

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 .

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

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

APPEARANCES:

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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

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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.

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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

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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

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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?

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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

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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

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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.)

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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

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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.

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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

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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?

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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

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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

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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

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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

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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.

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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 --

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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

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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

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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.

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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.)

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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.

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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.

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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?

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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?

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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

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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.

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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 --

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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

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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

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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

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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

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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

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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.

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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

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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?

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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

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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.

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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

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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

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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

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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?

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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

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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

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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

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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

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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.

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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

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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 --

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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

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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

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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

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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

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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?

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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

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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

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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?

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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.

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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.

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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?

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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

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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

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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

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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.

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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.

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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.

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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?

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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,

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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?

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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?

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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

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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.

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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

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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

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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

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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.

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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

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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.

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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?

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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?

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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.

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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?

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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

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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

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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

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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.

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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.

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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?

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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

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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.

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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?

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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

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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?

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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

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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?

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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?

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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.

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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

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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

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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

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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

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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 --

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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

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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

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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

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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.

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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?

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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?

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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

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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.

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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?

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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

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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 SOLIDER. 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

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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

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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

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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.

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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?

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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.

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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?

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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

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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.

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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?

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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.

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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?

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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

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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

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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?

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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?

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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?

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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

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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?

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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.

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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

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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

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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

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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?

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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.)

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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

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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

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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

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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

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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

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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

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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.

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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.

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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

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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.)

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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.

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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