based on newly discovered evidence, i.e., the sworn allegations of former deputy U.S. Marshal Jim Britt. Prior to filing the motion in this Court, the petitioner sought and received the unanimous authorization to file such motion from a three-judge panel of the U.S. Court of Appeals for the 4<sup>th</sup> Circuit. Now, while that motion is presently pending, the petitioner has first learned of additional new evidence that supports his claim of innocence, namely three hairs found at the murder scene that DNA testing has proven come from individuals not living in the MacDonald home. One such hair, with its root intact and tainted with blood residue,



was found underneath the fingernail of his daughter, Kristen, who was murdered, one was found on Kristen's bedspread, and one, of over two inches in length with root and follicle intact, was found on or under the body of his wife, Colette, who was murdered.

The DNA evidence that has come to light was the result of prior litigation before this Court, and subsequently before the U.S. Court of Appeals for the 4<sup>th</sup> Circuit. In that litigation, which occurred in 1997, the petitioner sought leave to have biological specimens including human hairs found at the crime scene tested through a new DNA procedure called mitochondrial DNA testing. The petitioner argued in that proceeding that some of the hairs were found in such critical places (such as under the fingernails of the victims) that if they were from unknown individuals, they would provide important evidence of innocence. This Court ruled that MacDonald's request was tantamount to a request for a subsequent habeas proceeding, and referred the matter to the U.S. Court of Appeals for the 4<sup>th</sup> Circuit. The court of appeals ruled that the DNA should be tested and remanded the matter to this Court to supervise the DNA testing of the specimens.<sup>1</sup> Certainly, implicit in that order, was the decision by the court of appeals, that once tested, the DNA results should be evaluated by this Court.

The petitioner contends that the DNA results amount to newly discovered evidence that could not have been discovered previously through due diligence, that the DNA results

---

<sup>1</sup> As set forth previously in the petitioner's pleadings, in April 1997, MacDonald filed a motion to reopen his previous 1990 *habeas corpus* petition based on government fraud. The motion also contained a request to have DNA tests run on certain evidence taken from the crime scene. On September 2, 1997, this court denied the motion to reopen the *habeas* proceeding and transferred the remaining matters to the United States Court of Appeals for the 4<sup>th</sup> Circuit as a petition for leave to file a successive *habeas corpus* petition. *U.S. v. MacDonald*, 979 F.Supp. 1057 (E.D.N.C. 1997). The court of appeals granted defendant's motion for DNA testing. *In Re MacDonald*, No. 97-713 (4<sup>th</sup> Cir. October 17, 1997.) Per the 4<sup>th</sup> Circuit's order regarding DNA testing, the case was remanded to this Court, which has been supervising such DNA testing.

are probative of the petitioner's innocence, and that when taken in light of the evidence as a whole, the DNA results establish that no reasonable juror could find guilt beyond a reasonable doubt.

Having discovered this new evidence, probative of innocence, the petitioner seeks to add it as a further predicate for his Motion Under 28 U.S.C. Section 2255 to Vacate his Conviction, now pending before this Court. As a matter of efficiency and convenience, it should be joined with the pending motion, rather than being the predicate for a separate but nearly identical motion.

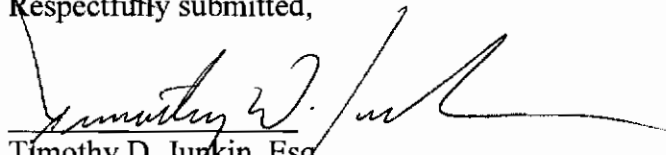
Consequently this Court should permit this motion and allow the petitioner to add the DNA evidence as an additional predicate for his motion to vacate. Moreover, this new DNA evidence, as a separate predicate for petitioner's motion to vacate, should lead this Court to evaluate the evidence taken as a whole, both that adduced at trial, and that discovered since the trial, in order to determine whether the petitioner has met his burden of proving that no reasonable juror could find guilt beyond a reasonable doubt.

In reviewing a claim of innocence based on newly discovered evidence, which is concomitant to a claim of "manifest injustice," this Court is required to conduct an analysis of the evidence "as a whole," including evidence developed post-trial. 28 U.S.C. Section 2255; *see, also, Herrera v. Collins*, 506 U.S. 390 at 442 (1992), (Blackmun, J., *dissenting*) (collecting various versions of Court's "probability of innocence" test for miscarriage of justice); *Sawyer v. Whitley*, 506 U.S. 333 at 339 & n.5: (The prisoner must show "that, in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial, the trier of fact would have entertained a

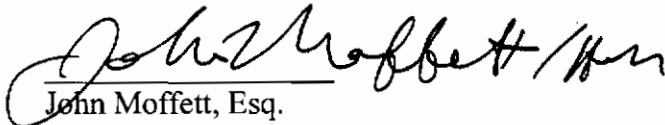
reasonable doubt of his guilt.” (quoting *Kuhlmann v. Wilson*, 477 U.S. 436, 455 n.17 (1986) ((quoting Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142, 160 (1970))); *Schlup v. Delo*, 513, U.S. 298 (1995).

Consequently, the petitioner requests that this Court add the DNA results as an additional predicate to the petitioner's pending motion to vacate his sentence.

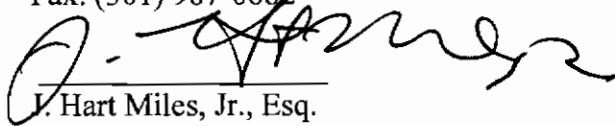
Respectfully submitted,



Timothy D. Junkin, Esq.  
D.C. Bar No. 940601



John Moffett, Esq.  
Fed. Bar No. (Md.) 9027  
Moffett & Junkin, Chtd.  
800 S. Frederick Ave., Suite 203  
Gaithersburg, Md. 20877  
(301) 987-0600  
Fax. (301) 987-0682



J. Hart Miles, Jr., Esq.  
NC Bar # 23342  
Hart Miles, Attorney at Law, P.A.  
19 W. Hargett Street, Suite 805  
Raleigh N.C. 27601  
Tel: (919) 834-8650  
Fax. (919) 834-9105



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JEFFREY R. MacDONALD, )  
 )  
 Applicant/Defendant, )

Crim. No. 75-26-CR-3  
No. 5:06-CV-24-F  
Judge James C. Fox

**PETITIONER’S MOTION, PURSUANT TO RULE 7 OF THE FEDERAL RULES GOVERNING SECTION 2255 PROCEEDINGS, TO EXPAND THE RECORD TO INCLUDE THE ITEMIZED AUTHENTICATED EVIDENCE SET FORTH HEREIN**

Petitioner, pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, respectfully requests that the record herein be expanded to include each item of authenticated evidence set forth in *Petitioner’s Statement of Itemized Material Evidence-With Citations to the Record or to Authenticated Proofs*, which is attached hereto, and incorporated herein by reference. (Such *Statement* includes in it by reference the Exhibits filed with the petitioner’s original memorandum in support of his motion to vacate, the Appendix #1 filed with the petitioner’s motion seeking to add the DNA results as an additional predicate for his motion to vacate, and Appendices 2-3 filed with the petitioner’s *Statement of Itemized Material Evidence*..

In support of this motion, the petitioner states the following:

1. Pursuant to his *Motion Pursuant to 28 U.S.C. Section 2255 to Vacate His Sentence*, which following an order from the U.S. Court of Appeals for the Fourth Circuit authorizing its filing herein as a “successive habeas,” has been filed in this Court, the

petitioner has averred that he has newly discovered evidence that could not have been discovered previously through the exercise of due diligence which proves the existence of a constitutional error. Applicant also contends that such newly discovered evidence, viewed in light of the evidence taken as a whole, is sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the petitioner guilty of the underlying offenses. In reviewing such a claim of innocence, which is concomitant to a claim of “manifest injustice,” this Court should conduct an analysis of the evidence “as a whole,” including evidence developed post-trial. 28 U.S.C. Section 2255; *see, also, Herrera v. Collins*, 506 U.S. 390 at 442 (1992), (Blackmun, J., *dissenting*) (collecting various versions of Court’s “probability of innocence” test for miscarriage of justice); *Sawyer v. Whitley*, 506 U.S. 333 at 339 & n.5: (The prisoner must show “that, in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial, the trier of fact would have entertained a reasonable doubt of his guilt.” (quoting *Kuhlmann v. Wilson*, 477 U.S. 436, 455 n.17 (1986) ((quoting Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142, 160 (1970))))); *Schlup v. Delo*, 513, U.S. 298 (1995).

2. The petitioner has attached hereto a *Statement of Itemized Material Evidence-With Citations to the Record or to Authenticated Proofs*, and requests that each such item be included in the record herein for consideration by this Court, as material to the issues the petitioner has now brought before this Court. Each such item of material evidence consists of the following.

- a. Evidence presented at the petitioner's trial with citations to the trial transcript with the portions of such transcript included in the Appendix 2;
- b. Evidence previously submitted as Exhibits attached to the petitioner's Memorandum in Support of his Motion to Vacate, which include the following:

Exhibit 1: Affidavit of Jim Britt;

Exhibit 2: Polygraph Report, and Resume of Steve Davenport;

Exhibit 3: Affidavit of Lee Tart;

Exhibit 4: Transcript of Trial, U.S. v. MacDonald, Aug. 17, 1979;

Exhibit 5: Affidavit of Wendy Rouder;

Exhibit 6: Newspaper Article: "Woman in MacDonald Case Claims He Was Victim Not Murderer," *The Register*, (Fayetteville, N.C.) 10 Jan. 1981, A20;

Exhibit 7: Affidavits of Everett Morse, Bryant Lane, and Donald Buffkin;

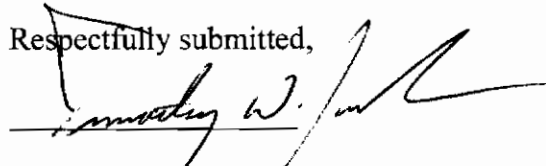
Exhibit 8: FBI Report on Patients Jeff MacDonald had Treated Prior to the Murders;

Exhibit 10: Judgment and Commitment Order of James L. Blackburn, Superior Court of Wake County, N.C., *State v. Blackburn*, Nos. 93-CRS-37345, 43572, (1993).

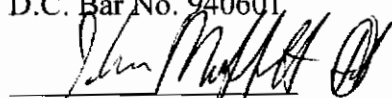
- c. Affidavits and evidence previously filed in the petitioner's prior motions to overturn his conviction as set forth in the attached *Statement of Itemized Material Evidence*, with accompanying appendices (Appendices 2 and 3) attached thereto;
- d. The DNA results as set forth in the March 10, 2006 report issued by the Armed Forces Institute of Pathology, with the supporting documentation for each relevant DNA specimen, all of which are set forth in the petitioner's Appendix 1, filed along with his motion to add the DNA results as an additional predicate for his motion to vacate his conviction.

3. The petitioner submits that this Court is authorized pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings to include and consider these items of material authenticated evidence as part of the record herein.

Respectfully submitted,



Timothy D. Junkin, Esq.  
D.C. Bar No. 940601



John Moffett, Esq.  
Fed. Bar No. (Md.) 9027  
Moffett & Junkin, Chtd.  
800 S. Frederick Ave., Suite 203  
Gaithersburg, Md. 20877  
(301) 987-0600  
Fax. (301) 987-0682

J. Hart Miles, Jr., Esq.  
NC Bar # 23342  
Hart Miles, Attorney at Law, P.A.  
19 W. Hargett Street, Suite 805  
Raleigh N.C. 27601  
Tel: (919) 834-8650  
Fax. (919) 834-9105

Certificate of Service

I hereby certify that a copy of this Motion to Expand the Record was mailed by me, first class mail, postage pre-paid, on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, to

the United States Attorney for the Eastern District of North Carolina, at the following address:

Honorable Frank D. Whitney  
United States Attorney  
Att. John Stuart Bruce  
Terry Sanford Federal Building  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601-1461

And to U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Senior Trial Attorney  
U.S. Department of Justice  
Domestic Security Section, Room 6747  
Criminal Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

---

J. Hart Miles, Esq.





UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Crim. No. 75-26-CR-3
	)	No. 5:06-CV-24-F
JEFFREY R. MacDONALD,	)	Judge James C. Fox
	)	
Applicant/Defendant,	)	

**PETITIONER'S STATEMENT OF ITEMIZED MATERIAL EVIDENCE –  
WITH CITATIONS TO THE RECORD OR TO AUTHENTICATED PROOFS -  
IN SUPPORT OF HIS MOTION UNDER 28 U.S.C. SECTION 2255 TO  
VACATE HIS SENTENCE**

Comes now, the petitioner/defendant, Jeffrey R. MacDonald, through undersigned counsel, and respectfully moves this court, in support of his Motion Pursuant to 28 U.S.C. Section 2255 to Vacate His Sentence, to accept for consideration this Statement of Itemized Material Evidence, each item supported with either citations to the record, to the authenticated exhibits previously filed in this matter, or to the authenticated documentary proofs contained in the appendices filed in this matter.

**I. INTRODUCTION: SUMMARY OF LEGAL AUTHORITY TO SUPPORT PETITIONER'S REQUEST THAT THIS STATEMENT OF ITEMIZED MATERIAL EVIDENCE BE CONSIDERED BY THIS COURT**

Pursuant to his Motion to Vacate, the petitioner has averred that he has newly discovered evidence that could not have been discovered previously through the exercise of due diligence which proves the existence of a constitutional error. Applicant also contends that such newly discovered evidence, viewed in light of the evidence taken as a whole, is

sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the petitioner guilty of the underlying offenses. In reviewing such a claim of innocence, which is concomitant to a claim of “manifest injustice,” this Court is required to conduct an analysis of the evidence “as a whole,” including evidence developed post-trial. 28 U.S.C. Section 2255; *see, also, Herrera v. Collins*, 506 U.S. 390 at 442 (1992), (Blackmun, J., *dissenting*) (collecting various versions of Court’s “probability of innocence” test for miscarriage of justice); *Sawyer v. Whitley*, 506 U.S. 333 at 339 & n.5: (The prisoner must show “that, in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial, the trier of fact would have entertained a reasonable doubt of his guilt.” (quoting *Kuhlmann v. Wilson*, 477 U.S. 436, 455 n.17 (1986) ((quoting Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142, 160 (1970))); *Schlup v. Delo*, 513, U.S. 298 (1995).

Given the extensive time period over which this ongoing legal dispute has continued (36 years since the crime), the many previous collateral attacks on the verdict brought by the petitioner, and the unusually complex matrix of evidence and factual allegations that must be considered in evaluating the petitioner’s claim of factual innocence, the petitioner submits this Statement of Material Itemized Evidence to assist this Court in its task of evaluating the evidence “as a whole,” and in support of his claim of actual innocence.<sup>1</sup>

---

<sup>1</sup> To the extent that post-trial factual claims have been previously raised, fully considered, and resolved adversely to the petitioner by this Court, those factual claims are either omitted from this Statement, or included with an explanation as to why the newly discovered evidence which is the predicate for the petitioner’s claim would likely affect and change the prior court ruling. Each itemized statement of the evidence is referenced to either the trial record, or to

## II. ITEMIZED STATEMENT OF MATERIAL EVIDENCE:

### A. Evidence Elicited at Trial

1. At approximately 3:30 a.m. on February 17, 1970 military police were summoned to the apartment of Dr. Jeffrey R. MacDonald, a twenty-six-year-old army captain serving as a medical officer at Fort Bragg, North Carolina. Upon arrival, the police found that MacDonald's pregnant wife, Colette, and his two young daughters, Kristen age two, and Kimberley age five, had been brutally murdered. [See, i.e., testimony of govt. witness Richard D. Tevere at trial, *U.S. v. MacDonald*, Trial Transcript, July 19 – August 3, 1979 {hereinafter "Trial Tr."} 1251-1290].<sup>2</sup>

2. At the scene, Jeff MacDonald was found lying next to his wife, Colette, in their master bedroom. He was unconscious or semi-conscious, and initially one of the military police on the scene thought he was dead. [Testimony of govt. witness Kenneth Mica, Trial Tr. 1481]. Jeff MacDonald was wounded, was cold, went in and out of consciousness, his teeth were chattering, and he required mouth to mouth resuscitation [Testimony of govt. witness Mica, Trial Tr. 1407-08, 1506]. Upon being revived, though MacDonald was saying a lot of things that were disconnected, and was continually asking about his family, was having difficulty breathing, and at one point passed out, he told the military police that he and his

---

other authenticated proofs contained in the appendices attached hereto, or has previously been submitted as part of the petitioner's Memorandum in Support of his Motion Under U.S.C. 28 Section 2255 to Vacate his Sentence. Petitioner is filing concomitantly with this Statement, a Motion to Expand the Record to include each item listed herein that was not part of the trial record.

<sup>2</sup> The portions of the trial transcript cited herein have been copied and included in Appendix 2, tab 14, attached hereto, with the exception of those portions contained in the trial transcript volume for Aug. 17, 1979 (pp. 5508-5800) which were previously provided to this Court as Exhibit 4 attached to the petitioner's Memorandum in Support of His Motion to Vacate.

family had been attacked by at least four intruders, three men and a woman. [Testimony of govt. witness Mica, Trial Tr. 1499-1504; testimony of govt. witness Tevere, Trial Tr. 1270].

3. There, on the scene, Jeff MacDonald described the woman intruder as having long blond hair, wearing a floppy hat and muddy boots, and bearing a flickering light such as a candle. [Govt. witness Tevere, Trial Tr. 1270; govt. witness Mica, Trial Tr. 1414, 1504-05]. Jeff MacDonald said he had heard the female say, "Acid is groovy, kill the pigs." [Tevere, Trial Tr. at 1323; Mica, Trial Tr. at 1504]. As to the male assailants, MacDonald indicated that two were white and one was a Negro with an army field jacket with sergeant's stripes. [Tevere, Trial Tr. at 1270; Mica, Trial Tr. at 1503.]

4. One of the military police officers, Kenneth Mica, driving his Jeep to the crime scene (within 5 minutes of receiving the emergency call and at approximately 3:30 a.m.) had seen a woman who bore a striking resemblance to the woman described by MacDonald (in that she was young, with long hair, and was wearing a wide-brimmed or floppy hat) standing outside in the rain or mist on a street corner within blocks of the MacDonald residence. Mica testified that it was unusual to see someone out on a street corner on a rainy night at that very late hour as everything around her was closed and said he would have stopped to investigate had he not been responding to an emergency. [Govt. witness Kenneth Mica, Trial Tr. 1450-54, 1403]. At the crime scene, when Officer Mica heard the description given by Jeff MacDonald of his assailants, he advised his supervisors of the woman he had seen and requested that a patrol be sent to find her. [Govt. witness Mica, Trial Tr. 1596, 1598].

5. At the scene, Jeff MacDonald, when found, was dressed in only his pajama bottoms. His pajama bottoms were ripped from knees to crotch. [Trial Tr. of medic Michael Douglas Newman, 2661-62). The pajama bottoms were lost when MacDonald was being

treated at the hospital. His pajama top was draped over the chest of his wife, Colette.

[Testimony of govt. witness Tevere, Trial Tr. at 1274].

6. At the scene, investigators found each of Jeff MacDonald's children, in their own respective beds, dead, and there were two bloody footprints leading out of the bedroom of Kristen MacDonald to the hallway. [Testimony of govt. witness William Ivory, Trial Tr. at 1616].

7. The word "PIG" was written sideways in blood on the headboard of the bed in the master bedroom. [Id. at 1627].

8. At trial Jeff MacDonald testified that he awoke while asleep on the couch in his living room to the screams of his wife and one of his daughters, saw four strangers in his house, and was immediately set upon, attacked, punched repeatedly, and knocked down with a club. [Trial Tr. 6581-82].

9. As he was trying to get up again, MacDonald heard a female voice saying "Acid is groovy; kill the pigs." He attempted to fend off the next blow and grab the arm of the person using the club, which he did do at some point in the struggle; the man's sleeve had military E-6 sergeant stripes on what appeared to be an Army field jacket. While he was receiving what he thought were punches, MacDonald also heard the words "acid and rain." [Trial Tr. 6513-14].

10. MacDonald testified that he continued to struggle with the intruders as he held onto the man's arm. At some point his hands became bound up in his pajama top. He did not know how this happened, although he thought it was either pulled over his head or ripped from around his back. [Trial Tr. 6586].

11. MacDonald presumed that the holes in his pajama top got there when he was fending off blows from the assailants. [Trial Tr. 6808]. The blows came straight at him, and he recalls using the pajama top “more or less as a shield.” [Trial Tr. 6811-13]. He felt a sharp pain in his right chest as he held onto the club, and he saw a blade, and realized that he had probably felt a stab, not a punch. [Trial Tr. 6588].

12. MacDonald testified at trial that the woman intruder had blond hair and was wearing a floppy hat. [Trial Tr. 6588]. He only saw her for a second or two, standing between the two white men at the end of the couch. The only other thing MacDonald remembered about her was seeing a bare knee and the top of a boot. [Trial Tr. 6588-89]. He testified that he remembered seeing a “wavering or flickering” light on the face of the woman with the blond hair and floppy hat, which appeared to be a light such as from a candle. [Trial Tr. 6592].

13. MacDonald testified that at some point during the struggle, he believed he was knocked unconscious because his next memory was of awakening on the landing leading from the living room into the hall. The house was quiet when he awoke; his teeth were chattering, and he thought he was going into shock. He remembered walking into the master bedroom, where he found his wife, Colette, on the floor, and a lot of blood. He pulled a knife out of her chest, throwing it aside. Her right shoulder was leaning against a green chair. He took the pajama top off his wrists and tried to give aid to his wife. He thought he probably moved her away from the chair before frantically giving her mouth-to-mouth resuscitation. Air came out of Colette’s chest through the stab wounds; Jeff MacDonald observed no signs of life. [Trial Tr. 6595-99].

14. MacDonald testified that he then went through the house to check on his two daughters. He went first to Kimberley's room, then to Kristen's. MacDonald found them both in their beds, covered in blood, and he desperately attempted to revive each of them without success. [Trial Tr. 6599-6603]. (It is not disputed that he was wearing his ripped pajama bottoms when this occurred.)

15. MacDonald testified that he was unsure of what he did next. At some point he went into the bathroom to check his head, which was hurting, and thought he rinsed his hands in the sink. [Tr. 6606-08]. He went back to Colette a second time and remembered covering her with his pajama top. [Tr. 6605]. He also dialed the operator from the master bedroom telephone and asked for medics and MPs. He was unconscious when help finally came.

16. In addition to MacDonald testifying that he moved his wife from against a chair when he was trying to administer help to her, the doctor who first examined her, Dr. Neal, said he rolled her over on the scene to examine her. [Trial Tr. 6921].

17. CID investigator Robert B. Shaw testified at trial that he found a bunch of tangled blue fibers at the west entrance of the hallway landing where it intersected the living room, [Tr. 2480, 2411-12], which was where Jeffrey MacDonald testified that he struggled with the intruders.

18. Included in the physical evidence discovered at the crime scene were wax drippings of three different kinds of wax, one taken from a coffee table in the living room (where MacDonald said he saw the woman with the flickering light), one from a chair in daughter Kimberley's bedroom, and one sample actually retrieved from the bedspread in Kimberley's bedroom. None of these samples matched any of the candles or other wax found in the MacDonald home and submitted by investigators for comparison. [Trial Tr. 3837-44].

The wax samples were brittle and flaky indicating to Hilyard Medlin, the government examiner, that they were several weeks old, though it was not until precisely several weeks after the crime, that the examiner received them for analysis. [Trial Tr. 3888-90, 3899].

19. According to a government expert witness, Hilyard Medlin, 44 useable latent fingerprints and 29 useable palm prints were lifted from the scene of the crime, but of these, only 26 fingerprints and 11 palm prints were matched with MacDonald family members or other investigators or individuals whose prints were available for comparison. [Trial Tr. 3116, 3141]. These included, *inter alia*, one fingerprint on a drinking glass located on a table directly at the head of the sofa where MacDonald said he struggled before being knocked unconscious. That fingerprint on the drinking glass could not be matched with any known comparison print. [Trial Tr. 3132-33].

20. The government introduced expert testimony that the fibers on the club that was believed to be one of the weapons used, which was found outside the back door, matched the fibers used to sew MacDonald's pajama top. [Tr. 3784]. (But see *contra*, pp. 43, *infra*.)

21. MacDonald was taken to the intensive care unit at Womack Army Hospital, where he was treated for a punctured lung and other life-threatening knife and puncture wounds. [Trial Tr. 5367]. He remained in the intensive care unit for several days and the hospital for nine days.

22. At trial, MacDonald testified that he had given a lot of thought to trying to figure out what happened to his family and why. He testified that he thought that either someone held a grudge against him or that it was a chance occurrence. [Trial Tr. 6648]. He saw patients with drug problems in both his position as preventive medical officer at Fort Bragg and his work at the Cape Fear Valley Emergency Department. [Trial Tr. 6649]. At times,



MacDonald's responsibilities to the soldier he was counseling and to the soldier's commanding officer conflicted, and MacDonald had to decide whether to notify the officer about the soldier's drug problem. [Trial Tr. 6652-53]. Some of the doctors providing drug counseling, himself included, were suspected of being "finks" for turning in troops for drug abuse. [Trial Tr. 6657].

23. A man who resided across the street from the MacDonald family at the time of the crime, James W. Milne, Jr., testified that on the night of the murders, just after midnight, he heard noises, and opening his door he saw two males and a female who were wearing white sheets and all carrying candles walking in a direction that would have taken them directly into the side door of the MacDonald home. They were only about 40 yards from the MacDonald home when he last saw them. He recalled that the woman he witnessed had long blond hair. [Trial Tr. 5445-57].

24. A police detective in Fayetteville, North Carolina, P.E. Beasley, on the day following the murders, upon hearing of the descriptions of the assailants given by MacDonald, thought he knew a young woman, a drug user and drug informant he had worked with, who fit the description of the female intruder. Beasley went searching for her that evening and during the following day. Her name was Helena Stoeckley. When he located her and first asked her about the crime, she responded, "In my mind it seems that I saw this thing happen. I was heavy on mescaline." [Trial Tr. 5738-42].

25. During the nine years that passed between the murders and the trial, a significant amount of evidence had been amassed connecting Helena Stoeckley to the murders. It was undisputed and proved at trial that at the time of killings, for example, she possessed a blond wig, which she burned shortly after the crime [Trial Tr. 5602-04].

26. Trial testimony established that the clothes she routinely wore around the time of the crime matched the clothes of the woman MacDonald described seeing in his house the night of the murders (a blond wig, floppy hat, and boots) [Trial Tr. 5583-90].

27. Trial testimony established that she routinely wore black [Trial Tr. 5634].

28. Trial testimony established that around the time of the murders she was involved in an illegal drug cult that ingested LSD, worshipped the devil, used candles, and ritualistically killed cats [Trial Tr. 5525, 5542-43].

29. Trial testimony established her obsession with the MacDonald murders, such that she had bought and hung wreaths all along her fence the day of the burials [Trial Tr. 5633-34].

30. Trial testimony established that a woman matching her description had been seen by several people near the crime scene at or around the time of the murders [testimony of govt. witness, MP Kenneth Mica, Trial Tr. 1453-54; testimony of James Milne, Trial Tr. 5454-56].

31. Prior to the trial, Helena Stoeckley had admitted to her participation in the crime to numerous people including six different individuals whom the defense had subpoenaed to the trial, and who were prepared to testify to the incriminating admissions that Stoeckley had made to them. These included Jane Zilloux, James Gaddis, Charles Underhill, Robert Brisentine, P.E. Beasley, and William Posey. These individuals did testify to the incriminating admissions Stoeckley had made to them concerning her involvement in the MacDonald murders, but only outside of the presence of the jury. [See, Ex. 4 to Petitioner's Memorandum in Support of his Motion to Vacate, Trial Transcript for August 17, 1979, 5508-5800]. Witness Jane Zilloux testified, for example, that Stoeckley told her that she was

wearing her blond wig and white boots when she committed the crime, and Zilloux had, in fact, seen Stoeckley's white plastic boots. Stoeckley also told Zilloux that it had been raining and that Stoeckley was worried that the rain might ruin her blond wig. [Trial Tr. 5698].

Witness William Edward Posey, who was a next-door neighbor from Stoeckley at the time of the murders, testified that Stoeckley routinely wore the white boots, a blond shoulder length wig, and purple clothing. [Trial Tr. 5751-55]. Posey also testified that during the U.S. Army Article 32 hearing (July 1970), he talked to Stoeckley and that she told him "that all she did was hold the light." He testified that she told him that she had seen "a hobby horse that wouldn't roll," that was broken, inside the MacDonald's home in one of the children's bedrooms. [Trial Tr. 5758-60]. The government objected to the admission of the testimony of all of these witnesses, arguing that Stoeckley's confessions to these six different third parties were not corroborated, and were not reliable.

32. During the 1979 trial, the defense had sought to locate and subpoena Helena Stoeckley to testify. When she was located by the government in Greenville, S.C., the court issued a material witness warrant requiring her to be brought to Raleigh. An experienced deputy U.S. Marshal, Jim Britt, was assigned to pick Stoeckley up in Greenville, and transport her to Raleigh, under the custody of the material witness warrant. Jim Britt traveled to Greenville, South Carolina to pick her up, and drove her back to Raleigh in his car. Britt specifically recalls that during the ride to Raleigh, Helena Stoeckley told Britt that she had been in the MacDonald house with others the night of the MacDonald murders. She told him other details that convinced him that she had, indeed, been there such as describing the hobby horse in the MacDonald home. Britt had no doubt that she was telling him the truth. The next day, Stoeckley was interviewed in the courthouse first by the defense attorneys. After her

meeting with the defense lawyers, Deputy Marshal Britt escorted Stoeckley to the office of James Blackburn to be interviewed. Blackburn invited Britt into his office with Stoeckley. Jim Britt witnessed Helena Stoeckley admit to James Blackburn that she had been in the MacDonald home with others on the night of the MacDonald murders and that they had gone there to steal drugs. Britt then specifically heard James Blackburn threaten Helena Stoeckley. He heard James Blackburn tell her that if she so testified in court, he would indict her for first-degree murder. Jim Britt declares in his affidavit that he is absolutely certain that these words were spoken. [Affidavit of former Deputy U.S. Marshall Jim Britt, attached as Exhibit 1 to Petitioner's Memorandum in Support of his Motion to Vacate, filed therewith].<sup>3</sup>

33. The next morning following Jim Blackburn's threat, in court, before the jury, called as a defense witness, Stoeckley denied knowing anything about the MacDonald murders or the MacDonald house. She, in fact, claimed to have amnesia concerning her whereabouts and activities during the specific five-hour time-frame in which the crime

---

<sup>3</sup> Jim Britt first mentioned the details of what he witnessed to a colleague, former deputy U.S. Marshall Lee Tart, approximately two years ago. The affidavit of Lee Tart, confirming this, is attached as Exhibit 3 to Petitioner's Memorandum in Support of his Motion to Vacate. Jim Britt also willingly took and passed a polygraph test, which indicated that he was truthful concerning the revelations he makes in his affidavit. The polygraph exam, and the curriculum vitae of the polygraph operator, Steve Davenport, are attached as Exhibit 2 to Petitioner's Memorandum. Additional corroboration for what Jim Britt says can be found in the Affidavit of Wendy Rouder, Esq., attached as Exhibit 5 to Petitioner's Memorandum. Rouder, who was a lawyer working with the defense team in 1979, recalls that the day after Jim Britt witnessed prosecutor James Blackburn threaten Helena Stoeckley, Stoeckley told Rouder that she was afraid to tell the truth in court, and when pressed by Rouder as to what she was afraid of, Stoeckley said that she was afraid of "those damn prosecutors." Over the years that followed, Stoeckley repeatedly affirmed that she was involved in the crime and that she had lied because she was afraid. See, e.g. "Woman in MacDonald Case Claims He Was Victim Not Murderer," *The Register*, (Fayetteville, N.C.) 10 Jan. 1981, A20 (attached as Exhibit 6 to Petitioner's Memorandum). Additional corroboration for Jim Britt's claim that he was the deputy marshal assigned to accompany Helena Stoeckley can be found in the video footage contained in the documentary *False Witness*, which has actual news footage of Stoeckley appearing at the Raleigh courthouse during the trial, and shows that she is accompanied by a much younger Jim Britt. [The video, *False Witness*, is submitted herewith in Appendix 2, Tab 13.]

occurred. [Ex. 4 to Petitioner's Memorandum in Support of his Motion to Vacate, Trial Tr. 5513-5676].

34. During her testimony, the trial court inquired at a bench conference of the lead prosecutor, Jim Blackburn, as to what Helena Stoeckley had told him during his interview of her in his office the day before. Blackburn represented to the court that in his office Stoeckley had denied having any knowledge of the MacDonalds or any involvement in the crimes. [Trial Tr. 5617]. This was contrary to what Jim Britt had witnessed. Blackburn, on cross-examination, using leading questions, had Stoeckley affirm before the jury that she knew nothing of the MacDonald murders or the MacDonald house or family. [Trial Tr. 5642-5674].

35. The trial court, after hearing Stoeckley's testimony, after hearing from the six witnesses to whom Stoeckley had made incriminating statements (out of the jury's presence), and after listening to the representations and arguments of the lawyers, ruled that the various incriminating statements made by Helena Stoeckley to these six witnesses would not be admissible because they were not corroborated, and were inherently unreliable pursuant to Fed. Rule of Evidence 803(b)(3). In so ruling, the lower court presumably relied, at least to some extent, on the representations that James Blackburn had made (that Stoeckley never said anything incriminating to him) for the court explicitly stated as part of its reasoning for its ruling that Stoeckley's statements were "all over the lot." [Trial Tr. 5808].<sup>4</sup>

36. Having never heard a word from Helena Stoeckley incriminating herself, nor a word from the six different third parties to whom Helena Stoeckley had confessed, the jury

---

<sup>4</sup> Had the court not been presented with that misinformation from James Blackburn, it may very well have admitted those six confessional statements into evidence. Consequently, Petitioner requests that they be considered in the analysis innocence that is to be done in view of the evidence "as a whole."

deliberated on the circumstantial evidence and found Jeffrey MacDonald guilty of the charged murders.

### **B. James Blackburn's Conviction**

37. James Blackburn, the lead prosecutor who tried Jeffrey MacDonald, was convicted in 1993 in the Superior Court of Wake County, North Carolina, following a guilty plea, of obstruction of justice and embezzlement. [See, Judgment and Commitment Order of James L. Blackburn, attached as Exhibit 10 to Petitioner's Memorandum in Support of his Motion to Vacate.]

### **C. Post-Trial Evidence – Set Forth in 1984 Motion For A New Trial**

38. In 1984, MacDonald filed a *Motion for A New Trial*, which included in it numerous detailed and direct post-trial confessions made by Helena Stoeckley. In these confessions she repeatedly named Greg Mitchell as her boyfriend at the time, and as the man who murdered Colette MacDonald.<sup>5</sup> These post-trial confessions include the following, with citations:

- a) Declaration of Ted Gunderson, 1984 [Appendix 2, tab 1].
- b) Declaration of Richard Comisky, February 6, 1984 [Appendix 2, tab 2].
- c) Declaration of Lynn Markstein, August 12, 1983 [Appendix 2, tab 3].

---

<sup>5</sup> While the trial court denied the *Motion for a New Trial*, and found that generally, Stoeckley was not a "reliable confessor," the court based its finding, to some extent, on the fact that there existed no corroborating evidence which would support Stoeckley's confessions. (This, of course, has now changed, with the discovery of the synthetic long blond wig hair fibers, discussed below, as well as the new clear and unambiguous additional confessions of Greg Mitchell presented herewith and discussed below. It is also changed by the revelations of Jim Britt, for had Helena Stoeckley not been threatened by the prosecutor, she would have told the jury, herself, of her involvement in the crime, and as our court of appeals has held, in that instance, "the injury to the government's case would have been incalculably great." *U.S. v. MacDonald*, 632 F.2d 258 at 264 (1980).) Stoeckley's post-trial confessions, thus, should be considered as part of the panoply of evidence supporting innocence that needs to be considered in the analysis *sub judice*.

d) Declaration of Ernest Leroy Davis, July 25, 1983 [Appendix 2, tab 4].

e) Declaration of Officer Prince Beasley, March 27, 1984 [Appendix 2, tab 5].

39. As part of MacDonald's 1984 *Motion for a New Trial*, sworn declarations were presented to the court of various witnesses, each who saw a group of people matching the description MacDonald had given of the intruders in close proximity to the MacDonald house either late the night of and just before the crime, or in the early morning hours just after the crime had occurred. Regarding the statements of these various corroborating witnesses, the trial judge ruled that the statements were weak circumstantial evidence that Stoeckley and her cohorts were in the area of the crime when it occurred. Nonetheless, one of these seems particularly probative, and to the extent it supports MacDonald's claim of innocence in any respect, it should be considered as part of the "whole" of the evidence. This declaration is set forth below:

a) Declaration of Joan Sonderson, a waitress, who arriving at work the morning following the murders between 8 a.m. and 9 a.m. saw a vehicle occupied by three sleeping people, including a white woman with blond hair and wearing a floppy hat and beige boots that were muddy, and a man wearing an army fatigue jacket. The woman in the floppy hat asked Sonderson if she knew that members of the MacDonald family had been murdered that night. [Appendix 3, tab 6].

40. As part of the MacDonald's Motion for a New Trial, he submitted the sworn statement of Jimmy Friar, who telephoned the MacDonald home at 2 a.m. the night of the murders and spoke with an hysterical woman and also heard someone in the background ordering the woman to hang up the phone. [Attached at Appendix 2, tab 7]. The Friar declaration was not specifically referred to in the lower court's opinion resolving the *Motion for a New Trial*. This declaration is particularly probative because Stoeckley, during her many confessions, repeatedly admitted to having answered a ringing phone in the MacDonald home that night (see sworn declaration of Ted Gunderson above).

41. As part of the 1984 *Motion for a New Trial*, MacDonald submitted sworn declarations from several individuals, who witnessed Greg Mitchell, who was the boyfriend of Helena Stoeckley at the time of the MacDonald murders, confess to the MacDonald murders. These include:

- a. The sworn declaration of Reverend Randy Phillips that a man he identified from a photo array as Greg Mitchell had confessed to the murders. [Appendix 2, tab 8];
- b. The sworn declaration of Ann Cannaday, who was a member of Reverend Phillips's church group, and who also identified Greg Mitchell from a photo array as the man who told her he had been part of a cult in Fayetteville, North Carolina and had murdered people. Cannaday also saw Greg Mitchell run from out of the back of a farmhouse used as a counseling center, and when she went inside, there was written in bright red paint on the wall, "I killed MacDonald's wife and children." [Appendix 2, tab 9];
- c. The sworn declarations of Bryant Lane and his wife, Norma Lane, that Greg Mitchell, who was a friend of theirs, had told them that he had been involved in "a terrible crime" at Fort Bragg, N.C. [Appendix 2, tab 10].

Regarding these sworn declarations, the trial court ruled that they were "speculative and circumstantial." *U.S. v. MacDonald*, 640 F. Supp. 286 at 328 (E.D.N.C. 1985). The court found the one statement made to Ann Cannaday, made fourteen years previous, as not to be evidence of any substance, and the fact that she saw Mitchell run from the farmhouse that had those words written on the wall, to be only weakly connected to Mitchell. The court found the Lane affidavits also to be unpersuasive because Mitchell made no specific reference to the MacDonald slayings. The court ruled that "absent a stronger showing, these affidavits are insufficient to prove Mitchell was in the MacDonald apartment on February 17, 1970."<sup>6</sup>

---

<sup>6</sup> Importantly, in its Memorandum Opinion, the court also ruled regarding the Mitchell statements, that they "were made under circumstances which would accord them a degree of



As set forth below, however, the Petitioner has submitted as Exhibit 7 to his Memorandum in Support of his Motion to Vacate, three additional and new affidavits of individuals who knew Greg Mitchell well, and to whom he unambiguously confessed to having participated in the killing of MacDonald's wife and children. Consequently, the above affidavits are now bolstered and corroborated by others, and deserve consideration as part of this court's analysis of the evidence of Petitioner's innocence, taken as a whole.

**D. Post-Trial Evidence Set Forth in 1990 Motion to Vacate, and 1997 Motion to Reopen**

42. Through FOIA requests, post-trial, the defense first learned of the existence of handwritten lab notes of CID investigator Janice Glisson which revealed that numerous blond synthetic hairs, up to 22 inches in length, had been found in a hairbrush in the dining room of the MacDonald home following the murders, and the hairs could not be matched to any known items in the MacDonald home. (Glisson had testified as a government witness at the petitioner's trial but had never mentioned finding these long blond synthetic hairs.) See, Memorandum Opinion of Judge Franklin Dupree, *U.S. v. MacDonald*, 778 F. Supp. 1342 at 1347-49 (E.D.N.C. 1991).

---

trustworthiness but there is not enough evidence to show that he actually made them or that they were in reference to the MacDonald murders for them to be of evidentiary value to MacDonald at a second trial." *Id.* at 330. As part of the petitioner's present motion to vacate his sentence, the defense has presented three new and additional affidavits herewith, however, of Greg Mitchell confessing to the MacDonald murders. These affidavits are clear and unambiguous, and all are made by people who knew Greg Mitchell well. The Buffkin affidavit relates a confession are akin to a deathbed confession. These, taken together with the affidavits submitted in 1984, demonstrate unequivocally that Greg Mitchell directly confessed on numerous occasions to participating with others in the murder of the MacDonald family. Taken in conjunction with the many Stoeckley confessions, and the substantial amount of circumstantial evidence corroborating their direct involvement in the crimes, as well as the substantial amount of circumstantial evidence corroborating the presence of intruders on the night of the crime, this new evidence proves Petitioner's claim that he is, in fact, innocent, and was wrongly convicted.

This new evidence was part of the predicate for MacDonald's 1990 habeas motion. The government countered the 1990 motion by submitting an affidavit from an FBI agent, Michael P. Malone, who opined that the blond synthetic hairs were not wig hairs, but were made of a saran fiber only used in doll's hair. Based to some extent on the Malone affidavit, and analyzing the evidence to determine if it, by itself would have yielded a different verdict from the jury, (see, pp. 43, *below*) the trial court denied the motion. *Id.* at 1350-51. Over the ensuing years, defense lawyers discovered information leading them to believe that the affidavit of Agent Malone was incorrect and false. MacDonald's lawyers in 1997 filed a Motion to Reopen the 1990 habeas proceeding arguing that Malone had committed a fraud on the court, and in that motion set forth substantial additional evidence refuting the claim of Malone, and probative of the fact that the synthetic saran fibers found in the hairbrush, were, in fact, routinely used in the manufacture of wigs at the time of the murders. The trial court, in resolving the Motion to Reopen, found that the defense had not proved by clear and convincing evidence that the FBI agent, Malone, had committed a fraud. It declined, as a result, to reach the question of whether the new evidence submitted by MacDonald, in fact, established that the blond saran synthetic hair was the type of hair routinely used in wigs at the time of the murder. The issue of whether the 22 inch-long fibers were wig hairs, or doll hairs, thus, was never resolved by this court. *U.S. v. MacDonald*, 979 F. Supp. 1057 at 1067-68 (E.D.N.C. 1997). The Court of Appeals for the 4<sup>th</sup> Circuit, in ruling on the appeal from this court's ruling on the Motion to Reopen, moreover, found that the issue of the blond hairs was not material to the question of MacDonald's innocence. *U.S. v. MacDonald*, 161 F.3d 4 (4<sup>th</sup> Cir. 1998). The fact, however, that Jim Britt now provides evidence that Helena Stoeckley was prepared to directly admit her involvement to the jury could very well change

the prior analysis and conclusion on this issue. For, had Helena Stoeckley directly admitted her involvement to the jury, and told them as she told Jane Zilloux (pp. 31 *infra*) that she was concerned about her blond wig the night of the murders, because it was wet from the rain, and had blond wig hairs then been introduced as having been discovered in a hairbrush in the living room of the MacDonald home, those hairs would have taken on more importance, as corroboration of Stoeckley's confession and of her presence in the MacDonald home. Hence the discovery of those hairs should now be considered by this court, along with the evidence supporting the fact that they were very likely "wig hairs." This evidence should be considered as part of the "evidence as a whole" in support of MacDonald's innocence. Such evidence is set forth in the Cormier affidavit cited below [Appendix 3], and particularly in tabs 15-23 thereof (affidavits of various industry specialists.)

Consequently, in this regard, Petitioner requests that the following items of new evidence, submitted in the 1990 and 1997 proceedings be considered by this Court in connection with the 22 inch-long blond wig hairs and their import:<sup>7</sup>

a. Affidavit of Philip G. Cormier No. 1 (concerning saran fibers) In Support of Jeffrey R. MacDonald's 1997 "Motion to Reopen 28 U.S.C. Section 2255 Proceedings and For Discovery," (with attachments) (particularly directing this Court's attention to the

---

<sup>7</sup> The existence of the 22 inch-long blond synthetic hairs, found in a clear-handled hair brush on a table in the MacDonald home does not seem to be in dispute, as these subject hairs were the partial basis for MacDonald's 1990 habeas motion, and 1997 Motion to Reopen, and the government in responses to these motions admitted to the existence of the hairs, and had attached to its various responses affidavits concerning these hairs. Consequently, the extensive lab notes of Janice Glisson, the CID technician who first noted the presence of the hairs, which were included in the Affidavit of John J. Murphy, submitted by Petitioner as part of his 1990 habeas motion, are not recopied in any appendix herein, but Petitioner requests that these lab notes be included in the record herein by reference.

attached affidavits of the various industry experts (tabs 15-23), [attached as Appendix 3 hereto];

b. Affidavit of Janice Glisson, Feb. 5, 1991 [attached in Appendix 2, tab 11 hereto].

43. Also as part of the petitioner's 1990 habeas attack, he brought before this Court through various affidavits and lab notes, the fact that other lab notes discovered post-trial as part of a FOIA request demonstrated that government investigators had found "one black wool fiber and one white wool fiber in the debris taken from the right biceps area of Colette's pajama top, two black wool fibers and one green wool fiber in the debris removed from the wooden club murder weapon, and two black wool fibers in the debris removed from the mouth area of Colette, none of which were matched to any known source in the MacDonald home." See, Memorandum Opinion of Judge Franklin Dupree, *U.S. v. MacDonald*, 778 F. Supp. 1342 at 1347-49 (E.D.N.C. 1991). The petitioner advanced this new evidence as proof that intruders were in the home and as corroboration of the many Stoeckley confessions. The trial court analyzed this new evidence (as well as the blond wig hair evidence discussed in the pp. above) considering whether it would have changed the outcome of the trial. ("[T]he ultimate question that the court must address... is whether the jury's verdict would have been different had the defense been aware of the allegedly suppressed evidence at the time of trial.") *Id.* at 1349; ("With these various standards of materiality in mind, the court turns to the effect that the allegedly suppressed evidence would have on the trial and the jury's verdict.") *Id.* at 1350. In analyzing the evidence this way, the court found that the new fiber evidence was "insufficient to warrant habeas relief." *Id.* at 22. The present analysis before this Court is a different one, however. For the

petitioner, if he is able to establish to this Court's satisfaction that the new evidence he puts forward from U.S. deputy marshal Jim Britt is reliable, or if this Court agrees that the DNA testing results are reliable and probative of innocence, is entitled to have *all of the evidence* considered *as a whole*, that which was adduced at trial, and that which has been discovered since the trial. And the question then becomes, *not whether any one new piece of evidence would have altered the result of the trial, but whether all of the new evidence, taken cumulatively, would have altered the jury's decision*. Consequently, the petitioner requests that this Court, in analyzing the evidence as a whole, consider the black wool fibers that were found on critical parts of Colette MacDonald's body, and on one of the murder weapons itself.

Consequently, in this regard, Petitioner requests that the following items of new evidence, submitted in the 1990 proceeding be considered by this Court in connection with the discovery of the wool fibers and their import:

- a. Affidavit of Ellen Dannelly, with exhibits, and FBI Laboratory Notes dated Oct. 17, 1974, [attached in Appendix 2, tab I2 hereto].

As part of its analysis of the black wool fiber impact, this Court might consider the following facts, never before submitted. First, during the direct examination of government witness Dillard Browning at the trial, prosecutor Murtaugh elicited the following testimony:

Q. Mr. Browning, with respect to Government Exhibit 306—what has been described as the club, and government Exhibit 307—which has been described as the fibers removed from the club—let me ask you if you have conducted an examination of the items in that vial with respect to the pajama top?

A. Yes; I have.

Q. And would you tell us, please, sir, the results of that examination?

- A. Yes; I found in this vial two purple cotton fibers that were identical in all aspects to the purple cotton threads used to sew the pajama top.

[Trial Tr. 3784].

To emphasize the importance of this during his closing argument, prosecutor James Blackburn told the jury that the blue cotton pajama fibers found on the murder weapon outside of the MacDonald home, was one of the most critical pieces of evidence of guilt. Blackburn, to be precise, argued as follows:

“Perhaps the most telling thing of all, ladies and gentleman, you come back to two pieces—you could throw the whole shooting match away except for two pieces of evidence... The club... He didn't go outside the door...if the pajama top was not taken off his body in the hall or in the living room until this club was out the door, how in the name of all that is reasonable did they [the pajama top fibers] walk out the door and get on the club and stick to it? [Trial Tr. 7136-37].

However, as the laboratory notes attached to Ellen Dannelly's affidavit so cogently demonstrate, specimen Q89 contained the debris from the murder club. [FBI Report Oct. 17, 1974, p. 173.] On February 2, 1979, (six months before the trial), prosecutor Brian Murtaugh had delivered specimen Q89 to the FBI for further testing. [Dannelly affidavit exhibit, p. 25.] The FBI determined that specimen Q89 contained 2 black wool fibers of unknown origin, one green woolen fiber of unknown origin, and blue, green and gold fibers matching the rayon rug in MacDonald home. [Dannelly affidavit exhibit, p. 37.] The FBI found no fibers matching Jeff MacDonald's pajama top. The defense was not aware of this FBI report at the time of trial, and had no way to dispute or call into question the inaccurate testimony regarding the fibers found on the murder weapon outside the MacDonald home.

**E. Additional Post-Trial Evidence**

44. During the trial the prosecution introduced blood evidence from various places within the MacDonald home. It claimed that no blood of Jeff MacDonald's blood type was found where MacDonald claimed he struggled and was stabbed by intruders. During closing argument the prosecutor argued vociferously that no blue pajama fibers and no trace of MacDonald's blood was found in the area where MacDonald claimed he struggled, suggesting that this proved the lie to his account. [Trial Tr. 7123]. Yet in addition to the bunch of blue fibers found by government witness Shaw at where the living room and hallway joined (which was exactly where MacDonald said he struggled) (see pp. 17 *infra*), laboratory reports obtained through FOIA requests since the trial show that "Type B" blood was found precisely where MacDonald said he struggled. In Appendix 1, tab 2 (filed previously herein), Exhibit D-144 is set forth as containing red-brown stains found at the west entrance of the hallway. And in Appendix 1, tab 3, D-144 is examined as made up of B or O type blood.

46. Additional witnesses have come forward to whom Greg Mitchell directly and unambiguously confessed to murdering the MacDonald family. Attached as Exhibit 7 to Petitioner's Memorandum in Support of his Motion to Vacate, filed previously, are the affidavits of Everett Morse, Bryant Lane, and Donald Buffkin. Morse swears that he was told by Greg Mitchell that Mitchell murdered the MacDonald family. Lane, in an amplification of his earlier deposition, swears that he was told by Mitchell that Mitchell murdered the MacDonald family. And Buffkin swears that he was told by Mitchell that Mitchell murdered the MacDonald family. Mitchell died in 1982. These statements of

Greg Mitchell were declarations against interest and should be admissible in this proceeding and in any future trial. *See*, Federal Rules of Evidence, 803, 804.

47. Petitioner has recently learned of additional new exculpatory evidence, namely DNA results from tests ordered to be conducted by the U.S. Court of Appeals for the 4<sup>th</sup> Circuit, and conducted under the supervision of this Court. The DNA report from the Department of Defense Armed Forces Institute of Pathology [hereinafter "AFIP"] was issued on March 10, 2006. As the report sets forth, 28 biological specimens were deemed by the AFIP laboratory sufficient for testing for DNA results to be matched against known exemplars from the MacDonald family members, as well as Helena Stoeckley and Greg Mitchell. Of these 28 specimens tested, 9 specimens either produced no useable result or produced an inconclusive result. Of the remaining 19 useable specimens, 13 specimens were consistent with members of the MacDonald family who were killed. Of the 6 specimens remaining, three were consistent with the DNA of Jeffrey MacDonald. The three remaining specimens, specimens 58A1, 75A, and 91A, provided DNA results that did not match any of the MacDonald family members or Helena Stoeckley or Greg Mitchell, but were of unknown origin.

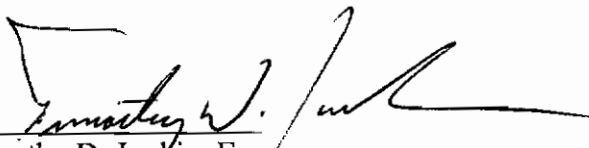
Regarding the unidentified specimens, specimen 58A1 was a hair found at the crime scene on the bedspread in Kristen MacDonald's room. Specimen 75A was a 2 ¼ in. body or pubic hair with root and follicle intact retrieved at the crime scene from off or under the body of Colette MacDonald. And also tellingly, specimen 91A was a hair with the root intact, found along with blood residue, underneath the fingernail of three-year-old Kristen MacDonald, who at crime scene was found murdered in her bed, and who had suffered defensive type wounds on her hands. [The genesis of these biological specimens, the



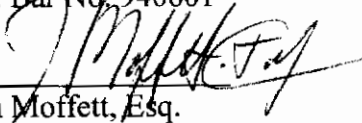
documentation supporting where they were found at the crime scene, and the DNA report analyzing them are set forth in the petitioner's memorandum in support of his motion to add an additional predicate to his previously filed Motion Under 28 U.S.C. Section 2255 to Vacate his Conviction, and the Appendix #1 filed therewith. The petitioner hereby respectfully incorporates those filings herein by reference.]

48. Jeffrey MacDonald, was a distinguished Green Beret army officer, and an accomplished physician before the crime. He had never been arrested for anything, had no criminal convictions, and no history of violence, and numerous character witnesses appeared on his behalf at his trial. During the nine years between the crime and his trial he was a model citizen, practicing medicine in California. He has been incarcerated now for over 26 years since his 1979 conviction in medium security institutions, housed among inmates with violent records, and during that extensive period of time Jeffrey MacDonald has been a model prisoner, and has never displayed a penchant for violence, or been cited for a violent incident.

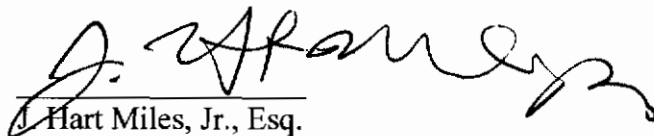
Respectfully submitted,



Timothy D. Junkin, Esq.  
D.C. Bar No. 940601



John Moffett, Esq.  
Fed. Bar No. (Md.) 9027  
Moffett & Junkin, Chtd.  
800 S. Frederick Ave., Suite 203  
Gaithersburg, Md. 20877  
(301) 987-0600  
Fax. (301) 987-0682



J. Hart Miles, Jr., Esq.  
NC Bar # 23342  
Hart Miles, Attorney at Law, P.A.  
19 W. Hargett Street, Suite 805  
Raleigh N.C. 27601  
Tel: (919) 834-8650  
Fax: (919) 834-9105

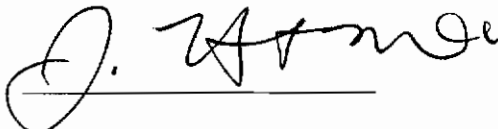
Certificate of Service

I hereby certify that a copy of this Petitioner's Statement of Itemized Material Evidence was mailed by me, first class mail, postage pre-paid, on the 23 day of March, 2006, to the United States Attorney for the Eastern District of North Carolina, at the following address:

Honorable Frank D. Whitney  
United States Attorney  
Att. John Stuart Bruce  
Terry Sanford Federal Building  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601-1461

And to U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Senior Trial Attorney  
U.S. Department of Justice  
Domestic Security Section, Room 6747  
Criminal Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530



J. Hart Miles, Esq.

**damaged.”<sup>5</sup>** However, according to Jim Britt, rather than fulfill his constitutional obligation, prosecutor Blackburn threatened and intimidated Helena Stoeckley into changing her trial testimony, so that rather than confess to the crime before the jury, she claimed amnesia as to her whereabouts on the night of the murder. Blackburn then knowingly elicited testimony from Stoeckley supporting this false testimony. Continuing with his misconduct, Blackburn then, when questioned by the trial court as to what Stoeckley had told him during his interview of her, further misrepresented the truth and further misled the court.

The record, when closely examined, in fact, contains much support for Jim Britt’s account. It stands to reason and reflects consistent behavior that Stoeckley was willing to confide the truth to government officials, but reluctant to do so to the defense, at least until a relationship of trust was developed. First she confided in deputy U.S. Marshal Jim Britt while on the long (5 hour) journey from Greenville, S.C. to Raleigh, N.C. Apparently, Stoeckley was then unwilling to open up to the Bernard Segal during his conference with her. In the presence of Jim Britt, however, to whom she had already confessed and apparently developed some trust, and in the office with Britt and prosecutor James Blackburn, (who was in a position to offer her protection/immunity) Stoeckley became candid again, and told Blackburn the truth. According to Britt, she was then threatened by Blackburn. Interestingly, prior to her testimony in court the next day, Blackburn suggested to the judge that Stoeckley might need to be furnished an attorney. [Tr. 5513]. There would have been no reason for Blackburn to raise this issue if Stoeckley had consistently insisted to him that she had nothing to do with the MacDonald crime. And after Blackburn threatened and intimidated her, and Stoeckley claimed amnesia on the stand, and later told Wendy Rouser that she had been in the MacDonald home the night of murders, when Rouser inquired of her why she didn’t tell the jury that, Stoeckley answered that it was because she was afraid—not of her co-murderers—but of “those damn prosecutors.” All of these circumstances lend credence to the recollection of Jim Britt.

The government further argues that Britt should not be credited because his assertion that Stoeckley mentioned seeing a broken hobby horse in the MacDonald home on the night of the crime to

---

<sup>5</sup> United States v. MacDonald, 632 F.2d at 264 (4<sup>th</sup> Cir. 1980).

him, during his trip with her from Greenville to Raleigh, could not be true. The government represents that the subject of the hobby horse was first interjected into the proceedings by Bernie Segal when he showed Stoeckley pictures during his pre-trial interview, and thus Stoeckley would not likely have mentioned the hobby horse a day earlier to Britt. Again, the government misstates the facts. The trial transcript makes clear, as does the government elsewhere in its Response, that Stoeckley first volunteered having seen a broken hobby horse in the MacDonald home long before her trip to Raleigh, to witness William Posey back in 1970 at the time of the Article 32 hearing. [Voir dire testimony of William Posey, Tr. 575—61 at 5760, attached to Movant's Memorandum as Exhibit 4]. Posey testified that back in 1970 Stoeckley told him that she had been in MacDonald's home the night of the murder and seen a broken hobby horse. Moreover, the government's claim that the hobby horse was not broken is unproven. None of the government photographs show the right front spring of the hobby horse, so there is no way to know if that area of the toy was broken. Moreover, the hobby horse was found the night of the crime against the wall in an unuseable position inside the MacDonald home (as the govt. crime scene photos depict) indicative of the fact that it was not being used and may very well have been broken. [Govt. App. Vol. V, Tabs 6 and 7]. Given where it was stationed, it looks as though it could not have been ridden, and Stoeckley may well have thought it was broken. If anything, the recollection by Jim Britt that Helena Stoeckley mentioned the broken hobby horse to him lends credence to his recollections.

The gravamen of the government's Response, however, seems to be that the outcome of a hypothetical trial today would be no different, notwithstanding the new evidence offered by Jim Britt and notwithstanding the very powerful other new evidence probative of innocence that has come to light since the 1979 trial. This government claim, once again, is without merit.<sup>6</sup> The Jim Britt revelations, on their own, suggest that had prosecutor Blackburn not violated movant's constitutional rights, Helena Stoeckley would have taken the witness stand and told the jury directly that she and others—not Jeffrey MacDonald—were responsible for the murders. This evidence, itself, would certainly have changed the

---

<sup>6</sup> Movant has set out the salient evidence probative of innocence, taken as a whole, in his Statement of Itemized Material Evidence attached to his Motion to Expand the Record, and asks that it be incorporated herein by reference and considered herewith.

outcome of the trial, for as the 4<sup>th</sup> Circuit has written, **“the government’s case would have been incalculably damaged.”**<sup>7</sup> However, when the additional substantial new evidence that has come to light since 1979 is added to the calculation, it becomes overwhelmingly clear that no reasonable juror could find guilt beyond a reasonable doubt. As part of this new evidence of innocence that has been uncovered post-trial, the movant has provided to this Court new affidavits, never before considered by a court, of the direct confessions made by Helena Stoeckley’s boyfriend, Greg Mitchell, before he died. [See, Exhibit 7 attached to the movant’s Memorandum]. **These affidavits are of profound importance, as they not only directly and unequivocally implicate Greg Mitchell in the crime, but they provide for the first time true corroboration of the confessions of Helena Stoeckley.**<sup>8</sup> Additional new evidence that has come to light only after the trial also includes the recently obtained DNA evidence demonstrating that there were unsourced hairs in key places found on the bodies of Colette and Kristen MacDonald. Other new evidence that should be considered is set forth in the movant’s Statement of Itemized Material Evidence. Upon a fair analysis of it, taken as a whole, and set next to the very weak circumstantial case compiled by the government, it is abundantly clear that no reasonable juror could find that Jeffrey R. MacDonald is guilty beyond a reasonable doubt.

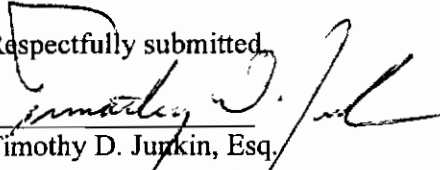
---

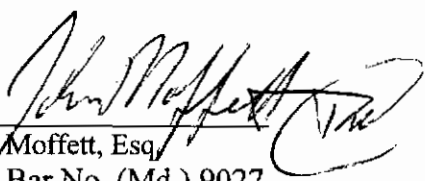
<sup>7</sup> United States v. MacDonald, 632 F.2d at 264 (4<sup>th</sup> Cir. 1980).

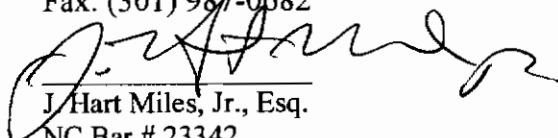
<sup>8</sup> The government argues that the affidavits of the Greg Mitchell confessions are foreclosed under the abuse of the writ doctrine because they were previously reviewed and found speculative and circumstantial, and has filed a motion to strike to which MacDonald has responded. But the government misrepresents the facts in this regard. First, while the court in 1984 found the affidavits submitted at that time to be speculative and circumstantial, it explicitly stated, that **“absent a stronger showing, these affidavits are insufficient to prove that Mitchell was in the MacDonald apartment on February 17, 1970.”** *U.S. v. MacDonald*, 640 F. Supp. 286, 328 (E.D.N.C. 1985). The movant has now submitted new affidavits, including two from additional new people to whom Greg Mitchell directly and unequivocally confessed, affidavits that—unlike the prior affidavits regarding Greg Mitchell—are neither speculative nor circumstantial. Thus the movant has now provided the “stronger showing” that the trial court found was needed. These new affidavits have not been reviewed before by any court; nor have they been found lacking. They were, in fact, unavailable at the time of trial and have come to light only since the trial. While the movant has not sought to make them the predicate for his motion to vacate his sentence, they nonetheless must be considered by this Court as “evidence that became available only after the trial.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995). In this regard, given the fact that Helena Stoeckley has been found to be unreliable, the question has still remained whether she was telling the truth when she confessed to the MacDonald murders, or when she recanted such confessions. The Greg Mitchell confessions answer that question, as they corroborate the fact that she was truthful when she confessed.

WHEREFORE, FOR THESE AND OTHER REASONS CONSIDERED BY THIS COURT, MOVANT RESPECTFULLY REQUESTS THAT HIS MOTION TO VACATE HIS SENTENCE BE GRANTED, OR ALTERNATIVELY, THAT MOVANT BE GRANTED A HEARING ON THE MERITS OF HIS MOTION.

Respectfully submitted,

  
 Timothy D. Jurkin, Esq.  
 D.C. Bar No. 940601  
 800 S. Frederick Ave., Suite 203  
 Gaithersburg, Md. 20877  
 (301) 987-0600  
 Fax. (301) 987-0682

  
 John Moffett, Esq.  
 Fed. Bar No. (Md.) 9027

  
 J. Hart Miles, Jr., Esq.  
 NC Bar # 23342  
 Hart Miles, Attorney at Law, P.A.  
 19 W. Hargett Street, Suite 805  
 Raleigh N.C. 27601  
 Tel: (919) 834-8650  
 Fax. (919) 834-9105

Certificate of Service

I hereby certify that a copy of this motion and accompanying brief were mailed by me, first class mail, postage pre-paid, on the 8 day of May, 2006, to the United States Attorney for the Eastern District of North Carolina, at the following address:

Honorable Frank D. Whitney, United States Attorney  
 Att. John Stuart Bruce  
 Terry Sanford Federal Building  
 310 New Bern Avenue, Suite 800  
 Raleigh, North Carolina 27601-1461

And to U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Senior Trial Attorney  
 U.S. Department of Justice  
 Domestic Security Section, Room 6747  
 950 Pennsylvania Ave., N.W.  
 Washington, D.C. 20530

  
 J. Hart Miles, Jr., Esq.

# Obituaries

THE NEWS & OBSERVER

WEDNESDAY, OCTOBER 22, 2008

## DEATH NOTICES

### Jimmy B. Britt

#### AMERICAN LAWMAN

APEX — Jimmy B. Britt, 70, of 616 Wimberly Road, Apex, went home to be with the Lord Sunday October 19th, 2008.



He was born in 1938, the son of the late Alton B. and Elma Taylor Britt, Bentonville Township, Four Oaks, NC. He was honorably discharged from the U.S. Army. He began his law enforcement career

with the Smithfield Police Department, was appointed as Johnston County's first ABC Officer, and also served as an ALE Officer until his appointment as a Deputy U.S. Marshal. He rose through the ranks of the U.S. Marshals Service from a Deputy to a Criminal Investigator, Inspector/Instructor at the Federal Law Enforcement Training Center in Brunswick, GA., and Supervisor of Operations for the Eastern District of N.C. He retired November 30, 1990 from the United States Department of Justice, and was then appointed as Johnston County's first Jail Administrator, serving in that capacity for six years. He served 40 years in military and law enforcement.

Surviving are his wife, Nancy Williams Britt of the home; children, Linda S. Britt and husband, David Bostic of Morrisville, Lee Anne Britt Nance and husband, Jon of Angier, James B. (Jim) Britt and wife, Susan of Fuquay-Varina, and Kathryn E. Britt Hamilton and husband, Tony of Four Oaks; grandchildren, Will and Blake Nance, Taylor, Yates and Nicholas Hamilton, and John (Jack) Britt; brother, Dixon Britt and wife Wanda of Four Oaks. He is also survived by his faithful companion Katie.

A memorial service celebrating his life will be held at 1:00 p.m. on Thursday October 23, 2008 in the Green Level Baptist Church in Apex. His family will receive friends from 11:00 a.m. until 1:00 p.m. in the church's fellowship hall prior to the memorial service.

Burial will be at 4:00 p.m., also on Thursday, in the Ebenezer United Methodist Church Cemetery on Harper House Road in the Bentonville Township, Johnston County. His grandfather, the late William Avery Britt, was instrumental in building and establishing the church in the 1800's. Dr. Kenneth Thrasher, former pastor of Sharon Baptist Church in Smithfield, will officiate. Fellowship Masonic Lodge #84 of Smithfield will conduct Masonic Burial Rites. Jimmy was a member of Sharon Baptist Church of Smithfield for 20 years, where he served as Deacon and in various other capacities. He transferred his membership to Green Level Baptist Church in 1990.

In lieu of flowers, the family requests memorials be made to a memorial fund that has been established in his name at Ebenezer United Methodist Church, 550 Bass Road, Four Oaks, NC 27524.

Apex Funeral Directors is entrusted with funeral arrangements, and online condolences may be made at [www.apexfuneral.com](http://www.apexfuneral.com)

485 F. Supp. 1087, 1091-94 (E.D.N.C. 1979), *aff'd*, 688 F.2d 224, 230-34 (4th Cir. 1982), *cert. denied*, 459 U.S. 1103 (1983)). Three of the Stoeckley Witnesses later were permitted to testify in the presence of the jury concerning their prior relationships with Stoeckley, but were not to repeat anything Stoeckley allegedly said to them concerning the MacDonald case. *See* Tpp. 5822-65 [DE-131 #1 & #2] (Prince Beasley; Tpp. 5867-87 [DE-131 # 2 & #3] (Jane Zillioux); Tpp. 5889-5907 [DE-131 #3] (Red Underhill); and Tpp. 5983-6031 [DE-131 #5 & #6] (William Posey). The transcript reflects that the defense team was able to craft many of its questions to these witnesses so that the Government's objections were rendered useless. For instance, Segal asked Jane Zillioux:

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

MR. BLACKBURN: Objection.

THE COURT: Sustained.

Tpp. 5885-86 [DE-131 #3].

After 29 days of trial the evidence, including MacDonald's own testimony, had concluded, the lawyers argued and the court instructed. On August 29, 1979, the jury returned a verdict of "guilty" against MacDonald on each of the three counts of murder (one count in the first degree, and two in the second degree), in violation of 18 U.S.C. § 1111.

On direct appeal, following remand from the Supreme Court on unrelated grounds, the Fourth Circuit Court of Appeals summarized its conclusion that Judge Dupree's exclusion of the Stoeckley Witnesses' testimony did not violate MacDonald's constitutional rights:

At bottom, the sticking point here, as recognized by the District Court, is the fundamental problem of trustworthiness. While MacDonald is able to point to a number of corroborating circumstances, he does not demonstrate, finally, that they make Stoeckley's alleged declaration trustworthy. Her apparent longstanding drug habits made her an inherently unreliable witness. Moreover, her vacillation about whether or not she remembered anything at all about the night of crime lends force to the view that everything she has said and done in this regard was a product of



Of course, MacDonald has sought and obtained a PFA as to only one item of “newly discovered evidence” underlying his Fourth Motion – the Britt affidavit. The facts underlying MacDonald’s Fifth and Seventh Motions [DE-122 & -144] have been the subject of neither an application for a PFA nor an award thereof. Although Judge’s Ellis’s opinion in *Hazel v. United States*, 303 F. Supp. 2d 753, 758-59 (E.D. Va. 2004), at first blush seems to authorize MacDonald’s strategy, a closer reading of *Hazel*, together with *United States v. Winestock*, 340 F. 3d 200, 205-06 (4th Cir.), *cert. denied*, 540 U.S. 995 (2003), upon which it relied, reveals that such an interpretation lacks application here.

Hazel had obtained a PFA from the Fourth Circuit Court of Appeals to pursue a successive § 2255 petition in the district court on a claim of “actual innocence,” in light of newly discovered evidence: the ten-year delayed affidavit of a purported eyewitnesses exonerating the petitioner of the murder. When Hazel presented the petition and PFA to the district court, he had included two additional claims. The district court first had to decide whether address two additional claims that Hazel had added to his PFA, “given the absence of circuit certification of these claims.” *Hazel*, 303 F. Supp. 2d at 758. The district court relied on *Winestock* for the proposition that “once the court of appeals finds that the application contains ‘any claim’ that satisfies § 2255, ‘the court [of appeals] should authorize the prisoner to file the entire application in the district court, even if some of the claims in the application do not satisfy the applicable standards.’ ” *Id.* (quoting *Winestock*, 340 F.3d at 205).

Here, MacDonald did not present a *Winestock* “mixed petition” either to the Fourth Circuit or to this court. His Fifth and Seventh Motions claims are entirely independent of his Fourth and of each other, and have been presented only to this court in the guise of entirely unrelated

---

present in the MacDonald house during the murders on February 17, 1970.” The elder Stoeckley’s Affidavit, Exhibit to Motion to Supplement [DE-144], at ¶ 3. The first occasion was after the MacDonald trial, and the second occasion was shortly before Stoeckley’s death in 1983. *Id.* ¶ 4.

not part of the trial record," [DE-126] at pp. 2-3, n.1, including the "new" DNA materials and the affidavit of Jim Britt and Helena Stoeckley's mother." See [DE-126], p. 1. MacDonald's "Itemized Statement of Material Evidence" [DE-126], consists of 48 numbered paragraphs of text setting forth his version of what is proved by the universe of evidence he has compiled to date – old and new, admitted and rejected.

It is MacDonald's position that this court must consider the propriety of allowing the Fourth Motion "in light of the evidence taken as a whole." [DE-126] at 1-2. He summarizes his theory supporting the court's review of all evidence he has acquired before, during, and after his trial as follows:

In reviewing [his] claim of innocence, which is concomitant to a claim of "manifest injustice," this Court is required to conduct an analysis of the evidence "as a whole," including evidence developed post-trial. 28 U.S.C. Section 2255; see also *Herrera v. Collins*, 506 U.S. 390, 442 (1992), (Blackmun, J., *dissenting*) (collecting various versions of the Court's "probability of innocence" test for miscarriage of justice); *Sawyer v. Whitley*, 50[5] U.S. 333, 339 & n.5 [(1992)] (the prisoner must show "that, in light of all the evidence, including that alleged to have been illegally admitted (*but with due regard to any unreliability of it*) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial, the trier of fact would have entertained a reasonable doubt of his guilt.") ([Q]uoting *Kuhlmann v. Wilson*, 477 U.S. 436, 455 n.17 (1986) (quoting Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142, 160 (1970))); *Schlup v. Delo*, 513 U.S. 298 (1995).

*Id.* at 2 (citing pre-AEDPA authority) (emphasis added).

The court believes MacDonald's reliance on the above-quoted authority is misplaced, and rejects his suggestion that this court is required, under the circumstances presented by this case, to expand the record and to consider every manner of supplementary material he deems supportive of his position, regardless of its source or its competence. The court finds the record

---

<sup>11</sup> See *infra*, discussion of MacDonald's "Seventh Motion."

as it presently is constituted to be more than adequate to permit a thorough and complete understanding of the material facts pertinent to the motions now before it. MacDonald's Sixth Motion is DENIED.

#### **IV. THE FOURTH MOTION**

##### **A. Overview**

Only the Fourth Motion – that predicated on former Deputy United States Marshal Jim Britt's 2005 affidavit – is the subject of a PFA from the Fourth Circuit Court of Appeals. The court perceives the gravamen of MacDonald's Fourth Motion to be that the Government, through AUSA Blackburn and former DUSM Britt, violated his Fifth and Sixth Amendment rights by withholding the fact and content of statements made by and to a defense witness that, if known to MacDonald and revealed to the jury, would have resulted in his acquittal. As will be more thoroughly explored below, the Britt Affidavit suggests three independent, but related, factual bases for MacDonald's Fourth Motion.

The propriety of Judge Dupree's 1979 evidentiary ruling to exclude the Stoeckley Witnesses' testimony at trial, and his rejection in 1985 of additional "newly discovered evidence," are not subjects of the Fourth Motion, except to the extent that such rulings appropriately may be considered among the facts and circumstances relevant to the court's inquiry with regard to this Fourth Motion.

##### **B. Standard of Review**

The overarching principles governing a proposed second or successive motion for collateral relief are summarized in 17B WRIGHT & MILLER: FEDERAL PRAC. & PROC. § 4267, Successive Applications for Writ (2007):

If a claim presented in a second or successive application had been presented in an earlier application the claim must be dismissed. Even if the claim is not one that has been previously presented, it must be dismissed unless the applicant shows one of two things. One is that the claim relies on a new rule of

denying it we will of course impeach her as we have the right to impeach her under the rules.

Although we have called her as a witness, there are rules that permit that to be done." *Id.*

AUSA Blackburn then remarked, *inter alia*,

I discussed – I told [defense attorney] Smith last night what she told us. I was under the impression to this very moment that what she told us was essentially what she told them. . . . I just don't know which way it is, because she has not indicated anything to the Government.

*Id.* (emphasis added).

Local defense counsel, Wade Smith, spoke up:

Judge, here I think is where we are. Generally, she said to us the same thing and that is, "I don't remember." But in two or three or four instances . . . she says something which would give an interesting insight into her mind.

I would submit that we have a right to cross her on those ["two or three or four instances"]; if she denies them then they have a right to impeach her on the statements or show that she did not say anything like that.

*Id.* at Tp. 5617-18 (emphasis added). When Judge Dupree asked Stoeckley whether she had told both sides the same story, she responded, "As far as I know, yes, sir." *Id.* at Tp. 5619.

(A) Blackburn's "Fraud"

In seeking leave to question Stoeckley as a hostile witness, Segal represented that he was surprised by Stoeckley's responses to his direct examination, strongly implying that those responses were *contrary* to what she had said during his interview of her the day before.<sup>16</sup> MacDonald contends in this Fourth Motion that Britt's affidavit now proves Stoeckley had been ready to admit her involvement when she arrived in Raleigh and was interviewed by the defense team. That is, taking as accurate Britt's recollection that Stoeckley made admissions to him on the drive to Raleigh, and representing that she continued to make admissions during the defense

---

<sup>16</sup> Even though Segal stated he expected Stoeckley to testify in his client's favor, he had at least six "impeachment" witnesses under subpoena and waiting in the wings.

team's interview of her, MacDonald suggests that Britt's affidavit is the "smoking gun" linking Blackburn's subsequent interview of Stoeckley with her startling change of position on the witness stand the following morning.

The theory is this: if Stoeckley still was ready to "confess" after the defense team was finished with her, and Britt recalls that she made admissions during the Government's interview, then Blackburn must have lied to Judge Dupree by suggesting that Stoeckley's failure of recollection on the witness stand was *consistent* with what she had said to him. Further, Britt's affidavit explains *why* Stoeckley experienced an unexpected lapse of memory in court – because Blackburn's threat of prosecution, overheard by Britt, so frightened and intimidated her that she feigned amnesia rather than expose herself to trial for murder. In short, MacDonald's fraud theory is that Blackburn browbeat a drug-addled young murderer into silence in order to achieve MacDonald's convictions, then committed a fraud on the court by lying to the presiding judge to cover up his misconduct.

The fraud aspect of this theory depends on the truth of Segal's representations to Judge Dupree that Stoeckley essentially had cleared MacDonald of the crimes by her admissions during the defense team's interview in the presence of half a dozen or more witnesses the day before. However, a close examination of MacDonald's brief reveals that his current defense team does not paint with quite so broad a brush. MacDonald's memorandum in support of the Fourth Motion mentions only Stoeckley's alleged out-of-court statements to certain of the Stoeckley Witnesses, to Wendy Rouder, and now to Jim Britt. *See* Memorandum [DE-111] at 18-20. If, as MacDonald's memorandum now seems to concede by omission, Stoeckley had *not* delivered the self-damning admissions during the defense interview that Segal's representations to Judge Dupree so plainly suggested, then *Segal's* candidness might well be challenged as to the factual basis offered for his request to examine Stoeckley as a hostile witness and to present the half-dozen Stoeckley Witnesses for "impeachment."

Again, MacDonald's own lawyer, Mr. Smith, told Judge Dupree, "*Generally, she said to us the same thing [she said to the Government] and that is, 'I don't remember.'*" If, indeed, Stoeckley essentially said "I don't remember" during the defense team's interview, then her failure of recollection on the witness stand was not inconsistent or surprising as represented, but merely disappointing to the defense. It would not provide a predicate for impeachment by hearsay testimony or examination of Stoeckley as a hostile witness.

The court perceives that this is where MacDonald meets himself coming. Given the contents of the trial transcript, the court is confident that MacDonald cannot reconcile that contemporaneous record with Britt's thirty-year delayed recollection of what he thought he heard during the Government's pre-trial interview of Helena Stoeckley. Moreover, MacDonald has not suggested how a misrepresentation to the trial judge by Blackburn of the content of Stoeckley's statements to him in any way affected MacDonald's right to present a defense and to confront witnesses against him. Judge Dupree denied Segal's request to lead Stoeckley during direct examination because Segal had not demonstrated that her testimony was "hostile." The record reveals that Segal did so anyway, and persisted in questioning Stoeckley at great length, in great detail, and with very little restraint.

Judge Dupree declined to admit the Stoeckley Witnesses' hearsay testimony because MacDonald's own evidence conclusively established the unreliability and lack of trustworthiness of anything Stoeckley said to anyone. *See, e.g.*, Tpp. 5523-31 [DE-130 #1] (extensive direct examination concerning Stoeckley's long-term heavy drug use); *see also id.* at Tpp. 5553-54 (Stoeckley's responses to Segal's questions concerning the various drugs she had used on February 16, 1970); *MacDonald*, 688 F.2d at 233 (affirming Judge Dupree's exclusion of the Stoeckley Witnesses' testimony under Rule 804(b)(3), Fourth Circuit Court of Appeals observed that Stoeckley's "longstanding drug habits made her an inherently unreliable witness. Moreover her vacillation about whether or not she remembered anything at all about the night of the crime

lends force to the view that everything she has said and done in this regard was a product of her drug addiction.”).

It would serve no worthwhile purpose now to entertain a dead-end excursion to explore the intriguing, but ultimately unhelpful, question of who misled whom in the presentation of Helena Stoeckley's testimony. Ms. Stoeckley's attendance at trial finally was procured at MacDonald's request and with the Government's assistance, and defense counsel had every opportunity to question her in the presence of the jury about a wide range of subjects and at great length. Insofar as it is based on “new evidence” that AUSA Blackburn defrauded the court by misrepresenting to Judge Dupree that Stoeckley's trial testimony was consistent with the gravamen of the Government's interview, MacDonald's motion for leave to file a successive § 2255 petition is DENIED.

(B) Blackburn's “Threat”

According to Britt's recollection of Stoeckley's interview with the Government, “After Helena Stoeckley had given the story of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated, ‘If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder.’” Britt affidavit [DE-111], ¶ 24. MacDonald interprets the quoted statement as Blackburn's “threat” on behalf of the Government intended to intimidate Stoeckley into changing her testimony. MacDonald contends Britt's affidavit constitutes irrefutable evidence that on August 16, 1979, Stoeckley confessed first to DUSM Britt, next to the defense team, and finally to AUSA Blackburn, but that after Blackburn threatened her with prosecution for murder if she so testified, Stoeckley changed her trial testimony to, “I don't remember.” MacDonald explains that, but for Blackburn's threat of prosecution and witness intimidation, Stoeckley would have confessed on the witness stand to having been present in the MacDonald home on the night of the murders. *See* [DE-115], at p. 20. After hearing that confession, he concludes, no reasonable jury could have convicted him.

prosecute a successive § 2255 petition, nor does it enhance the value of or “corroborate” Britt’s affidavit. If anything, the 2005 Britt and Rouder affidavits further reinforce Judge Dupree’s personal observations of Stoeckley as a witness, and his conclusion that her statements, being “all over the lot,” lacked any measure of trustworthiness.

c. Conclusion

Assuming proof of the facts alleged therein in light of the evidence as a whole, even if Britt’s affidavit were deemed “newly discovered,” it simply cannot establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found MacDonald guilty. For the foregoing reasons, the court concludes that MacDonald cannot open the second lock on the second gate to a successive review of his convictions, on grounds of Britt’s affidavit as newly discovered evidence. MacDonald’s **Fourth Motion** seeking leave to file a successive § 2255 motion on grounds of newly discovered evidence, to wit, the Britt affidavit, is DENIED.

## VI. SUMMARY

MacDonald’s Motion to Add Additional Predicate [DE-122], MacDonald’s Motion to Expand the Record with Itemized Evidence [DE-124], and MacDonald’s Motion to Supplement Itemized Evidence [DE-144] are DENIED. The Government’s Motion to Strike Exhibits [DE-129] is ALLOWED.

Having conducted its gatekeeping function pursuant to the Fourth Circuit’s PFA in this case, the court finds and concludes that MacDonald has failed to satisfy at least the second of the dual statutory requirements for district court review of a successive § 2255 petition on grounds of newly discovered evidence. That is, MacDonald has not demonstrated that the Britt affidavit, taken as true and accurate on its face and viewed in light of the evidence as a whole, could establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found MacDonald guilty of the murder of his wife and daughters.



DATE: 8-23-10

To: J. Hart Miles, Jr.  
Attorney At Law  
19 W. Hargett St., Suite 805  
Raleigh, N. C. 27601

REF: U.S.A v. Jeffrey R. McDonald

Based on facts I have learned, some discussed with you, I am requesting that all affidavits and depositions I have given in the above case be declared null and void as to further litigation or until further notice.

To alleviate any misunderstanding with other attorneys associated with the case as to my position and <sup>in</sup> view of the fact I am not familiar with current policies of the Bureau Of Prisons for an inmate to receive mail, I will appreciate forwarding the enclosed copy to the defendant.

I regret my input did not work-out.

Sincerely,

  
Lee W. Tart



Enclosure: one

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 3:75-CR-26-F

No. 5:06-CV-24-F

UNITED STATES OF AMERICA, )

v. )

JEFFREY R. MacDONALD, )  
Movant. )

ORDER

This matter came on before the court for a status conference on Wednesday, September 21, 2011, to assess the parties' positions whether an evidentiary hearing is appropriate on remand from the Fourth Circuit Court of Appeals in *United States v. MacDonald*, 641 F.3d 596 (4<sup>th</sup> Cir. 2011), and to establish a briefing and hearing schedule. At 4:30 p.m. on September 20, 2011, movant, Jeffrey R. MacDonald ("MacDonald"), through counsel, filed a Motion for Hearing [DE-175] and a Motion for New Trial Pursuant to the Innocence Protection Act ("IPA") [DE-176].

Present at the hearing on behalf of movant MacDonald were attorneys Hart Miles, F. Hill Allen, IV and Christine C. Mumma. Ms. Mumma, Executive Director of the North Carolina Center on Actual Innocence, filed her Notice of Appearance [DE-177] contemporaneously with her Motion for a New Trial [DE-176]. On behalf of the Government appeared United States Attorney for the Eastern District of North Carolina Thomas Walker, First Assistant United States Attorney John S. Bruce, and Special Assistant United States Attorney Brian M. Murtagh. This order memorializes the schedule set forth during the status conference.

MacDonald will file and serve on the Government on or before **October 10, 2011**, a list of the trial exhibits on which it seeks to conduct additional DNA testing pursuant to the IPA. The Government may respond thereto within its Response to the Motion for a New Trial on or before **December 1, 2011**.

Pursuant to this court's Notice and Order [DE-179], the Government shall file its Response to MacDonald's Motion for a New Trial [DE-176] on or before **December 1, 2011**. MacDonald may reply, if he so desires, on or before **December 12, 2011**.

The Clerk of Court is DIRECTED to schedule and notice an evidentiary hearing solely on the Britt § 2255 claim ("the Britt Claim") during the week of **October 31, 2011**, at 10:00 a.m., in Wilmington, North Carolina.

SO ORDERED.

This, the 21<sup>st</sup> day of September 2011.

  
\_\_\_\_\_  
JAMES C. FOX  
Senior United States District Judge

**AFFIDAVIT OF CRAIG S. CHAMBERLAIN**

**Craig S. Chamberlain, being duly sworn, does depose and say that:**

1. I am the same Craig S. Chamberlain who testified in August 1979 before the United States District Court for the Eastern District of North Carolina in the case of *United States of America v. Jeffrey R. MacDonald* , No. 75-26-CR-3.
2. In May 2005 I retired from 3M Corporation after being employed for 27 years as a research scientist, engaged in research in chemistry/physics at 3M's Corporate Research Laboratories, located in St. Paul, Minnesota.
3. I have a Bachelor of Science (B.S.) degree in Chemistry from California State University at Sacramento, a Master of Science degree in Chemistry (M.S.) from California State University at Sacramento, a Doctorate (Ph.D.) in Chemistry from the University of Illinois at Urbana, and a Bachelor of Science (B.S.) degree in Physics from Augsburg College at Minneapolis.

4. I have been a member of the following scientific organizations/societies:  
the American Chemical Society, the American Vacuum Society, Pi Lambda Epsilon, Sigma Psi, Sigma Pi Sigma, and the 3M Technical Forum.
5. I have been awarded 22 United States patents in the field of chemistry/physics, with numerous associated foreign patents, and several pending United States patents.
6. I have published 5 papers in peer reviewed scientific journals and 2 papers in trade journals.
7. I have received the 3M Circle of Technical Excellence Award (Corporate and Divisional levels) as well as other 3M awards for my work in the field of chemistry/physics.
8. In 1969, while a graduate student at California State University at Sacramento working toward my M.S. Degree in Chemistry, I was drafted into the U.S. Army. At the time of my induction I had completed 8 units of graduate work toward my M.S. degree.
9. Following basic training at Fort Ord, California, I was assigned as a chemist to the United States Army Criminal Investigation Laboratory

(USACIL), Fort Gordon, Georgia. Upon arrival at USACIL I was given a six month intensive course in forensic science, which included instruction in the collection and analysis of blood stains.

10. On February 17, 1970 I was part of a team of USACIL personnel deployed to Fort Bragg, North Carolina, in order to process the MacDonald crime scene located at 544 Castle Drive. I was not present when Colette, Kimberly and Kristen MacDonald were autopsied at Womack Army Hospital on Fort Bragg.
11. On February 21, 1970, prior to departing Fort Bragg, North Carolina, and returning to USACIL, I received from CID Special Agent Bennie J. Hawkins, numerous items of evidence that had been collected at autopsy from the MacDonald victims. Included within this category were 13 plastic vials, marked "BJH 17 Feb 70" and reported to contain fingernail scrapings, hair samples, fibers and vaginal smears taken from the victims at Womack Army Hospital by Major George Gammel, and Captain William Hancock. See Exhibit 1, Item 1, attached.
12. As reflected on Exhibit 1, Item 2 was described as a "Plastic container containing hair samples of 3 year old victim, Christine McDonald (sic), marked BJH, 17 Feb 70". Although I subsequently learned that the

victim's name was actually Kristen MacDonald, for some period of time I was under the misapprehension that her first name was "Christine".

13. Upon returning to Fort Gordon, Georgia, with the evidence that had been collected at Fort Bragg, between February 17-21, 1970, I assumed the duties of custodian and coordinator within the Chemistry Section of USACIL. By this statement I mean that, in addition to performing serological testing of suspected blood stains, I would distribute items to other USACIL chemists for their serological analysis or other examinations, including USACIL Department of Army Civilian (DAC) Chemist Dillard O. Browning.
14. In view of the number of suspected blood stains recovered from the crime scene, four chemists from the USACIL Chemistry Section were assigned to test the stains for the presence of human blood, and if possible, to determine which of the four ABO blood groups was present. Those chemists, in addition to myself, were DAC Janice S. Glisson, and Military Police Corps Specialists Larry Leonard Flinn, and Terry Lee Laber.
15. For the purpose of note taking and report listing, suspected blood stains were given the prefix "D" followed by a number. For example the bloodstained blue pajama top was designated as "D-210".

16. DAC Chemist Dillard O. Browning, was not tasked with conducting serological examinations, but rather was assigned responsibility for the examination and comparison of hairs and fibers, which were generally given an “E” prefix followed by a number.
17. On February 26, 1970, I recorded a number of alpha numeric “D” designations for exhibits D-232 through D-239 which were to be examined for the presence of ABO blood and other trace evidence, but not necessarily by me. I recorded these alpha–numeric designations in my notes in conjunction with the reported origin, or source, of the item to be examined. See Exhibit 2.
18. My notes for February 26, 1970 reflect that D-237 was as follows:  
Vial c/ fingernail scrapings marked “L. Hand Chris”. The quotation marks appear in my notes. See Exhibit 2.
19. The use of quotation marks, and the word “marked” indicates that something bore the writing “L. Hand Chris”, which contained the fingernail scrapings of Christine (sic) MacDonald. That exhibit D-237 was not described as a vial marked *fingernail scrapings L. Hand Chris*, but rather the exhibit was described as a Vial c/ fingernail scrapings marked “ L. Hand Chris” indicates that the words “L. Hand Chris” were



written on some surface (possibly a piece of paper) that was associated with the plastic pill vial.

20. As USACIL chemists determined the results of their serology tests of the "D" designated items, they recorded these results in their notes. These were later recorded on a color coded master chart so that the identity of the particular chemists performing one of the four tests then used to determine ABO blood group would be known. See Exhibit 9 attached.
21. In addition to the color coded chart which listed numerous "D" exhibits, the results, including those obtained by the other three chemists, for each "D" exhibit in numerical order were recorded on a single page. See Exhibits 3-8, attached.
22. My summary notes in relation to the results of the testing of exhibit D-237: Vial containing fingernail scrapings marked "L. Hand Chris" reflect that the results of the Crust test indicated the presence of blood. An examination of the color coded chart, however, reveals that I did not perform any chemical analysis or examination of the fingernail scrapings designated D-237, but rather such blood testing as was possible was conducted by DAC Chemist Janice S. Glisson.
23. Consequently, I have no personal knowledge of what constituted Exhibit D-237, beyond that reflected in my notes referenced above, nor do I

have personal knowledge of any serological or chemical analysis performed on D-237, other than as reported on the color coded chart.

Further your affiant sayeth not.

*Craig S. Chamberlain*

Craig S. Chamberlain, Ph.D.

Subscribed and sworn before me this <sup>9<sup>th</sup></sup> day of October, 2009.

*Lisa L. Jensen*



**SUPPLEMENTAL AFFIDAVIT OF CRAIG S. CHAMBERLAIN**

Craig S. Chamberlain, being duly sworn, does depose and say that:

1. I am the same Craig S. Chamberlain who testified in August 1979 before the United States District Court for the Eastern District of North Carolina in the case of *United States of America v. Jeffrey R. MacDonald*, No. 75-26-CR-3.
2. In May 2005 I retired from 3M Corporation after being employed for 27 years as a research scientist, engaged in research in chemistry/physics at 3M's Corporate Research Laboratories, located in St. Paul, Minnesota.
3. I have a Bachelor of Science (B.S.) degree in Chemistry from California State University at Sacramento, a Master of Science degree in Chemistry (M.S.) from California State University at Sacramento, a Doctorate (Ph.D.) in Chemistry from the University of Illinois at Urbana, and a Bachelor of Science (B.S.) degree in Physics from Augsburg College at Minneapolis.
4. I have been a member of the following scientific organizations/societies: the American Chemical Society, the American Vacuum Society, the American

Association for the Advancement of Science, Pi Lambda Epsilon, Sigma Psi, Sigma Pi Sigma, and the 3M Technical Forum.

5. I have been awarded 23 United States patents in the field of chemistry/physics, with numerous associated foreign patents, and several pending United States patents.
6. I have published 5 papers in peer reviewed scientific journals and 2 papers in trade journals.
7. I have received the 3M Circle of Technical Excellence Award (Corporate and Divisional levels) as well as other 3M awards for my work in the field of chemistry/physics.
8. In 1969, while a graduate student at California State University at Sacramento working toward my M.S. Degree in Chemistry, I was drafted into the U.S. Army. At the time of my induction I had completed 8 units of graduate work toward my M.S. degree.
9. Following basic training at Fort Ord, California, I was assigned as a chemist to the United States Army Criminal Investigation Laboratory (USACIL), Fort Gordon, Georgia. Upon arrival at USACIL I was given a six month intensive course in forensic science, which included instruction in the collection and analysis of blood stains.

10. On February 17, 1970 I was part of a team of USACIL personnel deployed to Fort Bragg, North Carolina, in order to process the MacDonald crime scene located at 544 Castle Drive. I was not present when Colette, Kimberly and Kristen MacDonald were autopsied at Womack Army Hospital on Fort Bragg.
11. On February 21, 1970, prior to departing Fort Bragg, North Carolina, and returning to USACIL, I received from CID Special Agent Bennie J. Hawkins, numerous items of evidence that had been collected at autopsy from the MacDonald victims. Included within this category were 13 plastic vials, marked "BJH 17 Feb 70" and reported to contain fingernail scrapings, hair samples, fibers and vaginal smears taken from the victims at Womack Army Hospital by Major George Gammel, and Captain William Hancock. See Exhibit 1, Item 1, attached.
12. As reflected on Exhibit 1, Item 2 was described as a "Plastic container containing hair samples of 3 year old victim, Christine McDonald (sic), marked BJH, 17 Feb 70". Although I subsequently learned that the victim's name was actually Kristen MacDonald, for some period of time I was under the misapprehension that her first name was "Christine".
13. Upon returning to Fort Gordon, Georgia, with the evidence that had been collected at Fort Bragg, between February 17-21, 1970, I assumed the duties of

custodian and coordinator within the Chemistry Section of USACIL. By this statement I mean that, in addition to performing serological testing of suspected blood stains, I would distribute items to other USACIL chemists for their serological analysis or other examinations, including USACIL Department of Army Civilian (DAC) Chemist Dillard O. Browning.

14. In view of the number of suspected blood stains recovered from the crime scene, four chemists from the USACIL Chemistry Section were assigned to test the stains for the presence of human blood, and if possible, to determine which of the four ABO blood groups was present. Those chemists, in addition to myself, were DAC Janice S. Glisson, and Military Police Corps Specialists Larry Leonard Flinn, and Terry Lee Laber.
  15. For the purpose of note taking and report listing, suspected blood stains were given the prefix "D" followed by a number. For example the bloodstained blue pajama top was designated as "D-210".
  16. DAC Chemist Dillard O. Browning, was not tasked with conducting serological examinations, but rather was assigned responsibility for the examination and comparison of hairs and fibers, which were generally given an "E" prefix followed by a number.
-

17. On February 26, 1970, I recorded a number of alpha numeric "D" designations for exhibits D-232 through D-239 which were to be examined for the presence of ABO blood and other trace evidence, but not necessarily by me. I recorded these alpha-numeric designations in my notes in conjunction with the reported origin, or source, of the item to be examined. See Exhibit 2.
18. My notes for February 26, 1970 reflect that D-237 was as follows: Vial c/ fingernail scrapings marked "L. Hand Chris". The quotation marks appear in my notes. See Exhibit 2.
19. The use of quotation marks, and the word "marked" indicates that something bore the writing "L. Hand Chris", which contained the fingernail scrapings of Christine (sic) MacDonald. That exhibit D-237 was not described as a vial marked *fingernail scrapings L. Hand Chris*, but rather the exhibit was described as a Vial c/ fingernail scrapings marked " L. Hand Chris" indicates that the words "L. Hand Chris" were written on some surface (possibly a piece of paper) that was associated with the plastic pill vial.
20. As USACIL chemists determined the results of their serology tests of the "D" designated items, they recorded these results in their notes. These were later recorded on a color coded master chart so that the identity of the particular chemists performing one of the four tests then used to determine ABO blood group would be known. See Exhibit 9 attached.

21. In addition to the color coded chart which listed numerous "D" exhibits, the results, including those obtained by the other three chemists, for each "D" exhibit in numerical order were recorded on a single page. See Exhibits 3-8, attached.
22. My summary notes in relation to the results of the testing of exhibit D-237: Vial containing fingernail scrapings marked "L. Hand Chris" reflect that the results of the Crust test indicated the presence of blood. An examination of the color coded chart, however, reveals that I did not perform any chemical analysis or examination of the fingernail scrapings designated D-237, but rather such blood testing as was possible was conducted by DAC Chemist Janice S. Glisson.
23. Consequently, I have no personal knowledge of what constituted Exhibit D-237, beyond that reflected in my notes referenced above, nor do I have personal knowledge of any serological or chemical analysis performed on D-237, other than as reported on the color coded chart.
24. This affidavit supplements my prior affidavit of October 9, 2009, based upon additional documents that I have been furnished in the interim and asked to review.
25. I have been furnished copies of the documents filed on July 15, 2010 in the



"Government's Supplemental Appendix to Appellee's Supplemental Brief" at G.S.A.21-G.S.A.37 (Document 3 below) and on August 2, 2010 with the United States Court of Appeals for the Fourth Circuit as an Addendum to the Supplemental Reply Brief Of Appellant Jeffrey R. MacDonald (Document 108) in United States of America v. Jeffrey R. MacDonald, Case No. 08-8525, on August 2, 2010, and consisting of:

- (1) a two page DA- Form 19-31, Military Police Receipt For Property, marked SV-2-59- 70, from Detachment B, 3d MP Group (CI), Fort Bragg, North Carolina, pertaining to items received from the Pathology Department, Womack Army Hospital, Fort Bragg, North Carolina on February 17, 1970;
- (2) a one page inventory of evidence to be examined dated "26 Feb 70" and bearing my initials "CSC"; and
- (3) the Preliminary Laboratory Report Number FA-D-P-C-FP-82-70 of the U.S. Army Criminal Investigation Laboratory, Fort Gordon, Georgia, dated "6 Apr 70".

26. With respect to document "1" described in paragraph 25 above, it appears to be a redacted copy of a sub- voucher of voucher 59-70 which is attached as Exhibit 1 to this affidavit, and to my affidavit of October 9, 2009, and is addressed in

paragraphs 11-12 above, and in paragraphs 11-12 of my affidavit of October 9, 2009.

27. With respect to document "2" described in paragraph 25 above, it appears to be a copy of a document, partially in my handwriting,\* that I prepared on February 26, 1970, in which I recorded alpha- numeric designations for exhibits to be examined, but not necessarily by me, for the presence of ABO blood and other trace evidence which is attached as Exhibit 2 to this affidavit and as Exhibit 2 to my affidavit of October 9, 2009, and is addressed in paragraphs 17- 19 above, and in paragraphs 17-19 of my affidavit of October 9, 2009.

\* My use of the phrase "partially in my handwriting" above is to reflect the fact that the descriptions which follow the alpha-numeric designations "D-230" and "D-231", and the parenthetical phrase relating to those exhibits, are not in my handwriting. The alpha-numeric designations "D-230" and "D-231" which replace the same crossed out alpha-numeric designations are in my handwriting. With respect to the alpha-numeric "D-232" through "D-239" and the descriptions which follow those designations, both are in my handwriting.

28. I have been provided with a copy of Exhibit 1 to the Affidavit of Janice Glisson (Exhibit 10 to this affidavit), which appears to be a laboratory bench note reflecting Crust test results dated "9 March 70", in case P-C-FP-82-70, bearing

the initials "JSG". My attention has been drawn to the column of alpha-numeric designations "D-233" through "D-239" which appears in the lower right hand corner of Glisson Exhibit 1 ( my Exhibit 10) and in juxtaposition to the description of the items from Womack Army Hospital subjected to the Crust test. For example, the sample described on the left as "L. Hand Chris", which appears not to be my handwriting, is in juxtaposition to the alpha-numeric designation "D-237" on the right, which looks like it is in my handwriting. The alpha-numeric designations "D-233 through D239" also looks like the handwritten designations for the same alpha-numeric designations which appear on Exhibit 2 of this affidavit, and which I did write.

29. I have no present recollection in 2011 of having written the alpha- numeric designations D-233 through D-239 on the March 9, 1970 serology bench note. The absence of any alpha-numeric designations on the left hand side of the bench note for the 7 items described only by place of origin by the serologist ( e.g. "L. Hand Chris"), and the fact that both the alpha-numeric designations and place of origin descriptions found in my list of February 26, 1970 ( Exhibit 2 of my affidavit) reflect the combined total information of the left and right hand sides of Glisson Exhibit 1 ( Exhibit 10 of this affidavit), is consistent with the following inferences: Sometime between March 9, 1970, and the issuance of the CID Preliminary Laboratory Report of April 6, 1970 (Glisson Exhibit 12, Exhibit 11 of this affidavit) the serology test results for the items from Womack Army Hospital described by place of origin on the bench note were collated with

the alpha-numeric designations D-233 through D-239 reflected in my inventory list of February 26, 1970 (Exhibit 2 of this affidavit). The serology test results for the evidence examined on March 9, 1970 from "L. Hand Chris" are described in the CID Preliminary Laboratory Report of April 6, 1970, at page 7 under "Evidence Examined" as "D-237- Fingernail scrapings from left hand of Christine MacDonald", and at page 13, paragraph 20: "Examinations of the red brown stains of Exhibits...D-237...indicated the presence of blood. Further examinations were precluded due to the paucity of the stain."

Further your affiant sayeth not.

*Craig S. Chamberlain*

Craig S. Chamberlain, Ph.D.

Subscribed and sworn before me this...27.....day of June, 2011.



*Louise Borowicz Sparkman*

**AFFIDAVIT OF DILLARD O. BROWNING**

Dillard O. Browning being duly sworn does depose and say :

1. I am the same Dillard O. Browning who testified as an expert witness to trace evidence examinations before the United States District Court for the Eastern District of North Carolina, in Raleigh, North Carolina in the 1979 trial of *United States of America v. Jeffrey R. MacDonald*. I also testified on October 23, 1974 in Raleigh before the federal Grand Jury that was investigating the deaths of Colette, Kimberly and Kristen MacDonald.
  
2. In 1951 I received a Bachelor of Science Degree with a double major in chemistry and biology from George Peabody College ( subsequently part of Vanderbilt University) in Nashville, Tennessee. Following graduation I was employed as a chemist by Dupont Corporation at its Savannah River Plant for approximately ten years. After leaving Dupont I was employed by Monsanto Corporation in Augusta, Georgia for approximately eighteen months. In the spring of 1964 I applied for a position as a forensic chemist with the U.S. Army's Criminal Investigation Laboratory (USACIL), then

located at Fort Gordon, Georgia. After completing a course in2 biochemistry in Augusta, Georgia, I re-applied for the position and was hired as a forensic chemist. After completing a program of instruction at USACIL, I was assigned general duties as a forensic chemist in the laboratory. From November, 1966 to November 1969, I served as the Chief Chemist at the USACIL in Frankfurt, Germany. Upon completing that tour, I returned to the Chemistry Section of USACIL, Fort Gordon, Georgia, and remained there until January, 1973 when I was offered the Chief Chemist position at the USACIL located in Tokyo, Japan. After completing that tour I returned to USACIL Fort Gordon, Georgia in 1976, where I continued to be employed as a forensic chemist including during the period of the trial of this case.

3. At the time of the MacDonald murders in February 1970, I was employed as a forensic chemist in the Chemistry Section of USACIL, Fort Gordon. I did not go to the crime scene, nor attend the autopsy of the victims at Fort Bragg, North Carolina, and consequently never collected any of the evidence recovered from either the crime scene or at autopsy. All of my work in connection with this case involved the examination of items which

had been collected in the first instance by Army Criminal Investigators (CID). I have no personal knowledge of where evidence was collected at the crime scene. For purposes of my laboratory bench notes and USACIL reports I relied upon the information provided by the CID Agents and USACIL personnel who had actually processed the crime scene and collected the evidentiary items for me to examine. In addition to the information provided by the investigators as to where an item was collected, where possible, I would also collate that information in my bench notes with what I had also learned about the identity of the victim, and where the victim's body was found. For example, if the investigators described something as being recovered in relation to the body found in the master bedroom , and by the time of my examination I had also learned that Colette MacDonald's body was found on the floor of the master bedroom, then I would include that additional information in my bench notes . In the event of a variance between the description of the location where evidence was found, recorded contemporaneously by the investigators who collected the evidence at the scene, and the description in my bench notes, the evidence collector's description controls as to where and when the evidence was collected.

4. Upon the return of the USACIL team which had collected or taken custody of the evidence at Fort Bragg, I was assigned responsibility within the Chemistry Section for the examination of all trace evidence, with the exception of the testing of suspected blood stains. In particular I was responsible for the examination of hairs, fibers, wood, paint and wax. I conducted no chemical analysis or serology testing of any suspected blood stains in connection with the MacDonald murders. Any reference in my bench notes to an item being "bloodstained" is based upon my visual observation of stains, in light of my experience as a forensic chemist.
  
5. On or about March 20, 1970 I was furnished with, among other exhibits, a vial further contained in a zip-lock type plastic bag, which had been marked for identification with a piece of masking tape upon which had been written:

Fibers & Debris from Area of Trunk & Legs  
of Rug under body- Master bed Room  
WFI-RBS 16 Mar 70 (14)

Also written on the piece of masking tape affixed to the bag is the designation " E-303", "P-C-FP-82-70" (the USACIL case number) and my initials "DOB". See Exhibit 1 (Photo # 33).



6. My bench notes for March 20, 1970, in pertinent part, state:

Exhibit E-303 - Fibers and debris from under the trunk and legs of Colette MacDonald in MBR- Vial contained numerous purple multi strand cotton fibers similar to the purple strand threads used to sew the seams of Exhibit D-210. Also several blue cotton /polyester multi strand fiber identical to the cotton polyester material of Exhibit D-210\*- one long green/brown cotton fiber, bloodstained- one human pubic or body hair, no comparison due to lack of knowns- Several pieces of wood identical to the wood of Exhibit A  
Two pieces of yellow tissue paper with bloodstains

(Emphasis in original) See Exhibit 2 ( See Also Def. App One, Tab 7).

By way of explanation, "Exhibit D-210" was the USACIL exhibit number for the blue pajama top reportedly found at the crime scene draped on Colette MacDonald's chest. My use of the asterisk symbol in relation to the cotton/polyester fibers identical to the material of "Exhibit D-210\*" was to record that the fibers visually appeared to be bloodstained.

7. As I conducted no further examination of the hair referenced in my notes regarding Exhibit E-303, due to a lack of known hairs for comparison

purposes, I can only attest that it was a human pubic or body hair.

8. On March 9, 1970 I was conducting examination of various exhibits in the MacDonald case for hairs and fibers of possible evidentiary significance.

My notes with respect to what had been designated "Exhibit # 237" state:

- Fingernail scrapings from Kimberly's Christine's left hand- Vial contains one microscopic piece of multi strand polyester/cotton fiber identical to the pajama top material Bloodstained but washed. See Exhibit 3, (emphasis in original).

The "pajama top" to which I refer was designated Exhibit "D-210" .

9. When I testified before the Grand Jury on October 23, 1974 concerning my discovery of the fiber in the fingernail scrapings (Exhibit #-237) and my microscopic comparison of that fiber with the polyester/ cotton material of the pajama top ( Exhibit D-210), my recollection of those events was fresher than it is today. See Exhibit 4 at pages 36, 54-56.

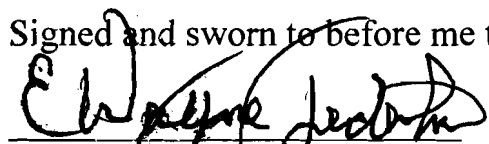
10. There is no question in my mind, however, that what I removed from the bloody fingernail scrapings of Exhibit # 237 was a fiber, and not a hair.

- 11. This fiber was extremely small and required needle tweezers to separate it from the blood. After it was microscopically compared to the material of the pajama top, I did not return the fiber to the pill vial. To the best of my recollection it was consumed in the course of further examinations.
- 12. The residual fingernail scrapings from Exhibit # 237 were turned over to Janice Glisson so that she could attempt to type the blood.
- 13. I have no personal knowledge of the serology testing of the fingernail scrapings from Kristen MacDonald's left hand, nor of any subsequent examinations of the residual contents of the vial in which they had been contained.

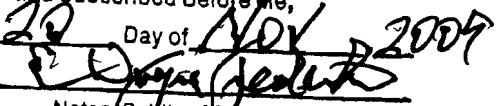
Further your affiant sayeth not.

  
 \_\_\_\_\_  
 Dillard O. Browning

Signed and sworn to before me this 20<sup>th</sup> day of Nov, 2009

  
 \_\_\_\_\_  
 Notary Public

My commission expires March 14, 2016

Sworn to and Subscribed Before Me,  
 This 20 Day of NOV, 2009  
 Signed:   
 \_\_\_\_\_  
 Notary Public of South Carolina  
 My Commission Expires: March 14, 2016

**UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 No. 75-CR-26-3**

---

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	
v.	)	
	)	
<b>JEFFREY R. MacDONALD</b>	)	
Movant	)	
	)	
	)	

---

**AFFIDAVIT OF GRANT D. GRAHAM, SR.**

**Grant D. Graham, Sr., being duly sworn does depose and say that:**

1. I am currently employed by the Mississippi Bureau of Investigation – Crime Scene Unit as a Senior Crime Scene Analyst, Forensic Scientist 5, Region Team Leader with responsibility for providing on-call, full service crime scene examinations and reconstruction, and training expertise to federal, state, and local law enforcement agencies throughout the state of Mississippi.
  
2. Prior to my employment with the Mississippi Bureau of Investigation, I served in the United States Air Force for a period of 20 years and 11 months and retired on August 31, 2000 with the rank of Master Sergeant.

3. **While in the Air Force I was trained as a Security Police Law Enforcement Specialist.**
4. **In 1997 I received a Master of Forensic Sciences Degree from National University.**
5. **In 1998 I attended a two week course given by the FBI Laboratory entitled Introduction to Hairs and Fibers, which involved training in the use of the microscope for the examination of hair and fiber trace evidence as well as being able to distinguish between hairs of human or animal origin. The course also included instruction on the basic structure and nomenclature of human hairs, and use of the microscope scale to measure items being viewed. I also received instruction in the use of the microscope while completing my Master of Forensic Sciences graduate studies at National University.**
6. **While I was on active duty in the U.S. Air Force and was assigned as the Chief, Forensic Trace Materials Analysis Laboratory, Office of The Armed Forces Medical Examiner (OAFME), Armed Forces Institute of Pathology (AFIP) in Rockville, Maryland, I received in-house training in the use of the OAFME microscope camera system to obtain photomicrographs.**
7. **I have never been qualified in any State or Federal Court of the United States, including courts-martial, as an expert in the forensic examination or comparison of hairs, and consequently have never testified as such.**
8. **In 1999, I was on active duty in the U.S. Air Force assigned to the OAFME, which was co-located with the Armed Forces DNA Identification Laboratory (AFDIL).**

9. As the Chief of the Forensic Trace Materials Laboratory my normal responsibilities included examining and preparing reports for bloodstain pattern analysis, alternate light source examinations, crime scene analysis, and assisting in autopsy and anthropology examinations. Extended responsibilities included independently processing aircraft mishaps, buried human remains and other death scenes for significant forensic evidence; performing crime and mishap scene, autopsy, laboratory, microscopic, and alternate light source photography.
10. In 1999, I was informed that the order of the United States District Court for the Eastern District of North Carolina dated March 26, 1999, the independent laboratory to be designated by the Court to conduct DNA testing of biological matter in *United States v. Jeffrey R. MacDonald* was required to conduct a divisibility analysis of the exhibits to determine which were divisible between the parties. AFIP was subsequently designated by the Court as the independent laboratory.
11. Because the Armed Forces DNA Identification Laboratory (AFDIL), a component of AFIP, lacked the in-house capacity to conduct microscopic examinations of biological matter, including hairs, for either divisibility or suitability for DNA testing purposes, assistance from the OAFME was requested<sup>1</sup>.

---

1

As explained to me, the term "suitability" in relation to nuclear and mitochondrial DNA testing depends on a number of factors, including the presence or absence of a hair root, and whether or not the root has follicular tissue attached. I was advised by AFDIL, as a general matter, that mitochondrial DNA testing could be conducted on hair shafts that had no roots, however, nuclear DNA testing required the presence of a hair root with some follicular tissue. My role in determining the divisibility of hairs for DNA testing was essentially limited to the measurement of the length and width of the hair, and providing that data to AFDIL for their determination as to the divisibility of the hair.

12. Subsequently, and with the express agreement of counsel for both sides, as well as defendant Jeffrey MacDonald, I was designated by AFIP to conduct microscopic examination of slides believed to contain hairs or other biological matter including possible blood.
13. Pursuant to agreement of the parties, and the requirements of AFDIL, my role was strictly limited to gathering data relevant to the issues of the suitability and divisibility of the biological evidence for DNA testing purposes only. Determination of suitability for DNA testing was to be determined by AFDIL personnel.
14. Specifically, I was to determine the following: (a) whether human hair was present on the slide, (b) the length of the hair, (c) the shaft diameter of the hair, (d) whether the hair had a root, (e) whether there was also follicular tissue present, and (e) whether there was possible blood present either on the hair or some other item on the slide. In observing for the presence of possible blood, I looked for the presence of a red – reddish brown in color substance/debris. I was not asked to make any determination with respect to whether a hair was forcibly removed or fell out naturally, and would not have been competent to do so. I was not permitted to alter the microscopic slides in any fashion or to remove any hair, collect any item, including possible blood, or otherwise change the evidence.
15. In accordance with standard operating procedures as OAFME/AFIP I proceeded to photograph the evidence I was asked to examine, starting with the packaging of the evidence as received by me and continuing through the process of microscopic examination of the slides. The body of the camera was attached to the microscope by means of an adapter. The camera was also attached to a computerized exposure meter that also functioned as the shutter release for the camera. In this process, in connection with AFDIL case No. 99C-0438, I exposed 16 rolls of Fujichrome 64

T (Tungsten) film, which were subsequently developed as slides. As I was photographing the evidence containers, and photographing the specimens mounted on glass slides, I maintained a Photographic Log for each roll of film which identified each specimen by AFDIL number, and further described each exposure. A copy of my photographic log for Case No. 99C-0438 is attached at Tab 1.

16. In addition to my Photographic Log, I made bench notes contemporaneously with my detailed examination of the contents of the slides, which were recorded on AFIP/OAFME Trace Materials Analysis Notes forms. Attached at Tab 2 are eight consecutively numbered pages of my bench notes.
17. The results of my divisibility measurements and examination of the hairs described above was detailed in the OAFME Forensic Trace Materials Analysis Laboratory Examination Report of November 30, 1999. An Addendum to this report was Dated December 20, 1999. Both documents are attached at Tab 3.
18. I have been furnished copies of Jeffrey MacDonald's Motion To Add An Additional Predicate To His Previously Filed Motion Under 28 U.S.C. Section 2255 and the accompanying Memorandum Of Evidence And Points And Authorities In Support of Petitioner's Motion To Add An Additional Predicate, both relating to the results of the DNA testing. I have no personal knowledge of the circumstances or actual location in which the hairs in specimens 91A, 75A, nor 58A1 were found or collected. Nor do I have any knowledge of the results of the DNA testing by AFDIL, or of any previous examinations by the FBI or CID laboratories. I can only attest to what I personally observed, or did not observe, when examining these three hairs under the microscope for the limited purposes of suitability and divisibility for DNA testing. I can further attest to the actual terminology that I used for those limited purposes in my contemporaneous bench notes and subsequent reports. I can not offer an expert opinion which is beyond



my level of knowledge, training, and experience. In the paragraphs which follow I set forth what I previously wrote with respect to each of these exhibits.

19. As reflected in my bench notes for 30 November 99, in regard to Specimen 91A, I wrote:

**“Slide 99C-0438-91A: Slide is in poor condition due to mounting medium being on top of cover slip. Contains unknown debris & yellow fibrous material that has red in color substance adhering to it that could be blood. Fiber marked with black dot and “1” for better identification. Contains one human hair with root but no tissue. Hair is approximately 29.4 [symbol for microns] wide, approx. 5mm long.” See Tab 2.**

**Descriptive language virtually identical to that of the bench notes appears in my typewritten report of November 30, 1999:**

**“Slide 99c-0438-91A : The slide is in poor condition with dried mounting medium on top of the cover slip. Contains one fiber with red adhering material that appears to be blood. Fiber marked with black dot and “1” for better identification. Also contains one (1) human hair with root but no tissue. Hair is white in color, approximately 5mm long, approximate maximum shaft diameter 29.4 [symbol for microns].” See Tab 3.**

I did not describe the single hair in Specimen 91A in my bench notes (Tab 2) as being a hair with “the hair root in tact”(sic) or as having an “intact root”. By use of the term “with root but no tissue” in reference to the 91A hair, I did not expressly, or by implication, offer any opinion as to whether the hair was naturally shed or forcibly removed, nor could I offer such an expert opinion. Nor did I describe the hair in Specimen 91A as having blood or suspected blood on the hair.

20. As reflected in my bench notes of 30 November 99, with respect to AFDIL Specimen 75A I stated the following:

“Slide 99C-0438-75A: Contains 1 human hair with root and follicular tissue. Hair is approximately 132.3 [symbol for microns] wide, approximately 63 mm long and medium blond to dark golden brown in color. Has splits along shaft & buckling. See Tab 2.

My typewritten OAFME Report of November 30, 1999 states as follows:

“ Slide 99C-0438-75A: Contains one human hair, approximately 63 mm long, approximate maximum shaft diameter is 132.3 [symbol for microns]. The hair has a root and adhering follicular tissue.” See Tab 3.

I did not describe Specimen75A as being a “hair with root and follicle intact”. In describing the 75A hair as having “a root with adhering follicular tissue” I did not expressly, or by implication, offer any opinion as to whether this hair was naturally shed or forcibly removed, nor could I offer such an expert opinion.

21. As reflected in my bench notes of 30 November 99 with respect to AFDIL Specimen 58A I stated the following:

“Slide 99C-0438-58A: Contains two human hairs. Both have roots but no tissue. Hair not marked with red dot is dark golden brown in color; end is cut. The hair marked with a red dot has a slightly rounded tip. The hair marked with a red dot is approximately 102.9 [symbol for microns] wide and approximately 43 mm long. The other hair is approximately 73.5 [symbol for microns] wide & approximately 5mm long. For identification purposes, the hair not marked with a red dot is numbered “1” and the other hair is numbered “2”.” See Tab 2.

My bench notes do not state, that hair No.1, the dark golden brown hair not marked with a red dot (AFDIL Specimen 58A(1) "is a hair with root intact". Rather, the description in my notes pertaining to hair No. 1 and hair No.2 states that "both have roots but no tissue". I did not expressly, or by implication, offer any opinion as to whether either hair No. 1, or hair No.2, in specimen 58A was naturally shed or forcibly removed, nor could I offer any such expert opinion.

My typed OAFME Report of November 30, 1999, states as follows:

"Slide 99C-0438-58A: Contains two (2) human hairs with roots but no tissue.

Hairs marked "1, 2" for better identification.

- a. Hair #1: Dark golden brown in color, approximately 5mm long, approximate maximum shaft diameter 73.5 [symbol for microns].
- b. Hair # 2: Blond in color, approximately 43mm long, approximate maximum shaft diameter 201.9 [symbol for microns]. See Tab 3.

My statement above with respect to my notes on Specimen 58A applies equally to my report concerning Specimen 58A.

22. As of this date, I have had no communication with any member of the MacDonald defense team regarding my examination of Specimens 91A, 75A or 58A, or my bench notes and typewritten report relating to those examinations, or any photographic images of those Specimens or my Photographic Log.

Further your Affiant sayeth not.

*Grant D. Graham, Sr.*

Grant D. Graham, Sr.

Subscribed to and sworn before me this 8<sup>th</sup> day of September 2007.

Notary: *Almetrius J. Brown*

My Commission expires My Commission Expires Feb 20 2009



### Affidavit of Janice S. Glisson

Janice S. Glisson, being duly sworn does depose and say :

1. I am the same Janice S. Glisson who testified as a summary witness to the serology test results in the 1979 trial of *United States of America v. Jeffrey R. MacDonald*, before the United States District Court for the Eastern District of North Carolina, in Raleigh, North Carolina.
  
2. I graduated from Skidmore College in Saratoga Springs, New York, in 1945 with a major in chemistry and a minor in biology. Between that time and 1967, with the exception of a brief retirement to raise three children, I was employed as a chemist or laboratory technologist in clinical laboratories of various hospitals, including Columbia Presbyterian Hospital in New York City, Oliver General Army Hospital, Augusta, Georgia, the Veterans Administration Hospital, Augusta, Georgia, and the Division of Hematology at Talmadge Hospital, the Medical College of Georgia.

3. From April of 1967 until my retirement in September 1983 I was employed by the United States Army Criminal Investigation (CID) Laboratory as a criminalist practicing forensic chemistry.
4. After joining the Army CID laboratory (USACIL), I was trained for approximately six months in the fields of serology, trace evidence, including: hair, fibers, soil, glass and paint analysis, as well as drug analysis. In 1979, I was named Chief of the Serology branch of the Chemistry Section, a position I retained until my retirement.
5. I first became associated with the analysis of evidence in the MacDonald murders case in February 1970. At that time I was a civilian chemist in the Chemistry Section of the Army CID Laboratory. My primary responsibility in this case included examining and typing the body fluid evidence, principally dried bloodstains, collected at the crime scene or at autopsy. Commencing in July 1970, I also performed some hair examinations and comparisons.

6. Because of the volume of evidence in the MacDonald case to be examined by the Chemistry Section it was decided that the processing of the suspected blood exhibits, using the then current technology of the ABO system, would be performed by myself, and three enlisted chemists to whom I was senior in experience. Those chemists were Specialist Four Terry L. Laber, Specialist Four Craig S. Chamberlain and Specialist Five Larry L. Flinn. Suspected blood exhibits were designated with a "D" prefix and a number. Exhibits believed to contain, hairs, fibers, wood, wax and other miscellaneous forms of trace evidence were also given alpha-numeric designations, and were given to civilian chemist Dillard O. Browning, who was responsible for conducting examination of these items. Exhibits believed to contain hairs or fibers were designated "E" plus a number. These designations were reflected in laboratory bench notes and USACIL reports but were not always marked on the exhibits themselves.
7. Specialist Craig Chamberlain had been to the MacDonald quarters on Fort Bragg as part of the USACIL team that processed the crime scene, and had accepted custody of numerous items of evidence before returning with them to USACIL, Fort Gordon, Georgia. Upon his return to the laboratory Craig

Chamberlain continued to act as evidence custodian and coordinated the alpha-numeric designation of exhibits, as well as the distribution of the evidence to the other chemists for examinations within their areas of responsibility.

8. On or before March 9, 1970 I performed the benzidine test, which detects the presence of blood, on a number of exhibits, including what had been designated as "237", and obtained a positive result indicating the presence of blood. (Exhibit 17) Although I have no present recollection of what I relied upon for the origin of exhibit "237", I must have obtained that numerical designation from Craig Chamberlain who acted as the evidence custodian.
  
9. My notes for March 9, 1970 reflect that I repeated the Lattes, or crust test, which detects the presence of antibodies in bloodstains, on numerous exhibits that had previously been subjected to the crust test by myself or other USACIL chemists. (Exhibit 1). Included within this group of exhibits was what had been presented to me as the fingernail scrapings from the left hand of the victim subsequently identified as the younger MacDonald



daughter, Kristen . Id. My notes for March 9, indicate that I may have initially thought the smaller, or younger, daughter's name was "Kim", because I crossed out the word "Kim". After that misunderstanding was corrected , I was apparently still under the impression that the smaller child's name was "Chris" or "Christine". Id. I make this statement because my notes reflect that I have written : " L. Hand ~~Kim~~ Chris" and "smaller child". My notes further reflect that the crust test on the fingernail scrapings from Kristen's left hand did not reveal the presence of either the Anti A or Anti B antibody. This result means that either the blood was from someone with Type AB blood (which has no antibodies), such as Kimberly MacDonald, or more likely given the paucity of the test sample, that there was not enough blood to reveal the presence of any antibody.<sup>1</sup> I have some recollection of being asked by Craig Chamberlain to perform this repeat crust test.

---

<sup>1</sup>Kristen MacDonald had Type O blood, which has both the Anti A and Anti B antibodies. The crust test results for Kristen's right hand ( D-238) indicated the presence of Type O blood. See Exhibits 1 and 13¶19.

10. As reflected in my bench note of March 9, 1970 (Exhibit 1), most of the exhibits tested I referred to only by number (e.g. "64NB"), rather than by description of origin, which indicates that they were already marked with the number reflected in my notes. The items from the victims hands, which I have listed in the extreme left hand column of Exhibit 1 are described by their place of origin ( e.g. "R. Hand Mother"), rather than by numerical designation. The column of numerical designations "D-233 to D-239", which appears on the extreme right hand side of Exhibit 1, was not written by me. Rather it appears to resemble the handwriting of Craig Chamberlain, and may have been written by him later to correlate my test results with the alpha-numeric designations which he had previously assigned to these exhibits. See Exhibit 6, and ¶ 11 *infra*.

11. As to how I came to write the description " L. Hand Chris" in my notes of March 9, 1970 I can state that I had no personal knowledge of the collection of this exhibit because I was not present at the autopsy of Kristen MacDonald. I have some recollection of receiving the fingernail scrapings from Dillard Browning before conducting the crust test that had been requested by Craig Chamberlain. It was my usual practice to record in my

notes whatever information about the origin of the evidence submitted to me for examination was marked on the evidence itself, or its container, although I did not invariably put this description in quotation marks in my notes. See ¶ 17, *infra*, and Exhibit 2. The pill vial into which the fingernail scrapings from Kristen's left hand were reportedly collected at autopsy, and which I subsequently examined on July 27, 1970 ( Exhibit 2 *infra*), is not marked "237", "D-237", or "L. Hand Chris". See Photos 311-312 (Exhibits 3, 4, respectively ). Nor is the remaining ruled piece of paper ( Photo 314, Exhibit 7 ) so marked but upon which appear the printed words:

Fingernail scrapings  
Left hand  
smaller female McDonald

My notes for March 9, 1970 (Exhibit 1) make no reference to a vial in relation to "L. Hand Chris", although the fingernail scrapings must have been in some form of container reflecting their source because I would not have accepted them for analysis if they had been loose and their origin was not provided. Consequently, I must have received the fingernail scrapings from Kristen's left hand in a container. I have examined the inventory of the vials containing the fingernail scrapings from the three victims prepared

on February 26, 1970 by Craig Chamberlain in which he has designated Exhibits "D-233" through "D-238", and in each case he has written that the scrapings- as opposed to the vial- were "marked" and followed the word "marked" with the identity of the victim and the location from which the scrapings were collected. The descriptions appear in quotation marks in the original. (Exhibit 6). For example, Chamberlain had written:

D-237 Vial c/fingernail scrapings marked "L. Hand Chris" .

12. Although I have not put the description - L. Hand Chris - in quotation marks in my notes, I have written the identical words describing the origin of these fingernail scrapings. See Exhibit 1. These circumstances, coupled with the fact that, by their very composition, fingernail scrapings themselves can not be written upon, or otherwise directly marked for identification, cause me to conclude that the fingernail scrapings from the left hand of Kristen MacDonald, upon which I performed the benzidine test that indicated the presence of blood, and the crust test which revealed no antibodies, were furnished to me, not in a vial, but in some form of container which had previously been marked for identification: "L. Hand Chris". I must have obtained the descriptive information "L. Hand Chris"

recorded in my notes of March 9, 1970, from what was written on the container in which the fingernail scrapings were furnished to me. Although I have no present recollection of the type of container which was marked for identification "L. Hand Chris", the use of a piece of laboratory filter paper to initially receive the scrapings, which was then folded to further contain them within the vial, would not have been inconsistent with the forensic practices of the time. And in fact this procedure was apparently utilized by the pathologists in this case to collect the debris removed from the area around the mouth of Colette MacDonald, before placing it in the vial. This was in addition to a ruled piece of paper marked "Mother area around mouth" which was also placed in vial #1. See Photos 288-289, Exhibits 8 and 9, respectively, and Exhibit 10.

13. My notes of March 9, 1970 pertaining to the crust test on "L. Hand Chris" make no mention of a hair. (Exhibit 1). Had I, at anytime, discovered a hair within the bloody fingernail scrapings I would have recorded its presence. See Exhibit 2 and ¶¶ 18-19. I have no recollection, knowledge, or other basis, therefore, to state that a hair was contained within the fingernail scrapings "L. Hand Chris" (designated "237" or "D-237" by

Craig Chamberlain), or that chemical analysis which indicated the presence of blood was performed on any hair that was reported in connection with Exhibit 237 or D-237. "Exhibit D-237", is listed in the USACIL Preliminary Laboratory Report of April 6, 1970, and described as "Fingernail scrapings from left hand of Christine (sic) MacDonald".

(Exhibit 12). The serology results for Exhibit D-237 are found in ¶20 of Exhibit 12, and reflect, in pertinent part, that "examination of the red brown stains of Exhibits... D-237...indicated the presence of blood. Further Examinations were precluded due to the paucity of the stain." Id. I can state that these results, based upon the benzidine test, are in relation to the fingernail scrapings themselves, and not in relation to any chemical analysis of any hair, because I did not perform any chemical analysis for the presence of blood on any hair in this case. The same observation applies equally to the USACIL Consolidated Laboratory Report serology results in relation to the examination of Exhibit D-237- "Fingernail scrapings from left hand of Kristen MacDonald". (Exhibit 13). Other than correcting "Christine" to "Kristen" the Consolidated Report merely repeats the benzidine test results at page C-3, ¶ 27, which were previously reported in the Preliminary Report. (Exhibit 12). The same observation also applies to

the tabulation of blood test results ("Incl. 5") and the tabulation of blood test results in conjunction with hair, fiber and other examination results performed by Dillard Browning ("Incl.6"). (See Exhibits 14 and 15, respectively).

14. In Jeffrey MacDonald's Memorandum Of Evidence And Points And Authorities, filed March 22, 2006, in support of his Motion to Add An Additional Predicate to His Previously Filed Motion Under 28 U.S.C. Section 2255, he states at page 8 that:

In the undated U.S. Army Chart of Exhibit Findings, which underwent chemical analysis, Item D-237 is listed as "Fingernail scrapings from the left hand of Kristen MacDonald," *and it is noted that the chemical analysis of the hair indicated a finding of blood on the hair.* [Attached in Appendix 1, Tab 3 (p.34).]  
(Emphasis supplied)

This statement is not accurate because the only chemical analysis in relation to the fingernail scrapings designated "237" or "D-237" that I did was on the fingernail scrapings themselves, and did not involve any hair.

15. During the course of the Article 32 UCMJ hearings in July 1970, and due to the temporary unavailability of Dillard Browning who had previously been conducting all hair examinations, I was assigned to compare the known hair exemplars of Jeffrey MacDonald with hairs recovered from the hands of Colette MacDonald. As I recall, this examination request was considered urgent because of the ongoing Article 32 hearings, and could not be deferred until Dillard Browning's return to USACIL.
  
16. On July 27, 1970 I received from the Fort Bragg CID thirteen plastic vials reported to contain fingernail scrapings, hair samples and other items collected from the MacDonald victims at autopsy. (Exhibit 2). When I received the vials they were not numbered, and were otherwise unmarked except that " 17 Feb70 BJH" had been marked on the bottom of each vial. I numbered the thirteen vials "1" through "13", and also marked them with my initials "JSG". With respect to vial #7, I wrote "# 7" and my initials "JSG" on the cap. See Photo 311, Exhibit 3. I next conducted, in numerical, order a macroscopic, or gross visual inventory, of each vial. I recorded in my notes under the corresponding vial number the contents of the vial, and the information then in the vial about the origin of those



contents. The notes were also marked "R-11" to indicate that this was the 11<sup>th</sup> repeat report in relation to this case. Exhibit 2.

17. With respect to the vial that I had numbered "#7", my notes of July 27, 1970 state: "#7 fingernail scrapings left hand smaller female McDonald (not labeled by Browning) 1 hair ? 2 fragments". (Exhibit 2).

I note that the words in my notes of July 27, 1970: "fingernail scrapings left hand smaller female McDonald", although not in quotation marks, correspond exactly with the words written on the piece of ruled paper depicted in photo No. 314 (Exhibit 7). I did not record in my notes of July 27, 1970 the contents or origin of this vial as being from "L. Hand Chris", "237" or "D-237". From these facts I conclude that I had not previously examined the contents of this vial as presented on July 27, 1970. Further, I conclude that the container that Craig Chamberlain had described on February 26, 1970 as fingernail scrapings marked "L. Hand Chris", the contents of which I previously subjected to the benzidine and crust tests, was not present on July 27, 1970.

18. With respect to Vial # 7, I mounted the contents present as of July 27, 1970, onto a glass microscope slide, which I labeled: “# 7 fibers Hair”.

See Photo 156, Exhibit 16.

19. I examined the slide MFI: “ # 7 fibers Hair” under the microscope and recorded my observations in my notes:

fibers + one light brown narrow hair, no medulla, striated, intact root, tapered end ( Exhibit 2 ) ( Emphasis in the original).

I have no basis to believe that prior to July 27, 1970 I had ever seen this hair before. From the absence of any mention in my notes of suspected blood stains, or red brown stains, I conclude that I observed nothing on the hair under the microscope which indicated that this hair was, or had been, bloodstained. In any case, prior to mounting this hair on a slide #7, I performed no chemical analysis for the presence of blood . Nor did I wash this hair. Had I observed any indication of blood I would have recorded this in my notes, as I did in the case of the long “ bloody” head hair ( E-3) in vial #1, the debris from around the mouth of Colette MacDonald, the “bloody” hair ( E-4) from vial # 10, “R. Hand Mother”, and the “bloody” hair (E-5) from vial # 13, “left hand Mother”. See Exhibit 2.

- 20 My use of the term “intact root” in relation to the hair I mounted on slide #7, does not imply that the hair was pulled out or otherwise forcibly removed, but rather, only records that I observed under the microscope the presence of a root on the hair, as distinguished from the absence of a root.
21. On July 27, 1970, I compared the hair mounted on slide # 7 with the known hair exemplars of Jeffrey MacDonald which had been submitted and found them not to be microscopically similar.
22. On or about August 31, 1971, I was requested by CID Agent Peter E. Kearns, in addition to other tasks, to inventory the contents of the autopsy vials for the presence of any skin particles. (Exhibit 11) In carrying out these examinations, I once again had occasion to examine the contents of vial #7. My notes ( Exhibit 10) related to R-29 reflect :
- “ #7 fingernail scrapings left hand smaller female McDonald nothing”.
- From this note I conclude that the piece of paper marked “L. Hand Chris”

was no longer present in the vial, and other than the ruled piece of paper ,  
the vial was empty.

Further your affiant sayeth not.

*Janice S. Glisson*  
JANICE S. GLISSON

Signed and sworn to before me this 12 day of November, 2009.

*Georgia Vesely*  
NOTARY PUBLIC

GEORGIA VESELY  
NOTARY PUBLIC  
Columbia County  
State of Georgia  
My Comm. Expires Aug. 15, 2013

My commission expires 8/15/13.

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

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

UNITED STATES OF AMERICA

v.

AFFIDAVIT OF  
JOSEPH A. DIZINNO

JEFFREY R. MacDONALD,  
Movant

Joseph A. DiZinno being duly sworn does depose and say:

1. I am currently employed as the Technical Director, Law Enforcement and Homeland Security, BAE Systems, a global company engaged in defense and security systems, headquartered in Arlington, Virginia, and have been employed in this capacity since May 2008.
2. In 2008 I retired from the Federal Bureau of Investigation (FBI) after 22 years of service as a Special Agent.
3. At the time of my retirement I held the position of Assistant Director for the FBI's Laboratory Division. My responsibilities as Assistant Director included: leading more than 550 FBI Laboratory personnel, providing forensic examinations, technical support, expert witness testimony,

and training to federal state and local law enforcement agencies.

I am a member of the American Academy of Forensic Sciences.

4. After being appointed as a Special Agent of the FBI in 1986, I served in the following positions in the field, and at FBI Headquarters, during my career: Special Agent (1986-1989); Supervisory Special Agent, FBI Laboratory (1989-1997); Unit Chief, Mitochondrial DNA Unit, FBI Laboratory (1997-2000); Section Chief- Scientific Analysis Section, FBI Laboratory (2000-2002); Deputy Assistant Director, FBI Laboratory (2002-2006); and Assistant Director Laboratory Division, FBI.
5. I have received the following awards for my service with the FBI: Numerous incentive awards and the 1996 FBI Director's Award for Technology and Scientific Advancement.
6. I have authored, or co-authored, the following articles in relation to DNA testing and procedures:

2002 DiZinno, J., Lord, W., Collins-Morton, M., Wilson, M., Goff, L., "Mitochondrial DNA Sequencing of Beetle Larvae (Nitidulidae: Omosita) Recovered from Human Bone", Journal of Forensic Science, (2002) 47:, 1337-1339.

1999 DiZinno, J., Wilson, M., Budowle, B., "Typing of DNA Derived from Hairs", Forensic Examination of Hair, (1999) Chapter 3, 155-170.

1997 Wilson, M., Polanskey, D., Replogle, J., DiZinno, J., Budowle, B., "A family exhibiting heteroplasmy in the human mitochondrial DNA control region reveals both somatic mosaicism and pronounced segregation of mitotypes," Human Genetics, (1997) 100: 167-171

1996 Sweet, D., DiZinno, J., "Personal Identification through Dental Evidence - Tooth Fragments to DNA," California Dental Association Journal, May 1996.

1995 Smith, B., Holland, M., Sweet, D., DiZinno, J., "DNA and Forensic Odontology," Manual of Forensic Odontology, Chapter 10, Third Edition, 1995.

1995 Wilson, M., DiZinno, J., Polanskey, J., Replogle, J., and Budowle, B., "Validation of Mitochondrial DNA Sequencing for Forensic Casework Analysis," International Journal of Legal Medicine, 108: 68-74.

1995 Wilson, M., Polanskey, D., Butler, J., DiZinno, J., Replogle, J., and Budowle, B., "Extraction, PCR Amplification and Sequencing of Mitochondrial DNA from Human Hair Shafts," Biotechniques, April 1995, Vol. 18, No. 4.

1993 Stoneking, M., Holland, M., Fisher, D., Budowle, B., Wilson, M. and DiZinno J., "Guidelines for the use of Mitochondrial DNA Sequencing in Forensic Science," FBI Crime Laboratory Digest, October, 1993.

1991 Owsley, D., Ubelaker, D. and DiZinno, J., "Unknown to Positive ID: A Forensic Anthropological Investigation," Journal of Forensic Identification, November, 1992.

7. In 1975, I graduated from the University of Notre Dame, with a Bachelor of Science, Pre-Professional Degree. In 1980, I graduated from the Ohio State University, College of Dentistry with a Doctor of Dental Surgery (DDS) Degree.

8. Prior to joining the FBI I owned and operated a family dental practice in Mayfield Heights, a suburb of Cleveland, Ohio.
9. In 1986, I entered onto duty with the FBI at the FBI Academy, Quantico, Virginia, and was appointed as a Special Agent of the FBI.
10. After completing new agent training, I was assigned to the FBI Washington Field Office. From 1986 to 1989 I was assigned as a Special Agent where my duties included: enforcing a wide range of federal statutes involving organized crime, white collar crime, bank robbery, kidnapping and extortion cases.



11. In 1989 I was assigned to the Hairs and Fibers Unit of the FBI Laboratory in Washington, D.C. as a Supervisory Special Agent, and began my training to become an Agent-Examiner of questioned hairs and fibers. Following a one year period of instruction I was qualified as an Agent-Examiner for hairs and fibers.
12. During my service with the FBI Laboratory's Hair and Fiber Unit I conducted an estimated tens of thousands of examinations and comparisons of questioned hairs.
13. I was qualified as an expert witness in the field of hair and fiber examinations and testified in Federal and State criminal cases across the country. I also served as an investigative resource on high profile cases involving the dental identification of human remains.
14. In 1992, as the potential applications of mitochondrial DNA testing were actively being explored by the FBI Laboratory, I was assigned to work in this field. I was part of a team which researched and validated forensic mitochondrial analysis capabilities. When mitochondrial DNA analysis was first applied to forensic case work in 1996, the FBI Laboratory gained the ability to characterize a DNA profile from evidence containing small or degraded quantities of DNA from hair, bone,

teeth and bodily fluids. During this period, I also participated in various interagency and scientific community working groups studying the potential applications and limitations of DNA testing. In 1997, I was appointed as the Unit Chief, DNA Unit 2, responsible for supervising forensic mitochondrial DNA testing. In 2000, I was appointed as the Chief of the Scientific Analysis Section, and supervised 200 case-working personnel handling a broad range of forensic investigations, including both nuclear and mitochondrial DNA, chemistry and trace evidence examinations.

15. In 1989, the FBI Laboratory began accepting cases for nuclear DNA testing. In 1996, **the** FBI Laboratory began accepting cases for mitochondrial DNA testing.
  
16. In February 1991, prior to the availability of mitochondrial DNA testing at the FBI Laboratory, as a means of confirming microscopic associations between questioned (Q's) and known (K's) hairs, and while assigned to the Hairs and Fibers Unit as a Supervisory Special Agent- Examiner, I was asked to confirm by microscopic examination the prior association found by Supervisory Special Agent- Examiner Michael P. Malone between a pubic hair found in specimen Q79, with the known pubic hair exemplars (K6 through K22) of Jeffrey Robert

MacDonald, in Lab No. 10201005. Special Agent Malone had concluded, based upon his microscopic comparisons that the Q79 pubic hair exhibited the same microscopic characteristics as the pubic hairs of Jeffrey Robert MacDonald. In accordance with the standard FBI Laboratory protocol in effect then, and at the time of my retirement, another Examiner not involved in the case was routinely asked to independently confirm the microscopic association. Hair associations, unlike fingerprints, have never been considered an absolute or positive basis for identification by the FBI Laboratory. The most that could be said was that a questioned hair, which had the same microscopic characteristics as a known exemplar, was consistent with, or could have, come from an identified individual.

17. I conducted microscopic examinations of four pubic hair specimens identified as being the known exemplars of Jeffrey MacDonald, and confirmed Special Agent Malone's association of the Q79 pubic hair with the known exemplars and reported this on the Confirmation Form (Exhibit 1) in Lab No. 10201005, which I signed on February 4, 1991. By this process, I independently determined that the Q79 pubic hair exhibited the same microscopic characteristics as the exemplar pubic hairs reported to be from Jeffrey Robert MacDonald, and consequently, was consistent with having

originated from Jeffrey Robert MacDonald. I have been furnished with a copy of the February 4, 1991 Report of the FBI Laboratory, Lab No. 10201005, to the Special Agent in Charge of the Charlotte Division, Re: Jeffrey Robert MacDonald, CGR-Murder (Exhibit 2), that reflects that the Q79 pubic hair " ... exhibits the same individual microscopic characteristics as the pubic hairs of JEFFREY MACDONALD, and accordingly, is consistent with having originated from JEFFREY MACDONALD." This statement is consistent with the results of my own examination as reflected in Exhibit 1. Further, the wording of the conclusion in the Report (Exhibit 2), with respect to the Q79 pubic hair, is in accord with standard FBI protocols then, and at the time of my retirement. Particularly in light of the next sentence in the Report: "It is pointed out that hair comparisons do not constitute a basis for absolute personal identification."

18. I have been advised that in March of 2006, the Armed Forces DNA Identification Laboratory (AFDIL) of the Armed Forces Institute of Pathology (AFIP) reported, based upon mitochondrial DNA analysis of AFDIL Specimen 75A, that the Q79 hair was not consistent with any other sample tested, including the known mitochondrial DNA reference sample (AFDIL 199A) of Jeffrey MacDonald. I do not find this conclusion

at odds with my determination in 1991 that the Q79 pubic hair exhibited the same microscopic characteristics as the known pubic hair exemplars of Jeffrey MacDonald. Microscopic comparison of hairs and the subsequent development of mitochondrial DNA extraction and sequencing are based upon entirely different technologies, with different capabilities to discriminate between donors. It has long been recognized by the FBI that hair associations are not an absolute basis for personal identification. This is also true of mitochondrial DNA comparisons, since mitochondrial DNA sequences are not unique to individuals. Mitochondrial DNA sequences can, however, be used to exclude an individual as the donor of a hair. This is apparently what has occurred in regard to the Q79 pubic hair; Jeffrey MacDonald is not the donor of this hair if his mtDNA sequence doesn't match that of the Q79 hair.

19. Although not common, as later research has shown, it is possible for two hairs to exhibit the same microscopic characteristics, although subsequent DNA comparison demonstrates they originated from different donors. In 2002 the Journal of Forensic Science published *Correlation of Microscopic and Mitochondrial DNA Hair Comparisons* by Max

Houck, M.A.<sup>1</sup> and Bruce Budowle, Ph.D.<sup>2</sup> (J. Forensic Sci. Sept.20002, Vol.47, No.5). The research involved a review of 170 hair examinations conducted by the FBI between 1996 and 2000. The authors found that "of the 80 hairs that were microscopically associated, nine comparisons were excluded by mtDNA analysis."<sup>u</sup> (Id. , p.3). One of the nine hairs that was previously associated by microscopic comparison was a brown Caucasian pubic hair. ( Id.,p 3, Table 4).

The authors further state:

These nine mtDNA exclusions should not be construed as a false positive rate for the microscopic method or a false exclusion rate for mtDNA typing: it displays the limits of the comparison of hairs examined in this sample only and not for any hairs examined by any particular examiner in anyone case. The microscopic comparison is not an absolute identification and therefore some small number of individual hairs that have a congruence of certain characteristics, even though they originated from separate individuals, may exist. (Id., 3).

In January 2004, the FBI Laboratory published:

*Microscopy of Hair Part 1: A Practical Guide and Manual for Human Hairs*, by Douglas W. Deedrick, Supervisory Special Agent, Scientific Analysis Section and Sandra

1 Project Director, Forensic Science Initiative, West Virginia University.

2 Then Senior Scientist, Federal Bureau of Investigation Laboratory.

L. Koch, Physical Scientist, Trace Evidence Unit.<sup>3</sup>At page 13, the manual states:

#### **DNA Examinations**

Hairs that have been matched or associated through a microscopic examination should also be examined by mtDNA sequencing. Although it is uncommon to find hairs from two different individuals exhibiting the same microscopic characteristics, it can occur. For this reason, the hairs or portions of hairs should be forwarded for mtDNA sequencing. The combined procedures add credibility to each.

In February 1991, when I performed my confirmatory microscopic examination of the Q79 pubic hair, the FBI Laboratory did not have mitochondrial DNA sequencing capability as a means of further confirmation of hair associations.

20. In February 1999 I was serving as the Chief of the Mitochondrial DNA Unit of the FBI Laboratory. In that capacity, I was asked by Department of Justice Attorney (DOJ) Brian Murtagh to provide assistance in determining the potential suitability and divisibility for DNA testing purposes of hairs mounted on glass microscope slides, submitted by the Charlotte Field

<sup>3</sup>Forensic Science Communications, January 2004, Volume 6, Number 1.

Office. These hairs had been the subject of court ordered DNA testing in USA v. Jeffrey MacDonald. Consistent with standard operating procedures in the FBI Laboratory, the slides were first be examined by the Trace Evidence Unit (the successor to the Hair and Fiber unit) to identify any human hairs on the slides. In this case the Trace Evidence Agent Examiner assigned in 1999 was Robert Fram, and the FBI Lab No. was 990111018.

21.

After Special Agent Fram had conducted his examinations I received a number of slides which were already marked with FBI "Q" numbers. (Once a "Q" number is assigned and marked on a specimen in the FBI Lab, that "Q" number is never re-assigned to a different specimen in the same case.) Although my purpose in examining any hairs present on the slides was to determine their potential suitability and divisibility for DNA testing, as a qualified hair examiner, I also described in my notes the characteristics of the hairs as to race, body origin site, or root type that I observed. (Exhibit 3). In noting the characteristics of a hair, I used the "Q" number marked on the slide, and the abbreviations employed by hair examiners in the FBI Laboratory. For



example, "COHH" I used to describe a Caucasian origin head hair and "COPH" I used to describe a Caucasian origin pubic hair. Similarly, I used the term "club" to refer to the root of a hair whose observable characteristics indicated that the hair had been naturally shed; I used "FR" to record observable characteristics of a hair root that indicated that the hair had been forcibly removed. In addition to recording in my notes what I observed and concluded with respect to suitability and divisibility for MtDNA testing, I also marked the slides examined (and the slide mailers) with my initials "JAD".

22. My notes (Exhibit 3) for February **11**, 1999, in Lab No. 990111018, reflect the following observable characteristics for the two hairs present in Specimen Q87:

~1" CO body, club [approximately 1 inch body hair of Caucasian origin, which was naturally shed];  
~ 1/8", CO frag, club [approximately 1/8 inch Caucasian origin hair fragment, which was naturally shed] .4

41 have followed the actual quote with a translation in brackets.

23. My notes (Exhibit 3) for February 11, 1999, in Lab No. 990111018, reflect the following observable characteristics for Specimen Q79:
- 2", COPH, club [approximately 2" inch Caucasian origin pubic hair, which was naturally shed].5
24. My notes (Exhibit 3) for February 11, 1999, in Lab No. 990111018, reflect the following observable characteristics for Specimen Q137:
- 3/4", CO, club (very fine) [approximately 3/4 inch, Caucasian origin , naturally shed, very fine hair] .
25. My notes (Exhibit 3) for February 11, 1999, in Lab No. 990111018, reflect the following observable characteristics for one of the four hairs present on Specimen Q96:
- 19" , COHH, FR [approximately 19 ~ inch Caucasian Origin Head Hair, which had been forcibly removed] .

s Although I probably did not recognize it as such at the time, the Q79 pubic hair I examined for DNA testing purposes in 1999, is the same Q79 pubic hair that I compared with Jeffrey MacDonald's known exemplars in 1991. I make this statement because, as I indicated above, "Q" numbers are not repeated in the same criminal case.

26. My notes (Exhibit 3) for February 11, 1999, in Lab No. 990111018, reflect the following observable characteristics for Specimen Q125:

- 2", body, FR [approximately 2 inch body hair which had been forcibly removed].

Further your affiant sayeth not.

*Joseph A. DiZinno, DDS*

Joseph A. DiZinno, DDS

Subscribed and sworn before me this .18. day of November, 2011.

*Nerianne Satre*

Notary Public,  
State of Virginia

County of Arlington

*Fairfax*



### AFFIDAVIT OF ROBERT FRAM

Robert B. Fram being duly sworn does depose and say that:

1. In May, 2009 I retired from the Federal Bureau of Investigation (FBI) with over 28 years of service. From January 2006 until my retirement I served as the Section Chief of the Scientific Analysis Section of the FBI Laboratory. In that capacity I managed the five units that comprised the Scientific Analysis Section: nuclear and mitochondrial DNA units, CODIS ( Combined DNA Index System), Chemistry and Trace Evidence.
2. In 1977 I received a Bachelor of Arts degree from Lehman College with a Major in Anthropology. In 1979 I received a Master of Arts in Physical Anthropology from Pennsylvania State University.
3. From March 1981 until March 1985 I was employed as a Physical Science Technician, in the Serology Unit of the FBI Laboratory.
4. In March 1985 I was appointed as a Special Agent of the FBI, and continued to hold that appointment until the time of my retirement in 2009. After completing New Agents Course at the FBI Academy, Quantico, Virginia, I worked as a Special Agent in various field assignments until March of 1989, primarily in organized crime and narcotics

investigations.

5. In March of 1989 I was assigned to what was then the Hairs and Fibers Unit of the FBI Laboratory in Washington, D.C. After successfully completing a one year training program in the Hairs and Fibers Unit, I was designated as a Supervisory Special Agent and qualified as a Laboratory Examiner of hairs and fibers. I continued in this capacity until June of 2001. My duties included the examination of physical evidence, including hairs, reporting the results of those examinations, and when required, testifying to those results as an expert witness in state or federal court. I have been accepted as an expert witness by federal or state courts in the examination of hairs or fibers over 100 times. While employed by the FBI I have conducted hundreds / thousands of examinations of hairs using a microscope.
6. In June, 2001 I was selected to be the Chief of the Trace Evidence Unit ( formerly the Hairs and Fibers Unit), and my duties became primarily supervisory. I conducted administrative and peer reviews of reports, supervised casework done by other examiners, oversaw research projects and the day to day operations of the Unit. In addition, on occasion, I conducted hair and fiber examinations on cases submitted to the Trace Evidence Unit.
7. I had no involvement as an FBI Agent, Laboratory Examiner or Physical Science Technician in the investigation, trial, or prior habeas litigation of *United States v. Jeffrey*

*R. MacDonald*, until after the issuance of an order by the United States Court of Appeals For The Fourth Circuit on October 17, 1997 granting MacDonald's motion for DNA testing. On December 11, 1998 the United States District Court for the Eastern District of North Carolina directed that the United States produce and make available to MacDonald's experts within 60 days specified biological evidence " so that such experts may conduct any appropriate non-destructive DNA examinations thereof." (Exhibit 1). As I recall, in addition to the fact that all DNA testing destroys the biological sample being tested, there were a number of other unresolved issues concerning the evidence between the Justice Department and Jeffrey MacDonald's counsel. These issues included defense access to the evidence in the FBI Laboratory prior to the DNA testing, who was going to do the DNA testing, the divisibility of hairs subject to DNA testing, and who was going to inventory any residual contents in the pill vials used initially to collect the evidence. As I recall it took some months after the district court's initial order of December 11, 1998 to resolve these additional issues. See Order of March 26, 1999 ( Exhibit 2. I was not directly involved in the resolution of these issues but rather, while these matters were being litigated, operated within the legal requirements and constraints as conveyed to me by the Department of Justice prosecutors. Unless precluded by these constraints, such as the prohibition against inventorying the contents of the pill vials, I followed standard FBI Laboratory procedures. Initially my role was to take custody of the evidence submitted by the Charlotte Field Office of the FBI, cause photo documentation of the unpacking of the items submitted (which had been previously identified by the Department of Justice as covered by the court orders mandating DNA

testing), inventory that evidence, if not previously compared, perform non-destructive comparative microscopic examinations of previously mounted slides containing hairs with other previously mounted slides containing known exemplar hairs, report any identifications resulting from these comparative examinations, and prepare the evidence for transfer to the independent laboratory designated by the court to conduct the DNA testing. Before any evidence was transferred to the independent DNA laboratory for destructive testing, the prosecutors wanted me to document the contents of the slides, particularly the number and other observable characteristics of any hairs present. In complying with this request in light of the unresolved issues between the parties, other than marking the slides for identification and, where necessary, putting the slides in protective cardboard mailers which were also marked for identification, I did not alter slides in any way. Specifically, I did not remove any hair or fiber that had previously been mounted on any slide, nor did I mount anything additional on an existing slide. I did not open or attempt to inventory the residual contents, if any, of the pill vials. I did not repeat comparisons of questioned and known hairs which had previously been conducted and reported by other examiners. As ordered by the district court, the Government was required to turn the evidence subject to DNA testing over to the independent DNA laboratory by May 17, 1999. (Exhibit 2, p.2)<sup>1</sup>

---

<sup>1</sup> The Armed Forces Institute of Pathology (AFIP) was subsequently designated by the district court as the independent laboratory to conduct the DNA testing. The Armed Forces DNA Identification Laboratory (AFDIL) was the component of AFIP that would eventually perform the DNA testing.

8. On January 11, 1999, Special Agent C. Andrew Thomure personally delivered to me several boxes containing numerous items of evidence, many in clear plastic bags or envelopes bearing yellow "Government Exhibit" stickers. These items consisted of resubmitted evidence which had been previously marked with a "Q" number . (In the FBI Laboratory all questioned items are assigned sequential "Q" numbers, and known items are assigned sequential "K" numbers.) It is standard procedure for FBI Laboratory personnel inventorying or examining evidence to also mark it for identification with their initials. In cases involving items resubmitted to the FBI Laboratory which have previously been assigned "Q" or "K" numbers, and initialed by previous examiners, the new examiner adds his or her initials to the item. I also received items that appeared never to have been examined by the FBI Laboratory, based upon the absence of a "Q" number. These items were marked with sequential "Q" numbers and initialed. Numerous photographs were taken to record the unpacking and inventorying of these items of evidence. See Government Photographic Submissions Volumes Two and Three.<sup>2</sup>
9. On February 3, 1999 I inventoried some of the items previously received from Special Agent Thomure, including a clear plastic folder taped closed inside another clear plastic folder that was partially heat sealed. The inner plastic folder bore a yellow Government

---

<sup>2</sup>Each photo included within the Government Photographic Submission was also assigned individual number. For example Government Photographic Submission Volume Two contains photos numbered 35-111. Unless otherwise indicated, references in this affidavit to numbered photographs are to photos which have previously been filed with the district court. For convenience, copies of these numbered photographs are also included as numbered "Exhibits" to this affidavit.



Exhibit sticker, number 285/ 75-26 CR -3. Contained within this folder were: a clear plastic pill vial, marked # 7 on top of the lid, in which a folded piece of paper was visible, 1 glass microscope slide, and a loose paper label. See Photo 39 ( Exhibit 3). After removing the items from the clear plastic bag, the slide was marked for identification as "Q137", as well as with the new FBI Lab case number (990111018ZJ) and with my initials "RBF". See Photos 153, 156 (Exhibits 4-5). In accordance with standard procedure in the FBI Laboratory, the slide was placed in a protective slide mailer which was also marked for identification Q137, as well as with the case number and my initials. While it would appear that the loose paper label, upon which someone had written "# 7 fibers Hair", had at one time been glued to the unprotected glass microscope slide, I have no personal knowledge of any prior examinations of Government Exhibit 285 including the slide now marked as Q137. The clear plastic pill vial was marked " Q137.1".

10. On February 3, 1999, I examined the slide marked as Q137 and determined that it contained a hair and a fiber. The hair was a very fine Caucasian hair approximately 3/4 of an inch in length with a "club" root and a natural tip. The hair did not possess enough individual characteristics to be of value for significant comparison purposes, or in FBI Lab terms was "NSFSCP". I subsequently took a photomicrograph of the Q137 hair. See Government's Photo Submissions, Volume Four, Photo 224.
11. The term club root in relation to the Q137 hair is the shorthand used by hair examiners in the FBI Lab to record that the characteristics of the hair root observable under the

microscope reveal that the hair was naturally shed, as opposed to having been forcibly pulled out. The examination of the root of a hair in an attempt to determine if the hair was forcibly removed or fell out naturally, and recording the examiner's conclusions are part of the standard FBI hair examination protocol. As everyone knows, hair grows from the skin or scalp. The sac-like organ in the skin of mammals from which the hair grows is known as the follicle. The root of the hair is imbedded in the skin. The lower end of the root beneath the skin expands to form the root bulb. Follicles have a period of activity which varies among species. The term *anagen* stage describes a follicle which is actively producing hair. After a period of activity in which hair is continuously produced the follicle starts to shut down, this transitional stage between the *anagen* stage and the resting stage is called the *catagen* stage. The third phase in which the follicle becomes inactive, and hair growth ceases, is known as the mature or *telogen* stage. During the *telogen* stage the hair is held in the follicle by means of a hardened bulbous root, that may resemble a club in appearance. When the root takes on a club shape it is ready to be naturally shed. In the telogen phase the hair may be naturally sloughed from the body, as occurs periodically, or may be fall out as the result brushing or combing. The mature or *telogen* phase root will have little or no follicular tissue adhering to it. Pigment is sparse in the mature root and there is frequently an abundance of cortical fusi (elongated or spindle- shaped air spaces found in the cortex of the hair). As a general principle, there is no scientifically valid means of determining the interval between the time when a *telogen* hair was naturally shed and when it was recovered from the substrata on which it was found. Stated another way, there is no way of determining whether a *telogen* hair found

inside an occupied dwelling had been there for days, weeks, or even years.

A root which has been plucked prior to maturation, as in the *anagen* phase will have a distorted appearance, and may have tissue adhering to it. In the plucked or forcibly removed hair, pigment is present down into the root and there are rarely cortical fusi (air pockets) near the root. A root near maturity at the *catagen* stage which has been plucked may exhibit the bulbous shape with a “tag” of soft tissue attached. While the presence or absence of a follicular tag is a factor in whether a hair has been forcibly removed, it is not the determining factor. For example pubic hairs which have been naturally shed frequently have a follicular tag. Rather, it is the observable characteristics of the hair itself which permits the qualified examiner to draw the conclusion that a hair was forcibly removed. In my opinion, and based upon my knowledge training and experience, I would not conclude that a hair had been forcibly removed unless it was an *anagen* hair (actively growing) with pigment down into the root, and the root was amorphous and stretched out. In the absence of any root at all it will not be possible to determine if the hair was pulled out forcibly while it was still growing. It is possible, however, based upon a microscopic examination of the proximal or root end of the hair shaft, to determine whether the hair was cut or broken off. Broken hairs will exhibit an irregular appearance at the point of the break. A crushed hair will exhibit a widening of the hair shaft and the cortical cells may appear ruptured or separated.<sup>3</sup> The fact that I used the term “club root” in relation to the Q137 hair indicates that I observed nothing under the microscope which was

---

<sup>3</sup>See Deedrick, D.W. and Koch, S.L., *Microscopy of Hair Part I: A Practical Guide and Manual for Human Hairs*, Forensic Science Communications, January 2004, Volume 6, Number 1.

consistent with an anagen hair that had been forcibly removed, and what I did observe was a hair root that exhibited the characteristics of a naturally shed mature hair.

In my experience, the term "intact root" is not commonly used by hair examiners, and should not be considered synonymous with forcible removal. A naturally shed hair in the *telogen* stage could be said to have an "intact root, but it would not be accurate to conclude from the use of that term that the hair had been forcibly removed .

12. I have been shown AFDIL images from slides 13 and 14, Roll 1, depicting AFDIL Specimen # 99C-0438 - 91A ( Exhibits.6-7), and I recognize the both the closed FBI slide mailer marked for identification (MFI) "Q137" depicted in slide 13 (Exhibit 6), and the glass microscope slide MFI "Q137" depicted in slide 14 (Exhibit 7), by my initials.
  
13. I have been shown AFDIL photomicrograph images 99C-0438-91A, Roll 9 slides 26, 27 and 28. ( Exhibits 8-10). Slides 26 ( Exhibit 8) and 27 (Exhibit 9) depict the proximal end of a Caucasian hair at lesser and greater magnifications, respectively, and Slide 28 (Exhibit 10 ) depicts the distal (tip) end of the hair. There are no red-brown stains visible on the hair depicted which would indicate the presence of blood. The hair root depicted in Slides 26 and 27 (Exhibits 8-9) does not have pigment growing down into the root, nor does the root appear to be amorphous or stretched out, but rather appears bulb shaped, and no follicular tissue, sheath or tag is present. There is no other observable evidence consistent with forcible removal of the hair depicted in Slides 26 and 27 Id. It appears that elongated air spaces, consistent with cortical fusi, are present in the cortex of the hair. See Slide 27 ( Exhibit 9). Based upon the observable characteristics described above, it is

my opinion that the hair was not actively growing at the time it was shed, and was in the mature or telogen phase. I further conclude, based upon the observable characteristics, and in the absence of observable characteristics consistent with forcible removal, that this was a mature hair that was naturally shed. For note taking purposes, I would also describe this hair as having a "club" root. It should be noted that photomicrographs are not the proper way to conduct hair comparisons, however, certain characteristics can be clearly seen.

14. Among the resubmitted items I received from Special Agent Thomure was Q79. See Photo 67. (Exhibit 11). This item was received in zip-lock type clear plastic bag which had affixed to its outer surface the following:

(a) a piece of masking type tape upon which had been written  
"Fibers + Debris from Area of Trunk +Legs of Rug under body- Master bed  
Room  
WFI-RBS 16 Mar 70 (14)

E-303  
P-C- FP -82-70  
DOB;

(b) a yellow "Government Exhibit" sticker upon which had been written

"E-303  
Q79" ; and

( c ) a second piece of masking type tape upon which had been written

" Q79 PMS E-303 MPM"

Id.

15. Contained within the zip- lock bag described above were the following:  
One clear plastic vial MFI: "Q79 PMS MPM" in which a small amount of debris- possible blood flecks - were visible- but with no apparent hairs, 3 cardboard pillboxes MFI "Q79", 2 cardboard slide mailers one MFI: "Q79 Fibers" and the other MFI: " Q79 Hairs", each mailer contained one glass microscope slide, one MFI : "F.FS L2082 Q79" and the other MFI: "H L2082 Q79". Q79 also included one blue plastic slide mailer, MFI: "01022018 RQ Q79, containing 2 glass microscope slides, each MFI : " 01022018 Q79 MPM" one MFI: "Blue/Blk Yn." and the other " Brown Yn". See Photos 68-70 (Exhibits 12-14).
16. On February 3, 1999, with the aid of a microscope, I examined each of the four glass slides described above to determine if they contained human hairs. Only the slide MFI : "H L 2082 Q79 PMS MPM" ( Photo 70, Exhibit 14) contained a human hair, which I determined was a brown Caucasian pubic hair, approximately 2 inches in length with a "club" root, indicating that it was naturally shed. I performed no other examinations or comparisons of any other item from Q79 as described above. Each of the slide mailers was marked for identification with the FBI Lab number ( 99011101825 ZJ) and with my initials( "RBF"). I was not present at, and consequently can not attest to the results of any prior examinations of the contents of Q79/E303.
17. Upon being shown AFDIL images # 99C-0438 75A & 76 ( Disc 2, Roll 2, Slide 1 and Disc 2, Roll 2, Slide 2) (Exhibits 15-16), I recognize the FBI Lab number and my initials

previously written on both the cardboard mailers and the two glass microscope slides MFI: "H L2082 Q79" and "F.F.S L2082 Q79, respectively.

18. I am shown AFDIL images 99C-0438 75A (Disc 2, Roll 8, Slides02, 03,04, 05, 06,07 and 08) ( Exhibits17-23) depicting segments of what appears to be a pubic hair of Caucasian origin. Slides 02 and 03 (Exhibits 17-18) depict the root portion of the hair under lesser and greater powers of magnification, respectively. As depicted in Exhibits 17-18. there is some follicular tissue present surrounding the bulb of the root, however, it does not appear to be a follicular sheath. The root does not appear to be amorphous or stretched out, but rather is bulb-like in shape. The presence of some follicular tissue surrounding the root of a pubic hair is not forensically significant, and in and of itself does establish to a reasonable scientific certainty that the hair was forcibly removed, because pubic hairs which have been shed naturally often have some follicular tissue present. In my opinion this hair was a mature hair that was shed naturally. I would describe this hair for note taking purposes as having a "club" root.

19. Among the resubmitted items received from Special Agent Thomure was Q87 (E-52NB). This exhibit included 3 glass microscope slides MFI: "Q87 L2082 PMS MPM", which were contained in one double and one single cardboard mailer. (One mailer was empty.) On February 1, 1999, I examined all three slides using a microscope and determined that only one slide contained human hairs, of which there were two. (The other slides contained animal hairs and fibers.) One human hair was a light brown Caucasian body

area hair, approximately 1 inch in length with a club root. This hair was not sufficient for comparison purposes. The other hair on this slide was a dark brown Caucasian hair fragment approximately 1/8 inch in length, with a club root and broken distal end. This hair also was not sufficient for comparison purposes. See Photos 74,75, 85, and 86.(Exhibits 24-27).

20. Upon being shown AFDIL images #99C-0438 58A, Disc 2, Roll 2, Slides 5-6 (Exhibits 28-29) I recognize the Q87 slide mailer, and Q87 slide ( MFI: "L2082 Q87 PMS MPM"), depicted respectively, now marked with FBI Lab No. 990111018 and with my initials.
  
21. I have been shown AFDIL images of specimen 99-0438-58A (Roll 8, Slides 09,14,and 15) (Exhibits30-32 ) depicting what appears to be segments of two human hairs, one dark brown and one light brown. The root of the dark brown hair is depicted in Slide 09 (Exhibit 30 ) and the root of the light brown hair is depicted in Slides 14-15 (Exhibits 31-32). Neither hair root is depicted as having any follicular tissue attached. I would characterize both hairs depicted in Slides 09,14 and 15 as having club roots, indicating that they were naturally shed.
  
22. Also among the resubmitted items received from Special Agent Thomure was exhibit Q125 (E-211), which included 2 glass microscope slides in a cardboard slide mailer. See Photos 77, 178, 179, 186 ( Exhibits 33-36). One glass microscope slide was MFI:



“90103084 Q125 JCF MPM” The other glass microscope was MFI: “Hair 90103084 Q125 JCF MPM”. See Photo 77 (Exhibit 33) On February 1, 1999, I examined both slides and determined one slide contained only fibers. The other Q125 slide marked “Hair” contained a brown Caucasian body area hair, approximately 2 inches in length, forcibly removed, that was not sufficient for comparison purposes. There was a small amount of tissue on the root area.

23. Upon being show AFDIL images 99C-0438 45A &46A (Disc 2, Roll 1, Slides 04 and 05) (Exhibits 37-38) I recognize the Q125 mailer now marked with my initials and the additional FBI Lab No. 9901110187ZJ, as well as its contents the two glass microscope slides MFI: “Q125”.

[Note Graham has the slides upside down in the mailer so the numbers 45A and 46A on the ruler don't correspond to the slides.]

24. Upon being shown AFDIL images 99C-0438-46A, Roll 3, Slides 03 and 09 ( Exhibits 39-40), I observe the presence of follicular tissue on the hair root. Upon being shown AFDIL image 99C-0438-46A, Slide 04, (Exhibit 41) I observe that the root of the hair has a distorted and elongated appearance. I can also observe the presence of pigment down into the root. Based upon what I can observe in these images, it is my conclusion that what is depicted is a human hair that was forcibly removed while it was still growing in the *anagen* stage. There is nothing observable about this hair depicted which is

consistent with it having been naturally shed in the *telogen* stage.

25. Also included among the items submitted to me was Q96(D229). See Photos 90, 91, 92, 93, and 94 (Exhibits 42-46). Contained within Exhibit Q96 were four cardboard single slide mailers each marked for identification "Q 96 PC L-2082 PMS MPM" See Photo 93- (Exhibit 45). Each slide mailer contained one glass microscope slide marked as follows:
- (a) "H (from thread) L 2082 Q96 PMS";
  - (b) "L2082 Q96 PMS";
  - (c) "19 ½ L2082 Q96 PMS"; and
  - (d) "yn. frag. L2082 Q96 PMS"

See Photo 94 ( Exhibit 46).

26. The slide MFI: "19 ½ L2082 Q96 PMS", upon examination under the microscope, revealed the presence of four Caucasian hairs, a head hair with a forcibly removed root, two head hair fragments and a body hair without a root. I compared the forcibly removed hair, which was the only hair with a root on this Q96 slide, with the K2 specimen hairs, and determined that they exhibited the same microscopic characteristics as this Q96 hair. Accordingly, this Q96 hair is consistent with having originated from Kimberly MacDonald, the identified source of the K2 specimen. See Photos 78-81 (Exhibits 47-

50).<sup>4</sup> The two Caucasian head hair fragments also found on this same Q96 slide are microscopically similar to the K2 specimen hairs; however, these hairs were too limited for significant comparison purposes. The Caucasian body area hair found on this slide is also not suitable for significant comparison purposes.

27. Upon being shown AFDIL image # 99C-0438 112A & 115A ( Disc 2, Roll 1, Slide 07) (Exhibit 51), I recognize the two cardboard slide mailers depicted both marked for identification “ Q96 L2082 990111018ZJ” and with my initials “RBF”. The top mailer is also marked “99C-0438-112A” Id. Upon being shown AFDIL image # 99C-0438 112A & 115A ( Disc 2, Roll 1, Slide 08) (Exhibit 52), I recognize the two glass slides depicted marked for identification (a) “ 19 ½ L2082 Q96 PMS 990111018 ZJ RBF” and (b) “L2082 Q96 PMS 990111018ZJ RBF”. The “Q96 19 ½” slide has also been marked “99C-0438-112A”. The other Q96 slide has been marked “99C-0438-115A”. Upon being shown AFDIL images 99C-0438-112A Slides 01 and 02 ( Exhibits 54, 53, respectively) depicting a glass microscope slide and a slide mailer and a ruler with a red label marked for identification “99C-0438-112A JSR 3/21/01”, I recognize both the slide mailer as being the same Q96 slide and mailer previously described in this paragraph (Exhibits 51-52) and in paragraph 26 above.

---

<sup>4</sup>The comparison of the microscopic characteristics in hairs does not constitute a basis for absolute personal identification. The probative value of hair comparisons may be affected by the results of mitochondrial (mtDNA) analysis. Two hairs can exhibit the same microscopic characteristics and be shown to be different in mtDNA sequence. Conversely, two hairs that have the same mtDNA sequence can have very different microscopic characteristics, as in the case of two children with the same mother.

28. In 2001, after the evidence had been furnished to AFDIL in 1999, I had further occasion to examine the hairs which had been originally mounted on the Q96 slide described above in ¶ 26. My understanding is that after this slide had been designated Specimen 112A by AFDIL, and Master Sergeant Grant Graham of the Office of the Armed Forces Medical Examiner had determined that one of the four hairs had a root with tissue on it, an AFDIL DNA Analyst removed the cover slip of the slide on March 30, 2001 and found 9 pieces of hair. See AFDIL Divisibility and Suitability Assessment, AFDIL letter of April 2, 2001 (Exhibits 55-56) It was further my understanding that the parties agreed on the need for the hairs to undergo further microscopic examination before any DNA testing was done on Specimen 112A (Q96), however, as a result of Master Sergeant Graham's intervening retirement, AFDIL no longer had that capability in house. Initially it was agreed that the examination of Specimen 112A would be conducted at AFDIL by Dr. Peter De Forrest, the defense hair expert. See letter of July 31, 2001 from Philip G. Cormier ( Exhibit 57). It is further my understanding that on August 6, 2001, Dr. De Forrest, prior to attempting limited non-comparative examinations, mounted the 9 hairs on separate glass microscope slides MFI :112A(1) through 112A(9). See Letter to Philip G. Cormier of September 13, 2001 ( Exhibit 58). Subsequently, I was requested by the Department of Justice to attempt to re-associate or match, the nine hair fragments with the original four hairs present on the Q96 slide. Id.

This re-examination was pursuant to an agreement reached between AFDIL and the counsel for the parties. See October 1, 2001 letter of Philip G. Cormier ( Exhibit 59).

29. On October 18, 2001, I received from AFDIL 9 glass microscope slides in separate blue plastic containers. Each slide contained a portion of a Caucasian hair, and was labeled "112A" and "06Aug01". Additionally, the slides were marked "#1- #9" and were initialed "JSR". For example see AFDIL images 99C-0438-112A Slides 04c and 05c depicting, respectively, slide 112A#4 (Exhibit 60 ) and slide 112A#5 (Exhibit 61). I numbered the slides Q96.1 through Q96.9 to correspond to the AFDIL numbering scheme, and with the aid of a microscope examined the hairs in attempt to associate the 9 hair fragments with the original 4 hairs on the Q96 slide. The results of my examinations are set forth in my report No. 011010030 ZJ of November 1, 2001 (Exhibit 62). The Q96.4 (112A(4)) slide contained a light brown Caucasian head hair, cut at the root end and broken at the tip end approximately 5-6 inches long. The Q96.5 (112A(5)) slide contained a light brown Caucasian head hair with forcibly removed root, cut at the tip end, approximately 4 inches long; the cut tip end was similar to the cut root end of Q96.4 (112A(4)) hair. Other than the tip end of the Q96.5 hair being similar to the root end of the Q96.4 hair, no conclusions could be reached as to which of these hairs might have, at one time, been joined to other of these hairs. As I stated in my report, it should also be noted that the Q96.5 head hair with the forcibly removed root is consistent with the forcibly removed Caucasian head hair found on the original Q96 slide ( MFI: "19 ½ L2082 Q96 PMS") that was reported as being consistent with having originated from Kimberly MacDonald (FBI Laboratory report dated May 19, 1999, ( Exhibit 63), in that both hairs are described as light brown Caucasian head hair with a forcibly removed root. The Q96.5 forcibly removed hair was considerably shorter than the original Q96 forcibly

removed head hair. (Exhibit 62).

- 30 Upon being shown AFDIL image 99C-0438-112A Slide 05a (Exhibit 64) which depicts a blue plastic slide mailer, a glass microscope slide marked "112A # 5 JSR", and a ruler with a tag marked "99C-0438-112A(5) JSR 12/4/01", I can just make out the FBI Lab number (011010030) and "Q96.5" also marked on the slide.
- 31 Upon being shown AFDIL images 99C-0438-112A Roll 8 Slides 21 and 22 ( Exhibits 65-66) I can state that what I observe depicted is the elongated and distorted root of a Caucasian hair which is consistent in appearance with a hair that has been forcibly removed while it was still growing..
32. Upon being shown AFDIL images "99C-0438-112A (#5) JR root end", "99C-0438-112A(#5) JR root end (difexp2)" and "99C-0438-112A(#5) JR root end (difexp3)" (Exhibits 67-69), I can state that what I observe depicted in all three images is the elongated and distorted root of the same Caucasian hair which is consistent in appearance with a hair that has been forcibly removed while it was still growing. I can also state that

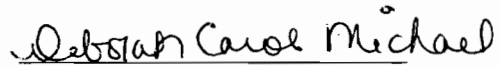
what I observe is consistent in appearance with the corresponding portion of the hair root

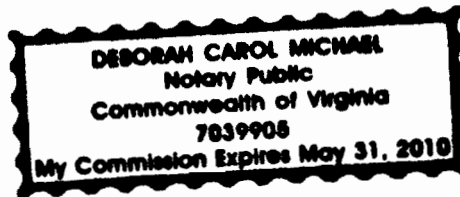
depicted in Exhibits 65-66 described in ¶ 31 above.

Further your affiant sayeth not.

  
Robert B. Fram

Subscribed and sworn before me this 23 day of February, 2010.

  
Notary Public,  
State of Virginia  
County of Stafford.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION.

3:75-CR-26-3

5:06-CV-24-F

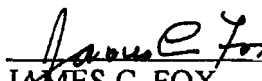
_____	)
UNITED STATES OF AMERICA	)
	)
v.	)
	)
JEFFREY R. MacDONALD,	)
Defendant	)
_____	)

**ORDER**

The matter is before the Court on defendant's Motion to Continue Evidentiary Hearing scheduled for August 20, 2012. The circumstances underlying the motion are unique and compelling. Therefore, for good cause shown, the motion is ALLOWED. The evidentiary hearing in this matter is hereby CONTINUED until September 17, 2012 in Wilmington, North Carolina.

SO ORDERED.

This the 16 day of July, 2012.

  
 \_\_\_\_\_  
 JAMES C. FOX  
 Senior United States District Judge



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

NO. 15-7136

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JEFFREY R. MACDONALD,

*Defendant-Appellant.*

---

**JOINT APPENDIX  
VOLUME IV of VII**

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
AT WILMINGTON

John Stuart Bruce  
Acting United States Attorney  
Leslie K. Cooley  
Jennifer P. May-Parker  
Assistant United States Attorneys  
310 New Bern Avenue, Suite 800  
Raleigh, NC 27601  
(919) 856-4530

Counsel for Appellee

Joseph E. Zeszotarski, Jr.  
Gammon, Howard & Zeszotarski, PLLC  
115 ½ West Morgan Street  
Raleigh, NC 27601  
(919) 521-5878

Counsel for Appellant

# TABLE OF CONTENTS

## Volume I of VII

### Appendix Page

Docket Entries.....1

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

    Testimony of Richard D. Tevere .....42

    Testimony of Kenneth C. Mica .....80

    Testimony of William F. Ivory .....135

    Testimony of Robert Shaw .....396

    Testimony of Dr. Edward Gammel .....474

    Testimony of Dr. George E. Hancock .....514

    Testimony of Michael Newman .....548

    Testimony of Paul Connolly .....563

    Testimony of Elizabeth Ramage.....568

    Testimony of Dr. Severt H. Jacobson.....576

    Testimony of Robert Caverly .....594

    Testimony of Dr. Frank Gemma.....614

    Testimony of Bennie Hawkins .....617

    Testimony of Hilyard Medlin .....626

Testimony of Mildred Kassab .....646

Testimony of Dr. Craig Stanley Chamberlain.....669

Testimony of Terry Laber.....690

Testimony of Janice Glisson.....702

**TABLE OF CONTENTS**

Volume II of VII

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

Testimony of Dillard Browning .....745

Testimony of Charles Michael Hoffman .....798

Testimony of Paul Stombaugh .....810

Testimony of Shirley Green .....891

Testimony of Jack B. Crawley, Jr.....945

Testimony of Vincent P. Guinn.....982

Testimony of John I. Thorton .....1023

Testimony of Dr. George Podgorny .....1040

Testimony of James Milne.....1041

Discussion on missing witnesses .....1047

Testimony of Helena Stoeckley.....1051

Argument to Court.....1342

Bench Conference.....1343

Testimony of P.E. Beasley .....1359

Testimony of Jane Zillioux.....1404

Testimony of Charles Underhill .....1426

**TABLE OF CONTENTS**

Volume III of VII

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

Testimony of Wendy Rouder .....1465

Testimony of William Posey .....1520

Testimony of Carmine Welch.....1569

Testimony of James Gaddis.....1572

Testimony of Jeffrey R. MacDonald .....1582

Bench Conference.....1658

Government Exhibit 1153 marked .....1693

Government Closing Argument.....1694

Defendant’s Closing Argument.....1699

Government Trial Exhibits

Exhibit 1 (photo).....1700

Exhibit 2 (photo).....1703

Exhibit 24 (photo).....1704

Exhibit 24b (photo).....1705

Exhibit 27 (photo).....1706

Exhibit 40 (photo).....1707

Exhibit 40a (photo).....1708

Exhibit 41 (photo).....1709

Exhibit 42 (photo).....1710

Exhibit 43 (photo).....1711

Exhibit 43a (photo).....1712

Exhibit 44 (photo).....1713

Exhibit 45 (photo).....1714

Exhibit 54 (photo).....1715

Exhibit 55 (photo).....1716

Exhibit 56 (photo).....1717

Exhibit 57 (photo).....1718

Exhibit 58 (photo).....1719

Exhibit 59 (photo).....1720

Exhibit 62 (photo).....1721

Exhibit 64 (photo).....1722

Exhibit 65 (photo).....1723

Exhibit 70 (photo).....1724

Exhibit 71 (photo).....1725

Exhibit 71a (photo).....1726

Exhibit 72 (photo).....1727

Exhibit 73 (photo).....1728

Exhibit 74 (photo).....1729

Exhibit 75 (photo).....1730

Exhibit 76 (photo).....1731

Exhibit 77 (photo).....1732

Exhibit 78 (photo).....1733

Exhibit 80 (photo).....1734

Exhibit 81 (photo).....1735

Exhibit 100 (photo).....1736

Exhibit 210 (photo).....1737

Exhibit 211 (photo).....1738

Exhibit 211a (photo) .....1739

Exhibit 212 (photo).....1740

Exhibit 214 (photo).....1741

Exhibit 422 (photo).....1742

Exhibit 424 (photo).....1743

Exhibit 425 (photo).....1744

Exhibit 428 (photo).....1745

Exhibit 430 (photo).....1746

Exhibit 597 (photo).....1747

Exhibit 606a (photo) .....1748

Exhibit 607 (photo).....1749

Exhibit 608a (photo) .....1750

Exhibit 609 (photo).....1751

Exhibit 610 (photo).....1752

Exhibit 611 (photo).....1753

Exhibit 612 (photo).....1754

Exhibit 638 (ABO Blood Factors: Colette, Kimberly, Jeffrey, Kristen)...1755

Exhibit 644 (Summary of Blood Analyses) .....1756

Exhibit 654 (Location of Threads and Yarns).....1757

Exhibit 763 (photo).....1758

Exhibit 764c (photo) .....1759

Exhibit 768 (photo).....1760

Exhibit 771 (photo).....1761

Exhibit 772 (photo).....1762

Exhibit 776 (photo).....1763

Exhibit 777 (photo).....1764

Exhibit 787a (photo) .....1765

Exhibit 789a (photo) .....1766

Exhibit 790 (photo).....1767

Exhibit 791 (photo).....1768

Exhibit 792 (photo).....1769

Exhibit 793 (photo).....1770

Exhibit 794 (photo).....1771

Exhibit 795 (photo).....1772

Exhibit 796 (photo).....1773

Exhibit 808 (photo).....1774

Exhibit 809 (photo).....1775

Exhibit 811 (photo).....1776

Exhibit 812 (photo).....1777



Exhibit 952 (photo).....1778

Exhibit 967 (Map of Corregidor Courts).....1779

Exhibit 968 (photo).....1780

Exhibit 978 (Items Found in Pile on Floor of Master Bedroom) .....1781

Exhibit 983 (South Bedroom – Kimberly MacDonald) .....1782

Exhibit 1070 (photo).....1783

Exhibit 1077 (photo).....1784

Exhibit 1078 (photo).....1785

Exhibit 1135 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume I).....1786

Exhibit 1136 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume II) .....1887

Exhibit 1141 (Table of Contents Subject Matter of Statements) .....1892

Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence, filed January 17, 2006 .....1932

Memorandum in Support of Jeffrey R. MacDonald’s Motion Under 28 U.S.C. Section 2255 To Set Aside His Sentence, filed January 17, 2006.....1954

Exhibit 1 (Affidavit of Jimmy Britt).....2006

Exhibit 3 (Affidavit of Lee Tart) .....2010

Exhibit 7 (Affidavit of Everett Morse, Bryant Lane, Donald Buffkin).....2012

Petitioner’s Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction – Namely Newly Discovered DNA Evidence, filed March 22, 2006 .....	2020
Memorandum of Evidence and Points and Authorities in Support of Petitioner’s Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction, filed March 22, 2006 .....	2026
Petitioner’s Motion, Pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, to Expand the Record to Include the Itemized Authenticated Evidence, filed March 23, 2006.....	2033
Petitioner’s Statement of Itemized Material Evidence- With Citations to the Record or to Authenticated Proofs- In Support of his Motion Under 28 U.S.C. § 2255 to Vacate his Sentence, filed March 23, 2006 .....	2038
Excerpts of Reply in Response to Motion to Vacate, Set Aside or Correct Sentence, filed May 8, 2006 .....	2064
Excerpt of Notice of Death, filed October 28, 2008.....	2068
Excerpts of Order Denying Motion for Leave to File Successive 2255 Motion; Denying Motion to Amend or Correct; Denying Motion to Expand the Record; Granting Motion to; Denying Motion to Supplement Itemized Evidence, filed November 4, 2008 .....	2069
Petitioner’s Motion for Hearing Attachment, Letter from Lee Tart to Counsel, filed September 20, 2011.....	2078
Order as to Petitioner’s Motion Under the IPA, filed September 21, 2011 .....	2079
Affidavit of Craig S. Chamberlain, filed December 12, 2011.....	2081
Supplemental Affidavit of Craig S. Chamberlain, filed December 12, 2011 .....	2088
Affidavit of Dillard O. Browning, filed December 12, 2011 .....	2098
Affidavit of Grant D. Graham, Sr., filed December 12, 2011 .....	2105

Affidavit of Janice S. Glisson, filed December 12, 2011 .....2114

Affidavit of Joseph A. Dizinno, filed December 12, 2011 .....2130

Affidavit of Robert Fram, filed December 12, 2011 .....2145

Order Granting Motion to Continue Evidentiary Hearing as to Jeffrey MacDonald,  
filed July 16, 2012.....2165

**TABLE OF CONTENTS**

Volume IV of VII

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 17, 2012.....2166

    Testimony of Wade Smith .....2185

    Testimony of Mary Britt.....2386

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 18, 2012.....2395

    Testimony of Mary Britt.....2398

    Testimony of Eugene Stoeckley .....2431

    Testimony of Wendy Rouder .....2509

    Testimony of Laura Redd .....2565

    Testimony of Sara McMann .....2582

Transcript of Evidentiary Hearing in the United States District Court  
 For the Eastern District of North Carolina, Before the Honorable James  
 C. Fox, September 19, 2012.....2629

    Testimony of Frank Mills .....2635

    Testimony of Dennis Meehan.....2680

    Testimony of Janice Meehan .....2701

    Testimony of Eddie R. Sigmon .....2708

    Testimony of William I. Berryhill, Jr. ....2727

    Testimony of Maddie Reddick .....2736

    Testimony of J. Rich Leonard .....2748

    Testimony of James L. Blackburn.....2759

**TABLE OF CONTENTS**

Volume V of VII

Transcript of Evidentiary Hearing in the United States District Court  
 For the Eastern District of North Carolina, Before the Honorable James  
 C. Fox, September 20, 2012.....2867

    Testimony of Jack B. Crawley, Jr.....2877

    Testimony of William Ivory .....2923

    Testimony of Raymond Madden, Jr. ....3045

Transcript of Evidentiary Hearing in the United States District Court  
 For the Eastern District of North Carolina, Before the Honorable James  
 C. Fox, September 21, 2012.....3071

Testimony of Raymond Madden, Jr. ....3073

Testimony of Joe McGinniss.....3114

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 24, 2012.....3224

Testimony of Joe McGinniss.....3227

Testimony of Jerry Leonard. ....3271

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 25, 2012.....3406

Petitioner’s Closing Argument. ....3408

Government’s Closing Argument.....3462

Petitioner’s Rebuttal. ....3561

**TABLE OF CONTENTS**

Volume VI of VII

Government Exhibits Introduced at September 2012 Evidentiary Hearing

Government Exhibit 2000 (Warrant for Arrest of Witness Helena Stoeckley)  
.....3588

Government Exhibit 2001 (Wire Document of August 1979).....3589

Government Exhibit 2002 (FBI Report of August 14, 1979 Interview of Helena Stoeckley).....	3592
Government Exhibit 2003 (Report of Arrest of Helena Stoeckley).....	3595
Government Exhibit 2006 (Fingerprint Card).....	3597
Government Exhibit 2007 (Fingerprint Card).....	3599
Government Exhibit 2008 (Helena Stoeckley Booking Report).....	3602
Government Exhibit 2009 (Helena Stoeckley Booking Photo) .....	3608
Government Exhibit 2010 (Sworn Statement of Vernoy Kennedy) .....	3609
Government Exhibit 2011 (Court Reporter Certification Vernoy Kennedy) .....	3624
Government Exhibit 2053 (Helena Stoeckley Prisoner, Detention and Disposition Record).....	3626
Government Exhibit 2054 (Helena Stoeckley Disposition Sheet).....	3627
Government Exhibit 2055 (Helena Stoeckley Prisoner, Detention and Disposition Record).....	3628
Government Exhibit 2056 (Helena Stoeckley Commitment) .....	3629
Government Exhibit 2057 (Helena Stoeckley Commitment) .....	3630
Government Exhibit 2058 (Helena Stoeckley Commitment) .....	3631
Government Exhibit 2059 (Helena Stoeckley Release).....	3632
Government Exhibit 2060 (Helena Stoeckley Release).....	3633
Government Exhibit 2061 (Helena Stoeckley Release).....	3634

Government Exhibit 2062 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3635

Government Exhibit 2063 (Helena Stoeckley Disposition Sheet).....3636

Government Exhibit 2064 (Helena Stoeckley Commitment) .....3637

Government Exhibit 2065 (Helena Stoeckley Commitment) .....3638

Government Exhibit 2066 (Helena Stoeckley Release).....3639

Government Exhibit 2067 (Photo of Pickens County Law Enforcement Center) .....3640

Government Exhibit 2068 (1977 Jail Book) .....3641

Government Exhibit 2069 (1977 Jail Book) .....3642

Government Exhibit 2070 (1977 Jail Book) .....3643

Government Exhibit 2071 (1977 Jail Book) .....3644

Government Exhibit 2072 (1977 Jail Book) .....3645

Government Exhibit 2073 (1977 Jail Book) .....3646

Government Exhibit 2074 (News & Observer Article, August 17, 1979)  
.....3647

Government Exhibit 2085 (Statement of Facts of Jimmy Britt, February 23, 2005).....3648

Government Exhibit 2086 (Interview Under Oath of Jimmy Britt, February 24, 2005).....3649

Government Exhibit 2087 (Affidavit of Jimmy Britt, October 26, 2005)  
.....3684

Government Exhibit 2088 (Affidavit of Jimmy Britt, November 3, 2005)  
 .....3688

Government Exhibit 2089 (Addendum to Affidavit of Jimmy Britt, February  
 28, 2006) .....3692

Government Exhibit 2100 (North Carolina-South Carolina Driving  
 Distances).....3694

Government Exhibit 2103a (Raleigh Map) .....3695

Government Exhibit 2104 (South Carolina Map) .....3696

Government Exhibit 2138 (Sketch of MacDonald Home).....3698

Government Exhibit 2201 (Fatal Vision Book Excerpt).....3699

Government Exhibit 2318 (Tale of the Green Beret Excerpt) .....3709

Government Exhibit 2332 (FBI Report of September 17, 2007 Interview of  
 Helena Stoeckley Sr.) .....3718

Government Exhibit 2333 (Notes of FBI Interview of Helena Stoeckley  
 Sr.).....3722

Government Exhibit 2334 (FBI Agent Madden Summary of Interview of  
 Helena Stoeckley Sr.) .....3726

Government Exhibit 2357 (Sketch).....3730

Government Exhibit 2367 (Government Summary Exhibit- Jimmy Britt) .....  
 .....3731

Government Exhibit 3499 (Government Summary Exhibit- Unsourced Hairs  
 75A, 91A and 58A (1)).....3749

Government Exhibit 3500 (Government Summary Exhibit- Q-137 and 91A)3871



Government Exhibit 3501 (Government Summary Exhibit- DNA Results of Government's Trial and New Evidence).....	3889
Government Exhibit 4000 (MacDonald Handwritten Notes) .....	3935
Government Exhibit 4002 (Fatal Vision Book Excerpt).....	3953
Government Exhibit 6001 (Military Police Receipt) .....	3958
Government Exhibit 6002 (Inventory) .....	3962
Government Exhibit 6073 (Government Summary of MacDonald Trial Testimony).....	3964
Government Exhibit 6076 (FBI Report of March 21, 2006 Interview of Jerry Leonard).....	4011
Government Exhibit 7000 (A Wilderness of Error Book Excerpt).....	4013
Government Exhibit 7001 (A Wilderness of Error Book Excerpt).....	4021
Government Exhibit 7010 (Excerpt of In Re Leonard, 339 N.C. 596 (1995))... ..	4024
Government Exhibit 7015 (NC State Bar Ethics Inquiry) .....	4027
Government Exhibit 7017 (May 21, 2007 Letter from Jerry Leonard to Court) .....	4031

#### Petitioner's Exhibits Introduced at September 2012 Evidentiary Hearing

Petitioner's Exhibit 5004 (Candle Wax Trial Testimony) .....	4033
Petitioner's Exhibit 5021 (Declaration of Jimmy Friar) .....	4045
Petitioner's Exhibit 5023 (Declaration of Ann Sutton Cannady) .....	4048
Petitioner's Exhibit 5024a (Declaration of Norma Lane) .....	4053

Petitioner’s Exhibit 5024b (Declaration of Bryant Lane) .....4055

Petitioner’s Exhibit 5027 (Affidavit of Ellen Dannelly) .....4057

Petitioner’s Exhibit 5048 (FBI Report of May 23, 1984 Interview of Norma Lane) .....4060

Petitioner’s Exhibit 5051 (Affidavit of Helena Stoeckley Sr.) .....4063

Petitioner’s Exhibit 5057 (Jimmy Britt Polygraph Examination).....4066

Petitioner’s Exhibit 5058 (Affidavit of Jimmy Britt).....4069

Petitioner’s Exhibit 5059 (Affidavit of Jimmy Britt).....4073

Petitioner’s Exhibit 5060 (Picture of Jimmy Britt with Helena Stoeckley in Courthouse).....4077

Petitioner’s Exhibit 5069 (Lee Tart Interview Under Oath) .....4078

Petitioner’s Exhibit 5080 (Affidavit of Wendy Rouder, Esq.).....4090

Petitioner’s Exhibit 5084 (Kay Reibold Statement).....4095

Petitioner’s Exhibit 5113 (Affidavit of Jerry Leonard).....4098

Petitioner’s Exhibit 5115 (Letter from Judge Dupree to Wendy Rouder)  
 ... .....4102

**TABLE OF CONTENTS**

Volume VII of VII

Stipulations, filed September 17, 2012 .....4103

Excerpts of Government’s Post-Hearing Memorandum, filed July 1, 2013 .....4219

Excerpts of Government’s Post-Hearing Sur-Reply, filed September 23, 2013  
.....4311

Order Denying Petitioner’s Motion to Vacate Under 28 U.S.C. § 2255,) filed July  
24, 2014 .....4389

Petitioner’s Motion to Alter or Amend Judgment and Incorporated Memorandum  
of Law, filed August 21, 2014 .....4558

Excerpts of Government’s Memorandum in Opposition of Petitioner’s Motion to  
Alter or Amend Judgment, filed February 12, 2015.....4570

Order Denying Motion to Alter or Amend Judgment as to Jeffrey MacDonald, filed  
May 18, 2015 .....4605

Petitioner’s Notice of Appeal, filed July 16, 2015 .....4631

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

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

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

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

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.

T A B L E O F C O N T E N T S

<u>OPENING STATEMENT</u>		<u>PAGE</u>
BY MR. WIDENHOUSE		14
<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
<u>WADE SMITH</u>		
BY MR. WIDENHOUSE	DIRECT	21
BY MR. BRUCE	CROSS	53
BY MR. WIDENHOUSE	REDIRECT	209
BY MR. BRUCE	RE CROSS	218
<u>MARY BRITT</u>		
BY MR. WIDENHOUSE	DIRECT	221
<u>EXHIBITS</u>		
<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
5055	2/24/05 STATEMENT UNDER OATH OF MR. BRITT	27
5060	PHOTO - MS. STOECKLEY AND MR. BRITT	32
5057	5/24/05 POLYGRAPH OF MR. BRITT	39
5058	10/26/05 AFFIDAVIT OF MR. BRITT	44
5059	11/3/05 AFFIDAVIT OF MR. BRITT	50
<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
2000	WARRANT FOR HELENA STOECKLEY	61
2362	CALENDAR FOR 1979	72
2077	FLOOR PLAN OF 7TH FLOOR RALEIGH FEDERAL BUILDING	74
2077A	FLOOR PLAN OF 7TH FLOOR RALEIGH FEDERAL BUILDING WITH MARKINGS	75
2377	PHOTO - HOLIDAY INN/CLARION	133
2368	PHOTO - JOURNEY'S END/DAYS INN	135
2373	PHOTO - HILTON	137
2374	PHOTO - HILTON	138
2085	2/23/05 STATEMENT OF FACTS OF MR. BRITT	165
2086	2/24/05 STATEMENT UNDER OATH OF MR. BRITT	168
2087	10/26/05 AFFIDAVIT OF MR. BRITT	186
2104	MAP OF SOUTH CAROLINA	189
2088	11/3/05 AFFIDAVIT OF MR. BRITT	195
2089	2/28/06 ADDENDUM TO AFFIDAVIT OF MR. BRITT	199
2074	PHOTO FROM <i>NEWS &amp; OBSERVER</i> OF MS. STOECKLEY, MR. BRITT AND MR. DAVIS	207

September 17, 2012

T A B L E O F C O N T E N T S C O N T I N U E D

BENCH CONFERENCES

PAGE

117

September 17, 2012

P R O C E E D I N G S

8:55 A.M.

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

(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, PLEASE BE SEATED.

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

(BENCH CONFERENCE NOT REPORTED.)

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

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

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

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

MR. WIDENHOUSE: YES, SIR.

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

September 17, 2012

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

2 THE COURT: THANK YOU.

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

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

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

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

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

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

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

September 17, 2012



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

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

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

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

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

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

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

September 17, 2012

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

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

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

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

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

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

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

September 17, 2012

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

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

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

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

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

September 17, 2012

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

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

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

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

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

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

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

September 17, 2012

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

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

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

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

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

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

September 17, 2012

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

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

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

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

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

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

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

September 17, 2012

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

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

5 THE COURT: YES.

6 MR. BRUCE: OKAY.

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

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

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

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

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

September 17, 2012

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

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

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

11 THE COURT: CERTAINLY.

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

14 THE COURT: CERTAINLY.

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

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

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

September 17, 2012



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

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

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

7 THE COURT: YES, SIR.

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

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

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

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

25 OUR POSITION AND CONTENTION IS THAT BOTH THE BRITT

September 17, 2012

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

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

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

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

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

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

September 17, 2012

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

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

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

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

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

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

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

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

September 17, 2012

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

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

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

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

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

25 WE ALSO HOPE TO PRESENT EVIDENCE FROM JERRY LEONARD

September 17, 2012

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

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

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

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

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

September 17, 2012

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

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

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

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

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

17 THE COURT: SURELY.

18 MR. BRUCE: THANK YOU.

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

21 MR. WIDENHOUSE: WE CALL WADE SMITH.

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

25 THE COURT: SURE.

September 17, 2012

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

2 THE COURT: FINE.

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

5 THE COURT: THANK YOU.

6 (PAUSE.)

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

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

13 DO YOU AGREE THAT THAT'S THE BURDEN?

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

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

18 MR. BRUCE: YES, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH.

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

21 THE COURT: GOOD MORNING, WADE.

22 THE WITNESS: GOOD MORNING, YOUR HONOR.

23 THE COURT: NICE TO SEE YOU AGAIN.

24 THE WITNESS: GOOD TO SEE YOU AGAIN.

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

September 17, 2012

Smith/Direct

Page 21

1 BY MR. WIDENHOUSE:

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

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

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

6 A. I'M A LAWYER.

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

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

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

11 A. FIFTY YEARS THIS YEAR.

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

13 A. I DO.

14 Q. AND HOW DO YOU KNOW HIM?

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

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

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

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

September 17, 2012



Smith/Direct

Page 22

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

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

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

9 Q. YES. YES.

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

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

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

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

September 17, 2012

Smith/Direct

Page 23

1 BEEN INVOLVED?

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

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

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

14 THE COURT: THANK YOU.

15 BY MR. WIDENHOUSE:

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

18 A. EXCUSE ME?

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

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

September 17, 2012

Smith/Direct

Page 24

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

2 A. I DO, YES, SIR.

3 Q. AND HOW DID YOU KNOW HIM?

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

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

12 A. YES.

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

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

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

23 A. IT DID.

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

September 17, 2012

Smith/Direct

Page 25

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

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

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

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

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

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

September 17, 2012

Smith/Direct

Page 26

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

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

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

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

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

18 A. AND --

19 Q. -- SHOW YOU --

20 A. GO AHEAD. YES, SIR.

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

24 A. I SEE IT, YES, SIR.

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

September 17, 2012

Smith/Direct

Page 27

1 A. I DO.

2 Q. AND WHAT IS IT?

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

5 (DEFENSE EXHIBIT NUMBER 5055

6 WAS IDENTIFIED FOR THE RECORD.)

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

10 A. YES, I HAVE.

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

14 A. I THINK IT DOES.

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

18 A. SO, LINE TEN ON PAGE SEVEN.

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

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

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

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

September 17, 2012

Smith/Direct

Page 28

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

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

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

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

11 A. YES, SIR.

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

13 A. YES, SIR.

14 Q. SO, A FAIRLY SUBSTANTIAL --

15 A. TWENTY-FIVE YEARS OR SO.

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

17 A. YES, I DID.

18 Q. AND WHAT DID HE TELL YOU?

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

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

September 17, 2012

Smith/Direct

Page 29

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

3 A. YES, IT DOES.

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

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

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

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

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

14 A. HE SAID --

15 Q. ACTUALLY, LET ME --

16 A. EXCUSE ME.

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

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

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

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

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

September 17, 2012



Smith/Direct

Page 30

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

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

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

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

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

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

22 A. OKAY. BEGINNING AT LINE SEVEN?

23 Q. YES. PAGE 15 LINE SEVEN.

24 A. OKAY.

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

September 17, 2012

Smith/Direct

Page 31

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

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

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

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

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

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

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

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

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

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

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

21 A. IT IS.

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

24 A. EXCUSE ME?

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

September 17, 2012

Smith/Direct

Page 32

1 OF JEFFREY MACDONALD'S TRIAL LAWYERS?

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

3 Q. CAN YOU TELL US WHY?

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

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

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

13 Q. DID HE TELL YOU --

14 A. -- AND THEN --

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

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

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

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

25 (DEFENSE EXHIBIT NUMBER 5060)

September 17, 2012

Smith/Direct

Page 33

1 WAS IDENTIFIED FOR THE RECORD.)

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

5 A. I'M UNABLE TO TELL.

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

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

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

14 A. NO.

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

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

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

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

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

25 (PAUSE.)

September 17, 2012

Smith/Direct

Page 34

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

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

10 A. HE DID.

11 Q. WHAT DID HE TELL YOU?

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

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

19 A. YES.

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

22 A. IT IS.

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

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

September 17, 2012

Smith/Direct

Page 35

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

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

6 A. YES, I RECOGNIZE THOSE WORDS.

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

9 A. YES, SIR.

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

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

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

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

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

20 A. I DID ASK HIM THAT.

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

23 A. YES, I RECOGNIZE THOSE WORDS.

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

25 A. IT IS.

September 17, 2012

Smith/Direct

Page 36

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

3 A. YES, SIR.

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

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

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

14 A. I DID.

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

18 A. ALL RIGHT.

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

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

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

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

September 17, 2012

Smith/Direct

Page 37

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

3 A. THEY WERE.

4 Q. AND WHY WAS THAT?

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

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

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

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

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

21 Q. ALL RIGHT.

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

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

September 17, 2012



Smith/Direct

Page 38

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

3 THE COURT: ALL RIGHT, SIR.

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

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

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

18 THE COURT: YES, SIR.

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

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

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

September 17, 2012

Smith/Direct

Page 39

1 ADMISSIBLE, YOUR HONOR, RIGHT?

2 THE COURT: YES, SIR.

3 MR. BRUCE: THANK YOU.

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

6 MR. BRUCE: THANK YOU.

7 MR. WIDENHOUSE: THANK YOU, JUDGE.

8 BY MR. WIDENHOUSE:

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

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

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

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

18 A. YES, I DID.

19 Q. AND WHY DID YOU CONTACT STEVE DAVENPORT?

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

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

September 17, 2012

Smith/Direct

Page 40

1 A. YES, IT DOES.

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

4 MR. WIDENHOUSE: I'M SORRY?

5 THE COURT: I WANT TO READ THE POLYGRAPH.

6 MR. WIDENHOUSE: OKAY.

7 THE COURT: THANK YOU. JUST A MOMENT.

8 (PAUSE.)

9 THE COURT: ALL RIGHT, SIR.

10 BY MR. WIDENHOUSE:

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

14 A. YES, I THINK IT DOES.

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

18 A. YES.

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

21 A. I WAS.

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

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

September 17, 2012

Smith/Direct

Page 41

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

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

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

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

11 A. YES, IT DOES.

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

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

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

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

September 17, 2012

1 ANSWER: YES.

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

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

7 ANSWER: YES.

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

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

12 ANSWER: NO.

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

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

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

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

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

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

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

Smith/Direct

Page 43

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

3 BY MR. WIDENHOUSE:

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

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

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

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

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

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

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

September 17, 2012

Smith/Direct

Page 44

1 CORRECT?

2 A. YES.

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

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

5 Q. AND DO YOU RECOGNIZE IT?

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

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

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

12 (DEFENSE EXHIBIT NUMBER 5058

13 WAS IDENTIFIED FOR THE RECORD.)

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

16 A. YES.

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

20 A. YES, IT DOES.

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

24 (PAUSE.)

25 A. YES, I'VE READ IT.

September 17, 2012

Smith/Direct

Page 45

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

4 A. YES, IT DOES.

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

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

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

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

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

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

September 17, 2012



Smith/Direct

Page 46

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

4 A. I DON'T THINK SO.

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

7 A. ALL RIGHT.

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

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

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

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

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

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

September 17, 2012

Smith/Direct

Page 47

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

3 A. IT IS, YES.

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

5 (PAUSE.)

6 A. I'VE LOOKED AT IT.

7 Q. AND WHAT DOES THAT INFORMATION REVEAL?

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

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

15 A. YES.

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

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

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

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

September 17, 2012

Smith/Direct

Page 48

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

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

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

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

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

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

17 THE WITNESS: YES, SIR.

18 THE COURT: THANK YOU.

19 THE WITNESS: THANK YOU.

20 BY MR. WIDENHOUSE:

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

23 (PAUSE.)

24 A. I'VE READ IT.

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

September 17, 2012

Smith/Direct

Page 49

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

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

7 (PAUSE.)

8 A. YES.

9 Q. AND WHAT INFORMATION IS --

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

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

16 (PAUSE.)

17 A. I HAVE.

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

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

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

September 17, 2012

Smith/Direct

Page 50

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

3 (PAUSE.)

4 A. I'VE READ THAT.

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

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

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

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

15 (DEFENSE EXHIBIT NUMBER 5059

16 WAS IDENTIFIED FOR THE RECORD.)

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

19 A. I HAVE.

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

23 A. YES.

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

September 17, 2012

Smith/Direct

Page 51

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

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

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

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

9 A. IT IS.

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

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

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

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

September 17, 2012

Smith/Direct

Page 52

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

3 A. I THINK THEY ARE.

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

7 A. THEY ARE.

8 Q. AND, AGAIN, WHAT'S THE IMPORTANCE OF THIS INFORMATION TO  
9 YOU AS HAVING BEEN ONE OF JEFFREY MACDONALD'S TRIAL LAWYERS?

10 A. WE HAD TO ESTABLISH THAT THERE WERE INTRUDERS IN THE  
11 HOUSE. THAT WAS OUR MISSION. WE NEEDED TO SHOW THAT PEOPLE  
12 CAME IN THAT HOUSE AND DID THIS THING TO HIS FAMILY. AND THIS  
13 IS -- THIS WOULD ESTABLISH IT OR COULD HELP ESTABLISH IT.

14 Q. SO, IT WAS IMPORTANT TO YOU TO HAVE SOMEONE LIKE HELENA  
15 STOECKLEY TESTIFY THAT SHE WAS IN THE HOUSE?

16 A. IT WAS.

17 Q. NOW, TO YOUR KNOWLEDGE, DID MR. BRITT HAVE ANY PERSONAL  
18 STAKE IN COMING FORWARD TO YOU WITH THIS INFORMATION?

19 A. NO, HE DIDN'T. I MEAN, HE MADE THAT CLEAR THAT HE HAD  
20 ONE REASON AND THAT WAS HE WANTED THIS OFF HIS HEART AND HIS  
21 SOUL.

22 MR. WIDENHOUSE: MAY I HAVE JUST A MOMENT, YOUR  
23 HONOR?

24 THE COURT: YES, SIR.

25 (PAUSE.)

September 17, 2012

Smith/Cross

Page 53

1 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. THAT'S ALL  
2 I HAVE.

3 THE COURT: CROSS.

4 MR. BRUCE: THANK YOU, YOUR HONOR.

5 C R O S S - E X A M I N A T I O N 10:15 A.M.

6 BY MR. BRUCE:

7 Q. GOOD MORNING, MR. SMITH.

8 A. MR. BRUCE, HOW ARE YOU, SIR?

9 Q. FINE. I HOPE YOU ARE. I WANT TO START WITH HELENA  
10 STOECKLEY'S ATTENDANCE AT THE TRIAL IN 1979, IS THAT OKAY WITH  
11 YOU?

12 A. THAT'S FINE.

13 Q. THE DEFENSE WANTED TO OBTAIN THE PRESENCE OF HELENA  
14 STOECKLEY AT THE 1979 TRIAL, IS THAT CORRECT?

15 A. WE DID.

16 Q. AND TOWARD THAT END, YOU SUBPOENAED HELENA STOECKLEY'S  
17 PARENTS, IS THAT CORRECT?

18 A. I VAGUELY REMEMBER THAT, BUT I THINK WE DID. THAT'S VERY  
19 VAGUE TO ME, MR. BRUCE, BUT I THINK SO.

20 Q. ALL RIGHT. MAYBE WE CAN REFRESH YOUR RECOLLECTION. I'M  
21 GOING TO -- FREQUENTLY DURING YOUR TESTIMONY I'M GOING TO  
22 REFER YOU TO PAGES OF THE TRIAL TRANSCRIPT.

23 A. THAT'S FINE.

24 Q. AND IF EVERYTHING WORKS CORRECTLY, THEY'LL COME UP ON THE  
25 SCREEN BEFORE YOU. I WANT TO START WITH TRIAL DAY 17, PAGE

September 17, 2012



1 86. AND IF YOU SEE AT THE TOP OF THE PAGE, IT SAYS -- CAN YOU  
2 READ THAT FIRST PARTIAL PARAGRAPH?

3 A. SECONDLY, WE HAVE HERE UNDER SUBPOENA THE PARENTS OF  
4 HELENA STOECKLEY. WE'VE BEEN TRYING TO LOCATE HER. IN OUR  
5 EFFORT TO LOCATE HER, WHICH HAS BEEN FUTILE UP TO NOW, WE HAVE  
6 SUBPOENAED THEM AS TO THEIR KNOWLEDGE OF HER WHEREABOUTS.

7 Q. THANK YOU. NOW, SHOWING THE WHOLE PAGE, PLEASE. IT'S  
8 FAIR TO INFER THAT THAT'S MR. SEGAL TALKING WHEN YOU LOOK AT  
9 THE BOTTOM OF THE PAGE?

10 A. YES.

11 Q. ALL RIGHT. DOES THAT REFRESH YOUR RECOLLECTION ABOUT  
12 SUBPOENAING MR. AND MRS. STOECKLEY?

13 A. JUST VERY VAGUELY, BUT IT DOES, AND I CERTAINLY WOULD  
14 AGREE THAT WE MUST HAVE DONE THAT.

15 Q. ALL RIGHT. LET'S LOOK AT PAGE 89 OF TRIAL DAY 17.

16 MADAM CLERK: I'M SORRY, IS THERE AN EXHIBIT NUMBER  
17 WITH THIS?

18 MR. BRUCE: NO, THERE IS NOT AN EXHIBIT NUMBER.

19 MADAM CLERK: THANK YOU.

20 MR. BRUCE: AND, YOUR HONOR, WE'RE USING PAGES THAT  
21 OUR SCANNING ASSIGNED TO IT BECAUSE THE PAGE NUMBERS OF THE  
22 TRIAL RECORD ARE SO HARD TO READ, THEY'VE FADED OVER THE  
23 YEARS.

24 WHERE I CAN, I'LL ALSO GIVE THE TRIAL TRANSCRIPT  
25 NUMBER. FOR INSTANCE, THE FIRST PAGE WE LOOKED AT IS TRIAL

Smith/Cross

Page 55

1 TRANSCRIPT 4846 AND THE ONE WE'RE LOOKING AT NOW IS 4849, BUT  
2 WE'RE REFERRING TO THEM BY THE TRIAL DAY. THIS IS TRIAL DAY  
3 17, PAGE 89.

4 BY MR. BRUCE:

5 Q. THIS WAS A LONG TRIAL, RIGHT, MR. SMITH?

6 A. ABOUT SIX WEEKS.

7 Q. ALL RIGHT. AND YOU HAD COURT GENERALLY FIVE DAYS A WEEK?

8 A. YES, WE DID.

9 Q. SO, THE COURT REPORTER NUMBERED THE TRIAL DAYS. FOR  
10 INSTANCE, THE FIRST WEEK WOULD BE ONE THROUGH FIVE AND THEN  
11 THE SECOND WEEK SIX THROUGH TEN AND SO FORTH?

12 A. I THINK THAT'S RIGHT, YES.

13 Q. ALL RIGHT. NOW, LOOKING AT PAGE 48 -- OR AT PAGE 89,  
14 WOULD YOU LOOK DOWN AT LINE 18 AND READ WHAT MR. SEGAL SAYS IN  
15 THAT FIRST PARAGRAPH?

16 A. DO YOU WANT ME TO READ IT ALOUD OR JUST READ IT TO  
17 MYSELF?

18 Q. READ IT ALOUD, IF YOU WOULD, PLEASE.

19 A. MR. SEGAL: I DON'T THINK ANYBODY IS HIDING HER OUT. I  
20 THINK SHE IS A DIFFICULT WITNESS TO FIND. THERE'S NO QUESTION  
21 ABOUT IT. I THINK THE ADDRESS WE HAD BEEN GIVEN IN 1975 AND  
22 '79, WAS HER PARENTS' ADDRESS AND THAT IS THE BEST ANYBODY  
23 HAS.

24 DO YOU WANT ME TO READ ON?

25 Q. READ THE LAST THREE LINES IF YOU WOULD.

September 17, 2012

Smith/Cross

Page 56

1 A. WE HAVE HER BROTHER'S ADDRESS NOW. WE HAVE BEEN UP TO  
2 HIS HOME. SHE'S BEEN IN AND OUT OF THERE. ALL I WANT TO DO  
3 IS SIMPLY -- I THINK WE HAVE TO MAKE --

4 Q. NOW, WE'RE MOVING ON TO PAGE 90 OF TRIAL DAY 17.

5 A. -- SOME OTHER PROOFS ABOUT HER UNAVAILABILITY. I DON'T  
6 CONSIDER THIS TO BE TOTAL AND COMPLETE. I INTEND TO MAKE SOME  
7 OTHER PROOFS. I JUST WANT TO PUT IT ON THE RECORD SO THAT  
8 EVERYBODY KNOWS THAT THERE HAS BEEN AN EFFORT MADE TO DO IT  
9 RIGHT.

10 Q. NOW, THIS IS MR. SEGAL SPEAKING AND HE WAS YOUR CO-  
11 COUNSEL AT THE MACDONALD TRIAL, IS THAT RIGHT?

12 A. HE WAS, YES.

13 Q. MR. BERNIE SEGAL, IS THAT RIGHT?

14 A. YES.

15 Q. AND IT SEEMS THAT HE IS TRYING TO ESTABLISH THE  
16 UNAVAILABILITY OF HELENA STOECKLEY, IS THAT RIGHT?

17 A. YES.

18 Q. AND IS THIS BECAUSE HE WANTED TO TRY TO INTRODUCE OUT OF  
19 COURT STATEMENTS THAT HELENA STOECKLEY HAD MADE AND FOR  
20 PURPOSES OF LAYING THAT PREDICATE HE WANTED TO ESTABLISH HER  
21 UNAVAILABILITY?

22 A. THAT CERTAINLY IS LOGICAL, MR. BRUCE. I DON'T REMEMBER  
23 CONFERRING WITH HIM ABOUT THAT, MAYBE WE DID, BUT THAT MAKES  
24 SENSE, YES.

25 Q. ALL RIGHT. NOW, BEFORE YOU HAD OBTAINED -- EVENTUALLY

September 17, 2012

Smith/Cross

Page 57

1 YOU WOULD OBTAIN THE PRESENCE OF HELENA STOECKLEY, IS THAT  
2 RIGHT?

3 A. SIR?

4 Q. EVENTUALLY YOU WOULD BE ABLE TO OBTAIN THE PRESENCE OF  
5 HELENA STOECKLEY?

6 A. WE DID.

7 Q. BEFORE WE GET TO THAT THOUGH, STICKING WITH HELENA  
8 STOECKLEY'S PARENTS, WHILE THEY WERE IN RALEIGH, DID YOU AND  
9 THE DEFENSE TEAM HAVE AN OPPORTUNITY TO INTERVIEW HER? I'M  
10 TALKING ABOUT THE MOTHER OF HELENA STOECKLEY.

11 A. I HAVE NO RECOLLECTION OF WHETHER WE DID.

12 Q. DO YOU KNOW HER NAME TO ALSO BE -- THE MOTHER OF HELENA  
13 STOECKLEY ALSO TO BE HELENA STOECKLEY?

14 A. I DON'T KNOW THAT.

15 Q. DO YOU RECALL EVER MEETING HER?

16 A. NO.

17 Q. IF THE BOOK BY JOE MCGINNISS SAYS THERE WAS A DEFENSE  
18 INTERVIEW OF HELENA STOECKLEY'S MOTHER, WOULD YOU DISPUTE  
19 THAT?

20 A. NO.

21 Q. DO YOU RECALL HER SAYING THAT SHE DIDN'T KNOW HELENA, THE  
22 DAUGHTER'S, ADDRESS AND DIDN'T WANT TO KNOW?

23 A. I DON'T REMEMBER THAT, NO, SIR.

24 Q. DID YOU SIT IN ON INTERVIEWS OF POTENTIAL DEFENSE  
25 WITNESSES?

September 17, 2012

1 A. MOST OF THE TIME.

2 Q. WELL, I'M GOING TO ASK YOU SOME OTHER QUESTIONS TO SEE IF  
3 IT REFRESHES YOUR RECOLLECTION.

4 A. CERTAINLY. PLEASE DO.

5 Q. DO YOU RECALL MRS. STOECKLEY SENIOR SAYING ABOUT HELENA  
6 THAT SHE CALLED UP, MUST HAVE BEEN A YEAR AND A HALF AGO, ALL  
7 BEFUDDLED BECAUSE SHE HAD LOST HER CAR KEYS?

8 A. NO, SIR.

9 Q. DO YOU RECALL HELENA STOECKLEY'S MOTHER SAYING ABOUT  
10 HELENA STOECKLEY THAT WHEN WE GOT HER HOME SHE WAS LIKE A  
11 VEGETABLE. SHE COULDN'T TALK, SHE COULDN'T EAT, HER FACE  
12 QUIVERED, SALIVA RAN OUT OF HER MOUTH?

13 A. NO, SIR.

14 Q. DO YOU RECALL HELENA STOECKLEY'S MOTHER SAYING ABOUT  
15 HELENA STOECKLEY THAT WE PUT HER ON A STRICT DIET, BUT SHE WAS  
16 STILL NOT QUITE RIGHT. SHE'S A PHYSICAL AND MENTAL WRECK. DO  
17 YOU RECALL ANY WORDS LIKE THAT?

18 A. I DON'T. IT MAY BE THAT I WAS THERE AND HEARD THOSE  
19 THINGS. IT'S VERY POSSIBLE THAT I WASN'T. AND SO I JUST  
20 DON'T REMEMBER THAT.

21 Q. NOW, WHEN THE DEFENSE WAS DOING MID-TRIAL INTERVIEWS, THE  
22 TEAM WAS USUALLY YOU AND BERNIE SEGAL?

23 A. AND PROBABLY OTHER PEOPLE, OTHER PARALEGAL PEOPLE, THINGS  
24 LIKE THAT. IT WOULD RARELY HAVE BEEN JUST THE TWO OF US.

25 Q. ALL RIGHT. AND ONE PERSON WHO WAS FREQUENTLY, IF NOT

1 ALWAYS, THERE WOULD BE JOE MCGINNISS?

2 A. JOE MCGINNISS WAS OFTEN THERE, YES.

3 Q. AND HE HAD BEEN SORT OF EMBEDDED IN THE TRIAL TEAM, IS  
4 THAT RIGHT?

5 A. HE HAD.

6 Q. AND THAT WAS BECAUSE OF A BOOK DEAL BETWEEN MR. MACDONALD  
7 AND MR. MCGINNISS?

8 A. I THINK THAT'S RIGHT.

9 Q. AND YOU KNEW THAT'S -- THAT WOULD EXPLAIN HIS PRESENCE?

10 A. YES. I MIGHT SAY THAT THAT WAS A LITTLE BIT OF A  
11 HUMOROUS THING BECAUSE I MADE IT CLEAR TO JOE MCGINNISS, WHO  
12 WOULD TELL YOU THIS, AND ALSO TO MR. SEGAL, THAT DOWN HERE IN  
13 NORTH CAROLINA WE DIDN'T DO THAT, BUT NEVERTHELESS HE WAS  
14 EMBEDDED AND WAS A PART OF THE TEAM.

15 Q. AND HIS PURPOSE THERE WAS TO RECORD WHAT WENT ON FOR  
16 PURPOSES OF WRITING THIS LATER BOOK, IS THAT RIGHT?

17 A. I'M SURE THAT'S RIGHT, YES, SIR.

18 Q. NOW, DO YOU RECALL MRS. STOECKLEY SENIOR SAYING ABOUT HER  
19 DAUGHTER SHE'S NOT EVEN A HUMAN BEING ANYMORE, YOU FIND HER  
20 NOW, SURE, SHE'LL TALK, SHE'LL ALWAYS TALK, BUT I'M TELLING  
21 YOU SHE'S GOING TO TALK ALL KINDS OF NONSENSE?

22 A. NO, SIR, I DON'T REMEMBER THAT.

23 Q. ARE YOU FAMILIAR WITH A MAN NAMED PRINCE BEASLEY?

24 A. YES, I WAS THEN. I REMEMBER HIS NAME.

25 Q. AND HE WAS A POLICE OFFICER IN THE FAYETTEVILLE AREA, IS

Smith/Cross

Page 60

1 THAT RIGHT?

2 A. HE WAS.

3 Q. AND HE HAD RETIRED BY THE TIME OF THE TRIAL?

4 A. I THINK SO.

5 Q. AND HE HAD A RELATIONSHIP WITH HELENA STOECKLEY IN TERMS  
6 OF SHE WAS A DRUG INFORMANT, IS THAT RIGHT?

7 A. HE HAD CONTACTED HER -- WAS IN CONTACT WITH HER FROM TIME  
8 TO TIME IN HIS WORK AS A FAYETTEVILLE POLICEMAN.

9 Q. GETTING BACK TO HELENA STOECKLEY SENIOR'S INTERVIEW WITH  
10 THE DEFENSE, DO YOU RECALL HER SAYING THAT HELENA WAS A SOFT  
11 HEARTED PERSON AND LOVED LITTLE CHILDREN?

12 A. I HAVE THE FAINTEST, VAGUEST RECOLLECTION OF SOMETHING  
13 LIKE THAT, BUT IT'S HARDLY ENOUGH THERE TO CLING TO.

14 Q. AND DO YOU RECALL HER SAYING THAT HELENA STOECKLEY, AFTER  
15 THE MACDONALD MURDERS, SAID THAT NO HIPPIE AROUND HERE WOULD  
16 DO A THING LIKE THAT?

17 A. NO, I DON'T REMEMBER THAT.

18 Q. AND DO YOU RECALL HER SAYING THAT HER DAUGHTER HAD SAID  
19 THAT EVERYBODY'S GOING TO PITCH IN AND FIND OUT WHAT HAPPENED?

20 A. NO, I DON'T REMEMBER THAT.

21 Q. AND REGARDING MR. BEASLEY, DO YOU RECALL MRS. STOECKLEY  
22 SAYING ABOUT HER DAUGHTER THAT BEASLEY WAS HER DADDY IMAGE?

23 A. NO, I DON'T REMEMBER THAT.

24 Q. DO YOU RECALL HER SAYING THAT HE HAD A TERRIFIC AMOUNT OF  
25 INFLUENCE OVER THE DAUGHTER, HELENA STOECKLEY?

September 17, 2012

Smith/Cross

Page 61

1 A. I DO NOT REMEMBER THAT.

2 Q. AND DO YOU RECALL HER SAYING THAT AS FAR AS HELENA  
3 STOECKLEY SAYING ANYTHING ABOUT THE MACDONALD MURDERS THAT  
4 DADDY BEASLEY HAD TALKED HER INTO IT?

5 A. I DON'T REMEMBER THAT.

6 Q. ALL RIGHT. SO, THE DEFENSE WAS ASKING FOR GOVERNMENT OR  
7 COURT HELP IN LOCATING HELENA STOECKLEY?

8 A. YES.

9 Q. CAN WE PUT UP GOVERNMENT EXHIBIT 2000 ON THE SCREEN,  
10 PLEASE? CAN YOU READ THAT, MR. SMITH?

11 A. YES. YES, I CAN.

12 Q. JUST TAKE A MINUTE TO READ THROUGH IT AND THEN TELL US  
13 WHAT IT IS.

14 (PAUSE.)

15 A. I'VE READ IT.

16 Q. AND CAN YOU TELL ME WHAT IT IS?

17 A. IT'S AN ORDER SIGNED BY JUDGE DUPREE THAT HELENA BE  
18 PICKED UP AND BROUGHT FORTHWITH TO THE TRIAL.

19 (GOVERNMENT EXHIBIT NUMBER 2000

20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. AND THIS IS PURSUANT TO DEFENSE REQUEST, IS THAT CORRECT?

22 A. YES.

23 Q. AND WAS THE GOVERNMENT ABLE TO LOCATE HER PRETTY QUICKLY?

24 A. THE GOVERNMENT DID LOCATE HER, YES.

25 Q. SO, THE UNITED STATES GOVERNMENT, YOUR ADVERSARY IN THE

September 17, 2012



Smith/Cross

Page 62

1 CASE, IS LOCATING WHAT YOU CONSIDERED TO BE A KEY WITNESS FOR  
2 THE DEFENSE?

3 A. YES.

4 Q. NOW, LET'S TURN TO TRIAL DAY 19, PAGE 14. IS IT FAIR TO  
5 SAY, MR. SMITH, THAT THERE WERE A LOT OF BENCH CONFERENCES  
6 DURING THIS TRIAL?

7 A. THERE WERE.

8 Q. AND YOU CAN'T SEE THE SPEAKER IDENTIFIED UNTIL THE NEXT  
9 PAGE SO LET'S GO ON TO PAGE 15 AND COME BACK. CAN YOU SEE  
10 FROM THERE THAT IT LOOKS LIKE THE COURT WAS ADDRESSING  
11 EVERYONE THERE AT THE TOP OF PAGE 15?

12 A. YES.

13 Q. ALL RIGHT.

14 A. IT APPEARS THAT THE COURT IS ADDRESSING EVERYONE.

15 Q. ALL RIGHT. WELL, THEN, LET'S GO BACK TO PAGE 14 AND GET  
16 THE FULL THRUST OF IT. IF YOU LOOK DOWN AT LINE 12 WHERE  
17 JUDGE DUPREE STARTS OUT BY SAYING WHAT I REALLY GOT YOU UP  
18 HERE FOR, DO YOU SEE THAT?

19 A. I DO, YES.

20 Q. AND BY UP HERE, JUDGE DUPREE MEANS UP AT THE BENCH --

21 A. YES.

22 Q. -- SPEAKING WITH HIM?

23 A. YES.

24 Q. YOU HAVE THE JURY IN THE BOX SO IF YOU -- IF COUNSEL AND  
25 THE JUDGE NEED TO TALK ABOUT SOMETHING THAT THE JURY CAN'T

September 17, 2012

Smith/Cross

Page 63

1 HEAR YOU APPROACH THE BENCH, IS THAT RIGHT?

2 A. YES, THAT'S TRUE.

3 Q. AND WOULD YOU, STARTING WITH THAT, WHAT I REALLY GOT YOU  
4 UP HERE FOR, READ TO THE END OF THE PAGE?

5 A. WHAT I REALLY GOT YOU UP HERE FOR IS TO TALK ABOUT THIS  
6 STOECKLEY PROBLEM.

7 THE COURT: EXCUSE ME. THAT'S NOT ON MY -- NOT ON  
8 MY SCREEN.

9 MR. BRUCE: IT SHOULD BE TRIAL DAY 19, PAGE 14, LINE  
10 -- IT STARTS WITH THE END OF LINE 12, WHAT I REALLY GOT YOU UP  
11 HERE --

12 THE COURT: YES. THANK YOU. THANK YOU. I'M SORRY.  
13 MR. BRUCE, LET'S TAKE OUR MORNING RECESS.

14 MR. BRUCE: ALL RIGHT.

15 THE COURT: WE'LL START BACK AT 10:45.

16 (RECESS TAKEN FROM 10:31 A.M., UNTIL 10:45 A.M.)

17 (DEFENDANT PRESENT.)

18 THE COURT: PLEASE BE SEATED. WE'LL CONTINUE. MR.  
19 BRUCE.

20 MR. BRUCE: THANK YOU, YOUR HONOR.

21 BY MR. BRUCE:

22 Q. MR. SMITH, WHEN WE BROKE WE WERE LOOKING AT THE  
23 TRANSCRIPT OF TRIAL DAY 19, PAGE 14, AND AT THE END OF LINE 12  
24 IF YOU COULD BEGIN READING WITH WHAT I REALLY GOT YOU UP HERE  
25 FOR.

September 17, 2012

1 A. I WILL.

2 WHAT I REALLY GOT YOU UP HERE FOR IS TO TALK ABOUT  
3 THIS STOECKLEY PROBLEM. I UNDERSTAND SHE IS IN CUSTODY. I  
4 UNDERSTAND THAT SHE CAN BE KEPT LIKE THAT FOR 72 HOURS WITHOUT  
5 BEING LET OUT.

6 DO YOU WANT ME TO READ ON?

7 Q. WELL, LET ME ASK A QUESTION ABOUT THAT. NOW, THIS IS THE  
8 JUDGE TALKING, RIGHT?

9 A. YES.

10 Q. AND IN YOUR EXPERIENCE, WAS JUDGE DUPREE CAREFUL ABOUT  
11 THE LAW?

12 A. VERY.

13 Q. AND SO IT SEEMS THAT HE HAD DONE SOME RESEARCH AND FOUND  
14 OUT THAT A MATERIAL WITNESS COULD BE KEPT IN CUSTODY FOR 72  
15 HOURS WITHOUT BEING LET OUT?

16 A. YES.

17 Q. ALL RIGHT. NOW, CONTINUE READING.

18 A. NOW, AS FAR AS FINDING HER AND MAKING HER AVAILABLE IS  
19 CONCERNED, I THINK THE COURT HAS DONE ABOUT ALL IT CAN DO. I  
20 SUGGEST TO YOU THAT YOU OUGHT TO GET YOUR EVIDENCE SO  
21 SCHEDULED AS TO ACCOMMODATE THIS PARTICULAR THING RATHER THAN  
22 RUN THE RISK THE NEXT TIME SHE GOES THAT SHE CAN'T BE FOUND BY  
23 ANYBODY.

24 Q. JUST CONTINUE READING, PLEASE.

25 A. SO, NOW THAT SHE IS AVAILABLE I THINK THAT THAT MOOTS THE

Smith/Cross

Page 65

1 QUESTION OF WHETHER OR NOT WE CAN TAKE UP SECONDARY EVIDENCE  
2 OF WHAT SHE WOULD HAVE SAID.

3 Q. LET ME STOP YOU RIGHT THERE.

4 A. OKAY.

5 Q. WE'LL GO ON TO THE NEXT PAGE IN A MOMENT. BUT MOOTING  
6 THE QUESTION OF SECONDARY EVIDENCE, IS THE JUDGE SAYING HERE  
7 NOW THAT SHE'S AVAILABLE, YOU DON'T HAVE AN ARGUMENT TO GET IN  
8 OUT OF COURT STATEMENTS BY HER?

9 A. THAT WOULD BE THE WAY I WOULD INTERPRET IT, YES.

10 Q. ALL RIGHT. AND LET'S GO TO THE NEXT PAGE, PLEASE. AND  
11 CONTINUE READING. I BELIEVE IT STARTED WITH I DON'T THINK.

12 A. I DON'T THINK IN THIS KIND OF CASE IF SHE IS AVAILABLE IT  
13 OUGHT TO BE DONE. MY FEELING ABOUT THAT IS THAT, HAVING MADE  
14 HER AVAILABLE, YOU MUST NOW AVAIL YOURSELF OF HER  
15 AVAILABILITY.

16 Q. ALL RIGHT. AND THEN CAN YOU READ STARTING WITH LINE FIVE  
17 WHAT MR. SEGAL SAID?

18 A. MR. SEGAL: I ABSOLUTELY AGREE THAT IT IS OUR DESIRE TO  
19 DO THAT. WE NEED TO KNOW, HOWEVER, YOUR HONOR -- YOU SAY SHE  
20 IS CUSTODY. IS SHE IN CUSTODY IN RALEIGH OR IS SHE IN  
21 GREENVILLE?

22 Q. NOW, THE NEXT LINE IS SPOKEN BY A PERSON IDENTIFIED AS  
23 THE LAW CLERK. DO YOU KNOW THAT TO BE STEVE COGGINS?

24 A. HE WAS THE LAW CLERK AT THAT TIME.

25 Q. ALL RIGHT. FOR JUDGE DUPREE?

September 17, 2012

Smith/Cross

Page 66

1 A. YES, THAT'S CORRECT.

2 Q. AND HE WAS DOING ALL OF THE LAW CLERK WORK AS FAR AS YOU  
3 KNOW FOR THE MACDONALD TRIAL?

4 A. I DON'T REMEMBER ANY OTHER LAW CLERK BEING IN THERE.

5 Q. OTHER THAN STEVE COGGINS?

6 A. STEVE COGGINS.

7 Q. ALL RIGHT. READ WHAT THE LAW CLERK AND THE COURT SAY  
8 ABOUT THE LOCATION THERE STARTING WITH LINE NINE.

9 A. ALL RIGHT.

10 LAW CLERK: SHE IS IN CUSTODY IN GREENVILLE --

11 THE COURT: (INTERPOSING.) GREENVILLE, SOUTH  
12 CAROLINA.

13 LAW CLERK: -- AND THEY ARE READY TO TRANSPORT HER  
14 HERE.

15 Q. ALL RIGHT. NOW, THIS IS A BENCH CONFERENCE, IS THAT  
16 CORRECT?

17 A. AS FAR AS I CAN TELL, YES.

18 Q. AND SO THAT WOULD MEAN THAT THE LAWYERS WOULD BE --  
19 BECAUSE REMEMBER JUDGE DUPREE EARLIER SAID I GOT YOU UP HERE?

20 A. YES.

21 Q. SO, THAT WOULD IMPLY THAT THE LAWYERS WERE UP AT THE  
22 BENCH TALKING WITH THE JUDGE?

23 A. IT DOES, YES.

24 Q. SO, THAT MEANS THAT THE OTHER PEOPLE IN THE COURTROOM  
25 COULD NOT HEAR THIS CONVERSATION?

September 17, 2012

Smith/Cross

Page 67

1 A. THAT'S RIGHT.

2 Q. ALL RIGHT. NOW, THE NEXT SPEAKER IS IDENTIFIED AS MR.  
3 BLACKBURN?

4 A. YES.

5 Q. AND THAT WOULD BE JIM BLACKBURN, THE LEAD PROSECUTOR FOR  
6 THE GOVERNMENT IN THE MACDONALD CASE?

7 A. YES.

8 Q. AND WHAT DOES HE SAY ON LINES 15 AND 16?

9 A. MR. BLACKBURN: PICKENS COUNTY JAIL IS WHAT I HAVE BEEN  
10 TOLD.

11 Q. OKAY. AND THEN MR. SEGAL MAKES A STATEMENT. WOULD YOU  
12 READ THAT ON 17 AND 18?

13 A. MR. SEGAL: WELL, GREENVILLE IS ABOUT THREE HOURS -- TWO  
14 AND A HALF HOURS.

15 Q. ALL RIGHT. NOW, MR. SEGAL WAS NOT FROM NORTH CAROLINA OR  
16 SOUTH CAROLINA, IS THAT CORRECT?

17 A. THAT'S RIGHT.

18 Q. HE WAS FROM WHERE?

19 A. HE WAS FROM PHILADELPHIA.

20 Q. OKAY. AND HIS NORTH CAROLINA GEOGRAPHY AND DRIVING TIMES  
21 ARE A LITTLE OFF WOULD YOU SAY?

22 A. PERHAPS, YES.

23 Q. THE COURT RESPONDS. CAN YOU READ WHAT THEY SAY -- WHAT  
24 THE COURT SAID IN 19 THROUGH 21?

25 A. THE COURT: MORE THAN THAT. IT IS THREE HOURS

September 17, 2012

1 COMFORTABLY TO CHARLOTTE, AND GREENVILLE IS ALMOST THAT SAME  
2 DISTANCE THE OTHER SIDE.

3 Q. SO, JUDGE DUPREE IS TELLING MR. SEGAL THAT YOU'RE LOOKING  
4 LIKE A FIVE OR SIX HOUR DRIVE TO GREENVILLE?

5 A. YES.

6 Q. THE NEXT SPEAKER SAYS MR. MURTAGH. DO YOU KNOW THAT TO  
7 BE MR. BRIAN MURTAGH?

8 A. I DO.

9 Q. HE'S SEATED TO MY RIGHT?

10 A. YES.

11 Q. AND HE WAS THE SECOND CHAIR IN THE MACDONALD TRIAL FOR  
12 THE GOVERNMENT?

13 A. HE WAS, YES.

14 Q. AND HE TOOK AN ACTIVE PART?

15 A. VERY.

16 Q. AND HE SAYS WHAT IN LINE 22 AND 23?

17 A. MR. MURTAGH: DO YOU KNOW WHO RUNS THE POLICE DEPARTMENT  
18 IN GREENVILLE? PAUL STOMBAUGH.

19 Q. WHO IS PAUL STOMBAUGH?

20 A. HE WAS A WITNESS IN THE MACDONALD TRIAL.

21 Q. ALL RIGHT. NOW, LET'S MOVE ON TO THE NEXT PAGE. WELL,  
22 I'M SORRY, SKIP BACK TO WHERE WE WERE AND LET'S PICK UP MR.  
23 SEGAL'S STATEMENT.

24 JUST READ WHAT MR. SEGAL SAID THERE ON THOSE FIRST  
25 TWO LINES -- LAST TWO LINES AND THEN WE'LL GO ON TO THE NEXT

September 17, 2012

Smith/Cross

Page 69

1 PAGE.

2 A. MR. SEGAL: MAYBE HE WILL DRIVE HER DOWN FOR US. YOUR  
3 HONOR, I UNDERSTAND SHE HAS BEEN TAKEN INTO CUSTODY PURSUANT  
4 TO A WARRANT AS A MATERIAL WITNESS IN THIS CASE. I WOULD  
5 REQUEST THAT SHE BE BROUGHT HERE FORTHWITH TO RALEIGH AND, AS  
6 SOON AS SHE IS HERE AND WE HAVE A CHANCE TO INTERVIEW HER, WE  
7 INTEND TO CALL HER AS A WITNESS. THAT IS MY REQUEST AND IF IT  
8 CAN BE NOTIFIED.

9 Q. ALL RIGHT. THE COURT RESPONDS IN LINES SEVEN THROUGH  
10 TEN. WOULD YOU READ THAT, PLEASE?

11 A. YES.

12 THE COURT: THAT IS ALL WE NEED TO KNOW. JUST TELL  
13 THE MAGISTRATE THAT THERE IS NO BOND AND JUST BRING HER HERE  
14 AND MAKE HER AVAILABLE TO THE DEFENSE COUNSEL.

15 Q. NOW, LET'S GO DOWN A COUPLE MORE LINES. AND MR. COGGINS,  
16 THE LAW CLERK, SAYS WHAT?

17 A. HE IS AWAITING WORD FROM OUR OFFICE.

18 Q. MR. SMITH, IS IT A FAIR INFERENCE FROM THIS EXCHANGE THAT  
19 HELENA STOECKLEY IS MAKING SOME SORT OF APPEARANCE, INITIAL  
20 APPEARANCE, BEFORE A MAGISTRATE JUDGE IN SOUTH CAROLINA?

21 A. IT SOUNDS LIKE THAT.

22 Q. AND JUDGE DUPREE, AS A RESULT OF WHAT MR. SEGAL HAS  
23 REQUESTED, SAYS THAT HE'S GOING TO TELL THE MAGISTRATE JUDGE  
24 IN SOUTH CAROLINA NO BOND?

25 A. YES.

September 17, 2012



Smith/Cross

Page 70

1 Q. AND WHAT DOES NO BOND MEAN?

2 A. IT MEANS SHE WOULD NOT BE PLACED IN CONFINEMENT.

3 Q. AND THEN SHE WOULD BE PROMPTLY TRANSPORTED TO RALEIGH?

4 A. YES.

5 Q. AND THE LAW CLERK SAYS HE, MEANING THE MAGISTRATE JUDGE,  
6 IS AWAITING WORD FROM OUR OFFICE AND BY OUR HE MEANS THE  
7 JUDGE'S OFFICE?

8 A. YES.

9 Q. NOW, DO YOU KNOW ANYTHING ELSE ABOUT HELENA STOECKLEY'S  
10 APPEARANCE BEFORE THE MAGISTRATE JUDGE IN SOUTH CAROLINA?

11 A. NO, SIR, I DON'T.

12 Q. SO, IT WOULD BE TYPICAL IN APPEARING BEFORE A MAGISTRATE  
13 JUDGE THAT YOU WOULD BE ADVISED OF YOUR RIGHT TO COUNSEL AND  
14 COUNSEL APPOINTED IF YOU COULD NOT AFFORD COUNSEL?

15 A. USUALLY THAT WOULD BE THE CASE.

16 Q. BUT YOU DON'T KNOW ANYTHING ABOUT WHAT ACTUALLY WENT ON?

17 A. NO, SIR.

18 Q. SO, IS IT FAIR TO SAY THIS IS A POSITIVE DEVELOPMENT FOR  
19 THE DEFENSE THAT THEIR KEY WITNESS IS GOING TO BE BROUGHT TO  
20 RALEIGH FOR AN INTERVIEW?

21 A. YES. I REMEMBER THAT WE WERE VERY GLAD THAT SHE HAD BEEN  
22 LOCATED AND WE WERE GOING TO HAVE A CHANCE TO INTERVIEW HER.

23 Q. NOW, OF YOUR OWN KNOWLEDGE, DO YOU HAVE ANY IDEA HOW  
24 HELENA STOECKLEY GOT FROM UP STATE SOUTH CAROLINA TO RALEIGH?

25 A. NO.

September 17, 2012

Smith/Cross

Page 71

1 Q. AND DO YOU KNOW WHAT I MEAN BY UP STATE SOUTH CAROLINA?

2 A. WELL, I ASSUME IT WOULD BE THE OPPOSITE OF DOWN STATE  
3 SOUTH CAROLINA.

4 Q. WELL, MEANING IT TO REFER TO THE GREENVILLE AREA. CAN  
5 YOU AGREE WITH ME ON THAT?

6 A. I WILL AGREE WITH YOU ON THAT, YES.

7 Q. NOW, DO YOU KNOW WHAT DAY THIS EXCHANGE ABOUT -- WELL,  
8 LET ME ASK YOU THIS, IS IT CONSISTENT WITH YOUR RECOLLECTION  
9 THAT THIS EXCHANGE ABOUT TRANSPORTING HELENA STOECKLEY FROM  
10 GREENVILLE TO RALEIGH OCCURRED ON WEDNESDAY, AUGUST THE 15TH,  
11 1979?

12 A. I WOULD NOT QUARREL WITH THAT, MR. BRUCE. IT SOUNDS  
13 ABOUT RIGHT IN THAT WE WERE IN THE MIDDLE OF AUGUST AND TRYING  
14 TO MOVE THIS CASE ALONG AND SO THAT MAKES SENSE, BUT I DON'T  
15 REMEMBER THE SPECIFIC DATE IN AUGUST.

16 MR. BRUCE: MAY I HAVE A MOMENT, YOUR HONOR?

17 THE COURT: CERTAINLY. OUR SOUTH CAROLINA FRIENDS  
18 REFER TO EASTERN SOUTH CAROLINA AS LOW COUNTRY.

19 THE WITNESS: YES, SIR. YES, SIR.

20 BY MR. BRUCE:

21 Q. ALL RIGHT. WELL, LET ME SEE IF I CAN GET THE DATES  
22 ORIENTED BECAUSE WE'RE GOING TO BE DOING A LOT OF TALKING  
23 ABOUT THOSE FEW DAYS.

24 DO YOU RECALL THAT HELENA STOECKLEY -- DO YOU RECALL  
25 THAT HELENA STOECKLEY TESTIFIED IN THE TRIAL ON A FRIDAY?

September 17, 2012

Smith/Cross

Page 72

1 A. I THINK I DO AND I WILL ACCEPT THAT AS THE TRUTH.

2 Q. WELL, DO YOU RECALL THAT THE -- THAT AFTER HER TESTIMONY  
3 IN COURT -- AND LET'S PUT UP GOVERNMENT EXHIBIT 2362, WHICH I  
4 HOPE WILL BE A CALENDAR OF 1979. AND IF YOU WOULD LOOK AT  
5 AUGUST.

6 A. I'M LOOKING AT AUGUST.

7 (GOVERNMENT EXHIBIT NUMBER 2362  
8 WAS IDENTIFIED FOR THE RECORD.)

9 Q. ALL RIGHT. NOW, DO YOU RECALL THAT -- I'M JUMPING AHEAD  
10 JUST TO ORIENT THE DATES, DO YOU UNDERSTAND?

11 A. YES, SIR.

12 Q. DO YOU RECALL THAT THE DAY AFTER -- THE DAY THAT HELENA  
13 STOECKLEY TESTIFIED IN THE TRIAL THAT THEN SHE WAS RELEASED  
14 FROM CUSTODY?

15 A. YES, SHE WAS.

16 Q. AND DO YOU RECALL THAT THERE IMMEDIATELY FOLLOWED A  
17 WEEKEND, SATURDAY AND SUNDAY, WHERE SOME INTERESTING EVENTS  
18 OCCURRED WITH REGARD TO HELENA STOECKLEY?

19 A. I REMEMBER.

20 Q. SO, DOES THAT FIX FOR US THE DATE OF HER TESTIMONY AS  
21 BEING FRIDAY, AUGUST 17TH?

22 A. IT DOES, I THINK, YES.

23 Q. ALL RIGHT. AND DO YOU RECALL THAT THE PREVIOUS DAY TO  
24 HER TESTIMONY WAS CONSUMED WITH THE DEFENSE AND PROSECUTION  
25 INTERVIEWS OF HELENA STOECKLEY?

September 17, 2012

Smith/Cross

Page 73

1 A. YES.

2 Q. AND YOU'VE ALREADY TESTIFIED ON DIRECT EXAMINATION ABOUT  
3 THOSE INTERVIEWS.

4 A. YES.

5 Q. AND SO THEN IT WOULD BE LOGICAL THAT THE TRANSPORTATION  
6 OF HER TO RALEIGH OCCURRED ON AUGUST THE 15TH, WEDNESDAY?

7 A. IT WOULD BE.

8 Q. ALL RIGHT. NOW, JUDGE DUPREE RECESSED COURT -- THE TRIAL  
9 ON THURSDAY, AUGUST 16TH, TO ALLOW FOR THIS DEFENSE INTERVIEW  
10 OF HELENA STOECKLEY, IS THAT RIGHT?

11 A. I THINK SO.

12 Q. AND THE JURY WAS KEPT WAITING WHILE THAT INTERVIEW WAS  
13 COMPLETED, IS THAT RIGHT?

14 A. THEY WERE, I REMEMBER THAT.

15 Q. AND THAT'S NOT SOMETHING THAT WOULD NORMALLY PLEASE JUDGE  
16 DUPREE, IS THAT RIGHT?

17 A. NO, AND I REMEMBER THAT WE WERE VERY NERVOUS ABOUT IT AND  
18 TENSE ABOUT IT.

19 Q. NOW, I WANT TO DIRECT YOUR ATTENTION TO GOVERNMENT  
20 EXHIBIT 2077, WHICH I HOPE IS GOING TO COME UP ON THE SCREEN,  
21 AND CAN YOU AGREE WITH ME THAT THIS IS A FLOOR PLAN OF THE  
22 SEVENTH FLOOR OF THE FEDERAL BUILDING IN RALEIGH, NORTH  
23 CAROLINA?

24 A. MAY I HAVE JUST A MOMENT?

25 Q. YES, YOU MAY. AND WHILE YOU'RE DOING THAT, I'LL ADVISE

September 17, 2012

Smith/Cross

Page 74

1 YOU THAT NEW BERN AVENUE IS AT THE TOP OF THE PAGE, WHICH IS  
2 THE FRONT OF THE BUILDING. IT MIGHT SEEM A LITTLE REVERSED  
3 FROM THE WAY IT OUGHT TO BE.

4 A. THAT WOULD MEAN THAT THE COURTROOM IN WHICH THIS CASE WAS  
5 BEING TRIED WOULD BE THE COURTROOM ON THE RIGHT ON THIS  
6 DOCUMENT, IS THAT CORRECT?

7 Q. I'M ASKING YOU.

8 A. I THINK THAT'S CORRECT. YES, IT WOULD BE THE COURTROOM  
9 ON THE RIGHT OF THIS DOCUMENT.

10 Q. AND THAT'S JUDGE DUPREE'S COURTROOM?

11 A. THAT'S CORRECT.

12 (GOVERNMENT EXHIBIT NUMBER 2077  
13 WAS IDENTIFIED FOR THE RECORD.)

14 Q. AND I BELIEVE IF YOU TOUCH THE SCREEN, YOU CAN MAKE A  
15 LITTLE MARK THERE.

16 A. YES, SIR.

17 Q. NOW, YOU SEE WHAT'S HIGHLIGHTED IN YELLOW IN THE UPPER  
18 RIGHT CORNER OF THE SCREEN?

19 A. I DO.

20 Q. AND WHAT'S THAT LOCATION?

21 A. I THINK -- I THINK THAT JUDGE DUPREE'S CHAMBERS.

22 Q. ALL RIGHT. AND NOW CAN YOU SHOW US ON THE SCREEN WHERE  
23 THE DEFENSE INTERVIEW OF HELENA STOECKLEY TOOK PLACE?

24 A. AS I RECALL -- SHALL I TOUCH THE SCREEN?

25 Q. YES.

September 17, 2012

Smith/Cross

Page 75

1 A. I THINK IT'S DOWN THIS HALL AND IN ONE OF THESE ROOMS  
2 ALONG THAT HALL.

3 Q. ALL RIGHT. NOW, DID THE DEFENSE HAVE AT THEIR DISPOSAL  
4 DURING THE TRIAL MORE THAN ONE OF THESE ROOMS?

5 A. I THINK WE HAD TWO AT LEAST.

6 Q. AND THAT'S WHERE YOU DID YOUR WORK DURING RECESSES AND SO  
7 FORTH?

8 A. WE COULD HAVE WITNESSES WAITING THERE, WE COULD DO OUR  
9 WORK THERE AND SO ON, YES.

10 Q. ALL RIGHT. I'M GOING TO ASK OUR TECHNICIAN TO PRESERVE  
11 THAT.

12 MR. BRUCE: CAN THE CLERK PRESERVE THOSE MARKINGS  
13 FOR US AND CALL IT GOVERNMENT EXHIBIT 2077A?

14 (GOVERNMENT EXHIBIT NUMBER 2077A  
15 WAS IDENTIFIED FOR THE RECORD.)

16 THE COURT: YES, SIR.

17 MADAM CLERK: DO YOU WANT IT PRINTED AS WELL OR YOU  
18 JUST WANT IT SAVED?

19 MR. BRUCE: JUST SAVE IT WOULD BE FINE.

20 (PAUSE.)

21 MR. BRUCE: ARE WE READY?

22 MADAM CLERK: YES.

23 MR. BRUCE: THANK YOU.

24 BY MR. BRUCE:

25 Q. MR. SMITH, THIS INTERVIEW BY THE DEFENSE OF HELENA

September 17, 2012

Smith/Cross

Page 76

1 STOECKLEY WAS A VERY IMPORTANT MOMENT IN THE TRIAL, IS THAT  
2 RIGHT?

3 A. IT WAS.

4 Q. IT WAS IMPORTANT BECAUSE YOU WERE HOPING THAT SHE WOULD  
5 CONFESS TO INVOLVEMENT IN THE MURDERS, IS THAT RIGHT?

6 A. WE HOPED THAT SHE WOULD DO THAT.

7 Q. AND PRESENT FOR THE INTERVIEW WERE YOU AND MR. SEGAL AND  
8 MR. MCGINNISS AND MS. STOECKLEY, IS THAT RIGHT?

9 A. YES.

10 Q. AND AT THE BEGINNING AT LEAST, THOSE WERE THE ONLY FOUR  
11 PEOPLE?

12 A. THAT'S RIGHT.

13 Q. NOW, THERE WAS NO MARSHAL PRESENT, NO DEPUTY MARSHAL?

14 A. NO.

15 Q. AND DO YOU KNOW FROM YOUR PERSONAL KNOWLEDGE WHAT DEPUTY  
16 MARSHAL MIGHT HAVE BROUGHT HELENA STOECKLEY TO THE DEFENSE  
17 INTERVIEW?

18 A. NO, I HAVE NO RECOLLECTION.

19 Q. CAN YOU TELL US WHEN MS. STOECKLEY CAME INTO THE ROOM FOR  
20 THE INTERVIEW JUST CAN YOU GIVE US HER APPEARANCE? DESCRIBE  
21 HER APPEARANCE.

22 A. SHE WAS -- SHE LOOKED VERY, VERY UNHEALTHY, VERY SALLOW,  
23 UNHEALTHY COMPLEXION. SHE SEEMED TO BE TOO HEAVY. AND THAT  
24 WOULD BE -- THAT WOULD BE THE MAJOR THINGS I REMEMBER. I  
25 DON'T REMEMBER WHAT DRESS SHE WOULD BE WEARING. I DON'T

September 17, 2012

1 REMEMBER THAT.

2 Q. OKAY. WOULD YOU DISPUTE IT IF IT WAS SAID THAT SHE WAS  
3 WEARING WHITE SHOES AND A FLORAL PRINT DRESS?

4 A. I WOULDN'T DISPUTE THAT, NO, SIR.

5 Q. SHE WAS NOT WEARING A FLOPPY HAT, WAS SHE?

6 A. NO.

7 Q. AND SHE WAS NOT WEARING A BLONDE WIG?

8 A. NO, SIR.

9 Q. AND DURING THE TIME THAT YOU SAW HER THAT WEEK IN RALEIGH  
10 FOR THE TRIAL, DID YOU AT ANY TIME SEE HER WEARING A FLOPPY  
11 HAT?

12 A. NO, SIR.

13 Q. WHO LED THE QUESTIONING OF HELENA STOECKLEY DURING THAT  
14 INTERVIEW?

15 A. MR. SEGAL.

16 Q. BUT YOU WERE PRESENT?

17 A. I WAS.

18 Q. AND SO WAS JOE MCGINNISS?

19 A. YES.

20 Q. AND DO YOU RECALL HER ASKING FOR A DIET SODA?

21 A. I DO.

22 Q. AND WAS THAT PROVIDED FOR HER?

23 A. YES, IT WAS.

24 Q. NOW, DID MR. SEGAL START OUT WITH A VERY QUIET APPROACH  
25 WITH MS. STOECKLEY?

September 17, 2012



Smith/Cross

Page 78

1 A. YES, HE DID.

2 Q. DID HE APPEAL TO HER DESIRE TO FREE WHAT MIGHT BE AN  
3 INNOCENT MAN?

4 A. HE DID.

5 Q. CAN YOU SORT OF DESCRIBE HOW HE MADE THAT PLEA TO HER?

6 A. WELL, HE DID IT I THINK IN THE BEST WAY THAT HE COULD. I  
7 HAD A SENSE THAT HE WAS -- HE RECOGNIZED THIS WAS A VERY  
8 IMPORTANT MOMENT AND HE WANTED TO DO IT WELL AND HE SPOKE  
9 SOFTLY TO HER AND HE TOLD HER THAT IT WAS RARE IN A HUMAN LIFE  
10 THAT A PERSON WOULD HAVE AN OPPORTUNITY TO MAKE SUCH A  
11 MARVELOUS CONTRIBUTION TO SOMEONE'S LIFE AND THIS WAS AN  
12 OPPORTUNITY FOR HER TO DO SOMETHING REALLY GOOD.

13 Q. AND AFTER HE MADE THAT STATEMENT TO HER WAS THERE SORT OF  
14 A DRAMATIC PAUSE FOR THE BIG MOMENT AS TO WHAT SHE WOULD SAY?

15 A. WELL, CERTAINLY IT WAS DRAMATIC TO US BECAUSE IT WAS  
16 SOMETHING THAT WE HAD WANTED FOR A LONG TIME. FOR MYSELF, I  
17 HAD WANTED TO SEE THIS WOMAN AND TO GIVE HER AN OPPORTUNITY TO  
18 TELL US THE TRUTH, THAT SHE WAS THERE. AND SO THIS WOULD BE  
19 AS IMPORTANT A MOMENT AS I CAN IMAGINE IN MY TRIAL EXPERIENCE.

20 Q. WELL, AFTER THAT PAUSE, DIDN'T SHE REPLY WITH WORDS TO  
21 THE EFFECT I CAN'T HELP YOU, I WASN'T IN THE HOUSE, I DIDN'T  
22 HAVE ANYTHING TO DO WITH ANY OF THIS?

23 A. I DON'T REMEMBER HER EXACT WORDS, BUT THEY WERE WORDS  
24 THAT WERE NOT WHAT WE HOPED. THEY WERE NOT WORDS THAT  
25 ACKNOWLEDGED THAT SHE WAS IN THE HOUSE AND IT WOULD BE

September 17, 2012

1 SOMETHING LIKE WHAT YOU JUST SAID.

2 Q. AND DID MR. SEGAL ADOPT A MORE AGGRESSIVE APPROACH WITH  
3 HER AFTER THAT?

4 A. SOMEWHAT MORE, BUT, AGAIN, YOU KNOW, YOU WOULD HAVE THE  
5 FEELING THAT HE CONTINUED TO CALL UPON HIS BEST -- HIS BEST  
6 IDEAS AND THOUGHTS TO HANDLE THIS IMPORTANT MOMENT WELL AND SO  
7 HE WOULD HAVE MADE IT A LITTLE BIT MORE AGGRESSIVE, BUT HE  
8 WASN'T -- CERTAINLY NOT SHOUTING OR ANYTHING LIKE THAT.

9 Q. AND STILL, TO THE MORE AGGRESSIVE QUESTIONS, SHE REPLIED  
10 WORDS TO THE EFFECT I DON'T KNOW WHAT YOU WANT TO KNOW, I WAS  
11 NEVER IN THAT HOUSE?

12 A. SOMETHING LIKE THAT.

13 Q. DO YOU RECALL MR. SEGAL TELLING HELENA STOECKLEY DURING  
14 THAT DEFENSE INTERVIEW WORDS TO THIS EFFECT, HELENA, YOU WILL  
15 NOT BE PROSECUTED, NOTHING WILL HAPPEN TO YOU. THAT I CAN  
16 PROMISE YOU. THE STATUTE OF LIMITATIONS HAS EXPIRED?

17 A. I REMEMBER THAT.

18 Q. LET'S TALK A LITTLE BIT ABOUT THE STATUTE OF LIMITATIONS.  
19 I WANT TO PUT ON THE SCREEN USING THE DOCUMENT CAMERA AND, MR.  
20 SMITH, IF YOU TOUCH THE SCREEN IN THE BOTTOM RIGHT I THINK  
21 THOSE MARKINGS WILL GO AWAY.

22 A. OKAY.

23 Q. I'M PUTTING ON THE DOCUMENT CAMERA A PORTION OF THE  
24 UNITED STATES CODE, AND IF WE CAN ORIENT IT FOR A MOMENT HERE.  
25 MR. MACDONALD WAS CHARGED WITH FIRST DEGREE MURDER, IS THAT

September 17, 2012

Smith/Cross

Page 80

1 RIGHT?

2 A. YES.

3 Q. OCCURRING ON A FEDERAL RESERVATION, TO-WIT, FORT BRAGG?

4 A. YES.

5 Q. AND THE STATUTE FOR THAT, IS IT NOT, IS 18 U.S. CODE  
6 1111?

7 A. I THINK SO.

8 Q. ALL RIGHT. NOW, IF YOU LOOK AT, AND IT MAY BE A LITTLE  
9 HARD TO READ, BUT I'M TRYING TO LOOK DOWN TO PART B WHERE IT  
10 GIVES THE PENALTY FOR MURDER. DO YOU SEE THAT?

11 A. YES, I THINK SO. BEGINNING WITH WITHIN THE SPECIAL  
12 MARITIME AND TERRITORIAL JURISDICTION, IS THAT RIGHT?

13 Q. THAT'S RIGHT.

14 A. OKAY.

15 Q. AND THAT'S WHAT THIS CASE WAS, RIGHT, BECAUSE FORT BRAGG  
16 IS CONSIDERED SPECIAL MARITIME AND TERRITORIAL JURISDICTION?

17 A. IT WAS.

18 Q. ALL RIGHT. NOW, WHAT DOES IT SAY ABOUT THE PENALTY FOR  
19 MURDER IN THE FIRST DEGREE?

20 A. THE PENALTY WOULD BE DEATH OR LIFE IMPRISONMENT.

21 Q. ALL RIGHT. NOW, AS AN ATTORNEY FOR MR. MACDONALD, YOU  
22 WERE UP TO SPEED ON THE LAW APPLICABLE AT THAT TIME?

23 A. I WOULD HAVE BEEN, I THINK, YES.

24 Q. AND IT'S TRUE, ISN'T IT, THAT MR. MACDONALD WAS NOT  
25 SUBJECT TO THE DEATH PENALTY?

September 17, 2012

1 A. AS I RECALL, WE DID NOT BELIEVE HE WAS.

2 Q. AND THAT'S BECAUSE AT THE TIME THERE WAS NO FEDERAL DEATH  
3 PENALTY DUE TO SUPREME COURT RULINGS, IS THAT RIGHT?

4 A. THAT'S RIGHT.

5 Q. AND IT WAS LATER AFTER 1979, PERHAPS 1984, THAT THE  
6 FEDERAL GOVERNMENT PASSED PROCEDURES IN ORDER TO HAVE A DEATH  
7 PENALTY?

8 A. YES.

9 Q. SO, THERE WAS NO DEATH PENALTY APPLICABLE TO JEFFREY  
10 MACDONALD?

11 A. THAT'S RIGHT.

12 Q. OKAY. THE MOST PENALTY -- THE HARSHEST PENALTY HE COULD  
13 RECEIVE WAS LIFE IN PRISON?

14 A. THAT'S CORRECT.

15 Q. ALL RIGHT. LET'S LOOK THEN AT THE STATUTE OF  
16 LIMITATIONS. WE'LL PUT IT UP ON THE SCREEN. IT'S 18 U.S.  
17 CODE SECTION 3281 AND 82. THIS MAY BE A LITTLE HARD TO READ  
18 BECAUSE IT'S BEEN PRINTED ON A COPIER.

19 NOW, YOU NOTICE 3281 IS THE PENALTY -- OR STRIKE  
20 THAT -- THE STATUTE OF LIMITATIONS FOR CAPITAL OFFENSES?

21 A. YES.

22 Q. AND WOULD YOU READ THAT?

23 A. AN INDICTMENT FOR ANY OFFENSE PUNISHABLE BY DEATH MAY BE  
24 FOUND AT ANY TIME WITHOUT LIMITATION.

25 Q. ALL RIGHT. NOW, LET'S LOOK AT 3282, AND READ THAT FOR

1 OFFENSES NOT CAPITAL.

2 A. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BY LAW, NO PERSON  
3 SHALL BE PROSECUTED, TRIED OR PUNISHED FOR ANY OFFENSE NOT  
4 CAPITAL UNLESS THE INDICTMENT IS FOUND OR THE INFORMATION IS  
5 INSTITUTED WITHIN FIVE YEARS NEXT AFTER SUCH OFFENSE SHALL  
6 HAVE BEEN COMMITTED.

7 Q. NOW, THIS IS THE GENERAL FIVE YEAR STATUTE OF LIMITATIONS  
8 THAT WE'RE USED TO IN THE FEDERAL SYSTEM, IS THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. MOST FELONIES THE STATUTE OF LIMITATIONS IS FIVE YEARS,  
11 IS THAT RIGHT?

12 A. THAT'S RIGHT.

13 Q. AND WHAT MR. SEGAL MEANT THEN, WITH THE DEATH PENALTY NOT  
14 APPLICABLE, THE FIVE YEAR STATUTE OF LIMITATIONS HAD RUN?

15 A. I WOULD ASSUME THAT THAT'S WHAT HE MEANT. I NEVER TOOK  
16 THAT UP WITH HIM AND WE DIDN'T DISCUSS IT, BUT I AM ASSUMING  
17 THAT THAT'S WHAT HE WOULD HAVE MEANT.

18 Q. THE MURDERS IN THE MACDONALD HOME TOOK PLACE ON THE EARLY  
19 MORNING HOURS OF FEBRUARY 17TH, 1970, IS THAT CORRECT?

20 A. YES, NINE YEARS EARLIER.

21 Q. ALL RIGHT. NINE AND A HALF YEARS ABOUT --

22 A. YES. YES.

23 Q. -- BEFORE JULY AND AUGUST 1979, RIGHT?

24 A. YES.

25 Q. SO, IF THERE WERE A FIVE YEAR STATUTE OF LIMITATIONS, IT

Smith/Cross

Page 83

1 WOULD HAVE CERTAINLY RUN BY AUGUST OF 1979?

2 A. IT WOULD HAVE.

3 Q. AND, IN FACT, THE INDICTMENT OF JEFFREY MACDONALD IN THE  
4 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH  
5 CAROLINA WAS RETURNED JANUARY 25TH OF 1975?

6 A. THAT'S RIGHT.

7 Q. SO, IT WOULD APPEAR THAT THE GOVERNMENT WAS TRYING TO  
8 BEAT THE FIVE YEAR STATUTE OF LIMITATIONS?

9 A. IT APPEARS THAT WAY. I DON'T KNOW THAT, BUT IT APPEARS  
10 THAT WAY.

11 Q. IF THERE WERE A FIVE YEAR STATUTE OF LIMITATIONS, IT  
12 WOULD HAVE RUN IN FEBRUARY OF 1975?

13 A. YES.

14 Q. SO, WHEN I SAY BEAT, I MEAN GET A TIMELY --

15 A. I UNDERSTAND.

16 Q. -- INDICTMENT SO THAT THE STATUTE WOULD NOT RUN?

17 A. YES.

18 Q. AND DID YOU EVER DISCUSS THAT WITH THE GOVERNMENT  
19 LAWYERS, THAT THEY BROUGHT THE INDICTMENT IN JANUARY OF 1975  
20 IN ORDER TO KEEP THE STATUTE OF LIMITATIONS FROM RUNNING?

21 A. NO, I DID NOT.

22 Q. OKAY. LET'S RETURN NOW TO THE INTERVIEW, DEFENSE  
23 INTERVIEW. AFTER MR. SEGAL, WHICH YOU REMEMBER HIM POINTING  
24 OUT TO HER THAT THE STATUTE OF LIMITATIONS HAD EXPIRED, IS  
25 THAT CORRECT?

September 17, 2012

Smith/Cross

Page 84

1 A. I DO REMEMBER THAT.

2 Q. AND DID SHE REPLY WITH WORDS TO THE EFFECT OF I CAN'T  
3 HELP YOU, I CAN'T TELL YOU THINGS I DON'T REMEMBER?

4 A. WORDS TO THAT EFFECT.

5 Q. NOW, THIS QUESTIONING BY MR. SEGAL CONSUMED SEVERAL --  
6 WELL, LET'S DIVIDE IT INTO PARTS. AT ONE POINT AFTER  
7 EXTENSIVE QUESTIONING, HE BROUGHT SOME OTHER FOLKS IN, IS THAT  
8 RIGHT?

9 A. HE DID.

10 Q. IS IT FAIR TO SAY THAT THE PORTION OF THE QUESTIONING  
11 WHERE SEGAL WAS DOING THE QUESTIONING WITH JUST THE FOUR OF  
12 YOU IN THE ROOM LASTED ABOUT TWO HOURS?

13 A. IT IS VERY DIFFICULT, MR. BRUCE, FOR ME TO SAY, BUT I  
14 CERTAINLY THINK IT COULD HAVE LASTED THAT LONG, YES.

15 Q. ALL RIGHT. AND YOU AGREE THAT DURING THAT TIME HE USED A  
16 SOOTHING TONE SOMETIMES AND A HARSH TONE SOMETIMES?

17 A. YES. I DON'T THINK HE EVER USED A -- REALLY WHAT I WOULD  
18 CALL A HARSH TONE, BUT A MORE -- MORE -- I THINK A STRONGER  
19 TONE WOULD BE A BETTER WORD.

20 Q. DO YOU REMEMBER HIM TELLING HELENA THAT IN HIS VIEW THAT  
21 PEOPLE HAD GONE TO THE ELECTRIC CHAIR WITH ONE-TENTH OF THE  
22 EVIDENCE THAT HE HAD AGAINST HER ON THIS CASE?

23 A. I REMEMBER SOMETHING LIKE THAT.

24 THE COURT: WOULD YOU REPEAT THAT QUESTION, PLEASE?

25 MR. BRUCE: I'M SORRY.

September 17, 2012

Smith/Cross

Page 85

1 BY MR. BRUCE:

2 Q. DO YOU RECALL MR. SEGAL TELLING HELENA STOECKLEY THAT  
3 PEOPLE HAD GONE TO THE ELECTRIC CHAIR WITH ONE-TENTH OF THE  
4 EVIDENCE THAT MR. SEGAL SAID HE HAD AGAINST HER IN THE  
5 MACDONALD CASE?

6 A. I DON'T REMEMBER THOSE EXACT WORDS, BUT I DO THINK THAT  
7 THERE WAS SOMETHING LIKE THAT.

8 Q. ALL RIGHT. NOW, DID THERE COME A TIME WHEN MR. SEGAL  
9 BROUGHT OTHER PEOPLE OR OTHER -- ONE BY ONE PERSONS INTO THE  
10 ROOM?

11 A. THERE DID.

12 Q. AND ARE THESE SOME OF THE PEOPLE THAT CAME TO BE CALLED  
13 IN THE TRIAL THE STOECKLEY WITNESSES?

14 A. YES.

15 Q. AND WOULD ONE OF THOSE BE JANE ZILLIOUX?

16 A. JANE ZILLIOUX.

17 Q. AND IS THAT Z-I-L-L-I-O-U-X?

18 A. YES.

19 Q. AND SHE WAS BROUGHT IN BY MR. SEGAL TO CONFRONT HELENA  
20 STOECKLEY WITH ALLEGED PRIOR STATEMENTS TO MS. ZILLIOUX?

21 A. YES.

22 Q. AND EVEN AFTER THAT, HELENA STOECKLEY STILL SAID I DON'T  
23 REMEMBER, I DON'T REMEMBER SAYING THOSE THINGS?

24 A. YES. MS. ZILLIOUX REMINDED HELENA OF A TIME WHEN I THINK  
25 THEY WERE IN MEMPHIS -- WHEN HELENA WAS IN MEMPHIS, AND THAT

September 17, 2012



Smith/Cross

Page 86

1 HELENA HAD SAID THESE THINGS TO MS. ZILLIOUX THAT WOULD BE  
2 LIKE I STILL THINK I WAS THERE, I STILL THINK I REMEMBER BEING  
3 THERE AND SO ON, YES.

4 Q. ALL RIGHT. I KIND OF GOT MY QUESTIONS OUT OF ORDER. I  
5 WANT TO BACK UP TO BEFORE MS. ZILLIOUX WAS BROUGHT IN THE  
6 ROOM.

7 DO YOU RECALL MR. SEGAL SHOWING PICTURES OF THE  
8 GRUESOME CRIME SCENE AND AUTOPSY PHOTOGRAPHS TO HELENA  
9 STOECKLEY?

10 A. I REMEMBER THAT HELENA SAW THOSE AND I CAN'T REMEMBER  
11 WHETHER MR. SEGAL SHOWED THEM TO HER, BUT I BELIEVE HE DID.

12 Q. DO YOU RECALL WHEN HELENA STOECKLEY VIEWED THOSE  
13 PHOTOGRAPHS, MR. SEGAL SAID SOMETHING LIKE WHAT KIND OF FATHER  
14 COULD DO THAT TO HIS OWN FLESH AND BLOOD?

15 A. I DON'T REMEMBER THAT SPECIFICALLY, BUT SOMETHING LIKE  
16 THAT, YES.

17 Q. AND DO YOU RECALL MS. STOECKLEY RESPONDING SOMEONE ON  
18 DRUGS COULD DO SOMETHING LIKE THAT, NOT ACID, MAYBE SPEED?

19 A. I DON'T REMEMBER THAT.

20 Q. YOU DON'T REMEMBER THAT?

21 A. NO.

22 Q. DO YOU RECALL HER SAYING SOMETHING LIKE ONLY SOMEBODY  
23 CRAZY OR WHACKED OUT ON DRUGS COULD HAVE DONE SOMETHING LIKE  
24 THAT?

25 A. I DO REMEMBER THAT.

September 17, 2012

Smith/Cross

Page 87

1 Q. AND DO YOU RECALL HER SAYING THAT SHE DOESN'T KNOW WHAT  
2 ANYBODY ELSE IS CAPABLE OF, BUT SHE KNOWS SHE'S NOT CAPABLE OF  
3 THAT?

4 A. I REMEMBER SOMETHING LIKE THAT, BUT THESE ARE -- THESE  
5 ARE SOMEWHAT LOST IN THE MIDST OF TIME. I REMEMBER SOME OF  
6 IT, YES.

7 Q. WELL, MY QUESTIONS ARE NOT INTENDED TO ASK YOU ABOUT  
8 EXACT WORDS. WHEN I --

9 A. THANK YOU.

10 Q. WHEN I GIVE A PHRASE ASKING YOU WHETHER HELENA STOECKLEY  
11 SAID IT, ASSUME I MEAN WORDS TO THAT EFFECT.

12 A. ALL RIGHT. THANK YOU.

13 Q. DID MR. SEGAL SAY SOMETHING TO HELENA STOECKLEY, WORDS TO  
14 THE EFFECT, THAT NO ONE IS ASKING YOU TO SAY YOU DID IT, JUST  
15 TO SAY THAT YOU WERE THERE HOLDING A CANDLE AND SO FORTH, AND  
16 YOU DON'T REMEMBER HURTING ANYONE, YOU JUST RAN OUT THE BACK  
17 DOOR?

18 A. I DON'T REMEMBER THAT.

19 Q. OKAY. SO, THEN YOU HAD ZILLIOUX AND OTHER WITNESSES  
20 BROUGHT IN ONE BY ONE TO CONFRONT HELENA STOECKLEY WITH  
21 ALLEGED PRIOR STATEMENTS, IS THAT A FAIR SUMMARY?

22 A. THAT'S CORRECT.

23 Q. AND THEY INCLUDED ZILLIOUX, IS THAT RIGHT?

24 A. YES.

25 Q. BEASLEY?

September 17, 2012

Smith/Cross

Page 88

1 A. I THINK THAT'S CORRECT, YES.

2 Q. AND THAT'S THE PRINCE BEASLEY WE'VE ALREADY SPOKEN ABOUT?

3 A. YES.

4 Q. AND JAMES GADDIS?

5 A. YES.

6 Q. G-A-D-D-I-S?

7 A. THAT'S CORRECT.

8 Q. AND HOW ABOUT A MAN NAMED RED UNDERHILL?

9 A. I REMEMBER RED UNDERHILL, YES.

10 Q. AND HOW ABOUT MR. POSEY?

11 A. I THINK I REMEMBER MR. POSEY, YES.

12 Q. AND HE WAS AN EX-NEIGHBOR OF HELENA STOECKLEY, IS THAT  
13 RIGHT?

14 A. I THINK SO.

15 Q. AND THEN A MAN NAMED BRISENTINE WHO APPARENTLY HAD DONE A  
16 POLYGRAPH?

17 A. YES.

18 THE COURT: EXCUSE ME. WHAT WAS THAT AGAIN?

19 MR. BRUCE: BRISENTINE.

20 THE COURT: THANK YOU.

21 MR. BRUCE: B-R-I-S-E-N-T-I-N-E. AND POSEY IS P-O-

22 S-E-Y. I BELIEVE IT'S WILLIAM POSEY. I DON'T KNOW

23 BRISENTINE'S FIRST NAME. IT MAY BE ROBERT.

24 BY MR. BRUCE:

25 Q. NOW, WOULD YOU AGREE THAT HER RESPONSE TO THESE WITNESSES

September 17, 2012

Smith/Cross

Page 89

1 AS THEY CAME IN ONE BY ONE WAS TO SAY I DON'T REMEMBER ANY OF  
2 THAT?

3 A. YES, I THINK THAT IS CORRECT. I MEAN, I DON'T THINK SHE  
4 ACKNOWLEDGED ANY OF THOSE STATEMENTS. CERTAINLY THE TONE OF  
5 WHAT SHE WAS SAYING WOULD HAVE BEEN PRETTY MUCH CONSTANT.

6 Q. NOW, DID THERE COME A TIME WHERE YOU HAD TO GO BACK TO  
7 COURT?

8 A. YES.

9 Q. LET ME CALL UP ON THE SCREEN TRIAL DAY 20, PAGE THREE.  
10 AND THIS IS ON AUGUST -- WE'VE ALREADY AGREED THIS IS ON  
11 AUGUST 16TH, 1979 --

12 A. YES.

13 Q. -- THURSDAY, THE DAY OF THE INTERVIEWS, IS THAT RIGHT?

14 A. YES.

15 Q. DO YOU SEE AT THE TOP OF THE PAGE THAT IT SAYS 1:00 P.M.?

16 A. YES.

17 Q. AND THE INTERVIEWS -- THERE HAD BEEN NO COURT THAT  
18 MORNING, RIGHT, FOR PURPOSES OF THE INTERVIEW?

19 A. THAT'S RIGHT.

20 Q. AND IF MR. MCGINNISS CITES AS THE BEGINNING MOMENT OF THE  
21 HELENA STOECKLEY INTERVIEW AS 10:04 A.M., WOULD YOU DISAGREE  
22 WITH HIM?

23 A. NO, I WOULDN'T QUARREL WITH THAT.

24 Q. OKAY. SO, THE INTERVIEW HAD BEEN GOING ON FROM 10:04 TO  
25 ABOUT 1:00 P.M. --

September 17, 2012

Smith/Cross

Page 90

1 A. YES.

2 Q. -- BEFORE THIS COURT PROCEEDING, IS THAT RIGHT?

3 A. YES.

4 Q. OKAY. NOW, LET'S GO DOWN TO LINE TEN. AND CAN YOU READ  
5 US LINE TEN THROUGH 16, WHAT THE COURT SAYS TO THE PARTIES AND  
6 THE ATTORNEYS?

7 A. WOULD YOU LIKE FOR ME TO READ IT?

8 Q. YES, PLEASE.

9 A. GENTLEMEN, I WILL ENTERTAIN A REPORT FROM YOU ON THE  
10 STATUS OF YOUR INTERROGATION OF A WITNESS WHO WAS NOT  
11 AVAILABLE TO EITHER SIDE UNTIL THIS MORNING AT NINE O'CLOCK  
12 AND THE QUESTION OF WHICH WITNESS NOW APPARENTLY BY ONE SIDE  
13 OR THE OTHER OR BOTH SEEMS TO BE IN AND ABOUT ITS THIRD HOUR.  
14 ARE YOU READY TO PROCEED IN THIS CASE?

15 Q. AND THE PERSON WHO REPLIES IS YOU, IS THAT RIGHT?

16 A. YES.

17 Q. CAN YOU READ THAT, 17 THROUGH 22?

18 A. YES.

19 YOUR HONOR, LET ME EXPRESS THE THANKS OF THE DEFENSE  
20 FOR THE COURT'S INDULGENCE AND THE JURY'S INDULGENCE THIS  
21 MORNING AS WE HAVE HAD AN OPPORTUNITY TO TALK WITH THIS  
22 WITNESS WHO HAS, INDEED, BEEN UNAVAILABLE TO EITHER SIDE FOR A  
23 LONG PERIOD OF TIME.

24 Q. AND KEEP READING, IF YOU WOULD.

25 A. WE HAVE ALMOST CONCLUDED OUR DISCUSSIONS WITH THE WITNESS

September 17, 2012

Smith/Cross

Page 91

1 AND WILL BE IN A POSITION VERY SHORTLY TO TURN THE WITNESS  
2 OVER TO THE GOVERNMENT IF THE GOVERNMENT DESIRES TO TALK WITH  
3 THE WITNESS.

4 Q. JUST FOR THE RECORD, NOW WE'RE ON PAGE FOUR, IS THAT  
5 RIGHT? YES. YES. WE'RE ON TRIAL DAY 20, PAGE FOUR. GO  
6 AHEAD.

7 A. WE WILL LEAVE ANY REMARKS TO MR. BLACKBURN ABOUT THAT.

8 Q. AND THEN LINE THREE THROUGH SEVEN, IT'S FAIR TO SAY THAT  
9 JUDGE DUPREE IS ASKING IF MR. BLACKBURN WANTS TO HAVE AN  
10 OPPORTUNITY TO INTERVIEW AND HE DOES?

11 A. YES.

12 Q. IT'S ASKED IN SORT OF A DIFFERENT STYLE?

13 A. IT WAS IN THE -- KIND OF IN THE STYLE OF WILLIAM  
14 FAULKNER.

15 Q. NOW, STARTING WITH LINE EIGHT, DO YOU SEE WHERE THE COURT  
16 TURNS TO ADDRESS THE JURY?

17 A. YES.

18 Q. NOW, I'M NOT GOING TO ASK YOU TO READ ALL OF THAT ALOUD,  
19 BUT YOU CAN READ IT SILENTLY IF YOU WANT TO, BUT IS THE GIST  
20 OF THIS THAT HE'S APOLOGIZING TO THE JURY THAT THIS IS TAKING  
21 SO MUCH TIME?

22 A. YES.

23 Q. AND DOWN AT LINE 19 OR SO, GOING ON DOWN, HE ASKS YOU A  
24 QUESTION IS THAT SO, MR. SMITH? DO YOU SEE THAT?

25 A. YES, I DO.

September 17, 2012

Smith/Cross

Page 92

1 Q. AND YOUR REPLY?

2 A. YES, SIR.

3 Q. AND THEN HE SAYS WHAT? 23 AND 24.

4 A. I KNOW YOU WERE NOT PAYING ATTENTION, BUT IS THAT SO?

5 Q. AND YOU REPLY?

6 A. WHATEVER YOU SAY, YOUR HONOR.

7 Q. ALL RIGHT. SO, THEN HE GOES ON TO EXPLAIN TO THE JURY ON  
8 LINES TWO THROUGH NINE ON PAGE FIVE OF TRIAL DAY 20 THAT HE'S  
9 GOING TO SEND THEM HOME, IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. AND YOU NOTICE AT LINE SEVEN, THE JUDGE TELLS THE JURY  
12 I'M GOING TO RECESS COURT UNTIL TOMORROW MORNING AT NINE  
13 O'CLOCK?

14 A. YES.

15 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

16 A. IT IS.

17 Q. ALL RIGHT. AND HE GOES ON TO EXPLAIN THAT A LITTLE  
18 FURTHER. LET'S MOVE ON DOWN. AND LET'S GO TO PAGE SIX. HE'S  
19 REALLY REASSURING THE JURY ON THIS POINT, WOULD YOU AGREE?

20 A. YES.

21 Q. AND AGAIN AT LINE NINE THROUGH 11, HE ANNOUNCES THAT  
22 COURT WILL BE RECESSED UNTIL TOMORROW MORNING AT NINE O'CLOCK,  
23 IS THAT CORRECT?

24 A. YES.

25 Q. AND THEN, MR. SEGAL, READ LINE 12 THROUGH 14. MR. SMITH,

September 17, 2012

1 READ WHAT MR. SEGAL SAID. I'M SORRY.

2 A. AFTER THE JURY'S EXCUSED I HAVE A BRIEF ADMINISTRATIVE  
3 MATTER, YOUR HONOR.

4 Q. THIS IS MR. SEGAL APPARENTLY INDICATING THAT HE WANTS TO  
5 TAKE UP SOMETHING WITH THE COURT OUT OF THE PRESENCE OF THE  
6 JURY?

7 A. YES.

8 Q. AND CAN YOU READ JUDGE DUPREE'S REPLY AT 15 THROUGH 19?

9 A. OH, YES, THE COURT NEVER STOPS WORK, BUT I DON'T WANT TO  
10 KEEP THESE JURORS HERE ANY LONGER SO WE WILL LET YOU RETIRE  
11 UNTIL TOMORROW MORNING AT NINE O'CLOCK. WE WILL GO BACK ON  
12 OUR REGULAR FRIDAY SCHEDULE, WITNESS OR NO.

13 Q. SO, THAT FURTHER INDICATES THAT THE NEXT DAY IS GOING TO  
14 BE FRIDAY, AUGUST THE 17TH, JUST TO ORIENT OUR DATES AGAIN, IS  
15 THAT RIGHT?

16 A. YES. YES.

17 Q. AND THE JURY LEAVES AT WHAT TIME?

18 A. 1:08.

19 Q. AND THEN THE JUDGE ENTERTAINS WHATEVER MR. SEGAL WANTS TO  
20 BRING UP. I'M NOT SURE THERE IS A PAGE SEVEN, BUT LET'S GO TO  
21 IT IN CASE. WE MIGHT NOT HAVE IT IN THIS EXCERPT. YES, WE  
22 DO. WOULD YOU GO AHEAD AND READ WHAT MR. SEGAL SAYS AT LINES  
23 TWO THROUGH EIGHT?

24 A. I CAN TELL YOUR HONOR AND THEN YOU CAN DECIDE HOW WE  
25 SHOULD PROCEED. THE WITNESS WHOSE PROBLEMS HAVE CAUSED OUR

September 17, 2012



Smith/Cross

Page 94

1 DELAY TODAY WAS TAKEN INTO CUSTODY PURSUANT TO A MATERIAL  
2 WITNESS WARRANT THAT WAS ISSUED UPON MY REQUEST. WE HAVE  
3 INTERVIEWED THE WITNESS. THE GOVERNMENT INTENDS TO INTERVIEW  
4 HER.

5 Q. NOW, HOLD ON BEFORE WE LEAVE THAT PARAGRAPH. MR. SEGAL  
6 AGAIN IS CONFIRMING THAT IT WAS A MATERIAL WITNESS WARRANT  
7 ISSUED UPON DEFENSE REQUEST, IS THAT RIGHT?

8 A. YES.

9 Q. AND HE ACKNOWLEDGES THAT HE'S INTERVIEWED THE WITNESS  
10 STOECKLEY?

11 A. YES.

12 Q. AND THAT THE GOVERNMENT INTENDS TO INTERVIEW HER?

13 A. THAT'S RIGHT.

14 Q. AND MOVING ON TO LINE NINE. JUST READ NINE THROUGH 16,  
15 PLEASE.

16 A. SHE AND A MAN WHO IDENTIFIES HIMSELF AS HER FIANCE ARE  
17 CONCERNED ABOUT THE NECESSITY FOR HER CONTINUED CONFINEMENT  
18 PENDING THE DISPOSITION OF HER APPEARANCE HERE. THEY HAVE  
19 MADE A REQUEST OF ME AND I HAVE HAD OCCASION TO SPEAK TO A  
20 WITNESS WHO I THINK MAY BE SOMEWHAT HELPFUL AND WHO KNOWS MS.  
21 STOECKLEY WELL. THAT IS FORMER FAYETTEVILLE POLICE DETECTIVE  
22 MR. P.E. BEASLEY. MR. BEASLEY IS HERE.

23 Q. NOW, DOES IT SEEM THAT MR. SEGAL IS PROPOSING THAT MS.  
24 STOECKLEY BE RELEASED FROM CUSTODY? AND WE CAN READ ON DOWN.

25 A. I'M NOT SURE I TAKE THAT FROM THAT PARAGRAPH BUT --

September 17, 2012

Smith/Cross

Page 95

1 Q. WELL, READ 17 THROUGH 22.

2 A. ALOUD? READ IT ALOUD?

3 Q. YES, PLEASE.

4 A. OKAY.

5 WHAT MS. STOECKLEY HAS ASKED AND MR. DAVIS, HER  
6 FIANCÉE, HAVE ASKED IS THAT WE CONSIDER ASKING THE COURT ON HER  
7 BEHALF TO LIFT THE WARRANT. WE WILL SERVE HER WITH A SUBPOENA  
8 AND THAT SHE WILL, IF BROUGHT INTO COURT OR OTHERWISE, SHE AND  
9 HER FIANCÉE HAVE BOTH PROMISED THAT THEY WOULD APPEAR.

10 Q. ALL RIGHT. AND LET'S TALK ABOUT MR. DAVIS. DID YOU SEE  
11 THE MAN MR. ERNEST DAVIS?

12 A. YES, I DID.

13 Q. AND HE APPEARED TO HAVE SOME SORT OF RELATIONSHIP WITH  
14 HELENA STOECKLEY?

15 A. HE SEEMED -- HE SEEMED TO BE HER BOYFRIEND OR SOMETHING  
16 LIKE THAT.

17 Q. AND WAS HE AROUND AND ABOUT ON THE SEVENTH FLOOR OF THE  
18 FEDERAL BUILDING THE DAY OF THE HELENA STOECKLEY DEFENSE  
19 INTERVIEW?

20 A. YES, AS I RECALL HE WAS, AND THAT'S THE ONLY TIME I THINK  
21 I SAW HIM.

22 Q. AND IS IT TRUE THAT HE WAS NOT ALLOWED BY MR. SEGAL TO  
23 SIT IN ON THE INTERVIEW WHEN THE FOUR OF YOU WERE IN THE ROOM;  
24 SEGAL, SMITH, STOECKLEY, MCGINNISS?

25 A. HE WAS NOT THERE.

September 17, 2012

Smith/Cross

Page 96

1 Q. DID HE HAVE SORT OF A BEDRAGGLED APPEARANCE, MR. DAVIS?

2 A. HE DID. HE LOOKED UNKEMPT.

3 Q. DO YOU RECALL IF HE WAS BAREFOOT?

4 A. I THINK HE WAS, YES.

5 Q. NOW, IT SEEMS THAT IT IS BEING PROPOSED THAT STOECKLEY BE  
6 LET OUT OF CUSTODY?

7 A. YES.

8 Q. AND IN MODERN DAY, WE WOULD CALL THAT, MR. BEASLEY BEING  
9 OFFERED AS A THIRD PARTY CUSTODIAN, ALTHOUGH I DON'T SEE THESE  
10 WORDS HERE, WOULD YOU AGREE?

11 A. YES.

12 Q. NOW, LET'S MOVE ON TO THE NEXT PAGE. READ LINES SEVEN  
13 THROUGH 14, PLEASE, ALOUD.

14 A. THE COURT: LET ME JUST SAY IN THAT CONNECTION THAT I  
15 WILL NOT RELEASE HER UNTIL BOTH SIDES HAVE HAD A FULL AND FAIR  
16 OPPORTUNITY. THAT IS WHY WE ARE TAKING THIS DAY OFF THAT  
17 STARTED OUT AS A 30 MINUTE REQUEST. I EXTENDED IT TO 45 AND  
18 THEN AN HOUR AND 15 AND NOW IT'S ALL DAY. SURELY, WE ARE NOT  
19 GOING TO LET THIS WITNESS GO UNTIL BOTH SIDES HAVE HAD AN  
20 AMPLE OPPORTUNITY TO TALK WITH HER.

21 Q. SO, THE COURT WANTED TO MAKE SURE THAT BOTH SIDES HAD AN  
22 AMPLE OPPORTUNITY TO INTERVIEW MS. STOECKLEY?

23 A. YES.

24 Q. NOW, DO YOU RECALL THAT MR. BEASLEY ACTUALLY TESTIFIES  
25 BRIEFLY HERE ABOUT HIS ABILITY TO WATCH OVER MS. STOECKLEY IF

September 17, 2012

Smith/Cross

Page 97

1 SHE WERE LET OUT?

2 A. I VERY VAGUELY RECALL THAT, BUT I THINK THAT'S CORRECT.

3 Q. OKAY. LET'S SEE IF WE CAN GO TO PAGE 20 -- I'M SORRY,  
4 TRIAL DAY 20, PAGE NINE. AND DO YOU SEE IN THE MIDDLE OF THE  
5 PAGE WHERE P.E. BEASLEY WAS CALLED AS A WITNESS?

6 A. YES.

7 Q. AND LET'S BACK UP TO THE TOP HALF OF THAT PAGE A MINUTE.  
8 A LITTLE MORE. I NOTICE -- DO YOU NOTICE THAT MR. SEGAL ASKS  
9 IF HE SHOULD BE SWORN AS A WITNESS AND THE COURT SAYS NO? DO  
10 YOU SEE THAT, MR. SMITH? LINE SIX THROUGH NINE.

11 A. THE COURT SAYS I'M GOING TO HEAR YOU.

12 Q. AND THEN MR. SEGAL SAYS?

13 A. MR. SEGAL SAYS SHALL WE SWEAR THE WITNESS, YOUR HONOR,  
14 AND THE COURT SAYS NO.

15 Q. OKAY. I'M GOING TO SKIP OVER MR. BEASLEY'S TESTIMONY AND  
16 LET'S GO TO PAGE 12. IF YOU'D PICK UP ON LINE TEN, IN THE  
17 MIDDLE OF LINE TEN, IT APPEARS THAT SOMEONE ON BEHALF OF THE  
18 GOVERNMENT IS SPEAKING.

19 CAN YOU READ THE SENTENCE THAT STARTS WITH I THINK  
20 AND READ TO THE END OF THE PARAGRAPH?

21 A. I THINK THE GOVERNMENT IS CONCERNED THAT SO MUCH TROUBLE  
22 WAS SPENT IN LOCATING HER AND BRINGING HER IN THE FIRST PLACE,  
23 WE ARE VERY SKEPTICAL OF RELEASING HER AT THIS TIME.

24 Q. AND THE COURT SAYS WHAT IN LINE 14 AND 15?

25 A. I WILL NOT RELEASE HER AT THIS TIME.

September 17, 2012

Smith/Cross

Page 98

1 Q. AND SO MR. BLACKBURN THANKS THE COURT?

2 A. YES.

3 Q. SO, PRESUMABLY, IT WAS HIM SPEAKING ABOUT THIS --

4 A. YES.

5 Q. -- WOULD YOU AGREE?

6 A. (WITNESS NODS HEAD.)

7 Q. NOW, LET'S GO DOWN TO LINE 17, AND READ WHAT JUDGE DUPREE  
8 SAYS FROM LINE 17 THROUGH 24.

9 A. I WILL LET YOU QUESTION THE WITNESS AND IT MAY BE THAT IT  
10 WILL BE RESOLVED BY RELEASING HER FROM A SUBPOENA. IT COULD  
11 BE. I DON'T KNOW ANYTHING ABOUT IT, BUT CONCEIVABLY SHE MIGHT  
12 NOT EVEN BE A WITNESS IN THE CASE, BUT I'M NOT GOING TO  
13 RELEASE HER UNTIL BOTH SIDES HAVE HAD A CHANCE TO TALK TO HER  
14 AND THEN YOU MAY LET ME KNOW NOT LATER THAN 4:15 THIS  
15 AFTERNOON.

16 Q. AND THEN MR. BLACKBURN MAKES THE STATEMENT THAT BEGINS ON  
17 PAGE -- ON LINE 25. COULD YOU READ THAT AND THEN WE'LL TRY TO  
18 SHOOT OVER TO PAGE 13.

19 A. MR. BLACKBURN: I MIGHT ASK COUNSEL, I KNOW YOU HAVE SAID  
20 THAT I COULD SEE HER SHORTLY, BUT CAN YOU BE MORE SPECIFIC AS  
21 TO WHEN SHORTLY MIGHT COME.

22 Q. AND WHAT DOES MR. SEGAL REPLY IN LINES THREE THROUGH  
23 NINE?

24 A. MR. SEGAL: I NEED TO DEFINE A COUPLE OF MATTERS, MR.  
25 BLACKBURN, BUT I WOULD SAY BY TWO O'CLOCK. I JUST WANT TO ADD

September 17, 2012

Smith/Cross

Page 99

1 FOR THE RECORD, YOUR HONOR, THE REQUEST IN REGARD TO WHETHER  
2 MS. STOECKLEY SHOULD BE RELEASED OR NOT WAS THE REQUEST THAT I  
3 CONVEYED AT HER INSTANCE. IT IS NOT NECESSARILY MY REQUEST,  
4 YOUR HONOR.

5 Q. NOW, WHAT MR. SEGAL WAS PROPOSING WAS TO RELEASE HER FROM  
6 CUSTODY AND PUT HER UNDER SUBPOENA, IS THAT RIGHT?

7 A. YES.

8 Q. AND THAT WOULD BE A SUBPOENA FROM THE DEFENSE?

9 A. YES.

10 Q. YOU WERE PUTTING ON YOUR CASE AT THIS TIME, IS THAT  
11 RIGHT?

12 A. EXCUSE ME?

13 Q. THE DEFENSE WAS PUTTING ON THE DEFENSE CASE AT THE TIME?

14 A. WE WERE. YES, WE WERE.

15 Q. YOU WERE IN THE MIDST OF CALLING THE DEFENSE WITNESSES?

16 A. YES.

17 Q. THE PROSECUTION HAD ALREADY PUT ON ITS CASE FOR MANY  
18 WEEKS?

19 A. YES.

20 Q. AND MR. MACDONALD WAS NOT AN INDIGENT DEFENDANT, IS THAT  
21 RIGHT?

22 A. NO.

23 Q. HE DIDN'T HAVE APPOINTED COUNSEL?

24 A. NO.

25 Q. AND HE DIDN'T HAVE ACCESS TO COURT FUNDS TO PAY FOR

September 17, 2012

Smith/Cross

Page 100

1 THINGS LIKE WITNESSES --

2 A. NO.

3 Q. -- IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. HE WAS FUNDING HIS OWN DEFENSE?

6 A. HE WAS.

7 Q. HE WAS PAYING YOU AND MR. SEGAL?

8 A. HE WAS.

9 Q. AND IF YOU HAD TO SUBPOENA WITNESSES, HE HAD TO PAY FOR  
10 THAT?

11 A. YES.

12 Q. AND WHEN YOU'RE A NON-INDIGENT DEFENDANT, WHEN YOU  
13 SUBPOENA WITNESSES, YOU HAVE TO TENDER THEIR TRAVEL EXPENSES  
14 AND WITNESS FEES, IS THAT CORRECT?

15 A. YES, SIR.

16 Q. SO, THAT'S WHAT WOULD HAVE HAD TO BE DONE IF MS.  
17 STOECKLEY WAS RELEASED?

18 A. YES.

19 Q. NOW, MR. SEGAL SAYS THAT HE'S GOING TO DEFINE A COUPLE OF  
20 MATTERS, BUT BY TWO O'CLOCK HE'LL CONCLUDE THE DEFENSE  
21 INTERVIEW AND MAKE HER AVAILABLE TO THE PROSECUTION, IS THAT  
22 HOW YOU READ IT?

23 A. THAT'S HOW I READ IT.

24 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

25 A. IT IS.

September 17, 2012

Smith/Cross

Page 101

1 Q. NOW, LET'S GO DOWN TO -- A FEW MORE LINES. LINE 14  
2 THROUGH 18, PLEASE READ THAT ALOUD.

3 A. THE COURT: TAKE A RECESS UNTIL TOMORROW MORNING AT NINE  
4 O'CLOCK. THE PROCEEDING WAS ADJOURNED AT 1:17 P.M., TO  
5 RECONVENE AT NINE O'CLOCK ON FRIDAY, AUGUST 17, 1979.

6 Q. SO, COURT WAS OVER FOR THE DAY AT 1:17 P.M., IS THAT  
7 RIGHT?

8 A. I THINK SO.

9 Q. AND DID MR. SEGAL AND YOU CONCLUDE YOUR INTERVIEW BY  
10 APPROXIMATELY 2:00 P.M., AS FAR AS YOU RECALL?

11 A. I DO NOT REMEMBER PARTICIPATING IN THAT INTERVIEW AND IT  
12 IS LIKELY THAT I DID, THOUGH, IT MAY BE THAT I HAD SOME OTHER  
13 TASK BECAUSE I DON'T REMEMBER BEING IN THE ROOM THEN.

14 Q. OKAY. AND IS IT FAIR TO SAY THAT WHATEVER PORTION OF THE  
15 INTERVIEW TOOK PLACE AFTER THIS COURT PROCEEDING, HELENA  
16 STOECKLEY'S ANSWERS WERE NOT DIFFERENT THAN THEY HAD BEEN  
17 BEFORE?

18 A. I DON'T THINK SO, NO.

19 Q. NOW, PRESUMABLY, SHE WAS TENDERED FOR A PROSECUTION  
20 INTERVIEW AT THE CONCLUSION OF THE DEFENSE INTERVIEW?

21 A. YES.

22 Q. DO YOU KNOW -- THE U.S. ATTORNEY'S OFFICE IN THE FEDERAL  
23 BUILDING IS ON THE EIGHTH FLOOR, IS THAT CORRECT?

24 A. IT IS.

25 Q. ONE FLOOR ABOVE THE SEVENTH FLOOR THAT WE HAD ON THE

September 17, 2012



Smith/Cross

Page 102

1 SCREEN A LITTLE WHILE AGO?

2 A. YES.

3 Q. YOU DON'T KNOW HOW MS. STOECKLEY GOT FROM THE SEVENTH  
4 FLOOR TO THE EIGHTH FLOOR FOR A PROSECUTION INTERVIEW, DO YOU?

5 A. NO.

6 Q. AND YOU WERE NOT PRESENT DURING ANY PART OF THE  
7 PROSECUTION INTERVIEW?

8 A. I WAS NOT.

9 Q. AND THERE WOULD BE NO NEED TO RETURN TO COURT THAT DAY --

10 A. NO.

11 Q. -- BECAUSE COURT HAD ADJOURNED, IS THAT RIGHT?

12 A. COURT WAS ADJOURNED.

13 Q. NOW, DO YOU RECALL BUMPING INTO JIM BLACKBURN LATER THAT  
14 DAY IN THE FEDERAL BUILDING AFTER THE PROSECUTION INTERVIEW?

15 A. I DO.

16 Q. AND DO YOU RECALL THAT HE SAID WORDS TO THE EFFECT THAT  
17 THE GOVERNMENT DIDN'T GET ANYTHING INTERESTING OUT OF MS.  
18 STOECKLEY AND ASKING YOU THE SAME THING?

19 A. IT WAS A -- YES, I REMEMBER THAT VERY WELL. I REMEMBER  
20 WHERE WE WERE STANDING. AND MR. BLACKBURN AND I OFTEN HAD  
21 EXCHANGES LIKE THAT. I WAS VERY EAGER TO GAIN AS MUCH  
22 INFORMATION AS I COULD.

23 Q. WHERE WERE YOU STANDING?

24 A. WE WERE STANDING AT THE EDGE OF THE COURTROOM. THERE WAS  
25 A DOOR AND WE WERE STANDING ALMOST IN THAT DOORWAY AS I

September 17, 2012

1 REMEMBER AND WE HAD A CONVERSATION THAT LASTED 15 SECONDS,  
2 SOMEWHAT LIKE THAT.

3 Q. AND THE GIST OF THE CONVERSATION WAS THAT HE DIDN'T SEE  
4 ANYTHING MEANINGFUL IN HIS INTERVIEW AND YOU SAID MUCH THE  
5 SAME THING?

6 A. SOMEWHAT LIKE THAT, YES.

7 Q. DO YOU RECALL MAKING A STATEMENT IN 2006, THAT IF  
8 STOECKLEY HAD CONFESSED IN THE DEFENSE INTERVIEW YOU WOULD  
9 HAVE SKIPPED OUT OF THE ROOM?

10 A. I DON'T REMEMBER SAYING IT, BUT I PROBABLY WOULD HAVE.

11 Q. AND, IN FACT, YOU DID NOT SKIP OUT OF THE ROOM?

12 A. NO.

13 Q. MIGHT IT HAVE BEEN DANCED OUT OF THE ROOM?

14 A. I'M NOT MUCH OF A DANCER, I WOULD BE BETTER AT SKIPPING,  
15 BUT ONE OR THE OTHER. THE POINT WOULD BE IS THAT I WOULD HAVE  
16 BEEN VERY, VERY HAPPY.

17 Q. AND YOU DIDN'T SKIP OR DANCE OUT OF THE ROOM AFTER THE  
18 DEFENSE INTERVIEW?

19 A. NO.

20 Q. AND THAT'S THE END OF HELENA STOECKLEY ON THURSDAY,  
21 AUGUST 16TH, AS FAR AS YOU'RE CONCERNED. YOU DIDN'T SEE HER  
22 AGAIN?

23 A. I THINK SO.

24 Q. SO, ON FRIDAY SHE TAKES THE STAND TO TESTIFY, IS THAT  
25 CORRECT?

September 17, 2012

Smith/Cross

Page 104

1 A. I THINK THAT'S RIGHT.

2 Q. LET'S GO TO TRIAL DAY 21, PAGE SIX, PLEASE. DO YOU SEE  
3 THAT ON THE SCREEN?

4 A. I DO.

5 Q. WOULD YOU READ LINES THREE THROUGH EIGHT SPOKEN BY MR.  
6 BLACKBURN?

7 A. MR. BLACKBURN: THIS IS THE ONE, OF COURSE, WE ALL TALKED  
8 TO YESTERDAY. I REMEMBER YOU TALKING ABOUT A VOIR DIRE. I  
9 KNOW THAT WADE MENTIONED THIS MORNING THAT SHE HAD COMMENTED  
10 ON THE NECESSITY OF WANTING AN ATTORNEY. I JUST WANTED TO BE  
11 SURE BEFORE WE GOT STARTED HOW WE'RE GOING TO GO.

12 Q. SO, HE'S BRINGING UP THE ISSUE OF WHETHER OR NOT THERE'S  
13 GOING TO BE AN ATTORNEY APPOINTED FOR HELENA STOECKLEY, IS  
14 THAT RIGHT?

15 A. YES.

16 Q. AND THEN YOU REPLY IN LINES NINE THROUGH 12, AND PLEASE  
17 READ THAT.

18 A. I THINK OUR POSITION, JUDGE -- OF COURSE, WE WILL DO  
19 WHATEVER YOUR HONOR WISHES TO DO -- BUT I FEEL THAT WE WILL  
20 JUST GO AHEAD WITH HER, IF WE CAN, AND SEE WHAT HAPPENS.

21 Q. AND APPARENTLY MR. BLACKBURN AND THE COURT ARE IN  
22 AGREEMENT WITH THAT?

23 A. YES.

24 Q. SO, YOU'RE PROPOSING THAT THE TESTIMONY PROCEED WITHOUT  
25 APPOINTING HER COUNSEL?

September 17, 2012

1 A. YES.

2 Q. ALL RIGHT. NOW, IF WE'LL GO DOWN A FEW LINES, IT APPEARS  
3 THAT SHE IS CALLED TO THE STAND AND IS IT TRUE THAT SHE BEGINS  
4 HER DIRECT EXAMINATION, ACCORDING TO THE TRANSCRIPT, AT 9:03  
5 A.M.?

6 A. YES.

7 Q. NOW, I'M NOT GOING TO TAKE YOU THROUGH EVERY LINE OF  
8 THIS, BUT I WANT TO LOOK AT SOME OF PAGES 16 THROUGH 24.  
9 LET'S GO TO TRIAL DAY 21, LINE 16. I'M SORRY, PAGE 16. I  
10 DIDN'T MEAN TO SAY LINE 16. LET'S GO UP A LITTLE BIT, PLEASE.

11 DO YOU RECALL MR. SEGAL ASKING HER ABOUT HER DRUG  
12 USE?

13 A. I DON'T HAVE AN INDEPENDENT RECOLLECTION OF IT, BUT I'M  
14 SURE HE DID.

15 Q. ALL RIGHT. LET'S MAKE IT BIGGER FOR THE WHOLE PAGE.  
16 LET'S START WITH LINE 12. BY THE WAY, DID MR. SEGAL HANDLE  
17 THE EXAMINATION OF MS. STOECKLEY WHILE SHE WAS ON THE STAND  
18 TESTIFYING FOR THE DEFENSE?

19 A. HE DID.

20 Q. AND THIS TESTIMONY WAS IN OPEN COURT BEFORE THE JURY, IS  
21 THAT RIGHT?

22 A. YES.

23 Q. MS. STOECKLEY DID NOT TESTIFY OUT OF THE PRESENCE OF THE  
24 JURY?

25 A. NO.

Smith/Cross

Page 106

1 Q. AND SHE WAS NOT PROHIBITED BY JUDGE DUPREE FROM  
2 TESTIFYING?

3 A. NO.

4 Q. ALL RIGHT. AND WOULD YOU READ THE QUESTIONS AND ANSWERS  
5 FROM MR. SEGAL AND MS. STOECKLEY STARTING ON LINE 12 AND GOING  
6 DOWN TO LINE 21?

7 A. QUESTION: HOW OFTEN WOULD YOU SAY DURING THAT PERIOD  
8 WERE YOU USING HEROIN? LET'S TALK ABOUT ON A DAILY OR WEEKLY  
9 BASIS SO THAT WE CAN GET A BETTER FIX ON IT.

10 ANSWER: DURING THE DAY MAYBE SIX OR SEVEN TIMES.

11 QUESTION: YOU WOULD TAKE AN INTRAVENOUS INJECTION  
12 OF HEROIN AND/OR OPIUM SIX OR SEVEN TIMES A DAY?

13 ANSWER: YES, SIR.

14 QUESTION: THAT WENT ON FOR HOW LONG? HOW LONG DID  
15 YOU REMAIN ADDICTED TO THE USE OF HEROIN AND OPIUM?

16 ANSWER: OFF AND ON ABOUT NINE YEARS.

17 Q. NOW, LET'S SKIP OVER TO PAGE 22, AND IF YOU WOULD START  
18 READING AT THE TOP, IT SAYS BY MR. SEGAL.

19 A. BY MR. SEGAL: QUESTION: DID YOU ALSO HAVE OCCASION TO  
20 USE IN '69 OR '70 A DRUG KNOWN AS MESCALINE?

21 YES, SIR.

22 QUESTION: IS THAT ALSO ANOTHER HALLUCINOGEN LIKE  
23 LSD?

24 ANSWER: IT IS MILDER.

25 QUESTION: IT IS A MILDER HALLUCINOGEN. DID YOU

September 17, 2012

Smith/Cross

Page 107

1 YOURSELF HAVE OCCASION TO USE IT IN '69 AND '70?

2 ANSWER: YES, SIR.

3 QUESTION: HOW OFTEN WOULD YOU SAY, MS. STOECKLEY,  
4 YOU KNOW, YOU WOULD USE MESCALINE?

5 ANSWER: MAYBE TWICE A WEEK.

6 QUESTION: WHY WOULD YOU USE THAT AS OPPOSED TO LSD?  
7 WAS THERE ANY DIFFERENCE? WOULD IT HAVE MADE A DIFFERENT  
8 MEANING -- WOULD IT HAVE A DIFFERENT MEANING TO YOU?

9 ANSWER: I JUST DIDN'T LIKE LSD THAT MUCH. IT WAS  
10 TOO HEAVY FOR ME. MESCALINE WAS A LOT EASIER.

11 QUESTION: WHEN YOU SAY THAT LSD WAS TOO HEAVY FOR  
12 YOU, ARE YOU SAYING THAT THE EXPERIENCES THAT YOU HAD WHEN YOU  
13 TOOK LSD WERE TOO DISTURBING OR UPSETTING, WOULD IT BE FAIR TO  
14 SAY THAT?

15 ANSWER: I DIDN'T LIKE THE DRUG TAKING ME AND THAT'S  
16 WHAT IT WOULD DO. WITH MESCALINE I COULD HANDLE IT USUALLY.

17 QUESTION: YOU SAY DRUG TAKING ME.

18 Q. THAT'S FAR ENOUGH, MR. SMITH. THANK YOU.

19 A. ALL RIGHT.

20 Q. NOW, LET'S -- IT SEEMS THAT MS. STOECKLEY HAS SOME  
21 EXPERTISE IN ILLEGAL DRUGS?

22 A. YES, SHE HAD HAD SOME EXPERIENCE WITH IT.

23 Q. NOW, LET'S MOVE TO PAGE 46. LET'S LOOK AT LINE SIX.

24 A. ALL RIGHT.

25 Q. AND CAN YOU READ THAT THROUGH THE BOTTOM OF THE SCREEN?

September 17, 2012

Smith/Cross

Page 108

1 A. YES.

2 HAD YOU HAD ANY DRUGS DURING THE DAY OF FEBRUARY 16,  
3 1970?

4 ANSWER: YES, SIR.

5 QUESTION: WOULD YOU TELL US, TO THE BEST OF YOUR  
6 RECOLLECTION, MS. STOECKLEY, WHAT YOU HAD TAKEN -- WHAT TYPES  
7 OF DRUGS YOU HAD TAKEN THAT DAY?

8 ANSWER: WELL, I HAD TAKEN FOR SURE THE OPIUM AND  
9 THE HEROIN. I HAD SMOKED GRASS ALL DAY, AND THEN, WHEN GREG  
10 LEFT, HE LEFT ME WITH A HIT OF MESCALINE WHICH I SWALLOWED  
11 THERE AT THE CAR BEFORE HE BACKED OUT.

12 Q. ALL RIGHT. FEBRUARY 16TH, 1970, WAS THE DAY BEFORE THE  
13 MACDONALD MURDERS AND BY THAT -- LET ME REPHRASE THAT  
14 QUESTION. DID THE MACDONALD MURDERS OCCUR ON THE EARLY  
15 MORNING HOURS OF FEBRUARY 17TH, 1970?

16 A. YES.

17 Q. IN THE MIDDLE OF THE NIGHT BASICALLY?

18 A. YES.

19 Q. AND SO THE DAY OF FEBRUARY 16TH, WOULD BE THE DAY  
20 PRECEDING THE EVENING OF THE MURDERS?

21 A. YES.

22 Q. ALL RIGHT. LET'S GO ON TO TRIAL TRANSCRIPT DAY 21, PAGE  
23 107. DO YOU SEE HERE THAT MR. SEGAL ASKS FOR A BENCH  
24 CONFERENCE AT LINE TWO AND THREE?

25 A. I SEE IT.

September 17, 2012

1 Q. AND BEGINNING AT LINE SIX -- READ LINES ALOUD, PLEASE,  
2 SIX THROUGH 13.

3 A. AT THIS TIME, YOUR HONOR, I ASK FOR LEAVE OF COURT TO  
4 TAKE THIS WITNESS AS ON CROSS, BECAUSE SHE IS A SURPRISE AND  
5 HOSTILE WITNESS.

6 I REPRESENT TO THE COURT THAT DURING THE INTERVIEWS  
7 WITH ME AND WITH OTHER PERSONS PRESENT SHE STATED THAT WHEN  
8 SHE LOOKED AT THE PICTURES SHE HAD A RECOLLECTION OF STANDING  
9 OVER A BODY HOLDING A CANDLE, SEEING A MAN'S BODY ON THE  
10 FLOOR.

11 Q. LET'S MOVE DOWN AND KEEP READING.

12 A. I ALSO MAY SAY, YOUR HONOR, WE ARE NOW DOWN TO THE BOTTOM  
13 FIVE OR SIX CRITICAL THINGS THAT SHE REVEALED YESTERDAY. I  
14 HAVE A FEELING, BASED UPON HER ANSWER TO THIS ONE NOW, THAT  
15 WHEN AND IF I ASK HER IN DIRECT FASHION, THAT I MAY GET  
16 NEGATIVE ANSWERS.

17 I HAD NO ANTICIPATION OF THAT BECAUSE YESTERDAY  
18 THROUGHOUT THE TIME THAT SHE MADE THESE STATEMENTS WE ACCEPTED  
19 THEM, DID NOT EXPECT CONTRARY.

20 WE HAVE NOT HAD ANY DIFFERENT STATEMENTS FROM HER  
21 AND WE FEEL THAT WE'RE ENTITLED TO A PLEA OF SURPRISE AS WELL  
22 AS THE FACT, I THINK, AT THIS POINT THE EXTENT OF HER HOSTILE  
23 RELATIONSHIP NOT IN TERMS OF MANNER BUT THE HOSTILITY OF HER  
24 INTEREST TO THE DEFENDANT.

25 Q. OKAY. YOU CAN STOP. IT SEEMS THAT MR. SEGAL IS



1 PROPOSING THAT HE BE ABLE TO QUESTION MS. STOECKLEY AS A  
2 HOSTILE WITNESS --

3 A. YES.

4 Q. -- IS THAT RIGHT?

5 A. YES.

6 Q. AND THE EFFECT OF THIS WOULD BE TO BE ABLE TO ASK HER  
7 LEADING QUESTIONS?

8 A. YES, THAT WOULD BE THE EFFECT.

9 Q. WHICH YOU WOULD NOT NORMALLY BE ABLE TO DO ON DIRECT  
10 EXAMINATION?

11 A. CORRECT. YES, SIR.

12 Q. ALL RIGHT. LET'S MOVE DOWN AND START WITH LINE EIGHT.

13 A. SHE HAS ALREADY SAID SOMETHING, AND I DID NOT WANT TO  
14 RAISE A SURPRISE QUESTION. I WANT TO DO IT ALL AT ONE TIME.  
15 THE PHOTOGRAPH THAT I SHOWED HER OF THE BEDROOM OF KRISTEN  
16 MACDONALD DURING THE INTERVIEW YESTERDAY SHE STATED THAT SHE  
17 REMEMBERED RIDING THE ROCKING HORSE WHEN SHE LOOKED AT THAT  
18 PICTURE.

19 Q. KEEP READING, PLEASE.

20 A. SHE ALSO STATED YESTERDAY SHE REMEMBERED STANDING AT THE  
21 END OF THE SOFA HOLDING A CANDLE. SHE ALSO SAID WHEN SHE SAW  
22 THE BODY OF KRISTEN MACDONALD, THE ONE WHEN SHE WAS CLOTHED  
23 WITH THE BABY BOTTLE, THAT THAT PICTURE LOOKED FAMILIAR TO  
24 HER. THAT SCENE LOOKED FAMILIAR.

25 SHE ALSO SAID WHEN SHE WAS SHOWN THE PHOTOGRAPH OF

September 17, 2012

Smith/Cross

Page 111

1 COLETTE MACDONALD, THE SAME ONE I SHOWED HER TODAY, THAT SHE  
2 SAID THAT THE FACE IN THAT PICTURE LOOKED FAMILIAR, EXCEPT  
3 THAT THE CHIN WAS BROKEN AND IT MADE IT A LITTLE HARD.

4 SHE ALSO STATED, AND I'M GOING TO GET TO IT --

5 Q. WE'RE ON TO PAGE 109.

6 A. -- SHE'S GOTTEN TO THE POINT WHERE SHE DOES NOT SOUND  
7 LIKE SHE'S GOING TO COOPERATE FURTHER -- THAT SHE WAS STANDING  
8 OFF THE CORNER OF HONEYCUTT ACROSS FROM MELONY VILLAGE.

9 Q. KEEP READING FIVE THROUGH TEN, PLEASE.

10 A. SHE HAS A RECOLLECTION OF STANDING THERE DURING THE EARLY  
11 MORNING HOURS OF FEBRUARY 17, 1970. SHE FURTHER STATED  
12 YESTERDAY, AND I INTEND TO ASK HER NOW, THAT SHE HAS A  
13 RECOLLECTION OF STANDING OUTSIDE OF THE HOUSE LOOKING AT HER  
14 HANDS AND SAYING, MY GOD, THE BLOOD; OH MY GOD, THE BLOOD.  
15 SHE SAID THAT TOOK PLACE FEBRUARY 17, 1970.

16 THERE ARE WITNESSES TO EACH OF THESE THINGS. I MUST  
17 SAY, YOUR HONOR, THERE WERE PERSONS PRESENT THE ENTIRE TIME  
18 THIS TOOK PLACE.

19 I INTEND TO NOW ASK HER DIRECTLY EACH OF THESE  
20 QUESTIONS. IF SHE REFUSES OR DENIES HER STATEMENTS I ASK FOR  
21 LEAVE TO CONFRONT HER; DID YOU NOT SAY THAT YESTERDAY WHEN YOU  
22 WERE CONFRONTED WITH THESE PHOTOGRAPHS OR PHOTOS?

23 IF SHE PERSISTS IN DENYING IT WE WILL OF COURSE  
24 IMPEACH HER AS WE HAVE THE RIGHT TO IMPEACH HER UNDER THE  
25 RULES. ALTHOUGH WE HAVE CALLED HER AS A WITNESS, THERE ARE

September 17, 2012

Smith/Cross

Page 112

1 RULES THAT PERMIT THAT TO BE DONE.

2           WHEN I AM DONE WITH THAT, I INTEND TO TURN HER OVER  
3 FOR CROSS-EXAMINATION.

4 Q.    OKAY. YOU CAN STOP READING.

5 A.    ALL RIGHT.

6 Q.    NOW, ON PAGE 110, AT THE TOP OF THE PAGE, THE VERY NEXT  
7 COMMENT IS BY MR. BLACKBURN. PLEASE READ ONE THROUGH FOUR.

8 A.    OF COURSE, I WAS NOT THERE WHEN SHE TALKED WITH THE  
9 DEFENSE YESTERDAY, BUT IN HER INTERVIEW WITH THE GOVERNMENT  
10 NONE OF THOSE STATEMENTS WERE MADE. SHE SPECIFICALLY TOLD  
11 US -- AND THEN THE COURT INTERRUPTS, DID YOU ASK HER ANY?

12           MR. BLACKBURN: YES, SIR. SHE SPECIFICALLY TOLD US  
13 THAT SHE HAD BEEN SHOWN THE PHOTOGRAPHS AND WE ASKED HER, DID  
14 YOU RECOGNIZE ANY OF THE SCENES IN THOSE PHOTOGRAPHS? THE  
15 ANSWER WAS NO.

16           I ASKED HER HAVE YOU EVER BEEN IN THAT HOUSE? SHE  
17 SAID NO. I SAID DO YOU KNOW ANYTHING ABOUT THAT? NO. WHO DO  
18 YOU THINK DID IT? DR. MACDONALD. YOU KNOW, IT'S JUST ONE  
19 RIGHT AFTER THE OTHER.

20           I DISCUSSED -- I TOLD MR. SMITH LAST NIGHT WHAT SHE  
21 TOLD US. I WAS UNDER THE IMPRESSION TO THIS VERY MOMENT THAT  
22 WHAT SHE TOLD US WAS ESSENTIALLY WHAT SHE TOLD THEM.

23 Q.    LET ME INTERRUPT YOU A MINUTE. IS THIS AN APPARENT  
24 REFERENCE TO THE CONVERSATION WITH MR. BLACKBURN THAT YOU HAVE  
25 PREVIOUSLY TESTIFIED ABOUT?

September 17, 2012

1 A. I THINK SO, YES.

2 Q. ALL RIGHT. NOW, CONTINUE READING WITH LINE 20.

3 A. IT IS DIFFICULT FOR ME -- YOU KNOW, I AM NOT SAYING THAT  
4 THEY ARE NOT SAYING WHAT SHE SAID. I JUST DON'T KNOW WHICH  
5 WAY IT IS BECAUSE SHE HAS NOT INDICATED ANYTHING TO THE  
6 GOVERNMENT.

7 Q. OKAY. NOW, YOU'RE THE NEXT SPEAKER?

8 A. YES.

9 Q. AND I WOULD LIKE FOR YOU TO READ LINES 24 AND 25 AND OVER  
10 TO THE NEXT PAGE.

11 A. OKAY.

12 MR. SMITH: JUDGE, HERE I THINK IS WHERE WE ARE.  
13 GENERALLY, SHE SAID TO US THE SAME THING AND THAT IS, I DON'T  
14 REMEMBER. BUT IN TWO OR THREE OR FOUR INSTANCES, WHATEVER THE  
15 LIST WOULD REVEAL, SHE SAYS SOMETHING WHICH WOULD GIVE AN  
16 INTERESTING INSIGHT INTO HER MIND.

17 Q. ALL RIGHT. STOP RIGHT THERE. YOU'RE RESPONDING TO WHAT  
18 MR. BLACKBURN HAS TOLD THE JUDGE ABOUT HIS UNDERSTANDING  
19 HAVING TALKED TO YOU ABOUT THE TWO INTERVIEWS, IS THAT RIGHT?

20 A. YES.

21 Q. NOW, MR. SMITH, YOU HAVE A WELL DESERVED REPUTATION AS A  
22 GENTLEMAN, DO YOU NOT?

23 A. I DON'T KNOW THE ANSWER TO THAT.

24 THE COURT: I DO.

25 THE WITNESS: THANK YOU.

September 17, 2012

Smith/Cross

Page 114

1 BY MR. BRUCE:

2 Q. ISN'T IT TRUE WHEN YOU MADE THIS STATEMENT TO JUDGE  
3 DUPREE, WEREN'T YOU JUST TOO MUCH OF A GENTLEMAN TO SAY IT  
4 OUTRIGHT THAT BERNIE SEGAL WAS EXAGGERATING WHAT HAD GONE ON  
5 IN THE DEFENSE INTERVIEW?

6 A. I HAVE NOT READ MUCH OF THE TRANSCRIPT. I HAVE READ  
7 THIS. AND I HAVE PUZZLED AND PUZZLED AND PUZZLED AND I  
8 PUZZLED INTO THE NIGHT LAST NIGHT ABOUT WHAT I COULD HAVE  
9 MEANT. AND AS YOU CAN SEE, MY WORDS ARE VERY VAGUE. I SAID  
10 IT WOULD GIVE AN INTERESTING INSIGHT INTO HER MIND.

