

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

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

UNITED STATES OF AMERICA .
 .
 v. .
 . September 25, 2012
 JEFFREY R. MACDONALD, . Wilmington, NC
 Defendant/Movant .

***** CORRECTED TRANSCRIPT PURSUANT TO COURT ORDER *****

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

APPEARANCES:

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T A B L E O F C O N T E N T S

<u>CLOSING ARGUMENTS</u>	<u>PAGE</u>
MR. WIDENHOUSE	1243
MR. MURTAGH	1297
MR. BRUCE	1351
MR. WIDENHOUSE	1396

EXHIBITS

<u>DEFENSE</u>	<u>DESCRIPTION</u>	<u>PAGE - ADMITTED</u>
5115	LETTER FROM JUDGE DUPREE TO MS. ROUDER	1243

<u>BENCH CONFERENCES</u>	<u>PAGE</u>
	NONE

September 25, 2012

P R O C E E D I N G S

9:00 A.M.

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(DEFENDANT PRESENT.)

THE COURT: GOOD MORNING, EVERYONE. PLEASE BE SEATED. YOU HAVE RESTED, MR. WIDENHOUSE?

MR. WIDENHOUSE: I'M SORRY?

THE COURT: YOU HAVE RESTED YOUR CASE?

MR. WIDENHOUSE: YES, SIR.

THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR FROM YOU.

MR. WIDENHOUSE: WELL, I GUESS I HAVEN'T COMPLETELY. I WILL ALERT THE COURT THAT WE DID GET A COPY LAST NIGHT OF THE LETTER THAT WENDY ROUDER REFERRED TO THAT JUDGE DUPREE HAD WRITTEN HER. WE SENT A COPY TO THE GOVERNMENT WHEN WE GOT IT LAST NIGHT. AND WE'VE MARKED THAT AS EXHIBIT 5115. AND SO WE WOULD OFFER THAT AS PART OF THE EVIDENCE AS A WHOLE.

THE COURT: ALL RIGHT. IT'S ADMITTED. NOW, YOU'VE RESTED?

(DEFENSE EXHIBIT NUMBER 5115 WAS OFFERED AND ADMITTED INTO EVIDENCE.)

MR. WIDENHOUSE: MAY IT PLEASE THE COURT, THIS CASE HAS BEEN AND UNDOUBTEDLY WILL CONTINUE TO BE ONE OF FASCINATION AND PUBLIC CURIOSITY. IT HAS SPAWNED BOOKS. IT HAS SPAWNED MOVIES AND ENDLESS COMMENTARY.

IT IS MOST CRITICAL TO OUR CLIENT, JEFFREY MACDONALD, AND SIMILARLY IT IS IMPORTANT TO THE GOVERNMENT.

September 25, 2012

1 BUT THE TASK FOR THE COURT IS TO SET ASIDE THE HYPE AND THE
2 CURIOSITY AND FOCUS ON THE FACTUAL AND LEGAL ISSUES IN A CALM
3 AND SOBER WAY.

4 AS DIFFICULT AS IT MAY BE, THE COURT MUST TREAT THIS
5 MATTER AS AN ORDINARY, RUN OF THE MILL CRIMINAL CASE, ASSUMING
6 THERE IS ANY SUCH THING AS AN ORDINARY, RUN OF THE MILL
7 CRIMINAL CASE.

8 WHEN ALL IS SAID AND DONE, THE COURT MUST EVALUATE
9 THE EVIDENCE SUPPORTING THE TWO CLAIMS INVOLVED HERE IN THE
10 CONTEXT OF THE EVIDENCE AS A WHOLE, AS IT WOULD IN A CASE
11 WHERE THERE'S NO BOOKS, NO GLARE OF MEDIA LIGHTS, NO
12 OUTPOURING OF PUBLIC CURIOSITY. IT IS A DAUNTING TASK, BUT
13 ONE THAT WE KNOW THE COURT WILL PERFORM.

14 AS YOU KNOW, YOUR HONOR, WE HAVE BEEN HERE FOR THE
15 LAST WEEK AND CHANGE ON TWO BASIC CLAIMS, WHAT WE NOW CALL THE
16 UNSOURCED HAIRS CLAIM AND THE BRITT CLAIM, ALL WITHIN THE
17 AMBIT OF THE EVIDENCE AS A WHOLE.

18 AND AS I NOTED IN MY OPENING TO YOU LAST WEEK, THE
19 FOURTH CIRCUIT REMINDED US OF WHAT JUDGE MURNAGHAN SAID ABOUT
20 THIS CASE WHEN IT WENT UP ON DIRECT APPEAL, THAT IT PROVOKED A
21 STRONG UNEASINESS IN HIM. AND HE POINTED OUT THAT THE WAY IN
22 WHICH A FINDING OF GUILT IS REACHED IS, IN OUR ENDURING SYSTEM
23 OF LAW, AT LEAST AS IMPORTANT AS THE FINDING OF GUILT ITSELF,
24 AND MACDONALD WOULD HAVE HAD A FAIRER TRIAL IF THE STOECKLEY
25 RELATED TESTIMONY WOULD HAVE BEEN ADMITTED.

September 25, 2012

1 WE NOW KNOW FROM HEARING WENDY ROUDER TESTIFY AND
2 MENTION ON CROSS-EXAMINATION THAT SHE HAD RECEIVED A LETTER
3 FROM JUDGE DUPREE, WHICH WE'VE OFFERED INTO EVIDENCE AS
4 DEFENDANT'S EXHIBIT 5115, WHERE HE TELLS HER THAT HE WAS
5 CONFIDENT THE JURY WAS GOING TO ACQUIT.

6 SO, WE HAVE COMMENTS FROM BOTH AN APPELLATE JUDGE
7 AND THE TRIAL JUDGE, SUGGESTING AN UNEASINESS, A NOTION OF AT
8 LEAST THE CLOSENESS OF THE EVIDENCE WHEN IT WAS PRESENTED AT
9 TRIAL.

10 HAVING HEARD THE TESTIMONY OVER THE LAST SEVERAL
11 DAYS, I THINK JUDGE MURNAGHAN WOULD BE MORE THAN UNEASY, FOR
12 NOW THERE IS MORE THAN THE ABSENCE OF STOECKLEY RELATED
13 TESTIMONY. NOW, THERE'S THE ABSENCE OF TESTIMONY BY STOECKLEY
14 HERSELF. AND WE FOUND THAT DRAMATICALLY ILLUSTRATED
15 YESTERDAY, I THINK, IN THE TESTIMONY OF JERRY LEONARD.

16 OUR POSITION IS BOTH THE BRITT CLAIM AND THE
17 UNSOURCED HAIRS CLAIM TAKEN TOGETHER AND SEPARATELY IN THE
18 CONTEXT OF THE EVIDENCE AS A WHOLE NOW HAS SHOWN BY CLEAR AND
19 CONVINCING EVIDENCE THAT NO REASONABLE JUROR WOULD HAVE FOUND
20 JEFFREY MACDONALD GUILTY IF THAT JURY HAD HEARD THIS NEW
21 EVIDENCE, BOTH THE UNSOURCED HAIRS EVIDENCE AND THE EVIDENCE
22 REGARDING WHAT MS. STOECKLEY TOLD HER LAWYER IN THE -- UNDER
23 THE UMBRELLA OF THE ATTORNEY-CLIENT PRIVILEGE AND TOLD HER
24 MOTHER IN A SITUATION WHERE SHE BELIEVED SHE WAS DYING.

25 WE AGREED YESTERDAY, I THINK, ON THE STANDARD THAT

September 25, 2012

1 THE FOURTH CIRCUIT HAS DIRECTED US TO USE. AND AS I
2 UNDERSTAND IT, THE STANDARD TELLS US THAT -- OR THE TRACKING
3 THAT THE FOURTH CIRCUIT TELLS US WE MUST FOLLOW IS THAT WE
4 HAVE TO PRODUCE SOME NEW EVIDENCE THAT NO REASONABLE FACT
5 FINDER WOULD HAVE FOUND JEFFREY MACDONALD GUILTY OF THE
6 OFFENSE IF THEY HAD HEARD THE EVIDENCE. PUT ANOTHER WAY, NO
7 REASONABLE JUROR WOULD HAVE FOUND JEFFREY MACDONALD GUILTY
8 BEYOND A REASONABLE DOUBT IF THEY HEARD THAT EVIDENCE.

9 IT MEANS THAT THE NEW EVIDENCE, THE BRITT CLAIM,
10 PARTICULARLY WHAT WE HEARD YESTERDAY FROM JERRY LEONARD, AND
11 THE UNSOURCED HAIRS MUST SHOW BY CLEAR AND CONVINCING EVIDENCE
12 COMPELLING EVIDENCE OF A REASONABLE DOUBT. AND I THINK THAT'S
13 WHAT WE HAVE SHOWN THROUGH OUR EVIDENCE.

14 NOW, I THINK WE'VE TRIED TO KEEP THE FOCUS OF THE
15 HEARING CLEAR. I THINK WE TRIED TO KEEP IT ON THOSE TWO
16 CLAIMS.

17 IF WE HAD TRIED TO PUT ON LIVE WITNESSES ABOUT EVERY
18 PIECE OF EVIDENCE THAT MIGHT BE COMPRISED IN THIS NOTION OF
19 THE EVIDENCE AS A WHOLE, IF THE GOVERNMENT AND THE DEFENSE HAD
20 DONE THAT, WE'D BE HERE UNTIL SOME TIME IN 2013 TRYING TO GET
21 ALL THAT EVIDENCE IN.

22 I DON'T THINK THAT'S WHAT THE HEARING WAS ABOUT. I
23 THINK IT WAS ABOUT PUTTING ON EVIDENCE SO YOU COULD ASSESS
24 CREDIBILITY ABOUT THOSE TWO CLAIMS AND THEN YOU COULD WEIGH
25 THOSE TWO CLAIMS WITHIN THE CONTEXT OF THE EVIDENCE AS A

September 25, 2012

1 WHOLE, WHICH WAS WHY WE HAD ASKED TO BE ALLOWED TO DO A POST-
2 TRIAL MEMORANDUM PULLING WHAT WE BELIEVE TO BE THE EVIDENCE AS
3 A WHOLE TOGETHER AND, OF COURSE, THE GOVERNMENT WOULD BE ABLE
4 TO DO THE SAME. THEN THE COURT CAN LOOK AT THOSE DOCUMENTS,
5 EVALUATE THIS EVIDENCE AS A WHOLE, AND MAKE A DETERMINATION OF
6 WHETHER WE HAVE PROVED OUR CLAIM IN THIS CASE. AND, OF
7 COURSE, WE DO BEAR THE BURDEN OF PROOF. I CERTAINLY
8 ACKNOWLEDGE THAT.

9 DR. MACDONALD HAS ALWAYS STATED FROM THE VERY
10 BEGINNING THROUGH TODAY THAT FOUR INTRUDERS CAME INTO HIS
11 HOUSE ON THAT NIGHT.

12 THERE WAS SOME EVIDENCE OF INTRUDERS THAT WAS
13 PRESENTED AT TRIAL. WE NOW KNOW FROM THE TESTIMONY OF JERRY
14 LEONARD AND GENE STOECKLEY THAT HELENA STOECKLEY SAID IN TWO
15 SITUATIONS, THAT I WOULD SUBMIT TO THE COURT, EXHIBIT THE
16 HIGHEST DEGREE OF TRUSTWORTHINESS, A STATEMENT TO ONE'S
17 ATTORNEY CLOAKED WITH THE PROMISE OF PROTECTION OF
18 CONFIDENTIALITY, WHICH I THINK WHATEVER ONE MAY SAY ABOUT
19 JERRY LEONARD'S APPROACH IN THIS CASE AND HIS TESTIMONY
20 YESTERDAY, HE HONORED THE ATTORNEY-CLIENT PRIVILEGE. HE HAD
21 THAT INFORMATION IN 1979. HE DIDN'T DISCLOSE IT UNTIL YOU
22 DIRECTED HIM TO. AND IT WAS A DECISION, I THINK, YOU DID NOT
23 TAKE LIGHTLY TO REMOVE THE ATTORNEY-CLIENT PRIVILEGE. AND I
24 CERTAINLY WOULD AGREE THAT IT'S NOT SOMETHING THAT SHOULD BE
25 TAKEN LIGHTLY BECAUSE I THINK THE ATTORNEY-CLIENT PRIVILEGE IS

September 25, 2012

1 VIRTUALLY SACRED TO THOSE WHO PRACTICE LAW BECAUSE IN ORDER
2 FOR US TO BE ABLE TO REPRESENT SOMEONE EFFECTIVELY, WE HAVE TO
3 BE ABLE -- WE HAVE TO HAVE THEM BE ABLE TO TELL US THE TRUTH.
4 WE HAVE TO KNOW WHAT THEY KNOW. WE HAVE TO KNOW THE FACTS SO
5 THAT WE CAN PROVIDE EFFECTIVE REPRESENTATION.

6 IT'S THE SAME WAY WE TALK ABOUT A STATEMENT IN THE
7 COURSE OF MEDICAL DIAGNOSIS OR TREATMENT BEING INHERENTLY
8 TRUSTWORTHY. GENERALLY SPEAKING, PEOPLE AREN'T GOING TO LIE
9 TO THEIR DOCTOR ABOUT WHAT'S GOING ON BECAUSE THEY WANT THEIR
10 DOCTOR TO TREAT SOMETHING THAT'S WRONG WITH THEM. AND IN
11 ORDER TO ACHIEVE THAT, WE BELIEVE, THE LAW BELIEVES, THAT A
12 PATIENT WOULD TELL THE DOCTOR THE TRUTH SO THAT THEY WOULD GET
13 THAT KIND OF TREATMENT.

14 THE SAME THING IS TRUE ABOUT THE ATTORNEY-CLIENT
15 PRIVILEGE, WE PROTECT IT, WE HONOR IT, BECAUSE WE WANT CLIENTS
16 TO BE ABLE TO TELL THEIR LAWYERS THE TRUTH WITHOUT THE FEAR
17 THAT WHAT THEY TELL THEIR LAWYER WILL BE DISCLOSED.

18 SO, WE THINK THAT WHAT MS. STOECKLEY TOLD MR.
19 LEONARD IN 1979, THE MOST IMPORTANT TIME IN THE TIMELINE OF
20 THIS CASE, HAS THIS AMBIT OF TRUSTWORTHINESS ON TOP OF IT.

21 NOW, SHE MENTIONS THE BROKEN HOBBY HORSE. AND WE
22 HAVE HEARD TIME AND TIME AGAIN ABOUT WHETHER THE HOBBY HORSE
23 WAS BROKEN OR NOT, WHICH I THINK REALLY DOESN'T MAKE A WHOLE
24 LOT OF DIFFERENCE.

25 THE POINT IS NOT WHETHER SHE WOULD HAVE TESTIFIED

September 25, 2012

1 ABOUT A HOBBY HORSE AND WHETHER IT WAS BROKEN OR NOT AND
2 WHETHER -- IF SHE DID AND WAS WRONG ABOUT THAT, THAT MIGHT BE
3 FODDER FOR IMPEACHMENT, BUT THE IMPORTANCE OF HER STATEMENT TO
4 MR. LEONARD IS I WAS THERE. THOSE THREE WORDS, I WAS THERE.

5 AND IN THE WORDS OF ONE OF THE GOVERNMENT'S OWN
6 WITNESSES, MR. MCGINNISS, THAT WOULD HAVE BEEN THE HOLY GRAIL
7 FOR THE DEFENSE. THOSE WERE HIS WORDS, THE HOLY GRAIL.

8 AND, IN FACT, IT IS THE HOLY GRAIL FOR THE DEFENSE
9 IN THIS CASE BECAUSE IT WOULD BE EYEWITNESS EVIDENCE,
10 FIRSTHAND EVIDENCE, OF THERE BEING INTRUDERS WHICH WOULD HAVE
11 SUPPORTED DR. MACDONALD'S CLAIM ABOUT HOW IT HAD HAPPENED.

12 SO, I THINK MR. MCGINNISS, WHATEVER ELSE HE SAID, I
13 WOULD AGREE HE'S RIGHT ABOUT THAT, THAT THE STATEMENTS THAT
14 WE'VE HEARD MS. STOECKLEY GAVE TO HER LAWYER IN 1979, TO HER
15 MOTHER WHEN SHE THOUGHT SHE WAS DYING, WOULD HAVE, IN FACT,
16 BEEN THE HOLY GRAIL.

17 IF THE JURY HAD HEARD THOSE THREE WORDS, THE
18 CIRCUMSTANTIAL EVIDENCE OF INTRUDERS THAT WAS EXISTING AT
19 TRIAL, EVEN BEFORE THAT CIRCUMSTANTIAL EVIDENCE WAS AUGMENTED
20 BY OTHER EVIDENCE THAT HAS BEEN AMASSED SINCE TRIAL, WHICH
21 WILL BE IN THE -- ROLLED INTO THE AMBIT OF THE EVIDENCE AS A
22 WHOLE THAT YOU WILL BE CONSIDERING AND WEIGHING AGAINST, IT'S
23 CATALOGED IN ALL THOSE NOTEBOOKS THAT THE COURT WILL BE ABLE
24 TO PERUSE THROUGH AT ITS LEISURE, NOW AUGMENTED FURTHER BY THE
25 DNA EVIDENCE IN THIS CASE, THE UNSOURCED HAIRS, THE THREE

September 25, 2012

1 UNSOURCED HAIRS, UNDER THOSE CIRCUMSTANCES, NO REASONABLE JURY
2 WOULD HAVE CONVICTED DR. MACDONALD. THERE WOULD HAVE BEEN
3 DIRECT, EYEWITNESS TESTIMONY ABOUT INTRUDERS.

4 I MAY NOT AGREE WITH EVERYTHING THAT MR. MCGINNISS
5 SAID. I TOOK A LITTLE BIT OF OFFENSE AT THE NOTION THAT NORTH
6 CAROLINIANS SEEM TO BE HAYSEEDS AND HICKS, I GUESS, IN HIS
7 ESTIMATION.

8 YOU KNOW, I GREW UP A METHODIST PREACHER'S SON AND A
9 SON OF A FIRST GRADE SCHOOL TEACHER, AND I LIVED ALL OVER THE
10 HIGHWAYS AND BYWAYS OF WESTERN NORTH CAROLINA, MOVING EVERY
11 THREE OR FOUR YEARS. A LOT OF MY FRIENDS PRIMED A LOT OF
12 TOBACCO WHEN I WAS IN ELEMENTARY SCHOOL AND JUNIOR HIGH
13 SCHOOL. AND, I GUESS, THOSE ARE THE HAYSEEDS AND HICKS THAT
14 WE WERE HEARING ABOUT. I DON'T AGREE WITH THAT, BUT I DO
15 AGREE WITH HIS ASSESSMENT ABOUT HELENA STOECKLEY'S STATEMENT I
16 WAS THERE, THAT WOULD HAVE BEEN THE HOLY GRAIL IN THIS CASE.
17 AND HEARING THAT, NO REASONABLE JUROR WOULD HAVE CONVICTED.

18 WITH THOSE OBSERVATIONS IN MIND, I WANT TO TALK FOR
19 A FEW MINUTES ABOUT THE UNSOURCED HAIRS OR THE DNA CLAIM IN
20 THIS CASE.

21 AND, AGAIN, AS I SAID IN MY OPENING STATEMENT, I
22 THINK THE DNA ISSUE AS WELL AS THE BRITT CLAIM ARE ACTUALLY
23 VERY SIMPLE AND STRAIGHTFORWARD.

24 WE STIPULATED TO THE DNA BECAUSE IT SHOWS WHAT IT
25 SHOWS. YOU KNOW, PEOPLE EXAMINED WHAT THEY EXAMINED. NOBODY

September 25, 2012

1 DISPUTES THAT THEY EXAMINED CERTAIN ITEMS. NOBODY DISPUTES
2 THAT THEY DID THE TEST CORRECTLY. NOBODY DISPUTES THAT THE
3 ANALYSIS THAT WAS BROUGHT TO BEAR AFTER THE TESTING SHOWS WHAT
4 THE ANALYSIS SHOWED. SO, WE DIDN'T HAVE TO HAVE A WEEK OR TWO
5 OF TESTIMONY FROM THE VARIOUS PEOPLE SAYING, WELL, THIS IS
6 WHAT I GOT. I BROUGHT IT TO SO AND SO AND THEN SO AND SO
7 BROUGHT IT SO AND SO AND THEN SO AND SO PUT IT UNDER THE
8 MICROSCOPE AND THEN THEY RAN IT THROUGH THESE PROCEDURES AND
9 HERE'S WHAT THEY CAME UP WITH BECAUSE WE WERE ABLE TO
10 STIPULATE FOR THE COURT WHAT IT SHOWS.

11 BUT BY A LITTLE BIT OF BACKGROUND, YOU'LL RECALL,
12 YOUR HONOR, THAT IN 1997 DR. MACDONALD FILED A MOTION TO
13 REOPEN THE PROCEEDINGS IN THIS CASE AND THEY INCLUDED A
14 REQUEST FOR DNA TESTING. AND THIS COURT TRANSFERRED THE
15 REQUEST TO THE FOURTH CIRCUIT, TREATING IT AS A REQUEST FOR A
16 PREFILING AUTHORIZATION TO DO A SUCCESSOR 2255. THE FOURTH
17 CIRCUIT GRANTED THAT REQUEST.

18 THE DNA TESTING WAS SUBSEQUENTLY DONE BY THE ARMED
19 FORCES DNA IDENTIFICATION LABORATORY, WHICH WE REFER TO AS
20 AFDIL.

21 THERE WERE 28 SPECIMENS THAT WERE AVAILABLE FOR
22 TESTING. THEY WERE COMPARED TO THE KNOWN DNA SAMPLES OF
23 JEFFREY MACDONALD, COLETTE MACDONALD, KIMBERLEY MACDONALD AND
24 KRISTEN MACDONALD. I THINK EVENTUALLY COMPARED TO SAMPLES
25 FROM HELENA STOECKLEY AND GREG MITCHELL AS WELL.

September 25, 2012

1 THREE OF THE 28 COULDN'T BE MATCHED TO ANYBODY,
2 ANYBODY THAT WAS RELEVANT. THEY'RE IDENTIFIED BY LAB NUMBERS
3 THAT AFDIL ASSIGNED TO THEM -- AND I THINK I'VE GOT THIS RIGHT
4 -- 91A, 58A.1, 75A. THOSE ARE THE THREE UNSOURCED HAIRS THAT
5 ARE AT ISSUE IN THIS CASE FROM THE DEFENSE PERSPECTIVE.

6 AND BY UNSOURCED HAIRS, ALL THAT MEANS IS THEY
7 DIDN'T BELONG TO ANYONE IN THE MACDONALD FAMILY. THAT'S WHAT
8 IT MEANS BY UNSOURCED. SO WE HAVE THREE OF THOSE.

9 AND I WANT TO TALK BRIEFLY ABOUT THOSE THREE. THE
10 MOST IMPORTANT IS 91A. AND I'M GOING TO TAKE THE COURT
11 THROUGH SOME SHORT PIECES OF TRANSCRIPT SO THAT YOU'LL
12 UNDERSTAND WHAT WE THINK IS IMPORTANT ABOUT 91A.

13 DR. GEORGE GAMMEL WAS THE PATHOLOGIST WHO DID THE
14 AUTOPSY ON COLETTE MACDONALD. HE DESCRIBED THE PROCESS OF
15 TAKING FINGERNAILS SCRAPINGS AT AN AUTOPSY. AND ON TRIAL
16 TRANSCRIPT PAGE 2533 HE MADE THIS STATEMENT UNDER OATH, I DID
17 WHAT WOULD BE A ROUTINE FINGERNAIL SCRAPING. I TOOK A
18 FINGERNAIL FILE AND SCRAPED OUT ANY MATERIAL THAT WAS THERE.
19 I THOUGHT ON THE LEFT SMALL FINGER THERE MIGHT HAVE BEEN A
20 LITTLE FRAGMENT OF SKIN THERE AND I COLLECTED THAT AND PUT IT
21 IN ONE OF THE VIALS.

22 THE IMPORTANT LANGUAGE THERE IS WHAT'S A FINGERNAIL
23 SCRAPING. HE SAYS I TAKE A FINGERNAIL FILE AND I SCRAPE OUT
24 ANY MATERIAL THAT MIGHT HAVE BEEN THERE. THAT'S WHAT HE DID.

25 DR. WILLIAM HANCOCK WAS THE PATHOLOGIST WHO DID THE

September 25, 2012

1 AUTOPSY ON THE TWO CHILDREN KIMBERLEY AND KRISTEN, AS SHOWN IN
2 HIS TESTIMONY AT TRANSCRIPT PAGE 2562, WHERE HE SAYS HALFWAY
3 THROUGH THAT BLOCK QUOTE ON THE SCREEN, DIRECTING YOUR
4 ATTENTION TO THE 17TH OF FEBRUARY 1979, DID YOU HAVE OCCASION
5 TO CONDUCT AUTOPSIES ON THE BODIES OF KIMBERLEY AND KRISTEN.
6 HE SAYS HE DID. SO, HANCOCK CONDUCTS THE AUTOPSIES.

7 THEN WE GO TO PAGE 2602 AND HE TALKS ABOUT TAKING
8 FINGERNAIL SCRAPINGS. THE QUESTION IS ASKED, WERE FINGERNAIL
9 SCRAPINGS TAKEN? HE ANSWERS, I PARTICIPATED DIRECTLY IN THAT
10 AND SCRAPED THOSE. AS MY AUTOPSY PROTOCOL STATED, I GAVE
11 THOSE TO THE CRIMINAL INVESTIGATIVE DIVISION AGENTS THAT WERE
12 THERE AT THE TIME, THAT WERE AT THE AUTOPSY AT THE TIME.

13 SO, DR. HANCOCK IS DOING THE FINGERNAIL SCRAPINGS
14 AND HE SCRAPES THOSE AND GIVES WHATEVER HE SCRAPES OUT TO THE
15 CID AGENTS THAT WERE ON THE SCENE.

16 THE CID ON THE SCENE IS BENNIE HAWKINS, WHO ATTENDED
17 THE AUTOPSY FOR THE PURPOSES OF COLLECTING, AMONG OTHER
18 THINGS, THE FINGERNAIL SCRAPINGS.

19 WE GO TO TRANSCRIPT PAGE 3042. HE'S ASKED, AFTER
20 YOU TOOK THE PRINTS FROM MS. MACDONALD AT THE MORGUE, WHAT WAS
21 THE NEXT THING YOU DID, IF YOU RECALL, IN THE MORGUE? HIS
22 ANSWER WAS, THE NEXT THING I DID IN THE MORGUE WAS TO PICK UP
23 SOME ITEMS THAT HAD BEEN COLLECTED FROM THE BODIES OF THE
24 VICTIMS. AND THEN HE'S ASKED, DO YOU RECALL WHAT THESE ITEMS
25 WERE GENERALLY? AND HIS ANSWER IS, THE ITEMS WERE CLOTHING,

September 25, 2012

1 FINGERNAIL SCRAPINGS, HAIRS AND FIBERS COLLECTED FROM THE
2 BODIES.

3 SO, BENNIE HAWKINS IS AT THE AUTOPSY AND HE COLLECTS
4 THE FINGERNAIL SCRAPINGS THAT WERE SCRAPED FROM THE
5 FINGERNAILS OF THE VICTIMS IN THIS CASE.

6 AND HE DESCRIBES WHAT HE DOES THAT -- WITH THAT ON
7 PAGE 3050 OF THE TRANSCRIPT. HE RECEIVES THE ITEMS, ALL THE
8 LITTLE VIALS. IN OTHER WORDS, HE'S TAKING THE VIALS THAT HAVE
9 THE FINGERNAIL SCRAPINGS AND OTHER EVIDENCE THAT'S GATHERED AT
10 THE AUTOPSY. AS YOU CAN SEE IN THE ANSWER AT THE LAST PART OF
11 THAT BLOCK QUOTATION, AGAIN, FROM THE TRIAL TRANSCRIPT ON PAGE
12 3033, ALL THE LITTLE VIALS WERE TOGETHER AND I TOOK POSSESSION
13 OF THE VIALS CONTAINING WHAT THE DOCTOR TOLD ME IT CONTAINED
14 AT THAT POINT.

15 SO, HE'S GETTING THE FINGERNAIL SCRAPINGS AT THE
16 AUTOPSY. HE RECEIVES THEM FROM DR. HANCOCK, AS HE SAYS
17 FURTHER ON PAGE 3050. HE'S ASKED, DO YOU REMEMBER WHO IT WAS
18 THAT TURNED OVER THESE MATTERS TO YOU OR TOLD YOU WHAT THEY --
19 WHEN THEY WERE AVAILABLE -- THAT THEY WERE AVAILABLE. AND MR.
20 HAWKINS SAYS, I THINK I RECEIVED THESE ITEMS FROM DR. HANCOCK.

21 SO, WE'RE SHOWING THE MOVEMENT OR CHAIN OF CUSTODY
22 OF THESE PARTICULAR ITEMS.

23 THEN MR. HAWKINS -- CID AGENT HAWKINS SAYS WHAT HE
24 DOES WITH THOSE VIALS OR HOW HE MARKS THEM. TRANSCRIPT PAGES
25 3050-51, HE'S ASKED, DID YOU MAKE ANY MARKINGS ON THESE VIALS

September 25, 2012

1 WHEN YOU RECEIVED THEM TO SHOW THAT YOU HAD RECEIVED THEM AND
2 THEY WERE SEALED BY YOU? AND HIS ANSWER IS, YES, SIR. I
3 MARKED THEM JUST WITH MY INITIALS, BJH, 17 FEBRUARY '70.

4 NOW, THAT'S IMPORTANT BECAUSE THAT'S ESTABLISHING
5 HOW WE KNOW THAT A PARTICULAR VIAL WAS TAKEN AT THE AUTOPSY
6 AND HOW WE KNOW THAT IF A VIAL MARKED, BJH, 17 FEBRUARY 1970,
7 IS A VIAL FROM THE AUTOPSY WHEN IT IS LATER EXAMINED BY
8 SOMEONE ELSE.

9 THE VIALS ARE THEN SENT TO JANICE GLISSON, WHO
10 RECEIVED THEM ON JULY 27TH, 1970. AND I'M GOING TO ASK YOU TO
11 NOTE THE HIGHLIGHTED TEXT. AND THIS IS COMING FROM EXHIBIT
12 TWO, WHICH IS PART OF DOCKET ENTRY 217. SO, IT'S IN THE
13 RECORD IN THIS CASE, DOCKET ENTRY 217, EXHIBIT TWO.

14 IF YOU'LL NOTE THE HIGHLIGHTED TEXT, JANICE GLISSON
15 SAYS SHE RECEIVED 13 PLASTIC VIALS CONTAINING FINGERNAIL
16 SCRAPINGS, HAIR SAMPLES, FIBERS AND VAGINAL SMEARS TAKEN FROM
17 THE VICTIMS AT WOMACK ARMY HOSPITAL, MARKED ON THE BOTTOM OF
18 THE VIALS 17 FEBRUARY '70, BJH.

19 ALL RIGHT. SO, WE KNOW THAT SHE NOW HAS VIALS THAT
20 AGENT HAWKINS TOOK FROM THE AUTOPSY IN THIS CASE. AND THAT'S
21 IMPORTANT BECAUSE IT SHOWS THAT WHAT SHE'S GOING TO BE
22 EXAMINING ON JULY 27TH, 1970, ARE EVIDENCE ITEMS, PHYSICAL
23 ITEMS, FINGERNAIL SCRAPINGS AND WHATEVER MIGHT BE INCLUDED IN
24 THOSE SCRAPINGS, THAT CAME FROM THE AUTOPSY IN THIS CASE.

25 THE HIGHLIGHTED PORTION, AGAIN, SAYS 13 PLASTIC

September 25, 2012

1 VIALS CONTAINING FINGERNAIL SCRAPINGS, HAIR SAMPLES, ET
2 CETERA, ET CETERA, MARKED ON THE BOTTOM OF THE VIALS 17
3 FEBRUARY '70, BJH, WHICH WE KNOW MEANS SOMETHING THAT AGENT
4 HAWKINS GOT FROM THE DOCTORS AT THE AUTOPSY.

5 JANICE GLISSON THEN NUMBERS THESE VIALS ONE THROUGH
6 13. AND VIAL SEVEN HAD THE FINGERNAIL SCRAPINGS, LEFT HAND,
7 SMALLER FEMALE MACDONALD. AGAIN, WE'RE ON DOCKET ENTRY 217,
8 EXHIBIT TWO, WHICH WOULD BE KRISTEN MACDONALD, SMALLER FEMALE
9 MACDONALD.

10 GLISSON NOTES THAT VIAL SEVEN CONTAINS ONE HAIR AND
11 TWO FRAGMENTS -- ONE HAIR AND TWO FRAGMENTS THAT SHE'S
12 EXAMINING FROM VIAL SEVEN IN JULY OF 1970, THAT CAME FROM THE
13 AUTOPSY.

14 SHE CONDUCTED A MICROSCOPIC ANALYSIS OF THE CONTENTS
15 OF THE VIALS AND WITH REGARD TO VIAL SEVEN SHE CONFIRMED IT
16 CONTAINED FIBERS AND ONE LIGHT BROWN HAIR. AGAIN, LOOKING AT
17 THE SCREEN, DOCKET ENTRY 217, EXHIBIT TWO, ONE LIGHT BROWN,
18 NARROW HAIR.

19 ALL RIGHT. SO, SHE'S EXAMINING A HAIR THAT CAME
20 FROM THE FINGERNAIL SCRAPINGS OF KRISTEN MACDONALD WHEN SHE
21 GETS THE VIAL IN JULY OF 1970, THAT CAME FROM THE AUTOPSY,
22 OKAY?

23 THAT BECOMES HAIR NUMBER SEVEN. IT'S LATER MARKED
24 91A, WHEN IT'S TESTED BY AFDIL. THE RESULTS OF HAIR NUMBER
25 SEVEN, THE RESULTS OF 91A, WAS IT DID NOT MATCH JEFFREY

September 25, 2012

1 MACDONALD. IT DID NOT MATCH COLETTE, KIMBERLEY OR KRISTEN.
2 IT DIDN'T MATCH HELENA STOECKLEY OR GREG MITCHELL IT IS,
3 THEREFORE, AN UNSOURCED HAIR.

4 EVEN IF IT'S A NATURALLY SHED HAIR -- AND THERE IS
5 SOME CLAIMS BY DEFENSE LAWYERS EARLIER IN THE LITIGATION THAT
6 PERHAPS THIS WAS A HAIR THAT WAS FORCIBLY REMOVED. MAYBE THEY
7 SAID IT HAD ROOTS AND BLOOD OR WHATEVER. THE POINT IS THE
8 HAIR IS WHAT IT IS, OKAY? IT SHOWS WHAT IT SHOWS.

9 AND WHAT WE KNOW AND WHAT IS NOT DISPUTED ABOUT THIS
10 HAIR, IT CAME FROM THE FINGERNAIL SCRAPINGS OF KRISTEN
11 MACDONALD, NATURALLY SHED OR NOT, IS THAT IT IS AN UNSOURCED
12 HAIR. IN OTHER WORDS, A HAIR THAT COULD HAVE COME FROM AN
13 INTRUDER.

14 AND IT'S IMPORTANT TO KEEP IN MIND THAT DR. HANCOCK,
15 WHO DID THE AUTOPSY, TESTIFIED THAT SOME OF KRISTEN'S WOUNDS
16 COULD BE DESCRIBED AS DEFENSIVE WOUNDS.

