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BY MR. MURTAGH:

Q All right, so you went over to this motel where Helena Stoeckley was staying, is that correct?

A Not then at that minute, I did not. I walked back to the Downtowner and then went back later.

Q Somehow or another you eventually got to the motel where she was staying?

A Certainly, I eventually went over there.

Q Who else was present with Ms. Stoeckley when you arrived at the motel?

A Ernest.

Q When did Ms. Rowder come?

A She and I went together.

Q Oh, Ms. Rowder took you to the motel?

MR. SEGAL: The second time.

BY MR. MURTAGH:

Q Is that correct?

A That's right, yes.

Q What was Ms. Rowder's purpose in going to see Helena Stoeckley, if you know?

A I don't know; I didn't ask her.

Q Would it be accurate to say that at least while you were there at this motel where Helen Stoeckley was present, some member of the Defense team, either an attorney or an assistant, was with Ms. Stoeckley or

#16 p2

1 in the vicinity?

2 A Well, Ms. Rowder was there. She was--she
3 drove the car--carried--give me a lift by there and
4 Helena Stoeckley asked to see her.

5 Then she went into her room on the request
6 of Helena Stoeckley.

7 Q After this business where Helena falls in
8 the bathroom and has a bloody nose, she said to you
9 something about her life was not worth five cents as a
10 result of what was said in court on Friday, is that
11 correct?

12 A No, sir; you got it--undoubtedly you got it
13 all turned around, my friend.

14 Q Yes, I do.

15 A She said last night and again this morning
16 to me, her life would not be worth five cents out on
17 the street. She did not relate back to many particular
18 day as of Friday, Saturday or this morning, or whatever.

19 Q Okay, then would it be correct to say,
20 Mr. Underhill, that in terms of what Helena Stoeckley
21 said to you, she did not relate that statement--her life
22 was not worth five cents--to anything, is that correct?

23 A I'm so sorry I have to ask you again--as to
24 anything--please repeat that again. I'm so sorry I'm
25 holding everybody up, but I'd like to hear it again, and



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maybe a little---

Q (Interposing) All right. My original question was, is it correct that Helena's statement---

A (Interposing) Excuse me just a minute; are you reading that off, or look at me so maybe I could pick it up better--straight in the eye here.

Q Surely. My question, Mr. Underhill, was: is it correct that Helena's statement -- "My life is not worth five cents out on the street"--relates back to what she testified to on Friday in court, is that correct?

A Like I just said, sir, she did not say what she might have said Friday. That could have been for Saturday. Maybe it could have been for yesterday; maybe it's for today.

I am just stating exactly word for word what she said to me.

Q And that's all she said, is that correct, in that particular time of your conversation?

A That her life would not be worth five cents out on the street, because, said, "They'll kill me for sure."

Q Okay; that's the entirety of the conversation at that part, is that correct?

A Well, she made that statement more than one



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time.

Q Do you know whether Helena Stoeckley has ever been an informant in drug cases?

A Well, I cannot prove it. I was only told this last week.

Q Now, she said, with respect to Greg Mitchell, that Dr. MacDonald knew Greg Mitchell; is that correct?

A Yes, sir; she said that this morning.

Q Do you know that to be true?

A Sir, I have no idea. Your word--your guess is as good as mine, or whatever. I don't know this man, but I do know her.

Q Okay. Is that all she said? She said, "I could name three people." What was that in reference to, as far as what Helena told you?

A Well, we was talking about the death of Dr. MacDonald's family, and from the conversation pertaining to this man's wife and two children--so whenever she said last night and again this morning, "I can name three people, but I doubt if I live if I do," you know, and I'll tell everybody here I begged her to come in here and do it--begged her to come in here and do it.

Q Now, one of these three people that she could name--is that Greg Mitchell one of those?



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A Sir, I don't know. She did not name three people. She just said three people.

Q Do you know what people in the past Helena Stoeckley has named in connection with this case?

A Well, the only name that I am familiar with is Mazzadozy (sic) or Mazzaroozy (sic) or some kind of, you know, funny name. I know it is not Irish, but-- anyway, she is deathly scared of this man.

She said that--she just fringes (sic) whenever you mention his name.

Q What was Helena's emotional state during these times that you were talking to her?

A Calm to just nervous and upset; just back and forth.

Q Was she crying at any time?

A On a couple of occasions I remember tears, you know, her eyes watering; but as, you know, continuous crying, no.

MR. MURTAGH: That's all, Your Honor.

MR. SEGAL: May I, Your Honor--one matter raised by the Government.

THE COURT: Yes, sir.

R E D I R E C T E X A M I N A T I O N 12:47 p.m.

BY MR. SEGAL:

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Q Did she tell you about someone hitting her in the nose?

A Well, no. No one hit her in the nose. Her nose injury came whenever she fell and she was by herself whenever that happened.