11 Q. AN INTERESTING INSIGHT INTO HER MIND IS NOT A CONFESSION,  
12 IS IT, MR. SMITH?

13 A. IT WAS -- IT WAS CERTAINLY -- LET ME JUST PUT IT THIS  
14 WAY, I WAS ABSOLUTELY DEVOTED TO THIS CASE AND UPHELD MY ROLE  
15 AS COUNSEL AND I'M STILL DEVOTED TO THIS CASE, BUT I DID NOT  
16 HEAR HELENA STOECKLEY SAY USEFUL THINGS FOR US. IT IS  
17 CERTAINLY POSSIBLE. AND I MENTIONED WHILE AGO, MAYBE I WAS  
18 OUT OF THE ROOM. I DO NOT KNOW THE ANSWER. BUT I CAN ONLY  
19 SPEAK FOR MYSELF AND THAT IS THAT WHEN I WAS PRESENT SHE DID  
20 NOT SAY THINGS THAT HELPED US.

21 Q. OKAY. LET'S MOVE ON DOWN TO -- WELL, JUST FOR  
22 COMPLETENESS GO AHEAD AND READ WHAT YOU SAID AT LINES FIVE  
23 THROUGH EIGHT.

24 A. I WOULD SUBMIT THAT WE HAVE A RIGHT TO CROSS HER ON  
25 THOSE. IF SHE DENIES THEM, THEN THEY HAVE A RIGHT TO IMPEACH

September 17, 2012

Smith/Cross

Page 115

1 HER ON THE STATEMENTS OR SHOW THAT SHE DID NOT SAY ANYTHING  
2 LIKE THAT.

3 Q. ALL RIGHT. AND THE COURT RESPONDS AT NINE THROUGH 12.

4 A. I'M NOT GOING TO CROSS THE HOSTILITY THING UNTIL THERE IS  
5 A REASON SHOWN TO INDICATE IT, BUT I'M GOING TO ASK THE  
6 WITNESS A QUESTION MYSELF.

7 Q. ALL RIGHT. SO, IT APPEARS THAT JUDGE DUPREE IS SAYING  
8 THAT HE IS NOT GOING TO RULE ON MR. SEGAL'S REQUEST TO  
9 QUESTION HER AS A HOSTILE WITNESS, IS THAT RIGHT?

10 A. YES.

11 Q. BUT HE WANTS TO QUESTION THE WITNESS HIMSELF?

12 A. YES.

13 Q. AND THAT'S PERMITTED UNDER THE RULES, JUDGES CAN ASK  
14 QUESTIONS OF A WITNESS? I BELIEVE JUDGE FOX HAS ALREADY ASKED  
15 A QUESTION OF YOU TODAY.

16 A. INDEED, IT IS.

17 Q. NOW, START READING WITH LINE 14, PLEASE.

18 A. THE COURT: MS. STOECKLEY, HOW LONG DID YOU SPEND  
19 YESTERDAY TALKING TO DEFENSE COUNSEL IN THIS CASE, MR. SEGAL,  
20 MR. SMITH AND OTHERS?

21 THE WITNESS: ABOUT THREE AND A HALF TO FOUR HOURS.

22 THE COURT: DID YOU THEREAFTER TALK TO THE  
23 GOVERNMENT'S ATTORNEYS?

24 THE WITNESS: YES, SIR.

25 THE COURT: HAD YOU EVER SEEN THEM AND TALKED TO

September 17, 2012

1 THEM BEFORE?

2 THE WITNESS: NO, SIR. ONE MEMBER I HAD BEFORE.

3 Q. KEEP READING AT THE TOP OF PAGE 112, PLEASE.

4 A. THE COURT: NOW, DID YOU TELL BOTH SIDES THE SAME STORY?

5 THE WITNESS: AS FAR AS I KNOW, YES, SIR.

6 THE COURT: ALL RIGHT, THAT WAS THE QUESTION I WAS  
7 GOING TO ASK.

8 Q. SO, THE WITNESS, HELENA STOECKLEY, TESTIFIED THAT SHE  
9 TOLD BOTH SIDES THE SAME STORY IN THE TWO INTERVIEWS THE  
10 PREVIOUS DAY?

11 A. YES.

12 Q. AND THAT'S CONSISTENT WITH YOUR DISCUSSION WITH JIM  
13 BLACKBURN AFTER BOTH INTERVIEWS ON THE PREVIOUS DAY?

14 A. YES.

15 Q. ALL RIGHT. NOW, LET'S MOVE ON TO PAGE 118. WELL, LET ME  
16 ASK A MORE GENERAL QUESTION BEFORE WE LOOK AT ANY MORE  
17 SPECIFIC EXCERPTS.

18 AS THE DIRECT EXAMINATION CONTINUED OF HELENA  
19 STOECKLEY, IS IT FAIR TO SAY THAT SHE NEVER ADMITTED TO SAYING  
20 THE THINGS ON WEDNESDAY THAT SEGAL WAS SAYING SHE HAD SAID?

21 A. THAT'S FAIR TO SAY.

22 Q. LET'S MOVE ON TO PAGE 118. WE'RE ALREADY THERE. OKAY.  
23 START READING AT THE TOP OF THE PAGE.

24 A. MS. STOECKLEY, I'M GOING TO PUT HERE ON THE EASEL SO THAT  
25 THE MEMBERS OF THE JURY CAN ALSO LOOK WITH YOU THE FIRST OF

September 17, 2012

1 TWO PHOTOGRAPHS OR PHOTOS. ONE IS AN ENLARGEMENT MARKED G-  
2 982. THEN THE OTHER IS MARKED G-145(a). CAN I IMPOSE UPON  
3 YOU, PLEASE, TO PERHAPS STEP DOWN HERE NEXT TO THE WITNESS  
4 STAND, LOOK AT THE PHOTOGRAPH AND TELL ME, HOW DOES IT APPEAR  
5 TO BE BROKEN IN ANY FASHION. ANSWER --

6 Q. AND WHAT'S HER ANSWER?

7 A. ANSWER: THE PART GOING TO THE SPRING.

8 QUESTION: THAT LOOKS BROKEN TO YOU, IS THAT RIGHT?

9 WITNESS NODS AFFIRMATIVELY.

10 Q. SO, IT APPEARS HERE THAT MS. STOECKLEY IS TESTIFYING THAT  
11 THE HOBBY HORSE LOOKS BROKEN IN THE PHOTOGRAPH?

12 A. YES.

13 THE COURT: MR. BRUCE, I THINK WE'LL STOP FOR OUR  
14 LUNCHEON RECESS. WE'LL START BACK AT 1:30. TAKE A RECESS  
15 TILL 1:30.

16 (LUNCHEON RECESS FROM 12:01 P.M., UNTIL 1:32 P.M.)

17 (DEFENDANT PRESENT.)

18 THE COURT: PLEASE BE SEATED. GOOD AFTERNOON,  
19 EVERYONE. PLEASE BE SEATED.

20 MR. WIDENHOUSE, MAY I SEE YOU AND MR. WILLIAMS AT  
21 THE BENCH, PLEASE? MAY I SEE YOU AT THE BENCH?

22 (BENCH CONFERENCE ON THE RECORD.)

23 THE COURT: I WANT TO UNDERSTAND WHAT KIND OF  
24 EQUIPMENT YOU'VE GOT HERE THAT'S WIRELESS COMMUNICATION.

25 MR. WILLIAMS: YES, SIR, I WAS REMINDED OF THAT OVER

September 17, 2012



Smith/Cross

Page 118

1 THE LUNCH HOUR.

2 THE COURT: DID YOU READ THE ORDER? DID YOU READ  
3 OUR ORDER?

4 MR. WILLIAMS: YES, SIR.

5 THE COURT: DOESN'T IT REFER TO WIRELESS  
6 COMMUNICATIONS?

7 MR. WILLIAMS: YES, SIR, I THOUGHT I WAS AN EXEMPT  
8 PERSON AND I FAILED TO BRING THAT TO THE ATTENTION OF THE  
9 COURT EARLIER UNFORTUNATELY. I VERY SINCERELY APOLOGIZE, YOUR  
10 HONOR.

11 THE COURT: WHAT ARE YOU USING IT FOR?

12 MR. WILLIAMS: I HAD MY WESTLAW SO I COULD LOOK AT  
13 THE STATUTES AS PART OF THE LEGAL RESEARCH AND I HAD NO OTHER  
14 COMMUNICATION OF ANY SORT AND I CAN TURN THAT OFF IF NEED BE.

15 THE COURT: WELL, I THINK THAT'S PERFECTLY ALL RIGHT  
16 AS FAR AS LOOKING AT WESTLAW, BUT YOU'RE NOT COMMUNICATING  
17 WITH ANYONE?

18 MR. WILLIAMS: NO, SIR.

19 MS. FAULK: DOES ANYONE ELSE HAVE THE PASSWORD TO  
20 YOUR WIFI?

21 MR. WILLIAMS: NO. MY WIFE -- MY FAMILY MIGHT, BUT  
22 THEY'RE NOT HERE. YOUR HONOR, I DO APOLOGIZE. I SHOULD HAVE  
23 BROUGHT THAT TO THE COURT'S ATTENTION THIS MORNING, BUT WITH  
24 THE RUSH OF EVERYTHING THIS MORNING IT JUST DIDN'T OCCUR TO  
25 ME.

September 17, 2012

Smith/Cross

Page 119

1 THE COURT: THAT'S ALL RIGHT. I DON'T MIND YOU  
2 USING IT TO CONTACT WESTLAW, BUT I DON'T WANT COMMUNICATIONS  
3 WITH OTHER PEOPLE OUTSIDE THE BUILDING.

4 MR. WILLIAMS: YES, SIR. I HAVE NOT BEEN  
5 COMMUNICATING WITH ANYONE, YOUR HONOR.

6 THE COURT: THANK YOU. WE'LL CONTINUE.

7 (BENCH CONFERENCE CONCLUDED.)

8 THE COURT: MR. SMITH, YOU'RE STILL UNDER OATH, OF  
9 COURSE. MR. BRUCE, THE WITNESS IS WITH YOU.

10 MR. BRUCE: THANK YOU, YOUR HONOR.

11 BY MR. BRUCE:

12 Q. MR. SMITH, BEFORE WE GET STARTED WITH OTHER QUESTIONS,  
13 YOU WERE MR. MACDONALD'S LAWYER, IS THAT RIGHT?

14 A. ONE OF THEM, YES.

15 Q. AND THIS IS NOT EASY FOR YOU TESTIFYING IN A PROCEEDING  
16 INVOLVING HIM, IS IT?

17 THE COURT: I'M SORRY, WHAT WAS YOUR QUESTION?

18 BY MR. BRUCE:

19 Q. THIS IS NOT EASY FOR YOU TESTIFYING IN A PROCEEDING  
20 INVOLVING HIM, IS IT?

21 A. IT DOES CAUSE ME TO STRUGGLE A LITTLE BECAUSE I HAVE -- I  
22 HAD AN OBLIGATION TO HIM AS AN ADVOCATE AND I DO WANT TO  
23 CONTINUE IN EVERY WAY THAT I CAN TO UPHOLD THE  
24 RESPONSIBILITIES THAT I HAD, YES, INDEED.

25 Q. ALL RIGHT. WHEN WE BROKE FOR LUNCH, WE WERE TALKING

September 17, 2012

Smith/Cross

Page 120

1 ABOUT THE DIRECT EXAMINATION OF HELENA STOECKLEY IN THE TRIAL,  
2 DO YOU RECALL THAT?

3 A. YES.

4 Q. AND, AGAIN, THIS WAS BEFORE THE JURY IN OPEN COURT, IS  
5 THAT RIGHT?

6 A. YES.

7 Q. AND IT'S TRUE THAT THERE WAS NEVER ANY INSTRUCTION FROM  
8 JUDGE DUPREE TO THE JURY TO DISREGARD OR DISCOUNT HER  
9 TESTIMONY?

10 A. I DIDN'T HEAR ANYTHING LIKE THAT.

11 Q. NOW, I WANT TO DIRECT YOUR ATTENTION TO SOME MORE  
12 TRANSCRIPT REFERENCES. LET'S LOOK AT TRIAL DAY 21, WHICH IS  
13 FRIDAY, AUGUST 17TH, AT PAGE 121.

14 A. ALL RIGHT. I'M LOOKING AT THAT.

15 Q. ALL RIGHT. DO YOU SEE -- WOULD YOU READ STARTING BY MR.  
16 SEGAL AT LINE THREE?

17 A. ALL RIGHT. SHALL I READ THAT?

18 Q. YES, READ THE QUESTION. YOU CAN SKIP THE OBJECTION AND  
19 THEN GO ON.

20 A. DID YOU NOT SAY YESTERDAY WHEN YOU WERE SITTING IN THE  
21 WITNESS ROOM THAT YOU RECALLED STANDING OUTSIDE ON FEBRUARY  
22 17, IN THE EARLY MORNING HOURS IN THE RAIN AND LOOKING AT YOUR  
23 HANDS?

24 THERE WAS AN OBJECTION. IT WAS OVERRULED.

25 AND THEN MR. SEGAL SAYS, DO YOU NOT RECALL SAYING

September 17, 2012

1 THAT? AND THE ANSWER WAS NO, SIR.

2 SHALL I READ ON?

3 Q. YOU CAN KEEP READING TO LINE 12.

4 A. DO YOU RECALL LOOKING AT YOUR HANDS AT ANY TIME ON  
5 FEBRUARY THE 17TH, 1970, IN THE EARLY MORNING HOURS?

6 ANSWER: NOT ON THAT DAY, NO.

7 QUESTION: WELL, I'M CONCERNED ABOUT THAT EARLY  
8 MORNING.

9 ANSWER: NO, SIR.

10 QUESTION: DID YOU NOT SAY YESTERDAY WHEN YOU WERE  
11 IN THE WITNESS ROOM THAT YOU HAD A RECOLLECTION OF LOOKING AT  
12 YOUR HANDS AND SEEING SOMETHING ON THEM? DO YOU RECALL THAT?

13 Q. MOVE IT ON DOWN, PLEASE, AND GO TO PAGE 123.

14 A. THE ANSWER IS NO, SIR.

15 QUESTION: TO MR. UNDERHILL YESTERDAY?

16 QUESTION -- I MEAN ANSWER, NO, SIR.

17 QUESTION: WERE YOU ON THE CORNER OF HONEYCUTT AND  
18 LUCAS NEAR MELONY VILLAGE ON THE MORNING OF FEBRUARY 17TH,  
19 1970?

20 ANSWER: NOT THAT I KNOW OF.

21 QUESTION: DO YOU RECALL BEING ASKED ABOUT THAT  
22 YESTERDAY?

23 YES, SIR.

24 DO YOU RECALL WHAT YOU SAID ABOUT THAT YESTERDAY?

25 ANSWER: I SAID I HAD BEEN ON THAT CORNER BEFORE,

Smith/Cross

Page 122

1 BUT I COULDN'T HAVE BEEN THERE THAT MORNING.

2 Q. THAT'S FINE. THANK YOU. DO YOU RECALL THE QUESTIONS AND  
3 ANSWERS GOING LIKE THIS DURING THE DIRECT EXAMINATION OF  
4 HELENA STOECKLEY?

5 A. IT'S VAGUE FOR ME, BUT I DO SOMEWHAT REMEMBER IT.

6 Q. LET'S MOVE TO PAGE 125 AND JUST START WITH HER ANSWER ON  
7 LINE FOUR.

8 A. SHALL I READ IT?

9 Q. YES, PLEASE.

10 A. ANSWER: I SAID THE SOFA LOOKED FAMILIAR, BUT I'VE SEEN A  
11 LOT OF SOFAS THAT LOOK LIKE THAT.

12 QUESTION: DO YOU RECALL SAYING SOMETHING ABOUT  
13 SEEING A BODY THERE?

14 ANSWER: I SAID THERE WAS NOTHING ON THERE.

15 QUESTION: DO YOU RECALL YESTERDAY SAYING IN THE  
16 WITNESS ROOM YOU RECALLED SEEING A BODY THERE ON THE SOFA OR  
17 ON THE FLOOR WHEN YOU WERE HOLDING A CANDLE; DO YOU RECALL  
18 MAKING THAT STATEMENT?

19 ANSWER: THAT WAS ONLY LIKE IN A DREAM OR SOMETHING  
20 LIKE THAT.

21 Q. OKAY. THAT WAS ONLY LIKE IN A DREAM OR SOMETHING LIKE  
22 THAT, IS THAT WHAT YOU REFERRED TO EARLIER AS AN INTERESTING  
23 INSIGHT INTO HER MIND?

24 A. I'M NOT SURE. IT COULD VERY WELL BE.

25 Q. ALL RIGHT. NOW, AFTER DIRECT EXAMINATION, OF COURSE, THE

September 17, 2012

Smith/Cross

Page 123

1 GOVERNMENT CROSS-EXAMINED MS. STOECKLEY, IS THAT RIGHT?

2 A. YES.

3 Q. LET'S GO TO TRIAL DAY 21, PAGE 141, AND IF YOU WOULD  
4 START READING AT LINE 19.

5 A. ALL RIGHT. TO YOUR OWN KNOWLEDGE, DID YOU PARTICIPATE IN  
6 THE KILLINGS OF THE MACDONALD FAMILY?

7 ANSWER: NO, SIR.

8 QUESTION: HOW DO YOU FEEL TOWARDS CHILDREN?

9 ANSWER: I LOVE CHILDREN.

10 QUESTION: OF YOUR OWN PERSONAL KNOWLEDGE, DID YOU  
11 KILL COLETTE MACDONALD?

12 Q. KEEP READING TO LINE 12 ON THE NEXT PAGE, IF YOU WILL.

13 A. ANSWER: NO, SIR.

14 QUESTION: HOW ABOUT KRISTEN?

15 ANSWER: NO, SIR.

16 HOW ABOUT KIMBERLEY?

17 ANSWER: NO, SIR.

18 DID YOU TRY TO KILL DR. MACDONALD?

19 ANSWER: NO, SIR.

20 DO YOU KNOW WHO DID?

21 ANSWER: NO, SIR.

22 QUESTION: DO YOU RECALL EVER BEING IN THE MACDONALD  
23 APARTMENT CARRYING A CANDLE?

24 ANSWER: NO, SIR.

25 Q. ALL RIGHT. NOW, LET'S MOVE TO PAGE 163, AND YOU'LL SEE

September 17, 2012

Smith/Cross

Page 124

1 THAT MR. BLACKBURN IS RESUMING -- SEE AT 12 AND 13 WHERE IT  
2 SAYS CROSS-EXAMINATION RESUMED?

3 A. YES.

4 Q. OKAY. LOOK AT -- LET'S GO TO THE NEXT PAGE ACTUALLY. I  
5 JUST WANTED TO ORIENT YOU. LET'S GO TO PAGE 164 AND READ  
6 LINES 12 THROUGH 19, PLEASE.

7 A. NOW, WHEN YOU CAME HOME AT ABOUT 4:30 OR FIVE O'CLOCK  
8 THAT MORNING ON THE 17TH, YOU GOT OUT OF THE CAR, YOU RECALL  
9 THAT?

10 ANSWER: YES, SIR.

11 QUESTION: DID YOU SEE ANY BLOOD ON YOUR HANDS?

12 ANSWER: NO, SIR.

13 QUESTION: DID YOU SEE ANY BLOOD ON YOUR CLOTHES?

14 ANSWER: NO, SIR.

15 Q. AND THEN MR. BLACKBURN SAYS NO FURTHER QUESTIONS?

16 A. YES.

17 Q. AND SO THAT -- THERE MAY HAVE BEEN SOME REDIRECT, BUT  
18 AFTER THAT THE TESTIMONY WAS CONCLUDED, IS THAT RIGHT?

19 A. YES.

20 Q. ALL RIGHT. LET'S LOOK AT PAGE 179 OF THIS SAME DAY. IF  
21 YOU'D LOOK AT LINE 13, WOULD YOU READ WHAT MR. SEGAL IS  
22 SAYING?

23 A. YES.

24 YOUR HONOR, MS. STOECKLEY HAS BEEN PRESENT IN THE  
25 COURT PURSUANT TO A WARRANT OF ARREST ISSUED FOR HER AS A

September 17, 2012

Smith/Cross

Page 125

1 MATERIAL WITNESS IN THIS MATTER AFTER I HAD FILED AN AFFIDAVIT  
2 WITH THIS COURT AND MADE AN ORAL MOTION IN THAT REGARD.

3 I BELIEVE AT THIS TIME, IT IS APPROPRIATE TO  
4 DISCHARGE THE WARRANT OF ARREST. IT WOULD EXPIRE, I THINK,  
5 THIS EVENING ANYWAY.

6 HOWEVER, BECAUSE IT IS NOT CERTAIN IN MY MIND THAT  
7 MS. STOECKLEY'S TESTIMONY MAY NOT BE NEEDED FURTHER IN THIS  
8 CASE, AT THIS TIME I'M GOING TO TENDER HER A SUBPOENA AS A  
9 WITNESS, A SUBPOENA TO BE HERE AT TWO O'CLOCK THIS AFTERNOON.

10 I WILL ASK THAT THEREAFTER SHE CAN BE EXCUSED AND I  
11 WILL JUST MAKE ARRANGEMENTS TO LOCATE HER.

12 Q. IF YOU WOULD JUST KEEP READING.

13 A. I'M ALSO GOING TO TENDER HER THE STATUTORY WITNESS FEES  
14 IN THAT REGARD. MY REQUEST OF THE COURT, THOUGH, IN VIEW OF  
15 THE FACT THAT MS. STOECKLEY HAS FRANKLY STATED THAT SHE DID  
16 NOT WANT TO BE HERE AND THAT SHE WAS SO DIFFICULT TO LOCATE, I  
17 WOULD ASK THE COURT TO ADVISE MS. STOECKLEY OF THE IMPORTANCE  
18 OF HONORING THE SUBPOENA AND THE FACT THAT THE COURT DOES  
19 FULLY EXPECT HER TO RETURN HERE AS NEEDED PURSUANT TO THE  
20 SUBPOENA.

21 Q. AND WE'LL SCROLL DOWN AND IF YOU'LL PLEASE READ WHAT THE  
22 COURT ADVISES HER STARTING AT LINE 11.

23 A. THE COURT: WELL, I WILL SAY TO THE WITNESS, MS.  
24 STOECKLEY, FIRST OF ALL, I HOPE YOU WILL UNDERSTAND THAT THE  
25 COURT, WHEN CALLED UPON TO DO SO IN A CASE OF A WITNESS WHO IS

September 17, 2012



Smith/Cross

Page 126

1 APPARENTLY RELUCTANT TO COME TO COURT OR IS EVADING PROCESS OF  
2 THE COURT, HAD TO, IN THIS INSTANCE, TAKE SOME NECESSARY  
3 ACTION TO INSURE YOUR PRESENCE HERE.

4 READ ON?

5 Q. PLEASE READ ON.

6 A. INsofar AS THE COURT IS CONCERNED, OF COURSE, YOU HAVE  
7 DISCHARGED THAT DUTY AND YOU WILL BE FREE FROM FURTHER ARREST  
8 AT THIS TIME.

9 WHAT COUNSEL IS TELLING YOU, THOUGH, IS THAT  
10 CONCEIVABLY HE MIGHT WANT YOU TO TESTIFY FURTHER AT SOME LATER  
11 TIME IN THE TRIAL, AND IN THAT EVENT, HE IS SERVING YOU WITH A  
12 SUBPOENA AT THIS TIME FOR YOUR CONTINUED APPEARANCE OR AT SUCH  
13 TIME AS HE WILL LET YOU KNOW. OF COURSE, THAT IS THE --

14 Q. GOING TO THE NEXT PAGE.

15 A. -- PROCESS OF THE COURT AND FAILURE TO COMPLY WITH IT  
16 COULD RESULT IN SANCTIONS OF ONE KIND OR ANOTHER AGAINST YOU,  
17 SO YOU WILL UNDERSTAND THAT.

18 I AM SURE THAT COUNSEL WILL NOT CALL YOU UNLESS HE  
19 FEELS THAT IT IS ESSENTIAL TO THE DEFENSE OF HIS CLIENT, BUT  
20 IF HE DOES, OF COURSE, YOU WILL BE EXPECTED TO COMPLY.

21 Q. AND MR. SEGAL REPLIES?

22 A. MR. SEGAL: IS THAT CLEAR, MS. STOECKLEY?

23 MS. STOECKLEY: YES, SIR.

24 MR. SEGAL: DO WE HAVE YOUR WORD THAT YOU WILL  
25 APPEAR AS REQUIRED?

September 17, 2012

1 MS. STOECKLEY: YES, SIR.

2 MR. SEGAL: THANK YOU, YOUR HONOR.

3 Q. ALL RIGHT. SO, JUDGE DUPREE HAS DONE AS THE DEFENSE HAS  
4 REQUESTED, RELEASED HER, AND NOW SHE'S UNDER SUBPOENA?

5 A. YES.

6 Q. AND FROM THAT POINT FORWARD, SHE IS THE FINANCIAL  
7 RESPONSIBILITY OF THE DEFENSE TEAM, IS THAT RIGHT?

8 A. AS I UNDERSTAND IT, YES.

9 Q. AND YET SHE'D BE UNDER SUBPOENA AND SUBJECT TO RECALL AS  
10 A WITNESS IF THE DEFENSE DECIDES TO RECALL HER?

11 A. YES.

12 Q. AND THE NEXT THING THAT THE JUDGE SAYS STARTING AT LINE  
13 14, IS HE'S GOING TO GIVE YOU SOME TIME TO DO VOIR DIRE  
14 EXAMINATION, IS THAT RIGHT?

15 A. YES.

16 Q. AND WHAT HE DID WAS GIVE YOU TIME TO DO VOIR DIRE  
17 EXAMINATION OF WHAT SOME PEOPLE CALLED THE STOECKLEY  
18 WITNESSES, IS THAT RIGHT?

19 A. YES.

20 Q. AND YOU WERE PUTTING UP THESE WITNESSES OUT OF THE  
21 PRESENCE OF THE JURY TO TESTIFY TO STATEMENTS THAT HELENA  
22 STOECKLEY HAD MADE TO THEM OUT OF COURT?

23 A. THAT'S RIGHT.

24 Q. AND YOUR HOPE WAS THAT THEY WOULD BE PERMITTED TO TESTIFY  
25 TO STATEMENTS THAT SHE HAD MADE AT SOME PRIOR TIME OUT OF

September 17, 2012

1 COURT ADMITTING SOME PRESENCE AT THE MACDONALD HOME?

2 A. BEFORE THE JURY, YES.

3 Q. AND YOU WANTED THAT TO HAPPEN BEFORE THE JURY --

4 A. YES.

5 Q. -- IS THAT RIGHT?

6 A. YES.

7 Q. BUT FIRST IT HAD TO BE DONE ON VOIR DIRE SO THE JUDGE  
8 COULD MAKE HIS DECISION, IS THAT RIGHT?

9 A. THAT'S RIGHT.

10 Q. PAGE 244 -- I'M SORRY, IT'S 244 OF TRIAL DAY 21. YOU'RE  
11 PUTTING UP THE VOIR DIRE TESTIMONY OF WILLIAM EDWARD POSEY, IS  
12 THAT RIGHT?

13 A. YES.

14 Q. OKAY. I WANT TO SKIP FORWARD IN HIS TESTIMONY TO PAGE  
15 253 AND STARTING AT LINE FOUR WOULD YOU READ DOWN TO LINE 16?

16 A. QUESTION: NOW, DID SHE EVER TALK TO YOU ABOUT SEEING  
17 ANYTHING INSIDE OF ANY OF THE BEDROOMS IN THAT HOUSE?

18 ANSWER: SHE SAID THAT THERE WAS A KID'S HORSE  
19 THING, BUT IT WOULDN'T -- IT WOULDN'T ROLL. IT WOULD JUST  
20 STAY STILL. IT WOULDN'T ROLL, YOU KNOW.

21 QUESTION: IT WAS A HOBBY HORSE THING?

22 ANSWER: YEAH, LIKE, YOU KNOW, LIKE A LITTLE KID  
23 HAS, YOU KNOW.

24 QUESTION: YES. WHAT DID SHE SAY ABOUT THAT?

25 ANSWER: IT WOULDN'T MOVE, YOU KNOW, IT WOULDN'T --

1 QUESTION: ROCK?

2 ANSWER: NO. IT WOULDN'T ROLL, YOU KNOW, IT WAS  
3 BROKE OR SOMETHING, IT WOULDN'T MOVE.

4 Q. SO, THIS IS MR. POSEY'S TESTIMONY ABOUT WHAT HELENA  
5 STOECKLEY TOLD HIM ABOUT A HOBBY HORSE IN THE MACDONALD HOME,  
6 IS THAT RIGHT?

7 A. YES.

8 Q. NOW, LET'S GO TO TRIAL DAY 22 AT PAGE 150. NOW, BEFORE I  
9 GET TO THAT -- WELL, THIS TRIAL DAY 22 IS MONDAY, AUGUST 20TH.  
10 21 HAVING BEEN FRIDAY.

11 A. YES.

12 Q. DOES THAT MAKE SENSE TO YOU?

13 A. YES.

14 Q. ALL RIGHT. LOOKING AT PAGE 150, READ LINES EIGHT THROUGH  
15 11, OR WE MIGHT BETTER START IT UP AT LINE FOUR ACTUALLY WHERE  
16 MR. SEGAL STARTS TALKING.

17 A. MR. SEGAL: I WANT TO FIRST MAKE A REPRESENTATION TO THE  
18 COURT IN REGARD TO THE CIRCUMSTANCES UNDER WHICH MRS. ROUDER  
19 SAW MS. STOECKLEY.

20 AT THE CONCLUSION OF HER TESTIMONY ON FRIDAY, YOUR  
21 HONOR, AT THAT TIME, YOU MAY RECALL, I SERVED THE WITNESS A  
22 SUBPOENA AND I HANDED HER A CHECK FOR WITNESS FEES IN  
23 ACCORDANCE WITH THE STATUTES AND TOLD HER TO BE BACK HERE ON  
24 MONDAY IN THIS COURTROOM.

25 Q. STOP RIGHT THERE. SO, THAT'S AGAIN HOW MRS. STOECKLEY

September 17, 2012

Smith/Cross

Page 130

1 WAS BEING COMPENSATED FOR HER WITNESS APPEARANCE, IS THAT  
2 RIGHT?

3 A. YES.

4 Q. NOW, THAT SHE'S NO LONGER IN CUSTODY, RIGHT?

5 A. YES.

6 Q. ALL RIGHT. GO AHEAD READING AT LINE 12.

7 A. I MADE NO OTHER ARRANGEMENTS WITH HER TO CONTACT HER TO  
8 SEE HER, DID NOT ASK HER WHERE SHE WAS GOING, WHERE SHE WAS  
9 GOING TO STAY. MY INTEREST WAS THEN WHAT IT IS NOW, HER  
10 POTENTIAL TESTIMONY AS A WITNESS UNDER CIRCUMSTANCES WHICH  
11 WOULD BE INAPPROPRIATE. SHE LEFT HERE AND I HAD NO KNOWLEDGE  
12 OF WHERE SHE WAS -- WHERE SHE WAS GOING.

13 I RECEIVED A TELEPHONE CALL, HOWEVER, ON FRIDAY  
14 EVENING FROM MS. STOECKLEY IN WHICH SHE CALLED ME TO TELL ME  
15 WHERE SHE WAS STAYING. SHE SAID THAT SHE HAD CHECKED INTO THE  
16 DOWNTOWNER MOTEL.

17 AT THAT TIME I SAID TO HER THAT I WAS SURPRISED SHE  
18 HAD GONE THERE AND THAT WOULD INAPPROPRIATE TO STAY THERE  
19 BECAUSE ALL OF THE DEFENSE WITNESSES AND THE DEFENSE LAWYERS  
20 WERE GOING TO MOVE THE NEXT DAY TO THAT MOTEL.

21 OUR LEASE AT THE PLACE WHERE WE HAD BEEN STAYING  
22 THROUGHOUT THE SUMMER HAD EXPIRED AND WE HAD MADE, SOME WEEKS  
23 AGO, ARRANGEMENTS TO STAY AT THE HOTEL.

24 Q. ALL RIGHT. MR. SMITH, LET ME ASK YOU, THE DEFENSE TEAM  
25 HAD ARRANGED TO STAY DURING THE TRIAL AT A FRATERNITY HOUSE AT

September 17, 2012

Smith/Cross

Page 131

1 N.C. STATE?

2 A. YES.

3 Q. AND SO MR. SEGAL WAS STAYING THERE?

4 A. YES.

5 Q. AND MR. MACDONALD?

6 A. YES.

7 Q. BECAUSE MR. MACDONALD WAS NOT IN CUSTODY DURING THE  
8 TRIAL, RIGHT?

9 A. HE WAS NOT, NO.

10 Q. AND SOME OF THE OTHER PEOPLE HELPING, MR. MCGINNISS FOR  
11 INSTANCE?

12 A. YES.

13 Q. AND MS. WENDY ROUDER?

14 A. I THINK SHE WAS THERE.

15 Q. AND CAN YOU EXPLAIN WHAT HER ROLE WAS?

16 A. SHE WAS AN ADVISER TO OUR TEAM, A VERY IMPORTANT MEMBER  
17 OF THE TEAM. VERY HELPFUL.

18 Q. WAS SHE A LAWYER?

19 A. I DON'T THINK SHE WAS A LAWYER AT THAT TIME, I COULD BE  
20 WRONG, BUT SHE WAS VERY HELPFUL AND USEFUL.

21 Q. AND NOW YOU, OF COURSE, YOUR HOME IS IN RALEIGH?

22 A. I STAYED AT MY HOUSE.

23 Q. OKAY. BUT AT SOME POINT THE FRATERNITY HOUSE AT N.C.  
24 STATE WAS NO LONGER AVAILABLE, IS THAT RIGHT?

25 A. THE LEASE EXPIRED, YES.

September 17, 2012

1 Q. ALL RIGHT. AND SO THE MEMBERS OF THE DEFENSE TEAM WHO  
2 DID NOT RESIDE IN RALEIGH HAD TO MOVE TO THE DOWNTOWNER HOTEL?

3 A. THAT'S CORRECT.

4 Q. LET'S SKIP DOWN TO LINE 22 THROUGH 25. CAN YOU READ THE  
5 LAST FOUR LINES OF THAT PAGE?

6 A. BEGINNING AT LINE 22?

7 Q. YES.

8 A. I HAD NO FURTHER KNOWLEDGE. LATER THAT DAY, I RECEIVED A  
9 TELEPHONE CALL FROM MR. UNDERHILL WHICH YOU NOW KNOW THE  
10 CIRCUMSTANCES ESSENTIALLY.

11 HE HAD GONE TO THE JOURNEY'S END, LEARNED WHAT HE  
12 DID ABOUT HER CONDITION, THAT SHE HAD A BLACK EYE AND THAT  
13 APPARENTLY SOMETHING HAD HAPPENED AT THE SWIMMING POOL WHICH  
14 IN THE VIEW OF THE MANAGER OF THE HOTEL -- THAT PERSON IS HERE  
15 AS A MATTER OF FACT, YOUR HONOR, IF YOU DESIRE TO HEAR FROM  
16 HER -- BUT IN THE VIEW OF THE MANAGER OF THE HOTEL IT WAS NOT  
17 A FRIENDLY INCIDENT.

18 Q. ALL RIGHT. LET ME MOVE BACK TO PAGE 151. MAYBE LEAVING  
19 OUT PART OF THE STORY WAS NOT A GOOD IDEA. HOW ABOUT STARTING  
20 READING AT LINE FIVE ON PAGE 151. READ WHAT WE MISSED.

21 A. THERE WERE SOME OTHER BRIEF INQUIRIES -- OH, I SHOULD ADD  
22 THAT THE REASON FOR THE CONVERSATION SPECIFICALLY WAS THAT SHE  
23 CALLED ABOUT A TELEVISION STORY SHE SAID SHE HAD HEARD AND  
24 WANTED TO ASK WHETHER PEOPLE REALLY HAD SAID THOSE THINGS  
25 ABOUT HER THAT THE TELEVISION REPORTER HAD COMMENTED ON.

September 17, 2012

Smith/Cross

Page 133

1 I TOLD HER THAT I HADN'T SEEN IT AND RESPONDED TO IT  
2 GENERALLY, AND THEN SHE TOLD ME WHERE SHE WAS. I HAD NO  
3 FURTHER CONTACT WITH HER EXCEPT THAT ON SATURDAY MORNING, I  
4 SPOKE WITH HER AND TOLD HER AT THAT TIME -- MR. DAVIS CALLED  
5 ME -- NOT MRS. STOECKLEY.

6 MR. DAVIS CALLED ME. I SAID TO HIM IT IS IMPERATIVE  
7 THAT THEY LEAVE THE MOTEL. I DO NOT WANT THEM IN THE SAME  
8 MOTEL WHERE WE ARE STAYING. I CONSIDER THAT TO BE  
9 UNCOMFORTABLE CIRCUMSTANCES AT BEST. HE SAID THEY WERE GOING  
10 TO LEAVE. HE DID NOT TELL ME WHERE THEY WERE GOING.

11 Q. OKAY. SO, THE GIST OF THIS IS THAT MR. SEGAL DID NOT  
12 WANT HELENA STOECKLEY STAYING AT THE DOWNTOWNER WHERE THE  
13 DEFENSE TEAM WAS, IS THAT RIGHT?

14 A. THAT'S RIGHT.

15 Q. AND IT WOULD APPEAR THAT SHE WAS MOVED OR DID MOVE TO THE  
16 JOURNEY'S END THERE AT LINE 25?

17 A. YES.

18 Q. OKAY. LET ME PUT UP ON THE SCREEN GOVERNMENT EXHIBIT  
19 2377. DO YOU RECOGNIZE THIS AS A PICTURE OF A HOLIDAY INN IN  
20 RALEIGH?

21 A. YES.

22 (GOVERNMENT EXHIBIT NUMBER 2377  
23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. ACTUALLY, I THINK IT MAY BE THE CLARION INN NOW --

25 A. CLARION INN.

September 17, 2012



Smith/Cross

Page 134

1 Q. -- BUT IN 1979, IT WAS A HOLIDAY INN?

2 A. IT WAS.

3 Q. AND IT HAS A DISTINCTIVE ROUND ARCHITECTURE?

4 A. YES.

5 Q. AND DO YOU RECALL THAT THE HOLIDAY INN, NOW CLARION, IS  
6 LOCATED ON HILLSBOROUGH STREET?

7 A. IT IS.

8 Q. NOW, THE DOWNTOWNER, WHERE THE DEFENSE TEAM WAS STAYING,  
9 IS NO LONGER IN EXISTENCE, IS THAT RIGHT?

10 A. NO.

11 Q. DO YOU RECALL THAT IT DID EXIST PREVIOUSLY IN '79?

12 A. IT DID EXIST AT THAT TIME.

13 Q. AND WHERE WAS IT IN RELATION TO THE HOLIDAY INN THAT  
14 WE'RE LOOKING AT IN THIS PICTURE?

15 A. PRETTY MUCH ACROSS THE STREET OR THE ROAD.

16 Q. ACROSS HILLSBOROUGH STREET?

17 A. VERY CLOSE.

18 Q. OKAY. NOW, LET'S LOOK AT 78 -- 2378. THAT'S JUST  
19 ANOTHER VIEW OF THE HOLIDAY INN, IS THAT RIGHT?

20 A. IT IS.

21 Q. LET'S LOOK AT GOVERNMENT EXHIBIT 2368. DOES THIS PICTURE  
22 -- DO YOU RECOGNIZE THIS PICTURE AS THE VIEW UP CAPITAL  
23 BOULEVARD TOWARD A HOTEL OR MOTEL?

24 A. I PASS THAT PLACE FIVE DAYS A WEEK.

25 Q. ALL RIGHT.

September 17, 2012

1 A. IT IS.

2 Q. AND CAPITAL BOULEVARD SPLITS INTO DAWSON STREET AND  
3 MCDOWELL STREET, IS THAT RIGHT?

4 A. IT DOES, YES.

5 Q. AND THIS IS LOOKING UP DAWSON TOWARD THAT MOTEL, IS THAT  
6 RIGHT?

7 A. YES, IT IS.

8 Q. AND IT SAYS -- THIS PICTURE, HAVING BEEN TAKEN THIS YEAR,  
9 IT SAYS DAYS INN, IS THAT RIGHT?

10 A. IT SAYS THAT, YES.

11 Q. DO YOU RECOGNIZE THAT AS BEING THE SAME MOTEL THAT IN '79  
12 WAS THE JOURNEY'S END?

13 A. I DO.

14 (GOVERNMENT EXHIBIT NUMBER 2368  
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. AND THAT'S E-N-D, NOT I-N-N?

17 A. YES.

18 Q. ALL RIGHT. AND I BELIEVE SOMEWHERE ALONG IN ITS HISTORY  
19 IT WAS ALSO A TRAVEL LODGE?

20 A. I THINK IT WAS.

21 Q. ALL RIGHT. SO, THIS WOULD BE THE MOTEL THAT HELENA  
22 STOECKLEY WAS MOVED TO FROM THE DOWNTOWNER?

23 A. IT WOULD BE.

24 Q. ALL RIGHT. LET'S LOOK AT DAY 22, LINE 96. I'M SORRY,  
25 PAGE 96. YOU CAN'T SEE THIS -- MAYBE IT WILL BECOME APPARENT

Smith/Cross

Page 136

1 FROM THE CONTEXT, BUT I WANT TO ASK YOU IF THIS IS THE  
2 TESTIMONY OF RED UNDERHILL, BUT START READING AT ABOUT LINE  
3 14.

4 A. QUESTION: NOW, DID YOU HAVE OCCASION TO SEE HELENA  
5 STOECKLEY THIS WEEKEND OUTSIDE OF THE COURTHOUSE?

6 ANSWER: YES, SIR, I CERTAINLY DID.

7 QUESTION: ALL RIGHT. WHEN WAS THE FIRST TIME YOU  
8 CAME IN CONTACT WITH HELENA STOECKLEY THIS WEEKEND?

9 ANSWER: I GUESS IT WAS SATURDAY ABOUT ONE O'CLOCK.

10 QUESTION: IN THE MORNING OR AFTERNOON?

11 ANSWER: IN THE AFTERNOON, P.M.

12 QUESTION: AND WHERE DID YOU SEE MS. STOECKLEY?

13 ANSWER: WHEN I FIRST SAW HER, SHE WAS -- IT LOOKS  
14 LIKE AN OLD TRAVEL LODGE MOTEL. IT'S BEEN RENAMED.

15 Q. OKAY. SO, PRESUMABLY, HE'S REFERRING TO THE SAME PLACE?

16 A. YES.

17 Q. ALL RIGHT. NOW, LET'S LOOK AT TRIAL DAY 22, PAGE 134,  
18 LINES 11 THROUGH 19.

19 A. QUESTION: WHAT WAS THE REASON WHY MS. STOECKLEY LEFT THE  
20 JOURNEY'S END MOTEL?

21 ANSWER: SHE WAS ASKED TO LEAVE BY THE MANAGER.

22 QUESTION: NOW, AS A RESULT OF THAT, HOW DID IT COME  
23 ABOUT THAT SHE WENT TO THE HILTON INN?

24 ANSWER: SHE WAS WORRIED ABOUT WHERE SHE WOULD GO,  
25 AND I ASSURED HER THERE MUST BE A PLACE, AND YOUR SECRETARY

September 17, 2012

Smith/Cross

Page 137

1 ARRANGED FOR A MOTEL ROOM, PHONED BACK, AND SAID THE HILTON  
2 WILL ACCEPT YOU.

3 Q. OKAY. KEEP READING.

4 A. DID SHE EXPLAIN WHAT HAD HAPPENED TO THE WITNESS MONEY  
5 THAT SHE HAD BEEN PAID IN REGARD TO THE SUBPOENA THAT HAD BEEN  
6 SERVED ON HER?

7 ANSWER: SHE SAID THAT THEY HAD PUT ADVANCE DEPOSITS  
8 DOWN ON SEVERAL NIGHTS AND SHE NEVER GOT THE MONEY BACK.

9 Q. ALL RIGHT. NOW, I REPRESENT TO YOU THAT THIS IS MS.  
10 ROUDER'S TESTIMONY. WOULD THAT SEEM LOGICAL TO YOU?

11 A. YES.

12 Q. ALL RIGHT. NOW, SHE REFERS TO THE HILTON AS THE PLACE  
13 WHERE HELENA STOECKLEY WAS MOVED DURING THE WEEKEND, IS THAT  
14 RIGHT?

15 A. YES.

16 Q. LET'S PUT UP GX-2373. NOW, AGAIN, THIS PICTURE IS TAKEN  
17 IN 2012. DO YOU RECOGNIZE THAT HOTEL?

18 A. I DO.

19 Q. AND WHAT IS IT?

20 A. IT WAS NAMED THE HILTON THEN. IT ISN'T NAMED THAT NOW,  
21 BUT IT'S THE HILTON.

22 (GOVERNMENT EXHIBIT NUMBER 2373

23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. ALL RIGHT. AND JUST TO ORIENT WHERE WE ARE, YOU KNOW  
25 THIS INTERSECTION BECAUSE OF THE LOCATION OF YOUR CHURCH?

September 17, 2012

Smith/Cross

Page 138

1 A. PULLEN CHURCH IS ACROSS THE STREET.

2 Q. ALL RIGHT. AND I THINK WE HAVE ONE MORE PICTURE OF THIS,  
3 2374. SAME PLACE?

4 A. SAME PLACE.

5 (GOVERNMENT EXHIBIT NUMBER 2374  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. ALL RIGHT. NOW, YOU DIDN'T HAVE TO STAY IN ANY OF THESE  
8 HOTELS BECAUSE YOU HAVE A HOME IN RALEIGH?

9 A. THAT'S RIGHT.

10 Q. ALL RIGHT. AND SO MONDAY MORNING THE TRIAL RESUMED, IS  
11 THAT CORRECT?

12 A. YES.

13 Q. AND THERE WAS MORE VOIR DIRE OF STOECKLEY WITNESSES ON  
14 MONDAY MORNING, IS THAT RIGHT?

15 A. I THINK THAT'S RIGHT.

16 Q. NOW, AT SOME POINT JUDGE DUPREE -- LET ME ASK YOU THIS,  
17 JUDGE DUPREE HAD TAKEN UNDER ADVISEMENT OVER THE WEEKEND THE  
18 DEFENSE MOTION TO ADMIT THESE OUT OF COURT STATEMENTS OF  
19 HELENA STOECKLEY, IS THAT RIGHT?

20 A. YES.

21 Q. AND HE REVEALED THAT HE HAD DONE A LOT OF RESEARCH ABOUT  
22 IT?

23 A. HE DID.

24 Q. ALL RIGHT. LET'S LOOK AT TRIAL DAY 22, PAGE 175, AND  
25 LOOK AT LINE 19 THROUGH 21, PLEASE, AND READ THAT FOR US.

September 17, 2012

1 A. I THINK IT IS NOT AS REQUIRED BY 803(b) (3) CLEARLY  
2 TRUSTWORTHY. IT'S PERHAPS THE MOST CLEARLY UNTRUSTWORTHY  
3 EVIDENCE THAT I HAVE HAD PUT BEFORE ME.

4 SO FOR THE REASONS THAT I GAVE IN SOMEWHAT BRIEF  
5 FORM ON THE RECORD THIS MORNING AT A BENCH CONFERENCE, I WILL  
6 EXCLUDE -- AND TO BE MORE FULLY EXPLICATED LATER IN A WRITTEN  
7 MEMORANDUM -- I WILL EXCLUDE THIS TESTIMONY.

8 Q. OKAY.

9 A. I DON'T THINK AS FAR AS SUBDIVISION (b) (5) IS CONCERNED  
10 THAT IT WOULD EVER BE ADEQUATE NOTICE THAT WAS GIVEN AT 11  
11 O'CLOCK IN THE MORNING AND THE EVIDENCE WAS THOUGHT TO BE  
12 INTRODUCED THEREAFTER.

13 Q. YOU CAN STOP READING. THESE REFERENCES ARE TO THE RULES  
14 OF EVIDENCE, IS THAT RIGHT?

15 A. THEY ARE.

16 Q. AND SO THE PARTIES HAD ARGUED THIS ISSUE AND JUDGE DUPREE  
17 HAD MULLED IT OVER THE WEEKEND AND HE CAME TO THIS DECISION?

18 A. YES.

19 Q. AND THERE WAS SOME EFFORT TO CHANGE HIS MIND BASED ON THE  
20 EVENTS OF THE WEEKEND, IS THAT RIGHT?

21 A. YES.

22 Q. INCLUDING YOU PUT UP WENDY ROUDER TO TESTIFY TO HER  
23 CONTACT WITH HELENA STOECKLEY?

24 A. YES.

25 Q. ALL RIGHT. LET'S LOOK AT PAGE 176, LINE 22 AND 23. CAN

1 YOU READ STARTING WITH I WILL EXCLUDE?

2 A. YES.

3 I WILL EXCLUDE THE EVIDENCE. LET THE JURY COME IN.  
4 LET ME SEE THE LAWYERS HERE AT THE BENCH JUST A MOMENT WHILE  
5 THEY'RE COMING.

6 Q. SO, THIS WAS HIS FINAL RULING THAT THE OUT OF COURT  
7 STATEMENTS OF HELENA STOECKLEY WERE NOT GOING TO BE ADMITTED?

8 A. YES.

9 Q. ALL RIGHT. NOW, LET'S LOOK AT TRIAL DAY 22, PAGE 179,  
10 AND START READING -- FIRST READ US THE COMMENT OF MR. MURTAGH  
11 LINES ONE AND TWO.

12 A. MR. MURTAGH: I THINK HELENA FEELS IN HER MIND THAT IN  
13 EFFECT SHE IS IN CUSTODY HERE.

14 THE COURT: OH, I AM GLAD YOU MENTIONED THAT BECAUSE  
15 I HAD NEGLECTED, JUST COMPLETELY OVERLOOKED IT, TO TELL YOU,  
16 BUT I WANT YOU TO KNOW THAT AMONG OTHERS CALLED BY HELENA, SHE  
17 CALLED ME TWICE SATURDAY NIGHT STATING THAT SHE WAS LIVING IN  
18 MORTAL DREAD OF PHYSICAL HARM BY BERNARD SEGAL, COUNSEL FOR  
19 THE DEFENDANT, AND THAT SHE WANTED A LAWYER TO REPRESENT HER.

20 Q. AND THEN THE JUDGE CONTINUES AT LINE 11. WOULD YOU READ  
21 THAT?

22 A. I SAID, WELL, NOW, LOOK, I CANNOT TALK TO YOU ABOUT THIS  
23 CASE, BUT SOMEBODY WILL CALL YOU TOMORROW. WHERE WILL YOU BE?  
24 THAT IS THE REASON I KNEW THIS JOURNEY'S END THING, SHE GAVE  
25 ME THE JOURNEY'S END.

September 17, 2012

Smith/Cross

Page 141

1           OF COURSE, WHAT I WANTED TO DO WAS TO GO TO THE  
2 CRIMINAL JUSTICE ACT TO SEE WHETHER OR NOT I COULD PAY ANY  
3 LAWYER UNDER THESE CIRCUMSTANCES, AND AMAZINGLY I FOUND AN  
4 AMENDMENT TO THE ACT, WHICH IS NOT EVEN IN THE BOUND VOLUME,  
5 WHICH ALLOWS ME TO DO IT FOR A WITNESS WHO IS IN --

6           AND MR. SMITH SAYS THAT'S INCREDIBLE.

7 Q.    MEANING THE JUDGE'S RESEARCH SKILLS?

8 A.    YES, THAT HE WAS DOING THE WORK.

9 Q.    ALL RIGHT. AND DID HE --

10 A.    THAT THE LAWYERS SHOULD HAVE BEEN DOING.

11           THE COURT: SO I TOLD STEVE COGGINS THEN, I SAID  
12 FIND ME A LAWYER, AND I THINK HE CALLED EVERYBODY IN THE BOOK  
13 JUST ABOUT, BUT HE FINALLY GOT --

14 Q.    NOW, WE'LL GO ON TO THE NEXT PAGE.

15 A.    JERRY LEONARD.

16           LAW CLERK: HAVE YOU EVER TRIED TO FIND A LAWYER ON  
17 SUNDAY AFTERNOON?

18 Q.    AND THAT'S MR. COGGINS SPEAKING, RIGHT?

19 A.    YES. YES.

20           THE COURT SAID YOU CAN ALWAYS FIND ME. SEGAL'S  
21 ALWAYS GOT ME WORKING ON SUNDAY AFTERNOON.

22 Q.    MEANING THE JUDGE IS WORKING ON MOTIONS THE DEFENSE HAS  
23 FILED?

24 A.    YES.

25 Q.    ALL RIGHT.

September 17, 2012



Smith/Cross

Page 142

1 A. MR. MURTAGH: JUDGE, I GUESS WE WON'T HAVE YOUR  
2 TESTIMONY.

3 THE COURT: THANK GOD FOR THAT RULE THAT SAYS I AM  
4 ABSOLUTELY READ OUT OF THIS ONE.

5 READ ON?

6 Q. NO, THAT'S FINE. NOW, MR. MURTAGH RAISES A QUESTION  
7 ABOUT PEOPLE TALKING TO HER. AND GO DOWN TO LINE 14 AND READ  
8 WHAT THE COURT SAYS.

9 A. THE COURT: MAYBE I CAN SHORTEN THAT FOR YOU. I'M GOING  
10 TO ORDER COUNSEL FOR BOTH SIDES AND ALL OTHER WITNESSES TO SAY  
11 AWAY FROM THIS WOMAN UNTIL THIS THING IS OVER.

12 Q. AND WHAT DOES MR. MURTAGH SAY TO THAT?

13 A. I BELIEVE SHE IS IN THE WITNESS ROOM.

14 Q. WE SKIPPED A PARAGRAPH HERE.

15 A. OKAY. YES.

16 Q. LINE 18 THROUGH 21.

17 A. ALL RIGHT. YOU CAN BRING HER BACK IN AND TESTIFY IF SHE  
18 WANTS TO, BUT I WILL JUST TREAT EVERYBODY ALIKE ABOUT THIS ONE  
19 THEN WE WON'T HAVE THAT QUESTION TO ARISE.

20 Q. SO, THE STATUS OF IT IS THAT THE JUDGE -- SHE'S STILL  
21 UNDER SUBPOENA, IS THAT RIGHT?

22 A. YES.

23 Q. AND SHE'S NOW BEEN APPOINTED A LAWYER?

24 A. YES.

25 Q. MR. JERRY LEONARD?

September 17, 2012

1 A. THAT'S CORRECT.

2 Q. AND THE JUDGE IS ORDERING THAT NO ONE, OF COURSE, EXCEPT  
3 HER LAWYER, MR. LEONARD, TALK TO HER, IS THAT RIGHT?

4 A. THAT'S CORRECT.

5 Q. AT LEAST THE PARTIES IN THE CASE AND THEIR  
6 REPRESENTATIVES?

7 A. YES.

8 Q. AND THEN MR. MURTAGH SAYS AT LINE 22 AND 23 WHAT?

9 A. I BELIEVE SHE IS IN THE WITNESS ROOM.

10 Q. AND THEN MR. LEONARD, APPARENTLY MR. JERRY LEONARD,  
11 SPEAKS AND SAYS WHAT?

12 A. SHE IS IN A SEPARATE WITNESS ROOM FROM ALL THE OTHERS.

13 Q. ALL RIGHT. I WANT TO READ ONE LINE FROM THE NEXT PAGE.

14 A. ALL RIGHT.

15 Q. WHAT DOES THE COURT SAY ABOUT THAT?

16 A. THE COURT SAYS, OH, YOU'VE GOT HER HERE.

17 Q. SO, THE JUDGE IS A LITTLE SURPRISED THAT SHE'S ACTUALLY  
18 IN THE COURTHOUSE, IS THAT RIGHT?

19 A. YES.

20 Q. NOW, DESPITE THE JUDGE'S RULING, THE DEFENSE CALLED FOUR  
21 OF THE STOECKLEY WITNESSES TO THE STAND ANYWAY, IS THAT RIGHT?

22 A. WELL, I DON'T REMEMBER IT WAS ANYWAY, BUT I DO THINK WE  
23 CALLED THEM, YES.

24 Q. YOU CALLED MR. BEASLEY?

25 A. YES.

Smith/Cross

Page 144

1 Q. AND MS. ZILLIOUX?

2 A. YES.

3 Q. MR. UNDERHILL?

4 A. YES.

5 Q. AND MR. POSEY?

6 A. THAT'S RIGHT.

7 Q. OKAY. LET'S LOOK AT TRIAL DAY 22, LINE -- SORRY, PAGE  
8 21, AND THIS IS JUST -- AS YOU CAN SEE IN THE MIDDLE OF THE  
9 PAGE MR. BEASLEY IS TAKING THE STAND?

10 A. YES.

11 Q. AND THIS TIME HE'S TESTIFYING BEFORE THE JURY?

12 A. I THINK THAT'S RIGHT.

13 Q. ALL RIGHT. AND NOW LET'S MOVE FORWARD TO PAGE 66 AND YOU  
14 SEE THERE THAT MS. ZILLIOUX IS BEING CALLED TO TESTIFY?

15 A. YES.

16 Q. AND LET'S MOVE TO PAGE 88. AND AT THE BOTTOM OF THE PAGE  
17 AT LINE 20, DO YOU SEE THAT MR. UNDERHILL IS BEING CALLED TO  
18 TESTIFY?

19 A. YES.

20 Q. NOW, LET'S LOOK AT PAGE 102 OF HIS TESTIMONY. START  
21 READING WITH MR. SEGAL'S COMMENT AT PAGE FOUR -- I MEAN, LINE  
22 FOUR.

23 A. LINE FOUR.

24 MR. SEGAL: SHE SAYS THAT SHE KNOWS WHO COMMITTED  
25 THE CRIMES AND THE GOVERNMENT STANDS HERE.

September 17, 2012

Smith/Cross

Page 145

1 MR. BLACKBURN: SHE HAS SAID THAT BEFORE.

2 MR. ANDERSON: SHE IS STILL AVAILABLE.

3 MR. SEGAL: SHE DID NOT. WHEN WE ASKED HER DID SHE  
4 KNOW WHAT SHE WAS OR WHO SHE WAS WITH --

5 MR. ANDERSON: NOW HE IS TALKING TO THE JURY.

6 BENCH CONFERENCE TERMINATED.

7 Q. BEFORE YOU GO ON LET'S IDENTIFY MR. ANDERSON. DO YOU  
8 KNOW WHO THAT IS?

9 A. I DO.

10 Q. WHO IS IT?

11 A. GEORGE ANDERSON, HE WAS THE -- I THINK THE UNITED STATES  
12 ATTORNEY FOR THE EASTERN DISTRICT AT THAT TIME.

13 Q. AND HE WAS ONE OF THE LAWYERS FOR THE GOVERNMENT IN THE  
14 COURTROOM, IS THAT RIGHT?

15 A. HE WAS.

16 Q. BUT HE DIDN'T TAKE AN ACTIVE ROLE MUCH?

17 A. NOT A VERY ACTIVE ROLE.

18 Q. ALL RIGHT. NOW, READING AT LINE 13, READ WHAT THE COURT  
19 SAYS.

20 A. THE COURT: I WOULD LIKE TO HEAR WHAT YOU HAVE TO SAY TO  
21 THE JURY SO LET'S DON'T ALL TALK AT ONCE. HAVE YOU BEEN  
22 TALKING TO THE JURY?

23 Q. AND THEN THE WITNESS.

24 A. READ?

25 Q. YEAH, THE WITNESS.

September 17, 2012

Smith/Cross

Page 146

1 A. THE WITNESS: YES, SIR, I ASKED THEM IF THEY WERE READY  
2 FOR A REST HOME. I CERTAINLY DID. I KNOW THEY'RE AWFUL TIRED  
3 AND GIVE OUT. I KNOW I SHOULDN'T HAVE SAID IT, BUT I DID.

4 Q. KEEP READING.

5 A. THE COURT: LOOK AT ME, PLEASE.

6 THE WITNESS: YES, SIR.

7 THE COURT: DON'T YOU SAY ANYTHING ELSE TO THIS JURY  
8 UNLESS IT IS IN RESPONSE TO A QUESTION ASKED BY SOME LAWYER  
9 APPEARING IN THE CASE.

10 THE WITNESS: YES, SIR.

11 Q. ALL RIGHT. SO, MR. UNDERHILL WAS TALKING TO THE JURY  
12 DURING A BENCH CONFERENCE IT APPEARS?

13 A. APPARENTLY SO. I DON'T --

14 Q. DO YOU REMEMBER THAT?

15 A. I DON'T REMEMBER IT. NO, I DON'T REMEMBER IT.

16 Q. ALL RIGHT. LET'S LOOK AT PAGE 73 AND READ, PLEASE, LINES  
17 FIVE THROUGH 25.

18 A. YOUR HONOR -- LET'S SEE. WAIT A MINUTE. GOVERNMENT  
19 EXHIBIT G-60, YOUR HONOR, WHICH HAS PREVIOUSLY BEEN IDENTIFIED  
20 HERE IN COURT AS A PHOTOGRAPH OF KRISTEN MACDONALD IN HER  
21 PAJAMAS ON THE BED.

22 BY MR. SEGAL: QUESTION: NOW, WHAT, IF ANYTHING,  
23 DID HELENA STOECKLEY SAY -- WELL, DID SHE SAY ANYTHING THE  
24 FIRST TIME SHE LOOKED AT THE PICTURE?

25 MR. BLACKBURN: YOUR HONOR, WE OBJECT.

September 17, 2012

Smith/Cross

Page 147

1 THE COURT: SUSTAINED.

2 BY MR. SEGAL: DID HELENA STOECKLEY EVER INDICATE TO  
3 YOU THAT SHE HAD EVER SEEN THE SCENE OF THE PERSON DEPICTED IN  
4 THAT PICTURE PREVIOUS TO THE TIME THAT SHE LOOKED AT THE BOOK?

5 MR. BLACKBURN: OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MR. SEGAL: DID HELENA STOECKLEY IN ANY WAY  
8 INDICATE FAMILIARITY WITH THE MATERIALS THERE?

9 MR. BLACKBURN: OBJECTION.

10 Q. OKAY. NOW, LET'S LOOK AT PAGE 75, LINES FOUR THROUGH 19,  
11 OR YOU CAN START READING FROM THE TOP OF THE PAGE ON LINE ONE  
12 IF YOU WANT TO GET THE CONTEXT.

13 A. MR. SEGAL: MAY THE RECORD REFLECT THAT THE WITNESS HAS  
14 INDICATED A PHOTOGRAPH PREVIOUSLY MARKED AS G-59, WHICH WOULD  
15 BE A LONGER RANGE PHOTOGRAPH OF THE BED OF KRISTEN MACDONALD  
16 SHOWING THE CHILD IN THE BED AND IN THE LEFT FOREGROUND A  
17 ROCKING HORSE.

18 BY MR. SEGAL: QUESTION: NOW, IN REGARD TO THIS  
19 PARTICULAR PHOTO, WHAT, IF ANYTHING, DID MS. STOECKLEY SAY TO  
20 YOU ABOUT THAT PHOTOGRAPH?

21 MR. ANDERSON: OBJECTION.

22 MR. MURTAGH: OBJECTION.

23 THE COURT: SUSTAINED.

24 BY MR. SEGAL: DID IN ANY WAY MS. STOECKLEY INDICATE  
25 THAT SHE RECOGNIZED SEEING THAT SCENE HERSELF?

September 17, 2012

Smith/Cross

Page 148

1 MR. ANDERSON: OBJECTION.

2 MR. BLACKBURN: OBJECTION.

3 THE COURT: SUSTAINED.

4 Q. ALL RIGHT. NOW, LET'S MOVE TO PAGE 84, LINES 12 THROUGH  
5 25.

6 A. QUESTION: DID MS. STOECKLEY SAY ANYTHING AT THAT TIME  
7 ABOUT THE TOTALITY OF THE SCENES DEPICTED IN THERE? THAT IS,  
8 DID SHE SAY ANYTHING INDICATING RECOGNITION AND PRIOR  
9 KNOWLEDGE OF THE PLACES AND EVENTS DEPICTED IN THOSE  
10 PHOTOGRAPHS?

11 MR. ANDERSON: OBJECTION.

12 MR. BLACKBURN: OBJECTION.

13 THE COURT: SUSTAINED.

14 BY MR. SEGAL: DID MS. STOECKLEY SAY ANYTHING TO YOU  
15 WITHIN THAT -- THE TIME THAT YOU WERE IN THE ROOM, WITNESS  
16 ROOM, WITH HER ABOUT HAVING CARRIED A LIGHTED CANDLE IN  
17 FEBRUARY OF 1970?

18 MR. BLACKBURN: OBJECTION.

19 Q. OKAY. SO, IS IT FAIR TO SAY THAT THE DEFENSE WAS ABLE TO  
20 GET AT LEAST PART OF ITS POINT ACROSS TO THE JURY THAT MS.  
21 STOECKLEY MAY HAVE MADE SOME OUT OF COURT ADMISSIONS?

22 A. YES.

23 Q. ALL RIGHT. LET'S MOVE TO TRIAL DAY 23, WHICH WOULD BE  
24 TUESDAY, PAGE NINE AND WOULD YOU READ LINES 21 THROUGH 25.

25 A. THE COURT: (INTERPOSING.) I THINK I HAVE GONE AS FAR

September 17, 2012

1 AS I OUGHT TO GO IN LETTING YOU PUT ON WITNESSES AND ASK THEM  
2 QUESTIONS, THE OBJECTIONS TO WHICH YOU KNOW ARE GOING TO BE  
3 SUSTAINED, AND IF YOU THINK I'M WRONG ABOUT THAT TELL ME.

4 Q. ALL RIGHT. SO, THE JUDGE IS SAYING YOU'VE PUT ON A  
5 NUMBER OF THESE WITNESSES WHERE THEY WERE ASKED QUESTIONS  
6 ABOUT STATEMENTS, OUT OF COURT STATEMENTS, THE OBJECTIONS WERE  
7 SUSTAINED AND HE WANTS TO CALL A HALT TO IT, IS THAT RIGHT?

8 A. YES.

9 Q. ALL RIGHT. NOW, LET'S LOOK AT PAGE 17, LINES 17 THROUGH  
10 22, ON THAT SAME DAY.

11 A. MR. BLACKBURN: OBJECTION.

12 THE COURT: SUSTAINED.

13 MEMBERS OF THE JURY, THE EVIDENCE NOW APPARENTLY  
14 SOUGHT TO BE ELICITED BY COUNSEL IS EVIDENCE WHICH THIS COURT  
15 HAS HEARD IN YOUR ABSENCE. THE COURT HAS RULED THAT THE  
16 EVIDENCE IS NOT ADMISSIBLE.

17 I'M INSTRUCTING YOU AT THIS TIME THAT YOU SHOULD NOT  
18 DRAW ANY INFERENCE WHATEVER FROM THE FACT THAT THE QUESTION  
19 ITSELF HAS BEEN ASKED. I WILL INSTRUCT COUNSEL NOT TO REPEAT  
20 THOSE QUESTIONS -- SUCH QUESTIONS.

21 I ALSO INFORM YOU THAT IT IS THE DUTY OF COUNSEL FOR  
22 EITHER SIDE WHEN IT IS PERCEIVED THAT OBJECTIONABLE TESTIMONY  
23 IS SOUGHT TO BE INTRODUCED OR ELICITED FROM A WITNESS TO  
24 REGISTER AN OBJECTION AND THAT YOU ARE NOT UNDER ANY  
25 CIRCUMSTANCES TO DRAW ANY INFERENCE ADVERSE TO COUNSEL MAKING

September 17, 2012



Smith/Cross

Page 150

1 SUCH AN OBJECTION, WHETHER IT BE THE GOVERNMENT OR THE  
2 DEFENDANT OR ANYONE. PROCEED.

3 Q. OKAY. SO, THE JUDGE IS EXPLAINING TO THE JURY THAT HE  
4 HAS SUSTAINED THE OBJECTION AND THEY CAN'T HEAR THIS EVIDENCE,  
5 IS THAT RIGHT?

6 A. YES. YES.

7 Q. NOW, DO YOU RECALL THAT HELENA STOECKLEY WAS MAINTAINED  
8 UNDER YOUR DEFENSE SUBPOENA FOR THE ENTIRE WEEK?

9 A. I THINK THAT IS CORRECT.

10 Q. LET'S LOOK AT TRIAL DAY 25 AT PAGE 153 AND START READING  
11 LINE 13 TO THE BOTTOM OF THE PAGE, PLEASE.

12 A. JUDGE -- MR. BLACKBURN: JUDGE, WE HAVE JUST INQUIRED,  
13 I'VE JUST TALKED TO WADE, WE WANT TO INQUIRE ON THE SITUATION  
14 WITH RESPECT TO HELENA STOECKLEY, WHETHER OR NOT SHE IS STILL  
15 UNDER SUBPOENA HERE.

16 THE COURT: I KNOW NOTHING ABOUT IT. I KEEP ASKING.  
17 I TOLD THEM LAST NIGHT IF THEY WERE GOING TO USE HER, THEY HAD  
18 BETTER DO IT FIRST THING THIS MORNING OR I WAS GOING TO  
19 RELEASE HER. THEY DIDN'T USE HER SO I ASSUME SHE'S RELEASED,  
20 BUT I DON'T KNOW.

21 MR. BLACKBURN: HER LAWYER, JERRY, IS STILL AROUND.

22 THE COURT: I ASKED MR. SEGAL --

23 Q. ALL RIGHT. LET'S STOP BEFORE WE GO TO THE NEXT PAGE.  
24 FIRST OF ALL, WE'RE ON TRIAL DAY 25. SO, IF MONDAY WAS TRIAL  
25 DAY 22 AND TUESDAY 23, THAT WOULD MEAN THIS IS THURSDAY?

September 17, 2012

1 A. YES.

2 Q. ALL RIGHT. AND HELENA STOECKLEY TESTIFIED ON THE  
3 PREVIOUS FRIDAY?

4 A. YES.

5 Q. ALL RIGHT. AND THE REFERENCE TO WADE WOULD REFER TO YOU?

6 A. IT WOULD.

7 Q. AND WHEN MR. BLACKBURN SAYS AT LINE 23 HER LAWYER JERRY,  
8 THAT'S REFERRING TO JERRY WHO?

9 A. IT WOULD BE JERRY LEONARD.

10 Q. ALL RIGHT. NOW, LET'S GO ON TO THE NEXT PAGE. THE LAST  
11 PART, IF YOU READ LINE ONE, IS THE CONCLUSION OF JUDGE  
12 DUPREE'S STATEMENT.

13 A. WHAT IS HE STILL DOING HERE?

14 Q. AND IF YOU'LL READ YOUR REPLY FROM LINE TWO THROUGH 13,  
15 PLEASE.

16 A. MR. SMITH: I TALKED TO JERRY LEONARD AT GREAT LENGTH,  
17 YOUR HONOR, THIS MORNING, TALKED TO HIM FOR A LONG TIME, AND  
18 THIS WOMAN CONTINUES TO SAY THINGS THAT TIE HER TO THIS CASE.

19 I WILL BE FRANK WITH YOUR HONOR, WE HAVE NO PLANS TO  
20 USE HER AT THIS MOMENT, BUT WE HAVE GOT TOO MUCH AT STAKE. IT  
21 IS TOO IMPORTANT A CASE AND SHE'S SAID TOO MUCH FOR US TO  
22 JUST, YOU KNOW, OUT OF HAND SAY, OH, SURE, GO ON, GO AWAY, WE  
23 WILL NEVER SEE YOU AGAIN. GO BACK IN HIDING AND LET THE YEARS  
24 ROLL BY.

25 SHE IS HERE. THE DEFENDANT IS ON THE STAND. WE

September 17, 2012

1 FEEL THAT WE NEED TO BE ABLE TO TALK WITH JERRY AND HAVE HER  
2 AVAILABLE AT LEAST FOR THIS AFTERNOON.

3 THE COURT: WELL --

4 Q. THE COURT SAYS?

5 A. I'M SORRY?

6 Q. THE COURT SAYS?

7 A. WELL, TODAY IS SHOT ANYWAY. GO ON.

8 Q. OKAY. LET'S GO BACK UP, PLEASE, TO WHERE HE WAS  
9 READING. NOW, THE DEFENDANT IS ON THE STAND. THAT MEANS THAT  
10 MR. MACDONALD IS TESTIFYING, IS THAT RIGHT?

11 A. THAT'S RIGHT. YES.

12 Q. AND THAT TESTIMONY TOOK SOME CONSIDERABLE AMOUNT OF TIME?

13 A. YES.

14 Q. DO YOU RECALL ABOUT HOW MUCH?

15 A. A NUMBER OF HOURS. A LOT OF HOURS. I DON'T RECALL HOW  
16 LONG, BUT A LOT OF TIME.

17 Q. ALL RIGHT. NOW, YOU'RE PLEADING WITH THE JUDGE TO ALLOW  
18 MS. STOECKLEY TO REMAIN UNDER SUBPOENA BECAUSE YOU STILL HOLD  
19 OUT THE POSSIBILITY OF RECALLING HER TO THE STAND, IS THAT  
20 RIGHT?

21 A. YES. MS. STOECKLEY HAD THE ABILITY TO SAY THE MOST  
22 TANTALIZING THINGS. SHE HAD SAID THEM TO MANY PEOPLE AND WE  
23 COULD NOT BEAR TO LET THAT GO.

24 Q. ALL RIGHT. AND THE JUDGE ACCEDES AT LEAST FOR THIS DAY  
25 TO YOUR REQUEST TO LEAVE HER UNDER SUBPOENA?

September 17, 2012

Smith/Cross

Page 153

1 A. YES.

2 Q. BY SAYING, WELL, TODAY IS SHOT ANYWAY?

3 A. YES.

4 Q. ALL RIGHT. NOW, I WANT TO ASK YOU ABOUT THE COMMENT  
5 ABOUT JERRY LEONARD. IT STATES THAT JERRY LEONARD TALKED TO  
6 YOU THAT MORNING AND THEN YOU MAKE THE STATEMENT THAT THIS  
7 WOMAN CONTINUES TO SAY THINGS THAT TIE HER TO THIS CASE.

8 THIS WOMAN REFERS TO HELENA STOECKLEY, IS THAT  
9 RIGHT?

10 A. YES.

11 Q. ALL RIGHT. DO YOU RECALL TALKING TO JERRY LEONARD?

12 A. YES, BUT I DOUBT THAT JERRY LEONARD TOLD ME THINGS THAT  
13 HELENA STOECKLEY HAD SAID. I THINK IT COULD VERY WELL BE THAT  
14 I WAS REFERRING TO WENDY ROUDER AND WHAT WENDY HAD SAID. BUT  
15 JERRY IS VERY PROFESSIONAL AND I DON'T THINK HE WOULD QUOTE  
16 HIS CLIENT TO ME.

17 Q. ALL RIGHT. SO, THE TWO PARTS OF THAT FIRST SENTENCE ARE  
18 NOT NECESSARILY CONNECTED IN THAT YOU WEREN'T SAYING TO THE  
19 JUDGE THAT JERRY LEONARD HAD TOLD YOU THAT HELENA STOECKLEY  
20 WAS SAYING THINGS TO TIE HER TO THE CASE?

21 A. NO, I DIDN'T MEAN TO BE SAYING THAT. NO.

22 Q. ALL RIGHT.

23 THE COURT: EXCUSE ME. WHO WAS SHE SAYING IT TO?

24 THE WITNESS: SHE, I BELIEVE, YOUR HONOR, HAD MADE  
25 STATEMENTS TO THE WOMAN WHOSE NAME IS WENDY ROUDER THAT

September 17, 2012

Smith/Cross

Page 154

1 WEEKEND. I MAY BE WRONG, BUT I THINK SHE HAD. I DON'T KNOW  
2 WHAT SHE EVER SAID TO JERRY LEONARD.

3 THE COURT: THANK YOU. I JUST WAS CURIOUS.

4 THE WITNESS: YES, SIR. YES, SIR.

5 BY MR. BRUCE:

6 Q. SO, IT'S YOUR TESTIMONY THAT JERRY LEONARD HAS NEVER  
7 DISCLOSED TO YOU WHAT HIS CLIENT TOLD HIM IN CONFIDENCE, HIS  
8 CLIENT HELENA STOECKLEY?

9 A. HE HAS NEVER -- HE HAS NEVER TOLD ME ANYTHING THAT SHE  
10 SAID THAT I RECALL.

11 Q. IN FACT, DO YOU RECALL TALKING TO MR. MORRIS IN  
12 CONNECTION WITH HIS BOOK?

13 A. I DO, YES.

14 Q. AND DIDN'T YOU TELL HIM THAT AFTER THE MACDONALD TRIAL  
15 YOU WOULD SOMETIMES SEE JERRY LEONARD AND KID ABOUT THIS?

16 A. WELL, I WOULD TALK TO JERRY LEONARD WITH THE HOPE THAT  
17 THERE WAS SOME -- SOMETHING THAT HE HAD THAT WOULD BE USEFUL  
18 AND HELPFUL AND I WOULD KID HIM ABOUT IT AND SAY YOU CAN TELL  
19 US NOW, BUT HE ALWAYS WAS FAITHFUL TO HIS PROMISE AND I  
20 CERTAINLY DIDN'T MEAN TO TRY TO GET HIM TO BE UNPROFESSIONAL.  
21 BUT I WOULD SEE HIM ONCE OR TWICE A YEAR WALKING DOWN THE  
22 STREET AND I WOULD SAY SOMETHING TO HIM LIKE THAT IN A KIDDING  
23 WAY.

24 Q. SOMETHING LIKE, JERRY, DON'T YOU HAVE SOMETHING DRAMATIC  
25 TO TELL ME?

September 17, 2012

1 A. SOMETHING LIKE THAT, BUT I WOULD SAY IT IN THE RIGHT  
2 SPIRIT.

3 Q. ALL RIGHT. NOW, LET'S LOOK AT TRIAL DAY 26, PAGE 149,  
4 AND LOOK AT LINE NINE THROUGH 20, PLEASE. STARTING WITH  
5 OTHERWISE WE HAVE NO FURTHER EVIDENCE.

6 A. OTHERWISE, WE HAVE NO FURTHER EVIDENCE READY TO GO AT  
7 THIS TIME.

8 THE COURT: HOW ABOUT STOECKLEY?

9 MR. SMITH: MAYBE THE GOVERNMENT WOULD LIKE TO CALL  
10 HER.

11 THE COURT: YOU DO NOT?

12 MR. SMITH: AT LEAST AT THIS MOMENT WE DO NOT.

13 THE COURT: WELL, NOW, LISTEN, ENOUGH OF THE THING  
14 IS ENOUGH, WADE. IF YOU'RE GOING TO EVER CALL HER, YOU CALL  
15 HER RIGHT NOW OR I'M GOING TO RELEASE HER FROM HER SUBPOENA.

16 MR. SMITH: JUDGE, I UNDERSTAND WHAT YOU'RE SAYING.  
17 LET ME JUST SAY THIS, THAT WOMAN MADE THE MOST OUTRAGEOUS  
18 STATEMENTS TO A LADY AT THE HOSPITAL WHEN SHE GOT HER NOSE  
19 FIXED THAT YOU HAVE EVER HEARD.

20 Q. OKAY. DO YOU REMEMBER WHAT THE LADY AT THE HOSPITAL HAD  
21 SAID?

22 A. IT WOULD HAVE BEEN THE SAME KIND OF THINGS THAT SHE SAID  
23 I ASSUME TO WENDY AND MAYBE THAT IS TO WENDY, BUT IT WOULD BE  
24 THE SAME KINDS OF THINGS THAT SHE WAS ALWAYS SAYING.

25 Q. ALL RIGHT. AND SO THIS WOULD BE AN EXAMPLE OF WHAT YOU

Smith/Cross

Page 156

1 REFERRED TO IN THAT EARLIER STATEMENT WHEN YOU WERE TALKING  
2 ABOUT JERRY LEONARD, BUT IT DIDN'T REALLY RELATE TO JERRY  
3 LEONARD?

4 A. THAT'S RIGHT. YES.

5 Q. LET'S LOOK AT THE NEXT PAGE -- I'M SORRY, 151. LET'S GO  
6 TO 151. AT LINE 17 THROUGH 23, READ WHAT THE COURT SAYS.

7 A. THE COURT: (INTERPOSING.) DON'T TELL ME ALL THAT STUFF.  
8 LISTEN, I'M NOT CARING WHETHER HE WANTS HER CALLED OR NOT.  
9 THE ONLY THING I'M CARING ABOUT IS YOU HAVE GOT A WITNESS HERE  
10 THAT YOU HAVE HAD ALL THE WHOLE WEEK. I'VE BEEN PAYING A  
11 LAWYER TO SORT OF CADDY FOR HER AT THE GOVERNMENT'S EXPENSE  
12 AND I'M AT THE END OF MY ROPE WITH THAT. READ ON?

13 Q. YOUR REPLY?

14 A. MR. SMITH: I WILL SAY THIS, JUDGE, THE DEFENSE DOESN'T  
15 HAVE MUCH MONEY, BUT WE WILL REIMBURSE THE GOVERNMENT FOR ANY  
16 ATTORNEY'S FEES THAT MAY BE REQUIRED TO KEEP HELENA STOECKLEY  
17 HERE UNTIL MONDAY.

18 MR. SEGAL: THAT IS RIGHT, YOUR HONOR, WE WILL AGREE  
19 TO DO THAT.

20 MR. MURTAGH: I DON'T SEE HOW YOU CAN DO THAT.

21 MR. SMITH: THE MORE THE GOVERNMENT COMPLAINS ABOUT  
22 HER BEING HERE, THE MORE INTERESTED WE ARE IN HER. IF THEY  
23 WOULD STOP TALKING ABOUT IT, WE WOULD LOSE INTEREST.

24 Q. ALL RIGHT. NOW, THIS WAS TRIAL DAY 26 THAT WE'RE READING  
25 FROM NOW. SO, THAT WOULD BE FRIDAY, RIGHT?

September 17, 2012

Smith/Cross

Page 157

1 A. YES, SIR, I THINK SO.

2 Q. AND SO AT LEAST WE KNOW FROM THE TRANSCRIPT THAT HELENA  
3 STOECKLEY WAS AVAILABLE TO YOU MONDAY THROUGH FRIDAY OF THE  
4 WEEK AFTER HER TESTIMONY?

5 A. YES, SIR.

6 Q. AND YOU DECIDED NOT TO RECALL HER?

7 A. YES, SIR.

8 Q. OKAY. I WANT TO DIRECT YOUR ATTENTION NOW TO THE  
9 TESTIMONY YOU GAVE ON DIRECT EXAMINATION ABOUT YOUR THEORY OF  
10 THE CASE WITH RESPECT TO INTRUDERS --

11 A. YES, SIR.

12 Q. -- DO YOU RECALL THAT?

13 A. YES, I DO.

14 Q. ALL RIGHT. YOU TESTIFIED, DID YOU NOT, ON DIRECT  
15 EXAMINATION ABOUT SOME RUBBER GLOVE FRAGMENTS, IS THAT RIGHT?

16 A. I DID.

17 Q. AND I BELIEVE YOU SAID ON DIRECT EXAMINATION THAT THEY  
18 WERE FOUND IN THE KITCHEN, BUT WEREN'T THEY REALLY FOUND IN  
19 THE MASTER BEDROOM?

20 A. THEY WERE FOUND, I THOUGHT, SOME IN THE KITCHEN, BUT THEY  
21 MAY HAVE BEEN IN THE MASTER BEDROOM. I MAY BE WRONG ABOUT  
22 THAT.

23 Q. ALL RIGHT. NOW, THE GOVERNMENT HAD INTRODUCED TESTIMONY  
24 AT THE TRIAL TRYING TO MATCH THESE FRAGMENTS TO A BOX OF  
25 SURGICAL GLOVES THAT WAS IN THE HOUSE, IS THAT RIGHT?

September 17, 2012



Smith/Cross

Page 158

1 A. THEY WERE UNDER THE SINK IN THE KITCHEN.

2 Q. ALL RIGHT. AND THEIR EXPERT TESTIFIED USING NEUTRON  
3 ACTIVATION ANALYSIS, IS THAT RIGHT?

4 A. THAT'S WHAT WAS USED.

5 Q. AND THE EVIDENCE THAT THE GOVERNMENT PRESENTED TENDED TO  
6 SHOW THAT THERE WAS A MATCH, IS THAT RIGHT?

7 A. I THINK THAT'S RIGHT.

8 Q. AND THEN YOU TESTIFIED ON DIRECT EXAMINATION TODAY THAT  
9 THE DEFENSE HAD ITS OWN NEUTRON ACTIVATION ANALYSIS DONE, IS  
10 THAT CORRECT?

11 A. I BELIEVE THAT IS CORRECT.

12 Q. AND WAS THAT BY A MR. GUINN?

13 A. I DON'T REMEMBER.

14 Q. ALL RIGHT. BUT YOU INTRODUCED EVIDENCE TO THE EFFECT  
15 THAT WITH HIS ANALYSIS HE HAD FOUND MORE TRACE ELEMENTS IN THE  
16 FRAGMENTS THAT HE SAID DIFFERENTIATED THEM FROM THE OTHERS IN  
17 THE BOX?

18 A. YES.

19 Q. BUT THE GOVERNMENT -- THIS WAS A DISPUTE BETWEEN THE  
20 PARTIES, IS THAT RIGHT?

21 A. IT WAS. AND, OF COURSE, WE SAID OUR PEOPLE WERE RIGHT  
22 AND THEY SAID THEIR PEOPLE WERE RIGHT.

23 Q. SO, THE JURY GOT CONFLICTING EVIDENCE ON WHETHER THE  
24 GLOVE FRAGMENTS MATCHED THE BOX?

25 A. I THINK THAT'S RIGHT.

September 17, 2012

1 Q. NOW, YOU TESTIFIED ON DIRECT EXAMINATION THAT YOUR SIDE  
2 OF THE CASE NEEDED EVIDENCE OF INTRUDERS, IS THAT RIGHT?

3 A. WE DID.

4 Q. AND YOU WERE ARGUING TO THE JURY THAT IF SOMETHING WAS  
5 FOUND THAT COULDN'T BE TRACED TO THE MACDONALD HOUSEHOLD THAT  
6 WAS EVIDENCE THAT HELPED YOU?

7 A. YES, IT WAS SOMETHING THAT COULD HAVE BEEN BROUGHT INTO  
8 THE HOUSE BY ALIEN TO THAT HOUSE, PEOPLE OF THAT HOUSE, IT  
9 WOULD HELP US.

10 Q. ALL RIGHT. BUT YOU HAD QUITE A BIT OF THAT EVIDENCE TO  
11 POINT TO IN THE TRIAL, DID YOU NOT?

12 A. THERE WAS SOME.

13 Q. LET ME REFER YOU TO TRIAL DAY 28, PAGE 217. AND I  
14 REPRESENT TO YOU THIS IS PART OF THE CLOSING ARGUMENT GIVEN BY  
15 MR. BERNIE SEGAL. DO YOU RECALL THAT CLOSING ARGUMENT?

16 A. I DO.

17 Q. AND IT'S PRETTY LEGENDARY IN RALEIGH, ISN'T IT?

18 A. YES.

19 Q. THE LEGENDARY PART BEING THAT HE TOOK ALL THE TIME AND  
20 DIDN'T LEAVE YOU WITH ANY, IS THAT RIGHT?

21 A. YES.

22 Q. AND MR. BLACKBURN GAVE YOU SOME OF HIS TIME SO YOU COULD  
23 MAKE SOME ARGUMENT TO THE JURY?

24 A. MR. BLACKBURN RETURNED A FAVOR I HAD DONE FOR HIM SOME  
25 YEARS BEFORE WHEN HE NEEDED -- WHEN HE HAD A JUROR HE NEEDED

Smith/Cross

Page 160

1 TO DISMISS AND I GAVE HIM A PEREMPTORY.

2 Q. ALL RIGHT.

3 A. SO, IT WAS A FAIR TRADE.

4 Q. ALL RIGHT. SO, HE GAVE YOU SOME TIME SO THAT YOU COULD  
5 MAKE AN ARGUMENT EVEN THOUGH MR. SEGAL HAD CONSUMED MOST OF  
6 THE TIME?

7 A. YES.

8 Q. ALL RIGHT. NOW, THIS IS MR. SEGAL'S ARGUMENT. AND LET'S  
9 LOOK AT PAGE 217. AND HE STARTS UP THERE IN THE MIDDLE OF  
10 LINE ONE -- LET'S GO BACK TO THE PREVIOUS PAGE FOR CONTEXT.  
11 LET'S START WITH THAT LAST LINE, LINE 25. THE GOVERNMENT --  
12 DO YOU SEE WHERE IT SAYS THE GOVERNMENT SAYS ALSO THAT THERE  
13 WERE NO --

14 A. THE GOVERNMENT SAYS ALSO THAT THERE WERE NO INTRUDERS IN  
15 THIS CASE. THERE IS NO PROOF OF INTRUDERS IN THIS CASE. THE  
16 LIST OF EVIDENCE THAT SUPPORTS JEFF'S STORY WILL SURPRISE YOU  
17 WHEN WE PULL IT ALL TOGETHER RIGHT NOW.

18 Q. ALL RIGHT. AND THEN IN LINES FIVE THROUGH 11 HE  
19 DESCRIBES THE LATEX GLOVE ABOUT WHICH YOU'VE ALREADY  
20 TESTIFIED?

21 A. YES.

22 Q. ALL RIGHT. NOW, LOOK DOWN AT LINE 12 AND WHAT IS -- READ  
23 THOSE FEW SENTENCES.

24 A. WHAT ABOUT THE FIBER FOUND ON JEFF'S GLASSES IN THE  
25 LIVING ROOM? THEY HAVE TRIED AND TRIED AND TRIED AND THEY

September 17, 2012

Smith/Cross

Page 161

1 CANNOT FIND ANY SOURCE FROM WITHIN THE MACDONALD HOUSE WHERE  
2 THAT FIBER CAME FROM.

3 Q. KEEP READING.

4 A. WHERE DO THEY THINK IT CAME FROM? IT FLEW IN THE WINDOW.  
5 NONSENSE. YOU HAVE A RIGHT TO BELIEVE THAT THAT FIBER IS ONE  
6 MORE PIECE OF PHYSICAL EVIDENCE THAT SUPPORTS AN OPPOSITE  
7 INFERENCE FROM WHAT THE GOVERNMENT WANTS. READ ON?

8 Q. NO. I WANT TO ASK YOU DID -- THIS REFERS IN MR. SEGAL'S  
9 ARGUMENT TO -- HE'S POINTING OUT TO THE JURY THAT THERE WAS A  
10 FIBER FOUND ON MACDONALD'S GLASSES, IS THAT RIGHT?

11 A. YES.

12 Q. AND IT COULDN'T BE TRACED TO ANYTHING IN THE HOUSE?

13 A. YES.

14 Q. ALL RIGHT. AND NOW READ 20 THROUGH 24, PLEASE.

15 A. UNIDENTIFIED HAIR. THERE IS HAIR IN THIS CASE. THE  
16 GOVERNMENT HAS FOUND AND THEY HAVE HAD MACDONALD'S SAMPLE  
17 WHICH WAS GIVEN TO THEM AND THEY STILL, TO THIS DAY, CANNOT  
18 ASCRIBE IT TO ANY MEMBER OF THE FAMILY.

19 Q. ALL RIGHT. SO, YOU WERE OR MR. SEGAL ON BEHALF OF THE  
20 DEFENSE WAS ABLE TO ARGUE TO THE JURY THAT THERE WAS AT LEAST  
21 ONE UNIDENTIFIED HAIR THAT HAD BEEN FOUND AT THE CRIME SCENE  
22 AND WAS UNIDENTIFIED?

23 A. YES.

24 Q. ALL RIGHT. AND DO YOU KNOW IF THAT HAIR WAS -- ONE  
25 MOMENT PLEASE.

September 17, 2012

Smith/Cross

Page 162

1 (PAUSE.)

2 DO YOU KNOW IF THE REFERENCE THERE TO THE HAIR WAS  
3 TO A HAIR FOUND IN COLETTE MACDONALD'S LEFT HAND?

4 A. I THINK SO, BUT I'M JUST NOT SURE.

5 Q. OKAY.

6 A. I THINK SO.

7 Q. ALL RIGHT. NOW, LET'S LOOK AT -- STARTING AT LINE 25  
8 WITH FINGERPRINTS, THERE ARE FINGERPRINTS.

9 A. YES.

10 Q. IF YOU'LL READ THAT, PLEASE.

11 A. THERE ARE FINGERPRINTS. WE TALKED ABOUT THE ONES THAT  
12 WERE FOUND AND THAT WERE NOT LIFTED PROPERLY, THE ONES THAT  
13 WERE FOUND THAT WERE NOT IDENTIFIED OR PARTIALLY OR NOT  
14 COMPLETE, THE ONES THAT WERE NEVER FOUND BECAUSE THEY DID NOT  
15 PROCESS THE CRIME SCENE.

16 Q. OKAY. SO, MR. SEGAL, ON BEHALF OF THE DEFENSE, IS  
17 TELLING THE JURY THAT THERE WERE UNIDENTIFIED FINGERPRINTS IN  
18 THE HOUSE?

19 A. YES.

20 Q. AND NOW IF YOU WOULD READ STARTING AT LINE SIX ABOUT THE  
21 CANDLE WAX.

22 A. WHAT ABOUT THE CANDLE WAX? THREE DIFFERENT CANDLES  
23 PRODUCED THREE DIFFERENT TYPES OF WAX. THEY WENT AND THEY  
24 ROUNDED UP EVERYTHING IN THE MACDONALD HOUSE. THEY FOUND 14  
25 CANDLES. THEY TOOK IT TO THE LAB. WHEN THEY GOT DONE WITH

September 17, 2012

Smith/Cross

Page 163

1 THEIR BEST EFFORTS, WHAT DID THEY FIND? THAT THE WAX THAT WAS  
2 FOUND IN THE MACDONALD HOUSE -- IN THE LIVING ROOM -- JEFF  
3 SAYS THAT HE REMEMBERS A WOMAN WITH A FLICKERING LIGHT --  
4 WHICH I THINK IS A REASONABLE CONCLUSION WHERE THEY ARE  
5 TALKING ABOUT A WOMAN WITH A CANDLE. THE REASONABLE  
6 CONCLUSION FROM ALL THAT IS THIS, THAT THAT IS EVIDENCE OF THE  
7 TRUTH. NOW, WHAT DID THE GOVERNMENT DO ABOUT THAT?

8 READ ON?

9 Q. YOU CAN READ ON. SURE.

10 A. THE WITNESS SAID, WELL, WE DIDN'T TAKE THAT SERIOUSLY  
11 BECAUSE THE WAX WAS HARDEN. HOW LONG DID IT TAKE TO HARDEN,  
12 I SAID TO THE WITNESS. THREE WEEKS. WHEN DID YOU EXAMINE THE  
13 WAX? MARCH 6TH OF 1970. FROM FEBRUARY 17TH TO MARCH 6TH IS  
14 THREE WEEKS. AND HE IS SURPRISED THAT THE WAX HAD HARDENED.  
15 WHAT I AM SAYING TO YOU IS THAT THE REASONABLE CONCLUSION THAT  
16 YOU OUGHT TO DRAW IS THAT THE WAX FOUND IN THAT HOUSE --

17 Q. THAT'S FAR ENOUGH.

18 A. ALL RIGHT.

19 Q. SO, HERE MR. SEGAL IS ARGUING TO THE JURY THAT THERE WAS  
20 CANDLE WAX IN THE HOUSE AND IT DIDN'T MATCH TO ANY OF THE 14  
21 CANDLES IN THE MACDONALD HOUSEHOLD, IS THAT RIGHT?

22 A. YES.

23 Q. NOW, LET'S MOVE FORWARD TO TRIAL DAY 28, PAGE 224. STILL  
24 IN THE CLOSING ARGUMENT. IF YOU GO DOWN TO LINE 23, JUST READ  
25 THAT.

September 17, 2012

Smith/Cross

Page 164

1 A. THERE'S MORE PROOF THAT THERE WERE INTRUDERS BESIDES THE  
2 LATEX, THE FIBERS, THE HAIR, THE WAX, THE FINGERPRINTS AND THE  
3 WEAPONS. THERE'S MORE.

4 Q. SO, IN SUMMARY, HE'S LISTING LATEX, FIBERS, HAIR, WAX,  
5 FINGERPRINTS --

6 A. YES.

7 Q. -- AND THE WEAPONS --

8 A. YES.

9 Q. -- AS THINGS THAT MR. SEGAL ARGUES WERE FOREIGN TO THE  
10 MACDONALD HOUSEHOLD?

11 A. YES.

12 Q. NOW, OF COURSE, THERE WAS A LOT OF DISPUTE ABOUT WHETHER  
13 THE WEAPONS WERE AS FAR AS THE GOVERNMENT'S CONTENTION --

14 A. THERE WAS.

15 Q. -- AND THE DEFENSE CONTENTION, IS THAT RIGHT?

16 A. YES.

17 Q. OKAY. MR. SMITH, I'D LIKE TO NOW MOVE TO THE ISSUE OF  
18 JIMMY BRITT.

19 A. ALL RIGHT.

20 Q. I WANT TO CALL UP GOVERNMENT EXHIBIT 285. I'M SORRY,  
21 2085. 2085. I ASK YOU TO TAKE A LOOK AT THAT DOCUMENT, WHICH  
22 IS IN EVIDENCE, AND SEE IF YOU'VE EVER SEEN IT BEFORE.

23 A. I DON'T THINK I'VE SEEN THAT BEFORE. IT MAY BE THAT I  
24 HAVE.

25 Q. ALL RIGHT. NOW, IT APPEARS TO BE SIGNED BY JIMMY B.

September 17, 2012

Smith/Cross

Page 165

1 BRITT, IS THAT CORRECT?

2 A. YES.

3 Q. AND HE IDENTIFIES HIMSELF AS A RETIRED SUPERVISORY DEPUTY  
4 U.S. MARSHAL?

5 A. YES.

6 Q. AND THE DATE HE SAYS IS 2/23/05?

7 A. THAT'S RIGHT.

8 (GOVERNMENT EXHIBIT NUMBER 2085  
9 WAS IDENTIFIED FOR THE RECORD.)

10 Q. AND IT APPEARS TO BE NOTARIZED BY LEE TART, IS THAT  
11 RIGHT?

12 A. IT APPEARS TO BE, YES.

13 Q. AND LEE TART YOU TESTIFIED ON DIRECT EXAMINATION WAS  
14 ANOTHER RETIRED DEPUTY MARSHAL WHO ACCOMPANIED MR. BRITT TO  
15 YOUR OFFICE?

16 A. YES.

17 Q. NOW, LOOKING AT THE FIRST PARAGRAPH -- JUST READ THE  
18 FIRST PARAGRAPH ALOUD, IF YOU WOULD.

19 A. I, JIMMY B. BRITT, RETIRED SUPERVISORY DEPUTY U.S.  
20 MARSHAL FOR THE EASTERN DISTRICT OF NORTH CAROLINA DO  
21 VOLUNTARILY SUBMIT THIS STATEMENT OF FACTS REGARDING THE  
22 IRREGULARITIES I OBSERVED DURING THE TRIAL OF JEFFREY  
23 MACDONALD IN RALEIGH, NORTH CAROLINA, IN JULY 1979 AND AUGUST  
24 1979.

25 Q. AND SKIP DOWN IF YOU WOULD AND READ PARAGRAPHS THREE AND

September 17, 2012



Smith/Cross

Page 166

1 FOUR.

2 A. THE SPECIFICS ARE TOO NUMEROUS TO LIST IN THIS STATEMENT  
3 OF FACTS. HOWEVER, I WILL LIST THE NAMES OF THE PEOPLE  
4 INVOLVED IN THE IRREGULARITIES THAT I OBSERVED WHILE ASSIGNED  
5 AS A DEPUTY U.S. MARSHAL AT THIS TRIAL; THE LATE FRANKLIN  
6 DUPREE, UNITED STATES DISTRICT JUDGE, PRESIDED OVER THE TRIAL;  
7 RICH LEONARD AND JOHN EDWARDS, LAW CLERKS FOR JUDGE DUPREE;  
8 AND JIM BLACKBURN, U.S. ATTORNEY; AND THE FOREMAN OF THE JURY.

9 Q. OKAY. SO, HERE MR. BRITT SEEMS TO BE SAYING THAT THERE  
10 WERE IRREGULARITIES AT THE TRIAL AND AMONG THE PEOPLE  
11 PARTICIPATING WERE JUDGE DUPREE, LAW CLERKS RICH LEONARD AND  
12 JOHN EDWARDS, JIM BLACKBURN AND THE FOREMAN OF THE JURY, IS  
13 THAT RIGHT?

14 A. IT APPEARS TO BE WHAT HE'S SAYING.

15 Q. ALL RIGHT. AND THEN READ THE LAST PARAGRAPH, IF YOU  
16 WOULD.

17 A. I HAVE REQUESTED AS A WITNESS ON MY BEHALF LEE W. TART,  
18 RETIRED INSPECTOR, WITNESS SECURITY DIVISION, U.S. MARSHAL  
19 SERVICE, 30 YEARS SERVICE, TO BE PRESENT AT ANY AND ALL  
20 MEETINGS AND POTENTIAL COURT HEARINGS.

21 Q. AND, IN FACT, THE NEXT DAY HE DID COME TO YOUR OFFICE TO  
22 GIVE THE SWORN STATEMENT?

23 A. YES.

24 Q. NOW, RICH LEONARD AND JOHN EDWARDS WEREN'T THE LAW CLERKS  
25 FOR JUDGE DUPREE DURING THE MACDONALD TRIAL, WERE THEY?

September 17, 2012

1 A. NO. STEVE COGGINS WAS.

2 Q. NOW, WITH REGARD TO THIS STATEMENT ABOUT IRREGULARITIES,  
3 DIDN'T JIM BRITT TELL YOU AS ONE OF THE ALLEGED IRREGULARITIES  
4 THIS STORY ABOUT A CAKE BEING PROVIDED BY THE JURY AND GIVEN  
5 TO JUDGE DUPREE?

6 A. YES.

7 Q. AND WOULD IT BE FAIR TO SAY THAT HE PUT AS MUCH EMPHASIS  
8 ON THAT AS AN IRREGULARITY AS HE DID THE MATTER HE ALLEGED  
9 ABOUT JIM BLACKBURN?

10 A. NO, I DON'T THINK THAT WOULD BE FAIR. HE PUT SOME  
11 EMPHASIS ON IT, BUT THE REASON HE CAME TO SEE ME WAS THE  
12 STATEMENT BY THE PROSECUTOR TO HELENA.

13 Q. DID HE TELL YOU CONCERNING THE CAKE THAT THE CAKE WAS  
14 TAKEN INTO JUDGE DUPREE'S CHAMBERS AND THAT THE LAW CLERKS,  
15 RICH LEONARD AND JOHN EDWARDS, ATE SOME OF IT?

16 A. I DON'T KNOW WHETHER HE SAID JOHN EDWARDS. I DON'T  
17 REMEMBER. HE SAID THAT OTHER PEOPLE JOINED IN THE SHARING OF  
18 THE CAKE.

19 Q. OKAY. IN ANY EVENT, THE NEXT DAY AFTER THIS STATEMENT,  
20 MR. BRITT AND MR. TART CAME TO YOUR OFFICE AND GAVE THE SWORN  
21 STATEMENT, IS THAT RIGHT?

22 A. YES, THEY DID.

23 Q. NOW, FEBRUARY 24TH, 2005, IS THE DATE OF THE SWORN  
24 STATEMENT. LET'S PUT UP GOVERNMENT EXHIBIT 286, PLEASE.

25 2086. FORGIVE ME. I'M SORRY. AND THIS IS ALSO -- I BELIEVE

Smith/Cross

Page 168

1 IT'S DEFENSE EXHIBIT 5055, IS THAT RIGHT? OKAY.

2 SO, THIS GIVES THE DATE FEBRUARY 24TH. NOW, WAS  
3 THIS THE FIRST TIME THAT MR. BRITT HAD COME TO YOUR OFFICE?

4 A. NO. NO.

5 (GOVERNMENT EXHIBIT NUMBER 2086  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. BECAUSE YOU HAD THE COURT REPORTER ALREADY THERE, RIGHT?

8 A. WELL, I DON'T THINK THIS IS THE DAY HE CAME TO MY OFFICE  
9 AT ALL BECAUSE I THINK I HAD TIME TO LISTEN TO WHAT HE HAD TO  
10 SAY AND REFLECT ON IT, THINK ABOUT IT SOME, AND DECIDED THAT  
11 IT WOULD BE IMPORTANT TO HAVE A SWORN STATEMENT.

12 Q. ALL RIGHT. SO, HE CAME TO YOUR OFFICE AT SOME TIME --  
13 SOME WEEKS BEFORE FEBRUARY 24TH --

14 A. YES.

15 Q. -- AND TOLD YOU THE GIST OF HIS ALLEGATIONS?

16 A. HE DID.

17 Q. ALL RIGHT. LET'S LOOK AT PAGE EIGHT OF THIS EXHIBIT AT  
18 LINE TEN AND THE QUESTION STARTS AT LINE SIX. WOULD YOU READ  
19 THE QUESTION AND ANSWER?

20 A. AND HAVE YOU HAD OCCASION DURING THAT PERIOD OF TIME TO  
21 SPEAK WITH ANY OF YOUR FRIENDS ABOUT IT TO LET THEM KNOW THAT  
22 YOU WERE WORRIED?

23 MR. BRITT: NOT UNTIL APPROXIMATELY TWO YEARS AGO.

24 Q. SO, HE'S SAYING APPROXIMATELY TWO YEARS AGO IS WHEN HE  
25 FIRST SPOKE TO HIS FRIENDS ABOUT THIS MATTER?

September 17, 2012

Smith/Cross

Page 169

1 A. YES.

2 Q. BY THE WAY, MR. SMITH, I THINK IF YOU TAP THE LOWER  
3 RIGHT-HAND CORNER OF THE SCREEN IT WILL GET RID OF THE --  
4 LOWER LEFT IT WILL GET RID OF THE PINK ARROW.

5 A. I SEE THE PINK ARROW.

6 Q. OKAY.

7 A. THERE WE GO.

8 Q. WE GOT IT. WE GOT IT. LET'S MOVE TO PAGE NINE AND TEN.  
9 AND AS WE SEE ON LINE -- I'M SORRY, PAGE NINE, LINE 12, YOU  
10 ASK HIM A QUESTION. CAN YOU READ THAT QUESTION?

11 A. MR. SMITH: IF YOU WILL, WOULD YOU GIVE US SOME INSIGHT  
12 INTO YOUR FEELINGS ABOUT WHY YOU WEREN'T ABLE TO COME FORWARD  
13 UNTIL NOW?

14 Q. AND HIS ANSWER?

15 A. READ ON?

16 Q. HIS ANSWER?

17 A. WELL, OUT OF RESPECT FOR THE HONORABLE LATE FRANKLIN  
18 DUPREE WHO WAS THE UNITED STATES DISTRICT JUDGE THAT PRESIDED  
19 OVER THIS CASE AND RICHARD LEONARD, WHO IS A UNITED STATES  
20 BANKRUPTCY JUDGE OVER IN WILSON, NORTH CAROLINA, AND I FEEL  
21 LIKE THAT IT WAS THE LATE SENATOR -- I MEAN, JOHN EDWARDS, WHO  
22 IS A FORMER UNITED STATES SENATOR FOR THE STATE OF NORTH  
23 CAROLINA.

24 Q. SO, HE'S SAYING OUT OF RESPECT TO THOSE THREE PEOPLE HE  
25 KEPT SILENT --

September 17, 2012

1 A. YES.

2 Q. -- IS THAT RIGHT?

3 A. YES.

4 Q. LET'S LOOK AT -- I'M SORRY, LET'S READ ON. LET'S LOOK AT  
5 LINE 24, READ THAT PART, AND THEN WE'LL GO TO THE NEXT PAGE,  
6 PAGE TEN.

7 A. MR. SMITH: AND WERE THOSE PEOPLE WORKING IN THE COURTS  
8 -- WITH THE COURTS OR WITH JUDGE DUPREE AT THE TIME OF THE  
9 MACDONALD TRIAL?

10 MR. BRITT: YES, SIR, THEY WERE.

11 Q. ALL RIGHT. THANK YOU. NOW, LET'S LOOK AT PAGE 11, LINE  
12 11 THROUGH 14. NOW, WE'LL START UP AT LINE EIGHT, MR. JUNKIN  
13 INTERJECTS. CAN YOU TELL US WHO HE IS?

14 A. MR. JUNKIN WAS A LAWYER WHO HAD WORKED SOME ON THE  
15 MACDONALD CASE IN SOME WAYS AND I INVITED HIM TO COME AND TO  
16 BE THERE FOR THIS.

17 Q. OKAY. WOULD YOU READ LINES EIGHT THROUGH 14 WHERE  
18 THERE'S A Q&A BETWEEN MR. JUNKIN AND --

19 A. MR. JUNKIN: I SEE. AND JUST TO BE SPECIFIC ABOUT WHEN  
20 YOU FIRST CONTACTED MR. SMITH ABOUT THE MACDONALD CASE, CAN  
21 YOU GIVE ME A MONTH? WAS IT -- WAS IT TODAY, FEBRUARY 25TH?  
22 WAS IT WITHIN THE LAST SAY EIGHT WEEKS?

23 MR. BRITT: YES, SIR, IT WAS IN JANUARY. IT WAS IN  
24 JANUARY OF 2005.

25 Q. OKAY. NOW, JIMMY BRITT IS SAYING THAT HE CAME FORWARD IN

Smith/Cross

Page 171

1 JANUARY OF 2005, TO YOU WITH THIS INFORMATION, IS THAT RIGHT?

2 A. YES. YES.

3 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

4 A. PRETTY CONSISTENT, YES.

5 Q. DO YOU KNOW -- CAN YOU BE MORE PRECISE THAN JUST THE  
6 MONTH OF JANUARY?

7 A. NO. NO. I'M SORRY. I WISH I COULD, BUT I THINK IT WAS  
8 IN JANUARY OF 2005.

9 Q. ALL RIGHT. DO YOU THINK IT WAS AFTER THE 17TH OF JANUARY  
10 OR BEFORE?

11 A. I DON'T KNOW.

12 Q. AND DO YOU RECALL CALLING ANYONE TO FIND OUT ABOUT THE  
13 HEALTH OF GERALDINE HOLDEN DURING THIS TIME PERIOD?

14 A. IT MAY BE I CALLED HER HOUSE. IT MAY BE I JUST MADE A  
15 PHONE CALL TO SEE IF I COULD TALK WITH HER. I'M NOT SURE. I  
16 REMEMBER SOMETHING ABOUT THAT.

17 Q. GERALDINE HOLDEN WAS AN EMPLOYEE IN 1979, WITH THE  
18 MARSHAL SERVICE, IS THAT RIGHT?

19 A. YES.

20 Q. AND, OF COURSE, SHE BY THE TIME -- THE TIME FRAME WE'RE  
21 TALKING ABOUT, 2005 TIME FRAME, SHE HAD RETIRED?

22 A. SHE HAD RETIRED.

23 Q. AND DID YOU LEARN THAT HER HEALTH WAS BAD OR GOOD?

24 A. I THINK I LEARNED THAT HER HEALTH WAS VERY BAD, THAT SHE  
25 WAS AT THAT TIME QUITE ILL.

September 17, 2012

Smith/Cross

Page 172

1 Q. AND DID YOU MAKE THAT CALL IN THE YEAR 2004?

2 A. I CAN'T IMAGINE IT BECAUSE I NEVER TALKED TO MR. BRITT --  
3 I HAD NOT TALKED TO MR. BRITT TILL 2005.

4 Q. SO, THE CALL WOULD HAVE BEEN AFTER YOU TALKED TO MR.  
5 BRITT?

6 A. IF I EVER MADE THAT CALL AT ALL, IT WOULD BE AFTER I  
7 TALKED TO MR. BRITT.

8 Q. BUT AS A RESULT OF THE CALL IF YOU MADE IT, YOU NEVER GOT  
9 A CHANCE TO TALK TO MS. HOLDEN?

10 A. NO. IT SEEMS TO ME THAT I WAS TOLD THAT SHE WAS IN NO  
11 CONDITION TO SPEAK. I MAY BE WRONG ABOUT THAT, BUT I THINK  
12 THAT'S TRUE.

13 Q. ALL RIGHT. LET'S LOOK AT LINE 23 ON THE SAME PAGE, 23  
14 AND 24, AND THEN WE'LL GO OVER TO THE -- I'M SORRY, 22 THROUGH  
15 24, AND THEN WE'LL GO OVER TO THE NEXT PAGE. CAN YOU READ  
16 THAT?

17 A. YES.

18 MR. SMITH: WHAT WERE YOU ASKED TO DO?

19 MR. BRITT: I WAS ASKED TO TRAVEL FROM RALEIGH,  
20 NORTH CAROLINA, TO CHARLESTON, SOUTH CAROLINA, TO ASSUME  
21 CUSTODY OF A PROTECTED WITNESS, A WITNESS BY THE NAME OF  
22 HELENA STOECKLEY.

23 Q. NOW, AS FAR AS THE TOWN IN SOUTH CAROLINA THAT DEFINITELY  
24 COMES FROM MR. BRITT AND NOT FROM YOU?

25 A. YES.

September 17, 2012

Smith/Cross

Page 173

1 Q. OKAY. LET'S GO DOWN TO LINE 13 ON PAGE 12, AND READ 13  
2 THROUGH 16, PLEASE.

3 A. MR. SMITH: AND WHERE WAS SHE IN CHARLESTON?

4 MR. BRITT: SHE WAS AT THE UNITED STATES MARSHAL'S  
5 OFFICE IN CHARLESTON, SOUTH CAROLINA.

6 Q. SO, MR. BRITT IS RECALLING TO YOU THAT HE PICKED UP  
7 HELENA STOECKLEY AT THE UNITED STATES MARSHAL'S OFFICE IN  
8 CHARLESTON, SOUTH CAROLINA, IS THAT RIGHT?

9 A. YES. YES.

10 Q. NOW, LET'S MOVE ON TO PAGE 13. EXCUSE ME A MINUTE.

11 (PAUSE.)

12 I'M SORRY, LET'S JUMP BACK TO PAGE 12, AND YOU  
13 NOTICE 17 THROUGH 19 THE BOYFRIEND ERNEST IS MENTIONED?

14 A. YES.

15 Q. OKAY. NOW, LET'S GO ON TO PAGE 13 AND LOOK AT LINE THREE  
16 THROUGH TEN. READ THOSE, PLEASE, QUESTION AND ANSWER.

17 A. MR. SMITH: DO YOU REMEMBER HOW SHE WAS DRESSED? I KNOW  
18 IT'S BEEN 25 OR 30 YEARS, BUT DO YOU REMEMBER HOW SHE WAS  
19 DRESSED?

20 MR. BRITT: YES, SIR. SHE HAD ON -- SHE HAD ON A --  
21 SHE HAD ON THIS FLOPPY HAT THAT'S BEEN DESCRIBED PREVIOUSLY IN  
22 THE COURSE OF THE INVESTIGATION AND TRIAL AND SHE WAS DRESSED  
23 IN A LONG SKIRT, HIPPIE-TYPE LOOKING LADY.

24 Q. SO, MR. BRITT IS SAYING THAT WHEN HE PICKED HELENA  
25 STOECKLEY UP SHE HAD ON THE FLOPPY HAT THAT'S BEEN THE SUBJECT

September 17, 2012



Smith/Cross

Page 174

1 OF THIS INVESTIGATION?

2 A. I DON'T KNOW WHETHER IT'S THE SAME ONE, BUT HE SAID THAT.

3 Q. ALL RIGHT. NOW, LOOK AT LINES 11 THROUGH 15, AND READ  
4 THE QUESTION AND ANSWER THERE.

5 A. MR. SMITH: DID ANYONE ACCOMPANY YOU ON THE JOURNEY?

6 MR. BRITT: YES, SIR. GERRY HOLDEN, WHO WAS AN  
7 ADMINISTRATIVE PERSON IN THE UNITED STATES MARSHAL'S OFFICE  
8 HERE IN RALEIGH.

9 Q. AND THAT'S A FEMALE GERRY, IS THAT RIGHT?

10 A. YES.

11 Q. OKAY. NOW, IF YOU WOULD GO AHEAD AND READ THE REST OF  
12 THE PAGE.

13 A. MR. SMITH: DID ANYONE ACCOMPANY YOU ON THE JOURNEY?

14 MR. BRITT: YES, SIR, GERRY HOLDEN AND SO ON.

15 MR. SMITH: NOW, WHEN YOU PICKED UP MS. STOECKLEY,  
16 DID HER FRIEND ERNEST ACCOMPANY HER AND YOU BACK TO NORTH  
17 CAROLINA?

18 MR. BRITT: YES, SIR, THEY DID.

19 MR. SMITH: WHERE DID MS. STOECKLEY RIDE IN THE CAR?  
20 WHERE DID HER BOYFRIEND ERNEST RIDE?

21 MR. BRITT: THEY RODE IN THE BACK SEAT OF THE CAR.

22 Q. SO, MR. BRITT'S STATEMENT TO YOU UNDER OATH WAS THAT HE  
23 -- THAT ERNEST DAVIS ALSO ACCOMPANIED THEM IN THE CAR RIDING  
24 FROM CHARLESTON TO RALEIGH?

25 A. YES.

September 17, 2012

1 Q. DID MR. BRITT TELL YOU WHAT HE KNEW ABOUT THE CURRENT  
2 CONDITION OF GERALDINE HOLDEN?

3 A. I DON'T REMEMBER.

4 Q. BY CURRENT, I MEAN --

5 A. AT THAT TIME.

6 Q. FEBRUARY 24TH, 2005.

7 A. I DON'T REMEMBER.

8 Q. ALL RIGHT. LET'S LOOK AT PAGE 14, LINES TEN THROUGH 17,  
9 IF YOU'D READ THAT, PLEASE.

10 A. MR. SMITH: DID SHE ON HER OWN, WITHOUT ANY PROMPTING  
11 FROM YOU, ENDEAVOR TO TALK ANY ABOUT THE MACDONALD CASE?

12 MR. BRITT: YES, DURING THE COURSE OF THE TRAVELS  
13 FROM CHARLESTON, SOUTH CAROLINA, TO RALEIGH, WITHOUT ANY  
14 PROMPTING FROM ME WHATSOEVER, SHE BROUGHT UP THE MATTER OF THE  
15 TRIAL OF MACDONALD.

16 MR. SMITH: AND WHAT DID SHE TELL YOU ABOUT THE  
17 TRIAL?

18 MR. BRITT: SHE SPECIFICALLY TOLD ME IN THE PRESENCE  
19 OF GERRY HOLDEN WHILE RIDING FROM CHARLESTON TO RALEIGH,  
20 SPECIFICALLY MADE MENTION OF A HOBBY HORSE, THAT SHE IN FACT  
21 -- THAT SHE IN FACT WAS AT JEFFREY MACDONALD'S HOME AND/OR  
22 APARTMENT AND THAT SHE MADE REFERENCE TO A HOBBY HORSE IN  
23 JEFFREY MACDONALD'S LIVING ROOM.

24 Q. ALL RIGHT. THANK YOU. NOW, THE HOBBY HORSE WAS NOT IN  
25 THE LIVING ROOM WAS IT IN ACTUAL FACT?

1 A. I DON'T REMEMBER.

2 Q. ALL RIGHT. LET'S GO ON TO PAGE -- SAME PAGE, PAGE 15.  
3 15 THROUGH 21, IF YOU'D READ THAT QUESTION AND ANSWER, PLEASE.

4 A. MR. SMITH: ARE THEY AMONG THE MOST IMPORTANT WORDS  
5 YOU'VE EVER HEARD IN YOUR LIFE IN CONNECTION WITH ANY CASE OR  
6 ANY OF YOUR OFFICIAL WORK?

7 MR. BRITT: YES, SIR, THAT'S CORRECT, AND ESPECIALLY  
8 SPECIFICALLY THE JEFFREY MACDONALD TRIAL, YES, SIR.

9 Q. SO, THE WORDS MOST IMPORTANT YOU'VE HEARD IN YOUR LIFE  
10 ACTUALLY FIRST CAME FROM YOU, NOT HIM, IS THAT RIGHT?

11 A. INDEED. THAT'S RIGHT.

12 Q. NOW, LET'S MOVE TO PAGE 16 AND LOOK AT QUESTION AND  
13 ANSWER SIX THROUGH -- LINE SIX THROUGH 16, IF YOU'D READ THAT,  
14 PLEASE.

15 A. MR. SMITH: ALL RIGHT. NOW, WHAT HAPPENED NEXT? YOU  
16 MADE IT TO NORTH CAROLINA, AND THEN WHAT HAPPENED?

17 MR. BRITT: I CHECKED HER IN AT THE HOLIDAY INN  
18 HOTEL OVER ON HILLSBOROUGH STREET, AND SHE AND ERNEST DEPARTED  
19 THE LOBBY -- I GAVE THEM THE KEY, AND THEY DEPARTED THE LOBBY  
20 AND WENT UP TO THEIR ROOMS. AND I DIDN'T SEE HELENA OR ERNEST  
21 UNTIL THE NEXT MORNING WHEN I WENT OVER TO THE MOTEL -- OR  
22 EXCUSE ME, THE HOTEL TO PICK THEM UP AND BRING THEM TO COURT.

23 Q. LET'S PUT GX-2377 BACK ON THE SCREEN, GOVERNMENT EXHIBIT  
24 2377. THAT'S THE HOLIDAY INN ON HILLSBOROUGH STREET, RIGHT?

25 A. YES, IT IS.

September 17, 2012

Smith/Cross

Page 177

1 Q. ALL RIGHT. GO BACK TO THE PAGE OF THE TRANSCRIPT,  
2 PLEASE. I'M SORRY, GOVERNMENT EXHIBIT 2086 AT PAGE 16. SO,  
3 HERE IS THE ANSWER YOU JUST READ AT LINES NINE THROUGH 16.  
4 MR. BRITT IS SAYING THAT HE TOOK HELENA STOECKLEY AND ERNEST,  
5 THE BOYFRIEND, TO THE HILLSBOROUGH STREET HOLIDAY INN AND THEY  
6 CHECK IN AS HOTEL GUESTS?

7 A. YES.

8 Q. AND THAT HE WENT BACK THERE THE NEXT MORNING TO PICK THEM  
9 UP TO TAKE THEM TO COURT?

10 A. YES.

11 Q. ALL RIGHT. LET'S LOOK AT PAGE 17 AT LINES 13 THROUGH 15.  
12 IF YOU COULD READ THE QUESTION IN LINE 12 AND READ THE ANSWER  
13 IN 13 THROUGH 15, PLEASE.

14 A. WHAT HAPPENED AFTER THAT?

15 MR. BRITT: I ESCORTED HER TO THE EIGHTH FLOOR TO  
16 JIM BLACKBURN'S OFFICE, WHO WAS AT THAT TIME THE UNITED STATES  
17 ATTORNEY.

18 Q. WAS MR. BLACKBURN THE UNITED STATES ATTORNEY?

19 A. MR. ANDERSON WAS THE U.S. ATTORNEY. MR. BLACKBURN WAS  
20 HIS ASSISTANT.

21 Q. ALL RIGHT. LET'S LOOK AT -- HOLD ON A MINUTE. LET'S  
22 LOOK AT LINE 24 ON PAGE 17, AND THEN YOU CAN CONTINUE READING  
23 THROUGH LINE SIX ON THE NEXT PAGE.

24 A. LINE 24.

25 MR. SMITH: NOW, WHEN YOU -- WHEN YOU DELIVERED

September 17, 2012

Smith/Cross

Page 178

1 HELENA STOECKLEY TO MR. BLACKBURN, DID MR. BLACKBURN MAKE ANY  
2 COMMENT TO YOU ABOUT REMAINING IN THE ROOM?

3 MR. BRITT: YES, SIR. HE ASKED ME TO REMAIN IN THE  
4 ROOM AND HER BOYFRIEND ERNEST SAT OUTSIDE IN THE ADJOINING  
5 OFFICE.

6 Q. ALL RIGHT. SO, MR. BRITT IS TELLING YOU UNDER OATH THAT  
7 MR. BLACKBURN ASKED HIM TO COME INTO THE ROOM WHERE THE  
8 INTERVIEW WAS GOING TO TAKE PLACE, BUT ERNEST COULD NOT COME  
9 IN?

10 A. YES.

11 Q. NOW, JUMP DOWN TO LINE 15, AND READ YOUR QUESTION AND  
12 ANSWER THROUGH LINE 18.

13 A. NOW, DO YOU REMEMBER ANYONE ALSO BEING IN THE ROOM?

14 MR. BRITT: NO, SIR, I DON'T RECALL ANYONE ELSE  
15 BEING IN THE ROOM.

16 Q. AND SO JIM BRITT IS TELLING YOU UNDER OATH THAT THE ONLY  
17 PEOPLE IN THE ROOM WERE HIM, JIM BLACKBURN AND HELENA  
18 STOECKLEY?

19 A. YES.

20 Q. AND MOVE FORWARD TO PAGE 19, LINE FOUR, WITH THE QUESTION  
21 AND THEN LINE NINE WITH THE ANSWER.

22 A. MR. SMITH: DO YOU RECALL WHETHER MS. STOECKLEY TOLD MR.  
23 BLACKBURN THE SAME THING, EXPRESSED THE SAME IDEAS, THAT SHE  
24 HAD EXPRESSED TO YOU ON THE WAY UP TO NORTH CAROLINA FROM  
25 SOUTH CAROLINA?

September 17, 2012

1 MR. BRITT: YES, SIR. SHE SPOKE FREELY, I THINK,  
2 WITH MR. BLACKBURN. AND NOT HER -- AND HER -- HER TESTIMONY,  
3 IF IT WAS TESTIMONY IN THE INTERVIEW OR WHATEVER, SHE TALKED  
4 VERY FREELY TO MR. BLACKBURN. SHE SPECIFICALLY MENTIONED THIS  
5 HOBBY HORSE AND VARIOUS OTHER THINGS, TOLD MR. BLACKBURN THAT  
6 SHE HAD BEEN INSIDE OF MR. JEFFREY MACDONALD'S HOME AND/OR  
7 APARTMENT. AND AS I RECALL, MR. BLACKBURN ASKED HER WHY SHE  
8 WAS THERE.

9 Q. SO, IN THIS QUESTION AND ANSWER, YOU ASKED MR. BRITT IF  
10 MS. STOECKLEY EXPRESSED THE SAME IDEAS TO MR. BLACKBURN THAT  
11 SHE HAD TOLD HIM ON THE RIDE TO NORTH CAROLINA FROM SOUTH  
12 CAROLINA?

13 A. YES.

14 Q. AND HE SAID, YES, SIR?

15 A. YES.

16 Q. LET'S LOOK AT PAGE 21. IF YOU WOULD START READING AT  
17 LINE 11 AND GO TO LINE 23.

18 A. MR. BRITT: AT THE CONCLUSION, MR. BLACKBURN STATED TO  
19 HELENA STOECKLEY -- AFTER SHE HAD GIVEN THE HISTORY OF HER  
20 VISIT TO JEFFREY MACDONALD'S HOME, MR. BLACKBURN STATED TO  
21 HELENA STOECKLEY THAT IF YOU GO DOWNSTAIRS AND TESTIFY BEFORE  
22 THE JURY AS TO WHAT YOU HAVE TOLD ME OR SAID TO ME HERE IN  
23 THIS OFFICE, I WILL INDICT YOU FOR MURDER.

24 Q. AND THEN YOUR NEXT QUESTION?

25 A. MR. SMITH: NOW, MR. BRITT, THE IMPORTANCE OF THOSE WORDS

Smith/Cross

Page 180

1 WAS NOT LOST ON YOU EITHER?

2 MR. BRITT: NO, SIR, THEY WERE NOT. HAVE NEVER  
3 BEEN.

4 Q. OKAY. SO, ONCE AGAIN, THE IMPORTANCE OF THE WORDS COMES  
5 FROM THE QUESTION, NOT THE ANSWER?

6 A. YES.

7 Q. ALL RIGHT. LET'S LOOK AT PAGE 22, STARTING AT LINE FIVE,  
8 AND I'M GOING TO ASK YOU TO READ ALL THE WAY OVER TO PAGE 23,  
9 LINE THREE. STARTING AT LINE FIVE, PAGE 22.

10 A. MR. BRITT: I TOOK HELENA STOECKLEY FROM THE EIGHTH FLOOR  
11 BY ELEVATOR DOWN TO THE SEVENTH FLOOR, AND TOOK HER IN THE  
12 HALLWAY DOWN IN THE DIRECTION OF JUDGE DUPREE'S CHAMBERS,  
13 WHERE THERE IS A DOOR ON THE FRONT (SIC) THAT ENTERS THE  
14 COURTROOM. AND I THINK -- AND I TOOK HELENA STOECKLEY INTO THE  
15 COURTROOM, AND WHILE IN THE PROCESS OF THIS TAKING HER INTO  
16 THE COURTROOM, WHILE IN THE PROCESS, MR. BLACKBURN WENT INTO  
17 JUDGE DUPREE'S CHAMBERS.

18 MR. SMITH: ALL RIGHT. AND HOW LONG WOULD HE HAVE  
19 BEEN IN THERE SO FAR AS YOU KNOW?

20 MR. BRITT: WELL, WHEN I TOOK HELENA STOECKLEY IN  
21 THE COURTROOM, THERE WAS -- NONE OF THE JURORS WERE PRESENT;  
22 THE JUDGE WAS NOT PRESENT. AND ONLY THE ATTORNEYS WERE  
23 PRESENT, THAT IS, YOU AND THE OTHER ATTORNEY.

24 MR. SMITH: MR. SEGAL?

25 MR. BRITT: MR. SEGAL. IN A MATTER OF ABOUT TEN-

September 17, 2012

Smith/Cross

Page 181

1 PLUS MINUTES, MAYBE 15 MINUTES AT THE MOST, IS WHEN JUDGE  
2 DUPREE AND THE U.S. ATTORNEY JIM BLACKBURN CAME BACK INTO THE  
3 COURTROOM.

4 MR. SMITH: NOW, WHEN YOU ENTERED THE DOOR THAT MR.  
5 BLACKBURN ENTERED GOING TOWARD OR INTO JUDGE DUPREE'S  
6 CHAMBERS, IS THERE ANY OTHER ROOM INTO WHICH HE COULD HAVE  
7 BEEN GOING OTHER THAN THE JUDGE'S OFFICE?

8 MR. BRITT: NO, SIR. NO, SIR.

9 MR. SMITH: IN OTHER WORDS, THERE'S NOT A HALLWAY  
10 THERE HE COULD HAVE ENTERED AND --

11 MR. BRITT: THAT DOOR IS LOCKED.

12 MR. SMITH: ALL RIGHT.

13 MR. BRITT: THE DOOR IS LOCKED IN THE HALLWAY.

14 Q. OKAY. WELL, LET'S JUST KEEP READING DOWN THROUGH LINE  
15 THREE ON THE NEXT PAGE AND THEN I'LL ASK YOU SOME QUESTIONS.

16 A. MR. BRITT: THAT DOOR IS LOCKED.

17 MR. SMITH: ALL RIGHT.

18 MR. BRITT: THE DOOR IS LOCKED IN THE HALLWAY.

19 MR. SMITH: YES.

20 MR. BRITT: THE HALLWAY DOOR IS LOCKED.

21 MR. SMITH: NOW, WHEN YOU ENTER THE COURTROOM AFTER  
22 SEEING MR. BLACKBURN ENTER JUDGE DUPREE'S CHAMBERS, DID YOU  
23 SEE MR. MACDONALD'S LAWYERS IN THE COURTROOM?

24 MR. BRITT: YES, SIR, I DID. YEAH.

25 MR. SMITH: SO, IS YOUR TESTIMONY -- YOUR TESTIMONY

September 17, 2012



Smith/Cross

Page 182

1 TODAY IS THAT THERE IS NO WAY THOSE LAWYERS WERE ALSO IN JUDGE  
2 DUPREE'S CHAMBERS?

3 MR. BRITT: NO, SIR, THEY WERE NOT. THEY WERE NOT,  
4 NO, SIR.

5 Q. ALL RIGHT. IS THE GIST OF THIS STATEMENT TO YOU BY MR.  
6 BRITT UNDER OATH IS THAT HE SAW MR. BLACKBURN GO INTO JUDGE  
7 DUPREE'S CHAMBERS APPARENTLY TO HAVE SOME EX PARTE  
8 COMMUNICATION?

9 A. YOU KNOW, I DIDN'T FOLLOW UP ON THAT WITH MR. BRITT. IT  
10 WAS A PART OF HIS STORY. I ASSUMED THAT'S WHAT HE WAS SAYING.

11 Q. SO, HE SAID IN ANY EVENT THAT AFTER THE PROSECUTION  
12 INTERVIEW THAT HE HAD -- SAID HE SAT IN ON THAT'S WHEN THIS IS  
13 HAPPENING?

14 A. YES.

15 Q. AFTER THE PROSECUTION INTERVIEW HE WAS TAKING HELENA  
16 STOECKLEY BACK TO THE COURTROOM, IS THAT RIGHT?

17 A. YES.

18 Q. AND HE SAYS THAT WHILE HE WAS DOING THAT HE SAW JIM  
19 BLACKBURN ENTER JUDGE DUPREE'S CHAMBERS, IS THAT RIGHT?

20 A. YES.

21 Q. AND THEN HE PROCEEDED INTO THE COURTROOM WHERE YOU AND  
22 MR. SEGAL WERE WAITING ALREADY, IS THAT RIGHT?

23 A. YES. YES.

24 Q. AND THAT IT WAS TEN-PLUS, MAYBE 15 MINUTES, BEFORE JUDGE  
25 DUPREE AND JIM BLACKBURN ENTERED THE COURTROOM?

September 17, 2012

Smith/Cross

Page 183

1 A. YES.

2 Q. THAT'S THE GIST OF WHAT HE WAS TELLING YOU THEN?

3 A. I THINK SO, YES.

4 Q. AND YET I BELIEVE THAT YOU TESTIFIED ON DIRECT  
5 EXAMINATION THAT JIM BRITT TOLD YOU THAT HE RESPECTED JUDGE  
6 DUPREE ENORMOUSLY?

7 A. HE DID.

8 Q. NOW, IF WE COULD TURN TO THE ISSUE OF THE POLYGRAPH.

9 A. YES.

10 MR. BRUCE: MAY I HAVE A MOMENT, PLEASE?

11 (PAUSE.)

12 BY MR. BRUCE:

13 Q. OKAY. THIS WOULD BE GOVERNMENT EXHIBIT -- I'M SORRY,  
14 DEFENDANT EXHIBIT 5057, THE POLYGRAPH REPORT. WOULD YOU PUT  
15 THAT UP? YOU TESTIFIED ABOUT THIS ON DIRECT EXAMINATION, IS  
16 THAT RIGHT?

17 A. YES.

18 Q. AND THIS POLYGRAPH WAS DONE BY MR. STEVE DAVENPORT?

19 A. IT WAS.

20 Q. AND IT WAS DONE ON MAY 24, 2005, WHICH WOULD HAVE BEEN --

21 A. YES.

22 Q. -- A COUPLE OF MONTHS AFTER THE STATEMENT UNDER OATH IN  
23 YOUR OFFICE?

24 A. THAT'S RIGHT.

25 Q. AND ARE YOU AWARE THAT SOMETIME PRIOR TO 2006, MR.

September 17, 2012

Smith/Cross

Page 184

1 DAVENPORT HAD A STROKE? HAVE YOU HEARD THAT?

2 A. YES.

3 Q. AND ARE YOU AWARE THAT WHEN GOVERNMENT AUTHORITIES TRIED  
4 TO CONTACT HIM TO FOLLOW UP ON THIS AFTER IT HAD BEEN FILED HE  
5 COULDN'T ANSWER ANY QUESTIONS?

6 A. I'M AWARE OF THAT.

7 Q. AND APPARENTLY HE DOESN'T HAVE ANY -- WELL, LET ME ASK  
8 YOU THIS, DO YOU HAVE ANY BACK UP RECORDS OTHER THAN JUST THIS  
9 REPORT?

10 A. NO.

11 Q. FREQUENTLY WHEN THERE'S A POLYGRAPH GIVEN, THE  
12 POLYGRAPHER DEVELOPS CHARTS FROM THE EQUIPMENT, IS THAT RIGHT?

13 A. YES, AND I -- HE WAS VERY GOOD AND I'M ASSUMING THAT AT  
14 ONE TIME HE HAD THOSE THINGS.

15 Q. BUT YOU DON'T HAVE THEM?

16 A. NO, I DON'T.

17 Q. AND AS FAR AS YOU KNOW, THE CURRENT MACDONALD LAWYERS  
18 DON'T HAVE THEM?

19 A. NO.

20 Q. AND SO THERE'S NO WAY TO EXAMINE THE -- TO HAVE ANOTHER  
21 EXPERT LOOK AT THE CHARTS --

22 A. NO.

23 Q. -- AND CHECK THE OPINION, IS THAT RIGHT?

24 A. NO.

25 Q. AND IN GIVING A POLYGRAPH, ISN'T IT CUSTOMARY TO

September 17, 2012

Smith/Cross

Page 185

1 ESTABLISH A BASELINE FOR TRUTHFULNESS?

2 A. YES, THAT'S CUSTOMARY. AND I DON'T KNOW WHETHER MR.  
3 DAVENPORT DID THAT, BUT I ASSUME WHAT YOU MEAN IS SOME  
4 QUESTIONS WOULD BE ASKED UNRELATED TO THE SUBJECT MATTER THAT  
5 ARE SHOCKING OR TO TEST HOW YOU WOULD RESPOND AND I ASSUME HE  
6 DID THAT, BUT I DON'T KNOW.

7 Q. SO, THE POINT IS THEN TO COMPARE THE NON-MACDONALD  
8 QUESTIONS TO THE RESPONSES RELATED TO THE MACDONALD CASE?

9 A. YES.

10 Q. AND FROM THIS REPORT WE CAN'T TELL ANY OF THAT?

11 A. WE CANNOT, BUT I CERTAINLY WOULD BELIEVE MR. DAVENPORT  
12 WAS EXCELLENT IN HIS WORK AND WOULD HAVE DONE IT RIGHT.

13 Q. NOW, THE SPECIFIC QUESTIONS THAT ARE REFLECTED IN THE  
14 REPORT WERE, NUMBER ONE, AND THIS WOULD BE ON -- YOU CAN SHOW  
15 HIM PAGE TWO. NUMBER ONE; DID YOU HEAR HELENA STOECKLEY TELL  
16 JIM BLACKBURN SHE HAD SEEN A BROKEN HOBBY HORSE WHILE SHE WAS  
17 INSIDE THE MACDONALD HOME?

18 A. YES.

19 Q. AND THE SECOND ONE WAS DID YOU HEAR JIM BLACKBURN TELL  
20 HELENA STOECKLEY HE WOULD INDICT HER FOR MURDER IF SHE  
21 TESTIFIED SHE HAD BEEN INSIDE THE MACDONALD HOME?

22 A. YES.

23 Q. AND THE THIRD ONE WAS ARE YOU NOW LYING ABOUT THE  
24 CONVERSATION BETWEEN JIM BLACKBURN AND HELENA STOECKLEY?

25 A. YES.

September 17, 2012

Smith/Cross

Page 186

1 Q. AND SO HE WAS NOT POLYGRAPHED ON THE QUESTION OF WHETHER  
2 HE TRANSPORTED HELENA STOECKLEY FROM SOUTH CAROLINA TO  
3 RALEIGH?

4 A. NO.

5 Q. AND TO YOUR RECOLLECTION ON THE JIM BRITT STATEMENTS THAT  
6 WE'VE LOOKED AT SO FAR, DID HE REALLY SAY THAT HELENA  
7 STOECKLEY HAD SEEN A BROKEN HOBBY HORSE?

8 A. I DON'T REMEMBER WHETHER HE SAID BROKEN.

9 Q. AND HOW DID MR. DAVENPORT DECIDE ON THESE QUESTIONS TO  
10 ASK?

11 A. WELL, I'M SURE THAT HE CONSULTED WITH ME AND I'M SURE HE  
12 CONSULTED WITH MR. BRITT AND HE WOULD HAVE ASKED MR. BRITT THE  
13 QUESTIONS THAT WERE THE KEY TO THE UNDERSTANDING OF THE TRUTH  
14 THAT WAS BEING QUESTIONED.

15 Q. ALL RIGHT. LET'S MOVE FORWARD THEN TO GOVERNMENT EXHIBIT  
16 287, WHICH I BELIEVE IS THE SAME AS DEFENSE -- 2087. I KEEP  
17 MAKING THAT MISTAKE.

18 MR. BRUCE: I'M SORRY, YOUR HONOR.

19 BY MR. BRUCE:

20 Q. GOVERNMENT EXHIBIT 2087, WHICH IS THE SAME EXHIBIT AS  
21 DEFENSE EXHIBIT 5058. AND LET'S START OUT BY LOOKING AT THE  
22 LAST PAGE, 2087.4. JUST TO ORIENT YOU, THIS IS THE OCTOBER  
23 26TH AFFIDAVIT.

24 A. YES.

25 (GOVERNMENT EXHIBIT NUMBER 2087

September 17, 2012

1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. AND AT THE BOTTOM ON THAT PAGE, DO YOU KNOW THIS LADY  
3 EARP THAT NOTARIZED THIS?

4 A. YES.

5 Q. DID SHE WORK IN YOUR OFFICE?

6 A. SHE WORKED IN MY OFFICE.

7 Q. OKAY. NOW, THE LAST STATEMENT APART FROM THE POLYGRAPH  
8 BEFORE THIS ONE WAS ON FEBRUARY 24TH, IN THE SWORN STATEMENT  
9 WE WENT THROUGH, RIGHT?

10 A. YES.

11 Q. IN BETWEEN FEBRUARY 24TH, 2005, AND OCTOBER 26TH, 2005,  
12 DID YOU AND MR. JUNKIN INVESTIGATE FACTS RELATED TO BRITT'S  
13 CLAIM?

14 A. I'M SURE WE DID SOME. I DON'T REMEMBER WHAT WE DID.

15 Q. FOR INSTANCE, DID EITHER YOU OR MR. JUNKIN READ TRIAL  
16 TRANSCRIPTS, PORTIONS OF TRIAL TRANSCRIPTS?

17 A. NO, I DIDN'T. NO.

18 Q. DO YOU KNOW IF MR. JUNKIN DID?

19 A. I DON'T. NO.

20 Q. ALL RIGHT. LOOKING AT 2087, LET'S LOOK AT PAGE TWO,  
21 PARAGRAPH TEN. IF YOU WOULD READ THAT, PLEASE.

22 A. I DID NOT COME FORWARD PREVIOUSLY WITH THE INFORMATION  
23 SHARED WITH MR. SMITH AND WHICH I NOW SHARE WITH THE COURT OUT  
24 OF RESPECT FOR THE LATE JUDGE FRANKLIN DUPREE, WHO PRESIDED  
25 OVER THE TRIAL, AND OTHERS WHO WERE WITH THE COURTS AT THE

September 17, 2012

1 TIME OF THE MACDONALD TRIAL.

2 WORKING ON THE SIDE OF LAW ENFORCEMENT IN THE  
3 COURTHOUSE WAS MY CAREER. I DID NOT WANT TO BETRAY OR APPEAR  
4 TO BE BETRAYING THE PEOPLE I WORKED WITH AND RESPECTED. I  
5 CONSIDERED MYSELF A LOYAL OFFICER OF THE COURT AND I STILL DO,  
6 BUT ULTIMATELY I DECIDED THAT I HAD A DUTY TO COME FORWARD.

7 Q. OKAY. SO, HERE, AGAIN, HE'S SAYING HE WAITED OUT OF  
8 RESPECT FOR THE LATE JUDGE FRANKLIN DUPREE?

9 A. YES.

10 Q. ALL RIGHT. NOW, LET'S READ PARAGRAPH 11, PLEASE.

11 A. WHAT I SHARED WITH MR. SMITH IS THAT DURING THE JEFFREY  
12 MACDONALD TRIAL IN MY CAPACITY AS THE UNITED STATES MARSHAL  
13 ASSIGNED TO THE DISTRICT COURT WHERE MACDONALD WAS TRIED I WAS  
14 ASSIGNED TO TRAVEL TO GREENVILLE, SOUTH CAROLINA, TO ASSUME  
15 CUSTODY OF A WITNESS BY THE NAME OF HELENA STOECKLEY.

16 I PICKED MS. STOECKLEY UP AT THE COUNTY JAIL IN  
17 GREENVILLE, SOUTH CAROLINA, AND DROVE HER BACK TO RALEIGH.

18 Q. NOW, I BELIEVE ON DIRECT EXAMINATION YOU TESTIFIED THAT  
19 THIS WAS CONSISTENT WITH HIS STATEMENT IN GOVERNMENT EXHIBIT  
20 2086, THE SWORN STATEMENT. DO YOU REMEMBER TESTIFYING TO  
21 THAT?

22 A. I DON'T REMEMBER THAT I TESTIFIED TO IT OR NOT, BUT I  
23 THINK THAT IT IS GENERALLY CONSISTENT. THAT IS, HE WENT TO  
24 SOUTH CAROLINA AND PICKED UP HELENA STOECKLEY AND BROUGHT HER  
25 BACK TO NORTH CAROLINA.

September 17, 2012

Smith/Cross

Page 189

1 Q. BUT THERE IS A MAJOR INCONSISTENCY IN THAT THIS SAYS  
2 GREENVILLE --

3 A. YES.

4 Q. -- AND HIS PRIOR SWORN STATEMENT SAID CHARLESTON?

5 A. THAT'S RIGHT.

6 Q. AND THE LOCATION OF GREENVILLE, SOUTH CAROLINA, DOES NOT  
7 APPEAR ANYWHERE IN THE SWORN STATEMENT?

8 A. YES.

9 Q. IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. NOW, LET'S SEE IF WE CAN PUT UP GOVERNMENT EXHIBIT 2102.  
12 NO, LET'S TRY 2103. 2104. OKAY. DO YOU RECOGNIZE THIS AS A  
13 MAP OF SOUTH CAROLINA?

14 A. I DO.

15 (GOVERNMENT EXHIBIT NUMBER 2104  
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. ALL RIGHT. CAN YOU POINT OUT GENERALLY WHERE CHARLESTON  
18 IS?

19 A. CHARLESTON WOULD BE DOWN ON THE RIGHT SIDE OF THE MAP  
20 DOWN IN LOW COUNTRY SOUTH CAROLINA IS WHAT I WOULD CALL IT.

21 Q. OKAY. MAYBE WE CAN BLOW IT UP A LITTLE BIT. AND DO YOU  
22 SEE CHARLESTON ON THE MAP DOWN THERE?

23 A. YES, I DO. YES.

24 Q. OKAY. AND IT'S ON THE COAST?

25 A. YES.

September 17, 2012



1 Q. AND DO YOU SEE GREENVILLE IN THE UPPER LEFT-HAND CORNER?

2 A. I SEE IT, YES.

3 Q. AND WOULD YOU AGREE WITH ME THAT CHARLESTON AND  
4 GREENVILLE ARE ABOUT AS FAR APART AS YOU CAN GET IN THE STATE  
5 OF SOUTH CAROLINA?

6 A. I THINK IT IS. I THINK THEY ARE, YES.

7 Q. ALL RIGHT. NOW, LET'S LOOK AT PARAGRAPH 13. ONCE AGAIN  
8 HE'S SAYING THAT GERRY HOLDEN ACCOMPANIED HIM ON THE TRIP BACK  
9 TO RALEIGH, IT DOESN'T SAY --

10 A. YES.

11 Q. -- FROM WHERE, THOUGH, RIGHT?

12 A. YES.

13 Q. ALL RIGHT. LOOK AT PARAGRAPH 15 NOW AND READ THAT,  
14 PLEASE.

15 A. DURING THE COURSE OF TRAVEL FROM CHARLESTON TO RALEIGH,  
16 WITHOUT ANY PROMPTING FROM ME WHATSOEVER, MS. STOECKLEY  
17 BROUGHT UP THE MATTER OF THE TRIAL OF MACDONALD. SHE TOLD ME  
18 IN THE PRESENCE OF GERRY HOLDEN ABOUT A HOBBY HORSE IN THE  
19 MACDONALD HOME AND THAT SHE, IN FACT, ALONG WITH OTHERS, WAS  
20 IN JEFFREY MACDONALD'S HOME ON THE NIGHT OF THE MACDONALD  
21 MURDERS.

22 Q. ALL RIGHT. SO, IN PARAGRAPH 15, WE'RE BACK TO BEING A  
23 CHARLESTON TO RALEIGH TRIP, IS THAT RIGHT?

24 A. YES.

25 Q. ALL RIGHT. NOW, WOULD YOU READ PARAGRAPH 16, PLEASE?

Smith/Cross

Page 191

1 A. I KNEW AT THE TIME THAT WHAT MS. STOECKLEY HAD SAID WAS  
2 VERY IMPORTANT AND IT WAS SOMETHING I WAS NOT ABOUT TO FORGET.  
3 I REMEMBER HER WORDS CLEARLY AND THEY ARE AMONG THE MOST  
4 IMPORTANT WORDS I'VE EVER HEARD IN MY LIFE IN CONNECTION WITH  
5 ANY CASE OR ANY OF MY OFFICIAL WORK.

6 Q. SO, HERE, MR. BRITT HAS ESSENTIALLY ADOPTED THE WORDS OF  
7 YOUR QUESTIONING IN A PREVIOUS STATEMENT AND MADE IT HIS  
8 STATEMENT?

9 A. WELL, HE'S ADOPTED, I THINK, MY WORDS, BUT THOSE WORDS I  
10 CHOSE WERE TO DESCRIBE WHAT HE WAS EXPRESSING TO ME.

11 Q. ALL RIGHT. LET'S GO FORWARD TO 2087.3, PAGE THREE, AND  
12 READ PARAGRAPH 20.

13 A. WHEN I DELIVERED HELENA STOECKLEY TO THE U.S. ATTORNEY'S  
14 OFFICE, MR. BLACKBURN ASKED ME TO REMAIN IN THE ROOM. THIS  
15 WAS NOT AN UNUSUAL OCCURRENCE. I HAD BEEN ASKED TO SIT IN THE  
16 ROOM BY GOVERNMENT ATTORNEYS MANY TIMES IN MY CAREER.

17 Q. SO, TWO THINGS HERE. MR. BRITT IS SAYING IN HIS  
18 AFFIDAVIT THAT MR. BLACKBURN ASKED HIM TO REMAIN IN THE ROOM  
19 DURING FOR THE INTERVIEW AND THAT THAT WAS NOT AN UNUSUAL  
20 OCCURRENCE?

21 A. NOT AN UNUSUAL OCCURRENCE?

22 Q. RIGHT.

23 A. YES.

24 Q. NOT UNUSUAL FOR AN ASSISTANT U.S. ATTORNEY OR U.S.  
25 ATTORNEY TO ASK HIM TO REMAIN IN THE ROOM DURING AN INTERVIEW?

September 17, 2012

1 A. THAT'S RIGHT.

2 Q. NOW, WOULD YOU READ PARAGRAPH 21, PLEASE?

3 A. AS I RECALL, MR. BLACKBURN SAT DOWN AT A DESK THAT WAS  
4 SET AT AN ANGLE IN THE NORTHEAST CORNER OF THE OFFICE. THERE  
5 WERE SEVERAL CHAIRS POSITIONED IN FRONT OF THE DESK. HELENA  
6 STOECKLEY SAT IN THE CENTER CHAIR IN FRONT OF THE DESK AND I  
7 SAT OVER TO THE SIDE NEXT TO THE WINDOW.

8 Q. OKAY. AND YOU DON'T KNOW ANYTHING ABOUT HOW THE ROOM  
9 LOOKED WHEN THEY WERE UP THERE, RIGHT?

10 A. I DON'T THINK I'VE EVER BEEN IN THAT ROOM. I MAY HAVE,  
11 BUT I DON'T THINK SO.

12 Q. ALL RIGHT. NOW, LET'S MOVE FORWARD TO PARAGRAPH 26. I'M  
13 SORRY, LET'S LOOK AT 22. READ 22, IF YOU WOULD.

14 A. AFTER MS. STOECKLEY WAS SETTLED IN THE ROOM MR. BLACKBURN  
15 BEGAN TO INTERVIEW HER. MS. STOECKLEY TOLD MR. BLACKBURN THE  
16 SAME THINGS SHE HAD STATED TO ME ON THE TRIP FROM CHARLESTON  
17 TO RALEIGH.

18 SHE SPECIFICALLY MENTIONED A HOBBY HORSE AND VARIOUS  
19 OTHER THINGS AND SPECIFICALLY TOLD MR. BLACKBURN THAT SHE,  
20 ALONG WITH OTHERS, HAD BEEN INSIDE JEFFREY MACDONALD'S HOME ON  
21 THE NIGHT OF THE MURDERS. SHE ALSO SAID THAT SHE HAD GONE TO  
22 THE MACDONALD HOUSE TO ACQUIRE DRUGS.

23 Q. ALL RIGHT. SO, HERE, AGAIN, MR. BRITT'S STATEMENT SAYS  
24 THAT WHAT HE TOLD -- WHAT HELENA STOECKLEY TOLD BLACKBURN WAS  
25 THE SAME THING MS. STOECKLEY TOLD HIM TRAVELING FROM

September 17, 2012

1 CHARLESTON TO RALEIGH?

2 A. YES.

3 Q. ALL RIGHT. LET'S SKIP TO PARAGRAPH 26 AND READ THAT,  
4 PLEASE.

5 A. I'M NOT CERTAIN AS TO WHETHER OTHER ATTORNEYS BESIDES MR.  
6 BLACKBURN WERE IN THE ROOM DURING THE STOECKLEY INTERVIEW. IT  
7 IS POSSIBLE GEORGE ANDERSON, THE UNITED STATES ATTORNEY AT THE  
8 TIME, AND/OR BRIAN MURTAGH, THE OTHER GOVERNMENT PROSECUTOR,  
9 OR OTHERS ASSOCIATED WITH THE PROSECUTION WERE THERE EITHER  
10 WHEN I ENTERED THE ROOM WITH MS. STOECKLEY OR AFTER I ENTERED  
11 WITH HER. THEY MAY HAVE COME IN AND LEFT AT SOME POINT, TAKEN  
12 A BREAK OR GONE OUT OF THE ROOM.

13 I HAVE A RECOLLECTION OF MS. STOECKLEY ASKING FOR A  
14 SANDWICH DURING THE INTERVIEW AND SOMEONE OTHER THAN MYSELF  
15 GOING TO SEE ABOUT IT.

16 Q. OKAY. READ ON TO THE END OF THE PARAGRAPH. IT WILL GO  
17 OVER TO THE NEXT PAGE.

18 A. BUT MY CLEAR RECOLLECTION IS THAT ONLY MR. BLACKBURN, MS.  
19 STOECKLEY AND I WERE IN THE ROOM AT THE TIME MR. BLACKBURN  
20 SAID THESE WORDS TO MS. STOECKLEY.

21 Q. OKAY. SO, MR. BRITT IS SAYING IN THIS AFFIDAVIT THAT  
22 THERE MAY HAVE BEEN OTHER ATTORNEYS AT TIMES IN THE ROOM  
23 DURING THE INTERVIEW, IS THAT RIGHT?

24 A. YES.

25 Q. BUT AT THE CRUCIAL MOMENT WHERE THE WORDS FROM MR.

September 17, 2012

1 BLACKBURN TO MS. STOECKLEY WERE MADE IT WAS JUST THE THREE OF  
2 THEM IN THE ROOM?

3 A. THAT'S RIGHT.

4 Q. BLACKBURN, STOECKLEY AND BRITT?

5 A. YES.

6 Q. OKAY. NOW, JUMPING BACK TO THE DEFENSE INTERVIEW  
7 EARLIER, DO YOU RECALL THAT AT SOME POINT TOWARD THE END OF  
8 HELENA STOECKLEY'S INTERVIEW WITH THE DEFENSE THAT SHE WAS  
9 BROUGHT A BOLOGNA SANDWICH TO EAT?

10 A. YES.

11 Q. OKAY. SO, SHE HAD ALREADY HAD A SANDWICH BEFORE THE  
12 PROSECUTION INTERVIEW?

13 A. YES.

14 Q. NOW, WOULD YOU READ PARAGRAPH 27, PLEASE?

15 A. UPON THE CONCLUSION OF THE INTERVIEW, I TOOK HELENA  
16 STOECKLEY FROM THE EIGHTH FLOOR BY STAIRWAY DOWN TO THE  
17 SEVENTH FLOOR AND TOOK HER INTO THE COURTROOM.

18 Q. ALL RIGHT. NOW, WOULD YOU READ PARAGRAPH 28, PLEASE?

19 A. DURING THE COURSE OF THE TRIAL, I OBSERVED WHAT I FELT TO  
20 BE UNETHICAL STANDARDS BY THE UNITED STATES DISTRICT COURT  
21 JUDGE, FRANKLIN T. DUPREE. JURORS ASKED ME ON TWO OCCASIONS  
22 TO TAKE CAKES TO JUDGE DUPREE. I TOOK THE CAKES AND PRESENTED  
23 THEM TO JUDGE DUPREE AND TOLD HIM THEY CAME FROM THE JURORS.

24 JUDGE DUPREE CAME OUT OF HIS CHAMBERS AND THANKED  
25 THE JURORS FOR THE CAKES. I OBSERVED THE JUDGE AND MEMBERS OF

September 17, 2012

1 HIS STAFF EATING THE CAKES.

2 Q. SO, MR. BRITT IS SAYING HERE THAT HE OBSERVED UNETHICAL  
3 STANDARDS BY JUDGE DUPREE, IS THAT RIGHT?

4 A. YES.

5 Q. BUT PREVIOUSLY HE STATED TO YOU THAT HE HAS THE UTMOST  
6 RESPECT FOR JUDGE DUPREE?

7 A. HE HAS.

8 Q. ALL RIGHT. LET'S MOVE FORWARD TO GOVERNMENT EXHIBIT  
9 2088, PLEASE, AND LET'S GO TO THE LAST PAGE, .4. DO YOU  
10 RECOGNIZE THE NOTARY ON THIS AFFIDAVIT, MR. SMITH?

11 A. NO, I DON'T, BUT, YOU KNOW, IT COULD BE SOMEONE CONNECTED  
12 WITH MY OFFICE AT THAT TIME. I JUST DON'T KNOW.

13 Q. OKAY. CAN YOU READ THE NAME?

14 A. IT LOOKS LIKE JUDY HAYES.

15 (GOVERNMENT EXHIBIT NUMBER 2088  
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. ALL RIGHT. WELL, LET'S BACKUP. OCTOBER 26TH, YOU DO  
18 RECALL THAT LEE TART CAME WITH JIMMY BRITT TO YOUR OFFICE TO  
19 EXECUTE THAT AFFIDAVIT, IS THAT RIGHT?

20 A. I THINK HE DID. LEE TART USUALLY CAME.

21 Q. IN FACT, IF YOU REMEMBER WAY BACK UP WHEN WE STARTED THIS  
22 IN THE FIRST SWORN STATEMENT, PUT UP 2085, PLEASE, IN THE LAST  
23 PARAGRAPH JIM BRITT SAYS THAT HE REQUESTS LEE TART BE PRESENT  
24 AT ANY AND ALL MEETINGS AND POTENTIAL COURT HEARINGS?

25 A. YES.

September 17, 2012

Smith/Cross

Page 196

1 Q. AND SO MR. BRITT AND MR. TART LEFT YOUR OFFICE ON OCTOBER  
2 26TH. HOW DID IT COME ABOUT THAT THEY RETURNED OR SOMEBODY  
3 RETURNED -- MR. BRITT RETURNED ON NOVEMBER THE 3RD?

4 A. I DON'T KNOW WHETHER I WAS CONCERNED ABOUT THE PARAGRAPH  
5 INVOLVING THE CAKE, BUT I THINK I WAS, AND I THINK THAT I  
6 WANTED MR. BRITT TO DO ANOTHER AFFIDAVIT AND NOT PUT THAT IN  
7 THE AFFIDAVIT. AND I BELIEVE THAT WAS IT.

8 THOUGH, I DO NOTE THAT CHARLESTON IS NOT IN THIS  
9 AFFIDAVIT, BUT GREENVILLE IS IN THIS AFFIDAVIT. AND IT COULD  
10 VERY WELL BE THAT I DECIDED THAT I WANTED TO GET THAT CORRECT.  
11 I JUST DON'T REMEMBER. BUT I DO REMEMBER NOT WANTING TO  
12 ADVANCE THE IDEA OF THE CAKE.

13 Q. DO YOU REMEMBER THAT MR. TART DID NOT ACCOMPANY MR. BRITT  
14 ON THIS NOVEMBER THE 3RD TRIP?

15 A. NO, I DON'T REMEMBER THAT.

16 Q. DO YOU KNOW IF MR. TART IS THE ONE WHO POINTED OUT TO MR.  
17 BRITT THAT PARAGRAPH 15 SAID CHARLESTON?

18 A. I DO NOT.

19 Q. OKAY. WERE YOU PRESENT WHEN MR. BRITT RETURNED TO THE  
20 OFFICE ON NOVEMBER 3RD, TO SIGN THE NEW AFFIDAVIT?

21 A. I DON'T REMEMBER.

22 Q. NOW, THE ONLY DIFFERENCES IN THIS AFFIDAVIT AS YOU  
23 TESTIFIED ON DIRECT EXAMINATION, GOVERNMENT EXHIBIT 2088, PAGE  
24 TWO, PARAGRAPH 15, CHARLESTON HAS BEEN CHANGED TO GREENVILLE?

25 A. YES, SIR.

September 17, 2012

1 Q. AND WAS THAT YOUR SUGGESTION?

2 A. I DON'T REMEMBER.

3 Q. OKAY.

4 A. AND I THINK THE REFERENCE TO THE CAKE WAS REMOVED.

5 Q. ALL RIGHT. AND THEN ALSO IN PARAGRAPH 22, THIS SAID  
6 CHARLESTON BEFORE IN THE PREVIOUS AFFIDAVIT, DID IT NOT?

7 A. I THINK THAT'S RIGHT.

8 Q. AND THIS ONE WAS CHANGED TO GREENVILLE?

9 A. YES.

10 Q. SOMETIME AFTER THE ORIGINAL SWORN STATEMENT ON FEBRUARY  
11 24TH, DID SOMEONE TELL JIM BRITT THAT CHARLESTON WASN'T RIGHT  
12 AND IT NEEDED TO BE GREENVILLE?

13 A. I DON'T -- I DON'T REMEMBER.

14 Q. ALL RIGHT. AND THEN THE ONLY OTHER CHANGE FROM THE  
15 OCTOBER 26TH AFFIDAVIT TO THE NOVEMBER 3RD AFFIDAVIT IS  
16 PARAGRAPH 28, WHICH USED TO BE ABOUT THE CAKE AND JUDGE  
17 DUPREE. IT SAYS SOMETHING COMPLETELY DIFFERENT NOW?

18 A. YES.

19 Q. AND THAT WAS YOUR IDEA?

20 A. YES.

21 Q. NOW, I BELIEVE IT WAS YOUR TESTIMONY CONCERNING THE CAKE  
22 AND JUDGE DUPREE THAT YOU FELT IT WAS UNIMPORTANT, NO BIG  
23 DEAL?

24 A. I DID.

25 Q. BUT THAT WAS NOT JIMMY BRITT'S OPINION, WAS IT?



Smith/Cross

Page 198

1 A. WELL, HE OBVIOUSLY WANTED TO MAKE AN ISSUE OF IT AND FELT  
2 THAT IT SHOULDN'T HAVE BEEN DONE, BUT MY SENSE OF IT WAS THAT  
3 I DIDN'T -- IT DIDN'T BOTHER ME IN THE LEAST IF A JUROR  
4 BROUGHT THE JUDGE A CAKE. I WANT THE JUROR TO BE HAPPY. I  
5 WANT THE JURORS TO BE JOYFUL. I WANT THEM TO BE IN A GOOD  
6 MOOD. HAPPY JURORS DON'T FIND PEOPLE GUILTY.

7 Q. NOW, IF IT'S -- IT WAS THE NOVEMBER 3RD AFFIDAVIT,  
8 GOVERNMENT EXHIBIT 2088, THAT WAS ATTACHED TO JEFFREY  
9 MACDONALD'S 2255 PETITION WHEN IT WAS FILED IN '06?

10 A. I DON'T -- I DON'T KNOW.

11 Q. OKAY. BECAUSE YOU WERE OUT OF THE CASE?

12 A. I WAS OUT OF THE CASE.

13 Q. OKAY. NOW, HAVE YOU SEEN ANOTHER STATEMENT THAT JIM  
14 BRITT GAVE ON -- LET ME SEE THE DATE HERE. IT'S GOVERNMENT  
15 EXHIBIT 2089.

16 A. YES, I HAVE SEEN THAT IN THE LAST FEW DAYS. IT MAY BE  
17 THAT I HAD SEEN THAT BEFORE. I DON'T REMEMBER IF I DID.

18 Q. ONE LAST QUESTION ABOUT THE CAKE. WAS IT BRITT'S  
19 STATEMENT THAT HE WAS THE ONE THAT CARRIED THE CAKE FROM THE  
20 JURY INTO JUDGE DUPREE'S CHAMBERS?

21 A. I THINK WHAT HE SAID WAS THE JURORS HAD THE CAKE AND HE  
22 DIRECTED THE JURORS SO THAT THEY COULD GIVE THE CAKE TO JUDGE  
23 DUPREE. I BELIEVE THAT'S RIGHT.

24 Q. ALL RIGHT. NOW, LET'S LOOK AT GOVERNMENT EXHIBIT 2089,  
25 WHICH YOU SAY YOU HAVE SEEN IN THE LAST FEW DAYS.

September 17, 2012

Smith/Cross

Page 199

1 A. AND IT MAY BE I SAW IT LONG AGO, I JUST DON'T REMEMBER.

2 Q. WELL, AGAIN, LET'S START WITH THE END OF IT SO WE CAN  
3 GET THE DATE AND SO FORTH. IT'S THE NEXT PAGE. YOU SEE IT'S  
4 DATED FEBRUARY 28TH, 2006?

5 A. YES, IT'S IN 2006. YES.

6 (GOVERNMENT EXHIBIT NUMBER 2089  
7 WAS IDENTIFIED FOR THE RECORD.)

8 Q. AND DO YOU KNOW LAURA J. REDD, THE NOTARY PUBLIC?

9 A. NO.

10 Q. DO YOU THINK THAT'S MAYBE SOMEONE WHO WORKS WITH MR. HART  
11 MILES?

12 A. I DO. I MEAN, I DON'T KNOW THAT FOR SURE, BUT I DON'T  
13 THINK THAT PERSON WORKS FOR ME.

14 Q. SO, THIS WOULD BE AFTER THE FILING OF MR. MACDONALD'S  
15 2255 PETITION, IS THAT RIGHT?

16 A. I'M ASSUMING SO.

17 Q. AND YOU'RE NOT IN THE CASE?

18 A. I'M OUT.

19 Q. OKAY. LET'S LOOK AT PAGE ONE OF GOVERNMENT EXHIBIT 2089,  
20 AND I'M GOING TO GET YOU TO READ THIS, BUT DO YOU SEE WHERE  
21 IT SAYS THAT ON AUGUST 14TH, BRITT WAS DIRECTED BY HUGH SALTER  
22 TO TRAVEL TO GREENVILLE?

23 A. YES, I DO.

24 Q. AND DO YOU SEE IN THE MIDDLE OF THAT PARAGRAPH WHERE HE  
25 SAYS HE TRAVELED TO THE GREENVILLE COUNTY JAIL, GREENVILLE,

September 17, 2012

1 SOUTH CAROLINA?

2 A. I DO.

3 Q. AND THEN HE SAYS HE TOOK CUSTODY OF HELENA STOECKLEY ON A  
4 MATERIAL WITNESS WARRANT?

5 A. YES.

6 Q. AND THEN HE SAYS HE TRAVELED BACK TO RALEIGH WHERE HE  
7 COMMITTED HER TO THE WAKE COUNTY JAIL?

8 A. I DO.

9 Q. NO MENTION HERE OF TAKING HER TO THE HOLIDAY INN TO CHECK  
10 IN, IS THAT RIGHT?

11 A. THAT'S RIGHT, YES.

12 Q. DO YOU SEE WHERE IT SAYS ON THE MORNING OF AUGUST 15TH,  
13 '79, MS. HOLDEN AND I WENT TO THE WAKE COUNTY JAIL AND AGAIN  
14 TOOK CUSTODY?

15 A. YES.

16 Q. IN THE SECOND PARAGRAPH. DO YOU SEE IN THE MIDDLE OF  
17 THAT PARAGRAPH WHERE IT SAYS AT APPROXIMATELY 12:00 NOON AT  
18 THE CONCLUSION OF THEIR INTERVIEW HE ESCORTED MS. STOECKLEY TO  
19 THE U.S. ATTORNEY'S OFFICE?

20 A. YES.

21 Q. ACTUALLY, WE'VE SEEN FROM THE TRANSCRIPTS TODAY AND YOUR  
22 RECOLLECTION THAT IT WAS CLOSER TO TWO O'CLOCK RATHER THAN  
23 12:00 NOON, RIGHT?

24 A. PERHAPS.

25 Q. AND ALSO HAVEN'T WE ESTABLISHED THAT THE INTERVIEWS BY

September 17, 2012

Smith/Cross

Page 201

1 THE DEFENSE AND THE PROSECUTION TOOK PLACE ON THURSDAY, AUGUST  
2 16TH, 1979?

3 A. I THINK SO.

4 Q. NOW, YOU SEE IN THE SECOND PARAGRAPH WHERE HE STATES THAT  
5 MR. ANDERSON AND MR. BLACKBURN, WHO HE IDENTIFIES AS LEAD  
6 PROSECUTOR, YOU SEE THAT?

7 A. WAS MR. BLACKBURN LEAD PROSECUTOR?

8 Q. I'M SAYING DOES MR. BRITT IN THIS STATEMENT IDENTIFY JIM  
9 BLACKBURN AS THE LEAD PROSECUTOR?

10 A. YES, I THINK SO.

11 Q. AND HE STATES THAT MR. ANDERSON, JIM BLACKBURN AND BRIAN  
12 MURTAGH WERE PRESENT?

13 A. YES. AND AS A MATTER OF FACT, I NEVER CONSIDERED MR.  
14 BLACKBURN TO BE ANY MORE LEAD PROSECUTOR THAN MR. MURTAGH. I  
15 MEAN, I ASSUMED THAT THEY SHARED IT EQUALLY, BUT THAT'S BESIDE  
16 THE POINT.

17 Q. ALL RIGHT.

18 THE COURT: WE'RE GOING TO TAKE OUR AFTERNOON BREAK,  
19 COUNSEL. WE'LL TAKE A RECESS UNTIL 3:45.

20 (RECESS TAKEN FROM 3:31 P.M., UNTIL 3:44 P.M.)

21 (DEFENDANT PRESENT.)

22 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.

23 MR. BRUCE.

24 MR. BRUCE: THANK YOU, YOUR HONOR.

25 BY MR. BRUCE:

September 17, 2012

Smith/Cross

Page 202

1 Q. WE'RE STILL TALKING, MR. SMITH, ABOUT GOVERNMENT EXHIBIT  
2 2089.

3 A. YES.

4 Q. WHICH IS THE FEBRUARY 28TH, 2006, ADDENDUM OF JIMMY  
5 BRITT, DO YOU RECALL THAT?

6 A. I REMEMBER.

7 Q. ALL RIGHT. LET'S LOOK AT THE THIRD UNNUMBERED PARAGRAPH  
8 AND IF YOU COULD JUST READ THAT.

9 A. DURING THE COURSE OF THE INTERVIEW, MR. BLACKBURN IN MY  
10 PRESENCE, AND MR. MURTAGH HAS STATED HE WAS PRESENT DURING THE  
11 ENTIRE INTERVIEW, STATED TO MS. STOECKLEY IF YOU GO DOWNSTAIRS  
12 AND TESTIFY THAT YOU WERE AT DR. JEFFREY MACDONALD'S HOUSE ON  
13 THE NIGHT OF THE MURDERS, I WILL INDICT YOU AS AN ACCESSORY TO  
14 MURDER.

15 Q. ALL RIGHT. NOW, JIM BRITT IS SAYING HERE THAT DURING THE  
16 COURSE OF THE INTERVIEW BLACKBURN SAID IN HIS PRESENCE THE  
17 STATEMENT, IS THAT RIGHT?

18 A. YES. MR. BLACKBURN IN MY PRESENCE.

19 Q. ALL RIGHT.

20 A. YES.

21 Q. AND THEN THERE'S THIS PHRASE INSERTED AND MR. MURTAGH HAS  
22 STATED THAT HE WAS PRESENT DURING THE ENTIRE INTERVIEW. WHAT  
23 DOES THAT MEAN? STATED TO WHOM?

24 A. I DON'T KNOW.

25 Q. OKAY. UNNUMBERED PARAGRAPH FOUR, WOULD YOU READ THAT,

September 17, 2012

1 PLEASE?

2 A. ON AUGUST 17, I ESCORTED MS. STOECKLEY FROM THE WAKE  
3 COUNTY JAIL TO THE U.S. DISTRICT COURT AND SHE TOOK THE  
4 WITNESS STAND BEFORE THE JURY AND STATED, IN ESSENCE, THAT SHE  
5 DID NOT KNOW ANYTHING ABOUT THE MURDERS. I MIGHT ADD THAT SHE  
6 WAS SCARED TO DEATH.

7 Q. OKAY. DO YOU KNOW IF JIMMY BRITT WITNESSED THE TESTIMONY  
8 OF HELENA STOECKLEY?

9 A. I DO NOT.

10 Q. ALL RIGHT. IN THE NEXT PARAGRAPH WOULD YOU READ THE  
11 FIRST SENTENCE?

12 A. SHE WAS RELEASED ON AUGUST 17, AS A MATERIAL WITNESS BY  
13 JUDGE DUPREE.

14 Q. ALL RIGHT. WELL, AUGUST 17TH WAS THE FRIDAY OF HER  
15 TESTIMONY, IS THAT RIGHT?

16 A. YES.

17 Q. ALL RIGHT. AND THEN READ THE SECOND SENTENCE.

18 A. A SUBPOENA WAS ISSUED, WHICH I SERVED ON MS. STOECKLEY,  
19 AND SHE WAS ADMONISHED BY THE COURT TO APPEAR WHEN AND IF SHE  
20 WAS AGAIN CALLED AS A WITNESS.

21 Q. ALL RIGHT. THEN DO YOU SEE THE SENTENCE WHERE IT SAYS I  
22 THEN TOOK MS. STOECKLEY?

23 A. YES.

24 Q. AND READ THAT SENTENCE.

25 A. I THEN TOOK MS. STOECKLEY TO A MOTEL IN RALEIGH CALLED

September 17, 2012

1 THE JOURNEY'S END.

2 Q. ALL RIGHT. NOW, AT THIS POINT MS. STOECKLEY WAS NO  
3 LONGER IN CUSTODY, IS THAT RIGHT, SHE HAD BEEN RELEASED AND  
4 PUT UNDER SUBPOENA BY YOU?

5 A. I THINK THAT'S RIGHT.

6 Q. AND DO YOU RECALL MR. SEGAL'S STATEMENT TO THE COURT THAT  
7 ORIGINALLY MS. STOECKLEY UPON BEING RELEASED WENT TO THE  
8 DOWNTOWNER AND CHECKED IN?

9 A. I DO.

10 Q. AND ONLY LATER MOVED TO THE JOURNEY'S END?

11 A. I THINK SO.

12 Q. BECAUSE THE DOWNTOWNER WAS GOING TO BE THE DEFENSE  
13 HEADQUARTERS HOTEL?

14 A. THAT'S RIGHT.

15 Q. WOULD YOU READ THE LAST SENTENCE OF THE LAST PARAGRAPH ON  
16 THIS PAGE STARTING WITH CHIEF DEPUTY?

17 A. CHIEF DEPUTY U.S. MARSHAL EDDIE SIGMON CALLED ME AT MY  
18 RESIDENCE AND ASKED ME TO GO TO THE JOURNEY'S END AND CHECK  
19 MS. STOECKLEY OUT OF THE MOTEL AND TO REGISTER HER AT THE  
20 HOLIDAY INN HILLSBOROUGH STREET, RALEIGH, NORTH CAROLINA,  
21 WHICH I DID.

22 Q. OKAY. AND LET'S PULL UP GOVERNMENT EXHIBIT 2377. SO,  
23 THAT WOULD BE A REFERENCE TO THAT STRUCTURE RIGHT THERE, IS  
24 THAT RIGHT?

25 A. YES.

September 17, 2012

Smith/Cross

Page 205

1 Q. ALL RIGHT. LET'S GO TO THE NEXT PAGE OF THIS ADDENDUM.  
2 WOULD YOU READ THAT FIRST UNNUMBERED PARAGRAPH, PLEASE?

3 A. ON MONDAY, AUGUST 20TH, JUDGE DUPREE OUTSIDE THE PRESENCE  
4 OF THE JURY STATED AS A MATTER OF RECORD THAT HE WAS NOT GOING  
5 TO PERMIT MS. STOECKLEY TO TESTIFY AGAIN, STATED THAT HER  
6 BRAIN WAS SCRAMBLED LIKE AN EGG.

7 THE JURY WAS SUMMONED AND THEY WERE SEATED IN THE  
8 JURY BOX. JUDGE DUPREE DIRECTED THE JURORS NOT TO CONSIDER  
9 ANY EVIDENCE BY MS. STOECKLEY ON FRIDAY, AUGUST 17.

10 Q. NOW, AS YOU KNOW, JUDGE DUPREE DID NOT RULE THAT HE WAS  
11 NOT GOING TO PERMIT MS. STOECKLEY TO TESTIFY AGAIN, IS THAT  
12 RIGHT?

13 A. AS I RECALL, THAT'S RIGHT.

14 Q. BECAUSE SHE WAS LEFT UNDER YOUR SUBPOENA THAT ENTIRE WEEK  
15 SUBJECT TO RECALL?

16 A. YES.

17 Q. AND AS LATE AS FRIDAY OF THE FOLLOWING WEEK OR THAT WEEK  
18 YOU WERE STILL HOLDING OUT THE POSSIBILITY OF RECALLING HER?

19 A. YES.

20 Q. AND DID JUDGE DUPREE STATE THAT HER BRAIN WAS SCRAMBLED  
21 LIKE AN EGG?

22 A. I DON'T REMEMBER IT IF HE DID.

23 Q. ALL RIGHT. NOW, IT ALSO SAYS IN THIS PARAGRAPH THAT  
24 JUDGE DUPREE DIRECTED THE JURORS NOT TO CONSIDER THE TESTIMONY  
25 BY MS. STOECKLEY ON FRIDAY, AUGUST 17. THAT'S NOT TRUE, IS

September 17, 2012



1 IT?

2 A. I DON'T THINK SO.

3 Q. THE TESTIMONY WAS IN FRONT OF THE JURY AND THEY WERE ABLE  
4 TO CONSIDER IT WHEN THEY CONSIDERED THEIR VERDICT, IS THAT  
5 RIGHT?

6 A. I THINK SO.

7 Q. ALL RIGHT. WOULD YOU READ THE LAST PARAGRAPH, PLEASE?

8 A. HUGH SALTER, U.S. MARSHAL, ASKED ME TO GO TO THE U.S.  
9 MARSHAL'S OFFICE AND SEE MRS. REDDICK AND THAT SHE WOULD GIVE  
10 ME A CHECK FOR FOUR DAYS OF SUBSISTENCE.

11 HE ASKED ME TO CASH THE CHECK AND GO TO THE BUS  
12 STATION AND PURCHASE MS. STOECKLEY A ONE-WAY TICKET TO  
13 CHARLESTON, SOUTH CAROLINA, WHICH I DID, AND FOR ME TO GO TO  
14 THE HOLIDAY INN, HILLSBOROUGH STREET IN RALEIGH, AND CHECK HER  
15 OUT OF THE HOTEL AND TAKE HER TO THE BUS STATION AND MAKE SURE  
16 SHE GOT ON THE BUS AND GIVE HER THE BALANCE OF HER  
17 SUBSISTENCE.

18 THIS WAS ON AUGUST THE 20TH, 1979. I HAVE NOT SEEN  
19 OR HEARD FROM HER SINCE.

20 Q. ALL RIGHT. NOW, AS WE'VE DISCUSSED, IT WAS A FACT THAT  
21 AT THIS POINT MS. STOECKLEY'S SUBSISTENCE WAS THE  
22 RESPONSIBILITY OF THE MACDONALD DEFENSE, IS THAT RIGHT?

23 A. YES.

24 Q. AND MS. STOECKLEY DID NOT TRAVEL ON A ONE-WAY TICKET TO  
25 CHARLESTON, SOUTH CAROLINA, BECAUSE SHE REMAINED THERE THE

September 17, 2012

Smith/Cross

Page 207

1 REST OF THE WEEK UNDER YOUR SUBPOENA, IS THAT RIGHT?

2 A. I THINK THAT'S RIGHT.

3 Q. AND MS. STOECKLEY, AS FAR AS YOU KNOW, DOES SHE HAVE ANY  
4 CONNECTION WHATSOEVER TO CHARLESTON, SOUTH CAROLINA?

5 A. NO, NOT THAT I -- NOT THAT I KNOW OF.

6 Q. AND MR. BRITT STATES THAT ALL THIS HAPPENED ON AUGUST  
7 20TH, 1979, WHICH WOULD HAVE BEEN THE MONDAY FOLLOWING HER  
8 FRIDAY TESTIMONY, RIGHT?

9 A. YES.

10 Q. AND THAT DAY YOU WERE IN COURT PRESENTING SOME OF THE  
11 STOECKLEY WITNESSES, IS THAT RIGHT?

12 A. I THINK SO.

13 Q. AND MS. STOECKLEY WAS STILL SUBJECT TO RECALL THAT ENTIRE  
14 WEEK?

15 A. I THINK SO.

16 Q. ALL RIGHT. LET ME PUT UP ON THE SCREEN GOVERNMENT  
17 EXHIBIT 2074. DO YOU REMEMBER ON DIRECT EXAMINATION YOU WERE  
18 SHOWN A PHOTOGRAPH AND YOU IDENTIFIED HELENA STOECKLEY, JIMMY  
19 BRITT, AND HER BOYFRIEND ERNEST DAVIS?

20 A. I DIDN'T IDENTIFY ERNEST, BUT I NOW SEE ERNEST THERE.  
21 BUT I REMEMBER WHAT -- YES, I DID.

22 (GOVERNMENT EXHIBIT NUMBER 2074

23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. OKAY. IS THIS PHOTOGRAPH IN GOVERNMENT EXHIBIT 2074  
25 SHOWN IN THE NEWSPAPER ARTICLE THE SAME PHOTOGRAPH THAT YOU

September 17, 2012

Smith/Cross

Page 208

1 IDENTIFIED ON DIRECT EXAMINATION?

2 A. IT DOES APPEAR TO BE.

3 Q. ALL RIGHT. AND WOULD YOU READ THE CAPTION OF THE DATE OF  
4 THE *NEWS & OBSERVER* ARTICLE?

5 A. AUGUST THE 17TH -- FRIDAY, AUGUST 17, 1979.

6 Q. JUST TAKE A MOMENT TO READ THROUGH THE ARTICLE. YOU  
7 DON'T HAVE TO READ IT ALOUD. JUST READ IT AND I WANT TO ASK  
8 YOU A QUESTION OR TWO ABOUT IT.

9 (PAUSE.)

10 A. ALL RIGHT.

11 Q. LET'S GO BACK TO THE FULL SCREEN, PLEASE. NOW, MY  
12 QUESTION IS THIS PHOTOGRAPH SHOWING DEPUTY MARSHAL JIMMY BRITT  
13 ESCORTING HELENA STOECKLEY -- THAT'S EVEN WHAT THE CAPTION  
14 SAYS, IS THAT RIGHT?

15 A. YES.

16 Q. ALL RIGHT. THIS PHOTOGRAPH COULD WELL BE THE  
17 TRANSPORTATION OF HELENA STOECKLEY TO OR FROM THE WAKE COUNTY  
18 COURTHOUSE TO THE FEDERAL BUILDING ON AUGUST 16TH, 1979?

19 A. YES. I HAVE NO WAY TO KNOW. I MEAN, IT CERTAINLY -- IT  
20 WAS IN THE PAPER THE NEXT DAY, AUGUST 17. SO, THAT WOULD TELL  
21 YOU THAT IT WAS -- IT WAS A PHOTOGRAPH MAYBE TAKEN THE DAY  
22 BEFORE.

23 Q. ALL RIGHT. AND YOU CANNOT IDENTIFY, I BELIEVE YOU  
24 TESTIFIED, THE PLACE WHERE THIS PHOTOGRAPH WAS TAKEN?

25 A. LET ME JUST HAVE A SECOND TO LOOK AT IT AGAIN.

September 17, 2012

Smith/Redirect

Page 209

1 Q. ALL RIGHT.

2 (PAUSE.)

3 A. THE ONLY PLACE THAT I COULD SAY IT LOOKS LIKE WOULD BE AT  
4 THE BACK OF THE FEDERAL BUILDING, THE BACK AT THE LOADING  
5 DOCK.

6 Q. THE BACK OF THE FEDERAL BUILDING IN RALEIGH?

7 A. YES, IT LOOKS LIKE THAT.

8 Q. ALL RIGHT. THANK YOU.

9 A. BUT I DON'T KNOW.

10 MR. BRUCE: THANK YOU. NO FURTHER QUESTIONS.

11 THE COURT: REDIRECT.

12 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

13 R E D I R E C T E X A M I N A T I O N 3:55 P.M.

14 BY MR. WIDENHOUSE:

15 Q. MR. SMITH, MR. BRUCE ASKED YOU ABOUT THE CONNECTION  
16 BETWEEN PRINCE BEASLEY AND MS. STOECKLEY.

17 A. YES.

18 Q. I WANT TO SHOW YOU PAGE 5748 OF THE TRIAL TRANSCRIPT.

19 A. ALL RIGHT.

20 Q. WHICH WOULD HAVE -- APPEARS TO HAVE BEEN ON FRIDAY, THE  
21 17TH?

22 A. YES.

23 Q. IT WAS DURING MR. BEASLEY'S TESTIMONY?

24 A. YES.

25 Q. ALL RIGHT. CAN YOU TAKE ME TO 5748? AND COULD YOU READ

September 17, 2012

Smith/Redirect

Page 210

1 THE FIRST FOUR LINES?

2 A. YES.

3 Q. I'M SORRY, PAGE 5739.

4 A. ALL RIGHT.

5 BY MR. SMITH: QUESTION: DURING THE PERIOD OF TIME  
6 IN WHICH YOU WERE A FAYETTEVILLE POLICE DETECTIVE WOULD YOU  
7 SAY WHETHER OR NOT YOU EVER KNEW HELENA STOECKLEY?

8 ANSWER: YES, I DID.

9 QUESTION: WHEN DID YOU FIRST MEET HER?

10 ANSWER: IN 1968.

11 Q. AND NOW WOULD YOU LOOK AT PAGE 5740 OF THE TRANSCRIPT AND  
12 READ THE HIGHLIGHTED PORTIONS THERE OF THE SAME DIRECT  
13 EXAMINATION OF MR. BEASLEY?

14 A. QUESTION: LET ME INTERRUPT YOU JUST FOR A MOMENT IF I  
15 MAY, MR. BEASLEY. I TAKE IT YOU HAD HAD MANY CONVERSATIONS  
16 WITH MS. STOECKLEY PRIOR TO THAT DAY?

17 ANSWER: YES, I DID.

18 QUESTION: AND YOU FOUND HER TO BE A RELIABLE  
19 PERSON?

20 ANSWER: THE MOST RELIABLE INFORMANT I EVER HAD.

21 Q. OKAY. AND MR. BEASLEY KNEW MS. STOECKLEY OBVIOUSLY?

22 A. YES, HE DID.

23 Q. NOW, WITH REGARD TO SOME QUESTIONS MR. BRUCE ASKED ABOUT  
24 THE DEFENSE INTERVIEW AND WHETHER BERNIE SEGAL SAID ACCORDING  
25 TO APPARENTLY SOME LANGUAGE OUT OF THE BOOK *FATAL VISION* ABOUT

September 17, 2012

Smith/Redirect

Page 211

1 SHE WOULD NOT BE SUBJECT TO THE STATUTE OF LIMITATIONS,  
2 DURING THAT INTERVIEW DID MS. STOECKLEY HAVE A LAWYER?

3 A. NO.

4 Q. SO, WAS ANYONE REPRESENTING HER AT THAT TIME?

5 A. NO.

6 Q. AND YOU WERE SHOWN A COPY OF 18 USC 3282 DURING CROSS-  
7 EXAMINATION --

8 A. YES, I WAS.

9 Q. -- WHICH DEALS WITH THE STATUTES OF LIMITATIONS --

10 A. YES.

11 Q. -- FOR MURDER. DID MR. SEGAL SHOW MS. STOECKLEY DURING  
12 THAT INTERVIEW A COPY OF 18 USC SECTION 3282?

13 A. NO.

14 Q. TO YOUR KNOWLEDGE, WOULD MS. STOECKLEY HAVE HAD ANY  
15 REASON TO BELIEVE BERNIE SEGAL WHEN HE TOLD HER SHE WOULD NOT  
16 HAVE ANY LIABILITY FOR A MURDER CHARGE IN FEDERAL COURT BASED  
17 ON STATUTE OF LIMITATIONS?

18 A. WELL, I MEAN, I DON'T THINK SHE HAD ANY KNOWLEDGE OF THE  
19 LAW, OF STATUTES OF LIMITATIONS. I WOULD SAY THAT SHE  
20 WOULDN'T KNOW BEANS ABOUT STATUTES OF LIMITATIONS.

21 Q. WAS YOUR SENSE IN THE INTERVIEW THAT SHE WAS BEING  
22 SOMEWHAT RELUCTANT AS A WITNESS?

23 A. SHE WAS BEING -- SHE WAS BEING TOTALLY UNCOOPERATIVE IN  
24 EVERY WAY. SHE WASN'T GIVING US ANYTHING.

25 Q. AS A CRIMINAL DEFENSE LAWYER, ARE YOU FAMILIAR WITH THE

September 17, 2012

Smith/Redirect

Page 212

1 CONCEPT OF CONCURRENT JURISDICTION BETWEEN STATE AND FEDERAL  
2 COURT?

3 A. I'VE ALWAYS CALLED IT THE PETITE DOCTRINE, YES.

4 Q. CAN YOU TELL US BRIEFLY WHAT THAT IS?

5 A. WELL, IT MEANS THAT BOTH -- THERE ARE TWO SOVEREIGNS.  
6 THERE'S A FEDERAL SOVEREIGN, WHICH WE MUST OBEY, AND THERE'S A  
7 STATE SOVEREIGN. AND OFTEN -- WELL, YOU HAVE TO SATISFY BOTH  
8 KINGS. YOU HAVE TO SATISFY THE STATE KING AND YOU HAVE TO  
9 SATISFY THE FEDERAL KING AND EACH ONE CAN PROSECUTE YOU. AND  
10 THE FACT THAT ONE PROSECUTES YOU DOESN'T MEAN THAT THE OTHER  
11 CAN'T.

12 Q. AND WOULD THAT MEAN THAT MS. STOECKLEY, IF SHE ADMITTED  
13 TO BEING IN THE MACDONALD HOUSE, COULD POSSIBLY HAVE BEEN  
14 PROSECUTED IN THE STATE COURTS OF NORTH CAROLINA AS WELL AS IN  
15 THE FEDERAL COURT?

16 A. SHE COULD HAVE. THERE IS NO STATUTE OF LIMITATIONS IN  
17 NORTH CAROLINA FOR FELONIES AND THAT CERTAINLY WOULD INCLUDE  
18 MURDER.

19 Q. SO, SHE WOULD NOT HAVE BEEN EXEMPT FROM STATE PROSECUTION  
20 FOR MURDER BASED ON THE STATUTE OF LIMITATIONS?

21 A. NO, SHE WOULD NOT.

22 Q. NOW, THERE WAS A LOT OF DISCUSSION ABOUT THE COLLOQUY AT  
23 THE BENCH WHICH -- WHERE MR. SEGAL WAS SAYING SHE TOLD US SHE  
24 WAS IN THE HOUSE AND YOU SAID SHE GAVE US SOME INQUIRIES INTO  
25 HER MIND --

September 17, 2012

Smith/Redirect

Page 213

1 A. YES.

2 Q. -- WHATEVER THAT MEANS. HOW LONG HAD YOU KNOWN BERNIE  
3 SEGAL BY THE TIME YOU GOT TO THAT POINT IN THE TRIAL?

4 A. ABOUT FOUR MONTHS.

5 Q. AND DID YOU HAVE A SENSE OF HIS REPUTATION AS A LAWYER  
6 BEFORE YOU JOINED ON THE DEFENSE TEAM?

7 A. NO, NOT MUCH.

8 Q. DID YOU HAVE A SENSE OF IN YOUR MIND WHETHER HE WOULD  
9 MISREPRESENT SOMETHING TO THE COURT?

10 A. WELL, I DIDN'T THINK HE WOULD. I DIDN'T THINK HE WOULD  
11 AND I DON'T NOW.

12 Q. OKAY. MR. BRUCE ALSO ASKED YOU ABOUT THE SO-CALLED  
13 STOECKLEY WITNESSES WHERE MR. SEGAL WAS ABLE TO ASK SOME  
14 LEADING QUESTIONS WHERE OBJECTIONS WERE SUSTAINED.

15 A. YES.

16 Q. AND IN THAT SITUATION, WOULD THE JUDGE NOT HAVE AT SOME  
17 POINT INSTRUCTED THE JURY NOT TO CONSIDER QUESTIONS OR ANSWERS  
18 TO WHICH OBJECTIONS WERE SUSTAINED?

19 A. HE MIGHT HAVE. I DON'T REMEMBER, BUT HE MIGHT HAVE --  
20 MIGHT WELL HAVE DONE THAT.

21 Q. AND, IN FACT, WHEN WE WERE LOOKING AT -- WHEN MR. BRUCE  
22 WAS SHOWING YOU THAT TRANSCRIPT, DIDN'T JUDGE DUPREE TELL THE  
23 JURY WHEN OBJECTIONS ARE SUSTAINED, YOU'RE NOT TO CONSIDER  
24 THAT INFORMATION?

25 A. HE DID.

September 17, 2012



Smith/Redirect

Page 214

1 Q. AND DO YOU THINK THE JURY WOULD HAVE LISTENED TO JUDGE  
2 DUPREE?

3 A. I THINK THEY WOULD HAVE.

4 Q. NOW, THERE WAS A NUMBER OF QUESTIONS ABOUT RESPECT FOR  
5 JUDGE DUPREE THAT MR. BLACKBURN SAID HE HAD -- I MEAN, NOT MR.  
6 BLACKBURN, MR. BRITT SAID HE HAD AND THAT WAS WHY HE DELAYED  
7 IN COMING FORWARD.

8 A. YES.

9 Q. YET SOME OF THE THINGS HE SAID WOULD HAVE SUGGESTED HE  
10 THOUGHT JUDGE DUPREE HAD DONE THINGS IMPROPERLY.

11 A. YES.

12 Q. AND DO YOU THINK HE WOULD HAVE DELAYED UNTIL AFTER JUDGE  
13 DUPREE PASSED AWAY TO BRING SOME OF THAT INFORMATION FORWARD  
14 BECAUSE OF THE RESPECT HE HAD FOR JUDGE DUPREE GENERALLY AS A  
15 JUDGE?

16 A. YES, I DO.

17 Q. NOW, MR. BRUCE ASKED YOU ABOUT SOME OF THE FAVORABLE  
18 EVIDENCE TO THE DEFENSE THAT MR. SEGAL BROUGHT OUT IN HIS  
19 CLOSING ARGUMENT. I THINK HE MENTIONED LATEX GLOVE TIPS,  
20 FIBER ON MR. MACDONALD'S GLASSES, UNIDENTIFIED HAIR,  
21 FINGERPRINTS, WAX THAT DIDN'T MATCH CANDLES IN THE HOUSE.

22 A. YES.

23 Q. WOULD THERE HAVE BEEN OTHER EVIDENCE OF INTRUDERS THAT  
24 WOULD HAVE ASSISTED YOU IN MAKING YOUR THEORY OF THE CASE?

25 A. ARE YOU ASKING ME WAS THERE OTHER SUCH EVIDENCE?

September 17, 2012

Smith/Redirect

Page 215

1 Q. IF THERE HAD BEEN OTHER EVIDENCE OF INTRUDERS BESIDES  
2 THESE THINGS THAT HE MENTIONED IN CLOSING ARGUMENT, WOULD THAT  
3 HAVE ASSISTED YOU IN THE CASE?

4 A. INCREDIBLY. I MEAN, WE WERE -- WE'RE DEALING WITH A  
5 LITTLE FIBER FOUND ON HIS GLASSES --

6 THE COURT: EXCUSE ME. WAS IT A FIBER OR A SPOT OF  
7 BLOOD?

8 THE WITNESS: EXCUSE ME?

9 THE COURT: I'M A LITTLE CONFUSED FROM SOMETHING I  
10 READ. WAS IT A FIBER OR A SPECK OF BLOOD?

11 THE WITNESS: I THOUGHT, YOUR HONOR, THAT IT WAS A  
12 SPECK OF BLOOD, BUT I YIELD TO THESE GENTLEMEN.

13 THE COURT: WELL, HE'S ASKED YOU THE QUESTION DO YOU  
14 KNOW WHETHER IT WAS A SPECK OF BLOOD OR A FIBER.

15 THE WITNESS: I DO NOT. I DON'T KNOW WHETHER IT WAS  
16 A FIBER OR A SPECK OF BLOOD. I REMEMBER A SPECK OF BLOOD.

17 THE COURT: THANK YOU. MR. WIDENHOUSE.

18 BY MR. WIDENHOUSE:

19 Q. BUT WHEN YOU WERE READING THE TRANSCRIPT OF THE CLOSING  
20 ARGUMENT, DID THE CLOSING ARGUMENT MENTION A FIBER ON HIS  
21 GLASSES?

22 A. I THINK SO.

23 Q. AND MY POINT IS, DESPITE HAVING THESE PIECES OF EVIDENCE,  
24 DO YOU THINK IT WOULD HAVE BEEN HELPFUL TO HAVE HAD OTHER  
25 EVIDENCE OF AN INTRUDER?

September 17, 2012

1 A. VERY HELPFUL, YES.

2 Q. AND I TAKE IT THAT'S WHY YOU WERE MOST INTERESTED IN  
3 SOMEONE LIKE HELENA STOECKLEY AND STATEMENTS THAT SHE HAD MADE  
4 TO OTHER PEOPLE?

5 A. INDEED, YES.

6 Q. NOW, WHO DID YOU SAY WAS JUDGE DUPREE'S LAW CLERK DURING  
7 THIS TRIAL?

8 A. STEVE COGGINS.

9 Q. DO YOU KNOW WHETHER RICH LEONARD WAS EVER A LAW CLERK FOR  
10 JUDGE DUPREE?

11 A. HE WAS AT ONE TIME AS I RECALL.

12 Q. AND DO YOU KNOW WHETHER JOHN EDWARDS WAS EVER A LAW CLERK  
13 FOR JUDGE DUPREE?

14 A. HE WAS AT ONE TIME.

15 Q. NOW, MR. BRUCE ASKED YOU ABOUT THE VARIOUS AFFIDAVITS,  
16 THE ADDENDUM TO THE AFFIDAVIT, STATEMENT UNDER OATH.

17 A. YES.

18 Q. IN ALL OF THESE DOCUMENTS THAT MR. BRITT EXECUTED UNDER  
19 OATH OR STATEMENTS HE MADE UNDER OATH TO YOU, WAS HE  
20 CONSISTENT IN THE STATE THAT HE SAID HE DROVE TO TO GET HELENA  
21 STOECKLEY?

22 A. HE WAS.

23 Q. AND WHERE WAS THAT?

24 A. SOUTH CAROLINA.

25 Q. AND WAS HE ALWAYS CONSISTENT ABOUT SAYING WHO WENT WITH

Smith/Redirect

Page 217

1 HIM?

2 A. HE WAS, GERRY HOLDER -- HOLDEN.

3 Q. AND WAS HE ALWAYS CONSISTENT ABOUT THE STATEMENT THAT HE  
4 SAID HE HEARD MS. STOECKLEY MAKE ON THE CAR TRIP BACK FROM  
5 SOUTH CAROLINA?

6 A. HE WAS.

7 Q. AND WAS HE ALWAYS CONSISTENT ABOUT THE STATEMENT THAT HE  
8 SAID HE HEARD JIM BLACKBURN MAKE TO HELENA STOECKLEY DURING  
9 THAT INTERVIEW?

10 A. HE WAS.

11 Q. IN YOUR MIND AS DEFENSE COUNSEL FOR JEFF MACDONALD, WERE  
12 THOSE TWO THINGS, THOSE LAST TWO THINGS, WHAT HE SAYS HE HEARD  
13 IN THE CAR AND WHAT HE SAID HE HEARD IN THE U.S. ATTORNEY'S  
14 OFFICE, THE IMPORTANT FEATURES OF WHAT HE HAD COME FORWARD  
15 WITH?

16 A. THEY WERE.

17 Q. I TAKE YOU BACK TO THE BEGINNING OF THE CROSS. THERE WAS  
18 SOME QUESTION ABOUT MR. MCGINNISS BEING IN THE ROOM DURING THE  
19 INTERVIEW --

20 A. YES.

21 Q. -- AND I THINK YOU SAID YOU HAD TOLD MR. SEGAL WE DON'T  
22 DO THAT IN NORTH CAROLINA?

23 A. I DID.

24 Q. WAS THERE, TO YOUR KNOWLEDGE, SOME SORT OF  
25 CONFIDENTIALITY AGREEMENT THAT MR. MCGINNISS ENTERED WITH DR.

September 17, 2012

Smith/Recross

Page 218

1 MACDONALD AND MR. SEGAL?

2 A. WELL, I NEVER SAW ANY FORMAL DOCUMENT THAT MADE THAT --  
3 THAT MADE IT OFFICIAL, BUT IT WAS ALWAYS MY IMPRESSION THAT HE  
4 WAS A MEMBER OF THE DEFENSE TEAM.

5 THE COURT: EXCUSE ME. I'M A LITTLE CONFUSED. I  
6 THINK MR. WIDENHOUSE ASKED YOU ABOUT AN AGREEMENT. ARE YOU  
7 AWARE OF A WRITTEN OR ORAL AGREEMENT?

8 THE WITNESS: NO, SIR, I'M NOT.

9 BY MR. WIDENHOUSE:

10 Q. BUT YOU DID HAVE AN UNDERSTANDING THAT THERE WAS AN  
11 AGREEMENT OF SOME SORT THAT HE WAS PART OF THE DEFENSE TEAM?

12 A. YES, I THOUGHT THERE MUST BE, BUT THAT WAS NOT SOMETHING  
13 THAT I PARTICIPATED IN OR SHARED.

14 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. THAT'S ALL  
15 I HAVE.

16 THE COURT: RE CROSS.

17 MR. BRUCE: JUST BRIEFLY, YOUR HONOR.

18 R E C R O S S - E X A M I N A T I O N 4:09 P.M.

19 BY MR. BRUCE:

20 Q. MR. SMITH, THESE MURDERS OCCURRED ON THE FORT BRAGG  
21 MILITARY RESERVATION, IS THAT CORRECT?

22 A. THEY OCCURRED ON A FEDERAL RESERVATION, YES.

23 Q. IN THE BASE HOUSING AT FORT BRAGG?

24 A. YES.

25 Q. AND ISN'T IT A FACT THAT FORT BRAGG'S PERIMETER IS

September 17, 2012

1 EXCLUSIVE FEDERAL JURISDICTION AND NOT CONCURRENT?

2 A. I DO NOT KNOW WHETHER THE STATE HAD CONCURRENT  
3 JURISDICTION. I KNOW IT HAPPENED ON FEDERAL TERRITORY.

4 Q. WELL, AS A MATTER OF FACT, IN MACDONALD'S CASE INITIALLY  
5 CHARGES WERE BROUGHT BY THE MILITARY AUTHORITIES, THE UNITED  
6 STATES ARMY, IS THAT RIGHT?

7 A. YES, SIR. ARTICLE 32 PROCEEDING, YES.

8 Q. AND THEN CHARGES WERE BROUGHT BY THE CIVILIAN PROSECUTION  
9 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT  
10 OF NORTH CAROLINA, IS THAT RIGHT?

11 A. THEY WERE.

12 Q. DO YOU KNOW OF ANY INVOLVEMENT WHATSOEVER BY THE STATE  
13 AUTHORITIES IN THE PROSECUTION OF JEFFREY MACDONALD?

14 A. NO.

15 Q. WITH REGARD TO MR. MCGINNISS, YOU TESTIFIED ON DIRECT  
16 EXAMINATION THAT THE PURPOSE OF MR. MCGINNISS BEING EMBEDDED,  
17 IF YOU WILL, IN THE DEFENSE TEAM WAS TO GATHER INFORMATION TO  
18 WRITE A BOOK?

19 A. YES.

20 Q. DO YOU MAINTAIN THAT TESTIMONY?

21 A. YES.

22 Q. WELL, THE BOOK WASN'T GOING TO BE CONFIDENTIAL, WAS IT?

23 A. NO.

24 Q. I MEAN, THE BOOK WAS A NATIONWIDE BEST SELLER, IS THAT  
25 RIGHT?

September 17, 2012

Smith/Recross

Page 220

1 A. IT WAS.

2 Q. AND A TELEVISION MINI-SERIES WAS MADE OUT OF IT, RIGHT?

3 A. YES.

4 Q. AND ALL THE MATERIAL THAT MR. MCGINNISS GATHERED IN HIS  
5 ASSOCIATION WITH THE DEFENSE TEAM OR MUCH OF IT WAS USED IN  
6 THOSE TWO THINGS?

7 A. IT WAS.

8 Q. AND I BELIEVE YOU PURCHASED A NUMBER OF COPIES OF MR.  
9 MCGINNISS'S BOOK, DID YOU NOT?

10 A. I DID NOT. I AM SURE THAT I GOT ONE COPY, BUT I DON'T  
11 THINK I WOULD HAVE PURCHASED A LOT OF COPIES. I'VE NEVER READ  
12 THE BOOK THROUGH.

13 MR. BRUCE: THANK YOU. NOTHING FURTHER.

14 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT  
15 WITNESS.

16 MR. WIDENHOUSE: MARY BRITT.

17 THE WITNESS: YOUR HONOR, MAY I BE EXCUSED? AM I  
18 RELEASED?

19 THE COURT: COUNSEL?

20 MR. BRUCE: YES, YOUR HONOR.

21 MR. WIDENHOUSE: (NODS HEAD.)

22 THE COURT: YES.

23 THE WITNESS: THANK YOU VERY MUCH.

24 MADAM CLERK: I'M SORRY, WHO WAS YOUR NEXT WITNESS  
25 THAT YOU WERE CALLING?

September 17, 2012

Britt/Direct

Page 221

1 MR. WIDENHOUSE: I'M SORRY. MARY BRITT.

2 MADAM CLERK: THANK YOU.

3 (PAUSE.)

4 THE COURT: COUNSEL, I'D LIKE FOR YOU ALL TO FILE A  
5 BRIEF ON THE PROPRIETY OF A JUDGE ACCEPTING A CAKE FROM A  
6 JUROR AND I HOPE YOU COME OUT RIGHT.

7 YOU KNOW, OVER THE YEARS, I HAVE HEARD THAT JURORS  
8 DEVELOP A REAL RAPPORT. THEY BRING EACH OTHER FOOD DURING THE  
9 TRIAL BOTH SIDES.

10 (PAUSE.)

11 MR. BRUCE: JUST SO YOU KNOW, YOUR HONOR, AUSA  
12 COOLEY IS GOING TO HANDLE THE CROSS-EXAMINATION OF THIS  
13 WITNESS.

14 THE COURT: THANK YOU.

15 **MARY BRITT, DEFENSE WITNESS, SWORN**

16 D I R E C T E X A M I N A T I O N 4:14 P.M.

17 BY MR. WIDENHOUSE:

18 Q. WOULD YOU STATE YOUR NAME FOR THE RECORD AND TELL US  
19 WHERE YOU LIVE?

20 A. MY NAME IS MARY WOOD BRITT. I LIVE AT 401 WILSON'S MILLS  
21 ROAD, SMITHFIELD, NORTH CAROLINA.

22 Q. AND WERE YOU MARRIED AT ONE TIME TO JIMMY BRITT?

23 A. YES, I WAS.

24 Q. AND WHEN DID YOU ALL GET MARRIED?

25 A. JULY 30TH, 1957.

September 17, 2012



Britt/Direct

Page 222

1 Q. OKAY. NOW, DID YOU ALL LIVE IN SMITHFIELD THE WHOLE  
2 TIME?

3 A. NO. WE LIVED IN BENSON, GREENSBORO, PINE TOPS AND  
4 RALEIGH, AND THEN MOVED TO SMITHFIELD IN 1970.

5 Q. OKAY. AND WHERE DID MR. BRITT WORK WHILE YOU WERE  
6 MARRIED? LET ME ASK IT THIS WAY, WHAT WAS HIS PRIMARY JOB  
7 DURING THE TIME YOU WERE MARRIED?

8 A. HE WAS DEPUTY U.S. MARSHAL FOR MOST OF THE TIME THAT WE  
9 WERE MARRIED.

10 Q. AND DID YOU ALL TALK ABOUT HIS WORK?

11 A. YES.

12 Q. DO YOU REMEMBER HEARING ABOUT THE MURDER OF DR.  
13 MACDONALD'S FAMILY?

14 A. YES.

15 Q. LET ME BACK UP A SECOND. DID MR. BRITT LIKE WORKING AS A  
16 MARSHAL?

17 A. YES, HE DID.

18 Q. AND DO YOU REMEMBER WHEN THE MACDONALD TRIAL STARTED IN  
19 FEDERAL COURT IN RALEIGH?

20 A. YES, I DO.

21 Q. AND WHAT DO YOU REMEMBER ABOUT IT?

22 A. JIM WORKED THE TRIAL QUITE A BIT. I DON'T KNOW EXACTLY  
23 WHAT -- COULD YOU BE MORE SPECIFIC IN YOUR QUESTION?

24 Q. WELL, I MEAN, I GUESS THE FACT THAT HE WORKED THE TRIAL.  
25 DID HE TALK ABOUT THE TRIAL?

September 17, 2012

Britt/Direct

Page 223

1 A. YES. YES, HE DID.

2 Q. AND WHAT KINDS OF THINGS DID HE TALK ABOUT?

3 A. HE TALKED ABOUT DAILY THINGS. HE WENT TO -- I REMEMBER  
4 THAT HE WENT TO SOUTH CAROLINA -- I REMEMBER HIM TELLING ME  
5 THAT HE WAS GOING TO SOUTH CAROLINA TO PICK UP A WITNESS. I  
6 REMEMBER THE EVENING THAT HE CAME IN FROM PICKING UP THE  
7 WITNESS.

8 Q. OKAY. WELL, TELL ME ABOUT -- DID YOU KNOW WHO HE -- WHAT  
9 WITNESS HE WAS GOING TO PICK UP IN SOUTH CAROLINA?

10 A. NOT WHEN HE WENT -- I DO NOT REMEMBER THAT. I DO NOT  
11 REMEMBER KNOWING A NAME, JUST A WITNESS. BUT WHEN HE GOT HOME  
12 THAT EVENING, WHEN HE CAME IN THE DOOR, HE WAS VERY EXCITED,  
13 AND THAT'S THE ONLY WORD I KNOW TO DESCRIBE IT, BECAUSE HE  
14 FELT THE WOMAN TALKED IN THE CAR COMING BACK ABOUT HER  
15 INVOLVEMENT, THAT HE SAID, HIS WORDS, SHE DESCRIBED THE INSIDE  
16 OF THE APARTMENT WHERE THE MACDONALDS LIVED, AND HE USED THE  
17 TERM THAT SHE DESCRIBED IT TO A T EVEN TO THE FACT OF A  
18 CHILD'S HOBBY HORSE THAT WAS BROKEN.

19 Q. OKAY. AND I TAKE IT THAT STICKS IN YOUR MIND AFTER --

20 A. YES.

21 Q. -- ALL THIS TIME?

22 A. YES. YES, IT DOES.

23 Q. AND THAT WAS DURING THE TRIAL ITSELF WHEN HE --

24 A. NO, NO, THAT WAS -- WELL, I'M NOT SURE FROM MY MEMORY IF  
25 THE TRIAL HAD ACTUALLY STARTED, BUT IT WAS WHEN HE WENT TO

September 17, 2012

Britt/Direct

Page 224

1 SOUTH CAROLINA TO PICK UP THE WITNESS, IT WAS THAT EVENING  
2 WHEN HE CAME IN.

3 Q. OKAY. AND WHAT WAS HIS ATTITUDE ABOUT -- DID HE HAVE AN  
4 ATTITUDE OR DID YOU GET A SENSE OF HOW HE FELT ABOUT THE TRIAL  
5 BEFORE HE MADE THE TRIP TO SOUTH CAROLINA?

6 A. NO, I DO NOT REMEMBER OTHER THAN, YOU KNOW, THAT HE WAS  
7 WORKING, HE WAS IN THE COURTROOM. AND AT THIS POINT IN TIME,  
8 SEQUENCE OF EVENTS ARE HARD.

9 ONE THING I DO REMEMBER THAT HAPPENED DURING THE  
10 TRIAL WAS JIM WAS A PERSON THAT NEVER HAD PROBLEMS SLEEPING.  
11 NO MATTER WHAT WAS GOING ON IN HIS LIFE HE COULD LAY DOWN AND  
12 GO TO SLEEP AND I ALWAYS ENVIED THAT.

13 BUT I WOKE UP DURING THE NIGHT AND HE WAS NOT IN THE  
14 BED AND I GOT UP AND WENT LOOKING FOR HIM AND HE WAS OUT IN  
15 THE SIDE YARD UNDER A TREE IN A LAWN CHAIR AND I SAT DOWN ON  
16 THE STEPS AND ASKED HIM, I SAID WHAT IS IT? AND HE DESCRIBED  
17 -- HE WAS VERY, VERY EMOTIONAL AND VERY UPSET, AND HE  
18 DESCRIBED PICTURES THAT WERE ON DISPLAY IN THE COURTROOM AND  
19 HE -- PICTURES OF THE CHILDREN, OF THE MACDONALD CHILDREN.  
20 AND HE SAID, MARY, I CAN'T GO BACK IN THERE. I JUST CAN'T.  
21 AND HE SAID I EVEN TODAY WENT -- AFTER EVERYBODY LEFT I  
22 UNLOCKED THE COURTROOM AND WENT IN THERE BY MYSELF. I THOUGHT  
23 IF I SAT THERE BY MYSELF I COULD ADJUST, I COULD DO IT, BUT HE  
24 SAID I CAN'T. AND I SAID, WELL, YOU NEED TO TALK TO MR.  
25 SALTER AND TELL HIM THAT.

September 17, 2012

Britt/Direct

Page 225

1           AND THE NEXT DAY -- I DO NOT KNOW WHAT HE DID, BUT  
2 THE NEXT DAY, I THINK IT WAS ON TV, AND I'M NOT SURE OF HOW I  
3 GOT THIS INFORMATION, BUT I REMEMBER THAT ONE OF THE JURORS  
4 WAS EMOTIONAL ABOUT THE PICTURES, I REMEMBER THAT, AND I  
5 ASSUMED THE PICTURES WERE TAKEN DOWN.

6 Q.     AND DO YOU RECALL AFTER ALL THIS TIME WHETHER THE EVENING  
7 OR THE NIGHT THAT YOU FOUND HIM AWAKE ON THE LAWN CHAIR OUT IN  
8 THE YARD WAS BEFORE OR AFTER THE TRIP TO SOUTH CAROLINA?

9 A.     I'M SURE THAT IT WAS -- IT WAS AFTER. I'M PRETTY  
10 POSITIVE ABOUT THAT BECAUSE IT WAS ON OVER INTO THE TRIAL.

11 Q.     OKAY. AND DO YOU RECALL -- WELL, YOU SAID HE CAME BACK  
12 FROM THE TRIP AND HE WAS SOMEWHAT EXCITED AND TALKED ABOUT  
13 WHAT THE PERSON HAD SAID TO HIM. DO YOU RECALL THE NEXT DAY  
14 AT THE TRIAL?

15 A.     I WAS VERY ANXIOUS TO HEAR -- WELL, WE DIDN'T HAVE CELL  
16 PHONES AND I NORMALLY DID NOT TALK WITH HIM DURING THE DAY,  
17 BUT I WAS VERY EXCITED TO HEAR WHAT THE OUTCOME OF THE WOMAN'S  
18 TESTIMONY WAS.

19           AND WHEN -- AS SOON AS HE WALKED IN THAT NIGHT, OF  
20 COURSE, I ASKED HIM AND I KNOW VERY WELL THE WORDS THAT HE  
21 USED TO TELL ME. HE SAID THEY SAY THEY CAN'T USE HER  
22 TESTIMONY BECAUSE HER BRAIN IS FRIED FROM THE USE OF DRUGS. I  
23 HAD NEVER HEARD THAT EXPRESSION BEFORE. AND THEN THERE JUST  
24 WERE NOT THAT MANY DRUGS AROUND SMITHFIELD AND I WAS NOT THAT  
25 FAMILIAR WITH IT. BUT I DO REMEMBER HIM TELLING ME THAT THEY

September 17, 2012

Britt/Direct

Page 226

1 SAID THEY COULD NOT USE HER TESTIMONY.

2 Q. DO YOU RECALL WHETHER ANYTHING UNUSUAL HAPPENED AT THE  
3 END OF THE TRIAL?

4 A. YES.

5 Q. COULD YOU TELL US ABOUT THAT?

6 A. HE CAME HOME FROM WORK EARLY, WHICH WAS VERY UNUSUAL  
7 BECAUSE MOST OF THE TIME HE WAS LATE, BUT HE CAME IN EARLY AND  
8 I WAS IN THE KITCHEN AND HE CAME IN THE BACK DOOR AND I STOOD  
9 AND LOOKED AT HIM AND I SAID, YOU KNOW, WHAT IS IT? AND I  
10 ASKED HIM, YOU KNOW, WHY HE WAS HOME EARLY BECAUSE I KNEW THE  
11 TRIAL WAS STILL GOING ON AND HE WAS WORKING IT. AND HE SAID  
12 THAT THEY FOUND JEFFREY MACDONALD GUILTY AND THAT HUGH SALTER  
13 -- AND HE -- JIM HAD A GREAT DEAL OF RESPECT FOR HUGH SALTER.  
14 HE IS THE PERSON WHO HIRED HIM AS A DEPUTY MARSHAL AND HE WAS  
15 VERY FOND OF HIM. AND HE SAID THAT MR. SALTER TOLD HIM TO  
16 LOCK HIM UP. AND HE SAID I TOLD HIM THAT I WAS NOT DOING ANY  
17 MORE OF THE DIRTY WORK, I WAS GOING HOME. AND HE SAID I LEFT  
18 AND I CAME HOME.

19 AND I WAS JUST SHOCKED THAT HE WOULD TALK TO MR.  
20 SALTER LIKE THAT ABOUT ANY -- YOU KNOW, AT ANY TIME. BUT THAT  
21 WAS HIS RESPONSE. AND I DID ON TV THAT NIGHT I SAW MR. SALTER  
22 ESCORTING JEFFREY MACDONALD.

23 Q. DID THERE COME A TIME AFTER THE TRIAL THAT YOU SAW THE TV  
24 MOVIE OR MINI-SERIES OR WHATEVER IT WAS *FATAL VISION*?

25 A. YES. AND THERE AGAIN, I CANNOT TELL YOU WHEN, BUT IT WAS

September 17, 2012

Britt/Direct

Page 227

1 AFTER JIM AND I WERE DIVORCED AND THAT WAS IN FEBRUARY OF '89.  
2 WE WERE AT LEAST SEPARATED, BUT I REALLY AM PRETTY SURE WE  
3 WERE DIVORCED, AND I SAW THE MINI-SERIES ON TV. I WATCHED IT.

4 AND HE STOPPED BY MY HOUSE ONE EVENING AS HE DID  
5 OCCASIONALLY. SOMETIMES IF HE -- HE WORKED IN SMITHFIELD AT  
6 THE COURTHOUSE AND IF HE KNEW ONE OF THE GRANDCHILDREN WAS  
7 THERE SOMETIMES HE WOULD STOP BY FOR A MINUTE. AND AS HE WAS  
8 LEAVING I HAPPENED TO THINK ABOUT SEEING THE MINI-SERIES AND I  
9 CALLED IT A MOVIE, BUT I ASKED HIM I SAID, JIM, DID YOU SEE  
10 THE MOVIE ABOUT THE MACDONALD TRIAL ON TV? AND HE WAS  
11 STANDING AT THE DOOR OF MY DEN AND HE HAD HIS HAND ON THE DOOR  
12 KNOB, HE SAID, I DID, IT'S NOT ACCURATE. HE SAID THEY HAVE ME  
13 STANDING IN THE HALL. I WAS IN THAT ROOM, I HEARD EVERY WORD  
14 THAT WAS SAID, AND HE SAID THAT THROUGH GRITTED TEETH. HE WAS  
15 ANGRY. AND HE WALKED OUT THE DOOR AND CLOSED THE DOOR BEHIND  
16 HIM BEFORE I COULD RESPOND IN ANY WAY.

17 Q. AND DO YOU RECALL SEEING HIM PORTRAYED IN THE MOVIE? I  
18 MEAN, DID YOU RECALL SEEING HIM PORTRAYED IN THE MOVIE?

19 A. I DID.

20 Q. AND IS THAT WHY YOU MENTIONED IT TO HIM?

21 A. NO. NO, NO. THE REASON I MENTIONED IT WAS I JUST  
22 WONDERED OUT OF CURIOSITY IF HE HAD SEEN IT AND HE INDICATED  
23 THAT, YES, HE HAD.

24 Q. AND HIS REACTION WAS WHAT YOU JUST DESCRIBED?

25 A. YES. YES. I'M SORRY. YES.

September 17, 2012

Britt/Direct

Page 228

1 Q. ALL RIGHT. THERE'S BEEN SOME TESTIMONY BEFORE THE COURT  
2 THAT MR. BRITT CONTACTED WADE SMITH A NUMBER OF YEARS AFTER  
3 THE MACDONALD TRIAL IN 2005 AND DISCUSSED SOME THINGS WITH  
4 HIM. DID YOU KNOW MR. BRITT WAS GOING TO CONTACT WADE SMITH  
5 BEFORE IT HAPPENED?

6 A. NO.

7 Q. HOW DID YOU COME TO LEARN ABOUT IT HAVING HAPPENED?

8 A. NOW, HERE AGAIN, SEQUENCE OF EVENTS. I'M NOT SURE IF  
9 WADE SMITH CALLED ME ON THE PHONE AND ASKED -- HE CALLED AND  
10 ASKED ME IF I COULD -- IF I WOULD BE WILLING TO ANSWER SOME  
11 QUESTIONS ABOUT MY MEMORY TO CONFIRM THINGS THAT I GUESS THAT  
12 JIM HAD TALKED AND DISCUSSED WITH HIM.

13 (PAUSE.)

14 I'M SORRY, I'M LOSING MY TRAIN OF THOUGHT. BUT WADE  
15 SMITH CALLED ME AND TALKED WITH ME AND ALSO TWO FBI AGENTS  
16 CAME TO MY HOUSE ONE MORNING AND THAT -- I'M NOT SURE WHICH  
17 HAPPENED FIRST, IF IT WAS THE TWO FBI AGENTS THAT SHOWED UP AT  
18 MY FRONT DOOR OR IF MR. SMITH CALLED ME BEFORE THEY CAME. I  
19 JUST AM NOT SURE.

20 Q. WOULD YOU TELL US ABOUT THE AGENTS COMING TO VISIT?

21 A. I HAD BEEN TO AN EXERCISE -- MY EXERCISE CLASS EARLY THAT  
22 MORNING AND CAME HOME AND WENT IN THE HOUSE AND WITHIN JUST A  
23 VERY -- THREE, FOUR, FIVE MINUTES AT THE MOST THE FRONT  
24 DOORBELL RANG AND I WENT AND THEY IDENTIFIED THEMSELVES AS FBI  
25 AGENTS AND ASKED ME IF THEY COULD COME IN AND TALK WITH ME AND

September 17, 2012

Britt/Direct

Page 229

1 THEY DID.

2           AND I WAS -- I WAS MORE THAN SHOCKED. I WAS -- I  
3 WAS UPSET. I WAS JUST SHOCKED. LAW ENFORCEMENT PEOPLE HAD  
4 NOT BEEN TO MY HOUSE LIKE THAT AND I -- MAYBE I OVERREACTED, I  
5 DON'T KNOW, BUT I EXPRESSED TO THEM THAT, YOU KNOW, I WISHED  
6 THEY HAD CALLED ME AND THEY WERE VERY NICE. THEY WERE VERY  
7 PROFESSIONAL. AND I DID EXPRESS TO THEM THAT I WISHED THEY  
8 HAD CALLED ME BEFORE THEY JUST SHOWED UP.

9 Q.     WHAT DID YOU TALK TO THEM ABOUT?

10 A.     THEY ASKED ME QUESTIONS ABOUT WHAT I REMEMBERED ABOUT THE  
11 JEFFREY MACDONALD TRIAL.

12 Q.     AND DO YOU REMEMBER WHAT YOU TOLD THEM?

13 A.     I TOLD THEM -- I MEAN, I HAD HAD NO REASON TO THINK ABOUT  
14 IT AND I TOLD THEM I SAID I WILL TELL YOU THE HONEST TRUTH TO  
15 THE BEST OF MY ABILITY WHAT I REMEMBER AND THEY SAID THAT'S  
16 WHAT -- YOU KNOW, THAT'S WHAT THEY WANTED.

17           THE COURT: WE'RE GOING TO TAKE A RECESS UNTIL  
18 TOMORROW MORNING AT NINE O'CLOCK. YOU MAY STEP DOWN.

19           (WHEREUPON, THESE PROCEEDINGS RECESSED AT 4:30 P.M.,  
20 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 18, 2012.)

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE  
TRANSCRIPT OF SAID PROCEEDINGS.

/s/ STACY SCHWINN, CCR, CVR-M  
STACY SCHWINN, CCR, CVR-M

11/19/12  
DATE

September 17, 2012



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 18, 2012  
 JEFFREY R. MACDONALD, . Wilmington, NC  
 Defendant/Movant .  
 . . . . .

EVIDENTIARY HEARING  
BEFORE THE HONORABLE JAMES C. FOX  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.

T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
<u>MARY BRITT</u>		
BY MR. WIDENHOUSE	DIRECT (CONTINUED)	233
BY MS. COOLEY	CROSS	241
BY MR. WIDENHOUSE	REDIRECT	265
<u>EUGENE STOECKLEY</u>		
BY MR. WIDENHOUSE	DIRECT	266
BY MR. BRUCE	CROSS	300
BY MR. WIDENHOUSE	REDIRECT	342
<u>WENDY ROUDER</u>		
BY MR. WIDENHOUSE	DIRECT	344
BY MR. BRUCE	CROSS	360
<u>LAURA REDD</u>		
BY MR. WIDENHOUSE	DIRECT	400
BY MR. BRUCE	CROSS	410
<u>SARA MCMANN</u>		
BY MR. WILLIAMS	DIRECT	417
BY MS. COOLEY	CROSS	431
BY MR. WILLIAMS	REDIRECT	440
<u>EXHIBITS</u>		
<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
5051	3/31/07 AFFIDAVIT OF HELENA STOECKLEY SENIOR	296 & 405
5080	AFFIDAVIT OF WENDY ROUDER	351
5077	2/26/83 STATEMENT OF MS. MCMANN	428
5019	DECLARATION OF PRINCE E. BEASLEY	440
<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
2125	MR. BRITT'S APPLICATION FOR RETIREMENT	250
2127	ANSWER AND COUNTERCLAIM - BRITT DIVORCE	254
2128	JUDGEMENT IN BRITT DIVORCE DECREE 2/8/89	256
2130	LETTER DATED 11/26/90 TO OPM FROM MS. BRITT	256
2133	LETTER DATED 12/20/90 FROM MR. O'HALE	257

September 18, 2012

T A B L E O F C O N T E N T S C O N I N U E DEXHIBITS

<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
2131	LETTER DATED 12/29/88 FROM MS. BRITT TO MR. HELMS	257
2132	LETTER DATED 11/28/90 FROM MS. BRITT TO MR. HELMS	257
2134	CONSENT ORDER DATED 11/28/90	257
2136	ORDER DATED 9/26/91	258
2126	STATEMENT REGARDING FORMER SPOUSE SIGNED BY MR. BRITT	259
2017	AFFIDAVIT FILED JIMMY BRITT V. NANCY BRITT	262
2317	<i>FRONT PAGE DETECTIVE</i> - CONTENTS PAGE	333
2318.4	PAGE 19 OF <i>FRONT PAGE DETECTIVE</i> - SHOWING ROCKING HORSE	333
2089	2/28/06 ADDENDUM TO AFFIDAVIT OF MR. BRITT	415

BENCH CONFERENCESPAGE

443

September 18, 2012

Britt/Direct

Page 233

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25P R O C E E D I N G S

9:00 A.M.

(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, EVERYONE. PLEASE BE SEATED AND WE'LL CONTINUE.

MS. BRITT, YOU'RE STILL UNDER OATH. HOW ARE YOU THIS MORNING?

THE WITNESS: GOOD. THANK YOU.

THE COURT: ALL RIGHT. MR. WIDENHOUSE.

MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

**MARY BRITT, DEFENSE WITNESS, PREVIOUSLY SWORN**D I R E C T E X A M I N A T I O N C O N T I N U E D

9:00 A.M.

BY MR. WIDENHOUSE:

Q. GOOD MORNING, MS. BRITT.

A. GOOD MORNING.

Q. HOW ARE YOU FEELING TODAY?

A. OKAY.

Q. WE APPRECIATE YOU COMING BACK. I THINK RIGHT ABOUT THE TIME WE BROKE YESTERDAY YOU HAD TALKED TO US ABOUT HAVING SEEN THE TV MOVIE OR MINI-SERIES *FATAL VISION* AND TALKING TO MR. BRITT ABOUT THAT.

DO YOU REMEMBER WHEN YOU WATCHED THE MOVIE WHAT PART ABOUT HIM YOU SAW IN IT?

A. I REMEMBER THAT HE WAS STANDING IN THE HALLWAY. THAT WAS THING.

September 18, 2012

Britt/Direct

Page 234

1 Q. OKAY. AND --

2 A. OUT IN THE HALLWAY.

3 Q. OKAY. AND WHEN HE SAID -- WHAT WAS HIS RESPONSE WHEN YOU  
4 MENTIONED HAVING SEEN HIM IN THE MOVIE?

5 A. I JUST MENTIONED THAT I HAD SEEN THE MOVIE RECENTLY ON  
6 TELEVISION AND I ASKED HIM IF HE HAD SEEN IT AND HE DIDN'T SAY  
7 YES OR NO. HE SAID IT'S NOT ACCURATE, THEY HAVE ME STANDING  
8 IN THE HALLWAY.

9 Q. OKAY.

10 A. I WAS IN THAT ROOM THE ENTIRE TIME. I HEARD EVERY WORD.

11 Q. OKAY. AND DO YOU KNOW WHAT ROOM HE WAS TALKING ABOUT?

12 A. THE ROOM THAT HELENA STOECKLEY WAS IN WITH THE DISTRICT  
13 ATTORNEY.

14 Q. OKAY. AND THEN I THINK I HAD GOTTEN -- YOU WOULD HAD  
15 BEEN -- I HAD ASKED YOU IF YOU WERE AWARE THAT HE WAS GOING TO  
16 COME FORWARD IN 2005, CONTACT WADE SMITH, AND I THINK THAT'S  
17 WHERE WE LEFT OFF YESTERDAY.

18 COULD YOU TELL US AGAIN, DID YOU KNOW HE WAS GOING  
19 TO CONTACT WADE SMITH?

20 A. NO. TO THE BEST OF MY ABILITY OR MY MEMORY, NO, I DID  
21 NOT KNOW THAT.

22 Q. AND DO YOU RECALL HOW YOU CAME TO FIND OUT THAT HE HAD  
23 COME FORWARD?

24 A. THERE AGAIN, I'M NOT POSITIVE WHICH CAME FIRST, IF MR.  
25 WADE SMITH CALLED ME ON THE PHONE OR IF IT WAS WHEN THE TWO

September 18, 2012

Britt/Direct

Page 235

1 FBI AGENTS CAME TO MY DOOR.

2 Q. OKAY.

3 A. I DO NOT REMEMBER.

4 Q. ALL RIGHT. AND TELL US WHAT HAPPENED WHEN THE FBI AGENTS  
5 CAME TO YOUR HOUSE.

6 A. I WAS VERY SHOCKED AND UPSET. I LIVED WITH LAW  
7 ENFORCEMENT FOR MANY YEARS, BUT I HAD NEVER HAD OCCASION TO  
8 ENCOUNTER. AND I WAS -- I THINK THEY PROBABLY PICKED UP ON  
9 THE FACT THAT I WAS UPSET AND IT WAS THE FACT THAT IT WAS SUCH  
10 A SURPRISE AND SHOCK. AND I EXPRESSED THAT TO THEM. BUT, YOU  
11 KNOW, THEY WERE VERY, VERY NICE, VERY PROFESSIONAL AND VERY  
12 KIND. AND THEY TOLD ME WHY THEY WERE THERE AND I JUST ASKED  
13 THEM IF THEY WOULD, I WOULD APPRECIATE THEM CALLING AND  
14 LETTING ME KNOW IF THEY -- IF THEY WERE COMING.

15 Q. OKAY.

16 A. AND, YOU KNOW, WHEN I LOOK BACK, I UNDERSTAND THEIR JOB.  
17 I KNOW THAT AND I KNOW WHY THEY DO THINGS THE WAY THEY DO, BUT  
18 I WAS THINKING OF THINGS FROM MY PERSPECTIVE.

19 Q. I UNDERSTAND. AND DO YOU RECALL WHAT THE AGENTS TALKED  
20 TO YOU ABOUT WHEN THEY CAME TO YOUR HOUSE?

21 A. THEY ASKED ME TO TELL THEM -- AND I THINK IT'S PROBABLY  
22 BEEN SEVEN YEARS, BUT THEY ASKED ME TO TELL THEM WHAT I  
23 REMEMBERED ABOUT THE JEFFREY MACDONALD -- THE PERIOD OF THE  
24 TRIAL AND SO FORTH. AND I TOLD THEM THAT I WOULD DO THE VERY  
25 BEST I COULD FROM MY MEMORY TO TELL THEM THE TRUTH OF WHAT I

September 18, 2012

Britt/Direct

Page 236

1 REMEMBERED.

2 Q. AND DO YOU REMEMBER WHAT YOU TOLD THEM?

3 A. IT WAS A LOT. I TOLD THEM THAT I REMEMBERED WHEN IT  
4 HAPPENED, THAT WE WERE LIVING IN GARNER, NORTH CAROLINA. OUR  
5 TWO YOUNGEST CHILDREN WERE ABOUT THE SAME AGES -- CLOSE TO THE  
6 AGES OF THE MACDONALD CHILDREN AND THAT IT WAS A TREMENDOUS  
7 HORRIBLE SHOCK TO EVERYONE, THAT WE JUST DIDN'T HEAR OF THINGS  
8 THAT HORRIBLE HAPPENING AND IT WAS AWFUL.

9 I REALLY CAN'T TELL YOU EVERYTHING THAT I SAID TO  
10 THEM, BUT I DID TELL THEM I REMEMBERED, YOU KNOW, WHEN JIM WAS  
11 INVOLVED IN WORKING THE TRIAL AND THE THINGS THAT -- SOME OF  
12 WHAT I REPEATED YESTERDAY, THE PROBLEM THAT HE HAD WITH BEING  
13 IN THE COURTROOM WITH THE PICTURES. HE KEPT TALKING ABOUT --  
14 HE CALLED THEM THE BABIES AND THE HORROR OF THAT.

15 AND JIM WAS A VERY -- I PERCEIVED HIM BEING A VERY  
16 STRONG PERSON. HE WAS ALWAYS IN CONTROL AND THE ONE THAT  
17 STEPPED FORWARD AND TOOK CONTROL AND HELPED IN A SITUATION.  
18 AND THAT WAS -- THAT WAS -- THAT WAS NEW FOR HIM, FOR ME TO  
19 SEE HIM IN THAT LIGHT.

20 Q. DO YOU RECALL WHETHER THE AGENTS ASKED YOU OR WHETHER YOU  
21 TALKED TO THE AGENTS ABOUT MR. BRITT HAVING GONE TO SOUTH  
22 CAROLINA DURING THE TRIAL?

23 A. YES. YES, I DID BECAUSE THAT WAS -- THAT WAS VERY CLEAR  
24 TO ME THAT HE WAS GOING TO PICK UP A WITNESS AND THEN WHEN HE  
25 CAME IN THAT EVENING, HE REALLY FELT OR EXPRESSED TO ME -- HE

September 18, 2012

Britt/Direct

Page 237

1 EXPRESSED TO ME THAT THE PERSON THAT WAS IN THE CAR THAT HE  
2 HAD BROUGHT BACK KNEW INTIMATE DETAILS OF WHAT HAD HAPPENED TO  
3 THE MACDONALD FAMILY.

4 AND HE -- WHAT I PERCEIVED IN WHAT HE WAS SAYING TO  
5 ME IS THAT IT WAS A MAJOR BREAKTHROUGH AND HE WAS VERY ANXIOUS  
6 FOR HER TO TELL HER STORY.

7 Q. AND IS THERE ANYTHING ELSE YOU REMEMBER TALKING TO THE  
8 AGENTS ABOUT SPECIFICALLY?

9 A. I'M SURE THAT I TOLD THEM ABOUT WHEN HE CAME IN THAT  
10 NIGHT AFTER SHE HAD GIVEN HER TESTIMONY THAT HIS RESPONSE --  
11 WELL, I ASKED HIM AS SOON AS HE CAME THROUGH THE DOOR I SAID  
12 WHAT -- YOU KNOW, WHAT DID THEY SAY? HOW DID IT GO? AND HE  
13 SAID, WELL, THEY SAY THEY CAN'T USE HER TESTIMONY BECAUSE HER  
14 BRAIN IS FRIED FROM USING DRUGS FOR SO LONG, MANY YEARS OR  
15 WHATEVER.

16 Q. DO YOU KNOW IF YOU RELATED TO THE AGENTS THE TESTIMONY  
17 YOU GAVE YESTERDAY ABOUT WHAT HAPPENED AT THE END OF THE TRIAL  
18 BETWEEN MR. BRITT AND MR. SALTER OR DID THAT COME UP?

19 A. I'M PRETTY POSITIVE THAT I DID TELL THEM THAT, YES.

20 Q. OKAY. AND DID YOU HAPPEN TO TALK TO THEM ABOUT HAVING  
21 SEEN THE MOVIE OR MINI-SERIES *FATAL VISION* AND THE ENCOUNTER  
22 YOU HAD WITH MR. BRITT AFTER SEEING THAT?

23 A. YES, I FEEL CONFIDENT -- THERE AGAIN, IT'S BEEN SEVEN  
24 YEARS AND, YOU KNOW, WHEN THEY SHOWED UP AT MY DOOR THAT DAY,  
25 I WAS REALLY THINKING OFF THE TOP OF MY HEAD, BUT I FEEL

September 18, 2012



Britt/Direct

Page 238

1 PRETTY CONFIDENT THAT I DID.

2 Q. OKAY. DID YOU HAVE A CONVERSATION WITH MR. BRITT AFTER  
3 THE AGENTS CAME TO SEE YOU AND YOU REALIZED THAT HE HAD COME  
4 FORWARD?

5 A. YES.

6 Q. AND CAN YOU TELL US A LITTLE BIT ABOUT THAT CONVERSATION?

7 A. HE CALLED ME SEVERAL DAYS LATER, I DON'T KNOW EXACTLY  
8 WHEN, AND I ADMIT THAT I DID NOT HANDLE IT WELL. APPARENTLY  
9 ONE OR SEVERAL OF OUR CHILDREN HAD TOLD HIM THAT THE FBI  
10 AGENTS HAD BEEN TO MY HOUSE. MY CHILDREN WERE UPSET ABOUT  
11 THAT AND APPARENTLY THEY TOLD THEIR FATHER THAT THEY HAD BEEN  
12 AND THAT THE CHILDREN WERE UPSET.

13 AND HE CALLED AND ASKED ME, HE SAID WHAT DID THEY  
14 WANT? AND I SAID THEY ASKED ME TO TELL THEM WHAT I COULD  
15 REMEMBER ABOUT THE JEFFREY MACDONALD TRIAL AND THE YEARS THAT  
16 YOU WORKED WITH THAT CASE. AND MY NEXT THING WAS, JIM, WHY  
17 DID YOU WAIT SO LONG TO COME FORWARD WITH THIS INFORMATION?  
18 AND HIS RESPONSE WAS TYPICAL. HE SAID, WELL, WHY DIDN'T YOU?  
19 AND I HUNG UP THE PHONE.

20 Q. AND WHEN HE SAID WHY DIDN'T YOU, WHAT DID THAT MEAN TO  
21 YOU?

22 A. I DON'T KNOW. I DON'T KNOW IF HE THOUGHT THAT HE HAD  
23 TOLD ME MORE THAN HE HAD OR IF THAT WAS JUST A JIM RESPONSE TO  
24 REVERTING IT BACK, RATHER THAN ANSWERING THE QUESTION  
25 REVERTING IT BACK.

September 18, 2012

Britt/Direct

Page 239

1 Q. SO, I TAKE IT THAT THE INCIDENT OF HIM COMING FORWARD  
2 CAUSED SOME CONFLICT WITHIN THE FAMILY, YOU AND YOUR CHILDREN  
3 AND HIS CHILDREN?

4 A. NOT WITHIN ME AND MY CHILDREN, NO.

5 Q. I GUESS, I MEAN, WITHIN EVERYBODY.

6 A. THEY WERE JUST CONCERNED THAT I WAS HAVING TO DEAL WITH  
7 THE STRESS AFTER SO MANY YEARS.

8 Q. I GUESS WHAT I'M ASKING IS DO YOU FEEL LIKE HIS COMING  
9 FORWARD HAD SORT OF AN EMOTIONALLY ADVERSE OR BAD IMPACT ON  
10 YOU? YOU SAID IT CAUSED YOU STRESS.

11 A. YEAH. WELL, THE THING THAT BOTHERED ME WAS THAT HE HAD  
12 WAITED SO MANY YEARS. I JUST -- I HAVE A REALLY HARD PROBLEM  
13 -- TIME WITH UNDERSTANDING THAT.

14 MR. WIDENHOUSE: YOUR HONOR, CAN I HAVE JUST A  
15 MOMENT, PLEASE?

16 THE COURT: I'M SORRY?

17 MR. WIDENHOUSE: CAN I HAVE A MOMENT?

18 THE COURT: CERTAINLY.

19 MR. WIDENHOUSE: THANK YOU.

20 (PAUSE.)

21 BY MR. WIDENHOUSE:

22 Q. YOU MENTIONED YESTERDAY ABOUT THE END OF THE TRIAL AND  
23 HIS HAVING REFUSED TO HONOR HUGH SALTER'S DIRECTIVE TO  
24 HANDCUFF DR. MACDONALD.

25 ARE YOU AWARE IN THE TIME THAT YOU WERE MARRIED TO

September 18, 2012

Britt/Cross

Page 240

1 MR. BRITT AND HIS WORK IN THE MARSHAL SERVICE IF THERE WAS  
2 EVER ANOTHER TIME WHERE HE REFUSED A DIRECT ORDER OF A  
3 SUPERIOR?

4 A. NOT TO MY KNOWLEDGE. NEVER.

5 Q. AND ARE YOU -- I KNOW YOU'RE NERVOUS AND YOU'VE BEEN  
6 GREAT, YOU KNOW, AND WE REALLY APPRECIATE YOU COMING. I JUST  
7 WANT TO MAKE SURE ARE YOU ABSOLUTELY CERTAIN AS YOU SIT HERE  
8 TODAY THAT DURING THE MACDONALD TRIAL HE TOLD YOU HE WAS GOING  
9 TO SOUTH CAROLINA TO PICK UP A WITNESS?

10 A. YES. YES.

11 Q. AND ARE YOU ABSOLUTELY CERTAIN THAT WHEN HE GOT BACK HE  
12 MADE THE COMMENT TO YOU ABOUT IT WAS A BREAKTHROUGH OR IT WAS  
13 IMPORTANT, THAT HE HAD LEARNED SOMETHING?

14 A. I DON'T KNOW THAT HE USED THE WORD BREAKTHROUGH, THAT WAS  
15 MY WORD, BUT I KNOW THAT WHEN HE CAME IN HE WAS EXCITED. HE  
16 REALLY FELT THAT THIS WAS JUST VERY -- SO VERY IMPORTANT THAT  
17 HE HAD HAD SOMEONE RIDING IN HIS CAR THAT DAY WHO HAD TALKED  
18 AT LENGTH ABOUT WHAT HAPPENED TO THE MACDONALD FAMILY. AND HE  
19 WENT INTO TALKING ABOUT -- HE SAID SHE DESCRIBED THAT  
20 APARTMENT TO A T. HE SAID SHE EVEN DESCRIBED A BROKEN HOBBY  
21 HORSE THAT WAS THERE.

22 Q. OKAY.

23 A. BUT, YES, I AM VERY POSITIVE THAT JIM BRITT CAME IN AND  
24 TOLD ME THAT THE DAY THAT HE WENT TO SOUTH CAROLINA.

25 MR. WIDENHOUSE: THANK YOU, MS. BRITT. THANK YOU,

September 18, 2012

Britt/Cross

Page 241

1 YOUR HONOR. NO FURTHER QUESTIONS.

2 THE COURT: MS. COOLEY.

3 MS. COOLEY: THANK YOU, YOUR HONOR.

4 C R O S S - E X A M I N A T I O N 9:14 A.M.

5 BY MS. COOLEY:

6 Q. GOOD MORNING, MS. BRITT.

7 A. GOOD MORNING.

8 Q. I WANT TO ASK YOU, YOU AND JIM WERE MARRIED IN 1957?

9 A. CORRECT.

10 Q. AND THEN YOU WERE MARRIED FOR 32 YEARS, IS THAT RIGHT?

11 A. ALMOST.

12 Q. DIVORCED IN 1970 -- 1989 RATHER?

13 A. CORRECT.

14 Q. AND YOU HAVE FOUR CHILDREN TOGETHER?

15 A. YES.

16 Q. AND THE MACDONALD TRIAL WAS IN 1979, AND YOU WERE MARRIED  
17 DURING THAT TIME?

18 A. CORRECT.

19 Q. AND THEN FOR ABOUT TEN YEARS AFTER THAT?

20 A. CORRECT.

21 Q. AND NOW YOU, YOURSELF, DIDN'T GO TO RALEIGH TO WATCH ANY  
22 OF THE TRIAL, IS THAT RIGHT?

23 A. NO. NO.

24 Q. AND SO EVERYTHING YOU LEARNED WAS JIM WOULD COME HOME AT  
25 NIGHT AFTER WORK AND TALK TO HIS WIFE ABOUT WHAT HAD HAPPENED

September 18, 2012

Britt/Cross

Page 242

1 AT WORK, IS THAT FAIR TO SAY?

2 A. CORRECT.

3 Q. AND SO THE THINGS THAT YOU HAVE TESTIFIED ABOUT ARE  
4 THINGS THAT HE TOLD YOU ABOUT WHAT HAPPENED AT WORK?

5 A. CORRECT.

6 Q. NOT THINGS THAT YOU HAVE ANY PERSONAL KNOWLEDGE ABOUT?

7 A. CORRECT.

8 Q. AND HE TOLD YOU THAT HE WENT TO GET THIS WITNESS FROM  
9 SOUTH CAROLINA?

10 A. YES.

11 Q. AND HE TOLD YOU ABOUT THAT AFTER WORK ONE DAY, THE DAY  
12 THAT HE SUPPOSEDLY WENT TO GET THE WITNESS, IS THAT RIGHT?

13 A. YES.

14 Q. AND --

15 A. HE TOLD ME THE DAY BEFORE, THE NIGHT BEFORE, THAT HE WAS  
16 GOING TO SOUTH CAROLINA.

17 Q. AND THEN HE TALKED ABOUT IT WHEN HE GOT HOME THE DAY THAT  
18 HE SUPPOSEDLY WENT TO GET THE WITNESS?

19 A. YES.

20 Q. AND THAT'S WHEN HE TOLD YOU THAT SHE HAD MADE THESE  
21 STATEMENTS DURING THE TRIP BACK, IS THAT RIGHT?

22 A. RIGHT.

23 Q. THE STATEMENTS ABOUT BEING IN THE HOUSE AND DESCRIBING  
24 THE HOUSE?

25 A. YES.

September 18, 2012

Britt/Cross

Page 243

1 Q. AND ABOUT THE BROKEN HOBBY HORSE?

2 A. YES.

3 Q. AND HE ALSO TOLD YOU, MAYBE IT WAS THE NEXT DAY, THAT  
4 THEY CAN'T USE HER TESTIMONY BECAUSE HER BRAIN IS FRIED?

5 A. YES. THE DAY THAT HE CAME IN, THAT EVENING, YES.

6 Q. AND WHEN HE WAS -- AND WHEN HE SAID THEY, HE WAS  
7 REFERRING TO THE PROSECUTORS, IS THAT RIGHT?

8 A. YES.

9 Q. AND NOT TO THE DEFENSE NOT BEING ABLE TO USE HER  
10 TESTIMONY?

11 A. RIGHT.

12 Q. AND THEN AT THE END OF THE TRIAL YOU TALKED ABOUT HE  
13 REFUSED TO LOCK JEFFREY MACDONALD UP AGAINST THE WISHES OF  
14 MARSHAL SALTER, IS THAT RIGHT?

15 A. YES.

16 Q. AND YOU SAID HE CAME HOME EARLY BECAUSE HE HAD LEFT WORK  
17 AFTER REFUSING TO DO THAT?

18 A. YES.

19 Q. AND THEN SOMETIME LATER, AND THIS WAS I GUESS AFTER THE  
20 TWO OF YOU HAD DIVORCED, HE STOPPED BY TO TALK ABOUT SOMETHING  
21 REGARDING THE KIDS OR GRANDKIDS AND YOU HAD A CONVERSATION  
22 ABOUT *FATAL VISION*?

23 A. YEAH. HE JUST OCCASIONALLY STOPPED BY, NOT OFTEN, BUT  
24 SOMETIMES. AND A LOT OF TIMES IT WOULD BE WHEN HE KNEW ONE OF  
25 THE -- ONE OR MORE OF THE GRANDCHILDREN WERE THERE VISITING.

September 18, 2012

Britt/Cross

Page 244

1 Q. AND THE CONVERSATION YOU HAD WITH HIM ABOUT *FATAL VISION*,  
2 THIS WAS -- THE TIME FRAME WAS THE LATE '90S, WAS THAT --

3 A. I DO NOT KNOW. I CANNOT TELL YOU WHEN.

4 Q. AND HE SAID THE MOVIE WASN'T ACCURATE AND THAT HE WAS IN  
5 THE ROOM DURING THE INTERVIEW AND ACTUALLY HAD HEARD EVERY  
6 WORD OF THAT CONVERSATION, IS THAT PRETTY MUCH WHAT HE TOLD  
7 YOU?

8 A. THAT IS WHAT HE SAID.

9 Q. NOW, I WANT TO GO BACK. ON THE RIDE THAT HE TOLD YOU  
10 ABOUT FROM SOUTH CAROLINA WITH THIS WITNESS, HE TOLD YOU SOME  
11 OF THE THINGS THE WITNESS HAD SAID ABOUT DESCRIBING THE  
12 MACDONALD HOUSE AND THE HOBBY HORSE, IS THAT RIGHT?

13 A. CORRECT.

14 Q. BUT HE NEVER MENTIONED TO YOU THAT THIS WITNESS'S  
15 BOYFRIEND WAS RIDING IN THE CAR WITH THEM, IS THAT RIGHT?

16 A. I DO NOT REMEMBER THAT. I DO NOT REMEMBER IF HE  
17 MENTIONED A BOYFRIEND.

18 Q. BUT YOU REMEMBER THE THINGS ABOUT THE HOBBY HORSE AND THE  
19 DESCRIPTION --

20 A. YES. YES.

21 Q. BUT YOU DON'T RECALL HIM EVER SAYING ANYTHING ABOUT THE  
22 BOYFRIEND BEING IN THE CAR WITH THEM, IS THAT RIGHT?

23 A. I DO NOT. I CANNOT HONESTLY SAY THAT HE TALKED ABOUT THE  
24 BOYFRIEND.

25 Q. AND HE ALSO -- DIDN'T HE TELL YOU AT SOME POINT THAT HE

September 18, 2012

Britt/Cross

Page 245

1 WENT TO PICK UP HELENA STOECKLEY AT HER HOTEL?

2 A. NO. I DON'T KNOW WHERE HE PICKED HER UP.

3 Q. AND THIS WOULD HAVE BEEN --

4 A. THE ONLY -- THE ONLY THING I REMEMBER IS SOUTH CAROLINA.

5 I DO NOT REMEMBER WHERE IN SOUTH CAROLINA.

6 Q. NOW, WHILE SHE WAS IN RALEIGH, WHILE HELENA STOECKLEY WAS  
7 IN RALEIGH, JIM WAS STILL WORKING ON THE MACDONALD TRIAL, IS  
8 THAT RIGHT?

9 A. CORRECT.

10 Q. AFTER HE HAD PICKED HER UP SHE WAS STILL IN RALEIGH FOR A  
11 PERIOD OF TIME AND HE WAS STILL WORKING ON THE TRIAL?

12 A. CORRECT.

13 Q. AND DURING THAT PERIOD OF TIME SHE, AT SOME POINT, WAS  
14 STAYING AT A HOTEL IN RALEIGH, WERE YOU AWARE OF THAT?

15 A. YES.

16 Q. AND THEN HE TOLD YOU DURING THAT PERIOD OF TIME, MAYBE  
17 NOT DURING THE TIME HE WENT TO SOUTH CAROLINA, BUT HE TOLD YOU  
18 THAT HE HAD AT SOME POINT HAD GONE TO HER HOTEL IN RALEIGH, IS  
19 THAT RIGHT?

20 A. CORRECT.

21 Q. AND HE SAID THAT AT THAT HOTEL THAT HE ARRIVED ONLY TO  
22 FIND THAT HER BOYFRIEND HAD BEATEN HER TO A PULP, IS THAT  
23 RIGHT?

24 A. RIGHT, AND THEY WERE HIS WORDS.

25 Q. THOSE WERE HIS WORDS?

September 18, 2012



Britt/Cross

Page 246

1 A. THAT THE BOYFRIEND HAD BEATEN HER TO A PULP.

2 Q. AND HE TOLD YOU THAT HE'S THE ONE THAT WENT TO THE HOTEL  
3 TO FIND HER THAT WAY, IS THAT RIGHT?

4 A. I'M ASSUMING HE WAS THE ONE BECAUSE HE TOLD THAT HE WAS  
5 -- I REMEMBER THAT HE WAS ANGRY ABOUT THE BOYFRIEND BEATING  
6 HER. AND I THINK SHE WAS TAKEN TO THE HOSPITAL FOR TREATMENT  
7 AND I SAW -- I KNOW THAT I SAW THAT SHE HAD A CAST ON HER ARM.

8 Q. ON TV YOU SAW THAT SHE HAD A CAST ON HER ARM?

9 A. UH-HUH, OR NEWSPAPER OR SOMEWHERE.

10 Q. AND HE, IN FACT, TOLD YOU THAT HE HAD AN ALTERCATION WITH  
11 THIS BOYFRIEND AT SOME POINT ABOUT THE FACT THAT HE HAD BEATEN  
12 HELENA UP, IS THAT RIGHT?

13 A. IN THE STAIR -- WELL, I DON'T KNOW THAT IT WAS ABOUT  
14 THAT. HE TOLD ME HE HAD AN ALTERCATION IN THE STAIRWELL WITH  
15 THE BOYFRIEND. I DON'T KNOW WHAT IT WAS ABOUT.

16 Q. AND THAT HE TOLD HIM TO STAY AWAY FROM HELENA STOECKLEY,  
17 IS THAT RIGHT?

18 THE COURT: I'M SORRY, WHAT WAS YOUR QUESTION AGAIN?

19 BY MS. COOLEY:

20 Q. AND THAT HE TOLD THE BOYFRIEND TO STAY AWAY FROM HELENA  
21 STOECKLEY, IS THAT RIGHT? DO YOU RECALL HIM TELLING YOU THAT?

22 A. YES, I THINK THAT WAS PART OF THE -- YES, I THINK IT WAS  
23 PART OF IT.

24 Q. AND JIM ALSO MENTIONED TO YOU THE INCIDENT ABOUT THE  
25 CAKE. DO YOU RECALL THAT INCIDENT, HIM MENTIONING THE CAKE TO

September 18, 2012

Britt/Cross

Page 247

1 YOU?

2 A. I REMEMBER WHEN THAT HAPPENED HE MENTIONED WHEN HE CAME  
3 IN FROM WORK HE WAS UPSET ABOUT JURORS BRINGING CAKES IN FOR  
4 THE JUDGE AND THAT HE JUST DIDN'T THINK THAT WAS SOMETHING  
5 THAT THEY SHOULD DO. AND I REMEMBER THINKING TO MYSELF,  
6 BECAUSE I KNEW NOTHING ABOUT THE COURT SYSTEM, THINKING, WELL,  
7 YOU KNOW, WHAT'S THE BIG DEAL? THAT WAS KIND OF MY REACTION  
8 TO THAT. BUT, YES, HE DID MORE THAN ONE TIME MENTION THE  
9 CAKES.

10 Q. AND SO TO HIM IT WAS A BIG DEAL?

11 A. YEAH.

12 Q. AND HE TALKED TO YOU SOME ABOUT JEFFREY MACDONALD'S  
13 Demeanor DURING THE TRIAL, IS THAT FAIR TO SAY?

14 A. YES, HE DID.

15 Q. AND HE TALKED TO YOU ABOUT THE FACT THAT HE SHOWED NO  
16 EMOTION WHEN THE VERDICT WAS READ, IS THAT RIGHT?

17 A. YES.

18 Q. AND HE ALSO MAYBE OPINED TO YOU THAT IF JEFFREY MACDONALD  
19 HAD DONE THIS THAT HE COULD HAVE BEEN ON DRUGS WHEN HE DID  
20 THIS, IS THAT FAIR TO SAY?

21 A. NO. WHAT HE SAID WAS, AND THIS WAS A VERY NEW THING TO  
22 ME AND I THINK WOULD HAVE BEEN TO MOST PEOPLE, AND I WILL TELL  
23 YOU WHAT HE SAID. HE SAID IF HE DID IT, HE DOESN'T REMEMBER  
24 ANYTHING ABOUT IT AND HE HAD TO HAVE BEEN ON SOME DRUGS OR  
25 SOMETHING WAS HIS --

September 18, 2012

Britt/Cross

Page 248

1 Q. AND THOSE WERE HIS WORDS?

2 A. AND THAT WAS HIS OPINION, I'M SURE, BUT, YES, HE DID SAY  
3 THAT.

4 Q. AND HE WAS JUST GIVING YOU HIS OPINION?

5 A. UH-HUH.

6 Q. NOW, WHEN HE CAME HOME AFTER THE DAY THAT HELENA  
7 STOECKLEY WAS INTERVIEWED DURING THE TRIAL AND YOU KNEW THAT  
8 THIS INTERVIEW WAS SUPPOSED TO HAVE HAPPENED THAT DAY AND SO  
9 YOU WERE WAITING TO HEAR FROM HIM ABOUT WHAT HAD HAPPENED AT  
10 WORK, IS THAT FAIR TO SAY?

11 A. YES. UH-HUH.

12 Q. AND HE CAME HOME AND HE TOLD YOU ABOUT IT, ABOUT WHAT  
13 HAPPENED DURING THE INTERVIEW, IS THAT RIGHT?

14 A. (WITNESS NODS HEAD.)

15 Q. BUT AT NO TIME DID HE EVER MENTION THAT JIM BLACKBURN HAD  
16 EVER THREATENED HELENA STOECKLEY?

17 A. NO, HE DID NOT. HE DID NOT.

18 Q. AND THEN SIMILARLY WHEN YOU HAD THE CONVERSATION ABOUT  
19 THE *FATAL VISION* MOVIE AND YOU TALKED TO HIM AGAIN ABOUT HIS  
20 INVOLVEMENT IN THAT STRING OF EVENTS WHERE SHE WAS  
21 INTERVIEWED, AT NO TIME DURING THAT CONVERSATION DID HE EVER  
22 MENTION TO YOU THAT JIM BLACKBURN HAD THREATENED HELENA  
23 STOECKLEY, IS THAT ALSO FAIR TO SAY?

24 A. YES, THAT'S FAIR TO SAY. HE DID NOT.

25 Q. SO, AT NO TIME DURING THE CONVERSATION THAT YOU HAD WAS

September 18, 2012

Britt/Cross

Page 249

1 THERE EVER A MENTION ABOUT A THREAT, IS THAT RIGHT?

2 A. NO, THERE WAS NOT.

3 Q. AND, MS. BRITT, WERE YOU AWARE THAT IN THE *FATAL VISION*  
4 MINI-SERIES -- YOU SAID THAT YOU WATCHED IT, IS THAT RIGHT?

5 A. YES.

6 Q. AND WERE YOU AWARE THAT THE INTERVIEW THAT WAS DEPICTED  
7 IN THAT MINI-SERIES WAS ACTUALLY THE INTERVIEW WITH THE  
8 DEFENSE AND THAT THE INTERVIEW WITH THE PROSECUTION WAS NOT  
9 DEPICTED IN THE MOVIE?

10 A. NO, I --

11 Q. IT'S PROBABLY BEEN A WHILE.

12 A. AND, THERE AGAIN, IT'S BEEN MANY YEARS SINCE I WATCHED  
13 IT.

14 Q. IT'S PROBABLY BEEN A WHILE. NOW, YOU MENTIONED THAT  
15 SOMETIME AFTER YOU HAD THE CONVERSATION WITH JIM ABOUT THE  
16 *FATAL VISION* MOVIE THAT HE CALLED YOU OR IT WAS AFTER HIS  
17 ALLEGATIONS CAME OUT, IS THAT RIGHT?

18 A. YES, AFTER THE FBI AGENTS CAME TO VISIT.

19 Q. DO YOU REMEMBER AROUND ABOUT WHEN THAT WAS?

20 A. IF THEY COULD TELL ME THE DATES THAT THEY CAME, I COULD  
21 TELL YOU IT WAS IN A FEW DAYS.

22 Q. OR THE YEAR EVEN?

23 A. I THINK IT'S MAYBE SEVEN -- ABOUT SIX OR SEVEN YEARS AGO.

24 Q. AND NOW I WANT TO TALK WITH YOU -- YOU TALKED ABOUT SOME  
25 OF THE THINGS THAT YOU TOLD THE FBI DURING THAT INTERVIEW AND

September 18, 2012

Britt/Cross

Page 250

1 I WANT TO TALK WITH YOU ABOUT A COUPLE OF OTHER THINGS THAT  
2 YOU MENTIONED.

3 YOU MENTIONED THAT JIM TOLD YOU HE HAD SPENT TIME  
4 WITH JEFFREY MACDONALD AT FORT BRAGG, IS THAT RIGHT?

5 A. YES. UH-HUH.

6 Q. AND JIM HAD TOLD YOU THAT?

7 A. YES, HE DID.

8 Q. YOU WEREN'T AT FORT BRAGG AT ANY TIME WITH THE TWO OF  
9 THEM?

10 A. NO.

11 Q. NOW, HE WAS IN THE ARMY, IS THAT RIGHT?

12 A. WHO? JIM?

13 Q. JIM.

14 A. YES, BUT THAT WAS MANY YEARS BEFORE.

15 Q. CAN I HAVE GOVERNMENT EXHIBIT 2125, PLEASE? AND IF YOU  
16 COULD MAKE THE TOP PART A LITTLE BIT LARGER.

17 MS. BRITT, CAN YOU SEE THAT I'M SHOWING YOU HERE  
18 THIS IS JIM'S APPLICATION FOR RETIREMENT FROM CIVIL SERVICE?  
19 CAN YOU SEE THAT ON THE SCREEN?

20 A. (WITNESS NODS HEAD.)

21 (GOVERNMENT EXHIBIT NUMBER 2125

22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. IT APPEARS TO HAVE HIS NAME AND TELEPHONE NUMBER AND  
24 ADDRESS?

25 A. (WITNESS NODS HEAD.)

September 18, 2012

Britt/Cross

Page 251

1 Q. MAY I HAVE PAGE TWO, PLEASE?

2 THE COURT: I CAN'T UNDERSTAND YOU. WHAT DID YOU  
3 SAY?

4 MS. COOLEY: I'M SORRY. I ASKED FOR PAGE TWO, YOUR  
5 HONOR.

6 THE COURT: THANK YOU.

7 BY MS. COOLEY:

8 Q. AND THIS DETAILS HIS TIME IN THE ARMY THAT HE WOULD HAVE  
9 HAD TO FILL OUT FOR HIS FEDERAL RETIREMENT, IS THAT RIGHT?

10 A. (WITNESS NODS HEAD.)

11 Q. AND SO DO THOSE DATES SEEM ACCURATE TO YOU THAT HE WAS IN  
12 THE ARMY FROM '57 TO '59?

13 A. THEY ARE ACCURATE.

14 Q. THANK YOU. AND HE DIDN'T START WORKING AT THE MARSHAL'S  
15 OFFICE UNTIL '68, IS THAT RIGHT?

16 A. CORRECT.

17 Q. AND HE RETIRED THERE AROUND ABOUT NOVEMBER OF '90?

18 A. I CAN'T HELP YOU WITH THAT DATE. I'M SORRY.

19 Q. CAN I HAVE THE BOTTOM OF THIS -- OF PAGE TWO OF THE  
20 RETIREMENT, PLEASE? AND NOW THIS IS -- DO YOU RECOGNIZE HIS  
21 SIGNATURE ON THIS DOCUMENT?

22 A. YES, I DO.

23 Q. AND THE DATE THAT HE HAS SIGNED THIS RETIREMENT DOCUMENT,  
24 THAT'S NOVEMBER 1ST OF 1990?

25 A. CORRECT.

September 18, 2012

Britt/Cross

Page 252

1 Q. AND YOU'VE TALKED TO US A FAIR BIT ABOUT HOW JIM WAS  
2 FAIRLY EMOTIONALLY INVESTED IN THE MACDONALD TRIAL, IS THAT A  
3 FAIR STATEMENT?

4 A. YES, HE WAS.

5 Q. AND BOTH DURING THE TRIAL AND THEN FOR SOME YEARS  
6 AFTERWARD, IS THAT A FAIR STATEMENT TOO?

7 A. DURING THE TRIAL HE WAS, YES, AND PROBABLY SOMETIME AFTER  
8 AS WELL.

9 Q. AND DURING THE TIME THAT YOU -- THAT *FATAL VISION* WAS ON  
10 TV AND YOU HAD THESE CONVERSATIONS WITH HIM HE WAS PRETTY MUCH  
11 EMOTIONAL ABOUT THAT, IS THAT RIGHT?

12 A. YES, HE WAS.

13 Q. AND DURING THE TIME OF THE TRIAL HE EMPHASIZED TO YOU  
14 THAT HE BELIEVED JEFFREY MACDONALD WAS A BRILLIANT MAN WHO  
15 RELATED WELL TO INDIVIDUALS FROM ALL WALKS OF LIFE, IS THAT AN  
16 ACCURATE STATEMENT?

17 A. YES. YES.

18 Q. AND THAT HE DIDN'T WANT TO LOCK HIM UP WHEN HE WAS FOUND  
19 GUILTY?

20 A. HE DID NOT EVER TELL ME HE DID NOT WANT TO LOCK HIM UP OR  
21 WHY. HE TOLD ME WHAT HAPPENED IN THE COURTROOM, BUT HE NEVER  
22 TOLD ME WHY.

23 Q. BUT HE SAID HE -- SO, WHAT HE TOLD YOU WAS THAT HE  
24 REFUSED TO LOCK HIM UP WHEN MARSHAL SALTER TOLD HIM TO?

25 A. YES.

September 18, 2012

Britt/Cross

Page 253

1 Q. AND THAT HE HAD MADE AN EFFORT TO DEAL WITH THE TRIAL  
2 PHOTOS DURING THE TRIAL?

3 A. YES.

4 Q. AND YOU TALKED ABOUT THAT WITH HIM?

5 A. (WITNESS NODS HEAD.)

6 Q. AND ALSO TO HIM -- YOU SAID THAT IT WAS YOUR WORD THAT IT  
7 WAS A MAJOR BREAKTHROUGH, BUT TO HIM IT APPEARED TO BE  
8 EQUIVALENT TO A MAJOR BREAKTHROUGH TO HAVE THIS INFORMATION  
9 ABOUT HELENA STOECKLEY COME FORWARD, IS THAT RIGHT?

10 A. YES, THAT SHE HAD INFORMATION TO SHARE THAT WAS VERY  
11 IMPORTANT.

12 Q. AND YOU SAID THAT HE SEEMED EXCITED ABOUT THE FACT SHE  
13 HAD THAT INFORMATION?

14 A. YES.

15 Q. NOW, I WANT TO FAST FORWARD A LITTLE BIT AND TALK ABOUT  
16 YOUR RELATIONSHIP WITH JIM SOME.

17 A. OKAY.

18 Q. AND HE FILED FOR DIVORCE IN 1988, IS THAT RIGHT?

19 A. YES.

20 Q. AND THEN YOU FILED A COUNTERCLAIM TO THAT, TO THE  
21 DIVORCE, TO PUT YOUR SIDE OF THE STORY, IS THAT FAIR TO SAY?

22 A. YES, I GUESS.

23 Q. MAY I HAVE GOVERNMENT EXHIBIT 2127, PLEASE? AND, MS.  
24 BRITT, I'LL JUST ASK YOU TO TAKE A LOOK AT THIS PAGE AND THEN  
25 WE'LL LET YOU LOOK AT THE OTHER PAGES OF THE DOCUMENT AND I

September 18, 2012



Britt/Cross

Page 254

1 WANT TO ASK IF YOU RECOGNIZE IT.

2 A. YES.

3 Q. AND CAN I HAVE THE LAST PAGE, PLEASE? AND THAT'S DATED  
4 FEBRUARY 1ST, 1989, IS THAT RIGHT?

5 A. YES.

6 Q. PAGE SEVEN. AND IS THAT YOUR SIGNATURE THERE ON PAGE  
7 SEVEN OF THAT DOCUMENT?

8 A. YES, IT IS.

9 Q. NOW, I WOULD LIKE TO GO BACK TO PAGE TWO, PLEASE. AND IF  
10 YOU COULD READ DOWN AT THE BOTTOM, PARAGRAPH 5C, THE CLAIM,  
11 THAT YOU ANSWERED HIS DIVORCE CLAIM.

12 A. THAT PLAINTIFF HAS COMMITTED ADULTERY AND CONTINUES TO  
13 COMMIT ADULTERY.

14 (GOVERNMENT EXHIBIT NUMBER 2127  
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. AND THAT WAS THE BEGINNING OF YOUR DIVORCE PROCEEDINGS  
17 WITH MR. BRITT, CORRECT?

18 A. I DON'T QUITE UNDERSTAND WHAT YOU MEAN BY THE BEGINNING.

19 Q. WHEN HE FIRST FILED FOR DIVORCE AND YOU ANSWERED HIM.

20 A. UH-HUH.

21 Q. OKAY. AND THEN DURING -- IT TAKES A LITTLE BIT OF TIME  
22 FOR THE DIVORCE TO BECOME FINAL, IS THAT FAIR TO SAY?

23 A. CORRECT. A YEAR.

24 Q. DURING THAT TIME THERE WERE SEVERAL OTHER FILINGS AND  
25 COURT APPEARANCES THAT YOU HAD TO GO TO AS A PART OF THAT, IS

September 18, 2012

Britt/Cross

Page 255

1 THAT RIGHT?

2 A. YES.

3 Q. AND ALSO DURING THIS TIME YOU WERE SEEKING ALIMONY FROM  
4 HIM BECAUSE YOU STILL HAD TO SUPPORT YOUR FOUR CHILDREN, IS  
5 THAT FAIR TO SAY?

6 A. NO. NO. I WAS NOT SEEKING ALIMONY AND MY CHILDREN WERE  
7 ALL OF ADULT AGE. THE YOUNGEST HAD TURNED 18. I WAS SEEKING  
8 EQUITABLE DISTRIBUTION OF OUR PROPERTY.

9 Q. AND THAT EQUITABLE DISTRIBUTION WOULD HAVE INCLUDED HIS  
10 RETIREMENT AND PENSION?

11 A. YES, THAT WAS WHAT I HAD HOPED.

12 Q. BECAUSE YOU HAD BEEN RAISING THE CHILDREN WHILE HE WAS  
13 WORKING?

14 A. YES, I WAS A STAY AT HOME MOTHER FOR TEN YEARS. AND THEN  
15 WHEN OUR OLDEST CHILDREN BEGAN COLLEGE OR A COUPLE OF YEARS  
16 BEFORE THEY BEGAN COLLEGE I WENT BACK TO WORK TO HELP GET THEM  
17 THROUGH SCHOOL.

18 Q. AND SO EQUITABLY SPEAKING, YOU'RE ENTITLED TO PART OF  
19 THAT RETIREMENT?

20 A. I FELT LIKE I WAS.

21 Q. AND IF I COULD HAVE GOVERNMENT EXHIBIT 2128, PLEASE.  
22 NOW, THIS DOCUMENT IS THE JUDGMENT FROM YOUR DIVORCE DECREE,  
23 IS THAT RIGHT?

24 A. I ASSUME THAT IT IS.

25 Q. AND IF I COULD HAVE PAGE THREE, PLEASE. AND IT BECAME

September 18, 2012

1 FINAL ON FEBRUARY 8TH OF 1989?

2 A. CORRECT.

3 (GOVERNMENT EXHIBIT NUMBER 2128  
4 WAS IDENTIFIED FOR THE RECORD.)

5 Q. AND IF I COULD HAVE GOVERNMENT EXHIBIT 2130. AND THIS  
6 LETTER IS A LETTER THAT YOU WROTE DATED NOVEMBER 26TH OF 1990,  
7 IS THAT RIGHT?

8 A. CORRECT.

9 (GOVERNMENT EXHIBIT NUMBER 2130  
10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. AND AT THAT POINT IN TIME THE EQUITABLE DISTRIBUTION WAS  
12 STILL ONGOING. EVEN THOUGH THE DIVORCE DECREE WAS FINAL, THE  
13 EQUITABLE DISTRIBUTION WAS STILL ONGOING?

14 A. CORRECT.

15 Q. AND YOU HAD NOT BEEN GIVEN THE CONTENTS OR THE AMOUNT OF  
16 HIS RETIREMENT AND PENSION?

17 A. CORRECT.

18 Q. AND YOU WERE TRYING TO FIGURE THAT OUT SO YOU COULD GET  
19 THE FINAL EQUITABLE DISTRIBUTION?

20 A. CORRECT.

21 Q. AND SO YOU WROTE THIS LETTER TO THE OFFICE OF PERSONNEL  
22 MANAGEMENT TO TRY AND GET THAT INFORMATION?

23 A. CORRECT.

24 Q. AND THEN IF I CAN HAVE GOVERNMENT EXHIBIT 2133. AND YOUR  
25 LAWYER ALSO WROTE TO TRY AND GET THE INFORMATION ON DECEMBER

September 18, 2012

Britt/Cross

Page 257

1 20TH OF 1990, IS THAT CORRECT?

2 A. CORRECT.

3 (GOVERNMENT EXHIBIT NUMBER 2133  
4 WAS IDENTIFIED FOR THE RECORD.)

5 Q. AND GOVERNMENT EXHIBIT 2131. AND YOU ALSO APPEALED TO  
6 SENATOR HELMS. AND THIS IS A LETTER FROM 1988?

7 A. CORRECT.

8 (GOVERNMENT EXHIBIT NUMBER 2131  
9 WAS IDENTIFIED FOR THE RECORD.)

10 Q. AND THEN 2132, PLEASE. AND THE LETTER IN 1988, YOU SENT  
11 WITH THIS LETTER IN 1990, BASICALLY LETTING HIM KNOW THAT YOU  
12 STILL HADN'T BEEN ABLE TO DETERMINE THE AMOUNT FOR THE  
13 EQUITABLE DISTRIBUTION, IS THAT RIGHT?

14 A. CORRECT.

15 (GOVERNMENT EXHIBIT NUMBER 2132  
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. AND 2134, PLEASE. NOW, IN 1991, AUGUST 22ND, THE COURT  
18 ORDERED THAT JIM GET THAT INFORMATION AND GET IT TO THE COURT  
19 AND GET IT TO YOU SO THAT YOU COULD HAVE YOUR FINAL EQUITABLE  
20 DISTRIBUTION, IS THAT RIGHT?

21 A. CORRECT.

22 (GOVERNMENT EXHIBIT NUMBER 2134  
23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. AND 2136, PLEASE. AND IN THIS ORDER THAT'S DATED -- IF I  
25 CAN GET THE LAST PAGE, PLEASE. THIS ORDER IS DATED SEPTEMBER

September 18, 2012

1 25TH OF 1991, IS THAT RIGHT?

2 A. YES.

3 (GOVERNMENT EXHIBIT NUMBER 2136  
4 WAS IDENTIFIED FOR THE RECORD.)

5 Q. AND IF I COULD HAVE THE FIRST PAGE, PLEASE, AND THE  
6 BOTTOM PARAGRAPH. AND ESSENTIALLY THIS HAS BEEN GOING ON  
7 SINCE THE FINAL DIVORCE DECREE IN 1989, AND NOW WE'RE IN 1991,  
8 AND THE JUDGE IS ORDERING THAT JIM APPEAR AND SHOW CAUSE WHY  
9 HE SHOULDN'T BE HELD IN CONTEMPT FOR NOT PROVIDING THIS  
10 INFORMATION TO THE COURT AND TO YOU SO THAT THE EQUITABLE  
11 DISTRIBUTION CAN BE FINAL, IS THAT RIGHT?

12 A. CORRECT.

13 Q. AND 2125, PLEASE. AND WE LOOKED AT THIS EARLIER AND YOU  
14 SAID THAT YOU RECOGNIZED THE SIGNATURE ON THIS DOCUMENT AND  
15 THIS WAS THE RETIREMENT DOCUMENT THAT HE FILED. AND IF I MAY  
16 HAVE PAGE TWO. AND HE FILED IT, WE SAID EARLIER, ON NOVEMBER  
17 1ST OF 1990, IS THAT RIGHT?

18 A. CORRECT.

19 Q. AND THEN IF I COULD HAVE 2126. AND NOW THIS IS THE  
20 STATEMENT REGARDING FORMER SPOUSES THAT HE ALSO SIGNED. IF  
21 YOU CAN SEE THAT THERE, DOES THAT APPEAR TO BE HIS SIGNATURE  
22 THAT YOU RECOGNIZE FOR NOVEMBER 1ST OF 1990, ON THIS DOCUMENT?

23 A. THAT IS HIS SIGNATURE.

24 Q. AND THIS DOCUMENT -- IF I COULD HAVE THE FULL TOP OF THE  
25 DOCUMENT -- IS THE STATEMENT REGARDING FORMER SPOUSES THAT HE

September 18, 2012

Britt/Cross

Page 259

1 HAD FILED WITH HIS RETIREMENT?

2 A. YES.

3 (GOVERNMENT EXHIBIT NUMBER 2126  
4 WAS IDENTIFIED FOR THE RECORD.)

5 Q. AND IN THIS DO YOU SEE WHERE IT SAYS DO YOU HAVE A LIVING  
6 FORMER SPOUSE WITH WHOM YOU WERE DIVORCED AFTER MAY 6TH, 1985,  
7 AND TO WHOM A COURT ORDER GIVES A SURVIVOR ANNUITY AND HE'S  
8 ANSWERED NO?

9 A. YES, I HAVE SEEN THIS RECENTLY, BUT I HAVE NOT BEEN GIVEN  
10 AN ANNUITY.

11 Q. THAT'S RIGHT. THAT'S RIGHT. AND AT THIS POINT IN TIME,  
12 THIS DOCUMENT, NOVEMBER 1ST OF 1990, THIS WAS IN THE MIDDLE OF  
13 WHEN YOU WERE TRYING TO WRITE THE LETTERS TO THE OFFICE OF  
14 PERSONNEL MANAGEMENT AND SO WAS YOUR ATTORNEY AND BEFORE THE  
15 COURT WAS ABLE TO MAKE ANY DISTRIBUTION EQUITABLE OR  
16 OTHERWISE, IS THAT RIGHT?

17 A. RIGHT.

18 Q. AND YOU MENTIONED EARLIER THAT EVEN AFTER YOU AND JIM  
19 WERE DIVORCED YOU HAD SOME ONGOING CONTACT. I MEAN, YOU HAD  
20 FOUR CHILDREN TOGETHER.

21 A. CORRECT.

22 Q. AND I ASSUME GRANDCHILDREN?

23 A. YES.

24 Q. I MEAN, SO, YOU SAID YOU WOULD SEE HIM FROM TIME TO TIME?

25 A. YES.

September 18, 2012

Britt/Cross

Page 260

1 Q. AND HE EVENTUALLY REMARRIED, IS THAT RIGHT?

2 A. CORRECT.

3 Q. TO A WOMAN NAMED NANCY WILLIAMS?

4 A. CORRECT.

5 Q. AND THEY LIVED TOGETHER AT 616 WIMBERLY ROAD IN APEX?

6 A. I CAN'T VERIFY THAT.

7 Q. THEY WERE LIVING TOGETHER AFTER THEY GOT MARRIED, IS THAT  
8 FAIR TO SAY?

9 A. YES, I'M SURE.

10 Q. AND THEY WERE TOGETHER UNTIL JIM PASSED AWAY, IS THAT  
11 RIGHT?

12 A. CORRECT. THAT IS MY UNDERSTANDING.

13 Q. AND THAT WAS IN 2008?

14 A. UH-HUH.

15 Q. AND DID YOU EVER KNOW HIM TO MOVE TO LAS VEGAS?

16 A. NO, BUT I CANNOT SPEAK TO JIM AFTER WE DIVORCED OTHER  
17 THAN THE FEW TIMES THAT I SAW HIM AT CHILDREN'S WEDDINGS OR  
18 THE FEW TIMES HE STOPPED AT MY HOUSE.

19 Q. AND DID YOU KNOW THAT JIM AND NANCY EVENTUALLY --

20 COURT REPORTER: I'M SORRY, CAN YOU REPEAT -- I'M  
21 SORRY, CAN YOU REPEAT THE QUESTION?

22 BY MS. COOLEY:

23 Q. DID YOU KNOW THAT JIM AND NANCY ALSO EVENTUALLY GOT  
24 DIVORCED?

25 A. YES, I WAS TOLD THAT.

September 18, 2012

Britt/Cross

Page 261

1 Q. IF I CAN HAVE GOVERNMENT 2017, AND IF I CAN HAVE PAGE  
2 TWO. NOW, MS. BRITT, DO YOU RECOGNIZE THE SIGNATURE ON THIS  
3 DOCUMENT AS WELL TO BE THAT OF YOUR EX-HUSBAND?

4 A. IT RESEMBLES HIS SIGNATURE, BUT IT'S NOT WHAT I WOULD  
5 NORMALLY RECOGNIZE AS HIS SIGNATURE. IT'S NOT AS CONCISE  
6 AS --

7 Q. IT'S NOT AS NEAT AS --

8 A. AS CONCISE AS NORMAL. BUT, YES, IT DOES RESEMBLE HIS  
9 SIGNATURE.

10 Q. AND CAN WE GO BACK TO PAGE ONE, PLEASE. AND THIS IS AN  
11 AFFIDAVIT FILED IN LAS VEGAS, NEVADA, IN THE MATTER OF JIMMY  
12 BRITT VERSUS NANCY BRITT. AND HE SAYS I, JIMMY B. BRITT, DO  
13 SOLEMNLY SWEAR AND TESTIFY HEREIN TO THE TRUTH, THE WHOLE  
14 TRUTH AND NOTHING BUT THE TRUTH, THAT I AM THE PLAINTIFF, THAT  
15 I RESIDE AT BUDGET SUITES IN LAS VEGAS, NEVADA.

16 NEXT PAGE, PLEASE.

17 THAT I HAVE BEEN A RESIDENT OF LAS VEGAS, CLARK  
18 COUNTY, IN EXCESS OF SIX WEEKS, IT'S MY INTENTION TO REMAIN  
19 FOR THE FORESEEABLE FUTURE, AND I AM THE COMPLAINANT.

20 THE DEFENDANT AND I, MEANING NANCY, ARE COMPATIBLE  
21 IN MARRIAGE -- ARE INCOMPATIBLE, EXCUSE ME, IN MARRIAGE. THAT  
22 IS, OUR LIKES, DISLIKES, TASTES AND PERSONALITIES ARE SO  
23 DIVERGENT THAT WE NO LONGER CAN LIVE TOGETHER AS HUSBAND AND  
24 WIFE. THAT THERE IS NO POSSIBILITY THAT WE WILL RECONCILE.

25 AND THEN IF WE CAN GO DOWN TO THE BOTTOM.

September 18, 2012



Britt/Cross

Page 262

1 HE'S SWORN TO THIS BEFORE A NOTARY ON MARCH 13TH OF  
2 2000, IS THAT -- DO YOU SEE THAT DATE THERE, MARCH 13TH OF  
3 2000?

4 A. (WITNESS NODS HEAD.)

5 (GOVERNMENT EXHIBIT NUMBER 2017  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. NOW, YOU KNEW HIM TO LIVE WITH NANCY, IN FACT, UNTIL HE  
8 DIED IN 2008, IS THAT RIGHT?

9 A. THAT'S WHAT I WAS TOLD. I NEVER SEEN -- BEEN TO THAT  
10 ADDRESS.

11 Q. SURE. YOU DIDN'T GO VISIT WITH THEM?

12 A. NO.

13 Q. NOW, AT SOME POINT ALSO AFTER YOUR DIVORCE, JIM TRIED TO  
14 OPEN UP A BAR AND RESTAURANT THERE IN SMITHFIELD FOR ONE OF  
15 YOUR SONS TO OPERATE OR TO RUN, IS THAT RIGHT?

16 A. WITH HIM.

17 Q. TOGETHER, RIGHT.

18 A. YES.

19 Q. BUT THAT WASN'T ABLE TO GET OFF THE GROUND DUE TO THE  
20 FINANCING OF THE RESTAURANT AND THE --

21 A. I'M GOING TO BE VERY HONEST WITH YOU ABOUT THIS, I KNOW  
22 ABSOLUTELY NOTHING ABOUT THAT. IT WAS NOT SHARED WITH ME. I  
23 WAS NOT INVOLVED IN ANY WAY WITH THAT.

24 Q. BUT FAIR TO SAY THAT IT NEVER ACTUALLY ENDED UP COMING TO  
25 FRUITION AND HAPPENING, IS THAT RIGHT?

September 18, 2012

Britt/Cross

Page 263

1 A. THAT IS TRUE.

2 Q. AND SO YOU'RE UNAWARE THAT IT EVENTUALLY WAS FORECLOSED  
3 UPON, IS THAT --

4 A. I AM TOTALLY UNAWARE. I DID NOT -- DID NOT KNOW THAT.

5 Q. MAY I HAVE GOVERNMENT EXHIBIT 2123? NOW, I'M SHOWING YOU  
6 HERE, YOU MAY NOT HAVE SEEN THIS DOCUMENT BEFORE, THIS IS THE  
7 PETITION IN BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NORTH  
8 CAROLINA, AND YOU SEE JIMMY'S NAME THERE AND HIS ADDRESS IN  
9 APEX. IF WE COULD GO TO THE LAST PAGE, PLEASE. AND CAN YOU  
10 SEE THE DATE ON THE LAST PAGE HERE, IT'S APRIL 27TH OF 2005?

11 A. YES, I SEE THAT DATE.

12 Q. AND IF WE COULD GO TO PAGE FOUR. NOW, HERE ON PAGE FOUR  
13 IT ASKS FOR HIM TO LIST HIS REAL PROPERTY AND HE LISTS A HOUSE  
14 AND LOT IN APEX.

15 A. PARDON?

16 Q. CAN YOU SEE THAT THE HOUSE AND LOT IN APEX IS A HALF  
17 INTEREST WITH NON-FILING WIFE? CAN YOU SEE THAT THERE?

18 A. YES, I SEE THAT.

19 Q. AND ON PAGE 24, THIS LISTS THE CO-DEBTORS THAT HE HAS ON  
20 THAT PROPERTY, A NAME AND ADDRESS, AND THIS SAYS NANCY BRITT  
21 ALSO IN APEX. DO YOU SEE THAT THERE ALSO?

22 A. I DO, BUT I DON'T UNDERSTAND WHY YOU'RE ASKING ME ABOUT  
23 THIS BECAUSE PLEASE UNDERSTAND I KNOW NOTHING, DID NOT WANT TO  
24 KNOW ANYTHING. ONCE I DIVORCED JIM OR WE DIVORCED, I REALLY  
25 TRIED TO NOT BE INVOLVED. SO, I KNOW NOTHING ABOUT THIS.

September 18, 2012

Britt/Cross

Page 264

1 Q. SO, YOU'RE UNAWARE THAT HE FILED FOR BANKRUPTCY IN 2005?

2 A. YEAH. I HAD NO REASON TO KNOW THAT.

3 Q. AT THAT POINT ALL OF YOUR ASSETS HAD ALREADY BEEN  
4 DISTRIBUTED BETWEEN THE TWO OF YOU?

5 A. YES.

6 Q. NOW, IS IT FAIR TO SAY, MS. BRITT, THAT LATER ON IN  
7 JIMMY'S LIFE HE FELL ONTO HARD TIMES A LITTLE BIT AND STARTED  
8 TO HAVE A PROBLEM WITH ALCOHOL?

9 A. THERE AGAIN, I CANNOT ANSWER THAT BECAUSE HONESTLY I WAS  
10 NOT INVOLVED. I MEAN, ANYTHING I WOULD TELL YOU WOULD NOT BE  
11 FROM MY PERSONAL KNOWLEDGE OR EXPERIENCE.

12 Q. AND SO YOU WEREN'T AWARE THAT HE WAS IN AND OUT OF REHAB  
13 IN RALEIGH AND --

14 MR. WIDENHOUSE: YOUR HONOR, I'M GOING TO OBJECT.  
15 THE WITNESS HAS SAID SHE DOESN'T HAVE ANY KNOWLEDGE OF THIS  
16 AND IT SEEMS TO ME IF THEY WANT TO GET THIS STUFF IN IT SHOULD  
17 BE THROUGH SOMEBODY ELSE.

18 THE COURT: WELL, I THINK YOU'RE CORRECT, MR.  
19 WIDENHOUSE. SUSTAINED.

20 MS. COOLEY: THANK YOU, YOUR HONOR. I HAVE NO  
21 FURTHER QUESTIONS.

22 THE COURT: MR. WIDENHOUSE.

23 MR. WIDENHOUSE: WOULD YOU GIVE ME JUST A MOMENT,  
24 YOUR HONOR?

25 THE COURT: SURELY.

September 18, 2012

Britt/Redirect

Page 265

1 (PAUSE.)

2 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

3 R E D I R E C T E X A M I N A T I O N 9:44 A.M.

4 BY MR. WIDENHOUSE:

5 Q. JUST A COUPLE OF FINAL QUESTIONS, MS. BRITT. DID YOU  
6 HAVE THE SENSE THAT AFTER THE MACDONALD TRIAL WAS OVER JIM  
7 CONTINUED TO BE OBSESSED WITH IT? DID HE TALK ABOUT THE  
8 MACDONALD TRIAL A LOT WITH YOU ONCE IT WAS OVER?

9 A. HE WAS CONCERNED ABOUT IT. THERE WAS NEVER -- JIM TALKED  
10 A LOT ABOUT DIFFERENT CASES THAT HE WORKED OVER THE YEARS,  
11 THINGS THAT HE WAS INVOLVED IN. SOMETIMES HE DID. SOMETIMES  
12 HE DIDN'T. BUT THERE WAS NEVER ANYTHING IN HIS CAREER THAT I  
13 WAS AWARE OF THAT IMPACTED HIM THE WAY THE MACDONALD TRIAL  
14 DID. THE MACDONALD -- NOT ONLY THE TRIAL, BUT THE ENTIRE  
15 PROCESS, YES.

16 Q. ALL RIGHT. AND I TAKE IT FROM THE DIVORCE EQUITABLE  
17 DISTRIBUTION DOCUMENTS THAT THE GOVERNMENT SHOWED YOU ON  
18 CROSS-EXAMINATION OF YOUR SITUATION THAT YOUR SEPARATION AND  
19 DIVORCE FROM MR. BRITT WAS AN EMOTIONAL TIME FOR YOU?

20 A. IT WAS VERY PAINFUL FOR ME. I WILL SAY I'VE EXPERIENCED  
21 THE DEATH OF LOVED ONES. IT WAS THE MOST PAINFUL THING I'VE  
22 EVER ENCOUNTERED. AND NOT -- IT'S JUST A BREAK UP OF FAMILY.  
23 SO, YES, IT WAS A VERY, VERY PAINFUL TIME.

24 Q. BUT YOU'RE STILL CERTAIN THAT YOU HAD THE CONVERSATIONS  
25 WITH HIM DURING THE MACDONALD TRIAL THAT YOU'VE TESTIFIED

September 18, 2012

Stoeckley/Direct

Page 266

1 ABOUT TODAY?

2 A. ABSOLUTELY. YES.

3 MR. WIDENHOUSE: THANK YOU, MS. BRITT. THAT'S ALL I  
4 HAVE, YOUR HONOR.

5 THE COURT: RE CROSS.

6 MS. COOLEY: NO, YOUR HONOR. THANK YOU.

7 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT  
8 WITNESS.

9 MR. WIDENHOUSE: WE CALL GENE STOECKLEY. AND, YOUR  
10 HONOR, COULD MS. BRITT BE EXCUSED?

11 THE COURT: YES, MA'AM. DO YOU HAVE ANY OBJECTION,  
12 MS. COOLEY?

13 MS. COOLEY: NO OBJECTION, YOUR HONOR.

14 THE COURT: THANK YOU.

15 (PAUSE.)

16 **EUGENE B. STOECKLEY, DEFENSE WITNESS, SWORN**

17

18 D I R E C T E X A M I N A T I O N 9:51 A.M.

19 BY MR. WIDENHOUSE:

20 Q. GOOD MORNING, MR. STOECKLEY. COULD YOU STATE YOUR NAME  
21 FOR THE RECORD AND JUST TELL US THE TOWN WHERE YOU LIVE?

22 A. EUGENE BERNARD STOECKLEY. I LIVE IN FUQUAY-VARINA, NORTH  
23 CAROLINA.

24 Q. ALL RIGHT. AND --

25 MADAM CLERK: I'M SORRY. THE RAIN.

September 18, 2012

Stoeckley/Direct

Page 267

1 BY MR. WIDENHOUSE:

2 Q. CAN YOU TELL US WHERE YOU GREW UP?

3 A. I SPENT THE MAJORITY OF MY LIFE GROWING UP IN  
4 FAYETTEVILLE, NORTH CAROLINA.

5 Q. OKAY. AND WHO WERE YOUR PARENTS?

6 A. CLARENCE AND HELENA STOECKLEY.

7 Q. AND WHAT DID YOUR FATHER DO?

8 A. HE WAS A SALES REPRESENTATIVE FOR HIGHLAND PRESS.

9 Q. AND --

10 MADAM CLERK: I'M SORRY. I THINK THAT'S THE RAIN  
11 OUTSIDE.

12 BY MR. WIDENHOUSE:

13 Q. WHAT DID HE DO BEFORE THAT?

14 A. HE WAS MILITARY. HE RETIRED FROM THE SERVICE AFTER 20  
15 YEARS.

16 Q. AND DO YOU HAVE ANY BROTHERS AND SISTERS?

17 A. YES. I CURRENTLY HAVE AN OLDER SISTER LIVING AND MY  
18 OLDER BROTHER, CLARENCE JUNIOR.

19 Q. AND DO YOU HAVE A SISTER THAT IS NO LONGER LIVING?

20 A. THAT'S CORRECT, HELENA JUNIOR.

21 Q. OKAY. I TAKE IT BY SAYING HELENA JUNIOR, THAT MUST MEAN  
22 YOUR MOTHER WAS HELENA AS WELL?

23 A. CORRECT.

24 Q. CAN YOU TELL US A LITTLE BIT ABOUT GROWING UP IN

25 FAYETTEVILLE, ESPECIALLY AS IT RELATES TO YOUR SISTER'S

September 18, 2012

Stoeckley/Direct

Page 268

1 HELENA'S --

2 MR. WIDENHOUSE: SORRY.

3 MADAM CLERK: LET'S SEE IF THIS IS A LITTLE BIT  
4 BETTER.

5 BY MR. WIDENHOUSE:

6 Q. CAN YOU TELL US A LITTLE BIT ABOUT GROWING UP WITH YOUR  
7 SISTER HAVING BEEN ASSOCIATED WITH THE MACDONALD  
8 INVESTIGATION?

9 A. WELL, AT THE TIME THAT THIS TOOK PLACE I WAS TEN YEARS  
10 OLD AND, OF COURSE, IT WAS A BIG THING IN FAYETTEVILLE  
11 OBVIOUSLY.

12 MY SISTER, ALTHOUGH NOT LIVING IN THE HOME AT THE  
13 TIME, BUT LIVING THERE IN FAYETTEVILLE, WE SAW EACH OTHER  
14 FREQUENTLY.

15 FEBRUARY 16TH WAS MY BIRTHDAY AND SHE HAD STOPPED BY  
16 THE HOUSE. I REMEMBER SHE ALWAYS WOULD COME BY BECAUSE I WAS  
17 HER LITTLE BROTHER AND SHE ALWAYS, YOU KNOW, HAD TO COME BY  
18 AND GIVE ME A BIRTHDAY CARD OR A LITTLE GIFT OR SOMETHING.

19 I JUST REMEMBER THE NEXT MORNING MY PARENTS KIND OF  
20 FOCUSED ON THE NEWS, BUT THERE WASN'T ANY SPECIFIC DISCUSSION.  
21 I DREW NO CONCLUSION THAT THERE WAS ANY KIND OF TIE-IN TO WHAT  
22 HAPPENED THAT NIGHT IN OUR FAMILY, NOT AT THAT TIME.

23 Q. DID THERE COME A TIME WHEN YOU BECAME AWARE OF THAT  
24 POSSIBILITY?

25 A. IT STARTED COMING OUT ESPECIALLY WHEN MY PARENTS STARTED

September 18, 2012

Stoeckley/Direct

Page 269

1 RECEIVING CALLS, REPORTERS COMING BY WISHING TO SPEAK TO THEM,  
2 AND IT SORT OF EVOLVED. I COULDN'T TELL YOU EXACTLY WHAT THE  
3 TIME FRAME WAS, IT JUST SORT OF STARTED EVOLVING. AND, OF  
4 COURSE, AS A YOUNGSTER I WASN'T REALLY -- YOU KNOW, MY FOCUS  
5 WASN'T ON THE NEWS OR THINGS LIKE THAT.

6 Q. DID IT HAVE ANY IMPACT ON SORT OF YOUR FAMILY LIFE THAT  
7 YOU CAN RECALL?

8 A. OH, ABSOLUTELY IT HAD AN IMPACT, ESPECIALLY AS I BECAME  
9 MORE AWARE OF THE RELATIONSHIP MY SISTER HAD WITH THE CASE.  
10 IT WAS -- I WOULD GET HARASSED AT SCHOOL. THERE WERE OTHER --  
11 I GUESS MY SCHOOL PEERS, SAME GRADE, THAT THEIR PARENTS WERE  
12 IN THE SAME CIRCLE AS MY PARENTS. THEY KNEW MY PARENTS WELL.  
13 AND I WOULD GET THINGS, YOU KNOW, JUST TALKING ABOUT YOUR  
14 SISTER'S A MURDERER, YOUR SISTER'S A MURDERER, AND THINGS LIKE  
15 THAT.

16 Q. AND DO YOU REMEMBER ABOUT WHAT AGE YOU WERE WHEN THOSE  
17 KINDS OF THINGS WERE HAPPENING?

18 A. PROBABLY AROUND FIFTH GRADE.

19 Q. AND DID THAT GO ON FOR A WHILE?

20 A. WELL, I DEVELOPED JUST MY OWN WAY OF DEALING WITH IT AS I  
21 GREW OLDER. I AVOIDED MOST SOCIAL SITUATIONS WHERE PEOPLE  
22 WOULD DRAW THE CONCLUSION THAT I WAS RELATED TO HELENA  
23 STOECKLEY AND INEVITABLY SOMEBODY WOULD ASK ME, YOU KNOW, ARE  
24 YOU RELATED TO THAT STOECKLEY WOMAN WHO WAS INVOLVED WITH THE  
25 CASE AND I WOULD DENY IT.

September 18, 2012



Stoeckley/Direct

Page 270

1 IT TOOK ME QUITE A WHILE INTO MY, I'D SAY, ADULT  
2 LIFE, INTO MY 30S, BEFORE I WAS ABLE TO JUST RECONCILE IT AND  
3 JUST CONVINCED MYSELF THAT I WAS NOT RESPONSIBLE FOR WHAT SHE  
4 DID OR MAY HAVE BEEN INVOLVED WITH. AND IT JUST TOOK SOME  
5 TIME TO JUST COME TO THAT REALIZATION AND ACCEPT THE HISTORY  
6 THAT WAS THERE AND QUIT TRYING TO HIDE FROM IT.

7 Q. DID THE EXPERIENCES YOU HAD GROWING UP AS A RESULT OF  
8 THIS INFORMATION, DID IT HAVE AN IMPACT ON YOUR RELATIONSHIP  
9 WITH YOUR SISTER HELENA?

10 A. AS I REACHED MY ADOLESCENT YEARS, I GUESS INTO JUNIOR  
11 HIGH AND THOSE YEARS, I HELD HER ACCOUNTABLE. I FOSTERED A  
12 BIT OF ILL WILL TOWARDS HER BECAUSE I SAW WHAT IT DID TO MY  
13 PARENTS. I SAW THE HARASSMENT. YOU KNOW, A NUMBER OF TIMES  
14 THEY HAD TO CHANGE PHONE NUMBERS, GET UNLISTED NUMBERS, JUST  
15 THINGS LIKE THAT. AND I WAS VERY -- HAD GROWN TO BE  
16 PROTECTIVE OF THEM AND ESPECIALLY IN THIS SITUATION.

17 BUT I USED TO RESENT MY SISTER BECAUSE OF WHAT I  
18 FELT SHE HAD BROUGHT UPON MY PARENTS AND NOT SO MUCH MYSELF,  
19 BUT MY PARENTS. AND THERE WAS A PERIOD WHERE I JUST REALLY  
20 DIDN'T HAVE MUCH TO DO WITH HER.

21 Q. DID THERE COME A TIME WHEN YOU CONFRONTED HER ABOUT IT?

22 A. IT CAME TO A HEAD AT ONE POINT. I DON'T KNOW IF SHE WAS  
23 LIVING IN SOUTH CAROLINA AT THE TIME, BUT I JUST REMEMBER  
24 THERE AT THE HOUSE IN FAYETTEVILLE THAT IT JUST SORT OF CAME  
25 TO A BOIL AND I JUST TOLD HER, YOU KNOW, THAT I WAS FED UP

September 18, 2012

Stoeckley/Direct

Page 271

1 WITH WHAT WE HAD GONE THROUGH BECAUSE OF HER NONSENSE AND WE  
2 JUST HAD A HEATED ARGUMENT.

3 Q. AND DID SHE SAY ANYTHING TO YOU SORT OF IN THAT ARGUMENT  
4 THAT STICKS IN YOUR MIND?

5 A. SHE DID. IT WAS -- SHE TOLD ME TO BE CAREFUL BECAUSE SHE  
6 HAD CERTAIN FRIENDS AND SHE TOLD ME SHE ALSO HAD AN ICE PICK.

7 Q. AND DO YOU REMEMBER ABOUT HOW OLD YOU WERE OR SORT OF IN  
8 WHAT GRADE IN SCHOOL WHEN YOU HAD THAT CONVERSATION -- THAT  
9 CONFRONTATION?

10 A. I WOULD HAVE TO SAY, AND THIS IS JUST MY BEST  
11 RECOLLECTION, THAT I WAS IN HIGH SCHOOL, MAYBE EARLY HIGH  
12 SCHOOL.

13 Q. OKAY. AND I KNOW YOU TOLD US YOU HAD THREE BROTHERS AND  
14 SISTERS AND I SHOULD HAVE ASKED YOU THEN, WHAT WERE THE AGE  
15 RANGES OF THE SIBLINGS IN YOUR FAMILY? WHO WAS THE OLDEST?

16 A. THE OLDEST WAS MY SISTER, DOLLY SCHEHERAZADE, CURRENTLY  
17 LIVING AND SHE'S IN VIRGINIA. AND NEXT WAS MY BROTHER,  
18 CLARENCE JUNIOR.

19 Q. WHAT'S THE AGE DIFFERENCE BETWEEN DOLLY AND CLARENCE  
20 JUNIOR?

21 A. LET'S SEE. DOLLY JUST TURNED, WHAT, 65. THERE'S  
22 PROBABLY FIVE YEARS AGE DIFFERENCE.

23 Q. OKAY. SO, YOU HAD DOLLY AND CLARENCE ABOUT FIVE YEARS  
24 APART AND THEN WHO CAME AFTER CLARENCE JUNIOR?

25 A. HELENA JUNIOR.

September 18, 2012

Stoeckley/Direct

Page 272

1 Q. AND WHAT WAS THE AGE DIFFERENCE BETWEEN CLARENCE JUNIOR  
2 AND HELENA?

3 A. IT WAS JUST A COUPLE OF YEARS. THEY WERE THE CLOSEST IN  
4 AGE.

5 Q. OKAY. AND THEN DOES THAT MAKE YOU THE BABY OF THE  
6 FAMILY?

7 A. I WAS THE BABY.

8 Q. OKAY. AND HOW MUCH YOUNGER -- WHAT'S THE AGE DIFFERENCE  
9 BETWEEN YOU AND HELENA JUNIOR?

10 A. I WOULD SAY ABOUT SIX YEARS. SIX, SEVEN YEARS.

11 Q. OKAY. SO, WHEN YOU WERE IN JUNIOR HIGH, AT THAT AGE  
12 RANGE, WAS SHE -- HAD SHE MOVED OUT OF THE HOUSE AT THAT  
13 POINT?

14 A. YES.

15 Q. AND SO YOU WERE THE ONLY CHILD LEFT IN THE HOUSE WITH  
16 YOUR MOM AND DAD?

17 A. CORRECT. CORRECT.

18 Q. OKAY. DO YOU RECALL THE TIME OF THE MACDONALD TRIAL IN  
19 1979?

20 A. YES, I WAS LIVING IN WILMINGTON.

21 Q. OKAY. AND DO YOU REMEMBER HOW OLD YOU WERE ROUGHLY?

22 A. I WAS IN MY EARLY 20S. I WAS ATTENDING SCHOOL.

23 Q. OKAY. AND DID YOUR MOTHER AND FATHER HAVE ANY CONNECTION  
24 WITH THE TRIAL?

25 A. I KNOW THEY WERE IN RALEIGH FOR THE TRIAL. I DON'T KNOW

September 18, 2012

Stoeckley/Direct

Page 273

1 IF IT WAS JUST WHETHER THEY HAD BEEN SUBPOENAED TO ACT -- TO  
2 GIVE TESTIMONY OR NOT. I DON'T KNOW.

3 Q. OKAY. DID THEY TALK TO YOU ABOUT THAT?

4 A. NEGATIVE. NO.

5 Q. OKAY. WELL, WHEN YOU WERE GROWING UP AT HOME WITH THIS  
6 INFORMATION OUT IN THE COMMUNITY WAS THERE TALK AT HOME ABOUT  
7 HELENA'S POSSIBLE INVOLVEMENT WITH THE MACDONALD KILLINGS OR  
8 ANYTHING LIKE THAT?

9 A. NO, IT WASN'T BROUGHT UP.

10 Q. WAS IT A SUBJECT THAT JUST IT WAS UNDERSTOOD WE DON'T  
11 TALK ABOUT IT AT HOME?

12 A. RIGHT. AND ESPECIALLY MY FATHER, HE NEVER BROUGHT IT UP.  
13 AND MY MOTHER, I NEVER DISCUSSED IT WITH HER, NOT AT THAT  
14 TIME.

15 Q. OKAY. SO, IT WAS SORT OF TABOO AT THE TIME?

16 A. THAT WOULD BE A GOOD DESCRIPTION.

17 Q. AND DO YOU RECALL WHERE HELENA JUNIOR LIVED AFTER THE  
18 MACDONALD TRIAL IN 1979?

19 A. I THINK AT THE TIME SHE WAS STILL LIVING IN SOUTH  
20 CAROLINA. SENECA OR SOMEWHERE DOWN IN SOUTH CAROLINA. SHE  
21 MOVED AROUND A FEW TIMES. AND LIKE I SAID, I DIDN'T KEEP UP  
22 WITH HER.

23 AT THAT POINT, I HAD PRETTY MUCH JUST PUT THE  
24 DISTANCE BETWEEN US AND I WAS TRYING TO GET ON WITH MY FUTURE  
25 AND TRYING TO MAP OUT MY COURSE.

September 18, 2012

Stoeckley/Direct

Page 274

1 Q. OKAY. I THINK YOU SAID YOU HAD GONE TO -- YOU WERE IN  
2 WILMINGTON DURING THE MACDONALD TRIAL, YOU WERE GOING TO  
3 SCHOOL?

4 A. YES, SIR.

5 Q. AND WHEN YOU FINISHED SCHOOL IN WILMINGTON, DID YOU MOVE  
6 BACK TO FAYETTEVILLE? DID YOU STAY IN WILMINGTON? WHAT  
7 HAPPENED AT THAT POINT?

8 A. I DID. I MOVED BACK TO FAYETTEVILLE SHORTLY AFTER MY  
9 SISTER PASSED AWAY. I THINK IT WAS THAT SUMMER. SHE PASSED  
10 AWAY IN JANUARY OF '83, AND I MOVED BACK TO FAYETTEVILLE.

11 Q. OKAY. AND DO YOU REMEMBER ABOUT WHEN YOU FINISHED THE  
12 SCHOOLING IN WILMINGTON?

13 A. I NEVER FINISHED THAT PROGRAM. I WAS -- IT HAD JUST KIND  
14 OF DISTRACTED ME. HER PASSING ACTUALLY HAD MORE EFFECT ON ME  
15 THAN I WOULD HAVE ANTICIPATED.

16 Q. OKAY. BETWEEN THE END OF -- I REALIZE I'M JUMPING AROUND  
17 SO IF YOU'LL JUST KIND OF BEAR WITH ME. BETWEEN THE END OF  
18 THE MACDONALD TRIAL IN 1979, AND YOUR SISTER'S DEATH I BELIEVE  
19 YOU SAID IN 1983, DID YOU HAVE A LOT OF CONTACT WITH HELENA  
20 JUNIOR DURING THAT --

21 A. NO, I DID NOT.

22 Q. -- THREE OR FOUR YEAR PERIOD?

23 A. DID NOT.

24 Q. OKAY. DO YOU RECALL A TIME WHEN YOUR SISTER CAME HOME  
25 TO FAYETTEVILLE AT SOME POINT IN THAT STRETCH OF TIME?

September 18, 2012

Stoeckley/Direct

Page 275

1 A. THE LAST TIME I SAW MY SISTER ALIVE WAS THE FALL OF 1982,  
2 AFTER THE BIRTH OF HER SON, DAVID. AND I HAD COME TO  
3 FAYETTEVILLE TO VISIT MY PARENTS AND HELENA WAS THERE WITH  
4 DAVID. AND I THINK HE COULD HAVE BEEN NO MORE THAN FIVE OR  
5 SIX MONTHS OLD PERHAPS.

6 Q. AND I BELIEVE YOU SAID THAT WAS IN THE FALL OF 1982.

7 A. RIGHT.

8 Q. AND WHERE WERE YOU LIVING AT THE TIME?

9 A. (NO RESPONSE.)

10 Q. WHERE WERE YOU LIVING AT THE TIME?

11 A. AT THAT TIME I WAS STILL IN WILMINGTON.

12 Q. AND DID YOU HAVE MUCH INTERACTION WITH YOUR SISTER  
13 DURING THAT VISIT?

14 A. I DON'T RECALL A WHOLE LOT OF INTERACTION. NO, NOT AT  
15 THAT TIME. SHE WAS BUSY WITH THE BABY AND MY MOTHER WAS  
16 ENJOYING HER GRANDSON. I PRETTY MUCH JUST STAYED OUT OF IT.  
17 I HAD SOME FRIENDS LIVING IN THE AREA AND I WOULD VISIT THEM  
18 AND WE'D GET TOGETHER.

19 Q. AND HOW WAS YOUR SISTER'S HEALTH AT THAT POINT, IF YOU  
20 KNOW?

21 A. FROM OUTWARD APPEARANCES, SHE HAD JUST SEEMED WHERE SHE  
22 HAD GAINED SOME WEIGHT, BUT SHE DID APPEAR TO BE JAUNDICED.  
23 OTHER THAN THAT, SHE DIDN'T APPEAR TO BE SICKLY OR OVERLY SO.

24 Q. OKAY. DID YOU HAVE A SENSE OF WHY HELENA CAME HOME TO  
25 VISIT IN THE FALL OF '82?

September 18, 2012

Stoeckley/Direct

Page 276

1 A. I EXPECTED JUST FOR THE FACT TO BRING DAVID UP TO MEET MY  
2 MOM AND DAD SO THEY COULD SEE THEIR GRANDSON.

3 Q. OKAY. AND YOUR FATHER WAS STILL ALIVE AT THAT POINT?

4 A. CORRECT.

5 Q. AND WHEN DID -- IS HE STILL LIVING?

6 A. NO, MY FATHER PASSED AWAY IN FEBRUARY OF 2002.

7 Q. AND AFTER YOUR SISTER CAME TO VISIT IN OCTOBER OF 1982,  
8 HOW MUCH LONGER DID SHE LIVE?

9 A. JUST A MATTER OF MONTHS. YOU KNOW, WE'RE TALKING TWO AND  
10 A HALF, THREE MONTHS, BEFORE SHE PASSED AWAY.

11 Q. OKAY. AFTER YOUR FATHER PASSED AWAY IN FEBRUARY OF 2002,  
12 WHERE DID YOUR MOTHER LIVE?

13 A. SHE REMAINED AT THE HOUSE IN FAYETTEVILLE.

14 Q. AND DID SHE STAY THERE CONTINUALLY OR --

15 A. SHE STAYED THERE APPROXIMATELY A YEAR AFTER HIS PASSING.  
16 I WAS TRYING TO RELOCATE AND ESTABLISH A NEW JOB IN THIS AREA  
17 SO I COULD BE CLOSE BY. AND AT THAT TIME I WAS LIVING IN  
18 SAVANNAH, GEORGIA.

19 SO, WE -- I WAS ABLE TO FIND A NEW JOB UP IN DURHAM,  
20 AND MY WIFE AND I RELOCATED. AND I ACTUALLY LIVED AT THE  
21 HOUSE WITH HER FOR, I WOULD SAY, FIVE MONTHS WHILE WE WERE  
22 HOUSE HUNTING AND TRYING TO GET RE-ESTABLISHED. SO, I LIVED  
23 THERE WITH HER ABOUT FIVE MONTHS.

24 Q. AND DO YOU KNOW ABOUT WHEN THAT WAS?

25 A. WELL, THAT WOULD HAVE BEEN AROUND APRIL OF 2002 UNTIL

September 18, 2012

Stoeckley/Direct

Page 277

1 PROBABLY AUGUST, SEPTEMBER. I BELIEVE THE END OF SEPTEMBER WE  
2 BEGAN THE PROCESS OF BUYING A HOME UP IN FUQUAY. SO, IT WAS  
3 PROBABLY ABOUT FIVE MONTHS.

4 Q. OKAY. AND DID THERE -- HOW WAS YOUR MOTHER'S HEALTH AT  
5 THAT POINT IN TIME?

6 A. SHE WAS DOING PRETTY WELL. HER EYESIGHT WAS THE BIGGEST  
7 DETRIMENT THAT I SAW TO HER LOSING HER INDEPENDENCE. SHE HAD  
8 MACULAR DEGENERATION AND SHE HAD, I BELIEVE AT THAT POINT,  
9 BEEN DECLARED LEGALLY BLIND. AND OTHER THAN THAT -- SHE WAS  
10 ON OXYGEN THERAPY, BUT OTHER THAN THAT SHE WAS -- SHE WANTED  
11 TO HOLD ON TO HER INDEPENDENCE. SHE WAS PRETTY FIERCE ABOUT  
12 THAT. VERY STRONG WILLED.

13 Q. AND DID THERE COME A TIME WHEN SHE WAS NO LONGER ABLE TO  
14 LIVE ON HER OWN?

15 A. SHE HAD -- SHE SUFFERED A FALL. WE HAD ALREADY -- WE HAD  
16 MOVED INTO OUR HOME THAT OCTOBER AND I DON'T -- I CAN'T  
17 REMEMBER HOW LONG WE HAD BEEN THERE AND WE GOT A PHONE CALL  
18 AND IT WAS MY MOTHER. AND I HAD ACTUALLY GONE TO BED THAT  
19 EVENING. SHE CALLED AND MY WIFE CAME IN AND WOKE ME AND SAID  
20 MY MOTHER HAD CALLED AND SAID SHE HAD FALLEN AND SAID SHE  
21 COULD NOT GET UP AND WALK AND SUSPECTED SHE HAD FRACTURED  
22 EITHER HER LEG OR HER HIP.

23 SO, I GOT DRESSED AND TOLD HER I'D BE ON THE WAY,  
24 BUT SHE TOLD MY WIFE TO NOT WORRY ABOUT IT. AND MY WIFE HAD  
25 ORIGINALLY -- I MEAN, THIS MUST HAVE BEEN ON A THURSDAY

September 18, 2012



Stoeckley/Direct

Page 278

1 BECAUSE I BELIEVE MY WIFE WAS PLANNING TO GO VISIT HER PARENTS  
2 THE NEXT DAY FOR THE WEEKEND AND SHE ASKED MY WIFE TO JUST  
3 COME BY AND CHECK ON HER WHEN SHE GOT INTO TOWN THE NEXT DAY  
4 EVEN THOUGH SHE COULDN'T GET OFF THE FLOOR.

5 Q. OKAY. AND AFTER THAT FALL, DID THERE COME A TIME WHEN  
6 YOUR MOM HAD TO LIVE SOMEWHERE WHERE SOMEONE COULD HELP TAKE  
7 CARE OF HER?

8 A. AS WE WENT THROUGH THE DECISION PROCESS OF TRYING TO SORT  
9 OUT WHAT SHE WAS ABLE TO DO AND NOT DO, I TRIED TO PUT  
10 EVERYTHING INTO HER HANDS AS TO THE MAJOR DECISION-MAKING AND  
11 I WOULD DO WHATEVER I WAS IN CHARGE OF LOOKING OVER HER  
12 AFFAIRS. AND I WOULD JUST -- I WOULDN'T FORCE HER, I'D JUST  
13 EXPLAIN WHATEVER OPTIONS, WHATEVER THE MEDICAL DIRECTIVES FROM  
14 THE DOCTORS CARING FOR HER, WHATEVER THEY SUGGESTED.

15 SO, IT CAME TO THE POINT WHERE WE DECIDED TO GO  
16 AHEAD AND PUT HER HOUSE UP FOR SALE. AND SHE -- WE WERE ABLE  
17 TO SELL THE HOUSE IN FAIRLY SHORT ORDER AND THEN SHE CAME TO  
18 FUQUAY AND LIVED WITH US MAYBE SIX MONTHS.

19 Q. AND THEN WHERE DID SHE LIVE AFTER THAT?

20 A. MY SISTER IN VIRGINIA NOTIFIED US AND TOLD US THERE WAS A  
21 DUPLEX CLOSE BY TO THEIR HOUSE AND SHE THOUGHT IT WOULD BE  
22 IDEAL FOR MY MOM. IT WAS A SMALL APARTMENT AND THOUGHT THAT  
23 SHE COULD GET AROUND FAIRLY EASILY ONCE SHE GOT THE LAYOUT.  
24 AND IT WAS CLOSE ENOUGH WHERE THEY COULD WALK OVER AND CHECK  
25 ON HER. SO, WE AGREED TO LET HER MOVE IN THERE AND SHE LIVED

September 18, 2012

Stoeckley/Direct

Page 279

1 THERE FOR A COUPLE -- WELL, ABOUT FOUR YEARS I THINK.

2 Q. AND WHERE DID SHE -- DID THERE COME A POINT WHERE SHE  
3 COULDN'T LIVE IN THE DUPLEX NEAR YOUR SISTER?

4 A. SHE HAD HAD SOME MEDICAL ISSUES. THEY WERE CONCERNED  
5 ABOUT HER HEART RHYTHM. SO, SHE WAS TAKEN TO THE DOCTOR AND  
6 AFTER AN EVALUATION AND A BRIEF STAY IN THE HOSPITAL THERE IN  
7 BEDFORD, THE DOCTOR MET WITH DOLLY AND MYSELF AND SAID THAT  
8 SHE HAD HAD A HEART ATTACK AT SOME POINT, BUT IT WASN'T  
9 EVALUATED. IT MUST HAVE HAPPENED SOMETIME PREVIOUS TO HER  
10 MOVING UP THERE. AND ALSO THAT THERE WAS INDICATION THAT  
11 THERE WAS MUSCLE DAMAGE TO THE HEART. THERE WAS ALSO A VALVE  
12 PROBLEM THAT HE, IN HIS EXPERTISE, SUGGESTED IT CAME WHEN SHE  
13 HAD RHEUMATIC FEVER AS A YOUNG CHILD. MY MOTHER NEVER  
14 MENTIONED HAVING HEART PROBLEMS. SO, THIS WAS ALL NEW  
15 INFORMATION TO US. BUT WE DID KNOW SHE HAD EMPHYSEMA, COPD  
16 FROM SMOKING. SO, THAT WAS -- THE HEART ISSUE WAS -- THAT WAS  
17 WHEN WE WERE FIRST MADE AWARE OF IT.

18 Q. AND WHERE DID SHE GO TO LIVE AT THAT POINT?

19 A. BASED ON THE MEDICAL INFORMATION WE WERE GIVEN AND THAT  
20 THE DOCTOR SUGGESTING -- HE RECOMMENDED SHE NOT LIVE BY  
21 HERSELF FROM THAT POINT FORWARD. THERE WAS NO ADEQUATE  
22 SKILLED ASSISTED LIVING FACILITY THERE.

23 SO, AFTER DISCUSSING IT WITH MOTHER AND DOLLY, I HAD  
24 HER FLOWN TO FAYETTEVILLE BECAUSE WE FOUND ASSISTED LIVING  
25 THERE THAT MET OUR CRITERIA AND WE FELT WOULD BE A GOOD FIT.

September 18, 2012

Stoeckley/Direct

Page 280

1 AND I THINK SHE FELT A SENSE OF COMFORT BEING BACK IN HER HOME  
2 WHERE SHE HAD SPENT SO MANY YEARS, BACK TO HER HOMETOWN. SHE  
3 STILL HAD CONTACTS THERE, SOME OLD FRIENDS THAT WOULD COME SEE  
4 HER.

5 Q. AND AT THAT POINT YOU WERE LIVING IN FUQUAY-VARINA?

6 A. YES.

7 Q. AND IS THAT FAIRLY CLOSE TO FAYETTEVILLE?

8 A. IT'S ABOUT A 45 MINUTE DRIVE.

9 Q. AND WHERE WAS -- AND I KNOW YOUR SISTER WAS IN VIRGINIA.  
10 WHERE WAS CLARENCE JUNIOR LIVING?

11 A. HE LIVES IN FAYETTEVILLE ALSO.

12 Q. OKAY. SO, THERE WAS SOME FAMILY CLOSE BY?

13 A. YES. HE WAS WITHIN WALKING DISTANCE OF THAT FACILITY.

14 Q. ONCE YOUR MOM MOVED INTO THIS ASSISTED LIVING FACILITY,  
15 DID YOU VISIT HER WITH ANY REGULARITY?

16 A. I WOULD MAKE IT A POINT TO SEE HER AT LEAST ONCE A WEEK  
17 UNLESS NEEDED IF SHE HAD PROBLEMS. AS I SAID, I WAS GIVEN THE  
18 TASK OF OVERSEEING HER -- BOTH HER FINANCIAL AND HER MEDICAL  
19 NEEDS.

20 SO, SHE HAD BEEN ADMITTED TO CAPE FEAR HOSPITAL ON  
21 SEVERAL OCCASIONS WHILE SHE WAS THERE FOR PNEUMONIA AND OTHER  
22 THINGS. I THINK THE UTI AND THE PNEUMONIA ARE THE TWO THAT I  
23 RECALL.

24 Q. SO, YOU WERE THE CHILD WHO WAS PRIMARILY IN CHARGE OF  
25 YOUR MOM'S CARE AND WELFARE AT THAT POINT?

September 18, 2012

Stoeckley/Direct

Page 281

1 A. YES.

2 Q. OKAY. AND IN THESE VISITS WITH YOUR MOTHER WHAT KINDS OF  
3 THINGS DID YOU TALK ABOUT?

4 A. OH, WE TALKED ABOUT OUR TRIPS TO THE BEACH, THE MEMORIES  
5 OF THE VACATIONS AT THE COAST. JUST THINGS LIKE THAT. THEN  
6 AFTER SHE WAS ADMITTED TO THE HOSPITAL WITH BILATERAL  
7 PNEUMONIA I SPENT THREE DAYS THERE WITH HER IN HER ROOM AND --

8 Q. DO YOU NEED TO TAKE A MOMENT TO GET A SIP OF WATER?

9 A. NO, I'LL BE ALL RIGHT. AND SHE WAS ON A RESPIRATOR. IT  
10 DIDN'T LOOK VERY GOOD, HER PROGNOSIS. SO, I HAD OCCASION TO  
11 SPEAK WITH HER ATTENDING PHYSICIAN ALONE AND HE SAID THAT IN  
12 ALL LIKELIHOOD SHE WOULD NOT LEAVE THERE. SHE WASN'T GOING TO  
13 SURVIVE. SO, I WENT AHEAD AND STARTED MAKING FUNERAL  
14 ARRANGEMENTS AND THINGS LIKE THAT.

15 Q. BUT SHE DID SURVIVE?

16 A. SHE DID AND IT WAS QUITE AMAZING, YOU KNOW, THAT SHE  
17 PULLED THROUGH.

18 Q. OKAY. AND AFTER SHE PULLED THROUGH, DID SHE MOVE BACK TO  
19 THE ASSISTED LIVING FACILITY?

20 A. YES.

21 Q. OKAY. AND CAN YOU TELL US SORT OF WHEN IN TIME THE  
22 HOSPITAL STAY WAS, MAYBE ROUGHLY A MONTH AND A YEAR?

23 A. I CAN'T REALLY --

24 Q. WELL, LET ME ASK IT THIS WAY --

25 A. I'D SAY IT WAS WITHIN SIX MONTHS OF HER BEING THERE. I

September 18, 2012

Stoeckley/Direct

Page 282

1 THINK IT WAS BEFORE -- I KNOW IT WAS BEFORE THE HOLIDAY PERIOD  
2 OF THANKSGIVING, CHRISTMAS, THAT SHE WAS ADMITTED. I THINK IT  
3 WAS IN AUGUST OF 2006, PERHAPS. BUT I BASICALLY REMEMBER I  
4 KNEW IT WAS AROUND THE END OF THE SUMMER WHEN SHE WENT THROUGH  
5 THAT EPISODE.

6 Q. OKAY. AND THEN SHE MOVED BACK TO THE ASSISTED LIVING  
7 FACILITY?

8 A. YES.

9 Q. AND I TAKE IT YOUR MOTHER IS NO LONGER LIVING --

10 A. CORRECT.

11 Q. -- IS THAT CORRECT? OKAY. AND HOW MUCH LONGER DID SHE  
12 LIVE ONCE SHE LEFT THE HOSPITAL AND MOVED BACK TO THE ASSISTED  
13 LIVING FACILITY?

14 A. AFTER SHE WAS BROUGHT BACK TO THE ASSISTED LIVING SHE  
15 LIVED THERE APPROXIMATELY ANOTHER YEAR. I THINK THE FOLLOWING  
16 NOVEMBER WE ARRANGED TO MOVE HER TO AN ASSISTED LIVING CLOSE  
17 TO FUQUAY IN ANGIER, NORTH CAROLINA, WHICH IS NOT FAR FROM  
18 FUQUAY.

19 Q. OKAY. AND IN THE MONTHS BETWEEN GOING TO THE HOSPITAL  
20 AND THEN GOING BACK TO ASSISTED LIVING AND EVENTUALLY MOVING  
21 TO ASSISTED LIVING IN FUQUAY, YOU CONTINUED TO VISIT HER IN  
22 THE FACILITY IN FAYETTEVILLE?

23 A. CORRECT.

24 Q. OKAY. AND DID THERE COME A TIME DURING ONE OF THOSE  
25 VISITS WHERE YOU TALKED TO HER ABOUT THE MACDONALD MATTER?

September 18, 2012

Stoeckley/Direct

Page 283

1 A. WELL, GIVEN I UNDERSTOOD THEN THAT HER TIME WAS DRAWING  
2 SHORT, ESPECIALLY AFTER THE LAST HOSPITAL VISIT WITH THE  
3 PNEUMONIA, WE JUST WOULD HAVE SOME INTIMATE DISCUSSIONS ABOUT  
4 OUR FAMILY.

5 AND I WOULD QUESTION HER -- I STARTED QUESTIONING  
6 HER ABOUT MY SISTER'S INVOLVEMENT BECAUSE I KNEW SHE WAS ONE  
7 OF THE REMAINING SOURCES OF WHAT I FELT WAS TRUE ABOUT WHAT  
8 HAD HAPPENED AND THAT'S WHEN WE STARTED DISCUSSING IT.

9 Q. OKAY. AND WHAT DID YOUR MOM TELL YOU WHEN YOU WERE --  
10 AND I TAKE IT ASKING HER ABOUT THIS WAS SOMETHING SOMEWHAT  
11 UNUSUAL BECAUSE, AS YOU'VE SAID, IT WAS A SUBJECT THAT JUST  
12 WASN'T DISCUSSED IN THE HOUSE.

13 A. RIGHT.

14 Q. AND AT THAT POINT YOUR FATHER WAS NO LONGER LIVING?

15 A. THAT'S CORRECT.

16 Q. AND WHAT DID SHE TELL YOU ABOUT -- IN ANSWER TO YOUR  
17 QUESTIONS WHEN YOU ASKED HER ABOUT THE MACDONALD ISSUE?

18 A. WELL, I JUST WANTED TO KNOW ABOUT MY SISTER'S INVOLVEMENT  
19 SO I WOULD KNOW THE TRUTH AND SHE SAID THAT HELENA WAS THERE  
20 THAT NIGHT.

21 Q. AND WHY DID SHE BELIEVE THAT TO BE THE CASE?

22 A. BECAUSE HELENA HAD CONFIDED IN HER DURING THAT VISIT IN  
23 FAYETTEVILLE WHEN SHE HAD BROUGHT DAVID TO SEE HER.

24 Q. THAT WAS THE VISIT IN ROUGHLY OCTOBER OF --

25 A. '82.

September 18, 2012

1 Q. -- '82?

2 A. YES.

3 Q. AND DID SHE SAY WHY SHE THOUGHT HELENA CONFIDED IN HER  
4 DURING THAT VISIT?

5 A. SHE SAID HELENA KNEW SHE WAS DYING.

6 Q. AND WANTED TO TELL YOUR MOM?

7 A. SHE JUST SAID SHE KNEW -- THAT HELENA KNEW SHE WAS DYING  
8 AND I DON'T KNOW THE SPECIFICS OTHER THAN SHE JUST CONFIDED IN  
9 HER ALL THAT SHE KNEW.