17 I TAKE YOU TO PAGE 2577 OF THE TRIAL TRANSCRIPT.
18 DR. HANCOCK, IN ANSWER TO A QUESTION, SAID I WOULD SAY AS A
19 GENERAL REFERENCE THESE -- TALKING ABOUT WOUNDS ON KRISTEN
20 MACDONALD -- COULD BE DEFINED AS DEFENSIVE WOUNDS, OR THESE
21 COULD BE WOUNDS INCURRED IN THE PROCESS OF OTHER TYPES OF
22 WOUNDS HAPPENING. AS A GENERAL STATEMENT, I WOULD SAY THAT.

23 SO, HE IS TESTIFYING THAT THERE ARE DEFENSIVE-LIKE
24 WOUNDS ON KRISTEN MACDONALD AND WE KNOW THAT A HAIR DOESN'T
25 MATCH HER FATHER OR ANYBODY ELSE IN THE MACDONALD FAMILY IS IN

September 25, 2012

1 THE FINGERNAIL SCRAPINGS THAT ARE TAKEN FROM KRISTEN AT THE
2 AUTOPSY.

3 SO, OUR POINT, OUR CONTENTION, ON THIS HAIR IS THAT
4 WE HAVE AN UNSOURCED HAIR FROM KRISTEN'S FINGERNAIL SCRAPINGS
5 THAT ARE CONSISTENT WITH HER DEFENDING HERSELF AGAINST AN
6 ATTACKER AND THE ATTACKER, BASED ON THAT HAIR, IS NOT JEFFREY
7 MACDONALD. AND THAT IS POSITIVE CIRCUMSTANTIAL EVIDENCE OF AN
8 INTRUDER. IT IS POSITIVE CIRCUMSTANTIAL EVIDENCE OF SOMEONE
9 ELSE INFLICTING THE WOUNDS ON KRISTEN MACDONALD AND IT IS SOME
10 CIRCUMSTANTIAL EVIDENCE THAT THE JURY WOULD HAVE HAD AND BEEN
11 ABLE TO CONSIDER IN ASSESSING THIS THEORY, THE DEFENSE THEORY,
12 THAT INTRUDERS COMMITTED THE CRIME. AND THAT'S IMPORTANT.

13 I TOOK YOU THROUGH ALL THAT LABORIOUSLY JUST SO IT
14 WOULD BE CRYSTAL CLEAR THAT WE'RE TALKING ABOUT HAIR THAT CAME
15 FROM FINGERNAIL SCRAPINGS TAKEN AT THE AUTOPSY, PUT IN A VIAL
16 BY AGENT HAWKINS -- OR TAKEN IN A VIAL BY AGENT HAWKINS AND
17 THEN IT GOES TO JANICE GLISSON AND SHE EXAMINES IT IN JULY OF
18 1970. BUT THAT HAIR, WHEN IT'S RETESTED, TURNS OUT THAT THE
19 DNA DOESN'T MATCH JEFFREY MACDONALD OR ANYONE ELSE IN THE
20 FAMILY.

21 NOW, A COUPLE OF COMMENTS ABOUT 51A AND 75A. 51A IS
22 A HAIR THAT'S COLLECTED FROM KRISTEN'S BEDSPREAD. IT'S
23 UNSOURCED -- I'M SORRY. IT'S 58A.1. I'LL GET THESE NUMBERS
24 RIGHT ONE WAY OR ANOTHER. 58A.1 IS COLLECTED FROM KRISTEN'S
25 BEDSPREAD. IT'S UNSOURCED, MEANING IT DOESN'T COME FROM

September 25, 2012

1 ANYBODY IN THE MACDONALD FAMILY. AND EVEN IF IT'S NATURALLY
2 SHED, AS OPPOSED TO FORCIBLY REMOVED, IT COULD HAVE BEEN SHED
3 BY AN INTRUDER WHILE THAT INTRUDER WAS ATTACKING KRISTEN IN
4 HER BEDROOM. SO, THAT'S ANOTHER POSITIVE PIECE OF
5 CIRCUMSTANTIAL EVIDENCE SUPPORTING A DEFENSE THEORY OF
6 INTRUDERS.

7 FINALLY, 75A, THE HAIR THAT WAS FOUND IN THE TRUNK
8 LEG AREAS OF THE BODY OUTLINE OF COLETTE MACDONALD ON THE RUG
9 IN THE MASTER BEDROOM. SO, THAT'S WHERE IT WAS FOUND. YOU'VE
10 GOT THE BODY OUTLINE, THE HAIR IS THERE IN THE BODY OUTLINE,
11 IN THE TRUNK AND LEGS AREA OF THE OUTLINE. IT'S UNSOURCED,
12 MEANING IT DIDN'T COME FROM JEFFREY MACDONALD, DIDN'T COME
13 FROM ANYBODY IN THE MACDONALD FAMILY. AND, AGAIN, WHETHER
14 IT'S NATURALLY SHED OR FORCIBLY REMOVED, IT IS A PIECE OF
15 EVIDENCE THAT AN INTRUDER COULD HAVE SHED WHILE ATTACKING
16 COLETTE MACDONALD.

17 SO, WE'VE GOT THREE UNSOURCED HAIRS THAT COULD HAVE
18 COME FROM INTRUDERS, IT CERTAINLY DIDN'T COME FROM ANYBODY IN
19 THE FAMILY, THAT IS ADDITIONAL EVIDENCE, BEYOND EVIDENCE THAT
20 WAS PRESENTED AT TRIAL, BEYOND EVIDENCE, CIRCUMSTANTIAL
21 EVIDENCE OF INTRUDERS THAT IS PART OF THE EVIDENCE AS A WHOLE
22 IN THIS CASE. IT IS ADDITIONAL EVIDENCE SUPPORTING DR.
23 MACDONALD'S CONSISTENT ACCOUNT OF INTRUDERS BEING THE ONES WHO
24 PERPETRATED THESE CRIMES. AND IT'S IMPORTANT FOR THAT IT BE
25 CONSIDERED WITHIN THE AMBIT OF THE EVIDENCE AS A WHOLE IN THIS

September 25, 2012

1 CASE.

2 NOW, THAT'S THE DNA OR UNSOURCED HAIRS CLAIM. I
3 THINK IT'S FAIRLY SIMPLE. I THINK IT'S STRAIGHTFORWARD. I
4 THINK IT'S POSITIVE AND POWERFUL EVIDENCE, CIRCUMSTANTIAL
5 THOUGH IT MAY BE, THAT SUPPORTS THE THEORY OF INTRUDERS IN
6 THIS SITUATION.

7 NOW, I WANT TO TURN TO WHAT WE CALL THE BRITT CLAIM.
8 AND THERE ARE TWO COMPONENTS OF THIS CLAIM; ONE, THAT HELENA
9 STOECKLEY MADE A STATEMENT THAT SHE WAS IN THE HOUSE AT THE
10 TIME OF THE MURDERS, WHICH WOULD, AGAIN, IN MY OPINION, BE
11 PIVOTAL EVIDENCE, DIRECT EVIDENCE OF INTRUDERS. AND THE
12 SECOND PART OF THIS CLAIM IS THAT JIM BLACKBURN THREATENED
13 HELENA STOECKLEY. EACH OF THOSE PIECES OF THE BRITT CLAIM ARE
14 INDEPENDENTLY IMPORTANT AND SIGNIFICANT.

15 WITH REGARD TO WHETHER HELENA STOECKLEY TOLD JIM
16 BRITT THAT SHE WAS IN THE HOUSE DURING A TRIP FROM SOUTH
17 CAROLINA TO NORTH CAROLINA, WE HAVE NOW, AFTER HEARING THE
18 EVIDENCE IN THIS CASE, EVIDENCE THAT WE DIDN'T KNOW WE WERE
19 GOING TO HAVE UNTIL WE HAD THIS HEARING, THAT'S EVEN MORE
20 COMPELLING AND MORE RELIABLE FROM A SET OF SOURCES REGARDING
21 WHAT HELENA STOECKLEY SAID.

22 I'D LIKE TO REFER TO THESE AS SORT OF THE BOOKENDS
23 OF HELENA STOECKLEY'S STATEMENTS, AND THE BOOKENDS BEING THE
24 STATEMENT TO JERRY LEONARD THAT WE HEARD ABOUT YESTERDAY AND
25 THE STATEMENT TO HER MOTHER WHEN SHE THOUGHT THAT SHE WAS

September 25, 2012

1 DYING IN OCTOBER OF 1982. I LIKE TO DESCRIBE THOSE AS THE
2 BOOKENDS OF HELENA STOECKLEY'S STATEMENTS, ONE TO HER LAWYER
3 UNDER THE CLOAK OF PRIVILEGE AND ONE TO HER MOTHER WHEN SHE
4 THOUGHT SHE WAS DYING.

5 NOW, I'LL BEGIN BY TALKING A LITTLE BIT ABOUT WHAT
6 WE HEARD YESTERDAY FROM JERRY LEONARD. AND AS I WAS THINKING
7 ABOUT IT LAST NIGHT AND PROBABLY TALKING TO MY WIFE ON THE
8 PHONE, WHO IS ALSO A LAWYER AND FRANKLY A SMARTER LAWYER THAN
9 I AM. I DON'T LIKE TO SAY THAT TOO MUCH, BUT IT'S TRUE. AND
10 SHE WAS SAYING -- AND, OF COURSE, I COULDN'T TALK TO HER ABOUT
11 IT UNTIL LAST NIGHT BECAUSE YOU HAD TOLD US NOT TO SAY
12 ANYTHING ABOUT THE AFFIDAVIT, AND I DON'T THINK ANY OF THE
13 LAWYERS DID. AND SHE SAID, YOU KNOW, THAT MUST HAVE BEEN --
14 THAT COURTROOM MUST HAVE JUST BEEN ROCKING WHEN THAT TESTIMONY
15 HAPPENED. AND I THOUGHT, WELL, YOU KNOW, IT DIDN'T FEEL LIKE
16 IT WAS ROCKING TO ME. AND I GUESS THE REASON IT DIDN'T TO ME
17 WAS I ALREADY KNEW WHAT WAS COMING BECAUSE WE HAD HAD UNDER
18 SEAL JERRY LEONARD'S AFFIDAVIT SINCE LAST THURSDAY. AND SO WE
19 KNEW WHAT WAS GOING TO HAPPEN. AND IN TALKING TO HER, YOU
20 KNOW, I SAID, WELL, I GUESS IT WAS REALLY ONE OF THOSE PERRY
21 MASON MOMENTS, YOU KNOW, ONE OF THOSE TIMES WHEN SOMETHING
22 DRAMATIC HAPPENS IN THE COURTROOM THAT NOBODY KNOWS IS GOING
23 TO HAPPEN UNTIL PERRY SORT OF DRIVES SOME WITNESS TO CONFESS
24 FROM THE STAND.

25 AND I THINK REALLY IN SOME WAYS IT WAS THAT DRAMATIC

September 25, 2012

1 BECAUSE IT WAS SOMETHING THAT JERRY LEONARD HAD KEPT TO
2 HIMSELF FOR -- SINCE 1979. HE OBVIOUSLY BELIEVED IN THE
3 IMPORTANCE OF THE ATTORNEY-CLIENT PRIVILEGE, INSISTED ON YOU
4 REMOVING THE PRIVILEGE BEFORE HE TESTIFIED.

5 AND AS MR. LEONARD DESCRIBES WHAT HAD HAPPENED, BOTH
6 FROM READING HIS AFFIDAVIT AND ALSO JUST TALKING ON THE STAND
7 ABOUT IT, THERE'S -- YOU KNOW, WHAT HAPPENED WAS, I THINK,
8 IMPORTANT TO KEEP IN MIND, BUT ONE OF THE THINGS SORT OF IS
9 WE'RE TALKING ABOUT A CONTEMPORANEOUS STATEMENT. WE'RE
10 TALKING ABOUT SOMETHING THAT SHE TELLS HER LAWYER WHILE THE
11 MACDONALD TRIAL IS GOING ON. SO, IT'S KIND OF LIKE THE HEIGHT
12 AND THE APEX OF ACTIVITY IN THE CASE.

13 WE KNOW FROM HIS TESTIMONY AND WE KNOW FROM OTHER
14 EVIDENCE IN THE TRANSCRIPT THAT WE'VE BEEN BACK AND FORTH
15 THROUGH A NUMBER OF TIMES IN THE LAST SEVEN DAYS THAT HE WAS
16 APPOINTED AFTER SHE HAD TESTIFIED IN FRONT OF THE JURY. AND
17 WE KNOW THAT WHEN SHE TESTIFIED IN FRONT OF THE JURY SHE SAID
18 SHE DIDN'T HAVE A RECOLLECTION OF THAT NIGHT.

19 AND HE'S APPOINTED AND HE MAKES AN EFFORT TO GET UP
20 WITH HER AND, YOU KNOW, I DON'T KNOW WHETHER -- WHAT HOTEL
21 ANYBODY WENT TO ANYMORE. I USED TO LIVE IN DOWNTOWN RALEIGH,
22 LIVED THERE FOR 15 OR 20 YEARS. I KNOW WHERE ALL OF THESE
23 HOTELS WERE. AND I'M SO CONFUSED, THE ONLY THING I'M SURE OF
24 NOW IS THERE'S A ROUND, TALL HOTEL SOMEWHERE IN DOWNTOWN
25 RALEIGH. AND WHAT HOTEL WAS WHICH AND WHO WENT WHERE AT ANY

September 25, 2012

1 POINT IN TIME, IT SEEMED TO BE AWFULLY CONFUSING. BUT I'M NOT
2 SURE THAT THAT'S JUST NOT THE TALL WEEDS IN THIS CASE, JUDGE
3 FOX.

4 I MEAN, WHAT'S IMPORTANT WITH REGARD TO JERRY
5 LEONARD'S TESTIMONY IS HE KNOWS HE GOT APPOINTED THAT WEEKEND
6 ON SUNDAY. HE KNOWS HE MADE SOME EFFORT TO GET UP WITH MS.
7 STOECKLEY. IT SOUNDS LIKE HE THINKS HE GOT HER AT THE
8 COURTHOUSE. AND HE REMEMBERS TAKING HER HOME AND SHE SLEPT
9 THAT NIGHT ON A RECLINER OR A SOFA IN HIS HOUSE.

10 NOW, I SUBMIT, YOUR HONOR, THAT'S NOT SOMETHING ONE
11 IS LIKELY TO FORGET. I MEAN, FOR EXAMPLE, HE EXPLAINED HOW IT
12 WAS UNUSUAL TO GET APPOINTED UNDER THE CRIMINAL JUSTICE ACT TO
13 REPRESENT SOMEBODY WHO IS A MATERIAL WITNESS AS OPPOSED TO
14 BEING APPOINTED TO REPRESENT SOMEBODY WHO IS CHARGED WITH A
15 CRIME. SO, THAT WAS AN UNUSUAL SITUATION.

16 AND HE TALKED ABOUT, YOU KNOW, PART OF MY TASK, PART
17 OF MY ROLE WAS TO TAKE CARE OF HER, MAKE SURE SHE STAYED IN
18 RALEIGH, MAKE SURE SHE SHOWED UP FOR COURT. AGAIN, SORT OF A
19 DIFFERENT ROLE OR UNUSUAL TASK THAN ONE WOULD NORMALLY HAVE IN
20 A CJA APPOINTMENT.

21 HE'S WITH HER THE BETTER PART OF EACH DAY. HE SAYS
22 THAT. MOST OF THE TIME THEY SPEND AT THE COURTHOUSE.
23 PRESUMABLY, HE SAW HER AFTER COURT, OUTSIDE OF COURT AS WELL.

24 AND I'M GOING TO TAKE YOU TO JUST A COUPLE OF
25 PARAGRAPHS IN HIS AFFIDAVIT, WHICH IS EXHIBIT 5113, PARAGRAPH

September 25, 2012

1 NUMBER SEVEN, AND I KNOW YOUR HONOR SAW IT YESTERDAY, BUT I
2 THINK IT'S IMPORTANT TO HIGHLIGHT IT AS WE SORT OF, YOU KNOW,
3 TRY AND PULL ALL OF THIS TOGETHER.

4 HE SAYS IN PARAGRAPH NUMBER SEVEN THAT HE EXPLAINED
5 HIS ROLE TO HER, AS AN ATTORNEY, MADE SURE SHE REALIZED
6 EITHER SIDE COULD CALL HER AS A WITNESS ON A MOMENT'S NOTICE.
7 UNDERSTOOD THAT -- AND THIS IS MOST IMPORTANT. HE MADE SURE
8 THAT SHE CLEARLY UNDERSTOOD THAT WHAT SHE TOLD HIM WAS JUST
9 BETWEEN ME AND HER, AND PROBABLY NOT THE WAY I WOULD HAVE
10 PHRASED THAT CLAUSE, ME AND HER, BUT AT ANY RATE, THAT'S WHAT
11 HE SAYS, HE MADE SURE SHE KNEW IT WAS JUST BETWEEN THE TWO OF
12 THEM AND SHE SHOULD NOT TALK ABOUT THE CASE TO ANYONE EXCEPT
13 HIM.

14 SO, HE WANTED TO HELP HER. AND HE EXPLAINED TO HER
15 SHE NEEDED TO TELL HIM THE TRUTH AND ASSURED HER IT WOULD BE
16 PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE.

17 NOW, THERE WAS A LOT OF TESTIMONY THROUGHOUT THIS
18 HEARING ABOUT WHETHER THERE'S A STATUTE OF LIMITATIONS FOR
19 MURDER AND WHAT IT WAS IN 1979. AND, AGAIN, I DON'T THINK IT
20 MAKES A TREMENDOUS AMOUNT OF DIFFERENCE WHAT THE LAW WAS IN
21 1979. PEOPLE WERE TRYING TO UNDERSTAND IT AS BEST THEY COULD.
22 MR. LEONARD WAS TRYING TO UNDERSTAND IT AS BEST HE COULD. THE
23 IMPORTANT THING IS HE REMEMBERS TALKING TO HELENA STOECKLEY
24 ABOUT THE STATUTE OF LIMITATIONS, WHICH WOULD BE A CONCERN
25 SOMEONE WOULD HAVE IF THERE WAS A POSSIBILITY THAT THEY MIGHT

September 25, 2012

1 BE CHARGED WITH A PARTICULAR CRIME.

2 AND IN PARAGRAPH NINE OF THE AFFIDAVIT, WHICH I'LL
3 TAKE YOU TO NOW, SHE TOLD HIM SHE COULDN'T REMEMBER ANYTHING
4 ABOUT THE NIGHT. SHE REMEMBERS THE DAY BEFORE. SHE REMEMBERS
5 THE MORNING AFTER. TOTALLY BLANK ABOUT THAT NIGHT. AGAIN,
6 CONSISTENT WITH WHAT SHE HAD TESTIFIED TO ON FRIDAY. AND THAT
7 TESTIMONY, AND YOUR HONOR KNOWS, ACCORDING TO JOE
8 MCGINNISS, ACCORDING TO WADE SMITH, WAS NOT THE HOLY GRAIL.
9 HER NOT HAVING A RECALL WASN'T SOMETHING THAT WOULD HELP THE
10 DEFENSE.

11 AND AFTER -- AND I THOUGHT IT WAS INTERESTING THAT
12 MR. LEONARD SAID, WELL, YOU KNOW, WHEN SHE TOLD HIM THAT, WE
13 HAD A DISCUSSION ABOUT THAT SOUNDED KIND OF CONVENIENT. I
14 BELIEVE CONVENIENT WAS THE WORD HE USED. IT SOUNDED
15 CONVENIENT THAT YOU DON'T REMEMBER THE CRITICAL MOMENT. YOU
16 REMEMBER THE MORNING -- THE DAY BEFORE. YOU REMEMBER THE
17 MORNING AFTER. YOU DON'T REMEMBER THE CRITICAL MOMENTS. AND
18 THAT SEEMED TO HIM TO BE CONVENIENT. BUT THAT'S WHAT SHE TOLD
19 HIM ON MONDAY, WHEN THEY FIRST TALKED ABOUT HER INVOLVEMENT.
20 AND HE SAYS HE DROPPED THE SUBJECT. THAT WAS WHAT SHE SAID.
21 HE DIDN'T BADGER HER ABOUT IT. HE ACCEPTED THAT THAT WAS WHAT
22 SHE WAS GOING TO TELL HIM REGARDING WHAT SHE KNEW ABOUT THE
23 MACDONALD KILLINGS.

24 THEN WE GET TO PARAGRAPH 12, WHICH I THINK IS, YOU
25 KNOW, IS AWFULLY IMPORTANT. SOMETIME ON MONDAY AFTERNOON MS.

September 25, 2012

1 STOECKLEY ASKED ME WHAT I WOULD DO IF SHE ACTUALLY HAD BEEN
2 THERE. SO, SHE COMES BACK TO HIM. SHE INITIATES FURTHER
3 DISCUSSION. SHE ASKS HIM -- ASKED HIM, UNPROMPTED, WHAT ABOUT
4 IF I WAS THERE? WHAT IF IT'S A LITTLE WORSE THAN I TOLD YOU
5 EARLIER TODAY WHEN I SAID I COULDN'T REMEMBER? AND HIS
6 RESPONSE TO HER IS I CAN HELP YOU, I'M STILL YOUR LAWYER, BUT
7 YOU'VE GOT TO TELL ME THE TRUTH.

8 SO, ONCE AGAIN HE'S TELLING HER HE'LL HELP HER.
9 HE'S TELLING HER HE'S HER LAWYER. HE'S TELLING HER WHAT SHE
10 TELLS HIM, GOOD, BAD OR INDIFFERENT, IS PROTECTED BY THE
11 ATTORNEY-CLIENT PRIVILEGE. AND AT THAT POINT SHE TELLS HIM,
12 WELL, IT'S NOT AS BAD AS EVERYBODY THINKS, BUT I WAS THERE.
13 AND SHE TOLD HIM SHE WAS IN THE ROOM -- IN THE RESIDENCE AT
14 THE TIME OF THE MURDERS, BUT SHE DIDN'T ACTUALLY HURT ANYBODY
15 AND SHE DIDN'T REALLY ANTICIPATE THAT ANYBODY WAS GOING TO GET
16 KILLED.

17 SO, NOW WE HAVE A DRAMATIC CHANGE FROM MONDAY
18 MORNING TO MONDAY AFTERNOON WITH REGARD TO WHAT HELENA
19 STOECKLEY IS TELLING HER LAWYER, AGAIN, UNDER THE AMBIT OF THE
20 ATTORNEY-CLIENT PRIVILEGE. AND SHE SAYS SHE WAS THERE. SHE
21 GOES ON TO TALK ABOUT, WELL, I WAS PART OF A CULT. WE WERE
22 GOING TO, YOU KNOW, SORT OF ROUGH UP MACDONALD, YOU KNOW,
23 BECAUSE THEY WERE UPSET ABOUT, YOU KNOW, HOW HE WAS HANDLING
24 DRUG TREATMENT OR REHAB OR SOMETHING LIKE THAT. THINGS GET
25 OUT OF HAND AND PEOPLE ARE KILLED.

September 25, 2012

1 NOW, THE OTHER IMPORTANT THING ABOUT THAT STATEMENT
2 IS SHE SAID WHILE WE WERE THERE THE PHONE RANG AND I ANSWERED
3 IT AND I WAS TOLD TO HANG UP. OKAY, HER FRIENDS, THE PEOPLE
4 SHE WAS WITH, YELLED AT HER TO HANG UP THE PHONE.

5 AND THAT'S IMPORTANT BECAUSE WE HAVE OTHER
6 INFORMATION IN THE EVIDENCE AS A WHOLE IN THE RECORD IN THIS
7 CASE ABOUT A PHONE CALL TO THE MACDONALD RESIDENCE IN THE
8 MIDDLE OF THE NIGHT. DEFENSE EXHIBIT 5021, WHICH IS ALSO
9 DOCKET ENTRY 126-2.

10 SO, IT'S IN THE EVIDENCE IN THIS CASE, IT'S IN THE
11 EVIDENCE AS A WHOLE. IT'S THE DECLARATION OF JIMMY FRIER.
12 AND WE'VE GOT THAT UP ON THE SCREEN. AND I'D TAKE YOU TO --
13 ARE WE GOING TO THE SECOND PAGE?

14 MR. WILLIAMS: YES.

15 MR. WIDENHOUSE: THE SECOND PAGE, PARAGRAPH NINE.
16 AND MR. FRIER SAID I CALLED THE NUMBER WHICH HAD BEEN GIVEN TO
17 ME AND I ASKED FOR DR. MACDONALD. THE WOMAN WHO ANSWERED THE
18 PHONE WAS LAUGHING AND I HEARD SOMEONE IN THE BACKGROUND SAY
19 HANG UP THE PHONE. AND THE PHONE WAS DISCONNECTED AT THAT
20 TIME. HE SAYS HE MADE THE CALL, IN PARAGRAPH TEN, AROUND 2:00
21 O'CLOCK A.M. HE RECALLS THE TIME BECAUSE HE HAD TO LEAVE FOR
22 FORT BRAGG THE NEXT DAY.

23 SO, WE HAVE A DECLARATION UNDER OATH INDEPENDENT OF
24 HELENA STOECKLEY'S STATEMENT TO HER LAWYER THAT HE DIDN'T
25 REVEAL UNTIL YESTERDAY ON THE STAND THAT SHE TOLD HIM WHILE

September 25, 2012

1 SHE WAS THERE AT THE HOUSE THERE WAS A TELEPHONE CALL.

2 SO, WE'VE GOT A CONTEMPORANEOUS STATEMENT UNDER THE
3 PROTECTION OF THE ATTORNEY-CLIENT PRIVILEGE THAT INCLUDES A
4 TELEPHONE CALL THAT WAS MADE THAT SHE ANSWERED WHILE SHE WAS
5 IN THE MACDONALD HOUSE AND WE'VE GOT CORROBORATING EVIDENCE OF
6 THAT PARTICULAR PHONE CALL.

7 SO, WE HAVE NOT ONLY A STATEMENT OF INVOLVEMENT
8 UNDER A SITUATION OF TRUSTWORTHINESS, A STATEMENT THAT HELENA
9 STOECKLEY INITIATED, OKAY? IT'S NOT SOMETHING MR. LEONARD
10 DRUG OUT OF HER. SHE INITIATED IT. SHE WANTED TO BE SURE HE
11 WOULD HELP HER AND HE ASSURED HER HE WOULD NOT TELL ANYONE.

12 SO, WE'VE GOT FROM YESTERDAY, I THINK, AN
13 EXTRAORDINARY DEVELOPMENT IN THIS CASE, SOMETHING COMPLETELY
14 NEW THAT WE COULDN'T HAVE KNOWN BEFORE YESTERDAY WHEN YOUR
15 HONOR REMOVED THE ATTORNEY-CLIENT PRIVILEGE AND ALLOWED MR.
16 LEONARD TO TESTIFY, AGAIN, HER STATEMENT I WAS THERE. THE
17 HOLY GRAIL TO THE DEFENSE IN THIS PARTICULAR CASE.

18 NOW, WE ALSO KNEW BEFORE YESTERDAY FROM THE EVIDENCE
19 IN THIS CASE THAT HELENA STOECKLEY HAD MADE A SIMILAR
20 STATEMENT AT THE END OF HER LIFE WHEN SHE KNEW THAT SHE WAS
21 DYING AND WE GOT THAT TESTIMONY FROM GENE STOECKLEY WHEN HE
22 TESTIFIED IN THIS CASE.

23 NOW, YOUR HONOR, I SUPPOSE WE ALL HAVE OUR OWN SET
24 OF INDICIA OF CREDIBILITY. YOU KNOW, WHEN WE LISTEN TO
25 SOMEBODY SAY SOMETHING TO US, WHEN WE HEAR THEM TESTIFYING ON

September 25, 2012

1 THE WITNESS STAND, THERE ARE VARIOUS THINGS THAT EACH OF US
2 SEPARATELY AND DIFFERENTLY ASSIGN TO CREDIBILITY.

3 BUT I WOULD SUBMIT TO YOU GENE STOECKLEY WAS A MAN
4 OF TOTAL CREDIBILITY. HE CAME IN THIS COURT WITH NO STAKE IN
5 THIS CASE. HE DIDN'T GET 20 PERCENT OF ANY BOOK DEAL. AND HE
6 CERTAINLY DIDN'T APPEAR LIKE HE WANTED TO BE. BUT HE DID WHAT
7 WE EXPECT ORDINARY CITIZENS TO DO. THEY GET CALLED TO THE
8 WITNESS STAND. THEY COME IN. THEY DO THEIR BEST TO TELL THE
9 TRUTH, UNVARNISHED, NO PRETENSE. AND I SUBMIT TO YOU THAT'S
10 WHAT WE GOT FROM GENE STOECKLEY.

11 HE OBVIOUSLY HAD A STRONG EMOTIONAL ATTACHMENT TO
12 HIS MOTHER, AND THAT WAS UNMISTAKABLE. I MEAN, HOW MANY OF US
13 ARE GOING TO FORGET THAT HE OPENLY WEPT WHEN HE RECALLED BEING
14 TOLD WHEN SHE WAS IN THE HOSPITAL YOUR MOTHER IS NOT GOING TO
15 LEAVE HERE. AND HE LEAVES THE HOSPITAL AND HE GOES AND STARTS
16 MAKING FUNERAL ARRANGEMENTS. IS THERE ANYONE IN THIS
17 COURTROOM WITH HALF A HEART WHO WASN'T TOUCHED BY HIS
18 TESTIMONY? I SUBMIT TO YOU THAT NO ONE WITH A MODICUM OF
19 SENSITIVITY AND COMPASSION COULD HELP BUT FEEL HIS PAIN.

20 THAT SON WAS DEVOTED TO HIS MOTHER. AND THAT'S
21 IMPORTANT, JUDGE FOX, BECAUSE IT SEEMS TO ME THAT THAT SON
22 WOULD NOT HAVE ALLOWED ANYBODY TO PUT WORDS IN HIS MOTHER'S
23 MOUTH. THAT SON WOULD NOT HAVE ALLOWED ANYONE TO PERSUADE,
24 CAJOLE, COERCE HER INTO MAKING AND SIGNING A STATEMENT THAT
25 WAS ANYTHING OTHER THAN PRECISELY WHAT SHE WANTED TO SAY.

September 25, 2012

1 I THINK MARY BRITT WAS ANOTHER WITNESS OF HIGH
2 CREDIBILITY. AND LIKE MARY BRITT, HE DID WHAT WE EXPECT
3 PEOPLE TO DO, WHAT WE EXPECT GOOD CITIZENS TO DO, TO COME INTO
4 COURT, TAKE AN OATH, AND DO THEIR BEST TO TELL THE TRUTH.

5 AND I THINK THERE'S NOT ANY DOUBT THAT WHEN HE
6 FINALLY TALKED TO HIS MOTHER ABOUT HIS SISTER'S POTENTIAL
7 INVOLVEMENT IN THE MACDONALD SITUATION, HE WAS INTERESTED IN
8 FINDING OUT THE TRUTH. HE WANTED TO HEAR WHAT HIS MOTHER
9 THOUGHT WAS TRUE ABOUT THIS INVOLVEMENT OF HIS SISTER OVER THE
10 YEARS THAT CAUSED SUCH A PROBLEM FOR HIM GROWING UP AND CAUSED
11 SUCH DISCORD WITHIN THE FAMILY.

12 IT WOULD MAKE SENSE THAT HE WOULD HAVE THIS
13 DISCUSSION WITH HIS MOTHER WHEN HE DID, DURING HER DAYS AT THE
14 ASSISTED LIVING CENTER WHEN THEY WERE TALKING ABOUT IMPORTANT
15 THINGS. IMPORTANT THINGS LIKE REMEMBERING WHEN THEY WENT TO
16 THE BEACH AS A FAMILY, REMEMBERING HOLIDAYS, REMEMBERING
17 SIGNIFICANT THINGS THAT PEOPLE TALK TO THEIR LOVED ONES ABOUT
18 WHEN THEY THINK THE LOVED ONES ARE SORT OF COMING TO THE END
19 OF THEIR LIFE ON THIS EARTH AND THE TIME THEY'LL BE ABLE TO
20 SPEND TOGETHER.

21 SO, IT MAKES SENSE HE WOULD HAVE THAT KIND OF
22 DISCUSSION WITH HIS MOTHER ABOUT THESE VARIOUS THINGS AT THE
23 ASSISTED LIVING CENTER AFTER SHE HAD HAD THE SITUATION AT THE
24 HOSPITAL WHERE HE THOUGHT SHE WAS GOING TO DIE.

25 AND IT MAKES SENSE THAT HE WOULD TALK AT SOME POINT

September 25, 2012

1 WITH HER ABOUT THE MACDONALD SAGA, BECAUSE IT HAD SUCH AN
2 IMPACT ON HIM. AND THAT'S WHY I ASKED HIM, WANTED HIM TO
3 TESTIFY SO YOU COULD HEAR HIM, YOUR HONOR, EXPLAIN WHAT THE
4 WHOLE MACDONALD THING HAD TO DO WITH HIS FAMILY. YOU KNOW, IT
5 WAS SOMETHING THEY DIDN'T TALK ABOUT A LOT. IT WAS
6 PROBLEMATIC. HE TALKED ABOUT HOW HIS PARENTS HAD TO CHANGE
7 THEIR PHONE NUMBERS FROM TIME TO TIME. HE TALKED ABOUT HOW HE
8 WAS RIDICULED OR BULLIED OR TEASED AT SCHOOL BECAUSE OF HIS
9 SISTER'S ALLEGED INVOLVEMENT OR CONNECTION TO THE SITUATION.

10 NOW, SOME OF THE THINGS HE SAID MAY HAVE BEEN
11 SLIGHTLY OUT OF ORDER. YOU KNOW, IT'S KIND OF LIKE WHAT MARY
12 BRITT SAID, I'M NOT SURE I'VE GOT EVERYTHING PRECISELY RIGHT,
13 BUT I'M GIVING YOU THE BEST RECOLLECTION THAT I HAVE.

14 BUT DID ANYBODY MISS, AND I HOPE YOU DIDN'T, JUDGE
15 FOX, MISS THE COMMENT THAT HE MADE AT THE END OF HIS TESTIMONY
16 WHEN HE SAID HE WAS HERE TO TELL THE TRUTH, SOMETHING HIS
17 PARENTS TAUGHT HIM TO DO, SOMETHING WE'RE ALL SUPPOSED TO DO,
18 AND I THINK HE SAID WHAT'S THE POINT OF COURTROOMS AND
19 HEARINGS IF THAT'S NOT WHAT PEOPLE ARE GOING TO DO, COME IN
20 AND TELL THE TRUTH.

21 NOW, I DIDN'T PROMPT HIM TO SAY THAT AND I WAS
22 STRUCK WHEN HE SAID IT AND I ALMOST WANTED TO STAND UP AND SAY
23 AMEN. THAT'S WHAT IT'S ALL ABOUT. IT'S ABOUT PEOPLE COMING
24 INTO COURT, GETTING UP THERE UNVARNISHED, WITHOUT PRETENSE,
25 AND TRYING TO TELL THE TRUTH.

September 25, 2012

1 AND I CAN TELL YOU, I'D GIVE A KING'S RANSOM IF ALL
2 OF THE WITNESSES I EVER HAVE IN THE REST OF MY COURTROOM LIFE
3 HAVE HALF THE CREDIBILITY OF GENE STOECKLEY AND MARY BRITT.

4 AGAIN, HE TALKED ABOUT THE MACDONALD SITUATION IN
5 HIS HOUSE, IN HIS GROWING UP, HIS SISTER'S INVOLVEMENT, THE
6 EFFECT ON THE FAMILY, THE EFFECT ON HIM IN HIS SCHOOL AND
7 COMMUNITY, THE EFFECT ON HIS RELATIONSHIP WITH HELENA WHEN
8 THEY WERE -- WHEN HE WAS IN JUNIOR HIGH AND HIGH SCHOOL.