Q No, I'm asking you about anything else---

A (Interposing) But she got a shiner up here where somebody, she said--whenever she--at this Downtowner on a Friday evening or Saturday morning--I didn't ask her just what hour--whether it was daylight or dark.

But anyway, she went to get some ice, and she said somebody comes there and hit her in the face with his fist.

Q That's how she got hit in the eye and got her black eye?

A Yes, sir. That happened at the Downtowner.

MR. SEGAL: All right. I have nothing further of this witness, Your Honor.

THE COURT: Anything else?

R E C R O S S E X A M I N A T I O N 12:48 p.m.

BY MR. MURTAGH:

Q Mr. Underhill, did you see her struck?

A No, I did not.

Q Do you know who did it?



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A No, sir, I do not.

Q Did she say who did it?

A No, sir.

Q Ernest Davis, her boyfriend--did he subsequently leave town to your knowledge?

A To my knowledge, he left Sunday on a bus to go to Walladoola (sic), South Carolina, or someplace.

Q Do you know who made the arrangements for that?

A Who made the arrangements?

Q Uh-huh (yes).

A Well, he didn't have no money to go home on, and his only source was to borrow it from a total stranger, and that's me.

And I loaned it to him in good hopes and faith that he will return it one day, because my money's hard to come by.

MR. MURTAGH: That's all, Your Honor.

MR. SEGAL: Thank you; you may step down. Your Honor, in regard---

(Witness excused.)

THE WITNESS: (Interposing) Thank you, Your Honor.

MR. SEGAL: ---to this matter of proof, I want to make it clear that this is taken in the

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1 context that we intend to call an additional witness
 2 with more explicit further statements given at the same
 3 time in which Ms. Stoeckley makes further admission as to
 4 her knowledge and who's involved in these crimes.

5 She has stated in the other statements why
 6 she was afraid to tell it here in court--why she refused
 7 to tell it in court.

8 THE COURT: I will let you call that
 9 witness, too.

10 MR. SEGAL: Well, does Your Honor want
 11 us to do that on voir dire also, or may I not call that
 12 witness---

13 THE COURT: (Interposing) Well, yes.
 14 I am going to require anything that is purported to
 15 come from this Stoeckley witness to be done in advance
 16 of the jury's hearing it.

17 Right now, we are going to take a recess
 18 until 2:30.

19 (This proceeding was recessed at 12:49 p.m.,
 20 to reconvene at 2:30 p.m., this same day.)

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FURTHER PROCEEDINGS 2:30 p.m.

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

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

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

THE COURT: Well, call that witness.

(Whereupon,

WENDY PHYLIS ROWDER

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

DIRECT EXAMINATION 2:32 p.m.

BY MR. SEGAL:

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

A I am.

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

A Yes, I do.

Q What other degree do you hold?

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A I hold a Doctor of Philosophy in Speech.

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

A Yes, I am.

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

A I did.

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

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

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

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

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

A I did.

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

A Yes.

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

2 A Yes, I did.

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

5 A Yes, Mr. Ernest Davis.

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

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

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

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

18 Q That was his suitcase or her suitcase?

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

21 Q She put his belongings in a suitcase?

22 A Yes.

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

25 A Yes, I did.

1 Q About how long were you there?

2 A Several hours.

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

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

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

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

16 Q Speaking to you?

17 A Speaking of me, yes.

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

20 A Yes, I did.

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

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



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That is the best I can do.

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

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

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

A Yes.

Q Do you have those with you?

A I do.

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

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

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driveway."

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

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

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1 BY MR. SEGAL:

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

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

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

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

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

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

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

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

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

10 A Yes.

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

13 A She was asked to leave by the manager.

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

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

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

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

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

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

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

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

6 A Yes; I did.

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

9 A Not initially, no.

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

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

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

17 A At the Hilton?

18 Q The Hilton motel.

19 A Yes.

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

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

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

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

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

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

9 Q How did that take place?

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

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

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

23 MR. SEGAL: I have no further questions.

24 THE COURT: Any questions of this
25 witness.

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MR. BLACKBURN: Yes, sir. I would be

the prosecutor.

CROSS - EXAMINATION 2:40 p.m.

BY MR. BLACKBURN:

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

A Yes.

Q About 11:00 or 11:30?

A Yeah.

Q At the Journey's End?

A Yes.

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

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

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BY MR. BLACKBURN:

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

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

Q Okay, I put that down.

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

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

THE COURT: (Interposing) But the first time, did you not say, "I still think I could have been there," is what you said.

THE WITNESS: Well, if I were reading-- yeah, "I still think I could have been there that night," right.

BY MR. BLACKBURN:

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

A She said a rocking horse.

MR. BLACKBURN: Your Honor, at this point I want to hand up to the witness the August issue, the front page, of Detective magazine, and turn to page 19. It purports to be a story about this murder, and if you would look, please, on page 19, the top photograph, if you would tell us what you see in it?