10 Q. OKAY. AND TELL US AGAIN WHAT YOUR MOTHER SAID HELENA  
11 CONFIDED IN HER.

12 A. MY MOTHER SAID THAT HELENA WAS THERE AND THAT DR.  
13 MACDONALD WAS NOT GUILTY OF THE CRIMES.

14 Q. OKAY. AND BY THERE, WHAT DID SHE MEAN?

15 A. PRESENT AT THE HOUSE THE NIGHT OF THE MURDERS.

16 Q. OKAY. AND ONCE YOUR MOTHER AND YOU HAD THAT DISCUSSION,  
17 DID THERE COME A TIME WHERE YOU ASKED HER IF SHE WANTED TO  
18 TELL ANYBODY ELSE ABOUT THAT?

19 A. IT WEIGHED HEAVILY ON MY MIND. I DIDN'T REALLY KNOW WHAT  
20 TO DO WITH THE KNOWLEDGE. IT WAS SOMETHING I CONSIDERED  
21 CAREFULLY. THE LAST THING I WANTED WAS TO DRAW ATTENTION TO  
22 THE REMAINING FAMILY MEMBERS, BUT, BY THE SAME TOKEN, I FELT  
23 SOMEHOW MORALLY OBLIGATED TO TELL SOMEBODY.

24 SO, I DISCUSSED IT IN MORE DETAIL WITH MY MOTHER,  
25 ASKED HER IF SHE CARED TO DIVULGE THIS INFORMATION TO SOMEBODY

September 18, 2012

Stoeckley/Direct

Page 285

1 OUTSIDE OF THE FAMILY.

2 Q. AND WHAT DID YOUR MOTHER TELL YOU?

3 A. SHE SAID THAT IF THERE WAS SOMEONE WHO WOULD LISTEN AND  
4 THAT WHERE SHE THOUGHT IT MIGHT DO SOME GOOD SHE WOULD BE  
5 WILLING TO DO SO.

6 Q. OKAY. AND DID YOU IMMEDIATELY DO ANYTHING IN RESPONSE TO  
7 THAT?

8 A. I DIDN'T REALLY KNOW WHAT TO DO OR WHO I WOULD CONTACT.

9 Q. AND DID YOU TALK TO YOUR OTHER SIBLINGS ABOUT YOUR MOM'S  
10 DESIRE TO COME FORWARD?

11 A. AT THAT POINT, NO. I DISCUSSED IT WITH MY WIFE.

12 Q. OKAY. AND DID YOU DISCUSS IT WITH ANYBODY ELSE OTHER  
13 THAN YOUR MOTHER AND YOUR WIFE THAT YOU RECALL?

14 A. NO.

15 Q. OKAY. AND HOW LONG DID YOU THINK ABOUT IT BEFORE YOU  
16 TOOK ANY ACTION, AGAIN, ROUGHLY?

17 A. I WOULD SAY WITHIN A MATTER OF A FEW WEEKS AFTER JUST  
18 THINKING THROUGH IT, THINKING OF THE CONSEQUENCES, THINKING OF  
19 WHAT IT WOULD MEAN, THE NEGATIVE PUBLICITY THINGS. THE WHOLE  
20 CASE WAS SO -- JUST HAD TOUCHED A LOT OF PEOPLE IN WAYS THAT  
21 MANY PEOPLE DIDN'T REALIZE.

22 Q. OKAY. AND DURING THAT SEVERAL WEEKS THAT YOU THOUGHT  
23 ABOUT IT, THE ONLY PERSON YOU REALLY TALKED TO WAS YOUR WIFE,  
24 YOU DIDN'T TALK TO YOUR SIBLINGS DURING THAT TIME?

25 A. CORRECT. JUST MY WIFE.

September 18, 2012



Stoeckley/Direct

Page 286

1 Q. OKAY. AND AFTER TALKING ABOUT IT WITH YOUR WIFE DID YOU  
2 MAKE A DECISION?

3 A. I LISTENED TO HER INPUT AND SHE SIMPLY CAUTIONED ME AS TO  
4 MAKING SURE I UNDERSTOOD WHAT WOULD HAPPEN, MY WIFE DID. AND  
5 I SIMPLY WENT ON THE INTERNET AND TRIED TO FIND SOMETHING  
6 CURRENT IN THE CASE AS I HAVEN'T KEPT UP WITH IT AND I FOUND  
7 KATHRYN'S WEBSITE.

8 Q. KATHRYN?

9 A. MACDONALD. AND IT APPEARED TO HAVE CURRENT INFORMATION  
10 AND I READ THAT APPARENTLY THEY WERE TRYING TO GET A HEARING  
11 OR THEY HAD FOUND NEW EVIDENCE, I DON'T RECALL THE DETAILS,  
12 BUT I JUST BELIEVED THAT THAT WOULD BE THE PERSON I NEEDED TO  
13 CONTACT. THAT WAS THE ONLY PERSON I WOULD KNOW TO CONTACT.

14 Q. OKAY. I TAKE IT FROM THE EMOTION THAT YOU'RE SHOWING  
15 HERE ON THE STAND THAT THAT WAS NOT SOMETHING YOU DID LIGHTLY?

16 A. NO. NO.

17 Q. AND YOU THOUGHT CAREFULLY ABOUT IT BEFORE YOU DECIDED YOU  
18 WANTED TO CONTACT SOMEBODY?

19 A. VERY MUCH.

20 Q. AND AT THAT POINT, DID YOU CONTACT KATHRYN MACDONALD?

21 A. YES, I SENT HER AN EMAIL.

22 Q. AND WAS THAT THE FIRST CONTACT YOU HAD EVER HAD WITH MS.  
23 MACDONALD?

24 A. YES.

25 Q. AND WHAT HAPPENED AFTER YOU INITIATED THIS CONTACT?

September 18, 2012

Stoeckley/Direct

Page 287

1 A. I DON'T REMEMBER THE EXACT DETAILS, BUT -- WELL, WE  
2 EXCHANGED EMAILS AND THEN I BELIEVE SHE ARRANGED TO HAVE ME  
3 CALL HER BASED ON OUR SCHEDULES. AND, AGAIN, I CAN'T REMEMBER  
4 THE -- I KNOW IT DIDN'T TAKE MORE THAN A COUPLE OF DAYS BEFORE  
5 SHE SAID SHE WANTED TO COME DOWN AND MEET WITH ME AND DISCUSS  
6 THIS PERSON TO PERSON. AND SO WE ARRANGED THAT WE WOULD MEET  
7 IN FUQUAY.

8 Q. AND WAS THERE ANYBODY ELSE PRESENT AT THAT MEETING?

9 A. NO. WE MET AT A RESTAURANT THERE IN FUQUAY IN A PUBLIC  
10 PLACE.

11 Q. OKAY. AND DID YOU MEET FOR A LONG TIME OR A SHORT TIME  
12 OR DO YOU RECALL?

13 A. IT SEEMED LIKE WE WERE THERE A WHILE, A PRETTY GOOD  
14 WHILE.

15 Q. OKAY.

16 A. I WOULD ALMOST VENTURE A GUESS THAT IT MAY HAVE LASTED  
17 TWO HOURS.

18 Q. OKAY. AND WHAT HAPPENED NEXT AFTER YOU HAD THIS TALK FOR  
19 SEVERAL HOURS WITH MS. MACDONALD?

20 A. I, OF COURSE, JUST FILLED HER IN ON MOTHER'S SITUATION  
21 AND WHAT SHE HAD TOLD ME AND, YOU KNOW, I SORT OF LAID THE  
22 GROUND RULES BECAUSE, AGAIN, I WAS -- MY PRIMARY INTEREST WAS  
23 TO MAKE SURE SHE WAS PROTECTED.

24 Q. AND WHEN YOU SAY YOU LAID THE GROUND RULES, WHAT KIND OF  
25 GROUND RULES DID YOU LAY?

September 18, 2012

Stoeckley/Direct

Page 288

1 A. WELL, I STIPULATED THAT IF AT ANY TIME MY MOTHER WAS  
2 UNCOMFORTABLE FOR ANY REASON TO GO FORWARD WITH THIS OR EVEN  
3 HAVE AN INTERVIEW WITH MRS. MACDONALD, THAT THAT WAS IT.  
4 THERE WOULD BE NO MORE. I WOULD STOP IT.

5 Q. SO, ONCE AGAIN, SORT OF BEING PROTECTIVE OF YOUR MOM?

6 A. ABSOLUTELY.

7 Q. OKAY. AND AFTER YOU HAD THIS INITIAL MEETING WITH MS.  
8 MACDONALD AND SET THESE GROUND RULES, WHAT HAPPENED NEXT?

9 A. WE DROVE TO FAYETTEVILLE TO THE ASSISTED LIVING CENTER  
10 AND I WENT IN BEFOREHAND TO CHECK ON MY MOM AND SEE HOW SHE  
11 WAS DOING. I EXPLAINED TO HER THAT MRS. MACDONALD WAS THERE  
12 AND I ASKED HER IF SHE WANTED TO MEET HER AND TALK TO HER.  
13 SHE SAID THAT WOULD BE FINE.

14 Q. LET ME BACK UP A SECOND. DID YOUR MOM KNOW THAT YOU HAD  
15 CONTACTED KATHRYN MACDONALD?

16 A. I HAD TOLD HER BEFOREHAND THAT I HAD EITHER CONTACTED --  
17 I DON'T KNOW IF I TOLD HER SPECIFICALLY THAT IT WAS KATHRYN  
18 MACDONALD OR SOMEBODY ABOUT IT. I CAN'T RECALL IF I TOLD HER  
19 SPECIFICALLY.

20 Q. FAIR ENOUGH. AND DID SHE KNOW YOU WERE MEETING SOMEBODY?

21 A. YES.

22 Q. OKAY. SO, SHE KNEW THOSE THINGS WERE HAPPENING AND THEN  
23 YOU WENT TO THE ASSISTED LIVING FACILITY WITH KATHRYN  
24 MACDONALD AND SHE WAITED SOME PLACE WHILE YOU WENT IN AND  
25 TALKED TO YOUR MOM?

September 18, 2012

Stoeckley/Direct

Page 289

1 A. YES, SHE WAS OUT IN THE PARKING LOT AND MET MY BROTHER  
2 WHO HAD WALKED DOWN THERE WITH A FRIEND OF MINE FROM  
3 FAYETTEVILLE WHO STOPPED BY TO VISIT BECAUSE HE KNEW I WAS  
4 GOING TO BE IN THE AREA AND HE HAPPENED TO BE UP FROM SOUTH  
5 CAROLINA AND WANTED TO SEE ME FOR A MINUTE.

6 THE COURT: WELL, LET'S TAKE A RECESS TILL 10:45.

7 (RECESS TAKEN FROM 10:30 A.M., UNTIL 10:45 A.M.)

8 (DEFENDANT PRESENT.)

9 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.

10 MR. WIDENHOUSE, THE WITNESS IS WITH YOU. YOU'RE STILL UNDER  
11 OATH, OF COURSE, MR. STOECKLEY.

12 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

13 BY MR. WIDENHOUSE:

14 Q. MR. STOECKLEY, I BELIEVE WHEN WE BROKE, WE WERE AT THE  
15 ASSISTED LIVING CENTER AND YOU HAD GONE IN TO TALK TO YOUR MOM  
16 AND MS. MACDONALD WAS WAITING IN HER CAR.

17 A. THAT'S CORRECT.

18 Q. AND CAN YOU TELL US WHAT HAPPENED AT THAT POINT? WHAT  
19 DID YOU TALK TO YOUR MOM ABOUT?

20 A. YES. SHE APPEARED TO BE PHYSICALLY HAVING A GOOD DAY,  
21 WASN'T TIRED, AND SHE AGREED TO HAVE MS. MACDONALD COME IN AND  
22 MEET HER.

23 Q. LET ME ASK YOU A QUESTION. DURING THE TIME THAT YOUR MOM  
24 WAS IN THE ASSISTED LIVING FACILITY AT THIS POINT AFTER BEING  
25 IN THE HOSPITAL, WHAT WERE HER MENTAL FACULTIES LIKE?

September 18, 2012

Stoeckley/Direct

Page 290

1 A. HER MENTAL STATE WAS ALWAYS SHARP, BUT SHE HAD DIFFICULTY  
2 WITH HER BREATHING DUE TO THE EMPHYSEMA. SHE WAS ON CONSTANT  
3 OXYGEN THERAPY AND SO SHE WOULD BECOME SHORT OF BREATH WHICH  
4 WOULD MAKE HER TIRED. BUT AS FAR AS MENTALLY, SHE WAS ALWAYS  
5 ALERT. SHE WAS ALWAYS AWARE OF HER SURROUNDINGS AND WHO WAS  
6 THERE.

7 Q. AND WHEN YOU WOULD TALK TO HER WHEN YOU VISITED, DID YOU  
8 HAVE ANY TROUBLE COMMUNICATING WITH HER?

9 A. ABSOLUTELY NOT.

10 Q. I TAKE IT THAT MEANS SHE'S TALKATIVE?

11 A. OH, SHE'D ENGAGE YOU.

12 Q. OKAY. AND SHE UNDERSTOOD WHAT SHE WAS DOING? WHEN YOU  
13 WOULD TALK TO HER ABOUT THINGS YOU HAD DONE AS A CHILD OR AS A  
14 FAMILY --

15 A. ABSOLUTELY.

16 Q. -- SHE WOULD KNOW WHAT YOU WERE TALKING ABOUT AND BE ABLE  
17 TO CARRY ON A CONVERSATION ABOUT THOSE THINGS WITH YOU?

18 A. ABSOLUTELY.

19 Q. OKAY. AND TAKING YOU BACK TO THE ASSISTED LIVING CENTER  
20 WHEN YOU'RE IN WITH YOUR MOM AND YOU TALK TO HER ABOUT MRS.  
21 MACDONALD BEING OUT IN HER CAR, WHAT HAPPENED AFTER YOU TALKED  
22 TO YOUR MOM ABOUT THAT?

23 A. I JUST WENT OUT TO THE PARKING LOT AND MRS. MACDONALD WAS  
24 TALKING TO MY BROTHER AT THAT TIME AND I JUST LET HER KNOW  
25 THAT MY MOTHER AGREED TO MEET HER AND TALK TO HER.

September 18, 2012

Stoeckley/Direct

Page 291

1 Q. OKAY. AND WHAT HAPPENED THEN?

2 A. I TOOK HER IN THE FACILITY TO MEET MY MOM AND INTRODUCED  
3 THEM.

4 Q. OKAY. AND YOU WERE IN YOUR MOM'S ROOM AT THAT POINT?

5 A. YES.

6 Q. AND WHO WAS IN THE ROOM BESIDES YOUR MOTHER?

7 A. JUST MYSELF AND MRS. MACDONALD AT THAT POINT.

8 Q. OKAY. AND CAN YOU TELL US WHAT WAS DISCUSSED AMONG THE  
9 THREE OF YOU IN YOUR MOM'S ROOM?

10 A. INITIALLY, IT WAS JUST SMALL TALK, JUST VERY LIGHT TALK  
11 ABOUT HOW ARE YOU DOING AND SHE WAS PLEASED TO MEET HER AND MY  
12 MOTHER DIDN'T REALIZE THAT MR. MACDONALD HAD REMARRIED. SO,  
13 IT WAS JUST VERY LIGHT TALK.

14 AND THEN SO WE SAT THERE A WHILE AND WE JUST -- I  
15 EXPLAINED TO MOTHER WHY WE WERE THERE AND WHAT -- YOU KNOW,  
16 WHATEVER SHE WANTED TO DISCUSS, FEEL FREE TO.

17 Q. AND DID SHE TELL Y'ALL -- Y'ALL -- YOU AND MS. MACDONALD  
18 THE SAME THINGS THAT SHE HAD TOLD YOU WHEN THE TWO OF YOU HAD  
19 TALKED ABOUT --

20 A. YES. SHE JUST COVERED WHAT WE HAD ALREADY -- SHE HAD  
21 TOLD ME, THAT MY SISTER HAD BEEN THERE THAT NIGHT. AND AT  
22 THAT POINT, MRS. MACDONALD JUST -- I GUESS HER REACTION WAS  
23 ONE OF KIND OF RELIEF. AND SHE ASKED ME IF WE COULD BRING THE  
24 ATTORNEY DOWN, HART MILES, IF WE COULD GET HIM INVOLVED. AND  
25 I BELIEVE AT SOME POINT KATHRYN WENT AND MADE A CELL PHONE

September 18, 2012

Stoeckley/Direct

Page 292

1 CALL TO THE ATTORNEY.

2 Q. OKAY. AND I TAKE IT BEFORE YOU LET HER CONTACT AN  
3 ATTORNEY WHO MIGHT POSSIBLY COME DOWN TO THE ASSISTED LIVING  
4 CENTER YOU THOUGHT ABOUT WHETHER THAT WAS A GOOD IDEA IN TERMS  
5 OF YOUR MOTHER'S CONDITION?

6 A. WELL, HER CONDITION -- SHE WAS FINE THEN TO ENGAGE  
7 FURTHER AND HAVE MORE COMPANY VISIT WITH HER.

8 Q. OKAY. AND WHAT HAPPENED AFTER MS. MACDONALD LEFT THE  
9 ROOM TO CONTACT MR. MILES?

10 A. I JUST REMAINED THERE AND VISITED WITH MY MOTHER LIKE I'D  
11 NORMALLY DO.

12 Q. AND DID THERE COME A TIME WHEN SOME OTHER PEOPLE ARRIVED  
13 AT THE ASSISTED LIVING CENTER?

14 A. MRS. MACDONALD CAME BACK AND TOLD ME THAT HART HAD AGREED  
15 TO COME DOWN THEN, THAT AFTERNOON, WITH HIS PARALEGAL. AND  
16 SHE ASKED ME WHETHER I FELT THAT MOTHER WOULD BE WILLING TO  
17 GIVE AN AFFIDAVIT AS TO WHAT SHE HAD TOLD US. AND I SAID,  
18 WELL, WE'LL ASK HER. AND I'M SURE SHE AGREED AT SOME POINT  
19 THERE TO, YOU KNOW, DO SO.

20 Q. AND DID YOU DISCUSS WITH YOUR MOM WHETHER SHE WOULD BE  
21 WILLING TO DO AN AFFIDAVIT?

22 A. THAT'S -- AFTER KATHRYN HAD TALKED TO HART AND LET ME  
23 KNOW THAT HE WAS GOING TO COME DOWN FROM RALEIGH. I INITIALLY  
24 THOUGHT THAT IT MAY BE A DAY OR TWO THAT HE WOULD COME DOWN  
25 AND WE'D ARRANGE ANOTHER MEETING. AND SO, OF COURSE, I

September 18, 2012

Stoeckley/Direct

Page 293

1 INFORMED MY MOTHER THAT THIS ATTORNEY WOULD COME DOWN AND  
2 SPEAK TO HER AND SHE WAS FINE WITH THAT.

3 Q. AND AS SORT OF HER FAMILIAL CARE GIVER YOU WERE OKAY WITH  
4 THAT AS WELL?

5 A. I WAS FINE. EVERYTHING WAS GOING OKAY AND I DIDN'T SEE  
6 ANY REASON THAT I SHOULD INTERFERE AT THAT POINT.

7 Q. AND DID THERE COME A TIME LATER THAT DAY WHEN MR. MILES  
8 AND HIS PARALEGAL ARRIVED AT THE ASSISTED LIVING CENTER?

9 A. CORRECT.

10 Q. AND WHEN THEY ARRIVED, WHAT HAPPENED INITIALLY?

11 A. THEY ARRIVED AND I BROUGHT THEM TO MY MOM'S ROOM AND  
12 INTRODUCED THEM.

13 Q. WHEN THEY ARRIVED, DID YOU HAVE ANY DISCUSSION ABOUT  
14 GROUND RULES WITH THEM?

15 A. I DON'T REMEMBER IF I TOLD THEM DIRECTLY. SO, I CAN'T  
16 SAY YES OR NO WITH THAT. I JUST MADE SURE THAT KATHRYN  
17 MACDONALD UNDERSTOOD THAT, THAT IF MY MOTHER GOT TO THE POINT  
18 WHERE SHE WAS UNCOMFORTABLE WITH WHAT WAS GOING ON IN ANY WAY  
19 THEN THEY'D HAVE TO LEAVE.

20 Q. OKAY.

21 A. I WASN'T GOING TO ALLOW IT TO CONTINUE.

22 Q. ALL RIGHT. AND CAN YOU TELL US A LITTLE BIT ABOUT THE  
23 PREPARATION OF THIS AFFIDAVIT?

24 A. WELL, WE JUST SAT THERE IN A PRETTY CASUAL SETTING AND  
25 JUST -- MOM JUST RELATED WHAT SHE HAD TOLD US ABOUT MY SISTER

September 18, 2012



Stoeckley/Direct

Page 294

1 BEING THERE THAT NIGHT AND SHE TOUCHED ON THE TOPIC OF THE  
2 HARASSING PHONE CALLS.

3 SHE SAID THAT HELENA WAS INTIMIDATED AND TOLD TO  
4 KEEP QUIET. SHE SAID AN FBI AGENT HAD CONTACTED THEM DIRECTLY  
5 AND TOLD THEM TO FIND A WAY TO KEEP HELENA'S MOUTH SHUT AND TO  
6 KEEP HER OUT OF -- HER NOSE OUT OF THE BUSINESS. AND THOSE  
7 WERE THE MAIN TOPICS THERE.

8 THE COURT: I'M SORRY, I'M HAVING TROUBLE. WHO TOLD  
9 HELENA THAT?

10 THE WITNESS: HELENA TOLD -- OH, MY MOTHER SAID THAT  
11 THE FBI HAD CONTACTED MY MOTHER AND FATHER AT SOME POINT BACK  
12 DURING THE TRIAL AND TOLD THEM TO TELL HELENA OR HAVE THEM  
13 KEEP HELENA UNDER CONTROL AND THAT SHE SHOULD KEEP HER MOUTH  
14 SHUT AND KEEP HER NOSE OUT OF THE BUSINESS OF THE CASE.

15 BY MR. WIDENHOUSE:

16 Q. OKAY. AND WHEN YOU WERE HAVING THIS CONVERSATION WITH  
17 YOUR MOM, HOW MANY PEOPLE WERE IN THE ROOM, IF YOU RECALL, IN  
18 YOUR MOM'S ROOM?

19 A. IT WOULD HAVE BEEN THE FOUR OF US. OCCASIONALLY, A CNA  
20 MIGHT COME IN DOING ROUNDS AND POP IN AND ASK IF SHE NEEDED  
21 ANYTHING AND USUALLY I'D JUST INTERVENE AND SAY WE'RE FINE.

22 Q. AND CAN YOU TELL US WHAT A CNA IS?

23 A. CERTIFIED NURSING ASSISTANT.

24 Q. OKAY. AND IT'S JUST A ROUTINE CHECK THAT WOULD BE  
25 HAPPENING BECAUSE YOUR MOM WAS IN ASSISTED LIVING?

September 18, 2012

Stoeckley/Direct

Page 295

1 A. THEY COME AROUND JUST TO SEE IF SHE NEEDED ANYTHING, ANY  
2 WATER, ANY BATHROOM ASSISTANCE, ANYTHING ALONG THOSE LINES.

3 Q. OKAY. AND WHEN YOU SAY THE FOUR OF US IN THE ROOM, WHO  
4 WERE THE FOUR PEOPLE IN THE ROOM AGAIN?

5 A. WELL, THERE WAS HART MILES AND I THINK LAURA, HIS  
6 PARALEGAL, MRS. MACDONALD AND MYSELF AND THEN MY MOTHER WAS  
7 THERE.

8 Q. OKAY. SO, FOUR OF YOU AND YOUR MOM?

9 A. IN ADDITION TO MY MOM.

10 Q. OKAY. AND DID THERE COME A TIME THAT AN AFFIDAVIT  
11 DOCUMENT WAS PREPARED AND TYPED UP?

12 A. YES. I REMEMBER I STAYED WITH MY MOTHER THERE, BUT THERE  
13 WAS A SMALL OFFICE ADJOINING THE NURSE'S STATION WHICH HAD A  
14 DOOR TO IT THAT COULD BE CLOSED, BUT THERE WAS OBVIOUSLY A PC  
15 IN THERE AND A PRINTER AND HART AND LAURA, THEY WERE  
16 DISCUSSING THINGS. I WASN'T IN THERE WATCHING WHAT THEY --  
17 YOU KNOW, I JUST STAYED WITH MY MOTHER THE WHOLE TIME.

18 Q. AND WOULD THEY COME BACK FROM TIME TO TIME AND HAVE YOU  
19 READ PARTS OF THE AFFIDAVIT TO YOUR MOM SO THAT SHE COULD  
20 COMMENT ON --

21 A. AFTER THEY HAD, I GUESS, THE BODY OF IT TYPED UP THEY  
22 BROUGHT IT IN AND ASKED ME TO READ IT OVER AND THEN I READ IT  
23 TO MY MOTHER AS IT WAS WRITTEN AND I TOLD HER YOU NEED TO TELL  
24 ME IF THERE'S ANYTHING HERE THAT'S NOT HOW IT'S SUPPOSED TO BE  
25 OR WHAT YOU SAID OR ANYTHING.

September 18, 2012

Stoeckley/Direct

Page 296

1 SO, THERE WERE A FEW CORRECTIONS MADE. YOU KNOW,  
2 SHE WOULD JUST SAY, WELL, THAT'S NOT WHAT I MEANT OR I DIDN'T  
3 SAY IT QUITE THAT WAY. IT WAS MAINLY JUST THE VERBIAGE, NOT  
4 THE INFORMATION.

5 Q. DURING THAT TIME OF THE PREPARATION OF THE AFFIDAVIT WAS  
6 ANYBODY TELLING YOUR MOM WHAT TO SAY?

7 A. ABSOLUTELY NOT.

8 Q. AND AS BEST YOU COULD TELL, KNOWING HER AS YOU KNEW HER  
9 AND UNDERSTANDING HER SORT OF MENTAL FACULTIES AT THE TIME,  
10 WAS SHE ACTING FREELY AND VOLUNTARILY?

11 A. OH, CERTAINLY. YES.

12 Q. OKAY. I'M GOING TO SHOW YOU -- AN EXHIBIT IS GOING TO  
13 COME UP ON THAT SCREEN. IT'S DEFENSE EXHIBIT 5051. AND THE  
14 FIRST THING I WANT YOU TO DO IS JUST WATCH US SCROLL THROUGH  
15 IT AND SEE IF IT -- IF YOU CAN TELL US WHAT IT IS.

16 A. THE BODY OF THE AFFIDAVIT THAT WAS READ TO MY MOM.

17 (DEFENSE EXHIBIT NUMBER 5051

18 WAS IDENTIFIED FOR THE RECORD.)

19 Q. ALL RIGHT. AND LET ME SHOW YOU THE THIRD PAGE OF THE  
20 AFFIDAVIT. DOES THAT APPEAR TO BE A PAGE WHERE THERE ARE  
21 SIGNATURES?

22 A. YES.

23 Q. AND DO YOU RECOGNIZE THE THIRD SIGNATURE ON THE PAGE?

24 A. THE THIRD SIGNATURE IS MINE.

25 Q. ALL RIGHT. AND DID YOU PUT YOUR SIGNATURE ON THAT

September 18, 2012

1 DOCUMENT?

2 A. YES.

3 Q. OKAY. AND THE SIGNATURE AT THE TOP OF THE PAGE, THE  
4 FIRST SIGNATURE, WHOSE SIGNATURE WAS THAT?

5 A. THAT'S MY MOTHER'S.

6 Q. OKAY. AND DID YOU SEE YOUR MOM SIGN THE DOCUMENT?

7 A. YES.

8 Q. OKAY. AND CAN YOU -- YOU SAID SHE HAD TROUBLE SEEING.  
9 HOW WAS SHE ABLE TO SIGN IT?

10 A. I TOOK HER HAND -- SHE HELD THE PEN AND I TOOK HER HAND  
11 AND JUST PLACED IT UP IN THE AREA OF THE LINE AND I TOLD HER  
12 TO SIGN HER NAME.

13 Q. OKAY. SO, THAT'S HER SIGNATURE THERE, NOT SOMEBODY  
14 ELSE'S?

15 A. OH, ABSOLUTELY.

16 Q. OKAY. AND BEFORE SHE PUT HER SIGNATURE ON THAT PAGE DID  
17 YOU READ THE FIRST TWO PAGES TO HER WORD FOR WORD?

18 A. THAT'S CORRECT.

19 Q. AND WHEN YOU WERE READING IT, DID YOU READ IT SLOWLY SO  
20 THAT SHE COULD -- SO THAT YOU WERE SURE SHE UNDERSTOOD WHAT  
21 YOU WERE READING?

22 A. YES.

23 Q. AND SHE WAS COMFORTABLE AND AGREED WITH EVERYTHING THAT  
24 YOU HAD READ TO HER?

25 A. SHE WOULDN'T HAVE SIGNED IT UNLESS SHE WAS.

September 18, 2012

1 Q. OKAY. AND, AGAIN, SHE WAS ALERT?

2 A. ABSOLUTELY.

3 Q. KNEW WHAT SHE WAS DOING?

4 A. YES.

5 Q. AND NOBODY WAS FORCING HER TO SIGN THIS DOCUMENT?

6 A. NOBODY FORCED HER.

7 Q. I'M GOING TO DRAW YOUR ATTENTION TO PARAGRAPH TWO OF THE  
8 AFFIDAVIT. AND COULD YOU READ THAT LINE FOR US OUT LOUD?

9 A. PARAGRAPH TWO?

10 Q. YES.

11 A. NOT THE HIGHLIGHTED?

12 Q. YES, PARAGRAPH TWO THAT'S HIGHLIGHTED. NUMBER TWO, I'M  
13 SORRY.

14 A. NUMBER TWO. I WAS VERY CLOSE TO MY DAUGHTER AND HELD HER  
15 CONFIDENCES.

16 Q. OKAY. AND I'D LIKE TO DRAW YOUR ATTENTION TO THE  
17 PARAGRAPH NUMBERED FIVE AND ASK YOU IF YOU COULD READ THAT  
18 INTO THE RECORD FOR US.

19 A. ON THE SECOND OCCASION WHEN SHE CONFIDED IN ME, MY  
20 DAUGHTER KNEW SHE WAS DYING. SHE WANTED TO SET THE RECORD  
21 STRAIGHT WITH HER MOTHER ABOUT THE MACDONALD MURDERS, AND THAT  
22 SHE WISHED SHE HAD NOT BEEN PRESENT IN THE HOUSE AND KNEW THAT  
23 DR. MACDONALD WAS INNOCENT.

24 Q. OKAY. AND WHEN YOUR MOTHER REFERS TO THE SECOND OCCASION  
25 WHEN HELENA CONFIDED IN HER, WHAT OCCASION IS SHE TALKING

September 18, 2012

1 ABOUT?

2 A. THAT WOULD HAVE BEEN IN REFERENCE TO THE LAST TIME I SAW  
3 HELENA THERE IN FAYETTEVILLE, THE WEEK SHE WAS THERE VISITING  
4 WITH DAVID.

5 Q. OKAY. THAT WOULD HAVE BEEN IN ROUGHLY OCTOBER OF 1982?

6 A. THAT'S CORRECT.

7 Q. AND SHE DIED SHORTLY AFTER THAT, IS THAT CORRECT?

8 A. THAT'S CORRECT, JANUARY OF 1983.

9 Q. I WANT TO TAKE YOU TO PARAGRAPH NUMBER 11 AND I'M GOING  
10 TO ASK YOU IF YOU WOULD READ THAT INTO THE RECORD AS WELL.

11 A. ON THE SECOND OCCASION DURING WHICH SHE CONFIDED IN ME,  
12 SHE TOLD ME SHE COULD NO LONGER LIVE WITH THE GUILT OF KNOWING  
13 SHE HAD BEEN IN THE HOUSE BUT LIED ABOUT IT AT THE TRIAL. SHE  
14 TOLD ME SHE WAS AFRAID TO TELL THE TRUTH BECAUSE SHE WAS  
15 AFRAID OF THE PROSECUTOR.

16 Q. OKAY. AND I'D LIKE TO TAKE YOU TO NUMBER 13 AND ASK IF  
17 YOU WOULD READ THAT INTO THE RECORD FOR US.

18 A. AS HER MOTHER, I FELT HELENA WAS TELLING ME THE FULL  
19 TRUTH ABOUT BEING IN THE MACDONALD HOUSE ON THE NIGHT OF THE  
20 MURDERS. SHE STATED TO ME THAT SHE WANTED TO SET THINGS  
21 STRAIGHT BEFORE SHE DIED.

22 Q. WAS YOUR MOTHER UNDER THE IMPRESSION THAT HELENA KNEW SHE  
23 WAS DYING WHEN SHE CAME AND VISITED IN OCTOBER?

24 A. PRETTY CERTAIN OF THAT.

25 MR. WIDENHOUSE: CAN I HAVE JUST A MOMENT, YOUR

Stoeckley/Cross

Page 300

1 HONOR?

2 THE COURT: YES, SIR.

3 (PAUSE.)

4 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
5 QUESTIONS.

6 THE COURT: CROSS.

7 MR. BRUCE: THANK YOU, YOUR HONOR.

8 C R O S S - E X A M I N A T I O N 11:02 A.M.

9 BY MR. BRUCE:

10 Q. GOOD MORNING, MR. STOECKLEY. I'M JOHN BRUCE. I'D LIKE  
11 TO ASK A FEW QUESTIONS.

12 A. GOOD MORNING.

13 Q. YOU INDICATED THAT YOU WERE THE LAST IN THE BIRTH ORDER  
14 OF THE STOECKLEY FAMILY, IS THAT RIGHT?

15 THE COURT: WOULD YOU PULL THE MIC A LITTLE CLOSER  
16 TO YOU, MR. BRUCE? THANK YOU.

17 BY MR. BRUCE:

18 Q. SORRY ABOUT THAT. YOU INDICATED THAT YOU WERE LAST IN  
19 THE BIRTH ORDER IN THE STOECKLEY FAMILY, IS THAT CORRECT?

20 A. YES, SIR.

21 Q. AND YOUR SISTER, HELENA, WAS ABOUT SIX YEARS OLDER THAN  
22 YOU?

23 A. YES, SIR.

24 Q. AND DO I UNDERSTAND THAT FEBRUARY 16TH, HAPPENS TO BE  
25 YOUR BIRTHDAY?

September 18, 2012

Stoeckley/Cross

Page 301

1 A. YES, SIR.

2 Q. SO, FEBRUARY 16TH, 1970, WOULD HAVE BEEN YOUR 11TH  
3 BIRTHDAY, IS THAT RIGHT?

4 A. IT WOULD HAVE BEEN, WHAT, MY TENTH.

5 Q. WHAT YEAR WERE YOU BORN?

6 A. FEBRUARY '59.

7 Q. OKAY.

8 A. WELL, '70 WOULD HAVE BEEN -- RIGHT.

9 Q. ELEVENTH?

10 A. ELEVENTH.

11 Q. ALL RIGHT. AND IS IT TRUE THAT ON YOUR 11TH BIRTHDAY,  
12 FEBRUARY 16TH, THAT YOUR SISTER CAME TO VISIT YOU?

13 A. SHE WAS AT THE HOUSE.

14 Q. AND SHE HAD ICE CREAM AND BIRTHDAY CAKE WITH YOU?

15 A. I REMEMBER SHE WAS THERE AND MY MOTHER ALWAYS PREPARED A  
16 LITTLE SOMETHING FOR US WHEN WE WERE CHILDREN.

17 Q. AND DID SHE BRING YOU A GIFT?

18 A. I CAN'T REMEMBER SPECIFICALLY.

19 Q. AND WAS THERE ANOTHER FEMALE WITH HER?

20 A. I DON'T RECALL IF THERE WAS OR NOT. SHE OFTENTIMES CAME  
21 ALONE OR SOMEBODY WOULD DROP HER OFF.

22 Q. DID SHE SEEM PERFECTLY NORMAL THAT DAY TO YOU?

23 A. SHE DID, YES.

24 Q. NO EVIDENCE THAT SHE WAS USING DRUGS?

25 A. NO. SHE WAS -- SHE WAS PRETTY LEVEL HEADED IN THAT

September 18, 2012



Stoeckley/Cross

Page 302

1 REGARD BECAUSE SHE KNEW MY PARENTS WOULDN'T ALLOW THAT AROUND  
2 THE HOUSE.

3 Q. SO, IT WAS A HAPPY OCCASION FOR YOU ON THAT DAY?

4 A. PRETTY MUCH.

5 Q. NOW, YOU INDICATED THAT YOUR MOTHER'S HEALTH WAS  
6 DECLINING SOMEWHAT IN THE 2000S, THE EARLY PART OF THAT  
7 DECADE, IS THAT RIGHT?

8 A. CORRECT.

9 Q. I BELIEVE YOU INDICATED THAT SHE HAD MACULAR DEGENERATION  
10 AND EVENTUALLY BECAME LEGALLY BLIND, IS THAT RIGHT?

11 A. THAT'S CORRECT.

12 Q. AND SHE NEEDED OXYGEN THERAPY, I BELIEVE?

13 A. CORRECT.

14 Q. AND YOU TOLD US ABOUT HER FALLING AND BREAKING A LIMB, IS  
15 THAT RIGHT?

16 A. CORRECT. SHE DID FRACTURE HER HIP.

17 Q. AND THEN AT SOME POINT SHE DEVELOPED HEART PROBLEMS?

18 A. APPARENTLY, THESE WERE ONGOING THAT NOBODY IN THE FAMILY  
19 HAD BEEN AWARE OF.

20 Q. AND EMPHYSEMA, IS THAT RIGHT?

21 A. YES. CORRECT.

22 Q. AND WHEN YOU SAID SHE WAS ON A RESPIRATOR, YOU MEANT JUST  
23 WHEN SHE VISITED THE HOSPITAL?

24 A. WHEN SHE HAD BILATERAL PNEUMONIA SHE WAS ON A VENTILATOR.

25 Q. OKAY. JUMPING BACK NOW TO THAT 1982 VISIT. I BELIEVE

September 18, 2012

Stoeckley/Cross

Page 303

1 YOU SAID THAT YOU WERE THERE DURING HELENA JUNIOR'S VISIT WITH  
2 YOUR MOTHER, IS THAT RIGHT?

3 A. THAT'S CORRECT.

4 Q. AND THE NEWBORN -- OR NOT NEWBORN, BUT SMALL BABY WAS  
5 THERE ALSO?

6 A. INFANT DAVID.

7 Q. AND I BELIEVE YOU TESTIFIED ON DIRECT EXAMINATION THAT  
8 HELENA DID NOT APPEAR TO BE OVERLY SICKLY AT THAT TIME?

9 A. NOT OVERLY. SHE HAD GAINED A LITTLE WEIGHT AND SHE -- I  
10 WAS USED TO SEEING HER APPEAR JAUNDICED. SHE HAD SUFFERED  
11 FROM HEPATITIS FOR MANY YEARS.

12 Q. AND I BELIEVE SHE ALSO SUFFERED FROM CIRRHOSIS OF THE  
13 LIVER, IS THAT RIGHT?

14 A. THAT DID -- I BELIEVE THAT WAS IN HER LATER YEARS THAT  
15 WAS A PROBLEM.

16 Q. NOW, I KNOW YOUR SISTER'S DEATH WAS DIFFICULT FOR YOU,  
17 BUT IS IT YOUR TESTIMONY THAT AS EARLY AS THE FALL OF 1982  
18 YOUR MOTHER AND SISTER KNEW THAT YOUR SISTER WAS DYING?

19 A. APPARENTLY MY SISTER KNEW IT.

20 Q. WELL, WHEN HER DEATH OCCURRED, HER BODY WASN'T DISCOVERED  
21 FOR A COUPLE OF DAYS, IS THAT RIGHT?

22 A. THAT WAS MY UNDERSTANDING.

23 Q. AND THE CAUSE OF DEATH WAS BRONCHIAL PNEUMONIA, IS THAT  
24 RIGHT?

25 A. I THINK THERE WERE SEVERAL CONTRIBUTING FACTORS, BUT THAT

September 18, 2012

Stoeckley/Cross

Page 304

1 WAS PROBABLY THE MAIN ONE WITH THE CIRRHOSIS.

2 Q. NOW, YOU INDICATED THAT YOUR MOTHER HAD GOTTEN OUT OF THE  
3 HOSPITAL AND WAS BACK IN THE ASSISTED LIVING FACILITY AND YOU  
4 WERE VISITING HER APPROXIMATELY WEEKLY, IS THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND AT THAT POINT YOU BROUGHT UP THE MACDONALD MURDERS  
7 WITH HER, IS THAT RIGHT?

8 A. DURING THE COURSE OF CONVERSATIONS ABOUT JUST OUR FAMILY  
9 LIFE.

10 Q. AND AT THAT POINT SHE'S CONFIDED OR TOLD YOU THAT HELENA  
11 HAD CONFIDED IN HER -- HELENA JUNIOR CONFIDED IN YOUR MOTHER  
12 THAT HELENA WAS THERE ON THE NIGHT OF THE MURDERS, IS THAT  
13 RIGHT?

14 A. AFTER I HAD QUESTIONED HER ABOUT IT.

15 Q. AND SHE, YOUR MOTHER, WAS SPEAKING TO YOU IN, THIS WOULD  
16 HAVE BEEN, LATE 2006 OR EARLY 2007, IS THAT RIGHT?

17 A. CORRECT.

18 Q. AND SHE WAS SPEAKING ABOUT HELENA JUNIOR -- CAN I CALL  
19 HER HELENA JUNIOR, IS THAT ALL RIGHT?

20 A. CORRECT.

21 Q. YOUR MOTHER WAS SPEAKING TO YOU ABOUT HELENA JUNIOR  
22 TALKING TO YOUR MOTHER IN THE FALL OF '82?

23 A. CORRECT.

24 Q. AND THIS INFORMATION THAT YOU RECEIVED IN 2006 OR 2007,  
25 YOU ATTACHED IMPORTANCE TO IT?

September 18, 2012

Stoeckley/Cross

Page 305

1 A. I DID. I DID BECAUSE MY MOTHER ATTACHED IMPORTANCE TO  
2 IT.

3 Q. BUT YOU ALREADY KNEW THAT YOUR SISTER HAD TOLD AN AWFUL  
4 LOT OF PEOPLE OVER THE YEARS THAT SHE WAS INVOLVED IN THE  
5 MACDONALD MURDERS, DIDN'T YOU KNOW THAT?

6 A. YES, THAT WAS COMMON KNOWLEDGE.

7 Q. IN FACT, IN THE EARLY '80S YOUR SISTER'S CLAIMS TO BE  
8 PART OF THE MACDONALD MURDERS WERE PART OF A COURT PROCEEDING,  
9 ISN'T THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND, IN FACT, DIDN'T SHE GIVE AN INTERVIEW TO *60 MINUTES*  
12 ON WHICH SHE SAID THAT SHE HAD BEEN INVOLVED IN AND PRESENT AT  
13 THE MACDONALD MURDERS?

14 A. I UNDERSTAND SHE DID, BUT I HAVEN'T WATCHED THE  
15 INTERVIEWS.

16 Q. SO, IT REALLY WASN'T ANYTHING NEW THAT YOU LEARNED IN  
17 2007?

18 A. NOT REALLY NEW, BUT THE WAY MY MOTHER TALKED ABOUT IT WAS  
19 WHAT HAD THE MOST IMPACT.

20 Q. AND I BELIEVE YOU INDICATED ON DIRECT EXAMINATION THAT  
21 AFTER YOUR MOTHER TOLD YOU THIS IT WEIGHED HEAVILY ON YOUR  
22 MIND?

23 A. THAT'S CORRECT.

24 Q. AND YOU WERE TRYING TO DECIDE WHAT TO DO ABOUT IT, IS  
25 THAT RIGHT?

September 18, 2012

Stoeckley/Cross

Page 306

1 A. YES, SIR.

2 Q. AND YOU DECIDED NOT TO CALL ANYBODY CONNECTED WITH LAW  
3 ENFORCEMENT, IS THAT RIGHT?

4 A. THAT'S CORRECT.

5 Q. AND INSTEAD YOU WENT ON THE INTERNET AND FOUND THE  
6 MACDONALD WEBSITE?

7 A. THAT'S CORRECT.

8 Q. AND YOU SENT A MESSAGE TO THE WEBSITE, IS THAT RIGHT?

9 A. THAT'S CORRECT.

10 Q. AND PRETTY SHORTLY THEREAFTER YOU WERE CONTACTED BY  
11 KATHRYN MACDONALD?

12 A. THAT'S CORRECT.

13 Q. AND BY EMAIL OR?

14 A. IF MY MEMORY'S CORRECT, WE EXCHANGED A FEW EMAILS  
15 INITIALLY.

16 Q. OKAY. DID SHE ASK YOU FOR YOUR CONTACT NUMBERS?

17 A. I'M NOT CERTAIN OF HOW THE NUMBER EXCHANGE TOOK PLACE,  
18 BUT I DO REMEMBER A COUPLE CELL PHONE CONTACTS.

19 Q. IN FACT, DID YOU CONTACT KATHRYN MACDONALD WHILE YOU WERE  
20 ON YOUR LUNCH BREAK FROM WORK BETWEEN 11:00 AND NOON ON A  
21 PARTICULAR DAY?

22 A. I DO RECALL CALLING HER FROM WORK ON MY LITTLE TRAK  
23 PHONE, THAT'S CORRECT.

24 Q. AND DID YOU MAKE CLEAR TO HER THAT YOU WERE NOT TRYING TO  
25 RUSH INTO THIS MATTER?

September 18, 2012

Stoeckley/Cross

Page 307

1 A. I BELIEVE SO. I KNOW SHE UNDERSTOOD MY TREPIDATION AS  
2 FAR AS BRINGING THIS TO LIGHT.

3 Q. BUT SHE WAS VERY EAGER TO GET GOING WITH IT, IS THAT  
4 RIGHT?

5 A. YES, SHE WAS.

6 Q. WAS THAT CONVERSATION THAT YOU HAD WITH KATHRYN MACDONALD  
7 FROM YOUR WORK PLACE, DID THAT OCCUR ON A FRIDAY?

8 A. I CAN'T SAY WITH CERTAINTY WHAT DAY THAT WAS.

9 Q. DID KATHRYN MACDONALD MAKE ARRANGEMENTS TO COME TO NORTH  
10 CAROLINA RIGHT AWAY THAT NIGHT TO MEET WITH YOU?

11 A. SHE DID. SAID SHE WOULD BE COMING DOWN IMMEDIATELY.

12 Q. AND IS THAT WHAT HAPPENED?

13 A. YES.

14 Q. AND SO THAT'S -- SO THE VERY DAY THAT YOU CALLED HER IS  
15 THE DAY THAT SHE CAME DOWN AND MET WITH YOU AT THE RESTAURANT?

16 A. WELL, I BELIEVE SHE CAME DOWN THAT EVENING AND I BELIEVE  
17 IT WAS THE NEXT DAY WE MET.

18 Q. OKAY. SO, YOU MET THE NEXT DAY?

19 A. THAT WAS MY RECOLLECTION.

20 Q. AND YOU MET AT A RESTAURANT IN FUQUAY-VARINA?

21 A. THAT'S CORRECT.

22 Q. AND YOU DISCUSSED THE SITUATION, IS THAT RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND KATHRYN MACDONALD WANTED TO PROCEED IMMEDIATELY TO  
25 THE NURSING HOME TO -- WAS IT A NURSING HOME OR ASSISTED

September 18, 2012

Stoeckley/Cross

Page 308

1 LIVING? WHAT'S THE PROPER TERM?

2 A. IT WAS ASSISTED LIVING IS WHAT THEY --

3 Q. THE NAME OF IT WAS HAYMOUNT NURSING HOME?

4 A. HAYMOUNT NURSING AND REHAB, THAT'S CORRECT.

5 Q. ALL RIGHT. DID KATHRYN MACDONALD WANT TO PROCEED THERE  
6 IMMEDIATELY?

7 A. WELL, SHE WASN'T OVERLY ANXIOUS, BUT SHE WAS INTERESTED  
8 IN GETTING TO MEET MY MOM IF SHE WOULD MEET HER, IF SHE WOULD  
9 HAVE HER.

10 Q. AND THIS WAS A SATURDAY I TAKE IT?

11 A. YES, SIR.

12 Q. AND DID THE TWO OF YOU PROCEED IMMEDIATELY TO THE NURSING  
13 FACILITY IN FAYETTEVILLE?

14 A. WE DID THAT AFTERNOON AFTER VISITING THERE AT THE  
15 RESTAURANT. LIKE I SAID, IT SEEMED TO BE MAYBE A COUPLE OF  
16 HOURS. I JUST REMEMBER AT ONE POINT WE LOOKED AT THE TIME AND  
17 SAID, WELL, YOU KNOW, WE -- TIME'S KIND OF GOTTEN AWAY FROM US  
18 SO WE DID.

19 Q. OKAY. SO, I ASSUME YOU GOT DOWN TO FAYETTEVILLE, WHAT,  
20 IN THE EARLY AFTERNOON?

21 A. THE LATER PART OF THE AFTERNOON, RIGHT.

22 Q. AND THE TWO OF YOU, KATHRYN MACDONALD AND YOU, DROVE TO  
23 FAYETTEVILLE IN THE SAME CAR?

24 A. THAT'S CORRECT.

25 Q. IN HER CAR OR YOUR CAR?

September 18, 2012

Stoeckley/Cross

Page 309

1 A. I CAN'T EVEN REMEMBER NOW. I DON'T RECALL REALLY. I  
2 THOUGHT IT WAS MY TRUCK, BUT I -- I THINK IT WAS MY TRUCK.

3 Q. WELL, ONE OF YOU LEFT YOUR CAR AT THE RESTAURANT IN  
4 FUQUAY?

5 A. WELL, I DON'T KNOW IF WE -- I REALLY CAN'T REMEMBER WHAT  
6 WE DID AS FAR AS DRIVING DOWN THERE BECAUSE I DIDN'T FORESEE  
7 THE CONSEQUENCES OF EVERY DETAIL.

8 Q. OKAY. BUT YOUR MEMORY IS THAT THE TWO OF YOU RODE DOWN  
9 THERE TOGETHER?

10 A. RIGHT. I KNEW THAT I WASN'T GOING TO HAVE HER COME BY  
11 THE HOUSE BECAUSE I DIDN'T WANT ANYBODY TO KNOW EXACTLY HOW TO  
12 GET TO OUR HOUSE AT THAT POINT. I WAS STILL SOMEWHAT -- I  
13 WASN'T TRUSTING OR, YOU KNOW, THERE WASN'T REALLY ANYBODY I  
14 TRUSTED.

15 Q. AND I UNDERSTAND THAT WHILE YOU WERE TRAVELING TO  
16 FAYETTEVILLE, YOUR WIFE CALLED YOUR BROTHER TO ALERT HIM THAT  
17 THIS WAS HAPPENING?

18 A. I BELIEVE SO.

19 Q. AND THIS IS YOUR BROTHER CLARENCE?

20 A. CORRECT.

21 Q. AND IS IT FAIR TO SAY THAT HE WAS NOT SUPPORTIVE OF THIS  
22 EFFORT THAT YOU WERE UNDERTAKING?

23 A. ABSOLUTELY.

24 Q. IT IS FAIR TO SAY THAT?

25 A. YES.

September 18, 2012



Stoeckley/Cross

Page 310

1 Q. NOW, WHEN YOU ARRIVED AT THE NURSING HOME, I BELIEVE YOU  
2 SAID YOU WENT IN FIRST TO TALK TO YOUR MOTHER, IS THAT RIGHT?

3 A. THAT'S CORRECT.

4 Q. AND WHEN YOU CAME BACK OUT TO THE PARKING LOT, YOUR  
5 BROTHER WAS THERE SPEAKING WITH KATHRYN MACDONALD?

6 A. THAT'S CORRECT.

7 Q. DID YOU OVERHEAR THAT CONVERSATION?

8 A. NO, BUT I DETECTED A BIT OF ANIMOSITY ON MY BROTHER'S  
9 PART.

10 Q. IS IT FAIR TO SAY HE JUST DIDN'T WANT YOUR MOTHER  
11 BOTHERED ABOUT THIS?

12 A. I WOULD SAY THAT WAS A GOOD ASSESSMENT.

13 Q. ALL RIGHT. AND SO, NEVERTHELESS, YOU AND KATHRYN  
14 RETURNED INTO THE NURSING HOME TO GO SEE YOUR MOTHER?

15 A. THAT'S CORRECT.

16 Q. AND THE TWO OF YOU SPOKE WITH HER ABOUT THE MACDONALD  
17 CASE?

18 A. THAT'S CORRECT.

19 Q. JUST THE THREE OF YOU IN THE ROOM AT THAT POINT?

20 A. YES.

21 Q. AND NOW AT SOME POINT KATHRYN MACDONALD REQUESTED THAT AN  
22 AFFIDAVIT BE PREPARED?

23 A. WELL, SHE DIDN'T DESCRIBE IT AS AN AFFIDAVIT. SHE JUST  
24 ASKED IF SHE WOULD BE WILLING TO MAKE A STATEMENT AND HAVE IT  
25 WITNESSED AND MOTHER AGREED.

September 18, 2012

Stoeckley/Cross

Page 311

1 Q. YOUR MOTHER AGREED?

2 A. (WITNESS NODS HEAD.)

3 Q. AND THEN KATHRYN MACDONALD CALLED ATTORNEY HART MILES IN  
4 RALEIGH?

5 A. AT THAT POINT I ASSUME SO. I DON'T THINK SHE WAS IN MY  
6 PRESENCE WHEN SHE MADE THE CALL.

7 Q. WELL, DID SHE TELL YOU THAT'S WHAT SHE WAS GOING TO DO?

8 A. YES, SHE DID TELL ME THAT.

9 Q. AND SHE WAS GOING TO ASK HIM TO COME DOWN IMMEDIATELY?

10 A. I THINK SHE WAS JUST GOING TO FIND OUT WHEN HE WAS  
11 AVAILABLE TO COME DOWN. I DON'T KNOW ABOUT IMMEDIATELY.

12 Q. WELL, IN FACT, APPARENTLY HE DID AGREE TO COME DOWN  
13 IMMEDIATELY?

14 A. APPARENTLY SO, YES.

15 Q. BECAUSE WITHIN ABOUT AN HOUR AND 20 MINUTES HE AND HIS  
16 PARALEGAL WERE THERE, IS THAT RIGHT?

17 A. THEY DID SHOW UP SHORTLY THEREAFTER, YES.

18 Q. AND, AGAIN, THIS WAS ON A SATURDAY?

19 A. YES.

20 Q. NOW, ISN'T IT TRUE THAT DURING THE PERIOD OF TIME IN  
21 WHICH YOU WERE WAITING FOR THEM TO ARRIVE FROM RALEIGH THAT  
22 KATHRYN MACDONALD TYPED UP A DRAFT OF THE AFFIDAVIT?

23 A. I DON'T KNOW OF A DRAFT TYPED BEFOREHAND.

24 Q. BEG YOUR PARDON?

25 A. I DON'T RECALL A DRAFT. I NEVER SAW A DRAFT BEFOREHAND.

September 18, 2012

Stoeckley/Cross

Page 312

1 I KNOW THAT SHE WAS TRYING TO SECURE THE USE OF A PC WITH A  
2 PRINTER AVAILABLE. I KNOW SHE WAS TRYING TO GET A HOLD OF  
3 HAVING ACCESS TO THAT WITH ONE OF THE STAFF, BUT I DON'T KNOW  
4 ABOUT HER GOING AHEAD AND TYPING A DRAFT.

5 Q. WELL, WAS SHE ABLE TO SECURE THE USE OF A COMPUTER AND  
6 PRINTER?

7 A. YES.

8 Q. IN A SMALL OFFICE AT THE NURSING FACILITY?

9 A. YES.

10 Q. AND AT THAT POINT, DID SHE BEGIN TYPING A DOCUMENT?

11 A. I'M NOT SURE. I'M NOT SURE IF SHE WAS TYPING AN ACTUAL  
12 DOCUMENT OR TRYING TO USE THE PC ITSELF. I DON'T KNOW.

13 Q. DO YOU RECALL BEING INTERVIEWED ON APRIL 21ST, 2007, BY  
14 THE FBI ABOUT THIS MATTER?

15 A. YES, JIM CHEROKE.

16 Q. THE MAN SEATED RIGHT OVER HERE?

17 A. YES.

18 Q. DO YOU RECOGNIZE HIM?

19 A. YES.

20 Q. DO REMEMBER TELLING HIM ON THAT DAY THAT WHILE THE  
21 ATTORNEY WAS ON THE WAY FROM RALEIGH THAT KATHRYN MACDONALD  
22 WAS TYPING?

23 A. WELL, AS I SAID, I DON'T KNOW WHAT SHE TYPED, IF SHE WAS  
24 TYPING, IF SHE WAS TRYING TO FAMILIARIZE HERSELF WITH THE  
25 PC --

September 18, 2012

Stoeckley/Cross

Page 313

1 THE COURT: EXCUSE ME. DID YOU UNDERSTAND THE  
2 QUESTION? ASK YOUR QUESTION AGAIN.

3 BY MR. BRUCE:

4 Q. DID YOU TELL JIM CHEROKE ON APRIL 21ST, 2007, THAT WHILE  
5 THE ATTORNEY WAS TRAVELING FROM RALEIGH THAT KATHRYN MACDONALD  
6 WAS TYPING?

7 A. I DON'T RECALL IF I SPECIFICALLY TOLD HIM THAT, NO.

8 Q. AND DID YOU TELL HIM ON THAT DAY THAT KATHRYN MACDONALD  
9 WAS STILL TYPING THE AFFIDAVIT WHEN THE ATTORNEY, HART MILES,  
10 ARRIVED?

11 A. GIVEN THAT I DIDN'T KNOW INITIALLY, I CAN'T SAY NO THAT I  
12 TOLD HIM THAT. I CAN'T RECALL.

13 Q. WELL, MY HAVING ASKED YOU THESE QUESTIONS IS YOUR  
14 RECOLLECTION NOW THAT KATHRYN MACDONALD WAS TYPING WHILE THE  
15 ATTORNEY WAS COMING FROM RALEIGH?

16 A. I DO NOT RECALL WHETHER SHE WAS. I SPENT TIME THERE WITH  
17 MY MOTHER IN HER COMPANY.

18 Q. SO, YOU WERE WITH YOUR MOTHER WHILE YOU WERE WAITING FOR  
19 HART MILES TO ARRIVE?

20 A. THAT'S CORRECT. MY FOCUS WAS ON HER AND I WAS JUST  
21 WAITING FOR THE -- FOR HART AND I BELIEVE IT WAS HIS  
22 PARALEGAL.

23 Q. BUT YOU DID GO OUT OF THE ROOM A COUPLE OF TIMES WHILE  
24 YOU WERE WAITING?

25 A. YES. MY BROTHER WAS OUTSIDE WITH ANOTHER ACQUAINTANCE OF

September 18, 2012

Stoeckley/Cross

Page 314

1 MINE. THEY WERE TALKING.

2 Q. AND, IN FACT, I BELIEVE YOU -- IS IT TRUE THAT KATHRYN  
3 MACDONALD WAS LEFT ALONE WITH YOUR MOTHER DURING A BRIEF TIME  
4 FRAME?

5 A. IT MAY BE TRUE BECAUSE IF I HAD LEFT THE ROOM SHE WOULD  
6 HAVE BEEN FREE TO COME AND GO.

7 Q. ALL RIGHT. WELL, AT SOME POINT YOU SAW A DRAFT OF AN  
8 AFFIDAVIT, DID YOU NOT?

9 A. CORRECT.

10 Q. OKAY. WELL, LET'S PUT IT THIS WAY, HART MILES AND HIS  
11 PARALEGAL ARRIVED, IS THAT RIGHT?

12 A. YES.

13 Q. WAS IT PRETTY QUICKLY THAT A DRAFT WAS PRODUCED?

14 A. THEY SEEMED TO GET TOGETHER AND HUDDLE A LITTLE BIT AND  
15 HAVE SOME DISCUSSION. I DON'T KNOW WHAT WAS TALKED ABOUT AT  
16 THAT TIME. AS I SAID, MY ATTENTION WAS ON MY MOM AND JUST  
17 MAKING SURE SHE WAS COMFORTABLE WITH THEM BEING THERE AND THAT  
18 -- LIKE I SAID, SHE WAS FINE WITH HOW THINGS WERE GOING.

19 I JUST LEFT THE PROCEDURAL BUSINESS UP TO THE FOLKS  
20 THERE. I DIDN'T GET INVOLVED EXCEPT FOR THE READING OF IT AND  
21 SIGNING AND WITNESSING.

22 Q. WELL, MY QUESTION IS, WAS IT A SHORT TIME AFTER THE  
23 ARRIVAL OF THE ATTORNEY AND HIS PARALEGAL, WAS IT A SHORT TIME  
24 BEFORE A DRAFT WAS PRODUCED TO READ TO YOUR MOTHER?

25 A. I DON'T THINK IT WAS -- YOU SAY A SHORT TIME. MAYBE

September 18, 2012

Stoeckley/Cross

Page 315

1 WITHIN 20 MINUTES PERHAPS. YOU KNOW, THAT'S JUST A BEST  
2 ESTIMATE WHEN I THINK OF BEING IN THERE.

3 Q. ALL RIGHT. NOW, AT SOME POINT THERE WAS A DRAFT AND I  
4 BELIEVE YOU TESTIFIED THAT YOU READ ALOUD THE DRAFT TO YOUR  
5 MOTHER?

6 A. THAT'S CORRECT.

7 Q. ALL RIGHT. AND BY THE WAY, HAD ATTORNEY HART MILES  
8 INTERVIEWED HER HIMSELF BEFORE THAT HAPPENED?

9 A. WELL, AS I RECALL, HE DIDN'T INTERVIEW HER ALONE.

10 Q. HE DID?

11 A. THAT HE DID NOT.

12 Q. HE DID NOT.

13 A. AND HE -- WE WERE ALL PRESENT AND HE JUST ENGAGED IN  
14 CONVERSATION WHILE WE WERE ALL THERE.

15 Q. ALL RIGHT. NOW, WHEN YOU READ THE AFFIDAVIT TO YOUR  
16 MOTHER YOU INDICATED THAT SHE SPECIFIED A FEW CHANGES?

17 A. SHE DID. I WOULD READ AND SHE WOULD SAY, WELL, YOU KNOW,  
18 THAT'S NOT EXACTLY HOW I SAID IT AND, YOU KNOW, DIFFERENT  
19 THINGS. AND AS I SAID, IT WASN'T SO MUCH THE THOUGHT SHE WAS  
20 TRYING TO ARTICULATE, BUT MORE OF THE VERBIAGE, YOU KNOW. SO,  
21 SHE JUST -- JUST LITTLE -- I DON'T KNOW. YOU JUST -- THE WAY  
22 SHE IS, SHE JUST -- YOU KNOW, IF SOMETHING WASN'T JUST SO SHE  
23 WOULD SAY, HEY, THAT ISN'T -- SO, SHE MADE IT CLEAR IF  
24 ANYTHING DIDN'T SET WELL WITH HER AS I READ IT. SHE WAS VERY  
25 CLEAR ABOUT IT.

September 18, 2012

Stoeckley/Cross

Page 316

1 Q. WELL, WAS ONE OF THE CHANGES THAT SHE WANTED MADE IS  
2 CONCERNING THE FACT ABOUT THE ALLEGED THREAT OF THE FBI FOR  
3 SOMEONE TO STOP CONTACTING THEM?

4 A. I DON'T REMEMBER HER TAKING EXCEPTION TO THAT BECAUSE  
5 THAT WAS A VERY -- THAT KIND OF STUCK IN HER MIND OVER THE  
6 YEARS. THAT WAS ONE OF THE REASONS SHE DIDN'T WANT TO BE  
7 INTERVIEWED SUBSEQUENTLY AFTER THE AFFIDAVIT CAME OUT.

8 Q. DID YOUR MOTHER REQUEST THAT THE AFFIDAVIT BE CHANGED TO  
9 SAY THAT THE FBI TOLD US, MEANING HER FAMILY, THAT THEY WANTED  
10 HELENA TO STOP CONTACTING THEM?

11 A. THAT WAS HER TERMINOLOGY, LET'S SAY HER WORDS, TO STOP  
12 CONTACTING THEM.

13 Q. I BELIEVE YOU SAID ON DIRECT EXAMINATION SOMETHING ABOUT  
14 THE FBI IS SAYING THIS TO YOUR PARENTS DURING THE TRIAL. DID  
15 YOU MEAN DURING THE TRIAL?

16 A. I DIDN'T SPEND TIME READING ABOUT THE TRIAL AND THOSE  
17 THINGS. SHE TOLD ME ON DIFFERENT OCCASIONS BEFORE THIS  
18 REVELATION ABOUT HELENA CONFIDING IN HER. SHE HAD TOLD ME  
19 MANY TIMES THAT THE FBI HAD TOLD THEM TO -- YOU KNOW, FOR  
20 HELENA TO STAY AWAY FROM IT.

21 Q. BUT IS IT YOUR TESTIMONY THAT SOMEONE FROM THE FBI  
22 CONTACTED YOUR PARENTS DURING THE TRIAL TO SAY THAT HELENA  
23 SHOULD BE QUIET?

24 A. I CAN'T SAY IT WAS DURING THE TRIAL. I JUST KNOW THAT  
25 SHE HAD SAID THE FBI HAD CONTACTED THEM AND TOLD THEM TO KEEP

September 18, 2012

Stoeckley/Cross

Page 317

1 HER UNDER CONTROL AND OUT OF IT, KEEP HER NOSE OUT OF IT.

2 Q. WELL, YOU KNOW, OF COURSE, THAT YOUR PARENTS WERE  
3 SUBPOENAED BY THE DEFENSE TO COME TO RALEIGH FOR THE TRIAL?

4 A. I KNEW THEY WERE SUBPOENAED, BUT I DIDN'T KNOW ANY OF THE  
5 DETAILS.

6 Q. AND YOU KNOW THAT YOUR SISTER WAS TRANSPORTED TO RALEIGH  
7 AS A MATERIAL WITNESS FOR THE TRIAL?

8 A. I UNDERSTOOD THAT, YES.

9 Q. ISN'T THE TRUTH OF THE MATTER THAT SOMETIME IN THE '80S  
10 WHEN HELENA -- WELL, LET ME PUT IT THIS WAY, SOMETIME DURING  
11 THE '80S YOUR SISTER GAVE A LOT OF STATEMENTS TO A PRIVATE  
12 INVESTIGATOR WORKING FOR MACDONALD, IS THAT RIGHT?

13 A. SHE MAY HAVE. I'M NOT -- AS I SAID, I DIDN'T FOLLOW THE  
14 CASE AS A LOT OF PEOPLE HAVE.

15 Q. YOU REALIZE THAT THE TRIAL WAS IN JULY AND AUGUST OF  
16 1979, RIGHT?

17 A. THAT'S CORRECT.

18 Q. ALL RIGHT. AND DURING THE '80S WERE YOU AWARE THAT YOUR  
19 SISTER HAD TRAVELED TO CALIFORNIA TO MEET WITH PRIVATE  
20 INVESTIGATORS WORKING FOR MACDONALD?

21 A. I READ THAT SOMEWHERE. IT WAS JUST DURING -- A PIECE OF  
22 INFORMATION I HAVE READ. I DON'T EVEN KNOW WHAT TRANSPIRED.

23 Q. WASN'T IT DURING THIS ERA THAT THE FBI CALLED AND SAID  
24 HELENA NEEDS TO STOP CONTACTING US REPEATEDLY?

25 A. I DO NOT KNOW. MY MOTHER NEVER SPECIFIED --

September 18, 2012



Stoeckley/Cross

Page 318

1 Q. COULD THAT BE WHAT YOUR MOTHER MEANT?

2 A. I CAN'T SAY. SHE NEVER SPECIFIED.

3 Q. COULD IT BE WHAT YOUR MOTHER MEANT?

4 A. COULD BE. SHE WASN'T SPECIFIC.

5 Q. LET'S LOOK AT THE DEFENSE EXHIBIT 5051 A MOMENT ON THE

6 SCREEN, PLEASE. AND CAN YOU GO TO THE BOTTOM OF THE SECOND

7 PAGE, PLEASE? AFTER PARAGRAPH 15 -- DO YOU SEE THAT, MR.

8 STOECKLEY?

9 A. YES.

10 Q. AFTER PARAGRAPH 15 NOTHING APPEARS ON THE REST OF THAT

11 PAGE, IS THAT RIGHT?

12 A. CORRECT.

13 Q. AND NOW GO TO THE THIRD PAGE. THE ONLY THING THAT'S ON

14 THIS PAGE ARE THE SIGNATURES AND THE NOTARIAL ACKNOWLEDGEMENT,

15 RIGHT?

16 A. CORRECT.

17 Q. AND DO YOU SEE AT THE TOP OF THE PAGE A TITLE OR A

18 CAPTION THAT SAYS UNTITLED?

19 A. YES, I DO.

20 Q. DO YOU KNOW WHAT THAT MEANS?

21 A. NO. I DON'T KNOW HOW IT'S REVALENT (SIC) IN THIS CASE.

22 Q. BUT YOU DON'T KNOW WHAT IT MEANS?

23 A. WELL, I KNOW WHAT UNTITLED -- I DON'T KNOW HOW IT'S --

24 WHAT IT MEANS IN REFERENCE TO THIS AFFIDAVIT OR THESE PAGES.

25 Q. OKAY. AT THE BOTTOM CENTER OF THE PAGE DO YOU SEE WHERE

September 18, 2012

Stoeckley/Cross

Page 319

1 IT SAYS PAGE ONE?

2 A. YES.

3 Q. BUT IT'S REALLY THE THIRD PAGE?

4 A. YES.

5 Q. AND THE FIRST TWO PAGES ARE UNNUMBERED, IS THAT RIGHT?

6 A. I DIDN'T -- IF YOU'D BACK UP.

7 Q. LET'S BACK UP. GO TO THE SECOND PAGE. DO YOU SEE A  
8 NUMBER ON THE FIRST PAGE? THAT'S THE FIRST PAGE.

9 A. NO.

10 Q. DO YOU SEE A NUMBER ON THE SECOND PAGE?

11 A. NO, I DO NOT.

12 Q. NOW, I BELIEVE YOU INDICATED THAT YOU, AT THIS POINT,  
13 WERE HANDLING YOUR MOTHER'S FINANCIAL AFFAIRS?

14 A. YES.

15 Q. DID YOU HAVE OCCASION ON OTHER DAYS OTHER THAN THIS,  
16 MARCH 31ST, 2007, DID YOU HAVE OTHER OCCASIONS IN WHICH YOU  
17 NEEDED HER SIGNATURE ON DOCUMENTS?

18 A. PERHAPS. WELL, I WAS THE -- I'M SORRY, I JUST KIND OF  
19 DREW A BLANK. BUT I HAD LEGAL AUTHORITY TO SIGN HER DOCUMENTS  
20 AND --

21 Q. YOU HAD POWER OF ATTORNEY?

22 A. POWER OF ATTORNEY, YES.

23 Q. ALL RIGHT. BUT NOTWITHSTANDING THAT, DID YOU HAVE  
24 OCCASIONS WHERE YOU GOT HER TO SIGN THINGS?

25 A. YES. PROBABLY CONCERNING HER ADMITTANCE INTO THE

September 18, 2012

Stoeckley/Cross

Page 320

1 FACILITIES, THE ASSISTED LIVING.

2 Q. AND SHE TRUSTED YOU, IS THAT RIGHT?

3 A. YES.

4 Q. AND I BELIEVE YOU STATED ON DIRECT EXAMINATION THAT WHEN  
5 IT CAME TIME TO SIGN THIS, YOU TOLD HER TO SIGN WHERE SHE DID  
6 BENEATH UNTITLED?

7 A. RIGHT. I JUST -- SHE HAD THE PEN IN HER HAND AND I JUST  
8 PLACED HER HAND IN THE GENERAL AREA OF THE DOCUMENT WHERE THE  
9 LINE IS.

10 Q. NOW, CAN YOU APPROXIMATE THE TIME THAT YOU AND KATHRYN  
11 MACDONALD ARRIVED AT THE NURSING HOME THAT DAY?

12 A. GOSH, IT MUST HAVE BEEN 3:00 OR 4:00 P.M.

13 Q. THAT LATE?

14 A. IT WAS LATE AFTERNOON.

15 Q. SO --

16 A. AND THAT'S JUST MY BEST ESTIMATE BASED ON THE LATE  
17 AFTERNOON SUN, THE LACK OF TRAFFIC. THERE WASN'T A LOT OF  
18 TRAFFIC LEAVING BRAGG. SO, IT WAS BEFORE THEN. I'D SAY, YOU  
19 KNOW, IF IT TOOK US 45 TO 50 MINUTES TO LEAVE FUQUAY, YOU  
20 KNOW, I'D SAY AROUND 3:00, 3:30, 4:00, SOMEWHERE IN THAT TIME  
21 FRAME.

22 Q. OKAY. SO, YOU HAD A LONG MEETING -- FIRST OF ALL, IS IT  
23 TRUE THAT KATHRYN MACDONALD WAS A COUPLE OF HOURS LATE TO YOUR  
24 MEETING IN FUQUAY?

25 A. I BELIEVE SHE WAS LATE, BUT I DON'T REMEMBER HOW LONG.

September 18, 2012

Stoeckley/Cross

Page 321

1 Q. ALL RIGHT. AND THEN YOU INDICATED EARLIER YOU HAD A LONG  
2 MEETING WITH HER AT THE RESTAURANT?

3 A. YES, WE SAT AND WE JUST BECAME ACQUAINTED. YOU KNOW,  
4 SHE KIND OF FILLED ME IN ON WHERE THEY WERE GOING AND THE  
5 DEVELOPMENTS. AS I SAID, I DIDN'T KEEP UP WITH IT. I HAD  
6 MADE IT A POINT TO JUST TRY TO STEER CLEAR OF IT.

7 Q. AND THEN YOU HAD THE ABOUT 50 MINUTE DRIVE FROM  
8 FUQUAY TO FAYETTEVILLE?

9 A. YES.

10 Q. AND THEN YOU STOPPED AND TALKED WITH YOUR BROTHER IN THE  
11 PARKING LOT?

12 A. YES.

13 Q. I'M SORRY, YOU WENT IN AND TALKED TO YOUR MOTHER, CAME  
14 BACK OUT --

15 A. I WENT IN AND -- WELL, I STOPPED AND TALKED TO MY  
16 BROTHER. HE WAS OUT THERE IN THE PARKING LOT WITH ANOTHER  
17 ACQUAINTANCE OF OURS AND THEY WERE JUST TALKING. AND I COULD  
18 TELL MY BROTHER WAS A BIT AGITATED WITH ME, BUT THAT'S FINE.  
19 HE WAS --

20 Q. AND THEN YOU AND KATHRYN MACDONALD HAD THE MEETING WITH  
21 YOUR MOTHER AS YOU'VE TESTIFIED?

22 A. YES, SIR.

23 Q. AND THEN SHE CALLED THE ATTORNEY IN RALEIGH AND IT TOOK  
24 ABOUT AN HOUR AND 20 MINUTES FOR HIM AND HIS PARALEGAL TO  
25 ARRIVE?

September 18, 2012

Stoeckley/Cross

Page 322

1 A. I WOULD SAY AT LEAST THAT IF THEY CAME FROM RALEIGH, YES,  
2 SIR.

3 Q. ALL RIGHT. SO, BY THAT TIME IT MUST HAVE BEEN AFTER 6:00  
4 P.M.?

5 A. IT WAS WELL INTO EARLY EVENING.

6 Q. ALL RIGHT. AND AFTER THE ATTORNEY AND HIS PARALEGAL  
7 ARRIVED SOME AMOUNT OF PREPARATION STILL HAD TO BE DONE ON THE  
8 AFFIDAVIT, IS THAT RIGHT?

9 A. THAT'S CORRECT.

10 Q. AND THEN YOU READ HER THE AFFIDAVIT AND MADE EDITS PER  
11 HER REQUEST OR SOMEONE MADE EDITS?

12 A. AT HER REQUEST. AS I READ, IT SHE WOULD POINT OUT WHAT  
13 SHE DIDN'T FEEL WAS QUITE RIGHT OR CONVEYED HER SENTIMENT.

14 Q. SO, BY THE TIME YOU DIRECTED HER IN SIGNING THIS  
15 SIGNATURE -- LET'S GO TO PAGE THREE OF 5051 -- WHAT WOULD YOU  
16 ESTIMATE THE TIME OF DAY WAS ABOUT THAT SHE SIGNED IT?

17 A. IT WAS -- IT COULDN'T HAVE BEEN DINNER TIME. NORMALLY,  
18 THEY WOULD COME IN AND CHECK ON HER AND ASK HER IF SHE'S READY  
19 FOR SUPPER. SO, IT WOULD HAVE BEEN BEFORE THEN. SO, IT WOULD  
20 HAVE BEEN MAYBE AROUND MOST PEOPLE'S QUITTING TIME FROM WORK.  
21 I WOULD SAY BEFORE 6:00, THAT WOULD BE MY BEST ESTIMATE,  
22 BECAUSE I DON'T RECALL ANYBODY STOPPING IN AND ASKING HER IF  
23 SHE WAS READY TO BE TAKEN DOWN FOR SUPPER.

24 Q. NOW, AS I UNDERSTAND IT, YOU WERE NOT GIVEN A COPY OF THE  
25 AFFIDAVIT AFTER IT WAS SIGNED?

September 18, 2012

Stoeckley/Cross

Page 323

1 A. THAT'S CORRECT.

2 Q. AND MR. HART MILES INFORMED YOU THAT IT MIGHT BE THE  
3 SUBJECT OF A COURT FILING AND THAT IT MIGHT RECEIVE MEDIA  
4 COVERAGE?

5 A. I BROUGHT THAT UP BECAUSE THAT WAS ONE OF MY CONCERNS,  
6 YES.

7 Q. WELL, IF YOU BROUGHT IT UP, WHAT DID HE SAY ABOUT IT?

8 A. HE SAID IT WAS VERY POSSIBLE ONCE IT BECAME PUBLIC  
9 INFORMATION.

10 Q. AND I BELIEVE MR. MILES ACTUALLY GAVE YOU A REFERRAL FOR  
11 AN ATTORNEY TO CONTACT IF YOU WANTED AN ATTORNEY IN THE  
12 MATTER?

13 A. I BELIEVE I REQUESTED INFORMATION IF I NEEDED AN ATTORNEY  
14 AT ANY POINT. HE SAID HE DIDN'T SEE THAT I -- THE LIKELIHOOD  
15 OF NEEDING ONE, BUT I REMEMBER HE DID PROVIDE A NAME, BUT I  
16 DON'T EVEN REMEMBER IF I HAVE IT WRITTEN IN MY ROLODEX.

17 Q. YOU DIDN'T CONTACT THE ATTORNEY?

18 A. (NO RESPONSE.)

19 Q. YOU DID NOT CONTACT THE ATTORNEY AFTER MR. MILES GAVE YOU  
20 THE NAME?

21 A. NO, SIR. NO, NOT TO MY RECOLLECTION I DIDN'T.

22 Q. NOW, DID MR. HART MILES EMAIL YOU A COPY OF THE AFFIDAVIT  
23 LATER?

24 A. HE DID.

25 Q. DO YOU KNOW ABOUT HOW MANY DAYS LATER?

September 18, 2012

Stoeckley/Cross

Page 324

1 A. I DO NOT KNOW.

2 Q. WHEN YOU GOT THE EMAIL COPY OF THE AFFIDAVIT, DID YOU  
3 READ IT OVER AT THAT TIME?

4 A. YES.

5 Q. DID YOU NOTICE SOMETHING THAT DIDN'T LOOK LIKE IT HAD  
6 BEEN IN THERE BEFORE?

7 A. NO, I DIDN'T -- SINCE I HAD READ IT AT THE NURSING HOME I  
8 THINK THE ONLY THING I REALLY LOOKED AT WERE THE SIGNATURES  
9 AND THE NOTARIZATION --

10 Q. WELL, LET'S LOOK AT --

11 A. -- BUT EVERYTHING WAS --

12 Q. I'M SORRY, AT THE NURSING HOME ALL YOU LOOKED AT WAS THE  
13 SIGNATURES AND --

14 A. NO, I READ EVERYTHING AT THE NURSING HOME SO THE  
15 AFFIDAVIT APPEARED TO BE EXACTLY AS I HAD READ IT THEN WHEN I  
16 RECEIVED IT.

17 Q. LET'S LOOK AT PAGE TWO. DIRECTING YOUR ATTENTION TO  
18 PARAGRAPH 14, DO YOU SEE WHERE IT SAYS I'VE DECIDED TO GIVE MY  
19 STATEMENT NOW BECAUSE OF MY ADVANCED AGE AND BECAUSE I DON'T  
20 BELIEVE HE SHOULD BE IN PRISON?

21 A. YES.

22 Q. AND I TAKE IT HE REFERS TO JEFFREY MACDONALD?

23 A. YES.

24 Q. AND MY ADVANCED AGE REFERS TO YOUR MOTHER?

25 A. THAT'S CORRECT.

September 18, 2012

Stoeckley/Cross

Page 325

1 Q. IS IT THE CASE THAT YOUR MOTHER DID NOT STATE THIS DURING  
2 THE INTERVIEW?

3 A. NO, MY MOTHER DID SAY THAT SHE BELIEVED HE SHOULD NOT BE  
4 IN PRISON.

5 Q. SHE DID SAY THAT?

6 A. YES.

7 Q. DO YOU RECALL YOUR MOTHER SAYING THAT DURING THE  
8 INTERVIEW THAT LED TO THE PREPARATION OF THIS AFFIDAVIT?

9 A. I REMEMBER HER DISTINCTLY SAYING THAT SHE BELIEVED HE WAS  
10 INNOCENT AND SHOULDN'T BE IN PRISON.

11 Q. DO YOU RECALL DURING YOUR INTERVIEW WITH AGENT CHEROKE ON  
12 APRIL 21ST, 2007, SAYING THAT YOU DID NOT RECALL YOUR MOTHER  
13 SAYING THAT MACDONALD WAS NOT GUILTY?

14 A. NO, I DID NOT -- I DON'T RECALL THAT.

15 Q. YOU DON'T RECALL SAYING THAT TO MR. CHEROKE?

16 A. THAT'S CORRECT, I DO NOT RECALL.

17 Q. ALL RIGHT. DURING THE TRIAL YOU SAID I BELIEVE THAT YOU  
18 WERE AWARE THAT YOUR PARENTS TRAVELED TO RALEIGH PURSUANT TO  
19 SUBPOENA?

20 A. THAT'S CORRECT.

21 Q. AND ARE YOU AWARE THAT THEY WERE INTERVIEWED BY THE  
22 DEFENSE CONCERNING THE MACDONALD MATTER WHILE THEY WERE UP  
23 THERE?

24 A. I WAS NOT AWARE.

25 Q. YOU WERE AWARE FROM TALKING TO YOUR PARENTS THAT NEITHER

September 18, 2012



Stoeckley/Cross

Page 326

1 ONE OF THEM TESTIFIED IN THE TRIAL?

2 A. I DIDN'T ENGAGE THEM ABOUT THE WHOLE MATTER BECAUSE IT  
3 WAS DIFFICULT FOR THEM.

4 Q. ALL RIGHT. THIS IS 1979, CORRECT, IS THE DATE OF THE  
5 TRIAL?

6 A. YES, SIR.

7 Q. AND AT THAT TIME YOU'RE 20 YEARS OLD --

8 A. YES, SIR.

9 Q. -- IS THAT RIGHT?

10 A. (WITNESS NODS HEAD.)

11 Q. AND WHERE WERE YOU LIVING?

12 A. LIVING IN WILMINGTON.

13 Q. OKAY. AND YOUR PARENTS WERE INDEPENDENTLY LIVING THEN,  
14 NO HEALTH PROBLEMS AT THAT TIME?

15 A. THAT'S CORRECT.

16 Q. WELL, WOULD IT SURPRISE YOU IF YOUR MOTHER TOLD THE  
17 DEFENSE TEAM IN RALEIGH DURING THE TRIAL THAT SHE DIDN'T KNOW  
18 WHERE TO REACH HELENA AND SHE DIDN'T WANT TO KNOW?

19 A. IT WOULDN'T SURPRISE ME, NO.

20 Q. WOULD IT -- WERE YOU KEEPING UP WITH YOUR SISTER DURING  
21 THIS TIME PERIOD?

22 A. NEGATIVE. NO, I DID NOT.

23 Q. NOT AT ALL?

24 A. NO, SIR.

25 Q. WERE YOU AWARE THAT YOUR SISTER HAD HAD A STROKE?

September 18, 2012

Stoeckley/Cross

Page 327

1 A. I BELIEVE MY FATHER HAD TOLD ME BECAUSE HE WAS THE ONE  
2 THAT EVENTUALLY TOLD ME SHE HAD PASSED AWAY, BUT I --

3 Q. WELL, I'M TALKING ABOUT --

4 A. -- DO RECALL HEARING --

5 Q. I'M SORRY, I'M NOT TALKING ABOUT CLOSE TO THE TIME SHE  
6 DIED, I'M TALKING ABOUT BEFORE THE MACDONALD TRIAL.

7 A. I DON'T RECALL THAT.

8 Q. DO RECALL HER GOING HOME TO STAY WITH YOUR PARENTS DURING  
9 THIS TIME FRAME BECAUSE SHE WAS SICK?

10 A. I'M NOT AWARE OF IT.

11 Q. WERE YOU -- WOULD IT SURPRISE YOU IF YOUR MOTHER  
12 DESCRIBED HER DURING THIS TIME FRAME AS BEING LIKE A  
13 VEGETABLE?

14 A. I HAVE NEVER HEARD HER DESCRIBE HER AS THAT, NO.

15 Q. WOULD IT SURPRISE YOU IF YOUR MOTHER DESCRIBED HER DURING  
16 THIS TIME FRAME AS BEING A PHYSICAL AND MENTAL WRECK?

17 A. IT WOULDN'T SURPRISE ME, BUT I HAVEN'T HEARD THAT  
18 PERSONALLY.

19 Q. AND TO YOUR KNOWLEDGE, WAS YOUR SISTER A PHYSICAL AND  
20 MENTAL WRECK DURING THIS TIME PERIOD?

21 A. SHE WAS PHYSICALLY BEAT DOWN DUE TO THE LIFESTYLE SHE HAD  
22 TAKEN. MENTALLY, SHE -- I'VE NEVER SEEN HER SO DISCONNECTED  
23 FROM REALITY THAT I WOULD SAY SHE WAS JUST COMPLETELY  
24 UNRELIABLE, NO.

25 Q. DID YOUR MOTHER EVER EXPRESS TO YOU THAT SHE THOUGHT THAT

September 18, 2012

Stoeckley/Cross

Page 328

1 PRINCE BEASLEY OR DADDY BEASLEY HAD UNDUE INFLUENCE ON YOUR  
2 SISTER?

3 A. YES.

4 Q. NOW, AFTER THE AFFIDAVIT WAS SIGNED AND FILED YOU WERE  
5 CONTACTED BY THE FBI, IS THAT RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND WE'VE DISCUSSED THE FACT THAT YOU WERE INTERVIEWED ON  
8 APRIL 21ST, 2007, BY MR. CHEROKE, IS THAT RIGHT?

9 A. YES, SIR.

10 Q. DID YOU AND MR. CHEROKE GO TO SEE YOUR MOTHER TOGETHER  
11 AFTER THAT?

12 A. NO, WE APPARENTLY SCHEDULED IT WHERE MY WIFE AND I MET  
13 DOWN THERE.

14 Q. WELL, THAT'S WHAT I MEANT. I DIDN'T MEAN YOU WENT THE  
15 SAME DAY.

16 A. RIGHT, BUT WE DID --

17 Q. IN FACT, WOULD IT SOUND CONSISTENT WITH YOUR RECOLLECTION  
18 IF IT WAS ABOUT FOUR DAYS LATER, APRIL 25TH, THAT YOU MET DOWN  
19 THERE?

20 A. RIGHT.

21 Q. IS THAT RIGHT?

22 A. RIGHT.

23 Q. OKAY. AND SO THIS IS SOMETHING YOU AGREED TO DO, THAT  
24 THE FBI REQUESTED AND YOU AGREED?

25 A. YES. I JUST WANTED TO INSURE THAT MY MOTHER WAS NOT IN

September 18, 2012

Stoeckley/Cross

Page 329

1 UNDUE STRESS AND THAT SHE UNDERSTOOD THAT THIS WAS NECESSARY.

2 Q. IN OTHER WORDS, YOU REQUESTED TO BE PRESENT WHILE THE FBI  
3 INTERVIEWED YOUR MOTHER?

4 A. YES.

5 Q. AND THEY AGREED?

6 A. YES.

7 Q. AND I BELIEVE YOU AND YOUR WIFE WENT DOWN THERE FOR THIS?

8 A. YES.

9 Q. AND SO MR. CHEROKE, YOU AND YOUR WIFE AND YOUR MOTHER SAT  
10 IN A ROOM WHILE MR. CHEROKE INTERVIEWED HER?

11 A. YES.

12 Q. DO YOU RECALL DURING THAT INTERVIEW THAT MS. STOECKLEY  
13 SAID THAT YOUR SISTER WAS A PERSON WHO LOVED KIDS AND OLD  
14 PEOPLE?

15 A. YES, THAT WAS WELL KNOWN.

16 Q. AND DO YOU RECALL DURING THAT INTERVIEW THAT YOUR MOTHER  
17 SAID THAT SHE BELIEVED HER SISTER DID WHATEVER BEASLEY TOLD  
18 -- I'M SORRY, LET ME REPHRASE THAT.

19 DO YOU RECALL IN THE INTERVIEW YOUR MOTHER SAYING  
20 THAT SHE BELIEVED THAT YOUR SISTER DID WHATEVER BEASLEY TOLD  
21 YOUR SISTER TO DO?

22 A. I DON'T RECALL THOSE WERE THE EXACT WORDS, BUT SHE DID  
23 STATE THAT DETECTIVES STUDER AND BEASLEY KEPT HER ENGAGED IN  
24 THE INFORMANT BUSINESS.

25 Q. DO YOU RECALL DURING THAT INTERVIEW THAT YOUR MOTHER

September 18, 2012

Stoeckley/Cross

Page 330

1 STATED THAT YOUR SISTER COULD NEVER HURT A CHILD OR AN OLD  
2 PERSON?

3 A. YES.

4 Q. DO YOU RECALL YOUR MOTHER SAYING THAT YOUR SISTER HAD  
5 DESCRIBED DETAILS SUCH AS SEEING THE HOBBY HORSE?

6 A. YES, SHE DID.

7 Q. AND LET'S PUT UP EXHIBIT 2318 ON THE SCREEN, PLEASE.  
8 WE'VE GOT THE WRONG EXHIBIT. WE'LL HAVE TO LOCATE THAT LATER,  
9 MR. STOECKLEY. BACK UP TO 2317, I BELIEVE THAT'S IT. ALL  
10 RIGHT, WE'LL MOVE ON TO SOMETHING ELSE AND COME BACK TO IT,  
11 MR. STOECKLEY.

12 DO YOU RECALL YOUR MOTHER STATING THAT SHE FELT AT  
13 THE TIME OF THE VISIT IN '82 THAT YOUR DAUGHTER (SIC) WAS  
14 SERIOUSLY ILL?

15 A. NO, NOT WHILE I WAS VISITING, NOT THAT TIME.

16 Q. OKAY. DID YOUR MOTHER STATE DURING THIS -- THE INTERVIEW  
17 I'M SPEAKING OF NOW IS MR. CHEROKE -- AGENT CHEROKE'S  
18 INTERVIEW OF YOUR MOTHER IN THE PRESENCE OF YOU AND YOUR WIFE.  
19 DO YOU UNDERSTAND?

20 A. YES.

21 Q. OKAY. IN THAT INTERVIEW ON APRIL 25TH, 2007, DID YOUR  
22 MOTHER REPEAT THAT SHE HAD NEVER MADE UP HER MIND AS TO  
23 MACDONALD'S GUILT?

24 A. WOULD YOU REPEAT THAT, PLEASE?

25 Q. DURING THE APRIL 25TH INTERVIEW OF YOUR MOTHER, DID SHE

September 18, 2012

Stoeckley/Cross

Page 331

1 STATE THAT SHE HAD NEVER MADE UP HER MIND WITH REGARD TO  
2 MACDONALD'S GUILT?

3 A. I DON'T RECALL THOSE WERE HER EXACT WORDS. I KNOW SHE  
4 HAD STRUGGLED WITH THE ISSUE AS WELL AS A LOT OF PEOPLE.

5 Q. DO YOU RECALL YOUR MOTHER STATING DURING THAT INTERVIEW  
6 THAT YOUR SISTER HAD TOLD YOUR MOTHER THAT YOUR SISTER DID NOT  
7 HAVE TO TESTIFY AT THE TRIAL?

8 A. I DON'T RECALL.

9 Q. YOU DON'T RECALL THAT?

10 A. NO, SIR.

11 Q. WELL, IN ANY OTHER CONVERSATION DID YOU HEAR YOUR MOTHER  
12 SAY YOUR SISTER HAD TOLD HER THAT YOUR SISTER DID NOT HAVE TO  
13 TESTIFY AT TRIAL?

14 A. WHAT MY MOTHER WOULD SAY ALONG THOSE LINES WAS THAT THEY  
15 WOULDN'T LET HER TESTIFY, SHE WANTED TO TESTIFY, BUT SHE WAS  
16 THREATENED WITH PROSECUTION FOR MURDER.

17 Q. OKAY. YOUR MOTHER SAID IN YOUR PRESENCE AT SOME TIME  
18 THAT YOUR SISTER WANTED TO TESTIFY AT THE TRIAL, BUT THEY  
19 WOULDN'T LET HER BECAUSE THE PROSECUTOR HAD THREATENED HER?

20 A. THAT'S CORRECT.

21 Q. SO, THE STATEMENT WAS THAT THEY WOULD NOT ALLOW YOUR  
22 SISTER TO TESTIFY AT THE TRIAL?

23 A. BECAUSE SHE FELT THREATENED. SHE WANTED IMMUNITY.

24 Q. REGARDLESS OF THE THREAT, THE STATEMENT WAS THAT YOUR  
25 SISTER WAS NOT ALLOWED TO TESTIFY AT THE TRIAL?

September 18, 2012

Stoeckley/Cross

Page 332

1 A. CORRECT.

2 Q. AND YOU HEARD YOUR MOTHER SAY THAT?

3 A. YES.

4 Q. AND YOU DON'T KNOW WHETHER IT WAS DURING THE APRIL 25TH  
5 INTERVIEW, BUT YOU HEARD HER SAY IT SOMETIME?

6 A. SEVERAL TIMES.

7 Q. SEVERAL TIMES?

8 A. YES, SIR.

9 Q. NOW, DO YOU RECALL DURING THE APRIL 25TH INTERVIEW OF  
10 YOUR MOTHER BY AGENT CHEROKE THAT YOUR MOTHER STATED THAT  
11 HELENA NEVER TOLD YOUR MOTHER THAT YOUR SISTER WAS AFRAID OF  
12 THE PROSECUTOR?

13 A. I DON'T RECALL THAT.

14 Q. AT SOME POINT DURING OR AFTER THIS INTERVIEW, DID YOU  
15 REMARK TO AGENT CHEROKE THAT THIS INTERVIEW WAS GOING QUITE  
16 DIFFERENTLY THAN THE ONE HAD WITH THE DEFENSE?

17 A. I DO RECALL BECAUSE MY MOTHER WAS ALREADY ON THE  
18 DEFENSIVE BECAUSE SHE DIDN'T TRUST THE FBI.

19 Q. WELL, MY QUESTION WAS DID YOU REMARK TO AGENT CHEROKE  
20 THAT THIS INTERVIEW WAS GOING DIFFERENTLY THAN THE ONE WITH  
21 THE DEFENSE TEAM THAT YOUR MOTHER HAD?

22 A. I BELIEVE I MADE A COMMENT TO THAT EFFECT, YES, SIR.

23 Q. OKAY. LET'S TRY AGAIN WITH THIS EXHIBIT 2318.4. TO  
24 ORIENT US, LET'S BACK UP TO THE CONTENTS PAGE, 2317. DO YOU  
25 SEE THE TITLE OF THIS MAGAZINE?

September 18, 2012

Stoeckley/Cross

Page 333

1 A. FRONT PAGE DETECTIVE.

2 (GOVERNMENT EXHIBIT NUMBER 2317

3 WAS IDENTIFIED FOR THE RECORD.)

4 Q. AND DO YOU SEE THE DATE?

5 A. AUGUST 1970.

6 Q. ALL RIGHT. NOW, LET'S GO TO PAGE 2318.4. DO YOU SEE A  
7 PICTURE OF A TOY HORSE IN THAT?

8 A. YES, I DO.

9 (GOVERNMENT EXHIBIT NUMBER 2318.4

10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. AND CAN YOU READ THE CAPTION?

12 A. WOULD YOU LIKE ME TO READ IT OUT LOUD?

13 Q. YES, PLEASE.

14 A. IT SAYS DRAMATIC PHOTO THROUGH WINDOW OF SLAIN CHILDREN'S  
15 ROOM KEYNOTED TRAGEDY INITIALLY. IT WAS ACCENTED AGAIN AS  
16 GREEN BERETS CARRIED COFFINS OF VICTIMS TO FUNERAL SERVICES IN  
17 CHAPEL AT FORT BRAGG.

18 Q. SO, AS EARLY AS 1970, CAN YOU TELL FROM THIS THAT IT WAS  
19 A PICTURE SHOWING THE HOBBY HORSE IN THE CHILD'S ROOM WAS  
20 PUBLISHED?

21 A. I WOULD DRAW THAT CORRELATION, YES.

22 Q. ALL RIGHT. AND ARE YOU AWARE THAT THIS SAME PICTURE WAS  
23 PUBLISHED IN THE FAYETTEVILLE NEWSPAPER AROUND THE TIME OF THE  
24 MURDERS?

25 A. I AM NOT.

September 18, 2012



Stoeckley/Cross

Page 334

- 1 Q. NOW, I'M GOING TO GO BACK TO THE APRIL 25TH, 2007,  
2 INTERVIEW. DO YOU RECALL -- WELL, LET ME ASK YOU THIS, YOUR  
3 PARENTS HAD TO GO TO RALEIGH TO ATTEND THE TRIAL, IS THAT  
4 RIGHT?
- 5 A. CORRECT.
- 6 Q. BUT THEY DIDN'T HAVE TO STAY VERY LONG, DID THEY?
- 7 A. I'M NOT SURE HOW LONG THEY WERE THERE. I DON'T BELIEVE  
8 IT WAS VERY LONG.
- 9 Q. BECAUSE NEITHER ONE OF THEM TESTIFIED?
- 10 A. THAT WAS MY UNDERSTANDING.
- 11 Q. AND THEY WERE NOT THERE IN RALEIGH DURING THE ENTIRE TIME  
12 THAT HELENA WAS IN RALEIGH TO YOUR KNOWLEDGE?
- 13 A. I BELIEVE THAT'S CORRECT.
- 14 Q. THEY WERE NOT?
- 15 A. THAT THEY WERE NOT THERE THE ENTIRE TIME, YES, SIR.
- 16 Q. IN FACT, DO YOU RECALL DURING THIS APRIL 25TH INTERVIEW  
17 THAT YOUR MOTHER STATED THAT SHE RECALLED HER HUSBAND GOING TO  
18 RALEIGH TO PICK UP HELENA AFTER SHE WAS THROUGH WITH THE  
19 TRIAL?
- 20 A. I DON'T RECALL THAT.
- 21 Q. DO YOU RECALL YOUR MOTHER EVER SAYING THAT --
- 22 A. NO.
- 23 Q. -- IN YOUR PRESENCE?
- 24 A. NO, NOT TO MY KNOWLEDGE.
- 25 Q. DO YOU HAVE ANY REASON TO DISPUTE IT?

September 18, 2012

Stoeckley/Cross

Page 335

1 A. NO, MY MOTHER WOULDN'T LIE. SHE WOULD --

2 Q. AND IF HELENA HAD BEEN ARRESTED AS A MATERIAL WITNESS,  
3 TAKEN TO RALEIGH -- WELL, LET ME BACK UP A MINUTE. AT THIS  
4 TIME YOUR SISTER WAS LIVING IN SOUTH CAROLINA, IS THAT RIGHT?

5 A. YES.

6 Q. AT THE TIME OF THE TRIAL?

7 A. YES.

8 Q. AND SHE WAS ARRESTED AS A MATERIAL WITNESS AND TAKEN INTO  
9 CUSTODY TO RALEIGH, ARE YOU AWARE OF THAT?

10 A. I BELIEVE THAT'S WHAT I UNDERSTOOD, IN THE CUSTODY OF THE  
11 MARSHALS.

12 Q. AND IF ERNEST DAVIS WAS NOWHERE AROUND IN RALEIGH AND  
13 YOUR SISTER'S OBLIGATION WAS FINISHED, SHE'D BE SOMEWHAT  
14 STRANDED IN RALEIGH, WOULDN'T SHE?

15 A. COULD BE. I DON'T KNOW IF SHE HAD ANY CONTACTS IN  
16 RALEIGH TO TURN TO.

17 Q. SO, IT WOULD MAKE SENSE THAT YOUR FATHER WENT UP THERE TO  
18 PICK HER UP?

19 A. IF SHE ASKED HIM, HE WOULD HAVE.

20 Q. NOW, DO YOU RECALL AGAIN IN THIS APRIL 25TH INTERVIEW  
21 WITH AGENT CHEROKE OF YOUR MOTHER THAT YOUR MOTHER STATED THAT  
22 SOMEONE FROM THE FBI CALLED YOUR MOTHER AND SAID TO TELL YOUR  
23 SISTER TO STOP CALLING THE FBI?

24 A. I DO RECALL THAT STATEMENT.

25 Q. THAT'S NOT QUITE THE SAME THING AS ALLEGEDLY TELLING YOUR

September 18, 2012

Stoeckley/Cross

Page 336

1 SISTER TO SHUT UP ABOUT THE MACDONALD CASE?

2 A. NO, BUT SHE HAD TOLD ME ON OCCASION WHEN WE'D HAVE THE  
3 DISCUSSIONS, OUR LITTLE TALKS, AND SHE WOULD SAY THAT THEY HAD  
4 PRETTY MUCH TOLD THEM STERNLY TO DO SOMETHING ABOUT HELENA TO  
5 GET HER NOSE OUT OF IT.

6 Q. DID YOUR MOTHER TELL AGENT CHEROKE IN YOUR PRESENCE THAT  
7 SHE, YOUR MOTHER, WAS NEVER INTERVIEWED BY THE ARMY CID OR THE  
8 FBI?

9 A. I DON'T RECALL THAT STATEMENT EITHER WAY, NO.

10 Q. DID YOU HEAR HER SAY WORDS TO THE EFFECT THAT SHE  
11 BELIEVED THAT NO ONE EVER INTERVIEWED HER ABOUT THE MACDONALD  
12 MURDERS?

13 A. I DON'T RECALL HEARING THAT.

14 Q. WELL, ARE YOU AWARE AS A MATTER OF FACT THAT SHE WAS  
15 CONTACTED AND INTERVIEWED BY THE FBI?

16 A. PRIOR TO AGENT CHEROKE'S INTERVIEW?

17 Q. YES.

18 A. NO, I'M NOT AWARE.

19 Q. MANY YEARS AGO.

20 A. I WASN'T AWARE OF THAT, NO, SIR.

21 Q. WELL, EVERYTHING IS MANY YEARS AGO. IN APPROXIMATELY  
22 JULY OF 1984, DO YOU REMEMBER YOUR MOTHER BEING INTERVIEWED BY  
23 AN AGENT WITH THE FBI?

24 A. NO, I'M NOT AWARE OF THAT.

25 Q. DO YOU KNOW WHAT WAS GOING ON IN THIS CASE IN 1984? WERE

September 18, 2012

Stoeckley/Cross

Page 337

1 YOU AWARE THAT THERE WAS A HABEAS CORPUS PROCEEDING PENDING  
2 BASED IN LARGE PART ON YOUR SISTER'S STATEMENTS?

3 A. I WAS NOT AWARE OF THAT.

4 Q. WHERE WERE YOU LIVING IN 1984?

5 A. SHORTLY AFTER MY SISTER'S DEATH, I HAD MOVED BACK TO  
6 FAYETTEVILLE PROBABLY WITHIN SIX MONTHS OR SO, THAT'S A GUESS,  
7 BUT I DID MOVE BACK TO FAYETTEVILLE.

8 Q. AND YOUR MOTHER DID NOT MENTION TO YOU DURING THAT TIME  
9 FRAME THAT SHE WAS INTERVIEWED BY THE FBI ABOUT THIS MATTER?

10 A. NO, SHE DIDN'T VOLUNTARILY DISCUSS THOSE MATTERS UNTIL  
11 HER LATER STAGES WHEN SHE WAS CONFINED TO THE ASSISTED LIVING.

12 Q. DID SHE EVER TELL YOU THAT SHE TOLD THE FBI THAT SHE  
13 RECALLED THAT WHEN HELENA CAME HOME THE NIGHT OF THE MACDONALD  
14 MURDERS SHE WAS IN A PERFECTLY SOBER AND NON-DRUG STATE AND  
15 HELENA KNEW NOTHING ABOUT THE MACDONALD MURDERS?

16 A. I WASN'T TOLD THAT, NO, SIR.

17 Q. DID SHE EVER TELL YOU THAT SHE HAD TOLD THE FBI IN 1984  
18 THAT SHE, YOUR MOTHER, WAS OF THE OPINION THAT YOUR SISTER  
19 COULD NOT HAVE BEEN PRESENT OR HAVE COMMITTED THE MURDERS  
20 BECAUSE SHE WAS NOT VIOLENT AND LOVED CHILDREN?

21 A. WHAT I WAS -- WHAT MY MOTHER TOLD ME WAS THERE WAS A LINE  
22 BETWEEN BEING PRESENT OR COMMITTING THE MURDERS.

23 Q. OKAY. WELL, MY QUESTION WAS DID YOUR MOTHER EVER TELL  
24 YOU THAT SHE TOLD THE FBI IN 1984, THAT YOUR MOTHER WAS OF THE  
25 OPINION THAT HELENA COULD NOT HAVE BEEN PRESENT OR COMMITTED

September 18, 2012

Stoeckley/Cross

Page 338

1 THE MURDERS, THAT SHE WAS NOT VIOLENT AND LOVED CHILDREN?

2 A. I WASN'T MADE AWARE OF THAT, THAT SHE HAD TOLD THE FBI  
3 THAT, NO.

4 Q. DID SHE EVER TELL YOU THAT SHE TOLD THE FBI IN 1984, THAT  
5 HELENA, YOUR SISTER, WAS NOT BEING TREATED FAIRLY BY PRINCE  
6 BEASLEY OR TED GUNDERSON?

7 A. NO, I WASN'T AWARE OF ANY OF THAT.

8 Q. NOW, WE'VE ALREADY TALKED ABOUT PRINCE BEASLEY. YOU KNOW  
9 WHO HE IS?

10 A. RIGHT.

11 Q. DO YOU KNOW WHO TED GUNDERSON IS?

12 A. I THINK HE WAS A PRIVATE INVESTIGATOR. I DON'T KNOW A  
13 WHOLE LOT ABOUT HIM.

14 Q. IS IT YOUR UNDERSTANDING THAT HE WAS A PRIVATE  
15 INVESTIGATOR HIRED BY THE MACDONALD DEFENSE?

16 A. I DON'T KNOW WHO HE WORKED FOR, I JUST -- I WAS AWARE OF  
17 THE NAME AND THAT HE WAS A PRIVATE INVESTIGATOR.

18 Q. DID YOU EVER HEAR YOUR MOTHER EXPRESS THE OPINION THAT  
19 HELENA WAS BEING TREATED UNFAIRLY BY BEASLEY OR GUNDERSON?

20 A. NO. NO, I HAVEN'T.

21 Q. DID YOU EVER HEAR YOUR MOTHER EXPRESS THE OPINION THAT  
22 HELENA'S MIND WAS GONE, ESPECIALLY WHEN UNDER THE INFLUENCE OF  
23 DRUGS OR ALCOHOL?

24 A. I HAVE HEARD HER SAY THAT, YOU KNOW, THE DRUGS AND  
25 ALCOHOL HAD AFFECTED HER. I NEVER HEARD HER USE THE TERM GONE

September 18, 2012

Stoeckley/Cross

Page 339

1 OR ANYTHING MORE SPECIFIC THAN JUST THAT THEY HAD AFFECTED  
2 HER.

3 Q. DID YOU EVER HEAR YOUR MOTHER EXPRESS THE OPINION THAT  
4 WHEN DOING DRUGS HELENA THOUGHT ABOUT THE MACDONALD CASE, BUT  
5 YOUR SISTER WAS NOT INVOLVED IN THE CASE?

6 A. NO, I HAVEN'T.

7 Q. DID SHE EVER TELL YOU THAT SHE TOLD THESE THINGS TO LAW  
8 ENFORCEMENT? YOUR MOTHER I MEAN.

9 A. NO, SIR.

10 Q. DID YOU EVER HEAR YOUR MOTHER STATE THAT AFTER -- WELL,  
11 LET ME ASK YOU THIS, WAS YOUR SISTER EVER TREATED AT DOROTHEA  
12 DIX HOSPITAL FOR ALCOHOLISM AND MENTAL PROBLEMS?

13 A. I'M NOT AWARE OF THAT. I WAS JUST AWARE OF HER TREATMENT  
14 AT CHAPEL HILL.

15 Q. ARE YOU AWARE THAT DOROTHEA DIX IS A MENTAL HOSPITAL IN  
16 RALEIGH, NORTH CAROLINA?

17 A. YES, SIR.

18 Q. DID YOU EVER HEAR YOUR MOTHER EXPRESS THAT AFTER HER  
19 TREATMENT, THAT IS YOUR SISTER'S TREATMENT, AT DOROTHEA DIX  
20 FOR ALCOHOLISM AND MENTAL PROBLEMS THAT YOUR SISTER WAS NEVER  
21 RIGHT?

22 A. I HAVE NOT HEARD THAT.

23 Q. AND DID YOUR MOTHER TELL YOU THAT SHE TOLD THAT SAME  
24 SENTIMENT TO THE FBI IN 1984?

25 A. NO, SIR.

September 18, 2012

Stoeckley/Cross

Page 340

1 Q. WHEN YOU HAD THESE TALKS IN 2007 WITH YOUR MOTHER, DID  
2 YOU DISCUSS THE PRIOR YEARS WHEN YOUR MOTHER HAD GIVEN  
3 INFORMATION ABOUT YOUR SISTER AND THE MACDONALD MURDERS?

4 A. NO, WE NEVER WENT BACK OTHER THAN COVERING THE FACT OF  
5 WHAT HELENA CONFIDED IN HER. SHE DIDN'T GO INTO YEARS PAST OR  
6 PRIOR HISTORY.

7 Q. AND, OF COURSE, IF YOUR MOTHER WAS INTERVIEWED BY THE FBI  
8 ON JULY 19TH, 1984, THAT WOULD HAVE BEEN AFTER THE 1982 VISIT  
9 THAT YOUR MOTHER TOLD YOU ABOUT HELENA CONFIDING IN HER?

10 A. THAT'S CORRECT.

11 Q. AND AFTER YOUR SISTER DIED IN 1983?

12 A. THAT'S CORRECT.

13 Q. DID YOU EVER HEAR YOUR MOTHER EXPRESS THE OPINION THAT  
14 HELENA ENJOYED THE ATTENTION FROM THE MACDONALD CASE?

15 A. SHE DIDN'T SAY SPECIFICALLY THE MACDONALD CASE. I KNOW  
16 SHE WAS -- SHE ENJOYED ATTENTION TO A DEGREE.

17 THE COURT: LET'S TAKE A RECESS TILL 1:30.

18 (LUNCHEON RECESS FROM 12:00 P.M., UNTIL 1:30 P.M.)

19 (DEFENDANT PRESENT.)

20 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE  
21 SEATED.

22 MR. STOECKLEY, YOU'RE STILL UNDER OATH. I BELIEVE  
23 THE WITNESS IS STILL WITH MR. BRUCE.

24 MR. BRUCE: THANK YOU, SIR. THANK YOU, YOUR HONOR.

25 BY MR. BRUCE:

September 18, 2012

Stoeckley/Cross

Page 341

1 Q. MR. STOECKLEY, JUST A COUPLE MORE QUESTIONS. I WAS  
2 QUESTIONING YOU WHEN WE BROKE FOR LUNCH ABOUT AN INTERVIEW  
3 THAT YOUR MOTHER GAVE TO THE FBI ON JULY 19TH, 1984. DO YOU  
4 RECALL MY QUESTIONING BEFORE LUNCH?

5 A. YES, SIR.

6 Q. AND I WANTED TO ASK YOU IF YOUR MOTHER EVER EXPRESSED TO  
7 YOU SOMETHING LIKE THIS, THAT HELENA, YOUR SISTER, TOLD YOUR  
8 MOTHER THAT WHEN YOUR SISTER TESTIFIED AT THE MACDONALD TRIAL  
9 YOUR SISTER TOLD EVERYTHING SHE KNEW AND TOLD THE TRUTH?

10 A. I WASN'T AWARE OF THAT. I HAVE NO KNOWLEDGE OF IT.

11 Q. OKAY. SO, YOUR MOTHER DIDN'T TELL YOU THAT IS WHAT  
12 YOU'RE SAYING?

13 A. CORRECT.

14 Q. AND YOUR MOTHER DIDN'T TELL YOU THAT SHE TOLD THE FBI  
15 THAT STATEMENT IN '84?

16 A. THAT'S CORRECT. I HAVE NO KNOWLEDGE.

17 Q. ALL RIGHT. NOW, AFTER THE APRIL 25TH INTERVIEW -- DO YOU  
18 REMEMBER THE APRIL 25TH INTERVIEW WHERE AGENT JIM CHEROKE  
19 INTERVIEWED YOUR MOTHER IN THE PRESENCE OF YOU AND YOUR WIFE?

20 A. YES, SIR.

21 Q. AND THAT WAS JUST ABOUT FOUR DAYS AFTER AGENT CHEROKE HAD  
22 INTERVIEWED YOU?

23 A. YES, SIR.

24 Q. AND IT WASN'T VERY LONG AFTER MARCH 31ST, WHEN YOUR  
25 MOTHER HAD SIGNED THE AFFIDAVIT, IS THAT RIGHT?

September 18, 2012



Stoeckley/Redirect

Page 342

1 A. CORRECT, SIR.

2 Q. IS IT FAIR TO SAY THAT BY THE END OF MR. CHEROKE'S  
3 INTERVIEW WITH YOUR MOTHER THAT YOUR MOTHER HAD WEARIED OF THE  
4 PROCESS SOMEWHAT?

5 A. WHAT MY MOTHER SAID WAS SHE WAS FINISHED WITH IT.

6 Q. DID SHE SAY THAT SHE HAD PASSED ON THE INFORMATION AND  
7 SHE DID NOT WISH TO DISCUSS THE MACDONALD CASE EVER AGAIN?

8 A. CORRECT. I DON'T KNOW IF THOSE WERE HER EXACT WORDS, BUT  
9 SHE DID SAY SHE WAS FINISHED.

10 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: ALL RIGHT. REDIRECT.

12 MR. WIDENHOUSE: YES, YOUR HONOR.

13 R E D I R E C T E X A M I N A T I O N 1:32 P.M.

14 BY MR. WIDENHOUSE:

15 Q. JUST A COUPLE OF QUESTIONS, MR. STOECKLEY. MR. BRUCE  
16 ASKED YOU IF YOUR SISTER, HELENA, DIDN'T DIE OF NATURAL CAUSES  
17 OF PNEUMONIA. AND ISN'T IT TRUE THAT YOU KNOW THAT A  
18 CONTRIBUTING CAUSE OF HER DEATH WAS POST-HEPATITIS CIRRHOSIS  
19 OF THE LIVER?

20 A. THAT'S CORRECT.

21 Q. OKAY. YOU ALSO MENTIONED ON CROSS-EXAMINATION THAT THE  
22 WAY YOUR MOTHER TALKED ABOUT THE MACDONALD INCIDENT TO YOU IN  
23 THE ASSISTED LIVING CENTER WAS NEW TO YOU?

24 A. THAT'S CORRECT. WE REALLY NEVER DISCUSSED IT IN DEPTH,  
25 BUT OUR CONVERSATIONS ABOUT END OF LIFE TOPICS LED US TO THAT

September 18, 2012

Stoeckley/Redirect

Page 343

1 AND ULTIMATELY ME ASKING HER WHAT SHE KNEW AS THE TRUTH.

2 Q. OKAY. AND I BELIEVE BY THE TIME YOU WERE HAVING THIS  
3 DISCUSSION IN THE ASSISTED LIVING CENTER I THINK YOU SAID YOUR  
4 FATHER HAD PASSED AWAY?

5 A. THAT'S CORRECT.

6 Q. AND IN THE SORT OF HOUSEHOLD WHEN YOU WERE GROWING UP HE  
7 WAS THE ONE WHO REALLY MADE SURE THE MACDONALD MATTER DIDN'T  
8 GET DISCUSSED?

9 A. WE KNEW BETTER THAN TO BRING IT UP.

10 Q. HE DIDN'T WANT IT BROUGHT UP?

11 A. HE DIDN'T WANT IT BROUGHT UP.

12 Q. OKAY. AND A LAST QUESTION. MR. BRUCE KEPT ASKING YOU  
13 ABOUT WHETHER YOUR MOTHER TOLD THE FBI THAT HELENA WAS NOT  
14 PRESENT BECAUSE SHE LOVED KIDS AND, THEREFORE, WOULDN'T BE  
15 PRESENT AND COULDN'T COMMIT A MURDER OR WOULDN'T COMMIT A  
16 MURDER. AND I THINK YOU TRIED TO EXPLAIN WHAT THAT STATEMENT  
17 MEANT TO YOU AND I WANT TO MAKE SURE YOU HAVE AN OPPORTUNITY  
18 TO DO THAT.

19 A. HELENA WAS A VERY GIVING PERSON. AND ALTHOUGH SHE HAD  
20 HER ALBATROSSES, THERE WERE STILL THINGS THAT WERE IMPORTANT  
21 TO HER IN THIS LIFE DESPITE THE FAILINGS, AND LOVING OTHERS  
22 AND BEING TRUTHFUL, AND THOSE WERE QUALITIES OUR PARENTS TRIED  
23 TO INSTILL IN US. THOSE ARE QUALITIES THAT BROUGHT ME HERE  
24 ULTIMATELY. IF WE CAN'T FIND THE TRUTH, THEN WHAT ARE ANY OF  
25 US --

September 18, 2012

Rouder/Direct

Page 344

1 Q. ALL RIGHT. AND I GUESS MY LAST QUESTION IS I JUST WANT  
2 TO MAKE SURE YOU'RE CONFIDENT AS YOU SIT THERE TODAY THAT WHEN  
3 YOUR MOTHER SIGNED THAT AFFIDAVIT SHE KNEW WHAT SHE WAS DOING  
4 AND KNEW WHAT WAS ON THOSE TWO PAGES THAT YOU READ?

5 A. YES, VERY MUCH SO.

6 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
7 QUESTIONS.

8 MR. BRUCE: NO RE-CROSS, YOUR HONOR.

9 THE COURT: YOU MAY STEP DOWN.

10 MR. WIDENHOUSE: YOUR HONOR, COULD HE BE EXCUSED?

11 THE COURT: YES, SIR. CALL YOUR NEXT WITNESS.

12 MR. WIDENHOUSE: THANK YOU. WENDY ROUDER.

13 (PAUSE.)

14 **WENDY PHYLLIS ROUDER, DEFENSE WITNESS, SWORN**

15 D I R E C T E X A M I N A T I O N 1:39 P.M.

16 BY MR. WIDENHOUSE:

17 Q. GOOD AFTERNOON. COULD YOU STATE YOUR NAME AND WHERE YOU  
18 LIVE FOR THE COURT, PLEASE?

19 A. MY NAME IS WENDY PHYLLIS ROUDER AND I LIVE IN SAN  
20 FRANCISCO.

21 Q. ALL RIGHT. AND CAN YOU TELL US YOUR EDUCATIONAL  
22 BACKGROUND?

23 A. YES. I'LL START WITH THE MOST RECENT EDUCATION. MY MOST  
24 RECENT DEGREE IS A J.D., AND THEN PRIOR TO THAT I RECEIVED A  
25 PH.D. DO YOU WANT ME TO KEEP GOING BACKWARDS?

September 18, 2012

Rouder/Direct

Page 345

1 Q. THAT'S FINE. WHAT'S YOUR PH.D. IN?

2 A. SPEECH.

3 Q. ALL RIGHT. AND WHERE DO YOU WORK NOW?

4 A. I WORK THROUGH THE LAW FIRM OF RENNE SLOAN HOLTZMAN AND  
5 SAKAI.

6 Q. OKAY. AND WHAT KIND OF WORK DO YOU DO?

7 A. BASICALLY, I'M A WORK PLACE INVESTIGATOR.

8 Q. AND WERE YOU INVOLVED IN THE JEFFREY MACDONALD TRIAL BACK  
9 IN 1979?

10 A. I WAS.

11 Q. OKAY. AND HOW WERE YOU INVOLVED?

12 A. I HAD JUST GRADUATED FROM LAW SCHOOL IN MARCH -- WELL,  
13 ACTUALLY I FINISHED COURSE WORK IN DECEMBER OF 1978. I TOOK  
14 THE BAR. IN MARCH OF '79, I JOINED THE DEFENSE TEAM  
15 ESSENTIALLY IN THE POSITION OF A LEGAL CLERK WAITING FOR BAR  
16 RESULTS, PASSED THE BAR, AND THEN CAME TO RALEIGH AS A TRIAL  
17 ASSISTANT ATTORNEY.

18 Q. OKAY. AND WERE YOU IN RALEIGH FOR THE ENTIRE TRIAL?

19 A. I WAS.

20 Q. OKAY. WERE YOU IN THE COURTROOM EVERY DAY OR JUST SOME  
21 OF THE DAYS?

22 A. JUST SOME OF THE DAYS I THINK.

23 Q. ALL RIGHT. AND DID YOU CONTINUE TO BE INVOLVED WITH THE  
24 MACDONALD LITIGATION AFTER THE TRIAL WAS OVER?

25 A. FOR A SHORT TIME, YES.

September 18, 2012

Rouder/Direct

Page 346

1 Q. AND WHAT WERE YOU WORKING ON AT THAT POINT?

2 A. I WAS WORKING ON -- ASSISTING IN WRITING THE BRIEF TO THE  
3 FOURTH CIRCUIT.

4 Q. OKAY. AND DO YOU KNOW SORT OF A BALLPARK TIME OF WHEN  
5 YOU CEASED BEING INVOLVED IN THE MACDONALD LITIGATION?

6 A. I PASSED THE NEW YORK BAR IN 1981. SO, BY THAT TIME I  
7 WAS WELL DONE I THINK.

8 Q. ALL RIGHT. AND YOU HAVEN'T BEEN INVOLVED IN THE  
9 LITIGATION SINCE THEN?

10 A. CORRECT.

11 Q. OKAY. DURING THE TRIAL DO YOU -- DID YOU HAVE DIRECT  
12 CONTACT WITH HELENA STOECKLEY?

13 A. I DID.

14 Q. CAN YOU TELL US A LITTLE ABOUT THAT?

15 A. I WAS THE ONLY ONE IN THE OFFICE ON A WEEKEND MORNING AND  
16 A PHONE CALL CAME INTO THE OFFICE ASKING THAT -- WELL, ASKING  
17 THAT HELENA STOECKLEY BE REMOVED FROM THE MOTEL WHERE SHE WAS  
18 STAYING. AND I CALLED MR. BERNARD SEGAL, WHO AT THE TIME WAS  
19 DR. MACDONALD'S CHIEF COUNSEL, AND I ASKED HIM WHAT I SHOULD  
20 DO AND HE SAID GO TO THE MOTEL AND FIND OUT WHAT'S GOING ON.

21 Q. OKAY. AND DID YOU DO THAT?

22 A. I DID.

23 Q. DID YOU GO BY YOURSELF?

24 A. I BELIEVE -- AND I'M NOT SURE WHETHER I MET A PERSON  
25 NAMED RED UNDERHILL AT THE MOTEL OR IF I LITERALLY WENT WITH

September 18, 2012

Rouder/Direct

Page 347

1 HIM. I DON'T RECALL.

2 Q. OKAY. WHAT HAPPENED ONCE YOU GOT TO THE MOTEL? WELL, DO  
3 YOU REMEMBER WHICH MOTEL IT WAS?

4 A. I BELIEVE IT WAS CALLED THE JOURNEY'S END.

5 Q. AND WHAT HAPPENED WHEN YOU GOT TO THE HOTEL?

6 A. WELL, THE MOTEL LADY ESCORTED US TO THE ROOM IN WHICH MS.  
7 STOECKLEY AND HER COMPANION, MR. ERNIE DAVIS, WAS STAYING AND  
8 I GUESS OUR GOAL WAS TO EXTRICATE MS. STOECKLEY FROM WHATEVER  
9 CHAOS WAS GOING ON IN THE MOTEL ROOM.

10 Q. AND COULD YOU TELL FROM BEING IN THE MOTEL ROOM WHAT KIND  
11 OF CHAOS MIGHT HAVE BEEN GOING ON?

12 A. WHEN WE WALKED IN HER NOSE WAS BLEEDING AND SHE WAS  
13 YELLING AT MR. DAVIS.

14 Q. ALL RIGHT. WHAT WAS HER PHYSICAL CONDITION COULD YOU  
15 TELL?

16 A. PHYSICALLY -- I MEAN, SHE WAS TOTALLY COGENT. SO, I  
17 CAN'T SAY THAT OTHER THAN THE BLOODY NOSE AND SHE MAY HAVE HAD  
18 A CAST ON HER ARM I REMEMBER ANYTHING UNUSUAL ABOUT HER  
19 PHYSICAL CONDITION.

20 Q. DO YOU RECALL WHETHER SHE WAS TAKEN TO A HOSPITAL THAT  
21 WEEKEND?

22 A. NOT WITH ANY CERTAINTY. I CAN'T RECALL.

23 Q. OKAY. AND WERE YOU ABLE TO CALM THE SITUATION?

24 A. HOPEFULLY, BUT MR. DAVIS LEFT AND IT SEEMED CALMER AFTER  
25 HE LEFT.

September 18, 2012

Rouder/Direct

Page 348

1 Q. OKAY. AND WHAT DID YOU DO AT THAT POINT?

2 A. AT SOME POINT IN TIME I BELIEVE I ASKED HER IF SHE WAS  
3 OKAY ALONE OR IF SHE WANTED SOMEBODY TO BE WITH HER. SHE  
4 INVITED ME TO STAY WITH HER.

5 Q. OKAY. AND WHAT DID YOU DO?

6 A. WELL, I PROCEEDED TO SPEND THE NEXT SEVERAL HOURS WITH  
7 HER INTERRUPTED ONE TIME, I BELIEVE.

8 Q. OKAY. AND DID YOU ALL TALK?

9 A. WE DID. IT'S A LONG TIME TO BE SILENT.

10 Q. OKAY. AND WHAT KINDS OF THINGS DID YOU TALK ABOUT, IF  
11 YOU REMEMBER?

12 A. I DO REMEMBER THAT WE TALKED ABOUT THEATER AND OPERA AND  
13 WE TALKED ABOUT HER FAMILY BACKGROUND. I DON'T REMEMBER THE  
14 SPECIFICS OF IT, BUT I REMEMBER THAT AS A TOPIC. AND EVERY  
15 ONCE IN A WHILE SHE WOULD RAISE ISSUES ABOUT HER INVOLVEMENT  
16 WITH THE MURDERS OF DR. MACDONALD'S FAMILY.

17 Q. OKAY. AND WHAT KINDS OF THINGS WOULD SHE -- I'LL LET YOU  
18 GET SOME WATER BEFORE I --

19 A. THANK YOU.

20 Q. OKAY. AND WHAT KINDS OF THINGS WOULD SHE SAY WHEN SHE  
21 BROUGHT UP THE SUBJECT OF THE CASE?

22 A. SHE WOULD SAY THAT SHE THINKS SHE WAS THERE, SHE FEELS  
23 GUILTY, SHE WISHES SHE COULD TAKE SODIUM PENTOTHAL TO PURGE  
24 HER GUILT. SHE DIDN'T USE THE WORD PURGE, BUT ABOUT GETTING  
25 IT ALL OUT. AND SHE REMEMBERED A ROCKING -- THERE BEING A

September 18, 2012

Rouder/Direct

Page 349

1 ROCKING HORSE AND THE LITTLE DAUGHTER. AND THOSE WERE SOME OF  
2 THE REFERENCES SHE MADE.

3 Q. OKAY. AND DID THERE COME A POINT WHEN SHE HAD TO LEAVE  
4 THE JOURNEY'S END?

5 A. YES.

6 Q. AND DO YOU REMEMBER WHY?

7 A. I BELIEVE IT WAS BECAUSE THE MOTEL LADY WAS YELLING GET  
8 HER OUT OF HERE, GET HER OUT OF HERE.

9 Q. OKAY. AND SO WHAT DID YOU DO?

10 A. AT SOME POINT, MADE ARRANGEMENTS FOR ANOTHER HOTEL.  
11 THAT'S WHAT I REMEMBER.

12 Q. DO YOU REMEMBER AFTER ALL THIS TIME WHICH HOTEL IT WAS?

13 A. I BELIEVE AT SOME POINT WE WOUND UP AT A HILTON INN. I  
14 THINK THAT'S THE NAME.

15 Q. OKAY. AND DO YOU KNOW HOW SHE GOT TO THE HILTON?

16 A. I BELIEVE MR. UNDERHILL WAS DRIVING. WE ESCORTED HER TO  
17 THE HILTON. I REMEMBER BEING IN A PARKING LOT ALONE WITH HER  
18 WHEN MR. UNDERHILL LEFT FOR A WHILE.

19 Q. AND DID YOU HAVE CONVERSATIONS WITH HER WAITING AT THE  
20 HILTON? FOR EXAMPLE, DID SHE WANT YOU TO STAY WITH HER AT THE  
21 HILTON?

22 A. SHE ASKED ME TO STAY WITH HER. I DON'T REMEMBER IF IT  
23 WAS AT THE HILTON. JUST COULD -- COULD I -- SHE ASKED ME IF I  
24 COULD SPEND THE NIGHT WITH HER.

25 Q. UH-HUH. AND WHAT DID YOU TELL HER?

September 18, 2012



Rouder/Direct

Page 350

1 A. I TOLD HER THAT I NEEDED TO CHECK THAT WITH MY BOSS.

2 Q. OKAY. AND DID YOU END UP SPENDING THE NIGHT?

3 A. NO.

4 Q. OKAY. BUT WAS SHE OKAY STAYING AT THE HILTON?

5 A. I THINK -- I BELIEVE I PARTED FROM HER AT THE HILTON AND  
6 I -- I BELIEVE THAT'S THE PLACE. AND I DON'T KNOW WHAT  
7 HAPPENED AFTER AND I DON'T HAVE ANY SPECIFIC MEMORY OF WHETHER  
8 THE HILTON WAS FINE WITH HER, NOT FINE WITH HER. I DON'T  
9 REMEMBER.

10 Q. DID YOU HAVE ANY DISCUSSIONS WITH HER AT THE HILTON  
11 BEFORE YOU LEFT ABOUT THE INCIDENT SURROUNDING THE TRIAL?

12 A. AS THE HOURS PROGRESSED AND WE MOVED FROM LOCATION TO  
13 LOCATION, THE TOPIC OF HER INVOLVEMENT CAME UP.

14 Q. OKAY. AND --

15 A. I DON'T KNOW -- YOU KNOW, I CAN'T SAY THESE WORDS WERE AT  
16 THIS LOCATION AND THESE WORDS WERE AT THAT LOCATION. I CAN'T  
17 REMEMBER THAT.

18 Q. AND DID YOU MAKE ANY COMMENTS TO HER IN RESPONSE TO SOME  
19 OF THOSE THINGS SHE WAS SAYING?

20 A. YES. I EVENTUALLY SAID TO HER AT SOME POINT IN TIME,  
21 HELENA, WHY ARE YOU TELLING ME ALL THIS, WHY DON'T YOU TESTIFY  
22 THAT WAY ON THE STAND, OR SOMETHING TO THAT EFFECT. I ASKED  
23 HER WHY SHE DIDN'T -- WOULDN'T TESTIFY.

24 Q. AND WHAT WAS HER RESPONSE TO YOU?

25 A. SHE SAID I CAN'T WITH THOSE DAMN PROSECUTORS SITTING

September 18, 2012

Rouder/Direct

Page 351

1 THERE.

2 Q. OKAY.

3 A. AND I BELIEVE SHE ADDED THEY'LL BURN ME, FRY ME, HANG ME,  
4 YOU KNOW, THOSE WORDS ARE NOT SPECIFIC.

5 Q. OKAY. LET ME SHOW YOU EXHIBIT 5080. IT'S GOING TO COME  
6 UP ON THE SCREEN THERE.

7 A. EXCUSE ME, I DIDN'T PREDICT THE WEATHER IN RALEIGH AND  
8 I'M WEARING THE WRONG -- HERE IN WILMINGTON, AND I'M WEARING  
9 THE WRONG GLASSES. OKAY. WHERE WOULD I LOOK?

10 Q. IT SHOULD BE ON THE SCREEN.

11 A. OKAY.

12 Q. AND DO YOU RECOGNIZE -- FROM READING -- FROM LOOKING AT  
13 THE FIRST HALF OF THE PAGE, DO YOU RECOGNIZE THE DOCUMENT?

14 A. LOOKS LIKE AN AFFIDAVIT THAT I SIGNED.

15 (DEFENSE EXHIBIT NUMBER 5080

16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. ALL RIGHT. I'M GOING TO TAKE YOU TO THE LAST PAGE AND --

18 A. THAT IS MY SIGNATURE.

19 Q. ALL RIGHT. AND DID YOU READ THE AFFIDAVIT BEFORE YOU  
20 SIGNED IT?

21 A. YES.

22 Q. DID YOU BY ANY CHANCE TYPE THE AFFIDAVIT YOURSELF?

23 A. NO.

24 Q. OKAY. I'D LIKE TO DRAW YOUR ATTENTION TO PARAGRAPH FIVE  
25 OF THE AFFIDAVIT.

September 18, 2012

Rouder/Direct

Page 352

1 A. YES.

2 Q. AND WOULD YOU JUST READ THAT TO YOURSELF AND TELL ME IF  
3 IT REFLECTS WHY YOU CAME TO DO THE AFFIDAVIT TO START WITH.

4 A. IT DOES.

5 Q. OKAY. AND WOULD YOU READ PARAGRAPH FIVE FOR THE RECORD?

6 A. IN AUGUST 2005, I WAS CONTACTED BY JEFFREY MACDONALD'S  
7 WIFE, KATHRYN MACDONALD. SHE TOLD ME SHE WAS WORKING ON HER  
8 HUSBAND'S BEHALF IN A PARALEGAL CAPACITY.

9 KATHRYN MACDONALD ASKED ME IF I COULD RECALL ANY  
10 FURTHER DETAILS ABOUT MY INTERACTIONS WITH WITNESS HELENA  
11 STOECKLEY DURING HER TIME IN RALEIGH IN AUGUST OF 1979. I  
12 RELATED TO HER THE INFORMATION I RECITE BELOW.

13 Q. ALL RIGHT. AND I'D LIKE TO DRAW YOUR ATTENTION TO  
14 PARAGRAPH SIX. WELL, I GUESS -- IT LOOKS LIKE THERE ARE TWO  
15 PARAGRAPH SIXES. I ASSUME THERE WERE TWO -- WERE THERE TWO  
16 PARAGRAPH SIXES WHEN YOU SIGNED THE AFFIDAVIT?

17 A. I DIDN'T COUNT. SORRY. I DON'T KNOW.

18 Q. YOU DON'T HAVE ANY REASON TO BELIEVE THIS ISN'T THE  
19 ACCURATE AFFIDAVIT?

20 A. NO, I HAVE NO REASON TO BELIEVE THAT IT ISN'T ACCURATE.

21 Q. ALL RIGHT. WELL, THE SECOND PARAGRAPH NUMBER SIX --

22 A. OKAY.

23 Q. -- WOULD YOU READ THAT AND LET ME ASK YOU DOES IT REFLECT  
24 WHY YOU CAME TO GO LOOK FOR HELENA STOECKLEY --

25 A. IT DOES.

September 18, 2012

Rouder/Direct

Page 353

1 Q. -- THAT WEEKEND? AND COULD YOU READ THAT PARAGRAPH FOR  
2 THE RECORD?

3 A. ON A WEEKEND MORNING, I BELIEVE THE WEEKEND OF AUGUST 18,  
4 1979, I WAS ALONE IN OUR COUNSEL OFFICE WHEN MR. SEGAL ASKED  
5 ME TO INVESTIGATE A COMPLAINT ALLEGEDLY MADE BY THE MANAGEMENT  
6 OF THE MOTEL WHERE HELENA STOECKLEY HAD BEEN REGISTERED TO  
7 STAY DURING HER TIME IN RALEIGH.

8 THE COMPLAINT BY MOTEL MANAGEMENT WAS THAT MS.  
9 STOECKLEY WAS BEING ASSAULTED BY SOMEONE WHO THE MOTEL MANAGER  
10 DID NOT IDENTIFY AND THAT MS. STOECKLEY WAS CAUSING TROUBLE  
11 FOR THE MOTEL.

12 Q. OKAY. THANK YOU. AND WHEN I ASK YOU TO READ THE NEXT  
13 ONE, YOU MAY NEED TO READ A LITTLE MORE SLOWLY. I CAN'T HEAR  
14 QUITE AS FAST AS YOU TALK.

15 I'LL DRAW YOUR ATTENTION TO PARAGRAPH NINE OF THE  
16 AFFIDAVIT AND WOULD YOU READ IT FOR THE RECORD?

17 A. KATHRYN MACDONALD INFORMED ME THAT A NEW WITNESS HAD COME  
18 FORWARD, A UNITED STATES MARSHAL, TO WHOM HELENA STOECKLEY HAD  
19 MADE REMARKABLY SIMILAR STATEMENTS.

20 Q. WELL, LET ME STOP YOU A SECOND. WHEN YOU SAY REMARKABLY  
21 SIMILAR STATEMENTS, REMARKABLY SIMILAR TO WHAT?

22 A. TO THE STATEMENTS THAT APPARENTLY MRS. MACDONALD READ AS  
23 MY TESTIMONY IN VOIR DIRE IN 1979.

24 Q. OKAY. CONTINUE.

25 A. KATHRYN MACDONALD INFORMED ME THAT A NEW WITNESS HAD COME

September 18, 2012

Rouder/Direct

Page 354

1 FORWARD -- I'M SORRY, LET ME NOT BACKTRACK. SHE TOLD ME THE  
2 SAME UNITED STATES MARSHAL HAD SWORN THAT ALSO IN HIS PRESENCE  
3 ONE OF THE PROSECUTORS, JAMES BLACKBURN, HAD THREATENED TO  
4 INDICT MS. STOECKLEY FOR MURDER IF SHE WERE TO MAKE THE SAME  
5 ADMISSIONS REGARDING HER INVOLVEMENT IN THE MACDONALD MURDERS  
6 IN THE COURTROOM.

7 Q. ALL RIGHT. AND DID YOU RECOGNIZE THE NAME OF JAMES  
8 BLACKBURN WHEN YOU HEARD IT IN 2005?

9 A. I DID.

10 Q. AND WHAT DID YOU RECOGNIZE IT TO BE?

11 A. THAT HE WAS ONE OF THE TWO TRIAL PROSECUTORS IN THE CASE  
12 OF *UNITED STATES V. JEFFREY MACDONALD*.

13 Q. ALL RIGHT. WHEN YOU HEARD THIS INFORMATION OR GOT THIS  
14 INFORMATION, WAS IT THE FIRST TIME THAT YOU HAD HEARD ABOUT A  
15 POSSIBLE THREAT TO HELENA STOECKLEY BY ONE OF THE PROSECUTORS  
16 IN THE MACDONALD TRIAL?

17 A. ABSOLUTELY.

18 Q. AND DID YOU FIND THIS REVELATION SIGNIFICANT?

19 A. ABSOLUTELY.

20 Q. AND WHY IS THAT?

21 A. BECAUSE IT RANG A BELL FOR ME. THE BELL THAT RANG WAS,  
22 AH-HA, THAT'S WHY SHE SAID SHE CAN'T TESTIFY WITH THOSE DAMN  
23 PROSECUTORS SITTING THERE. IN '79, I HAD NO SUCH ASSOCIATION  
24 WITH THAT PHRASE.

25 Q. OKAY. AND LET ME TAKE YOU TO PARAGRAPH TEN OF THE

September 18, 2012

Rouder/Direct

Page 355

1 AFFIDAVIT AND ASK YOU TO READ IT TO YOURSELF AND TELL ME IF IT  
2 REFLECTS YOUR RESPONSE WHEN YOU HEARD ABOUT THE PROSECUTOR'S  
3 THREAT.

4 (PAUSE.)

5 A. OKAY. SHALL I READ IT?

6 Q. YES, IF YOU COULD READ IT FOR THE RECORD AS WELL.

7 A. MY FIRST STATEMENT TO MRS. MACDONALD WAS NOW IT ALL MAKES  
8 SENSE. SHE ASKED ME WHAT I MEANT AND I SAID THAT AFTER HELENA  
9 STOECKLEY HAD MADE HER STATEMENTS TO ME TOTALLY UNSOLICITED I  
10 HAD ASKED HER WHY SHE WAS MAKING ADMISSIONS TO ME IN PRIVATE  
11 WHEN SHE HAD MADE PUBLIC DENIALS IN THE COURTHOUSE AND WHY  
12 DIDN'T SHE TESTIFY IN COURT AS TO WHAT SHE WAS TELLING ME.  
13 SHE THEN RESPONDED, I CAN'T, I'M AFRAID.

14 I ASKED HER WHAT SHE WAS AFRAID OF. I FULLY  
15 EXPECTED HER TO SAY THAT SHE WAS AFRAID OF THE PEOPLE WITH  
16 WHOM SHE WAS INVOLVED THE NIGHT OF THE MACDONALD FAMILY  
17 MURDERS OR THAT PERSON OR PERSONS WHO THE MOTEL MANAGER HAD  
18 REPORTED AS HAVING ASSAULTED HER.

19 THUS, I WAS VERY SURPRISED WHEN MS. STOECKLEY  
20 RESPONDED THAT SHE COULD NOT TESTIFY AS TO WHAT SHE WAS  
21 SHARING WITH ME BECAUSE OF THOSE DAMN PROSECUTORS SITTING  
22 THERE AND SHE ADDED WORDS TO THE EFFECT OF THEY'LL FRY ME.

23 Q. ALL RIGHT. NOW, THERE'S SEVERAL CLAUSES OR PHRASES IN  
24 PARAGRAPH TEN THAT ARE EMPHASIZED BY BEING IN ITALICS. DID  
25 YOU DIRECT THAT THE AFFIDAVIT BE PREPARED WITH THOSE EMPHASES?

September 18, 2012

Rouder/Direct

Page 356

1 A. I DON'T RECALL. I DOUBT IT, BUT I DON'T RECALL.

2 Q. OKAY. WHEN YOU READ THE AFFIDAVIT BEFORE YOU SIGNED IT  
3 AND DECIDED TO SIGN IT, DID YOU THINK THAT THE EMPHASES WERE  
4 APPROPRIATE?

5 A. THEY'RE NOT INAPPROPRIATE. AND I DON'T KNOW THAT IT'S A  
6 COMPLETE PICTURE OF MY THOUGHT PROCESS IN 1979, BUT I DON'T  
7 THINK THEY WERE INAPPROPRIATE.

8 Q. OKAY. WELL, CAN YOU TELL US WHY THE WORDS NOW IT ALL  
9 MAKES SENSE WERE EMPHASIZED?

10 A. AH, THAT ITALIC WORD. I WAS FOCUSING ON I FULLY  
11 EXPECTED. NOW IT ALL MAKES SENSE IS TOTALLY APPROPRIATE AND  
12 IT PROBABLY CAPTURED MY INFLECTION AS WELL. I TEND TO GET  
13 EXCITED WHEN I GET EXCITED.

14 Q. AND YOU DON'T HAVE THE SAME RECOLLECTION ABOUT FULLY  
15 EXPECTED?

16 A. THAT'S WHAT I WAS REFERRING TO, YES.

17 Q. AND IN THE NEXT TO THE LAST SENTENCE -- LINE OF PARAGRAPH  
18 TEN THERE'S AN EMPHASIS ON THOSE DAMN PROSECUTORS SITTING  
19 THERE. WAS THAT AN APPROPRIATE EMPHASIS DO YOU THINK?

20 A. YES.

21 Q. ALL RIGHT. AND IN THE LAST LINE THE EMPHASIS ON THEY'LL  
22 FRY ME, WAS THAT AN APPROPRIATE EMPHASIS BASED ON YOUR THOUGHT  
23 PROCESS?

24 A. PROBABLY NOT. PROBABLY NOT.

25 Q. NOW, THAT LAST LINE -- LET ME ASK YOU THIS, IN

September 18, 2012

Rouder/Direct

Page 357

1 PREPARATION FOR COMING HERE TODAY AND TESTIFYING, DID YOU  
2 REVIEW YOUR -- THE TRANSCRIPT OF YOUR VOIR DIRE TESTIMONY FROM  
3 1979?

4 A. VERY BRIEFLY.

5 Q. ALL RIGHT. AND DO YOU REMEMBER FROM THAT REVIEW WHETHER  
6 THE WORDS TO THE EFFECT OF THEY'LL FRY ME APPEARS IN YOUR VOIR  
7 DIRE TESTIMONY?

8 A. IT DOES NOT.

9 Q. ALL RIGHT. AND WHY WOULD IT APPEAR IN THE AFFIDAVIT AND  
10 NOT THE VOIR DIRE TESTIMONY?

11 A. WHEN MRS. MACDONALD TOLD ME ABOUT THE MARSHAL HAVING  
12 REVEALED WHAT HE REVEALED ABOUT MR. BLACKBURN THAT'S WHAT I  
13 REMEMBERED. AT THE MOMENT I SAID TO MRS. MACDONALD, AH,  
14 THAT'S WHAT SHE MEANT AND MRS. MACDONALD ASKED ME WHAT DID IT  
15 MEAN AND THEN I SAID THAT'S WHAT THOSE WORDS THOSE DAMN  
16 PROSECUTORS SITTING THERE AND I THINK SHE ADDED THEY'LL FRY  
17 ME, BURN ME, HANG ME. THAT WAS MY EUREKA MOMENT. THAT'S WHAT  
18 I REMEMBERED SAYING TO MRS. MACDONALD. THAT'S WHAT I  
19 REMEMBERED AT THAT MOMENT. THAT'S WHAT I REMEMBER NOW. BUT I  
20 CAN'T EXPLAIN WHY IT'S NOT IN MY TRIAL VOIR DIRE TESTIMONY.

21 Q. ALL RIGHT. WELL, AS YOU SIT HERE TODAY EVEN AFTER 33  
22 YEARS, ARE YOU SATISFIED, YOU KNOW, TO YOURSELF THAT SHE USED  
23 WORDS OR WORDS TO THAT EFFECT IN 1979?

24 A. ABOUT THEY'LL FRY ME --

25 Q. YES.

September 18, 2012



Rouder/Direct

Page 358

1 A. -- OR THOSE DAMN PROSECUTORS?

2 Q. YES.

3 A. IT'S IN MY HEAD SO I'M SATISFIED. DO I -- CAN I  
4 INDEPENDENTLY SEPARATE OUT THE TWO PHRASES AND SAY, AH, SHE  
5 HAD HER HAND IN THIS POSITION, THAT POSITION, I SEE IT? NO, I  
6 CAN'T GO THAT FAR.

7 Q. LET ME DIRECT YOUR ATTENTION TO PARAGRAPH 11 OF THE  
8 AFFIDAVIT AND ASK IF YOU WOULD READ IT FOR THE RECORD.

9 A. HELENA STOECKLEY MAY HAVE SAID BURN ME OR HANG ME INSTEAD  
10 OF FRY ME. MY SPECIFIC RECALL AFTER 26 YEARS IS THAT THE  
11 WORDS SHE USED EXPRESSED IN HER VERNACULAR HER FEAR OF THE  
12 PROSECUTION IMPOSING ADVERSE CONSEQUENCES ON HER WERE SHE TO  
13 TESTIFY TRUTHFULLY.

14 Q. ALL RIGHT. AND IF I COULD TAKE YOU TO PARAGRAPH 15 OF  
15 THE AFFIDAVIT AND ASK IF YOU WOULD READ THAT FOR THE RECORD?

16 A. FURTHER, I DID NOT REALIZE THAT MR. BLACKBURN HAD MET  
17 WITH MS. STOECKLEY, AS I HAD THOUGHT HE WOULD HAVE HAD TO  
18 MIRANDIZE HER, AND THAT IF HE DID SO, SHE WOULD REFUSE TO  
19 SPEAK WITH HIM, OR IF SHE PLEADED THE FIFTH AMENDMENT IN  
20 COURT, THIS ALONE WOULD RAISE REASONABLE DOUBT REGARDING HER  
21 INVOLVEMENT IN THE MACDONALD MURDERS.

22 Q. SO, YOU DON'T -- DO YOU HAVE A RECOLLECTION OF BEING IN  
23 THE COURTROOM ON THE DAY THAT THERE WAS ESSENTIALLY NO COURT  
24 SO THAT THE VARIOUS PARTIES COULD INTERVIEW MS. STOECKLEY?

25 A. YES, I REMEMBER THAT.

September 18, 2012

Rouder/Direct

Page 359

1 Q. OKAY. BUT YOU DON'T HAVE -- YOU DIDN'T REALIZE THAT MR.  
2 BLACKBURN WAS GOING TO INTERVIEW HER?

3 A. NO, I JUST -- NO, I DID NOT REALIZE THAT. I WAS  
4 CONCERNED -- NOT CONCERNED -- I REALIZED THE DEFENSE WAS GOING  
5 TO INTERVIEW HER. AND TO TELL YOU THE TRUTH, I FELT A LITTLE  
6 LEFT OUT BECAUSE THEY DIDN'T INVITE ME INTO THAT ROOM.

7 Q. OKAY. FAIR ENOUGH. I WOULD HAVE FELT LEFT OUT TOO. LET  
8 ME TAKE YOU TO PARAGRAPH 17 OF THE RECORD -- I MEAN OF THE  
9 AFFIDAVIT AND ASK IF YOU WOULD READ THAT FOR THE RECORD?

10 A. THE FACT THAT HELENA STOECKLEY'S ADMISSIONS TO ME WERE  
11 DISCOUNTED AFTER VOIR DIRE HAS ALWAYS TROUBLED ME, AND I FELT  
12 COMPELLED TO BRING MY FURTHER RECOLLECTIONS TO THE COURT'S  
13 ATTENTION, GIVEN THE TESTIMONY THAT -- IT PROBABLY SHOULD HAVE  
14 CONTAINED THE WORDS THAT GIVEN THE TESTIMONY I UNDERSTOOD  
15 ABOUT MR. JAMES BRITT.

16 Q. AND I KNOW YOU'VE ALREADY TESTIFIED THAT YOU AT LEAST  
17 BRIEFLY REVIEWED YOUR VOIR DIRE TESTIMONY --

18 A. VERY BRIEFLY.

19 Q. -- IN PREPARATION. IN YOUR REVIEW OF THAT, DID IT SEEM  
20 TO BE ACCURATE? IN OTHER WORDS, AFTER 26 YEARS, DID YOU THINK  
21 YOU SAID WHAT YOU THOUGHT YOU EXPERIENCED THAT WEEKEND?

22 A. YES, IT WAS ACCURATE TO MY RECOLLECTION.

23 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
24 QUESTIONS.

25 THE COURT: CROSS.

September 18, 2012

Rouder/Cross

Page 360

1 MR. BRUCE: THANK YOU, YOUR HONOR.

2 C R O S S - E X A M I N A T I O N 2:01 P.M.

3 BY MR. BRUCE:

4 Q. MS. ROUDER, MY NAME IS JOHN BRUCE AND I'D LIKE TO ASK YOU  
5 A FEW QUESTIONS.

6 A. CERTAINLY.

7 Q. I BELIEVE YOU TESTIFIED ON DIRECT EXAMINATION THAT A CALL  
8 CAME INTO THE OFFICE WHERE YOU WERE WORKING ON THAT WEEKEND  
9 MORNING, IS THAT RIGHT?

10 A. THAT'S CORRECT.

11 Q. AND WAS THE CALL TO YOU FROM THE HOTEL MANAGEMENT?

12 A. MOTEL. THAT'S MY MEMORY, YES.

13 Q. MOTEL MANAGEMENT.

14 A. YES.

15 Q. AND THEN YOU CALLED MR. SEGAL?

16 A. CORRECT.

17 Q. OKAY. FOR INSTRUCTIONS?

18 A. CORRECT.

19 Q. AND WHEN YOU SAY YOU WERE WORKING IN THE OFFICE, WHERE  
20 WAS THE OFFICE?

21 A. SOMEWHERE DOWNTOWN RALEIGH, NOT TOO FAR FROM THE  
22 COURTHOUSE.

23 Q. SO, THE DEFENSE TEAM HAD AN OFFICE OUTSIDE THE FEDERAL  
24 BUILDING?

25 A. YES, I BELIEVE SO. THAT'S MY MEMORY.

September 18, 2012

Rouder/Cross

Page 361

1 Q. OKAY. NOW, WHEN YOU WENT OVER TO THE JOURNEY'S END AND  
2 RESCUED HELENA FROM HER BOYFRIEND, WOULD THAT BE A FAIR  
3 CHARACTERIZATION?

4 A. I'M SORRY, A LITTLE LOUDER, PLEASE.

5 Q. DID YOU GO OVER TO THE JOURNEY'S END AND RESCUE HELENA  
6 FROM HER BOYFRIEND IN ESSENCE?

7 A. I DON'T KNOW THAT I RESCUED HER. I DON'T KNOW THAT  
8 RESCUE IS A FAIR WORD AND NO.

9 Q. OKAY. BUT YOU WENT OVER THERE AND SHE HAD A BLOODY  
10 NOSE --

11 A. CORRECT.

12 Q. -- AND WAS YELLING AT HIM, IS THAT RIGHT?

13 A. AND WHAT?

14 Q. AND WAS YELLING AT HIM?

15 A. YES, THAT'S CORRECT.

16 Q. AND YOU ASKED HER IF SHE WANTED HIM TO LEAVE?

17 A. YES, I BELIEVE I DID.

18 Q. AND SHE SAID YES?

19 A. THAT'S CORRECT.

20 Q. AND SHE ASKED -- YOU TRANSMITTED THAT MESSAGE THAT HE  
21 NEEDED TO LEAVE?

22 A. I DON'T REMEMBER WHAT I SAID, IF I TRANSMITTED THE  
23 MESSAGE. I MIGHT -- I MAY HAVE TRANSMITTED THE MESSAGE.

24 Q. ANYWAY, HE LEFT?

25 A. CORRECT.

September 18, 2012

Rouder/Cross

Page 362

1 Q. AND THE ONLY PERSON HELPING OR THE ONLY PERSONS HELPING  
2 HELENA AT THE JOURNEY'S END WITH THIS AT THAT TIME WERE YOU  
3 AND RED UNDERHILL?

4 A. THAT'S MY MEMORY, YES.

5 Q. ALL RIGHT. THERE WERE NO DEPUTY U.S. MARSHALS THERE?

6 A. I DON'T BELIEVE THERE WERE. NO, I DON'T REMEMBER ANY.

7 Q. YOU WOULD HAVE NOTICED IF THERE HAD BEEN ANY THERE, IS  
8 THAT RIGHT?

9 A. NOT IF I HAD NOT REGULARLY KNOWN WHO THEY WERE. I MEAN,  
10 I DON'T KNOW WHO MR. BRITT IS OR WAS.

11 Q. WELL, I MEAN, WOULDN'T YOU HAVE KNOWN IF, IN THAT LITTLE  
12 HOTEL ROOM, THERE WAS A DEPUTY U.S. --

13 A. OH, IN THE ROOM. NO, THERE WAS NOBODY ELSE IN THE ROOM  
14 BESIDES MR. DAVIS INITIALLY, MR. UNDERHILL AND MS. STOECKLEY  
15 AND MYSELF. YES, I WOULD HAVE KNOWN IN THE ROOM.

16 Q. ALL RIGHT. SO, THERE WAS NOBODY INTERACTING THAT YOU SAW  
17 WITH HELENA STOECKLEY OTHER THAN YOU AND RED UNDERHILL?

18 A. AND MR. DAVIS.

19 Q. AND MR. DAVIS, HER BOYFRIEND, IS THAT RIGHT?

20 A. YES, THAT'S CORRECT.

21 Q. OKAY. NOW, AS I UNDERSTAND IT, WHILE YOU WERE TALKING TO  
22 MS. STOECKLEY SHE ASKED YOU TO REMAIN, IS THAT RIGHT?

23 A. SHE DID.

24 Q. AFTER MR. DAVIS HAD LEFT SHE WANTED SOMEONE TO STAY WITH  
25 HER, IS THAT RIGHT?

September 18, 2012

1 A. THAT'S CORRECT.

2 Q. AND YOU BEGAN CONVERSING WITH HER AT THE JOURNEY'S END  
3 MOTEL?

4 A. THAT'S CORRECT.

5 Q. AND RED UNDERHILL WAS NOT PRESENT AT THIS TIME?

6 A. HE WAS IN AND OUT. I BELIEVE -- HE WAS IN AND OUT. SO,  
7 AT WHICH TIME IS THIS TIME?

8 Q. AT THE TIME THAT SHE WAS MAKING STATEMENTS TO YOU ABOUT  
9 THE MACDONALD MURDERS.

10 A. I DON'T BELIEVE HE WAS PRESENT.

11 Q. IT WAS JUST YOU AND MS. STOECKLEY?

12 A. THAT'S MY UNDERSTANDING, CORRECT.

13 Q. ALL RIGHT. WHEN YOU WENT OVER TO THE HOTEL, DID MR.  
14 SEGAL GIVE YOU ANY INSTRUCTIONS ABOUT QUESTIONING MS.  
15 STOECKLEY?

16 A. I DON'T RECALL ONE WAY OR THE OTHER.

17 Q. WELL, DID YOU HAVE IT IN YOUR MIND WHEN YOU WERE GOING  
18 OVER TO THE MOTEL THAT YOU WOULD QUESTION HER ABOUT THE  
19 MACDONALD CASE?

20 A. I HAD IT IN MY MIND THAT I WOULD NOT QUESTION HER ABOUT  
21 THE MACDONALD CASE.

22 Q. YOU DECIDED IN ADVANCE YOU WERE NOT GOING TO DO THAT?

23 A. I WOULD NOT INITIATE QUESTIONING, CORRECT.

24 Q. ALL RIGHT. BUT THE TOPIC JUST ACCIDENTALLY CAME UP?

25 A. IT DIDN'T ACCIDENTALLY CAME UP, SHE BROUGHT IT UP.

Rouder/Cross

Page 364

1 Q. SHE BROUGHT UP THE TOPIC?

2 A. YES.

3 Q. WHICH WAS CONTRARY TO YOUR PLAN?

4 A. I HAD NO -- I HAD NO PLAN. I WAS SENT OVER THERE TO  
5 FIGURE OUT WHAT WAS GOING ON, WHY THE MOTEL LADY WAS SAYING  
6 GET HER OUT OF HERE, GET HER OUT OF HERE. SO, I HAD NO PLAN  
7 BEYOND GOING OVER TO DEAL WITH THAT DRAMA OF THE MOTEL LADY  
8 CALLING AND YELLING GET HER OUT OF HERE.

9 Q. MY UNDERSTANDING IS THAT YOU MADE DETAILED NOTES OF THESE  
10 CONVERSATIONS WITH HELENA STOECKLEY?

11 A. YOU KNOW, I HAVE THOUGHT ABOUT WHETHER I MADE NOTES AND I  
12 DON'T KNOW THAT I DID MAKE NOTES. I KNOW THERE'S A REFERENCE  
13 TO NOTES I BELIEVE AND I DON'T REMEMBER MAKING NOTES.

14 SO, THERE IS A REFERENCE, IF I RECALL, IN THE VOIR  
15 DIRE TESTIMONY TO NOTES, BUT I CAN'T SAY THAT INDEPENDENTLY I  
16 REMEMBER MAKING NOTES. I CERTAINLY DIDN'T MAKE  
17 CONTEMPORANEOUS NOTES. IF I DID MAKE NOTES, IT WOULD HAVE  
18 BEEN LATER THAT DAY.

19 Q. ALL RIGHT. WELL, THAT WAS GOING TO BE MY NEXT QUESTION.  
20 YOU DON'T RECALL MAKING NOTES WHILE HELENA WAS TALKING TO YOU?

21 A. CORRECT.

22 Q. SO, IF YOU MADE NOTES, AS IS REFLECTED IN THE TRIAL  
23 TRANSCRIPT, THAT WOULD HAVE BEEN LATER?

24 A. THAT'S RIGHT.

25 Q. AND DID YOU DO THAT, MAKE THE NOTES LATER, AT THE

September 18, 2012

Rouder/Cross

Page 365

1 SUGGESTION OR DIRECTION OF BERNIE SEGAL?

2 A. I DON'T REMEMBER, BUT THAT WOULDN'T BE IMPLAUSIBLE.

3 Q. BECAUSE YOU WERE WORKING FOR HIM ON THE CASE?

4 A. CORRECT. CORRECT.

5 Q. NOW, AS I UNDERSTAND IT, WHILE YOU WERE STAYING --  
6 REMAINING WITH HELENA STOECKLEY AT THE JOURNEY'S END THE  
7 MANAGEMENT CAME AND ASKED HER TO LEAVE?

8 A. THE FEMALE MANAGER OF THE MOTEL, YES, CAME AND DEMANDED  
9 THAT I OR WE GET HER OUT OF HERE.

10 Q. AND DID YOU CALL MR. SEGAL FOR FURTHER DIRECTION?

11 A. I PROBABLY DID BECAUSE I WOULDN'T HAVE KNOWN WHERE SHE  
12 SHOULD GO, BUT I CAN'T REMEMBER THAT I DID.

13 Q. WELL, DIDN'T YOU FIND OUT OR THE TEAM FIND OUT THAT THE  
14 HILTON WOULD TAKE HER?

15 A. APPARENTLY, YES, THE TEAM DID FIND OUT BECAUSE APPARENTLY  
16 WE WENT TO THE HILTON HOTEL. WHEN I SAY APPARENTLY, I HAVE A  
17 MEMORY OF DRIVING WITH HER TO SOME OTHER RESIDENTIAL LOCATION  
18 AND I BELIEVE IT WAS THE HILTON HOTEL.

19 Q. OKAY. AND THEN AFTER ARRIVING AT THE HILTON, DID YOU  
20 ASSIST HER IN GETTING CHECKED IN?

21 A. I DON'T REMEMBER.

22 Q. AND DID YOU REMAIN THERE WITH HER FOR A WHILE?

23 A. I REMAINED AT A SITE, WHICH I BELIEVE WAS THE HILTON,  
24 UNTIL SUCH TIME AS JUDGE DUPREE PHONED ME.

25 Q. WELL, WE'LL GET TO THAT IN A MINUTE.

September 18, 2012



Rouder/Cross

Page 366

1 A. OKAY.

2 Q. YOU TESTIFIED ON DIRECT EXAMINATION THAT YOU DID NOT TYPE  
3 THIS AFFIDAVIT WHICH IS DEFENSE EXHIBIT 5080. AND WE'LL PUT  
4 IT ON THE SCREEN. IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. WHO DID TYPE IT?

7 A. I DON'T KNOW.

8 Q. HOW DID YOU GET IT?

9 A. IT WAS MAILED TO ME OR FAXED TO ME OR --

10 Q. WELL, DOES IT APPEAR TO HAVE ANY FAX TRANSMITTAL  
11 INFORMATION ON IT?

12 A. NOT THAT I CAN SEE SO IT PROBABLY WAS SENT TO ME IN U.S.  
13 MAIL.

14 Q. AND IT WAS SENT BY KATHRYN MACDONALD?

15 A. I DON'T KNOW WHO DEPOSITED IT IN THE MAIL.

16 Q. WELL, YOUR ONLY CONVERSATION ABOUT THIS BEFORE IT ARRIVED  
17 IN THE MAIL WAS WITH KATHRYN MACDONALD?

18 A. THAT'S CORRECT.

19 Q. AND THEN IT CAME --

20 A. WELL, I THINK THAT'S CORRECT. I DON'T INDEPENDENTLY  
21 REMEMBER TALKING TO AN ATTORNEY AFFILIATED WITH DR. MACDONALD  
22 AT THE TIME, BUT SOMETHING ABOUT YOUR QUESTION SAYS MAYBE I  
23 DID SPEAK WITH AN ATTORNEY. I DON'T KNOW.

24 Q. WELL, DID YOU OR DIDN'T YOU?

25 A. I DON'T REMEMBER. I DON'T REMEMBER. I JUST WANT TO

September 18, 2012

Rouder/Cross

Page 367

1 SHARE WITH YOU THAT I'M NOT SPECIFICALLY RULING THAT  
2 POSSIBILITY OUT.

3 Q. WOULD THAT HAVE BEEN MR. TIMOTHY JUNKIN?

4 A. COULD HAVE BEEN. COULD HAVE BEEN.

5 Q. DO YOU KNOW HIM?

6 A. NO, NEVER MET HIM.

7 Q. DO YOU KNOW WHO I'M TALKING ABOUT?

8 A. THAT'S A NAME THAT WAS AFFILIATED ON VARIOUS DOCUMENTS, I  
9 BELIEVE, WITH THE MACDONALD CASE.

10 Q. COULD IT HAVE BEEN MR. WADE SMITH?

11 A. OH, I KNOW MR. SMITH. NO, IT WASN'T MR. SMITH.

12 Q. OKAY. SO, YOU'RE NOT SURE IF YOU TALKED TO ANYONE, BUT  
13 KATHRYN MACDONALD --

14 A. CORRECT.

15 Q. -- BEFORE THE AFFIDAVIT ARRIVED IN THE MAIL?

16 A. CORRECT.

17 Q. AND IT ARRIVED AS A PAPER COPY?

18 A. I ASSUME SO.

19 Q. WELL, DID YOU MAKE ANY CHANGES TO IT?

20 A. NO.

21 Q. AND LET'S GO TO THE LAST PAGE OF THE EXHIBIT, PLEASE. I  
22 NOTICE THAT THE ONLY THING ON THIS PAGE IS YOUR SIGNATURE AND  
23 THE NOTARY.

24 A. CORRECT.

25 Q. DID YOU KEEP A COPY OF THE AFFIDAVIT?

September 18, 2012

Rouder/Cross

Page 368

1 A. NO.

2 Q. ARE YOU ABSOLUTELY CERTAIN THAT THE FIRST FOUR PAGES OF  
3 THE AFFIDAVIT ARE JUST LIKE IT WAS WHEN YOU SIGNED IT?

4 A. I DO NOT WALK AROUND REMEMBERING THE CONTENT OF DOCUMENTS  
5 I'VE READ SO I CANNOT SAY WITH 100 PERCENT CERTAINTY THAT THE  
6 FIRST FOUR PAGES ARE WHAT I SIGNED, BUT THEY DON'T LOOK  
7 UNFAMILIAR TO ME AND I WOULD SURMISE THAT THEY ARE EXACTLY  
8 WHAT I READ.

9 Q. YOU SIGNED IT ON NOVEMBER 29TH, 2005, IS THAT CORRECT?

10 A. THAT IS CORRECT. SEVEN YEARS AGO.

11 Q. AND THAT WAS OVER 26 YEARS -- 36 YEARS --

12 A. NO. NO. NO.

13 Q. 26 YEARS AFTER --

14 A. I'M ONLY 33 YEARS OLD SO --

15 Q. IT WAS OVER 26 YEARS AFTER THE MACDONALD TRIAL?

16 A. 27 YEARS.

17 Q. OKAY.

18 A. 26. 26 YEARS. I MEAN ONE PLUS FIVE.

19 Q. WELL, THE TRIAL WAS IN JULY AND AUGUST OF '79, IS THAT  
20 CORRECT.

21 A. YEAH. 26 YEARS.

22 Q. IF YOU MADE CONTEMPORANEOUS NOTES -- NOT CONTEMPORANEOUS  
23 NOTES. I WITHDRAW THAT. IF YOU MADE NOTES THAT DAY OF YOUR  
24 CONVERSATIONS WITH HELENA STOECKLEY, ARE THOSE MORE LIKELY TO  
25 BE AN ACCURATE RECOLLECTION THAN AN AFFIDAVIT DONE 26 YEARS

September 18, 2012

Rouder/Cross

Page 369

1 LATER?

2 A. IF I MADE THEM, YES.

3 Q. AND THIS HAPPENED -- BY THE WAY, WAS IT SATURDAY OR  
4 SUNDAY?

5 A. I BELIEVE IT WAS SUNDAY.

6 Q. OKAY. SO, IT WAS THE NEXT DAY ON MONDAY THAT YOU  
7 TESTIFIED IN COURT ON VOIR DIRE EXAMINATION ABOUT THIS?

8 A. THAT SEEMS TO BE MY MEMORY, YES.

9 Q. SO, IS IT LIKELY THAT YOUR RECOLLECTION WAS FRESHER WHEN  
10 YOU TESTIFIED THE DAY AFTER THIS HAPPENED AS OPPOSED TO 26  
11 YEARS LATER?

12 A. IT'S LIKELY, YES.

13 Q. OKAY. SO, LET'S GO TO PAGE -- TRIAL DAY 22, PAGE 136.  
14 AND CAN YOU SEE THAT?

15 A. I CAN.

16 Q. WOULD YOU PLEASE READ STARTING AT LINE TEN DOWN TO LINE  
17 17?

18 A. OKAY.

19 MR. UNDERHILL HAD GONE UPSTAIRS TO GET HIS CLOTHES.  
20 AGAIN, OUR CONVERSATION WAS PREDOMINANTLY SMALL TALK. THERE  
21 WAS A PAUSE. SHE SAID I STILL THINK I WAS THERE IN THAT HOUSE  
22 THAT NIGHT. AND I SAID, HELENA, IS IT A FEELING OR -- A  
23 FEELING YOU'RE HAVING OR A MEMORY? SHE SAID IT'S A MEMORY. I  
24 REMEMBER STANDING AT THE COUCH HOLDING A CANDLE ONLY, YOU  
25 KNOW, IT WASN'T DRIPPING WAX, IT WAS DRIPPING BLOOD.

September 18, 2012

Rouder/Cross

Page 370

1 Q. ALL RIGHT. IS THAT CONSISTENT WITH YOUR RECOLLECTION OF  
2 WHAT YOU TESTIFIED TO IN 1979?

3 A. IT IS.

4 Q. NOW, LET'S COMPARE THAT TO GOING BACK TO DEFENSE EXHIBIT  
5 5080 AT PAGE THREE, PARAGRAPH TEN. WHEN YOU SAY IN YOUR  
6 AFFIDAVIT IN THAT PARAGRAPH AFTER HELENA STOECKLEY HAD MADE  
7 HER STATEMENTS TO ME TOTALLY UNSOLICITED, I HAD ASKED HER WHY  
8 SHE WAS MAKING ADMISSIONS TO ME IN PRIVATE WHEN SHE HAD MADE  
9 PUBLIC DENIALS AT THE COURTHOUSE, IS THAT SORT OF A 26 YEAR  
10 LATER PARAPHRASE OF WHAT WE READ?

11 A. YOU WANT ME TO -- YOU WANT MY OPINION OR YOU WANT ME --

12 Q. YES.

13 A. MY OPINION IS THAT IS NOT A PARAPHRASE OF WHAT I READ.

14 Q. OKAY. WELL, WHEN YOU MADE THE PHASE -- WHEN YOU USED THE  
15 PHRASE MAKING ADMISSIONS IN PARAGRAPH TEN, WERE YOU REFERRING  
16 TO THE STATEMENT SHE MADE ABOUT IT'S A MEMORY, I REMEMBER  
17 STANDING AT THE COUCH HOLDING A CANDLE, ET CETERA?

18 A. I REFER TO ALL THE STATEMENTS THAT I ATTRIBUTED TO HER IN  
19 MY VOIR DIRE TESTIMONY.

20 Q. ALL THE STATEMENTS?

21 A. UH-HUH.

22 Q. DO YOU RECALL A MORE DIRECT ADMISSION THAN ONE IN YOUR  
23 VOIR DIRE TESTIMONY?

24 A. WELL, IN MY VOIR DIRE TESTIMONY I SAID THAT SHE HAD SAID  
25 SOMETHING ABOUT A ROCKING -- SEEING A ROCKING HORSE AND THE

September 18, 2012

Rouder/Cross

Page 371

1 FAMILIARITY OF KRISTEN LEE (SIC). I MEAN, IT'S ALL THESE  
2 THINGS THAT SHE WAS COMING UP WITH, THAT SHE FEELS GUILTY, YOU  
3 KNOW, THERE'S A WHOLE BUNCH OF THINGS IN MY VOIR DIRE  
4 TESTIMONY.

5 Q. PLEASE PUT UP GOVERNMENT EXHIBIT 2317. DO YOU REMEMBER  
6 THIS DOCUMENT BEING INTRODUCED IN THE TRIAL?

7 A. NO.

8 Q. WERE YOU SHOWN THIS DOCUMENT WHEN YOU WERE ON THE STAND?

9 A. I DON'T REMEMBER. I DON'T REMEMBER.

10 Q. YOU DON'T REMEMBER IT?

11 A. THE ONLY THING I REMEMBER IS A PHOTOGRAPH, A NEWSPAPER  
12 PHOTOGRAPH.

13 Q. OKAY. WELL, LOOK AT 2318.4. DO YOU REMEMBER BEING SHOWN  
14 THAT PHOTOGRAPH?

15 A. IT LOOKS -- YEAH, I BELIEVE THAT'S WHAT I WAS SHOWN.

16 Q. OKAY. AND THE POINT WAS MADE WHEN YOU WERE SHOWN THAT  
17 THAT THE FACT THAT THERE WAS A ROCKING HORSE IN THE ROOM WAS  
18 PUBLIC KNOWLEDGE?

19 A. I DON'T -- YOU KNOW, I KNOW -- I DIDN'T MAKE THAT POINT,  
20 LET ME SAY THAT.

21 Q. WELL, LET'S LOOK AT TRIAL DAY 22, PAGE 138. AND WOULD  
22 YOU READ STARTING AT LINE 13?

23 A. 13.

24 IF I WERE READING -- YEAH, I STILL THINK I COULD  
25 HAVE BEEN THERE THAT NIGHT, RIGHT. THAT'S ME. I DON'T KNOW

September 18, 2012

Rouder/Cross

Page 372

1 THE CONTEXT OF -- THE SENTENCE BEGINS, WELL, IF I WERE READING  
2 AND I DON'T KNOW THE CONTEXT. YOU WANT TO SHOW ME --

3 Q. OKAY. WELL, LET'S GO UP HIGHER. YES. MAYBE WE BETTER  
4 GO TO THE PREVIOUS PAGE, 137. WHY DON'T YOU START READING  
5 ALOUD AT LINE SIX?

6 A. MS. ROWDER (SIC) -- I'M SORRY, IT'S A MISSPELLING OF MY  
7 NAME SO I'M TRYING TO CAPTURE THE SOUND.

8 Q. IT'S R-O-U, IS THAT CORRECT?

9 A. R-O-U, YES. I BELIEVE YOU SAID -- WAS IT SATURDAY OR  
10 YESTERDAY MORNING WHEN YOU FIRST SAW HER?

11 YES.

12 ABOUT 11:00 OR 11:30?

13 YEAH.

14 AT THE JOURNEY'S END?

15 YES.

16 SHE SAID AT THIS FIRST MEETING, AS I UNDERSTAND YOUR  
17 TESTIMONY -- SHE SAID SHE COULD HAVE BEEN THERE. SHE DID NOT  
18 KNOW AT THAT POINT YESTERDAY MORNING WHETHER OR NOT SHE WAS  
19 THERE, IS THAT CORRECT?

20 HER STATEMENT WAS I COULD HAVE BEEN IN THE HOUSE  
21 THAT NIGHT.

22 Q. ALL RIGHT. LET ME STOP YOU A MINUTE. IT SEEMS TO ME IN  
23 YOUR VOIR DIRE TESTIMONY YOU WERE BEING VERY PRECISE ABOUT  
24 HELENA STOECKLEY'S STATEMENTS. DO YOU AGREE WITH THAT?

25 A. I TRY TO BE PRECISE EVERY TIME -- THE FEW TIMES I'VE

September 18, 2012

Rouder/Cross

Page 373

1 TESTIFIED I'VE TRIED TO BE PRECISE. SO, THAT'S MY EFFORT THEN  
2 AND NOW, YES.

3 Q. AND COULD THAT BE BECAUSE YOU WERE REFERRING TO NOTES  
4 DURING YOUR PRETRIAL -- YOUR VOIR DIRE TESTIMONY?

5 A. I DON'T KNOW WHY AND IF I -- YOU KNOW, WHY AND IF, I  
6 DON'T KNOW.

7 Q. ALL RIGHT. LET'S GO ON TO THE NEXT PAGE, PLEASE. NOW,  
8 JUST CONTINUE READING FROM THE TOP.

9 A. DID SHE SAY I DON'T KNOW?

10 I DID NOT ASK HER, AND SHE DIDN'T SAY, I DON'T KNOW.

11 OKAY, I PUT THAT DOWN.

12 AND THEN THE COURT SAYS, WELL, SHE SAID, I STILL  
13 THINK I COULD HAVE BEEN THERE. THAT WAS HER EXACT WORDS,  
14 WASN'T IT?

15 THEN I SAY, NO, THERE'S TWO AND THEN THE COURT CUTS  
16 ME OFF AND SAYS BUT THE FIRST TIME, DID YOU NOT SAY, I STILL  
17 THINK I COULD HAVE BEEN THERE, IS THAT WHAT YOU SAID? AND  
18 THEN I SAY, WELL, IF I WERE READING -- YEAH, I STILL THINK I  
19 COULD HAVE BEEN THERE NIGHT, RIGHT.

20 Q. DO YOU THINK THAT MIGHT BE REFERRING TO READING NOTES?

21 A. 32 YEARS LATER, IT DOESN'T MAKE ANY SENSE TO ME WHAT'S  
22 GOING ON.

23 Q. OKAY.

24 A. YES. COULD IT HAVE BEEN? YES, IT COULD HAVE BEEN  
25 ANYTHING. YES.

September 18, 2012



Rouder/Cross

Page 374

1 Q. WELL, READING NOTES DURING YOUR VOIR DIRE TESTIMONY MIGHT  
2 MAKE IT MORE ACCURATE, MIGHTEN IT NOT?

3 A. YEAH, IT MIGHT. YES, I WOULD HOPE.

4 Q. YOU MADE THE NOTES ON SUNDAY?

5 A. I DON'T -- I DON'T KNOW. I TOLD YOU THAT I DON'T KNOW  
6 THAT I MADE NOTES.

7 Q. ALL RIGHT. CONTINUE READING AT LINE 16, PLEASE.

8 A. MR. BLACKBURN: QUESTION: AND SHE SAID THAT WAS BECAUSE  
9 SHE SAID SHE REMEMBERED A ROCKING HORSE?

10 AND I ANSWER SHE SAID A ROCKING HORSE.

11 MR. BLACKBURN: YOUR HONOR, AT THIS POINT I WANT TO  
12 HAND UP TO THE WITNESS THE AUGUST ISSUE OF THE FRONT PAGE OF  
13 *DETECTIVE MAGAZINE* AND TURN TO PAGE 19. IT PURPORTS TO BE A  
14 STORY ABOUT THIS MURDER, AND IF YOU WOULD LOOK, PLEASE, ON  
15 PAGE 19, THE TOP PHOTOGRAPH, IF YOU WOULD TELL US WHAT YOU SEE  
16 IN IT.

17 Q. GO TO THE NEXT PAGE, PLEASE.

18 A. I CLEARLY SEE A ROCKING HORSE.

19 AND WHAT YOU -- AND WOULD YOU READ WHAT IS WRITTEN  
20 UNDERNEATH?

21 AND I READ QUOTE, DRAMATIC PHOTO THROUGH WINDOW OF  
22 SLAIN CHILDREN'S ROOM KEYNOTED TRAGEDY INITIALLY. IT WAS  
23 ACCENTED AGAIN AS GREEN BERETS CARRIED -- AS GREEN BERETS  
24 CARRIED COFFINS OF VICTIMS TO FUNERAL SERVICES IN CHAPEL AT  
25 FORT BRAGG.

September 18, 2012

Rouder/Cross

Page 375

1 AND THE QUESTION IS, MS. ROUDER, DO YOU HAVE ANY  
2 PERSONAL KNOWLEDGE AS TO WHETHER OR NOT THAT PARTICULAR  
3 PHOTOGRAPH EVER APPEARED IN EITHER THE FAYETTEVILLE OR RALEIGH  
4 NEWSPAPERS SHORTLY AFTER THE MURDERS?

5 ANSWER: ABSOLUTELY NO IDEA.

6 Q. AND YOU STILL DON'T HAVE ANY IDEA WHETHER THOSE WERE  
7 PUBLISHED?

8 A. ABSOLUTELY STILL DO NOT KNOW.

9 Q. BUT THE -- BACK UP, PLEASE, TO THE PREVIOUS PAGE. WOULD  
10 YOU AGREE WITH ME THAT THE PHRASE OR SENTENCE I STILL THINK I  
11 COULD HAVE BEEN THERE IS NOT AS MUCH OF AN ADMISSION AS THE  
12 STATEMENT ABOUT THE CANDLE ON PAGE 136? LET'S GO TO PAGE 136.

13 A. IS NOT AS MUCH OF AN ADMISSION, WOULD I AGREE WITH YOU?

14 Q. I STILL THINK I COULD HAVE BEEN THERE --

15 A. RIGHT.

16 Q. -- COMPARED TO YOU ASK HER IF IT'S A MEMORY AND SHE SAYS  
17 IT'S A MEMORY.

18 A. AH, THE STATEMENT IT'S A MEMORY IS A MUCH FIRMER  
19 COMMITMENT THAN THE TENTATIVE CONDITIONAL COULD HAVE, YES.

20 Q. OKAY. SO, CAN YOU RECALL IN YOUR VOIR DIRE TESTIMONY  
21 ANYTHING THAT WAS MORE CLEARLY AN ADMISSION THAN THE STATEMENT  
22 ON PAGE 136 IT'S A MEMORY, I REMEMBER STANDING AT THE COUCH  
23 HOLDING A CANDLE ONLY, YOU KNOW, IT WASN'T DRIPPING WAX, IT  
24 WAS DRIPPING BLOOD?

25 A. I THINK THAT EVERY STATEMENT THAT I'VE QUOTED WAS AN

September 18, 2012

Rouder/Cross

Page 376

1 ADMISSION.

2 Q. ALL RIGHT. ON PAGE 136 AFTER SHE MAKES -- AFTER YOU  
3 REPORT HELENA STOECKLEY MAKING THE STATEMENT IT WAS DRIPPING  
4 BLOOD YOU WERE ASKED ANOTHER QUESTION AND THERE'S AN ANSWER AT  
5 LINES 18 THROUGH 22. PLEASE READ THAT.

6 A. QUESTION: IS THAT THE LAST CONVERSATION YOU HAD WITH HER  
7 YESTERDAY THAT RELATED TO THIS CASE?

8 ANSWER: MY FOLLOW UP TO THAT WAS, HELENA, WHY DON'T  
9 YOU JUST GO AND SAY THAT IN COURT AND SHE SAID I CAN'T WITH  
10 THOSE DAMN PROSECUTORS STANDING -- SITTING THERE.

11 Q. AND AT THAT POINT MR. SEGAL CONCLUDES HIS QUESTIONING OF  
12 YOU?

13 A. CORRECT.

14 Q. AND WOULD IT BE FAIR TO SAY THAT IF YOUR NOTES REFLECTED  
15 THEY WILL FRY ME, THEY WILL BURN ME, THEY WILL HANG ME, HE  
16 WOULD HAVE ASKED YOU THAT?

17 A. PROBABLY HE WOULD, YES. PROBABLY, BUT POSSIBLY NOT  
18 BECAUSE THAT WAS -- LOOK, I'VE LOOKED BACK AND SAID WHY DIDN'T  
19 THOSE WORDS APPEAR IN MY VOIR DIRE TESTIMONY AND I THOUGHT  
20 THAT'S NOT THE CRITICAL IDEA BEHIND -- WHETHER THEY'LL FRY HER  
21 IS IRRELEVANT, THAT THEY'RE SITTING THERE IS WHAT'S RELEVANT.  
22 SO, I DON'T KNOW.

23 Q. LET'S GO BACK TO THE AFFIDAVIT FOR A MOMENT, DEFENDANT  
24 EXHIBIT 5080, AND LET'S LOOK AT PARAGRAPH 13.

25 A. OKAY.

September 18, 2012

Rouder/Cross

Page 377

1 Q. AND IT SAYS -- WELL, JUST READ THE FIRST -- WELL, READ  
2 THE WHOLE PARAGRAPH.

3 A. OKAY. I ALSO RECALL THAT UPON MY ARRIVAL TO MS.  
4 STOECKLEY'S ROOM THE PHONE RANG AND THE HOTEL OPERATOR HAD  
5 ASKED ME SPECIFICALLY -- FOR ME SPECIFICALLY. THE CALL WAS  
6 FROM JUDGE FRANKLIN DUPREE. HE ADDRESSED ME BY NAME AND ASKED  
7 WHY I WAS THERE WITH HELENA STOECKLEY AND WARNED ME NOT TO ASK  
8 HER ANY QUESTIONS.

9 FOR YEARS AFTERWARD, I HAVE WONDERED HOW JUDGE  
10 DUPREE CAME TO KNOW THAT I HAD ARRIVED ON A WEEKEND TO SEE  
11 ABOUT MS. STOECKLEY'S WELL BEING AND WHY HE WAS CONCERNED  
12 ABOUT WHAT SHE MIGHT BE SAYING OR BEING ASKED.

13 NOW, IN AUGUST OF 2005, HEARING MR. BRITT'S  
14 STATEMENT THIS BIZARRE OCCURRENCE ALSO MADE SENSE TO ME.

15 Q. WELL, FIRST OF ALL, I WANT TO ASK YOU ABOUT THAT CALL  
16 FROM KATHRYN MACDONALD. WHEN SHE CALLED YOU AND TOLD YOU  
17 ABOUT WHAT THE RETIRED DEPUTY MARSHAL HAD REPORTED, YOU TOOK  
18 IT AT FACE VALUE?

19 A. I DID.

20 Q. SO, YOU ASSUMED THAT, NUMBER ONE, KATHRYN MACDONALD WAS  
21 TELLING YOU THE TRUTH?

22 A. I DID.

23 Q. AND YOU ASSUMED, NUMBER TWO, THAT THE DEPUTY MARSHAL THAT  
24 SHE WAS QUOTING WAS TELLING THE TRUTH?

25 A. I DID.

September 18, 2012

Rouder/Cross

Page 378

1 Q. AND NOT ONLY TELLING THE TRUTH, BUT GETTING -- TRUTH  
2 IMPLIES HONESTY, DISHONESTY, BUT PEOPLE CAN BE MISTAKEN ALSO,  
3 IS THAT RIGHT?

4 A. I HAVE FOUND THAT TO BE SO, YES.

5 Q. AND YOU WERE ASSUMING THAT NEITHER KATHRYN MACDONALD NOR  
6 THE DEPUTY MARSHAL WERE MISTAKEN?

7 A. I ACTED ON THAT ASSUMPTION, YES.

8 Q. ALL RIGHT. BY THE WAY, YOU WERE NOT PRESENT I BELIEVE  
9 YOU TESTIFIED ON DIRECT EXAMINATION AT THE DEFENSE INTERVIEW  
10 OF --

11 A. THAT IS CORRECT.

12 Q. -- HELENA STOECKLEY?

13 A. THAT IS CORRECT.

14 Q. AND YOU FELT SOMEWHAT LEFT OUT?

15 A. I DID.

16 Q. DID SOMEONE ON THE TEAM REPORT TO YOU ABOUT THAT  
17 INTERVIEW?

18 A. IT WAS TALKED ABOUT AFTERWARDS. I DON'T -- THEY DIDN'T  
19 REPORT IT TO ME, BUT WAS I WITHIN EAR SHOT, YES.

20 Q. AND THEN YOU SAT IN THE COURTROOM AND OBSERVED HELENA  
21 STOECKLEY'S TESTIMONY ON FRIDAY, AUGUST 17TH?

22 A. I DON'T KNOW IF IT WAS ON FRIDAY. I WAS IN THE COURTROOM  
23 WHEN SHE TESTIFIED, YES.

24 Q. WORKING ALONG SIDE THE TRIAL TEAM DURING THE TRIAL WAS  
25 JOE MCGINNISS, THE AUTHOR, IS THAT RIGHT?

September 18, 2012

Rouder/Cross

Page 379

1 A. THAT IS CORRECT.

2 Q. AND DID YOU SHARE WITH HIM -- IF YOU TOOK ANY NOTES,  
3 WOULD YOU HAVE SHARED THEM WITH HIM?

4 A. I WOULD HOPE NOT. I WOULD HAVE HOPED THAT I WOULD NOT  
5 SHARED WITH HIM UNLESS MR. SEGAL INVITED ME TO DO THAT.

6 Q. ALL RIGHT. WELL, MR. SEGAL WAS ON BOARD WITH THE FACT  
7 THAT MR. MCGINNISS WAS GIVEN ACCESS TO THE DEFENSE TEAM DURING  
8 THE MACDONALD TRIAL, RIGHT?

9 A. YES.

10 Q. SO, YOU DON'T KNOW OF ANY REASON WHY THOSE NOTES WOULD  
11 HAVE BEEN WITHHELD FROM MR. MCGINNISS?

12 A. NO, I DON'T KNOW OF ANY REASON WHY. NO.

13 Q. DID YOU SPEAK WITH MR. MCGINNISS ABOUT YOUR CONVERSATIONS  
14 WITH HELENA STOECKLEY?

15 A. I DON'T REMEMBER HAVING A ONE ON ONE WITH HIM, BUT  
16 BECAUSE HE HAD ACCESS I MIGHT HAVE SHARED IN HIS EARSHOT WITH  
17 MR. SEGAL ABOUT MY CONVERSATION WITH HELENA.

18 Q. WELL, IF HE REPORTED ABOUT YOUR CONVERSATION WITH HELENA  
19 STOECKLEY IN HIS BOOK, HE COULDN'T -- HE HADN'T OBSERVED IT  
20 FIRSTHAND, HAD HE?

21 A. I DON'T KNOW.

22 Q. WELL, HE WASN'T THERE WHEN YOU TALKED WITH HELENA  
23 STOECKLEY?

24 A. NO, BUT I DON'T KNOW WHERE HE GOT HIS INFORMATION FROM.  
25 HE MIGHT HAVE OVERHEARD ME TALKING TO MR. SEGAL. I MIGHT HAVE

September 18, 2012

Rouder/Cross

Page 380

1 TALKED TO HIM. HE MIGHT HAVE MADE IT UP. I DON'T -- I DON'T  
2 KNOW. I DON'T EVEN REMEMBER WHAT'S IN HIS BOOK.

3 Q. WELL, HAVE YOU EVER READ HIS BOOK?

4 A. LET'S SEE, WE'RE 32 YEARS OUT. I READ IT ABOUT 30 YEARS  
5 AGO.

6 Q. OKAY. CAN YOU PUT GOVERNMENT EXHIBIT 2201 ON THE SCREEN  
7 AND GO TO PAGE 2201.8? CAN YOU READ THAT?

8 A. WHERE WOULD YOU LIKE ME TO --

9 Q. NO, NO, I'M ASKING YOU IF YOU CAN READ -- I'M NOT ASKING  
10 YOU TO READ ALOUD.

11 A. YEAH. YEAH, I THINK.

12 Q. CAN YOU LOOK AT THE SECOND PARAGRAPH STARTING ON SUNDAY  
13 MORNING AND --

14 A. ON WHICH PAGE? 2201.8?

15 Q. ON PAGE 536.

16 A. NO, I CAN'T SEE ANY -- OH, THERE THEY ARE. 536.

17 Q. AND I SAID SECOND PARAGRAPH, BUT I MEANT SECOND PARAGRAPH  
18 AFTER THE BREAK.

19 A. YES, I SEE.

20 Q. AND IT STARTS ON SUNDAY MORNING.

21 A. OKAY.

22 Q. JUST READ IT TO YOURSELF.

23 A. OKAY.

24 (PAUSE.)

25 OKAY.

September 18, 2012

Rouder/Cross

Page 381

1 Q. IS THAT CONSISTENT WITH YOUR RECOLLECTION?

2 A. IT'S BRINGING BACK CERTAIN MEMORIES, YEAH, IT IS.

3 Q. I'M GOING TO TRY TO SPEED THIS PROCESS UP A LITTLE BIT.

4 GO DOWN TO THE PARAGRAPH STARTING WITH ROUDER COMMA CONCERNED  
5 THAT ERNIE DAVIS AND READ THAT TO YOURSELF, PLEASE.

6 (PAUSE.)

7 A. OKAY.

8 Q. WOULD YOU SAY THAT'S PRETTY ACCURATE?

9 A. EXCEPT FOR THE SENTENCE THAT BEGINS ROUDER, CONCERNED  
10 THAT ERNIE DAVIS, PERHAPS, WAS NOT REACTING WELL TO RECENT  
11 STRESSES, AND FEARING THAT HE MIGHT HAVE BEEN THE CAUSE OF THE  
12 BLACK EYE, I DON'T KNOW THAT -- THE FIRST PART OF THAT  
13 SENTENCE DOESN'T RESONATE WITH ME AS TRUE OR NOT TRUE. I  
14 DON'T KNOW THAT I WAS CONCERNED ABOUT DAVIS'S REACTION TO  
15 RECENT STRESSES.

16 Q. WERE YOU CONCERNED THAT HE MIGHT HARM HELENA STOECKLEY  
17 AGAIN?

18 A. YES.

19 Q. OKAY. READ THE DIALOGUE THERE THAT STARTS HELENA AND  
20 THEN THE NEXT PARAGRAPH.

21 A. HELENA, DO YOU WANT HIM TO LEAVE ROUDER ASKED. YES, SAID  
22 STOECKLEY, I WANT HIM TO GO. SHE IMMEDIATELY BEGAN PLACING  
23 HIS CLOTHES AND PERSONAL BELONGINGS IN A SUITCASE ADDING, AS  
24 WELL, ALL THE MOTEL ASHTRAYS SHE COULD FIND.

25 Q. DO YOU REMEMBER THAT?

September 18, 2012



Rouder/Cross

Page 382

1 A. I REMEMBER THE SUITCASE AND OBJECTS FROM THE MOTEL BEING  
2 THROWN IN IT. AND HAD I NOT READ THAT, I WOULD HAVE SAID  
3 TOWELS, BUT NOW I THINK I REMEMBER ASHTRAYS.

4 Q. AND DROP DOWN THERE TO WHERE THE DIALOGUE STARTS AGAIN  
5 WHERE IT SAYS WILL YOU BE ALL RIGHT.

6 A. YES. WILL YOU BE ALL RIGHT, ROUDER ASKED, OR WOULD YOU  
7 LIKE SOMEBODY TO STAY WITH YOU? STOECKLEY SAID SHE WOULD  
8 PREFER TO HAVE A COMPANION. HOW ABOUT YOU, SHE ASKED ROUDER,  
9 COULD YOU STAY?

10 Q. ISN'T THAT CONSISTENT WITH YOUR RECOLLECTION?

11 A. YES.

12 Q. SO, IT SEEMS THAT MR. MCGINNISS IS PRETTY FAITHFULLY  
13 REPORTING WHAT HE WAS TOLD ABOUT CONVERSATIONS BETWEEN YOU AND  
14 MS. STOECKLEY?

15 A. WHAT I HAVE READ IS ACCURATE TO MY RECOLLECTION TO THE  
16 EXTENT THAT I'VE SAID IT IS.

17 Q. ALL RIGHT. LET'S MOVE ON TO -- ON THAT SAME 2201.8, BUT  
18 THE HALF OF THE OTHER SIDE, WHICH IS PAGE 537, AND GO DOWN TO  
19 WHERE IT SAYS EVENTUALLY.

20 A. OKAY. DO YOU WANT ME TO READ THAT OUT LOUD?

21 Q. YES, PLEASE.

22 A. OKAY. EVENTUALLY THERE CAME A LULL IN THE CONVERSATION  
23 AND STOECKLEY SAID I STILL THINK I COULD HAVE BEEN THERE THAT  
24 NIGHT. WHAT MAKES YOU THINK SO, ROUDER ASKED. I DON'T KNOW.  
25 THERE WAS ANOTHER PAUSE AND THEN STOECKLEY SAID THAT ROCKING

September 18, 2012

Rouder/Cross

Page 383

1 HORSE, THAT ROCKING HORSE IN KRISTEN'S ROOM. SEEING THE TOY  
2 HORSE DEPICTED IN ONE OF THE CRIME SCENE PHOTOGRAPHS HAD  
3 BROUGHT BACK TO STOECKLEY A FLASH -- OF MEMORY? OF  
4 IMAGINATION? THAT IS NOT MY WORDS, OKAY?

5 Q. WHAT'S NOT YOUR WORDS?

6 A. THE NARRATIVE COMMENT THAT APPARENTLY MR. MCGINNISS HAS  
7 ADDED IN SAYING SEEING THE TOY ROCKING HORSE DEPICTED IN ONE  
8 OF THE CRIME SCENE PHOTOGRAPHS HAD BROUGHT BACK TO STOECKLEY A  
9 FLASH -- OF MEMORY? OF IMAGINATION? I DON'T KNOW WHAT THAT  
10 SENTENCE MEANS IN TERMS OF WHAT I EXPERIENCED.

11 Q. OKAY. BUT STICKING WITH THE PART THAT HE HAS GOT IN  
12 QUOTES --

13 A. IN QUOTES, OKAY, STICKING WITH THAT. THE QUOTE IS -- THE  
14 QUOTE SEEMS ACCURATE. I DON'T HAVE A SPECIFIC MEMORY, BUT  
15 IT'S NOT INCONSISTENT WITH ANYTHING I CAN RECALL.

16 Q. WELL, THAT QUOTE THAT SAYS I STILL THINK I COULD HAVE  
17 BEEN THERE THAT NIGHT --

18 A. THAT PART IS CONSISTENT WITH MY TESTIMONY.

19 Q. IN FACT, IT'S PRETTY MUCH WORD FOR WORD, ISN'T IT?

20 A. UH-HUH, IT IS. BUT THAT -- BUT I TESTIFIED TO THAT IN  
21 COURT AND THAT COULD HAVE BEEN MR. MCGINNISS'S SOURCE. I  
22 DON'T KNOW. I DON'T KNOW.

23 Q. ALL RIGHT. LET'S GO DOWN FURTHER ON THAT PAGE WHERE  
24 THERE'S -- STARTING WITH OF COURSE, STOECKLEY REPLIED.

25 A. CAN YOU PULL IT UP? THANK YOU.

September 18, 2012

Rouder/Cross

Page 384

1           STARTING WITH OF COURSE, STOECKLEY REPLIED, WHAT DO  
2 YOU THINK I'VE BEEN TAKING ALL THOSE DAMN DRUGS FOR?

3           IF MACDONALD WERE CONVICTED, ROUDER ASKED, DO YOU  
4 THINK YOU CAN LIVE WITH THAT GUILT TOO?

5           I DON'T THINK SO.

6           ISN'T THERE ANYTHING YOU CAN DO TO GET RID OF THE  
7 GUILT?

8           MAYBE SODIUM PENTOTHAL OR HYPNOSIS OR SOMETHING LIKE  
9 THAT STOECKLEY SAID.

10 Q.    IS THAT CONSISTENT WITH YOUR RECOLLECTION OF YOUR  
11 CONVERSATION WITH HELENA STOECKLEY?

12 A.    IT'S CONSISTENT OF THE GIST. I DON'T KNOW IF IT'S  
13 CONSISTENT OF WHAT I RELAYED WORD FOR WORD, NO. IT'S  
14 CONSISTENT WITH THE GIST.

15 Q.    ALL RIGHT. LET'S GO TO THE NEXT PAGE, 2201.9, AND LOOK  
16 AT THE PART BEFORE THE BREAK ON PAGE 538.

17 A.    THE CONVERSATION WAS INTERRUPTED BY THE MANAGER OF THE  
18 JOURNEY'S END WHO CALLED TO SAY THAT STOECKLEY WAS NO LONGER  
19 WELCOME AT THE MOTEL.

20           A ROOM WAS OBTAINED FOR HER AT A NEARBY HILTON.  
21 LATER IN THE AFTERNOON, AS ROUDER AND STOECKLEY SAT TOGETHER  
22 IN AN AUTOMOBILE EN ROUTE FROM ONE MOTEL TO THE OTHER,  
23 STOECKLEY AGAIN SAID I STILL THINK I WAS THERE IN THAT HOUSE  
24 THAT NIGHT.

25           HELENA, IS THAT A FEELING YOU'RE HAVING OR A MEMORY,

September 18, 2012

Rouder/Cross

Page 385

1 ROUDER ASKED. IT'S A MEMORY STOECKLEY SAID. I REMEMBER  
2 STANDING AT THE COUCH HOLDING A CANDLE ONLY, YOU KNOW, IT  
3 WASN'T DRIPPING WAX, IT WAS DRIPPING BLOOD.

4 Q. ALL RIGHT. LET'S GO BACK TO TRIAL DAY 22, PAGE 136, AND  
5 YOU SEE WHERE IT SAYS, HELENA, IS THAT A FEELING YOU'RE  
6 HAVING, ET CETERA?

7 A. UH-HUH.

8 Q. ISN'T THAT WORD FOR WORD WHAT MR. MCGINNISS REPORTED IN  
9 HIS BOOK?

10 A. YOU KNOW WHAT, PUT BOTH ON THE SCREEN SIDE BY SIDE AND  
11 I'LL MATCH EVERY WORD. I CAN TELL YOU IF IT'S WORD BY WORD.

12 Q. THE EXHIBIT NUMBER IS 2201.9.

13 A. IN FACT, IF YOU CAN READ TO ME ONE, I'LL COMPARE IT TO  
14 THE OTHER, I MEAN IF THAT'S WHAT WE NEED TO DO.

15 Q. ALL RIGHT. I'LL READ FROM THE TRIAL TRANSCRIPT.

16 A. OKAY. ONE SECOND NOW I HAVE TO CATCH UP.

17 Q. I STILL THINK I WAS THERE IN THE HOUSE THAT NIGHT.

18 A. OKAY. JUST THOSE WORDS. I STILL THINK I WAS THERE IN  
19 THE HOUSE. THAT'S WORD FOR WORD. GO AHEAD.

20 Q. AND I SAID, HELENA -- QUOTE, HELENA, IS IT A FEELING YOU  
21 ARE HAVING OR A MEMORY? CLOSE QUOTE.

22 A. EXCEPT I SAID. YEAH, THAT WORKS. THAT'S WORD FOR WORD.  
23 GO AHEAD.

24 Q. AND THEN IT SAYS SHE SAID QUOTE, IT'S A MEMORY. I  
25 REMEMBER STANDING AT THE COUCH COMMA HOLDING A CANDLE COMMA

September 18, 2012

Rouder/Cross

Page 386

1 ONLY, YOU KNOW, IT WASN'T DRIPPING WAX, IT WAS DRIPPING BLOOD.

2 A. WORD FOR WORD RIGHT OUT OF THE TRANSCRIPT, YES. THANK  
3 YOU.

4 Q. ALL RIGHT. NOW, JUST PUT UP PAGE 2201.9, PAGE 538. NOW,  
5 THERE IS ONE DIFFERENCE BETWEEN THE TRIAL TRANSCRIPT. WHEN  
6 YOU GET TO THE PART ABOUT IT'S DRIPPING BLOOD IT ENDS WITHOUT  
7 ANY MENTION OF THE PROSECUTORS.

8 A. APPEARS TO BE CORRECT, YES.

9 Q. ALL RIGHT.

10 MR. BRUCE: MAY I HAVE ONE MOMENT, YOUR HONOR,  
11 PLEASE?

12 THE COURT: YES, SIR.

13 (PAUSE.)

14 BY MR. BRUCE:

15 Q. LET'S GO BACK TO 2201.8 ON PAGE 537 AND DO YOU SEE --  
16 READ DOWN THAT PAGE TO YOURSELF --

17 A. WHAT?

18 Q. THE 537 HALF ON THE RIGHT.

19 A. THE WHOLE PAGE?

20 Q. DON'T READ IT ALOUD, JUST READ THROUGH IT.

21 A. THE WHOLE PAGE YOU WANT ME TO READ?

22 Q. AND RIGHT ABOUT WHERE THE CURSOR IS DO YOU SEE WHERE IT  
23 SAYS ROUDER KEPT TALKING?

24 A. YES, I DO SEE THAT. THAT'S WHERE YOU WANT ME TO BEGIN?

25 Q. YES.

September 18, 2012

Rouder/Cross

Page 387

1 A. (WITNESS REVIEWS DOCUMENT.) (PAUSE.) OKAY.

2 Q. ALL RIGHT. DO YOU SEE WHERE IT SAYS ROUDER KEPT TALKING  
3 TO STOECKLEY THROUGHOUT THE AFTERNOON TAKING NOTES ON THE  
4 CONVERSATION?

5 A. I SEE THAT, YES.

6 Q. OKAY. DO YOU DISPUTE THAT?

7 A. AS I SAID, I DON'T HAVE A SPECIFIC MEMORY, BUT I DON'T  
8 DISPUTE IT.

9 Q. WELL, IF YOU WERE TAKING NOTES --

10 A. WHY IT SEEMS ODD TO ME IS I HAVE NO MEMORY OF HAVING A  
11 PENCIL AND PAPER AND WRITING AS SHE WAS TALKING. I MEAN, IT  
12 WOULD NOT BE CONSISTENT WITH THE DYNAMICS OF THE DAY, WHICH  
13 WAS GETTING TO THE MOTEL AND DEALING WITH THE ISSUES, MOVING  
14 HER AROUND.

15 I DON'T -- YOU KNOW, AGAIN, I CAN'T SAY I DIDN'T DO  
16 IT, BUT IT JUST DOESN'T SEEM CONSISTENT WITH WHAT WAS GOING  
17 ON.

18 Q. ALL RIGHT. LET'S LOOK AT TRIAL DAY 22, PAGE 131, AND  
19 YOU'RE BEING QUESTIONED BY MR. SEGAL IT APPEARS. START  
20 READING AT LINE TWO; QUESTION, AT ANY POINT.

21 A. AT ANY POINT, DID YOU TALK TO HER ABOUT INVOLVEMENT IN  
22 THE MURDERS OF THE MACDONALD FAMILY?

23 YES. THIS FOLLOWED A PAUSE IN THE CONVERSATION -- A  
24 CONVERSATION FRAMED BY SMALL TALK. THERE WAS A PAUSE, AND SHE  
25 BROUGHT UP THE SUBJECT.

September 18, 2012

Rouder/Cross

Page 388

1 DID YOU MAKE NOTES -- AT MY REQUEST, DID YOU MAKE  
2 NOTES OF WHAT SHE SAID TO YOU AT THAT TIME?

3 YES.

4 DO YOU HAVE THOSE WITH YOU?

5 OKAY, SO WHAT DO I HEAR HERE? I HEAR THAT THERE  
6 WERE NOTES MADE, BUT NOT WHILE I WAS WITH HER. IN OTHER  
7 WORDS, THIS IS SUGGESTING THAT I MADE NOTES AND MORE LOGICALLY  
8 AT THE END OF THE DAY, WHICH IS MORE LOGICAL.

9 Q. OKAY.

10 A. AND I DON'T HAVE A MEMORY OF DOING THAT, BUT THAT SEEMS  
11 TO BE WHAT THIS SAYS.

12 Q. AND YOU WERE UNDER OATH AND YOU WOULD HAVE CERTAINLY TOLD  
13 THE TRUTH --

14 A. ABSOLUTELY.

15 Q. -- ABOUT WHETHER OR NOT YOU MADE NOTES, IS THAT RIGHT?

16 A. ABSOLUTELY.

17 Q. ALL RIGHT. KEEP READING ON, DO YOU HAVE THOSE WITH YOU?

18 A. I DO.

19 DO YOU WANT TO READ TO US YOUR BEST RECOLLECTION AS  
20 YOU RECORDED IT IN YOUR MEMORANDUM THERE AS TO WHAT SHE SAID  
21 TO YOU IN THIS FIRST -- IN THIS FIRST TIME THAT SHE MADE AN  
22 OBSERVATION ABOUT THE MACDONALD CASE?

23 AFTER A PAUSE, SHE SAYS TO ME I STILL THINK I COULD  
24 HAVE BEEN THERE THAT NIGHT. AND THEN I ASKED WHAT MAKES YOU  
25 THINK SO? SHE SAID I DON'T KNOW. THERE WAS A PAUSE AND THEN

September 18, 2012

Rouder/Cross

Page 389

1 SHE SAID THAT ROCKING HORSE. THERE WAS ANOTHER PAUSE AND SHE  
2 ADDED, YOU KNOW, KRISTEN, KRISTEN JEAN. THOSE PICTURES, WHEN  
3 I LOOKED AT THOSE PICTURES, I KNEW I HAD SEEN HER SOMEWHERE  
4 BEFORE. ANOTHER PAUSE AND THEN SHE ADDED AND THAT DRIVEWAY, I  
5 REMEMBER BEING IN THAT DRIVEWAY.

6 WAS THAT END OF HER REMARKS ABOUT THE JOURNEY --  
7 REMARKS ABOUT THE MACDONALD CASE AT THAT JUNCTURE?

8 SPECIFICALLY, PLACING HERSELF ON SOMETHING CONCRETE,  
9 YES. THERE WERE MORE ALLUSIONS TO HER INVOLVEMENT THROUGH IN  
10 THAT PARTICULAR CONVERSATION.

11 Q. ALL RIGHT. NOW, AFTER YOU CONCLUDED YOUR CROSS AND --  
12 DIRECT AND CROSS, THE COURT ASKED YOU SOME QUESTIONS. DO YOU  
13 REMEMBER THAT?

14 A. YES.

15 Q. LET'S GO TO TRIAL DAY 22, PAGE 145. AND DO YOU SEE WHERE  
16 IT STARTS OUT WHERE HE ASKS YOU IF YOU'RE ASSOCIATED WITH  
17 DEFENSE COUNSEL IN THE DEFENSE IN THIS CASE?

18 A. I SEE. YES.

19 Q. ALL RIGHT. LET'S SKIP OVER TO PAGE 146. AND DO YOU SEE  
20 WHERE ON LINE THREE -- WOULD YOU READ THAT, LINE THREE THROUGH  
21 EIGHT?

22 A. CERTAINLY.

23 QUESTION, AND THIS IS FROM THE COURT, I SEE. DID  
24 YOU PREPARE SOME OF THESE BRIEFS YOURSELF?

25 ANSWER: YES.

September 18, 2012



Rouder/Cross

Page 390

1 QUESTION: WELL, I WANT TO COMMEND YOU ON HAVING  
2 DONE A VERY GOOD JOB.

3 ANSWER: THANK YOU.

4 Q. SO, THE JUDGE IS COMMENDING YOU FOR YOUR WORK ON THE  
5 BRIEFS IN THE MACDONALD CASE?

6 A. CONTINUALLY.

7 Q. AND HE DID THAT MORE THAN ONCE?

8 A. MANY TIMES.

9 Q. MANY TIMES. AND THEN STARTING AT LINE 13, HE ASKS YOU A  
10 QUESTION. WOULD YOU READ THE QUESTION AND ANSWER DOWN THROUGH  
11 22?

12 A. CERTAINLY.

13 IN CALIFORNIA, IS IT UNUSUAL -- IS IT USUAL AND  
14 CUSTOMARY AND THE ORDINARY PRACTICE FOR ATTORNEYS TO GO AND  
15 SPEND ALL OF THIS TIME LIKE YOU SPENT WITH THE WITNESS  
16 YESTERDAY BETWEEN TIME WHEN SHE HAS -- BETWEEN TIME WHEN SHE  
17 HAS TESTIFIED ONE TIME AND HAS BEEN PLACED UNDER SUBPOENA TO  
18 TESTIFY AGAIN?

19 AND I ANSWER I CAN'T ANSWER WHETHER IT IS USUAL OR  
20 CUSTOMARY. I WILL SAY THAT I THINK PERHAPS THE TIME I SPENT  
21 WITH HER I WAS RESPONDING MORE AS A PERSON CONCERNED WITH HER  
22 PHYSICAL WELL BEING. THAT WAS SORT OF THE IMPETUS FOR THE  
23 TIME.

24 SHALL I CONTINUE?

25 Q. NO. THE GIST OF THIS IS THE JUDGE WAS EXPRESSING SOME

September 18, 2012

Rouder/Cross

Page 391

1 CONCERN ABOUT THIS CONTACT WITH THE WITNESS BY THE DEFENSE  
2 TEAM, IS THAT FAIR?

3 A. APPARENTLY.

4 Q. I WASN'T ASKING YOU WHETHER -- I DIDN'T MEAN TO ASK YOU  
5 WHETHER HIS CONCERN WAS FAIR, BUT IS IT FAIR TO CHARACTERIZE  
6 THAT HE HAD CONCERN?

7 A. DO YOU MEAN DO I INTERPRET WHAT I READ AS THE JUDGE  
8 SHOWING CONCERN?

9 Q. YES, AND ALSO WHEN YOU HEARD IT LIVE.

10 A. FROM WHAT I READ HERE AND WHAT THE JUDGE SAID TO ME ON  
11 THE PHONE, YES, HE HAD CONCERN.

12 Q. WELL, YOU SAID THE JUDGE SAID TO YOU ON THE PHONE, BUT IS  
13 THERE ANYTHING IN HERE, IN THIS TRANSCRIPT, ABOUT THE JUDGE  
14 CALLING YOU ON THE PHONE?

15 A. NO. WHY WOULD THAT BE RELEVANT TO ANYTHING? I'M SORRY  
16 TO ASK A QUESTION AND I KNOW YOU ASKED ME A QUESTION. I'M  
17 SORRY. THE LAWYER IN ME SLIPPED OUT, I'M SORRY.

18 Q. THERE'S A PRETTY LONG COLLOQUY BETWEEN YOU AND THE JUDGE  
19 IN THIS TRANSCRIPT ABOUT YOUR MEETING WITH MS. STOECKLEY, IS  
20 THAT RIGHT?

21 A. CORRECT.

22 Q. AND YET NEITHER YOU NOR THE JUDGE MAKE ANY REFERENCE TO  
23 HAVING A PHONE CONVERSATION THAT WEEKEND?

24 A. WELL, I COULD SAY I THOUGHT ABOUT CHASTISING HIM FOR  
25 CALLING ME AT THE MOTEL AND INTERRUPTING, BUT I DIDN'T REALLY

September 18, 2012

Rouder/Cross

Page 392

1 THINK ABOUT THAT. NO. NO.

2 Q. DO YOU RECALL THERE WAS CONVERSATION THAT DAY IN COURT  
3 ABOUT A PHONE CONVERSATION THAT THE JUDGE HAD WITH SOMEONE?

4 A. DO WHAT? SAY THAT AGAIN.

5 Q. DO YOU RECALL THAT THERE WAS CONVERSATION IN COURT THAT  
6 DAY, MONDAY, AUGUST 20TH, ABOUT A PHONE CONVERSATION THAT THE  
7 JUDGE HAD WITH ANOTHER PERSON NOT YOU?

8 A. NO, I DON'T. I DON'T RECALL. NO.

9 Q. JUST A MOMENT, PLEASE.

10 (PAUSE.)

11 LET'S GO TO TRIAL DAY 22, PAGE 179. AND IF YOU  
12 WOULD READ LINE THREE THROUGH TEN ALOUD.

13 A. OH, I'M GLAD -- I'M GLAD YOU MENTIONED THAT BECAUSE I  
14 HAVE NEGLECTED, JUST COMPLETELY OVERLOOKED IT, TO TELL YOU,  
15 BUT I WANT YOU TO KNOW THAT AMONG OTHERS CALLED BY HELENA, SHE  
16 CALLED ME -- SHE CALLED ME TWICE SATURDAY NIGHT STATING THAT  
17 SHE WAS LIVING IN MORTAL DREAD OF PHYSICAL HARM BY BERNARD  
18 SEGAL, COUNSEL FOR THE DEFENDANT, AND THAT SHE WANTED A LAWYER  
19 TO REPRESENT HER. I SAID, WELL, NOW, LOOK, I CANNOT TALK TO  
20 YOU ABOUT THIS CASE, BUT SOMEBODY WILL CALL YOU TOMORROW.  
21 WHERE WILL YOU BE?

22 Q. KEEP ON READING TO THE END.

23 A. THIS IS THE REASON I KNEW THIS JOURNEY'S END THING. SHE  
24 GAVE ME THE JOURNEY'S END. OF COURSE, WHAT I WANTED TO DO WAS  
25 GO TO THE CRIMINAL JUSTICE ACT TO SEE WHETHER OR NOT I COULD

September 18, 2012

Rouder/Cross

Page 393

1 PAY ANY LAWYER UNDER THESE CIRCUMSTANCES, AND AMAZINGLY I  
2 FOUND AN AMENDMENT TO THE ACT, WHICH IS NOT EVEN IN THE BOUND  
3 VOLUME, WHICH ALLOWS ME TO DO IT FOR A WITNESS WHO IS --

4 MR. SMITH: (INTERPOSING.) THAT'S INCREDIBLE.

5 THE COURT: SO I TOLD STEVE COGGINS THEN, I SAID,  
6 FIND ME A LAWYER, AND I THINK HE CALLED EVERYBODY IN THE BOOK  
7 JUST ABOUT, BUT HE FINALLY GOT JERRY LEONARD.

8 LAW CLERK: HAVE YOU EVER TRIED TO FIND A LAWYER ON  
9 SUNDAY AFTERNOON?

10 THE COURT: YOU CAN ALWAYS FIND ME. SEGAL'S GOT ME  
11 WORKING ON SUNDAY AFTERNOON.

12 Q. THAT'S ENOUGH. ACTUALLY, SEGAL AND ROUDER HAD HIM  
13 WORKING ON SUNDAY AFTERNOON, IS THAT RIGHT?

14 A. I THINK THAT'S WHAT JUDGE DUPREE WOULD HAVE SAID.

15 Q. BUT IN ANY CASE, JUDGE DUPREE WAS TELLING EVERYONE THAT  
16 HE HAD RECEIVED TWO PHONE CALLS FROM HELENA STOECKLEY, IS THAT  
17 RIGHT?

18 A. THAT'S WHAT I READ HERE, YES.

19 Q. BUT TO YOUR RECOLLECTION, WAS THERE ANY MENTION IN COURT  
20 ABOUT JUDGE DUPREE HAVING CALLED YOU?

21 A. NO. I MEAN, WHAT -- YEAH. NO. NO.

22 Q. WELL, THERE'S NOTHING IN *FATAL VISION* ABOUT JUDGE DUPREE  
23 HAVING CALLED YOU THAT WEEKEND, WOULD YOU AGREE WITH THAT?

24 A. I DON'T KNOW, BUT I TAKE YOUR WORD FOR IT. I MEAN, I  
25 DON'T WANT TO ENGAGE IN, YOU KNOW, ARGUMENTATIVE THINGS.

September 18, 2012

1 Q. AND THERE'S NOTHING IN THE TRIAL TRANSCRIPT ABOUT JUDGE  
2 DUPREE HAVING CALLED YOU, IS THERE?

3 A. NO.

4 Q. AND --

5 A. THAT I KNOW OF.

6 Q. AND YET, 26 YEARS LATER, IT POPS UP IN YOUR AFFIDAVIT?

7 A. YES, BUT WHY -- THE REASON I LEFT -- I WOULDN'T HAVE LEFT  
8 HELENA STOECKLEY IF JUDGE DUPREE DIDN'T TELL ME WE'RE SENDING  
9 -- WE'RE SENDING SOMEONE DOWN AND I DON'T THINK YOU SHOULD BE  
10 TALKING TO HER.

11 Q. HE SAID WE'RE SENDING SOMEONE DOWN?

12 A. YES. I DON'T REMEMBER IF HE SAID A LAWYER OR A MARSHAL,  
13 BUT HE TOLD ME TO STOP TALKING TO HER. I WOULDN'T HAVE  
14 STOPPED TALKING -- LOOK, YOU KNOW, SHE WAS BRINGING STUFF UP,  
15 I WAS WILLING TO -- CERTAINLY WILLING TO LISTEN. AND I WOULD  
16 NEVER HAVE LEFT HER IF I WEREN'T ORDERED BY JUDGE DUPREE TO  
17 LEAVE HER -- TO LEAVE HER.

18 Q. WHY DIDN'T YOU SAY THAT IN COURT THE NEXT DAY?

19 A. WHY WOULD I SAY THAT? WHAT HAS THAT GOT TO DO WITH WHAT  
20 SHE TOLD ME? YOU KNOW, THAT'S AN ANSWER, PUT A PERIOD THERE.  
21 IT'S REALLY NOT A QUESTION. YOUR QUESTION HONESTLY MAKES NO  
22 SENSE TO ME.

23 Q. IT'S A PRETTY DRAMATIC EVENT TO BE CALLED BY A UNITED  
24 STATES DISTRICT JUDGE ON THE TELEPHONE, ISN'T IT?

25 A. IT CERTAINLY -- AFTER 32 YEARS OF PRACTICING LAW, I WILL

Rouder/Cross

Page 395

1 SAY IT REALLY IS.

2 Q. AND DID YOU EVER REPORT IT TO ANYONE PRIOR TO THIS  
3 AFFIDAVIT IN 2007 -- 2005?

4 A. REPORT IT IN THE SENSE OF WHAT? DID I EVER --

5 Q. WRITE ABOUT IT? SPEAK ABOUT IT?

6 A. I MIGHT HAVE. I MIGHT HAVE. DID YOU KNOW THAT JUDGE  
7 DUPREE SENT ME A LETTER COMPLIMENTING ME AND TELLING ME HE  
8 BELIEVED DR. MACDONALD WAS GOING TO BE ACQUITTED? DID YOU  
9 KNOW THAT?

10 Q. WELL, LIKE YOU SAID, I CAN'T ANSWER QUESTIONS.

11 A. OKAY.

12 Q. SO, YOU TELL US ABOUT THE LETTER.

13 A. OKAY. I ASSUME THAT YOU DON'T KNOW THAT JUDGE DUPREE  
14 WROTE TO ME AND SAID THAT HE COULDN'T OFFER ME A LAW CLERK  
15 POSITION BECAUSE HE TRULY -- BECAUSE HE BELIEVED THAT DR.  
16 MACDONALD WOULD BE ACQUITTED. AND NOW DURING -- NOW, THAT HE  
17 HAS NOT BEEN ACQUITTED, HE ASSUMES I WOULD BE WORKING ON THE  
18 APPELLATE BRIEF. SO, THAT WAS A SORT OF VERY STRANGE WAY OF  
19 TELLING ME I'M NOT GIVING YOU A JOB.

20 Q. HAD YOU ASKED HIM FOR A JOB?

21 A. YES.

22 Q. SO, HIS LETTER TO YOU WAS A REPLY TO YOUR REQUEST FOR A  
23 LAW CLERK POSITION?

24 A. THAT'S CORRECT.

25 Q. AND YOU DECIDED TO ASK HIM FOR A LAW CLERK POSITION

September 18, 2012

Rouder/Cross

Page 396

1 BECAUSE HE HAD COMPLIMENTED YOU SEVERAL TIMES ON YOUR BRIEF  
2 WRITING?

3 A. AND BECAUSE I KNEW THAT I WOULD BE UNEMPLOYED AFTER THE  
4 MACDONALD CASE.

5 Q. AND I ASSUME THAT IF YOU WERE ASKING HIM FOR A LAW CLERK  
6 POSITION THAT HE'S -- FROM YOUR EXPERIENCE WITH HIM IN THE  
7 MACDONALD TRIAL, HE WAS A PERSON THAT YOU WOULD WANT TO WORK  
8 FOR?

9 A. I DIDN'T GET THAT FAR. IT STARTED OUT AS BANTER, I WAS  
10 WILLING TO ENTERTAIN IT, AND I NEVER -- I DIDN'T -- HAD NO  
11 IDEA WHAT -- I KNOW I APPLIED AND I HAD NO IDEA WHAT I WOULD  
12 DO IF HE DID, IN FACT, OFFER IT TO ME.

13 Q. IN ANY CASE, IN REPLY TO YOUR REQUEST FOR A LAW CLERK  
14 POSITION HE WROTE YOU A NICE LETTER?

15 A. I DON'T KNOW IF IT WAS NICE. HE WROTE ME WHAT I JUST  
16 SAID.

17 Q. AND THAT WAS AFTER THE TRIAL?

18 A. THAT WAS AFTER THE TRIAL, YES.

19 Q. AND IT WASN'T CALLING YOU ON A WEEKEND AT A HOTEL OR  
20 ANYTHING LIKE THAT?

21 A. NO, IT WASN'T CALLING ME AT A HOTEL.

22 Q. NOW, MY UNDERSTANDING IS YOU WERE IN THE COURTROOM DURING  
23 THE COURT PROCEEDINGS ALMOST THE ENTIRE TRIAL?

24 A. THE MAJORITY OF THE TIME.

25 Q. AND --

September 18, 2012

Rouder/Cross

Page 397

1 A. DON'T FORGET, I HAD TO FIND THE TIME TO PEPPER JUDGE  
2 DUPREE WITH BRIEFS.

3 Q. AND SO YOU WERE AWARE FROM BEING IN THE COURTROOM, WERE  
4 YOU NOT, THAT THERE WAS GOING TO BE BOTH A DEFENSE AND  
5 PROSECUTION INTERVIEW OF HELENA STOECKLEY?

6 A. AT THE TIME, I WAS PROBABLY AWARE BECAUSE I PROBABLY  
7 HEARD THAT, BUT I HAVE NO INDEPENDENT MEMORY THAT THERE WAS  
8 GOING TO BE A PROSECUTION INTERVIEW. I KNEW THERE WAS GOING  
9 TO BE A DEFENSE INTERVIEW. I WAS PAYING A LOT OF ATTENTION TO  
10 THAT.

11 Q. ALL OF THE STATEMENTS THAT YOU REPORTED ON IN YOUR NOTES  
12 IF YOU MADE THEM -- OR WHAT'S YOUR CURRENT RECOLLECTION NOW OF  
13 THE NOTE SITUATION HAVING REVIEWED THIS MATERIAL DURING OUR  
14 EXAMINATION?

15 A. ALL THE EVIDENCE POINTS TO THE FACT THAT THERE WAS SOME  
16 NOTES THAT I CREATED, BUT --

17 Q. OKAY. IN THE CONVERSATIONS YOU HAD WITH HELENA STOECKLEY  
18 THAT YOU MAY HAVE REPORTED IN YOUR NOTES, ALL OF THOSE  
19 CONVERSATIONS WERE WHEN THE TWO OF YOU WERE ALONE, IS THAT  
20 CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND ALL THE CONVERSATIONS --

23 A. AGAIN, I DON'T HAVE ANY MEMORY OF MR. UNDERHILL STANDING  
24 THERE AND HE WOULD BE THE ONLY OTHER PERSON THAT COULD HAVE  
25 POSSIBLY OVERHEARD.

September 18, 2012



Rouder/Cross

Page 398

1 Q. AND THE SAME WOULD BE TRUE FOR ALL OF THE CONVERSATIONS  
2 BETWEEN YOU AND HELENA STOECKLEY THAT YOU REPORTED IN YOUR  
3 VOIR DIRE TESTIMONY, THE TWO OF YOU WERE ALONE?

4 A. AGAIN, I HAVE NO MEMORY OF MR. UNDERHILL STANDING THERE,  
5 BUT I'M NOT SURE. AGAIN, MY MEMORY IS THAT WE WERE ALONE.

6 Q. WELL, MR. SEGAL'S PURPOSE IN CALLING YOU TO THE STAND ON  
7 MONDAY, AUGUST 20TH, FOR VOIR DIRE WAS IN HOPES OF PERSUADING  
8 JUDGE DUPREE TO PERMIT YOU TO TESTIFY BEFORE THE JURY TO  
9 HELENA'S OUT OF COURT STATEMENTS TO YOU, IS THAT CORRECT?

10 A. THAT'S TRUE.

11 Q. BECAUSE YOU HAD BEEN INVOLVED IN BRIEF WRITING TRYING TO  
12 PERSUADE THE JUDGE TO ALLOW THEM UNDER THE FEDERAL RULES OF  
13 EVIDENCE, IS THAT RIGHT?

14 A. THAT'S TRUE.

15 Q. AND SO IF MR. SEGAL HAD HAD CORROBORATION OF THOSE  
16 STATEMENTS FROM RED UNDERHILL, WOULDN'T HE HAVE PUT RED  
17 UNDERHILL UP TO SAY THE SAME THING?

18 A. I BELIEVE I TESTIFIED AFTER SIX, SEVEN OR EIGHT OTHER  
19 WITNESSES TESTIFIED AND I THINK THAT POSSIBLY MR. SEGAL WOULD  
20 HAVE NOT DONE THAT BECAUSE IF HE, THE JUDGE, AFTER HEARING ALL  
21 THAT AND HEARING ME, WAS NOT GOING TO ALLOW IT, THE RECORD WAS  
22 MADE AND THERE WOULD BE NO REASON TO PUT MR. UNDERHILL ON.  
23 YET, IT'S POSSIBLE HE WOULD HAVE. I DON'T KNOW.

24 Q. IT WAS ON FRIDAY, AUGUST THE 17TH, AFTER HELENA  
25 STOECKLEY'S TESTIMONY THAT THE STOECKLEY WITNESSES, SO-CALLED

September 18, 2012

Rouder/Cross

Page 399

1 STOECKLEY WITNESSES, TESTIFIED ON VOIR DIRE, DO YOU REMEMBER  
2 THAT?

3 A. I REMEMBER A DAY OF THAT, YES.

4 Q. AND DO YOU REMEMBER THAT THE JUDGE TOOK UNDER ADVISEMENT  
5 OVER THE WEEKEND THE MOTION OF THE DEFENSE TO ADMIT THE OUT OF  
6 COURT STATEMENTS OF HELENA STOECKLEY THROUGH THE STOECKLEY  
7 WITNESSES?

8 A. SOUNDS FAMILIAR, YES.

9 Q. AND THEN ON MONDAY, AUGUST 20TH, HE ANNOUNCED HIS RULING  
10 THAT HE WAS NOT GOING TO PERMIT THE STOECKLEY WITNESSES TO  
11 TESTIFY TO THE OUT OF COURT STATEMENTS?

12 A. I HAVE NO REASON TO DISPUTE THE FACTS CONTAINED IN YOUR  
13 QUESTION.

14 Q. AND THEN, MR. SEGAL, IN FURTHER EFFORT TO GET A FAVORABLE  
15 RULING, PUT YOU UP TO TESTIFY ABOUT THE EVENTS OF THE WEEKEND?

16 A. THAT'S PROBABLY HOW IT OCCURRED.

17 Q. ALL RIGHT.

18 MR. BRUCE: MAY I HAVE JUST A MOMENT?

19 THE COURT: YES, SIR.

20 (PAUSE.)

21 BY MR. BRUCE:

22 Q. THE DEFENSE TEAM ALSO INTERVIEWED HELENA STOECKLEY'S  
23 MOTHER, DO YOU REMEMBER THAT?

24 A. NO.

25 Q. DID YOU SIT IN ON THAT INTERVIEW?

September 18, 2012

Redd/Direct

Page 400

1 A. NO.

2 Q. SOMEWHERE IN ALL OF THIS, I CAN'T POINT TO IT RIGHT NOW,  
3 BUT SOMEWHERE IN ALL OF THIS IT SAYS THAT A FEMALE MEMBER OF  
4 THE DEFENSE TEAM SAT IN. THAT WASN'T YOU?

5 A. I DON'T BELIEVE SO. THERE WERE THREE OF US, MAYBE MORE,  
6 BUT THERE WERE DEFINITELY -- I REMEMBER TWO OTHERS.

7 Q. AND WHO WERE THEY?

8 A. ONE WAS JUDGE FRAN FINE, WHO WASN'T A JUDGE THEN.

9 Q. WHAT WAS HER NAME?

10 A. FRANCES FINE. AND THE OTHER WAS AN ATTORNEY NAMED SARA  
11 SIMMONS.

12 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

13 THE COURT: ANY REDIRECT?

14 MR. WIDENHOUSE: NO REDIRECT.

15 THE COURT: YOU MAY STEP DOWN. THANK YOU.

16 THE WITNESS: THANK YOU, YOUR HONOR.

17 THE COURT: WELL, WE'LL TAKE OUR AFTERNOON RECESS.

18 WE'LL START BACK AT 3:15.

19 (RECESS TAKEN FROM 2:58 P.M., UNTIL 3:17 P.M.)

20 (DEFENDANT PRESENT.)

21 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE  
22 SEATED AND WE'LL CONTINUE. MR. WIDENHOUSE.

23 MR. WIDENHOUSE: WE CALL LAURA REDD.

24 **LAURA IRVIN REDD, DEFENSE WITNESS, SWORN**

25 D I R E C T E X A M I N A T I O N 3:18 P.M.

September 18, 2012

Redd/Direct

Page 401

1 BY MR. WIDENHOUSE:

2 Q. GOOD AFTERNOON.

3 A. HI.

4 Q. WOULD YOU STATE YOUR NAME AND TELL THE COURT JUST THE  
5 TOWN WHERE YOU LIVE?

6 A. LAURA IRVIN REDD. WAKE FOREST, NORTH CAROLINA.

7 Q. AND ARE YOU A CERTIFIED PARALEGAL?

8 A. YES, SIR.

9 Q. AND ARE YOU ALSO A NOTARY PUBLIC?

10 A. YES, SIR.

11 Q. DO YOU RECALL WHERE YOU WERE WORKING IN MARCH OF 2007?

12 A. FOR HART MILES.

13 Q. ALL RIGHT. AND DID THERE COME A TIME WHEN MR. MILES  
14 ASKED YOU TO GO TO FAYETTEVILLE WITH HIM IN CONNECTION WITH  
15 HIS REPRESENTATIONS OF JEFFREY MACDONALD?

16 A. YES, SIR.

17 Q. AND CAN YOU TELL US HOW THAT CAME ABOUT AS BEST YOU  
18 RECALL?

19 A. I REMEMBER IT WAS A SATURDAY AFTERNOON, JUST A LEISURELY  
20 DAY AT HOME, AND IT WAS PROBABLY -- IT'S BEEN FIVE OR SIX  
21 YEARS AGO -- I'M THINKING 3:00, MAYBE 2:00 OR 3:00 IN THE  
22 AFTERNOON I'M THINKING, LATER ON IN THE AFTERNOON AFTER LUNCH,  
23 THAT I GOT A CALL FROM MR. MILES THAT HE WANTED ME TO RIDE  
24 WITH HIM TO FAYETTEVILLE TO AN ASSISTED LIVING FACILITY TO  
25 TAKE HELENA STOECKLEY'S AFFIDAVIT, TO TAKE IT AND NOTARIZE IT.

September 18, 2012

Redd/Direct

Page 402

1 Q. AND WHAT DID YOU DO ONCE YOU GOT TO THE ASSISTED LIVING  
2 CENTER?

3 A. FIRST WENT IN AND MET MRS. STOECKLEY AND HER SON GENE AND  
4 CHATTED FOR A BIT AND --

5 Q. AND AS YOU CHATTED WITH -- DID YOU ENGAGE IN CONVERSATION  
6 WITH MS. STOECKLEY AS WELL AS OTHER PEOPLE THAT WERE IN THE  
7 ROOM?

8 A. YES, SIR, I INTRODUCED MYSELF TO MRS. STOECKLEY AND HER  
9 SON. I ALSO MET KATHRYN MACDONALD THAT DAY. OF COURSE, KNEW  
10 HART. IT WAS JUST US. HAD A VERY ENGAGING CONVERSATION WITH  
11 MRS. STOECKLEY. SHE WAS VERY SHARP, VERY -- I WAS SURPRISED  
12 ACTUALLY FOR HER AGE AND HEALTH CONDITION THAT SHE WAS AS  
13 INTELLIGENT AS SHE WAS.

14 Q. SO, SHE SEEMED MENTALLY ALERT --

15 A. VERY MUCH SO.

16 Q. -- AND AWARE OF WHAT SHE WAS DOING?

17 A. VERY WITTY. VERY WITTY.

18 Q. OKAY. AND CAN YOU TELL US WHO ALL WAS IN THE ROOM WHEN  
19 YOU WERE HAVING THIS CONVERSATION TO START WITH?

20 A. YES, SIR. IT WAS MYSELF, MR. MILES, KATHRYN MACDONALD,  
21 GENE STOECKLEY AND HELENA STOECKLEY.

22 Q. AND HOW DID THE -- AFTER PLEASANTRIES WERE EXCHANGED, HOW  
23 DID THE DISCUSSION PROCEED? DO YOU REMEMBER?

24 A. I CAN'T RECALL EXACTLY. I'M THINKING IT WAS SOMETHING  
25 ALONG THE LINES OF GENE SAYING, YOU KNOW, MOM, THESE ARE THE

September 18, 2012

Redd/Direct

Page 403

1 PEOPLE THAT I TOLD YOU ABOUT, YOU KNOW, THIS IS MR. MILES AND  
2 THIS IS HIS PARALEGAL AND, YOU KNOW, THEY CAME TO TAKE YOUR  
3 STATEMENT KIND OF THING. I DON'T REMEMBER EXACTLY WORD FOR  
4 WORD, I'M SORRY.

5 Q. WAS SOMEBODY TAKING NOTES?

6 A. YOU KNOW, IF I'M NOT MISTAKEN, IT SEEMS LIKE KATHRYN HAD  
7 A LAPTOP THAT MAYBE SHE WAS TYPING AS SHE WENT OR EITHER HART  
8 MIGHT HAVE HAD -- SOMEBODY HAD A LAPTOP. I'M THINKING THAT  
9 THEY WERE TYPING AS SHE SPOKE. I KNOW I DIDN'T DO IT.

10 BUT THEN WE HAD AN ISSUE WITH THE PRINTING, WE  
11 COULDN'T GET IT TO PRINT FROM OUR LAPTOP. SO, THEN WE HAD TO  
12 GO FIND SOMEBODY TO LET US IN THEIR OFFICE TO TRY TO ENTER IT  
13 ON THEIR COMPUTER. IT WAS VERY DISCOMBOBULATED.

14 Q. ALL RIGHT. AND IN ANY EVENT, SOMEBODY GOT TO THE POINT  
15 WHERE THERE WAS A DOCUMENT CREATED?

16 A. YES, SIR.

17 Q. AND I TAKE IT, YOU DIDN'T TYPE THE AFFIDAVIT?

18 A. I THINK IT WAS KIND OF A EVERYBODY WAS TRYING TO GET IT  
19 DONE AT THE SAME -- YOU KNOW, I TYPE REALLY FAST. I THINK I  
20 REMEMBER TELLING KATHRYN, YOU KNOW, HERE, MOVE, LET ME DO IT,  
21 I THINK I CAN TYPE FASTER KIND OF THING, BUT I THINK IT WAS A  
22 JOINT EFFORT.

23 Q. AND WAS THE TYPING BEING DONE IN THIS OTHER ROOM WHERE  
24 THE --

25 A. YES, SIR, BECAUSE WE COULD NOT GET WHAT WE HAD ENTERED --

September 18, 2012

Redd/Direct

Page 404

1 WHAT WHOEVER HAD ENTERED ON THE LAPTOP WE COULDN'T GET IT TO  
2 PRINT. WE DIDN'T HAVE A PRINTER, YOU KNOW, AND WE COULDN'T --  
3 OUR LAPTOP WASN'T COMPATIBLE WITH THEIR STUFF. SO, WE HAD TO  
4 RE-ENTER EVERYTHING FROM THE LAPTOP ON THEIR SYSTEM AND TRY TO  
5 GET IT TO PRINT. AND I REMEMBER WE HAD A REALLY HARD TIME AND  
6 IT TOOK A LONG TIME.

7 Q. OKAY. IS YOUR RECOLLECTION THAT SOMEBODY WAS LOOKING AT  
8 THE SCREEN, THE WORDS ON THE SCREEN ON THE LAPTOP, AND WAS  
9 TYPING ON A KEYBOARD TO ENTER INTO A COMPUTER OR DO YOU  
10 RECALL?

11 A. I DON'T EXACTLY. IT MAY HAVE BEEN MAYBE, YOU KNOW, WHEN  
12 I WAS TYPING, SHE MAY HAVE BEEN READING AS I TYPED. I'M JUST  
13 NOT EXACTLY SURE HOW WE GOT IT DONE. I DO REMEMBER IT WAS A  
14 VERY -- IT WAS A BIG HASSLE TO GET IT DONE BECAUSE IT WASN'T  
15 OUR EQUIPMENT. IT WASN'T LIKE IN MY OFFICE WITH MY SYSTEM  
16 THAT I KNEW.

17 Q. ALL RIGHT.

18 A. IT WAS -- IN FACT, WE HAD TO WAIT A REALLY LONG TIME TO  
19 GET SOMEBODY TO LET US IN TO EVEN GET ACCESS TO THEIR COMPUTER  
20 AND THEY DID US A FAVOR, YOU KNOW, LETTING US DO THAT.

21 Q. OKAY. BUT YOUR RECOLLECTION IS YOU HAD SOME PART IN THE  
22 PREPARATION --

23 A. YES, SIR.

24 Q. -- OF THE AFFIDAVIT?

25 A. YES, SIR.

September 18, 2012

Redd/Direct

Page 405

1 Q. OKAY. I'M GOING TO SHOW YOU, AND IT'S GOING TO COME UP  
2 ON THE SCREEN THERE, DEFENSE EXHIBIT 5051. AND I'M JUST GOING  
3 TO HAVE -- WE'RE JUST GOING TO SCROLL THROUGH IT AND THEN I'M  
4 GOING TO ASK YOU IF YOU RECOGNIZE THE DOCUMENT ONCE WE --  
5 DON'T SCROLL TOO FAST. SORRY.

6 A. AS FAR AS I RECOLLECT, THIS IS THE DOCUMENT.

7 Q. OKAY. AND LET ME SHOW YOU THE SECOND PAGE AND JUST TAKE  
8 A QUICK LOOK AT PARAGRAPHS 11 THROUGH 15.

9 A. YES, SIR, I BELIEVE THIS IS IT.

10 Q. OKAY. DOES THAT APPEAR -- LET ME GO TO PAGE THREE. I'M  
11 SORRY. PAGE THREE.

12 A. THAT IS MY SIGNATURE, THAT IS MY HANDWRITING, UNDER GENE  
13 -- GENE'S SIGNATURE I PRINTED IT AND THAT IS MY HANDWRITING  
14 UNDER GRADY PETERSON, WHO WAS A WITNESS, I PRINTED THAT. AND  
15 I DEFINITELY REMEMBER HELENA'S SIGNATURE. THAT IS HELENA'S  
16 SIGNATURE.

17 Q. OKAY. BUT BASED ON YOUR RECOLLECTION, DOES THE  
18 AFFIDAVIT, DEFENSE EXHIBIT 5051, REFLECT WHAT MS. STOECKLEY  
19 TOLD PEOPLE ON MARCH 31ST?

20 A. AND THIS IS 5051?

21 Q. YES.

22 A. YES, SIR.

23 (DEFENSE EXHIBIT NUMBER 5051

24 WAS IDENTIFIED FOR THE RECORD.)

25 Q. ALL RIGHT. AND DO YOU RECALL WHEN SHE SIGNED IT? BY

September 18, 2012



Redd/Direct

Page 406

1 THAT, I MEAN DO YOU RECALL SEEING HER SIGN IT?

2 A. OH, YES, SIR.

3 Q. OKAY. YOU WOULDN'T HAVE NOTARIZED IT IF YOU HADN'T  
4 SEEN --

5 A. NO, SIR.

6 Q. -- HER SIGNATURE?

7 A. NO, SIR.

8 Q. ALL RIGHT. AND --

9 A. THERE'S A DIFFERENT OATH IF THERE'S A SUBSCRIBING  
10 WITNESS. HAD SOMEONE ELSE BEEN IN HER PRESENCE WHEN SHE  
11 SIGNED IT, I WOULD HAVE HAD TO DO ANOTHER OATH SAYING SO AND  
12 SO APPEARED BEFORE ME AND SWORE THAT HE SAW HER SIGN IT. BUT,  
13 NO, SIR, I PERSONALLY SAW IT.

14 Q. OKAY. SO, YOU SAW HER SIGN --

15 A. YES, SIR.

16 Q. -- WHAT'S THERE AT THE TOP OF THE PAGE?

17 A. YES, SIR.

18 Q. AND BEFORE SHE SIGNED IT WERE YOU IN THE ROOM WHEN HER  
19 SON GENE READ IT TO HER?

20 A. YES, SIR.

21 Q. AND YOU HEARD HIM READ THE WHOLE THING?

22 A. YES, SIR.

23 Q. AND DO YOU RECALL WHAT SHE SAID OR WHAT HE SAID TO HER  
24 AFTER HE FINISHED READING IT AND HOW SHE RESPONDED?

25 A. SHE WAS VERY -- SHE WAS A VERY FUNNY LADY AND SHE WAS

September 18, 2012

Redd/Direct

Page 407

1 LIKE -- YOU KNOW, KIND OF LIKE, YES, GENE, I TOLD YOU. AND IT  
2 WAS KIND OF LIKE -- AT THIS POINT, IT WAS LIKE, YOU KNOW, HOW  
3 MANY TIMES DO I HAVE TO TELL YOU THIS? YES, THIS IS WHAT --  
4 SHE WAS A LITTLE IMPATIENT WITH US.

5 Q. OKAY. SO, SHE HAD HEARD THE ENTIRE AFFIDAVIT READ AND  
6 YOU HEARD HER SAY THIS IS WHAT I'M GOING TO ACKNOWLEDGE?

7 A. YES, SIR.

8 Q. IN THE TIME THAT YOU WERE THERE IN THE ASSISTED LIVING  
9 CENTER, DID ANYBODY TRY TO COERCE MRS. STOECKLEY?

10 A. EXACT OPPOSITE. ESPECIALLY, MR. MILES. I DON'T KNOW IF  
11 YOU KNOW MR. MILES OR NOT, HE HAS GOT MORE INTEGRITY THAN  
12 ANYBODY I THINK I'VE EVER MET. AND HE HANDLED HER WITH KID  
13 GLOVES AND WANTED TO MAKE SURE THAT THIS IS WHAT SHE WANTED TO  
14 DO.

15 IN FACT, I DON'T KNOW HIS EXACT WORDS, BUT I THINK  
16 HE EVEN ASKED HER, YOU KNOW, IS THIS -- ARE YOU COMING FORWARD  
17 WITH IT OR IS ANYBODY MAKING YOU DO THIS, KIND OF THING. HE  
18 COVERED THE BASES, YES, SIR.

19 Q. ALL RIGHT. AND WERE YOU PRESENT WHEN -- DID YOU WRITE  
20 THE NAME GRADY PATTERSON AND --

21 A. PETERSON, YES, SIR.

22 Q. PETERSON, I'M SORRY.

23 A. THAT'S OKAY.

24 Q. AND WERE YOU PRESENT WHEN THE PERSON WHO REPRESENTED  
25 HIMSELF TO BE GRADY PETERSON SIGNED THERE?

September 18, 2012

Redd/Direct

Page 408

1 A. YES, SIR, HE WAS A WORKER THERE AT THE ASSISTED LIVING  
2 FACILITY.

3 Q. ALL RIGHT. AND I BELIEVE YOU'VE TOLD US YOU WROTE GENE  
4 STOECKLEY'S NAME AS WELL?

5 A. YES, SIR.

6 Q. AND WERE YOU PRESENT WHEN HE SIGNED?

7 A. YES, SIR.

8 Q. AND IS THE INFORMATION THAT'S BOXED IN RED ON THE SCREEN,  
9 IS THAT YOUR NOTARY SEAL?

10 A. YES, SIR.

11 Q. AND IS THAT YOUR SIGNATURE --

12 A. YES, SIR.

13 Q. -- ON THE DOCUMENT?

14 A. YES, SIR.

15 Q. AND WOULD YOU HAVE NOTARIZED THIS DOCUMENT IF THERE  
16 WEREN'T -- IF ALL THREE PAGES WEREN'T TOGETHER WHEN YOU PUT  
17 YOUR SIGNATURE AND NOTARY SEAL ON IT?

18 A. ABSOLUTELY NOT. I WOULD NOT HAVE GIVEN A BLANK  
19 AFFIRMATION BECAUSE THAT COULD HAVE BEEN ATTACHED TO ANYTHING,  
20 A CAR DEED OR ANYTHING ELSE. SO, NO, SIR, I WOULD NEVER HAVE  
21 DONE THAT.

22 Q. I NOTICE THAT THE SIGNATURES AND NOTARIZATION INFORMATION  
23 IS ON A SEPARATE PAGE. IT DOESN'T -- IT'S NOT AT THE BOTTOM  
24 OF PAGE TWO. WAS THERE A REASON THAT IT TURNED OUT THAT WAY?

25 A. YOU KNOW, I CAN'T UNDERSTAND THAT MYSELF BECAUSE I THINK

September 18, 2012

Redd/Cross

Page 409

1 -- LIKE I SAID, I WAS HAVING TROUBLE WITH THEIR SYSTEM AND I  
2 THINK THAT WE JUST COULDN'T GET IT TO FIT, EVERYTHING TO FIT  
3 ON THAT SAME PAGE. AND IF I REMEMBER CORRECTLY, I THINK I  
4 COULDN'T GET IT OFF OF DOUBLE SPACE WHEN WE GOT TO THIS POINT.

5 I THINK ACTUALLY WE JUST TOOK THE AFFIDAVIT AND READ  
6 IT TO HER, THEN WENT BACK AND DID THE NOTARY PART AND CAME  
7 BACK AND SIGNED. I DON'T REMEMBER EXACTLY HOW IT HAPPENED,  
8 BUT I DO KNOW EXACTLY WHAT THE WOMAN SAID AND THIS IS EXACTLY  
9 WHAT THE WOMAN SAID.

10 Q. BUT YOUR RECOLLECTION IS THE REASON THERE'S THIS THIRD  
11 PAGE THAT'S LABELED UNTITLED AT THE TOP AND HAS A NUMBER ONE  
12 AT THE BOTTOM WAS A PROBLEM WITH THE PROCESSING SYSTEM AND THE  
13 COMPATIBILITY?

14 A. THAT WE DIDN'T KNOW WHAT WE WERE DOING ON THEIR COMPUTER,  
15 YES, SIR.

16 Q. BUT YOU'RE CERTAIN THAT THIS AFFIDAVIT IS THE ONE YOU  
17 NOTARIZED?

18 A. IT ENTAILS ALL THE INFORMATION, YES, SIR.

19 Q. ALL RIGHT.

20 A. YES, SIR.

21 Q. AND NOBODY FORCED MS. STOECKLEY TO SIGN?

22 A. NO, SIR, ABSOLUTELY NOT.

23 Q. AND SHE WAS CLEAR HEADED?

24 A. LIKE I SAY, I WAS SURPRISED. I WAS VERY SURPRISED AT HOW  
25 SMART SHE WAS. I REALLY WAS. I WAS VERY SURPRISED. SHE WAS

September 18, 2012

Redd/Cross

Page 410

1 VERY SMART AND WITTY.

2 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
3 QUESTIONS.

4 THE COURT: CROSS.

5 MR. BRUCE: THANK YOU, YOUR HONOR.

6 C R O S S - E X A M I N A T I O N 3:29 P.M.

7 BY MR. BRUCE:

8 Q. MS. REDD, AS I UNDERSTAND YOUR TESTIMONY, YOU WERE CALLED  
9 WITH NO NOTICE ON SATURDAY AFTERNOON TO TAKE THIS TRIP?

10 A. WITH NO NOTICE, IS THAT WHAT YOU SAID?

11 Q. YES.

12 A. NO, SIR, I DID NOT HAVE ANY NOTICE.

13 Q. YOU MAY WANT TO SPEAK DIRECTLY INTO THE --

14 A. OH, I'M SORRY.

15 Q. AND WERE YOU IN FULL TIME EMPLOYMENT FOR MR. HART MILES  
16 AT THAT TIME?

17 A. NO, SIR. I ONLY WORKED PART TIME FOR MR. MILES MY ENTIRE  
18 TIME WITH HIM.

19 Q. ARE YOU A CONTRACT PARALEGAL, IS THAT YOUR --

20 A. NO, SIR. AT THE TIME I HAD A CHILD THAT WAS IN HIGH  
21 SCHOOL AND HAD A PROBLEM WITH ATTENDANCE SO I HAD TO MAKE SURE  
22 I GOT HER THERE AND PICKED HER UP EVERY DAY.

23 Q. ARE YOU STILL WORKING FOR MR. MILES?

24 A. NO, SIR.

25 Q. SO, YOU AGREED TO GO ON THIS TRIP ON SHORT NOTICE?

September 18, 2012

Redd/Cross

Page 411

1 A. OH, YES, SIR.

2 Q. AND IT TOOK YOU ABOUT HOW LONG FROM THE TIME HART MILES  
3 CALLED YOU FOR YOU AND HE TO GET DOWN THERE?

4 A. FROM THE TIME HE CALLED ME TO THE TIME WE GOT THERE?

5 Q. YES.

6 A. I'D SAY THREE HOURS, THREE AND A HALF MAYBE.

7 Q. AND YOU ESTIMATED THAT THE TIME CAME IN -- THE CALL CAME  
8 IN, I'M SORRY, ABOUT 2:00 OR THREE O'CLOCK?

9 A. YES, SIR, BUT, NOW, I DON'T -- I'M NOT ABSOLUTELY SURE.  
10 I JUST REMEMBER IT WAS AFTER LUNCH. IT WAS LATER ON IN THE  
11 AFTERNOON. I REMEMBER WHEN WE GOT THERE IT WASN'T DARK, BUT  
12 IT WAS CERTAINLY DARK WHEN WE LEFT.

13 Q. ALL RIGHT. AND, OF COURSE, THIS WAS ON MARCH THE 31ST,  
14 IS THAT RIGHT?

15 A. YES, SIR.

16 Q. OKAY. SO, IT MIGHT NOT HAVE BEEN DARK WHEN YOU ARRIVED,  
17 BUT IT BECAME DARK BEFORE YOU LEFT?

18 A. YES, SIR.

19 Q. IS IT TRUE THAT KATHRYN MACDONALD WAS TYPING THE  
20 AFFIDAVIT AS YOU WERE DRIVING DOWN OR DOING SOME OF THE TYPING  
21 ON IT?

22 A. NOT THAT I'M AWARE. KATHRYN DID NOT DRIVE DOWN WITH US.

23 Q. NO, WHILE YOU AND HART MILES WERE DRIVING DOWN, SHE WAS  
24 ALREADY AT THE NURSING HOME, IS THAT RIGHT?

25 A. SHE WAS THERE WHEN WE GOT THERE.

September 18, 2012

Redd/Cross

Page 412

1 Q. WASN'T SHE THERE WHEN THE CALL CAME FROM HER TO HART  
2 MILES TO HAVE YOU ALL COME DOWN?

3 A. I HAVE NO IDEA. I'M SORRY, I DON'T -- I HAVE NO IDEA.

4 Q. WELL, IF GENE STOECKLEY HAD SAID THAT KATHRYN MACDONALD  
5 WAS TYPING A DRAFT OF THE AFFIDAVIT WHILE YOU AND HART WERE  
6 RIDING DOWN, WOULD YOU DISPUTE THAT?

7 A. I WOULD NEVER CALL GENE A LIAR, NO, SIR. I JUST WASN'T  
8 PRIVY TO THAT INFORMATION.

9 Q. WELL, WERE THERE WORDS ON PAPER AT THE TIME THAT YOU GOT  
10 THERE?

11 A. WERE THERE WORDS ON PAPER? ON PAPER, I DON'T BELIEVE SO.  
12 THERE MAY HAVE BEEN WORDS ON THE LAPTOP ALREADY, BUT I DON'T  
13 BELIEVE THERE WAS ANYTHING PRINTED.

14 Q. THAT'S A GOOD POINT. WERE THERE WORDS ON THE COMPUTER  
15 SCREEN BY THE TIME YOU GOT THERE?

16 A. I MEAN, I KNOW THERE -- I'M NOT POSITIVE. I'M SORRY,  
17 IT'S BEEN, WHAT, OVER FIVE YEARS? I MEAN, YOU KNOW, AND THE  
18 THING ABOUT IT IS, IS THAT THAT WASN'T THE ONLY CASE I WORKED  
19 ON. IT WAS A VERY IMPORTANT CASE AND A VERY HIGH PROFILE  
20 CASE, BUT IN CASES LIKE THAT MR. MILES MOSTLY FILED ALL OF HIS  
21 -- WELL, IN FEDERAL CASES LIKE THIS FILED ALL OF HIS PLEADINGS  
22 AND, YOU KNOW, I WAS CONCENTRATING MORE ON TRAFFIC CASES AND  
23 THINGS LIKE THAT.

24 Q. I BELIEVE YOU TESTIFIED ON DIRECT EXAMINATION THAT YOU  
25 MIGHT HAVE DONE SOME TYPING AND KATHRYN MACDONALD MIGHT HAVE

September 18, 2012

Redd/Cross

Page 413

1 DONE SOME TYPING, IS THAT RIGHT?

2 A. YES, SIR. I DO REMEMBER THAT WE HAD AN ISSUE WITH WE  
3 COULDN'T GET THE STUFF TO PRINT FROM THE LAPTOP SO THEN WE HAD  
4 TO GO INTO THEIR OFFICE AND GET IT ON THEIR SYSTEM TO BE ABLE  
5 TO PRINT IT. I BELIEVE THAT'S HOW IT WORKED. I JUST KNOW IT  
6 WAS A VERY BIG PAIN AND IT TOOK A LOT LONGER THAN IT SHOULD  
7 HAVE.

8 Q. WELL, WHEN YOU -- THE PART OF THE TYPING THAT YOU WERE  
9 DOING, YOU WERE JUST TYPING, YOU WEREN'T --

10 A. RETYPING, RIGHT, WHAT WE WERE TRYING TO GET TO PRINT OUT  
11 TO BEGIN WITH KIND OF THING, YES, SIR.

12 Q. YOU WEREN'T COMPOSING?

13 A. OH, NO, SIR. NO, SIR.

14 Q. KATHRYN MACDONALD WAS DOING THAT?

15 A. I DON'T KNOW IF THAT WAS HER OR HART. I DON'T KNOW.

16 Q. WHOSE LAPTOP WAS IT?

17 A. I DON'T KNOW IF IT WAS HERS OR HART. I KNOW THERE WAS A  
18 LAPTOP, BUT I CAN'T REMEMBER IF IT WAS HART THAT HAD ONE OR  
19 SHE HAD ONE.

20 Q. BUT YOU HAVE A RECOLLECTION, I BELIEVE YOU TESTIFIED  
21 EARLIER, THAT WHEN YOU GOT INTO THE OFFICE CENTER OF THE  
22 NURSING HOME WORKING ON THEIR COMPUTER, IT WAS YOU AND KATHRYN  
23 WORKING BACK AND FORTH?

24 A. YEAH. I BELIEVE HART MIGHT HAVE COME IN THERE A TIME OR  
25 TWO TO SEE WHAT WAS GOING ON, WHAT WAS TAKING SO LONG.

September 18, 2012



Redd/Cross

Page 414

1 Q. BUT, GENERALLY, IT WAS YOU AND KATHRYN WORKING BACK AND  
2 FORTH?

3 A. YES, SIR.

4 Q. BUT YOU DIDN'T DECIDE ON THE WORDING OF THIS AFFIDAVIT,  
5 THAT WASN'T YOU?

6 A. NO, SIR. I'M MORE ELOQUENT THAN THAT. NO, I'M JUST  
7 KIDDING.

8 Q. LET'S PUT 5051 ON THE SCREEN, PLEASE, DEFENSE EXHIBIT.  
9 GO TO PAGE THREE. NOW, I UNDERSTAND THAT YOU SAID ON DIRECT  
10 EXAMINATION THAT IT SAYS UNTITLED AT THE TOP JUST BECAUSE  
11 THERE WAS SOME GLITCH WITH THE COMPUTER?

12 A. I ASSUME THAT'S HOW THEIR SYSTEM WAS SET UP AND IF YOU  
13 DIDN'T NAME THE DOCUMENT IT JUST CAME OUT UNTITLED.

14 Q. BUT WHY DOES IT SAY PAGE ONE AT THE BOTTOM?

15 A. I ASSUME THAT WAS THE WAY THEIR SYSTEM WAS SET UP. WE  
16 DID NOT SAVE THE DOCUMENT TO THEIR SYSTEM. I GUESS IF WE HAD  
17 SAVED IT TO THEIR SYSTEM, WE WOULD HAVE HAD TO HAVE NAMED IT  
18 AND THEN IT WOULD HAVE HAD OUR NAME INSTEAD OF THIS UNTITLED I  
19 ASSUME.

20 Q. SO, THE FIRST TWO PAGES OF THE AFFIDAVIT WERE PREPARED ON  
21 ONE COMPUTER AND THE LAST PAGE ON A DIFFERENT ONE?

22 A. I BELIEVE THAT'S HOW IT WENT.

23 Q. ALL RIGHT. ONCE YOU NOTARIZED THIS PAGE THREE THAT SAYS  
24 UNTITLED PAGE ONE, ONCE YOU NOTARIZED IT, WHAT WAS DONE WITH  
25 THE AFFIDAVIT?

September 18, 2012

Redd/Cross

Page 415

1 A. IT WAS PUT IN MR. MILES' BRIEFCASE.

2 Q. CAN WE PUT ON THE SCREEN GOVERNMENT EXHIBIT 2089? CAN WE  
3 GO TO PAGE TWO? DO YOU REMEMBER THIS AFFIDAVIT?

4 A. YES.

5 Q. IS THAT YOUR SIGNATURE AND NOTARIAL SEAL?

6 A. YES, SIR.

7 (GOVERNMENT EXHIBIT NUMBER 2089  
8 WAS IDENTIFIED FOR THE RECORD.)

9 Q. CAN YOU REMEMBER ANY OF THE CIRCUMSTANCES SURROUNDING  
10 THIS AFFIDAVIT?

11 A. AS FAR AS WHEN I NOTARIZED IT?

12 Q. WELL, DID MR. BRITT COME BY MR. MILES' OFFICE AND SIGN  
13 THIS AFFIDAVIT?

14 A. I MET MR. BRITT ON SEVERAL OCCASIONS. I'M NOT SURE IF HE  
15 -- IF I NOTARIZED THIS WHEN HE CAME INTO OUR OFFICE. I ALSO  
16 MET HIM AT BIG ED'S DOWN AT CITY MARKET. ALL THIS HAS BEEN SO  
17 LONG AGO, I AM SO SORRY.

18 Q. BUT ANYWAY, THERE'S NO DOUBT IN YOUR MIND THAT HE SIGNED  
19 THIS --

20 A. OH, NO, SIR. NO DOUBT IN MY MIND.

21 Q. -- IN YOUR PRESENCE?

22 A. OH, YES, SIR.

23 Q. AND I NOTICE THAT THIS SIGNATURE PAGE AND NOTARY PUBLIC  
24 INFORMATION IS ON THE SAME PAGE AS THE SECOND PAGE OF TEXT, IS  
25 THAT CORRECT?

September 18, 2012

Redd/Cross

Page 416

1 A. YES, SIR.

2 Q. SO, THIS IS DEFINITELY HIS AFFIDAVIT?

3 A. YES, SIR.

4 Q. GOING BACK TO MRS. STOECKLEY'S AFFIDAVIT FOR A MOMENT.

5 SO, THE WHOLE PROCESS FROM THE TIME THAT YOU GOT INVOLVED TOOK

6 ABOUT -- I'M TALKING ABOUT WHEN YOU ALL GOT THE CALL IN

7 RALEIGH -- TOOK HOW MANY HOURS?

8 A. SIX OR SEVEN.

9 Q. SIX OR SEVEN HOURS?

10 A. YES.

11 Q. AND KATHRYN MACDONALD AND GENE STOECKLEY HAD ALREADY BEEN

12 TALKING TO MRS. STOECKLEY FOR SOME TIME BEFORE THAT?

13 A. I WASN'T THERE, I DON'T KNOW.

14 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

15 EXCUSE ME.

16 (PAUSE.)

17 BY MR. BRUCE:

18 Q. WHAT TYPE OF WORD PROCESSING PROGRAM IS USED IN THIS

19 AFFIDAVIT?

20 A. WHICH AFFIDAVIT ARE WE SPEAKING OF?

21 Q. I'M SORRY. LET'S GO BACK AND PUT THAT ONE ON THE SCREEN,

22 5051. THIS AFFIDAVIT. WHAT TYPE OF WORD PROCESSING PROGRAM

23 IS USED IN THIS AFFIDAVIT?

24 A. I'M SORRY, I DON'T KNOW. I DON'T.

25 Q. IS IT THE SAME ONE ON THE FIRST TWO PAGES AS ON THE THIRD

September 18, 2012

McMann/Direct

Page 417

1 PAGE?

2 A. CAN I SEE -- I MEAN, ARE YOU ASKING ME IS THE FONT THE  
3 SAME OR ARE YOU -- I'M NOT SURE WHAT YOU'RE ASKING ME.

4 Q. WELL, FONT -- NO, I'M ASKING WHAT -- YOU KNOW, THERE'S  
5 WORDPERFECT. THERE'S WORD.

6 A. YES, SIR. AND I'LL BE HONEST WITH YOU, I COULDN'T TELL  
7 YOU. I MEAN, I CAN USE THEM ALL, BUT IT'S JUST -- I MEAN,  
8 THEY ALL DO THE SAME THING, IT'S JUST A DIFFERENT WAY TO GET  
9 THEM TO DO IT. I'M NOT SURE WHICH IS WHICH. I COULDN'T TELL  
10 YOU WHICH. I DON'T HAVE THE META DATA. THE META DATA WOULD  
11 TELL YOU WHAT TYPE OF SYSTEM IT WAS ON.

12 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

13 MR. WIDENHOUSE: NO REDIRECT. THANK YOU, YOUR  
14 HONOR.

15 THE COURT: YOU MAY STEP DOWN. THANK YOU VERY MUCH.

16 THE WITNESS: THANK YOU.

17 MR. WIDENHOUSE: YOUR HONOR, MAY SHE BE EXCUSED AS  
18 WELL?

19 THE COURT: YES, SIR.

20 MR. WIDENHOUSE: THANK YOU.

21 MR. WILLIAMS: YOUR HONOR, WITH YOUR PERMISSION, OUR  
22 NEXT WITNESS IS SARA MCMANN.

23 THE COURT: ALL RIGHT, SIR.

24 (PAUSE.)

25 **SARA MCMANN, DEFENSE WITNESS, SWORN**

September 18, 2012

McMann/Direct

Page 418

1                                    D I R E C T   E X A M I N A T I O N                                    3:42 P.M.

2 BY MR. WILLIAMS:

3 Q.     GOOD AFTERNOON, MS. MCMANN.

4 A.     YES.

5 Q.     COULD YOU PLEASE STATE YOUR NAME?    MS. MCMANN, WE'RE HERE

6 OVER TO YOUR RIGHT.

7 A.     OKAY.    SARA ANN MCMANN.

8 Q.     ALL RIGHT.    THANK YOU.    MS. MCMANN, WHERE ARE YOU FROM?

9 A.     GREENVILLE, SOUTH CAROLINA.

10 Q.    ARE YOU MARRIED?

11 A.    YES, SIR.

12 Q.    HOW LONG HAVE YOU BEEN MARRIED?

13 A.    ALMOST 48 -- WELL, I'VE BEEN MARRIED 48 YEARS, BUT I'M

14 GETTING CLOSE TO 50.

15 Q.    ALL RIGHT.    GOOD.    MS. MCMANN, I WANT TO TAKE YOU BACK TO

16 1982.    WERE YOU LIVING IN SOUTH CAROLINA IN 1982?

17 A.    YES, SIR.

18 Q.    WERE YOU LIVING THERE WITH YOUR HUSBAND?

19 A.    YES, SIR.

20 Q.    AND DID YOU HAVE OCCASION TO HEAR ABOUT A YOUNG LADY BY

21 THE NAME OF HELENA STOECKLEY?

22 A.    YES, I DID.

23 Q.    TELL US ABOUT THAT.

24 A.    WE WERE IN CHURCH ONE SUNDAY WHEN A MAN IN OUR CHURCH

25 ASKED FOR PRAYER FOR A LADY AND A BABY.    AND THE WAY HE HAD

September 18, 2012

McMann/Direct

Page 419

1 MET THIS LADY AND BABY, HE WAS WORKING WITH A USED CAR LOT IN  
2 WALHALLA. THIS IS THE NORTHWEST CORNER OF SOUTH CAROLINA BY  
3 GEORGIA.

4 AND WHAT HAPPENED WAS HE WANTED TO HAVE PRAYER FOR  
5 THIS LADY AND BABY BECAUSE THE BABY WAS ON A MONITOR FOR CRIB  
6 DEATH AND THE WOMAN WAS NOT ABLE TO TAKE CARE OF HERSELF VERY  
7 WELL AT THAT TIME.

8 Q. SO, HE EXPRESSED THAT SHE WAS IN NEED?

9 A. YES.

10 Q. AND WHAT, IF ANYTHING, DID YOU AND YOUR HUSBAND DO IN  
11 RESPONSE?

12 A. WE HELPED HER.

13 Q. TELL US ABOUT THAT.

14 A. WE PRAYED ABOUT IT IN CHURCH THAT SUNDAY AND WE WENT OVER  
15 TO WALHALLA GARDENS. I FOUND OUT FROM ELSIE AND JANET, THEY  
16 WERE GOOD FRIENDS OF OURS, THAT THEY LIVED -- SHE LIVED IN  
17 WALHALLA GARDENS. AND WE WENT OVER ON MONDAY NIGHT RIGHT  
18 AFTER THAT SUNDAY.

19 Q. WHAT DID YOU FIND?

20 A. WE FOUND A BABY THAT WAS SIX POUNDS SOMETHING WHEN HE WAS  
21 BORN, HIS NAME WAS DAVID, AND HE WAS ON A MONITOR FOR CRIB  
22 DEATH. AND HELENA DID NOT HAVE MUCH FINANCE TO TAKE CARE OF  
23 HIM, BUT SHE WAS IN THIS GOVERNMENT HOUSING SO, YOU KNOW, THE  
24 RENT WASN'T VERY HIGH. IT WASN'T A BAD PLACE. IT'S JUST THAT  
25 SHE NEEDED HELP. SO, I WOULD GO HELP HER AND I WOULD MAKE

September 18, 2012

McMann/Direct

Page 420

1 SURE THAT DAVID WAS BEING FED FROM THEN ON.

2 Q. AND THIS WOMAN THAT YOU'VE IDENTIFIED AS HELENA, WHAT WAS  
3 HER FULL NAME AS YOU UNDERSTOOD IT?

4 A. HELENA STOECKLEY DAVIS.

5 Q. WHEN YOU SAY THAT YOU HELPED HER, DESCRIBE THAT FOR US,  
6 THAT DAY AND THE LATER DAYS.

7 A. OKAY. MY HUSBAND WAS WORKING AND SO I HAD TIME. MY  
8 OLDER CHILDREN WERE WELL IN AGE IN HIGH SCHOOL AND I HAD TIME  
9 IN THE DAY TO TAKE CARE OF HER AND GO HELP HER BECAUSE I  
10 WANTED TO MAKE SURE SHE WAS GETTING DAVID FED ENOUGH. JUST  
11 BECAME HER FRIEND. WE WERE FRIENDS. AND I WOULD GO OVER  
12 THERE.

13 AND I WOULD PRAY WITH JANET IN THE MORNING BECAUSE  
14 WE BOTH FELT, YOU KNOW, COMPASSION FOR HER NEEDS AND FOR  
15 DAVID'S NEEDS BECAUSE HE WAS NOT REAL, REAL HEALTHY AT THAT  
16 TIME BECAUSE OF THE CRIB DEATH.

17 Q. AND WE'VE TALKED ABOUT THIS WAS 1982. CAN YOU REMEMBER  
18 THE MONTH, MAYBE NOT THE EXACT DATE, BUT THE MONTH IN 1982  
19 WHEN YOU STARTED TO GO OVER AND VISIT HELENA AND HER SON?

20 A. DAVID WAS BORN DURING THE FIRST OF '82, SO HE WAS VERY  
21 SMALL, AND IT WAS THE FIRST WEEK OF AUGUST APPROXIMATELY THAT  
22 THIS ALL HAPPENED, THAT WE MET HER.

23 Q. SO, FROM AUGUST OF 1982 GOING FORWARD YOU HELPED HER.  
24 DID THERE COME A TIME WHERE THAT HELP BECAME A LITTLE BIT MORE  
25 COMPREHENSIVE WHERE YOU DID MORE THAN JUST GO AND VISIT?

September 18, 2012

McMann/Direct

Page 421

1 A. SHE HAD A FRIEND THAT WAS WITH HER AND HE -- IT WAS STEVE  
2 LEWING, OKAY, AND AT ONE POINT SHE WANTED HIM OUT OF THERE AND  
3 HE WASN'T TREATING HER TOO WELL.

4 SO, HE HAD GONE OFF ON A SATURDAY, TOOK HER CAR AND  
5 WENT SO-CALLED FISHING, BUT HE HAD BEEN DRINKING. SO, HE  
6 ROLLED THE CAR OVER AND SHE CALLED ME AND SHE SAYS, NOW, I CAN  
7 COME STAY WITH YOU, I'M FREE, AWAY FROM STEVE, HE'S IN JAIL.

8 Q. IS THAT WHAT SHE DID?

9 A. YEAH, WE WENT AFTER HER AND DAVID AND GOT HER MOVED IN A  
10 HURRY THAT DAY.

11 Q. SO, MOVED FROM WALHALLA GARDENS OVER TO WHERE?

12 A. TO OUR HOME IN KEOWEE KEY, WHICH HAD A GUARD BOOTH TO GO  
13 INTO THE AREA. IT'S A VERY NICE AREA AND SO SHE HAD SECURITY  
14 FROM HIM IN THAT WAY.

15 Q. WAS THIS STILL IN 1982?

16 A. THIS WAS IN OCTOBER -- I THINK IT -- I KNOW IT WAS THE  
17 LAST SATURDAY OF THE MONTH. IT MAY HAVE BEEN OCTOBER 24TH  
18 THAT SHE MOVED -- WE MOVED HER TO OUR HOUSE.

19 Q. AND DO I UNDERSTAND CORRECTLY THAT SHE LIVED WITH YOU  
20 UNTIL DECEMBER 1982?

21 A. YES, SIR, PROBABLY SHORTLY BEFORE CHRISTMAS. WE HAD A  
22 LOT OF FUN. WE WERE DECORATING FOR CHRISTMAS. SHE WAS A VERY  
23 TALENTED WOMAN. I DON'T THINK SHE HAD A LOT OF MUSIC LESSONS,  
24 BUT WE HAD A BABY GRAND PIANO AND SHE PLAYED ALL OVER IT.  
25 JUST IT'S A GIFT, YOU KNOW, SHE WAS ABLE TO PLAY IT. VERY

September 18, 2012



McMann/Direct

Page 422

1 MUSICALLY TALENTED.

2 Q. BETWEEN AUGUST 1982 AND DECEMBER 1982, DID YOU EVER HAVE  
3 OCCASION TO TALK WITH HER ABOUT SOMETHING THAT HAD OCCURRED IN  
4 FAYETTEVILLE?

5 A. I SURELY DID. AND I CAN REMEMBER IN WALHALLA GARDENS WE  
6 JUST WERE TALKING LIKE YOU AND I NOW, OKAY, AND SHE SAID -- WE  
7 SAID WE WERE -- HAD MOVED FROM SOUTHERN PINES AND WE LIVED IN  
8 A HOUSING DEVELOPMENT AND WE WERE RIGHT AT THE EDGE OF FORT  
9 BRAGG. AND THAT WAS AT THE TIME THE CASE WAS GOING ON FOR MR.  
10 MACDONALD IN RALEIGH, OKAY, THE TRIAL. SO, IT WAS ON THE  
11 FRONT PAGE EVERY DAY.

12 WELL, SHE SAID -- THAT NIGHT SHE SAID, WELL, I'M  
13 FROM FAYETTEVILLE. AND WE DID NOT MENTION OR I DIDN'T EVEN  
14 REALIZE WHO SHE WAS THAT NIGHT. BUT SHE SAID I'M FROM  
15 FAYETTEVILLE AND I WAS INVOLVED IN AN FBI CASE AND I JUST  
16 HAVEN'T BEEN ABLE TO GET BACK OVER THERE BECAUSE, YOU KNOW, OF  
17 THAT.

18 AND SO I DIDN'T EVEN THINK ABOUT WHO SHE WAS BECAUSE  
19 I HADN'T MET HER BEFORE, BUT THE NEXT MORNING I WENT  
20 DOWNSTAIRS TO GET SOMETHING FOR MY HUSBAND'S LUNCH AND TO GET  
21 HIM OFF TO WORK AND I -- IT'S LIKE A LIGHT BULB WENT OFF IN MY  
22 HEAD. YOU KNOW HOW YOU JUST -- SOMETHING WILL CONNECT AND I'M  
23 LIKE, OH, MY GOSH, THAT'S HELENA STOECKLEY FROM THE MACDONALD  
24 CASE WE HAD SEEN IN THE NEWSPAPER.

25 AND SO WHAT HAPPENED IS I WENT UPSTAIRS AND I SAID

September 18, 2012

McMann/Direct

Page 423

1 TO MY HUSBAND, DO YOU REALIZE WHO WE MET LAST NIGHT? I SAID  
2 IT WAS HELENA STOECKLEY FROM THE MACDONALD CASE.

3 Q. AND DID THERE COME A TIME THAT YOU TALKED WITH HELENA  
4 ABOUT THAT?

5 A. WELL, SHE HAD SAID THAT MONDAY NIGHT THAT SHE WAS FROM  
6 FAYETTEVILLE, OKAY, AND SAID SHE'D BEEN INVOLVED IN A CASE,  
7 BUT THEN I LET IT BE KNOWN TO HER THAT, YOU KNOW, WE KNEW  
8 ABOUT THE WHOLE SITUATION THAT HAD HAPPENED, YOU KNOW, FROM  
9 THE NEWSPAPER ONLY, THAT IT WAS THE MACDONALD CASE.

10 AND SHE SAYS, WELL, SHE SAID THE MEN THAT DID IT,  
11 SHE SAID THEY ASKED ME TO GO ALONG, THAT THEY WERE GOING TO  
12 ROUGH MACDONALD UP AND I WOULD BECOME A WIZARD IN THE OCCULT  
13 GROUP --

14 COURT REPORTER: I'M SORRY, CAN YOU REPEAT THAT  
15 AGAIN?

16 THE WITNESS: YES, MA'AM. HELENA TOLD ME THAT THEY  
17 -- THAT THE MEN THAT WENT AND DID THE MURDERING, OKAY,  
18 JEFFREY'S WIFE, CHILDREN, AND ALMOST KILLED JEFFREY, THAT THEY  
19 WERE GOING TO ROUGH JEFFREY MACDONALD UP AND THAT SHE WOULD  
20 BECOME A WIZARD IN THE OCCULT GROUP.

21 BY MR. WILLIAMS:

22 Q. I UNDERSTAND.

23 A. OKAY.

24 Q. DID HELENA TELL YOU THAT SHE RAN OUT SCREAMING?

25 A. YES. SHE WAS HAUNTED WITH NIGHTMARES ABOUT THIS.

September 18, 2012

McMann/Direct

Page 424

1 Q. DID SHE SAY ANYTHING ABOUT DR. MACDONALD, ABOUT WHETHER  
2 HE WAS --

3 A. SHE AND I BOTH WANTED TO SEE HIM FREED. WE KNEW HE WAS  
4 NOT GUILTY. I KNOW AS WELL AS I KNOW I'M SITTING HERE TODAY  
5 THAT JEFFREY MACDONALD IS INNOCENT.

6 Q. HELENA MOVED OUT IN DECEMBER OF 1982, I BELIEVE YOU TOLD  
7 US EARLIER.

8 A. BEFORE CHRISTMAS BECAUSE SHE HAD A DRINKING PROBLEM AND  
9 SHE FELT GUILTY AFTER I PRAYED WITH HER TO RECEIVE THE LORD.  
10 SHE JUST FELT GUILTY. I THINK MOST PEOPLE THAT ARE ALCOHOLIC  
11 -- SHE FELT GUILTY ABOUT IT.

12 BUT IT WAS ALSO FOR OUR ADVANTAGE BECAUSE SHE KNEW  
13 SHE WASN'T WELL, OKAY, AND WE HAD TAKEN DAVID AND HER TO SEE  
14 HER PARENTS BECAUSE SHE WANTED TO HAVE DAVID BE SEEN BY HER  
15 PARENTS. SO, WE WENT BACK FOR THE GOLF TOURNAMENT. MY  
16 HUSBAND AND SON LOVE TO GOLF. AND WE MET MR. STOECKLEY IN  
17 ABERDEEN AND HE TOOK DAVID AND HELENA TO HIS HOME TO VISIT  
18 WITH HER MOTHER AND HIM AND HAVE A WEEKEND TOGETHER.

19 Q. DID THERE COME A TIME WHEN HELENA HAD SOME CONVERSATION  
20 WITH YOU ABOUT DAVID HER SON AND WHAT SHE WOULD WANT TO HAVE  
21 HAPPEN WITH DAVID?

22 A. MORE THAN ONCE SHE WOULD HAND HIM TO MY HUSBAND AND I AND  
23 SAY WILL YOU RAISE HIM BECAUSE SHE KNEW SHE WAS DYING. SHE  
24 KNEW SHE HAD -- WAS NOT IN GOOD HEALTH.

25 AT THANKSGIVING TIME SHE WENT BACK OVER AND I

September 18, 2012

McMann/Direct

Page 425

1 BELIEVE THAT'S WHEN MR. BEASLEY MIGHT HAVE COME FOR HER AND  
2 MET HER AND TAKEN HER AND HER FATHER BROUGHT HER BACK.

3           THERE WAS MORE THAN ONE TIME AFTER THE FIRST TIME WE  
4 TOOK HER TO SEE HER PARENTS THAT SHE GOT TO GO BACK AND BE  
5 WITH THEM AND HER SISTER AND THE OTHER -- THE REST OF THE  
6 FAMILY --

7 Q.    MORE THAN ONE TIME?

8 A.    -- THAT WERE THERE IN FAYETTEVILLE.  AND THAT WAS SO GOOD  
9 THAT SHE WAS ABLE TO DO THAT.  AND I'M SORRY, I'M GETTING OFF  
10 OF WHAT YOU ASKED ME.

11 Q.    IT'S OKAY.  YOU'RE FINE.  NO, YOU'RE FINE.  SO, I  
12 UNDERSTOOD YOU TO SAY THAT HELENA SAID THAT HELENA THOUGHT  
13 THAT SHE WAS VERY SICK, THAT SHE THOUGHT SHE DID NOT HAVE MUCH  
14 TIME, AND SHE ASKED YOU TO TAKE CARE OF DAVID?

15 A.    MANY TIMES.  AND SHE --

16 Q.    AFTER HELENA --

17 A.    SHE WENT TO THE DOCTOR WHEN SHE WAS BACK IN FAYETTEVILLE  
18 AT THANKSGIVING AND HE LET HER KNOW SHE WASN'T WELL.

19 Q.    AFTER SHE MOVED OUT, DO YOU HAVE AN UNDERSTANDING OF WHEN  
20 SHE PASSED AWAY?

21 A.    YES, VERY MUCH SO.

22 Q.    AND WHEN WAS THAT?

23 A.    DAVID HAS AN AUNT THAT KIND OF KEPT TRACK OF HER IN  
24 SENECA GARDENS AND THIS WAS IN THE NEXT -- ABOUT THE FIRST  
25 WEEK OF JANUARY.  SHE WASN'T IN SENECA GARDENS VERY LONG.

September 18, 2012

McMann/Direct

Page 426

1 Q. OF WHAT YEAR?

2 A. 1983.

3 Q. SO, SHE PASSED AWAY IN JANUARY OF 1983?

4 A. DAVID WAS SEVEN MONTHS OLD AND HE LAID AND ALMOST DIED  
5 AFTER SHE DIED. HE'S A MIRACLE.

6 Q. WHAT HAPPENED TO DAVID AFTER SHE PASSED AWAY?

7 A. HE BECAME A WARD OF THE STATE BECAUSE HIS DAD WAS  
8 INCARCERATED. AND HE WENT TO -- FIRST HE WAS HOSPITALIZED  
9 BECAUSE HE WAS ALMOST DEHYDRATED. THEY PUT AN I.V. IN HIS  
10 ANKLE.

11 Q. WAS HE PUT INTO THE COURT SYSTEM?

12 A. YES. WE BECAME FOSTER PARENTS IN ORDER TO RAISE HIM AT  
13 FIRST. WE HAD TO BECAUSE THAT WAS THE SITUATION. AND A LADY  
14 IN WESTMINSTER, SOUTH CAROLINA, WHICH IS HIS ADDRESS NOW, HAD  
15 HIM FIRST BECAUSE WE WEREN'T QUALIFIED AS FOSTER PARENTS. WE  
16 WORKED THROUGH SOCIAL SERVICE IN OCONEE COUNTY.

17 Q. AND WHO ENDED UP RAISING DAVID?

18 A. WE HAVE. HE'S OUR SON BY LEGAL GUARDIANSHIP BECAUSE HIS  
19 DAD IS STILL LIVING AND HE HAS A GOOD RELATIONSHIP WITH US AND  
20 HIS FATHER. HE'S MARRIED AND HAS A PRECIOUS SON.

21 Q. OKAY. NOW, I WANT TO DIRECT YOUR ATTENTION AGAIN BACK TO  
22 THIS PERIOD 1982, 1983. WAS THERE A TIME THAT YOU TALKED WITH  
23 PRINCE BEASLEY BY TELEPHONE?

24 A. ONE TIME THAT I CAN REMEMBER.

25 Q. AND I'M GOING TO DIRECT YOUR ATTENTION TO THE SCREEN IN

September 18, 2012

McMann/Direct

Page 427

1 FRONT OF YOU. DEFENSE EXHIBIT 5077.

2 A. I KNOW MR. BEASLEY WENT TO HIS DEATH BED WANTING TO CLEAR  
3 JEFFREY MACDONALD BECAUSE I KNOW HE HELD THE MEN THAT DID IT.

4 Q. ALL RIGHT. AND IF YOU COULD READ THIS STATEMENT STARTING  
5 WITH WHERE IT SAYS I TALKED, BEFORE THE YELLOW.

6 A. I TALKED WITH MRS. SARA MCMANN BY TELEPHONE IN REFERENCE  
7 TO HELENA STOECKLEY DAVIS AND THE JEFFREY MACDONALD MURDER  
8 CASE.

9 Q. ALL RIGHT. AND THEN KEEP READING THE PART THAT'S IN THE  
10 YELLOW.

11 A. OKAY. MY EYESIGHT ISN'T THE BEST FOR THIS, BUT SHE  
12 STATED TO ME THAT --

13 Q. LET ME SEE IF I CAN MAKE IT JUST A LITTLE LARGER.

14 A. OKAY.

15 Q. DOES THAT HELP?

16 A. YES. SHE STATED TO ME THAT SHE BEFRIENDED HELENA AND HER  
17 SMALL SON DAVID FOR QUITE SOME TIME BEFORE HER DEATH. SHE  
18 STATED THAT SHE AND HELENA HAD TALKED SEVERAL TIMES ABOUT THE  
19 MACDONALD MURDER. SHE STATED THAT HELENA HAD ADMITTED TO HER  
20 THAT SHE WAS A WITNESS TO THE MURDERS, BUT TOOK NO ACTIVE PART  
21 IN THEM. SHE TOLD MRS. MCMANN THAT DR. MACDONALD WAS NOT  
22 GUILTY AND THAT SHE WAS GOING TO HELP HIM.

23 Q. AND THEN THE NEXT YELLOW PART THERE?

24 A. SHE STATED THAT HELENA SEEMED TO BE VERY WORRIED OVER  
25 THIS SITUATION.

September 18, 2012

1 Q. ALL RIGHT. I UNDERSTAND THAT YOU DID NOT WRITE THIS  
2 NOTE, BUT IS THAT AN ACCURATE SUMMARY OF SOME OF THE THINGS  
3 YOU'VE TOLD US TODAY?

4 A. YES, PRETTY MUCH OF IT SEEMS TO BE.

5 (DEFENSE EXHIBIT NUMBER 5077

6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. AND IF YOU'LL LOOK AT THE TOP RIGHT OF THE SCREEN, YOU'LL  
8 SEE A DATE THERE IN RED.

9 A. FEBRUARY 26TH, 1983.

10 Q. AND I'M NOT ASKING YOU TO GIVE US THE EXACT DAY THAT YOU  
11 SPOKE WITH PRINCE BEASLEY BY TELEPHONE, BUT I WILL ASK YOU  
12 THIS, WAS IT SOMETIME IN EITHER 1982 OR 1983?

13 A. IT WAS BEFORE HELENA DIED SO IT WAS IN '82.

14 Q. OKAY. AND WHERE IT SAYS KEOWEE KEYS, THAT'S A NAME THAT  
15 YOU MENTIONED EARLIER.

16 A. UH-HUH.

17 Q. IS THAT WHERE YOU LIVED?

18 A. YES. IT WASN'T -- THAT WASN'T THE ADDRESS, BUT THAT WAS  
19 THE NAME OF THE -- IT WAS KEOWEE KEYS WAS THE BUILDING NAME OF  
20 THE AREA.

21 Q. THE SUBDIVISION?

22 A. IT WAS A RESORT AREA OF THE LAKES.

23 Q. AND SALEM, SOUTH CAROLINA, WHAT IS THAT?

24 A. SALEM, THAT WAS THE CITY. IT'S A VERY SMALL PLACE.

25 Q. OKAY.

McMann/Direct

Page 429

1 A. AND PART OF OUR ADDRESS. OUR ADDRESS WASN'T KEOWEE KEYS,  
2 THAT WAS JUST THE NAME OF THE PLACE, BUT IT WAS IN SALEM,  
3 SOUTH CAROLINA, THAT'S CORRECT.

4 Q. OKAY. NOW, IF WE LOOK FURTHER DOWN INTO THIS STATEMENT,  
5 THERE'S ALSO A REFERENCE AT THE BOTTOM THAT PRINCE BEASLEY  
6 WROTE, MR. BEASLEY WROTE, SAYING THAT YOUR HUSBAND DID NOT  
7 WANT TO SPEAK WITH HIM AND DID NOT WANT YOU TO SPEAK WITH HIM  
8 BECAUSE A POLYGRAPH HAD ALREADY SHOWED HELENA WAS TELLING THE  
9 TRUTH AND THE DOCTOR SAID SHE WAS ALL RIGHT.

10 IS IT FAIR TO SAY THAT PART OF THE STATEMENT IS  
11 PROBABLY NOT YOUR RECOLLECTION?

12 A. MY HUSBAND WASN'T AGAINST ANYTHING THAT WE DID AT ALL.  
13 WE WERE IN ONE ACCORD ABOUT EVERYTHING. SO, I DON'T KNOW WHAT  
14 THIS IS SAYING. CAN WE GO OVER THIS AGAIN?

15 Q. SURE. AND YOU CAN READ IT THERE. WHAT I'M ASKING YOU IS  
16 THE PARTS WE JUST READ IN YELLOW, THE PARTS THAT YOU READ, I  
17 BELIEVE YOU TOLD US THOSE WERE ACCURATE.

18 A. YEAH, EVERYTHING'S PRETTY MUCH ACCURATE, BUT MY HUSBAND  
19 AND I WERE IN ONE ACCORD TO HELP HER, TAKE CARE OF HER AND TO  
20 RAISE DAVID.

21 Q. AND IF PRINCE BEASLEY MISUNDERSTOOD THAT THEN THAT --

22 A. I DON'T KNOW WHAT HE WAS THINKING THERE ABOUT ANYTHING  
23 REALLY.

24 Q. BUT THAT WOULD BE --

25 A. BECAUSE I JUST TALKED TO HIM ONE TIME AND MY HUSBAND WAS

September 18, 2012



McMann/Cross

Page 430

1 USUALLY AT WORK AND, YOU KNOW, WE JUST -- WE WERE A FAMILY  
2 WITH HER.

3 Q. I UNDERSTAND. LET ME TAKE YOU BACK UP A LITTLE HIGHER  
4 INTO THE STATEMENT. YOU MENTIONED THAT YOU FOUND OR HE SAYS  
5 YOU MENTIONED THAT TWO BOTTLES OF VODKA WERE FOUND IN THE  
6 HOUSE BEFORE SHE MOVED OUT. IS THAT WHAT YOU WERE TELLING US  
7 ABOUT HELENA STILL HAD A DRINKING PROBLEM?

8 A. SHE DID HAVE A DRINKING PROBLEM. AT NIGHT PROBABLY  
9 MOSTLY WHEN SHE -- YOU KNOW, SHE WOULD EAT A GOOD MEAL, BUT AT  
10 NIGHT I THINK WHEN SHE COULDN'T SLEEP WELL SHE WOULD PROBABLY  
11 BE DRINKING THE MOST, BUT I NEVER REALLY SAW HER IN A REAL  
12 DRUNKEN STATE WHERE SHE WASN'T IN CONTROL OR ANYTHING. SHE  
13 WOULD PUT IT IN A DIAPER BAG.

14 Q. I UNDERSTAND. AND, MS. MCMANN, THERE'S ALSO A REFERENCE  
15 HERE IN THE BEASLEY STATEMENT THAT YOU HAD TOLD HIM ABOUT AN  
16 FBI AGENT BY THE NAME OF FRANK MILLS WHO HAD COME OVER TO  
17 VISIT ONE DAY. TELL US ABOUT THAT.

18 A. HE JUST CAME OVER TO WHERE I WAS TEACHING PIANO AT THE  
19 CHURCH WHERE WE PRAYED FOR THEM IN THE BEGINNING WHERE WE  
20 ATTENDED CHURCH. AND HE FELT, I BELIEVE, THAT JEFFREY WAS  
21 GUILTY. AND I JUST TOLD HIM, I SAID, ALL HELENA -- I TOLD HIM  
22 RIGHT THERE IN THE CHURCH BEFORE WE CAME OUT TO OUR HOUSE, I  
23 SAID ALL HELENA AND I WANT TO DO IS SEE HIM FREE, BUT THAT  
24 WOULD HAVE ALSO PUT HER IN JEOPARDY BECAUSE SHE WAS THERE THAT  
25 NIGHT. I DON'T KNOW IF I STATED THAT, BUT AS WELL AS I KNOW

September 18, 2012

McMann/Cross

Page 431

1 I'M SITTING HERE, HELENA WAS THERE THAT NIGHT. I'VE ALREADY  
2 SAID WHY SHE WENT. SHE DIDN'T INTEND TO MURDER ANYBODY, BUT  
3 SHE WENT THAT NIGHT.

4 MR. WILLIAMS: IF I COULD HAVE JUST A MINUTE, YOUR  
5 HONOR?

6 (PAUSE.)

7 MR. WILLIAMS: THANK YOU, YOUR HONOR.

8 THE COURT: CROSS.

9 MS. COOLEY: THANK YOU, YOUR HONOR.

10 C R O S S - E X A M I N A T I O N 4:01 P.M.

11 BY MS. COOLEY:

12 Q. GOOD AFTERNOON, MS. MCMANN, CAN YOU HEAR ME? I'M RIGHT  
13 HERE.

14 A. YES, MA'AM.

15 Q. HI, THERE. I'M LESLIE COOLEY. I'M GOING TO ASK YOU A  
16 COUPLE OF QUESTIONS IF THAT'S ALL RIGHT.

17 A. SURE.

18 Q. OKAY. I WANT TO FIRST ASK YOU, YOU SAID THAT YOU FIRST  
19 MET HELENA IN AUGUST OF 1982, IS THAT RIGHT?

20 A. YES.

21 Q. BUT SHE DIDN'T MOVE IN WITH YOU UNTIL SEVERAL MONTHS  
22 AFTER THAT?

23 A. RIGHT. IT WAS THE LAST SATURDAY IN OCTOBER.

24 Q. OKAY.

25 A. BUT I WOULD GO SEE HER IN WALHALLA GARDENS.

September 18, 2012

McMann/Cross

Page 432

1 Q. AND YOU MENTIONED THAT WHEN SHE WAS LIVING WITH YOU, THE  
2 REASON WHY SHE ENDED UP HAVING TO MOVE OUT IS BECAUSE OF HER  
3 DRINKING, IS THAT A FAIR STATEMENT?

4 A. YES, SHE JUST FELT SHE SHOULD GO ON ELSEWHERE.

5 Q. AND SUFFICE IT TO SAY, IT WAS A PROBLEM FOR HER. YOU  
6 FOUND THE VODKA BOTTLES IN HER ROOM AND --

7 A. WE NEVER GAVE HER --

8 Q. -- YOU SAID SHE WOULD HIDE IT IN HER DIAPER BAG?

9 A. YEAH. WE NEVER GAVE HER ANY PUNISHMENT. WE WERE JUST  
10 ONE HAPPY FAMILY AND WE KNEW ABOUT HER DRINKING, BUT SHE KNEW  
11 WE KNEW AND SHE DID HAVE THAT PROBLEM.

12 Q. SURE. AND I DON'T MEAN THAT IT WAS A PROBLEM -- THAT YOU  
13 HAD A PROBLEM WITH HER, I MEAN THAT SHE HAD A PROBLEM WITH  
14 ALCOHOL.

15 A. WELL, WHAT I MIGHT SAY IS FOR OUR OWN GOOD -- I DIDN'T  
16 EVEN KNOW SHE WAS GOING TO MOVE OUT, BUT FOR OUR OWN GOOD,  
17 AFTER SHE DIED -- I'M GLAD SHE DIDN'T DIE IN OUR HOME BECAUSE  
18 THAT WOULD HAVE PRESENTED A PROBLEM FOR US WITH ALL THE THINGS  
19 THAT WERE INVOLVED. SO, MAYBE THAT WAS PART OF IT TOO.

20 I DON'T KNOW WHY SHE DECIDED TO GO. SHE DIDN'T EVEN  
21 SAY FOR SURE SHE WAS GOING TO GO UNTIL THE LAST MINUTE, BUT IT  
22 WAS FOR OUR GOOD NOW THAT I LOOK BACK ON IT BECAUSE IF SHE HAD  
23 DIED IN OUR HOME WE WOULD HAVE BEEN QUESTIONED.

24 Q. AND ABOUT HER DEATH, YOU SAID SHE WAS LIVING IN SENECA  
25 GARDEN APARTMENTS?

September 18, 2012

McMann/Cross

Page 433

1 A. YES. SHE WENT FROM ONE -- THE GOVERNMENT HOUSING IN  
2 WALHALLA TO SENECA, WHICH THEY'RE MAYBE EIGHT MILES APART.  
3 THEY'RE CLOSE.

4 Q. AND YOU SAID SHE DIED IN JANUARY OF 1983, IS THAT RIGHT?

5 A. YES.

6 Q. AND WERE YOU AWARE AT THE TIME THAT THEY FOUND HER BODY  
7 THAT SHE HAD BEEN DEAD IN THERE FOR SEVERAL DAYS?

8 A. WHAT HAPPENED IS HER AUNT WENT TO SEE HER AND SAW HER  
9 THROWING UP AND NOT WELL AND SHE COULDN'T GET IN. SHE DIDN'T  
10 LET HER IN.

11 SO, WHAT HAPPENED WAS FAYE DAVIS, HER AUNT, THOUGHT  
12 SHE MIGHT HAVE DIED ON MONDAY AND BY FRIDAY NOON THEY FOUND  
13 HER.

14 THE MAINTENANCE MAN OF SENECA GARDENS SAW BLOW  
15 FLIES ON THE WINDOW. PEOPLE THOUGHT THERE WAS SOMETHING WRONG  
16 BECAUSE PEOPLE LIVING AROUND THERE DIDN'T SEE HER COMING AND  
17 GOING.

18 BUT I WENT TO VISIT HER, I BELIEVE MY HUSBAND AND I,  
19 ONE TIME AFTER SHE MOVED BECAUSE WE NO LONGER FELT THE NEED TO  
20 HELP WITH DAVID. SHE HAD GOTTEN A CHECK AND WAS, YOU KNOW,  
21 DOING BETTER AS FAR AS I WAS CONCERNED. I DIDN'T GO THERE  
22 LIKE I DID AS MUCH AS I DID IN THE BEGINNING.

23 Q. SURE. BECAUSE WHEN SHE HAD MOVED OUT, YOU SAID THAT SHE  
24 HAD KIND OF GOTTEN IT TOGETHER?

25 A. YEAH, WE JUST FELT LIKE, WELL, SHE WAS CLOSE TO FAYE AND

September 18, 2012

McMann/Cross

Page 434

1 FAYE WAS AS CLOSE A FRIEND TO HER AND THEY LIVED AT SENECA.  
2 THAT'S DAVID'S BROTHER'S -- HALF BROTHER'S WIFE. FAYE AND I  
3 WERE LIKE HELENA ONLY WE STILL ARE VERY CLOSE. WE'RE ONE  
4 FAMILY. I TOOK DAVID TO SEE ERNEST EVERY WEEK --

5 Q. WHEN HE WAS IN PRISON?

6 A. -- IN THE BEGINNING.

7 Q. ERNEST WHEN HE WAS IN PRISON?

8 A. (WITNESS NODS HEAD.) WE ARE STILL VERY CLOSE.

9 Q. AND YOU SAID THAT SHE MOVED OUT AND SHE WAS DOING WELL AT  
10 THE TIME. YOU'RE AWARE THAT SHE DIED FROM BRONCHIAL  
11 PNEUMONIA, RIGHT?

12 A. YEAH. SHE KNEW SHE WASN'T WELL. SHE WAS AN INTELLIGENT  
13 WOMAN AND SHE SAID TO US IF SOMETHING HAPPENS TO ME, WILL YOU  
14 PLEASE RAISE DAVID? SHE'D GO LIKE THIS TO HAND HIM AND  
15 MOTION. SHE SAID THIS TO MY HUSBAND AND I BOTH.

16 Q. AND NOW I WANT TO BACK UP JUST A MINUTE.

17 A. YES, MA'AM.

18 Q. YOU FIRST BECAME AWARE OF HER SITUATION WHEN YOU WERE IN  
19 CHURCH, IS THAT RIGHT?

20 A. UH-HUH.

21 Q. ALL RIGHT. AND THEN AFTER YOU WENT TO VISIT HER, SHE HAD  
22 MENTIONED BEING INVOLVED WITH THE FBI IN FAYETTEVILLE AND IT  
23 CLICKED WITH YOU THAT SHE WAS SOMEHOW INVOLVED WITH THE  
24 MACDONALD CASE, IS THAT RIGHT?

25 A. WELL, HER PICTURE WAS IN THE NEWSPAPER AND WE EVERY DAY

September 18, 2012

McMann/Cross

Page 435

1 -- YOU KNOW, WE WERE LIVING IN SOUTHERN PINES RIGHT BY FORT  
2 BRAGG. WE COULD GET TO FAYETTEVILLE BY GOING ACROSS FORT  
3 BRAGG BECAUSE THE ALLOTMENT WHERE WE LIVED WAS RIGHT AT THE  
4 EDGE OF FORT BRAGG. WE LIVED THERE THREE YEARS; '78, '79 AND  
5 '80.

6 Q. AND SO IT'S FAIR TO SAY YOU FOLLOWED THE MACDONALD CASE  
7 PRETTY CLOSELY WHEN YOU WERE LIVING IN --

8 A. JUST IN THE NEWSPAPER, RIGHT.

9 Q. AND YOU SAID THAT SHE HAD A FRIEND LIVING WITH HER, STEVE  
10 SOMEONE?

11 A. STEVE LEWING.

12 Q. LEWING?

13 A. JUST A BOYFRIEND. BUT SHE AND I WOULD TAKE DAVID AND GO.  
14 I WOULD TAKE THEM TO SEE ERNEST AND SHE WAS LIKE, YOU KNOW,  
15 WHAT IS THERE FOR ME? MY HUSBAND'S IN JAIL. I'M NOT SAYING  
16 SHE DIDN'T LOVE HER HUSBAND.

17 Q. AND I WANT TO TALK WITH YOU FOR A MOMENT ABOUT WHAT SHE  
18 SAID HAPPENED. SO, ACCORDING TO WHAT YOU'VE TESTIFIED ABOUT  
19 ON DIRECT EXAMINATION, HELENA TOLD YOU THAT ON THE NIGHT OF  
20 THE MACDONALD MURDERS SHE WENT WITH A GROUP OF INDIVIDUALS --

21 A. MEN. THREE MEN.

22 Q. -- AND THEY ASKED HER TO GO ALONG IN ORDER FOR HER TO  
23 BECOME A WIZARD IN THE OCCULT GROUP, IS THAT RIGHT?

24 A. YEAH, THEY SAID COME ALONG, WE'RE GOING TO ROUGH  
25 MACDONALD UP, AND YOU'LL BECOME A WIZARD IN THE OCCULT GROUP

September 18, 2012

McMann/Cross

Page 436

1 IF SHE GOES. BIGGEST MISTAKE OF HER LIFE.

2 Q. SO, SORT OF LIKE A GANG INITIATION OR SOMETHING?

3 A. UH-HUH.

4 Q. NOW, PRINCE BEASLEY, YOU SAID THAT YOU HAD MET HIM ON ONE  
5 OCCASION, IS THAT RIGHT?

6 A. I DON'T -- I DID NOT MEET HIM. I ONLY TALKED TO HIM ON  
7 THE PHONE AND HE REALLY WANTED TO SEE JEFFREY FREED BECAUSE HE  
8 HELD THE MEN THAT DID IT.

9 Q. I'M SORRY, HE HELPED THE MEN?

10 A. HE HELD THE MEN THAT DID IT.

11 Q. HE HELD THE MEN. NOW, THE TIME THAT YOU TALKED WITH HIM  
12 -- YOU ONLY SPOKE WITH HIM ONE TIME ON THE PHONE. DID YOU  
13 TALK WITH HIM ABOUT -- OR HELENA ABOUT HIM AT ALL?

14 A. DID I TALK TO HELENA ABOUT HIM?

15 Q. ABOUT BEASLEY.

16 A. YEAH, HE CALLED IN ORDER TO MAKE ARRANGEMENTS WITH HELENA  
17 TO HELP HER GET HOME AGAIN.

18 Q. AND SO THAT WAS ON A SEPARATE OCCASION FROM THE TIME WHEN  
19 YOU CALLED HIM AND GAVE HIM THE STATEMENT THAT RESULTED IN  
20 THIS WRITTEN STATEMENT FROM HIM?

21 A. NO, THE ONLY TIME I TALKED TO HIM THAT I CAN REMEMBER IS  
22 ONE TIME ON THE PHONE, BUT I BELIEVE HELENA TALKED TO HIM MORE  
23 BECAUSE WE HAD A HOME PHONE. I WOULD GO TEACH PIANO AT THE  
24 CHURCH AND SHE HAD -- SHE WAS THERE AT THE HOUSE. YOU KNOW, I  
25 HAD DAVID THE DAY THE -- YOU KNOW, THAT THEY CAME, THE FBI MAN

September 18, 2012

McMann/Cross

Page 437

1 CAME.

2 Q. MR. MILLS, SPECIAL AGENT MILLS?

3 A. HE CAME TO THE CHURCH AND DAVID WAS WITH ME SO I JUST  
4 LEFT HER AT HOME, YOU KNOW, AND I TAUGHT PIANO AND I CAME BACK  
5 AND I TOLD MR. MILLS HE COULD COME TO THE HOUSE FROM THE  
6 CHURCH. AND HE WANTED TO TALK TO HELENA, BUT HE WASN'T IN ONE  
7 ACCORD WITH WHAT WE BELIEVED AND WHAT HE BELIEVED AND SHE JUST  
8 DIDN'T WANT TO BE BOTHERED ABOUT IT. SHE SAID, YOU KNOW, I'M  
9 NOT GOING TO SIGN ANYTHING.

10 Q. SURE. AND JUST TO MAKE SURE WE'RE CLEAR, THAT'S MR.  
11 MILLS, SPECIAL AGENT FRANK MILLS, WITH THE FBI?

12 A. (WITNESS NODS HEAD.)

13 Q. AND I'M TALKING ABOUT A SEPARATE PERSON. I'M TALKING  
14 ABOUT PRINCE BEASLEY WHO WAS A FORMER DETECTIVE IN  
15 FAYETTEVILLE.

16 A. THOSE ARE THE ONLY TWO PEOPLE THAT I HAD ANY ASSOCIATION  
17 WITH ABOUT THIS SITUATION. I KNOW MR. MILLS CAME TO ME AT  
18 CHURCH AND MR. BEASLEY TALKED TO ME ON THE PHONE ONE TIME  
19 BECAUSE SHE -- YOU KNOW, THEY WOULD CALL OUR HOUSE. WHAT I'M  
20 SAYING IS IT WAS A HOUSE PHONE.

21 Q. RIGHT.

22 A. SO, IF SHE WAS THERE, SHE COULD HAVE ANSWERED IT OR SHE  
23 COULD HAVE CALLED HIM.

24 Q. SURE.

25 A. SHE WAS --

September 18, 2012



McMann/Cross

Page 438

1 Q. AND SHE HAD A RELATIONSHIP WITH PRINCE BEASLEY?

2 A. SHE WAS -- HAD A RELATIONSHIP OF HELPING WITH HIM AND HE  
3 HELPED HER GET HOME TO VISIT HER PARENTS JUST LIKE WE DID.

4 Q. AND YOU WERE AWARE THAT HER RELATIONSHIP WITH PRINCE  
5 BEASLEY LASTED OVER SOME PERIOD OF TIME, IS THAT RIGHT?

6 A. WELL, YOU KNOW, THEY WERE BOTH WORKING TOGETHER KIND OF  
7 ON THIS THING I THINK, YOU KNOW.

8 Q. AND WERE YOU AWARE THAT THE TWO OF THEM HAD A BOOK DEAL  
9 IN THE WORKS WITH A MAN NAMED FRED BOST?

10 A. NO, I DIDN'T KNOW ABOUT THAT. SHE MIGHT HAVE TOLD ME,  
11 BUT I DON'T REMEMBER THAT.

12 Q. WERE YOU AWARE THAT SHE WENT TO CALIFORNIA WITH PRINCE  
13 BEASLEY OR THAT HE PROMISED HER A NEW IDENTITY OR ANY OF THOSE  
14 THINGS?

15 A. NO, I DIDN'T KNOW ABOUT THAT AT ALL.

16 Q. NOW, I WANT TO GO BACK JUST BRIEFLY TO THE NIGHT OF THE  
17 MACDONALD MURDERS. YOU SAID THAT PRINCE BEASLEY, THAT HE HELD  
18 THEM. WHEN YOU SAY HE HELD THEM, WHAT ARE YOU REFERRING TO?

19 A. I'M REFERRING TO WHEN THE MURDERS HAPPENED AS FAR AS I  
20 UNDERSTAND, OKAY, THAT HE DID HOLD THE MEN THAT WERE GUILTY  
21 FOR 48 HOURS.

22 Q. HE HELD THEM FOR 48 HOURS?

23 A. THAT'S WHAT I --

24 Q. AT THE POLICE DEPARTMENT OR --

25 A. I DON'T KNOW. I DON'T KNOW MILITARY LAW.

September 18, 2012

McMann/Redirect

Page 439

1 Q. AND THAT ALL CAME FROM HELENA OR FROM MR. BEASLEY?

2 A. IT COULD HAVE COME FROM HIM WHEN WE TALKED. IT'S BEEN A  
3 LONG TIME AGO AND I'M NOT POSITIVE OF THAT ANSWER.

4 Q. AND NOW SPEAKING FURTHER OF MR. BEASLEY, YOU'VE  
5 CHARACTERIZED HIM AS PRETTY PASSIONATE ABOUT FREEING JEFFREY  
6 MACDONALD, IS THAT A FAIR STATEMENT?

7 A. I JUST THINK HE WANTED TO DO WHAT WAS RIGHT. I DON'T  
8 KNOW HIM, DIDN'T KNOW HIM, YOU KNOW, I JUST --

9 Q. AND YOU HAD A CHANCE TO LOOK AT THE STATEMENT THAT HE  
10 WROTE DOWN ABOUT YOUR CONVERSATION AND I TAKE IT THAT YOU  
11 PROBABLY HAVEN'T SEEN THAT BEFORE YOU WERE CALLED AS A WITNESS  
12 IN THIS HEARING, IS THAT RIGHT?

13 A. WELL, I DIDN'T REALLY HAVE A LOT OF -- I GUESS MY PROBLEM  
14 IS I DON'T HAVE A LOT OF MEMORY OF EXACTLY WHAT WE SAID ON THE  
15 PHONE. YOU KNOW, IT WAS A ONE TIME THING. BUT I THINK HE DID  
16 PROBABLY ASK ME SOME QUESTIONS AND I WAS THE ONLY ONE THERE.  
17 MY HUSBAND HAD NO INVOLVEMENT WITH THAT.

18 WE WERE IN ONE ACCORD ABOUT TRYING TO HELP HELENA  
19 MOSTLY KEEP ALIVE AND DAVID TO KEEP ALIVE. OUR WHOLE THING  
20 WAS A MINISTRY TO HER AND -- MAYBE I SHOULD SAY THIS. I DID  
21 WRITE TO JEFFREY TELLING HIM I KNEW HE WAS INNOCENT. I FEEL  
22 COMPASSION BECAUSE I KNOW THE TRUTH.

23 Q. AND WHEN WAS THAT? WHEN DID YOU WRITE TO --

24 A. I DON'T REMEMBER. IT WAS AFTER WE GOT DAVID.

25 Q. IT WAS AFTER YOU GOT DAVID. SO, IT WAS AFTER YOU HAD

September 18, 2012

McMann/Redirect

Page 440

1 BEEN IN TOUCH WITH HELENA?

2 A. I FELT I WOULD LIKE TO HELP HIM.

3 Q. AND SO YOU'RE HERE TODAY SO THAT YOU CAN DO YOUR PART TO  
4 HELP HIM?

5 A. (WITNESS NODS HEAD.)

6 MS. COOLEY: I HAVE NOTHING FURTHER, YOUR HONOR.

7 THE COURT: REDIRECT.

8 MR. WILLIAMS: YES, SIR, YOUR HONOR, IF I COULD.

9 R E D I R E C T E X A M I N A T I O N 4:12 P.M.

10 BY MR. WILLIAMS:

11 Q. MS. MCMANN, I'M GOING TO DIRECT YOUR ATTENTION TO THE  
12 SCREEN WHERE I'M GOING TO PLACE DEFENSE EXHIBIT 5019, AND I'LL  
13 MAKE THIS LARGER SO THAT IT'S EASIER TO SEE, AND I'M GOING TO  
14 ASK YOU TO READ WHAT'S STATED THERE AT THE TOP OF THE SCREEN?

15 A. DECLARATION OF PRINCE E. BEASLEY.

16 (DEFENSE EXHIBIT NUMBER 5019

17 WAS IDENTIFIED FOR THE RECORD.)

18 Q. ALL RIGHT. AND I'M GOING TO PAGE FORWARD TO THE END OF  
19 THE DOCUMENT AND ASK YOU IF THERE IS A SIGNATURE LINE THERE  
20 AND IF YOU COULD -- IF YOU SEE THAT, READ THE NAME THAT'S  
21 UNDER IT.

22 A. PRINCE E. BEASLEY.

23 Q. ALL RIGHT. AND THEN THE NEXT PARAGRAPH WHERE IT STARTS  
24 THE WORD ON, IF YOU COULD READ THAT FOR US, PLEASE.

25 A. ON MARCH 27TH, 1994, BEFORE ME, THE UNDERSIGNED, A NOTARY

September 18, 2012

1 PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED  
2 PRINCE E. BEASLEY, PERSONALLY KNOWN TO BE OR PROVED TO ME ON  
3 THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME  
4 IS SUBSCRIBED TO WITHIN INSTRUMENT AND ACKNOWLEDGMENT THAT HE  
5 EXECUTED THE SAME. WITNESS MY HAND AND OFFICIAL SEAL.

6 Q. AND IT HAS A NOTARY PUBLIC SIGNATURE?

7 A. OKAY.

8 Q. DO YOU SEE THAT THERE?

9 A. YEAH. DO YOU WANT ME TO READ THAT?

10 Q. NO, THAT'S OKAY.

11 A. OKAY.

12 Q. LOOK AT THE DATE FOR ME ONE MORE TIME. ON MARCH 27TH,  
13 WHAT IS THE YEAR?

14 A. OH, 1984.

15 Q. OKAY. NOW, I'M GOING TO DIRECT YOUR ATTENTION BACK TO AN  
16 EARLIER PART OF THIS DOCUMENT AND IF YOU COULD PLEASE READ THE  
17 SECTION IN YELLOW.

18 A. EARLY THE NEXT MORNING I SET UP SURVEILLANCE AT HELENA  
19 STOECKLEY'S APARTMENT AT 1108 CLARK STREET, FAYETTEVILLE. AT  
20 APPROXIMATELY 2:15 A.M. ON FEBRUARY 18TH, 1970, STOECKLEY AND  
21 TWO OR THREE MEN PULLED UP IN AN OLD FADED YELLOW CAR WITH OUT  
22 OF STATE PLATES.

23 I BLOCKED THEIR CAR IN THE DRIVEWAY WITH MY CAR AND  
24 CALLED OUT TO HELENA. AS SHE APPROACHED MY CAR, THE MEN  
25 FOLLOWED AS IF TO PROTECT HER. SHE TOLD THEM IT WAS ALL RIGHT

September 18, 2012

1 AND THEY WENT BACK TO THEIR CAR.

2           BEFORE I SAID ANYTHING, HELENA SAID TO ME THAT SHE  
3 KNEW WHY I WAS THERE TO SEE HER AND ASKED, MR. BEASLEY, DO YOU  
4 WANT TO SEE MY ICE PICK? I TOLD HER I DID NOT THINK HER  
5 STATEMENT WAS FUNNY. I ASKED HER IF SHE WAS INVOLVED IN THE  
6 FORT BRAGG MURDERS. SHE SAID SHE THOUGHT SHE WAS PRESENT WHEN  
7 IT HAPPENED AND COULD REMEMBER HOW AWFUL IT WAS.

8 Q. ALL RIGHT. I'M GOING PAGE DOWN A LITTLE FURTHER. CAN  
9 YOU READ THE FIRST LINE THERE AT PARAGRAPH 12, THE NEXT  
10 PARAGRAPH?

11 A. AFTER NUMBER 12?

12 Q. YES.

13 A. I RADIOED THE POLICE DEPARTMENT AND ADVISED THEM TO CALL  
14 THE ARMY CID. I TOLD THEM I HAD FOUND SUSPECTS IN THE  
15 MURDERS. OVER AN HOUR PASSED AND NO ASSISTANCE ARRIVED. SO,  
16 I WAS FORCED TO RELEASE THEM BECAUSE THEY BECAME THREATENING  
17 TO ME.

18 Q. IS THAT WHAT YOU WERE SPEAKING OF WHEN YOU WERE ASKED ON  
19 CROSS AND YOU HAD SAID THAT IT WAS YOUR UNDERSTANDING HE WAS  
20 FORCED TO RELEASE THE PEOPLE HE HAD CAUGHT IN THE MURDERS?

21 A. I DIDN'T KNOW THAT.

22 Q. BUT DOES THAT -- IS THAT CONSISTENT WITH WHAT YOU WERE  
23 TELLING US EARLIER?

24 A. WELL, IT CERTAINLY DOES APPLY, DOESN'T IT?

25           MR. WILLIAMS: THANK YOU, YOUR HONOR.

McMann/Redirect

Page 443

1 MS. COOLEY: IF I MAY HAVE JUST ONE MOMENT, YOUR  
2 HONOR?

3 THE COURT: YES.

4 MS. COOLEY: THANK YOU.

5 (PAUSE.)

6 MS. COOLEY: I HAVE NOTHING FURTHER, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN. YOUR NEXT WITNESS.

8 MR. WIDENHOUSE: JERRY LEONARD.

9 THE WITNESS: GO AHEAD?

10 MR. WILLIAMS: YOUR HONOR, CAN WE RELEASE MS.

11 MCMANN?

12 MR. BRUCE: NO OBJECTION.

13 THE COURT: CERTAINLY.

14 (PAUSE.)

15 MR. WILLIAMS: YOUR HONOR, COULD WE APPROACH THE

16 BENCH?

17 THE COURT: YES, SIR.

18 (BENCH CONFERENCE ON THE RECORD.)

19 THE COURT: MR. WEST.

20 MR. WEST: GOOD AFTERNOON, YOUR HONOR.

21 THE COURT: I UNDERSTAND YOU REPRESENT MR. LEONARD.

22 MR. WEST: YES, SIR.

23 THE COURT: HE REPRESENTS MR. LEONARD.

24 MR. BRUCE: THAT'S FINE WITH ME.

25 MR. WILLIAMS: YOUR HONOR, WE JUST WANT TO LET THE

September 18, 2012

McMann/Redirect

Page 444

1 COURT KNOW THAT WE --

2 COURT REPORTER: MR. WILLIAMS, COULD YOU --

3 MR. WILLIAMS: I'M SORRY.

4 MR. WIDENHOUSE: WE'RE UNDER THE IMPRESSION THAT  
5 HE'S GOING TO ASSERT THE ATTORNEY-CLIENT PRIVILEGE AND WE'VE  
6 SIMPLY COME TO THE BENCH TO ASK YOU IF YOU WANT US TO DO THAT  
7 IN OPEN COURT TO START WITH OR IF YOU'D RATHER HEAR US IN  
8 CHAMBERS. I'M JUST TRYING TO GET SOME GUIDANCE FROM THE COURT  
9 IS ALL. AND MR. WEST OBVIOUSLY IS HERE TO REPRESENT HIM.

10 THE COURT: MR. LEONARD'S FORMER CLIENT WAS --

11 MR. WIDENHOUSE: HELENA STOECKLEY.

12 THE COURT: AND SHE'S DECEASED.

13 MR. WIDENHOUSE: CORRECT.

14 THE COURT: I DON'T THINK I'VE EVER HAD THE  
15 PRIVILEGE ASSERTED IN THIS SITUATION BEFORE, BUT I'M SURE YOU  
16 CAN ENLIGHTEN ME ON IT.

17 MR. WIDENHOUSE: WELL, HE'S TOLD ME HE'S GOING TO  
18 ASSERT THE PRIVILEGE.

19 THE COURT: WELL, I'VE NEVER HAD THE OCCASION WHERE  
20 IT WAS ASSERTED WHERE SOMEBODY WAS DEPARTED AND NOT SUBJECT TO  
21 PROSECUTION. IT SEEMS TO BE SOMEWHAT MOOT.

22 MR. WEST: AND, YOUR HONOR, WE WILL OBVIOUSLY COMPLY  
23 WITH WHATEVER YOUR HONOR ORDERS, BUT OUT OF A SENSE OF CAUTION  
24 UNDER THE RULES OF PROFESSIONAL CONDUCT THE WAY I READ THEM, I  
25 THINK WE HAVE A DUTY TO ASSERT IT AND THEN IF YOU ORDER MR.

September 18, 2012

1 LEONARD TO ANSWER THEN HE HAS TO AND THAT TAKES CARE OF THE  
2 CONCERN, BUT YOU GOT THE ATTORNEY-CLIENT PRIVILEGE AND THE  
3 DUTY OF CONFIDENTIALITY.

4           AND THE WAY I READ THE RULES, ON HIS BEHALF, I AT  
5 LEAST HAVE TO REQUEST THIS OF THE COURT OR HE DOES BECAUSE  
6 THERE IS SOME LINE OF CASES THAT SAY THAT THE ATTORNEY-CLIENT  
7 PRIVILEGE SURVIVES THE DEATH OF A CLIENT, YOUR HONOR, THE WAY  
8 I READ THEM AND I HUMBL Y SUBMIT THAT TO YOUR HONOR. BUT MR.  
9 LEONARD IS NOT TRYING TO GET IN THE WAY OF THIS AND --

10           THE COURT: I UNDERSTAND, BUT I'M JUST TELLING YOU  
11 I'VE NEVER HAD THAT PARTICULAR SITUATION BEFORE.

12           MR. WEST: I HADN'T EITHER.

13           THE COURT: CAN YOU ENLIGHTEN ME ON IT, MR.  
14 WIDENHOUSE?

15           MR. WIDENHOUSE: WELL, I MEAN, THERE IS A U.S.  
16 SUPREME COURT CASE, *SWIDLER VS. BERLIN*, THAT SAYS THE  
17 ATTORNEY-CLIENT PRIVILEGE SURVIVES DEATH. AND I THINK HE  
18 WOULD BE IN A POSITION WHERE HE COULD ASSERT IT.

19           THE COURT: WELL, I'M NOT FAMILIAR WITH THE CASE,  
20 BUT DID IT INVOLVE A CRIMINAL MATTER?

21           MR. BRUCE: I THINK IT DID, YOUR HONOR. I THINK IT  
22 INVOLVED VINCE FOSTER.

23           MR. WEST: THE VINCE FOSTER CASE, YOUR HONOR. IT  
24 HAD TO DO WITH SOME NOTES AND DOCUMENTS AND I'M HAPPY TO  
25 PROVIDE THAT CASE TO YOUR HONOR IF YOUR HONOR WOULD LIKE FOR



1 ME TO.

2 THE COURT: WELL, I'LL DISCUSS IT WITH YOU ALL RIGHT  
3 HERE IN FRONT OF THE PUBLIC AND YOU CAN ADVISE ME.

4 MR. WIDENHOUSE: WELL, I MEAN, *SWIDLER VS. BERLIN*  
5 WAS A CRIMINAL CASE AND IT SAYS THE PRIVILEGE SURVIVES DEATH.  
6 IT DOES HAVE A FOOTNOTE THAT SAYS WE'RE NOT ADDRESSING THE  
7 QUESTION ABOUT THE SITUATION WHERE A DEFENDANT IS TRYING TO  
8 HAVE AN ATTORNEY BREACH THE ATTORNEY-CLIENT PRIVILEGE TO  
9 PRESENT FAVORABLE EVIDENCE TO THE DEFENSE IN A CRIMINAL CASE.

10 AND THAT'S WHAT WE THINK WE HAVE HERE, ALTHOUGH I'M  
11 A LITTLE BIT IN THE DARK BECAUSE WHEN I'VE INTERVIEWED MR.  
12 LEONARD, HE SAYS HE CAN'T TALK TO ME ABOUT THINGS THAT MS.  
13 STOECKLEY SAID TO HIM DURING HIS REPRESENTATION OF HER.

14 MR. WEST: AND, YOUR HONOR, THE ONLY REASON THAT I  
15 -- LAST WEEK I BECAME INVOLVED, MR. LEONARD ASKED ME TO BE  
16 INVOLVED, AND I SPOKE WITH THE U.S. ATTORNEY AND I SPOKE WITH  
17 MR. WILLIAMS AND I SAID, YOU KNOW, WHAT IS IT YOU WANT TO ASK  
18 MR. LEONARD. AND WHILE I DON'T KNOW EXACTLY WHAT THEY WANT TO  
19 ASK, AND THERE MAY BE SOME QUESTIONS THEY WANT TO ASK THAT,  
20 YOU KNOW, WHAT DID YOU HEAR A THIRD PARTY SAY OR HOW DID YOU  
21 BECOME INVOLVED, CLEARLY WOULD NOT FALL WITHIN PRIVILEGE AT  
22 ALL.

23 BUT IN MY CONVERSATIONS WITH BOTH OF THEM I GOT THE  
24 IMPRESSION THAT THEY MIGHT ASK THINGS THAT MIGHT FALL UNDER  
25 THAT.

September 18, 2012

McMann/Redirect

Page 447

1           AND, AGAIN, MR. LEONARD IS AT THE COURT'S PLEASURE  
2 AND IF YOU ORDER HIM TO, WHICH IS WHAT HE NEEDS FOR THAT -- TO  
3 DO TO PROTECT HIM UNDER THE RULES OF PROFESSIONAL CONDUCT,  
4 THAT'S WHAT I'M CONCERNED ABOUT, YOUR HONOR, IS JUST MAKING  
5 SURE THAT HE COMPLIES WITH HIS OBLIGATIONS UNDER THE RULES.  
6 AND IF YOUR HONOR ORDERS HIM TO SPEAK, HE HAS TO SPEAK.

7           THE COURT: ARE YOU FAMILIAR WITH THE CASE, MR.  
8 BRUCE?

9           MR. BRUCE: I AM FAMILIAR WITH THE CASE, BUT CAN I  
10 SAY SOMETHING ELSE? YOUR HONOR RE-EDUCATED ME LAST WEEK ON  
11 FIRST AMENDMENT LAW AND SEALING THINGS AND I THINK THIS  
12 DISCUSSION CAN BE HAD IN OPEN COURT. IT'S JUST A LEGAL ISSUE  
13 WITH THE ATTORNEY-CLIENT PRIVILEGE.

14           NOW, IF THE COURT LATER RULES THAT YOU WANT TO HEAR  
15 THE EVIDENCE IN CAMERA FROM JERRY LEONARD ABOUT WHAT HIS  
16 CLIENT TOLD TO SEE IF THE PRIVILEGE SHOULD BE LIFTED, THAT'S  
17 ONE THING, BUT THIS LEGAL DISCUSSION CAN BE HAD OUT AT COUNSEL  
18 TABLES AND WE DON'T NEED TO KEEP IT FROM --

19           MR. WEST: AND THAT'S FINE. I JUST DIDN'T WANT TO  
20 POP UP AND SAY OBJECTION AND YOUR HONOR --

21           THE COURT: NO, THAT'S ALL RIGHT.

22           MR. WEST: I DO THINK HIS IDEA ABOUT THE IN CAMERA  
23 IS THE APPROPRIATE THING IF YOUR HONOR DECIDES TO DO THAT AND  
24 I AGREE WITH THE U.S. ATTORNEY ABOUT THAT.

25           THE COURT: WELL, DO YOU THINK IT'S RIGHT FOR ME TO

September 18, 2012

McMann/Redirect

Page 448

1 HEAR IT IN CAMERA?

2 MR. WEST: I THINK THAT WOULD BE THE BEST THING  
3 UNDER WHAT I'VE READ, YOUR HONOR.

4 THE COURT: WELL, NOW, HOW CAN WE DO THAT?

5 MR. WEST: YOUR HONOR, AGAIN, IF YOUR HONOR ORDERS  
6 HIM TO DO IT, THEN I THINK THE WAY THAT WE WOULD CONTEMPLATE  
7 THAT IS THAT YOUR HONOR WOULD HAVE TO SPECIFICALLY ORDER HIM  
8 TO TALK AND IT WOULD BE, OF COURSE, TRANSCRIBED BY THE  
9 TRANSCRIPTIONIST SO THAT IT'S ON THE RECORD. AND THEN IT  
10 WOULD BE UP TO YOUR HONOR ABOUT, I THINK, WHETHER YOUR HONOR  
11 DID THAT JUST WITH MR. LEONARD AND MYSELF OR WHETHER YOU HAD  
12 THE OTHER PARTIES INVOLVED, AND MR. LEONARD DOES NOT HAVE A  
13 POSITION ABOUT THAT.