9 REMEMBER, HE TALKED ABOUT THE ENCOUNTER WITH HER,
10 WHERE HE CONFRONTED HER ABOUT THE KIND OF PROBLEMS HE WAS
11 HAVING BECAUSE OF HER POTENTIAL INVOLVEMENT AND HOW THE
12 COMMUNITY THOUGHT SHE WAS INVOLVED. REMEMBER, WHAT HE SAID,
13 SHE SAID YOU DON'T WANT TO MESS AROUND WITH ME BECAUSE I'VE
14 GOT FRIENDS AND AN ICE PICK. FRIENDS AND AN ICE PICK. THAT'S
15 A CONVERSATION HE REMEMBERED HAVING IN THIS ENCOUNTER WITH
16 HELENA.

17 HE EXPLAINED HOW HIS FATHER, WHO WAS CAREER
18 MILITARY, DIDN'T WANT TO TALK ABOUT IT. THEY DIDN'T TALK
19 ABOUT THAT IN THE FAMILY.

20 AND THAT'S IMPORTANT BECAUSE IT'S NOT UNTIL AFTER
21 HIS FATHER PASSES AWAY -- OF COURSE, HELENA HAS ALREADY
22 DECEASED IN 1983. HIS FATHER DIES IN 2002. AND IT'S NOT
23 UNTIL AFTER THAT THAT HIS MOTHER FEELS FREE TO DISCUSS WITH
24 HIM AT THE ASSISTED LIVING CENTER WHAT HAD HAPPENED. SO, IT'S
25 AFTER THAT HE HAS THE DISCUSSION WITH HIS MOTHER AND HE

September 25, 2012

1 EXPLAINS THAT SHE TOLD HIM THAT DEFINITELY HELENA CAME HOME IN
2 OCTOBER OF 1982, BROUGHT HER SON WHO WAS FIVE OR SIX YEARS
3 (SIC) OLD. SHE KNEW SHE WAS DYING. AND WE KNOW SHE -- SARA
4 MCMANN CAME INTO COURT AND SAID, YOU KNOW, HOW SICK SHE WAS
5 AND SHE KNEW SHE WAS DYING IN THE FALL OF 1982. SHE HAD BAD
6 HEALTH. SHE HAD CHRONIC HEPATITIS. AND THAT'S WHEN HELENA
7 CONFIDED IN HER MOTHER. THAT'S IMPORTANT.

8 NOW, THE GOVERNMENT KEEPS ASKING WITNESSES ABOUT
9 WHETHER HELENA JUNIOR DIED OF NATURAL CAUSES. AND I'M NOT
10 SURE WHAT THAT HAS TO DO ANYTHING BECAUSE WE'RE NOT -- THIS IS
11 REALLY LIKE A DYING DECLARATION. IT'S NOT PRECISELY WITHIN
12 THE CONTOURS OF A DYING DECLARATION, BUT IT HAS THOSE INDICIA
13 ABOUT IT. IT'S THE KIND OF COMMENT YOU WOULD MAKE TO A PERSON
14 IN CONFIDENCE, LIKE YOUR MOTHER, WHEN YOU KNOW YOU DON'T HAVE
15 LONG LEFT ON THE EARTH AND YOU WANT TO CLEAN THE SLATE. AND
16 THAT'S WHAT HAPPENED IN OCTOBER OF 1982.

17 AGAIN, IT'S NOT SURPRISING THAT HELENA SENIOR, MAMA,
18 WOULDN'T TELL ANYBODY ABOUT THAT CONVERSATION. IT'S NOT
19 SOMETHING THEY TALKED ABOUT IN THEIR FAMILY. IT'S ONLY AFTER
20 THE FATHER DIES, A NUMBER OF YEARS LATER, SHE'S IN THE
21 ASSISTED LIVING CENTER AND SHE'S HAVING SOME OF THESE
22 DISCUSSIONS WITH HER SON AND HE ASKED ABOUT IT AND TOLD HIM
23 WHAT HELENA HAD SAID.

24 IT WAS ALSO IMPORTANT THAT HE MENTIONED TO HER, YOU
25 KNOW, DO YOU WANT TO SAY ANYTHING TO ANYBODY ABOUT IT. AND

September 25, 2012

1 SHE SAID THAT SHE DID. AND HE SAID ON THE WITNESS STAND HE
2 DIDN'T DO ANYTHING IMMEDIATELY. HE WANTED TO THINK ABOUT IT.
3 AND AGAIN, THAT MAKES SENSE, JUDGE, BECAUSE THIS WASN'T
4 SOMETHING THEY WANTED TO TALK ABOUT. I'M SURE WHEN HE WAS
5 DISCUSSING THIS WITH HIS MOTHER THE FARTHEST THING FROM GENE
6 STOECKLEY'S MIND IS I'M GOING TO BE SITTING IN A FEDERAL
7 COURTROOM SOME YEARS FROM NOW HAVING TO GO THROUGH THIS AND
8 RECOUNT THIS INCIDENT AND TALK ABOUT ALL THIS INVOLVEMENT OF
9 OUR FAMILY, CONNECTION OF OUR FAMILY WITH THE MACDONALD
10 SITUATION. HE KNEW IT WAS LIKELY TO RESURRECT THE TALKS ABOUT
11 THIS.

12 BUT AFTER THINKING ABOUT IT, KNOWING HIS MOTHER
13 WANTED TO SAY SOMETHING TO SOMEBODY, HE CONTACTED KATHRYN
14 MACDONALD. KATHRYN MACDONALD DIDN'T CONTACT HIM. NOBODY WENT
15 LOOKING FOR HIM. HE IS THE ONE WHO CAME FORWARD. HE'S THE
16 ONE WHO INITIATED THE CONTACT AND THE ACTIVITY THAT LED TO THE
17 AFFIDAVIT.

18 IT'S ALSO IMPORTANT THAT HE SAID I SET GROUND RULES
19 BEFORE ANYBODY TALKED TO MY MOTHER ABOUT THIS. AND IS THERE
20 ANY REASON TO BELIEVE THAT WASN'T A TRUE STATEMENT WHEN HE
21 SAID IT? IS THERE ANY REASON TO BELIEVE HE WOULDN'T HAVE SET
22 GROUND RULES? THIS WAS A SON WHO WAS PROTECTIVE OF HIS
23 MOTHER. HE WAS OBVIOUSLY CLOSE TO HER. HE WAS EMOTIONALLY
24 ATTACHED TO HER. THIS WASN'T SOMETHING HE WOULD WANT TO COME
25 OUT UNDER THE ORDINARY COURSE OF AFFAIRS. SO, AFTER THINKING

September 25, 2012

1 ABOUT THAT, HE CALLS HER AND HE LIMITS THE ACCESS THAT HIS
2 MOM'S GOING TO HAVE.

3 AND HE EXPLAINED THE PROCESS OF HOW THE AFFIDAVIT
4 CAME ABOUT. THEY GO TO THE ASSISTED LIVING CENTER. HE TALKS
5 TO HIS MOM. HE THEN BRINGS KATHRYN MACDONALD IN THE ROOM.
6 THEY TALK ABOUT WHAT HIS MOTHER HAD SAID. THEY THEN MAKE
7 ARRANGEMENTS FOR HART MILES, WHO WAS REPRESENTING MR.
8 MACDONALD AT THE TIME, TO COME. HE COMES WITH HIS NOTARY.

9 AGAIN, WHEN THEY ARRIVE AT THE ASSISTED LIVING
10 CENTER GENE STOECKLEY IS STILL IN CHARGE. NOBODY'S COERCING
11 HIS MOTHER. SHE'S ACTING FREELY. HE DESCRIBES THE PROCESS OF
12 HOW THEY CAME ABOUT TO DO THE AFFIDAVIT. AND EVEN THOUGH SHE
13 CAN'T SEE VERY WELL, SHE CAN'T READ THE AFFIDAVIT, EVERYBODY
14 SAYS THAT WAS THERE THAT SHE WAS LUCID, COHERENT AND KNEW
15 EXACTLY WHAT SHE WAS DOING. AND HE EXPLAINS HOW HE READS THE
16 AFFIDAVIT TO HER WORD FOR WORD, LINE FOR LINE, PARAGRAPH FOR
17 PARAGRAPH. THEY GET IT THE WAY THAT HIS MOTHER SAYS THIS IS
18 WHAT I WANT TO SAY. AND ONLY AFTER HIS MOTHER IS SATISFIED
19 WITH IT, WORD FOR WORD, IS IT SIGNED AND NOTARIZED. AND GENE
20 STOECKLEY SIGNS IT. IT'S HIS SIGNATURE ON THERE. HE SAYS HE
21 ONLY SIGNED IT AFTER HIS MOTHER HAD SAID IT WAS OKAY, AND HE
22 WITNESSED HER SIGNATURE, AND WE BROUGHT IN THE NOTARY WHO
23 WITNESSED THE SIGNATURE AS WELL WHO EXPLAINED THE PROCESS.

24 AND I JUST WANT TO HIT A COUPLE HIGHLIGHTS, A
25 REMINDER ABOUT WHAT'S IN THIS PARTICULAR AFFIDAVIT, WHICH IS

September 25, 2012

1 DEFENSE EXHIBIT 5051. WE HAVE THAT UP ON THE SCREEN.

2 PARAGRAPH TWO TALKS ABOUT HOW SHE WAS VERY CLOSE TO HER
3 DAUGHTER AND HELD HER CONFIDENCES. PARAGRAPH FIVE, HELENA
4 STOECKLEY KNEW SHE WAS DYING WHEN SHE CAME TO HER MOM IN
5 OCTOBER OF '82, WANTED TO SET THE RECORD STRAIGHT, AND SAYS
6 SHE WISHED SHE HAD NOT BEEN PRESENT IN THE HOUSE, BUT SHE KNEW
7 THAT DR. MACDONALD WAS INNOCENT.

8 SO, AGAIN, WE HAVE THE SAME STATEMENT THAT SHE HAD
9 MADE TO HER ATTORNEY IN 1979; I WAS THERE. WHATEVER ELSE SHE
10 SAID, ROCKING HORSE, BROKEN, NOT BROKEN, TELEPHONE CALLS OR
11 NOT TELEPHONE CALLS, CANDLES OR NO CANDLES; I WAS THERE. AND
12 THAT'S WHAT THE JURY NEEDED TO HEAR. THEY NEEDED TO HEAR HER
13 SAY THAT SHE WAS THERE.

14 PARAGRAPH 11 OF THE AFFIDAVIT, AGAIN, JUST BRIEFLY,
15 DURING THIS CONFIDENTIAL SETTING AND DISCUSSION WITH HER
16 MOTHER, TOLD HER SHE COULDN'T LIVE WITH THE GUILT OF KNOWING
17 SHE HAD BEEN IN THE HOUSE, BUT LIED ABOUT IT AT TRIAL.
18 BECAUSE, AS WE KNOW, WHAT SHE SAID AT TRIAL WAS I CAN'T
19 REMEMBER, WHICH SHE IS NOW SAYING WAS NOT TRUE. AND BASED ON
20 WHAT SHE TOLD JERRY LEONARD IN 1979, WAS NOT THE TRUTH.

21 AND IN PARAGRAPH 13, SORT OF TO CONCLUDE MY -- YOU
22 KNOW, LOOK AT THIS PARTICULAR AFFIDAVIT, AS HER MOTHER, I FELT
23 HELENA WAS TELLING ME THE FULL TRUTH ABOUT BEING IN THE
24 MACDONALD HOUSE ON THE NIGHT OF THE MURDERS BECAUSE SHE WANTED
25 TO SET THE RECORD STRAIGHT, SET THINGS STRAIGHT, BEFORE SHE

September 25, 2012

1 DIED.

2 SO, I WOULD SUBMIT TO YOUR HONOR THAT AGAIN WE HAVE
3 A STATEMENT BY HELENA STOECKLEY THAT IS IMBUED WITH INDICIA OF
4 RELIABILITY. SHE'S COMING CLEAN. SHE'S SETTING THE RECORD
5 STRAIGHT, WHICH IS WHAT WE DO IN THIS JUDEO CHRISTIAN SOCIETY.
6 IT'S WHAT BELIEVERS DO NEAR THE END. WE WANT TO SET THE
7 RECORD STRAIGHT AND GET IMPORTANT MATTERS OFF OUR MIND AND
8 MAKE SURE PEOPLE KNOW WHAT WE THINK THE TRUTH IS.

9 SO, I THINK HER STATEMENT AT THE END OF HER LIFE IS
10 IMBUED WITH INDICIA OF RELIABILITY AND TRUSTWORTHINESS, MUCH
11 IN THE SAME WAY THAT HER STATEMENT TO HER ATTORNEY IN 1979 IS
12 IMBUED WITH INDICIA OF TRUSTWORTHINESS AND RELIABILITY.

13 NOW, SARA MCMANN ALSO TESTIFIED AND SHE CONFIRMED A
14 COUPLE OF CRITICAL FACTS. HELENA STOECKLEY KNEW SHE WAS
15 DYING. SHE ASKED SARA MCMANN TO TAKE CARE OF HER SON WHEN SHE
16 DIES. HER SON'S FIVE OR SIX MONTHS OLD AT THAT TIME. AND
17 THAT'S NOT SOMETHING YOU WOULD ASK SOMEBODY TO DO, I SUBMIT,
18 UNLESS YOU THOUGHT YOU DIDN'T HAVE MUCH TIME LEFT.

19 SO, I THINK IT IS CLEAR THAT HELENA STOECKLEY, IN
20 THE FALL OF 1982, KNEW SHE WAS DYING. DIES OF CHRONIC
21 HEPATITIS AND PNEUMONIA IN JANUARY OF 1983. SO, WE HAVE THIS
22 INDICIA OF RELIABILITY, AND ALSO SHE TELLS SARA MCMANN SHE WAS
23 THERE IN THE MACDONALD HOUSE.

24 SO, THOSE ARE WHAT I DESCRIBE AS THE BOOKENDS OF
25 HELENA STOECKLEY'S ACCOUNT OF HER INVOLVEMENT. SHE WAS THERE.

September 25, 2012

1 SHE TELLS HER LAWYER IN 1979, UNDER THE AMBIT -- UNDER THE
2 COVER OF CONFIDENTIALITY. SHE TELLS HER MOTHER IN 1982, IN
3 CONTEMPLATION OF DEATH, AND DIES IN JANUARY OF 1983.

4 AGAIN, THE HOLY GRAIL OF THIS PROOF OR SUPPORT OF AN
5 ACCOUNT OF INTRUDERS THAT THE DEFENSE DID NOT HAVE WHEN THIS
6 CASE WAS TRIED. I THINK THAT OUR EVIDENCE HAS SHOWN BY A
7 PREPONDERANCE OF THE EVIDENCE THAT MS. STOECKLEY ADMITTED
8 BEING IN THE HOUSE IN A TRUSTWORTHY AND RELIABLE WAY.

9 NOW, I WANT TO TALK FOR A COUPLE OF MINUTES ABOUT
10 JIM BRITT AND HIS AFFIDAVITS AND HIS STATEMENTS ABOUT THE
11 SITUATION. HE TELLS IN THE AFFIDAVITS AND IN HIS STATEMENT
12 UNDER OATH THAT HE WENT TO SOUTH CAROLINA TO ASSUME CUSTODY OF
13 HELENA STOECKLEY. THAT'S CONSISTENT IN ALL OF HIS AFFIDAVITS
14 AND STATEMENTS. NOW, CERTAINLY THERE ARE INCONSISTENCIES AND
15 I'M SURE WE'RE GOING TO HEAR ABOUT THOSE FROM THE GOVERNMENT.

16 WE OFFERED THOSE AFFIDAVITS AND I POINTED OUT THE
17 INCONSISTENCIES TO YOUR HONOR AS I WENT THROUGH THEM WITH MR.
18 SMITH ON THE STAND. SO, WE PUT THAT EVIDENCE BEFORE YOU, AS I
19 LIKE TO SAY, WARTS AND ALL.

20 AND TO SOME EXTENT, I THINK THE WARTS SUGGEST
21 THERE'S SOME RELIABILITY OR CREDIBILITY IN THE STATEMENTS
22 BECAUSE WHAT'S HAPPENING IS MR. BRITT'S ATTEMPTING TO GIVE HIS
23 BEST RECOLLECTION. AND I WOULD SUBMIT, IT DOESN'T MATTER IF
24 HE SAID HE WENT TO CHARLESTON OR GREENVILLE. THE IMPORTANT
25 POINT IS HE WENT TO SOUTH CAROLINA TO PICK UP A WITNESS. AND

September 25, 2012

1 THAT IS SUPPORTED BY HIS STATEMENT TO MARY BRITT IN 1979. AND
2 SHE GETS ON THE STAND AND SAID I REMEMBER DURING MACDONALD
3 TRIAL JIM SAID HE WAS GOING TO SOUTH CAROLINA TO GET A
4 WITNESS.

5 NOW, THERE'S SOME TESTIMONY THAT THE MEEHANS MADE
6 THIS TRANSPORT. BUT, AGAIN, THERE AREN'T ANY DOCUMENTS TO
7 SUPPORT THAT. THEY SAY THEY TAKE A MARSHAL'S VEHICLE. THERE
8 ARE NO RECORDS OF THAT. SO, ALL WE'VE GOT IS THEIR ACCOUNT
9 VERSUS JIM BRITT'S ACCOUNT.

10 AND ONE OF THE INTERESTING THINGS ABOUT THE
11 TRANSPORT IS, IF YOU LOOK AT GOVERNMENT EXHIBIT 2003, WHICH IS
12 UP ON THE SCREEN, AND YOU SCROLL DOWN A LITTLE BIT TO THE END,
13 IT SAYS ON AUGUST 13, U.S. MARSHAL JOE NEELEY, GREENVILLE,
14 SOUTH CAROLINA, ADVISED THAT THE SUBJECT -- THAT'S MS.
15 STOECKLEY -- HAD BEEN TRANSPORTED DIRECTLY FROM PICKENS COUNTY
16 JAIL TO RALEIGH. SO, HE'S TALKING ABOUT A DIRECT TRANSPORT.

17 NOW, WHAT THE MEEHANS DESCRIBED IS NOT A DIRECT
18 TRANSPORT. THEY TALK ABOUT SOMEBODY FROM SOUTH CAROLINA
19 BRINGS HER TO CHARLOTTE. THEY GO TO CHARLOTTE AND PICK HER UP
20 AND THEN GO TO RALEIGH. THAT'S NOT A DIRECT TRANSPORT.

21 THE ONLY PERSON WHO TALKS ABOUT A DIRECT TRANSPORT
22 IS JIMMY BRITT. SO, THERE IS SOME INDICATION THAT WHAT HE
23 SAYS IS TRUE.

24 AND AGAIN, I THINK IT'S IMPORTANT THAT MARY BRITT
25 RECALLS HIM GOING TO SOUTH CAROLINA TO PICK UP A WITNESS

September 25, 2012

1 BECAUSE IF WHAT SOMEONE WERE TO SUGGEST IS THAT JIM BRITT IS
2 MAKING THIS UP IN 2005, YOU ALMOST HAVE TO BELIEVE HE'S COMING
3 UP WITH A PLAN TO MAKE IT UP IN 2005 IN 1979, BECAUSE HE'S
4 TELLING HIS WIFE, HIS THEN WIFE, IN 1979, I'M GOING TO PICK UP
5 HELENA STOECKLEY. THERE WOULD BE NO WAY FOR HIM TO KNOW THAT
6 HE WOULD WANT TO COME FORWARD IN 2005, AND SAY HE MADE THE
7 TRANSPORT AND WENT TO SOUTH CAROLINA, SO THAT HE COULD HAVE
8 TOLD MARY BRITT ABOUT IT TO SORT OF IMBUE OR SUPPORT THIS -- I
9 ASSUME THE GOVERNMENT WILL CLAIM -- FALSE STATEMENT THAT HE
10 WENT THERE IN 2005.

11 SO, MARY BRITT'S TESTIMONY IS ABSOLUTELY CRITICAL TO
12 THIS NOTION OF WHAT JIMMY BRITT DID OR DID NOT DO. AND,
13 AGAIN, I WOULD SUBMIT TO YOU THAT WOMAN HAD NO MOTIVE TO COME
14 IN HERE AND TELL YOU ANYTHING BUT THE TRUTH.

15 AGAIN, SHE DIDN'T GET 20 PERCENT OF ANY BOOK DEAL.
16 SHE DIDN'T HAVE ANYBODY TO HELP OR PERSUADE. SHE CAME IN HERE
17 AND ANSWERED QUESTIONS DIRECTLY AND FORTHRIGHTLY. SHE DIDN'T
18 SHADE OR HEDGE HER ANSWERS, WHICH I THINK IS A HIGH MARK OF
19 CREDIBILITY.

20 AND I HAVE TO ADMIT I FELT A LITTLE BIT SORRY FOR
21 HER WHEN, YOU KNOW, SHE WAS ASKED ON CROSS-EXAMINATION ABOUT
22 THE CIRCUMSTANCES OF HER DIVORCE AND THE CLAIMS OF ADULTERY.
23 AND OBVIOUSLY THAT WAS VERY EMOTIONAL FOR HER. I'M NOT SAYING
24 IT WASN'T FAIR GAME, BUT, YOU KNOW, IT WOULD CERTAINLY HURT
25 HER TO HAVE TO TALK ABOUT THAT IN COURT.

September 25, 2012

1 BUT I THINK THAT ENHANCES HER CREDIBILITY FROM OUR
2 PERSPECTIVE BECAUSE SHE WOULD HAVE NO REASON TO WANT TO COME
3 IN HERE AND SUPPORT SOMETHING OR VERIFY SOMETHING THAT JIM
4 BRITT HAD SAID BASED ON WHAT ALL THAT'S HAPPENED.

5 I MEAN, CAN THERE BE ANY DOUBT THAT DURING THE TRIAL
6 OF JEFFREY MACDONALD IN 1979, MARY BRITT WOULD HAVE HAD NO
7 EARTHLY IDEA SHE MIGHT BE IN THIS COURTROOM 33 YEARS LATER.
8 IS THERE ANY DOUBT THAT WHEN SHE HEARD JIM BRITT SAY HE WAS
9 GOING TO SOUTH CAROLINA, SHE WOULD NEVER EVEN HAVE ENVISIONED
10 BEING CALLED AS A WITNESS HERE.

11 AND IT SEEMS TO ME SHE CAME HERE AND DID THE BEST
12 SHE COULD TRYING TO TELL THE TRUTH AND EXPLAIN WHAT SHE
13 REMEMBERED.

14 SO, I THINK WE HAVE CREDIBLE, POIGNANT AND POWERFUL
15 TESTIMONY FROM MARY BRITT THAT JIM BRITT DID THIS TRANSPORT IN
16 1979.

17 SHE ALSO REMEMBERS THAT WHEN HE CAME BACK FROM
18 MAKING THE TRANSPORT HE WAS EXCITED BECAUSE WHAT HELENA
19 STOECKLEY HAD SAID TO HIM INDICATED SHE WAS IN THE HOUSE. AND
20 YOU'LL RECALL AGAIN THE WORDS SHE USED WHEN SHE TESTIFIED,
21 SHE SAID HE SAID SHE DESCRIBED IT TO A T, TALKING ABOUT THE
22 MACDONALD HOUSE. OF COURSE, HE WOULD KNOW BECAUSE HE HAD BEEN
23 IN THE COURTROOM DURING THE MACDONALD TRIAL AND SEEN THE
24 PHOTOGRAPHS AND EXHIBITS. SHE RECALLS HIM SAYING SHE
25 DESCRIBED IT TO A T. AND THEN HE WAS DISAPPOINTED THE NEXT

September 25, 2012

1 DAY WHEN IT TURNED OUT SHE EITHER WASN'T ALLOWED TO TESTIFY OR
2 DIDN'T TESTIFY THAT SHE WAS, IN FACT, IN THE MACDONALD HOUSE.

3 I THINK, JUDGE FOX, MARY BRITT'S TESTIMONY IS WHOLLY
4 BELIEVABLE AND OF UTMOST IMPORTANCE BECAUSE IT IS CLEAR
5 SUPPORT FOR MR. BRITT HAVING MADE THE TRANSPORT.

6 ALTHOUGH, I HAVE TO SAY, ONCE WE HAVE JERRY
7 LEONARD'S TESTIMONY BOOKENDED BY GENE STOECKLEY'S TESTIMONY
8 ABOUT WHAT HIS MOTHER SAID, I DON'T THINK IT REALLY MATTERS
9 WHETHER HELENA STOECKLEY MADE ANY STATEMENTS TO JIM BRITT OR
10 NOT BECAUSE WE KNOW NOW, WHAT WE DIDN'T KNOW BEFORE YESTERDAY,
11 THAT JERRY LEONARD KNEW AND HAD HEARD IN A CONFIDENTIAL
12 SETTING THAT HELENA STOECKLEY TOLD HIM SHE WAS IN THE HOUSE.

13 NOW, THE OTHER PART OF THE BRITT CLAIM BESIDES THE
14 TRANSPORT AND STATEMENT FROM HELENA STOECKLEY TO JIM BRITT, IS
15 THIS NOTION ABOUT WHETHER JIM BLACKBURN MADE COMMENTS WHEN
16 THEY WERE INTERVIEWING MS. STOECKLEY IN THE PROSECUTION ROOM
17 THAT SHE WOULD HAVE INTERPRETED TO BE A THREAT.

18 NOW, THERE IS A CONFLICT IN THE EVIDENCE. MR.
19 BRITT'S AFFIDAVITS ARE CLEAR AND CONSISTENT THAT HE WAS IN THE
20 ROOM AND HEARD THE THREAT.

21 THE GOVERNMENT'S EVIDENCE TO THE CONTRARY COMES FROM
22 TWO PEOPLE; JIM BLACKBURN AND JACK CRAWLEY. AND I THINK WE
23 CAN ALL -- I HOPE WE CAN ALL AGREE THAT JIM BLACKBURN IS
24 MARKEDLY LACKING IN CREDIBILITY. AND I'M NOT GOING TO TAKE
25 THE COURT THROUGH ALL OF THE THINGS THAT HE SAID AND ADMITTED

September 25, 2012

1 DURING HIS EXAMINATION THAT SUGGEST LACK OF CREDIBILITY, BUT
2 WE KNOW HE FORGED NAMES ON -- JUDGES' SIGNATURES ON ORDERS.
3 HE ADMITTED THAT. WE KNOW HE FALSIFIED AND MADE UP COURT
4 DOCUMENTS AND FILES TO SHOW HIS CLIENTS. WE KNOW HE
5 EMBEZZLED. WE KNOW HE STOLE MONEY. AND WE KNOW HE MADE
6 PROMISES THAT HE DIDN'T KEEP. SO, THOSE ARE ALL INDICIA OF A
7 LACK OF CREDIBILITY AND UNRELIABILITY.

8 BUT I'M GOING TO SAY THIS, I DON'T THINK THOSE
9 INDICATIONS OF UNRELIABILITY ARE THE FULL STORY WITH RESPECT
10 TO MR. BLACKBURN AND CREDIBILITY.

11 IT WOULD SEEM TO ME ON THE STAND HE TRIED TO SOFT
12 PEDAL HIS BAD CONDUCT. HE OBFUSCATED. HE DIDN'T ANSWER
13 QUESTIONS DIRECTLY. AND I THINK THAT IS, AGAIN, AN INDICATION
14 OF A LACK OF CREDIBILITY. HE FEIGNED HIS DESIRE FOR NOTORIETY
15 AND WENT RIGHT OUTSIDE AND HELD A PRESS CONFERENCE ON THE
16 COURTHOUSE STEPS.

17 SO, THE THINGS WE'RE HEARING FROM MR. BLACKBURN, TO
18 ME, SUGGESTED A LACK OF FORTHRIGHTNESS AND A LACK OF
19 CREDIBILITY, IN ADDITION TO WHAT WE KNOW WERE MISSTATEMENTS.

20 AND ONE OF THE MOST INTERESTING THINGS, IT SEEMED TO
21 ME, HE SAID, YOU KNOW, AFTER QUESTION, AFTER QUESTION, AFTER
22 QUESTION IS, WELL, THAT WAS THEN, MR. WIDENHOUSE, AND I DON'T
23 DO THAT ANYMORE. YOU KNOW, I WROTE A LETTER OF APOLOGY TO THE
24 BAR. AND WHEN HE SAID THAT, I THOUGHT, WELL, HE OBVIOUSLY
25 DOESN'T KNOW THAT I KNOW ABOUT BROOKE MORROW. HE OBVIOUSLY

September 25, 2012

1 DOESN'T KNOW THAT I KNOW THAT HE TOOK \$50,000 FROM HER IN
2 2001, WITH A PROMISE TO WRITE A BOOK, WHICH HE DID NOT HONOR.
3 HE OBVIOUSLY DIDN'T KNOW I HAD A PROMISSORY NOTE HE EXECUTED
4 WITH MS. MORROW THAT HE DIDN'T HONOR, WHICH HE ADMITTED. AND
5 HE OBVIOUSLY DIDN'T KNOW THAT I KNEW HE HAD NOT PAID ONE CENT
6 OF THE \$50,000 BACK TO HER DESPITE THAT IT'S BEEN DUE SINCE
7 2003, WHICH LAST TIME I COUNTED WAS ABOUT NINE YEARS. AND THE
8 BEST THING THAT HE COULD SAY ABOUT THAT WAS, WELL, I DIDN'T
9 HAVE THE MONEY TO PAY HER BACK I WAS WAITING TABLES.

10 BUT WE KNOW FROM HIS TESTIMONY HE'S NOT WAITING
11 TABLES ANYMORE HE'S GIVING ALL THESE SEMINARS AND SPEECHES
12 UNDER THE AMBIT OF JIM BLACKBURN ENTERPRISES, SPEAKING TO BAR
13 GROUPS ON ISSUES INCLUDING ETHICS, WHICH I HAVE TO SAY STRIKES
14 ME AS HIGHLY IRONIC. IT SEEMED TO ME HIS TESTIMONY WAS A LOT
15 ABOUT SELF-PROMOTION UNLIKE THE TESTIMONY OF PEOPLE LIKE MARY
16 BRITT AND GENE STOECKLEY AND I THINK THAT IS AN INDICATION OF
17 A LACK OF CREDIBILITY.

18 HE ALSO SAID AND ADMITTED HE WAS ONE OF THESE
19 LAWYERS WHO PROMOTES HIMSELF AS A LAWYER WHO WANTED TO WIN AT
20 ALL COSTS. AND, YOU KNOW, WHEN I ASKED HIM ABOUT THAT HE, YOU
21 KNOW, WAS QUICK TO SAY, WELL, I DIDN'T MEAN WIN AT ALL COST BY
22 CHEATING. OF COURSE, THAT'S NOT WHAT HE SAID WHEN HE
23 DESCRIBED HIMSELF THAT WAY.

24 SO, IT SEEMS TO ME, IF WHAT YOU HAVE IS JIM BRITT
25 AND HIS AFFIDAVITS AND JIM BLACKBURN AND HIS TESTIMONY, WELL,

September 25, 2012

1 THAT CREDIBILITY GOES OUR WAY. IT SEEMS TO ME, IT GOES OUR
2 WAY EVERY DAY, EVERY TIME THE QUESTION WOULD GET ASKED.

3 NOW, WITH RESPECT TO MR. CRAWLEY, IT SEEMED TO ME
4 THAT HIS TESTIMONY WAS KIND OF SAD. I MEAN, I FELT SORRY FOR
5 HIM WHEN HE WAS ON THE STAND TESTIFYING. AND SOME OF THE
6 THINGS WOULD HAVE BEEN FUNNY IF IT JUST HADN'T FELT SO SAD.

7 BUT THE INTERESTING THING ABOUT MR. CRAWLEY IS ALL
8 HE CAN REMEMBER ABOUT THAT MEETING IS THERE WERE NO THREATS.
9 HE DOESN'T REMEMBER WHO WENT AND GOT SANDWICHES, IF ANYBODY
10 DID, FOR HER. HE DOESN'T REMEMBER WHO TOOK NOTES. AND MOST
11 IMPORTANTLY, HE'S NOT SURE JIM BRITT WASN'T IN THE ROOM. I
12 MEAN, WHEN ASKED THE QUESTION HE SAID, WELL, YOU KNOW, I DON'T
13 RECALL. HE MIGHT HAVE BEEN.

14 SO, THE GOVERNMENT'S EVIDENCE ON THAT PARTICULAR
15 ISSUE JUST FAILS. AND THE PREPONDERANCE OF THE EVIDENCE WOULD
16 SHOW THAT MR. BRITT WAS IN THAT ROOM, HEARD A THREAT AND IT
17 CAME FROM MR. BLACKBURN.

18 NOW, THAT THREAT IS IMPORTANT BECAUSE IT WOULD BE A
19 REASON THAT HELENA STOECKLEY WOULDN'T HAVE SAID SHE WAS IN THE
20 ROOM TO ANYBODY EXCEPT HER LAWYER, WHO PROMISED NOT TO TELL
21 ANYBODY WHAT SHE SAID.

22 SO, THE THREAT IS AN IMPORTANT SITUATION. I DON'T
23 THINK WE NEED THE THREAT IN ORDER TO PREVAIL AT THIS HEARING,
24 BUT I THINK THAT BY A PREPONDERANCE OF THE EVIDENCE WE'VE
25 SHOWN THAT IT WOULD HAPPEN -- HAPPENED.

September 25, 2012

1 AND THE LAST THING ABOUT THE THREAT I WOULD SAY IS,
2 YOU KNOW, THERE WAS A LOT OF TALK ABOUT POLYGRAPHS IN THIS
3 CASE. AND THERE WAS A POLYGRAPH OF MR. BRITT. AND, YOU KNOW,
4 I WOULD TAKE THE COURT TO EXHIBIT 5057, PAGE TWO OF THAT
5 EXHIBIT, AND REMIND THE COURT OF THE QUESTIONS THAT WERE ASKED
6 OF MR. BRITT DURING THIS POLYGRAPH. HE WAS ASKED, DID YOU
7 HEAR HELENA STOECKLEY TELL JIM BLACKBURN SHE HAD SEEN A BROKEN
8 HOBBY HORSE WHILE SHE WAS INSIDE THE MACDONALD HOUSE? THE
9 ANSWER IS YES. DID YOU HEAR JIM BLACKBURN TELL HELENA
10 STOECKLEY HE WOULD HAVE HER INDICTED FOR MURDER IF SHE
11 TESTIFIED SHE HAD BEEN INSIDE THE MACDONALD HOUSE? THE ANSWER
12 IS YES. ARE YOU NOW LYING ABOUT THE CONVERSATION BETWEEN JIM
13 BLACKBURN AND HELENA STOECKLEY? THE ANSWER IS NO.

14 AND STEVE DAVENPORT, WHO, YOU KNOW, MR. SMITH SAID
15 -- MR. WADE SMITH SAID ON THE STAND WAS AN EXPERIENCED
16 POLYGRAPHER. HE WORKED FOR THE SBI FOR 20 YEARS AND HE WAS
17 THEIR CHIEF POLYGRAPHER. HE DID THE POLYGRAPH TEST AND HE
18 CONCLUDED -- AGAIN, IT'S ON PAGE TWO OF THE EXHIBIT -- THAT
19 MR. BRITT'S PHYSIOLOGICAL REACTIONS WHEN HE ANSWERED THE ABOVE
20 QUESTIONS AS SHOWN SHOWED NO DECEPTION TO THE RELEVANT
21 QUESTIONS.