#19 p2

1 A I clearly see a rocking horse.

2 Q And would you read what is written under-

3 neath?

4 A "Dramatic photo through the window of slain

5 children's room keynoted tragedy initially.

6 It was accented again as Green Berets car-

7 ried coffins of victims to funeral services

8 in chapel at Fort Bragg."

9 Q Ms. Rowder, do you have any personal know-

10 ledge as to whether or not that particular photograph

11 ever appeared in either the Fayetteville or Raleigh

12 newspapers shortly after the murders?

13 A Absolutely no idea.

14 Q Now, you stated I believe at this time this

15 morning that she remembered something about being in the

16 driveway, is that correct?

17 A That's correct.

18 Q Did she say which driveway?

19 A No.

20 Q Have you heard any of her testimony?

21 A Yes.

22 Q Do you recall that testimony--do you recall

23 her testifying anything about the driveway?

24 A No.

25 Q You don't recall anything about her standing



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1 in the driveway with Greg Mitchell?

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

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

7 A Yes.

8 Q When did that occur specifically?

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

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

13 A Yes.

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

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

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

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

24 A Yes; I knew that.

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



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she ever say definitely, "I was there."

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

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

A Could have been.

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

A It was in that conversation.

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

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

Q (Interposing) This was on and off?

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



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BY MR. BLACKBURN:

Q Now, was Mr. Underhill with you at this time?

A Neither one.

Q The two of you were alone?

A Uh-huh.

Q When did you go to the Hilton specifically?

A I can't give you the time, but when her nose stopped bleeding.

Q Was that early afternoon?

A Yeah, I would say around 2:00--1:30 or 2:00. It is a guess.

Q Excuse me?

A That is a guess.

Q You were with her, then, I guess, about two-- two and a half hours at the Journey's End; is that correct?

A Yes.

Q And then you and Mr. Underhill took her to the Hilton?

A Uh-huh.

Q How long did you stay with her at the Hilton?

A We just went up to the room to check her in and then we went downstairs to get Mr. Underhill's

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belongings from the Downtowner.

Q So, he checked into the Hilton?

A Yes.

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

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

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

A Yes.

Q She fell in the bathroom; is that accurate?

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

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

A No.

Q When did she next talk to you?

A In the car at the Capital Motor Inn.

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

A Yes, when she brought up the conversation.



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

2 A Uh-huh.

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

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

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

10 A No.

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

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

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

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

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

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

25 MR. BLACKBURN: No further questions, Your

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Honor.

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

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

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

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

BY THE COURT:

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

A I am, Your Honor.

Q And that you are from California?

A I am now, yes.

Q Where do you live in California?

A In San Francisco.

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

A Only in reference to this case.

Q Just this one case?

A Uh-huh.

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

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

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

5 A Yes.

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

8 A Thank you.

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

12 A No.

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

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

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



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everybody about these things that you are telling

me and get this off your mind so to speak?"

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

BY THE COURT:

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

A Of course.

Q But she never did say that?

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

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

A Yes; I was.

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

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

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

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open season.

MR. SEGAL: I have nothing further of
this witness, Your Honor.

THE COURT: How about you, Mr.
Blackburn?

MR. BLACKBURN: I don't think so!

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

THE COURT: Let the witness step down.

(Witness excused.)

MR. SEGAL: Now, at this point, Your
Honor, there are two things: one, I want to make a
brief representation to the Court on the record as time
meant to ask very briefly to be heard by Your Honor in
regard to the significance, if any, to be given to the
testimony of the last two witnesses taken on voir dire.

THE COURT: Before you begin, are
there more other witnesses of this particular character
that you will be bringing in?

MR. SEGAL: Pardon me, Your Honor.

(Pause.)

MR. SEGAL: I think not, Your Honor.
This represents to the best of my knowledge---

THE COURT: (Interposing) The reason
I inquire is because I think that argument relative to



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

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

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

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

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

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

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

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

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

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condition--that she had a black eye and that

apparently something had happened at the swimming pool

which in the view of the manager of that motel--that

person is here as a matter of fact, Your Honor, if you

desire to hear from her--but in the view of the manager

of the motel it was not a friendly incident.

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MR. SEGAL: (Continuing) At that

point, my concern is that having spent so long and so much effort to locate Helena Stoeckley, I was not about to let anyone harm her if I could avoid that.

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

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

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

MR. BLACKBURN: We don't have anything.

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

MR. BLACKBURN: No.

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



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

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

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

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

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

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

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

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

25 MR. SEGAL: We have noticed the

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

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

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

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

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

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

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



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And I do just, in concluding, say to

Your Honor, I know your feeling that it would be a tragedy for all concerned for this case, with all the years that have gone by and all the effort that has gone into it, to not properly and fully resolve the issues that are here.

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

24 THE COURT:

Any response?



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