14 THE COURT: WELL, DO YOU HAVE ANY PROBLEM WITH ME  
15 HEARING IT IN CAMERA?

16 MR. WIDENHOUSE: NO.

17 THE COURT: ANYBODY?

18 MR. BRUCE: I DON'T HAVE ANY -- THE GOVERNMENT DOES  
19 NOT HAVE ANY PROBLEM WITH THIS PRIVILEGE BEING LIFTED OR YOUR  
20 HONOR HEARING IT IN CAMERA FIRST. I THINK THERE ARE SOME  
21 LEGAL ARGUMENTS AS TO WHETHER OR NOT THE PRIVILEGE EXISTS AND  
22 WHAT IS THE PROPER PROCEDURE.

23 ALL I'M SAYING IS THAT I THINK THAT THE LEGAL  
24 CONTENTIONS OF THE PARTIES THAT WE'RE PUTTING FORWARD TO THE  
25 COURT ABOUT THIS ISSUE SHOULD BE DONE IN OPEN COURT AND THEN

September 18, 2012

McMann/Redirect

Page 449

1 THE COURT CAN DECIDE WHETHER TO TAKE EVIDENCE IN CAMERA.

2 MR. WEST: AND I DON'T HAVE A PROBLEM WITH THAT,  
3 YOUR HONOR. I JUST DIDN'T WANT TO BE POPPING UP AND YOUR  
4 HONOR NOT UNDERSTAND WHERE WE WERE COMING FROM. AND THAT'S  
5 WHY I ALSO CALLED BOTH THESE GENTLEMEN SO THEY KNEW LAST WEEK  
6 ABOUT IT.

7 AGAIN, WE ARE NOT TRYING TO GET IN THE WAY OF THE  
8 COURT AT ALL. I'M JUST MERELY TRYING TO PROTECT MR. LEONARD  
9 UNDER THE RULES OF PROFESSIONAL RESPONSIBILITY, THAT'S ALL,  
10 YOUR HONOR.

11 THE COURT: WELL, I'M NOT FAMILIAR WITH THE CASE  
12 THAT YOU REFERRED TO. WHAT'S THE NAME OF IT AGAIN?

13 MR. BRUCE: IS IT *SWIDLER*?

14 MR. WEST: I HAVE A COPY IF YOU'D LIKE FOR ME TO  
15 HAND IT TO YOU.

16 THE COURT: I WOULD, YEAH.

17 MR. WEST: THOMAS, CAN YOU GET THAT, PLEASE?

18 THE COURT: WELL, I THINK WE'LL STOP FOR THE DAY,  
19 BUT I THINK TOMORROW MORNING WHAT I WOULD LIKE TO DO IS  
20 PROCEED WITH YOUR CASE AND I'LL COME BACK TO THIS SOMETIME.

21 MR. WIDENHOUSE: THIS IS OUR LAST WITNESS.

22 THE COURT: WELL, THEN, I'M GOING TO GO FORWARD WITH  
23 MR. BRUCE'S CASE TOMORROW MORNING. YOU ALL CAN PRESENT IT IN  
24 CAMERA SOMEWHERE ALONG THE LINE AT THE CONCLUSION OF MR.  
25 BRUCE'S CASE IF YOU WANT TO OR AFTER YOUR REBUTTAL AND THEN

September 18, 2012

McMann/Redirect

Page 450

1 I'LL TAKE A LOOK AT IT AND SEE WHAT HE'S GOT TO SAY.

2 MR. WIDENHOUSE: ALL RIGHT.

3 THE COURT: WE'RE KIND OF DOING IT IN A VACUUM.

4 MR. WIDENHOUSE: OKAY.

5 THE COURT: I DON'T WANT TO DO THAT.

6 MR. WEST: YOUR HONOR, DO YOU WANT ME TO PROVIDE  
7 ANYTHING ELSE TO YOU IN TERMS OF SOME OF THE -- COUPLE OF  
8 CASES THAT WE'VE LOOKED AT?

9 THE COURT: YEAH, I'D LIKE TO HAVE THEM.

10 MR. WEST: I DON'T KNOW IF THAT WOULD HELP THE COURT  
11 KNOW WHERE WE'RE COMING FROM. AND, AGAIN, WE WANT TO BE  
12 REALLY CLEAR, MR. LEONARD DOES NOT WANT TO GET IN THE WAY OF  
13 WHATEVER YOUR HONOR WANTS.

14 THE COURT: AS I UNDERSTAND, HE WAS APPOINTED -- HE  
15 WAS APPOINTED TO REPRESENT HER?

16 MR. WEST: THAT'S CORRECT. JUDGE DUPREE APPOINTED  
17 MR. LEONARD AFTER MS. STOECKLEY WAS ON THE STAND AND SPENT A  
18 PERIOD OF DAYS WITH HER AS I UNDERSTAND IT.

19 AND I THINK THAT -- FROM WHAT I UNDERSTAND FROM THE  
20 U.S. ATTORNEY, HE HAS SOME QUESTIONS ABOUT WHETHER MR. LEONARD  
21 HEARD SOME THINGS FROM THIRD PARTIES, BUT, ALSO, PERHAPS, FROM  
22 MS. STOECKLEY, I THINK, IF I UNDERSTAND THESE FOLKS CORRECTLY.

23 THE COURT: WELL, IF HE HEARD THINGS FROM THIRD  
24 PARTIES THAT'S CERTAINLY PERMITABLE AND IF IT'S SOMETHING SHE  
25 SAID THAN THE ATTORNEY-CLIENT PRIVILEGE IS WAIVED.

September 18, 2012

McMann/Redirect

Page 451

1 MR. WEST: WELL, WE THINK THAT, YOUR HONOR, THINGS  
2 THAT MS. STOECKLEY MAY HAVE SAID TO MR. LEONARD, JUST THE TWO  
3 OF THEM, WOULD BE --

4 THE COURT: I UNDERSTAND THAT.

5 MR. WEST: THAT'S WHAT I WAS TRYING TO SAY.

6 THE COURT: OH, I THOUGHT YOU MEANT --

7 MR. WEST: NO, SIR, I'M SORRY, I DIDN'T SPEAK  
8 CLEARLY ENOUGH. AND I THINK THEY WOULD LIKE TO ASK ABOUT THE  
9 CONVERSATIONS AND I THINK THEY MAY TAKE THE TACT THAT THE  
10 PRIVILEGE SOMEHOW MAY NOT EXIST AT THIS POINT. AND, AGAIN, I  
11 DON'T HAVE A DOG IN THAT FIGHT. I'M JUST TRYING TO MAKE SURE  
12 MR. LEONARD DOESN'T GET IN TROUBLE --

13 THE COURT: I UNDERSTAND.

14 MR. WEST: -- WITH THE AUTHORITIES OF THE BAR.

15 MR. BRUCE: YOUR HONOR, JERRY LEONARD SENT A LETTER  
16 TO THIS COURT IN 2007, ABOUT THIS ISSUE AFTER DISCUSSING IT  
17 WITH HART MILES WHO WAS THE ATTORNEY FOR JEFFREY MACDONALD AT  
18 THE TIME. AND THE LETTER SAID -- AND IT ENCLOSED AN INQUIRY  
19 FROM THE STATE BAR AND A REPLY.

20 AND THE LETTER SAID THAT THE ATTORNEYS FOR JEFFREY  
21 MACDONALD WERE TRYING TO GET JERRY LEONARD TO DISCLOSE WHAT  
22 HELENA STOECKLEY HAD TOLD HIM IN AN ATTORNEY-CLIENT SITUATION  
23 DURING THE MACDONALD TRIAL AND THAT THEY HAD MADE AN INQUIRY  
24 TO THE STATE BAR COUCHING IT AS THERE WAS EVIDENCE OF  
25 INNOCENCE THAT WOULD FREE A PRISONER AND UNDER THOSE

September 18, 2012

McMann/Redirect

Page 452

1 CIRCUMSTANCES WHAT WAS THE DUTY OF THE LAWYER.

2           AND THEY SENT THE LETTER AND THE OPINION FROM THE  
3 STATE BAR OR ANSWER TO QUESTION, IT WASN'T REALLY AN OPINION,  
4 TO YOUR HONOR. WE DIDN'T FIND OUT ABOUT IT UNTIL 2012.  
5 THERE'S SOME MATERIAL IN THERE THAT THE COURT MIGHT WANT TO  
6 CONSIDER. WE HAVE COPIES IF YOU NEED THEM.

7           THE COURT: I DON'T RECALL IT.

8           MR. BRUCE: AND RESPECTFULLY WE WOULD LIKE TO GET  
9 THIS RESOLVED BECAUSE EVIDENCE THAT WE PUT ON WILL BE  
10 DEPENDENT -- NOT ALL OF IT, OF COURSE. WE CAN START SOME OF  
11 OUR EVIDENCE, BUT THERE ARE SOME WITNESSES THAT WE NEED TO  
12 KNOW WHAT THEIR CASE WITH RESPECT TO JERRY LEONARD IS BEFORE  
13 WE START TO PUT ON OUR EVIDENCE IN REPLY.

14           COURT REPORTER: WOULD IT BE POSSIBLE FOR ME TO STEP  
15 BACK DOWN FOR A MINUTE?

16           THE COURT: YEAH. GO AHEAD. WE'LL WAIT.

17           (PAUSE.)

18           MR. BRUCE: AND SO MY POSITION WOULD BE EITHER  
19 TONIGHT OR IN THE MORNING, WHATEVER YOUR HONOR PREFERENCES, THAT  
20 WE, ALL SIDES, MACDONALD, ATTORNEY FOR JERRY LEONARD AND THE  
21 GOVERNMENT PRESENT THEIR POSITIONS ON THE LAW IN OPEN COURT.

22           WE CAN GIVE YOU ANY MATERIALS WE HAVE TONIGHT AND  
23 THEN THE COURT CAN DECIDE THE ISSUE. EITHER YOU'RE RULING  
24 THAT THE PRIVILEGE STILL EXISTS OR YOU'RE RULING THAT YOU NEED  
25 TO REVIEW WHATEVER HE'S GOING TO SAY IN CAMERA TO DECIDE

September 18, 2012

McMann/Redirect

Page 453

1 WHETHER THE PRIVILEGE SHOULD BE LIFTED OR OVERCOME. AND  
2 THAT'S THE WAY WE SHOULD PROCEED IN THAT FASHION.

3 THE COURT: WELL, I'M GOING TO STOP FOR THE DAY.  
4 I'M GOING TO TAKE -- LIBBY, HAND ME THE CASE YOU'VE GOT THERE  
5 AND I'LL TRY TO READ IT TONIGHT OR THIS AFTERNOON AND MAKE --  
6 GET SOME KIND OF TENTATIVE LOOK AT IT. HAVE YOU RESEARCHED  
7 THIS, MR. BRUCE?

8 MR. BRUCE: A LITTLE. IN FACT, WE STARTED  
9 RESEARCHING IT FROM THE -- BEFORE WE EVEN KNEW THAT THE  
10 MACDONALD LAWYERS HAD TALKED TO JERRY LEONARD. AND BY THE  
11 WAY, IT'S NOT MR. WIDENHOUSE OR MR. WILLIAMS.

12 BUT BEFORE WE EVEN KNEW THAT, BASED ON WHAT JERRY  
13 LEONARD HAD TOLD THE FBI IN OUR INVESTIGATION IN 2006, WE  
14 THOUGHT WE MIGHT BE THE ONES ADVOCATING TO HAVE THE PRIVILEGE  
15 LIFTED SO HE COULD TELL WHAT HIS CLIENT TOLD HIM DURING THE  
16 TRIAL.

17 AND THE RESEARCH THAT WE DID SHOWED IT'S A THORNY  
18 QUESTION. THE PRIVILEGE -- THE GENERAL RULE IS IT DOES  
19 SURVIVE DEATH, BUT THERE IS A NORTH CAROLINA SUPREME COURT  
20 CASE WHICH, OF COURSE, IS NOT BINDING IN FEDERAL COURT, WHERE  
21 THE COURT ORDERED THE PRIVILEGE LIFTED SO THAT RICK GAMMON, AN  
22 ATTORNEY IN RALEIGH, WAS REQUIRED TO DISCLOSE TO COLON  
23 WILLOUGHBY WHAT HIS DEAD CLIENT HAD SAID BECAUSE IT WAS  
24 EVIDENCE IN A MURDER CASE.

25 SO, THERE'S NO ABSOLUTE RULE I THINK. I THINK IT'S

September 18, 2012



McMann/Redirect

Page 454

1 A DIFFICULT ISSUE. THE BAR, WHEN THEY SENT INFORMATION BY THE  
2 MACDONALD ATTORNEYS FRAMING THE QUESTION, IT WAS FRAMED AS IF  
3 -- THE QUESTION WAS IF THE LAWYER BECAME AWARE FROM A CLIENT  
4 THAT THE CLIENT HAD PERJURED THEMSELVES IN A PROCEEDING, WHAT  
5 WAS THE ATTORNEY'S DUTY AND THE ANSWER --

6 THE COURT: I THINK IT WAS DISCUSSED.

7 MR. BRUCE: AND THE ANSWER WAS IF THE PROCEEDING IS  
8 STILL GOING ON, THE ATTORNEY SHOULD TAKES STEPS TO RECTIFY THE  
9 PERJURY.

10 BUT, OF COURSE, THAT MAKES A LOT OF ASSUMPTIONS  
11 ABOUT WHAT HELENA STOECKLEY MAY HAVE TOLD JERRY LEONARD AND IT  
12 ALSO -- THE INTERPRETATION THAT THE MACDONALD LAWYERS AT THAT  
13 TIME PUT ON IT WAS THAT THE PROCEEDING IN THE MACDONALD CASE  
14 IS STILL GOING ON IN 2012, WHEN THE TRIAL WAS IN 1979.

15 BUT I THINK YOUR HONOR SHOULD READ WHAT THE BAR SAID  
16 ABOUT IT. IT MIGHT BE --

17 MR. WIDENHOUSE: YOUR HONOR, I MEAN, I REALLY -- I  
18 DON'T DISAGREE WITH THAT ALTHOUGH IT REALLY DOES RELY ON THE  
19 TWO *IN RE MILLER* CASES, WHICH ARE STATE CASES.

20 MR. WEST: AND I AGREE THAT'S AN IMPORTANT CASE.

21 MR. WIDENHOUSE: BUT THE *SWIDLER AND BERLIN* CASE  
22 ADDRESSES THE QUESTION OF THE ATTORNEY-CLIENT PRIVILEGE IN A  
23 CRIMINAL CASE, BUT NOT IN THE CONTEXT OF WHERE THE DEFENDANT  
24 IS TRYING TO GET THE EVIDENCE IN TO HELP. SO, YOU DO NEED TO  
25 READ THAT CASE AND YOU'RE GOING TO COME AWAY THINKING THE

September 18, 2012

1 QUESTION IS NOT CLEARLY ANSWERED.

2 WE HAVE A VERY RECENT FEDERAL DISTRICT COURT CASE  
3 FROM THE WEST COAST AND WE CAN PROVIDE A COPY TO YOU AS WELL  
4 BEFORE WE LEAVE TODAY THAT AT LEAST GOES THROUGH THE ANALYSIS  
5 THAT WE THINK WOULD APPLY. AND, YOU KNOW, JOHN CAN LOOK IT  
6 TONIGHT AND SEE IF HE AGREES. BUT IT AT LEAST GIVES YOU ONE  
7 JUDGE'S TAKE ON THE STEPS THAT YOU WOULD THINK ABOUT IN  
8 DECIDING WHETHER, IN A GIVEN CONTEXT, THAT THE PRIVILEGE  
9 SHOULD BE LIFTED.

10 THE COURT: WELL, LET ME ASK YOU, AS I UNDERSTAND IT  
11 YOUR CASE -- YOU CONSIDER THIS TESTIMONY AS A PREDICATE FOR  
12 YOUR CASE, IS THAT CORRECT?

13 MR. BRUCE: WELL, NOT THE WHOLE CASE, OF COURSE, BUT  
14 THERE ARE SOME WITNESSES THAT IT WOULD BE IMPORTANT FOR US TO  
15 KNOW WHAT THE MACDONALD MOVANT EVIDENCE IS BEFORE WE PRESENT  
16 THOSE WITNESSES.

17 SO, I JUST DID NOT, RESPECTFULLY, WANT TO BE PUT IN  
18 THE POSITION OF PUTTING ON OUR WHOLE CASE BEFORE THIS ISSUE  
19 ABOUT THEIR WITNESS IS DECIDED.

20 THE COURT: WELL, I DON'T KNOW WHEN I'M GOING TO GET  
21 TO THIS. I DON'T KNOW HOW LONG IT'S GOING TO TAKE. I DON'T  
22 WANT TO MAKE A -- I CAN MAKE A SNAP JUDGMENT, BUT I THINK THE  
23 EVIDENCE IS KIND OF -- I HATE TO ACT IN HASTE AND REPENT AT  
24 LEISURE, YOU KNOW. I'M TRYING TO THINK HOW I CAN GET SOME  
25 TIME. HOW LONG IS YOUR CASE GOING TO TAKE?

September 18, 2012

1 MR. BRUCE: I'M AWFULLY BAD AT ESTIMATING, BUT WE  
2 HAVE ABOUT 12 WITNESSES, AND I'M THINKING WE CAN GET IT DONE  
3 IN ABOUT THREE DAYS.

4 THE COURT: WELL, YOU GIVE ME YOUR RESEARCH AND YOUR  
5 RESEARCH. HAVE YOU BRIEFED THIS AT ALL?

6 MR. BRUCE: I HAVE NOT WRITTEN A BRIEF.

7 MR. WIDENHOUSE: NO.

8 THE COURT: HAVE YOU?

9 MR. WIDENHOUSE: I SHOULDN'T HAVE LET MS. ROUDER GO,  
10 BUT, NO, I HAVEN'T BRIEFED IT.

11 THE COURT: WELL, AS YOU KNOW, I WASN'T AT THE CASE  
12 -- THE TRIAL. I KNOW NOTHING ABOUT IT. I PURPOSELY HAVE  
13 NEVER READ *FATAL VISION* ONCE I GOT THIS CASE ASSIGNED TO ME.

14 MR. WIDENHOUSE: YOU MAY BE GETTING MOST OF IT READ  
15 TO YOU HERE.

16 THE COURT: BUT I'LL HAVE TO LOOK AT YOUR MATERIALS  
17 AND IF I HAVE TO DELAY THIS FOR HALF A DAY, I'LL HAVE TO DELAY  
18 IT FOR HALF A DAY.

19 MR. WIDENHOUSE: OKAY. IF YOU WANT TO TAKE A BREAK  
20 UNTIL THURSDAY, I CAN GET YOU A BRIEF BY TOMORROW AFTERNOON,  
21 BUT I NEED TO KNOW THAT I DON'T HAVE TO GET READY FOR JOHN'S  
22 WITNESSES TONIGHT. IT WOULD BE A SHORT BRIEF TOO.

23 MR. BRUCE: WELL, YOUR HONOR, WE'VE GOT A LOT OF  
24 WITNESSES HERE. MY SUGGESTION WOULD BE LET US GIVE YOU THE  
25 MATERIALS THAT WE HAVE TONIGHT AND BE PREPARED TO ARGUE IT IN

September 18, 2012

McMann/Redirect

Page 457

1 THE MORNING AND THEN THE COURT CAN DECIDE WHETHER ITS IN A  
2 POSITION TO RULE.

3 THE COURT: WELL, I DON'T KNOW WHETHER I CAN READ IT  
4 TONIGHT.

5 MR. BRUCE: WELL, COULD WE --

6 THE COURT: I FIND NOWADAYS I READ BETTER IN THE  
7 MORNING.

8 MR. WIDENHOUSE: YES, I UNDERSTAND.

9 THE COURT: WELL, GIVE ME YOUR MATERIALS. AND I  
10 THINK YOU'VE CERTAINLY GOT ENOUGH WITNESSES TO GO ON WITH  
11 SOMETHING, RIGHT?

12 MR. BRUCE: YES.

13 THE COURT: ALL RIGHT. WE'LL GO ON WITH YOURS  
14 TOMORROW AND I'LL TRY TO GET TO -- SOMETHING ON THIS AS SOON  
15 AS I CAN, TAKE A LOOK AT IT.

16 NOW, THE CASE THAT YOU'RE REFERRING TO, THE QUESTION  
17 OF EVADING THE PRIVILEGE WAS BECAUSE HE WANTED TO HELP SOMEONE  
18 WHO WAS CHARGED IN ANOTHER OFFENSE?

19 MR. BRUCE: WELL, THE CASE I WAS REFERRING TO IN THE  
20 NORTH CAROLINA SUPREME COURT IS *IN RE MILLER* AND THERE IT WAS  
21 THE PROSECUTION THAT WANTED TO GET THE -- A MAN WHO WAS  
22 ACCUSED OF CONSPIRING WITH A WOMAN TO KILL HER HUSBAND HIRED  
23 RICK GAMMON AND HE -- IT LATER CAME OUT THAT HE TOLD RICK  
24 GAMMON THAT HE HAD HELPED HER POISON HER HUSBAND AND RICK  
25 GAMMON GAVE HIM THE ADVICE THAT THAT MIGHT MAKE HIM AN

September 18, 2012

1 ACCESSORY TO MURDER. THE MAN -- THE CLIENT OF RICK GAMMON  
2 THEN WENT HOME AND COMMITTED SUICIDE.

3 COLON WILLOUGHBY SOUGHT THE EVIDENCE FROM RICK  
4 GAMMON, WHAT DID HIS MAN, ERIC MILLER I THINK HIS NAME WAS,  
5 TELL YOU BEFORE HE DIED ABOUT THIS MURDER.

6 IT WENT ALL THE WAY TO THE NORTH CAROLINA SUPREME  
7 COURT. IT'S A VERY CONFUSING OPINION. BUT THE LONG AND SHORT  
8 OF IT IS, IS THEY SENT IT BACK TO JUDGE STEPHENS AND SAID THAT  
9 JUDGE STEPHENS SHOULD TAKE THE INFORMATION FROM RICK GAMMON IN  
10 CAMERA AND HE DID AND THEN HE ORDERED IT TURNED OVER TO COLIN  
11 WILLOUGHBY AND COLON WILLOUGHBY USED THE INFORMATION TO  
12 PROSECUTE THE WOMAN.

13 THE COURT: TO PROSECUTE HER.

14 MR. BRUCE: THAT'S CORRECT, PROSECUTE THE WOMAN THAT  
15 KILLED HER HUSBAND.

16 THE COURT: RIGHT.

17 MR. WIDENHOUSE: THE DIFFERENCE IN THE *MILLER*  
18 LITIGATION IS THERE WAS A WAIVER OF THE PRIVILEGE FROM THE  
19 EXECUTOR OF THE ESTATE AND IT WAS A MATTER OF STATE LAW THAT  
20 ALLOWED THE EXECUTOR TO DO THAT. AND THAT DOESN'T APPLY HERE  
21 BECAUSE IN FEDERAL COURT THE STATE LAW DOESN'T CONTROL.

22 MR. BRUCE: ANOTHER WRINKLE TO THIS IS THAT IN THE  
23 SUBMISSION THAT MR. JERRY LEONARD SENT TO THIS COURT IN 2007,  
24 AT THE BEHEST OF MACDONALD'S THEN LAWYERS, INCLUDED AN  
25 AFFIDAVIT FROM GENE STOECKLEY, WHO TESTIFIED TODAY, PURPORTING

September 18, 2012

McMann/Redirect

Page 459

1 TO WAIVE HELENA STOECKLEY'S ATTORNEY-CLIENT PRIVILEGE.

2 THE COURT: WHO WAIVED IT?

3 MR. BRUCE: GENE STOECKLEY, HER BROTHER, WHO  
4 TESTIFIED HERE TODAY, SIGNED AN AFFIDAVIT PURPORTING TO WAIVE  
5 HIS DECEASED SISTER'S ATTORNEY-CLIENT PRIVILEGE. AND I HAVE  
6 THOSE DOCUMENTS. AND JERRY LEONARD, AT THE BEHEST OF HART  
7 MILES, SENT THEM TO YOUR HONOR IN EITHER -- I THINK IN '07.

8 MR. WEST: THAT'S CORRECT, YOUR HONOR.

9 MR. WIDENHOUSE: THAT'S ROUGHLY CORRECT.

10 THE COURT: I DON'T HAVE ANY RECOLLECTION OF IT.

11 MR. BRUCE: WE CAN PROVIDE -- DOES LIBBY --

12 LAW CLERK: WE'VE GOT THEM SOMEWHERE.

13 MR. BRUCE: YOU'VE GOT THEM.

14 MR. WEST: YOU ALL PROVIDED ME A COPY SO I'M AWARE  
15 OF IT NOW.

16 MR. WIDENHOUSE: YEAH, THERE IS A LETTER, THERE IS  
17 THE BAR INQUIRY, AND WE'VE GOT SOME EMAILS BACK AND FORTH  
18 BETWEEN HART AND THE BAR.

19 MR. BRUCE: I THINK LIBBY'S INDICATING SHE HAS THEM.

20 LAW CLERK: I RECALL IT.

21 MR. BRUCE: DO YOU NEED ADDITIONAL COPIES?

22 LAW CLERK: (NODS HEAD.)

23 THE COURT: WELL, WE'LL GO FORWARD TOMORROW MORNING  
24 WITHOUT RULING ON THIS UNTIL WE CAN TRY TO GET A HANDLE ON IT.

25 MR. BRUCE: OKAY. SO, I SHOULD BE PREPARED TO PUT

September 18, 2012

McMann/Redirect

Page 460

1 ON WITNESSES TOMORROW MORNING?

2 THE COURT: YES.

3 MR. BRUCE: OKAY. ONE OTHER THING, THERE'S A LOT OF  
4 MEDIA HERE --

5 COURT REPORTER: I NEED TO STEP DOWN AGAIN. CAN WE  
6 DO THIS OUT THERE OR?

7 THE COURT: I'M SORRY?

8 COURT REPORTER: I EITHER NEED TO STEP BACK DOWN  
9 BECAUSE I DIDN'T KNOW WE'D BE UP HERE SO LONG OR CAN WE DO IT  
10 FROM OUT THERE?

11 THE COURT: DO YOU HAVE ANY OBJECTION TO IT?

12 MR. WIDENHOUSE: NO, I DON'T HAVE ANY OBJECTION.

13 THE COURT: ALL RIGHT. LET'S DO IT FROM OUT THERE.  
14 (BENCH CONFERENCE CONCLUDED.)

15 THE COURT: COUNSEL, LET ME SEE YOU JUST ONE MORE  
16 SECOND.

17 (BENCH CONFERENCE ON THE RECORD.)

18 THE COURT: I'VE GOT THAT CIVIL MATTER THURSDAY  
19 MORNING. I'M JUST THINKING IF I CAN WORK THAT IN SOMEHOW.

20 MADAM CLERK: WE'RE STARTING THAT AT NINE O'CLOCK ON  
21 THURSDAY AND I BELIEVE YOU HAD ALREADY TOLD EVERYBODY THAT WE  
22 WOULD PICK THIS HEARING BACK UP AT 10:00.

23 THE COURT: YEAH, THAT'S WHAT I HAD PLANNED TO DO.  
24 WELL, LEAVE ME YOUR MATERIALS AND LET ME TAKE A LOOK AT IT.  
25 AND I THINK YOU BETTER PLAN TO STAY -- PLAN TO GO FORWARD

September 18, 2012

McMann/Redirect

Page 461

1 TOMORROW MORNING.

2 MR. BRUCE: PLAN TO DO WHAT, I'M SORRY?

3 THE COURT: PLAN TO GO FORWARD TOMORROW MORNING, BUT  
4 I'M GOING TO TRY TO TAKE A LOOK AT IT TONIGHT.

5 MR. BRUCE: THANK YOU.

6 THE COURT: THANK YOU VERY MUCH.

7 MR. WEST: THANK YOU, YOUR HONOR.

8 MR. BRUCE: YOUR HONOR, I WAS JUST GOING TO SAY,  
9 JUST TRYING TO SAVE HEADACHES FOR EVERYBODY, THERE'S A LOT OF  
10 MEDIA HERE THAT ARE GOING TO BE VERY CURIOUS ABOUT WHAT WE'RE  
11 TALKING ABOUT AND I THINK WE CAN ARGUE THIS IN OPEN COURT  
12 BECAUSE I DON'T SEE ANY NEED TO DO IT AT THE BENCH.

13 MR. WIDENHOUSE: I DON'T DISAGREE WE CAN ARGUE IN  
14 OPEN COURT.

15 THE COURT: OKAY. WE'LL START OFF TOMORROW MORNING  
16 WITH THE ARGUMENTS.

17 MR. WIDENHOUSE: ALL RIGHT.

18 THE COURT: NOW, LET ME GET YOUR MATERIALS.

19 MR. WIDENHOUSE: YES, YOUR HONOR.

20 THE COURT: GIVE THEM TO LIBBY BEFORE YOU LEAVE.

21 MR. WEST: YOUR HONOR, MAY I ASK SOMETHING? I'M  
22 TRYING NOT TO BE A HINDERANCE ANYMORE TO THE COURT THAN I'VE  
23 ALREADY BEEN TODAY, BUT --

24 THE COURT: JUST WAIT UNTIL YOU ASK FOR A  
25 CONTINUANCE AGAIN.

September 18, 2012



McMann/Redirect

Page 462

1 MR. WEST: THANK YOU, YOUR HONOR. WE'VE DONE A FAIR  
2 AMOUNT OF RESEARCH ABOUT THIS JUST RECENTLY AND I'M HAPPY TO  
3 TRY TO SHARE THAT, BUT I ALSO AM TRYING NOT TO GET IN THE WAY,  
4 IF YOU'D LIKE FOR ME TO PROVIDE THAT I CAN.

5 THE COURT: YES, I WOULD. I'VE NEVER HAD THIS  
6 PARTICULAR QUESTION.

7 MR. WEST: I HADN'T EITHER UNTIL VERY RECENTLY.

8 THE COURT: WELL, EVERY TIME I COME TO COURT I HAVE  
9 SOMETHING NEW COME UP I CAN TELL YOU THAT.

10 MR. WEST: YES, SIR.

11 THE COURT: YOU KNOW, WHEN I WAS PRACTICING LAW, I  
12 CAN REMEMBER, AND I KNOW YOU ALL HAVE, TOO, BUT YOU THINK  
13 THERE'S GOT TO BE A CASE ON THAT. YOU DON'T THINK IT'S GOING  
14 TO TAKE ANY TIME AND TWO WEEKS LATER YOU'RE SAYING WHY ISN'T  
15 THERE SOMETHING ON THIS.

16 MR. WEST: YES, SIR.

17 MR. BRUCE: ED, YOU'RE GOING TO PROVIDE THAT TO US,  
18 TOO?

19 MR. WEST: YES. NO, I MEAN, I'M TRYING TO --

20 THE COURT: LET ME HAVE WHAT YOU'VE GOT AND I'LL TRY  
21 TO GET IT --

22 MR. WEST: THANK YOU.

23 THE COURT: THANK YOU VERY MUCH.

24 (BENCH CONFERENCE CONCLUDED.)

25 THE COURT: WE'LL TAKE A RECESS TILL 9:00 A.M.

September 18, 2012

McMann/Redirect

Page 463

1 TOMORROW.

2 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 4:44 P.M.,  
3 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 19, 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 18, 2012

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 19, 2012  
 JEFFREY R. MACDONALD, . Wilmington, NC  
 Defendant/Movant .  
 . . . . .

EVIDENTIARY HEARING  
BEFORE THE HONORABLE JAMES C. FOX  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.

T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
<u>FRANK MILLS</u>		
BY MS. COOLEY	DIRECT	470
BY MR. WIDENHOUSE	CROSS	501
<u>DENNIS MEEHAN</u>		
BY MR. BRUCE	DIRECT	515
BY MR. WIDENHOUSE	CROSS	532
<u>JANICE MEEHAN</u>		
BY MS. COOLEY	DIRECT	536
BY MR. WIDENHOUSE	CROSS	540
BY MS. COOLEY	REDIRECT	542
<u>EDDIE R. SIGMON</u>		
BY MR. BRUCE	DIRECT	543
BY MR. WIDENHOUSE	CROSS	559
<u>WILLIAM I. BERRYHILL, JR.</u>		
BY MR. BRUCE	DIRECT	562
<u>MADDIE REDDICK</u>		
BY MS. COOLEY	DIRECT	571
BY MR. WIDENHOUSE	CROSS	578
<u>J. RICH LEONARD</u>		
BY MR. BRUCE	DIRECT	583
<u>JAMES L. BLACKBURN</u>		
BY MR. BRUCE	DIRECT	594
BY MR. WIDENHOUSE	CROSS	647
BY MR. BRUCE	REDIRECT	694
BY MR. WIDENHOUSE	RECROSS	696

T A B L E O F C O N T E N T S C O N T I N U E DEXHIBITS

<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
5014C	MR. BLACKBURN'S NORTH CAROLINA BAR DISBARMENT ORDER	653

<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
2001	FBI TELETYPE 8/15/79	471
2104.2	MAP OF GREENVILLE SOUTH CAROLINA AREA	477
2104	MAP SHOWING WALHALLA AND PICKENS SC	479
2003	FBI TELETYPE 8/15/79	483
2006	FINGERPRINT CARD - HELENA STOECKLEY 8/14/79	484
2007	FINGERPRINT CARD - HELENA STOECKLEY 8/14/79	485
2064	8/14/79 COMMITMENT FORM - HELENA STOECKLEY	486
2066	8/15/79 RELEASE FORM - HELENA STOECKLEY	487
2002	FBI 302 - HELENA STOECKLEY'S ARREST 8/14/79	490
2010	SWORN STATEMENT OF VERNON KENNEDY	514
2000	WARRANT FOR HELENA STOECKLEY	518 & 547
2362	CALENDAR FOR 1979	519
2103.3	MAP DEPICTING INTERSECTION OF I-85 AND I-77	521
2101.3	MAP OF DOWNTOWN RALEIGH	523 & 554
2101.3A	MAP OF DOWNTOWN RALEIGH WITH MARKINGS	527
2074	PHOTO FROM <i>NEWS &amp; OBSERVER</i> OF MS. STOECKLEY, MR. BRITT AND MR. DAVIS	528
2039.1	RECORDS TRANSMITTAL RECEIPT - CRIMINAL WARRANT FILES	580
2039.4	REQUEST FOR RECORDS DISPOSITION AUTHORITY	582
2040	RECORDS TRANSMITTAL AND RECEIPT - 3/15/04	582
2080	FLOOR PLAN OF EIGHTH FLOOR OF RALEIGH FEDERAL BUILDING	605
2082A	FLOOR PLAN OF EIGHTH FLOOR OF RALEIGH FEDERAL BUILDING WITH MARKINGS	640
2013	EMAIL BETWEEN MR. BLACKBURN AND MR. SMITH	642

<u>BENCH CONFERENCES</u>	<u>PAGE</u>
	467
	508
	698

1                                   P R O C E E D I N G S                                   8:59 A.M.  
2                                   (DEFENDANT PRESENT.)  
3                                   THE COURT: GOOD MORNING. PLEASE BE SEATED. LET ME  
4 SEE COUNSEL JUST FOR A SECOND, PLEASE.  
5                                   (BENCH CONFERENCE ON THE RECORD.)  
6                                   THE COURT: YOUR CLIENT -- THE PROBLEM HERE IS I  
7 DON'T KNOW WHAT I'M DEALING WITH. IN OTHER WORDS, I'VE GOT  
8 ABSOLUTELY NO KNOWLEDGE OF WHAT THE ISSUE IS.  
9                                   I THOUGHT ABOUT MAYBE HAVING MR. LEONARD MAKE A  
10 PROFFER TO ME HERE AT THE BENCH AS TO WHAT THE SITUATION IS.  
11 ON THE OTHER HAND, THAT WOULD JUST CONFUSE THINGS FURTHER.  
12                                   I HAVE READ *SWIDLER* AND I'VE READ A NUMBER OF OTHER  
13 THINGS. I'M INCLINED TO THINK THE PRIVILEGE APPLIES. THAT'S  
14 WHAT I SO HOLD.  
15                                   MR. WIDENHOUSE: CAN WE JUST GET THAT ON -- WELL, I  
16 GUESS IT'S ON THE RECORD.  
17                                   THE COURT: YES, I'LL GET IT ON THE RECORD.  
18                                   MR. WIDENHOUSE: OKAY.  
19                                   THE COURT: THANK YOU.  
20                                   (BENCH CONFERENCE CONCLUDED.)  
21                                   THE COURT: COUNSEL, I'VE LOOKED INTO THE QUESTION  
22 OF PRIVILEGED COMMUNICATION. AS YOU KNOW, THE SUPREME COURT  
23 HAS DEALT WITH THIS ISSUE TO SOME EXTENT, AND I THINK THE  
24 ATTORNEY-CLIENT PRIVILEGE SURVIVES THE DEATH OF THE CLIENT,  
25 AND I SO RULE. AND IN DOING SO, I AM FOLLOWING *SWIDLER VS.*

September 19, 2012

1 *BERLIN*, A SUPREME COURT CASE TO WHICH YOU ARE BOTH AWARE.

2 THANK YOU, COUNSEL.

3 MR. WIDENHOUSE: YOUR HONOR, I JUST WANT TO MAKE  
4 SURE THE RECORD REFLECTS THAT WE WERE ASKING YOU TO BREACH OR  
5 WAIVE THE PRIVILEGE BASED ON OUR CLIENT'S FIFTH AND SIXTH  
6 AMENDMENT DUE PROCESS AND COMPULSORY PROCESS RIGHTS TO PRESENT  
7 A DEFENSE. I JUST WANT TO MAKE SURE THE RECORD REFLECTS THE  
8 BASIS FOR OUR MOTION.

9 THE COURT: WELL, I UNDERSTAND. AND, OF COURSE, I  
10 THINK IT'S -- THE QUESTION OF PRIVILEGE HAS BEEN DEBATED MANY,  
11 MANY TIMES, BUT I THINK FOR THE MOST PART IN COMMON LAW IT  
12 SURVIVES, AND THE SUPREME COURT SO HELD IN *SWIDLER*, AND I  
13 THINK THAT THEIR REASONING IS CORRECT. THANK YOU.

14 DO YOU HAVE ANY FURTHER EVIDENCE, MR. WIDENHOUSE?

15 MR. WIDENHOUSE: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. MR. BRUCE, ARE YOU READY TO  
17 GO FORWARD?

18 MR. WIDENHOUSE: WELL, I GUESS, I JUST WANT TO MAKE  
19 SURE ALL THE EXHIBITS THAT WE'VE TENDERED IN THE NOTEBOOKS ARE  
20 PART OF THE EVIDENCE AS A WHOLE.

21 THE COURT: SURE. NOW, MR. BRUCE, DO YOU WANT TO  
22 MAKE AN OPENING STATEMENT?

23 MR. BRUCE: NO, NOT A FORMAL OPENING STATEMENT, YOUR  
24 HONOR, EXCEPT TO PREVIEW HOW WE'RE GOING TO PRESENT THE  
25 EVIDENCE.

September 19, 2012

1 WE HAVE A NUMBER OF WITNESSES TO CALL, AND THEN WE  
2 WANT TO, DURING THAT AND PERHAPS RIGHT AFTER THAT, JUST CALL  
3 THE ATTENTION TO THE COURT BY WAY OF PUBLICATION OF SOME OF  
4 THE EXHIBITS THAT ARE IN THE RECORD.

5 THE COURT: ALL RIGHT, SIR.

6 MR. BRUCE: AND THEN WE'RE HOPEFUL THAT THE COURT  
7 WILL ALLOW A CLOSING ARGUMENT.

8 THE COURT: YES, I WILL.

9 MR. BRUCE: OKAY.

10 THE COURT: I'M GOING TO ALLOW YOU ALSO TO FILE  
11 BRIEFS ON THE ISSUES.

12 MR. BRUCE: OKAY. BUT THE CRYING NEED FOR US IN THE  
13 CLOSING ARGUMENT IS ENOUGH TIME FOR MR. MURTAGH TO -- BECAUSE  
14 WE'RE NOT PRESENTING ANY EVIDENCE ON THE UNSOURCED HAIR CLAIM.  
15 IT'S ALL IN THE RECORD. IT'S STIPULATED TO. BUT WE FEEL IT  
16 WOULD BE HELPFUL TO HAVE HIM, BY WAY OF ARGUMENT, WALK THE  
17 COURT THROUGH THE KEY EXHIBITS AND AFFIDAVITS.

18 THE COURT: WELL, I READ YOUR BRIEF ON THAT ISSUE  
19 VERY CAREFULLY AND I FRANKLY THOUGHT THERE MIGHT BE FURTHER  
20 EVIDENCE ON THAT POINT, BUT WE'LL GO FORWARD AT THIS TIME.

21 MR. BRUCE: OKAY.

22 THE COURT: ALL RIGHT, SIR.

23 MR. BRUCE: OUR FIRST WITNESS IS FRANK MILLS.

24 THE COURT: FRANK WHO? I'M SORRY.

25 MR. BRUCE: FRANK MILLS.



Mills/Direct

Page 470

1 THE COURT: THANK YOU.

2 **FRANK MILLS, GOVERNMENT WITNESS, SWORN**

3 D I R E C T E X A M I N A T I O N 9:05 A.M.

4 BY MS. COOLEY:

5 Q. GOOD MORNING, MR. MILLS.

6 A. GOOD MORNING.

7 Q. IF YOU WOULD, PLEASE STATE YOUR FULL NAME FOR THE COURT  
8 AND EXPLAIN TO US YOUR FORMER OCCUPATION.

9 A. MY NAME IS FRANK MILLS, AND I WAS AN FBI AGENT FROM 1962  
10 UNTIL I RETIRED IN 1990.

11 Q. 1990?

12 A. YES.

13 Q. AND I'LL ASK YOU TO JUST SPEAK INTO THAT MICROPHONE --

14 A. OKAY.

15 Q. -- SO THAT WE CAN MAKE SURE TO GET IT ON THE RECORD. AND  
16 DURING YOUR TIME WITH THE FBI, HOW WERE YOU EMPLOYED WITH  
17 THEM?

18 A. HOW WAS I EMPLOYED?

19 Q. IN WHAT CAPACITY DID YOU WORK FOR THE FBI?

20 A. I WAS A SPECIAL AGENT, INVESTIGATOR.

21 Q. WHERE DID YOU MOSTLY WORK?

22 A. MOST OF THE TIME IN SOUTH CAROLINA, AND I WAS ASSIGNED TO  
23 GREENVILLE, SOUTH CAROLINA.

24 Q. AND WERE YOU ASSIGNED TO GREENVILLE IN 1979?

25 A. YES, I WAS.

September 19, 2012

Mills/Direct

Page 471

1 Q. AND IN 1979, DID YOU HAVE OCCASION TO COME INTO CONTACT  
2 WITH HELENA STOECKLEY?

3 A. I DID.

4 Q. AND WAS THAT AS PART OF YOUR EMPLOYMENT WITH THE FBI?

5 A. IT WAS.

6 Q. AND HOW DID THAT COME ABOUT?

7 A. I RECEIVED A TELEPHONE CALL, I BELIEVE ON THE 13TH OF  
8 AUGUST OF THAT YEAR, FROM THE U.S. ATTORNEY'S OFFICE IN  
9 RALEIGH, NORTH CAROLINA, TELLING ME THAT JUDGE DUPREE HAD  
10 ISSUED A MATERIAL WITNESS BENCH WARRANT FOR HELENA STOECKLEY'S  
11 ARREST AND THAT WAS FOLLOWED UP BY A TELETYPE FROM THE FBI  
12 OFFICE THAT SAME NIGHT.

13 Q. MAY I HAVE GOVERNMENT EXHIBIT 2001, PLEASE? MR. MILLS,  
14 I'M SHOWING YOU GOVERNMENT EXHIBIT 2001. IF WE COULD ZOOM IN  
15 AT THE TOP. AND IF YOU COULD JUST LET US KNOW WHERE THIS  
16 ORIGINATED FROM AND WHERE THE TELETYPE CAME IN?

17 A. THE TELETYPE CAME FROM THE CHARLOTTE DIVISION AND IT WENT  
18 TO THE COLUMBIA DIVISION, WHICH WAS MY HEADQUARTERS CITY.

19 (GOVERNMENT EXHIBIT NUMBER 2001  
20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. AND WHAT WAS IT IN REFERENCE TO?

22 A. THE JEFFREY ROBERT MACDONALD CASE OUT OF CHARLOTTE.

23 Q. AND IF YOU COULD SCROLL DOWN. DO YOU SEE THERE IN THE  
24 SECOND -- I'M SORRY, BACK UP TO PAGE ONE, SECOND PARAGRAPH, UP  
25 INCLUDING THE NEXT PART, PLEASE. THANK YOU. THE ONE THAT

September 19, 2012

Mills/Direct

Page 472

1 SAYS RE: CHARLOTTE. CAN YOU READ STARTING THERE, PLEASE.

2 A. THE NEXT PARAGRAPH?

3 Q. STARTING AT THE TOP THERE.

4 A. OKAY. RE: CHARLOTTE TELCALL TO FRANK -- TO S.A. FRANK  
5 MILLS, COLUMBIA, AUGUST 10, 1979. TRIAL OF CAPTIONED SUBJECT  
6 CURRENTLY IN PROCESS AND DEFENSE BEGAN PRESENTING EVIDENCE ON  
7 AUGUST 13, 1979.

8 ON AUGUST 13, 1979, U.S. DISTRICT JUDGE FRANKLIN  
9 DUPREE, EASTERN DISTRICT OF NORTH CAROLINA, RALEIGH, NORTH  
10 CAROLINA, SIGNED A MATERIAL WITNESS BENCH WARRANT AT THE  
11 REQUEST OF THE DEFENSE FOR THE ARREST OF HELENA STOECKLEY,  
12 ALSO KNOWN AS HELENA WORLIE STOECKLEY, HELENA STOECKLEY --  
13 WERLE STOECKLEY, HELENA POSTER, DIRECTING THAT SHE BE BROUGHT  
14 FORTHWITH BEFORE THE U.S. DISTRICT COURT, EASTERN DISTRICT OF  
15 NORTH CAROLINA, RALEIGH, NORTH CAROLINA. AND I NEED YOU TO  
16 SCROLL IT.

17 Q. OKAY. AND CAN I ASK YOU, WOULD THAT BE POSSIBLE THAT  
18 THAT SAYS HELENA FOSTER INSTEAD OF POSTER? I KNOW IT'S A  
19 LITTLE BLURRY GIVEN IT'S AN OLD DOCUMENT.

20 A. YES, IT COULD BE. I DON'T KNOW.

21 Q. AND THEN CONTINUING. I THINK YOU LEFT OFF WITH SINCE HER  
22 TESTIMONY.

23 A. DIRECTING THAT SHE BE BROUGHT FORTHWITH BEFORE THE U.S.  
24 DISTRICT COURT, EASTERN DISTRICT OF NORTH CAROLINA, RALEIGH,  
25 NORTH CAROLINA, SINCE HER TESTIMONY IS MATERIAL TO THIS TRIAL

September 19, 2012

Mills/Direct

Page 473

1 AND IT HAS BECOME IMPRACTICAL TO SECURE HER PRESENCE BY --

2 Q. NEXT PAGE, PLEASE.

3 A. -- BY SUBPOENA. WARRANT ORDERS THAT SHE IS TO BE  
4 DETAINED UNTIL SHE IS DISCHARGED BY THE COURT. WARRANT IS  
5 ISSUED PURSUANT TO TITLE 18 U.S. SECTION 3149.

6 BENCH WARRANT WAS ISSUED UPON SWORN AFFIDAVIT SIGNED  
7 BY DEFENSE COUNSEL BERNARD L. SEGAL, AUGUST 13TH, 1979,  
8 TESTIFYING SHE IS A NECESSARY WITNESS AND EFFORTS BY THE  
9 DEFENSE TO LOCATE HER HAVE BEEN FRUITLESS.

10 ASSISTANT UNITED STATES ATTORNEY JAMES BLACKBURN,  
11 EASTERN DISTRICT OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA,  
12 REQUESTS UPON HER APPREHENSION THAT SHE BE INTERVIEWED  
13 CONCERNING PREVIOUS STATEMENTS SHE HAS MADE INDICATING THAT  
14 SHE MAY HAVE PARTICIPATED IN THE MURDER OF THE SUBJECT'S WIFE  
15 AND TWO CHILDREN AT THEIR FORT BRAGG, NORTH CAROLINA,  
16 APARTMENT DURING THE EARLY HOURS -- EARLY HOURS FEBRUARY 17TH,  
17 1970; HOWEVER, DUE TO HEAVY DRUG USE, SHE CANNOT RECALL  
18 WHETHER OR NOT SHE WAS INVOLVED. SHE HAS MADE THESE  
19 STATEMENTS TO INDIVIDUALS BOTH IN THE FAYETTEVILLE, NORTH  
20 CAROLINA AREA AND IN THE NASHVILLE, TENNESSEE -- AND IN  
21 NASHVILLE, TENNESSEE.

22 SHE HAS BEEN HOSPITALIZED IN MENTAL INSTITUTIONS ON  
23 SEVERAL OCCASIONS AND APPARENTLY IS UNSTABLE AND A HEAVY DRUG  
24 USER.

25 STOECKLEY IS DESCRIBED AS A WHITE FEMALE BORN JUNE

September 19, 2012

Mills/Direct

Page 474

1 THE 3RD, 1950, UNCONFIRMED, APPROXIMATELY FIVE FEET FOUR  
2 INCHES TALL, 150 POUNDS, HEAVY BUILD, BROWN HAIR, REPORTEDLY  
3 HAS A SMALL TATTOO ABOVE ONE OF HER BREASTS.

4 COLUMBIA, AT WALHALLA, SOUTH CAROLINA, WILL LOCATE  
5 AND APPREHEND STOECKLEY AND ADVISE THE CHARLOTTE DIVISION.  
6 BENCH WARRANT IN POSSESSION OF U.S. MARSHAL, EASTERN DISTRICT  
7 OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA. SUTEL RESULTS --  
8 IT'S SUBMIT TELEGRAM RESULTS OF INVESTIGATION IMMEDIATELY.

9 IN VIEW OF STOECKLEY'S KNOWN DRUG USE AND MENTAL  
10 INSTABILITY CAUTION SHOULD BE USED IN APPREHENDING.

11 Q. NOW, YOU SAID SUTEL. WHAT IS THAT? WHAT DOES THAT MEAN  
12 TO YOU?

13 A. SUBMIT TELETYPE.

14 Q. AND WAS THE TELETYPE A COMMON WAY THAT YOU COMMUNICATED  
15 IN THE FBI IN 1979?

16 A. YES, IN SITUATIONS WHERE WE NEEDED IMMEDIATE  
17 COMMUNICATION.

18 Q. AND DID YOU, IN FACT, APPREHEND HER PURSUANT TO THE  
19 WARRANT IN THIS TELETYPE?

20 A. I DID.

21 Q. OKAY. AND WHERE DID YOU FIRST LOCATE MS. STOECKLEY?

22 A. I BELIEVE THAT WE HAD A -- WE WERE TOLD THAT SHE WAS  
23 LIVING WITH HER HUSBAND, PARAMOUR, BOYFRIEND, ERNEST DAVIS.  
24 AND I BELIEVE WE HAD A ROUTE ADDRESS OUT OF WALHALLA,  
25 POSSIBLY, SOUTH CAROLINA, WHERE HE WAS.

September 19, 2012

Mills/Direct

Page 475

1           AND ON THE DAY FOLLOWING THE TELETYPE, I HAD ANOTHER  
2 AGENT IN THE OFFICE, TOM DONOHUE, GO WITH ME, AND WE WENT TO  
3 THE POST OFFICE THERE BECAUSE WE DIDN'T KNOW WHERE THE ROUTE  
4 WAS AND WE GOT DIRECTIONS TO WHERE THE ROUTE ADDRESS WAS. AND  
5 THEN, FROM THERE, WE PROCEEDED TO THE ADDRESS, WHICH WAS A  
6 TRAILER.

7 Q.     IT WAS A TRAILER YOU SAID?

8 A.     YEAH.

9 Q.     OKAY. AND DID YOU, IN FACT, LOCATE HELENA STOECKLEY AT  
10 THAT ADDRESS?

11 A.     WE DID. WHEN WE GOT THERE, ERNEST DAVIS CAME OUT OF THE  
12 TRAILER AND SHE REMAINED IN THE TRAILER. AGENT DONOHUE STAYED  
13 WITH DAVIS AND I WENT IN AND FOUND HELENA AND WE DID COME  
14 OUTSIDE AND I IMMEDIATELY ADVISED HER WHAT IT WAS ALL ABOUT.

15 Q.     WHAT YOU WERE THERE FOR?

16 A.     YEAH.

17 Q.     OKAY. NOW, AFTER YOU LOCATED HER, YOU AND SPECIAL AGENT  
18 DONOHUE, DID YOU ARREST HER AND TAKE HER WITH YOU?

19 A.     I DID.

20 Q.     OKAY. NOW, DID MR. DAVIS COME WITH YOU AT THAT POINT?

21 A.     NO, I WOULDN'T -- WE WOULDN'T HAVE DONE THAT.

22 Q.     AND WHY WOULDN'T YOU HAVE DONE THAT? WHY WOULDN'T THAT  
23 BE PERMITTED?

24 A.     WELL, AS I RECALL, I TOLD MR. DAVIS WHERE WE WERE GOING.  
25 WE KNEW WHERE WE WERE GOING TO TAKE HER. AND I TOLD HIM, I

September 19, 2012

Mills/Direct

Page 476

1 SAID THAT IF HE WANTED TO SEE HER HE COULD MAKE ARRANGEMENTS  
2 WITH THE PICKENS COUNTY JAIL AND PROBABLY GO VISIT HER THAT  
3 NIGHT.

4 Q. DID YOU --

5 A. BUT TO DRIVE HER AND HIM TOGETHER IN THE BUREAU CAR WOULD  
6 NOT HAVE BEEN APPROPRIATE.

7 Q. WOULD NOT HAVE BEEN APPROPRIATE?

8 A. NO.

9 Q. AND WHY WOULD THAT HAVE NOT BEEN APPROPRIATE?

10 A. WELL, IT JUST WOULD HAVE CREATED A POSSIBLE VOLATILE  
11 SITUATION.

12 Q. AND WHEN YOU SAY A POSSIBLE VOLATILE SITUATION, WOULD  
13 THAT BE FOR ANY LAW ENFORCEMENT OFFICER?

14 A. OH, YES. I MEAN, HER ARREST, THAT'S TRAUMATIC. AND TO  
15 HAVE THE FIVE OF US IN THE CAR TOGETHER RIDING TO THE JAIL  
16 WOULDN'T HAVE BEEN A GOOD THING.

17 Q. THE FIVE OF YOU OR THE FOUR OF YOU?

18 A. THE FIVE -- EXCUSE ME, I'LL GET MY NUMBERS STRAIGHT. THE  
19 FOUR OF US, RIGHT.

20 Q. JUST MAKING SURE I'M NOT LEAVING ANYBODY OUT.

21 A. NO, THAT'S IT.

22 Q. AND SO WHEN YOU ARRESTED HER, WHERE DID YOU TAKE HER?

23 A. WE WENT TO THE PICKENS COUNTY JAIL.

24 Q. FROM WALHALLA?

25 A. YES.

September 19, 2012

Mills/Direct

Page 477

1 Q. AND THAT TAKES ABOUT HOW LONG?

2 A. THIRTY, 40 MINUTES, I WOULD THINK.

3 Q. OKAY. NOW, ARE YOU FAMILIAR WITH THE DISTANCE BETWEEN  
4 WALHALLA AND CHARLESTON?

5 A. YES, ROUGHLY.

6 Q. ABOUT HOW LONG WOULD IT TAKE TO GET FROM CHARLESTON TO  
7 WALHALLA OR VICE VERSA?

8 A. PROBABLY FOUR AND A HALF HOURS.

9 Q. FOUR AND A HALF HOURS?

10 A. YEAH.

11 Q. AND IF I COULD HAVE GOVERNMENT EXHIBIT NUMBER 2104.2.  
12 I'M SHOWING YOU WHAT IS A MAP OF THE GREENVILLE, SOUTH  
13 CAROLINA AREA. DOES THAT LOOK FAMILIAR TO YOU?

14 A. YES, IT DOES.

15 (GOVERNMENT EXHIBIT NUMBER 2104.2  
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. OKAY. AND IF YOU COULD -- DO YOU SEE WALHALLA ON THIS  
18 MAP?

19 A. (WITNESS NODS HEAD.)

20 Q. AND IF YOU COULD JUST TOUCH THE SCREEN AND CIRCLE WHERE  
21 YOU SEE WALHALLA.

22 A. HERE.

23 Q. SO, THERE WHERE YOU'VE MADE THOSE RED MARKS?

24 A. IT'S JUST SOUTHWEST OF PICKENS.

25 Q. I'M SORRY. CAN YOU SPEAK INTO THE MICROPHONE, PLEASE?

September 19, 2012



Mills/Direct

Page 478

1 A. I'M SORRY. SOUTHWEST OF PICKENS.

2 Q. OKAY. AND THEN YOU ALSO SEE PICKENS?

3 A. YES, I DO.

4 Q. IS THAT CIRCLED THERE IN RED?

5 A. IT IS.

6 Q. AND SO THE DISTANCE BETWEEN WALHALLA AND PICKENS THAT  
7 WE'RE LOOKING AT ON THIS MAP, YOU SAID IT WOULD TAKE ABOUT 35  
8 TO 40 MINUTES?

9 A. APPROXIMATELY.

10 Q. AND IF I COULD HAVE GOVERNMENT EXHIBIT 2104, PLEASE. AND  
11 IF WE COULD ZOOM IN ON THE -- THANK YOU. AND ON THE TOP HALF  
12 OF THAT, PLEASE.

13 NOW, CAN YOU SEE ON THIS MAP THE AREA THAT WE WERE  
14 JUST REFERRING TO OR --

15 A. YES.

16 Q. -- IS IT TOO SMALL? DO YOU NEED ME TO BLOW IT UP SOME  
17 MORE FOR YOU?

18 A. I CAN SEE IT.

19 Q. OKAY. AND GENERALLY WHERE IS THAT?

20 A. ON THE LEFT OF THE SCREEN. I'M TOUCHING PICKENS NOW AND  
21 WALHALLA --

22 Q. OKAY. YOU'RE TOUCHING PICKENS.

23 A. -- WOULD BE RIGHT THERE --

24 Q. OKAY.

25 A. -- AT HIGHWAY 178.

September 19, 2012

Mills/Direct

Page 479

1 (GOVERNMENT EXHIBIT NUMBER 2104  
2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. MR. MILLS, CAN YOU PULL THAT MIC AROUND SO THAT WE CAN  
4 MAKE SURE TO GET ALL OF THIS ON RECORD?

5 A. ALL RIGHT.

6 Q. THANK YOU. OKAY. AND DO YOU ALSO SEE -- CAN WE BACK OUT  
7 ON THAT JUST A LITTLE BIT? DO YOU ALSO SEE WERE CHARLOTTE IS  
8 LOCATED ON THIS MAP?

9 A. YES, I DO.

10 Q. OKAY. AND WHERE IS THAT, IF YOU COULD INDICATE?

11 A. I THINK IT'S HERE.

12 Q. WE'RE GOING TO BLOW IT UP JUST A LITTLE BIT.

13 A. OKAY. CHARLOTTE IS RIGHT HERE.

14 Q. OVER THERE IN THE UPPER RIGHT-HAND CORNER?

15 A. CORRECT.

16 Q. AND ARE YOU AWARE OF ABOUT THE DISTANCE BETWEEN PICKENS  
17 AND CHARLOTTE, ROUGHLY?

18 A. MAYBE TWO HOURS.

19 Q. AND YOU SAY YOU TOOK HER TO PICKENS -- THANK YOU. YOU  
20 CAN TAKE IT OFF THE SCREEN. YOU SAY YOU TOOK HER TO PICKENS  
21 COUNTY JAIL. WHY DID YOU NOT TAKE HER TO GREENVILLE?

22 A. GREENVILLE HAD BEEN A FEDERALLY APPROVED JAIL FACILITY  
23 AND THEY WERE HAVING A DISCUSSION BETWEEN THE LOCAL  
24 AUTHORITIES AND THE MARSHAL'S OFFICE OVER HOW MUCH MONEY THEY  
25 WOULD CHARGE TO HOUSE A PRISONER AND THAT HAD NOT BEEN

September 19, 2012

Mills/Direct

Page 480

1 RESOLVED. SO, IT WAS TAKEN OFF THE FEDERALLY APPROVED --  
2 TEMPORARILY TAKEN OFF THE FEDERALLY APPROVED FACILITY LIST AND  
3 PICKENS WAS THE NEAREST FEDERALLY APPROVED FACILITY.

4 Q. AND ON THE WAY TO PICKENS, YOU SAID THAT THE PEOPLE IN  
5 THE CAR WERE YOU, SPECIAL AGENT DONOHUE AND HELENA STOECKLEY,  
6 IS THAT CORRECT?

7 A. CORRECT.

8 Q. AND DID YOU INTERVIEW HER AS PER THE TELETYPE?

9 A. YES, I DID.

10 Q. AND WHAT DID SHE TELL YOU?

11 A. I ASKED HER IF SHE WOULD TALK TO ME ABOUT THE MACDONALD  
12 SITUATION AND SHE SAID SHE WOULD. SHE TOLD ME THAT SHE WAS,  
13 AND HAD BEEN FOR A NUMBER OF YEARS, A VERY HEAVY DRUG USER.  
14 SHE SAID SHE WAS TAKING DAILY, SMOKING POT AND OTHER DRUGS  
15 INCLUDING HALLUCINATORY DRUGS. SHE SAID SHE REMEMBERS THE  
16 NIGHT OF THE MURDER BECAUSE OF THE PRESS IN THE PAPER THE NEXT  
17 DAY. SHE TOLD ME THAT SHE HAD, IN FACT, NOT ONLY USED DRUGS,  
18 BUT SHE HAD ALSO SOLD DRUGS, MOSTLY MARIJUANA. AND SHE SAID,  
19 IN FACT, SHE HAD SOLD DRUGS TO DOCTORS IN THE  
20 FAYETTEVILLE/FORT BRAGG AREA, BUT SHE SAID NOT MACDONALD.

21 AND SHE SAID THAT SHE KNEW THIS BECAUSE ON THE DAY  
22 FOLLOWING THE MURDER SITUATION, OR SHORTLY AFTER THAT, HIS  
23 PAPER WAS IN THE PAPER -- HIS PICTURE WAS IN THE PAPER AND SHE  
24 OBSERVED IT AND SAID I'VE NEVER SEEN HIM BEFORE.

25 SHE SAID THAT SHE DID RECALL THE NIGHT IN QUESTION

September 19, 2012

Mills/Direct

Page 481

1 AND SHE SAID, AS EVERY NIGHT, SHE WAS USING DRUGS. SHE  
2 RECALLS IT WAS APPROXIMATELY SHORTLY BEFORE MIDNIGHT OR ABOUT  
3 MIDNIGHT THAT SHE MET A FRIEND WHO WAS ALSO A DRUG USER, AN  
4 ENLISTED MAN AT FORT BRAGG, WHOSE NAME, I THINK, WAS GREG  
5 MITCHELL. AND MITCHELL GAVE HER A, QUOTE, HIT, UNQUOTE, OF  
6 MESCALINE. AND SHE SAID FROM THAT POINT ON SHE SAID SHE  
7 DIDN'T REMEMBER ANYTHING. IT LIKE PUT HER OUT.

8 AND SHE SAID THE NEXT THING SHE REMEMBERED WAS THE  
9 FOLLOWING MORNING AND SHE SAID SHE COULDN'T REMEMBER IF IT WAS  
10 THAT DAY OR THE NEXT DAY THAT -- I SHOULD BACKTRACK HERE --  
11 THAT DETECTIVE BEASLEY, PRINCE BEASLEY, FROM THE FAYETTEVILLE  
12 POLICE DEPARTMENT CONTACTED HER ABOUT THE MURDERS.

13 LET ME ADD THAT SHE ALSO HAD TOLD ME PREVIOUSLY THAT  
14 SHE WAS AN INFORMANT FOR THE FAYETTEVILLE POLICE DEPARTMENT  
15 AND PRINCE BEASLEY WAS AN OFFICER ON, I BELIEVE, WHAT WAS THE  
16 JOINT DRUG TASK FORCE IN THE FAYETTEVILLE AREA, AND THAT HE  
17 OPERATED HER AS AN INFORMANT. AS A MATTER OF FACT, SHE SAID  
18 THAT SHE WAS HIS INFORMANT FROM THE TIME SHE WAS 15 YEARS OLD.  
19 AND I THINK SHE WAS 27 WHEN WE ARRESTED HER.

20 AND AFTER THAT, SHE SAID THAT SHE HAD CONTACTED  
21 BEASLEY THE NEXT DAY AND JUST BASICALLY COULD NOT REMEMBER  
22 WHAT HAD HAPPENED THE PREVIOUS NIGHT.

23 Q. DID SHE ALSO MENTION SPEAKING TO A CID OFFICER NAMED  
24 MANN?

25 A. YES. MAHON OR MANN, YES.

September 19, 2012

Mills/Direct

Page 482

1 Q. NOW, WHERE DID THIS INTERVIEW TAKE PLACE?

2 A. MY INTERVIEW?

3 Q. YOUR INTERVIEW OF HELENA STOECKLEY.

4 A. IN THE CAR ON THE WAY FROM WALHALLA TO PICKENS COUNTY.

5 Q. OKAY. AND WHO DRIVING?

6 A. ALSO, WHAT SHE -- I MIGHT ADD, TOO, THAT AT THE TIME OF  
7 THIS INCIDENT SHE WAS, IN FACT, LIVING IN FAYETTEVILLE.

8 Q. AT THE TIME?

9 A. AT THE TIME OF THE MURDER SHE WAS LIVING IN FAYETTEVILLE.

10 Q. NOT WALHALLA?

11 A. NO. NO, SHE WAS LIVING IN FAYETTEVILLE AND HAD -- I  
12 THINK SHE TOLD ME SHE HAD TWO FEMALE ROOMMATES, BUT DID NOT  
13 WANT TO TELL ME WHO THEY WERE.

14 Q. AND DURING YOUR INTERVIEW WITH HER IN THE CAR, WHO WAS  
15 DRIVING?

16 A. DONOHUE.

17 Q. SO, YOU WERE NOT DRIVING AND INTERVIEWING?

18 A. NO.

19 Q. AND DID ANYONE ELSE RIDE IN THE CAR WITH THE TWO OF YOU?

20 A. NO, JUST THE THREE OF US; DONOHUE, MYSELF AND HELENA.

21 Q. AND WAS THERE ANY DEPUTY U.S. MARSHAL PRESENT WHEN YOU  
22 ARRESTED HELENA STOECKLEY?

23 A. NO, THERE WASN'T.

24 Q. OR WHEN YOU TRANSPORTED HER?

25 A. NO.

September 19, 2012

Mills/Direct

Page 483

1 Q. OR AT PICKENS WHEN YOU COMMITTED HER?

2 A. NO.

3 Q. IF I COULD HAVE GOVERNMENT EXHIBIT 2003. AND PURSUANT TO  
4 THE REQUEST ON THE FIRST TELETYPE THAT WE LOOKED AT,  
5 GOVERNMENT EXHIBIT 2001, DID YOU THEN SEND A TELETYPE OR  
6 SOMEHOW COMMUNICATE THE RESULTS OF YOUR INTERVIEW BACK TO  
7 RALEIGH?

8 A. YES.

9 Q. OKAY. AND WHAT DID YOU DO?

10 A. WELL, I SENT THIS TELETYPE THAT I'M LOOKING AT HERE DATED  
11 AUGUST 15TH, '79, FROM COLUMBIA TO CHARLOTTE. AND IN IT I SAY  
12 THAT HELENA STOECKLEY WAS ARRESTED ON -- AT EIGHT -- I CAN'T  
13 READ THE TIME. IT'S NOT LEGIBLE, THE TIME HERE.

14 (GOVERNMENT EXHIBIT NUMBER 2003  
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. OKAY.

17 A. SOMETIME AT OCONEE COUNTY BY SPECIAL AGENTS OF THE FBI  
18 WITHOUT INCIDENT. SHE WAS INCARCERATED AT THE PICKENS COUNTY  
19 JAIL. THE U.S. MAGISTRATE AND U.S. MARSHAL GREENVILLE WERE  
20 IMMEDIATELY NOTIFIED.

21 AND I SAY THAT STOECKLEY WAS INTERVIEWED FOLLOWING  
22 HER ARREST AND SUBSTANCE OF THE INTERVIEW WAS FURNISHED BY  
23 TELEPHONE CALL FROM SPECIAL AGENT MILLS TO ASSISTANT UNITED  
24 STATES ATTORNEY IN FAYETTEVILLE, NORTH CAROLINA, AND TO THE  
25 FBI IN RALEIGH, NORTH CAROLINA.

September 19, 2012

Mills/Direct

Page 484

1 Q. SO, IN ADDITION TO THE TELETYPE, DID YOU ALSO CALL IN THE  
2 INFORMATION THAT YOU GOT FROM HELENA?

3 A. THAT'S CORRECT.

4 Q. OKAY. AND DO YOU KNOW AN INDIVIDUAL BY THE NAME OF JIMMY  
5 BRITT?

6 A. NO, I DON'T.

7 Q. SO, HE WAS NOT WITH YOU AT ANY POINT DURING ANY OF THIS?

8 A. NO.

9 Q. NOW, ONCE YOU ARRIVED AT THE PICKENS COUNTY JAIL WITH  
10 HELENA, WHAT DID YOU AND SPECIAL AGENT DONOHUE DO?

11 A. WELL, WE WOULD HAVE BOOKED HER INTO THE JAIL. I BELIEVE  
12 WE PROBABLY CALLED THE JAIL ON THE WAY AFTER THE ARREST TO LET  
13 THEM KNOW WE WERE COMING. AND THEN WE WOULD HAVE BOOKED HER  
14 INTO THE JAIL.

15 Q. NOW, WHEN SOMEONE IS BOOKED INTO A JAIL, ARE THEY  
16 FINGERPRINTED?

17 A. YES.

18 Q. MAY I HAVE GOVERNMENT EXHIBIT 2006, PLEASE? AND I'M  
19 SHOWING YOU HERE GOVERNMENT EXHIBIT 2006. WHAT'S THE NAME ON  
20 THIS FINGERPRINT CARD?

21 A. HELENA WORLIE STOECKLEY.

22 (GOVERNMENT EXHIBIT NUMBER 2006  
23 WAS IDENTIFIED FOR THE RECORD.)

24 Q. AND WHAT'S THE DATE THAT THESE PRINTS WERE TAKEN?

25 A. THE DATE WAS 8/14/79.

September 19, 2012

Mills/Direct

Page 485

1 Q. AND IS THAT THE DAY THAT YOU ARRESTED HER?

2 A. YES.

3 Q. OKAY. AND DOES IT LIST THE CHARGE OR THE REASON WHY SHE  
4 WAS BEING PRINTED?

5 A. YES, IT DOES. MATERIAL WITNESS.

6 Q. IF I MAY HAVE GOVERNMENT EXHIBIT 2007? AND IS THIS ALSO  
7 A FINGERPRINT CARD?

8 A. YES, IT IS.

9 Q. IS IT A DIFFERENT FINGERPRINT CARD?

10 A. IT'S A DIFFERENT FINGERPRINT CARD, BUT IT'S OF THE SAME  
11 PERSON.

12 (GOVERNMENT EXHIBIT NUMBER 2007  
13 WAS IDENTIFIED FOR THE RECORD.)

14 Q. OKAY. SAME DATE?

15 A. I'M SORRY?

16 Q. IS IT FROM THE SAME DATE?

17 A. YES.

18 Q. OKAY. AND WHAT WAS THE LOCATION THAT THE CARD WAS TAKEN?

19 A. (NO RESPONSE.)

20 Q. DOES IT LIST IT UNDERNEATH HER NAMES?

21 A. OH, YEAH. OH, YES, IT DOES. YEAH. RIGHT. IT WAS --  
22 IT'S BLOCK STAMPED PICKENS COUNTY SHERIFF'S OFFICE.

23 Q. AND IS THAT ALSO FOR A MATERIAL WITNESS THAT'S A FEDERAL  
24 PRISONER?

25 A. YES, IT IS.

September 19, 2012



Mills/Direct

Page 486

1 Q. AND DOWN IN THE MIDDLE OF THE PRINTS, IS THERE A NOTATION  
2 THERE ABOUT --

3 A. ONE OF THE FINGERPRINTS IS MISSING. AND I THINK IT SAYS  
4 LEFT THUMB, I BELIEVE. AND THE FINGERPRINT WAS NOT TAKEN IN  
5 THIS BLOCK BECAUSE THERE'S A NOTATION STATING THAT THE LEFT  
6 THUMB WAS IN A CAST.

7 Q. NOW, WHEN YOU COMMIT SOMEONE TO THE PICKENS COUNTY JAIL  
8 OR IN YOUR EXPERIENCE, DID YOU ALSO HAVE TO FILL OUT A  
9 COMMITMENT FORM?

10 A. YES.

11 Q. IF I COULD HAVE GOVERNMENT EXHIBIT 2064. NOW, I'M  
12 SHOWING YOU A COMMITMENT FORM. IT'S FORM 102. IS THERE A  
13 NAME AS TO WHO WAS BEING COMMITTED ON THIS FORM?

14 A. YES, THERE IS.

15 Q. AND WHO IS IT THAT'S BEING COMMITTED?

16 A. HELENA WORLIE STOECKLEY.

17 Q. AND WHAT'S THE DATE OF THAT COMMITMENT?

18 A. 8/14/79.

19 Q. AND THE LOCATION?

20 A. PICKENS, SOUTH CAROLINA.

21 (GOVERNMENT EXHIBIT NUMBER 2064

22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. SO, IS THAT THE DATE THAT YOU COMMITTED HER TO PICKENS?

24 A. THAT'S CORRECT.

25 Q. NOW, WHO SIGNED AND FILLED OUT THIS COMMITMENT FORM, DO

September 19, 2012

Mills/Direct

Page 487

1 YOU KNOW?

2 A. MY ASSOCIATE, TOM DONOHUE, THE OTHER AGENT THAT  
3 ACCOMPANIED ME THAT DAY.

4 Q. OKAY. AND DO YOU RECOGNIZE HIS SIGNATURE ON THIS FORM?

5 A. YES, I DO.

6 Q. AND, AGAIN, DOES IT NOTE WHAT SHE'S BEING CHARGED WITH?

7 A. YES, IT DOES. MATERIAL WITNESS.

8 Q. AND ABOUT WHAT TIME WAS THIS COMMITMENT FORM FILLED OUT?

9 A. 6:32 P.M.

10 Q. AND JUST AS THERE IS A COMMITMENT FORM, IS THERE ALSO A  
11 RELEASE FORM FOR A PRISONER FROM BEING -- WHEN THEY'RE BOOKED  
12 INTO THE JAIL?

13 A. YES, THERE IS.

14 Q. MAY I HAVE GOVERNMENT EXHIBIT 2066? AND THIS IS THE  
15 RELEASE FORM FOR HELENA STOECKLEY. WHAT IS THE DATE OF THIS  
16 RELEASE FORM?

17 A. OH, THE FOLLOWING DAY, 8/15/79.

18 (GOVERNMENT EXHIBIT NUMBER 2066  
19 WAS IDENTIFIED FOR THE RECORD.)

20 Q. OKAY. AND WHAT IS THE NAME OF THE INDIVIDUAL WHO SHE WAS  
21 RELEASED INTO THE CUSTODY OF?

22 A. SHE WAS RELEASED TO VANOY KENNEDY, DEPUTY U.S. MARSHAL.

23 Q. DO YOU KNOW VERNON KENNEDY?

24 A. YES, I DO.

25 Q. OKAY.

September 19, 2012

Mills/Direct

Page 488

1 A. YES.

2 THE COURT: I'M SORRY. WHAT WAS THE NAME AGAIN?

3 THE WITNESS: VANOY, V-A-N-O-Y, KENNEDY.

4 THE COURT: THANK YOU.

5 BY MS. COOLEY:

6 Q. IS IT VERNOY, V-E-R-N-O-Y?

7 A. YES, YOU'RE RIGHT. I'M SORRY. EXCUSE ME.

8 MADAM CLERK: I'M SORRY, WE'RE HAVING A HARD TIME  
9 HEARING YOU. LET'S TRY THAT.

10 THE WITNESS: OKAY. THAT'S CORRECT. NO, I  
11 MISPELLED IT. IT'S V-E-R-N-O-Y. IT'S VERNOY.

12 BY MS. COOLEY.

13 Q. AND DID YOU KNOW HIM -- HOW DID YOU KNOW HIM AT THE TIME?

14 A. I KNEW HIM WHEN HE WAS A DEPUTY WITH THE GREENVILLE  
15 COUNTY SHERIFF'S OFFICE SOME YEARS PRIOR TO BECOMING A MARSHAL  
16 AND THEN HE BECAME A DEPUTY UNITED STATES MARSHAL AND I KNEW  
17 HIM ALL THROUGH THAT TIME. WE WORKED IN THE SAME FEDERAL  
18 BUILDING IN GREENVILLE TOGETHER.

19 Q. AND WHAT IS HIS PHYSICAL DESCRIPTION?

20 A. HE'S A BLACK MALE, PROBABLY SIX FOOT TWO, MEDIUM BUILD,  
21 BACK THEN ABOUT MY AGE, BACK THEN.

22 Q. BACK THEN ABOUT YOUR AGE?

23 A. YEAH.

24 Q. OKAY. THANK YOU. AND DURING THE ENTIRE TIME THAT YOU  
25 WERE WITH HELENA STOECKLEY ON AUGUST 14TH OF 1979, DID SHE

September 19, 2012

Mills/Direct

Page 489

1 EVER CONFESS TO ANYTHING REGARDING THE MACDONALD MURDERS TO  
2 YOU?

3 A. NO, SHE DID NOT.

4 Q. NOW AS A PART OF YOUR DUTY AS A LAW ENFORCEMENT OFFICER  
5 WITH THE FBI, AFTER TAKING AN INTERVIEW LIKE YOU DID WITH  
6 HELENA STOECKLEY, WOULD YOU MEMORIALIZE THAT IN SOME WAY?

7 A. YES.

8 Q. AND HOW WOULD YOU DO THAT?

9 A. WELL, WE HAD A RULE, WE WOULD WRITE UP THE RESULTS OF THE  
10 INTERVIEW OR ARREST OR COMBINATION OF THE TWO WITHIN A FIVE  
11 DAY PERIOD OF THE INCIDENT.

12 Q. AND WAS THAT COMMONLY REFERRED TO AS A 302?

13 A. YES, IT WAS.

14 Q. MAY I HAVE GOVERNMENT EXHIBIT 2002, PLEASE? DID YOU  
15 CREATE A 302 FOR YOUR INTERVIEW WITH HELENA STOECKLEY ON  
16 AUGUST 14TH, 1979?

17 A. I DID.

18 Q. AND I WANT YOU TO TAKE A LOOK AT THIS DOCUMENT. DO YOU  
19 SEE YOUR NAME HERE ON THIS DOCUMENT?

20 A. I DO.

21 Q. OKAY. AND DO YOU RECOGNIZE WHAT THIS DOCUMENT IS?

22 A. YES, I DO.

23 Q. WHAT DO YOU RECOGNIZE IT TO BE?

24 A. THE RESULTS OF MY ARREST AND INTERVIEW OF HELENA ON THAT  
25 DAY, THE 14TH.

September 19, 2012

Mills/Direct

Page 490

- 1 (GOVERNMENT EXHIBIT NUMBER 2002  
2 WAS IDENTIFIED FOR THE RECORD.)
- 3 Q. NOW, WAS IT A MULTI-PAGE DOCUMENT?
- 4 A. I THINK SO. I'VE ONLY GOT ONE HERE, BUT I THINK THERE'S  
5 ANOTHER PAGE OR TWO.
- 6 Q. CAN WE SCROLL THROUGH THE REST OF THE PAGES?
- 7 A. I'M SORRY? OH. YEAH, A THREE PAGE DOCUMENT.
- 8 Q. OKAY. AND BACK TO THE FIRST PAGE, IF YOU WOULD. NOW, IS  
9 YOUR NAME ON THIS FIRST PAGE?
- 10 A. YES, IT IS.
- 11 Q. AND THERE'S SOME WRITING THERE AND WHAT IS THAT -- BY  
12 YOUR NAME, WHAT IS THAT ABOUT?
- 13 A. SOME WRITING AT THE BOTTOM?
- 14 Q. UH-HUH.
- 15 A. WELL, WE WOULD OKAY -- WE WOULD INITIAL THE 302 AFTER IT  
16 WAS PRODUCED TO VERIFY THAT IT WAS ACCURATE.
- 17 Q. AND WAS THAT STANDARD PROCEDURE AT THE TIME?
- 18 A. YES.
- 19 Q. STILL STANDARD PROCEDURE, PRESUMABLY?
- 20 A. YES.
- 21 Q. AND WHAT IS THE DATE THAT YOU COMPLETED THIS 302 OR WHAT  
22 IS THE DATE, RATHER, EXCUSE ME, THAT THE 302 WAS COMPLETED IN  
23 REFERENCE TO THE INTERVIEW?
- 24 A. I THINK --
- 25 Q. LET ME REPHRASE THAT.

September 19, 2012

Mills/Direct

Page 491

1 A. -- THAT WOULD BE AUGUST 27TH.

2 Q. AND WHAT WAS THE DATE OF THE INTERVIEW THAT YOU WERE  
3 WRITING ABOUT?

4 A. THE 14TH.

5 Q. AND IF WE COULD START AT THE TOP WITH PARAGRAPH ONE.

6 A. OKAY.

7 Q. IF YOU WOULD JUST READ TO US WHAT YOU WROTE.

8 A. HELENA WORLIE STOECKLEY, ALSO KNOWN AS GYPSY, WAS  
9 ARRESTED BY SPECIAL AGENTS MILLS AND DONOHUE IN A TRAILER  
10 LOCATED OFF HIGHWAY 24, OAKWAY COMMUNITY, OCONEE COUNTY. SHE  
11 WAS IMMEDIATELY ADVISED OF THE IDENTITY OF THE ARRESTING  
12 AGENTS AND THAT THE ARREST WAS BASED ON A MATERIAL WITNESS  
13 BENCH WARRANT ISSUED ON AUGUST 13TH, 1979, BY U.S. DISTRICT  
14 JUDGE FRANKLIN DUPREE, EASTERN DISTRICT OF NORTH CAROLINA,  
15 RALEIGH, NORTH CAROLINA. STOECKLEY WAS LIVING AT THE ABOVE  
16 RESIDENCE WITH ERNEST T. DAVIS, WHO'S PERMANENT RESIDENCE IS  
17 -- AND THAT'S BLANKED OUT -- WALHALLA, SOUTH CAROLINA.  
18 STOECKLEY ADVISED THAT SHE WAS AGREEABLE TO TALKING TO THE FBI  
19 CONCERNING ANY INFORMATION SHE MAY HAVE REGARDING THE MURDER  
20 OF COLETTE S. MACDONALD AT FORT BRAGG, NORTH CAROLINA, IN  
21 1970.

22 Q. AND IF YOU'LL CONTINUE.

23 A. STOECKLEY ADVISED THAT AT THE TIME OF THE MURDER SHE WAS  
24 RESIDING ON CLARK STREET AT MARRAMOUNT HILL, FAYETTEVILLE,  
25 NORTH CAROLINA. SHE WAS LIVING IN AN APARTMENT WITH TWO OTHER

September 19, 2012

Mills/Direct

Page 492

1 GIRLS WHOSE NAMES SHE DID NOT CARE TO MENTION. SHE ADVISED  
2 THAT SHE WAS A HEAVY USER OF DRUGS AT THAT TIME AND DAILY  
3 SMOKED POT, DROPPED ACID, USED HEROIN AND OPIATE DERIVATIVES.  
4 SHE ADVISED THAT SHE WAS AN INFORMANT FOR THE LOCAL  
5 AUTHORITIES IN DRUG MATTERS AND WAS ALSO DEALING IN DRUGS  
6 HERSELF. SHE ADVISED THAT SHE HAD SOLD DRUGS TO SEVERAL  
7 DOCTORS IN THE FAYETTEVILLE, NORTH CAROLINA AREA, MOSTLY POT.  
8 SHE STATED THAT SHE HAD SEEN PHOTOGRAPHS OF DR. MACDONALD  
9 AFTER HIS COURT MARTIAL SUBSEQUENT TO THE MURDER, AND SHE FELT  
10 THAT SHE HAD NEVER SEEN HIM BEFORE. SHE WAS CERTAIN -- SHE  
11 STATED THAT SHE IS CERTAIN THAT SHE NEVER SOLD ANY DRUGS TO  
12 DR. MACDONALD PERSONALLY. SHE ADVISED THAT DURING THIS TIME  
13 HE WAS UNDER -- SHE WAS UNDER TREATMENT AT WOMACK ARMY  
14 HOSPITAL ON FORT BRAGG. SHE STATED THAT IN TRAVELLING FROM  
15 THE WOMACK HOSPITAL TO HER RESIDENCE, SHE WOULD PASS BY THE  
16 CASTLE DRIVE APARTMENTS, WHICH SHE UNDERSTOOD WERE THE  
17 APARTMENTS WHERE DR. MACDONALD AND -- WERE THE APARTMENTS  
18 OCCUPIED BY DR. MACDONALD AND HIS FAMILY. SUBSEQUENT TO THE  
19 MURDER, SHE ADVISED THAT SHE COULD NEVER FIGURE OUT HOW MANY  
20 -- HOW ANY BAND OF HIPPIES, AS ALLEGED BY DR. MACDONALD, COULD  
21 HAVE WALKED THROUGH AN OFFICERS BARRACKS SECTION OF FORT  
22 BRAGG, INASMUCH AS THERE ARE NUMEROUS MILITARY POLICE PATROLS  
23 PATROLLING THE AREA REGULARLY.

24 CONTINUE?

25 Q. YES, PLEASE.

September 19, 2012

Mills/Direct

Page 493

1 A. SHE ADVISED FURTHER THAT AT THE SAME -- YOU NEED TO GO  
2 UP.

3 Q. THE NEXT PAGE, PLEASE. IF YOU COULD START UP AT THE TOP.

4 A. OKAY. APPROXIMATE TIME THAT SHE AND SOME OF HER FRIENDS  
5 WERE INVOLVED IN -- AT THAT TIME -- AT THAT APPROXIMATE TIME,  
6 SHE AND SOME OF HER FRIENDS WERE INVOLVED IN WITCHCRAFT.

7 STOECKLEY ADVISED THAT ON THE DAY PRECEDING THE  
8 MURDER, SHE HAD HEAVILY USED VARIOUS TYPES OF DRUGS. SHE  
9 RECALLS AT APPROXIMATELY MIDNIGHT, AN ENLISTED MAN NAMED GREG  
10 MITCHELL APPEARED AS -- DESCRIBED AS A WHITE MALE, ATTACHED TO  
11 FORT BRAGG, CAME TO HER APARTMENT AND MET HER OUTSIDE THE  
12 APARTMENT. SHE STATED THAT HE WAS ALONE AT THE TIME AND HE  
13 GAVE HER A HIT OF MESCALINE. THIS DRUG COMPLETELY KNOCKED HER  
14 OUT TO THE POINT THAT SHE HAS ABSOLUTELY NO RECOLLECTION OF  
15 ANY ACTIVITY OF HERS FOR THE REST OF THE NIGHT. SHE ADVISED  
16 THAT THE NEXT THING THAT SHE CAN REMEMBER WAS THAT ON THE DAY  
17 OF THE MURDER OR THE DAY FOLLOWING THE MURDER, SHE WAS PICKED  
18 UP FOR QUESTIONING BY FAYETTEVILLE POLICE -- BY THE  
19 FAYETTEVILLE POLICE DEPARTMENT. SHE BELIEVES THAT SHE WAS  
20 INTERROGATED BY AN OFFICER -- BY OFFICER BEASLEY. SHE RECALLS  
21 GIVING BEASLEY A NUMBER OF DIFFERENT STORIES AS TO WHERE SHE  
22 WAS DURING THE TIME OF THE MURDERS. SHE STATED THAT HER  
23 REASON FOR DOING THIS WAS THAT SHE FELT THAT A LIE WOULD BE  
24 MORE BELIEVABLE THAN IF SHE WAS TO TELL THE TRUTH WHICH WAS  
25 THAT SHE SIMPLY WAS SO HIGH ON DRUGS THAT SHE HAD NO

September 19, 2012



Mills/Direct

Page 494

1 RECOLLECTION OF WHERE SHE WAS OR WHAT SHE WAS DOING.

2 Q. AND IF YOU'LL CONTINUE.

3 A. OKAY. APPROXIMATELY FOUR TO SIX WEEKS LATER, SHE WAS  
4 CONTACTED BY A CID OFFICER NAMED MAHON. SHE STATED THAT HE  
5 WAS -- THAT HE INTERROGATED HER CONCERNING THE MURDER AND AT  
6 THAT TIME, SHE TOLD HIM THAT SHE SIMPLY DID NOT KNOW WHERE SHE  
7 WAS OR WHAT SHE WAS DOING. SHE STATED THAT SHE MAY HAVE TOLD  
8 HIM THAT BECAUSE SHE DID NOT KNOW WHETHER OR NOT -- LET ME  
9 START AGAIN. SHE STATED THAT SHE MAY HAVE TOLD HIM THAT --  
10 MAY HAVE TOLD HIM THAT SHE DID NOT KNOW WHETHER OR NOT SHE  
11 COMMITTED THE MURDERS BECAUSE SHE HAD NO IDEA OF HER  
12 ACTIVITIES THAT NIGHT. AT THAT TIME, SHE WAS ASKED TO TAKE A  
13 POLYGRAPH EXAMINATION BUT WAS AFRAID TO DO SO. SHE ADVISED  
14 THAT THE REASON SHE DID NOT WANT TO TAKE A POLYGRAPH WAS  
15 BECAUSE SHE WAS A HEAVY USER OF DRUGS AND SHE HAD HEARD THAT  
16 POLYGRAPH OPERATORS COULD OBTAIN ANY RESULTS THEY WANT,  
17 PARTICULARLY WITH REGARD TO DRUG USERS.

18 SOMETIME THEREAFTER, SHE LEFT THE FAYETTEVILLE,  
19 NORTH CAROLINA AREA AND WAS ACCEPTED ON A CONDITIONAL BASIS  
20 INTO AQUINAS COLLEGE, NASHVILLE, TENNESSEE. SHE STATED THAT  
21 WHILE SHE WAS ATTENDING THIS COLLEGE SHE WAS ARRESTED FOR  
22 DRUGS. FOLLOWING HER ARREST, SHE WAS AGAIN QUESTIONED  
23 CONCERNING THE MURDER IN FAYETTEVILLE BY FAYETTEVILLE POLICE  
24 OFFICER BEASLEY AND CID AGENT MAHON. SHE STATED THEY TRAVELED  
25 TO NASHVILLE TO INTERVIEW HER. SHE STATED SHE HAD WORKED OUT

September 19, 2012

Mills/Direct

Page 495

1 A DEAL WITH MAHON WHERE SHE WOULD HAVE THE LOCAL DRUG -- WHERE  
2 HE WOULD HAVE THE LOCAL DRUG CHARGES DROPPED IF SHE WOULD  
3 AGREE TO A POLYGRAPH EXAMINATION. SHE AGREED TO DO SO. SHE  
4 STATED THAT THE POLYGRAPH EXAMINATION WAS GIVEN TO HER OVER A  
5 TWO DAY PERIOD. SHE RECALLED THAT THE FIRST DAY SHE WAS SO  
6 HIGH DRUGS THAT THERE WAS NO POSSIBILITY OF OBTAINING AN  
7 ACCURATE POLYGRAPH EXAMINATION. SHE STATED THAT SHE DOES NOT  
8 KNOW THE OUTCOME OF THIS POLYGRAPH EXAMINATION.

9           STOECKLEY ADVISED THAT SHE HONESTLY DOES NOT KNOW  
10 WHAT SHE DID THE NIGHT -- THAT NIGHT, THE NIGHT OF THE  
11 MURDERS, AND THEREFORE, COULD NOT CATEGORICALLY STATE THAT SHE  
12 WAS NOT INVOLVED IN THE MURDER. SHE STATED THAT SHE HAS HAD A  
13 RECURRING DREAM SINCE THE MURDER IN WHICH SHE IS PICTURED AS  
14 BEING DRESSED IN BLACK, WITH A CANDLE IN HER HAND, AND THE  
15 WORDS APPEARING ON A WALL OF WHATEVER ROOM SHE IS IN WITH THE  
16 INSCRIPTION ACID IS GROOVY, KILL THE PIGS. SHE STATED IN THIS  
17 DREAM, SHE DOES NOT SPECIFICALLY SEE BODIES OR ANYONE BEING  
18 KILLED OR ANYTHING OF THIS NATURE. SHE STATED THAT THIS DREAM  
19 COULD VERY WELL BE BASED ON THE INFORMATION THAT SHE HAD READ  
20 IN THE NEWSPAPER ACCOUNTS OF THE MURDER.

21 Q.    THANK YOU. AND NOW JUST TO ORIENT US TO TIME AND PLACE  
22 OF THIS STATEMENT, THIS WAS TAKEN IN THE CAR ON THE 14TH OF  
23 AUGUST, BEFORE SHE GOT TO RALEIGH FOR THE TRIAL, IS THAT  
24 RIGHT?

25 A.    THAT'S CORRECT.

September 19, 2012

Mills/Direct

Page 496

1 Q. NOW, HAVE YOU HAD OTHER OCCASIONS TO COME INTO CONTACT  
2 WITH HELENA STOECKLEY AFTER THAT, TAKING THAT STATEMENT FROM  
3 HER?

4 A. PROBABLY TWO OR THREE.

5 Q. OKAY. AND DID SHE EVER, DURING THOSE ENCOUNTERS, EVER  
6 GIVE YOU A VERSION THAT DIFFERED FROM WHAT YOU SPOKE WITH HER  
7 ABOUT IN THE CAR?

8 A. NO, GENERALLY SHE SAID THE SAME THING EVERY TIME I TALKED  
9 TO HER.

10 Q. DID YOU HAVE OCCASION TO INTERVIEW HER ON SEPTEMBER 10TH  
11 OF 1981, WITH SPECIAL AGENT BUTCH MADDEN?

12 A. I DID.

13 Q. AND AT THAT POINT IN TIME WERE YOU ABLE TO HAVE A  
14 CONVERSATION WITH HER REGARDING HER INTERACTION WITH DEFENSE  
15 INVESTIGATORS TED GUNDERSON AND PRINCE BEASLEY?

16 A. YES. I WAS -- BUTCH MADDEN HAD CONTACTED ME. HE WAS IN  
17 RALEIGH AND HE WANTED TO COME DOWN TO OUR AREA IN SOUTH  
18 CAROLINA AND INTERVIEW HER.

19 AND THE TWO OF US WENT OUT AND WE DID TALK TO HER.  
20 AND AT THAT TIME SHE TOLD US THAT, AS SHE DID IN ALL OF THESE  
21 SUBSEQUENT CONVERSATIONS, HER MAIN IDEA WAS SHE WAS VERY  
22 UNHAPPY WITH THE PRIVATE INVESTIGATORS.

23 BY THIS TIME, I THINK POLICE OFFICER BEASLEY, I  
24 GUESS, HAD RETIRED AND WAS A PRIVATE INVESTIGATOR. AND THE  
25 OTHER PRIVATE INVESTIGATOR WAS TED GUNDERSON, WHO WAS A

September 19, 2012

Mills/Direct

Page 497

1 RETIRED FBI ACTING SPECIAL AGENT IN CHARGE FROM LOS ANGELES.  
2 AND THEY HAD HAD NUMEROUS CONTACTS WITH HER AND, IN FACT, THEY  
3 HAD FLOWN HER OUT TO CALIFORNIA.

4 AND AS I RECALL, ON ONE OCCASION, ONE OF -- I THINK  
5 PROBABLY BEASLEY BROUGHT A FELLOW WITH HIM WHO WAS A GENTLEMAN  
6 BY THE NAME OF BOST, B-O-S-T. AND I BELIEVE HE WAS AN AUTHOR  
7 WHO WAS GOING TO WRITE A BOOK ABOUT THE WHOLE MACDONALD  
8 SITUATION. AND ALSO THERE WAS TALK ABOUT WHAT HER CUT OF THE  
9 REVENUE OR THE ROYALTIES WOULD BE, A CERTAIN PERCENTAGE, AND  
10 THIS SORT OF THING.

11 AND I BELIEVE I RECALL THAT SHE SAID THAT SHE DIDN'T  
12 WANT TO TALK TO ANYBODY UNTIL SHE HAD THIS WHOLE THING BEHIND  
13 HER. AND AT SOME POINT GUNDERSON SAID HE WAS GOING TO FLY TO  
14 WASHINGTON, D.C., AND OBTAIN TOTAL IMMUNITY FROM PROSECUTION  
15 FOR HER.

16 ON ANOTHER OCCASION, I THINK PART OF ONE OF THE  
17 CONVERSATIONS, ONE OF EITHER -- PROBABLY BEASLEY, BUT I DON'T  
18 REMEMBER IF IT WAS HIM OR MAHON, BROUGHT A REPORTER FROM THE  
19 *WASHINGTON POST* DOWN TO SOUTH CAROLINA, I BELIEVE, AND SHE  
20 INTERVIEWED OR HE INTERVIEWED HELENA STOECKLEY. AND THAT WAS  
21 BASICALLY WHAT THE WHOLE THRUST OF EVERYTHING WAS.

22 Q. OKAY. AND DURING THAT CONVERSATION, DID SHE ALSO SPEAK  
23 WITH YOU ABOUT HER FEELINGS REGARDING HER INTERACTIONS WITH  
24 PRINCE BEASLEY AND TED GUNDERSON?

25 A. YES. SHE WAS NOT HAPPY WITH IT. SHE THOUGHT THAT SHE

September 19, 2012

Mills/Direct

Page 498

1 WAS BEING HARASSED. AS A MATTER OF FACT, ON THE FIRST  
2 INTERVIEW WHEN I WENT OUT WITH BUTCH MADDEN, THE AGENT FROM  
3 NORTH CAROLINA, SHE FURNISHED US WITH A COPY OF A LETTER I  
4 BELIEVE THAT WHAT SHE SAID WAS AN ALMOST EXACT DUPLICATE OF  
5 THE LETTER SHE HAD SENT TO GUNDERSON, WHICH STATED, IN EFFECT,  
6 STAY AWAY FROM ME AND I DON'T WANT ANYTHING MORE TO DO WITH  
7 YOU.

8 Q. AND DO YOU ALSO RECALL AN INCIDENT OR A TIME, RATHER, IN  
9 WHICH -- IN 1982, I BELIEVE, THAT YOU WERE TAKING SOME FORMS  
10 BY FOR HELENA TO SIGN AT SOME POINT?

11 A. YES, VAGUELY.

12 Q. AND DO YOU RECALL WHAT THOSE FORMS WERE ABOUT OR WHY YOU  
13 WERE THERE ON THAT PARTICULAR OCCASION?

14 A. HONESTLY, I DON'T. I KNOW -- I'VE SEEN THAT IT'S -- IT  
15 WAS TO GET HER TO SIGN A RELEASE, BUT I HONESTLY DON'T RECALL  
16 WHAT THE RELEASE WAS ALL ABOUT.

17 Q. I ALSO WANT TO TALK WITH YOU ABOUT THE DEATH  
18 INVESTIGATION OF HELENA STOECKLEY. DID YOU COME INTO  
19 INFORMATION AS PART OF YOUR INVESTIGATION REGARDING HER DEATH?

20 A. I DID.

21 Q. WHO PROVIDED THAT INFORMATION TO YOU?

22 A. I'M NOT SURE HOW I FIRST HEARD ABOUT IT, BUT I CONTACTED  
23 A DETECTIVE IN SENECA, NORTH CAROLINA -- I MEAN, SENECA, SOUTH  
24 CAROLINA. I THINK HIS NAME WAS BROCK. I'M NOT SURE.

25 Q. OKAY. AND WHAT WAS THE NATURE OF THAT CONTACT?

September 19, 2012

Mills/Direct

Page 499

1 A. THE NATURE OF THE CONVERSATION WAS I THINK I HEARD THAT  
2 SHE HAD -- THAT SOMEHOW OR ANOTHER I HAD HEARD THAT SHE HAD  
3 DIED AND I CONTACTED HIM. AND HE TOLD ME THAT, YES, HE SAID  
4 THAT -- AND I DON'T RECALL THE DATE, I'M GOING TO SAY IT WAS  
5 JANUARY 14TH, 1983 -- THAT HE HAD BEEN IN HIS OFFICE IN  
6 SENECA AT THE POLICE DEPARTMENT AND HE RECEIVED A PHONE CALL  
7 FROM THE CARETAKER OF AN APARTMENT COMPLEX IN SENECA, THAT  
8 THEY HAD FOUND A BODY IN A ROOM.

9 SO, HE IMMEDIATELY WENT OVER THERE. AND I REMEMBER  
10 HIM SAYING IT WAS LIKE 1:00 IN THE AFTERNOON WHEN HE GOT THE  
11 CALL AND HE GOT TO THE APARTMENT ABOUT 1:10. AND THEY WENT IN  
12 THE APARTMENT, AND THE FIRST THING HE NOTICED WAS A VERY FOUL  
13 ODOR. AND HE LOOKED IN AND THERE WAS A DECOMPOSING FEMALE  
14 BODY IN THERE AND HE IMMEDIATELY CONTACTED THE CORONER AND THE  
15 EMS AND, YOU KNOW, WHATEVER -- EVERYBODY HE COULD THINK OF, I  
16 GUESS.

17 AND BY THE TIME HE GOT OUT OF THE ROOM A NEIGHBOR OR  
18 SOMEONE THAT WAS LIVING IN THE AREA SAID DID YOU FIND A LITTLE  
19 BABY IN THE ROOM AND HE SAID NO. AND HE WENT BACK IN AND THEN  
20 HE DID FIND A BABY ALIVE AND HE SAID ALERT, LAYING FACE UP --  
21 A MALE BABY LAYING FACE UP UNDER A CRIB IN THE ROOM. AND BY  
22 THIS TIME HE KNEW WHO -- YOU KNOW, FROM THE RECORDS HE KNEW  
23 WHOSE ROOM IT WAS AND HE KNEW IT WAS HELENA STOECKLEY.

24 Q. OKAY. AND AT THAT POINT IN TIME, DID HE KNOW HOW LONG  
25 SHE HAD BEEN IN THERE?

September 19, 2012

Mills/Direct

Page 500

1 A. NO. HE KNEW THAT IT WAS A DECOMPOSING BODY AND HE DID  
2 SOME SORT OF CHECK OF NEIGHBORS AND IT WAS PROBABLY FIVE OR  
3 NINE DAYS, SOMETHING OF THAT NATURE, THAT THE LAST PERSON HAD  
4 ACTUALLY SEEN HER OUTSIDE THE APARTMENT.

5 Q. IF I COULD HAVE APPENDIX ONE TO THE GOVERNMENT'S RESPONSE  
6 TO THE MOTION FOR NEW TRIAL AS CONTAINED IN THE JOINT APPENDIX  
7 TO THE APPEAL FROM THE 1985 ORDER, VOLUME ONE, PAGE 988,  
8 PLEASE. 988, I'M SORRY. THANK YOU.

9 MR. MILLS, IF YOU COULD TELL ME, AT THE TOP OF THIS  
10 DOCUMENT, DO YOU SEE WHAT TYPE OF DOCUMENT I'M SHOWING YOU?

11 A. YES. IT'S AN AUTOPSY REPORT.

12 Q. AND WHO IS IT AN AUTOPSY REPORT FOR?

13 A. OF HELENA DAVIS.

14 Q. AND WHAT'S THE DATE ON THIS AUTOPSY, THAT SHE WAS  
15 AUTOPSIED?

16 A. AUTOPSIED ON 8/15, AND THEY FIXED THE TIME -- THE DATE OF  
17 DEATH AT -- DID I SAY -- I MEAN, JANUARY 15TH, IF THAT'S NOT  
18 WHAT I SAID, THAT'S THE TIME OF THE AUTOPSY, AND THEY FIXED  
19 THE TIME THAT SHE DIED AS JANUARY 9TH, 1983.

20 Q. AND IF WE COULD HAVE THE BOTTOM CHART OF THIS PAGE. AND  
21 DOES THE AUTOPSY INDICATE THE MANNER OF DEATH?

22 A. PROBABLE CAUSE OF DEATH IS A TYPE OF PNEUMONIA AND  
23 CONTRIBUTORY EFFECTS WERE CIRRHOSIS OF THE LIVER.

24 Q. AND WAS IT RULED A NATURAL DEATH?

25 A. NATURAL DEATH, CORRECT.

September 19, 2012

1 MS. COOLEY: IF I MAY HAVE ONE MOMENT, YOUR HONOR?

2 THE COURT: CERTAINLY.

3 (PAUSE.)

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 9:47 A.M.

9 BY MR. WIDENHOUSE:

10 Q. IS IT STILL AGENT MILLS?

11 A. NO, I RETIRED IN 1990.

12 Q. CONGRATULATIONS ON THAT.

13 A. THANK YOU.

14 Q. I HOPE YOU'RE ENJOYING RETIREMENT. YOU MENTIONED THAT  
15 THERE WAS AN INTERVIEW IN OCTOBER OF MS. STOECKLEY, IS THAT  
16 RIGHT, AN OCTOBER INTERVIEW?

17 A. IS THIS -- ARE YOU REFERRING TO THE ONE WHERE BUTCH  
18 MADDEN, THE AGENT, CAME DOWN FROM NORTH CAROLINA?

19 Q. YES.

20 A. YES, THAT'S CORRECT.

21 Q. IS THERE A 302 OF THAT INTERVIEW?

22 A. I DON'T HAVE ONE.

23 Q. DO YOU KNOW WHETHER ONE WAS MADE OR YOU JUST DON'T  
24 RECALL?

25 A. WELL, YEAH, I'M CERTAIN I WOULD HAVE MADE ONE.

September 19, 2012



Mills/Cross

Page 502

1 Q. OKAY. YOU JUST DON'T HAVE IT?

2 A. NO, SIR.

3 Q. SO, YOU'RE TESTIFYING FROM MEMORY OR HAVE YOU SEEN IT  
4 LATELY?

5 A. I SAW IT LATELY.

6 Q. SO, YOU USED IT TO REFRESH YOUR --

7 A. YES.

8 Q. -- RECOLLECTION ABOUT THAT PARTICULAR INTERVIEW?

9 A. THAT'S RIGHT.

10 Q. NOW, YOU'RE AWARE THAT THE KILLINGS IN THE MACDONALD  
11 HOUSE OCCURRED IN 1970?

12 A. YES, SIR.

13 Q. AND THAT WAS NINE YEARS BEFORE YOU ARRESTED MS.  
14 STOECKLEY?

15 A. YES, THAT'S CORRECT.

16 Q. AND AT THE TIME OF THE KILLINGS, SHE WAS CONSIDERED A  
17 SUSPECT. I THINK THAT'S WHAT SHE TOLD YOU?

18 A. YES.

19 Q. AND YOU PUT IT IN YOUR REPORT THAT SHE HAD BEEN  
20 INTERVIEWED?

21 A. RIGHT, THE POLICE DEPARTMENT WENT OUT AND INTERVIEWED  
22 HER. THAT'S CORRECT.

23 Q. OKAY. AND DR. MACDONALD HAD AN ARTICLE 32 HEARING,  
24 MILITARY TRIBUNAL, ARE YOU AWARE OF THAT?

25 A. NO.

September 19, 2012

Mills/Cross

Page 503

1 Q. OKAY. SO, YOU WOULDN'T BE AWARE THAT SHE WAS CONSIDERED  
2 A SUSPECT AS A RESULT OF THE ARTICLE 32 INQUIRY?

3 A. NO.

4 Q. YOU JUST WOULDN'T HAVE -- OKAY.

5 A. I'M JUST NOT FAMILIAR WITH THAT.

6 Q. ALL RIGHT. BUT SHE WAS QUESTIONED BY DETECTIVE BEASLEY  
7 AND I BELIEVE YOU SAID, IS IT, AGENT MAHON?

8 A. I THINK THAT'S RIGHT. I'VE NEVER MET THE GENTLEMAN.

9 Q. OKAY.

10 A. HE WAS A CID AGENT.

11 Q. CID?

12 A. YES.

13 Q. OKAY. AND THEY -- BUT THEY BOTH QUESTIONED STOECKLEY  
14 SHORTLY AFTER THE KILLINGS OCCURRED?

15 A. THAT'S CORRECT.

16 Q. SHE TOLD YOU THAT?

17 A. YES.

18 Q. AND IF I COULD TAKE -- I BELIEVE -- IF I COULD TAKE YOU  
19 TO PAGE TWO OF THE 302 THAT YOU DID OF YOUR INTERVIEW OF MS.  
20 STOECKLEY, AND I BELIEVE THAT'S WHERE YOU RECORDED THAT SHE  
21 TOLD YOU SHE MAY HAVE BEEN INVOLVED IN THE MURDER?

22 A. YEAH, I DON'T HAVE THE -- THERE WE GO. YOU SAID PAGE  
23 TWO?

24 Q. I THINK IT'S ON PAGE TWO.

25 A. I HAVE PAGE ONE HERE. OKAY.

September 19, 2012

Mills/Cross

Page 504

1 Q. WELL, SHE TOLD YOU -- YOU WROTE DOWN THERE AT THE END OF  
2 THE FIRST PARAGRAPH THAT SHE LIED TO OFFICER OR DETECTIVE  
3 BEASLEY BECAUSE SHE THOUGHT A LIE WOULD BE MORE BELIEVABLE  
4 THAN TELLING THE TRUTH?

5 A. YEAH, SHE SAID THAT A LIE WOULD BE MORE BELIEVABLE THAN  
6 TO TELL THE TRUTH, WHICH WAS THAT SHE SIMPLY WAS SO HIGH ON  
7 DRUGS SHE COULDN'T REMEMBER ANYTHING.

8 Q. ALL RIGHT. AND IF I COULD TAKE YOU TO THE NEXT PAGE OF  
9 THAT DOCUMENT, THE LAST -- THE FIRST FULL PARAGRAPH, DO YOU  
10 SEE THAT, WHERE THE HIGHLIGHTED PORTION IS?

11 A. NO. I NEED TO GO -- YOU NEED TO SCROLL DOWN OR UP. I  
12 GUESS SCROLL UP. I'M ON THE LAST PARAGRAPH NOW.

13 Q. THAT'S WHERE I WANT YOU --

14 A. OH, OKAY.

15 Q. -- THE LAST PARAGRAPH. I'M SORRY.

16 A. OKAY.

17 Q. AND DO YOU SEE THE HIGHLIGHTED PORTION?

18 A. YES, I DO.

19 Q. AND COULD YOU READ THAT FOR US?

20 A. SURE. STOECKLEY ADVISED THAT SHE HONESTLY DOES NOT KNOW  
21 WHAT SHE DID THAT NIGHT, AND THEREFORE, CANNOT CATEGORICALLY  
22 STATE THAT SHE WAS NOT INVOLVED IN THE MURDER. SHE STATED  
23 THAT SHE HAS HAD A RECURRING DREAM SINCE THE MURDER IN WHICH  
24 SHE IS PICTURED AS BEING DRESSED IN BLACK WITH A CANDLE IN HER  
25 HAND, WITH THE WORDS APPEARING ON A WALL OF WHATEVER ROOM SHE

September 19, 2012

Mills/Cross

Page 505

1 IS IN WITH THE INSCRIPTION ACID IS GROOVY, KILL THE PIGS. SHE  
2 STATED THAT THIS DREAM --

3 Q. THAT'S FINE.

4 A. IN THIS DREAM SHE DOES NOT SPECIFICALLY SEE BODIES OR  
5 ANYONE BEING KILLED OR ANYTHING OF THAT NATURE. IS THAT --

6 Q. YES.

7 A. OKAY.

8 Q. BUT SHE TELLS YOU -- SHE TOLD YOU SHE COULD NOT  
9 CATEGORICALLY STATE SHE WAS NOT INVOLVED IN THE MURDER?

10 A. THAT'S CORRECT.

11 Q. THAT'S ACCURATE --

12 A. THAT'S --

13 Q. -- OF WHAT SHE TOLD YOU THAT NIGHT?

14 A. THAT'S ACCURATE, YES, SIR.

15 Q. CAN YOU TELL ME ABOUT HOW FAR PICKENS IS FROM GREENVILLE?

16 A. PROBABLY 40 MINUTES. MILES, I WOULD SAY, 25 MILES OR  
17 SOMETHING LIKE THAT.

18 Q. AND I'M NOT FROM SOUTH CAROLINA.

19 A. RIGHT.

20 Q. IS PICKENS A SMALL TOWN, WHEREAS, GREENVILLE WOULD BE  
21 CONSIDERED A CITY?

22 A. YES.

23 Q. AND IF SOMEBODY WERE COMING TO THAT AREA OF SOUTH  
24 CAROLINA FROM, SAY, RALEIGH, NORTH CAROLINA -- ARE YOU  
25 FAMILIAR WITH RALEIGH?

September 19, 2012

Mills/Cross

Page 506

1 A. YES, I AM.

2 Q. IT'S A PRETTY GOOD WAYS?

3 A. YES.

4 Q. IF THEY WERE GOING TO THAT AREA, DO YOU THINK IT WOULD BE  
5 -- THEY'RE HEADED TO PICKENS, THEY MIGHT SAY I'M GOING TO  
6 GREENVILLE?

7 A. NO.

8 Q. IF THEY WERE TRYING TO TELL SOMEBODY WHERE THEY WERE  
9 GOING WHO DIDN'T HAVE FAMILIARITY WITH SOUTH CAROLINA?

10 A. I DON'T THINK I WOULD. I WOULD JUST SAY TAKE 85 TO  
11 GREENVILLE AND TAKE 178 FROM GREENVILLE TO PICKENS OR WHATEVER  
12 ROAD IT IS.

13 Q. OKAY. SO, YOU WOULD GO TO GREENVILLE FROM RALEIGH -- YOU  
14 PROBABLY WOULD GO TO GREENVILLE FROM RALEIGH TO GET TO  
15 PICKENS? TAKE 85 TO GREENVILLE?

16 A. IT'S 85 AND 85 GOES -- IS THE MAIN ROAD GOING SOUTHEAST,  
17 WEST, IN SOUTH CAROLINA.

18 Q. OKAY. I UNDERSTAND. THANKS. AND I BELIEVE YOU  
19 TESTIFIED YOU DIDN'T DO THE TRANSPORT OF MS. STOECKLEY FROM  
20 PICKENS --

21 A. NO.

22 Q. -- TO RALEIGH?

23 A. THAT'S CORRECT.

24 Q. WEREN'T INVOLVED WITH THAT AT ALL?

25 A. NO.

September 19, 2012

Mills/Cross

Page 507

1 Q. AND YOU DON'T KNOW WHO DID THE TRANSPORT. YOU JUST KNOW  
2 THERE'S A CARD THAT SAYS VERNON KENNEDY TOOK HER FROM THE --  
3 OUT OF THE PICKENS COUNTY JAIL?

4 A. I CAN'T SAY THAT BECAUSE I WAS IN DAILY CONTACT WITH  
5 VERNON KENNEDY. I MEAN, HE WAS IN THE NEXT OFFICE TO ME. AND  
6 WHETHER WE HAD THAT CONVERSATION, I DON'T RECALL, BUT I  
7 WOULDN'T BE SURPRISED IF HE DIDN'T TELL ME HE TOOK HER UP  
8 THERE, BUT I DON'T -- I DON'T RECALL.

9 Q. YOU DON'T KNOW. ALL YOU KNOW IS THAT CARD SHOWS HE TOOK  
10 HER OUT OF THE PICKENS COUNTY JAIL?

11 A. THAT'S CORRECT.

12 Q. AND YOU WEREN'T IN THE CAR THAT WENT TO NORTH CAROLINA --

13 A. NO, SIR.

14 Q. -- WITH HELENA STOECKLEY?

15 A. NO, SIR.

16 MR. WIDENHOUSE: CAN I HAVE A MOMENT, YOUR HONOR?

17 THE COURT: CERTAINLY.

18 (PAUSE.)

19 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
20 QUESTIONS.

21 THE COURT: CROSS.

22 MS. COOLEY: NO REDIRECT, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN.

24 THE WITNESS: THANK YOU.

25 MS. COOLEY: YOUR HONOR --

September 19, 2012

Mills/Cross

Page 508

1 THE WITNESS: NOW, I GOT THE MIC THEN.

2 MS. COOLEY: -- IF WE MAY RELEASE MR. MILLS?

3 THE COURT: I'M SORRY?

4 MR. WIDENHOUSE: NO OBJECTION.

5 MS. COOLEY: MAY WE RELEASE MR. MILLS FROM HIS  
6 SUBPOENA?

7 THE COURT: YES, MA'AM.

8 MS. COOLEY: THANK YOU.

9 MR. BRUCE: YOUR HONOR, BEFORE I CALL THE NEXT  
10 WITNESS, I WOULD LIKE TO CALL THE COURT'S ATTENTION TO AN  
11 EXHIBIT THAT'S IN THE RECORD AND READ SOME PORTIONS OF IT.  
12 THIS WITNESS IS DECEASED. AND IT IS GOVERNMENT EXHIBIT 2010  
13 IN THIS PROCEEDING. I'VE PUT IT UP ON THE SCREEN.

14 THE COURT: THANK YOU.

15 MR. BRUCE: AS YOU CAN SEE IT SAYS SWORN STATEMENT  
16 OF VERNON KENNEDY, 23RD DAY OF AUGUST, 2006, COMMENCING AT  
17 APPROXIMATELY 10:30 A.M. GO TO THE NEXT PAGE, PLEASE.

18 MR. WIDENHOUSE: WELL, YOUR HONOR, I DON'T WANT TO  
19 INTERRUPT MR. BRUCE, BUT JUST FOR THE RECORD I'M GOING TO  
20 OBJECT UNDER THE CONFRONTATION CLAUSE IF HE'S GOING TO PUT IT  
21 INTO EVIDENCE WITHOUT THE WITNESS.

22 THE COURT: LET ME SEE YOU, COUNSEL.

23 (BENCH CONFERENCE ON THE RECORD.)

24 THE COURT: I'M GOING TO OVERRULE YOUR OBJECTION,  
25 BUT I WANT YOU TO UNDERSTAND WHAT'S SAUCE FOR THE GOOSE IS

September 19, 2012

Mills/Cross

Page 509

1 SAUCE FOR THE GANDER THROUGHOUT THIS HEARING.

2 MR. WIDENHOUSE: I UNDERSTAND.

3 THE COURT: THANK YOU.

4 MR. WIDENHOUSE: I JUST HAVE A CONFRONTATION RIGHT  
5 THEY DON'T HAVE.

6 THE COURT: WELL, I MEAN --

7 MR. WIDENHOUSE: AND ALL I'M DOING IS TRYING TO  
8 PROTECT THE RECORD.

9 THE COURT: SURE. SURE. THANK YOU.

10 MR. BRUCE: WELL, MAY I SAY SOMETHING FOR THE  
11 RECORD? OUR POSITION IS, IN ADDITION TO THE EVIDENCE AS A  
12 WHOLE STANDARD, THE CONFRONTATION CLAUSE IS NOT APPLICABLE AT  
13 THIS TYPE OF A HEARING. IT'S A TRIAL RIGHT FOR A CRIMINAL  
14 TRIAL. THANK YOU.

15 THE COURT: LET'S GO FORWARD. THANK YOU.

16 (BENCH CONFERENCE CONCLUDED.)

17 THE COURT: THANK YOU, COUNSEL. I OVERRULE THE  
18 OBJECTION.

19 MR. BRUCE: ON PAGE TWO OF THE EXHIBIT, YOUR HONOR,  
20 IT STATES THAT THE QUESTIONING ATTORNEYS ARE JOHN STUART  
21 BRUCE, BRIAN M. MURTAGH, ATTENDING IS ROBERT D. SCOTT, FBI,  
22 COLUMBIA DIVISION, GREENVILLE R.A.

23 I'M NOT GOING TO READ THE WHOLE EXHIBIT, BUT I'VE  
24 SELECTED SOME PORTIONS. IF WE GO TO -- EXCUSE ME, YOUR HONOR,  
25 I PICKED UP THE WRONG -- I HAD A HIGHLIGHTED COPY AND I PICKED

September 19, 2012



Mills/Cross

Page 510

1 UP THE WRONG ONE.

2 (PAUSE.)

3 MR. BRUCE: MOVE TO 2010.6, WHICH IS PAGE SIX OF THE  
4 SWORN STATEMENT AND GO TO LINE 13.

5 (PAUSE.)

6 MR. BRUCE: GO TO LINE 13 THROUGH THE BOTTOM OF THE  
7 PAGE.

8 AND DO YOU REMEMBER APPROXIMATELY HOW MANY DEPUTY  
9 U.S. MARSHALS THERE WERE HERE AT THAT TIME? JUST  
10 APPROXIMATELY, I DON'T NEED AN EXACT NUMBER.

11 ANSWER: THREE WERE STATIONED IN GREENVILLE.  
12 HOWEVER, THERE WERE NOT ALWAYS THREE ON -- ON DUTY HERE AT ALL  
13 TIMES BECAUSE THERE WERE TIMES WHEN SOME OF THE MARSHALS WOULD  
14 BE ASSIGNED TO OTHER DISTRICTS OR ASSIGNED TO OTHER DUTIES.

15 QUESTION: WERE YOU THE ONLY AFRICAN-AMERICAN DEPUTY  
16 U.S. MARSHAL IN GREENVILLE AT THAT TIME?

17 ANSWER: I WAS.

18 QUESTION: ALL RIGHT. NOW, HOW DID YOU FIND OUT  
19 ABOUT YOUR ASSIGNMENT TO GO PICK UP A PRISONER, A FEMALE  
20 PRISONER, IN PICKENS?

21 ANSWER: I FOUND IT OUT THROUGH MY SUPERVISOR. MY  
22 SUPERVISOR WAS ADVISED BY OUR COLUMBIA HEADQUARTERS THAT THIS  
23 PERSON NEEDED TO BE TRANSPORTED.

24 ALL RIGHT. NOW, WERE YOU AWARE AT THE TIME THAT THE  
25 MURDER TRIAL OF JEFFREY MACDONALD WAS GOING ON IN FEDERAL

September 19, 2012

Mills/Cross

Page 511

1 COURT IN NORTH CAROLINA?

2 ANSWER: I WAS AWARE BECAUSE THIS WAS AN ONGOING  
3 NEWS PRIORITY AT THAT TIME.

4 MOVING FORWARD TO 2010.8 AND LINE 15.

5 QUESTION: THE BOTTOM PART ON -- THE BOTTOM PART ON  
6 EXHIBIT ONE -- THAT'S RIGHT. I'M SORRY, GO UP TO LINE EIGHT.

7 ALL RIGHT. I WANT TO SHOW YOU -- WE LOOKED AT THIS  
8 BEFORE WE GOT STARTED, BUT LET ME SHOW YOU -- IT TO YOU AGAIN.  
9 I'VE MARKED IT AS EXHIBIT ONE FOR TODAY, 8/23/06. IT'S A  
10 XEROX COPY, IS IT NOT, OR A PHOTOCOPY?

11 YES.

12 THE BOTTOM PART ON EXHIBIT ONE IS A COMMITMENT FORM  
13 AND IT'S DATED 8/14/79, AND IT'S SIGNED BY THOMAS DONOHUE,  
14 SPECIAL AGENT, FBI. DO YOU KNOW HIM OR DID YOU KNOW HIM?

15 ANSWER: YES, I KNOW HIM.

16 QUESTION: THE TOP ONE SAYS RELEASE AND IT'S DATED  
17 AUGUST 15TH, 1979, AND IT SAYS THIS PRISONER, HELENA  
18 STOECKLEY, IS BEING TAKEN INTO CUSTODY FOR TRANSFER TO  
19 RALEIGH, N.C. DO YOU SEE THAT?

20 ANSWER: YES.

21 QUESTION: ALL RIGHT. NOW, AT THE BOTTOM IT SAYS --  
22 IT HAS A SIGNATURE LINE.

23 UH-HUH.

24 DO YOU SEE THAT?

25 YES.

September 19, 2012

Mills/Cross

Page 512

1 IS THAT YOUR SIGNATURE?

2 YES, IT IS.

3 ALL RIGHT. FOR THE RECORD, IT APPEARS TO SAY VERNY  
4 KENNEDY?

5 ANSWER: D-U-S-M.

6 QUESTION: D-U-S-M?

7 ANSWER: DEPUTY U.S. MARSHAL.

8 QUESTION: ALL RIGHT. OKAY. SO, THIS WOULD  
9 DOCUMENT THAT YOU PICKED UP HELENA STOECKLEY AT THE PICKENS  
10 COUNTY JAIL ON AUGUST 15TH, 1979, IS THAT RIGHT?

11 UH-HUH.

12 OKAY. NOW, YOU AND THE FEMALE GUARD PICKED HER UP  
13 AND TRANSPORTED HER WHERE?

14 WE TRANSPORTED TO HER AN INTERSECTION. I BELIEVE IT  
15 WAS A SERVICE STATION AT THE INTERSECTION OF I-85 AND --  
16 INTERSTATE 85 AND INTERSTATE 75 -- I MEAN INTERSTATE 85 AND  
17 77.

18 QUESTION: I-85 AND I-77?

19 ANSWER: RIGHT.

20 AND THAT'S IN CHARLOTTE?

21 ANSWER: YES.

22 MOVING ON TO 2010.11, STARTING AT LINE 24.

23 ALL RIGHT. OKAY. SO, YOU TOOK MS. STOECKLEY TO THE  
24 I-77/I-85 INTERSECTION, IS THAT RIGHT?

25 YES.

September 19, 2012

Mills/Cross

Page 513

1 AND THERE WAS A PREARRANGED SPOT TO MEET, IS THAT  
2 CORRECT?

3 ANSWER: YES, IT WAS.

4 AND WHO HAD ARRANGED THAT?

5 THAT WAS ARRANGED THROUGH THE COLUMBIA OFFICE. AND  
6 HE HAD -- HE TOLD THE SUPERVISOR HERE IN GREENVILLE, WHO  
7 INSTRUCTED ME WHERE THE MEETING PLACE WAS TO BE.

8 AND THE MEETING PLACE WAS SOME SORT OF ESTABLISHMENT  
9 AT THAT INTERSECTION?

10 NO, IT WAS NOT.

11 QUESTION: WELL --

12 ANSWER: IT WAS JUST A COMMON PLACE THAT WE BOTH  
13 KNEW.

14 ALL RIGHT. OBVIOUSLY, YOU HAD TO EXIT OFF THE  
15 INTERSTATE TO MEET?

16 RIGHT.

17 AND LET'S SKIP DOWN TO THE QUESTION AT LINE 23.

18 OKAY. AND THE MARSHAL THAT -- OR THE DEPUTY MARSHAL  
19 THAT YOU MET WAS SOMEONE FROM THE MARSHAL SERVICE IN THE  
20 EASTERN DISTRICT OF NORTH CAROLINA?

21 ANSWER: THAT'S CORRECT.

22 MOVING ON TO LINE 11.

23 DURING YOUR TRANSPORTATION OF MS. STOECKLEY, DID SHE  
24 SAY ANYTHING ABOUT THE CASE THAT SHE WAS GOING TO BE A WITNESS  
25 IN?

September 19, 2012

Dennis Meehan/Direct

Page 514

1 ANSWER: NO. AND IT WAS A STRICT REGULATION OF THE  
2 MARSHAL SERVICE NOT TO DISCUSS THEIR CASE WITH THE MARSHALS OR  
3 ANYONE ELSE IN THE MARSHAL'S PRESENCE. IN OTHER WORDS, IF WE  
4 HAVE A GUARD WHO WAS NOT EMPLOYED BY THE MARSHAL SERVICE, IT  
5 WAS THE MARSHAL'S DUTY TO INSTRUCT THAT PERSON NOT TO DISCUSS  
6 THEIR CASE WITH THE INMATE.

7 QUESTION: OKAY. SO, YOU MADE IT A POLICY NOT TO  
8 DISCUSS THE CASE WITH THE PRISONER THAT YOU WERE TRANSPORTING?

9 ANSWER: I MADE IT A POLICY AND AS FAR AS I'M  
10 CONCERNED IT WAS A REGULATION.

11 MOVE TO 2010.15, WHICH IS EXHIBIT ONE ATTACHED TO  
12 THE SWORN STATEMENT, AND ZOOM IN ON THE TOP PORTION. THIS IS  
13 A RELEASE FORM THAT'S BEEN PREVIOUSLY IDENTIFIED.

14 IT IS ALSO IN THE RECORD AS GOVERNMENT EXHIBIT 2066,  
15 WHICH IS MORE LEGIBLE. SO I'M GOING TO CALL THAT UP AT THIS  
16 TIME. AND THAT'S THE SAME COPY OF THE RELEASE FORM SIGNED BY  
17 VERNON KENNEDY, DUSM, PREVIOUSLY IDENTIFIED BY THE WITNESS  
18 MILLS.

19 (GOVERNMENT EXHIBIT NUMBERS 2010 AND  
20 2066 WERE IDENTIFIED FOR THE RECORD.)

21 MR. BRUCE: MAY I HAVE JUST A MOMENT, PLEASE, YOUR  
22 HONOR?

23 THE COURT: YES, SIR.

24 (PAUSE.)

25 MR. BRUCE: AND THAT COMPLETES THAT. AND NOW I'D

September 19, 2012

Dennis Meehan/Direct

Page 515

1 LIKE TO CALL MY NEXT WITNESS WHO IS DENNIS MEEHAN.

2 **DENNIS MEEHAN, GOVERNMENT WITNESS, SWORN**

3 D I R E C T E X A M I N A T I O N 10:05 A.M.

4 BY MR. BRUCE:

5 Q. WOULD YOU STATE YOUR NAME, SIR?

6 A. DENNIS MEEHAN.

7 Q. MR. MEEHAN, WHERE DO YOU CURRENTLY RESIDE?

8 A. RYE, NEW YORK.

9 Q. HOW LONG HAVE YOU LIVED IN RYE?

10 A. TWO YEARS.

11 Q. WHERE ARE YOU FROM ORIGINALLY?

12 A. NEW JERSEY.

13 Q. WERE YOU IN THE MILITARY?

14 A. UNITED STATES NAVY.

15 Q. FOR HOW LONG?

16 A. FOUR YEARS.

17 Q. AFTER THE MILITARY, DID YOU GO INTO LAW ENFORCEMENT?

18 A. NOT DIRECTLY. I WENT TO SCHOOL AND THEN WENT INTO LAW  
19 ENFORCEMENT.

20 Q. AND WHAT WAS YOUR JOB, FIRST JOB IN LAW ENFORCEMENT?

21 A. DEPUTY SHERIFF. DEPUTY SHERIFF.

22 Q. YOU NEED TO GET CLOSER TO THE MIC, PLEASE.

23 A. DEPUTY SHERIFF.

24 Q. WHAT COUNTY?

25 A. MECKLENBURG.

September 19, 2012

Dennis Meehan/Direct

Page 516

1 Q. AFTER YOUR EMPLOYMENT THERE, WHAT WAS YOUR NEXT JOB?

2 A. U.S. BUREAU OF PRISONS.

3 Q. HOW LONG WERE YOU WITH BOP?

4 A. TWO YEARS.

5 Q. AND DID YOU SUBSEQUENTLY OBTAIN A POSITION WITH THE  
6 UNITED STATES MARSHAL SERVICE?

7 A. YES.

8 Q. WHAT YEAR WAS THAT?

9 A. 1978.

10 Q. HOW LONG DID YOU SERVE -- YOU WERE A DEPUTY UNITED STATES  
11 MARSHAL, IS THAT RIGHT?

12 A. YES.

13 Q. HOW LONG DID YOU SERVE AS A DEPUTY UNITED STATES MARSHAL?

14 A. TWENTY-THREE YEARS.

15 Q. AND SO YOU RETIRED WHAT DATE?

16 A. IT WAS NOVEMBER OF 2001.

17 Q. DURING THE FIRST FEW YEARS OF YOUR DUTIES AS A DEPUTY  
18 MARSHAL WERE YOU STATIONED IN RALEIGH, NORTH CAROLINA?

19 A. YES.

20 Q. AND DID YOU SUBSEQUENTLY HAVE A MOVE OF YOUR POST OF  
21 DUTY?

22 A. I TRANSFERRED TO ELIZABETH CITY, NORTH CAROLINA.

23 Q. AND HOW MANY YEARS DID YOU SERVE IN ELIZABETH CITY?

24 A. I BELIEVE I WENT UP THERE IN '86 OR '87.

25 Q. AND YOU SERVED THERE UNTIL PRETTY CLOSE TO YOUR

September 19, 2012

Dennis Meehan/Direct

Page 517

1 RETIREMENT?

2 A. UNTIL THE LAST YEAR THEN I CAME BACK TO RALEIGH FOR A  
3 YEAR.

4 Q. ALL RIGHT. NOW, I'M GOING TO FOCUS ON THE EARLY YEARS OF  
5 YOUR SERVICE AS A DEPUTY U.S. MARSHAL IN RALEIGH. WHO WAS  
6 YOUR SUPERVISOR?

7 A. EDDIE SIGMON, CHIEF DEPUTY.

8 Q. AND WHO WAS THE UNITED STATES MARSHAL IN 1979?

9 A. HUGH SALTER.

10 Q. WHO GAVE YOU YOUR DUTY ASSIGNMENTS?

11 A. IT CAME DIRECTLY FROM THE CHIEF DEPUTY.

12 Q. THAT WAS?

13 A. EDDIE SIGMON.

14 Q. CHIEF DEPUTY EDDIE SIGMON?

15 A. YES.

16 Q. DO YOU REMEMBER THE -- WELL, WAIT A MINUTE. WAS ONE OF  
17 YOUR DUTIES REGULARLY WITH THE MARSHAL SERVICE TO TRANSPORT  
18 PRISONERS?

19 A. YES.

20 Q. DID THE MARSHALS HAVE -- HOW DID THEY HOUSE THE  
21 PRISONERS, FEDERAL PRISONERS, IN THE EASTERN DISTRICT OF NORTH  
22 CAROLINA AT THAT TIME?

23 A. THEY WERE ALL LOCAL JAILS, CONTRACT JAILS, WE CALLED  
24 THEM.

25 Q. DO YOU REMEMBER THE MACDONALD TRIAL?

September 19, 2012



Dennis Meehan/Direct

Page 518

1 A. YES, I DO.

2 Q. DID YOU HAVE DEPUTY MARSHAL DUTIES IN CONNECTION WITH THE  
3 MACDONALD TRIAL GENERALLY?

4 A. YES.

5 Q. AND WHAT WERE THEY?

6 A. WITH THE TRIAL, I WAS ASSIGNED TO JURY SELECTION. AND  
7 THEN PRIOR TO THE TRIAL, I TRANSPORTED PRISONERS.

8 Q. WHO WAS HANDING OUT THE ASSIGNMENTS AS TO WHAT EACH  
9 DEPUTY MARSHAL WAS TO DO DURING THE MACDONALD TRIAL?

10 A. THAT WAS EDDIE SIGMON, CHIEF DEPUTY.

11 Q. NOW, DID THERE COME A TIME WHEN MR. SIGMON ASKED YOU TO  
12 GO ON THE ROAD TO MAKE A TRANSFER OF A PRISONER IN CONNECTION  
13 WITH THE MACDONALD TRIAL?

14 A. YES, HE DID.

15 Q. MAY WE HAVE GOVERNMENT EXHIBIT 2000, AND ENLARGE THE TOP  
16 HALF, IF YOU WOULD. DO YOU KNOW WHAT THIS IS, MR. MEEHAN?

17 A. IT'S A WARRANT FOR ARREST OF A WITNESS.

18 Q. AND WHO IS THE WITNESS?

19 A. HELENA STOECKLEY.

20 (GOVERNMENT EXHIBIT NUMBER 2000

21 WAS IDENTIFIED FOR THE RECORD.)

22 Q. DO YOU RECALL THAT THERE WAS SUCH A WARRANT ISSUED FOR  
23 THE ARREST OF HELENA STOECKLEY DURING THE MACDONALD TRIAL?

24 A. YES.

25 Q. WERE YOU GIVEN ANY ASSIGNMENT IN CONNECTION WITH THE

September 19, 2012

Dennis Meehan/Direct

Page 519

1 ARREST OR TRANSPORTATION OF HELENA STOECKLEY?

2 A. YES. YES, I WAS.

3 Q. AND WHAT WAS THAT ASSIGNMENT?

4 A. TO TRANSPORT HER, TRANSFER HER FROM CHARLOTTE, NORTH  
5 CAROLINA, TO RALEIGH, NORTH CAROLINA, WAKE COUNTY JAIL.

6 Q. AND I WANT TO ORIENT THE TIME OF THIS. LET'S PUT UP THE  
7 CALENDAR, WHICH IS EXHIBIT 2362, AND ENLARGE AUGUST, PLEASE.

8 NOW, IF THE INTERVIEWS BY THE PROSECUTION AND  
9 DEFENSE OF HELENA STOECKLEY OCCURRED ON THURSDAY, AUGUST 16TH,  
10 WHAT DAY DID YOU TRANSPORT HER FROM CHARLOTTE?

11 A. IT WAS WEDNESDAY, THE 15TH.

12 Q. WEDNESDAY, AUGUST 15TH?

13 A. YES.

14 (GOVERNMENT EXHIBIT NUMBER 2362  
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. ALL RIGHT. NOW, WHAT DID MR. SIGMON -- WHAT WERE YOUR  
17 INSTRUCTIONS FROM HIM ABOUT THIS TRANSFER?

18 A. TO TRAVEL TO NORTH CAROLINA -- I MEAN TO CHARLOTTE,  
19 SECURE THE PRISONER, AND THEN RETURN HER TO THE WAKE COUNTY  
20 JAIL.

21 Q. WHAT WAS THE EXACT SPOT IN CHARLOTTE WHERE YOU WERE  
22 SUPPOSED TO MEET?

23 A. IT WAS AT THE INTERSECTION OF I-77 AND I-85.

24 Q. SO, YOU WERE NOT INSTRUCTED TO GO TO A JAIL FACILITY IN  
25 CHARLOTTE OR ANYWHERE TO PICK HER UP?

September 19, 2012

Dennis Meehan/Direct

Page 520

1 A. NO. NO.

2 Q. OR TO A U.S. MARSHAL'S OFFICE?

3 A. NO.

4 Q. DID YOU KNOW -- DID YOU EVEN KNOW WHAT JAIL SHE WAS IN  
5 BEGINNING HER DAY ON AUGUST 15TH, 1979?

6 A. THE ONLY THING I KNEW, SHE WAS BEING TRANSPORTED OUT OF  
7 THE DISTRICT OF SOUTH CAROLINA.

8 Q. TO CHARLOTTE?

9 A. TO CHARLOTTE.

10 Q. AND AS FAR AS A MEETING PLACE, WAS THAT ARRANGED BY YOU  
11 OR BY YOUR SUPERIORS?

12 A. I BELIEVE THAT WAS SET UP BY THE CHIEF, THAT WAS  
13 PREDETERMINED.

14 Q. AND WHEN YOU SAY THE CHIEF YOU MEAN EDDIE SIGMON?

15 A. EDDIE SIGMON, YES.

16 Q. ALL RIGHT. NOW, DID YOU TAKE ANYONE WITH YOU TO  
17 CHARLOTTE TO PICK UP HELENA STOECKLEY?

18 A. I TOOK MY WIFE.

19 Q. WHY DID YOU TAKE YOUR WIFE?

20 A. I NEEDED A FEMALE TO ACCOMPANY ME AND WE DID NOT HAVE  
21 FEMALE DEPUTIES. SO, I HIRED HER AS A GUARD MATRON.

22 Q. AND WHEN YOU SAY YOU HIRED HER, DO YOU MEAN THE MARSHAL  
23 SERVICE DID?

24 A. I SELECTED HER, BUT THE MARSHAL SERVICE SANCTIONED IT AND  
25 COMPENSATED HER.

September 19, 2012

Dennis Meehan/Direct

Page 521

1 Q. AND THIS WAS BECAUSE IT WAS A FEMALE PRISONER?

2 A. YES.

3 Q. ALL RIGHT. SO, YOU AND YOUR WIFE TRAVELED FROM RALEIGH  
4 TO CHARLOTTE, IS THAT RIGHT?

5 A. RIGHT.

6 Q. AND MAY I HAVE ON THE SCREEN, PLEASE, EXHIBIT 2103.3?  
7 CAN YOU IDENTIFY -- AND WE'LL ENLARGE IT A LITTLE BIT. CAN  
8 YOU IDENTIFY ON THIS EXHIBIT WHERE YOU MADE THE RENDEZVOUS TO  
9 MEET HELENA STOECKLEY?

10 A. IT WAS IN THE VICINITY OF 77 AND I-85.

11 (GOVERNMENT EXHIBIT NUMBER 2103.3  
12 WAS IDENTIFIED FOR THE RECORD.)

13 Q. IF YOU TOUCH THE SCREEN WHERE YOU'RE INDICATING I THINK  
14 IT MIGHT MAKE A MARK.

15 A. THAT WAS --

16 Q. APPROXIMATELY THERE?

17 A. A LITTLE BIT MORE TO THE RIGHT OF THAT.

18 Q. OKAY.

19 A. BUT IN THAT GENERAL VICINITY.

20 Q. ALL RIGHT. THANK YOU. NOW, WHEN YOU GOT TO THE MEETING  
21 POINT, WAS THE PERSON OR THE GROUP THAT YOU WERE MEETING  
22 ALREADY THERE?

23 A. YES, I BELIEVE THEY WERE. YEAH.

24 Q. AND WHO -- IF YOU RECALL, WHO WAS IN THE CAR AS FAR AS  
25 THE CAR YOU MET TRAVELLING FROM SOUTH CAROLINA?

September 19, 2012

Dennis Meehan/Direct

Page 522

1 A. IT WAS A MALE DEPUTY MARSHAL AND A FEMALE, I DON'T KNOW  
2 WHETHER SHE WAS -- I DON'T BELIEVE SHE WAS A DEPUTY, I THINK  
3 SHE WAS A GUARD MATRON, AND THEN THE PRISONER STOECKLEY.

4 Q. OKAY. THE ONE THAT YOU SAID WAS THE GUARD MATRON WAS  
5 FULFILLING A SIMILAR ROLE TO YOUR WIFE?

6 A. YES.

7 Q. AND THEN THE PRISONER WAS WHO?

8 A. HELENA STOECKLEY.

9 Q. AND AS FAR AS THE DEPUTY U.S. MARSHAL DOING THE  
10 TRANSPORT, CAN YOU DESCRIBE HIM?

11 A. HE WAS A TALL, BLACK MAN.

12 Q. ALL RIGHT. AND WHAT HAPPENED AFTER YOU MET AT THE PLACE  
13 THERE AT THE INTERSECTION?

14 A. I RECEIPTED FOR THE PRISONER, RETRIEVED THE PAPERWORK,  
15 WE SWITCHED OUT RESTRAINTS, I PLACED HER IN THE CAR AND WE  
16 DEPARTED FOR RALEIGH.

17 Q. AND SO WHO WAS IN THE CAR WHEN YOU DEPARTED FOR RALEIGH?

18 A. MYSELF, MY EX-WIFE AND HELENA STOECKLEY.

19 Q. AND AT THE TIME THE PERSON YOU'RE REFERRING TO AS YOUR  
20 EX-WIFE WAS ACTUALLY YOUR WIFE AT THAT TIME?

21 A. CORRECT. YES.

22 Q. AND WHAT'S HER FIRST NAME?

23 A. JANICE.

24 Q. AND WHERE DID YOU GO AFTER YOU LEFT THE RENDEZVOUS POINT?

25 A. DIRECTLY TO THE WAKE COUNTY JAIL.

September 19, 2012

Dennis Meehan/Direct

Page 523

1 Q. IN RALEIGH?

2 A. RALEIGH, YES.

3 Q. MAY WE HAVE GOVERNMENT EXHIBIT 2101.3? AND LET'S ENLARGE  
4 IT A LITTLE BIT. CAN YOU POINT OUT WHERE THE WAKE COUNTY --  
5 DID YOU SAY YOU WENT TO THE WAKE COUNTY SHERIFF'S DEPARTMENT  
6 OR JAIL, IS THAT RIGHT?

7 A. IT WAS A COMBINATION OF A JAIL/COURTHOUSE.

8 Q. CAN YOU POINT IT OUT ON THIS MAP?

9 A. RIGHT THERE. RIGHT THERE. LET'S SEE HERE. WELL, IF YOU  
10 COULD CLEAR IT OFF.

11 Q. OKAY. I SEE. YOU PUT A RED MARK THERE?

12 A. UH-HUH.

13 Q. AND I NOTICED THAT THAT'S ON THE -- WHERE YOUR RED MARK  
14 IS IS ON SALISBURY STREET?

15 A. YES. YES.

16 (GOVERNMENT EXHIBIT NUMBER 2101.3

17 WAS IDENTIFIED FOR THE RECORD.)

18 Q. SO, THAT'S THE APPROACH YOU MADE WHEN YOU WERE DELIVERING  
19 OR PICKING UP PRISONERS AT THE WAKE COUNTY COURTHOUSE?

20 A. YES, YOU'D COME DOWN SALISBURY AND THEN TAKE A LEFT INTO  
21 THE FACILITY.

22 Q. AND CAN YOU SORT OF DESCRIBE THE WAY THE FACILITY WORKED  
23 WHEN YOU TURNED LEFT INTO IT?

24 A. IT WAS UNDERGROUND PARKING AND THE JAIL ENTRANCE WAS IN,  
25 I'D CALL IT, THE BASEMENT AREA. THEY HAD A PARKING LOT AND

September 19, 2012

Dennis Meehan/Direct

Page 524

1 SALLY PORT WHERE YOU BROUGHT THE PRISONERS IN.

2 Q. HAD YOU PICKED UP PRISONERS OR DELIVERED PRISONERS TO THE  
3 WAKE COUNTY JAIL MANY TIMES BEFORE?

4 A. YES. YES.

5 Q. WAKE COUNTY HAD A CONTRACT WITH THE MARSHALS?

6 A. YES.

7 Q. NOW, WHEN YOU ARRIVED WITH YOUR PRISONER, DID YOU SEE  
8 ANYONE HANGING AROUND?

9 A. THERE WAS A WHITE MALE ON THE -- RIGHT ON THE CORNER  
10 ACROSS THE PARKING LOT.

11 Q. AND DID HE TRY TO APPROACH YOU WITH YOUR PRISONER?

12 A. HE DID.

13 Q. AND WHAT DID YOU DO ABOUT THAT?

14 A. TOLD HIM TO STEP BACK.

15 Q. DID YOU -- AND WHAT WAS THE REASON THAT YOU DID THAT?

16 A. IT WOULD HAVE BEEN A BREACH OF SECURITY. I DIDN'T KNOW  
17 WHO HE WAS.

18 Q. DID YOU SEE HIM LATER?

19 A. THAT DAY?

20 Q. THAT DAY OR ANY DAY.

21 A. I DON'T BELIEVE SO.

22 Q. ALL RIGHT. DID YOU SEE HIM IN THE BOOKING AREA AT ALL?

23 A. I DON'T RECALL.

24 Q. ALL RIGHT. DID YOU TAKE THE PRISONER TO THE BOOKING  
25 AREA?

September 19, 2012

Dennis Meehan/Direct

Page 525

1 A. TOOK HER IN THE FACILITY, TOOK HER UP TO THE FIFTH FLOOR,  
2 THAT'S WHERE THE JAIL WAS.

3 Q. ALL RIGHT. DID YOU -- ABOUT WHAT TIME OF DAY DID YOU  
4 ARRIVE AT THE WAKE COUNTY JAIL?

5 A. I'D SAY SOMEWHERE BETWEEN 4:30 AND 5:00.

6 Q. DID YOU SEE ANY NEWS MEDIA THERE WHEN YOU ARRIVED?

7 A. YES.

8 Q. AND WHERE WERE THEY?

9 A. INITIALLY THEY WERE ON THE GROUND FLOOR AND THEN THEY  
10 MOVED UP TO THE FIFTH FLOOR IN THE BOOKING AREA.

11 Q. AFTER YOU FINISHED BOOKING IN THE PRISONER, WHAT DID YOU  
12 DO?

13 A. I WAS OFF DUTY. WE WENT HOME.

14 Q. SO, YOU AND YOUR WIFE WENT HOME?

15 A. CORRECT.

16 Q. NOW, AFTER YOU GOT HOME, DID YOU HAVE AN OCCASION TO  
17 WATCH THE LOCAL NEWS THAT NIGHT?

18 A. I DID.

19 Q. WHAT DID YOU SEE?

20 A. FILM FOOTAGE OF US BRINGING HER INTO THE FACILITY AND  
21 THEN ALSO FILM FOOTAGE ON THE BOOKING FLOOR.

22 Q. AND BY US YOU MEAN YOU AND YOUR WIFE?

23 A. YES.

24 Q. WAS ANY OTHER DEPUTY U.S. MARSHAL INVOLVED IN THE  
25 TRANSPORT FROM CHARLOTTE TO RALEIGH?

September 19, 2012



Dennis Meehan/Direct

Page 526

1 A. NO.

2 Q. JUST YOU?

3 A. MYSELF AND THE OTHER DEPUTY FROM SOUTH CAROLINA.

4 Q. AND HE BROUGHT HER FROM SOUTH CAROLINA TO CHARLOTTE, IS  
5 THAT RIGHT?

6 A. TO CHARLOTTE, YES.

7 Q. SO, INVOLVING THE TRANSFER OF HELENA STOECKLEY ON AUGUST  
8 15TH, 1979, NO DEPUTY U.S. MARSHAL FROM RALEIGH WENT TO SOUTH  
9 CAROLINA?

10 A. NO, NOT THAT I KNOW OF.

11 Q. NOW, ARE YOU AWARE -- LET'S PUT THE CALENDAR BACK UP FOR  
12 A MOMENT. THAT'S 2362. ARE YOU AWARE THAT HELENA STOECKLEY  
13 WAS TRANSFERRED FROM THE WAKE COUNTY JAIL TO THE FEDERAL  
14 BUILDING ON AUGUST 16TH, THURSDAY?

15 A. YES.

16 Q. AND DO YOU KNOW WHO MADE THAT TRANSPORT?

17 A. IT WAS JIM BRITT AND GERALDINE HOLDEN.

18 Q. LET'S GO BACK TO THE MAP, EXHIBIT 2101.3. WE'LL ENLARGE  
19 IT A LITTLE BIT. NOW, AS I UNDERSTAND YOUR TESTIMONY, YOU DID  
20 NOT TRANSFER HELENA STOECKLEY FROM THE WAKE COUNTY JAIL TO THE  
21 FEDERAL BUILDING, IS THAT RIGHT?

22 A. NO.

23 Q. BUT YOU HAVE TRANSFERRED MANY PRISONERS FROM THE WAKE  
24 COUNTY JAIL TO THE FEDERAL BUILDING IN RALEIGH?

25 A. YES.

September 19, 2012

Dennis Meehan/Direct

Page 527

1 Q. COULD YOU TRACE WITH YOUR FINGER, AS BEST YOU CAN, THE  
2 ROUTE THAT YOU WOULD TAKE WHEN YOU WOULD DEPART WAKE COUNTY  
3 SHERIFF'S DEPARTMENT AND WERE TRAVELING TO TAKE A PRISONER TO  
4 THE FEDERAL BUILDING.

5 A. YOU WOULD EXIT THE JAIL, TAKE A LEFT ON SALISBURY, TAKE A  
6 RIGHT ON DAVIE, COME ACROSS TO BLOODWORTH, AND THEN UP TO THE  
7 FEDERAL BUILDING.

8 Q. OKAY. SO, CAN YOU COUNT THE NUMBER OF BLOCKS THAT WOULD  
9 BE? THERE'S A PARTIAL BLOCK RIGHT AFTER YOU TURN.

10 A. YEAH.

11 Q. THEN COUNT THE OTHER BLOCKS.

12 A. INCLUDING THE FEDERAL BUILDING?

13 Q. YES.

14 A. SIX.

15 Q. SO, THAT WOULD BE A SIX BLOCK TRIP TO MAKE THAT PRISONER  
16 TRANSPORTATION?

17 A. YES.

18 Q. THANK YOU.

19 MR. BRUCE: IF WE COULD, MADAM CLERK, PRESERVE THAT  
20 AND WE'LL CALL IT 2101.3A.

21 (GOVERNMENT EXHIBIT NUMBER 2101.3A  
22 WAS IDENTIFIED FOR THE RECORD.)

23 MADAM CLERK: YES, SIR.

24 MR. BRUCE: THANK YOU.

25 BY MR. BRUCE:

September 19, 2012

Dennis Meehan/Direct

Page 528

1 Q. NOW, LET ME SHOW YOU AN EXHIBIT, GOVERNMENT EXHIBIT 2074.  
2 AND IF YOU CAN -- OKAY, WE GOT RID OF THE RED MARK. DO YOU  
3 SEE THIS TO BE A COPY OF A NEWS ARTICLE FROM THE *RALEIGH NEWS*  
4 & *OBSERVER* ON FRIDAY, AUGUST 17TH, 1979?

5 A. YES.

6 Q. AND DO YOU SEE THE PHOTOGRAPH IN THE -- ON THE RIGHT-HAND  
7 SECTION?

8 A. YES.

9 Q. DO YOU RECOGNIZE THE PEOPLE IN THAT PHOTOGRAPH?

10 A. THE ONE IN THE FOREFRONT, THE FEMALE, IS HELENA  
11 STOECKLEY. THE MALE BEHIND HER IS JIM BRITT. THE OTHER MALE  
12 IN THE BACKGROUND IS EITHER HER HUSBAND OR HER BOYFRIEND.

13 (GOVERNMENT EXHIBIT NUMBER 2074  
14 WAS IDENTIFIED FOR THE RECORD.)

15 Q. IS THAT THE SAME PERSON THAT YOU SAW APPROACH YOU ON  
16 AUGUST 15TH, 1979, AT THE WAKE COUNTY JAIL WHEN YOU WERE  
17 DELIVERING HELENA STOECKLEY THERE?

18 A. AS BEST I RECALL, YES.

19 THE COURT: ARE YOU REFERRING TO THE -- NOT TO MR.  
20 BRITT, BUT THE OTHER PERSON?

21 MR. BRUCE: I'M SORRY. LET ME BE MORE PRECISE.  
22 BY MR. BRUCE:

23 Q. THE FIRST PERSON IN THE FOREGROUND IS HELENA STOECKLEY,  
24 IS THAT RIGHT?

25 A. YES.

September 19, 2012

Dennis Meehan/Direct

Page 529

1 Q. ALL RIGHT. WHO'S THE SECOND PERSON?

2 A. THE SECOND PERSON IS JIMMY BRITT.

3 Q. AND HE WAS A DEPUTY U.S. MARSHAL?

4 A. CORRECT.

5 Q. AND HE'S WEARING A COAT AND TIE?

6 A. YES.

7 Q. ALL RIGHT. THE PERSON IN THE LEFT-HAND PART OF THE  
8 PICTURE IN THE BACKGROUND, TELL WHAT YOU KNOW ABOUT HIM.

9 A. HE WAS AT THE JAIL WHEN WE PULLED IN.

10 Q. AND YOU BELIEVE HER TO BE -- BELIEVE HIM TO BE A  
11 BOYFRIEND OR A HUSBAND OF HELENA STOECKLEY?

12 A. AT THAT TIME, I DID.

13 Q. OKAY.

14 A. THIS SAYS FIANCE.

15 Q. OKAY. THE CAPTION SAYS FIANCE?

16 A. I BELIEVE SO.

17 Q. YES. OKAY. NOW, A QUESTION ABOUT THIS PICTURE. CAN YOU  
18 TELL WHERE IT WAS TAKEN?

19 A. IT'S THE ENTRANCE TO THE LOADING DOCK OF THE FEDERAL  
20 BUILDING IN RALEIGH.

21 Q. IS THAT -- IN 1979, WAS THAT THE LOADING DOCK THAT YOU  
22 WERE USING TO TRANSPORT PRISONERS IN AND OUT?

23 A. YES.

24 Q. NOW, CAN YOU TELL FROM WHAT'S INDICATED IN THE PHOTOGRAPH  
25 ARE THE PEOPLE COMING INTO THE BUILDING OR OUT OF THE

September 19, 2012

Dennis Meehan/Direct

Page 530

1 BUILDING?

2 A. THEY'RE COMING OUT OF THE BUILDING.

3 Q. AND HOW CAN YOU TELL THAT?

4 A. YOU CAN SEE HOW THE RAILING SLANTS DOWN.

5 Q. AND SO GOING DOWN IS COMING OUT?

6 A. YES.

7 Q. NOW, LET'S PUT THE WHOLE PICTURE UP AGAIN, PLEASE. AND  
8 DO YOU SEE THE DATE ON THE NEWSPAPER?

9 A. 17TH.

10 Q. NOW, ON THE 15TH, THAT'S THE DAY YOU BROUGHT HELENA  
11 STOECKLEY FROM CHARLOTTE TO THE WAKE COUNTY JAIL, IS THAT  
12 RIGHT?

13 A. THE 15TH?

14 Q. WEDNESDAY, THE 15TH. I'M JUST --

15 A. YES. YES.

16 Q. -- ASKING.

17 A. YES.

18 Q. OKAY. HELENA STOECKLEY DID NOT -- IS IT TRUE THAT HELENA  
19 STOECKLEY DID NOT GO TO THE FEDERAL BUILDING ON WEDNESDAY,  
20 AUGUST 15TH?

21 A. ON THE 15TH, NO.

22 Q. SHE DID NOT?

23 A. NO.

24 Q. SO, THIS PICTURE DEPICTED IN 2074 COULD NOT HAVE BEEN  
25 TAKEN ON WEDNESDAY, AUGUST 15TH?

September 19, 2012

Dennis Meehan/Cross

Page 531

1 A. NO.

2 Q. AND YOU KNOW THAT WHY?

3 A. BECAUSE I WAS MOVING HER FROM CHARLOTTE TO WAKE COUNTY.

4 Q. THANK YOU.

5 THE COURT: CROSS. WELL, LET'S --

6 MR. BRUCE: I'M SORRY, I HAVE A FEW MORE QUESTIONS.

7 THE COURT: I'M SORRY. GO AHEAD.

8 MR. BRUCE: I'M SORRY.

9 BY MR. BRUCE:

10 Q. DID YOU WORK WITH DEPUTY U.S. MARSHAL JIMMY BRITT DURING  
11 YOUR TIME IN RALEIGH?

12 A. THERE WERE TIMES I WORKED WITH HIM.

13 Q. AND WHAT KIND OF RELATIONSHIP DID YOU HAVE WITH HIM?

14 A. IT WAS A WORKING RELATIONSHIP.

15 Q. BASED ON YOUR OBSERVATION OF HIM AS A FELLOW DEPUTY, WHAT  
16 KIND OF RELATIONSHIP DID JIM BRITT HAVE WITH HIS SUPERVISORS?

17 A. THERE WAS TENSION BETWEEN THEM.

18 Q. CAN YOU ALSO -- DID YOU HAVE AN INCIDENT WITH JIMMY BRITT  
19 CONCERNING A TAPE RECORDER AND A CUBICLE?

20 A. YES, I DID.

21 Q. CAN YOU EXPLAIN THAT TO US, PLEASE?

22 A. I RECEIVED A HANDHELD TAPE RECORDER FROM OUR HEADQUARTERS  
23 OFFICE AND THAT WAS INTENDED FOR ONE OF THE INSPECTORS EITHER  
24 -- I CAN'T REMEMBER WHETHER IT WAS THE ENFORCEMENT OR THE  
25 WITNESS INSPECTOR. AND I WAS TESTING IT, DOING A

September 19, 2012

1 RECORD/PLAYBACK, AND DEPUTY BRITT CAME AROUND OUT OF HIS  
2 CUBICLE AND HE WANTED TO KNOW WHAT I WAS DOING AND WHAT THIS  
3 THING WAS AND WHAT IT WAS ALL ABOUT. AND I EXPLAINED IT TO  
4 HIM. HE TOLD ME TO GET RID OF IT AND DON'T TURN IT ON OR  
5 WORDS TO THAT EFFECT.

6 Q. NOW, IN YOUR EXPERIENCE WITH TRANSPORTING PRISONERS WHO  
7 ARE WITNESSES TO BE INTERVIEWED, HAVE YOU EVER SAT IN ON AN  
8 INTERVIEW WHEN THE PRISONER WITNESS IS BEING INTERVIEWED BY AN  
9 ASSISTANT UNITED STATES ATTORNEY?

10 A. MYSELF, NO, NEVER.

11 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

12 THE COURT: WELL, WE'RE GOING TO TAKE OUR RECESS  
13 TILL 10:45.

14 (RECESS TAKEN FROM 10:29 A.M., UNTIL 10:46 A.M.)

15 (DEFENDANT PRESENT.)

16 THE COURT: PLEASE BE SEATED. WE'LL CONTINUE.

17 YOU'RE STILL UNDER OATH, MR. MEEHAN. THE WITNESS IS WITH YOU,  
18 MR. WIDENHOUSE.

19 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

20 C R O S S - E X A M I N A T I O N 10:46 A.M.

21 BY MR. WIDENHOUSE:

22 Q. NOW, MR. MEEHAN, WE'VE KNOWN EACH OTHER BACK WHEN NEITHER  
23 ONE OF US HAD WHITE HAIR, DIDN'T WE?

24 A. YOU'RE RIGHT.

25 Q. IF I CAN HAVE GOVERNMENT EXHIBIT 2003? AND COULD YOU

Dennis Meehan/Cross

Page 533

1 LOOK AT THE LAST PARAGRAPH? WE'LL PULL IT UP FOR YOU AND I  
2 THINK IT'S HIGHLIGHTED ON PAGE TWO. AND COULD YOU READ THE  
3 HIGHLIGHTED PARAGRAPH THERE FOR ME?

4 A. ON AUGUST 15TH, 1979, U.S. MARSHAL JOE NEELEY, GREENVILLE  
5 S.C., ADVISED THAT THE SUBJECT HAD BEEN TRANSPORTED DIRECTLY  
6 FROM THE PICKENS COUNTY JAIL TO RALEIGH, N.C., ON AUGUST -- IT  
7 APPEARS TO BE A 15 OR A 13, 1979.

8 Q. ALL RIGHT. AND IF I UNDERSTOOD YOUR DIRECT, YOU SAID  
9 THAT CHIEF DEPUTY SIGMON HAD DIRECTED YOU TO GO TO CHARLOTTE  
10 AND PICK UP HELENA STOECKLEY?

11 A. CORRECT.

12 Q. AND THAT'S WHAT YOU DID?

13 A. YES.

14 Q. AND YOU MET AT SOME PREARRANGED LOCATION AT THE  
15 INTERSECTION OF I-85 AND I-77?

16 A. THAT'S CORRECT.

17 Q. DO YOU REMEMBER WHAT THE PREARRANGED LOCATION WAS?

18 A. IT WAS A PARKING LOT, EITHER A HOWARD JOHNSON OR A  
19 SHONEY'S.

20 Q. AND THEN YOU BROUGHT HER BACK TO THE WAKE COUNTY JAIL?

21 A. DIRECTLY BACK, YES.

22 Q. AND YOU CHECKED HER INTO THE WAKE COUNTY JAIL? YOU SAW  
23 HER BOOKED IN?

24 A. I BOOKED HER IN.

25 Q. ALL RIGHT. AND THEN YOU DIDN'T HAVE ANY CONTACT WITH HER

September 19, 2012



Dennis Meehan/Cross

Page 534

1 AGAIN ON THE 15TH?

2 A. NO.

3 Q. SO, IT'S POSSIBLE SOMEBODY ELSE COULD HAVE TRANSPORTED  
4 HER AFTER YOU HAD HER BOOKED IN THE JAIL OVER TO THE WAKE  
5 COUNTY -- THE FEDERAL BUILDING, YOU JUST DIDN'T DO IT?

6 A. ON THE 15TH?

7 Q. YES.

8 A. THE DAY I MOVED HER?

9 Q. YES.

10 A. I HIGHLY DOUBT THAT.

11 Q. OKAY. BUT ALL YOU KNOW FOR SURE IS YOU DIDN'T MOVE HER?

12 A. NO, I DID NOT.

13 Q. AND WHAT KIND OF -- DO YOU REMEMBER WHAT KIND OF CAR YOU  
14 TOOK WHEN YOU -- DID YOU TAKE YOUR PERSONAL CAR FROM --

15 A. NO, IT WAS A GOVERNMENT CAR.

16 Q. OKAY. AND DO YOU HAVE A RECEIPT? IS THAT A LOG BOOK?  
17 WOULD THAT CAR HAVE BEEN LOGGED OUT TO TAKE IT TO CHARLOTTE?

18 A. NOT LOGGED OUT DIRECTLY, BUT IT WOULD HAVE BEEN ON MY  
19 DAILY LOG AT THE TIME.

20 Q. OKAY. SO, YOU DON'T HAVE TO SIGN THE CAR OUT?

21 A. NO. NO.

22 Q. BUT IT WOULD BE ON YOUR LOG?

23 A. YES.

24 Q. AND DO YOU HAVE A COPY OF YOUR LOG?

25 A. NO, I DON'T.

September 19, 2012

Dennis Meehan/Cross

Page 535

1 Q. IF I CAN HAVE THE PICTURE THAT YOU LOOKED AT -- THAT HE  
2 LOOKED AT ON DIRECT. I THINK IT'S THE NEWSPAPER ARTICLE. CAN  
3 YOU TELL ME AGAIN WHERE YOU THINK THAT LOCATION IS? DID YOU  
4 SAY THAT'S THE LOADING DOCK AT THE FEDERAL BUILDING?

5 A. THAT'S WHAT IT APPEARS TO ME, YES.

6 Q. AND ARE PEOPLE GOING INTO THE FEDERAL BUILDING?

7 A. FROM THIS PICTURE, IT APPEARS LIKE THEY'RE EXITING THE  
8 BUILDING.

9 Q. OKAY. AND WOULD IT BE COMMON PRACTICE FOR A CIVILIAN WHO  
10 WASN'T UNDER -- IN UNITED STATES MARSHAL'S CUSTODY TO BE THAT  
11 CLOSE COMING OUT OF THE COURTHOUSE WITH AN ESCORTED PRISONER?

12 A. THAT SHOULDN'T HAVE HAPPENED.

13 Q. SO, LOOKING AT THAT PICTURE, I TAKE IT, YOU THINK THAT  
14 LOOKS UNUSUAL TO YOU?

15 A. TO ME, YES.

16 Q. AND OTHER THAN THE FACT THAT THE PICTURE APPEARS TO HAVE  
17 BEEN PUBLISHED IN THE *NEWS & OBSERVER* ON AUGUST 17TH, DO YOU  
18 KNOW WHEN THE PICTURE WAS MADE?

19 A. WHEN THAT PICTURE WAS TAKEN?

20 Q. YES.

21 A. NO.

22 MR. WIDENHOUSE: THANK YOU. THAT'S ALL I HAVE, YOUR  
23 HONOR.

24 THE COURT: ANYTHING FURTHER, MR. BRUCE?

25 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

September 19, 2012

Janice Meehan/Direct

Page 536

1 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. CALL  
2 YOUR NEXT WITNESS.

3 MR. BRUCE: MAY THIS WITNESS BE EXCUSED?

4 MR. WIDENHOUSE: NO OBJECTION.

5 THE COURT: YES, SIR.

6 MR. BRUCE: THE GOVERNMENT CALLS EDDIE SIGMON. I'M  
7 SORRY, I'VE GOT THE WRONG ORDER, YOUR HONOR. JANICE MEEHAN.

8 **JANICE MEEHAN, GOVERNMENT WITNESS, SWORN**

9 D I R E C T E X A M I N A T I O N 10:52 A.M.

10 BY MS. COOLEY:

11 Q. GOOD MORNING, MS. MEEHAN

12 A. GOOD MORNING.

13 Q. IF YOU COULD PLEASE SPELL YOUR LAST NAME FOR THE COURT  
14 REPORTER.

15 A. M-DOUBLE E-H-A-N.

16 Q. AND WHERE DO YOU CURRENTLY LIVE?

17 A. RALEIGH, NORTH CAROLINA.

18 Q. AND WERE YOU LIVING IN RALEIGH IN 1979?

19 A. YES.

20 Q. AND AT THAT TIME WERE YOU MARRIED TO DENNIS MEEHAN?

21 A. YES, I WAS.

22 Q. AND HOW WAS HE EMPLOYED DURING 1979?

23 A. HOW WAS HE EMPLOYED?

24 Q. WHO DID HE WORK FOR?

25 A. OH. THE UNITED STATES MARSHAL SERVICE.

September 19, 2012

Janice Meehan/Direct

Page 537

1 Q. AND AT SOME POINTS OR AT SOME TIMES DURING HIS EMPLOYMENT  
2 WITH THE MARSHAL SERVICE, WOULD YOU HAVE OCCASION TO RIDE WITH  
3 HIM?

4 A. YES.

5 Q. HOW WOULD THAT COME ABOUT?

6 A. IF THEY DIDN'T HAVE A FEMALE, I THINK THEY CALLED THEM  
7 MATRONS, TO HELP TRANSPORT A FEMALE PERSON. I DON'T KNOW  
8 WHETHER YOU'D CALL THEM PRISONERS OR NOT.

9 Q. IF IT WAS A FEMALE IN CUSTODY?

10 A. YES. THANK YOU.

11 Q. SURE. AND WERE YOU PAID FOR THIS POSITION?

12 A. I BELIEVE I WAS, YES. IT'S BEEN A LONG TIME.

13 Q. AND DO YOU REMEMBER THE TIME IN 1979, DURING THE  
14 MACDONALD TRIAL?

15 A. YES.

16 Q. AND DO YOU REMEMBER YOUR EX-HUSBAND WORKING PARTS OF THE  
17 MACDONALD TRIAL?

18 A. YES.

19 Q. DID YOU EVER HAVE OCCASION TO GO WITH HIM TO TRANSPORT A  
20 PRISONER RELATED TO THAT TRIAL?

21 A. YES.

22 Q. OKAY. AND DO YOU REMEMBER WHO THAT PERSON WAS?

23 A. HELENA STOECKLEY.

24 Q. DO YOU REMEMBER WHERE IT WAS THAT YOU WENT WITH HIM TO  
25 GET HER?

September 19, 2012

Janice Meehan/Direct

Page 538

1 A. I DON'T REMEMBER THAT. I DO REMEMBER THAT IT WAS LIKE A  
2 PARKING LOT BECAUSE I REMEMBER, YOU KNOW, PEOPLE WALKING.

3 Q. AND ABOUT HOW LONG -- DID YOU LEAVE FROM RALEIGH?

4 A. YES.

5 Q. ABOUT HOW LONG DID IT TAKE YOU TO GET TO THIS LOCATION  
6 FROM RALEIGH?

7 A. MAYBE TWO, THREE HOURS. I REALLY DON'T RECALL THAT TO BE  
8 REAL SPECIFIC.

9 Q. AND DID YOU GO AND COME IN THE SAME DAY?

10 A. PARDON ME?

11 Q. DID YOU GO PICK UP THE PRISONER AND COME BACK TO RALEIGH  
12 IN THE SAME DAY?

13 A. YES.

14 Q. AND CAN YOU DESCRIBE -- WELL, YOU SAID THAT WHERE YOU  
15 PICKED THIS PERSON UP WAS A PARKING LOT?

16 A. YES.

17 Q. WHERE WAS IT IN RELATION TO THE HIGHWAY?

18 A. I DON'T REALLY REMEMBER, BUT I DON'T THINK IT WAS FAR  
19 OFF.

20 Q. AND WHO DID YOU PICK HER UP FROM, IF YOU CAN RECALL?

21 A. I AM ASSUMING TWO FEDERAL MARSHALS.

22 Q. DO YOU REMEMBER WHO IT WAS EXACTLY THAT YOU PICKED HER UP  
23 FROM?

24 A. NAME-WISE, NO.

25 Q. AND ON THE RIDE BACK TO RALEIGH, AFTER PICKING HER UP --

September 19, 2012

Janice Meehan/Direct

Page 539

1 A. YES.

2 Q. -- WHO ALL WAS IN THE CAR?

3 A. DENNIS, HELENA AND MYSELF.

4 Q. THERE WAS NO ONE ELSE IN THE CAR WITH YOU?

5 A. NO.

6 Q. AND DID YOU TALK AT ALL ON THE RIDE BACK?

7 A. NO. SHE --

8 Q. DID -- GO AHEAD.

9 A. SHE KIND OF MUMBLED, BUT YOU COULDN'T -- I COULDN'T  
10 REALLY HEAR HER OR ANYTHING.

11 Q. DID YOU TALK TO HER AT ALL ABOUT HER INVOLVEMENT IN THE  
12 MACDONALD TRIAL?

13 A. NO.

14 Q. AND WHEN YOU GOT BACK TO RALEIGH, WHERE DID YOU TAKE HER?

15 A. TO THE JAIL.

16 Q. AND UPON ARRIVAL AT THE JAIL, WAS THERE ANYONE THERE?

17 A. YES, I DO REMEMBER A SHORT FELLOW RUNNING -- YOU KNOW,  
18 RUNNING OUT TOWARD THE CAR.

19 Q. TOWARDS THE CAR THAT YOU WERE IN?

20 A. TOWARD, YEAH, THE CAR THAT WE WERE IN.

21 Q. DO YOU REMEMBER WHETHER HE WAS WHITE, BLACK?

22 A. I WANT TO SAY -- I KNOW HE WAS WHITE AND HE HAD DARK  
23 HAIR. I DO REMEMBER THAT.

24 Q. WAS THERE ANYONE ELSE WAITING THERE AT THE JAIL WHEN YOU  
25 ARRIVED?

September 19, 2012

Janice Meehan/Cross

Page 540

1 A. I DIDN'T SEE ANYONE ELSE.

2 Q. DID YOU EVER SEE ANY MEMBERS OF THE MEDIA?

3 A. OF THE WHAT?

4 Q. MEDIA.

5 A. WHEN WE -- YES. WHEN WE WENT UPSTAIRS, THERE WAS MEDIA  
6 THERE.

7 Q. AND HOW DO YOU RECALL THAT THERE WAS MEDIA?

8 A. BECAUSE I -- IT WAS ACTION NEWS, I BELIEVE, 11 AND, YOU  
9 KNOW, THEY HAD CAMERAS AND ALL THAT STUFF. THAT'S WHAT I  
10 REMEMBER.

11 Q. DID YOU SEE YOURSELF LATER ON THE NEWS?

12 A. YES.

13 Q. YOU SAID YOU THOUGHT IT WAS ACTION 11?

14 A. ELEVEN.

15 MS. COOLEY: I HAVE NO FURTHER QUESTIONS, YOUR  
16 HONOR.

17 THE COURT: CROSS.

18 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

19 C R O S S - E X A M I N A T I O N 10:57 A.M.

20 BY MR. WIDENHOUSE:

21 Q. MS. MEEHAN, DO YOU RECALL WHAT KIND OF VEHICLE YOU AND  
22 YOUR HUSBAND --

23 A. IT WAS A CROWN VICTORIA, I'M ALMOST POSITIVE, BECAUSE  
24 THAT'S WHAT THEY DROVE.

25 Q. OKAY. SO, IT WAS NOT A PERSONAL VEHICLE, IT WAS A

September 19, 2012

Janice Meehan/Cross

Page 541

1 MARSHAL'S CAR?

2 A. RIGHT. RIGHT. RIGHT.

3 Q. AND DO YOU RECALL WHETHER THERE WAS AN EXCHANGE OF  
4 PAPERWORK WHEN YOU ALL GOT MS. STOECKLEY?

5 A. WELL, THEY WENT TO THE SIDE, I DO REMEMBER THAT, AND  
6 WHAT, YOU KNOW, THEY WERE DOING OVER THERE I REALLY DIDN'T PAY  
7 ANY ATTENTION TO TO SAY. I REMEMBER LEAVING I HAD TO SIGN  
8 FROM THE JAIL SOMETHING.

9 Q. YOU SIGNED SOMETHING AT THE WAKE COUNTY JAIL --

10 A. YEAH.

11 Q. -- WHEN YOU GOT BACK TO RALEIGH?

12 A. (WITNESS NODS HEAD.)

13 Q. OKAY. DO YOU REMEMBER ANYTHING ABOUT THE PEOPLE THAT YOU  
14 GOT HELENA STOECKLEY FROM WHEN YOU ARRIVED IN CHARLOTTE AT THE  
15 PARKING LOT?

16 A. I DO REMEMBER ONE OF THE MEN WAS A BLACK MAN AND THE  
17 OTHER WAS A WHITE MAN.

18 Q. OKAY. SO IT WAS TWO MEN. AND YOUR RECOLLECTION IS ONE  
19 BLACK AND ONE WHITE?

20 A. YES.

21 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
22 QUESTIONS.

23 THE COURT: ANY REDIRECT?

24 MS. COOLEY: IF I MAY HAVE ONE MOMENT, YOUR HONOR.

25 (PAUSE.)

September 19, 2012



Janice Cooley/Redirect

Page 542

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 10:59 A.M.

3 BY MS. COOLEY:

4 Q. MS. MEEHAN, JUST ONE QUESTION. WHEN YOU PICKED HELENA

5 STOECKLEY UP FROM THE INDIVIDUALS IN CHARLOTTE, DO YOU RECALL

6 WHETHER THERE WAS A MATRON WITH THEM TO TRANSPORT HER?

7 A. DO I REMEMBER WHAT?

8 Q. IF YOU RECALL WHETHER THERE WAS A MATRON, A FEMALE ALSO

9 HELPING IN TRANSPORT LIKE YOU WERE DOING?

10 A. NO, I JUST SORT OF GLANCED OVER THERE. IT WASN'T LIKE I

11 WAS WATCHING EVERYTHING OR ANYTHING.

12 Q. SO, YOU JUST DON'T RECALL?

13 A. NO, I DON'T.

14 MS. COOLEY: THANK YOU. NO FURTHER QUESTIONS, YOUR

15 HONOR.

16 THE WITNESS: THANK YOU.

17 THE COURT: YOU MAY STEP DOWN.

18 THE WITNESS: THANK YOU.

19 THE COURT: DO YOU HAVE ANYTHING FURTHER?

20 MR. WIDENHOUSE: NO RECROSS, YOUR HONOR.

21 MS. COOLEY: YOUR HONOR, MAY MS. MEEHAN BE RELEASED

22 FROM HER SUBPOENA?

23 MR. WIDENHOUSE: NO OBJECTION.

24 THE COURT: YES, MA'AM, SHE'S RELEASED.

25 MS. COOLEY: THANK YOU, YOUR HONOR.

September 19, 2012

Sigmon/Direct

Page 543

1 MR. BRUCE: THE GOVERNMENT CALLS NOW EDDIE SIGMON.

2 **EDDIE R. SIGMON, GOVERNMENT WITNESS, SWORN**

3 D I R E C T E X A M I N A T I O N 11:00 A.M.

4 BY MR. BRUCE:

5 Q. WOULD YOU STATE YOUR NAME, PLEASE?

6 A. EDDIE SIGMON.

7 Q. AND WHERE DO YOU CURRENTLY RESIDE?

8 A. SIR?

9 Q. WHERE DO YOU CURRENTLY -- I'M SORRY, LET ME GET THE  
10 MICROPHONE. WHERE DO YOU CURRENTLY RESIDE?

11 A. CARY, NORTH CAROLINA.

12 Q. ARE YOU RETIRED?

13 A. I AM.

14 Q. AND FROM WHAT PROFESSION DID YOU RETIRE?

15 A. I WAS THE CHIEF DEPUTY U.S. MARSHAL FOR THE EASTERN  
16 DISTRICT OF NORTH CAROLINA.

17 Q. CAN YOU OUTLINE YOUR LAW ENFORCEMENT CAREER PRIOR TO  
18 BECOMING A DEPUTY U.S. MARSHAL?

19 A. I STARTED IN LAW ENFORCEMENT WITH THE CATAWBA COUNTY  
20 SHERIFF'S DEPARTMENT IN 1954.

21 Q. AND WHAT STATE WAS THAT?

22 A. CATAWBA COUNTY.

23 Q. CATAWBA COUNTY. AND WHEN DID YOU GO WITH THE MARSHAL  
24 SERVICE?

25 A. I WAS SWORN IN SEPTEMBER THE 21ST, 1959.

September 19, 2012

Sigmon/Direct

Page 544

1 Q. '59. AND WHERE WAS YOUR FIRST POST OF DUTY?

2 A. RALEIGH.

3 Q. YOU STAYED IN RALEIGH YOUR WHOLE CAREER?

4 A. I DID.

5 Q. AND WHEN DID YOU BECOME THE CHIEF DEPUTY UNITED STATES  
6 MARSHAL?

7 A. I THINK THE MONTH WAS JUNE. THE YEAR WAS 1965.

8 Q. AND WHO WAS THE U.S. MARSHAL AT THAT TIME?

9 A. B. RAY COHOON.

10 Q. AND SO YOU SERVED AS CHIEF DEPUTY UNITED STATES MARSHAL  
11 FROM THAT TIME UNTIL WHEN?

12 A. UNTIL MY RETIREMENT, DECEMBER THE 31ST, 1984.

13 Q. WERE YOU RECOGNIZED UPON YOUR RETIREMENT?

14 A. I WAS.

15 Q. TELL US ABOUT THAT.

16 A. THE DIRECTOR OF THE MARSHAL SERVICE INDICATED TO ME OR  
17 TOLD ME IN A LETTER THAT I WAS THE LONGEST SERVING CHIEF  
18 DEPUTY THAT'S EVER BEEN IN THE MARSHAL SERVICE.

19 Q. AND YOU GOT A LETTER TO THAT EFFECT?

20 A. I DO.

21 Q. NOW, IN YOUR CAPACITY AS CHIEF DEPUTY UNITED STATES  
22 MARSHAL, YOU SUPERVISED ALL OF THE OTHER DEPUTIES IN THE  
23 DISTRICT, EASTERN DISTRICT OF NORTH CAROLINA?

24 A. YES.

25 Q. AND YOU WORKED -- THE UNITED STATES MARSHAL IS AN

September 19, 2012

Sigmon/Direct

Page 545

1 APPOINTED POLITICAL POSITION, IS THAT RIGHT?

2 A. YES.

3 Q. AND SO YOU SERVED THROUGH VARIOUS ADMINISTRATIONS OF  
4 APPOINTED UNITED STATES MARSHALS?

5 A. YES.

6 Q. AND WAS THERE A TIME WHEN YOU SERVED AS ACTING UNITED  
7 STATES MARSHAL?

8 A. YES.

9 Q. WHEN WAS THAT?

10 A. I'M NOT SURE OF THE DATE. I THINK IT WAS 1974. CHIEF  
11 JUDGE ALGERNON BUTLER APPOINTED ME UNDER ORDER TO FINISH THE  
12 TERM OF A FORMER MARSHAL.

13 Q. NOW, IS ONE OF THE DUTIES OF THE UNITED STATES MARSHAL  
14 SERVICE TO TRANSPORT PRISONERS TO AND FROM COURT?

15 A. YES.

16 Q. AND DID YOU OVERSEE THAT OPERATION WHILE YOU WERE CHIEF  
17 DEPUTY?

18 A. YES.

19 Q. WERE YOU SERVING AS CHIEF DEPUTY DURING THE TRIAL OF  
20 *UNITED STATES V. MACDONALD* IN 1979?

21 A. YES.

22 Q. DO YOU RECALL THAT?

23 A. REPEAT.

24 Q. DO YOU RECALL THE TRIAL?

25 A. I'M SORRY, JOHN, I STILL --

September 19, 2012

Sigmon/Direct

Page 546

1 Q. LET ME WITHDRAW THAT AND GO TO THE NEXT ONE. DURING THE  
2 TRIAL, DID YOU HAVE THE RESPONSIBILITY OF HANDING OUT  
3 ASSIGNMENTS FOR WHAT THE DEPUTY U.S. MARSHALS WERE GOING TO  
4 DO?

5 A. YES.

6 Q. AND AMONG THOSE DEPUTIES THAT YOU WERE GIVING ASSIGNMENTS  
7 TO WAS DENNIS MEEHAN?

8 A. YES.

9 Q JIM BRITT?

10 A. YES.

11 Q. AND THERE WERE OTHERS, OF COURSE?

12 A. YES.

13 Q. WILLIAM SESSIONS, I BELIEVE?

14 A. REPEAT, PLEASE.

15 Q. CAN YOU GIVE US SOME OF THE OTHER NAMES OF THE DEPUTIES  
16 THAT WERE WORKING FOR YOU DURING THE MACDONALD CASE?

17 A. WELL, LEE TART, FRANK SESSOMS, DENNIS MEEHAN, AL MARTIN  
18 AND WE ALSO HAD SOME EXTRA HELP FROM OUT IN THE DISTRICT  
19 DURING THE TRIAL.

20 Q. AND THE U.S. MARSHAL AT THAT TIME WAS WHO?

21 A. HUGH SALTER.

22 Q. BUT YOU WERE THE ONE GIVING OUT THE DAY-TO-DAY  
23 ASSIGNMENTS, IS THAT RIGHT?

24 A. YES.

25 Q. DID YOU BECOME AWARE THAT THERE WAS A NEED TO TRANSPORT

September 19, 2012

Sigmon/Direct

Page 547

1 HELENA STOECKLEY FROM SOUTH CAROLINA TO RALEIGH, NORTH  
2 CAROLINA, DURING THE TRIAL?

3 A. I HAD KNOWLEDGE THAT HE HAD -- SHE HAD BEEN ARRESTED IN  
4 SOUTH CAROLINA AND THAT SHE WOULD BE TRANSPORTED TO RALEIGH.

5 Q. CAN WE LOOK AT GOVERNMENT EXHIBIT 2000?

6 A. OKAY.

7 Q. CAN YOU TELL US WHAT THAT IS?

8 A. BASICALLY, IT'S AN ORDER TO MOVE HELENA STOECKLEY FROM  
9 SOUTH CAROLINA TO THE EASTERN DISTRICT OF NORTH CAROLINA.

10 Q. IT'S A WARRANT FOR HER ARREST, IS THAT RIGHT?

11 A. SIGNED BY THE HONORABLE JUDGE FRANK DUPREE.

12 (GOVERNMENT EXHIBIT NUMBER 2000

13 WAS IDENTIFIED FOR THE RECORD.)

14 Q. OKAY. SO, IT WOULD BE YOUR RESPONSIBILITY TO WORK OUT  
15 THE TRANSPORTATION?

16 A. TO MAKE THE ASSIGNMENT, YES.

17 Q. AND IN COOPERATION WITH THE UNITED STATES MARSHALS IN THE  
18 DISTRICT OF SOUTH CAROLINA WHERE SHE WAS BEING HELD?

19 A. YES.

20 Q. NOW, ON THE SUBJECT OF TRANSPORTING FEMALE PRISONERS  
21 GENERALLY, WAS THERE A POLICY THAT THERE HAD TO BE A FEMALE  
22 MATRON ACCOMPANY THE DEPUTY U.S. MARSHAL?

23 A. YES.

24 Q. AND DID YOU HAVE ANY FEMALE DEPUTIES AT THAT TIME?

25 A. NO.

September 19, 2012

Sigmon/Direct

Page 548

1 Q. SO, WHAT TYPE OF ARRANGEMENTS WOULD YOU MAKE TO HAVE A  
2 MATRON?

3 A. IF I HAD A DEPUTY THAT HAD A WIFE AVAILABLE, I WOULD  
4 CHOOSE THEM.

5 Q. AND DID YOU ALSO HAVE ON OCCASION A CLERICAL PERSON WHO  
6 WAS A FEMALE SERVE AT VARIOUS PRISONER TRANSPORTATIONS?

7 A. YES.

8 Q. AND WHO WAS THAT?

9 A. WE WOULD SWITCH AROUND, MAYBE WHOEVER WAS AVAILABLE.

10 Q. AND WAS ONE OF THEM GERALDINE HOLDEN?

11 A. YES.

12 Q. ALL RIGHT. NOW, DO YOU SPECIFICALLY RECALL WHO YOU  
13 ASSIGNED TO TRAVEL FROM RALEIGH TO GO PICK UP HELENA  
14 STOECKLEY?

15 A. IT'S BEEN SO LONG, I CANNOT DO THAT UNLESS I HAD THE  
16 RECORDS.

17 Q. ALL RIGHT. IF THE TWO CHOICES WERE DENNIS MEEHAN AND HIS  
18 WIFE OR JIM BRITT AND GERALDINE HOLDEN, WHICH DO YOU THINK YOU  
19 WOULD HAVE CHOSEN?

20 A. I WOULD HAVE SENT THE DEPUTY WHO HAD A WIFE AVAILABLE TO  
21 GO WITH HIM.

22 Q. AND WHY IS THAT?

23 A. WELL, I NEED MY CLERICAL PEOPLE IN THE OFFICE TO PERFORM  
24 THEIR DUTIES.

25 Q. AND WAS GERALDINE HOLDEN A VALUABLE CLERICAL EMPLOYEE IN

September 19, 2012

Sigmon/Direct

Page 549

1 THE OFFICE?

2 A. SHE WAS.

3 Q. NOW, HAD YOU EVER ASSIGNED DENNIS MEEHAN TO PICK UP A  
4 PRISONER ALONG WITH HIS WIFE, JANICE MEEHAN, PRIOR TO THIS  
5 TIME?

6 A. I COULDN'T BE DEFINITE ABOUT THAT, BUT I WOULD ANSWER  
7 YES.

8 Q. OKAY. NOW, WHAT WAS THE -- WHEN THE DEPUTY U.S. MARSHALS  
9 WERE TRANSPORTING PRISONERS DURING YOUR SUPERVISION, WHAT WAS  
10 THE POLICY ON INTERROGATING THE PRISONER ABOUT THE CASE  
11 INVOLVED?

12 A. WELL, TO MY KNOWLEDGE, THERE WAS NO POLICY FOR A DEPUTY  
13 TO INTERROGATE A PRISONER.

14 Q. WOULD YOU WANT THE DEPUTY TO DO THAT DURING THE PRISONER  
15 TRANSPORTATION?

16 A. NO.

17 Q. NOW, IF A DEPUTY U.S. MARSHAL HAPPENED TO OVERHEAR A  
18 CONFESSION OF SOMEBODY IN CONNECTION WITH A MURDER TRIAL, WHAT  
19 WOULD BE THEIR DUTY?

20 A. WELL, I WOULD CERTAINLY HOPE, SINCE I'M THEIR SUPERVISOR,  
21 THAT THEY WOULD COME AND TELL ME ABOUT IT.

22 Q. AND WAS ANY SUCH THING REPORTED TO YOU IN CONNECTION WITH  
23 HELENA STOECKLEY?

24 A. NO.

25 Q. AND TO YOUR KNOWLEDGE, WAS ANY SUCH THING REPORTED TO

September 19, 2012



Sigmon/Direct

Page 550

1 MARSHAL HUGH SALTER ABOUT HELENA STOECKLEY?

2 A. NO. IF IT WAS, I'M SURE HE WOULD HAVE CONSULTED WITH ME.

3 Q. NOW, I WANT TO ASK YOU ABOUT -- YOUR RELATIONSHIP WITH  
4 JIMMY BRITT WAS ONE OF SUPERVISOR TO SUBORDINATE, IS THAT  
5 RIGHT?

6 A. YES.

7 Q. AND DO YOU KNOW ABOUT HOW LONG YOU SUPERVISED JIMMY BRITT  
8 AS A DEPUTY U.S. MARSHAL?

9 A. I DON'T REMEMBER WHEN JIM CAME TO WORK IN OUR OFFICE. I  
10 THINK HE WAS THERE WHEN I WAS ELEVATED TO CHIEF DEPUTY. AND  
11 IF THAT IS THE CASE, I WOULD HAVE SUPERVISED HIM FROM THAT  
12 TIME UNTIL I RETIRED.

13 Q. AND HOW WOULD YOU CHARACTERIZE HIM AS AN EMPLOYEE?

14 A. AN ATTENTION SEEKER.

15 Q. DO YOU RECALL AN INCIDENT -- LEARNING OF AN INCIDENT  
16 INVOLVING A FISTFIGHT OR A DISTURBANCE BETWEEN HIM AND ANOTHER  
17 U.S. DEPUTY MARSHAL?

18 A. I HEARD ABOUT IT.

19 Q. TELL US WHAT YOU KNOW ABOUT IT.

20 A. I'M NOT SURE WHERE I GOT THE INFORMATION. I THINK IT WAS  
21 FROM A POLICE OFFICER IN CARY THAT TOLD ME ABOUT IT BECAUSE IT  
22 HAPPENED IN THE CITY LIMITS OF CARY IN THE VICINITY OF SOUTH  
23 HILLS MALL.

24 Q. AND WHAT HAPPENED PURSUANT TO YOUR UNDERSTANDING?

25 A. WELL, THE ONLY THING HE TOLD ME, HE ASKED ME IF I KNEW

September 19, 2012

Sigmon/Direct

Page 551

1 HIM AND I SAID YES, AND HE KIND OF FILLED IN AS TO WHAT TOOK  
2 PLACE.

3 Q. AND WHAT WAS THAT?

4 A. THAT THERE WAS AN ENGAGEMENT BETWEEN THE TWO OVER A  
5 FEMALE.

6 Q. AND THIS WAS JIMMY BRITT AND ANOTHER DEPUTY U.S. MARSHAL?

7 A. ROGER MULLIS.

8 Q. AND DID YOU AND THE MARSHAL HAVE TO TAKE ANY PERSONNEL  
9 ACTION?

10 A. WELL, I WAS RETIRED AT THAT TIME.

11 Q. OH, YOU WERE RETIRED?

12 A. YES.

13 Q. OKAY.

14 A. ROGER MULLIS TOOK MY PLACE WHEN I RETIRED.

15 Q. OKAY. NOW, LET ME GO BACK TO WHEN YOU STILL WERE WORKING  
16 AS THE CHIEF DEPUTY U.S. MARSHAL. DO YOU RECALL AN INCIDENT  
17 INVOLVING SOME EXCESS OVERTIME CLAIMED BY JIMMY BRITT?

18 A. YES.

19 Q. TELL US ABOUT THAT.

20 A. JIMMY BRITT AND ANOTHER DEPUTY HAD BEEN ON A PRISONER  
21 TRIP AND THEY RETURNED TO RALEIGH ON A SATURDAY AFTERNOON AND  
22 FOR SOME REASON I WAS AT THE WAKE COUNTY JAIL ALSO. I  
23 PROBABLY GOT A CALL TO COME UP ABOUT SOMETHING. AND I WAS  
24 THERE WHEN THEY RETURNED. AND WHEN I RECEIVED THEIR DAILY  
25 WORKSHEETS, IT CAUGHT MY EYE THAT THEY WERE CHARGING MORE

September 19, 2012

Sigmon/Direct

Page 552

1 OVERTIME THAN THEY WERE ENTITLED TO.

2 Q. AND WHAT DID YOU DO ABOUT IT?

3 A. I DISALLOWED IT.

4 Q. AND DID YOU TELL JIMMY BRITT THAT YOU HAD DONE THAT?

5 A. OH, YES, I HAD A CONVERSATION WITH HIM.

6 Q. HOW DID HE TAKE IT?

7 A. WELL, I KIND OF JOKED WITH HIM. TO MAKE SURE THAT I WAS  
8 CORRECT, I WENT OVER TO THE JAIL AND CHECKED THE COMMITMENT  
9 PAPERS WITH THE JAIL. AND, OF COURSE, THEY HAD THE RIGHT TIME  
10 ON THEM. AND I THINK I TOLD HIM, I SAID, YOU OUGHT TO HAVE  
11 BEEN A LITTLE BIT SMARTER.

12 Q. NOW, SUBSEQUENT TO THAT TIME, DID JIM BRITT FILE A  
13 COMPLAINT ABOUT YOU?

14 A. YES.

15 Q. CAN YOU TELL US ABOUT THE CIRCUMSTANCES OF THAT?

16 A. I'LL TELL YOU WHAT I FOUND OUT ABOUT IT. I WOULD HAVE  
17 LIKED TO HAVE KNOWN MORE. I UNDERSTAND THAT THIS TOOK PLACE  
18 AT THE HOLIDAY INN MOTEL IN NEW BERN. AND I WAS TOLD THAT  
19 THEY WERE ALL DRINKING, HAVING A PARTY, AND THEY FABRICATED A  
20 STORY AND IT WAS SERIOUS ENOUGH THAT IT HAD TO BE  
21 INVESTIGATED. AND IT WAS INVESTIGATED BY THE CHIEF  
22 INVESTIGATOR FOR INTERNAL AFFAIRS FOR THE MARSHAL SERVICE AND  
23 THEY ALSO ASSIGNED TWO FBI AGENTS TO THE INVESTIGATION FROM  
24 THE GREENSBORO OFFICE.

25 Q. AND WHAT WAS THE GIST OF THE STORY THEY HAD FABRICATED?

September 19, 2012

Sigmon/Direct

Page 553

1 A. THAT I HAD ACCEPTED \$100 FROM AN ATTORNEY IN  
2 FAYETTEVILLE, STEVE NIMOCKS, FOR SERVING A PROCESS TO STOP THE  
3 OVERSEAS SHIPMENT OF A YOUNG SOLDIER THAT IN SOME WAY WAS  
4 CONNECTED WITH THE NEW YORK STOCK EXCHANGE, AND THIS TOOK  
5 PLACE ABOUT 4:00 A.M. IN THE MORNING.

6 Q. AND WAS IT TRUE?

7 A. THE ALLEGATION?

8 Q. THE ALLEGATION.

9 A. ALL THREE INVESTIGATORS RULED IT WAS NOT TRUE.

10 Q. AND, OF COURSE, YOU KNOW IT TO BE FALSE YOURSELF?

11 A. SIR?

12 Q. YOU ALSO YOURSELF KNOW THAT IT WAS FALSE?

13 A. I CERTAINLY DID.

14 Q. DID YOU EVER HAVE ANY BLEMISHES ON YOUR RECORD WITH THE  
15 UNITED STATES MARSHAL?

16 A. I DID NOT.

17 Q. LET'S PUT UP EXHIBIT 2101.3. CAN YOU SEE THAT, MR.  
18 SIGMON? WE'RE GOING TO ENLARGE IT A LITTLE BIT.

19 A. YES.

20 Q. DID THE MARSHAL SERVICE HAVE A CONTRACT WITH THE WAKE  
21 COUNTY JAIL TO HOUSE PRISONERS?

22 A. YES.

23 Q. AND ON OCCASION, DID DEPUTY MARSHALS HAVE TO TRANSPORT  
24 PRISONERS FROM THE WAKE COUNTY JAIL TO THE FEDERAL BUILDING IN  
25 RALEIGH?

September 19, 2012

Sigmon/Direct

Page 554

1 A. YES.

2 Q. AND DOES THAT MAP DEPICT THE RELATIONSHIP OF THE LOCATION  
3 BETWEEN THOSE TWO BUILDINGS?

4 A. YES.

5 (GOVERNMENT EXHIBIT NUMBER 2101.3  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. IN YOUR EXPERIENCE, ABOUT HOW LONG WOULD IT TAKE TO  
8 TRANSPORT A PRISONER FROM THE WAKE COUNTY JAIL TO THE FEDERAL  
9 BUILDING IN RALEIGH?

10 A. WELL, FROM THE TIME THEY PUT THEM IN A CAR TILL THEY GOT  
11 TO THE FEDERAL BUILDING, I WOULD SAY, CONSIDERING TRAFFIC, NO  
12 MORE THAN TEN MINUTES.

13 Q. COULD BE LESS?

14 A. COULD BE LESS.

15 Q. NOW, JEFFREY MACDONALD WAS FOUND GUILTY BY THE JURY, IS  
16 THAT RIGHT?

17 A. YES.

18 Q. AND PRIOR TO THAT TIME HE WAS NOT IN CUSTODY, IS THAT  
19 RIGHT? I MEAN DURING THE TRIAL.

20 A. AS WELL AS I CAN REMEMBER, HE WAS NOT.

21 Q. AND SO HE HAD TO BE TAKEN INTO CUSTODY AFTER THE GUILTY  
22 VERDICT, IS THAT RIGHT?

23 A. YES.

24 Q. AND IN THOSE DAYS THE SENTENCING OCCURRED RIGHT AFTER THE  
25 GUILTY VERDICT, IS THAT RIGHT?

September 19, 2012

Sigmon/Direct

Page 555

1 A. RIGHT.

2 Q. SO, HE WAS FOUND GUILTY BY THE JURY AND SENTENCED ON THE  
3 SAME DAY?

4 A. YES.

5 Q. AND DID YOU HAVE THE RESPONSIBILITY OF MAKING THE  
6 ARRANGEMENTS FOR THE TRANSPORTATION OF JEFFREY MACDONALD AFTER  
7 HIS CONVICTION?

8 A. AFTER I LEARNED THAT THE JURY HAD RETURNED A VERDICT, I  
9 IMMEDIATELY CALLED THE BUREAU OF PRISONS IN WASHINGTON AND GOT  
10 PERMISSION TO TRANSPORT HIM TO BUTNER.

11 Q. WHERE THERE WAS A FEDERAL PRISON?

12 A. THAT'S CORRECT.

13 Q. AND YOU GOT THE PERMISSION?

14 A. I DID.

15 Q. AND WHO DID THE TRANSPORTATION OF JEFFREY MACDONALD FROM  
16 RALEIGH, THE FEDERAL BUILDING IN RALEIGH, TO THE BOP FACILITY  
17 AT BUTNER?

18 A. HUGH SALTER, FRANK SESSOMS AND MYSELF.

19 Q. SO, THE U.S. MARSHAL, THE CHIEF DEPUTY AND ANOTHER DEPUTY  
20 MARSHAL NAMED FRANK SESSOMS?

21 A. CORRECT.

22 Q. AND THERE'S ACTUALLY A PICTURE THAT SHOWS THAT SOMEWHERE.  
23 HAVE YOU SEEN IT?

24 A. I DON'T KNOW IF I HAVE OR NOT.

25 Q. OKAY. NOW, DID JIMMY BRITT HAVE ANYTHING WHATSOEVER TO

September 19, 2012

Sigmon/Direct

Page 556

1 DO WITH THE TRANSPORTATION OF JEFFREY MACDONALD FOLLOWING HIS  
2 CONVICTION?

3 A. NO.

4 Q. DID YOU ASK HIM TO HAVE ANYTHING TO DO WITH IT?

5 A. NO.

6 Q. SO, HE WOULD HAVE NO OCCASION TO HAVE HANDCUFFED JEFFREY  
7 MACDONALD?

8 A. I WOULD HAVE NOT HAVE?

9 Q. NO. JIMMY BRITT WOULD NOT HAVE IS MY QUESTION.

10 A. I REALLY CAN'T ANSWER THAT QUESTION. I'M SURE SOMEBODY  
11 TOOK HIM IN CUSTODY IN THE COURTROOM AND PROBABLY WALKED HIM  
12 INTO THE MARSHAL'S OFFICE, WHICH WAS ON THE SAME FLOOR.

13 Q. NOW, I WANT TO SHOW YOU ANOTHER EXHIBIT, 2089. AND LET'S  
14 HIGHLIGHT -- THIS HAS PREVIOUSLY BEEN DISCUSSED. IT'S AN  
15 ADDENDUM TO AN AFFIDAVIT SIGNED BY JIMMY BRITT. LET'S FOCUS  
16 IN ON THE LAST PARAGRAPH ON THAT PAGE. I'M GOING TO READ THIS  
17 PARAGRAPH ALOUD AND THEN I'M GOING TO ASK YOU SOME QUESTIONS.

18 SHE WAS RELEASED ON AUGUST 17TH, AS A MATERIAL  
19 WITNESS BY JUDGE DUPREE. A SUBPOENA WAS ISSUED, WHICH I  
20 SERVED ON MS. STOECKLEY, AND SHE WAS ADMONISHED BY THE COURT  
21 TO APPEAR WHEN AND IF SHE WAS AGAIN CALLED AS A WITNESS. THIS  
22 WAS DONE OUTSIDE THE PRESENCE OF THE JURY AS JUDGE DUPREE  
23 DISMISSED THE JURY AT APPROXIMATELY 1:00 P.M. I THEN TOOK MS.  
24 STOECKLEY TO A MOTEL IN RALEIGH CALLED THE JOURNEY'S END.

25 ON SUNDAY, AUGUST 19TH, SOMEONE CALLED JUDGE DUPREE

September 19, 2012

Sigmon/Direct

Page 557

1 AT HIS HOME AND TOLD HIM THAT SHE AND HER BOYFRIEND ERNEST  
2 WERE FIGHTING AND THE MANAGER WANTED THEM REMOVED FROM THE  
3 MOTEL.

4 CHIEF DEPUTY U.S. MARSHAL EDDIE SIGMON CALLED ME AT  
5 MY RESIDENCE AND ASKED ME TO GO TO THE JOURNEY'S END AND CHECK  
6 MS. STOECKLEY OUT OF THE MOTEL AND TO REGISTER HER AT THE  
7 HOLIDAY INN ON HILLSBOROUGH STREET, RALEIGH, N.C., WHICH I  
8 DID.

9 NOW, ONCE A MATERIAL WITNESS HAS BEEN RELEASED FROM  
10 CUSTODY AND BECOMES A WITNESS UNDER SUBPOENA, DO THE U.S.  
11 MARSHALS DO ANY TRANSPORTATION OF HER?

12 A. NO.

13 Q. SO, YOU DID NOT INSTRUCT JIMMY BRITT TO TAKE MS.  
14 STOECKLEY TO THE JOURNEY'S END MOTEL?

15 A. I WOULD HAVE NO AUTHORITY TO DO ANYTHING.

16 Q. AND DID YOU CALL JIMMY BRITT OVER THE WEEKEND, SUNDAY,  
17 AUGUST 19TH, AND TELL HIM TO GO TO THE JOURNEY'S END MOTEL AND  
18 CHECK MS. STOECKLEY OUT AND TAKE HER TO THE HOLIDAY INN?

19 A. NO.

20 Q. LET'S GO TO THE NEXT PAGE, PLEASE. LET'S ZOOM IN ON THE  
21 LAST PARAGRAPH, PLEASE. MR. SIGMON, I'M GOING TO READ THIS  
22 PARAGRAPH; HUGH SALTER, U.S. MARSHAL, ASKED ME TO GO TO THE  
23 U.S. MARSHAL'S OFFICE AND SEE MS. REDDICK AND THAT SHE WOULD  
24 GIVE ME A CHECK FOR FOUR DAYS OF SUBSISTENCE. HE ASKED ME TO  
25 CASH THE CHECK AND GO TO THE BUS STATION AND PURCHASE MS.

September 19, 2012



Sigmon/Direct

Page 558

1 STOECKLEY A ONE-WAY TICKET TO CHARLESTON, SOUTH CAROLINA, IN  
2 WHICH I DID, AND FOR ME TO GO TO THE HOLIDAY INN, HILLSBOROUGH  
3 STREET, RALEIGH, AND CHECK HER OUT OF THE HOTEL AND TAKE HER  
4 TO THE BUS STATION AND MAKE SURE SHE GOT ON THE BUS AND GIVE  
5 HER THE BALANCE OF HER SUBSISTENCE. THIS WAS ON AUGUST 20TH,  
6 1979, AND I HAVE NOT SEEN OR HEARD FROM HER SINCE.

7 NOW, IF HELENA STOECKLEY WAS IN CUSTODY, KEPT IN THE  
8 JAIL UP UNTIL FRIDAY, AUGUST THE 17TH, AND THEN RELEASED,  
9 WOULD THERE BE ANY SUBSISTENCE THAT SHE WAS OWED?

10 A. UNLESS SOMEBODY ISSUED US A VOUCHER TO ISSUE A CHECK --

11 Q. AND IF THE --

12 A. -- WOULD BE THE ONLY WAY THAT WE WOULD ISSUE A CHECK SUCH  
13 AS HE DESCRIBES.

14 Q. AND IF THE SUBPOENA FOR HER PRESENCE WAS ISSUED BY A  
15 DEFENDANT WHO WAS NOT INDIGENT AND WAS PAYING HIS OWN DEFENSE  
16 EXPENSES, THE MARSHALS WOULD HAVE NO ROLE IN PAYING THE  
17 WITNESS, IS THAT RIGHT?

18 A. WE'D STILL HAVE TO HAVE A VOUCHER FROM SOMEBODY.

19 Q. AND THEY COULDN'T -- THEY DIDN'T HAVE THE AUTHORITY TO  
20 GIVE YOU A VOUCHER IF THEY WERE PAYING FOR THEIR OWN  
21 WITNESSES, WOULD THEY?

22 A. NO.

23 Q. DO YOU HAVE ANY KNOWLEDGE OF MR. SALTER ASKING JIMMY  
24 BRITT TO BUY A ONE-WAY TICKET FOR HELENA STOECKLEY OUT OF  
25 TOWN?

September 19, 2012

Sigmon/Cross

Page 559

1 A. I HAVE NO KNOWLEDGE, BUT I HAVE AN OPINION.

2 Q. WHAT'S YOUR OPINION?

3 A. THAT HE WOULD NOT.

4 Q. WOULD THAT BE OUTSIDE THE MARSHAL SERVICE REGULATIONS?

5 A. CERTAINLY WOULD.

6 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

7 THE COURT: CROSS.

8 MR. BRUCE: OH, I'M SORRY. I'M SORRY. MAY I HAVE  
9 JUST A MOMENT, PLEASE?

10 THE COURT: YES, SIR.

11 (PAUSE.)

12 MR. BRUCE: NO FURTHER QUESTIONS.

13 THE COURT: CROSS.

14 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

15 C R O S S - E X A M I N A T I O N 11:26 A.M.

16 BY MR. WIDENHOUSE:

17 Q. JUST A COUPLE OF QUESTIONS, MR. SIGMON. I BELIEVE YOU  
18 TESTIFIED ON DIRECT THAT YOU DON'T RECALL WHO WAS ASSIGNED TO  
19 GO GET MS. STOECKLEY?

20 A. IN SOUTH CAROLINA?

21 Q. YES.

22 A. I DO NOT, NOT UNLESS I WOULD HAVE THE DEPUTY'S DAILY  
23 WORKSHEET.

24 Q. AND YOU SAID THAT YOU WOULD NOT WANT A DEPUTY TO  
25 INTERROGATE SOMEONE THAT THEY WERE TRANSPORTING, IS THAT

September 19, 2012

Sigmon/Cross

Page 560

1 CORRECT?

2 A. IT'S THE POLICY OF THE MARSHAL SERVICE. WE ARE NOT AN  
3 INVESTIGATIVE AGENCY.

4 Q. BUT IF SOMEBODY JUST TALKED OPENLY, THERE WOULD BE NO WAY  
5 FOR THE TRANSPORTING DEPUTY TO NOT HEAR IT IF IT WAS SPOKEN  
6 LOUDLY ENOUGH, WOULD THERE?

7 A. NO. THAT'S CORRECT.

8 Q. BUT THE POLICY IS THEY'RE NOT SUPPOSED TO INITIATE AND  
9 ASK QUESTIONS?

10 A. CORRECT.

11 Q. OKAY. NOW, YOU MENTIONED THIS INCIDENT WHERE YOU WERE  
12 APPARENTLY FALSELY ACCUSED OF TAKING A HUNDRED DOLLARS FOR  
13 SOME SORT OF THING YOU DID WITHIN THE SCOPE OF YOUR DUTIES AS  
14 A MARSHAL.

15 A. IT WAS TO SERVE AN ORDER THAT --

16 Q. YES. AND DID I UNDERSTAND YOU CORRECTLY THAT THERE WERE  
17 A NUMBER OF PEOPLE THAT WERE SITTING AROUND MAKING UP THAT  
18 ACCUSATION?

19 A. I WAS TOLD THAT IT WAS DEPUTY BRITT, DEPUTY TART,  
20 ATTORNEY STEVE NIMOCKS --

21 Q. SO, WHAT -- I THOUGHT I MISUNDERSTOOD YOU.

22 A. -- AND A FORMER DEPUTY BY THE NAME OF JIM DAVIS, WHO HAD  
23 BEEN SEPARATED FROM THE MARSHAL SERVICE.

24 Q. OKAY. AND THE INCIDENT THAT YOU DESCRIBED IN CARY, WHERE  
25 THERE WAS AN ALTERCATION BETWEEN TWO MARSHALS, WAS THAT AFTER

September 19, 2012

Sigmon/Cross

Page 561

1 HOURS, OFF DUTY?

2 A. FOR THE TWO DEPUTIES THAT WAS INVOLVED?

3 Q. YES.

4 A. I DO NOT KNOW WHAT TIME IT TOOK PLACE. I WOULD ASSUME IT  
5 WOULD HAVE BEEN AFTER HOURS, BUT I DON'T KNOW.

6 Q. OKAY. AND YOU WENT THERE BECAUSE YOU WERE CALLED ABOUT  
7 IT?

8 A. OH, NO, I DID NOT GO THERE.

9 Q. OH, YOU JUST HEARD ABOUT IT?

10 A. I WAS JUST ACCIDENTALLY TOLD ABOUT IT.

11 Q. OKAY. ALL RIGHT. AND THAT WAS AFTER YOU RETIRED?

12 A. YES, SIR.

13 Q. I KNOW IT'S A LONG TIME AGO. DO YOU RECALL IF YOU SENT  
14 SOMEBODY TO SOUTH CAROLINA TO PICK UP MS. STOECKLEY?

15 A. I'M SURE I DIRECTED SOMEBODY, YES.

16 Q. AND IT WOULD BE TO GO TO SOUTH CAROLINA IS YOUR  
17 RECOLLECTION?

18 A. I'LL CLARIFY THAT SOMEWHAT. IT MATERIALIZED THAT SOME  
19 DEPUTIES OUT OF SOUTH CAROLINA WOULD TRANSPORT MRS. STOECKLEY  
20 TO CHARLOTTE AND A RENDEZVOUS WOULD BE MADE THERE.

21 Q. OKAY. AND IS THAT YOUR RECOLLECTION?

22 A. YES.

23 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
24 QUESTIONS.

25 THE COURT: ANYTHING FURTHER?

September 19, 2012

Berryhill/Direct

Page 562

1 MR. BRUCE: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: NICE TO SEE YOU, MR. SIGMON. YOU MAY  
3 STEP DOWN.

4 MR. BRUCE: YES, THIS WITNESS IS EXCUSED.

5 THE COURT: YES, SIR.

6 MR. WIDENHOUSE: NO OBJECTION.

7 MR. BRUCE: AND THE NEXT WITNESS WE'D LIKE TO CALL  
8 IS MR. BILL BERRYHILL.

9 **WILLIAM I. BERRYHILL, JR., GOVERNMENT WITNESS, SWORN**

10 D I R E C T E X A M I N A T I O N 11:30 A.M.

11 BY MR. BRUCE:

12 Q. STATE YOUR NAME, PLEASE.

13 A. I'M WILLIAM I. BERRYHILL, JR.

14 Q. MR. BERRYHILL, ARE YOU RETIRED?

15 A. YES, I AM.

16 Q. WHAT DID YOU DO IN YOUR CAREER BEFORE YOU RETIRED?

17 A. I WAS A FORMER CHIEF UNITED STATES MARSHAL FOR THE  
18 EASTERN DISTRICT OF NORTH CAROLINA.

19 Q. AND HOW LONG DID YOU SERVE IN THAT POSITION?

20 A. ABOUT 18 AND A HALF YEARS.

21 Q. BEGINNING WHEN?

22 A. DECEMBER OF 1981 UNTIL, I THINK, APRIL OF 1999.

23 Q. AND DURING THAT TIME YOU WERE THE CEO, SO TO SPEAK, OF  
24 THE UNITED STATES MARSHALS FOR THE EASTERN DISTRICT OF NORTH  
25 CAROLINA?

September 19, 2012

Berryhill/Direct

Page 563

1 A. THAT'S CORRECT.

2 Q. AND DID YOU HAVE A CHIEF DEPUTY WORKING UNDER YOUR  
3 SUPERVISION?

4 A. YES, SIR, I HAD SEVERAL.

5 Q. WHO WAS THE FIRST CHIEF DEPUTY THAT SERVED UNDER YOU?

6 A. THE FIRST CHIEF DEPUTY WAS MR. EDDIE SIGMON.

7 Q. AND HE WAS ALREADY CHIEF DEPUTY WHEN YOU BECAME U.S.  
8 MARSHAL?

9 A. THAT'S CORRECT.

10 Q. AND HOW LONG DID HE CONTINUE TO SERVE IN THAT CAPACITY  
11 UNDER YOUR SUPERVISION?

12 A. WELL, IT WAS FOR A GOOD WHILE. I DON'T REMEMBER THE  
13 EXACT NUMBER OF YEARS, BUT IT WAS SEVERAL YEARS.

14 Q. AND DID YOU FIND HIM TO BE A CAPABLE CHIEF DEPUTY?

15 A. ONE OF THE VERY BEST I EVER HAD.

16 Q. NOW, HOW MANY -- APPROXIMATELY HOW MANY DEPUTY U.S.  
17 MARSHALS SERVED UNDER YOU IN THOSE FIRST FEW YEARS THAT YOU  
18 WERE U.S. MARSHAL?

19 A. WELL, THE FIRST FEW YEARS I SUPPOSE I HAD ABOUT 15  
20 DIFFERENT MARSHALS. WHEN I RETIRED, I HAD ABOUT 21.

21 Q. AND WAS ONE OF THE ONES THAT SERVED -- WAS SERVING AS A  
22 DEPUTY U.S. MARSHAL WHEN YOU BECAME U.S. MARSHAL JIMMY BRITT?

23 A. YES, HE WAS.

24 Q. AND DID YOU GET TO KNOW HIM AS AN EMPLOYEE IN YOUR  
25 MARSHAL'S OFFICE?

September 19, 2012

Berryhill/Direct

Page 564

1 A. I KNEW HIM EXCEEDINGLY WELL.

2 Q. AND HOW WOULD YOU DESCRIBE HIM AS A DEPUTY U.S. MARSHAL?

3 A. I WOULD SAY HE WAS A VERY MARGINAL EMPLOYEE. I FOUND  
4 JIMMY BRITT TO BE RATHER LARGE IN EGO AND RATHER SMALL WHEN IT  
5 CAME TO VERACITY.

6 Q. SO, DID YOU HAVE PROBLEMS WITH HIM WHEN HE WAS UNDER YOUR  
7 SUPERVISION?

8 A. CONSTANTLY.

9 Q. WERE YOU SERVING AS U.S. MARSHAL WHEN THERE WAS AN  
10 ALTERCATION BETWEEN HIM AND ANOTHER DEPUTY U.S. MARSHAL IN  
11 CARY?

12 A. I WAS SERVING AS MARSHAL, YES, SIR.

13 Q. TELL ME WHAT YOU LEARNED ABOUT THAT.

14 A. I WAS NOT A WITNESS TO IT. IT HAPPENED OUTSIDE THE  
15 OFFICE. I SIMPLY OVERHEARD THAT THERE WAS SOME POTENTIAL  
16 FISTICUFFS AND THAT THE CARY, NORTH CAROLINA, POLICE  
17 DEPARTMENT ARRIVED ON SCENE AND BROKE UP THE ALTERCATION.

18 Q. AND WHO WAS THE ALTERCATION BETWEEN?

19 A. IT WAS BETWEEN JIM BRITT AND MY CHIEF DEPUTY AT THE TIME,  
20 MR. ROGER MULLIS.

21 Q. OKAY. AND DO YOU KNOW WHAT THEY WERE FIGHTING OVER?

22 A. THEY WERE FIGHTING OVER A RELATIONSHIP WITH A LADY IN MY  
23 OFFICE.

24 Q. AND WHO WAS THAT?

25 A. THAT WAS NANCY BRITT.

September 19, 2012

Berryhill/Direct

Page 565

1 Q. OF COURSE, HER NAME WASN'T BRITT AT THE TIME, IS THAT  
2 RIGHT?

3 A. NO, I CAN'T REMEMBER EXACTLY, COUNSELOR.

4 Q. OKAY.

5 A. EXCUSE ME. YOU'RE RIGHT. SHE MARRIED -- WELL, EXCUSE  
6 ME. NO, I CANNOT REMEMBER HER LAST NAME AT THE TIME. IT WAS  
7 NOT BRITT.

8 Q. DID THIS CAUSE SOME PERSONNEL PROBLEMS IN YOUR OFFICE?

9 A. A GREAT DEAL. LOTS OF OFFICE DISCORD. YOU CAN IMAGINE  
10 MY CHIEF DEPUTY AND ANOTHER DEPUTY BOTH VYING FOR THE  
11 AFFECTIONS, SO TO SPEAK, OF A LADY IN MY OFFICE.

12 I FINALLY HAD TO PUT A STOP TO IT. I INVITED ALL  
13 THREE PARTIES INTO MY OFFICE AND TOLD THEM TO CEASE AND DESIST  
14 OR I WOULD HAVE TO REPORT THEM TO NATIONAL HEADQUARTERS.

15 Q. ALL RIGHT. NOW, DID YOU EVER -- HOW WOULD YOU SAY --  
16 CHARACTERIZE JIMMY BRITT'S RELATIONSHIP WITH CHIEF DEPUTY  
17 EDDIE SIGMON?

18 A. TROUBLESOME. EDDIE WAS CONTINUING TO HAVE VARIOUS FORMS  
19 OF DISCORD AND TROUBLE WITH DEPUTY BRITT.

20 Q. NOW, DID THERE COME A TIME WHEN JIMMY BRITT TRANSFERRED  
21 FROM THE U.S. MARSHAL'S OFFICE IN RALEIGH TO ANOTHER LOCATION?

22 A. YES, HE DID. HE TRANSFERRED DOWN TO OUR TRAINING  
23 FACILITY IN GLYNCO, GEORGIA.

24 Q. DID YOU ENCOURAGE THAT TRANSFER?

25 A. YES, I DID.

September 19, 2012



Berryhill/Direct

Page 566

1 Q. WHY?

2 A. FOR THE GOOD OF THE OFFICE. BECAUSE OF THE DISCORD THAT  
3 HAD GONE ON THERE, I FELT IT WOULD BE BEST IF HE LEFT THE  
4 EASTERN DISTRICT OF NORTH CAROLINA.

5 Q. AND DID HE DO SO?

6 A. HE DID.

7 Q. DID THERE COME A TIME WHEN HE RETURNED TO THE OFFICE?

8 A. YES, HE DID, PRIOR TO HIS RETIREMENT.

9 Q. AS BEST YOU CAN RECALL, ABOUT HOW LONG WAS HE OUT OF  
10 RALEIGH AND DOWN AT GLYNCO?

11 A. I DON'T RECALL THAT IT WAS TOO LONG. HE HAD SOME HEALTH  
12 PROBLEMS WHILE HE WAS DOWN THERE AND THEN LATER RETURNED TO  
13 RALEIGH. IT'S BEEN AWHILE AGO. I DON'T REMEMBER THE PRECISE  
14 DATES.

15 Q. DID YOU HAVE OCCASION TO SPEAK TO ANYONE AT GLYNCO ABOUT  
16 HOW HE HAD -- WHETHER THERE HAD BEEN ANY PROBLEMS WHEN HE HAD  
17 BEEN DOWN THERE?

18 A. NO, SIR, I DON'T RECALL SPEAKING TO ANYONE SPECIFICALLY.

19 Q. DO YOU HAVE ANY INFORMATION THAT CAME TO YOUR ATTENTION  
20 WHILE YOU WERE SUPERVISING JIMMY BRITT OR AFTER ABOUT HIS  
21 ALCOHOL USE?

22 A. I ONLY HEARD ABOUT IT. THIS WAS AFTER HIS RETIREMENT.  
23 VARIOUS DEPUTIES AND VARIOUS OTHER PEOPLE INFORMED ME THAT HE  
24 HAD AN ALCOHOLIC PROBLEM, BUT I NEVER WITNESSED IT MYSELF.

25 Q. NOW, DO YOU RECALL WHEN JIMMY BRITT RETIRED FROM THE U.S.

September 19, 2012

Berryhill/Direct

Page 567

1 MARSHAL'S SERVICE?

2 A. YES, SIR.

3 Q. AND WAS HE SERVING IN RALEIGH AT THAT TIME?

4 A. YES, HE WAS.

5 Q. AND AS THE DATE OF HIS RETIREMENT WAS APPROACHING, DID  
6 YOU HAVE ANY DISCUSSIONS ABOUT A POSSIBLE RETIREMENT CEREMONY?

7 A. YES, I DID. I INVITED JIMMY INTO THE OFFICE, AS I DID  
8 EVERY EMPLOYEE WHO WAS GETTING READY TO RETIRE, AND I ASKED  
9 THEM TO TELL ME WHAT SORT OF RETIREMENT CELEBRATION THEY WOULD  
10 LIKE TO HAVE. WE NORMALLY DID TWO THINGS, WE EITHER LET THEM  
11 INVITE FELLOW WORKERS INTO THE OFFICE FOR A CELEBRATION OR WE  
12 PICKED OUT A LOCAL RESTAURANT AND WENT THERE AND HAD LUNCH  
13 AND THEY WERE ABLE TO INVITE THEIR FRIENDS TO THAT.

14 I INVITED JIM IN BECAUSE WE NEEDED TIME TO MAKE  
15 THOSE ARRANGEMENTS AND HE SIMPLY TOLD ME THAT HE DID NOT WANT  
16 ANY SORT OF RETIREMENT CELEBRATION. HE SIMPLY WANTED TO PUT  
17 HIS HAT ON AND WALK OUT THE DOOR.

18 I SAID, JIM THIS IS A ONCE IN A LIFETIME OPPORTUNITY  
19 FOR YOU, ARE YOU SURE YOU DO NOT WANT ANY SORT OF RETIREMENT  
20 CELEBRATION? AND HE SAID, ABSOLUTELY NOT, SIR. AND I SAID,  
21 JIMMY, PLEASE THINK ABOUT THIS BECAUSE THIS IS YOUR LAST  
22 OPPORTUNITY. I'M ASKING YOU SO THAT WE CAN DO FOR YOU WHAT  
23 YOU'VE WORKED FOR AND EARNED. AND HE SAID, NO, SIR, I SIMPLY  
24 WANT TO PUT MY HAT ON AND WALK OUT THE DOOR AND HAVE NO  
25 RETIREMENT CELEBRATION WHATSOEVER.

September 19, 2012

Berryhill/Direct

Page 568

1 SO, AT THAT POINT, HE LEFT MY OFFICE AND I TURNED TO  
2 MY CHIEF DEPUTY AND I SAID, WELL, THAT SETTLES THAT. WE'LL  
3 HAVE NO RETIREMENT FOR DEPUTY BRITT.

4 Q. OKAY. AND WHEN THE RETIREMENT DAY ACTUALLY CAME, WHAT  
5 DID HAPPEN?

6 A. WELL, I WAS ON THE WAY -- I HAD TRAVELED TO GREENSBORO,  
7 NORTH CAROLINA, FOR THE WEDDING OF MY OLDEST SON. AND WHEN I  
8 CHECKED INTO THE MOTEL ON THAT FRIDAY, THERE WAS A MESSAGE  
9 WAITING FOR ME TO CALL THE OFFICE IMMEDIATELY.

10 I CALLED THE OFFICE. I GOT MY CHIEF DEPUTY, DWIGHT  
11 RICH, ON THE TELEPHONE AND HE SAID, MARSHAL, WE'VE GOT A  
12 PROBLEM. AND I SAID, WHAT IS IT, SIR? HE SAID, DEPUTY BRITT  
13 WALKED INTO MY OFFICE THIS MORNING -- THIS IS HIS LAST DAY --  
14 AND SAID THAT HE HAD CHANGED HIS MIND AND THAT HE GOT ON THE  
15 TELEPHONE LAST NIGHT AND STARTED INVITING COURT PERSONNEL TO A  
16 RETIREMENT WITHIN OUR OFFICE TODAY. HE'S INVITED THE JUDGES,  
17 THE MAGISTRATES, THE HEAD OF ALL THE LAW ENFORCEMENT AGENCIES,  
18 EVERYBODY HE HAD WORKED WITH IN THE SYSTEM, AND HE SAYS HE  
19 WANTS TO HAVE A RETIREMENT PARTY.

20 AND I SAID, DWIGHT, FIND DEPUTY BRITT AND TELL HIM,  
21 NO, SIR, IT IS NOT GOING TO HAPPEN. HE HAD HIS CHANCE. HE  
22 TURNED IT DOWN. I CANNOT HAVE JUDGES AND MAGISTRATES AND LAW  
23 ENFORCEMENT HEADS WALKING INTO MY OFFICE AND I AM NOT THERE AS  
24 MARSHAL TO GREET THEM. IT WOULD NOT BE PROPER. IT WOULD NOT  
25 BE PROTOCOL. AND TELL HIM THAT HE HAD HIS CHANCE AND HE

September 19, 2012

Berryhill/Direct

Page 569

1 TURNED IT DOWN, AND THERE WILL BE NO RETIREMENT PARTY FOR HIM  
2 INSIDE OUR OFFICE.

3 (PAUSE.)

4 Q. DO YOU RECALL THAT SOME EVIDENCE RELATED TO THE MACDONALD  
5 CASE WAS ACTUALLY STORED IN YOUR LOCKUP ON THE SEVENTH FLOOR?

6 A. YES, SIR. I WAS NOT MARSHAL AT THE TIME, BUT AT THE END  
7 OF THE '79 TRIAL THE FBI NEEDED TO SECURE THAT EVIDENCE AND  
8 THEY ARRANGED WITH THE MARSHAL AT THAT TIME TO STORE IT IN OUR  
9 JUVENILE HOLDING CELL UNDER LOCK AND KEY. I INHERITED THAT  
10 EVIDENCE WHEN I BECAME MARSHAL.

11 Q. AND WAS THAT A LITTLE BIT OF A PROBLEM FOR YOU?

12 A. IT WAS A BIG PROBLEM IN A WAY. WE HARDLY EVER USED THE  
13 JUVENILE CELL, BUT THE EVIDENCE WAS STORED THERE, AND WHENEVER  
14 THE INSPECTORS FROM WASHINGTON WOULD COME DOWN TO DO A REVIEW  
15 OF MY OFFICE, THEY WOULD ALWAYS MENTION THE FACT THAT THAT  
16 EVIDENCE WAS IN OUR HOLDING CELL WHEN IT SHOULD NOT BE.

17 I EVENTUALLY CONTACTED THE FBI. I THINK I EVEN  
18 WROTE A MEMORANDUM TO MR. MURTAGH. AND EVENTUALLY WE GOT THE  
19 BUREAU TO REMOVE THAT EVIDENCE AND MOVE IT DOWN THE HALL INTO  
20 ANOTHER ROOM THEY RENTED UNDER LOCK AND KEY.

21 Q. ALL RIGHT. SO, FOR MANY YEARS THE EVIDENCE REMAINED  
22 THERE IN YOUR UNITED STATES MARSHAL'S OFFICE ON THE SEVENTH  
23 FLOOR OF THE FEDERAL BUILDING?

24 A. THAT'S CORRECT.

25 Q. AND DURING THAT TIME, JIM BRITT HAD AN OFFICE IN THAT

September 19, 2012

Berryhill/Direct

Page 570

1 SAME OFFICE?

2 A. THAT'S CORRECT.

3 Q. SO, HE WOULD HAVE HAD ACCESS TO IT?

4 A. NO, SIR. THERE WAS ONLY ONE PERSON WHO HAD A KEY TO THAT  
5 DOOR AND THAT WAS CHIEF DEPUTY EDDIE SIGMON.

6 Q. OKAY. AND WAS IT IN A CELL WHERE YOU COULD SEE THROUGH  
7 TO LOOK AT IT WITHOUT EVEN UNLOCKING IT?

8 A. YEAH, YOU COULD SEE IT. YES, SIR.

9 Q. NOW, ARE YOU AWARE THAT JIM BRITT ENTERED AN ALCOHOL  
10 TREATMENT PROGRAM AT ONE POINT AFTER HIS RETIREMENT?

11 A. I HEARD SOMETHING ABOUT THAT, BUT I WAS NEVER FULLY AWARE  
12 OF IT.

13 MR. BRUCE: THANK YOU. NO FURTHER QUESTIONS.

14 THE COURT: CROSS.

15 MR. WIDENHOUSE: MAY I HAVE JUST A MOMENT, YOUR  
16 HONOR?

17 (PAUSE.)

18 MR. WIDENHOUSE: I DON'T HAVE ANY QUESTIONS, YOUR  
19 HONOR. THANK YOU.

20 THE COURT: BILL, IT'S NICE TO SEE YOU AGAIN.

21 THE WITNESS: YES, SIR. THANK YOU, SIR.

22 THE COURT: YOU MAY STEP DOWN.

23 MR. BRUCE: COULD THIS WITNESS BE RELEASED?

24 MR. WIDENHOUSE: NO OBJECTION.

25 THE COURT: YES.

September 19, 2012

Reddick/Direct

Page 571

1 MS. COOLEY: YOUR HONOR, THE GOVERNMENT WOULD CALL  
2 MADDIE REDDICK.

3 **MADDIE REDDICK, GOVERNMENT WITNESS, SWORN**

4 D I R E C T E X A M I N A T I O N 11:46 A.M.

5 BY MS. COOLEY:

6 Q. GOOD MORNING, MS. REDDICK.

7 A. GOOD MORNING.

8 Q. I'M GOING TO ASK YOU TO PULL THAT MICROPHONE A LITTLE BIT  
9 CLOSER TO YOU SO WE CAN MAKE SURE TO HEAR YOU. THANK YOU. IF  
10 YOU WOULD, PLEASE, SPELL YOUR LAST NAME FOR THE COURT  
11 REPORTER.

12 A. R-E-D-D-I-C-K.

13 Q. AND, MS. REDDICK, ARE YOU CURRENTLY EMPLOYED?

14 A. RETIRED.

15 Q. RETIRED. WHERE DID YOU RETIRE FROM?

16 A. THE UNITED STATES MARSHAL'S OFFICE.

17 Q. AND HOW LONG DID YOU WORK FOR THE MARSHALS?

18 A. THIRTY YEARS.

19 Q. WHEN DID YOU START WORKING THERE?

20 A. I FIRST STARTED TO WORK FROM 1952 TO 1954, THEN I WAS OUT  
21 FOR ABOUT 18 MONTHS, AND CAME BACK IN 1956 AND RETIRED IN  
22 1984.

23 Q. AND SO YOU HAD THE PLEASURE OF SERVING WITH SEVERAL  
24 DIFFERENT U.S. MARSHALS, IS THAT RIGHT?

25 A. YES.

September 19, 2012

Reddick/Direct

Page 572

1 Q. AND DURING YOUR TENURE AT THE MARSHAL'S SERVICE, WHAT  
2 WERE YOUR JOB DUTIES?

3 A. I WAS SUPERVISOR ADMINISTRATIVE ASSISTANT OF OFFICE WORK,  
4 ADMINISTRATIVE WORK.

5 Q. OKAY. AND IN THAT CAPACITY, WHAT TYPES OF THINGS WERE  
6 YOU IN CHARGE OF?

7 A. I WAS IN CHARGE OF -- I WAS CALLED THE DISBURSING OFFICER  
8 AT THAT TIME. I WROTE ALL THE CHECKS FOR SALARIES FOR THE  
9 UNITED STATES ATTORNEY'S OFFICE, FOR THE UNITED STATES  
10 DISTRICT JUDGE'S OFFICE, FOR THE UNITED STATES PROBATION  
11 OFFICE AND FOR THE UNITED STATES MARSHAL'S OFFICE, WITNESSES,  
12 JURORS, SALARIES.

13 Q. SO, AT THAT TIME ALL OF THE SALARIES WERE PAID --

14 A. LOCALLY.

15 Q. -- FROM THE MARSHAL'S OFFICE?

16 A. YES, OUT OF THE MARSHAL'S OFFICE IN RALEIGH.

17 Q. AND THAT'S NO LONGER THE CASE, IS THAT RIGHT?

18 A. I UNDERSTAND NOT.

19 Q. AND IS IT FAIR TO SAY THAT YOU KNEW THE INS AND OUTS OF  
20 THE MARSHAL'S OFFICE PRETTY WELL?

21 A. YES.

22 Q. AND THAT WHEN A NEW MARSHAL WOULD TAKE OFFICE, YOU WOULD  
23 HELP THEM ADAPT AND ACCLIMATE TO THE DIFFERENT DUTIES THAT  
24 NEEDED TO BE PERFORMED WITHIN THE OFFICE?

25 A. YES.

September 19, 2012

Reddick/Direct

Page 573

1 Q. AND SOMETIMES YOU EVEN HAD TO TRAIN THEM, IS THAT FAIR TO  
2 SAY?

3 A. I DID THE BEST I COULD HELPING THEM WHEN THEY CAME IN,  
4 YES.

5 Q. AND YOU WERE WORKING IN THE MARSHAL'S OFFICE DURING THE  
6 MACDONALD TRIAL, IS THAT RIGHT?

7 A. YES.

8 Q. AND DID YOU KNOW JIM BRITT?

9 A. YES.

10 Q. DID YOU WORK WITH HIM FOR AWHILE IN THE OFFICE?

11 A. I DID.

12 Q. AND DURING THAT TRIAL, DO YOU EVER RECALL JIM BRITT  
13 COMING TO YOU AND ASKING FOR A SUBSISTENCE CHECK FOR A  
14 WITNESS, HELENA STOECKLEY?

15 A. I DO NOT REMEMBER WRITING THAT CHECK, BUT LET ME SAY  
16 THIS, IF I WROTE THAT CHECK IT WOULD HAVE BEEN HIGHLY UNUSUAL  
17 BECAUSE NORMALLY I DIDN'T WRITE ANY WITNESS CHECK WITHOUT THEM  
18 BEING RELEASED BY THE UNITED STATES ATTORNEY'S OFFICE AND  
19 BRINGING DOWN TO ME A DISCHARGE WITNESS FORM.

20 Q. SO, MOST OF THE WITNESSES THAT YOU DEALT WITH WERE U.S.  
21 ATTORNEY'S OFFICE WITNESSES?

22 A. THAT'S CORRECT.

23 Q. AND SO IF I UNDERSTAND CORRECTLY, THE PROCESS WAS THE  
24 U.S. ATTORNEY'S OFFICE WOULD PROVIDE A FORM THAT WOULD COME TO  
25 YOU?

September 19, 2012



Reddick/Direct

Page 574

1 A. YES.

2 Q. AND THEN FROM THAT FORM YOU WOULD ISSUE THE CHECKS, IS  
3 THAT RIGHT?

4 A. THAT'S CORRECT.

5 Q. NOW, LET ME ASK YOU A LITTLE BIT MORE ABOUT THAT PROCESS.  
6 IF A WITNESS CAME INTO THE COURTHOUSE ON A MATERIAL WITNESS  
7 WARRANT, HOW WOULD THEIR SUBSISTENCE BE PROVIDED?

8 A. THEY WEREN'T PROVIDED ANY SUBSISTENCE UNTIL THEY WERE  
9 RELEASED.

10 Q. AND IS THAT BECAUSE THEY WERE HOUSED IN THE JAIL?

11 A. IF THEY WERE HOUSED IN JAIL, THEY DIDN'T GET PAY BECAUSE  
12 WE WERE CONTRACTED WITH THE UNITED STATES BUREAU OF PRISONS TO  
13 -- WE HAD CONTRACT JAILS, COUNTY JAILS, AND WAKE COUNTY JAIL  
14 WAS ONE OF THEM. SO, IF THEY WERE IN JAIL, I DIDN'T PAY THEM  
15 ANY SUBSISTENCE BECAUSE I PAID DIRECTLY FROM THE BUREAU OF  
16 PRISONS' ACCOUNT, NOT FROM THE WITNESS ACCOUNT, FOR A WITNESS  
17 BEING INCARCERATED.

18 Q. SO, IF A WITNESS WAS IN JAIL, THEY DIDN'T RECEIVE MONEY,  
19 YOU PAID SEPARATELY TO THE FACILITY THAT WAS HOUSING THEM?

20 A. THAT IS CORRECT.

21 Q. AND THEN WITH RESPECT TO THE U.S. ATTORNEY'S OFFICE, IF  
22 THE U.S. ATTORNEY'S OFFICE ISSUED SUBPOENAS FOR A WITNESS,  
23 THEN ISSUED THE CORRECT PAPERWORK TO YOU, WOULD YOU ALSO BE IN  
24 CHARGE OF ISSUING THE CHECKS TO THOSE WITNESSES?

25 A. YES.

September 19, 2012

Reddick/Direct

Page 575

1 Q. AND IT WORKED SIMILARLY WITH JURORS, IS THAT RIGHT?

2 A. YES. WELL, NOW, THE JURORS' CHECKS, THEY CAME TO ME FROM  
3 THE UNITED STATES DISTRICT CLERK'S OFFICE.

4 Q. AS OPPOSED TO THE U.S. ATTORNEY'S OFFICE?

5 A. THAT'S CORRECT.

6 Q. NOW, WITH A DEFENSE WITNESS, IF A WITNESS WAS PLACED  
7 UNDER SUBPOENA BY THE DEFENSE ATTORNEY, WOULD YOU HAVE ANY  
8 INVOLVEMENT IN THE MARSHAL'S OFFICE IN ISSUING ANY CHECKS FOR  
9 SUBSISTENCE TO THAT WITNESS?

10 A. NO. THEY WERE PAID BY THE DEFENSE.

11 Q. AND SO IN THE MACDONALD TRIAL YOU WOULD NOT HAVE BEEN  
12 RESPONSIBLE FOR ISSUING CHECKS TO ANY WITNESSES UNDER DEFENSE  
13 SUBPOENA AT THAT TIME?

14 A. NO.

15 Q. NOW, YOU SAID YOU RETIRED IN 1984, IS THAT RIGHT?

16 A. A LONG TIME AGO. THAT'S CORRECT.

17 Q. AND WHERE HAVE YOU BEEN SINCE THEN?

18 A. I LIVE IN YOUNGSVILLE, NORTH CAROLINA, WHICH IS 20 MILES  
19 NORTH OF RALEIGH NEAR WAKE FOREST.

20 Q. NOW, WHEN YOU WERE AT THE MARSHAL'S OFFICE, YOU MENTIONED  
21 YOU KNEW JIM BRITT. DID YOU ALSO KNOW GERALDINE HOLDEN?

22 A. YES.

23 Q. AND DID YOU REMAIN IN CONTACT WITH HER AFTER YOU RETIRED?

24 A. YES, GERRY HAD BEEN A FRIEND. SHE FIRST WORKED IN THE  
25 UNITED STATES ATTORNEY'S OFFICE AND THEN SHE MARRIED A MAN

September 19, 2012

Reddick/Direct

Page 576

1 FROM YOUNGSVILLE AND THEY LIVED IN YOUNGSVILLE FOR AWHILE  
2 BEFORE THEY MOVED TO RALEIGH. SO, I HAD KNOWN GERRY FOR MANY  
3 YEARS.

4 SHE STARTED IN THE UNITED STATES ATTORNEY'S OFFICE  
5 AND THEN HER HUSBAND HAD A STROKE AND SHE HAD TO STAY HOME FOR  
6 A NUMBER OF YEARS. AND AFTER HER HUSBAND DIED, SHE CAME TO  
7 THE UNITED STATES MARSHAL'S OFFICE AND WORKED AND WAS THERE.

8 Q. AND DID YOU WORK WITH HER AT THE MARSHAL'S OFFICE?

9 A. YES, I DID.

10 Q. AND DID SHE ALSO RETIRE FROM THE MARSHAL'S OFFICE AT SOME  
11 POINT?

12 A. YES.

13 Q. AND DID YOU KEEP UP WITH HER AFTER THAT?

14 A. NO, I DID NOT.

15 Q. DID YOU HAVE OCCASION TO LEARN OF HER WELL BEING FROM  
16 TIME TO TIME?

17 A. YES, I DID. AND AFTER SHE -- SHE LIVED IN RALEIGH, BUT  
18 SHE HAD TWO DAUGHTERS AND THEY WERE BOTH LIVING IN THE  
19 MOREHEAD AREA. SO, SHE MOVED TO MOREHEAD TO BE NEAR HER TWO  
20 DAUGHTERS AND I NEVER SAW HER AFTER SHE MOVED TO MOREHEAD.

21 Q. DID YOU HAVE OCCASION TO GO TO HER FUNERAL?

22 A. I DID GO TO HER FUNERAL BECAUSE SHE WAS BURIED AT MY HOME  
23 IN RALEIGH, AND SO I WAS AT HER FUNERAL.

24 Q. AND LEADING UP TO HER FUNERAL, WERE YOU AWARE THAT SHE  
25 WAS IN DECLINING HEALTH?

September 19, 2012

Reddick/Direct

Page 577

1 A. YES. I HAD BEEN DOWN TO THE BEACH AND RAN INTO HUGH  
2 SALTER, THE UNITED STATES MARSHAL WITH US ON TWO DIFFERENT  
3 OCCASIONS, AND HE TOLD ME THAT GERRY WAS IN A NURSING -- A  
4 REST HOME FACILITY IN MOREHEAD AT THAT TIME.

5 Q. AND DO YOU REMEMBER ABOUT WHAT YEAR THAT WAS?

6 A. THAT WAS -- YEAH, THAT WAS IN MID-2005, SOMETHING LIKE  
7 THAT, '06.

8 Q. AND AT SOME POINT AFTER YOU RETIRED, DO YOU RECALL  
9 GETTING A PHONE CALL FROM JIM BRITT?

10 A. YES.

11 Q. DO YOU REMEMBER AROUND ABOUT WHEN THAT WAS?

12 A. AROUND 2004.

13 Q. OKAY. AND WHAT WAS THE NATURE OF THAT PHONE CALL?

14 A. HE WANTED TO KNOW IF I KNEW WHERE GERRY WAS LIVING, AND I  
15 HAD NOT TALKED TO JIM BRITT IN A NUMBER OF YEARS, AND I SAID,  
16 YES, JIM, I DO, BECAUSE I HAD TALKED TO HUGH SALTER AND I TOLD  
17 HIM THAT SHE WAS IN MOREHEAD IN A REST HOME THERE.

18 Q. AND DID YOU TELL HIM ANYTHING ABOUT WHY SHE WAS THERE,  
19 ABOUT HER HEALTH?

20 A. I TOLD HIM WHAT I JUST SAID TO YOU, THAT SHE WAS THERE TO  
21 BE NEAR HER TWO DAUGHTERS.

22 Q. AND WAS THAT A REGULAR THING FOR YOU TO HAVE HEARD FROM  
23 JIM BRITT?

24 A. NO. I WAS VERY SURPRISED WHEN I HEARD FROM JIM. I HAD  
25 NOT TALKED TO JIM IN A NUMBER OF YEARS.

September 19, 2012

Reddick/Cross

Page 578

1 Q. AND WAS THAT THE ONLY TIME YOU EVER HEARD FROM HIM ON THE  
2 PHONE?

3 A. I BELIEVE SO.

4 MS. COOLEY: IF I MAY HAVE ONE MOMENT, YOUR HONOR?

5 THE COURT: YES, MA'AM.

6 (PAUSE.)

7 MS. COOLEY: I HAVE NO FURTHER QUESTIONS FOR MS.

8 REDDICK.

9 THE COURT: CROSS.

10 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

11 C R O S S - E X A M I N A T I O N 11:54 A.M.

12 BY MR. WIDENHOUSE:

13 Q. MS. REDDICK, IF A WITNESS HAD A COURT APPOINTED ATTORNEY,  
14 WOULD THERE BE AN OCCASION THAT YOU MIGHT CUT A SUBSISTENCE  
15 CHECK IN THAT SITUATION, IF THE WITNESS WERE NOT IN CUSTODY?

16 A. YES, OCCASIONALLY, RARELY, BUT THAT COULD HAPPEN. YES.

17 Q. THAT WOULD BE A SITUATION WHERE IT MIGHT HAPPEN?

18 A. IF IT WERE AN INDIGENT WITNESS AND DIDN'T HAVE  
19 SUBSISTENCE, YES, THEY WOULD HAVE AUTHORIZED IT.

20 MR. WIDENHOUSE: THANK YOU. NO FURTHER QUESTIONS,  
21 YOUR HONOR.

22 THE COURT: ANYTHING FURTHER?

23 MS. COOLEY: NO, YOUR HONOR.

24 THE COURT: THANK YOU, MS. REDDICK. WE'RE GOING TO  
25 TAKE A RECESS TILL 1:30.

September 19, 2012

Reddick/Cross

Page 579

1 (LUNCHEON RECESS FROM 11:56 A.M., UNTIL 1:30 P.M.)

2 (DEFENDANT PRESENT.)

3 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE  
4 SEATED AND WE'LL CONTINUE. MR. BRUCE.

5 MR. BRUCE: YOUR HONOR, BEFORE I PROCEED WITH THE  
6 NEXT WITNESS, WE HAVE SIX WITNESSES REMAINING IN OUR CASE AND  
7 THE LAST WITNESS THAT WE EXPECT TO CALL SOMETIME TOMORROW  
8 MORNING IS JOE MCGINNISS.

9 AND AT PAGE 43 OF THE PRETRIAL ORDER, THE MOVANT HAS  
10 AN OBJECTION TO HIS TESTIMONY THAT, AT LEAST AS FAR AS I KNOW,  
11 THEY'RE STILL MAINTAINING. AND WE PREPARED A BRIEF ON THAT  
12 ISSUE AND WE WOULD LIKE TO HAND IT UP AT THIS TIME.

13 THE COURT: WHAT'S THE OBJECTION?

14 MR. WIDENHOUSE: IT'S REALLY OUTSIDE THE SCOPE OF  
15 THE EVIDENCE AS A WHOLE.

16 THE COURT: I BEG YOUR PARDON. THE COURT OF APPEALS  
17 WAS VERY -- EXPRESSED THAT WE EXAMINE EVERYTHING.

18 MR. WIDENHOUSE: I UNDERSTAND.

19 THE COURT: IT'S GOING TO BE ADMITTED.

20 MR. BRUCE: OKAY. SO, THERE'S NO MORE OBJECTION TO  
21 THE WITNESS' TESTIMONY, IS THAT RIGHT?

22 MR. WIDENHOUSE: NO.

23 THE COURT: THANK YOU.

24 MR. BRUCE: THANK YOU. BEFORE WE PROCEED WITH THE  
25 NEXT WITNESS, MR. MURTAGH IS GOING TO PUBLISH SOME EXHIBITS

September 19, 2012

Reddick/Cross

Page 580

1 THAT ARE IN THE RECORD FOR THE COURT'S REVIEW.

2 THE COURT: ALL RIGHT, SIR.

3 MR. MURTAGH: GOOD AFTERNOON, YOUR HONOR. IF WE  
4 COULD HAVE ON THE SCREEN 2040 -- OH, I'M SORRY, EXCUSE ME --  
5 2039.1.

6 YOUR HONOR, IF I MAY DIRECT THE COURT'S ATTENTION TO  
7 2039.1, IT IS A RECORDS TRANSMITTAL AND RECEIPT AND IT'S  
8 ADDRESSED TO THE FEDERAL RECORDS CENTER IN EAST POINT,  
9 GEORGIA, AND IT'S FROM THE UNITED STATES MARSHAL, EASTERN  
10 DISTRICT OF NORTH CAROLINA, AND THE TRANSFERRING AGENCY  
11 LIAISON PERSON IS NANCY W. BRITT, U.S. MARSHALS.

12 AND, YOUR HONOR, IF I COULD DIRECT YOUR ATTENTION --  
13 AND I COULD EXPLAIN THIS FORM, IF YOUR HONOR WOULD LIKE, AS TO  
14 HOW IT WORKS. MAY I DO THAT, YOUR HONOR?

15 (GOVERNMENT EXHIBIT NUMBER 2039.1  
16 WAS IDENTIFIED FOR THE RECORD.)

17 THE COURT: YES, SIR, PLEASE. THANK YOU.

18 MR. MURTAGH: YOUR HONOR, AS I UNDERSTAND THE  
19 PROCESS, AN AGENCY, WHEN IT SENDS ITS RECORDS TO THE FEDERAL  
20 RECORD CENTER, PREPARES THIS RECORDS TRANSMITTAL AND RECEIPT  
21 FORM LISTING WHAT THEY'RE SENDING. AND THEN IT GOES TO THE  
22 FEDERAL RECORDS CENTER AND THE FEDERAL RECORDS CENTER ASSIGNS  
23 AN ACCESSION NUMBER FOR THE RECORDS THAT HAVE BEEN LISTED ON  
24 THE TRANSMITTAL FORM, AND THEN SENDS THAT BACK TO THE  
25 CONTRIBUTING AGENCY SO THAT IN THE FUTURE WHEN THE AGENCY

September 19, 2012

Reddick/Cross

Page 581

1 WANTS TO GET ITS RECORDS BACK, IT LOOKS AT ITS OWN FORM, THE  
2 ACCESSION NUMBER, AND ASKS THE FEDERAL RECORDS CENTER, PLEASE  
3 GIVE US WHATEVER. SO, THE FORM IS DESIGNED TO GO OUT AS A  
4 TRANSMITTAL RECORD AND COME BACK AS A MEANS OF RETRIEVING THE  
5 RECORDS.

6 SO, YOUR HONOR, IF I COULD DIRECT YOUR ATTENTION TO  
7 THE COLUMN SORT OF TOWARDS THE -- JUST TO THE RIGHT OF THE  
8 CENTER OF THE FORM, DISPOSAL AUTHORITY. AND WHAT'S STATED  
9 THERE IS NI-527-00-3, DESTROY AFTER, AND WHAT WAS ORIGINALLY  
10 TYPED IS 55 YEARS, ALL RIGHT, AND THE 55 HAS BEEN CROSSED OUT  
11 AND 25 YEARS, SEE ATTACHMENT, HAS BEEN WRITTEN IN, OKAY?

12 AND IF WE COULD -- AFTER YOUR HONOR HAS HAD A CHANCE  
13 TO LOOK AT THAT.

14 THE COURT: ALL RIGHT, SIR.

15 MR. MURTAGH: OKAY. IF WE COULD PULL UP 2039.4.  
16 YOUR HONOR, THIS FORM IS ENTITLED REQUEST FOR RECORDS  
17 DISPOSITION AUTHORITY, AND IT WAS -- IT'S FROM THE UNITED  
18 STATES MARSHAL'S SERVICE, AND THE NAME OF THE PERSON WITH WHOM  
19 TO CONFER IS ROBERT GOEWY, G-O-E-W-E-Y. THAT'S IN BOX NUMBER  
20 FOUR. AND IF YOU GO DOWN TO THE -- AND THIS FORM IS DATED 1/5  
21 -- I'M SORRY. DATE RECEIVED IS 6/30/2000. AND THEN WHAT  
22 COMES BACK APPARENTLY IS A CHANGE. IF YOU LOOK AT DISPOSITION  
23 TEMPORARY FOR FELONY INVESTIGATIVE FILES -- AND, YOUR HONOR, I  
24 NEGLECTED TO MENTION THAT ON THE PREVIOUS EXHIBIT 2039, THE  
25 RECORDS THAT WERE BEING SENT DOWN WERE CRIMINAL WARRANT FILES

September 19, 2012



Reddick/Cross

Page 582

1 LISTED ALPHABETICALLY. OKAY? SO, THERE'S BEEN -- IF YOU LOOK  
2 AT 2039.4, WHICH WAS THE ATTACHMENT THAT CAME BACK TO 2039,  
3 THE DISPOSITION AUTHORITY, PAPER FILES ARE DESTROYED AFTER 25  
4 YEARS. ALL RIGHT?

5 SO, THAT IS APPARENTLY WHAT HAS HAPPENED HERE. THE  
6 MARSHAL SERVICE OR THE RECORD SERVICE -- RECORD CENTER HAS  
7 NOTIFIED THE U.S. MARSHAL YOUR DISPOSITION AUTHORITY HAS  
8 CHANGED.

9 THE NEXT DOCUMENT, YOUR HONOR, I'D ASK THAT OUR  
10 ASSISTANT -- LITIGATION SUPPORT SPECIALIST TO BRING UP IS  
11 2040.

12 AND, YOUR HONOR, THIS IS A SIMILAR RECORDS  
13 TRANSMITTAL AND RECEIPT. THE TRANSFERRING AGENCY LIAISON  
14 OFFICIAL IS NANCY W. BRITT. THE DATE THAT THIS WAS SENT DOWN  
15 TO THE RECORDS CENTER IS 3/15/04 AND THEY'RE FOR, AGAIN,  
16 CRIMINAL WARRANT FILES FOR THE YEAR 2001, LISTED  
17 ALPHABETICALLY. AND IN THE DISPOSAL AUTHORITY, WHAT HAS BEEN  
18 TYPED IN NOW IS NI-527-00-3-IA, DESTROY AFTER 25 YEARS.

19 AND THE FIRST RECORD, 2039, WAS DATED 2/14/02. SO  
20 BY -- I'M SORRY, BY 6/30/04 OR 3/15/04 IT'S -- THE RECORD  
21 DISPOSITION AUTHORITY THAT IS IN EFFECT IS BEING FOLLOWED BY  
22 THE U.S. MARSHAL SERVICE IN RALEIGH.

23 (GOVERNMENT EXHIBIT NUMBERS 2039.4 AND  
24 2040 WERE IDENTIFIED FOR THE RECORD.)

25 THE COURT: YES, SIR.

September 19, 2012

Leonard/Direct

Page 583

1 MR. MURTAGH: THANK YOU, YOUR HONOR.

2 MR. BRUCE: WE'RE READY TO PROCEED WITH OUR NEXT  
3 WITNESS, YOUR HONOR.

4 THE COURT: ALL RIGHT, SIR.

5 MR. BRUCE: WE CALL J. RICH LEONARD.

6 (PAUSE.)

7 THE COURT: I BELIEVE I KNOW THIS MAN.

8 **J. RICH LEONARD, GOVERNMENT WITNESS, SWORN**

9 D I R E C T E X A M I N A T I O N 1:40 P.M.

10 BY MR. BRUCE:

11 Q. WOULD YOU STATE YOUR NAME, PLEASE?

12 A. J. RICH LEONARD.

13 Q. JUDGE LEONARD, HOW ARE YOU EMPLOYED?

14 A. I'M A JUDGE WITH THE UNITED STATES BANKRUPTCY COURT FOR  
15 THE EASTERN DISTRICT OF NORTH CAROLINA.

16 Q. AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

17 A. I JUST HAD A 20TH ANNIVERSARY THIS SUMMER.

18 Q. AND IS IT TRUE THAT YOU USED TO BE A LAW CLERK FOR JUDGE  
19 FRANKLIN T. DUPREE?

20 A. I WAS. I STARTED MY CAREER THERE IN THE FALL OF 1976.

21 Q. COULD YOU JUST GIVE US AN OUTLINE OF YOUR CAREER AFTER  
22 THAT DATE.

23 A. I WAS JUDGE DUPREE'S LAW CLERK FROM SEPTEMBER OF 1976  
24 THROUGH AUGUST OF 1978. I WENT TO PRACTICE LAW WITH THE LAW  
25 FIRM OF SANFORD, ADAMS, MCCULLOUGH AND BEARD IN RALEIGH AFTER

September 19, 2012

Leonard/Direct

Page 584

1 MY CLERKSHIP.

2 I CAME BACK TO THE COURT IN A DIFFERENT CAPACITY, AS  
3 THE CLERK OF THE COURT, ON JULY 6TH, 1979. I HELD THAT  
4 POSITION FOR 13 YEARS. IN 1981, I ALSO BECAME A UNITED STATES  
5 MAGISTRATE JUDGE AND HELD WHAT WAS CALLED A COMBINATION  
6 POSITION UNTIL I TOOK THIS JOB IN 1992.

7 Q. AND ARE YOU APPOINTED FOR A 12 YEAR TERM, IS THAT RIGHT?

8 A. 14 YEAR TERM. I'M IN MY SECOND 14 YEAR TERM.

9 Q. ALL RIGHT. NOW, TAKING YOU BACK TO THE '70S, COULD YOU  
10 EXPLAIN THE COMPOSITION OF THE FEDERAL BENCH IN THIS DISTRICT  
11 BETWEEN '75 AND '79?

12 A. IN 1975, IT WAS A THREE JUDGE COURT WITH JUDGE BUTLER,  
13 JUDGE LARKINS AND JUDGE DUPREE. MY RECOLLECTION, THOUGH, IS  
14 THAT JUDGE BUTLER RETIRED, I BELIEVE IN THE SUMMER OF '75,  
15 AND BECAUSE JUDGE DUPREE'S JUDGESHIP HAD BEEN THIS PECULIAR  
16 ANIMAL KNOWN AS A SPECIAL JUDGESHIP, HIS VACANCY WAS NOT  
17 FILLED. SO, IT REVERTED TO A TWO JUDGE COURT WITH JUDGE  
18 LARKINS AND JUDGE DUPREE, WITH JUDGE LARKINS AS THE CHIEF  
19 JUDGE.

20 Q. ALL RIGHT. AND DID THERE COME A TIME WHEN JUDGE LARKINS  
21 WAS NO LONGER THE CHIEF JUDGE?

22 A. THERE DID. ACTUALLY, IT WAS IN THE SUMMER OF 1979.

23 Q. AND WHO BECAME CHIEF JUDGE THEN?

24 A. JUDGE DUPREE.

25 Q. AND DID THAT CAUSE A CHANGE IN THE LEADERSHIP OF THE

September 19, 2012

Leonard/Direct

Page 585

1 CLERK'S OFFICE?

2 A. IT DID.

3 Q. PLEASE EXPLAIN.

4 A. THE CHANGE WAS THAT MY PREDECESSOR WAS ASKED TO RESIGN  
5 AND I WAS APPOINTED.

6 Q. AND SO THE ONLY ACTIVE JUDGE ON THE BENCH IN THE SUMMER  
7 OF 1979 WAS JUDGE DUPREE?

8 A. I BELIEVE THAT'S RIGHT.

9 Q. AND YOU MENTIONED THE DATE THAT YOU BECAME THE CLERK OF  
10 THE COURT. WAS THERE SOME SIGNIFICANCE --

11 A. MR. BRUCE, WAIT A MINUTE. I'VE GOT SOMETHING WRONG  
12 THERE. ACTUALLY, IN 19 -- I BELIEVE THAT JUDGE LARKINS WAS  
13 STILL ACTIVE IN 1979. IT BECAME A TWO JUDGE COURT, AS I SAID  
14 EARLIER. SO, IT WAS NOT TRUE THAT JUDGE DUPREE WAS THE ONLY  
15 ACTIVE JUDGE.

16 Q. WAS JUDGE LARKINS TAKING A FULL CASE LOAD AT THAT TIME?

17 A. YES, BUT THEY DID A LARGELY GEOGRAPHICAL SPLIT. JUDGE  
18 DUPREE TENDED TO TAKE THE RALEIGH AND FAYETTEVILLE CASES AND  
19 JUDGE LARKINS TOOK THE COASTAL CASES.

20 Q. NOW, YOU MENTIONED THE DATE THAT YOU BECAME CLERK OF  
21 COURT. WAS THERE ANY SIGNIFICANCE TO THAT PARTICULAR DATE?

22 A. I BECAME CLERK OF THE COURT SLIGHTLY EARLIER THAN I  
23 ANTICIPATED BECAUSE DR. MACDONALD'S TRIAL WAS TO START THE  
24 NEXT WEEK AND JUDGE DUPREE FRANKLY WANTED SOMEONE IN THAT  
25 POSITION WHO HE TRUSTED TO MANAGE THE LOGISTICS OF THAT TRIAL.

September 19, 2012

Leonard/Direct

Page 586

1 Q. NOW, TAKING YOU BACK TO YOUR CLERKSHIP, YOU SAID THAT WAS  
2 '76 TO '78?

3 A. THAT'S CORRECT.

4 Q. AND WAS ONE OF YOUR CO-CLERKS JOHN EDWARDS?

5 A. HE WAS, FOR THE SECOND YEAR OF MY CLERKSHIP.

6 Q. OKAY. DO YOU KNOW WHEN HE LEFT?

7 A. HE LEFT IN THE SAME MONTH, IN AUGUST OF 1978. HE LEFT TO  
8 PRACTICE LAW IN NASHVILLE, TENNESSEE, AND WAS THERE FOR  
9 SEVERAL YEARS.

10 Q. SO, HE ONLY SERVED ONE YEAR --

11 A. HE DID.

12 Q. -- AS A CLERK TO JUDGE DUPREE?

13 A. THAT'S RIGHT.

14 Q. WAS THAT UNUSUAL?

15 A. IT WAS UNUSUAL. HE LEFT EARLY BECAUSE HIS WIFE HAD A ONE  
16 YEAR CLERKSHIP WITH ANOTHER JUDGE AND THEY HAD PROCURED DUAL  
17 JOBS IN NASHVILLE, AND HE ASKED JUDGE DUPREE'S PERMISSION TO  
18 LEAVE EARLY SO THEY COULD BOTH START THEIR JOBS  
19 SIMULTANEOUSLY.

20 Q. SO, YOU AND JOHN EDWARDS ESSENTIALLY EXITED TOGETHER  
21 FROM --

22 A. WE EXITED TOGETHER, WITHIN A WEEK OF EACH OTHER, IN  
23 AUGUST OF 1978.

24 Q. SO, WHO WERE JUDGE DUPREE'S LAW CLERKS DURING THE TIME OF  
25 THE JEFFREY MACDONALD TRIAL?

September 19, 2012

Leonard/Direct

Page 587

1 A. STEVE COGGINS WAS JUDGE DUPREE'S LAW CLERK FOR A TWO YEAR  
2 TERM AND HE WAS THERE THE DURATION OF THE TRIAL. JUDGE  
3 DUPREE'S SECOND LAW CLERK, AT THE BEGINNING OF THE TRIAL WAS  
4 WILLIAM PAPPAS. AT SOME POINT DURING THAT TRIAL, AND I  
5 BELIEVE IN EARLY AUGUST, BILL'S TERM ENDED AND JEFFREY HOWARD  
6 CAME AS JUDGE DUPREE'S SECOND LAW CLERK.

7 Q. SO, TO YOUR KNOWLEDGE, WHO DID THE LAW CLERK WORK ON THE  
8 JEFFREY MACDONALD TRIAL?

9 A. CERTAINLY AT THE BEGINNING IT WAS MR. COGGINS, FROM MY  
10 OBSERVATION. I THINK -- BECAUSE MR. PAPPAS WAS TRYING TO  
11 FINISH UP A NUMBER OF OTHER COMPLICATED CIVIL MATTERS THAT  
12 JUDGE DUPREE HAD BEEN WORKING ON DURING HIS TENURE AND WAS NOT  
13 VERY INVOLVED. I THINK WHEN MR. HOWARD CAME THEY SHARED THE  
14 DUTIES.

15 Q. NOW, WHAT WAS YOUR ROLE DURING THE MACDONALD TRIAL?

16 A. ON THE PERIPHERY. I HAD TAKEN OVER A COURT THAT DAY  
17 THAT, TO SAY IT CHARITABLY, HAD NOT BEEN VERY WELL RUN BEFORE  
18 I ARRIVED. I SIGNED ON AS THE ACCOUNTABLE OFFICER FOR ALL THE  
19 BUILDINGS AND PROPERTY AND REGISTRY FUNDS AND PERSONNEL. AND  
20 I WAS WORKING 20 HOURS A DAY TO TRY TO MAKE SENSE OF THAT JOB.

21 MY INVOLVEMENT WITH THE MACDONALD TRIAL WAS TO WORK  
22 OUT THE RULES FOR ACCESS, FOR COURTROOM PARTICIPATION, FOR  
23 MEDIA ACCESS, FOR CONFERENCE ROOMS FOR LAWYERS, FOR CONTROL OF  
24 EXHIBITS, BUT I DON'T THINK I EVER WAS IN THE COURTROOM A  
25 SINGLE MINUTE WHILE THE TRIAL ITSELF WAS ACTUALLY IN PROGRESS.

September 19, 2012

Leonard/Direct

Page 588

1 Q. AND, OF COURSE, IN YOUR POSITION YOU WERE IN A  
2 SUPERVISORY CAPACITY OVER THE DEPUTY CLERKS?

3 A. I WAS. I HAD A VETERAN DEPUTY CLERK NAMED SHIRLEY  
4 RODGERS WHO WAS LARGELY RESPONSIBLE IN THE COURTROOM DURING  
5 THIS TRIAL.

6 Q. ALL RIGHT. LET ME SHOW YOU -- I'M GOING TO PUT UP ON THE  
7 SCREEN AN EXCERPT FROM THE TRIAL TRANSCRIPT, TRIAL DAY 20,  
8 PAGE 13. AND JUST FOR YOUR INFORMATION, TRIAL DAY 20 HAS BEEN  
9 IDENTIFIED AS FRIDAY, AUGUST 17TH, 1979. LET'S JUST HIGHLIGHT  
10 LINE TEN THROUGH 18 -- OR 13, REALLY, THROUGH 18.

11 DO YOU SEE, JUDGE LEONARD, WHERE IT SAYS BY THE  
12 COURT, TAKE A RECESS UNTIL TOMORROW MORNING AT NINE O'CLOCK?

13 A. I DO.

14 Q. AND DO YOU SEE WHERE THE COURT REPORTER HAS ADDED THE  
15 NOTE SAYING THE PROCEEDING WAS ADJOURNED AT 11 -- EXCUSE ME,  
16 1:17 P.M., TO RECONVENE AT 9:00 A.M. ON FRIDAY, AUGUST 17TH,  
17 1979?

18 A. I DO.

19 Q. AND I MISSPOKE. TRIAL DAY 20 IS AUGUST 16TH, 1979. NOW,  
20 DOES THIS INDICATE, THEN, THAT THERE'S GOING TO BE NO MORE  
21 COURT ON THURSDAY, AUGUST 16TH?

22 A. IT DOES SEEM TO.

23 Q. SO, WHAT WOULD BE THE POLICY OF THE COURT AS TO WHAT  
24 HAPPENS WITH THE COURTROOM IN THAT CIRCUMSTANCE DURING A  
25 CRIMINAL TRIAL?

September 19, 2012

Leonard/Direct

Page 589

1 A. IT WOULD HAVE BEEN LOCKED DOWN.

2 Q. AND WHAT'S THE REASON FOR THAT?

3 A. WELL, THE REASON IS WE UNDERSTAND CHAIN OF CUSTODY. AND  
4 IN A SMALLER CASE, THE DEPUTY CLERK MIGHT HAVE REMOVED ALL THE  
5 EXHIBITS AND TAKEN THEM WITH HER BACK TO AN EXHIBIT ROOM, BUT  
6 IN A CASE LIKE THIS WHERE THERE WERE SO MANY DEMONSTRATIVE AND  
7 DOCUMENTARY EXHIBITS, MS. RODGERS EITHER, WITHOUT ANY  
8 EXCEPTION, EITHER WOULD HAVE BEEN IN THE COURTROOM OR HAD HAD  
9 ANOTHER MEMBER OF MY STAFF IN THE COURTROOM WITH THE EXHIBITS  
10 OR THE COURTROOM WOULD HAVE BEEN LOCKED.

11 Q. ALL RIGHT. NOW, LET'S TAKE A LOOK ON THE SCREEN AT  
12 GOVERNMENT EXHIBIT 2077. DO YOU RECOGNIZE THAT AS A FLOOR  
13 PLAN OF THE SEVENTH FLOOR --

14 A. IT SEEMS TO BE A DIAGRAM OF THE SEVENTH FLOOR AS IT  
15 APPEARED THEN. IT'S BEEN ALTERED SINCE THAT TIME.

16 Q. ALL RIGHT. AND DO YOU TAKE NOTE THAT THE FRONT OF THE  
17 BUILDING ON NEW BERN AVENUE IS AT THE TOP OF THE PAGE?

18 A. I DO.

19 Q. ALL RIGHT. WITH THAT ORIENTATION, THEN, CAN YOU POINT  
20 OUT WHERE JUDGE DUPREE'S COURTROOM WAS?

21 A. JUDGE DUPREE'S COURTROOM WOULD HAVE BEEN RIGHT HERE,  
22 COURTROOM ONE.

23 Q. ALL RIGHT. AND THEN CAN YOU ALSO POINT OUT WHERE JUDGE  
24 DUPREE'S CHAMBERS, WHERE HE ACTUALLY HAD HIS DESK AND SO  
25 FORTH?

September 19, 2012



Leonard/Direct

Page 590

1 A. WELL, HIS PRIVATE OFFICE WAS THE CORNER OFFICE HERE.

2 Q. ALL RIGHT. NOW, IS THERE A DOOR OUT INTO THE HALLWAY  
3 FROM THAT OFFICE?

4 A. THERE IS.

5 Q. AND WHAT WAS THE POLICY ON THAT DOOR?

6 A. THAT DOOR WAS CUSTOMARILY LOCKED BECAUSE IT GAVE ACCESS  
7 DIRECTLY INTO HIS PRIVATE OFFICE.

8 Q. NOW, IS THERE A DOOR THAT OPENED FROM THE CORRIDOR ONTO A  
9 LAW CLERK AND LIBRARY AREA?

10 A. THERE IS. AND THIS IS THE WAY THAT VIRTUALLY EVERYONE  
11 WOULD HAVE ENTERED JUDGE DUPREE'S CHAMBERS THROUGH THAT DOOR.  
12 IT WOULD HAVE OPENED INTO, IN THOSE DAYS, A LARGE LIBRARY  
13 WHERE BOTH OF HIS LAW CLERKS HAD WORK STATIONS. AND  
14 CUSTOMARILY, WE WERE THE FIRST GREETERS OF ANYONE WHO ENTERED  
15 HIS CHAMBERS. AND IF SOMEONE WANTED TO SEE THE JUDGE, THEY  
16 WOULD HAVE MOVED TO THE NEXT OFFICE, WHERE THE VERY  
17 FORMIDABLE, MS. ALBUS, HIS SECRETARY, PRESIDED. AND IF YOU  
18 WANTED TO SEE THE JUDGE, YOU EXPLAINED TO MS. ALBUS WHY YOU  
19 WANTED TO SEE THE JUDGE AND SHE WOULD BUZZ HIM AND EXPLAIN  
20 YOUR REQUEST AND EITHER LET YOU IN OR NOT. HE WAS NOT A  
21 FELLOW WITH AN OPEN DOOR POLICY. LAWYERS DIDN'T JUST WANDER  
22 IN AND CHITTY-CHAT WITH HIM IN HIS OFFICE.

23 Q. IN YOUR EXPERIENCE AS LAW CLERK TO JUDGE DUPREE AND AS  
24 CLERK OF COURT, CAN YOU TELL US WHAT WAS HIS POLICY ON  
25 SUBSTANTIVE EX PARTE COMMUNICATION?

September 19, 2012

Leonard/Direct

Page 591

1 A. I THINK ANYONE WHO HAS EVER TRIED A CASE BEFORE ME OR  
2 WORKED WITH ME KNOWS MY COMPLETE AVERSION TO EX PARTE  
3 COMMUNICATIONS AND I LEARNED THAT FROM HIM.

4 I HAVE SEEN HIM MANY A TIME WHEN A LAWYER DRIFTED  
5 FROM POLITE CONVERSATION INTO WHAT MIGHT BE, PERHAPS, AN EX  
6 PARTE COMMUNICATION, HOLD UP HIS HAND AND SAY LET'S NOT TALK  
7 ABOUT THAT. LET'S NOT GO THERE.

8 Q. ALL RIGHT. DID THERE COME A TIME -- LET ME PULL UP A  
9 CALENDAR OF 1979. DID THERE COME A TIME WHEN YOU ENCOUNTERED  
10 JUDGE DUPREE ON A WEEKEND?

11 A. I DID VIRTUALLY --

12 Q. 2362.

13 A. VIRTUALLY EVERY --

14 Q. GO AHEAD.

15 A. VIRTUALLY EVERY WEEKEND. AS I SAID, I WAS WORKING 20  
16 HOURS A DAY, SEVEN DAYS A WEEK TO TRY TO FIGURE OUT WHAT IT  
17 MEANT TO BE THE CHIEF EXECUTIVE OFFICER OF THIS COURT. AND HE  
18 WORKED INVARIABLY ON THE WEEKENDS.

19 SO, THERE WAS A WEEKEND, AND I KNOW IT WAS IN LATE  
20 AUGUST, AND I WAS ENOUGH AWARE OF WHAT WAS GOING ON IN THE  
21 TRIAL TO KNOW THAT THERE HAD BEEN SOME IMPORTANT PROCEEDINGS  
22 THE FEW DAYS BEFORE, AND SAW HIS CAR IN THE LOT SUNDAY  
23 AFTERNOON AND JUST WENT IN TO SAY HELLO.

24 HE HAD BOOKS EVERYWHERE, HE HAD LAW BOOKS -- YOU  
25 KNOW, THIS WAS BEFORE WESTLAW AND LEXIS, WHEN WE USED THE

September 19, 2012

Leonard/Direct

Page 592

1 BOOKS, AND HE HAD LAW BOOKS OPENED EVERYWHERE. AND I SAID,  
2 WHAT ARE YOU WORKING ON? AND HE SAID, WELL, THEY'VE THROWN  
3 SOME THORNY EVIDENTIARY ISSUES AT ME I HAVE TO RULE ON  
4 TOMORROW AND I'M TRYING TO GET TO THE BOTTOM OF IT. THAT WAS  
5 REALLY THE EXTENT OF OUR CONVERSATION.

6 Q. YOU DIDN'T GET INTO THE SUBSTANCE OF IT?

7 A. I DIDN'T. I WASN'T HIS LAW CLERK ANYMORE. HE HAD ABLE  
8 LAW CLERKS. AND, YOU KNOW, ONE OF THE THINGS I LEARNED YEARS  
9 AGO WAS IF JUDGE DUPREE WAS AHEAD OF YOU ON THE RESEARCH,  
10 TALKING TO HIM WAS FRUSTRATING FOR YOU AND NOT VERY HELPFUL  
11 FOR HIM. SO, I DIDN'T GO ANY FURTHER.

12 Q. IS IT YOUR OPINION THAT HE -- THAT WAS THE WEEKEND HE WAS  
13 MULLING THE --

14 A. I KNOW IT WAS BECAUSE I REMEMBER THAT HE HAD -- I  
15 REMEMBER THE RULINGS COMING THE NEXT DAY.

16 Q. THE RULINGS ON THE STOECKLEY --

17 A. ON THE ADMISSIBILITY OF THE STOECKLEY TESTIMONY.

18 Q. ALL RIGHT.

19 A. AND ONE THING I MIGHT ADD, MR. BRUCE, WHICH ESCAPES  
20 EVERYONE WITH TIME, IS THAT IN 1979, THE RULES OF EVIDENCE  
21 WERE LESS THAN THREE YEARS OLD. THEY HAD ONLY BEEN ADOPTED IN  
22 1976.

23 SO, EVIDENCE ISSUES UNDER THE PRECISE WORDING OF  
24 THOSE RULES WAS VERY DIFFICULT BECAUSE THERE WASN'T A LOT OF  
25 PRECEDENT. THERE WASN'T A LOT OF CASE LAW. SO, WE OFTEN

September 19, 2012

Leonard/Direct

Page 593

1 WORKED VERY HARD ON EVIDENCE ISSUES TO BE RIGHT.

2 Q. NOW, IN YOUR EXPERIENCE AS LAW CLERK AND AS CLERK OF  
3 COURT, DO YOU KNOW ANYTHING ABOUT JUDGE DUPREE'S LUNCHTIME  
4 HABITS WHEN HE WAS HOLDING COURT?

5 A. ABSOLUTELY. HE WAS A MAN OF HABIT. HE RARELY CHANGED  
6 HIS ROUTINE. HE TRIED TO RUN HIS COURTROOM WITH CLOCK-LIKE  
7 PUNCTUALITY AND HE WOULD ADJOURN COURT AT ONE O'CLOCK AND HE  
8 KEPT ALL HIS LUNCH SUPPLIES IN A SMALL KITCHENETTE IN HIS  
9 CHAMBERS. HE WOULD COME OUT, HE WOULD MAKE HIS LUNCH, AND  
10 CONVERSATION MIGHT HAVE HAPPENED IN THE FEW MINUTES WHILE HE  
11 MADE HIS LUNCH, BUT THEN HE WOULD TAKE IT BACK INTO HIS  
12 OFFICE, SHUT THE DOOR, AND IF HE HAD AN ISSUE TO WORK ON,  
13 WORK. IF HE DIDN'T, HE WOULD OFTEN TURN ON CLASSICAL MUSIC  
14 AND RELAX FOR A LITTLE WHILE.

15 Q. SO, THERE WAS NOT MUCH SOCIALIZING?

16 A. EXCEPT FOR THE FEW MINUTES WHEN HE WAS MAKING HIS LUNCH,  
17 WHERE WE MIGHT TALK ABOUT WHAT HAD HAPPENED IN THE COURTROOM  
18 THAT MORNING, NO. I WAS THERE FOR A LONG TIME AND I DON'T  
19 EVER RECALL SITTING DOWN IN HIS CHAMBERS AND HAVING LUNCH WITH  
20 HIM.

21 Q. NOW, TRAGICALLY, JUDGE DUPREE DIED. DO YOU RECALL THE  
22 APPROXIMATE DATE OF HIS DEATH?

23 A. I THINK IT WAS 1995.

24 Q. DID YOU HAVE A ROLE OR PEOPLE WORKING UNDER YOU HAVE A  
25 ROLE, JUDGE LEONARD, IN ASSIGNING ROOMS FOR THE MACDONALD TEAM

September 19, 2012

Blackburn/Direct

Page 594

1 TO USE DURING THE TRIAL?

2 A. I AM SURE WE DID. I HAVE NO PRECISE -- IT'S BEEN A LONG  
3 TIME, BUT THAT WOULD HAVE CERTAINLY BEEN SOMETHING THAT I OR  
4 SOMEONE WORKING UNDER ME WOULD HAVE DONE IN ANY TRIAL.

5 MR. BRUCE: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: CROSS.

7 MR. WIDENHOUSE: NO, THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU VERY MUCH, MR. LEONARD.

9 THE WITNESS: THANK YOU.

10 MR. BRUCE: AND MAY THE JUDGE BE RELEASED?

11 MR. WIDENHOUSE: NO OBJECTION.

12 THE COURT: ALL RIGHT.

13 MR. BRUCE: YOUR HONOR, THE GOVERNMENT CALLS JIM  
14 BLACKBURN.

15 THE COURT: THANK YOU.

16 **JAMES L. BLACKBURN, GOVERNMENT WITNESS, SWORN**

17 D I R E C T E X A M I N A T I O N 1:56 P.M.

18 BY MR. BRUCE:

19 Q. WOULD YOU STATE YOUR NAME, PLEASE?

20 A. JAMES LESLIE BLACKBURN.

21 Q. WHERE DO YOU LIVE, MR. BLACKBURN?

22 A. IN RALEIGH, NORTH CAROLINA.

23 Q. AND HOW LONG HAVE YOU LIVED IN RALEIGH?

24 A. 1969.

25 Q. WHAT IS YOUR CURRENT EMPLOYMENT STATUS?

September 19, 2012

1 A. I AM SELF-EMPLOYED.

2 Q. WHAT DO YOU DO?

3 A. WHAT I DO AND HAVE DONE FOR SEVERAL YEARS NOW IS I HOLD  
4 CONTINUING LEGAL EDUCATION SEMINARS FOR LAWYERS AND PARALEGALS  
5 IN NORTH AND SOUTH CAROLINA AND OTHER STATES FROM TIME TO  
6 TIME.

7 I SPEAK ON ETHICS AND PROFESSIONALISM AND MENTAL  
8 HEALTH ISSUES. THESE ARE ALL APPROVED BY THE BARS OF BOTH  
9 STATES. I HAVE SPOKEN IN OTHER STATES AS WELL. JUST MOST  
10 RECENTLY, OKLAHOMA AND KENTUCKY AT THEIR ANNUAL BAR  
11 CONVENTIONS.

12 Q. ALL RIGHT. LET ME GO BACK TO THE BEGINNING OF YOUR  
13 CAREER. WHERE DID YOU GO TO COLLEGE AND LAW SCHOOL?

14 A. I WENT TO WAKE FOREST IN WINSTON-SALEM AND WENT TO LAW  
15 SCHOOL AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

16 Q. AND WHAT WAS YOUR FIRST JOB OUT OF LAW SCHOOL?

17 A. I WAS AN ASSOCIATE ATTORNEY GENERAL, I BELIEVE, WITH THE  
18 DEPARTMENT OF JUSTICE IN NORTH CAROLINA IN 1969.

19 Q. AND WHAT DID YOU DO AFTER THAT?

20 A. I BECAME AN ASSISTANT U.S. ATTORNEY I BELIEVE IN THE FALL  
21 -- OCTOBER 1977.

22 Q. OKAY. AND WHO WAS THE U.S. ATTORNEY WHEN YOU BECAME AN  
23 ASSISTANT UNITED STATES ATTORNEY?

24 A. GEORGE ANDERSON.

25 Q. AND AS AN ASSISTANT UNITED STATES ATTORNEY, WHAT WERE

September 19, 2012

Blackburn/Direct

Page 596

1 YOUR DUTIES?

2 A. WELL, I WAS IN CHARGE -- I WAS THE FIRST ASSISTANT U.S.  
3 ATTORNEY AND I WAS -- WE HAD A SMALL OFFICE THEN, ONLY EIGHT  
4 OR NINE ASSISTANTS. I WAS PRIMARILY IN CHARGE OF THE CRIMINAL  
5 SECTION AND PROSECUTED CASES IN DIFFERENT JURISDICTIONS WITHIN  
6 THE EASTERN DISTRICT OF NORTH CAROLINA.

7 Q. DID THERE COME A TIME WHEN YOU BECAME INVOLVED IN THE  
8 PROSECUTION OF *U.S. V. MACDONALD*?

9 A. YES.

10 Q. AND WHEN WAS THAT?

11 A. I THINK -- I BELIEVE IT WAS THE FALL OF 1977. NOT LONG  
12 AFTER I JOINED THE U.S. ATTORNEY'S OFFICE I WAS ASKED TO GET  
13 INVOLVED IN THAT CASE.

14 Q. BY THE U.S. ATTORNEY?

15 A. YES.

16 Q. AND DID IT EVENTUALLY COME TO TRIAL?

17 A. IT DID.

18 Q. AND WHAT WAS THE TRIAL TEAM?

19 A. THE TRIAL TEAM WAS MYSELF; GEORGE ANDERSON, THE U.S.  
20 ATTORNEY; JACK CRAWLEY, AN ASSISTANT U.S. ATTORNEY; AND BRIAN  
21 MURTAGH, FROM THE U.S. DEPARTMENT OF JUSTICE.

22 Q. ALL RIGHT. AND WHO DID MOST OF THE ACTUAL QUESTIONING OF  
23 WITNESSES AND ARGUMENT?

24 A. WELL, I DID MOST OF THE FACT WITNESSES. BRIAN DID MOST  
25 OF THE TECHNICAL WITNESSES. THAT'S HOW WE DIVIDED IT UP.

September 19, 2012

Blackburn/Direct

Page 597

1 Q. ALL RIGHT. NOW, DID THERE COME A TIME DURING THE TRIAL  
2 THAT THE PRESENCE OF HELENA STOECKLEY BECAME AN ISSUE?

3 A. YES.

4 Q. LET'S PUT ON THE SCREEN TRIAL DAY 17, PAGE 86, AND  
5 HIGHLIGHT THE TOP OF THE PAGE. DO YOU SEE, MR. BLACKBURN,  
6 WHERE IT SAYS, SECONDLY, WE HAVE HERE UNDER SUBPOENA?

7 A. YES.

8 Q. WOULD YOU READ THAT, LINE ONE THROUGH 15?

9 A. SECONDLY, WE HAVE HERE UNDER SUBPOENA THE PARENTS OF  
10 HELENA STOECKLEY. WE HAVE BEEN TRYING TO LOCATE HER. IN OUR  
11 EFFORT TO LOCATE HER, WHICH HAS BEEN FUTILE UP UNTIL NOW, WE  
12 HAVE SUBPOENAED THEM AS TO THEIR KNOWLEDGE OF HER WHEREABOUTS.

13 Q. ALL RIGHT. AND YOU CAN CONTINUE READING.

14 A. I'M SORRY.

15 I AM NOT PARTICULARLY ANXIOUS TO MAKE THEM -- I AM  
16 NOT PARTICULARLY ANXIOUS TO MAKE THEM DO NECESSARILY ALL THAT  
17 EXPLANATION ABOUT WHAT THEY DON'T KNOW ABOUT THEIR DAUGHTER  
18 NECESSARILY IN FRONT OF THE CROWD. I JUST HAVE A FEELING,  
19 HAVING TALKED TO THEM -- ON THE OTHER HAND, I DO NEED TO PUT  
20 THEIR TESTIMONY OF RECORD EITHER BEFORE OR AFTER THE LUNCHEON  
21 BREAK AS TO THEIR KNOWLEDGE OR LACK OF KNOWLEDGE OF HER  
22 WHEREABOUTS BECAUSE, IF WE CANNOT FIND HER, AFTER SUCH A  
23 DILIGENT SEARCH, WE WILL SEEK TO HAVE HER DEEMED UNAVAILABLE  
24 FOR THE PURPOSE OF VARIOUS 800 RULES.

25 Q. ALL RIGHT. DO YOU RECALL THAT THE DEFENSE WAS TRYING TO

September 19, 2012



Blackburn/Direct

Page 598

1 ESTABLISH HELENA STOECKLEY'S UNAVAILABILITY IN TERMS OF TRYING  
2 TO GET IN HER OUT OF COURT STATEMENTS?

3 A. OH, YES.

4 Q. ALL RIGHT. LET'S GO DOWN TO THE BOTTOM OF THE PAGE. IN  
5 FACT, LET'S GO OVER TO TD-17, 87. WOULD YOU READ WHERE IT  
6 STARTS MR. BLACKBURN?

7 A. YOUR HONOR, MAY I RESPOND TO THAT? I GAVE WADE THIS  
8 MORNING AT 8:30 THE NEWEST ADDRESS WHICH WE HAD. IT MAY BE  
9 THAT ALL OF THIS IS RENDERED ACADEMIC IF THEY DO FIND HER.

10 MR. SEGAL: WE HAVE SOMEONE WORKING ON THAT. I  
11 WOULD SAY THERE IS SOME DIFFICULTY WITH THE ADDRESS THAT WAS  
12 GIVEN. THERE IS SOME PROBLEM WITH WHETHER THAT NUMBER EXISTS.  
13 WE ARE WORKING ON IT. ALL I WANT TO SAY IS THAT WE HAVE AN  
14 OBLIGATION TO MAKE A RECORD AS TO OUR EFFORTS.

15 Q. ALL RIGHT. DID THE UNITED STATES GOVERNMENT ASSIST IN  
16 THE LOCATION -- IN THE LOCATING OF HELENA STOECKLEY?

17 A. I BELIEVE THEY DID.

18 Q. AND SO YOU WERE REPRESENTING THE UNITED STATES  
19 GOVERNMENT, WHICH WAS THE ADVERSARY OF JEFFREY MACDONALD IN  
20 THIS CASE, IS THAT RIGHT?

21 A. CORRECT.

22 Q. AND YET THE GOVERNMENT ACTUALLY LOCATED HELENA STOECKLEY,  
23 THE DEFENSE WITNESS?

24 A. YES.

25 Q. ALL RIGHT. COULD WE LOOK AT EXHIBIT 2000? WOULD YOU

September 19, 2012

Blackburn/Direct

Page 599

1 TAKE A LOOK AT THIS DOCUMENT AND TELL US WHAT IT IS.

2 A. IT IS A WARRANT FOR THE ARREST OF A WITNESS.

3 Q. AND WHO IS THE WITNESS?

4 A. HELENA STOECKLEY.

5 Q. AND DO YOU RECALL THIS WARRANT BEING ISSUED DURING THE  
6 TRIAL?

7 A. YES.

8 Q. AND WHAT WERE THE CIRCUMSTANCES?

9 A. WELL, THE CIRCUMSTANCES WERE THAT I THINK SHE HAD BEEN  
10 LOCATED OR THIS MAY HAVE BEEN BEFORE SHE WAS LOCATED, I DON'T  
11 RECALL, AND THAT SHE WAS TO BE ARRESTED AND BROUGHT BACK TO  
12 NORTH CAROLINA TO TESTIFY AS A MATERIAL WITNESS IN THE CASE.

13 Q. OKAY. DID THERE COME A TIME WHEN YOU LEARNED THAT SHE  
14 HAD BEEN ARRESTED ON THIS WARRANT?

15 A. YES.

16 Q. AND HOW DID YOU LEARN THAT, IF YOU RECALL?

17 A. I DON'T RECALL.

18 Q. ALL RIGHT. LET'S GO TO TRIAL DAY 19, PAGE 14. AND IF  
19 YOU WOULD START AT THE END OF LINE 12, WHERE IT SAYS WHAT I  
20 REALLY GOT YOU UP HERE FOR.

21 A. THAT IS NOT TO SAY I WON'T LET EVERYBODY HAVE HIS FULL  
22 SAY. I WILL DO IT IF I CAN. WHAT I REALLY GOT YOU UP HERE  
23 FOR IS TO TALK ABOUT THIS STOECKLEY PROBLEM. I UNDERSTAND  
24 SHE IS IN CUSTODY. I UNDERSTAND THAT SHE CAN BE KEPT LIKE  
25 THAT FOR 72 HOURS WITHOUT BEING LET OUT.

September 19, 2012

Blackburn/Direct

Page 600

1           NOW, AS FAR AS FINDING HER AND MAKING HER AVAILABLE  
2 IS CONCERNED, I THINK THE COURT HAS DONE ABOUT ALL IT CAN DO.  
3 I SUGGEST TO YOU THAT YOU OUGHT TO GET YOUR EVIDENCE SO  
4 SCHEDULED AS TO ACCOMMODATE THIS PARTICULAR THING RATHER THAN  
5 RUN THE RISK THE NEXT TIME SHE GOES THAT SHE CAN'T BE FOUND BY  
6 ANYBODY.

7 Q.     KEEP READING.

8 A.     SO, NOW THAT SHE IS AVAILABLE, I THINK THAT MOOTS THE  
9 QUESTION OF WHETHER OR NOT WE CAN TAKE UP SECONDARY EVIDENCE  
10 OF WHAT SHE WOULD HAVE SAID, AND I DON'T THINK IN THIS KIND OF  
11 CASE IF SHE IS AVAILABLE IT OUGHT TO BE DONE. MY FEELING  
12 ABOUT THAT IS THAT, HAVING MADE HER AVAILABLE, THAT YOU MUST  
13 NOW AVAIL YOURSELF OF HER AVAILABILITY.

14 Q.     AND WHAT DOES MR. SEGAL REPLY?

15 A.     I ABSOLUTELY AGREE THAT IT IS OUR DESIRE TO DO THAT. WE  
16 NEED TO KNOW, HOWEVER, YOUR HONOR -- YOU SAY SHE IS IN  
17 CUSTODY. IS SHE IN CUSTODY HERE IN RALEIGH OR IS SHE IN  
18 GREENVILLE?

19           LAW CLERK: SHE IS IN CUSTODY IN GREENVILLE --

20           THE COURT: (INTERPOSING.) GREENVILLE, SOUTH  
21 CAROLINA.

22           LAW CLERK: -- AND THEY ARE READY TO TRANSPORT HER  
23 HERE.

24 Q.     AND WHAT DO YOU SAY AT THAT POINT?

25 A.     PICKENS COUNTY JAIL IS WHAT I HAVE BEEN TOLD.

September 19, 2012

Blackburn/Direct

Page 601

1 Q. NOW, THIS CONVERSATION WAS GOING ON AT A BENCH  
2 CONFERENCE, IS THAT RIGHT?

3 A. YES.

4 Q. SO, IT COULDN'T BE HEARD BY ALL PARTIES IN THE COURTROOM?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT. AND SOMEONE HAD OBVIOUSLY INFORMED YOU OF HER  
7 LOCATION IN THE PICKENS COUNTY JAIL?

8 A. YES.

9 Q. ALL RIGHT. THEN THERE'S A DISCUSSION ABOUT DISTANCES TO  
10 GREENVILLE AND SO FORTH. AND LET'S GO TO THE NEXT PAGE. AND  
11 STARTING WITH I WOULD REQUEST, READ THAT IF YOU WOULD?

12 A. I WOULD REQUEST THAT SHE BE BROUGHT HERE FORTHWITH TO  
13 RALEIGH AND, AS SOON AS SHE IS HERE AND WE HAVE A CHANCE TO  
14 INTERVIEW HER, WE INTEND TO CALL HER AS A WITNESS. THAT IS MY  
15 REQUEST AND IF I CAN BE NOTIFIED --

16 THE COURT: THAT IS ALL WE NEEDED TO KNOW. JUST  
17 TELL THE MAGISTRATE THAT THERE IS NO BOND AND JUST BRING HER  
18 HERE AND MAKE HER AVAILABLE TO DEFENSE COUNSEL.

19 LAW CLERK: HE IS AWAITING WORD FROM OUR OFFICE.

20 DO YOU WANT ME TO CONTINUE?

21 Q. NO. NOW, WAS IT YOUR UNDERSTANDING THAT HELENA STOECKLEY  
22 WAS GOING TO BE BROUGHT THERE FOR A DEFENSE INTERVIEW AND A  
23 PROSECUTION INTERVIEW?

24 A. I AM NOT CERTAIN THAT WE KNEW ABOUT THE INTERVIEW PROCESS  
25 UNTIL THE NEXT MORNING WHEN SHE WAS THERE. WE MAY HAVE KNOWN

September 19, 2012

Blackburn/Direct

Page 602

1 THE DAY BEFORE, BUT AT SOME POINT, EITHER THE AFTERNOON BEFORE  
2 OR THAT NEXT MORNING, WE KNEW THAT.

3 Q. OKAY. AND THIS PAGE WE'RE LOOKING AT IS TRIAL DAY 19,  
4 WHICH WOULD BE WEDNESDAY, AUGUST 16TH, 1979. SO, THE NEXT --  
5 I'M SORRY, WEDNESDAY, AUGUST 15TH, 1979. NOW, THE NEXT DAY  
6 WAS COURT SUSPENDED FOR THESE INTERVIEWS TO TAKE PLACE?

7 A. YES.

8 Q. AND THE DEFENSE INTERVIEW WAS FIRST, WAS IT NOT?

9 A. YES.

10 Q. SO, THE PROSECUTION TEAM WAS AT EASE WAITING FOR THE  
11 DEFENSE TO COMPLETE THE INTERVIEW?

12 A. I WOULDN'T SAY WE WERE AT EASE, BUT WE WEREN'T IN THE  
13 COURTROOM.

14 Q. ALL RIGHT. DID THERE COME A TIME WHEN JUDGE DUPREE  
15 CALLED THE PARTIES BACK TO THE COURTROOM?

16 A. YES.

17 Q. AND LET'S GO TO TRIAL DAY 20, PAGE THREE. DO YOU SEE  
18 WHERE IT SAYS AT THE TOP OF THE PAGE 1:00 P.M.?

19 A. YES.

20 Q. AND DO YOU SEE AT LINES TEN THROUGH 17 WHERE THE COURT IS  
21 ASKING FOR A REPORT?

22 A. YES.

23 Q. AND READ LINES 17 THROUGH 22 CONCERNING MR. SMITH'S  
24 REPLY.

25 A. YOUR HONOR, LET ME EXPRESS THE THANKS OF THE DEFENSE FOR

September 19, 2012

Blackburn/Direct

Page 603

1 THE COURT'S INDULGENCE AND THE JURY'S INDULGENCE THIS MORNING,  
2 AS WE HAVE HAD AN OPPORTUNITY TO TALK WITH THIS WITNESS WHO  
3 HAS, INDEED, BEEN UNAVAILABLE TO EITHER SIDE FOR A LONG PERIOD  
4 OF TIME.

5 Q. ALL RIGHT. AND READ THE NEXT SENTENCE, IF YOU WOULD.

6 A. WE HAVE ALMOST CONCLUDED OUR DISCUSSIONS WITH THE WITNESS  
7 AND WILL BE IN A POSITION VERY SHORTLY TO TURN THE WITNESS  
8 OVER TO THE GOVERNMENT IF THE GOVERNMENT DESIRES TO TALK WITH  
9 THE WITNESS. WE WILL LEAVE ANY REMARKS TO MR. BLACKBURN.

10 Q. AND THEN THERE'S AN EXCHANGE BETWEEN YOU AND THE JUDGE  
11 THAT THE SUBSTANCE IS THAT YOU DO WANT TO TALK TO THE WITNESS?

12 A. YES. THE JUDGE SAYS WILL IT TAKE ANY PARTICULAR DEGREE  
13 IN EDUCATION IN THE GUESS THAT YOU WOULD WANT TO TALK TO HER  
14 AND I SAID, NO, SIR, I DON'T THINK IT WOULD.

15 Q. OKAY. NOW, LET'S MOVE FORWARD TO PAGE SIX OF TRIAL DAY  
16 20. AND DO YOU SEE DOWN ON LINE 16 THROUGH 20 --

17 A. YES.

18 Q. -- WHERE THE JUDGE EXCUSES THE JURY UNTIL TOMORROW  
19 MORNING AT NINE O'CLOCK?

20 A. YES.

21 Q. DO YOU SEE WHERE IT SAYS JURY EXITS AT 1:08 P.M.?

22 A. YES.

23 Q. NOW, LET'S GO TO TRIAL DAY 20, PAGE 13 -- SORRY, PAGE 12.  
24 PAGE 12. DO YOU SEE AT THE VERY BOTTOM WHERE IT SAYS MR.  
25 BLACKBURN?

September 19, 2012

Blackburn/Direct

Page 604

1 A. YES.

2 Q. WOULD YOU READ THAT SENTENCE AND THEN WE'LL MOVE IT OVER  
3 TO THE NEXT PAGE?

4 A. I MIGHT ASK COUNSEL, I KNOW YOU HAVE SAID THAT I COULD  
5 SEE HER SHORTLY, BUT CAN YOU BE MORE SPECIFIC AS TO WHEN  
6 SHORTLY MIGHT COME?

7 MR. SEGAL: I NEED TO DEFINE A COUPLE OF MATTERS,  
8 MR. BLACKBURN, BUT I WOULD SAY BY TWO O'CLOCK. I JUST WANT TO  
9 ADD FOR THE RECORD, YOUR HONOR, THE REQUEST IN REGARD TO  
10 WHETHER MS. STOECKLEY SHOULD BE RELEASED OR NOT WAS THE  
11 REQUEST THAT I CONVEYED AT HER INSTANCE. IT IS NOT  
12 NECESSARILY MY REQUEST, YOUR HONOR.

13 THE COURT: ALL RIGHT. I DIDN'T IDENTIFY YOU WITH  
14 THE REQUEST. YOU WERE JUST COMMUNICATING A REQUEST BY THE  
15 WITNESS AND HER BOYFRIEND.

16 MR. SEGAL: YES, YOUR HONOR.

17 THE COURT: TAKE A RECESS UNTIL TOMORROW MORNING AT  
18 NINE O'CLOCK.

19 Q. AND THEN THE CLERK -- I'M SORRY, THE COURT REPORTER ADDS  
20 A NOTE SAYING WHAT?

21 A. THE PROCEEDING WAS ADJOURNED AT 1:17 P.M., TO RECONVENE  
22 AT 9:00 A.M. ON FRIDAY, AUGUST 17TH, 1979.

23 Q. SO, THERE WAS NO MORE COURT THAT DAY?

24 A. I'M SORRY?

25 Q. THERE WAS NO MORE COURT THAT DAY?

September 19, 2012

Blackburn/Direct

Page 605

1 A. THAT'S CORRECT.

2 Q. NOW, DID YOU, IN FACT, HAVE THE WITNESS TURNED OVER TO  
3 YOU BY ABOUT 2:00 P.M. FOR AN INTERVIEW I MEAN?

4 A. YES. YES. YES.

5 Q. OKAY. AND 2:00 P.M. IS CONSISTENT WITH YOUR  
6 RECOLLECTION?

7 A. YES.

8 Q. DO YOU HAVE ANY IDEA HOW THE WITNESS GOT FROM THE SEVENTH  
9 FLOOR, WHERE THE DEFENSE WAS INTERVIEWING HER, TO THE EIGHTH  
10 FLOOR, WHERE THE U.S. ATTORNEY'S OFFICE IS LOCATED?

11 A. NO.

12 Q. LET'S LOOK AT GOVERNMENT EXHIBIT 2080. CAN YOU TELL US  
13 WHAT THAT IS, MR. BLACKBURN?

14 A. I THINK IT'S AN EIGHTH FLOOR FLOOR PLAN OF THE FEDERAL  
15 BUILDING IN RALEIGH.

16 (GOVERNMENT EXHIBIT NUMBER 2080  
17 WAS IDENTIFIED FOR THE RECORD.)

18 Q. OKAY. NOW, WAS THE U.S. ATTORNEY'S OFFICE ON THE EIGHTH  
19 FLOOR --

20 A. YES.

21 Q. -- WHILE YOU WERE WORKING THERE?

22 A. YES. YES.

23 Q. AND JUST FOR ORIENTATION, THE GRAND JURY ROOM IS ALSO ON  
24 THE EIGHTH FLOOR, IS THAT RIGHT?

25 A. YES, IT WAS AT THE OTHER END OF THE HALL I BELIEVE.

September 19, 2012



Blackburn/Direct

Page 606

1 Q. JUST INDICATE WITH YOUR HAND, TOUCH WHERE THE GRAND JURY  
2 ROOM IS.

3 A. I THINK RIGHT AROUND THAT LAST AREA, IF I'VE GOT THE  
4 RIGHT --

5 Q. WELL, NOW, NEW BERN AVENUE IS ON THE FRONT AT THE BOTTOM.

6 A. OKAY. THERE WE GO. THE BOTTOM LEFT-HAND PART OF THE  
7 BUILDING OR THE PAGE.

8 Q. I'M SORRY. LET'S SWITCH EXHIBITS TO 2081. I THINK I GOT  
9 THE -- 2082. OKAY. THIS ONE'S MORE CLEAR. NOW, IF YOU WOULD  
10 TAP -- WHAT DOES HE TAP TO GET THAT -- NOW, WOULD YOU MARK ON  
11 THIS EXHIBIT THE LOCATION OF THE GRAND JURY ROOM?

12 A. (WITNESS COMPLIES.)

13 Q. ALL RIGHT. NOW, THE AREA BORDERED IN YELLOW, IS THAT THE  
14 U.S. ATTORNEY'S OFFICE AS IT EXISTED IN 1979?

15 A. YES.

16 Q. ALL RIGHT. NOW, CAN YOU INDICATE BY TOUCHING THE SCREEN  
17 WHERE MR. ANDERSON, THE U.S. ATTORNEY'S OFFICE WAS?

18 A. (WITNESS COMPLIES.)

19 Q. OKAY. AND NOW INDICATE WHERE YOUR OFFICE WAS.

20 A. (WITNESS COMPLIES.)

21 Q. OKAY. THAT WAS YOUR OFFICE AS FIRST ASSISTANT U.S.  
22 ATTORNEY?

23 A. YES.

24 Q. AND OBVIOUSLY THERE'S AN OFFICE BETWEEN THE TWO, AND WHO  
25 SAT THERE?

September 19, 2012

Blackburn/Direct

Page 607

1 A. MARIE SMITH. SHE WAS THE ADMINISTRATIVE ASSISTANT TO MR.  
2 ANDERSON.

3 Q. OKAY. IN WHICH OF THESE ROOMS DID THE INTERVIEW OF  
4 HELENA STOECKLEY TAKE PLACE?

5 A. MR. ANDERSON'S OFFICE.

6 Q. OKAY. NOW, DID MR. ANDERSON HAVE A DESK IN THE OFFICE?

7 A. YES.

8 Q. THE RIGHT SIDE OF THE PAGE BEING WEST AND THE BOTTOM OF  
9 THE PAGE BEING NORTH, WHICH WAY WAS HIS DESK FACING?

10 A. HIS DESK WAS FACING OUT THE WINDOWS TOWARDS THE STATE  
11 CAPITOL. I DON'T KNOW. YOU'LL HAVE TO TELL ME THAT  
12 DIRECTION.

13 Q. OKAY. WELL, YOU KNOW WHICH WAY THE STATE CAPITOL WAS, SO  
14 YOU TELL ME.

15 A. IT WENT OUT THAT WAY.

16 Q. ALL RIGHT. SO, IT WAS FACING OUT THAT WAY?

17 A. YES.

18 Q. AND WAS IT ALIGNED SQUARE WITH WALLS OR WAS IT AT AN  
19 ANGLE?

20 A. IT WAS SQUARE WITH THE WALLS.

21 Q. OKAY. NOW, WHO PARTICIPATED IN THE INTERVIEW OF HELENA  
22 STOECKLEY?

23 A. GEORGE ANDERSON WAS THERE. HE SAT BEHIND HIS DESK. I  
24 WAS THERE AND I BELIEVE I SAT IN A CHAIR TO HIS LEFT. AT THAT  
25 TIME, THERE WERE TWO LARGE, OVERSTUFFED CHAIRS AND A SOFA, A

September 19, 2012

Blackburn/Direct

Page 608

1 SOFA ALONG THE WALL. HELENA STOECKLEY WAS THERE. BRIAN  
2 MURTAGH WAS THERE. JACK CRAWLEY WAS THERE.

3 Q. OKAY. NOW, YOU SAID MR. ANDERSON WAS SITTING BY HIS DESK  
4 -- I MEAN BEHIND HIS DESK LOOKING OUT. SO, JUST FOR CLARITY,  
5 SINCE PERSON STREET IS WRITTEN ON THERE, WAS HE LOOKING OUT  
6 TOWARDS PERSON STREET?

7 A. YES.

8 Q. OKAY. NOW, WERE THERE ANY PEOPLE OTHER THAN THE  
9 ASSISTANT U.S. ATTORNEYS AND THE U.S. ATTORNEY AND HELENA  
10 STOECKLEY IN THE ROOM DURING THE INTERVIEW?

11 A. NO.

12 Q. ALL RIGHT. WAS THIS A PRETTY IMPORTANT INTERVIEW?

13 A. YES.

14 Q. CAN YOU EXPLAIN WHY?

15 A. WE WERE, I THINK, INTO THE DEFENSE CASE. THE DEFENDANT,  
16 DR. MACDONALD, HAD LONG ALLEGED THAT HIPPIE INTRUDERS HAD  
17 PARTICIPATED IN THE MURDER OF HIS FAMILY.

18 HELENA STOECKLEY WAS KNOWN AS SOMEONE WHO WAS A  
19 PERSON WHO HAD ONCE LIVED IN FAYETTEVILLE, NORTH CAROLINA. WE  
20 KNEW THAT THE DEFENSE WANTED TO USE OUT OF COURT WITNESS  
21 STATEMENTS AS AN EXCEPTION TO THE HEARSAY RULE THAT WOULD, YOU  
22 KNOW, BE POSSIBLE TO BE ADMITTED.

23 IT WAS IMPORTANT TO, I THINK, BOTH SIDES FRANKLY TO  
24 INTERVIEW HER. SINCE SHE WAS A DEFENSE WITNESS ESSENTIALLY  
25 THEY WENT FIRST IN THE MORNING.

September 19, 2012

Blackburn/Direct

Page 609

1 AND THEN JUDGE DUPREE, I REMEMBER SAYING WORDS TO  
2 THIS EFFECT, HE DIDN'T WANT ANYBODY TO BE SURPRISED AND SO HE  
3 WAS GOING TO ALLOW BOTH SIDES TO INTERVIEW HER. AND SO WE DID  
4 THAT AFTERNOON.

5 WE THOUGHT THIS WAS AN IMPORTANT INTERVIEW. ALL  
6 WITNESS INTERVIEWS, OF COURSE, ARE IMPORTANT IN A TRIAL, BUT  
7 WE THOUGHT THIS WAS PARTICULARLY SIGNIFICANT.

8 Q. WELL, IS IT FAIR TO SAY THAT THE MACDONALD DEFENSE WAS  
9 POINTING AT HELENA STOECKLEY AS A PRIME SUSPECT?

10 A. OH, YES.

11 Q. AND THE OUT OF COURT STATEMENTS YOU MENTIONED THAT WERE  
12 BEING PROFFERED WERE WITNESSES TO WHOM HELENA STOECKLEY HAD  
13 MADE ADMISSIONS?

14 A. I THINK THAT DURING THE 1970S SHE WAS SORT OF A VAGABOND,  
15 LIVING IN DIFFERENT LOCATIONS, LIVING WITH DIFFERENT PEOPLE,  
16 AND AT VARIOUS TIMES HAD MADE STATEMENTS THAT WERE -- COULD  
17 BE CONSTRUED AS ADMISSIONS TO THESE PEOPLE. SHE HAD ALSO MADE  
18 OTHER STATEMENTS AS WELL.

19 Q. AND SO YOU DIDN'T KNOW WHAT SHE WAS GOING TO SAY?

20 A. THAT'S CORRECT.

21 Q. ALL RIGHT. WELL, DESCRIBE WHAT HAPPENED AS THE INTERVIEW  
22 BEGAN.

23 A. I THINK I WAS THE ONE WHO ASKED HER QUESTIONS. MAYBE I  
24 WAS THE ONLY ONE. I DON'T REMEMBER THAT. BUT I DO REMEMBER I  
25 DID ASK HER QUESTIONS.

September 19, 2012

Blackburn/Direct

Page 610

1           AND SHE SAT DOWN IN THE CHAIR OPPOSITE ME, ONE OF  
2 THOSE OVERSTUFFED CHAIRS, AND AFTER WE DID THE INTRODUCTIONS,  
3 I SAID WORDS TO THE EFFECT, HELENA, ARE YOU INVOLVED IN THIS  
4 CASE? WERE YOU THERE? DID YOU PARTICIPATE IN THESE MURDERS?  
5 AND SHE SAID TO ME VERY CLEARLY, NO, I DID NOT. I WAS NOT  
6 THERE. THEN SHE SAID TO ME, WORDS TO THE EFFECT, DO YOU HAVE  
7 ANY EVIDENCE THAT I WAS THERE? AND I REMEMBER SAYING BACK TO  
8 HER, NO, HELENA, WE DON'T, EXCEPT FOR SOME OF YOUR OWN  
9 STATEMENTS.

10 Q.   NOW, WAS THAT --

11 A.   AND ONE MORE THING I SAID TO HER AND THAT WAS, WE DON'T  
12 EVEN HAVE YOUR FINGERPRINTS THERE. AND BEYOND THAT, MY MEMORY  
13 IS PRETTY MUCH GONE OF WHAT SHE DID SPECIFICALLY SAY.

14 Q.   BUT YOU CLEARLY REMEMBER THAT FIRST MOMENT WHEN SHE  
15 ANSWERED YOUR FIRST MATERIAL QUESTION?

16 A.   THAT'S CORRECT.

17 Q.   AND CAN YOU DESCRIBE YOUR REACTION WHEN YOU HEARD HER  
18 ANSWER?

19 A.   IT WAS LIKE THE AIR CAME OUT OF A BALLOON, I GUESS. IT  
20 WAS JUST RELIEF AND WE RELAXED. AND THEN WE SPENT TIME, I  
21 SUSPECT, JUST ASKING HER QUESTIONS TO BOLSTER OR SUPPORT OR BE  
22 MORE INQUISITIVE AS TO WHAT SHE MIGHT SAY IF SHE WERE CALLED  
23 TO TESTIFY, WHICH SHE, I THINK, WAS GOING TO BE CALLED TO  
24 TESTIFY.

25 Q.   NOW, DID YOU AT ANY TIME DURING THE INTERVIEW OF HELENA

September 19, 2012

Blackburn/Direct

Page 611

1 STOECKLEY THREATEN TO PROSECUTE HER FOR THE MURDERS OF JEFFREY  
2 MACDONALD'S FAMILY?

3 A. NO, I NEVER DID THAT.

4 Q. AND WOULD IT HAVE EVEN BEEN POSSIBLE, IN YOUR VIEW, TO  
5 PROSECUTE HELENA STOECKLEY FOR THOSE MURDERS?

6 A. I HAVE NO IDEA. I WILL TELL YOU THE REASON I SAY IT THAT  
7 WAY IS BECAUSE THE ISSUE OF STATUTE OF LIMITATIONS WAS AT  
8 HAND. I THINK, AT THAT TIME, I'M NOT FOR CERTAIN, BUT I THINK  
9 IT WAS A FIVE YEAR STATUTE OF LIMITATIONS ON THIS SORT OF  
10 THING AND THAT WOULD HAVE PASSED.

11 THE ISSUE OF WHETHER THIS WAS A CAPITAL CASE OR NOT,  
12 THEREBY ESCAPING THE STATUTE OF LIMITATIONS, WE NEVER  
13 RESOLVED.

14 JUDGE DUPREE, I REMEMBER IN SOME PRETRIAL  
15 DISCUSSIONS, I THINK TREATED IT AS THOUGH, BECAUSE HE GAVE  
16 EACH SIDE 20 JURY CHALLENGES, BUT HE -- WE NEVER RAISED THE  
17 ISSUE -- NEITHER SIDE RAISED THE ISSUE OF WHETHER IT WAS A  
18 CAPITAL CASE.

19 Q. OKAY. NOW, TO THE BEST OF YOUR RECOLLECTION,  
20 APPROXIMATELY HOW LONG DID THE INTERVIEW BY THE PROSECUTION OF  
21 HELENA STOECKLEY TAKE?

22 A. I WOULD HAZARD A GUESS OF ABOUT AN HOUR.

23 Q. ALL RIGHT. AND AFTER THE INTERVIEW WAS OVER, THERE WAS  
24 NO MORE COURT, RIGHT?

25 A. THAT'S CORRECT.

September 19, 2012

Blackburn/Direct

Page 612

1 Q. AND DID YOU HAVE AN OCCASION LATER THAT DAY TO BUMP INTO  
2 WADE SMITH IN THE BUILDING?

3 A. YES.

4 Q. AND DID YOU AND HE HAVE A CONVERSATION ABOUT THE TWO  
5 INTERVIEWS, THE DEFENSE AND PROSECUTION INTERVIEWS?

6 A. YES.

7 Q. TELL US ABOUT THAT.

8 A. I DON'T RECALL THAT HE TOLD ME ANYTHING, YOU KNOW, ABOUT  
9 THE INTERVIEWS THAT THEY HAD CONDUCTED AND I DON'T KNOW THAT I  
10 ASKED HIM. I DO RECALL TELLING HIM THAT DAY THAT HELENA HAD  
11 TOLD US THAT SHE WAS NOT PRESENT AT THE MACDONALD APARTMENT  
12 AND DID NOT PARTICIPATE IN THE MURDERS AND THAT'S WHAT SHE WAS  
13 GOING TO SAY. I DO REMEMBER TELLING HIM THAT.

14 Q. DID HE INDICATE ANY REACTION TO THAT VIS-A-VIS THE  
15 DEFENSE INTERVIEWS?

16 A. I'M SURE HE DID. I JUST DON'T RECALL WHAT IT WAS.

17 Q. ALL RIGHT. BUT DID HE SAY ANYTHING TO YOU TO THE EFFECT  
18 OF, WELL, WE REALLY GOT SOME GOOD STUFF FROM HER OR ANYTHING  
19 LIKE THAT?

20 A. OH, NO. NO. NO. NO. NO.

21 Q. DID HE SAY TO YOU THAT SHE HAD CONFESSED --

22 A. NO.

23 Q. -- INVOLVEMENT --

24 A. NO.

25 Q. -- DURING THE DEFENSE INTERVIEW?

September 19, 2012

Blackburn/Direct

Page 613

1 A. NO.

2 Q. SO, WHEN YOU WENT TO COURT THE NEXT DAY, DID YOU THINK  
3 THAT HELENA STOECKLEY HAD MADE ANY ADMISSIONS TO ANYBODY ON  
4 THE DAY OF THE INTERVIEWS?

5 A. NO. I HAD NO IDEA WHAT SHE WAS GOING TO SAY ON DIRECT  
6 FROM THE DEFENSE.

7 MR. BRUCE: MAY I HAVE JUST A MOMENT, YOUR HONOR?

8 THE COURT: YES, SIR.

9 (PAUSE.)

10 MR. BRUCE: SORRY, YOUR HONOR. I'M READY NOW.

11 BY MR. BRUCE:

12 Q. LET'S PUT UP TD-21, PAGE FIVE. DO YOU SEE, MR.  
13 BLACKBURN, THAT THESE ARE THE PROCEEDINGS FOR FRIDAY, AUGUST  
14 17TH, 1979?

15 A. YES.

16 Q. DO YOU SEE DOWN ON LINE 19, WHERE -- OR 18, WHERE MR.  
17 SEGAL CALLS HELENA STOECKLEY TO THE STAND.

18 A. YES.

19 Q. AND THEN YOU ASK FOR A BENCH CONFERENCE?

20 A. YES.

21 Q. OKAY. LET'S GO OVER TO PAGE SIX, AND READ WHAT YOU SAY  
22 THERE.

23 A. THIS IS THE ONE, OF COURSE, WE ALL TALKED TO YESTERDAY.  
24 I REMEMBER YOU TALKING ABOUT A VOIR DIRE. I KNOW THAT WADE  
25 MENTIONED THIS MORNING THAT SHE HAD COMMENTED ON THE NECESSITY

September 19, 2012



Blackburn/Direct

Page 614

1 OF WANTING AN ATTORNEY. I JUST WANTED TO BE SURE BEFORE WE  
2 GOT STARTED HOW WE'RE GOING TO GO.

3 MR. SMITH: I THINK OUR POSITION, JUDGE -- OF  
4 COURSE, WE WILL DO WHATEVER YOUR HONOR WISHES TO DO -- BUT I  
5 FEEL THAT WE WILL JUST GO AHEAD WITH HER IF WE CAN AND SEE  
6 WHAT HAPPENS.

7 MR. BLACKBURN: I THINK THAT IS FINE.

8 THE COURT: WELL, LET'S GO.

9 Q. ALL RIGHT. SO, HERE YOU'RE BRINGING UP THE POSSIBILITY  
10 OF HELENA STOECKLEY HAVING AN ATTORNEY BEFORE SHE TESTIFIES?

11 A. THAT'S CORRECT.

12 Q. AND MR. SMITH, REPRESENTING MACDONALD, SAYS NO, LET'S  
13 JUST GO AHEAD?

14 A. THAT'S CORRECT.

15 Q. ALL RIGHT. NOW, YOU WERE PRESENT, OF COURSE, FOR THE  
16 DIRECT EXAMINATION OF HELENA STOECKLEY?

17 A. I WAS.

18 Q. AND IS IT FAIR TO SAY THAT DURING THAT DIRECT EXAMINATION  
19 SHE WAS NOT GIVING ANY EVIDENCE FAVORABLE TO THE DEFENSE?

20 A. YES, THAT'S FAIR TO SAY.

21 Q. OKAY. LET'S GO FORWARD TO TRIAL DAY 21, PAGE 107. DO  
22 YOU SEE WHERE MR. SEGAL ASKS FOR A BENCH CONFERENCE?

23 A. YES.

24 Q. CAN YOU READ THE REST OF THE PAGE?

25 A. MR. SEGAL: AT THIS TIME, YOUR HONOR, I ASK FOR LEAVE OF

September 19, 2012

Blackburn/Direct

Page 615

1 COURT TO TAKE THIS WITNESS AS ON CROSS, BECAUSE SHE IS A  
2 SURPRISE AND HOSTILE WITNESS.

3 I REPRESENT TO THE COURT THAT DURING THE INTERVIEWS  
4 WITH ME AND WITH OTHER PERSONS PRESENT SHE STATED THAT WHEN  
5 SHE LOOKED AT THE PICTURE SHE HAD A RECOLLECTION OF STANDING  
6 OVER A BODY HOLDING A CANDLE, SEEING A MAN'S BODY ON THE  
7 FLOOR.

8 I ALSO MUST SAY, YOUR HONOR, WE ARE NOW DOWN TO THE  
9 BOTTOM FIVE OR SIX CRITICAL THINGS THAT SHE REVEALED  
10 YESTERDAY. I HAVE A FEELING, BASED UPON HER ANSWER TO THIS  
11 ONE NOW, THAT WHEN AND IF I ASK HER IN DIRECT FASHION, THAT I  
12 MAY GET NEGATIVE ANSWERS.

13 I HAD NO ANTICIPATION OF THAT, BECAUSE YESTERDAY  
14 THROUGHOUT THE TIME THAT SHE HAD MADE THESE STATEMENTS, WE  
15 ACCEPTED THEM, DID NOT EXPECT CONTRARY.

16 WE HAVE NOT HAD ANY DIFFERENT STATEMENTS FROM HER  
17 AND WE FEEL THAT WE ARE ENTITLED TO THE PLEA OF SURPRISE AS  
18 WELL AS THE FACT, I THINK, AT THIS POINT -- THE EXTENT OF HER  
19 HOSTILE RELATIONSHIP NOT IN TERMS OF MANNER BUT OF THE  
20 HOSTILITY OF HER INTEREST TO THE DEFENDANT.

21 I AM GOING TO TELL YOUR HONOR THE OTHER THINGS THAT  
22 SHE HAS SAID. WOULD THAT BE APPROPRIATE NOW TO EXPEDITE, OR  
23 SHOULD WE DO IT ONE AT A TIME?

24 THE COURT: WELL, IF IT WILL SAVE ANY TRIPS UP HERE  
25 MAYBE YOU SHOULD TELL US NOW.

September 19, 2012

Blackburn/Direct

Page 616

1 MR. SEGAL: SHE HAS ALREADY ACTUALLY SAID SOMETHING,  
2 AND I DID NOT WANT TO RAISE A SURPRISE QUESTION. I WANT TO DO  
3 IT ALL AT ONE TIME. THE PHOTOGRAPH THAT I SHOWED HER OF THE  
4 BEDROOM OF KRISTEN MACDONALD DURING THE INTERVIEW YESTERDAY,  
5 SHE STATED THAT SHE REMEMBERED RIDING THE ROCKING HORSE WHEN  
6 SHE LOOKED AT THE PICTURE.

7 SHE ALSO STATED YESTERDAY SHE REMEMBERED STANDING AT  
8 THE END OF THE SOFA HOLDING A CANDLE. SHE ALSO SAID WHEN SHE  
9 SAW THE BODY OF KRISTEN MACDONALD, THE ONE WHEN SHE WAS  
10 CLOTHED WITH THE BABY BOTTLE, THAT THAT PICTURE LOOKED  
11 FAMILIAR TO HER. THAT SCENE LOOKED FAMILIAR.

12 SHE ALSO SAID WHEN SHE WAS SHOWN THE PHOTOGRAPH OF  
13 COLETTE MACDONALD, THE SAME ONE I SHOWED HER TODAY, THAT SHE  
14 SAID THAT THE FACE IN THAT PICTURE LOOKED FAMILIAR, EXCEPT  
15 THAT THE CHIN WAS BROKEN AND MADE IT A LITTLE HARD.

16 SHE ALSO STATED, AND I'M GOING TO GET TO IT -- SHE'S  
17 GOTTEN TO THE POINT WHERE SHE DOES NOT SOUND LIKE SHE IS GOING  
18 TO COOPERATE FURTHER -- THAT SHE WAS STANDING AT THE CORNER OF  
19 HONEYCUTT ACROSS FROM MELONY VILLAGE. SHE HAS A RECOLLECTION  
20 OF STANDING THERE DURING THE EARLY MORNING HOURS OF FEBRUARY  
21 17TH, 1970. SHE FURTHER STATED YESTERDAY, AND I INTEND TO ASK  
22 HER NOW, THAT SHE HAS A RECOLLECTION OF STANDING OUTSIDE OF  
23 THE HOUSE LOOKING AT HER HANDS AND SAYING, MY GOD, THE BLOOD;  
24 OH MY GOD, THE BLOOD. SHE SAID THAT TOOK PLACE FEBRUARY 17TH,  
25 1970.

September 19, 2012

Blackburn/Direct

Page 617

1           THERE ARE WITNESSES TO EACH OF THESE THINGS. I MUST  
2 SAY, YOUR HONOR, THERE WERE PERSONS PRESENT THE ENTIRE TIME  
3 THIS TOOK PLACE.

4           I INTEND TO NOW ASK HER DIRECTLY EACH OF THESE  
5 QUESTIONS. IF SHE REFUSES OR DENIES HER STATEMENT, I ASK FOR  
6 LEAVE TO CONFRONT HER; DID YOU NOT SAY THAT YESTERDAY WHEN YOU  
7 WERE CONFRONTED WITH THESE PHOTOS?

8           IF SHE PERSISTS IN DENYING IT WE WILL OF COURSE  
9 IMPEACH HER AS WE HAVE THE RIGHT TO IMPEACH HER UNDER THE  
10 RULES. ALTHOUGH WE HAVE CALLED HER AS A WITNESS, THERE ARE  
11 RULES TO PERMIT THAT TO BE DONE.

12           WHEN I AM DONE WITH THAT, I INTEND TO TURN HER OVER  
13 FOR CROSS-EXAMINATION.

14 Q.   NOW, MY QUESTION TO YOU IS, DID THESE STATEMENTS THAT MR.  
15 SEGAL WAS MAKING ABOUT WHAT HELENA STOECKLEY HAD ALLEGEDLY  
16 SAID DURING THE DEFENSE INTERVIEW, DID THAT SURPRISE YOU?

17 A.   WELL, YES.

18 Q.   AND SO ON THE NEXT PAGE, TRIAL DAY 21, PAGE 110, WHAT DID  
19 YOU SAY? JUST READ IT.

20 A.   OF COURSE, I WAS NOT THERE WHEN SHE TALKED WITH THE  
21 DEFENSE YESTERDAY, BUT IN HER INTERVIEW WITH THE GOVERNMENT  
22 NONE OF THOSE STATEMENTS WERE MADE. SHE SPECIFICALLY TOLD  
23 US --

24           THE COURT: (INTERPOSING.) DID YOU ASK HER ANY?

25           MR. BLACKBURN: YES, SIR. SHE SPECIFICALLY TOLD US

September 19, 2012

Blackburn/Direct

Page 618

1 THAT SHE HAD BEEN SHOWN THE PHOTOGRAPHS AND WE ASKED HER, DID  
2 YOU RECOGNIZE ANY OF THE SCENES IN THOSE PHOTOGRAPHS? THE  
3 ANSWER WAS NO. I ASKED HER HAVE YOU EVER BEEN IN THAT HOUSE?  
4 SHE SAID NO. I SAID DO YOU KNOW ANYTHING ABOUT THAT? NO.  
5 WHO DO YOU THINK DID IT? DR. MACDONALD. YOU KNOW, IT JUST  
6 WENT ONE RIGHT AFTER THE OTHER.

7 Q. NOW, WAS THAT A FAIR SUMMARY, TO THE BEST OF YOUR  
8 ABILITY, OF WHAT HAD GONE ON DURING THE DEFENSE -- STRIKE THAT  
9 -- THE PROSECUTION INTERVIEW THE PREVIOUS DAY?

10 A. YES.

11 Q. LET ME SEE WHERE YOU STOPPED READING. OKAY. NOW, READ  
12 THE NEXT PARAGRAPHS 16 THROUGH 19.

13 A. I DISCUSSED -- I TOLD MR. SMITH LAST NIGHT WHAT SHE TOLD  
14 US. I WAS UNDER THE IMPRESSION TO THIS VERY MOMENT THAT WHAT  
15 SHE TOLD US WAS ESSENTIALLY WHAT SHE TOLD THEM. IT IS --

16 Q. THAT WAS BASED ON YOUR CONVERSATION THE PREVIOUS DAY WITH  
17 WADE SMITH?

18 A. CORRECT.

19 Q. ALL RIGHT. NOW, READ ON.

20 A. IT IS DIFFICULT FOR ME -- YOU KNOW, I AM NOT SAYING THAT  
21 THEY ARE NOT SAYING WHAT SHE SAID. I JUST DON'T KNOW WHICH  
22 WAY IT IS BECAUSE SHE HAS NOT INDICATED ANYTHING TO THE  
23 GOVERNMENT.