22 SO, WE HAVE COMPELLING EVIDENCE IN THIS CASE THAT
23 MR. BRITT WAS IN THE ROOM, THAT HE HEARD A THREAT. WE'VE GOT
24 AFFIDAVITS AND A POLYGRAPH OF MR. BRITT. WE HAVE NO AFFIDAVIT
25 AND NO POLYGRAPH OF MR. BLACKBURN. WE HAVE NO AFFIDAVIT AND

September 25, 2012

1 NO POLYGRAPH OF MR. CRAWLEY. AND I WOULD SUBMIT TO YOU THAT
2 WHEN THE TWO OF THEM TESTIFIED THERE WAS A STARK LACK OF
3 CREDIBILITY WITH RESPECT TO THEIR TESTIMONY.

4 THE OTHER PIECE OF THIS SORT OF WHO WAS IN THE ROOM
5 SEEMS TO BE JOE MCGINNISS SAYING, WELL, YOU KNOW, THAT FILMING
6 IN THE MINI-SERIES, THE ROOM THAT WAS SHOWN WAS THE DEFENSE
7 ROOM. WELL, NOBODY WOULD KNOW WATCHING THE FILM WHICH ROOM IT
8 WAS BECAUSE THAT'S NOT SHOWN IN THE FILM. IT'S JUST HE'S
9 TELLING YOU WHAT HE THOUGHT THE ROOM WAS SUPPOSED TO DEPICT.

10 BUT JIM BRITT SAW THE MOVIE, RUNS INTO MARY BRITT
11 LATER AND SHE SAID, OH, I SAW THE MOVIE THE OTHER DAY AND HIS
12 RESPONSE, ACCORDING TO HER, THROUGH GRITTED TEETH WAS IT WAS
13 INACCURATE, I WAS IN THE ROOM.

14 NOW, HE CAN'T BE TALKING ABOUT THE DEFENSE ROOM
15 BECAUSE NOBODY SAYS HE WAS IN THE DEFENSE ROOM. JOE MCGINNISS
16 SAYS HE WASN'T. WADE SMITH SAYS HE WASN'T. JIM BRITT NEVER
17 SAYS HE WAS.

18 SO, THE ONLY ROOM THAT HE COULD MEAN WHEN HE SAYS
19 IT'S NOT ACCURATE, I WAS IN THE ROOM, IS THE ROOM WHERE THE
20 PROSECUTION WAS INTERVIEWING HELENA STOECKLEY.

21 AND I WOULD SUBMIT THAT TESTIMONY FROM MARY BRITT,
22 AGAIN, IS IMPORTANT CORROBORATION OF THE THREAT. SHE WOULD
23 HAVE NO REASON TO BELIEVE IN 1984 OR 1985, WHEN SHE SAW THE
24 MOVIE AND THEN SAW MR. BRITT AT HER HOUSE LATER ON AND ASKED
25 HIM ABOUT IT TO BELIEVE SHE WOULD BE HAULED INTO A FEDERAL

September 25, 2012

1 COURT IN 2012, AND ASKED TO TESTIFY ABOUT IT. BUT SHE HAS
2 THAT DISTINCT RECOLLECTION OF THAT ENCOUNTER AND HIS RESPONSE
3 IT'S NOT ACCURATE, I WAS IN THE ROOM.

4 I THINK THAT IS POWERFUL CONTEMPORANEOUS EVIDENCE OF
5 WHAT MR. BRITT SAID, BOTH THAT HE MADE THE TRANSPORT TO SOUTH
6 CAROLINA AND THAT HE WAS IN THE ROOM AND HEARD THE THREAT MADE
7 TO HELENA STOECKLEY.

8 AGAIN -- AND I'M A BIG STAR WARS FAN, JUDGE FOX, AND
9 I DON'T KNOW IF YOU ARE OR NOT, BUT DON'T BE CONFUSED BY THESE
10 JEDI MIND TRICKS YOU MAY BE HEARING FROM THE GOVERNMENT. YOU
11 KNOW, THIS IS NOT THE ROOM YOU'RE LOOKING FOR. WE KNOW WHAT
12 ROOM IT IS. WE KNOW WHAT ROOM JIM BRITT THOUGHT IT WAS WHEN
13 HE SAW THE MOVIE, AND THAT IS WHAT IS IMPORTANT, WHAT MOVIE --
14 WHAT ROOM DID HE THINK THEY WERE DEPICTING AT THAT TIME.

15 THE THREAT'S IMPORTANT, AGAIN, BECAUSE IT IS
16 EVIDENCE OF PROSECUTORIAL MISCONDUCT, WHICH IS A VIOLATION OF
17 DUE PROCESS AND A CONSTITUTIONAL BASIS FOR THE RELIEF THAT WE
18 SEEK IN THIS CASE. IT EXPLAINS WHY HELENA STOECKLEY WOULD
19 HAVE SAID THE NEXT DAY ON THE STAND SHE DIDN'T REMEMBER THE
20 NIGHT OF THE MURDERS AND WOULDN'T HAVE TOLD ANYBODY
21 DIFFERENTLY IN 1979, UNDER THE CLOAK OF PRIVILEGE, WHICH WAS
22 HER LAWYER, WHICH SHE DID UNDER THE CLOAK OF PRIVILEGE.

23 AND MR. BRITT'S STATEMENTS IN THIS REGARD ARE UNDER
24 OATH. IN HIS AFFIDAVITS, THEY'RE ALL CONSISTENT ON THIS POINT
25 AND THEY'RE SUPPORTED BY THE TESTIMONY OF MARY BRITT.

September 25, 2012

1 AND I WOULD JUST REMIND THE COURT, I'M NOT GOING TO
2 TAKE YOU THROUGH THE AFFIDAVIT, BUT I REMIND THE COURT THAT
3 IT'S DEFENSE EXHIBIT 5058, PARTICULARLY PARAGRAPH 22, 23 AND
4 24.

5 THE IMPORTANCE OF MR. BRITT'S STATEMENTS IN COMING
6 FORWARD IN 2005, AGAIN, ARE TWOFOLD. HE SPENDS TIME WITH
7 HELENA STOECKLEY AND SHE SAYS SHE WAS IN THE MACDONALD HOUSE
8 AND HE HEARS THE PROSECUTOR THREATEN HER WITH A MURDER CHARGE,
9 WHICH KEEPS HER FROM TESTIFYING THAT SHE WAS IN THE HOUSE WHEN
10 SHE COMES TO COURT THE NEXT WAY -- THE NEXT DAY.

11 NOW, WE KNOW WHY MR. BRITT CAME FORWARD. HE WAS,
12 AGAIN, CONSISTENT IN ALL HIS STATEMENTS TO MR. SMITH, BOTH THE
13 STATEMENT UNDER OATH AND THE AFFIDAVIT, THAT HE HAD A MORAL
14 BURDEN THAT HE FELT LIKE HE NEEDED TO UNLOAD IN 2005.

15 ONE HAS TO ASK ONE'S SELF WHAT WOULD BE HIS MOTIVE
16 FOR COMING FORWARD IN 2005, OTHER THAN TO UNLOAD A BURDEN HE
17 HAD BEEN CARRYING. I MEAN, WHAT DOES HE GET OUT OF IT? WELL,
18 HE DOESN'T -- AS FAR AS WE KNOW, HE DOESN'T GET ANY MONEY. AS
19 FAR AS WE KNOW, HE DOESN'T GET ANY BOOK DETAIL, 20 PERCENT OF
20 ANY BOOK DEAL. AS FAR AS WE KNOW, ALL HE GETS IS A BUNCH OF
21 UNPLEASANTNESS FOR HIS WIFE -- HIS EX-WIFE AND HIS FAMILY.

22 THERE WOULD BE NO REASON FOR HIM TO COME FORWARD IN
23 2005, FOR ANY REASON OTHER THAN TO UNLOAD A BURDEN THAT HE HAD
24 BEEN CARRYING AND A BURDEN OF WHAT HE SAW AND BELIEVED WAS
25 INAPPROPRIATE CONDUCT BY A PROSECUTOR.

September 25, 2012

1 NOW, I HAVE TO ADMIT THERE'S SOME HUMOR IN THE
2 NOTION THAT MAYBE WHAT HE WANTED TO COME FORWARD WITH WAS
3 WHETHER JUDGE DUPREE HAD GOTTEN A CAKE FROM A JUROR DURING THE
4 MACDONALD TRIAL BECAUSE THE WAS FROM THE FIRST AFFIDAVIT. AND
5 WADE SMITH EXPLAINED WHY IT'S NOT IN THE SUBSEQUENT AFFIDAVITS
6 BECAUSE HE DIDN'T THINK IT WAS PARTICULARLY IMPORTANT.

7 AND I DON'T THINK THERE'S ANY REASON TO BELIEVE THAT
8 THE REASON JIM BRITT COMES FORWARD IN 2005, IS KNOWLEDGE OF A
9 CHOCOLATE CAKE THAT A JUDGE RECEIVED DURING A TRIAL IN 1979.

10 I THINK THE REASON HE COMES FORWARD IS BECAUSE HE
11 WAS BURDEN BY THINGS THAT HE KNEW THAT WEREN'T ACCURATE, THAT
12 LED TO SOMEONE BEING CONVICTED. WHETHER THAT PERSON WAS
13 INNOCENT OR NOT I DON'T THINK WAS WHAT JIM BRITT WAS SAYING.
14 I THINK WHAT HE WAS SAYING WAS I DON'T THINK THE TRIAL WAS
15 FAIR BECAUSE EVIDENCE WAS WRONGFULLY SUPPRESSED OR PREVENTED
16 FROM BEING PRESENTED BECAUSE OF CONDUCT BY THE PROSECUTOR.

17 BUT HIS STATEMENTS TO MARY BRITT AND THE STATEMENTS
18 TO WADE SMITH THAT ARE PUT IN HIS AFFIDAVIT HAVE TO DO WITH
19 SUPPRESSED EVIDENCE AND THE REASON THAT HE WOULD HAVE WANTED
20 TO COME FORWARD AFTER ALL THIS TIME.

21 NOW, WE'VE HEARD FROM SEVERAL MARSHALS THAT HE
22 CLEARLY WAS NOT THE MOST POPULAR MEMBER OF THE MARSHAL
23 SERVICE. THAT DOESN'T REALLY HAVE ANYTHING TO DO WITH HIS
24 CREDIBILITY IN 2005 AND COMING FORWARD WITH THIS INFORMATION.
25 AND THE MOST -- AGAIN, THE MOST IMPORTANT PART OF WHY WHAT HE

September 25, 2012

1 SAYS IN 2005 IS BELIEVABLE IS BECAUSE OF WHAT HE TELLS HIS
2 WIFE IN 1979, THAT'S CONSISTENT WITH WHAT HE SAYS IN 2005.
3 AND THERE'S JUST NO REASON TO BELIEVE HE TOLD MARY BRITT THAT
4 HE WAS GOING TO SOUTH CAROLINA IN 1979, AND TOLD HER WHEN HE
5 GOT BACK THAT THE WOMAN HAD DESCRIBED THE HOUSE TO A T SO THAT
6 HE COULD THEN COME FORWARD 26 YEARS LATER AND REVEAL THAT
7 INFORMATION. SO, WHAT MARY BRITT TELLS US IS EXTREMELY
8 IMPORTANT. AND HE PASSES THE POLYGRAPH WITH RESPECT TO THE
9 THREATS MADE BY THE PROSECUTOR.

10 NOW, WE GOT SOME CORROBORATING EVIDENCE OF THE
11 THREATS BECAUSE WE KNOW FROM WENDY ROUDER, FOR EXAMPLE, HOW
12 HELENA STOECKLEY FELT AFTER SHE TESTIFIED AND AFTER SHE MET
13 WITH THE PROSECUTOR DURING MS. ROUDER'S EXPLANATION OF WHAT
14 HAPPENED ON SATURDAY AND SUNDAY IN WHATEVER MOTEL OR
15 COLLECTION OF MOTELS WERE INVOLVED, BUT SHE TALKS ABOUT
16 COMMOTION AT THE JOURNEY'S END ON SATURDAY MORNING. SHE GOES
17 THERE WITH RED UNDERHILL. ERNIE DAVIS IS MADE TO LEAVE. AND
18 DURING THAT TIME SHE HAS DISCUSSIONS WITH MS. ROUDER ABOUT THE
19 ROCKING HORSE, PICTURES OF CHILDREN, BEING IN THE DRIVEWAY. I
20 THINK I WAS IN THE HOME. IT'S A MEMORY, YOU KNOW, IT'S NOT A
21 DREAM. AND WHY DON'T YOU -- AND THEN MS. ROUDER SAYS, WELL,
22 WHY DON'T YOU GET ON THE STAND AND SAY THAT? AND SHE RECALLS
23 WHAT HELENA STOECKLEY SAID, I CAN'T BECAUSE OF THOSE DAMN
24 PROSECUTORS.

25 SO, THERE IS CLEAR EVIDENCE, AGAIN, CONTEMPORANEOUS

September 25, 2012

1 WITH THE EVENT, THAT HELENA STOECKLEY WAS SCARED IN 1979, IN
2 PART BECAUSE OF ACTIONS BY THE PROSECUTORS.

3 AND, AGAIN, AS MS. ROUDER SAYS IN HER AFFIDAVIT,
4 ONCE SHE LEARNED IN 2005 ABOUT MR. BRITT COMING FORWARD AND
5 REVEALING THE THREATS, ALL OF THIS BEGAN TO MAKE SENSE,
6 INCLUDING THAT MS. STOECKLEY SAID, YOU KNOW, THEY'LL FRY ME,
7 YOU KNOW, I CAN'T COME FORWARD. I CAN'T GET ON THE STAND AND
8 TESTIFY.

9 SO, I THINK AT THE END OF THE DAY -- I THINK AT THE
10 END OF THE DAY OUR EVIDENCE SHOWS BY A PREPONDERANCE OF THE
11 EVIDENCE THAT MR. BLACKBURN THREATENED HELENA STOECKLEY AND
12 THAT SHE WAS AFRAID BECAUSE OF THAT. THEREFORE, SHE DIDN'T
13 TESTIFY THAT SHE WAS IN THE HOUSE.

14 I THINK OUR EVIDENCE SHOWS BY A PREPONDERANCE OF THE
15 EVIDENCE, AGAIN AT THE END OF THE DAY, THAT HELENA STOECKLEY
16 WAS IN THE HOUSE AND WOULD HAVE SAID SHE WAS IN THE HOUSE IF
17 SHE TOLD THE TRUTH ON THE STAND. AGAIN, THAT'S WHAT SHE SAYS
18 TO JERRY LEONARD IN 1979, UNDER THE PROMISE AND CLOAK OF
19 ATTORNEY-CLIENT PRIVILEGE. IT'S WHAT SHE TELLS HER MOTHER IN
20 1982, SHORTLY BEFORE SHE DIES, KNOWING THAT SHE'S REACHING THE
21 POINT OF DEATH.

22 SO, WE HAVE, IN THE END, YOUR HONOR, MUCH MORE THAN
23 MERELY STOECKLEY RELATED TESTIMONY THAT JUDGE MURNAGHAN TALKED
24 ABOUT. AND WE ALSO KNOW NOW THAT JUDGE DUPREE THOUGHT THE
25 EVIDENCE IN THIS CASE MUST HAVE BEEN CLOSE OR HE WOULDN'T HAVE

September 25, 2012

1 WRITTEN A LETTER TO WENDY ROUDER AND SAID I WAS CONFIDENT THE
2 JURY WAS GOING TO ACQUIT. WE HAVE DIRECT EVIDENCE FROM HELENA
3 STOECKLEY THAT SHE WAS IN THE HOUSE. IT'S AN EYEWITNESS
4 ACCOUNT OF INTRUDERS. IT IS DIRECT EVIDENCE OF AN INTRUDER.

5 AND IN TANDEM WITH THE NEW EVIDENCE FROM THE DNA
6 TESTING THAT SHOWS UNSOURCED HAIRS, WHICH IS SUPPORTIVE
7 EVIDENCE OF INTRUDERS, IN TANDEM WITH THAT AND IN THE CONTEXT
8 OF THE EVIDENCE AS A WHOLE, I THINK WE HAVE COMPELLING
9 EVIDENCE THAT A JURY -- THAT IF THE JURY HAD HEARD, NO
10 REASONABLE JURY WOULD HAVE CONVICTED.

11 AND I THINK IT'S IMPORTANT IN SORT OF WRAPPING UP
12 THE HELENA STOECKLEY NOTION IS THAT IN 1979, 1980, AND SHORTLY
13 BEFORE, POLICE OFFICERS THOUGHT HELENA STOECKLEY WAS
14 TRUSTWORTHY. YOU'LL REMEMBER THERE IS EVIDENCE THAT WE
15 PRESENTED THAT PRINCE BEASLEY SAID SHE WAS THE BEST INFORMANT
16 I EVER HAD. SO, LOTS OF POLICE OFFICERS USED HER AS AN
17 INFORMANT AND THEY WOULD NOT DO THAT IF THEY DIDN'T BELIEVE
18 THAT SHE WOULD BE ABLE TO GIVE TRUSTWORTHY TESTIMONY. SO,
19 THEY RELY ON HER AND DEPEND ON HER. THEY DEEM HER
20 TRUSTWORTHY.

21 AND I WANT TO LEAVE THE COURT WITH AN ILLUSTRATION
22 FROM ONE OF MY FAVORITE PLAYS, WHICH IS A MAN FOR ALL SEASONS.
23 AND IT'S THE STORY YOUR HONOR PROBABLY KNOWS OF SIR THOMAS
24 MORE. AND THERE IS A SCENE IN THAT PARTICULAR PLAY WHERE
25 ROPER AND ALICE AND THOMAS MORE ARE IN A ROOM TOGETHER AND

September 25, 2012

1 SOMEONE WHO IS PLOTTING AGAINST THOMAS MORE HAS BEEN IN THE
2 ROOM AND HAS NOW LEFT. AND ALICE AND ROPER ARE UPSET WITH
3 THOMAS MORE. THEY SAY YOU SHOULD HAVE HIM ARRESTED. AND HE
4 SAYS HE HASN'T BROKEN A LAW. AND THEY SAY, WELL, HE'S BROKEN
5 GOD'S LAW. THOMAS MORE SAYS I'M NOT IN CHARGE OF GOD'S LAW.
6 WE'RE ONLY IN CHARGE OF MAN'S LAW AND HE HASN'T BROKEN THAT
7 YET. AND THOMAS MORE SPEAKS TO ROPER AND -- WELL, ROPER SAYS
8 TO THOMAS MORE SO YOU WOULD GIVE THE DEVIL THE BENEFIT OF THE
9 LAW? AND THOMAS MORE SAYS, SURE, I'D GIVE THE DEVIL THE
10 BENEFIT OF THE LAW. WHAT WOULD YOU DO? AND ROPER SAYS I
11 WOULD CUT DOWN EVERY LAW, EVERY TREE IN ENGLAND TO GET AT THE
12 DEVIL. AND THOMAS MORE TURNS TO HIM AND SAID AND WHAT WOULD
13 YOU DO WHEN THE DEVIL TURNED ON YOU? NOW, THAT YOU HAVE CUT
14 DOWN ALL THE LAWS, YOU WOULD HAVE NO PROTECTION FROM THE DEVIL
15 IF HE TURNED BACK ON YOU.

16 AND WHAT'S THE -- THE IMPORTANCE OF THAT SCENE, YOUR
17 HONOR, IS I THINK IT ILLUSTRATES WHY WE IN THIS COUNTRY DEPEND
18 ON THE RULE OF LAW. THE LAW PROTECTS YOU. THE LAW PROTECTS
19 ME. THE LAW PROTECTS JEFFREY MACDONALD. AND THE LAW IN THIS
20 CASE, IN LIGHT OF THE EVIDENCE THAT YOU'VE HEARD, I THINK,
21 SUPPORTS OUR REQUEST THAT YOU GRANT THE MOTION TO VACATE.

22 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS UNTIL
23 10:40.

24 (RECESS TAKEN FROM 10:25 A.M., UNTIL 10:41 A.M.)

25 (DEFENDANT PRESENT.)

September 25, 2012

1 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.
2 MR. BRUCE.

3 MR. BRUCE: THANK YOU, YOUR HONOR. I'M JUST GOING
4 TO SPEAK VERY BRIEFLY ON THE LEGAL ASPECTS OF THIS CASE AND
5 WHAT WE'RE ASKING THE COURT TO DO, AND THEN I'M GOING TO TURN
6 IT OVER TO MR. MURTAGH, WHO IS GOING TO DISCUSS THE
7 GOVERNMENT'S PERSPECTIVE ON THE UNSOURCED HAIR CLAIM AND ALSO
8 WHAT WE CONSIDER TO BE THE MOST IMPORTANT PART OF THE EVIDENCE
9 AS A WHOLE, WHICH IS SOME OF THE ASPECTS OF THE TRIAL EVIDENCE
10 THAT CAUSED THE JURY TO CONVICT JEFFREY MACDONALD IN 1979.
11 AND THEN -- AND WE WON'T GET TO THIS UNTIL AFTER LUNCH, I'M
12 SURE, BUT THEN I'M GOING TO WIND UP BY SPEAKING ABOUT THE
13 BRITT CLAIM WHEN MR. MURTAGH IS THROUGH.

14 BUT WHAT I WANTED TO SAY TO THE COURT BEFORE MR.
15 MURTAGH GETS STARTED IS, AS WE SAID IN OUR SPECIFIC ISSUES
16 CITED IN THE PRETRIAL ORDER, WE'RE ASKING THE COURT TO
17 DETERMINE, NOW THAT THE COURT HAS HEARD THE EVIDENCE AS A
18 WHOLE, WE'RE ASKING THE COURT TO HOLD THAT THE GATEKEEPING
19 STANDARD HAS NOT BEEN MET WITH RESPECT TO THE BRITT CLAIM OR
20 THE UNSOURCED HAIR CLAIM, THAT IS, THAT THE DEFENDANT OR THE
21 MOVANT HAS, WITH DUE REGARD TO THE LIKELY CREDIBILITY AND THE
22 PROBABLE RELIABILITY OF THE EVIDENCE AS A WHOLE, HAS FAILED TO
23 SHOW THAT IN COMBINATION WITH THE NEWLY DISCOVERED EVIDENCE,
24 IF PROVEN, BRITT CLAIM AND UNSOURCED HAIR CLAIM, WOULD BE
25 SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT

September 25, 2012

1 NO REASONABLE JUROR WOULD HAVE FOUND MACDONALD GUILTY.

2 THAT'S WHAT YOUR HONOR FOUND IN NOVEMBER OF 2008,
3 AND WE SUBMIT NOTHING HAS BEEN ADDUCED AT THIS HEARING
4 DISTURBS THAT.

5 BUT AS YOUR HONOR STATED WHEN WE BEGAN THIS HEARING
6 A WEEK AGO YESTERDAY, THIS HAS REALLY BEEN A CONFLATED HEARING
7 IN THAT THE PARTIES HAVE HAD AN OPPORTUNITY TO INTRODUCE
8 EVIDENCE AS A WHOLE FOR THE GATEKEEPING STANDARD, BUT THE
9 PARTIES HAVE ALSO HAD AN OPPORTUNITY TO INTRODUCE EVIDENCE
10 GOING TO THE MERITS OF THE CLAIM -- THE TWO CLAIMS, THE BRITT
11 CLAIM AND THE UNSOURCED HAIRS CLAIM.

12 AND SO WE'RE GOING TO BE ASKING THE COURT AND WE ARE
13 ASKING THE COURT TO HOLD NOT ONLY THAT MACDONALD'S TWO CLAIMS
14 THAT CAME BACK FROM THE FOURTH CIRCUIT, THE BRITT CLAIM AND
15 UNSOURCED HAIRS CLAIM, DO NOT SURVIVE GATEKEEPING. HE HAS NOT
16 MET THAT CLEAR AND CONVINCING EVIDENCE THRESHOLD. AND EVEN IF
17 HE HAD, THE CLAIMS FAIL ON THE MERITS BECAUSE HE HAS FAILED TO
18 PROVE THE BRITT CLAIM -- THE BRITT AVERMENTS THAT CONSTITUTE
19 THE BRITT CLAIM AND HE'S FAILED TO PROVE ANY EXCULPATORY VALUE
20 FROM THE UNSOURCED HAIRS CLAIM.

21 THE COURT: MR. BRUCE, JUST A MOMENT. I BELIEVE YOU
22 AGREED THAT THAT WAS THE CASE, MR. WIDENHOUSE.

23 MR. WIDENHOUSE: YES.

24 THE COURT: IS THAT CORRECT?

25 MR. WIDENHOUSE: I AGREE THAT WE HAVE TO PROVE BY

September 25, 2012

1 CLEAR AND CONVINCING EVIDENCE THOSE --

2 THE COURT: I UNDERSTOOD THAT YOU AGREED THAT THIS
3 CASE WOULD BE HEARD ON ITS MERITS.

4 MR. WIDENHOUSE: YES. YES.

5 THE COURT: AS WELL AS THE GATEKEEPING.

6 MR. WIDENHOUSE: YES.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. BRUCE: AND WITH THAT INTRODUCTION, I WILL NOW
9 TURN IT OVER TO MR. MURTAGH. THANK YOU.

10 MR. MURTAGH: GOOD MORNING, YOUR HONOR. AND MAY IT
11 PLEASE COURT, BY SOME QUIRK OF FATE THE LAST TIME I ADDRESSED
12 A FEDERAL JUDGE, A CASE IN WHICH I WAS COUNSEL, WAS ON MARCH
13 23RD IN THIS COURTROOM BEFORE YOUR HONOR ON THIS CASE. SO,
14 HERE I AM AGAIN, A LITTLE RUSTY, BUT THIS IS FAMILIAR GROUND
15 FOR ME TO GO OVER.

16 WHAT I'D LIKE TO START WITH IS THE TRANSCRIPT
17 EXCERPTS THAT MR. WIDENHOUSE, I MIGHT ADD, SOMEWHAT CAREFULLY
18 PARSED TRANSCRIPT EXCERPTS, THAT HE TALKED TO YOU ABOUT AND
19 PUT ON THE SCREEN.

20 SO, WITH THE HELP OF MY ELECTRONIC WARFARE OFFICER,
21 IF WE COULD HAVE TD-6, PAGE 130, AND THAT IS TRANSCRIPT
22 REFERENCE 2533, THE FIRST ONE, DR. GAMMEL. THE COURT'S
23 INDULGENCE HERE.

24 (PAUSE.)

25 MR. MURTAGH: OKAY. AND NOW IF WE COULD HAVE TD-6,

September 25, 2012

1 PAGE 199. COULD WE BLOW UP -- AND THIS IS DR. HANCOCK'S
2 TESTIMONY, I BELIEVE. COULD WE BLOW UP INITIALLY LINES ONE
3 THROUGH 11? OKAY, AND SCROLL DOWN, PLEASE. EXCUSE ME.

4 DO YOU RECALL WHETHER ANY HAIR SAMPLES WERE TAKEN
5 FROM THE BODIES OF THE DECEASED? NOT TO MY KNOWLEDGE.

6 OKAY. FINGERNAIL SCRAPINGS. OKAY. YOUR HONOR,
7 WHAT I'M GOING TO ADVISE THE COURT AND COUNSEL IS AT TRIAL,
8 WHICH IS IN 1979, DR. HANCOCK INDEED TESTIFIED THAT HE DID THE
9 FINGERNAIL SCRAPINGS FROM KRISTEN. HE DID THE AUTOPSIES ON
10 KRISTEN AND KIMBERLEY.

11 I WOULD REFER THE COURT TO GOVERNMENT EXHIBIT 3053,
12 WHICH IS THE ARTICLE 32 TRANSCRIPT OF DR. GAMMEL, AND ALSO TO
13 GOVERNMENT EXHIBIT 3055, WHICH IS THE ARTICLE 32 TRANSCRIPT OF
14 DR. HANCOCK, WHICH IS IN 1970. AND IF I MAY ADVISE THE COURT,
15 BASICALLY, IN 1970, DR. GAMMEL RECALLED THAT HE SCRAPED THE
16 FINGERNAIL OF EVERYBODY BEFORE THEY DID THE ACTUAL AUTOPSIES
17 AND DR. HANCOCK ASSISTED BY PUTTING LITTLE SLIPS OF PAPER --
18 AND YOU'LL SEE ONE OF THESE SHORTLY -- WITH THE DESCRIPTION OF
19 WHERE THE SAMPLE HAD BEEN TAKEN FROM. NEITHER OF THESE
20 PEOPLE, AS WAS BROUGHT OUT AT TRIAL, WERE FORENSIC
21 PATHOLOGISTS. THIS WAS THEIR FIRST ADVENTURE IN FINGERNAIL
22 SCRAPINGS.

23 OKAY. IF WE COULD HAVE -- ALSO, WITH RESPECT TO DR.
24 HANCOCK, I BELIEVE MR. WIDENHOUSE OFFERED A TRANSCRIPT EXCERPT
25 TO SHOW THAT KRISTEN HAD STRUGGLED WITH HER ASSAILANT.

September 25, 2012

1 OKAY. IF WE COULD HAVE GOVERNMENT EXHIBIT 775, IT'S
2 THE BODY OF KRISTEN MACDONALD, AND THERE WAS TESTIMONY AT
3 TRIAL, YOUR HONOR, THAT THE LARGE GAPING WOUNDS WERE
4 CONSISTENT WITH HAVING BEEN INFLICTED BY THE OLD HICKORY
5 KNIFE. AND IF WE COULD HAVE GOVERNMENT 778, WHICH THERE'S
6 TESTIMONY AT TRIAL, THIS IS FROM DR. HANCOCK'S TESTIMONY, THAT
7 THAT WAS HER RIGHT HAND.

8 NOW, IF WE COULD HAVE THE REFERENCE OF TD-6, 173 AND
9 174, AND IF WE COULD ZOOM IN ON -- I THINK YOU HAVE THE WRONG
10 PAGE THERE. OKAY. THE HIGHLIGHTED PORTION, IF YOU'D BLOW
11 THAT UP.

12 NOW, THIS IS MR. BLACKBURN, MY CO-COUNSEL, ASKING
13 DR. HANCOCK WITH RESPECT TO THE HANDS OF KRISTEN MACDONALD,
14 WHAT, IF ANYTHING, DID YOU OBSERVE THERE, SIR? AND THEN DR.
15 HANCOCK SAYS THERE WERE MULTIPLE MINOR LACERATIONS, CUTS
16 BASICALLY, ON BOTH HANDS IF I RECALL FROM READING MY PROTOCOL
17 AND, IN ADDITION, THERE WAS A MORE SIGNIFICANT WOUND. I THINK
18 IT WAS ON THE RIGHT HAND -- THE RIGHT HAND ON EITHER THE RING
19 OR THE MIDDLE FINGER. THERE WAS A FAIRLY LARGE -- IT LOOKED
20 LIKE AN INCISED OR CUT WOUND APPROXIMATELY AN INCH AND A HALF
21 OR SO ON THE SIDE OF -- IF WE GO ON -- THE FINGER. BUT THE
22 HAND ALSO HAD SOME MINOR CUTS ON IT IN OTHER PLACES WHICH
23 BASICALLY DID NOT CAUSE ANY BLEEDING, BUT THE LARGE WOUND THAT
24 I DESCRIBED WAS DOWN BASICALLY TO THE BONE. YOUR HONOR, THAT
25 WOULD BE THE WOUND DEPICTED IN GOVERNMENT 778. IT'S HER RIGHT

September 25, 2012

1 HAND.

2 AND THEN MR. BLACKBURN ASKED DO YOU HAVE AN OPINION,
3 SIR, SATISFACTORY TO YOURSELF AS TO THE TYPE OR CLASSIFICATION
4 OF THE WOUND THAT WAS ON HER FINGER? AND DR. HANCOCK SAYS I
5 WOULD SAY AS A GENERAL REFERENCE THESE COULD BE DEFINED AS
6 DEFENSIVE WOUNDS OR THESE COULD BE WOUNDS INCURRED IN THE
7 PROCESS OF OTHER TYPE OF WOUNDS HAPPENING -- KEEP GOING -- AS
8 A GENERAL STATEMENT, I WOULD SAY THAT. OKAY. AND THEN HE
9 GOES ON TO SOMETHING ELSE.

10 YOUR HONOR, I WOULD SUBMIT THAT FAR FROM SUPPORTING
11 THE ASSERTION THAT THIS SHOWS THAT KRISTEN STRUGGLED WITH HER
12 ASSAILMENT AND THAT'S HOW WHATEVER WAS FOUND UNDER HER
13 FINGERNAILS GOT THERE, WHAT DR. HANCOCK IS IN EFFECT SAYING IS
14 EITHER SHE HAD HER HAND OUT IN FRONT OF HER OR THE HAND WAS ON
15 HER CHEST AND, YOU KNOW, THE KNIFE WENT THROUGH HER FINGER
16 BEFORE IT PENETRATED HER CHEST WALL. BUT IN ANY EVENT, I
17 DON'T THINK THAT TESTIMONY SUPPORTS ANY KIND OF -- IF WE COULD
18 GO BACK TO 778. DO YOU SEE WHAT I'M TALKING ABOUT, YOUR
19 HONOR? IT'S THE THIRD FINGER. DR. HANCOCK DESCRIBES THAT AS
20 A THROUGH AND THROUGH DOWN TO THE BONE CUT. AND WE WOULD
21 SUGGEST THAT IT'S CONSISTENT WITH THE HAND HAVING BEEN ON THE
22 CHEST WHEN SHE WAS STABBED. OKAY. THANK YOU.

23 ALSO, IF WE COULD GO BACK TO TD-6, PAGE 130. YOUR
24 HONOR, I THINK IF WE READ THAT IN CONTEXT, DR. GAMMEL IS
25 TALKING ABOUT THE FINGERNAIL SCRAPINGS OF COLETTE MACDONALD,

September 25, 2012

1 WHERE THERE WAS SUPPOSED TO BE A PIECE OF SKIN. YES, IF YOU
2 LOOK AT LINE 13.

3 SO, THAT MAY BE SOME EVIDENCE OF WHAT DR. GAMMEL WAS
4 TALKING ABOUT WITH RESPECT TO FINGERNAIL SCRAPINGS, BUT IT HAS
5 NOTHING TO DO WITH KRISTEN MACDONALD.

6 YOUR HONOR, IF WE COULD HAVE, ON THE HAWKINS ISSUE
7 -- I BELIEVE MR. WIDENHOUSE SHOWED -- LET'S GO TO TD-8, PAGE
8 140. AGAIN, WE WERE LOOKING AT A SMALL EXCERPT. IF WE CAN GO
9 BACK A PAGE TO TD-139.

10 YOUR HONOR, I WON'T GO THROUGH THE WHOLE TRANSCRIPT,
11 BUT WHAT I WOULD REPRESENT, THAT AN EXAMINATION OF MR.
12 HAWKINS' TESTIMONY WOULD SHOW THAT HE ARRIVED AFTER THE
13 AUTOPSIES. HE WAS THERE, INDEED, TO PICK UP WHAT HAD BEEN
14 COLLECTED, BUT HE WAS NOT THE AGENT THAT WAS PRESENT DURING
15 THE AUTOPSY ITSELF.

16 AND IF WE COULD HAVE GOVERNMENT 6001 AND WE COULD
17 BLOW THAT UP A LITTLE BIT, THIS IS -- MR. IVORY TALKED ABOUT
18 ONE OF THESE. IT'S A DA 19-31. IT'S A MILITARY POLICE
19 PROPERTY RECEIPT. AND IF WE COULD -- YOU CAN SEE ON THE
20 WITNESSED BY IT'S JAMES A. KING AND THAT'S A CID AGENT,
21 DETACHMENT B, 3RD MP CI, FORT BRAGG, NORTH CAROLINA. HE'S THE
22 AGENT THAT WAS THERE THAT WITNESSED THE AUTOPSIES.