24 Q. NOW, READ WADE SMITH'S REPLY, PLEASE.

25 A. MR. SMITH: JUDGE, HERE I THINK IS WHERE WE ARE.

September 19, 2012

Blackburn/Direct

Page 619

1 GENERALLY, SHE SAID TO US THE SAME THING AND THAT IS, I DON'T  
2 REMEMBER. BUT IN TWO OR THREE OR FOUR INSTANCES, WHATEVER THE  
3 LIST WOULD REVEAL, SHE SAYS SOMETHING WHICH WOULD GIVE AN  
4 INTERESTING INSIGHT INTO HER MIND.

5 I WOULD SUBMIT THAT WE HAVE A RIGHT TO CROSS HER ON  
6 THOSE. IF SHE DENIES THEM, THEN THEY HAVE A RIGHT TO IMPEACH  
7 HER ON THE STATEMENTS OR SHOW THAT SHE DID NOT SAY ANYTHING  
8 LIKE THAT.

9 THE COURT: I AM NOT GOING TO CROSS THE HOSTILITY  
10 THING UNTIL THERE IS A REASON TO INDICATE IT, BUT I'M GOING TO  
11 ASK THE WITNESS A QUESTION MYSELF.

12 Q. AND DO YOU RECALL THAT JUDGE DUPREE DID ASK HELENA  
13 STOECKLEY SOME QUESTIONS?

14 A. HE DID.

15 Q. AND GO AHEAD AND READ THAT, PLEASE.

16 A. THE COURT: MS. STOECKLEY, HOW LONG DID YOU SPEND  
17 YESTERDAY TALKING TO DEFENSE COUNSEL IN THIS CASE, MR. SEGAL,  
18 MR. SMITH AND OTHERS?

19 THE WITNESS: ABOUT THREE AND A HALF TO FOUR HOURS.

20 THE COURT: DID YOU THEREAFTER TALK TO THE  
21 GOVERNMENT'S ATTORNEYS?

22 THE WITNESS: YES, SIR.

23 THE COURT: HAD YOU EVER SEEN THEM AND TALKED WITH  
24 THEM BEFORE?

25 THE WITNESS: NO, SIR. ONE MEMBER I HAD BEFORE.

September 19, 2012

Blackburn/Direct

Page 620

1 Q. ALL RIGHT. KEEP GOING.

2 A. THE COURT: NOW, DID YOU TELL BOTH SIDES THE SAME STORY?

3 THE WITNESS: AS FAR AS I KNOW, YES, SIR.

4 THE COURT: ALL RIGHT, THAT WAS THE QUESTION I WAS  
5 GOING TO ASK.

6 Q. ALL RIGHT. SO, THE DIRECT EXAMINATION RESUMED, IS THAT  
7 RIGHT?

8 A. THAT'S RIGHT.

9 Q. NOW, AS YOU SAT THERE AND LISTENED TO THE DIRECT  
10 EXAMINATION OF HELENA STOECKLEY BY MR. SEGAL, FROM YOUR POINT  
11 OF VIEW AS THE PROSECUTOR, WAS IT GOING WELL?

12 A. IT WAS GOING WELL FOR THE PROSECUTION. IT WASN'T GOING  
13 WELL FOR THE DEFENSE.

14 Q. AND THEN THE WITNESS WAS TENDERED ON CROSS-EXAMINATION?

15 A. YES.

16 Q. LET'S GO TO -- AND YOU HANDLED THE CROSS-EXAMINATION, IS  
17 THAT RIGHT?

18 A. THAT'S RIGHT.

19 Q. LET'S GO TO TRIAL DAY 21, PAGE 141. START AT LINE 19.

20 A. TO YOUR OWN KNOWLEDGE, DID YOU PARTICIPATE IN THE  
21 KILLINGS OF THE MACDONALD FAMILY?

22 NO, SIR.

23 HOW DO YOU FEEL TOWARDS CHILDREN?

24 I LOVE CHILDREN.

25 OF YOUR OWN PERSONAL KNOWLEDGE, DID YOU KILL COLETTE

September 19, 2012

Blackburn/Direct

Page 621

1 MACDONALD?

2 NO, SIR.

3 HOW ABOUT KRISTEN?

4 NO, SIR.

5 HOW ABOUT KIMBERLEY?

6 NO, SIR.

7 DID YOU TRY TO KILL DR. MACDONALD?

8 NO, SIR.

9 DO YOU KNOW WHO DID?

10 NO, SIR.

11 DO YOU RECALL EVER BEING IN THE MACDONALD APARTMENT

12 CARRYING A CANDLE?

13 NO, SIR.

14 NOW, I BELIEVE YOU TESTIFIED ON DIRECT --

15 Q. THAT'S ALL RIGHT.

16 A. I'M SORRY.

17 Q. YOU CAN STOP. IS IT FAIR TO SAY THAT THE SUM -- THE LIST  
18 OF QUESTIONS YOU JUST READ AND THE ANSWERS IS A FAIR SUMMARY  
19 OF HER TESTIMONY?

20 A. YES.

21 Q. NOW, LET'S MOVE TO TRIAL DAY 21, PAGE 164. AND IT LOOKS  
22 LIKE YOU'RE ABOUT TO CONCLUDE YOUR CROSS-EXAMINATION. READ  
23 LINES 12 THROUGH 19.

24 A. NOW, WHEN YOU CAME HOME ABOUT 4:30 OR FIVE O'CLOCK THAT  
25 MORNING ON THE 17TH, YOU GOT OUT OF THE CAR, YOU RECALL THAT?

September 19, 2012



Blackburn/Direct

Page 622

1 YES, SIR.

2 DID YOU SEE ANY BLOOD ON YOUR HANDS?

3 NO, SIR.

4 DID YOU SEE ANY BLOOD ON YOUR CLOTHES?

5 NO, SIR.

6 MR. BLACKBURN: NO FURTHER QUESTIONS, YOUR HONOR.

7 Q. ALL RIGHT. SO, AS A LITIGATOR AND A PROSECUTOR, DID YOU  
8 FEEL LIKE THAT THAT WENT PRETTY WELL FOR THE PROSECUTION?

9 A. YES, I DID.

10 Q. ALL RIGHT. NOW, LET'S GO TO LATER THAT SAME DAY, TRIAL  
11 DAY 21, 179. AND DO YOU SEE WHERE IT SAYS MR. SEGAL, YOUR  
12 HONOR? WOULD YOU READ THAT, PLEASE, STARTING AT LINE 13?

13 A. YOUR HONOR, COULD WE DISPOSE OF THE ADMINISTRATIVE MATTER  
14 IN REGARD TO THE SUBPOENA THAT I HAVE PREPARED?

15 OH, YES.

16 MR. SEGAL: MAY WE ASK THE MARSHAL TO BRING MS.  
17 STOECKLEY BACK TO THE COURT, PLEASE. IT WILL JUST TAKE A  
18 MOMENT, YOUR HONOR.

19 MS. STOECKLEY ENTERS AT 1:55 P.M.

20 MR. SEGAL: YOUR HONOR, MS. STOECKLEY HAS BEEN  
21 PRESENT IN THE COURT PURSUANT TO A WARRANT OF ARREST ISSUED  
22 FOR HER AS A MATERIAL WITNESS IN THIS MATTER AFTER I HAD FILED  
23 AN AFFIDAVIT WITH THIS COURT AND MADE AN ORAL MOTION IN THAT  
24 REGARD. I BELIEVE AT THIS TIME, IT IS APPROPRIATE TO  
25 DISCHARGE THE WARRANT OF ARREST. IT WOULD EXPIRE, I THINK,

September 19, 2012

Blackburn/Direct

Page 623

1 THIS EVENING ANYWAY. HOWEVER, BECAUSE IT IS NOT CERTAIN IN MY  
2 MIND THAT MS. STOECKLEY'S TESTIMONY MAY NOT BE NEEDED FURTHER  
3 IN THIS CASE, AT THIS TIME I AM GOING TO TENDER HER A SUBPOENA  
4 AS A WITNESS, A SUBPOENA TO BE HERE AT TWO O'CLOCK THIS  
5 AFTERNOON. I WILL ASK THAT THEREAFTER SHE CAN BE EXCUSED, AND  
6 I WILL JUST MAKE ARRANGEMENTS TO LOCATE -- I WOULD ASK THE  
7 COURT TO ADVISE MS. STOECKLEY OF THE IMPORTANCE OF HONORING  
8 THE SUBPOENA AND THE FACT THAT THE COURT DOES FULLY EXPECT HER  
9 TO RETURN HERE AS NEEDED PURSUANT TO THE SUBPOENA.

10 THE COURT: WELL, I WILL SAY TO THE WITNESS, MS.  
11 STOECKLEY, FIRST OF ALL, I HOPE YOU WILL UNDERSTAND THAT THE  
12 COURT, WHEN CALLED UPON TO DO SO IN A CASE OF A WITNESS WHO IS  
13 APPARENTLY RELUCTANT TO COME TO COURT OR IS EVADING PROCESS OF  
14 THE COURT, HAD TO, IN THIS INSTANCE, TAKE SOME NECESSARY  
15 ACTION TO INSURE YOUR PRESENCE HERE.

16 Q. ALL RIGHT. YOU CAN STOP. AND I BELIEVE YOU SKIPPED THE  
17 FIRST COUPLE OF SENTENCES AT THE TOP OF THE PAGE STARTING WITH  
18 I AM ALSO GOING.

19 A. I AM ALSO GOING TO TENDER HER THE STATUTORY WITNESS FEES  
20 IN THAT REGARD. MY REQUEST TO THE COURT, THOUGH, IN VIEW OF  
21 THE FACT THAT MS. STOECKLEY HAS FRANKLY STATED THAT SHE DID  
22 NOT WANT TO BE HERE AND THAT SHE WAS SO DIFFICULT TO LOCATE, I  
23 WOULD ASK THE COURT TO ADVISE MS. STOECKLEY OF THE IMPORTANCE  
24 OF HONORING THE SUBPOENA AND THE FACT THAT THE COURT DOES  
25 FULLY EXPECT HER TO RETURN HERE AS NEEDED PURSUANT TO THIS

September 19, 2012

Blackburn/Direct

Page 624

1 SUBPOENA.

2 Q. ALL RIGHT. NOW, SKIP DOWN, IF YOU WOULD, TO LINE 20. AT  
3 THE END OF THE LINE IT STARTS WITH WHAT COUNSEL IS TELLING  
4 YOU.

5 A. WHAT COUNSEL IS TELLING YOU, THOUGH, IS THAT CONCEIVABLY  
6 HE MIGHT WANT YOU TO TESTIFY FURTHER AT SOME LATER TIME IN THE  
7 TRIAL, AND IN THAT EVENT, HE IS SERVING YOU WITH A SUBPOENA AT  
8 THIS TIME FOR YOUR CONTINUED APPEARANCE OR AT SUCH TIME AS HE  
9 WILL LET YOU KNOW. OF COURSE, THAT IS THE PROCESS OF THE  
10 COURT AND FAILURE TO COMPLY WITH IT COULD RESULT IN SANCTIONS  
11 OF ONE KIND OR ANOTHER AGAINST YOU, SO YOU WILL UNDERSTAND  
12 THAT.

13 I AM SURE THAT COUNSEL WILL NOT CALL YOU UNLESS HE  
14 FEELS THAT IT'S ESSENTIAL TO THE DEFENSE OF HIS CLIENT, BUT IF  
15 HE DOES, OF COURSE, YOU WILL BE EXPECTED TO COMPLY.

16 MR. SEGAL: IS THAT CLEAR, MS. STOECKLEY?

17 MS. STOECKLEY: YES, SIR.

18 MR. SEGAL: DO WE HAVE YOUR WORD THAT YOU WILL  
19 APPEAR AS REQUIRED, MS. STOECKLEY?

20 MS. STOECKLEY: YES, SIR.

21 MR. SEGAL: DO WE HAVE YOUR WORD THAT YOU WILL  
22 APPEAR AS REQUIRED?

23 MS. STOECKLEY: YES, SIR.

24 MR. SEGAL: THANK YOU, YOUR HONOR.

25 Q. ALL RIGHT. THANK YOU. THAT'S ENOUGH. SO, MS. STOECKLEY

September 19, 2012

Blackburn/Direct

Page 625

1 WAS GOING TO BE CONTINUING UNDER DEFENSE SUBPOENA SUBJECT TO  
2 RECALL, IS THAT RIGHT?

3 A. THAT'S CORRECT.

4 Q. ALL RIGHT. NOW, DO YOU RECALL AFTER MS. STOECKLEY'S  
5 TESTIMONY -- AND BY THE WAY, THAT TESTIMONY WAS BEFORE THE  
6 JURY, IS THAT RIGHT?

7 A. THAT'S CORRECT.

8 Q. AFTER THAT, DID THE COURT TAKE SOME VOIR DIRE TESTIMONY  
9 OF THE SO-CALLED STOECKLEY WITNESSES?

10 A. YES.

11 Q. CAN YOU EXPLAIN THAT?

12 A. WELL, THE DEFENSE WANTED TO GET INTO EVIDENCE THESE --  
13 WHAT THESE WITNESSES SAID. AND IT ESSENTIALLY WOULD BE  
14 HEARSAY AND WAS TRYING TO DO IT UNDER A RULE, I DON'T RECALL  
15 THE RULE NUMBER, AS AN EXCEPTION TO THE HEARSAY RULE.

16 AND BEFORE THE COURT WOULD ALLOW THEM TO TESTIFY, HE  
17 CONDUCTED AN OUT OF COURT OR OUT OF THE JURY PRESENCE HEARING,  
18 I SUPPOSE, CALL IT A VOIR DIRE. AND THEY -- EACH WITNESS GOT,  
19 YOU KNOW, ON THE STAND AND GAVE DIRECT AND THEN THERE WAS  
20 CROSS-EXAMINATION. CROSS-EXAMINATION WAS, I BELIEVE, BY BRIAN  
21 MURTAGH OF THESE DIFFERENT WITNESSES. AND THEN THE JUDGE TOOK  
22 IT UNDER ADVISEMENT.

23 Q. AND THE PARTIES PRESENTED BRIEFS AND ARGUED THE ISSUE ON  
24 WHETHER THESE HEARSAY STATEMENTS SHOULD BE ADMITTED?

25 A. THAT'S RIGHT.

September 19, 2012

Blackburn/Direct

Page 626

1 Q. AND JUDGE DUPREE TOOK IT UNDER ADVISEMENT OVER THE  
2 WEEKEND?

3 A. THAT'S RIGHT.

4 Q. AND TO YOUR KNOWLEDGE, DID ANY OF THE PROSECUTION TEAM  
5 HAVE ANYTHING -- ANY CONTACT WHATSOEVER WITH MS. STOECKLEY  
6 OVER THAT WEEKEND?

7 A. NO.

8 Q. I SUPPOSE YOU WERE SPENDING THE WEEKEND CONTINUING YOUR  
9 TRIAL WORK?

10 A. YES, BECAUSE THE DEFENSE, I THINK, WAS HALFWAY THROUGH OR  
11 TWO-THIRDS OF THE WAY THROUGH THEIR CASE. WE KNEW THAT DR.  
12 MACDONALD WAS GOING TO -- OR WE THOUGHT HE WAS GOING TO  
13 TESTIFY, WHICH HE DID ON THE FOLLOWING THURSDAY AND FRIDAY. I  
14 DON'T RECALL WHO THEIR WITNESSES WERE MONDAY AND TUESDAY AND  
15 WEDNESDAY. BUT WE HAD TO KEEP GOING, YOU KNOW, WITHOUT LET UP  
16 TO BE READY TO GO.

17 Q. DID YOU LEARN ON MONDAY IN COURT THAT THERE HAD BEEN SOME  
18 ACTIVITY WITH REGARD TO MS. STOECKLEY OVER THE WEEKEND?

19 A. YES.

20 Q. DID YOU KNOW ANYTHING ABOUT THAT BEFORE YOU GOT TO COURT  
21 MONDAY?

22 A. NO.

23 Q. SO, NO ONE CALLED YOU OR GOT THE PROSECUTION INVOLVED IN  
24 ANY OF THAT?

25 A. NO.

September 19, 2012

Blackburn/Direct

Page 627

1 Q. AND DO YOU KNOW OF ANY INVOLVEMENT OF THE UNITED STATES  
2 MARSHALS IN THOSE ACTIVITIES OVER THE WEEKEND?

3 A. NO.

4 Q. ALL RIGHT. LET'S GO TO TRIAL DAY 22, PAGE 179. DO YOU  
5 SEE WHERE AT LINE THREE THE COURT IS TALKING AND IT STARTS  
6 WITH, OH, I'M GLAD YOU MENTIONED?

7 A. YES.

8 Q. PLEASE READ THAT.

9 A. THE COURT: OH, I'M GLAD YOU MENTIONED THAT BECAUSE I HAD  
10 NEGLECTED, JUST COMPLETELY OVERLOOKED IT, TO TELL YOU, BUT I  
11 WANT YOU TO KNOW THAT AMONG OTHERS CALLED BY HELENA, SHE  
12 CALLED ME TWICE SATURDAY NIGHT STATING THAT SHE WAS LIVING IN  
13 MORTAL DREAD OF PHYSICAL HARM BY BERNARD SEGAL, COUNSEL FOR  
14 THE DEFENDANT, AND THAT SHE WANTED A LAWYER TO REPRESENT HER.

15 I SAID, WELL, NOW, LOOK, I CANNOT TALK TO YOU ABOUT  
16 THIS CASE, BUT SOMEBODY WILL CALL YOU TOMORROW. WHERE WILL  
17 YOU BE? THAT IS THE REASON I KNEW THIS JOURNEY'S END THING.  
18 SHE GAVE ME THE JOURNEY'S END.

19 OF COURSE, WHAT I WANTED TO DO WAS GO TO THE  
20 CRIMINAL JUSTICE ACT TO SEE WHETHER OR NOT I COULD PAY ANY  
21 LAWYER UNDER THESE CIRCUMSTANCES, AND AMAZINGLY I FOUND AN  
22 AMENDMENT TO THE ACT, WHICH IS NOT EVEN IN THE BOUND VOLUME,  
23 WHICH ALLOWS ME TO DO IT FOR A WITNESS WHO IS IN --

24 MR. SMITH: (INTERPOSING.) THAT IS INCREDIBLE.

25 THE COURT: SO I TOLD STEVE COGGINS THEN, I SAID,

September 19, 2012

Blackburn/Direct

Page 628

1 FIND ME A LAWYER, AND I THINK HE CALLED EVERYBODY IN THE BOOK  
2 JUST ABOUT, BUT HE FINALLY GOT JERRY LEONARD.

3 LAW CLERK: HAVE YOU EVER TRIED TO FIND A LAWYER ON  
4 SUNDAY AFTERNOON?

5 THE COURT: YOU CAN ALWAYS FIND ME. SEGAL HAS  
6 ALWAYS GOT ME WORKING ON SUNDAY AFTERNOON.

7 MR. MURTAGH: JUDGE, I GUESS WE WON'T HAVE YOUR  
8 TESTIMONY.

9 THE COURT: THANK GOD FOR THAT RULE THAT SAYS THAT I  
10 AM COMPLETELY READ OUT OF THIS ONE.

11 Q. ALL RIGHT. YOU CAN STOP THERE. WAS THAT -- WHEN THAT  
12 HAPPENED IN COURT, WHEN THAT WAS DISCLOSED BY JUDGE DUPREE, IS  
13 THAT THE FIRST YOU KNEW OF IT?

14 A. YES.

15 Q. ALL RIGHT. NOW, JUDGE DUPREE RULED THAT THE OUT OF COURT  
16 STATEMENTS WOULD NOT COME IN, IS THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. NOW, HELENA STOECKLEY REMAINED AVAILABLE FOR RECALL.  
19 FIRST, LET'S LOOK AT THAT RULING. ACTUALLY, THE DEFENSE  
20 CALLED SOME OTHER WITNESSES TRYING TO GET JUDGE DUPREE TO  
21 CHANGE HIS MIND. DO YOU REMEMBER WENDY ROUDER?

22 A. YES.

23 Q. OKAY.

24 (PAUSE.)

25 ALL RIGHT. LET'S GO BACK TO RIGHT WHERE WE WERE

September 19, 2012

Blackburn/Direct

Page 629

1 EXCEPT IT'S TRIAL DAY 22, PAGE 180. DO YOU SEE WHERE AT LINE  
2 TEN MR. MURTAGH SAYS WHAT I AM CONCERNED ABOUT?

3 A. YES.

4 Q. READ THAT TO THE BOTTOM OF THE PAGE, IF WOULD YOU.

5 A. WHAT I AM CONCERNED ABOUT IS THAT THIS PERSON IS VERY  
6 SUSCEPTIBLE TO SUGGESTION. ALL OF HER PAST FRIENDS,  
7 UNDERHILL, ZILLIOUX, I DETECTED BEASLEY WAS HANGING AROUND.

8 THE COURT: MAYBE I CAN SHORTEN THAT FOR YOU. I AM  
9 GOING TO ORDER COUNSEL FOR BOTH SIDES AND ALL OTHER WITNESSES  
10 TO STAY AWAY FROM THIS WOMAN UNTIL THIS THING IS OVER.

11 YOU CAN BRING HER BACK IN HERE AND TESTIFY IF SHE  
12 WANTS TO, BUT I WILL JUST TREAT EVERYBODY ALIKE ABOUT THAT  
13 ONE, THEN WE WON'T HAVE THAT QUESTION TO ARISE.

14 MR. MURTAGH: I BELIEVE SHE IS IN THE WITNESS ROOM.

15 MR. LEONARD: SHE IS IN A SEPARATE WITNESS ROOM FROM  
16 ALL THE OTHERS.

17 Q. NOW, IS THAT JERRY LEONARD?

18 A. YES.

19 Q. ALL RIGHT. AND THEN WHAT DOES THE COURT SAY ON THE NEXT  
20 PAGE?

21 A. OH, YOU'VE GOT HER HERE. BENCH CONFERENCE TERMINATED.

22 Q. ALL RIGHT. SO, IS IT YOUR UNDERSTANDING THAT HELENA  
23 STOECKLEY WAS IN A SEPARATE WITNESS ROOM AVAILABLE FOR RECALL  
24 BY THE DEFENSE?

25 A. YES.

September 19, 2012



Blackburn/Direct

Page 630

1 Q. LET'S GO TO TRIAL DAY 25, WHICH WOULD BE THURSDAY, AUGUST  
2 23RD, 1979. START READING WITH WHERE IT SAYS -- WAIT A MINUTE  
3 -- TRIAL DAY 25, PAGE 153. DO YOU SEE WHERE IT SAYS MR.  
4 BLACKBURN AT THE BENCH?

5 A. YES.

6 Q. READ THAT, PLEASE.

7 A. JUDGE, WE HAVE JUST INQUIRED -- I HAVE JUST TALKED TO  
8 WADE. WE WANT TO INQUIRE ON THE SITUATION WITH RESPECT TO  
9 HELENA STOECKLEY, WHETHER OR NOT SHE IS STILL UNDER SUBPOENA  
10 HERE.

11 THE COURT: I KNOW NOTHING ABOUT IT. I KEEP ASKING.  
12 I TOLD THEM LAST NIGHT IF THEY'RE GOING TO USE HER, THEY HAD  
13 BETTER DO IT FIRST THING THIS MORNING OR I WAS GOING TO  
14 RELEASE HER. THEY DIDN'T USE HER SO I ASSUME SHE IS RELEASED,  
15 I DON'T KNOW -- BUT I DON'T KNOW.

16 MR. BLACKBURN: HER LAWYER, JERRY, IS STILL AROUND.

17 THE COURT: I ASKED MR. SEGAL, I SAID, WHAT IS HE  
18 STILL DOING HERE?

19 MR. SMITH: I TALKED TO JERRY LEONARD AT GREAT  
20 LENGTH, YOUR HONOR, THIS MORNING, TALKED TO HIM FOR A LONG  
21 TIME, AND THIS WOMAN CONTINUES TO SAY THINGS THAT TIE HER TO  
22 THIS CASE.

23 I WILL BE FRANK WITH YOUR HONOR, WE HAVE NO PLANS TO  
24 USE HER AT THIS MOMENT, BUT WE HAVE GOT TOO MUCH AT STAKE. IT  
25 IS TOO IMPORTANT A CASE AND SHE'S SAID TOO MUCH FOR US TO

September 19, 2012

Blackburn/Direct

Page 631

1 JUST, YOU KNOW, OUT OF HAND SAY, OH, SURE, GO ON, GO AWAY, WE  
2 WILL NEVER SEE YOU AGAIN. GO BACK IN HIDING AND LET THE YEARS  
3 ROLL BY.

4 SHE IS HERE. THE DEFENDANT IS ON THE STAND AND WE  
5 FEEL THAT WE NEED TO BE ABLE TO TALK WITH JERRY AND HAVE HER  
6 AVAILABLE AT LEAST FOR THIS AFTERNOON.

7 THE COURT: WELL, TODAY IS SHORT ANYWAY. GO ON.

8 BENCH CONFERENCE TERMINATED.

9 Q. DOESN'T IT SAY TODAY IS SHOT ANYWAY?

10 A. YES.

11 Q. OKAY. SO, THE DEFENSE WAS ABLE TO KEEP HER AROUND AT  
12 LEAST ONE MORE DAY?

13 A. YES.

14 Q. ALL RIGHT. NOW, LET'S MOVE OVER TO TRIAL DAY NUMBER 26,  
15 WHICH WOULD BE FRIDAY, AUGUST 24TH, 1979, AND THAT'S PAGE 149.  
16 DO YOU SEE WHERE, ON LINE NINE, SOMEONE IS SAYING OTHERWISE,  
17 WE HAVE NO FURTHER EVIDENCE READY TO GO AT THIS TIME?

18 A. YES.

19 Q. ALL RIGHT. CONTINUE READING THERE.

20 A. THE COURT: HOW ABOUT STOECKLEY?

21 MR. SMITH: MAYBE THE GOVERNMENT WOULD LIKE TO CALL  
22 HER.

23 THE COURT: YOU DO NOT?

24 MR. SMITH: AT LEAST AT THIS MOMENT WE DO NOT.

25 THE COURT: WELL, NOW, LISTEN, ENOUGH OF THE THING

September 19, 2012

Blackburn/Direct

Page 632

1 IS ENOUGH, WADE. IF YOU'RE GOING TO EVER CALL HER, YOU CALL  
2 HER RIGHT NOW OR I AM GOING TO RELEASE HER FROM HER SUBPOENA.

3 MR. SMITH: JUDGE, I UNDERSTAND WHAT YOU'RE SAYING.  
4 LET ME JUST SAY THIS, THAT WOMAN MADE THE MOST OUTRAGEOUS  
5 STATEMENTS TO A LADY AT THE HOSPITAL WHEN SHE GOT HER NOSE  
6 FIXED THAT YOU HAVE EVER HEARD.

7 Q. ALL RIGHT. NOW, LET'S SKIP TO PAGE 151 AT LINE 17.

8 A. DON'T TELL ME ALL -- THE COURT: (INTERPOSING.) DON'T  
9 TELL ME ALL THAT STUFF. LISTEN, I AM NOT CARING WHETHER HE  
10 WANTS HER CALLED OR NOT. THE ONLY THING I'M CARING ABOUT IS  
11 WHETHER YOU'VE GOT A WITNESS HERE THAT YOU HAVE HAD ALL THE  
12 WHOLE WEEK. I HAVE BEEN PAYING A LAWYER TO SORT OF CADDY FOR  
13 HER AT GOVERNMENT EXPENSE AND I'M AT THE END OF MY ROPE WITH  
14 THAT.

15 MR. SMITH: I WILL SAY, JUDGE, THE DEFENSE DOESN'T  
16 HAVE MUCH MONEY, BUT WE WILL REIMBURSE THE GOVERNMENT FOR ANY  
17 ATTORNEY'S FEES THAT MAY BE REQUIRED TO KEEP HELENA STOECKLEY  
18 HERE UNTIL MONDAY.

19 Q. ALL RIGHT. THANK YOU. SO, HELENA STOECKLEY CONTINUED TO  
20 BE SUBJECT TO RECALL UP UNTIL AT LEAST FRIDAY OF THAT WEEK?

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT. NOW, THE RESULT OF THE TRIAL WAS THAT DR.  
23 MACDONALD WAS CONVICTED?

24 A. YES.

25 Q. AND WHAT WAS HIS SENTENCE?

September 19, 2012

Blackburn/Direct

Page 633

1 A. I'M SORRY?

2 Q. DO YOU REMEMBER HIS SENTENCE?

3 A. YES.

4 Q. WELL, TELL US.

5 A. THE SENTENCING TOOK PLACE A SHORT TIME AFTER THE JURY  
6 CAME BACK, I BELIEVE, AND JUDGE DUPREE IMPOSED THREE LIFE  
7 SENTENCES TO RUN CONSECUTIVE.

8 Q. AND DR. MACDONALD WAS TAKEN INTO CUSTODY AT THAT TIME?

9 A. YES.

10 Q. NOW, DID YOU CONTINUE TO WORK ON THE POST-TRIAL PHASES OF  
11 THE MACDONALD CASE, THAT IS, THE APPEAL?

12 A. I DID.

13 Q. AND HOW MUCH LONGER DID YOU STAY WITH THE U.S. ATTORNEY'S  
14 OFFICE AFTER THE MACDONALD TRIAL WAS CONCLUDED?

15 A. IT CONCLUDED AT THE END OF AUGUST OF 1979, AND I STAYED  
16 IN THE UNITED STATES ATTORNEY'S OFFICE TILL THE END OF  
17 SEPTEMBER 1981.

18 Q. AND DID YOU SERVE AS INTERIM OR ACTING U.S. ATTORNEY  
19 DURING SOME OF THAT TIME?

20 A. YES.

21 Q. WHEN WAS THAT?

22 A. THAT, I THINK, WAS -- BEGAN IN MAY 1980. I WAS APPOINTED  
23 BY JUDGE DUPREE.

24 Q. AND THEN THERE CAME A TIME WHEN YOU -- THERE WAS A NEW  
25 U.S. ATTORNEY APPOINTED?

September 19, 2012

Blackburn/Direct

Page 634

1 A. YES.

2 Q. AND IS THAT WHEN YOU LEFT THE OFFICE?

3 A. YES.

4 Q. AND WHAT DID YOU DO IN YOUR CAREER AFTER THAT?

5 A. RICK GAMMON, WHO HAD INTERNEED IN THE U.S. ATTORNEY'S  
6 OFFICE MAYBE A YEAR OR TWO BEFORE, AND I HAD BECOME FRIENDS  
7 AND WE OPENED A LAW FIRM TOGETHER IN DOWNTOWN RALEIGH.

8 Q. AND HOW LONG DID YOU AND MR. GAMMON PRACTICE --

9 A. WE STAYED TOGETHER, I GUESS, UNTIL 1984 SOMETIME. THEN I  
10 WENT -- THEN WE SEPARATED. WE SHARED OFFICE SPACE FOR A TIME.  
11 HE WENT TO ANOTHER LAW FIRM EVENTUALLY. I REMAINED IN A SOLO  
12 PRACTITIONER ROLE UNTIL JUNE OF 1987, AND THEN I WENT TO WORK  
13 IN JUNE OF 1987, IN THE RALEIGH OFFICE OF THE LAW FIRM OF  
14 SMITH, HELMS, MULLIS AND MOORE.

15 Q. AND THAT'S A RATHER LARGE LAW FIRM?

16 A. AT THAT TIME, IT WAS THE SECOND LARGEST FIRM IN NORTH  
17 CAROLINA. THE RALEIGH OFFICE WAS NOT THAT LARGE, BUT THE  
18 OFFICE WAS BASED IN GREENSBORO AND CHARLOTTE.

19 Q. NOW, A FEW YEARS AFTER THAT, DID YOU GET INTO SOME  
20 TROUBLE?

21 A. I GOT INTO A LOT OF TROUBLE.

22 Q. CAN YOU TELL ME WHEN THE CONDUCT THAT LED TO YOUR --  
23 WELL, LET ME ASK YOU THIS, DID THE TROUBLE RESULT IN YOUR  
24 DISBARMENT AND CONVICTION OF A CRIME?

25 A. YES.

September 19, 2012

Blackburn/Direct

Page 635

1 Q. CAN YOU TELL ME WHEN THE CONDUCT BEGAN THAT RESULTED IN  
2 YOUR DISBARMENT AND CONVICTION OF CRIME?

3 A. THIS IS A GUESS, BUT I WOULD ESTIMATE SOME TIME IN 1991.

4 Q. SO, THAT WOULD HAVE BEEN HOW MANY YEARS AFTER THE  
5 MACDONALD TRIAL?

6 A. ABOUT A DOZEN.

7 Q. AND ABOUT HOW MANY YEARS AFTER YOU LEFT THE U.S.  
8 ATTORNEY'S OFFICE?

9 A. ABOUT TEN.

10 Q. AND WHAT WERE THE CRIMES THAT YOU WERE CONVICTED OF?

11 A. I WAS CONVICTED -- I PLED GUILTY TO ALL COUNTS, WITHOUT  
12 ANY PLEA AGREEMENT, TO A 12 COUNT BILL OF INDICTMENT.

13 Q. AND THAT WAS IN STATE COURT, IS THAT RIGHT?

14 A. YES. YES. AND WADE SMITH AND RICK GAMMON WERE MY  
15 FRIENDS AND LAWYERS. I PLEADED GUILTY TO -- AND I MAY LEAVE  
16 ONE OUT -- BUT EMBEZZLEMENT, OBSTRUCTION OF JUSTICE, I SUSPECT  
17 THERE'S A FRAUD CONVICTION IN THERE SOMEWHERE, AND FORGERY.

18 WHAT I HAD DONE, TO PUT IT IN LAYMAN'S TERMS, WAS TO  
19 MISAPPROPRIATE OR TAKE OVER \$234,000, AT LEAST \$75,000 OF  
20 WHICH WENT TO CLIENTS DIRECTLY, \$56,000 FROM THE LAW FIRM'S  
21 TRUST ACCOUNT, ANOTHER \$26,000 WENT TO THE UNITED STATES  
22 GOVERNMENT AS REIMBURSEMENT ON A CASE. THAT'S WHERE THE  
23 FORGERY CAME IN BECAUSE I -- WE -- THE LAW FIRM WANTED ME TO  
24 PUT A DOCUMENT IN THE FILE, PROMISSORY NOTE, FOR THE CLIENT.  
25 HE WAS OUT OF TOWN AND SO I SIGNED HIS NAME TO THE NOTE AND

September 19, 2012

Blackburn/Direct

Page 636

1 PUT IT IN THE FILE. THAT WAS THE FORGERY.

2 THE OTHER MONEY THAT WAS TAKEN WENT INTO MY OWN  
3 ACCOUNT AND OUT OF THAT ACCOUNT I WROTE CHECKS OVER A LONG  
4 PERIOD OF TIME TO VARIOUS CLIENTS, WHICH I HAD GOTTEN BEHIND  
5 ON OR MATTERS THEY THOUGHT THEY DESERVED.

6 I BASICALLY SHOT MY LEGAL CAREER IN THE HEAD AND IT  
7 ENDED ABRUPTLY IN MID-JANUARY OF 1993, I THINK. ACTUALLY, IT  
8 WAS THE 13TH OF JANUARY 1993, WHEN THE LOCAL BANK, BB&T, HAD  
9 BEEN ALERTED THAT THERE WAS A PROBLEM WITH THE TRUST ACCOUNT.  
10 THE LAW FIRM ITSELF IS THE ONE THAT, YOU KNOW, TURNED ALL THIS  
11 INFORMATION IN TO THE STATE BAR.

12 I SAW WADE SMITH LATER THAT DAY. WE TALKED. AND  
13 WITHIN TWO DAYS AFTER THAT, BY THE 15TH OF JANUARY, I HAD  
14 RESIGNED FROM THE LAW FIRM AND HAD MY FIRST MEETING WITH DR.  
15 JEAN SPAULDING, A PSYCHIATRIST IN DURHAM, WHO WAS AT DUKE, AT  
16 THE ADVICE OF WADE SMITH, AND I WOULD SEE HER FOR TWO OR THREE  
17 YEARS.

18 AND SO IN THE FALL OF 1993, OR MAYBE EARLY DECEMBER  
19 OF 1993, I ENTERED -- I THINK IT WAS EARLY DECEMBER OR LATE  
20 NOVEMBER, ENTERED A PLEA IN FRONT OF JUDGE HIGHT IN RALEIGH TO  
21 ALL COUNTS AND THEN I WAS SENTENCED A WEEK LATER.

22 THE SENTENCE THAT I GOT WAS A THREE YEAR SENTENCE.  
23 AND THIS WAS BEFORE STRUCTURED SENTENCING, I THINK, IN NORTH  
24 CAROLINA AT THAT TIME. SO, IT MEANT, ESSENTIALLY, ABOUT A  
25 MONTH FOR A YEAR AT THAT TIME. AND THE JUDGE RECOMMENDED THAT

September 19, 2012

Blackburn/Direct

Page 637

1 I BE ENTITLED TO WORK RELEASE.

2 I GOT WORK RELEASE AND I WORKED FOR THE PERSON WHO  
3 GAVE ME MY FIRST JOB AS A LAWYER, SENATOR ROBERT MORGAN, IN  
4 HIS RALEIGH -- DOWNTOWN RALEIGH LAW OFFICE.

5 I WAS HOUSED AT WAKE CORRECTIONAL, I THINK, WHICH  
6 WAS A MINIMUM SECURITY FACILITY, UNTIL EARLY APRIL OF 1994. I  
7 WAS RELEASED ON APRIL THE 6TH. HAD ABOUT THREE HOURS OF  
8 FREEDOM. BECAUSE THERE WAS A PRESS INTEREST IN THE CASE, THEY  
9 DISCOVERED THAT I HAD BEEN RELEASED TOO SOON. AND SO THEY  
10 CALLED AND I HAD MYSELF DRIVEN BACK TO WAKE CORRECTIONAL WHERE  
11 I STAYED ANOTHER THREE WEEKS OR SO.

12 Q. NOW, YOU'VE MENTIONED --

13 A. AND I WANT TO SAY ONE MORE THING SINCE YOU ASKED ME THIS  
14 QUESTION. OVER A LONG, LONG PERIOD OF TIME ALL THAT MONEY WAS  
15 PAID BACK.

16 Q. YOU MENTIONED, WHEN YOU WERE DESCRIBING THESE OFFENSES,  
17 THAT YOU HAD GOTTEN BEHIND ON SOME CASES. WERE CLIENTS MISLED  
18 BY YOU THAT YOU HAD FILED THINGS ON THEIR BEHALF WHEN YOU  
19 REALLY HADN'T?

20 A. YES. YES. YES.

21 Q. AND DID IT ALSO INVOLVE THE FORGING OF SOME JUDGES' NAMES  
22 ON --

23 A. I DID AND --

24 Q. -- SOME ORDERS?

25 A. YES. AND TWO OF THEM WERE FEDERAL JUDGES IN THE EASTERN

September 19, 2012



Blackburn/Direct

Page 638

1 DISTRICT OF NORTH CAROLINA. ONE WAS JUDGE BRITT AND THE OTHER  
2 WAS JUDGE DUPREE.

3 Q. ALL RIGHT. AND SO AFTER YOU FINISHED SERVING YOUR TIME,  
4 WHAT DID YOU DO?

5 A. IT'S REALLY HARD FOR AN EX-LAWYER TO GET A JOB. AND SO I  
6 WOULD -- THAT'S ONE OF THE THINGS I TELL LAWYERS IN MY  
7 SEMINARS, DON'T SCREW UP. AND SO I HAD -- I TRIED TO WRITE A  
8 BOOK. IT WASN'T VERY GOOD. AND SO I HAD A FRIEND WHO OWNED  
9 THE 42ND STREET OYSTER BAR IN RALEIGH AND SO I WENT TO HIM --  
10 BECAUSE I USED TO GO THERE TO DINNER A LOT, YOU KNOW. AND SO  
11 I WENT TO HIM. HIS NAME IS BRAD HURLEY. SO, I WENT AND SAID,  
12 BRAD, CAN I HAVE A JOB? HE SAID, WELL, DOING WHAT? I SAID,  
13 WELL, I'D LIKE TO BE A MANAGER. HE SAID, YOU'RE NOT  
14 QUALIFIED. HAVE YOU EVER WORKED IN A RESTAURANT BEFORE? I  
15 SAID, WELL, NO. AND SO HE SAID, COME BACK THIS AFTERNOON. SO  
16 HE GAVE ME A JOB AS A HOST MAKING \$6 AN HOUR.

17 I WAS A HOST FOR SEVERAL WEEKS -- FOR SEVERAL  
18 MONTHS. AND I GOT IN TROUBLE THERE TOO BECAUSE ONE NIGHT I  
19 WAS TAKING THIS COUPLE TO THEIR TABLE AND I ASKED THE LADY  
20 WHEN HER BABY WAS DUE. AND, OF COURSE, SHE TOLD ME SHE WAS  
21 NOT PREGNANT. AND SO I SAID TO HER, WELL, NO MORE HUSH  
22 PUPPIES FOR YOU. AND THAT DIDN'T GO OVER WELL.

23 AND SO THEY MADE ME A WAITER. AND SO I LEARNED TO  
24 WAIT TABLES AND I WAITED TABLES FOR TWO OR THREE YEARS. AND I  
25 THINK I SAW EVERYBODY I EVER KNEW IN MY LIFE AND WAITED ON

September 19, 2012

Blackburn/Direct

Page 639

1 EVERYBODY. ONE OF THOSE MOST FREQUENT CUSTOMERS WAS JUDGE  
2 BRITT.

3 THE COURT: WE'LL TAKE A RECESS TILL 3:15.

4 MR. BRUCE: THANK YOU, YOUR HONOR.

5 (RECESS TAKEN FROM 3:00 P.M., UNTIL 3:16 P.M.)

6 (DEFENDANT PRESENT.)

7 THE COURT: PLEASE BE SEATED. WE'LL START RIGHT UP.

8 MR. BLACKBURN, YOU'RE STILL UNDER OATH AND THE WITNESS IS  
9 STILL WITH MR. BRUCE.

10 MR. BRUCE: THANK YOU, YOUR HONOR.

11 BY MR. BRUCE:

12 Q. MR. BLACKBURN, I WANT TO GO BACK A MOMENT --

13 MADAM CLERK: EXCUSE ME, MR. BRUCE, CAN YOU MOVE THE  
14 MICROPHONE? THANK YOU.

15 BY MR. BRUCE:

16 Q. MR. BLACKBURN, I WANT TO GO BACK A MOMENT TO GOVERNMENT  
17 EXHIBIT 2082 THAT I HAD YOU MAKE SOME MARKINGS ON BECAUSE I  
18 FORGOT TO SAVE IT. SO, VERY QUICKLY, WOULD YOU ORIENT  
19 YOURSELF TO THIS DIAGRAM AND PLACE A MARK WHERE THE GRAND JURY  
20 ROOM IS OR WAS.

21 A. (WITNESS COMPLIES.)

22 Q. OKAY. NOW, WOULD YOU GO BACK AND MAKE A MARK -- IN FACT,  
23 IF YOU COULD MAKE A B WHERE YOUR OFFICE WAS IN 1979.

24 A. (WITNESS COMPLIES.)

25 Q. THAT'S PRETTY GOOD. NOW, CAN YOU MAKE AN A WHERE THE

September 19, 2012

Blackburn/Direct

Page 640

1 U.S. ATTORNEY GEORGE ANDERSON'S OFFICE WAS.

2 A. (WITNESS COMPLIES.)

3 Q. THAT'S NOT SO GOOD.

4 A. I'M NOT STUPID.

5 Q. AT ANY RATE, THE OFFICE THAT YOU HAVE MARKED, THAT LAST  
6 MARK, IS WHERE THE INTERVIEW OF HELENA STOECKLEY OCCURRED BY  
7 THE PROSECUTION TEAM?

8 A. YES.

9 Q. CAN YOU READ THE NUMBER, THE ROOM NUMBER?

10 A. I HAVE TO SWITCH GLASSES.

11 Q. ACTUALLY, I THINK WE HAVE A --

12 A. I DON'T KNOW. MAYBE SIX -- 839.

13 MR. BRUCE: OKAY. NOW, I WOULD ASK THE CLERK TO  
14 SAVE THIS AS 2082A.

15 (GOVERNMENT EXHIBIT NUMBER 2082A  
16 WAS IDENTIFIED FOR THE RECORD.)

17 BY MR. BRUCE:

18 Q. AND WHILE WE'RE ON THAT SUBJECT, I BELIEVE YOU TESTIFIED  
19 THAT THERE WERE FIVE PEOPLE IN THE ROOM DURING THE HELENA  
20 STOECKLEY PROSECUTION INTERVIEW, IS THAT RIGHT?

21 A. THAT'S CORRECT.

22 Q. WAS JIMMY BRITT IN THE ROOM?

23 A. NO.

24 Q. IN YOUR EXPERIENCE AS AN ASSISTANT UNITED STATES  
25 ATTORNEY, DID YOU MAKE IT A PRACTICE TO INCLUDE DEPUTY UNITED

September 19, 2012

Blackburn/Direct

Page 641

1 STATES MARSHALS IN WITNESS INTERVIEWS?

2 A. TO THE BEST OF MY RECOLLECTION, I HAVE NEVER INTERVIEWED  
3 A WITNESS WITH A DEPUTY U.S. MARSHAL IN THE ROOM.

4 Q. ALL RIGHT. DURING THE MACDONALD TRIAL, DID JIM BRITT  
5 APPROACH YOU WITH ANY CONCERNS?

6 A. NO.

7 Q. DID HE IN THE YEARS FOLLOWING THE MACDONALD TRIAL  
8 APPROACH YOU WITH ANY CONCERNS HE HAD ABOUT THE MACDONALD  
9 TRIAL?

10 A. NO.

11 Q. DID THERE COME A TIME -- WELL, WHEN WE BROKE YOU WERE  
12 DESCRIBING WHAT YOU WERE DOING AFTER YOUR PRISON TIME AND YOU  
13 WERE TALKING ABOUT 42ND STREET OYSTER BAR. AFTER THAT, DID  
14 YOU GET INTO THE WORK YOU'RE DOING NOW?

15 A. THERE WAS AN INTERIM PERIOD WHERE I WORKED FOR ALMOST  
16 FOUR YEARS AS THE ASSISTANT TO THE DIRECTOR OF THE STATE'S  
17 RETIREMENT SYSTEM, NORTH CAROLINA. HARLAN BOYLES AND JACK  
18 PRUITT, WHO AT THAT TIME WAS DIRECTOR OF THE RETIREMENT  
19 SYSTEM, ASKED ME TO WORK THERE IN THAT CAPACITY. SO, I WOULD  
20 DO THAT DURING THE DAY AND OFTENTIMES WORK -- WAIT TABLES AT  
21 NIGHT.

22 I GOT INTO THE WORK THAT I'M DOING NOW BY ACCIDENT  
23 REALLY BECAUSE I HAD WRITTEN A BOOK, WHICH I WANTED TO SELL,  
24 AND SO I WAS SPEAKING TO BAR ASSOCIATION GROUPS AND THEY WERE  
25 GETTING CLE CREDIT FOR IT. AND THEN I FINALLY SOMEHOW FIGURED

September 19, 2012

Blackburn/Direct

Page 642

1 OUT THAT, PERHAPS, I COULD DO IT MYSELF AS A PROVIDER AND THE  
2 BAR ALLOWED ME TO DO THAT.

3 Q. ALL RIGHT. NOW, DID THERE COME A TIME WHEN WADE SMITH  
4 APPROACHED YOU ABOUT SOME INFORMATION HE HAD RECEIVED WITH  
5 REGARD TO THE MACDONALD CASE?

6 A. YES.

7 Q. AND APPROXIMATELY WHEN WAS THAT?

8 A. I BELIEVE IT WAS AUGUST OR SEPTEMBER OF 2005.

9 Q. ALL RIGHT. I'M GOING TO PUT SOME EXHIBITS ON THE SCREEN.  
10 THIS IS -- ACTUALLY, IT'S JUST ONE EXHIBIT, I BELIEVE.  
11 GOVERNMENT EXHIBIT 2013.

12 A. YES.

13 Q. AND IT'S IN THE FORM OF AN EMAIL, BUT IT APPEARS TO BE  
14 SIGNED BY YOU, IF YOU GO TO PAGE 2013.2. IS THAT YOUR  
15 SIGNATURE?

16 A. YES.

17 Q. IT APPEARS TO BE A WAIVER?

18 A. YES.

19 (GOVERNMENT EXHIBIT NUMBER 2013  
20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. CAN YOU EXPLAIN HOW THIS CAME ABOUT?

22 A. WADE AND I HAD MET AT STARBUCKS THE FIRST TIME TO DISCUSS  
23 THIS WHEN HE TOLD ME ABOUT IT. HE DIDN'T TELL ME WHO IT WAS,  
24 WHO MADE THESE STATEMENTS, BUT HE SAID TO ME THE GIST OF THE  
25 STATEMENT, WHAT YOU'VE DESCRIBED OR WE'VE TALKED ABOUT THIS

September 19, 2012

Blackburn/Direct

Page 643

1 AFTERNOON WITH JIMMY BRITT.

2 BUT HE SAID, JIM, I CAN'T REPRESENT DR. MACDONALD ON  
3 THIS ANYWAY BECAUSE I HAVE A CONFLICT. AND I SAID TO HIM, IF  
4 YOU WILL GIVE ME ONE OF THOSE NAPKINS, I WILL SIGN A WAIVER ON  
5 IT RIGHT NOW. AND HE SAID, NO, DON'T DO THAT RIGHT NOW.

6 AND IT WAS A FEW WEEKS AFTER THAT THAT HE CALLED AND  
7 WANTED TO HAVE LUNCH. WE HAD LUNCH AND DISCUSSED THE WAIVER,  
8 WHICH YOU'VE JUST ENUMERATED AS AN EXHIBIT. IT WENT BACK AND  
9 FORTH BETWEEN THE TWO OF US FOR SEVERAL DAYS AND I SIGNED IT  
10 WITH AN ADDENDUM EMAIL BACK TO HIM AND SIGNED IT.

11 Q. ALL RIGHT. NOW, IT SEEMS THAT -- IF WE CAN ENLARGE THAT  
12 PORTION WHERE THE SIGNATURE IS -- IT LOOKS LIKE THE DATE IS  
13 SEPTEMBER 29TH?

14 A. YES.

15 Q. AND IT LOOKS LIKE IN ADDITION TO SIGNING, YOU INITIALED  
16 THE DATE, IS THAT RIGHT?

17 A. YES.

18 Q. AND THEN THERE'S INITIALS TO THE LEFT, WMS?

19 A. THAT'S WADE SMITH.

20 Q. ALL RIGHT. NOW, IF WE GO ON TO THE NEXT PAGE OF THIS  
21 EXHIBIT, IT LOOKS LIKE IT'S AN EMAIL FROM YOU. CAN YOU  
22 ENLARGE IT?

23 A. DO YOU WANT ME TO READ IT?

24 Q. YES, PLEASE.

25 A. WADE, THANKS FOR THE NOTE OF SEPTEMBER 21, 2005, AND THE

September 19, 2012

Blackburn/Direct

Page 644

1 ATTACHED WAIVER REGARDING THE JEFFREY MACDONALD MATTER. AS  
2 YOU KNOW, WE HAVE SPENT A GOOD DEAL OF TIME DISCUSSING THIS  
3 ISSUE OF WAIVER SINCE YOU REPRESENTED ME SOME YEARS AGO AS  
4 WELL AS HAVING BEEN JEFFREY MACDONALD'S LAWYER SINCE AT LEAST  
5 1979.

6 FIRST, LET ME SAY THAT I AGREED TO GIVE YOU A WAIVER  
7 IN THIS MATTER AND WILL SIGN THE ONE THAT YOU HAVE PROPOSED.  
8 MY ONLY CONCERN IS THAT IN THE BODY OF THE NOTE THAT YOU WROTE  
9 TO ME YOU REFERENCED MY CONVERSATIONS WITH HELENA STOECKLEY.

10 THE ONE TIME I HAD A CONVERSATION WITH HELENA  
11 STOECKLEY WAS IN THE OFFICE OF THE UNITED STATES ATTORNEY AT A  
12 COURT APPROVED MEETING THAT WAS ATTENDED BY OTHER COUNSEL FOR  
13 THE GOVERNMENT AT THAT TIME.

14 WHILE I DID TALK WITH MS. STOECKLEY DURING THAT  
15 MEETING, I WANT TO SAY AGAIN IN THIS EMAIL TO YOU, AS I HAVE  
16 DONE IN ALL OUR CONVERSATIONS, THAT AT NO TIME DID I HAVE ANY  
17 CONVERSATION WITH HER OR MAKE ANY STATEMENT TO HER THAT WAS  
18 INAPPROPRIATE, AND SO I WANT TO MAKE SURE THAT BY AGREEING TO  
19 THE WAIVER, I AM NOT AGREEING WITH ANY SUGGESTIONS, HOWEVER  
20 IMPLIED, IN YOUR INITIAL NOTE TO ME THAT THERE WAS ANY  
21 IMPROPRIETY IN ANY OF MY COMMENTS TO HER.

22 I AM AGREEING TO THIS WAIVER WITH YOU BECAUSE I  
23 BELIEVE YOU ARE AN ATTORNEY OF THE UTMOST INTEGRITY AND AN  
24 OUTSTANDING ADVOCATE FOR YOUR CLIENT. I DO NOT WISH TO STAND  
25 IN THE WAY OF YOUR REPRESENTATION OF JEFFREY MACDONALD AND

September 19, 2012

Blackburn/Direct

Page 645

1 YOUR OBLIGATION TO REPRESENT YOUR CLIENT TO THE BEST OF YOUR  
2 ABILITY.

3 Q. AND AT SOME POINT DID WADE SMITH ALLOW YOU TO READ A  
4 DRAFT OF SOMETHING THAT THE MACDONALD TEAM WAS PLANNING TO  
5 FILE IN COURT ON THIS?

6 A. YES. HE CALLED ME ONE DAY LATER AND SAID IT WAS READY  
7 AND IF I WISHED TO COME BY HIS OFFICE, YOU KNOW, I COULD DO SO  
8 AND READ IT. AND I DID. HE GAVE ME -- OR HIS SECRETARY GAVE  
9 ME THE AFFIDAVIT AND SOME SUPPORTING DOCUMENTS.

10 I WENT DOWNSTAIRS TO START READING IT AND IT WAS  
11 THEN THAT I RECOGNIZED OR REALIZED FOR THE FIRST TIME THAT THE  
12 PERSON INVOLVED IN THIS WAS JIMMY BRITT. AND I DIDN'T -- I  
13 MAY HAVE READ THE ENTIRE WAIVER. I DON'T KNOW. I DIDN'T READ  
14 ANY OTHER ATTACHED DOCUMENTS.

15 I TOOK ALL THE DOCUMENTS AND WENT BACK UP TO WADE'S  
16 OFFICE, KNOCKED ON THE DOOR AND WENT INSIDE AND SAID HERE IT  
17 IS. HE SAID ARE YOU THROUGH ALREADY? AND I SAID, WELL, I  
18 READ ALL I WANT TO READ. AND WE HAD AN EXTREMELY, EXTREMELY  
19 HEATED DISCUSSION AT THAT POINT IN TIME.

20 Q. IN WHICH YOU EXPRESSED YOUR OPINION THAT YOU DIDN'T THINK  
21 IT WAS TRUE?

22 A. THOSE WERE NOT THE WORDS THAT I USED, BUT I DID TELL HIM  
23 THAT I DID NOT THINK IT WAS TRUE. I WAS VERY STRONG ABOUT  
24 THAT.

25 Q. ALL RIGHT. DID YOU LATER LEARN THAT MR. SMITH HAD

September 19, 2012



Blackburn/Direct

Page 646

1 WITHDRAWN FROM THE CASE?

2 A. THAT CAME ABOUT -- WE HAD A DISCUSSION ABOUT THAT. AND I  
3 SAID HOW CAN YOU DO THIS? HE SAYS, WHAT DO YOU MEAN? I SAID,  
4 YOU KNOW AS WELL AS I DO THIS IS NOT TRUE AND YOU STOOD THERE,  
5 WADE, WHILE BERNIE SEGAL MADE THESE MISREPRESENTATIONS TO  
6 JUDGE DUPREE ABOUT HELENA STOECKLEY AT THE TRIAL. HE SAYS,  
7 HOW DO YOU MEAN -- KNOW THAT? I SAID, WELL, GO READ JOE  
8 MCGINNISS' BOOK, WHICH IS SITTING ON YOUR BOOKSHELF, WHICH WAS  
9 WHERE I GOT THAT FROM. I DON'T RECALL WHAT HE SAID TO THAT.  
10 AND I REMEMBER SAYING TO HIM, I SAID, YOU GO AHEAD AND  
11 REPRESENT JEFFREY MACDONALD IF YOU WANT TO AND FILE THIS  
12 MOTION AND WE'LL STILL BE FRIENDS, BUT IT WILL BE TOUGH, BUT  
13 WE'LL STILL BE FRIENDS, AND I WALKED OUT OF HIS OFFICE. TWO  
14 OR THREE HOURS LATER MY PHONE RANG AND HE CALLED TO TELL ME HE  
15 WAS GOING TO WITHDRAW FROM THE MACDONALD CASE.

16 Q. ALL RIGHT. NOW, LATER ON, WERE YOU APPROACHED ABOUT  
17 WAIVING A CONFLICT OF INTEREST SO THAT ONE OF WADE'S PARTNERS  
18 COULD REPRESENT MR. MACDONALD?

19 A. YES. WADE AND I HAVE REMAINED FRIENDS OVER THE YEARS,  
20 YOU KNOW. AT SOME TIME HE WROTE ME AN EMAIL SAYING THAT --

21 Q. WELL, LET'S GO TO THE NEXT --

22 A. WELL, HE WROTE ME AN EMAIL.

23 Q. -- PAGE AND READ THE EMAIL.

24 A. I'M SORRY?

25 Q. LET'S GO TO THE NEXT PAGE OF THE EXHIBIT.

September 19, 2012

Blackburn/Cross

Page 647

1 A. OKAY. IT'S A MESSAGE FROM WADE SMITH TO HART MILES.

2 Q. AND WHAT'S THE -- GO AHEAD AND READ IT.

3 A. HART, JIM BLACKBURN WAS REMARKABLE ABOUT THIS. HE WAS SO  
4 KIND AND IN SO MANY WAYS GENEROUS. HE SAID TO TELL YOU TO GO  
5 FORWARD WITH HILL, THAT IT IS OKAY. JIM IS TRULY AN AMAZING  
6 FELLOW AND I THINK HE IS A VERY ELEGANT HUMAN BEING. HE HAS  
7 LIVED THROUGH SO MUCH AND HE HAS SURVIVED AND EVEN FLOURISHED  
8 AND THRIVED IN THE MOST BARREN ENVIRONMENTS. WADE.

9 Q. ALL RIGHT. SO, YOU AGREED TO LET HILL ALLEN REPRESENT  
10 JEFFREY MACDONALD IN THIS MATTER?

11 A. YES.

12 Q. AS FAR AS WAIVING YOUR CONFLICT OF INTEREST?

13 A. YES. YES.

14 Q. ALL RIGHT. AND THE DATE OF THAT EMAIL THAT YOU JUST READ  
15 IS WHAT?

16 A. AUGUST 17, 2011.

17 MR. BRUCE: ALL RIGHT. NO FURTHER QUESTIONS, YOUR  
18 HONOR.

19 THE COURT: CROSS.

20 MR. WIDENHOUSE: THANK YOU, YOUR HONOR.

21 C R O S S - E X A M I N A T I O N 3:28 P.M.

22 BY MR. WIDENHOUSE:

23 Q. MR. BLACKBURN, I'M GORDON WIDENHOUSE. WE'VE KNOWN EACH  
24 OTHER FOR AWHILE.

25 A. WE HAVE, GORDON.

September 19, 2012

Blackburn/Cross

Page 648

1 Q. NOW, YOU HAVE WRITTEN OR SAID IN THE PAST THAT WHEN YOU  
2 GOT THE JEFFREY MACDONALD CASE YOU THOUGHT YOU WOULD LOSE,  
3 HAVE YOU NOT?

4 A. YES.

5 Q. AND I BELIEVE YOU SAID IN THE PAST OR WRITTEN IN THE PAST  
6 THAT IF WADE SMITH HAD BEEN ABLE TO GIVE THE CLOSING ARGUMENT  
7 WITH THE AMOUNT OF TIME THAT HAD BEEN RESERVED FOR HIM HE  
8 MIGHT WELL HAVE -- VERY WELL HAVE WON THE CASE?

9 A. WELL, THAT'S -- I SAID THAT I'M CERTAIN AND THAT'S BEEN  
10 LEGEND IN RALEIGH FOR MANY YEARS.

11 Q. SO, YOU'VE SAID BOTH OF THOSE TWO THINGS?

12 A. YES.

13 Q. OKAY.

14 A. I WILL TELL YOU, GORDON, THAT ABOUT SIX MONTHS AGO I HAD  
15 LUNCH WITH ONE OF THE FORMER JURORS IN THE CASE. AND I SAID,  
16 YOU KNOW -- IT WAS FRED THORNHILL. I SAID, YOU KNOW, FRED,  
17 WE'VE ALL BEEN TOLD THAT IF WADE HAD MADE THE CLOSING  
18 ARGUMENT, YOU KNOW, OR GOTTEN TO GIVE HIS ONE HOUR CLOSING  
19 ARGUMENT FOR DR. MACDONALD THEY MIGHT HAVE WON. I SAID, I'VE  
20 ALSO BEEN TOLD THAT I GAVE A REALLY GOOD CLOSING ARGUMENT AND  
21 THAT MADE A DIFFERENCE. WHICH ONE IS TRUE? AND HE LOOKED AT  
22 ME AND HE SMILED AND HE SAID, JIM, NEITHER ONE IS TRUE, IT WAS  
23 THE MATTER OF THE EVIDENCE.

24 Q. NOW, YOU'VE WRITTEN A BOOK CALLED *FLAME-OUT, FROM*  
25 *PROSECUTING JEFFREY MACDONALD TO SERVING TIME TO SERVING*

September 19, 2012

1 TABLES?

2 A. YES.

3 Q. AND THAT'S A SELF-PUBLISHED BOOK?

4 A. YES.

5 Q. AND YOU WROTE IT IN 2000, OR IT WAS PUBLISHED IN 2000?

6 A. IT WAS.

7 Q. AND DO YOU USE THAT AS THE -- SOMETIMES AS THE MANUSCRIPT  
8 FOR SOME OF YOUR CLE TALKS?

9 A. I DON'T KNOW IF I USE IT AS A MANUSCRIPT, BUT I'VE  
10 CERTAINLY TAKEN IT TO THE SEMINARS AND OFFERED IT FOR SALE,  
11 MAKE PEOPLE AWARE OF IT, AND THAT SORT OF THING.

12 Q. BUT PEOPLE CAN GET IT AT YOUR SEMINARS?

13 A. YES. YES. YES.

14 Q. AND THE TITLE REFLECTS THAT THE MACDONALD TRIAL WAS SORT  
15 OF A HIGH MARK IN YOUR LEGAL PRACTICE?

16 A. IT WAS.

17 Q. AND WOULD IT BE FAIR TO SAY YOU ENJOYED THE SUCCESS OF  
18 WINNING THE TRIAL?

19 A. I BELIEVE THAT DR. MACDONALD WAS GUILTY AND I BELIEVE  
20 THAT THE JURY REACHED THE RIGHT VERDICT.

21 Q. WELL, MY QUESTION IS --

22 A. I DON'T KNOW THAT I CAN SAY THAT I ENJOYED THE SUCCESS.

23 Q. YOU DIDN'T GET SORT OF A -- DIDN'T YOU WRITE IN YOUR BOOK  
24 THAT YOU COULD NEVER GET BACK TO HAVING A MACDONALD CASE  
25 AGAIN?

September 19, 2012

Blackburn/Cross

Page 650

1 A. YEAH, BUT THAT'S NOT WHAT -- THAT WASN'T WHAT I DEFINED  
2 AS ENJOYING MY SUCCESS. I CAN ANSWER YOUR QUESTION THIS WAY,  
3 I'M NOT TRYING TO AVOID IT. I CAN ANSWER THIS WAY, I DO THINK  
4 THAT ONE OF THE PROBLEMS THAT I FACED IN MY CAREER WAS, AS I  
5 THINK I HAVE SAID AT MY SEMINARS, ONE OF WHICH, YOU KNOW, YOU  
6 WENT TO, IS THAT I ALWAYS WANTED ANOTHER BIG CASE. AND, YOU  
7 KNOW, I DID. AND THAT'S AN HONEST ANSWER.

8 Q. SORT OF THE NEXT BIG CASE?

9 A. WHATEVER. WHATEVER.

10 Q. WHATEVER IT WOULD BE?

11 A. WHATEVER IT WAS, YES.

12 Q. AND SO YOU ENJOYED THE NOTORIETY FROM THE BIG CASE?

13 A. I'M SURE I DID.

14 Q. AND YOU STILL ENJOY SORT OF THE NOTORIETY OF BEING IN  
15 FRONT OF THE CROWD?

16 A. I WOULD LIKE TO BE AN UNKNOWN RIGHT NOW. I DON'T HAVE  
17 ANY -- NOTORIETY IS ONE OF THE MOST OVERRATED THINGS IN THE  
18 WORLD, GORDON.

19 Q. BUT YOU DO THESE SEMINARS WHERE YOU'RE IN FRONT OF  
20 GROUPS?

21 A. I DON'T DO THAT FOR -- I DON'T DO THESE SEMINARS FOR  
22 NOTORIETY.

23 Q. THAT'S NOT MY QUESTION, THAT YOU DO THEM FOR NOTORIETY,  
24 BUT YOU ENJOY BEING IN FRONT OF A GROUP --

25 A. YES, I DO. YES. YES. YES, I DO.

September 19, 2012

1 Q. YOU ENJOY --

2 A. YES.

3 Q. -- BEING IN FRONT OF A GROUP OF PEOPLE AND TALKING?

4 A. YES. YES. YES.

5 Q. OKAY. AND WOULD YOU SAY NOW THAT YOUR PROFESSION IS SORT  
6 OF THAT OF A MOTIVATIONAL SPEAKER?

7 A. YES.

8 Q. ALL RIGHT. AND YOU DO A LOT OF DIFFERENT TOPICS?

9 A. YES.

10 Q. OKAY. AND SOME OF THEM ARE THINGS LIKE LAND MINES ON THE  
11 WAY TO THE TOP AND HOW TO AVOID THEM?

12 A. YES.

13 Q. THE UNFORGIVING MINUTE?

14 A. YES.

15 Q. ETHICS IN LIFE, THE MARKETPLACE AND BUSINESS?

16 A. YES.

17 Q. NIGHT FALLS FAST?

18 A. YES.

19 Q. THOSE ARE SOME OF THE --

20 A. YES.

21 Q. -- TOPICS OF YOUR PRESENTATIONS?

22 A. YES. YES.

23 Q. AND DO MOST OF THOSE PRESENTATIONS SORT OF BEGIN WITH,  
24 YOU KNOW, TALKING ABOUT THE MACDONALD CASE?

25 A. NIGHT FALLS FAST DOES NOT. NIGHT FALLS FAST IS A MENTAL

September 19, 2012

Blackburn/Cross

Page 652

1 HEALTH PROGRAM. THE OTHERS -- I VARY IT SOMETIMES DEPENDING  
2 ON -- YOU KNOW, I DO VARY -- SOMETIMES, YOU'RE RIGHT.  
3 SOMETIMES, YOU'RE ABSOLUTELY RIGHT, I DO TALK ABOUT THE  
4 MACDONALD CASE.

5 Q. AND IN YOUR SORT OF PROMOTIONAL BIOGRAPHY FOR, YOU KNOW,  
6 YOUR MOTIVATIONAL SPEAKINGS, YOU DESCRIBE YOURSELF AS HAVING A  
7 DRIVE TO WIN AT ANY COST?

8 A. YES.

9 Q. A STRONG DESIRE TO BE ALL THINGS TO ALL PEOPLE?

10 A. YES.

11 Q. AND DO YOU STILL SORT OF FEEL THAT WAY THAT THAT'S --

12 A. I'M A LOT BETTER ABOUT THAT NOW. ONE OF MY DIAGNOSES BY  
13 DR. SPAULDING WAS THAT I HAVE A SEVERE PERSONALITY DISORDER  
14 THAT I WANTED TO PLEASE PEOPLE TOO MUCH AND COULD NOT SAY NO.

15 Q. OKAY.

16 A. SO THAT WAS PART OF MY PROBLEM.

17 Q. ALL RIGHT. AND YOU HAD MENTIONED ON DIRECT THAT YOU DID  
18 SOME WRITING FOR AWHILE. OBVIOUSLY, WROTE THE *FLAME-OUT* BOOK?

19 A. YES.

20 Q. AND DID YOU HAVE THOUGHTS ABOUT DOING MORE WRITING?

21 A. YES, I DID.

22 Q. AND YOUR EMAIL TAG LINE WAS SORT OF JBWRITER AT?

23 A. THAT WAS IT. THAT WAS LONG AGO, BUT THAT WAS ONCE --  
24 THAT WAS ONCE A TAG LINE.

25 Q. AND DID YOU THINK AT ONE TIME ABOUT WRITING A BOOK ABOUT

September 19, 2012

1 THE MACDONALD CASE?

2 A. OH, YES.

3 Q. AND OF COURSE --

4 A. I NEVER DID, BUT I THOUGHT ABOUT IT. I TRIED -- I DID  
5 SOME INITIAL WRITINGS ON IT.

6 Q. AND DO YOU STILL THINK ABOUT THAT?

7 A. NO.

8 Q. OKAY. SO, YOU REALLY SORT OF SEE YOURSELF NOW AS A  
9 MOTIVATIONAL SPEAKER, NOT A WRITER?

10 A. NO, I SEE MYSELF TWO WAYS. I SEE MYSELF AS A  
11 MOTIVATIONAL SPEAKER, AND I WOULD LIKE TO WRITE AGAIN, BUT I  
12 WOULD PROBABLY LIKE TO WRITE FICTION OR WRITE ANOTHER SEQUEL  
13 TO MY *FLAME-OUT* BOOK.

14 Q. OKAY. I'M GOING TO SHOW YOU DEFENSE EXHIBIT 5014C AND  
15 ASK IF YOU CAN LOOK AT THE CAPTION THERE AND TELL US IF THAT'S  
16 NOT THE ORDER OF DISBARMENT IN YOUR CASE?

17 A. YES.

18 (DEFENSE EXHIBIT NUMBER 5014C  
19 WAS IDENTIFIED FOR THE RECORD.)

20 Q. AND THIS WAS WHAT RESULTED FROM YOU DECIDING TO TURN IN  
21 YOUR LAW LICENSE?

22 A. YES. YES.

23 Q. THAT YOU TALKED A LITTLE BIT ABOUT ON DIRECT?

24 A. YES.

25 Q. AND IF WE COULD GO TO PAGE TWO OF THE ORDER OF

September 19, 2012



Blackburn/Cross

Page 654

1 DISBARMENT, YOU TALK ABOUT IN PARAGRAPH TWO THAT YOU DESIRE TO  
2 RESIGN AND TENDER YOUR LICENSE TO PRACTICE LAW.

3 A. YES.

4 Q. AND YOU SIGNED THIS -- AN AFFIDAVIT SUPPORTING THIS ORDER  
5 OF DISBARMENT?

6 A. I'M SURE I DID.

7 Q. OKAY. AND SO YOU READ IT BEFORE YOU SIGNED IT?

8 A. PROBABLY I DID. IT WAS -- AT THAT POINT IT REALLY DIDN'T  
9 MAKE A GREAT DEAL OF DIFFERENCE.

10 Q. OKAY. AND IN PARAGRAPH THREE YOU SAY MY RESIGNATION IS  
11 FREE AND VOLUNTARILY TENDERED AND NOT THE RESULT OF COERCION  
12 AND DURESS, CORRECT?

13 A. YES.

14 Q. AND YOU'RE FULLY AWARE OF THE CONSEQUENCES RESULTING FROM  
15 TENDERING?

16 A. YES.

17 Q. AND YOU'RE COMPETENT TO MAKE THE DECISION?

18 A. YES.

19 Q. SO, YOU WEREN'T SO MENTALLY DISABLED AT THAT POINT THAT  
20 YOU COULDN'T FUNCTION AND MAKE THE DECISION TO TENDER YOUR LAW  
21 LICENSE?

22 A. I WOULD HAVE TO SAY YES.

23 Q. ALL RIGHT. NOW, PARAGRAPH FIVE STARTS TO DESCRIBE IN  
24 SOME DETAIL THE PROBLEMS THAT LED TO TENDERING THE LAW LICENSE  
25 AND I'LL TAKE YOU THROUGH THE VARIOUS SENTENCES --

September 19, 2012

Blackburn/Cross

Page 655

1 A. SURE.

2 Q. -- IN PARAGRAPH FIVE AND ASK YOU SOME QUESTIONS ABOUT IT.  
3 AND IT STARTS OUT BY SAYING -- TALKING ABOUT REPRESENTING  
4 CLIENT A, THEY REQUESTED THAT YOU FILE A COMPLAINT SEEKING TO  
5 SETTLE A LAND DISPUTE IN LAKE GASTON, VIRGINIA.

6 NOW, YOU DID NOT DO WHAT THE CLIENT WANTED YOU TO DO  
7 IN THAT SITUATION, DID YOU?

8 A. NO.

9 Q. AND YOU, IN FACT, MISLED THE CLIENT ABOUT WHETHER YOU HAD  
10 FILED THE COMPLAINT?

11 A. YES.

12 Q. AND THAT WAS AN UNTRUE STATEMENT?

13 A. YES.

14 Q. FALSE STATEMENT?

15 A. YES.

16 Q. OKAY. AND OVER THE -- YOU SAY -- I'M NOW GOING TO THE  
17 THIRD SENTENCE IN THAT PARAGRAPH. YOU SAID OVER THE NEXT TWO  
18 YEARS YOU HAD MANY CONVERSATIONS WITH THE CLIENT WHEREIN WE  
19 DISCUSSED HIS CASE, CONVERSATIONS INCLUDING STRATEGY  
20 CONSIDERATIONS AND PROGRESS OF THE CASE.

21 HOW MANY CONVERSATIONS DO YOU THINK YOU HAD WITH THE  
22 CLIENT OVER THE NEXT TWO YEARS?

23 A. I HAVE NO IDEA.

24 Q. MORE THAN TWO?

25 A. YES.

September 19, 2012

Blackburn/Cross

Page 656

1 Q. MORE THAN TEN?

2 A. THAT I DON'T KNOW. I'M SURE IT WAS MORE THAN TEN,  
3 GORDON, BUT I DON'T KNOW.

4 Q. MAYBE MORE THAN 25?

5 A. I DON'T KNOW.

6 Q. OKAY. BUT A LOT OF CONVERSATIONS --

7 A. YES.

8 Q. -- WITH THE CLIENT OVER THE NEXT TWO YEARS?

9 A. YES.

10 Q. AND EVERY ONE OF THOSE CONVERSATIONS MISLED THE CLIENT,  
11 DIDN'T IT?

12 A. SURE I DID.

13 Q. OKAY. SO, LOTS OF, THE LONG ONGOING TWO YEAR PERIOD WITH  
14 THIS CLIENT, MISLEADING HIM AS TO WHAT YOU HAD OR HAD NOT DONE  
15 IN HIS CASE?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND YOU SAY YOU HAD CONVERSATIONS ABOUT STRATEGY  
18 IN THE CASE. WOULD THAT BE WHAT YOU HAD DONE IN THE CASE?

19 A. YES. THIS WAS THE -- LET ME SAY THIS, THE ANSWER IS YES,  
20 BUT IF I MAY SAY ONE FURTHER SENTENCE. IT WAS DURING THIS  
21 TIME IN MY DIAGNOSIS BY DR. SPAULDING WHERE SHE HAD SAID THAT  
22 I HAD A BREAK WITH REALITY. I DON'T KNOW. THAT WAS HER  
23 DIAGNOSIS, NOT MINE, YOU KNOW.

24 BUT NEVERTHELESS, THE ANSWER TO YOUR QUESTION IS FOR  
25 A YEAR AND A HALF, OR HOWEVER LONG IT WAS, I MISLED THIS

September 19, 2012

Blackburn/Cross

Page 657

1 CLIENT, TOLD THIS CLIENT NUMBERS OF THINGS THAT WERE UNTRUE  
2 AND MADE -- DRAFTED FALSE, YOU KNOW, COURT DOCUMENTS ON THE  
3 CASE THAT WERE NOT TRUE.

4 Q. ALL RIGHT. AND ALL OF THOSE STATEMENTS WERE FALSE?

5 A. YES.

6 Q. SO, IT'S A CONTINUING PATTERN OF MAKING FALSE STATEMENTS  
7 TO THIS PARTICULAR CLIENT?

8 A. YES.

9 Q. ALL RIGHT. AND WHEN YOU TALKED ABOUT PROGRESS OF THE  
10 CASE, ANY STATEMENT YOU MADE ABOUT THE CASE BEING -- MAKING  
11 PROGRESS, WERE FALSE?

12 A. THAT'S RIGHT.

13 Q. BECAUSE THERE HADN'T BEEN A CASE?

14 A. THAT'S RIGHT.

15 Q. OKAY. AND YOU TOLD THE CLIENT EVENTUALLY, YOU SAY IN THE  
16 LAST SENTENCE ON THAT PAGE, THAT YOU HAD BEEN SUCCESSFUL IN  
17 RESOLVING THE LAND DISPUTE. THAT, OF COURSE, WAS FALSE?

18 A. YES.

19 Q. THERE WASN'T A LAND DISPUTE FILED?

20 A. THAT'S CORRECT.

21 Q. AND YOU HAD A FILE THAT YOU WERE SHOWING THE CLIENT,  
22 DIDN'T YOU?

23 A. I'M SORRY?

24 Q. DID YOU HAVE A FILE THAT YOU WERE SHOWING THE CLIENT?

25 A. YES.

September 19, 2012

Blackburn/Cross

Page 658

1 Q. OKAY. AND THOSE DOCUMENTS, YOU JUST MADE THEM UP?

2 A. YES.

3 Q. DID YOU GET THEM OUT OF ANOTHER FILE AND HOPE THE CLIENT  
4 DIDN'T REALIZE IT WAS A DIFFERENT CAPTION OR DID YOU TYPE A  
5 DIFFERENT DOCUMENT OR DO YOU RECALL?

6 A. I RECALL THAT WHAT I DID WAS I WROTE THESE DOCUMENTS TO  
7 GIVE THE CLIENT AN INDICATION AS TO WHAT I WAS DOING ON THEIR  
8 BEHALF AND GAVE THEM TO THE CLIENT. I MADE THEM UP IS THE  
9 ANSWER TO YOUR QUESTION.

10 Q. OKAY. AND DID YOU -- AND WHAT I'M ASKING IS, DID YOU  
11 CREATE THE DOCUMENTS?

12 A. YES.

13 Q. FOR THIS CLIENT?

14 A. YES.

15 Q. AND IT REALLY WAS COMPLETELY FALSE?

16 A. YES.

17 Q. IT WAS IMAGINARY?

18 A. YES.

19 Q. DID ANYBODY EVER TYPE IT UP FOR YOU OR DID YOU TYPE IT  
20 YOURSELF?

21 A. I TYPED IT MYSELF.

22 Q. SO, YOU HAVE THIS ENTIRE FILE, EVERY PIECE OF PAPER IN IT  
23 IS FALSE?

24 A. I DON'T KNOW ABOUT THAT, BUT MOST OF IT WAS FALSE.

25 Q. WELL, IF IT WASN'T A CASE, ANYTHING YOU SAID ABOUT THE

September 19, 2012

Blackburn/Cross

Page 659

1 CASE HAD TO BE FALSE, DIDN'T IT?

2 A. THERE MAY HAVE BEEN CORRESPONDENCE WITH THE CLIENT  
3 UNRELATED TO THAT AND THE MATTERS WERE TRUE, BUT THE REST OF  
4 MY ANSWER IS, YES, EVERYTHING I SAID ABOUT THIS ALLEGED CASE  
5 WAS FALSE.

6 Q. OKAY. SO, AGAIN, EVERY DOCUMENT THAT YOU PUT IN THAT  
7 FILE FOR THAT CLIENT WAS FALSE?

8 A. YES.

9 Q. AND MOVING TO THE TOP OF PAGE TWO, YOU TOLD THE CLIENT  
10 THAT HE HAD -- WAS ENTITLED TO A LARGE SUM OF MONEY, CORRECT?

11 A. THAT'S RIGHT.

12 Q. BOTH FROM PEOPLE WHO WERE INVOLVED WITH THE DISPUTE WITH  
13 HIM, THE PEOPLE HE THOUGHT YOU HAD SUED, CORRECT?

14 A. YES.

15 Q. AND A POWER COMPANY THAT HAD BEEN INVOLVED IN THE LAKE  
16 GASTON AREA?

17 A. YES.

18 Q. AND NONE OF THAT WAS TRUE?

19 A. THAT'S RIGHT.

20 Q. HE WASN'T ENTITLED TO ANY MONEY AT ALL BASED ON WHAT YOU  
21 HAD DONE?

22 A. CORRECT.

23 Q. AND YOU GO ON IN THE NEXT SENTENCE IN THE PARAGRAPH AND  
24 MENTION WITH SPECIFICITY THAT YOU HAD DRAFTED A NUMBER OF  
25 LEGAL PLEADINGS, CORRECT?

September 19, 2012

Blackburn/Cross

Page 660

1 A. YES.

2 Q. OKAY. AND OBVIOUSLY NONE OF THOSE HAD -- WERE FACTUALLY  
3 ACCURATE BECAUSE THERE WAS NO CASE, RIGHT?

4 A. THAT'S CORRECT.

5 Q. ALL RIGHT. AND YOU SAID THAT YOU DRAFTED AT LEAST 17  
6 ORDERS, CORRECT?

7 A. YES.

8 Q. SUPPOSEDLY SIGNED BY JUDGES?

9 A. YES.

10 Q. THAT AWARDED THE DISPUTED PROPERTY TO THE CLIENT ALONG  
11 WITH SUMS OF MONEY?

12 A. YES.

13 Q. ALL RIGHT. NOW, EACH ONE OF THOSE 17 ORDERS, YOU WERE  
14 WRITING AN ORDER THAT YOU KNEW WAS FALSE WHEN YOU WERE WRITING  
15 IT?

16 A. YES.

17 Q. AND YOU SIGNED THE JUDGE'S NAME?

18 A. YES.

19 Q. AND I BELIEVE YOU TOLD US YOU AT LEAST SIGNED JUDGE  
20 DUPREE'S NAME TO ORDERS AND JUDGE BRITT'S NAME?

21 A. YES.

22 Q. DID YOU SIGN JUDGE FOX'S NAME TO ANY OF THEM?

23 A. I DON'T THINK SO.

24 Q. OKAY. AND EVERY TIME YOU SIGNED A JUDGE'S NAME TO ONE OF  
25 THOSE DOCUMENTS, YOU WERE COMMITTING FORGERY, WEREN'T YOU?

September 19, 2012

Blackburn/Cross

Page 661

1 A. YES.

2 Q. OKAY. SO, AT LEAST 17 FORGERIES OF JUDGES' NAMES JUST IN  
3 THOSE SETS OF ORDERS IN ONE CLIENT'S FILE?

4 A. YES. I WILL SAY, HOWEVER, THAT NONE OF THESE -- IT MAKES  
5 NO REAL DIFFERENCE -- WAS EVER FILED ANYWHERE.

6 Q. CORRECT. BUT YOU'RE FORGING A JUDGE'S NAME --

7 A. I UNDERSTAND.

8 Q. -- TO AN ORDER SO IT'S STILL AN ACT OF FORGERY?

9 A. YES.

10 Q. AND IT'S A CRIME?

11 A. YES.

12 Q. AND IT'S ONE OF THOSE CRIMINAL FALSI CRIMES, IN OTHER  
13 WORDS, A CRIME OF FALSITY? FORGERY IS A CRIME OF FALSITY?

14 A. YES.

15 Q. WE LEARNED IN CRIMINAL LAW IN LAW SCHOOL, CORRECT?

16 A. YES.

17 Q. ALL RIGHT. AND YOU DIDN'T HAVE ANY AUTHORIZATION TO SIGN  
18 THOSE NAMES -- THE PEOPLE'S NAMES TO THOSE 17 ORDERS?

19 A. NO.

20 Q. AND WHEN YOU SHOWED THOSE ORDERS TO YOUR CLIENT, EACH  
21 TIME YOU SHOWED ONE OF THOSE ORDERS, IT WAS A  
22 MISREPRESENTATION?

23 A. CORRECT.

24 Q. SO, A FALSE STATEMENT AGAIN TO THE CLIENT?

25 A. YES.

September 19, 2012



Blackburn/Cross

Page 662

1 Q. SO, WE GOT A DOCUMENT THAT'S NOT AN ACCURATE DOCUMENT TO  
2 START WITH, YOU FORGE THE JUDGE'S NAME TO IT, IT FALSELY  
3 MISREPRESENTS THINGS TO YOUR CLIENT, CORRECT?

4 A. YES.

5 Q. AND THE DISPUTED PROPERTY THAT WAS AWARDED WAS NOT  
6 AWARDED TO THE CLIENT?

7 A. NO. NO.

8 Q. OKAY. NOW, I BELIEVE YOU DID SAY YOU NEVER FILED ANY OF  
9 THOSE DOCUMENTS IN COURT?

10 A. CORRECT.

11 Q. THERE WAS NO LAWSUIT?

12 A. THAT'S RIGHT. THERE WAS NOWHERE TO FILE THEM.

13 Q. OKAY. SO, THEY WERE JUST IN THE FILE THAT YOU HELD FOR  
14 YOUR CLIENT AT YOUR OFFICE, CORRECT?

15 A. YES.

16 Q. OKAY. AND I BELIEVE YOU SAID YOU PREPARED THEM ALL?

17 A. YES.

18 Q. YOU SIGNED THEM ALL?

19 A. YES.

20 Q. DIDN'T REVEAL TO THE CLIENT THERE WAS NO LAWSUIT?

21 A. CORRECT.

22 Q. ALL OF THOSE THINGS WERE FALSE?

23 A. YES.

24 Q. IN PARAGRAPH SIX YOU TALK ABOUT SENDING CHECKS TO CLIENT  
25 A TO COMPENSATE HIM FOR THE CASE. DID YOU SEND PERSONAL

September 19, 2012

Blackburn/Cross

Page 663

1 CHECKS?

2 A. (NO RESPONSE.)

3 Q. FIRST SENTENCE IN PARAGRAPH SIX; I GAVE OR SENT CHECKS TO  
4 CLIENT A PURPORTING TO COMPENSATE HIM FOR THE CASE. WERE THEY  
5 PERSONAL CHECKS?

6 A. NO.

7 Q. WERE THEY LAW FIRM CHECKS?

8 A. YES.

9 Q. DID YOU HAVE AUTHORITY TO SIGN --

10 A. NO.

11 Q. -- THE CHECKS FROM THE LAW FIRM?

12 A. NO. NO.

13 Q. DID THE CLIENT HAVE ANY OF THAT MONEY -- WAS HE ENTITLED  
14 TO ANY OF THAT MONEY?

15 A. NO. NO.

16 Q. OKAY. AND YOU THEN SAY YOU STOPPED PAYMENT ON THOSE  
17 CHECKS BECAUSE THEY DID NOT REPRESENT REAL FUNDS FROM WHICH  
18 THE CLIENT COULD BE PAID, CORRECT?

19 A. CORRECT.

20 Q. OKAY. DOES THAT MEAN IT WAS A BAD CHECK TO START WITH?

21 A. NO. I DON'T THINK --

22 Q. BECAUSE THERE WAS MONEY IN THE LAW FIRM ACCOUNT --

23 A. YES.

24 Q. -- THAT YOU WERE WRITING A CHECK ON?

25 A. I JUST DIDN'T GO THROUGH WITH IT. IN OTHER WORDS, I

September 19, 2012

Blackburn/Cross

Page 664

1 STOPPED -- IN OTHER WORDS, I STOPPED THE PAYMENT ON THE CHECK  
2 SO IT WOULDN'T BE CASHED.

3 Q. YEAH. BUT YOU STOPPED THE PAYMENT ON THE CHECKS BECAUSE  
4 IF IT GOT CASHED SOMEBODY MIGHT FIND OUT YOU HAD WRITTEN A  
5 CHECK --

6 A. SURE.

7 Q. -- YOU WEREN'T AUTHORIZED TO WRITE?

8 A. SURE.

9 Q. OKAY. SO, YOU KNEW THE CHECKS WERE FRAUDULENT WHEN YOU  
10 WROTE THEM?

11 A. YES.

12 Q. ALL RIGHT. AND THEY WERE MISREPRESENTATIONS TO THE  
13 CLIENT?

14 A. YES.

15 Q. CORRECT?

16 A. YES.

17 Q. AND THEN IN THE THIRD SENTENCE IN PARAGRAPH SIX YOU TALK  
18 ABOUT IN LATE NOVEMBER YOU REQUESTED FUNDS OF \$50,000 FROM  
19 YOUR FIRM'S TRUST ACCOUNT AND WIRED IT TO THE CLIENT AT A BANK  
20 AND ACCOUNT OF HIS CHOOSING, IS THAT CORRECT?

21 A. YES.

22 Q. WIRED \$50,000 FROM YOUR LAW FIRM'S TRUST ACCOUNT TO THIS  
23 CLIENT?

24 A. YES.

25 Q. THESE WERE NOT FUNDS THAT CLIENT A WAS ENTITLED TO --

September 19, 2012

Blackburn/Cross

Page 665

1 A. NO.

2 Q. -- WERE THEY? AND THEY WERE FUNDS OF ANOTHER CLIENT, IN  
3 FACT, WEREN'T THEY?

4 A. THAT'S RIGHT.

5 Q. AND THAT'S STEALING, ISN'T IT?

6 A. SURE.

7 Q. OKAY. AND IT'S ALSO EMBEZZLEMENT?

8 A. YES.

9 Q. OKAY. AND THOSE ARE CRIMES THAT INVOLVE FALSE  
10 REPRESENTATIONS, DON'T THEY?

11 A. YES.

12 Q. OKAY. AND YOU KNEW THEY WERE WRONG WHEN YOU DID IT,  
13 DIDN'T YOU?

14 A. YES, BUT, I MEAN -- YES.

15 Q. YOU KNEW YOU WERE TAKING FUNDS THAT YOU WEREN'T --

16 A. I KNOW IT'S NOT RIGHT TO TAKE FUNDS FROM ONE PLACE AND  
17 GIVE IT TO ANOTHER. I KNOW THAT.

18 Q. YOU KNEW IT WAS WRONG WHEN YOU WERE DOING IT? YES?

19 A. YES.

20 Q. OKAY. AND THAT'S REALLY WHERE -- AND IT WAS ALSO, ASIDE  
21 FROM BEING FRAUDULENT AS FAR AS THE CLIENT IS CONCERNED, IT  
22 WAS A VIOLATION OF STATE BAR POLICY REGARDING LAW FIRM TRUST  
23 ACCOUNTS?

24 A. YES.

25 Q. BECAUSE NONE OF THE OTHER FIRM CLIENTS HAD OKAYED YOU

September 19, 2012

Blackburn/Cross

Page 666

1 SENDING THEIR MONEY TO CLIENT A?

2 A. THAT'S CORRECT.

3 Q. ALL RIGHT. AND OTHER CLIENTS, IN FACT, DIDN'T KNOW ABOUT  
4 THE MONEY?

5 A. THAT'S RIGHT.

6 Q. AND, IN FACT, THE LAW FIRM ORIGINALLY DIDN'T KNOW ABOUT  
7 IT?

8 A. THAT'S RIGHT.

9 Q. AND THAT'S REALLY WHERE THINGS COMPLETELY FELL APART?

10 A. THEY DID.

11 Q. BECAUSE YOU COULDN'T STOP PAYMENT ON A WIRE TRANSFER?

12 A. I DIDN'T.

13 Q. WELL, YOU COULDN'T HAVE STOPPED PAYMENT ON A WIRE  
14 TRANSFER?

15 A. NO.

16 Q. OKAY. NOW --

17 A. BUT I WILL ALSO TELL YOU I DID THAT ON THE FRIDAY AFTER  
18 THANKSGIVING OF 1993. IT DIDN'T COME TO LIGHT, I THINK, UNTIL  
19 MID-JANUARY OF -- I'M SORRY -- OF 1993. IT WAS THANKSGIVING  
20 OF 1992. AND I THINK WHAT WAS GOING THROUGH MY MIND OR BRAIN  
21 AT THAT TIME WAS I'LL WORRY ABOUT THAT TOMORROW. YOU KNOW, I  
22 JUST DIDN'T TRY TO DO ANYTHING ABOUT IT. I JUST DID IT. I  
23 DIDN'T TRY TO STOP IT. I DIDN'T TRY TO TELL ANYBODY. I  
24 DIDN'T DO ANYTHING.

25 Q. WELL, YOU COULDN'T HAVE STOPPED A WIRE TRANSFER?

September 19, 2012

Blackburn/Cross

Page 667

1 A. I KNOW THAT, BUT I'M STILL SAYING I DIDN'T TRY TO DO  
2 ANYTHING.

3 Q. OKAY. WELL, WHAT COULD YOU HAVE DONE?

4 A. I DON'T KNOW.

5 Q. I MEAN --

6 A. I MIGHT HAVE GONE TO THE LAW FIRM AND SAID I HAVE DONE  
7 THIS, LET ME TELL YOU WHAT I HAVE DONE. I WISH I HAD DONE  
8 THAT.

9 Q. YOU MAY HAVE --

10 A. I WISH I HAD -- LET ME JUST SAY THIS TO YOU, I WISH MORE  
11 THAN YOU KNOW THAT I HAD DONE THAT. ONE OF THE THINGS --  
12 YOU'VE ASKED ME THESE QUESTIONS ON FALSITY AND LYING AND  
13 STEALING. LET ME JUST SAY THIS TO YOU AS A BREAK HERE, I KNOW  
14 AS WELL AS ANYBODY IN THIS COURTROOM THE CONSEQUENCES OF DOING  
15 THESE THINGS. I WANT YOU TO KNOW I HAVE LEARNED THAT LESSON  
16 SO WELL. I WOULD NEVER IN A MILLION YEARS SAY SOMETHING FROM  
17 THIS WITNESS STAND THAT WAS UNTRUE TO KEEP DR. MACDONALD OR  
18 ANYBODY ELSE IN ANY SITUATION BECAUSE IT JUST IS NOT WORTH IT.  
19 I WOULD NOT DO THAT AND I HAVE NOT DONE THAT.

20 Q. OKAY. AND IF WE COULD GO TO PARAGRAPH SEVEN OF THE  
21 DISBARMENT, CONSENT DISBARMENT. YOU TALK ABOUT ANOTHER  
22 CLIENT, CLIENT B, YOU DEALT WITH FOR A NUMBER OF YEARS,  
23 CORRECT?

24 A. YES.

25 Q. THAT CLIENT ASKED YOU TO FILE A COMPLAINT?

September 19, 2012

Blackburn/Cross

Page 668

1 A. YES.

2 Q. FOR DAMAGES FOR BREACH OF CONTRACT?

3 A. YES.

4 Q. AND YOU DID THAT?

5 A. YES.

6 Q. AND THEN YOU TOOK A VOLUNTARY DISMISSAL?

7 A. YES.

8 Q. YOU DIDN'T TELL THE CLIENT YOU TOOK A VOLUNTARY  
9 DISMISSAL?

10 A. WHATEVER IT SAYS IS WHAT IT -- I DON'T REMEMBER, BUT  
11 WHATEVER --

12 Q. DO YOU NEED THE PARAGRAPH?

13 A. -- IT SAYS -- WHATEVER IT SAYS IS TRUE.

14 Q. OKAY. DID YOU REFILE THE COMPLAINT WITHIN ONE YEAR?

15 A. I DON'T RECALL.

16 Q. OKAY. BUT YOU KNOW THAT IF YOU TAKE A VOLUNTARY  
17 DISMISSAL --

18 A. I DO.

19 Q. -- IN STATE COURT UNDER THE RULES --

20 A. I DO.

21 Q. -- OF CIVIL PROCEDURE YOU'VE GOT ONE YEAR TO REFILE?

22 A. RIGHT.

23 Q. AND IF YOU DON'T --

24 A. CORRECT.

25 Q. -- THE CAUSE OF ACTION IS GONE?

September 19, 2012

Blackburn/Cross

Page 669

1 A. CORRECT.

2 Q. IF WE COULD GO TO THE NEXT PAGE WHERE WE'RE CONTINUING IN  
3 THIS AFFIDAVIT. YOU ULTIMATELY TOOK THE DISMISSAL WITHOUT THE  
4 CLIENT'S KNOWLEDGE AND CONSENT, YOU SAY THAT?

5 A. (WITNESS NODS HEAD.)

6 Q. THE CLIENT DIDN'T CONSENT TO THE VOLUNTARY DISMISSAL,  
7 CORRECT?

8 A. YES.

9 Q. ALL RIGHT. AND YOU TOLD THE CLIENT THE COMPLAINT HAD  
10 BEEN FILED AND PROGRESS WAS BEING MADE, CORRECT?

11 A. YES.

12 Q. AND BOTH OF THOSE THINGS WERE FALSE?

13 A. YES. YES.

14 Q. OKAY. SO, AGAIN, TWO FALSE STATEMENTS TO A CLIENT ABOUT  
15 ONGOING LITIGATION?

16 A. YES.

17 Q. AND FALSE REPRESENTATIONS ABOUT WHETHER PROGRESS WAS  
18 BEING MADE IN THE CASE?

19 A. YES.

20 Q. DO YOU KNOW HOW MANY CALLS OR CONVERSATIONS YOU HAD WITH  
21 CLIENT B?

22 A. NO.

23 Q. COULD IT HAVE BEEN MORE THAN TWO MAYBE?

24 A. PROBABLY.

25 Q. MORE THAN TEN?

September 19, 2012



Blackburn/Cross

Page 670

1 A. I DON'T -- NO, I DON'T REMEMBER THAT. NOT AS MANY AS THE  
2 OTHER, BUT I DON'T REMEMBER.

3 Q. OKAY. BUT EVERY ONE OF THEM WOULD HAVE BEEN A FALSE --

4 A. CORRECT.

5 Q. -- REPRESENTATION?

6 A. CORRECT.

7 Q. AND THEN -- YOU THEN TOLD CLIENT B HE HAD WON HIS CASE?

8 A. YES.

9 Q. AND THAT WAS FALSE?

10 A. YES.

11 Q. AND THAT WAS A MISREPRESENTATION?

12 A. YES.

13 Q. AND THAT WAS FRAUDULENT?

14 A. YES.

15 Q. ALL RIGHT. AND AT THAT POINT YOU WIRED SOME MONEY TO  
16 CLIENT B?

17 A. \$6,000.

18 Q. FROM THE LAW FIRM'S TRUST ACCOUNT?

19 A. YES.

20 Q. AND YOU WIRED IT TO THE CLIENT'S PERSONAL BANK ACCOUNT?

21 A. YES.

22 Q. THAT WASN'T MONEY THE CLIENT WAS ENTITLED TO?

23 A. NO.

24 Q. SO, THAT WAS, AGAIN, A MISREPRESENTATION?

25 A. YES.

September 19, 2012

Blackburn/Cross

Page 6/1

1 Q. IT WAS DEFRAUDING YOUR LAW FIRM?

2 A. YES.

3 Q. IT WAS STEALING?

4 A. YES.

5 Q. AND IT WAS A VIOLATION OF STATE BAR PROFESSIONAL  
6 REQUIREMENTS REGARDING TRUST FUNDS?

7 A. YES.

8 Q. NOW, IF WE COULD GO TO PARAGRAPH EIGHT OF THIS DOCUMENT  
9 AND WE'RE TALKING ABOUT THE YEAR PRIOR TO 1992, AND YOU HAD  
10 CLIENT C, WHO HAD SETTLED A CLAIM. THE FIRST LINE IN  
11 PARAGRAPH EIGHT; CLIENT C HAD SETTLED A CLAIM AND RECEIVED A  
12 CASH PAYMENT, CORRECT?

13 A. YES.

14 Q. AND ALSO HAD PAYMENT OVER TIME, CORRECT?

15 A. YES.

16 Q. AND HE OWED A MEDICAL LIEN?

17 A. YES.

18 Q. AND WHEN YOU SETTLE A CLAIM ON BEHALF OF A CLIENT, IS IT  
19 NOT THE LAW FIRM'S RESPONSIBILITY OR THE LAWYER'S  
20 RESPONSIBILITY TO PAY OUTSTANDING MEDICAL LIENS OUT OF THE  
21 SETTLEMENT BEFORE THE MONEY IS DISBURSED TO THE CLIENT?

22 A. YES.

23 Q. AND THAT WASN'T DONE HERE?

24 A. CORRECT.

25 Q. AND THE FEDERAL GOVERNMENT FOUND OUT THE CLIENT HAD NOT

September 19, 2012

Blackburn/Cross

Page 672

1 PAID -- THAT THEY HAD NOT BEEN PAID?

2 A. RIGHT. RIGHT. RIGHT.

3 Q. THE FEDERAL GOVERNMENT HADN'T BEEN PAID \$23,000?

4 A. RIGHT.

5 Q. IT WAS A LOT OF MONEY?

6 A. YES.

7 Q. A LOT OF MONEY, \$23,000?

8 A. YES.

9 Q. THE CLIENT ALL OF A SUDDEN OWES -- FINDS OUT HE OWES  
10 \$23,000 THAT SHOULD HAVE BEEN TAKEN FROM THE SETTLEMENT  
11 PROCEEDS?

12 A. YES.

13 Q. AND THE FEDERAL GOVERNMENT WANTS THEIR MONEY?

14 A. YES.

15 Q. OKAY. AND THEY'RE COMING TO GET IT? I MEAN, THEY'RE  
16 WRITING THEY WANT THE MONEY?

17 A. YES.

18 Q. AND HE OWES THE MONEY AND HE DOESN'T HAVE IT TO PAY THEM,  
19 CORRECT?

20 A. YES.

21 Q. AND YOU MADE ARRANGEMENTS FOR THE FIRM TO ADVANCE HIM  
22 \$23,000?

23 A. YES.

24 Q. AND DID THE FIRM AGREE TO THAT?

25 A. YES.

September 19, 2012

Blackburn/Cross

Page 673

1 Q. DID THEY REALIZE THAT YOU HAD NOT DISBURSED THE MONEY IN  
2 THE APPROPRIATE FASHION AND THAT WAS WHY THE \$23,000 WAS A  
3 LIEN THAT HADN'T BEEN PAID?

4 A. I DON'T KNOW THAT I -- I DON'T -- I'M SURE THEY DID NOT  
5 KNOW THAT, BUT I'M SURE I DIDN'T HAVE A DISCUSSION WITH THEM  
6 ABOUT THAT.

7 Q. OKAY. SO, ONCE AGAIN, IT WAS A MISREPRESENTATION TO THE  
8 LAW FIRM?

9 A. I DON'T KNOW THAT -- IF YOU WANT TO CALL IT A  
10 MISREPRESENTATION. IT WAS A MISREPRESENTATION BY OMISSION  
11 THAT I DIDN'T TELL THEM MORE INFORMATION THAN THEY NEEDED TO  
12 KNOW. I DON'T KNOW IF I EVER LIED TO THE FIRM ABOUT THAT  
13 EXCEPT -- UNLESS IT'S A LIE TO NOT TELL THEM SOMETHING.

14 Q. OKAY. ALL RIGHT. IN ORDER TO DEAL WITH THIS, YOU GOT A  
15 -- YOU PREPARED A PROMISSORY NOTE?

16 A. CORRECT.

17 Q. AND IT WAS A PROMISSORY NOTE FOR THE CLIENT TO SIGN?

18 A. YES.

19 Q. TO THE FIRM?

20 A. YES.

21 Q. SO, THE FIRM WOULD BE REIMBURSED FOR THE \$23,000?

22 A. YES. YES.

23 Q. THAT WAS PAYMENT TO THE FEDERAL GOVERNMENT?

24 A. YES.

25 Q. WHO WANTED THEIR MONEY?

September 19, 2012

Blackburn/Cross

Page 674

1 A. YES.

2 Q. OKAY. AND DID THE CLIENT SIGN THE PROMISSORY NOTE OR  
3 DID --

4 A. NO, I DID.

5 Q. OKAY. SO, YOU SIGNED THE CLIENT'S NAME TO THE PROMISSORY  
6 NOTE?

7 A. YES.

8 Q. WITHOUT THE CLIENT'S KNOWLEDGE?

9 A. YES.

10 Q. ANOTHER FORGERY?

11 A. YES.

12 Q. ANOTHER MISREPRESENTATION?

13 A. YES.

14 Q. THE LAW FIRM DIDN'T KNOW ABOUT IT?

15 A. NO.

16 Q. AND, AGAIN, IF THE MONEY CAME FROM THE LAW FIRM TRUST  
17 ACCOUNT TO THE FEDERAL GOVERNMENT, IT WAS A BREACH OF STATE  
18 BAR ETHICS?

19 A. THAT MONEY DID NOT COME FROM THE FIRM'S TRUST ACCOUNT.

20 Q. WHERE DID THAT MONEY COME FROM?

21 A. PROBABLY THE OPERATING ACCOUNT.

22 Q. OKAY. SO, THE FIRM PAID THAT OUT OF THE OPERATING  
23 ACCOUNT?

24 A. I SUSPECT THAT'S TRUE. IT DID NOT COME FROM THE TRUST  
25 ACCOUNT. IT WOULD BE AN OPERATING ACCOUNT. I DON'T KNOW WHAT

September 19, 2012

Blackburn/Cross

Page 675

1 THEY CALLED THE ACCOUNT.

2 Q. ALL RIGHT. AND, AGAIN, YOU'RE SURE IT DIDN'T COME FROM  
3 THE LAW FIRM TRUST ACCOUNT?

4 A. I AM POSITIVE.

5 Q. SO, THAT JUST --

6 A. OR AT LEAST TO THE BEST OF MY KNOWLEDGE, IT DIDN'T COME  
7 FROM -- I DIDN'T TAKE IT FROM ANY TRUST ACCOUNT. I AM CERTAIN  
8 THAT IT DID NOT COME FROM THE LAW FIRM'S TRUST ACCOUNT.

9 Q. OKAY. BECAUSE THE LAW FIRM WAS WRITING THE CHECK?

10 A. CORRECT.

11 Q. THEY KNEW THEY WERE WRITING THE CHECK?

12 A. THAT'S CORRECT.

13 Q. AND THEY WOULDN'T HAVE WRITTEN IT FROM THE TRUST ACCOUNT?

14 A. THAT'S CORRECT. THAT'S CORRECT.

15 Q. AND THEN I BELIEVE -- WE GET TO PARAGRAPH NINE AND YOU  
16 TALK ABOUT IN 1991 AND '92, DIVERTING \$140,000 OF FUNDS THAT  
17 CAME INTO THE FIRM, AND YOU DIVERTED THEM TO YOUR PERSONAL  
18 CHECKING ACCOUNT?

19 A. YES.

20 Q. AND THAT WAS MONEY THAT SHOULD HAVE GONE TO THE FIRM,  
21 BEEN EARNED BY THE FIRM?

22 A. YES. YES.

23 Q. EARNED BY YOUR PARTNERS OR YOU AS WELL?

24 A. EARNED BY ME.

25 Q. WHOEVER THE PARTNERS WERE.

September 19, 2012

Blackburn/Cross

Page 676

1 A. EARNED BY ME.

2 Q. OKAY. AND WHEN YOU SAY NONE OF YOUR PARTNERS KNEW ABOUT  
3 THE DIVERSION OF FUNDS, IS DIVERSION JUST A NICE WAY OF SAYING  
4 YOU STOLE THE MONEY?

5 A. I WOULD HOPE SO.

6 Q. WELL, I MEAN, THAT'S REALLY WHAT IT WAS? YOU STOLE MONEY  
7 FROM THE LAW FIRM?

8 A. YOU CAN USE THE WORD STEAL IF YOU WISH.

9 Q. WELL, ISN'T THAT AN ACCURATE DESCRIPTION OF --

10 A. SURE.

11 Q. -- THE CRIME OF STEALING --

12 A. SURE.

13 Q. -- PROPERTY?

14 A. SURE.

15 Q. AND YOU KNEW IT WAS A CRIME WHEN YOU DID IT?

16 A. YEAH.

17 Q. AND YOU'RE A CRIMINAL DEFENSE LAWYER?

18 A. YEAH. I PLED GUILTY TO THESE CHARGES IN COURT.

19 Q. I UNDERSTAND.

20 A. AND WHEN I PLED GUILTY, I PLED GUILTY TO FELONIES IN  
21 COURT.

22 Q. I KNOW YOU DID AND WE'LL GET TO THAT IN JUST A MINUTE,  
23 BUT MY QUESTION IS, YOU KNEW IT WAS A CRIME WHEN YOU DID THE  
24 ACT?

25 A. YES.

September 19, 2012

Blackburn/Cross

Page 677

1 Q. AND YOU KNEW IT WAS WRONG --

2 A. YES.

3 Q. -- IN ADDITION TO BEING A CRIME?

4 A. YES.

5 Q. AND YOU USED THE MONEY -- THE THIRD SENTENCE. IT SAYS  
6 YOU USED THE MONEY, A SUM IN EXCESS OF \$100,000, TO PAY OUT TO  
7 VARIOUS CLIENTS --

8 A. YES.

9 Q. -- OR TO OTHERS ON THEIR BEHALF?

10 A. (WITNESS NODS HEAD.)

11 Q. AND IS THAT TO COVER THINGS THAT HADN'T BEEN TAKEN CARE  
12 OF FOR THE CLIENTS?

13 A. I'M SURE SOME OF THAT MONEY WAS FOR THAT REASON.

14 Q. WELL, WHY ELSE WOULD YOU WRITE CHECKS --

15 A. WELL, THERE WAS A SITUATION -- AND I'M NOT TRYING TO  
16 SPLIT HAIRS -- BUT THERE WAS A SITUATION WHERE IT WAS 18,000  
17 OR \$20,000, WHERE I HAD WON A CASE IN FEDERAL CIVIL COURT AND  
18 THE CLIENTS WANTED TO SUE SOMEBODY ELSE TO GET THEIR  
19 ATTORNEY'S FEES BACK AND SOME OF THAT MONEY WENT FOR THAT, TO  
20 GIVE THEM THAT SO THEIR ATTORNEY'S FEES WOULD BE PAID BACK.  
21 SO, THAT WASN'T WORK THAT WASN'T DONE FOR THEM IT WAS JUST --  
22 IT WAS STILL MISUSE OF THE MONEY. I'M NOT DISPUTING THAT.

23 Q. OKAY. AND YOU SAY THAT YOU WERE PAYING OUT TO VARIOUS  
24 CLIENTS OR OTHERS ON THEIR BEHALF AND THE SUMS WERE PAID OUT  
25 BECAUSE -- LAST SENTENCE IN THE PARAGRAPH -- POTENTIAL CLAIMS

September 19, 2012



Blackburn/Cross

Page 678

1 CLIENTS HAD AGAINST ME OR THE THREAT OF CLAIMS.

2 A. THAT WAS THE ONE THAT I JUST SPOKE ABOUT, ABOUT THE  
3 ATTORNEY FEES ISSUE. I THINK THAT'S THE ONE I'M REFERRING TO.

4 Q. SO, THAT'S JUST -- THERE WAS JUST ONE WHERE YOU WERE  
5 WORRIED ABOUT A CLAIM AGAINST YOU?

6 A. YEAH. THERE MAY HAVE BEEN OTHERS, I DON'T RECALL TODAY  
7 AS I SIT HERE.

8 Q. WERE YOU WORRIED THAT THEY HAD A CLAIM THAT YOU HADN'T  
9 DONE SOMETHING YOU WERE SUPPOSED TO DO?

10 A. NO, I WAS WORRIED THAT THEY -- WELL, YEAH, IN THE SENSE  
11 OF THE WORD. THEY WANTED TO SUE AND GET BACK THEIR ATTORNEY'S  
12 FEES AND I HADN'T DONE ALL THE LEGAL PAPERWORK, I THINK, THAT  
13 WOULD GIVE THEM THE RIGHT TO DO THAT. AND SO IN THAT SENSE OF  
14 THE WORD, I HADN'T DONE WHAT THEY HAD REQUESTED.

15 Q. SO, THEY THOUGHT THEY WERE ENTITLED TO ATTORNEY'S FEES  
16 FROM THE LOSING PARTY?

17 A. YES.

18 Q. IN A CASE --

19 A. YES.

20 Q. -- THAT YOU HAD --

21 A. YES.

22 Q. -- WON FOR THEM?

23 A. YES. YES.

24 Q. ALL RIGHT. AND YOU JUST DIDN'T DO --

25 A. RIGHT.

September 19, 2012

Blackburn/Cross

Page 679

1 Q. -- THE NECESSARY WORK --

2 A. RIGHT.

3 Q. -- TO TRY TO RECOUP THE ATTORNEY'S FEES?

4 A. RIGHT.

5 Q. AND SO YOU JUST PAID THEM?

6 A. YES.

7 Q. OKAY. AND WAS THIS AN ACTION THAT YOU HAD THOUGHT WAS A  
8 SITUATION OF YOU TRYING TO PLEASE EVERYBODY?

9 A. I WAS TRYING TO PLEASE THEM.

10 Q. OKAY. ALL RIGHT. AND YOU TALKED ABOUT -- EVENTUALLY  
11 AFTER THE DISBARMENT -- THAT CAME FIRST IN SORT OF THE VERY  
12 FIRST CONSEQUENCES --

13 A. THAT CAME -- YEAH. IT WAS A BAD YEAR. THAT CAME IN LATE  
14 APRIL OF THAT YEAR.

15 Q. AND THEN THE CRIMINAL CASE MOVED AFTER OR COMPLETED --  
16 CAME TO FRUITION AFTER --

17 A. YES. YES.

18 Q. -- THE STATE BAR MATTER HAD FINISHED?

19 A. YES.

20 Q. AND I BELIEVE YOU SAID THAT THE CRIMINAL CASE INVOLVED  
21 \$235,000 IN LAW FIRM MONEY ROUGHLY?

22 A. 234.

23 Q. 234. SO, A GOOD BIT OF LAW FIRM MONEY?

24 A. OH, YES.

25 Q. OKAY. 56,000 THAT WERE TWO NON-EXISTENT LAWSUITS?

September 19, 2012

Blackburn/Cross

Page 680

1 A. CORRECT.

2 Q. 17 FAKE COURT ORDERS?

3 A. YES.

4 Q. 17 FORGED JUDGE'S SIGNATURES?

5 A. YES.

6 Q. ALL RIGHT. I BELIEVE YOU STATED YOU EVENTUALLY PLED  
7 GUILTY TO 12 FELONY CHARGES?

8 A. YES.

9 Q. EMBEZZLEMENT?

10 A. YES.

11 Q. OBSTRUCTION OF JUSTICE?

12 A. YES.

13 Q. OBTAINING PROPERTY BY FALSE PRETENSES?

14 A. I SUSPECT. I DON'T KNOW.

15 Q. BUT 12 FELONIES THAT ALL OF THE TIME CARRIED A MAXIMUM  
16 SENTENCE OF TEN YEARS, DO YOU THINK? DOES THAT SOUND ABOUT  
17 RIGHT?

18 A. NO. I WILL TELL YOU THAT I THINK THE MAXIMUM THAT I  
19 COULD HAVE RECEIVED IF THEY HAD BEEN RUN TOGETHER --  
20 CONSECUTIVE, THE MAXIMUM I COULD HAVE GOTTEN WAS 110.

21 Q. OKAY. SO, 12 FELONIES, NINE -- ROUGHLY NINE -- ROUGHLY  
22 ABOUT NINE YEARS --

23 A. MY MATH IS NOT GOOD.

24 Q. -- SOMETHING LIKE THAT?

25 A. OKAY.

September 19, 2012

Blackburn/Cross

Page 681

1 Q. AND SO YOU FACED 110 YEARS, YOU THINK?

2 A. YES.

3 Q. AND YOU GOT THREE?

4 A. YES.

5 Q. OKAY. AND I BELIEVE YOU SAID YOU SERVED JUST OVER A  
6 YEAR?

7 A. NO, I SERVED A LITTLE OVER THREE MONTHS, ABOUT THREE AND  
8 A HALF MONTHS.

9 Q. OH, OKAY. SO, THREE AND A HALF MONTHS OF A THREE YEAR  
10 SENTENCE?

11 A. YES.

12 Q. OKAY. AND SPENT THAT TIME, EXCEPT FOR A LITTLE BIT AT  
13 THE BEGINNING, AT WAKE ADVANCEMENT OR WAKE CORRECTIONAL?

14 A. CORRECT. CORRECT.

15 Q. A MINIMUM SECURITY FACILITY?

16 A. RIGHT.

17 Q. SO, YOU WERE WORKING DURING THE DAY AND LOCKED UP AT  
18 NIGHT?

19 A. YES. YES.

20 Q. NOW, DID THERE COME A TIME WHEN YOU -- LET ME BREAK OFF  
21 THAT FOR A MINUTE. DID THERE COME A TIME IN SEPTEMBER OF  
22 2005, WHERE YOU HAD DINNER WITH KATHRYN MACDONALD?

23 A. YES.

24 Q. AND WAS IT A LONG DINNER?

25 A. PROBABLY.

September 19, 2012

Blackburn/Cross

Page 682

1 Q. OKAY. AND DID YOU MAKE SOME STATEMENTS TO HER DURING  
2 THAT MEETING THAT YOU DIDN'T THINK JEFFREY MACDONALD WAS  
3 GUILTY?

4 A. NO.

5 Q. YOU NEVER MADE THAT STATEMENT TO HER?

6 A. NO.

7 Q. DID YOU EVER SAY YOU WOULD BE HAPPY IF HIS CONVICTIONS  
8 WERE OVERTURNED?

9 A. NO.

10 Q. AND --

11 A. THIS DINNER WAS BEFORE ANY MOTION WAS FILED, I THINK. I  
12 THINK IT WAS BEFORE THE MOTION WAS FILED. I MET KATHRYN  
13 MACDONALD PURSUANT TO A PHONE CALL BY WADE SMITH, WHO WANTED  
14 ME TO COME TO HIS OFFICE TO MEET HER AND ANOTHER LAWYER IN THE  
15 CASE, TIM JUNKIN, WHICH I DID.

16 A FEW DAYS AFTER THAT WE HAD DINNER. I'M SURE THAT  
17 MY PURPOSE WAS TO HOPE THAT NO MOTION WOULD BE FILED. I'M  
18 SURE THAT HER PURPOSE WAS TO CONVINC ME THE REVERSE.

19 Q. OKAY. AND YOU DIDN'T THINK ANYTHING ODD ABOUT HAVING  
20 DINNER?

21 A. YEAH, I THINK IT WAS VERY ODD.

22 Q. OKAY. YOU DID?

23 A. IT WAS ONE OF THE DUMBER THINGS I'VE DONE.

24 Q. OKAY. LET ME TALK TO YOU FOR A FEW MINUTES ABOUT A  
25 FORMER CLIENT OF YOURS BY THE NAME OF LEROY MCNEIL.

September 19, 2012

Blackburn/Cross

Page 683

1 A. WHO?

2 Q. LEROY MCNEIL. DO YOU REMEMBER --

3 A. OH, YES. YES, YES, YES.

4 Q. -- REPRESENTING MR. MCNEIL? YES?

5 A. YES.

6 Q. YOU WERE APPOINTED TO REPRESENT HIM?

7 A. YES.

8 Q. A CAPITAL CASE?

9 A. YES.

10 Q. CHARGED WITH THREE MURDERS, I BELIEVE, IS THAT RIGHT,  
11 TWO OR THREE?

12 A. YES. I THINK YOU DID THE POST-CONVICTION WORK ON SOME OF  
13 IT.

14 Q. AND YOUR CO-COUNSEL WAS RICK GAMMON?

15 A. YES.

16 Q. WHO YOU DESCRIBED AS YOUR PROTEGEE?

17 A. I DIDN'T DESCRIBE HIM AS THAT.

18 Q. WOULD YOU DESCRIBE HIM AS YOUR PROTEGEE?

19 A. NO, I THINK HE WAS JUST A YOUNG LAWYER AND WE WORKED  
20 TOGETHER. HE MIGHT NOT EVEN WANT TO BE DESCRIBED THAT WAY.

21 Q. ALL RIGHT. EVENTUALLY HE BECAME YOUR LAW PARTNER?

22 A. YES.

23 Q. A GOOD FRIEND?

24 A. YES.

25 Q. REPRESENTED YOU WHEN YOU GOT IN TROUBLE?

September 19, 2012

1 A. YES.

2 Q. IN FACT, WORKED WITH MR. SMITH IN THAT REPRESENTATION?

3 A. YES.

4 Q. AND THE TRIAL -- MR. MCNEIL WAS CONVICTED?

5 A. YES.

6 Q. AND HE WAS SENTENCED TO DEATH?

7 A. YES.

8 Q. OKAY. AND THE DEATH SENTENCE WAS UPHELD ON APPEAL?

9 A. YES.

10 Q. AND THERE WAS A MOTION FOR APPROPRIATE RELIEF FILED?

11 A. YES.

12 Q. OKAY. AND YOU RECALL THE LITIGATION ABOUT THE MOTION FOR  
13 APPROPRIATE RELIEF?

14 A. YES.

15 Q. OKAY. AND ONE OF THE ALLEGATIONS WAS INEFFECTIVE  
16 ASSISTANCE OF COUNSEL?

17 A. SURE.

18 Q. OKAY. AND PART OF THE INEFFECTIVE ASSISTANCE ARGUMENT  
19 DEALT WITH WHETHER YOU HAD MR. MCNEIL'S PERMISSION TO CONCEDE  
20 GUILT OF SECOND DEGREE MURDER TO THE JURY IN CLOSING ARGUMENT,  
21 DOES THAT SOUND FAMILIAR?

22 A. YEAH.

23 Q. OKAY. AND AT THE TIME THAT YOU REPRESENTED MR. MCNEIL  
24 THERE WAS NO STATE SUPREME COURT DECISION DIRECTING THAT YOU  
25 NEEDED THE CLIENT'S PERMISSION TO DO THAT?

September 19, 2012

Blackburn/Cross

Page 685

1 A. I TRULY DO NOT RECALL.

2 Q. OKAY. BUT THE ARGUMENT -- THE ISSUE -- ONE OF THE  
3 INEFFECTIVE ASSISTANCE ISSUES WAS THAT MR. MCNEIL SAID NOBODY  
4 HAD GOTTEN HIS PERMISSION --

5 A. CORRECT.

6 Q. -- TO PLEAD GUILTY TO SECOND DEGREE MURDER? YOU WOULD  
7 AGREE NOW THAT A CRIMINAL DEFENSE LAWYER HAS TO GET A CLIENT'S  
8 PERMISSION TO CONCEDE GUILT IN CLOSING ARGUMENT TO A  
9 PARTICULAR CRIME?

10 A. YEAH. WE WERE TRYING TO SAVE HIS LIFE.

11 Q. I UNDERSTAND. BUT YOU DO HAVE TO HAVE THE CLIENT'S  
12 PERMISSION TO DO THAT?

13 A. YES. YES.

14 Q. NOBODY'S QUESTIONING --

15 A. YES, I UNDERSTAND.

16 Q. OKAY. AND THERE CAME A TIME THAT THERE WAS AN  
17 EVIDENTIARY HEARING ON THE MOTION FOR APPROPRIATE RELIEF?

18 A. YES. YES.

19 Q. OKAY. AND THERE WAS AN AFFIDAVIT -- DO YOU RECALL IF  
20 THERE WAS AN AFFIDAVIT FROM LEROY MCNEIL SAYING NOBODY HAD  
21 ASKED HIM FOR HIS PERMISSION?

22 A. I'M SURE THERE WAS. I DON'T RECALL, BUT I'M SURE THERE  
23 WAS.

24 Q. AND DO YOU RECALL THAT MR. GAMMON TESTIFIED AT THAT  
25 HEARING?

September 19, 2012



Blackburn/Cross

Page 686

1 A. THE RECORD WOULD REFLECT WHATEVER THE RECORD REFLECTS,  
2 BUT I DON'T REMEMBER.

3 Q. SO, YOU DON'T RECALL THAT HE TESTIFIED --

4 A. NO.

5 Q. SO, YOU WOULDN'T RECALL THAT HE TESTIFIED THAT YOU DIDN'T  
6 HAVE PERMISSION TO CONCEDE --

7 A. I WOULD NOT BE SURPRISED, BUT I JUST DON'T RECALL.

8 Q. OKAY. BUT YOU WENT TO COURT AT THE HEARING TO TESTIFY,  
9 DIDN'T YOU?

10 A. YES.

11 Q. CALLED BY THE STATE?

12 A. YES.

13 Q. AND YOU TOOK AN OATH JUST LIKE YOU DID TODAY?

14 A. YES.

15 Q. OKAY. AND SWORE ON THE BIBLE TO TELL THE TRUTH?

16 A. YES.

17 Q. AND YOU TESTIFIED THAT YOU HAD MR. MCNEIL'S PERMISSION?

18 A. I THINK WE TOLD HIM. I DON'T THINK I LIED ON THAT STAND  
19 THAT DAY. I DO NOT THINK I DID AT ALL AND I -- NOR AM I  
20 SAYING THAT RICK DID.

21 WHAT I'M SAYING IS THAT AT THAT PARTICULAR INSTANCE  
22 I BELIEVED THAT I TALKED TO LEROY VERBALLY, NOT IN WRITING,  
23 BUT VERBALLY, AND TOLD HIM WHAT WE WERE GOING TO SAY. AND I'M  
24 NOT SURE IT WAS EVEN IN CLOSING ARGUMENT. IT MAY HAVE BEEN IN  
25 THE OPENING STATEMENT BECAUSE -- LET ME FINISH -- BECAUSE WE

September 19, 2012

Blackburn/Cross

Page 687

1 HAD NO CHANCE WHATSOEVER OF GETTING HIM ACQUITTED ON A FIRST  
2 DEGREE MURDER TRIAL UNLESS WE COULD GET IT -- DO SOMETHING TO  
3 SAVE HIS LIFE. SO, THAT'S WHAT WE WERE TRYING TO DO.

4 I RECALL, MORE SPECIFICALLY TO YOUR QUESTION, THAT  
5 MY TESTIMONY THAT DAY WAS ACCURATE AND TRUTHFUL AND I WOULD  
6 NOT CONCEDE OTHERWISE.

7 Q. ALL RIGHT. BUT DO YOU RECALL SAYING YOU HAD LEROY  
8 MCNEIL'S PERMISSION TO CONCEDE GUILT TO SECOND DEGREE MURDER?

9 A. IF THAT'S WHAT THE RECORD REFLECTS, THAT'S WHAT I -- IT  
10 WOULD BE.

11 Q. AND THE JUDGE, IN FACT, RULED THAT LEROY MCNEIL WAS  
12 ENTITLED TO A NEW TRIAL BECAUSE HE HAD NOT BEEN ADVISED?

13 A. I DON'T RECALL THAT.

14 Q. YOU DON'T RECALL?

15 A. I MEAN, I DON'T REMEMBER THE RESULT. I KNOW YOU WERE THE  
16 LAWYER ON THE OTHER SIDE, BUT I JUST DON'T REMEMBER THE  
17 RESULT.

18 Q. OKAY. SO YOU WOULDN'T DISPUTE --

19 A. I DON'T DISPUTE IT. I'M JUST TELLING YOU THAT WHAT I  
20 SAID WAS THE TRUTH.

21 Q. ALL RIGHT. IS THERE AN ENTITY OR A CORPORATION OR A FIRM  
22 THAT'S CALLED CHAPTER TWO?

23 A. USED TO BE.

24 Q. AND WHAT WAS THAT?

25 A. CHAPTER TWO WAS -- IT WASN'T A CORPORATION. IT WAS JUST

September 19, 2012

Blackburn/Cross

Page 688

- 1 AN ENTITY THAT I HAD SET UP AT ONE TIME TO HELP ME IN MY  
2 SPEAKING SEMINAR BUSINESS AND WRITING MY BOOK AND STUFF LIKE  
3 THAT.
- 4 Q. OKAY. AND MAYBE SO YOU COULD HAVE AN ACCOUNT THAT WOULD  
5 ALLOW YOU TO PAY EXPENSES --
- 6 A. YES.
- 7 Q. -- AND THINGS WHILE YOU WORKED ON WRITING THE BOOK?
- 8 A. YES.
- 9 Q. AND DID THERE COME A TIME WHEN A FRIEND OF YOURS  
10 INTRODUCED YOU TO A PERSON BY THE NAME OF BROOKE MORROW?
- 11 A. YES.
- 12 Q. AND WHO -- MS. MORROW WAS SOMEBODY WHO WAS INTERESTED IN  
13 HELPING YOU WRITE A BOOK?
- 14 A. SHE WANTED ME TO WRITE A BOOK ON THE MACDONALD CASE.
- 15 Q. AND SO SHE AGREED TO GIVE YOU SOME FINANCIAL SUPPORT FOR  
16 THAT?
- 17 A. SHE DID.
- 18 Q. AND WROTE A CHECK OR WROTE TWO CHECKS FOR \$50,000 TOTAL  
19 TO CHAPTER TWO?
- 20 A. YES. YES.
- 21 Q. OKAY. AND THERE WAS A PROMISSORY NOTE TO REPAY THAT  
22 MONEY?
- 23 A. YES. YES.
- 24 Q. A WRITTEN AGREEMENT?
- 25 A. YES.

September 19, 2012

Blackburn/Cross

Page 689

1 Q. THAT YOU SIGNED?

2 A. YES.

3 Q. OKAY. DID YOU EVER WRITE THE BOOK?

4 A. NO.

5 Q. OKAY. DID YOU REPAY HER THE MONEY?

6 A. NO. I HAD NO MONEY AT THAT TIME SO, NO, I WAS NOT ABLE  
7 TO REPAY HER THE MONEY.

8 Q. OKAY. AND THAT WAS IN 2001, THAT YOU SIGNED THE  
9 PROMISSORY NOTE, IS THAT CORRECT?

10 A. YES.

11 Q. AT THAT POINT --

12 A. THAT'S WHY I WAS WAITING TABLES AGAIN DURING THAT TIME.

13 Q. THAT'S WHEN YOU THOUGHT YOU WOULD WRITE THE BOOK?

14 A. YES.

15 Q. OKAY. AND DID YOU PERIODICALLY COMMUNICATE WITH HER  
16 ABOUT PROGRESS THAT WAS BEING MADE?

17 A. I WAS WORKING ON THE BOOK TO SOME DEGREE. I DID DO SOME  
18 DRAFTING WRITING DURING THAT TIME, I BELIEVE. I BELIEVE I  
19 DID. I JUST NEVER FINISHED IT.

20 Q. OKAY. AND THE AGREEMENT WAS IF YOU DIDN'T HAVE THE BOOK  
21 FINISHED YOU WOULD REPAY THE PROMISSORY NOTE?

22 A. CORRECT.

23 Q. THAT HASN'T BEEN DONE?

24 A. NO.

25 Q. OKAY. THAT'S BEEN EIGHT YEARS?

September 19, 2012

Blackburn/Cross

Page 690

1 A. YES.

2 Q. AND HAVE YOU TALKED TO HER ABOUT REPAYING THE MONEY?

3 A. NOT IN THE LAST FIVE YEARS, NO.

4 Q. OKAY. AND THAT'S THE SAME SORT OF PATTERN OF CONDUCT  
5 THAT WE SAW AT THE LAW FIRM, ISN'T IT?

6 A. NO.

7 Q. WELL, ISN'T IT TAKING MONEY WITH AN EXPECTATION THAT  
8 SOMEBODY WILL GET SOMETHING IN RETURN FOR IT?

9 A. I FULLY INTENDED TO DO THAT. IT'S NOT THE SAME THING AT  
10 ALL TO ME.

11 Q. WELL, IF YOU DON'T --

12 A. I UNDERSTAND WHAT YOU'RE TRYING TO SAY, BUT I DON'T THINK  
13 THAT'S THE SAME THING AT ALL. I DID NOT DO IT. I DID NOT  
14 FINISH IT. I DID NOT HAVE THE MONEY TO REPAY HER, BUT I DID  
15 NOT GO INTO THAT SITUATION AND TELL HER THINGS THAT WERE  
16 FALSE.

17 Q. OKAY. BUT YOU SIGNED A PROMISSORY NOTE THAT YOU DIDN'T  
18 OWN UP TO?

19 A. THE PROMISSORY NOTE -- THAT'S CORRECT.

20 Q. OKAY.

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT. AGAIN, A SITUATION OF TRYING TO PLEASE  
23 EVERYBODY? IS THAT STILL THAT GOING ON?

24 A. I DON'T KNOW HOW YOU WOULD CHARACTERIZE THAT. I DON'T  
25 KNOW. I'M NOT A DOCTOR. I CAN'T --

September 19, 2012

Blackburn/Cross

Page 691

1 Q. WELL, I'M JUST ASKING HOW YOU --

2 A. I DON'T KNOW. I DON'T CHARACTERIZE IT THAT WAY.

3 Q. OKAY. THE CHARACTERIZATION -- IS IT WINNING AT ALL COSTS  
4 STILL?

5 A. NO.

6 Q. OKAY. YOU DON'T BELIEVE IN WINNING AT ALL COSTS ANYMORE?

7 A. NO.

8 Q. OKAY. SO, THAT WAS ONLY IN THE EARLY DAYS?

9 A. IT WAS WHENEVER I SAID THAT, BUT I DON'T REMEMBER WHEN I  
10 SAID THAT.

11 Q. WELL, IT'S IN YOUR PROMOTIONAL MATERIALS NOW. HE'S A  
12 PERSON WHO BELIEVES IN WINNING AT ALL COST AND PLEASING  
13 EVERYBODY.

14 A. WELL, IN MY PROMOTIONAL MATERIALS I SENT OUT I HAD THE  
15 ATTITUDE AT ONE TIME OF WINNING AT ALL COST. THAT DOES NOT  
16 MEAN, AND IT NEVER HAS MEANT, WINNING ILLEGALLY AT ALL COSTS.  
17 AND IT CERTAINLY DIDN'T MEAN IT IN THE MACDONALD CASE.

18 Q. THERE WAS NO QUALIFICATION IN THE DESCRIPTION THAT YOU  
19 WROTE, WAS THERE?

20 A. WELL, THE REASON FOR THAT IS WHEN I WROTE THE DARN THING  
21 I DIDN'T KNOW THAT THE MACDONALD CASE WOULD COME BACK UP WITH  
22 A MOTION LIKE WE HAVE HERE. I DIDN'T THINK OF THE MACDONALD  
23 CASE WHEN I WROTE THAT SENTENCE FOR PROMOTIONAL MATERIALS LIKE  
24 I DO NOW -- WOULD TODAY.

25 Q. BUT DID YOU THINK ABOUT THE WORDS A LAWYER WHO BELIEVED

September 19, 2012

Blackburn/Cross

Page 692

1 IN WINNING AT ALL COST WHEN YOU PUT THOSE WORDS ON YOUR  
2 PROMOTIONAL MATERIALS?

3 A. DID I BELIEVE WHAT NOW?

4 Q. DID YOU BELIEVE THE DESCRIPTION THAT YOU WERE A LAWYER --

5 A. DID I BELIEVE IT WAS ACCURATE? SURE, I BELIEVE IT WAS  
6 ACCURATE.

7 Q. OKAY.

8 A. I'M NOT QUARRELING WITH YOU ABOUT THAT. WHAT I'M  
9 QUARRELING WITH YOU ABOUT IS THAT I DID NOT DO WHAT'S ALLEGED  
10 IN THIS CASE THAT YOU'RE TRYING TO PROVE THAT I DID. THAT  
11 SIMPLY DID NOT EVER HAPPEN, PERIOD. IT NEVER TOOK PLACE.

12 MR. WIDENHOUSE: MAY I HAVE A MOMENT, YOUR HONOR?

13 THE COURT: YES, SIR.

14 (PAUSE.)

15 BY MR. WIDENHOUSE:

16 Q. DURING THE MACDONALD TRIAL WHEN JUDGE DUPREE EXCLUDED THE  
17 STOECKLEY WITNESSES, THAT WAS A BIG BOOST FOR THE PROSECUTION?

18 A. YES.

19 Q. YOU DIDN'T TELL KATHRYN MACDONALD DURING YOUR MEETING  
20 THAT YOU THOUGHT JUDGE DUPREE HANDED YOU THE CASE WHEN HE DID  
21 THAT, DID YOU?

22 A. NO.

23 Q. IN ONE OF YOUR ANSWERS YOU MENTIONED THAT I HAD BEEN TO  
24 ONE OF YOUR SEMINARS?

25 A. YES.

September 19, 2012

Blackburn/Redirect

Page 693

1 Q. AND YOU TALK A LOT ABOUT SUBSTANCE ABUSE?

2 A. NO, NO, THAT'S NOT TRUE. I TALK ABOUT MENTAL HEALTH  
3 ISSUES, NOT SUBSTANCE ABUSE. I DON'T KNOW ANYTHING ABOUT  
4 SUBSTANCE ABUSE. I KNOW A LOT ABOUT MENTAL HEALTH ISSUES.

5 Q. OKAY. SO NONE OF THE CLE CREDIT THAT COMES FROM YOUR  
6 SEMINARS WOULD COVER THE SUBSTANCE ABUSE REQUIREMENT?

7 A. OH, YES, IT DOES. IF YOU WILL LOOK AT THE BAR RULES IT  
8 SAYS MENTAL HEALTH/SUBSTANCE ABUSE. IT DOESN'T MAKE ANY  
9 DIFFERENCE WHICH YOU GET.

10 Q. SO, SUBSTANCE ABUSE WASN'T AN ISSUE IN YOUR SITUATION?

11 A. NO.

12 Q. AND AS YOU SAID, YOU DON'T HAVE ANY EXPERTISE IN THAT  
13 PARTICULAR AREA?

14 A. NO.

15 Q. OKAY. NOW, THE DEPRESSION ISSUE -- THE MENTAL HEALTH  
16 ISSUES THAT YOU TALKED ABOUT AND GOING TO SEE DR. SPAULDING,  
17 ET CETERA, ALL THAT REALLY CAME OUT AFTER THE WORLD CRUMBLED?

18 A. YES.

19 Q. IT DIDN'T COME OUT AHEAD OF TIME?

20 A. NO. DR. SPAULDING WAS OF THE VIEW THAT WHATEVER I WAS  
21 GOING THROUGH HAD PRECEDED -- BY HOW LONG, I DO NOT KNOW -- A  
22 YEAR OR TWO THE FALL OR THE WORLD CRUMBLING, AS YOU SAY. IT  
23 DIDN'T -- THE DEPRESSION OR THE SEVERE DEPRESSION THAT I WENT  
24 THROUGH DID NOT COME ABOUT JUST AS THE RESULT OF MY FALL.

25 Q. BUT THAT WAS THE FIRST INKLING THAT YOU HAD THAT YOU HAD

September 19, 2012



Blackburn/Redirect

Page 694

1 THIS SERIOUS MENTAL ILLNESS?

2 A. YES. I WAS PROBABLY -- IN ALL HONESTY, I DIDN'T BELIEVE  
3 IN PSYCHIATRY. I DIDN'T BELIEVE, QUITE HONESTLY, IN MENTAL  
4 HEALTH ISSUES. THE TRUTH OF THE MATTER, AS I THINK YOU MAY  
5 KNOW, IS THAT THE FIRST TIME I WENT TO SEE DR. SPAULDING IN  
6 DURHAM, THEY HAD MY SECRETARY FOLLOW ME IN HER CAR TO MAKE  
7 SURE I SHOWED UP BECAUSE THEY DIDN'T THINK I'D GO. SO, THAT  
8 WAS THE FIRST TIME I KNEW.

9 Q. OKAY. AND ALL OF THAT REALLY CAME TO LIGHT, AND THE  
10 ACKNOWLEDGMENT OF IT, AFTER THE LAW FIRM DISCOVERED THE  
11 TRANSFER?

12 A. YES. YES. YES. YES. YES.

13 MR. WIDENHOUSE: ALL RIGHT. THANK YOU, YOUR HONOR.  
14 NO FURTHER QUESTIONS.

15 THE COURT: MR. BRUCE.

16 MR. BRUCE: JUST BRIEFLY.

17 R E D I R E C T E X A M I N A T I O N 4:14 P.M.

18 BY MR. BRUCE:

19 Q. MR. WIDENHOUSE ASKED YOU IF THE EXCLUSION OF THE OUT OF  
20 COURT TESTIMONY -- EXCUSE ME, THE TESTIMONY OF THE STOECKLEY  
21 WITNESSES ABOUT HER OUT OF COURT STATEMENTS WAS A BIG DEAL TO  
22 THE PROSECUTION. DO YOU REMEMBER HIM ASKING YOU THAT?

23 A. YES.

24 Q. IN FACT, AFTER THAT RULING, DIDN'T THE STOECKLEY  
25 WITNESSES, OR AT LEAST FOUR OF THEM, GET CALLED TO THE STAND

September 19, 2012

1 ANYWAY?

2 A. YES.

3 Q. AND WEREN'T THEY ASKED MANY QUESTIONS TO WHICH THE ANSWER  
4 WAS OBJECTIONABLE BASED ON JUDGE DUPREE'S RULING?

5 A. YES. THE BOTTOM LINE IS IT REALLY DIDN'T MAKE ANY  
6 DIFFERENCE ABOUT JUDGE DUPREE'S RULING BECAUSE BERNIE --

7 COURT REPORTER: I'M SORRY. I DIDN'T UNDERSTAND  
8 THAT.

9 THE WITNESS: IT DIDN'T REALLY MAKE TOO MUCH  
10 DIFFERENCE ABOUT JUDGE DUPREE'S RULING BECAUSE BERNIE, IN HIS  
11 QUESTIONS, GOT MOST OF THE STUFF HE WANTED IN ANYWAY IN FRONT  
12 OF THE JURY.

13 BY MR. BRUCE:

14 Q. LET'S PUT 5014C UP ON THE SCREEN, PLEASE. THIS IS THE  
15 DOCUMENT THAT MR. WIDENHOUSE TOOK YOU THROUGH ON CROSS-  
16 EXAMINATION. DO YOU REMEMBER THAT?

17 A. YES.

18 Q. AND IN THIS DOCUMENT IT IS DISCLOSED THAT YOU TOLD MANY,  
19 MANY LIES?

20 A. YES.

21 Q. AND THAT YOU TOOK OR MISAPPROPRIATED A LOT OF MONEY THAT  
22 DIDN'T BELONG TO YOU?

23 A. YES.

24 Q. AND LET'S GO TO PAGE FIVE OF THAT DOCUMENT.

25 MR. WIDENHOUSE: PAGE WHAT?

September 19, 2012

Blackburn/Recross

Page 696

1 MR. BRUCE: PAGE FIVE.

2 BY MR. BRUCE:

3 Q. FOCUS IN ON PARAGRAPH TEN. JUST READ PARAGRAPH TEN.

4 A. I ACKNOWLEDGE MY MISCONDUCT WITH REGARD TO THE ABOVE SUCH  
5 STATED MATTERS. DO YOU WANT ME TO CONTINUE?

6 Q. NO.

7 MR. BRUCE: NO FURTHER QUESTIONS.

8 THE WITNESS: I WANT TO SAY ONE LAST THING. IN  
9 ADDITION TO THIS, I DON'T KNOW IF IT IS A MATTER OF THE BAR  
10 RECORD, I ALSO SUBMITTED A PERSONAL LETTER TO THE BAR THAT  
11 SAME DAY THAT I TENDERED MY RESIGNATION IN WHICH I APOLOGIZED  
12 TO THE LAW FIRM AND APOLOGIZED TO THE BAR OF NORTH CAROLINA.  
13 THAT'S ALL. WHICH I STILL DO.

14 THE COURT: MR. WIDENHOUSE.

15 R E C R O S S - E X A M I N A T I O N 4:16 P.M.

16 BY MR. WIDENHOUSE:

17 Q. ALL OF THE STOECKLEY -- I'M SORRY, ALL OF THE STOECKLEY  
18 WITNESS TESTIMONY --

19 A. I'M SORRY, WHAT?

20 Q. ALL OF THE STOECKLEY WITNESS TESTIMONY THAT THE JURY  
21 HEARD ABOUT BECAUSE OF BERNIE SEGAL'S QUESTIONS, THERE WERE  
22 OBJECTIONS SUSTAINED TO THOSE QUESTIONS, RIGHT?

23 A. YES, BUT IT DIDN'T STOP BERNIE.

24 Q. I UNDERSTAND. BUT THE JURY IS INSTRUCTED TO DISREGARD  
25 THAT?

September 19, 2012

Blackburn/Recross

Page 697

1 A. YES. YES.

2 Q. AND WE BELIEVE JURIES LISTEN TO THEIR INSTRUCTIONS, DON'T  
3 WE?

4 A. YES. THE RECORD WILL REFLECT WHETHER THEY WERE TOLD TO  
5 DISREGARD IT OR NOT. I DON'T RECALL WHETHER THAT PART IS  
6 ACCURATE OR NOT.

7 MR. WIDENHOUSE: OKAY. THANK YOU. NO FURTHER  
8 QUESTIONS.

9 THE COURT: EXCUSE ME. I HAVE A QUESTION.

10 THE WITNESS: YES, SIR.

11 THE COURT: WHO WAS WITH YOU AT THE TIME YOU  
12 INTERVIEWED MR. BRITT -- I MEAN MS. STOECKLEY?

13 THE WITNESS: I'M SORRY?

14 THE COURT: WHO WAS WITH YOU WHEN YOU INTERVIEWED  
15 MS. STOECKLEY?

16 THE WITNESS: GEORGE ANDERSON, WHO WAS THE UNITED  
17 STATES ATTORNEY, BRIAN MURTAGH AND JACK CRAWLEY. THERE WERE  
18 JUST FOUR PEOPLE -- THERE WERE FOUR LAWYERS AND HELENA  
19 STOECKLEY.

20 THE COURT: AND WERE THEY THERE THE WHOLE TIME?

21 THE WITNESS: YES, SIR. I NEVER INTERVIEWED HELENA  
22 STOECKLEY WITHOUT BRIAN MURTAGH, JACK CRAWLEY AND GEORGE  
23 ANDERSON. I ONLY INTERVIEWED HER THAT ONE TIME.

24 THE COURT: ALL RIGHT. THANK YOU. I WANT TO SEE  
25 COUNSEL AT THE BENCH JUST A SECOND.

September 19, 2012

Blackburn/Recross

Page 698

1 (BENCH CONFERENCE ON THE RECORD.)

2 THE COURT: I JUST WONDER IF MR. MURTAGH HAS AN  
3 OBLIGATION TO TESTIFY.

4 MR. BRUCE: WELL, WE MADE THE DECISION THAT WE WOULD  
5 NOT CALL HIM AS A WITNESS BECAUSE WE WANTED TO KEEP HIM ON THE  
6 TRIAL TEAM.

7 THE COURT: I SEE. LET ME ASK YOU ALL SOMETHING  
8 ELSE. I NOTICED IN THE HELENA STOECKLEY AFFIDAVIT THERE'S NO  
9 STAPLE IN IT. ALL THE OTHER AFFIDAVITS ARE STAPLED -- PAGES  
10 ARE STAPLED TOGETHER. NONE IS REFLECTED IN HER AFFIDAVIT.  
11 THAT'S PRETTY STRANGE.

12 MR. WIDENHOUSE: I DIDN'T NOTICE THAT.

13 THE COURT: I DID.

14 MR. WIDENHOUSE: OKAY.

15 THE COURT: I MEAN, I DON'T KNOW WHETHER YOU'VE GOT  
16 THE ORIGINAL OR NOT. THE COPY THAT I HAVE DOESN'T SHOW THAT.

17 MR. WIDENHOUSE: OKAY.

18 THE COURT: NOW, TOMORROW MORNING I HAVE A  
19 CONTINUATION OF A SHOW CAUSE HEARING AT NINE O'CLOCK AND I  
20 HOPE I WILL BE THROUGH BY 10:00 AND I WILL TAKE A LITTLE BREAK  
21 BEFORE I COME BACK TO YOU ALL AND I HOPE WE CAN WORK STRAIGHT  
22 THROUGH TO LUNCH WITHOUT A MORNING BREAK.

23 MR. WIDENHOUSE: OKAY.

24 THE COURT: IS THERE ANYTHING ELSE WE NEED TO TAKE  
25 UP TONIGHT, COUNSEL?

September 19, 2012

Blackburn/Recross

Page 699

1 MR. BRUCE: YOUR HONOR, DO YOU WANT US TO BE HERE AT  
2 10:00 IN CASE YOU'RE FINISHED AND READY TO GO?

3 THE COURT: I WANT YOU TO BE IN THE BUILDING  
4 SOMEWHERE I CAN GET IN TOUCH WITH YOU.

5 MR. BRUCE: OKAY.

6 THE COURT: I HONESTLY HAVE NO IDEA WHAT TO EXPECT  
7 TOMORROW. IT'S A VERY STRANGE THING. BUT ANYWAY --

8 MR. WIDENHOUSE: BUT IF WE'RE IN THE BUILDING BY  
9 10:00 -- BY QUARTER TILL 10:00, WE'LL BE OKAY AS FAR AS YOU'RE  
10 CONCERNED?

11 THE COURT: OH, YEAH. SURE. I'M GOING TO TAKE A  
12 BREAK BETWEEN THE TWO HEARINGS. ANYTHING ELSE, COUNSEL?

13 MR. BRUCE: THAT'S ALL. THANK YOU.

14 THE COURT: I'D LIKE TO SEE IF YOU COULD FIND THE  
15 ORIGINAL OF THAT AFFIDAVIT.

16 MR. WIDENHOUSE: I'LL DO THE BEST I CAN. IT MAY BE  
17 IN CHAPEL HILL OR IT MAY BE IN ANOTHER LAWYER'S OFFICE.

18 THE COURT: I HAVE NO IDEA WHERE IT IS. WE'VE GOT A  
19 LOT OF STUFF HERE, I DON'T KNOW, BUT I DID NOTICE THAT ON THE  
20 MATERIAL THAT WAS GIVEN TO ME AND I DID NOTICE THAT THE OTHERS  
21 WERE STAPLED.

22 MR. WIDENHOUSE: ALL RIGHT. I'LL SEE WHAT I CAN DO.

23 THE COURT: IS THERE ANYTHING ELSE, COUNSEL?

24 MR. BRUCE: THAT'S ALL.

25 MR. WILLIAMS: YOUR HONOR, JUST IF I COULD, AND I

September 19, 2012

Blackburn/Recross

Page 700

1 DON'T MEAN TO SPEAK OUT OF TURN, BUT MY OFFICE PREPARED THE  
2 COPIES AND I DON'T KNOW IF YOU MEAN THE ACTUAL NOTEBOOK COPIES  
3 THAT YOU RECEIVED SOME WERE STAPLED AND OTHERS IN THE NOTEBOOK  
4 WERE NOT STAPLED.

5 THE COURT: THE PHOTOGRAPH SHOWS NO STAPLE.

6 MR. WILLIAMS: THE PHOTOGRAPH SHOWS NO STAPLE MARK,  
7 OKAY.

8 THE COURT: THAT'S RIGHT.

9 MR. WILLIAMS: OKAY. THAT WOULD PRECEDE US, BUT WE  
10 CAN CERTAINLY CHECK ON THAT.

11 THE COURT: WELL, I THINK IT WOULD BE INTERESTING --

12 MR. WILLIAMS: YES, SIR.

13 THE COURT: -- IN VIEW OF THE NATURE OF THE DOCUMENT  
14 AND THE SECOND PAGE AND THE FIRST PAGE.

15 MR. WILLIAMS: YES, SIR.

16 THE COURT: ALL RIGHT. ANYTHING FURTHER, COUNSEL?

17 MR. BRUCE: THAT'S ALL.

18 (BENCH CONFERENCE CONCLUDED.)

19 THE COURT: WE'RE GOING TO TAKE A RECESS TILL NINE  
20 O'CLOCK TOMORROW MORNING.

21 MR. BRUCE: THANK YOU, YOUR HONOR.

22 THE COURT: THIS CASE WILL START AT 10:00, COUNSEL.

23 I'VE GOT ANOTHER HEARING TOMORROW MORNING TO HANDLE AT 9:00.

24 I HOPE TO BE THROUGH BY 10:00. I CAN'T GUARANTEE THAT, BUT I  
25 THINK WE WILL. THANK YOU.

September 19, 2012

Blackburn/Recross

Page 701

1 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 4:21 P.M.,  
2 TO RECONVENE AT 10:00 A.M., ON SEPTEMBER 20, 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 19, 2012



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

NO. 15-7136

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JEFFREY R. MACDONALD,

*Defendant-Appellant.*

---

**JOINT APPENDIX  
VOLUME V of VII**

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
AT WILMINGTON

John Stuart Bruce  
Acting United States Attorney  
Leslie K. Cooley  
Jennifer P. May-Parker  
Assistant United States Attorneys  
310 New Bern Avenue, Suite 800  
Raleigh, NC 27601  
(919) 856-4530

Counsel for Appellee

Joseph E. Zeszotarski, Jr.  
Gammon, Howard & Zeszotarski, PLLC  
115 ½ West Morgan Street  
Raleigh, NC 27601  
(919) 521-5878

Counsel for Appellant

# TABLE OF CONTENTS

## Volume I of VII

### Appendix Page

Docket Entries.....1

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

    Testimony of Richard D. Tevere .....42

    Testimony of Kenneth C. Mica .....80

    Testimony of William F. Ivory .....135

    Testimony of Robert Shaw .....396

    Testimony of Dr. Edward Gammel .....474

    Testimony of Dr. George E. Hancock .....514

    Testimony of Michael Newman .....548

    Testimony of Paul Connolly .....563

    Testimony of Elizabeth Ramage.....568

    Testimony of Dr. Severt H. Jacobson.....576

    Testimony of Robert Caverly .....594

    Testimony of Dr. Frank Gemma.....614

    Testimony of Bennie Hawkins .....617

    Testimony of Hilyard Medlin .....626

Testimony of Mildred Kassab .....646

Testimony of Dr. Craig Stanley Chamberlain.....669

Testimony of Terry Laber.....690

Testimony of Janice Glisson.....702

**TABLE OF CONTENTS**

Volume II of VII

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

Testimony of Dillard Browning .....745

Testimony of Charles Michael Hoffman .....798

Testimony of Paul Stombaugh .....810

Testimony of Shirley Green .....891

Testimony of Jack B. Crawley, Jr.....945

Testimony of Vincent P. Guinn.....982

Testimony of John I. Thorton .....1023

Testimony of Dr. George Podgorny .....1040

Testimony of James Milne.....1041

Discussion on missing witnesses .....1047

Testimony of Helena Stoeckley.....1051

Argument to Court.....1342

Bench Conference.....1343

Testimony of P.E. Beasley .....1359

Testimony of Jane Zillioux.....1404

Testimony of Charles Underhill .....1426

**TABLE OF CONTENTS**

Volume III of VII

Excerpts of Transcript of Trial in the United States District Court  
for the Eastern District of North Carolina in July-August 1979

Testimony of Wendy Rouder .....1465

Testimony of William Posey .....1520

Testimony of Carmine Welch.....1569

Testimony of James Gaddis.....1572

Testimony of Jeffrey R. MacDonald .....1582

Bench Conference.....1658

Government Exhibit 1153 marked .....1693

Government Closing Argument.....1694

Defendant’s Closing Argument.....1699

Government Trial Exhibits

Exhibit 1 (photo).....1700

Exhibit 2 (photo).....1703

Exhibit 24 (photo).....1704

Exhibit 24b (photo).....1705

Exhibit 27 (photo).....1706

Exhibit 40 (photo).....1707

Exhibit 40a (photo).....1708

Exhibit 41 (photo).....1709

Exhibit 42 (photo).....1710

Exhibit 43 (photo).....1711

Exhibit 43a (photo).....1712

Exhibit 44 (photo).....1713

Exhibit 45 (photo).....1714

Exhibit 54 (photo).....1715

Exhibit 55 (photo).....1716

Exhibit 56 (photo).....1717

Exhibit 57 (photo).....1718

Exhibit 58 (photo).....1719

Exhibit 59 (photo).....1720

Exhibit 62 (photo).....1721

Exhibit 64 (photo).....1722

Exhibit 65 (photo).....1723

Exhibit 70 (photo).....1724

Exhibit 71 (photo).....1725

Exhibit 71a (photo).....1726

Exhibit 72 (photo).....1727

Exhibit 73 (photo).....1728

Exhibit 74 (photo).....1729

Exhibit 75 (photo).....1730

Exhibit 76 (photo).....1731

Exhibit 77 (photo).....1732

Exhibit 78 (photo).....1733

Exhibit 80 (photo).....1734

Exhibit 81 (photo).....1735

Exhibit 100 (photo).....1736

Exhibit 210 (photo).....1737

Exhibit 211 (photo).....1738

Exhibit 211a (photo).....1739

Exhibit 212 (photo).....1740

Exhibit 214 (photo).....1741

Exhibit 422 (photo).....1742

Exhibit 424 (photo).....1743

Exhibit 425 (photo).....1744

Exhibit 428 (photo).....1745

Exhibit 430 (photo).....1746

Exhibit 597 (photo).....1747

Exhibit 606a (photo).....1748

Exhibit 607 (photo).....1749

Exhibit 608a (photo).....1750

Exhibit 609 (photo).....1751

Exhibit 610 (photo).....1752

Exhibit 611 (photo).....1753

Exhibit 612 (photo).....1754

Exhibit 638 (ABO Blood Factors: Colette, Kimberly, Jeffrey, Kristen)...1755

Exhibit 644 (Summary of Blood Analyses) .....1756

Exhibit 654 (Location of Threads and Yarns).....1757

Exhibit 763 (photo).....1758

Exhibit 764c (photo) .....1759

Exhibit 768 (photo).....1760

Exhibit 771 (photo).....1761

Exhibit 772 (photo).....1762

Exhibit 776 (photo).....1763

Exhibit 777 (photo).....1764

Exhibit 787a (photo) .....1765

Exhibit 789a (photo) .....1766

Exhibit 790 (photo).....1767

Exhibit 791 (photo).....1768

Exhibit 792 (photo).....1769

Exhibit 793 (photo).....1770

Exhibit 794 (photo).....1771

Exhibit 795 (photo).....1772

Exhibit 796 (photo).....1773

Exhibit 808 (photo).....1774

Exhibit 809 (photo).....1775

Exhibit 811 (photo).....1776

Exhibit 812 (photo).....1777



Exhibit 952 (photo).....	1778
Exhibit 967 (Map of Corregidor Courts).....	1779
Exhibit 968 (photo).....	1780
Exhibit 978 (Items Found in Pile on Floor of Master Bedroom) .....	1781
Exhibit 983 (South Bedroom – Kimberly MacDonald) .....	1782
Exhibit 1070 (photo).....	1783
Exhibit 1077 (photo).....	1784
Exhibit 1078 (photo).....	1785
Exhibit 1135 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume I).....	1786
Exhibit 1136 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume II) .....	1887
Exhibit 1141 (Table of Contents Subject Matter of Statements) .....	1892
 Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence, filed January 17, 2006 .....	 1932
 Memorandum in Support of Jeffrey R. MacDonald’s Motion Under 28 U.S.C. Section 2255 To Set Aside His Sentence, filed January 17, 2006.....	 1954
 Exhibit 1 (Affidavit of Jimmy Britt).....	 2006
 Exhibit 3 (Affidavit of Lee Tart) .....	 2010
 Exhibit 7 (Affidavit of Everett Morse, Bryant Lane, Donald Buffkin).....	 2012

Petitioner’s Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction – Namely Newly Discovered DNA Evidence, filed March 22, 2006 .....2020

Memorandum of Evidence and Points and Authorities in Support of Petitioner’s Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction, filed March 22, 2006 .....2026

Petitioner’s Motion, Pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, to Expand the Record to Include the Itemized Authenticated Evidence, filed March 23, 2006.....2033

Petitioner’s Statement of Itemized Material Evidence- With Citations to the Record or to Authenticated Proofs- In Support of his Motion Under 28 U.S.C. § 2255 to Vacate his Sentence, filed March 23, 2006 .....2038

Excerpts of Reply in Response to Motion to Vacate, Set Aside or Correct Sentence, filed May 8, 2006 .....2064

Excerpt of Notice of Death, filed October 28, 2008.....2068

Excerpts of Order Denying Motion for Leave to File Successive 2255 Motion; Denying Motion to Amend or Correct; Denying Motion to Expand the Record; Granting Motion to; Denying Motion to Supplement Itemized Evidence, filed November 4, 2008 .....2069

Petitioner’s Motion for Hearing Attachment, Letter from Lee Tart to Counsel, filed September 20, 2011.....2078

Order as to Petitioner’s Motion Under the IPA, filed September 21, 2011 .....2079

Affidavit of Craig S. Chamberlain, filed December 12, 2011 .....2081

Supplemental Affidavit of Craig S. Chamberlain, filed December 12, 2011 .....2088

Affidavit of Dillard O. Browning, filed December 12, 2011 .....2098

Affidavit of Grant D. Graham, Sr., filed December 12, 2011 .....2105

Affidavit of Janice S. Glisson, filed December 12, 2011 .....2114

Affidavit of Joseph A. Dizinno, filed December 12, 2011 .....2130

Affidavit of Robert Fram, filed December 12, 2011 .....2145

Order Granting Motion to Continue Evidentiary Hearing as to Jeffrey MacDonald,  
filed July 16, 2012.....2165

**TABLE OF CONTENTS**

Volume IV of VII

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 17, 2012.....2166

    Testimony of Wade Smith .....2185

    Testimony of Mary Britt.....2386

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 18, 2012.....2395

    Testimony of Mary Britt.....2398

    Testimony of Eugene Stoeckley .....2431

    Testimony of Wendy Rouder .....2509

    Testimony of Laura Redd .....2565

    Testimony of Sara McMann .....2582

Transcript of Evidentiary Hearing in the United States District Court  
 For the Eastern District of North Carolina, Before the Honorable James  
 C. Fox, September 19, 2012.....2629

    Testimony of Frank Mills .....2635

    Testimony of Dennis Meehan.....2680

    Testimony of Janice Meehan .....2701

    Testimony of Eddie R. Sigmon .....2708

    Testimony of William I. Berryhill, Jr. ....2727

    Testimony of Maddie Reddick .....2736

    Testimony of J. Rich Leonard .....2748

    Testimony of James L. Blackburn.....2759

**TABLE OF CONTENTS**

Volume V of VII

Transcript of Evidentiary Hearing in the United States District Court  
 For the Eastern District of North Carolina, Before the Honorable James  
 C. Fox, September 20, 2012.....2867

    Testimony of Jack B. Crawley, Jr.....2877

    Testimony of William Ivory .....2923

    Testimony of Raymond Madden, Jr. ....3045

Transcript of Evidentiary Hearing in the United States District Court  
 For the Eastern District of North Carolina, Before the Honorable James  
 C. Fox, September 21, 2012.....3071

Testimony of Raymond Madden, Jr. ....3073

Testimony of Joe McGinniss.....3114

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 24, 2012.....3224

Testimony of Joe McGinniss.....3227

Testimony of Jerry Leonard. ....3271

Transcript of Evidentiary Hearing in the United States District Court  
For the Eastern District of North Carolina, Before the Honorable James  
C. Fox, September 25, 2012.....3406

Petitioner’s Closing Argument. ....3408

Government’s Closing Argument.....3462

Petitioner’s Rebuttal. ....3561

**TABLE OF CONTENTS**

Volume VI of VII

Government Exhibits Introduced at September 2012 Evidentiary Hearing

Government Exhibit 2000 (Warrant for Arrest of Witness Helena Stoeckley)  
.....3588

Government Exhibit 2001 (Wire Document of August 1979).....3589

Government Exhibit 2002 (FBI Report of August 14, 1979 Interview of Helena Stoeckley).....	3592
Government Exhibit 2003 (Report of Arrest of Helena Stoeckley).....	3595
Government Exhibit 2006 (Fingerprint Card).....	3597
Government Exhibit 2007 (Fingerprint Card).....	3599
Government Exhibit 2008 (Helena Stoeckley Booking Report).....	3602
Government Exhibit 2009 (Helena Stoeckley Booking Photo) .....	3608
Government Exhibit 2010 (Sworn Statement of Vernoy Kennedy) .....	3609
Government Exhibit 2011 (Court Reporter Certification Vernoy Kennedy) .....	3624
Government Exhibit 2053 (Helena Stoeckley Prisoner, Detention and Disposition Record).....	3626
Government Exhibit 2054 (Helena Stoeckley Disposition Sheet).....	3627
Government Exhibit 2055 (Helena Stoeckley Prisoner, Detention and Disposition Record).....	3628
Government Exhibit 2056 (Helena Stoeckley Commitment) .....	3629
Government Exhibit 2057 (Helena Stoeckley Commitment) .....	3630
Government Exhibit 2058 (Helena Stoeckley Commitment) .....	3631
Government Exhibit 2059 (Helena Stoeckley Release).....	3632
Government Exhibit 2060 (Helena Stoeckley Release).....	3633
Government Exhibit 2061 (Helena Stoeckley Release).....	3634

Government Exhibit 2062 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3635

Government Exhibit 2063 (Helena Stoeckley Disposition Sheet).....3636

Government Exhibit 2064 (Helena Stoeckley Commitment) .....3637

Government Exhibit 2065 (Helena Stoeckley Commitment) .....3638

Government Exhibit 2066 (Helena Stoeckley Release).....3639

Government Exhibit 2067 (Photo of Pickens County Law Enforcement Center) .....3640

Government Exhibit 2068 (1977 Jail Book) .....3641

Government Exhibit 2069 (1977 Jail Book) .....3642

Government Exhibit 2070 (1977 Jail Book) .....3643

Government Exhibit 2071 (1977 Jail Book) .....3644

Government Exhibit 2072 (1977 Jail Book) .....3645

Government Exhibit 2073 (1977 Jail Book) .....3646

Government Exhibit 2074 (News & Observer Article, August 17, 1979)  
.....3647

Government Exhibit 2085 (Statement of Facts of Jimmy Britt, February 23, 2005).....3648

Government Exhibit 2086 (Interview Under Oath of Jimmy Britt, February 24, 2005).....3649

Government Exhibit 2087 (Affidavit of Jimmy Britt, October 26, 2005)  
.....3684

Government Exhibit 2088 (Affidavit of Jimmy Britt, November 3, 2005)  
 .....3688

Government Exhibit 2089 (Addendum to Affidavit of Jimmy Britt, February  
 28, 2006) .....3692

Government Exhibit 2100 (North Carolina-South Carolina Driving  
 Distances).....3694

Government Exhibit 2103a (Raleigh Map) .....3695

Government Exhibit 2104 (South Carolina Map) .....3696

Government Exhibit 2138 (Sketch of MacDonald Home).....3698

Government Exhibit 2201 (Fatal Vision Book Excerpt).....3699

Government Exhibit 2318 (Tale of the Green Beret Excerpt) .....3709

Government Exhibit 2332 (FBI Report of September 17, 2007 Interview of  
 Helena Stoeckley Sr.) .....3718

Government Exhibit 2333 (Notes of FBI Interview of Helena Stoeckley  
 Sr.).....3722

Government Exhibit 2334 (FBI Agent Madden Summary of Interview of  
 Helena Stoeckley Sr.) .....3726

Government Exhibit 2357 (Sketch).....3730

Government Exhibit 2367 (Government Summary Exhibit- Jimmy Britt) .....  
 .....3731

Government Exhibit 3499 (Government Summary Exhibit- Unsourced Hairs  
 75A, 91A and 58A (1)).....3749

Government Exhibit 3500 (Government Summary Exhibit- Q-137 and 91A)3871



Government Exhibit 3501 (Government Summary Exhibit- DNA Results of Government's Trial and New Evidence).....	3889
Government Exhibit 4000 (MacDonald Handwritten Notes) .....	3935
Government Exhibit 4002 (Fatal Vision Book Excerpt).....	3953
Government Exhibit 6001 (Military Police Receipt) .....	3958
Government Exhibit 6002 (Inventory) .....	3962
Government Exhibit 6073 (Government Summary of MacDonald Trial Testimony).....	3964
Government Exhibit 6076 (FBI Report of March 21, 2006 Interview of Jerry Leonard).....	4011
Government Exhibit 7000 (A Wilderness of Error Book Excerpt).....	4013
Government Exhibit 7001 (A Wilderness of Error Book Excerpt).....	4021
Government Exhibit 7010 (Excerpt of In Re Leonard, 339 N.C. 596 (1995))... ..	4024
Government Exhibit 7015 (NC State Bar Ethics Inquiry) .....	4027
Government Exhibit 7017 (May 21, 2007 Letter from Jerry Leonard to Court) .....	4031

#### Petitioner's Exhibits Introduced at September 2012 Evidentiary Hearing

Petitioner's Exhibit 5004 (Candle Wax Trial Testimony) .....	4033
Petitioner's Exhibit 5021 (Declaration of Jimmy Friar) .....	4045
Petitioner's Exhibit 5023 (Declaration of Ann Sutton Cannady) .....	4048
Petitioner's Exhibit 5024a (Declaration of Norma Lane) .....	4053

Petitioner’s Exhibit 5024b (Declaration of Bryant Lane) .....4055

Petitioner’s Exhibit 5027 (Affidavit of Ellen Dannelly) .....4057

Petitioner’s Exhibit 5048 (FBI Report of May 23, 1984 Interview of Norma Lane) .....4060

Petitioner’s Exhibit 5051 (Affidavit of Helena Stoeckley Sr.) .....4063

Petitioner’s Exhibit 5057 (Jimmy Britt Polygraph Examination) .....4066

Petitioner’s Exhibit 5058 (Affidavit of Jimmy Britt) .....4069

Petitioner’s Exhibit 5059 (Affidavit of Jimmy Britt) .....4073

Petitioner’s Exhibit 5060 (Picture of Jimmy Britt with Helena Stoeckley in Courthouse).....4077

Petitioner’s Exhibit 5069 (Lee Tart Interview Under Oath) .....4078

Petitioner’s Exhibit 5080 (Affidavit of Wendy Rouder, Esq.).....4090

Petitioner’s Exhibit 5084 (Kay Reibold Statement).....4095

Petitioner’s Exhibit 5113 (Affidavit of Jerry Leonard).....4098

Petitioner’s Exhibit 5115 (Letter from Judge Dupree to Wendy Rouder)  
 ... .....4102

**TABLE OF CONTENTS**

Volume VII of VII

Stipulations, filed September 17, 2012 .....4103

Excerpts of Government’s Post-Hearing Memorandum, filed July 1, 2013 .....4219

Excerpts of Government’s Post-Hearing Sur-Reply, filed September 23, 2013  
 .....4311

Order Denying Petitioner’s Motion to Vacate Under 28 U.S.C. § 2255,) filed July  
 24, 2014 .....4389

Petitioner’s Motion to Alter or Amend Judgment and Incorporated Memorandum  
 of Law, filed August 21, 2014 .....4558

Excerpts of Government’s Memorandum in Opposition of Petitioner’s Motion to  
 Alter or Amend Judgment, filed February 12, 2015.....4570

Order Denying Motion to Alter or Amend Judgment as to Jeffrey MacDonald, filed  
 May 18, 2015 .....4605

Petitioner’s Notice of Appeal, filed July 16, 2015 .....4631

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 .  
 . . . . .

EVIDENTIARY HEARING  
BEFORE THE HONORABLE JAMES C. FOX  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.

T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
<u>JACK B. CRAWLEY, JR.</u>		
BY MR. BRUCE	DIRECT	712
BY MR. WIDENHOUSE	CROSS	735
BY MR. BRUCE	REDIRECT	753
<u>WILLIAM IVORY</u>		
BY MS. COOLEY	DIRECT	758
BY MR. WIDENHOUSE	CROSS	832
BY MS. COOLEY	REDIRECT	872
BY MR. WIDENHOUSE	RECROSS	879
<u>RAYMOND MADDEN, JR.</u>		
BY MS. COOLEY	DIRECT	880
<u>EXHIBITS</u>		
<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
5076	ROCK REPORT OF ARTICLE 32 PROCEEDINGS	846
5005	TRANSCRIPT PAGE	860
5029	AFFIDAVIT OF EVERETT MORSE	864
5030	AFFIDAVIT OF BRYANT LANE	866
<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
2082	FLOOR PLAN OF EIGHTH FLOOR OF RALEIGH FEDERAL BUILDING	718
2083	FLOOR PLAN OF EIGHTH FLOOR OF RALEIGH FEDERAL BUILDING	719
2084	ENLARGEMENT OF FLOOR PLAN OF EIGHTH FLOOR OF RALEIGH FEDERAL BUILDING	720
161	PHOTO OF MACDONALD RESIDENCE	766
164	PHOTO OF MACDONALD RESIDENCE	767
165	PHOTO OF MACDONALD RESIDENCE	767
165A	PHOTO OF MACDONALD RESIDENCE WITH MARKINGS	767
652	FLOOR PLAN OF MACDONALD RESIDENCE	768
652A	FLOOR PLAN OF MACDONALD RESIDENCE WITH MARKINGS	768
2138	PHOTO DEPICTING BLOOD DISTRIBUTION	769
21	PHOTO OF MACDONALD LIVING ROOM	770
22	360 DEGREE PHOTO OF MACDONALD LIVING ROOM	771
28	PHOTO OF MACDONALD DINING ROOM	771
30	PHOTO OF DINING ROOM DOOR INTO THE KITCHEN	772

September 20, 2012

T A B L E O F C O N T E N T S C O N T I N U E D

<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
33	PHOTO OF BLOOD DROPLETS IN KITCHEN	772
75	CONTINUING 360 DEGREE PHOTO OF LIVING ROOM	773
26	CONTINUING 360 DEGREE PHOTO OF LIVING ROOM	774
25	PHOTO OF <i>ESQUIRE</i> MAGAZINE	775
27	PHOTO OF EYEGLASSES	775
23	PHOTO OF COUCH	775
38	PHOTO OF HALLWAY FROM LIVING ROOM TO MASTER BEDROOM	777
39	PHOTO OF BODY OF COLETTE MACDONALD	778
40	CLOSER PHOTO OF BODY OF COLETTE MACDONALD	779
40A	CLOSER PHOTO OF BODY OF COLETTE MACDONALD WITH MARKINGS	780
41	PHOTO OF BODY OF COLETTE MACDONALD	780
50	PHOTO OF GENEVA FORGE KNIFE	783
43	CLOSE UP PHOTO OF BODY OF COLETTE MACDONALD	783
43A	CLOSE UP PHOTO OF BODY OF COLETTE MACDONALD WITH MARKINGS	784
46	PHOTO OF BED IN MASTER BEDROOM	785
71	PHOTO OF BEDROOM WITH COLETTE MACDONALD'S BODY REMOVED	785
3033	MILITARY POLICE RECEIPT FOR PROPERTY	790
55	PHOTO OF KIMBERLEY MACDONALD'S BEDROOM	792
56	PHOTO OF KIMBERLEY MACDONALD'S BODY IN BED	792
57	PHOTO OF BODY OF KIMBERLEY MACDONALD	793
215	PHOTO OF KIMBERLEY MACDONALD'S BED WITH BODY REMOVED	793
59	PHOTO OF KRISSY MACDONALD'S BODY IN BED	794
60	PHOTO OF KRISSY MACDONALD'S BODY IN BED	795
70	PHOTO OF BLOOD ON FLOOR	796
63	PHOTO OF END OF KRISSY MACDONALD'S BED	797
145	PHOTO OF KRISSY MACDONALD'S BEDROOM AND ROCKING HORSE	797
72	PHOTO OF KRISSY MACDONALD'S BED AFTER BODY REMOVED	798
65	PHOTO OF FOOTPRINTS - KRISSY MACDONALD'S BEDROOM	798
211	PHOTO FROM MASTER BEDROOM INTO HALLWAY	800
211A	PHOTO FROM MASTER BEDROOM INTO HALLWAY WITH MARKINGS	802
51	PHOTO FROM MASTER BEDROOM LOOKING INTO LAUNDRY ROOM	802
79	PHOTO OF DOOR LEADING INTO LAUNDRY ROOM	803
80	PHOTO OUTSIDE OF CLUB, ICE PICK AND OLD HICKORY KNIFE	803

September 20, 2012

T A B L E O F C O N T E N T S C O N T I N U E D

<u>GOVERNMENT</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
81	PHOTO OF OLD HICKORY KNIFE AND ICE PICK	803
2199	STATEMENT OF GREG MITCHELL - 5/25/71	805
2200	POLYGRAPH EXAMINATION OF GREG MITCHELL	811
2331	POLYGRAPH EXAMINATION OF WILLIAM POSEY	817
2320	CLOSE UP PHOTO OF REAR SPRINGS OF ROCKING HORSE	823
2321	CLOSE UP PHOTO OF FRONT SPRINGS OF ROCKING HORSE	824
2324	PROPERTY INVENTORY	824
2325	CLAIM FOR SEIZED PROPERTY	826
2318.4	PHOTO OF FOOTBOARD OF BED AND TOYS AND ROCKING HORSE	828
2119	PHOTO OF SIMILAR ROCKING HORSE	828
2121	PHOTO OF ROCKING HORSE WITH SPRING REMOVED	829
2122	PHOTO OF REAR OF ROCKING HORSE WITH SPRING REMOVED	829
2118	ACTUAL ROCKING HORSE SIMILAR TO ONE IN KRISTEN'S BEDROOM	830
542	PHOTO OF CHAIR WITH WAX ON IT	875

BENCH CONFERENCES

<u>PAGE</u>
706
842
879
893
899

P R O C E E D I N G S

9:57 A.M.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(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

September 20, 2012



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

September 20, 2012

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.

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

September 20, 2012

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

Crawley/Direct

Page 711

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

September 20, 2012

Crawley/Direct

Page 712

1 MEAN, THIS THING IS GOING TO DRAW TO A CLOSE PROBABLY  
2 TOMORROW, DON'T YOU THINK, JUDGE?

3 THE COURT: I DON'T KNOW.

4 MR. WEST: I MEAN, I FEEL LIKE WE WILL BE ABLE TO  
5 GET SOMETHING TO THE COURT BEFORE THE END OF THE DAY.

6 MR. BRUCE: OKAY. THANK YOU.

7 THE COURT: OKAY. THANK YOU, COUNSEL. ARE YOU  
8 GOING TO PUT ON ANOTHER WITNESS? DID YOU FINISH UP THE LAST  
9 ONE?

10 MR. BRUCE: WE'RE READY FOR A NEW WITNESS. WE HAVE  
11 FOUR MORE WITNESSES.

12 THE COURT: OKAY. THANK YOU.

13 (BENCH CONFERENCE CONCLUDED.)

14 THE COURT: ALL RIGHT. MR. BRUCE, YOUR NEXT  
15 WITNESS.

16 MR. BRUCE: YOUR HONOR, THE GOVERNMENT CALLS JACK  
17 CRAWLEY.

18 **JACK B. CRAWLEY, JR., GOVERNMENT WITNESS, SWORN**

19 D I R E C T E X A M I N A T I O N 10:07 A.M.

20 BY MR. BRUCE:

21 Q. WOULD YOU STATE YOUR NAME, PLEASE.

22 A. JACK BENJAMIN CRAWLEY, JR.

23 Q. MR. CRAWLEY, WHERE DO YOU LIVE?

24 A. I LIVE IN RALEIGH, IN THE CAMERON VILLAGE AREA OF  
25 RALEIGH.

September 20, 2012

Crawley/Direct

Page 713

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

September 20, 2012

Crawley/Direct

Page 714

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.

September 20, 2012



Crawley/Direct

Page 715

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.

September 20, 2012

Crawley/Direct

Page 716

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

September 20, 2012

Crawley/Direct

Page 717

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.

September 20, 2012

Crawley/Direct

Page 718

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

September 20, 2012

Crawley/Direct

Page 719

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.)

September 20, 2012

Crawley/Direct

Page 720

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?

September 20, 2012

Crawley/Direct

Page 721

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?

September 20, 2012

Crawley/Direct

Page 722

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

September 20, 2012



Crawley/Direct

Page 723

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?

September 20, 2012

Crawley/Direct

Page 724

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

September 20, 2012

Crawley/Direct

Page 725

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.

September 20, 2012

Crawley/Direct

Page 726

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

September 20, 2012

Crawley/Direct

Page 727

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?

September 20, 2012

Crawley/Direct

Page 728

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.

September 20, 2012

Crawley/Direct

Page 729

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?

September 20, 2012

Crawley/Direct

Page 730

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

September 20, 2012



Crawley/Direct

Page 731

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.

September 20, 2012

Crawley/Direct

Page 732

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?

September 20, 2012

Crawley/Direct

Page 733

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

September 20, 2012

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

September 20, 2012

Crawley/Cross

Page 735

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

September 20, 2012

Crawley/Cross

Page 736

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.

September 20, 2012

Crawley/Cross

Page 737

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?

September 20, 2012

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?



Crawley/Cross

Page 739

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.

September 20, 2012

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?

Crawley/Cross

Page 741

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.

September 20, 2012

Crawley/Cross

Page 742

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

September 20, 2012

Crawley/Cross

Page 743

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?

September 20, 2012

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?

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?

Crawley/Cross

Page 746

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?

September 20, 2012



Crawley/Cross

Page 747

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

September 20, 2012

Crawley/Cross

Page 748

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

September 20, 2012

Crawley/Cross

Page 749

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,

September 20, 2012

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.

September 20, 2012

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.

September 20, 2012

Crawley/Cross

Page 752

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.

September 20, 2012

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.

September 20, 2012

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?



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?

September 20, 2012

- 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.

September 20, 2012

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.

Ivory/Direct

Page 758

1 MR. BRUCE: MAY WE RELEASE MR. CRAWLEY?

2 THE COURT: ANY OBJECTION?

3 MR. WIDENHOUSE: NO OBJECTION.

4 THE COURT: YES, HE'S RELEASED.

5 MR. BRUCE: AND WHILE THE WITNESS IS COMING AROUND,  
6 MR. MURTAGH AND I WOULD LIKE TO TRADE SEATS SO HE CAN ASSIST  
7 MS. COOLEY WITH THIS WITNESS.

8 THE COURT: SURE.

9 MS. COOLEY: YOUR HONOR, THE NEXT WITNESS WILL BE  
10 BILL IVORY.

11 THE COURT: I'M SORRY?

12 MS. COOLEY: BILL IVORY WILL BE THE NEXT WITNESS FOR  
13 THE GOVERNMENT, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MADAM CLERK: I'M SORRY, WAS THAT IVORY?

16 MS. COOLEY: IVORY.

17 MADAM CLERK: THANK YOU.

18 **WILLIAM IVORY, GOVERNMENT WITNESS, SWORN**

19 D I R E C T E X A M I N A T I O N 11:23 A.M.

20 BY MS. COOLEY:

21 Q. GOOD MORNING, MR. IVORY.

22 A. GOOD MORNING.

23 Q. IS IT FAIR TO SAY THAT YOU WERE ONE OF THE ORIGINAL  
24 INVESTIGATORS IN THE MACDONALD CASE, IS THAT RIGHT?

25 A. YES, I WAS.

September 20, 2012

Ivory/Direct

Page 759

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

September 20, 2012

Ivory/Direct

Page 760

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.

September 20, 2012

Ivory/Direct

Page 761

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.

September 20, 2012

Ivory/Direct

Page 762

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?

September 20, 2012



Ivory/Direct

Page 763

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?

September 20, 2012

Ivory/Direct

Page 764

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

September 20, 2012

Ivory/Direct

Page 765

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.

September 20, 2012

Ivory/Direct

Page 766

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

September 20, 2012

Ivory/Direct

Page 767

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.)

September 20, 2012

Ivory/Direct

Page 768

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

September 20, 2012

Ivory/Direct

Page 769

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?

September 20, 2012

Ivory/Direct

Page 770

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

September 20, 2012



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?

September 20, 2012

Ivory/Direct

Page 772

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.

September 20, 2012

Ivory/Direct

Page 773

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.

September 20, 2012

Ivory/Direct

Page 774

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

September 20, 2012

Ivory/Direct

Page 775

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.)

September 20, 2012

Ivory/Direct

Page 776

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

September 20, 2012

Ivory/Direct

Page 777

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

September 20, 2012

Ivory/Direct

Page 778

1 WAS KIM'S AND WHICH BEDROOM WAS KRISSEY'S.

2 A. THIS WAS KRISSEY'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

September 20, 2012



Ivory/Direct

Page 779

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

September 20, 2012

Ivory/Direct

Page 780

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

September 20, 2012

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.)

September 20, 2012

Ivory/Direct

Page 782

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

September 20, 2012

Ivory/Direct

Page 783

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

September 20, 2012

Ivory/Direct

Page 784

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.

September 20, 2012

Ivory/Direct

Page 785

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.

September 20, 2012

Ivory/Direct

Page 786

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.

September 20, 2012



Ivory/Direct

Page 787

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

September 20, 2012

Ivory/Direct

Page 788

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?

September 20, 2012

Ivory/Direct

Page 789

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

September 20, 2012

Ivory/Direct

Page 790

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

September 20, 2012

Ivory/Direct

Page 791

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

September 20, 2012

Ivory/Direct

Page 792

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.

September 20, 2012

Ivory/Direct

Page 793

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?

September 20, 2012

Ivory/Direct

Page 794

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.

September 20, 2012



Ivory/Direct

Page 795

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.

September 20, 2012

Ivory/Direct

Page 796

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.

September 20, 2012

Ivory/Direct

Page 797

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.

September 20, 2012

Ivory/Direct

Page 798

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.

September 20, 2012

Ivory/Direct

Page 799

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?

September 20, 2012

Ivory/Direct

Page 800

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

September 20, 2012

Ivory/Direct

Page 801

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.

September 20, 2012

Ivory/Direct

Page 802

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.

September 20, 2012



Ivory/Direct

Page 803

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?

September 20, 2012

Ivory/Direct

Page 804

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?

September 20, 2012

Ivory/Direct

Page 805

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?

September 20, 2012

Ivory/Direct

Page 806

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.

September 20, 2012

Ivory/Direct

Page 807

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?

September 20, 2012

Ivory/Direct

Page 808

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

September 20, 2012

Ivory/Direct

Page 809

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

September 20, 2012

Ivory/Direct

Page 810

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?

September 20, 2012



Ivory/Direct

Page 811

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

September 20, 2012

Ivory/Direct

Page 812

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

September 20, 2012

Ivory/Direct

Page 813

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

September 20, 2012

Ivory/Direct

Page 814

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?

September 20, 2012

Ivory/Direct

Page 815

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.

September 20, 2012

Ivory/Direct

Page 816

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

September 20, 2012

Ivory/Direct

Page 817

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.)

September 20, 2012

Ivory/Direct

Page 818

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?

September 20, 2012



Ivory/Direct

Page 819

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

September 20, 2012

Ivory/Direct

Page 820

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

September 20, 2012

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

September 20, 2012

Ivory/Direct

Page 822

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.

September 20, 2012

Ivory/Direct

Page 823

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?

September 20, 2012

Ivory/Direct

Page 824

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.)

September 20, 2012

Ivory/Direct

Page 825

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?

September 20, 2012

Ivory/Direct

Page 826

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

September 20, 2012



Ivory/Direct

Page 827

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

September 20, 2012

Ivory/Direct

Page 828

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

September 20, 2012

Ivory/Direct

Page 829

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

September 20, 2012

Ivory/Direct

Page 830

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

September 20, 2012

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.

September 20, 2012

Ivory/Cross

Page 832

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?

September 20, 2012

Ivory/Cross

Page 833

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.

September 20, 2012

Ivory/Cross

Page 834

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

September 20, 2012



Ivory/Cross

Page 835

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 --

September 20, 2012

Ivory/Cross

Page 836

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

September 20, 2012

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?

September 20, 2012

Ivory/Cross

Page 838

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.

September 20, 2012

Ivory/Cross

Page 839

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

September 20, 2012

Ivory/Cross

Page 840

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?

September 20, 2012

Ivory/Cross

Page 841

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

September 20, 2012

Ivory/Cross

Page 842

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.

September 20, 2012



Ivory/Cross

Page 843

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

September 20, 2012

Ivory/Cross

Page 844

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,

September 20, 2012

Ivory/Cross

Page 845

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

September 20, 2012

Ivory/Cross

Page 846

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.

September 20, 2012

Ivory/Cross

Page 847

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

September 20, 2012

Ivory/Cross

Page 848

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.

September 20, 2012

Ivory/Cross

Page 849

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

September 20, 2012

Ivory/Cross

Page 850

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?

September 20, 2012



Ivory/Cross

Page 851

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

September 20, 2012

Ivory/Cross

Page 852

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?

September 20, 2012

Ivory/Cross

Page 853

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?

September 20, 2012

Ivory/Cross

Page 854

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

September 20, 2012

Ivory/Cross

Page 855

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.

September 20, 2012

Ivory/Cross

Page 856

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?

September 20, 2012

Ivory/Cross

Page 857

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

September 20, 2012

Ivory/Cross

Page 858

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.

September 20, 2012



Ivory/Cross

Page 859

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

September 20, 2012

Ivory/Cross

Page 860

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

September 20, 2012

Ivory/Cross

Page 861

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.

September 20, 2012

Ivory/Cross

Page 862

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

September 20, 2012

Ivory/Cross

Page 863

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?

September 20, 2012

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

September 20, 2012

Ivory/Cross

Page 865

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?

September 20, 2012

Ivory/Cross

Page 866

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

September 20, 2012



Ivory/Cross

Page 867

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

September 20, 2012

Ivory/Cross

Page 868

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

September 20, 2012

Ivory/Cross

Page 869

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:

September 20, 2012

Ivory/Cross

Page 870

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?

September 20, 2012

Ivory/Cross

Page 871

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.

September 20, 2012

Ivory/Redirect

Page 872

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.

September 20, 2012

Ivory/Redirect

Page 873

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?

September 20, 2012

Ivory/Redirect

Page 874

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.

September 20, 2012



Ivory/Redirect

Page 875

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

September 20, 2012

Ivory/Redirect

Page 876

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

September 20, 2012

Ivory/Redirect

Page 877

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 --

September 20, 2012

Ivory/Redirect

Page 878

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.

September 20, 2012

Ivory/Recross

Page 879

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?

September 20, 2012

Madden/Direct

Page 880

1 Q. YES. ISN'T THAT --

2 A. YES, THAT IS WHAT HE SAID. YES.

3 MR. WIDENHOUSE: THANK YOU. THAT'S ALL I HAVE, YOUR  
4 HONOR.

5 THE COURT: ALL RIGHT.

6 MS. COOLEY: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT  
8 WITNESS.

9 MS. COOLEY: YOUR HONOR, MAY MR. IVORY BE EXCUSED  
10 FROM HIS SUBPOENA?

11 MR. WIDENHOUSE: NO OBJECTION.

12 THE COURT: HE'S EXCUSED.

13 THE WITNESS: THANK YOU, YOUR HONOR.

14 MS. COOLEY: YOUR HONOR, THE GOVERNMENT WOULD CALL  
15 RAYMOND BUTCH MADDEN.

16 **RAYMOND MADDEN, JR., GOVERNMENT WITNESS, SWORN**

17 D I R E C T E X A M I N A T I O N 4:11 P.M.

18 BY MS. COOLEY:

19 Q. GOOD AFTERNOON, MR. MADDEN.

20 A. GOOD AFTERNOON.

21 Q. AND IS IT TRUE THAT YOUR FIRST NAME IS RAYMOND, BUT YOU  
22 TYPICALLY GO BY BUTCH?

23 A. YES, MA'AM.

24 Q. OKAY. AND WERE YOU FORMERLY EMPLOYED BY THE FBI?

25 A. YES, MA'AM, I WAS.

September 20, 2012

Madden/Direct

Page 881

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

September 20, 2012

Madden/Direct

Page 882

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?

September 20, 2012



Madden/Direct

Page 883

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.

September 20, 2012

Madden/Direct

Page 884

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

September 20, 2012

Madden/Direct

Page 885

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

September 20, 2012

Madden/Direct

Page 886

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.

September 20, 2012

Madden/Direct

Page 887

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

September 20, 2012

Madden/Direct

Page 888

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?

September 20, 2012

Madden/Direct

Page 889

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

September 20, 2012

Madden/Direct

Page 890

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?

September 20, 2012



Madden/Direct

Page 891

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.

September 20, 2012

Madden/Direct

Page 892

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.

September 20, 2012

Madden/Direct

Page 893

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

September 20, 2012

Madden/Direct

Page 894

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?

September 20, 2012

Madden/Direct

Page 895

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

September 20, 2012

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

September 20, 2012

Madden/Direct

Page 897

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

September 20, 2012

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.

September 20, 2012



Madden/Direct

Page 899

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

September 20, 2012

Madden/Direct

Page 900

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.

September 20, 2012

Madden/Direct

Page 901

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

September 20, 2012

Madden/Direct

Page 902

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

September 20, 2012

Madden/Direct

Page 903

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?

September 20, 2012

Madden/Direct

Page 904

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.

September 20, 2012

Madden/Direct

Page 905

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

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 21, 2012  
 JEFFREY R. MACDONALD, . Wilmington, NC  
 Defendant/Movant .  
 . . . . .

EVIDENTIARY HEARING  
BEFORE THE HONORABLE JAMES C. FOX  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.



T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
<u>RAYMOND MADDEN, JR.</u>		
BY MS. COOLEY	DIRECT (CONTINUED)	908
<u>JOE MCGINNISS</u>		
BY MR. BRUCE	DIRECT	949
BY MR. WILLIAMS	CROSS	1017
<u>EXHIBITS</u>		
<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
5112	EXCERPT FROM CIVIL TRIAL	1037
<u>GOVERNMENT'S</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED</u>
2333	NOTES OF INTERVIEW - HELENA STOECKLEY SENIOR	940
2334	LEGIBLE COPIES OF NOTES OF INTERVIEW HELENA STOECKLEY SENIOR	941
2332	REPORT OF INCIDENT - INTERVIEW OF HELENA STOECKLEY SENIOR	941
2201.2	EXCERPT FROM <i>FATAL VISION</i>	961
2077	FLOOR PLAN - 7TH FLOOR OF RALEIGH FEDERAL BUILDING	966
2077B	FLOOR PLAN - 7TH FLOOR OF RALEIGH FEDERAL BUILDING WITH MARKINGS	968
2201.3	EXCERPT FROM <i>FATAL VISION</i>	969
4002	EXCERPT FROM <i>FATAL VISION</i>	996
4000	MR. MACDONALD'S HANDWRITTEN NOTES	1000
4001	MIKE WALLACE INTERVIEW	1015
<u>BENCH CONFERENCES</u>		<u>PAGE</u>
		NONE

Madden/Direct

Page 908

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

8:59 A.M.

(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, EVERYONE. PLEASE BE SEATED. LET ME START BY EXPLAINING OUR SCHEDULE FOR TODAY. WE'RE GOING TO WORK TILL ONE O'CLOCK. WE'RE GOING TO TAKE A RECESS MID-MORNING ABOUT 11:00, BUT WE'LL STOP FOR THE WEEKEND AT ONE O'CLOCK.

ALL RIGHT, LET'S SEE. MR. BRUCE. YOU'RE STILL UNDER OATH, MR. MADDEN.

MS. COOLEY: THANK YOU, YOUR HONOR.

**RAYMOND MADDEN, JR., GOVERNMENT WITNESS, PREVIOUSLY SWORN**

D I R E C T E X A M I N A T I O N C O N T I N U E D

9:00 A.M.

BY MS. COOLEY:

Q. MR. MADDEN, WHEN WE LEFT OFF YESTERDAY, WE WERE TALKING ABOUT YOUR INTERVIEW WITH HELENA STOECKLEY JUNIOR, FOR LACK OF A BETTER WAY TO CALL HER.

A. YES, MA'AM.

Q. AND YOU HAD TESTIFIED YESTERDAY THAT YOU INTERVIEWED HER BOTH ON SEPTEMBER 9TH OF 1981, AS WELL AS SEPTEMBER 10TH OF 1981, CORRECT?

A. THAT'S CORRECT.

Q. AND WE HAD TALKED ABOUT THE SEPTEMBER 9TH INTERVIEW AND YOU READ HER STATEMENTS TO US. WHY DID YOU GO BACK ON SEPTEMBER 10TH?

September 21, 2012

Madden/Direct

Page 909

1 A. BECAUSE SHE REQUESTED US TO RETURN OUTSIDE THE PRESENCE  
2 OF HER HUSBAND, ERNEST DAVIS.

3 Q. AND WHEN YOU RETURNED, DID SHE TELL YOU WHY SHE WANTED  
4 YOU TO COME BACK WITHOUT ERNEST BEING THERE?

5 A. BASICALLY, FROM MY RECOLLECTION IS THAT, ACCORDING TO  
6 HER, HER HUSBAND HAD NO INFORMATION REGARDING HER DRUG  
7 ACTIVITY BACK IN THE '70S.

8 Q. AND DID SHE WANT HIM TO KNOW ABOUT THAT?

9 A. I'M SORRY?

10 Q. DID SHE WANT HIM TO KNOW ABOUT THAT?

11 A. NO, MA'AM.

12 Q. NOW, WHAT WAS YOUR OBJECTIVE IN INTERVIEWING HELENA  
13 STOECKLEY ON THOSE TWO DAYS?

14 A. BASICALLY TO GO OVER THE ALLEGED STATEMENTS THAT SHE  
15 PROVIDED TO PRIVATE INVESTIGATORS GUNDERSON AND BEASLEY AND TO  
16 DETERMINE THE TRUTH OF THE MATTER.

17 Q. AND ON SEPTEMBER 10TH, WHEN YOU CAME BACK TO INTERVIEW  
18 HER, DID SHE MAKE SOME CORRECTIONS TO HER STATEMENT OF  
19 SEPTEMBER 9TH TO YOU?

20 A. I DON'T RECALL OFFHAND.

21 Q. MAY I HAVE PAGE 917, PARAGRAPH 31. WILL YOU BLOW UP  
22 PARAGRAPH 31, PLEASE? THANK YOU.

23 NOW, THIS IS FROM THE AFFIDAVIT WE LOOKED AT  
24 YESTERDAY, THE AFFIDAVIT YOU PREPARED AS A RESULT OF YOUR  
25 INTERVIEW WITH MS. STOECKLEY. DOES THIS HELP TO REFRESH YOUR

September 21, 2012

Madden/Direct

Page 910

1 RECOLLECTION?

2 A. YES, MA'AM.

3 Q. OKAY. AND WHAT CORRECTIONS DID SHE WANT TO MAKE?

4 A. SHE WANTED TO CORRECT SOME OF HER PREVIOUS STATEMENTS  
5 FURNISHED ON SEPTEMBER 9TH, 1981, TO THE INTERVIEWING AGENTS,  
6 AND ADVISED THAT REGARDING HER CONTACTS WITH BEASLEY SINCE  
7 DECEMBER OF 1980, IN JANUARY OF 1981, BEASLEY SHOWED UP AT HER  
8 RESIDENCE IN SENECA, SOUTH CAROLINA, WITH FRED BOST, B-O-S-T.

9           THEY INFORMED HER THAT BOST WAS WRITING A BOOK AND  
10 BEASLEY REQUESTED THAT BOST BE PERMITTED TO INTERVIEW HER.  
11 BEASLEY WANTED HER TO TELL HER STORY TO BOST AND NOTED THAT  
12 BEASLEY INFORMED HER THAT SHE SHOULD DEAL SPECIFICALLY WITH  
13 BEASLEY AND NOT THROUGH GUNDERSON OR BOST.

14           BEASLEY INFORMED HER AT THIS TIME NOT TO TALK TO THE  
15 FBI OR DEPARTMENT OF JUSTICE OR ANYONE ELSE INVOLVED WITH THE  
16 MACDONALD CASE.

17           SHE STATED THAT SHE AND BOST TALKED ABOUT A BOOK  
18 THAT HE WAS GOING TO WRITE AND THAT SHE RECALLS BEING  
19 INTERVIEWED BY HIM.

20 Q. DID MS. STOECKLEY DISCUSS WITH YOU THE SPLIT FOR THE  
21 PERCENTAGE THAT EACH PERSON WOULD GET AS A RESULT OF THIS BOOK  
22 DEAL?

23 A. BASICALLY, YES. MY RECOLLECTION, HELENA WAS SUPPOSED TO  
24 RECEIVE APPROXIMATELY 20 PERCENT, BEASLEY 20 PERCENT, BOST AN  
25 UNRECALLED PERCENTAGE, AND A PUBLISHER OR AGENT AN UNRECALLED

September 21, 2012

Madden/Direct

Page 911

1 PERCENTAGE.

2 Q. AND WAS IT YOUR UNDERSTANDING THAT THIS BOOK WAS ABOUT  
3 THE MACDONALD MURDERS?

4 A. YES, MA'AM.

5 Q. NOW, DID SHE ALSO WANT TO CLARIFY A FEW THINGS FOR YOU  
6 REGARDING THE TESTIMONY SHE GAVE AT THE MACDONALD TRIAL?

7 A. I DON'T RECALL JUST OFFHAND.

8 Q. IF I MAY HAVE PARAGRAPH 36? NOW, THIS IS PARAGRAPH 36  
9 FROM YOUR SAME AFFIDAVIT. IF YOU COULD READ THAT AND SEE IF  
10 THAT REFRESHES YOUR RECOLLECTION.

11 A. YES, MA'AM.

12 REGARDING HER COURT TESTIMONY DURING THE MACDONALD  
13 TRIAL IN AUGUST 1979, HELENA ADVISED THAT SHE WISHED TO MAKE  
14 THE FOLLOWING CORRECTIONS TO HER STATEMENT ON SEPTEMBER 9TH,  
15 1981.

16 SHE STATED THAT SHE WAS NOT ENTIRELY TRUTHFUL IN  
17 FRONT OF HER HUSBAND AND WANTED TO MAKE THE NECESSARY  
18 CORRECTIONS AS FOLLOWS; SHE DID NOT POSSIBLY ADMIT TO THE  
19 IDENTITIES OF SOME INDIVIDUALS, SPECIFICALLY GREG MITCHELL AND  
20 POSSIBLY SOME OTHERS.

21 SHE BELIEVES SHE REMEMBERS SEEING DR. MACDONALD  
22 PRIOR TO THE TRIAL AND THINKS THAT HE WAS POINTED OUT TO HER  
23 BY JOE KELLY WHO USED TO GET DRUGS FOR HER. KELLY STAYED AT  
24 THE MEDICAL HOLDING ON FORT BRAGG IN FAYETTEVILLE, NORTH  
25 CAROLINA.

September 21, 2012

Madden/Direct

Page 912

1 SHE BELIEVES SHE POSSIBLY SAW DR. MACDONALD AT THE  
2 HOSPITAL PRIOR TO THE TRIAL IN 1979. SHE WAS UNSURE THAT SHE  
3 DID THE EVENING BEFORE THE MACDONALD MURDERS OR THE NEXT  
4 MORNING ON SEPTEMBER -- I'M SORRY, ON FEBRUARY 17TH, 1970.

5 Q. THERE IN PARAGRAPH C DOES IT SAY SHE WAS UNSURE WHAT SHE  
6 DID THE EVENING BEFORE THE MACDONALD MURDERS?

7 A. YES.

8 Q. AND THOSE ARE CORRECTIONS THAT SHE MADE VOLUNTARILY TO  
9 YOU, IS THAT RIGHT?

10 A. THAT'S CORRECT.

11 Q. AND DID SHE INDICATE TO YOU AT ALL -- WELL, LET ME ASK  
12 YOU THIS, DURING THE TIME THAT SHE WAS MAKING CORRECTIONS TO  
13 YOU, TALKING TO YOU ABOUT HER TESTIMONY DURING THE TRIAL, DID  
14 SHE EVER MENTION TO YOU ANY THREATS MADE TO HER BY JIM  
15 BLACKBURN?

16 A. NO, MA'AM.

17 Q. AND DID SHE MENTION TO YOU HOW SHE FELT ABOUT HER  
18 RELATIONSHIP WITH PRINCE BEASLEY?

19 A. SHE THOUGHT BASICALLY THAT SHE WAS POSSIBLY USED BY  
20 BEASLEY TO FURNISH INFORMATION REGARDING THE MACDONALD CASE.

21 Q. AND DID SHE ALSO INDICATE TO YOU HOW SHE FELT ABOUT HER  
22 RELATIONSHIP WITH TED GUNDERSON?

23 A. YES, AND APPROXIMATELY THE SAME ANSWER, THAT SHE FELT  
24 THAT SHE PROBABLY HAD BEEN USED BY GUNDERSON ALSO TO COERCE A  
25 STATEMENT FROM HER REGARDING THE MACDONALD CASE.

September 21, 2012

Madden/Direct

Page 913

1 Q. DID SHE INDICATE TO YOU THAT SHE HAD WRITTEN MR.  
2 GUNDERSON A LETTER?

3 A. YES.

4 Q. AND DID SHE GIVE YOU A COPY OF THAT LETTER?

5 A. YES, SHE DID.

6 Q. AND DID YOU SUMMARIZE OR DID YOU, RATHER, RECREATE THAT  
7 LETTER IN YOUR AFFIDAVIT HERE THAT WE HAVE IN FRONT OF US?

8 A. YES.

9 Q. IF I MAY HAVE PARAGRAPH 41, PLEASE? IF YOU WOULD READ  
10 PARAGRAPH 41?

11 A. MR. GUNDERSON, IN ALL FAIRNESS TO ANY PERSON OR PERSONS  
12 INVOLVED IN THE FOLLOWING OF THE JEFFREY MACDONALD MURDER CASE  
13 IN 1970, AT FORT BRAGG, NORTH CAROLINA, I FEEL THAT IT IS MY  
14 MORAL OBLIGATION TO INFORM YOU THAT MY HUSBAND AND I ARE IN  
15 THE PROCESS OF IMMEDIATE RELOCATION.

16 IT IS MY OPINION THAT IN THE PRECEDING MONTHS I HAVE  
17 BEEN USED AS A PAWN FOR YOUR CONVENIENCE AND SUITABILITY. I  
18 ALSO FEEL THAT I WAS COERCED INTO SIGNING THE SO-CALLED  
19 CONFESSION IN DECEMBER BY MEANS OF EXPLOITATION, FALSE HOPES,  
20 AND EMPTY PROMISES.

21 NEVER HAVE I SEEN A GREATER MOCKERY MADE OF JUSTICE  
22 OR SUCH A SHAMBLES MADE OF A LEGAL INVESTIGATION. GRANTED, I  
23 HAVE A PAST HISTORY OF HEAVY DRUG USE, CULT INVOLVEMENT, AND  
24 POLICE TROUBLE. BUT IN MY OPINION, I DO NOT PROMISE CLEAR AND  
25 SOUND MENTAL FACULTIES AND GOOD JUDGMENT AND A MODERATE LEVEL

September 21, 2012

Madden/Direct

Page 914

1 OF INTELLIGENCE.

2 Q. LET ME TAKE YOU BACK REAL QUICK. DOES IT SAY I DO  
3 POSSESS CLEAR AND SOUND MENTAL FACULTIES?

4 A. YES, MA'AM. I'M SORRY.

5 Q. THAT'S ALL RIGHT.

6 A. AFTER HAVING BEEN DECEIVED TIME AND TIME AGAIN AND AFTER  
7 CONCLUDING THAT WHAT I THOUGHT WAS CAUTION AND SHREWDNESS ON  
8 MY PART WAS BEING TAKEN BY EVERYONE AS GULLIBILITY, I NO  
9 LONGER FEEL OBLIGATED TO AID ANYONE IN THIS MATTER ANY  
10 FURTHER.

11 WHEN I FINALLY AGREED TO TALK TO YOU, I FELT THAT I  
12 WAS DOING WHAT WAS MORALLY RIGHT. I WOULD ALSO BE FREEING  
13 MYSELF FROM A PRIVATE HELL. SO, I GAVE YOU AS CONCLUSIVE A  
14 REVIEW OF THE EVENTS OF THE NIGHT IN QUESTION AS I COULD.  
15 YOU, IN TURN, MISCONSTRUED AND DISTORTED ALL STATEMENTS I MADE  
16 TO YOU TO BE USED AT YOUR CONVENIENCE.

17 NO LONGER WILL I BE CAUSED ANY FURTHER EMBARRASSMENT  
18 OR HAVE UNFAVORABLE IMPLICATIONS MADE ABOUT ME DUE TO THIS  
19 CASE. ANY FEARS OR ANXIETIES THAT I NOW HAVE I WILL DEAL WITH  
20 MYSELF.

21 CONTRARY TO STATEMENTS MADE BY JUDGE DUPREE AND  
22 OTHERS, MY LIFE IS NO LONGER A DRUG DAZED STUPOR THAT I CANNOT  
23 FACE OR DEAL WITH.

24 I HAVE PROCURED A LAWYER WHO IS GATHERING DATA ON  
25 THIS CASE SO THAT SHOULD ANYONE COME UP WITH ANY INSANE IDEA

September 21, 2012



Madden/Direct

Page 915

1 THAT I SHOULD BE INCARCERATED I WON'T BE CAUGHT UNPREPARED.

2 IF I WERE YOU, I WOULD ALSO BE MINDFUL OF THE FACT  
3 THAT DEFAMATION OF CHARACTER OVER SUCH A LONG PERIOD OF TIME  
4 IS A VERY SERIOUS OFFENSE.

5 DO NOT TRY TO CONTACT ME OR ANYONE RELATED TO ME IN  
6 THE FUTURE.

7 AT THIS POINT, I FEEL THAT VINDICATION IS IN MY  
8 FAVOR.

9 YOUR COOPERATION IN THIS MATTER WOULD BE  
10 APPRECIATED. PLEASE MAKE MY STAND CLEAR TO MR. BEASLEY AS  
11 WELL. SINCERELY, MRS. HELENA STOECKLEY.

12 P.S. I MUST REITERATE, SHOULD THERE BE ANY UNDUE  
13 STRESS PLACED UPON ME OR MY FAMILY IN THE FUTURE, I SHALL NOT  
14 HESITATE TO TAKE LEGAL ACTION.

15 Q. DID SHE SIGN IT HELENA STOECKLEY OR HELENA DAVIS?

16 A. I'M SORRY?

17 Q. DID SHE SIGN IT HELENA STOECKLEY OR HELENA DAVIS?

18 A. HELENA DAVIS, I THINK. YES.

19 Q. AND IF WE COULD GO BACK TWO PAGES. THE DATE OF THIS  
20 LETTER? WHAT WAS THE DATE?

21 A. IT IS 7/25/81.

22 Q. SO, SHE WROTE THIS BEFORE YOU WENT TO VISIT HER AND TAKE  
23 HER STATEMENT?

24 A. YES.

25 Q. AND THEN FURNISHED YOU WITH A COPY?

September 21, 2012

Madden/Direct

Page 916

1 A. YES.

2 Q. NOW, AT SOME POINT, DID YOU LEARN THAT HELENA STOECKLEY  
3 HAD PASSED AWAY?

4 A. YES.

5 Q. DID YOU CONTACT THE DOCTOR WHO DID THE AUTOPSY?

6 A. YES, I DID.

7 Q. DR. SANDRA CONRADI?

8 A. YES, MA'AM.

9 Q. AND DID YOU GET A COPY OF THE AUTOPSY REPORT?

10 A. YES, I DID.

11 Q. IF I CAN HAVE PAGE 988. AND AT THE TOP HERE, DO YOU  
12 RECOGNIZE THIS TO BE THE COPY OF THE AUTOPSY YOU PROCURED FROM  
13 DR. CONRADI?

14 A. YES, MA'AM.

15 Q. AND THE NAME ON THIS IS HELENA DAVIS?

16 A. YES.

17 Q. AND THE DATE OF HER DEATH DR. CONRADI PLACED AT JANUARY  
18 9TH OF 1983?

19 A. YES. YES.

20 Q. AND AFTER -- AT SOME POINT AFTER YOU TALKED TO MS.  
21 STOECKLEY, YOU ALSO SPOKE WITH TED GUNDERSON AND PRINCE  
22 BEASLEY, IS THAT RIGHT?

23 A. THAT'S CORRECT.

24 Q. TELL ME HOW THAT INTERVIEW WITH THE TWO OF THEM CAME  
25 ABOUT?

September 21, 2012

Madden/Direct

Page 917

1 A. WOULD YOU REPEAT THAT, PLEASE?

2 Q. TELL ME HOW YOUR INTERVIEW WITH THE TWO OF THEM CAME  
3 ABOUT?

4 A. I HAD CONTACTED MR. GUNDERSON SEVERAL TIMES ON THE  
5 TELEPHONE OVER A PERIOD OF TIME BASICALLY REQUESTING THAT HE  
6 SUBMIT HIMSELF FOR AN INTERVIEW TO THE FBI.

7 AT VARIOUS TIMES, HE EXPRESSED TO ME THAT HE HAD  
8 BEEN ADVISED BY COUNSEL, BERNARD SEGAL, THAT HE SHOULD NOT  
9 TALK TO THE FBI AT THIS TIME. IF THE FBI WANTED TO QUESTION  
10 HIM THAT THEY SHOULD PROVIDE A LIST OF WRITTEN QUESTIONS PRIOR  
11 TO ANY INTERVIEW BEING CONDUCTED. BUT BASICALLY HE ADVISED  
12 THAT MR. SEGAL DID NOT WANT HIM TO SUBMIT TO AN INTERVIEW WITH  
13 THE FBI.

14 Q. DID HE AT SOME POINT SUBMIT TO AN INTERVIEW WITH YOU?

15 A. YES, HE DID.

16 Q. AND DID MR. BEASLEY AS WELL?

17 A. PARDON?

18 Q. DID MR. BEASLEY AS WELL?

19 A. YES.

20 Q. AND WHEN YOU INTERVIEWED THE TWO OF THEM, WAS THAT  
21 RECORDED?

22 A. YES, IT WAS.

23 Q. AND THEN TRANSCRIBED?

24 A. YES, MA'AM.

25 Q. AND WAS THAT -- WOULD YOU CHARACTERIZE THAT AS A FAIRLY

September 21, 2012

Madden/Direct

Page 918

1 LONG INTERVIEW?

2 A. YES, IT WAS A FAIRLY LONG INTERVIEW AS I REMEMBER. IT  
3 WAS CONDUCTED ON A SUNDAY IN AN FBI OFFICE IN RALEIGH, NORTH  
4 CAROLINA, WITH MY PARTNER AT THAT TIME.

5 Q. AND DURING THAT INTERVIEW, DID YOU DISCUSS SOME OF THE  
6 INFORMATION THAT MR. GUNDERSON AND MR. BEASLEY HAD BROUGHT  
7 FORTH REGARDING THEIR INTERVIEWS WITH HELENA STOECKLEY?

8 A. WOULD YOU SAY THAT AGAIN, PLEASE?

9 Q. DURING THAT TIME, DID YOU DISCUSS WITH THEM THE  
10 INFORMATION THAT MR. GUNDERSON AND MR. BEASLEY HAD BROUGHT  
11 FORTH WITH REGARD TO THEIR INTERVIEWS WITH HELENA STOECKLEY?

12 A. YES.

13 Q. AND WITH RESPECT TO YOUR INTERVIEW WITH MR. GUNDERSON AND  
14 MR. BEASLEY -- WELL, LET ME BACK UP. AT SOME POINT WAS THERE  
15 AN INDIVIDUAL NAMED HOMER YOUNG THAT YOU CAME INTO CONTACT  
16 WITH?

17 A. YES, MA'AM.

18 Q. OKAY. AND WHO IS HOMER YOUNG?

19 A. HOMER YOUNG WAS A RETIRED FBI AGENT FROM LOS ANGELES,  
20 CALIFORNIA, WHO, FOR SOME PERIOD OF TIME, WAS EMPLOYED BY TED  
21 GUNDERSON AS A PRIVATE INVESTIGATOR.

22 Q. AND DID YOU HAVE A CONVERSATION WITH MR. YOUNG?

23 A. YES, I DID.

24 Q. WHAT WAS THE NATURE OF THAT CONVERSATION?

25 A. BASICALLY, FROM MY RECOLLECTION, IT WAS THE ATMOSPHERE

September 21, 2012

Madden/Direct

Page 919

1 THAT HELENA WAS INTERVIEWED IN LOS ANGELES, CALIFORNIA, BY  
2 GUNDERSON AND BEASLEY.

3 Q. AND DID HE EXPRESS TO YOU ANY OPINIONS ABOUT THAT  
4 INTERVIEW?

5 A. YES, HE DID.

6 Q. WHAT DID HE TELL YOU?

7 A. HE THOUGHT THAT IT WAS AN UNUSUAL INTERVIEW, THAT IT HAD  
8 BEEN CONDUCTED 12 TO 15 HOURS A DAY OVER A TWO OR THREE OR  
9 FOUR DAY PERIOD, CONDUCTED UNDER SOME DURESS IN HIS OPINION,  
10 AND THAT GUNDERSON IN HIS OPINION ALSO PROBABLY HAD USED  
11 UNETHICAL TACTICS CONDUCTING THE INTERVIEW.

12 Q. DID HE MENTION WHAT THOSE WERE?

13 A. WELL, I THINK KEEPING SOMEONE IN AN INTERVIEW FOR 12 TO  
14 15 HOURS A DAY AND HAVING VERY LITTLE SLEEP OR REST TIME  
15 BEFORE THE NEXT INTERVIEW BEGAN THE NEXT MORNING OR WHENEVER.

16 Q. IF I MAY HAVE PAGE 797, PLEASE. MR. MADDEN, I'M GOING TO  
17 HAVE YOU READ A COUPLE OF EXCERPTS FROM YOUR INTERVIEW WITH  
18 MR. GUNDERSON AND MR. BEASLEY. IF YOU WOULD START READING IN  
19 THE FIRST PARAGRAPH AT I SUBSEQUENTLY TALKED TO HER IN. THE  
20 THIRD LINE.

21 A. I SUBSEQUENTLY TALKED TO HER IN LOS ANGELES, CALIFORNIA,  
22 IN OCTOBER 1980, AND SHE RETURNED TO LOS ANGELES IN DECEMBER  
23 1980. AND IN EACH INSTANCE, WE SPENT -- PRINCE BEASLEY AND I  
24 SPENT PROBABLY FIVE TO SIX DAYS ON BOTH TRIPS, BUT I --

25 Q. OKAY. LET ME STOP YOU THERE. AND THIS IS MR. GUNDERSON

September 21, 2012

Madden/Direct

Page 920

1 TALKING, IS THAT CORRECT?

2 A. YES, THAT'S CORRECT.

3 Q. AND NOW WE'LL SKIP DOWN TO YOUR RESPONSE TO THIS AND THEN  
4 THE QUESTION AND ANSWER THAT FOLLOWS.

5 A. BY ME, UH, DID SHE FURNISH SIGNED STATEMENTS FROM HER  
6 INTERVIEWS SHOWING HER SIGNATURES?

7 GUNDERSON REPLIED YES.

8 HOW LONG, UH, DID THESE INTERVIEWS TAKE?

9 Q. IF YOU WOULD READ MR. GUNDERSON'S REPLY?

10 A. UM, WELL, LET'S SEE. UH, THE FIRST SIGNED STATEMENT, UH,  
11 IT'S HARD TO SAY BECAUSE WE SPENT ABOUT A DAY AND A HALF, WHEN  
12 SHE CAME BACK IN OCTOBER 1980, WE SPENT ABOUT A DAY AND A HALF  
13 TALKING TO HER BEFORE SHE WOULD AGREE TO, UH, GIVE US A SIGNED  
14 STATEMENT.

15 AND THEN, UH, WE STARTED -- SHE STARTED TALKING AS I  
16 RECALL AROUND NINE O'CLOCK, NINE TO TEN O'CLOCK ONE EVENING,  
17 AND I THINK WE FINISHED UP WITH A STATEMENT FROM HER AROUND  
18 2:00 OR 3:00 IN THE MORNING.

19 AND WE TOOK THE -- SHE STATED -- SHE STARTED, I'M  
20 SORRY, TO TALK ABOUT THE CASE SO I FELT RATHER THAN, EVEN  
21 THOUGH IT WAS LATE, RATHER THAN, UH, DISCONTINUE THE INTERVIEW  
22 AND PICKING UP THE NEXT DAY I FELT IT WAS BEST TO GO ON  
23 THROUGH -- I'M SORRY -- GO ON THROUGH TO THE NEXT NIGHT, TAKE  
24 A STATEMENT FROM HER ON THIS OCCASION AND HAVE IT SIGNED AND  
25 THEN THE NEXT DAY, WHEN I LOOKED THE STATEMENT OVER, IT WAS

September 21, 2012

Madden/Direct

Page 921

1 RATHER DISJOINTED SO I RETYPED IT, REORGANIZED IT, AND SHE  
2 SIGNED IT, A SECOND STATEMENT THAT NEXT DAY. AND WHEN YOU SAY  
3 HOW LONG DID IT TAKE, WELL, THAT'S DIFFICULT TO SAY, BECAUSE  
4 WE WERE WITH HELENA FOR FIVE, SIX STRAIGHT DAYS, AND THE ONLY  
5 TIME WE DIDN'T TALK TO HER WAS WHEN WE WERE ALL SLEEPING.

6 Q. AND I WANT TO TAKE YOU FORWARD TO PAGE 799, PLEASE.  
7 STARTING WITH YOUR FIRST QUESTION STATING OKAY.

8 A. THIS WOULD BE ME SPEAKING. OKAY. WHEN SHE RETURNED TO  
9 CALIFORNIA, LATER THAT YEAR IN DECEMBER, I BELIEVE 1980, SHE  
10 WAS IN CALIFORNIA FOR HOW LONG?

11 GUNDERSON: ABOUT FIVE OR SIX DAYS AGAIN, I'D SAY.

12 THEN I ASKED, AND DURING THIS PERIOD OF TIME AGAIN  
13 WAS SHE ACCOMPANIED BY YOU AND/OR PRINCE BEASLEY PRACTICALLY  
14 CONTINUOUSLY THE WHOLE TIME?

15 GUNDERSON: RIGHT, THE SAME SITUATION. WHENEVER SHE  
16 FELT LIKE TALKING, WE'D TALKED TO HER. WHEN SHE DIDN'T FEEL  
17 LIKE TALKING, WE'D LET HER GO HOME AND GO TO BED AND DO HER  
18 THING, WHATEVER SHE WANTED TO DO. WE DIDN'T PRESSURE HER OR  
19 PUSH HER AT ALL.

20 MY RESPONSE WAS -- MY QUESTION WAS, BUT DID YOU SAY  
21 THAT YOU WERE WITH HER CONTINUOUSLY FROM EARLY MORNING HOURS  
22 UNTIL LATE EVENING HOURS OR POSSIBLY THE EARLY MORNING HOURS  
23 OF THE NEXT DAY?

24 GUNDERSON'S RESPONSE: WE WERE WITH HER, NOW YOU  
25 CAN'T SAY, YOU CAN'T SAY EARLY MORNING HOURS EVERY TIME,

September 21, 2012

Madden/Direct

Page 922

1 BECAUSE I -- BECAUSE LIKE I SAY, WE WERE WITH HER WHENEVER SHE  
2 WAS AVAILABLE AND TO BE INTERVIEWED. WHENEVER SHE FELT LIKE  
3 BEING INTERVIEWED.

4 MY NEXT RESPONSE, IN THE DECEMBER TRIP DID SHE AGAIN  
5 FURNISH YOU WITH A SIGNED STATEMENT?

6 GUNDERSON: SHE DID.

7 I ASKED WAS THIS SIGNED STATEMENT TAKEN ORALLY OR  
8 RECORDED OR ON A TAPE RECORDING MACHINE OR WAS IT A SIGNED  
9 STATEMENT THAT YOU PREPARED AND HAD HER SIGN?

10 GUNDERSON: THIS SIGNED STATEMENT, UH, AGAIN, LET'S  
11 GO BACK TO OCTOBER. WHEN SHE WAS THERE IN OCTOBER, SHE  
12 REFUSED TO GO ON A TAPE RECORDER. SO, THEREFORE -- I'M SORRY,  
13 WHERE DO YOU WANT ME TO BEGIN HERE?

14 Q. SO, THEREFORE. DO YOU SEE WHERE THE CURSOR IS? SO,  
15 THEREFORE, I BASICALLY --

16 A. I CAN'T SEE THE TOP LINE IT APPEARS.

17 Q. OKAY. I BELIEVE YOU ALREADY READ THAT. IF YOU WOULD  
18 START AT THE THIRD LINE DOWN UNDER HIS REPLY. SO, THEREFORE,  
19 AT THE END OF THAT SENTENCE.

20 A. I'M NOT SEEING IT. I'M SORRY.

21 Q. DO YOU SEE WHERE THE CURSOR IS MOVING?

22 A. OH, I'M SORRY. THEREFORE, I BASICALLY PREPARED THAT  
23 STATEMENT, BASED ON INFORMATION SHE GAVE ME, AND THEN SHE READ  
24 IT, OF COURSE, AND SAID IT WAS, UH, ACCURATE AND SHE SIGNED  
25 IT. IN DECEMBER, UH, SHE FELT A LITTLE MORE COMFORTABLE,

September 21, 2012



Madden/Direct

Page 923

1 OBVIOUSLY WITH ME, SO SHE, UH, AGREED TO GO ON A TAPE  
2 RECORDER, AND IT WAS IN DECEMBER, UH, THE DECEMBER INTERVIEW,  
3 UH, THAT SHE WENT ON A TAPE RECORDER. YES, AND I HAVE THAT  
4 TAPE RECORDER IN MY OFFICE RIGHT NOW.

5 WE ALSO -- WE -- WE THEN REDUCED THE RECORDING TO  
6 THE FORM OF A SIGNED STATEMENT, WHICH IS A 53 PAGE DOCUMENT,  
7 AND SHE READ IT, INITIALED EACH PAGE, AND SAID THAT IT WAS  
8 ACCURATE.

9 Q. OKAY. LET ME STOP YOU RIGHT THERE. SO, HER STATEMENT  
10 THAT HE PREPARED FOR HER TO SIGN WAS 53 PAGES?

11 A. YES.

12 Q. AND --

13 A. ACCORDING TO HIM.

14 Q. ACCORDING TO HIM. AND DID HE ALSO TELL YOU -- DID YOU  
15 ASK HIM ABOUT INTERVIEW LOGS WITH REGARD TO THIS INTERVIEW?

16 A. YES, I HAVE A RECOLLECTION OF ASKING HIM ABOUT THAT.

17 Q. NOW, AS AN FBI AGENT, WHY WOULD YOU HAVE ASKED ABOUT A  
18 TOOL SUCH AS AN INTERVIEW LOG?

19 A. WELL, TO SHOW THAT THE INTERVIEW WAS CONDUCTED IN A  
20 PROFESSIONAL MANNER, THAT TIMES WERE KEPT AS TO HOW LONG A  
21 PERSON WAS INTERVIEWED, WHETHER THERE WERE BREAKS INVOLVED.  
22 JUST A RECORD OF THE INTERVIEW TIME-WISE.

23 Q. AND IS THAT SOMETHING THAT YOU TYPICALLY DID IN  
24 CONDUCTING YOUR INTERVIEWS WITH SUBJECTS?

25 A. YES, MA'AM.

September 21, 2012

Madden/Direct

Page 924

1 Q. AND IF I MAY HAVE THE BOTTOM HALF OF THAT PAGE, PLEASE,  
2 STARTING WITH DURING THE INTERVIEWS. AND IF YOU WOULD JUST  
3 READ US HIS RESPONSE TO YOU, YOUR QUESTION AND HIS RESPONSE.

4 A. YOU WANT ME TO READ --

5 Q. START WITH YOUR QUESTION, PLEASE.

6 A. MADDEN: DURING THE INTERVIEWS WITH STOECKLEY, UH, DID  
7 YOU MAINTAIN INTERVIEW LOGS AND WILL YOU PROVIDE THE ORIGINALS  
8 AND/OR COPIES TO THE FBI?

9 GUNDERSON: I DID NOT INTERVIEW, UH, MAKE THE  
10 INTERVIEW LOG.

11 IS THERE ANY -- I'M SORRY.

12 MADDEN: IS THERE ANY PARTICULAR REASON WHY YOU DID  
13 NOT MAKE --

14 GUNDERSON: I JUST DIDN'T DO IT. I DIDN'T THINK IT  
15 WAS NECESSARY.

16 MADDEN: ARE YOU TALKING WITH HER FOR LONG HOURS AT  
17 A TIME, BUT YOU DIDN'T FEEL IT WAS NECESSARY --

18 GUNDERSON: NO.

19 MADDEN: -- TO MAINTAIN SOME TYPE OF LOG INDICATING  
20 HOW LONG SHE WAS WITH YOU BEING INTERVIEWED?

21 GUNDERSON: THAT'S RIGHT, I DIDN'T FEEL IT WAS  
22 NECESSARY. SHE DID EVERYTHING VOLUNTARILY AND I DIDN'T THINK  
23 IT WAS NECESSARY TO MAKE AN INTERVIEW LOG.

24 Q. NOW, TED GUNDERSON WAS A FORMER FBI AGENT, IS THAT  
25 CORRECT?

September 21, 2012

Madden/Direct

Page 925

1 A. THAT'S CORRECT.

2 Q. SO, HE SHOULD HAVE BEEN FAMILIAR WITH THE CONTEXT OR THE  
3 CONCEPT OF AN INTERVIEW LOG?

4 A. ABSOLUTELY.

5 Q. AND DID YOU TALK WITH HIM ABOUT ANY PROMISES THAT HE MADE  
6 TO HELENA AND ERNEST?

7 A. YES.

8 Q. AND WHAT DID HE SAY ABOUT THE PROMISES THAT HE MADE TO  
9 THEM?

10 A. SPECIFICALLY, WITHOUT HAVING THE INTERVIEW IN FRONT OF  
11 ME, THAT HE WOULD PROVIDE HELENA AND ERNEST WITH RELOCATION TO  
12 CALIFORNIA, POSSIBLE EMPLOYMENT, A POSSIBLE NEW IDENTITY, AND  
13 FINANCIAL ASSISTANCE FOR THEM TO GET ON THEIR FEET.

14 Q. AND DID YOU ALSO TALK WITH HIM ABOUT CERTAIN INDIVIDUALS  
15 THAT HE ALLEGED MS. STOECKLEY NAMED AS BEING INVOLVED IN THE  
16 MURDERS?

17 A. YES.

18 Q. AND DID HE GIVE YOU A LIST OF SOME OF THOSE PEOPLE?

19 A. YES, FROM HIS REPORT THAT WAS PREPARED. I DON'T RECALL  
20 SPECIFICALLY DURING HIS INTERVIEW. I THINK IT WAS 78 PAGES  
21 WITH HER HE PROVIDED AT THAT TIME.

22 Q. IF I COULD HAVE PAGE 806.

23 A. I'M SORRY?

24 Q. WE'RE GOING TO PUT UP ON THE SCREEN THAT PORTION OF YOUR  
25 INTERVIEW. AND HIS SECOND RESPONSE, GUNDERSON'S SECOND

September 21, 2012

Madden/Direct

Page 926

1 RESPONSE, PLEASE. DO YOU SEE THERE WHERE HE'S NAMED SOME  
2 INDIVIDUALS TO YOU?

3 A. YES.

4 Q. BRUCE FOWLER, GREG MITCHELL, DON HARRIS --

5 A. ALLEN P. MAZEROLLE.

6 Q. OKAY. NOW, I WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT  
7 THOSE INDIVIDUALS. AFTER OBTAINING THOSE INDIVIDUALS' NAMES,  
8 DID YOU ATTEMPT TO LOCATE AND RUN DOWN THOSE LEADS?

9 A. YES, I DID, AND I ASKED MR. GUNDERSON IF HE HAD ATTEMPTED  
10 TO LOCATE AND INTERVIEW THESE INDIVIDUALS. HE SAID HE DID NOT  
11 AND I SAID SOMETHING TO THE EFFECT THAT WOULD PROBABLY BE A  
12 LOGICAL NEXT STEP IN THE INVESTIGATION. HE SAID THAT HE WAS  
13 OUT OF MONEY, THAT HE HAD NOT BEEN PAID FOR A SUBSTANTIAL  
14 AMOUNT OF HIS INVESTIGATIVE WORK IN THE CASE.

15 Q. AND SO NO ONE OTHER THAN YOU RAN DOWN THOSE LEADS?

16 A. THAT'S CORRECT.

17 Q. NOW, WITH RESPECT PARTICULARLY TO ALLEN MAZEROLLE, WHAT,  
18 IF ANY, INVESTIGATION DID YOU DO REGARDING HIS WHEREABOUTS ON  
19 FEBRUARY 16TH AND 17TH OF 1970?

20 A. I ATTEMPTED TO DETERMINE, FIRST OF ALL, WHO HE WAS AND  
21 WHERE HE WAS ON THE DATES OF THE CRIME. IN THAT REGARD, I  
22 WENT TO THE FAYETTEVILLE, NORTH CAROLINA, POLICE DEPARTMENT  
23 AND ATTEMPTED TO LOCATE RECORDS REGARDING MAZEROLLE.

24 AS I REMEMBER, AND THIS IS 30 YEARS AGO OR SO, BUT  
25 AS I REMEMBER, THE JAILER OR POLICE OFFICER IN CHARGE OF

September 21, 2012

Madden/Direct

Page 927

1 RECORDS AT THAT TIME TOLD ME FAYETTEVILLE POLICE DEPARTMENT  
2 HAD RECENTLY RELOCATED, THAT THE RECORDS WERE PRETTY MUCH IN  
3 SHAMBLES SOMEWHAT, AND THAT OLD RECORDS WERE STORED IN A ROOM  
4 UPSTAIRS AT THE POLICE DEPARTMENT AND I WAS WELCOME TO REVIEW  
5 THOSE RECORDS IF I CARED TO.

6 Q. AND DID YOU GO AND REVIEW THOSE RECORDS?

7 A. YES, I DID.

8 Q. AND WERE YOU ABLE TO LOCATE RECORDS REGARDING ALLEN  
9 MAZEROLLE THIS WAY?

10 A. YES, I WAS.

11 Q. AND IF I COULD HAVE PAGE 882, PLEASE. DID YOU COPY SOME  
12 OF THOSE RECORDS WHILE YOU WERE THERE AT THE FAYETTEVILLE  
13 POLICE DEPARTMENT?

14 A. YES, MA'AM.

15 Q. IF WE COULD BLOW UP THIS. NOW, WHAT ARE WE LOOKING AT  
16 HERE?

17 A. WE'RE LOOKING AT A DATE OF COMMITMENT FOR ALLEN P.  
18 MAZEROLLE, IT'S M-A-Z-E-R-O-L-L-E, A WHITE MALE AGE 20, THAT  
19 HE WAS COMMITTED ON 1/29/70 AND HE WAS RELEASED ON 3/10/70 AT  
20 5:15 P.M. HE HAD SPENT 41 DAYS IN JAIL AND THAT HE WAS  
21 COMMITTED TO THE JAIL BY SONBERG, S-O-N-B-E-R-G, AND BEASLEY.  
22 HE WAS CHARGED WITH POSSESSION AND TRANSPORTATION OF LSD.

23 Q. OKAY. I'LL STOP YOU RIGHT THERE. SO, HE WAS IN JAIL  
24 DURING THE TIME OF THE MACDONALD MURDERS?

25 A. THAT'S CORRECT.

September 21, 2012

Madden/Direct

Page 928

1 Q. AND THE PERSON WHO PUT HIM IN JAIL WAS BEASLEY?

2 A. THAT'S CORRECT.

3 Q. OKAY. DID YOU ALSO OBTAIN THE RECORDS FOR ARREST? IF I  
4 COULD HAVE 883. DID YOU OBTAIN THIS ARREST RECORD AND  
5 COMPLAINT WHILE YOU WERE THERE AT THE POLICE DEPARTMENT AS  
6 WELL?

7 A. YES.

8 Q. AND IF WE COULD GO TO THE BOTTOM AND IF WE COULD ROTATE  
9 THAT. NOW, AT THE BOTTOM OF THIS ARREST, DOES IT INDICATE  
10 WHEN THE ARREST WARRANT WAS SERVED AND THE OFFICER'S RETURN AT  
11 THE BOTTOM?

12 A. THE RETURN?

13 Q. YES. IS IT JANUARY 28TH OF 1970?

14 A. YES, MA'AM.

15 Q. OKAY. AND SO THAT WAS -- THE ARREST WARRANT WAS RETURNED  
16 AND HE WAS ARRESTED ON THAT DATE?

17 A. YES.

18 Q. AND AT SOME POINT WAS THERE AN ISSUE REGARDING WHETHER HE  
19 HAD BONDED OUT? IF I COULD HAVE 884, PLEASE.

20 A. I DON'T RECALL.

21 Q. OKAY. I'M SHOWING YOU HERE WHAT'S AN APPEARANCE BOND  
22 ALSO MARKED AS A TRUE COPY THAT YOU GOT FROM THE FAYETTEVILLE  
23 POLICE DEPARTMENT. DO YOU RECALL THIS DOCUMENT?

24 A. YES.

25 Q. OKAY. AND THIS IS FOR ALLEN MAZEROLLE?

September 21, 2012

Madden/Direct

Page 929

1 A. YES.

2 Q. AND IT INDICATES THAT HE WAS BONDED OUT ON MARCH 16TH OF  
3 1970, IS THAT CORRECT?

4 A. YES.

5 Q. AND DID YOU ALSO DO SOME INVESTIGATION WITH REGARD TO THE  
6 OTHER INDIVIDUALS THAT HAD BEEN NAMED?

7 A. YES.

8 Q. SPECIFICALLY, WITH RESPECT TO THE INDIVIDUAL KNOWN AS  
9 EDDIE OR SMITTY, DID YOU COME TO KNOW HIM AS DWIGHT EDWIN  
10 SMITH?

11 A. YES, MA'AM.

12 Q. AND DID YOU ALSO PREPARE AN AFFIDAVIT ABOUT YOUR  
13 INTERVIEW WITH MR. SMITH?

14 A. YES.

15 Q. IF I COULD HAVE PAGE 895. AND, AGAIN, IS THIS YOUR  
16 AFFIDAVIT COMPLETED BASED UPON YOUR SEPTEMBER 7TH, 1982,  
17 INTERVIEW WITH DWIGHT EDWIN SMITH?

18 A. YES.

19 Q. AND WERE YOU ABLE TO DETERMINE -- IF I COULD HAVE  
20 PARAGRAPH TWO -- WHAT HE DID FOR A LIVING AT THE TIME OF THE  
21 MACDONALD MURDERS?

22 A. DO YOU WANT ME TO READ FROM THIS OR DO YOU WANT ME TO  
23 TELL YOU FROM RECOLLECTION?

24 Q. YOU CAN TELL ME FROM YOUR RECOLLECTION.

25 A. HE WAS A DRUG COUNSELOR IN FAYETTEVILLE, NORTH CAROLINA.

September 21, 2012

Madden/Direct

Page 930

1 Q. AND SO HE WAS WORKING IN FAYETTEVILLE AT THE TIME OF THE  
2 MURDERS?

3 A. YES.

4 Q. AND DID YOU HAVE A CONVERSATION WITH HIM REGARDING  
5 WHETHER OR NOT HE HAD BEEN INVOLVED IN THESE MURDERS?

6 A. YES.

7 Q. AND WHAT DID HE TELL YOU?

8 A. SAID THAT HE KNEW ABSOLUTELY NOTHING REGARDING THE  
9 MURDERS.

10 Q. AND DID HE KNOW ANY OF THE OTHER INDIVIDUALS THAT WERE  
11 NAMED AS BEING INVOLVED IN THE MURDERS?

12 A. I DON'T SPECIFICALLY RECALL.

13 Q. IF I MAY HAVE PAGE FIVE -- I'M SORRY, PARAGRAPH FIVE, ON  
14 PAGE 897.

15 A. THE NAMES OF BRUCE JOHNNY FOWLER, SHELBY DON HARRIS,  
16 ALLEN PATRICK MAZEROLLE AND WIZARD MEANT NOTHING TO HIM  
17 WHATSOEVER. HE BELIEVES HE REMEMBERS THE NAME OF GREGORY  
18 HOWARD MITCHELL AND THINKS MITCHELL WAS PROBABLY ACQUAINTED  
19 WITH HELENA STOECKLEY, ALTHOUGH HE COULD NOT PROVIDE ANY  
20 INFORMATION REGARDING MITCHELL.

21 Q. SO, FAIR TO SAY, HE WAS NOT ASSOCIATES WITH THESE PEOPLE?

22 A. THAT'S CORRECT.

23 Q. AND DID YOU TALK WITH HIM ABOUT HIS WHEREABOUTS OF THE  
24 NIGHT OF THE MACDONALD MURDERS?

25 A. I DON'T SPECIFICALLY RECALL. I'M SURE I DID.

September 21, 2012



Madden/Direct

Page 931

1 Q. IF I COULD HAVE PARAGRAPH SIX. DID HE INDICATE TO YOU  
2 THAT HE HAD SOME INVOLVEMENT WITH SOME SBI AGENTS AS A RESULT  
3 OF HIS POSITION AS A DRUG TREATMENT COUNSELOR?

4 A. I DON'T REMEMBER.

5 Q. WELL, DID HE SPEAK WITH THESE SBI AGENTS ON FEBRUARY 17TH  
6 OF 1970?

7 A. SBI AGENTS, NOT FBI AGENTS.

8 Q. YES. SBI AGENTS.

9 A. I'M SORRY. S AS IN STATE.

10 Q. THAT'S CORRECT.

11 A. YES.

12 Q. OKAY. AND DID HE SPEAK WITH THESE AGENTS ON THE MORNING  
13 AFTER THE MURDERS, FEBRUARY 17TH, 1970?

14 A. YES. IF YOU'D LIKE ME TO READ HIS STATEMENT.

15 Q. YES, PLEASE.

16 A. HE COULD NOT RECALL SPECIFICALLY WHERE HE WAS DURING THE  
17 EVENING OF FEBRUARY 16TH OR THE EARLY MORNING HOURS OF  
18 FEBRUARY 17TH, 1970.

19 HE DOES REMEMBER THAT DURING EARLY OR MID-MORNING  
20 HOURS ON FEBRUARY 17TH, THAT RAY DAVIS AND CUYLER WINDHAM, SBI  
21 AGENTS, CAME TO HIS RESIDENCE, SPOKE WITH HIM, AND PAT REESE  
22 REGARDING THE MACDONALD MURDERS.

23 THEY WERE SEEKING INFORMATION FROM SMITH AND REESE  
24 AS TO POSSIBLE SUSPECTS AS THE SBI HAD A DESCRIPTION OF A  
25 GROUP OF INDIVIDUALS WHICH MAY HAVE PARTICIPATED IN THE

September 21, 2012

Madden/Direct

Page 932

1 MACDONALD MURDERS.

2 TO THE BEST OF SMITH'S RECOLLECTION, HE WAS UNAWARE  
3 OF THE MACDONALD MURDERS UNTIL INFORMED ABOUT SAME BY WINDHAM  
4 AND DAVIS.

5 WINDHAM AND DAVIS WERE OBVIOUSLY LOOKING FOR HELP AS  
6 TO SUSPECTS AS HE WORKED CLOSELY WITH THEM WITH VARIOUS DRUG  
7 USERS.

8 SMITH NOTED THAT HE DID MANY PROGRAMS OF A COMMUNITY  
9 NATURE AT SCHOOLS AND CHURCHES REGARDING DRUGS WITH WINDHAM  
10 AND DAVIS.

11 TO THE BEST OF HIS RECOLLECTION, AT THE TIME HE WAS  
12 CONTACTED HE COULD NOT FURNISH ANY SUSPECTS TO WINDHAM OR  
13 DAVIS.

14 Q. OKAY. THANK YOU.

15 A. HE --

16 Q. THAT'S FINE. SO, FAIR TO SAY AT THAT TIME THEY WERE  
17 SEEKING HIS HELP IN TRYING TO DETERMINE WHO ANY OF THESE  
18 INDIVIDUALS WERE?

19 A. YES.

20 Q. DID YOU ALSO LOCATE SHELBY DON HARRIS?

21 A. I BELIEVE SO.

22 Q. IF I COULD HAVE PAGE 1184. I'M SORRY, 1182. IS THIS  
23 ALSO AN AFFIDAVIT PREPARED BY YOU?

24 A. YES, IT IS.

25 Q. AND DID YOU HAVE OCCASION -- IF I COULD HAVE PARAGRAPH

September 21, 2012

Madden/Direct

Page 933

1 THREE -- TO INTERVIEW SHELBY DON HARRIS VIA THE TELEPHONE?

2 A. YES.

3 Q. AND DID HE INDICATE TO YOU THAT HE HAD ANY INVOLVEMENT IN  
4 THE MACDONALD MURDERS?

5 A. AS I RECALL, NO.

6 Q. IF I COULD HAVE PARAGRAPH SIX ON PAGE 1183. IF YOU WOULD  
7 READ PARAGRAPH SIX.

8 A. STARTING AT SIX?

9 Q. YES, PLEASE.

10 A. HE EMPHASIZED TO SHEDLICK THAT HE KNEW ABSOLUTELY NOTHING  
11 ABOUT THE MACDONALD MURDERS AND VOLUNTEERED TO TAKE A  
12 POLYGRAPH EXAMINATION IN TENNESSEE FOR SHEDLICK. HOWEVER,  
13 SHEDLICK WANTED HARRIS TO COME TO NORTH CAROLINA FOR SUCH AN  
14 EXAMINATION AND HARRIS DECLINED.

15 SHEDLICK ASKED HIM QUESTIONS ABOUT PEOPLE HE MAY  
16 HAVE KNOWN WHILE IN FAYETTEVILLE, NORTH CAROLINA, AND A  
17 BUSINESS ESTABLISHMENT, NAME UNRECALLED, THAT WAS A LOCAL  
18 PIZZA SHOP IN FAYETTEVILLE, NORTH CAROLINA.

19 HARRIS READILY ADMITTED TO SHEDLICK THAT HE KNEW  
20 CERTAIN INDIVIDUALS INCLUDING HELENA STOECKLEY AND GREG  
21 MITCHELL AND THAT HE HAD FREQUENTED EITHER A PIZZA OR A DONUT  
22 TYPE RESTAURANT.

23 Q. OKAY. THAT'S --

24 A. HE DOES --

25 Q. THANK YOU. THAT'S PLENTY. SO, HE INDICATED HE KNEW THEM

September 21, 2012

Madden/Direct

Page 934

1 FROM AROUND FAYETTEVILLE, IS THAT FAIR TO SAY?

2 A. THAT'S CORRECT.

3 Q. OKAY. AND --

4 MS. COOLEY: IF I COULD HAVE ONE MOMENT?

5 (PAUSE.)

6 BY MS. COOLEY:

7 Q. OKAY. AND SO SUFFICE IT TO SAY, YOU MADE EFFORTS TO  
8 DETERMINE WHERE THESE INDIVIDUALS WERE ON THE NIGHT OF THE  
9 MACDONALD MURDERS AND NONE OF THEM INDICATED INVOLVEMENT IN  
10 ANY WAY TO YOU?

11 A. THAT'S CORRECT.

12 Q. MOST PARTICULARLY ALLEN MAZEROLLE WHO WAS IN JAIL?

13 A. THAT'S CORRECT. AND HE WAS INTERVIEWED BY FBI AGENTS IN  
14 PORTLAND, MAINE.

15 Q. AND DID HE INDICATE TO THEM THAT HE HAD BEEN INVOLVED IN  
16 ANY WAY?

17 A. NO.

18 Q. NOW, DID YOU HAVE OCCASION TO TALK TO TED GUNDERSON ABOUT  
19 THE BOOK DEAL THAT HE HAD INVOLVING HELENA STOECKLEY AND THE  
20 MACDONALD MURDERS?

21 A. I DON'T RECALL SPECIFIC DETAILS REGARDING THAT.

22 Q. BUT DO YOU RECALL THAT CONVERSATION AS PART OF --

23 A. YES.

24 Q. OKAY. MAY I HAVE PAGE 815 STARTING WITH THE THIRD  
25 PARAGRAPH. AND IF YOU COULD JUST READ FOR US YOUR

September 21, 2012

Madden/Direct

Page 935

1 CONVERSATION WITH GUNDERSON.

2 A. MYSELF: HAVE YOU, SINCE THAT TIME, ACTUALLY ENTERED INTO  
3 ANY CONTRACTUAL ARRANGEMENTS WITH HELENA STOECKLEY FOR A BOOK  
4 OR A MOVIE TO BE WRITTEN REGARDING THE MACDONALD CASE?

5 GUNDERSON: I HAVE NOT, AND IN FACT I HAVE NOT  
6 ENTERED INTO A CONTRACTUAL AGREEMENT WITH ANYBODY FOR THAT.  
7 THAT IS MY NOT PRIMARY GOAL. MY PRIMARY GOAL HAS ALWAYS AND  
8 WILL BE TO DETERMINE WHAT THE FACTS, TRUE FACTS, ARE IN THIS  
9 INVESTIGATION.

10 MADDEN: HAVE YOU, YOURSELF, CONTACTED ANYONE  
11 REGARDING THE POSSIBILITY OF A BOOK OR MOVIE REGARDING THIS  
12 CASE?

13 GUNDERSON: YES, I HAVE. I'VE TALKED TO SEVERAL  
14 PEOPLE ABOUT IT AND UH -- I KEEP SAYING UH, BUT THAT'S HIS  
15 PHRASEOLOGY -- I HAVE AN ATTORNEY IN LOS ANGELES WHO HAS  
16 MAINLY DONE THE WORK ON IT AND HE HAS TALKED TO SOME PEOPLE  
17 ABOUT IT, BUT WE HAVE NOT ENTERED INTO ANY SORT OF AGREEMENT.  
18 THAT IS NOT MY PRIMARY, THAT IS SECONDARY.

19 Q. IF I COULD HAVE PAGE 816. WE'RE GOING TO CONTINUE ON THE  
20 NEXT PAGE. AND THE SIXTH PARAGRAPH STARTING WITH, UH, HAVE  
21 YOU CONTACTED.

22 A. MADDEN: HAVE YOU CONTACTED ANYONE IN THE MOVIE INDUSTRY  
23 IN CALIFORNIA REGARDING A POSSIBLE MOVIE REGARDING THE  
24 MACDONALD CASE?

25 GUNDERSON: NO, I REALLY, I HAVE TALKED TO SOME

September 21, 2012

Madden/Direct

Page 936

1 PEOPLE ABOUT IT, BUT I HAVEN'T, YOU KNOW, I REALLY HAVEN'T  
2 GONE INTO IT IN EARNEST OR I HAVEN'T REALLY SOUGHT ANYBODY  
3 OUT. I JUST -- I MERELY HAD GENERAL DISCUSSIONS ABOUT IT.  
4 AND SPENCER, SPENCER'S LOOKING INTO THE POSSIBILITY NOW. AND  
5 AS I MENTIONED, THIS IS SECONDARY. THE PRIMARY, UH, CONCERN  
6 IS THIS CASE, THE INVESTIGATION. AND MY MOTIVE FOR THIS  
7 INVESTIGATION INITIALLY WAS IT WAS A CLIENT-BUSINESS  
8 RELATIONSHIP.

9 Q. OKAY. YOU CAN STOP THERE. SO, HE HAD CONTACTED BOTH  
10 PEOPLE IN THE MOVIE INDUSTRY AND IN THE BOOK INDUSTRY  
11 REGARDING A BOOK AND A MOVIE IN THIS CASE?

12 A. YES.

13 Q. OKAY. DID YOU ALSO ASK HIM ABOUT ANY CONTACTS THAT HE  
14 KNEW ABOUT PRINCE BEASLEY HAVING WITH FRED BOST REGARDING A  
15 BOOK?

16 A. I DON'T REMEMBER WHETHER BEASLEY -- I'M SORRY, WHETHER  
17 GUNDERSON DISCUSSED ANY DEAL WITH BEASLEY OR BOST, BUT I DO  
18 REMEMBER BEASLEY AT SOME POINT IN TIME SAYING THAT HE HAD  
19 TRANSPORTED FRED BOST TO SENECA, SOUTH CAROLINA, TO HAVE A  
20 DISCUSSION WITH HELENA ABOUT THE POSSIBILITY OF A BOOK BEING  
21 PUBLISHED.

22 Q. AND DID YOU DISCUSS WITH HIM THE PROCEEDS SIMILAR TO THE  
23 CONVERSATION YOU HAD WITH HELENA ABOUT THE PROCEEDS FOR THAT  
24 BOOK?

25 A. I'M SORRY, WOULD YOU REPEAT THAT?

September 21, 2012

Madden/Direct

Page 937

1 Q. DID YOU DISCUSS WITH BEASLEY THE PROCEEDS FOR THAT BOOK  
2 SIMILAR TO HOW YOU HAD HAD THAT DISCUSSION WITH HELENA ABOUT  
3 THE PROCEEDS?

4 A. YES.

5 Q. IF I COULD HAVE PAGE 847. AND STARTING WITH THE SECOND  
6 PARAGRAPH.

7 A. MADDEN: BUT CERTAINLY THE MACDONALD CASE.

8 BEASLEY: OF COURSE, CERTAINLY I IMAGINE IT WOULD  
9 COME UP THERE, YES, SIR, IT WOULD.

10 MADDEN: WHAT PERCENTAGE OR PROFIT DO YOU EXPECT TO  
11 RECEIVE OR SPECIFICALLY WHAT IS YOUR CONTRACTUAL AGREEMENTS,  
12 UH, WHAT --

13 BEASLEY: A PERCENTAGE OF 20 PERCENT FOR EACH.

14 MADDEN: 20 PERCENT YOU WOULD RECEIVE FROM THE BOOK?

15 BEASLEY: AND HER ALSO.

16 AND HELENA?

17 RIGHT. BEASLEY, I'M SORRY, RIGHT.

18 MADDEN: AND WOULD MR. BOST RETAIN THE REMAINING  
19 PERCENTAGE?

20 BEASLEY: THAT'S CORRECT.

21 Q. OKAY. THANK YOU. SO, THAT'S IN ACCORDANCE WITH THE  
22 CONVERSATION YOU HAD WITH HELENA ABOUT THE PERCENTAGES FROM  
23 THE BOOK?

24 A. YES.

25 Q. OKAY. NOW, DID YOU ALSO TALK TO MR. GUNDERSON AND MR.

September 21, 2012

Madden/Direct

Page 938

1 BEASLEY ABOUT CERTAIN PIECES OF INFORMATION THAT THEY FELT  
2 CORROBORATED HELENA'S STORY?

3 A. I'M SURE THAT I DID, YES.

4 Q. NOW, DID MR. GUNDERSON TALK TO YOU ABOUT ALLEN MAZEROLLE  
5 BEING THE PERSON IN THE CAR THAT NIGHT?

6 A. I DON'T SPECIFICALLY REMEMBER, BUT I THINK SO, YES.

7 Q. AND LET ME HAVE PAGE 861, PLEASE. DID MR. GUNDERSON TALK  
8 TO YOU -- STARTING WITH THE SECOND PARAGRAPH, UH, WE ASKED  
9 HELENA. DID MR. GUNDERSON TALK TO YOU ABOUT SOME HAIR THAT  
10 WAS FOUND IN COLETTE'S HAND? IF YOU COULD READ THAT.

11 A. CAN YOU GO BACK A LITTLE BIT?

12 Q. SURE. WE CAN GO UP TO THE TOP OF THE PAGE.

13 A. OKAY. WHAT WOULD YOU LIKE ME TO DO?

14 Q. IF YOU WOULD START READING WITH, UH, WE ASKED HELENA.

15 A. GUNDERSON: HELENA STOECKLEY HAS MADE THE SAME STATEMENT,  
16 HAD MADE THE SAME STATEMENT TO US ABOUT THE CAR MAKING A U-  
17 TURN AND GOING BACK TOWARD THE MACDONALD HOUSE.

18 UH, WE ASKED HELENA ABOUT THE HAIR STRANDS THAT WERE  
19 FOUND IN COLETTE'S RIGHT HAND. UH, AS I SAY, I RECALL THIS IS  
20 FROM MEMORY NOW SO I CAN'T SAY FOR SURE, BUT, AND I BELIEVE, I  
21 KNOW THIS IS IN MY REPORT, OUR REPORT, UH, SHE TOLD US, UH,  
22 BRUCE, SHE THOUGHT IT WAS BRUCE FOWLER, BUT BEFORE EARLIER SHE  
23 TOLD, SHE HAD TOLD PRINCE THAT SHE THOUGHT IT WAS GREG  
24 MITCHELL, AND SHE MADE THE STATEMENT TO PRINCE BEASLEY AND  
25 THAT SHE SAW GREG MITCHELL ON TOP OF COLETTE STRUGGLE WITH

September 21, 2012



Madden/Direct

Page 939

1 COLETTE, BUT ONE OF THE AREAS LIKE THIS, THIS CONCERNS ME  
2 BECAUSE IT SEEMS TO ME LIKE SOMEBODY SHOULD ATTEMPT TO LOCATE  
3 THESE PEOPLE AND COMPARE THE HAIR STRANDS FOUND IN COLETTE'S  
4 HAND WITH THE KNOWN SPECIMENS --

5 Q. OKAY. THAT'S ENOUGH. WE CAN STOP THERE. AND ARE YOU  
6 AWARE THAT LATER IN THE INVESTIGATION THOSE HAIRS IN COLETTE'S  
7 HAND WERE ACTUALLY COMPARED TO SAMPLES FROM GREG MITCHELL AS  
8 WELL AS FROM MR. MACDONALD AND COLETTE?

9 A. THAT IS MY RECOLLECTION.

10 Q. AND THAT THE HAIR IN ONE OF COLETTE'S HANDS WAS  
11 CONSISTENT WITH HER OWN AND THE HAIR IN THE OTHER HAND WAS DR.  
12 MACDONALD'S?

13 A. I DON'T SPECIFICALLY RECALL THAT INFORMATION.

14 Q. WERE YOU AWARE THAT NEITHER OF THOSE SAMPLES MATCHED GREG  
15 MITCHELL?

16 A. TO THE BEST OF MY RECOLLECTION, YES.

17 Q. NOW, DURING THIS ENTIRE INTERVIEW YOU HAD WITH TED  
18 GUNDERSON AND WITH BEASLEY, IT'S A FAIR STATEMENT THAT YOU  
19 COVERED A LOT OF DIFFERENT TOPICS WITH THEM REGARDING THE  
20 MACDONALD MURDERS?

21 A. YES.

22 Q. AND, IN FACT, YOU SAID, I BELIEVE, 80-SOMETHING PAGES OF  
23 TRANSCRIPT?

24 A. 78, I BELIEVE.

25 Q. 78. AND AT NO TIME DURING ANY OF THAT INTERVIEW DID

September 21, 2012

Madden/Direct

Page 940

1 EITHER OF THEM EVER MENTION TO YOU HELENA HAD TOLD THEM JIM  
2 BLACKBURN THREATENED HER DURING THE TRIAL?

3 A. THAT'S CORRECT.

4 Q. AND YOU ALSO HAD OCCASION TO INTERVIEW HELENA'S MOTHER?

5 A. YES.

6 Q. AND THAT CAME SOMETIME AFTER YOUR INTERVIEW WITH HELENA,  
7 IS THAT RIGHT?

8 A. THAT'S CORRECT.

9 Q. OKAY. DO YOU REMEMBER THE DATE OF THAT INTERVIEW?

10 A. NOT OFFHAND, NO.

11 Q. DID YOU PREPARE NOTES OF THAT INTERVIEW?

12 A. YES.

13 Q. AND DID YOU PREPARE HANDWRITTEN NOTES?

14 A. I'M SORRY?

15 Q. DID YOU PREPARE HANDWRITTEN NOTES?

16 A. YES.

17 Q. IF I MAY HAVE GOVERNMENT 2333, AND IF WE COULD JUST PAGE  
18 THROUGH. AND DO RECOGNIZE WHOSE HANDWRITING THIS IS?

19 A. THAT'S MY HANDWRITING.

20 Q. AND DO YOU RECOGNIZE THIS DOCUMENT AS NOTES THAT YOU TOOK  
21 DURING YOUR INTERVIEW WITH HELENA STOECKLEY'S MOTHER, HELENA  
22 STOECKLEY SENIOR?

23 A. YES.

24 (GOVERNMENT EXHIBIT NUMBER 2333  
25 WAS IDENTIFIED FOR THE RECORD.)

September 21, 2012

Madden/Direct

Page 941

1 Q. AND DID YOU LATER WRITE THOSE NOTES INTO A MORE LEGIBLE  
2 FORMAT, SO TO SPEAK?

3 A. YES.

4 Q. IF I MAY HAVE 2334, AND IF YOU COULD JUST PAGE THROUGH.  
5 AND DO YOU RECOGNIZE THESE NOTES AS WELL?

6 A. YES.

7 Q. AND ARE THESE THE LEGIBLE COPIES OF YOUR NOTES?

8 A. YES.

9 (GOVERNMENT EXHIBIT NUMBER 2334  
10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. AND DID YOU TURN THESE OVER TO AGENT CHEROKE, WHO ALSO  
12 WORKS WITH THE FBI?

13 A. YES.

14 Q. AND WERE THESE NOTES OF YOUR TRANSCRIBED INTO WHAT WE  
15 WOULD CALL A 302 OR A REPORT OF INCIDENT?

16 A. YES.

17 Q. IF I MAY HAVE 2332. AND DO YOU RECOGNIZE THIS AS THE  
18 REPORT OF INCIDENT OF YOUR INTERVIEW WITH MS. STOECKLEY  
19 SENIOR?

20 A. YES, MA'AM.

21 (GOVERNMENT EXHIBIT NUMBER 2332  
22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. AND WHAT DATE DID YOU INTERVIEW HER? DOES IT REFLECT ON  
24 YOUR 302?

25 A. SEPTEMBER -- I'M SORRY.

September 21, 2012

Madden/Direct

Page 942

1 Q. WHAT DATE DID YOU INTERVIEW MS. STOECKLEY?

2 A. SEPTEMBER -- I'M SORRY, I'M NOT FOLLOWING YOU.

3 Q. IF YOU COULD READ STARTING AT THE TOP.

4 A. I'M SORRY?

5 Q. IF YOU COULD JUST READ IT STARTING AT THE TOP.

6 A. REVIEW OF CAPTIONED CASE MATERIAL REVEALED A HANDWRITTEN  
7 DRAFT OF AN INTERVIEW REPORT FORM FD-302 REFLECTING INTERVIEW  
8 OF HELENA W. STOECKLEY ON JULY 19TH, 1984.

9 Q. OKAY. AND THEN IT WAS TRANSCRIBED ON SEPTEMBER 19TH OF  
10 2007, IS THAT RIGHT?

11 A. THAT'S CORRECT.

12 Q. NOW, FAIR TO SAY AT THE TIME THAT YOU INTERVIEWED MS.  
13 STOECKLEY SENIOR, THAT WAS A ROUTINE INTERVIEW JUST LIKE THE  
14 OTHER ONES YOU CONDUCTED IN THIS CASE?

15 A. YES.

16 Q. AND THAT YOU WERE UNAWARE THAT IT WOULD LATER COME TO BE  
17 THE SUBJECT OF THIS LITIGATION?

18 A. THAT'S CORRECT.

19 Q. AND SO, WHAT WAS YOUR PURPOSE IN INTERVIEWING HER AT THAT  
20 POINT IN TIME?

21 A. JUST TO DETERMINE WHETHER SHE HAD ANY KNOWLEDGE REGARDING  
22 THE MURDERS EITHER ON A PERSONAL BASIS OR FROM HER DAUGHTER,  
23 HELENA STOECKLEY.

24 Q. NOW, THIS DATE, JULY 19TH, 1984, THAT IS AFTER HELENA  
25 DIED IN JANUARY OF '83, IS THAT RIGHT?

September 21, 2012

Madden/Direct

Page 943

1 A. THAT'S CORRECT.

2 Q. AND SO, AT THE POINT THAT YOU INTERVIEWED HER MOTHER,  
3 HELENA WAS ALREADY DECEASED?

4 A. THAT'S CORRECT.

5 Q. AND IF YOU WOULD, STARTING WITH THE QUOTATION MARKS, READ  
6 THE SUBSTANCE OF YOUR REPORT REGARDING YOUR INTERVIEW WITH MS.  
7 STOECKLEY SENIOR.

8 A. MRS. HELENA W. STOECKLEY, FAYETTEVILLE, NORTH CAROLINA,  
9 TELEPHONE NUMBER 919-484-0459, WAS CONTACTED AND ADVISED OF  
10 THE IDENTITY OF THE INTERVIEWING AGENT, AND THEREAFTER ADVISED  
11 AS FOLLOWS: MRS. STOECKLEY WAS THE MOTHER OF HELENA  
12 STOECKLEY, WHO IS DECEASED. SHE HAD BEEN PREVIOUSLY INTERVIEW  
13 ON ONE OCCASION BEFORE BY A GOVERNMENT AGENT, IDENTITY AND  
14 AGENCY UNRECALLED.

15 SHE WAS SUBPOENAED -- SHE MEANING THE DAUGHTER  
16 HELENA -- WAS SUBPOENAED TO THE MACDONALD TRIAL BY THE DEFENSE  
17 TEAM AND WENT TO RALEIGH, NORTH CAROLINA, WHERE SHE WAS  
18 INTERVIEWED BY A FEMALE ATTORNEY, NAME UNRECALLED, WHO WAS A  
19 LEGAL ASSISTANT TO THE DEFENSE ATTORNEY, BERNARD SEGAL. MRS.  
20 STOECKLEY STATED THAT SHE TOLD THE ATTORNEY -- HELENA AGAIN --  
21 THAT SHE DID NOT KNOW ANYTHING ABOUT THE MURDERS.

22 SHE RECALLED THAT WHEN HELENA CAME HOME AFTER THE  
23 MACDONALD MURDERS, HELENA TOLD HER IN A PERFECTLY SOBER NON-  
24 DRUGGED STATE THAT HELENA KNEW ABSOLUTELY NOTHING ABOUT THE  
25 MACDONALD MURDERS.

September 21, 2012

Madden/Direct

Page 944

1           IN 1970, AT THE TIME OF THE MACDONALD MURDERS,  
2 HELENA WAS NOT LIVING AT HOME WITH THE FAMILY. SHORTLY BEFORE  
3 THE MURDERS, HELENA TOLD HER SHE HAD A MAN NAMED MAZEROLLE  
4 ARRESTED. HELENA WAS SNITCHING FOR DETECTIVES STUDER AND  
5 BEASLEY. MRS. STOECKLEY TOLD HELENA AND (SIC) HER PARENTS  
6 THEY COULD NOT CONDONE HER DRUG USAGE. AS LONG AS SHE  
7 CONTINUED THIS ACTIVITY, HELENA WAS NOT ALLOWED TO LIVE AT THE  
8 HOUSE.

9           HELENA THEN MOVED FROM THE HOUSE INTO ANOTHER  
10 RESIDENCE IN FAYETTEVILLE, NORTH CAROLINA, WITH OTHER  
11 INDIVIDUALS, NAMES UNKNOWN.

12           I'M SORRY, COULD YOU GO BACK A LITTLE? NO, THE  
13 OTHER WAY. WHOA.

14           AFTER THE MACDONALD MURDERS, HER HUSBAND SAW HELENA  
15 AT WHICH TIME HELENA TOLD HER HUSBAND THAT SHE DID NOT KNOW  
16 ANYTHING ABOUT THE MURDERS.

17           ACCORDING TO MRS. STOECKLEY, HER HUSBAND TOLD HELENA  
18 TO TELL THE TRUTH. MRS. STOECKLEY WAS OF THE OPINION THAT  
19 HELENA COULD NOT HAVE BEEN PRESENT OR COMMITTED THEM AS SHE  
20 WAS NOT VIOLENT AND LOVED CHILDREN.

21           STOECKLEY WAS RELUCTANT TO DISCUSS ADDITIONAL  
22 INFORMATION BECAUSE HELENA WAS NOT TREATED FAIRLY BY BEASLEY  
23 OR TED GUNDERSON, A PRIVATE INVESTIGATOR.

24           SHE WAS OF THE OPINION THAT HELENA'S MIND WAS QUOTE,  
25 GONE, UNQUOTE, ESPECIALLY WHEN UNDER THE INFLUENCE OF DRUGS

September 21, 2012

Madden/Direct

Page 945

1 AND/OR ALCOHOL. WHEN DOING DRUGS, HELENA THOUGHT ABOUT THE  
2 MACDONALD CASE, BUT SHE WAS NOT INVOLVED.

3 HELENA TOLD HER THAT DURING THE TRIAL QUOTE, THEY,  
4 UNQUOTE, WANTED HER TO TAKE DRUGS TO HELP HER REMEMBER  
5 DETAILS. MRS. STOECKLEY WAS OF THE OPINION THAT HELENA WAS  
6 USED, BUT WOULD NOT STATE BY WHOM. SHE NOTED THAT HELENA WAS  
7 BEATEN UP DURING THE MACDONALD TRIAL IN RALEIGH, NORTH  
8 CAROLINA, BUT WAS OF THE OPINION IT WAS NOT BY HER BOYFRIEND,  
9 ERNEST DAVIS.

10 MRS. STOECKLEY SAVED ALL THE NEWSPAPER ARTICLES  
11 RELATIVE TO THE MACDONALD CASE. AFTER THE MURDERS, HELENA  
12 RETURNED HOME. MRS. STOECKLEY THEN ALLOWED HELENA TO READ ALL  
13 OF THE NEWSPAPER ARTICLES CONCERNING THE MACDONALD CASE. MRS.  
14 STOECKLEY BELIEVES HELENA LEFT THEIR HOME THE FALL OF 1970.  
15 MRS. STOECKLEY'S KNOWLEDGE ABOUT THE CASE CAME FROM THE  
16 ARTICLES SHE READ IN THE NEWSPAPER.

17 HELENA HAD BEEN TRYING TO QUIT DRUGS SINCE 1970, AND  
18 AFTER HER RELEASE FROM DORTHEA DIX HOSPITAL, A MENTAL HEALTH  
19 HOSPITAL IN RALEIGH, NORTH CAROLINA, BELIEVED TO BE SOMETIME  
20 IN 1976, 1977, HELENA WAS STRUGGLING AT DORTHEA DIX FOR  
21 ALCOHOLISM AND MENTAL PROBLEMS. HELENA WAS NEVER RIGHT.

22 HELENA ENJOYED THE ATTENTION FROM THE MACDONALD  
23 CASE. SHE WAS OF THE OPINION THE MACDONALD CASE WOULD HAVE  
24 BEEN RESOLVED IF NOT FOR THE PERSISTENCE OF PRINCE BEASLEY,  
25 WHO WOULD NOT LEAVE HELENA ALONE. MRS. STOECKLEY STATED THAT

September 21, 2012

Madden/Direct

Page 946

1 SHE NEVER MET BEASLEY, BUT TALKED TO HIM ON THE TELEPHONE WHEN  
2 HE WOULD CALL HELENA. BEASLEY CALLED HELENA FREQUENTLY WHEN  
3 HELENA WAS INFORMING.

4 HELENA TOLD HER THAT WHEN SHE TESTIFIED AT THE  
5 MACDONALD TRIAL, SHE TOLD EVERYTHING SHE KNEW AND TOLD THE  
6 TRUTH.

7 HELENA TOLD MRS. STOECKLEY THAT SHE WAS A HEAVY DRUG  
8 USER, ESPECIALLY WHEN SHE WAS IN NASHVILLE, TENNESSEE. HELENA  
9 HAD A LOT OF ATTENTION FROM INVESTIGATORS AND ATTORNEYS.

10 BEFORE HER DEATH HELENA WAS IN TERRIBLE PHYSICAL  
11 SHAPE. IT WAS ABOUT THIS TIME THAT HELENA GAVE A STATEMENT TO  
12 A PRIVATE INVESTIGATOR FROM CALIFORNIA. WHEN MRS. STOECKLEY  
13 ASKED HELENA WHY SHE GAVE A STATEMENT, HELENA REPLIED SHE  
14 THOUGHT SHE WAS AT THE MURDER SCENE.

15 Q. NOW, WHEN YOU TOOK THIS STATEMENT FROM MRS. STOECKLEY  
16 SENIOR, HELENA STOECKLEY SENIOR, WHERE DID YOU INTERVIEW HER?

17 A. AT HER RESIDENCE.

18 Q. OKAY. AND HOW DID SHE APPEAR TO YOU? HOW WERE HER  
19 FACULTIES?

20 A. SHE WAS AN ELDERLY WOMAN AT THAT TIME. SHE APPEARED TO  
21 BE NORMAL.

22 Q. DID SHE HAVE ANY TROUBLE RECALLING THESE DETAILS WHEN YOU  
23 TALKED WITH HER?

24 A. NOT THAT I RECALL.

25 Q. AND SHE COULD SEE OKAY AT THAT POINT IN TIME?

September 21, 2012



Madden/Direct

Page 947

1 A. YES.

2 Q. AND SHE WAS STILL LIVING AT HOME FULL TIME?

3 A. THEN?

4 Q. THEN.

5 A. YES.

6 Q. AT THE TIME OF THE INTERVIEW.

7 A. YES.

8 Q. OKAY. AND DURING YOUR ENTIRE INTERVIEW WITH HER, YOU  
9 TALKED SOME WITH HER ABOUT HELENA'S TESTIMONY AT TRIAL AND  
10 WHAT HELENA HAD TOLD HER ABOUT THAT, CORRECT?

11 A. YES.

12 Q. AND AT ANY TIME DID SHE EVER TELL YOU THAT HELENA HAD  
13 TOLD HER JIM BLACKBURN THREATENED HER?

14 A. NO, MA'AM.

15 Q. OR ANY OTHER PROSECUTOR?

16 A. NO.

17 Q. AND HELENA STOECKLEY SENIOR GAVE ANOTHER AFFIDAVIT MUCH  
18 LATER IN HER LIFE WHEN SHE WAS LIVING IN A NURSING HOME AND  
19 SHE -- AT THIS POINT, SOMEONE WROTE IN THE AFFIDAVIT THAT ON  
20 TWO SEPARATE OCCASIONS MY DAUGHTER CONFIDED IN ME THAT SHE WAS  
21 PRESENT IN THE MACDONALD HOUSE DURING THE MURDERS ON FEBRUARY  
22 17TH. SHE DIDN'T SAY ANYTHING LIKE THAT TO YOU, DID SHE?

23 A. NO.

24 Q. AND YOU INTERVIEWED HER IN '84, SO IN THE EARLY '80S?

25 A. IN WHAT?

September 21, 2012

Madden/Direct

Page 948

1 Q. IN '84.

2 A. YES.

3 Q. SO, IT WAS CLOSER TO THE TIME OF THE TRIAL AND OF THE  
4 INCIDENT?

5 A. YES.

6 Q. AND MS. STOECKLEY SENIOR DIDN'T SAY ANYTHING TO YOU  
7 DURING YOUR INTERVIEW ABOUT KNOWING -- THAT HELENA KNEW THERE  
8 WAS SOME SORT OF HOBBY HORSE IN A CHILD'S BEDROOM, DID SHE?

9 A. NO.

10 Q. AND --

11 MS. COOLEY: WELL, I HAVE NO FURTHER QUESTIONS.  
12 THANK YOU.

13 THE COURT: MR. WIDENHOUSE.

14 MR. WIDENHOUSE: YOUR HONOR, I HAVE NO QUESTIONS OF  
15 AGENT MADDEN.

16 THE COURT: YOU MAY STEP DOWN. YOU MAY STEP DOWN,  
17 MR. MADDEN.

18 THE WITNESS: THANK YOU.

19 MS. COOLEY: YOUR HONOR, MAY MR. MADDEN BE EXCUSED  
20 FROM HIS SUBPOENA?

21 MR. WIDENHOUSE: NO OBJECTION, YOUR HONOR.

22 THE COURT: YES.

23 MS. COOLEY: THANK YOU.

24 MR. BRUCE: YOUR HONOR, WE'RE READY FOR OUR NEXT  
25 WITNESS.

September 21, 2012

McGinniss/Direct

Page 949

1 THE COURT: YES, SIR.

2 MR. BRUCE: WE'LL CALL JOE MCGINNISS.

3 (PAUSE.)

4 MR. BRUCE: YOUR HONOR, I THINK THAT WENT A LITTLE  
5 FASTER THAN WE ANTICIPATED AND SO HE'S UPSTAIRS SO IT'S GOING  
6 TO TAKE A MINUTE.

7 THE COURT: SURE.

8 (PAUSE.)

9 **JOE MCGINNISS, GOVERNMENT WITNESS, SWORN**

10 D I R E C T E X A M I N A T I O N 10:05 A.M.

11 BY MR. BRUCE:

12 Q. WOULD YOU STATE YOUR NAME, PLEASE?

13 A. JOE MCGINNISS.

14 Q. MR. MCGINNISS, WHERE ARE YOU FROM ORIGINALLY?

15 A. I WAS BORN IN NEW YORK CITY.

16 Q. AND DID YOU ATTEND COLLEGE?

17 A. I DID. I WENT TO HOLY CROSS COLLEGE IN WORCHESTER,  
18 MASSACHUSETTS, AND GRADUATED IN 1964.

19 Q. AFTER COLLEGE, WHAT CAREER DID YOU PURSUE?

20 A. I STARTED WORKING FOR NEWSPAPERS. I GOT A JOB FIRST WITH  
21 MY HOME TOWN PAPER IN COLCHESTER, NEW YORK. THEN I WAS HIRED  
22 BY THE *WORCESTER TELEGRAM* IN MASSACHUSETTS. THEN IN 1965, THE  
23 *PHILADELPHIA BULLETIN* HIRED ME AS A SPORTS WRITER. IN THE  
24 FALL OF '66, I MOVED OVER TO THE *PHILADELPHIA INQUIRER* WHERE I  
25 WROTE A COLUMN THREE DAYS A WEEK ABOUT WHATEVER WAS HAPPENING.

September 21, 2012

McGinniss/Direct

Page 950

1 Q. YOU MIGHT NEED TO GET A LITTLE CLOSER TO THE MICROPHONE.

2 A. SURE THING. HOW ABOUT THAT?

3 Q. OKAY. SO, YOU INDICATED THAT YOU STARTED WRITING A  
4 COLUMN FOR THE *PHILADELPHIA INQUIRER*?

5 A. THAT'S CORRECT.

6 Q. AND WHAT SUBJECTS DID YOU COVER?

7 A. WELL, IT WAS THREE DAYS A WEEK, ANYTHING I WANTED. AND  
8 IT WAS LARGELY BASED IN PHILADELPHIA, BUT GRADUALLY THE SCOPE  
9 EXPANDED. I WENT TO VIETNAM TO WRITE THE COLUMN IN THE FALL  
10 OF 1967. I WAS OVER THERE FOR A COUPLE OF MONTHS. GOT BACK  
11 JUST BEFORE THE TET OFFENSIVE BEGAN.

12 AND THEN IN 1968, I WENT TO PARIS TO COVER THE PEACE  
13 TALKS, WHICH COINCIDED WITH THE MASS OF STUDENT RIOTS IN  
14 PARIS. AND THAT WAS A VERY TOUGH SPRING. MARTIN LUTHER KING  
15 WAS ASSASSINATED THAT SPRING. I FLEW DOWN TO MEMPHIS AND WENT  
16 TO THE MOTEL WHERE HE'D BEEN SHOT AND KILLED AND THEN WENT TO  
17 ATLANTA FOR HIS FUNERAL.

18 AND THEN, OF COURSE, THERE WERE MANY MORE RIOTS,  
19 WHICH I WAS IN WASHINGTON AND PHILADELPHIA WRITING ABOUT THEM.

20 AND THEN IN JUNE, ROBERT KENNEDY WAS ASSASSINATED.  
21 ACTUALLY, I WAS ON THE FIFTH FLOOR OF THE GOOD SAMARITAN  
22 HOSPITAL IN LOS ANGELES WHEN HE DIED. I ATTENDED HIS FUNERAL  
23 AND RODE THE TRAIN DOWN TO ARLINGTON CEMETERY.

24 AND, YOU KNOW, I WOULD WRITE ABOUT WHATEVER SEEMED  
25 INTERESTING. THERE WAS A LOT OF -- 1968 WAS A HECK OF A YEAR.

September 21, 2012

McGinniss/Direct

Page 951

1 Q. AT SOME POINT, DID YOU BEGIN TO WRITE BOOKS AS WELL AS  
2 NEWSPAPER ARTICLES?

3 A. WELL, I DID. I TOOK A WEEK OFF AFTER THE ROBERT KENNEDY  
4 FUNERAL, BURIAL. I HAD JUST BEEN FLAT OUT WORKING FOR A WEEK  
5 WITHOUT SLEEP. I TOOK A WEEK OFF AND I WENT UP TO NEW YORK TO  
6 DO A PIECE FOR *TV GUIDE* MAGAZINE ABOUT A NEW SPORTSCASTER WHO  
7 WAS ATTRACTING ATTENTION, A GUY NAMED HOWARD COSELL.

8 I WOUND UP STAYING THE NIGHT WITH HOWARD AT HIS  
9 HOUSE UP IN POUND RIDGE, NEW YORK, AND THE NEXT MORNING WHEN  
10 RIDING TO THE STAMFORD CONNECTICUT TRAIN STATION TO GET THE  
11 TRAIN BACK INTO THE CITY, AND IT WAS A CAR POOL, AND THERE WAS  
12 -- THE GUY DRIVING IT WAS DRIVING A LITTLE VOLKSWAGEN BUG AND  
13 EVERYBODY IN IT WAS AT LEAST SIX FOOT THREE. HOWARD WAS A  
14 TALL FELLOW. AND THE REASON IT WAS A VOLKSWAGEN BUG WAS THE  
15 MAN DRIVING IT WAS ED RUSSELL, WHO WAS THE VICE PRESIDENT OF  
16 DOYLE DANE BERNBACH, THE ADVERTISING AGENCY THAT HANDLED  
17 VOLKSWAGEN. AND MR. RUSSELL LEANED ACROSS TO HOWARD AND SAID,  
18 HOWARD, GREAT NEWS, WE JUST LANDED THE HUMPHREY ACCOUNT. AND  
19 I'M IN THE BACK SEAT AND I JUST SAID WHAT'S THE HUMPHREY  
20 ACCOUNT? AND RUSSELL -- MR. RUSSELL SAID, WELL, WE'RE GOING  
21 TO SELL HUMPHREY JUST THE WAY WE SELL VOLKSWAGEN AND AVIS RENT  
22 A CAR AND HEINZ KETCHUP. WE'RE GOING TO ADVERTISE HIM JUST  
23 LIKE HE'S ANOTHER CONSUMER PRODUCT. AND THAT'S THE WAY  
24 POLITICS IS NOW. WELL, THAT WAS NEWS TO ME. I DIDN'T KNOW  
25 CANDIDATES HAD ADVERTISING AGENCIES.

September 21, 2012

McGinniss/Direct

Page 952

1 BY CHANCE, I WAS SCHEDULED TO HAVE LUNCH THAT DAY  
2 WITH AN EDITOR FROM SIMON AND SCHUSTER WHO WANTED TO TALK TO  
3 ME ABOUT WRITING BOOKS. AND I SAT DOWN, I SAID, WELL, I HAVE  
4 AN IDEA FOR A BOOK I JUST FOUND THIS MORNING. WE CAN CALL IT  
5 THE SELLING OF THE PRESIDENT, NOT THE MAKING OF THE PRESIDENT,  
6 BUT THE SELLING OF THE PRESIDENT BECAUSE HUMPHREY'S GOT AN AD  
7 AGENCY AND I'LL BET IF HUMPHREY DOES NIXON ALSO DOES. SO, I  
8 CHECKED INTO IT AND, OF COURSE, NIXON DID TOO.

9 SO, I WROTE *THE SELLING OF THE PRESIDENT*. THAT WAS  
10 MY FIRST BOOK AND THAT'S HOW THAT STARTED. NOW, SUBSEQUENTLY,  
11 ALL TOGETHER, I'VE WRITTEN 12 BOOKS AND WELL AT WORK ON MY  
12 13TH RIGHT NOW.

13 Q. AND THAT FIRST BOOK WAS *THE SELLING OF THE PRESIDENT*  
14 *1968*?

15 A. THAT'S CORRECT.

16 Q. AND HOW DID IT DO?

17 A. OH, IT DID REAL WELL. IT WAS NUMBER ONE ON THE *NEW YORK*  
18 *TIMES* LIST FOR MANY WEEKS. IT WAS A BIG SUCCESS.

19 Q. AND PRIOR TO YOUR ASSOCIATION WITH THE MACDONALD CASE,  
20 WHAT OTHER BOOKS HAD YOU WRITTEN OTHER THAN *SELLING THE*  
21 *PRESIDENT*?

22 A. WELL, I WROTE MY ONE NOVEL OR, AS WILLIAM BUCKLEY PUTS  
23 IT, I COMMITTED ONE NOVEL CALLED *THE DREAM TEAM*, WHICH WAS NOT  
24 SO SUCCESSFUL COMMERCIALY, ALTHOUGH IT GOT SOME NICE REVIEWS.

25 THEN I WROTE A BOOK CALLED *HEROS* ABOUT WHY AMERICA

September 21, 2012

McGinniss/Direct

Page 953

1 DIDN'T HAVE NATIONAL HEROS ANYMORE THE WAY THE COUNTRY ONCE  
2 HAD.

3           AND THEN I WENT TO ALASKA. THE OIL PIPE LINE WAS  
4 BEING BUILT AND I SAW THIS AS THE LAST DAYS OF AMERICA'S LAST  
5 FRONTIER. SO, I WENT OUT THERE AND SPENT A YEAR LIVING IN  
6 ALASKA TO WRITE A BOOK CALLED *GOING TO EXTREMES*.

7           SO, I HAD WRITTEN THOSE FOUR BOOKS BEFORE -- IN  
8 FACT, I MAILED THE MANUSCRIPT OF *GOING TO EXTREMES* TO MY  
9 PUBLISHER IN NEW YORK IN JUNE ON THE WAY TO THE AIRPORT WHERE  
10 I WAS FLYING TO LOS ANGELES BECAUSE I HAD TAKEN A POSITION AS  
11 A WRITER IN RESIDENCE AT THE *LOS ANGELES HERALD EXAMINER*.

12           AND THAT MEANT FOR TWO OR THREE MONTHS THEY WOULD  
13 BRING IN SOMEBODY WHO DIDN'T NORMALLY WRITE NEWSPAPER COLUMNS  
14 FROM ANOTHER PART OF THE COUNTRY AND THEY WOULD JUST GIVE A  
15 FRESH TAKE ON WHAT WAS HAPPENING IN AND AROUND L.A.

16           SO, I ARRIVED AND FACED WITH THE TASK OF WRITING  
17 THREE DIFFERENT PIECES EVERY WEEK I STARTED TO PAY ATTENTION  
18 TO WHAT WAS HAPPENING.

19           AND ONE OF THE THINGS I NOTICED, I SAW -- I PICKED  
20 UP THE NEWSPAPER AND SAW THAT THE LONG BEACH POLICE OFFICERS  
21 ASSOCIATION WAS HOLDING A FUND RAISING DINNER FOR JEFFREY  
22 MACDONALD WHO WAS GOING BACK TO NORTH CAROLINA TO BE TRIED FOR  
23 THE MURDER OF HIS WIFE AND KIDS. I SAID, OH, MY GOD, IS THAT  
24 CASE STILL GOING ON? EVEN BACK IN 1979, IT SEEMED LIKE A LONG  
25 TIME. AND I THOUGHT THAT WOULD BE AN INTERESTING THING, YOU

September 21, 2012

McGinniss/Direct

Page 954

1 KNOW, TO LEARN MORE ABOUT. I WONDER HOW THIS GUY IS FARING  
2 WITH ALL THIS.

3 SO, I CALLED HIM UP AND WE TALKED ON THE PHONE AND I  
4 WENT DOWN TO SEE HIM, HAD BREAKFAST WITH HIM, AND WE TALKED  
5 FOR A COUPLE OF HOURS. AND HE ASKED ME IF I'D EVER CONSIDER  
6 WRITING A BOOK ABOUT HIM AND HIS CASE. AND THAT WAS OUR FIRST  
7 CONVERSATION ABOUT IT.

8 UNBEKNOWNST TO ME AT THE TIME, AS SOON AS HE  
9 FINISHED BREAKFAST WITH ME, HE GOT IN HIS CAR AND HE DROVE UP  
10 TO SEE JOSEPH WAMBAUGH AND HAVE LUNCH WITH WAMBAUGH AND HE  
11 MADE THE EXACT SAME PITCH TO JOE WAMBAUGH AS HE DID WITH ME.

12 Q. WHO IS JOSEPH WAMBAUGH?

13 A. JOSEPH WAMBAUGH IS A FORMER LOS ANGELES POLICE HOMICIDE  
14 DETECTIVE WHO HAS WRITTEN A NUMBER OF BEST SELLING BOOKS BOTH  
15 FICTION AND NON-FICTION. HE WAS A VERY BIG NAME AT THE TIME  
16 AND I THINK QUITE A BIT BIGGER THAN MINE. AND I THINK HE WAS  
17 MACDONALD'S FIRST CHOICE, BUT WAMBAUGH WANTED NOTHING TO DO  
18 WITH IT.

19 Q. WELL, WHAT WAS MACDONALD'S PITCH TO YOU ABOUT WRITING A  
20 BOOK?

21 A. HE SAID THAT IF I CAME TO THE TRIAL, I COULD HAVE  
22 COMPLETE ACCESS TO HIM AND HIS DEFENSE TEAM THROUGHOUT THE  
23 WHOLE PROCEEDING AND THEN AFTERWARDS I COULD HAVE COMPLETE  
24 ACCESS TO ALL THEIR FILES, ALL HIS PAPERS, ANYTHING TO DO WITH  
25 THE CASE. AND I SAID, WELL, THAT WOULD BE WONDERFUL, BUT ONE

September 21, 2012



McGinniss/Direct

Page 955

1 THING ELSE I NEED AND THAT IS THE COMPLETE FREEDOM TO TELL THE  
2 STORY ANY WAY I CHOOSE. IT WOULDN'T BE YOUR STORY, IT  
3 WOULDN'T BE YOUR BOOK THAT I'M A GHOST WRITER, THIS WOULD BE  
4 MY BOOK AND YOU WOULD HAVE NO CONTROL OVER THE CONTENT. AND,  
5 IN FACT, YOU WOULDN'T EVEN GET TO SEE THE MANUSCRIPT UNTIL IT  
6 WAS PUBLISHED. AND HE SAID, OH, THAT'S FINE, I KNOW A REAL  
7 WRITER WOULDN'T SETTLE FOR ANYTHING LESS THAN THAT.

8 HIS CONCERN WAS MONEY. HE WANTED MONEY. AND SO WE  
9 ACTUALLY -- HIS LAWYER, BERNIE SEGAL, AND MY AGENT AT THE  
10 TIME, STERLING LORD, NEGOTIATED A DEAL WHEREBY HE WOULD GET 20  
11 PERCENT OF THE ROYALTIES UP TO A CERTAIN FIGURE AND THEN 33  
12 PERCENT OF THE ROYALTIES BEYOND THAT FIGURE. SO, WE HAD THAT  
13 KIND OF CONTRACTUAL RELATIONSHIP.

14 Q. ALL RIGHT. SO, DID YOU AGREE TO THIS ARRANGEMENT?

15 A. YES, I DID.

16 Q. AND WAS IT REDUCED TO WRITING?

17 A. IT WAS. THERE WAS A RELEASE SIGNED BY MACDONALD AND ME  
18 IN NORTH CAROLINA THAT DESCRIBED THE AGREEMENT AND MADE THOSE  
19 TERMS QUITE CLEAR.

20 Q. AND IN THE AGREEMENT, HE GAVE YOU UNFETTERED ACCESS TO  
21 ANY INCIDENTS, CHARACTERS, DIALOGUES, ACTION SCENES AND  
22 SITUATIONS THAT YOU DESIRED IN CONNECTION WITH THE PUBLICATION  
23 OF THE BOOK?

24 A. THAT SOUNDS RIGHT.

25 Q. AND SO, DID YOU JOIN THE TRIAL TEAM IN RALEIGH FOR THE

September 21, 2012

McGinniss/Direct

Page 956

1 TRIAL?

2 A. THEY WERE LIVING IN A FRATERNITY HOUSE ON THE CAMPUS OF  
3 NORTH CAROLINA STATE UNIVERSITY. THEY FELT THAT GAVE THEM  
4 MORE PRIVACY AND A PLACE TO UNWIND A LITTLE BIT. AND, YEAH, I  
5 HAD A ROOM THERE. I STAYED -- I STAYED THERE WITH MACDONALD'S  
6 LAWYERS, LEGAL ASSISTANTS, THE OTHER HANGERS ON, WHATEVER HIS  
7 ENTOURAGE CONSISTED OF, AND HE WAS THERE TOO.

8 Q. DID YOU PARTICIPATE IN INTERVIEWS OF WITNESSES,  
9 PROSPECTIVE WITNESSES, THAT THE DEFENSE MIGHT CALL?

10 A. OH, NO, NO, NO, I DIDN'T DO ANYTHING LIKE THAT. I WAS  
11 JUST THERE TAKING NOTES FOR THE BOOK I WAS GOING TO WRITE  
12 AFTER THE TRIAL WAS OVER.

13 Q. SO, YOU DIDN'T PARTICIPATE, BUT YOU WERE PRESENT?

14 A. I WAS PRESENT AT THE INTERVIEWS OF SOME WITNESSES. IT  
15 DEPENDED ON THE WITNESS. I DON'T THINK I WAS PRESENT FOR THE  
16 -- FOR INTERVIEWS WITH EVERY WITNESS, BUT I HAD THE RIGHT TO  
17 BE. I HAD ACCESS. I HAD, YOU KNOW, FREE RUN. I COULD --  
18 THERE WERE NO -- THIS WAS A PROVISION THAT DROVE MR. WADE  
19 SMITH, THE LOCAL COUNSEL, HALFWAY CRAZY BECAUSE HE THOUGHT --  
20 HE DISAPPROVED OF THIS SO MUCH. HE THOUGHT YOU DON'T LET A  
21 WRITER INTO YOUR INNER SANCTUM IN THE MIDDLE OF A MURDER  
22 TRIAL, THAT'S NOT THE WAY YOU DO THINGS, BUT BERNIE SEGAL HAD  
23 A DIFFERENT APPROACH AND BERNIE WAS THE BOSS SO WADE HAD TO GO  
24 ALONG WITH IT. AND, THEREFORE, THERE WERE NO CLOSED DOORS. I  
25 COULD -- I WAS PRESENT AT ANYTHING I WANTED TO BE PRESENT AT.

September 21, 2012

McGinniss/Direct

Page 957

1 Q. AND DID YOU SIT IN THE GALLERY AND WATCH THE TRIAL AS IT  
2 UNFOLDED?

3 A. YES, I DID.

4 Q. SO, PRETTY MUCH THE ENTIRE TRIAL?

5 A. THE WHOLE THING. I WAS THERE ALL DAY EVERY DAY.

6 Q. DID YOU ATTEND THE JURY SELECTION?

7 A. YES, I DID.

8 Q. AND DO YOU REMEMBER ANYTHING ABOUT THE COMPOSITION OF THE  
9 JURY AS IT WAS SELECTED?

10 A. WELL, I REMEMBER THEY HAD HIRED A FELLOW FROM DUKE  
11 UNIVERSITY. I THINK HIS NAME WAS MCCONAHEY. PAID HIM 30 OR  
12 \$35,000, I THINK, TO SCIENTIFICALLY SELECT THE JURY.

13 AND WHAT THEY CAME UP WITH -- I WAS STRUCK BY, FIRST  
14 OF ALL, THE HIGH EDUCATION LEVEL OF THE JURY. I BELIEVE 11 OF  
15 THE 12 JURORS, I THINK IT WAS 11, HAD AT LEAST SOME COLLEGE  
16 EDUCATION.

17 THERE WERE PROFESSIONAL PEOPLE. THERE WERE  
18 ACCOUNTANTS. THERE WAS A CHEMIST. THERE WAS A -- KIND OF A  
19 SOCIALITE WOMAN. THERE WAS THE SON -- A YOUNG FELLOW WHO WAS  
20 THE SON OF A PROMINENT DOCTOR IN RALEIGH. THIS WAS NOT SOME  
21 COLLECTION OF HAYSEEDS AND HICKS DRAGGED IN FROM THE TOBACCO  
22 FIELDS. THIS WAS A HIGH CLASS GROUP OF PEOPLE.

23 THERE WAS ONE FORMER GREEN BARET SERGEANT ACTUALLY  
24 ON THE JURY AND THERE WAS A RETIRED NORTH CAROLINA STATE  
25 POLICEMAN.

September 21, 2012

McGinniss/Direct

Page 958

1           AND YOU WOULD THINK THAT THE DEFENSE WOULDN'T WANT A  
2 RETIRED POLICEMAN ON THE JURY, BUT BERNIE SEGAL EXPLAINED THAT  
3 THE POLICE WORK DONE BY THE ARMY WAS SO SLOPPY THAT A REAL  
4 POLICE OFFICER WOULD SEE RIGHT THROUGH IT AND SEE WHAT A BAD  
5 JOB IT WAS. AND THEN I REMEMBER MACDONALD WAS SO HAPPY WITH  
6 THE GREEN BERET.

7 Q.    I'M NOT GOING TO ASK YOU ANY QUESTIONS ABOUT WHAT  
8 MACDONALD SAID.

9 A.    OKAY.

10 Q.   NOW, AT THE CONCLUSION OF ALL OF YOUR WORK IN THIS CASE  
11 -- AND YOU RESEARCHED IT AFTER THE TRIAL ALSO, DID YOU NOT?

12 A.   OH, FOR YEARS.

13 Q.   AT THE CONCLUSION OF ALL OF THAT, YOU WROTE A BOOK ABOUT  
14 IT, IS THAT RIGHT?

15 A.   YES, SIR.

16 Q.   AND THE TITLE OF THE BOOK WAS *FATAL VISION*?

17 A.   THAT'S CORRECT.

18 Q.   NOW, IN WRITING *FATAL VISION* -- YOU WROTE ALL OF IT, IS  
19 THAT RIGHT?

20 A.   I WROTE ALL OF IT?

21 Q.   YOU WROTE THE WHOLE BOOK?

22 A.   YEAH. SURE.

23 Q.   EVERY WORD?

24 A.   I DID. THAT'S WHAT I DO.

25 Q.   AND WERE YOU TRYING TO BE ACCURATE IN THE BOOK?

September 21, 2012

McGinniss/Direct

Page 959

1 A. YES, ABSOLUTELY. IT WAS NON-FICTION.

2 Q. AND YOUR PROFESSION IS JOURNALISM?

3 A. THAT'S CORRECT.

4 Q. AND YOU WERE WRITING THIS BOOK AS A JOURNALIST?

5 A. THAT'S RIGHT.

6 Q. NOT A NOVELIST?

7 A. NOT A NOVELIST, NO.

8 Q. SO, UNDER OATH, WOULD YOU SAY THAT YOUR BOOK IS ACCURATE?

9 A. YES, I WOULD. THIS HAS ACTUALLY BEEN LITIGATED. I DON'T  
10 KNOW IF YOU WANT TO GET INTO THAT, BUT --

11 Q. NOT RIGHT NOW. NOW, I WANT TO PUT UP ON THE SCREEN  
12 GOVERNMENT EXHIBIT 2201. AND THE BOOK WAS -- THE WRITING  
13 PROCESS OF THE BOOK TOOK PLACE WHEN?

14 A. WELL, I STARTED IN THE FALL OF '79, BUT I WAS STILL DOING  
15 SO MUCH RESEARCH I -- YOU KNOW, PROBABLY WAS SOMETIME IN 1980  
16 BEFORE I ACTUALLY GOT INTO A WRITING RHYTHM, BUT EVEN THEN I  
17 WAS CONTINUING MY RESEARCH.

18           THERE CAME A POINT WHEN COLETTE MACDONALD'S PARENTS,  
19 HER MOTHER AND STEPFATHER, WHO WOULD NOT SPEAK TO ME DURING  
20 THE TRIAL BECAUSE THEY WERE UNDER THE IMPRESSION THAT I WAS  
21 HIRED BY MACDONALD AND I WAS GOING TO BE HIS WRITER, HIS  
22 MOUTHPIECE, TELLING HIS STORY, WHEN THEY FINALLY WERE  
23 PERSUADED OR CAME TO UNDERSTAND THAT THAT WASN'T TRUE THEN  
24 THEY DID TALK TO ME AND THAT OPENED UP A WHOLE NEW AVENUE THAT  
25 GAVE ME -- THAT DOUBLED THE AMOUNT OF INFORMATION AVAILABLE TO

September 21, 2012

McGinniss/Direct

Page 960

1 ME.

2           LIKewise, THE MEMBERS OF THE PROSECUTION HAD REFUSED  
3 TO SPEAK TO ME BECAUSE THEY TOO THOUGHT THAT I WAS PART OF THE  
4 MACDONALD TEAM. AND WHEN THEY FOUND OUT THAT WASN'T THE CASE  
5 THEN THEY WERE MORE OPEN AND WILLING TO SPEAK WITH ME.

6           SO, I BEGAN TO GET A LOT MORE INFORMATION AND DETAIL  
7 SOMETIME DURING SAY THE FALL OF 1980 INTO '81.

8           IT TOOK ME SO LONG TO WRITE THE BOOK THAT MY  
9 ORIGINAL PUBLISHER GAVE UP ON IT AND THEY SAID, YOU KNOW, WE  
10 WANT OUR ADVANCE BACK BECAUSE YOU DIDN'T FINISH THIS BY THE  
11 DAY YOU SHOULD. I SAID, WELL, THE STORY CHANGED, IT GOT A LOT  
12 MORE COMPLICATED. AND THEY DIDN'T CARE ABOUT THAT.

13           SO, ANYWAY, I WOUND UP WITH A DIFFERENT PUBLISHER  
14 WHO UNDERSTOOD THAT SOMETIMES, YOU KNOW, IF YOU WANT QUALITY,  
15 IT TAKES TIME TO ACHIEVE IT.

16           AND THE BOOK -- I DIDN'T FINISH WRITING THE BOOK  
17 UNTIL DECEMBER OF '82, AND THEN EVEN AFTER THAT THROUGH THE  
18 SPRING OF '83, I WAS DOING EDITING AND CHANGES.

19           SO, IT WAS A PROCESS THAT PROBABLY -- IT WAS  
20 PUBLISHED IN THE FALL OF '83, I THINK OCTOBER, AND THERE WERE  
21 PROBABLY -- I WAS PROBABLY STILL TINKERING WITH IT RIGHT UP  
22 THROUGH JULY OF '83.

23           SO, THAT WAS FOUR YEARS AFTER THE TRIAL AND THAT WAS  
24 A CONSTANT PROCESS. THAT WAS THE ONLY JOB I DID. THAT WAS  
25 FULL TIME WORK FOR ME. I WASN'T MAKING TV COMMERCIALS. I

September 21, 2012

McGinniss/Direct

Page 961

1 WASN'T OFF DOING ANYTHING ELSE. I WAS JUST WORKING ON THIS  
2 BOOK ALL THE TIME, DAY AND NIGHT, AND I FINALLY FINISHED IT.

3 Q. SO, THE WRITING PROCESS TOOK FROM '79 TO MID-'83, IS THAT  
4 RIGHT?

5 A. YES, SIR.

6 Q. AND THAT WAS A LOT CLOSER TO THE TIME OF THE EVENTS THAN  
7 2012?

8 A. IT WAS, YEAH.

9 Q. ALL RIGHT. LET'S LOOK AT PAGE 2201.2 OF GOVERNMENT  
10 EXHIBIT 2201. AND DO YOU RECALL THAT THE DEFENSE INTERVIEWED  
11 -- WELL, FIRST OF ALL, DO YOU RECALL THAT THEY WERE TRYING TO  
12 FIND HELENA STOECKLEY, THE YOUNGER HELENA STOECKLEY?

13 A. YES, THERE WAS -- I BELIEVE A BENCH WARRANT WAS ISSUED  
14 AND THERE WERE LAW ENFORCEMENT PEOPLE ACTIVELY SEARCHING FOR  
15 HER.

16 Q. DO YOU RECALL THAT THE DEFENSE SUBPOENAED THE PARENTS OF  
17 HELENA STOECKLEY?

18 A. YES, I DO RECALL THAT.

19 Q. AND WAS THERE AN INTERVIEW?

20 A. YES, THEY INTERVIEWED THE STOECKLEY PARENTS. AND MY  
21 RECOLLECTION IS THAT MOST OF THE TALKING, IF NOT ALMOST ALL OF  
22 IT, WAS DONE BY MRS. STOECKLEY.

23 Q. AND YOU WROTE ABOUT THIS INTERVIEW IN YOUR BOOK?

24 A. YES, SIR, I DID.

25 (GOVERNMENT EXHIBIT NUMBER 2201.2

September 21, 2012

McGinniss/Direct

Page 962

1 WAS IDENTIFIED FOR THE RECORD.)

2 Q. ALL RIGHT. LET'S GO DOWN TO THE MIDDLE OF THE PAGE WHERE  
3 IT STARTS WITH HIS PERIMETER OVERRUN.

4 A. OKAY.

5 Q. JUST READ THAT TO THE BOTTOM OF THE PAGE, IF YOU WOULD.

6 A. WITH HIS PERIMETER OVERRUN AND WITH EVEN HIS INNER LINES  
7 OF DEFENSE BEGINNING TO CRUMBLE, BERNIE SEGAL RECOGNIZED THAT  
8 THE TIME HAD COME TO RUSH A REAL, QUOTE, MYSTERY WITNESS INTO  
9 THE BREACH. HELENA STOECKLEY HAD SAVED HIM AND JEFFREY  
10 MACDONALD ONCE BEFORE IN 1970. MAYBE SHE, OR THE INVOCATION  
11 OF HER, COULD BE MADE TO DO SO AGAIN.

12 FIRST, SEGAL SUBPOENA STOECKLEY'S PARENTS. THEN  
13 JUDGE DUPREE ISSUED A BENCH WARRANT FOR STOECKLEY HERSELF ON  
14 THE GROUNDS THAT SHE WAS A MATERIAL WITNESS IN A HOMICIDE  
15 CASE.

16 STOECKLEY'S PARENTS CAME TO RALEIGH AND SAID THEY  
17 DID NOT KNOW WHERE THEIR DAUGHTER WAS. THE LAST TIME THEY HAD  
18 SEEN HER WAS IN EARLY JUNE, WHEN SHE HAD COME TO FAYETTEVILLE  
19 FOR A BRIEF VISIT FROM A DRUG REHABILITATION CENTER IN  
20 COLUMBIA, SOUTH CAROLINA. SHE HAD SAID THEN THAT SHE PLANNED  
21 TO MOVE TO THE SMALL SOUTH CAROLINA TOWN OF WALHALLA TO LIVE  
22 WITH A MAN WHOM SHE HAD MET AT THE REHABILITATION CENTER.  
23 QUOTE, I DON'T KNOW HER ADDRESS STOECKLEY'S MOTHER SAID,  
24 QUOTE, AND I DON'T WANT TO KNOW.

25 THAT'S THE BOTTOM OF THE PAGE ON MY SCREEN.

September 21, 2012



McGinniss/Direct

Page 963

1 Q. WELL, READ THAT LAST PHRASE AND THEN WE'LL GO ON TO THE  
2 NEXT PAGE.

3 A. IN A PRIVATE INTERVIEW WITH DEFENSE ATTORNEYS, THE MOTHER  
4 ALSO SAID --

5 Q. HOLD UP A MINUTE. OKAY. GO AHEAD.

6 A. THE MOTHER ALSO SAID THAT EVEN IF HER DAUGHTER WERE  
7 FOUND, IT WAS NOT LIKELY SHE COULD CONTRIBUTE MUCH OF VALUE TO  
8 THE TRIAL.

9 AND THIS IS A QUOTE, SHE CALLED UP, MUST HAVE BEEN A  
10 YEAR AND A HALF AGO, FOUR O'CLOCK IN THE MORNING, ALL  
11 BEFUDDLED. SHE SAID SOMEBODY WAS CHASING HER AND HAD TAKEN  
12 HER CAR KEYS. THEN IT TURNED OUT SHE HAD A STROKE. WE GOT  
13 HER HOME. SHE WAS LIKE A VEGETABLE. SHE COULDN'T TALK,  
14 COULDN'T EAT, HER FACE QUIVERED, SALIVA WOULD RUN OUT OF HER  
15 MOUTH. WE PUT HER ON A STRICT DIET AND LET HER REST AND AFTER  
16 ABOUT THREE WEEKS SHE WAS IMPROVED, BUT STILL SHE WAS NOT  
17 QUITE RIGHT. THAT'S THE END OF THE QUOTATION.

18 SHE HAD LEFT HOME AGAIN, THIS TIME FOR DAYTONA,  
19 FLORIDA, WHERE SHE SAID SHE PLANNED TO WORK IN A HOSPITAL.  
20 THE NEXT THING HER PARENTS HAD HEARD WAS THAT SHE HAD BEEN  
21 ARRESTED FOR DRUNKEN DRIVING.

22 THIS IS A QUOTE AGAIN, SHE'S HAD HER GALLBLADDER  
23 REMOVED HER MOTHER SAID, SHE'S HAD THREE LIVER BIOPSIES AND  
24 SHE'S BEEN SPITTING UP BLOOD AND PASSING BLOOD IN HER STOOLS  
25 FOR YEARS. SHE'S NOT AT ALL LIKE SHE USED TO BE. SHE'S A

September 21, 2012

McGinniss/Direct

Page 964

1 PHYSICAL AND MENTAL WRECK. SHE'S NOT EVEN A HUMAN BEING  
2 ANYMORE. YOU FIND HER NOW, SURE SHE'LL TALK. SHE'LL ALWAYS  
3 TALK. BUT I'M TELLING YOU, SHE'S GONNA TALK ALL KINDS OF  
4 NONSENSE.

5 Q. CONTINUE WITH CHAIN-SMOKING.

6 A. CHAIN-SMOKING VIRGINIA SLIMS CIGARETTES, HELENA  
7 STOECKLEY'S MOTHER DESCRIBED HER DAUGHTER'S ORIGINAL REACTION  
8 TO THE MURDERS. QUOTE, IT REALLY HURT HER. SHE WAS A VERY  
9 SOFT HEARTED PERSON AND SHE ESPECIALLY LOVED LITTLE CHILDREN.  
10 SHE SAID RIGHT AWAY NOT A HIPPIE AROUND HERE WOULD DO A THING  
11 LIKE THAT. EVERYBODY'S GOING TO PITCH IN AND FIND OUT WHAT  
12 HAPPENED. WE'VE GOT TO FIND OUT WHO DID THIS.

13 QUOTE, I REALLY BELIEVE IT WAS BEASLEY WHO FIRST PUT  
14 THE IDEA IN HER HEAD. BEASLEY WAS HER DADDY IMAGE. HE HAD A  
15 TERRIFIC AMOUNT OF INFLUENCE OVER HER. SHE TOLD ME HE HAD  
16 BEEN UP TO TALK TO HER RIGHT AFTER IT HAPPENED AND THEN SHE  
17 SAID, YEAH, I'VE BEEN THINKING AND I DON'T REALLY KNOW WHERE I  
18 WAS THAT NIGHT. I MIGHT HAVE BEEN THERE. AND I JUST KNEW  
19 RIGHT THEN THAT DADDY BEASLEY HAD TALKED HER INTO IT.

20 Q. ALL RIGHT. THAT'S FINE. SO, OBVIOUSLY, THE ELDER HELENA  
21 STOECKLEY WOULD NOT BE A GOOD WITNESS FOR THE DEFENSE IN THE  
22 CASE?

23 A. THEY DIDN'T WANT HER ANYWHERE NEAR THE JURY.

24 Q. ALL RIGHT. SO, HELENA STOECKLEY, THE YOUNGER, WAS  
25 TRANSPORTED TO RALEIGH, IS THAT RIGHT?

September 21, 2012

McGinniss/Direct

Page 965

1 A. YEAH. THE WORD CAME IN THAT SHE HAD BEEN PICKED UP AND  
2 THAT SHE WAS GOING TO BE BROUGHT TO RALEIGH. AND THEN SHE WAS  
3 GOING TO -- BOTH THE DEFENSE AND THE PROSECUTION WERE GOING TO  
4 HAVE A CHANCE TO QUESTION HER PRIVATELY AND THEN IF, I GUESS,  
5 EITHER SIDE CHOSE TO, SHE WOULD TAKE THE STAND, SHE COULD BE  
6 MADE TO TESTIFY.

7 Q. NOW, DO YOU KNOW ANYTHING WHATSOEVER ABOUT HER  
8 TRANSPORTATION TO RALEIGH?

9 A. NO, I DON'T. I JUST KNOW -- THE FIRST THING I'M REALLY  
10 CONSCIOUS OF WOULD BE THE FIRST TIME I SAW HER, WHICH WAS IN  
11 THE COURTHOUSE WHEN SHE -- AFTER SHE HAD ARRIVED IN RALEIGH.

12 Q. ALL RIGHT. SO, YOU SAT IN ON THE DEFENSE INTERVIEW OF  
13 HER?

14 A. YES, THERE WERE -- BERNIE SEGAL WAS GOING TO INTERVIEW  
15 HER IN THE WITNESS ROOM AND WADE SMITH, OF COURSE, WAS GOING  
16 TO BE PRESENT TO TAKE NOTES AND MAYBE PARTICIPATE. AND THEN  
17 BERNIE -- WELL, OF COURSE, I WANTED TO BE IN THERE, BUT BERNIE  
18 MADE A BIG POINT, HE SAYS, JOE, YOU'VE GOT TO BE IN HERE.

19 BERNIE WANTED ME THERE TO RECORD EVERY BIT OF THIS  
20 BECAUSE HE WAS CONFIDENT THIS WAS GOING TO BE HIS GREAT MOMENT  
21 OF TRIUMPH. HE WAS GOING TO GET STOECKLEY TO CONFESS AND THEN  
22 HE WAS GOING TO WALK OUT OF THERE AND THEY COULD CALL OFF THE  
23 TRIAL BECAUSE THERE'S THIS DRAMATIC NEW THING. AND HE WANTED  
24 -- YOU KNOW, BERNIE SAW HIMSELF AS THE STAR OF THE SHOW AND HE  
25 WANTED TO BE SURE THAT I WAS THERE TO SEE HIM IN ALL OF HIS

September 21, 2012

McGinniss/Direct

Page 966

1 GLORY.

2 Q. ALL RIGHT. LET ME PUT UP GOVERNMENT EXHIBIT 2077 AND  
3 WE'LL ENLARGE THAT A LITTLE BIT. AND I WANT TO WARN YOU THAT  
4 THIS COULD BE CONFUSING BECAUSE THE FRONT OF THE BUILDING IS  
5 AT THE TOP OF THE PAGE RATHER THAN THE BOTTOM.

6 A. RIGHT. NEW BERN AVENUE.

7 Q. RIGHT.

8 A. THAT'S THE MAIN ENTRANCE, YEAH.

9 (GOVERNMENT EXHIBIT NUMBER 2077  
10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. ALL RIGHT. SO, DO YOU RECOGNIZE WHERE THE TRIAL WAS  
12 HELD?

13 A. YEAH, YOU WOULD GET OFF THE ELEVATOR -- I SEE WHERE IT  
14 SAYS LOBBY AND COMING OFF THE ELEVATOR THE COURTROOM WOULD BE  
15 DIRECTLY AHEAD OF YOU JUST ON THE OTHER SIDE OF THE LOBBY.

16 Q. CAN YOU MAKE A MARK WITH YOUR HAND WHERE THE COURTROOM  
17 WOULD BE?

18 A. WELL, I'M NO JOHN MADDEN. THERE. RIGHT THERE.

19 Q. AND SO YOU SAT IN THIS COURTROOM EVERY DAY OF THE TRIAL,  
20 IS THAT RIGHT?

21 A. YES, SIR.

22 Q. AND WOULD YOU SIT BEHIND THE DEFENSE TEAM?

23 A. THEY WERE -- I DON'T -- I DON'T KNOW THAT I SAT -- WELL,  
24 I SAT -- THE DEFENSE TEAM -- I SAT MOSTLY ON THE RIGHT-HAND  
25 SIDE AND I KNOW THE KASSABS WERE ON THE OTHER SIDE. SO, I

September 21, 2012

McGinniss/Direct

Page 967

1 GUESS THAT WAS THE PROSECUTION SIDE. BUT WHERE THE COUNSEL  
2 TABLES WERE -- AND THE JURY WAS ON THE RIGHT SIDE. BUT I  
3 DON'T -- I DON'T RECALL WHICH COUNSEL TABLE WAS ON WHICH SIDE.

4 Q. SO, YOU WEREN'T SEATED AT COUNSEL TABLE WITH THE DEFENSE?

5 A. NO, NO, NO, I WAS BACK IN THE GALLERY. AND, YOU KNOW, I  
6 DIDN'T SIT IN THE SAME SEAT EVERY DAY. I MEAN, THE COURTROOM  
7 WAS SELDOM FILLED AND, YOU KNOW, I WOULD MOVE AROUND A LITTLE  
8 BIT.

9 Q. ALL RIGHT. NOW -- HOLD ON JUST A MINUTE.

10 (PAUSE.)

11 OKAY. MR. MCGINNISS, CAN YOU MAKE THOSE MARKS  
12 AGAIN? WE DIDN'T HAVE IT SET UP TO RECORD. JUST POINT OUT  
13 THE COURTROOM AGAIN.

14 A. YEAH, THIS IS -- I'M DRAWING A RECTANGLE, WHICH -- WELL,  
15 NO, I DIDN'T QUITE, BUT THAT'S THE COURTROOM.

16 Q. OKAY. NOW, WAS IT SOMEWHERE ON THIS FLOOR THAT THE  
17 DEFENSE DID THE INTERVIEW OF HELENA STOECKLEY?

18 A. YES. IF YOU WERE TO COME OUT OF THE COURTROOM AND THEN  
19 GO IN THIS DIRECTION AND THEN GO DOWN THIS WAY, THERE WERE A  
20 COUPLE OF ROOMS THAT WERE GIVEN OVER TO THE DEFENSE. I THINK  
21 THEY WERE STORING DOCUMENTS IN ONE AND THE OTHER WAS AVAILABLE  
22 FOR WITNESS INTERVIEWS. SO, IT WOULD BE DOWN THIS HALLWAY IN  
23 THAT DIRECTION. AND THE PROSECUTION, AS I RECALL, WAS ONE  
24 FLOOR HIGHER UP.

25 Q. AND DID YOU EVER GO UP THERE?

September 21, 2012

McGinniss/Direct

Page 968

1 A. NO, I DIDN'T BECAUSE I HAD NO REASON TO.

2 Q. ALL RIGHT. SO, THE INTERVIEW THAT YOU SAT IN ON WITH  
3 HELENA STOECKLEY, THE YOUNGER, OCCURRED IN ONE OF THOSE ROOMS  
4 ON THIS DIAGRAM?

5 A. THAT'S MY RECOLLECTION, YES, SIR.

6 Q. ALL RIGHT.

7 MR. BRUCE: CAN WE PRESERVE THIS AS 2077 --

8 MADAM CLERK: B. B.

9 MR. BRUCE: B. OKAY. THANK YOU.

10 (GOVERNMENT EXHIBIT NUMBER 2077B

11 WAS IDENTIFIED FOR THE RECORD.)

12 BY MR. BRUCE:

13 Q. NOW, YOU WROTE ABOUT THIS INTERVIEW IN YOUR BOOK IN SOME  
14 DETAIL, DID YOU NOT?

15 A. OH, YEAH, THIS WAS A BIG MOMENT.

16 Q. ALL RIGHT. LET'S GO TO 2201.3.

17 MADAM CLERK: CAN YOU GO BACK TO THAT ONE?

18 MR. BRUCE: OKAY. GO BACK.

19 MADAM CLERK: THE MARKS ARE STILL THERE. JUST BEAR  
20 WITH ME ONE SECOND.

21 MR. BRUCE: THAT'S FINE.

22 MADAM CLERK: OKAY. THANK YOU.

23 BY MR. BRUCE:

24 Q. OKAY. LET'S GO TO GOVERNMENT EXHIBIT 2201.3, AND WE'LL  
25 CLEAR THE SCREEN, AND LET'S BLOW UP WHERE IT STARTS AT FOUR

September 21, 2012

1 MINUTES ON PAGE 527. WOULD YOU BEGIN READING WHERE IT SAYS AT  
2 FOUR MINUTES?

3 A. AT FOUR MINUTES BEFORE TEN O'CLOCK ON THE MORNING OF  
4 THURSDAY, AUGUST 16TH, 1979, EXACTLY ONE MONTH AFTER THE TRIAL  
5 OF JEFFREY MACDONALD HAD BEGUN AND NINE AND A HALF YEARS TO  
6 THE DAY SINCE MONDAY, FEBRUARY 16TH, 1970, THE DAY WHICH HAD  
7 ENDED WITH HER TAKING MESCALINE IN HER DRIVEWAY ON CLARK  
8 STREET IN FAYETTEVILLE, HELENA STOECKLEY, ESCORTED BY A U.S.  
9 MARSHAL, WALKED INTO A SMALL OFFICE ON THE NINTH FLOOR OF THE  
10 FEDERAL BUILDING IN RALEIGH, WHERE BERNIE SEGAL WAS WAITING  
11 FOR HER HOPING TO PERSUADE HER TO CONFESS.

12 SHE WAS NEATLY, EVEN DEMURELY, ATTIIRED IN WHITE  
13 SHOES AND A FLORAL PRINT DRESS. HER HAIR WAS BLACK. HER  
14 COMPLEXION SALLOW. SHE WAS MANY POUNDS OVERWEIGHT. HER EYES  
15 WERE DULL AND HER THIN LIPS UNEXPRESSIVE. SHE SPOKE IN A SOFT  
16 VOICE ALMOST ENTIRELY DEVOID OF AFFECT.

17 HER LEFT ARM WAS IN A CAST. IT HAD BEEN BROKEN IN  
18 CINCINNATI TWO WEEKS EARLIER WHEN SOMEONE HAD HIT HER WITH A  
19 TIRE IRON DURING A DISPUTE INVOLVING NARCOTICS.

20 HER FIANCE, ERNEST DAVIS, WHOM SHE HAD MET IN THE  
21 DRUG REHABILITATION CENTER IN COLUMBIA, SOUTH CAROLINA, PACED  
22 BAREFOOT, UNWASHED AND UNSHAVED IN A SMALL CORRIDOR OUTSIDE  
23 THE OFFICE.

24 (GOVERNMENT EXHIBIT NUMBER 2201.3  
25 WAS IDENTIFIED FOR THE RECORD.)

September 21, 2012

McGinniss/Direct

Page 970

1 Q. LET ME STOP YOU RIGHT THERE. SO, MR. DAVIS WAS NOT  
2 PRESENT IN THE INTERVIEW?

3 A. NO. I THINK -- NO. AFTER THE MORNING INTERVIEW ENDED  
4 AND SHE WAS ALLOWED TO HAVE A SANDWICH, I THINK HE CAME IN AND  
5 JOINED HER FOR LUNCH.

6 Q. ALL RIGHT. SO --

7 A. BUT THERE ARE ONLY FOUR PEOPLE IN THE ROOM. BERNIE --

8 Q. NAME THOSE FOUR PEOPLE, PLEASE.

9 A. BERNIE SEGAL, WADE SMITH, HELENA STOECKLEY AND MYSELF.

10 Q. ALL RIGHT. NO DEPUTY U.S. MARSHALS WERE IN THE ROOM?

11 A. NO. NO, THEY STOPPED AT THE DOOR.

12 Q. ALL RIGHT. AND DO YOU KNOW WHO BROUGHT HELENA STOECKLEY  
13 TO THAT INTERVIEW ROOM AND LEFT HER?

14 A. NO, I HAVE NO IDEA.

15 Q. OKAY. NOW, CONTINUE READING WITH FOR ALMOST A DECADE.

16 A. FOR ALMOST A DECADE, IN BERNIE SEGAL'S MIND, HELENA  
17 STOECKLEY HAD BEEN A FIGURE OF NEAR MYTHIC PROPORTION. NOW,  
18 HERE SHE WAS, THREE FEET FROM HIM, POLITELY DECLINING HIS  
19 OFFER OF COFFEE AND DONUTS. SHE WOULD, SHE SAID, BE GRATEFUL  
20 FOR A CAN OF DIET SODA.

21 SEGAL BEGAN TO SPEAK IN A VOICE SO QUIET AND SO  
22 GENTLE THAT IT WAS AS IF HELENA WERE SLEEPING AND HE DID NOT  
23 WANT TO RISK AWAKENING HER. YET THERE WAS AN ALMOST PAINFUL  
24 INTENSITY TO HIS TONE. THIS WOMAN, HE BELIEVED, HAD THE POWER  
25 TO SET JEFFREY MACDONALD FREE AND TO PROVIDE SEGAL WITH THE

September 21, 2012



1 GREATEST TRIUMPH OF HIS CAREER.

2 HIS FIRST WORDS WERE LIKE SURGICAL INSTRUMENTS  
3 UTILIZED WITH THE UTMOST SKILL AND DELICACY THEY MIGHT ENABLE  
4 HIM TO STRIDE FORTH FROM THIS ROOM AND ANNOUNCE TO THE JUDGE  
5 AND THE JURY AND THE PRESS THAT THERE WAS NO NEED TO PROCEED  
6 FURTHER WITH THE TRIAL, ONE OF THE REAL KILLERS HAD JUST  
7 CONFESSED.

8 SEGAL HAD, AT HIS SIDE, AN ALBUM CONTAINING  
9 PHOTOGRAPHS OF --

10 Q. HOLD ON JUST A MOMENT.

11 A. -- THE CRIME SCENE. HE PLACED IT ON A TABLE BEFORE  
12 STOECKLEY. THE FIRST PICTURE WAS NOT A PARTICULARLY HORRID  
13 ONE. ALL IT SHOWED WAS A PORTION OF THE KITCHEN OF 544 CASTLE  
14 DRIVE. THERE WAS A CALENDAR HANGING ON A WALL. THE TOP PAGE  
15 OF THE CALENDAR SAID FEBRUARY 1970.

16 SEE THAT, HELENA, SEGAL SAID SOFTLY LEANING SO CLOSE  
17 TO HER THAT HE COULD HAVE PUT HIS ARM AROUND HER IF HE HAD  
18 DESIRED. SEE THAT CALENDAR? IT HAS BEEN THERE FOR NINE YEARS  
19 WAITING. WAITING FOR SOMEBODY TO TELL US HOW THIS STORY  
20 SHOULD END.

21 SHE STARED AT THE PICTURE. THERE WAS ABSOLUTELY NO  
22 CHANGE OF EXPRESSION ON HER FACE. SHE TOOK A SIP OF DIET  
23 SODA. I CAN'T HELP YOU SHE SAID TONELESSLY, I WASN'T IN THAT  
24 HOUSE. I DIDN'T HAVE ANYTHING TO DO WITH ANY OF THIS.

25 BERNIE SEGAL BEGAN TO SHAKE HIS HEAD, NO, HELENA,

September 21, 2012

McGinniss/Direct

Page 972

1 THAT WON'T DO. YOU CAN'T GET AWAY WITH THAT ANYMORE. IT'S  
2 GOT TO END. WE ARE AT TRIAL NOW. THE TIME HAS COME. I'M  
3 SERIOUS, HELENA. YOU WERE IN THAT HOUSE. I KNOW IT AND YOU  
4 KNOW IT. NOW LET'S TALK ABOUT IT. DON'T GO ON PUNISHING  
5 YOURSELF.

6 SHE STARED AT THE FLOOR, SHAKING HER HEAD, STILL  
7 WITH NO CHANGE OF EXPRESSION. I DON'T KNOW WHAT YOU WANT TO  
8 KNOW. I WAS NEVER IN THAT HOUSE.

9 Q. CONTINUE READING WITH HELENA, BELIEVE ME.

10 A. HELENA, BELIEVE ME, SEGAL SAID. IF YOU TALK TO ME HERE,  
11 IF YOU TELL ME WHAT HAPPENED, I CAN MAKE THIS VERY SHORT AND  
12 PAINLESS. HELENA, YOU CAN PUT IT BEHIND YOU FOREVER. NOW,  
13 FOR YOUR OWN CONSCIENCE. AND FOR THE SAKE OF THAT MAN IN THE  
14 COURTROOM. THAT MAN WHO'S BEEN MADE TO SUFFER UNJUSTLY FOR  
15 NINE YEARS.

16 AND, HELENA, YOU WILL NOT BE PROSECUTED. NOTHING  
17 WILL HAPPEN TO YOU. THAT I CAN PROMISE YOU. THE STATUTE OF  
18 LIMITATIONS HAS EXPIRED. THIS IS THE END, HELENA. RIGHT NOW.  
19 RIGHT HERE. ALL YOU HAVE TO DO IS TALK TO ME.

20 FOR THE FIRST TIME, STOECKLEY LOOKED DIRECTLY AT  
21 BERNIE SEGAL. I CAN'T HELP YOU SHE SAID. I CAN'T TELL YOU  
22 THINGS I DON'T REMEMBER.

23 FOR NEARLY TWO HOURS, SEGAL PERSISTED. HIS TONE  
24 CHANGED FROM SOOTHING AND PROTECTIVE TO HARSH AND DEMANDING  
25 AND BACK AGAIN. IT MADE NO DIFFERENCE. HE MIGHT AS WELL HAVE

September 21, 2012

McGinniss/Direct

Page 973

1 BEEN A MORNING QUIZ SHOW. STOECKLEY WAS TUNED TO THE STATION  
2 BUT SHE WAS ONLY A VIEWER, NOTHING MORE. THERE WAS NOTHING HE  
3 COULD DO OR SAY TO MOVE HER.

4 HELENA, PEOPLE HAVE GONE TO THE ELECTRIC CHAIR FOR  
5 HAVING SAID ONE-TENTH OF WHAT YOU'VE SAID ABOUT THIS CASE.  
6 I'VE GOT SIX WITNESSES. PEOPLE TO WHOM YOU'VE ALREADY  
7 CONFESSED. THEY'RE WAITING IN THE NEXT ROOM. ONE AFTER  
8 ANOTHER, I'M GOING TO PUT THEM ON THE STAND AND HAVE THEM TELL  
9 THE JURY WHAT YOU'VE TOLD THEM, THEN, BY LAW, I HAVE TO PUT  
10 YOU ON THE STAND.

11 SHE LOOKED AT HIM COOLLY IN SILENCE.

12 HELENA, THE CHOICE IS YOURS.

13 I CAN'T HELP YOU.

14 HELENA, REMEMBER WHAT YOU TOLD JANE ZILLIOUX; THE  
15 BLOOD, THE BLOOD, I REMEMBER THE BLOOD ON MY HANDS.

16 SHE SHOOK HER HEAD, I DON'T REMEMBER EVER SAYING  
17 THAT.

18 DO YOU THINK JANE ZILLIOUX IS LYING?

19 I DIDN'T SAY THAT. I JUST SAID I DON'T REMEMBER  
20 SAYING IT.

21 STILL, THERE WAS NO INFLECTION, NO SPARK, NOT EVEN  
22 OF RESENTMENT IN HER VOICE. DO YOU REALIZE HOW MUCH DRUGS  
23 I'VE TAKEN SINCE THAT HAPPENED? I'M NOT GONNA SIT THERE AND  
24 SAY YES TO THINGS I DIDN'T SAY OR THINGS I DON'T REMEMBER  
25 SAYING. BESIDES, SHE SAID, HOW DO YOU KNOW HE'S NOT GUILTY?

September 21, 2012

McGinniss/Direct

Page 974

1 Q. LET ME STOP YOU FOR A MOMENT. SOME OF THIS MATERIAL THAT  
2 YOU WROTE IN YOUR BOOK IS IN QUOTES. DOES THAT MEAN THOSE  
3 WERE EXACT WORDS THAT WERE SPOKEN?

4 A. THOSE WERE EXACT WORDS. I WAS TAKING LINE BY LINE NOTES  
5 AS EVERYBODY WAS SPEAKING. NO, TWO PEOPLE WERE SPEAKING;  
6 BERNIE AND HELENA.