23 AND IF WE COULD SCROLL DOWN A BIT. OKAY. MR.
24 HAWKINS TAKES CUSTODY OF WHATEVER DR. HANCOCK, YOU KNOW,
25 TURNED OVER TO HIM ON THE 17TH OF FEBRUARY.

September 25, 2012

1 ALL RIGHT. NOW, WHAT I THINK YOU HEARD MR.
2 WIDENHOUSE DO IS, AND I WILL GET TO THIS LATER, BUT BASICALLY
3 HE OFFERED A PARSED EXCERPT FROM JANICE GLISSON'S DE-217
4 EXHIBIT TWO OF 27 JULY 1970 R11 REPORT. THE INFERENCE WAS
5 THAT MR. HAWKINS TOOK CUSTODY OF THESE THINGS AND THEY WENT
6 DIRECTLY TO JANICE GLISSON ON JULY 27TH, 1970. AND AS OUR
7 AFFIDAVITS AND NUMEROUS DOCUMENTS SHOW, THAT'S NOT THE CASE.

8 IF WE COULD HAVE GOVERNMENT'S EXHIBIT 6002. BEFORE
9 YOU DO THAT, I'M SORRY, GO BACK A SECOND TO 6001. AND IF WE
10 COULD HONE IN ON THE RELINQUISHED BY AND RECEIVED BY COLUMNS,
11 YOU'LL SEE THAT BENNIE HAWKINS, WHO WAS THE CID AGENT AT FORT
12 BRAGG, TURNED THE ITEMS OVER TO CRAIG S. CHAMBERLAIN, WHO WAS
13 A CHEMIST FROM THE UNITED STATES ARMY CRIMINAL INVESTIGATION
14 LABORATORY, OR AS WE'LL HERE AGAIN USACIL, U-S-A-C-I-L.

15 OKAY. NOW, IF WE COULD HAVE 6002, AND IF WE COULD
16 LOOK AT THE TOP OF THE PAGE, AND THIS IS EXHIBIT TWO TO
17 CHAMBERLAIN'S AFFIDAVIT. AND BASICALLY IT'S HIS INVENTORY OF
18 STUFF THAT HE WAS GOING TO DISTRIBUTE TO OTHER CHEMISTS. SO,
19 ON 26 FEBRUARY 1970. PREVIOUS DOCUMENTS SHOWED THAT HE
20 RECEIVED THE ITEMS ON 21 FEBRUARY AND TRANSPORTED THEM TO FORT
21 GORDON.

22 NOW, IF WE SCROLL DOWN. ALL RIGHT. IF WE LOOK IN
23 THE -- CAN WE HIGHLIGHT THIS, D-237? AND WHAT MR. CHAMBERLAIN
24 HAS WRITTEN IS D-237 VIAL C SLASH -- I WOULD SUBMIT THAT
25 STANDS FOR CONTAINING -- FINGERNAIL SCRAPINGS MARKED, QUOTE,

September 25, 2012

1 L. HAND, CHRIS, END QUOTE. OKAY.

2 AND THEN I THINK WE WILL GO DIRECTLY AT THIS POINT
3 TO GOVERNMENT'S EXHIBIT 3499, WHICH IS OUR POWERPOINT OF THE
4 UNSOURCED HAIRS, AND THEN SKIP DIRECTLY TO THE 91A HAIR.

5 AND, YOUR HONOR, THERE ARE A LOT OF SLIDES, I MEAN,
6 VISUAL SLIDES HERE. MANY OF THEM SHOW SIMPLY CHAIN OF
7 IDENTIFICATION, PICTURES OF SLIDES AND SLIDE MAILERS AND WHAT-
8 NOT. AND IN THE INTEREST OF TIME I MAY GO THROUGH THOSE
9 SOMEWHAT QUICKLY, BUT IF THERE'S ANYTHING YOU WANT -- YOUR
10 HONOR WANTS ME TO FOCUS ON, I'LL CERTAINLY DO THAT.

11 OKAY. NEXT SLIDE, PLEASE. AND THESE ARE THE
12 DEFENSE'S CONTENTIONS AS CONTAINED IN THE ORIGINAL MOTION TO
13 ADD THE DNA PREDICATE DE-123. THESE ARE MR. JUNKIN'S
14 AVERMENTS AND HE'S SAYING THAT CHEMICAL ANALYSIS OF THE HAIR
15 D-237 BY THE CID INDICATED A FINDING OF BLOOD ON THE HAIR.

16 NEXT SLIDE. YOUR HONOR, AGAIN, THESE WERE PREPARED
17 BEFORE, YOU KNOW, MR. WIDENHOUSE STOOD UP TODAY AND, AS I
18 UNDERSTAND IT, SEEMS TO HAVE ABANDONED, ALTHOUGH, MAYBE NOT,
19 MAYBE I MISUNDERSTOOD HIM, THE FORCIBLE REMOVAL AND THE
20 PRESENCE OF BLOOD CLAIMS. BUT OUT OF AN ABUNDANCE OF CAUTION,
21 WE'RE GOING TO ASSUME THAT THAT'S STILL IN THE CASE AND
22 PROCEED ACCORDINGLY.

23 THE COURT: WELL, AS I RECALL, YOU SUBMITTED SOME
24 AFFIDAVITS OF TECHNICIANS --

25 MR. MURTAGH: I'M SORRY, YOUR HONOR?

September 25, 2012

1 THE COURT: AS I RECALL, YOU SUBMITTED AFFIDAVITS OF
2 TECHNICIANS CONCERNING --

3 MR. MURTAGH: YES, YOUR HONOR. EVERYTHING THAT'S IN
4 THE POWERPOINT IS SUPPORTED BY AN AVERMENT IN AN AFFIDAVIT
5 EITHER FROM CRAIG CHAMBERLAIN, JANICE GLISSON, DILLARD
6 BROWNING --

7 THE COURT: YES. YES. I'VE READ THOSE.

8 MR. MURTAGH: RIGHT. SO, THIS IS -- BUT THIS IS
9 SORT OF THE VISUAL ASPECT.

10 OKAY. NEXT SLIDE, PLEASE. AGAIN, SEE, WE HAVE MR.
11 CHAMBERLAIN'S NOTE. NEXT SLIDE, THIS, YOUR HONOR, MR.
12 WIDENHOUSE DIDN'T BRING TO YOUR ATTENTION, BUT THIS IS, AGAIN,
13 AN EXHIBIT FROM JANICE GLISSON'S AFFIDAVIT AND IT IS HER
14 SEROLOGY BENCH NOTE FOR MARCH 9TH, 1970, NOT JULY 27TH, MARCH
15 9TH.

16 AND IF WE ZOOM IN ON THE HIGHLIGHTED PORTION, AND
17 WHAT THAT SHOWS IS ON THE LEFT-HAND SIDE SHE HAS WRITTEN --
18 SHE'S DOING REPEAT CRUST TESTS. SHE'S WRITTEN L. HAND, CHRIS.
19 AND THEN SHE HAS HER RESULTS AND THEN THAT INDICATES SHE'S
20 SMALLER.

21 AND THEN IF WE GO TO THE RIGHT-HAND COLUMN -- LET'S
22 GO BACK TO THE -- YOU HAVE CHAMBERLAIN'S ALPHANUMERIC
23 DESIGNATIONS. IF WE GO BACK TO THE ORIGINAL SLIDE. WE HAVE
24 IN CRAIG CHAMBERLAIN'S SUPPLEMENTAL AFFIDAVIT -- BASICALLY, D-
25 237 IS A DESIGNATION THAT EXISTS ONLY IN CHAMBERLAIN'S NOTES.

September 25, 2012

1 IT'S NEVER MARKED ON ANYTHING EXCEPT HERE WHERE HE COLLATES
2 HIS DESIGNATION WITH JANICE GLISSON'S RESULTS FOR L. HAND,
3 CHRIS. AGAIN, THIS IS ON MARCH 9TH, 1970.

4 NEXT SLIDE. OKAY. NOW, ALSO ON MARCH 9TH -- THIS
5 IS AN EXCERPT FROM DILLARD BROWNING'S BENCH NOTES. AND IF WE
6 COULD ZOOM IN ON THE HIGHLIGHTED PORTION. AND IT SAYS
7 FINGERNAIL SCRAPINGS FROM CHRISTINE'S LEFT HAND, VIAL
8 CONTAINING ONE MICROSCOPIC PIECE OF MULTI-STRAND POLYESTER
9 COTTON FIBER, IDENTICAL TO THE PAJAMA TOP MATERIAL BLOOD
10 STAINED BUT WASHED. OKAY.

11 THE NEXT SLIDE, PLEASE. WHAT ALSO WE HAVE -- AND I
12 WANT TO COME BACK TO THESE. THESE RESULTS, THE MARCH 9TH
13 RESULTS, WIND UP IN THE CID'S PRELIMINARY LABORATORY REPORT.
14 AND MAYBE IF I COULD JUST HAVE MY CO-COUNSEL HERE PUT ON THE
15 DOCUMENT PROJECTOR -- OKAY. THIS REPORT, IF WE WENT TO THE
16 FRONT PAGE, IS DATED APRIL 6TH, 1970. ALL RIGHT. AND IF WE
17 GO DOWN TO THE BOTTOM OF THAT PAGE, YOU'LL SEE IT'S PAGE 12,
18 THIS IS FROM MACDONALD'S APPENDIX ONE. I THINK IT'S DE-123.2.
19 THIS IS THE PAPER VERSION, BUT IT'S THE SAME IN THE ELECTRONIC
20 VERSION. AND IF WE COULD FLIP THE PAGE, IT SKIPS TO PAGE 14.
21 AND WHAT'S MISSING -- AND CAN WE GO OFF THE POWERPOINT FOR A
22 SECOND, PLEASE?

23 A MOMENT'S INDULGENCE, YOUR HONOR.

24 (PAUSE.)

25 MR. MURTAGH: OKAY. IF WE COULD HAVE GOVERNMENT

September 25, 2012

1 EXHIBIT -- ALL RIGHT. LET ME TRY GOVERNMENT'S EXHIBIT 13. --
2 3020.1. OKAY. NO. SORRY. WHAT I'M TRYING TO FIND, YOUR
3 HONOR, IS THE MISSING PAGE AND WHAT'S ON IT. LET ME COME BACK
4 TO THAT.

5 BUT WHAT I'LL REPRESENT TO THE COURT IS PARAGRAPH
6 20, WHICH SHOULD BE ON PAGE 13 OF THE PRELIMINARY REPORT FILED
7 BY MACDONALD IN 2006, SHOWS GLISSON'S MARCH 1970 SEROLOGY
8 RESULTS FOR D-237. D-237, WHICH THE DEFENSE CONTENDS IN
9 PLEADINGS, IS THE SAME AS 91A, IN FACT, MEANS DIFFERENT THINGS
10 TO DIFFERENT PEOPLE. TO THE SEROLOGY PEOPLE IT'S THE ACTUAL
11 BLOOD STAINS IN THE FINGERNAIL SCRAPINGS IN L. HAND CHRIS. TO
12 DILLARD BROWNING, IT'S A FIBER THAT MATCHES MACDONALD'S PAJAMA
13 TOP. BUT LEST I FORGET TO SAY IT, NO USACIL CHEMIST EVER USED
14 THE DESIGNATION D-237 IN REFERENCE TO THE HAIR WHICH I'M ABOUT
15 TO TALK ABOUT.

16 SO, GO BACK TO THE POWERPOINT, PLEASE. OKAY. THIS
17 IS AN -- THIS IS THE FULL DOCUMENT. MR. WIDENHOUSE SHOWED YOU
18 A PARTIAL PORTION OF IT. I THINK JUST THE TOP PORTION.

19 ALL RIGHT, LET'S SCROLL DOWN AND HIGHLIGHT THE TOP
20 PORTION, PLEASE. NO, THE TOP PORTION. I'M SORRY, UP HERE.
21 27 -- NO. MAYBE YOU CAN'T DO IT.

22 ALL RIGHT. THE DOCUMENT IS DATED 27 JULY 1970, AND
23 MR. WIDENHOUSE OFFERED IT FOR THE PROPOSITION THAT WHEN BENNIE
24 HAWKINS TOOK CUSTODY OF THE VIALS FROM THE AUTOPSY HE SENT
25 THEM DIRECTLY TO JANICE GLISSON.

September 25, 2012

1 IN POINT OF FACT, THE VIALS HAD ALREADY BEEN TO THE
2 CID LAB, HAD BEEN EXAMINED BY BROWNING, AND AT LEAST THE
3 FINGERNAIL SCRAPINGS CONTAINED IN L. HAND, CHRIS, HAD BEEN
4 TESTED FOR BLOOD BY JANICE GLISSON.

5 OKAY. NOW, THE HIGHLIGHTED PORTION IS -- NONE OF
6 THESE VIALS ARE MARKED IN ANY WAY OTHER THAN WITH HAWKINS'
7 INITIALS ON THE BASE WHEN GLISSON GETS THEM ON JULY 27TH. SO,
8 THE FIRST THING SHE DOES IS SHE NUMBERS ALL THE VIALS ONE
9 THROUGH 13. AND NUMBER SEVEN IS FINGERNAIL SCRAPINGS, LEFT
10 HAND, SMALLER FEMALE, MCDONALD, NOT LABELED BY BROWNING, ONE
11 HAIR, QUESTION MARK, TWO FRAGMENTS.

12 OKAY. NEXT PAGE. THE HIGHLIGHTED PART REFLECTS
13 JANICE GLISSON'S MICROSCOPIC EXAMINATION. AND WITH RESPECT TO
14 NUMBER SEVEN -- CAN WE ZOOM IN ON THAT? OKAY. NUMBER SEVEN,
15 FIBERS, ONE LIGHT BROWN, NARROW HAIR, NO MEDULLA, STRIATED
16 INTACT ROOT, TAPERED END. AND THE PORTION TO THE LEFT
17 BASICALLY IS JANICE GLISSON COMPARES THIS HAIR TO JEFFREY
18 MACDONALD'S KNOWN HAIR SAMPLES AND IT DOESN'T MATCH, OKAY,
19 AND THAT WAS IN 1970.

20 OKAY. NEXT PAGE, PLEASE, OR NEXT SLIDE. ALL RIGHT,
21 NEXT PAGE. ALL RIGHT. NOW, WITH RESPECT TO NUMBER SEVEN AND
22 EIGHT, SHE'S SAYING THERE THAT THEY DON'T MATCH MACDONALD'S
23 HAIR SAMPLES.

24 NOW, THE HIGHLIGHTED PARAGRAPH AT THE BOTTOM, IF YOU
25 CAN -- NO, THE BOTTOM. OKAY. WHAT GLISSON IS SAYING, AND

September 25, 2012

1 MR. WIDENHOUSE DIDN'T SHOW YOU THIS PAGE OR EXCERPT, DID NOT
2 LABEL ALL OF THE OTHER VIALS CONTAINING FIBERS AND HAIRS, ET
3 CETERA, PARENTHESES, NUMBER ONE, NUMBER SEVEN, NUMBER EIGHT,
4 CLOSE PARENTHESES, BUT GAVE THESE NUMBERS A SLIDE -- IT LOOKS
5 LIKE CORRESPOND TO THESE NUMBERS SINCE THEY ARE NOT GOING TO
6 BE REPORTED ON BY ME.

7 SO, THIS IS THE ORIGIN OF THE 91A HAIR. IT HAS NO
8 PROVENANCE BEFORE JULY 27TH, 1970. GLISSON FINDS IT IN THE
9 VIAL, WHICH SHE APPARENTLY HAS NOT EXAMINED BEFORE, AND MOUNTS
10 IT ON TO SLIDE NUMBER SEVEN.

11 OKAY. NEXT SLIDE, PLEASE. OKAY. THIS IS THE U.S.
12 ARMY CHART OF EXHIBITS AND FINDINGS. THIS IS, AGAIN, ONE OF
13 THE -- I BELIEVE THE EXHIBITS IN THE MACDONALD APPENDIX.
14 THESE ARE THE RESULTS OF JANICE GLISSON AND THE OTHER
15 SEROLOGISTS' BLOOD WORK.

16 NEXT SLIDE, PLEASE. UNDER D-237, IF WE COULD EXPAND
17 THAT. I'M SORRY. OKAY. WHAT IT SAYS IS THE FINGERNAIL
18 SCRAPINGS FROM LEFT HAND OF KRISTEN MACDONALD INDICATED BLOOD.
19 WELL, THAT'S CONSISTENT WITH JANICE GLISSON'S MARCH 9TH
20 SEROLOGY NOTES.

21 OKAY. NEXT SLIDE. THIS PAGE IS OMITTED FROM THE
22 DEFENSE FILING, BUT IT'S BASICALLY THEY GAVE -- BROWNING HAD
23 RESPONSIBILITY FOR THE HAIRS AND FIBERS. GLISSON AND THREE
24 OTHER CHEMISTS DID THE SEROLOGY WORK. THEY COMBINED THE TWO
25 INTO ONE CHART.

September 25, 2012

1 OKAY. NEXT SLIDE, PLEASE. NOW, WITH RESPECT TO
2 D-237, WHAT YOU WILL SEE IS THAT UNDER THE HAIRS COLUMN
3 THERE'S NOTHING. AND UNDER THE FIBERS COLUMN IS D-210. AND
4 THEN UNDER THE BLOOD COLUMN THIS INDICATES -- EXCUSE ME --
5 INDICATES BLOOD.

6 AND WITH THE COURT'S INDULGENCE ONE MOMENT. WHAT
7 I'D LIKE TO PUT ON THE DOCUMENT PROTECTOR -- PROJECTOR IS THE
8 BOUND VERSION OF THIS CORRESPONDING PAGE FROM DE-123.2. AND
9 YOU'LL SEE THAT THE REFERENCE TO D-210 HAS BEEN OBSCURED BY --
10 I DON'T KNOW WHETHER IT'S A POST-IT OR A STICKY OR SOMETHING,
11 BUT YOU WOULDN'T KNOW FROM LOOKING AT THAT THAT WHAT IT
12 REPRESENTS IS THAT A FIBER MATCHING MACDONALD'S PAJAMA TOP WAS
13 FOUND IN D-237.

14 OKAY. NEXT SLIDE, PLEASE, OR LET'S GO BACK TO THE
15 POWER POINT. YOUR HONOR, I'LL JUST FLIP THROUGH THESE.
16 THEY'RE BASICALLY CHAIN OF IDENTIFICATION TYPE THINGS.

17 NEXT. ALL RIGHT. WHAT THIS SLIDE REPRESENTS IS --
18 AND YOUR HONOR MAY RECALL THAT YOU ORDERED US TO DO DETAILED
19 PHOTOGRAPHIC DOCUMENTATION OF THE UNPACKAGING OF THE EVIDENCE
20 BY THE FBI AND LATER BY AFIP.

21 WHAT WE'RE LOOKING AT THERE IS FROM VOLUME THREE,
22 PHOTOGRAPH NUMBER 156 OF THE PHOTOGRAPHIC SUBMISSIONS FILED IN
23 1999. AND YOU'LL SEE THERE'S A LITTLE PAPER LABEL THAT
24 APPARENTLY HAS COME LOOSE, WHICH IS A RECURRING PROBLEM IN
25 THIS CASE, IT'S SO OLD ALL THE GLUE HAS DRIED OUT OF THE

September 25, 2012

1 EXHIBIT LABELS. AND IT SAYS NUMBER SEVEN, FIBERS, HAIR.

2 AND YOU MAY NOT BE ABLE TO SEE IT -- WE'LL GO ON TO
3 ANOTHER SLIDE. OKAY. NEXT. ALL RIGHT. WHAT WE'RE LOOKING
4 AT HERE IS VIAL NUMBER SEVEN, AS PHOTOGRAPHED AT AFDIL, ARMED
5 FORCES DNA IDENTIFICATION LABORATORY ON 6/3, IT LOOKS LIKE,
6 1999.

7 NEXT SLIDE. YOU SEE ON THE TOP OF THE VIAL,
8 CONSISTENT WITH JANICE GLISSON'S NOTES, IT SAYS NUMBER SEVEN,
9 AND THEN THOSE ARE HER INITIALS, JSG.

10 NEXT SLIDE. YOU CAN SEE THIS IS THE BOTTOM OF THE
11 SLIDE AND YOU'LL SEE WHAT'S SCRATCHED ON THE BOTTOM OF THE
12 SLIDE IS BJH, BENNIE HAWKINS' INITIALS. YOU CAN SEE THERE ARE
13 PIECES OF PAPER IN THAT VIAL.

14 OKAY. NEXT. THERE'S -- OKAY. NEXT. AND THIS IS
15 -- THE TECHNICIAN HAS OPENED THE VIAL AND WHAT'S IN THERE AND
16 SHE'S HOLDING IS A PIECE OF RULED PAPER AND IT SAYS FINGERNAIL
17 SCRAPINGS LEFT HAND, SMALLER FEMALE, MCDONALD.

18 NOW, YOUR HONOR, IF YOU'LL RECALL FROM A FEW SLIDES
19 AGO WHEN WE WERE LOOKING AT JANICE GLISSON'S JULY 27TH, 1970,
20 BENCH NOTE, HER DESCRIPTION IS EXACTLY THAT, FINGERNAIL
21 SCRAPINGS, SMALLER FEMALE, MCDONALD, NOT MACDONALD.

22 WHAT I WOULD ALSO DRAW YOUR HONOR'S ATTENTION TO IS
23 JANICE GLISSON'S JULY 27TH BENCH NOTES, WHICH ARE DETAILED
24 BECAUSE SHE CERTAINLY LISTS THIS PIECE OF PAPER, MAKE NO
25 REFERENCE TO ANYTHING MARKED L. HAND, CHRIS, WHICH IS HOW

September 25, 2012

1 CHAMBERLAIN ORIGINALLY DESCRIBED THE FINGERNAIL SCRAPINGS FROM
2 THE LEFT HAND OF KRISTEN MACDONALD.

3 AND WE SUBMIT THAT WHAT HAS HAPPENED IS THE ACTUAL
4 FINGERNAIL SCRAPINGS WERE IN SOME OTHER PIECE OF PAPER,
5 SOMETHING THAT WAS CAPABLE OF BEING MARKED L. HAND, CHRIS,
6 BECAUSE CHAMBERLAIN HAS IT IN QUOTES, AND THAT'S WHERE THE
7 BLOOD WAS. WHATEVER WAS ACTUALLY IN THOSE FINGERNAIL
8 SCRAPINGS WAS IN L. HAND, CHRIS. IT APPEARS TO HAVE BEEN
9 CONSUMED IN ANALYSIS, CERTAINLY BY APRIL 6TH, 1970, AND IT
10 DOESN'T EXIST AS OF JULY 27TH, 1970.

11 SO, NEXT. THIS IS THE SLIDE -- THE SLIDE NUMBER
12 SEVEN HAS BEEN MARKED Q137, THIS IS THE SLIDE MAILER, BY THE
13 FBI AND AFIP HAS MARKED IT 91A.

14 NEXT SLIDE. SAME THING. IN OTHER WORDS, THERE'S NO
15 DISPUTE THAT GLISSON'S SLIDE NUMBER SEVEN CONTAINED THE HAIR
16 THAT CAME FROM THE VIAL. IT'S THE SAME HAIR AS Q137, AS 91A,
17 AS TESTED BY AFIP.

18 OKAY. NEXT. NOW, WHAT WE HAVE HERE, YOUR HONOR, IS
19 A COMBINATION OF A PHOTOMICROGRAPH, WHICH IS IN EVIDENCE DUE
20 TO THE DNA STIPULATIONS. THESE WERE TAKEN BY GRANT GRAHAM.
21 AND WE HAVE AT THE TOP GLISSON'S DESCRIPTION, NUMBER SEVEN
22 FIBERS, ONE LIGHT BROWN NARROW HAIR, NO MEDULLA, STRIATED
23 INTACT ROOT, TAPERED END, NOT SIMILAR. THAT COMES FROM HER
24 BENCH NOTES, JULY 27TH.

25 AND THEN WE HAVE IN THE RIGHT-HAND CORNER

September 25, 2012

1 MITOCHONDRIAL DNA ANALYSIS EQUALS NOT CONSISTENT WITH ANY
2 OTHER SAMPLE TESTED, WHICH IS NOT JUST THE MACDONALD FAMILY
3 MEMBERS, BUT ALSO STOECKLEY AND HER DECEASED BOYFRIEND, GREG
4 MITCHELL.

5 NEXT. ALL RIGHT. AGAIN, THERE'S NO MENTION OF D-
6 237. THAT'S THE END OF THE HAIR IN THIS SLIDE. IT'S ALMOST
7 INVISIBLE.

8 NEXT SLIDE. THIS IS A CLOSE UP OF THE ROOT OF 91A.
9 AGAIN, IT APPEARED THAT MR. WIDENHOUSE WAS SAYING SO WHAT IF
10 IT WAS NATURALLY SHED. WE DISPUTE THAT. THE PRESENCE OF
11 NATURALLY SHED HAIRS AT A CRIME SCENE OR ELSEWHERE ARE NOT IN
12 THEMSELVES FORENSICALLY SIGNIFICANT.

13 THE Q137 AND ONE OF THE LITTLE NOTATIONS IN RED,
14 CAUCASIAN HAIR, CLUB ROOT, WHICH MR. FRAM DESCRIBES IN HIS
15 AFFIDAVIT AS FBI SHORTHAND FOR A NATURALLY SHED HAIR. NAT,
16 NATURAL TIP. NSFPCP IS FBI SHORTHAND FOR NOT SUFFICIENT FOR
17 SIGNIFICANT COMPARISON PURPOSES. THIS WAS A HAIR -- TINY
18 HAIR. AND, AGAIN, IT'S NOT CONSISTENT WITH ANY SAMPLE TESTED.

19 NEXT. AND WHAT WE HAVE IN THE TOP THERE ARE THE
20 NOTATIONS OF GRANT GRAHAM, WHOSE BENCH NOTES WERE FILED, I
21 BELIEVE, AS PART OF MACDONALD'S APPENDIX ONE, DE-123.2.
22 GRAHAM DID NOT DESCRIBE THE HAIR AS MR. JUNKIN SAYS IN THE
23 MEMORANDUM IN SUPPORT OF THAT AS HAVING AN INTACT ROOT. WE'LL
24 GET TO THAT IN A SECOND.

25 ALL RIGHT. NEXT. IT'S THE HAIR END.

September 25, 2012

1 NEXT. AND THIS WOULD BASICALLY BE OUR SUBMISSION.
2 BASED ON THE AFFIDAVITS, THERE'S NO EVIDENCE OF BLOOD PRESENT,
3 CERTAINLY NOT IN GLISSON'S JULY 27TH NOTE OR IN ANY OF THE
4 PHOTOGRAPHS. AND FRAM IS SAYING THERE'S NO PIGMENT DOWN INTO
5 THE ROOT. THE ROOT HAS NOT BEEN AMORPHOUS OR STRETCHED OUT,
6 NO FOLLICULAR TAG PRESENT, NO SKIN SHEATH PRESENT, HAIR NOT
7 ACTIVELY GROWING TELOGEN PHASE, NO OTHER EVIDENCE OF FORCIBLE
8 REMOVAL. IT'S A NATURALLY SHED HAIR, WITHOUT ANY EVIDENCE OF
9 BLOOD.

10 NEXT SLIDE. AND AGAIN, THERE IS NO EVIDENCE THAT
11 THIS HAIR WAS FOUND AT THE CRIME SCENE. NOBODY TESTIFIED TO
12 THAT. NOBODY SAW IT. NO EVIDENCE THAT THIS HAIR WAS OBSERVED
13 OR FOUND AT AUTOPSY UNDER KRISTEN'S FINGERNAIL. NEITHER DR.
14 GAMMEL NOR DR. HANCOCK TESTIFY ANYWHERE TO THAT EFFECT. NO
15 EVIDENCE THAT THE CID LAB USED D-237 IN REFERENCE TO A HAIR
16 AND NO EVIDENCE THAT THIS HAIR WAS OBSERVED OR NOTED DURING
17 PRIOR EXAMINATION OF D-237.

18 NEXT. NO EVIDENCE THAT BROWNING FOUND A HAIR IN THE
19 VIAL THAT HE REFERRED TO AS EXHIBIT D-237, FINGERNAIL
20 SCRAPINGS FROM CHRISTINE'S LEFT HAND. BECAUSE THE AUTOPSY
21 PATHOLOGIST THOUGHT THE VICTIM'S NAME WAS CHRISTINE MACDONALD
22 THIS CHRISTINE MISNOMER PERPETUATES ITSELF UNTIL ULTIMATELY
23 IT'S CORRECTED IN THE CONSOLIDATED REPORT. NO EVIDENCE THAT
24 91A HAD BLOOD ON IT. IF THE 91A HAIR HAD ACTUALLY BEEN UNDER
25 THE FINGERNAIL SCRAPINGS, AND THIS IS OUR ARGUMENT, IT WOULD

September 25, 2012

1 HAVE HAD BLOOD ON IT. YOUR HONOR, I THINK, DOES NOT NEED TO
2 SEE THE PICTURES OF KRISTEN LYING IN HER BED, BUT HER HANDS
3 ARE SOAKED IN BLOOD.

4 NEXT SLIDE. WE'VE GONE THROUGH THIS.

5 NEXT. AGAIN, GLISSON MAKES NO MENTION OF BLOOD.
6 SHE USES THE TERM INTACT ROOT, BUT AS SHE SAYS IN HER
7 AFFIDAVIT WHAT THAT MEANS TO ME IS IT HAS A ROOT AS OPPOSED TO
8 NO ROOT. AND GRANT GRAHAM DID NOT DESCRIBE IT AS AN INTACT
9 ROOT, WHATEVER THAT MEANS, BUT RATHER AS A HUMAN HAIR WITH
10 ROOT BUT NO TISSUE. AND AS MR. FRAM, I THINK, DESCRIBES IN
11 HIS AFFIDAVITS, YOU KNOW, HAIRS STOP GROWING. THEY DRY UP.
12 THEY FALL OUT. IT'S PART OF NATURE.

13 NEXT. I THINK WE'VE SORT OF COVERED THAT. IN OTHER
14 WORDS, PART OF OUR POINT HERE IS THE DEFENSE HAS THE BURDEN OF
15 PROOF HERE. THEY'VE PREVIOUSLY ALLEGED NOT ONLY PROVENANCE
16 UNDER KRISTEN'S FINGERNAIL BUT BLOODY, FORCIBLY REMOVED.
17 THEY'VE OFFERED NO EVIDENCE WHATSOEVER, NOT FROM ANY EXPERTS,
18 NOT IN ANY AFFIDAVITS. WE'VE OFFERED AFFIDAVITS FROM EXPERTS.
19 THEY HAVEN'T CHALLENGED THEM. THEY DIDN'T DEPOSE THE PEOPLE.
20 THEY COULD HAVE. WE BELIEVE OUR EVIDENCE STANDS AND THEY'VE
21 FAILED ON THEIR BURDEN OF PROOF.

22 NEXT SLIDE, PLEASE. AND I'VE GONE THROUGH THAT, BUT
23 BASICALLY THAT'S ALL SUPPORTED BY MR. FRAM'S AFFIDAVIT AND
24 ALSO THE AFFIDAVIT OF DR. JOSEPH DIZINNO, WHO IS THE FORMER
25 DIRECTOR OF THE FBI LAB, AND A DNA EXPERT AND A QUALIFIED HAIR

September 25, 2012

1 AND FIBER EXAMINER.

2 OKAY. NEXT. I'VE MADE THIS ARGUMENT. AND, YOUR
3 HONOR, OBVIOUSLY THESE ARE IN THE RECORD AND YOUR HONOR CAN
4 READ THEM AT YOUR LEISURE.

5 NEXT. WE DON'T AGREE THAT THE HAIR WAS, IN FACT,
6 UNDER HER FINGERNAILS OR EVEN ON HER HANDS. BUT AS WAS
7 BROUGHT AT THE TRIAL BY MR. SMITH, WHEN HE CROSS-EXAMINED BOTH
8 DR. GAMMEL AND HANCOCK, THE VICTIM'S HANDS WERE NOT BAGGED.
9 NO PROTECTIVE COVERINGS WERE PUT ON THEM. THEY WERE PLACED,
10 YOU KNOW -- IN FACT, PART OF MACDONALD'S DEFENSE WAS
11 CONTAMINATION ALL OVER THE PLACE. AND IT'S ENTIRELY POSSIBLE
12 THAT A HAIR COULD HAVE BEEN PICKED UP WHEN THE HAIR -- WHEN
13 THE BODY WAS PLACED ON A CANVAS STRETCHER FROM AN ARMY
14 AMBULANCE WHEN IT'S COVERED WITH A SHEET, AGAIN FROM AN ARMY
15 AMBULANCE, WHEN IT'S PLACED IN THE COOLER IN THE MORTUARY AND
16 UNDRESSED. IN OTHER WORDS, THIS WAS NOT CSI IN 1970.

17 AND, OF COURSE, AS YOU'LL SEE WHEN WE GET INTO THE
18 58A.1 THING, KRISTEN'S BEDDING WAS CONTAMINATED WITH ALL KINDS
19 OF HAIRS AND FIBERS.

20 NEXT. SHE WAS ALSO TOUCHED BY A DOCTOR. WE'VE
21 TALKED ABOUT THE HANDS NOT BEING BAGGED.

22 OKAY. NEXT. THIS IS A FIVE MILLIMETER LONG,
23 VIRTUALLY INVISIBLE HAIR. I MEAN, IT'S ALMOST WHITE IN COLOR.
24 WE THINK IT'S SPECIOUS EVIDENCE. WE THINK IT'S CONTAMINATION,
25 WHETHER THE CONTAMINATION CAME FROM THE PAD OF PAPER THAT DR.

September 25, 2012

1 HANCOCK WROTE FINGERNAIL SCRAPINGS, LEFT HAND, CHRIS, STUCK IT
2 IN THE VIAL, OR IT'S POSSIBLE THAT WHEN THIS EVIDENCE WENT
3 BACK TO THE LAB AFTER GLISSON'S AND BROWNING'S INITIAL
4 EXAMINATION, WHICH IS REFLECTED IN THE PROPERTY RECEIPT, THE
5 EVIDENCE CUSTODIAN WOULD HAVE GOTTEN A VIAL AND WOULD HAVE HAD
6 NO WAY OF KNOWING WHAT'S IN IT. HE MIGHT HAVE OPENED IT AND
7 TAKEN OUT THE PIECE OF PAPER AND READ FINGERNAIL SCRAPINGS,
8 LEFT HAND, SMALL FEMALE MACDONALD. I CAN'T TELL YOU THAT
9 THAT'S HAPPENED, BUT IT IS CERTAINLY A POSSIBILITY. THERE IS
10 NO PROVENANCE OF THIS HAIR BEFORE JULY 27, 1970.

11 OKAY. NEXT. WELL, SINCE WE'RE HERE, LET'S GO
12 THROUGH AFDIL 58A IF WE MAY. THIS IS THE BODY OF KRISTEN
13 MACDONALD AND YOU CAN SEE HER BODY THERE AND YOU CAN SEE HER
14 RIGHT HAND, IT'S RIGHT IN A BIG, LARGE BLOOD STAIN.

15 NEXT. THIS IS, AGAIN, WHAT MACDONALD CONTENDS. AND
16 HE SAYS THAT IT IS A HAIR WITH ROOT INTACT, ACCORDING TO
17 MACDONALD'S LAWYERS QUOTE OF GRANT GRAHAM'S BENCH NOTES.
18 THAT'S NOT WHAT HE SAID.

19 NEXT. AGAIN, THEY SUGGEST IT WAS FORCIBLY REMOVED.
20 THAT MAY HAVE BEEN ABANDONED. MITOCHONDRIAL DNA SEQUENCE WAS
21 NOT CONSISTENT WITH ANY OTHER SAMPLE TESTED.

22 MY CO-COUNSEL REMINDED ME THIS MORNING THAT I
23 PROBABLY OUGHT TO EXPLAIN, HOWEVER BRIEFLY, THE DIFFERENCE
24 BETWEEN MITOCHONDRIAL DNA AND NUCLEAR DNA, AT LEAST FOR THE
25 RECORD.

September 25, 2012

1 MITOCHONDRIAL DNA IS TRANSMITTED THROUGH THE
2 MATERNAL LINE. IT IS USED MORE FOR ELIMINATION THAN FOR
3 INCLUSION. IN OTHER WORDS, YOU'RE ONLY GETTING THE MATERNAL
4 LINE DNA. AND WITH THE CASE OF THESE THREE VICTIMS, THEY ALL
5 HAVE THE SAME MITOCHONDRIAL DNA SEQUENCE, AFDIL REFERS TO AS
6 GROUP A.

7 NUCLEAR DNA COMES FROM BOTH PARENTS. AND IF YOU
8 HAVE A COMPLETE NUCLEAR DNA SEQUENCE, I THINK IT'S GENERALLY
9 AGREED THAT YOU CAN POSITIVELY IDENTIFY THE DONOR WITH THAT
10 MUCH INFORMATION.

11 WITH MITOCHONDRIAL DNA, IF YOU DO HAVE A MATCH,
12 USUALLY THE EXPERT WILL TESTIFY CANNOT EXCLUDE. AND THAT'S
13 THE SCIENTIFIC EVIDENCE.

14 WE WOULD ARGUE THAT UNDER THE CIRCUMSTANCES OF THIS
15 CASE IF YOU'VE GOT DR. MACDONALD'S MITOCHONDRIAL DNA SEQUENCE,
16 WE SUBMIT THAT'S HIS HAIR. AND THE SAME WITH RESPECT TO
17 KRISTEN. WELL, IT'S A LITTLE MORE COMPLICATED WITH THE THREE
18 VICTIMS BECAUSE THEY ALL HAVE THE SAME SEQUENCE.

19 OKAY. JUNKIN SAYS THE UNIDENTIFIED HAIR IS PROFOUND
20 NEW EVIDENCE OF INTRUDERS WHICH COULD NOT HAVE BEEN PREVIOUSLY
21 DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE.

22 WELL, HE COULD HAVE LOOKED AT THIS STUFF. I MEAN,
23 THIS WAS IN THE RECORD. IN FACT, WHAT HAPPENED HERE, YOUR
24 HONOR, IS THE NUMBER OF VIALS THAT WERE INTRODUCED IN EVIDENCE
25 AT TRIAL FOR THE PRESENCE OF PAJAMA TOP FIBERS OR SPLINTERS,

September 25, 2012

1 AS WAS THE CASE HERE WITH THIS VIAL, WHICH WAS CALLED NB -- I
2 WON'T QUOTE IT FROM MEMORY. I'LL PROBABLY GET IT WRONG. BUT
3 THIS PARTICULAR VIAL WENT INTO EVIDENCE AT TRIAL, BUT NOT FOR
4 THIS PURPOSE.

5 OKAY. NEXT SLIDE. WE'VE GOT -- AND YOU'LL SEE THIS
6 AGAIN. THIS IS THE -- WELL, ACTUALLY, IF YOU LOOK AT THE
7 HIGHLIGHTED PORTION -- I THINK IT'S GOVERNMENT EXHIBIT 362, E-
8 52, NORTH BEDROOM, NB, Q87, AND IT WAS INTRODUCED FOR PURPLE
9 COTTON THREADS IDENTICAL TO THE PURPLE COTTON THREADS FROM
10 MACDONALD'S PAJAMA TOP.

11 OKAY. NEXT SLIDE. YEAH. OKAY. NEXT. THESE ARE
12 CHAIN OF IDENTIFICATION PHOTOGRAPHS. LET'S GO THROUGH THEM.
13 NEXT. NEXT. ONCE THE SLIDE GETS TO AFDIL, THEY ASSIGN IT THE
14 NUMBER OF 58A, AND YOU CAN SEE THE PRIOR MARKINGS FROM THE
15 FBI. ALL RIGHT. NEXT IS THE SLIDE WITH Q87, WHICH WAS WHAT
16 THE FBI CALLED IT, 58A.

17 NEXT. NOW, WHEN YOU LOOK AT GRANT GRAHAM'S BENCH
18 NOTES -- AND HIS JOB WAS INITIALLY TO LOOK AT ALL THESE SLIDES
19 THAT YOUR HONOR HAD ORDERED US TO TURN OVER TO AFIP TO
20 DETERMINE WHAT'S ON THE SLIDE. IS IT A HAIR? DOES IT HAVE A
21 ROOT? HOW LONG IS IT? IT WAS BASICALLY DNA SUITABILITY AND
22 DIVISIBILITY. THAT'S WHAT HE WAS LOOKING FOR. BUT IN THE
23 PROCESS HE DESCRIBED THE TWO -- THERE ARE TWO HAIRS ON SLIDE
24 58A. 58A.1 IS THE DARKER HAIR, AND THAT DOESN'T MATCH
25 ANYBODY'S DNA SEQUENCE.

September 25, 2012

1 NEXT. I'M SORRY, COULD YOU GO BACK TO THE PREVIOUS
2 SLIDE? IN THE UPPER RIGHT-HAND OR LEFT-HAND CORNER, SLIDE,
3 YOU KNOW, 99C043858A, AFDIL MARKINGS, CONTAINS TWO HUMAN
4 HAIRS. BOTH HAVE ROOTS BUT NO TISSUE. HAIR NUMBER TWO IS NOT
5 MARKED WITH A RED DOT. IT HAS A SLIGHTLY ROUNDED TIP.

6 OKAY. NEXT SLIDE. THAT'S, AGAIN, A PORTION OF HAIR
7 NUMBER ONE, 58A.1.

8 NEXT. OKAY. WHAT YOU'RE SEEING THERE, IN ADDITION
9 TO WHAT GRANT GRAHAM SAID, IS WHAT THE FBI SAID. AND THIS IS
10 IN MR. FRAM'S AFFIDAVIT, Q87, CAUCASIAN BODY AREA HAIR
11 FRAGMENT, APPROXIMATELY ONE-EIGHTH INCH, DARK BROWN, CLUB
12 ROOT.

13 AS YOUR HONOR MAY RECALL, WE ASKED YOUR PERMISSION
14 TO HAVE THE FBI LOOK AT THE SLIDES. THEY COULDN'T DO ANYTHING
15 ELSE, BUT LOOK AT THEM UNDER THE MICROSCOPE. SO, WE BASICALLY
16 HAD SOME INVENTORIES BEFORE THEY WERE TURNED OVER TO AFIP.
17 SO, THAT'S WHERE THIS INFORMATION COMES FROM. MR. FRAM DID
18 THIS IN 1999.

19 OKAY. NEXT. NOW, WE'RE LOOKING AT 58A.2, WHICH HAS
20 A MITOCHONDRIAL DNA SEQUENCE CONSISTENT WITH SEQUENCE B, WHICH
21 ACCORDING TO THE STIPULATED AFDIL RESULTS, IS THE SAME
22 SEQUENCE AS JEFFREY MACDONALD.

23 NOW, OUR POSITION IS THIS IS A NATURALLY SHED HAIR
24 OF JEFFREY MACDONALD. IT'S ALSO FOUND ON KRISTEN'S BEDSPREAD.
25 THERE'S NO EVIDENCE AS TO WHEN THIS HAIR GOT HERE. IT COULD

September 25, 2012

1 HAVE BEEN THERE FOR MONTHS. WHO KNOWS.

2 NEXT SLIDE. MORE OF 58A.2. NEXT. NEXT.

3 OKAY. AGAIN, THIS IS THE ROOT END. AND MR. FRAM
4 STATES IN HIS AFFIDAVIT THAT THIS IS A CLUB ROOT, WHICH MEANS
5 IT'S A NATURALLY SHED HAIR.

6 NEXT. MORE OF THE SAME. NEXT. MORE OF THE SAME.
7 NEXT. NEXT.

8 ALL RIGHT. WHAT WE'RE SAYING ABOUT 58A.1 IS IT'S A
9 CAUCASIAN HAIR, APPROXIMATELY FIVE MILLIMETERS LONG, ROOT BUT
10 NO TISSUE, NATURALLY SHED -- CLUB ROOT, NATURALLY SHED.
11 MITOCHONDRIAL MTDNA ANALYSIS NOT CONSISTENT WITH ANY OTHER
12 SAMPLE TESTED.

13 OKAY. NEXT. 58A.2, BASICALLY THE SAME KIND OF
14 HAIR, EXCEPT IT'S JEFFREY MACDONALD'S MITOCHONDRIAL DNA
15 SEQUENCE. OUR POSITION IS THAT HAIR IS NO MORE INCRIMINATORY
16 OF DR. MACDONALD THAN THE UNSOURCED HAIR IS EVIDENCE OF
17 INTRUDERS. IT'S A NATURALLY SHED HAIR. AND WHEN WE GO ON
18 WITH 58A AND WHAT ELSE WAS FOUND ON THE BEDSPREAD, I THINK
19 YOU'LL SEE WHY.

20 NEXT. OKAY. KRISTEN'S BEDSPREAD HAD ALL SORTS OF
21 THINGS ON IT.

22 NEXT. THERE WERE NUMEROUS UNMATCHED SYNTHETIC
23 FIBERS, UNKNOWN TEXTILE FIBERS, BLACK DOG HAIR WITH AN INTACT
24 ROOT. THEY DIDN'T HAVE A BLACK DOG. AS FAR AS WE KNOW, A
25 BLACK DOG IS NOT ALLEGED TO HAVE BEEN INVOLVED WITH THE

September 25, 2012

1 INTRUDERS. SOMEHOW THE BLACK DOG HAIR GETS ON THE GREEN
2 BEDSPREAD. YOU KNOW, IT'S THE FIBER TRANSFER PRINCIPLE.
3 THERE'S ALSO TWO BROWN AND WHITE ANIMAL HAIRS, WHICH IF I MAY
4 OFFER AN UNEXPERT OPINION, I THINK THEY HAD A BROWN AND WHITE
5 CAT.

6 OKAY. NEXT. AND WE CAN GO THROUGH THESE. THESE
7 ARE CHAIN OF IDENTIFICATION. NEXT. NEXT. BLACK DOG HAIR.
8 NEXT. MORE BLACK DOG HAIR. NEXT. BROWN AND WHITE ANIMAL
9 HAIR. NEXT. BROWN AND WHITE ANIMAL HAIR. NEXT.

10 OKAY. WHAT THIS IS, AFDIL -- THIS IS THE AFDIL
11 SPECIMEN 55A, THEY -- YOU KNOW, IF YOU GO WAY, WAY BACK,
12 ORIGINALLY THERE'S A VIAL, E-52 NORTH BEDROOM, NB, WHICH WAS
13 COLLECTED BY WALTER ROWE, ACCORDING TO THE STIPULATION, AND
14 BILL IVORY WITNESSED THIS. IT GOES TO THE FBI BECAUSE Q87 WAS
15 INTRODUCED AT TRIAL. IT'S GOVERNMENT EXHIBIT 362. BUT WHEN
16 IT GETS TO AFDIL, THEY BREAK IT DOWN INTO, YOU KNOW, HAIRS AND
17 OTHER NONHUMAN MATERIAL.

18 NEXT. THIS IS WHAT THEY FIND. I MEAN, THERE'S
19 NUMEROUS FIBERS, BLUE FIBERS.

20 NEXT. KIND OF BROWN AND RED FIBERS AND CLEAR
21 FIBERS.

22 NEXT. FIBER BUNDLE, TRANSPARENT. I MEAN, THERE ARE
23 LITERALLY HUNDREDS OF FOREIGN FIBERS HERE.

24 NEXT. IT'S A HAIR ROOT, NONHUMAN. I THINK THAT'S
25 THE BLACK DOG HAIR. ANYWAY, NEXT. NEXT. NEXT. FIBER -- IN

September 25, 2012

1 OTHER WORDS, WE'VE GOT RED, BLUE. WE'VE GOT GREEN, I THINK.
2 THERE'S EVERY COLOR OF THE RAINBOW. THIS DOESN'T PROVE
3 INTRUDERS. IT PROVES THAT FIBERS FALL OUT OF THINGS AND LAND
4 ON SURFACES.

5 NEXT. NEXT. NEXT. NEXT. APPARENTLY, THERE'S A
6 PIECE OF HAY ON THE BEDSPREAD.

7 NEXT. OKAY. I'VE MADE THESE ARGUMENTS. AND AGAIN,
8 MACDONALD HAS OFFERED NO EXPERT OPINION ON ANY OF THIS.

9 NEXT. DEFENSE HAS FAILED TO PROVE WHEN THIS HAIR
10 GOT ON THE BEDSPREAD. AND I THINK THAT'S THE KEY ISSUE WITH
11 RESPECT TO ALL OF THE UNSOURCED HAIRS, WHEN DID THEY GET
12 THERE. NEXT. AND IT'S THEIR BURDEN.

13 AND AS I SAY THERE IN NUMBER EIGHT, IF THE
14 CHARACTERISTICS OF SPECIMEN 58A.1, THE UNIDENTIFIED HAIR,
15 DEMONSTRATE FORCIBLE REMOVAL, THEN SO DOES MACDONALD'S HAIR,
16 58A.2. WE DON'T MAKE THAT ARGUMENT, BUT IF YOU LOOK AT THE
17 TWO HAIR ROOTS SIDE BY SIDE THEY'RE VIRTUALLY IDENTICAL.

18 NEXT. OKAY. NOW, IF WE COULD GO BACK TO -- AND THE
19 END IS IN SIGHT, YOUR HONOR -- 75A, THE VERY BEGINNING OF THE
20 POWERPOINT PRESENTATION.

21 ALL RIGHT. AND AT TRIAL THIS WAS GOVERNMENT EXHIBIT
22 327 BECAUSE WE INTRODUCED, I THINK THROUGH THE TESTIMONY OF
23 BILL IVORY, THE COLLECTION OF -- I'M GOING TO SAY 12 TO 15
24 SEAM THREADS FROM MACDONALD'S -- OR MATCHING MACDONALD'S
25 PAJAMA TOP.

September 25, 2012

1 NEXT. AND THIS IS GOVERNMENT EXHIBIT 984, WHICH WAS
2 THE SUMMARY CHART THAT WE PRESENTED AT THE END OF THE
3 GOVERNMENT'S CASE. AND WHAT ALL OF THAT SAYS, IF YOU WERE TO
4 READ EVERY LITTLE BOX, IS THERE'S THREADS THAT MATCH THE
5 PAJAMA TOP. IT'S SPLINTERS. IT'S, YOU KNOW -- AND WE OFFERED
6 IT AT TRIAL FOR THE PROPOSITION THAT CONTRARY TO MACDONALD'S
7 ACCOUNT, THE FIGHT BETWEEN COLETTE AND DR. MACDONALD STARTED
8 IN THE MASTER BEDROOM.

9 NEXT. YOU'VE SEEN THAT PICTURE BEFORE.

10 NEXT. YOU'LL RECALL THE TESTIMONY OF BILL IVORY.
11 HE, ON MARCH 16TH, 1970, GOES BACK AND LOOKS FOR MORE THREADS
12 AND YARNS AND COLLECTS EVERYTHING IN SIGHT, INCLUDING THIS
13 HAIR THAT WE'RE TALKING ABOUT.

14 NEXT. OKAY. WE'RE JUST ANNOTATING THAT. NEXT.
15 THERE'S 15 PURPLE COTTON THREADS THAT MATCH THE SEAM THREADS
16 OF MACDONALD'S PAJAMA TOP, AND THREE BLUE, POLYESTER COTTON
17 YARNS.

18 THERE WAS EVIDENCE AT THE TRIAL THAT THE PAJAMA TOP,
19 WHICH WAS A V-NECK PULLOVER TYPE, WAS RIPPED ENTIRELY DOWN THE
20 MIDLINE AND ALL THE WAY THROUGH THE LEFT INSEAM TO THE CUFF
21 AND DOWN THE INTERNAL SEAM RIGHT TO THE BORDER.

22 NEXT. AND THIS IS WHAT DR. MACDONALD'S ATTORNEY
23 CLAIMED WITH RESPECT TO 75A. PETITIONER SUBMITS THAT THESE
24 UNIDENTIFIED HAIRS -- HERE HE'S TALKING ABOUT 75A -- A HAIR OF
25 OVER TWO INCHES IN LENGTH WITH HAIR SIC AND FOLLICLE INTACT

September 25, 2012

1 FOUND UNDER COLETTE'S BODY IS PROFOUND NEW EVIDENCE THAT COULD
2 NOT HAVE PREVIOUSLY BEEN DISCOVERED THROUGH DUE DILIGENCE, AND
3 THAT WHEN VIEWED IN THE LIGHT OF THE OTHER EVIDENCE TAKEN AS A
4 WHOLE, ENTITLES THE PETITIONER TO HAVE HIS SENTENCE VACATED.

5 WELL, IN POINT OF FACT, AT TRIAL BILL IVORY
6 TESTIFIED, WHEN HE'S SHOWN GOVERNMENT 362 -- AND THE
7 TRANSCRIPT WILL BEAR THIS OUT -- HE SAYS THIS VIAL WAS USED TO
8 COLLECT, AMONG OTHER THINGS, HAIRS. HE SAYS IT TWICE. IF YOU
9 WANTED TO PURSUE HAIRS YOU COULD HAVE.

10 NEXT. ALL RIGHT. AGAIN, MACDONALD'S CONTENTION IS
11 THAT THIS IS A FORCIBLY REMOVED PUBIC HAIR THAT IS EVIDENCE OF
12 INTRUDERS.

13 NEXT. IT'S SOMEWHAT OF AN OVERSTATEMENT TO SAY THAT
14 IT IS CLEAR THAT THIS UNIDENTIFIED HAIR WAS FOUND UNDERNEATH
15 WHERE COLETTE MACDONALD'S BODY LAID AT THE CRIME SCENE, THAT
16 IT WASN'T FULL LENGTH. OKAY. THE POINT IS, IT WAS FOUND IN
17 HER BODY OUTLINE. IT WAS FOUND A MONTH LATER. AND, OF
18 COURSE, THE KEY ISSUE IS WHEN DID IT GET THERE.

19 NEXT. ALL RIGHT. IT DOES HAVE A ROOT WITH
20 FOLLICULAR TISSUE. DNA-STR ANALYSIS OF ROOT WAS -- IN OTHER
21 WORDS, THE NUCLEAR DNA, NO REPORTABLE RESULTS. THE MTDNA
22 ANALYSIS OF THE SHAFT, NOT CONSISTENT WITH ANY OTHER SAMPLE
23 TESTED. SO, IT'S NOT MACDONALD'S. IT'S NOT THE THREE
24 VICTIMS. IT'S NOT STOECKLEY'S. IT'S NOT MITCHELL'S.

25 NEXT. AND I THINK YOU WERE SHOWN OR THESE WERE

September 25, 2012

1 PUBLISHED WHEN BILL IVORY TESTIFIED.

2 NEXT. AND YOU MAY RECALL WE ZOOMED IN ON A PIECE OF
3 MASKING TAPE, WHICH SHOWS WHEN HE COLLECTED IT.

4 NEXT. NEXT. NEXT. AND THIS IS FROM THE 1990
5 AFFIDAVIT OF MICHAEL MALONE, THAT WOULD BE PHOTOGRAPHIC
6 EXHIBIT 43, A TWO INCH BROWN PUBIC HAIR OF CAUCASIAN ORIGIN
7 DOES NOT APPEAR TO BE FORCIBLY REMOVED, EXHIBITS THE SAME
8 MICROSCOPIC CHARACTERISTICS OF JEFFREY MACDONALD'S KNOWN PUBIC
9 HAIR EXEMPLAR, AND IT DOES, BUT IT'S NOT JEFFREY
10 MACDONALD'S PUBIC HAIR BECAUSE THE MITOCHONDRIAL DNA SYSTEM --
11 SEQUENCE IS DIFFERENCE. BUT THAT WAS THE TECHNOLOGY IN 1990.
12 IN 2006, THE TECHNOLOGY HAS CHANGED.

13 NEXT. THIS IS A PHOTOGRAPH OF GRANT GRAHAM'S. I'M
14 LOOKING AT GOVERNMENT EXHIBIT 3403. ALL RIGHT. AND YOU CAN
15 SEE THE -- THAT'S THE HAIR ROOT.

16 NEXT. AND THIS IS AN ENLARGEMENT OF IT. OKAY. AND
17 GRAHAM SAYS THE HAIR HAS A ROOT AND ADHERING FOLLICULAR
18 TISSUE. HE ALSO SAYS IT CONTAINS ONE HUMAN HAIR WITH ROOT AND
19 FOLLICULAR TISSUE. BUT BOB FRAM, WHO IS A QUALIFIED HAIR AND
20 FIBER EXAMINER, IN HIS AFFIDAVIT SAYS CLUB ROOT EQUALS
21 NATURALLY SHED. AND HE GOES ON IN HIS AFFIDAVIT TO POINT OUT
22 THAT UNLIKE HEAD HAIRS, PUBIC HAIRS FREQUENTLY HAVE SOME
23 FOLLICULAR TISSUE, BUT THAT, PER SE, DOES NOT DEMONSTRATE
24 FORCIBLE REMOVAL. AND THE DNA RESULTS ARE THERE AT THE
25 BOTTOM.

September 25, 2012

1 NEXT. THERE WAS OTHER STUFF UNDER COLETTE'S BODY.

2 NEXT. THESE ARE THE SEAM THREADS MATCHING
3 MACDONALD'S PAJAMA TOP.

4 NEXT. NEXT. SPLINTERS THAT MATCH THE CLUB.

5 NEXT. NEXT. MORE SPLINTERS.

6 NEXT. NEXT. NEXT. THIS WAS FROM THE 1990 MALONE
7 AFFIDAVIT. THERE WAS BROWN COTTON THREAD ON THE RUG. WELL,
8 THERE WAS BROWN COTTON THREAD ON THE RUG.

9 NEXT. THERE WAS A BLUISH-BLACK YARN. THIS WAS AN
10 ISSUE IN 1990.

11 NEXT. THERE WAS A BLUISH-BLACK YARN OF GREEN
12 ACRYLIC.

13 NEXT. BLUISH-BLACK YARD, ROUND RAYON.

14 NEXT. OUR POINT IS THERE'S ALL SORTS OF DEBRIS ON
15 THIS RUG. THIS RUG WAS -- IT DIDN'T COME WITH THE HOUSE, FROM
16 WHAT WE CAN TELL FROM DR. MACDONALD'S CLAIM TO THE ARMY,
17 WHICH, I THINK, IVORY TESTIFIED ABOUT THE CLAIM HE MADE.

18 HE INDICATED THAT HE HAD IT WHEN HE WAS -- IN 1969,
19 AT A TIME WHEN HE WAS LIVING IN BERGENFIELD, NEW JERSEY. IT
20 WAS IN ANOTHER HOUSE. SO, THIS IS A SHAG RUG. IT COLLECTS
21 DEBRIS, HAIRS, FIBERS, WHATEVER FALLS ON IT.

22 NEXT. NEXT. AND EXCUSE ME, YOUR HONOR, DEBRIS FROM
23 THE VICINITY OF LEFT HAND OF COLETTE MACDONALD.

24 NEXT. ALL RIGHT. YOU SEE HER LEFT HAND.

25 NEXT. THAT PICTURE YOU'RE FAMILIAR WITH.

September 25, 2012

1 NEXT. MORE PURPLE COTTON SEWING THREADS EQUALING
2 MACDONALD'S BLUE PAJAMA TOP. ONE BLUE COTTON POLYESTER YARN.

3 NEXT. OKAY. NEXT. THIS IS ANOTHER HAIR. IT'S
4 ANOTHER CAUCASIAN PUBIC HAIR. AND IT'S DISSIMILAR TO
5 MACDONALD'S. WE DON'T KNOW WHO IT'S FROM, BUT IT'S ON THE
6 RUG.

7 NEXT. AND I THINK THAT'S ANOTHER HAIR.

8 NEXT. NEXT. NEXT. TWELVE PURPLE COTTON SEWING
9 THREADS. IN OTHER WORDS, IT WAS OUR THEORY AT TRIAL, YOUR
10 HONOR, THAT THE FIGHT HAD STARTED IN THE MASTER BEDROOM. THE
11 FIGHT MOVED AT SOME POINT INTO KRISTEN'S ROOM. THAT'S WHY
12 COLETTE'S BLOOD IS SPATTERED ON THE WALL. IT'S ON THE TOP
13 SHEET OF KRISTEN'S BED. AND IF YOU LOOK AT THE PICTURES OF
14 HER PAJAMA BOTTOMS, THERE'S BLOOD ALL THE WAY DOWN HER LEGS,
15 AND THE LEGS HAVE BEEN PUSHED UP. WE BELIEVE SHE WAS CARRIED
16 IN THE SHEET AND THEN PLACED IN THAT POSITION. DID HE MEAN TO
17 PUT HER ON TOP OF ALL THE THREADS AND YARNS? NO. BUT THEY
18 WERE THERE BECAUSE THE PAJAMA TOP, IN OUR VIEW, HAD BEEN TORN
19 IN THE MASTER BEDROOM.

20 NEXT. THERE WAS A SHORT PIECE OF BLUE-BLACK SEWING
21 THREAD THAT WAS USED TO SEW THE CUFF ON THE PAJAMA TOP.

22 NEXT. OKAY. WE'RE BACK TO AFDIL 91A.

23 AND THAT, UNLESS YOUR HONOR HAS SOME QUESTIONS, THAT
24 PRETTY MUCH CONCLUDES THE DNA PORTION OF MY ARGUMENT,
25 PRESENTATION. AND I WAS THEN GOING TO GO BACK INTO TRIAL

September 25, 2012

1 EVIDENCE BECAUSE I THINK, FIRST OF ALL, THIS IS THE EVIDENCE
2 AS THE WHOLE AND IN ORDER TO EVALUATE THIS EVIDENCE I THINK
3 YOUR HONOR NEEDS, YOU KNOW, SOME EXPOSITION OF THE TRIAL
4 EVIDENCE. AND AS YOUR HONOR HAS STATED, YOU DIDN'T TRY THIS
5 CASE, AND I CAN'T IMAGINE WHAT IT'S LIKE TRYING TO PICTURE
6 WHAT WAS FOUND WHERE AND WHAT DOES THIS MEAN COMING INTO IT AT
7 THIS JUNCTURE. SO, I'M AT YOUR HONOR'S --

8 THE COURT: WELL, I'VE READ THE AFFIDAVITS OF YOUR
9 TECHNICIANS THAT WERE FILED. AND THAT'S THE PREDICATE FOR
10 YOUR ARGUMENT HERE TODAY, IS THAT CORRECT?

11 MR. MURTAGH: YES, THAT'S CORRECT, YOUR HONOR.

12 THE COURT: AND I THINK THAT DEFENSE COUNSEL HAD AN
13 OPPORTUNITY TO TAKE DEPOSITIONS OF THOSE PEOPLE IF THEY WANTED
14 TO.

15 MR. MURTAGH: THAT'S CORRECT, YOUR HONOR. EVERYBODY
16 -- EVERY EXPERT WAS AVAILABLE FOR DEPOSITION. THEY ONLY
17 INDICATED A DESIRE TO DEPOSE JANICE GLISSON, AND THEY NEVER
18 DID, BUT YOUR HONOR HAD GIVEN THEM AMPLE TIME TO DO IT. THEY
19 FILED NO AFFIDAVITS.

20 YOU KNOW, OUR BASIC POSITION IS THAT THE CONTENTIONS
21 IN THE ORIGINAL, YOU KNOW, MOTION TO ADD THE DNA PREDICATE ARE
22 AVERMENTS OF COUNSEL. THEY'RE NOT SWORN. THEY FAILED IN
23 THEIR EVIDENTIARY BURDEN.

24 THE COURT: THANK YOU.

25 MR. MURTAGH: THE COURT'S INDULGENCE --

September 25, 2012

1 THE COURT: NOW, YOU'RE NEXT GOING TO ADDRESS THE
2 EVIDENCE AT TRIAL, IS THAT CORRECT?

3 MR. MURTAGH: YES, THAT'S CORRECT, YOUR HONOR.

4 THE COURT: AND I KNOW THAT'S GOING TO TAKE SOME
5 TIME. WHY DON'T WE TAKE A RECESS UNTIL 1:15, AND THEN YOU
6 WON'T BE INTERRUPTED.

7 MR. MURTAGH: YES.

8 THE COURT: TAKE A RECESS TILL 1:15.

9 (LUNCHEON RECESS FROM 11:45 A.M., UNTIL 1:15 P.M.)

10 (DEFENDANT PRESENT.)

11 THE COURT: GOOD AFTERNOON. PLEASE BE SEATED AND
12 WE'LL CONTINUE. MR. MURTAGH.

13 MR. MURTAGH: THANK YOU, YOUR HONOR. IF I MAY, I'M
14 GOING TO RETURN A LITTLE BIT TO THE DNA, ALTHOUGH NOT THE SAME
15 DNA, IF YOU WILL.

16 MACDONALD SOUGHT DNA TESTING IN 1997, BECAUSE HE
17 CLAIMED IT WOULD FURTHER DEMONSTRATE HIS INNOCENCE BY LINKING
18 STOECKLEY TO THE CRIME SCENE. WELL, IT HASN'T.

19 HE CHOSE THE EVIDENCE TO BE TESTED. HE DIDN'T TEST
20 ANYTHING THAT WAS USED TO CONVICT HIM AT TRIAL. IT WAS ALL
21 UNSOURCED STUFF. HE CHOSE AFIP AS THE LAB. WE PAID FOR IT.
22 THE DNA RESULTS ELIMINATE HELENA STOECKLEY AND GREG MITCHELL
23 AS THE SOURCE OF ANY OF THE SAMPLES TESTED, TO PARAPHRASE MR.
24 WIDENHOUSE, THEY WERE NOT THERE.

25 NOW THAT HELENA STOECKLEY AND MITCHELL HAVE BEEN

September 25, 2012

1 ELIMINATED AS THE SOURCE OF THE SAMPLES TESTED, MR. WIDENHOUSE
2 IS SAYING THAT ANY UNSOURCED, NATURALLY SHED HAIR, EVEN IF IT
3 DOESN'T HAVE BLOOD ON IT, PROVES THE PRESENCE OF INTRUDERS.

4 WELL, WE REJECT THIS CONTENTION AND THE FOURTH
5 CIRCUIT DID LIKEWISE IN 1992. IT WASN'T THE SAME HAIR, BUT IT
6 WAS THE SAME ISSUE. AND BASICALLY THERE WERE UNSOURCED HAIRS
7 AND FIBERS, AND IT WENT UP ON THAT ISSUE AND ON ABUSE OF THE
8 WRIT.

9 AND, YOU KNOW, THE COURT SAYING THE EVIDENCE RAISED
10 HERE WHEN CONSIDERED WITH ALL THE TRIAL EVIDENCE SIMPLY DOES
11 NOT RISE TO A COLORABLE SHOWING OF FACTUAL INNOCENCE NECESSARY
12 TO SHOW A FUNDAMENTAL MISCARRIAGE OF JUSTICE. IT NEITHER
13 SUPPORTS MACDONALD'S ACCOUNT OF THE INTRUDERS NOR DISCREDITS
14 THE GOVERNMENT'S THEORY. THE MOST THAT CAN BE SAID ABOUT THE
15 EVIDENCE IS THAT IT RAISES SPECULATION CONCERNING ITS ORIGINS.
16 FURTHERMORE, THE ORIGINS OF THE HAIR AND FIBER EVIDENCE HAVE
17 SEVERAL LIKELY EXPLANATIONS OTHER THAN INTRUDERS.

18 AND THEN THIS IS, I BELIEVE, JUDGE MURNAGHAN
19 WRITING, THE EVIDENCE SIMPLY DOES NOT ESCALATE THE UNEASE ONE
20 FEELS WITH THIS CASE INTO A REASONABLE DOUBT.

21 YOU KNOW, UNSOURCED HAIRS, PER SE, PROVE NOTHING.
22 ALSO, YOUR HONOR, THIS IS NOT A CONSTITUTIONAL CLAIM HERE OF
23 DNA. THIS IS A FREESTANDING CLAIM OF ACTUAL INNOCENCE BASED
24 ON *HERRERA VS. COLLINS*. YOUR HONOR INSTRUCTED COUNSEL FOR
25 MACDONALD BACK IN SEPTEMBER OF 2011, TO BRIEF THIS ISSUE

September 25, 2012

1 BECAUSE YOUR HONOR'S VIEW AT THE TIME WAS THAT NO COURT HAD
2 EVER UPHELD OR GRANTED A NEW TRIAL BASED ON SUCH A THEORY.
3 MR. MILES SAID HE WOULD DO SO.

4 THE COURT: I DON'T RECALL THAT A BRIEF WAS FILED.

5 MR. MURTAGH: I'M SORRY, YOUR HONOR?

6 THE COURT: I DO NOT RECALL THAT A BRIEF WAS FILED.

7 MR. MURTAGH: WELL, THAT'S MY RECOLLECTION ALSO,
8 YOUR HONOR. I WAS GOING TO MAKE THAT POINT, THAT NONE WAS
9 FILED. THEY HAD AN OPPORTUNITY TO DO SO. SO, IT'S A
10 DIFFERENT STANDARD, IT'S A MUCH HIGHER STANDARD UNDER *HERRERA*
11 *VS. COLLINS*.

12 AND ALSO YOU HAVE *HOUSE VS. BELL*. IN OTHER WORDS,
13 IF DNA IS GOING TO BE USED TO GRANT SOMEBODY A NEW TRIAL, WHAT
14 *HOUSE V. BELL* TELLS US IS IT HAS TO BE EVIDENCE THAT WAS
15 CENTRAL TO THE GOVERNMENT'S CASE AT TRIAL. IN *HERRERA VS.*
16 *COLLINS*, THE SEMEN ON THE MURDERED WOMAN'S NIGHTGOWN THROUGH
17 DNA TESTING TURNED OUT TO BE HER HUSBAND'S AND NOT HOUSE, I
18 BELIEVE, OKAY, THE DEFENDANT.

19 ALSO, THE DNA RESULTS HERE ACTUALLY STRENGTHEN THE
20 GOVERNMENT'S CASE, NOT THE UNSOURCED DNA, BUT OTHER DNA
21 RESULTS.

22 AND AT THIS TIME WITH YOUR HONOR'S PERMISSION, WE
23 WOULD SHOW GOVERNMENT EXHIBIT 3501. AND I'LL TRY AND GO
24 THROUGH THIS AS QUICKLY AS POSSIBLE.

25 OKAY. NEXT SLIDE. SPECIMEN 52A. OKAY. NEXT. AT

September 25, 2012

1 TRIAL 52A WAS GOVERNMENT'S 280 OR E-4 OR Q118. AND WHAT IT
2 WAS, WAS DEBRIS FROM THE RIGHT HAND OF COLETTE MACDONALD.

3 OKAY. NEXT. AND AT TRIAL IT WAS MICROSCOPICALLY
4 MATCHED TO COLETTE MACDONALD'S HEAD HAIR.

5 NEXT. ALL RIGHT. NEXT. BASICALLY, WHERE WE COME
6 OUT HERE IS THE MITOCHONDRIAL DNA SEQUENCE EQUALS COLETTE
7 MACDONALD'S. IN OTHER WORDS, THE DNA CONFIRMS THE MUCH
8 CRITICIZED MICROSCOPIC HAIR COMPARISON.

9 NEXT. AFDIL SPECIMEN 51A.2 WAS THE HAIR FOUND IN
10 THE LEFT HAND OF COLETTE MACDONALD, WHICH WAS THE REASON WHY
11 STUFF WAS SENT TO JANICE GLISSON IN THE FIRST PLACE.