7 Q. AND IN YOUR PROFESSION AS A JOURNALIST, IS THAT SOMETHING  
8 THAT YOU WERE EXPERIENCED AT DOING?

9 A. OH, YES, INDEED. YEP, THAT'S A SKILL THAT I HAVE AND  
10 THAT I'VE USED OFTEN.

11 Q. OKAY. CONTINUE READING, IF YOU WOULD, WHERE IT SAYS  
12 SEGAL RETURNED TO THE ALBUMS.

13 A. SEGAL RETURNED TO THE ALBUMS OF CRIME SCENE AND AUTOPSY  
14 PHOTOGRAPHS. HE TURNED TO A PICTURE OF KIMBERLEY, A PICTURE  
15 THAT SHOWED THE FRACTURE OF HER SKULL AND THE PIECE OF  
16 CHEEKBONE PROTRUDING THROUGH THE SKIN OF HER FACE.

17 THAT WAS HIS FLESH AND BLOOD, HELENA. WHAT KIND OF  
18 FATHER COULD DO THAT TO HIS OWN FLESH AND BLOOD?

19 SOMEBODY ON DRUGS COULD DO SOMETHING LIKE THAT. NOT  
20 ACID. MAYBE SPEED. DID THEY DO BLOOD TESTS ON HIM RIGHT  
21 AWAY?

22 YES, HELENA. THEY DID BLOOD TESTS. THERE WERE NO  
23 DRUGS, THERE WAS NO ALCOHOL.

24 HAS HE BEEN GIVEN PSYCHIATRIC EVALUATION AND  
25 EVERYTHING?

September 21, 2012

McGinniss/Direct

Page 975

1 YES, HELENA, HE'S BEEN GIVEN ALL OF THAT. SEGAL  
2 FLIPPED TO A PICTURE OF COLETTE. LOOK AT HIS WIFE, HELENA.  
3 LOOK AT THIS PICTURE. HER JAW WAS BROKEN. BOTH OF HER ARMS  
4 WERE BROKEN. HER SKULL WAS FRACTURED RIGHT DOWN THE MIDDLE.  
5 SHE WAS STABBED WITH A KNIFE, WITH A ICE PICK, DOZENS OF  
6 TIMES. HELENA, THAT WAS THE WORK OF A REPULSIVE, CRAZY  
7 PERSON. DR. MACDONALD IS A NORMAL, DECENT HUMAN BEING. EVEN  
8 THE ARMY PSYCHIATRISTS WHO HAVE EXAMINED HIM AGREED TO THAT.

9 SEGAL TURNED TO A PICTURE OF KRISTEN, A COLORED  
10 PICTURE, TAKEN BEFORE THE BODY HAD BEEN REMOVED FROM THE BED.  
11 THE BRIGHT RED OF HER BLOOD FILLED THE ROOM.

12 ONLY SOMEBODY CRAZY OR WHACKED OUT ON DRUGS COULD  
13 HAVE DONE SOMETHING LIKE THAT, STOECKLEY SAID. I DON'T KNOW  
14 WHAT ANYBODY ELSE IS CAPABLE OF, BUT I KNOW I'M NOT CAPABLE OF  
15 THAT.

16 HELENA, NO ONE IS ASKING YOU TO SAY THAT YOU DID  
17 THAT. YOU WILL NOT BE TOUCHED, I PROMISE YOU. YOU WILL NOT  
18 BE INDICTED EVER. ALL YOU HAVE TO DO -- ALL YOU HAVE TO SAY  
19 IS YOU WERE THERE HOLDING THE CANDLE.

20 Q. HOLD ON A MOMENT.

21 A. SAYING ACID IS GROOVY. YOU DON'T REMEMBER HURTING  
22 ANYBODY. THEN YOU RAN OUT THE BACK DOOR.

23 HE TURNED TO ANOTHER PICTURE OF KIMBERLEY. HELENA,  
24 HELP US END IT. I BEG OF YOU. LOOK AT THIS CHILD'S FACE.  
25 FOR GOD'S SAKE. TO ACCUSE THE FATHER OF THESE BABIES OF

September 21, 2012

McGinniss/Direct

Page 976

1 HAVING DONE THAT TO THEM. HELENA, LOOK AT THIS. LOOK AT THIS  
2 ONE. SMASHED WITH A CLUB. COME ON, HELENA, HOW MUCH LONGER  
3 WILL THAT MAN HAVE TO SIT THERE ACCUSED OF SOMETHING SO  
4 MONSTROUS. YOU HAVE IT IN YOUR POWER, HELENA, TO END IT RIGHT  
5 NOW. OTHERWISE, HELENA, I GUARANTEE YOU, I AM GOING TO TAKE  
6 YOU INTO COURT.

7 IF I COULD REMEMBER, SHE TOLD HIM, I WOULD SAY.

8 SEGAL STEPPED INTO AN ADJACENT ROOM WHERE HIS OTHER  
9 WITNESSES HAD BEEN WAITING. ONE BY ONE, LIKE THE GHOSTS OF  
10 CHRISTMAS PAST, HE BROUGHT THEM IN TO CONFRONT HER WITH THE  
11 THINGS SHE HAD SAID TO THEM YEARS BEFORE. BEASLEY. GADDIS.  
12 ZILLIOUX. UNDERHILL. THE POLYGRAPH MAN WHOSE NAME WAS  
13 BRISENTINE. AND FINALLY, HER EX-NEIGHBOR, POSEY.

14 NONE OF IT MATTERED. SHE SAID HELLO. SHE SAID NICE  
15 TO SEE YOU, HOW HAVE YOU BEEN? BUT WHENEVER THEY ASKED HER  
16 ABOUT THE MACDONALD CASE, SHE SAID I DON'T REMEMBER ANY OF  
17 THAT.

18 ONE BY ONE, THE WITNESSES TROOPED OUT OF THE ROOM.  
19 SEGAL WAS ADMITTING DEFEAT. THERE WOULD BE NO DRAMATIC  
20 ANNOUNCEMENT. THERE WOULD BE NO NEWS BULLETINS ON TV. NO  
21 EIGHT-COLUMN HEADLINES ACROSS PAGE ONE. THERE WOULD JUST BE A  
22 TRUCULENT, UNCOMMUNICATIVE, APATHETIC WITNESS, 30 POUNDS  
23 OVERWEIGHT AND LOOKING FAR LESS MENACING THAN PATHETIC TELLING  
24 THE JURY SHE DIDN'T REMEMBER A THING.

25 Q. ALL RIGHT. YOU CAN STOP THERE. NOW, DID THERE COME A

September 21, 2012

McGinniss/Direct

Page 977

1 TIME -- WELL, WAIT A MINUTE. LET'S READ ON TO THE BOTTOM OF  
2 THAT PAGE.

3 A. NOW, TOO LATE, BERNIE SEGAL REALIZED HE WOULD HAVE BEEN  
4 BETTER OFF IF SHE HAD NEVER BEEN FOUND. MUCH EASIER TO HAVE  
5 CONJURED UP THE IMAGE OF A DRUG-CRAZED AND MURDEROUS HIPPIE  
6 FROM THE DISTANT AND DANGEROUS PAST AND TO HAVE THE JURY SEIZE  
7 UPON THAT AS AN EXPLANATION THAN TO PRESENT THEM WITH THIS  
8 BURNED-OUT WOMAN AND EXPECT THEM TO BELIEVE THAT SHE HAD EVER  
9 STOOD OVER A COUCH ON WHICH JEFFREY MACDONALD HAD BEEN  
10 SLEEPING AND HAD HELD A CANDLE BENEATH HER FACE WHILE CHANTING  
11 ACID IS GROOVY, KILL THE PIGS, ACID AND RAIN.

12 SEGAL LEFT HER, IN THE COMPANY OF HER FIANCE, THE  
13 BAREFOOT AND BEDRAGGLED ERNEST DAVIS, WHILE HE WENT TO INFORM  
14 THE JUDGE THAT HE HAD COMPLETED HIS WITNESS INTERVIEW AND THAT  
15 HE WAS PREPARED FOR THE TRIAL TO RESUME.

16 IT WAS NOW LUNCHTIME. HELENA STOECKLEY HAD BEEN  
17 GIVEN A BOLOGNA SANDWICH. SHE SAT QUIETLY, PLACIDLY, CHEWING  
18 HER FOOD AND SLOWLY TURNING THE PAGES OF THE CRIME SCENE AND  
19 AUTOPSY PHOTO ALBUMS AS IF SHE WERE BROWSING THROUGH A MOVIE  
20 MAGAZINE.

21 Q. ALL RIGHT. SO, MR. SEGAL RETURNED TO COURT AT SOME  
22 POINT?

23 A. YEAH, I'D SAY THIS WHOLE THING WITH STOECKLEY PROBABLY  
24 RAN ABOUT THREE HOURS INCLUDING THE TIME THAT THESE WITNESSES  
25 CAME IN. SO, I THINK IT WAS EARLY AFTERNOON WHEN THERE WAS --

September 21, 2012

McGinniss/Direct

Page 978

1 WHEN THEY MADE A PROGRESS -- I THINK THEY MADE A PROGRESS  
2 REPORT TO THE JUDGE SOMETHING ABOUT WHERE IT STOOD.

3 Q. ALL RIGHT. LET'S GO TO TRIAL DAY 20, PAGE THREE. NOW,  
4 WOULD YOU READ STARTING WITH LINE TEN?

5 A. THE COURT -- SO THIS WOULD BE JUDGE DUPREE -- GENTLEMEN,  
6 I WILL ENTERTAIN A REPORT FROM YOU ON THE STATUS OF YOUR  
7 INTERROGATION OF A WITNESS WHO WAS NOT AVAILABLE TO EITHER  
8 SIDE UNTIL THIS MORNING AT NINE O'CLOCK AND THE QUESTION OF  
9 WHICH WITNESS -- AND THE QUESTION OF WHICH WITNESS NOW  
10 APPARENTLY BY ONE SIDE OR THE OTHER OR BOTH SEEMS TO BE IN AND  
11 ABOUT ITS THIRD HOUR. ARE YOU READY TO PROCEED IN THIS CASE?

12 AND MR. SMITH SAYS, YOUR HONOR, LET ME EXPRESS THE  
13 THANKS OF THE DEFENSE FOR THE COURT'S INDULGENCE AND THE  
14 JURY'S INDULGENCE THIS MORNING AS WE HAVE HAD AN OPPORTUNITY  
15 TO TALK WITH THIS WITNESS WHO HAS, INDEED, BEEN UNAVAILABLE TO  
16 EITHER SIDE FOR A LONG PERIOD OF TIME.

17 WE HAVE ALMOST CONCLUDED OUR DISCUSSIONS WITH THE  
18 WITNESS AND WILL BE IN A POSITION VERY SHORTLY TO TURN THE  
19 WITNESS OVER TO THE GOVERNMENT IF THE GOVERNMENT DESIRES TO  
20 TALK WITH THE WITNESS. WE WILL LEAVE ANY REMARKS TO MR.  
21 BLACKBURN ABOUT THAT.

22 Q. ALL RIGHT. YOU CAN STOP THERE. LET ME GO BACK TO THE  
23 PREVIOUS PAGE AND GET YOU TO LOOK AT THE TIME THERE IN THE  
24 UPPER RIGHT-HAND CORNER.

25 A. YEAH, 1:00 P.M.

September 21, 2012



1 Q. ALL RIGHT. NOW, WHILE THIS WAS GOING ON IN COURT, DO YOU  
2 RECALL WHETHER YOU WERE IN COURT WATCHING THIS OR WERE YOU  
3 UPSTAIRS -- I'M SORRY, NOT UPSTAIRS, DOWN THE HALL WHERE THE  
4 WITNESS INTERVIEW WAS?

5 A. I REMEMBER THAT I WAS IN THE ROOM WITH SEGAL WHEN -- I'M  
6 SORRY, WITH STOECKLEY WHEN BERNIE AND WADE LEFT AND THEY LET  
7 HER FIANCE COME IN AND THEY DELIVERED HER BOLOGNA SANDWICH.

8 BUT I THINK WHILE THAT DISCUSSION WAS STILL GOING ON  
9 IN COURT, I LEFT THAT ROOM AND WENT BACK INTO THE COURTROOM  
10 BECAUSE I DON'T REMEMBER WATCHING -- I DON'T REMEMBER STAYING  
11 THERE FOR THE WHOLE TIME THAT STOECKLEY AND ERNIE DAVIS WERE  
12 THERE. AND I THINK THEY WOUND UP JUST ALONE IN THAT ROOM.

13 Q. YOU DID STAY LONG ENOUGH TO SEE HER, AS YOU READ, EATING  
14 THE BOLOGNA SANDWICH WHILE TURNING THROUGH THE PICTURES?

15 A. YEAH, THAT'S AN UNFORGETTABLE IMAGE.

16 Q. ALL RIGHT. NOW, LET'S LOOK AT PAGE SIX AND LET'S READ AT  
17 LINE 15.

18 A. AGAIN THIS IS JUDGE DUPREE. OH, YEAH, THE COURT NEVER  
19 STOPS WORK, BUT I DON'T WANT TO KEEP THESE JURORS HERE ANY  
20 LONGER, SO WE WILL LET YOU RETIRE UNTIL TOMORROW MORNING AT  
21 NINE O'CLOCK. WE WILL GO BACK ON OUR REGULAR FRIDAY SCHEDULE  
22 WITNESS OR NO. JURY EXITS AT 1:08 P.M.

23 Q. ALL RIGHT. NOW LET'S GO TO PAGE 12 AND AT THE VERY  
24 BOTTOM, LINE 25, PICK UP WHERE IT SAYS MR. BLACKBURN.

25 A. MR. BLACKBURN: I MIGHT ASK COUNSEL I KNOW --

McGinniss/Direct

Page 980

1 Q. HOLD ON A MOMENT.

2 A. I KNOW YOU HAVE SAID THAT I COULD SEE HER SHORTLY, BUT  
3 CAN YOU BE MORE SPECIFIC AS TO WHEN SHORTLY MIGHT COME?

4 MR. SEGAL: I NEED TO DEFINE A COUPLE OF MATTERS,  
5 MR. BLACKBURN, BUT I WOULD SAY BY TWO O'CLOCK. I JUST WANT TO  
6 ADD FOR THE RECORD, YOUR HONOR, THE REQUEST IN REGARD TO  
7 WHETHER MS. STOECKLEY SHOULD BE RELEASED OR NOT WAS THE  
8 REQUEST THAT I CONVEYED AT HER INSTANCE. IT IS NOT  
9 NECESSARILY MY REQUEST, YOUR HONOR.

10 THE COURT: ALL RIGHT --

11 DO YOU WANT ME TO KEEP GOING?

12 Q. YEAH, JUST TO THE END OF THE PAGE.

13 A. ALL RIGHT. I DIDN'T IDENTIFY YOU WITH THE REQUEST. YOU  
14 WERE JUST COMMUNICATING A REQUEST BY THE WITNESS AND HER  
15 BOYFRIEND.

16 YES, YOUR HONOR.

17 THE COURT: TAKE A RECESS UNTIL TOMORROW MORNING AT  
18 NINE O'CLOCK.

19 THE PROCEEDING WAS ADJOURNED AT 1:17 P.M., TO  
20 RECONVENE AT 9:00 A.M. ON FRIDAY, AUGUST 17TH, 1979.

21 Q. OKAY. SO, IN THIS TRANSCRIPT, MR. SEGAL FORECASTS THAT  
22 HE'S GOING TO CONTINUE TO QUESTION HER UNTIL ABOUT TWO  
23 O'CLOCK?

24 A. WELL, HE DIDN'T -- HE SAID THAT HE NEEDS TO DEFINE A  
25 COUPLE OF MATTERS. I'M NOT, AT THIS POINT, SURE WHAT HE MEANT

September 21, 2012

McGinniss/Direct

Page 981

1 BY THAT. BUT BASICALLY THE QUESTIONING OF HER WAS OVER BY THE  
2 TIME THEY GAVE HER THE BOLOGNA SANDWICH. THERE WAS NO OTHER  
3 MAINSTREAM INTERROGATION OR ANYTHING.

4 Q. IF MR. SEGAL QUESTIONED HER ANY MORE AFTER THIS POINT,  
5 WERE YOU PRESENT?

6 A. NO, AND HE -- AND I WOULD HAVE BEEN. MR. SEGAL WANTED TO  
7 BE SURE I WAS PRESENT FOR EVERYTHING HE HAD TO DO WITH  
8 STOECKLEY BECAUSE, YOU KNOW, I THINK UP UNTIL THE -- PROBABLY  
9 UP UNTIL TWO O'CLOCK, HE STILL THOUGHT MAYBE HE COULD -- BUT  
10 HE NEVER WENT BACK AND TRIED AGAIN. HE NEVER WENT BACK AND HE  
11 PRETTY MUCH KNEW THAT THIS DIDN'T WORK BY THE TIME HE SPOKE TO  
12 THE JUDGE AT 1:00.

13 Q. BUT YOU'RE CONFIDENT THAT ANY QUESTIONING OF MS.  
14 STOECKLEY BY SEGAL YOU OBSERVED?

15 A. OH, YES. ABSOLUTELY.

16 Q. AND THAT WOULD HAVE BEEN AT HIS INSISTENCE?

17 A. YES, INDEED. I MEAN, I COULD HAVE REFUSED TO GO IN THE  
18 ROOM, I GUESS, BUT HE WAS -- HE WASN'T JUST ENCOURAGING ME TO,  
19 HE MADE IT VERY CLEAR HE WANTED ME THERE.

20 Q. AND SO THERE WAS NO MORE COURT THAT DAY, IS THAT RIGHT?

21 A. IT DOESN'T LOOK LIKE IT. IT SAYS IT WAS ADJOURNED UNTIL  
22 THE NEXT MORNING.

23 Q. NOW, YOU SAT IN THE COURTROOM AND OBSERVED HELENA  
24 STOECKLEY TESTIFYING THE NEXT DAY?

25 A. YES, SIR, I DID.

September 21, 2012

McGinniss/Direct

Page 982

1 Q. DIRECT EXAMINATION BY MR. SEGAL, IS THAT RIGHT?

2 A. RIGHT.

3 Q. DID THE TESTIMONY THAT YOU OBSERVED HELENA STOECKLEY GIVE  
4 ON DIRECT EXAMINATION, WAS IT CONSISTENT WITH WHAT SHE HAD  
5 SAID THE PREVIOUS DAY IN THE DEFENSE INTERVIEW ROOM?

6 A. YES, I THINK IT WAS. SHE SAID JUST WHAT SHE HAD SAID THE  
7 DAY BEFORE, THAT SHE HADN'T BEEN THERE, SHE COULDN'T HELP.

8 Q. LET'S GO TO TRIAL DAY 21, PAGE 107.

9 MR. BRUCE: JUST A MOMENT, PLEASE, YOUR HONOR.

10 (PAUSE.)

11 BY MR. BRUCE:

12 Q. OKAY. NOW, WHEN YOU WERE SEATED IN THE COURTROOM, YOU  
13 DID NOT GO TO THE BENCH WHEN THEY CALLED A BENCH CONFERENCE,  
14 DID YOU?

15 A. I WASN'T ALLOWED IN FRONT OF THE BAR, NO.

16 Q. ALL RIGHT. SO, YOU WERE NOT ABLE TO HEAR WHAT WAS GOING  
17 ON WHEN THE LAWYERS WERE SPEAKING TO THE JUDGE AT THE BENCH?

18 A. THAT'S RIGHT.

19 Q. ALL RIGHT. LET'S TAKE A LOOK AT THIS PAGE 107 OF TRIAL  
20 DAY 21 AND JUST START READING WHERE IT SAYS, MR. SEGAL, MAY WE  
21 APPROACH THE BENCH, YOUR HONOR?

22 A. OKAY.

23 MR. SEGAL: MAY WE APPROACH THE BENCH?

24 BENCH CONFERENCE.

25 MR. SEGAL: AT THIS TIME, YOUR HONOR, I ASK FOR

September 21, 2012

McGinniss/Direct

Page 983

1 LEAVE OF COURT TO TAKE THIS WITNESS ON -- TAKE THIS WITNESS AS  
2 ON CROSS BECAUSE SHE IS A SURPRISE AND HOSTILE WITNESS.

3 I REPRESENT TO THE COURT THAT DURING INTERVIEWS WITH  
4 ME AND WITH OTHER PERSONS PRESENT SHE STATED THAT WHEN SHE  
5 LOOKED AT THE PICTURE, SHE HAD A RECOLLECTION OF STANDING OVER  
6 A BODY HOLDING A CANDLE, SEEING A MAN'S BODY ON THE FLOOR.

7 I ALSO MAY SAY, YOUR HONOR, WE ARE NOW DOWN TO THE  
8 BOTTOM FIVE OR SIX CRITICAL THINGS THAT SHE REVEALED  
9 YESTERDAY. I HAVE A FEELING, BASED ON HER ANSWER TO THIS ONE  
10 NOW, THAT WHEN AND IF I ASK HER IN DIRECT FASHION THAT I MAY  
11 GET NEGATIVE ANSWERS.

12 I HAD NO ANTICIPATION OF THAT, BECAUSE YESTERDAY  
13 THROUGHOUT THE TIME THAT SHE MADE THESE STATEMENTS, WE  
14 ACCEPTED THEM, DID NOT EXPECT CONTRARY.

15 WE HAVE NOT HAD ANY DIFFERENT STATEMENTS FROM HER  
16 AND WE FEEL THAT WE ARE ENTITLED TO THE PLEA OF SURPRISE AS  
17 WELL AS THE FACT, I THINK, AT THIS POINT, THE EXTENT OF HER  
18 HOSTILE RELATIONSHIP NOT IN TERMS OF MANNER BUT THE HOSTILITY  
19 OF HER INTEREST TO THE DEFENDANT.

20 I AM GOING TO TELL YOUR HONOR THE OTHER THINGS THAT  
21 SHE HAS SAID. WOULD THAT APPROPRIATE NOW TO EXPEDITE OR  
22 SHOULD IT DO IT ONE AT A TIME?

23 THE COURT: WELL, IF IT WILL SAVE ANY TRIPS UP HERE  
24 MAYBE YOU SHOULD TELL US NOW.

25 MR. SEGAL: SHE HAS ALREADY ACTUALLY SAID SOMETHING,

September 21, 2012

McGinniss/Direct

Page 984

1 AND I DID NOT WANT TO RAISE A SURPRISE QUESTION. I WANT TO DO  
2 IT ALL AT ONE TIME. THE PHOTOGRAPH THAT I SHOWED HER OF THE  
3 BEDROOM OF KRISTEN MACDONALD DURING THE INTERVIEW YESTERDAY,  
4 SHE STATED THAT SHE REMEMBERED RIDING THE ROCKING HORSE WHEN  
5 SHE LOOKED AT THAT PICTURE.

6 SHE ALSO STATED YESTERDAY SHE REMEMBERED STANDING AT  
7 THE END OF THE SOFA HOLDING A CANDLE. SHE ALSO STATED WHEN  
8 SHE SAW THE BODY OF KRISTEN MACDONALD, THE ONE WHEN SHE WAS  
9 CLOTHED WITH THE BABY BOTTLE, THAT THAT PICTURE LOOKED  
10 FAMILIAR TO HER. THAT SCENE LOOKED FAMILIAR.

11 SHE ALSO SAID WHEN SHE WAS SHOWN THE PHOTOGRAPH OF  
12 COLETTE MACDONALD, THE SAME ONE I SHOWED HER TODAY, THAT SHE  
13 SAID THAT THE FACE IN THAT PICTURE LOOKED FAMILIAR EXCEPT THAT  
14 THE CHIN WAS BROKEN AND MADE IT A LITTLE HARD.

15 SHE ALSO STATED, AND I'M GOING TO GET TO IT -- SHE'S  
16 GOTTEN TO THE POINT WHERE SHE DOES NOT SOUND LIKE SHE IS GOING  
17 TO COOPERATE FURTHER -- THAT SHE WAS STANDING ON THE CORNER OF  
18 HONEYCUTT ACROSS FROM MELONY VILLAGE.

19 SHE HAS A RECOLLECTION OF STANDING THERE DURING THE  
20 EARLY MORNING HOURS OF FEBRUARY 17TH, 1970. SHE FURTHER  
21 STATED YESTERDAY, AND I INTEND TO ASK HER NOW, THAT SHE HAS A  
22 RECOLLECTION OF STANDING OUTSIDE THE HOUSE LOOKING AT HER  
23 HANDS AND SAYING, MY GOD, THE BLOOD; OH, MY GOD, THE BLOOD.

24 SHE SAID THAT TOOK PLACE FEBRUARY 17TH, 1970. THERE  
25 ARE WITNESSES TO EACH OF THESE THINGS. I MUST SAY, YOUR

September 21, 2012

McGinniss/Direct

Page 985

1 HONOR, THERE WERE PERSONS PRESENT THE ENTIRE TIME THIS TOOK  
2 PLACE.

3 I INTEND TO NOW ASK HER DIRECTLY EACH OF THESE  
4 QUESTIONS. IF SHE REFUSES OR DENIES HER STATEMENTS, I ASK FOR  
5 LEAVE TO CONFRONT HER; DID YOU NOT SAY THAT YESTERDAY WHEN YOU  
6 WERE CONFRONTED WITH THESE PHOTOS?

7 IF SHE PERSISTS IN DENYING IT WE WILL OF COURSE  
8 IMPEACH HER AS WE HAVE THE RIGHT TO IMPEACH HER UNDER THE  
9 RULES. ALTHOUGH WE HAVE CALLED HER AS A WITNESS, THERE ARE  
10 RULES THAT PERMIT THAT TO BE DONE.

11 WHEN I AM DONE WITH THAT, I INTEND TO TURN HER OVER  
12 FOR CROSS-EXAMINATION.

13 THE COURT: LET'S TAKE A RECESS UNTIL 11:15.

14 (RECESS TAKEN FROM 10:59 A.M., UNTIL 11:16 A.M.)

15 (DEFENDANT PRESENT.)

16 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.  
17 PLEASE BE SEATED.

18 MR. MCGINNISS, YOU'RE STILL UNDER OATH. THE WITNESS  
19 IS STILL WITH MR. BRUCE.

20 MR. BRUCE: THANK YOU, YOUR HONOR.

21 BY MR. BRUCE:

22 Q. MR. MCGINNISS, LET'S GO BACK TO PAGE 108, WHERE MR. SEGAL  
23 WAS AT THE BENCH. DO YOU RECALL READING THAT JUST BEFORE THE  
24 BREAK?

25 A. YES, SIR.

September 21, 2012

McGinniss/Direct

Page 986

1 Q. I'M GOING TO ASK THE TECHNICIAN TO HIGHLIGHT THE AREA  
2 BEGINNING WITH, ON LINE TEN, THE PHOTOGRAPH THAT I SHOWED AND  
3 THROUGH THE END OF THAT PARAGRAPH.

4 NOW, THE STATEMENT, THE PHOTOGRAPH THAT I SHOWED HER  
5 OF THE BEDROOM OF KRISTEN MACDONALD DURING THE INTERVIEW  
6 YESTERDAY, SHE STATED THAT SHE REMEMBERED RIDING THE ROCKING  
7 HORSE WHEN SHE LOOKED AT THAT PICTURE. DID YOU HEAR HELENA  
8 STOECKLEY MAKE ANY STATEMENT LIKE THAT DURING THE INTERVIEW  
9 THE PREVIOUS DAY?

10 A. NO, I DID NOT.

11 Q. NOW, I WANT TO MOVE DOWN TO THE FIRST SENTENCE OF THE  
12 NEXT PARAGRAPH. SHE ALSO STATED YESTERDAY THAT SHE REMEMBERED  
13 STANDING AT THE END OF THE SOFA HOLDING A CANDLE. PRESUMABLY,  
14 THE SOFA IN THE MACDONALD HOUSE. DID YOU HEAR HER SAY  
15 ANYTHING LIKE THAT?

16 A. NO, SHE DIDN'T SAY ANYTHING THAT.

17 Q. ALL RIGHT. LET'S MOVE TO PAGE 109 AND STARTING WITH  
18 WHERE -- LET'S SEE -- WHERE IT SAYS SHE HAS A RECOLLECTION OF  
19 STANDING THERE. STARTING ON LINE FIVE AND GOING THROUGH LINE  
20 12. AND JUST READ WHAT SHE SAYS THERE OR WHAT SEGAL QUOTES  
21 HER SAYING.

22 A. SHE HAS A RECOLLECTION OF STANDING THERE DURING THE EARLY  
23 MORNING HOURS OF FEBRUARY 17TH, 1970. SHE FURTHER STATED  
24 YESTERDAY, AND I INTEND TO ASK HER NOW, THAT SHE HAS A  
25 RECOLLECTION OF STANDING OUTSIDE THE HOUSE LOOKING AT HER

September 21, 2012



McGinniss/Direct

Page 987

1 HANDS AND SAYING, MY GOD, THE BLOOD; OH, MY GOD, THE BLOOD.  
2 SHE SAID THAT TOOK PLACE FEBRUARY 17TH, 1970. THERE ARE  
3 WITNESSES TO EACH OF THESE THINGS.

4 Q. ALL RIGHT. DID YOU HEAR HELENA STOECKLEY THE PREVIOUS  
5 DAY DURING THE DEFENSE INTERVIEW SAY ANYTHING LIKE THAT?

6 A. ABSOLUTELY NOT.

7 Q. NOW, THESE STATEMENTS, IF SHE HAD MADE THEM, WOULD BE  
8 ADMITTING TO PRESENCE AT THE MACDONALD SCENE -- CRIME SCENE,  
9 IS THAT RIGHT?

10 A. YEAH. I MEAN, IF SHE HAD EVER SAID ANYTHING LIKE THAT  
11 THERE WOULD HAVE BEEN JUBILATION IN THAT ROOM. THERE WOULD  
12 HAVE BEEN HIGH FIVES. THEY WOULD HAVE RAN OUT OF COURT AND  
13 CHAMPAGNE CORKS WOULD HAVE POPPED. THIS WAS -- THIS WAS THEIR  
14 DREAM, BUT IT JUST DIDN'T HAPPEN.

15 Q. AND SO THERE WAS NO CELEBRATION THERE OR EVEN BACK AT THE  
16 FRATERNITY HOUSE?

17 A. NO. THEY WOULD HAVE BEEN UP ALL NIGHT PARTYING REALLY.  
18 I MEAN, THAT WOULD HAVE BEEN -- THAT WAS THE HOLY GRAIL, TO  
19 GET STOECKLEY TO CONFESS, AND IT ABSOLUTELY DID NOT HAPPEN.

20 Q. ALL RIGHT. NOW, I WANT TO TAKE YOU BACK TO PAGE 110, AND  
21 GET YOU TO START READING WITH WHERE IT SAYS MR. BLACKBURN ON  
22 LINE ONE.

23 A. MR. BLACKBURN: OF COURSE, I WAS NOT THERE WHEN SHE  
24 TALKED WITH THE DEFENSE YESTERDAY, BUT IN HER INTERVIEW WITH  
25 THE GOVERNMENT NONE OF THOSE STATEMENTS WERE MADE. SHE

September 21, 2012

McGinniss/Direct

Page 988

1 SPECIFICALLY TOLD US --

2 THE COURT: (INTERPOSING.) DID YOU ASK HER ANY?

3 MR. BLACKBURN: YES, SIR. SHE SPECIFICALLY TOLD US  
4 THAT SHE HAD BEEN SHOWN THE PHOTOGRAPHS AND WE ASKED HER DID  
5 YOU RECOGNIZE ANY OF THE SCENES IN THOSE PHOTOGRAPHS. THE  
6 ANSWER WAS NO. I ASKED HER HAVE YOU EVER BEEN TO THAT HOUSE?  
7 SHE SAID NO. I SAID DO YOU KNOW ANYTHING ABOUT THAT? NO.  
8 WHO DO YOU THINK DID IT? DR. MACDONALD. YOU KNOW, IT JUST  
9 WENT ONE RIGHT AFTER THE OTHER.

10 I DISCUSSED -- I TOLD MR. SMITH LAST NIGHT WHAT SHE  
11 TOLD US. I WAS UNDER THE IMPRESSION TO THIS VERY MOMENT THAT  
12 WHAT SHE TOLD US WAS ESSENTIALLY WHAT SHE TOLD THEM.

13 IT IS DIFFICULT FOR ME -- YOU KNOW, I AM NOT SAYING  
14 THAT THEY ARE NOT SAYING WHAT SHE SAID. I JUST DON'T KNOW  
15 WHICH WAY IT IS BECAUSE SHE HAS NOT INDICATED ANYTHING TO THE  
16 GOVERNMENT.

17 Q. STOP THERE FOR A MINUTE. THE STATEMENTS THAT MR.  
18 BLACKBURN -- WELL, LET ME ASK YOU THIS, WERE YOU PRESENT  
19 DURING THE PROSECUTION INTERVIEW OF HELENA STOECKLEY?

20 A. NO.

21 Q. AND SO YOU DON'T KNOW OF YOUR PERSONAL KNOWLEDGE WHAT  
22 WENT ON THERE?

23 A. NO, I DON'T.

24 Q. BUT THE STATEMENTS THAT MR. BLACKBURN HAS MADE ABOUT THE  
25 PROSECUTION INTERVIEW, YOU JUST READ THEM, IS THAT RIGHT?

September 21, 2012

McGinniss/Direct

Page 989

1 A. I JUST READ WHAT'S IN THE TRANSCRIPT HERE.

2 Q. RIGHT. MY QUESTION IS, WHAT MR. BLACKBURN IS RELATING  
3 ABOUT THE PROSECUTION INTERVIEW, WOULD YOU COMPARE THAT TO  
4 WHAT YOU HEARD DURING THE DEFENSE INTERVIEW?

5 A. JUST ABOUT IDENTICAL.

6 Q. ALL RIGHT. NOW, START READING WITH MR. SMITH.

7 A. MR. SMITH: JUDGE, HERE I THINK IS WHERE WE ARE.  
8 GENERALLY, SHE SAID TO US THE SAME THING -- SAID TO US THE  
9 SAME THING AND THAT IS I DON'T REMEMBER. BUT IN TWO OR THREE  
10 OR FOUR INSTANCES, WHATEVER THE LIST WOULD REVEAL, SHE SAYS  
11 SOMETHING WHICH WOULD GIVE AN INTERESTING INSIGHT INTO HER  
12 MIND.

13 Q. ALL RIGHT. NOW, PRIOR TO THIS WEEK, HAD YOU EVER READ  
14 THIS TRANSCRIPT EXCERPT WE'VE BEEN GOING OVER THIS MORNING?

15 A. NO, I NEVER DID. THIS IS COMPLETELY NEWS TO ME. IF I  
16 HAD, BELIEVE ME, IT WOULD HAVE BEEN IN THE BOOK.

17 Q. DID YOU GET A TRIAL TRANSCRIPT IN PREPARING YOUR BOOK?

18 A. YES, AND I HAD -- THE BENCH CONFERENCES WERE IN A  
19 SEPARATE VOLUME AND I WAS ESPECIALLY INTERESTED IN THEM  
20 BECAUSE THAT'S THE PART I NEVER HEARD. AND I GOT -- MR.  
21 SEGAL, BERNIE SEGAL, SENT ME FROM HIS OFFICE IN SAN FRANCISCO,  
22 AS I RECALL, THE FULL VOLUME OF THE BENCH CONFERENCES, OR AT  
23 LEAST I THOUGHT IT WAS THE FULL VOLUME, BUT CLEARLY THESE  
24 PAGES HAD BEEN REMOVED. THEY WERE NOT IN IT. I'VE NEVER SEEN  
25 -- I'VE NEVER SEEN THIS BEFORE.

September 21, 2012

McGinniss/Direct

Page 990

1 Q. SO, WHEN YOU READ THIS -- THESE STATEMENTS OF BERNIE  
2 SEGAL ABOUT THE DEFENSE INTERVIEW IN THIS TRANSCRIPT THIS  
3 WEEK, WHAT WAS YOUR REACTION?

4 A. WELL, HE WAS LYING. I DON'T LIKE TO SPEAK ILL OF THE  
5 DEAD, BUT, YOU KNOW, THIS IS RIDICULOUS. HE'S STANDING RIGHT  
6 THERE IN FRONT OF A FEDERAL JUDGE AND HE'S JUST MAKING UP THIS  
7 STUFF. CRAZY.

8 Q. AND YOU JUST READ WHAT MR. SMITH SAID. WOULD YOU SAY  
9 BETWEEN THE TWO STATEMENTS ABOUT WHAT WENT ON THE PREVIOUS DAY  
10 IN THE DEFENSE INTERVIEW WHICH WAS MORE ACCURATE, MR. SEGAL OR  
11 MR. SMITH?

12 A. WELL, MR. SEGAL'S IS ALL JUST -- JUST MADE UP. MR. SMITH  
13 WAS SAYING I DON'T -- SHE SAID I DON'T REMEMBER. THAT'S  
14 ACCURATE.

15 YOU KNOW, I TALKED TO WADE SMITH AFTER THE TRIAL AND  
16 HE TOLD ME HE FELT THAT HE HAD BEEN BETWEEN A ROCK AND A HARD  
17 PLACE BECAUSE HE COULDN'T STAND UP THERE AND UNDERMINE HIS CO-  
18 COUNSEL BY TELLING THE COURT MR. SEGAL'S NOT TELLING THE  
19 TRUTH, BUT ON THE OTHER HAND, HE'S NOT -- AS AN OFFICER OF THE  
20 COURT, HE'S NOT GOING TO PARTICIPATE IN TRYING TO FABRICATE  
21 ANYTHING OR PUT UP -- YOU KNOW, SAY ANYTHING THAT WAS NOT  
22 TRUE.

23 Q. AND WHEN YOU SAY --

24 A. HE WALKED A FINE LINE AND HE WAS VERY HAPPY WHEN HE GOT  
25 TO THE OTHER END.

September 21, 2012

McGinniss/Direct

Page 991

1 Q. ALL RIGHT. SO, YOU'RE RELATING WHAT WENT ON WITH THE  
2 CONVERSATION BETWEEN YOU AND MR. SMITH YOU SAID AFTER TRIAL,  
3 BUT IT WAS QUITE A LONG TIME AFTER TRIAL, RIGHT?

4 A. WELL, I'VE SEEN WADE OVER THE YEARS MANY TIMES AND, YOU  
5 KNOW, WE'VE HAD HUNDREDS OF CONVERSATIONS AND I'M SURE IT'S  
6 COME UP MORE THAN ONCE.

7 Q. ALL RIGHT. NOW, DID YOU ALSO SIT IN THE COURTROOM AND  
8 OBSERVE THE CROSS-EXAMINATION OF HELENA STOECKLEY BY MR.  
9 BLACKBURN?

10 A. YES, SIR, I DID.

11 Q. AND LET'S GO TO TRIAL DAY 21, PAGE 141. AND WOULD YOU  
12 START READING AT LINE 19.

13 A. TO YOUR OWN KNOWLEDGE -- THIS IS THE QUESTION -- TO YOUR  
14 OWN KNOWLEDGE, DID YOU PARTICIPATE IN THE KILLINGS OF THE  
15 MACDONALD FAMILY?

16 NO, SIR.

17 HOW DO YOU FEEL TOWARD CHILDREN?

18 I LOVE CHILDREN.

19 OF YOUR OWN PERSONAL KNOWLEDGE, DID YOU KILL COLETTE  
20 MACDONALD?

21 NO, SIR.

22 HOW ABOUT KRISTEN?

23 NO, SIR.

24 HOW ABOUT KIMBERLEY?

25 NO, SIR.

September 21, 2012

McGinniss/Direct

Page 992

1 DID YOU TRY TO KILL DR. MACDONALD?

2 NO, SIR.

3 DO YOU KNOW WHO DID?

4 NO, SIR.

5 DO YOU RECALL EVER BEING IN THE MACDONALD APARTMENT  
6 CARRYING A CANDLE?

7 NO, SIR.

8 NOW, I BELIEVE --

9 Q. THAT'S FINE. NOW, THOSE STATEMENTS THAT MR. BLACKBURN  
10 ELICITED ON CROSS-EXAMINATION, WERE THEY CONSISTENT WITH WHAT  
11 YOU HEARD HELENA STOECKLEY SAY IN THE DEFENSE INTERVIEW THE  
12 PREVIOUS DAY?

13 A. ABSOLUTELY.

14 Q. ALL RIGHT. NOW, LET'S GO TO PAGE 164, AND START READING  
15 AT LINE 12 DOWN TO LINE 19.

16 A. THE QUESTION IS, NOW, WHEN YOU CAME HOME AT ABOUT 4:30 OR  
17 FIVE O'CLOCK THAT MORNING ON THE 17TH, YOU GOT OUT OF THE CAR,  
18 DO YOU RECALL THAT?

19 YES, SIR.

20 DID YOU SEE ANY BLOOD ON YOUR HANDS?

21 NO, SIR.

22 DID YOU SEE ANY BLOOD ON YOUR CLOTHES?

23 NO, SIR.

24 MR. BLACKBURN: NO FURTHER QUESTIONS, YOUR HONOR.

25 Q. ALL RIGHT. NOW, I DON'T KNOW IF THAT SUBJECT WAS COVERED

September 21, 2012

McGinniss/Direct

Page 993

1 IN THE DEFENSE INTERVIEW, DO YOU RECALL?

2 A. I DON'T RECALL THAT HE ASKED THAT SPECIFIC QUESTION.

3 Q. OKAY. NOW, THE TRIAL RESULTED IN THE CONVICTION OF DR.  
4 MACDONALD, IS THAT RIGHT?

5 A. YES, IT DID.

6 Q. AND YOU CONTINUED TO WORK ON THE BOOK?

7 A. YES, I DID.

8 Q. AND DID YOU HAVE INTERACTION WITH JEFFREY MACDONALD IN  
9 WORKING ON THE BOOK?

10 A. WELL, I DID IN A LIMITED WAY. AND, OF COURSE, HE WAS IN  
11 PRISON WHICH MADE IT A LITTLE DIFFICULT. BUT THAT FALL -- HE  
12 WAS CONVICTED IN AUGUST OF '79. I BELIEVE IT WAS NOVEMBER OF  
13 '79, THAT I WENT OUT TO -- THEY HAD SHUTTLED HIM AROUND THE  
14 COUNTRY, YOU KNOW, HE WAS IN A LOT OF DIFFERENT PLACES BEFORE  
15 HE GOT TO TERMINAL ISLAND.

16 BUT HE FINALLY GOT TO THE FCI AT TERMINAL ISLAND,  
17 WHICH IS IN SOUTHERN CALIFORNIA, NOT FAR FROM WHERE HE HAD  
18 LIVED. AND I WENT OUT THERE TO VISIT HIM AND ALSO TO GATHER  
19 UP ALL THE MATERIALS THAT HE HAD IN HIS CONDOMINIUM BECAUSE I  
20 NEEDED THEM FOR MY RESEARCH.

21 IN FACT, I STAYED AT HIS CONDO AT HIS SUGGESTION  
22 BECAUSE IT WAS MORE CONVENIENT. I COULD JUST WORK THERE, GO  
23 THROUGH ALL OF HIS FILES, SELECT THE PAPERS THAT I NEEDED TO  
24 BRING BACK HOME TO HAVE COPIED AND THEN GO VISIT HIM IN THE  
25 EVENINGS. AND FOUR OR FIVE DAYS THAT'S WHAT I DID.

September 21, 2012

McGinniss/Direct

Page 994

1 BUT HERE'S THE THING, AT TERMINAL ISLAND I HAD  
2 PLANNED TO DO INTERVIEWS WITH HIM, BUT THEY WOULDN'T LET YOU  
3 TAKE NOTES. I COULDN'T SIT THERE AND ASK HIM QUESTIONS AND  
4 WRITE DOWN HIS ANSWERS. THAT WAS NOT PERMITTED.

5 SO, I THINK -- IT MIGHT HAVE EVEN BEEN HIS  
6 SUGGESTION, THAT HE MAKE TAPES IN HIS CELL AND SEND THEM TO  
7 ME. I WOULD WRITE HIM LISTS OF QUESTIONS AND HE WOULD RESPOND  
8 ON TAPE AND THEN HE'D HAVE SOMEONE SEND ME THE CASSETTES.

9 Q. ALL RIGHT. NOW, WHILE YOU WERE STAYING AT JEFFREY  
10 MACDONALD'S CONDOMINIUM, DID HE GIVE YOU PRETTY MUCH THE RUN  
11 OF THE PLACE?

12 A. OH, YEAH, ABSOLUTELY. THE IDEA WAS IT WOULD BE THE MOST  
13 CONVENIENT WAY FOR ME TO HAVE ACCESS TO ALL OF HIS FILES THAT  
14 WENT BACK -- BASICALLY BACK TO 1970.

15 Q. AND THE PAPERWORK WAS ALL THERE IN THE CONDOMINIUM?

16 A. YEAH. AS I RECALL, THERE WERE BOXES AND BOXES WITH FILE  
17 FOLDERS OF TRANSCRIPTS AND ALL KINDS OF THINGS. I EVEN CAME  
18 ACROSS HIS CORRESPONDENCE -- HIS CORRESPONDENCE THAT HE HAD  
19 WITH JOE WAMBAUGH. HE AND WAMBAUGH EXCHANGED A LETTER AFTER  
20 THEIR MEETING. BUT, YOU KNOW, EVERYTHING WAS THERE. IT WAS  
21 ALL IN -- IT WASN'T ORGANIZED, BUT IT WAS ALL IN CARDBOARD  
22 BOXES IN THE HALLWAY.

23 Q. AND AS PART OF YOUR AGREEMENT WITH HIM, YOU WERE GIVEN  
24 ACCESS TO ALL THAT MATERIAL?

25 A. OH, ABSOLUTELY. YEAH.

September 21, 2012



McGinniss/Direct

Page 995

1 Q. NOW, DID THERE COME A TIME WHEN YOU FOUND SOME NOTES THAT  
2 HE HAD MADE CONCERNING THE DAY IN QUESTION, THE DAY OF THE  
3 HOMICIDES?

4 A. YEAH. WELL -- YES. ACTUALLY, I THINK THESE NOTES -- AS  
5 I RECALL, HIS MILITARY LAWYER AT THE ARTICLE 32 HEARING HAD  
6 ASKED HIM TO DESCRIBE IN AS MUCH DETAIL AS HE COULD EVENTS  
7 LEADING UP TO THAT DAY AND THEN INCLUDING THAT DAY SO HE WOULD  
8 HAVE A FULL COMPREHENSIVE ACCOUNT OF PUTTING THAT DAY IN  
9 CONTEXT.

10 Q. OKAY. SO, YOU FOUND THESE NOTES AND READ THEM?

11 A. RIGHT. YES, I DID.

12 Q. IN THE MATERIALS YOU WERE GIVEN ACCESS TO?

13 A. THAT'S RIGHT, YEP.

14 Q. AND THEN YOU WROTE ABOUT IT IN YOUR BOOK?

15 A. CORRECT. I QUOTED FROM, YOU KNOW, FROM -- I QUOTED FROM  
16 A LOT OF DIFFERENT THINGS.

17 Q. ALL RIGHT. LET'S GO TO GOVERNMENT EXHIBIT 4002, AND  
18 LET'S GO TO THE NEXT PAGE. AND WOULD YOU START READING, MR.  
19 MCGINNISS, WHERE IT SAYS ON MY LAST DAY AT THE CONDOMINIUM?

20 A. ON MY LAST DAY AT THE CONDOMINIUM, I FOUND MORE PAGES OF  
21 NOTES IN JEFFREY MACDONALD'S HANDWRITING. THE HEADING SAID  
22 ACTIVITIES MONDAY, 16 FEBRUARY, 5:30 P.M. DASH TUESDAY IN  
23 HOSPITAL, 17 FEBRUARY.

24 THIS, TOO, WAS PART OF THE DETAILED ACCOUNT WHICH  
25 MACDONALD HAD PREPARED AT THE REQUEST OF HIS MILITARY ATTORNEY

September 21, 2012

McGinniss/Direct

Page 996

1 IMMEDIATELY AFTER THE APRIL 6TH ANNOUNCEMENT THAT HE WAS BEING  
2 HELD AS A SUSPECT. THE ACCOUNT WHICH, HE HAD TOLD VICTOR  
3 WORHEIDE AT THE GRAND JURY, HE HAD PUT IN WRITING BECAUSE THE  
4 EVENTS WERE TOO PAINFUL FOR HIM TO TALK ABOUT. THIS --

5 (GOVERNMENT EXHIBIT NUMBER 4002  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. HOLD ON A SECOND. HOLD ON A SECOND. YOU -- OKAY, KEEP  
8 READING. I'M SORRY.

9 A. THIS, HE HAD TOLD WORHEIDE, WAS THE MOST ACCURATE, MOST  
10 COMPLETE, MOST COHERENT ACCOUNT OF THE NIGHT OF THE MURDERS  
11 WHICH HE HAD EVER COMPILED. HE HAD NOT, HOWEVER, MADE IT  
12 AVAILABLE TO WORHEIDE OR TO THE GRAND JURORS. HE HAD NOT MADE  
13 IT AVAILABLE TO ANY INVESTIGATOR. HE HAD GIVEN IT TO HIS  
14 LAWYERS FOR THEIR USE NOT KNOWING AT THE TIME WHAT THE  
15 EVIDENCE AGAINST HIM MIGHT CONSIST OF. AND ONCE IT BECAME  
16 CLEAR DURING THE ARTICLE 32 HEARING THAT CERTAIN AVENUES WERE  
17 NOT TO BE PURSUED THIS, QUOTE, MOST ACCURATE ACCOUNT HAD LAIN  
18 AT THE BOTTOM OF A CARDBOARD BOX COVERED BY DOZENS OF OTHER  
19 FILES.

20 Q. HOLD ON JUST A MINUTE. LET ME ASK YOU ONE QUESTION.  
21 YOU'VE GOT SOME COMMENTS HERE ABOUT WHAT MACDONALD TESTIFIED  
22 TO IN THE GRAND JURY, IS THAT RIGHT, THAT YOU JUST READ?

23 A. YES. YES. RIGHT. THAT WAS FROM SOME OF THE MATERIALS  
24 THAT I TOOK BACK WITH ME. MACDONALD HAD COPIES OF HIS OWN  
25 GRAND JURY TESTIMONY.

September 21, 2012

McGinniss/Direct

Page 997

1 Q. ALL RIGHT. AND HE WAS QUESTIONED IN THE GRAND JURY BY  
2 VICTOR WORHEIDE WHO WAS -- HELPED WITH PROSECUTING THE CASE AT  
3 THAT TIME?

4 A. YES.

5 Q. AND THE GRAND JURY TRANSCRIPTS WERE PREPARED -- I MEAN,  
6 WERE PROVIDED TO MACDONALD'S DEFENSE TEAM?

7 A. YEAH, I DON'T THINK THEY PROVIDED THEM THE COMPLETE GRAND  
8 JURY TRANSCRIPT, BUT THEY PROVIDED THEM ANYBODY WHO WAS GOING  
9 TO BE --

10 Q. WELL, WHATEVER THEY PROVIDED -- WHATEVER WAS PROVIDED TO  
11 THE DEFENSE TEAM YOU GOT TO SEE?

12 A. I DID, YEAH. YOU KNOW, I THINK MACDONALD'S MOTHER AND  
13 HIS BROTHER ALSO TESTIFIED. IF YOU TESTIFY AT A GRAND JURY,  
14 YOU GET A COPY OF YOUR OWN -- YOU KNOW, YOU GET A TRANSCRIPT  
15 OF YOUR OWN TESTIMONY.

16 Q. WELL, MY QUESTION IS, WHATEVER GRAND JURY TRANSCRIPTS THE  
17 PROSECUTION PROVIDED TO THE DEFENSE, MACDONALD DEFENSE, YOU  
18 GOT TO SEE THEM?

19 A. YES.

20 Q. OKAY. NOW, CONTINUE READING WITH THE WARM SOUTHERN  
21 CALIFORNIA SUN.

22 A. WITH THE WARM SOUTHERN CALIFORNIA SUN OF LATE NOVEMBER  
23 SHINING BRIGHTLY THROUGH THE SLIDING GLASS DOORS, I STARTED TO  
24 READ. AND NOW THIS IS -- THESE WERE FROM HIS HANDWRITTEN  
25 NOTES. WE ATE DINNER TOGETHER AT 5:45 P.M., PARENTHESSES, ALL

September 21, 2012

McGinniss/Direct

Page 998

1 FOUR. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO  
2 NOT REMEMBER, BUT IT IS POSSIBLE. I HAD BEEN RUNNING A WEIGHT  
3 CONTROL PROGRAM FOR MY UNIT AND I PUT MY NAME AT THE TOP OF  
4 THE PROGRAM TO ENCOURAGE PARTICIPATION. I HAD LOST 12 DASH 15  
5 POUNDS IN THE PRIOR THREE DASH FOUR WEEKS IN THE PROCESS USING  
6 THREE DASH FIVE CAPSULES OF ESKATROL -- ESKATROL SPANSULE,  
7 PARENTHESSES, 15 MILLIGRAMS, DEXTROAMPHETAMINE, DOUBLE  
8 PARENTHESSES, QUOTES, SPEED, AND 7.5 MILLIGRAMS  
9 PROCHLORPERAZINE, PARENTHESSES, COMPAZINE TO COUNTERACT THE  
10 EXCITABILITY OF THE SPEED.

11 I WAS ALSO LOSING WEIGHT BECAUSE I WAS WORKING OUT  
12 WITH THE BOXING TEAM AND THE COACH TOLD ME TO LOSE WEIGHT. IN  
13 ANY CASE, THE REASON I COULD HAVE TAKEN THE PILL WAS TWOFOLD;  
14 ONE, TO EAT LESS IN THE EVENING WHEN I SNACKED THE MOST; AND  
15 TWO, TO TRY TO STAY AWAKE AFTER DINNER SINCE I WAS  
16 BABYSITTING. IT DIDN'T WORK IF I DID TAKE THE PILL BECAUSE I  
17 THINK I HAD A HALF HOUR NAP ON THE FLOOR FROM 7:30 TO 8:00  
18 P.M. AFTER I PUT KRISTY TO BED.

19 THE CID KNOWS NOTHING ABOUT THE POSSIBLE DIET PILL.  
20 IF I DID TAKE THE PILL, IT IS CONCEIVABLE THAT MY URINE AND  
21 BLOOD 11:30 A.M. TUESDAY WOULD STILL HAVE SOME RESIDUE.

22 WE WOULD HAVE TO RESEARCH THE BREAKDOWN AND  
23 EXCRETION OF WHAT WAS IN THE PILL. WE WOULD ALSO HAVE TO FIND  
24 OUT THE EXCRETION PRODUCTS ARE DEFINITELY DIFFERENT THAN  
25 NORMAL BREAKDOWN PRODUCTS OF ADRENALINE FROM THE BODY, WHICH

September 21, 2012

McGinniss/Direct

Page 999

1 WOULD BE INCREASED IN THE EXCITEMENT OF THE ATTACK, ET CETERA.  
2 RIGHT NOW, I DON'T KNOW IF IT IS DEFINITELY POSSIBLE TO  
3 IDENTIFY DEXTROAMPHETAMINE FROM PILLS IN THE BLOOD AND IN THE  
4 URINE. I THINK I TOLD THE CID THE ONLY PILLS I USUALLY TOOK  
5 WERE ASPIRIN, OCCASIONALLY COLD PILLS, AND TETRACYCLINE, AN  
6 ANTIBIOTIC. THEN THERE'S FOUR DOTS.

7 DR. HENRY ASHTON NOW LIVING IN SALT LAKE CITY, UTAH,  
8 WAS THE GROUP SURGEON BEFORE I ARRIVED IN SEPTEMBER 1969. IF  
9 HE REMEMBERS, HE CAN TESTIFY THAT THE BOTTLE OF ESKATROL FROM  
10 MY HOUSE, PARENTHESSES, WITH ONLY A FEW MISSING, WAS LEFT IN  
11 THE DESK I TOOK OVER WHEN HE LEFT.

12 IF NECESSARY, WE CAN THEN CONTACT THE SMITH KLINE  
13 AND FRENCH REPRESENTATIVE NEAR HERE WHO CAN TESTIFY I NEVER  
14 RECEIVED ANOTHER LARGE BOTTLE OF SAMPLE ESKATROL. HE DID GIVE  
15 ME SOME SMALL SAMPLE BOTTLES FOR USE IN THE WEIGHT CONTROL  
16 PROGRAM.

17 COLETTE HAD SOME DIET PILLS OF HER OWN, PARENTHESSES,  
18 USED BEFORE SHE WAS PREGNANT. I THINK I THREW THEM ALL OUT  
19 BECAUSE THEY MADE HER NERVOUS, BUT POSSIBLY THERE WAS AN OLD  
20 CONTAINER LEFT IN THE MEDICINE CABINET.

21 Q. ALL RIGHT. STOP RIGHT THERE. NOW, LET'S PUT UP ON THE  
22 SCREEN EXHIBIT 4000. NOW, WE'VE BEEN READING FROM THE  
23 REPRODUCTION OF THIS IN YOUR BOOK, BUT DO YOU RECOGNIZE 4000  
24 AS THE HANDWRITTEN NOTES OF DR. MACDONALD?

25 A. YES. YES, I DO.

September 21, 2012

McGinniss/Direct

Page 1000

1 (GOVERNMENT EXHIBIT NUMBER 4000  
2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. AND WHENEVER THERE WERE -- THERE WAS A DOT, DOT, DOT IN  
4 YOUR -- OR ELLIPSIS IN YOUR BOOK, YOU LEFT OUT SOMETHING FROM  
5 THE NOTES?

6 A. WELL, I'M NOT SURE IF THAT'S THE CASE OR IF I WAS JUST  
7 REPRODUCING DOTS IN HIS --

8 Q. WELL, LET'S LOOK AT IT. LET'S SEE IF WE CAN BLOW THIS --  
9 ENLARGE THIS A LITTLE BIT. SCROLL DOWN. ALL RIGHT, LET'S GO  
10 TO THE NEXT PAGE. SCROLL UP A LITTLE BIT. WELL, I WAS TRYING  
11 TO ORIENT TO THE ELLIPSIS, BUT IT DOESN'T LOOK LIKE THERE'S  
12 ANYTHING LEFT OUT. DO YOU SEE ANYTHING LEFT OUT?

13 A. WELL, IT SAYS IN THE HANDWRITTEN NOTES HERE I ALSO HAVE A  
14 VERY STRONG NAP URGE AFTER A FULL MEAL.

15 Q. OKAY.

16 A. AND KNOWING THIS, I WOULD WANT TO PREVENT THE NAP AT  
17 LEAST UNTIL KRISTY WAS IN BED.

18 Q. OKAY. SO, THAT MAY BE THE PORTION LEFT OUT?

19 A. YEAH, I -- YOU KNOW, YEAH. RIGHT.

20 Q. OKAY.

21 A. IN ITS NEW EDITION, MR. BRUCE, *FATAL VISION* IS NOW 951  
22 PAGES LONG. YOU KNOW, IT WOULD BE 2,000 IF I DIDN'T LEAVE  
23 SOME THINGS OUT.

24 Q. OKAY. WELL, LET'S SEE. WE WANT TO BE COMPLETE HERE.  
25 SO, LET'S SCROLL DOWN TO WHERE WE CAN FIND THE CID. WELL,

September 21, 2012

McGinniss/Direct

Page 1001

1 I'LL TELL YOU WHAT, LET'S JUST GO BACK TO THE BEGINNING OF  
2 THIS HANDWRITTEN VERSION AND LET'S READ IT.

3 A. STARTING AGAIN WITH WE ATE DINNER TOGETHER?

4 Q. WE ATE DINNER.

5 A. HUH?

6 Q. WE ATE DINNER.

7 A. SO, WHAT I'VE ALREADY READ. OKAY.

8 Q. EXCUSE ME. LET'S GO TO THE TOP AND GET THE DATE OF THIS.  
9 OKAY. WHAT DOES IT SAY ABOUT ACTIVITIES?

10 A. ACTIVITIES MONDAY, 5:00 P.M. 16 -- SOME STUFF IS SO FAINT  
11 AND SMUDGED HERE I CAN'T ACTUALLY READ IT.

12 Q. RIGHT.

13 A. THEN IT SAYS 16 FEB AND THAT SAYS 17 FEB. 5:30 P.M.  
14 MONDAY DASH A.M. TUESDAY.

15 Q. OKAY.

16 A. THEN WE ATE DINNER TOGETHER AT 5:45 P.M., ALL FOUR. IT  
17 IS POSSIBLE I HAD -- I HAD ONE DIET PILL AT THIS TIME. I DO  
18 NOT REMEMBER, AND DO NOT THINK I HAD ONE, BUT IT IS POSSIBLE.  
19 I HAVE BEEN RUNNING A WEIGHT CONTROL PROGRAM FOR THE SIXTH  
20 SPECIAL FORCES GROUP, PARENTHESES, MY UNIT AND I PUT MY NAME  
21 AT THE TOP OF THE PROGRAM TO ENCOURAGE PARTICIPATION.

22 I HAD LOST 12 DASH 15 POUNDS IN THE PRIOR THREE,  
23 FOUR WEEKS, IN THE PROCESS USING THREE DASH FIVE AMP -- WELL,  
24 WHAT'S THAT WORD? CAPSULES OF ESKATROL SPANSULE BRACKET 15  
25 MILLIGRAM DEXTROAMPHETAMINE, PARENTHESES, QUOTE, SPEED, AND

September 21, 2012

McGinniss/Direct

Page 1002

1 7.5 MILLIGRAMS PROCHLORPERAZINE, PARENTHESSES, COMPAZINE, TO  
2 COUNTERACT THE EXCITABILITY OF THE SPEED. I WAS ALSO LOSING  
3 WEIGHT BECAUSE I WAS WORKING OUT WITH THE BOXING TEAM AND THE  
4 COACH ME TO LOSE WEIGHT.

5 IN ANY CASE, THE REASON I COULD HAVE TAKEN THE PILL  
6 WAS TWOFOLD; ONE, TO EAT LESS IN THE EVENING WHEN I SNACKED  
7 THE MOST; AND TWO, TO TRY TO STAY AWAKE AFTER DINNER SINCE I  
8 WAS BABYSITTING. IT DIDN'T WORK IF I DID TAKE A PILL BECAUSE  
9 I THINK I HAD A HALF HOUR NAP ON THE FLOOR FROM 7:30 TO 8:00  
10 P.M. AFTER -- WHAT DOES THAT SAY -- TO NAP ON THE FLOOR. I  
11 ALSO HAVE A VERY STRONG NAP URGE AFTER A FULL MEAL AND KNOWING  
12 THIS I WOULDN'T -- NO  
13 -- KNOWING THIS, I WOULD WANT TO PREVENT THE NAP AT LEAST  
14 UNTIL KRISTY WAS IN BED.

15 AFTER DINNER, I PUT THE DISHES IN THE SINK. COLETTE  
16 GOT READY FOR SCHOOL AND LEFT 6:15 P.M.

17 THE KIDS AND I PLAYED, I READ TO THEM, WATCHED TV,  
18 ET CETERA. I PUT KRISTY TO BED IN HER OWN ROOM AT ABOUT 7:15,  
19 7:30 P.M. AND TOOK A SOME KIND OF -- TOOK SOME KIND OF NAP.

20 Q. COULD IT BE SHORT NAP?

21 A. THAT WORD LOOKS LONGER THAN SHORT, BUT COULD BE. I CAN'T  
22 MAKE OUT THAT HANDWRITING OF THE WORD.

23 ON THE FLOOR WAITING FOR, QUOTE, LAUGH-IN TO COME  
24 ON. KIM AND I ALWAYS WATCHED LAUGH-IN TOGETHER ON MONDAY WITH  
25 COLETTE -- WHEN COLETTE WENT TO CLASS.

September 21, 2012



McGinniss/Direct

Page 1003

1 PUT KIM TO BED AT 9:00 P.M. AND RETURNED TO THE  
2 LIVING ROOM TO WATCH TV. I THINK IT WAS THE GLEN CAMPBELL  
3 SHOW. COLETTE RETURNED HOME AT 9:30, 9:40 P.M., HAVING  
4 DROPPED OFF ANOTHER GIRL. I SOMETHING -- I DON'T KNOW WHAT  
5 THAT WORD IS.

6 Q. OKAY. WE'LL JUST MOVE ON.

7 A. COLETTE CHANGED TO PAJAMAS AND WE WATCHED TV TOGETHER.  
8 SHE HAD AT LEAST ONE GLASS OF COGNAC -- NO, LIQUOR, DRAMBUIE  
9 OR CREME DE MINT. AT ABOUT 12:00 MIDNIGHT SHE WENT TO BED.  
10 SOMETHING OF JOHNNY CARSON. I DON'T -- MAYBE THAT'S A  
11 PARENTHESSES AND THEN -- I DON'T KNOW. SOMETHING OF JOHNNY  
12 CARSON.

13 Q. ALL RIGHT.

14 A. SHE UNDOUBTEDLY HAD AN ANTI-NAUSEA PILL AND IT LOOKS LIKE  
15 SOMETHING BEND -- BEND -- SOMETHING -- B-E-N-D -- IT'S THE  
16 NAME OF A DRUG, WHICH IS SAFE IN PREGNANCY, AND POSSIBLY HAD A  
17 BENADRYL PILL FOR SLEEP. UNDERLINED CAPITAL LETTERS THIS IS  
18 UNLIKELY. THE SOMETHING IS AN ANTIHISTAMINE, BUT ALSO MAKES  
19 YOU SLEEPY AND IS SAFE FOR PREGNANT WOMEN AND IS SOMETIMES  
20 USED FOR SLEEP IN SOMETHING OLDER PATIENTS.

21 I WATCHED TV UNTIL CARSON SHOW OFF. THEN I WASHED  
22 DISHES IN KITCHEN USING EITHER DISH GLOVES, YELLOW RUBBER, OR  
23 MORE LIKELY, PARENTHESSES, LARGER SURGICAL GLOVES THAT I HAD --  
24 I HAD -- THAT I HAD SUPPLIED FOR COLETTE'S USE. THERE WERE AT  
25 LEAST TWO PAIRS SURGICAL GLOVES OUT IN THE HOUSE, ONE ON SINK

September 21, 2012

McGinniss/Direct

Page 1004

1 AND ONE ON DRYER IN SMALL BACK ROOM OFF MASTER BEDROOM  
2 SOMETHING TO THE BACK DOOR USED -- USED FOR ENTRY THAT NIGHT  
3 BY THE ATTACKERS, PARENTHESES, QUOTE, ALLEGEDLY.

4 ALSO, THE YELLOW GLOVES WERE ON THE KITCHEN SINK.  
5 ALSO, SEVERAL UNOPENED PAIRS OF GLOVES WERE PROBABLY IN HALL  
6 CLOSET. I FINISHED THE DISHES, PUT ON THE FM STEREO, AND READ  
7 A MIKE HAMMER MYSTERY. I FINISHED IT ABOUT PARENTHESES ROUGH  
8 2:00 A.M., POSSIBLY 2:30 A.M., AND WENT IN TO GO TO BED.

9 KRISTY HAD CRAWLED INTO MY SIDE OF THE BED, AS  
10 USUAL, AND HAD WET THE BED PARENTHESES SHE STILL --

11 Q. HOLD ON A MINUTE. I DIDN'T REALIZE IT WAS QUITE THIS  
12 LONG. LET'S SEE IF WE CAN SKIP TO THE POINT WHERE THE CID  
13 DISCUSSION COMES UP. LET'S GO TO PAGE 18. I THINK IT'S PAGE  
14 18 OF THE EXHIBIT. OKAY, GO BACK TO 17.

15 (PAUSE.)

16 WHILE WE'RE FINDING THAT PORTION -- I WANTED YOU TO  
17 READ THE PORTION FROM THE ACTUAL NOTES THAT'S EXCERPTED IN  
18 YOUR BOOK ABOUT THE CID KNOWS NOTHING ABOUT THE POSSIBLE DIET  
19 PILL.

20 BUT WHILE WE'RE FINDING IT LET ME ASK YOU THIS,  
21 AFTER YOU READ THIS, DID YOU DO SOME ADDITIONAL RESEARCH ON  
22 ESKATROL?

23 A. OH, YES, I STARTED TO -- I WANTED TO LEARN MORE ABOUT IT  
24 SO I LOOKED IT UP IN VARIOUS MEDICAL BOOKS, PHARMACOLOGY  
25 BOOKS.

September 21, 2012

McGinniss/Direct

Page 1005

1 Q. OKAY. WELL, WHAT IS IT? WHAT DID YOU FIND OUT THAT IT  
2 IS?

3 A. WELL, IT'S A MIXTURE OF AN UPPER AND A DOWNER, SPEED AND  
4 A TRANQUILIZING AGENT. AND IT APPARENTLY -- WELL, IT WAS MORE  
5 THAN APPARENTLY, IT WAS PARTICULARLY DANGEROUS IN TERMS OF  
6 SIDE EFFECTS. IN FACT, THE MANUFACTURER TOOK IT OFF THE  
7 MARKET SOMETIME NOT LONG AFTER FEBRUARY 1970.

8 AND I HAVE -- IN *FATAL VISION* I QUOTE FROM MEDICAL  
9 BOOKS THAT DESCRIBE THE SIDE EFFECTS. A FREQUENT SIDE EFFECT  
10 WAS RAGE REACTIONS. PEOPLE WOULD SUDDENLY HAVE UNCONTROLLABLE  
11 BURSTS OF RAGE AFTER TAKING ESKATROL.

12 Q. ALL RIGHT. WELL, LET'S FIND THAT IN YOUR BOOK. LET'S  
13 LOOK AT EXHIBIT 4002 AT PAGE THREE. AND IF YOU LOOK -- DO YOU  
14 SEE WHERE IT SAYS TEN YEARS LATER HOWEVER?

15 A. YES, SIR.

16 Q. CAN YOU START READING THERE?

17 A. TEN YEARS LATER, HOWEVER, THE POTENTIAL HAZARDS  
18 ASSOCIATED WITH ESKATROL CONSUMPTION HAD RECEIVED CONSIDERABLY  
19 WIDER ATTENTION. THE DRUG WAS LISTED IN *PILLS THAT DON'T*  
20 *WORK*, THE 1981 BOOK BY SIDNEY M. WOLFE, M.D., AND CHRISTOPHER  
21 M. COLEY THAT IS DESCRIBED ON ITS COVER AS, QUOTE, A  
22 CONSUMERS' AND DOCTORS' GUIDE TO OVER 600 PRESCRIPTION DRUGS  
23 THAT LACK EVIDENCE OF EFFECTIVENESS.

24 WOLFE AND COLEY DESCRIBED THE DRUG AS QUOTE, NOT  
25 ONLY INEFFECTIVE BUT ALSO DANGEROUS. TO USE A COMBINATION --

September 21, 2012

McGinniss/Direct

Page 1006

1 THIS IS STILL A QUOTE -- TO USE A COMBINATION OF AN UPPER AND  
2 A DOWNER BOTH OF WHICH CARRY SIGNIFICANT RISKS IS ASKING FOR  
3 TROUBLE.

4 AND THEN I SAY, AMONG THE POSSIBLE SIDE EFFECTS  
5 LISTED ARE QUOTE, INSOMNIA, RESTLESSNESS, NERVOUSNESS AND  
6 DIZZINESS. THE AUTHORS ALSO STATE THAT, QUOTE, PSYCHOSIS,  
7 PARENTHESSES, INSANITY, MAY OCCUR WITH LARGE DOSES, CLOSE  
8 QUOTE.

9 ESKATROL IS DESCRIBED IN EVEN MORE DETAIL IN THE  
10 *PHYSICIANS' DESK REFERENCE*, A STANDARD MEDICAL REFERENCE BOOK  
11 PUBLISHED BY MEDICAL ECONOMICS COMPANY.

12 QUOTE, AMPHETAMINES HAVE A SIGNIFICANT POTENTIAL FOR  
13 ABUSE THIS TEXT STATES. IN VIEW OF THEIR SHORT-TERM ANORECTIC  
14 EFFECT AND RAPID DEVELOPMENT OF TOLERANCE THEY SHOULD BE USED  
15 WITH EXTREME CAUTION AND ONLY FOR LIMITED PERIODS OF TIME IN  
16 WEIGHT REDUCTION PROGRAMS, CLOSE QUOTE.

17 ACCORDING TO HIS OWN NOTES, THE NOTES THAT VICTOR  
18 WORHEIDE HAD ASKED HIM TO PROVIDE TO THE GRAND JURY BUT WHICH  
19 HE DECLINED TO DO, NOTES WHICH HAD LAIN IN THE BOTTOM OF A  
20 FILE DRAWER SINCE 1970 WHEN MACDONALD HAD LEARNED THAT CID  
21 TESTING HAD FAILED TO DISCOVER THE PRESENCE OF AMPHETAMINES IN  
22 HIS BLOOD. MACDONALD HAD LOST 12 TO 15 POUNDS IN THE THREE TO  
23 FOUR WEEKS PRECEDING THE MURDERS.

24 THAT WAS A LOT OF WEIGHT TO LOSE FOR AN ALREADY FIT  
25 26-YEAR-OLD GREEN BARET OFFICER FRESH FROM PARATROOP TRAINING

September 21, 2012

McGinniss/Direct

Page 1007

1 AT FORT BENNING. AND BOXING WOULD NOT ACCOUNT FOR IT. HIS  
2 LAST WORKOUT WITH THE BOXING TEAM HAD COME MORE THAN THREE  
3 WEEKS BEFORE THE KILLINGS. NEITHER WOULD AN ODD HOUR OF  
4 BASKETBALL LATE ON A RAINY AFTERNOON PRODUCE THAT SORT OF  
5 WEIGHT LOSS. AND THERE HAD BEEN NOTHING TO SUGGEST THAT  
6 MACDONALD HAD EMBARKED UPON A FORMAL DIET. INDEED, HE'D BEEN  
7 EATING COOKIES WITH RON HARRISON ON THE NIGHT OF VALENTINE'S  
8 DAY AND DRINKING A SWEET LIQUEUR WITH HIS WIFE TWO NIGHTS  
9 LATER AND HE HAD SAID ONE OF THE MOST APPEALING FEATURES OF  
10 HAMLET HOSPITAL WAS THAT THE NURSES SERVED HIM STEAK FOR  
11 BREAKFAST.

12 QUOTE, THREE TO FIVE ESKATROL SPANSULES OVER A THREE  
13 TO FOUR WEEK PERIOD ALSO WOULD NOT HAVE ACCOUNTED FOR THE  
14 WEIGHT LOSS. THREE TO FIVE PER DAY, HOWEVER, COULD HAVE HAD A  
15 MARKED EFFECT.

16 Q. ALL RIGHT. STOP RIGHT THERE. LET'S GO BACK TO THE  
17 EXCERPT IN YOUR BOOK FROM HIS NOTES AND THAT WOULD BE ON PAGE  
18 TWO OF THE EXHIBIT AND LET'S ZOOM IN ON THE TOP OF PAGE 611.

19 NOW, IN THERE -- IN THIS, JEFFREY MACDONALD SAYS I  
20 HAD LOST 12 TO 15 POUNDS IN THE PRIOR THREE TO FOUR WEEKS, IN  
21 THE PROCESS USING THREE TO FIVE CAPSULES OF ESKATROL SPANSULE,  
22 WHICH HE THEN DESCRIBES THE DRUG. HE DOESN'T SAY THREE TO  
23 FIVE PER DAY, IS THAT RIGHT?

24 A. THAT'S RIGHT. HE DOESN'T SAY THREE TO FIVE PER DAY. HE  
25 DOESN'T SAY THREE TO FIVE OVER THE THREE TO FOUR WEEKS. HE

September 21, 2012

McGinniss/Direct

Page 1008

1 JUST DOESN'T SAY.

2 Q. SO, THAT'S WHAT YOU WERE EXPLAINING WHEN YOU WERE JUST  
3 READING ABOUT THREE TO FIVE WOULD NOT ACCOUNT FOR THE WEIGHT  
4 LOSS OVER THAT LONG PERIOD OF TIME?

5 A. YEAH. YOU KNOW, ANYBODY WHO'S TAKING A DIET PILL WHO  
6 LOSES 15 -- THREE TO FIVE CAPSULES OVER THREE TO FOUR WEEKS,  
7 YOU WOULD BE TAKING, YOU KNOW, ONE PILL A WEEK. NOBODY TAKES  
8 ONE DIET PILL A WEEK IF THEY'RE LOSING WEIGHT, YOU KNOW, THEY  
9 TAKE A PILL EVERY DAY.

10 Q. ALL RIGHT. LET'S GO BACK TO WHERE YOU WERE ON PAGE  
11 THREE. AND I BELIEVE YOU HAD READ THROUGH THE END OF THE  
12 PARAGRAPH THAT SAYS PSYCHOSIS.

13 A. NO, I STOPPED -- YOU STOPPED ME IN THE MIDDLE, I THINK.

14 Q. OKAY. WELL, RESUME THEN.

15 A. THREE TO FIVE ESKATROL SPANSULES OVER A THREE TO FOUR  
16 WEEK PERIOD ALSO WOULD NOT ACCOUNT FOR THE WEIGHT LOSS. THREE  
17 TO FIVE PER DAY, HOWEVER, COULD HAVE A MARKED EFFECT.

18 THAT LEVEL OF CONSUMPTION COULD ALSO HAVE HAD A  
19 NUMBER OF OTHER CONSEQUENCES SUCH AS, ACCORDING TO THE  
20 *PHYSICIANS' DESK REFERENCE*, QUOTE, MARKED INSOMNIA, TENSENESS  
21 AND IRRITABILITY, HYPERACTIVITY, CONFUSION, ASSAULTIVENESS,  
22 HALLUCINATIONS, PANIC -- PANIC STATES AND, QUOTE, THE MOST  
23 SEVERE, PSYCHOSIS.

24 CARDIOVASCULAR REACTIONS, THE REFERENCE BOOK STATES,  
25 MAY INCLUDE CHILLINESS, PALLOR OR HEADACHE. ALL THREE OF

September 21, 2012

McGinniss/Direct

Page 1009

1 WHICH SYMPTOMS JEFFREY MACDONALD EXHIBITED IN THE IMMEDIATE  
2 AFTERMATH OF THE MURDER OF HIS FAMILY.

3 AND IT IS NOT ONLY THE AMPHETAMINE COMPONENT WHICH  
4 CAN POSE HAZARDS. AGAIN, AS CITED IN THE *PHYSICIANS' DESK*  
5 *REFERENCE*, PROCHLORPERAZINE, THE SEDATIVE COMPONENT OF THE  
6 SPANSULE, CAN CAUSE, QUOTE, AGITATION, RESTLESSNESS AND  
7 REACTIVATION OF PSYCHOTIC PROCESSES.

8 Q. OKAY.

9 A. OKAY. AND --

10 Q. AND WHY DON'T WE SKIP OVER -- WELL, GO AHEAD AND READ  
11 THAT PART WHERE IT SAYS *PHYSICIANS' DESK REFERENCE*.

12 A. OKAY. THE *PHYSICIANS' DESK REFERENCE* ALSO STATES THAT  
13 THE DRUG WAS, QUOTE, SO PREPARED THAT AN INITIAL DOSE IS  
14 RELEASED PROMPTLY AND THE REMAINING MEDICATION IS RELEASED  
15 GRADUALLY OVER A PROLONGED PERIOD, CLOSE QUOTE. THE  
16 PRESCRIBED DOSE WAS ONE CAPSULE PER DAY TO BE TAKEN IN THE  
17 MORNING.

18 QUOTE, IF APPETITE CONTROL IS DESIRED THROUGH  
19 EVENING HOURS THE *PDR* STATES, QUOTE, SHIFT DOSE TO MID-  
20 MORNING. LATE AFTERNOON OR EVENING MEDICATION SHOULD BE  
21 AVOIDED BECAUSE OF RESULTING INSOMNIA.

22 Q. OKAY. NOW, LET'S SKIP OVER TO WHERE IT SAYS THE CHAPTER  
23 ON AMPHETAMINES.

24 A. YEP. THE CHAPTER ON AMPHETAMINES IN -- THIS IS THE  
25 TITLE -- *DISPOSITION OF TOXIC DRUGS AND CHEMICALS IN MAN* BY

September 21, 2012

McGinniss/Direct

Page 1010

1 RANDALL C. BASELT, BIOMEDICAL PUBLICATIONS, 1982, STATES THAT  
2 QUOTE, CHRONIC USAGE IS ASSOCIATED WITH A HIGH INCIDENCE OF  
3 WEIGHT LOSS, HALLUCINATIONS AND PARANOID PSYCHOSIS.

4 AN EVEN MORE DETAILED ANALYSIS OF THE EFFECTS OF  
5 AMPHETAMINES AND PROCHLORPERAZINE IS CONTAINED IN *GOODMAN AND*  
6 *GILMAN'S PHARMACOLOGICAL BASIS OF THERAPEUTICS*, A WIDELY USED  
7 MEDICAL TEXT EDITED BY ALFRED GOODMAN GILMAN, LOUIS S.  
8 GOODMAN, AND ALFRED GILMAN AND PUBLISHED BY MACMILLAN.

9 IN THE CHAPTER ENTITLED DRUG ADDICTION AND DRUG  
10 ABUSE, JEROME H. JAFFE, M.D., PROFESSOR OF PSYCHIATRY AT THE  
11 UNIVERSITY OF CONNECTICUT SCHOOL OF MEDICINE WRITES, QUOTE,  
12 THE USER OF AMPHETAMINES IS HYPERACTIVE AND DURING A TOXIC  
13 EPISODE MAY ACT IN RESPONSE TO PERSECUTORY DELUSIONS. THE  
14 FULLY DEVELOPED TOXIC SYNDROME FROM AMPHETAMINE IS  
15 CHARACTERIZED BY VIVID VISUAL, AUDITORY, AND SOMETIMES TACTILE  
16 HALLUCINATIONS. THAT'S THE END OF -- THAT'S A CLOSE QUOTE.  
17 AND THEN --

18 Q. YOU CAN STOP THERE.

19 A. OKAY.

20 Q. NOW, MOVE ON TO WHERE IT SAYS OTHER  
21 PSYCHOPHARMACOLOGISTS.

22 A. OTHER PSYCHOPHARMACOLOGISTS HAVE COMMENTED THAT RAGE  
23 REACTIONS ARE NOT UNCOMMON IN INDIVIDUALS WHO ARE ABUSING  
24 AMPHETAMINES, PARTICULARLY WHEN THE PERIOD OF ABUSE INVOLVES  
25 SLEEP DEPRIVATION, OUTSIDE STRESSES AND, MOST NOTABLY, ANY

September 21, 2012



McGinniss/Direct

Page 1011

1 PREDISPOSITION TOWARDS PSYCHOLOGICAL INSTABILITY SUCH AS WOULD  
2 BE -- SUCH AS WOULD BE THE CASE WITH AN INDIVIDUAL SUFFERING  
3 FROM A NARCISSISTIC PERSONALITY DISORDER.

4 QUOTE, MOST OBSERVERS, DR. JAFFE WRITES, QUOTE, HAVE  
5 NOTED CONSIDERABLE PSYCHOPATHOLOGY IN COMPULSIVE AMPHETAMINE  
6 USERS AND THEIR FAMILIES WHICH APPEARED TO HAVE ANTEDATED THE  
7 DRUG USE. WHETHER QUOTE, CONSIDERABLE PSYCHOPATHOLOGY, CLOSE  
8 QUOTE, EXISTED IN THE MACDONALD FAMILY OF PATCHOGUE, LONG  
9 ISLAND, IS PERHAPS ANOTHER, QUOTE, DARK AREA, BUT IT IS FACT  
10 THAT THE FATHER WAS GIVEN TO OUTBURSTS OF ANGER AND THAT  
11 JEFFREY'S ONLY BROTHER WAS HOSPITALIZED AFTER A PSYCHOTIC  
12 EPISODE INVOLVING VIOLENCE.

13 IT IS ALSO FACT THAT IF JEFFREY MACDONALD WERE  
14 TAKING THREE TO FIVE ESKATROL SPANSULES DAILY, HE WOULD HAVE  
15 BEEN CONSUMING 75 MILLIGRAMS OF DEXTROAMPHETAMINE, MORE THAN  
16 ENOUGH TO PRECIPITATE AN AMPHETAMINE PSYCHOSIS.

17 CHAPTER 19, DRUG TREATMENT OF DISORDERS OF MOOD OF  
18 GOODMAN AND GILMAN'S BOOK, DISCUSSES SIDE EFFECTS OF  
19 CHLORPROMAZINE, THE CATEGORY OF DRUGS WHICH INCLUDES THE  
20 PROCHLORPERAZINE FOUND IN ESKATROL SPANSULES.

21 THE AUTHOR ROSS J. BALDESSARINI, M.D., PROFESSOR OF  
22 PSYCHIATRY AT THE HARVARD MEDICAL SCHOOL, WRITES THAT WHILE  
23 TOLERANCE TO THE SEDATIVE EFFECTS OF THIS DRUG DEVELOPS,  
24 QUOTE, OVER A PERIOD OF DAYS OR WEEKS IT RETAINS CAPACITY TO  
25 PRODUCE UNPLEASANT SIDE EFFECTS INCLUDING A SYNDROME KNOWN AS

September 21, 2012

McGinniss/Direct

Page 1012

1 AKATHISIA -- IS THAT RIGHT -- AKATHISIA WHICH IS CHARACTERIZED  
2 BY QUOTE, THE COMPELLING NEED OF THE PATIENT TO BE IN CONSTANT  
3 MOVEMENT. THE PATIENT FEELS THAT HE MUST GET UP AND WALK OR  
4 CONTINUOUSLY MOVE ABOUT. AKATHISIA CAN BE MISTAKEN FOR  
5 AGITATION IN PSYCHOTIC PATIENTS, CLOSE QUOTE.

6 CERTAINLY ALL REPORTS FROM WOMACK HOSPITAL INDICATE  
7 THAT JEFFREY MACDONALD, IN THE FIRST MOMENTS AFTER HIS  
8 ARRIVAL, INDEED, UNTIL MERRILL BRONSTEIN BEGAN INTRAVENOUS  
9 ADMINISTRATION OF VISTARIL, NEMBUTAL, AND DEMEROL HAD FELT A  
10 POWERFUL URGE TO GET UP AND WALK ABOUT AND THAT HE APPEARED TO  
11 BE IN A STATE OF HIGH AGITATION.

12 CONCLUDING THAT THEIR -- CONCLUDING THEIR DISCUSSION  
13 OF ESKATROL SPANSULES *IN PILLS THAT DON'T WORK*, WOLFE AND  
14 COLEY WRITE THAT THE DRUG QUOTE, SHOULD HAVE BEEN REMOVED FROM  
15 THE MARKET LONG AGO, CLOSE QUOTE.

16 LATE IN 1980, AS SUCH MEDICATIONS WERE COMING UNDER  
17 CLOSER SCRUTINY FROM THE FOOD AND DRUG ADMINISTRATION, ITS  
18 MANUFACTURER SMITH KLINE AND FRENCH VOLUNTARILY CEASED THE  
19 MANUFACTURE AND DISTRIBUTION OF ESKATROL, DESPITE THE FACT  
20 THAT ITS ESTIMATED RETAIL SALES AT THAT TIME TOTALED MORE THAN  
21 SIX MILLION DOLLARS ANNUALLY.

22 Q. ALL RIGHT. I WANT YOU TO JUST READ ONE MORE PARAGRAPH,  
23 THE ONE THAT STARTS WITH WHEN COLETTE MACDONALD.

24 A. WHEN COLETTE MACDONALD, PREGNANT BY ACCIDENT ONCE AGAIN,  
25 HAD LEFT FOR HER PSYCHOLOGY CLASS THAT COLD AND RAINY FEBRUARY

September 21, 2012

McGinniss/Direct

Page 1013

1 EVENING, HER HUSBAND, PARENTHESSES, WHOSE PALLOR, FATIGUE AND  
2 CHANGED -- PALLOR, FATIGUE AND CHANGED PERSONALITY HAD BEEN  
3 NOTED EVEN BY NEIGHBORS IN THE WEEKS IMMEDIATELY PRECEDING THE  
4 MURDERS, HAD BEEN SO EXHAUSTED FROM HAVING WORKED A 24 HOUR  
5 EMERGENCY ROOM SHIFT AND THEN A FULL DAY AT THE OFFICE  
6 FOLLOWED BY AN HOUR OF BASKETBALL AND A TRIP WITH HIS  
7 DAUGHTERS TO FEED THE PONY, THAT HE HAD BEEN ON THE VERGE OF  
8 FALLING SLEEP WITHOUT EVENING PUTTING HIS YOUNGER DAUGHTER TO  
9 BED. HIS CONDITION HAD BEEN SO NOTEWORTHY THAT COLETTE HAD  
10 COMMENTED ON IT TO THE FRIEND WHOM SHE DROVE TO CLASS.

11 Q. NOW, THAT INFORMATION IN THAT PARAGRAPH ABOUT COLETTE'S  
12 COMMENT AND THE NEIGHBORS OBSERVING JEFFREY MACDONALD, THAT  
13 WAS FROM YOUR RESEARCH ON THE CASE?

14 A. THAT'S RIGHT.

15 Q. ALL RIGHT.

16 A. I BELIEVE IT WAS ACTUALLY -- YOU KNOW, THERE'S ALSO BEEN  
17 RESEARCH DONE BY PROSECUTORS IN THE CASE.

18 Q. OKAY. NOW, GOING BACK TO PAGE TWO OF THE EXHIBIT. AND  
19 YOU'VE ALREADY READ IT, I'M NOT GOING TO GET YOU TO READ IT  
20 AGAIN, BUT THE PORTION STARTING WITH WE ATE DINNER AND THEN  
21 GOING ON TO THE NEXT PAGE, 611, ALL THE WAY DOWN TO MEDICINE  
22 CABINET, THAT'S A QUOTE FROM THOSE NOTES YOU FOUND?

23 A. THAT'S RIGHT.

24 Q. OKAY. AND YOU HAD THE ENTIRE SET OF NOTES?

25 A. I HAD EVERYTHING THAT I FOUND IN THE CONDOMINIUM.

September 21, 2012

McGinniss/Direct

Page 1014

1 Q. OKAY. AND WHEN YOU PUT THE ELLIPSIS IN PLACES, THAT  
2 INDICATES SKIPPING OVER TO THE NEXT MATERIAL?

3 A. YEAH, THAT'S GENERALLY WHAT IT WOULD INDICATE. YEP.

4 Q. NOW, AFTER YOU CONCLUDED WRITING THE BOOK, DID YOU  
5 COOPERATE WITH *60 MINUTES* ON A STORY ON THE MATTER?

6 A. YES.

7 Q. AND CAN YOU TELL US ABOUT HOW THAT CAME ABOUT?

8 A. WELL, EVERY PUBLISHER WANTS TO HAVE A NEW BOOK FEATURED  
9 ON *60 MINUTES* AND MY PUBLISHER SENT THE MANUSCRIPT TO *60*  
10 *MINUTES*.

11 AND PRODUCERS THERE GOT INTERESTED ENOUGH TO COME UP  
12 AND TALK TO ME. THEY READ THE MANUSCRIPT. THEY LOOKED  
13 THROUGH MY NOTES. WE HAD A SERIES OF MEETINGS AND THEY  
14 FINALLY AGREED THAT THEY WERE GOING TO DO A -- I GUESS A 20  
15 MINUTE FEATURE ON A *60 MINUTES* PROGRAM THAT WOULD AIR JUST AT  
16 ABOUT THE TIME THE BOOK CAME OUT.

17 Q. OKAY. AND SO YOU WERE INTERVIEWED ON CAMERA FOR THAT?

18 A. YES, I WAS.

19 Q. AND JEFFREY MACDONALD WAS INTERVIEWED ON CAMERA FOR THAT?

20 A. YES.

21 Q. AND THE *60 MINUTES* PRODUCERS KNEW ABOUT THE NOTES THAT  
22 YOU'D FOUND THAT JEFFREY MACDONALD WROTE TO HIS MILITARY  
23 LAWYER?

24 A. RIGHT. THEY READ THE MANUSCRIPT SO THEY KNEW EVERYTHING  
25 THAT WAS IN THERE.

September 21, 2012

McGinniss/Direct

Page 1015

1 MR. BRUCE: YOUR HONOR, AT THIS TIME WE WOULD LIKE  
2 TO PLAY A PORTION OF GOVERNMENT EXHIBIT 4001 SHOWING MIKE  
3 WALLACE INTERVIEWING JEFFREY MACDONALD.

4 (GOVERNMENT EXHIBIT NUMBER 4001  
5 WAS IDENTIFIED FOR THE RECORD.)

6 THE COURT: ALL RIGHT.

7 BY MR. BRUCE:

8 Q. WELL, BEFORE WE START, THIS IS NOT YOU TALKING, BUT IS  
9 THAT YOU ON THE SCREEN?

10 A. ME OR MY SON.

11 (VIDEO PLAYING.) (PAUSE.)

12 Q. ALL RIGHT. MR. MCGINNISS, THIS INFORMATION ABOUT  
13 POSSIBLE ESKATROL USE WAS NOT INTRODUCED AT THE TRIAL, IS THAT  
14 RIGHT?

15 A. NO, IT WAS NOT.

16 Q. AND PRESUMABLY, THE GOVERNMENT DIDN'T EVEN KNOW ABOUT IT  
17 AT THE TIME OF THE TRIAL?

18 A. I HAVE NO WAY OF KNOWING IF THE GOVERNMENT KNEW ABOUT IT  
19 OR NOT. I DIDN'T KNOW ABOUT IT UNTIL I FOUND THOSE NOTES.

20 Q. ALL RIGHT. NOW, *FATAL VISION* WAS PUBLISHED, IS THAT  
21 RIGHT?

22 A. YES, IN THE FALL OF 1983.

23 Q. AND WAS IT A BIG SUCCESS?

24 A. IT WAS A REASONABLY -- IT WAS REASONABLY SUCCESSFUL. IT  
25 NEVER GOT TO NUMBER ONE ON THE HARDCOVER *NEW YORK TIMES* LIST.

September 21, 2012

McGinniss/Direct

Page 1016

1 I THINK IT GOT AS HIGH AS NUMBER SIX. IT WAS OKAY. IT DID  
2 WELL.

3 Q. WAS THERE A TELEVISION MINI-SERIES MADE OF THE BOOK?

4 A. YES, THERE WAS. BROADCAST BY NBC.

5 Q. AND DID YOU HAVE ANYTHING TO DO WITH THAT?

6 A. WELL, NOT MUCH. I WAS OFFICIALLY A CONSULTANT, WHICH  
7 MEANS THAT THEY COULD ASK MY OPINION OF STUFF AND THEN IGNORE  
8 WHAT I SAID. THAT WAS THE ROLE OF A CONSULTANT.

9 I DID MEET WITH THE SCREEN WRITER, JOHN GAY, AND,  
10 YOU KNOW, I WAS AVAILABLE, BUT I HAD NO CONTROL OVER -- I HAD  
11 NOTHING -- I HAD NO REAL CREATIVE INPUT. I COULDN'T SAY WHAT  
12 THEY SHOULD INCLUDE OR WHAT THEY SHOULDN'T. IT WAS A SEPARATE  
13 PROJECT.

14 Q. DID YOU WATCH THE MOVIE?

15 A. YES, I DID.

16 Q. IT WAS AIRED OVER TWO NIGHTS, FOUR HOURS, IS THAT RIGHT?

17 A. SIX HOURS, I BELIEVE.

18 Q. ALL RIGHT. SO, YOU WATCHED IT?

19 A. IT WAS TWO NIGHTS AND SIX HOURS AS I RECALL. YEAH, I  
20 WATCHED IT. YEAH.

21 Q. OKAY. DO YOU RECALL THE DEFENSE INTERVIEW OF HELENA  
22 STOECKLEY BEING DEPICTED IN THE *FATAL VISION* MOVIE?

23 A. YES, I THINK -- I REMEMBER VIVIDLY THE ACTRESS PLAYING  
24 STOECKLEY SAYING I WASN'T THERE LIKE THAT, AND I'M SURE THAT  
25 WAS IN RESPONSE TO THAT KIND OF A QUESTION.

September 21, 2012

McGinniss/Cross

Page 1017

1 Q. WAS THERE ANY DEPICTION OF THE PROSECUTION INTERVIEW OF  
2 HELENA STOECKLEY IN THE *FATAL VISION* MOVIE?

3 A. NO, BECAUSE IT WAS BASED ON MY BOOK AND MY BOOK DIDN'T  
4 INCLUDE ANYTHING ABOUT THAT.

5 Q. AND YOU DIDN'T HAVE ANY INFORMATION ABOUT THE  
6 PROSECUTION?

7 A. I DID NOT. I KNEW THAT THEY HAD INTERVIEWED HER, I KNEW  
8 WHAT MR. BLACKBURN HAD SAID IN OPEN COURT, BUT THAT WAS THE  
9 EXTENT OF MY KNOWLEDGE OF THAT.

10 MR. BRUCE: NO FURTHER QUESTIONS ON DIRECT, YOUR  
11 HONOR.

12 THE COURT: CROSS.

13 MR. WILLIAMS: YES, SIR. THANK YOU, YOUR HONOR.

14 C R O S S - E X A M I N A T I O N 12:11 P.M.

15 BY MR. WILLIAMS:

16 Q. SIR, I'M GOING TO BEGIN BY ASKING YOU A QUESTION ABOUT  
17 YOUR EXPERIENCE AS AN AUTHOR. I THINK WE CAN AGREE THAT WHEN  
18 AN AUTHOR WANTS TO PROMOTE A BOOK, ONE WAY TO ACCOMPLISH THAT  
19 IS BY DOING PUBLICITY, WOULD YOU AGREE WITH THAT?

20 A. ABSOLUTELY.

21 Q. I'M GOING TO DIRECT YOUR ATTENTION TO THE SCREEN. MR.  
22 MCGINNISS, YOU HAVE A TWITTER ACCOUNT UNDER WHICH YOU SEND OUT  
23 TWITTER MESSAGES TO PEOPLE WHO FOLLOW YOU?

24 MADAM CLERK: IS THERE AN EXHIBIT NUMBER FOR THAT,  
25 SIR?

September 21, 2012

McGinniss/Cross

Page 1018

1 MR. WILLIAMS: NO, I'M JUST SHOWING IT TO HIM.

2 THE WITNESS: YEAH, FROM TIME TO TIME.

3 BY MR. WILLIAMS:

4 Q. AND YOU'LL SEE HERE ON THE SCREEN, IF YOU LOOK AT THE  
5 BOTTOM, AUGUST 29TH, 2012, WHICH WAS ROUGHLY THREE WEEKS AGO.

6 IS IT FAIR TO SAY YOU SENT OUT A TWITTER MESSAGE  
7 THAT SAID THE FIRST E-BOOK EDITION OF *FATAL VISION* ON SALE  
8 TODAY AT AMAZON, NEW PRINT EDITION DUE NEXT WEEK?

9 A. YES, I SENT THAT.

10 Q. THAT WAS THE SAME PRINT EDITION YOU MENTIONED EARLIER,  
11 THE ONE THAT'S GOING TO BE 900 AND SOME PAGES?

12 A. OH, IT IS 951.

13 Q. EARLIER THIS WEEK ON MONDAY, YOU ALSO TWITTERED OUT, YOU  
14 SAID SEQUESTERED IN WITNESS ROOM UNTIL I TESTIFY, INSTRUCTED  
15 NOT TO LEARN ANYTHING ABOUT HEARING, BUT I TAPED INTERVIEW  
16 WITH *INSIDE EDITION*. DID YOU SEND THAT OUT AS SHOWN ON  
17 MONDAY, SEPTEMBER 17TH?

18 A. DID I TWITTER THAT? YES, I DID.

19 Q. GOING TO TUESDAY. JOE MCGINNISS, SPEAKING OF YOURSELF IN  
20 THE THIRD PERSON, WILL PROBABLY TESTIFY THURSDAY IN *FATAL*  
21 *VISION* JEFFREY MACDONALD HEARING. LOOKS LIKE *TODAY SHOW*  
22 INTERVIEW THURSDAY OR FRIDAY. DID YOU SEND THAT OUT AS WELL?

23 A. YES, I DID.

24 Q. AND THEN ON WEDNESDAY, SEPTEMBER 19TH, YOU SEE THE DATE  
25 AT THE BOTTOM, *FATAL VISION* OR *FV*, AN E-BOOK FOR THE FIRST

September 21, 2012



McGinniss/Cross

Page 1019

1 TIME, ALSO NEW BIGGER PRINT EDITION. YOU SENT THAT MESSAGE  
2 OUT AS WELL?

3 A. YES, I DID.

4 Q. NOW, THERE'S BEEN SOME TESTIMONY ABOUT THE BOOK AND THE  
5 QUOTES AND WHAT HAD BEEN WRITTEN. AND I WANT TO DIRECT YOUR  
6 ATTENTION TO THE SCREEN AND I'LL ATTEMPT TO ENLARGE THIS FOR  
7 YOU SO THAT WE CAN ALL LOOK AT IT HERE TOGETHER.

8 AND I BELIEVE YOU'RE FAMILIAR WITH THE BOOK ENOUGH  
9 TO LOOK ON THE LEFT-HAND SIDE OF THE SCREEN TOWARD THE BOTTOM  
10 AND YOU'LL SEE A YELLOW HIGHLIGHT.

11 A. YES, SIR.

12 Q. AND THIS IS THE SECTION, OR AT LEAST PART OF IT, THAT YOU  
13 WERE READING FOR THE PROSECUTION?

14 A. YES, THAT'S RIGHT.

15 Q. AND COULD YOU PLEASE READ FOR ME THE YELLOW HIGHLIGHTED  
16 PORTION?

17 A. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO  
18 NOT REMEMBER, BUT IT IS POSSIBLE.

19 Q. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO  
20 NOT REMEMBER, BUT IT IS POSSIBLE. ARE THERE ANY ELLIPSES, ANY  
21 DOTS IN THERE, THAT WOULD INDICATE ANYTHING WAS LEFT OUT?

22 A. THERE'S NO ELLIPSES, NO.

23 Q. AND I BELIEVE YOU SAID THAT THIS WAS A WORK OF NON-  
24 FICTION, CORRECT?

25 A. ABSOLUTELY.

September 21, 2012

McGinniss/Cross

Page 1020

1 Q. AND SO IT WOULD BE YOUR INTENTION TO QUOTE THINGS  
2 ACCURATELY?

3 A. ACCURATELY, BUT NOT NECESSARILY IN FULL.

4 Q. AND IF YOU LEFT SOMETHING OUT, YOU WOULD PUT ELLIPSIS?

5 A. YEAH, MOST LIKELY.

6 Q. ESPECIALLY SOMETHING IMPORTANT?

7 A. WELL, WHAT'S IMPORTANT TO ONE PERSON MIGHT NOT BE  
8 IMPORTANT TO ANOTHER.

9 Q. WELL, WHY DON'T YOU LET ME PUT BACK ON THE SCREEN THE  
10 ACTUAL NOTES AND IF YOU WOULD, PLEASE, READ THE PORTION THAT  
11 IS SHOWN IN RED WHICH WOULD BE WHERE YOU HAD SOMEWHAT QUOTED.  
12 READ THAT PORTION, IF YOU WOULD.

13 A. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO  
14 NOT REMEMBER AND DO NOT THINK I HAD ONE, BUT IT IS POSSIBLE.

15 Q. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO  
16 NOT REMEMBER AND DO NOT THINK I HAD ONE, BUT IT IS POSSIBLE.

17 WOULD YOU LIKE ME TO PUT YOUR BOOK BACK ON THE  
18 SCREEN SO THAT WE CAN SEE WHETHER YOU INCLUDED THE PHRASE AND  
19 DO NOT THINK I HAD ONE? WOULD YOU LIKE ME TO PUT THAT BACK ON  
20 THE SCREEN OR DO YOU REMEMBER?

21 A. WELL, YOU CAN IF YOU WANT.

22 Q. WELL, DO YOU REMEMBER?

23 A. I DON'T THINK I REPEATED IT IS POSSIBLE TWICE, BUT I DO  
24 NOT THINK --

25 Q. WELL, LET'S FOCUS ON THAT PHRASE AND DO NOT THINK I HAD

September 21, 2012

McGinniss/Cross

Page 1021

1 ONE.

2 A. YEAH.

3 Q. READ FOR ME AGAIN THE PORTION IN YELLOW. THIS IS FROM  
4 YOUR ACTUAL BOOK.

5 A. IT IS POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO  
6 NOT REMEMBER, BUT IT IS POSSIBLE.

7 Q. SO, YOU LEFT OUT THE PHRASE AND DO NOT THINK I HAD ONE?

8 A. THAT'S CORRECT.

9 Q. WE'RE GOING TO MOVE NEXT TO TESTIMONY THAT YOU GAVE  
10 BEFORE IN A RELATED CASE, AND I'M GOING TO ASK YOU SOME  
11 QUESTIONS ABOUT YOUR TESTIMONY IN A CIVIL CASE THAT INVOLVED  
12 YOU AND DR. MACDONALD. AND I'M SPEAKING HERE OF THE CIVIL  
13 CASE THAT WAS FILED IN FEDERAL COURT IN LOS ANGELES IN THE  
14 1980S. DO YOU REMEMBER THAT CASE?

15 A. YES, I DO.

16 Q. AND DO YOU REMEMBER THAT YOU TESTIFIED IN THAT CASE?

17 A. YES, SIR.

18 Q. ALL RIGHT. DIRECTING YOUR ATTENTION THEN TO THE SCREEN,  
19 YOU'LL SEE WHAT I REPRESENT TO YOU IS A PAGE FROM THE  
20 TRANSCRIPT. AND I WILL TELL YOU THAT I'M GOING TO SHOW YOU  
21 PAGES FROM THE TRANSCRIPT. IF, AT ANY TIME, YOU'D LIKE TO SEE  
22 THE ACTUAL TRANSCRIPT, I HAVE ALL OF THOSE BACK HERE. I CAN  
23 HAND UP A WHOLE VOLUME. I THOUGHT THIS MIGHT HELP US GO A  
24 LITTLE FASTER.

25 A. YEAH. SURE.

September 21, 2012

McGinniss/Cross

Page 1022

1 Q. YOU SEE AT THE TOP IT SAYS LOS ANGELES, CALIFORNIA,  
2 THURSDAY, JULY 16TH, 1987?

3 A. 9:30 A.M.

4 Q. AND YOU WERE IN FEDERAL COURT AND IT WAS A CASE IN WHICH  
5 DR. MACDONALD HAD SUED YOU?

6 A. THAT'S CORRECT.

7 Q. AND IF YOU LOOK DOWN ON THE PAGE, YOU'LL SEE JOSEPH R.  
8 MCGINNISS, PLAINTIFF'S WITNESS, SWORN. THAT MEANS THAT YOU  
9 WERE SWORN IN TO TESTIFY, CORRECT?

10 A. THAT'S CORRECT.

11 Q. SWORN TO TELL THE TRUTH?

12 A. THAT'S RIGHT.

13 Q. YOU UNDERSTOOD YOUR DUTY TO TELL THE TRUTH?

14 A. YES, SIR.

15 Q. YOU MADE EVERY EFFORT TO TELL THE TRUTH WHEN YOU  
16 TESTIFIED IN THAT CASE?

17 A. AS WELL AS I CAN RECALL.

18 Q. YOU KNEW YOUR TESTIMONY WAS PART OF THE EVIDENCE IN THE  
19 CASE?

20 A. WELL, SURE.

21 Q. AND YOU WANTED TO PROVIDE RELIABLE INFORMATION TO THE  
22 COURT, DIDN'T YOU?

23 A. YEAH, I WANTED TO HONESTLY ANSWER WHATEVER QUESTIONS I  
24 WAS ASKED.

25 Q. ALL RIGHT. I DIRECT YOUR ATTENTION AGAIN TO THE SCREEN.

September 21, 2012

McGinniss/Cross

Page 1023

1 YOU WERE ASKED THE QUESTION IN 1987, ARE YOU CONVINCED TODAY  
2 THAT HE KILLED HIS WIFE, THAT IS DR. MACDONALD, THAT HE KILLED  
3 HIS WIFE AND CHILDREN? AND WHAT WAS YOUR ANSWER?

4 A. YES, I AM.

5 Q. YOU WERE ALSO ASKED AND WHEN DID YOU BECOME SO CONVINCED?  
6 AND WHAT WAS YOUR ANSWER?

7 A. I WOULD SAY THAT BASED ON THE EVIDENCE PRESENTED IN  
8 COURT, I HAD FORMED THAT OPINION BY THE END OF THE TRIAL IN  
9 1979. HOWEVER, THERE WAS FOR A CONSIDERABLE TIME THEREAFTER A  
10 GREAT DEGREE OF VARIATION -- THAT'S THE END OF THE PAGE.

11 Q. IT'S OKAY. I --

12 MR. BRUCE: EXCUSE ME. EXCUSE ME, YOUR HONOR.  
13 COULD WE GET AN EXHIBIT NUMBER? WE'RE NOT FINDING THIS AT OUR  
14 TABLE.

15 THE COURT: YES.

16 MR. WILLIAMS: YOUR HONOR, I'M USING THIS TO REFRESH  
17 RECOLLECTION. I'M NOT INTENDING TO ADMIT IT AT THIS TIME.

18 MR. BRUCE: WELL, WE WOULD REQUEST A COPY.

19 THE COURT: ALL RIGHT, SIR.

20 MR. WILLIAMS: AND I CAN PROVIDE IT IF YOU'D LIKE TO  
21 HAVE THE WRITTEN DOCUMENTS.

22 (PAUSE.)

23 BY MR. WILLIAMS:

24 Q. ALL RIGHT. GETTING BACK TO THE SCREEN THEN. YOU WERE  
25 ASKED WHEN DID YOU BECOME SO CONVINCED AND YOU SAID I WOULD

September 21, 2012

McGinniss/Cross

Page 1024

1 SAY THAT BASED ON THE EVIDENCE PRESENTED IN COURT, I HAD  
2 FORMED THAT OPINION BY THE END OF TRIAL IN 1979. AND THAT WAS  
3 AUGUST 1979, CORRECT?

4 A. CORRECT. THAT PARAGRAPH CONTINUES, HOWEVER --

5 Q. AND I'LL MOVE THAT BACK UP SO YOU CAN CONTINUE READING.

6 A. HOWEVER, THERE WAS, FOR A CONSIDERABLE TIME THEREAFTER, A  
7 GREAT DEGREE OF VARIATION IN THE INTENSITY WITH WHICH I HELD  
8 THAT OPINION. I WAS CONFRONTED ON A DAILY BASIS WITH THIS  
9 HORRIBLE CONFLICT BETWEEN WHAT THE EVIDENCE HAD DEMONSTRATED  
10 AND THE MAN I THOUGHT I KNEW.

11 Q. SO, YOU HELD THAT OPINION CONSISTENTLY FROM AUGUST '79  
12 FORWARD, BUT YOU'RE SAYING SOME DAYS YOU REALLY HELD IT AND  
13 OTHER DAYS YOU SORT OF HELD IT?

14 A. I KEPT TRYING TO FIND ANY REASON I COULD TO BELIEVE THAT  
15 HE WASN'T GUILTY.

16 Q. BUT YOU NEVER CHANGED YOUR OPINION?

17 A. I NEVER DID, BUT IT WAS -- IT TOOK A LONG TIME BEFORE IT  
18 SOLIDIFIED.

19 Q. IF YOU'D TAKE A LOOK THERE. YOU WERE ASKED THE QUESTION  
20 DID YOU EVER COMMUNICATE TO DR. MACDONALD THE FACT THAT YOU  
21 HAD FORMED THAT OPINION BY THE END OF THE TRIAL? WHAT WAS  
22 YOUR ANSWER?

23 A. NO, I DIDN'T.

24 Q. NOW, I WANT TO TAKE YOU TO TESTIMONY IN THAT CASE ABOUT A  
25 HANDWRITTEN LETTER FROM SEPTEMBER 11TH, 1979. DO YOU SEE

September 21, 2012

McGinniss/Cross

Page 1025

1 WHERE YOU ACKNOWLEDGED THAT YOU WERE SHOWN A LETTER WITH THAT  
2 DATE AND YOU SAID THAT IT WAS YOUR HANDWRITING. DO YOU SEE  
3 THAT?

4 A. YEP, I DO. YEP.

5 Q. AND YOU WERE ASKED ABOUT THAT LETTER AND THERE WAS A  
6 QUOTE YOU HAD THERE AND IT WAS QUOTED AS THIS; TOTAL STRANGERS  
7 CAN RECOGNIZE WITHIN FIVE MINUTES THAT YOU DID NOT RECEIVE A  
8 FAIR TRIAL. WAS THAT PART OF THAT LETTER THAT YOU SENT TO DR.  
9 MACDONALD?

10 A. YES.

11 Q. GOING ON TO THE NEXT PAGE, YOU'LL SEE AGAIN THERE'S A  
12 QUOTE, YOU WERE ASKED ABOUT THE LETTER AND I BELIEVE YOU WERE  
13 READING FROM IT IN THE TESTIMONY. IF YOU WOULD, PLEASE READ  
14 THE PART THAT'S IN THE YELLOW?

15 A. JEFF, IT'S ALL SO FUCKING AWFUL. I CAN'T BELIEVE IT YET.  
16 THE SIGHT OF THE JURY COMING IN, OF THE JURY POLLING, OF YOU  
17 STANDING SAYING THOSE FEW WORDS, BEING LED OUT, AND THEN  
18 SEEING YOU IN A FUCKING PRISON IS A HELL OF A THING. SPEND  
19 THE SUMMER MAKING A NEW FRIEND AND THEN THE BASTARDS COME  
20 ALONG AND LOCK HIM UP. BUT NOT FOR LONG, JEFFREY, NOT FOR  
21 LONG.

22 Q. AND THIS IS ROUGHLY SEPTEMBER 11TH, '79. SO, THREE WEEKS  
23 OR SO AFTER THE TRIAL?

24 A. YES. I THINK IT WAS -- THIS WAS IN RESPONSE TO A LETTER  
25 I HAD GOTTEN FROM HIM.

September 21, 2012

McGinniss/Cross

Page 1026

1 Q. AND THEN WE ALSO HAVE A LETTER DATED SEPTEMBER 28TH, '79,  
2 WHICH I BELIEVE YOU TYPED OUT. AND I'LL LET YOU TAKE A LOOK  
3 AT THAT TO SEE IF YOU RECOGNIZE IT.

4 A. YEAH. YES. YES.

5 Q. ALL RIGHT. AND LOOKING TO PAGE FOUR OF THE LETTER IF YOU  
6 WOULD, PLEASE, READ THE YELLOW PORTIONS FOR US.

7 A. GODDAMN, JEFF, ONE OF THE WORST THINGS ABOUT ALL OF THIS  
8 IS HOW SUDDENLY AND TOTALLY ALL OF YOUR FRIENDS, SELF  
9 INCLUDED, HAVE BEEN DEPRIVED OF THE PLEASURE OF YOUR COMPANY.  
10 WHAT THE FUCK WERE THOSE PEOPLE THINKING OF? HOW COULD 12  
11 PEOPLE NOT ONLY AGREE TO BELIEVE SUCH A HORRENDOUS  
12 PROPOSITION, BUT AGREE, WITH A MAN'S LIFE AT STAKE, THAT THEY  
13 BELIEVED IT BEYOND A REASONABLE DOUBT IN SIX AND A HALF HOURS?  
14 THE QUESTIONS WHICH KEEP YOU AWAKE NIGHT AFTER NIGHT, NO  
15 DOUBT, DID THE SAME TO MYSELF AND TO WADE EVEN AT 8,000 FEET.

16 Q. YOU HAVE ANOTHER LETTER THAT YOU WROTE TO HIM DATED  
17 DECEMBER 18TH, 1979, AND I'VE PUT THAT ON THE SCREEN. I  
18 BELIEVE YOU WERE RETURNING TO HIM AT THAT TIME HIS ARTICLE 32  
19 TESTIMONY AND SOME NOTES AND A DIARY. DO YOU SEE THAT?

20 A. YEP. YES, I DO.

21 Q. ALL RIGHT. AND AS WE LOOK AHEAD TO PAGE THREE OF THE  
22 LETTER, I BELIEVE WHAT WE SEE IS THAT YOU MENTION THAT YOU HAD  
23 BEEN SPENDING A LOT OF TIME GOING THROUGH THE ARTICLE 32  
24 MATERIAL?

25 A. YES, I READ THE ENTIRE TRANSCRIPT.

September 21, 2012



McGinniss/Cross

Page 1027

1 Q. THE ARTICLE 32 PROCEEDING WAS THE MILITARY PROCEEDING,  
2 CORRECT, THAT WAS HEADED BY COLONEL WARREN ROCK IN 1970?

3 A. THAT'S RIGHT.

4 Q. AND IT INCLUDED A RECOMMENDATION, YOU MAY BE FAMILIAR  
5 WITH IT AND TELL ME IF YOU ARE, ALL CHARGES AND SPECIFICATIONS  
6 AGAINST CAPTAIN JEFFREY R. MACDONALD BE DISMISSED BECAUSE THE  
7 MATTERS SET FORTH IN ALL CHARGES AND SPECIFICATIONS ARE NOT  
8 TRUE. DO YOU REMEMBER THAT RECOMMENDATION?

9 A. I DON'T RECALL THAT LANGUAGE, BUT I KNOW THAT THE OUTCOME  
10 WAS THAT THEY DID NOT PROCEED TO A COURT MARTIAL.

11 Q. ALL RIGHT. AND DIRECTING YOUR ATTENTION AGAIN TO THE  
12 SCREEN, IF YOU COULD PLEASE READ THE SECOND HIGHLIGHTED QUOTE  
13 FROM YOUR LETTER?

14 A. ONE CERTAINLY GETS THE IMPRESSION THAT COLONEL ROCK WAS A  
15 MORE IMPARTIAL AND INTELLIGENT HEARING OFFICER THAN JUDGE  
16 DUPREE.

17 Q. MOVING FORWARD TO A LETTER THAT I BELIEVE YOU SENT TO DR.  
18 MACDONALD ON FEBRUARY 4TH, 1980. AND HERE WE'RE LOOKING AT  
19 YOUR TRIAL TESTIMONY FROM THE CALIFORNIA CASE. YOU'LL SEE  
20 THERE'S A REFERENCE TO A FOUR PAGE LETTER DATED FEBRUARY 4TH,  
21 1980, AND YOU SAID THAT YOU'RE SURE THAT YOU WROTE THAT. DO  
22 YOU SEE THAT THERE?

23 A. YES, I SEE THAT.

24 Q. AND LOOKING AT THE NEXT PAGE WHERE THAT LETTER WAS  
25 DISCUSSED, IF YOU WOULD, PLEASE, READ THE BOTTOM THREE LINES

September 21, 2012

1 AND THEN I'LL GO OVER TO THE NEXT PAGE SO YOU CAN FINISH THE  
2 QUOTE. AND THIS, FROM THE TRIAL TESTIMONY, WAS FROM YOUR  
3 LETTER OF FEBRUARY 4TH, 1980, TO DR. MACDONALD.

4 A. AMONG THE TRIAL ISSUES, THE REBUTTAL BRIEF ARGUES SO  
5 STRONGLY AND LUCIDLY IN REGARD TO HELENA STOECKLEY THAT I  
6 CANNOT SEE HOW THE GOVERNMENT CAN HOPE TO MAKE THE VERDICT  
7 STICK. THAT'S --

8 Q. MOVING ON AGAIN -- I'M SORRY, DID YOU WANT TO SAY  
9 SOMETHING ELSE?

10 A. NO, I THOUGHT YOU WANTED ME TO READ MORE.

11 Q. THAT'S FINE. THANK YOU. MOVING ON AGAIN YOU WROTE A  
12 LETTER NOVEMBER 3RD, 1981, TO A PERSON BY THE NAME OF MORGAN.  
13 AND IF I'M UNDERSTANDING CORRECTLY, THAT'S MORGAN ENTRAKAN,  
14 SOMEONE CONNECTED WITH YOUR PUBLISHER?

15 A. MORGAN ENTRAKAN, YEAH.

16 Q. AND YOU SEE THE DATE THERE AT THE TOP, NOVEMBER 3RD,  
17 1981?

18 A. YES.

19 Q. AND YOU CAN SEE THAT WE'VE HIGHLIGHTED JUST A PORTION AND  
20 YOU DON'T HAVE TO READ IT, BUT JUST FOR YOUR REFERENCE TO SHOW  
21 YOU THAT I BELIEVE THIS LETTER HAS TO DO WITH TALKING ABOUT  
22 THE DIVISION AND STRUCTURE OF THE BOOK?

23 A. RIGHT. MORGAN WAS MY EDITOR AT THAT TIME.

24 Q. LOOKING AHEAD TO PAGE THREE OF THIS LETTER, YOU MENTION A  
25 CONVERSATION THAT YOU HAD LAST NIGHT, WHICH WOULD HAVE BEEN

McGinniss/Cross

Page 1029

1 NOVEMBER 2ND, 1981, SPOKE TO HIM, SPOKE TO JEFFREY MACDONALD.

2 IF YOU COULD READ THAT FOR US THERE, PLEASE.

3 A. I SPOKE TO HIM LAST NIGHT AND HE KEPT REFERRING TO,

4 QUOTE, OUR BOOK AND WAS ASTOUNDED THAT TAYLOR DASH WIGUTOW

5 COULD HAVE GIVEN A STORY TO THE *HOLLYWOOD REPORTER* TO THE

6 EFFECT THAT THEY WERE PLANNING A FILM ON DR. JEFFREY MACDONALD

7 QUOTE CONVICTED OF HAVING MURDERED HIS WIFE AND CHILDREN WHEN

8 THE WHOLE POINT OF THE FILM AND BOOK OBVIOUSLY WAS THAT HE WAS

9 FALSELY CONVICTED AS HE HAD BEEN FALSELY SUSPECTED FOR TEN

10 YEARS, ET CETERA, ET CETERA. HE'S LETTING THIS ONE PASS,

11 WRITING IT OFF TO SLOPPINESS IN A TRADE PAPER, BUT THE ICE IS

12 GETTING THINNER AND I'M STILL A LONG WAY FROM SHORE.

13 Q. SO, AS I UNDERSTAND THIS WRITING HERE, YOU HAD A

14 CONVERSATION WITH DR. MACDONALD THE NIGHT BEFORE AND YOU HAD

15 SHARED WITH HIM THAT THERE WAS A STORY IN THE *HOLLYWOOD*

16 *REPORTER*. THE STORY SAID THAT THERE WAS A FILM PLANNED ABOUT

17 HOW HE SUPPOSEDLY HAD BEEN CONVICTED OR HOW HE SUPPOSEDLY HAD

18 MURDERED HIS WIFE AND CHILDREN AND THAT ASTOUNDED HIM BECAUSE

19 HE THOUGHT THE WHOLE POINT OF THE FILM AND BOOK WAS OBVIOUSLY

20 THAT HE WAS FALSELY CONVICTED. DO YOU SEE THAT?

21 A. THAT'S WHAT HE KEPT HOPING.

22 Q. AND YOU SHARED WITH MORGAN THAT HE WAS LETTING THIS ONE

23 PASS, HE WROTE IT OFF TO SOME SLOPPINESS IN A TRADE PAPER.

24 BUT YOU SAID THIS, BUT THE ICE IS GETTING THINNER AND I'M

25 STILL A LONG WAY FROM SHORE?

September 21, 2012

McGinniss/Cross

Page 1030

1 A. THAT'S RIGHT.

2 Q. AND YOU WERE ASKED ABOUT THAT IN THE TRIAL IN CALIFORNIA.  
3 DO YOU SEE THERE AT THE TOP? WHAT DID YOU MEAN WHEN YOU WROTE  
4 MORGAN ENTRAKAN IN NOVEMBER OF 1981, THAT THE ICE WAS GETTING  
5 THINNER AND YOU WERE STILL A LONG WAY FROM SHORE? AND IF YOU  
6 WOULD, PLEASE READ YOUR ANSWER THERE.

7 A. WELL, I MEANT THAT MACDONALD'S GRADUALLY GROWING  
8 AWARENESS OF THE FACT THAT THIS BOOK WASN'T NECESSARILY GOING  
9 TO COME OUT THE WAY HE WANTED TO WAS SOMETHING THAT COULD  
10 POTENTIALLY TURN INTO A PROBLEM.

11 AND THEN YOU WANT ME TO READ. YOU KNOW, THE MAN HAD  
12 KILLED BEFORE. I DIDN'T KNOW WHAT HE WAS GOING TO DO TO MY  
13 WIFE OR MY KID. HE WASN'T IN PRISON AT THAT TIME.

14 Q. THAT'S FINE. THERE YOU'RE REFERENCING IF SOMEONE ASKED  
15 YOU IF YOU WERE CONCERNED ABOUT ANY THREATS TO YOURSELF AND I  
16 BELIEVE THE CONTEXT WAS, WELL, YOU HADN'T RECEIVED ANY, BUT  
17 YOU HAD A GENERAL CONCERN BASED ON WHAT YOU KNEW HE WAS  
18 CONVICTED OF?

19 A. THAT'S RIGHT.

20 Q. WELL, GETTING BACK TO THE ANSWER ABOVE, YOU KNEW THAT  
21 MACDONALD WAS GRADUALLY GROWING AWARE OF THE FACT THAT THE  
22 BOOK WASN'T NECESSARILY GOING TO BE HIS WAY AND THAT YOU  
23 WANTED TO AVOID THAT, THAT THAT COULD BE A PROBLEM FOR YOU?

24 A. YES. YOU KNOW, HE'D BEEN TRYING TO CON ME FROM THE FIRST  
25 DAY AND IT HAD TAKEN ME A LONG TIME TO REALIZE THAT. I DIDN'T

September 21, 2012

McGinniss/Cross

Page 1031

1 UNDERSTAND ABOUT HIM BEING A PSYCHOPATH UNTIL PROBABLY 19 --  
2 THE FALL OF '80 OR 1981, WHEN I HAD A CONVERSATION WITH JOE  
3 WAMBAUGH.

4           AND THEN THE THING IS, YOU KNOW, HERE'S A GUY WHO'S  
5 KILLED HIS WIFE AND KIDS AND HE'S LYING TO ME CONSISTENTLY AND  
6 MY GOAL THEN IS TO TRY TO KEEP HIM TALKING TO LEARN AS MUCH AS  
7 I POSSIBLY CAN ABOUT THIS PERSONALITY TYPE AND WHAT KIND OF,  
8 YOU KNOW, WHAT KIND OF PSYCHOPATH HE REALLY IS.

9           SO, I WANTED TO STAY IN TOUCH WITH HIM AS LONG AS I  
10 COULD AND I KNEW THAT HE WOULD BREAK OFF CONTACT THE MINUTE HE  
11 FOUND OUT THAT THE BOOK WASN'T GOING TO BE WHAT HE HAD HOPED  
12 FOR.

13 Q.    SO, IN REGARD TO THAT CORRESPONDENCE -- LET ME DIRECT YOU  
14 AGAIN TO THE SCREEN AND THE CORRESPONDENCE THAT YOU HAD OR  
15 DESCRIBING WHAT YOU HAD WITH HIM.

16           I BELIEVE YOU TESTIFIED IN THAT TRIAL THAT DR.  
17 MACDONALD BEGAN TO WRITE TO YOU WITHIN HOURS OF YOUR (SIC)  
18 CONVICTION?

19 A.    YEAH, I THINK I GOT A LETTER THAT HE WROTE FROM BUTNER,  
20 WHICH WAS WHERE HE WAS TAKEN RIGHT FROM THE COURTROOM THAT  
21 NIGHT BEGGING ME FOR MY SUPPORT AND, YOU KNOW, SAYING HOW  
22 TERRIBLE HE FELT. AND, YOU KNOW, AT THAT POINT I STILL -- THE  
23 GUY WAS WONDERFULLY CHARMING. YOU KNOW, HE DID A GREAT JOB.  
24 PSYCHOPATHS ARE VERY CHARMING PEOPLE. I FELT GENUINE  
25 AFFECTION FOR HIM AT THAT TIME. I WAS INTELLECTUALLY

September 21, 2012

McGinniss/Cross

Page 1032

1 CONVINCED BY THE PROSECUTION'S CASE THAT HE WAS GUILTY AS  
2 CHARGED, BUT, GOD, IT WAS A TOUGH FIGHT BETWEEN MY HEAD AND MY  
3 HEART FOR A LONG TIME.

4 Q. IT'S HARD WHEN YOU FEEL AFFECTION FOR A PSYCHOPATH, I CAN  
5 ONLY IMAGINE.

6 A. IT IS, BUT THAT'S BECAUSE -- THAT'S BEFORE I FOUND OUT HE  
7 WAS A PSYCHOPATH. YOU KNOW, I STILL THOUGHT HE WAS A  
8 GENUINELY TROUBLED GUY.

9 Q. YOU ALSO SAID HE WAS YOUR SUBJECT?

10 A. ABSOLUTELY.

11 Q. HE WAS MY -- STILL MY SUBJECT -- DID YOU SAY THIS, HE WAS  
12 STILL MY SUBJECT AND I WAS STILL THE AUTHOR AND I FELT I HAD A  
13 PROFESSIONAL DUTY TO MAINTAIN AS CLOSE A RELATIONSHIP WITH HIM  
14 AS I COULD? DID YOU SAY THAT?

15 A. ABSOLUTELY. YEP.

16 Q. ALL RIGHT. NOW, I WANT TO TAKE YOU BACK TO THE  
17 HANDWRITTEN LETTER THAT YOU MENTIONED IN THIS TRIAL TRANSCRIPT  
18 AS HAVING WRITTEN IT ON SEPTEMBER 11TH OF 1979. AND I BELIEVE  
19 THERE WAS CONVERSATION IN THERE -- WELL, I'LL JUST PUT IT THIS  
20 WAY; YOU WERE ASKED ABOUT BOB KEELER, WHO WAS A REPORTER. YOU  
21 SAID THAT HE WAS A REPORTER FROM THE LONG ISLAND NEWSPAPER AND  
22 YOU'VE MENTIONED HIM IN THIS LETTER.

23 AND YOU WERE ASKED THIS QUESTION, YOU WERE WORRIED  
24 ABOUT SOMEBODY ELSE PUTTING OUT A BOOK ABOUT THIS SUBJECT THAT  
25 MIGHT CUT INTO YOUR POSSIBLE FAME AND PROFIT, WEREN'T YOU?

September 21, 2012

McGinniss/Cross

Page 1033

1 A. OH, SURE. YOU NEVER --

2 Q. WHAT WAS YOUR ANSWER?

3 A. YOU NEVER WANT ANOTHER BOOK ON THE SAME SUBJECT THAT  
4 YOU'RE WRITING ABOUT TO COME OUT ESPECIALLY AT THE SAME TIME  
5 AS YOURS. YOU KNOW, THAT DOESN'T HELP ANYBODY.

6 Q. AND YOU ALSO TESTIFIED THAT YOU WANTED DR. MACDONALD, AS  
7 YOU CAN SEE HERE IN THE HIGHLIGHTED PORTIONS, TO KEEP IN MIND  
8 THE FACT THAT WE HAD AN EXCLUSIVE ARRANGEMENT. DO YOU  
9 REMEMBER THAT?

10 A. THAT'S RIGHT.

11 Q. YOU ALSO HAD A CONCERN THAT HE NOT GET IN THE WAY OF YOUR  
12 PROJECT. AND IF YOU WOULD, IF YOU COULD READ THE HIGHLIGHTED  
13 PORTION AGAIN FROM THE CALIFORNIA TRANSCRIPT?

14 A. I JUST DIDN'T WANT TO GET HIM ALL AGITATED AND DOING THE  
15 KINDS OF THINGS THAT WOULD PREVENT ME FROM MOVING FORWARD WITH  
16 THE BOOK THAT I FELT HE WAS CAPABLE OF DOING.

17 Q. AND SO YOU WERE ASKED LATER ABOUT A LETTER THAT SAID THAT  
18 YOU HOPED THAT FUTURE BRIEFINGS WITH HIM COULD BE MADE BY  
19 TELEPHONE, TO HIS HOME TELEPHONE NUMBER. AND YOU WERE ASKED  
20 THIS, YOU WERE TRYING TO TELL HIM THAT YOU HOPED THAT HE WOULD  
21 BE OUT OF JAIL SO THAT YOU COULD CALL HIM AT HOME. AND WHAT  
22 WAS YOUR ANSWER THERE, LINE NINE THROUGH 11?

23 A. I WAS SURE NOT TRYING TO TELL HIM WHAT MY TRUE FEELINGS  
24 WERE IN 1982, BECAUSE I DIDN'T WANT HIM TO TAKE STEPS TO TRY  
25 TO PREVENT ME FROM FINISHING MY BOOK.

September 21, 2012

McGinniss/Cross

Page 1034

1 Q. AND THEN YOU WERE ASKED, MR. MCGINNISS, YOU TOLD YOUR  
2 WIFE YOU WERE GLAD HE WAS BACK IN JAIL. TWO WEEKS LATER IN  
3 THIS LETTER YOU'RE TELLING HIM THAT YOU HOPED YOU WOULD BE  
4 ABLE TO CALL HIM AT HOME, WHY? AND WHAT WAS YOUR ANSWER?

5 A. AS I'VE ALREADY TESTIFIED, I BELIEVE, BECAUSE I WAS  
6 ENCOURAGING HIM TO NOT DISCOURAGE ME FROM FINISHING THE BOOK  
7 THAT I HAD PUT SO MUCH OF MY LIFE INTO AT THAT POINT. MY  
8 COMMITMENT WAS TO THE BOOK AND TO THE TRUTH.

9 Q. AND IT WAS OKAY TO TELL HIM SOMETHING THAT YOU REALLY  
10 DIDN'T BELIEVE IN IN THE SERVICE OF THIS TRUTH?

11 A. I WAS JUST SAYING THAT FALLS INTO MR. WAMBAUGH'S CATEGORY  
12 OF UNTRUTH. I COULD EXPLAIN THAT BECAUSE IT MIGHT NOT BE  
13 CLEAR OUT OF CONTEXT.

14 Q. THAT'S ALL RIGHT. I DIRECT YOUR ATTENTION NEXT TO THE  
15 SCREEN WHERE YOU MENTION THAT THERE WAS SOME CONVERSATION,  
16 EITHER IN PERSON OR BY CORRESPONDENCE, I'M NOT SURE WHICH,  
17 WHERE APPARENTLY THERE WAS A CONCERN THAT IF DR. MACDONALD  
18 RECEIVED A NEW TRIAL, WHAT EVIDENCE OR WHAT ROLE WOULD YOU  
19 PLAY IN THAT. AND IN THIS LETTER YOU SPOKE TO THAT. AND IF  
20 YOU COULD, PLEASE READ THE HIGHLIGHTED PORTIONS FOR US?

21 A. I'M SORRY, COULD YOU JUST CLARIFY WHEN THIS LETTER WAS  
22 WRITTEN OR WHEN I WROTE IT OR SENT IT?

23 Q. YES, I CAN.

24 MR. WILLIAMS: IF I CAN HAVE JUST A MOMENT.

25 (PAUSE.)

September 21, 2012



McGinniss/Cross

Page 1035

1 MR. BRUCE: YOUR HONOR, MAY I SAY, NONE OF THESE  
2 DOCUMENTS THAT ARE BEING USED ARE IN THE PRETRIAL ORDER AND  
3 I'M NOT OBJECTING ON THAT BASIS, BUT IT JUST SEEMS LIKE TO ME  
4 IT'S GOING TO BE HARD TO REVIEW THE RECORD WHEN YOU DON'T HAVE  
5 EXHIBIT NUMBERS.

6 MR. WILLIAMS: YOUR HONOR, I'VE NOT ASKED THE COURT  
7 TO ADMIT THIS INTO THE RECORD. I'M USING IT FOR PURPOSES OF  
8 REFRESHING HIS RECOLLECTION. I CERTAINLY DON'T EXPECT HIM TO  
9 REMEMBER EVERYTHING FROM BACK IN THE DAY AND I'M TRYING TO  
10 HELP US MOVE A LITTLE FASTER.

11 I'D BE GLAD TO WALK BACK AND FORTH BETWEEN HERE AND  
12 THE STAND TO SHOW HIM INDIVIDUAL PAGES, BUT I SUSPECT THAT  
13 THIS MIGHT HELP US GO FORWARD A LITTLE FASTER AND I CERTAINLY  
14 HAVE NO OBJECTION TO THE GOVERNMENT SEEING THESE SOURCE  
15 DOCUMENTS.

16 THE COURT: MR. BRUCE.

17 MR. BRUCE: I DON'T OBJECT TO USING THE SCREEN.

18 THE COURT: I'M SORRY?

19 MR. BRUCE: I DON'T OBJECT TO HIM USING THE SCREEN  
20 OR THE DOCUMENTS. I JUST THINK THERE NEEDS TO BE SOME METHOD  
21 OF IDENTIFICATION OF WHAT DOCUMENTS THE WITNESS IS BEING ASKED  
22 ABOUT.

23 THE COURT: WELL, I THINK HE'S PROBABLY CORRECT  
24 ABOUT THAT. I THINK FOR GOING FORWARD IN THE FUTURE IF YOU  
25 WANT TO FIND OUT WHAT HE'S REFERRING THEN IT SHOULD BE

September 21, 2012

1 NUMBERED.

2 MR. WILLIAMS: YES, SIR. YES, SIR.

3 BY MR. WILLIAMS:

4 Q. ALL RIGHT. TAKING YOU BACK TO YOUR QUESTION, I BELIEVE  
5 YOU SAID YOU WOULD LIKE TO SEE SOME CONTEXT FOR THAT.

6 A. NO, I JUST WONDERED WHAT THE DATE WAS.

7 Q. SURE. WE HAVE HERE A REFERENCE IN THE TRANSCRIPT FROM  
8 THE CALIFORNIA CASE, IT SAYS EXHIBIT 234 BEFORE THE WITNESS,  
9 AND IT SAYS DO YOU SEE PAGE ONE IS DATED APPROXIMATELY TWO  
10 WEEKS AFTER THAT TELEPHONE CONVERSATION. AND IT SAYS, DEAR,  
11 JEFF, I HAD NOT THOUGHT THAT I WOULD BE WRITING TO YOU AGAIN  
12 AT THIS ADDRESS AND THEN YOU SAY THAT YOU BELIEVED YOU WERE  
13 WRITING TO HIM AT TERMINAL ISLAND. THAT'S THE CONTEXT THAT I  
14 HAVE FOR THIS IN THE TRANSCRIPT.

15 A. SO, THIS WOULD HAVE BEEN AFTER HE WAS RE-ARRESTED?

16 Q. COULD HAVE BEEN, YES, WHEN HE WAS CONSIDERING THE  
17 POSSIBILITY OF WHAT WOULD HAPPEN IF THERE WAS A NEW TRIAL.

18 AND IF YOU COULD, PLEASE, READ FOR US BEGINNING FROM  
19 LINE SIX DOWN THROUGH LINE 18.

20 MR. WILLIAMS: YOUR HONOR, FOR THE RECORD WE WILL  
21 IDENTIFY THIS AS -- THE PORTION HE'S GOING TO READ AS EXHIBIT  
22 5112, DEFENSE 5112.

23 THE WITNESS: IF I AM SUBPOENAED BY THE PROSECUTION  
24 IN THE EVENT OF A NEW TRIAL, I WOULD RESIST ON FIRST AMENDMENT  
25 GROUNDS. I DON'T KNOW FOR WHAT THEY WOULD WANT ME, BUT I

September 21, 2012

McGinniss/Cross

Page 1037

1 WOULD CERTAINLY REFUSE TO ALLOW THEM ANY ACCESS WHATSOEVER TO  
2 ANY TAPES, LETTERS, FILES, SO FORTH, MADE AVAILABLE TO ME FOR  
3 PURPOSES OF THE BOOK, AND I COULD MAKE A HELL OF A FREEDOM OF  
4 SPEECH, AUTHOR-CLIENT RELATIONSHIP, CASE OUT OF IT.

5           THIS HAS HAPPENED BEFORE. WRITERS HAVE REFUSED.  
6 THEY'VE BEEN HELD IN CONTEMPT OF COURT. HAVE ACTUALLY GONE TO  
7 JAIL.

8           AS AN OLD PARATROOPER FRIEND OF MINE, NOW,  
9 COINCIDENTALLY, A MOVIE PRODUCER, OFTEN SAYS IF YOU NEVER HAVE  
10 JUMPED OUT OF AN AIRPLANE, DON'T SAY YOU WOULD.

11                           (DEFENSE EXHIBIT NUMBER 5112  
12                           WAS IDENTIFIED FOR THE RECORD.)

13 BY MR. WILLIAMS:

14 Q.    ALL RIGHT. NOW, SIR, I'D LIKE TO ASK YOU SOME QUESTIONS  
15 ABOUT YOUR TESTIMONY ON DIRECT AND IN PARTICULAR I WANT TO  
16 DIRECT YOUR ATTENTION TO YOUR TESTIMONY ABOUT YOUR INTERACTION  
17 WITH THE DEFENSE ON THURSDAY, AUGUST 16TH, 1979.

18           YOU TESTIFIED, IF I RECALL CORRECTLY, THAT YOU WERE  
19 PRESENT IN THE ROOM WHEN ATTORNEY BERNIE SEGAL INTERVIEWED  
20 HELENA STOECKLEY?

21 A.    THAT'S CORRECT.

22 Q.    AND AT THE SAME TIME YOU WERE PRESENT WADE SMITH WAS ALSO  
23 IN THE ROOM?

24 A.    YES, THERE WERE FOUR OF US.

25 Q.    AND THERE WAS NO ONE ELSE IN THE ROOM?

September 21, 2012

McGinniss/Cross

Page 1038

1 A. NO ONE ELSE.

2 Q. AND YOU WERE SHOWN A TRANSCRIPT FROM THAT DAY WHEN, AT  
3 ROUGHLY 1:00 P.M. OR SHORTLY THEREAFTER, THAT COURT RESUMES  
4 AND THE REPORT WAS MADE THAT SOME ADDITIONAL TIME WAS NEEDED  
5 AND SO COURT WAS RECESSED FOR THE DAY AND MR. SEGAL SAID I  
6 NEED HER TILL ROUGHLY 2:00. DO YOU REMEMBER THAT TESTIMONY?

7 A. YES, I THINK -- YES, GENERALLY.

8 Q. NOW, IT'S BEEN A LONG TIME, BUT LET ME ASK YOU THIS,  
9 WHEN YOU LEFT THAT COURTROOM THAT DAY, WHERE DID YOU GO?

10 A. I WENT BACK TO -- I BELIEVE I WENT BACK TO THE WITNESS  
11 ROOM. STOECKLEY -- NO, I STAYED IN THE COURTROOM, OR I WOULD  
12 HAVE, I'M JUST PROJECTING WHAT MY PROCEDURE WOULD HAVE BEEN,  
13 UNTIL THE COURT WAS IN RECESS. AND AT THAT TIME, I WOULD JUST  
14 HAVE GONE WITH, AS I DID AT THE END OF COURT JUST ABOUT EVERY  
15 DAY, GO WITH BERNIE SEGAL AND WITH MACDONALD AND, YOU KNOW,  
16 EVENTUALLY GO BACK TO THE FRATERNITY HOUSE. IF STOECKLEY WAS  
17 STILL IN THAT ROOM, WE COULD HAVE COME BACK AND HAD SOME  
18 DISPOSITION.

19 HER WHEREABOUTS FOR THE WEEKEND WERE UNDER SOME  
20 DISCUSSION BECAUSE SHE WASN'T GOING TO BE HELD IN -- SHE  
21 WASN'T GOING TO BE LOCKED UP, BUT THEY DIDN'T WANT HER TO  
22 LEAVE. SO, SOMEBODY GOT HER A MOTEL ROOM AND IT WAS ALL THOSE  
23 KIND OF ARRANGEMENTS GOING ON.

24 Q. RIGHT. AND I UNDERSTAND IT'S BEEN A LONG TIME. I'M NOT  
25 TRYING TO PUT YOU ON THE SPOT OTHER THAN YOU'VE TALKED ABOUT

September 21, 2012

McGinniss/Cross

Page 1039

1 IT EARLIER TODAY SO I NEED TO FOLLOW UP WITH YOU ABOUT IT.

2 A. SURE.

3 Q. IS IT FAIR TO SAY THAT YOU DON'T SPECIFICALLY RECALL  
4 EVERY MINUTE OF WHERE YOU WERE FROM WHEN COURT ENDED THROUGH  
5 THE REST OF THE DAY AUGUST 16TH, 1979?

6 A. I DON'T THINK I SPECIFICALLY RECALL EVERY MINUTE OF EVERY  
7 DAY AFTER COURT FOR ANY DAY DURING THE SIX WEEK TRIAL, YOU  
8 KNOW. I KNOW WHAT THE NORMAL PRACTICE WAS AND DEVIATIONS FROM  
9 THAT WOULD STICK OUT IN MY MIND, BUT --

10 Q. AND BECAUSE OF HIS EGO, YOU FEEL LIKE BERNIE SEGAL WOULD  
11 DEFINITELY HAVE HAD YOU THERE IF HE HAD TALKED TO HELENA  
12 STOECKLEY?

13 A. I AM CONVINCED OF THAT. HE MADE A BIG POINT OF WANTING  
14 ME THERE. AND HE AND WADE HAD SOME DISCUSSIONS ABOUT THAT  
15 WHICH WADE -- I WAS ACTUALLY PRIVY TO -- WADE WAS OBJECTING.  
16 HE SAID, BERNIE, THAT'S NOT HOW -- YOU KNOW, WE DON'T DO IT  
17 THAT WAY DOWN HERE. I DON'T THINK THIS IS A GOOD IDEA. YOU  
18 KNOW, WE SHOULDN'T HAVE HIM PRESENT WHEN YOU'RE TALKING TO A  
19 WITNESS. AND BERNIE SAID, NO, NO, I WANT HIM THERE. SO,  
20 THAT'S HOW THAT WENT.

21 Q. BUT YOU COULD AGREE WITH ME, I THINK, THAT IT'S AT LEAST  
22 POSSIBLE THAT BERNIE COULD HAVE SPOKEN TO MS. STOECKLEY AGAIN  
23 THAT DAY WITHOUT YOU KNOWING ABOUT IT?

24 A. I WOULD HAVE KNOWN ABOUT IT AND I CERTAINLY WOULD HAVE  
25 KNOWN ABOUT IT IF SHE HAD SAID ANYTHING HELPFUL TO THE DEFENSE

September 21, 2012

McGinniss/Cross

Page 1040

1 BECAUSE BERNIE WOULD HAVE BEEN ON TOP OF THE WORLD. AND,  
2 BELIEVE ME, HE WAS NOT.

3 Q. BUT YOU DON'T REMEMBER WHERE YOU WERE EVERY MINUTE FOR  
4 THE REST OF THAT DAY?

5 A. THAT'S CORRECT.

6 Q. AND SO IT IS POSSIBLE THAT BERNIE COULD HAVE BEEN  
7 SOMEWHERE THAT YOU DON'T REMEMBER DOING SOMETHING THAT YOU  
8 DIDN'T KNOW ABOUT?

9 A. NO, WHEN BERNIE WENT TO THE BATHROOM, I DIDN'T FOLLOW  
10 HIM. HE COULD HAVE BEEN -- YOU KNOW, IT IS POSSIBLE, YES,  
11 SIR.

12 Q. ALL RIGHT. LET'S MOVE NEXT AND TALK ABOUT YOUR ESKATROL  
13 THEORY. AND I WANT TO START BY TALKING ABOUT THE ORIGIN OF  
14 THAT AND WHERE ALL THAT CAME FROM.

15 AND IF YOU LOOK AT THE SCREEN -- MY UNDERSTANDING  
16 WAS THAT YOU FOUND THESE NOTES AND THAT YOU TALKED TO JEFFREY  
17 MACDONALD ABOUT THESE NOTES AND THAT HE TOLD YOU THAT HE HAD  
18 BEEN REQUESTED TO WRITE A DETAILED ACCOUNT. AND IN  
19 PARTICULAR, THE TESTIMONY FROM THE CASE IN CALIFORNIA  
20 INDICATED THAT THE POINT WAS THAT MACDONALD SAID HE FOUND IT  
21 VERY DIFFICULT TO TALK ABOUT THE EVENTS OF THAT NIGHT AND IT  
22 SORT OF MIGHT BE EASIER FOR HIM TO JUST WRITE OUT AN ACCOUNT.  
23 DO YOU REMEMBER THAT?

24 A. YES, HE HAD -- YEAH. YES. AT SOME POINT HE SAID THAT  
25 THE REASON HE WROTE THIS OUT RATHER THAN JUST TALKING TO HIS

September 21, 2012

McGinniss/Cross

Page 1041

1 LAWYERS ABOUT IT WAS HE FOUND IT HARD TO TALK ABOUT IT AND IT  
2 MIGHT BE EASIER IF HE JUST PUT IT IN WRITING.

3 Q. SURE.

4 MR. WILLIAMS: IF I COULD HAVE JUST A MOMENT, YOUR  
5 HONOR, TO --

6 THE COURT: YES.

7 (PAUSE.)

8 BY MR. WILLIAMS:

9 Q. AND SO YOU MENTIONED THE FACT THAT YOU WERE THERE IN  
10 CALIFORNIA. AND I THINK IT'S AGAIN MY UNDERSTANDING, CORRECT  
11 ME IF I'M WRONG, THAT DR. MACDONALD STILL HAD A CONDOMINIUM IN  
12 CALIFORNIA AT THE TIME?

13 A. YES, HE DID.

14 Q. AND YOU WERE THERE IN CALIFORNIA BECAUSE YOU WERE GOING  
15 TO TAKE A LOOK AT HIS NOTES, BUT I BELIEVE THERE WAS TESTIMONY  
16 ALSO THAT YOU WERE THERE BECAUSE YOU HAD A PUBLICITY TOUR FOR  
17 AN UPCOMING BOOK?

18 A. NO, THAT WAS NOT THE SAME TIME. MY BOOK ON ALASKA WASN'T  
19 PUBLISHED UNTIL THE FALL OF 1980, AND THIS WAS THE FALL OF  
20 '79. SO, I WAS THERE ONLY TO SEE MACDONALD AT TERMINAL ISLAND  
21 AND TO GATHER UP ALL THE MATERIALS THAT HE HADN'T BROUGHT TO  
22 RALEIGH FOR THE TRIAL.

23 Q. SO, THERE WAS A PUBLICITY TOUR, BUT IT WASN'T AT THAT  
24 TIME?

25 A. IT WAS 1980. IT WAS A YEAR LATER.

September 21, 2012

McGinniss/Cross

Page 1042

1 Q. AND YOU WERE THERE JUST IN THE CONDO OR JUST FOR THIS  
2 PURPOSE, I UNDERSTAND. LET ME DIRECT YOUR ATTENTION TO THE  
3 SCREEN AND YOU MENTIONED THAT YOU LOOKED AT THE DOCUMENTS AND  
4 I THINK YOU USED THE SAME LANGUAGE TODAY, YOU WENT THROUGH  
5 BOXES AND BOXES OF DOCUMENTS, THERE WAS A TON OF BOXES.

6 A. YES, I SEE WHERE I SAID THAT. YEP.

7 Q. AND YOU ALSO SAID THAT YOU WENT THROUGH EVERYTHING THAT  
8 WAS IN THE AREA OF THE CONDO WHERE THE MATERIAL RELATED TO THE  
9 CASE WAS KEPT. DO YOU SEE THAT?

10 A. YES, I DO.

11 Q. AND YOU WERE ASKED, DR. MACDONALD TOLD YOU YOU COULD DO  
12 THAT, RIGHT? AND WHAT WAS YOUR ANSWER?

13 A. HE SURE DID.

14 Q. YOU WERE ALSO ASKED, AND HE TOLD YOU YOU COULD TAKE SOME  
15 DOCUMENTS, IS THAT RIGHT? AND WHAT WAS YOUR ANSWER?

16 A. YEAH, HE TOLD ME I COULD TAKE BACK ANYTHING I WANTED.

17 Q. AND IT WAS DURING THIS TIME THAT YOU FOUND THESE NOTES  
18 CONCERNING THE ESKATROL, IS THAT A RIGHT UNDERSTANDING?

19 A. YES, IT WAS THE FALL -- NOVEMBER OF '79.

20 Q. NOW, LOOKING AT THIS PAGE HERE FROM YOUR BOOK IN *FATAL*  
21 *VISION*, I'VE HIGHLIGHTED THE PART THAT YOU'VE ALREADY READ AND  
22 THESE QUOTING THE NOTES I BELIEVE CORRECTLY THIS TIME; I HAD  
23 LOST 12 TO 15 POUNDS IN THE PRIOR THREE TO FOUR WEEKS IN THE  
24 PROCESS USING THREE TO FIVE CAPSULES OF ESKATROL SPANSULE. DO  
25 YOU SEE THAT?

September 21, 2012



McGinniss/Cross

Page 1043

1 A. YES, I DO.

2 Q. AND I BELIEVE WE'VE ALREADY HAD SOME DISCUSSION, THE  
3 NOTES DID NOT SAY IF THAT WAS THREE TO FIVE CAPSULES PER DAY  
4 EVERY DAY FOR THREE TO FOUR WEEKS OR WHETHER THAT WAS A TOTAL  
5 OF THREE TO FIVE CAPSULES OVER THE ENTIRE THREE TO FOUR WEEKS.  
6 THE NOTES ARE JUST SILENT ON THAT PARTICULAR POINT.

7 A. THEY ARE, BUT THE LOGICAL INFERENCE WOULD BE IT WASN'T  
8 JUST ONE PILL A WEEK.

9 Q. AND YOU WERE ASKED ABOUT THIS IN THE TRIAL IN CALIFORNIA  
10 AND YOU WERE ASKED IN PARTICULAR IF THERE WAS ANY EVIDENCE OF  
11 A DAILY USE. AND IF YOU COULD PLEASE READ YOUR ANSWER IN THE  
12 HIGHLIGHTED PORTIONS?

13 A. THERE WAS NO EVIDENCE PRESENTED IN COURT AND FOUND TO BE  
14 TRUE BY A JURY AND UPHELD BY APPELLATE COURTS THAT SAID HE  
15 TOOK THREE TO FIVE PER DAY.

16 Q. YOU ALSO WERE ASKED ABOUT THAT AGAIN. SOMEONE ASKED YOU  
17 -- THE ATTORNEY I BELIEVE ASKED YOU, DR. MACDONALD CONSUMING  
18 THE DRUG IS THAT JUST MORE THAN SURMISAL? AND WHAT WAS YOUR  
19 ANSWER THERE?

20 A. BASED ON THE NOTES, WHICH WERE MADE AVAILABLE TO ME BY  
21 HIM, I DON'T THINK THERE'S MUCH QUESTION ABOUT WHETHER OR NOT  
22 HE WAS CONSUMING THE DRUG. THE QUESTION MAY BE HOW MUCH AND  
23 WHEN.

24 Q. AND IN YOUR BOOK YOU ADDRESS THAT WITH THE QUOTED PART  
25 THERE WHICH SAYS HOW MUCH HE MIGHT HAVE BEEN CONSUMING WILL

September 21, 2012

McGinniss/Cross

Page 1044

1 FOREVER BE, TO EMPLOY A PHRASE USED BY FREDDY KASSAB BEFORE  
2 THE GRAND JURY, QUOTE, A DARK AREA. IS THAT RIGHT?

3 A. I SEE THAT. YES, SIR.

4 Q. NOW, IN ADDITION TO WRITING ABOUT THE DRUG, YOU ALSO  
5 WROTE ABOUT THE DRUG TESTING THAT WAS DONE ON DR. MACDONALD  
6 SHORTLY AFTER THE MURDERS OCCURRED. DO YOU REMEMBER THAT?

7 A. YES, I DO.

8 Q. AND IN YELLOW THERE YOU WROTE THAT THE CHEMIST HAD NEVER  
9 BEEN INSTRUCTED TO TEST FOR THE PRESENCE OF AMPHETAMINES AND,  
10 IN FACT, THE EQUIPMENT AVAILABLE AT THE CID LABORATORY AT THE  
11 TIME WOULD NOT HAVE ENABLED HIM TO DO SO. DO YOU SEE THAT?

12 A. YES, I DO.

13 Q. AND SO YOU'RE TELLING THE READER THAT THE BLOOD AND URINE  
14 CAME IN FOR TESTING, BUT THE EQUIPMENT AT THE CID LAB WAS  
15 SIMPLY NOT AVAILABLE TO TEST FOR AMPHETAMINES?

16 A. YES, THAT'S RIGHT, AND THAT WAS CONFIRMED IN 1987 BY THE  
17 ARMY CHEMIST, MR. BARBATO, WHO TESTIFIED AT THE CIVIL TRIAL.

18 Q. SURE. WELL, LET'S TAKE A LOOK AT THAT. FIRST YOU WERE  
19 ASKED ABOUT THE SOURCE FOR THAT INFORMATION THAT YOU WROTE  
20 THERE AND WHAT WAS YOUR ANSWER AS SHOWN IN YELLOW?

21 A. WELL, AS I SAY EARLIER IN THE PARAGRAPH, I MADE A FREEDOM  
22 OF INFORMATION REQUEST FOR THE LABORATORY NOTES AND THAT, IN  
23 CONJUNCTION WITH A CONVERSATION I HAD WITH MR. MURTAGH,  
24 PERSUADED ME THAT THAT PARAGRAPH WAS SUBSTANTIALLY ACCURATE.

25 Q. AND THAT WOULD BE MR. MURTAGH WHO ALSO SITS AT COUNSEL

September 21, 2012

McGinniss/Cross

Page 1045

1 TODAY, IS THAT RIGHT, FOR THE GOVERNMENT, THE PROSECUTOR MR.  
2 MURTAGH?

3 A. THAT'S CORRECT.

4 Q. YOU SPOKE ON THAT A LITTLE FURTHER IN THE TRIAL, AND IF  
5 YOU COULD READ THE PORTIONS THAT ARE HIGHLIGHTED AGAIN THERE  
6 IN YELLOW.

7 A. AND THERE WERE, AS I RECALL, A COUPLE OF PAGES OF  
8 TYPEWRITTEN NOTES AND MAYBE EVEN SOME GRAPH TYPE PAPER SHOWING  
9 TESTING THAT WAS OR WASN'T DONE.

10 AND DID THESE NOTES SAY THAT TESTING WAS NOT DONE  
11 FOR AMPHETAMINES?

12 MY RECOLLECTION IS THAT IT WAS MR. MURTAGH WHOSE  
13 INTERPRETATION OF THOSE NOTES I RELIED UPON.

14 Q. SO, YOU RELIED UPON MR. MURTAGH'S INTERPRETATION FOR THAT  
15 SECTION?

16 A. THAT'S WHAT IT SAYS HERE, WHICH WAS CLOSER TO THE TIME  
17 THAN TODAY IS.

18 Q. AND YOU WERE UNDER OATH?

19 A. OH, YES.

20 Q. AND INTENDED TO TELL THE TRUTH THEN?

21 A. ABSOLUTELY.

22 Q. LET'S TAKE A LOOK THEN AT MR. BARBATO, I THINK YOU SAID,  
23 WHO TESTIFIED. HE WAS THE MAN WHO PERFORMED THE ACTUAL  
24 TESTING ON THE BLOOD AND THE URINE.

25 WE'RE LOOKING HERE AT PAGE 92 AND I DIRECT YOUR

September 21, 2012

McGinniss/Cross

Page 1046

1 ATTENTION TO -- WELL, I'LL JUST ASK IT. THERE WAS A QUESTION  
2 THERE, THE QUESTION WAS WHETHER IN HIS REPORT DID HE SAY THAT  
3 THERE WAS NO EVIDENCE OF NARCOTICS OR DANGEROUS DRUGS?

4 AND THEN HE ANSWERED, I THINK THE REPORT BASICALLY  
5 SAYS THE EXAM DID NOT REVEAL THE PRESENCE, WHICH MEANS IT DID  
6 NOT REVEAL THE PRESENCE BASED ON THE TEST THAT I CONDUCTED.  
7 AND FURTHER DOWN HE SAYS I DID NOT DETECT THE DRUGS.

8 NOW, WE'RE GOING TO GO -- WALK THROUGH THAT AND I'LL  
9 BE SURE THAT WE COVER YOUR POINT AS WELL, BUT, FIRST, JUST SO  
10 WE UNDERSTAND OUR TERMINOLOGY, THERE WAS TESTIMONY THERE ABOUT  
11 WHAT WERE CONSIDERED DANGEROUS DRUGS BY THE ARMY.

12 AND IF YOU COULD READ THE ANSWER THAT MR. BARBATO  
13 GAVE, LINES 15 TO 17.

14 A. OKAY. MR. BARBATO SAID I BELIEVE THAT THAT WAS A  
15 GENERAL TERM THAT WAS USED TO APPLY TO DRUGS THAT WERE IN SOME  
16 WAY CONTROLLED BY FEDERAL LAWS OR MILITARY LAWS, CODE OF  
17 CONDUCT RULES.

18 Q. AND THEN IF YOU COULD READ THE YELLOW PORTION THERE AT  
19 LINES 21 THROUGH 25.

20 A. I THINK IT WAS GENERALLY A CATCH ALL PHRASE TO TRY TO  
21 INDICATE CONTROLLED SUBSTANCES THAT WERE CONTROLLED BY FEDERAL  
22 STATUTE.

23 AND WERE AMPHETAMINES, AT THAT TIME, CONTROLLED BY  
24 FEDERAL STATUTE?

25 Q. AND HIS ANSWER?

September 21, 2012

McGinniss/Cross

Page 1047

1 A. I BELIEVE THEY WERE.

2 SO, THEY WERE DANGEROUS DRUGS?

3 YES.

4 SO, THE STATEMENT ON PAGE 612 OF THAT SAME BOOK  
5 WHICH SAYS THAT AMPHETAMINES WERE NOT CONSIDERED A DANGEROUS  
6 DRUG BY MILITARY AUTHORITIES IS NOT CORRECT?

7 I GUESS YOU'RE CORRECT ON THAT.

8 Q. ALL RIGHT. NOW, AS YOU'VE NOTED, THERE WAS CONVERSATION  
9 ABOUT WHETHER THE TESTING THAT HE DID WOULD BE ABLE TO DETECT  
10 ANYTHING. AND WE'RE LOOKING HERE AT -- LOOKING HERE AT  
11 ANOTHER SECTION OF THE TRIAL TESTIMONY. I BELIEVE YOUR  
12 ATTORNEY, MR. KORNSTEIN, ASKED MR. BARBATO FOR AMPHETAMINES,  
13 CAN YOU TELL US THE MINIMUM AMOUNT THAT YOUR EQUIPMENT WOULD  
14 HAVE IDENTIFIED AT THAT TIME. AND DROPPING DOWN, YOU CAN SEE  
15 YOUR ATTORNEY ALSO SAYS DOES IT MEAN THAT YOUR EQUIPMENT COULD  
16 NOT AT THAT TIME DETECT LESS THAN THAT LETHAL DOSE OF  
17 AMPHETAMINE?

18 AND HE ANSWERED, WELL, IT MEANS THAT -- IT MEANS THE  
19 EQUIPMENT WOULD NOT BE THE EQUIPMENT OF CHOICE TO DO THAT TYPE  
20 OF ANALYSIS. DO YOU SEE THAT THERE?

21 A. YES, I DO.

22 Q. SO, MR. BARBATO IS SAYING THE EQUIPMENT THAT HE USED IN  
23 THE LAB WOULD NOT HAVE BEEN ABLE TO DETECT AMPHETAMINES AT  
24 LESS THAN A LETHAL DOSE?

25 A. THAT'S MY RECOLLECTION OF WHAT HE'S TESTIFIED TO.

September 21, 2012

McGinniss/Cross

Page 1048

1 Q. NOW, HE WENT ON TO TALK ABOUT OTHER EQUIPMENT IN THE LAB.  
2 AND IF YOU COULD READ THE HIGHLIGHTED PORTION AT LINES EIGHT  
3 TO NINE?

4 A. WELL, THERE WAS A GAS CHROMATOGRAPH THAT WAS AVAILABLE IN  
5 THE LABORATORY, WHICH I WAS NOT AT THAT POINT QUALIFIED TO  
6 USE. AND, IN FACT, IN THE YEAR AND A HALF THAT I WAS ASSIGNED  
7 TO THAT LAB I NEVER USED THAT PIECE OF EQUIPMENT.

8 Q. SO, IN HIS LAB WHERE HE DID THE TESTING THERE WAS A  
9 SEPARATE INSTRUMENT CALLED A GAS CHROMATOGRAPH THAT WAS  
10 AVAILABLE, BUT HE JUST WASN'T QUALIFIED TO USE IT?

11 A. THAT'S WHAT HE SAYS.

12 Q. AND THEN DROPPING DOWN TO LINES 15 THROUGH 19, DO YOU SEE  
13 ALSO THAT HE SAID THAT IN RETROSPECT THAT WOULD HAVE BEEN AN  
14 INSTRUMENT THAT WOULD HAVE BEEN ORDERS OF MAGNITUDE MORE  
15 SENSITIVE TO USE THAN THE INSTRUMENT THAT I DID USE, BUT,  
16 UNFORTUNATELY, I WAS UNQUALIFIED TO USE IT SO, THEREFORE, IT  
17 WAS BASICALLY UNAVAILABLE TO ME. DO YOU SEE THAT?

18 A. I DO.

19 Q. IT WAS AVAILABLE IN THE LAB, BUT NOT AVAILABLE TO HIM  
20 BECAUSE OF HIS LACK OF TRAINING?

21 A. THAT'S WHAT HE'S SAYING, YEP.

22 Q. AND IN PARTICULAR HE WAS ASKED THE GAS CHROMATOGRAPH THAT  
23 YOU SAID WOULD BE SIGNIFICANTLY MORE SENSITIVE WOULD HAVE BEEN  
24 ABLE TO DETECT LESS THAN LETHAL DOSES OF AMPHETAMINES, TO YOUR  
25 KNOWLEDGE, ISN'T THAT RIGHT? AND WHAT DID HE SAY?

September 21, 2012

McGinniss/Cross

Page 1049

1 A. HE SAID, YES, I BELIEVE THAT IS CORRECT.

2 Q. I'D LIKE TO TAKE YOU BACK TO THE INFORMATION THAT YOU  
3 SAID OR THE INTERPRETATION YOU SAID THAT YOU GOT FROM MR.  
4 MURTAGH, AND I SHOW YOU AGAIN JUST TO REFRESH YOU, THAT YOU  
5 SAID THAT THESE NOTES WERE INTERPRETED BY MR. MURTAGH. AND  
6 YOU SAID MY RECOLLECTION IS THAT IT WAS MR. MURTAGH WHOSE  
7 INTERPRETATION OF THOSE NOTES I RELIED UPON.

8 MR. MURTAGH, THE PROSECUTOR, RIGHT?

9 YES, SIR.

10 DO YOU SEE THAT THERE?

11 A. I DO.

12 Q. WHEN DID YOU START USING THE PROSECUTOR, MR. MURTAGH, TO  
13 INTERPRET THE SOURCE MATERIAL FOR YOUR BOOK?

14 A. I DON'T THINK I STARTED TALKING TO THE PROSECUTION UNTIL  
15 -- I CAN'T EVEN REMEMBER THE FIRST TIME, BUT IT WAS -- IT  
16 WASN'T RIGHT AWAY BECAUSE THEY WOULDN'T TALK TO ME.

17 Q. WELL, WHEN DID YOU STOP USING THE PROSECUTOR, MR.  
18 MURTAGH, TO INTERPRET SOURCE MATERIAL FOR YOUR BOOK?

19 A. I WOULD SAY -- WELL, THE BOOK WAS PUBLISHED IN 1983. I  
20 DON'T KNOW IF THERE WAS A DAY WHEN -- A DAY WOULD COME WHEN I  
21 WOULDN'T ASK ANYBODY FOR ANY INTERPRETATIONS BECAUSE IT WAS  
22 BEYOND THAT POINT.

23 Q. SO, IS YOUR ANSWER YOU DON'T REMEMBER WHEN YOU STOPPED  
24 USING MR. MURTAGH TO INTERPRET THE SOURCE MATERIAL?

25 A. I CAN'T GIVE YOU A DATE.

September 21, 2012

McGinniss/Cross

Page 1050

1 Q. HOW MANY TIMES DID YOU CONSULT WITH MR. MURTAGH ABOUT  
2 WHAT SHOULD GO IN YOUR BOOK?

3 A. I WENT DOWN TO WASHINGTON AND SPENT SOME TIME WITH HIM IN  
4 HIS OFFICE. I THINK JUST ONE DAY. AND WE WOULD TALK ON THE  
5 PHONE FROM TIME TO TIME. I WOULD HAVE QUESTIONS ABOUT THEIR  
6 TACTICS DURING THE TRIAL AND, YOU KNOW, OTHER THINGS WOULD  
7 COME UP. AND IF I NEEDED TO CHECK SOMETHING THAT I KNEW HE  
8 HAD BEEN INVOLVED IN AND HE COULD ANSWER A QUESTION, I WOULD  
9 ASK HIM.

10 Q. DID YOU GIVE A COPY OF THE BOOK TO MR. MURTAGH BEFORE IT  
11 WAS PUBLISHED?

12 A. NO, I DID NOT.

13 Q. HAVE YOU EVER CHANGED OR REVISED ANYTHING IN THE BOOK  
14 BASED ON FURTHER INFORMATION RECEIVED FROM MR. MURTAGH?

15 A. NO, THE BOOK -- THE BASIC TEXT OF THE BOOK IS WHAT WAS  
16 PUBLISHED IN 1983. I HAVE WRITTEN A COUPLE OF EPILOGUES  
17 AFTERWARDS, BUT HAVEN'T GONE BACK AND CHANGED ANYTHING IN THE  
18 BODY OF THE TEXT.

19 Q. AND DIRECTING YOUR ATTENTION AGAIN TO THE SCREEN. AGAIN,  
20 ON YOUR TWITTER ACCOUNT, THIS WAS WEDNESDAY, YOU SAID IT LOOKS  
21 LIKE BACK TO THE FUTURE, BUT GOOD TO RECONNECT WITH OLD PALS.  
22 IS MR. MURTAGH ONE OF YOUR OLD PALS?

23 A. I'D SAY I CONSIDER HIM A FRIEND NOW, YEAH. AND WITH MR.  
24 SMITH TOO. IT WAS GREAT TO SEE WADE AGAIN. AND JIM  
25 BLACKBURN, IT WAS GREAT TO SEE HIM TOO.

September 21, 2012



McGinniss/Cross

Page 1051

1 Q. LET'S GO BACK TO YOUR BOOK, SIR, AND I'VE GOT IT ON THE  
2 SCREEN FOR YOU, *FATAL VISION* PAGE 613. AND I'LL SUMMARIZE  
3 THIS BECAUSE I'D LIKE TO MOVE ALONG.

4 MR. WILLIAMS: AND, YOUR HONOR, IF I COULD, I WOULD  
5 JUST COMMUNICATE TO THE COURT I BELIEVE IF I COULD HAVE UNTIL  
6 1:15, I THINK WE COULD FINISH THIS AND ALLOW THE WITNESS TO  
7 TRAVEL HOME IF THAT'S ACCEPTABLE TO THE GOVERNMENT AND THE  
8 COURT.

9 MR. BRUCE: NO OBJECTION.

10 THE COURT: SURELY. THANK YOU.

11 BY MR. WILLIAMS:

12 Q. YOU SAID IN THE BOOK THAT USE OF THREE TO FIVE ESKATROL  
13 SPANSULES PER DAY COULD HAVE HAD A MARKED EFFECT ON A PERSON  
14 AND YOU WENT THROUGH THE *PHYSICIANS' DESK REFERENCE* AND YOU  
15 NOTED THE SYMPTOMS; MARKED INSOMNIA, TENSENESS, IRRITABILITY,  
16 HYPERACTIVITY. I WON'T REPEAT ALL OF THEM, BUT I'M REFERRING  
17 TO THAT SAME LIST THAT YOU READ EARLIER. DO YOU SEE THAT  
18 THERE?

19 A. YES, I DO.

20 Q. YOU WERE ASKED ABOUT THIS AT THE CIVIL TRIAL AND IN  
21 PARTICULAR I BELIEVE THE QUESTION THAT WAS ASKED WAS THIS,  
22 THE QUESTION WAS HOW MANY PEOPLE -- WHO DID YOU TALK TO THAT  
23 SHOWED -- THAT TOLD YOU THAT DR. MACDONALD MANIFESTED SYMPTOMS  
24 OF OVERUSE OF ESKATROL IN THE WEEKS BEFORE FEBRUARY 19 -- OR  
25 FEBRUARY 17TH, 1970? DO YOU SEE THAT QUESTION?

September 21, 2012

McGinniss/Cross

Page 1052

1 A. YES, I DO.

2 Q. HOW MANY PEOPLE DID YOU TALK TO, IT SAYS, TO SEE IF DR.  
3 MACDONALD MANIFESTED THESE SYMPTOMS. AND WHAT WAS YOUR  
4 ANSWER?

5 A. I SAID NO ONE. I NEVER ASKED ANYONE THAT QUESTION.

6 Q. YOU ALSO SAY IN YOUR BOOK AND, AGAIN, I'M HIGHLIGHTING  
7 PORTIONS YOU'VE ALREADY QUOTED, THAT A PERSON CAN HAVE A RAGE  
8 REACTION, ESPECIALLY WHEN THEY HAVE SOME PRE-EXISTING OR OTHER  
9 PSYCHOLOGICAL CONDITION. AND YOU CAN SEE THERE THAT IT  
10 REFERENCES OUTSIDE STRESSES. IT REFERENCES SLEEP DEPRIVATION.  
11 IT ALSO TALKS ABOUT A PERSON SUFFERING FROM A NARCISSISTIC  
12 PERSONALITY DISORDER.

13 AND I BELIEVE IN YOUR BOOK, AT LEAST AS I UNDERSTAND  
14 IT, YOU MENTION THAT YOU FELT LIKE SLEEP DEPRIVATION COULD BE  
15 AN ISSUE AND THE WAY THAT YOU SPECULATED HE INTERACTED WITH  
16 WOMEN, PERHAPS, A NARCISSISTIC PERSONALITY DISORDER COULD BE  
17 AN ISSUE.

18 A. BASED ON THE READING I'VE DONE ABOUT THE NARCISSISTIC  
19 PERSONALITY DISORDER, THERE WERE ELEMENTS IN HIS CHARACTER AND  
20 PERSONALITY THAT WOULD SEEM TO PUT HIM IN THAT CATEGORY.

21 I BELIEVE DR. STONE CAME OUT AS AN EXPERT WITNESS  
22 AND TESTIFIED, A PSYCHIATRIST FROM NEW YORK, TESTIFIED AT THE  
23 CIVIL SUIT IN 1987 ABOUT THIS ASPECT OF IT.

24 Q. HE DID. DR. STONE, WHO NEVER EXAMINED DR. MACDONALD, IS  
25 THAT CORRECT?

September 21, 2012

McGinniss/Cross

Page 1053

1 A. NO, I DON'T THINK HE EVER DID.

2 Q. RIGHT. SO, HE MADE AN OPINION WITHOUT SEEING THE  
3 PATIENT. BUT IF I COULD TAKE YOU BACK TO THIS TRANSCRIPT, I  
4 WANT TO ASK YOU ABOUT THE SLEEP DEPRIVATION BECAUSE IN YOUR  
5 BOOK YOU MENTION THAT DR. MACDONALD, A PHYSICIAN WITH THE  
6 ARMY, ALSO DID SOME MOONLIGHTING. IN OTHER WORDS, WORKED PART  
7 TIME AT OTHER AREA HOSPITALS. AND THERE WAS SOME SPECULATION  
8 ABOUT SLEEP DEPRIVATION FROM THAT.

9 AND SO THE QUESTION WAS ASKED OF YOU IN THE PREVIOUS  
10 TRIAL; ALSO BY JANUARY, OF COURSE, HE WAS MOONLIGHTING AT CAPE  
11 FEAR VALLEY -- AND THEN THE PARTICULAR QUESTION IS PUT ON THE  
12 NEXT PAGE, IT'S THIS; MY QUESTION TO YOU NOW IS DID YOU TALK  
13 TO ANYONE AT, LET US SAY, CAPE FEAR WHO KNEW OF THE  
14 MOONLIGHTING THAT DR. MACDONALD HAD BEEN DOING? AND WHAT WAS  
15 YOUR ANSWER?

16 A. NO, SIR.

17 Q. ANOTHER HOSPITAL. DID YOU EVER TALK TO ANYONE AT HAMLET  
18 HOSPITAL, ANOTHER PLACE THAT YOU SAID THAT HE WAS  
19 MOONLIGHTING? AND WHAT WAS YOUR ANSWER?

20 A. NO, SIR. AND THEN I SAY, IF I COULD?

21 Q. SURE.

22 A. THANK YOU. I SAID I KNEW THAT HE HAD WORKED A 24 HOUR  
23 SHIFT AT HAMLET HOSPITAL IN THE TIME PERIOD IMMEDIATELY  
24 PRECEDING THE MURDERS AND THEN HAD BEEN UP ALL DAY AND WAS  
25 STILL UP AT -- I KNEW THAT HE WAS EXHAUSTED, SO EXHAUSTED THAT

September 21, 2012

McGinniss/Cross

Page 1054

1 HE WAS LYING DOWN FALLING ASLEEP NEXT TO HIS DAUGHTER  
2 KIMBERLEY ON THE RUG AT SEVEN O'CLOCK THAT NIGHT AND THEN AT  
3 TWO O'CLOCK IN THE MORNING HE'S UP WASHING DISHES.

4 Q. AND, OF COURSE, WHETHER HE WAS EXHAUSTED HE WOULD KNOW  
5 THAT. AND SO YOU WERE ASKED THE QUESTION DID YOU EVER ASK DR.  
6 MACDONALD HOW MUCH SLEEP HE HAD THE NIGHT BEFORE THE ASSAULT?  
7 AND WHAT WAS YOUR ANSWER?

8 A. NOT THAT I RECALL. BECAUSE THERE CAME A POINT IN TIME  
9 WHEN I RECOGNIZED THAT HE WAS BEING UNTRUTHFUL IN ALL OF HIS  
10 ANSWERS TO ME. SO, THERE WAS NO POINT IN ASKING HIM A  
11 QUESTION IF I JUST KNEW HE WAS GOING TO LIE.

12 Q. IF YOU KNEW HE WOULD DO THINGS LIKE QUOTE SOURCE MATERIAL  
13 INACCURATELY?

14 A. WHAT I SAID WAS LIE.

15 Q. LET ME ASK YOU NEXT ABOUT THE NARCISSISTIC -- OR THE  
16 NARCISSISM, IF YOU WILL. YOU WERE ASKED THE QUESTION DID YOU  
17 TALK TO ANYONE THAT YOU CAN RECALL THAT YOU WOULD SAY WERE  
18 FRIENDS, RELATIVES, CO-WORKERS OR COLLEAGUES TO ASK WHETHER  
19 THEY HAD OBSERVED ANY BEHAVIOR THAT COULD BE TERMED  
20 PATHOLOGICAL NARCISSISM? AND WHAT WAS YOUR ANSWER?

21 A. NO, I DID NOT.

22 Q. YOU WERE THEN ASKED SOME LARGER QUESTIONS, SIR, ABOUT  
23 WHETHER OR, I'M SORRY, WHEN. DO YOU SEE AT THE BOTTOM OF THE  
24 PAGE? WHEN DID YOU COME TO THE CONCLUSION THAT DR. MACDONALD  
25 MAY HAVE BEEN TAKING THREE TO FIVE ESKATROL SPANSULES A DAY?

September 21, 2012

1 AND WHAT WAS YOUR ANSWER?

2 A. I DON'T KNOW THAT I EVER CAME TO THAT CONCLUSION. I  
3 THINK IT'S MORE SUGGESTED ALONG THE LINES OF A POSSIBILITY  
4 BASED ON AMBIGUITY IN HIS OWN NOTES AND BASED ON THE EVENTS OF  
5 THAT NIGHT.

6 Q. YOU WERE ALSO ASKED ARE YOU SAYING THAT THAT'S NOT A  
7 SURMISAL, THAT PART OF THE MOTIVATION FOR THE CRIMES WAS THE  
8 EFFECT OF THE AMPHETAMINES? AND WHAT WAS YOUR RESPONSE?

9 A. I'M CERTAINLY SAYING THAT I PRESENT IT AS A POSSIBILITY  
10 AND TWO PARAGRAPHS LATER, AS I ASKED, MIGHT IT BE TOO MUCH TO  
11 SURMISE? MY OWN ANSWER TO THE READER IS PERHAPS, WE JUST  
12 DON'T KNOW THAT. WE DO KNOW WHAT HAPPENED.

13 Q. RIGHT. NOW, LET ME TAKE YOU BACK -- AND WE'RE GETTING  
14 TOWARD THE END. LET ME TAKE YOU BACK AGAIN TO YOUR BOOK WHERE  
15 YOU QUOTE THIS PART ACCURATELY ABOUT THE WEIGHT LOSS PROGRAM.  
16 DR. MACDONALD WROTE I HAD LOST 12 TO 15 POUNDS IN THE PRIOR  
17 THREE TO FOUR WEEKS. DO YOU SEE THAT?

18 A. YES, I DO.

19 Q. I WANT TO DIRECT YOUR ATTENTION TO A LETTER THAT YOU  
20 WROTE TO DR. MACDONALD DATED JANUARY 16TH, 1980. IT SAYS,  
21 DEAR, JEFF -- YOU CAN SEE -- GOT THE FIRST TWO TAPES  
22 YESTERDAY. USEFUL AND KEEP THEM COMING. DO YOU SEE THAT?

23 A. YES. YES, I DO.

24 Q. AND THAT'S REFERENCING, I BELIEVE, THE TAPES THAT YOU  
25 DISCUSSED EARLIER WHERE DR. MACDONALD WAS GIVING YOU

September 21, 2012

1 ADDITIONAL INFORMATION?

2 A. YEAH, HE WOULD MAKE THE RECORDINGS AND SMUGGLE THEM --  
3 HAVE SOMEBODY TO SMUGGLE THEM OUT OF THE PRISON.

4 Q. AND AT THAT POINT YOU, YOURSELF, WERE GOING THROUGH A  
5 WEIGHT LOSS PLAN. AND IF YOU WOULD, PLEASE READ THE SECOND  
6 YELLOW PORTION IN HIGHLIGHTS THERE THAT DESCRIBE IT FOR US AS  
7 YOU DESCRIBED IT IN YOUR LETTER.

8 A. I'M FINALLY BACK TO RUNNING AN HOUR A DAY, THREE DAYS A  
9 WEEK FOR A WHILE, BUT, MAN, ON ONLY 1,000 TO 1,200 CALORIES  
10 PER DAY I SURE DO RUN SLOW AND FEEL WEAK, BUT FIVE POUNDS ARE  
11 OFF AFTER ONLY TEN DAYS OF DIET AND TWO DAYS OF RUNNING.

12 SO, BY THE TIME I'M BACK OUT THERE AT THE END OF  
13 FEBRUARY OR BEGINNING OF MARCH, I OUGHT TO BE DOWN RIGHT  
14 SVELTE. PALE AND TREMBLING, BUT SVELTE.

15 Q. WOULD YOU AGREE WITH ME THAT IF A PERSON LOST FIVE POUNDS  
16 IN TEN DAYS AND THEN CONTINUED TO LOSE WEIGHT AT THAT SAME  
17 RATE THAT IT WOULD BE TEN POUNDS IN 20 DAYS AND 15 POUNDS IN  
18 30 DAYS? WOULD YOU AGREE WITH THAT?

19 A. I GUESS THAT'S THE ARITHMETIC, YEAH. BUT ALTHOUGH, YOU  
20 KNOW, THE FIRST FIVE POUNDS COME OFF A LOT EASIER THAN THE  
21 ONES THAT ARE AFTER THAT.

22 Q. WELL, NOW, I'LL ASK YOU AGAIN, IF THE PERSON LOST IT AT  
23 THE SAME RATE, FIVE POUNDS IN TEN DAYS, IF THEY CONTINUED THAT  
24 FOR A TOTAL OF 30 DAYS, IT WOULD BE TEN POUNDS IN 20 DAYS AND  
25 THEN 15 POUNDS IN 30 DAYS, CORRECT?

September 21, 2012

McGinniss/Cross

Page 1057

1 A. THAT'S CORRECT.

2 Q. AND THAT WOULD BE THE SAME LEVEL OF WEIGHT LOSS THAT DR.  
3 MACDONALD DESCRIBED IN HIS NOTES?

4 A. THAT'S RIGHT.

5 Q. BIGGER PICTURE, SIR. TALKING ABOUT YOUR BOOKS, YOU FIRST  
6 PUBLISHED *FATAL VISION*, THE HARD COVER, IN 1983, RIGHT?

7 A. THAT'S CORRECT.

8 Q. IT LATER CAME OUT IN PAPERWORK?

9 A. YES. ACTUALLY, THE FOLLOWING YEAR.

10 Q. IT LATER CAME OUT IN AN AUDIO VERSION?

11 A. THE AUDIO PROBABLY WAS THE SAME TIME AS THE HARD COVER.

12 Q. AN E-BOOK EDITION HAS COME OUT AUGUST 29TH?

13 A. JUST THIS YEAR, THAT'S RIGHT.

14 Q. AND A NEW AND BIGGER PRINT EDITION IS ON THE WAY?

15 A. IT'S ACTUALLY HERE.

16 Q. ONE FINAL QUESTION FOR YOU, SIR. WOULD YOU AGREE THAT  
17 THERE IS NO ONE WHO HAS PROFITED FINANCIALLY MORE OFF OF THIS  
18 STORY THAN YOU?

19 A. I CAN'T THINK OF ANYONE WHO WOULD BECAUSE NO ONE'S DONE  
20 THE WORK I'VE DONE.

21 MR. WILLIAMS: THANK YOU, YOUR HONOR.

22 THE COURT: MR. BRUCE, LET'S STOP FOR THE WEEKEND.

23 MR. BRUCE: THAT'S FINE, YOUR HONOR.

24 THE COURT: WE'RE GOING TO TAKE A RECESS TILL MONDAY  
25 AT 9:00 A.M.

September 21, 2012

1 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 1:03 P.M.,  
2 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 24, 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 21, 2012



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 24, 2012  
 JEFFREY R. MACDONALD, . Wilmington, NC  
 Defendant/Movant .  
 . . . . .

EVIDENTIARY HEARING  
BEFORE THE HONORABLE JAMES C. FOX  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.

T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
<u>JOE MCGINNISS</u>		
BY MR. BRUCE	REDIRECT	1061
BY MR. WILLIAMS	REXCROSS	1086
<u>JERRY LEONARD</u>		
BY MR. WIDENHOUSE	DIRECT	1106
BY MR. BRUCE	CROSS	1124
BY MR. WIDENHOUSE	REDIRECT	1229
BY MR. BRUCE	REXCROSS	1232
<u>EXHIBITS</u>		
<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED/ADMITTED</u>
5112	EXCERPT FROM CIVIL TRIAL	1087 & 1234
5113	AFFIDAVIT OF JERRY LEONARD	1116 & 1234
5114	REPORT OF DR. MACK	1235
<u>GOVERNMENT'S</u>	<u>DESCRIPTION</u>	<u>PAGE - IDENTIFIED/ADMITTED</u>
4019	EXCERPTS FROM <i>FATAL VISION</i>	1063
4019.12	EXCERPTS FROM <i>FATAL VISION</i>	1064
6070	AGREEMENT AND RELEASE	1069
4017.85	EXCERPT FROM CIVIL TRIAL	1072
2201	EXCERPTS FROM <i>FATAL VISION</i>	1079
4002.5	EXCERPTS FROM <i>FATAL VISION</i>	1081
6075	LETTER FROM MR. SILVERMAN	1083
2111	PHOTO OF MR. BRITT'S RESIDENCE	1092
2115	PHOTO OF MR. BRITT'S RESIDENCE	1092
4001	<i>60 MINUTES</i>	1093
7000.1	EXCERPTS FROM ERROL MORRIS'S BOOK	1132 & 1229
6076	EXCERPT - MR. LEONARD'S STATEMENT	1144 & 1226
2373	PHOTO - DOUBLETREE	1162
2377	PHOTO - HOLIDAY INN	1163
7017	LETTER - MR. LEONARD TO JUDGE FOX	1214 & 1228
7015	LETTER - MR. MILES	1215 & 1229
7010	SUPREME COURT DECISION RE: MR. LEONARD	1226
6077	HANDWRITTEN POEM FROM MS. STOECKLEY TO MR. LEONARD	1227 & 1228
6073	JEFFREY MACDONALD'S TRIAL TESTIMONY	1237

T A B L E O F C O N T E N T S C O N T I N U E D

<u>BENCH CONFERENCES</u>	<u>PAGE</u>
	1094
	1142
	1225

September 24, 2012

McGinniss/Redirect

Page 1062

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

9:00 A.M.

(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, EVERYONE. PLEASE BE SEATED. YOU'RE STILL UNDER OATH, MR. MCGINNISS.

THE WITNESS: YES, SIR.

THE COURT: MR. BRUCE, THE WITNESS IS WITH YOU.

MR. BRUCE: BEG YOUR PARDON?

THE COURT: THE WITNESS IS WITH YOU.

MR. BRUCE: OKAY. THANK YOU, YOUR HONOR.

**JOE MCGINNISS, GOVERNMENT WITNESS, PREVIOUSLY SWORN**

R E D I R E C T E X A M I N A T I O N 9:00 A.M.

BY MR. BRUCE:

Q. MR. MCGINNISS, ON FRIDAY YOU WERE ASKED ON CROSS-EXAMINATION ABOUT PROFIT YOU HAD FROM YOUR BOOK, DO YOU RECALL THAT?

A. YES, SIR.

Q. WOULD YOU HAVE MADE JUST AS MUCH PROFIT IF YOU HAD PROCLAIMED JEFFREY MACDONALD'S INNOCENCE?

A. FAR MORE. THE STORY WOULD HAVE BEEN -- THE EXCITING STORY WOULD BE THIS POOR MAN WAS FALSELY ACCUSED AND THEN WRONGLY CONVICTED AND HERE'S THE STORY THAT PROVES HE'S NOT GUILTY, THE WHOLE THING'S BEEN A TRAGIC MISTAKE. THAT'S THE STORY PEOPLE REALLY WOULD HAVE WANTED TO READ.

THE STORY THAT I TOLD WAS SIMPLY THAT A MAN WAS ACCUSED OF A CRIME, HE WENT ON TRIAL, HE WAS CONVICTED, AND

September 24, 2012

1 HE'S GUILTY. THAT'S NOT A VERY EXCITING STORY. THAT'S JUST  
2 MATTER OF FACT. THAT'S JUST DOG BITES MAN. THE OTHER WAY IS  
3 MAN BITES DOG.

4 Q. NOW, YOU WERE ASKED ON CROSS-EXAMINATION ABOUT THE  
5 EXCHANGE OF INFORMATION BETWEEN YOU AND JEFFREY MACDONALD  
6 AFTER THE TRIAL AS YOU WERE WORKING ON YOUR BOOK. DO YOU  
7 RECALL THAT?

8 A. YES, I DO.

9 Q. NOW, ULTIMATELY, DID YOU WRITE AN ADDENDUM TO YOUR BOOK  
10 COVERING THAT PERIOD OF TIME?

11 A. I WROTE A COUPLE ADDENDUMS. ONE IN -- I FORGET EXACTLY  
12 WHEN, BUT THE SECOND WAS IN 1989.

13 Q. WELL, LET ME PUT ON THE SCREEN GOVERNMENT EXHIBIT 4019,  
14 AND ARE YOU ABLE TO RECOGNIZE THAT AS A *FATAL VISION* EPILOGUE  
15 YOU WROTE?

16 A. YES, THAT'S RIGHT. THAT'S, I GUESS, TAKEN FROM MY HOME  
17 PAGE ON MY WEBSITE.

18 (GOVERNMENT EXHIBIT NUMBER 4019  
19 WAS IDENTIFIED FOR THE RECORD.)

20 Q. ALL RIGHT. AND YOU WROTE THIS AFTER THE TRIAL IN  
21 CALIFORNIA, IS THAT RIGHT?

22 A. YES, THAT WAS IN 1987.

23 Q. OKAY. AND LET ME MOVE FORWARD TO PAGE 12. THAT WOULD BE  
24 EXHIBIT 4019.12. AND IF YOU COULD START READING WHERE IT SAYS  
25 DESPITE THE WARNING FLAGS? AND WE'LL ENLARGE IT FOR YOU.

September 24, 2012

1 A. DESPITE THE WARNING FLAGS I HAD HELD UP, MACDONALD, MORE  
2 THAN A FULL YEAR LATER, SIGNED A SECOND RELEASE. THIS ONE  
3 REQUESTED BY A PRODUCER IN CONNECTION WITH THE *FATAL VISION*  
4 MINI-SERIES, BUT CLEARLY COVERING THE BOOK AS WELL.

5 WITH NO ADDITIONS OR DELETIONS, MACDONALD GRANTED ME  
6 THE, QUOTE, UNLIMITED RIGHT, CLOSE QUOTE, TO QUOTE, DESCRIBE,  
7 IMPERSONATE, SIMULATE, DEPICT, AND PORTRAY HIM AND TO, QUOTE,  
8 MAKE USE OF ANY EPISODES IN HIS LIFE AS I IN MY, QUOTE, SOLE  
9 DISCRETION DEEMED PROPER.

10 THE RELEASE ALSO STATED THAT I, QUOTE, MAY EXERCISE  
11 ALL OR ANY OF THE RIGHTS GRANTED HEREIN WITHOUT CLAIMS,  
12 DEMANDS OR CAUSES OF ACTION WHETHER FOR LIBEL, DEFAMATION,  
13 VIOLATION OF RIGHT OF PRIVACY, OR INFRINGEMENT OF ANY LITERARY  
14 OR OTHER PROPERTY RIGHT OR OTHERWISE INSOFAR AS MACDONALD WAS  
15 CONCERNED.

16 AND THERE IS MORE. IN ADDITION TO THE RELEASES,  
17 MACDONALD SENT ME MANY LETTERS IN WHICH HE REITERATED HIS  
18 AWARENESS THAT HE HAD NO CONTROL OVER THE CONTENT OF MY BOOK.  
19 EXAMPLES FROM THE PUBLIC RECORD AVAILABLE TO, BUT IGNORED BY,  
20 MALCOLM INCLUDE --

21 (GOVERNMENT EXHIBIT NUMBER 4019.12  
22 WAS IDENTIFIED FOR THE RECORD.)

23 Q. NOW, CAN YOU IDENTIFY FOR THE COURT WHAT THE REFERENCE TO  
24 MALCOLM IS?

25 A. MALCOLM REFERS TO A WRITER BY THE NAME OF JANET MALCOLM

September 24, 2012

1 WHO WROTE A TWO-PART SERIES IN THE *NEW YORKER* MAGAZINE, LATER  
2 PUBLISHED AS A BOOK, ABOUT MY PROFESSIONAL RELATIONSHIP WITH  
3 JEFFREY MACDONALD.

4 Q. NOW, WE'VE MOVED DOWN THE PAGE ON THE SCREEN AND JUST  
5 READ THOSE THREE BULLET POINTS THERE.

6 A. OKAY. APRIL 14TH, 1982. THIS IS FROM MACDONALD TO ME.  
7 I HAVEN'T EVER ASKED YOU FOR ANY FAVORS RE: THE BOOK AND I  
8 DON'T NORMALLY THINK IT'S MY PLACE TO DO SO. MACDONALD THEN  
9 ACKNOWLEDGED HIS RECOGNITION THAT HE DID NOT HAVE, QUOTE, ANY  
10 RIGHT TO REVIEW MATERIAL OR ANYTHING ELSE, CLOSE QUOTE, AND  
11 ADDED, QUOTE, I NEVER ASKED YOU WHAT YOU WERE WRITING OR HOW  
12 YOU FEEL ABOUT ANYTHING; I.E., ME, BERNIE, EVIDENCE, ET  
13 CETERA, ET CETERA.

14 APRIL 27TH, 1982. FOLLOWING A MEETING WITH AN  
15 ASSOCIATE OF F. LEE BAILEY'S IN WHICH MACDONALD TRIED  
16 UNSUCCESSFULLY TO PERSUADE BAILEY TO TAKE HIS CASE, QUOTE,  
17 BAILEY'S ASSOCIATE WAS TOTALLY AGHAST THAT I HAD NO ARTISTIC  
18 CONTROL OVER THE BOOK, CLOSE QUOTE.

19 AUGUST 22ND, 1982. I HAD MADE MYSELF A PROMISE, IN  
20 ITALICS, NOT TO QUESTION YOU ON THE BOOK. I'VE TOLD YOU, AND  
21 I MEAN IT, THAT I HAVE DECIDED TO GO WITH YOU WITHOUT ANY  
22 CONTROLS TO PROTECT ME AS I COULD HAVE GOTTEN WITH A LESSER  
23 WRITER, CLOSE QUOTE.

24 Q. OKAY. THANK YOU. NOW, DURING CROSS-EXAMINATION ON  
25 FRIDAY, YOU WERE SHOWN SOME EXCERPTS FROM THE TRIAL TRANSCRIPT

September 24, 2012

1 IN CALIFORNIA, IS THAT RIGHT?

2 A. YES, SIR.

3 Q. AND CAN YOU TELL US WHAT THIS LAWSUIT WAS ABOUT?

4 A. THIS LAWSUIT WAS ABOUT MACDONALD BEING ANGRY THAT HE  
5 HADN'T SUCCEEDED IN CONNING ME, THAT I ACTUALLY WROTE A BOOK  
6 THAT TOLD THE TRUTH INSTEAD OF WRITING A BOOK THAT WOULD TELL  
7 THE LIES THAT HE WANTED ME TO TELL.

8 AND BECAUSE WE HAD A CONTRACTUAL RELATIONSHIP, HE  
9 WAS ABLE TO MAKE UP GROUNDS SUCH AS BREACH OF CONTRACT AND  
10 BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AND  
11 THINGS LIKE THAT.

12 HE COULDN'T SUE FOR LIBEL BECAUSE -- WELL, FOR TWO  
13 REASONS; ONE, THERE'S NOTHING LIBELOUS IN THE BOOK AND, NUMBER  
14 TWO, BECAUSE AS A CONVICTED MURDERER HE HAD NO REPUTATION THAT  
15 COULD HAVE BEEN HARMED.

16 UNDER THE LAW, IF YOU'RE CONVICTED OF MURDER, YOU'RE  
17 WHAT'S CALLED LIBEL PROOF. YOU CANNOT BE LIBELED BECAUSE  
18 YOU'VE ALREADY GOT A REPUTATION THAT'S SO BAD THAT NOTHING  
19 THAT ANYBODY SAYS ABOUT YOU COULD MAKE IT ANY WORSE.

20 Q. NOW, THE LAWSUIT WENT FORWARD TO TRIAL, IS THAT CORRECT?

21 A. YES, SIR.

22 Q. AND IT WAS A PRETTY LENGTHY TRIAL, WASN'T IT?

23 A. I BELIEVE THAT TRIAL LASTED LONGER THAN THE CRIMINAL  
24 TRIAL IN 1979.

25 Q. AND YOU TESTIFIED AT SOME LENGTH?

September 24, 2012



1 A. I DID.

2 Q. AND MR. WILLIAMS SHOWED YOU SOME OF YOUR TESTIMONY ON  
3 FRIDAY?

4 A. THAT'S CORRECT.

5 Q. AND MR. MACDONALD TESTIFIED AT SOME LENGTH AT THE TRIAL?

6 A. WELL, I DON'T REMEMBER HOW MUCH LENGTH, BUT HE DID  
7 TESTIFY, YES, SIR.

8 Q. AND YOU ATTENDED THE TRIAL, IS THAT RIGHT?

9 A. OH, YEAH, I WAS THERE.

10 Q. NOW, WHAT WAS THE RESULT AT THE END OF THE TRIAL?

11 A. AT THE END OF THE TRIAL THE JUDGE GAVE A -- THERE WERE  
12 SIX JURORS AND THE JUDGE HANDED THEM A 60-SOMETHING -- MORE  
13 THAN 60 QUESTION VERDICT FORM. AND THEY WERE TO GO THROUGH  
14 THE QUESTIONS IN ORDER AND WHEN THEY HAD REACHED UNANIMOUS  
15 AGREEMENT ON ONE, THEY WOULD MARK DOWN YES OR NO AND THEN MOVE  
16 ON TO THE NEXT.

17 THE VERY FIRST QUESTION ON THAT FORM WAS ABOUT  
18 MACDONALD'S OBLIGATIONS TO ME AND THE QUESTION -- TO  
19 PARAPHRASE IT FROM MEMORY NOW, THE QUESTION ASKED WHETHER  
20 MACDONALD HAD, IN FACT, FULFILLED ALL OF HIS CONTRACTUAL  
21 OBLIGATIONS TO ME. THAT'S BEFORE THEY EVEN GOT TO WHAT -- IF  
22 I EVER HAD ANY OBLIGATIONS TO HIM.

23 AND THEY WERE NOT ABLE TO AGREE ON THAT FIRST  
24 QUESTION. THEY SAT THERE FOR THREE DAYS AND ARGUED OVER THAT  
25 VERY FIRST QUESTION AND NEVER GOT TO THE REST OF THE FORM AND

September 24, 2012

1 THEY LET THE JUDGE KNOW -- HE HAD GONE OFF TO HAWAII. THEY  
2 LET HIM KNOW THAT THEY WERE DEADLOCKED ON THE FIRST QUESTION.  
3 SO, HE CAME BACK AND DECLARED A MISTRIAL.

4 Q. SO, THAT FIRST TRIAL ENDED IN A MISTRIAL, IS THAT RIGHT?

5 A. YES, SIR, IT DID.

6 Q. AND THEN WAS THE CASE SETTLED?

7 A. YES. AT THAT POINT, MY PUBLISHER'S INSURANCE COMPANY,  
8 WHICH TRIED TO ESCAPE INVOLVEMENT -- WHEN I WAS FIRST SUED,  
9 THEY SAID, WELL, WE DON'T HAVE TO COVER THIS BECAUSE HE DIDN'T  
10 CALL IT LIBEL AND OUR INSURANCE IS FOR LIBEL AND THIS IS  
11 SOMETHING ELSE.

12 WELL, I HAD TO SUE THAT INSURANCE COMPANY IN FEDERAL  
13 COURT IN NEW YORK AND JUDGE ROBERT SWEET, FEDERAL DISTRICT  
14 JUDGE ROBERT SWEET, RULED THAT IN ESSENCE IT WAS A LIBEL SUIT  
15 IN DISGUISE, THAT MACDONALD WAS SUING ME BECAUSE HE WAS ANGRY  
16 ABOUT THE CONTENT OF THE BOOK AND HOWEVER HE PHRASED IT THAT  
17 WAS THE ESSENCE OF IT. SO, HE FOUND A DECLARATORY JUDGMENT  
18 THAT THEY WERE OBLIGATED TO PAY ALL COSTS ASSOCIATED WITH MY  
19 DEFENSE.

20 SO, MY LAWYER SENT THEM A BILL FOR OVER SEVEN OR  
21 \$800,000 AT THE END OF THIS SEVEN WEEK TRIAL IN LOS ANGELES.  
22 THE INSURANCE COMPANY IN KANSAS CITY SAID, YOU KNOW, WE DON'T  
23 -- WE'VE HAD ENOUGH OF THIS, FIND A WAY TO SETTLE THIS CASE.

24 SO, THEY NEGOTIATED. MY LAWYER NEGOTIATED WITH  
25 MACDONALD'S LAWYERS. I HAD NOTHING TO DO WITH IT. AND THEY

September 24, 2012

McGinniss/Redirect

Page 1069

1 SETTLED FOR -- THE INSURANCE COMPANY WOULD PAY \$325,000. A  
2 LOT OF PEOPLE DEVELOPED A MISIMPRESSION THAT SOMEHOW I HAD  
3 PAID MACDONALD THIS MONEY. I DIDN'T PAY MACDONALD TEN CENTS.

4 AND ACTUALLY I MADE MONEY ON THE DEAL BECAUSE AS  
5 PART OF THE SETTLEMENT MACDONALD WAIVED HIS RIGHT TO  
6 PARTICIPATE IN ANY FUTURE ROYALTIES. HE HAD BEEN RECEIVING 20  
7 AND THEN UP TO 33 PERCENT OF ROYALTIES FROM THE BOOK AND  
8 BECAUSE OF THE TERMS OF THE SETTLEMENT HE NEVER RECEIVED  
9 ANYTHING AFTER THAT.

10 SO, THEN HIS FATHER-IN-LAW, FREDDY KASSAB, WENT TO  
11 STATE COURT IN CALIFORNIA AND UNDER THE CALIFORNIA SON OF SAM  
12 LAW HE SUED MACDONALD BECAUSE YOU CAN'T PROFIT FROM HAVING  
13 COMMITTED A CRIME. AND HE WON THAT SUIT AND THE PROCEEDS WERE  
14 TAKEN AWAY FROM MACDONALD AND, AS I RECALL, WERE DIVIDED  
15 BETWEEN -- THERE WAS SOME SET ASIDE FOR THE CARE OF  
16 MACDONALD'S AILING MOTHER, SOME WAS TO PAY MACDONALD'S LAWYERS  
17 FEES, AND THE REST WENT TO FREDDY AND MILDRED KASSAB, THE  
18 PARENTS OF COLETTE.

19 Q. ALL RIGHT. LET ME PUT ON THE SCREEN GOVERNMENT EXHIBIT  
20 6070. 6-0-7-0. DO YOU RECOGNIZE THIS AS THE SETTLEMENT  
21 AGREEMENT OF THE LAWSUIT? IF YOU NEED ME TO GO THROUGH SOME  
22 OTHER PAGES, I CAN DO THAT FOR YOU.

23 A. YEAH. YES, I DO RECOGNIZE IT.

24 (GOVERNMENT EXHIBIT NUMBER 6070  
25 WAS IDENTIFIED FOR THE RECORD.)

September 24, 2012

1 Q. ALL RIGHT. LET'S LOOK DOWN THE MIDDLE OF THAT FIRST PAGE  
2 AT PAYMENT, PARAGRAPH THREE. NOW, IT SAYS MCGINNISS WILL  
3 CAUSE TO BE PAID MACDONALD THE SUM AND YOU JUST EXPLAINED  
4 THAT, RIGHT?

5 A. RIGHT. THE INSURANCE COMPANY PAID IT.

6 Q. ALL RIGHT. NOW, LET'S MOVE OVER HERE. YOU DON'T ADMIT  
7 ANY LIABILITY TO MACDONALD IN THIS AGREEMENT, IS THAT RIGHT?

8 A. OH, ABSOLUTELY NOT.

9 Q. AND LET'S LOOK AT 6070.5. CAN YOU SEE THERE AT THE  
10 BOTTOM OF THE PAGE WHERE -- AND IT GOES OVER TO THE NEXT PAGE  
11 -- WHERE THE -- LET'S GO OVER TO THE NEXT PAGE -- WHERE THE  
12 CASE WAS DISMISSED WITH PREJUDICE AS PART OF THE AGREEMENT?

13 A. I SEE THAT.

14 Q. ALL RIGHT. NOW, YOU WERE ASKED SOME QUESTIONS ON CROSS-  
15 EXAMINATION ABOUT DR. BARBATO'S TESTIMONY -- OR HE'S NOT A  
16 DOCTOR -- MR. BARBATO'S TESTIMONY IN THAT FEDERAL COURT TRIAL  
17 IN CALIFORNIA, DO YOU REMEMBER THAT?

18 A. YES, SIR, THE ARMY CHEMIST.

19 Q. OKAY. LET'S TAKE A LOOK AT GOVERNMENT EXHIBIT 4017.85.  
20 AND WOULD YOU LOOK DOWN AT LINE TEN AND READ TO THE BOTTOM OF  
21 THE PAGE?

22 A. LINE TEN. MY LAWYER, MR. KORNSTEIN, HAS ASKED HIM; FOR  
23 AMPHETAMINES CAN YOU TELL US THE MINIMUM AMOUNT THAT YOUR  
24 EQUIPMENT WOULD HAVE IDENTIFIED AT THAT TIME?

25 ANSWER: WELL, A COMMON NUMBER FOR SOMETHING LIKE

McGinniss/Redirect

Page 1071

1 AMPHETAMINE, DEXTROAMPHETAMINE, AMPHETAMINE SULFATE, WOULD BE  
2 APPROXIMATELY A HALF A MILLIGRAM PER MILLILITER OF LIQUID THAT  
3 YOU WERE PUTTING INTO THE CELL.

4 QUESTION: DO YOU KNOW WHAT THE EFFECT OF SUCH AN  
5 AMOUNT OF AMPHETAMINE ON A HUMAN BODY WOULD BE?

6 ANSWER: IT WOULD BE WAY ABOVE A LETHAL DOSE.

7 QUESTION: AND DOES THAT MEAN THAT YOUR EQUIPMENT  
8 COULD NOT AT THAT TIME DETECT LESS THAN THAT LETHAL DOSE?

9 ANSWER: WELL, IT MEANS THAT THE -- THAT EQUIPMENT  
10 WOULD NOT BE THE EQUIPMENT OF CHOICE TO DO THAT TYPE OF  
11 ANALYSIS.

12 AND DID YOU HAVE ANY OTHER EQUIPMENT THAT YOU USED  
13 AT THAT TIME ON THE MACDONALD SAMPLES?

14 ANSWER: THERE WAS NO OTHER EQUIPMENT THAT I WAS  
15 QUALIFIED TO --

16 Q. WE'LL GO TO THE NEXT PAGE AND IF YOU WOULD CONTINUE  
17 READING DOWN THROUGH LINE EIGHT.

18 A. TO USE THAT WAS IN THE LABORATORY AT THE TIME THAT COULD  
19 HAVE GIVEN ME BETTER INFORMATION.

20 QUESTION: NOW, IF A PERSON HAD USED AMPHETAMINES  
21 THE DAY BEFORE THE SAMPLE WAS TAKEN AND IT WAS LESS THAN A  
22 LETHAL DOSE, WOULD YOUR TEST HAVE REVEALED THE PRESENCE OF  
23 SUCH AMPHETAMINES?

24 ANSWER: UNFORTUNATELY, THE TEST THAT I CONDUCTED  
25 WOULD HAVE MISSED SOMETHING LIKE THAT.

September 24, 2012

1 (GOVERNMENT EXHIBIT NUMBER 4017.85  
2 WAS IDENTIFIED FOR THE RECORD.)

3 Q. ALL RIGHT. ON FRIDAY YOU WERE ASKED ON CROSS-EXAMINATION  
4 ABOUT SOME STATEMENTS IN YOUR BOOK CONNECTING THE POSSIBLE  
5 ESKATROL WITH CHANGES IN MACDONALD'S BEHAVIOR. DO YOU  
6 REMEMBER THAT?

7 A. I DO.

8 Q. AND YOU SAT THROUGH THE ENTIRE TRIAL OF MACDONALD, RIGHT?

9 A. YES, IN RALEIGH.

10 Q. ALL RIGHT. LET'S LOOK AT TRIAL DAY SEVEN, PAGE 182. AND  
11 IF YOU WOULD GO DOWN TO LINE 25, WE'RE JUST GOING TO READ ONE  
12 LINE AND THEN GO OVER TO THE NEXT PAGE.

13 A. THE QUESTION STARTS DID SHE EVER SAY ANYTHING TO YOU --

14 Q. AND FOR THE RECORD THIS IS THE TESTIMONY OF ELIZABETH  
15 RAMAGE, DO YOU REMEMBER THAT TESTIMONY?

16 A. TO TELL YOU THE TRUTH, I HAVEN'T -- IT'S BEEN SO LONG I  
17 DON'T REMEMBER CLEARLY WHO THAT WOMAN WOULD BE.

18 Q. WELL, MAYBE THE CONTEXT WILL COME TO YOU AS YOU READ.  
19 ANYWAY, CONTINUE READING.

20 A. WHATEVER THAT FIRST LINE WAS AND THEN IT SAYS CONCERNING  
21 HER HUSBAND, JEFFREY MACDONALD.

22 ANSWER: YES, HIS NAME CAME UP IN CONVERSATION. IT  
23 WAS THAT EVENING, BUT I CAN'T REMEMBER WHAT TIME THE  
24 CONVERSATION TOOK PLACE ABOUT HER HUSBAND THAT -- SHE HAD  
25 MENTIONED THAT HE HAD BEEN MOONLIGHTING THE NIGHT BEFORE IN A

September 24, 2012

McGinniss/Redirect

Page 1073

1 SMALL TOWN NEARBY AND HE WAS REALLY TIRED THAT NIGHT WHEN SHE  
2 LEFT FOR CLASS. SHE SAID THE PEOPLE HAD BEEN REALLY NICE TO  
3 HIM AT THIS PLACE WHERE HE HAD MOONLIGHTED. I BELIEVE SHE  
4 TOLD ME HE HAD BEEN ASLEEP WHEN SHE LEFT TO COME TO CLASS  
5 BECAUSE HE WAS SO TIRED FROM WORKING THE NIGHT BEFORE AND THEN  
6 WORKING AT THE HOSPITAL ON FORT BRAGG THE NEXT DAY.

7 Q. OKAY. NOW --

8 A. THIS WOULD BE THE WOMAN I BELIEVE THAT COLETTE GAVE A  
9 RIDE TO CLASS OR COLETTE -- TO WHOM COLETTE SPOKE THAT NIGHT.

10 Q. THE LAST NIGHT OF HER LIFE?

11 A. YES, THE LAST NIGHT OF HER LIFE. NOW, SHOULD I CONTINUE?

12 Q. I'M SORRY?

13 A. I SHOULD CONTINUE READING?

14 Q. NO. THAT'S FINE. THANK YOU. NOW, LET'S MOVE FORWARD TO  
15 TRIAL DAY 11 AT PAGE 58. AND WOULD YOU GO TO LINE FOUR? AND  
16 THIS IS THE TESTIMONY OF PAMELA KALIN, THE BABYSITTER.

17 A. QUESTION: NOW, YOU SPOKE OF THE RELATIONSHIP BETWEEN DR.  
18 AND MRS. MACDONALD DURING THE FALL OF 1969. DID YOU HAVE AN  
19 OCCASION TO OBSERVE THEIR RELATIONSHIP AFTER THE FIRST OF THE  
20 YEAR OF 1970?

21 YES.

22 HOW WOULD YOU DESCRIBE THAT, PLEASE?

23 THEY DIDN'T SMILE MUCH TO EACH OTHER.

24 WAS THAT A DIFFERENCE OR A CHANGE BETWEEN WHAT YOU  
25 HAD SEEN BEFORE?

September 24, 2012

1 YES.

2 NOW, IN KEEPING THE LITTLE CHILDREN, DID EITHER ONE  
3 OF THEM EVER HAVE AN OCCASION TO GET OUT OF THE BED AND GO  
4 SOMEWHERE ELSE TO ANOTHER BED OR ANYTHING LIKE THAT?

5 YES.

6 Q. THAT'S FAR ENOUGH.

7 A. OKAY.

8 Q. NOW LET'S MOVE FORWARD TO PAGE 80 OF THAT SAME TRIAL DAY  
9 11, AND WOULD YOU READ LINES 13 THROUGH 20?

10 A. NOW, DO YOU RECALL WITH RESPECT TO THE TIMES YOU KEPT THE  
11 CHILDREN AFTER THE FIRST OF THE YEAR, DID YOU STILL DO THAT ON  
12 A FAIRLY REGULAR BASIS?

13 YES. AND I WANT TO CLEAR SOMETHING UP. I MAY NOT  
14 HAVE SEEN THEM TOGETHER. THAT IS WHY I NOTICED SOMETHING.  
15 THAT IS, THEY USED TO GO OUT A LOT TOGETHER AND THEY DIDN'T  
16 THEN. I WOULD ONLY SEE COLETTE MOST OF THE TIME.

17 Q. ALL RIGHT. NOW, YOU TESTIFIED ON FRIDAY THAT YOU WERE  
18 PRESENT DURING THE DEFENSE INTERVIEW -- THE ENTIRE DEFENSE  
19 INTERVIEW OF HELENA STOECKLEY, DO YOU REMEMBER THAT?

20 A. YES, SIR, I DO.

21 Q. AND YOU WERE CROSS-EXAMINED ON THAT AND YOU AT ONE POINT  
22 INDICATED, WELL, YOU DIDN'T FOLLOW BERNIE SEGAL TO THE  
23 BATHROOM, DO YOU REMEMBER THAT?

24 A. THAT'S RIGHT.

25 Q. ALL RIGHT. NOW, IT'S TRUE THAT THERE WERE SOME THINGS



1 REPORTED IN YOUR BOOK THAT YOU DID NOT OBSERVE FIRSTHAND, IS  
2 THAT RIGHT?

3 A. OH, SURE, THERE'S A LOT OF THINGS I DIDN'T OBSERVE  
4 FIRSTHAND.

5 Q. ALL RIGHT. LET'S LOOK AT GOVERNMENT EXHIBIT 2201 AND  
6 SPECIFICALLY 2201.8. AND DO YOU SEE ON PAGE 536 THERE'S A  
7 BREAK IN THE TEXT AND IT STARTS HELENA STOECKLEY SPENT THE  
8 WEEKEND?

9 A. YES.

10 Q. NOW, I'M NOT GOING TO ASK YOU TO READ THIS ALOUD, BUT  
11 JUST GLANCE THROUGH IF YOU WOULD AND I WANT TO ASK YOU A  
12 QUESTION ABOUT IT.

13 (PAUSE.)

14 WELL, ON SECOND THOUGHT, EVERYBODY SEEMS TO BE  
15 READING IT SO LET'S JUST READ IT ALOUD. JUST START WITH  
16 HELENA STOECKLEY.

17 A. HELENA STOECKLEY SPENT THE WEEKEND IN RALEIGH. BERNIE  
18 SEGAL STILL HOPING THAT HE MIGHT BE ABLE TO TURN HER PRESENCE  
19 TO ADVANTAGE. USING JEFFREY MACDONALD'S MONEY, HE OBTAINED A  
20 ROOM FOR HER AND HER FIANCE IN A MOTEL CALLED THE JOURNEY'S  
21 END.

22 ON SUNDAY MORNING SEGAL RECEIVED A PHONE CALL FROM  
23 THE MANAGER OF THE MOTEL. SHE SAID THAT SOMEONE HAD JUST  
24 TRIED TO DROWN HELENA STOECKLEY IN THE SWIMMING POOL. SEGAL  
25 IMMEDIATELY DISPATCHED A FEMALE ASSISTANT, A SAN FRANCISCO

September 24, 2012

1 ATTORNEY NAMED WENDY ROUDER, TO THE SCENE.

2 ROUDER WAS TOLD THAT IT HAD BEEN STOECKLEY'S FIANCE,  
3 ERNIE DAVIS, WHO HAD BEEN HOLDING HER HEAD UNDER WATER IN THE  
4 POOL. IN ADDITION TO HER BROKEN ARM, STOECKLEY, BY SUNDAY  
5 MORNING, HAD A SWOLLEN AND BLACKENED EYE WHERE IT APPEARED  
6 THAT SOMEONE HAD PUNCHED HER.

7 SHE TOLD ROUDER THAT THIS HAD OCCURRED THE DAY  
8 BEFORE WHEN SHE HAD STEPPED INTO A HALLWAY TO BUY A CAN OF  
9 SODA FROM A MACHINE AND A COMPLETE STRANGER HAD WALKED UP TO  
10 HER AND STRUCK HER.

11 ROUDER, CONCERNED THAT ERNIE DAVIS, PERHAPS, WAS NOT  
12 REACTING WELL TO RECENT STRESSES AND FEARING THAT HE MIGHT  
13 HAVE BEEN THE CAUSE OF THE BLACK EYE AS WELL AS THE QUOTE,  
14 DROWNING ATTEMPT, PERSUADED HIM TO STEP INTO THE MOTEL  
15 CORRIDOR WHILE SHE SPOKE PRIVATELY TO STOECKLEY FOR A MOMENT.

16 HELENA, DO YOU WANT HIM TO LEAVE, ROUDER ASKED.  
17 YES, STOECKLEY SAID, I WANT HIM TO GO. SHE IMMEDIATELY BEGAN  
18 PLACING HIS CLOTHES AND PERSONAL BELONGINGS IN A SUITCASE  
19 ADDING AS WELL ALL THE MOTEL ASHTRAYS SHE COULD FIND.

20 RED UNDERHILL HAD ACCOMPANIED ROUDER TO THE  
21 JOURNEY'S END AND WAS PREPARED TO SEE DAVIS TO THE BUS  
22 TERMINAL AND TO GIVE HIM \$20 OF JEFFREY MACDONALD'S MONEY FOR  
23 A ONE-WAY TICKET OUT OF TOWN.

24 WILL YOU BE ALL RIGHT, ROUDER ASKED, OR WOULD YOU  
25 LIKE SOMEBODY TO STAY WITH YOU? STOECKLEY SAID SHE WOULD

September 24, 2012

1 PREFER TO HAVE A COMPANION. HOW ABOUT YOU, SHE ASKED ROUDER,  
2 COULD YOU STAY? ROUDER AGREED TO SPEND AT LEAST THE AFTERNOON  
3 WITH HELENA STOECKLEY, BUT LEFT THE ROOM BRIEFLY TO PERMIT  
4 STOECKLEY TO INFORM HER FIANCE PRIVATELY THAT HIS PRESENCE IN  
5 RALEIGH WAS NO LONGER DESIRED.

6 TEN MINUTES LATER THE DOOR SWUNG OPEN AND DAVIS  
7 BARE-CHESTED AND CARRYING THE SUITCASE RAN DOWN THE HALL. RE-  
8 ENTERING THE ROOM, ROUDER AND RED UNDERHILL FOUND STOECKLEY IN  
9 THE BATHROOM BLEEDING PROFUSELY FROM THE NOSE. SHE SAID, NO,  
10 DAVIS HAD NOT HIT HER, SHE HAD SIMPLY WALKED INTO A DOOR.

11 WITH STOECKLEY HOLDING TOWELS TO HER NOSE AND  
12 TILTING HER HEAD BACK IN AN ATTEMPT TO GET THE BLEEDING TO  
13 STOP, WENDY ROUDER SPENT THE AFTERNOON WITH HER IN HER MOTEL  
14 ROOM.

15 AS THE BLEEDING GRADUALLY SUBSIDED, STOECKLEY AND  
16 ROUDER BEGAN TO TALK. IT WAS MOSTLY SMALL TALK. STOECKLEY  
17 DESCRIBED TO ROUDER HOW SHE HAD HAD AT ONE TIME A MAGNIFICENT  
18 SINGING VOICE AND HOW HAD IT NOT BEEN FOR THE STROKE SHE HAD  
19 SUFFERED SHE MIGHT HAVE HAD A CAREER IN OPERA.

20 EVENTUALLY THERE CAME A LULL IN THE CONVERSATION.  
21 THEN STOECKLEY SAID I STILL THINK I COULD HAVE BEEN THERE THAT  
22 NIGHT. WHAT MAKES YOU THINK SO, ROUDER ASKED. I DON'T KNOW.  
23 THERE WAS ANOTHER PAUSE. THEN STOECKLEY SAID THAT ROCKING  
24 HORSE, THAT ROCKING HORSE IN KRISTEN'S ROOM.

25 SEEING THE TOY HORSE DEPICTED IN ONE OF THE CRIME

September 24, 2012

McGinniss/Redirect

Page 1078

1 SCENE PHOTOGRAPHS HAD BROUGHT BACK TO STOECKLEY A FLASH -- OF  
2 MEMORY? OF IMAGINATION? IN WHICH SHE HAD BEEN SITTING ON THE  
3 HORSE TRYING TO RIDE IT, BUT HAD BEEN UNABLE TO BECAUSE QUOTE,  
4 THE WHEELS WERE BROKEN AND IT WOULDN'T ROLL. THE ROCKING  
5 HORSE AS IT HAPPENED HAD BEEN ON RUNNERS, NOT WHEELS.

6 THEN AFTER ANOTHER PAUSE STOECKLEY ADDED YOU KNOW,  
7 KRISTEN, KRISTEN JEAN, THOSE PICTURES, WHEN I LOOKED AT THOSE  
8 PICTURES, I KNEW I HAD SEEN HER SOMEWHERE BEFORE.

9 ROUDER KEPT TALKING TO STOECKLEY THROUGHOUT THE  
10 AFTERNOON TAKING NOTES ON THE CONVERSATION. AT ONE POINT SHE  
11 ASKED IF STOECKLEY STILL FELT GUILTY ABOUT HER INVOLVEMENT.  
12 OF COURSE, STOECKLEY REPLIED, WHAT DO YOU THINK I'VE BEEN  
13 TAKING ALL THESE DAMN DRUGS FOR? IF MACDONALD WERE CONVICTED,  
14 ROUDER ASKS, DO YOU THINK YOU COULD LIVE WITH THAT GUILT TOO?  
15 I DON'T THINK SO. ISN'T THERE ANYTHING YOU COULD DO TO GET  
16 RID OF THE GUILT? MAYBE SODIUM PENTOTHAL OR HYPNOSIS OR  
17 SOMETHING, STOECKLEY SAID.

18 Q. JUST READ ON THE NEXT PAGE TO A BREAK IN THE TEXT.

19 A. THE CONVERSATION WAS INTERRUPTED BY THE MANAGER OF THE  
20 JOURNEY'S END WHO CALLED TO SAY THAT STOECKLEY WAS NO LONGER  
21 WELCOME AT THE MOTEL.

22 A ROOM WAS OBTAINED FOR HER AT A NEARBY HILTON.  
23 LATER IN THE AFTERNOON AS ROUDER AND STOECKLEY SAT TOGETHER IN  
24 AN AUTOMOBILE EN ROUTE FROM ONE MOTEL TO THE OTHER, STOECKLEY  
25 AGAIN SAID I STILL THINK I WAS THERE IN THAT HOUSE THAT NIGHT.

September 24, 2012

1 HELENA, IS THAT A FEELING YOU ARE HAVING OR A MEMORY, ROUDER  
2 ASKED. IT'S A MEMORY, STOECKLEY SAID. I REMEMBER STANDING AT  
3 THE COUCH HOLDING A CANDLE ONLY, YOU KNOW, IT WASN'T DRIPPING  
4 WAX. IT WAS DRIPPING BLOOD.

5 (GOVERNMENT EXHIBIT NUMBER 2201  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. ALL RIGHT. NOW, WITH RESPECT TO THE STATEMENTS ALLEGEDLY  
8 MADE BY HELENA STOECKLEY TO WENDY ROUDER ABOUT THE MACDONALD  
9 MURDERS, HOW DID YOU GET THAT INFORMATION FOR YOUR BOOK?

10 A. FROM TALKING TO WENDY ROUDER. SHE CAME BACK AND WAS  
11 THOROUGHLY DEBRIEFED BY BERNIE SEGAL. I WAS PRESENT FOR THAT  
12 AND THEN I TALKED TO HER PERSONALLY ASKING MORE DETAILED  
13 QUESTIONS. SO, SHE FILLED ME IN ON VIRTUALLY EVERY MINUTE OF  
14 THE TIMES THAT SHE HAD GONE TO THE MOTEL UNTIL SHE CAME BACK.

15 Q. AND DID SHE HAVE NOTES?

16 A. OH, SHE HAD COPIOUS NOTES, YES.

17 Q. AND WERE YOU PRESENT IN THE COURTROOM ON MONDAY WHEN SHE  
18 TESTIFIED OUT OF THE PRESENCE OF THE JURY TO THIS  
19 CONVERSATION?

20 A. NO, I WAS NOT.

21 Q. I DIDN'T SEE ANYTHING IN THE PORTION THAT YOU READ ABOUT  
22 JUDGE DUPREE ALLEGEDLY CALLING WENDY ROUDER. DO YOU REMEMBER  
23 HER TELLING YOU THAT?

24 A. I REMEMBER JUDGE DUPREE TELLING THE ATTORNEYS THAT HELENA  
25 STOECKLEY HAD CALLED HIM OVER THAT WEEKEND, BUT --

September 24, 2012

1 Q. BUT NOT HIM CALLING ROUDER?

2 A. I DON'T RECALL THAT.

3 Q. ALL RIGHT. IF WENDY ROUDER HAD TOLD YOU THAT OR BERNIE  
4 SEGAL HAD TOLD YOU THAT, THAT IS, THAT JUDGE DUPREE CALLED  
5 WENDY ROUDER OVER THE WEEKEND, WOULD YOU HAVE REPORTED THAT IN  
6 YOUR BOOK?

7 A. I THINK I WOULD HAVE BECAUSE IT WOULD HAVE BEEN UNUSUAL  
8 BEHAVIOR FOR A FEDERAL JUDGE DURING A TRIAL LIKE THAT TO MAKE  
9 FREQUENT PHONE CALLS TO A WOMAN ASSOCIATED WITH ONE SIDE.

10 Q. NOW, YOU TESTIFIED ON DIRECT EXAMINATION ABOUT THE NOTES  
11 THAT YOU FOUND IN MR. MACDONALD'S CONDOMINIUM WHERE HE  
12 MENTIONED ESKATROL.

13 A. YES, SIR.

14 Q. AND YOU WERE CROSS-EXAMINED AT LENGTH ON THAT, DO YOU  
15 REMEMBER THAT?

16 A. YES, I DO.

17 Q. NOW, LET'S GO TO GOVERNMENT EXHIBIT 4002.5, AND WOULD YOU  
18 READ THE LAST HALF STARTING WITH -- DO YOU SEE IN THE LAST  
19 PARAGRAPH WHERE IT SAYS AND WHEN?

20 A. YES, SIR.

21 Q. WOULD YOU START READING THERE AND READ TO THE END? HE'LL  
22 ENLARGE IT FOR YOU THERE IN THE LAST PARAGRAPH. START WITH  
23 AND WHEN.

24 A. AND WHEN HE HAD SAT DOWN TO WRITE HIS FIRST ACCOUNT OF  
25 THE NIGHT'S EVENTS KNOWING THAT HE WAS NOW CONSIDERED THE

September 24, 2012

1 CHIEF SUSPECT, HIS CONSUMPTION OF A DRUG, WHICH IS CAPABLE OF  
2 TRIGGERING A PSYCHOTIC RAGE, HAD BEEN THE THING HE HAD FELT IT  
3 NECESSARY TO MENTION FIRST.

4 (GOVERNMENT EXHIBIT NUMBER 4002.5  
5 WAS IDENTIFIED FOR THE RECORD.)

6 Q. IS THAT WHY YOU INCLUDED THIS IN YOUR BOOK? IS THAT THE  
7 SIGNIFICANCE YOU ATTACH TO IT?

8 A. YES, THE FACT THAT HE WAS SO WORRIED, HE WAS SO TRYING AT  
9 LENGTH TO FIND POSSIBLE EXPLANATIONS IN CASE THEY HAD FOUND  
10 AMPHETAMINES IN HIS BLOOD. IT WAS CLEAR THAT THIS WAS A MAJOR  
11 CONCERN TO HIM.

12 Q. NOW, LET'S BACK UP ON THIS EXHIBIT TO PAGE -- THE PAGE  
13 WOULD BE TWO, .2. NOW, THAT INDENTED MATERIAL -- I'M NOT  
14 GOING TO GET YOU TO READ IT AGAIN, BUT THAT INDENTED MATERIAL  
15 ON 4002.2 FROM PAGE 610 OF THE BOOK TO PAGE 611, IT'S WHAT YOU  
16 INCLUDED OF THE ESKATROL NOTES OR THE NOTES OF MACDONALD IN  
17 YOUR BOOK, IS THAT RIGHT?

18 A. YES, THAT'S CORRECT.

19 Q. ALL RIGHT. THE ACTUAL NOTES THEMSELVES WERE MUCH MORE  
20 LENGTHY THAN THAT, IS THAT RIGHT?

21 A. OH, THEY WERE. YES, SIR.

22 Q. DO YOU RECALL HOW MANY PAGES?

23 A. SEVERAL PAGES. IT WAS A COMPLETE ACCOUNT OF HIS  
24 DESCRIPTION OF HIS ACTIVITIES FROM THAT AFTERNOON UP UNTIL THE  
25 TIME OF THE MURDERS. AND, YOU KNOW, I HAD WRITTEN ABOUT THIS

September 24, 2012

1 THREE OR FOUR TIMES EARLIER IN THE BOOK AND SO THERE WAS NO  
2 NEED TO REPEAT IT HERE. THERE WAS NOTHING NEW.

3 Q. WELL, THAT'S WHAT I WAS GOING TO ASK YOU IS WHY DIDN'T  
4 YOU PUT THE NOTES VERBATIM IN THE BOOK?

5 A. BECAUSE I ALREADY PUT THAT DESCRIPTION, WHICH WAS BASED  
6 ON THE NOTES. HE GAVE IT, I THINK THE FIRST TIME WAS, AT THE  
7 APRIL 6TH, 1970, INTERVIEW WITH THE CID. HE WENT THROUGH IT  
8 ALL AGAIN WHEN HE TESTIFIED BEFORE THE GRAND JURY AND THEN HE  
9 WENT THROUGH IT AGAIN WHEN HE TESTIFIED AT THE TRIAL.

10 THERE WERE AT LEAST THREE OCCASIONS, MAYBE MORE, IN  
11 *FATAL VISION* WHERE I PRESENTED THAT FULL ACCOUNT TO THE  
12 READER. HERE, AT THE END, I WAS MERELY FOCUSING ON WHAT WAS  
13 NEW, NOT WHAT I HAD ALREADY PRESENTED.

14 Q. ALL RIGHT. NOW, YOU WERE ASKED ON CROSS-EXAMINATION ON  
15 FRIDAY ABOUT A PSYCHOLOGICAL EVALUATION OR OPINION OF A DR.  
16 STONE, IS THAT RIGHT?

17 A. YES, MICHAEL STONE.

18 Q. AND THE POINT YOU WERE ASKED TO TESTIFY ABOUT WAS THAT  
19 DR. STONE HAD NOT EXAMINED JEFFREY MACDONALD IN FORMING HIS  
20 OPINION, IS THAT RIGHT?

21 A. THAT'S RIGHT.

22 Q. DO YOU RECALL DURING THE 1979 TRIAL THAT THERE WAS A  
23 COURT ORDERED PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION OF  
24 JEFFREY MACDONALD?

25 A. I BELIEVE THERE WAS.



McGinniss/Redirect

Page 1083

1 Q. AND DO YOU RECALL THAT JEFFREY MACDONALD WANTED TO OFFER  
2 SOME PSYCHIATRIC TESTIMONY IN HIS OWN DEFENSE?

3 A. WELL, I THINK SO BECAUSE AT THE ARTICLE 32 HEARING IN  
4 1970, I THINK HE HAD BEEN ALLOWED TO PRESENT A PSYCHIATRIC  
5 EVALUATION WHICH HE FOUND FAVORABLE TO HIS OWN INTERESTS.

6 Q. AND DID THE COURT, JUDGE DUPREE, ORDER AT THE  
7 GOVERNMENT'S REQUEST THAT HE SUBMIT TO A PSYCHIATRIST AND  
8 PSYCHOLOGIST HIRED BY THE GOVERNMENT?

9 A. I THINK SO, YES, SIR.

10 Q. DID YOU EVER MEET MR. HIRSCH SILVERMAN, PH.D. -- DR.  
11 HIRSCH SILVERMAN, PH.D. IN DOING YOUR BOOK?

12 A. I'M NOT SURE IF I EVER HAD A PERSONAL CONVERSATION WITH  
13 HIM OR NOT.

14 Q. LET ME PUT GOVERNMENT EXHIBIT 6075 ON THE SCREEN, PLEASE.  
15 AND DO YOU SEE THE DATE ON THAT? CAN YOU READ US THE DATE?

16 A. YES. AUGUST 16TH, 1979.

17 Q. AND IT'S ADDRESSED TO WHOM?

18 A. TO UNITED STATES ATTORNEY, ATTENTION BRIAN MURTAGH,  
19 ESQUIRE.

20 Q. AND FROM?

21 A. FROM HIRSCH LAZAAR SILVERMAN, PH.D.

22 Q. AND WHAT'S IT ABOUT?

23 A. RE: MACDONALD, JEFFREY R., M.D., AND GIVES HIS ADDRESS.  
24 (GOVERNMENT EXHIBIT NUMBER 6075  
25 WAS IDENTIFIED FOR THE RECORD.)

September 24, 2012

1 Q. AND READ THE -- HE'LL SCROLL DOWN, AND JUST READ THE  
2 FIRST PARAGRAPH OF THAT, PLEASE.

3 A. IN COMPREHENSIVE SESSION OF PSYCHODIAGNOSTICS AND  
4 CONSULTATION ON 8/13/79, FOLLOWING A FULL DAY OF OBSERVATION  
5 OF SUBJECT INDIVIDUAL IN COURT IN THE FEDERAL BUILDING IN  
6 RALEIGH, THE UNDERSIGNED THERAPIST CONCERNED -- CONFERRED WITH  
7 THE ABOVE CAPTIONED, DR. JEFFREY R. MACDONALD, AND  
8 ACCOMPLISHED WITH HIM PROJECTIVE AND STANDARDIZED  
9 PSYCHOMETRICS, INCLUDING RORSCHACH PSYCHODIAGNOSTIC,  
10 PROJECTIVE DRAWING TEST, CALIFORNIA TEST OF PERSONALITY, DEPTH  
11 SENTENCE COMPLETION TEST, MOONEY PROBLEM CHECK LIST, AND  
12 CORNELL INDEX.

13 DR. MACDONALD WAS SEEN FOR PSYCHOLOGICAL EVALUATION  
14 IN THE OFFICE OF HIS ATTORNEYS, MESSRS THARRINGTON, SMITH, AND  
15 HARGROVE IN RALEIGH, NORTH CAROLINA.

16 Q. NOW, THAT'S THE FIRM OF WADE SMITH, IS THAT RIGHT?

17 A. THAT'S RIGHT.

18 Q. ALL RIGHT. NOW, OF COURSE, YOU WEREN'T ALLOWED TO BE  
19 PRESENT FOR THIS PSYCHIATRIC EVALUATION?

20 A. NO, I WAS NOT. NO.

21 Q. LET'S TURN TO PAGE 6075.4 AND LET'S GO DOWN TO THE LAST  
22 PARAGRAPH. AND JUST READ -- WELL, JUST READ TO THE END OF THE  
23 PAGE.

24 A. SUMMARILY, IN THE VIEW OF THIS THERAPIST, PREDICATED ON  
25 SCIENTIFIC PSYCHODIAGNOSTICS AND PSYCHOLOGICAL EVALUATION, DR.

September 24, 2012

McGinniss/Redirect

Page 1085

1 MACDONALD MAY WELL BE VIEWED AS A PSYCHOPATH SUBJECT TO  
2 VIOLENCE UNDER PRESSURE, RATHER EFFEMINATE AS AN INDIVIDUAL,  
3 AND GIVEN TO OVERT BEHAVIOR WHEN FACED WITH EMOTIONAL STRESS.  
4 HE IS NO LESS SUBJECT TO BLOTTING OUT THAT PAST OF WHAT TO HIM  
5 IS CONVENIENT AND TRULY ESSENTIAL -- HE IS NO LESS SUBJECT OF  
6 BLOTTING OUT THAT PAST -- I'M NOT SURE THAT'S -- THAT MIGHT BE  
7 A TYPO. SHOULD IT BE THAT PART? BUT, ANYWAY, THAT'S WHAT IT  
8 SAYS. AND TRULY ESSENTIAL TO BLOCK OUT FOR HIS OWN EMOTIONAL  
9 PRESERVATION.

10 AS A SOCIOPATHIC INDIVIDUAL WITH TROUBLESOME  
11 PSYCHOPATHY WITH AN OVERLAY OF SUBMERGED AND CONFUSED  
12 SEXUALITY DR. MACDONALD, DESPITE HIS HEDONISM, SEEMS SELF-  
13 DESTRUCTIVE, NAIVE, SUPERFICIAL, AND EVEN ILLOGICAL AT TIMES.  
14 A MAN WHO SEEKS FREEDOM AND EMANCIPATION ONLY FOR PERSONAL  
15 REMOVAL FROM CONSTRAINT, CONTROLS AND RESTRICTIONS.

16 TO SUIT HIS WHIM, HE HAS THE FACULTY TO MANUFACTURE  
17 AND CONVOLUTE CIRCUMSTANCES. HE SEEKS ATTENTION AND APPROVAL  
18 AND IS GIVEN TO DENIAL OF TRUTH. HE CAN BE CRITICALLY  
19 SARCASTIC. AS A SERIOUSLY EMOTIONAL MAN, HE GIVES EVIDENCE OF  
20 SECRETIVENESS WITH QUESTIONABLE MORAL STANDARDS.

21 HE IS DETAILISTIC AND LACKS INSIGHT IN SEEING THE  
22 GESTALT, THE WHOLE QUALITY OF THINGS AND EVENTS AND PERSONS,  
23 AS WELL AS CIRCUMSTANCES. PARENTHESSES, AS A PHYSICIAN, HE  
24 PROBABLY IS GIVEN TO TREATING THE SYMPTOM RATHER THAN THE  
25 ILLNESS AND THE DISEASE.

September 24, 2012

1 IN ESSENCE --

2 Q. JUST FINISH THAT SENTENCE.

3 A. IN ESSENCE, THEN, DR. MACDONALD, IN PERSONAL AND SOCIAL  
4 ADJUSTMENT, IS IN NEED OF CONTINUOUS CONSISTENT  
5 PSYCHOTHERAPEUTIC INTERVENTION COUPLED WITH PSYCHIATRIC  
6 ATTENTION.

7 Q. NOW, DO YOU RECALL THAT JUDGE DUPREE RULED THAT NONE OF  
8 THE PSYCHIATRIC EVIDENCE FOR MACDONALD AND AGAINST COULD BE  
9 PRESENTED IN THE JURY TRIAL?

10 A. I BELIEVE HE DID.

11 Q. AND DO YOU RECALL THAT THIS REPORT THAT YOU JUST READ  
12 FROM WAS SUBMITTED ON A POST-TRIAL BOND MOTION OR DO YOU?

13 A. I DON'T RECALL THAT.

14 MR. BRUCE: NO FURTHER QUESTIONS ON REDIRECT.

15 THE COURT: MR. WILLIAMS.

16 MR. WILLIAMS: YES, SIR. THANK YOU, YOUR HONOR.

17 R E C R O S S - E X A M I N A T I O N 9:37 A.M.

18 BY MR. WILLIAMS:

19 Q. SIR, I WANT TO DIRECT YOUR ATTENTION TO THE SCREEN IF WE  
20 CAN HAVE IT COME UP. IT'LL TAKE JUST A SECOND. WELL, WE'LL  
21 JUST GO THROUGH IT THIS WAY.

22 FIRST, I WANT TO ASK YOU ABOUT YOUR BOOK WHERE YOU  
23 SAID THAT YOU QUOTED FROM THE NOTES ABOUT THE ESKATROL, BUT  
24 YOU COULD NOT PUT EVERYTHING IN BECAUSE IT WAS TOO LENGTHY.  
25 DO YOU RECALL SAYING THAT JUST NOW?

September 24, 2012

1 A. YEAH, I HAD ALREADY PUT IT IN IN EARLIER SECTIONS OF THE  
2 BOOK. I DIDN'T WANT TO BE REPETITIVE.

3 Q. AND IN THAT PLACE WHERE YOU QUOTED THOSE NOTES THERE  
4 WERE, AS WAS POINTED OUT ON FRIDAY, THERE WERE SECTIONS WHERE  
5 YOU HAD AN ELLIPSES WHICH WOULD INDICATE THAT YOU HAD LEFT  
6 PORTIONS OUT, CORRECT?

7 A. YEAH, I THINK THAT'S CORRECT.

8 Q. ALL RIGHT. I WILL NOW DIRECT YOUR ATTENTION TO THE  
9 SCREEN AND THIS IS FROM EXHIBIT 5112, DEFENSE 5112. DO YOU  
10 SEE THERE AT THE BOTTOM THE HIGHLIGHTED PORTION, IT IS  
11 POSSIBLE I HAD ONE DIET PILL AT THIS TIME. I DO NOT REMEMBER,  
12 BUT IT IS POSSIBLE. DO YOU SEE THAT?

13 A. YES, SIR, I DO.

14 (DEFENSE EXHIBIT NUMBER 5112  
15 WAS IDENTIFIED FOR THE RECORD.)

16 Q. IS THERE AN ELLIPSES IN THERE?

17 A. NO, THERE ISN'T.

18 Q. IS THERE ANY INDICATION THAT SOMETHING IS LEFT OUT?

19 A. THERE'S NO ELLIPSES. THERE'S NO INDICATION THAT ANYTHING  
20 IS LEFT OUT.

21 Q. BUT ALSO IN DEFENSE EXHIBIT 5112, WE HAVE THE NOTES  
22 THEMSELVES, AND IN THE BOX IT'S CLEAR THAT HE SAYS IT IS  
23 POSSIBLE THAT I HAD ONE DIET PILL AT THIS TIME. I DO NOT  
24 REMEMBER AND DO NOT THINK I HAD ONE, BUT IT IS POSSIBLE. YOU  
25 SEE THAT, DON'T YOU?

September 24, 2012

1 A. YES, I DO.

2 Q. AND THERE'S NOTHING IN YOUR BOOK THAT GIVES THE READER  
3 ANY INDICATION THAT THE PHRASE AND DO NOT THINK I HAD ONE HAS  
4 BEEN LEFT OUT OF WHAT YOU QUOTED, IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND IN OTHER SECTIONS OF THIS SAME QUOTE, AGAIN DIRECTING  
7 YOUR ATTENTION TO THE SCREEN WHICH CONTINUES TO BE DEFENSE  
8 5112, THERE ARE ELLIPSES THAT YOU HAVE PLACED IN THERE?

9 A. YEAH, I SEE A COUPLE -- COUPLE OF PLACES WHERE I USED  
10 ELLIPSES.

11 Q. NOW, YOU'VE TALKED ABOUT A PSYCHIATRIC EXAM THAT WAS DONE  
12 AND I BELIEVE YOU SAID IT WAS DONE BY MR. SILVERMAN, WHO WAS  
13 HIRED BY THE GOVERNMENT, IS THAT CORRECT?

14 A. THAT'S MY RECOLLECTION.

15 Q. YOU'RE ALSO AWARE, ARE YOU NOT, THAT THERE WAS -- THAT  
16 ONE OF THE DEFENSE REPORTS WAS PREPARED BY ROBERT SADOFF?

17 A. YES, INDEED. IN FACT, I SPOKE TO DR. SADOFF. I  
18 INTERVIEWED DR. SADOFF PERSONALLY WHILE I WAS WORKING ON THIS  
19 BOOK.

20 Q. AND SO IT WOULD NOT SURPRISE YOU TO KNOW THAT DR. SADOFF  
21 SAID ABOUT DR. MACDONALD I SEE NO EVIDENCE IN CAPTAIN  
22 MACDONALD'S PERSONALITY, EMOTIONAL -- EMOTIONAL AND  
23 PSYCHOLOGICAL MAKEUP THAT COULD ACCOUNT EITHER FOR THE LOSS OF  
24 CONTROL OR A CALCULATED HOMICIDE THAT OCCURRED IN HIS HOME ON  
25 FEBRUARY 17TH, 1970. I DO SEE IN HIM A DEPRESSED MAN TRYING

September 24, 2012

1 TO HANDLE A VERY DIFFICULT SITUATION. ARE YOU AWARE THAT HE  
2 SAID THAT?

3 A. DID DR. SADOFF SAY THAT AT THE ARTICLE 32 IN 1970?

4 Q. I WOULD REPRESENT TO YOU THAT -- WELL, MY QUESTION TO YOU  
5 WOULD BE THAT THIS WOULD BE FROM AN APRIL 23RD, 1979, LETTER  
6 THAT HE WROTE TO BERNIE SEGAL.

7 A. OKAY. PRIOR TO THE TRIAL.

8 Q. STRIKE THAT. I BELIEVE IT WOULD BE 1970, AS I LOOK AT MY  
9 COPY HERE.

10 A. OKAY. BECAUSE WHEN I TALKED TO DR. SADOFF ABOUT THAT  
11 EVALUATION, HE SAID TO ME, WELL, IF HE HAD KNOWN THEN THE  
12 THINGS THAT HE LEARNED LATER ABOUT THE ESKATROL AND OTHER  
13 MATTERS HIS OPINION MIGHT HAVE BEEN VERY DIFFERENT.

14 HE HADN'T CONSIDERED THAT DR. MACDONALD MIGHT HAVE  
15 SUFFERED FROM NARCISSISTIC PERSONALITY DISORDER OR MIGHT HAVE  
16 BEEN A PSYCHOPATH. THAT DIDN'T COME ACROSS IN THE CLINICAL  
17 SETTING. SO, HE HAD NOT CONSIDERED THAT OPTION. HE TOLD ME  
18 THAT IF HE HAD IT TO DO OVER AGAIN, HE MIGHT HAVE WRITTEN A  
19 VERY DIFFERENT OPINION.

20 Q. BUT AT LEAST AT THE TIME HE CONDUCTED HIS EVALUATION HE  
21 ALSO CONCLUDED THERE WAS NOTHING TO SUGGEST IN CAPTAIN  
22 MACDONALD THAT HE WAS CAPABLE OF COMMITTING THIS TYPE OF  
23 CRIME. YOU'RE AWARE THAT HE HAD THAT CONCLUSION WITH HIS  
24 EVALUATION AS DONE?

25 A. YES, SIR, IN 1970.

September 24, 2012

McGinniss/Recross

Page 1090

1 Q. MR. MCGINNISS, IN ADDITION TO THE EVALUATION DONE BY MR.  
2 SADOFF, ARE YOU ALSO AWARE THAT SOME EVALUATIONS WERE DONE BY  
3 PERSONNEL AT WALTER REED, THAT THOSE ALSO WERE FAVORABLE TO  
4 THE DEFENSE AND THAT THEY WERE PART OF THE FAVORABLE  
5 PSYCHOLOGICAL REPORTS THAT THE DEFENSE WAS ATTEMPTING TO  
6 SUBMIT TO THE COURT? ARE YOU AWARE OF THAT?

7 A. I DON'T SPECIFICALLY RECALL PSYCHIATRIC EXAMINATIONS OR  
8 PSYCHOLOGICAL TESTING DONE AT WALTER REED, WHICH IS NOT TO SAY  
9 THAT IT DIDN'T HAPPEN.

10 Q. ALL RIGHT. AND THEN ONE FINAL AREA OF INQUIRY AND I'M  
11 GOING TO PUT BACK ONTO THE SCREEN A PORTION FROM GOVERNMENT  
12 EXHIBIT 4017. THAT'S 4017.

13 YOU WERE ASKED ABOUT THE EQUIPMENT THAT WAS  
14 AVAILABLE FOR AMPHETAMINE TESTING AT FORT BRAGG AT THE TIME  
15 THAT THESE MURDERS OCCURRED. AND I'M GOING TO BLOW THIS UP  
16 FOR YOU A LITTLE BIT.

17 THIS IS TESTIMONY FROM THE CIVIL CASE IN WHICH MR.  
18 BARBATO, THE PERSON WHO DID THE TESTING, WAS ASKED ABOUT THE  
19 AVAILABLE EQUIPMENT. IF YOU COULD PLEASE READ THE HIGHLIGHTED  
20 PORTIONS FOR US.

21 A. SURE.

22 QUESTION: WERE YOU ACQUAINTED WITH ALL OF THE OTHER  
23 EQUIPMENT THAT WAS IN YOUR LAB FOR TESTING DRUGS?

24 ANSWER: WELL, THERE WAS A GAS CHROMATOGRAPH THAT  
25 WAS AVAILABLE IN THE LABORATORY, WHICH I WAS NOT AT THAT POINT

September 24, 2012



1 QUALIFIED TO USE.

2 Q. AND GOING ON TO THE NEXT PAGE OF THIS TRANSCRIPT, IF YOU  
3 COULD READ AGAIN THE HIGHLIGHTED PORTION.

4 A. QUESTION: THE GAS CHROMATOGRAPH THAT YOU SAID WOULD BE  
5 SIGNIFICANTLY MORE SENSITIVE WOULD HAVE BEEN ABLE TO DETECT  
6 LESS THAN A LETHAL DOSE OF AMPHETAMINES TO YOUR KNOWLEDGE,  
7 ISN'T THAT RIGHT?

8 YES, I BELIEVE THAT IS CORRECT.

9 MR. WILLIAMS: THANK YOU. NO FURTHER QUESTIONS,  
10 YOUR HONOR.

11 THE COURT: YOU MAY STEP DOWN.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 MR. BRUCE: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

14 MR. WIDENHOUSE: NO OBJECTION.

15 THE COURT: YES, SIR.

16 THE WITNESS: THANK YOU.

17 MR. BRUCE: YOUR HONOR, AT THIS POINT WE'RE PREPARED  
18 TO CLOSE OUR EVIDENCE. I WANT TO MAKE SURE, FIRST OF ALL,  
19 THAT THE EXHIBITS THAT WE OFFERED THIS MORNING WILL BE  
20 RECEIVED IN EVIDENCE.

21 THE COURT: YES, SIR.

22 MR. BRUCE: AND GOING BACK TO THE PRETRIAL ORDER AT  
23 PAGE 43 AND 44, WHICH WERE -- IT'S MY UNDERSTANDING THE WAY  
24 THIS WORKS, AND YOUR HONOR CAN CORRECT ME, IS THAT IF IT'S IN  
25 THE PRETRIAL ORDER UNOBJECTED TO IT COMES INTO EVIDENCE, IS

September 24, 2012

McGinniss/Recross

Page 1092

1 THAT RIGHT?

2 THE COURT: YES, SIR. YES, SIR.

3 MR. BRUCE: AND LOOKING AT THEIR OBJECTIONS TO OUR  
4 EXHIBITS, I BELIEVE THAT THEY HAD PREVIOUSLY OBJECTED TO THE  
5 TESTIMONY OF JOE MCGINNISS ON PRIVILEGE GROUNDS, BUT THEY  
6 RETREATED FROM THAT OBJECTION. THEY OBJECTED ON EVIDENCE AS A  
7 WHOLE AND YOUR HONOR OVERRULED THAT OBJECTION.

8 THE COURT: YES, SIR.

9 MR. BRUCE: ALL RIGHT. AND THEN WE'VE GOT TWO  
10 EXHIBITS, 2111 AND 2115, I SUPPOSE WE CAN PUT THOSE ON THE  
11 SCREEN. WE NEVER REFERRED TO THEM IN TESTIMONY. THEY PURPORT  
12 TO BE PHOTOGRAPHS FROM JIMMY BRITT'S HOME. THERE IS THE FIRST  
13 ONE. AND IF YOU'D GO TO 2115, THERE IS THE SECOND ONE.

14 AND THEIR OBJECTION WAS IMPROPER CHARACTER EVIDENCE  
15 WITH REGARD TO JIMMY BRITT. AND I JUST DON'T KNOW IF YOU EVER  
16 RESOLVED THAT, YOUR HONOR.

17 THE COURT: OVERRULED.

18 (GOVERNMENT'S EXHIBITS NUMBER 2111

19 AND 2115 WERE ADMITTED INTO EVIDENCE.)

20 MR. BRUCE: ALL RIGHT. WE HAVE IN OUR EXHIBITS  
21 GRAND JURY TRANSCRIPTS THAT WERE TURNED OVER TO THE DEFENSE  
22 PRIOR TO THE TRIAL IN 1979, AND HAVE BEEN IN THEIR POSSESSION  
23 EVER SINCE. AND I THINK ALL BUT ONE OF THESE WITNESSES  
24 TESTIFIED AT THE TRIAL AND THE OBJECTION IN THE PRETRIAL ORDER  
25 ON BEHALF OF THE MOVANT WAS THAT IT VIOLATED THE CONFRONTATION

September 24, 2012

1 CLAUSE.

2 THE COURT: IT'S OVERRULED.

3 MR. BRUCE: ON PAGE 44 OF THE PRETRIAL ORDER THEY  
4 OBJECTED TO SOME OF THE TRANSCRIPTS FROM THE *MACDONALD V.*  
5 *MCGINNISS* FEDERAL COURT TRIAL IN CALIFORNIA. THESE HAVE BEEN  
6 REFERRED TO, SOME OF THEM, AND THEY OBJECTED IT WAS BEYOND  
7 EVIDENCE AS A WHOLE.

8 THE COURT: OVERRULED.

9 MR. BRUCE: THEY OBJECTED TO US CALLING THEIR -- ONE  
10 OF *MACDONALD'S* FORMER ATTORNEYS, HART MILES. WELL, OBVIOUSLY,  
11 WE'RE NOT CALLING HIM SO THAT'S MOOT.

12 THEY OBJECTED TO THE *60 MINUTES* PROGRAM, EXHIBIT  
13 4001.

14 THE COURT: THAT'S OVERRULED.

15 (GOVERNMENT EXHIBIT NUMBER 4001 WAS  
16 OFFERED AND ADMITTED INTO EVIDENCE.)

17 MR. BRUCE: AND, YOUR HONOR'S ALREADY DEALT WITH THE  
18 POLYGRAPH EVIDENCE AND OVERRULED THAT OBJECTION AS I  
19 UNDERSTAND.

20 THE COURT: YES, SIR.

21 MR. BRUCE: YOUR HONOR, THE LAST OBJECTION THEY  
22 LISTED IN THE PRETRIAL ORDER HAS BEEN MOOTED BECAUSE WE DIDN'T  
23 INTRODUCE THAT EXHIBIT.

24 THE COURT: ALL RIGHT, SIR.

25 MR. BRUCE: AND, OF COURSE, WE REFERRED TO MANY

September 24, 2012

McGinniss/Recross

Page 1094

1 THINGS THAT ARE IN THE RECORD OF THE LITIGATION FROM THE  
2 BEGINNING AND THOSE ARE ALL IN THE RECORD.

3 THE COURT: THANK YOU.

4 MR. BRUCE: AND WITH THAT, WE WOULD REST OUR  
5 EVIDENCE.

6 THE COURT: ALL RIGHT. MR. WILLIAMS OR MR.  
7 WIDENHOUSE.

8 MR. WIDENHOUSE: YOUR HONOR, WE'D CALL JERRY  
9 LEONARD.

10 THE COURT: ALL RIGHT.

11 MR. WIDENHOUSE: YOUR HONOR, I JUST WANT TO MAKE  
12 SURE THAT ONCE HE TAKES THE STAND THAT THE AFFIDAVIT IS NO  
13 LONGER UNDER SEAL, IS THAT --

14 THE COURT: YES, SIR, THAT'S CORRECT.

15 MR. WIDENHOUSE: OKAY.

16 MR. WEST: YOUR HONOR, WITH YOUR PERMISSION, I WOULD  
17 APPRECIATE BEING ABLE TO APPROACH WITH COUNSEL ABOUT ONE  
18 MATTER.

19 THE COURT: YES, SIR.

20 (BENCH CONFERENCE ON THE RECORD.)

21 MR. WEST: GOOD MORNING, YOUR HONOR.

22 THE COURT: GOOD MORNING, ED.

23 MR. WEST: YOUR HONOR, I WOULD LIKE TO RENEW A  
24 REQUEST I MADE LAST WEEK AND READ ONE PORTION OF SOMETHING TO  
25 YOUR HONOR, IF I COULD, FROM THE RULES OF PROFESSIONAL

September 24, 2012

1 CONDUCT.

2           IT IS A NOTE THAT IS UNDER RULE 1.6 AND IT SAYS AT  
3 THE END, IF THE DISCLOSURE WILL BE MADE IN CONNECTION WITH A  
4 JUDICIAL PROCEEDING, THE DISCLOSURE SHOULD BE MADE IN A MANNER  
5 THAT LIMITS ACCESS TO THE INFORMATION TO THE TRIBUNAL OR OTHER  
6 PERSONS HAVING A NEED TO KNOW IT, AN APPROPRIATE PROTECTIVE  
7 ORDER OR OTHER ARRANGEMENTS SHOULD BE SOUGHT BY THE LAWYER TO  
8 THE FULLEST EXTENT PRACTICABLE.

9           AND SO, YOUR HONOR, OUR REQUEST IN THAT, AGAIN, IS  
10 TO HAVE THIS EXAMINATION DONE IN CAMERA, YOUR HONOR. AND PART  
11 OF THAT HAS TO DO WITH, YOUR HONOR, THIS IS SUCH A COMPLEX AND  
12 GRAY AREA OF THE LAW, YOUR HONOR, AND I FELT DUTY BOUND TO  
13 BRING THAT TO THE COURT'S ATTENTION.

14           THE COURT: WELL, I UNDERSTAND. I DON'T KNOW WHAT  
15 THE POSITION OF THE PARTIES IS ON THIS. QUITE FRANKLY, WHEN I  
16 MADE THAT DECISION, MY DECISION WAS THAT MS. STOECKLEY WAS  
17 DEAD, HER PARENTS WERE DEAD. HER BROTHER JOINED IN THE  
18 REQUEST THAT THE PRIVILEGE BE WAIVED AND THIS HAPPENED 40 SOME  
19 YEARS.

20           I NEVER SAW ANY OF THESE PEOPLE INVOLVED, BUT I FEEL  
21 THAT THE FOURTH CIRCUIT'S DIRECTIVE WAS THAT EVERYTHING BE  
22 HEARD. EVERYTHING.

23           MR. WEST: AND WE'RE NOT OPPOSING, YOUR HONOR, TO  
24 HEAR IT, BUT WE WOULD REQUEST THOSE SPECIFIC MEASURES. AND  
25 THE MEASURE THAT WE WOULD ASK YOUR HONOR IS TO DO IT, YOU

September 24, 2012

1 KNOW, WITH EITHER A CLEAR COURTROOM OR IN CHAMBERS OR  
2 SOMETHING, OF COURSE, ON THE RECORD SO THAT THERE'S A RECORD  
3 OF IT, OF COURSE.

4 BUT THAT PROTECTS THE DUTY OF CONFIDENTIALITY THAT  
5 THIS RULE SPEAKS OF, YOUR HONOR. AND WE FELT DUTY BOUND TO  
6 ASK IT AND THAT'S THE ONLY REASON I READ IT TO YOU, YOUR  
7 HONOR.

8 THE COURT: WELL, WHAT DO YOU HAVE TO SAY ABOUT IT,  
9 MR. BRUCE?

10 MR. BRUCE: YOUR HONOR, WE WOULD OPPOSE CLOSING THE  
11 COURTROOM FOR THIS TESTIMONY. I THINK THE PROPER PROCEDURE  
12 HAS BEEN FOLLOWED BY THE COURT. YOU RECEIVED THE SEALED  
13 AFFIDAVIT TO DETERMINE WHETHER EXCEPTIONAL CIRCUMSTANCES  
14 OVERCAME THE ATTORNEY-CLIENT PRIVILEGE. THE COURT RULED THAT  
15 IT DID.

16 NOW, WE'RE INVOLVED IN A PUBLIC EVIDENTIARY HEARING  
17 IN WHICH THE PUBLIC IS VERY INTERESTED AND I THINK THE  
18 TESTIMONY NEEDS TO BE RECEIVED IN PUBLIC.

19 ALSO, AS YOUR HONOR POINTED OUT AS A PRACTICAL  
20 MATTER, THIS WOMAN HAS BEEN DEAD SINCE 1983. EVERY DETAIL OF  
21 HER LIFE --

22 THE COURT: HER PARENTS ARE DEAD AS WELL.

23 MR. BRUCE: RIGHT. EVERY DETAIL OF HER LIFE,  
24 POSITIVE AND NEGATIVE, HAS BEEN THOROUGHLY AIRED. SO, I DON'T  
25 THINK THIS WOULD ADD ANY PREJUDICE TO HER.

September 24, 2012

1 MR. WIDENHOUSE: I DON'T OPPOSE IT BEING DONE IN  
2 CAMERA, JUDGE. I MEAN, I THINK THERE'S A SERIOUS ISSUE OF  
3 PRIVILEGE AND A SERIOUS ISSUE OF CONFIDENTIALITY. I THINK  
4 WE'RE ENTITLED TO THE INFORMATION, IT NEEDS TO BE IN THE  
5 RECORD, BUT I THINK MR. WEST'S POINT IS WELL TAKEN. AND WE  
6 DON'T HAVE AN OBJECTION TO DOING IT IN CAMERA BY CLOSING THE  
7 COURTROOM OR DOING IT IN CHAMBERS. WE JUST HAVE TO GET THE  
8 INFORMATION IN THE RECORD.

9 THE COURT: WELL, I AM SYMPATHETIC WITH YOUR VIEW  
10 POINT AND WITH MR. WEST'S, BUT THE FOURTH CIRCUIT HAS BEEN  
11 RATHER CLEAR ON CLOSING COURTS. I MEAN, DO YOU FEEL THAT I'M  
12 INCORRECT IN THAT REGARD?

13 MR. WIDENHOUSE: NO. I THINK THIS IS A UNIQUE  
14 SITUATION. I THINK IT'S -- I DON'T THINK THE FOURTH CIRCUIT  
15 HAS ADDRESSED WHETHER A SITUATION INVOLVING PRIVILEGED AND  
16 CONFIDENTIAL INFORMATION THAT THE DEFENDANT IS ENTITLED TO,  
17 ESPECIALLY WHEN IT'S NOT A JURY TRIAL, COULDN'T BE DONE  
18 OUTSIDE THE PRESENCE OF THE PUBLIC WITH A SEALED TRANSCRIPT,  
19 BUT THAT'S ALL I CAN SAY.

20 THE COURT: WHAT'S YOUR VIEW, MR. BRUCE?

21 MR. BRUCE: WE'RE OPPOSED TO IT. I JUST DON'T  
22 BELIEVE THAT THERE'S A -- IF YOU LOOK AT THE AFFIDAVIT, THE  
23 THREE OR FOUR PARAGRAPHS THAT HE RELATES OF WHAT HE SAYS THAT  
24 HELENA STOECKLEY TOLD HIM IS NOT VERY MUCH DIFFERENT THAN SOME  
25 OF THE OTHER CONFESSIONS, ALLEGED CONFESSIONS, BY HER THAT

September 24, 2012

1 HAVE BEEN ADMITTED IN THIS PROCEEDING AND OTHER PROCEEDINGS  
2 RELATED TO MACDONALD.

3 I THINK AT THIS POINT, I THINK THE COURT GAVE ALL  
4 THE DUE PROCESS AND PROTECTION TO THAT AND HAS RULED NOW AT  
5 THE REQUEST OF THE DEFENSE THAT THE PRIVILEGE BE OVERCOME AND  
6 IT NEEDS TO BE AIRED AS PART OF THIS PUBLIC HEARING.

7 I DON'T -- THERE'S NOTHING IN THERE THAT WOULD BE  
8 MORE EMBARRASSING TO HELENA STOECKLEY THAN WHAT'S ALREADY BEEN  
9 HEARD.

10 THE COURT: WELL, THAT'S CERTAINLY TRUE.

11 MR. WIDENHOUSE: I DON'T MEAN TO INTERRUPT, MR.  
12 BRUCE. I THINK THERE'S A LARGER ISSUE THAN EMBARRASSMENT TO  
13 MS. STOECKLEY AND HER FAMILY.

14 I THINK THERE'S A LARGER ISSUE ABOUT THE ATTORNEY-  
15 CLIENT PRIVILEGE AND THE NOTION THAT IF IT GETS BREACHED IT'S  
16 GOING TO BE AIRED IN OPEN COURT IN AN UNSEALED MANNER AND IT  
17 WOULD GIVE SOME PROTECTION EVEN WHEN THE PRIVILEGE IS DEEMED  
18 TO BE WAIVED BY THE COURT IF IT WERE TAKEN INITIALLY UNDER  
19 SEAL AND IN CAMERA, THAT'S ALL, AND I JUST THINK THAT'S  
20 IMPORTANT.

21 THE COURT: WELL, TO ME, AS I READ HER MATERIAL, THE  
22 SWORN STATEMENT, IT WAS SOMEWHAT EXCULPATORY.

23 MR. WIDENHOUSE: YES.

24 THE COURT: AND MY FEELING WAS THAT IF A MAN IS  
25 INNOCENT THEN THAT TESTIMONY THAT FAVORS HIS INNOCENCE TRUMPS

September 24, 2012



1 THE ATTORNEY-CLIENT PRIVILEGE. ALTHOUGH, I AGREE THAT I  
2 REACHED THAT CONCLUSION RELUCTANTLY.

3 MR. WIDENHOUSE: I UNDERSTAND.

4 MR. WEST: AND, YOUR HONOR, JUST AGAIN, I THINK IT'S  
5 NOT JUST WHAT'S IN THE AFFIDAVIT, AND I DON'T KNOW WHAT THESE  
6 FOLKS ARE GOING TO ASK, BUT IF THEY WANT TO GET INTO, YOU  
7 KNOW, IMPRESSIONS OR OTHER THINGS OUTSIDE THE AFFIDAVIT, THEN  
8 THE ONLY WAY TO PROTECT THAT WOULD BE IN AN CAMERA PROCEEDING.

9 THE COURT: WELL, LET ME LOOK AT THE FOURTH CIRCUIT  
10 MANDATE AGAIN. IT SAYS, AND I RECALL IT DISTINCTLY, IT SAYS  
11 EVERYTHING MEANS EVERYTHING.

12 MR. WIDENHOUSE: I'VE READ IT.

13 THE COURT: AM I CORRECT?

14 MR. WIDENHOUSE: YES, BUT I DON'T KNOW THAT THAT  
15 MEANS EVERYTHING IN OPEN COURT. I THINK THAT MEANS EVERYTHING  
16 ON THE RECORD.

17 THE COURT: WELL, YOU'VE GOT A GOOD POINT THERE.

18 MR. WEST: YEAH, WE'RE NOT SAYING IT SHOULDN'T BE  
19 HEARD AND CERTAINLY THE REPORTER SHOULD BE THERE TO TAKE IT  
20 DOWN SO THAT THERE IS A TRANSCRIPT OF IT. THERE'S NO QUESTION  
21 ABOUT THAT. WE'RE NOT SAYING THAT. I UNDERSTAND WHAT YOUR  
22 HONOR IS SAYING AND WE ACCEPT THAT. I'M JUST TRYING TO --

23 THE COURT: I UNDERSTAND.

24 MR. WEST: AND CERTAINLY IF IT'S ON THE RECORD, THEN  
25 THE PUBLIC AT SOME POINT, IF THE FOURTH CIRCUIT RULES HOWEVER

September 24, 2012

McGinniss/Recross

Page 1100

1 THEY MAY RULE, WILL CERTAINLY BE AVAILABLE TO THEM.

2 MR. BRUCE: YOUR HONOR, MR. WEST REPRESENTS MR.  
3 LEONARD. HE DOES NOT REPRESENT MS. STOECKLEY.

4 MR. WEST: I --

5 MR. BRUCE: MAY I FINISH, PLEASE?

6 MR. WEST: OF COURSE.

7 MR. BRUCE: WHEN MR. LEONARD TESTIFIES, IF HE  
8 TESTIFIES ON DIRECT EXAMINATION CONSISTENT WITH HIS SEALED  
9 AFFIDAVIT, HE'S GOING TO BE SUBJECT TO VIGOROUS CROSS-  
10 EXAMINATION.

11 I SUBMIT THAT WHAT'S REALLY GOING ON HERE IS THAT  
12 THEY'RE TRYING TO PROTECT MR. LEONARD FROM EMBARRASSMENT.  
13 WELL, THAT'S NOT THE POINT. THE POINT IS MS. STOECKLEY'S  
14 PRIVILEGED INFORMATION. THE COURT HAS RULED NOW THAT  
15 PRIVILEGE IS OVERCOME BECAUSE OF THE EXCEPTIONAL  
16 CIRCUMSTANCES. THERE'S NO ARGUMENT --

17 THE COURT: DO YOU DISAGREE?

18 MR. BRUCE: NO, I DO NOT AGREE -- I DO NOT DISAGREE.  
19 I DO NOT DISAGREE. AND I DON'T THINK THERE'S ANY REASON NOW,  
20 CONNECTED TO MS. STOECKLEY, THAT HIS TESTIMONY SHOULD NOT BE  
21 RECEIVED IN PUBLIC FOR THE REASONS ALREADY STATED.

22 AND I THINK ALSO THAT IF THE COURT PROPOSES TO CLOSE  
23 THE COURTROOM IN A TRIAL THAT'S RECEIVING ALL THIS MEDIA  
24 ATTENTION, YOU'RE GOING TO HAVE TO HEAR FROM THE MEDIA OUTLETS  
25 AS TO --

September 24, 2012

1 THE COURT: OH, YEAH.

2 MR. WEST: WELL, YOUR HONOR, IF I COULD AT LEAST BE  
3 HEARD ABOUT THIS NOW THAT HE'S BROUGHT THAT UP. WE'RE DOING  
4 THIS BECAUSE WE THINK THE RULE REQUIRES IT AND I DID THAT LAST  
5 WEEK AND I'M DOING THIS MORNING. I SAID TO HIM LAST NIGHT  
6 THAT I WAS GOING TO BRING THIS UP. I SAID TO HIM LAST NIGHT I  
7 WAS GOING TO BRING THIS UP.

8 YOU KNOW, HE'S TALKED ABOUT THAT HE WANTS TO  
9 VIGOROUSLY CROSS-EXAMINE MR. LEONARD AND HE HAS CERTAINLY LET  
10 MR. LEONARD KNOW THROUGH ME THINGS HE WANTS TO BRING UP.

11 AND SO WHILE WE'RE TALKING ABOUT THAT, I GUESS I  
12 WOULD ASK YOUR HONOR -- I KNOW THAT YOUR HONOR HAS SAID  
13 EVERYTHING COMES IN, BUT AM I ALLOWED TO OBJECT IF I THINK  
14 THAT SOMETHING IS, YOU KNOW, IMPROPER HERE BECAUSE HE'S LET IT  
15 BE NO SECRET THAT HE INTENDS TO GO AFTER MR. LEONARD  
16 VIGOROUSLY.

17 MR. BRUCE: WELL, YOUR HONOR, WE CAN DISCUSS IF  
18 THERE'S ANY -- I MEAN, I WOULD NORMALLY FRONT TO YOUR HONOR  
19 ANY SENSITIVE AREAS OF IMPEACHMENT ANYWAY, BUT THAT'S NOT THE  
20 ISSUE ABOUT CLOSING THE COURTROOM. THERE'S CERTAINLY NO  
21 ARGUMENT TO CLOSE THE COURTROOM TO PROTECT MR. LEONARD FROM  
22 EMBARRASSMENT.

23 THE ONLY -- WHAT THE RULE SAYS THAT MR. WEST IS  
24 QUOTING IS THAT THE ATTORNEY, LEONARD, WHO, THROUGH HIS  
25 ATTORNEY, IS SUPPOSED TO AT LEAST MAKE A MOTION TO KEEP THIS

September 24, 2012

McGinniss/Recross

Page 1102

1 -- AS MANY SAFEGUARDS AS POSSIBLE --

2 THE COURT: YES, I AGREE WITH THAT.

3 MR. BRUCE: -- ON THE DISCLOSED INFORMATION. HE'S  
4 DONE THAT. IT'S BEEN SUBMITTED IN CAMERA. YOUR HONOR HAS  
5 RULED THAT THE PRIVILEGE HAS BEEN OVERCOME. NOW, HE'S ASKED  
6 FOR IT TO BE -- THE COURTROOM TO BE SEALED DURING THE  
7 TESTIMONY. HE HAS DISCHARGED -- MR. LEONARD AND HIS ATTORNEY  
8 MR. WEST HAVE DISCHARGED THEIR OBLIGATION.

9 BUT I THINK THE COURT'S RULING SHOULD BE IN FAVOR OF  
10 THE FIRST AMENDMENT AND IN FAVOR OF THIS PUBLIC EVIDENTIARY  
11 HEARING.

12 MR. WEST: WELL, AND I GUESS I'VE MOVED ON, I'VE  
13 ASSUMED YOUR HONOR HAS ALREADY RULED ON THAT AND I GUESS I'VE  
14 MOVED ON TO THE NEXT ISSUE THAT HE BROUGHT UP.

15 I WANT TO MAKE SURE THAT, YOU KNOW, IF HE IS  
16 INTENDING TO DO WHATEVER IT IS HE INTENDS TO DO TO MR.  
17 LEONARD, THAT I HAVE SOME FORECAST OF THAT SO THAT I MIGHT BE  
18 ABLE TO OBJECT IF I THINK SOMETHING'S IMPROPER BECAUSE, YOU  
19 KNOW, THAT'S IMPORTANT TO MR. LEONARD.

20 MR. BRUCE: YOUR HONOR, I DON'T THINK MR. WEST HAS  
21 STANDING TO OBJECT TO ORDINARY CROSS-EXAMINATION. MR.  
22 WIDENHOUSE MIGHT HAVE STANDING TO OBJECT TO MY CROSS-  
23 EXAMINATION OF MR. LEONARD. BUT, AGAIN, NONE OF THAT WOULD BE  
24 ANY REASON TO CLOSE THE COURTROOM.

25 MR. WEST: I'M NOT SAYING THAT ANYMORE. WHAT I'M

September 24, 2012

McGinniss/Recross

Page 1103

1 SAYING IS THAT I THINK THE COURT DID RULE AND I UNDERSTAND  
2 THAT. I'M TRYING TO MOVE ON NOW TO THE FACT THAT MR. LEONARD  
3 IS GOING TO BE ON THE STAND AND I HAVE A DUTY TO TRY TO LOOK  
4 AFTER HIM AND REPRESENT HIM AND YOU HAVE REPRESENTED TO ME  
5 THAT YOU INTEND TO GO AFTER HIM VIGOROUSLY.

6 AND SO I WOULD LIKE THE OPPORTUNITY TO NOT BE A  
7 POTTED PLANT IF MR. LEONARD'S UP THERE AND I THINK SOMETHING'S  
8 IMPROPER, YOUR HONOR.

9 MR. BRUCE: WELL, YOUR HONOR, MY PROPOSAL ON THAT  
10 WOULD BE -- FIRST OF ALL, I DON'T THINK MR. WEST HAS ANY  
11 STANDING BEYOND THIS PRIVILEGE ISSUE.

12 I THINK THAT IF THERE ARE CROSS-EXAMINATION  
13 QUESTIONS TO WHICH THERE'S AN OBJECTION, THEY SHOULD BE LODGED  
14 BY MR. WIDENHOUSE OR MR. WILLIAMS WHO ARE PARTIES --  
15 REPRESENTING A PARTY TO THE CASE.

16 BUT AFTER THE DIRECT EXAMINATION AND BEFORE -- I  
17 HAVEN'T HEARD THE DIRECT EXAMINATION YET. SO, AFTER THE  
18 DIRECT EXAMINATION, I'D BE HAPPY TO COME TO THE BENCH AND  
19 FRONT ANY SENSITIVE CROSS-EXAMINATION QUESTIONS ABOUT MR.  
20 LEONARD'S BACKGROUND SO THAT THE OTHER SIDE CAN BE HEARD, BUT  
21 I REALLY DON'T THINK MR. WEST HAS ANY STANDING AT THAT POINT.

22 MR. WIDENHOUSE: WELL, I'M NOT SURE WHAT I CAN DO  
23 BECAUSE I'M SORT OF SADDLED WITH THE EVIDENCE AS A WHOLE  
24 STANDARD. I MEAN, WE HAVEN'T BEEN OBJECTING TO CROSS-  
25 EXAMINATION EVEN IF THE IMPEACHMENT MIGHT HAVE BEEN A LITTLE

September 24, 2012

McGinniss/Recross

Page 1104

1 BIT IMPROPER ON ONE SIDE OR THE OTHER. MR. BRUCE AND I HAVE  
2 BEEN LETTING EACH OTHER DO WHATEVER WE WANTED UNDER THE  
3 EVIDENCE AS A WHOLE STANDARD.

4 MR. WEST: AND WHERE I'M COMING FROM, YOUR HONOR, IS  
5 THIS, MR. WIDENHOUSE ASKED TO SPEAK TO MR. LEONARD OVER THE  
6 WEEKEND AND I DID NOT ALLOW HIM TO DO THAT. AND I DON'T KNOW  
7 WHAT HE --

8 THE COURT: YOU DIDN'T?

9 MR. WEST: SIR?

10 THE COURT: YOU DID NOT ALLOW HIM?

11 MR. WEST: NO, SIR, I DID NOT. I DID NOT THINK THAT  
12 THAT WAS PROPER UNDER THE RULE. AND, YOU KNOW, HE MAY BRING  
13 THINGS UP OR HE MAY -- HE'S MADE IT VERY CLEAR HE'S GOING TO  
14 BRING THINGS UP. AND I WOULD LIKE TO BE ABLE TO BE MR.  
15 LEONARD'S REPRESENTATIVE IF SOMETHING COMES UP.

16 THE COURT: WELL, I WOULD PREFER TO HEAR IT IN  
17 CAMERA, BUT I DON'T KNOW THAT I CAN DO THAT. MY RECOLLECTION  
18 IS THAT THE FOURTH CIRCUIT WAS VERY DEFINITE ABOUT NOT CLOSING  
19 COURTROOMS AND I THINK THERE IS A FIRST AMENDMENT ISSUE HERE.  
20 AND I THINK I'LL HAVE TO LET HIM GO IN THE COURTROOM.

21 MR. WIDENHOUSE, CAN YOU OFFER ANY SUGGESTIONS?

22 MR. WIDENHOUSE: WELL, I HATE TO DO THE EXAMINATION  
23 TWICE, BUT WE COULD HAVE IT IN CAMERA AND THEN COME IN OPEN  
24 COURT.

25 MR. BRUCE: YOUR HONOR, I JUST DON'T -- I DON'T

September 24, 2012

Leonard/Direct

Page 1105

1 THINK THERE'S AN ISSUE HERE. ONCE THE COURT HAS RULED THAT  
2 THE EXCEPTIONAL CIRCUMSTANCES OVERCOME THE PRIVILEGE IT NEEDS  
3 TO BE HEARD PUBLICLY.

4 NOW, THIS MATTER -- MS. STOECKLEY'S PRIVILEGE HAS  
5 BEEN OVERCOME. IF THIS DIRECT OR CROSS-EXAMINATION IS  
6 EMBARRASSING TO MR. LEONARD, THAT'S CERTAINLY NO REASON TO  
7 HEAR ANYTHING IN CAMERA. MR. BLACKBURN WAS EMBARRASSED. MR.  
8 CRAWLEY WAS EMBARRASSED.

9 I MEAN, THAT'S JUST -- WHEN YOU BECOME A WITNESS IN  
10 A FEDERAL TRIAL, YOU MIGHT GET CROSS-EXAMINED AND IT'S GOING  
11 TO HAPPEN IN PUBLIC AND IT MIGHT BE EMBARRASSING, BUT THAT'S  
12 NO REASON TO CLOSE THE COURTROOM OR TAKE THE TESTIMONY IN  
13 CAMERA.

14 MR. WEST: AND I HAVEN'T REQUESTED IT ON THAT BASIS.

15 MR. BRUCE: WELL, I THOUGHT MR. WIDENHOUSE WAS.

16 MR. WEST: WELL, I GUESS, WHAT I WAS JUST SAYING,  
17 YOUR HONOR, IS THAT IF HE WANTS TO GO IN THAT DIRECTION AND HE  
18 HAS INDICATED THAT HE IS, I JUST THINK THAT IT'S ONLY FAIR TO  
19 MR. LEONARD THAT IF I THINK SOMETHING'S OBJECTIONABLE OR NOT  
20 PROPER OR MISLEADING TO THE COURT, THAT I OUGHT TO BE ABLE TO  
21 BRING IT TO THE COURT'S ATTENTION.

22 THE COURT: WELL, YOU CAN OBJECT. YOU CAN NOTE YOUR  
23 OBJECTION.

24 MR. WEST: YES, SIR.

25 THE COURT: COUNSEL, I THINK WITH THE NOTORIETY OF

September 24, 2012

Leonard/Direct

Page 1106

1 THIS CASE AND THE FIRST AMENDMENT ISSUES THAT MR. BRUCE IS  
2 RIGHT, I THINK THE CLOSING OF THE COURTROOM IS IMPOSSIBLE AT  
3 THIS JUNCTURE. IT'S ALREADY A MEDIA CIRCUS. WE'VE GOT A  
4 HEARING WITH NO RULES. NO RULES. I MEAN, THE MANDATE DOESN'T  
5 GIVE ME MUCH HELP IN THAT REGARD.

6 MR. WIDENHOUSE: I DON'T DISAGREE WITH THAT AT ALL.

7 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A SHORT  
8 BREAK AND THEN WE'RE GOING TO COME BACK AND PROCEED.

9 MR. BRUCE: THANK YOU, YOUR HONOR.

10 THE COURT: HE'LL BE ALLOWED TO TESTIFY.

11 MR. BRUCE: THANK YOU.

12 (BENCH CONFERENCE CONCLUDED.)

13 THE COURT: LET'S TAKE A RECESS TILL 10:15.

14 (RECESS TAKEN FROM 10:04 A.M., UNTIL 10:34 A.M.)

15 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.

16 ALL RIGHT, MR. WIDENHOUSE.

17 MR. WIDENHOUSE: YOUR HONOR, I CALL JERRY LEONARD.

18 **JERRY WAYNE LEONARD, DEFENSE WITNESS, SWORN**

19 D I R E C T E X A M I N A T I O N 10:34 A.M.

20 BY MR. WIDENHOUSE:

21 Q. GOOD MORNING, MR. LEONARD.

22 A. GOOD MORNING.

23 Q. CAN YOU STATE YOUR NAME AND TELL US WHERE YOU LIVE?

24 A. MY NAME IS JERRY WAYNE LEONARD AND I LIVE IN RALEIGH,  
25 NORTH CAROLINA.

September 24, 2012



Leonard/Direct

Page 1107

1 Q. OKAY. AND WHAT DO YOU DO FOR A LIVING?

2 A. I PRACTICE LAW.

3 Q. AND WHAT KIND OF LAW DO YOU PRACTICE?

4 A. WELL, RIGHT NOW I'M -- I DO APPOINTED WORK THROUGH THE  
5 FEDERAL PUBLIC DEFENDERS AND I DO MEDIATION AND ARBITRATION.

6 Q. OKAY. CAN YOU TELL US ABOUT YOUR EDUCATIONAL BACKGROUND,  
7 WHERE YOU WENT TO UNDERGRAD AND LAW SCHOOL?

8 A. I WENT TO HAMPTON SYDNEY COLLEGE IN VIRGINIA FOR  
9 UNDERGRADUATE AND I WENT TO UNC LAW SCHOOL.

10 Q. AND WHEN DID YOU GRADUATE FROM LAW SCHOOL?

11 A. JANUARY OF 1971.

12 Q. AND WHAT DID YOU DO AFTER YOU -- WHAT WAS YOUR FIRST  
13 EMPLOYMENT AFTER GRADUATION FROM LAW SCHOOL?

14 A. I WENT TO THE UNITED STATES DISTRICT COURT FOR THE  
15 EASTERN DISTRICT OF NORTH CAROLINA AS A LAW CLERK TO JUDGE  
16 FRANKLIN T. DUPREE, JUNIOR

17 Q. OKAY. HOW LONG WERE YOU WITH JUDGE DUPREE?

18 A. FOR A YEAR.

19 Q. AND WHAT DID YOU DO AFTER THAT?

20 A. I WENT INTO PRIVATE PRACTICE. I WAS IN PRIVATE PRACTICE  
21 AND I WAS DIRECTOR OF WAKE COUNTY LEGAL AID ON A PART TIME  
22 BASIS.

23 Q. OKAY. AND DID YOU HAVE YOUR OWN PRACTICE, I MEAN, A SOLO  
24 PRACTICE?

25 A. IT WAS A SOLO PRACTICE, BUT I WAS SHARING OFFICE SPACES

September 24, 2012

Leonard/Direct

Page 1108

1 WITH AT FIRST ONE AND THEN FIVE ATTORNEYS.

2 Q. OKAY.

3 A. INCLUDING MYSELF.

4 Q. WHAT KIND OF LAW WERE YOU PRACTICING BACK AFTER YOU  
5 FINISHED CLERKING FOR JUDGE DUPREE?

6 A. I DID EVERYTHING. I WAS ON THE APPOINTED LIST FOR  
7 JUVENILE COURT FOR CRIMINAL APPOINTMENTS. I DID A RIGHT MANY  
8 FEDERAL APPOINTMENTS. I THOUGHT I HAD AN EXPERTISE IN FEDERAL  
9 LAW SO I DID A LOT OF 1983 ACTIONS, SOME EEOC CASES --

10 Q. WHAT PERCENTAGE --

11 A. -- AND ENVIRONMENTAL CASES.

12 Q. I'M SORRY. WHAT PERCENTAGE OF YOUR PRACTICE WOULD YOU  
13 SAY WAS CRIMINAL DEFENSE WORK BACK THEN IF YOU REMEMBER?

14 A. PROBABLY ABOUT 30 PERCENT.

15 Q. DID THERE COME A TIME WHEN YOU BEGAN TO REPRESENT A WOMAN  
16 BY THE NAME OF HELENA STOECKLEY?

17 A. YEAH. YES.

18 Q. CAN YOU TELL US WHAT YOU RECALL ABOUT HOW THAT CAME  
19 ABOUT, HOW YOU CAME TO REPRESENT HER?

20 A. I RECEIVED A TELEPHONE CALL FROM JUDGE DUPREE'S OFFICE  
21 ASKING ME IF I WOULD REPRESENT HELENA STOECKLEY. I DON'T KNOW  
22 -- WELL, I'M SURE THEY TOLD ME HER NAME, BUT I UNDERSTOOD IT  
23 WAS A MATERIAL WITNESS INVOLVED IN THIS CASE, THE MACDONALD  
24 CASE.

25 Q. WERE YOU FOLLOWING THE MACDONALD CASE AT THE TIME?

September 24, 2012

Leonard/Direct

Page 1109

1 A. NOT PARTICULARLY.

2 Q. OKAY. AND CAN YOU TELL US HOW YOU BEGAN INTERACTING WITH  
3 MS. STOECKLEY ONCE YOU WERE APPOINTED?

4 A. I PICKED HER UP, AND I CAN'T REMEMBER WHERE I PICKED HER  
5 UP. I WAS THINKING IT WAS FROM THE FEDERAL BUILDING, BUT I'M  
6 NOT SURE. IT WAS A SUNDAY AFTERNOON LATE.

7 I HAD BEEN INSTRUCTED TO MAKE SURE THAT SHE -- I HAD  
8 UNDERSTOOD THAT SHE HAD BEEN ARRESTED AS A MATERIAL WITNESS,  
9 THAT SHE HAD TESTIFIED, THAT SHE WAS SUBJECT TO RECALL, AND I  
10 WAS BEING APPOINTED AND I NEEDED TO HAVE HER AT COURT EACH AND  
11 EVERY DAY THAT COURT WAS IN SESSION.

12 WHEN I FIRST GOT HER, I DIDN'T KNOW WHAT TO DO. I  
13 DIDN'T KNOW ANYTHING ABOUT HER. SHE DIDN'T KNOW ANYTHING  
14 ABOUT ME. AND IT WAS OBVIOUS THAT, TO HER, I WAS PART OF THE  
15 ESTABLISHMENT AND I FELT THAT I HAD TO BUILD TRUST.

16 I WAS WORRIED ABOUT WHERE SHE WAS GOING TO STAY AND  
17 I HAD TO GET LODGING FOR HER AND I HAD TO MAKE SURE THAT SHE  
18 WAS THERE IN COURT.

19 AND SO I TOOK HER TO MY HOUSE AND WE SAT AROUND AND  
20 TALKED AND TALKED VERY GENERALLY. AND I GOT TO KNOW HER A  
21 LITTLE BIT AND I HOPED THAT -- MY JOB -- I WAS TRYING TO  
22 ESTABLISH TRUST SO I COULD REPRESENT HER.

23 Q. AND HOW LONG DO YOU RECALL SPENDING WITH HER SORT OF IN  
24 THE TRUST BUILDING UP PROCESS?

25 A. WELL, SHE WAS -- SHE WAS -- WHEN I PICKED HER UP, SHE HAD

September 24, 2012

Leonard/Direct

Page 1110

1 A BROKEN ARM. SHE HAD -- SHE HAD BEEN -- SHE HAD MARKS ON HER  
2 EYE. SHE WAS VERY WORRIED ABOUT HER BOYFRIEND. APPARENTLY,  
3 HER BOYFRIEND, WHO HAD FOUND HER UP HERE, HAD -- SHE TOLD ME  
4 THAT HE HAD ASSAULTED HER.

5 Q. WELL, WHEN YOU SAY SHE WAS WORRIED ABOUT HER BOYFRIEND,  
6 DO YOU MEAN SHE WAS WORRIED ABOUT WHAT HE MIGHT -- SHE WAS  
7 AFRAID OF HIM OR SHE WAS WORRIED ABOUT WHETHER HE HAD A PLACE  
8 TO STAY OR DID YOU GET A SENSE? WHAT DO YOU MEAN BY WORRIED  
9 ABOUT HIM?

10 A. MY MEMORY TELLS ME THAT SHE WAS AFRAID OF HIM.

11 Q. OKAY. DID YOU --

12 A. I CAN FURTHER STATE THAT SHE HAD -- I UNDERSTOOD THAT SHE  
13 HAD NOT SLEPT AT ALL THE NIGHT BEFORE. WE SAT AROUND AND  
14 TALKED AND SHE ENDED UP FALLING ASLEEP RIGHT THERE. AND THAT  
15 WAS THE END OF THE FIRST DAY OF ME TRYING TO BUILD TRUST.

16 Q. OKAY. SO, DID SHE SORT OF SLEEP ON YOUR COUCH OR  
17 SOMETHING THAT NIGHT?

18 A. SHE SLEPT ON A RECLINER CHAIR.

19 Q. AND THEN WHAT HAPPENED THE NEXT DAY?

20 A. WELL, WE HAD TO GET TO COURT AND WE HAD TO BE THERE EARLY  
21 ENOUGH. SO, WE LEFT AND ON THE WAY TO COURT I CHECKED HER  
22 INTO A -- I THINK IT WAS A HILTON. IT WAS A HOLIDAY INN TYPE  
23 THING, IT LATER BECAME THE BROWNSTONE IN RALEIGH, NORTH  
24 CAROLINA. IT WAS ON THE WAY BETWEEN MY HOUSE AND THE  
25 COURTHOUSE.

September 24, 2012

Leonard/Direct

Page 1111

1 SHE WENT TO THE COURTHOUSE AND THEY GAVE US A ROOM  
2 ON THE SEVENTH FLOOR OF THE COURTHOUSE, WHICH WAS THE SAME  
3 FLOOR THAT THE COURTROOM WAS ON. IT WAS A PRIVATE ROOM.

4 Q. AND DID YOU ALL STAY IN OR AROUND THAT ROOM MOST OF THAT  
5 DAY?

6 A. WELL, I HAD TO KEEP AN EYE ON HER AT ALL TIMES OR  
7 SOMEBODY HAD TO KEEP AN EYE ON HER. AND SHE WAS IN THAT ROOM  
8 ALMOST ALL DAY AT THAT POINT. I DON'T KNOW IF WE WENT OUT TO  
9 EAT OR ANYTHING.

10 Q. DID YOU TALK TO HER THAT DAY ABOUT HER POSSIBLE  
11 INVOLVEMENT IN THE MACDONALD SITUATION?

12 A. YES.

13 Q. AND WHAT DID SHE TELL YOU?

14 A. SHE TOLD ME IN THE MORNING -- THIS IS AFTER I HAD TOLD  
15 HER WHAT MY ROLE AS HER ATTORNEY WAS.

16 Q. WELL, BEFORE WE GET TO WHAT SHE TOLD YOU, WHAT DID YOU  
17 EXPLAIN TO HER WAS YOUR ROLE?

18 A. WELL, I TOLD HER THAT MY JOB WAS TO HELP HER AND I WAS  
19 GOING TO DO THAT AS BEST I COULD. I TOLD HER THAT WHAT SHE  
20 TOLD ME WAS BETWEEN ME AND HER. WE TALKED ABOUT THE FACT THAT  
21 THIS WAS A FIRST DEGREE MURDER TRIAL.

22 WE TALKED ABOUT THE FACT THAT AT THAT TIME THERE WAS  
23 NO DEATH PENALTY IN EXISTENCE AT LEAST FOR THE FEDERAL COURTS  
24 AND THAT THAT WAS IN LIMBO, THAT IT COULD BE REINSTATED, IT  
25 MIGHT NOT, BUT IT HAD BEEN DECLARED UNCONSTITUTIONAL AS

September 24, 2012

Leonard/Direct

Page 1112

1 APPLIED. GENERALLY, THAT'S WHAT I TOLD HER.

2 Q. ALL RIGHT. AND DID YOU --

3 A. AND ONE OTHER THING, SHE ASKED ME ABOUT THE STATUTE OF  
4 LIMITATIONS.

5 Q. AND WHAT DID YOU TELL HER ABOUT THAT?

6 A. WELL, THAT I DIDN'T KNOW AND THAT IT WAS REALLY IN LIMBO.

7 Q. DID SHE TELL YOU --

8 A. BECAUSE IT HAD BEEN DECLARED UNCONSTITUTIONAL, BUT THERE  
9 WAS NO STATUTE OF LIMITATIONS FOR CAPITAL CASES. SO, THE  
10 QUESTION IS WHETHER OR NOT FIRST DEGREE MURDER IS A CAPITAL  
11 CASE. SO, THAT WAS AN ISSUE THAT HAD NOT BEEN DECIDED AT THAT  
12 TIME I DON'T THINK.

13 Q. DID SHE TELL YOU WHY SHE WAS CONCERNED ABOUT THE STATUTE  
14 OF LIMITATIONS?

15 A. NO, AND I DON'T KNOW IF SHE BROUGHT IT UP OR I BROUGHT IT  
16 UP TO TELL YOU -- I MEAN, I DON'T KNOW WHO BROUGHT IT UP. I  
17 REMEMBER TALKING ABOUT IT AND NOT REALLY KNOWING THE ANSWER.

18 Q. ALL RIGHT. AND IN THOSE -- THE EARLY CONVERSATION AFTER  
19 YOU BUILT UP HER TRUST AND YOU BEGAN TO TALK ABOUT THE  
20 MACDONALD SITUATION, DID YOU ASK HER IF SHE WAS INVOLVED?

21 A. I DON'T KNOW IF I SAID ARE YOU -- WERE YOU INVOLVED. I  
22 SAID TELL ME WHAT YOUR TESTIMONY WOULD BE IF YOU WERE CALLED  
23 TO THE WITNESS STAND AGAIN.

24 Q. AND WHAT DID SHE TELL YOU?

25 A. SHE SAID THAT SHE WAS -- THAT SHE DID NOT REMEMBER

September 24, 2012

Leonard/Direct

Page 1113

1 ANYTHING ABOUT THE EVENING.

2 Q. DID THERE COME A TIME WHEN SHE TOLD YOU ANYTHING ELSE  
3 ABOUT HER POSSIBLE INVOLVEMENT?

4 A. SHE TOLD ME -- LATER ON SHE SAID WHAT WOULD YOU DO IF I  
5 WERE THERE.

6 Q. WELL, LET ME -- BEFORE YOU TELL US THAT, HOW MUCH TIME  
7 PASSED BETWEEN HER SAYING SHE DIDN'T HAVE ANY RECOLLECTION AND  
8 HER BRINGING UP WHAT IF IT WAS A LITTLE BIT DIFFERENT?

9 A. I QUESTIONED -- SOME TIME PASSED. I MEAN, ONE WAS THE  
10 MORNING AND ONE WAS THE AFTERNOON. IN THE MORNING SESSION WE  
11 HAD THAT CONVERSATION THAT SHE COULDN'T REMEMBER AND I THOUGHT  
12 THAT WAS FAIRLY CONVENIENT. BUT I ASKED HER -- SO, I ASKED  
13 HER, I WAS TRYING TO GET HER TO WHY WOULD SHE REMEMBER THAT  
14 SHE DIDN'T REMEMBER ON A PARTICULAR NIGHT AND TIME.

15 AND SHE TOLD ME THAT EVERYBODY KNEW RIGHT AWAY AFTER  
16 THE MURDERS, THEY KNEW OF THE MURDERS. SHE ALSO TOLD ME THAT  
17 SHE HAD BEEN -- SHE HAD SPOKEN TO SOME INVESTIGATORS REALLY  
18 SOON, AND MY THOUGHTS ARE WITHIN SEVERAL DAYS, AFTER THE  
19 MURDERS. AND SO, THEREFORE, SHE KNEW WHICH NIGHT IT WAS AND  
20 SHE KNEW THAT SHE COULDN'T REMEMBER THAT NIGHT.

21 SO, THAT WAS IT AS FAR AS I WAS CONCERNED. THAT WAS  
22 IT. THAT WAS GOING TO BE HER TESTIMONY AND I WAS -- I DIDN'T  
23 KNOW -- I WAS REALLY HOPING THAT SHE WAS NOT GOING TO BE  
24 RECALLED, BUT I HAD TO KNOW WHAT HER TESTIMONY WOULD BE OR  
25 WHAT HER CONDUCT ON THE WITNESS STAND WOULD BE BECAUSE, YOU

September 24, 2012

Leonard/Direct

Page 1114

1 KNOW, ANYTIME WE COULD HEAR THIS LITTLE KNOCK ON THE DOOR AND  
2 THERE SHE WAS GOING TO HAVE TO GO -- I WAS GOING TO HAVE TO  
3 REPRESENT HER AS A WITNESS.

4 Q. OKAY. AND SO TAKING YOU BACK TO, I GUESS, THAT AFTERNOON  
5 WHEN SHE INITIATED FURTHER CONVERSATION ABOUT THE MACDONALD  
6 INCIDENT, CAN YOU TELL US WHAT HAPPENED OR WHAT SHE SAID?

7 A. SHE SAID WHAT WOULD YOU DO IF I TOLD YOU I WAS THERE AND  
8 I SAID I'D STILL REPRESENT YOU. I NEED TO KNOW THE TRUTH.  
9 SHE SAID, WELL, SHE WAS THERE, AND THEN SHE TOLD THE STORY  
10 ABOUT WHAT HAPPENED THAT EVENING.

11 I THEREAFTER TOLD HER THAT I COULD NOT -- THAT SHE  
12 SHOULD NOT TAKE THE WITNESS STAND AGAIN AND TESTIFY, THAT SHE  
13 COULD PLEAD HER FIFTH AMENDMENT RIGHT NOT TO INCRIMINATE  
14 HERSELF AND THAT I WOULD HELP HER WITH THAT.

15 Q. AND WHAT DID YOU DO TOWARD THAT END OF HELPING HER WITH  
16 THAT FIFTH AMENDMENT RIGHT?

17 A. WE WROTE OUT A -- I WROTE OUT WHAT I THOUGHT WAS THE  
18 PROPER WAY TO INVOKE THE FIFTH AMENDMENT FOR HER TO READ AND  
19 SHE HAD THAT THEREAFTER. WELL, I THINK SHE HAD IT THEREAFTER.  
20 I TOLD HER TO KEEP IT WHEN SHE WAS IN THE COURTROOM.

21 Q. AND DID SHE EVER GET CALLED AS A WITNESS?

22 A. NO, SHE DIDN'T.

23 Q. AND DID YOU HAVE FURTHER CONVERSATIONS WITH HER ABOUT THE  
24 MACDONALD INCIDENT AFTER SHE TOLD YOU SHE WAS THERE AND YOU  
25 TOLD HER HOW TO ASSERT THE FIFTH AMENDMENT PRIVILEGE?

September 24, 2012



Leonard/Direct

Page 1115

1 A. SHE -- WE TALKED A LOT DURING THAT WEEK AND WE DIDN'T  
2 REALLY TALK ABOUT THE MACDONALD CASE. SHE -- YOUR QUESTION IS  
3 WHAT SPECIFICALLY DID SHE TALK ABOUT OR IS THAT WHAT YOU --

4 Q. WELL, IF IT RELATES TO THE MACDONALD CASE, NOT IF YOU'RE  
5 TALKING ABOUT THE WEATHER --

6 A. MY JOB WAS SIMPLY TO SEE WHETHER OR NOT -- WHAT SHE WOULD  
7 SAY ON THE WITNESS STAND AND PROTECT HER BASED ON WHAT SHE  
8 WOULD SAY. I DIDN'T GO INTO ANY SPECIFICS AND I DIDN'T HEAR  
9 -- LEARN ANY SPECIFICS OF THE -- WHAT SHE WOULD HAVE SAID  
10 HAPPENED THAT NIGHT OTHER THAN WHAT I HAVE IN MY AFFIDAVIT.

11 AND AS FAR AS HER CONDUCT, SHE BASICALLY SAID THAT  
12 SHE DIDN'T PARTICIPATE IN THE ACTUAL MURDERS, BUT THAT SHE WAS  
13 THERE. SHE SAID THAT AT SOME POINT DURING THE -- WHILE SHE  
14 WAS THERE THE PHONE RANG AND SHE PICKED UP THE PHONE. AND SHE  
15 TOLD ME ABOUT THAT DAGGONE HOBBY HORSE.

16 Q. I'M INTERESTED IN THE PHONE RINGING. DID SHE TELL YOU  
17 ANYTHING OTHER THAN THE PHONE RANG AND SHE -- I ASSUME WHEN  
18 YOU SAY SHE PICKED IT UP, SHE ANSWERED IT. IS THAT WHAT YOU  
19 MEAN?

20 A. THESE WERE CONVERSATIONS THAT SHE WOULD JUST POP UP AND  
21 SAY. I MEAN, THESE WERE RANDOM THINGS THAT CAME OUT DURING  
22 THE COURSE OF THE REMAINING WEEK. SHE SAID THE PHONE RANG,  
23 SHE PICKED IT UP, AND ONE OF THE PEOPLE THAT SHE WAS WITH TOLD  
24 HER TO PUT IT DOWN, TO HANG UP.

25 Q. OKAY. SO, SHE MENTIONED THE PHONE RINGING AND SHE

September 24, 2012

Leonard/Direct

Page 1116

1 ANSWERED IT AND SOMEONE TOLD HER TO PUT IT DOWN. SHE  
2 MENTIONED A HOBBY HORSE. DID SHE MENTION ANYTHING ELSE  
3 ABOUT --

4 A. NO.

5 Q. -- WHAT HAPPENED INSIDE THE HOUSE?

6 A. NO.

7 Q. NOW, YOU MENTIONED A COUPLE MINUTES AGO AN AFFIDAVIT. I  
8 TAKE IT YOU PREPARED AN AFFIDAVIT IN THIS MATTER?

9 A. YES.

10 Q. I'M GOING TO SHOW YOU WHAT WE'VE MARKED AS DEFENDANT'S  
11 EXHIBIT 5113. IT'LL COME UP ON THE SCREEN. AND IF YOU LOOK  
12 AT THE TOP, DOES THAT APPEAR TO BE THE BEGINNING OF THE  
13 AFFIDAVIT THAT YOU GAVE?

14 A. YES, IT -- YES, IT DOES.

15 Q. OKAY. AND I'M GOING TO SCROLL TO THE LAST PAGE OF THE  
16 AFFIDAVIT AND DOES THAT APPEAR TO BE YOUR SIGNATURE?

17 A. YES.

18 (DEFENSE EXHIBIT NUMBER 5113

19 WAS IDENTIFIED FOR THE RECORD.)

20 Q. AND DID YOU READ THE AFFIDAVIT BEFORE YOU SIGNED IT?

21 A. YES.

22 Q. AND IS THE AFFIDAVIT ACCURATE TO THE BEST OF YOUR  
23 RECOLLECTION?

24 A. YES.

25 Q. ALL RIGHT. I WANT TO TAKE YOU THROUGH SEVERAL PARAGRAPHS

September 24, 2012

Leonard/Direct

Page III7

1 OF THE AFFIDAVIT JUST SO THAT WE CAN GET THEM IN THE RECORD.  
2 IF YOU COULD GO TO PARAGRAPH SIX ON THE SECOND PAGE, AND WE'LL  
3 GET IT ON THE SCREEN, AND IF YOU COULD READ PARAGRAPH SIX FOR  
4 US INTO THE RECORD.

5 A. I SPENT SEVERAL HOURS IN CONVERSATION WITH HER FROM THE  
6 FIRST DAY, PARENTHESES, SUNDAY, AUGUST 19TH, END PARENTHESES.  
7 I WAS TRYING TO INTRODUCE MYSELF AND GET TO KNOW HER AS A  
8 PERSON AND TO UNDERSTAND WHAT I WAS DEALING WITH.

9 BASICALLY, THE COURT HAD PLACED HER IN MY CUSTODY.  
10 I HAD TO ARRANGE HER LODGING, AND I NEEDED TO BE SURE SHE  
11 WOULD NOT LEAVE RALEIGH AND THAT I COULD GET HER TO EACH COURT  
12 SESSION. I DID NOT TALK TO HER IN DEPTH ABOUT HER LEGAL  
13 SITUATION UNTIL THE MORNING OF MONDAY, AUGUST 20TH, WHICH WAS  
14 OUR FIRST DAY TOGETHER AT THE FEDERAL COURTHOUSE IN RALEIGH.

15 Q. OKAY. AND LET ME ASK YOU THIS BEFORE WE GO TO ANOTHER  
16 PARAGRAPH. WAS THIS SOMETHING OF AN UNUSUAL APPOINTMENT AS A  
17 LAWYER?

18 A. YEAH. I MEAN, YES. YES, SIR, IT WAS. I THINK IT WAS  
19 VERY UNUSUAL.

20 Q. AND CAN YOU TELL US SORT OF WHY IT FELT UNUSUAL TO YOU?

21 A. WELL, I WAS APPOINTED TO REPRESENT SOMEONE THAT WAS GOING  
22 THROUGH A GREAT DEAL OF -- I MEAN, SHE WAS A MESS. I TOLD YOU  
23 ABOUT THE BROKEN ARM AND I THINK THAT WAS FAIRLY RECENT. HER  
24 BOYFRIEND HAD TRIED TO DROWN HER ALLEGEDLY IN THE SWIMMING  
25 POOL OF A HOTEL THAT THEY WERE STAYING IN OR A MOTEL AND THEY

September 24, 2012

Leonard/Direct

Page 1118

1 GOT KICKED OUT OF THE MOTEL.

2 SHE HAD CALLED JUDGE DUPREE AT HOME. JUDGE DUPREE  
3 HAD A REGULAR NUMBER LISTED IN THE PHONE BOOK. AND SOMEBODY  
4 -- WELL, ANYWAY, AND THAT'S HOW I GOT INVOLVED IN IT.

5 Q. I TAKE IT WHEN YOU SAY YOU GOT A CALL FROM HIS OFFICE,  
6 WAS IT THE LAW CLERK WHO CALLED YOU OR DO YOU RECALL?

7 A. YEAH, IT WAS THE LAW CLERK.

8 Q. OKAY. I TAKE IT THAT AS PART OF THE UNUSUAL  
9 CIRCUMSTANCES WAS NORMALLY WHEN YOU GET APPOINTED TO REPRESENT  
10 SOMEBODY IN A FEDERAL CASE YOU PROBABLY DON'T TAKE THEM TO  
11 YOUR HOUSE?

12 A. WELL, I DIDN'T HAVE ANY PLACE TO TAKE HER, I MEAN, RIGHT  
13 THEN. I MEAN, I COULD HAVE TAKEN HER TO A RESTAURANT I GUESS,  
14 BUT --

15 Q. I GUESS, MY POINT IS, IS THAT'S WHAT WAS UNUSUAL IS THAT  
16 YOU WERE SORT OF SHEPARDING AROUND SOMEBODY YOU HAD BEEN  
17 APPOINTED TO REPRESENT.

18 A. AS I UNDERSTOOD IT, MY JOB WAS BASICALLY TO DO THE BEST I  
19 COULD REPRESENTING HER AND TO KIND OF BABYSIT HER AND MAKE  
20 SURE THAT SHE DIDN'T LEAVE.

21 SHE HAD BEEN UNDER ARREST -- WELL, SHE SPENT A NIGHT  
22 IN SOUTH CAROLINA, I BELIEVE, UNDER ARREST WHEN SHE WAS FIRST  
23 PICKED UP AS A MATERIAL WITNESS AND SHE HAD SPENT AT LEAST ONE  
24 NIGHT IN THE WAKE COUNTY JAIL AND SHE DIDN'T WANT TO BE THERE.  
25 AND, I MEAN, IT WAS JUST ME MAKING SURE THAT SHE STAYED

September 24, 2012

Leonard/Direct

Page 1119

1 SOMEWHERE THAT NIGHT AND THAT SHE WAS BACK IN COURT THE NEXT  
2 DAY.

3 Q. OKAY. COULD YOU READ -- I'M TAKING YOU TO PARAGRAPH  
4 SEVEN OF THE AFFIDAVIT, IT SHOULD BE ON THE SCREEN, AND ASK IF  
5 YOU COULD READ THAT PARAGRAPH INTO THE RECORD.

6 A. ON THAT MONDAY MORNING I EXPLAINED TO HER MY ROLE AS HER  
7 ATTORNEY AND MADE SURE SHE REALIZED THAT EITHER SIDE COULD ASK  
8 HER TO TESTIFY AGAIN ON A MOMENT'S NOTICE.

9 I MADE SURE THAT MS. STOECKLEY CLEARLY UNDERSTOOD  
10 THAT WHAT I TOLD -- WHAT SHE TOLD ME WAS JUST BETWEEN ME AND  
11 HER AND THAT SHE WOULD NOT TALK ABOUT THE CASE TO ANYONE  
12 EXCEPT ME.

13 I TOLD HER THAT I WANTED TO HELP HER AND WOULD HELP  
14 HER, BUT I NEEDED TO KNOW THE TRUTH NO MATTER WHAT IT WAS IN  
15 ORDER TO HELP HER.

16 Q. OKAY. AND I JUST WANT YOU TO LOOK AT PARAGRAPH EIGHT.  
17 I'M NOT GOING TO HAVE YOU READ IT INTO THE RECORD, BUT IS THAT  
18 CONSISTENT WITH WHAT YOU HAVE TESTIFIED TO EARLIER ABOUT  
19 DISCUSSING THE FEDERAL PENALTY FOR MURDER AND THE STATUTE OF  
20 LIMITATIONS?

21 (PAUSE.)

22 A. YES.

23 Q. OKAY. AND I TAKE YOU TO PARAGRAPH NINE OF THE AFFIDAVIT,  
24 WHICH BLEEDS OVER TO THE NEXT PAGE AS WELL, AND I WOULD ASK  
25 YOU TO READ PARAGRAPH NINE INTO THE RECORD.

September 24, 2012

Leonard/Direct

Page 1120

1 A. MS. STOECKLEY INITIALLY TOLD ME SHE DID NOT REMEMBER  
2 ANYTHING ABOUT THE NIGHT OF THE MACDONALD MURDERS BECAUSE SHE  
3 WAS VERY HIGH ON DRUGS. SHE COULD REMEMBER THE DAY BEFORE AND  
4 THE MORNING AFTER THE MURDERS, BUT SHE CLAIMED SHE HAD A  
5 TOTALLY BLANK MEMORY ABOUT THE PERIOD OF TIME WITHIN WHICH THE  
6 MURDERS OCCURRED.

7 WE TALKED ABOUT HOW UNLIKELY IT SEEMED THAT SHE  
8 COULD ASSOCIATE THAT TEMPORARY LOSS OF MEMORY WITH THE DATE OF  
9 THE CRIMES. SHE TOLD ME THAT ALMOST EVERYONE HAD HEARD ALMOST  
10 IMMEDIATELY ABOUT THE MURDERS, AND THAT SHE WAS INTERVIEWED BY  
11 INVESTIGATORS NOT LONG AFTER THE CRIMES.

12 Q. ALL RIGHT. AND I'D ASK YOU TO LOOK AT PARAGRAPH 11 AND  
13 IF YOU WOULD READ THAT INTO THE RECORD.

14 A. THAT WAS THE END OF MY INQUIRY INTO HER INVOLVEMENT, AS  
15 FAR AS I WAS CONCERNED. I DID NOT PUSH HER AND I DROPPED THE  
16 SUBJECT, BELIEVING SHE WAS FIRM IN HER ASSERTION THAT SHE HAD  
17 JUST -- THAT SHE JUST COULD NOT REMEMBER.

18 Q. OKAY. AND SO I ASSUME AT THAT POINT ANY CONVERSATIONS  
19 THAT YOU HAD WITH HER THAT YOU INITIATED JUST DIDN'T HAVE  
20 ANYTHING TO DO WITH THE MACDONALD CASE, BUT JUST EVERYDAY  
21 CONVERSATION?

22 A. THAT'S THE WAY I REMEMBER IT.

23 Q. OKAY. AND THEN WOULD YOU READ PARAGRAPH 12 INTO THE  
24 RECORD?

25 A. SOMETIME IN THE AFTERNOON, MS. STOECKLEY ASKED ME WHAT

September 24, 2012

Leonard/Direct

Page 1121

1 WOULD I DO IF SHE ACTUALLY HAD BEEN THERE. I RECALL TELLING  
2 HER I WOULD STILL HELP HER, BUT THAT SHE HAD TO TELL ME THE  
3 TRUTH. SHE THEN TOLD ME THAT SHE HAD BEEN SCARED TO TELL ME  
4 THE TRUTH, BUT THE TRUTH WAS NOT AS BAD AS EVERYBODY THOUGHT.  
5 AND THAT'S IN QUOTES.

6 SHORTLY THEREAFTER SHE BEGAN TELLING ME THAT SHE  
7 WAS, IN FACT, AT THE MACDONALD RESIDENCE AT THE TIME OF THE  
8 MURDERS. SHE SAID SHE DID NOT ACTUALLY HURT ANYONE, NOR DID  
9 SHE ANTICIPATE THAT THE MACDONALDS WOULD BE HURT.

10 Q. AND DO YOU HAVE A SPECIFIC RECOLLECTION OF HER TELLING  
11 YOU THAT SHE WAS THERE?

12 A. I HAVE A SPECIFIC RECOLLECTION OF EVERYTHING IN THIS  
13 AFFIDAVIT INCLUDING THAT.

14 Q. OKAY. AND I THINK JUST TO SPEED THINGS UP I'M JUST GOING  
15 TO HAVE YOU READ THE REST OF THE AFFIDAVIT, 13, 14, 15, 16 AND  
16 17, JUST SO WE'LL HAVE THAT IN THE RECORD.

17 A. SHE STATED THAT SHE BELONGED TO A CULT. THE CULT HAD A  
18 CORE GROUP OF FOLLOWERS AND A LARGER GROUP OF PEOPLE THAT CAME  
19 TO SOME OF THE CULT'S LARGER MEETINGS. SHE SAID THE CULT DID  
20 NOT -- I'M SORRY. SHE SAID THE CORE GROUP DID RITUALS AND  
21 BELIEVED IN WITCHES, AND THAT SHE WAS PART OF THE CORE GROUP.

22 I REMEMBER MS. STOECKLEY SAYING MS. MACDONALD WAS  
23 PREGNANT AND SHE SAID SOMETHING TO THE EFFECT THAT THE CULT  
24 ASSOCIATED NEWBORN BABIES WITH THE DEVIL.

25 DO YOU WANT ME TO --

September 24, 2012

Leonard/Direct

Page 1122

1 Q. YES, GO AHEAD AND READ PARAGRAPH 14 AS WELL.

2 A. ACCORDING TO WHAT MS. STOECKLEY TOLD ME, THE IDEA TO GO  
3 TO THE MACDONALD RESIDENCE CAME UP ONE NIGHT WHEN SHE WAS  
4 DOING DRUGS WITH SOME OF HER FRIENDS. THE FRIENDS WERE PART  
5 OF THIS CULT'S CORE GROUP.

6 AT LEAST ONE MAN IN THE GROUP HAD AN ISSUE AGAINST  
7 DR. MACDONALD BECAUSE THE MAN FELT MACDONALD DISCRIMINATED  
8 AGAINST HARD DRUG USERS -- MY SCREEN'S GONE. OKAY. I'M  
9 SORRY. HARD DRUG USERS IN HIS WORK AT A DRUG TREATMENT  
10 PROGRAM, SOMETHING TO THE EFFECT THAT HEROIN USERS WOULD BE  
11 RECOMMENDED FOR COURT MARTIAL OR DISCHARGED AND WOULD NOT  
12 RECEIVE TREATMENT WHILE OTHERS GOT MORE FAVORABLE TREATMENT.

13 MACDONALD (SIC) SAID THIS MAN TALKED THEM INTO GOING  
14 TO DR. MACDONALD'S HOUSE TO CONFRONT MACDONALD ABOUT THIS  
15 UNFAIR TREATMENT AND, THEREFORE, THEY WENT TO HIS HOUSE ON THE  
16 NIGHT OF THE MURDERS.

17 MS. STOECKLEY SAID THE END RESULT WAS THAT THINGS  
18 GOT OUT OF HAND AND THE PEOPLE SHE WAS WITH COMMITTED THE  
19 MURDERS.

20 Q. ALL RIGHT. LET ME STOP YOU THERE. I BELIEVE THE NEXT TO  
21 THE LAST SENTENCE IN THE PARAGRAPH, I BELIEVE YOU MISREAD THE  
22 FIRST PART OF THAT SENTENCE. COULD YOU READ THE NEXT TO THE  
23 LAST SENTENCE IN THE PARAGRAPH AGAIN?

24 A. MS. STOECKLEY SAID THIS MAN TALKED THEM INTO GOING TO DR.  
25 MACDONALD'S HOUSE TO CONFRONT MACDONALD ABOUT THIS UNFAIR

September 24, 2012



Leonard/Cross

Page 1123

1 TREATMENT AND, THEREFORE, THEY WENT TO HIS HOUSE ON THE NIGHT  
2 OF THE MURDERS.

3 Q. ALL RIGHT. AT ANY POINT DID MS. STOECKLEY TELL YOU THE  
4 NAMES OF ANY OF THESE OTHER PEOPLE?

5 A. NO.

6 Q. DID YOU ASK HER?

7 A. NO.

8 Q. OKAY. AND IF YOU'D GO AHEAD AND READ PAGE 15 INTO THE  
9 RECORD -- I MEAN PARAGRAPH 15.

10 MR. WIDENHOUSE: I'M SORRY, YOUR HONOR.

11 THE WITNESS: MS. STOECKLEY ALSO SAID THAT DURING  
12 THE VIOLENCE THE MACDONALDS' HOME PHONE RANG AND SHE ANSWERED  
13 THE PHONE. SHE HUNG UP QUICKLY AFTER ONE OF HER FRIENDS  
14 YELLED AT HER TO HANG UP THE PHONE.

15 SHE ALSO NOTICED A TOY ROCKING HORSE AT THE  
16 MACDONALDS' HOME AND THAT THE HORSE WAS BROKEN. MS. STOECKLEY  
17 SAID ONE OF THE SPRINGS WAS NOT ATTACHED TO THE HORSE AND SHE  
18 TOOK THAT FACT AS A SIGN THAT DR. MACDONALD DID NOT CARE FOR  
19 HIS CHILDREN.

20 BY MR. WIDENHOUSE:

21 Q. ALL RIGHT. AND WOULD YOU READ PARAGRAPH 16 INTO THE  
22 RECORD?

23 A. OUR PLAN THEREAFTER WAS FOR MS. STOECKLEY TO REFUSE TO  
24 ANSWER ANY QUESTIONS IF RECALLED AS A WITNESS. WE HAD THE  
25 SCRIPT WRITTEN DOWN FOR HER TO WRITE FROM -- TO READ FROM THE

September 24, 2012

Leonard/Cross

Page 1124

1 STAND IN ORDER TO PROPERLY INVOKE HER FIFTH AMENDMENT RIGHTS.

2 Q. AND YOU SPECIFICALLY RECALL HELPING OR DRAFTING THAT  
3 FIFTH AMENDMENT ASSERTION FOR HER?

4 A. YES.

5 Q. AND COULD YOU READ PARAGRAPH 17?

6 A. MS. STOECKLEY WAS NOT CALLED BY -- WAS NOT RECALLED AS A  
7 WITNESS. I DID NOT HEAR FROM HER AGAIN AFTER THE TRIAL.

8 MR. WIDENHOUSE: YOUR HONOR, COULD I HAVE JUST A  
9 MOMENT?

10 THE COURT: YES, SIR.

11 (PAUSE.)

12 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
13 QUESTIONS.

14 THE COURT: CROSS.

15 MR. BRUCE: THANK YOU, YOUR HONOR.

16 C R O S S - E X A M I N A T I O N 11:06 A.M.

17 BY MR. BRUCE:

18 Q. GOOD MORNING, MR. LEONARD.

19 A. GOOD MORNING, MR. BRUCE.

20 Q. WE'VE KNOWN EACH OTHER A LONG TIME, HAVE WE NOT?

21 A. YES, WE HAVE.

22 Q. BUT WE'VE NEVER QUITE BEEN IN THIS SITUATION, HAVE WE?

23 A. I'VE NEVER BEEN IN THIS SITUATION.

24 Q. I WANT TO GO BACK TO YOUR AFFIDAVIT FOR A MOMENT,

25 LOOKING AT PARAGRAPH TEN. AS I UNDERSTAND IT, AT NO TIME DID

September 24, 2012

Leonard/Cross

Page 1125

1 MS. STOECKLEY REPRESENT TO YOU THAT SPECIFIC THREATS HAD BEEN  
2 COMMUNICATED TO HER BY EITHER THE PROSECUTION TEAM OR THE  
3 DEFENSE TEAM, IS THAT RIGHT?

4 A. THAT'S CORRECT. MY SCREEN IS NOT --

5 Q. I DIDN'T PUT IT UP ON THE SCREEN, BUT WE CAN. LET'S --

6 A. WELL, I CAN ANSWER YOUR QUESTION.

7 Q. WE'LL USE THE DOCUMENT CAMERA. I'M JUST FOCUSING ON  
8 PARAGRAPH TEN.

9 A. OKAY.

10 Q. DO YOU SEE THAT?

11 A. YES.

12 Q. OKAY. SO, THAT WAS YOUR STATEMENT IN THE AFFIDAVIT AND  
13 IT'S YOUR TESTIMONY HERE?

14 A. THAT IS CORRECT.

15 Q. OKAY.

16 A. MY TESTIMONY IS THAT I NEVER -- I NEVER HEARD ANY THREATS  
17 OR INTIMIDATION OR ANYTHING OF HER DURING THE TIME I  
18 REPRESENTED HER. AND THE FIRST I HAD EVER HEARD OF ANYTHING  
19 LIKE THAT WAS WHEN THE FBI CALLED ME ABOUT MAYBE EIGHT OR NINE  
20 YEARS AGO TO ASK ME. THEY WERE INVESTIGATING THAT.

21 Q. ABOUT EIGHT OR NINE YEARS AGO?

22 A. THAT'S WHAT I THINK, YEAH.

23 Q. OKAY. AND THAT'S THE FIRST YOU HAD HEARD OF -- ARE YOU  
24 SPEAKING ABOUT THE JIMMY BRITT ALLEGATION NOW?

25 A. WELL, I DIDN'T KNOW ANYTHING ABOUT THE JIMMY BRITT

September 24, 2012

Leonard/Cross

Page 1126

1 ALLEGATION. THEY MIGHT HAVE TOLD ME ABOUT THAT, BUT THEY  
2 ASKED ME IF I KNEW OF ANY THREATS OR INTIMIDATION THAT HAD  
3 BEEN MADE AGAINST HER AT ANY TIME AND I TOLD THEM NO.

4 Q. ALL RIGHT. NOW, THAT MEETING WITH THE AGENTS, WAS IT IN  
5 PERSON OR BY TELEPHONE?

6 A. BY TELEPHONE.

7 Q. AND WOULD MARCH 21ST, 2006, SOUND LIKE A RIGHT DATE FOR  
8 THAT MEETING OR THAT TELEPHONIC CONFERENCE?

9 A. IT SEEMS LIKE A LONGER TIME THAN THAT, BUT IT CERTAINLY  
10 COULD BE THE TIME. IT WAS ACTUALLY THE FIRST TIME THAT I HAD  
11 BEEN CONTACTED ABOUT THIS CASE IN ABOUT 20 YEARS.

12 Q. BUT YOU DO RECALL IN THAT CONVERSATION THAT -- SAYING  
13 THAT YOU REPORTED NO ACTS OF MISCONDUCT BY ANY OF THE  
14 ATTORNEYS INVOLVED IN THE CASE TO THE COURT?

15 A. THAT'S CORRECT.

16 Q. AND DO YOU RECALL SAYING IN THAT TELEPHONIC CONFERENCE  
17 THAT YOU REPORTED NO THREATS AGAINST STOECKLEY TO THE COURT OR  
18 ANYONE ELSE?

19 A. THAT IS CORRECT.

20 Q. DID YOU ALSO TELL THE AGENTS DURING THAT TELEPHONIC  
21 INTERVIEW THAT YOU HAD ACCESS TO AND A RELATIONSHIP TO JUDGE  
22 DUPREE WHICH WOULD HAVE FACILITATED SUCH REPORTING?

23 A. THAT'S CORRECT.

24 Q. AND DID YOU ALSO -- DID THE AGENTS ASK YOU ABOUT THE  
25 ALLEGATIONS OF JIMMY BRITT DURING THAT INTERVIEW?

September 24, 2012

Leonard/Cross

Page 1127

1 A. MY RECOLLECTION IS THE INTERVIEW WAS JUST ABOUT  
2 INTIMIDATION BY EITHER PARTY, THE MACDONALD SIDE OR THE  
3 GOVERNMENT SIDE, OF HELENA STOECKLEY IN AN EFFORT TO INFLUENCE  
4 HER TESTIMONY.

5 Q. ALL RIGHT. DID YOU TELL THEM DURING THAT INTERVIEW THAT  
6 JIM BRITT NEVER CAME TO YOU AND SAID THAT STOECKLEY HAD BEEN  
7 THREATENED BY JIM BLACKBURN?

8 A. I DON'T REMEMBER TELLING THEM THAT, BUT THAT'S TRUE.

9 Q. AND DID YOU TELL THEM DURING THAT TELEPHONIC INTERVIEW  
10 THAT YOU, YOURSELF, NEVER HAD ANY UNDERSTANDING THAT JIMMY  
11 BRITT SAT IN ON ANY INTERVIEW WITH STOECKLEY?

12 A. I KNOW -- I KNOW OF NO TIME THAT HE DID.

13 Q. I'M SORRY, I DIDN'T HEAR THAT.

14 A. I DO NOT -- I DON'T KNOW OF ANY TIME THAT HE WOULD HAVE  
15 SAT IN. I DID NOT KNOW ABOUT ALL THE INTERVIEWS THAT SHE HAD  
16 HAD. WHEN I WAS FIRST APPOINTED, I DIDN'T EVEN KNOW THAT SHE  
17 HAD SPOKEN TO ALL THESE PEOPLE, TO BOTH THE GOVERNMENT -- I  
18 LEARNED LATER SHE HAD ALREADY SPOKEN TO THE GOVERNMENT AND TO  
19 THE DEFENSE AND I DIDN'T KNOW.

20 Q. DID YOU LEARN THAT SHE HAD SPOKEN TO THE DEFENSE AND THE  
21 PROSECUTION DURING -- DID YOU LEARN THAT DURING YOUR  
22 REPRESENTATION OF HER IN 1979?

23 A. I DID.

24 Q. YET YOU NEVER -- WHEN YOU LEARNED THAT SHE HAD SAT IN ON  
25 -- OR STRIKE THAT -- THAT SHE HAD BEEN INTERVIEWED BY THE

September 24, 2012

Leonard/Cross

Page 1128

1 DEFENSE AND THE PROSECUTION YOU DID NOT RECEIVE ANY  
2 INFORMATION THAT JIMMY BRITT SAT IN ON EITHER?

3 A. I DID NOT RECEIVE ANY INFORMATION TO THAT EFFECT.

4 Q. NOW, ALSO IN YOUR AFFIDAVIT IN PARAGRAPH NINE, YOU PUT IN  
5 YOUR AFFIDAVIT THAT YOU QUESTIONED HER ABOUT HER STORY THAT  
6 SHE HAD A TOTALLY BLANK MEMORY ABOUT THE PERIOD OF TIME WHEN  
7 THE MURDERS OCCURRED.

8 A. THAT'S CORRECT.

9 Q. AND AS I UNDERSTOOD THE THRUST OF YOUR QUESTIONING TO HER  
10 ABOUT THAT WAS HOW CAN YOU REMEMBER THAT YOU DON'T REMEMBER  
11 WHERE YOU WERE ON THE EARLY MORNING HOURS OF FEBRUARY 17TH?