12 AND AT TRIAL PAUL STOMBAUGH TESTIFIED THAT IT WAS
13 THE DISTAL PORTION OF A CAUCASIAN LIMB HAIR. IN OTHER WORDS,
14 NOT SUFFICIENT FOR COMPARISON PURPOSES.

15 NEXT. AND TO JUST DIGRESS A SECOND. REMEMBER, YOUR
16 HONOR, WHEN WE POSTED OR PUBLISHED BERNIE SEGAL'S THE
17 GOVERNMENT SAYS THERE'S NO EVIDENCE OF INTRUDERS. AND HE
18 ARGUED REFERRING TO THIS HAIR BECAUSE IT WAS THE ONLY HAIR OF
19 ANY SIGNIFICANCE IN THE TRIAL THAT IT WAS EVIDENCE OF
20 INTRUDERS.

21 OKAY. NEXT SLIDE. NEXT SLIDE. AFDIL CALLS IT
22 51A.2. NEXT SLIDE. AND THE REASON FOR THAT IS IT'S MOUNTED
23 BETWEEN TWO KNOWN HAIRS OF MACDONALD BY JANICE GLISSON,
24 INCIDENTALY. SO, IT'S THE SECOND HAIR ON THE SLIDE.

25 NEXT. NEXT. NEXT. OKAY. WELL, THERE YOU CAN SEE

September 25, 2012

1 A PHOTO MICROGRAPH DONE BY GRANT GRAHAM, BUT THE MITOCHONDRIAL
2 DNA SEQUENCE EQUALS GROUP B, JEFFREY MACDONALD.

3 NOW, IN MACDONALD'S I THINK IT'S HIS MEMORANDUM IN
4 SUPPORT OF HIS MOTION TO ADD THE DNA PREDICATE IN A FOOTNOTE,
5 I BELIEVE IT'S FOOTNOTE FIVE, HE SAYS, OF COURSE, THIS IS IN
6 NO WAY INCULPATORY BECAUSE DR. MACDONALD SAID HE TOUCHED THE
7 BODY, GAVE MOUTH TO MOUTH, ET CETERA, ET CETERA.

8 OKAY. NEXT. THE PROBLEM IS THAT IT'S A BROKEN HAIR
9 AND IT'S BROKEN OFF AT THE ROOT END. NEXT. IT HAS A ROUNDED
10 TIP. THAT WOULD BE THE DISTAL END AS OPPOSED TO THE PROXIMAL
11 END. NEXT. BUT ACCORDING TO GRANT GRAHAM, IT HAS DEBRIS IN
12 THE TISSUE WHICH APPEARS TO BE BLOOD AND UNKNOWN DEBRIS.

13 OKAY. NEXT. AND THERE IS A FIBER ADHERING TO IT.

14 NEXT. THIS IS WHAT I WAS REFERRING TO IN BERNIE'S
15 ARGUMENT.

16 NEXT. NEXT. WELL, WE BELIEVE IT IS INCULPATORY.
17 YOU'VE GOT THE VICTIM'S BROKEN, BLOODY HAIR IN -- MACDONALD'S
18 BROKEN BLOODY HAIR, EXCUSE ME, IN THE VICTIM'S HAND. WE
19 CERTAINLY THINK THAT, YOU KNOW, THAT DOES NOT SUPPORT THE
20 EVIDENCE OF INTRUDERS THEORY AT ALL, BUT RATHER POINTS TO
21 MACDONALD.

22 NEXT. WE THINK HE'S ESTOPPED FROM MAKING THIS
23 ARGUMENT. FOR, YOU KNOW, 30 ODD YEARS THIS WAS THE HAIR OF
24 THE MURDERER CLUTCHED IN THE VICTIM'S HANDS. WHEN IT TURNS
25 OUT TO BE HIS HAIR, IT'S SUDDENLY INNOCUOUS.

September 25, 2012

1 NEXT. ALSO, THE JURY REJECTED MACDONALD'S -- YOU
2 KNOW, HE HAD AN EXPLANATION FOR EVERYTHING AT TRIAL, YOUR
3 HONOR. IN OTHER WORDS, IF WE HAD SOMETHING THAT SEEMED TO
4 POINT TO HIM, HE WOULD SAY, WELL, I DID THIS AND SO AND THAT'S
5 WHY COLETTE'S BLOOD IS ON MY PAJAMA TOP OR WHATEVER. ANYWAY,
6 THEY CAN NO LONGER RELY ON THIS HAIR TO SUPPORT THE ACCOUNT OF
7 INTRUDERS.

8 NEXT. OKAY. THE PILE OF BEDDING ON THE FLOOR OF
9 THE MASTER BEDROOM WAS A CORNUCOPIA OF EVIDENCE. TIME DOESN'T
10 PERMIT ME TO GO THROUGH EVERYTHING HERE, BUT BASICALLY WHAT
11 YOU HAD WERE BLOODY FABRIC IMPRESSIONS IN COLETTE'S BLOOD
12 MATCHING COLETTE'S PAJAMA CUFFS AND MACDONALD'S PAJAMA CUFFS
13 ON THE SHEET, WHICH IS -- WHICH SURROUNDS THE BEDSPREAD, THE
14 DARKER OBJECT IN THE PICTURE, AND THEN THERE WERE ALL KINDS OF
15 THREADS AND YARNS AND A FINGER SECTION OF A RUBBER GLOVE.
16 AND, OF COURSE, THIS IS -- THIS EXHIBIT IS IN THE RECORD.

17 NEXT. OKAY. AFDIL SPECIMEN 113A WAS A HEAD HAIR
18 WHICH MICROSCOPICALLY MATCHES COLETTE MACDONALD. THE HAIR WAS
19 FOUND ENTANGLED WITH ONE OF THE PURPLE COTTON THREADS, WHICH
20 SHOULDN'T BE THERE, BECAUSE ACCORDING TO MACDONALD'S ACCOUNT
21 HE NEVER TOUCHED THE PILE OF BEDDING ON THE NIGHT OF THE
22 MURDERS.

23 NEXT. OKAY. SO, HERE AGAIN, THE TRIAL EVIDENCE
24 STANDS. MICROSCOPICALLY IT MATCHED. MTDNA SEQUENCE WAS
25 INCONCLUSIVE. SO, WE SAY THAT EVIDENCE IS STILL VALID.

September 25, 2012

1 NEXT. NEXT. NEXT. OF COURSE, THERE IS A BROKEN
2 END OF THAT HAIR AS WELL.

3 NEXT. OKAY. AFDIL SPECIMEN 46A. NEXT. AGAIN,
4 GOING BACK TO THE PILE OF BEDDING. NEXT. THIS TIME IT'S IN
5 THE -- I'M SORRY. IT'S THE SHEET. OKAY. AND HERE WE'VE GOT
6 A PHOTO MICROGRAPH, GOVERNMENT EXHIBIT 3457. THIS IS A
7 PICTURE TAKEN BY GRANT GRAHAM. AND HE DESCRIBES IT AS HAVING
8 -- I'M SORRY, IT'S FRAM, ROBERT FRAM -- TISSUE ATTACHED TO THE
9 BASAL AREA CONSISTENT WITH FORCIBLE REMOVAL. NUCLEAR DNA
10 STR'S CONSISTENT WITH COLETTE'S STR'S. THAT'S SHORT TANDEM
11 REPEATS. AND IT EXCLUDES KIMBERLEY AND KRISTEN. SO, THIS IS
12 ONE OF THOSE RARE CIRCUMSTANCES -- AND THE SAME WAY WITH
13 MITOCHONDRIAL DNA SEQUENCE. THIS IS ONE OF THOSE RARE
14 CIRCUMSTANCES WE CAN SAY THIS IS THIS PERSON'S HAIR. SO,
15 THAT'S COLETTE'S HAIR.

16 NEXT SLIDE. WITH DEBRIS. ROOT PRESENT WITH ROOT
17 SHEATH AND FOLLICULAR TAG AND ATTACHED TISSUE. FRAM
18 AFFIDAVIT.

19 NEXT. AND THERE'S THE ROOT. AND WHAT FRAM IS
20 SAYING IS THAT THIS IS CONSISTENT WITH FORCIBLE REMOVAL. AND
21 I WOULD SUBMIT, YOUR HONOR, THAT'S WHAT A FORCIBLY REMOVED
22 HAIR LOOKS LIKE. IT'S A GROWING HAIR. IT'S RIPPED OUT OF ITS
23 FOLLICLE. THE ROOT BECOMES DISTORTED. THE PIGMENT IS STILL
24 DOWN IN THE ROOT AND SOMETIMES YOU GET A FOLLICULAR SHEATH OR
25 FOLLICULAR TISSUE ATTACHED. OKAY. SO, YOU HAVE COLETTE'S

September 25, 2012

1 FORCIBLY REMOVED HAIR IN THE SHEET WHICH SHOULDN'T BE THERE.

2 NEXT. OKAY. 112A.5. NEXT. OKAY. THIS IS FROM
3 THE BEDSPREAD.

4 NEXT. IN THE STIPULATION, I BELIEVE, IT'S AGREED
5 THAT Q96.5, ACCORDING TO FRAM'S INITIAL EXAMINATION BEFORE THE
6 TESTING IS A FORCIBLY REMOVED HAIR WHICH MATCHES KIMBERLEY
7 MACDONALD'S KNOWN HAIR EXEMPLARS.

8 NEXT. AND YOU CAN SEE FROM ANOTHER PHOTO MICROGRAPH
9 HERE. AND THE MITOCHONDRIAL DNA SEQUENCE EQUALS THE
10 MITOCHONDRIAL SEQUENCE OF KIMBERLEY. IT ALSO MATCHED -- HAS
11 THE SAME MITOCHONDRIAL DNA SEQUENCE AS KRISTEN AND COLETTE,
12 BUT MICROSCOPICALLY IT MATCHES KIMBERLEY. SO, OUR POSITION IS
13 THIS IS KIMBERLEY'S FORCIBLY REMOVED HAIR IN THE BEDSPREAD AND
14 IT SHOULDN'T BE THERE BECAUSE, ACCORDING TO MACDONALD'S
15 ACCOUNT, KIMBERLEY SHOULD HAVE HAD NO CONTACT WITH THE
16 BEDSPREAD AND HE SAID HE HAD NO CONTACT WITH THE BEDSPREAD OR
17 THE SHEET.

18 NEXT. ALL RIGHT. YOUR HONOR, THIS IS -- BASICALLY,
19 WHAT WE'VE DONE HERE IS WE'VE ADDED THE DNA TEST RESULTS TO
20 THE PREVIOUS CHART, WHICH I CAN, THINK, GIVE YOU THE EXHIBIT
21 NUMBER.

22 THE COURT'S INDULGENCE A MOMENT.

23 (PAUSE.)

24 MR. MURTAGH: OKAY. AT TRIAL THIS WAS GOVERNMENT
25 EXHIBIT 978. AND WHAT'S NEW IS AT THE BOTTOM ON THE LEFT AND

September 25, 2012

1 THE RIGHT YOU CAN SEE THE AFDIL SPECIMEN 46A AND THE AFDIL
2 SPECIMEN -- WHAT IS IT -- 112A.5 RESULTS. SO, HERE THE DNA
3 RESULTS STRENGTHEN THE GOVERNMENT'S CASE.

4 BASICALLY, THE GOVERNMENT'S THEORY AT TRIAL WAS THAT
5 MACDONALD CARRIED HIS WIFE BACK FROM KRISTEN'S ROOM TO THE
6 MASTER BEDROOM, WRAPPED IN THE SHEET, TRANSFERRING THE BLOODY
7 FABRIC IMPRESSIONS, HER BLOOD, HIS PAJAMA TOP, HER PAJAMA TOP,
8 AND IN THE PROCESS ALSO STEPPED ON THE BEDSPREAD, WHICH IS, AS
9 YOU CAN SEE THERE, COVERED IN BLOOD AND THAT'S WHERE HE GOT
10 THE BLOOD ON THE SOLE OF HIS FOOT.

11 SO, THAT'S IT FOR DNA. I THINK -- OH, COUNSEL
12 REMINDED ME OF SOMETHING, BUT I'M GOING TO COVER IT ANYWAY.

13 OKAY. NOW, SWITCHING TO THE EVIDENCE AS A WHOLE OR
14 THE TRIAL EVIDENCE, WE'VE PLAYED OR SHOWN BERNIE SEGAL'S NO
15 EVIDENCE OF INTRUDERS THING SEVERAL TIMES. IT WAS CERTAINLY
16 THE GOVERNMENT'S POSITION THAT THERE WERE NO INTRUDERS IN THIS
17 CASE AND THAT MACDONALD HIMSELF WAS THE MURDERER. BUT YOU
18 WILL SEARCH THE RECORD IN VAIN FOR ANYPLACE WHERE EITHER JIM
19 BLACKBURN OR MYSELF UTTERED THE WORDS, QUOTE, THERE IS NO
20 EVIDENCE OF INTRUDERS. THAT WAS A STRAWMAN THAT BERNIE SEGAL
21 SET UP. NOR WILL YOU FIND ANYPLACE WHERE WE TOLD THE JURY
22 THERE WAS NOTHING FOUND IN THAT HOUSE THAT COULD NOT BE SHOWN
23 TO HAVE COME FROM THE HOUSE OR ITS OCCUPANTS, SUCH AS
24 UNSOURCED HAIRS.

25 IN OTHER WORDS, THIS WAS NOT A NO FOOTPRINTS IN THE

September 25, 2012

1 SNOW TYPE OF CASE. WE HAD DOZENS OF UNIDENTIFIED
2 FINGERPRINTS. WE HAD ALL KINDS OF UNIDENTIFIED FIBERS. WE
3 HAD A FEATHER, WHICH WAS A BIG DEAL AT THE TRIAL. AND WE
4 SIMPLY COULD NOT HAVE MADE THAT ARGUMENT. NOT TO MENTION THE
5 WAX. WE HAD ALL KINDS OF WAX.

6 I SUBMIT AND I HOPE TO DEMONSTRATE TO YOUR HONOR
7 THAT JEFFREY MACDONALD WAS CONVICTED OF THE MURDERS BECAUSE OF
8 THE EXISTENCE OF EVIDENCE WHICH COULD NOT BE EXPLAINED BY THE
9 ACTIONS OR PRESENCE OF INTRUDERS BUT ONLY BY MACDONALD'S
10 ACTIONS BASED UPON HIS FALSE EXCULPATORY STATEMENTS, AND THAT
11 THAT EVIDENCE -- AND I'LL ENUMERATE IT IN A SECOND --
12 IDENTIFIED HIM AS THE ONLY POSSIBLE CRIMINAL AGENT.

13 NOW, THE GOVERNMENT'S MOST, I THINK, COMPELLING
14 EVIDENCE AT TRIAL WAS WHAT WE CALLED THE PAJAMA TOP
15 RECONSTRUCTION.

16 SO, IF I COULD GO TO THAT NOW. LET'S START WITH
17 GOVERNMENT'S 43. ALL RIGHT. YOU SEE THIS IS COLETTE
18 MACDONALD. SHE'S LYING ON THE FLOOR OF THE MASTER BEDROOM AND
19 THE BLUE OBJECT ON HER LOWER CHEST, MIDSECTION, IS -- THERE
20 WAS TESTIMONY THIS IS MACDONALD'S PAJAMA TOP AND WHAT YOU'RE
21 LOOKING AT IS ITS TURNED RIGHT SLEEVE INSIDE OUT. THERE WAS
22 TESTIMONY TO THAT EFFECT, WHICH WASN'T CHALLENGED, BASED ON
23 THE IDENTIFICATION OF WHERE THE SEAMS ARE.

24 OKAY. JUST ONE OTHER THING, YOUR HONOR, I'D LIKE TO
25 BRING YOUR ATTENTION -- DRAW TO YOUR ATTENTION. IF YOU LOOK

September 25, 2012

1 UNDER COLETTE'S LEFT ARM, YOU CAN SEE IN HER BICEP AREA,
2 THAT'S HER HAIR. IN OTHER WORDS, HER HAIR HAS COME DOWN AND
3 LANDED ON THE RUG AND THEN HER ARM HAS FLOPPED OVER IT. AND I
4 WOULD SUBMIT THAT THAT'S CONSISTENT NOT WITH SOMEBODY BEING
5 KNOCKED OUT AND, YOU KNOW, FALLING, BUT RATHER SOMEBODY BEING
6 PLACED.

7 OKAY. NEXT SLIDE. I'M SORRY, IT'S 44. ALL RIGHT.
8 AND THAT'S ANOTHER VIEW OF THE PAJAMA TOP. ALL RIGHT.

9 LET'S GO TO GOVERNMENT'S 604, PLEASE. THIS IS THE
10 PAJAMA TOP ON WHAT WE CALL THE MALE SUIT FORM AND ALL THE
11 LITTLE FLAGS REPRESENT PUNCTURE HOLES CONSISTENT WITH THE ICE
12 PICK, ALL MADE WHILE THE GARMENT WAS STATIONARY.

13 AND NOW IF WE COULD GO TO GOVERNMENT 609. THIS IS
14 THE SAME WITH THE BACK OF THE PAJAMA TOP. AND THOSE --
15 MACDONALD'S ACCOUNT -- I MEAN, BASICALLY, WE PUT HIS STORY
16 INTO EVIDENCE. AND HIS ACCOUNT WAS BASICALLY HE WAS ATTACKED
17 IN THE LIVING ROOM BY WHAT WAS ALLEGED TO BE AN ICE PICK
18 WIELDING ASSAILMENT, ONE OF THE THREE, AND HIS PAJAMA TOP WAS
19 EITHER PULLED OVER HIS HEAD OR IN ANY EVENT IT CAME DOWN
20 AROUND HIS ARMS AND HE WAS USING IT TO BLUNT THE THRUSTS OF
21 THE ICE PICK WIELDING ASSAILANT.

22 ALL RIGHT. NOW, IF WE COULD GO TO -- AND OBVIOUSLY
23 WE DISPUTED THAT AND PROVED, I THINK, THAT IT IS IMPOSSIBLE TO
24 STAB AT THE UNSUPPORTED CLOTH WITH AN ICE PICK WITHOUT TEARING
25 IT.

September 25, 2012

1 GOVERNMENT 786, PLEASE. THIS IS A CLOSE UP VIEW OF
2 COLETTE MACDONALD'S CHEST. THE PATHOLOGIST HAS IDENTIFIED THE
3 GAPING WOUNDS, THE SQUARE LITTLE BOXES, THAT'S CONSISTENT WITH
4 THE GENEVA FORGE KNIFE, THE PATTERN BRUISE AS BEING CONSISTENT
5 WITH THE END OF THE CLUB, AND HAS IDENTIFIED, 21 PUNCTURE
6 WOUNDS WHICH ARE CONSISTENT WITH HAVING BEEN INFLICTED BY THE
7 ICE PICK. ALL OF THESE WOUNDS, WITH THE EXCEPTION OF THE
8 PATTERN BRUISE, ARE CONSISTENT WITH THE VICTIM BEING FLAT ON
9 HER BACK, PROBABLY UNCONSCIOUS, WHEN THE WOUNDS ARE INFLICTED.

10 NOW, IF WE COULD GO TO GOVERNMENT'S 790. THIS IS
11 THE FIRST OF THE PHOTOGRAPHS THAT WE USED IN THE
12 RECONSTRUCTION. WHAT YOU'RE LOOKING AT, YOUR HONOR, IS THE
13 PAJAMA TOP. AND SHIRLEY GREEN, WHO TESTIFIED AT TRIAL, HAS
14 INSERTED 21 PUSH PINS THROUGH 48 PUNCTURE HOLES IN THE PAJAMA
15 TOP WHEN IT'S TURNED RIGHT SLEEVE INSIDE OUT. AND IT'S ON A
16 CARDBOARD BOX WITH SOME GRAPH PAPER. AND, OF COURSE, NEXT TO
17 IT IS THE PHOTOGRAPH THAT WE JUST SAW, WHICH WAS GOVERNMENT'S
18 786.

19 OKAY. NOW, IF WE CAN GO TO 791. THIS IS A
20 DIFFERENT PHOTOGRAPH, ALSO IDENTIFIED BY THE PATHOLOGIST AS
21 BEING THE INJURIES IN COLETTE'S CHEST.

22 792. ALL RIGHT, WHAT WE'RE LOOKING AT HERE IS THE
23 PAJAMA TOP, WHICH IS FBI EXHIBIT Q12, HAS BEEN REMOVED FROM --
24 IN OTHER WORDS, THE PUSH PINS HAVE BEEN TAKEN OUT AND PLACED
25 IN THE HOLES THAT REGISTERED WHEN THE PUSH PINS WENT THROUGH

September 25, 2012

1 THE PAJAMA TOP TURNED RIGHT SLEEVE INSIDE OUT. AND THAT'S THE
2 PATTERN THAT RESULTS.

3 OKAY. THIS IS 793 NEXT. THERE YOU SEE BEING
4 JUXTAPOSED THE BOX WITH THE Q12 REGISTERED WOUNDS OR
5 REGISTERED PUNCTURES NEXT TO THE AUTOPSY PICTURE 786 OF
6 COLETTE.

7 ALL RIGHT, 794. AND NOW WE'VE PUT AN ADDITIONAL
8 BOX, WHICH IS MARKED PHOTO, WE'VE PUT 21 PUSH PINS THROUGH
9 WHAT WAS PREVIOUSLY IDENTIFIED AS 21 ICE PICK WOUNDS IN
10 COLETTE'S CHEST AND THE PATTERNS ARE VIRTUALLY IDENTICAL.
11 WE'VE GOT FIVE ON ONE SIDE AND 16 ON THE OTHER SIDE. THE
12 SCALE IS DIFFERENT BECAUSE THE AUTOPSY PICTURE DID NOT HAVE A
13 SCALE IN IT.

14 ALL RIGHT. NOW, IF WE COULD GO TO 795. OKAY,
15 WE'VE TAKEN THE BOX WITH THE Q12 WITH THE PATTERN AND THEN WE
16 GO 796, WE'VE PUT THE TWO BOXES SIDE BY SIDE. THE ONE ON THE
17 LEFT IS THE Q12, THE RECONSTRUCTION, IN OTHER WORDS, THE
18 PATTERN THAT RESULTS WHEN YOU PUT 21 PROBES THROUGH 48 HOLES
19 IN THE PAJAMA TOP. AND THE ONE ON THE RIGHT, THE PHOTO, IS
20 THE PATTERN THAT RESULTS WHEN YOU PUT 21 PUSH PINS IN WHAT WAS
21 PREVIOUSLY IDENTIFIED AS 21 ICE PICK WOUNDS.

22 AND, YOUR HONOR, THIS WAS PROBABLY OUR STRONGEST
23 EVIDENCE IN THE CASE BECAUSE IT'S MACDONALD'S OWN ACCOUNT THAT
24 HE PLACED THE PAJAMA TOP ON HIS WIFE'S CHEST THE FIRST TIME HE
25 WENT INTO THE MASTER BEDROOM, OSTENSIBLY TO TREAT HER FOR

September 25, 2012

1 SHOCK. OF COURSE, WHAT HE WAS DOING, HE WAS TRYING TO ACCOUNT
2 FOR THE PRESENCE OF HER BLOOD BEING ON HIS PAJAMA TOP BEFORE
3 IT WAS TORN.

4 BUT WHAT THE JURY UNDERSTOOD IS THAT SOMEBODY
5 STABBED COLETTE MACDONALD THROUGH HIS PAJAMA TOP WHILE SHE WAS
6 FLAT ON HER BACK ON THE FLOOR OF THE MASTER BEDROOM. AND THE
7 ONLY PERSON THAT COULD HAVE DONE THAT IS JEFFREY MACDONALD
8 BECAUSE, BY HIS ACCOUNT, THE HIPPIES HAVE FLED INTO THE NIGHT
9 AND HE'S STILL UNCONSCIOUS IN THE LIVING ROOM STILL WEARING
10 HIS PAJAMA TOP WHEN HE WAKES UP.

11 OKAY. THE COURT'S INDULGENCE A SECOND.

12 (PAUSE.)

13 MR. MURTAGH: OKAY. IF WE COULD HAVE GOVERNMENT'S
14 59. THIS IS A PICTURE OF KRISTEN'S BEDROOM. THERE WAS
15 TESTIMONY AT TRIAL THAT ALL OF THE BLOOD ON THE FLOOR BY
16 KRISTEN'S BED, NOT SURPRISINGLY, IS TYPE O, KRISTEN'S TYPE.

17 AND THEN IF WE COULD HAVE 65, PLEASE, GOVERNMENT'S
18 65. NOW, THERE WAS -- MR. IVORY TESTIFIED CORRECTLY THE OTHER
19 DAY IN TERMS OF HIS KNOWLEDGE. HE WAS RELYING ON THE
20 LABORATORY REPORT, WHICH BASICALLY DID NOT MAKE A POSITIVE
21 IDENTIFICATION BECAUSE RIDGE LINES COULD NOT BE SEEN IN THE
22 PHOTOGRAPH OF THE FOOTPRINT, BUT AT TRIAL MR. MEDLIN TESTIFIED
23 TO THE IDENTIFICATION HE MADE IN SITU WITH MACDONALD'S KNOWN
24 FOOTPRINT. THEY HAD HIM FOOTPRINTED. THIS IS JEFFREY
25 MACDONALD'S FOOTPRINT. IT'S EXITING FROM KRISTEN'S ROOM. AND

September 25, 2012

1 WHAT'S SIGNIFICANT ABOUT IT IS THERE IS NO BLOOD OF COLETTE'S
2 TYPE ANYWHERE ON THE FLOOR IN THAT ROOM. SO, HE HAD TO STEP
3 ON SOMETHING THAT COATED HIS FOOT WITH BLOOD AND TRACK IT OUT.
4 IN OTHER WORDS, WE'VE SAID IF HE DIDN'T TRACK IT IN, HOW DID
5 HE TRACK IT OUT? AND OUR ARGUMENT AT TRIAL WAS IT WAS THE
6 BEDSPREAD USED IN THE MOVEMENT OF COLETTE'S BODY FROM THIS
7 ROOM -- LET'S GO BACK TO -- WAS IT 59?

8 THERE WAS TESTIMONY AT TRIAL, YOUR HONOR, THAT ON
9 THE WALL ABOVE KRISTEN'S BED TYPE A BLOOD, COLETTE'S TYPE, WAS
10 SPATTERED. THERE WAS TESTIMONY THAT THERE WAS A LARGE STAIN
11 IN COLETTE'S BLOOD ON THE TOP SHEET, NOT TERRIBLY VISIBLE IN
12 THIS PICTURE, OF KRISTEN'S BED. AND THERE WAS A HAIR RIBBON
13 -- COLETTE APPARENTLY TIED HER HAIR UP WITH SORT OF A THICK
14 WOOL-TYPE RIBBON. THAT WAS FOUND ON THE MULTI-COLORED RUG
15 THERE, BROKEN AND BLOODY. AND THEN THERE WAS A STIPULATION
16 FROM AN EXAMINER NAMED JAMES FRIER, IT WAS STIPULATED TO HIS
17 TESTIMONY, THAT A FIBER MATCHING THAT RUG ON THE FLOOR WAS
18 FOUND IN KRISTEN'S -- IN COLETTE'S HAND. THERE WAS ALSO
19 TESTIMONY THAT THERE WAS A THREAD AND I BELIEVE A YARN FROM
20 MACDONALD'S PAJAMA TOP FOUND ON THE BEDSPREAD. AND THERE WAS
21 A SPLINTER, WHICH MATCHED THE CLUB, FOUND ON THE BEDSPREAD,
22 BUT KRISTEN WAS NOT STRUCK WITH THE CLUB.

23 AND WHAT ALL OF THAT MEANS IS COLETTE MACDONALD WAS
24 ASSAULTED A SECOND TIME IN THAT ROOM WITH THE CLUB BY SOMEBODY
25 WEARING A BLUE PAJAMA TOP, AND THAT CAN ONLY BE DR. MACDONALD.

September 25, 2012

1 ALL RIGHT. IF WE COULD GO NOW TO GOVERNMENT'S 981.
2 THIS WAS THE SUMMARY CHARGE THAT WE USED WHERE THE TONGUE
3 DEPRESSOR STICKS MARKED THE PLACE WHERE THE CLUB WAS FOUND
4 OUTSIDE THE HOUSE BY CID AGENT BOB SHAW.

5 NOW, WE HAVE ALL SORTS OF SPLINTERS, AND I CAN SHOW
6 YOU GOVERNMENT'S 437 IN A SECOND. THE CLUB WAS USED IN THE
7 MASTER BEDROOM, IT SPLINTERED AND LEFT SPLINTERS ALL OVER THE
8 PLACE.

9 TYPE A BLOOD, COLETTE'S TYPE, IS FOUND ON THE CLUB,
10 AS IS ALSO TYPE AB BLOOD, KIMBERLEY'S TYPE, THE TWO VICTIMS
11 WHO HAD BLUNT TRAUMA INJURIES.

12 WHAT ALSO WAS FOUND ON THE CLUB -- AND I'LL HAVE TO
13 LEAN FORWARD A BIT HERE -- IS THERE ARE TWO PURPLE COTTON
14 THREADS THAT ARE -- THAT EQUAL THE PURPLE COTTON SEAM THREADS
15 OF THE BLUE PAJAMA TOP. THE PAJAMA TOP WAS SEWN -- THE SEAM
16 IS RIPPED FROM HERE ALL THE WAY TO HERE AND DOWN THE CENTER,
17 BUT WHEN THE SEAM IS RIPPED, THESE LITTLE Z-TYPE THREADS POP
18 OUT AND THERE ARE DOZENS OF THEM IN THE MASTER BEDROOM. SO,
19 YOU HAVE THOSE.

20 AND THEN -- EXCUSE ME, THIS DOESN'T WORK WELL WITH
21 BIFOCALS. THERE ARE NUMEROUS RAYON -- OKAY. THANK YOU.
22 THERE ARE NUMEROUS RAYON FIBERS IDENTICAL TO THOSE OF THE
23 MULTI-COLORED THROW RUG, EXHIBIT 322, IN THE MASTER BEDROOM.
24 WE CAN PROBABLY FIND A PICTURE OF THAT, YOUR HONOR. BUT THIS
25 IS THE THROW RUG THAT IS BY COLETTE MACDONALD'S FEET. IT'S

September 25, 2012

1 SOMEWHAT OVERTURNED AND THE POCKET FROM THE PAJAMA TOP IS ON
2 IT.

3 AND, IN FACT -- JUST TO DIGRESS FOR A SECOND -- THE
4 MOST IMPORTANT QUESTION THAT ANY INVESTIGATOR EVER ASKED DR.
5 MACDONALD WAS EARLY ON, ON APRIL 6TH, 1970, WHEN BOB SHAW
6 ASKED MACDONALD, HOW IS IT, DOCTOR, YOUR PAJAMA TOP IS SOAKED
7 IN BLOOD AND THERE'S ONLY A LITTLE BIT OF BLOOD ON THE POCKET?

8 SO, AS HAPPENED ON SEVERAL OCCASIONS, MACDONALD HAS
9 TO INVENT FACTS WITHOUT KNOWING ALL THE CONSEQUENCES OF THOSE
10 INVENTIONS. SO, HE SAYS, I WENT IN THERE THE FIRST TIME AND I
11 COVERED HER WITH IT, AND MAYBE I SHOOK IT OR SOMETHING, BUT
12 IT'S THE FIRST TIME I WENT IN THERE -- THE MASTER BEDROOM -- I
13 DIDN'T MAKE A CIRCUIT WITH IT ON. AND THAT FORECLOSES THE
14 PRESENCE OF SEAM THREADS FROM THE PAJAMA TOP BEING IN
15 KIMBERLEY'S ROOM OR KRISTEN'S ROOM.

16 THE SIGNIFICANCE OF THE MULTI-COLORED THROW RUG
17 FIBERS ON THE CLUB IS -- AND IF I COULD HAVE 2138. YOUR
18 HONOR, MACDONALD'S ACCOUNT IS HE'S ATTACKED IN THE LIVING
19 ROOM, WHERE YOU SEE THE COFFEE TABLE, WHICH, BY THE WAY, WE
20 DID NOT RELY ON AT ALL AT THE TRIAL. WE DID NOT RETRY THE
21 ARTICLE 32 INVESTIGATION. BUT AGAIN, ACCORDING TO MACDONALD'S
22 ACCOUNT, HE WAKES UP AFTER THE INTRUDERS HAVE FLED, THE HOUSE
23 IS QUIET. HE'S ON THE STEP LEADING DOWN THE HALLWAY. HE
24 WALKS DOWN THE HALLWAY. HE SEES COLETTE LEANING UP AGAINST
25 WHAT IS, I THINK, ACTUALLY A GREEN ARMCHAIR HERE. SHE HAS A

September 25, 2012

1 KNIFE IN HER CHEST, WHICH HE PULLS OUT AND THROWS SOMEPLACE.
2 YOU KNOW, THE INVESTIGATORS THOUGHT THAT'S A STRANGE THING FOR
3 A PHYSICIAN TO DO. BUT IN ANY EVENT, THAT'S WHAT HE SAID.

4 THE KNIFE IS THE GENEVA FORGE KNIFE, WHICH IS NOT
5 CONSISTENT WITH ANY OF THE PENETRATING STAB WOUNDS ON
6 COLETTE'S CHEST OR KIMBERLEY'S THROAT AND IS NOT CONSISTENT
7 WITH ANY OF THE DEFECTS IN COLETTE'S PAJAMA TOP. IT IS
8 CONSISTENT WITH HAVING MADE THE CUT ON THE LEFT SLEEVE OF
9 MACDONALD'S PAJAMA TOP, WHICH IS THE ONLY PLACE WHERE HE HAD A
10 CORRESPONDING BLEEDING INJURY, A LITTLE TINY BIT OF TYPE B ON
11 THE LEFT SLEEVE OF THE PAJAMA TOP.

12 BUT THE IMPORTANT THING IS THAT -- AGAIN, HE'S
13 ABSOLUTELY INSISTENT ON THIS -- HE NEVER GOES OUT THE BACK
14 DOOR. HE MIGHT HAVE GONE TO THE SCREEN TO LOOK OUT, BUT HE
15 NEVER WENT OUTSIDE THE BACK DOOR.

16 WELL, IF YOU HAVE THREADS FROM THE PAJAMA TOP, OF
17 WHICH THERE WERE NONE IN THE LIVING ROOM, AND YOU HAVE FIBERS
18 FROM THE THROW RUG, WHICH IS IN THE MASTER BEDROOM, WE ARGUE
19 THAT THE ONLY WAY THAT THOSE TWO THINGS COULD HAVE GOTTEN ON
20 THE CLUB IS IF THE CLUB HAD COME TO REST ON THE THROW RUG AT
21 SOME POINT AND PICKED UP NOT ONLY OTHER SEAM THREADS, WHICH
22 ARE ALL OVER THIS ROOM, BUT THE RAYON FIBERS OF THE THROW RUG.
23 AND THERE'S NO WAY YOU CAN RECONCILE THAT WITH MACDONALD'S
24 ACCOUNT.

25 THE PAJAMA TOP DOESN'T COME INTO THE MASTER BEDROOM,

September 25, 2012

1 ACCORDING TO HIS ACCOUNT, UNTIL THE CLUB IS ALREADY OUTSIDE.
2 HE NEVER TOUCHES THE CLUB. HE NEVER GOES OUTSIDE. AND WE
3 ARGUE THAT THAT BASICALLY POINTED TO HIM BECAUSE THE ONLY
4 PERSON THAT COULD MAKE THAT HAPPEN IS THE DEFENDANT. SO, THAT
5 WAS OUR ARGUMENT WITH RESPECT TO THAT.