12 A. THAT'S CORRECT.

13 Q. AND THE ANSWER SHE GAVE YOU WAS THAT EVERYONE HEARD ABOUT  
14 THE MACDONALD MURDERS ALMOST IMMEDIATELY AFTER THEY HAPPENED,  
15 IS THAT RIGHT?

16 A. THAT'S CORRECT.

17 Q. AND THAT SHE HAD BEEN INTERVIEWED BY INVESTIGATORS NOT  
18 LONG AFTER THE CRIMES, IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND SO THAT THIS FIXED IN HER MIND THAT HER RECOLLECTION  
21 WAS SHE HAD NO RECOLLECTION OF HER WHEREABOUTS AT THE TIME OF  
22 THE MURDERS?

23 A. THAT'S CORRECT.

24 Q. AND THAT EXPLANATION MAKES SENSE, DOES IT NOT?

25 A. IT MADE SENSE AFTER SHE TOLD ME THAT -- TOLD ME THAT SHE

September 24, 2012

Leonard/Cross

Page 1129

1 HAD HEARD OF THE MURDERS ALMOST IMMEDIATELY AFTER THEY  
2 HAPPENED AND THAT SHE KNEW WHAT SHE DID OR DID NOT KNOW ON  
3 THAT NIGHT.

4 Q. NOW, YOU'VE BEEN PRACTICING CRIMINAL DEFENSE LAW IN  
5 RALEIGH FOR A LONG, LONG TIME, IS THAT RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND IS IT FAIR TO SAY THAT YOU HAVE A CLOSE ASSOCIATION  
8 WITH OTHER MEMBERS OF THE CRIMINAL DEFENSE BAR IN RALEIGH?

9 A. I HAVE.

10 Q. MANY OF THEM ARE YOUR FRIENDS?

11 A. YES.

12 Q. AND THEY'RE SOCIAL FRIENDS?

13 A. YES.

14 Q. AND ALSO THEY'RE COLLEAGUES IN THE SAME PROFESSION, IS  
15 THAT RIGHT?

16 A. YES.

17 Q. WHEN LAWYERS GET TOGETHER WITH ONE ANOTHER, DO THEY TEND  
18 TO TALK ABOUT INTERESTING CASES IN THE NEWS?

19 A. THEY MIGHT TEND TO. I MEAN, IT'S NOT NECESSARILY THE  
20 SUBJECT, BUT, YEAH.

21 Q. OR THEY MIGHT TALK ABOUT INTERESTING CASES THAT THEY'RE  
22 INVOLVED IN AS ATTORNEYS, IS THAT RIGHT?

23 A. YES.

24 Q. IS IT FAIR TO SAY THAT THE MACDONALD CASE IS LEGENDARY IN  
25 RALEIGH AMONG THE CRIMINAL DEFENSE BAR?

September 24, 2012

Leonard/Cross

Page 1130

1 A. I ASSUME IT IS. I HAVE NOT HAD A LOT OF CONVERSATION  
2 ABOUT THE MACDONALD CASE AND PEOPLE HAVEN'T SPOKEN TO ME A LOT  
3 ABOUT THE MACDONALD CASE.

4 Q. WOULD IT BE FAIR TO SAY THAT YOU HOLD THE OPINION THAT  
5 MACDONALD DID NOT RECEIVE A FAIR TRIAL?

6 A. THAT IS TRUE AND I WOULD LIKE TO EXPLAIN THAT, IF I MAY.

7 Q. SURE.

8 A. I SAY THAT BECAUSE I WAS ONLY IN THAT COURTROOM PROBABLY  
9 AN HOUR DURING MAYBE THE WEEK THAT I REPRESENTED -- THE FIVE  
10 DAYS OF COURT SESSION AND I'M ESTIMATING THAT AMOUNT OF TIME.  
11 I WAS ONLY THERE, SAY, AN HOUR OR WHAT-HAVE-YOU.

12 BUT THE FIRST THING THAT CAME OUT WAS -- THAT I  
13 OBSERVED WAS JUST MACDONALD'S ATTORNEY, HIS NAME IS BERNIE  
14 SEGAL, CONSTANTLY CHALLENGING JUDGE DUPREE IN HIS RULINGS.  
15 THE LAWYER SEEMED TO BE PRETTY ARROGANT AND BY THAT I MEAN  
16 VERY ARROGANT. AND IT -- HE WAS MACDONALD'S COMMUNICATOR AND  
17 HE HAD TO COMMUNICATE WITH THE JURY.

18 AND JUDGE DUPREE WAS A GOOD MAN AND HE SHOWED IT. I  
19 MEAN, THE JURY KNEW THAT I'M SURE. HE ALSO TOLD THEM WHEN TO  
20 TAKE RECESSES. HE TOLD THEM WHEN TO COME BACK THE NEXT DAY  
21 AND HE TOOK CARE OF THE JURY.

22 AND TO BE CHALLENGED BY SOMEONE WHO REALLY -- HE  
23 CAME FROM SAN FRANCISCO AND ACTED LIKE HE CAME FROM SAN  
24 FRANCISCO. HIS ENTOURAGE ACTED LIKE THEY WERE -- THEY WERE IN  
25 THE SOUTH AND WE WERE KIND OF BUMPKINS OR SOMETHING.

September 24, 2012



Leonard/Cross

Page 1131

1           AND I JUST BELIEVED AT THAT TIME THAT MACDONALD  
2 WOULD NOT BE ABLE TO COMMUNICATE TO THE JURY AND THAT HE WAS  
3 AT A DISADVANTAGE NOT BECAUSE OF THE CONDUCT OF THE TRIAL BY  
4 ANYBODY ELSE OTHER THAN HIS ATTORNEY. AND I DIDN'T FEEL THAT  
5 THAT ATTORNEY -- THE BODY LANGUAGE OF THE DAGGONE JURORS WAS  
6 AGAINST THAT LAWYER AND HE WAS MACDONALD'S REPRESENTATIVE.

7 Q. DO YOU RECALL BEING INTERVIEWED BY JOHN DOLAN MYERS, A  
8 DEFENSE INVESTIGATOR IN 1980?

9 A. YES, I THOUGHT IT WAS A COUPLE OF YEARS LATER, BUT THAT  
10 COULD BE. I DO REMEMBER THE INTERVIEW.

11 Q. DO YOU RECALL TELLING HIM THAT YOU FELT THAT THE  
12 PROSECUTION DID NOT PROVE THEIR CASE AND THAT YOU THOUGHT  
13 MACDONALD HAD BEEN QUOTE SCREWED CLOSE QUOTE?

14 A. I DON'T REMEMBER TELLING HIM THAT. I PROBABLY WOULD HAVE  
15 MORE HAVE TOLD HIM WHAT I TOLD YOU ABOUT THE WAY THE DEFENSE  
16 BAR RELATED -- I MEAN, THE DEFENSE ATTORNEY RELATED TO THE  
17 COURT. I DON'T EVEN KNOW WHAT THE GOVERNMENT'S CASE WAS.

18 Q. OKAY.

19 A. I NEVER SAW ANY OF THE GOVERNMENT'S PRESENTATION. I  
20 NEVER READ ANY BOOKS OR SAW ANY MOVIES ABOUT THE MACDONALD  
21 CASE. I DIDN'T WANT TO.

22 Q. ALL RIGHT. LET'S PUT EXHIBIT 7000.7 ON THE SCREEN,  
23 PLEASE. I BELIEVE DEFENSE HAS A COPY OF THIS. JUST FOR YOUR  
24 INFORMATION, LET'S GO BACK TO 7000.1 SO THE WITNESS CAN SEE  
25 THE FIRST PAGE OF THIS.

September 24, 2012

Leonard/Cross

Page 1132

1 DO YOU RECOGNIZE THIS AS AN EXCERPT FROM A RECENTLY  
2 PUBLISHED BOOK BY MR. ERROL MORRIS?

3 A. I KNOW THAT -- THAT IT IS. I KNOW THAT IT IS, YES.

4 (GOVERNMENT EXHIBIT NUMBER 7000.1  
5 WAS IDENTIFIED FOR THE RECORD.)

6 Q. ARE YOU AWARE THAT THE CHAPTER ON YOU IS CALLED I KNOW, I  
7 KNOW, I KNOW?

8 A. I KNOW THAT NOW.

9 Q. DID YOU JUST LEARN IT JUST NOW?

10 A. NO. ACTUALLY, HE SENT ME A COPY OF THIS CHAPTER.

11 Q. ALL RIGHT. NOW, LET'S GO BACK OVER TO PAGE 7000.7, AND  
12 DO YOU SEE AT THE BOTTOM OF THE PAGE WHERE THIS DISCUSSION --  
13 YOU CAN BLOW UP LIKE THE LAST THIRD OF THE LEFT-HAND PAGE SO  
14 MR. LEONARD CAN SEE IT.

15 A. OKAY.

16 Q. DO YOU SEE WHERE MR. MORRIS REPORTS THAT HE IS QUOTING  
17 FROM A STATEMENT GIVEN BY JERRY LEONARD TO JOHN DOLAN MYERS, A  
18 DEFENSE INVESTIGATOR?

19 A. I SEE THAT -- I'M SORRY. I SEE THAT THIS IS -- THAT HE  
20 IS QUOTING FROM A STATEMENT MADE BY JOHN DOLAN MYERS.

21 Q. OKAY. AND MR. MORRIS REPORTS THAT THE DATE WAS JANUARY  
22 23RD, 1980?

23 A. YES.

24 Q. AND SO THAT WOULD HAVE BEEN ABOUT FIVE MONTHS AFTER THE  
25 CONCLUSION OF THE MACDONALD TRIAL, IS THAT RIGHT?

September 24, 2012

Leonard/Cross

Page 1133

1 A. YES.

2 Q. AND WAS -- JUST A MOMENT, PLEASE.

3 (PAUSE.)

4 DID YOU KNOW THAT JOHN DOLAN MYERS WAS EMPLOYED BY  
5 MR. WADE SMITH AND WAS PART OF THE TRIAL TEAM?

6 A. I KNEW IT WHEN I SPOKE TO HIM.

7 Q. OKAY.

8 A. MR. MYERS WAS A -- I KNEW MR. MYERS AND I --

9 Q. DID YOU KNOW HIM FROM OTHER CASES?

10 A. DID I KNOW WHAT?

11 Q. DID YOU KNOW HIM FROM OTHER CASES BESIDES MACDONALD?

12 A. NO, HE WAS A REAL CHARACTER AROUND RALEIGH. HE HAD  
13 WRITTEN A BOOK OR HE WROTE A BOOK. HE -- I JUST -- YOU KNOW,  
14 I JUST KNEW HIM, I GUESS, SOCIALLY TO SOME EXTENT AND I DON'T  
15 THINK I KNEW HIM PROFESSIONALLY.

16 Q. WHILE WE'RE ON THIS PAGE, LET'S TAKE A LOOK AT THE LAST  
17 SENTENCE ON THE PAGE WHERE IT SAYS LEONARD STATED THAT HE  
18 NEVER RECEIVED ANY SUGGESTIONS OR INSTRUCTIONS FROM THE COURT  
19 REGARDING MS. STOECKLEY AFTER HE WAS APPOINTED TO REPRESENT  
20 HER. DID YOU MAKE THAT STATEMENT TO MR. MYERS?

21 A. I DON'T REMEMBER MAKING THAT STATEMENT, BUT I PROBABLY  
22 DID.

23 Q. AND IS IT TRUE?

24 A. YEAH, I NEVER -- NO ONE -- ONCE I HAD HER -- WELL, YOU  
25 KNOW, THEY SAID YOU HAVE A ROOM DOWN THE HALL. THEY SAID

September 24, 2012

Leonard/Cross

Page 1134

1 COURT IS BACK AT SUCH AND SUCH A TIME, YOU NEED TO HAVE HER  
2 HERE, BUT I CERTAINLY DIDN'T HAVE ANY SUGGESTIONS OR  
3 INSTRUCTIONS REGARDING HOW TO REPRESENT HER OR ANYTHING LIKE  
4 THAT.

5 Q. ALL RIGHT. NOW, LET'S GO OVER TO THE SECOND -- RIGHT-  
6 HAND SIDE OF THAT PAGE AND HIGHLIGHT THE FIRST THIRD OR HALF.  
7 OKAY. DOWN WHERE IT SAYS NOTE, DO YOU SEE THAT?

8 A. OKAY.

9 Q. THIRD PARAGRAPH.

10 A. YEAH, I SEE IT.

11 Q. CAN YOU JUST READ THAT? GO AHEAD AND READ IT ALOUD.

12 A. MR. LEONARD STATED THAT HE DIDN'T -- HE DID NOT KNOW IF  
13 MACDONALD WAS GUILTY OR INNOCENT. HOWEVER, HE STATED THAT HE  
14 DID NOT FEEL THE PROSECUTION -- THAT HE DID FEEL THAT THE  
15 PROSECUTION DID NOT PROVE THEIR CASE. HE STATED HE THOUGHT  
16 MACDONALD HAD BEEN SCREWED.

17 Q. OKAY. AND THAT'S THE STATEMENT I ASKED YOU ABOUT  
18 EARLIER. DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER  
19 YOU MADE THAT STATEMENT TO MR. MYERS?

20 A. I DON'T REMEMBER MAKING -- I REMEMBER TALKING TO MR.  
21 MYERS. I DON'T REMEMBER TELLING HIM THAT I DID NOT KNOW IF  
22 MACDONALD WAS GUILTY OR INNOCENT.

23 I DON'T REMEMBER EVER TELLING ANYBODY -- WELL, IT'S  
24 VERY TRUE THAT I THOUGHT BECAUSE OF WHAT I TOLD YOU THAT  
25 MACDONALD DID NOT HAVE -- I THOUGHT THAT MISTAKES WERE MADE IN

September 24, 2012

Leonard/Cross

Page 1135

1 HIS DEFENSE THAT HAMPERED HIS DEFENSE SERIOUSLY AND THAT THE  
2 JURY JUST WAS NOT RELATING TO MACDONALD.

3 AND SO IF I THINK THAT HE HAD BEEN SCREWED, I WOULD  
4 HAVE THOUGHT THAT HE WOULD HAVE BEEN SCREWED BY HIS DEFENSE  
5 TEAM.

6 YOU KNOW, I WASN'T REFERRING -- I WASN'T REFERRING  
7 TO MISCONDUCT BY ANYBODY, BUT WHAT I WAS REFERRING TO WAS THAT  
8 SERIOUS MISTAKES I THOUGHT WERE BEING MADE BY THE DEFENSE TEAM  
9 IN TRYING TO COMMUNICATE JEFFREY MACDONALD'S POSITION AND IT  
10 WAS INEFFECTIVE IN THAT RESPECT BECAUSE OF THE WAY THEY WENT  
11 ABOUT HANDLING IT.

12 Q. ALL RIGHT. IN FACT, DO YOU SHARE THE OPINION HELD BY  
13 MANY IN THE RALEIGH DEFENSE BAR THAT MACDONALD WOULD HAVE BEEN  
14 ACQUITTED IF WADE SMITH HAD HANDLED THE ENTIRE CASE?

15 A. WELL, HE WOULD NOT HAVE HAD THAT DISABILITY, OKAY, SO HIS  
16 CHANCES CERTAINLY WOULD HAVE BEEN GREATER, BUT I DON'T KNOW  
17 WHAT THE GOVERNMENT'S EVIDENCE WAS AND I STILL DON'T KNOW WHAT  
18 THE EVIDENCE WAS.

19 Q. BECAUSE, AS YOU STATED, YOU ONLY SAT IN THE COURTROOM FOR  
20 ONE HOUR?

21 A. THAT'S ABOUT RIGHT.

22 Q. LET'S GO TO GOVERNMENT EXHIBIT 7000.3. LET ME SEE IF I  
23 CAN FIND THIS ON THE PAGE FOR YOU.

24 (PAUSE.)

25 OKAY. LOOK DOWN AT JUST BEFORE THE BREAK IN THE

September 24, 2012

Leonard/Cross

Page 1136

1 TEXT -- BY THE WAY, DID YOU TALK TO ERROL MORRIS FOR HIS BOOK?

2 A. YES. YEAH, HE -- YES, HE CONTACTED ME AND I SPOKE TO  
3 HIM. I SPOKE TO HIM ON SEVERAL OCCASIONS.

4 Q. AND DID YOU HAVE -- DID HE INFORM YOU THAT HE WAS TAKING  
5 IT DOWN IN SOME WAY EITHER BY RECORDING OR SOMETHING?

6 A. YES.

7 Q. OKAY. LOOK AT THE LAST EXCHANGE. WE'LL BLOW IT UP THERE  
8 JUST BEFORE THE BREAK IN THE TEXT. OKAY, DOWN THERE AT THE  
9 BOTTOM DO YOU SEE WHERE ERROL MORRIS SAYS WOULD WADE SMITH  
10 HAVE WON THE CASE FOR HIM AND YOU SAY YES, UH-HUH?

11 A. I SEE IT AND I ASSUME I SAID IT.

12 Q. OKAY.

13 A. I WANT TO TELL YOU THAT I REALLY HAVEN'T READ -- I  
14 HAVEN'T READ THIS. I JUST HAVEN'T READ -- I'VE REALLY TRIED  
15 REAL HARD NOT TO -- I DON'T WANT TO READ STUFF ABOUT THIS  
16 CASE.

17 Q. I UNDERSTAND. AND YOU UNDERSTAND THAT I'M JUST SHOWING  
18 YOU THIS TO EXAMINE YOU ON YOUR -- WHAT HE REPORTS TO BE YOUR  
19 PRIOR STATEMENTS. DO YOU UNDERSTAND THAT?

20 A. YES.

21 Q. OKAY. DID YOU TELL ERROL MORRIS THAT THE COURT IN  
22 RALEIGH DRAWS ITS JURORS FROM EASTERN NORTH CAROLINA SO YOU'RE  
23 TALKING ABOUT FARMERS, YOU'RE TALKING ABOUT REDNECKS?

24 A. THAT SOUNDS LIKE SOMETHING I MIGHT HAVE SAID -- I WOULD  
25 HAVE SAID.

September 24, 2012

Leonard/Cross

Page 1137

1 Q. LET'S LOOK AT 7000.2. AND ON THE RIGHT-HAND HALF OF THE  
2 PAGE ABOUT HALFWAY DOWN, DO YOU SEE THE FIVE LINES FROM THE  
3 TOP STARTING WHERE IT SAYS THE COURT IN RALEIGH DRAWS ITS  
4 JURORS FROM EASTERN NORTH CAROLINA AND YOU'RE TALKING ABOUT  
5 1979, SO YOU'RE TALKING ABOUT FARMERS, YOU'RE TALKING ABOUT  
6 REDNECKS?

7 A. YEAH. YES, I DO.

8 Q. DO YOU RECALL MAKING THAT STATEMENT TO ERROL MORRIS?

9 A. I CAN'T RECALL MAKING IT SPECIFICALLY TO ERROL MORRIS. I  
10 HAVE -- I CAN RECALL MAKING THAT STATEMENT.

11 Q. BY THE WAY, WHEN DID ERROL MORRIS INTERVIEW YOU? I KNOW  
12 YOU SAID HE INTERVIEWED YOU TWO OR THREE TIMES, BUT TELL ME  
13 THE DATES OF ALL OF THEM AS BEST YOU CAN RECALL.

14 A. IT WAS PROBABLY BEGINNING OF THE SPRING.

15 Q. OF 2012?

16 A. YES.

17 Q. SO, THESE INTERVIEWS OCCURRED ABOUT SIX MONTHS AGO?

18 A. YES.

19 Q. ALL RIGHT.

20 A. I FEEL THAT -- I MEAN, WHAT HE WOULD DO WOULD BE THAT HE  
21 WOULD ATTEMPT TO DRAW THINGS OUT OF ME AND I WAS BASICALLY  
22 WILLING TO TALK ABOUT THE CONDUCT OF THE TRIAL AS IT RELATED  
23 TO THE PARTICIPANTS IN THE TRIAL OR WHAT I OBSERVED AND I WAS  
24 TRYING TO PROTECT MS. STOECKLEY'S ATTORNEY-CLIENT PRIVILEGE AS  
25 WELL.

September 24, 2012

Leonard/Cross

Page 1138

1 Q. SO, YOU DIDN'T TELL HIM ANYTHING THAT MS. STOECKLEY TOLD  
2 YOU?

3 A. NO.

4 Q. ALL RIGHT. NOW, WITH REGARD TO WHAT YOU SAID ABOUT THE  
5 JURY, DID YOU KNOW THAT 11 OF THE 12 JURORS HAD SOME COLLEGE  
6 EDUCATION?

7 A. NO, I DIDN'T.

8 Q. DID YOU KNOW THAT THERE WERE TWO ACCOUNTANTS ON THE JURY?

9 A. I DON'T KNOW WHAT THE COMPENSATION -- I MEAN, COMPOSITION  
10 OF THE JURY WAS.

11 Q. DID YOU KNOW THAT THERE WAS A CHEMIST ON THE JURY?

12 A. NO, BUT I MIGHT HAVE READ THAT SOMEWHERE IN THE PAPER OR  
13 SOMETHING. I DON'T KNOW. I THINK THERE WAS A MILITARY MAN ON  
14 THE JURY AS WELL, IF I REMEMBER CORRECTLY.

15 Q. GETTING BACK TO YOUR AFFIDAVIT, I BELIEVE IT STATES IN  
16 PARAGRAPH THREE THAT ACCORDING TO YOUR BEST RECOLLECTION YOU  
17 WERE APPOINTED ON SUNDAY, AUGUST 19TH, 1979. DO YOU CLEARLY  
18 RECALL THAT NOW?

19 A. I DON'T -- NO, I HAVE PUT THAT TOGETHER.

20 Q. I'M SORRY?

21 A. I HAVE PUT -- I HAVE PUT THAT DATE TOGETHER AND BELIEVE  
22 TO THE BEST OF MY RECOLLECTION, AS I SAY IN MY AFFIDAVIT, I  
23 THINK THAT'S WHEN I WAS -- TO THE BEST OF MY RECOLLECTION  
24 THAT'S WHEN I WAS APPOINTED, THAT'S WHEN I WAS CONTACTED. IT  
25 WAS A SUNDAY AFTER SHE HAD TESTIFIED I BELIEVE.

September 24, 2012



Leonard/Cross

Page 1139

1 Q. WHEN YOU SAY PUT IT TOGETHER, YOU MEAN IT'S HARD TO  
2 REMEMBER THE EXACT DATE OF A SUNDAY IN AUGUST 33 YEARS AGO,  
3 RIGHT?

4 A. RIGHT. I WENT BACK TO A CALENDAR.

5 Q. OKAY. WE'RE GOING TO TRY TO PUT UP A CALENDAR HERE AND  
6 WE'RE GOING TO BLOW UP THE MONTH OF AUGUST. OKAY. AND YOUR  
7 STATEMENT IN YOUR AFFIDAVIT IS THAT, ACCORDING TO YOUR BEST  
8 RECOLLECTION, YOU WERE APPOINTED ON SUNDAY, AUGUST 19TH, 1970,  
9 AND YOU CAN SEE ON THE CALENDAR THAT, IN FACT, AUGUST 19TH IS  
10 A SUNDAY, IS THAT RIGHT?

11 A. YES.

12 Q. SO, PIECING TOGETHER YOUR RECOLLECTION, YOU RECALL IT  
13 BEING A SUNDAY?

14 A. YES.

15 Q. ALL RIGHT. YOU DIDN'T RECALL IT THAT WAY ON AUGUST 24TH,  
16 2012, DID YOU?

17 A. I DON'T KNOW. I DON'T KNOW.

18 Q. DO YOU RECALL MEETING WITH ME AND MS. COOLEY AND AGENT  
19 CHEROKE --

20 A. YEAH. YES.

21 Q. -- ON AUGUST 24TH, 2012, IN THE U.S. ATTORNEY'S OFFICE?

22 A. YES. YES.

23 Q. DID YOU TELL US THAT IT WAS ON SATURDAY NIGHT THAT STEVE  
24 COGGINS CALLED YOU ABOUT REPRESENTING HELENA STOECKLEY?

25 A. YES. WELL, YES. I MEAN, I'M NOT SAYING, WELL, YES. I'M

September 24, 2012

Leonard/Cross

Page 1140

1 SAYING, YES, I DID.

2 Q. OKAY. ALL RIGHT. LET'S -- YES, YOU DID TELL US THAT IS  
3 WHAT YOU'RE SAYING?

4 A. THAT'S CORRECT.

5 Q. OKAY. LET'S LOOK AT TRIAL DAY 22, PAGE 180. NOW, LET'S  
6 GO BACK ONE PAGE AND LET'S ENLARGE THE FIRST HALF OF THE PAGE,  
7 PLEASE.

8 DO YOU SEE THE PARAGRAPH WHERE IT SAYS THE COURT AND  
9 HE STARTS SAYING I'M GLAD YOU MENTIONED THAT? LINE THREE.

10 A. YES.

11 Q. LINE THREE.

12 A. I DO.

13 Q. JUST READ THAT, IF YOU WOULD.

14 A. THIS IS THE COURT; OH, I'M GLAD YOU MENTIONED THAT  
15 BECAUSE I HAD NEGLECTED, JUST COMPLETELY OVERLOOKED IT, TO  
16 TELL YOU, BUT I WANT YOU TO KNOW THAT AMONG OTHERS CALLED BY  
17 HELENA, SHE CALLED ME TWICE SATURDAY NIGHT STATING THAT SHE  
18 WAS LIVING IN MORTAL DREAD OF PHYSICAL HARM BY BERNIE SEGAL,  
19 COUNSEL FOR THE DEFENDANT, AND THAT SHE WANTED A LAWYER TO  
20 REPRESENT HER.

21 Q. AND WHAT DID JUDGE DUPREE SAY NEXT?

22 A. I SAID, WELL, NOW, LOOK, I CANNOT TALK TO YOU ABOUT THIS  
23 CASE, BUT SOMEBODY WILL CALL YOU TOMORROW. WHERE WILL YOU BE?

24 Q. JUST KEEP READING.

25 A. THAT IS THE REASON I KNEW THIS JOURNEY'S END THING. SHE

September 24, 2012

Leonard/Cross

Page 1141

1 GAVE ME THE JOURNEY'S END. OF COURSE, WHAT I WANTED TO DO WAS  
2 GO TO THE CRIMINAL JUSTICE ACT AND SEE WHETHER OR NOT I COULD  
3 PAY ANY LAWYER UNDER THOSE CIRCUMSTANCES, AND AMAZINGLY I  
4 FOUND AN AMENDMENT TO THE ACT, WHICH IS NOT EVEN IN THE BOUND  
5 VOLUME, WHICH ALLOWS ME TO DO IT FOR A WITNESS WHO IS IN AND  
6 THEN ONE OF THE LAWYERS SAYS THAT IS INCREDIBLE.

7 Q. KEEP READING.

8 A. AND THEN JUDGE DUPREE SAYS SO I CALLED STEVE COGGINS  
9 THEN, I SAID FIND ME A LAWYER, AND I THINK HE CALLED EVERYBODY  
10 IN THE BOOK JUST ABOUT, BUT HE FINALLY GOT JERRY LEONARD.

11 Q. AND THAT'S YOU, RIGHT?

12 A. I'M SORRY?

13 Q. AND THAT'S YOU, RIGHT?

14 A. THAT'S ME.

15 Q. AND KEEP READING WHAT THE LAW CLERK SAYS.

16 A. HAVE YOU EVER TRIED TO FIND A LAWYER ON SUNDAY AFTERNOON?

17 THE COURT: YOU CAN ALWAYS FIND ME. SEGAL'S ALWAYS  
18 GOT ME WORKING ON SUNDAY AFTERNOON.

19 MR. MURTAGH: JUDGE, I GUESS WE WON'T HAVE YOUR  
20 TESTIMONY.

21 THE COURT: THANK GOD FOR THAT RULE THAT SAYS I AM  
22 ABSOLUTELY READ OUT OF THIS ONE.

23 Q. ALL RIGHT. YOU CAN STOP. SO, WHICH WAS IT, SATURDAY  
24 NIGHT OR SUNDAY AFTERNOON THAT YOU WERE APPOINTED?

25 A. WELL, I WAS -- I KNOW IT WAS LATE IN THE AFTERNOON AND I

September 24, 2012

Leonard/Cross

Page 1142

1 KNEW ABOUT THIS INCIDENT IN THE SWIMMING POOL AND ALL OF THAT.  
2 AND SO I -- AND MY MEMORY TELLS ME THAT THE NEXT MORNING AFTER  
3 I GOT HER, I FOUND HER A PLACE TO STAY, AND MY MEMORY TELLS ME  
4 THAT'S THE DAY WE WENT TO COURT.

5 AND SO I -- IT MUST HAVE BEEN SUNDAY, AND THE SUNDAY  
6 AFTER SHE TESTIFIED WAS AUGUST 19TH, AND THAT'S WHERE I CAME  
7 UP WITH THAT. AND I DID THAT AFTER I SPOKE TO YOU ALL AND I  
8 DID THAT WHEN I WAS ASKED TO PREPARE THAT AFFIDAVIT.

9 Q. ALL RIGHT. AND NOW LET'S GO TO THE BOTTOM OF THIS PAGE  
10 JUST SO -- BEFORE WE LEAVE IT AND CAN IDENTIFY -- DO YOU SEE  
11 WHERE YOU SPEAK UP THERE IN THE LAST LINE, 24 AND 25?

12 A. YES.

13 Q. AND THAT'S YOU TALKING?

14 A. YES.

15 Q. AND IT SAYS WHAT?

16 A. MR. LEONARD: SHE IS IN A SEPARATE WITNESS ROOM FROM ALL  
17 THE OTHERS.

18 Q. SO, DO YOU RECALL THAT STEVE COGGINS HAD TO CALL A LARGE  
19 NUMBER OF LAWYERS UNTIL HE FOUND THAT YOU WERE AVAILABLE?

20 A. HE DIDN'T TELL ME THAT. I DIDN'T KNOW.

21 MR. BRUCE: YOUR HONOR, MAY WE APPROACH THE BENCH?

22 THE COURT: YES, SIR.

23 (BENCH CONFERENCE ON THE RECORD.)

24 MR. BRUCE: I JUST WANTED TO MAKE SURE BEFORE I ASK  
25 HIM THESE NEXT COUPLE OF QUESTIONS THAT IT WAS PERMISSIBLE. I

September 24, 2012

Leonard/Cross

Page 1143

1 WANT TO ASK HIM IF HE TOLD ERROL MORRIS THAT JUDGE DUPREE  
2 THOUGHT THAT HE, HE JERRY LEONARD, UNDERSTOOD HELENA BECAUSE  
3 PROBABLY HE, JERRY LEONARD, HAD A DRUG BACKGROUND OR  
4 SOMETHING.

5 THE COURT: I DON'T THINK THAT'S REALLY APPROPRIATE.

6 MR. BRUCE: OKAY. THANK YOU.

7 (BENCH CONFERENCE CONCLUDED.)

8 BY MR. BRUCE:

9 Q. SO, YOU DON'T DISPUTE THE NOTION THAT YOU WEREN'T PICKED  
10 OUT BY JUDGE DUPREE, HE JUST HAD HIS LAW CLERK CALL A NUMBER  
11 OF PEOPLE AND IT HAPPENED TO BE YOU?

12 A. I DON'T DISPUTE THAT.

13 (PAUSE.)

14 Q. NOW, IN YOUR AFFIDAVIT YOU MENTIONED -- I'M SORRY. DID  
15 YOU TELL AGENT CHEROKE AND THOMURE THAT THE STATUTE OF  
16 LIMITATIONS MAY HAVE BEEN A FACTOR IN JUDGE DUPREE APPOINTING  
17 YOU TO REPRESENT HELENA STOECKLEY? AND LET'S -- WELL, YOU CAN  
18 ANSWER AND THEN WE'LL SHOW IT TO YOU AND SEE IF IT REFRESHES  
19 YOUR RECOLLECTION.

20 A. AND I DON'T REMEMBER THAT, NO.

21 Q. ALL RIGHT. LET'S PUT GOVERNMENT EXHIBIT 6076 ON THE  
22 SCREEN AND GO TO PAGE TWO AND HIGHLIGHT THE THIRD PARAGRAPH.  
23 AND DO YOU SEE WHERE IN THAT -- IT'S NOW IN THE MIDDLE OF THE  
24 PARAGRAPH ON THE SCREEN, DO YOU SEE THERE'S A DISCUSSION OF  
25 THE STATUTE OF LIMITATIONS AND THEN IT STATES LEONARD FEELS

September 24, 2012

Leonard/Cross

Page 1144

1 THIS MAY HAVE BEEN A FACTOR IN JUDGE DUPREE ASSIGNING HIM TO  
2 REPRESENT STOECKLEY?

3 A. YES.

4 (GOVERNMENT EXHIBIT NUMBER 6076  
5 WAS IDENTIFIED FOR THE RECORD.)

6 Q. OKAY. DO YOU RECALL MAKING THAT STATEMENT?

7 A. NOT SPECIFICALLY. I KNOW WHAT I WAS TALKING ABOUT. I  
8 THINK I WAS WRONG ABOUT THE STATUTE OF LIMITATIONS.

9 Q. I'M JUST TALKING ABOUT WHETHER IT WAS A FACTOR IN YOUR  
10 APPOINTMENT, NOT HOW LONG IT WAS.

11 A. THERE WAS A REAL BIG -- THERE HAS BEEN AN ISSUE IN MY  
12 MIND OVER THE YEARS AS TO WHY SHE DID NOT HAVE A LAWYER UP  
13 UNTIL AFTER SHE TESTIFIED.

14 AND I MEAN HERE WAS SOMEBODY WHO HAD BEEN ARRESTED  
15 AS A MATERIAL WITNESS IN SOUTH CAROLINA AND BROUGHT TO NORTH  
16 CAROLINA AND, YOU KNOW, I FOUND OUT LATER BEING QUESTIONED BY  
17 BOTH SIDES WITHOUT A LAWYER AND THEN BE PUT ON A WITNESS STAND  
18 IN A FIRST DEGREE MURDER CASE WITHOUT LEGAL REPRESENTATION.

19 AND MY POINT IS THAT -- I MEAN, SHE WAS IN JEOPARDY  
20 OR SHE COULD HAVE BEEN IN JEOPARDY IF THE GOVERNMENT DECIDED  
21 TO PROSECUTE HER.

22 WHATEVER THE STATUTE OF LIMITATIONS WAS -- I WAS  
23 THINKING IT WAS TEN YEARS AND IT COULD WELL HAVE BEEN FIVE  
24 YEARS, BUT I WAS THINKING IT WAS TEN YEARS. AND I WAS  
25 APPOINTED BECAUSE SHE WAS IN JEOPARDY AND STILL COULD BE

September 24, 2012

Leonard/Cross

Page 1145

1 CHARGED. THAT WAS A FACTOR -- THAT HAD TO BE THE FACTOR OF  
2 APPOINTING A LAWYER.

3 Q. OKAY. SO, YOU STILL HOLD THAT OPINION THAT YOU WERE  
4 APPOINTED BECAUSE JUDGE DUPREE WAS THINKING ABOUT THE STATUTE  
5 OF LIMITATIONS?

6 A. I WAS APPOINTED BECAUSE -- I ASSUME I WAS APPOINTED  
7 BECAUSE JUDGE DUPREE REALIZED THAT SHE WAS -- COULD BE IN  
8 JEOPARDY OF PROSECUTION AND IT WAS NOT BARRED BY THE STATUTE  
9 OF LIMITATIONS.

10 Q. ALL RIGHT. WELL, LET'S GO BACK TO TRIAL TRANSCRIPT DAY  
11 22, 180, AND GO BACK TO 179, I'M SORRY. DO YOU SEE THE  
12 PARAGRAPH -- THE SECOND PARAGRAPH LINES THREE THROUGH TEN?

13 A. YES. YES, I DO.

14 Q. OKAY. AND WE READ THIS EARLIER AND DOESN'T IT SAY THAT  
15 THE REASON THAT JUDGE DUPREE APPOINTED HER A LAWYER IS BECAUSE  
16 HELENA STOECKLEY CALLED HIM AND TOLD HIM THAT SHE WAS AFRAID  
17 OF DEFENSE ATTORNEY BERNIE SEGAL AND SHE THEN REQUESTED A  
18 LAWYER?

19 A. THAT IS THE TRANSCRIPT AND THAT WAS WHAT WAS SAID.

20 Q. SO, THAT SORT OF SOLVES THE MYSTERY AS TO WHY JUDGE  
21 DUPREE APPOINTED HER A LAWYER ON SUNDAY AFTERNOON, DOESN'T IT?

22 A. IT COULD, BUT, I MEAN -- YES. I MEAN, YOU CAN SAY THAT.  
23 I DIDN'T KNOW -- I HAVE NEVER SEEN THIS TRANSCRIPT, I DON'T  
24 THINK, BEFORE. I'VE SEEN SOME PAPERS OVER THE YEARS THAT  
25 LAWYERS KIND OF -- WELL, YOU KNOW, WHATEVER, BUT I DON'T -- I

September 24, 2012

Leonard/Cross

Page 1146

1 DON'T -- I DID NOT SEE THIS PAGE.

2 Q. ALL RIGHT. WELL --

3 A. BUT I DON'T WANT -- EXCUSE ME. ALL RIGHT. I NEVER -- I  
4 DON'T REMEMBER ANYTHING ABOUT BERNIE SEGAL THREATENING HER.  
5 IT SEEMED TO ME WHEN I TALKED TO HER THAT SHE WAS IN FEAR OF  
6 HER BOYFRIEND BECAUSE HER BOYFRIEND HAD BROKEN HER ARM, GIVEN  
7 HER A BLACK EYE, AND TRIED TO DROWN HER. I MEAN, THAT SOUNDS  
8 HORRIBLE, BUT THAT'S WHAT I UNDERSTOOD.

9 I DIDN'T KNOW THAT SHE HAD REQUESTED AN ATTORNEY.  
10 AND TODAY IS THE FIRST -- I THINK TODAY IS THE FIRST TIME THAT  
11 I KNEW THAT SHE APPARENTLY HAD REQUESTED AN ATTORNEY.

12 I WAS THINKING THAT A LAWYER WAS APPOINTED BECAUSE,  
13 YOU KNOW, KIND OF CLEAR THINKING THAT, GOSH, WE'VE KEPT HER  
14 HERE A WEEK OR SO AND WE'RE GOING TO KEEP HER SOME MORE, LET'S  
15 GIVE HER A LAWYER NOW.

16 Q. ALL RIGHT. NOW, WE'VE ALREADY READ IT TODAY, BUT LINES  
17 14 THROUGH 20, THEY INDICATE THAT JUDGE DUPREE, WHEN HE GOT  
18 THIS REQUEST, HAD TO DO SOME LEGAL RESEARCH AS TO WHETHER THE  
19 CRIMINAL JUSTICE ACT ALLOWED HIM TO APPOINT AN ATTORNEY FOR  
20 HER.

21 A. THAT'S CORRECT. I'VE READ THAT.

22 Q. AND HE DETERMINED IN -- NOT EVEN IN THE BOUND VOLUME, BUT  
23 APPARENTLY IN THE POCKET PART THAT HE COULD?

24 A. THAT'S WHAT HE SAYS AND THAT'S TRUE. I TAKE IT AS BEING  
25 TRUE.

September 24, 2012



Leonard/Cross

Page 1147

1 Q. OKAY. IN YOUR AFFIDAVIT IT STATES -- IF I CAN FIND IT --  
2 AT THE TIME OF MY APPOINTMENT SHE, MEANING HELENA STOECKLEY,  
3 HAD ALREADY TESTIFIED BEFORE THE JURY. IS THAT IN YOUR  
4 AFFIDAVIT?

5 A. YES.

6 Q. DO YOU HAVE A CLEAR RECOLLECTION OF THAT NOW? THAT IS,  
7 DO YOU HAVE A CLEAR RECOLLECTION THAT AT THE TIME YOU WERE  
8 APPOINTED SHE HAD ALREADY TESTIFIED BEFORE THE JURY?

9 A. DID I HAVE A CLEAR RECOLLECTION WHEN?

10 Q. RIGHT NOW THIS MINUTE.

11 A. WELL, YOU'VE GOT TO REALIZE I WAS NOT THERE AND FOR YEARS  
12 I THOUGHT THAT SHE HAD -- AND I'VE NEVER SEEN A TRANSCRIPT  
13 UNTIL, YOU KNOW, WHATEVER, IF I HAVE. FOR YEARS I THOUGHT SHE  
14 TESTIFIED ON VOIR DIRE. I THOUGHT THAT MADE SENSE. THAT'S  
15 WHAT I THOUGHT. AND THEN MUCH MORE RECENTLY I HAVE FOUND OUT  
16 THAT SHE ACTUALLY TESTIFIED BEFORE A JURY.

17 Q. AND SO IS IT YOUR TESTIMONY TODAY THAT YOU NEVER KNEW IN  
18 1979, WHILE YOU WERE REPRESENTING HER, THAT SHE TESTIFIED  
19 BEFORE THE JURY?

20 A. I CANNOT REMEMBER KNOWING WHETHER SHE HAD TESTIFIED  
21 BEFORE THE JURY OR BEFORE THE COURT IN VOIR DIRE AT THAT TIME.  
22 I KNOW THAT SHE HAD TESTIFIED UNDER OATH.

23 Q. YOU KNEW THAT ALL ALONG?

24 A. YES.

25 Q. OKAY. IN 2006, YOU DID NOT RECALL THAT SHE HAD TESTIFIED

September 24, 2012

Leonard/Cross

Page 1148

1 IN OPEN COURT, ISN'T THAT TRUE?

2 A. THAT'S POSSIBLE. I MEAN, THAT'S --

3 Q. LET'S LOOK AT GOVERNMENT EXHIBIT 6076, AND LET'S LOOK AT  
4 PARAGRAPH FOUR. ENLARGE PARAGRAPH FOUR, PLEASE.

5 NOW, DID YOU TELL AGENTS CHEROKE AND THOMURE IN YOUR  
6 TELEPHONE CONFERENCE ON MARCH 21ST, 2006, THAT YOU DID NOT  
7 RECALL STOECKLEY TESTIFYING IN OPEN COURT, BUT ADDED THAT HART  
8 MILES IS OF THE IMPRESSION THAT SHE DID?

9 A. YES.

10 Q. OKAY. AND SO THAT WAS YOUR BEST RECOLLECTION IN 2006?

11 A. YES. I DO WANT TO TELL YOU I KNEW SHE TESTIFIED UNDER  
12 OATH.

13 Q. I'M SORRY? YOU KNEW THAT SHE --

14 A. I DO WANT TO TELL YOU THAT I DID KNOW THAT SHE HAD  
15 TESTIFIED UNDER OATH.

16 Q. UNDER OATH, BUT NOT IN OPEN COURT?

17 A. NO, I DON'T KNOW, IT COULD HAVE -- I MEAN, EITHER THEY  
18 DID A VOIR DIRE IN THE COURTROOM WITH THE JURY NOT BEING  
19 THERE, THAT'S WHAT I WAS THINKING, OR THEY DID IT IN CHAMBERS,  
20 BUT IT -- THE POINT I WAS MAKING IS SHE HAD NOT TESTIFIED WITH  
21 THE JURY -- BEFORE THE JURY. AND THAT'S WHAT I WAS -- THAT'S  
22 THE POINT I WAS ACTUALLY MAKING AND, YOU KNOW, MAYBE DID NOT  
23 MAKE IT CLEAR AT ALL IN THIS.

24 AND THEN WHEN HART MILES, WHO WAS REPRESENTING --  
25 WHO WAS TRYING TO GET ME TO -- WELL, TOLD ME THAT HE WAS UNDER

September 24, 2012

Leonard/Cross

Page 1149

1 THE IMPRESSION THAT SHE HAD TESTIFIED IN OPEN COURT. AND OPEN  
2 COURT TO ME REFERS TO OPEN COURT BEFORE A JURY.

3 Q. SO, THE FIRST TIME YOU HEARD THAT IS HART MILES TOLD YOU  
4 BEFORE MARCH 21ST, 2006?

5 A. THAT'S THE FIRST TIME I REMEMBER KNOWING THAT SHE  
6 TESTIFIED -- THAT SHE TESTIFIED BEFORE A JURY.

7 Q. AND BY THE WAY, I GUESS HART MILES WAS COMMUNICATING WITH  
8 YOU ON BEHALF OF MACDONALD AT THAT TIME?

9 A. HE WAS.

10 Q. AND SO DID HE INFORM YOU -- ABOUT HOW LONG DID YOU TALK  
11 TO HART MILES BEFORE THE AGENTS INTERVIEWED YOU ON MARCH 21ST,  
12 2006?

13 A. I WAS ACTUALLY THINKING THAT THE AGENTS INTERVIEWED ME  
14 BEFORE HART MILES DID, BUT, OBVIOUSLY, I TOLD THE AGENTS THAT  
15 I HAD BEEN CONTACTED BY HART MILES.

16 Q. SO, THE HART MILES CONTACT HAD TO HAVE BEEN FIRST?

17 A. YES.

18 Q. AND SO, SURELY, HART MILES TOLD YOU THAT HE AND ANOTHER  
19 ATTORNEY ON BEHALF OF JEFFREY MACDONALD HAD FILED A 2255  
20 PROCEEDING BASED ON THE BRITT ALLEGATIONS?

21 A. I KNEW THAT AND HE MUST HAVE BEEN THE FIRST PERSON I  
22 TALKED TO AND SO THE ANSWER WOULD BE YES.

23 Q. ALL RIGHT. I BELIEVE YOU TESTIFIED EARLIER THAT THE  
24 FIRST YOU HAD HEARD OF THE JIMMY BRITT ALLEGATIONS OR ANY  
25 ALLEGATIONS OF A THREAT WAS WHEN THE FBI INTERVIEWED YOU?

September 24, 2012

Leonard/Cross

Page 1150

1 A. YES.

2 Q. BUT THAT'S NOT RIGHT BECAUSE HART MILES TOLD YOU FIRST?

3 A. I DON'T KNOW THAT HART MILES TOLD ME WHAT THE -- WHAT THE  
4 ALLEGATIONS WERE. AT SOME POINT SOMEBODY -- AND I THINK IT  
5 WAS AT A MUCH LATER TIME THAT I WAS PRESENTED A COPY OF MR.  
6 BRITT'S AFFIDAVIT.

7 I KNEW ALL ALONG THAT DIFFERENT APPEALS OR PETITIONS  
8 WERE COMING ALONG AND HAD BEEN -- HAD COME ALONG AND MAYBE HAD  
9 BEEN DECIDED OR WHAT-HAVE-YOU. I KNEW THAT THINGS WERE GOING  
10 UP TO THE FOURTH CIRCUIT.

11 MY THOUGHTS ARE I DID NOT SPECIFICALLY KNOW ABOUT  
12 MR. BRITT'S ALLEGATIONS UNTIL WITHIN THE LAST TWO OR THREE  
13 YEARS.

14 Q. SO, THAT WOULD BE 2008, 2009?

15 A. AND I EVEN THINK THAT IT'S MORE -- IT WAS MORE RECENTLY  
16 THAN THAT.

17 Q. ALL RIGHT. DO YOU RECALL TELLING ERROL MORRIS THAT JUDGE  
18 DUPREE WOULD NOT LET HELENA STOECKLEY TESTIFY BEFORE THE JURY  
19 BECAUSE OF HER ALLEGED PAST DRUG USE?

20 A. I COULD HAVE, YES.

21 Q. BECAUSE THAT'S WHAT YOU BELIEVED AT THE TIME THAT YOU  
22 SPOKE WITH ERROL MORRIS?

23 A. WELL, THINGS DON'T GET REALLY ACCURATELY REPORTED ALL THE  
24 TIME. WHAT I KNOW AND I WOULD THINK THAT THAT'S WHAT I TOLD  
25 HIM WAS THAT -- LET'S SEE. I READ A TRANSCRIPT OR -- YES,

September 24, 2012

Leonard/Cross

Page 1151

1 WHERE JUDGE DUPREE AT ONE POINT SAID THAT HELENA STOECKLEY HAD  
2 TESTIFIED INTELLIGENTLY, THAT SHE ANSWERED THE QUESTIONS, AND  
3 HE SAID THIS FROM THE BENCH, I ASSUME, IT WAS ON A TRANSCRIPT,  
4 AND THAT BERNIE SEGAL, BERNARD SEGAL, COULD NOT TAKE HER ON AS  
5 AN ADVERSE WITNESS.

6 AND ALSO I KNEW THAT AT ONE POINT THAT -- THIS IS  
7 WHAT I BELIEVE AND, ONCE AGAIN, YOU KNOW, I WASN'T THERE, BUT  
8 THIS IS WHAT I BELIEVE, THAT JUDGE DUPREE SAID THAT HER  
9 TESTIMONY WAS NOT INHERENTLY RELIABLE OR, AND THEN HE PUT OR,  
10 IT WAS INHERENTLY UNRELIABLE. THAT'S ALMOST A QUOTE.

11 THE COURT: WE'RE GOING TO TAKE OUR LUNCHEON RECESS.  
12 TAKE A RECESS TILL 1:30.

13 (LUNCHEON RECESS FROM 11:59 A.M., UNTIL 1:31 P.M.)  
14 (DEFENDANT PRESENT.)

15 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE  
16 SEATED AND WE'LL CONTINUE. YOU'RE STILL UNDER OATH, MR.  
17 LEONARD. THE WITNESS IS WITH YOU, MR. BRUCE.

18 MR. BRUCE: THANK YOU, YOUR HONOR.

19 BY MR. BRUCE:

20 Q. MR. LEONARD, WHEN WE TOOK THE LUNCHEON RECESS, I BELIEVE  
21 THE LAST QUESTION I ASKED YOU WAS WHETHER YOU RECALLED TELLING  
22 ERROL MORRIS THAT JUDGE DUPREE WOULD NOT LET HELENA STOECKLEY  
23 TESTIFY BEFORE THE JURY BECAUSE OF HER PAST ALLEGED DRUG USE?

24 A. I DID TELL YOU THAT. I ASSUME I TOLD YOU THAT.

25 Q. MY QUESTION WAS DID YOU TELL ERROL MORRIS THAT?

September 24, 2012

Leonard/Cross

Page 1152

1 A. I COULD HAVE. YOU KNOW, WHAT HAPPENS IS YOU FIND OUT  
2 STUFF LATER AND THEN YOU CONFUSE THAT WITH WHAT ACTUALLY YOU  
3 KNEW AT A PARTICULAR TIME.

4 I KNOW THAT JUDGE DUPREE -- I TOLD YOU THE STATEMENT  
5 THAT JUDGE DUPREE MADE ABOUT HELENA STOECKLEY AND THAT MAY  
6 HAVE -- I KNEW THAT STATEMENT AND THAT MIGHT HAVE BEEN WHY I  
7 SAID THAT.

8 I DO -- YOU KNOW, I DO KNOW THAT THEY WOULD NOT LET  
9 MR. SEGAL IMPEACH HER OR TAKE HER ON AS AN ADVERSE WITNESS.  
10 AND I THINK JUDGE DUPREE'S STATEMENT WAS MADE IN REGARDS, I  
11 BELIEVE, I WASN'T THERE, WAS MADE IN REGARDS TO ALLOWING  
12 WITNESSES THAT HELENA STOECKLEY HAD SPOKEN TO EARLIER TO  
13 TESTIFY AND I'M NOT SURE ABOUT THAT.

14 Q. ALL RIGHT. NOW, DID ERROL MORRIS INTERVIEW YOU FOR A  
15 SECOND TIME?

16 A. HE CALLED ME PROBABLY, I WANT TO SAY, AT LEAST THREE  
17 TIMES.

18 Q. ALL RIGHT. WELL, LET'S LOOK AT 7000.5 ON THE SCREEN AND  
19 LET'S ENLARGE ON THE LEFT-HAND PAGE, PAGE 412, LET'S ENLARGE  
20 ABOUT HALFWAY DOWN THE MIDDLE THIRD OF THE PAGE. DO YOU SEE  
21 THIS, WHAT PURPORTS TO BE A Q&A BETWEEN YOU AND ERROL MORRIS?

22 A. YES. YES.

23 Q. AND DO YOU SEE THE SECOND TIME HE SPEAKS WHERE HE STATES  
24 SHE WAS INTERVIEWED BY THE DEFENSE AND PROSECUTION ON THURSDAY  
25 AND SHE TESTIFIED ON FRIDAY OUTSIDE THE PRESENCE OF THE JURY?

September 24, 2012

Leonard/Cross

Page 1153

1 A. YES, THAT'S WHAT IT SAYS.

2 Q. AND DO YOU SEE YOUR REPLY WHERE IT SAYS, YES, AND THE  
3 JUDGE WAS OF THE OPINION THAT SHE HAD TAKEN TOO MANY DRUGS IN  
4 THE PAST TO OFFER RELIABLE TESTIMONY. THOSE WERE THE ISSUES  
5 THAT I WAS DEALING WITH AS FAR AS TRYING TO KEEP HER FROM  
6 TESTIFYING.

7 A. YES.

8 Q. DO YOU THINK THAT'S AN ACCURATE REPRESENTATION OF THE  
9 RESPONSE YOU MADE TO HIS QUESTION?

10 A. YES.

11 Q. OKAY.

12 A. LET ME -- SOME OF HIS STATEMENTS WERE TAKEN OUT OF  
13 CONTEXT, I THINK, BUT THAT ONE WASN'T I DON'T THINK.

14 Q. THAT ONE WAS NOT?

15 A. I DON'T THINK IT WAS.

16 Q. OKAY. WHAT YOU JUST SAID THERE, THAT THE JUDGE WAS OF  
17 THE OPINION THAT SHE HAD TAKEN TOO MANY DRUGS IN THE PAST TO  
18 OFFER RELIABLE TESTIMONY WAS NOT EXACTLY WHAT JUDGE DUPREE  
19 RULED, WAS IT? I MEAN, HER TESTIMONY --

20 A. I DON'T KNOW. I KNOW AT ONE POINT HE WOULDN'T LET HER BE  
21 IMPEACHED BECAUSE -- OR BE TAKEN ON AS AN ADVERSE WITNESS.  
22 AND THIS IS WHAT I REMEMBER FROM READING THE TRANSCRIPT THAT  
23 HE SAID THAT SHE HAD ANSWERED EVERY QUESTION, AS I REMEMBER,  
24 AND THAT SHE HAD INTELLIGENTLY ANSWERED THE QUESTIONS.

25 THEN BEFORE I WAS APPOINTED, HE SAID SOMETHING WHICH

September 24, 2012

Leonard/Cross

Page 1154

1 WAS KIND OF JUDGE DUPREEY, AND THAT WOULD BE THAT HER  
2 TESTIMONY IS NOT INHERENTLY RELIABLE, IT'S MORE INHERENTLY  
3 UNRELIABLE. THAT'S THE WAY I REMEMBER THAT QUOTE.

4 Q. HER TESTIMONY BEFORE THE JURY STOOD, DID IT NOT?

5 A. I'M SORRY?

6 Q. HER TESTIMONY BEFORE THE JURY STOOD, DID IT NOT, IT WAS  
7 CONSIDERED BY THE JURY?

8 A. I WASN'T THERE AND I DON'T KNOW WHAT THE TRANSCRIPT SAID  
9 ABOUT THAT. I DON'T THINK HE INSTRUCTED THE JURY TO DISREGARD  
10 HER TESTIMONY.

11 Q. WHAT HE RULED WAS THAT OTHER WITNESSES COULD NOT TESTIFY  
12 TO HER OUT OF COURT STATEMENTS, HEARSAY, IN OTHER WORDS?

13 A. I UNDERSTAND HE RULED THAT.

14 Q. AND YOU WERE RIGHT THERE IN THE COURTROOM ON MONDAY,  
15 AUGUST 20TH, 1979, WHEN JUDGE DUPREE RULED ON THIS ISSUE, WERE  
16 YOU NOT?

17 A. APPARENTLY, I WAS IN THE COURTROOM AND APPARENTLY I WAS  
18 PART OF A BENCH CONFERENCE BECAUSE I SAID SOMETHING DURING THE  
19 COURSE OF THAT CONFERENCE.

20 Q. LET'S LOOK AT TRIAL DAY 22, PAGE 175. 175, I'M SORRY.  
21 DO YOU SEE DOWN TOWARD THE BOTTOM OF THE PAGE STARTING AT LINE  
22 19, WHERE HE SAYS I THINK IT IS NOT AS REQUIRED BY 803(b)(3)  
23 CLEARLY TRUSTWORTHY, IT IS PERHAPS THE MOST CLEARLY  
24 UNTRUSTWORTHY EVIDENCE THAT I'VE HAD PUT BEFORE ME?

25 A. YES.

September 24, 2012



Leonard/Cross

Page 1155

1 Q. AND HERE HE WAS SPEAKING ABOUT THE OUT OF COURT  
2 STATEMENTS THAT ARE BEING PROFFERED, ISN'T THAT CORRECT?

3 A. I DON'T KNOW THE ANSWER TO THAT QUESTION. I CAN'T -- I  
4 DON'T KNOW EXACTLY WHAT HE WAS REFERRING TO.

5 Q. WELL, YOU'RE FAMILIAR WITH THE FEDERAL RULES OF EVIDENCE,  
6 RIGHT?

7 A. YES.

8 Q. WOULDN'T 803(b)(3) BE PART OF THE FEDERAL RULES OF  
9 EVIDENCE DEALING WITH HEARSAY?

10 A. YES.

11 Q. ALL RIGHT. NOW, THIS IS AT PAGE 175 OF THE TRANSCRIPT.  
12 LET'S GO BACK TO THE FULL PAGE AND JUST PAGE ONE AT A TIME.  
13 176, HE'S EXPLAINING HIS RULING A LITTLE BIT MORE. DO YOU SEE  
14 WHERE IT SAYS I THINK THE JURY HAVING -- WELL, LET'S ENLARGE  
15 IT, LINE 13, PLEASE. I THINK THE JURY HAVING HEARD HER FOR  
16 THE BETTER PART OF A DAY WOULD BE IN A GOOD POSITION NOW TO  
17 EVALUATE HER AND HER STORY AND EVERYTHING ABOUT IT. DO YOU  
18 SEE THAT?

19 A. YES, I DO.

20 Q. AND NOW LET'S MOVE -- ENLARGE BACK TO THE FULL PAGE,  
21 PLEASE, AND THEN GO ON TO PAGE 177. AND HE'S DISCUSSING HIS  
22 RULING A LITTLE MORE, DO YOU SEE THAT AT LINES THREE THROUGH  
23 12?

24 A. YES.

25 Q. ALL RIGHT. NOW, LET'S GO TO PAGE 178. AND DO YOU SEE

September 24, 2012

Leonard/Cross

Page 1156

1 WHERE MR. SEGAL IS PROPOSING TO PUT ON MR. POSEY AND ASK ABOUT  
2 A CONVERSATION WITH HER DOWN AT THE BOTTOM OF THE PAGE, LINE  
3 21 THROUGH 24?

4 A. YES, I DO.

5 Q. ALL RIGHT. NOW, LET'S GO TO PAGE 179. AND THIS IS WHAT  
6 WE READ EARLIER ABOUT THE MATTER OF THE PHONE CALL FROM HELENA  
7 STOECKLEY TO JUDGE DUPREE AND AT THE BOTTOM OF THE PAGE STEVE  
8 COGGINS FIND ME A LAWYER, REMEMBER THAT?

9 A. YES.

10 Q. ALL RIGHT. AND LET'S GO TO PAGE 180. SEE AT THE BOTTOM  
11 OF PAGE 180 WHERE YOU SPEAK UP?

12 A. YES.

13 Q. SO, WE'VE ONLY GONE FROM PAGES 175 TO 180, SO IT WOULD  
14 APPEAR THAT YOU WERE IN THE COURTROOM WHEN JUDGE DUPREE  
15 ANNOUNCED HIS RULING ON THE OUT OF COURT STATEMENTS AND THE  
16 STOECKLEY WITNESSES?

17 A. I CAN'T SAY THAT FOR SURE.

18 Q. ALL RIGHT.

19 A. I DEFINITELY DID NOT HAVE A PLACE TO SIT IN THAT  
20 COURTROOM AND IN THE VERY BEGINNING I HAD TO FIND A PLACE TO  
21 KEEP HELENA STOECKLEY.

22 Q. NOW, THIS IS MONDAY, TRIAL DAY 22.

23 A. YEAH, I THINK THAT'S THE FIRST DAY -- I BELIEVE THAT THAT  
24 IS THE FIRST DAY THAT I WAS IN COURT WITH HELENA STOECKLEY.

25 Q. AND I BELIEVE THAT WHERE YOU'RE SHOWN AS SPEAKING IS A

September 24, 2012

Leonard/Cross

Page 1157

1 BENCH CONFERENCE, IS IT NOT?

2 A. YES. I MEAN, IT CERTAINLY APPEARS SO. I MEAN, THE  
3 ANSWER IS FROM THE TRANSCRIPT I WAS PRESENT AT THE BENCH  
4 CONFERENCE.

5 Q. ALL RIGHT. AGAIN, WHEN YOU TALKED TO MR. MORRIS IN 2012,  
6 YOU DIDN'T REMEMBER IT RIGHT AS TO WHAT JUDGE DUPREE'S RULING  
7 WAS?

8 A. I THINK I HAD IT PRETTY RIGHT. I ALSO -- I THOUGHT I HAD  
9 -- I THINK I HAVE IT PRETTY RIGHT AND I DID NOT -- BUT I DID  
10 NOT KNOW THAT SHE HAD TESTIFIED IN FRONT OF THE JURY. I MEAN,  
11 I COULD NOT -- AS LATE AS THIS LAST TEN YEARS, I MEAN MOST OF  
12 THIS TEN YEARS, THE MOST RECENT TEN YEARS, I WAS THINKING THAT  
13 SHE TESTIFIED TO THE JUDGE UNDER OATH AND OUTSIDE THE PRESENCE  
14 OF THE JURY.

15 Q. BUT NOW YOU UNDERSTAND THAT SHE DID TESTIFY BEFORE THE  
16 JURY AND JUDGE DUPREE'S RULING WAS ONLY TO EXCLUDE OUT OF  
17 COURT STATEMENTS THAT SHE HAD MADE TO OTHERS?

18 A. CORRECT.

19 Q. DID ERROL MORRIS CALL YOU A THIRD TIME?

20 A. HE CALLED ME AT LEAST THREE TIMES.

21 Q. OKAY. DID YOU -- LET'S LOOK AT 7000.8. DO YOU SEE WHERE  
22 IT SAYS -- LET'S BLOW UP OR ENLARGE THE FIRST THIRD OF THE  
23 PAGE.

24 DO YOU SEE WHERE IT SAYS WHAT HAPPENED WAS I GOT A  
25 CALL FROM THE CLERK, IT WASN'T JUDGE DUPREE, ASKING IF I WOULD

September 24, 2012

Leonard/Cross

Page 1158

1 REPRESENT A HIPPIE GIRL?

2 A. YES.

3 Q. AND MR. MORRIS'S TRANSCRIPT REPRESENTS THAT YOU SAID  
4 THAT?

5 A. YES.

6 Q. DO YOU SEE WHERE YOU STATE FURTHER, MY JOB, I HAD BEEN  
7 THINKING ALL THESE YEARS, WAS JUST TO FADE AWAY, KEEP HER OUT  
8 OF THE COURTROOM. I DIDN'T EVEN KNOW SHE HAD TESTIFIED?

9 A. I THINK I'VE SAID THAT, YES.

10 Q. WELL, THIS SAYS YOU DIDN'T KNOW SHE HAD TESTIFIED AT ALL.

11 A. THAT IS CORRECT. I LEARNED -- BUT I LEARNED -- YOU KNOW,  
12 AT THE TIME -- WHAT YOU'RE SAYING IS I WAS PRESENT AT THE  
13 BENCH CONFERENCE WHERE IT WAS MENTIONED THAT SHE HAD TESTIFIED  
14 BEFORE THE JURY. I DIDN'T PICK UP ON THAT. I PICKED UP -- I  
15 PICKED UP ON THAT SHE HAD TESTIFIED AND I CAN'T -- FOR THE  
16 LIFE OF ME, I WAS THINKING IT WAS TO THE COURT AND BASICALLY  
17 THAT THE COURT HAD FOUND THAT SHE WAS UNRELIABLE.

18 Q. WELL, MR. LEONARD, I BELIEVE IT SAYS RIGHT HERE IN WHAT I  
19 JUST READ THAT YOU STATED I DIDN'T EVEN KNOW SHE HAD  
20 TESTIFIED, PERIOD.

21 A. THAT IS EXACTLY -- I MEAN, LET'S ASSUME THAT'S EXACTLY  
22 WHAT I SAID, BUT IT WASN'T AN ACCURATE STATEMENT.

23 Q. ALL RIGHT. WELL, GO DOWN TO THE NEXT TIME YOU'RE SHOWN  
24 SPEAKING ON THE PAGE AND DO YOU SEE WHERE -- WELL, WHY DON'T  
25 YOU JUST READ THE FIRST THREE SENTENCES.

September 24, 2012

Leonard/Cross

Page 1159

1 A. THE NEXT -- MR. MORRIS --

2 Q. STARTING WITH I CAN'T IMAGINE.

3 A. I CAN'T IMAGINE THAT I WAS NOT TOLD THAT SHE HAD  
4 TESTIFIED. I WOULD HAVE THOUGHT I WOULD HAVE ORDERED A  
5 TRANSCRIPT OF HER TESTIMONY RIGHT AWAY. OBVIOUSLY, I DIDN'T.  
6 I JUST REMEMBER SITTING THERE AND IT SEEMED PRETTY BORING TO  
7 ME.

8 THE PAY AT THAT TIME WAS \$35 AN HOUR AND YOU WERE  
9 LOSING MONEY RUNNING AN OFFICE ON \$35 AN HOUR. I TAKE IT  
10 BACK, BACK THEN IT WAS \$35 AN HOUR FOR OUT OF COURT AND \$45  
11 FOR IN COURT. SO, I GUESS THAT WAS IN COURT.

12 Q. ALL RIGHT. SO, AT THE TIME THAT YOU WERE SPEAKING TO  
13 ERROL MORRIS IN 2012, YOU SEEM TO BE WONDERING WHETHER YOU  
14 KNEW SHE HAD TESTIFIED AT ALL, WHETHER YOU KNEW IN 1979 THAT  
15 SHE HAD TESTIFIED AT ALL.

16 A. I DON'T -- I CAN'T TESTIFY TO YOU THAT I KNEW THEN THAT  
17 SHE HAD TESTIFIED.

18 Q. ALL RIGHT.

19 A. MY -- AND THEN YOU HEAR THINGS AND OBVIOUSLY I HEARD THAT  
20 SHE HAD TESTIFIED AND I WAS THINKING SURELY SHE DID NOT  
21 TESTIFY BEFORE THE JURY. AND JUDGE DUPREE'S STATEMENTS COULD  
22 HAVE BEEN -- WELL, I'M MAKING EXPLANATIONS, BUT JUST BECAUSE  
23 IT WAS SAID AT A BENCH CONFERENCE WHERE THERE WERE AS MANY  
24 LAWYERS AS YOU HAVE HERE OR MAYBE AS MANY, THAT I HEARD IT. I  
25 MEAN, I COULD HAVE BEEN SITTING OVER WHERE THE CLERK SITS, YOU

September 24, 2012

Leonard/Cross

Page 1160

1 KNOW.

2 Q. SO, AS I UNDERSTAND YOUR TESTIMONY, YOU'RE SAYING THAT  
3 IT'S SOMETIMES DIFFICULT TO DISTINGUISH WHAT YOU LEARNED IN  
4 1979, AND WHAT YOU'VE LEARNED SINCE?

5 A. YEAH, AND THAT'S THE DANGER. AND I HAVEN'T TALKED TO --  
6 I'VE TRIED REAL HARD NOT TO TALK TO PEOPLE ABOUT THIS. I'VE  
7 TRIED REAL HARD NOT TO -- I MEAN, I'M TALKING ABOUT THE TRIAL  
8 IN GENERAL, ALTHOUGH I HAVE OBVIOUSLY.

9 AND WHAT HAPPENS IS YOU HEAR STUFF AT A LATER DATE  
10 AND IT ALL BECOMES PART OF WHAT YOU KNOW AND IT'S HARD TO PEEL  
11 AWAY THE CONTEXT THAT YOU HEARD ONE THING FROM THE OTHER.

12 Q. ALL RIGHT. BY THE WAY, YOU MENTIONED THAT YOU THOUGHT --  
13 YOU MENTIONED TO MR. MORRIS THAT YOU THOUGHT IF YOU HAD FOUND  
14 OUT THAT SHE HAD TESTIFIED WHILE YOU WERE REPRESENTING HER IN  
15 1979, YOU WOULD HAVE ORDERED A TRANSCRIPT, IS THAT RIGHT?

16 A. YES.

17 Q. DID YOU KNOW THAT THE GOVERNMENT WAS GETTING A DAILY  
18 TRANSCRIPT AT THE TIME?

19 A. NO.

20 Q. NOW --

21 A. LET ME TELL YOU ONE OTHER THING IN RELATION.

22 Q. ALL RIGHT.

23 A. I DON'T REMEMBER HAVING ANY CONTACT WHATSOEVER WITH THE  
24 GOVERNMENT OR THE DEFENSE DURING THIS TRIAL.

25 Q. ALL RIGHT.

September 24, 2012

Leonard/Cross

Page 1161

1 A. I JUST DID NOT TALK TO ANYBODY THAT I REMEMBER ABOUT --  
2 THAT WAS A PARTY TO THE LAWSUIT.

3 Q. ALL RIGHT. SO, AS YOU SIT HERE TODAY, BASED ON YOUR OWN  
4 MEMORY, NOT WHAT SOMEBODY MIGHT HAVE TOLD YOU, DO YOU REMEMBER  
5 WHETHER OR NOT YOU KNEW WHILE REPRESENTING HELENA STOECKLEY  
6 THAT SHE HAD PREVIOUSLY TESTIFIED?

7 A. I CAN'T SAY THAT I DID.

8 Q. OKAY. NOW, LET'S MOVE ON TO ANOTHER PART OF YOUR  
9 AFFIDAVIT. IT STATES -- EXCUSE ME A MINUTE.

10 (PAUSE.)

11 OKAY. IT STATES IN YOUR AFFIDAVIT AT PAGE SIX THAT  
12 YOU HAD TO ARRANGE HER LODGING, IS THAT CORRECT?

13 A. I DID.

14 Q. WELL, MY QUESTION IS, IS THAT WHAT YOUR AFFIDAVIT STATES,  
15 THAT YOU HAD TO ARRANGE HER LODGING?

16 A. YES, AS I REMEMBER MY AFFIDAVIT. NOW, I ACTUALLY  
17 PREPARED THAT AFFIDAVIT AND SENT IT TO MY ATTORNEY AT HIS  
18 REQUEST PRIOR TO THIS HEARING STARTING. AND THE ANSWER IS  
19 YES, I DID. YEAH, I FOUND HER A PLACE TO STAY.

20 Q. AND YOU RECALL THAT CLEARLY?

21 A. YES.

22 Q. OKAY. DURING YOUR INTERVIEW WITH AGENTS CHEROKE AND  
23 THOMURE, DO YOU RECALL THAT YOU ATTEMPTED TO LOCATE A PLACE  
24 FOR STOECKLEY TO STAY DURING HER TIME IN RALEIGH AND SECURED A  
25 ROOM FOR HER AT THE BROWNSTONE HOTEL?

September 24, 2012

Leonard/Cross

Page 1162

1 A. IT WASN'T THE BROWNSTONE AT THE TIME. IT BECAME THE  
2 BROWNSTONE AND IT WAS THE BROWNSTONE WHEN I WAS TALKING TO THE  
3 AGENTS.

4 Q. ALL RIGHT.

5 A. IT WAS THE HOLIDAY INN OR HILTON.

6 Q. WELL, LET'S SEE IF WE CAN CLEAR THAT UP. FIRST OF ALL,  
7 THE HOTEL YOU'RE TALKING ABOUT THAT YOU GOT -- YOU SAY YOU GOT  
8 HER A ROOM AT WHAT WAS LATER CALLED THE BROWNSTONE, IS THAT  
9 YOUR TESTIMONY?

10 A. CORRECT.

11 Q. OKAY. LET'S PUT UP GOVERNMENT EXHIBIT 2373. NOW, THIS  
12 HOTEL IS NOW KNOWN AS THE DOUBLE TREE HILTON, IS THAT THE SAME  
13 HOTEL THAT YOU'RE REFERRING TO?

14 A. YES.

15 (GOVERNMENT EXHIBIT NUMBER 2373  
16 WAS IDENTIFIED FOR THE RECORD.)

17 Q. AND AT A TIME AFTER 1979, IT BECAME THE BROWNSTONE AND  
18 THEN LATER THE DOUBLE TREE HILTON?

19 A. THAT SOUNDS CORRECT.

20 Q. ALL RIGHT. BUT IN FACT IN 1979, IT WAS CALLED THE  
21 HILTON, WASN'T IT?

22 A. I BELIEVE SO.

23 Q. LET'S LOOK AT 2377. NOW, DO YOU RECOGNIZE THIS HOTEL?

24 A. YES, I DO.

25 Q. IT HAS A VERY DISTINCTIVE ROUND ARCHITECTURE?

September 24, 2012



Leonard/Cross

Page 1163

1 A. YES, IT DOES.

2 Q. WASN'T, IN 1979, THAT THE HOLIDAY INN? WASN'T THAT THE  
3 HOLIDAY INN? EXCUSE ME.

4 A. YES. YES, IT WAS.

5 (GOVERNMENT EXHIBIT NUMBER 2377  
6 WAS IDENTIFIED FOR THE RECORD.)

7 Q. AND NOW IT'S CALLED THE CLARION?

8 A. I DON'T KNOW WHAT IT'S CALLED NOW.

9 Q. BUT IT'S STILL THERE IN DOWNTOWN RALEIGH?

10 A. IT'S STILL THERE.

11 Q. RIGHT ACROSS FROM -- IT'S RIGHT ON HILLSBOROUGH STREET,  
12 RIGHT?

13 A. YES.

14 Q. AND SO THE HOTEL THAT YOU SAY THAT YOU ARRANGED FOR MS.  
15 STOECKLEY TO STAY IN WAS NOT THIS HOTEL SHOWN IN 2377?

16 A. NO. NO, IT'S NOT.

17 Q. IT WAS -- GO BACK TO 2373. IT WAS THIS HOTEL?

18 A. YES.

19 Q. OKAY. SO, IF THAT HOTEL, AS SHOWN IN GOVERNMENT EXHIBIT  
20 2373, WAS THE HILTON IN 1979, THEN THAT'S WHERE YOU ARRANGED  
21 FOR HER TO STAY?

22 A. YES.

23 Q. AND THIS IS DOWN ON THE END OF HILLSBOROUGH STREET NEAR  
24 N.C. STATE UNIVERSITY, IS THAT RIGHT?

25 A. YES.

September 24, 2012

Leonard/Cross

Page 1164

1 Q. AND SO THIS WOULD BE ABOUT SOME NUMBER OF BLOCKS, SIX OR  
2 SEVEN OR TEN BLOCKS, WEST OF THAT ROUND HOLIDAY INN WE JUST  
3 LOOKED AT?

4 A. YES.

5 Q. AND YOU LIVE IN OR YOU DID AT THAT TIME LIVE IN THE  
6 CAMERON PARK NEIGHBORHOOD OF RALEIGH, IS THAT RIGHT?

7 A. YES.

8 Q. SO, THIS HOTEL, AS SHOWN IN GOVERNMENT EXHIBIT 2373, IS  
9 FAIRLY NEAR WHERE YOU LIVED?

10 A. YES.

11 Q. OKAY. NOW, DID YOU FURTHER TELL AGENTS THOMURE AND  
12 CHEROKE THAT YOU BELIEVED THAT YOU PAID FOR AT LEAST THE FIRST  
13 NIGHT'S LODGING OUT OF POCKET, BUT WAS SUBSEQUENTLY REIMBURSED  
14 BY THE COURT? AND DO YOU WANT TO LOOK AT THE STATEMENT?  
15 WE'LL PUT IT UP ON THE SCREEN IF YOU'D LIKE, 6076.

16 A. IF YOU COULD.

17 Q. OKAY. ENLARGE THE LAST PARAGRAPH. THAT'S WHAT I'VE BEEN  
18 QUOTING FROM.

19 (PAUSE.)

20 A. THAT'S WHAT I TOLD THEM.

21 Q. OKAY. SO, YOU RECALL TELLING THEM --

22 A. I WAS TELLING THEM WHAT I -- IT SAYS LEONARD BELIEVES,  
23 LEONARD BELIEVES.

24 Q. WELL, IT'S WRITTEN IN THE THIRD PERSON BECAUSE YOU DIDN'T  
25 WRITE THIS, IS THAT RIGHT?

September 24, 2012

Leonard/Cross

Page 1165

1 A. NO, I DID NOT.

2 Q. THE AGENTS PREPARED THIS AFTER INTERVIEWING YOU ON THE  
3 TELEPHONE?

4 A. YES.

5 Q. SO, MY QUESTION TO YOU, AND I'M NOT ASKING EXACT WORDS,  
6 BUT MY QUESTION TO YOU IS DID YOU MAKE THOSE STATEMENTS THAT  
7 WE JUST WENT OVER OR WORDS TO THAT EFFECT TO THE AGENTS?

8 A. I DID.

9 Q. OKAY. AND IT GOES ON TO SAY, THEREAFTER, LEONARD FEELS  
10 THAT THE COURT PROVIDED A HOUSING ALLOWANCE FOR STOECKLEY  
11 COVERING THE DURATION OF HER STAY. DID YOU SAY WORDS TO THAT  
12 EFFECT TO THE AGENTS?

13 A. YES, AND I STILL BELIEVE THAT.

14 Q. ALL RIGHT. LET'S LOOK AT TRIAL DAY 21, PAGE 179,  
15 ENLARGING IT AT LINE 13. WOULD YOU READ STARTING WITH LINE  
16 13, PLEASE?

17 A. MR. SEGAL: YOUR HONOR, MS. STOECKLEY HAS BEEN PRESENT IN  
18 THE COURT PURSUANT TO A WARRANT OF ARREST ISSUED FOR HER AS A  
19 MATERIAL WITNESS IN THIS MATTER AFTER I HAD FILED AN AFFIDAVIT  
20 WITH THIS COURT AND MADE AN ORAL MOTION IN THAT REGARD. I  
21 BELIEVE AT THIS TIME, IT WOULD BE APPROPRIATE TO DISCHARGE THE  
22 WARRANT OF ARREST. IT WOULD EXPIRE, I THINK, THIS EVENING  
23 ANYWAY. HOWEVER, BECAUSE IT IS NOT CERTAIN IN MY MIND THAT  
24 MS. STOECKLEY'S TESTIMONY MAY NOT BE NEEDED FURTHER IN THIS  
25 CASE, AT THIS TIME I AM GOING TO TENDER HER A SUBPOENA AS A

September 24, 2012

Leonard/Cross

Page 1166

1 WITNESS, A SUBPOENA TO BE HERE AT TWO O'CLOCK THIS AFTERNOON.  
2 I WILL ASK THAT THEREAFTER SHE CAN BE EXCUSED AND I WILL JUST  
3 MAKE ARRANGEMENTS TO LOCATE HER.

4 I AM ALSO GOING TO TENDER HER THE STATUTORY WITNESS  
5 FEES IN THAT REGARD. MY REQUEST TO THE COURT, THOUGH, IN VIEW  
6 OF THE FACT THAT MS. STOECKLEY HAS FRANKLY STATED SHE DID NOT  
7 WANT TO BE HERE AND SHE WAS SO DIFFICULT TO LOCATE I WOULD ASK  
8 THE COURT TO ADVISE MS. STOECKLEY OF THE IMPORTANCE OF  
9 HONORING THE SUBPOENA AND THE FACT THAT THE COURT DOES NOT  
10 (SIC) FULLY EXPECT HER TO RETURN HERE AS NEEDED PURSUANT TO  
11 THE SUBPOENA.

12 Q. NOW, MR. LEONARD, WHAT WAS HAPPENING HERE WAS THAT MS.  
13 STOECKLEY WAS BEING RELEASED FROM CUSTODY, IS THAT RIGHT?

14 A. THAT'S WHAT IT SAYS, YES.

15 Q. AND AT THAT POINT, SHE WAS BEING SERVED A SUBPOENA ON  
16 BEHALF OF THE DEFENDANT MACDONALD, IS THAT RIGHT?

17 A. YES.

18 Q. AND MR. SEGAL IS STATING TO THE COURT THAT HE WAS GOING  
19 TO TENDER HER THE STATUTORY WITNESS FEES, IS THAT CORRECT?

20 A. YES.

21 Q. AND MR. MACDONALD HAD HIRED HIS OWN COUNSEL FOR THE  
22 TRIAL, IS THAT CORRECT?

23 A. YOU MEAN MR. SEGAL?

24 Q. I MEANT MR. MACDONALD HAD HIRED MR. SEGAL AND MR. SMITH  
25 TO REPRESENT HIM, HE DID NOT HAVE APPOINTED COUNSEL, IS THAT

September 24, 2012

Leonard/Cross

Page 1167

1 RIGHT?

2 A. CORRECT.

3 Q. SO, HE WAS NOT AN INDIGENT DEFENDANT?

4 A. NO, HE WAS NOT.

5 Q. AND IN YOUR EXPERIENCE, A NON-INDIGENT DEFENDANT WHEN  
6 THEY SUBPOENA WITNESSES HAS TO PAY FOR THE SUBSISTENCE AND  
7 WITNESS FEES, DO THEY NOT?

8 A. YES.

9 Q. LET'S LOOK AT TRIAL DAY 22, PAGE 150. LET'S LOOK AT  
10 LINES FOUR THROUGH 11.

11 A. DO YOU WANT ME TO READ IT?

12 Q. IF YOU WOULD, PLEASE.

13 A. MR. SEGAL: I WANT TO FIRST MAKE A REPRESENTATION TO THE  
14 COURT IN REGARD TO THE CIRCUMSTANCES UNDER WHICH MS. ROUDER  
15 SAW MS. STOECKLEY. AT THE CONCLUSION OF HER TESTIMONY ON  
16 FRIDAY, YOUR HONOR, AT THAT TIME, YOU MAY RECALL, I SERVED THE  
17 WITNESS A SUBPOENA, AND HANDED HER A CHECK FOR WITNESS FEES IN  
18 ACCORDANCE WITH THE STATUTES AND TOLD HER TO BE BACK HERE ON  
19 MONDAY IN THIS COURTROOM.

20 Q. LET'S GO ON TO THE NEXT PARAGRAPH. CONTINUE READING.

21 A. I MADE NO OTHER ARRANGEMENTS WITH HER TO CONTACT HER, TO  
22 SEE HER. DID NOT ASK HER WHERE SHE WAS GOING, WHERE SHE WAS  
23 GOING TO STAY. MY INTEREST WAS THEN WHAT IT IS NOW, IN HER  
24 POTENTIAL TESTIMONY AS A WITNESS UNDER CIRCUMSTANCES WHICH  
25 WOULD BE INAPPROPRIATE. SHE LEFT HERE AND I HAD NO KNOWLEDGE

September 24, 2012

Leonard/Cross

Page 1168

1 OF WHERE SHE WAS GOING.

2 Q. CONTINUE READING, PLEASE.

3 A. I RECEIVED A TELEPHONE CALL, HOWEVER, ON FRIDAY EVENING  
4 FROM MS. STOECKLEY IN WHICH SHE CALLED ME TO TELL ME WHERE SHE  
5 WAS STAYING. SHE SAID THAT SHE HAD CHECKED INTO THE  
6 DOWNTOWNER HOTEL. AT THAT TIME I SAID TO HER THAT I WAS  
7 SURPRISED SHE HAD GONE THERE AND IT WOULD BE INAPPROPRIATE TO  
8 STAY THERE BECAUSE ALL OF THE DEFENSE WITNESSES AND THE  
9 DEFENSE LAWYERS WERE GOING TO MOVE THE NEXT DAY TO THAT HOTEL  
10 -- MOTEL. OUR LEASE AT THE PLACE WHERE WE HAD BEEN STAYING  
11 THROUGHOUT THE SUMMER HAD EXPIRED AND WE HAD MADE, SEVERAL  
12 WEEKS AGO, ARRANGEMENTS TO STAY AT THE HOTEL.

13 THERE WERE SOME OTHER BRIEF INQUIRIES -- OH, I  
14 SHOULD ADD THAT THE REASON FOR THE CONVERSATION SPECIFICALLY  
15 WAS THAT SHE CALLED ABOUT A TELEVISION STORY THAT SHE HAD  
16 HEARD AND WANTED TO ASK WHETHER PEOPLE REALLY HAD SAID THINGS  
17 ABOUT HER THAT THE TELEVISION REPORTER HAD COMMENTED ON.

18 Q. THAT'S FAR ENOUGH. THANK YOU. NOW, PAGE DOWN A LITTLE  
19 BIT, PLEASE, MR. MORGAN. KEEP GOING. ALL RIGHT. DO YOU SEE  
20 WHERE, ON LINE 22, WHERE IT SAYS I HAVE NO FURTHER KNOWLEDGE?

21 A. YES, I DO.

22 Q. WOULD YOU READ THAT PLEASE?

23 A. I HAVE NO FURTHER KNOWLEDGE. LATER THAT DAY, I RECEIVED  
24 A TELEPHONE CALL FROM MR. UNDERHILL WHICH YOU KNOW NOW THE  
25 CIRCUMSTANCES ESSENTIALLY.

September 24, 2012

Leonard/Cross

Page 1169

1 HE HAD GONE TO THE JOURNEY'S END, LEARNED WHAT HE  
2 DID ABOUT HER CONDITION, THAT SHE HAD A BLACK EYE AND  
3 APPARENTLY SOMETHING HAD HAPPENED IN THE SWIMMING POOL WHICH  
4 IN THE VIEW OF THE MANAGER OF THE MOTEL -- THAT PERSON IS HERE  
5 AS A MATTER OF FACT, YOUR HONOR, IF YOU DESIRE TO HEAR FROM  
6 HER -- BUT IN THE VIEW OF THE MANAGER OF THE MOTEL IT WAS NOT  
7 A FRIENDLY INCIDENT.

8 Q. ALL RIGHT. NOW, LET'S MOVE FORWARD TO TRIAL DAY 22, PAGE  
9 134. AND I'LL REPRESENT TO YOU THAT MS. WENDY ROUDER IS  
10 TESTIFYING AT THIS STAGE OF THE PROCEEDINGS. WILL YOU START  
11 READING WITH LINE 11, PLEASE?

12 A. WHAT WAS THE REASON -- I'M SORRY. WHAT WAS THE REASON  
13 WHY MS. STOECKLEY LEFT THE JOURNEY'S END MOTEL?

14 SHE WAS ASKED TO LEAVE BY THE MANAGER.

15 NOW, AS A RESULT OF THAT, HOW DID IT COME ABOUT THAT  
16 SHE WENT TO THE HILTON INN?

17 SHE WAS WORRIED ABOUT WHERE SHE WOULD GO, AND I  
18 ASSUMED -- I ASSURED HER THERE MUST BE A PLACE, AND YOUR  
19 SECRETARY ARRANGED FOR A MOTEL ROOM, AND PHONED BACK AND SAID  
20 THE HILTON WILL ACCEPT YOU.

21 Q. ALL RIGHT. NOW, SHE SAYS YOUR SECRETARY, WOULD THAT  
22 IMPLY THAT SHE'S TALKING ABOUT THE SECRETARY OF WHATEVER  
23 LAWYER IS QUESTIONING HER?

24 A. YES, IT WOULD IMPLY THAT.

25 Q. ALL RIGHT. KEEP READING AT LINE 20.

September 24, 2012

Leonard/Cross

Page 1170

1 A. DID SHE EXPLAIN WHAT HAPPENED TO THE WITNESS MONEY THAT  
2 SHE HAD BEEN PAID IN REGARD TO THE SUBPOENA THAT HAD BEEN  
3 SERVED ON HER?

4 SHE SAID THAT SHE HAD PUT ADVANCE DEPOSITS DOWN ON  
5 SEVERAL NIGHTS AND SHE NEVER GOT THE MONEY BACK.

6 Q. KEEP READING.

7 A. I SEE. ALL RIGHT. AT THAT POINT, DID SHE INDICATE TO  
8 YOU THAT SHE HAD ANY MONEY ON HER AT ALL?

9 SHE SAID THERE WAS VERY LITTLE MONEY AND ERNIE HAD  
10 TO TAKE WHATEVER THERE WAS.

11 AS A RESULT OF THAT, DID YOU DRIVE HER OVER TO THE  
12 HILTON INN?

13 YES, I DID.

14 DID YOU REMAIN THERE FOR SOME PERIOD OF TIME?

15 NO. INITIALLY, NO.

16 WELL, WHO STAYED AT THE HOTEL WITH HER?

17 MR. UNDERWOOD (SIC) AND MYSELF CHECKED HER IN,  
18 DEPOSITED HER CLOTHING IN HER ROOM, AND THEN WE ASKED -- SHE  
19 ASKED TO ACCOMPANY ME AND HIM BACK TO THE DOWNTOWNER MOTEL SO  
20 THAT SHE COULD -- SO HE COULD RETRIEVE HIS CLOTHING AND FULLY  
21 CHECK IN.

22 Q. SO, HOLD ON A MINUTE. IT APPEARS THAT WHAT'S BEING SAID  
23 HERE, WOULD YOU AGREE, THAT THEY CHECKED HER IN AT THE HILTON  
24 AND THEN THEY ALL THREE RODE BACK TO GET MR. UNDERHILL'S  
25 CLOTHES AT THE DOWNTOWNER SO HE COULD MOVE TO THE HILTON?

September 24, 2012



Leonard/Cross

Page 1171

1 A. THAT'S THE WAY IT READS.

2 Q. ALL RIGHT. AND KEEP READING.

3 A. WAS IT MR. UNDERHILL -- AND WAS MR. UNDERHILL CHECKED  
4 INTO A DIFFERENT ROOM?

5 AT THE HILTON?

6 THE HILTON MOTEL.

7 YES.

8 AND AT WHOSE REQUEST -- WELL, JUST TELL US WHAT YOU  
9 KNOW ABOUT HOW HE CAME TO BE STAYING AT THE HOTEL AND WHAT  
10 WERE THE CIRCUMSTANCES.

11 SHE REPEATEDLY ASKED ME --

12 Q. THAT'S ALL RIGHT. YOU DON'T HAVE TO GO ANY FURTHER IF  
13 YOU DON'T WANT TO. NOW, THIS IS THE DAY -- WHAT MS. ROUDER IS  
14 TESTIFYING ABOUT, IS THIS THE DAY WHERE THE PEOPLE ASSOCIATED  
15 WITH MR. SEGAL MOVED HELENA STOECKLEY FROM THE JOURNEY'S END  
16 TO THE HILTON?

17 A. YES. I DON'T KNOW WHAT DAY THIS IS. I MEAN, CAN YOU --  
18 CAN THIS BE SATURDAY OR SUNDAY OR FRIDAY?

19 Q. WELL, WASN'T SUNDAY THE DAY THAT THE SO-CALLED ALMOST  
20 DROWNING INCIDENT OCCURRED AT THE JOURNEY'S END BETWEEN HELENA  
21 STOECKLEY AND HER FRIEND?

22 A. I DON'T KNOW. MY CHRONOLOGY OF THIS IS THAT A LOT OF  
23 STUFF HAPPENED ON SATURDAY. AND THIS IS MY PRESENT  
24 UNDERSTANDING. SHE CALLED JUDGE DUPREE AND HE WENT TO HIS  
25 BOOKS AND I WASN'T -- AND ALL THIS STUFF HAD HAPPENED AND

September 24, 2012

Leonard/Cross

Page 1172

1 THAT'S WHY JUDGE DUPREE WAS ALARMED. AND SO SUNDAY WAS WHEN I  
2 GOT INVOLVED.

3 Q. WELL, DIDN'T WE ESTABLISH THROUGH LOOKING AT TRANSCRIPTS  
4 BEFORE LUNCH THAT IT WAS ON SATURDAY NIGHT THAT HELENA  
5 STOECKLEY CALLED JUDGE DUPREE?

6 A. YES, AND I ASSUMED THAT THAT WAS AFTER ALL THIS STUFF AT  
7 THE HOTEL OR MOTEL HAPPENED.

8 Q. WELL, DIDN'T HE SAY THAT THAT'S HOW HE LEARNED THAT SHE  
9 WAS AT THE JOURNEY'S END? DO YOU WANT TO GO BACK AND LOOK AT  
10 IT?

11 A. WELL, I CAN GO BACK AND LOOK AT IT, YEAH.

12 Q. LET'S GO TO TRIAL DAY 22, PAGE 179. DO YOU SEE IN LINES  
13 THREE THROUGH TEN WHERE JUDGE DUPREE IS SAYING THAT ON TWICE  
14 -- TWICE ON SATURDAY NIGHT HELENA STOECKLEY CALLED HIM AND  
15 SAID THAT SHE WAS LIVING IN MORTAL DREAD OF PHYSICAL HARM BY  
16 BERNIE SEGAL, COUNSEL FOR THE DEFENDANT, AND THAT SHE WANTED A  
17 LAWYER?

18 A. YES, I SEE.

19 Q. AND IF WE DROP DOWN FURTHER ON THE PAGE, YOU CAN SEE  
20 WHERE JUDGE DUPREE SAYS THIS IS THE REASON I KNEW THIS  
21 JOURNEY'S END THING.

22 A. YES, I SEE THAT.

23 Q. ALL RIGHT. SO, AS OF SATURDAY NIGHT, SHE WAS STILL AT  
24 THE JOURNEY'S END ACCORDING TO JUDGE DUPREE?

25 A. YES.

September 24, 2012

Leonard/Cross

Page 1173

1 Q. ALL RIGHT. AND WE JUST READ WENDY ROUDER TESTIFYING  
2 ABOUT MOVING HELENA STOECKLEY FROM THE JOURNEY'S END TO THE  
3 HILTON?

4 A. YES. I DON'T KNOW -- I THINK THE INCIDENT -- AT LEAST  
5 ONE INCIDENT INVOLVING CONFLICT BETWEEN -- WHERE HELENA  
6 STOECKLEY HAD SOME CONFLICT WITH HER BOYFRIEND OCCURRED AT THE  
7 JOURNEY'S END. THAT'S WHAT I'M THINKING.

8 Q. RIGHT. OKAY. LET'S GO TO TRIAL DAY 22, PAGE 128. THIS  
9 IS -- MAYBE THIS IS A LITTLE BIT EARLIER IN WENDY ROUDER'S  
10 TESTIMONY THAN I WAS SHOWING YOU EARLIER.

11 A. OKAY.

12 Q. DO YOU SEE THE TOP OF THE PAGE WHERE SHE SAYS I HOLD A  
13 DOCTOR OF PHILOSOPHY IN SPEECH?

14 A. YES, I DO.

15 Q. OKAY. NOW, JUMP DOWN TO LINE FIVE, AND READ LINES FIVE  
16 THROUGH 11.

17 A. AND YESTERDAY, ON SUNDAY, DID YOU HAVE OCCASION TO SEE  
18 HELENA STOECKLEY HERE IN RALEIGH?

19 I DID.

20 WHEN WAS THE FIRST TIME -- APPROXIMATELY AT WHAT  
21 TIME AND AT WHAT PLACE?

22 IT WAS APPROXIMATELY 11:00, 11:30, AT THE JOURNEY'S  
23 END MOTEL.

24 WOULD YOU TELL HIS HONOR BRIEFLY WHY AND HOW YOU  
25 CAME TO GO TO THE JOURNEY'S END HOTEL -- MOTEL?

September 24, 2012

Leonard/Cross

Page 1174

1 MR. SEGAL HAD INFORMED ME THAT MS. STOECKLEY HAD  
2 BEEN BEATEN AND POSSIBLY HAD BEEN SUBJECTED TO A DROWNING. HE  
3 ASKED ME TO CHECK INTO HER WELL BEING. THE RUMOR OR THE  
4 HEARSAY AS YOU MIGHT SAY HAS BEEN THAT HER FIANCE HAD  
5 INFLICTED THIS ATTACK UPON HER AND IT WOULD BE BEST IF IN SOME  
6 WAY I COULD HELP SEPARATE THEM FOR THEIR OWN SAFETY.

7 DID YOU THEN GO DOWN TO THE JOURNEY'S END MOTEL?

8 I DID.

9 DID YOU GO WITH RED UNDERWOOD (SIC) AT THAT TIME?

10 YES.

11 Q. OKAY. THAT'S FAR ENOUGH. SO, WITH THAT CONTEXT, IF  
12 YOU'D GO BACK TO WHERE WE WERE AT PAGE 134 -- AT PAGE 134  
13 LINES TEN THROUGH 15. DO YOU SEE -- WE READ THIS EARLIER  
14 ABOUT MS. ROUDER TESTIFYING THAT THEY SECURED HER A ROOM AT  
15 THE HILTON INN?

16 A. YES.

17 Q. SO, THAT WOULD BE ON SUNDAY, WOULD IT NOT, AUGUST 19TH,  
18 1979?

19 A. YES.

20 Q. OKAY. SO, MS. STOECKLEY HAD A ROOM AT THE HILTON ON  
21 SUNDAY, AUGUST 19TH, COURTESY OF THE DEFENSE TEAM?

22 A. THAT'S WHAT IT -- THAT IS EXACTLY WHAT IT SAYS.

23 Q. ALL RIGHT. NOW, DO YOU STILL SAY THAT YOU RECALL THAT  
24 YOU MADE HER HOTEL ARRANGEMENTS?

25 A. MY MEMORY TELLS ME THAT I DID AND MY MEMORY TELLS ME THAT

September 24, 2012

Leonard/Cross

Page 1175

1 I HAD TO APPLY FOR REIMBURSEMENT OF HER EXPENSES AND THAT  
2 NEITHER THE GOVERNMENT OR THE DEFENSE TEAM GAVE ME MONEY TO  
3 PAY. AND THAT'S MY MEMORY.

4 Q. WELL, IT WOULD HAVE BEEN THE OBLIGATION OF THE DEFENSE,  
5 NOT TO GIVE YOU MONEY, BUT TO GIVE MS. STOECKLEY MONEY FOR HER  
6 SUBSISTENCE, WOULD IT NOT?

7 A. I DON'T KNOW THE ANSWER TO THAT, THE PROPER ANSWER TO  
8 THAT, BUT I WOULDN'T HAVE GIVEN MS. STOECKLEY MONEY.

9 Q. OKAY.

10 A. SHE WOULD HAVE -- SHE COULD HAVE FLOWN THE COOP, SO TO  
11 SPEAK.

12 Q. AS FAR AS YOU KNOW, DID SHE CONTINUE TO STAY AT THE  
13 HILTON DURING THE REST OF HER STAY IN RALEIGH?

14 A. AS FAR AS I KNOW.

15 Q. BECAUSE EVEN, BASED ON YOUR ACCOUNT, THAT'S WHERE YOU PUT  
16 HER AT THE HILTON THAT LATER BECAME THE BROWNSTONE?

17 A. I PUT HER IN THE MOST -- THE MOTEL THAT WAS MOST  
18 AVAILABLE TO ME IN CASE SOMETHING HAPPENED AND THAT HAPPENED  
19 TO BE THE BROWNSTONE OR THEN THE HILTON.

20 Q. OKAY. BUT, IN FACT, SHE WAS ALREADY THERE WHEN YOU WERE  
21 APPOINTED?

22 A. I DON'T REMEMBER THAT. I REALLY DON'T.

23 Q. OKAY. IN YOUR AFFIDAVIT YOU STATED THAT YOU TALKED TO  
24 HELENA STOECKLEY ABOUT THE STATUTE OF LIMITATIONS, IS THAT  
25 CORRECT?

September 24, 2012

Leonard/Cross

Page 1176

1 A. YES.

2 Q. PARAGRAPH EIGHT. WE CAN PUT IT ON THE SCREEN IF YOU'D  
3 LIKE, ON THE DOCUMENT CAMERA.

4 A. MR. BRUCE, CAN I EXPLAIN ONE THING?

5 Q. SURE.

6 A. AND IT'S SOMETHING I'VE SAID BEFORE. I WASN'T GIVEN  
7 DETAILED INSTRUCTIONS ON HOW TO ACCOMPLISH WHAT NEEDED TO BE  
8 ACCOMPLISHED, MEANING TO GET HER TO COURT, AND I DON'T  
9 REMEMBER BEING TOLD WHERE SHE WAS STAYING, IF SHE WAS STAYING  
10 ANYWHERE.

11 I HAD UNDERSTOOD THAT SHE'D BEEN KICKED OUT OF A  
12 MOTEL, AT LEAST ONE. I HAD UNDERSTOOD THAT SHE -- I KNOW THAT  
13 SHE WAS AFRAID OF HER BOYFRIEND. SHE WAS VERY DISTRAUGHT  
14 ABOUT HER BOYFRIEND. THAT'S WHAT SHE WAS DISTRAUGHT ABOUT  
15 THAT I REMEMBER.

16 AND SO ANYWAY, IT WASN'T AN EASY TASK BECAUSE HERE  
17 IS THIS WOMAN WHO DIDN'T WANT TO STAY, THAT I WAS -- SHE WAS  
18 BASICALLY IN MY CHARGE. AND LODGING WAS A PROBLEM, OKAY,  
19 THAT WAS, AND KEEPING HER SECURE FROM HER BOYFRIEND AND  
20 KEEPING HER FROM JUST LEAVING.

21 Q. WELL, YOU TESTIFIED ON DIRECT EXAMINATION THAT YOU  
22 REMEMBER MEETING HER AT THE FEDERAL BUILDING ON SUNDAY, IS  
23 THAT RIGHT?

24 A. I SAID I THOUGHT I MET HER AT THE FEDERAL BUILDING.

25 Q. AND THEN I BELIEVE YOU TESTIFIED AS TO TAKING HER TO YOUR

September 24, 2012

Leonard/Cross

Page 1177

1 HOME?

2 A. YES.

3 Q. AND THEN YOU TESTIFIED THAT AT SOME POINT, I GUESS ON  
4 MONDAY, YOU GOT HER A ROOM AT THE HILTON?

5 A. YES.

6 Q. ALL RIGHT. BUT, IN FACT, THE RECORD REVEALS THAT WENDY  
7 ROUDER AND RED UNDERHILL, REPRESENTING BERNIE SEGAL, HAD GONE  
8 TO THE JOURNEY'S END ON SUNDAY, ISN'T THAT RIGHT?

9 A. THAT IS WHAT THIS TRANSCRIPT SAYS AND THAT'S WHAT I'VE  
10 READ.

11 Q. AND THE RECORD FURTHER REVEALS THAT THEY HAD GOTTEN RID  
12 OF ERNEST DAVIS AND SENT HIM ON HIS WAY?

13 A. I DIDN'T -- WELL, YOU KNOW, I MEAN, IT'S KIND OF HARD  
14 BEING A WITNESS SITTING RIGHT HERE, BUT I DON'T REMEMBER  
15 READING THAT ERNIE HAD BEEN TAKEN CARE OF.

16 Q. ALL RIGHT. AND THE RECORD FURTHER REVEALS THAT THEY --  
17 THAT MR. SEGAL'S SECRETARY HAD SECURED A ROOM FOR MS.  
18 STOECKLEY AT THE HILTON AND THE HILTON HAD AGREED TO ACCEPT  
19 HER?

20 A. YES.

21 Q. AND THE RECORD FURTHER REVEALS THAT WENDY ROUDER AND RED  
22 UNDERHILL TOOK HER OVER TO THE HILTON AND CHECKED HER IN?

23 A. YES.

24 Q. SO, YOU WOULD HAVE HAD NO NEED TO FIND LODGING FOR HER ON  
25 SUNDAY NIGHT?

September 24, 2012

Leonard/Cross

Page 1178

1 A. THAT IS -- THAT'S REALLY WHAT IT SOUNDS LIKE.

2 Q. ALL RIGHT. NOW, CONCERNING THE STATUTE OF LIMITATIONS IN  
3 PARAGRAPH EIGHT IT STATES HERE, MIDWAY THROUGH THE PARAGRAPH,  
4 WE TALKED ABOUT THE STATUTE OF LIMITATIONS AND I REMEMBER  
5 TELLING HER THAT I THOUGHT IT WAS UP IN THE AIR BECAUSE THE  
6 UNITED STATES SUPREME COURT HAD NOT DECIDED THE ISSUE SINCE AN  
7 EARLIER DECISION HAD DECLARED THE DEATH PENALTY  
8 UNCONSTITUTIONAL AS IMPLEMENTED. IS THAT YOUR STATEMENT IN  
9 THE AFFIDAVIT?

10 A. YES.

11 Q. ALL RIGHT. IS THAT -- AS YOU SIT THERE TODAY, IS THAT  
12 WHAT YOU RECALL --

13 A. YES.

14 Q. -- TELLING MS. STOECKLEY?

15 A. (WITNESS NODS HEAD.)

16 Q. AND YOU RECALL THAT CLEARLY?

17 A. YES.

18 Q. DO YOU RECALL TELLING AGENTS CHEROKE AND THOMURE THAT YOU  
19 BELIEVED THERE WAS A POTENTIAL TEN YEAR STATUTE OF LIMITATIONS  
20 ON THE MACDONALD MURDERS AND THAT THERE WOULD HAVE BEEN  
21 APPROXIMATELY SIX MONTHS LEFT TO PURSUE ANY TYPE OF ACTION  
22 AGAINST STOECKLEY?

23 A. YES. I'VE TOLD OTHER PEOPLE THAT AND I THINK THAT THAT'S  
24 AN INCORRECT LEGAL PROPOSITION.

25 Q. YOU THINK THAT'S AN INCORRECT LEGAL PROPOSITION?

September 24, 2012



Leonard/Cross

Page 1179

1 A. I THINK THAT THE STATUTE -- THE PROBLEM I WAS HAVING WITH  
2 THE STATUTE OF LIMITATIONS IS THERE WAS A CASE OUT OF GEORGIA  
3 IN THE LATE '60S, I THINK, THAT DECLARED THE DEATH PENALTY  
4 UNCONSTITUTIONAL AS IMPLEMENTED. AND THAT THREW THE DEATH  
5 PENALTY, IF I REMEMBER CORRECTLY, ALL THROUGH THE UNITED  
6 STATES IN STATE COURTS AS WELL AS FEDERAL COURTS, UP IN THE  
7 AIR AS UNCONSTITUTIONAL AND THEY HAD TO FIGURE OUT HOW TO  
8 CONSTITUTIONALLY IMPLEMENT IT.

9 AND THE STATUTE OF LIMITATIONS -- THE FEDERAL  
10 STATUTE OF LIMITATIONS FOR FELONIES I WAS THINKING WAS TEN  
11 YEARS. IT MAY HAVE BEEN FIVE YEARS. IT'S FIVE YEARS NOW I  
12 BELIEVE. AND SO THE UNLIMITED STATUTE OF LIMITATIONS APPLIED  
13 TO CAPITAL CASES AS I UNDERSTOOD IT. I MEAN, THIS IS JUST MY  
14 UNDERSTANDING OF THE LAW BACK THEN.

15 Q. THIS WAS YOUR UNDERSTANDING BACK THEN?

16 A. MY UNDERSTANDING.

17 Q. BACK THEN?

18 A. YES. AND THAT -- SO, A CAPITAL CASE TO ME WAS PUTTING  
19 SOMEBODY TO DEATH. AND SO, THEREFORE, THE QUESTION WOULD BE  
20 DOES THE UNLIMITED STATUTE OF LIMITATIONS APPLY IN A CASE THAT  
21 IS NO LONGER NON-CAPITAL.

22 AND LATER ON IT WAS DECIDED THAT THE COURTS DID NOT  
23 HAVE THE AUTHORITY TO DEFINE WHAT IS CAPITAL PUNISHMENT VERSUS  
24 NON-CAPITAL PUNISHMENT IN INTERPRETING A STATUTE. IT'S UP TO  
25 CONGRESS.

September 24, 2012

Leonard/Cross

Page 1180

1           AND SO I BELIEVE THAT LATER ON IN THE EARLY '80S  
2 THEY SAID THAT THE UNLIMITED STATUTE OF LIMITATIONS APPLIED TO  
3 FIRST DEGREE MURDER CASES.

4 Q.    ALL RIGHT. LET'S LOOK AT EXHIBIT 7000.8, AND ENLARGE THE  
5 LOWER PORTION OF THE PAGE, PLEASE. DO YOU SEE THAT THIS IS  
6 FROM MR. MORRIS'S BOOK, THE EXHIBIT WE LOOKED AT BEFORE? DO  
7 YOU SEE WHERE IT SAYS JERRY LEONARD AND QUOTES YOU AS SAYING  
8 THERE WAS A TEN YEAR STATUTE OF LIMITATIONS ON MURDER IN THE  
9 FEDERAL SYSTEM, THAT WAS MY CONCERN. IF I COULD GET HER PAST  
10 THAT TEN YEAR PERIOD, SHE WAS CLEAR, THEY COULDN'T INDICT HER?

11 A.    YES, I TOLD HIM THAT.

12 Q.    AND THEN HE RELIES IT WAS NOT VERY FAR OFF, IT WOULD HAVE  
13 BEEN FEBRUARY 1980, SIX MONTHS, AND YOU SAID, YES, THAT WAS  
14 KEY IN MY MIND?

15 A.    YES.

16 Q.    SO, WHEN YOU SPOKE WITH ERROL MORRIS, AND I BELIEVE YOU  
17 SAID THAT WAS ABOUT SIX MONTHS AGO?

18 A.    ACTUALLY, IT WAS OVER -- I SPOKE TO HIM PROBABLY OVER A  
19 MONTH PERIOD.

20 Q.    OKAY.

21 A.    AND BEGINNING LAST SPRING PROBABLY, IN EARLY SPRING.

22 Q.    SPRING OF 2012?

23 A.    YEAH, I THINK SO.

24 Q.    SO, IN SPRING OF 2012, THAT WAS YOUR STATEMENT TO HIM  
25 ABOUT YOUR UNDERSTANDING BACK THEN IN '79, ON THE STATUTE OF

September 24, 2012

Leonard/Cross

Page 1181

1 LIMITATIONS?

2 A. YES. BUT, YOU KNOW, I MEAN, IF I'D GOTTEN INTO IT MORE  
3 WITH HIM, IT WASN'T SETTLED. AND I TOLD YOU EARLIER I WAS  
4 THINKING THAT THE FEDERAL STATUTE OF LIMITATION WAS TEN YEARS  
5 AND --

6 Q. AND THIS SAYS --

7 A. -- THAT WAS THE STATE STATUTE OF LIMITATIONS FOR  
8 FELONIES.

9 Q. IN NORTH CAROLINA?

10 A. I WAS THINKING -- THAT'S WHAT I WAS THINKING AT THE TIME.

11 Q. I THOUGHT THE STATUTE OF LIMITATIONS FOR FELONIES IN  
12 NORTH CAROLINA WAS UNLIMITED.

13 A. WELL, IT MAY BE.

14 Q. ANYWAY, THIS SAYS IF I COULD GET HER PAST THE TEN YEAR  
15 PERIOD, SHE WAS CLEAR, THEY COULDN'T INDICT HER, IS THAT  
16 RIGHT?

17 A. YES.

18 Q. NOW, SINCE YOU MADE THOSE STATEMENTS TO ERROL MORRIS, HAS  
19 SOMEONE EDUCATED YOU ON THIS POINT OF THE APPLICABLE STATUTE  
20 OF LIMITATIONS?

21 A. I LOOKED IT UP.

22 Q. OKAY.

23 A. I HAD TO GO BACK AND FIND THE FEDERAL -- THE U.S. CODE  
24 ANNOTATED FROM THE '70S.

25 Q. WHEN YOU WERE REPRESENTING HELENA STOECKLEY, DID YOU DO

September 24, 2012

Leonard/Cross

Page 1182

1 ANY LEGAL RESEARCH ON THIS STATUTE OF LIMITATIONS POINT?

2 A. I DON'T REMEMBER DOING ANY, BUT, ONCE AGAIN, BY THEN I  
3 HAD DECIDED -- WELL, I CAN'T SAY THAT.

4 Q. WELL, WHEN YOU SAID YOU LOOKED IT UP, DO YOU MEAN YOU  
5 LOOKED IT UP IN 2012?

6 A. I LOOKED IT UP ABOUT A MONTH AND A HALF AGO.

7 Q. ALL RIGHT. NOW, IF YOU HAD LEARNED -- IF YOU HAD  
8 RESEARCHED IT BACK IN 1979, AND LEARNED THAT THE STATUTE OF  
9 LIMITATIONS MIGHT HAVE ALREADY RUN BEING A FIVE YEAR STATUTE  
10 OF LIMITATIONS, WOULDN'T THAT HAVE BEEN IMPORTANT IN ADVISING  
11 YOUR CLIENT?

12 A. I DON'T KNOW. IF -- I DIDN'T KNOW FOR SURE AND I DON'T  
13 THINK ANYBODY REALLY KNEW AT THE TIME WHETHER OR NOT THE  
14 STATUTE OF LIMITATIONS FOR REGULAR FELONIES APPLIED OR  
15 WHATEVER IT WAS OR THE UNLIMITED STATUTE OF LIMITATIONS FOR  
16 CAPITAL OFFENSES.

17 THE BOTTOM LINE IS, IT WAS NOT IN HER BEST INTEREST  
18 TO GET ON THE WITNESS STAND AND SAY, WELL, I WAS THERE DA-DA-  
19 DA, OR EVEN TO TAKE THE WITNESS STAND BECAUSE SHE WAS -- MY  
20 IMPRESSION WAS THAT SHE WAS ALL OVER THE PLACE AND I WASN'T  
21 GOING TO PUSH HER TO BE ALL OVER THE PLACE, BUT I JUST -- ONCE  
22 I FOUND OUT, I DIDN'T WANT HER TO TESTIFY, THAT WAS IT AND I  
23 DIDN'T PUSH HER.

24 Q. DID YOU LEARN FROM HELENA STOECKLEY THAT BERNIE SEGAL HAD  
25 ALREADY ADVISED HER DURING THE DEFENSE INTERVIEW THAT SHE

September 24, 2012

Leonard/Cross

Page 1183

1 COULDN'T BE PROSECUTED BECAUSE OF THE STATUTE OF LIMITATIONS?

2 A. NO.

3 Q. DO YOU REMEMBER TELLING AGENTS CHEROKE AND THOMURE THAT  
4 DURING YOUR REPRESENTATION OF STOECKLEY YOU OFTEN USED JUDGE  
5 DUPREE'S CHAMBERS TO WORK AND CONDUCT LEGAL RESEARCH?

6 A. I USED JUDGE -- I DON'T KNOW HOW MUCH RESEARCH I DID, BUT  
7 I USED JUDGE DUPREE'S CHAMBERS TO -- THERE WAS NO PHONE -- I  
8 DON'T THINK THERE WAS A PHONE IN THE ROOM THAT I WAS IN. AND  
9 I -- JUDGE DUPREE HAD A LIBRARY WHERE THE CLERK'S OFFICES --  
10 DESKS WERE AND I WAS BACK THERE THREE OR FOUR TIMES A DAY  
11 CHECKING MY MESSAGES AND TRYING TO RETURN CALLS AND STUFF LIKE  
12 THAT. AND I COULD HAVE DONE -- I COULD HAVE USED IT TO DO  
13 RESEARCH AS WELL AND I'M SURE THEY WOULDN'T HAVE MINDED.

14 Q. WELL, THERE WAS NO WESTLAW BACK THEN, RIGHT?

15 A. I KIND OF THINK THERE PROBABLY WAS, BUT I DON'T KNOW.

16 Q. ALL RIGHT.

17 A. I HAD AT MY OFFICE -- THE FIRST BOOKS THAT I BOUGHT AT MY  
18 OFFICE WAS THE U.S. CODE ANNOTATED AND, YOU KNOW, I COULD USE  
19 THAT PRETTY WELL.

20 Q. ANYWAY, YOU DON'T REMEMBER DOING ANY RESEARCH ON THE  
21 STATUTE OF LIMITATIONS IN 1979, WHILE YOU WERE REPRESENTING  
22 HELENA STOECKLEY?

23 A. I KNEW THAT -- I DON'T KNOW IF I DID RESEARCH OR I KNEW  
24 THIS OFF OF THE TOP OF MY HEAD, BUT I DID KNOW THAT -- THAT IF  
25 THE STATUTE OF LIMITATIONS WAS UNLIMITED, YOU KNOW, SHE COULD

September 24, 2012

Leonard/Cross

Page 1184

1 BE IN TROUBLE.

2 IF IT WAS FIVE YEARS -- I MEAN, I DIDN'T THINK IT  
3 WAS FIVE YEARS, I THOUGHT IT WAS TEN YEARS. BUT REGARDLESS,  
4 MY DECISION REMAINED THE SAME TO TRY MY BEST TO KEEP HER FROM  
5 GETTING UP AND INCRIMINATING HERSELF REGARDLESS OF, YOU KNOW,  
6 WHAT SHE SAID.

7 Q. WELL, AS FAR AS ANYONE CAN TELL, BASED ON YOUR PRIOR  
8 STATEMENTS PRIOR TO THIS AFFIDAVIT, YOUR UNDERSTANDING WAS  
9 THAT THE STATUTE -- IN '79, WAS THAT THE STATUTE OF  
10 LIMITATIONS WAS TEN YEARS PERIOD?

11 A. WELL, THAT'S NOT WHAT I KNEW AT THE TIME. IT'S AN  
12 INTERESTING PROPOSITION THAT IT WAS FIVE YEARS AND SHE  
13 COULDN'T BE PROSECUTED ANYWAY, OR IT WAS TEN YEARS AND THERE'S  
14 ANOTHER FIVE OR SIX MONTHS BEFORE THAT EXPIRED, OR IT WAS  
15 UNLIMITED.

16 I THINK THE CORRECT INTERPRETATION AT THE TIME, AS  
17 WE KNOW NOW, IS THAT IT NEVER -- IT WAS NEVER LIMITED TO A  
18 NUMBER OF YEARS, IT STAYED UNLIMITED. AND THEN THE  
19 LEGISLATURE, THE CONGRESS, CORRECTED THE DEATH PENALTY  
20 PROVISIONS.

21 Q. ALL RIGHT. NOW, ON MONDAY, AUGUST 20TH, 1979, WAS THE  
22 FIRST FULL DAY OF YOUR REPRESENTATION OF HELENA STOECKLEY, IS  
23 THAT RIGHT?

24 A. THAT IS MY RECOLLECTION TODAY, 33 YEARS LATER.

25 Q. ALL RIGHT. WELL --

September 24, 2012

Leonard/Cross

Page 1185

1 A. BASED ON WHAT I'VE READ AND, I MEAN, YOU KNOW, SOME OF  
2 THE TRANSCRIPTS I'VE SEEN. I'VE SEEN HELENA STOECKLEY'S  
3 TRANSCRIPT.

4 Q. THE DATE WE CAN GET FROM THE CALENDAR IF YOU NEED IT.

5 A. WELL, THAT'S WHAT -- THAT'S WHERE I GOT THE DATE BEFORE.  
6 AND SO MY TESTIMONY AND THE BEST OF MY KNOWLEDGE IS THAT  
7 MONDAY, AUGUST 20TH, 1979, WAS MY FIRST DAY IN COURT WITH HER.

8 Q. OKAY. NOW, IN YOUR AFFIDAVIT IT EXPLAINS THAT ON MONDAY  
9 MORNING YOU HAD THESE DISCUSSIONS WITH HER ABOUT THE  
10 ATTORNEY'S ROLE AND SO FORTH?

11 A. YES.

12 Q. AND THEN YOU HAD DISCUSSIONS WITH HER ABOUT THE DEATH  
13 PENALTY AND THE STATUTE OF LIMITATIONS ACCORDING TO YOUR  
14 AFFIDAVIT?

15 A. YES.

16 Q. AND YOU HAD DISCUSSIONS WITH HER ON MONDAY MORNING ABOUT  
17 THE FACT THAT SHE SAID SHE DIDN'T REMEMBER WHERE SHE WAS AND  
18 YOU TESTED HER RECOLLECTION ON THAT, IS THAT RIGHT?

19 A. YES. MY QUESTION WOULD HAVE GONE LIKE IF YOU WERE CALLED  
20 TO TESTIFY ON RECALL, WHAT WOULD YOUR TESTIMONY BE? I MEAN,  
21 THAT WOULD BE -- THAT WOULD BE NORMALLY THE WAY I WOULD PHRASE  
22 A QUESTION TO A WITNESS.

23 Q. ALL RIGHT.

24 A. SHE WASN'T A DEFENDANT, SHE WAS A WITNESS.

25 Q. ALL RIGHT. AND IT'S YOUR TESTIMONY, AND IT SAYS IN YOUR

September 24, 2012

Leonard/Cross

Page 1186

1 AFFIDAVIT, THAT LATER THAT SAME DAY IN THE AFTERNOON -- EXCUSE  
2 ME, WHAT ARE YOU LOOKING AT, MR. LEONARD?

3 A. I'M LOOKING AT MY FINGERNAILS. I'M SORRY. I APOLOGIZE.

4 Q. I'M SORRY. YOUR TESTIMONY AND YOUR AFFIDAVIT SAYS THAT  
5 LATER THAT SAME DAY, ON MONDAY AFTERNOON, SHE BEGAN TO TELL  
6 YOU A COMPLETELY DIFFERENT STORY, IS THAT RIGHT?

7 A. YES. IT CHANGED FROM NOT REMEMBERING TO TELLING ME THAT  
8 SHE WAS THERE.

9 Q. OKAY. NOW, MY QUESTION IS, AND I THINK YOU TOUCHED ON  
10 THIS EARLIER, THE PREPARATION OF THIS AFFIDAVIT, IT WAS  
11 PREPARED QUITE RECENTLY, IS THAT RIGHT?

12 A. YES.

13 Q. I THINK IT WAS DELIVERED TO THE COURT ON LAST THURSDAY.  
14 DID YOU PREPARE IT BEFORE LAST THURSDAY?

15 A. I PREPARED IT PROBABLY ON WEDNESDAY, THURSDAY, AND PART  
16 -- WEDNESDAY AND THURSDAY OF THE WEEK BEFORE --

17 Q. OKAY.

18 A. -- BEFORE COURT STARTED.

19 Q. JUST BEFORE THIS HEARING STARTED?

20 A. YES.

21 Q. A FEW DAYS BEFORE IT STARTED.

22 A. MY LAWYER ASKED ME TO PUT IN AFFIDAVIT FORM AND NOT TO  
23 SIGN IT WHAT MY TESTIMONY -- WHAT I REMEMBERED AND WHAT MY  
24 TESTIMONY WOULD BE.

25 Q. NOW, DID YOU HAVE ANY NOTES FROM YOUR CONVERSATIONS WITH

September 24, 2012



Leonard/Cross

Page 1187

1 HELENA STOECKLEY IN 1979?

2 A. I DON'T REMEMBER EVEN HAVING ANY NOTES FROM WHAT SHE WAS  
3 TELLING ME.

4 Q. SO, YOU NEVER HAD ANY NOTES?

5 A. I DON'T THINK SO.

6 Q. YOU NEVER PREPARED ANY NOTES?

7 A. NO.

8 Q. SO, WHEN YOU SAT DOWN A WEEK AGO LAST WEDNESDAY TO  
9 PREPARE THIS AFFIDAVIT, YOU HAD TO GET IT ENTIRELY FROM YOUR  
10 MEMORY?

11 A. YES, AND BASICALLY WHAT I DID -- I REMEMBER SPECIFIC  
12 THINGS THAT ARE REALLY RELEVANT TO WHAT I'VE GOT TO DO AND SO  
13 I JUST TRIED TO PUT DOWN THE STUFF THAT, YOU KNOW, I COULD GET  
14 UP HERE AND TESTIFY ABOUT.

15 YOU KNOW, IF I'M WRONG ABOUT MY PAYING FOR HER TO  
16 STAY AT THE HOTEL OR THE CIRCUMSTANCES THAT WE WENT TO THAT  
17 HOTEL, I'M SORRY. IT'S NOT INTENTIONAL.

18 BUT MY MEMORY IS, I WAS SITTING THERE SAYING, HOW IN  
19 THE HECK AM I GOING TO PAY FOR THIS AND WAS THERE A PROVISION  
20 TO ALLOW HER TO BE PAID OR ME TO BE PAID?

21 AND I THINK IT WOULD HAVE BEEN VERY FOOLISH TO HAVE  
22 GIVEN HER X DOLLARS, YOU KNOW, SHE WOULD BE GONE. I MEAN, SHE  
23 MIGHT BE GONE AND THAT WOULDN'T BE -- YOU KNOW, THAT WASN'T  
24 GOOD.

25 Q. MY QUESTION IS, WHEN YOU WERE PREPARING THIS AFFIDAVIT A

September 24, 2012

Leonard/Cross

Page 1188

1 WEEK AGO LAST WEDNESDAY AND THURSDAY, YOU HAD TO TAKE IT  
2 COMPLETELY FROM YOUR RECOLLECTION AND PUT IT ON PAPER, IS THAT  
3 RIGHT?

4 A. YES.

5 Q. AND YOU DID THAT BY JUST SITTING DOWN AT A WORD PROCESSOR  
6 AND TYPING IT?

7 A. I TYPED IT MYSELF.

8 Q. OKAY. NOW, THIS -- YOUR SITUATION THEN IS VERY DIFFERENT  
9 FROM SOME OF THE OTHER WITNESSES IN THE TRIAL IN THAT THEY PUT  
10 DOWN A RECOLLECTION ON PAPER MANY YEARS AGO CLOSER TO THE  
11 TRIAL AND HAD IT TO REFER BACK TO TO REFRESH THEIR  
12 RECOLLECTION.

13 A. OKAY.

14 Q. YOU HAD TO GO ENTIRELY ON YOUR RECOLLECTION AND THEN PUT  
15 IT DOWN ON PAPER JUST TEN DAYS AGO?

16 A. THAT IS CORRECT.

17 Q. ALL RIGHT. NOW, ON DIRECT EXAMINATION MR. WIDENHOUSE WAS  
18 EXAMINING YOU ABOUT THE CONTENTS OF MS. STOECKLEY'S ADMISSIONS  
19 TO YOU AND I BELIEVE YOU MENTIONED TWO THINGS. YOU MENTIONED  
20 THAT SHE GOT A PHONE CALL WHILE SHE WAS AT THE MACDONALD HOUSE  
21 WHILE THE MURDERS WERE GOING ON, IS THAT RIGHT?

22 A. YES, THAT'S WHAT SHE SAID.

23 Q. AND YOU SAID THAT SHE MENTIONED THAT BROKEN HOBBY HORSE,  
24 THAT ONE OF THE SPRINGS WAS NOT ATTACHED?

25 A. YES.

September 24, 2012

Leonard/Cross

Page 1189

1 Q. SHE SAID IT LOOKED LIKE THAT RIGHT OVER THERE?

2 A. I SAW PICTURES OF THAT HOBBY HORSE. SOMEHOW OR ANOTHER,  
3 I ENDED UP BEING ALLOWED TO SEE THE CRIME SCENE PHOTOS. SHE  
4 SIMPLY DESCRIBED THE HOBBY HORSE AND I SAW A PICTURE OF THE  
5 HOBBY HORSE.

6 Q. WELL, WAIT A MINUTE. YOU SAID -- WHAT DO YOU MEAN SHE  
7 SIMPLY DESCRIBED THE HOBBY HORSE?

8 A. SHE DESCRIBED THE HOBBY HORSE AS BEING BROKEN AND THAT  
9 THE LITTLE KID HAD A BROKEN HOBBY HORSE AND DADDY OR MOMMY  
10 DIDN'T FIX IT. I MEAN, THAT WAS -- THAT WAS BASICALLY THE  
11 EFFECT. AND SHE SAID THAT OUT OF CONTEXT, I THINK.

12 SHE WOULD SAY STUFF JUST LIKE -- JUST OUT OF THE  
13 CLEAR BLUE SKY. AND I THINK -- WELL, ANYWAY, AND I'M NOT SURE  
14 WHETHER SHE SAID IT IN CONTEXT OF HER TELLING ME THAT SHE WAS  
15 THERE OR SHE MENTIONED IT LATER ON THAT MACDONALD -- THAT  
16 MACDONALD'S CHILDREN'S TOY WAS BROKEN.

17 Q. WELL, SHE TOLD IT TO YOU DURING THAT WEEK YOU REPRESENTED  
18 HER, IS THAT RIGHT?

19 A. SHE TOLD IT TO ME DURING THE WEEK THAT I REPRESENTED HER,  
20 YES.

21 Q. ALL RIGHT. NOW, YOU SAID SOMEBODY SHOWED YOU LATER THE  
22 CRIME SCENE PHOTOGRAPHS. YOU MEAN MUCH LATER, NOT WHILE YOU  
23 WERE REPRESENTING HER?

24 A. I SAW THEM WHILE I WAS REPRESENTING HER.

25 Q. OH, YOU DID SEE THEM WHILE YOU WERE REPRESENTING HER?

September 24, 2012

Leonard/Cross

Page 1190

1 A. (WITNESS NODS HEAD.)

2 Q. OKAY. WELL, WHEN YOU LOOKED AT THE PHOTOGRAPHS OF THE  
3 HOBBY HORSE, DID YOU NOTICE THAT IT WAS NOT BROKEN?

4 A. I THOUGHT IT WAS BROKEN.

5 Q. OH, YOU THOUGHT IT WAS BROKEN?

6 A. (WITNESS NODS HEAD.)

7 Q. OKAY. NOW, YOU MENTIONED THE PHONE CALL AND THE HOBBY  
8 HORSE BEING BROKEN BEFORE MR. WIDENHOUSE PUT THE AFFIDAVIT UP  
9 ON THE SCREEN. COULD YOU JUST TELL US --

10 A. I'M SORRY, BEFORE MR. WIDENHOUSE DID WHAT?

11 Q. ON DIRECT EXAMINATION BEFORE MR. WIDENHOUSE PUT THE  
12 AFFIDAVIT ON THE SCREEN, IS THAT RIGHT?

13 A. YES. UH-HUH.

14 Q. ALL RIGHT. COULD YOU JUST TELL US NOW, IN YOUR OWN  
15 WORDS, EVERYTHING YOU CAN REMEMBER THAT HELENA STOECKLEY TOLD  
16 YOU ABOUT HER PARTICIPATION AND PRESENCE IN THE MACDONALD  
17 MURDERS?

18 A. WHAT I PUT IN MY AFFIDAVIT IS AS SPECIFIC AS I CAN BE AND  
19 IT'S NOT VERY SPECIFIC. SHE TOLD ME THAT SHE WAS THERE. SHE  
20 TOLD ME HOW SHE GOT THERE OR WHY THEY WENT THERE. SHE TOLD  
21 ME --

22 Q. WHICH WAS WHAT? WHAT DID SHE TELL YOU?

23 A. I'M SORRY?

24 Q. WHICH WAS WHAT? WHAT DID SHE TELL YOU ABOUT HOW SHE GOT  
25 THERE?

September 24, 2012

Leonard/Cross

Page 1191

1 A. SHE SAID THAT SHE WAS A MEMBER OF A CULT AND THIS CULT  
2 WOULD MEET, SOMETIMES A SMALL GROUP OF THE CULT THAT WERE KIND  
3 OF THE LEADERS OF THE CULT, AND THEN SOMETIMES THEY WOULD HAVE  
4 MEETINGS WITH PEOPLE -- OTHER PEOPLE ATTENDING. MY IMPRESSION  
5 IS IT WAS A LARGER MEETING.

6 AND THAT ON THE NIGHT IN QUESTION ONE OF THE GUYS  
7 WANTED TO -- THEY WERE DOING DRUGS. ONE OF THEM WANTED TO GO  
8 CONFRONT MACDONALD AND -- I'M PRETTY MUCH PARAPHRASING MY  
9 AFFIDAVIT AND THE REASON WHY I'M DOING THAT IS BECAUSE THAT'S  
10 WHAT I REMEMBER.

11 SHE WENT ALONG. IT GOT OUT OF HAND. PEOPLE STARTED  
12 GETTING HURT. SHE DIDN'T HURT ANYBODY. SHE DIDN'T KNOW  
13 ANYBODY WAS GOING TO BE HURT. I MEAN, IT'S KIND OF AN  
14 EXCULPATORY THING; I WAS THERE, BUT I DIDN'T DO ANYTHING. I  
15 MEAN, THAT'S THE WAY IT WENT.

16 Q. AND THAT'S WHAT YOU REMEMBER HER SAYING?

17 A. YEAH. AND SEE, I WASN'T -- I WASN'T A DEFENSE LAWYER, I  
18 WASN'T FOR HER, I WASN'T A PROSECUTOR. I WANTED TO KNOW RIGHT  
19 THEN HOW I WAS GOING TO ADVISE HER TO TAKE THE WITNESS STAND  
20 AND WHETHER OR NOT SHE WAS GOING TO BE ALLOWED TO ANSWER --  
21 WHETHER OR NOT SHE SHOULD ANSWER QUESTIONS. AND THAT WAS ALL  
22 I WAS INTERESTED IN.

23 Q. ALL RIGHT.

24 A. IN ADDITION, I REALLY DID HAVE A HARD TIME MAINTAINING  
25 HER TRUST AND SO I DIDN'T WANT TO GO, OH, WOW -- YOU KNOW, I

September 24, 2012

Leonard/Cross

Page 1192

1 WAS REALLY GOING, OH, GOSH, TO MYSELF, BUT I DIDN'T WANT TO  
2 GO, OH, WOW, TELL ME WHAT HAPPENED, GIVE ME A BLOW BY BLOW  
3 ACCOUNT, AND I DON'T THINK I REALLY WANTED TO KNOW AND I  
4 DIDN'T NEED TO KNOW AT ALL. SO, I'M NOT -- I THINK I WOULD DO  
5 THE SAME THING AGAIN.

6 Q. OKAY. IT'S YOUR TESTIMONY THAT SHE TOLD YOU THAT SHE WAS  
7 A MEMBER OF A CORE GROUP -- CORE GROUP OF A CULT THAT  
8 ASSOCIATED NEWBORN BABIES WITH THE DEVIL, IS THAT RIGHT?

9 A. YES.

10 Q. ALL RIGHT. YOUR MEMORY'S CLEAR ON THAT POINT?

11 A. MY MEMORY IS PRETTY CLEAR AND I THINK VERY CLEAR ON THE  
12 THINGS THAT SHE TOLD ME THAT I NEEDED TO KNOW AND WERE THINGS  
13 THAT SHOCKED ME. YOU KNOW, I -- YOU KNOW, MY CONCERN WAS THAT  
14 SHE WAS GOING TO SAY SHE WAS THERE AND I DIDN'T WANT HER TO  
15 GET ON THE WITNESS STAND AND SAY SHE WAS THERE. I WAS HER  
16 LAWYER.

17 Q. ARE YOU AWARE THAT STOECKLEY HAD ALREADY TESTIFIED THAT  
18 SHE LOVED CHILDREN?

19 A. NO, I'M NOT. I MEAN, I -- I STARTED TO SAY I GATHER THAT  
20 NOW, BUT I DON'T KNOW HOW I GATHERED THAT, BUT SHE DIDN'T -- I  
21 DON'T REMEMBER HER TELLING ME THAT.

22 Q. LET'S LOOK AT TRIAL DAY 21, PAGE 141. DO YOU SEE AT THE  
23 BOTTOM OF THE PAGE, LINE 22, WHERE IT SAYS HOW DO YOU FEEL  
24 TOWARDS CHILDREN; I LOVE CHILDREN?

25 A. YES, I DO.

September 24, 2012

Leonard/Cross

Page 1193

1 Q. ALL RIGHT. LET'S LOOK AT GOVERNMENT EXHIBIT 2201.3,  
2 FOURTH FULL PARAGRAPH. DO YOU SEE WHERE -- JUST THE PARAGRAPH  
3 STARTING CHAIN-SMOKING VIRGINIA SLIM CIGARETTES.

4 A. CHAIN-SMOKING VIRGINIA SLIM CIGARETTES, HELENA  
5 STOECKLEY'S MOTHER DESCRIBED HER DAUGHTER'S ORIGINAL REACTION  
6 TO THE MURDER. QUOTE, IT REALLY HURT HER. SHE WAS A VERY  
7 SOFT HEARTED PERSON AND SHE ESPECIALLY LOVED LITTLE CHILDREN.  
8 SHE SAID RIGHT AWAY, QUOTE, NOT A HIPPIE AROUND HERE WOULD DO  
9 A THING LIKE THAT. EVERYBODY'S GOING TO PITCH IN AND FIND OUT  
10 WHAT HAPPENED. WE'VE GOT TO FIND OUT WHO DID THIS.

11 Q. OKAY. THANK YOU. NOW, IN PARAGRAPH 14 OF YOUR  
12 AFFIDAVIT, AND WE CAN PUT THAT ON THE SCREEN, IT HAS SOME VERY  
13 SPECIFIC DETAIL THAT YOU GOT FROM HELENA STOECKLEY ABOUT  
14 MACDONALD -- THESE PEOPLE ALLEGEDLY GOING TO THE MACDONALD  
15 HOUSE, IS THAT RIGHT?

16 A. THESE PEOPLE DOING WHAT WITH MACDONALD?

17 Q. I WITHDRAW THAT. LET ME JUST PUT IT THIS WAY; IT SAYS IN  
18 THIS AFFIDAVIT AT PARAGRAPH 14 THAT THE GROUP HAD AN ISSUE  
19 AGAINST DR. MACDONALD BECAUSE HE HAD DISCRIMINATED AGAINST  
20 HARD DRUG USERS IN THE DRUG TREATMENT PROGRAM. AND YOU  
21 SPECIFICALLY RECALL HER SAYING THAT?

22 A. YES, I DO.

23 Q. OKAY. AND THEN IN PARAGRAPH 15, WHICH IS ON THE NEXT  
24 PAGE, YOU SAY THAT SHE TOLD YOU THAT THE PHONE RANG DURING THE  
25 VIOLENCE AND SHE ANSWERED IT?

September 24, 2012

Leonard/Cross

Page 1194

1 A. YES.

2 Q. AND YOU SPECIFICALLY RECALL HER TELLING YOU THAT?

3 A. YES, I DO.

4 Q. AND SHE FURTHER STATED THAT SHE HUNG UP QUICKLY AFTER ONE  
5 OF HER FRIENDS YELLED AT HER TO HANG UP THE PHONE?

6 A. YES.

7 Q. SO, SHE -- ACCORDING TO HER STATEMENTS TO YOU, THEN SHE  
8 STAYED AT THE MACDONALD HOME PRETTY MUCH DURING THE WHOLE  
9 GRIZZLY EPISODE?

10 A. I GUESS YOU CAN ASSUME THAT.

11 Q. I MEAN, THIS IS NOT -- AS I READ IT, NOT ONE OF THE  
12 VERSIONS OF HER ADMISSIONS IN THE PAST WHERE SHE SAID SHE GOT  
13 SCARED AND RAN OUT THE DOOR?

14 A. YOU KNOW, I DIDN'T -- WELL, I DON'T KNOW WHAT HER EARLIER  
15 VERSIONS ARE. I DO KNOW THAT SHE'S BEEN VERY CONTRADICTIONARY IN  
16 THINGS THAT SHE SAID. I DID NOT KNOW -- I DON'T KNOW HOW I  
17 KNEW THAT SHE HAD SAID THAT SHE RAN OUT THE DOOR, BUT THAT'S A  
18 FAIRLY RECENT THING THAT'S COME TO MY KNOWLEDGE.

19 FROM WHAT SHE WAS TELLING ME, HER POINT TO ME WAS,  
20 WELL, I WAS THERE AND I DIDN'T DO ANYTHING WRONG. I MEAN,  
21 THAT SEEMED LIKE THE POINT SHE SEEMED TO BE WANTING ME TO  
22 BELIEVE.

23 Q. WELL, OF COURSE, AS A LAWYER YOU KNEW THAT IF THIS  
24 ACCOUNT THAT YOU SAY YOU REMEMBER HER TELLING YOU WAS TRUE,  
25 SHE WOULD BE GUILTY OF AT LEAST ACCESSORY OR AIDING AND

September 24, 2012



Leonard/Cross

Page 1195

1 ABETTING?

2 A. EXACTLY.

3 Q. ALL RIGHT. NOW, ARE YOU AWARE THAT COLETTE, KIMBERLEY,  
4 AND KRISTEN MACDONALD ALL RECEIVED AT LEAST 15 STAB WOUNDS AND  
5 MULTIPLE BLUNT FORCE TRAUMA INJURIES?

6 A. I THINK THAT I HAVE BEEN AWARE OF THAT SINCE THE -- SINCE  
7 THE FIRST -- SINCE THE MURDERS OCCURRED. I THINK SO FROM  
8 READING THE PAPER. I DIDN'T TALK TO ANYBODY ABOUT WHAT THE  
9 TESTIMONY HAD BEEN BEFORE, I DON'T THINK, AND I HAVEN'T SEEN  
10 ANYTHING. I HAVEN'T READ ANY ACCOUNT OF IT.

11 Q. WERE YOU AWARE THAT JEFFREY MACDONALD WAS A GREEN BERET  
12 SOLDIER ABOUT FIVE-ELEVEN AND 170 POUNDS AT THE TIME OF THE  
13 MURDERS?

14 A. I WAS AWARE THAT HE WAS A GREEN BERET SOLDIER. I KNEW HE  
15 WAS A DOCTOR. I DIDN'T KNOW HOW TALL HE WAS. I SAW HIM  
16 SEVERAL -- I SAW HIM IN THE COURTROOM AND I SAW HIM WALKING  
17 DOWN THE HALL PASSING US.

18 Q. IN 1979?

19 A. IN 1979.

20 Q. AND THAT WAS NINE YEARS AFTER THE MURDERS?

21 A. YES.

22 Q. DID HE LOOK LIKE HE WAS IN PRETTY GOOD PHYSICAL CONDITION  
23 THEN?

24 A. YES.

25 Q. ALL RIGHT. WHEN HELENA STOECKLEY WAS TALKING TO YOU IN

September 24, 2012

Leonard/Cross

Page 1196

1 '79, DID YOU ASK HER WHY THE FEMALE MACDONALDS WERE KILLED  
2 MANY TIMES OVER AND YET THE GREEN BERET DOCTOR THAT THEY WERE  
3 ANGRY AT WAS NOT SERIOUSLY WOUNDED?

4 A. NO, I -- NO, I DID NOT. AND, YOU KNOW, I KNEW THAT SHE  
5 HAD TOLD CONTRADICTORY STORIES BEFORE AND I WAS TAKING THAT  
6 WHAT SHE HAD TOLD ME AS, WELL, THIS IS WHAT HER TESTIMONY IS  
7 GOING TO BE OR I DON'T WANT IT TO BE. THAT'S WHERE I WAS  
8 COMING FROM WHEN I WAS LISTENING TO HER.

9 Q. IF YOU HADN'T READ ANYTHING ABOUT THE CASE, HOW DID YOU  
10 KNOW SHE HAD TOLD CONTRADICTORY STORIES BEFORE?

11 A. BECAUSE IT -- I WAS IN THE MILITARY WHEN THIS OCCURRED.  
12 I MEAN, I WAS ON -- I THINK I WAS ON ACTIVE DUTY IN THE  
13 RESERVES. AND IT REALLY WAS ALL OVER THE PAPERS. AND I WAS  
14 AWARE THAT -- WHEN I WORKED FOR JUDGE DUPREE, SOME THINGS WERE  
15 HAPPENING IN THE CASE, I BELIEVE, AND I --

16 Q. HOW LONG DID YOU WORK FOR JUDGE DUPREE?

17 A. A YEAR.

18 Q. FROM WHAT YEAR TO WHAT YEAR?

19 A. 1971 TO -- FROM JANUARY OF 1971 THROUGH THE END OF THE  
20 YEAR. AS SOON AS I GOT OUT OF LAW SCHOOL, THAT DAY I WENT TO  
21 WORK FOR JUDGE DUPREE.

22 Q. AND YOU THINK SOMETHING OCCURRED IN THE MACDONALD CASE IN  
23 UNITED STATES DISTRICT COURT AS EARLY AS 1971?

24 A. NO, I JUST THINK THAT THINGS STARTED HAPPENING -- WELL, I  
25 KNOW THAT THE CASE WENT -- AND, MR. BRUCE, PLEASE KNOW THAT

September 24, 2012

Leonard/Cross

Page 1197

1 I'M NOT SAYING THIS AS A FACT, MY IMPRESSION WAS THAT IT WENT  
2 TO THE APPELLATE COURTS AND EVEN WENT TO THE SUPREME COURT ON  
3 THE ISSUES OF SPEEDY TRIAL AND DOUBLE JEOPARDY. THAT'S WHAT I  
4 THINK. AND I JUST KNOW THAT AS A LAWYER I WAS VERY INTERESTED  
5 IN CONSTITUTIONAL LAW AND STUFF LIKE THAT, THAT'S WHAT I DID.

6 AND WHEN I WORKED FOR JUDGE DUPREE, THIS MIGHT BE  
7 TOO LONG OF AN ANSWER, BUT HE WAS IMMERSSED ALMOST TOTALLY IN  
8 CIVIL -- IN THE BACK LOG OF CIVIL CASES BECAUSE THERE WERE  
9 ONLY TWO JUDGES BEFORE HIM AND THEY WERE HAVING TO DEAL WITH  
10 SPEEDY TRIAL ISSUES AND STUFF LIKE THAT.

11 AND SO JUDGE DUPREE WORKED ON CIVIL CASES AND I  
12 HELPED HIM WITH CIVIL CASES AND HIS CLERKS DID THE 1983'S AND  
13 HABEAS CORPUSES. SO, I WAS -- I GOT SOME EXPERTISE IN THAT  
14 AREA AND I KEPT -- I TRIED TO MAINTAIN IT.

15 Q. OKAY. BUT THE INDICTMENT WAS IN 1975, AND ALL THAT  
16 LITIGATION PRIOR TO TRIAL OCCURRED BETWEEN THEN AND '79,  
17 RIGHT?

18 A. NOW, THAT YOU -- I GUESS THE INDICTMENT WAS '75, BUT IT  
19 WENT UP SEVERAL TIMES.

20 Q. BUT YOU HADN'T BEEN WORKING FOR JUDGE DUPREE FOR FOUR  
21 YEARS WHEN THE INDICTMENT CAME DOWN, IS THAT RIGHT?

22 A. NO, I HAD NOT.

23 Q. ALL RIGHT. NOW, IN YOUR AFFIDAVIT YOU STATE THAT THE  
24 SPRING ON THE HOBBY HORSE WAS NOT ATTACHED AND THAT THIS  
25 SHOWED -- THAT HELENA STOECKLEY TOLD YOU IN '79, THAT THIS

September 24, 2012

Leonard/Cross

Page 1198

1 SHOWED THAT DR. MACDONALD DID NOT CARE FOR HIS CHILDREN, IS  
2 THAT RIGHT?

3 A. THAT'S WHAT SHE SAID.

4 Q. AND YOU CLEARLY RECALL THAT?

5 A. YES.

6 Q. AND IN LIGHT OF THAT, DID YOU ASK HER WHY THE GROUP SHE  
7 WAS WITH KILLED THE CHILDREN BUT NOT HIM?

8 A. NO, I DID NOT.

9 Q. NOW, YOU GOT THIS DETAILED CONFESSION FROM YOUR CLIENT ON  
10 MONDAY AUGUST 20TH, 1979, IS THAT RIGHT?

11 A. THE DETAILS ARE IN THOSE PARAGRAPHS THAT I WROTE. I  
12 MEAN, IT WASN'T -- I MEAN, IT CERTAINLY WASN'T A BLOW BY -- IT  
13 WASN'T A LONG ACCOUNT OF WHAT HAPPENED IN THE HOUSE.

14 Q. WELL, BUT IT'S PRETTY DETAILED IN THAT IT TELLS WHY THE  
15 GROUP WENT THERE AND --

16 A. I WAS INTERESTED IN THAT.

17 Q. AND WHAT THE GRIEVANCE WAS AGAINST DR. MACDONALD?

18 A. UH-HUH.

19 Q. AND IT SAYS THAT HEROIN USERS WOULD BE RECOMMENDED FOR  
20 COURT MARTIAL OR DISCHARGED WHILE OTHERS GOT MORE FAVORABLE  
21 TREATMENT?

22 A. YES.

23 Q. AND IT'S GOT DETAILS LIKE THE PHONE CALL AND IT'S GOT  
24 DETAILS LIKE THE ROCKING HORSE?

25 A. YES, IT DOES.

September 24, 2012

Leonard/Cross

Page 1199

1 Q. BY THE WAY, DID YOU ASK HER THAT OR --

2 A. THOSE ARE -- I'M SORRY.

3 Q. NO. GO AHEAD.

4 A. THOSE ARE THINGS THAT SHE TOLD ME THAT STOOD OUT. YOU  
5 KNOW, I JUST FOUND IT UNUSUAL. I FOUND IT SHOCKING. I DIDN'T  
6 KNOW ANYTHING ABOUT CULTS, FOR EXAMPLE. WELL, I ASSUME I  
7 DIDN'T. THAT'S MY KNOWLEDGE OF CULTS RIGHT THERE.

8 Q. DID YOU ASK HER WHO HER ACCOMPLICES WERE?

9 A. NO. NO. WELL, SHE WAS WITH -- SHE SAID THAT SHE WAS  
10 WITH THREE -- I WANT TO SAY THREE OR FOUR OTHER PEOPLE AND I  
11 THINK THEY WERE ALL MALES AND THOSE WERE HER CLOSE CULT  
12 FRIENDS. THAT'S WHAT I WAS TOLD.

13 Q. BY HER?

14 A. BY HER.

15 Q. I DON'T SEE ANY NUMBER OF PEOPLE LISTED IN THE AFFIDAVIT.

16 A. WELL, I JUST ADDED THAT NUMBER.

17 Q. ALL RIGHT. SO, IT'S YOUR TESTIMONY NOW THAT SHE SAID  
18 THAT SHE WAS ACCOMPANIED BY THREE OR FOUR ADULT MALES?

19 A. I WOULD NOT TESTIFY -- DON'T MAKE THAT A FACT, PLEASE,  
20 BUT THAT'S WHAT I -- THAT'S WHAT I RECALL.

21 Q. RECALL FROM '79, NOT SOMETHING YOU'VE READ SINCE?

22 A. THAT PROBABLY IS WHY IT'S NOT IN THERE. I JUST -- WHAT I  
23 PUT IN THERE WAS THAT SHE CAME UP AND SHE TOLD -- I MEAN, SHE  
24 CAME OUT WITH THIS STORY. SHE TOLD ME WHY THEY DID IT. SHE  
25 WOULD SEEM TO INDICATE THAT IT WASN'T HER IDEA. SHE WASN'T A

September 24, 2012

Leonard/Cross

Page 1200

1 LEADER. SHE WENT THERE AND WAS BASICALLY JUST THERE AND THAT  
2 SHE DIDN'T KNOW ANYBODY WAS GOING TO BE HURT WHEN SHE WENT  
3 THERE AND SHE DIDN'T HURT ANYBODY WHEN SHE WAS THERE.

4 NOW, THAT'S -- THAT'S WHAT -- AND I WAS GOING, OH,  
5 NO, TRYING TO FIGURE OUT WHERE TO GO FROM THERE. AND THAT'S  
6 WHAT IT WAS.

7 Q. ALL RIGHT.

8 A. AND SHE WAS EXTREMELY FRAGILE. I MEAN, SHE -- IT'S NOT  
9 LIKE SHE WAS REAL EMOTIONAL, BUT I REALLY DIDN'T KNOW WHERE  
10 SHE WAS GOING TO GO -- MY THOUGHTS ARE I DIDN'T KNOW WHERE SHE  
11 WAS GOING TO GO NEXT.

12 Q. AS A CRIMINAL DEFENSE ATTORNEY, YOU COULD FORM THE  
13 OPINION FROM WHAT SHE TOLD YOU THAT SHE HAD A MINOR ROLE OR A  
14 MINIMAL ROLE IN THE KILLINGS?

15 A. YES. MR. BRUCE, I DON'T KNOW IF THAT WAS PART OF THE --  
16 THEY DIDN'T HAVE GUIDELINES BACK THEN.

17 Q. WELL, I DIDN'T MEAN IT IN --

18 A. I KNOW.

19 Q. SHE WAS A LESSER PLAYER?

20 A. YES, SHE WAS -- SHE MADE IT A POINT TO TELL ME THAT SHE  
21 HAD A MINOR ROLE. NO ROLE IN PLANNING GOING THERE, SHE JUST  
22 WENT. NO ROLE IN HURTING ANYBODY, SHE WAS JUST THERE. AND IT  
23 DIDN'T MATTER TO ME ANYTHING ELSE, I DID NOT WANT HER TO  
24 TESTIFY.

25 Q. AS A CRIMINAL DEFENSE ATTORNEY, WOULDN'T IT BE IMPORTANT

September 24, 2012

Leonard/Cross

Page 1201

1 FOR YOU TO GET THE NAMES OF THE ACCOMPLICES IN CASE SHE DID  
2 INCRIMINATE HERSELF AND MAKE A DEAL WITH THE GOVERNMENT SO  
3 THAT SHE COULD EARN ASSISTANCE FOR TESTIFYING AGAINST THEM?

4 A. I WASN'T GOING TO THE GOVERNMENT. I WAS NOT HER DEFENSE  
5 LAWYER. I WAS HER MATERIAL WITNESS -- HER LAWYER IN HER ROLE  
6 AS A MATERIAL WITNESS. AND MY CONCERN WAS WHAT SHE WOULD --  
7 MY CONCERN WAS HOW TO ADVISE HER, WHETHER OR NOT SHE SHOULD  
8 GET ON THE WITNESS STAND AND TALK OR SHE SHOULD GET ON THE  
9 WITNESS STAND AND NOT TALK.

10 Q. WELL, DIDN'T YOU EXPLAIN TO HER -- DIDN'T YOU STATE IN  
11 YOUR AFFIDAVIT THAT YOU EXPLAINED TO HER THAT SHE MIGHT COULD  
12 MAKE SOME SORT OF AGREEMENT WITH THE GOVERNMENT?

13 A. YES.

14 Q. SO, WOULDN'T IT BE IMPORTANT TO KNOW IF SHE COULD  
15 IDENTIFY ACCOMPLICES?

16 A. I ASSUMED -- WELL, I DON'T KNOW WHAT I ASSUMED THEN. I  
17 CAN TELL YOU I ASSUME NOW THAT SHE KNEW WHO HER ACCOMPLICES  
18 WERE.

19 Q. BUT YOU DIDN'T ASK HER WHETHER SHE DID OR NOT?

20 A. NO. NO. I WAS TRYING TO -- I WAS TRYING TO LET HER KNOW  
21 THAT I WOULD HELP HER AS BEST AS I COULD, THAT -- AND I DID  
22 ALSO -- AND I DON'T KNOW IF IT'S IN THE AFFIDAVIT, BUT WE DID  
23 TALK ABOUT THAT SHE COULD TELL THIS TO THE GOVERNMENT, BUT  
24 THAT SHE WOULD BE PROSECUTED AND THE GOVERNMENT WOULD ASK HER  
25 TO TELL THE WHOLE STORY TO THEM.

September 24, 2012

Leonard/Cross

Page 1202

1 Q. ALL RIGHT. SO, SHE GAVE YOU THIS DETAILED CONFESSION ON  
2 MONDAY, AUGUST 20TH, 1979, RIGHT?

3 A. YES.

4 Q. AND SHE -- AND YOU TOLD HER --

5 A. TO THE BEST OF MY KNOWLEDGE.

6 Q. AND YOU TOLD HER TO PLEAD -- TO PLAN TO PLEAD THE FIFTH  
7 AMENDMENT IF SHE WAS RECALLED TO THE STAND?

8 A. YES.

9 Q. AND YOU DID NOTHING ELSE?

10 A. I SAT -- I SPENT A LARGE PORTION OR A PORTION OF EACH DAY  
11 THEREAFTER UNTIL SHE WAS EXCUSED WITH HER IN THAT WITNESS ROOM  
12 -- IN THAT CONFERENCE ROOM. IT WAS AN ATTORNEY CONFERENCE  
13 ROOM.

14 Q. ALL RIGHT. THE NEXT DAY WAS TUESDAY. ON TUESDAY, AUGUST  
15 21ST, YOU DIDN'T DO ANYTHING ABOUT THIS INFORMATION THAT YOU  
16 HAD RECEIVED?

17 A. NO, I DID NOT.

18 Q. AND DOWN THE HALL, JUST DOWN THE HALL, IN JUDGE DUPREE'S  
19 COURTROOM THE TRIAL WAS CONTINUING, IS THAT RIGHT?

20 A. YES.

21 Q. AND JEFFREY MACDONALD WAS TESTIFYING IN HIS OWN DEFENSE  
22 FACING THREE MURDER CHARGES?

23 A. I DIDN'T SEE MACDONALD -- I DON'T THINK I SAW MACDONALD  
24 TESTIFY, BUT HE DID TESTIFY AND IT WOULD HAVE BEEN THEN.

25 Q. ALL RIGHT. THEN WEDNESDAY, AUGUST 22ND, CAME AND YOU

September 24, 2012



Leonard/Cross

Page 1203

1 DIDN'T DO ANYTHING ABOUT THE INFORMATION THAT STOECKLEY HAD  
2 GIVEN YOU?

3 A. I HAVE NEVER DONE ANYTHING WITH THAT INFORMATION.

4 Q. I'M SORRY, I DIDN'T HEAR THAT.

5 A. I DON'T BELIEVE I HAVE EVER DONE ANYTHING WITH THAT  
6 INFORMATION.

7 Q. ALL RIGHT. DID YOU --

8 A. I CONSIDER IT TO BE PART OF THE ATTORNEY-CLIENT  
9 PRIVILEGE.

10 Q. DID YOU CONSULT THE STATE BAR FOR GUIDANCE AT THAT TIME?

11 A. I DON'T KNOW. MY LAWYER ASKED ME THAT AND I DON'T KNOW.  
12 AT A LATER TIME, I'VE CONSULTED WITH THE STATE BAR AND I'VE  
13 CONSULTED WITH THEM TWICE.

14 Q. WELL, WHEN YOU SAY --

15 A. I DON'T REMEMBER AT ALL CONTACTING THE STATE BAR DURING  
16 THAT WEEK OF REPRESENTATION.

17 Q. ALL RIGHT. WHEN YOU SAY YOU CONTACTED THE STATE BAR AT A  
18 LATER TIME, YOU MEAN 2007, RIGHT?

19 A. I GAVE YOU A COPY OF THE LETTER THAT I WROTE -- A LETTER  
20 THAT I WROTE REFERENCING THE FACT THAT I NEEDED GUIDANCE AS TO  
21 WHETHER OR NOT TO ANSWER QUESTIONS.

22 Q. BUT THAT WAS IN 2007, WHICH WAS 28 YEARS AFTER THE MURDER  
23 -- AFTER THE TRIAL?

24 A. YES. AND THE ATTORNEY PRIVILEGE IS HER PRIVILEGE, IT'S  
25 NOT MY PRIVILEGE. AND I THINK IT'S, YOU KNOW, THE GOLDEN

September 24, 2012

Leonard/Cross

Page 1204

1 RULE, THE SACROSANCT, AND I JUST HAD TO LIVE WITH WHAT I HAD  
2 BEEN TOLD.

3 Q. WHAT YOU HAD BEEN TOLD BY HER?

4 A. YEAH.

5 Q. BUT YOU HADN'T BEEN TOLD ANYTHING BY THE STATE BAR AT  
6 THAT TIME?

7 A. NO.

8 THE COURT: TAKE A RECESS TILL 3:15.

9 (RECESS TAKEN FROM 3:00 P.M., UNTIL 3:17 P.M.)

10 (DEFENDANT PRESENT.)

11 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.  
12 YOU'RE STILL UNDER OATH, MR. LEONARD. THE WITNESS IS WITH  
13 YOU, MR. BRUCE.

14 MR. BRUCE: THANK YOU, YOUR HONOR.

15 BY MR. BRUCE:

16 Q. MR. LEONARD, WHEN WE BROKE I THINK WE HAD DISCUSSED  
17 MONDAY, TUESDAY AND WEDNESDAY. NOW, LET ME ASK YOU ABOUT  
18 THURSDAY. LET'S SEE, THAT WOULD BE AUGUST 23RD OF 1979. WERE  
19 YOU STILL REPRESENTING MS. STOECKLEY?

20 A. I REPRESENTED HER UNTIL SHE WAS RELEASED. SO, I BELIEVE  
21 I WAS AND I DON'T THINK SHE WAS RELEASED UNTIL EITHER THE END  
22 OF THE WEEK OR THE FIRST PART OF THE NEXT WEEK.

23 Q. ALL RIGHT. LET'S GO TO TRIAL DAY 25, PAGE 153, AND ZOOM  
24 IN ON LINE 13 THROUGH 25. DO YOU SEE WHERE MR. BLACKBURN IS  
25 INQUIRING ABOUT THE SITUATION WITH RESPECT TO HELENA

September 24, 2012

Leonard/Cross

Page 1205

1 STOECKLEY?

2 A. SAY THAT QUESTION -- SAY THAT QUESTION AGAIN, PLEASE.

3 Q. DO YOU SEE WHERE MR. BLACKBURN IS INQUIRING WITH REGARD  
4 TO --

5 A. YES.

6 Q. -- THE SITUATION ABOUT HELENA STOECKLEY?

7 A. YES, I DO.

8 Q. ALL RIGHT. JUST READ WHAT THE COURT SAYS AT 18 THROUGH  
9 22.

10 A. THE COURT: I KNOW NOTHING ABOUT IT. I KEEP ASKING. I  
11 TOLD THEM LAST NIGHT THAT THEY WERE GOING -- IF THEY WERE  
12 GOING TO USE HER, THEY HAD BETTER DO IT FIRST THING THIS  
13 MORNING OR I WAS GOING TO RELEASE HER. THEY DIDN'T USE HER SO  
14 I ASSUME SHE IS RELEASED, BUT I DON'T KNOW.

15 Q. ALL RIGHT. AND MR. BLACKBURN SAYS?

16 A. HER LAWYER, JERRY, IS STILL AROUND.

17 Q. THAT WOULD BE YOU?

18 A. YES.

19 Q. ALL RIGHT. CONTINUE READING WITH THE COURT.

20 A. I ASKED MR. SEGAL, I SAID WHAT IS HE STILL DOING HERE?

21 AND MR. SMITH: I TALKED TO JERRY LEONARD AT GREAT  
22 LENGTH, YOUR HONOR, THIS MORNING, AND TALKED TO HIM FOR A LONG  
23 TIME AND THIS WOMAN CONTINUES TO SAY THINGS THAT TIE HER TO  
24 THIS CASE. I WILL BE FRANK WITH YOUR HONOR I HAVE NO PLANS TO  
25 USE HER AT THIS POINT, BUT WE HAVE GOT TOO MUCH AT STAKE. IT

September 24, 2012

Leonard/Cross

Page 1206

1 IS TOO IMPORTANT A CASE, AND SHE HAS SAID TOO MUCH FOR US TO  
2 JUST, YOU KNOW, OUT OF HAND SAY, OH, SURE, GO ON, GO AWAY, WE  
3 WILL NEVER SEE YOU AGAIN. GO BACK IN HIDING AND LET THE YEARS  
4 ROLL BY. SHE IS HERE. THE DEFENDANT IS ON THE STAND AND I  
5 FEEL WE NEED TO BE ABLE TO TALK WITH JERRY AND HAVE HER  
6 AVAILABLE AT LEAST FOR THIS AFTERNOON.

7 AND THE COURT SAID, WELL, TODAY IS SHOT ANYWAY. GO  
8 ON.

9 Q. ALL RIGHT. LET'S SCROLL BACK UP IF WE COULD. NOW, IT'S  
10 MY UNDERSTANDING THAT YOU DO NOT REMEMBER TALKING TO WADE  
11 SMITH ON THAT THURSDAY?

12 A. IN OUR -- I TOLD YOU THAT I DON'T REMEMBER AND I STILL  
13 DON'T REMEMBER TALKING TO WADE SMITH.

14 Q. AND WHEN YOU SAY YOU TOLD ME, YOU MEAN YOU TOLD ME, MS.  
15 COOLEY AND AGENT CHEROKE ON AUGUST 24TH, 2012, IN THE U.S.  
16 ATTORNEY'S OFFICE?

17 A. YEAH, AND I STILL DON'T REMEMBER.

18 Q. IN FACT, I BELIEVE YOU STATED ON THAT OCCASION THAT YOU  
19 HAD NEVER TALKED TO WADE SMITH ABOUT THIS CASE?

20 A. I CERTAINLY HOPE NOT. I MEAN, I -- I HAVEN'T -- I HAVE  
21 NOT BEEN PRIVY TO THE TESTIMONY IN THIS CASE. I WAS TOLD NOT  
22 TO BE SO I DON'T KNOW WHAT HE'S TESTIFIED TO. I HAVE NEVER  
23 DIVULGED -- WADE AND I HAVE -- MR. SMITH AND I HAVE NEVER  
24 REALLY TALKED AT ALL ABOUT THIS CASE TO MY MEMORY.

25 AND I KNOW WHAT THIS SAYS AND I THINK I MIGHT -- I

September 24, 2012

Leonard/Cross

Page 1207

1 PROBABLY BROUGHT THIS UP TO YOU AND SAID I JUST DON'T REMEMBER  
2 THIS.

3 Q. DO YOU REMEMBER ALSO TELLING US ON AUGUST 24TH, 2012,  
4 THAT YOU DON'T REMEMBER NEEDING TO TALK TO ANYBODY?

5 A. REMEMBER WHAT, THE NEED --

6 Q. REMEMBER NEEDING TO TALK TO ANYBODY ABOUT IT?

7 A. NO. I MEAN, THE ANSWER IS YES, I REMEMBER TELLING YOU  
8 THAT AND --

9 Q. ALL RIGHT. NOW --

10 A. -- I DIDN'T FEEL LIKE I NEEDED TO TALK TO ANYBODY.

11 Q. IF YOU LOOK AT THE FIRST SENTENCE OF MR. SMITH'S  
12 STATEMENTS STATED AT LINE TWO THROUGH FIVE, HE DOESN'T  
13 ACTUALLY SAY THAT YOU TOLD HIM THAT THE WOMAN CONTINUES TO SAY  
14 THINGS THAT TIE HER TO THE CASE.

15 A. WELL, I CAN INTERPRET IT THAT WAY.

16 Q. WHICH WAY?

17 A. THAT I DID NOT TELL HER -- TELL HIM THAT THIS WOMAN  
18 CONTINUES TO SAY THINGS THAT TIE HER TO THIS CASE. MY PROBLEM  
19 IS, AND THIS WORRIED ME, IS I DIDN'T KNOW -- I DON'T KNOW WHAT  
20 THAT MEANS. AND IF IT MEANS THAT I FELT LIKE I NEEDED TO TALK  
21 TO WADE SMITH -- I CERTAINLY DON'T REMEMBER FEELING THAT WAY  
22 NOR -- AND I FEEL REALLY PRETTY SURE -- I FEEL REAL SURE THAT  
23 I DIDN'T TALK TO WADE.

24 Q. WELL, DO YOU RECALL ERROL MORRIS ASKING YOU WHY DID YOU  
25 CONTACT WADE AND YOU SAID I DON'T KNOW, I DON'T REMEMBER DOING

September 24, 2012

Leonard/Cross

Page 1208

1 IT?

2 A. I DON'T REMEMBER SAYING THAT, BUT THAT WOULD BE AN  
3 ANSWER. I DO WANT TO TELL YOU, MR. BRUCE, I HAVE NEVER READ  
4 MR. MORRIS'S THING. HE SENT ME THAT CHAPTER AND IT'S JUST  
5 SOMETHING, YOU KNOW, I JUST PUT AWAY.

6 HE MAILED ME A COPY OF HIS BOOK AND, YOU KNOW, I  
7 TOLD YOU ABOUT HIS BOOK AND I TOLD YOU THAT IT'S SUPPOSED TO  
8 COME OUT SEPTEMBER 4TH OR WHATEVER, AND HE MAILED ME A COPY OF  
9 IT AND I GAVE IT TO MY BROTHER WITHOUT LOOKING AT IT.

10 Q. ALL RIGHT. WELL, LET'S PUT IT ON THE SCREEN, 7000.7,  
11 RIGHT-HAND HALF JUST BELOW I CALLED LEONARD AGAIN. OKAY. I'M  
12 JUST INTERESTED IN THE FIRST FOUR LINES. DO YOU SEE WHERE IT  
13 SAYS WHY DID YOU CONTACT WADE AND YOU SAID I DON'T REMEMBER, I  
14 DON'T REMEMBER DOING IT?

15 A. YES.

16 Q. AND THEN HE SAYS YOU DON'T HAVE ANY MEMORY OF AT ALL?  
17 NO, I SURE DON'T?

18 A. UH-HUH.

19 Q. NOW, ALL WE KNOW ABOUT THIS IS THIS IS WHAT MR. MORRIS  
20 SAYS YOU TOLD HIM?

21 A. OH, IT'S WHAT MR. MORRIS SAID THAT I TOLD HIM?

22 Q. WELL, HE SAYS IT IN HIS BOOK.

23 A. YEAH.

24 Q. SO, MY QUESTION TO YOU IS DO YOU REMEMBER TELLING HIM  
25 THAT?

September 24, 2012

Leonard/Cross

Page 1209

1 A. I REMEMBER THIS CONVERSATION AND I TOLD HIM IF HE -- I  
2 TOLD HIM IF HE WANTED TO KNOW WHAT WADE WAS TALKING ABOUT WHEN  
3 HE DID THIS COLLOQUY AT THE BENCH OR WHEREVER HE DID IT, HE  
4 SHOULD ASK MR. SMITH AND NOT ME BECAUSE I DON'T REMEMBER.

5 Q. ALL RIGHT. LET'S GO TO TRIAL DAY 26, 149. SO, WE JUST  
6 READ ABOUT THURSDAY AND THE DEFENSE SAID THEY WANTED TO KEEP  
7 HELENA STOECKLEY. NOW, WE'RE LOOKING AT FRIDAY. DO YOU SEE  
8 WHERE THE COURT SAYS HOW ABOUT STOECKLEY?

9 A. YES.

10 Q. AND MR. SMITH SAYS MAYBE THE GOVERNMENT WOULD LIKE TO  
11 CALL HER AND THE COURT SAYS YOU DO NOT, DO YOU SEE THAT?

12 A. YES.

13 Q. AND HE SAYS AT LEAST AT THIS MOMENT WE DO NOT?

14 A. YES.

15 Q. AND NOW READ WHAT -- READ THE BOTTOM OF THE PAGE, PLEASE.

16 A. WHERE IT STARTS THE COURT?

17 Q. YES.

18 A. WELL, NOW, LISTEN, ENOUGH OF THIS THING IS ENOUGH, WADE.  
19 IF YOU'RE GOING TO EVER CALL HER, YOU CALL HER RIGHT NOW OR  
20 I'M GOING TO RELEASE HER FROM HER SUBPOENA.

21 Q. KEEP READING.

22 A. MR. SMITH: JUDGE, I UNDERSTAND WHAT YOU'RE SAYING. LET  
23 ME JUST SAY THIS, THAT WOMAN MADE THE MOST OUTRAGEOUS  
24 STATEMENTS TO A LADY AT THE HOSPITAL WHEN SHE GOT HER NOSE  
25 FIXED THAT YOU HAVE EVER HEARD.

September 24, 2012

Leonard/Cross

Page 1210

1 Q. ALL RIGHT. NOW, LET'S SKIP TO PAGE 151.

2 A. YOU WANT TO START AT THE TOP?

3 Q. NO, I WANT TO START AT LINE 17.

4 A. THE COURT: (INTERPOSING.) DON'T TELL ME ALL THAT  
5 STUFF. LISTEN, I AM NOT CARING WHETHER HE WANTS HER CALLED OR  
6 NOT. THE ONLY THING I AM CARING ABOUT IS YOU HAVE TO GET --  
7 YOU HAVE GOT A WITNESS HERE THAT WE HAVE ALL HAD THE WHOLE  
8 WEEK. I HAVE BEEN PAYING A LAWYER TO SORT OF CADDY FOR HER AT  
9 GOVERNMENT EXPENSE AND I AM AT THE END OF MY ROPE WITH THAT.

10 Q. ALL RIGHT. STOP RIGHT THERE. NOW, OF COURSE, JUDGE  
11 DUPREE DIDN'T MEAN HE WAS PERSONALLY PAYING YOU?

12 A. WELL, I DID GET PAID FOR REPRESENTING HER.

13 Q. RIGHT. BUT YOU --

14 A. I ASSUME I DID.

15 Q. BUT YOU WEREN'T GETTING PERSONALLY PAID BY JUDGE DUPREE,  
16 YOU WERE GETTING PAID BY CJA FUNDS, IS THAT RIGHT?

17 A. YEAH, HE WAS PROBABLY GOING TO HAVE TO SIGN THE VOUCHER  
18 AND APPROVE THE HOURS.

19 Q. ALL RIGHT. I ASKED YOU DO THINK HE'S REFERRING TO THE  
20 FACT THAT THE ADMINISTRATIVE OFFICE OF THE COURTS IS GOING TO  
21 HAVE TO PAY YOUR FEE FOR REPRESENTING HER AS AN INDIGENT  
22 MATERIAL WITNESS?

23 A. YES.

24 Q. AND HE'S INDICATED THAT HE WANTS TO CUT OFF THAT COURT  
25 EXPENSE AS SOON AS HE CAN?

September 24, 2012



Leonard/Cross

Page 1211

1 A. YES.

2 Q. ALL RIGHT. THEN MR. SMITH SAYS WHAT?

3 A. I WILL SAY THIS, JUDGE, THE DEFENSE DOESN'T HAVE MUCH  
4 MONEY, BUT WE WILL REIMBURSE THE GOVERNMENT FOR ANY ATTORNEY'S  
5 FEES THAT MAY BE REQUIRED TO KEEP HELENA STOECKLEY HERE UNTIL  
6 MONDAY.

7 Q. OKAY. SO, AT LEAST THROUGH FRIDAY HELENA STOECKLEY  
8 REMAINED AVAILABLE FOR RECALL BY THE DEFENSE, IS THAT RIGHT?

9 A. YES.

10 Q. AND YOU STILL HAD TOLD NO ONE ANYTHING ABOUT WHAT SHE HAD  
11 DISCLOSED TO YOU?

12 A. I REALLY, REALLY BELIEVE THAT THE ANSWER TO THAT IS, NO,  
13 I HAD NOT.

14 Q. I'M SORRY?

15 A. I THINK THE ANSWER TO THAT IS, NO, I HAD NOT DISCLOSED  
16 ANYTHING.

17 Q. ALL RIGHT. NOW, THE TRIAL ENDED AND MACDONALD WAS  
18 CONVICTED, IS THAT RIGHT?

19 A. YES.

20 Q. AND HE WAS SENT TO PRISON?

21 A. YES.

22 Q. AND HE GOT OUT OF PRISON BRIEFLY WHEN THE FOURTH CIRCUIT  
23 REVERSED HIS CONVICTION, IS THAT RIGHT?

24 A. I DIDN'T KNOW THAT.

25 Q. OKAY. BUT ULTIMATELY HIS CONVICTION WAS AFFIRMED. YOU

September 24, 2012

Leonard/Cross

Page 1212

1 KNEW THAT, DIDN'T YOU?

2 A. YES.

3 Q. NOW, IN 1983, YOUR FORMER CLIENT HELENA STOECKLEY DIED,  
4 IS THAT RIGHT?

5 A. I DON'T KNOW THAT I -- I DON'T KNOW HOW I KNEW SHE DIED,  
6 BUT I DID KNOW SHE DIED AND IT WAS IN -- AND I KNOW -- AND I  
7 KNOW NOW IT WAS 1983.

8 Q. ALL RIGHT. DID YOU LEARN SOMETIME --

9 A. I'M SORRY?

10 Q. DID YOU LEARN SOMETIME IN THE '80S, THAT SHE HAD DIED IN  
11 1983?

12 A. YEAH, I KNEW -- I'VE KNOWN FOR A LONG TIME.

13 Q. OKAY. NOW, DID THAT CHANGE YOUR PERSPECTIVE AT ALL?

14 A. WELL, THE QUESTION IS WHETHER OR NOT THE ATTORNEY-CLIENT  
15 PRIVILEGE SURVIVES THE DEATH OF A CLIENT.

16 Q. WELL, THAT'S THE QUESTION WE'VE BEEN ADDRESSING THIS  
17 WEEK, BUT MY QUESTION TO YOU IS DID YOU LOOK INTO THAT LEGAL  
18 QUESTION BACK THEN IN 1983 AFTER SHE DIED?

19 A. YES.

20 Q. YOU DID?

21 A. I KNOW I DID. I DON'T REMEMBER SPECIFICALLY DOING IT,  
22 BUT IT SEEMED PRETTY OBVIOUS TO ME THAT IT DID.

23 Q. IT SEEMED PRETTY OBVIOUS TO YOU THAT THE PRIVILEGE  
24 APPLIED?

25 A. SURE.

September 24, 2012

Leonard/Cross

Page 1213

1 Q. SO, DO YOU REMEMBER DOING RESEARCH ON IT IN THE '80S OR  
2 NOT?

3 A. I REMEMBER BEING CONFIDENT IN TELLING PEOPLE THAT I'M  
4 SORRY, IT DIDN'T MATTER THAT SHE'S DEAD, YOU KNOW, IT WOULD --  
5 YOU KNOW, THE PRIVILEGE SURVIVES.

6 Q. WHO WERE YOU TELLING THAT TO?

7 A. PEOPLE -- SOMETIMES PEOPLE WOULD SAY, WELL, YOU CAN TALK  
8 NOW OR SOMETHING LIKE THAT AND I'D SAY NO. YOU KNOW, THERE'S  
9 A LOT OF -- THERE ARE A LOT OF GOOD REASONS WHY IT DOES  
10 SURVIVE.

11 Q. ALL RIGHT. WOULD YOU BUMP INTO WADE SMITH FROM TIME TO  
12 TIME WHEN YOU WERE BOTH PRACTICING LAW IN RALEIGH IN THE '80S?

13 A. YES, I WOULD.

14 Q. AND '90S?

15 A. YES.

16 Q. AND DID HE SOMETIMES SAY TO YOU SOMETHING LIKE, JERRY,  
17 DON'T YOU HAVE SOMETHING DRAMATIC TO TELL ME?

18 A. SOMETHING TO THAT EFFECT.

19 Q. OKAY. YOU DIDN'T DISCLOSE ANYTHING TO HIM?

20 A. NO.

21 Q. OR TELL HIM THAT THERE MIGHT BE SOME PROCESS TO FIND OUT  
22 IF YOU COULD DISCLOSE ANYTHING TO HIM?

23 A. I DON'T THINK I'VE EVER GIVEN WADE SMITH ANY LEGAL  
24 ADVICE.

25 Q. ALL RIGHT. YOU DIDN'T CONSULT WITH THE STATE BAR?

September 24, 2012

Leonard/Cross

Page 1214

1 A. I DON'T KNOW. I HAVE -- I HAVE CALLED THEM MORE THAN  
2 ONCE. I THINK AT LEAST TWICE, PROBABLY MORE THAN THAT.

3 Q. ON THIS MATTER?

4 A. YEAH. YEAH. BUT, I MEAN, THE LAST TIME I CALLED THEM  
5 WHEN I GOT SUBPOENAED TO COME HERE.

6 Q. WELL, WHEN'S THE FIRST TIME YOU CALLED THEM ABOUT THIS  
7 MATTER?

8 A. WELL, I HAVE A RECORD OF -- WELL, A LETTER THAT I WROTE  
9 INDICATES THAT I HAD TALKED TO THEM IN 19 -- I MEAN, 2006,  
10 2007, AND I WAS THINKING IT WAS BEFORE THEN.

11 Q. ALL RIGHT. THERE'S A LETTER DATED MAY 21ST, 2007, THAT  
12 YOU SENT TO JUDGE FOX, IS THAT RIGHT?

13 A. YES. IS THAT -- I GAVE YOU THAT LETTER?

14 Q. YES. LET'S LOOK AT GOVERNMENT EXHIBIT 7017.

15 A. OKAY. YES.

16 Q. AND LET'S LOOK AT THE SECOND PAGE SO YOU CAN LOOK AT IT.  
17 NOW, THIS IS AN UNSIGNED COPY SO IS THIS A FAIR COPY OF WHAT  
18 YOU SENT TO JUDGE FOX?

19 A. I SENT YOU THE COPY THAT I HAVE FOR MY RECORDS.

20 (GOVERNMENT EXHIBIT NUMBER 7017

21 WAS IDENTIFIED FOR THE RECORD.)

22 Q. YOU SENT ME A COPY?

23 A. I SENT YOU A COPY.

24 Q. YOU SENT ME A COPY IN 2012, RIGHT?

25 A. LAST SPRING.

September 24, 2012

Leonard/Cross

Page 1215

1 Q. RIGHT. APRIL OF 2012.

2 A. AND THEN WHEN I SAW YOU -- WELL, I REMAILED IT AFTER I  
3 SAW YOU OR RE-EMAILED IT.

4 Q. RIGHT. SO, YOU SENT IT TO ME TWICE, BOTH IN 2012?

5 A. YES.

6 Q. ALL RIGHT. BUT THE LETTER IS DATED MAY 21ST, 2007?

7 A. YEP. YES.

8 Q. AND THIS UNSIGNED COPY, YOU CAN TAKE A MINUTE TO READ IT  
9 IF YOU WANT TO, BUT IS IT AS FAR AS YOU KNOW AN ACCURATE COPY  
10 OF WHAT YOU SENT TO JUDGE FOX?

11 A. I'VE READ IT OVER THE WEEKEND. IT IS.

12 Q. ALL RIGHT. NOW, IT ENCLOSED AN ANSWER FROM THE STATE BAR  
13 FOR AN ETHICS INQUIRY, IS THAT RIGHT?

14 A. YES.

15 Q. AND THAT'S GOVERNMENT EXHIBIT 7015. LET'S PUT IT ON THE  
16 SCREEN, PLEASE. NOW, THIS LOOKS LIKE HART MILES HAS SENT THE  
17 ETHICS INQUIRY IN.

18 A. HE DID.

19 (GOVERNMENT EXHIBIT NUMBER 7015

20 WAS IDENTIFIED FOR THE RECORD.)

21 Q. SO, THIS DOESN'T SHOW A CONTACT BY YOU WITH THE STATE  
22 BAR?

23 A. THAT'S CORRECT.

24 Q. ALL RIGHT. SO, WHEN'S THE FIRST TIME YOU EVER REMEMBER  
25 CONTACTING THE STATE BAR?

September 24, 2012

Leonard/Cross

Page 1216

1 A. MR. BRUCE, I'M NOT -- I DON'T KNOW. IT WAS -- I KNOW  
2 THAT I WAS IN CONTACT -- I BELIEVE I WAS IN CONTACT WITH THEM  
3 DURING THIS THING RIGHT HERE AND --

4 Q. IN 2007?

5 A. YEAH. AND THE -- BASICALLY, THE DECISION -- BASICALLY, I  
6 WAS OF THE OPINION THAT THE ETHICAL THING TO DO WAS FOR ME NOT  
7 TO MAKE -- I WAS GETTING READY TO BE SUBPOENAED I THOUGHT FOR  
8 A DEPOSITION AND HERE I AM --

9 Q. THAT'S WHAT HART MILES TOLD YOU?

10 A. THAT'S HOW I REMEMBER IT AND THAT WAS THE CIRCUMSTANCES  
11 LEADING UP TO THIS LETTER AND THAT I COULDN'T WAIVE THE  
12 PRIVILEGE. AND I WAS AWARE OF THE *MILLER* DECISION BY THE  
13 STATE SUPREME COURT, I GUESS. AND THE ONLY WAY THAT I COULD  
14 -- MY OPINION WAS, AND I WAS GOING ON THAT EVEN BEFORE HART  
15 MILES GOT THIS THING, WAS THAT I COULDN'T WAIVE THE PRIVILEGE,  
16 ONLY A JUDGE COULD ORDER ME TO TESTIFY.

17 Q. OKAY. SO, AS FAR AS YOU KNOW, THE ONLY -- THE FIRST  
18 INQUIRY TO THE STATE BAR ABOUT THIS MATTER FROM THE TIME YOU  
19 LEARNED ABOUT HELENA STOECKLEY'S ADMISSIONS TO YOU IN 1979 WAS  
20 2007?

21 A. THAT'S ALL THAT I CAN POINT TO.

22 Q. ALL RIGHT. NOW, IN 1984, ARE YOU AWARE THAT MACDONALD  
23 FILED A 2255 ATTACK ON HIS CONVICTION BASED IN LARGE PART ON  
24 STOECKLEY'S ALLEGED CONFESSIONS?

25 A. VAGUELY. I WASN'T INVOLVED IN IT AND I DON'T REMEMBER

September 24, 2012

Leonard/Cross

Page 1217

1 ANYBODY TALKING TO ME ABOUT THAT ACTION.

2 Q. AND, IN FACT, THE THINGS IN YOUR AFFIDAVIT ABOUT  
3 STOECKLEY'S ALLEGED ADMISSIONS TO YOU ARE REMARKABLY SIMILAR  
4 TO SOME OF THE THINGS THAT TED GUNDERSON REPORTED IN THAT  
5 2255, AREN'T THEY?

6 A. I HAVEN'T EVER READ THE 2255 AND I JUST DON'T KNOW WHAT  
7 THAT HABEAS SAYS.

8 Q. WELL, ALL THAT WAS AVAILABLE PUBLIC RECORD, RIGHT?

9 A. YES, I CERTAINLY THINK SO.

10 Q. OKAY. IN FACT, IT'S ALL ON WEBSITES NOW ABOUT THE  
11 MACDONALD CASE, IS IT NOT?

12 A. WELL, I KNOW.

13 Q. OKAY. NOW, AS A RESULT OF THAT 2255 FILING, THERE WAS A  
14 PRETTY LENGTHY EVIDENTIARY HEARING BEFORE JUDGE DUPREE IN  
15 RALEIGH ON THE STOECKLEY CONFESSIONS IN 1984 -- '84 AND '85?

16 A. I REMEMBER JUDGE DUPREE HAVING POST-CONVICTION HEARINGS.

17 Q. ALL RIGHT. AND THAT DID NOT MOVE YOU TO MAKE ANY  
18 INQUIRIES OR TAKE ANY ACTION ABOUT WHAT YOU KNEW?

19 A. I DIDN'T.

20 Q. ALL RIGHT. NOW, DO YOU RECALL IN THE MID AND LATE '90S  
21 -- YOU'RE A LAWYER, YOU KEEP UP WITH LEGAL DEVELOPMENTS,  
22 RIGHT?

23 A. I TRY TO.

24 Q. OKAY. DO YOU RECALL IN THE MID TO LATE '90S THAT THERE  
25 WAS AN INDEPENDENT COUNSEL NAMED KEN STAR WHO WAS

September 24, 2012

Leonard/Cross

Page 1218

1 INVESTIGATING PRESIDENT AND MRS. CLINTON?

2 A. YES.

3 Q. AND DO YOU RECALL THAT THE WHITE HOUSE COUNSEL VINCE  
4 FOSTER COMMITTED SUICIDE?

5 A. YES.

6 Q. AND DO YOU RECALL THAT KEN STAR WANTED TO FORCE VINCE  
7 FOSTER'S ATTORNEYS TO DIVULGE INFORMATION NOW THAT HE WAS DEAD  
8 THAT HAD BEEN PRIVILEGED?

9 A. I DO REMEMBER THAT. I MEAN, I THINK THAT'S HOW I  
10 REMEMBER.

11 Q. AND DO YOU REMEMBER THAT THAT CASE WENT ALL THE WAY TO  
12 THE SUPREME COURT?

13 A. I DIDN'T KNOW THAT. I DON'T KNOW THAT FOR SURE.

14 Q. OKAY. WELL, DO YOU REMEMBER THAT THE SUPREME COURT  
15 DECIDED THE CASE IN -- HOLD ON A MINUTE -- IN A CASE CALLED  
16 *SWIDLER AND BERLIN* IN 1998?

17 A. I DIDN'T KNOW THAT. I THINK THAT YOU TOLD ME ABOUT THAT  
18 CASE DURING OUR CONFERENCE, I'M NOT SURE, BUT I HAVE HEARD OF  
19 THAT CASE, NOT THAT IT HAD TO DO WITH KEN STAR AND VINCE  
20 FOSTER, BUT SOMEBODY'S TOLD ME THAT THERE ARE MORE OPINIONS  
21 THAN THE STATE OPINION OF *MILLER*.

22 Q. WELL, IS IT FAIR TO SAY THAT IF THE CASE WENT ALL THE WAY  
23 TO THE SUPREME COURT, THAT THERE WAS SOME QUESTION ABOUT THE  
24 CIRCUMSTANCES WHERE THE ATTORNEY-CLIENT PRIVILEGE SURVIVED  
25 DEATH AND CIRCUMSTANCES WHERE IT DIDN'T?

September 24, 2012



Leonard/Cross

Page 1219

1 A. I DON'T KNOW -- I DON'T REMEMBER READING THE OPINION.

2 AND, YOU KNOW, MAYBE I SHOULD HAVE, BUT I DIDN'T.

3 Q. ALL RIGHT. ANYWAY, IF YOU HEARD ABOUT THE LITIGATION  
4 INVOLVING THE ATTORNEY-CLIENT PRIVILEGE IN THAT SUPREME COURT  
5 CASE, THAT DIDN'T CAUSE YOU TO MAKE ANY INQUIRIES OR DO  
6 ANYTHING ABOUT IT?

7 A. I DON'T THINK SO.

8 Q. ALL RIGHT. NOW, I BELIEVE YOU'VE ALREADY MENTIONED THE  
9 MILLER CASE. I BELIEVE YOU KNOW RICK GAMMON, IS THAT RIGHT?

10 A. YES, I DO.

11 Q. AND HE -- UNTIL HIS RETIREMENT, HE WAS A PROMINENT  
12 DEFENSE ATTORNEY IN RALEIGH, IS THAT RIGHT?

13 A. WELL, YES. THE LAST TIME I -- YES. I THINK HE COMES OUT  
14 OF RETIREMENT EVERY ONCE IN A WHILE.

15 Q. OKAY. NOW, DO YOU RECALL THAT HE HAD A CLIENT WHO MIGHT  
16 HAVE BEEN IMPLICATED IN THE DEATH OF ERIC MILLER, A POISON  
17 DEATH IN RALEIGH?

18 A. THAT'S THE CASE I'VE BEEN TALKING ABOUT.

19 Q. ALL RIGHT. AND DO YOU RECALL THAT MR. GAMMON'S CLIENT  
20 CONSULTED WITH HIM AND THEN COMMITTED SUICIDE?

21 A. YES.

22 Q. AND DO YOU RECALL THAT THE DISTRICT ATTORNEY WANTED TO  
23 GET THE INFORMATION THAT THE DECEASED CLIENT HAD DISCLOSED TO  
24 MR. GAMMON BECAUSE THE DISTRICT ATTORNEY THOUGHT IT WAS  
25 RELEVANT TO THE MURDER CASE?

September 24, 2012

Leonard/Cross

Page 1220

1 A. YES.

2 Q. AND DO YOU RECALL THAT THE NORTH CAROLINA SUPREME COURT  
3 EVENTUALLY FORCED MR. GAMMON TO REVEAL THE INFORMATION THAT  
4 HAD BEEN CONFIDED TO HIM BY HIS CLIENT BEFORE HIS CLIENT DIED?

5 A. YES, I THINK THAT HE, AND YOU CAN CORRECT ME IF I'M  
6 WRONG, BUT THE DECISION WAS THAT HE WOULD DISCLOSE IT TO JUDGE  
7 STEPHENS, A SUPERIOR COURT JUDGE, IN CHAMBERS PROBABLY BY  
8 AFFIDAVIT, I THINK, AND THAT JUDGE STEPHENS WOULD MAKE THE  
9 DECISION WHETHER OR NOT IT WAS -- THE INTEREST OF JUSTICE  
10 OUTWEIGHED THE ATTORNEY-CLIENT PRIVILEGE. THAT'S MY MEMORY OF  
11 THAT DECISION.

12 Q. AND THEN ULTIMATELY JUDGE STEPHENS RULED THAT IT DID AND  
13 THAT THE EVIDENCE WAS GIVEN TO THE DISTRICT ATTORNEY, ISN'T  
14 THAT RIGHT?

15 A. THAT'S MY UNDERSTANDING.

16 Q. AND WASN'T THE INFORMATION USED TO CONVICT THE DECEASED'S  
17 WIFE OF KILLING HIM?

18 A. I DON'T KNOW. I MEAN, I DON'T KNOW THAT. I ASSUMED IT  
19 WAS. I UNDERSTOOD THAT JUDGE STEPHENS ORDERED THAT THE -- I  
20 DON'T KNOW IF MR. GAMMON TESTIFIED. HE MIGHT HAVE TESTIFIED  
21 BY -- I DON'T KNOW THAT HE ACTUALLY TESTIFIED, BUT HE WAS  
22 ORDERED TO RELEASE THE INFORMATION THAT HE HAD GAINED FROM MR.  
23 MILLER.

24 Q. ALL RIGHT. AND THAT WAS PRETTY BIG NEWS IN THE RALEIGH  
25 LEGAL COMMUNITY, IS THAT RIGHT?

September 24, 2012

Leonard/Cross

Page 1221

1 A. YEP. YES, IT WAS.

2 Q. AND THAT N.C. SUPREME COURT DECISION WAS IN AUGUST OF  
3 2003?

4 A. I DON'T KNOW. THAT SOUNDS RIGHT.

5 Q. WELL, WHENEVER IT CAME OUT, IT DIDN'T CHANGE YOUR  
6 PERSPECTIVE, YOU DIDN'T CONSULT ANYBODY ABOUT WHAT YOU NEEDED  
7 TO DO ABOUT HELENA STOECKLEY AT THAT TIME?

8 A. WELL, THAT'S WHY I FELT COMFORTABLE WRITING JUDGE FOX  
9 THAT I NEEDED SOME INSTRUCTION.

10 Q. IN 2007?

11 A. IN 2007.

12 Q. FOUR YEARS AFTER THE *MILLER* CASE?

13 A. NO ONE -- I'M NOT -- WELL, NO ONE WAS COMING AFTER ME TO  
14 TRY TO GET ME TO TESTIFY AT THAT TIME.

15 Q. WELL, YOU COULD HAVE ON YOUR OWN GONE TO THE STATE BAR OR  
16 JUDGE FOX, COULDN'T YOU?

17 A. MR. BRUCE, I'M JUST A WITNESS AND I WAS NOT GOING TO -- I  
18 DON'T KNOW WHAT I WAS SUPPOSED TO DO IN AN ACTION THAT WASN'T  
19 PENDING OR WHATEVER, GO RUNNING TO JUDGE FOX, AND IT WASN'T  
20 UNTIL IT LOOKED LIKE I WAS GOING TO HAVE TO TESTIFY THAT I  
21 SOUGHT THE -- I DID WHAT I THOUGHT I WAS SUPPOSED TO DO.

22 BUT I DIDN'T GO RUNNING TO JUDGE FOX IN 2003. I  
23 DIDN'T GO TO THE STATE -- I DON'T KNOW THAT I WENT TO THE  
24 STATE BAR IN 2003. I CAN'T SAY THAT.

25 Q. OKAY. NOW, DID YOU TELL ERROL MORRIS IN HIS THIRD

September 24, 2012

Leonard/Cross

Page 1222

1 INTERVIEW OF YOU, DID YOU TELL HIM THAT YOU JUST REMEMBER  
2 SITTING THERE -- TALKING ABOUT YOUR REPRESENTATION OF HELENA  
3 STOECKLEY, THAT YOU JUST REMEMBERED SITTING THERE AND IT  
4 SEEMED PRETTY BORING TO YOU?

5 A. YES, AND I CAN ADD TO THAT. I'M KIDDING. BUT I'VE BEEN  
6 SITTING HERE FOR A WEEK AND A DAY IN ADDITION TO APPARENTLY  
7 THE FIVE DAYS THAT I SPENT SITTING IN THAT ROOM IN THE RALEIGH  
8 COURTHOUSE.

9 Q. ALL RIGHT. WELL, WHAT I'M TALKING ABOUT, YOU TOLD HIM  
10 THAT IT SEEMED PRETTY BORING TO YOU WHEN YOU WERE SITTING  
11 THERE WITH HELENA STOECKLEY IN '79.

12 A. YES.

13 Q. ALL RIGHT. AND THE -- GO AHEAD. I'M SORRY. DID YOU  
14 FINISH?

15 A. WELL, WE WERE JUST SITTING IN A ROOM AND WE WERE JUST  
16 SITTING IN A ROOM.

17 Q. AND SHE HAD MADE ADMISSIONS TO YOU ABOUT THIS -- ONE OF  
18 THE MOST FAMOUS MURDER CASES IN NORTH CAROLINA HISTORY, IS  
19 THAT RIGHT?

20 A. WELL, SHE HAD MADE ADMISSIONS TO ME AND SHE TOLD  
21 CONFLICTING STORIES IN A VERY WELL KNOWN MURDER CASE. AND I  
22 SAT THERE AND WE TALKED ABOUT ALL KINDS OF STUFF, BUT THERE  
23 WASN'T MUCH ELSE MENTIONED ABOUT THE NIGHT OF THE MURDERS OR  
24 OF SUBSTANCE, I MEAN, THE REST OF THE WEEK.

25 Q. AND THE TRIAL WAS GOING ON JUST DOWN THE HALL?

September 24, 2012

Leonard/Cross

Page 1223

1 A. YES.

2 Q. ALL RIGHT. NOW, LET'S LOOK AT -- LET'S LOOK AT 2000 --  
3 I'M SORRY, 7000.7, AND ZOOM IN ON PAGE 417 ABOUT THE BOTTOM  
4 HALF OF THE PAGE. DO YOU SEE THE SECOND TIME YOUR NAME  
5 APPEARS AT THE END OF THE SECOND LINE WITH THE PHRASE THAT  
6 STARTS HONESTLY?

7 A. HONESTLY, I'M WRONG ON SOME KEY FACTS?

8 Q. NO, HONESTLY, MY MEMORY IS NOT 100 PERCENT.

9 A. CORRECT.

10 Q. OKAY. READ STARTING WITH HONESTLY.

11 A. HONESTLY, MY MEMORY IS NOT A HUNDRED PERCENT AND FOR  
12 ANYTHING THAT I SAY TO BE RELIABLE, EVEN AS I'M TRYING TO FILL  
13 IN THE FACTS FOR YOU, IS FAIRLY DANGEROUS I THINK BECAUSE  
14 HONESTLY I'M WRONG ON SOME KEY FACTS.

15 Q. DID YOU MAKE THAT STATEMENT TO ERROL MORRIS?

16 A. YES, AND I'VE MADE THAT STATEMENT TO YOU I THINK.

17 Q. AND THAT'S AN ACCURATE STATEMENT?

18 A. YEAH.

19 Q. ALL RIGHT. NOW, LET'S LOOK AT PAGE 7000.8, AND DO YOU  
20 SEE WHERE IT SAYS AT THE TOP OF THE PAGE -- PLEASE ENLARGE THE  
21 TOP OF THE PAGE. DO YOU SEE IN THE SECOND LINE IT SAYS I'D  
22 LIKE TO BE A LITTLE SHINING LIGHT, BUT I JUST DON'T KNOW THAT  
23 I CAN?

24 A. YEAH. AND I WANT TO TELL YOU, I WAS WILLING TO TALK TO  
25 MR. MORRIS ABOUT WHAT DAY -- TO PUT EVERYTHING IN PERSPECTIVE.

September 24, 2012

Leonard/Cross

Page 1224

1 I MEAN, HE KEPT ASKING ME, YOU KNOW -- WELL, YOU KNOW, HE  
2 ASKED ME WHY WAS HELENA STOECKLEY NOT APPOINTED AN ATTORNEY IN  
3 THE VERY BEGINNING.

4 Q. I'M SORRY, HE ASKED YOU WHAT?

5 A. WHY WAS NOT HELENA STOECKLEY APPOINTED AN ATTORNEY IN THE  
6 VERY BEGINNING. AND YOU ASKED ME THAT I THINK. AND I DON'T  
7 KNOW. YOU KNOW, I WOULD HAVE THOUGHT THAT WHEN SHE WAS PICKED  
8 UP, MAYBE NOT IN SOUTH CAROLINA, BUT SHE WOULD HAVE BEEN  
9 BROUGHT TO A MAGISTRATE, YOU KNOW, IN THE EASTERN DISTRICT  
10 AND, YOU KNOW, GIVEN HER RIGHTS. I DON'T KNOW.

11 Q. WELL, WHEN DO YOU SAY I ASKED YOU THAT QUESTION?

12 A. WELL, WE TALKED ABOUT IT.

13 Q. WE DID?

14 A. YEAH, I THINK WE DID. AND SO, YOU KNOW, THAT'S -- THAT  
15 IS A -- TO MR. MORRIS, THAT WAS A FAIRLY KEY POINT AND I  
16 DIDN'T KNOW. I WOULD LIKE TO HAVE BEEN ABLE TO TELL HIM,  
17 WELL, SHE WAIVED HER RIGHT TO COUNSEL IN SOUTH CAROLINA, BUT I  
18 DIDN'T KNOW.

19 Q. WELL, THE RECORD REVEALS THAT -- OR AT LEAST IT IMPLIES  
20 THAT SHE DID HAVE AN INITIAL APPEARANCE BEFORE A MAGISTRATE IN  
21 SOUTH CAROLINA, DOES IT NOT?

22 A. I DON'T KNOW. I MEAN, THOSE ARE THINGS THAT -- I MEAN,  
23 THAT'S -- THERE'S SOME -- THE DRIFT OF HIS BOOK OR HIS  
24 QUESTIONS TO ME WAS TO TRY TO GET FACTS OUT OF ME THAT SEEMED  
25 TO SHOW THAT MACDONALD DID NOT GET A FAIR TRIAL. AND, YOU

September 24, 2012

Leonard/Cross

Page 1225

1 KNOW, I DIDN'T KNOW VERY MUCH ABOUT THAT.

2 I MEAN, I KNEW HOW SEGAL HAD INTERACTED WITH JUDGE  
3 DUPREE. I THOUGHT THAT WAS PREJUDICIAL TO MACDONALD. AND I  
4 HAD WONDERED THROUGH THE YEARS, YOU KNOW, WHY I WASN'T  
5 APPOINTED EARLIER OR SOME LAWYER APPOINTED EARLIER.

6 Q. WELL, AT ANY RATE, YOU SAID TO HIM THAT YOU'D LIKE TO BE  
7 A LITTLE SHINING LIGHT, BUT YOU JUST DIDN'T KNOW THAT YOU  
8 COULD?

9 A. WELL, THAT'S WHAT I WAS TALKING ABOUT.

10 Q. ALL RIGHT.

11 A. I WOULD HAVE LIKED TO HAVE FILLED HIM IN ON THE  
12 PROCEDURE, WHAT WAS HAPPENING UP HERE.

13 Q. AND SOMETIME LATER AFTER THAT DID YOU DECIDE TO BECOME A  
14 LITTLE SHINING LIGHT?

15 A. NO. I DON'T WANT TO BE HERE.

16 MR. BRUCE: MAY I APPROACH THE BENCH, YOUR HONOR?

17 THE COURT: YES, SIR.

18 (BENCH CONFERENCE ON THE RECORD.)

19 MR. BRUCE: YOUR HONOR, HAVING GIVEN THIS SOME  
20 THOUGHT SINCE WE HAD THE BENCH CONFERENCE EARLIER TODAY, I  
21 WOULD LIKE TO PROPOSE THAT THE COURT RECEIVE GOVERNMENT  
22 EXHIBIT 7010, WHICH IS THE SUPREME COURT DECISION WITH REGARD  
23 TO MR. LEONARD THAT I READ IN CHAMBERS. AND I WOULD LIKE FOR  
24 THE COURT TO CONSIDER IT WHEN IT CONSIDERS HIS EVIDENCE AS --  
25 ALL THE EVIDENCE AS A WHOLE IN TERMS OF THE LIKELY CREDIBILITY

September 24, 2012

Leonard/Cross

Page 1226

1 AND PROBABLE RELIABILITY THEREOF. AND THEN I JUST -- I DON'T  
2 NEED TO MENTION IT IN OPEN COURT IF THE COURT WILL JUST ACCEPT  
3 IT.

4 THE COURT: DO YOU HAVE ANY OBJECTION TO THAT?

5 MR. WIDENHOUSE: NO. I MEAN, I THINK IT COMES IN AS  
6 THE EVIDENCE AS A WHOLE.

7 THE COURT: DO YOU WANT IT IN COURT?

8 MR. WIDENHOUSE: NO. NO, NO. OH, I'M SORRY. I  
9 MISUNDERSTOOD.

10 THE COURT: THANK YOU.

11 MR. WEST: I SURE DON'T.

12 MR. BRUCE: AND IT'S A PUBLIC RECORD ANYWAY SO I'LL  
13 JUST LEAVE IT WITH THE COURT.

14 THE COURT: THANK YOU.

15 MR. WEST: THANK YOU.

16 MR. BRUCE: THANK YOU.

17 THE COURT: THANK YOU.

18 (BENCH CONFERENCE CONCLUDED.)

19 MR. BRUCE: YOUR HONOR, BEFORE I CONCLUDE MY CROSS-  
20 EXAMINATION I WOULD LIKE TO MOVE INTO EVIDENCE THE EXHIBITS  
21 THAT WE HAVE USED WITH THIS WITNESS; 6076, WHICH IS THE FBI  
22 302; 7010, WHICH IS WHAT I JUST BROUGHT TO THE BENCH; 6077 --  
23 WELL, I HAVEN'T -- SORRY.

24 THE COURT: ALL RIGHT, SIR.

25 (GOVERNMENT EXHIBITS NUMBER 6076 AND 7010

September 24, 2012



Leonard/Cross

Page 1227

1 WERE OFFERED AND ADMITTED INTO EVIDENCE.)

2 MR. BRUCE: I NEED TO ASK THE WITNESS ABOUT THIS.

3 BY MR. BRUCE:

4 Q. MR. LEONARD, DO YOU RECOGNIZE GOVERNMENT EXHIBIT 6077?

5 A. YES.

6 Q. IS THAT A HANDWRITTEN POEM THAT HELENA STOECKLEY WROTE  
7 AND GAVE TO YOU?

8 A. YES.

9 (GOVERNMENT EXHIBIT NUMBER 6077

10 WAS IDENTIFIED FOR THE RECORD.)

11 Q. AND DO YOU HAVE IT DISPLAYED ON YOUR WALL OR SOMETHING?

12 A. WELL, I DID AND I CAN EXPLAIN -- I CAN TELL YOU ABOUT  
13 THIS.

14 Q. OKAY. WAS IT DATED AUGUST 23RD, 1979?

15 A. YES. WELL, IT LOOKS LIKE THE 25TH, BUT IT COULD BE THE  
16 23RD. I DON'T KNOW WHAT YOURS LOOKS LIKE.

17 Q. WELL, ANYWAY, BASED ON YOUR RECOLLECTION, DID IT OCCUR --  
18 DID SHE WRITE IT AND DATE IT WHILE YOU WERE REPRESENTING HER?

19 A. SHE WROTE IT ON THE STATIONARY THAT WAS IN THE CONFERENCE  
20 ROOM THAT WE WERE IN.

21 Q. ACTUALLY, IT LOOKS LIKE THE COURT REPORTING PAPER,  
22 DOESN'T IT, IF YOU --

23 A. YEAH.

24 Q. OKAY. AND DID YOU GIVE A COPY OF THIS TO JIM BLACKBURN  
25 AT SOME POINT?

September 24, 2012

Leonard/Cross

Page 1228

1 A. WELL, THAT'S ANOTHER THING. I DON'T REMEMBER DOING IT,  
2 BUT OBVIOUSLY I DID. I TOLD YOU ABOUT THIS AND I TOLD OTHER  
3 PEOPLE ABOUT IT. SHE GAVE ME THIS AND I ACTUALLY -- I MEAN, I  
4 REMEMBER HER GIVING IT TO ME AND I TOLD HER I THOUGHT IT WAS  
5 REALLY KIND OF A BEAUTIFUL WRITING. AND SHE SAID IT'S YOURS  
6 AND I SAID, WELL, DO YOU MIND IF I FRAME IT AND PUT ON MY  
7 OFFICE WALL AND I DID.

8 AND I DON'T KNOW -- YOU HANDED ME AN ENVELOPE THAT  
9 WAS ADDRESSED FROM ME TO JIM BLACKBURN CONTAINING THIS THING.

10 Q. YOU'RE TALKING ABOUT WHEN I INTERVIEWED YOU ALONG WITH  
11 MS. COOLEY AND MR. CHEROKE ON AUGUST 24TH, 2012?

12 A. YEAH. AND SO THAT'S THE FIRST TIME THAT I LEARNED THAT I  
13 HAD MAILED IT TO BLACKBURN.

14 Q. AND WE GAVE YOU A SEALED ENVELOPE THAT BLACKBURN HAD  
15 GIVEN US, IS THAT RIGHT?

16 A. THAT'S HOW I UNDERSTAND -- THAT'S WHAT I UNDERSTAND.

17 Q. AND YOU OPENED IT AND GAVE IT -- ALLOWED US TO READ IT?

18 A. YES.

19 Q. ALL RIGHT.

20 A. AND I'VE GOT COPIES OF IT.

21 MR. BRUCE: ALL RIGHT. WE WOULD MOVE GOVERNMENT  
22 EXHIBIT 6077 INTO EVIDENCE AND ALSO 7017.

23 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

24 (GOVERNMENT EXHIBITS NUMBER 6077 AND 7017  
25 WERE OFFERED AND ADMITTED INTO EVIDENCE.)

September 24, 2012

Leonard/Redirect

Page 1229

1 MR. BRUCE: AND 7015, WHICH ARE THE EMAILS THAT WERE  
2 DISCUSSED EARLIER, AND EXHIBIT 7000, WHICH IS THE EXCERPT WE  
3 USED FROM MR. MORRIS'S BOOK. AND AT THIS POINT WE HAVE NO  
4 FURTHER QUESTIONS ON CROSS.

5 THE COURT: ALL RIGHT. MR. WILLIAMS (SIC).

6 (GOVERNMENT EXHIBITS NUMBER 7015 AND 7000  
7 WERE OFFERED AND ADMITTED INTO EVIDENCE.)

8 MR. WIDENHOUSE: VERY BRIEFLY, YOUR HONOR. THANK  
9 YOU.

10 R E D I R E C T E X A M I N A T I O N 3:56 P.M.

11 BY MR. WIDENHOUSE:

12 Q. JUST A HALF A DOZEN QUESTIONS, MR. LEONARD. I TAKE IT  
13 FROM YOUR TESTIMONY, THIS WAS A FAIRLY UNUSUAL COURT  
14 APPOINTMENT?

15 A. YEAH.

16 Q. I MEAN, YOU DON'T USUALLY GET APPOINTED, I ASSUME, TO  
17 REPRESENT A WITNESS AS OPPOSED TO --

18 A. THAT'S THE ONLY TIME I'VE EVER BEEN APPOINTED TO  
19 REPRESENT A WITNESS.

20 Q. AND YOUR PLAN WITH RESPECT TO HER WAS WHAT?

21 A. HERE'S WHAT I KNOW I KNOW AND THAT WAS THAT SHE WAS A  
22 MATERIAL WITNESS, SHE HAD BEEN ARRESTED, THAT SHE WAS SUBJECT  
23 TO RECALL, AND I WAS GOING TO REPRESENT HER. AND SO -- AND  
24 THAT MIGHT HAVE BEEN UNUSUAL TO BE APPOINTED TO A MATERIAL  
25 WITNESS, BUT SHE WAS A PRETTY UNUSUAL PERSON HERSELF AND IT

September 24, 2012

Leonard/Redirect

Page 1230

1 WAS KIND OF CHALLENGING.

2 AND SO, YOU KNOW, WE WENT FROM THERE, WHICH INVOLVED  
3 TRYING TO GET HER TO TALK TO ME AND TELL ME THE TRUTH AND STAY  
4 AROUND. I MEAN, I WAS VERY MUCH AFRAID THAT SOMEBODY WOULD GO  
5 PICK HER UP AT THE HOTEL ONE DAY AND SHE WAS GONE AND I'D HAVE  
6 TO EXPLAIN THAT TO JUDGE DUPREE.

7 Q. OKAY. AND WHY WAS IT IMPORTANT FOR HER TO TELL YOU --

8 A. WELL, I WANTED TO KNOW --

9 Q. -- HER INVOLVEMENT?

10 A. I'M SORRY.

11 Q. HER INVOLVEMENT, IF ANY.

12 A. WELL, I WANTED TO KNOW -- THE QUESTION WAS NOT TELL ME  
13 WHAT YOU'VE DONE AND TELL ME ABOUT THESE CRIMES. THE QUESTION  
14 WAS WHAT WILL YOUR TESTIMONY BE IF YOU'RE GOING TO BE RECALLED  
15 AS A WITNESS SO THAT I COULD ADVISE HER ON WHETHER OR NOT SHE  
16 TESTIFIED.

17 AND, YOU KNOW, I PROBABLY WOULD HAVE ADVISED HER ON  
18 HOW TO TESTIFY, HOW TO PRESENT WHATEVER SHE WAS SAYING IF THAT  
19 WAS THE CASE. I MEAN, I JUST NEEDED TO KNOW WHAT SHE WAS  
20 GOING TO SAY SO I COULD ADVISE HER PROPERLY SO SHE WOULD  
21 PRESENT HERSELF THE WAY SHE WANTED TO PRESENT HERSELF.

22 Q. AND ONCE YOU HAD ACCOMPLISHED THAT, ONCE YOU HAD GOTTEN  
23 HER TO TELL YOU WHAT SHE WOULD TESTIFY TO AND YOU HAD COME UP  
24 WITH A PLAN OF ASSERTING A FIFTH AMENDMENT PRIVILEGE, WAS  
25 THERE ANYTHING ELSE FOR YOU TO DO OTHER THAN, IN JUDGE

September 24, 2012

Leonard/Recross

Page 1231

1 DUPREE'S WORDS, CADDY HER AROUND THE REST OF THE WEEK?

2 A. NO, AND I DIDN'T -- YOU KNOW, I WAS GLAD TO HAVE A PLAN  
3 AND THAT WAS IT. AND I DIDN'T WANT TO PUSH MY LUCK WITH THAT  
4 AS FAR AS, YOU KNOW, WHATEVER. I WANTED -- I HAD THIS PLAN,  
5 THIS WAS GOING TO BE THE PLAN, AND THAT WAS IT. AND HE MAY  
6 HAVE USED THE WORD CADDY, HE USED THE WORD BABYSIT TOO.

7 Q. AND MR. BRUCE ASKED YOU WHY YOU WEREN'T CALLING THE STATE  
8 BAR BACK THEN. DID YOU HAVE ANY REASON TO QUESTION WHAT YOUR  
9 DUTY WAS ONCE SHE TOLD YOU THE EXTENT OF WHAT HER TESTIMONY  
10 WOULD BE IF SHE WERE CALLED AGAIN?

11 A. SHE TOLD ME TWO DIFFERENT THINGS AND SO MY -- TO ME, IT  
12 WAS MY DUTY -- I DIDN'T SEE A DUTY TO GO AND SAY, HEY, THIS  
13 WITNESS WHO I DIDN'T REPRESENT IS NOW SAYING SUCH AND SUCH  
14 BECAUSE SHE WAS -- PART OF IT SEEMED TO BE WHAT SHE HAD  
15 TESTIFIED TO BEFORE JUDGE DUPREE OR BEFORE THE JURY.

16 AND SO -- AND SHE HAD A HISTORY, AS I UNDERSTOOD, OF  
17 TELLING PEOPLE THAT SHE WAS THERE AND THEN APPARENTLY ON THE  
18 WITNESS STAND SHE DIDN'T INCRIMINATE HERSELF.

19 Q. OKAY. I TAKE IT THAT AT THAT TIME YOU HAD A CLEAR  
20 UNDERSTANDING OF YOUR DUTY WITH RESPECT TO ATTORNEY-CLIENT  
21 PRIVILEGE?

22 A. YEAH.

23 Q. AND ARE YOU TELLING US THAT YOUR MEMORY IS CLEAR ABOUT  
24 EVERYTHING YOU PUT IN YOUR AFFIDAVIT?

25 A. WHAT I PUT IN MY AFFIDAVIT IS WHAT I AM WILLING TO

September 24, 2012

Leonard/Recross

Page 1232

1 TESTIFY TO.

2 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. NO FURTHER  
3 QUESTIONS.

4 THE COURT: MR. BRUCE.

5 MR. BRUCE: JUST TO FOLLOW UP ON ONE POINT.

6 R E C R O S S - E X A M I N A T I O N 4:02 P.M.

7 BY MR. BRUCE:

8 Q. MR. WIDENHOUSE ASKED YOU IF IT WAS CLEAR TO YOU WHAT YOUR  
9 DUTY WAS WITH RESPECT TO THIS INFORMATION YOU RECEIVED WHEN  
10 YOU GOT IT IN 1979.

11 A. OKAY.

12 Q. IS THAT RIGHT?

13 A. I THINK THAT'S WHAT HIS QUESTION WAS.

14 Q. AND YOU ANSWERED YES?

15 A. YEAH.

16 Q. WHICH WAS TO TELL NO ONE AND TELL HER TO PLEAD THE FIFTH?

17 A. UH-HUH.

18 Q. NOW, IN 2007, WHEN MR. MILES SENT THE INQUIRY TO THE BAR  
19 SAYING WHAT IF AN ATTORNEY LEARNS WHILE THE TRIAL IS STILL  
20 GOING ON THAT HIS CLIENT HAS PERJURED HERSELF AND THAT TRUE  
21 INFORMATION WOULD EXCULPATE THE DEFENDANT AND THEY SAY YOUR  
22 DUTY WAS TO MAKE IT KNOWN TO THE TRIBUNAL BEFORE IT PREJUDICED  
23 THE THIRD PARTY, IN ESSENCE, ISN'T THAT WHAT IT SAYS?

24 A. YEAH.

25 Q. SO, MY QUESTION TO YOU IS HOW DO YOU KNOW YOUR DUTY

September 24, 2012

Leonard/Recross

Page 1233

1 WASN'T THIS? THE SAME THING THAT THE BAR SAID IN 2007, HOW DO  
2 YOU KNOW THAT WASN'T YOUR DUTY IN 1979?

3 A. YOU MEAN TO GO BACK AND CORRECT THE RECORD, YOU KNOW,  
4 LIKE MS. STOECKLEY SAID ONE THING LAST WEEK AND NOW SHE'S  
5 TELLING ME THAT PLUS SOMETHING ELSE AS WELL? IS THAT YOUR  
6 QUESTION?

7 Q. MY QUESTION IS IF YOU CONSULTED NO ONE, NOT THE STATE  
8 BAR, NOT JUDGE DUPREE, NOT ANYONE, HOW DO YOU KNOW IF YOUR  
9 DUTY AS A LAWYER WAS DIFFERENT IN '79, THAN THE STATE BAR SAID  
10 IT WAS IN 2007?

11 A. WELL, YOU KNOW, I'M GOING TO ANSWER THIS WITH WHAT I  
12 UNDERSTAND THE ETHICS WERE AT THE TIME AND HOW THEY'VE  
13 CHANGED. THE ETHICS WERE THAT -- AND THE LAWYERS -- I MEAN,  
14 I'M TELLING YOU ALL SOMETHING YOU KNOW.

15 Q. I'M SORRY?

16 A. I'M TELLING YOU ALL -- I'M TELLING YOU SOMETHING YOU KNOW  
17 I THINK, BUT THE ETHICS WERE YOU COULD NOT LET YOUR CLIENT GET  
18 ON THE WITNESS STAND AND TELL A FALSEHOOD THAT YOU KNEW TO BE  
19 A FALSEHOOD. YOU HAD TO -- MY UNDERSTANDING WAS THAT YOU HAD  
20 TO WITHDRAW IF THAT WAS GOING TO HAPPEN. AND YOU DON'T GO  
21 TELLING THE JUDGE, WELL, I'M GETTING READY TO WITHDRAW BECAUSE  
22 MY CLIENT'S GETTING READY TO TELL YOU SOMETHING THAT'S NOT  
23 TRUE. YOU JUST WITHDRAW. THE JUDGE WOULD GRANT THE MOTION TO  
24 WITHDRAW.

25 AND THE ISSUE OF SOMEBODY CORRECTING THE RECORD OF

September 24, 2012

Leonard/Recross

Page 1234

1 SOMEBODY WHO YOU DID NOT REPRESENT AT THE TIME THEY MADE --  
2 YOU KNOW, YOU'RE A SUBSEQUENT ATTORNEY AND YOU WERE NOT  
3 REPRESENTING THEM WHEN THEY MADE THAT MISREPRESENTATION AND  
4 NOW YOU ARE REPRESENTING THEM.

5 AND WHAT I LEARNED FROM THE STATE BAR IS YOU NEED TO  
6 LOOK AT IT AS CONTINUING REPRESENTATION. THIS HABEAS -- I  
7 DON'T -- I TAKE IT THIS IS A HABEAS ACTION HERE, BUT IT'S A  
8 CONTINUATION OF THE SAME 75-CR CASE. AND I WAS TOLD THE WAY  
9 TO HANDLE IT IN THAT SITUATION EVEN WHEN YOUR CLIENT IS DEAD  
10 THAT YOU GET -- YOU SHOULD NOT TESTIFY, BUT YOU SHOULD LET THE  
11 JUDGE KNOW, YOU KNOW -- YOU KNOW, LET HIM KNOW THAT YOU'VE GOT  
12 A CONFLICT RIGHT THERE.

13 Q. YOU WERE TOLD THAT IN 2007?

14 A. I THINK SO.

15 Q. BUT YOU DIDN'T EVEN MAKE AN INQUIRY IN 1979?

16 A. NO.

17 MR. BRUCE: NO FURTHER QUESTIONS.

18 THE COURT: MR. WILLIAMS, DO YOU WANT TO MOVE IN  
19 YOUR EXHIBIT 5112 AND 5113?

20 MR. WILLIAMS: YES, SIR, YOUR HONOR.

21 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

22 (DEFENSE EXHIBITS NUMBER 5112 AND 5113  
23 WERE OFFERED AND ADMITTED INTO EVIDENCE.)

24 MR. WILLIAMS: THANK YOU, YOUR HONOR. AND IF I  
25 COULD BE HEARD JUST BRIEFLY ON THAT POINT AS WELL. YOUR

September 24, 2012



Leonard/Recross

Page 1235

1 HONOR, THE GOVERNMENT EARLIER TODAY ADMITTED GOVERNMENT  
2 EXHIBIT 6075, WHICH WAS A PSYCHOLOGICAL REPORT ON DR.  
3 MACDONALD FROM HIRSCH SILVERMAN, A GOVERNMENT HIRED EXPERT  
4 BACK IN 1979. THIS WAS NOT ON THEIR EXHIBIT LIST AND SO WE  
5 DID NOT KNOW ABOUT IT. WE'RE NOT OBJECTING TO IT ON THAT  
6 BASIS. I UNDERSTAND THE EVIDENCE AS A WHOLE.

7 BUT IN FAIRNESS, YOUR HONOR, WE WOULD PROPOSE TO  
8 OFFER DEFENSE EXHIBIT 5114, A REPORT FROM DR. JAMES MACK FROM  
9 JUNE OF 1979, SAYING THAT DR. MACDONALD SHOWED NO SIGNS OF  
10 PSYCHOSIS OR PSYCHOPATHY AND ALSO THAT HE SHOWED NO INDICATION  
11 OF A MOTIVATION FOR TAKING THE LIVES OF HIS WIFE AND CHILDREN.  
12 YOUR HONOR, WE WOULD JUST CONTEND IN FAIRNESS.

13 THE COURT: THAT'S ADMITTED.

14 (DEFENSE EXHIBIT NUMBER 5114 WAS  
15 OFFERED AND ADMITTED INTO EVIDENCE.)

16 MR. WILLIAMS: THANK YOU, AND I'LL HAVE COPIES FOR  
17 THE PARTIES WHEN I GET TO A PRINTER.

18 THE COURT: ALL RIGHT. NOW, COUNSEL, HOW LONG DO  
19 YOU WANT TO ARGUE THE CASE?

20 MR. BRUCE: YOUR HONOR, WE WOULD LIKE A VERY LONG  
21 TIME. WE -- NOT MUCH HAS BEEN PRESENTED ON THE UNSOURCED HAIR  
22 AND OUR PLAN ON THAT HAS BEEN TO HAVE MR. MURTAGH ARGUE AT  
23 SOME LENGTH TO THE COURT ABOUT, NUMBER ONE, SOME OF THE TRIAL  
24 EVIDENCE, WHICH IS PART OF THE EVIDENCE AS A WHOLE AND THE  
25 UNSOURCED HAIR. AND WE THINK THAT MAY TAKE A COUPLE OF HOURS.

September 24, 2012

Leonard/Recross

Page 1236

1 THE COURT: YES, I'VE READ YOUR EVIDENCE IN THAT  
2 REGARD VERY CAREFULLY, YOUR AFFIDAVITS, ET CETERA.

3 MR. BRUCE: ALL RIGHT. AND THEN WE ALSO WOULD LIKE  
4 TO ARGUE ON THE BRITT CLAIM. SO, WE WOULD ASK FOR THREE  
5 HOURS, YOUR HONOR.

6 THE COURT: MR. WIDENHOUSE.

7 MR. WIDENHOUSE: I CERTAINLY WON'T NEED THREE HOURS,  
8 MAYBE AN HOUR AND A HALF.

9 THE COURT: YOU WON'T NEED THREE HOURS?

10 MR. WIDENHOUSE: NO.

11 THE COURT: WELL, I'M GOING TO GIVE YOU EACH THREE  
12 HOURS SO YOU CAN USE IT IF YOU NEED IT.

13 MR. WIDENHOUSE: I ASSUME YOU WON'T BE MAD IF I  
14 DON'T TAKE THREE HOURS.

15 THE COURT: WON'T DO THAT AT ALL. DO YOU ALL WANT  
16 TO ARGUE THIS TOMORROW OR DO YOU WANT TO HAVE A DAY'S REST IN  
17 BETWEEN YOUR ARGUMENTS?

18 MR. BRUCE: THE GOVERNMENT WOULD LIKE TO DO IT  
19 TOMORROW, YOUR HONOR.

20 MR. WIDENHOUSE: THAT'S FINE, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 MR. WIDENHOUSE: YOUR HONOR, I WANT TO MAKE SURE IF  
23 I'M SUPPOSED TO OPEN, I ASSUME I CAN RESERVE SOME OF MY TIME  
24 TO RESPOND?

25 THE COURT: YES, SIR.

September 24, 2012

Leonard/Recross

Page 1237

1 MR. WIDENHOUSE: THANK YOU.

2 MR. BRUCE: YOUR HONOR, WE HAVE ONE MORE EXHIBIT TO  
3 OFFER IF WE COULD. THIS IS A COMPILATION -- THIS IS A  
4 COMPILATION OF JEFFREY MACDONALD'S TESTIMONY FROM THE TRIAL  
5 AND WE WANT TO OFFER IT AS EVIDENCE AS A WHOLE. IT'S  
6 GOVERNMENT EXHIBIT 6073.

7 THE COURT: WELL, I'LL CERTAINLY ACCEPT IT.

8 (GOVERNMENT EXHIBIT NUMBER 6073 WAS  
9 OFFERED AND ADMITTED INTO EVIDENCE.)

10 MR. BRUCE: ALL RIGHT. THANK YOU, YOUR HONOR.

11 THE COURT: NOW, COUNSEL -- YOU MAY STEP DOWN, MR.  
12 LEONARD.

13 THE WITNESS: THANK YOU.

14 MR. WIDENHOUSE: AND MAY HE BE EXCUSED, YOUR HONOR?

15 MR. BRUCE: NO OBJECTION.

16 THE COURT: YES, SIR.

17 MR. WEST: THANK YOU, YOUR HONOR.

18 THE COURT: I WANT TO READ THE MANDATE FROM THE  
19 FOURTH CIRCUIT BACK TO THIS COURT. THUS, THE COURT MUST MAKE  
20 ITS SECTION 2244(2)(b)(1) OR 2255(h) DETERMINATION, UNBOUNDED  
21 BY THE RULES OF ADMISSIBILITY THAT WOULD GOVERN AT TRIAL,  
22 BASED ON ALL OF THE EVIDENCE, INCLUDING THAT ALLEDGED TO HAVE  
23 BEEN ILLEGALLY ADMITTED AND THAT TENABLY CLAIMED TO HAVE BEEN  
24 WRONGLY EXCLUDED OR TO HAVE BECOME AVAILABLE ONLY AFTER THE  
25 TRIAL OR, TO SAY IT ANOTHER WAY, THE COURT MUST CONSIDER ALL

September 24, 2012

Leonard/Recross

Page 1238

1 OF THE EVIDENCE, OLD AND NEW, INCRIMINATING AND EXCULPATORY,  
2 WITHOUT REGARD TO WHETHER IT WOULD NECESSARILY BE ADMITTED  
3 UNDER THE EVIDENTIARY RULES. THAT'S A VERY BROAD, BROAD  
4 STATEMENT.

5 IN DIRECTING MR. LEONARD TO TESTIFY, I'VE CONSIDERED  
6 THAT LANGUAGE AND I'VE ALSO CONSIDERED THE FACT THAT THE  
7 CLIENT, MS. STOECKLEY, IS DEAD, HER MOTHER AND FATHER ARE  
8 DEAD, HER BROTHER HAS SUGGESTED THAT IT BE ADMITTED.

9 WHEREAS, THE MOVANT, MR. MACDONALD, HAS THREE LIFE  
10 SENTENCES TO EXPIRE AHEAD OF HIM.

11 IT IS MY BEST JUDGMENT THAT THOSE EXTRAORDINARY  
12 CONDITIONS REQUIRE THE PRIVILEGE TO BE WAIVED AT THIS TIME.

13 I THINK THAT THE QUESTION OF INNOCENCE TRUMPS OTHER  
14 ASPECTS OF THE PRIVILEGE, PARTICULARLY WHEN I DO NOT SEE HOW  
15 THE CLIENT OR HER FAMILY IS GOING TO BE HARMED.

16 THE FOURTH CIRCUIT MAY WELL THINK DIFFERENTLY, I  
17 UNDERSTAND THAT, BUT I WANTED YOU ALL TO KNOW THE REASONS FOR  
18 MY JUDGMENT IN THAT REGARD.

19 NOW, IS THERE ANYTHING ELSE WE NEED TO TAKE UP  
20 TONIGHT, COUNSEL?

21 MR. WIDENHOUSE: NO, YOUR HONOR.

22 MR. BRUCE: NOT FROM THE GOVERNMENT, YOUR HONOR. DO  
23 WE START AT NINE O'CLOCK TOMORROW MORNING?

24 THE COURT: YES, SIR.

25 (PAUSE.)

September 24, 2012

Leonard/Recross

Page 1239

1 THE COURT: NOW, I'LL JUST READ THIS. THIS IS --  
2 WELL, AS I GATHER IT, IT DESCRIBES THE GATEWAY CLAIM. IT SAYS  
3 THE FACTS UNDERLYING THE CLAIM IF PROVEN AND VIEWED IN THE  
4 LIGHT OF THE EVIDENCE AS A WHOLE WOULD BE SUFFICIENT TO  
5 ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT BUT FOR  
6 CONSTITUTIONAL ERROR NO REASONABLE FACT FACTOR WOULD HAVE  
7 FOUND THE APPLICANT GUILTY OF THE UNDERLYING OFFENSE.

8 DO YOU AGREE WITH THAT?

9 MR. WIDENHOUSE: YES, YOUR HONOR.

10 THE COURT: MR. BRUCE, DO YOU AGREE WITH THAT?

11 MR. BRUCE: YES, YOUR HONOR.

12 THE COURT: AND THAT'S WHAT WE'RE HERE TO DETERMINE,  
13 IS THAT CORRECT?

14 MR. BRUCE: YES, YOUR HONOR.

15 MR. WIDENHOUSE: (NODS HEAD.)

16 THE COURT: I HAVE HAD DIFFERENT PEOPLE TRY TO  
17 EXPLAIN TO ME A GATEWAY CLAIM TO ACTUAL INNOCENCE, BUT MY  
18 UNDERSTANDING OF IT CONFORMS TO THE LANGUAGE THAT I READ TO  
19 YOU. I JUST WANT TO BE SURE THAT YOU ALL -- YOU'RE ON THE  
20 SAME PAGE.

21 MR. WIDENHOUSE: WELL, THAT'S WHAT THE FOURTH  
22 CIRCUIT SAYS. SO, I THINK WE'RE ON THE SAME PAGE.

23 THE COURT: THANK YOU, MR. WIDENHOUSE. WELL,  
24 COUNSEL, I'VE ENJOYED WORKING WITH YOU AND WE'LL SEE YOU  
25 TOMORROW MORNING.

September 24, 2012

Leonard/Recross

Page 1240

1 MR. BRUCE: THANK YOU, YOUR HONOR.

2 THE COURT: TAKE A RECESS TILL NINE O'CLOCK.

3 (WHEREUPON, THESE PROCEEDINGS RECESSED AT 4:14 P.M.,  
4 TO RECONVENE AT 9:00 A.M., ON SEPTEMBER 25, 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 24, 2012

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 25, 2012  
 JEFFREY R. MACDONALD, . Wilmington, NC  
 Defendant/Movant .  
 . . . . .

EVIDENTIARY HEARING  
BEFORE THE HONORABLE JAMES C. FOX  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOHN S. BRUCE, FIRST ASST. U.S. ATTORNEY  
LESLIE K. COOLEY, ASST. U.S. ATTORNEY  
UNITED STATES ATTORNEY'S OFFICE  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27601

BRIAN M. MURTAGH, TRIAL ATTORNEY  
UNITED STATES DEPARTMENT OF JUSTICE  
950 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20530

For Defendant/Movant: M. GORDON WIDENHOUSE, JR., ESQUIRE  
RUDOLF, WIDENHOUSE & FIALKO  
312 WEST FRANKLIN STREET  
CHAPEL HILL, NC 27561

KEITH A. WILLIAMS, ESQUIRE  
LAW OFFICES OF KEITH A. WILLIAMS P.A.  
321 SOUTH EVANS STREET, SUITE 103  
GREENVILLE, NC 27835

Court Reporter: STACY SCHWINN, CCR, CVR-M  
P.O. BOX 1611  
WILMINGTON, NC 28402  
(910) 431-4502

Proceedings recorded by stenomask, transcript produced from dictation.

T A B L E O F C O N T E N T S

<u>CLOSING ARGUMENTS</u>	<u>PAGE</u>
MR. WIDENHOUSE	1243
MR. MURTAGH	1297
MR. BRUCE	1351
MR. WIDENHOUSE	1396

EXHIBITS

<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - ADMITTED</u>
5115	LETTER FROM JUDGE DUPREE TO MS. ROUDER	1243

BENCH CONFERENCES

PAGE  
NONE

September 25, 2012



P R O C E E D I N G S

9:00 A.M.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, EVERYONE. PLEASE BE SEATED. YOU HAVE RESTED, MR. WIDENHOUSE?

MR. WIDENHOUSE: I'M SORRY?

THE COURT: YOU HAVE RESTED YOUR CASE?

MR. WIDENHOUSE: YES, SIR.

THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR FROM YOU.

MR. WIDENHOUSE: WELL, I GUESS I HAVEN'T COMPLETELY. I WILL ALERT THE COURT THAT WE DID GET A COPY LAST NIGHT OF THE LETTER THAT WENDY ROUDER REFERRED TO THAT JUDGE DUPREE HAD WRITTEN HER. WE SENT A COPY TO THE GOVERNMENT WHEN WE GOT IT LAST NIGHT. AND WE'VE MARKED THAT AS EXHIBIT 5115. AND SO WE WOULD OFFER THAT AS PART OF THE EVIDENCE AS A WHOLE.

THE COURT: ALL RIGHT. IT'S ADMITTED. NOW, YOU'VE RESTED?

(DEFENSE EXHIBIT NUMBER 5115 WAS OFFERED AND ADMITTED INTO EVIDENCE.)

MR. WIDENHOUSE: MAY IT PLEASE THE COURT, THIS CASE HAS BEEN AND UNDOUBTEDLY WILL CONTINUE TO BE ONE OF FASCINATION AND PUBLIC CURIOSITY. IT HAS SPAWNED BOOKS. IT HAS SPAWNED MOVIES AND ENDLESS COMMENTARY.

IT IS MOST CRITICAL TO OUR CLIENT, JEFFREY MACDONALD, AND SIMILARLY IT IS IMPORTANT TO THE GOVERNMENT.

September 25, 2012

1 BUT THE TASK FOR THE COURT IS TO SET ASIDE THE HYPE AND THE  
2 CURIOSITY AND FOCUS ON THE FACTUAL AND LEGAL ISSUES IN A CALM  
3 AND SOBER WAY.

4 AS DIFFICULT AS IT MAY BE, THE COURT MUST TREAT THIS  
5 MATTER AS AN ORDINARY, RUN OF THE MILL CRIMINAL CASE, ASSUMING  
6 THERE IS ANY SUCH THING AS AN ORDINARY, RUN OF THE MILL  
7 CRIMINAL CASE.

8 WHEN ALL IS SAID AND DONE, THE COURT MUST EVALUATE  
9 THE EVIDENCE SUPPORTING THE TWO CLAIMS INVOLVED HERE IN THE  
10 CONTEXT OF THE EVIDENCE AS A WHOLE, AS IT WOULD IN A CASE  
11 WHERE THERE'S NO BOOKS, NO GLARE OF MEDIA LIGHTS, NO  
12 OUTPOURING OF PUBLIC CURIOSITY. IT IS A DAUNTING TASK, BUT  
13 ONE THAT WE KNOW THE COURT WILL PERFORM.

14 AS YOU KNOW, YOUR HONOR, WE HAVE BEEN HERE FOR THE  
15 LAST WEEK AND CHANGE ON TWO BASIC CLAIMS, WHAT WE NOW CALL THE  
16 UNSOURCED HAIRS CLAIM AND THE BRITT CLAIM, ALL WITHIN THE  
17 AMBIT OF THE EVIDENCE AS A WHOLE.

18 AND AS I NOTED IN MY OPENING TO YOU LAST WEEK, THE  
19 FOURTH CIRCUIT REMINDED US OF WHAT JUDGE MURNAGHAN SAID ABOUT  
20 THIS CASE WHEN IT WENT UP ON DIRECT APPEAL, THAT IT PROVOKED A  
21 STRONG UNEASINESS IN HIM. AND HE POINTED OUT THAT THE WAY IN  
22 WHICH A FINDING OF GUILT IS REACHED IS, IN OUR ENDURING SYSTEM  
23 OF LAW, AT LEAST AS IMPORTANT AS THE FINDING OF GUILT ITSELF,  
24 AND MACDONALD WOULD HAVE HAD A FAIRER TRIAL IF THE STOECKLEY  
25 RELATED TESTIMONY WOULD HAVE BEEN ADMITTED.

September 25, 2012

1 WE NOW KNOW FROM HEARING WENDY ROUDER TESTIFY AND  
2 MENTION ON CROSS-EXAMINATION THAT SHE HAD RECEIVED A LETTER  
3 FROM JUDGE DUPREE, WHICH WE'VE OFFERED INTO EVIDENCE AS  
4 DEFENDANT'S EXHIBIT 5115, WHERE HE TELLS HER THAT HE WAS  
5 CONFIDENT THE JURY WAS GOING TO ACQUIT.

6 SO, WE HAVE COMMENTS FROM BOTH AN APPELLATE JUDGE  
7 AND THE TRIAL JUDGE, SUGGESTING AN UNEASINESS, A NOTION OF AT  
8 LEAST THE CLOSENESS OF THE EVIDENCE WHEN IT WAS PRESENTED AT  
9 TRIAL.

10 HAVING HEARD THE TESTIMONY OVER THE LAST SEVERAL  
11 DAYS, I THINK JUDGE MURNAGHAN WOULD BE MORE THAN UNEASY, FOR  
12 NOW THERE IS MORE THAN THE ABSENCE OF STOECKLEY RELATED  
13 TESTIMONY. NOW, THERE'S THE ABSENCE OF TESTIMONY BY STOECKLEY  
14 HERSELF. AND WE FOUND THAT DRAMATICALLY ILLUSTRATED  
15 YESTERDAY, I THINK, IN THE TESTIMONY OF JERRY LEONARD.

16 OUR POSITION IS BOTH THE BRITT CLAIM AND THE  
17 UNSOURCED HAIRS CLAIM TAKEN TOGETHER AND SEPARATELY IN THE  
18 CONTEXT OF THE EVIDENCE AS A WHOLE NOW HAS SHOWN BY CLEAR AND  
19 CONVINCING EVIDENCE THAT NO REASONABLE JUROR WOULD HAVE FOUND  
20 JEFFREY MACDONALD GUILTY IF THAT JURY HAD HEARD THIS NEW  
21 EVIDENCE, BOTH THE UNSOURCED HAIRS EVIDENCE AND THE EVIDENCE  
22 REGARDING WHAT MS. STOECKLEY TOLD HER LAWYER IN THE -- UNDER  
23 THE UMBRELLA OF THE ATTORNEY-CLIENT PRIVILEGE AND TOLD HER  
24 MOTHER IN A SITUATION WHERE SHE BELIEVED SHE WAS DYING.

25 WE AGREED YESTERDAY, I THINK, ON THE STANDARD THAT

1 THE FOURTH CIRCUIT HAS DIRECTED US TO USE. AND AS I  
2 UNDERSTAND IT, THE STANDARD TELLS US THAT -- OR THE TRACKING  
3 THAT THE FOURTH CIRCUIT TELLS US WE MUST FOLLOW IS THAT WE  
4 HAVE TO PRODUCE SOME NEW EVIDENCE THAT NO REASONABLE FACT  
5 FINDER WOULD HAVE FOUND JEFFREY MACDONALD GUILTY OF THE  
6 OFFENSE IF THEY HAD HEARD THE EVIDENCE. PUT ANOTHER WAY, NO  
7 REASONABLE JUROR WOULD HAVE FOUND JEFFREY MACDONALD GUILTY  
8 BEYOND A REASONABLE DOUBT IF THEY HEARD THAT EVIDENCE.

9 IT MEANS THAT THE NEW EVIDENCE, THE BRITT CLAIM,  
10 PARTICULARLY WHAT WE HEARD YESTERDAY FROM JERRY LEONARD, AND  
11 THE UNSOURCED HAIRS MUST SHOW BY CLEAR AND CONVINCING EVIDENCE  
12 COMPELLING EVIDENCE OF A REASONABLE DOUBT. AND I THINK THAT'S  
13 WHAT WE HAVE SHOWN THROUGH OUR EVIDENCE.

14 NOW, I THINK WE'VE TRIED TO KEEP THE FOCUS OF THE  
15 HEARING CLEAR. I THINK WE TRIED TO KEEP IT ON THOSE TWO  
16 CLAIMS.

17 IF WE HAD TRIED TO PUT ON LIVE WITNESSES ABOUT EVERY  
18 PIECE OF EVIDENCE THAT MIGHT BE COMPRISED IN THIS NOTION OF  
19 THE EVIDENCE AS A WHOLE, IF THE GOVERNMENT AND THE DEFENSE HAD  
20 DONE THAT, WE'D BE HERE UNTIL SOME TIME IN 2013 TRYING TO GET  
21 ALL THAT EVIDENCE IN.

22 I DON'T THINK THAT'S WHAT THE HEARING WAS ABOUT. I  
23 THINK IT WAS ABOUT PUTTING ON EVIDENCE SO YOU COULD ASSESS  
24 CREDIBILITY ABOUT THOSE TWO CLAIMS AND THEN YOU COULD WEIGH  
25 THOSE TWO CLAIMS WITHIN THE CONTEXT OF THE EVIDENCE AS A

September 25, 2012

1 WHOLE, WHICH WAS WHY WE HAD ASKED TO BE ALLOWED TO DO A POST-  
2 TRIAL MEMORANDUM PULLING WHAT WE BELIEVE TO BE THE EVIDENCE AS  
3 A WHOLE TOGETHER AND, OF COURSE, THE GOVERNMENT WOULD BE ABLE  
4 TO DO THE SAME. THEN THE COURT CAN LOOK AT THOSE DOCUMENTS,  
5 EVALUATE THIS EVIDENCE AS A WHOLE, AND MAKE A DETERMINATION OF  
6 WHETHER WE HAVE PROVED OUR CLAIM IN THIS CASE. AND, OF  
7 COURSE, WE DO BEAR THE BURDEN OF PROOF. I CERTAINLY  
8 ACKNOWLEDGE THAT.

9 DR. MACDONALD HAS ALWAYS STATED FROM THE VERY  
10 BEGINNING THROUGH TODAY THAT FOUR INTRUDERS CAME INTO HIS  
11 HOUSE ON THAT NIGHT.

12 THERE WAS SOME EVIDENCE OF INTRUDERS THAT WAS  
13 PRESENTED AT TRIAL. WE NOW KNOW FROM THE TESTIMONY OF JERRY  
14 LEONARD AND GENE STOECKLEY THAT HELENA STOECKLEY SAID IN TWO  
15 SITUATIONS, THAT I WOULD SUBMIT TO THE COURT, EXHIBIT THE  
16 HIGHEST DEGREE OF TRUSTWORTHINESS, A STATEMENT TO ONE'S  
17 ATTORNEY CLOAKED WITH THE PROMISE OF PROTECTION OF  
18 CONFIDENTIALITY, WHICH I THINK WHATEVER ONE MAY SAY ABOUT  
19 JERRY LEONARD'S APPROACH IN THIS CASE AND HIS TESTIMONY  
20 YESTERDAY, HE HONORED THE ATTORNEY-CLIENT PRIVILEGE. HE HAD  
21 THAT INFORMATION IN 1979. HE DIDN'T DISCLOSE IT UNTIL YOU  
22 DIRECTED HIM TO. AND IT WAS A DECISION, I THINK, YOU DID NOT  
23 TAKE LIGHTLY TO REMOVE THE ATTORNEY-CLIENT PRIVILEGE. AND I  
24 CERTAINLY WOULD AGREE THAT IT'S NOT SOMETHING THAT SHOULD BE  
25 TAKEN LIGHTLY BECAUSE I THINK THE ATTORNEY-CLIENT PRIVILEGE IS

September 25, 2012

1 VIRTUALLY SACRED TO THOSE WHO PRACTICE LAW BECAUSE IN ORDER  
2 FOR US TO BE ABLE TO REPRESENT SOMEONE EFFECTIVELY, WE HAVE TO  
3 BE ABLE -- WE HAVE TO HAVE THEM BE ABLE TO TELL US THE TRUTH.  
4 WE HAVE TO KNOW WHAT THEY KNOW. WE HAVE TO KNOW THE FACTS SO  
5 THAT WE CAN PROVIDE EFFECTIVE REPRESENTATION.

6 IT'S THE SAME WAY WE TALK ABOUT A STATEMENT IN THE  
7 COURSE OF MEDICAL DIAGNOSIS OR TREATMENT BEING INHERENTLY  
8 TRUSTWORTHY. GENERALLY SPEAKING, PEOPLE AREN'T GOING TO LIE  
9 TO THEIR DOCTOR ABOUT WHAT'S GOING ON BECAUSE THEY WANT THEIR  
10 DOCTOR TO TREAT SOMETHING THAT'S WRONG WITH THEM. AND IN  
11 ORDER TO ACHIEVE THAT, WE BELIEVE, THE LAW BELIEVES, THAT A  
12 PATIENT WOULD TELL THE DOCTOR THE TRUTH SO THAT THEY WOULD GET  
13 THAT KIND OF TREATMENT.

14 THE SAME THING IS TRUE ABOUT THE ATTORNEY-CLIENT  
15 PRIVILEGE, WE PROTECT IT, WE HONOR IT, BECAUSE WE WANT CLIENTS  
16 TO BE ABLE TO TELL THEIR LAWYERS THE TRUTH WITHOUT THE FEAR  
17 THAT WHAT THEY TELL THEIR LAWYER WILL BE DISCLOSED.

18 SO, WE THINK THAT WHAT MS. STOECKLEY TOLD MR.  
19 LEONARD IN 1979, THE MOST IMPORTANT TIME IN THE TIMELINE OF  
20 THIS CASE, HAS THIS AMBIT OF TRUSTWORTHINESS ON TOP OF IT.

21 NOW, SHE MENTIONS THE BROKEN HOBBY HORSE. AND WE  
22 HAVE HEARD TIME AND TIME AGAIN ABOUT WHETHER THE HOBBY HORSE  
23 WAS BROKEN OR NOT, WHICH I THINK REALLY DOESN'T MAKE A WHOLE  
24 LOT OF DIFFERENCE.

25 THE POINT IS NOT WHETHER SHE WOULD HAVE TESTIFIED

1 ABOUT A HOBBY HORSE AND WHETHER IT WAS BROKEN OR NOT AND  
2 WHETHER -- IF SHE DID AND WAS WRONG ABOUT THAT, THAT MIGHT BE  
3 FODDER FOR IMPEACHMENT, BUT THE IMPORTANCE OF HER STATEMENT TO  
4 MR. LEONARD IS I WAS THERE. THOSE THREE WORDS, I WAS THERE.

5 AND IN THE WORDS OF ONE OF THE GOVERNMENT'S OWN  
6 WITNESSES, MR. MCGINNISS, THAT WOULD HAVE BEEN THE HOLY GRAIL  
7 FOR THE DEFENSE. THOSE WERE HIS WORDS, THE HOLY GRAIL.

8 AND, IN FACT, IT IS THE HOLY GRAIL FOR THE DEFENSE  
9 IN THIS CASE BECAUSE IT WOULD BE EYEWITNESS EVIDENCE,  
10 FIRSTHAND EVIDENCE, OF THERE BEING INTRUDERS WHICH WOULD HAVE  
11 SUPPORTED DR. MACDONALD'S CLAIM ABOUT HOW IT HAD HAPPENED.

12 SO, I THINK MR. MCGINNISS, WHATEVER ELSE HE SAID, I  
13 WOULD AGREE HE'S RIGHT ABOUT THAT, THAT THE STATEMENTS THAT  
14 WE'VE HEARD MS. STOECKLEY GAVE TO HER LAWYER IN 1979, TO HER  
15 MOTHER WHEN SHE THOUGHT SHE WAS DYING, WOULD HAVE, IN FACT,  
16 BEEN THE HOLY GRAIL.

17 IF THE JURY HAD HEARD THOSE THREE WORDS, THE  
18 CIRCUMSTANTIAL EVIDENCE OF INTRUDERS THAT WAS EXISTING AT  
19 TRIAL, EVEN BEFORE THAT CIRCUMSTANTIAL EVIDENCE WAS AUGMENTED  
20 BY OTHER EVIDENCE THAT HAS BEEN AMASSED SINCE TRIAL, WHICH  
21 WILL BE IN THE -- ROLLED INTO THE AMBIT OF THE EVIDENCE AS A  
22 WHOLE THAT YOU WILL BE CONSIDERING AND WEIGHING AGAINST, IT'S  
23 CATALOGED IN ALL THOSE NOTEBOOKS THAT THE COURT WILL BE ABLE  
24 TO PERUSE THROUGH AT ITS LEISURE, NOW AUGMENTED FURTHER BY THE  
25 DNA EVIDENCE IN THIS CASE, THE UNSOURCED HAIRS, THE THREE

September 25, 2012

1 UNSOURCED HAIRS, UNDER THOSE CIRCUMSTANCES, NO REASONABLE JURY  
2 WOULD HAVE CONVICTED DR. MACDONALD. THERE WOULD HAVE BEEN  
3 DIRECT, EYEWITNESS TESTIMONY ABOUT INTRUDERS.

4 I MAY NOT AGREE WITH EVERYTHING THAT MR. MCGINNISS  
5 SAID. I TOOK A LITTLE BIT OF OFFENSE AT THE NOTION THAT NORTH  
6 CAROLINIANS SEEM TO BE HAYSEEDS AND HICKS, I GUESS, IN HIS  
7 ESTIMATION.

8 YOU KNOW, I GREW UP A METHODIST PREACHER'S SON AND A  
9 SON OF A FIRST GRADE SCHOOL TEACHER, AND I LIVED ALL OVER THE  
10 HIGHWAYS AND BYWAYS OF WESTERN NORTH CAROLINA, MOVING EVERY  
11 THREE OR FOUR YEARS. A LOT OF MY FRIENDS PRIMED A LOT OF  
12 TOBACCO WHEN I WAS IN ELEMENTARY SCHOOL AND JUNIOR HIGH  
13 SCHOOL. AND, I GUESS, THOSE ARE THE HAYSEEDS AND HICKS THAT  
14 WE WERE HEARING ABOUT. I DON'T AGREE WITH THAT, BUT I DO  
15 AGREE WITH HIS ASSESSMENT ABOUT HELENA STOECKLEY'S STATEMENT I  
16 WAS THERE, THAT WOULD HAVE BEEN THE HOLY GRAIL IN THIS CASE.  
17 AND HEARING THAT, NO REASONABLE JUROR WOULD HAVE CONVICTED.

18 WITH THOSE OBSERVATIONS IN MIND, I WANT TO TALK FOR  
19 A FEW MINUTES ABOUT THE UNSOURCED HAIRS OR THE DNA CLAIM IN  
20 THIS CASE.

21 AND, AGAIN, AS I SAID IN MY OPENING STATEMENT, I  
22 THINK THE DNA ISSUE AS WELL AS THE BRITT CLAIM ARE ACTUALLY  
23 VERY SIMPLE AND STRAIGHTFORWARD.

24 WE STIPULATED TO THE DNA BECAUSE IT SHOWS WHAT IT  
25 SHOWS. YOU KNOW, PEOPLE EXAMINED WHAT THEY EXAMINED. NOBODY

September 25, 2012



1 DISPUTES THAT THEY EXAMINED CERTAIN ITEMS. NOBODY DISPUTES  
2 THAT THEY DID THE TEST CORRECTLY. NOBODY DISPUTES THAT THE  
3 ANALYSIS THAT WAS BROUGHT TO BEAR AFTER THE TESTING SHOWS WHAT  
4 THE ANALYSIS SHOWED. SO, WE DIDN'T HAVE TO HAVE A WEEK OR TWO  
5 OF TESTIMONY FROM THE VARIOUS PEOPLE SAYING, WELL, THIS IS  
6 WHAT I GOT. I BROUGHT IT TO SO AND SO AND THEN SO AND SO  
7 BROUGHT IT SO AND SO AND THEN SO AND SO PUT IT UNDER THE  
8 MICROSCOPE AND THEN THEY RAN IT THROUGH THESE PROCEDURES AND  
9 HERE'S WHAT THEY CAME UP WITH BECAUSE WE WERE ABLE TO  
10 STIPULATE FOR THE COURT WHAT IT SHOWS.

11 BUT BY A LITTLE BIT OF BACKGROUND, YOU'LL RECALL,  
12 YOUR HONOR, THAT IN 1997 DR. MACDONALD FILED A MOTION TO  
13 REOPEN THE PROCEEDINGS IN THIS CASE AND THEY INCLUDED A  
14 REQUEST FOR DNA TESTING. AND THIS COURT TRANSFERRED THE  
15 REQUEST TO THE FOURTH CIRCUIT, TREATING IT AS A REQUEST FOR A  
16 PREFILING AUTHORIZATION TO DO A SUCCESSOR 2255. THE FOURTH  
17 CIRCUIT GRANTED THAT REQUEST.

18 THE DNA TESTING WAS SUBSEQUENTLY DONE BY THE ARMED  
19 FORCES DNA IDENTIFICATION LABORATORY, WHICH WE REFER TO AS  
20 AFDIL.

21 THERE WERE 28 SPECIMENS THAT WERE AVAILABLE FOR  
22 TESTING. THEY WERE COMPARED TO THE KNOWN DNA SAMPLES OF  
23 JEFFREY MACDONALD, COLETTE MACDONALD, KIMBERLEY MACDONALD AND  
24 KRISTEN MACDONALD. I THINK EVENTUALLY COMPARED TO SAMPLES  
25 FROM HELENA STOECKLEY AND GREG MITCHELL AS WELL.

September 25, 2012

1           THREE OF THE 28 COULDN'T BE MATCHED TO ANYBODY,  
2 ANYBODY THAT WAS RELEVANT. THEY'RE IDENTIFIED BY LAB NUMBERS  
3 THAT AFDIL ASSIGNED TO THEM -- AND I THINK I'VE GOT THIS RIGHT  
4 -- 91A, 58A.1, 75A. THOSE ARE THE THREE UNSOURCED HAIRS THAT  
5 ARE AT ISSUE IN THIS CASE FROM THE DEFENSE PERSPECTIVE.

6           AND BY UNSOURCED HAIRS, ALL THAT MEANS IS THEY  
7 DIDN'T BELONG TO ANYONE IN THE MACDONALD FAMILY. THAT'S WHAT  
8 IT MEANS BY UNSOURCED. SO WE HAVE THREE OF THOSE.

9           AND I WANT TO TALK BRIEFLY ABOUT THOSE THREE. THE  
10 MOST IMPORTANT IS 91A. AND I'M GOING TO TAKE THE COURT  
11 THROUGH SOME SHORT PIECES OF TRANSCRIPT SO THAT YOU'LL  
12 UNDERSTAND WHAT WE THINK IS IMPORTANT ABOUT 91A.

13           DR. GEORGE GAMMEL WAS THE PATHOLOGIST WHO DID THE  
14 AUTOPSY ON COLETTE MACDONALD. HE DESCRIBED THE PROCESS OF  
15 TAKING FINGERNAILS SCRAPINGS AT AN AUTOPSY. AND ON TRIAL  
16 TRANSCRIPT PAGE 2533 HE MADE THIS STATEMENT UNDER OATH, I DID  
17 WHAT WOULD BE A ROUTINE FINGERNAIL SCRAPING. I TOOK A  
18 FINGERNAIL FILE AND SCRAPED OUT ANY MATERIAL THAT WAS THERE.  
19 I THOUGHT ON THE LEFT SMALL FINGER THERE MIGHT HAVE BEEN A  
20 LITTLE FRAGMENT OF SKIN THERE AND I COLLECTED THAT AND PUT IT  
21 IN ONE OF THE VIALS.

22           THE IMPORTANT LANGUAGE THERE IS WHAT'S A FINGERNAIL  
23 SCRAPING. HE SAYS I TAKE A FINGERNAIL FILE AND I SCRAPE OUT  
24 ANY MATERIAL THAT MIGHT HAVE BEEN THERE. THAT'S WHAT HE DID.

25           DR. WILLIAM HANCOCK WAS THE PATHOLOGIST WHO DID THE

1 AUTOPSY ON THE TWO CHILDREN KIMBERLEY AND KRISTEN, AS SHOWN IN  
2 HIS TESTIMONY AT TRANSCRIPT PAGE 2562, WHERE HE SAYS HALFWAY  
3 THROUGH THAT BLOCK QUOTE ON THE SCREEN, DIRECTING YOUR  
4 ATTENTION TO THE 17TH OF FEBRUARY 1979, DID YOU HAVE OCCASION  
5 TO CONDUCT AUTOPSIES ON THE BODIES OF KIMBERLEY AND KRISTEN.  
6 HE SAYS HE DID. SO, HANCOCK CONDUCTS THE AUTOPSIES.

7           THEN WE GO TO PAGE 2602 AND HE TALKS ABOUT TAKING  
8 FINGERNAIL SCRAPINGS. THE QUESTION IS ASKED, WERE FINGERNAIL  
9 SCRAPINGS TAKEN? HE ANSWERS, I PARTICIPATED DIRECTLY IN THAT  
10 AND SCRAPED THOSE. AS MY AUTOPSY PROTOCOL STATED, I GAVE  
11 THOSE TO THE CRIMINAL INVESTIGATIVE DIVISION AGENTS THAT WERE  
12 THERE AT THE TIME, THAT WERE AT THE AUTOPSY AT THE TIME.

13           SO, DR. HANCOCK IS DOING THE FINGERNAIL SCRAPINGS  
14 AND HE SCRAPES THOSE AND GIVES WHATEVER HE SCRAPES OUT TO THE  
15 CID AGENTS THAT WERE ON THE SCENE.

16           THE CID ON THE SCENE IS BENNIE HAWKINS, WHO ATTENDED  
17 THE AUTOPSY FOR THE PURPOSES OF COLLECTING, AMONG OTHER  
18 THINGS, THE FINGERNAIL SCRAPINGS.

19           WE GO TO TRANSCRIPT PAGE 3042. HE'S ASKED, AFTER  
20 YOU TOOK THE PRINTS FROM MS. MACDONALD AT THE MORGUE, WHAT WAS  
21 THE NEXT THING YOU DID, IF YOU RECALL, IN THE MORGUE? HIS  
22 ANSWER WAS, THE NEXT THING I DID IN THE MORGUE WAS TO PICK UP  
23 SOME ITEMS THAT HAD BEEN COLLECTED FROM THE BODIES OF THE  
24 VICTIMS. AND THEN HE'S ASKED, DO YOU RECALL WHAT THESE ITEMS  
25 WERE GENERALLY? AND HIS ANSWER IS, THE ITEMS WERE CLOTHING,

1 FINGERNAIL SCRAPINGS, HAIRS AND FIBERS COLLECTED FROM THE  
2 BODIES.

3 SO, BENNIE HAWKINS IS AT THE AUTOPSY AND HE COLLECTS  
4 THE FINGERNAIL SCRAPINGS THAT WERE SCRAPED FROM THE  
5 FINGERNAILS OF THE VICTIMS IN THIS CASE.

6 AND HE DESCRIBES WHAT HE DOES THAT -- WITH THAT ON  
7 PAGE 3050 OF THE TRANSCRIPT. HE RECEIVES THE ITEMS, ALL THE  
8 LITTLE VIALS. IN OTHER WORDS, HE'S TAKING THE VIALS THAT HAVE  
9 THE FINGERNAIL SCRAPINGS AND OTHER EVIDENCE THAT'S GATHERED AT  
10 THE AUTOPSY. AS YOU CAN SEE IN THE ANSWER AT THE LAST PART OF  
11 THAT BLOCK QUOTATION, AGAIN, FROM THE TRIAL TRANSCRIPT ON PAGE  
12 3033, ALL THE LITTLE VIALS WERE TOGETHER AND I TOOK POSSESSION  
13 OF THE VIALS CONTAINING WHAT THE DOCTOR TOLD ME IT CONTAINED  
14 AT THAT POINT.

15 SO, HE'S GETTING THE FINGERNAIL SCRAPINGS AT THE  
16 AUTOPSY. HE RECEIVES THEM FROM DR. HANCOCK, AS HE SAYS  
17 FURTHER ON PAGE 3050. HE'S ASKED, DO YOU REMEMBER WHO IT WAS  
18 THAT TURNED OVER THESE MATTERS TO YOU OR TOLD YOU WHAT THEY --  
19 WHEN THEY WERE AVAILABLE -- THAT THEY WERE AVAILABLE. AND MR.  
20 HAWKINS SAYS, I THINK I RECEIVED THESE ITEMS FROM DR. HANCOCK.

21 SO, WE'RE SHOWING THE MOVEMENT OR CHAIN OF CUSTODY  
22 OF THESE PARTICULAR ITEMS.

23 THEN MR. HAWKINS -- CID AGENT HAWKINS SAYS WHAT HE  
24 DOES WITH THOSE VIALS OR HOW HE MARKS THEM. TRANSCRIPT PAGES  
25 3050-51, HE'S ASKED, DID YOU MAKE ANY MARKINGS ON THESE VIALS

1 WHEN YOU RECEIVED THEM TO SHOW THAT YOU HAD RECEIVED THEM AND  
2 THEY WERE SEALED BY YOU? AND HIS ANSWER IS, YES, SIR. I  
3 MARKED THEM JUST WITH MY INITIALS, BJH, 17 FEBRUARY '70.

4 NOW, THAT'S IMPORTANT BECAUSE THAT'S ESTABLISHING  
5 HOW WE KNOW THAT A PARTICULAR VIAL WAS TAKEN AT THE AUTOPSY  
6 AND HOW WE KNOW THAT IF A VIAL MARKED, BJH, 17 FEBRUARY 1970,  
7 IS A VIAL FROM THE AUTOPSY WHEN IT IS LATER EXAMINED BY  
8 SOMEONE ELSE.

9 THE VIALS ARE THEN SENT TO JANICE GLISSON, WHO  
10 RECEIVED THEM ON JULY 27TH, 1970. AND I'M GOING TO ASK YOU TO  
11 NOTE THE HIGHLIGHTED TEXT. AND THIS IS COMING FROM EXHIBIT  
12 TWO, WHICH IS PART OF DOCKET ENTRY 217. SO, IT'S IN THE  
13 RECORD IN THIS CASE, DOCKET ENTRY 217, EXHIBIT TWO.

14 IF YOU'LL NOTE THE HIGHLIGHTED TEXT, JANICE GLISSON  
15 SAYS SHE RECEIVED 13 PLASTIC VIALS CONTAINING FINGERNAIL  
16 SCRAPINGS, HAIR SAMPLES, FIBERS AND VAGINAL SMEARS TAKEN FROM  
17 THE VICTIMS AT WOMACK ARMY HOSPITAL, MARKED ON THE BOTTOM OF  
18 THE VIALS 17 FEBRUARY '70, BJH.

19 ALL RIGHT. SO, WE KNOW THAT SHE NOW HAS VIALS THAT  
20 AGENT HAWKINS TOOK FROM THE AUTOPSY IN THIS CASE. AND THAT'S  
21 IMPORTANT BECAUSE IT SHOWS THAT WHAT SHE'S GOING TO BE  
22 EXAMINING ON JULY 27TH, 1970, ARE EVIDENCE ITEMS, PHYSICAL  
23 ITEMS, FINGERNAIL SCRAPINGS AND WHATEVER MIGHT BE INCLUDED IN  
24 THOSE SCRAPINGS, THAT CAME FROM THE AUTOPSY IN THIS CASE.

25 THE HIGHLIGHTED PORTION, AGAIN, SAYS 13 PLASTIC

1 VIALS CONTAINING FINGERNAIL SCRAPINGS, HAIR SAMPLES, ET  
2 CETERA, ET CETERA, MARKED ON THE BOTTOM OF THE VIALS 17  
3 FEBRUARY '70, BJH, WHICH WE KNOW MEANS SOMETHING THAT AGENT  
4 HAWKINS GOT FROM THE DOCTORS AT THE AUTOPSY.

5 JANICE GLISSON THEN NUMBERS THESE VIALS ONE THROUGH  
6 13. AND VIAL SEVEN HAD THE FINGERNAIL SCRAPINGS, LEFT HAND,  
7 SMALLER FEMALE MACDONALD. AGAIN, WE'RE ON DOCKET ENTRY 217,  
8 EXHIBIT TWO, WHICH WOULD BE KRISTEN MACDONALD, SMALLER FEMALE  
9 MACDONALD.

10 GLISSON NOTES THAT VIAL SEVEN CONTAINS ONE HAIR AND  
11 TWO FRAGMENTS -- ONE HAIR AND TWO FRAGMENTS THAT SHE'S  
12 EXAMINING FROM VIAL SEVEN IN JULY OF 1970, THAT CAME FROM THE  
13 AUTOPSY.

14 SHE CONDUCTED A MICROSCOPIC ANALYSIS OF THE CONTENTS  
15 OF THE VIALS AND WITH REGARD TO VIAL SEVEN SHE CONFIRMED IT  
16 CONTAINED FIBERS AND ONE LIGHT BROWN HAIR. AGAIN, LOOKING AT  
17 THE SCREEN, DOCKET ENTRY 217, EXHIBIT TWO, ONE LIGHT BROWN,  
18 NARROW HAIR.

19 ALL RIGHT. SO, SHE'S EXAMINING A HAIR THAT CAME  
20 FROM THE FINGERNAIL SCRAPINGS OF KRISTEN MACDONALD WHEN SHE  
21 GETS THE VIAL IN JULY OF 1970, THAT CAME FROM THE AUTOPSY,  
22 OKAY?

23 THAT BECOMES HAIR NUMBER SEVEN. IT'S LATER MARKED  
24 91A, WHEN IT'S TESTED BY AFDIL. THE RESULTS OF HAIR NUMBER  
25 SEVEN, THE RESULTS OF 91A, WAS IT DID NOT MATCH JEFFREY

1 MACDONALD. IT DID NOT MATCH COLETTE, KIMBERLEY OR KRISTEN.  
2 IT DIDN'T MATCH HELENA STOECKLEY OR GREG MITCHELL IT IS,  
3 THEREFORE, AN UNSOURCED HAIR.

4 EVEN IF IT'S A NATURALLY SHED HAIR -- AND THERE IS  
5 SOME CLAIMS BY DEFENSE LAWYERS EARLIER IN THE LITIGATION THAT  
6 PERHAPS THIS WAS A HAIR THAT WAS FORCIBLY REMOVED. MAYBE THEY  
7 SAID IT HAD ROOTS AND BLOOD OR WHATEVER. THE POINT IS THE  
8 HAIR IS WHAT IT IS, OKAY? IT SHOWS WHAT IT SHOWS.

9 AND WHAT WE KNOW AND WHAT IS NOT DISPUTED ABOUT THIS  
10 HAIR, IT CAME FROM THE FINGERNAIL SCRAPINGS OF KRISTEN  
11 MACDONALD, NATURALLY SHED OR NOT, IS THAT IT IS AN UNSOURCED  
12 HAIR. IN OTHER WORDS, A HAIR THAT COULD HAVE COME FROM AN  
13 INTRUDER.

14 AND IT'S IMPORTANT TO KEEP IN MIND THAT DR. HANCOCK,  
15 WHO DID THE AUTOPSY, TESTIFIED THAT SOME OF KRISTEN'S WOUNDS  
16 COULD BE DESCRIBED AS DEFENSIVE WOUNDS.

17 I TAKE YOU TO PAGE 2577 OF THE TRIAL TRANSCRIPT.  
18 DR. HANCOCK, IN ANSWER TO A QUESTION, SAID I WOULD SAY AS A  
19 GENERAL REFERENCE THESE -- TALKING ABOUT WOUNDS ON KRISTEN  
20 MACDONALD -- COULD BE DEFINED AS DEFENSIVE WOUNDS, OR THESE  
21 COULD BE WOUNDS INCURRED IN THE PROCESS OF OTHER TYPES OF  
22 WOUNDS HAPPENING. AS A GENERAL STATEMENT, I WOULD SAY THAT.

23 SO, HE IS TESTIFYING THAT THERE ARE DEFENSIVE-LIKE  
24 WOUNDS ON KRISTEN MACDONALD AND WE KNOW THAT A HAIR DOESN'T  
25 MATCH HER FATHER OR ANYBODY ELSE IN THE MACDONALD FAMILY IS IN

September 25, 2012

1 THE FINGERNAIL SCRAPINGS THAT ARE TAKEN FROM KRISTEN AT THE  
2 AUTOPSY.

3 SO, OUR POINT, OUR CONTENTION, ON THIS HAIR IS THAT  
4 WE HAVE AN UNSOURCED HAIR FROM KRISTEN'S FINGERNAIL SCRAPINGS  
5 THAT ARE CONSISTENT WITH HER DEFENDING HERSELF AGAINST AN  
6 ATTACKER AND THE ATTACKER, BASED ON THAT HAIR, IS NOT JEFFREY  
7 MACDONALD. AND THAT IS POSITIVE CIRCUMSTANTIAL EVIDENCE OF AN  
8 INTRUDER. IT IS POSITIVE CIRCUMSTANTIAL EVIDENCE OF SOMEONE  
9 ELSE INFLICTING THE WOUNDS ON KRISTEN MACDONALD AND IT IS SOME  
10 CIRCUMSTANTIAL EVIDENCE THAT THE JURY WOULD HAVE HAD AND BEEN  
11 ABLE TO CONSIDER IN ASSESSING THIS THEORY, THE DEFENSE THEORY,  
12 THAT INTRUDERS COMMITTED THE CRIME. AND THAT'S IMPORTANT.

13 I TOOK YOU THROUGH ALL THAT LABORIOUSLY JUST SO IT  
14 WOULD BE CRYSTAL CLEAR THAT WE'RE TALKING ABOUT HAIR THAT CAME  
15 FROM FINGERNAIL SCRAPINGS TAKEN AT THE AUTOPSY, PUT IN A VIAL  
16 BY AGENT HAWKINS -- OR TAKEN IN A VIAL BY AGENT HAWKINS AND  
17 THEN IT GOES TO JANICE GLISSON AND SHE EXAMINES IT IN JULY OF  
18 1970. BUT THAT HAIR, WHEN IT'S RETESTED, TURNS OUT THAT THE  
19 DNA DOESN'T MATCH JEFFREY MACDONALD OR ANYONE ELSE IN THE  
20 FAMILY.

21 NOW, A COUPLE OF COMMENTS ABOUT 51A AND 75A. 51A IS  
22 A HAIR THAT'S COLLECTED FROM KRISTEN'S BEDSPREAD. IT'S  
23 UNSOURCED -- I'M SORRY. IT'S 58A.1. I'LL GET THESE NUMBERS  
24 RIGHT ONE WAY OR ANOTHER. 58A.1 IS COLLECTED FROM KRISTEN'S  
25 BEDSPREAD. IT'S UNSOURCED, MEANING IT DOESN'T COME FROM

September 25, 2012



1 ANYBODY IN THE MACDONALD FAMILY. AND EVEN IF IT'S NATURALLY  
2 SHED, AS OPPOSED TO FORCIBLY REMOVED, IT COULD HAVE BEEN SHED  
3 BY AN INTRUDER WHILE THAT INTRUDER WAS ATTACKING KRISTEN IN  
4 HER BEDROOM. SO, THAT'S ANOTHER POSITIVE PIECE OF  
5 CIRCUMSTANTIAL EVIDENCE SUPPORTING A DEFENSE THEORY OF  
6 INTRUDERS.

7 FINALLY, 75A, THE HAIR THAT WAS FOUND IN THE TRUNK  
8 LEG AREAS OF THE BODY OUTLINE OF COLETTE MACDONALD ON THE RUG  
9 IN THE MASTER BEDROOM. SO, THAT'S WHERE IT WAS FOUND. YOU'VE  
10 GOT THE BODY OUTLINE, THE HAIR IS THERE IN THE BODY OUTLINE,  
11 IN THE TRUNK AND LEGS AREA OF THE OUTLINE. IT'S UNSOURCED,  
12 MEANING IT DIDN'T COME FROM JEFFREY MACDONALD, DIDN'T COME  
13 FROM ANYBODY IN THE MACDONALD FAMILY. AND, AGAIN, WHETHER  
14 IT'S NATURALLY SHED OR FORCIBLY REMOVED, IT IS A PIECE OF  
15 EVIDENCE THAT AN INTRUDER COULD HAVE SHED WHILE ATTACKING  
16 COLETTE MACDONALD.

17 SO, WE'VE GOT THREE UNSOURCED HAIRS THAT COULD HAVE  
18 COME FROM INTRUDERS, IT CERTAINLY DIDN'T COME FROM ANYBODY IN  
19 THE FAMILY, THAT IS ADDITIONAL EVIDENCE, BEYOND EVIDENCE THAT  
20 WAS PRESENTED AT TRIAL, BEYOND EVIDENCE, CIRCUMSTANTIAL  
21 EVIDENCE OF INTRUDERS THAT IS PART OF THE EVIDENCE AS A WHOLE  
22 IN THIS CASE. IT IS ADDITIONAL EVIDENCE SUPPORTING DR.  
23 MACDONALD'S CONSISTENT ACCOUNT OF INTRUDERS BEING THE ONES WHO  
24 PERPETRATED THESE CRIMES. AND IT'S IMPORTANT FOR THAT IT BE  
25 CONSIDERED WITHIN THE AMBIT OF THE EVIDENCE AS A WHOLE IN THIS

September 25, 2012

1 CASE.

2 NOW, THAT'S THE DNA OR UNSOURCED HAIRS CLAIM. I  
3 THINK IT'S FAIRLY SIMPLE. I THINK IT'S STRAIGHTFORWARD. I  
4 THINK IT'S POSITIVE AND POWERFUL EVIDENCE, CIRCUMSTANTIAL  
5 THOUGH IT MAY BE, THAT SUPPORTS THE THEORY OF INTRUDERS IN  
6 THIS SITUATION.

7 NOW, I WANT TO TURN TO WHAT WE CALL THE BRITT CLAIM.  
8 AND THERE ARE TWO COMPONENTS OF THIS CLAIM; ONE, THAT HELENA  
9 STOECKLEY MADE A STATEMENT THAT SHE WAS IN THE HOUSE AT THE  
10 TIME OF THE MURDERS, WHICH WOULD, AGAIN, IN MY OPINION, BE  
11 PIVOTAL EVIDENCE, DIRECT EVIDENCE OF INTRUDERS. AND THE  
12 SECOND PART OF THIS CLAIM IS THAT JIM BLACKBURN THREATENED  
13 HELENA STOECKLEY. EACH OF THOSE PIECES OF THE BRITT CLAIM ARE  
14 INDEPENDENTLY IMPORTANT AND SIGNIFICANT.

15 WITH REGARD TO WHETHER HELENA STOECKLEY TOLD JIM  
16 BRITT THAT SHE WAS IN THE HOUSE DURING A TRAVEL FROM SOUTH  
17 CAROLINA TO NORTH CAROLINA, WE HAVE NOW, AFTER HEARING THE  
18 EVIDENCE IN THIS CASE, EVIDENCE THAT WE DIDN'T KNOW WE WERE  
19 GOING TO HAVE UNTIL WE HAD THIS HEARING, THAT'S EVEN MORE  
20 COMPELLING AND MORE RELIABLE FROM A SET OF SOURCES REGARDING  
21 WHAT HELENA STOECKLEY SAID.

22 I'D LIKE TO REFER TO THESE AS SORT OF THE BOOKENDS  
23 OF HELENA STOECKLEY'S STATEMENTS, AND THE BOOKENDS BEING THE  
24 STATEMENT TO JERRY LEONARD THAT WE HEARD ABOUT YESTERDAY AND  
25 THE STATEMENT TO HER MOTHER WHEN SHE THOUGHT THAT SHE WAS

September 25, 2012

1 DYING IN OCTOBER OF 1982. I LIKE TO DESCRIBE THOSE AS THE  
2 BOOKENDS OF HELENA STOECKLEY'S STATEMENTS, ONE TO HER LAWYER  
3 UNDER THE CLOAK OF PRIVILEGE AND ONE TO HER MOTHER WHEN SHE  
4 THOUGHT SHE WAS DYING.

5 NOW, I'LL BEGIN BY TALKING A LITTLE BIT ABOUT WHAT  
6 WE HEARD YESTERDAY FROM JERRY LEONARD. AND AS I WAS THINKING  
7 ABOUT IT LAST NIGHT AND PROBABLY TALKING TO MY WIFE ON THE  
8 PHONE, WHO IS ALSO A LAWYER AND FRANKLY A SMARTER LAWYER THAN  
9 I AM. I DON'T LIKE TO SAY THAT TOO MUCH, BUT IT'S TRUE. AND  
10 SHE WAS SAYING -- AND, OF COURSE, I COULDN'T TALK TO HER ABOUT  
11 IT UNTIL LAST NIGHT BECAUSE YOU HAD TOLD US NOT TO SAY  
12 ANYTHING ABOUT THE AFFIDAVIT, AND I DON'T THINK ANY OF THE  
13 LAWYERS DID. AND SHE SAID, YOU KNOW, THAT MUST HAVE BEEN --  
14 THAT COURTROOM MUST HAVE JUST BEEN ROCKING WHEN THAT TESTIMONY  
15 HAPPENED. AND I THOUGHT, WELL, YOU KNOW, IT DIDN'T FEEL LIKE  
16 IT WAS ROCKING TO ME. AND I GUESS THE REASON IT DIDN'T TO ME  
17 WAS I ALREADY KNEW WHAT WAS COMING BECAUSE WE HAD HAD UNDER  
18 SEAL JERRY LEONARD'S AFFIDAVIT SINCE LAST THURSDAY. AND SO WE  
19 KNEW WHAT WAS GOING TO HAPPEN. AND IN TALKING TO HER, YOU  
20 KNOW, I SAID, WELL, I GUESS IT WAS REALLY ONE OF THOSE PERRY  
21 MASON MOMENTS, YOU KNOW, ONE OF THOSE TIMES WHEN SOMETHING  
22 DRAMATIC HAPPENS IN THE COURTROOM THAT NOBODY KNOWS IS GOING  
23 TO HAPPEN UNTIL PERRY SORT OF DRIVES SOME WITNESS TO CONFESS  
24 FROM THE STAND.

25 AND I THINK REALLY IN SOME WAYS IT WAS THAT DRAMATIC

September 25, 2012

1 BECAUSE IT WAS SOMETHING THAT JERRY LEONARD HAD KEPT TO  
2 HIMSELF FOR -- SINCE 1979. HE OBVIOUSLY BELIEVED IN THE  
3 IMPORTANCE OF THE ATTORNEY-CLIENT PRIVILEGE, INSISTED ON YOU  
4 REMOVING THE PRIVILEGE BEFORE HE TESTIFIED.

5 AND AS MR. LEONARD DESCRIBES WHAT HAD HAPPENED, BOTH  
6 FROM READING HIS AFFIDAVIT AND ALSO JUST TALKING ON THE STAND  
7 ABOUT IT, THERE'S -- YOU KNOW, WHAT HAPPENED WAS, I THINK,  
8 IMPORTANT TO KEEP IN MIND, BUT ONE OF THE THINGS SORT OF IS  
9 WE'RE TALKING ABOUT A CONTEMPORANEOUS STATEMENT. WE'RE  
10 TALKING ABOUT SOMETHING THAT SHE TELLS HER LAWYER WHILE THE  
11 MACDONALD TRIAL IS GOING ON. SO, IT'S KIND OF LIKE THE HEIGHT  
12 AND THE APEX OF ACTIVITY IN THE CASE.

13 WE KNOW FROM HIS TESTIMONY AND WE KNOW FROM OTHER  
14 EVIDENCE IN THE TRANSCRIPT THAT WE'VE BEEN BACK AND FORTH  
15 THROUGH A NUMBER OF TIMES IN THE LAST SEVEN DAYS THAT HE WAS  
16 APPOINTED AFTER SHE HAD TESTIFIED IN FRONT OF THE JURY. AND  
17 WE KNOW THAT WHEN SHE TESTIFIED IN FRONT OF THE JURY SHE SAID  
18 SHE DIDN'T HAVE A RECOLLECTION OF THAT NIGHT.

19 AND HE'S APPOINTED AND HE MAKES AN EFFORT TO GET UP  
20 WITH HER AND, YOU KNOW, I DON'T KNOW WHETHER -- WHAT HOTEL  
21 ANYBODY WENT TO ANYMORE. I USED TO LIVE IN DOWNTOWN RALEIGH,  
22 LIVED THERE FOR 15 OR 20 YEARS. I KNOW WHERE ALL OF THESE  
23 HOTELS WERE. AND I'M SO CONFUSED, THE ONLY THING I'M SURE OF  
24 NOW IS THERE'S A ROUND, TALL HOTEL SOMEWHERE IN DOWNTOWN  
25 RALEIGH. AND WHAT HOTEL WAS WHICH AND WHO WENT WHERE AT ANY

September 25, 2012

1 POINT IN TIME, IT SEEMED TO BE AWFULLY CONFUSING. BUT I'M NOT  
2 SURE THAT THAT'S JUST NOT THE TALL WEEDS IN THIS CASE, JUDGE  
3 FOX.

4 I MEAN, WHAT'S IMPORTANT WITH REGARD TO JERRY  
5 LEONARD'S TESTIMONY IS HE KNOWS HE GOT APPOINTED THAT WEEKEND  
6 ON SUNDAY. HE KNOWS HE MADE SOME EFFORT TO GET UP WITH MS.  
7 STOECKLEY. IT SOUNDS LIKE HE THINKS HE GOT HER AT THE  
8 COURTHOUSE. AND HE REMEMBERS TAKING HER HOME AND SHE SLEPT  
9 THAT NIGHT ON A RECLINER OR A SOFA IN HIS HOUSE.

10 NOW, I SUBMIT, YOUR HONOR, THAT'S NOT SOMETHING ONE  
11 IS LIKELY TO FORGET. I MEAN, FOR EXAMPLE, HE EXPLAINED HOW IT  
12 WAS UNUSUAL TO GET APPOINTED UNDER THE CRIMINAL JUSTICE ACT TO  
13 REPRESENT SOMEBODY WHO IS A MATERIAL WITNESS AS OPPOSED TO  
14 BEING APPOINTED TO REPRESENT SOMEBODY WHO IS CHARGED WITH A  
15 CRIME. SO, THAT WAS AN UNUSUAL SITUATION.

16 AND HE TALKED ABOUT, YOU KNOW, PART OF MY TASK, PART  
17 OF MY ROLE WAS TO TAKE CARE OF HER, MAKE SURE SHE STAYED IN  
18 RALEIGH, MAKE SURE SHE SHOWED UP FOR COURT. AGAIN, SORT OF A  
19 DIFFERENT ROLE OR UNUSUAL TASK THAN ONE WOULD NORMALLY HAVE IN  
20 A CJA APPOINTMENT.

21 HE'S WITH HER THE BETTER PART OF EACH DAY. HE SAYS  
22 THAT. MOST OF THE TIME THEY SPEND AT THE COURTHOUSE.  
23 PRESUMABLY, HE SAW HER AFTER COURT, OUTSIDE OF COURT AS WELL.

24 AND I'M GOING TO TAKE YOU TO JUST A COUPLE OF  
25 PARAGRAPHS IN HIS AFFIDAVIT, WHICH IS EXHIBIT 5113, PARAGRAPH

1 NUMBER SEVEN, AND I KNOW YOUR HONOR SAW IT YESTERDAY, BUT I  
2 THINK IT'S IMPORTANT TO HIGHLIGHT IT AS WE SORT OF, YOU KNOW,  
3 TRY AND PULL ALL OF THIS TOGETHER.

4 HE SAYS IN PARAGRAPH NUMBER SEVEN THAT HE EXPLAINED  
5 HIS ROLE TO HER, AS AN ATTORNEY, MADE SURE SHE REALIZED  
6 EITHER SIDE COULD CALL HER AS A WITNESS ON A MOMENT'S NOTICE.  
7 UNDERSTOOD THAT -- AND THIS IS MOST IMPORTANT. HE MADE SURE  
8 THAT SHE CLEARLY UNDERSTOOD THAT WHAT SHE TOLD HIM WAS JUST  
9 BETWEEN ME AND HER, AND PROBABLY NOT THE WAY I WOULD HAVE  
10 PHRASED THAT CLAUSE, ME AND HER, BUT AT ANY RATE, THAT'S WHAT  
11 HE SAYS, HE MADE SURE SHE KNEW IT WAS JUST BETWEEN THE TWO OF  
12 THEM AND SHE SHOULD NOT TALK ABOUT THE CASE TO ANYONE EXCEPT  
13 HIM.

14 SO, HE WANTED TO HELP HER. AND HE EXPLAINED TO HER  
15 SHE NEEDED TO TELL HIM THE TRUTH AND ASSURED HER IT WOULD BE  
16 PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE.

17 NOW, THERE WAS A LOT OF TESTIMONY THROUGHOUT THIS  
18 HEARING ABOUT WHETHER THERE'S A STATUTE OF LIMITATIONS FOR  
19 MURDER AND WHAT IT WAS IN 1979. AND, AGAIN, I DON'T THINK IT  
20 MAKES A TREMENDOUS AMOUNT OF DIFFERENCE WHAT THE LAW WAS IN  
21 1979. PEOPLE WERE TRYING TO UNDERSTAND IT AS BEST THEY COULD.  
22 MR. LEONARD WAS TRYING TO UNDERSTAND IT AS BEST HE COULD. THE  
23 IMPORTANT THING IS HE REMEMBERS TALKING TO HELENA STOECKLEY  
24 ABOUT THE STATUTE OF LIMITATIONS, WHICH WOULD BE A CONCERN  
25 SOMEONE WOULD HAVE IF THERE WAS A POSSIBILITY THAT THEY MIGHT

September 25, 2012

1 BE CHARGED WITH A PARTICULAR CRIME.

2           AND IN PARAGRAPH NINE OF THE AFFIDAVIT, WHICH I'LL  
3 TAKE YOU TO NOW, SHE TOLD HIM SHE COULDN'T REMEMBER ANYTHING  
4 ABOUT THE NIGHT. SHE REMEMBERS THE DAY BEFORE. SHE REMEMBERS  
5 THE MORNING AFTER. TOTALLY BLANK ABOUT THAT NIGHT. AGAIN,  
6 CONSISTENT WITH WHAT SHE HAD TESTIFIED TO ON FRIDAY. AND THAT  
7 TESTIMONY, AND YOUR HONOR KNOWS, ACCORDING TO JOE  
8 MCGINNISS, ACCORDING TO WADE SMITH, WAS NOT THE HOLY GRAIL.  
9 HER NOT HAVING A RECALL WASN'T SOMETHING THAT WOULD HELP THE  
10 DEFENSE.

11           AND AFTER -- AND I THOUGHT IT WAS INTERESTING THAT  
12 MR. LEONARD SAID, WELL, YOU KNOW, WHEN SHE TOLD HIM THAT, WE  
13 HAD A DISCUSSION ABOUT THAT SOUNDED KIND OF CONVENIENT. I  
14 BELIEVE CONVENIENT WAS THE WORD HE USED. IT SOUNDED  
15 CONVENIENT THAT YOU DON'T REMEMBER THE CRITICAL MOMENT. YOU  
16 REMEMBER THE MORNING -- THE DAY BEFORE. YOU REMEMBER THE  
17 MORNING AFTER. YOU DON'T REMEMBER THE CRITICAL MOMENTS. AND  
18 THAT SEEMED TO HIM TO BE CONVENIENT. BUT THAT'S WHAT SHE TOLD  
19 HIM ON MONDAY, WHEN THEY FIRST TALKED ABOUT HER INVOLVEMENT.  
20 AND HE SAYS HE DROPPED THE SUBJECT. THAT WAS WHAT SHE SAID.  
21 HE DIDN'T BADGER HER ABOUT IT. HE ACCEPTED THAT THAT WAS WHAT  
22 SHE WAS GOING TO TELL HIM REGARDING WHAT SHE KNEW ABOUT THE  
23 MACDONALD KILLINGS.

24           THEN WE GET TO PARAGRAPH 12, WHICH I THINK IS, YOU  
25 KNOW, IS AWFULLY IMPORTANT. SOMETIME ON MONDAY AFTERNOON MS.

September 25, 2012

1 STOECKLEY ASKED ME WHAT I WOULD DO IF SHE ACTUALLY HAD BEEN  
2 THERE. SO, SHE COMES BACK TO HIM. SHE INITIATES FURTHER  
3 DISCUSSION. SHE ASKS HIM -- ASKED HIM, UNPROMPTED, WHAT ABOUT  
4 IF I WAS THERE? WHAT IF IT'S A LITTLE WORSE THAN I TOLD YOU  
5 EARLIER TODAY WHEN I SAID I COULDN'T REMEMBER? AND HIS  
6 RESPONSE TO HER IS I CAN HELP YOU, I'M STILL YOUR LAWYER, BUT  
7 YOU'VE GOT TO TELL ME THE TRUTH.

8 SO, ONCE AGAIN HE'S TELLING HER HE'LL HELP HER.  
9 HE'S TELLING HER HE'S HER LAWYER. HE'S TELLING HER WHAT SHE  
10 TELLS HIM, GOOD, BAD OR INDIFFERENT, IS PROTECTED BY THE  
11 ATTORNEY-CLIENT PRIVILEGE. AND AT THAT POINT SHE TELLS HIM,  
12 WELL, IT'S NOT AS BAD AS EVERYBODY THINKS, BUT I WAS THERE.  
13 AND SHE TOLD HIM SHE WAS IN THE ROOM -- IN THE RESIDENCE AT  
14 THE TIME OF THE MURDERS, BUT SHE DIDN'T ACTUALLY HURT ANYBODY  
15 AND SHE DIDN'T REALLY ANTICIPATE THAT ANYBODY WAS GOING TO GET  
16 KILLED.

17 SO, NOW WE HAVE A DRAMATIC CHANGE FROM MONDAY  
18 MORNING TO MONDAY AFTERNOON WITH REGARD TO WHAT HELENA  
19 STOECKLEY IS TELLING HER LAWYER, AGAIN, UNDER THE AMBIT OF THE  
20 ATTORNEY-CLIENT PRIVILEGE. AND SHE SAYS SHE WAS THERE. SHE  
21 GOES ON TO TALK ABOUT, WELL, I WAS PART OF A CULT. WE WERE  
22 GOING TO, YOU KNOW, SORT OF ROUGH UP MACDONALD, YOU KNOW,  
23 BECAUSE THEY WERE UPSET ABOUT, YOU KNOW, HOW HE WAS HANDLING  
24 DRUG TREATMENT OR REHAB OR SOMETHING LIKE THAT. THINGS GET  
25 OUT OF HAND AND PEOPLE ARE KILLED.

September 25, 2012



1           NOW, THE OTHER IMPORTANT THING ABOUT THAT STATEMENT  
2 IS SHE SAID WHILE WE WERE THERE THE PHONE RANG AND I ANSWERED  
3 IT AND I WAS TOLD TO HANG UP. OKAY, HER FRIENDS, THE PEOPLE  
4 SHE WAS WITH, YELLED AT HER TO HANG UP THE PHONE.

5           AND THAT'S IMPORTANT BECAUSE WE HAVE OTHER  
6 INFORMATION IN THE EVIDENCE AS A WHOLE IN THE RECORD IN THIS  
7 CASE ABOUT A PHONE CALL TO THE MACDONALD RESIDENCE IN THE  
8 MIDDLE OF THE NIGHT. DEFENSE EXHIBIT 5021, WHICH IS ALSO  
9 DOCKET ENTRY 126-2.

10           SO, IT'S IN THE EVIDENCE IN THIS CASE, IT'S IN THE  
11 EVIDENCE AS A WHOLE. IT'S THE DECLARATION OF JIMMY FRIER.  
12 AND WE'VE GOT THAT UP ON THE SCREEN. AND I'D TAKE YOU TO --  
13 ARE WE GOING TO THE SECOND PAGE?

14           MR. WILLIAMS: YES.

15           MR. WIDENHOUSE: THE SECOND PAGE, PARAGRAPH NINE.  
16 AND MR. FRIER SAID I CALLED THE NUMBER WHICH HAD BEEN GIVEN TO  
17 ME AND I ASKED FOR DR. MACDONALD. THE WOMAN WHO ANSWERED THE  
18 PHONE WAS LAUGHING AND I HEARD SOMEONE IN THE BACKGROUND SAY  
19 HANG UP THE PHONE. AND THE PHONE WAS DISCONNECTED AT THAT  
20 TIME. HE SAYS HE MADE THE CALL, IN PARAGRAPH TEN, AROUND 2:00  
21 O'CLOCK A.M. HE RECALLS THE TIME BECAUSE HE HAD TO LEAVE FOR  
22 FORT BRAGG THE NEXT DAY.

23           SO, WE HAVE A DECLARATION UNDER OATH INDEPENDENT OF  
24 HELENA STOECKLEY'S STATEMENT TO HER LAWYER THAT HE DIDN'T  
25 REVEAL UNTIL YESTERDAY ON THE STAND THAT SHE TOLD HIM WHILE

1 SHE WAS THERE AT THE HOUSE THERE WAS A TELEPHONE CALL.

2 SO, WE'VE GOT A CONTEMPORANEOUS STATEMENT UNDER THE  
3 PROTECTION OF THE ATTORNEY-CLIENT PRIVILEGE THAT INCLUDES A  
4 TELEPHONE CALL THAT WAS MADE THAT SHE ANSWERED WHILE SHE WAS  
5 IN THE MACDONALD HOUSE AND WE'VE GOT CORROBORATING EVIDENCE OF  
6 THAT PARTICULAR PHONE CALL.

7 SO, WE HAVE NOT ONLY A STATEMENT OF INVOLVEMENT  
8 UNDER A SITUATION OF TRUSTWORTHINESS, A STATEMENT THAT HELENA  
9 STOECKLEY INITIATED, OKAY? IT'S NOT SOMETHING MR. LEONARD  
10 DRUG OUT OF HER. SHE INITIATED IT. SHE WANTED TO BE SURE HE  
11 WOULD HELP HER AND HE ASSURED HER HE WOULD NOT TELL ANYONE.

12 SO, WE'VE GOT FROM YESTERDAY, I THINK, AN  
13 EXTRAORDINARY DEVELOPMENT IN THIS CASE, SOMETHING COMPLETELY  
14 NEW THAT WE COULDN'T HAVE KNOWN BEFORE YESTERDAY WHEN YOUR  
15 HONOR REMOVED THE ATTORNEY-CLIENT PRIVILEGE AND ALLOWED MR.  
16 LEONARD TO TESTIFY, AGAIN, HER STATEMENT I WAS THERE. THE  
17 HOLY GRAIL TO THE DEFENSE IN THIS PARTICULAR CASE.

18 NOW, WE ALSO KNEW BEFORE YESTERDAY FROM THE EVIDENCE  
19 IN THIS CASE THAT HELENA STOECKLEY HAD MADE A SIMILAR  
20 STATEMENT AT THE END OF HER LIFE WHEN SHE KNEW THAT SHE WAS  
21 DYING AND WE GOT THAT TESTIMONY FROM GENE STOECKLEY WHEN HE  
22 TESTIFIED IN THIS CASE.

23 NOW, YOUR HONOR, I SUPPOSE WE ALL HAVE OUR OWN SET  
24 OF INDICIA OF CREDIBILITY. YOU KNOW, WHEN WE LISTEN TO  
25 SOMEBODY SAY SOMETHING TO US, WHEN WE HEAR THEM TESTIFYING ON

September 25, 2012

1 THE WITNESS STAND, THERE ARE VARIOUS THINGS THAT EACH OF US  
2 SEPARATELY AND DIFFERENTLY ASSIGN TO CREDIBILITY.

3 BUT I WOULD SUBMIT TO YOU GENE STOECKLEY WAS A MAN  
4 OF TOTAL CREDIBILITY. HE CAME IN THIS COURT WITH NO STAKE IN  
5 THIS CASE. HE DIDN'T GET 20 PERCENT OF ANY BOOK DEAL. AND HE  
6 CERTAINLY DIDN'T APPEAR LIKE HE WANTED TO BE. BUT HE DID WHAT  
7 WE EXPECT ORDINARY CITIZENS TO DO. THEY GET CALLED TO THE  
8 WITNESS STAND. THEY COME IN. THEY DO THEIR BEST TO TELL THE  
9 TRUTH, UNVARNISHED, NO PRETENSE. AND I SUBMIT TO YOU THAT'S  
10 WHAT WE GOT FROM GENE STOECKLEY.

11 HE OBVIOUSLY HAD A STRONG EMOTIONAL ATTACHMENT TO  
12 HIS MOTHER, AND THAT WAS UNMISTAKABLE. I MEAN, HOW MANY OF US  
13 ARE GOING TO FORGET THAT HE OPENLY WEPT WHEN HE RECALLED BEING  
14 TOLD WHEN SHE WAS IN THE HOSPITAL YOUR MOTHER IS NOT GOING TO  
15 LEAVE HERE. AND HE LEAVES THE HOSPITAL AND HE GOES AND STARTS  
16 MAKING FUNERAL ARRANGEMENTS. IS THERE ANYONE IN THIS  
17 COURTROOM WITH HALF A HEART WHO WASN'T TOUCHED BY HIS  
18 TESTIMONY? I SUBMIT TO YOU THAT NO ONE WITH A MODICUM OF  
19 SENSITIVITY AND COMPASSION COULD HELP BUT FEEL HIS PAIN.

20 THAT SON WAS DEVOTED TO HIS MOTHER. AND THAT'S  
21 IMPORTANT, JUDGE FOX, BECAUSE IT SEEMS TO ME THAT THAT SON  
22 WOULD NOT HAVE ALLOWED ANYBODY TO PUT WORDS IN HIS MOTHER'S  
23 MOUTH. THAT SON WOULD NOT HAVE ALLOWED ANYONE TO PERSUADE,  
24 CAJOLE, COERCE HER INTO MAKING AND SIGNING A STATEMENT THAT  
25 WAS ANYTHING OTHER THAN PRECISELY WHAT SHE WANTED TO SAY.

September 25, 2012

1 I THINK MARY BRITT WAS ANOTHER WITNESS OF HIGH  
2 CREDIBILITY. AND LIKE MARY BRITT, HE DID WHAT WE EXPECT  
3 PEOPLE TO DO, WHAT WE EXPECT GOOD CITIZENS TO DO, TO COME INTO  
4 COURT, TAKE AN OATH, AND DO THEIR BEST TO TELL THE TRUTH.

5 AND I THINK THERE'S NOT ANY DOUBT THAT WHEN HE  
6 FINALLY TALKED TO HIS MOTHER ABOUT HIS SISTER'S POTENTIAL  
7 INVOLVEMENT IN THE MACDONALD SITUATION, HE WAS INTERESTED IN  
8 FINDING OUT THE TRUTH. HE WANTED TO HEAR WHAT HIS MOTHER  
9 THOUGHT WAS TRUE ABOUT THIS INVOLVEMENT OF HIS SISTER OVER THE  
10 YEARS THAT CAUSED SUCH A PROBLEM FOR HIM GROWING UP AND CAUSED  
11 SUCH DISCORD WITHIN THE FAMILY.

12 IT WOULD MAKE SENSE THAT HE WOULD HAVE THIS  
13 DISCUSSION WITH HIS MOTHER WHEN HE DID, DURING HER DAYS AT THE  
14 ASSISTED LIVING CENTER WHEN THEY WERE TALKING ABOUT IMPORTANT  
15 THINGS. IMPORTANT THINGS LIKE REMEMBERING WHEN THEY WENT TO  
16 THE BEACH AS A FAMILY, REMEMBERING HOLIDAYS, REMEMBERING  
17 SIGNIFICANT THINGS THAT PEOPLE TALK TO THEIR LOVED ONES ABOUT  
18 WHEN THEY THINK THE LOVED ONES ARE SORT OF COMING TO THE END  
19 OF THEIR LIFE ON THIS EARTH AND THE TIME THEY'LL BE ABLE TO  
20 SPEND TOGETHER.

21 SO, IT MAKES SENSE HE WOULD HAVE THAT KIND OF  
22 DISCUSSION WITH HIS MOTHER ABOUT THESE VARIOUS THINGS AT THE  
23 ASSISTED LIVING CENTER AFTER SHE HAD HAD THE SITUATION AT THE  
24 HOSPITAL WHERE HE THOUGHT SHE WAS GOING TO DIE.

25 AND IT MAKES SENSE THAT HE WOULD TALK AT SOME POINT

September 25, 2012

1 WITH HER ABOUT THE MACDONALD SAGA, BECAUSE IT HAD SUCH AN  
2 IMPACT ON HIM. AND THAT'S WHY I ASKED HIM, WANTED HIM TO  
3 TESTIFY SO YOU COULD HEAR HIM, YOUR HONOR, EXPLAIN WHAT THE  
4 WHOLE MACDONALD THING HAD TO DO WITH HIS FAMILY. YOU KNOW, IT  
5 WAS SOMETHING THEY DIDN'T TALK ABOUT A LOT. IT WAS  
6 PROBLEMATIC. HE TALKED ABOUT HOW HIS PARENTS HAD TO CHANGE  
7 THEIR PHONE NUMBERS FROM TIME TO TIME. HE TALKED ABOUT HOW HE  
8 WAS RIDICULED OR BULLIED OR TEASED AT SCHOOL BECAUSE OF HIS  
9 SISTER'S ALLEGED INVOLVEMENT OR CONNECTION TO THE SITUATION.

10 NOW, SOME OF THE THINGS HE SAID MAY HAVE BEEN  
11 SLIGHTLY OUT OF ORDER. YOU KNOW, IT'S KIND OF LIKE WHAT MARY  
12 BRITT SAID, I'M NOT SURE I'VE GOT EVERYTHING PRECISELY RIGHT,  
13 BUT I'M GIVING YOU THE BEST RECOLLECTION THAT I HAVE.

14 BUT DID ANYBODY MISS, AND I HOPE YOU DIDN'T, JUDGE  
15 FOX, MISS THE COMMENT THAT HE MADE AT THE END OF HIS TESTIMONY  
16 WHEN HE SAID HE WAS HERE TO TELL THE TRUTH, SOMETHING HIS  
17 PARENTS TAUGHT HIM TO DO, SOMETHING WE'RE ALL SUPPOSED TO DO,  
18 AND I THINK HE SAID WHAT'S THE POINT OF COURTROOMS AND  
19 HEARINGS IF THAT'S NOT WHAT PEOPLE ARE GOING TO DO, COME IN  
20 AND TELL THE TRUTH.

21 NOW, I DIDN'T PROMPT HIM TO SAY THAT AND I WAS  
22 STRUCK WHEN HE SAID IT AND I ALMOST WANTED TO STAND UP AND SAY  
23 AMEN. THAT'S WHAT IT'S ALL ABOUT. IT'S ABOUT PEOPLE COMING  
24 INTO COURT, GETTING UP THERE UNVARNISHED, WITHOUT PRETENSE,  
25 AND TRYING TO TELL THE TRUTH.

September 25, 2012

1           AND I CAN TELL YOU, I'D GIVE A KING'S RANSOM IF ALL  
2 OF THE WITNESSES I EVER HAVE IN THE REST OF MY COURTROOM LIFE  
3 HAVE HALF THE CREDIBILITY OF GENE STOECKLEY AND MARY BRITT.

4           AGAIN, HE TALKED ABOUT THE MACDONALD SITUATION IN  
5 HIS HOUSE, IN HIS GROWING UP, HIS SISTER'S INVOLVEMENT, THE  
6 EFFECT ON THE FAMILY, THE EFFECT ON HIM IN HIS SCHOOL AND  
7 COMMUNITY, THE EFFECT ON HIS RELATIONSHIP WITH HELENA WHEN  
8 THEY WERE -- WHEN HE WAS IN JUNIOR HIGH AND HIGH SCHOOL.

9           REMEMBER, HE TALKED ABOUT THE ENCOUNTER WITH HER,  
10 WHERE HE CONFRONTED HER ABOUT THE KIND OF PROBLEMS HE WAS  
11 HAVING BECAUSE OF HER POTENTIAL INVOLVEMENT AND HOW THE  
12 COMMUNITY THOUGHT SHE WAS INVOLVED. REMEMBER, WHAT HE SAID,  
13 SHE SAID YOU DON'T WANT TO MESS AROUND WITH ME BECAUSE I'VE  
14 GOT FRIENDS AND AN ICE PICK. FRIENDS AND AN ICE PICK. THAT'S  
15 A CONVERSATION HE REMEMBERED HAVING IN THIS ENCOUNTER WITH  
16 HELENA.

17           HE EXPLAINED HOW HIS FATHER, WHO WAS CAREER  
18 MILITARY, DIDN'T WANT TO TALK ABOUT IT. THEY DIDN'T TALK  
19 ABOUT THAT IN THE FAMILY.

20           AND THAT'S IMPORTANT BECAUSE IT'S NOT UNTIL AFTER  
21 HIS FATHER PASSES AWAY -- OF COURSE, HELENA HAS ALREADY  
22 DECEASED IN 1983. HIS FATHER DIES IN 2002. AND IT'S NOT  
23 UNTIL AFTER THAT THAT HIS MOTHER FEELS FREE TO DISCUSS WITH  
24 HIM AT THE ASSISTED LIVING CENTER WHAT HAD HAPPENED. SO, IT'S  
25 AFTER THAT HE HAS THE DISCUSSION WITH HIS MOTHER AND HE

September 25, 2012

1 EXPLAINS THAT SHE TOLD HIM THAT DEFINITELY HELENA CAME HOME IN  
2 OCTOBER OF 1982, BROUGHT HER SON WHO WAS FIVE OR SIX YEARS  
3 (SIC) OLD. SHE KNEW SHE WAS DYING. AND WE KNOW SHE -- SARA  
4 MCMANN CAME INTO COURT AND SAID, YOU KNOW, HOW SICK SHE WAS  
5 AND SHE KNEW SHE WAS DYING IN THE FALL OF 1982. SHE HAD BAD  
6 HEALTH. SHE HAD CHRONIC HEPATITIS. AND THAT'S WHEN HELENA  
7 CONFIDED IN HER MOTHER. THAT'S IMPORTANT.

8 NOW, THE GOVERNMENT KEEPS ASKING WITNESSES ABOUT  
9 WHETHER HELENA JUNIOR DIED OF NATURAL CAUSES. AND I'M NOT  
10 SURE WHAT THAT HAS TO DO ANYTHING BECAUSE WE'RE NOT -- THIS IS  
11 REALLY LIKE A DYING DECLARATION. IT'S NOT PRECISELY WITHIN  
12 THE CONTOURS OF A DYING DECLARATION, BUT IT HAS THOSE INDICIA  
13 ABOUT IT. IT'S THE KIND OF COMMENT YOU WOULD MAKE TO A PERSON  
14 IN CONFIDENCE, LIKE YOUR MOTHER, WHEN YOU KNOW YOU DON'T HAVE  
15 LONG LEFT ON THE EARTH AND YOU WANT TO CLEAN THE SLATE. AND  
16 THAT'S WHAT HAPPENED IN OCTOBER OF 1982.

17 AGAIN, IT'S NOT SURPRISING THAT HELENA SENIOR, MAMA,  
18 WOULDN'T TELL ANYBODY ABOUT THAT CONVERSATION. IT'S NOT  
19 SOMETHING THEY TALKED ABOUT IN THEIR FAMILY. IT'S ONLY AFTER  
20 THE FATHER DIES, A NUMBER OF YEARS LATER, SHE'S IN THE  
21 ASSISTED LIVING CENTER AND SHE'S HAVING SOME OF THESE  
22 DISCUSSIONS WITH HER SON AND HE ASKED ABOUT IT AND TOLD HIM  
23 WHAT HELENA HAD SAID.

24 IT WAS ALSO IMPORTANT THAT HE MENTIONED TO HER, YOU  
25 KNOW, DO YOU WANT TO SAY ANYTHING TO ANYBODY ABOUT IT. AND

September 25, 2012

1 SHE SAID THAT SHE DID. AND HE SAID ON THE WITNESS STAND HE  
2 DIDN'T DO ANYTHING IMMEDIATELY. HE WANTED TO THINK ABOUT IT.  
3 AND AGAIN, THAT MAKES SENSE, JUDGE, BECAUSE THIS WASN'T  
4 SOMETHING THEY WANTED TO TALK ABOUT. I'M SURE WHEN HE WAS  
5 DISCUSSING THIS WITH HIS MOTHER THE FARTHEST THING FROM GENE  
6 STOECKLEY'S MIND IS I'M GOING TO BE SITTING IN A FEDERAL  
7 COURTROOM SOME YEARS FROM NOW HAVING TO GO THROUGH THIS AND  
8 RECOUNT THIS INCIDENT AND TALK ABOUT ALL THIS INVOLVEMENT OF  
9 OUR FAMILY, CONNECTION OF OUR FAMILY WITH THE MACDONALD  
10 SITUATION. HE KNEW IT WAS LIKELY TO RESURRECT THE TALKS ABOUT  
11 THIS.

12 BUT AFTER THINKING ABOUT IT, KNOWING HIS MOTHER  
13 WANTED TO SAY SOMETHING TO SOMEBODY, HE CONTACTED KATHRYN  
14 MACDONALD. KATHRYN MACDONALD DIDN'T CONTACT HIM. NOBODY WENT  
15 LOOKING FOR HIM. HE IS THE ONE WHO CAME FORWARD. HE'S THE  
16 ONE WHO INITIATED THE CONTACT AND THE ACTIVITY THAT LED TO THE  
17 AFFIDAVIT.

18 IT'S ALSO IMPORTANT THAT HE SAID I SET GROUND RULES  
19 BEFORE ANYBODY TALKED TO MY MOTHER ABOUT THIS. AND IS THERE  
20 ANY REASON TO BELIEVE THAT WASN'T A TRUE STATEMENT WHEN HE  
21 SAID IT? IS THERE ANY REASON TO BELIEVE HE WOULDN'T HAVE SET  
22 GROUND RULES? THIS WAS A SON WHO WAS PROTECTIVE OF HIS  
23 MOTHER. HE WAS OBVIOUSLY CLOSE TO HER. HE WAS EMOTIONALLY  
24 ATTACHED TO HER. THIS WASN'T SOMETHING HE WOULD WANT TO COME  
25 OUT UNDER THE ORDINARY COURSE OF AFFAIRS. SO, AFTER THINKING

September 25, 2012



1 ABOUT THAT, HE CALLS HER AND HE LIMITS THE ACCESS THAT HIS  
2 MOM'S GOING TO HAVE.

3 AND HE EXPLAINED THE PROCESS OF HOW THE AFFIDAVIT  
4 CAME ABOUT. THEY GO TO THE ASSISTED LIVING CENTER. HE TALKS  
5 TO HIS MOM. HE THEN BRINGS KATHRYN MACDONALD IN THE ROOM.  
6 THEY TALK ABOUT WHAT HIS MOTHER HAD SAID. THEY THEN MAKE  
7 ARRANGEMENTS FOR HART MILES, WHO WAS REPRESENTING MR.  
8 MACDONALD AT THE TIME, TO COME. HE COMES WITH HIS NOTARY.

9 AGAIN, WHEN THEY ARRIVE AT THE ASSISTED LIVING  
10 CENTER GENE STOECKLEY IS STILL IN CHARGE. NOBODY'S COERCING  
11 HIS MOTHER. SHE'S ACTING FREELY. HE DESCRIBES THE PROCESS OF  
12 HOW THEY CAME ABOUT TO DO THE AFFIDAVIT. AND EVEN THOUGH SHE  
13 CAN'T SEE VERY WELL, SHE CAN'T READ THE AFFIDAVIT, EVERYBODY  
14 SAYS THAT WAS THERE THAT SHE WAS LUCID, COHERENT AND KNEW  
15 EXACTLY WHAT SHE WAS DOING. AND HE EXPLAINS HOW HE READS THE  
16 AFFIDAVIT TO HER WORD FOR WORD, LINE FOR LINE, PARAGRAPH FOR  
17 PARAGRAPH. THEY GET IT THE WAY THAT HIS MOTHER SAYS THIS IS  
18 WHAT I WANT TO SAY. AND ONLY AFTER HIS MOTHER IS SATISFIED  
19 WITH IT, WORD FOR WORD, IS IT SIGNED AND NOTARIZED. AND GENE  
20 STOECKLEY SIGNS IT. IT'S HIS SIGNATURE ON THERE. HE SAYS HE  
21 ONLY SIGNED IT AFTER HIS MOTHER HAD SAID IT WAS OKAY, AND HE  
22 WITNESSED HER SIGNATURE, AND WE BROUGHT IN THE NOTARY WHO  
23 WITNESSED THE SIGNATURE AS WELL WHO EXPLAINED THE PROCESS.  
24 AND I JUST WANT TO HIT A COUPLE HIGHLIGHTS, A  
25 REMINDER ABOUT WHAT'S IN THIS PARTICULAR AFFIDAVIT, WHICH IS

September 25, 2012

1 DEFENSE EXHIBIT 5051. WE HAVE THAT UP ON THE SCREEN.

2 PARAGRAPH TWO TALKS ABOUT HOW SHE WAS VERY CLOSE TO HER  
3 DAUGHTER AND HELD HER CONFIDENCES. PARAGRAPH FIVE, HELENA  
4 STOECKLEY KNEW SHE WAS DYING WHEN SHE CAME TO HER MOM IN  
5 OCTOBER OF '82, WANTED TO SET THE RECORD STRAIGHT, AND SAYS  
6 SHE WISHED SHE HAD NOT BEEN PRESENT IN THE HOUSE, BUT SHE KNEW  
7 THAT DR. MACDONALD WAS INNOCENT.

8 SO, AGAIN, WE HAVE THE SAME STATEMENT THAT SHE HAD  
9 MADE TO HER ATTORNEY IN 1979; I WAS THERE. WHATEVER ELSE SHE  
10 SAID, ROCKING HORSE, BROKEN, NOT BROKEN, TELEPHONE CALLS OR  
11 NOT TELEPHONE CALLS, CANDLES OR NO CANDLES; I WAS THERE. AND  
12 THAT'S WHAT THE JURY NEEDED TO HEAR. THEY NEEDED TO HEAR HER  
13 SAY THAT SHE WAS THERE.

14 PARAGRAPH 11 OF THE AFFIDAVIT, AGAIN, JUST BRIEFLY,  
15 DURING THIS CONFIDENTIAL SETTING AND DISCUSSION WITH HER  
16 MOTHER, TOLD HER SHE COULDN'T LIVE WITH THE GUILT OF KNOWING  
17 SHE HAD BEEN IN THE HOUSE, BUT LIED ABOUT IT AT TRIAL.  
18 BECAUSE, AS WE KNOW, WHAT SHE SAID AT TRIAL WAS I CAN'T  
19 REMEMBER, WHICH SHE IS NOW SAYING WAS NOT TRUE. AND BASED ON  
20 WHAT SHE TOLD JERRY LEONARD IN 1979, WAS NOT THE TRUTH.

21 AND IN PARAGRAPH 13, SORT OF TO CONCLUDE MY -- YOU  
22 KNOW, LOOK AT THIS PARTICULAR AFFIDAVIT, AS HER MOTHER, I FELT  
23 HELENA WAS TELLING ME THE FULL TRUTH ABOUT BEING IN THE  
24 MACDONALD HOUSE ON THE NIGHT OF THE MURDERS BECAUSE SHE WANTED  
25 TO SET THE RECORD STRAIGHT, SET THINGS STRAIGHT, BEFORE SHE

September 25, 2012

1 DIED.

2 SO, I WOULD SUBMIT TO YOUR HONOR THAT AGAIN WE HAVE  
3 A STATEMENT BY HELENA STOECKLEY THAT IS IMBUED WITH INDICIA OF  
4 RELIABILITY. SHE'S COMING CLEAN. SHE'S SETTING THE RECORD  
5 STRAIGHT, WHICH IS WHAT WE DO IN THIS JUDEO CHRISTIAN SOCIETY.  
6 IT'S WHAT BELIEVERS DO NEAR THE END. WE WANT TO SET THE  
7 RECORD STRAIGHT AND GET IMPORTANT MATTERS OFF OUR MIND AND  
8 MAKE SURE PEOPLE KNOW WHAT WE THINK THE TRUTH IS.

9 SO, I THINK HER STATEMENT AT THE END OF HER LIFE IS  
10 IMBUED WITH INDICIA OF RELIABILITY AND TRUSTWORTHINESS, MUCH  
11 IN THE SAME WAY THAT HER STATEMENT TO HER ATTORNEY IN 1979 IS  
12 IMBUED WITH INDICIA OF TRUSTWORTHINESS AND RELIABILITY.

13 NOW, SARA MCMANN ALSO TESTIFIED AND SHE CONFIRMED A  
14 COUPLE OF CRITICAL FACTS. HELENA STOECKLEY KNEW SHE WAS  
15 DYING. SHE ASKED SARA MCMANN TO TAKE CARE OF HER SON WHEN SHE  
16 DIES. HER SON'S FIVE OR SIX MONTHS OLD AT THAT TIME. AND  
17 THAT'S NOT SOMETHING YOU WOULD ASK SOMEBODY TO DO, I SUBMIT,  
18 UNLESS YOU THOUGHT YOU DIDN'T HAVE MUCH TIME LEFT.

19 SO, I THINK IT IS CLEAR THAT HELENA STOECKLEY, IN  
20 THE FALL OF 1982, KNEW SHE WAS DYING. DIES OF CHRONIC  
21 HEPATITIS AND PNEUMONIA IN JANUARY OF 1983. SO, WE HAVE THIS  
22 INDICIA OF RELIABILITY, AND ALSO SHE TELLS SARA MCMANN SHE WAS  
23 THERE IN THE MACDONALD HOUSE.

24 SO, THOSE ARE WHAT I DESCRIBE AS THE BOOKENDS OF  
25 HELENA STOECKLEY'S ACCOUNT OF HER INVOLVEMENT. SHE WAS THERE.

September 25, 2012

1 SHE TELLS HER LAWYER IN 1979, UNDER THE AMBIT -- UNDER THE  
2 COVER OF CONFIDENTIALITY. SHE TELLS HER MOTHER IN 1982, IN  
3 CONTEMPLATION OF DEATH, AND DIES IN JANUARY OF 1983.

4           AGAIN, THE HOLY GRAIL OF THIS PROOF OR SUPPORT OF AN  
5 ACCOUNT OF INTRUDERS THAT THE DEFENSE DID NOT HAVE WHEN THIS  
6 CASE WAS TRIED. I THINK THAT OUR EVIDENCE HAS SHOWN BY A  
7 PREPONDERANCE OF THE EVIDENCE THAT MS. STOECKLEY ADMITTED  
8 BEING IN THE HOUSE IN A TRUSTWORTHY AND RELIABLE WAY.

9           NOW, I WANT TO TALK FOR A COUPLE OF MINUTES ABOUT  
10 JIM BRITT AND HIS AFFIDAVITS AND HIS STATEMENTS ABOUT THE  
11 SITUATION. HE TELLS IN THE AFFIDAVITS AND IN HIS STATEMENT  
12 UNDER OATH THAT HE WENT TO SOUTH CAROLINA TO ASSUME CUSTODY OF  
13 HELENA STOECKLEY. THAT'S CONSISTENT IN ALL OF HIS AFFIDAVITS  
14 AND STATEMENTS. NOW, CERTAINLY THERE ARE INCONSISTENCIES AND  
15 I'M SURE WE'RE GOING TO HEAR ABOUT THOSE FROM THE GOVERNMENT.

16           WE OFFERED THOSE AFFIDAVITS AND I POINTED OUT THE  
17 INCONSISTENCIES TO YOUR HONOR AS I WENT THROUGH THEM WITH MR.  
18 SMITH ON THE STAND. SO, WE PUT THAT EVIDENCE BEFORE YOU, AS I  
19 LIKE TO SAY, WARTS AND ALL.

20           AND TO SOME EXTENT, I THINK THE WARTS SUGGEST  
21 THERE'S SOME RELIABILITY OR CREDIBILITY IN THE STATEMENTS  
22 BECAUSE WHAT'S HAPPENING IS MR. BRITT'S ATTEMPTING TO GIVE HIS  
23 BEST RECOLLECTION. AND I WOULD SUBMIT, IT DOESN'T MATTER IF  
24 HE SAID HE WENT TO CHARLESTON OR GREENVILLE. THE IMPORTANT  
25 POINT IS HE WENT TO SOUTH CAROLINA TO PICK UP A WITNESS. AND

September 25, 2012

1 THAT IS SUPPORTED BY HIS STATEMENT TO MARY BRITT IN 1979. AND  
2 SHE GETS ON THE STAND AND SAID I REMEMBER DURING MACDONALD  
3 TRIAL JIM SAID HE WAS GOING TO SOUTH CAROLINA TO GET A  
4 WITNESS.

5 NOW, THERE'S SOME TESTIMONY THAT THE MEEHANS MADE  
6 THIS TRANSPORT. BUT, AGAIN, THERE AREN'T ANY DOCUMENTS TO  
7 SUPPORT THAT. THEY SAY THEY TAKE A MARSHAL'S VEHICLE. THERE  
8 ARE NO RECORDS OF THAT. SO, ALL WE'VE GOT IS THEIR ACCOUNT  
9 VERSUS JIM BRITT'S ACCOUNT.

10 AND ONE OF THE INTERESTING THINGS ABOUT THE  
11 TRANSPORT IS, IF YOU LOOK AT GOVERNMENT EXHIBIT 2003, WHICH IS  
12 UP ON THE SCREEN, AND YOU SCROLL DOWN A LITTLE BIT TO THE END,  
13 IT SAYS ON AUGUST 13, U.S. MARSHAL JOE NEELEY, GREENVILLE,  
14 SOUTH CAROLINA, ADVISED THAT THE SUBJECT -- THAT'S MS.  
15 STOECKLEY -- HAD BEEN TRANSPORTED DIRECTLY FROM PICKENS COUNTY  
16 JAIL TO RALEIGH. SO, HE'S TALKING ABOUT A DIRECT TRANSPORT.

17 NOW, WHAT THE MEEHANS DESCRIBED IS NOT A DIRECT  
18 TRANSPORT. THEY TALK ABOUT SOMEBODY FROM SOUTH CAROLINA  
19 BRINGS HER TO CHARLOTTE. THEY GO TO CHARLOTTE AND PICK HER UP  
20 AND THEN GO TO RALEIGH. THAT'S NOT A DIRECT TRANSPORT.

21 THE ONLY PERSON WHO TALKS ABOUT A DIRECT TRANSPORT  
22 IS JIMMY BRITT. SO, THERE IS SOME INDICATION THAT WHAT HE  
23 SAYS IS TRUE.

24 AND AGAIN, I THINK IT'S IMPORTANT THAT MARY BRITT  
25 RECALLS HIM GOING TO SOUTH CAROLINA TO PICK UP A WITNESS

1 BECAUSE IF WHAT SOMEONE WERE TO SUGGEST IS THAT JIM BRITT IS  
2 MAKING THIS UP IN 2005, YOU ALMOST HAVE TO BELIEVE HE'S COMING  
3 UP WITH A PLAN TO MAKE IT UP IN 2005 IN 1979, BECAUSE HE'S  
4 TELLING HIS WIFE, HIS THEN WIFE, IN 1979, I'M GOING TO PICK UP  
5 HELENA STOECKLEY. THERE WOULD BE NO WAY FOR HIM TO KNOW THAT  
6 HE WOULD WANT TO COME FORWARD IN 2005, AND SAY HE MADE THE  
7 TRANSPORT AND WENT TO SOUTH CAROLINA, SO THAT HE COULD HAVE  
8 TOLD MARY BRITT ABOUT IT TO SORT OF IMBUE OR SUPPORT THIS -- I  
9 ASSUME THE GOVERNMENT WILL CLAIM -- FALSE STATEMENT THAT HE  
10 WENT THERE IN 2005.

11 SO, MARY BRITT'S TESTIMONY IS ABSOLUTELY CRITICAL TO  
12 THIS NOTION OF WHAT JIMMY BRITT DID OR DID NOT DO. AND,  
13 AGAIN, I WOULD SUBMIT TO YOU THAT WOMAN HAD NO MOTIVE TO COME  
14 IN HERE AND TELL YOU ANYTHING BUT THE TRUTH.

15 AGAIN, SHE DIDN'T GET 20 PERCENT OF ANY BOOK DEAL.  
16 SHE DIDN'T HAVE ANYBODY TO HELP OR PERSUADE. SHE CAME IN HERE  
17 AND ANSWERED QUESTIONS DIRECTLY AND FORTHRIGHTLY. SHE DIDN'T  
18 SHADE OR HEDGE HER ANSWERS, WHICH I THINK IS A HIGH MARK OF  
19 CREDIBILITY.

20 AND I HAVE TO ADMIT I FELT A LITTLE BIT SORRY FOR  
21 HER WHEN, YOU KNOW, SHE WAS ASKED ON CROSS-EXAMINATION ABOUT  
22 THE CIRCUMSTANCES OF HER DIVORCE AND THE CLAIMS OF ADULTERY.  
23 AND OBVIOUSLY THAT WAS VERY EMOTIONAL FOR HER. I'M NOT SAYING  
24 IT WASN'T FAIR GAME, BUT, YOU KNOW, IT WOULD CERTAINLY HURT  
25 HER TO HAVE TO TALK ABOUT THAT IN COURT.

September 25, 2012

1           BUT I THINK THAT ENHANCES HER CREDIBILITY FROM OUR  
2 PERSPECTIVE BECAUSE SHE WOULD HAVE NO REASON TO WANT TO COME  
3 IN HERE AND SUPPORT SOMETHING OR VERIFY SOMETHING THAT JIM  
4 BRITT HAD SAID BASED ON WHAT ALL THAT'S HAPPENED.

5           I MEAN, CAN THERE BE ANY DOUBT THAT DURING THE TRIAL  
6 OF JEFFREY MACDONALD IN 1979, MARY BRITT WOULD HAVE HAD NO  
7 EARTHLY IDEA SHE MIGHT BE IN THIS COURTROOM 33 YEARS LATER.  
8 IS THERE ANY DOUBT THAT WHEN SHE HEARD JIM BRITT SAY HE WAS  
9 GOING TO SOUTH CAROLINA, SHE WOULD NEVER EVEN HAVE ENVISIONED  
10 BEING CALLED AS A WITNESS HERE.

11           AND IT SEEMS TO ME SHE CAME HERE AND DID THE BEST  
12 SHE COULD TRYING TO TELL THE TRUTH AND EXPLAIN WHAT SHE  
13 REMEMBERED.

14           SO, I THINK WE HAVE CREDIBLE, POIGNANT AND POWERFUL  
15 TESTIMONY FROM MARY BRITT THAT JIM BRITT DID THIS TRANSPORT IN  
16 1979.

17           SHE ALSO REMEMBERS THAT WHEN HE CAME BACK FROM  
18 MAKING THE TRANSPORT HE WAS EXCITED BECAUSE WHAT HELENA  
19 STOECKLEY HAD SAID TO HIM INDICATED SHE WAS IN THE HOUSE. AND  
20 YOU'LL RECALL AGAIN THE WORDS SHE USED WHEN SHE TESTIFIED,  
21 SHE SAID HE SAID SHE DESCRIBED IT TO A T, TALKING ABOUT THE  
22 MACDONALD HOUSE. OF COURSE, HE WOULD KNOW BECAUSE HE HAD BEEN  
23 IN THE COURTROOM DURING THE MACDONALD TRIAL AND SEEN THE  
24 PHOTOGRAPHS AND EXHIBITS. SHE RECALLS HIM SAYING SHE  
25 DESCRIBED IT TO A T. AND THEN HE WAS DISAPPOINTED THE NEXT

September 25, 2012

1 DAY WHEN IT TURNED OUT SHE EITHER WASN'T ALLOWED TO TESTIFY OR  
2 DIDN'T TESTIFY THAT SHE WAS, IN FACT, IN THE MACDONALD HOUSE.

3 I THINK, JUDGE FOX, MARY BRITT'S TESTIMONY IS WHOLLY  
4 BELIEVABLE AND OF UTMOST IMPORTANCE BECAUSE IT IS CLEAR  
5 SUPPORT FOR MR. BRITT HAVING MADE THE TRANSPORT.

6 ALTHOUGH, I HAVE TO SAY, ONCE WE HAVE JERRY  
7 LEONARD'S TESTIMONY BOOKENDED BY GENE STOECKLEY'S TESTIMONY  
8 ABOUT WHAT HIS MOTHER SAID, I DON'T THINK IT REALLY MATTERS  
9 WHETHER HELENA STOECKLEY MADE ANY STATEMENTS TO JIM BRITT OR  
10 NOT BECAUSE WE KNOW NOW, WHAT WE DIDN'T KNOW BEFORE YESTERDAY,  
11 THAT JERRY LEONARD KNEW AND HAD HEARD IN A CONFIDENTIAL  
12 SETTING THAT HELENA STOECKLEY TOLD HIM SHE WAS IN THE HOUSE.

13 NOW, THE OTHER PART OF THE BRITT CLAIM BESIDES THE  
14 TRANSPORT AND STATEMENT FROM HELENA STOECKLEY TO JIM BRITT, IS  
15 THIS NOTION ABOUT WHETHER JIM BLACKBURN MADE COMMENTS WHEN  
16 THEY WERE INTERVIEWING MS. STOECKLEY IN THE PROSECUTION ROOM  
17 THAT SHE WOULD HAVE INTERPRETED TO BE A THREAT.

18 NOW, THERE IS A CONFLICT IN THE EVIDENCE. MR.  
19 BRITT'S AFFIDAVITS ARE CLEAR AND CONSISTENT THAT HE WAS IN THE  
20 ROOM AND HEARD THE THREAT.

21 THE GOVERNMENT'S EVIDENCE TO THE CONTRARY COMES FROM  
22 TWO PEOPLE; JIM BLACKBURN AND JACK CRAWLEY. AND I THINK WE  
23 CAN ALL -- I HOPE WE CAN ALL AGREE THAT JIM BLACKBURN IS  
24 MARKEDLY LACKING IN CREDIBILITY. AND I'M NOT GOING TO TAKE  
25 THE COURT THROUGH ALL OF THE THINGS THAT HE SAID AND ADMITTED

September 25, 2012



1 DURING HIS EXAMINATION THAT SUGGEST LACK OF CREDIBILITY, BUT  
2 WE KNOW HE FORGED NAMES ON -- JUDGES' SIGNATURES ON ORDERS.  
3 HE ADMITTED THAT. WE KNOW HE FALSIFIED AND MADE UP COURT  
4 DOCUMENTS AND FILES TO SHOW HIS CLIENTS. WE KNOW HE  
5 EMBEZZLED. WE KNOW HE STOLE MONEY. AND WE KNOW HE MADE  
6 PROMISES THAT HE DIDN'T KEEP. SO, THOSE ARE ALL INDICIA OF A  
7 LACK OF CREDIBILITY AND UNRELIABILITY.

8 BUT I'M GOING TO SAY THIS, I DON'T THINK THOSE  
9 INDICATIONS OF UNRELIABILITY ARE THE FULL STORY WITH RESPECT  
10 TO MR. BLACKBURN AND CREDIBILITY.

11 IT WOULD SEEM TO ME ON THE STAND HE TRIED TO SOFT  
12 PEDAL HIS BAD CONDUCT. HE OBFUSCATED. HE DIDN'T ANSWER  
13 QUESTIONS DIRECTLY. AND I THINK THAT IS, AGAIN, AN INDICATION  
14 OF A LACK OF CREDIBILITY. HE FEIGNED HIS DESIRE FOR NOTORIETY  
15 AND WENT RIGHT OUTSIDE AND HELD A PRESS CONFERENCE ON THE  
16 COURTHOUSE STEPS.

17 SO, THE THINGS WE'RE HEARING FROM MR. BLACKBURN, TO  
18 ME, SUGGESTED A LACK OF FORTHRIGHTNESS AND A LACK OF  
19 CREDIBILITY, IN ADDITION TO WHAT WE KNOW WERE MISSTATEMENTS.

20 AND ONE OF THE MOST INTERESTING THINGS, IT SEEMED TO  
21 ME, HE SAID, YOU KNOW, AFTER QUESTION, AFTER QUESTION, AFTER  
22 QUESTION IS, WELL, THAT WAS THEN, MR. WIDENHOUSE, AND I DON'T  
23 DO THAT ANYMORE. YOU KNOW, I WROTE A LETTER OF APOLOGY TO THE  
24 BAR. AND WHEN HE SAID THAT, I THOUGHT, WELL, HE OBVIOUSLY  
25 DOESN'T KNOW THAT I KNOW ABOUT BROOKE MORROW. HE OBVIOUSLY

September 25, 2012

1 DOESN'T KNOW THAT I KNOW THAT HE TOOK \$50,000 FROM HER IN  
2 2001, WITH A PROMISE TO WRITE A BOOK, WHICH HE DID NOT HONOR.  
3 HE OBVIOUSLY DIDN'T KNOW I HAD A PROMISSORY NOTE HE EXECUTED  
4 WITH MS. MORROW THAT HE DIDN'T HONOR, WHICH HE ADMITTED. AND  
5 HE OBVIOUSLY DIDN'T KNOW THAT I KNEW HE HAD NOT PAID ONE CENT  
6 OF THE \$50,000 BACK TO HER DESPITE THAT IT'S BEEN DUE SINCE  
7 2003, WHICH LAST TIME I COUNTED WAS ABOUT NINE YEARS. AND THE  
8 BEST THING THAT HE COULD SAY ABOUT THAT WAS, WELL, I DIDN'T  
9 HAVE THE MONEY TO PAY HER BACK I WAS WAITING TABLES.

10 BUT WE KNOW FROM HIS TESTIMONY HE'S NOT WAITING  
11 TABLES ANYMORE HE'S GIVING ALL THESE SEMINARS AND SPEECHES  
12 UNDER THE AMBIT OF JIM BLACKBURN ENTERPRISES, SPEAKING TO BAR  
13 GROUPS ON ISSUES INCLUDING ETHICS, WHICH I HAVE TO SAY STRIKES  
14 ME AS HIGHLY IRONIC. IT SEEMED TO ME HIS TESTIMONY WAS A LOT  
15 ABOUT SELF-PROMOTION UNLIKE THE TESTIMONY OF PEOPLE LIKE MARY  
16 BRITT AND GENE STOECKLEY AND I THINK THAT IS AN INDICATION OF  
17 A LACK OF CREDIBILITY.

18 HE ALSO SAID AND ADMITTED HE WAS ONE OF THESE  
19 LAWYERS WHO PROMOTES HIMSELF AS A LAWYER WHO WANTED TO WIN AT  
20 ALL COSTS. AND, YOU KNOW, WHEN I ASKED HIM ABOUT THAT HE, YOU  
21 KNOW, WAS QUICK TO SAY, WELL, I DIDN'T MEAN WIN AT ALL COST BY  
22 CHEATING. OF COURSE, THAT'S NOT WHAT HE SAID WHEN HE  
23 DESCRIBED HIMSELF THAT WAY.

24 SO, IT SEEMS TO ME, IF WHAT YOU HAVE IS JIM BRITT  
25 AND HIS AFFIDAVITS AND JIM BLACKBURN AND HIS TESTIMONY, WELL,

September 25, 2012

1 THAT CREDIBILITY GOES OUR WAY. IT SEEMS TO ME, IT GOES OUR  
2 WAY EVERY DAY, EVERY TIME THE QUESTION WOULD GET ASKED.

3 NOW, WITH RESPECT TO MR. CRAWLEY, IT SEEMED TO ME  
4 THAT HIS TESTIMONY WAS KIND OF SAD. I MEAN, I FELT SORRY FOR  
5 HIM WHEN HE WAS ON THE STAND TESTIFYING. AND SOME OF THE  
6 THINGS WOULD HAVE BEEN FUNNY IF IT JUST HADN'T FELT SO SAD.

7 BUT THE INTERESTING THING ABOUT MR. CRAWLEY IS ALL  
8 HE CAN REMEMBER ABOUT THAT MEETING IS THERE WERE NO THREATS.  
9 HE DOESN'T REMEMBER WHO WENT AND GOT SANDWICHES, IF ANYBODY  
10 DID, FOR HER. HE DOESN'T REMEMBER WHO TOOK NOTES. AND MOST  
11 IMPORTANTLY, HE'S NOT SURE JIM BRITT WASN'T IN THE ROOM. I  
12 MEAN, WHEN ASKED THE QUESTION HE SAID, WELL, YOU KNOW, I DON'T  
13 RECALL. HE MIGHT HAVE BEEN.

14 SO, THE GOVERNMENT'S EVIDENCE ON THAT PARTICULAR  
15 ISSUE JUST FAILS. AND THE PREPONDERANCE OF THE EVIDENCE WOULD  
16 SHOW THAT MR. BRITT WAS IN THAT ROOM, HEARD A THREAT AND IT  
17 CAME FROM MR. BLACKBURN.

18 NOW, THAT THREAT IS IMPORTANT BECAUSE IT WOULD BE A  
19 REASON THAT HELENA STOECKLEY WOULDN'T HAVE SAID SHE WAS IN THE  
20 ROOM TO ANYBODY EXCEPT HER LAWYER, WHO PROMISED NOT TO TELL  
21 ANYBODY WHAT SHE SAID.

22 SO, THE THREAT IS AN IMPORTANT SITUATION. I DON'T  
23 THINK WE NEED THE THREAT IN ORDER TO PREVAIL AT THIS HEARING,  
24 BUT I THINK THAT BY A PREPONDERANCE OF THE EVIDENCE WE'VE  
25 SHOWN THAT IT WOULD HAPPEN -- HAPPENED.

September 25, 2012

1           AND THE LAST THING ABOUT THE THREAT I WOULD SAY IS,  
2 YOU KNOW, THERE WAS A LOT OF TALK ABOUT POLYGRAPHS IN THIS  
3 CASE. AND THERE WAS A POLYGRAPH OF MR. BRITT. AND, YOU KNOW,  
4 I WOULD TAKE THE COURT TO EXHIBIT 5057, PAGE TWO OF THAT  
5 EXHIBIT, AND REMIND THE COURT OF THE QUESTIONS THAT WERE ASKED  
6 OF MR. BRITT DURING THIS POLYGRAPH. HE WAS ASKED, DID YOU  
7 HEAR HELENA STOECKLEY TELL JIM BLACKBURN SHE HAD SEEN A BROKEN  
8 HOBBY HORSE WHILE SHE WAS INSIDE THE MACDONALD HOUSE? THE  
9 ANSWER IS YES. DID YOU HEAR JIM BLACKBURN TELL HELENA  
10 STOECKLEY HE WOULD HAVE HER INDICTED FOR MURDER IF SHE  
11 TESTIFIED SHE HAD BEEN INSIDE THE MACDONALD HOUSE? THE ANSWER  
12 IS YES. ARE YOU NOW LYING ABOUT THE CONVERSATION BETWEEN JIM  
13 BLACKBURN AND HELENA STOECKLEY? THE ANSWER IS NO.

14           AND STEVE DAVENPORT, WHO, YOU KNOW, MR. SMITH SAID  
15 -- MR. WADE SMITH SAID ON THE STAND WAS AN EXPERIENCED  
16 POLYGRAPHER. HE WORKED FOR THE SBI FOR 20 YEARS AND HE WAS  
17 THEIR CHIEF POLYGRAPHER. HE DID THE POLYGRAPH TEST AND HE  
18 CONCLUDED -- AGAIN, IT'S ON PAGE TWO OF THE EXHIBIT -- THAT  
19 MR. BRITT'S PHYSIOLOGICAL REACTIONS WHEN HE ANSWERED THE ABOVE  
20 QUESTIONS AS SHOWN SHOWED NO DECEPTION TO THE RELEVANT  
21 QUESTIONS.

22           SO, WE HAVE COMPELLING EVIDENCE IN THIS CASE THAT  
23 MR. BRITT WAS IN THE ROOM, THAT HE HEARD A THREAT. WE'VE GOT  
24 AFFIDAVITS AND A POLYGRAPH OF MR. BRITT. WE HAVE NO AFFIDAVIT  
25 AND NO POLYGRAPH OF MR. BLACKBURN. WE HAVE NO AFFIDAVIT AND

September 25, 2012

1 NO POLYGRAPH OF MR. CRAWLEY. AND I WOULD SUBMIT TO YOU THAT  
2 WHEN THE TWO OF THEM TESTIFIED THERE WAS A STARK LACK OF  
3 CREDIBILITY WITH RESPECT TO THEIR TESTIMONY.

4 THE OTHER PIECE OF THIS SORT OF WHO WAS IN THE ROOM  
5 SEEMS TO BE JOE MCGINNISS SAYING, WELL, YOU KNOW, THAT FILMING  
6 IN THE MINI-SERIES, THE ROOM THAT WAS SHOWN WAS THE DEFENSE  
7 ROOM. WELL, NOBODY WOULD KNOW WATCHING THE FILM WHICH ROOM IT  
8 WAS BECAUSE THAT'S NOT SHOWN IN THE FILM. IT'S JUST HE'S  
9 TELLING YOU WHAT HE THOUGHT THE ROOM WAS SUPPOSED TO DEPICT.

10 BUT JIM BRITT SAW THE MOVIE, RUNS INTO MARY BRITT  
11 LATER AND SHE SAID, OH, I SAW THE MOVIE THE OTHER DAY AND HIS  
12 RESPONSE, ACCORDING TO HER, THROUGH GRITTED TEETH WAS IT WAS  
13 INACCURATE, I WAS IN THE ROOM.

14 NOW, HE CAN'T BE TALKING ABOUT THE DEFENSE ROOM  
15 BECAUSE NOBODY SAYS HE WAS IN THE DEFENSE ROOM. JOE MCGINNISS  
16 SAYS HE WASN'T. WADE SMITH SAYS HE WASN'T. JIM BRITT NEVER  
17 SAYS HE WAS.

18 SO, THE ONLY ROOM THAT HE COULD MEAN WHEN HE SAYS  
19 IT'S NOT ACCURATE, I WAS IN THE ROOM, IS THE ROOM WHERE THE  
20 PROSECUTION WAS INTERVIEWING HELENA STOECKLEY.

21 AND I WOULD SUBMIT THAT TESTIMONY FROM MARY BRITT,  
22 AGAIN, IS IMPORTANT CORROBORATION OF THE THREAT. SHE WOULD  
23 HAVE NO REASON TO BELIEVE IN 1984 OR 1985, WHEN SHE SAW THE  
24 MOVIE AND THEN SAW MR. BRITT AT HER HOUSE LATER ON AND ASKED  
25 HIM ABOUT IT TO BELIEVE SHE WOULD BE HAULED INTO A FEDERAL

September 25, 2012

1 COURT IN 2012, AND ASKED TO TESTIFY ABOUT IT. BUT SHE HAS  
2 THAT DISTINCT RECOLLECTION OF THAT ENCOUNTER AND HIS RESPONSE  
3 IT'S NOT ACCURATE, I WAS IN THE ROOM.

4 I THINK THAT IS POWERFUL CONTEMPORANEOUS EVIDENCE OF  
5 WHAT MR. BRITT SAID, BOTH THAT HE MADE THE TRANSPORT TO SOUTH  
6 CAROLINA AND THAT HE WAS IN THE ROOM AND HEARD THE THREAT MADE  
7 TO HELENA STOECKLEY.

8 AGAIN -- AND I'M A BIG STAR WARS FAN, JUDGE FOX, AND  
9 I DON'T KNOW IF YOU ARE OR NOT, BUT DON'T BE CONFUSED BY THESE  
10 JEDI MIND TRICKS YOU MAY BE HEARING FROM THE GOVERNMENT. YOU  
11 KNOW, THIS IS NOT THE ROOM YOU'RE LOOKING FOR. WE KNOW WHAT  
12 ROOM IT IS. WE KNOW WHAT ROOM JIM BRITT THOUGHT IT WAS WHEN  
13 HE SAW THE MOVIE, AND THAT IS WHAT IS IMPORTANT, WHAT MOVIE --  
14 WHAT ROOM DID HE THINK THEY WERE DEPICTING AT THAT TIME.

15 THE THREAT'S IMPORTANT, AGAIN, BECAUSE IT IS  
16 EVIDENCE OF PROSECUTORIAL MISCONDUCT, WHICH IS A VIOLATION OF  
17 DUE PROCESS AND A CONSTITUTIONAL BASIS FOR THE RELIEF THAT WE  
18 SEEK IN THIS CASE. IT EXPLAINS WHY HELENA STOECKLEY WOULD  
19 HAVE SAID THE NEXT DAY ON THE STAND SHE DIDN'T REMEMBER THE  
20 NIGHT OF THE MURDERS AND WOULDN'T HAVE TOLD ANYBODY  
21 DIFFERENTLY IN 1979, UNDER THE CLOAK OF PRIVILEGE, WHICH WAS  
22 HER LAWYER, WHICH SHE DID UNDER THE CLOAK OF PRIVILEGE.

23 AND MR. BRITT'S STATEMENTS IN THIS REGARD ARE UNDER  
24 OATH. IN HIS AFFIDAVITS, THEY'RE ALL CONSISTENT ON THIS POINT  
25 AND THEY'RE SUPPORTED BY THE TESTIMONY OF MARY BRITT.

September 25, 2012

1           AND I WOULD JUST REMIND THE COURT, I'M NOT GOING TO  
2 TAKE YOU THROUGH THE AFFIDAVIT, BUT I REMIND THE COURT THAT  
3 IT'S DEFENSE EXHIBIT 5058, PARTICULARLY PARAGRAPH 22, 23 AND  
4 24.

5           THE IMPORTANCE OF MR. BRITT'S STATEMENTS IN COMING  
6 FORWARD IN 2005, AGAIN, ARE TWOFOLD. HE SPENDS TIME WITH  
7 HELENA STOECKLEY AND SHE SAYS SHE WAS IN THE MACDONALD HOUSE  
8 AND HE HEARS THE PROSECUTOR THREATEN HER WITH A MURDER CHARGE,  
9 WHICH KEEPS HER FROM TESTIFYING THAT SHE WAS IN THE HOUSE WHEN  
10 SHE COMES TO COURT THE NEXT WAY -- THE NEXT DAY.

11           NOW, WE KNOW WHY MR. BRITT CAME FORWARD. HE WAS,  
12 AGAIN, CONSISTENT IN ALL HIS STATEMENTS TO MR. SMITH, BOTH THE  
13 STATEMENT UNDER OATH AND THE AFFIDAVIT, THAT HE HAD A MORAL  
14 BURDEN THAT HE FELT LIKE HE NEEDED TO UNLOAD IN 2005.

15           ONE HAS TO ASK ONE'S SELF WHAT WOULD BE HIS MOTIVE  
16 FOR COMING FORWARD IN 2005, OTHER THAN TO UNLOAD A BURDEN HE  
17 HAD BEEN CARRYING. I MEAN, WHAT DOES HE GET OUT OF IT? WELL,  
18 HE DOESN'T -- AS FAR AS WE KNOW, HE DOESN'T GET ANY MONEY. AS  
19 FAR AS WE KNOW, HE DOESN'T GET ANY BOOK DETAIL, 20 PERCENT OF  
20 ANY BOOK DEAL. AS FAR AS WE KNOW, ALL HE GETS IS A BUNCH OF  
21 UNPLEASANTNESS FOR HIS WIFE -- HIS EX-WIFE AND HIS FAMILY.

22           THERE WOULD BE NO REASON FOR HIM TO COME FORWARD IN  
23 2005, FOR ANY REASON OTHER THAN TO UNLOAD A BURDEN THAT HE HAD  
24 BEEN CARRYING AND A BURDEN OF WHAT HE SAW AND BELIEVED WAS  
25 INAPPROPRIATE CONDUCT BY A PROSECUTOR.

September 25, 2012

1           NOW, I HAVE TO ADMIT THERE'S SOME HUMOR IN THE  
2 NOTION THAT MAYBE WHAT HE WANTED TO COME FORWARD WITH WAS  
3 WHETHER JUDGE DUPREE HAD GOTTEN A CAKE FROM A JUROR DURING THE  
4 MACDONALD TRIAL BECAUSE THE WAS FROM THE FIRST AFFIDAVIT. AND  
5 WADE SMITH EXPLAINED WHY IT'S NOT IN THE SUBSEQUENT AFFIDAVITS  
6 BECAUSE HE DIDN'T THINK IT WAS PARTICULARLY IMPORTANT.

7           AND I DON'T THINK THERE'S ANY REASON TO BELIEVE THAT  
8 THE REASON JIM BRITT COMES FORWARD IN 2005, IS KNOWLEDGE OF A  
9 CHOCOLATE CAKE THAT A JUDGE RECEIVED DURING A TRIAL IN 1979.

10           I THINK THE REASON HE COMES FORWARD IS BECAUSE HE  
11 WAS BURDEN BY THINGS THAT HE KNEW THAT WEREN'T ACCURATE, THAT  
12 LED TO SOMEONE BEING CONVICTED. WHETHER THAT PERSON WAS  
13 INNOCENT OR NOT I DON'T THINK WAS WHAT JIM BRITT WAS SAYING.  
14 I THINK WHAT HE WAS SAYING WAS I DON'T THINK THE TRIAL WAS  
15 FAIR BECAUSE EVIDENCE WAS WRONGFULLY SUPPRESSED OR PREVENTED  
16 FROM BEING PRESENTED BECAUSE OF CONDUCT BY THE PROSECUTOR.

17           BUT HIS STATEMENTS TO MARY BRITT AND THE STATEMENTS  
18 TO WADE SMITH THAT ARE PUT IN HIS AFFIDAVIT HAVE TO DO WITH  
19 SUPPRESSED EVIDENCE AND THE REASON THAT HE WOULD HAVE WANTED  
20 TO COME FORWARD AFTER ALL THIS TIME.

21           NOW, WE'VE HEARD FROM SEVERAL MARSHALS THAT HE  
22 CLEARLY WAS NOT THE MOST POPULAR MEMBER OF THE MARSHAL  
23 SERVICE. THAT DOESN'T REALLY HAVE ANYTHING TO DO WITH HIS  
24 CREDIBILITY IN 2005 AND COMING FORWARD WITH THIS INFORMATION.  
25 AND THE MOST -- AGAIN, THE MOST IMPORTANT PART OF WHY WHAT HE

September 25, 2012



1 SAYS IN 2005 IS BELIEVABLE IS BECAUSE OF WHAT HE TELLS HIS  
2 WIFE IN 1979, THAT'S CONSISTENT WITH WHAT HE SAYS IN 2005.  
3 AND THERE'S JUST NO REASON TO BELIEVE HE TOLD MARY BRITT THAT  
4 HE WAS GOING TO SOUTH CAROLINA IN 1979, AND TOLD HER WHEN HE  
5 GOT BACK THAT THE WOMAN HAD DESCRIBED THE HOUSE TO A T SO THAT  
6 HE COULD THEN COME FORWARD 26 YEARS LATER AND REVEAL THAT  
7 INFORMATION. SO, WHAT MARY BRITT TELLS US IS EXTREMELY  
8 IMPORTANT. AND HE PASSES THE POLYGRAPH WITH RESPECT TO THE  
9 THREATS MADE BY THE PROSECUTOR.

10 NOW, WE GOT SOME CORROBORATING EVIDENCE OF THE  
11 THREATS BECAUSE WE KNOW FROM WENDY ROUDER, FOR EXAMPLE, HOW  
12 HELENA STOECKLEY FELT AFTER SHE TESTIFIED AND AFTER SHE MET  
13 WITH THE PROSECUTOR DURING MS. ROUDER'S EXPLANATION OF WHAT  
14 HAPPENED ON SATURDAY AND SUNDAY IN WHATEVER MOTEL OR  
15 COLLECTION OF MOTELS WERE INVOLVED, BUT SHE TALKS ABOUT  
16 COMMOTION AT THE JOURNEY'S END ON SATURDAY MORNING. SHE GOES  
17 THERE WITH RED UNDERHILL. ERNIE DAVIS IS MADE TO LEAVE. AND  
18 DURING THAT TIME SHE HAS DISCUSSIONS WITH MS. ROUDER ABOUT THE  
19 ROCKING HORSE, PICTURES OF CHILDREN, BEING IN THE DRIVEWAY. I  
20 THINK I WAS IN THE HOME. IT'S A MEMORY, YOU KNOW, IT'S NOT A  
21 DREAM. AND WHY DON'T YOU -- AND THEN MS. ROUDER SAYS, WELL,  
22 WHY DON'T YOU GET ON THE STAND AND SAY THAT? AND SHE RECALLS  
23 WHAT HELENA STOECKLEY SAID, I CAN'T BECAUSE OF THOSE DAMN  
24 PROSECUTORS.

25 SO, THERE IS CLEAR EVIDENCE, AGAIN, CONTEMPORANEOUS

September 25, 2012

1 WITH THE EVENT, THAT HELENA STOECKLEY WAS SCARED IN 1979, IN  
2 PART BECAUSE OF ACTIONS BY THE PROSECUTORS.

3           AND, AGAIN, AS MS. ROUDER SAYS IN HER AFFIDAVIT,  
4 ONCE SHE LEARNED IN 2005 ABOUT MR. BRITT COMING FORWARD AND  
5 REVEALING THE THREATS, ALL OF THIS BEGAN TO MAKE SENSE,  
6 INCLUDING THAT MS. STOECKLEY SAID, YOU KNOW, THEY'LL FRY ME,  
7 YOU KNOW, I CAN'T COME FORWARD. I CAN'T GET ON THE STAND AND  
8 TESTIFY.

9           SO, I THINK AT THE END OF THE DAY -- I THINK AT THE  
10 END OF THE DAY OUR EVIDENCE SHOWS BY A PREPONDERANCE OF THE  
11 EVIDENCE THAT MR. BLACKBURN THREATENED HELENA STOECKLEY AND  
12 THAT SHE WAS AFRAID BECAUSE OF THAT. THEREFORE, SHE DIDN'T  
13 TESTIFY THAT SHE WAS IN THE HOUSE.

14           I THINK OUR EVIDENCE SHOWS BY A PREPONDERANCE OF THE  
15 EVIDENCE, AGAIN AT THE END OF THE DAY, THAT HELENA STOECKLEY  
16 WAS IN THE HOUSE AND WOULD HAVE SAID SHE WAS IN THE HOUSE IF  
17 SHE TOLD THE TRUTH ON THE STAND. AGAIN, THAT'S WHAT SHE SAYS  
18 TO JERRY LEONARD IN 1979, UNDER THE PROMISE AND CLOAK OF  
19 ATTORNEY-CLIENT PRIVILEGE. IT'S WHAT SHE TELLS HER MOTHER IN  
20 1982, SHORTLY BEFORE SHE DIES, KNOWING THAT SHE'S REACHING THE  
21 POINT OF DEATH.

22           SO, WE HAVE, IN THE END, YOUR HONOR, MUCH MORE THAN  
23 MERELY STOECKLEY RELATED TESTIMONY THAT JUDGE MURNAGHAN TALKED  
24 ABOUT. AND WE ALSO KNOW NOW THAT JUDGE DUPREE THOUGHT THE  
25 EVIDENCE IN THIS CASE MUST HAVE BEEN CLOSE OR HE WOULDN'T HAVE

September 25, 2012

1 WRITTEN A LETTER TO WENDY ROUDER AND SAID I WAS CONFIDENT THE  
2 JURY WAS GOING TO ACQUIT. WE HAVE DIRECT EVIDENCE FROM HELENA  
3 STOECKLEY THAT SHE WAS IN THE HOUSE. IT'S AN EYEWITNESS  
4 ACCOUNT OF INTRUDERS. IT IS DIRECT EVIDENCE OF AN INTRUDER.

5 AND IN TANDEM WITH THE NEW EVIDENCE FROM THE DNA  
6 TESTING THAT SHOWS UNSOURCED HAIRS, WHICH IS SUPPORTIVE  
7 EVIDENCE OF INTRUDERS, IN TANDEM WITH THAT AND IN THE CONTEXT  
8 OF THE EVIDENCE AS A WHOLE, I THINK WE HAVE COMPELLING  
9 EVIDENCE THAT A JURY -- THAT IF THE JURY HAD HEARD, NO  
10 REASONABLE JURY WOULD HAVE CONVICTED.

11 AND I THINK IT'S IMPORTANT IN SORT OF WRAPPING UP  
12 THE HELENA STOECKLEY NOTION IS THAT IN 1979, 1980, AND SHORTLY  
13 BEFORE, POLICE OFFICERS THOUGHT HELENA STOECKLEY WAS  
14 TRUSTWORTHY. YOU'LL REMEMBER THERE IS EVIDENCE THAT WE  
15 PRESENTED THAT PRINCE BEASLEY SAID SHE WAS THE BEST INFORMANT  
16 I EVER HAD. SO, LOTS OF POLICE OFFICERS USED HER AS AN  
17 INFORMANT AND THEY WOULD NOT DO THAT IF THEY DIDN'T BELIEVE  
18 THAT SHE WOULD BE ABLE TO GIVE TRUSTWORTHY TESTIMONY. SO,  
19 THEY RELY ON HER AND DEPEND ON HER. THEY DEEM HER  
20 TRUSTWORTHY.

21 AND I WANT TO LEAVE THE COURT WITH AN ILLUSTRATION  
22 FROM ONE OF MY FAVORITE PLAYS, WHICH IS A MAN FOR ALL SEASONS.  
23 AND IT'S THE STORY YOUR HONOR PROBABLY KNOWS OF SIR THOMAS  
24 MORE. AND THERE IS A SCENE IN THAT PARTICULAR PLAY WHERE  
25 ROPER AND ALICE AND THOMAS MORE ARE IN A ROOM TOGETHER AND

1 SOMEONE WHO IS PLOTTING AGAINST THOMAS MORE HAS BEEN IN THE  
2 ROOM AND HAS NOW LEFT. AND ALICE AND ROPER ARE UPSET WITH  
3 THOMAS MORE. THEY SAY YOU SHOULD HAVE HIM ARRESTED. AND HE  
4 SAYS HE HASN'T BROKEN A LAW. AND THEY SAY, WELL, HE'S BROKEN  
5 GOD'S LAW. THOMAS MORE SAYS I'M NOT IN CHARGE OF GOD'S LAW.  
6 WE'RE ONLY IN CHARGE OF MAN'S LAW AND HE HASN'T BROKEN THAT  
7 YET. AND THOMAS MORE SPEAKS TO ROPER AND -- WELL, ROPER SAYS  
8 TO THOMAS MORE SO YOU WOULD GIVE THE DEVIL THE BENEFIT OF THE  
9 LAW? AND THOMAS MORE SAYS, SURE, I'D GIVE THE DEVIL THE  
10 BENEFIT OF THE LAW. WHAT WOULD YOU DO? AND ROPER SAYS I  
11 WOULD CUT DOWN EVERY LAW, EVERY TREE IN ENGLAND TO GET AT THE  
12 DEVIL. AND THOMAS MORE TURNS TO HIM AND SAID AND WHAT WOULD  
13 YOU DO WHEN THE DEVIL TURNED ON YOU? NOW, THAT YOU HAVE CUT  
14 DOWN ALL THE LAWS, YOU WOULD HAVE NO PROTECTION FROM THE DEVIL  
15 IF HE TURNED BACK ON YOU.

16 AND WHAT'S THE -- THE IMPORTANCE OF THAT SCENE, YOUR  
17 HONOR, IS I THINK IT ILLUSTRATES WHY WE IN THIS COUNTRY DEPEND  
18 ON THE RULE OF LAW. THE LAW PROTECTS YOU. THE LAW PROTECTS  
19 ME. THE LAW PROTECTS JEFFREY MACDONALD. AND THE LAW IN THIS  
20 CASE, IN LIGHT OF THE EVIDENCE THAT YOU'VE HEARD, I THINK,  
21 SUPPORTS OUR REQUEST THAT YOU GRANT THE MOTION TO VACATE.

22 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS UNTIL  
23 10:40.

24 (RECESS TAKEN FROM 10:25 A.M., UNTIL 10:41 A.M.)

25 (DEFENDANT PRESENT.)

September 25, 2012

1 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.  
2 MR. BRUCE.

3 MR. BRUCE: THANK YOU, YOUR HONOR. I'M JUST GOING  
4 TO SPEAK VERY BRIEFLY ON THE LEGAL ASPECTS OF THIS CASE AND  
5 WHAT WE'RE ASKING THE COURT TO DO, AND THEN I'M GOING TO TURN  
6 IT OVER TO MR. MURTAGH, WHO IS GOING TO DISCUSS THE  
7 GOVERNMENT'S PERSPECTIVE ON THE UNSOURCED HAIR CLAIM AND ALSO  
8 WHAT WE CONSIDER TO BE THE MOST IMPORTANT PART OF THE EVIDENCE  
9 AS A WHOLE, WHICH IS SOME OF THE ASPECTS OF THE TRIAL EVIDENCE  
10 THAT CAUSED THE JURY TO CONVICT JEFFREY MACDONALD IN 1979.  
11 AND THEN -- AND WE WON'T GET TO THIS UNTIL AFTER LUNCH, I'M  
12 SURE, BUT THEN I'M GOING TO WIND UP BY SPEAKING ABOUT THE  
13 BRITT CLAIM WHEN MR. MURTAGH IS THROUGH.

14 BUT WHAT I WANTED TO SAY TO THE COURT BEFORE MR.  
15 MURTAGH GETS STARTED IS, AS WE SAID IN OUR SPECIFIC ISSUES  
16 CITED IN THE PRETRIAL ORDER, WE'RE ASKING THE COURT TO  
17 DETERMINE, NOW THAT THE COURT HAS HEARD THE EVIDENCE AS A  
18 WHOLE, WE'RE ASKING THE COURT TO HOLD THAT THE GATEKEEPING  
19 STANDARD HAS NOT BEEN MET WITH RESPECT TO THE BRITT CLAIM OR  
20 THE UNSOURCED HAIR CLAIM, THAT IS, THAT THE DEFENDANT OR THE  
21 MOVANT HAS, WITH DUE REGARD TO THE LIKELY CREDIBILITY AND THE  
22 PROBABLE RELIABILITY OF THE EVIDENCE AS A WHOLE, HAS FAILED TO  
23 SHOW THAT IN COMBINATION WITH THE NEWLY DISCOVERED EVIDENCE,  
24 IF PROVEN, BRITT CLAIM AND UNSOURCED HAIR CLAIM, WOULD BE  
25 SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT

September 25, 2012

1 NO REASONABLE JUROR WOULD HAVE FOUND MACDONALD GUILTY.

2 THAT'S WHAT YOUR HONOR FOUND IN NOVEMBER OF 2008,  
3 AND WE SUBMIT NOTHING HAS BEEN ADDUCED AT THIS HEARING  
4 DISTURBS THAT.

5 BUT AS YOUR HONOR STATED WHEN WE BEGAN THIS HEARING  
6 A WEEK AGO YESTERDAY, THIS HAS REALLY BEEN A CONFLATED HEARING  
7 IN THAT THE PARTIES HAVE HAD AN OPPORTUNITY TO INTRODUCE  
8 EVIDENCE AS A WHOLE FOR THE GATEKEEPING STANDARD, BUT THE  
9 PARTIES HAVE ALSO HAD AN OPPORTUNITY TO INTRODUCE EVIDENCE  
10 GOING TO THE MERITS OF THE CLAIM -- THE TWO CLAIMS, THE BRITT  
11 CLAIM AND THE UNSOURCED HAIRS CLAIM.

12 AND SO WE'RE GOING TO BE ASKING THE COURT AND WE ARE  
13 ASKING THE COURT TO HOLD NOT ONLY THAT MACDONALD'S TWO CLAIMS  
14 THAT CAME BACK FROM THE FOURTH CIRCUIT, THE BRITT CLAIM AND  
15 UNSOURCED HAIRS CLAIM, DO NOT SURVIVE GATEKEEPING. HE HAS NOT  
16 MET THAT CLEAR AND CONVINCING EVIDENCE THRESHOLD. AND EVEN IF  
17 HE HAD, THE CLAIMS FAIL ON THE MERITS BECAUSE HE HAS FAILED TO  
18 PROVE THE BRITT CLAIM -- THE BRITT AVERMENTS THAT CONSTITUTE  
19 THE BRITT CLAIM AND HE'S FAILED TO PROVE ANY EXCULPATORY VALUE  
20 FROM THE UNSOURCED HAIRS CLAIM.

21 THE COURT: MR. BRUCE, JUST A MOMENT. I BELIEVE YOU  
22 AGREED THAT THAT WAS THE CASE, MR. WIDENHOUSE.

23 MR. WIDENHOUSE: YES.

24 THE COURT: IS THAT CORRECT?

25 MR. WIDENHOUSE: I AGREE THAT WE HAVE TO PROVE BY

1 CLEAR AND CONVINCING EVIDENCE THOSE --

2 THE COURT: I UNDERSTOOD THAT YOU AGREED THAT THIS  
3 CASE WOULD BE HEARD ON ITS MERITS.

4 MR. WIDENHOUSE: YES. YES.

5 THE COURT: AS WELL AS THE GATEKEEPING.

6 MR. WIDENHOUSE: YES.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. BRUCE: AND WITH THAT INTRODUCTION, I WILL NOW  
9 TURN IT OVER TO MR. MURTAGH. THANK YOU.

10 MR. MURTAGH: GOOD MORNING, YOUR HONOR. AND MAY IT  
11 PLEASE COURT, BY SOME QUIRK OF FATE THE LAST TIME I ADDRESSED  
12 A FEDERAL JUDGE, A CASE IN WHICH I WAS COUNSEL, WAS ON MARCH  
13 23RD IN THIS COURTROOM BEFORE YOUR HONOR ON THIS CASE. SO,  
14 HERE I AM AGAIN, A LITTLE RUSTY, BUT THIS IS FAMILIAR GROUND  
15 FOR ME TO GO OVER.

16 WHAT I'D LIKE TO START WITH IS THE TRANSCRIPT  
17 EXCERPTS THAT MR. WIDENHOUSE, I MIGHT ADD, SOMEWHAT CAREFULLY  
18 PARSED TRANSCRIPT EXCERPTS, THAT HE TALKED TO YOU ABOUT AND  
19 PUT ON THE SCREEN.

20 SO, WITH THE HELP OF MY ELECTRONIC WARFARE OFFICER,  
21 IF WE COULD HAVE TD-6, PAGE 130, AND THAT IS TRANSCRIPT  
22 REFERENCE 2533, THE FIRST ONE, DR. GAMMEL. THE COURT'S  
23 INDULGENCE HERE.

24 (PAUSE.)

25 MR. MURTAGH: OKAY. AND NOW IF WE COULD HAVE TD-6,

1 PAGE 199. COULD WE BLOW UP -- AND THIS IS DR. HANCOCK'S  
2 TESTIMONY, I BELIEVE. COULD WE BLOW UP INITIALLY LINES ONE  
3 THROUGH 11? OKAY, AND SCROLL DOWN, PLEASE. EXCUSE ME.

4 DO YOU RECALL WHETHER ANY HAIR SAMPLES WERE TAKEN  
5 FROM THE BODIES OF THE DECEASED? NOT TO MY KNOWLEDGE.

6 OKAY. FINGERNAIL SCRAPINGS. OKAY. YOUR HONOR,  
7 WHAT I'M GOING TO ADVISE THE COURT AND COUNSEL IS AT TRIAL,  
8 WHICH IS IN 1979, DR. HANCOCK INDEED TESTIFIED THAT HE DID THE  
9 FINGERNAIL SCRAPINGS FROM KRISTEN. HE DID THE AUTOPSIES ON  
10 KRISTEN AND KIMBERLEY.

11 I WOULD REFER THE COURT TO GOVERNMENT EXHIBIT 3053,  
12 WHICH IS THE ARTICLE 32 TRANSCRIPT OF DR. GAMMEL, AND ALSO TO  
13 GOVERNMENT EXHIBIT 3055, WHICH IS THE ARTICLE 32 TRANSCRIPT OF  
14 DR. HANCOCK, WHICH IS IN 1970. AND IF I MAY ADVISE THE COURT,  
15 BASICALLY, IN 1970, DR. GAMMEL RECALLED THAT HE SCRAPED THE  
16 FINGERNAIL OF EVERYBODY BEFORE THEY DID THE ACTUAL AUTOPSIES  
17 AND DR. HANCOCK ASSISTED BY PUTTING LITTLE SLIPS OF PAPER --  
18 AND YOU'LL SEE ONE OF THESE SHORTLY -- WITH THE DESCRIPTION OF  
19 WHERE THE SAMPLE HAD BEEN TAKEN FROM. NEITHER OF THESE  
20 PEOPLE, AS WAS BROUGHT OUT AT TRIAL, WERE FORENSIC  
21 PATHOLOGISTS. THIS WAS THEIR FIRST ADVENTURE IN FINGERNAIL  
22 SCRAPINGS.

23 OKAY. IF WE COULD HAVE -- ALSO, WITH RESPECT TO DR.  
24 HANCOCK, I BELIEVE MR. WIDENHOUSE OFFERED A TRANSCRIPT EXCERPT  
25 TO SHOW THAT KRISTEN HAD STRUGGLED WITH HER ASSAILANT.

September 25, 2012



1           OKAY. IF WE COULD HAVE GOVERNMENT EXHIBIT 775, IT'S  
2 THE BODY OF KRISTEN MACDONALD, AND THERE WAS TESTIMONY AT  
3 TRIAL, YOUR HONOR, THAT THE LARGE GAPING WOUNDS WERE  
4 CONSISTENT WITH HAVING BEEN INFLICTED BY THE OLD HICKORY  
5 KNIFE. AND IF WE COULD HAVE GOVERNMENT 778, WHICH THERE'S  
6 TESTIMONY AT TRIAL, THIS IS FROM DR. HANCOCK'S TESTIMONY, THAT  
7 THAT WAS HER RIGHT HAND.

8           NOW, IF WE COULD HAVE THE REFERENCE OF TD-6, 173 AND  
9 174, AND IF WE COULD ZOOM IN ON -- I THINK YOU HAVE THE WRONG  
10 PAGE THERE. OKAY. THE HIGHLIGHTED PORTION, IF YOU'D BLOW  
11 THAT UP.

12           NOW, THIS IS MR. BLACKBURN, MY CO-COUNSEL, ASKING  
13 DR. HANCOCK WITH RESPECT TO THE HANDS OF KRISTEN MACDONALD,  
14 WHAT, IF ANYTHING, DID YOU OBSERVE THERE, SIR? AND THEN DR.  
15 HANCOCK SAYS THERE WERE MULTIPLE MINOR LACERATIONS, CUTS  
16 BASICALLY, ON BOTH HANDS IF I RECALL FROM READING MY PROTOCOL  
17 AND, IN ADDITION, THERE WAS A MORE SIGNIFICANT WOUND. I THINK  
18 IT WAS ON THE RIGHT HAND -- THE RIGHT HAND ON EITHER THE RING  
19 OR THE MIDDLE FINGER. THERE WAS A FAIRLY LARGE -- IT LOOKED  
20 LIKE AN INCISED OR CUT WOUND APPROXIMATELY AN INCH AND A HALF  
21 OR SO ON THE SIDE OF -- IF WE GO ON -- THE FINGER. BUT THE  
22 HAND ALSO HAD SOME MINOR CUTS ON IT IN OTHER PLACES WHICH  
23 BASICALLY DID NOT CAUSE ANY BLEEDING, BUT THE LARGE WOUND THAT  
24 I DESCRIBED WAS DOWN BASICALLY TO THE BONE. YOUR HONOR, THAT  
25 WOULD BE THE WOUND DEPICTED IN GOVERNMENT 778. IT'S HER RIGHT

1 HAND.

2           AND THEN MR. BLACKBURN ASKED DO YOU HAVE AN OPINION,  
3 SIR, SATISFACTORY TO YOURSELF AS TO THE TYPE OR CLASSIFICATION  
4 OF THE WOUND THAT WAS ON HER FINGER? AND DR. HANCOCK SAYS I  
5 WOULD SAY AS A GENERAL REFERENCE THESE COULD BE DEFINED AS  
6 DEFENSIVE WOUNDS OR THESE COULD BE WOUNDS INCURRED IN THE  
7 PROCESS OF OTHER TYPE OF WOUNDS HAPPENING -- KEEP GOING -- AS  
8 A GENERAL STATEMENT, I WOULD SAY THAT. OKAY. AND THEN HE  
9 GOES ON TO SOMETHING ELSE.

10           YOUR HONOR, I WOULD SUBMIT THAT FAR FROM SUPPORTING  
11 THE ASSERTION THAT THIS SHOWS THAT KRISTEN STRUGGLED WITH HER  
12 ASSAILMENT AND THAT'S HOW WHATEVER WAS FOUND UNDER HER  
13 FINGERNAILS GOT THERE, WHAT DR. HANCOCK IS IN EFFECT SAYING IS  
14 EITHER SHE HAD HER HAND OUT IN FRONT OF HER OR THE HAND WAS ON  
15 HER CHEST AND, YOU KNOW, THE KNIFE WENT THROUGH HER FINGER  
16 BEFORE IT PENETRATED HER CHEST WALL. BUT IN ANY EVENT, I  
17 DON'T THINK THAT TESTIMONY SUPPORTS ANY KIND OF -- IF WE COULD  
18 GO BACK TO 778. DO YOU SEE WHAT I'M TALKING ABOUT, YOUR  
19 HONOR? IT'S THE THIRD FINGER. DR. HANCOCK DESCRIBES THAT AS  
20 A THROUGH AND THROUGH DOWN TO THE BONE CUT. AND WE WOULD  
21 SUGGEST THAT IT'S CONSISTENT WITH THE HAND HAVING BEEN ON THE  
22 CHEST WHEN SHE WAS STABBED. OKAY. THANK YOU.

23           ALSO, IF WE COULD GO BACK TO TD-6, PAGE 130. YOUR  
24 HONOR, I THINK IF WE READ THAT IN CONTEXT, DR. GAMMEL IS  
25 TALKING ABOUT THE FINGERNAIL SCRAPINGS OF COLETTE MACDONALD,

September 25, 2012

1 WHERE THERE WAS SUPPOSED TO BE A PIECE OF SKIN. YES, IF YOU  
2 LOOK AT LINE 13.

3 SO, THAT MAY BE SOME EVIDENCE OF WHAT DR. GAMMEL WAS  
4 TALKING ABOUT WITH RESPECT TO FINGERNAIL SCRAPINGS, BUT IT HAS  
5 NOTHING TO DO WITH KRISTEN MACDONALD.

6 YOUR HONOR, IF WE COULD HAVE, ON THE HAWKINS ISSUE  
7 -- I BELIEVE MR. WIDENHOUSE SHOWED -- LET'S GO TO TD-8, PAGE  
8 140. AGAIN, WE WERE LOOKING AT A SMALL EXCERPT. IF WE CAN GO  
9 BACK A PAGE TO TD-139.

10 YOUR HONOR, I WON'T GO THROUGH THE WHOLE TRANSCRIPT,  
11 BUT WHAT I WOULD REPRESENT, THAT AN EXAMINATION OF MR.  
12 HAWKINS' TESTIMONY WOULD SHOW THAT HE ARRIVED AFTER THE  
13 AUTOPSIES. HE WAS THERE, INDEED, TO PICK UP WHAT HAD BEEN  
14 COLLECTED, BUT HE WAS NOT THE AGENT THAT WAS PRESENT DURING  
15 THE AUTOPSY ITSELF.

16 AND IF WE COULD HAVE GOVERNMENT 6001 AND WE COULD  
17 BLOW THAT UP A LITTLE BIT, THIS IS -- MR. IVORY TALKED ABOUT  
18 ONE OF THESE. IT'S A DA 19-31. IT'S A MILITARY POLICE  
19 PROPERTY RECEIPT. AND IF WE COULD -- YOU CAN SEE ON THE  
20 WITNESSED BY IT'S JAMES A. KING AND THAT'S A CID AGENT,  
21 DETACHMENT B, 3RD MP CI, FORT BRAGG, NORTH CAROLINA. HE'S THE  
22 AGENT THAT WAS THERE THAT WITNESSED THE AUTOPSIES.

23 AND IF WE COULD SCROLL DOWN A BIT. OKAY. MR.  
24 HAWKINS TAKES CUSTODY OF WHATEVER DR. HANCOCK, YOU KNOW,  
25 TURNED OVER TO HIM ON THE 17TH OF FEBRUARY.

1 ALL RIGHT. NOW, WHAT I THINK YOU HEARD MR.  
2 WIDENHOUSE DO IS, AND I WILL GET TO THIS LATER, BUT BASICALLY  
3 HE OFFERED A PARSED EXCERPT FROM JANICE GLISSON'S DE-217  
4 EXHIBIT TWO OF 27 JULY 1970 R11 REPORT. THE INFERENCE WAS  
5 THAT MR. HAWKINS TOOK CUSTODY OF THESE THINGS AND THEY WENT  
6 DIRECTLY TO JANICE GLISSON ON JULY 27TH, 1970. AND AS OUR  
7 AFFIDAVITS AND NUMEROUS DOCUMENTS SHOW, THAT'S NOT THE CASE.

8 IF WE COULD HAVE GOVERNMENT'S EXHIBIT 6002. BEFORE  
9 YOU DO THAT, I'M SORRY, GO BACK A SECOND TO 6001. AND IF WE  
10 COULD HONE IN ON THE RELINQUISHED BY AND RECEIVED BY COLUMNS,  
11 YOU'LL SEE THAT BENNIE HAWKINS, WHO WAS THE CID AGENT AT FORT  
12 BRAGG, TURNED THE ITEMS OVER TO CRAIG S. CHAMBERLAIN, WHO WAS  
13 A CHEMIST FROM THE UNITED STATES ARMY CRIMINAL INVESTIGATION  
14 LABORATORY, OR AS WE'LL HERE AGAIN USACIL, U-S-A-C-I-L.

15 OKAY. NOW, IF WE COULD HAVE 6002, AND IF WE COULD  
16 LOOK AT THE TOP OF THE PAGE, AND THIS IS EXHIBIT TWO TO  
17 CHAMBERLAIN'S AFFIDAVIT. AND BASICALLY IT'S HIS INVENTORY OF  
18 STUFF THAT HE WAS GOING TO DISTRIBUTE TO OTHER CHEMISTS. SO,  
19 ON 26 FEBRUARY 1970. PREVIOUS DOCUMENTS SHOWED THAT HE  
20 RECEIVED THE ITEMS ON 21 FEBRUARY AND TRANSPORTED THEM TO FORT  
21 GORDON.

22 NOW, IF WE SCROLL DOWN. ALL RIGHT. IF WE LOOK IN  
23 THE -- CAN WE HIGHLIGHT THIS, D-237? AND WHAT MR. CHAMBERLAIN  
24 HAS WRITTEN IS D-237 VIAL C SLASH -- I WOULD SUBMIT THAT  
25 STANDS FOR CONTAINING -- FINGERNAIL SCRAPINGS MARKED, QUOTE,

1 L. HAND, KRIS, END QUOTE. OKAY.

2 AND THEN I THINK WE WILL GO DIRECTLY AT THIS POINT  
3 TO GOVERNMENT'S EXHIBIT 3499, WHICH IS OUR POWERPOINT OF THE  
4 UNSOURCED HAIRS, AND THEN SKIP DIRECTLY TO THE 91A HAIR.

5 AND, YOUR HONOR, THERE ARE A LOT OF SLIDES, I MEAN,  
6 VISUAL SLIDES HERE. MANY OF THEM SHOW SIMPLY CHAIN OF  
7 IDENTIFICATION, PICTURES OF SLIDES AND SLIDE MAILERS AND WHAT-  
8 NOT. AND IN THE INTEREST OF TIME I MAY GO THROUGH THOSE  
9 SOMEWHAT QUICKLY, BUT IF THERE'S ANYTHING YOU WANT -- YOUR  
10 HONOR WANTS ME TO FOCUS ON, I'LL CERTAINLY DO THAT.

11 OKAY. NEXT SLIDE, PLEASE. AND THESE ARE THE  
12 DEFENSE'S CONTENTIONS AS CONTAINED IN THE ORIGINAL MOTION TO  
13 ADD THE DNA PREDICATE DE-123. THESE ARE MR. JUNKIN'S  
14 AVERMENTS AND HE'S SAYING THAT CHEMICAL ANALYSIS OF THE HAIR  
15 D-237 BY THE CID INDICATED A FINDING OF BLOOD ON THE HAIR.

16 NEXT SLIDE. YOUR HONOR, AGAIN, THESE WERE PREPARED  
17 BEFORE, YOU KNOW, MR. WIDENHOUSE STOOD UP TODAY AND, AS I  
18 UNDERSTAND IT, SEEMS TO HAVE ABANDONED, ALTHOUGH, MAYBE NOT,  
19 MAYBE I MISUNDERSTOOD HIM, THE FORCIBLE REMOVAL AND THE  
20 PRESENCE OF BLOOD CLAIMS. BUT OUT OF AN ABUNDANCE OF CAUTION,  
21 WE'RE GOING TO ASSUME THAT THAT'S STILL IN THE CASE AND  
22 PROCEED ACCORDINGLY.

23 THE COURT: WELL, AS I RECALL, YOU SUBMITTED SOME  
24 AFFIDAVITS OF TECHNICIANS --

25 MR. MURTAGH: I'M SORRY, YOUR HONOR?

1 THE COURT: AS I RECALL, YOU SUBMITTED AFFIDAVITS OF  
2 TECHNICIANS CONCERNING --

3 MR. MURTAGH: YES, YOUR HONOR. EVERYTHING THAT'S IN  
4 THE POWERPOINT IS SUPPORTED BY AN AVERMENT IN AN AFFIDAVIT  
5 EITHER FROM CRAIG CHAMBERLAIN, JANICE GLISSON, DILLARD  
6 BROWNING --

7 THE COURT: YES. YES. I'VE READ THOSE.

8 MR. MURTAGH: RIGHT. SO, THIS IS -- BUT THIS IS  
9 SORT OF THE VISUAL ASPECT.

10 OKAY. NEXT SLIDE, PLEASE. AGAIN, SEE, WE HAVE MR.  
11 CHAMBERLAIN'S NOTE. NEXT SLIDE, THIS, YOUR HONOR, MR.  
12 WIDENHOUSE DIDN'T BRING TO YOUR ATTENTION, BUT THIS IS, AGAIN,  
13 AN EXHIBIT FROM JANICE GLISSON'S AFFIDAVIT AND IT IS HER  
14 SEROLOGY BENCH NOTE FOR MARCH 9TH, 1970, NOT JULY 27TH, MARCH  
15 9TH.

16 AND IF WE ZOOM IN ON THE HIGHLIGHTED PORTION, AND  
17 WHAT THAT SHOWS IS ON THE LEFT-HAND SIDE SHE HAS WRITTEN --  
18 SHE'S DOING REPEAT CROSS-CUTS. SHE'S WRITTEN L. HAND, KRIS.  
19 AND THEN SHE HAS HER RESULTS AND THEN THAT INDICATES SHE'S  
20 SMALLER.

21 AND THEN IF WE GO TO THE RIGHT-HAND COLUMN -- LET'S  
22 GO BACK TO THE -- YOU HAVE CHAMBERLAIN'S ALPHANUMERIC  
23 DESIGNATIONS. IF WE GO BACK TO THE ORIGINAL SLIDE. WE HAVE  
24 IN CRAIG CHAMBERLAIN'S SUPPLEMENTAL AFFIDAVIT -- BASICALLY, D-  
25 237 IS A DESIGNATION THAT EXISTS ONLY IN CHAMBERLAIN'S NOTES.

1 IT'S NEVER MARKED ON ANYTHING EXCEPT HERE WHERE HE COLLATES  
2 HIS DESIGNATION WITH JANICE GLISSON'S RESULTS FOR L. HAND,  
3 KRIS. AGAIN, THIS IS ON MARCH 9TH, 1970.

4           NEXT SLIDE. OKAY. NOW, ALSO ON MARCH 9TH -- THIS  
5 IS AN EXCERPT FROM DILLARD BROWNING'S BENCH NOTES. AND IF WE  
6 COULD ZOOM IN ON THE HIGHLIGHTED PORTION. AND IT SAYS  
7 FINGERNAIL SCRAPINGS FROM CHRISTINE'S LEFT HAND, VIAL  
8 CONTAINING ONE MICROSCOPIC PIECE OF MULTI-STRAND POLYESTER  
9 COTTON FIBER, IDENTICAL TO THE PAJAMA TOP MATERIAL BLOOD  
10 STAINED BUT WASHED. OKAY.

11           THE NEXT SLIDE, PLEASE. WHAT ALSO WE HAVE -- AND I  
12 WANT TO COME BACK TO THESE. THESE RESULTS, THE MARCH 9TH  
13 RESULTS, WIND UP IN THE CID'S PRELIMINARY LABORATORY REPORT.  
14 AND MAYBE IF I COULD JUST HAVE MY CO-COUNSEL HERE PUT ON THE  
15 DOCUMENT PROJECTOR -- OKAY. THIS REPORT, IF WE WENT TO THE  
16 FRONT PAGE, IS DATED APRIL 6TH, 1970. ALL RIGHT. AND IF WE  
17 GO DOWN TO THE BOTTOM OF THAT PAGE, YOU'LL SEE IT'S PAGE 12,  
18 THIS IS FROM MACDONALD'S APPENDIX ONE. I THINK IT'S DE-123.2.  
19 THIS IS THE PAPER VERSION, BUT IT'S THE SAME IN THE ELECTRONIC  
20 VERSION. AND IF WE COULD FLIP THE PAGE, IT SKIPS TO PAGE 14.  
21 AND WHAT'S MISSING -- AND CAN WE GO OFF THE POWERPOINT FOR A  
22 SECOND, PLEASE?

23           A MOMENT'S INDULGENCE, YOUR HONOR.

24           (PAUSE.)

25           MR. MURTAGH: OKAY. IF WE COULD HAVE GOVERNMENT

1 EXHIBIT -- ALL RIGHT. LET ME TRY GOVERNMENT'S EXHIBIT 13. --  
2 3020.1. OKAY. NO. SORRY. WHAT I'M TRYING TO FIND, YOUR  
3 HONOR, IS THE MISSING PAGE AND WHAT'S ON IT. LET ME COME BACK  
4 TO THAT.

5 BUT WHAT I'LL REPRESENT TO THE COURT IS PARAGRAPH  
6 20, WHICH SHOULD BE ON PAGE 13 OF THE PRELIMINARY REPORT FILED  
7 BY MACDONALD IN 2006, SHOWS GLISSON'S MARCH 1970 SEROLOGY  
8 RESULTS FOR D-237. D-237, WHICH THE DEFENSE CONTENDS IN  
9 PLEADINGS, IS THE SAME AS 91A, IN FACT, MEANS DIFFERENT THINGS  
10 TO DIFFERENT PEOPLE. TO THE SEROLOGY PEOPLE IT'S THE ACTUAL  
11 BLOOD STAINS IN THE FINGERNAIL SCRAPINGS IN L. HAND KRIS. TO  
12 DILLARD BROWNING, IT'S A FIBER THAT MATCHES MACDONALD'S PAJAMA  
13 TOP. BUT LEST I FORGET TO SAY IT, NO USACIL CHEMIST EVER USED  
14 THE DESIGNATION D-237 IN REFERENCE TO THE HAIR WHICH I'M ABOUT  
15 TO TALK ABOUT.

16 SO, GO BACK TO THE POWERPOINT, PLEASE. OKAY. THIS  
17 IS AN -- THIS IS THE FULL DOCUMENT. MR. WIDENHOUSE SHOWED YOU  
18 A PARTIAL PORTION OF IT. I THINK JUST THE TOP PORTION.

19 ALL RIGHT, LET'S SCROLL DOWN AND HIGHLIGHT THE TOP  
20 PORTION, PLEASE. NO, THE TOP PORTION. I'M SORRY, UP HERE.  
21 27 -- NO. MAYBE YOU CAN'T DO IT.

22 ALL RIGHT. THE DOCUMENT IS DATED 27 JULY 1970, AND  
23 MR. WIDENHOUSE OFFERED IT FOR THE PROPOSITION THAT WHEN BENNIE  
24 HAWKINS TOOK CUSTODY OF THE VIALS FROM THE AUTOPSY HE SENT  
25 THEM DIRECTLY TO JANICE GLISSON.

September 25, 2012



1           IN POINT OF FACT, THE VIALS HAD ALREADY BEEN TO THE  
2 CID LAB, HAD BEEN EXAMINED BY BROWNING, AND AT LEAST THE  
3 FINGERNAIL SCRAPINGS CONTAINED IN L. HAND, KRIS, HAD BEEN  
4 TESTED FOR BLOOD BY JANICE GLISSON.

5           OKAY. NOW, THE HIGHLIGHTED PORTION IS -- NONE OF  
6 THESE VIALS ARE MARKED IN ANY WAY OTHER THAN WITH HAWKINS'  
7 INITIALS ON THE BASE WHEN GLISSON GETS THEM ON JULY 27TH. SO,  
8 THE FIRST THING SHE DOES IS SHE NUMBERS ALL THE VIALS ONE  
9 THROUGH 13. AND NUMBER SEVEN IS FINGERNAIL SCRAPINGS, LEFT  
10 HAND, SMALLER FEMALE, MCDONALD, NOT LABELED BY BROWNING, ONE  
11 HAIR, QUESTION MARK, TWO FRAGMENTS.

12           OKAY. NEXT PAGE. THE HIGHLIGHTED PART REFLECTS  
13 JANICE GLISSON'S MICROSCOPIC EXAMINATION. AND WITH RESPECT TO  
14 NUMBER SEVEN -- CAN WE ZOOM IN ON THAT? OKAY. NUMBER SEVEN,  
15 FIBERS, ONE LIGHT BROWN, NARROW HAIR, NO MEDULLA, STRIATED  
16 INTACT ROOT, TAPERED END. AND THE PORTION TO THE LEFT  
17 BASICALLY IS JANICE GLISSON COMPARES THIS HAIR TO JEFFREY  
18 MACDONALD'S KNOWN HAIR SAMPLES AND IT DOESN'T MATCH, OKAY,  
19 AND THAT WAS IN 1970.

20           OKAY. NEXT PAGE, PLEASE, OR NEXT SLIDE. ALL RIGHT,  
21 NEXT PAGE. ALL RIGHT. NOW, WITH RESPECT TO NUMBER SEVEN AND  
22 EIGHT, SHE'S SAYING THERE THAT THEY DON'T MATCH MACDONALD'S  
23 HAIR SAMPLES.

24           NOW, THE HIGHLIGHTED PARAGRAPH AT THE BOTTOM, IF YOU  
25 CAN -- NO, THE BOTTOM. OKAY. WHAT GLISSON IS SAYING, AND

1 MR. WIDENHOUSE DIDN'T SHOW YOU THIS PAGE OR EXCERPT, DID NOT  
2 LABEL ALL OF THE OTHER VIALS CONTAINING FIBERS AND HAIRS, ET  
3 CETERA, PARENTHESES, NUMBER ONE, NUMBER SEVEN, NUMBER EIGHT,  
4 CLOSE PARENTHESES, BUT GAVE THESE NUMBERS A SLIDE -- IT LOOKS  
5 LIKE CORRESPOND TO THESE NUMBERS SINCE THEY ARE NOT GOING TO  
6 BE REPORTED ON BY ME.

7 SO, THIS IS THE ORIGIN OF THE 91A HAIR. IT HAS NO  
8 PROMINENCE BEFORE JULY 27TH, 1970. GLISSON FINDS IT IN THE  
9 VIAL, WHICH SHE APPARENTLY HAS NOT EXAMINED BEFORE, AND MOUNTS  
10 IT ON TO SLIDE NUMBER SEVEN.

11 OKAY. NEXT SLIDE, PLEASE. OKAY. THIS IS THE U.S.  
12 ARMY CHART OF EXHIBITS AND FINDINGS. THIS IS, AGAIN, ONE OF  
13 THE -- I BELIEVE THE EXHIBITS IN THE MACDONALD APPENDIX.  
14 THESE ARE THE RESULTS OF JANICE GLISSON AND THE OTHER  
15 SEROLOGISTS' BLOOD WORK.

16 NEXT SLIDE, PLEASE. UNDER D-237, IF WE COULD EXPAND  
17 THAT. I'M SORRY. OKAY. WHAT IT SAYS IS THE FINGERNAIL  
18 SCRAPINGS FROM LEFT HAND OF KRISTEN MACDONALD INDICATED BLOOD.  
19 WELL, THAT'S CONSISTENT WITH JANICE GLISSON'S MARCH 9TH  
20 SEROLOGY NOTES.

21 OKAY. NEXT SLIDE. THIS PAGE IS OMITTED FROM THE  
22 DEFENSE FILING, BUT IT'S BASICALLY THEY GAVE -- BROWNING HAD  
23 RESPONSIBILITY FOR THE HAIRS AND FIBERS. GLISSON AND THREE  
24 OTHER CHEMISTS DID THE SEROLOGY WORK. THEY COMBINED THE TWO  
25 INTO ONE CHART.

September 25, 2012

1           OKAY. NEXT SLIDE, PLEASE. NOW, WITH RESPECT TO  
2 D-237, WHAT YOU WILL SEE IS THAT UNDER THE HAIRS COLUMN  
3 THERE'S NOTHING. AND UNDER THE FIBERS COLUMN IS D-210. AND  
4 THEN UNDER THE BLOOD COLUMN THIS INDICATES -- EXCUSE ME --  
5 INDICATES BLOOD.

6           AND WITH THE COURT'S INDULGENCE ONE MOMENT. WHAT  
7 I'D LIKE TO PUT ON THE DOCUMENT PROTECTOR -- PROJECTOR IS THE  
8 BOUND VERSION OF THIS CORRESPONDING PAGE FROM DE-123.2. AND  
9 YOU'LL SEE THAT THE REFERENCE TO D-210 HAS BEEN OBSCURED BY --  
10 I DON'T KNOW WHETHER IT'S A POST-IT OR A STICKY OR SOMETHING,  
11 BUT YOU WOULDN'T KNOW FROM LOOKING AT THAT THAT WHAT IT  
12 REPRESENTS IS THAT A FIBER MATCHING MACDONALD'S PAJAMA TOP WAS  
13 FOUND IN D-237.

14           OKAY. NEXT SLIDE, PLEASE, OR LET'S GO BACK TO THE  
15 POWER POINT. YOUR HONOR, I'LL JUST FLIP THROUGH THESE.  
16 THEY'RE BASICALLY CHAIN OF IDENTIFICATION TYPE THINGS.

17           NEXT. ALL RIGHT. WHAT THIS SLIDE REPRESENTS IS --  
18 AND YOUR HONOR MAY RECALL THAT YOU ORDERED US TO DO DETAILED  
19 PHOTOGRAPHIC DOCUMENTATION OF THE UNPACKAGING OF THE EVIDENCE  
20 BY THE FBI AND LATER BY AFIP.

21           WHAT WE'RE LOOKING AT THERE IS FROM VOLUME THREE,  
22 PHOTOGRAPH NUMBER 156 OF THE PHOTOGRAPHIC SUBMISSIONS FILED IN  
23 1999. AND YOU'LL SEE THERE'S A LITTLE PAPER LABEL THAT  
24 APPARENTLY HAS COME LOOSE, WHICH IS A RECURRING PROBLEM IN  
25 THIS CASE, IT'S SO OLD ALL THE GLUE HAS DRIED OUT OF THE

1 EXHIBIT LABELS. AND IT SAYS NUMBER SEVEN, FIBERS, HAIR.

2 AND YOU MAY NOT BE ABLE TO SEE IT -- WE'LL GO ON TO  
3 ANOTHER SLIDE. OKAY. NEXT. ALL RIGHT. WHAT WE'RE LOOKING  
4 AT HERE IS VIAL NUMBER SEVEN, AS PHOTOGRAPHED AT AFDIL, ARMED  
5 FORCES DNA IDENTIFICATION LABORATORY ON 6/3, IT LOOKS LIKE,  
6 1999.

7 NEXT SLIDE. YOU SEE ON THE TOP OF THE VIAL,  
8 CONSISTENT WITH JANICE GLISSON'S NOTES, IT SAYS NUMBER SEVEN,  
9 AND THEN THOSE ARE HER INITIALS, JSG.

10 NEXT SLIDE. YOU CAN SEE THIS IS THE BOTTOM OF THE  
11 SLIDE AND YOU'LL SEE WHAT'S SCRATCHED ON THE BOTTOM OF THE  
12 SLIDE IS BJH, BENNIE HAWKINS' INITIALS. YOU CAN SEE THERE ARE  
13 PIECES OF PAPER IN THAT VIAL.

14 OKAY. NEXT. THERE'S -- OKAY. NEXT. AND THIS IS  
15 -- THE TECHNICIAN HAS OPENED THE VIAL AND WHAT'S IN THERE AND  
16 SHE'S HOLDING IS A PIECE OF RULED PAPER AND IT SAYS FINGERNAIL  
17 SCRAPINGS LEFT HAND, SMALLER FEMALE, MCDONALD.

18 NOW, YOUR HONOR, IF YOU'LL RECALL FROM A FEW SLIDES  
19 AGO WHEN WE WERE LOOKING AT JANICE GLISSON'S JULY 27TH, 1970,  
20 BENCH NOTE, HER DESCRIPTION IS EXACTLY THAT, FINGERNAIL  
21 SCRAPINGS, SMALLER FEMALE, MCDONALD, NOT MACDONALD.

22 WHAT I WOULD ALSO DRAW YOUR HONOR'S ATTENTION TO IS  
23 JANICE GLISSON'S JULY 27TH BENCH NOTES, WHICH ARE DETAILED  
24 BECAUSE SHE CERTAINLY LISTS THIS PIECE OF PAPER, MAKE NO  
25 REFERENCE TO ANYTHING MARKED L. HAND, KRIS, WHICH IS HOW

1 CHAMBERLAIN ORIGINALLY DESCRIBED THE FINGERNAIL SCRAPINGS FROM  
2 THE LEFT HAND OF KRISTEN MACDONALD.

3           AND WE SUBMIT THAT WHAT HAS HAPPENED IS THE ACTUAL  
4 FINGERNAIL SCRAPINGS WERE IN SOME OTHER PIECE OF PAPER,  
5 SOMETHING THAT WAS CAPABLE OF BEING MARKED L. HAND, KRIS,  
6 BECAUSE CHAMBERLAIN HAS IT IN QUOTES, AND THAT'S WHERE THE  
7 BLOOD WAS. WHATEVER WAS ACTUALLY IN THOSE FINGERNAIL  
8 SCRAPINGS WAS IN L. HAND, KRIS. IT APPEARS TO HAVE BEEN  
9 CONSUMED IN ANALYSIS, CERTAINLY BY APRIL 6TH, 1970, AND IT  
10 DOESN'T EXIST AS OF JULY 27TH, 1970.

11           SO, NEXT. THIS IS THE SLIDE -- THE SLIDE NUMBER  
12 SEVEN HAS BEEN MARKED Q137, THIS IS THE SLIDE MAILER, BY THE  
13 FBI AND AFIP HAS MARKED IT 91A.

14           NEXT SLIDE. SAME THING. IN OTHER WORDS, THERE'S NO  
15 DISPUTE THAT GLISSON'S SLIDE NUMBER SEVEN CONTAINED THE HAIR  
16 THAT CAME FROM THE VIAL. IT'S THE SAME HAIR AS Q137, AS 91A,  
17 AS TESTED BY AFIP.

18           OKAY. NEXT. NOW, WHAT WE HAVE HERE, YOUR HONOR, IS  
19 A COMBINATION OF A PHOTOMICROGRAPH, WHICH IS IN EVIDENCE DUE  
20 TO THE DNA STIPULATIONS. THESE WERE TAKEN BY GRANT GRAHAM.  
21 AND WE HAVE AT THE TOP GLISSON'S DESCRIPTION, NUMBER SEVEN  
22 FIBERS, ONE LIGHT BROWN NARROW HAIR, NO MEDULLA, STRIATED  
23 INTACT ROOT, TAPERED END, NOT SIMILAR. THAT COMES FROM HER  
24 BENCH NOTES, JULY 27TH.

25           AND THEN WE HAVE IN THE RIGHT-HAND CORNER

1 MITOCHONDRIAL DNA ANALYSIS EQUALS NOT CONSISTENT WITH ANY  
2 OTHER SAMPLE TESTED, WHICH IS NOT JUST THE MACDONALD FAMILY  
3 MEMBERS, BUT ALSO STOECKLEY AND HER DECEASED BOYFRIEND, GREG  
4 MITCHELL.

5           NEXT. ALL RIGHT. AGAIN, THERE'S NO MENTION OF D-  
6 237. THAT'S THE END OF THE HAIR IN THIS SLIDE. IT'S ALMOST  
7 INVISIBLE.

8           NEXT SLIDE. THIS IS A CLOSE UP OF THE ROOT OF 91A.  
9 AGAIN, IT APPEARED THAT MR. WIDENHOUSE WAS SAYING SO WHAT IF  
10 IT WAS NATURALLY SHED. WE DISPUTE THAT. THE PRESENCE OF  
11 NATURALLY SHED HAIRS AT A CRIME SCENE OR ELSEWHERE ARE NOT IN  
12 THEMSELVES FORENSICALLY SIGNIFICANT.

13           THE Q137 AND ONE OF THE LITTLE NOTATIONS IN RED,  
14 CAUCASIAN HAIR, CLUB ROOT, WHICH MR. FRAM DESCRIBES IN HIS  
15 AFFIDAVIT AS FBI SHORTHAND FOR A NATURALLY SHED HAIR. NAT,  
16 NATURAL TIP. NSFPCP IS FBI SHORTHAND FOR NOT SUFFICIENT FOR  
17 SIGNIFICANT COMPARISON PURPOSES. THIS WAS A HAIR -- TINY  
18 HAIR. AND, AGAIN, IT'S NOT CONSISTENT WITH ANY SAMPLE TESTED.

19           NEXT. AND WHAT WE HAVE IN THE TOP THERE ARE THE  
20 NOTATIONS OF GRANT GRAHAM, WHOSE BENCH NOTES WERE FILED, I  
21 BELIEVE, AS PART OF MACDONALD'S APPENDIX ONE, DE-123.2.  
22 GRAHAM DID NOT DESCRIBE THE HAIR AS MR. JUNKIN SAYS IN THE  
23 MEMORANDUM IN SUPPORT OF THAT AS HAVING AN INTACT ROOT. WE'LL  
24 GET TO THAT IN A SECOND.

25           ALL RIGHT. NEXT. IT'S THE HAIR END.

1           NEXT. AND THIS WOULD BASICALLY BE OUR SUBMISSION.  
2 BASED ON THE AFFIDAVITS, THERE'S NO EVIDENCE OF BLOOD PRESENT,  
3 CERTAINLY NOT IN GLISSON'S JULY 27TH NOTE OR IN ANY OF THE  
4 PHOTOGRAPHS. AND FRAM IS SAYING THERE'S NO PIGMENT DOWN INTO  
5 THE ROOT. THE ROOT HAS NOT BEEN AMORPHOUS OR STRETCHED OUT,  
6 NO FOLLICULAR TAG PRESENT, NO SKIN SHEATH PRESENT, HAIR NOT  
7 ACTIVELY GROWING TELOGEN PHASE, NO OTHER EVIDENCE OF FORCIBLE  
8 REMOVAL. IT'S A NATURALLY SHED HAIR, WITHOUT ANY EVIDENCE OF  
9 BLOOD.

10           NEXT SLIDE. AND AGAIN, THERE IS NO EVIDENCE THAT  
11 THIS HAIR WAS FOUND AT THE CRIME SCENE. NOBODY TESTIFIED TO  
12 THAT. NOBODY SAW IT. NO EVIDENCE THAT THIS HAIR WAS OBSERVED  
13 OR FOUND AT AUTOPSY UNDER KRISTEN'S FINGERNAIL. NEITHER DR.  
14 GAMMEL NOR DR. HANCOCK TESTIFY ANYWHERE TO THAT EFFECT. NO  
15 EVIDENCE THAT THE CID LAB USED D-237 IN REFERENCE TO A HAIR  
16 AND NO EVIDENCE THAT THIS HAIR WAS OBSERVED OR NOTED DURING  
17 PRIOR EXAMINATION OF D-237.

18           NEXT. NO EVIDENCE THAT BROWNING FOUND A HAIR IN THE  
19 VIAL THAT HE REFERRED TO AS EXHIBIT D-237, FINGERNAIL  
20 SCRAPINGS FROM CHRISTINE'S LEFT HAND. BECAUSE THE AUTOPSY  
21 PATHOLOGIST THOUGHT THE VICTIM'S NAME WAS CHRISTINE MACDONALD  
22 THIS CHRISTINE MISNOMER PERPETUATES ITSELF UNTIL ULTIMATELY  
23 IT'S CORRECTED IN THE CONSOLIDATED REPORT. NO EVIDENCE THAT  
24 91A HAD BLOOD ON IT. IF THE 91A HAIR HAD ACTUALLY BEEN UNDER  
25 THE FINGERNAIL SCRAPINGS, AND THIS IS OUR ARGUMENT, IT WOULD

September 25, 2012

1 HAVE HAD BLOOD ON IT. YOUR HONOR, I THINK, DOES NOT NEED TO  
2 SEE THE PICTURES OF KRISTEN LYING IN HER BED, BUT HER HANDS  
3 ARE SOAKED IN BLOOD.

4 NEXT SLIDE. WE'VE GONE THROUGH THIS.

5 NEXT. AGAIN, GLISSON MAKES NO MENTION OF BLOOD.  
6 SHE USES THE TERM INTACT ROOT, BUT AS SHE SAYS IN HER  
7 AFFIDAVIT WHAT THAT MEANS TO ME IS IT HAS A ROOT AS OPPOSED TO  
8 NO ROOT. AND GRANT GRAHAM DID NOT DESCRIBE IT AS AN INTACT  
9 ROOT, WHATEVER THAT MEANS, BUT RATHER AS A HUMAN HAIR WITH  
10 ROOT BUT NO TISSUE. AND AS MR. FRAM, I THINK, DESCRIBES IN  
11 HIS AFFIDAVITS, YOU KNOW, HAIRS STOP GROWING. THEY DRY UP.  
12 THEY FALL OUT. IT'S PART OF NATURE.

13 NEXT. I THINK WE'VE SORT OF COVERED THAT. IN OTHER  
14 WORDS, PART OF OUR POINT HERE IS THE DEFENSE HAS THE BURDEN OF  
15 PROOF HERE. THEY'VE PREVIOUSLY ALLEGED NOT ONLY PROVIDENCE  
16 UNDER KRISTEN'S FINGERNAIL BUT BLOODY, FORCIBLY REMOVED.  
17 THEY'VE OFFERED NO EVIDENCE WHATSOEVER, NOT FROM ANY EXPERTS,  
18 NOT IN ANY AFFIDAVITS. WE'VE OFFERED AFFIDAVITS FROM EXPERTS.  
19 THEY HAVEN'T CHALLENGED THEM. THEY DIDN'T DEPOSE THE PEOPLE.  
20 THEY COULD HAVE. WE BELIEVE OUR EVIDENCE STANDS AND THEY'VE  
21 FAILED ON THEIR BURDEN OF PROOF.

22 NEXT SLIDE, PLEASE. AND I'VE GONE THROUGH THAT, BUT  
23 BASICALLY THAT'S ALL SUPPORTED BY MR. FRAM'S AFFIDAVIT AND  
24 ALSO THE AFFIDAVIT OF DR. JOSEPH DIZINNO, WHO IS THE FORMER  
25 DIRECTOR OF THE FBI LAB, AND A DNA EXPERT AND A QUALIFIED HAIR

September 25, 2012



1 AND FIBER EXAMINER.

2 OKAY. NEXT. I'VE MADE THIS ARGUMENT. AND, YOUR  
3 HONOR, OBVIOUSLY THESE ARE IN THE RECORD AND YOUR HONOR CAN  
4 READ THEM AT YOUR LEISURE.

5 NEXT. WE DON'T AGREE THAT THE HAIR WAS, IN FACT,  
6 UNDER HER FINGERNAILS OR EVEN ON HER HANDS. BUT AS WAS  
7 BROUGHT AT THE TRIAL BY MR. SMITH, WHEN HE CROSS-EXAMINED BOTH  
8 DR. GAMMEL AND HANCOCK, THE VICTIM'S HANDS WERE NOT BAGGED.  
9 NO PROTECTIVE COVERINGS WERE PUT ON THEM. THEY WERE PLACED,  
10 YOU KNOW -- IN FACT, PART OF MACDONALD'S DEFENSE WAS  
11 CONTAMINATION ALL OVER THE PLACE. AND IT'S ENTIRELY POSSIBLE  
12 THAT A HAIR COULD HAVE BEEN PICKED UP WHEN THE HAIR -- WHEN  
13 THE BODY WAS PLACED ON A CANVAS STRETCHER FROM AN ARMY  
14 AMBULANCE WHEN IT'S COVERED WITH A SHEET, AGAIN FROM AN ARMY  
15 AMBULANCE, WHEN IT'S PLACED IN THE COOLER IN THE MORTUARY AND  
16 UNDRESSED. IN OTHER WORDS, THIS WAS NOT CSI IN 1970.

17 AND, OF COURSE, AS YOU'LL SEE WHEN WE GET INTO THE  
18 58A.1 THING, KRISTEN'S BEDDING WAS CONTAMINATED WITH ALL KINDS  
19 OF HAIRS AND FIBERS.

20 NEXT. SHE WAS ALSO TOUCHED BY A DOCTOR. WE'VE  
21 TALKED ABOUT THE HANDS NOT BEING BAGGED.

22 OKAY. NEXT. THIS IS A FIVE MILLIMETER LONG,  
23 VIRTUALLY INVISIBLE HAIR. I MEAN, IT'S ALMOST WHITE IN COLOR.  
24 WE THINK IT'S SPECIOUS EVIDENCE. WE THINK IT'S CONTAMINATION,  
25 WHETHER THE CONTAMINATION CAME FROM THE PAD OF PAPER THAT DR.

September 25, 2012

1 HANCOCK WROTE FINGERNAIL SCRAPINGS, LEFT HAND, KRIS, STUCK IT  
2 IN THE VIAL, OR IT'S POSSIBLE THAT WHEN THIS EVIDENCE WENT  
3 BACK TO THE LAB AFTER GLISSON'S AND BROWNING'S INITIAL  
4 EXAMINATION, WHICH IS REFLECTED IN THE PROPERTY RECEIPT, THE  
5 EVIDENCE CUSTODIAN WOULD HAVE GOTTEN A VIAL AND WOULD HAVE HAD  
6 NO WAY OF KNOWING WHAT'S IN IT. HE MIGHT HAVE OPENED IT AND  
7 TAKEN OUT THE PIECE OF PAPER AND READ FINGERNAIL SCRAPINGS,  
8 LEFT HAND, SMALL FEMALE MACDONALD. I CAN'T TELL YOU THAT  
9 THAT'S HAPPENED, BUT IT IS CERTAINLY A POSSIBILITY. THERE IS  
10 NO PROVIDENCE OF THIS HAIR BEFORE JULY 27, 1970.

11 OKAY. NEXT. WELL, SINCE WE'RE HERE, LET'S GO  
12 THROUGH AFDIL 58A IF WE MAY. THIS IS THE BODY OF KRISTEN  
13 MACDONALD AND YOU CAN SEE HER BODY THERE AND YOU CAN SEE HER  
14 RIGHT HAND, IT'S RIGHT IN A BIG, LARGE BLOOD STAIN.

15 NEXT. THIS IS, AGAIN, WHAT MACDONALD CONTENDS. AND  
16 HE SAYS THAT IT IS A HAIR WITH ROOT INTACT, ACCORDING TO  
17 MACDONALD'S LAWYERS QUOTE OF GRANT GRAHAM'S BENCH NOTES.  
18 THAT'S NOT WHAT HE SAID.

19 NEXT. AGAIN, THEY SUGGEST IT WAS FORCIBLY REMOVED.  
20 THAT MAY HAVE BEEN ABANDONED. MITOCHONDRIAL DNA SEQUENCE WAS  
21 NOT CONSISTENT WITH ANY OTHER SAMPLE TESTED.

22 MY CO-COUNSEL REMINDED ME THIS MORNING THAT I  
23 PROBABLY OUGHT TO EXPLAIN, HOWEVER BRIEFLY, THE DIFFERENCE  
24 BETWEEN MITOCHONDRIAL DNA AND NUCLEAR DNA, AT LEAST FOR THE  
25 RECORD.

September 25, 2012

1 MITOCHONDRIAL DNA IS TRANSMITTED THROUGH THE  
2 MATERNAL LINE. IT IS USED MORE FOR ELIMINATION THAN FOR  
3 INCLUSION. IN OTHER WORDS, YOU'RE ONLY GETTING THE MATERNAL  
4 LINE DNA. AND WITH THE CASE OF THESE THREE VICTIMS, THEY ALL  
5 HAVE THE SAME MITOCHONDRIAL DNA SEQUENCE, AFDIL REFERS TO AS  
6 GROUP A.

7 NUCLEAR DNA COMES FROM BOTH PARENTS. AND IF YOU  
8 HAVE A COMPLETE NUCLEAR DNA SEQUENCE, I THINK IT'S GENERALLY  
9 AGREED THAT YOU CAN POSITIVELY IDENTIFY THE DONOR WITH THAT  
10 MUCH INFORMATION.

11 WITH MITOCHONDRIAL DNA, IF YOU DO HAVE A MATCH,  
12 USUALLY THE EXPERT WILL TESTIFY CANNOT EXCLUDE. AND THAT'S  
13 THE SCIENTIFIC EVIDENCE.

14 WE WOULD ARGUE THAT UNDER THE CIRCUMSTANCES OF THIS  
15 CASE IF YOU'VE GOT DR. MACDONALD'S MITOCHONDRIAL DNA SEQUENCE,  
16 WE SUBMIT THAT'S HIS HAIR. AND THE SAME WITH RESPECT TO  
17 KRISTEN. WELL, IT'S A LITTLE MORE COMPLICATED WITH THE THREE  
18 VICTIMS BECAUSE THEY ALL HAVE THE SAME SEQUENCE.

19 OKAY. JUNKIN SAYS THE UNIDENTIFIED HAIR IS PROFOUND  
20 NEW EVIDENCE OF INTRUDERS WHICH COULD NOT HAVE BEEN PREVIOUSLY  
21 DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE.

22 WELL, HE COULD HAVE LOOKED AT THIS STUFF. I MEAN,  
23 THIS WAS IN THE RECORD. IN FACT, WHAT HAPPENED HERE, YOUR  
24 HONOR, IS THE NUMBER OF VIALS THAT WERE INTRODUCED IN EVIDENCE  
25 AT TRIAL FOR THE PRESENCE OF PAJAMA TOP FIBERS OR SPLINTERS,

September 25, 2012

1 AS WAS THE CASE HERE WITH THIS VIAL, WHICH WAS CALLED NB -- I  
2 WON'T QUOTE IT FROM MEMORY. I'LL PROBABLY GET IT WRONG. BUT  
3 THIS PARTICULAR VIAL WENT INTO EVIDENCE AT TRIAL, BUT NOT FOR  
4 THIS PURPOSE.

5 OKAY. NEXT SLIDE. WE'VE GOT -- AND YOU'LL SEE THIS  
6 AGAIN. THIS IS THE -- WELL, ACTUALLY, IF YOU LOOK AT THE  
7 HIGHLIGHTED PORTION -- I THINK IT'S GOVERNMENT EXHIBIT 362, E-  
8 52, NORTH BEDROOM, NB, Q87, AND IT WAS INTRODUCED FOR PURPLE  
9 COTTON THREADS IDENTICAL TO THE PURPLE COTTON THREADS FROM  
10 MACDONALD'S PAJAMA TOP.

11 OKAY. NEXT SLIDE. YEAH. OKAY. NEXT. THESE ARE  
12 CHAIN OF IDENTIFICATION PHOTOGRAPHS. LET'S GO THROUGH THEM.  
13 NEXT. NEXT. ONCE THE SLIDE GETS TO AFDIL, THEY ASSIGN IT THE  
14 NUMBER OF 58A, AND YOU CAN SEE THE PRIOR MARKINGS FROM THE  
15 FBI. ALL RIGHT. NEXT IS THE SLIDE WITH Q87, WHICH WAS WHAT  
16 THE FBI CALLED IT, 58A.

17 NEXT. NOW, WHEN YOU LOOK AT GRANT GRAHAM'S BENCH  
18 NOTES -- AND HIS JOB WAS INITIALLY TO LOOK AT ALL THESE SLIDES  
19 THAT YOUR HONOR HAD ORDERED US TO TURN OVER TO AFIP TO  
20 DETERMINE WHAT'S ON THE SLIDE. IS IT A HAIR? DOES IT HAVE A  
21 ROOT? HOW LONG IS IT? IT WAS BASICALLY DNA SUITABILITY AND  
22 DIVISIBILITY. THAT'S WHAT HE WAS LOOKING FOR. BUT IN THE  
23 PROCESS HE DESCRIBED THE TWO -- THERE ARE TWO HAIRS ON SLIDE  
24 58A. 58A.1 IS THE DARKER HAIR, AND THAT DOESN'T MATCH  
25 ANYBODY'S DNA SEQUENCE.

1           NEXT. I'M SORRY, COULD YOU GO BACK TO THE PREVIOUS  
2 SLIDE? IN THE UPPER RIGHT-HAND OR LEFT-HAND CORNER, SLIDE,  
3 YOU KNOW, 99C043858A, AFDIL MARKINGS, CONTAINS TWO HUMAN  
4 HAIRS. BOTH HAVE ROOTS BUT NO TISSUE. HAIR NUMBER TWO IS NOT  
5 MARKED WITH A RED DOT. IT HAS A SLIGHTLY ROUNDED TIP.

6           OKAY. NEXT SLIDE. THAT'S, AGAIN, A PORTION OF HAIR  
7 NUMBER ONE, 58A.1.

8           NEXT. OKAY. WHAT YOU'RE SEEING THERE, IN ADDITION  
9 TO WHAT GRANT GRAHAM SAID, IS WHAT THE FBI SAID. AND THIS IS  
10 IN MR. FRAM'S AFFIDAVIT, Q87, CAUCASIAN BODY AREA HAIR  
11 FRAGMENT, APPROXIMATELY ONE-EIGHTH INCH, DARK BROWN, CLUB  
12 ROOT.

13           AS YOUR HONOR MAY RECALL, WE ASKED YOUR PERMISSION  
14 TO HAVE THE FBI LOOK AT THE SLIDES. THEY COULDN'T DO ANYTHING  
15 ELSE, BUT LOOK AT THEM UNDER THE MICROSCOPE. SO, WE BASICALLY  
16 HAD SOME INVENTORIES BEFORE THEY WERE TURNED OVER TO AFIP.  
17 SO, THAT'S WHERE THIS INFORMATION COMES FROM. MR. FRAM DID  
18 THIS IN 1999.

19           OKAY. NEXT. NOW, WE'RE LOOKING AT 58A.2, WHICH HAS  
20 A MITOCHONDRIAL DNA SEQUENCE CONSISTENT WITH SEQUENCE B, WHICH  
21 ACCORDING TO THE STIPULATED AFDIL RESULTS, IS THE SAME  
22 SEQUENCE AS JEFFREY MACDONALD.

23           NOW, OUR POSITION IS THIS IS A NATURALLY SHED HAIR  
24 OF JEFFREY MACDONALD. IT'S ALSO FOUND ON KRISTEN'S BEDSPREAD.  
25 THERE'S NO EVIDENCE AS TO WHEN THIS HAIR GOT HERE. IT COULD

1 HAVE BEEN THERE FOR MONTHS. WHO KNOWS.

2 NEXT SLIDE. MORE OF 58A.2. NEXT. NEXT.

3 OKAY. AGAIN, THIS IS THE ROOT END. AND MR. FRAM  
4 STATES IN HIS AFFIDAVIT THAT THIS IS A CLUB ROOT, WHICH MEANS  
5 IT'S A NATURALLY SHED HAIR.

6 NEXT. MORE OF THE SAME. NEXT. MORE OF THE SAME.  
7 NEXT. NEXT.

8 ALL RIGHT. WHAT WE'RE SAYING ABOUT 58A.1 IS IT'S A  
9 CAUCASIAN HAIR, APPROXIMATELY FIVE MILLIMETERS LONG, ROOT BUT  
10 NO TISSUE, NATURALLY SHED -- CLUB ROOT, NATURALLY SHED.  
11 MITOCHONDRIAL MTDNA ANALYSIS NOT CONSISTENT WITH ANY OTHER  
12 SAMPLE TESTED.

13 OKAY. NEXT. 58A.2, BASICALLY THE SAME KIND OF  
14 HAIR, EXCEPT IT'S JEFFREY MACDONALD'S MITOCHONDRIAL DNA  
15 SEQUENCE. OUR POSITION IS THAT HAIR IS NO MORE INCRIMINATORY  
16 OF DR. MACDONALD THAN THE UNSOURCED HAIR IS EVIDENCE OF  
17 INTRUDERS. IT'S A NATURALLY SHED HAIR. AND WHEN WE GO ON  
18 WITH 58A AND WHAT ELSE WAS FOUND ON THE BEDSPREAD, I THINK  
19 YOU'LL SEE WHY.

20 NEXT. OKAY. KRISTEN'S BEDSPREAD HAD ALL SORTS OF  
21 THINGS ON IT.

22 NEXT. THERE WERE NUMEROUS UNMATCHED SYNTHETIC  
23 FIBERS, UNKNOWN TEXTILE FIBERS, BLACK DOG HAIR WITH AN INTACT  
24 ROOT. THEY DIDN'T HAVE A BLACK DOG. AS FAR AS WE KNOW, A  
25 BLACK DOG IS NOT ALLEGED TO HAVE BEEN INVOLVED WITH THE

September 25, 2012

1 INTRUDERS. SOMEHOW THE BLACK DOG HAIR GETS ON THE GREEN  
2 BEDSPREAD. YOU KNOW, IT'S THE FIBER TRANSFER PRINCIPLE.  
3 THERE'S ALSO TWO BROWN AND WHITE ANIMAL HAIRS, WHICH IF I MAY  
4 OFFER AN UNEXPERT OPINION, I THINK THEY HAD A BROWN AND WHITE  
5 CAT.

6 OKAY. NEXT. AND WE CAN GO THROUGH THESE. THESE  
7 ARE CHAIN OF IDENTIFICATION. NEXT. NEXT. BLACK DOG HAIR.  
8 NEXT. MORE BLACK DOG HAIR. NEXT. BROWN AND WHITE ANIMAL  
9 HAIR. NEXT. BROWN AND WHITE ANIMAL HAIR. NEXT.

10 OKAY. WHAT THIS IS, AFDIL -- THIS IS THE AFDIL  
11 SPECIMEN 55A, THEY -- YOU KNOW, IF YOU GO WAY, WAY BACK,  
12 ORIGINALLY THERE'S A VIAL, E-52 NORTH BEDROOM, NB, WHICH WAS  
13 COLLECTED BY WALTER ROWE, ACCORDING TO THE STIPULATION, AND  
14 BILL IVORY WITNESSED THIS. IT GOES TO THE FBI BECAUSE Q87 WAS  
15 INTRODUCED AT TRIAL. IT'S GOVERNMENT EXHIBIT 362. BUT WHEN  
16 IT GETS TO AFDIL, THEY BREAK IT DOWN INTO, YOU KNOW, HAIRS AND  
17 OTHER NONHUMAN MATERIAL.

18 NEXT. THIS IS WHAT THEY FIND. I MEAN, THERE'S  
19 NUMEROUS FIBERS, BLUE FIBERS.

20 NEXT. KIND OF BROWN AND RED FIBERS AND CLEAR  
21 FIBERS.

22 NEXT. FIBER BUNDLE, TRANSPARENT. I MEAN, THERE ARE  
23 LITERALLY HUNDREDS OF FOREIGN FIBERS HERE.

24 NEXT. IT'S A HAIR ROOT, NONHUMAN. I THINK THAT'S  
25 THE BLACK DOG HAIR. ANYWAY, NEXT. NEXT. NEXT. FIBER -- IN

1 OTHER WORDS, WE'VE GOT RED, BLUE. WE'VE GOT GREEN, I THINK.  
2 THERE'S EVERY COLOR OF THE RAINBOW. THIS DOESN'T PROVE  
3 INTRUDERS. IT PROVES THAT FIBERS FALL OUT OF THINGS AND LAND  
4 ON SURFACES.

5 NEXT. NEXT. NEXT. NEXT. APPARENTLY, THERE'S A  
6 PIECE OF HAY ON THE BEDSPREAD.

7 NEXT. OKAY. I'VE MADE THESE ARGUMENTS. AND AGAIN,  
8 MACDONALD HAS OFFERED NO EXPERT OPINION ON ANY OF THIS.

9 NEXT. DEFENSE HAS FAILED TO PROVE WHEN THIS HAIR  
10 GOT ON THE BEDSPREAD. AND I THINK THAT'S THE KEY ISSUE WITH  
11 RESPECT TO ALL OF THE UNSOURCED HAIRS, WHEN DID THEY GET  
12 THERE. NEXT. AND IT'S THEIR BURDEN.

13 AND AS I SAY THERE IN NUMBER EIGHT, IF THE  
14 CHARACTERISTICS OF SPECIMEN 58A.1, THE UNIDENTIFIED HAIR,  
15 DEMONSTRATE FORCIBLE REMOVAL, THEN SO DOES MACDONALD'S HAIR,  
16 58A.2. WE DON'T MAKE THAT ARGUMENT, BUT IF YOU LOOK AT THE  
17 TWO HAIR ROOTS SIDE BY SIDE THEY'RE VIRTUALLY IDENTICAL.

18 NEXT. OKAY. NOW, IF WE COULD GO BACK TO -- AND THE  
19 END IS IN SIGHT, YOUR HONOR -- 75A, THE VERY BEGINNING OF THE  
20 POWERPOINT PRESENTATION.

21 ALL RIGHT. AND AT TRIAL THIS WAS GOVERNMENT EXHIBIT  
22 327 BECAUSE WE INTRODUCED, I THINK THROUGH THE TESTIMONY OF  
23 BILL IVORY, THE COLLECTION OF -- I'M GOING TO SAY 12 TO 15  
24 SEAM THREADS FROM MACDONALD'S -- OR MATCHING MACDONALD'S  
25 PAJAMA TOP.



1           NEXT. AND THIS IS GOVERNMENT EXHIBIT 984, WHICH WAS  
2 THE SUMMARY CHART THAT WE PRESENTED AT THE END OF THE  
3 GOVERNMENT'S CASE. AND WHAT ALL OF THAT SAYS, IF YOU WERE TO  
4 READ EVERY LITTLE BOX, IS THERE'S THREADS THAT MATCH THE  
5 PAJAMA TOP. IT'S SPLINTERS. IT'S, YOU KNOW -- AND WE OFFERED  
6 IT AT TRIAL FOR THE PROPOSITION THAT CONTRARY TO MACDONALD'S  
7 ACCOUNT, THE FIGHT BETWEEN COLETTE AND DR. MACDONALD STARTED  
8 IN THE MASTER BEDROOM.

9           NEXT. YOU'VE SEEN THAT PICTURE BEFORE.

10           NEXT. YOU'LL RECALL THE TESTIMONY OF BILL IVORY.  
11 HE, ON MARCH 16TH, 1970, GOES BACK AND LOOKS FOR MORE THREADS  
12 AND YARNS AND COLLECTS EVERYTHING IN SIGHT, INCLUDING THIS  
13 HAIR THAT WE'RE TALKING ABOUT.

14           NEXT. OKAY. WE'RE JUST ANNOTATING THAT. NEXT.  
15 THERE'S 15 PURPLE COTTON THREADS THAT MATCH THE SEAM THREADS  
16 OF MACDONALD'S PAJAMA TOP, AND THREE BLUE, POLYESTER COTTON  
17 YARNS.

18           THERE WAS EVIDENCE AT THE TRIAL THAT THE PAJAMA TOP,  
19 WHICH WAS A V-NECK PULLOVER TYPE, WAS RIPPED ENTIRELY DOWN THE  
20 MIDLINE AND ALL THE WAY THROUGH THE LEFT INSEAM TO THE CUFF  
21 AND DOWN THE INTERNAL SEAM RIGHT TO THE BORDER.

22           NEXT. AND THIS IS WHAT DR. MACDONALD'S ATTORNEY  
23 CLAIMED WITH RESPECT TO 75A. PETITIONER SUBMITS THAT THESE  
24 UNIDENTIFIED HAIRS -- HERE HE'S TALKING ABOUT 75A -- A HAIR OF  
25 OVER TWO INCHES IN LENGTH WITH HAIR SIC AND FOLLICLE INTACT

September 25, 2012

1 FOUND UNDER COLETTE'S BODY IS PROFOUND NEW EVIDENCE THAT COULD  
2 NOT HAVE PREVIOUSLY BEEN DISCOVERED THROUGH DUE DILIGENCE, AND  
3 THAT WHEN VIEWED IN THE LIGHT OF THE OTHER EVIDENCE TAKEN AS A  
4 WHOLE, ENTITLES THE PETITIONER TO HAVE HIS SENTENCE VACATED.

5 WELL, IN POINT OF FACT, AT TRIAL BILL IVORY  
6 TESTIFIED, WHEN HE'S SHOWN GOVERNMENT 362 -- AND THE  
7 TRANSCRIPT WILL BEAR THIS OUT -- HE SAYS THIS VIAL WAS USED TO  
8 COLLECT, AMONG OTHER THINGS, HAIRS. HE SAYS IT TWICE. IF YOU  
9 WANTED TO PURSUE HAIRS YOU COULD HAVE.

10 NEXT. ALL RIGHT. AGAIN, MACDONALD'S CONTENTION IS  
11 THAT THIS IS A FORCIBLY REMOVED PUBIC HAIR THAT IS EVIDENCE OF  
12 INTRUDERS.

13 NEXT. IT'S SOMEWHAT OF AN OVERSTATEMENT TO SAY THAT  
14 IT IS CLEAR THAT THIS UNIDENTIFIED HAIR WAS FOUND UNDERNEATH  
15 WHERE COLETTE MACDONALD'S BODY LAID AT THE CRIME SCENE, THAT  
16 IT WASN'T FULL LENGTH. OKAY. THE POINT IS, IT WAS FOUND IN  
17 HER BODY OUTLINE. IT WAS FOUND A MONTH LATER. AND, OF  
18 COURSE, THE KEY ISSUE IS WHEN DID IT GET THERE.

19 NEXT. ALL RIGHT. IT DOES HAVE A ROOT WITH  
20 FOLLICULAR TISSUE. DNA-STR ANALYSIS OF ROOT WAS -- IN OTHER  
21 WORDS, THE NUCLEAR DNA, NO REPORTABLE RESULTS. THE MTDNA  
22 ANALYSIS OF THE SHAFT, NOT CONSISTENT WITH ANY OTHER SAMPLE  
23 TESTED. SO, IT'S NOT MACDONALD'S. IT'S NOT THE THREE  
24 VICTIMS. IT'S NOT STOECKLEY'S. IT'S NOT MITCHELL'S.

25 NEXT. AND I THINK YOU WERE SHOWN OR THESE WERE

September 25, 2012

1 PUBLISHED WHEN BILL IVORY TESTIFIED.

2           NEXT. AND YOU MAY RECALL WE ZOOMED IN ON A PIECE OF  
3 MASKING TAPE, WHICH SHOWS WHEN HE COLLECTED IT.

4           NEXT. NEXT. NEXT. AND THIS IS FROM THE 1990  
5 AFFIDAVIT OF MICHAEL MALONE, THAT WOULD BE PHOTOGRAPHIC  
6 EXHIBIT 43, A TWO INCH BROWN PUBIC HAIR OF CAUCASIAN ORIGIN  
7 DOES NOT APPEAR TO BE FORCIBLY REMOVED, EXHIBITS THE SAME  
8 MICROSCOPIC CHARACTERISTICS OF JEFFREY MACDONALD'S KNOWN PUBIC  
9 HAIR EXEMPLAR, AND IT DOES, BUT IT'S NOT JEFFREY  
10 MACDONALD'S PUBIC HAIR BECAUSE THE MITOCHONDRIAL DNA SYSTEM --  
11 SEQUENCE IS DIFFERENCE. BUT THAT WAS THE TECHNOLOGY IN 1990.  
12 IN 2006, THE TECHNOLOGY HAS CHANGED.

13           NEXT. THIS IS A PHOTOGRAPH OF GRANT GRAHAM. I'M  
14 LOOKING AT GOVERNMENT EXHIBIT 3403. ALL RIGHT. AND YOU CAN  
15 SEE THE -- THAT'S THE HAIR ROOT.

16           NEXT. AND THIS IS AN ENLARGEMENT OF IT. OKAY. AND  
17 GRAHAM SAYS THE HAIR HAS A ROOT AND ADHERING FOLLICULAR  
18 TISSUE. HE ALSO SAYS IT CONTAINS ONE HUMAN HAIR WITH ROOT AND  
19 FOLLICULAR TISSUE. BUT BOB FRAM, WHO IS A QUALIFIED HAIR AND  
20 FIBER EXAMINER, IN HIS AFFIDAVIT SAYS CLUB ROOT EQUALS  
21 NATURALLY SHED. AND HE GOES ON IN HIS AFFIDAVIT TO POINT OUT  
22 THAT UNLIKE HEAD HAIRS, PUBIC HAIRS FREQUENTLY HAVE SOME  
23 FOLLICULAR TISSUE, BUT THAT, PER SE, DOES NOT DEMONSTRATE  
24 FORCIBLE REMOVAL. AND THE DNA RESULTS ARE THERE AT THE  
25 BOTTOM.

September 25, 2012

1 NEXT. THERE WAS OTHER STUFF UNDER COLETTE'S BODY.

2 NEXT. THESE ARE THE SEAM THREADS MATCHING  
3 MACDONALD'S PAJAMA TOP.

4 NEXT. NEXT. SPLINTERS THAT MATCH THE CLUB.

5 NEXT. NEXT. MORE SPLINTERS.

6 NEXT. NEXT. NEXT. THIS WAS FROM THE 1990 MALONE  
7 AFFIDAVIT. THERE WAS BROWN COTTON THREAD ON THE RUG. WELL,  
8 THERE WAS BROWN COTTON THREAD ON THE RUG.

9 NEXT. THERE WAS A BLUISH-BLACK YARN. THIS WAS AN  
10 ISSUE IN 1990.

11 NEXT. THERE WAS A BLUISH-BLACK YARN OF GREEN  
12 ACRYLIC.

13 NEXT. BLUISH-BLACK YARD, ROUND RAYON.

14 NEXT. OUR POINT IS THERE'S ALL SORTS OF DEBRIS ON  
15 THIS RUG. THIS RUG WAS -- IT DIDN'T COME WITH THE HOUSE, FROM  
16 WHAT WE CAN TELL FROM DR. MACDONALD'S CLAIM TO THE ARMY,  
17 WHICH, I THINK, IVORY TESTIFIED ABOUT THE CLAIM HE MADE.

18 HE INDICATED THAT HE HAD IT WHEN HE WAS -- IN 1969,  
19 AT A TIME WHEN HE WAS LIVING IN BERGENFIELD, NEW JERSEY. IT  
20 WAS IN ANOTHER HOUSE. SO, THIS IS A SHAG RUG. IT COLLECTS  
21 DEBRIS, HAIRS, FIBERS, WHATEVER FALLS ON IT.

22 NEXT. NEXT. AND EXCUSE ME, YOUR HONOR, DEBRIS FROM  
23 THE VICINITY OF LEFT HAND OF COLETTE MACDONALD.

24 NEXT. ALL RIGHT. YOU SEE HER LEFT HAND.

25 NEXT. THAT PICTURE YOU'RE FAMILIAR WITH.

1           NEXT. MORE PURPLE COTTON SEWING THREADS EQUALING  
2 MACDONALD'S BLUE PAJAMA TOP. ONE BLUE COTTON POLYESTER YARN.

3           NEXT. OKAY. NEXT. THIS IS ANOTHER HAIR. IT'S  
4 ANOTHER CAUCASIAN PUBIC HAIR. AND IT'S DISSIMILAR TO  
5 MACDONALD'S. WE DON'T KNOW WHO IT'S FROM, BUT IT'S ON THE  
6 RUG.

7           NEXT. AND I THINK THAT'S ANOTHER HAIR.

8           NEXT. NEXT. NEXT. TWELVE PURPLE COTTON SEWING  
9 THREADS. IN OTHER WORDS, IT WAS OUR THEORY AT TRIAL, YOUR  
10 HONOR, THAT THE FIGHT HAD STARTED IN THE MASTER BEDROOM. THE  
11 FIGHT MOVED AT SOME POINT INTO KRISTEN'S ROOM. THAT'S WHY  
12 COLETTE'S BLOOD IS SPATTERED ON THE WALL. IT'S ON THE TOP  
13 SHEET OF KRISTEN'S BED. AND IF YOU LOOK AT THE PICTURES OF  
14 HER PAJAMA BOTTOMS, THERE'S BLOOD ALL THE WAY DOWN HER LEGS,  
15 AND THE LEGS HAVE BEEN PUSHED UP. WE BELIEVE SHE WAS CARRIED  
16 IN THE SHEET AND THEN PLACED IN THAT POSITION. DID HE MEAN TO  
17 PUT HER ON TOP OF ALL THE THREADS AND YARNS? NO. BUT THEY  
18 WERE THERE BECAUSE THE PAJAMA TOP, IN OUR VIEW, HAD BEEN TORN  
19 IN THE MASTER BEDROOM.

20           NEXT. THERE WAS A SHORT PIECE OF BLUE-BLACK SEWING  
21 THREAD THAT WAS USED TO SEW THE CUFF ON THE PAJAMA TOP.

22           NEXT. OKAY. WE'RE BACK TO AFDIL 91A.

23           AND THAT, UNLESS YOUR HONOR HAS SOME QUESTIONS, THAT  
24 PRETTY MUCH CONCLUDES THE DNA PORTION OF MY ARGUMENT,  
25 PRESENTATION. AND I WAS THEN GOING TO GO BACK INTO TRIAL

1 EVIDENCE BECAUSE I THINK, FIRST OF ALL, THIS IS THE EVIDENCE  
2 AS THE WHOLE AND IN ORDER TO EVALUATE THIS EVIDENCE I THINK  
3 YOUR HONOR NEEDS, YOU KNOW, SOME EXPOSITION OF THE TRIAL  
4 EVIDENCE. AND AS YOUR HONOR HAS STATED, YOU DIDN'T TRY THIS  
5 CASE, AND I CAN'T IMAGINE WHAT IT'S LIKE TRYING TO PICTURE  
6 WHAT WAS FOUND WHERE AND WHAT DOES THIS MEAN COMING INTO IT AT  
7 THIS JUNCTURE. SO, I'M AT YOUR HONOR'S --

8 THE COURT: WELL, I'VE READ THE AFFIDAVITS OF YOUR  
9 TECHNICIANS THAT WERE FILED. AND THAT'S THE PREDICATE FOR  
10 YOUR ARGUMENT HERE TODAY, IS THAT CORRECT?

11 MR. MURTAGH: YES, THAT'S CORRECT, YOUR HONOR.

12 THE COURT: AND I THINK THAT DEFENSE COUNSEL HAD AN  
13 OPPORTUNITY TO TAKE DEPOSITIONS OF THOSE PEOPLE IF THEY WANTED  
14 TO.

15 MR. MURTAGH: THAT'S CORRECT, YOUR HONOR. EVERYBODY  
16 -- EVERY EXPERT WAS AVAILABLE FOR DEPOSITION. THEY ONLY  
17 INDICATED A DESIRE TO DEPOSE JANICE GLISSON, AND THEY NEVER  
18 DID, BUT YOUR HONOR HAD GIVEN THEM AMPLE TIME TO DO IT. THEY  
19 FILED NO AFFIDAVITS.

20 YOU KNOW, OUR BASIC POSITION IS THAT THE CONTENTIONS  
21 IN THE ORIGINAL, YOU KNOW, MOTION TO ADD THE DNA PREDICATE ARE  
22 AVERMENTS OF COUNSEL. THEY'RE NOT SWORN. THEY FAILED IN  
23 THEIR EVIDENTIARY BURDEN.

24 THE COURT: THANK YOU.

25 MR. MURTAGH: THE COURT'S INDULGENCE --

1 THE COURT: NOW, YOU'RE NEXT GOING TO ADDRESS THE  
2 EVIDENCE AT TRIAL, IS THAT CORRECT?

3 MR. MURTAGH: YES, THAT'S CORRECT, YOUR HONOR.

4 THE COURT: AND I KNOW THAT'S GOING TO TAKE SOME  
5 TIME. WHY DON'T WE TAKE A RECESS UNTIL 1:15, AND THEN YOU  
6 WON'T BE INTERRUPTED.

7 MR. MURTAGH: YES.

8 THE COURT: TAKE A RECESS TILL 1:15.

9 (LUNCHEON RECESS FROM 11:45 A.M., UNTIL 1:15 P.M.)

10 (DEFENDANT PRESENT.)

11 THE COURT: GOOD AFTERNOON. PLEASE BE SEATED AND  
12 WE'LL CONTINUE. MR. MURTAGH.

13 MR. MURTAGH: THANK YOU, YOUR HONOR. IF I MAY, I'M  
14 GOING TO RETURN A LITTLE BIT TO THE DNA, ALTHOUGH NOT THE SAME  
15 DNA, IF YOU WILL.

16 MACDONALD SOUGHT DNA TESTING IN 1997, BECAUSE HE  
17 CLAIMED IT WOULD FURTHER DEMONSTRATE HIS INNOCENCE BY LINKING  
18 STOECKLEY TO THE CRIME SCENE. WELL, IT HASN'T.

19 HE CHOSE THE EVIDENCE TO BE TESTED. HE DIDN'T TEST  
20 ANYTHING THAT WAS USED TO CONVICT HIM AT TRIAL. IT WAS ALL  
21 UNSOURCED STUFF. HE CHOSE AFIP AS THE LAB. WE PAID FOR IT.  
22 THE DNA RESULTS ELIMINATE HELENA STOECKLEY AND GREG MITCHELL  
23 AS THE SOURCE OF ANY OF THE SAMPLES TESTED, TO PARAPHRASE MR.  
24 WIDENHOUSE, THEY WERE NOT THERE.

25 NOW THAT HELENA STOECKLEY AND MITCHELL HAVE BEEN

1 ELIMINATED AS THE SOURCE OF THE SAMPLES TESTED, MR. WIDENHOUSE  
2 IS SAYING THAT ANY UNSOURCED, NATURALLY SHED HAIR, EVEN IF IT  
3 DOESN'T HAVE BLOOD ON IT, PROVES THE PRESENCE OF INTRUDERS.

4 WELL, WE REJECT THIS CONTENTION AND THE FOURTH  
5 CIRCUIT DID LIKEWISE IN 1992. IT WASN'T THE SAME HAIR, BUT IT  
6 WAS THE SAME ISSUE. AND BASICALLY THERE WERE UNSOURCED HAIRS  
7 AND FIBERS, AND IT WENT UP ON THAT ISSUE AND ON ABUSE OF THE  
8 WRIT.

9 AND, YOU KNOW, THE COURT SAYING THE EVIDENCE RAISED  
10 HERE WHEN CONSIDERED WITH ALL THE TRIAL EVIDENCE SIMPLY DOES  
11 NOT RISE TO A COLORABLE SHOWING OF FACTUAL INNOCENCE NECESSARY  
12 TO SHOW A FUNDAMENTAL MISCARRIAGE OF JUSTICE. IT NEITHER  
13 SUPPORTS MACDONALD'S ACCOUNT OF THE INTRUDERS NOR DISCREDITS  
14 THE GOVERNMENT'S THEORY. THE MOST THAT CAN BE SAID ABOUT THE  
15 EVIDENCE IS THAT IT RAISES SPECULATION CONCERNING ITS ORIGINS.  
16 FURTHERMORE, THE ORIGINS OF THE HAIR AND FIBER EVIDENCE HAVE  
17 SEVERAL LIKELY EXPLANATIONS OTHER THAN INTRUDERS.

18 AND THEN THIS IS, I BELIEVE, JUDGE MURNAGHAN  
19 WRITING, THE EVIDENCE SIMPLY DOES NOT ESCALATE THE UNEASE ONE  
20 FEELS WITH THIS CASE INTO A REASONABLE DOUBT.

21 YOU KNOW, UNSOURCED HAIRS, PER SE, PROVE NOTHING.  
22 ALSO, YOUR HONOR, THIS IS NOT A CONSTITUTIONAL CLAIM HERE OF  
23 DNA. THIS IS A FREESTANDING CLAIM OF ACTUAL INNOCENCE BASED  
24 ON *HERRERA VS. COLLINS*. YOUR HONOR INSTRUCTED COUNSEL FOR  
25 MACDONALD BACK IN SEPTEMBER OF 2011, TO BRIEF THIS ISSUE

September 25, 2012



1 BECAUSE YOUR HONOR'S VIEW AT THE TIME WAS THAT NO COURT HAD  
2 EVER UPHELD OR GRANTED A NEW TRIAL BASED ON SUCH A THEORY.

3 MR. MILES SAID HE WOULD DO SO.

4 THE COURT: I DON'T RECALL THAT A BRIEF WAS FILED.

5 MR. MURTAGH: I'M SORRY, YOUR HONOR?

6 THE COURT: I DO NOT RECALL THAT A BRIEF WAS FILED.

7 MR. MURTAGH: WELL, THAT'S MY RECOLLECTION ALSO,  
8 YOUR HONOR. I WAS GOING TO MAKE THAT POINT, THAT NONE WAS  
9 FILED. THEY HAD AN OPPORTUNITY TO DO SO. SO, IT'S A  
10 DIFFERENT STANDARD, IT'S A MUCH HIGHER STANDARD UNDER *HERRERA*  
11 *VS. COLLINS*.

12 AND ALSO YOU HAVE *HOUSE VS. BELL*. IN OTHER WORDS,  
13 IF DNA IS GOING TO BE USED TO GRANT SOMEBODY A NEW TRIAL, WHAT  
14 *HOUSE V. BELL* TELLS US IS IT HAS TO BE EVIDENCE THAT WAS  
15 CENTRAL TO THE GOVERNMENT'S CASE AT TRIAL. IN *HERRERA VS.*  
16 *COLLINS*, THE SEMEN ON THE MURDERED WOMAN'S NIGHTGOWN THROUGH  
17 DNA TESTING TURNED OUT TO BE HER HUSBAND'S AND NOT HOUSE, I  
18 BELIEVE, OKAY, THE DEFENDANT.

19 ALSO, THE DNA RESULTS HERE ACTUALLY STRENGTHEN THE  
20 GOVERNMENT'S CASE, NOT THE UNSOURCED DNA, BUT OTHER DNA  
21 RESULTS.

22 AND AT THIS TIME WITH YOUR HONOR'S PERMISSION, WE  
23 WOULD SHOW GOVERNMENT EXHIBIT 3501. AND I'LL TRY AND GO  
24 THROUGH THIS AS QUICKLY AS POSSIBLE.

25 OKAY. NEXT SLIDE. SPECIMEN 52A. OKAY. NEXT. AT

1 TRIAL 52A WAS GOVERNMENT'S 280 OR E-4 OR Q118. AND WHAT IT  
2 WAS, WAS DEBRIS FROM THE RIGHT HAND OF COLETTE MACDONALD.

3 OKAY. NEXT. AND AT TRIAL IT WAS MICROSCOPICALLY  
4 MATCHED TO COLETTE MACDONALD'S HEAD HAIR.

5 NEXT. ALL RIGHT. NEXT. BASICALLY, WHERE WE COME  
6 OUT HERE IS THE MITOCHONDRIAL DNA SEQUENCE EQUALS COLETTE  
7 MACDONALD'S. IN OTHER WORDS, THE DNA CONFIRMS THE MUCH  
8 CRITICIZED MICROSCOPIC HAIR COMPARISON.

9 NEXT. AFDIL SPECIMEN 51A.2 WAS THE HAIR FOUND IN  
10 THE LEFT HAND OF COLETTE MACDONALD, WHICH WAS THE REASON WHY  
11 STUFF WAS SENT TO JANICE GLISSON IN THE FIRST PLACE.

12 AND AT TRIAL PAUL STOMBAUGH TESTIFIED THAT IT WAS  
13 THE DISTAL PORTION OF A CAUCASIAN LIMP HAIR. IN OTHER WORDS,  
14 NOT SUFFICIENT FOR COMPARISON PURPOSES.

15 NEXT. AND TO JUST DIGRESS A SECOND. REMEMBER, YOUR  
16 HONOR, WHEN WE POSTED OR PUBLISHED BERNIE SEGAL'S THE  
17 GOVERNMENT SAYS THERE'S NO EVIDENCE OF INTRUDERS. AND HE  
18 ARGUED REFERRING TO THIS HAIR BECAUSE IT WAS THE ONLY HAIR OF  
19 ANY SIGNIFICANCE IN THE TRIAL THAT IT WAS EVIDENCE OF  
20 INTRUDERS.

21 OKAY. NEXT SLIDE. NEXT SLIDE. AFDIL CALLS IT  
22 51A.2. NEXT SLIDE. AND THE REASON FOR THAT IS IT'S MOUNTED  
23 BETWEEN TWO KNOWN HAIRS OF MACDONALD BY JANICE GLISSON,  
24 INCIDENTALY. SO, IT'S THE SECOND HAIR ON THE SLIDE.

25 NEXT. NEXT. NEXT. OKAY. WELL, THERE YOU CAN SEE

1 A PHOTO MICROGRAPH DONE BY GRANT GRAHAM, BUT THE MITOCHONDRIAL  
2 DNA SEQUENCE EQUALS GROUP B, JEFFREY MACDONALD.

3 NOW, IN MACDONALD'S I THINK IT'S HIS MEMORANDUM IN  
4 SUPPORT OF HIS MOTION TO ADD THE DNA PREDICATE IN A FOOTNOTE,  
5 I BELIEVE IT'S FOOTNOTE FIVE, HE SAYS, OF COURSE, THIS IS IN  
6 NO WAY INCULPATORY BECAUSE DR. MACDONALD SAID HE TOUCHED THE  
7 BODY, GAVE MOUTH TO MOUTH, ET CETERA, ET CETERA.

8 OKAY. NEXT. THE PROBLEM IS THAT IT'S A BROKEN HAIR  
9 AND IT'S BROKEN OFF AT THE ROOT END. NEXT. IT HAS A ROUNDED  
10 TIP. THAT WOULD BE THE DISTAL END AS OPPOSED TO THE PROXIMAL  
11 END. NEXT. BUT ACCORDING TO GRANT GRAHAM, IT HAS DEBRIS IN  
12 THE TISSUE WHICH APPEARS TO BE BLOOD AND UNKNOWN DEBRIS.

13 OKAY. NEXT. AND THERE IS A FIBER ADHERING TO IT.

14 NEXT. THIS IS WHAT I WAS REFERRING TO IN BERNIE'S  
15 ARGUMENT.

16 NEXT. NEXT. WELL, WE BELIEVE IT IS INCULPATORY.  
17 YOU'VE GOT THE VICTIM'S BROKEN, BLOODY HAIR IN -- MACDONALD'S  
18 BROKEN BLOODY HAIR, EXCUSE ME, IN THE VICTIM'S HAND. WE  
19 CERTAINLY THINK THAT, YOU KNOW, THAT DOES NOT SUPPORT THE  
20 EVIDENCE OF INTRUDERS THEORY AT ALL, BUT RATHER POINTS TO  
21 MACDONALD.

22 NEXT. WE THINK HE'S ESTOPPED FROM MAKING THIS  
23 ARGUMENT. FOR, YOU KNOW, 30 ODD YEARS THIS WAS THE HAIR OF  
24 THE MURDERER CLUTCHED IN THE VICTIM'S HANDS. WHEN IT TURNS  
25 OUT TO BE HIS HAIR, IT'S SUDDENLY INNOCUOUS.

September 25, 2012

1           NEXT. ALSO, THE JURY REJECTED MACDONALD'S -- YOU  
2 KNOW, HE HAD AN EXPLANATION FOR EVERYTHING AT TRIAL, YOUR  
3 HONOR. IN OTHER WORDS, IF WE HAD SOMETHING THAT SEEMED TO  
4 POINT TO HIM, HE WOULD SAY, WELL, I DID THIS AND SO AND THAT'S  
5 WHY COLETTE'S BLOOD IS ON MY PAJAMA TOP OR WHATEVER. ANYWAY,  
6 THEY CAN NO LONGER RELY ON THIS HAIR TO SUPPORT THE ACCOUNT OF  
7 INTRUDERS.

8           NEXT. OKAY. THE PILE OF BEDDING ON THE FLOOR OF  
9 THE MASTER BEDROOM WAS A CORNUCOPIA OF EVIDENCE. TIME DOESN'T  
10 PERMIT ME TO GO THROUGH EVERYTHING HERE, BUT BASICALLY WHAT  
11 YOU HAD WERE BLOODY FABRIC IMPRESSIONS IN COLETTE'S BLOOD  
12 MATCHING COLETTE'S PAJAMA CUFFS AND MACDONALD'S PAJAMA CUFFS  
13 ON THE SHEET, WHICH IS -- WHICH SURROUNDS THE BEDSPREAD, THE  
14 DARKER OBJECT IN THE PICTURE, AND THEN THERE WERE ALL KINDS OF  
15 THREADS AND YARNS AND A FINGER SECTION OF A RUBBER GLOVE.  
16 AND, OF COURSE, THIS IS -- THIS EXHIBIT IS IN THE RECORD.

17           NEXT. OKAY. AFDIL SPECIMEN 113A WAS A HEAD HAIR  
18 WHICH MICROSCOPIC MATCHES COLETTE MACDONALD. THE HAIR WAS  
19 FOUND ENTANGLED WITH ONE OF THE PURPLE COTTON THREADS, WHICH  
20 SHOULDN'T BE THERE, BECAUSE ACCORDING TO MACDONALD'S ACCOUNT  
21 HE NEVER TOUCHED THE PILE OF BEDDING ON THE NIGHT OF THE  
22 MURDERS.

23           NEXT. OKAY. SO, HERE AGAIN, THE TRIAL EVIDENCE  
24 STANDS. MICROSCOPICALLY IT MATCHED. MTDNA SEQUENCE WAS  
25 INCONCLUSIVE. SO, WE SAY THAT EVIDENCE IS STILL VALID.

September 25, 2012

1           NEXT. NEXT. NEXT. OF COURSE, THERE IS A BROKEN  
2 END OF THAT HAIR AS WELL.

3           NEXT. OKAY. AFDIL SPECIMEN 46A. NEXT. AGAIN,  
4 GOING BACK TO THE PILE OF BEDDING. NEXT. THIS TIME IT'S IN  
5 THE -- I'M SORRY. IT'S THE SHEET. OKAY. AND HERE WE'VE GOT  
6 A PHOTO MICROGRAPH, GOVERNMENT EXHIBIT 3457. THIS IS A  
7 PICTURE TAKEN BY GRANT GRAHAM. AND HE DESCRIBES IT AS HAVING  
8 -- I'M SORRY, IT'S FRAM, ROBERT FRAM -- TISSUE ATTACHED TO THE  
9 BASAL AREA CONSISTENT WITH FORCIBLE REMOVAL. NUCLEAR DNA  
10 STR'S CONSISTENT WITH COLETTE'S STR'S. THAT'S SHORT TANDEM  
11 REPEATS. AND IT EXCLUDES KIMBERLEY AND KRISTEN. SO, THIS IS  
12 ONE OF THOSE RARE CIRCUMSTANCES -- AND THE SAME WAY WITH  
13 CHONDRAL DNA SEQUENCE. THIS IS ONE OF THOSE RARE  
14 CIRCUMSTANCES WE CAN SAY THIS IS THIS PERSON'S HAIR. SO,  
15 THAT'S COLETTE'S HAIR.

16           NEXT SLIDE. WITH DEBRIS. ROOT PRESENT WITH ROOT  
17 SHEATH AND FOLLICULAR TAG AND ATTACHED TISSUE. FRAM  
18 AFFIDAVIT.

19           NEXT. AND THERE'S THE ROOT. AND WHAT FRAM IS  
20 SAYING IS THAT THIS IS CONSISTENT WITH FORCIBLE REMOVAL. AND  
21 I WOULD SUBMIT, YOUR HONOR, THAT'S WHAT A FORCIBLY REMOVED  
22 HAIR LOOKS LIKE. IT'S A GROWING HAIR. IT'S RIPPED OUT OF ITS  
23 FOLLICLE. THE ROOT BECOMES DISTORTED. THE PIGMENT IS STILL  
24 DOWN IN THE ROOT AND SOMETIMES YOU GET A FOLLICULAR SHEATH OR  
25 FOLLICULAR TISSUE ATTACHED. OKAY. SO, YOU HAVE COLETTE'S

1 FORCIBLY REMOVED HAIR IN THE SHEET WHICH SHOULDN'T BE THERE.

2 NEXT. OKAY. 112A.5. NEXT. OKAY. THIS IS FROM  
3 THE BEDSPREAD.

4 NEXT. IN THE STIPULATION, I BELIEVE, IT'S AGREED  
5 THAT Q96.5, ACCORDING TO FRAM'S INITIAL EXAMINATION BEFORE THE  
6 TESTING IS A FORCIBLY REMOVED HAIR WHICH MATCHES KIMBERLEY  
7 MACDONALD'S KNOWN HAIR EXEMPLARS.

8 NEXT. AND YOU CAN SEE FROM ANOTHER PHOTO MICROGRAPH  
9 HERE. AND THE MITOCHONDRIAL DNA SEQUENCE EQUALS THE  
10 MITOCHONDRIAL SEQUENCE OF KIMBERLEY. IT ALSO MATCHED -- HAS  
11 THE SAME MITOCHONDRIAL DNA SEQUENCE AS KRISTEN AND COLETTE,  
12 BUT MICROSCOPICALLY IT MATCHES KIMBERLEY. SO, OUR POSITION IS  
13 THIS IS KIMBERLEY'S FORCIBLY REMOVED HAIR IN THE BEDSPREAD AND  
14 IT SHOULDN'T BE THERE BECAUSE, ACCORDING TO MACDONALD'S  
15 ACCOUNT, KIMBERLEY SHOULD HAVE HAD NO CONTACT WITH THE  
16 BEDSPREAD AND HE SAID HE HAD NO CONTACT WITH THE BEDSPREAD OR  
17 THE SHEET.

18 NEXT. ALL RIGHT. YOUR HONOR, THIS IS -- BASICALLY,  
19 WHAT WE'VE DONE HERE IS WE'VE ADDED THE DNA TEST RESULTS TO  
20 THE PREVIOUS CHART, WHICH I CAN, THINK, GIVE YOU THE EXHIBIT  
21 NUMBER.

22 THE COURT'S INDULGENCE A MOMENT.

23 (PAUSE.)

24 MR. MURTAGH: OKAY. AT TRIAL THIS WAS GOVERNMENT  
25 EXHIBIT 978. AND WHAT'S NEW IS AT THE BOTTOM ON THE LEFT AND

1 THE RIGHT YOU CAN SEE THE AFDIL SPECIMEN 46A AND THE AFDIL  
2 SPECIMEN -- WHAT IS IT -- 112A.5 RESULTS. SO, HERE THE DNA  
3 RESULTS STRENGTHEN THE GOVERNMENT'S CASE.

4 BASICALLY, THE GOVERNMENT'S THEORY AT TRIAL WAS THAT  
5 MACDONALD CARRIED HIS WIFE BACK FROM KRISTEN'S ROOM TO THE  
6 MASTER BEDROOM, WRAPPED IN THE SHEET, TRANSFERRING THE BLOODY  
7 FABRIC IMPRESSIONS, HER BLOOD, HIS PAJAMA TOP, HER PAJAMA TOP,  
8 AND IN THE PROCESS ALSO STEPPED ON THE BEDSPREAD, WHICH IS, AS  
9 YOU CAN SEE THERE, COVERED IN BLOOD AND THAT'S WHERE HE GOT  
10 THE BLOOD ON THE SOLE OF HIS FOOT.

11 SO, THAT'S IT FOR DNA. I THINK -- OH, COUNSEL  
12 REMINDED ME OF SOMETHING, BUT I'M GOING TO COVER IT ANYWAY.

13 OKAY. NOW, SWITCHING TO THE EVIDENCE AS A WHOLE OR  
14 THE TRIAL EVIDENCE, WE'VE PLAYED OR SHOWN BERNIE SEGAL'S NO  
15 EVIDENCE OF INTRUDERS THING SEVERAL TIMES. IT WAS CERTAINLY  
16 THE GOVERNMENT'S POSITION THAT THERE WERE NO INTRUDERS IN THIS  
17 CASE AND THAT MACDONALD HIMSELF WAS THE MURDERER. BUT YOU  
18 WILL SEARCH THE RECORD IN VAIN FOR ANYPLACE WHERE EITHER JIM  
19 BLACKBURN OR MYSELF UTTERED THE WORDS, QUOTE, THERE IS NO  
20 EVIDENCE OF INTRUDERS. THAT WAS A STRAWMAN THAT BERNIE SEGAL  
21 SET UP. NOR WILL YOU FIND ANYPLACE WHERE WE TOLD THE JURY  
22 THERE WAS NOTHING FOUND IN THAT HOUSE THAT COULD NOT BE SHOWN  
23 TO HAVE COME FROM THE HOUSE OR ITS OCCUPANTS, SUCH AS  
24 UNSOURCED HAIRS.

25 IN OTHER WORDS, THIS WAS NOT A NO FOOTPRINTS IN THE

1 SNOW TYPE OF CASE. WE HAD DOZENS OF UNIDENTIFIED  
2 FINGERPRINTS. WE HAD ALL KINDS OF UNIDENTIFIED FIBERS. WE  
3 HAD A FEATHER, WHICH WAS A BIG DEAL AT THE TRIAL. AND WE  
4 SIMPLY COULD NOT HAVE MADE THAT ARGUMENT. NOT TO MENTION THE  
5 WAX. WE HAD ALL KINDS OF WAX.

6 I SUBMIT AND I HOPE TO DEMONSTRATE TO YOUR HONOR  
7 THAT JEFFREY MACDONALD WAS CONVICTED OF THE MURDERS BECAUSE OF  
8 THE EXISTENCE OF EVIDENCE WHICH COULD NOT BE EXPLAINED BY THE  
9 ACTIONS OR PRESENCE OF INTRUDERS BUT ONLY BY MACDONALD'S  
10 ACTIONS BASED UPON HIS FALSE EXCULPATORY STATEMENTS, AND THAT  
11 THAT EVIDENCE -- AND I'LL ENUMERATE IT IN A SECOND --  
12 IDENTIFIED HIM AS THE ONLY POSSIBLE CRIMINAL AGENT.

13 NOW, THE GOVERNMENT'S MOST, I THINK, COMPELLING  
14 EVIDENCE AT TRIAL WAS WHAT WE CALLED THE PAJAMA TOP  
15 RECONSTRUCTION.

16 SO, IF I COULD GO TO THAT NOW. LET'S START WITH  
17 GOVERNMENT'S 43. ALL RIGHT. YOU SEE THIS IS COLETTE  
18 MACDONALD. SHE'S LYING ON THE FLOOR OF THE MASTER BEDROOM AND  
19 THE BLUE OBJECT ON HER LOWER CHEST, MIDSECTION, IS -- THERE  
20 WAS TESTIMONY THIS IS MACDONALD'S PAJAMA TOP AND WHAT YOU'RE  
21 LOOKING AT IS ITS TURNED RIGHT SLEEVE INSIDE OUT. THERE WAS  
22 TESTIMONY TO THAT EFFECT, WHICH WASN'T CHALLENGED, BASED ON  
23 THE IDENTIFICATION OF WHERE THE SEAMS ARE.

24 OKAY. JUST ONE OTHER THING, YOUR HONOR, I'D LIKE TO  
25 BRING YOUR ATTENTION -- DRAW TO YOUR ATTENTION. IF YOU LOOK



1 UNDER COLETTE'S LEFT ARM, YOU CAN SEE IN HER BICEP AREA,  
2 THAT'S HER HAIR. IN OTHER WORDS, HER HAIR HAS COME DOWN AND  
3 LANDED ON THE RUG AND THEN HER ARM HAS FLOPPED OVER IT. AND I  
4 WOULD SUBMIT THAT THAT'S CONSISTENT NOT WITH SOMEBODY BEING  
5 KNOCKED OUT AND, YOU KNOW, FALLING, BUT RATHER SOMEBODY BEING  
6 PLACED.

7 OKAY. NEXT SLIDE. I'M SORRY, IT'S 44. ALL RIGHT.  
8 AND THAT'S ANOTHER VIEW OF THE PAJAMA TOP. ALL RIGHT.

9 LET'S GO TO GOVERNMENT'S 604, PLEASE. THIS IS THE  
10 PAJAMA TOP ON WHAT WE CALL THE MALE SUIT FORM AND ALL THE  
11 LITTLE FLAGS REPRESENT PUNCTURE HOLES CONSISTENT WITH THE ICE  
12 PICK, ALL MADE WHILE THE GARMENT WAS STATIONARY.

13 AND NOW IF WE COULD GO TO GOVERNMENT 609. THIS IS  
14 THE SAME WITH THE BACK OF THE PAJAMA TOP. AND THOSE --  
15 MACDONALD'S ACCOUNT -- I MEAN, BASICALLY, WE PUT HIS STORY  
16 INTO EVIDENCE. AND HIS ACCOUNT WAS BASICALLY HE WAS ATTACKED  
17 IN THE LIVING ROOM BY WHAT WAS ALLEGED TO BE AN ICE PICK  
18 WIELDING ASSAILMENT, ONE OF THE THREE, AND HIS PAJAMA TOP WAS  
19 EITHER PULLED OVER HIS HEAD OR IN ANY EVENT IT CAME DOWN  
20 AROUND HIS ARMS AND HE WAS USING IT TO BLUNT THE THRUSTS OF  
21 THE ICE PICK WIELDING ASSAILANT.

22 ALL RIGHT. NOW, IF WE COULD GO TO -- AND OBVIOUSLY  
23 WE DISPUTED THAT AND PROVED, I THINK, THAT IT IS IMPOSSIBLE TO  
24 STAB AT THE UNSUPPORTED CLOTH WITH AN ICE PICK WITHOUT TEARING  
25 IT.

1           GOVERNMENT 786, PLEASE. THIS IS A CLOSE UP VIEW OF  
2 COLETTE MACDONALD'S CHEST. THE PATHOLOGIST HAS IDENTIFIED THE  
3 GAPING WOUNDS, THE SQUARE LITTLE BOXES, THAT'S CONSISTENT WITH  
4 THE GENEVA FORGE KNIFE, THE PATTERN BRUISE AS BEING CONSISTENT  
5 WITH THE END OF THE CLUB, AND HAS IDENTIFIED, 21 PUNCTURE  
6 WOUNDS WHICH ARE CONSISTENT WITH HAVING BEEN INFLICTED BY THE  
7 ICE PICK. ALL OF THESE WOUNDS, WITH THE EXCEPTION OF THE  
8 PATTERN BRUISE, ARE CONSISTENT WITH THE VICTIM BEING FLAT ON  
9 HER BACK, PROBABLY UNCONSCIOUS, WHEN THE WOUNDS ARE INFLICTED.

10           NOW, IF WE COULD GO TO GOVERNMENT'S 790. THIS IS  
11 THE FIRST OF THE PHOTOGRAPHS THAT WE USED IN THE  
12 RECONSTRUCTION. WHAT YOU'RE LOOKING AT, YOUR HONOR, IS THE  
13 PAJAMA TOP. AND SHIRLEY GREEN, WHO TESTIFIED AT TRIAL, HAS  
14 INSERTED 21 PUSH PINS THROUGH 48 PUNCTURE HOLES IN THE PAJAMA  
15 TOP WHEN IT'S TURNED RIGHT SLEEVE INSIDE OUT. AND IT'S ON A  
16 CARDBOARD BOX WITH SOME GRAPH PAPER. AND, OF COURSE, NEXT TO  
17 IT IS THE PHOTOGRAPH THAT WE JUST SAW, WHICH WAS GOVERNMENT'S  
18 786.

19           OKAY. NOW, IF WE CAN GO TO 791. THIS IS A  
20 DIFFERENT PHOTOGRAPH, ALSO IDENTIFIED BY THE PATHOLOGIST AS  
21 BEING THE INJURIES IN COLETTE'S CHEST.

22           792. ALL RIGHT, WHAT WE'RE LOOKING AT HERE IS THE  
23 PAJAMA TOP, WHICH IS FBI EXHIBIT Q12, HAS BEEN REMOVED FROM --  
24 IN OTHER WORDS, THE PUSH PINS HAVE BEEN TAKEN OUT AND PLACED  
25 IN THE HOLES THAT REGISTERED WHEN THE PUSH PINS WENT THROUGH

1 THE PAJAMA TOP TURNED RIGHT SLEEVE INSIDE OUT. AND THAT'S THE  
2 PATTERN THAT RESULTS.

3 OKAY. THIS IS 793 NEXT. THERE YOU SEE BEING  
4 JUXTAPOSED THE BOX WITH THE Q12 REGISTERED WOUNDS OR  
5 REGISTERED PUNCTURES NEXT TO THE AUTOPSY PICTURE 786 OF  
6 COLETTE.

7 ALL RIGHT, 794. AND NOW WE'VE PUT AN ADDITIONAL  
8 BOX, WHICH IS MARKED PHOTO, WE'VE PUT 21 PUSH PINS THROUGH  
9 WHAT WAS PREVIOUSLY IDENTIFIED AS 21 ICE PICK WOUNDS IN  
10 COLETTE'S CHEST AND THE PATTERNS ARE VIRTUALLY IDENTICAL.  
11 WE'VE GOT FIVE ON ONE SIDE AND 16 ON THE OTHER SIDE. THE  
12 SCALE IS DIFFERENT BECAUSE THE AUTOPSY PICTURE DID NOT HAVE A  
13 SCALE IN IT.

14 ALL RIGHT. NOW, IF WE COULD GO TO 795. OKAY,  
15 WE'VE TAKEN THE BOX WITH THE Q12 WITH THE PATTERN AND THEN WE  
16 GO 796, WE'VE PUT THE TWO BOXES SIDE BY SIDE. THE ONE ON THE  
17 LEFT IS THE Q12, THE RECONSTRUCTION, IN OTHER WORDS, THE  
18 PATTERN THAT RESULTS WHEN YOU PUT 21 PROBES THROUGH 48 HOLES  
19 IN THE PAJAMA TOP. AND THE ONE ON THE RIGHT, THE PHOTO, IS  
20 THE PATTERN THAT RESULTS WHEN YOU PUT 21 PUSH PINS IN WHAT WAS  
21 PREVIOUSLY IDENTIFIED AS 21 ICE PICK WOUNDS.

22 AND, YOUR HONOR, THIS WAS PROBABLY OUR STRONGEST  
23 EVIDENCE IN THE CASE BECAUSE IT'S MACDONALD'S OWN ACCOUNT THAT  
24 HE PLACED THE PAJAMA TOP ON HIS WIFE'S CHEST THE FIRST TIME HE  
25 WENT INTO THE MASTER BEDROOM, OSTENSIBLY TO TREAT HER FOR

September 25, 2012

1 SHOCK. OF COURSE, WHAT HE WAS DOING, HE WAS TRYING TO ACCOUNT  
2 FOR THE PRESENCE OF HER BLOOD BEING ON HIS PAJAMA TOP BEFORE  
3 IT WAS TORN.

4 BUT WHAT THE JURY UNDERSTOOD IS THAT SOMEBODY  
5 STABBED COLETTE MACDONALD THROUGH HIS PAJAMA TOP WHILE SHE WAS  
6 FLAT ON HER BACK ON THE FLOOR OF THE MASTER BEDROOM. AND THE  
7 ONLY PERSON THAT COULD HAVE DONE THAT IS JEFFREY MACDONALD  
8 BECAUSE, BY HIS ACCOUNT, THE HIPPIES HAVE FLED INTO THE NIGHT  
9 AND HE'S STILL UNCONSCIOUS IN THE LIVING ROOM STILL WEARING  
10 HIS PAJAMA TOP WHEN HE WAKES UP.

11 OKAY. THE COURT'S INDULGENCE A SECOND.

12 (PAUSE.)

13 MR. MURTAGH: OKAY. IF WE COULD HAVE GOVERNMENT'S  
14 59. THIS IS A PICTURE OF KRISTEN'S BEDROOM. THERE WAS  
15 TESTIMONY AT TRIAL THAT ALL OF THE BLOOD ON THE FLOOR BY  
16 KRISTEN'S BED, NOT SURPRISINGLY, IS TYPE O, KRISTEN'S TYPE.

17 AND THEN IF WE COULD HAVE 65, PLEASE, GOVERNMENT'S  
18 65. NOW, THERE WAS -- MR. IVORY TESTIFIED CORRECTLY THE OTHER  
19 DAY IN TERMS OF HIS KNOWLEDGE. HE WAS RELYING ON THE  
20 LABORATORY REPORT, WHICH BASICALLY DID NOT MAKE A POSITIVE  
21 IDENTIFICATION BECAUSE RIDGE LINES COULD NOT BE SEEN IN THE  
22 PHOTOGRAPH OF THE FOOTPRINT, BUT AT TRIAL MR. MEDLIN TESTIFIED  
23 TO THE IDENTIFICATION HE MADE IN C2 WITH MACDONALD'S KNOWN  
24 FOOTPRINT. THEY HAD HIM FOOTPRINTED. THIS IS JEFFREY  
25 MACDONALD'S FOOTPRINT. IT'S EXITING FROM KRISTEN'S ROOM. AND

1 WHAT'S SIGNIFICANT ABOUT IT IS THERE IS NO BLOOD OF COLETTE'S  
2 TYPE ANYWHERE ON THE FLOOR IN THAT ROOM. SO, HE HAD TO STEP  
3 ON SOMETHING THAT COATED HIS FOOT WITH BLOOD AND TRACK IT OUT.  
4 IN OTHER WORDS, WE'VE SAID IF HE DIDN'T TRACK IT IN, HOW DID  
5 HE TRACK IT OUT? AND OUR ARGUMENT AT TRIAL WAS IT WAS THE  
6 BEDSPREAD USED IN THE MOVEMENT OF COLETTE'S BODY FROM THIS  
7 ROOM -- LET'S GO BACK TO -- WAS IT 59?

8           THERE WAS TESTIMONY AT TRIAL, YOUR HONOR, THAT ON  
9 THE WALL ABOVE KRISTEN'S BED TYPE A BLOOD, COLETTE'S TYPE, WAS  
10 SPATTERED. THERE WAS TESTIMONY THAT THERE WAS A LARGE STAIN  
11 IN COLETTE'S BLOOD ON THE TOP SHEET, NOT TERRIBLY VISIBLE IN  
12 THIS PICTURE, OF KRISTEN'S BED. AND THERE WAS A HAIR RIBBON  
13 -- COLETTE APPARENTLY TIED HER HAIR UP WITH SORT OF A THICK  
14 WOOL-TYPE RIBBON. THAT WAS FOUND ON THE MULTI-COLORED RUG  
15 THERE, BROKEN AND BLOODY. AND THEN THERE WAS A STIPULATION  
16 FROM AN EXAMINER NAMED JAMES FRIER, IT WAS STIPULATED TO HIS  
17 TESTIMONY, THAT A FIBER MATCHING THAT RUG ON THE FLOOR WAS  
18 FOUND IN KRISTEN'S -- IN COLETTE'S HAND. THERE WAS ALSO  
19 TESTIMONY THAT THERE WAS A THREAD AND I BELIEVE A YARN FROM  
20 MACDONALD'S PAJAMA TOP FOUND ON THE BEDSPREAD. AND THERE WAS  
21 A SPLINTER, WHICH MATCHED THE CLUB, FOUND ON THE BEDSPREAD,  
22 BUT KRISTEN WAS NOT STRUCK WITH THE CLUB.

23           AND WHAT ALL OF THAT MEANS IS COLETTE MACDONALD WAS  
24 ASSAULTED A SECOND TIME IN THAT ROOM WITH THE CLUB BY SOMEBODY  
25 WEARING A BLUE PAJAMA TOP, AND THAT CAN ONLY BE DR. MACDONALD.

1           ALL RIGHT. IF WE COULD GO NOW TO GOVERNMENT'S 981.  
2 THIS WAS THE SUMMARY CHARGE THAT WE USED WHERE THE TONGUE  
3 DEPRESSOR STICKS MARKED THE PLACE WHERE THE CLUB WAS FOUND  
4 OUTSIDE THE HOUSE BY CID AGENT BOB SHAW.

5           NOW, WE HAVE ALL SORTS OF SPLINTERS, AND I CAN SHOW  
6 YOU GOVERNMENT'S 437 IN A SECOND. THE CLUB WAS USED IN THE  
7 MASTER BEDROOM, IT SPLINTERED AND LEFT SPLINTERS ALL OVER THE  
8 PLACE.

9           TYPE A BLOOD, COLETTE'S TYPE, IS FOUND ON THE CLUB,  
10 AS IS ALSO TYPE AB BLOOD, KIMBERLEY'S TYPE, THE TWO VICTIMS  
11 WHO HAD BLUNT TRAUMA INJURIES.

12           WHAT ALSO WAS FOUND ON THE CLUB -- AND I'LL HAVE TO  
13 LEAN FORWARD A BIT HERE -- IS THERE ARE TWO PURPLE COTTON  
14 THREADS THAT ARE -- THAT EQUAL THE PURPLE COTTON SEAM THREADS  
15 OF THE BLUE PAJAMA TOP. THE PAJAMA TOP WAS SEWN -- THE SEAM  
16 IS RIPPED FROM HERE ALL THE WAY TO HERE AND DOWN THE CENTER,  
17 BUT WHEN THE SEAM IS RIPPED, THESE LITTLE Z-TYPE THREADS POP  
18 OUT AND THERE ARE DOZENS OF THEM IN THE MASTER BEDROOM. SO,  
19 YOU HAVE THOSE.

20           AND THEN -- EXCUSE ME, THIS DOESN'T WORK WELL WITH  
21 BIFOCALS. THERE ARE NUMEROUS RAYON -- OKAY. THANK YOU.  
22 THERE ARE NUMEROUS RAYON FIBERS IDENTICAL TO THOSE OF THE  
23 MULTI-COLORED THROW RUG, EXHIBIT 322, IN THE MASTER BEDROOM.  
24 WE CAN PROBABLY FIND A PICTURE OF THAT, YOUR HONOR. BUT THIS  
25 IS THE THROW RUG THAT IS BY COLETTE MACDONALD'S FEET. IT'S

1 SOMEWHAT OVERTURNED AND THE POCKET FROM THE PAJAMA TOP IS ON  
2 IT.

3           AND, IN FACT -- JUST TO DIGRESS FOR A SECOND -- THE  
4 MOST IMPORTANT QUESTION THAT ANY INVESTIGATOR EVER ASKED DR.  
5 MACDONALD WAS EARLY ON, ON APRIL 6TH, 1970, WHEN BOB SHAW  
6 ASKED MACDONALD, HOW IS IT, DOCTOR, YOUR PAJAMA TOP IS SOAKED  
7 IN BLOOD AND THERE'S ONLY A LITTLE BIT OF BLOOD ON THE POCKET?

8           SO, AS HAPPENED ON SEVERAL OCCASIONS, MACDONALD HAS  
9 TO INVENT FACTS WITHOUT KNOWING ALL THE CONSEQUENCES OF THOSE  
10 INVENTIONS. SO, HE SAYS, I WENT IN THERE THE FIRST TIME AND I  
11 COVERED HER WITH IT, AND MAYBE I SHOOK IT OR SOMETHING, BUT  
12 IT'S THE FIRST TIME I WENT IN THERE -- THE MASTER BEDROOM -- I  
13 DIDN'T MAKE A CIRCUIT WITH IT ON. AND THAT FORECLOSES THE  
14 PRESENCE OF SEAM THREADS FROM THE PAJAMA TOP BEING IN  
15 KIMBERLEY'S ROOM OR KRISTEN'S ROOM.

16           THE SIGNIFICANCE OF THE MULTI-COLORED THROW RUG  
17 FIBERS ON THE CLUB IS -- AND IF I COULD HAVE 2138. YOUR  
18 HONOR, MACDONALD'S ACCOUNT IS HE'S ATTACKED IN THE LIVING  
19 ROOM, WHERE YOU SEE THE COFFEE TABLE, WHICH, BY THE WAY, WE  
20 DID NOT RELY ON AT ALL AT THE TRIAL. WE DID NOT RETRY THE  
21 ARTICLE 32 INVESTIGATION. BUT AGAIN, ACCORDING TO MACDONALD'S  
22 ACCOUNT, HE WAKES UP AFTER THE INTRUDERS HAVE FLED, THE HOUSE  
23 IS QUIET. HE'S ON THE STEP LEADING DOWN THE HALLWAY. HE  
24 WALKS DOWN THE HALLWAY. HE SEES COLETTE LEANING UP AGAINST  
25 WHAT IS, I THINK, ACTUALLY A GREEN ARMCHAIR HERE. SHE HAS A

1 KNIFE IN HER CHEST, WHICH HE PULLS OUT AND THROWS SOMEPLACE.  
2 YOU KNOW, THE INVESTIGATORS THOUGHT THAT'S A STRANGE THING FOR  
3 A PHYSICIAN TO DO. BUT IN ANY EVENT, THAT'S WHAT HE SAID.

4 THE KNIFE IS THE GENEVA FORGE KNIFE, WHICH IS NOT  
5 CONSISTENT WITH ANY OF THE PENETRATING STAB WOUNDS ON  
6 COLETTE'S CHEST OR KIMBERLEY'S THROAT AND IS NOT CONSISTENT  
7 WITH ANY OF THE DEFECTS IN COLETTE'S PAJAMA TOP. IT IS  
8 CONSISTENT WITH HAVING MADE THE CUT ON THE LEFT SLEEVE OF  
9 MACDONALD'S PAJAMA TOP, WHICH IS THE ONLY PLACE WHERE HE HAD A  
10 CORRESPONDING BLEEDING INJURY, A LITTLE TINY BIT OF TYPE B ON  
11 THE LEFT SLEEVE OF THE PAJAMA TOP.

12 BUT THE IMPORTANT THING IS THAT -- AGAIN, HE'S  
13 ABSOLUTELY INSISTENT ON THIS -- HE NEVER GOES OUT THE BACK  
14 DOOR. HE MIGHT HAVE GONE TO THE SCREEN TO LOOK OUT, BUT HE  
15 NEVER WENT OUTSIDE THE BACK DOOR.

16 WELL, IF YOU HAVE THREADS FROM THE PAJAMA TOP, OF  
17 WHICH THERE WERE NONE IN THE LIVING ROOM, AND YOU HAVE FIBERS  
18 FROM THE THROW RUG, WHICH IS IN THE MASTER BEDROOM, WE ARGUE  
19 THAT THE ONLY WAY THAT THOSE TWO THINGS COULD HAVE GOTTEN ON  
20 THE CLUB IS IF THE CLUB HAD COME TO REST ON THE THROW RUG AT  
21 SOME POINT AND PICKED UP NOT ONLY OTHER SEAM THREADS, WHICH  
22 ARE ALL OVER THIS ROOM, BUT THE RAYON FIBERS OF THE THROW RUG.  
23 AND THERE'S NO WAY YOU CAN RECONCILE THAT WITH MACDONALD'S  
24 ACCOUNT.

25 THE PAJAMA TOP DOESN'T COME INTO THE MASTER BEDROOM,



1 ACCORDING TO HIS ACCOUNT, UNTIL THE CLUB IS ALREADY OUTSIDE.  
2 HE NEVER TOUCHES THE CLUB. HE NEVER GOES OUTSIDE. AND WE  
3 ARGUE THAT THAT BASICALLY POINTED TO HIM BECAUSE THE ONLY  
4 PERSON THAT COULD MAKE THAT HAPPEN IS THE DEFENDANT. SO, THAT  
5 WAS OUR ARGUMENT WITH RESPECT TO THAT.

6 NOW, OVER THE YEARS CLAIMS HAVE BEEN RAISED AND, IN  
7 FACT, THERE'S ONE BEFORE YOUR HONOR IN THE MOTION TO EXPAND  
8 THE RECORD, THE GIST OF WHICH IS THAT I INDUCED OR HAD DILLARD  
9 BROWNING TESTIFY THAT THERE WERE TWO SEAM THREADS ON THE  
10 PAJAMA TOP. AND ACCORDING TO THE LATEST ITERATION OF THIS  
11 CLAIM, THEY ARE NOT PURPLE COTTON THREAD, THEY'RE BLACK WOOL,  
12 WHICH, OF COURSE, COULD ONLY HAVE COME FROM HELENA STOECKLEY.  
13 AND THEY RELY ON THE AFFIDAVIT OF A WOMAN CALLED ELLEN  
14 DANNELLY, WHICH IS BEFORE YOUR HONOR. AND TO MAKE A LONG  
15 STORY SHORT, WHAT DANNELLY DID WAS ANALYZE THE RESULTS FROM A  
16 SECOND EXAMINATION BY THE FBI LAB.

17 TO BACK UP, IN 1974 PAUL STOMBAUGH CONFIRMS DILLARD  
18 BROWNING'S IDENTIFICATION OF TWO PURPLE COTTON THREADS COMING  
19 FROM EXHIBIT Q89, THE DEBRIS FROM THE CLUB. THOSE GO IN  
20 LITTLE PILL BOXES. AND THEN IN 1978, I ASKED THE FBI TO DO  
21 SOME ADDITIONAL EXAMINATIONS IN THE HOPE OF IDENTIFYING THE  
22 BLUE ACRYLIC FIBER THAT WAS IN COLETTE MACDONALD'S HAND, WHICH  
23 TO THIS DAY IS UNIDENTIFIED, BUT THE DEFENSE HAS NEVER FOUNDED  
24 ON THAT. IN THE PROCESS, THEY IDENTIFIED THE RAYON FIBERS  
25 FROM THE THROW RUG, BUT THEY ALSO FIND BLACK WOOL AND I

September 25, 2012

1 BELIEVE WHITE WOOL AND SOME OTHER KIND OF WOOL, BUT THEY DON'T  
2 REPORT ON THAT. IN OTHER WORDS, THEY ONLY REPORT ON THE  
3 IDENTIFICATION. SO, THIS IS IN BENCH NOTES THAT ARE NOT  
4 RELEASED UNTIL YEARS LATER.

5 BUT, YOUR HONOR, IF THEY WANTED TO PURSUE THAT, THEY  
6 COULD HAVE CALLED ELLEN DANNELLY, WHO ONLY LOOKED AT THE  
7 SECOND LAB REPORT, NOT THE FIRST ONE. AND I WOULD REPRESENT  
8 TO YOUR HONOR, THAT THERE ARE BOTH PURPLE COTTON THREADS AND  
9 BLACK WOOL AND RAYON FIBERS FROM THE THROW RUG.

10 A MOMENT'S INDULGENCE, YOUR HONOR.

11 (PAUSE.)

12 MR. MURTAGH: YOUR HONOR, IF WE COULD HAVE  
13 GOVERNMENT'S 39. ALL RIGHT, YOUR HONOR, GOVERNMENT'S 39 IS  
14 YOU'RE LOOKING AT COLETTE MACDONALD'S BODY FROM THE HALLWAY OF  
15 THE HOUSE. THE LITTLE BLUE OBJECT ON THE UPTURNED CORNER OF  
16 THE THROW RUG IS THE POCKET FROM THE PAJAMA TOP. AND THERE  
17 WAS TESTIMONY AT TRIAL, AND I FORGET WHETHER IT WAS LABER OR  
18 FLYNN, IT WAS ONE OF THE TWO TESTIFIED THAT THE BLOOD ON THE  
19 PAJAMA POCKET, WHICH WAS TYPE A, COLETTE'S TYPE, WAS  
20 CONSISTENT WITH CONTACT STAINS. THEN THERE'S THE THROW RUG,  
21 WHICH HAD, IN ADDITION TO THREAD AND YARNS FROM THE PAJAMA  
22 TOP, IT HAD ITS OWN COMPOSITION OF RAYON FIBERS. YOU SEE THE  
23 PAJAMA TOP TRAILING OFF. AND I TALKED EARLIER ABOUT COLETTE'S  
24 PAJAMA PANTS OR BOTTOMS. THESE ARE MEN'S TYPE PAJAMAS.  
25 THEY'RE FULL LENGTH. BUT YOU NOTICE HOW THE LEGS HAVE BEEN

September 25, 2012

1 PUSHED UP, AND WE ARGUE THAT THAT WAS CONSISTENT WITH THE BODY  
2 HAVING BEEN LIFTED UNDERNEATH THE KNEES.

3 AND, YOUR HONOR, WE -- BASICALLY WE PUT ALL OF  
4 MACDONALD'S STATEMENTS ON THE KEY POINTS INTO EVIDENCE EITHER  
5 BY READING TRANSCRIPTS IN OR PLAYING THE AUDIO TAPE OF THE  
6 APRIL 6TH INTERVIEW. AND IT WAS HIS STORY VERSUS THE PHYSICAL  
7 EVIDENCE.

8 AND AS I SAY, MACDONALD WAS NOT CONVICTED BECAUSE  
9 THERE WAS NO EVIDENCE OF INTRUDERS. I MEAN, THERE WAS ALL  
10 KINDS OF STUFF THAT WE COULD NOT IDENTIFY. AND IF THE JURY  
11 HAD WANTED -- AND LET ME JUST SAY THAT THIS WAS A VERY, VERY  
12 DIFFICULT CASE FOR A JURY. WE HAD NO PRIOR SIMILAR ACTS. WE  
13 COULD NOT PROVE THAT HE ABUSED HIS WIFE OR CHILDREN. HE WAS  
14 THE ALL AMERICAN BOY. HE WAS A SOLDIER. HE WAS A DOCTOR.  
15 AND I SUBMIT THAT THE EVIDENCE MUST HAVE BEEN COMPELLING  
16 BECAUSE THERE CERTAINLY WAS NO REASON FOR THIS EDUCATED JURY  
17 TO HOLD ANYTHING AGAINST JEFFREY MACDONALD, JUST THE OPPOSITE.

18 THE FIRST JUROR IN THROUGH THE DOOR WHEN THE VERDICT  
19 WAS ANNOUNCED WAS THE RETIRED GREEN BERET MASTER SERGEANT,  
20 WHICH MIGHT SOUND STRANGE THAT WE PUT HIM ON THE JURY, BUT  
21 THERE WERE REASONS FOR IT. HE WAS AN INSURANCE INVESTIGATOR  
22 WHO WORKED WITH FRAUD. ANYWAY, THAT MAN WALKS IN AND THE  
23 TEARS ARE STREAMING DOWN HIS FACE. NONE OF THE JURORS LOOKED  
24 AT MACDONALD WHEN THEY CAME INTO THE COURTROOM. AS I SAY,  
25 THIS WAS NOT AN EASY DECISION AND NOT ONE THAT THEY TOOK

September 25, 2012

1 LIGHTLY.

2 I WOULD ALSO ADD, YOUR HONOR, THAT THERE WAS NEVER A  
3 CHALLENGE TO ANYTHING THAT JUDGE DUPREE SAID IN THE CHARGE TO  
4 THE JURY. AND HE BASICALLY LAID OUT THE LAW AND HE SAID IF  
5 YOU THINK THE DEFENDANT IS INNOCENT SAY SO. IT'S THE  
6 GOVERNMENT'S BURDEN OF PROOF. THERE WAS NO CHALLENGE TO  
7 ANYTHING EITHER THAT I SAID OR JIM BLACKBURN SAID IN FINAL  
8 ARGUMENT. WITH ALL THE STUFF THAT'S BEEN LITIGATED IN THIS  
9 CASE, I THINK IT'S SIGNIFICANT THAT NEITHER THE CHARGE NOR THE  
10 FINAL ARGUMENT WAS EVER POINTED OUT.

11 AND I THINK I HAVE ABOUT FIVE MINUTES. YOUR HONOR,  
12 IF YOU HAVE ANY QUESTIONS ABOUT THE EVIDENCE IN THE CASE I  
13 THINK, TO THE BEST OF MY ABILITY AND AS AN OFFICER OF THE  
14 COURT, I WILL TRY TO ANSWER THEM.

15 THE COURT: WELL, I APPRECIATE YOUR EFFORTS. I CAN  
16 TELL ALL OF YOU NOW FOR A JUDGE WHO DID NOT TRY THE CASE IT'S  
17 VERY DIFFICULT TO FOLLOW.

18 MR. MURTAGH: YOUR HONOR, I THINK WE MARKED THESE  
19 EARLIER, BUT WE PUT IN -- IN OTHER WORDS, NOT ONLY  
20 GOVERNMENT'S EXHIBIT 1141, WHICH WAS THE SUMMARY OF KEY  
21 STATEMENTS THAT HE HAD MADE PRIOR TO TRIAL, I THINK WE ALSO  
22 PUT IN THE ANALYSIS OF HIS TESTIMONY ON THOSE SAME POINTS AT  
23 TRIAL, IN OTHER WORDS, WHAT THE JURY HEARD. DO WE HAVE A  
24 NUMBER? EXCUSE ME.

25 (PAUSE.)

1 MR. MURTAGH: YOUR HONOR, I'LL FIND THAT -- 6073.  
2 AND WE'VE GIVEN COPIES TO THE CLERK AND COUNSEL. AND THAT'S  
3 IT FOR ME, YOUR HONOR.

4 THE COURT: THANK YOU. MR. BRUCE.

5 MR. BRUCE: YOUR HONOR, I WOULD NOW LIKE TO TURN TO  
6 THE BRITT CLAIM, AND I'M GOING TO HAND UP -- THE DEFENSE  
7 ALREADY HAS A COPY AND I'LL HAND ONE -- I THINK THIS IS THE  
8 ORIGINAL. THIS IS GOVERNMENT EXHIBIT 2367, BUT IT'S JUST A  
9 DEMONSTRATIVE CHART FOR PURPOSES OF CLOSING.

10 THE COURT: THANK YOU.

11 MR. BRUCE: AND WHAT I WANT TO DO WITH THIS CHART,  
12 AND USING THE SCREEN TO PUT UP SOME EXHIBITS, IS TO CHRONICLE  
13 FOR THE COURT WHAT WE CONTEND THE EVIDENCE HAS SHOWN ARE THE  
14 FALSE ASSERTIONS OF JIMMY BRITT. AND I BELIEVE THERE ARE 27  
15 OF THEM. SOME OF THEM ARE DETAILS, SOME OF THEM ARE MAJOR  
16 POINTS, AND SOME OF THEM ARE THE WHOLE CRUX OF HIS STORY.

17 LET'S START WITH THE ONE ON THE FIRST PAGE. HE  
18 ASSERTED THAT JUDGE DUPREE'S LAW CLERKS DURING THE TRIAL WERE  
19 RICH LEONARD AND JOHN EDWARDS. HE DID THIS FIRST IN HIS  
20 STATEMENT OF FACTS, GX-2085, PARAGRAPHS THREE AND FOUR. WE'LL  
21 BLOW UP THREE AND FOUR. AND THIS IS THE FIRST THING THAT  
22 JIMMY BRITT WROTE ABOUT THIS CASE, AT LEAST THAT ANYBODY HAS,  
23 AND HE SAYS THAT THE SPECIFICS ARE TOO NUMEROUS TO LIST IN  
24 THIS STATEMENT OF FACTS. HOWEVER, HE WILL LIST THE NAMES OF  
25 THE PEOPLE INVOLVED IN THE IRREGULARITIES THAT I OBSERVED --

September 25, 2012

1 MEANING I JIMMY BRITT -- WHILE ASSIGNED AS A DEPUTY U.S.  
2 MARSHAL AT THIS TRIAL; THE LATE FRANKLIN DUPREE, UNITED STATES  
3 DISTRICT JUDGE WHO PRESIDED OVER THE TRIAL; RICH LEONARD AND  
4 JOHN EDWARDS, LAW CLERKS FOR JUDGE DUPREE; JIM BLACKBURN, U.S.  
5 ATTORNEY; AND THE FOREMAN OF THE JURY.

6           AFTER HE CAME FORWARD TO WADE SMITH AND WADE SMITH  
7 PUT HIM UNDER OATH IN WADE SMITH'S OFFICE -- THAT'S GX-2086 --  
8 WITH A COURT REPORTER THERE -- LET'S GO TO PAGE NINE, LINE 15  
9 -- HE WAS ASKED WHY DID YOU WAIT SO LONG TO COME FORWARD. AND  
10 HE SAYS, WELL, OUT OF RESPECT FOR THE LATE FRANKLIN DUPREE,  
11 WHO WAS THE UNITED STATES DISTRICT JUDGE THAT PRESIDED OVER  
12 THIS CASE, AND RICH LEONARD, WHO IS A UNITED STATES BANKRUPTCY  
13 JUDGE OVER IN WILSON, AND I FEEL LIKE IT IS THE LATE SENATOR  
14 -- I MEAN, JOHN EDWARDS, WHO WAS A FORMER UNITED STATES  
15 SENATOR FOR THE STATE OF NORTH CAROLINA. AND MR. SMITH SAYS  
16 AND THOSE WERE THE PEOPLE WORKING IN THE COURTS, WITH THE  
17 COURTS, OR WITH JUDGE DUPREE AT THE TIME OF THE MACDONALD  
18 TRIAL AND MR. BRITT SAYS, YES, SIR, THEY WERE.

19           WELL, THE TRUE FACTS, OF COURSE, AS SHOWN IN THE  
20 THIRD COLUMN OF OUR CHART, ARE THAT RICH LEONARD SERVED AS LAW  
21 CLERK FOR JUDGE DUPREE FROM 1976 TO 1978. AND AS HE  
22 TESTIFIED, JOHN EDWARDS LEFT AS A LAW CLERK FOR JUDGE DUPREE  
23 AFTER ONLY ONE YEAR, AT ABOUT THE SAME TIME THAT RICH LEONARD  
24 DID, LEAVING FOR NASHVILLE, TENNESSEE, IN AUGUST OF 1978. SO,  
25 NEITHER WERE SERVING AS LAW CLERKS AT THE TIME OF THE

September 25, 2012

1 MACDONALD TRIAL. THE LAW CLERK WORKING ON THE CASE WAS STEVE  
2 COGGINS. AND THE EVIDENCE OF THE TRUE FACTS AS I STATED IS  
3 THE TESTIMONY OF RICH LEONARD AND THIS WAS ALSO BROUGHT OUT IN  
4 THE CROSS-EXAMINATION OF WADE SMITH.

5 THE SECOND ASSERTION WE HAVE ON THE CHARTS ON THE  
6 SECOND PAGE -- AND THE COLUMN HEADINGS, UNFORTUNATELY, ARE NOT  
7 ON EVERY PAGE, BUT THE LEFT-HAND COLUMN IS WHAT WE CONTEND IS  
8 THE FALSE ASSERTION OF JIMMY BRITT, AND THEN THE SOURCE OF IT  
9 FROM HIS VARIOUS STATEMENTS, THEN WHAT WE CONTEND THE EVIDENCE  
10 SHOWS THE TRUE FACTS ARE AND THE SOURCES OF THAT EVIDENCE.

11 SO, THIS NEXT ASSERTION IS THAT HE TRAVELED FROM  
12 RALEIGH TO CHARLESTON, SOUTH CAROLINA, TO TRANSPORT HELENA  
13 STOECKLEY BACK TO RALEIGH DURING THE MACDONALD TRIAL.

14 IN THE INTERVIEW UNDER OATH, GX-2086 AT PAGE 11,  
15 STARTING AT LINE 23, MR. SMITH SAYS WHAT WERE YOU ASKED TO DO  
16 AND JIMMY BRITT SAYS I WAS ASKED TO TRAVEL FROM RALEIGH, NORTH  
17 CAROLINA, TO CHARLESTON, SOUTH CAROLINA, TO ASSUME CUSTODY OF  
18 A PROTECTED WITNESS, A WITNESS BY THE NAME OF HELENA  
19 STOECKLEY.

20 AND LET'S GO TO -- HE ALSO SAID THIS AGAIN IN GX-  
21 2087, THE AFFIDAVIT HE GAVE ON OCTOBER 26TH. NOW, REMEMBER  
22 WADE SMITH HAS ESSENTIALLY DEPOSED HIM WITH NO ADVERSARY THERE  
23 ON FEBRUARY 24TH. AND THEN MONTHS PASS AND HE GIVES AN  
24 AFFIDAVIT TO THE LAWYERS FOR MACDONALD. AND THAT'S GX-2087.  
25 AND IF YOU LOOK AT PAGE TWO, PARAGRAPH 15, HE STILL SAYS THAT

1 DURING THE COURSE OF TRAVEL FROM CHARLESTON TO RALEIGH, MS.  
2 STOECKLEY BROUGHT UP SUCH AND SUCH. AND THEN IF YOU LOOK AT  
3 PAGE THREE, PARAGRAPH 22, IN REFERRING TO THE LATER  
4 CONVERSATION IN THE U.S. ATTORNEY'S OFFICE, HE SAYS THAT MS.  
5 STOECKLEY STATED THE SAME THINGS THAT SHE HAD ON THE TRIP FROM  
6 CHARLESTON TO RALEIGH. SO, HE'S STILL SAYING IN TWO PLACES  
7 CHARLESTON.

8 THE TRUE FACTS ARE THAT BRITT WAS NOT GIVEN THE TASK  
9 AT ALL TO TRANSPORT HER FROM SOUTH CAROLINA. STOECKLEY WAS  
10 NOT IN CHARLESTON. SHE WAS IN THE PICKENS COUNTY JAIL. AND  
11 DEPUTY U.S. MARSHAL MEEHAN WAS SENT FROM RALEIGH TO MEET  
12 DEPUTY U.S. MARSHAL KENNEDY IN CHARLOTTE TO TRANSPORT  
13 STOECKLEY TO RALEIGH.

14 WHAT IS THE EVIDENCE OF THIS? IN THE RIGHT-HAND  
15 COLUMN, OF COURSE, THE TESTIMONY OF DENNIS MEEHAN, THE  
16 TESTIMONY OF JANICE MEEHAN, THE SWORN STATEMENT OF THE VEROY  
17 KENNEDY.

18 AND LET'S LOOK AT PAGE NINE, LINE 12 THROUGH 25.  
19 SO, THIS WOULD BE THE DOCUMENT THAT YOU PICKED UP HELENA  
20 STOECKLEY AT PICKENS COUNTY JAIL ON AUGUST 15TH, 1979, IS THAT  
21 RIGHT?

22 UH-HUH

23 OKAY. NOW, YOU AND THE FEMALE GUARD PICKED HER UP  
24 AND TRANSPORTED HER WHERE?

25 WE TRANSPORTED HER TO AN INTERSECTION. I BELIEVE IT



1 WAS A SERVICE STATION AT THE INTERSECTION OF I-85 AND I-75. I  
2 MEAN, I-85 AND 77.

3 I-85 AND 77?

4 RIGHT.

5 AND THAT'S IN CHARLOTTE?

6 YES.

7 AND YOU WILL RECALL MR. MEEHAN'S TESTIMONY WAS THAT  
8 HE MET A DEPUTY U.S. MARSHAL FROM SOUTH CAROLINA, WHO WAS AN  
9 AFRICAN-AMERICAN -- A TALL, AFRICAN-AMERICAN MALE. AND THEN  
10 IN THE SWORN STATEMENT OF VERNOY KENNEDY, OF COURSE, SADLY,  
11 HE'S NOW DECEASED, HE STATES THAT HE WAS THE ONLY AFRICAN-  
12 AMERICAN DEPUTY SERVING IN THE DISTRICT OF SOUTH CAROLINA AT  
13 THAT TIME.

14 WE ALSO HAVE THE BOOKING RECORDS AT THE PICKENS  
15 COUNTY JAIL, WHICH CLEARLY DEMONSTRATE THAT THAT'S WHERE  
16 HELENA STOECKLEY WAS INCARCERATED, NOT GREENVILLE, NOT  
17 CHARLESTON, BUT PICKENS COUNTY.

18 AND LET'S LOOK AT GOVERNMENT EXHIBIT 2006 AND 2007  
19 AND GOVERNMENT EXHIBIT 2008 AND GOVERNMENT EXHIBIT 2009. IT'S  
20 A PRETTY FAINT PICTURE, BUT THAT'S HER.

21 GOVERNMENT EXHIBIT 2064, THE COMMITMENT FORM OF  
22 HELENA STOECKLEY AS SHE WAS SIGNED IN THERE ON AUGUST THE  
23 14TH, 1979, BY THOMAS DONOHUE, WHO WAS WORKING WITH FRANK  
24 MILLS, WHO TESTIFIED HERE IN THIS HEARING.

25 AND THEN GOVERNMENT EXHIBIT 2066, WHICH SHOWS THAT

1 VERNON KENNEDY -- DOWN AT THE BOTTOM VERNON KENNEDY, DEPUTY  
2 U.S. MARSHAL, IS THE PERSON THAT SIGNED HER OUT OF THE PICKENS  
3 COUNTY JAIL.

4 WELL, IF, AS WE WERE TOLD DURING THE MOVANT'S  
5 CLOSING ARGUMENT THIS MORNING, THAT IT WAS JUST A MIXUP ABOUT  
6 WHERE IT WAS, BUT ACTUALLY JIMMY BRITT WENT DOWN TO SOUTH  
7 CAROLINA AND PICKED HER UP THEN WHY IS NOT HIS SIGNATURE ON  
8 THE BOTTOM OF THIS RELEASE FORM FROM THE PICKENS COUNTY JAIL?

9 THE NEXT ASSERTION, GOING OVER TO PAGE THREE OF THE  
10 CHART, IS THAT JIMMY BRITT SAID THAT HE PICKED UP STOECKLEY AT  
11 THE UNITED STATES MARSHAL'S SERVICE OFFICE IN CHARLESTON,  
12 SOUTH CAROLINA.

13 LET'S LOOK AT GOVERNMENT EXHIBIT 2086, WHICH IS THE  
14 INTERVIEW UNDER OATH IN WADE SMITH'S OFFICE AT PAGE 12. IT  
15 SHOULD SAY LINE 13 THROUGH 16. I THINK IT COMES OUT ON THE  
16 PAGE AS 130 AND 160, BUT IT SHOULD BE LINE 13 THROUGH 16.

17 MR. SMITH: AND WHERE WAS SHE IN CHARLESTON?

18 SHE WAS AT THE UNITED STATES MARSHAL'S OFFICE IN  
19 CHARLESTON, SOUTH CAROLINA.

20 WELL, ACTUALLY, OF COURSE, SHE WAS IN CUSTODY  
21 PURSUANT TO A WARRANT AND SHE WAS HOUSED AT THE PICKENS, SOUTH  
22 CAROLINA, COUNTY JAIL. AND WE KNOW THIS IN GOVERNMENT EXHIBIT  
23 2000, WHICH IS THE WARRANT FOR HER ARREST SIGNED BY JUDGE  
24 DUPREE. WE KNOW THIS FROM THE TESTIMONY OF FRANK MILLS AND IN  
25 THE COMMITMENT, GOVERNMENT EXHIBIT 2064. WE KNOW THIS FROM

1 THE TESTIMONY OF DENNIS MEEHAN, THAT SHE WAS TRANSFERRED IN  
2 CUSTODY. WE KNOW THIS FROM THE TESTIMONY OF JANICE MEEHAN  
3 THAT CORROBORATES HER EX-HUSBAND'S TESTIMONY. BY THE WAY,  
4 THEY'VE BEEN DIVORCED FOR MANY YEARS, AND ONE LIVES IN RALEIGH  
5 AND ONE LIVES IN NEW YORK STATE, I BELIEVE.

6 WE HAVE THE SWORN STATEMENT OF VEROY KENNEDY,  
7 GOVERNMENT EXHIBIT 2010, AT PAGE NINE, LINES 12 THROUGH 25,  
8 THE SAME PORTION THAT WE READ EARLIER. AND ALL THE BOOKING  
9 RECORDS, WHICH I WON'T GO THROUGH AGAIN, WHICH SHOW THAT THIS  
10 WAS AN IN CUSTODY TRANSFER, WHERE SHE WAS PICKED UP AT THE  
11 JAIL AND NOT PICKED UP AT THE U.S. MARSHAL'S SERVICE OFFICE IN  
12 CHARLESTON, SOUTH CAROLINA.

13 NOW, OF COURSE, JIMMY BRITT'S STATEMENTS CHANGED  
14 OVER TIME. SO, LET'S GO TO PAGE FOUR AND YOU SEE THE  
15 ASSERTION THAT HE TRAVELED FROM RALEIGH TO GREENVILLE TO  
16 ASSUME CUSTODY. HE'S CHANGED IT. SOMEHOW HE'S LEARNED THAT  
17 THE FIRST STORY DIDN'T WORK, AND SO HE'S CHANGED IT TO TRAVEL  
18 FROM RALEIGH TO GREENVILLE, SOUTH CAROLINA, TO ASSUME CUSTODY  
19 OF HELENA STOECKLEY AND TRANSPORT HER BACK TO RALEIGH DURING  
20 THE MACDONALD TRIAL, AND HE PICKED HER UP AT THE COUNTY JAIL  
21 IN GREENVILLE, SOUTH CAROLINA.

22 WELL, WHERE DID HE SAY THIS? WELL, HE SAID IT IN  
23 THE AFFIDAVIT ON OCTOBER 26TH. THAT'S GX-2087 AT PAGE TWO,  
24 PARAGRAPH 11. HE SAYS HE WAS ASSIGNED TO TRAVEL TO  
25 GREENVILLE, SOUTH CAROLINA, TO ASSUME CUSTODY OF A WITNESS BY

September 25, 2012

1 THE NAME OF HELENA STOECKLEY. HE PICKED UP MS. STOECKLEY AT  
2 THE COUNTY JAIL IN GREENVILLE, SOUTH CAROLINA, AND DROVE HER  
3 BACK TO RALEIGH. HE ALSO SAYS THIS IN GX-2088, THE NOVEMBER  
4 3RD AFFIDAVIT, WHERE IT MAKES ITS WAY INTO PARAGRAPH 11, WHICH  
5 WE'VE ALREADY LOOKED AT, IT'S THE SAME AS THE PREVIOUS ONE,  
6 AND ALSO PARAGRAPH 15, DURING THE COURSE OF TRAVEL FROM  
7 GREENVILLE, SOUTH CAROLINA, TO RALEIGH, SO FORTH AND SO ON.

8 AND FINALLY, IN THE ADDENDUM -- AND BY THE WAY, THE  
9 AFFIDAVIT OF NOVEMBER 3, 2005, IT'S IMPORTANT TO REMEMBER THAT  
10 WAS THE AFFIDAVIT ON WHICH THIS ENTIRE PROCEEDING IS BASED.  
11 THAT WAS THE ONE THAT WAS ATTACHED TO THE 2255 PLEADING THAT  
12 WAS FILED IN JANUARY. I BELIEVE IT WAS JANUARY 27TH OF 2006  
13 -- SORRY, THE 17TH, JANUARY -- WELL, ONE OR THE OTHER.

14 AND LET'S LOOK AT 2089. JIMMY BRITT DID AN  
15 ADDENDUM, ABOUT A MONTH LATER, TO THE AFFIDAVIT. AND THESE  
16 PARAGRAPHS AREN'T NUMBERED, BUT IF WE COULD LOOK AT THE FIRST  
17 PARAGRAPH. AND HERE AGAIN HE'S NOW SAYING THAT HE TRAVELED TO  
18 GREENVILLE, SOUTH CAROLINA, TO TAKE CUSTODY, ALONG WITH  
19 GERALDINE HOLDEN.

20 BUT WE KNOW WHAT THE TRUE FACTS ARE, WHICH WERE  
21 AFTER HIS -- HER ARREST ON AUGUST 14TH, SHE WAS TAKEN TO THE  
22 PICKENS COUNTY JAIL. SHE WAS NOT HOUSED IN GREENVILLE AT ANY  
23 TIME. DEPUTY U.S. MARSHAL MEEHAN WAS SENT FROM RALEIGH TO  
24 MEET DEPUTY U.S. MARSHAL KENNEDY IN CHARLOTTE TO TRANSPORT  
25 STOECKLEY TO RALEIGH. AND BRITT WAS NOT INVOLVED IN THE

September 25, 2012

1 TRANSPORT. AND I'M NOT GOING TO GO THROUGH THEM AGAIN, BUT  
2 YOU SEE ALL THE TESTIMONY AND ITEMS OF DOCUMENTARY EVIDENCE  
3 THAT DISPROVES THE STATEMENT ABOUT THAT.

4 NOW, GOING BACK -- THE NEXT SERIES OF STATEMENTS ON  
5 PAGE FIVE, SOME OF THESE COME FROM THE EARLIER STATEMENTS. I  
6 THOUGHT ONE OF THE INTERESTING STATEMENTS HE MADE WAS THAT  
7 STOECKLEY WAS DRESSED -- AND THIS IS WHEN HE WAS TALKING ABOUT  
8 HE PICKED HER UP IN CHARLESTON. HE SAID STOECKLEY WAS DRESSED  
9 IN THIS FLOPPY HAT THAT HAD BEEN DESCRIBED DURING THE COURSE  
10 OF THE INVESTIGATION. NOW, LET'S LOOK AT THAT, GX-2086, PAGE  
11 13, LINE SIX THROUGH 10.

12 NOW, THAT'S A PRETTY EXTRAORDINARY STATEMENT. MR.  
13 BRITT IS SAYING THAT WHEN HE PICKED UP THE PRISONER SHE WAS  
14 WEARING THE HAT THAT SHE HAD WORN NINE AND A HALF YEARS  
15 EARLIER AT THE SCENE OF THE CRIME. WE ASKED WADE SMITH ABOUT  
16 THAT AND HE NEVER SAW SUCH A THING. AND I DIDN'T HEAR ANYBODY  
17 ELICIT ANY TESTIMONY FROM ANYONE WHO HAD ANY CONTACT WITH  
18 HELENA STOECKLEY DURING THE TIME SHE WAS IN RALEIGH IN AUGUST  
19 OF 1979, THAT SHE WAS WEARING THE FAMOUS FLOPPY HAT.

20 HE ALSO ASSERTED THAT HE TRANSPORTED STOECKLEY'S  
21 BOYFRIEND ERNEST FROM CHARLESTON TO RALEIGH. LET'S LOOK AT  
22 THAT, GX-2086, THE INTERVIEW UNDER OATH. THIS IS THE FIRST  
23 DETAILED STATEMENT HE GAVE, THE ONE IN WADE SMITH'S OFFICE, AT  
24 PAGE 13, LINE 16 THROUGH 24.

25 NOW, WHEN YOU PICKED UP MS. STOECKLEY, DID HER

1 FRIEND ERNEST ACCOMPANY HER AND YOU BACK TO NORTH CAROLINA?

2 MR. BRITT: YES, SIR, THEY DID.

3 MR. SMITH: WHERE DID MS. STOECKLEY RIDE IN THE CAR  
4 AND WHERE DID HER BOYFRIEND ERNEST RIDE?

5 MR. BRITT: THEY RODE IN THE BACK SEAT OF THE CAR.

6 HE HAS AN EXPLICIT RECOLLECTION OF MS. STOECKLEY AND  
7 HER BOYFRIEND RIDING IN THE BACK SEAT OF PRESUMABLY A MARSHAL  
8 SERVICE VEHICLE WHILE HE TRANSFERS HER FROM CHARLESTON TO  
9 RALEIGH.

10 WELL, THE TRUE FACT, OF COURSE, IS THAT ERNEST DAVIS  
11 WAS NOWHERE NEAR CHARLESTON, SOUTH CAROLINA, BECAUSE HE LIVED  
12 IN WALHALLA, SOUTH CAROLINA, IN THE UPSTATE, ABOUT AS FAR FROM  
13 CHARLESTON AS YOU CAN GET AND STILL BE IN THE STATE OF SOUTH  
14 CAROLINA. HE MADE HIS OWN WAY FROM WALHALLA, SOUTH CAROLINA,  
15 TO RALEIGH. AND IN BRINGING HIM ALONG ON SUCH A TRANSFER  
16 WOULD HAVE VIOLATED UNITED STATES MARSHAL SERVICE POLICY. AND  
17 WE KNOW THIS FROM THE TESTIMONY OF DENNIS MEEHAN AND ALSO FROM  
18 THE TESTIMONY OF JANICE MEEHAN. YOU'LL RECALL THAT BOTH  
19 MEEHAN'S TESTIFIED THAT THEY TRANSPORTED THE PRISONER IN  
20 CUSTODY, AND YOU WOULDN'T HAVE A THIRD PARTY TO BE ALLOWED TO  
21 TRAVEL ALONG. THAT WOULD BE ABSURD. AND THEY ALSO TESTIFIED  
22 THAT WHEN THEY ARRIVED AT THE WAKE COUNTY JAIL TO BOOK IN THE  
23 PRISONER THAT THEY HAD TRANSFERRED, HAVING MET VERNON KENNEDY  
24 IN CHARLOTTE AND TRANSPORTED HER THE REST OF THE WAY, THAT  
25 THEY BOTH SAW WHAT APPEARED TO BE HER BOYFRIEND, DISHEVELED,

September 25, 2012

1 TRY TO APPROACH AND TALK TO HIS GIRLFRIEND HELENA, AND THAT HE  
2 HAD MADE HIS WAY THERE NOT WITH THEM BUT SOME OTHER WAY.

3 NOW, MR. BRITT ALSO SAID THAT THE UNITED STATES  
4 MARSHAL SERVICE EMPLOYEE GERRY HOLDEN ACCOMPANIED HIM TO PICK  
5 UP STOECKLEY AND TO TRANSPORT HER TO RALEIGH. HE SAID THIS  
6 SEVERAL TIMES. IN GX-2086, THE INTERVIEW UNDER OATH, AT PAGE  
7 13, LINE 11 THROUGH 15; DID ANYONE ACCOMPANY YOU ON THE  
8 JOURNEY?

9 MR. BRITT: YES, SIR. GERRY HOLDEN, WHO WAS AN  
10 ADMINISTRATIVE PERSON IN THE UNITED STATES MARSHAL SERVICE  
11 HERE IN RALEIGH.

12 AND HE ALSO SAID THAT ON PAGE 14 AT LINE 18 THROUGH  
13 21; AND DID SHE TELL YOU ABOUT THE TRIAL?

14 SHE SPECIFICALLY TOLD ME IN THE PRESENCE OF GERRY  
15 HOLDEN RIDING -- RIDING FROM -- AND I THINK IT GOES ON TO SAY  
16 CHARLESTON, SOUTH CAROLINA.

17 NOW, GX-2087, THE AFFIDAVIT ON OCTOBER 26TH, IN  
18 PARAGRAPHS 13 AND 15, HE ALSO STATES THAT GERRY HOLDEN WAS  
19 ACCOMPANYING HIM ON THE TRIP. AND THAT'S ALSO REPEATED IN THE  
20 AFFIDAVIT THAT WAS FILED WITH THE 2255 PETITION, 2088, THE  
21 SAME TWO PARAGRAPHS.

22 WELL, THE TRUE FACTS ARE THAT HOLDEN DID NOT GO ON  
23 THE TRIP TO PICK UP STOECKLEY THAT JANICE MEEHAN SERVED AS THE  
24 FEMALE MATRON WHILE DEPUTY MARSHAL MEEHAN TRANSPORTED  
25 STOECKLEY FROM CHARLOTTE TO RALEIGH. AND, OF COURSE, IN THE

1 STATEMENT OF VERNON KENNEDY -- WE'LL LOOK AT THAT IN A MINUTE  
2 -- BUT HE'LL POINT OUT THAT A FEMALE INTERN SERVED THIS ROLE  
3 WITH HIM, TRANSPORTING STOECKLEY FROM PICKENS, SOUTH CAROLINA,  
4 TO CHARLOTTE TO MEET MEEHAN.

5 LET'S LOOK AT GX-2010, PAGE SEVEN, LINE 22; AND  
6 BECAUSE IT WAS A FEMALE PRISONER, WHAT WAS THE PROCEDURE?

7 WELL, BECAUSE IT WAS A FEMALE THAT MEANT THAT I HAD  
8 TO GET A FEMALE GUARD. WE ALWAYS USED A FEMALE GUARD TO  
9 TRANSPORT THE PRISONER.

10 AND YOU'LL RECALL ALSO FROM THE EVIDENCE THAT MR.  
11 BRITT -- HE MADE INQUIRIES AS TO GERALDINE HOLDEN'S HEALTH AND  
12 FOUND OUT THAT HER HEALTH WAS FAILING AND THAT SHE WOULD NOT  
13 BE IN A POSITION TO CONTRADICT HIS STATEMENT BEFORE HE CAME  
14 FORWARD.

15 NOW, ON PAGE SIX HE SAYS DURING TRANSPORTATION FROM  
16 RALEIGH -- TO RALEIGH FROM SOUTH CAROLINA, STOECKLEY TOLD  
17 BRITT OF THE PRESENCE -- STOECKLEY'S PRESENCE, ALLEGEDLY,  
18 INSIDE THE MACDONALD HOME ON THE NIGHT OF THE MURDERS.

19 THIS IS IN GX-2086, INTERVIEW UNDER OATH, PAGE 14,  
20 LINE 13; DURING THE COURSE OF THE TRAVELS FROM CHARLESTON,  
21 SOUTH CAROLINA, TO RALEIGH, WITHOUT ANY PROMPTING FROM ME  
22 WHATSOEVER, SHE BROUGHT UP THE MATTER OF THE TRIAL OF  
23 MACDONALD.

24 AND WHAT DID SHE TELL YOU ABOUT THE TRIAL?

25 SHE SPECIFICALLY TOLD ME IN THE PRESENCE OF GERRY



1 HOLDEN, RIDING -- RIDING FROM CHARLESTON TO RALEIGH,  
2 SPECIFICALLY MADE MENTION OF A HOBBY HORSE, THAT SHE WAS IN  
3 FACT AT THE MACDONALD'S HOME OR APARTMENT, AND THAT SHE MADE  
4 REFERENCE TO A HOBBY HORSE IN JEFFREY MACDONALD'S LIVING ROOM.

5 NOW, OF COURSE, YOU KNEW AS YOU WERE RIDING ALONG  
6 THAT THIS WOULD BE IMPORTANT?

7 YES, SIR.

8 AND HE GOES ON TO DISCUSS THE IMPORTANCE OF THOSE  
9 WORDS. NOW, LET'S SEE, IF WE GO UP TO -- OKAY. GX-2087, THE  
10 AFFIDAVIT. THIS IS REPEATED AGAIN IN PARAGRAPH 15 AND ALSO  
11 PARAGRAPH 22, ABOUT ON THE LONG TRIP FROM CHARLESTON TO  
12 RALEIGH, MS. STOECKLEY BROUGHT UP THE MATTER OF THE TRIAL OF  
13 JEFFREY MACDONALD AND TALKED ABOUT THE HORSE. AND IF YOU LOOK  
14 AT PARAGRAPH 22, IT SAYS THE SAME THING. IT TALKS ABOUT THE  
15 INTERVIEW THE NEXT DAY IN BLACKBURN'S OFFICE. IT REFERS BACK  
16 TO THE TRIP FROM CHARLESTON TO RALEIGH IS WHERE HE FIRST HEARD  
17 THE CONFESSION THAT WAS SUPPOSEDLY REPEATED IN BLACKBURN'S  
18 OFFICE.

19 NOW, IF YOU LOOK AT 2088, THE SAME TWO PARAGRAPHS,  
20 PARAGRAPHS 15 AND 22, IT CHANGES TO GREENVILLE, BUT THE IDEA  
21 IS THE SAME, THAT ON THIS LONG TRIP FROM SOUTH CAROLINA IS  
22 WHERE HELENA STOECKLEY DECIDED TO BEAR HER SOUL AND CONFESS TO  
23 JIMMY BRITT AND THAT THAT'S WHAT HE HEARD REPEATED IN  
24 BLACKBURN'S OFFICE THE NEXT DAY.

25 BUT WE KNOW FROM THE TESTIMONY OF DENNIS MEEHAN AND

1 JANICE MEEHAN AND FROM VERNON KENNEDY, 2010, PAGE NINE, LINE  
2 12 THROUGH 25, THAT HE HAD -- THAT JIMMY BRITT HAD NOTHING TO  
3 DO WITH THE TRANSPORTATION OF HELENA STOECKLEY FROM SOUTH  
4 CAROLINA. AND, IN FACT, NO DEPUTY MARSHAL FROM NORTH CAROLINA  
5 WENT TO THE STATE OF SOUTH CAROLINA TO GET HER. DENNIS MEEHAN  
6 ONLY WENT AS FAR AS CHARLOTTE.

7 NOW, HE STATES -- WE'RE MOVING TO PAGE SEVEN NOW.  
8 MR. BRITT ALSO STATED THAT UPON ARRIVAL IN RALEIGH FROM SOUTH  
9 CAROLINA HE TOOK STOECKLEY AND ERNEST, THE BOYFRIEND, TO THE  
10 HOLIDAY INN, AND THEY CHECKED IN AND STAYED THERE UNTIL HE  
11 PICKED THEM UP THE NEXT MORNING. UNDER OATH IN WADE SMITH'S  
12 OFFICE HE SAID I CHECKED HER IN AT THE HOLIDAY INN HOTEL OVER  
13 ON HILLSBOROUGH STREET AND SHE AND ERNEST DEPARTED THE LOBBY.  
14 I GAVE THEM THE KEY AND THEY DEPARTED THE LOBBY AND WENT UP TO  
15 THEIR ROOMS. I DIDN'T SEE HELENA OR ERNEST UNTIL THE NEXT  
16 MORNING WHEN I WENT OVER TO THE MOTEL -- OR, EXCUSE ME, THE  
17 HOTEL, TO PICK THEM UP AND BRING THEM TO COURT.

18 NO AMBIGUITY ABOUT THAT. HE CLEARLY REMEMBERS  
19 CHECKING HER AND HER BOYFRIEND INTO THE HOLIDAY INN AND THEN  
20 GOING BACK AND PICKING THEM UP THE NEXT MORNING TO TRANSFER  
21 HER -- TRANSPORT HER TO COURT.

22 BUT, IN FACT, WE KNOW THAT STOECKLEY WAS IN CUSTODY  
23 AS A MATERIAL WITNESS, THAT UPON ARRIVAL IN RALEIGH, DEPUTY  
24 U.S. MARSHAL MEEHAN PUT HER IN THE WAKE COUNTY JAIL. WE KNOW  
25 THAT ERNEST WAS OBSERVED IN THE AREA OUTSIDE THE JAIL BY BOTH

September 25, 2012

1 OF THE MEEHANS. WE KNOW THAT BRITT AND HOLDEN ACTUALLY DID  
2 TRANSPORT STOECKLEY, BUT IT WAS THE NEXT MORNING, FROM THE  
3 WAKE COUNTY JAIL TO THE FEDERAL BUILDING AND PROBABLY BACK IN  
4 THE AFTERNOON. WE KNOW THAT STOECKLEY DID NOT STAY AT THE  
5 HOLIDAY INN DURING THE ENTIRE STAY IN RALEIGH. AND UPON  
6 RELEASE ON AUGUST 17TH, 1979, HELENA STOECKLEY STAYED FIRST AT  
7 THE DOWNTOWNER, THEN AT THE JOURNEY'S END AND THEN AT THE  
8 HILTON INN ON THE OTHER END OF HILLSBOROUGH STREET. AND WE  
9 KNOW THIS FROM THE TESTIMONY OF DENNIS MEEHAN, FROM THE  
10 TESTIMONY OF JANICE MEEHAN, FROM THE ARREST ORDER OF HELENA  
11 STOECKLEY.

12 NOW, LET'S LOOK AT TRIAL DAY 19, PAGE 16, LINE SEVEN  
13 THROUGH TEN. AND, YOU KNOW, THE GREAT THING ABOUT THE COURT  
14 RECORD, WHEN WE CAN FIND THINGS IN THE TRIAL RECORD IS IT WAS  
15 PUT DOWN ON PAPER IN 1979 BY A COURT REPORTER, IT DOESN'T RELY  
16 ON ANYONE'S MEMORY OF A 33 YEAR OLD EVENT. AND THIS IS -- IF  
17 YOU RECALL, WE REFERRED TO THIS EARLIER IN THE HEARING, IT  
18 SEEMS APPARENT FROM THE CONTEXT THAT HELENA STOECKLEY IS  
19 HAVING AN INITIAL APPEARANCE BEFORE A MAGISTRATE JUDGE IN  
20 SOUTH CAROLINA, AND IT'S ON THE MORNING OF AUGUST 15TH AND  
21 JUDGE DUPREE IS ASKING THE PARTIES, WELL, WHAT DO YOU WANT TO  
22 DO? AND BERNIE SEGAL SAYS, WELL, WE WANT HER TRANSPORTED TO  
23 RALEIGH SO WE CAN INTERVIEW HER. AND JUDGE DUPREE SAYS THAT  
24 IS ALL WE NEEDED TO KNOW, JUST TELL THE MAGISTRATE JUDGE THERE  
25 IS NO BOND AND JUST BRING HER HERE AND MAKE HER AVAILABLE TO

September 25, 2012

1 DEFENSE COUNSEL. SO, THIS WAS AN IN CUSTODY TRANSFER AS A  
2 MATERIAL WITNESS.

3 NOW, IN REGARD TO THE -- I THINK MR. WIDENHOUSE SAID  
4 THIS MORNING THAT THERE WAS SOME CONFUSION ABOUT THE HOTELS.  
5 THERE'S NO CONFUSION ABOUT THE HOTELS EXCEPT FOR JIMMY BRITT  
6 FALSELY STATED THAT HELENA STOECKLEY STAYED AT THE HOLIDAY  
7 INN, THE ONE WITH THE DISTINCTIVE ROUND ARCHITECTURE THAT WE  
8 SHOWED PICTURES OF MANY TIMES BECAUSE WE CAN LOOK IN THE  
9 RECORD AND SEE THAT MR. SEGAL EXPLAINS THAT -- AND WE'VE HAD  
10 THIS ON THE SCREEN MANY TIMES DURING THE TRIAL. MAYBE IT'S  
11 TRIAL DAY 21? MAYBE THIS IS IT. LET ME PUT IT UP.

12 WELL, FIRST OF ALL, LET ME GO IN ORDER. LET ME PUT  
13 UP GX-2074, THE PHOTO. NOW, THIS IS -- DENNIS MEEHAN  
14 TESTIFIED THAT AFTER HE TRANSPORTED HELENA STOECKLEY FROM  
15 CHARLOTTE, AFTER HE MET VERNOY KENNEDY, AND PUT HER IN THE  
16 WAKE COUNTY JAIL ON WEDNESDAY, AUGUST 15TH, IN THE LATE  
17 AFTERNOON OR EARLY EVENING, HE TESTIFIED THAT, YES, HE WAS  
18 AWARE THAT JIMMY BRITT AND GERALDINE HOLDEN HAD ACTUALLY  
19 TRANSPORTED HELENA STOECKLEY ON THE MORNING OF THE 16TH,  
20 COMING OVER TO THE FEDERAL BUILDING. WHAT ENDED UP HAPPENING,  
21 OF COURSE, THAT DAY WAS THAT SHE WAS INTERVIEWED BY THE  
22 DEFENSE AND THE PROSECUTION.

23 BUT HE ALSO TESTIFIED THAT THIS PHOTOGRAPH THAT YOU  
24 SEE HERE IS COMING OUT OF THE FEDERAL BUILDING AND HE  
25 IDENTIFIED HELENA STOECKLEY, JIMMY BRITT AND THE BOYFRIEND

September 25, 2012

1 ERNEST IN THE BACKGROUND. AND SINCE THIS PICTURE APPEARS ON  
2 FRIDAY, AUGUST 17TH, 1979, IN THE *NEWS & OBSERVER*, THE MOST  
3 LIKELY CONCLUSION IS THAT THIS PICTURE WAS TAKEN ON THE  
4 AFTERNOON OF AUGUST 16TH, AFTER HELENA STOECKLEY HAD BEEN  
5 INTERVIEWED BY BOTH THE PROSECUTION AND THE DEFENSE OR THE  
6 DEFENSE AND PROSECUTION TO GET IT IN THE RIGHT ORDER, AND SHE  
7 WAS BEING MOVED BACK TO THE WAKE COUNTY JAIL.

8 BUT, OF COURSE, BY THAT TIME THE INTERVIEWS HAD  
9 ALREADY TAKEN PLACE. SO, THIS WOULD BE COMPLETELY IRRELEVANT  
10 TO ANY INFORMATION THAT JIMMY BRITT WOULD GET FROM HELENA  
11 STOECKLEY THAT WOULD THEN BE ALLEGEDLY REPEATED IN THE  
12 INTERVIEWS.

13 SO, WHAT WE HAVE IS, FROM THE EVIDENCE, THE ONE  
14 CONTACT THAT WE -- THAT THE EVIDENCE SHOWS THAT JIMMY BRITT  
15 ACTUALLY HAD WITH HELENA STOECKLEY BEFORE THE DEFENSE AND THE  
16 PROSECUTION INTERVIEWS ON AUGUST 16TH, 1979, WAS TRANSPORTING  
17 HER ON THAT MORNING.

18 AND LET'S LOOK AT GX-2101.3, 2101.3. I THINK IT'S  
19 2101.3. I'M TRYING TO SHOW DOWNTOWN RALEIGH. JUST A MOMENT,  
20 PLEASE, YOUR HONOR. THERE WE GO. ALL RIGHT. HERE IT IS.  
21 IT'S 2101.3. AND THIS SHOWS, AND MR. MEEHAN OUTLINED THIS FOR  
22 US, YOU'VE GOT THE WAKE COUNTY COURTHOUSE OVER HERE ON THE  
23 LEFT OF THE SCREEN. IT'S BOXED IN RED. AND ALL THE DEPUTY --  
24 AFTER THEY COME OUT ONTO SALISBURY STREET, OUT OF THE BACK OF  
25 THE JAIL THE WAY IT WAS THEN, AND THEY MAKE ONE LEFT-HAND TURN

September 25, 2012

1 ON DAVIE STREET. THAT'S A HALF A BLOCK TO GET TO DAVIE  
2 STREET. THEN ONE, TWO, THREE BLOCKS ON DAVIE STREET -- FOUR  
3 BLOCKS ACTUALLY TO GET TO BLOODWORTH AND THEN ONE, TWO, THREE  
4 BLOCKS TO GET TO THE FEDERAL BUILDING. SO, THAT'S SEVEN AND A  
5 HALF BLOCKS THAT YOU HAD TO TRANSPORT THE PRISONER TO GET THEM  
6 FROM THE WAKE COUNTY JAIL TO THE FEDERAL BUILDING.

7 AND I'D SUBMIT THAT IT STRAINS ALL CREDULITY TO SAY  
8 THAT DURING THAT SEVEN AND A HALF BLOCK RIDE THAT HELENA  
9 STOECKLEY DECIDED TO BEAR HER SOUL AND CONFESS THE MACDONALD  
10 MURDERS TO JIMMY BRITT, WHOM SHE HAD NEVER MET BEFORE THAT  
11 DAY. AND BESIDES, THAT WON'T WORK TO EXPLAIN HIS STATEMENTS  
12 ANYWAY.

13 GOING BACK TO PAGE SEVEN, WHERE WE WERE, LET'S LOOK  
14 AT TRIAL DAY 21, PAGE 179, LINES 13 THROUGH 25.

15 THE COURT: EXCUSE ME JUST ONE SECOND.

16 (COURT CONFERS WITH CLERK.) (PAUSE.)

17 THE COURT: YES, SIR. GO AHEAD, MR. BRUCE.

18 MR. BRUCE: OKAY. THIS SHOWS, AS IS STATED IN  
19 CONTRADICTION TO WHAT JIMMY BRITT SAYS, THAT BERNIE SEGAL IS  
20 HAVING HER SERVED WITH A SUBPOENA AFTER SHE IS RELEASED FROM  
21 CUSTODY AND THAT SHE WOULD BE -- BECOME A DEFENSE WITNESS AND  
22 ONLY THEN WOULD SHE BE CHECKED INTO A HOTEL AND NOT AS JIMMY  
23 BRITT SAID WHEN SHE FIRST ARRIVED.

24 AND AS I SAID, THERE'S NO CONFUSION ABOUT THE  
25 HOTELS. IF YOU LOOK AT THE TRANSCRIPT, WHICH DOESN'T RELY ON

1 ANYBODY'S MEMORY, SHE WAS FIRST -- SHE FIRST CHECKED IN AT THE  
2 DOWNTOWNER. MR. SEGAL INFORMED THE COURT THAT HE DIDN'T WANT  
3 HER AT THE DOWNTOWNER BECAUSE THAT'S WHERE THE DEFENSE TEAM  
4 WAS GOING TO STAY AFTER THEIR LEASE AT THE FRATERNITY HOUSE  
5 HAD RUN OUT. SO, SHE MOVED TO THE JOURNEY'S END, WHICH WADE  
6 SMITH IDENTIFIED CLEARLY FOR US FROM THE PHOTOGRAPH. AND IT  
7 IS -- IN FACT, SHE WAS AT THE JOURNEY'S END ON SATURDAY AND  
8 SATURDAY NIGHT AND SUNDAY BECAUSE IT WAS FROM THE JOURNEY'S  
9 END THAT SHE CALLED JUDGE DUPREE.

10 THAT MAY BE THE NEXT REFERENCE OF TRANSCRIPT --  
11 TRIAL DAY 22, PAGE 134. ALL RIGHT. THIS IS FROM WENDY  
12 ROUDER'S TESTIMONY. AND MR. SEGAL SAYS, WELL, WHAT WAS THE  
13 REASON MS. STOECKLEY LEFT THE JOURNEY'S END?

14 SHE WAS ASKED TO LEAVE BY THE MANAGER.

15 AND AS A RESULT OF THAT, HOW DID IT COME ABOUT THAT  
16 SHE WENT TO THE HILTON?

17 SHE WAS WORRIED ABOUT WHERE SHE WOULD GO AND I  
18 ASSURED HER THERE MUST BE A PLACE. AND YOUR OWN SECRETARY --  
19 MEANING MR. SEGAL'S SECRETARY -- ARRANGED FOR A MOTEL ROOM,  
20 PHONED BACK AND SAID THE HILTON WILL ACCEPT YOU.

21 SHE STAYED AT THE DOWNTOWNER BRIEFLY UNTIL MR. SEGAL  
22 INSISTED SHE MOVE. SHE MOVED TO THE JOURNEY'S END. SHE  
23 STAYED THERE ON SATURDAY NIGHT. THE JOURNEY'S END WANTED --  
24 PEOPLE WANTED -- SHE CALLED JUDGE DUPREE FROM THE JOURNEY'S  
25 END ON SATURDAY NIGHT. HE PUT THAT IN THE RECORD. THEN ON

September 25, 2012

1 SUNDAY A FIGHT ENSUED OR WHATEVER WENT ON WITH HER BOYFRIEND,  
2 THE HOTEL ASKED HER TO LEAVE, AND THE MACDONALD DEFENSE TEAM,  
3 MR. SEGAL, MS. WENDY ROUDER AND THIS MAN RED UNDERHILL  
4 ARRANGED FOR HER TO BE TRANSFERRED TO THE HILTON INN, WHICH  
5 HAS BEEN CLEARLY IDENTIFIED AS NOW THE DOUBLETREE HILTON.  
6 IT'S SEVEN OR EIGHT OR TEN BLOCKS FURTHER WEST OF DOWNTOWN.  
7 AND THAT'S THE ONLY PLACES SHE STAYED.

8 THE ONLY PERSON THAT EVER SAID ANYTHING ABOUT HER  
9 BEING AT THE HOLIDAY INN, THE ONE WITH THE DISTINCTIVE ROUND  
10 ARCHITECTURE, IS JIMMY BRITT. AND HE'S WRONG ABOUT THAT JUST  
11 LIKE HE'S WRONG ABOUT MOST EVERYTHING ELSE IN THIS CASE.

12 NOW, LET'S LOOK AT TRIAL DAY 22, PAGE 150, LINE 19  
13 THROUGH 22. AGAIN, THIS IS WHAT I'VE BEEN REFERRING TO. THIS  
14 IS THE ORIGINAL STATEMENT BY MR. SEGAL THAT THE FIRST PLACE  
15 SHE WENT TO WAS THE DOWNTOWNER. HE DIDN'T WANT HER THERE SO  
16 HE MOVED HER FIRST TO THE JOURNEY'S END AND THEN TO THE  
17 HILTON.

18 OKAY. LET'S MOVE ON TO PAGE EIGHT. AT THE TIME OF  
19 -- JIM BRITT STATED THAT AT THE TIME OF THE MACDONALD TRIAL  
20 JIM BLACKBURN WAS THE U.S. ATTORNEY. HE SAID THIS IN GX-2086,  
21 THE INTERVIEW UNDER OATH, AT PAGE 17, LINE 13 THROUGH 15.

22 HE SAID I ESCORTED HER TO THE EIGHTH FLOOR TO JIM  
23 BLACKBURN'S OFFICE, WHO WAS AT THE TIME THE UNITED STATES  
24 ATTORNEY.

25 WELL, THE TRUE FACTS, OF COURSE, ARE THAT JIM



1 BLACKBURN WAS NOT THE UNITED STATES ATTORNEY IN 1979. HE WAS  
2 THE FIRST ASSISTANT U.S. ATTORNEY. GEORGE ANDERSON WAS THE  
3 U.S. ATTORNEY. AND WE KNOW THAT IN THIS PROCEEDING FROM THE  
4 TESTIMONY OF WADE SMITH, JACK CRAWLEY AND JIM BLACKBURN.

5 NOW, THE NEXT THING WE HAVE ON THIS PAGE IS AN  
6 ASSERTION BY BRITT THAT AFTER THE DEFENSE INTERVIEW, BRITT  
7 ESCORTED STOECKLEY TO THE U.S. ATTORNEY'S OFFICE AT  
8 APPROXIMATELY 12:00 NOON. HE SAID THIS IN A SWORN STATEMENT  
9 -- I'M SORRY, IN THE ADDENDUM, GX-2089, THAT HE EXECUTED ON  
10 FEBRUARY 28TH, 2006, IN PARAGRAPH TWO.

11 HE SAYS AT APPROXIMATELY 12:00 NOON AT THE  
12 CONCLUSION OF THEIR INTERVIEW -- MEANING THE DEFENSE -- I  
13 ESCORTED MS. STOECKLEY TO THE U.S. ATTORNEY'S OFFICE.

14 IN FACT, THE DEFENSE INTERVIEW DID NOT CONCLUDE  
15 UNTIL AT LEAST 2:00 P.M., AND PERHAPS LATER. AND ONLY AFTER  
16 THE CONCLUSION OF THAT INTERVIEW WAS MS. STOECKLEY BROUGHT TO  
17 THE UNITED STATES ATTORNEY'S OFFICE. AND WE KNOW THAT FROM  
18 THE TESTIMONY OF WADE SMITH AND WE ALSO KNOW IT FROM TRIAL DAY  
19 20, PAGE 13, LINES THREE THROUGH 18. AS YOUR HONOR WILL  
20 RECALL, THE INTERVIEW FOR THE DEFENSE WAS DRAGGING ON AND  
21 JUDGE DUPREE SUMMONED THE PARTIES BACK TO COURT AT ONE  
22 O'CLOCK. HE DISMISSED THE JURY AND HE SAID THAT WE NEEDED TO  
23 GET THE INTERVIEWS CONCLUDED THE REMAINDER OF THAT DAY. MR.  
24 SMITH HAD SAID THAT THEY WOULD BE THROUGH WITH HELENA  
25 STOECKLEY SHORTLY. MR. BLACKBURN ASKED WHAT DO YOU MEAN BY

September 25, 2012

1 SHORTLY? AND MR. SEGAL SAYS I NEED TO DEFINE A COUPLE OF  
2 MATTERS, MR. BLACKBURN, BUT I WOULD SAY ABOUT TWO O'CLOCK.  
3 AND THEN JUDGE DUPREE ADJOURNS COURT AT 1:17 P.M. TO RECONVENE  
4 THE NEXT MORNING. SO, IT COULD HAVE BEEN LATER THAN TWO  
5 O'CLOCK, BUT IT WASN'T ANY EARLIER THAN TWO O'CLOCK, AND IT  
6 WAS WELL AFTER NOON. AND THIS BECOMES IMPORTANT, WE'RE GOING  
7 TO SEE LATER, WHEN IT'S TALKED ABOUT A SANDWICH. WELL, THE  
8 LUNCH HOUR HAD BEEN SPANNED BY THE DEFENSE INTERVIEW AND  
9 THAT'S WHY HELENA STOECKLEY ACTUALLY ATE A BOLOGNA SANDWICH IN  
10 THE DEFENSE INTERVIEW ROOM AS REPORTED BY -- AS REMEMBERED BY  
11 WADE SMITH AND REMEMBERED BY JOE MCGINNISS AND REPORTED IN HIS  
12 BOOK.

13 NOW, THE INTERVIEW -- JIM BRITT ALSO SAID THAT THE  
14 INTERVIEW OF STOECKLEY BY THE PROSECUTION ON OCTOBER -- I'M  
15 SORRY, AUGUST 16TH, 1979, TOOK PLACE IN BLACKBURN'S OFFICE.

16 HE SAID THIS IN GOVERNMENT EXHIBIT 2086, THE SWORN  
17 STATEMENT, FEBRUARY 24TH, PAGE 17, LINE 13 THROUGH 15; I  
18 ESCORTED HER TO THE EIGHTH FLOOR TO JIM BLACKBURN'S OFFICE WHO  
19 WAS AT THE TIME THE UNITED STATES ATTORNEY.

20 AND IF YOU GO OVER TO PAGE 18, LINE TEN THROUGH 14,  
21 HE DESCRIBES -- JUST REFERS BACK TO HIS CONVERSATION ABOUT  
22 BLACKBURN'S OFFICE, TALKING ABOUT HIS OFFICE, HIS DESK AND SO  
23 FORTH.

24 WELL, ACTUALLY, THE INTERVIEW TOOK PLACE IN THE  
25 OFFICE OF U.S. ATTORNEY GEORGE ANDERSON. WE KNOW THAT FROM

1 THE TESTIMONY OF JACK CRAWLEY AND THE TESTIMONY OF JIM  
2 BLACKBURN. AND WE HAVE THE CHART OF THE FLOOR PLAN, GX-  
3 2082.A. AND WE HAVE MARKED INDIVIDUAL EXHIBITS, BUT I WON'T  
4 CALL THOSE UP. BUT YOUR HONOR WILL RECALL THAT THE U.S.  
5 ATTORNEY'S OFFICE WAS IDENTIFIED AS THE CORNER OFFICE IN THE  
6 LOWER RIGHT-HAND PORTION OF THE SCREEN, WHICH IS THE NORTHWEST  
7 CORNER OF THE OFFICE. AND THAT ACTUALLY MR. BLACKBURN'S  
8 OFFICE WAS TWO OFFICES TOWARD THE TOP OF THE PAGE -- I CAN'T  
9 READ THE NUMBER -- 836. ANDERSON'S OFFICE, THE EVIDENCE WOULD  
10 SHOW, IS 839 AND BLACKBURN'S OFFICE WAS 836.

11 OKAY. JIM BRITT ALSO DESCRIBED HOW THE FURNITURE  
12 WAS ARRANGED. IN THIS VERY IMPORTANT, DRAMATIC INTERVIEW THAT  
13 HE WITNESSED, HE CLAIMED TO KNOW HOW THE FURNITURE WAS  
14 ARRANGED. HE SAID THAT IT WAS IN THE U.S. -- IN THIS  
15 PARTICULAR STATEMENT HE SAID IT WAS IN THE U.S. ATTORNEY'S  
16 OFFICE AND THAT THE U.S. ATTORNEY'S DESK WAS SET AT AN ANGLE  
17 IN THE NORTHEAST CORNER OF THE OFFICE. HE SAID THIS IN HIS  
18 AFFIDAVIT ON OCTOBER 26TH. THIS WOULD BE PARAGRAPH 21; AS I  
19 RECALL, BLACKBURN SAT BEHIND A DESK THAT WAS SET AT AN ANGLE  
20 IN THE NORTHEAST CORNER OF THE OFFICE. THERE WERE SEVERAL  
21 CHAIRS POSITIONED IN FRONT OF THE DESK. HELENA STOECKLEY SAT  
22 IN THE CENTER CHAIR IN FRONT OF THE DESK AND I SAT OVER TO THE  
23 SIDE NEXT TO THE WINDOW.

24 AND HE DESCRIBES THE SAME THING -- I WON'T BOTHER TO  
25 PUT IT UP, BUT HE DESCRIBES IT THE SAME WAY IN THE NOVEMBER

September 25, 2012

1 3RD AFFIDAVIT, WHICH WAS FILED WITH THE 2255 PLEADING AND THAT  
2 AFFIDAVIT WAS EXECUTED ON NOVEMBER 3RD.

3 NOW, ACTUALLY, FROM THE TESTIMONY OF JACK CRAWLEY  
4 AND JIM BLACKBURN, WE KNOW -- AND IT'S HARD TO DESCRIBE IN  
5 WORDS. I'VE TRIED TO DO IT HERE. BUT IT'S BEST TO PUT A  
6 PICTURE UP. LET'S PUT UP 2082.A. CAN'T GET THAT ONE? OKAY.  
7 WE DON'T HAVE THAT ONE ON THE SCREEN BECAUSE IT'S ONE OF THOSE  
8 THAT THE WITNESS MARKED UP DURING THE TESTIMONY. BUT LET'S  
9 ENLARGE THE PORTION AND WE'LL RECALL THE TESTIMONY.

10 BOTH BLACKBURN AND CRAWLEY TESTIFIED THAT THE DESK  
11 WAS -- THAT THE DESK WAS -- WELL, IT'S NOT WORKING. THAT THE  
12 DESK WAS ARRANGED SQUARELY. OF COURSE, IT WASN'T RIGHT UP  
13 AGAINST THE WALL LIKE I'VE GOT IT, BUT IT WAS ARRANGED  
14 SQUARELY, NOT AT AN ANGLE, AND THAT THE PERSON SITTING BEHIND  
15 THE DESK WOULD BE LOOKING OUT TO THE WEST, TOWARDS PERSON  
16 STREET. SO, JIMMY BRITT IS COMPLETELY WRONG ABOUT THAT.

17 HE SAID THAT BLACKBURN ASKED BRITT -- JIMMY BRITT  
18 SAID THAT BLACKBURN ASKED HIM TO REMAIN IN THE ROOM DURING THE  
19 PROSECUTION INTERVIEW OF STOECKLEY AND HE SAID THAT THIS WAS  
20 NOT AN UNUSUAL OCCURRENCE.

21 HE SAID THIS AT GX-2086, THE INTERVIEW UNDER OATH,  
22 PAGE 18, LINE FOUR THROUGH SIX; YES, SIR, HE ASKED ME TO  
23 REMAIN IN THE ROOM AND HER BOYFRIEND ERNEST SAT OUTSIDE IN THE  
24 ADJOINING OFFICE. PRESUMABLY, IN THE U.S. ATTORNEY'S OFFICE.

25 HE SAID THIS IN 2087, THE AFFIDAVIT ON OCTOBER 26TH,

1 IN PARAGRAPH 20; I HAD BEEN ASKED TO SIT IN THE ROOM BY  
2 GOVERNMENT ATTORNEYS MANY TIMES IN MY CAREER HE CLAIMS THERE.  
3 HE SAYS THE SAME THING IN HIS NOVEMBER 3RD AFFIDAVIT, 2088.

4 AND THEN IN 2089 AT PAGE ONE, PARAGRAPH TWO, THIS IS  
5 THE ADDENDUM HE DID IN FEBRUARY OF '06, HE SAYS BLACKBURN  
6 STATED TO ME, NO, COME IN AND CLOSE THE DOOR.

7 NOW, ACTUALLY, BLACKBURN DID NOT ASK BRITT TO SIT IN  
8 ON THE INTERVIEW AND BRITT DID NOT DO SO. AND IT WAS NOT THE  
9 CUSTOM AND PRACTICE IN THE U.S. ATTORNEY'S OFFICE TO HAVE  
10 DEPUTY MARSHALS SIT IN ON WITNESS INTERVIEWS DURING TRIAL.  
11 AND WE KNOW THIS FROM THE TESTIMONY OF JACK CRAWLEY AND THE  
12 TESTIMONY OF JIM BLACKBURN AND ALSO THE TESTIMONY OF DENNIS  
13 MEEHAN. AS YOU MAY RECALL, HE WAS ASKED ABOUT THIS AND SAID  
14 THAT HE HAD NEVER IN HIS ENTIRE CAREER BEEN ASKED TO SIT IN ON  
15 AN INTERVIEW BY AN AUSA DURING A TRIAL.

16 NOW, AT PAGE TEN, AT ONE POINT -- WELL, ACTUALLY, AT  
17 EVERY POINT AS FAR AS I KNOW, JIMMY BRITT CLAIMED THAT NO ONE  
18 OTHER THAN BLACKBURN, BRITT AND STOECKLEY WAS IN THE ROOM  
19 DURING THE INTERVIEW OR AT LEAST DURING THE CRUCIAL PARTS OF  
20 IT.

21 LET'S LOOK AT GX-2086, THE INTERVIEW UNDER OATH, AT  
22 PAGE 18, LINE 15 THROUGH 18.

23 NOW, DO YOU REMEMBER ANYONE ELSE OTHER THAN  
24 BLACKBURN AND STOECKLEY BEING IN THE ROOM?

25 NO, SIR, I DON'T RECALL ANYONE ELSE BEING IN THE

1 ROOM.

2 AND I THINK HE'S TALKING ABOUT DURING THE WHOLE  
3 INTERVIEW. WE'RE GOING TO GET TO A MORE SPECIFIC REFERENCE, I  
4 THINK, LATER ABOUT THE -- YES.

5 OKAY. SO, AT THAT POINT IN THE SWORN STATEMENT HE  
6 GAVE IN FEBRUARY HE SAID NO ONE ELSE WAS IN THE ROOM, BUT WE  
7 KNOW THAT PRESENT DURING THE INTERVIEW WERE BLACKBURN,  
8 ANDERSON, JACK CRAWLEY AND BRIAN MURTAGH AS TESTIFIED TO BY  
9 JACK CRAWLEY AND JIM BLACKBURN.

10 NOW, THIS IS VERY IMPORTANT. HE SAID DURING THE  
11 INTERVIEW STOECKLEY TOLD BLACKBURN THE SAME THINGS THAT SHE  
12 HAD TOLD BRITT DURING HER TRANSPORTATION FROM SOUTH CAROLINA.  
13 WELL, THIS IS A CENTRAL POINT BECAUSE THE MOVANT, OF COURSE,  
14 AT THIS POINT WANTS TO EXPLAIN AWAY THE PROBLEMS WITH JIMMY  
15 BRITT'S STORY ABOUT THE TRANSPORTATION AND STILL SAY THAT  
16 HELENA STOECKLEY CONFESSED DURING THE INTERVIEW BY JIM  
17 BLACKBURN THAT HE THREATENED HER, BUT THE PROBLEM IS THAT  
18 EVERY SINGLE TIME THAT JIMMY BRITT DESCRIBED WHAT HE SAYS HE  
19 HEARD STOECKLEY TELL BLACKBURN, HE DESCRIBES IT IN TERMS OF IT  
20 BEING THE SAME THING THAT WAS SAID TO HIM WHILE HE TRANSPORTED  
21 STOECKLEY FROM SOUTH CAROLINA, WHICH HE DID NOT DO.

22 LET'S LOOK AT GX-2086, AN INTERVIEW UNDER OATH AT  
23 19, PAGE FOUR THROUGH NINE; DO YOU RECALL WHETHER MS.  
24 STOECKLEY TOLD MR. BLACKBURN THE SAME THINGS, EXPRESSED THE  
25 SAME IDEAS THAT SHE HAD EXPRESSED TO YOU ON THE WAY TO NORTH

September 25, 2012

1 CAROLINA FROM SOUTH CAROLINA?

2 YES, SIR. SHE SPOKE FREELY.

3 LET'S LOOK AT GX-2087, THE AFFIDAVIT OF OCTOBER 26TH  
4 AT PARAGRAPH 22; AFTER MS. STOECKLEY -- NOW, THIS IS GOING TO  
5 BE THE SAME THING IN 2087 AND 2088, THE OCTOBER 26TH INTERVIEW  
6 AND THE NOVEMBER 3RD INTERVIEW, WHICH IS THE ONE AFFIDAVIT  
7 THAT HE FILED WITH THE 2255.

8 AND IT SAID AFTER MS. STOECKLEY WAS SETTLED IN THE  
9 ROOM, MR. BLACKBURN BEGAN TO INTERVIEW HER. MS. STOECKLEY  
10 TOLD MR. BLACKBURN THE SAME THINGS THAT SHE HAD STATED TO ME  
11 ON THE TRIP FROM CHARLESTON TO RALEIGH. SHE SPECIFICALLY  
12 MENTIONED THE HOBBY HORSE, SO FORTH AND SO ON.

13 NOW, LET'S GO TO GX-2088, PARAGRAPH 22, AFTER THEY  
14 CHANGED IT FROM CHARLESTON TO GREENVILLE. AND, AGAIN, SOMEHOW  
15 JIMMY BRITT LEARNS THAT CHARLESTON IS NOT GOING TO WORK THAT  
16 AT LEAST GREENVILLE IS A LITTLE BIT CLOSER TO WHERE SHE WAS AT  
17 ONE TIME. AND SO HE SAYS -- AND THIS IS THE AFFIDAVIT THAT  
18 WAS FILED WITH THE 2255 PETITION -- AFTER MS. STOECKLEY WAS  
19 SETTLED IN THE ROOM, MR. BLACKBURN BEGAN TO INTERVIEW HER.  
20 MS. STOECKLEY TOLD MR. BLACKBURN THE SAME THINGS SHE STATED TO  
21 ME ON THE TRIP FROM GREENVILLE TO RALEIGH.

22 SO, THE MOVANT DOESN'T HAVE ANY EVIDENCE WHATSOEVER  
23 THAT BRITT WITNESSED A CONFESSION BY STOECKLEY TO BLACKBURN  
24 OTHER THAN BRITT'S STATEMENTS ON PAPER THAT SAY THAT STOECKLEY  
25 TOLD BLACKBURN THE SAME THING THAT SHE TOLD HIM ON THE TRIP

September 25, 2012

1 FROM SOUTH CAROLINA. NO SUCH TRIP EVER TOOK PLACE.  
2 THEREFORE, THEY HAVE NO EVIDENCE THAT ANY CONFESSION WAS EVER  
3 MADE BY STOECKLEY TO BLACKBURN. AND I WON'T GO THROUGH THESE  
4 -- THE TESTIMONIES AND EXHIBITS TO PROVE THIS, BUT WE'VE SEEN  
5 THEM BEFORE IN PREVIOUS INSTANCES.

6 NOW, ON PAGE 11, AFTER STOECKLEY ADMITTED PRESENCE  
7 IN THE MACDONALD HOME ON THE NIGHT OF THE MURDERS DURING THE  
8 INTERVIEW BLACKBURN THREATENED TO PROSECUTE HER FOR MURDER IF  
9 SHE SO TESTIFIED. AND BLACKBURN SAID THIS -- I'M SORRY --  
10 BRITT SAID THIS AT PAGE 21 OF GX-2086; IF YOU GO DOWNSTAIRS  
11 AND TESTIFY BEFORE THE JURY, I WILL INDICT YOU. NOW, HE SAYS  
12 IT AT 2087, PARAGRAPH 24, AND HE SAYS IT IN 2088, PARAGRAPH  
13 24, AND HE SAYS IT AT 2089, WHICH IS THE ADDENDUM, AT  
14 PARAGRAPH THREE.

15 OKAY. WELL, WHAT DO WE KNOW ABOUT THIS? WELL, WE  
16 KNOW THAT BLACKBURN DID NOT THREATEN STOECKLEY WITH  
17 PROSECUTION BECAUSE SHE HADN'T ADMITTED TO ANYTHING THAT WOULD  
18 HAVE PROVOKED SUCH A THREAT EVEN IF HE WAS INCLINED TO MAKE IT  
19 AND THAT THE PROSECUTION HAD GRAVE DOUBTS ABOUT ITS ABILITY  
20 TO BRING ANY NEW PROSECUTION NINE YEARS AFTER THE MURDERS AND  
21 WE KNOW THAT FROM THE TESTIMONY OF JACK CRAWLEY, FROM THE  
22 TESTIMONY OF JIM BLACKBURN. WE PUT UP ON THE SCREEN THE  
23 RELEVANT STATUTES, 18 U.S. CODE 1111, WHICH IS THE MURDER  
24 STATUTE, WHICH SAID THE PENALTY WAS DEATH, BUT THERE WAS NO  
25 DEATH PENALTY AVAILABLE AND, THEREFORE, IT REVERTED PROBABLY

September 25, 2012



1 TO THE STATUTE OF LIMITATIONS -- THE REGULAR STATUTE OF  
2 LIMITATIONS REFLECTED AT 3281 AND 3282, WHICH WAS FIVE YEARS,  
3 NOT TEN YEARS, BUT FIVE YEARS.

4 AND WE ALSO KNOW FROM *FATAL VISION* AND FROM THE  
5 TESTIMONY OF JOE MCGINNISS AT GOVERNMENT EXHIBIT 2201.4,  
6 PARAGRAPH SEVEN, WHICH STARTS HELENA BELIEVE ME, THAT EVEN  
7 BERNIE SEGAL -- NO, THAT'S NOT THE RIGHT PARAGRAPH. IT'S THE  
8 NEXT ONE. EVEN BERNIE SEGAL WAS MAKING THAT INTERPRETATION OF  
9 THE LAW BECAUSE HE HAD TOLD HELENA STOECKLEY DURING THE  
10 DEFENSE INTERVIEW NOTHING WILL HAPPEN TO YOU. THAT I CAN  
11 PROMISE YOU. THE STATUTE OF LIMITATIONS EXPIRED. THIS IS THE  
12 END. SO, YOU WON'T BE PROSECUTED.

13 NOW, JIMMY BRITT ALSO -- IF YOU TURN TO PAGE 12,  
14 JIMMY BRITT --

15 THE COURT: LET'S TAKE A RECESS.

16 MR. BRUCE: THANK YOU, YOUR HONOR.

17 THE COURT: TAKE A RECESS TILL THREE O'CLOCK.

18 (RECESS TAKEN FROM 2:44 P.M., UNTIL 3:05 P.M.)

19 (DEFENDANT PRESENT.)

20 THE COURT: PLEASE BE SEATED. WE'LL CONTINUE. ALL  
21 RIGHT, MR. BRUCE.

22 MR. BRUCE: THANK YOU, YOUR HONOR. YOUR HONOR, I'M  
23 GOING TO DEPART FROM MY CHAIR ON THE FALSE ASSERTIONS OF JIMMY  
24 BRITT IN THE INTEREST OF TIME. I MAY GET BACK TO IT IF I HAVE  
25 TIME, BUT THERE'S SOME OTHER MATTERS I WANT TO MAKE SURE I

September 25, 2012

1 COVER, IF THAT'S ALL RIGHT WITH THE COURT.

2 THE COURT: CERTAINLY.

3 MR. BRUCE: I WANTED TO RESPOND TO A FEW THINGS THAT  
4 WERE SAID ABOUT THE JIMMY BRITT CLAIM THIS MORNING. I THINK I  
5 UNDERSTOOD COUNSEL TO SAY THAT IT DOESN'T REALLY MATTER  
6 WHETHER HELENA STOECKLEY MADE ANY STATEMENTS TO JIMMY BRITT.

7 WELL, WE CONTEND IT CERTAINLY DOES MATTER. THIS IS  
8 THE CLAIM. THIS IS THE BRITT CLAIM, THAT STOECKLEY CONFESSED  
9 TO JIMMY BRITT AND THEN REPEATED THE SAME CONFESSION MADE IN  
10 THE LONG DRIVE FROM SOUTH CAROLINA IN BLACKBURN'S PRESENCE,  
11 AND THEN BLACKBURN REACTED TO THAT BY SAYING IF YOU TESTIFY TO  
12 THAT I WILL PROSECUTE YOU.

13 ALL THE EVIDENCE AS A WHOLE IN THE WORLD WON'T MAKE  
14 ANY DIFFERENCE IF THE MOVANT CAN'T PROVE HIS 2255 BRITT CLAIM.  
15 SO, IT MAKES A GREAT DEAL OF DIFFERENCE THAT THE EVIDENCE HERE  
16 TODAY HAS SHOWN -- OR IN THIS PROCEEDING HAS SHOWN THAT HELENA  
17 STOECKLEY DID NOT CONFESS TO JIMMY BRITT AND THAT CONFESSION  
18 MADE IN THE LONG TRIP FROM SOUTH CAROLINA WAS NOT REPEATED TO  
19 JIM BLACKBURN AND SO FORTH.

20 SOMETHING WAS SAID THIS MORNING ABOUT ONE OF THE  
21 WITNESSES FOR THE GOVERNMENT BEING A SELF-PROMOTER. WELL, WE  
22 CONTEND THAT'S EXACTLY WHAT THE GOVERNMENT'S EVIDENCE SHOWED  
23 ABOUT JIMMY BRITT.

24 WE PUT ON HIS LONG-TIME SUPERVISOR CHIEF DEPUTY  
25 EDDIE SIGMON AND ALSO MARSHAL WILLIAM BERRYHILL WHO SUPERVISED

September 25, 2012

1 HIM FOR A TIME PRIOR TO HIS RETIREMENT AND THEY STATED THAT HE  
2 WAS AN ATTENTION SEEKER. AND THAT'S WHAT APPARENTLY WAS GOING  
3 ON HERE LATE IN HIS LIFE AS HE SOUGHT TO INTERJECT HIMSELF  
4 INTO THE MACDONALD CASE.

5 IN FACT, MR. LEE TART DID NOT APPEAR AS A WITNESS IN  
6 THIS PROCEEDING, BUT HIS STATEMENTS ARE IN THE RECORD OF THIS  
7 CASE AND THEY REVEAL THAT WHEN JIM BRITT FIRST TOLD THIS STORY  
8 TO LEE TART AND ANOTHER FELLOW DEPUTY IT WAS WHEN HE WAS  
9 TRAVELING WITH THEM TO MISSISSIPPI, WHERE THE OTHER DEPUTIES  
10 WERE GOING TO BE HONORED FOR THEIR PARTICIPATION BACK IN THE  
11 '60S IN THE INTEGRATION OF THE UNIVERSITY OF MISSISSIPPI. AND  
12 I WOULD SUBMIT THAT HE DIDN'T HAVE ANYTHING TO BRAG ABOUT LIKE  
13 THEY DID AND SO HE CAME UP WITH THIS STORY ABOUT MACDONALD.

14 AND, OF COURSE, THE EVIDENCE HAS SHOWN IN THIS CASE  
15 THAT HE WAITED UNTIL GERALDINE HOLDEN COULD NOT CONTRADICT  
16 HIM. HE INQUIRED ABOUT HER HEALTH. AND THEN ONLY CAME -- HE  
17 SAYS HE WAITED OUT OF RESPECT FOR JUDGE DUPREE, BUT JUDGE  
18 DUPREE DIED IN 1995, AND JIM BRITT DOES NOT COME FORWARD UNTIL  
19 2005, TEN YEARS LATER.

20 AS TO THE POLYGRAPH EVIDENCE, EVERYTHING'S COMING IN  
21 IN THIS PROCEEDING, BUT WE SUBMIT THAT THE COURT SHOULD GIVE  
22 NO WEIGHT TO THE POLYGRAPH. WE ONLY HAVE THE SKIMPIEST OF  
23 REPORTS. WE HAVE NO BACKUP INFORMATION. WE HAVE NO CHARTS TO  
24 SHOW TO ANY OTHER EXPERT. WE DON'T KNOW THE CIRCUMSTANCES  
25 UNDER WHICH THIS POLYGRAPH WAS GIVEN AND WE CONTEND THAT THE

September 25, 2012

1 COURT SHOULD GIVE IT NO WEIGHT.

2 NOW, WITH RESPECT TO THE TESTIMONY OF MARY BRITT,  
3 THE GOVERNMENT DOES NOT CONTEND IN ANY WAY THAT MARY BRITT  
4 CAME INTO THIS COURT AND LIED. SHE WAS ONLY REPORTING WHAT  
5 HER HUSBAND, JIM BRITT, TOLD HER. IT IS OUR CONTENTION THAT  
6 HE IS THE ONE THAT WAS LYING.

7 FOR INSTANCE, HE TOLD HER THAT MACDONALD AND HE, JIM  
8 BRITT, SERVED TOGETHER AT FORT BRAGG, WHICH WE DEMONSTRATED ON  
9 CROSS-EXAMINATION WAS IMPOSSIBLE.

10 AND SHE ALSO STATED THAT WHEN THE *FATAL VISION* MOVIE  
11 OR TELEVISION MINI-SERIES, IT REALLY WAS, WAS AIRED, THAT JIM  
12 BRITT PROMPTLY STATED THAT IT WAS IN ERROR BECAUSE HE WAS NOT  
13 DEPICTED AS BEING IN THE INTERVIEW ROOM, SHE SAID, WHEN  
14 STOECKLEY WAS BEING INTERVIEWED BY THE DISTRICT ATTORNEY.

15 WELL, AS JOE MCGINNISS TESTIFIED, THERE IS NO DEPICTION  
16 OF THE PROSECUTION INTERVIEW IN THE MOVIE BECAUSE HE DIDN'T  
17 PARTICIPATE IN IT AND HE -- HE, JOE MCGINNISS, AND HE KNEW  
18 NOTHING ABOUT IT AND, THEREFORE, HE DIDN'T WRITE ABOUT IT IN  
19 HIS BOOK AND THE MOVIE BASED ON HIS BOOK DOES NOT CONTAIN  
20 ANYTHING ABOUT A PROSECUTION INTERVIEW.

21 IT DOES, OF COURSE, HAVE A DEPICTION OF THE DEFENSE  
22 INTERVIEW ABOUT WHICH MR. MCGINNISS TESTIFIED AND MR. SMITH  
23 TESTIFIED, AND THE PARTICIPANTS IN THAT INTERVIEW WERE MR.  
24 WADE SMITH, BERNIE SEGAL, THE WITNESS STOECKLEY, AND JOE  
25 MCGINNISS AND JIM BRITT WAS NOT A PART OF THAT EITHER.

September 25, 2012

1 BUT IN ANY CASE, HE WAS LYING WHEN HE TOLD HIS WIFE  
2 THAT HE SHOULD HAVE BEEN DEPICTED IN THAT INTERVIEW AND HE WAS  
3 LYING WHEN HE TOLD HIS WIFE THAT THE INTERVIEW BEING DEPICTED  
4 WAS THAT OF THE PROSECUTION AS OPPOSED TO THE DEFENSE.

5 NOW, IT WAS STATED THIS MORNING THAT MR. WADE SMITH  
6 DECIDED THE BEST IDEA WAS TO TAKE THE CAKE EPISODE OUT OF THE  
7 FINAL AFFIDAVIT THAT WAS -- THAT ENDED UP BEING ATTACHED TO  
8 THE 2255 PLEADING, AND THAT HE THOUGHT IT WAS UNIMPORTANT.  
9 WELL, WE ALL AGREE, I THINK, IN THIS ROOM THAT IT WAS  
10 UNIMPORTANT, BUT THAT'S NOT WHAT JIMMY BRITT THOUGHT. JIMMY  
11 BRITT THOUGHT IT WAS VERY IMPORTANT BECAUSE HE SAID IN HIS  
12 VARIOUS STATEMENTS THAT THIS WAS EVIDENCE OF A WIDESPREAD  
13 CORRUPTION THAT WAS ASSOCIATED WITH THE MACDONALD TRIAL.

14 AND YOUR HONOR WILL REMEMBER THAT HE ALSO SPUN THIS  
15 INTRICATE PLOT, WHICH IS COVERED LATER IN MY CHART, ABOUT JIM  
16 BLACKBURN SUPPOSEDLY GOING DOWN AFTER THE STOECKLEY INTERVIEW  
17 AND HAVING -- DUCKING INTO JUDGE DUPREE'S OFFICE AND HAVING AN  
18 EX PARTE COMMUNICATION JUST BEFORE THEY WENT BACK INTO COURT.  
19 AND, OF COURSE, THIS STORY IS IMPOSSIBLE BECAUSE THERE WAS NO  
20 MORE COURT THAT DAY. COURT HAD BEEN ADJOURNED FOR THE DAY FOR  
21 THE INTERVIEWS. AND AS RICH LEONARD TESTIFIED THAT JUDGE  
22 DUPREE WOULD NOT ENTERTAIN SUCH EX PARTE COMMUNICATION.

23 SO, THE CAKE EPISODE IS IMPORTANT BECAUSE IT'S  
24 ANOTHER FABRICATION OF JIMMY BRITT SPINNING THIS SORT OF WEB  
25 OF CORRUPTION THAT HE ALLEGES TOOK PLACE DURING THE MACDONALD

September 25, 2012

1 TRIAL.

2 NOW, DEPARTING FROM JIMMY BRITT FOR A MINUTE, IN  
3 PREPARING THIS ARGUMENT I WAS TRYING TO ANALYZE, WELL, WHAT  
4 HAS THE MOVANT COME FORWARD WITH IN TERMS OF EVIDENCE AS A  
5 WHOLE TO EITHER HELP WITH THEIR GATEKEEPING, CLEAR AND  
6 CONVINCING BURDEN, OR TO HELP PERSUADE SOMEHOW THAT THE BRITT  
7 CLAIM HAS SOME TRUTH TO IT. AND I CAN ONLY COME UP WITH FOUR  
8 THINGS THAT ARE IN EVIDENCE AT THIS HEARING; HELENA  
9 STOECKLEY'S MOTHER'S AFFIDAVIT AND THE TESTIMONY ABOUT THAT;  
10 SARA MCMANN'S TESTIMONY; AN AFFIDAVIT BY A WOMAN BY THE NAME  
11 OF KAY REIBOLD, WHICH HAS BEEN PUT IN THE RECORD BY THE  
12 DEFENSE, BUT HAS NOT BEEN REFERRED TO IN THIS ENTIRE HEARING;  
13 AND THEN JERRY LEONARD'S TESTIMONY.

14 SO, LET ME TRY TO ADDRESS THOSE ONE BY ONE. AS TO  
15 HELENA STOECKLEY'S MOTHER, THIS AFFIDAVIT HAS BEEN ADMITTED AS  
16 PART OF THE EVIDENCE AS A WHOLE UNDER THE RELAXED EVIDENTIARY  
17 STANDARDS WE HAVE HERE, BUT I SUBMIT THAT THE COURT SHOULD NOT  
18 GIVE IT VERY MUCH WEIGHT.

19 THE CIRCUMSTANCES UNDER WHICH IT WAS TAKEN, THIS  
20 LADY WAS IN AN ASSISTED LIVING OR NURSING HOME SITUATION. THE  
21 PERSONS WHO WERE GETTING THIS AFFIDAVIT FROM HER HAD BEEN WITH  
22 HER ALL AFTERNOON AND INTO THE EVENING. KATHRYN MACDONALD HAD  
23 A BIG HAND IN THE PREPARATION OF THIS AFFIDAVIT. AND THE  
24 AFFIDAVIT ITSELF IS IRREGULAR IN FORM. IT HAS A SIGNATURE  
25 PAGE THAT IS DISJOINTED FROM THE REST OF THE DOCUMENT AND MR.

September 25, 2012

1 STOECKLEY, GENE STOECKLEY, WHO TESTIFIED ADMITTED THAT HE  
2 DIDN'T -- HE WAS NOT EVEN FURNISHED A COPY OF THE SIGNED  
3 AFFIDAVIT. HE LATER GOT IT BY EMAIL. AND I DON'T THINK WE  
4 CAN REALLY BE SURE THAT THAT'S WHAT SHE ACTUALLY SIGNED.

5 BUT THE MAIN REASON THAT THE COURT SHOULD ATTACH  
6 VERY LITTLE, IF ANY, WEIGHT TO THIS LATE IN LIFE AFFIDAVIT IS  
7 BECAUSE IT'S SO FLATLY AT ODDS WITH MRS. STOECKLEY SENIOR'S  
8 STATEMENTS GIVEN ON PREVIOUS OCCASIONS. AND THERE ARE TWO  
9 THAT I THINK ARE VERY SIGNIFICANT. ONE IS THE ONE THAT SHE  
10 GAVE IN 1979 TO THE DEFENSE, THE MACDONALD DEFENSE TEAM, WHICH  
11 WAS RECOUNTED IN *FATAL VISION* AND TESTIFIED TO IN THIS  
12 PROCEEDING BY JOE MCGINNISS. AND THIS WAS DURING THE TRIAL.  
13 REMEMBER, THEY HAD SUBPOENAED HER -- STOECKLEY'S PARENTS IN AN  
14 EFFORT TO LOCATE STOECKLEY AND SO THEY INTERVIEWED HER. AND  
15 SHE SAID -- LET ME PUT THIS ON THE SCREEN, 2201.2. I DON'T  
16 KNOW HER ADDRESS -- MEANING HELENA'S ADDRESS -- AND I DON'T  
17 WANT TO KNOW. GOING ON TO 2201.3. SHE GOES ON -- MRS.  
18 STOECKLEY TALKING ABOUT HER DAUGHTER, RECOUNTS AN EPISODE  
19 ABOUT LOSING HER CAR KEYS AND THAT HELENA, YOUNG HELENA, WAS A  
20 VEGETABLE. SHE COULDN'T TALK. SHE COULDN'T EAT. HER FACE  
21 QUIVERED. SALIVA WOULD RUN OUT OF HER MOUTH. WE PUT HER ON A  
22 STRICT DIET, BUT SHE WAS NOT QUITE RIGHT. GOING ON DOWN TO  
23 THE THIRD FULL PARAGRAPH, SHE'S NOT AT ALL LIKE SHE USED TO  
24 BE, SPEAKING OF HER DAUGHTER NOW, SHE'S A PHYSICAL AND MENTAL  
25 WRECK. SHE'S NOT EVEN A HUMAN BEING ANYMORE. YOU FIND HER

September 25, 2012

1 NOW, SURE, SHE'LL TALK, SHE'LL ALWAYS TALK, BUT I'M TELLING  
2 YOU SHE'S GOING TO TALK ALL KINDS OF NONSENSE.

3 GOING ON, THIS IS A MOTHER TALKING ABOUT HER  
4 DAUGHTER, IT REALLY HURT -- TALKING ABOUT THE MACDONALD  
5 MURDERS -- IT REALLY HURT. SHE WAS A VERY SOFT HEARTED PERSON  
6 AND SHE ESPECIALLY LOVED LITTLE CHILDREN. SHE SAID RIGHT AWAY  
7 NOT A HIPPIE AROUND HERE WOULD DO A THING LIKE THAT.  
8 EVERYBODY IS GOING TO PITCH IN AND FIND OUT WHAT HAPPENED.  
9 WE'VE GOT TO FIND OUT WHO DID THIS. I REALLY BELIEVE IT WAS  
10 BEASLEY WHO FIRST PUT THE IDEA IN HER HEAD. BEASLEY WAS HER  
11 DADDY IMAGE. SHE GOES ON TO SAY I JUST KNEW RIGHT THEN THAT  
12 BEASLEY HAD TALKED HER INTO IT.

13 SO, THAT'S WHAT SHE SAID IN 1979, MRS. STOECKLEY,  
14 ABOUT HER DAUGHTER. AND THEN -- SO, WE'RE LED TO BELIEVE IN  
15 THE EVIDENCE THAT WAS PRESENTED HERE THAT, WELL, THIS ALL  
16 CHANGED BECAUSE OF THE DAUGHTER STOECKLEY SAID SOME THINGS  
17 NEAR HER -- AT THE TIME OF HER DEATH AND THIS CHANGED THE  
18 MOTHER STOECKLEY'S ATTITUDE ABOUT EVERYTHING.

19 WELL, WE HAVE IN EVIDENCE, AND I'M GOING TO PUT IT  
20 ON THE SCREEN, GX-2332. THIS IS A TYPEWRITTEN 302, FBI-302,  
21 FROM THE HANDWRITTEN NOTES OF BUTCH MADDEN, WHO INTERVIEWED  
22 HELENA STOECKLEY SENIOR ON JULY 19TH, 1984, AND HE TESTIFIED  
23 TO IT IN THIS PROCEEDING. AND REMEMBER, THIS IS AFTER THE  
24 DEATH OF THE YOUNG GIRL HELENA STOECKLEY. SHE DIED IN MARCH  
25 OF --

September 25, 2012



1 MR. MURTAGH: JANUARY 1983.

2 MR. BRUCE: JANUARY OF 1983, AND THIS INTERVIEW WAS  
3 IN JULY -- ON JULY 19TH, 1984. AND IN THE INTERVIEW, THE  
4 THIRD PARAGRAPH DOWN, THE ELDER MRS. STOECKLEY IS THE SHE  
5 REFERRED TO, SHE RECALLED THAT HER DAUGHTER HELENA CAME HOME  
6 AFTER THE MACDONALD MURDERS, HELENA TOLD HER IN A PERFECTLY  
7 SOBER AND NON-DRUGGED STATE THAT HELENA KNEW ABSOLUTELY  
8 NOTHING ABOUT THE MACDONALD MURDERS. SHE GOES ON TO DESCRIBE  
9 HER RELATIONSHIP WITH THE DRUG PEOPLE THERE IN FAYETTEVILLE.  
10 AND THEN GOING ON TO PAGE TWO, SHE STATES THAT MS. STOECKLEY  
11 WAS OF THE OPINION THAT HELENA COULD NOT HAVE BEEN PRESENT OR  
12 COMMITTED THE MURDERS AS SHE WAS NOT VIOLENT AND LOVED  
13 CHILDREN. THE ELDER MRS. STOECKLEY WAS RELUCTANT TO DISCUSS  
14 ADDITIONAL INFORMATION BECAUSE HELENA WAS NOT TREATED FAIRLY  
15 BY BEASLEY OR TED GUNDERSON, A PRIVATE INVESTIGATOR. SHE WAS  
16 OF THE OPINION THAT HELENA -- THAT'S THE ELDER MRS. STOECKLEY  
17 WAS OF THE OPINION THAT HELENA'S MIND WAS GONE, ESPECIALLY  
18 WHEN UNDER THE INFLUENCE OF DRUGS OR ALCOHOL. WHEN DOING  
19 DRUGS HELENA THOUGHT ABOUT THE MACDONALD CASE, BUT SHE WAS NOT  
20 INVOLVED.

21 SO, THIS IS WHAT THE ELDER MRS. STOECKLEY THOUGHT  
22 WHEN SHE WAS IN THE PRIME OF LIFE, EVEN AFTER HER DAUGHTER HAD  
23 DIED. AND I SUBMIT THAT THE AFFIDAVIT SHE GAVE FROM THE  
24 NURSING HOME, IF IT IS AN ACCURATE RENDITION OF WHAT SHE SAID,  
25 IT SHOULD NOT BE GIVEN ANY WEIGHT.

September 25, 2012

1           NOW, LET'S TALK ABOUT SARA MCMANN. SHE SEEMS LIKE A  
2 NICE LADY AND SHE HAS A STRONG OPINION THAT MACDONALD IS  
3 INNOCENT. IT'S A STRONGLY HELD OPINION, BUT IT'S NOT BASED ON  
4 ANY KNOWLEDGE OF THE CASE. I BELIEVE AND, OF COURSE, THE  
5 TRANSCRIPT WILL BEAR ME OUT WHEN I TRY TO RECALL THINGS FROM  
6 THE TESTIMONY, BUT I RECALL THAT ON CROSS-EXAMINATION THAT SHE  
7 SAID SOMETHING LIKE THAT SHE REALLY DIDN'T KNOW ANYTHING ABOUT  
8 THE FACTS OF THE CASE AND THAT IS A VERY TRUE STATEMENT. AND  
9 HER TESTIMONY, WE CONTEND, SHOULD NOT BE GIVEN ANY WEIGHT.

10           NOW, THIS EXHIBIT THAT I REFERRED TO IS DEFENSE  
11 EXHIBIT 5084 AND I'M NOT GOING TO CALL IT UP ON THE SCREEN OR  
12 ANYTHING BECAUSE IT HASN'T BEEN MENTIONED IN THIS ENTIRE  
13 PROCEEDING AND THE ONLY REASON I'M MENTIONING IT NOW IS  
14 BECAUSE WHEN THE COURT IS REVIEWING THE EVIDENCE AND PREPARING  
15 THE ORDER THE COURT MIGHT COME ACROSS IT.

16           WELL, IT'S FROM AN INDIVIDUAL BY THE NAME OF KAY  
17 REIBOLD AND IT'S UNSIGNED AND IT'S UNSWORN. WE DON'T EVEN  
18 KNOW IF SHE EVER READ IT. NO EVIDENCE HAS BEEN PRODUCED ABOUT  
19 IT HERE. SHE, KAY REIBOLD, WAS NOT CALLED TO TESTIFY IN THIS  
20 PROCEEDING. THEY HAD JERRY LEONARD ON THE STAND. SHE WAS  
21 SUPPOSED TO BE AN ASSOCIATE OF HIS. I DON'T MEAN A LEGAL  
22 ASSOCIATE, BUT A FRIEND AND WAS INVOLVED WITH HIM SOMEHOW.

23           ANYWAY, THEY HAD JERRY LEONARD ON THE STAND AND THEY  
24 DID NOT ASK ONE QUESTION ABOUT KAY REIBOLD. SO, EVEN THOUGH  
25 IT'S COMING IN UNDER THE EVIDENCE AS A WHOLE STANDARD, WE

1 SUBMIT THAT NO WEIGHT SHOULD BE ATTACHED TO THIS STATEMENT.

2 NOW, LET ME ADDRESS THE TESTIMONY OF JERRY LEONARD.  
3 THE CONCERN THAT THE GOVERNMENT HAS ABOUT MR. LEONARD'S  
4 TESTIMONY IS, WE SUBMIT, A MEMORY PROBLEM. HE CANDIDLY  
5 ADMITTED ON CROSS-EXAMINATION -- THIS IS THE WAY WE HAVE IT.  
6 THE TRANSCRIPT WILL BE THE FINAL ARBITER OF THAT. BUT HE MADE  
7 A COUPLE OF STATEMENTS ON CROSS-EXAMINATION; WHAT HAPPENS IS  
8 YOU FIND OUT STUFF LATER AND CONFUSE THAT WITH WHAT HAPPENED  
9 AT THE TIME. HE ALSO STATED ON CROSS-EXAMINATION; THAT'S THE  
10 DANGER. I TRY REALLY HARD NOT TO TALK TO PEOPLE ABOUT THIS.  
11 WHAT HAPPENS IS YOU HEAR STUFF AT A LATER DATE AND IT ALL  
12 BECOMES PART OF WHAT YOU KNOW AND IT'S HARD TO PEEL AWAY THE  
13 CONTEXT THAT YOU HEARD ONE THING OR ANOTHER.

14 AND I THINK THAT'S EXACTLY WHAT HAS HAPPENED IN MR.  
15 LEONARD'S CASE. HE WAS AT A GREAT DISADVANTAGE COMPARED TO  
16 THE OTHER WITNESSES IN THIS CASE WHO WERE INVOLVED IN THE CASE  
17 IN '79, BECAUSE ALL OF THEM, WHETHER IT BE AGENTS OR JOE  
18 MCGINNISS OR THE LAWYERS OR WADE SMITH AND SO FORTH, THEY HAD  
19 THINGS DOWN ON PAPER, THEY WERE PUT DOWN CONTEMPORANEOUSLY,  
20 FROM WHICH THEY COULD REFRESH THEIR RECOLLECTION NOW IN 2012,  
21 33 YEARS AFTER THE TRIAL.

22 JERRY LEONARD HAD NO SUCH THING. HE HAD NOTHING  
23 DOWN ON PAPER. HE HAD TO CALL EVERYTHING UP FROM MEMORY AND  
24 FIRST PUT IT DOWN ON PAPER JUST A FEW DAYS, APPARENTLY, BEFORE  
25 THIS HEARING BEGAN.

September 25, 2012

1           AND THERE WAS -- WE TRIED TO DEMONSTRATE, AND I  
2 THINK WE SUCCESSFULLY DEMONSTRATED ON CROSS-EXAMINATION, THAT  
3 HE HAD A LOT OF MEMORY PROBLEMS CONCERNING IMPORTANT FACTS OF  
4 THE CASE.

5           ONE EXAMPLE OF THAT IS THAT HE WAS SO UNCERTAIN IN  
6 HIS VARIOUS STATEMENTS AS TO WHETHER HELENA STOECKLEY HAD  
7 TESTIFIED BEFORE THE JURY, AS TO WHETHER HELENA STOECKLEY HAD  
8 TESTIFIED IN OPEN COURT, OR WHETHER SHE HAD TESTIFIED AT ALL.

9           IN FACT, WE SHOWED HIM THE QUOTES FROM HIM IN MR.  
10 MORRIS' BOOK, WHICH IS IN EVIDENCE AS EXHIBIT 7000. AND AS I  
11 RECALL, HE ADMITTED TO MAKING THESE STATEMENTS TO MR. MORRIS  
12 AND HE SAYS -- WE CAN PUT THIS ON THE SCREEN, 7000.8, THE  
13 FIFTH LINE FROM THE TOP. HE SAYS I DIDN'T EVEN KNOW THAT SHE  
14 HAD TESTIFIED, MEANING STOECKLEY. AND THEN LATER, I CAN'T  
15 IMAGINE THAT I WAS NOT TOLD THAT SHE TESTIFIED. I WOULD HAVE  
16 THOUGHT I WOULD HAVE ORDERED A TRANSCRIPT OF HER TESTIMONY  
17 RIGHT AWAY. I DIDN'T. I JUST REMEMBER SITTING THERE AND IT  
18 SEEMED PRETTY BORING TO ME.

19           I JUST DON'T THINK -- A LOT HAS HAPPENED SINCE 1979.  
20 I'M SURE MR. LEONARD HAS HAD HUNDREDS OF CASES AND THERE HAVE  
21 BEEN HUNDREDS OF EVENTS IN HIS LIFE THAT HAVE OCCURRED SINCE  
22 1979, AND I JUST DON'T THINK THAT HIS MEMORY OF THESE EVENTS  
23 IS CLEAR. SO, I WOULD RESPECTFULLY SUBMIT THAT THE COURT  
24 SHOULD DISCOUNT HIS TESTIMONY ON THAT BASIS.

25           AND ANOTHER THING I WOULD LIKE TO POINT OUT TO THE

1 COURT IS THAT THE CONFESSION OF HELENA STOECKLEY THAT JERRY  
2 LEONARD HAS REPORTED IN HIS AFFIDAVIT AND IN HIS TESTIMONY  
3 HERE, THE AFFIDAVIT OF SEPTEMBER 20TH, 2012, WE SUBMIT IS NOT  
4 PROBABLY RELIABLE, AS THE STANDARD IS, BECAUSE OF THE PASSAGE  
5 OF TIME, THE QUALITY OF HIS MEMORY AND THE LIKELIHOOD THAT HE  
6 IS CONFLATING WHAT HIS ACTUAL MEMORY IS WITH LATER EVENTS.

7 AND THERE ARE A COUPLE OF KEY INDICATORS OF THAT AND  
8 ONE OF THEM IS THAT THE RECITED CONFESSION THAT'S SET FORTH IN  
9 DETAIL IN HIS AFFIDAVIT CLOSELY RESEMBLES THE POST-TRIAL  
10 CONFESSIONS OF HELENA STOECKLEY THAT WERE GIVEN TO MR. TED  
11 GUNDERSON AND THE PEOPLE WORKING WITH HIM WHEN THEY WERE  
12 WORKING ON BEHALF OF MACDONALD TO TRY TO GET A NEW TRIAL AND  
13 THIS ULTIMATELY BECAME THE BASIS OR MUCH OF THE BASIS OF  
14 MACDONALD'S FIRST 2255. AND BASICALLY, THIS IS WHERE YOU SEE  
15 FOR THE FIRST TIME THIS DISCUSSION OF A CULT THAT ALLEGEDLY  
16 WAS ANGRY WITH DR. MACDONALD ABOUT HIS TREATMENT OF DRUG  
17 OFFENDERS AND THE DESIRE OF THE MEMBERS OF THE CULT TO WANT TO  
18 CONFRONT HIM OR PERSUADE HIM.

19 THERE'S EVEN ONE VERSION OF THIS CONFESSION THAT SHE  
20 GAVE TO GUNDERSON THAT SAYS THAT THEY WENT TO MACDONALD'S  
21 HOUSE AND ENGAGED HIM IN DISCUSSION FOR ABOUT 20 MINUTES OVER  
22 THIS DRUG ISSUE BEFORE ANY FIGHT STARTED. AND, OF COURSE,  
23 THIS IS TOTALLY AT ODDS WITH MACDONALD'S TESTIMONY AND  
24 STATEMENTS ABOUT THE CASE. SO, IT DOESN'T MAKE ANY SENSE.

25 MS. STOECKLEY'S SO-CALLED CONFESSIONS PRIOR TO THE

September 25, 2012

1 1979 TRIAL WERE NOT OF THIS TYPE. THE STOECKLEY WITNESSES WHO  
2 TESTIFIED ON VOIR DIRE AT THE TRIAL ALL TESTIFIED TO SORT OF  
3 MISTY MEMORIES LIKE I REMEMBER BLOOD ON MY HANDS OR  
4 KRISTEN'S FACE LOOKS FAMILIAR OR I FEEL LIKE I MIGHT HAVE BEEN  
5 THERE. YOU DON'T SEE ANYTHING IN THEIR TESTIMONY ABOUT AN  
6 ORGANIZED CULT GOING TO THE HOUSE BECAUSE THEY WERE MAD AT DR.  
7 MACDONALD BECAUSE OF HIS TREATMENT OF DRUG ADDICTS. THAT ONLY  
8 COMES UP LATER.

9 AND SO -- AND ALL OF THAT, OF COURSE, WAS IN THE  
10 PUBLIC RECORD WHEN THEY FILED THEIR 2255 IN 1984. IT WAS THE  
11 SUBJECT OF A LONG HEARING BEFORE JUDGE DUPREE. AND IT'S BEEN  
12 ON THE INTERNET AND EVERYBODY KNOWS ABOUT IT. AND I SUBMIT  
13 THAT JERRY LEONARD HAS HEARD ABOUT THAT OVER THE YEARS AND  
14 THOSE ARE THE DETAILS THAT GOT STUCK IN HIS HEAD WHEN HE SAT  
15 DOWN TO THINK OF WHAT HELENA STOECKLEY MIGHT HAVE TOLD HIM AND  
16 THAT'S WHAT HE PUT DOWN.

17 AND I WOULD CITE TWO SOURCES ABOUT THIS TO THE  
18 COURT. AND THAT IS TO GO BACK AND LOOK AT THE TESTIMONY OF  
19 THE SO-CALLED STOECKLEY WITNESSES AT THE MACDONALD TRIAL IN  
20 1979, AND YOU'LL SEE THAT IT SOUNDS NOTHING LIKE WHAT JERRY  
21 LEONARD WAS SAYING THAT HELENA STOECKLEY WAS SAYING TO HIM IN  
22 1979. AND, ALSO, IF THE COURT LOOKS AT JUDGE DUPREE'S OPINION  
23 IN 1985 AT 640 F. SUPP 286, DENYING MACDONALD'S 2255, WHICH  
24 WAS BASED IN LARGE PART ON HELENA STOECKLEY'S POST-TRIAL  
25 CONFESSIONS, AT PAGES 315 THROUGH 317 OF THAT OPINION, JUDGE

September 25, 2012

1 DUPREE -- BY THE WAY, THERE'S ALSO AN EXCELLENT DISCUSSION IN  
2 THIS OPINION ABOUT THE TRIAL EVIDENCE AND THE EVIDENCE THAT  
3 THE GOVERNMENT SUCCESSFULLY CONVICTED DR. MACDONALD ON.

4 BUT AT PAGES 315 THROUGH 317 THERE IS -- JUDGE  
5 DUPREE SKETCHES OUT WHAT THE SO-CALLED STOECKLEY WITNESSES HAD  
6 SAID AT THE TIME OF THE '79 TRIAL. AND, AGAIN, I SUBMIT --  
7 I'M SUMMARIZING, BUT IT'S THESE MISTY MEMORY TYPE THINGS THAT  
8 SHE HAD SAID OVER THE YEARS.

9 BUT AT PAGES 321 THROUGH 323, THAT'S WHERE YOU SEE  
10 THE -- WHAT I WOULD CALL THE GUNDERSON CONFESSIONS THAT WERE  
11 MADE AFTER THE '79 TRIAL, WHEN THEY TOOK HER OUT TO CALIFORNIA  
12 AND THEY WINED HER AND THEY DINED HER AND AS BUTCH MADDEN SAID  
13 THEY QUESTIONED HER FOR HOURS ON END AND THAT'S WHERE YOU SEE  
14 THESE THINGS. AND I'M READING FROM JUDGE DUPREE'S OPINION,  
15 STOECKLEY WAS A MEMBER OF A SATANIC CULT, WHICH WAS ANGRY WITH  
16 MILITARY PHYSICIANS, MACDONALD AMONG THEM, BECAUSE THEY  
17 REFUSED TO HELP DRUG USERS WITH THEIR PROBLEMS. THE LEADERS  
18 OF THE CULT DECIDED TO APPROACH MACDONALD IN AN ATTEMPT TO  
19 OBTAIN DRUGS FROM HIM AND PERSUADE HIM TO TREAT DRUG ADDICTS.

20 NONE OF THIS HAD EVER BEEN PART OF THE PARLANCE OF  
21 HELENA STOECKLEY UNTIL THE GUNDERSON INVESTIGATION, WHICH WAS  
22 WELL AFTER THE TRIAL.

23 AND SO I THINK THAT, JUDGE, JERRY LEONARD HAS HEARD  
24 ABOUT THAT OVER THE YEARS AND HAS CONFLATED THAT IN HIS MIND  
25 WITH SOMETHING THAT WAS A MEMORY IN 1979. SO, WE WOULD URGE

September 25, 2012

1 THE COURT TO DISCOUNT THAT TESTIMONY.

2 SO, HERE'S WHERE WE THINK WE ARE. MR. MURTAGH HAS  
3 OUTLINED TO YOU WHY THE UNSOURCED HAIRS CLAIM FAILS ON THE  
4 MERITS, IF THE COURT GETS TO THE MERITS, BECAUSE IT'S NOT  
5 EXCULPATORY. THE FINAL ANALYSIS, IT'S JUST MORE DEBRIS. IT  
6 WAS JUST LIKE THAT WAS KNOWN AT THE TRIAL. LOTS OF  
7 UNIDENTIFIED THINGS AT THE TRIAL; CANDLE WAX, HAIR, SURGICAL  
8 GLOVE PART, YOU NAME IT. ANY HOUSEHOLD, ESPECIALLY ONE LIKE  
9 THIS ON BASE HOUSING THAT HAD MANY OCCUPANTS IN AND OUT, WOULD  
10 HAVE THIS TYPE OF DEBRIS. SO, IT DOESN'T ADVANCE THE BALL AT  
11 ALL.

12 AS TO THE BRITT CLAIM, THEREFORE, THEY HAVEN'T  
13 PROVED ANY EXCULPATORY EVIDENCE TO MEET THEIR BURDEN. AND IF  
14 YOU CONSIDER IT IN THE LIGHT OF THE EVIDENCE AS A WHOLE, IT  
15 DOES NOT SURVIVE GATEKEEPING.

16 NOW, AS TO THE BRITT CLAIM, AGAIN, I'M TALKING ABOUT  
17 THE MERITS FIRST WHEN GATEKEEPING REALLY COMES FIRST, BUT I  
18 WOULD CONTEND TO YOUR HONOR THAT IF THIS -- IF THIS HEARING  
19 THAT WE HAVE HAD THE LAST TWO WEEKS HAD BEEN A CRIMINAL TRIAL  
20 FOR PERJURY OF JIMMY BRITT, WE WOULD HAVE PROVEN IT BEYOND A  
21 REASONABLE DOUBT, BUT WE DON'T HAVE TO PROVE ANYTHING. THE  
22 OTHER SIDE HAS THE BURDEN OF PROOF AND THEY HAVE FAILED TO  
23 MEET THEIR BURDEN OF PROOF TO PROVE THE VERACITY OF THE BRITT  
24 CLAIM.

25 AND, ALSO, EVEN IF -- YOUR HONOR IN 2008 SAID EVEN

September 25, 2012



1 IF BRITT'S CLAIM IS TRUE IT DOESN'T SURVIVE THE GATEKEEPING  
2 STANDARD BECAUSE TAKEN WITH THE OTHER EVIDENCE IT DOES NOT  
3 ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT NO REASONABLE  
4 FACT FINDER COULD FIND MACDONALD GUILTY.

5 NOW, YOUR HONOR HAS HEARD ALL THE EVIDENCE AS A  
6 WHOLE AND I WOULD CONTEND ON GATEKEEPING NOTHING HAS CHANGED.  
7 YOUR HONOR CAN REACH THE SAME DECISION THAT THE COURT REACHED  
8 IN 2008. SO, THE BRITT CLAIM FAILS ON BOTH COUNTS, BOTH  
9 PRONGS, ON GATEKEEPING AND ON THE MERITS.

10 AND IN SUMMATION, I WOULD SAY TO THE COURT, JUDGE --  
11 I MEAN, MR. MURTAGH QUOTED EARLIER FROM A FOURTH CIRCUIT  
12 OPINION AND IT'S AT 966 FED. 2ND 854 AT PAGE 861. AND THE  
13 PANEL -- THIS WAS IN 1992. AND IT WAS JUDGE RUSSELL WRITING  
14 WITH JUDGE BUTZNER AND MURNAGHAN JOINING IN AND THIS WAS  
15 TURNING DOWN THE -- I GUESS THE SECOND HABEAS AND FINDING  
16 THERE WAS AN ABUSE OF THE WRIT AND AFFIRMING JUDGE DUPREE ON  
17 THAT FINDING. AND THIS IS WHAT JUDGE RUSSELL SAID, WHILE WE  
18 ARE KEENLY AWARE OF MACDONALD'S INSISTENCE AS TO HIS  
19 INNOCENCE, AT SOME POINT -- AT SOME POINT WE MUST ACCEPT THIS  
20 CASE AS FINAL.

21 YOUR HONOR, WE HAVE REACHED THAT POINT. JEFFREY  
22 MACDONALD IS NEVER GOING TO ADMIT HIS GUILT, HIS LOYAL BAND OF  
23 FOLLOWERS ARE NEVER GOING TO BE SATISFIED NO MATTER HOW MANY  
24 HEARINGS WE HAVE, BUT HIS CLAIMS FAIL AND WE MUST END THIS  
25 CASE AND MAKE IT FINAL. THANK YOU, YOUR HONOR.

September 25, 2012

1 THE COURT: MR. WIDENHOUSE.

2 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. I'M GOING  
3 TO RESPOND TO THE CLAIMS SORT OF IN THE ORDER THAT THEY TALKED  
4 ABOUT THEM AND I'M ONLY GOING TO TAKE ABOUT 15 MINUTES. I  
5 DON'T THINK I NEED TO DRONE ON AND ON IN RESPONSE TO WHAT  
6 THESE CLAIMS ARE ALL ABOUT.

7 WITH RESPECT TO THE UNSOURCED HAIRS CLAIM, THE  
8 GOVERNMENT'S CONTENTION SEEMS TO BE THAT NATURALLY SHED HAIRS  
9 AT A CRIME SCENE ARE NOT FORENSICALLY SIGNIFICANT -- ARE NOT  
10 FORENSICALLY SIGNIFICANT. THAT SOUNDS LIKE AGENT IVORY ON THE  
11 STAND THE OTHER DAY SAYING FINGERPRINTS AT A CRIME SCENE WHERE  
12 THERE'S AN ALLEGATION OF INTRUDERS AREN'T SIGNIFICANT BECAUSE  
13 THEY COULD HAVE BEEN PLACED THERE TWO, THREE, FOUR MONTHS  
14 EARLIER. THAT'S, OF COURSE, TRUE. THEY COULD ALSO HAVE BEEN  
15 PLACED THERE WHEN THE INTRUDERS WERE COMMITTING THE CRIME.  
16 SO, IF THERE ARE UNSOURCED HAIRS THAT ARE PRESENT AT THE CRIME  
17 SCENE THAT IS SOME CIRCUMSTANTIAL EVIDENCE OF INTRUDERS THAT  
18 WAS NOT AVAILABLE AT TRIAL.

19 THE COURT: WELL, EXCUSE ME. I UNDERSTOOD THE  
20 GOVERNMENT'S DISCUSSION -- MR. MURTAGH'S DISCUSSION OF THE  
21 UNSOURCED HAIRS TO BE THAT THEY WEREN'T AS PROBATIVE AS THEY  
22 WOULD BE IF THEY HAD BEEN DEMONSTRATIVELY FORCIBLY REMOVED AND  
23 HAD BLOOD ON THEM.

24 MR. WIDENHOUSE: WELL, CERTAINLY, IF THEY WERE  
25 FORCIBLY REMOVED THEY'RE MORE PROBATIVE THAN THEY WOULD BE IF

1 THEY'RE NOT.

2 THE COURT: ALL RIGHT. DO YOU SAY THAT THE EVIDENCE  
3 STILL SUPPORTS THAT?

4 MR. WIDENHOUSE: YES. THE EVIDENCE SUPPORTS THAT  
5 THEY'RE AN UNSOURCED --

6 THE COURT: YOU HAVE READ THE AFFIDAVITS ATTACHED --

7 MR. WIDENHOUSE: I'M NOT SAYING THEY'RE FORCIBLY  
8 REMOVED.

9 THE COURT: WELL, THAT'S WHAT I'M ASKING YOU.

10 MR. WIDENHOUSE: NO. I'M SAYING THAT THE EVIDENCE  
11 FROM THE DNA --

12 THE COURT: I'M ASKING YOU WHETHER THEY HAVE BLOOD  
13 ON THEM.

14 MR. WIDENHOUSE: NO, THEY DON'T SEEM TO HAVE BLOOD  
15 ON THEM.

16 THE COURT: ALL RIGHT. NOW, THAT'S TWO BIG ISSUES.  
17 IF THEY HAD THOSE, I THINK IT WOULD BE MORE IN YOUR FAVOR AND  
18 I THINK THAT THAT WAS MR. BRUCE'S POINT.

19 MR. WIDENHOUSE: OKAY. AND MY RESPONSE IS I DON'T  
20 DISPUTE THAT THAT WOULD BE MORE FAVORABLE, BUT --

21 THE COURT: WELL, THAT'S DIFFERENT FROM WHAT MR.  
22 SEGAL REPRESENTED AT THE ARGUMENT AS I RECALL.

23 MR. WIDENHOUSE: THAT'S CORRECT.

24 THE COURT: ALL RIGHT.

25 MR. WIDENHOUSE: WE'RE NOT THERE. WE'RE HERE. AND

1 MY POINT IS THAT THE FOURTH CIRCUIT SAID THERE ARE THESE  
2 HAIRS, TAKE A LOOK AT THEM AT A HEARING.

3 THE COURT: I UNDERSTAND. AND I APPRECIATE YOUR  
4 POINT.

5 MR. WIDENHOUSE: ALL RIGHT. AND I SIMPLY AM SAYING  
6 THAT IT IS SOME CIRCUMSTANTIAL EVIDENCE OF INTRUDERS THAT WAS  
7 NOT AVAILABLE AT TRIAL.

8 WITH RESPECT TO THE GOVERNMENT'S CONTENTION THAT  
9 SOMEHOW THIS HAIR THAT WE THINK WAS IN THE FINGERNAIL  
10 SCRAPINGS FROM KRISTEN'S HAND DIDN'T APPEAR AT SOME POINT IN  
11 TIME THEY'RE CLAIMING IT'S CONTAMINATION.

12 WELL, THEY'RE THE ONES WITH THE EXHIBITS AND IF  
13 THERE'S CONTAMINATION, YOU CAN'T HOLD THAT AGAINST THE  
14 DEFENSE. ALL WE CAN EXAMINE -- ALL WE CAN HAVE LOOKED AT ARE  
15 THE EXHIBITS AS THEY EXIST IN THE GOVERNMENT'S POSSESSION.

16 MY ARGUMENT IS WHEN YOU LOOK AT ALL OF THE EVIDENCE  
17 IN THE CASE, THE QUESTION IS DO THE UNSOURCED HAIRS,  
18 PARTICULARLY THE ONE THAT WE CLAIM WAS IN THE FINGERNAIL  
19 SCRAPINGS FROM KRISTEN, IS THAT SOME CIRCUMSTANTIAL EVIDENCE  
20 OF AN INTRUDER THAT WAS NOT AVAILABLE TO THE DEFENSE AT TRIAL?  
21 AND I THINK THE ANSWER TO THAT QUESTION IS YES.

22 NOW, IT'S NOT AS GOOD, I ADMIT, AS IF IT'S A  
23 FORCIBLY REMOVED HAIR IF SOMETHING LIKE THAT EXISTS OR IF  
24 THERE'S BLOOD ON IT OR WHATEVER, BUT IT IS STILL POSITIVE  
25 CIRCUMSTANTIAL EVIDENCE OF AN INTRUDER AND I DON'T THINK

September 25, 2012

1 THERE'S ANY WAY AROUND THAT PARTICULAR POINT.

2 WITH RESPECT TO THE DISCUSSION ABOUT THE CRIME  
3 SCENE, CERTAINLY THE EVIDENCE HERE WAS SUFFICIENT TO GO TO A  
4 JURY. THERE WERE THREE MURDERS COMMITTED. THERE IS NO DOUBT  
5 ABOUT THAT. BUT I WOULD DRAW THE COURT'S ATTENTION -- I'M NOT  
6 GOING TO READ IT TO YOUR HONOR, YOU CAN READ IT YOURSELF -- TO  
7 DOCKET ENTRY 126, WHICH IS A PREVIOUS FILING BY THE DEFENSE  
8 THAT CATALOGS IN ORDER POST-TRIAL DEVELOPMENTS OF EVIDENCE  
9 THAT CHALLENGES OR CONTRADICTS THE EVIDENCE THAT WAS PRESENTED  
10 AT TRIAL, EVIDENCE THAT THE JURY DIDN'T HEAR, WE THINK  
11 EVIDENCE THAT WHEN CONSIDERED IN LIGHT OF THE EVIDENCE AS A  
12 WHOLE IS IMPORTANT AND WOULD HAVE CAUSED A REASONABLE JURY NOT  
13 TO CONVICT DR. MACDONALD.

14 FOR EXAMPLE, THERE'S A LOT OF DISCUSSION ABOUT BLUE  
15 PAJAMA FIBERS AND WHY IF HIS PAJAMA SHIRT IS OFF WERE THERE  
16 FIBERS OTHER PLACES IN THE HOUSE.

17 YOU HAVE TO REMEMBER THAT IF YOU GO TO PAGE 2061 OF  
18 THE TRANSCRIPT, THERE'S TESTIMONY FROM A MEDIC AT THE HOSPITAL  
19 THAT DR. MACDONALD'S PAJAMA BOTTOMS WERE RIPPED COMPLETELY  
20 APART. THERE WERE -- THERE WOULD HAVE BEEN THREADS THAT WOULD  
21 HAVE BEEN FALLING OFF OF THOSE. AND IF HE MOVED AROUND THE  
22 HOUSE FROM ROOM TO ROOM, AS HE SAID HE DID, THE FIBERS COULD  
23 EASILY HAVE COME FROM THE PAJAMA BOTTOMS WHICH WERE PART OF A  
24 SET LIKE THE PAJAMA TOP.

25 SO, ALL OF THE DISCUSSION ABOUT, WELL, THERE ARE

September 25, 2012

1 THESE PAJAMA FIBERS HERE, PAJAMA FIBERS THERE, AND HE DOESN'T  
2 HAVE HIS PAJAMA SHIRT ON ANYMORE, THERE'S NO EXPLANATION FOR  
3 THAT. WELL, THE EXPLANATION IS THEY'RE ON THE PAJAMA BOTTOMS  
4 THAT WERE RIPPED APART THAT WOULD HAVE BEEN LEAVING THREADS AS  
5 HE MOVED FROM PLACE TO PLACE, PAJAMA BOTTOMS THAT WERE -- HE  
6 HAD ON WHEN HE GOT TO THE HOSPITAL THAT WERE SINCE DESTROYED  
7 AND NOT AVAILABLE AT THE TIME OF TRIAL.

8 SO, THAT'S ONE EXAMPLE OF EVIDENCE THAT WOULD HAVE  
9 SUGGESTED AN EXPLANATION FOR SOME OF THE GOVERNMENT'S EVIDENCE  
10 AT TRIAL.

11 WE'VE ALREADY HEARD TESTIMONY DURING AGENT IVORY'S  
12 TIME ON THE STAND ABOUT AN EXPLANATION FOR WHY THERE WAS BLOOD  
13 TYPE O ON HIS GLASSES. HE TREATED FIVE PATIENTS THE WEEKEND  
14 BEFORE AT THE EMERGENCY ROOM THAT HAD TYPE O.

15 I QUESTIONED HIM ABOUT WHETHER A PINK FIBER IN DR.  
16 MACDONALD'S GLASSES WOULD BE SOME EVIDENCE OF A STRUGGLE WITH  
17 AN INTRUDER WHEN THOSE PINK -- THAT PINK FIBER DIDN'T MATCH  
18 ANYTHING IN THE MACDONALD HOUSE.

19 THE COURT: MR. WIDENHOUSE, LET ME ASK YOU AND I  
20 APOLOGIZE, BUT AS YOU KNOW, I'M NOT FAMILIAR WITH THE TRIAL.  
21 I WASN'T THERE. WAS THERE EVIDENCE AT THE TRIAL THAT HE HAD  
22 TREATED PEOPLE WITH BLOOD TYPE O, FIVE, AT THE HOSPITAL?

23 MR. WIDENHOUSE: NO. THAT'S POST-TRIAL EVIDENCE.  
24 IT'S POST-TRIAL EVIDENCE ABOUT HE TREATED TYPE O PATIENTS.

25 THE COURT: WHEN DID THAT COME IN POST-TRIAL?

1 MR. WIDENHOUSE: THERE WAS A FOIA REQUEST AT SOME  
2 POINT AFTER THE TRIAL, A FREEDOM OF INFORMATION ACT REQUEST,  
3 AND THAT DEVELOPED THAT AT THAT POINT. WE'LL BRING THAT TO  
4 THE COURT'S ATTENTION --

5 THE COURT: THANK YOU.

6 MR. WIDENHOUSE: -- WITH SPECIFICITY IN THE POST-  
7 TRIAL MEMORANDUM. I MEAN, AGAIN, MY POINT IS SIMPLY THERE'S A  
8 LOT OF POST-TRIAL DEVELOPMENT WITH REGARD TO WIG HAIRS AND  
9 HUMAN HAIRS AND THINGS LIKE THAT, AND FIBERS, BLOOD, THAT WILL  
10 BE PART OF THE EVIDENCE AS A WHOLE, THAT CREATES A SCENARIO  
11 WHERE THIS NEW EVIDENCE THAT WE'RE TALKING ABOUT THAT CAME OUT  
12 AT THIS HEARING, YOU KNOW, WOULD HAVE BEEN IMPORTANT AND WOULD  
13 HAVE CAUSED A JURY -- WOULD HAVE LESSENERED THE IMPACT OF THE  
14 TRIAL EVIDENCE TO THE EXTENT THAT IF THE NEW EVIDENCE HAD BEEN  
15 AVAILABLE A REASONABLE JURY WOULD NOT NECESSARILY HAVE FOUND  
16 HIM GUILTY. AND AGAIN --

17 THE COURT: EXCUSE ME. I THOUGHT THE BURDEN WAS YOU  
18 HAD TO PROVE THAT NO REASONABLE JUROR.

19 MR. WIDENHOUSE: YES, AND THAT'S WHAT I THINK THE  
20 EVIDENCE WILL SHOW IS THAT NO REASONABLE JUROR WOULD HAVE  
21 CONVICTED HIM.

22 THE COURT: YOU HAVE TO PROVE THAT NO JUROR.

23 MR. WIDENHOUSE: CORRECT.

24 THE COURT: THANK YOU.

25 MR. WIDENHOUSE: I THOUGHT THAT -- THAT'S WHAT I

1 MEANT TO SAY. I DIDN'T MEAN TO SUGGEST A DIFFERENT KIND OF  
2 BURDEN.

3 THE COURT: THANK YOU.

4 MR. WIDENHOUSE: AND THE LAST ARGUMENT -- POINT I'D  
5 LIKE TO MAKE WITH RESPECT TO THE BRITT CLAIM, I DON'T THINK WE  
6 HAVE TO PROVE JIMMY BRITT'S VERACITY. WE DON'T HAVE TO PROVE  
7 HIS ALLEGATIONS.

8 THE POINT OF THE BRITT CLAIM, AS I'VE TRIED TO  
9 EXPLAIN IN OPENING STATEMENT AND IN THE BEGINNING OF MY  
10 ARGUMENT IS THAT THE SUBSTANCE OF THE BRITT CLAIM IS THAT  
11 HELENA STOECKLEY MADE AN ADMISSION THAT SHE WAS IN THE HOUSE  
12 AND THAT THERE WAS A THREAT TO HER BY THE PROSECUTOR. WE CAN  
13 PROVE HER ADMISSION WITHOUT JIMMY BRITT'S ALLEGATION. WE  
14 PROVED THAT WITH JERRY LEONARD'S TESTIMONY. WE PROVED THAT  
15 WITH HELENA STOECKLEY'S DYING DECLARATION TO HER MOTHER. NOW,  
16 THE GOVERNMENT WANTS TO SAY DON'T ACCEPT THAT AFFIDAVIT.  
17 WELL, I DON'T KNOW WHAT I CAN DO OTHER THAN PUT THE NOTARY ON  
18 THE STAND WHO SAID I WAS THERE, I HEARD HIM READ THE AFFIDAVIT  
19 TO HIS MOTHER, I SAW HER SIGN IT, THIS IS WHAT I NOTARIZED,  
20 THIS DOCUMENT HERE. IT LOOKS IRREGULAR, I ACKNOWLEDGE, BUT  
21 WE'VE GOT GENE STOECKLEY AND THE NOTARY VERIFYING THAT HER  
22 MOTHER KNEW EXACTLY WHAT WAS IN THE AFFIDAVIT, KNEW EXACTLY  
23 WHAT SHE WAS DOING AND SIGNED IT. SO, I THINK YOU CAN TAKE  
24 THAT AFFIDAVIT AT THE VALUE, AT FACE VALUE, FOR WHAT IS  
25 CONTAINED IN THE AFFIDAVIT ITSELF.

September 25, 2012



1           AND MR. BRUCE MAKES THE POINT THAT, WELL, MAMA  
2 STOECKLEY HAD MADE DIFFERENT STATEMENTS AT OTHER TIMES ABOUT  
3 HELENA AND WHAT SHE MIGHT SAY. ONE OF THOSE WAS AT TRIAL.  
4 WELL, AT TRIAL SHE WOULD BE SAYING SOMETHING TO KEEP HER  
5 DAUGHTER FROM NECESSARILY BEING INVOLVED. I THINK THE MORE --  
6 THE MORE CREDIBLE STATEMENT SHE WOULD MAKE WOULD BE A  
7 STATEMENT SHE MADE UNDER OATH, WHICH IS WHAT YOU DO WHEN  
8 YOU'RE HAVING SOMETHING NOTARIZED. AND HER SON, WHO I THINK  
9 WAS AN EXTRAORDINARILY CREDIBLE WITNESS, WOULDN'T HAVE LET HIS  
10 MOTHER BE PUSHED AROUND AND WOULDN'T HAVE LET PEOPLE PUT WORDS  
11 IN HER MOUTH, SAID THIS IS WHAT SHE SAID AND SHE WANTED TO  
12 COME FORWARD AT THIS TIME.

13           THE FACT THAT IT'S AT ODDS WITH SOMETHING SHE SAID  
14 NOT UNDER OATH TO A DEFENSE INVESTIGATOR AND TO AN FBI AGENT  
15 YEARS BEFORE, I DON'T THINK MEANS THAT YOU SHOULD NOT TAKE  
16 WHAT SHE SAYS IN THE AFFIDAVIT, WHICH SHE MAKES UNDER OATH.

17           NOW, THERE'S A SUGGESTION, IT SEEMS TO ME, THAT --  
18 AND I THINK IT BECAME CLEARER NEAR THE END OF MR. BRUCE'S  
19 ARGUMENT, THAT, WELL, JIMMY BRITT DIDN'T HAVE ANYTHING TO BE  
20 PROUD OF LIKE THESE MARSHALS THAT HE WAS GOING DOWN TO  
21 MISSISSIPPI WITH WHO WERE GOING TO GET SOME AWARD AND SOMEHOW  
22 HE THEN CREATED THIS STATEMENT ABOUT HAVING DONE THE TRANSPORT  
23 AND SEEN THE THREAT IN THE PROSECUTOR'S OFFICE.

24           WELL, THAT, AGAIN, BEGS THE QUESTION OF WHAT I  
25 MENTIONED IN MY OPENING ARGUMENT EARLIER TODAY. HE WOULD HAVE

September 25, 2012

1 TO HAVE HAD THAT PLAN IN 1979, BECAUSE HE TELLS MARY BRITT,  
2 I'M GOING TO PICK UP THE WITNESS. HE THEN COMES BACK AND SAID  
3 SHE SAID SHE WAS IN THE HOUSE.

4 NOW, IF HE WANTS TO MAKE UP SOMETHING IN 2005, HOW  
5 IN THE WORLD DID HE KNOW TO TELL HIS THEN WIFE ABOUT THE TRIP  
6 AND WHAT HELENA STOECKLEY SAID? I MEAN, THERE'S JUST NO WAY  
7 THAT THOSE TWO THINGS HANG TOGETHER.

8 EVEN IF YOU DON'T BELIEVE WHAT JIM BRITT SAID, THE  
9 POINT IS THE BRITT CLAIM IS THE SUBSTANCE THAT HELENA  
10 STOECKLEY WOULD HAVE MADE A STATEMENT AND, IN FACT, MADE  
11 STATEMENTS THAT SHE WAS IN THE MACDONALD HOUSE. THAT'S  
12 WHAT'S IMPORTANT. IT REALLY DOESN'T MATTER IF SHE WAS IN A  
13 CULT, DOESN'T MATTER WHY SHE'S THERE, WHAT MATTERS IS SHE MADE  
14 THAT STATEMENT.

15 WHICH TAKES US, I THINK, TO JERRY LEONARD'S  
16 TESTIMONY. AND, AGAIN, IT SEEMED TO ME HE HELD ON TO WHAT SHE  
17 WOULD HAVE TOLD HIM FOR 33 YEARS. HE MADE YOU LIFT THE  
18 ATTORNEY-CLIENT PRIVILEGE BEFORE HE REVEALED WHAT HE SAID.  
19 AND THE IMPORTANCE OF WHAT HE SAID IS SHE TOLD ME WHEN I TOLD  
20 HER I WOULD DO WHATEVER SHE NEEDED ME TO DO, SHE TOLD ME SHE  
21 WAS THERE. AND HIS EXPLANATION OF HOW THAT HAPPENED, I THINK,  
22 IS PARTICULARLY IMPORTANT. SHE FIRST SAYS, I DON'T REMEMBER.  
23 HE ACCEPTS THAT. AND SHE THEN COMES BACK TO HIM LATER THAT  
24 DAY OR THE NEXT DAY AND SAYS, WHAT IF IT'S WORSE THAN I SAID?  
25 WHAT IF IT'S WORSE THAN I SAID? AND HE SAID, IT DOESN'T

September 25, 2012

1 MATTER, YOU JUST NEED TO TELL ME THE TRUTH.

2           NOW, I SUPPOSE ONE COULD SAY FADED MEMORIES,  
3 CONFABULATED MEMORIES. BUT HE WAS VERY CLEAR THAT THIS WAS A  
4 SIGNIFICANTLY UNUSUAL COURT APPOINTMENT. HE WASN'T APPOINTED  
5 TO REPRESENT SOMEBODY CHARGED WITH A CRIME. HE WAS APPOINTED  
6 TO REPRESENT A WITNESS. THE PURPOSE OF REPRESENTING THE  
7 WITNESS WAS TO PROTECT HER. IN OTHER WORDS, DON'T LET HER  
8 TESTIFY AND MAKE INCRIMINATING STATEMENTS. HE WOULD THEN,  
9 DISCHARGING THAT DUTY, WANT TO BE CAREFUL AND CLEAR ABOUT WHAT  
10 SHE TOLD HIM. AND I WOULD THINK, I WOULD THINK, AND AS A  
11 LAWYER, IN THAT SITUATION, HER SAYING -- COMING BACK TO HIM  
12 AND SAYING IT'S NOT THAT I DON'T REMEMBER, IT'S THAT I WAS  
13 THERE, HE WOULD REMEMBER THAT. THAT WOULD BE ONE OF THOSE,  
14 FOR LACK OF A BETTER EXPRESSION, KODAK MOMENTS. I MEAN, HE  
15 MIGHT NOT REMEMBER ALL THE DETAILS OF WHY SHE WAS THERE.  
16 THAT'S NOT WHAT'S SIGNIFICANT. WHAT'S SIGNIFICANT IS THOSE  
17 THREE WORDS, I WAS THERE.

18           NOW, THE LAST POINT I WANT TO MAKE IS ABOUT THE  
19 THREAT THAT MR. BRITT SAID HE HEARD. YOU HAVE MR. BRITT  
20 PASSING A POLYGRAPH. NOW, THEY DON'T WANT YOU TO ACCEPT THAT  
21 POLYGRAPH, JUST ACCEPT THE GOVERNMENT POLYGRAPHS, NOT THE  
22 DEFENSE POLYGRAPHS. BUT YOU'VE GOT A POLYGRAPH THAT'S NOT  
23 DISPUTED THAT IT OCCURRED. AND WHAT HE ASKED -- AND I TAKE  
24 THE COURT JUST TO THE FIRST QUESTION. WHAT HE WAS ASKED IS  
25 DID YOU HEAR HELENA STOECKLEY TELL JIM BLACKBURN SHE HAD SEEN

September 25, 2012

1 A BROKEN HOBBY HORSE WHILE SHE WAS INSIDE THE MACDONALD HOUSE?

2 MR. BRUCE WAS TRYING TO SUGGEST THAT THE ONLY PART  
3 OF THE BRITT CLAIM, THE ONLY TIME HE HEARD OR IT SAID ABOUT  
4 SHE SAID SHE WAS INSIDE THE HOUSE WAS ON THIS TRANSPORT THAT  
5 THEY CLAIM DIDN'T OCCUR, WHICH I THINK IS DISPUTED WHETHER JIM  
6 BRITT COULD HAVE DONE THE TRANSPORT OR NOT AND I'VE MADE MY  
7 ARGUMENT TO THAT EFFECT.

8 BUT THE POINT ABOUT WHETHER HE WOULD HAVE HEARD THAT  
9 AT SOME OTHER TIME IS CLARIFIED BY HIM SAYING THAT AND  
10 ANSWERING THAT QUESTION IN THE POLYGRAPH, THAT HE HEARD HER  
11 SAY THAT AND HE HEARD HER SAY IT IN THE PROSECUTION ROOM.

12 AGAIN, I THINK THIS DISCUSSION ABOUT *FATAL VISION* IS  
13 REALLY THE JEDI MIND TRICK. THERE IS NO WAY THAT SOMEONE  
14 WATCHING THAT MOVIE AND SEEING A MARSHAL STANDING OUTSIDE A  
15 ROOM WOULD KNOW WHETHER IT WAS THE DEFENSE ROOM OR THE  
16 PROSECUTION ROOM. AND IF JIM BRITT SAID, I WAS INSIDE THE  
17 ROOM, WHICH MARY BRITT SAID HE DID. HE SAID -- YOU KNOW, HE  
18 SAID I WASN'T OUTSIDE THE ROOM, I WAS INSIDE THE ROOM. HE  
19 COULD NOT HAVE THOUGHT IT WAS THE DEFENSE ROOM BECAUSE NO ONE  
20 EVER SUGGESTED HE WAS IN THE DEFENSE ROOM. AND I THINK MARY  
21 BRITT'S RECOLLECTION OF THAT IS UNIMPEACHABLE. AND, AGAIN, IT  
22 BEGS THE QUESTION THAT SOMEHOW JIM BRITT WAS DIVINING THIS  
23 PLAN IN 1984 TO SPRING IT 20 YEARS LATER IN 2005.

24 I THINK WE HAVE PROVED THE RELEVANT FACTS BY A  
25 PREPONDERANCE OF THE EVIDENCE. AND I THINK WHEN YOU LOOK AT

1 THOSE FACTS THAT HELENA STOECKLEY MADE THESE STATEMENTS THAT  
2 SHE WAS IN THE -- THAT SHE WAS IN THE MACDONALD HOUSE AND THAT  
3 WE NOW HAVE THAT FOLDED IN WITH SOME UNSOURCED HAIRS, WHETHER  
4 NATURALLY SHED OR OTHERWISE, IS ADDED EVIDENCE THAT WAS NOT  
5 AVAILABLE AT TRIAL, NEWLY DISCOVERED EVIDENCE, THAT WHEN  
6 CONSIDERED IN THE EVIDENCE AS A WHOLE, NO REASONABLE JUROR  
7 WOULD HAVE CONVICTED AND WE ASK YOU TO GRANT THE MOTION TO  
8 VACATE.

9 THE COURT: ARE ONE OF YOU GOING TO ORDER A  
10 TRANSCRIPT OF THIS?

11 MR. WIDENHOUSE: WELL, YEAH, I THINK WE WOULD  
12 CERTAINLY.

13 THE COURT: WELL, YOU SAID YOU WANTED TO BRIEF THIS.

14 MR. WIDENHOUSE: YES, I'D LIKE 60 DAYS AFTER THE  
15 TRANSCRIPT IS DELIVERED IF THAT'S ACCEPTABLE.

16 THE COURT: SURELY. AND YOU WANT SOME MORE TIME  
17 THAN THAT, MR. BRUCE?

18 MR. BRUCE: WELL, WE WOULD LIKE A SHORTER TIME  
19 PERIOD. WE'D LIKE TO BRING THIS THING TO A CLOSE. BUT, OF  
20 COURSE, WE'LL GO BY WHATEVER THE COURT WANTS TO DO.

21 THE COURT: WELL, I WANT EVERYBODY TO HAVE AS MUCH  
22 TIME AS THEY WANT.

23 MR. BRUCE: ALL RIGHT. BUT ONE THING WE WOULD LIKE  
24 TO VERY MUCH REQUEST THE COURT TO MAKE CLEAR AND TO CLARIFY,  
25 THIS IS OUR UNDERSTANDING AND SEE IF THE COURT AGREES, THE

1 PARTIES ARE GOING TO BRIEF IT, THE PURPOSE OF WHICH WILL BE TO  
2 RECALL ALL OF THE EVIDENCE THAT'S BEEN PRESENTED HERE TO THE  
3 COURT AND TO MAYBE EXPLAIN SOME LEGAL POINTS. BUT THE  
4 EVIDENCE, WE UNDERSTAND, AT THE CLOSE OF THIS HEARING IS  
5 CLOSED BECAUSE WE'VE GOT TO BRING THIS TO SOME SORT OF  
6 CLOSURE.

7 THE COURT: I THINK THAT'S REASONABLE. DON'T YOU  
8 THINK SO, MR. WIDENHOUSE?

9 MR. WIDENHOUSE: WELL, I'D HATE TO STAKE THAT OUT  
10 BECAUSE I NEVER KNOW WHAT'S GOING TO CROP UP TOMORROW AND IF  
11 IT WAS SOMETHING EXTREMELY SIGNIFICANT, I WOULD SEEK LEAVE OF  
12 THE COURT TO PRESENT IT. I DON'T THINK AS A LAWYER I COULD  
13 SAY --

14 THE COURT: WELL, DEPENDING IF IT WAS SOMETHING NEW.

15 MR. WIDENHOUSE: YES.

16 THE COURT: I MEAN, WE WOULDN'T WANT TO GO OVER THE  
17 SAME STUFF WE'VE GONE OVER.

18 MR. WIDENHOUSE: OH, CORRECT.

19 THE COURT: OR ANYTHING THAT COULD HAVE BEEN  
20 PRESENTED AT THIS TIME.

21 MR. BRUCE: YOUR HONOR, MY POINT IS THAT THE PARTIES  
22 HAVE HAD SIX AND A HALF YEARS SINCE THIS CLAIM WAS FILED TO  
23 GET READY. WE'VE HAD A YEAR AND A HALF SINCE THE CASE CAME  
24 BACK FROM THE FOURTH CIRCUIT. THE COURT WAS NOT OBLIGATED TO  
25 HAVE AN EVIDENTIARY HEARING. THE COURT SET ASIDE TWO WEEKS OF

1 ITS BUSY SCHEDULE. AND WE SUBMIT THAT IF THE PARTIES HAVE NOT  
2 PRESENTED IT BY NOW IN ALL THE REAMS OF PAPER THAT HAVE BEEN  
3 FILED UP TILL NOW AND IN THIS TWO WEEK HEARING THAT SHOULD BE  
4 THE END OF OPENING THE GATES FOR EVIDENCE AS A WHOLE.

5 THE COURT: WELL, I DON'T KNOW THAT I DISAGREE WITH  
6 YOU, BUT I DON'T KNOW THAT I AGREE WITH YOU. I THINK THAT MR.  
7 WIDENHOUSE'S VIEW POINT IS THAT SOMETHING CAN ALWAYS COME UP.  
8 YOU NEVER KNOW WHAT'S GOING TO HAPPEN THAT MIGHT WARRANT SOME  
9 OPENING. I WOULD HOPE NOTHING FURTHER COMES UP.

10 I'M GOING TO GIVE YOU 60 DAYS AFTER THE TRANSCRIPT  
11 AND YOU CAN HAVE AS MUCH TIME -- UP TO 60 DAYS AFTER THAT IF  
12 YOU WANT, MR. BRUCE.

13 MR. BRUCE: THANK YOU, YOUR HONOR.

14 THE COURT: NOW, COUNSEL, I TALKED TO YOU EARLIER  
15 AND SUMMARIZED WHAT I THOUGHT THE GATEKEEPING STANDARD WAS FOR  
16 THE SECOND GATEKEEPING FOR A SUCCESSIVE MOTION HABEAS.

17 I'D LIKE FOR YOU BOTH TO ADDRESS THAT AND SEE IF YOU  
18 AGREE AS TO WHAT THE STANDARD IS AND I'D ALSO LIKE TO KNOW  
19 WHAT YOU THINK THE STANDARD IS ON THE HABEAS -- FULL HABEAS  
20 CLAIM.

21 NOW, THAT RAISES ANOTHER ISSUE. THE EVIDENCE AS A  
22 WHOLE, AS I UNDERSTAND IT, WAS TO BE CONSIDERED IN DETERMINING  
23 WHETHER OR NOT A SUCCESSIVE MOTION WOULD BE ALLOWED. IT IS  
24 NOT THE EVIDENCE AS A WHOLE AS TO THE MERITS OF THE CLAIM.

25 DO YOU THINK IT IS, MR. WIDENHOUSE? DO YOU SEE MY

1 POINT?

2 MR. WIDENHOUSE: I DO AND I DON'T KNOW THE ANSWER TO  
3 THAT.

4 THE COURT: I DON'T KNOW EITHER. THANK YOU. I'D  
5 LIKE FOR BOTH OF YOU TO ADDRESS THAT IF YOU WOULD. I THINK  
6 THAT MIGHT BE VERY SIGNIFICANT.

7 NOW, OBVIOUSLY, WE HAVE PARTICIPATED IN A HEARING  
8 WITH NO RULES. NO RULES. I THINK THAT IF WE TRIED THE CASE,  
9 WE'D TRY IT ACCORDING TO RULES. DO YOU ALL DISAGREE WITH  
10 THAT?

11 MR. BRUCE: (SHAKES HEAD.)

12 MR. WIDENHOUSE: (SHAKES HEAD.)

13 THE COURT: I JUST DON'T KNOW -- IT SEEMS TO BE  
14 SOMEWHAT INCONGRUOUS IN MY MIND THAT YOU COULD HAVE DIFFERENT  
15 STANDARDS APPLY BECAUSE YOU COULD HAVE A PASSING OF THE SECOND  
16 GATEKEEPING AND HAVE AN ISSUE FAIL ON THE MERITS. CERTAINLY  
17 IF YOU HAD YOUR USUAL RULES OF EVIDENCE IN PLACE, I THINK  
18 THERE'S A LOT OF THINGS THAT WOULD NOT HAVE COME IN AT THE  
19 TRIAL.

20 DO YOU AGREE WITH THAT, MR. BRUCE?

21 MR. BRUCE: YOU MEAN A TRIAL OF A CRIMINAL CASE?  
22 OBVIOUSLY, A LOT OF THE EVIDENCE THAT WAS PRESENTED HERE WOULD  
23 NOT HAVE BEEN ADMISSIBLE IN A TRIAL OF A CRIMINAL CASE OR A  
24 TRIAL OF A CIVIL CASE.

25 THE COURT: THAT'S WHAT I'M SAYING.



1 MR. BRUCE: BUT, YOUR HONOR, I THINK THAT WE'RE  
2 STUCK WITH THE EVIDENCE AS A WHOLE STANDARD AS THE FOURTH  
3 CIRCUIT HAS GIVEN IT TO US. I THINK THE COURT WAS RIGHT TO  
4 ALLOW --

5 THE COURT: BUT FOR BOTH? BOTH THE SECOND  
6 GATEKEEPING FUNCTION AND ON THE MERITS?

7 MR. BRUCE: WELL, I HADN'T THOUGHT ABOUT THAT.

8 THE COURT: WELL, I HAVE, AND I'M LIKE MR.  
9 WIDENHOUSE, I DON'T KNOW WHAT THE ANSWER TO IT IS.

10 MR. BRUCE: I WOULD SAY THAT I THINK OUR POSITION IS  
11 GOING TO BE THAT EVEN IF THE COURT CONSIDERS EVERYTHING  
12 PRESENTED AT THIS HEARING AS EVIDENCE BEARING ON THE MERITS, I  
13 DON'T THINK THAT MACDONALD WILL CARRY HIS BURDEN ANYWAY TO  
14 PROVE THE BRITT CLAIM.

15 AND BY THE WAY, THIS IS THE BRITT CLAIM AND THE  
16 UNSOURCED HAIRS CLAIM. IT'S NOT THE JERRY LEONARD CLAIM.  
17 IT'S NOT THE HELENA STOECKLEY SENIOR CLAIM. THEY'VE GOT TO  
18 PROVE THE BRITT CLAIM. THEY'VE GOT TO PROVE THE UNSOURCED  
19 HAIRS CLAIM.

20 SO, WE'LL ADDRESS THAT IN OUR BRIEF, BUT MY INITIAL  
21 REACTION IS I DON'T THINK WE'RE GOING TO OBJECT TO THE COURT  
22 CONSIDERING THE EVIDENCE AS A WHOLE BOTH ON GATEKEEPING AND ON  
23 THE MERITS.

24 THE COURT: WELL, I DON'T KNOW IF THAT WOULD BE  
25 PROPER.

1 MR. BRUCE: WELL, I'M JUST -- WHAT I'M TRYING TO SAY  
2 IS IT SEEMS TO ME THAT GIVES HIM -- MACDONALD THE BIGGEST  
3 BENEFIT HE COULD GET IN TRYING TO PROVE HIS CLAIM AND THAT WAY  
4 IF HE STILL FAILS TO PROVE IT --

5 THE COURT: I DON'T KNOW WHETHER I WOULD WANT TO  
6 APPROVE IT AS A MATTER OF PRECEDENT.

7 MR. BRUCE: I UNDERSTAND, YOUR HONOR.

8 (PAUSE.)

9 THE COURT: NOW, I'D LIKE FOR BOTH OF YOU TO SEE IF  
10 YOU AGREE ON THE STANDARD THAT'S TO BE APPLIED IN THE SECOND  
11 GATEKEEPING FUNCTION OF THIS COURT IN DETERMINING WHETHER  
12 SUCCESSIVE MOTIONS SHOULD BE ALLOWED. THERE'S SOME CONFUSION  
13 IN MY MIND ABOUT THAT. ALTHOUGH, I THOUGHT I UNDERSTOOD IT.  
14 AS I UNDERSTOOD IT, AND MAYBE I'M INCORRECT ABOUT THIS, BUT  
15 YOU HAVE TO PROVE A CONSTITUTIONAL VIOLATION IN ORDER FOR --  
16 TO CONSIDER ALL OF THE EVIDENCE AS A WHOLE. IS THAT  
17 INCORRECT?

18 MR. WIDENHOUSE: AT THE RISK OF SPEAKING TOO  
19 QUICKLY, I DON'T THINK IT'S INCORRECT. AND THE WAY I READ THE  
20 FOURTH CIRCUIT OPINION, THEY TALK ABOUT THE GATEKEEPING IS  
21 THIS AND THEN THE SECOND STEP IS PROVING CONSTITUTIONAL  
22 VIOLATION.

23 NOW, YOU HAVE TO SORT OF SCRATCH YOUR HEAD AND SAY,  
24 WELL, IF I PROVE NEWLY DISCOVERED EVIDENCE THAT WILL CONVINC  
25 NO REASONABLE JUROR WOULD HAVE CONVICTED, HOW IN THE WORLD

1 HAVE I NOT PROVEN CONSTITUTIONAL VIOLATION? BUT THAT'S WHAT  
2 IT READS LIKE TO ME.

3 THE COURT: IT READ TO ME LIKE YOU HAD TO PROVE THE  
4 CONSTITUTIONAL VIOLATION FIRST AND THEN YOU LET EVERYTHING IN.  
5 DO YOU DISAGREE WITH THAT, MR. BRUCE?

6 MR. BRUCE: YOUR HONOR, I THINK I DO DISAGREE WITH  
7 THAT, ALTHOUGH I'M NOT THAT SURE OF MYSELF, BUT LET ME TRY TO  
8 EXPLAIN THE WAY I UNDERSTAND THIS AND I THINK THE PEOPLE AT  
9 THE GOVERNMENT TABLE UNDERSTAND THIS.

10 THE COURT IS OBLIGED TO CONSIDER THE PROFFERED  
11 EVIDENCE. NOW, THAT, I THINK, IF YOU READ THE FOURTH CIRCUIT  
12 OPINION, IS EVIDENCE AS A WHOLE WITH DUE REGARD FOR THE LIKELY  
13 CREDIBILITY AND PROBABLE RELIABLE TO DETERMINE IF, IN  
14 COMBINATION WITH THE NEWLY DISCOVERED EVIDENCE, THE BRITT  
15 CLAIM, IF PROVEN, WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR  
16 AND CONVINCING EVIDENCE THAT NO REASONABLE JUROR WOULD HAVE  
17 FOUND MACDONALD GUILTY.

18 THE WAY I INTERPRET THIS IS THAT WHEN -- IS YOUR  
19 HONOR WAS TRYING TO APPLY THIS WHEN THIS CASE WAS BEFORE THIS  
20 COURT BEFORE. AND WHAT THE COURT DID, JUST LIKE IS TYPICALLY  
21 DONE IN CIVIL CASES, IS YOU ASSUME FOR PURPOSES OF ARGUMENT  
22 THAT THEY COULD PROVE THEIR BRITT CLAIM, AND YOU SAID EVEN IF  
23 THEY COULD PROVE THEIR BRITT CLAIM, CONSIDERING THAT IN THE  
24 LIGHT OF THE PROFFERED EVIDENCE, IT DOESN'T ESTABLISH BY CLEAR  
25 AND CONVINCING EVIDENCE THAT NO REASONABLE JUROR WOULD HAVE

September 25, 2012

1 FOUND MACDONALD GUILTY.

2 NOW, THE FOURTH CIRCUIT SAID, WELL, WHEN YOUR HONOR  
3 DID THAT YOU DIDN'T CONSIDER THE EVIDENCE AS A WHOLE.

4 SO, THIS CASE HAS COME BACK FOR THE COURT TO DO  
5 GATEKEEPING, CONSIDERING A BROADER RANGE OF EVIDENCE, WHICH  
6 THEY PRESENTED AT THIS HEARING, BUT THE PARTIES HAVE ALSO  
7 ASKED THE COURT TO LOOK AT THE MERITS AT THE SAME TIME. WE'VE  
8 GOT A CONFLATED HEARING THAT'S LOOKING AT BOTH.

9 AND SO I THINK THE COURT IS DOING BOTH SIMULTANEOUS  
10 ESSENTIALLY, LOOKING AT THE EVIDENCE AS A WHOLE TO SEE IF --  
11 IF THEY COULD PROVE THE BRITT CLAIM THAT WOULD ESTABLISH  
12 GATEKEEPING AND HAVE THEY PROVEN THE BRITT CLAIM.

13 THE COURT: WELL, WHAT DOES THE BRITT CLAIM HAVE TO  
14 DO WITH GATEKEEPING?

15 MR. BRUCE: NOTHING, EXCEPT IT HAS TO SURVIVE.

16 THE COURT: I'M SORRY. I'LL CONFESS CONSIDERABLE  
17 CONFUSION IN MY MIND, BUT I ALWAYS THOUGHT THE GATEKEEPING  
18 FUNCTION WAS YOU PROVED A CONSTITUTIONAL VIOLATION AND THEN  
19 YOU CONSIDERED -- YOU DISREGARD THAT AND CONSIDERED ALL THE  
20 EVIDENCE AS A WHOLE. THAT WAS WHAT GOT YOU THROUGH THE GATE  
21 TO AT LEAST CONSIDER ALL OF THE EVIDENCE AS A WHOLE. YOU  
22 DON'T AGREE WITH THAT?

23 MR. BRUCE: RESPECTFULLY, I DON'T. I THINK THAT THE  
24 CONSTITUTIONAL VIOLATION -- IT SAYS CONSTITUTIONAL VIOLATION  
25 ALLEGED IN THE CLAIM. AND I THINK THE CONSTITUTIONAL

1 VIOLATION THAT THE MACDONALD SIDE OF THIS CASE HAS ALLEGED IS  
2 THE BRITT CLAIM, THAT IS, THAT THERE WAS A CONFESSION THAT THE  
3 GOVERNMENT SUPPRESSED AND THERE WAS A THREAT FROM THE  
4 PROSECUTOR TO THE POTENTIAL DEFENSE WITNESS.

5 THE COURT: AND THAT WAS A DENIAL OF DUE PROCESS OF  
6 LAW.

7 MR. BRUCE: RIGHT. AND YOUR HONOR ANALYZED THAT IN  
8 THE 2008 ORDER, IN FACT, BROKE IT INTO THREE PARTS, THE  
9 CONFESSION CLAIM, THE THREAT CLAIM AND THE --

10 MR. MURTAGH: FRAUD.

11 MR. BRUCE: -- FRAUD CLAIM BECAUSE THEY ALLEGED THAT  
12 BLACKBURN LIED TO JUDGE DUPREE ABOUT THE HELENA STOECKLEY  
13 INTERVIEW. AND SO THOSE WERE THE CONSTITUTIONAL CLAIMS. YOU  
14 CAN DIVIDE THEM INTO THREE PARTS, BUT THEY CAN ALSO BE LOOKED  
15 AT AS ONE. THAT WAS THE CONSTITUTIONAL VIOLATION OR THE  
16 CONSTITUTIONAL VIOLATIONS THAT THEY WERE ALLEGING THAT  
17 CONSTITUTE THE BRITT CLAIM.

18 SO, THEY'VE GOT TO GET THROUGH GATEKEEPING. IF THEY  
19 GET THROUGH GATEKEEPING THEY WOULD YET BE OBLIGED TO PROVE THE  
20 CONSTITUTIONAL VIOLATION. AND THAT'S WHAT -- THAT REFERS BACK  
21 TO THE IF PROVEN.

22 AND WHAT I THINK WHAT THIS COURT DID -- AND, OF  
23 COURSE, WE AGREED WITH WHAT THE COURT DID. THE FOURTH CIRCUIT  
24 SAID YOU NEED TO CONSIDER MORE EVIDENCE. BUT WHAT THE COURT  
25 DID IN 2008, WAS ASSUME THAT THE BRITT CLAIM, WHICH WAS A

1 CONSTITUTIONAL CLAIM, COULD BE PROVEN AND DID IT PASS  
2 GATEKEEPING AND THE COURT SAID NO.

3 SO, NOW, WE THINK WE'VE ESTABLISHED, AFTER ALL THE  
4 EVIDENCE AS A WHOLE IS CONSIDERED, THAT IT DOESN'T PASS  
5 GATEKEEPING, BUT EVEN IF IT DOES, THEY CAN'T PROVE THE BRITT  
6 CLAIM, WHICH IS THE CONSTITUTIONAL VIOLATION THEY ALLEGE. THE  
7 BRITT CLAIM IS THE CONSTITUTIONAL VIOLATION THAT THEY ALLEGE.

8 AND THAT'S THE PROBLEM, AS MR. MURTAGH SAID, THAT  
9 THEY HAVE WITH THE UNSOURCED HAIRS CLAIM BECAUSE EVEN IF THEY  
10 COULD PROVE NEWLY DISCOVERED EXCULPATORY EVIDENCE IS PRESENT  
11 IN THESE UNSOURCED HAIRS, THERE'S NO CONSTITUTIONAL VIOLATION  
12 TO PROVE, AND THAT'S WHERE THE *HERRERA V. COLLINS* PROBLEMS  
13 COME IN.

14 THE COURT: WELL, COUNSEL, I'M GOING TO ASK THAT YOU  
15 ALL -- SEE IF YOU ALL CAN AGREE ON WHAT THE PROPER -- WHAT THE  
16 SECOND GATEWAY CLAIM IS AND COME UP WITH THE -- PUT IN THE  
17 ORDER OF PROOF WHERE THE CONSTITUTIONAL VIOLATIONS ARE PROVEN  
18 FIRST TO ADMIT THE EVIDENCE OR THE EVIDENCE IS PROVEN FIRST TO  
19 ADMIT EVIDENCE OF THE CONSTITUTIONAL VIOLATION. THERE SEEMS  
20 TO BE TWO DIFFERENT VIEWS PRESENTED HERE.

21 I ALSO -- IF THE SECOND GATEKEEPING FUNCTION HAS A  
22 REASON, AND I PRESUME IT DOES, IF IT FAILED, WHY WOULD YOU GO  
23 AHEAD AND HEAR THE MOTION -- HEAR IT ON THE MERITS? I DON'T  
24 KNOW. I MEAN, WHAT'S THE FUNCTION OF THE SECOND GATEKEEPING  
25 MOTION -- GATEKEEPING PURPOSE -- FUNCTION?

September 25, 2012

1 MR. BRUCE: WELL, YOUR HONOR, I THINK IT PRESENTS  
2 THIS HIGH THRESHOLD THAT CONGRESS CREATED TO KEEP US FROM  
3 HAVING THESE REPETITIVE HABEAS MOTIONS, THAT HE'S GOT TO GET  
4 OVER, THAT HE'S NEVER GOTTEN OVER, WHICH IS TO SHOW BY CLEAR  
5 AND CONVINCING EVIDENCE, CONSIDERING THE EVIDENCE AS A WHOLE,  
6 THAT THIS IS NEW EVIDENCE, IF HE COULD PROVE IT, WOULD  
7 ESTABLISH THAT NO REASONABLE JUROR COULD FIND HIM GUILTY. AND  
8 I DON'T THINK WE CAN JUST BLINK THAT AWAY. HE'S GOT TO PASS  
9 THAT.

10 BUT WHAT WE'RE HOPEFUL FOR IS THAT THE COURT WILL  
11 DETERMINE THAT HE COULDN'T -- HE CAN'T PASS GATEKEEPING TO GET  
12 TO THE MERITS, BUT SINCE THE PARTIES HAVE ALREADY ADDRESSED  
13 THE MERITS, THE COURT COULD MAKE AN ALTERNATIVE HOLDING THAT  
14 HE HASN'T PROVEN HIS CONSTITUTIONAL BRITT CLAIM.

15 THE COURT: WELL, HAVE YOU PRESENTED, MR.  
16 WIDENHOUSE, EVERYTHING THAT YOU'D WANT TO PRESENT AT A HEARING  
17 ON THE MERITS? IS IT PROPER FOR ME TO REACH THE MERITS AT  
18 THIS TIME?

19 IN OTHER WORDS, I DON'T KNOW WHETHER YOU'VE GOT --  
20 THERE ARE ISSUES IN THIS CASE, SOME OF THEM I REMEMBER, THE  
21 DOLL HAIR, YOU KNOW, AND THE WAX AND MAYBE OTHER THINGS THAT  
22 I'M OVERLOOKING. THERE MAY BE OTHER EVIDENCE THAT YOU WOULD  
23 WANT TO PRESENT IF THE CASE WAS BEING HEARD ON THE MERITS.

24 MR. WIDENHOUSE: I DON'T KNOW THE ANSWER TO THAT  
25 QUESTION.

1 THE COURT: WELL, I DON'T EITHER, BUT YOU SEE IT HAS  
2 TO -- IN A SENSE, YOU ALL ARE AGREEING THAT I CAN SKIP THE  
3 SECOND GATEKEEPING OR MR. BRUCE IS, JUST SKIP IT. IF IT'S  
4 REQUIRED BY LAW, I DON'T KNOW HOW I CAN JUST SKIP IT.

5 I THINK WE'VE GOT TO GET -- I THINK THAT YOU AND I  
6 AND MR. BRUCE AND POSSIBLY MR. WILLIAMS AND MR. MURTAGH AND  
7 MS. COOLEY -- I WANT TO GET IT SETTLED ON WHAT WE'RE DOING AND  
8 WHERE WE'RE GOING. AND IT'S NOT CLEAR IN MY MIND. I WISH I  
9 COULD TELL YOU THAT IT WAS.

10 MR. WIDENHOUSE: AND I WISH I COULD CLARIFY IT FOR  
11 YOU. AT THIS POINT, I CAN'T. IT'S VERY CONFUSING.

12 THE COURT: IT IS. AND I'VE GOT TO GO TO WORK ON  
13 THAT AND I'M GOING TO HAVE TO READ A GOOD BIT OF MATERIAL.  
14 AND I DON'T -- THAT ISSUE IS NOT EXACTLY IN FOCUS FOR ME.  
15 AGAIN, I'M NOT -- I'M JUST MAKING A STATEMENT AS A MATTER OF  
16 FACT.

17 AS YOU GENTLEMEN KNOW, I DIDN'T TRY THE CASE, AND I  
18 CAN ASSURE YOU THAT I'VE TRIED TO GO BACK AND START IN ON THE  
19 TRANSCRIPT. AS I TOLD YOU, YOU CAN'T READ A TRANSCRIPT WHEN  
20 THE LAWYERS ARE SHOWING A MAN A PHYSICAL ITEM AND THE WITNESS  
21 IS TESTIFYING, THE TRANSCRIPT DOESN'T MEAN ANYTHING TO YOU.  
22 IT CAN'T BE DONE. I COULDN'T DO IT. AND THAT'S A HANDICAP  
23 THAT, AS FAR AS I'M CONCERNED, THAT I'M GOING TO BE STUCK WITH  
24 FOR THE REST OF THIS THING. AND I'D LIKE -- MAYBE WE'LL HAVE  
25 ANOTHER MEETING, AFTER YOU ALL HAVE GIVEN IT SOME FURTHER

September 25, 2012



1 THOUGHT, TO TRY TO GET THIS IN FOCUS AND GET THE GROUND RULES  
2 AGREED UPON. I DON'T WANT TO APPROACH THE THING WITH A  
3 MISTAKEN IDEA OF WHAT WE'RE TRYING TO DO.

4 MR. WIDENHOUSE: I DON'T DISAGREE WITH THAT.

5 THE COURT: AND I THINK THAT WE, AS LAWYERS, OUGHT  
6 TO BE ABLE TO RESOLVE THAT ISSUE AMONGST US.

7 YOU KNOW, I'M GOING TO TELL YOU ALL SOMETHING THAT I  
8 FREQUENTLY SAY BECAUSE I FIND IT COMFORTING AND AMUSING, JUDGE  
9 GILLIAM, BLESS HIS HEART, USED TO SAY WHEN HE WAS REVERSED, HE  
10 SAYS, I WASN'T WRONG, IT JUST MEANS THE FOURTH CIRCUIT  
11 DISAGREED WITH ME.

12 BUT I'D LIKE FOR US TO TRY TO GET TOGETHER AND GET  
13 THIS THING WORKED OUT. I MAY HAVE A CONFERENCE WITH YOU ALL  
14 AGAIN BEFORE WE TRY TO GET THIS THING FINALLY MESHED OUT.

15 BUT MAYBE YOU ALL CAN AGREE UPON IT OR DISCUSS IT  
16 TOGETHER AND PUT IT IN SOME SORT OF AGREED FORM FOR YOUR  
17 BRIEFS TO APPROACH IT. I DON'T KNOW WHETHER YOU CAN OR NOT,  
18 BUT YOU CAN TRY.

19 MR. BRUCE: WELL, YOUR HONOR, I THINK THAT THE COURT  
20 -- IF WE GO BACK AND LOOK AT THE COURT'S ORDERS IN THE RUN UP  
21 TO THIS HEARING, I THINK WHAT THE COURT WAS SAYING TO THE  
22 PARTIES IS SORT OF IT'S NOW OR NEVER, THAT THIS HEARING WAS  
23 GOING TO BE ON THE BRITT CLAIM AND THE UNSOURCED HAIRS CLAIM  
24 AND IMPLICITLY ON THE EVIDENCE AS A WHOLE BECAUSE THAT'S WHAT  
25 THE COURT -- THE FOURTH CIRCUIT SAID YOU HAD TO CONSIDER AND

September 25, 2012

1 THAT'S WHAT YOU ALLOWED PRESENTED.

2 THE COURT: WELL, NOW, YOU UNDERSTAND THAT THIS  
3 COURT HAS NOT SEEN ALL OF THE EVIDENCE AS A WHOLE. I HAVE NOT  
4 SEEN ALL OF THE EVIDENCE AS A WHOLE.

5 MR. BRUCE: RIGHT.

6 THE COURT: YOU ALL -- I'M JUST EXPRESSING A  
7 FRUSTRATION.

8 MR. BRUCE: WELL, YOUR HONOR, WHAT I'M SAYING IS  
9 THAT'S THE PARTIES' RESPONSIBILITY. IT'S OUR RESPONSIBILITY  
10 AND THEIR RESPONSIBILITY. IF THERE'S SOMETHING THAT THE  
11 PARTIES WANTED THE COURT TO CONSIDER AS THE EVIDENCE AS A  
12 WHOLE, THIS WAS OUR OPPORTUNITY, THESE TWO WEEKS THAT THE  
13 COURT GAVE US.

14 THE COURT: I AGREE. I AGREE WITH THAT.

15 MR. BRUCE: AND, I THINK, YOU KNOW, THE PARTIES  
16 CONCENTRATED ON WHAT THEY THOUGHT WAS STRONG. IF SARAN DOLL  
17 HAIR WAS MENTIONED IN THE FOURTH CIRCUIT'S OPINION AND  
18 SOMEBODY THOUGHT IT WAS WORTHWHILE BRINGING IT UP HERE THEY  
19 SHOULD HAVE INTRODUCED SOMETHING ABOUT SARAN DOLL HAIR.

20 THE COURT: I THINK IT WAS MENTIONED.

21 MR. BRUCE: BUT WHAT I'M SAYING IS, THIS WOULD HAVE  
22 BEEN THE TIME FOR EITHER PARTY TO ADDRESS THE SARAN HAIR ISSUE  
23 IF THEY HAD ANYTHING MORE TO SAY THAN WHAT'S IN THE RECORD OF  
24 THIS CASE GOING BACK 30 YEARS.

25 AND ANOTHER THING -- AND AS I SAID, IT'S THE

1 RESPONSIBILITY OF THE PARTIES. IF WE HAVEN'T GIVEN YOU A  
2 CLEAR ENOUGH PICTURE OF WHAT WENT ON IN THE TRIAL THEN THAT'S  
3 WHAT WE NEED TO DO IN OUR NEXT BRIEF.

4 AND ANOTHER THING THAT WE WILL POINT OUT TO THE  
5 COURT IS -- IN OUR BRIEF, IS TO GO BACK TO THESE OTHER  
6 OPINIONS WRITTEN BY JUDGE DUPREE AND THE FOURTH CIRCUIT AND  
7 THEY RECITE THE TRIAL EVIDENCE AS A WHOLE, BUT IT'S UP TO THE  
8 PARTIES TO GET TO THE COURT WHAT THEY WANT THE COURT TO  
9 CONSIDER ON THESE ISSUES AND THE EVIDENCE AS A WHOLE.

10 THE COURT HAS BENT OVER BACKWARDS TO GIVE THE  
11 PARTIES AN OPPORTUNITY, CUT TWO WEEKS OUT OF ITS SCHEDULE,  
12 GIVEN THE PARTIES MANY CONTINUANCES TO GET READY FOR THIS  
13 HEARING. AND WE SAY IF IT HASN'T BEEN PRESENTED BY NOW, IT'S  
14 PROBABLY NOT IMPORTANT, YOUR HONOR. THANK YOU.

15 THE COURT: WELL, YOU CERTAINLY GOT A GOOD POINT,  
16 MR. BRUCE. WELL, I'LL LOOK FORWARD TO GETTING YOUR BRIEFS,  
17 COUNSEL.

18 MR. BRUCE: THANK YOU.

19 THE COURT: AND IN YOUR BRIEFS IF YOU THINK ANYTHING  
20 IS IMPORTANT FROM THE TRIAL YOU SHOULD PUT IT IN YOUR BRIEFS  
21 BECAUSE YOU CAN'T ASSUME THAT I KNOW ABOUT IT.

22 I WOULD JUST ALSO LIKE TO SAY THAT JUDGE DUPREE WAS  
23 A COLLEAGUE OF MINE AND I HAD THE GREATEST ADMIRATION FOR HIM.

24 ALL RIGHT, ADJOURN COURT.

25 (WHEREUPON, THESE PROCEEDINGS ADJOURNED AT 4:12 P.M.)

September 25, 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 25, 2012