6 NOW, OVER THE YEARS CLAIMS HAVE BEEN RAISED AND, IN
7 FACT, THERE'S ONE BEFORE YOUR HONOR IN THE MOTION TO EXPAND
8 THE RECORD, THE GIST OF WHICH IS THAT I INDUCED OR HAD DILLARD
9 BROWNING TESTIFY THAT THERE WERE TWO SEAM THREADS ON THE
10 PAJAMA TOP. AND ACCORDING TO THE LATEST ITERATION OF THIS
11 CLAIM, THEY ARE NOT PURPLE COTTON THREAD, THEY'RE BLACK WOOL,
12 WHICH, OF COURSE, COULD ONLY HAVE COME FROM HELENA STOECKLEY.
13 AND THEY RELY ON THE AFFIDAVIT OF A WOMAN CALLED ELLEN
14 DANNELLY, WHICH IS BEFORE YOUR HONOR. AND TO MAKE A LONG
15 STORY SHORT, WHAT DANNELLY DID WAS ANALYZE THE RESULTS FROM A
16 SECOND EXAMINATION BY THE FBI LAB.

17 TO BACK UP, IN 1974 PAUL STOMBAUGH CONFIRMS DILLARD
18 BROWNING'S IDENTIFICATION OF TWO PURPLE COTTON THREADS COMING
19 FROM EXHIBIT Q89, THE DEBRIS FROM THE CLUB. THOSE GO IN
20 LITTLE PILL BOXES. AND THEN IN 1978, I ASKED THE FBI TO DO
21 SOME ADDITIONAL EXAMINATIONS IN THE HOPE OF IDENTIFYING THE
22 BLUE ACRYLIC FIBER THAT WAS IN COLETTE MACDONALD'S HAND, WHICH
23 TO THIS DAY IS UNIDENTIFIED, BUT THE DEFENSE HAS NEVER FOUNDED
24 ON THAT. IN THE PROCESS, THEY IDENTIFIED THE RAYON FIBERS
25 FROM THE THROW RUG, BUT THEY ALSO FIND BLACK WOOL AND I

September 25, 2012

1 BELIEVE WHITE WOOL AND SOME OTHER KIND OF WOOL, BUT THEY DON'T
2 REPORT ON THAT. IN OTHER WORDS, THEY ONLY REPORT ON THE
3 IDENTIFICATION. SO, THIS IS IN BENCH NOTES THAT ARE NOT
4 RELEASED UNTIL YEARS LATER.

5 BUT, YOUR HONOR, IF THEY WANTED TO PURSUE THAT, THEY
6 COULD HAVE CALLED ELLEN DANNELLY, WHO ONLY LOOKED AT THE
7 SECOND LAB REPORT, NOT THE FIRST ONE. AND I WOULD REPRESENT
8 TO YOUR HONOR, THAT THERE ARE BOTH PURPLE COTTON THREADS AND
9 BLACK WOOL AND RAYON FIBERS FROM THE THROW RUG.

10 A MOMENT'S INDULGENCE, YOUR HONOR.

11 (PAUSE.)

12 MR. MURTAGH: YOUR HONOR, IF WE COULD HAVE
13 GOVERNMENT'S 39. ALL RIGHT, YOUR HONOR, GOVERNMENT'S 39 IS
14 YOU'RE LOOKING AT COLETTE MACDONALD'S BODY FROM THE HALLWAY OF
15 THE HOUSE. THE LITTLE BLUE OBJECT ON THE UPTURNED CORNER OF
16 THE THROW RUG IS THE POCKET FROM THE PAJAMA TOP. AND THERE
17 WAS TESTIMONY AT TRIAL, AND I FORGET WHETHER IT WAS LABER OR
18 FLYNN, IT WAS ONE OF THE TWO TESTIFIED THAT THE BLOOD ON THE
19 PAJAMA POCKET, WHICH WAS TYPE A, COLETTE'S TYPE, WAS
20 CONSISTENT WITH CONTACT STAINS. THEN THERE'S THE THROW RUG,
21 WHICH HAD, IN ADDITION TO THREAD AND YARNS FROM THE PAJAMA
22 TOP, IT HAD ITS OWN COMPOSITION OF RAYON FIBERS. YOU SEE THE
23 PAJAMA TOP TRAILING OFF. AND I TALKED EARLIER ABOUT COLETTE'S
24 PAJAMA PANTS OR BOTTOMS. THESE ARE MEN'S TYPE PAJAMAS.
25 THEY'RE FULL LENGTH. BUT YOU NOTICE HOW THE LEGS HAVE BEEN

September 25, 2012

1 PUSHED UP, AND WE ARGUE THAT THAT WAS CONSISTENT WITH THE BODY
2 HAVING BEEN LIFTED UNDERNEATH THE KNEES.

3 AND, YOUR HONOR, WE -- BASICALLY WE PUT ALL OF
4 MACDONALD'S STATEMENTS ON THE KEY POINTS INTO EVIDENCE EITHER
5 BY READING TRANSCRIPTS IN OR PLAYING THE AUDIO TAPE OF THE
6 APRIL 6TH INTERVIEW. AND IT WAS HIS STORY VERSUS THE PHYSICAL
7 EVIDENCE.

8 AND AS I SAY, MACDONALD WAS NOT CONVICTED BECAUSE
9 THERE WAS NO EVIDENCE OF INTRUDERS. I MEAN, THERE WAS ALL
10 KINDS OF STUFF THAT WE COULD NOT IDENTIFY. AND IF THE JURY
11 HAD WANTED -- AND LET ME JUST SAY THAT THIS WAS A VERY, VERY
12 DIFFICULT CASE FOR A JURY. WE HAD NO PRIOR SIMILAR ACTS. WE
13 COULD NOT PROVE THAT HE ABUSED HIS WIFE OR CHILDREN. HE WAS
14 THE ALL AMERICAN BOY. HE WAS A SOLDIER. HE WAS A DOCTOR.
15 AND I SUBMIT THAT THE EVIDENCE MUST HAVE BEEN COMPELLING
16 BECAUSE THERE CERTAINLY WAS NO REASON FOR THIS EDUCATED JURY
17 TO HOLD ANYTHING AGAINST JEFFREY MACDONALD, JUST THE OPPOSITE.

18 THE FIRST JUROR IN THROUGH THE DOOR WHEN THE VERDICT
19 WAS ANNOUNCED WAS THE RETIRED GREEN BERET MASTER SERGEANT,
20 WHICH MIGHT SOUND STRANGE THAT WE PUT HIM ON THE JURY, BUT
21 THERE WERE REASONS FOR IT. HE WAS AN INSURANCE INVESTIGATOR
22 WHO WORKED WITH FRAUD. ANYWAY, THAT MAN WALKS IN AND THE
23 TEARS ARE STREAMING DOWN HIS FACE. NONE OF THE JURORS LOOKED
24 AT MACDONALD WHEN THEY CAME INTO THE COURTROOM. AS I SAY,
25 THIS WAS NOT AN EASY DECISION AND NOT ONE THAT THEY TOOK

September 25, 2012

1 LIGHTLY.

2 I WOULD ALSO ADD, YOUR HONOR, THAT THERE WAS NEVER A
3 CHALLENGE TO ANYTHING THAT JUDGE DUPREE SAID IN THE CHARGE TO
4 THE JURY. AND HE BASICALLY LAID OUT THE LAW AND HE SAID IF
5 YOU THINK THE DEFENDANT IS INNOCENT SAY SO. IT'S THE
6 GOVERNMENT'S BURDEN OF PROOF. THERE WAS NO CHALLENGE TO
7 ANYTHING EITHER THAT I SAID OR JIM BLACKBURN SAID IN FINAL
8 ARGUMENT. WITH ALL THE STUFF THAT'S BEEN LITIGATED IN THIS
9 CASE, I THINK IT'S SIGNIFICANT THAT NEITHER THE CHARGE NOR THE
10 FINAL ARGUMENT WAS EVER POINTED OUT.

11 AND I THINK I HAVE ABOUT FIVE MINUTES. YOUR HONOR,
12 IF YOU HAVE ANY QUESTIONS ABOUT THE EVIDENCE IN THE CASE I
13 THINK, TO THE BEST OF MY ABILITY AND AS AN OFFICER OF THE
14 COURT, I WILL TRY TO ANSWER THEM.

15 THE COURT: WELL, I APPRECIATE YOUR EFFORTS. I CAN
16 TELL ALL OF YOU NOW FOR A JUDGE WHO DID NOT TRY THE CASE IT'S
17 VERY DIFFICULT TO FOLLOW.

18 MR. MURTAGH: YOUR HONOR, I THINK WE MARKED THESE
19 EARLIER, BUT WE PUT IN -- IN OTHER WORDS, NOT ONLY
20 GOVERNMENT'S EXHIBIT 1141, WHICH WAS THE SUMMARY OF KEY
21 STATEMENTS THAT HE HAD MADE PRIOR TO TRIAL, I THINK WE ALSO
22 PUT IN THE ANALYSIS OF HIS TESTIMONY ON THOSE SAME POINTS AT
23 TRIAL, IN OTHER WORDS, WHAT THE JURY HEARD. DO WE HAVE A
24 NUMBER? EXCUSE ME.

25 (PAUSE.)

September 25, 2012

1 MR. MURTAGH: YOUR HONOR, I'LL FIND THAT -- 6073.
2 AND WE'VE GIVEN COPIES TO THE CLERK AND COUNSEL. AND THAT'S
3 IT FOR ME, YOUR HONOR.

4 THE COURT: THANK YOU. MR. BRUCE.

5 MR. BRUCE: YOUR HONOR, I WOULD NOW LIKE TO TURN TO
6 THE BRITT CLAIM, AND I'M GOING TO HAND UP -- THE DEFENSE
7 ALREADY HAS A COPY AND I'LL HAND ONE -- I THINK THIS IS THE
8 ORIGINAL. THIS IS GOVERNMENT EXHIBIT 2367, BUT IT'S JUST A
9 DEMONSTRATIVE CHART FOR PURPOSES OF CLOSING.

10 THE COURT: THANK YOU.

11 MR. BRUCE: AND WHAT I WANT TO DO WITH THIS CHART,
12 AND USING THE SCREEN TO PUT UP SOME EXHIBITS, IS TO CHRONICLE
13 FOR THE COURT WHAT WE CONTEND THE EVIDENCE HAS SHOWN ARE THE
14 FALSE ASSERTIONS OF JIMMY BRITT. AND I BELIEVE THERE ARE 27
15 OF THEM. SOME OF THEM ARE DETAILS, SOME OF THEM ARE MAJOR
16 POINTS, AND SOME OF THEM ARE THE WHOLE CRUX OF HIS STORY.

17 LET'S START WITH THE ONE ON THE FIRST PAGE. HE
18 ASSERTED THAT JUDGE DUPREE'S LAW CLERKS DURING THE TRIAL WERE
19 RICH LEONARD AND JOHN EDWARDS. HE DID THIS FIRST IN HIS
20 STATEMENT OF FACTS, GX-2085, PARAGRAPHS THREE AND FOUR. WE'LL
21 BLOW UP THREE AND FOUR. AND THIS IS THE FIRST THING THAT
22 JIMMY BRITT WROTE ABOUT THIS CASE, AT LEAST THAT ANYBODY HAS,
23 AND HE SAYS THAT THE SPECIFICS ARE TOO NUMEROUS TO LIST IN
24 THIS STATEMENT OF FACTS. HOWEVER, HE WILL LIST THE NAMES OF
25 THE PEOPLE INVOLVED IN THE IRREGULARITIES THAT I OBSERVED --

September 25, 2012

1 MEANING I JIMMY BRITT -- WHILE ASSIGNED AS A DEPUTY U.S.
2 MARSHAL AT THIS TRIAL; THE LATE FRANKLIN DUPREE, UNITED STATES
3 DISTRICT JUDGE WHO PRESIDED OVER THE TRIAL; RICH LEONARD AND
4 JOHN EDWARDS, LAW CLERKS FOR JUDGE DUPREE; JIM BLACKBURN, U.S.
5 ATTORNEY; AND THE FOREMAN OF THE JURY.

6 AFTER HE CAME FORWARD TO WADE SMITH AND WADE SMITH
7 PUT HIM UNDER OATH IN WADE SMITH'S OFFICE -- THAT'S GX-2086 --
8 WITH A COURT REPORTER THERE -- LET'S GO TO PAGE NINE, LINE 15
9 -- HE WAS ASKED WHY DID YOU WAIT SO LONG TO COME FORWARD. AND
10 HE SAYS, WELL, OUT OF RESPECT FOR THE LATE FRANKLIN DUPREE,
11 WHO WAS THE UNITED STATES DISTRICT JUDGE THAT PRESIDED OVER
12 THIS CASE, AND RICH LEONARD, WHO IS A UNITED STATES BANKRUPTCY
13 JUDGE OVER IN WILSON, AND I FEEL LIKE IT IS THE LATE SENATOR
14 -- I MEAN, JOHN EDWARDS, WHO WAS A FORMER UNITED STATES
15 SENATOR FOR THE STATE OF NORTH CAROLINA. AND MR. SMITH SAYS
16 AND THOSE WERE THE PEOPLE WORKING IN THE COURTS, WITH THE
17 COURTS, OR WITH JUDGE DUPREE AT THE TIME OF THE MACDONALD
18 TRIAL AND MR. BRITT SAYS, YES, SIR, THEY WERE.

19 WELL, THE TRUE FACTS, OF COURSE, AS SHOWN IN THE
20 THIRD COLUMN OF OUR CHART, ARE THAT RICH LEONARD SERVED AS LAW
21 CLERK FOR JUDGE DUPREE FROM 1976 TO 1978. AND AS HE
22 TESTIFIED, JOHN EDWARDS LEFT AS A LAW CLERK FOR JUDGE DUPREE
23 AFTER ONLY ONE YEAR, AT ABOUT THE SAME TIME THAT RICH LEONARD
24 DID, LEAVING FOR NASHVILLE, TENNESSEE, IN AUGUST OF 1978. SO,
25 NEITHER WERE SERVING AS LAW CLERKS AT THE TIME OF THE

September 25, 2012

1 MACDONALD TRIAL. THE LAW CLERK WORKING ON THE CASE WAS STEVE
2 COGGINS. AND THE EVIDENCE OF THE TRUE FACTS AS I STATED IS
3 THE TESTIMONY OF RICH LEONARD AND THIS WAS ALSO BROUGHT OUT IN
4 THE CROSS-EXAMINATION OF WADE SMITH.

5 THE SECOND ASSERTION WE HAVE ON THE CHARTS ON THE
6 SECOND PAGE -- AND THE COLUMN HEADINGS, UNFORTUNATELY, ARE NOT
7 ON EVERY PAGE, BUT THE LEFT-HAND COLUMN IS WHAT WE CONTEND IS
8 THE FALSE ASSERTION OF JIMMY BRITT, AND THEN THE SOURCE OF IT
9 FROM HIS VARIOUS STATEMENTS, THEN WHAT WE CONTEND THE EVIDENCE
10 SHOWS THE TRUE FACTS ARE AND THE SOURCES OF THAT EVIDENCE.

11 SO, THIS NEXT ASSERTION IS THAT HE TRAVELED FROM
12 RALEIGH TO CHARLESTON, SOUTH CAROLINA, TO TRANSPORT HELENA
13 STOECKLEY BACK TO RALEIGH DURING THE MACDONALD TRIAL.

14 IN THE INTERVIEW UNDER OATH, GX-2086 AT PAGE 11,
15 STARTING AT LINE 23, MR. SMITH SAYS WHAT WERE YOU ASKED TO DO
16 AND JIMMY BRITT SAYS I WAS ASKED TO TRAVEL FROM RALEIGH, NORTH
17 CAROLINA, TO CHARLESTON, SOUTH CAROLINA, TO ASSUME CUSTODY OF
18 A PROTECTED WITNESS, A WITNESS BY THE NAME OF HELENA
19 STOECKLEY.

20 AND LET'S GO TO -- HE ALSO SAID THIS AGAIN IN GX-
21 2087, THE AFFIDAVIT HE GAVE ON OCTOBER 26TH. NOW, REMEMBER
22 WADE SMITH HAS ESSENTIALLY DEPOSED HIM WITH NO ADVERSARY THERE
23 ON FEBRUARY 24TH. AND THEN MONTHS PASS AND HE GIVES AN
24 AFFIDAVIT TO THE LAWYERS FOR MACDONALD. AND THAT'S GX-2087.
25 AND IF YOU LOOK AT PAGE TWO, PARAGRAPH 15, HE STILL SAYS THAT

September 25, 2012

1 DURING THE COURSE OF TRAVEL FROM CHARLESTON TO RALEIGH, MS.
2 STOECKLEY BROUGHT UP SUCH AND SUCH. AND THEN IF YOU LOOK AT
3 PAGE THREE, PARAGRAPH 22, IN REFERRING TO THE LATER
4 CONVERSATION IN THE U.S. ATTORNEY'S OFFICE, HE SAYS THAT MS.
5 STOECKLEY STATED THE SAME THINGS THAT SHE HAD ON THE TRIP FROM
6 CHARLESTON TO RALEIGH. SO, HE'S STILL SAYING IN TWO PLACES
7 CHARLESTON.

8 THE TRUE FACTS ARE THAT BRITT WAS NOT GIVEN THE TASK
9 AT ALL TO TRANSPORT HER FROM SOUTH CAROLINA. STOECKLEY WAS
10 NOT IN CHARLESTON. SHE WAS IN THE PICKENS COUNTY JAIL. AND
11 DEPUTY U.S. MARSHAL MEEHAN WAS SENT FROM RALEIGH TO MEET
12 DEPUTY U.S. MARSHAL KENNEDY IN CHARLOTTE TO TRANSPORT
13 STOECKLEY TO RALEIGH.

14 WHAT IS THE EVIDENCE OF THIS? IN THE RIGHT-HAND
15 COLUMN, OF COURSE, THE TESTIMONY OF DENNIS MEEHAN, THE
16 TESTIMONY OF JANICE MEEHAN, THE SWORN STATEMENT OF THE VEROY
17 KENNEDY.

18 AND LET'S LOOK AT PAGE NINE, LINE 12 THROUGH 25.
19 SO, THIS WOULD BE THE DOCUMENT THAT YOU PICKED UP HELENA
20 STOECKLEY AT PICKENS COUNTY JAIL ON AUGUST 15TH, 1979, IS THAT
21 RIGHT?

22 UH-HUH

23 OKAY. NOW, YOU AND THE FEMALE GUARD PICKED HER UP
24 AND TRANSPORTED HER WHERE?

25 WE TRANSPORTED HER TO AN INTERSECTION. I BELIEVE IT

September 25, 2012

1 WAS A SERVICE STATION AT THE INTERSECTION OF I-85 AND I-75. I
2 MEAN, I-85 AND 77.

3 I-85 AND 77?

4 RIGHT.

5 AND THAT'S IN CHARLOTTE?

6 YES.

7 AND YOU WILL RECALL MR. MEEHAN'S TESTIMONY WAS THAT
8 HE MET A DEPUTY U.S. MARSHAL FROM SOUTH CAROLINA, WHO WAS AN
9 AFRICAN-AMERICAN -- A TALL, AFRICAN-AMERICAN MALE. AND THEN
10 IN THE SWORN STATEMENT OF VERNOY KENNEDY, OF COURSE, SADLY,
11 HE'S NOW DECEASED, HE STATES THAT HE WAS THE ONLY AFRICAN-
12 AMERICAN DEPUTY SERVING IN THE DISTRICT OF SOUTH CAROLINA AT
13 THAT TIME.

14 WE ALSO HAVE THE BOOKING RECORDS AT THE PICKENS
15 COUNTY JAIL, WHICH CLEARLY DEMONSTRATE THAT THAT'S WHERE
16 HELENA STOECKLEY WAS INCARCERATED, NOT GREENVILLE, NOT
17 CHARLESTON, BUT PICKENS COUNTY.

18 AND LET'S LOOK AT GOVERNMENT EXHIBIT 2006 AND 2007
19 AND GOVERNMENT EXHIBIT 2008 AND GOVERNMENT EXHIBIT 2009. IT'S
20 A PRETTY FAINT PICTURE, BUT THAT'S HER.

21 GOVERNMENT EXHIBIT 2064, THE COMMITMENT FORM OF
22 HELENA STOECKLEY AS SHE WAS SIGNED IN THERE ON AUGUST THE
23 14TH, 1979, BY THOMAS DONOHUE, WHO WAS WORKING WITH FRANK
24 MILLS, WHO TESTIFIED HERE IN THIS HEARING.

25 AND THEN GOVERNMENT EXHIBIT 2066, WHICH SHOWS THAT

September 25, 2012

1 VERNOY KENNEDY -- DOWN AT THE BOTTOM VERNOY KENNEDY, DEPUTY
2 U.S. MARSHAL, IS THE PERSON THAT SIGNED HER OUT OF THE PICKENS
3 COUNTY JAIL.

4 WELL, IF, AS WE WERE TOLD DURING THE MOVANT'S
5 CLOSING ARGUMENT THIS MORNING, THAT IT WAS JUST A MIXUP ABOUT
6 WHERE IT WAS, BUT ACTUALLY JIMMY BRITT WENT DOWN TO SOUTH
7 CAROLINA AND PICKED HER UP THEN WHY IS NOT HIS SIGNATURE ON
8 THE BOTTOM OF THIS RELEASE FORM FROM THE PICKENS COUNTY JAIL?

9 THE NEXT ASSERTION, GOING OVER TO PAGE THREE OF THE
10 CHART, IS THAT JIMMY BRITT SAID THAT HE PICKED UP STOECKLEY AT
11 THE UNITED STATES MARSHAL'S SERVICE OFFICE IN CHARLESTON,
12 SOUTH CAROLINA.

13 LET'S LOOK AT GOVERNMENT EXHIBIT 2086, WHICH IS THE
14 INTERVIEW UNDER OATH IN WADE SMITH'S OFFICE AT PAGE 12. IT
15 SHOULD SAY LINE 13 THROUGH 16. I THINK IT COMES OUT ON THE
16 PAGE AS 130 AND 160, BUT IT SHOULD BE LINE 13 THROUGH 16.

17 MR. SMITH: AND WHERE WAS SHE IN CHARLESTON?

18 SHE WAS AT THE UNITED STATES MARSHAL'S OFFICE IN
19 CHARLESTON, SOUTH CAROLINA.

20 WELL, ACTUALLY, OF COURSE, SHE WAS IN CUSTODY
21 PURSUANT TO A WARRANT AND SHE WAS HOUSED AT THE PICKENS, SOUTH
22 CAROLINA, COUNTY JAIL. AND WE KNOW THIS IN GOVERNMENT EXHIBIT
23 2000, WHICH IS THE WARRANT FOR HER ARREST SIGNED BY JUDGE
24 DUPREE. WE KNOW THIS FROM THE TESTIMONY OF FRANK MILLS AND IN
25 THE COMMITMENT, GOVERNMENT EXHIBIT 2064. WE KNOW THIS FROM

September 25, 2012

1 THE TESTIMONY OF DENNIS MEEHAN, THAT SHE WAS TRANSFERRED IN
2 CUSTODY. WE KNOW THIS FROM THE TESTIMONY OF JANICE MEEHAN
3 THAT CORROBORATES HER EX-HUSBAND'S TESTIMONY. BY THE WAY,
4 THEY'VE BEEN DIVORCED FOR MANY YEARS, AND ONE LIVES IN RALEIGH
5 AND ONE LIVES IN NEW YORK STATE, I BELIEVE.

6 WE HAVE THE SWORN STATEMENT OF VEROY KENNEDY,
7 GOVERNMENT EXHIBIT 2010, AT PAGE NINE, LINES 12 THROUGH 25,
8 THE SAME PORTION THAT WE READ EARLIER. AND ALL THE BOOKING
9 RECORDS, WHICH I WON'T GO THROUGH AGAIN, WHICH SHOW THAT THIS
10 WAS AN IN CUSTODY TRANSFER, WHERE SHE WAS PICKED UP AT THE
11 JAIL AND NOT PICKED UP AT THE U.S. MARSHAL'S SERVICE OFFICE IN
12 CHARLESTON, SOUTH CAROLINA.

13 NOW, OF COURSE, JIMMY BRITT'S STATEMENTS CHANGED
14 OVER TIME. SO, LET'S GO TO PAGE FOUR AND YOU SEE THE
15 ASSERTION THAT HE TRAVELED FROM RALEIGH TO GREENVILLE TO
16 ASSUME CUSTODY. HE'S CHANGED IT. SOMEHOW HE'S LEARNED THAT
17 THE FIRST STORY DIDN'T WORK, AND SO HE'S CHANGED IT TO TRAVEL
18 FROM RALEIGH TO GREENVILLE, SOUTH CAROLINA, TO ASSUME CUSTODY
19 OF HELENA STOECKLEY AND TRANSPORT HER BACK TO RALEIGH DURING
20 THE MACDONALD TRIAL, AND HE PICKED HER UP AT THE COUNTY JAIL
21 IN GREENVILLE, SOUTH CAROLINA.

22 WELL, WHERE DID HE SAY THIS? WELL, HE SAID IT IN
23 THE AFFIDAVIT ON OCTOBER 26TH. THAT'S GX-2087 AT PAGE TWO,
24 PARAGRAPH 11. HE SAYS HE WAS ASSIGNED TO TRAVEL TO
25 GREENVILLE, SOUTH CAROLINA, TO ASSUME CUSTODY OF A WITNESS BY

September 25, 2012

1 THE NAME OF HELENA STOECKLEY. HE PICKED UP MS. STOECKLEY AT
2 THE COUNTY JAIL IN GREENVILLE, SOUTH CAROLINA, AND DROVE HER
3 BACK TO RALEIGH. HE ALSO SAYS THIS IN GX-2088, THE NOVEMBER
4 3RD AFFIDAVIT, WHERE IT MAKES ITS WAY INTO PARAGRAPH 11, WHICH
5 WE'VE ALREADY LOOKED AT, IT'S THE SAME AS THE PREVIOUS ONE,
6 AND ALSO PARAGRAPH 15, DURING THE COURSE OF TRAVEL FROM
7 GREENVILLE, SOUTH CAROLINA, TO RALEIGH, SO FORTH AND SO ON.

8 AND FINALLY, IN THE ADDENDUM -- AND BY THE WAY, THE
9 AFFIDAVIT OF NOVEMBER 3, 2005, IT'S IMPORTANT TO REMEMBER THAT
10 WAS THE AFFIDAVIT ON WHICH THIS ENTIRE PROCEEDING IS BASED.
11 THAT WAS THE ONE THAT WAS ATTACHED TO THE 2255 PLEADING THAT
12 WAS FILED IN JANUARY. I BELIEVE IT WAS JANUARY 27TH OF 2006
13 -- SORRY, THE 17TH, JANUARY -- WELL, ONE OR THE OTHER.

14 AND LET'S LOOK AT 2089. JIMMY BRITT DID AN
15 ADDENDUM, ABOUT A MONTH LATER, TO THE AFFIDAVIT. AND THESE
16 PARAGRAPHS AREN'T NUMBERED, BUT IF WE COULD LOOK AT THE FIRST
17 PARAGRAPH. AND HERE AGAIN HE'S NOW SAYING THAT HE TRAVELED TO
18 GREENVILLE, SOUTH CAROLINA, TO TAKE CUSTODY, ALONG WITH
19 GERALDINE HOLDEN.

20 BUT WE KNOW WHAT THE TRUE FACTS ARE, WHICH WERE
21 AFTER HIS -- HER ARREST ON AUGUST 14TH, SHE WAS TAKEN TO THE
22 PICKENS COUNTY JAIL. SHE WAS NOT HOUSED IN GREENVILLE AT ANY
23 TIME. DEPUTY U.S. MARSHAL MEEHAN WAS SENT FROM RALEIGH TO
24 MEET DEPUTY U.S. MARSHAL KENNEDY IN CHARLOTTE TO TRANSPORT
25 STOECKLEY TO RALEIGH. AND BRITT WAS NOT INVOLVED IN THE

September 25, 2012

1 TRANSPORT. AND I'M NOT GOING TO GO THROUGH THEM AGAIN, BUT
2 YOU SEE ALL THE TESTIMONY AND ITEMS OF DOCUMENTARY EVIDENCE
3 THAT DISPROVES THE STATEMENT ABOUT THAT.

4 NOW, GOING BACK -- THE NEXT SERIES OF STATEMENTS ON
5 PAGE FIVE, SOME OF THESE COME FROM THE EARLIER STATEMENTS. I
6 THOUGHT ONE OF THE INTERESTING STATEMENTS HE MADE WAS THAT
7 STOECKLEY WAS DRESSED -- AND THIS IS WHEN HE WAS TALKING ABOUT
8 HE PICKED HER UP IN CHARLESTON. HE SAID STOECKLEY WAS DRESSED
9 IN THIS FLOPPY HAT THAT HAD BEEN DESCRIBED DURING THE COURSE
10 OF THE INVESTIGATION. NOW, LET'S LOOK AT THAT, GX-2086, PAGE
11 13, LINE SIX THROUGH 10.

12 NOW, THAT'S A PRETTY EXTRAORDINARY STATEMENT. MR.
13 BRITT IS SAYING THAT WHEN HE PICKED UP THE PRISONER SHE WAS
14 WEARING THE HAT THAT SHE HAD WORN NINE AND A HALF YEARS
15 EARLIER AT THE SCENE OF THE CRIME. WE ASKED WADE SMITH ABOUT
16 THAT AND HE NEVER SAW SUCH A THING. AND I DIDN'T HEAR ANYBODY
17 ELICIT ANY TESTIMONY FROM ANYONE WHO HAD ANY CONTACT WITH
18 HELENA STOECKLEY DURING THE TIME SHE WAS IN RALEIGH IN AUGUST
19 OF 1979, THAT SHE WAS WEARING THE FAMOUS FLOPPY HAT.

20 HE ALSO ASSERTED THAT HE TRANSPORTED STOECKLEY'S
21 BOYFRIEND ERNEST FROM CHARLESTON TO RALEIGH. LET'S LOOK AT
22 THAT, GX-2086, THE INTERVIEW UNDER OATH. THIS IS THE FIRST
23 DETAILED STATEMENT HE GAVE, THE ONE IN WADE SMITH'S OFFICE, AT
24 PAGE 13, LINE 16 THROUGH 24.

25 NOW, WHEN YOU PICKED UP MS. STOECKLEY, DID HER

September 25, 2012

1 FRIEND ERNEST ACCOMPANY HER AND YOU BACK TO NORTH CAROLINA?

2 MR. BRITT: YES, SIR, THEY DID.

3 MR. SMITH: WHERE DID MS. STOECKLEY RIDE IN THE CAR
4 AND WHERE DID HER BOYFRIEND ERNEST RIDE?

5 MR. BRITT: THEY RODE IN THE BACK SEAT OF THE CAR.

6 HE HAS AN EXPLICIT RECOLLECTION OF MS. STOECKLEY AND
7 HER BOYFRIEND RIDING IN THE BACK SEAT OF PRESUMABLY A MARSHAL
8 SERVICE VEHICLE WHILE HE TRANSFERS HER FROM CHARLESTON TO
9 RALEIGH.

10 WELL, THE TRUE FACT, OF COURSE, IS THAT ERNEST DAVIS
11 WAS NOWHERE NEAR CHARLESTON, SOUTH CAROLINA, BECAUSE HE LIVED
12 IN WALHALLA, SOUTH CAROLINA, IN THE UPSTATE, ABOUT AS FAR FROM
13 CHARLESTON AS YOU CAN GET AND STILL BE IN THE STATE OF SOUTH
14 CAROLINA. HE MADE HIS OWN WAY FROM WALHALLA, SOUTH CAROLINA,
15 TO RALEIGH. AND IN BRINGING HIM ALONG ON SUCH A TRANSFER
16 WOULD HAVE VIOLATED UNITED STATES MARSHAL SERVICE POLICY. AND
17 WE KNOW THIS FROM THE TESTIMONY OF DENNIS MEEHAN AND ALSO FROM
18 THE TESTIMONY OF JANICE MEEHAN. YOU'LL RECALL THAT BOTH
19 MEEHAN'S TESTIFIED THAT THEY TRANSPORTED THE PRISONER IN
20 CUSTODY, AND YOU WOULDN'T HAVE A THIRD PARTY TO BE ALLOWED TO
21 TRAVEL ALONG. THAT WOULD BE ABSURD. AND THEY ALSO TESTIFIED
22 THAT WHEN THEY ARRIVED AT THE WAKE COUNTY JAIL TO BOOK IN THE
23 PRISONER THAT THEY HAD TRANSFERRED, HAVING MET VERNON KENNEDY
24 IN CHARLOTTE AND TRANSPORTED HER THE REST OF THE WAY, THAT
25 THEY BOTH SAW WHAT APPEARED TO BE HER BOYFRIEND, DISHEVELED,

September 25, 2012

1 TRY TO APPROACH AND TALK TO HIS GIRLFRIEND HELENA, AND THAT HE
2 HAD MADE HIS WAY THERE NOT WITH THEM BUT SOME OTHER WAY.

3 NOW, MR. BRITT ALSO SAID THAT THE UNITED STATES
4 MARSHAL SERVICE EMPLOYEE GERRY HOLDEN ACCOMPANIED HIM TO PICK
5 UP STOECKLEY AND TO TRANSPORT HER TO RALEIGH. HE SAID THIS
6 SEVERAL TIMES. IN GX-2086, THE INTERVIEW UNDER OATH, AT PAGE
7 13, LINE 11 THROUGH 15; DID ANYONE ACCOMPANY YOU ON THE
8 JOURNEY?

9 MR. BRITT: YES, SIR. GERRY HOLDEN, WHO WAS AN
10 ADMINISTRATIVE PERSON IN THE UNITED STATES MARSHAL SERVICE
11 HERE IN RALEIGH.

12 AND HE ALSO SAID THAT ON PAGE 14 AT LINE 18 THROUGH
13 21; AND DID SHE TELL YOU ABOUT THE TRIAL?

14 SHE SPECIFICALLY TOLD ME IN THE PRESENCE OF GERRY
15 HOLDEN RIDING -- RIDING FROM -- AND I THINK IT GOES ON TO SAY
16 CHARLESTON, SOUTH CAROLINA.

17 NOW, GX-2087, THE AFFIDAVIT ON OCTOBER 26TH, IN
18 PARAGRAPHS 13 AND 15, HE ALSO STATES THAT GERRY HOLDEN WAS
19 ACCOMPANYING HIM ON THE TRIP. AND THAT'S ALSO REPEATED IN THE
20 AFFIDAVIT THAT WAS FILED WITH THE 2255 PETITION, 2088, THE
21 SAME TWO PARAGRAPHS.

22 WELL, THE TRUE FACTS ARE THAT HOLDEN DID NOT GO ON
23 THE TRIP TO PICK UP STOECKLEY THAT JANICE MEEHAN SERVED AS THE
24 FEMALE MATRON WHILE DEPUTY MARSHAL MEEHAN TRANSPORTED
25 STOECKLEY FROM CHARLOTTE TO RALEIGH. AND, OF COURSE, IN THE

September 25, 2012

1 STATEMENT OF VERNON KENNEDY -- WE'LL LOOK AT THAT IN A MINUTE
2 -- BUT HE'LL POINT OUT THAT A FEMALE INTERN SERVED THIS ROLE
3 WITH HIM, TRANSPORTING STOECKLEY FROM PICKENS, SOUTH CAROLINA,
4 TO CHARLOTTE TO MEET MEEHAN.

5 LET'S LOOK AT GX-2010, PAGE SEVEN, LINE 22; AND
6 BECAUSE IT WAS A FEMALE PRISONER, WHAT WAS THE PROCEDURE?

7 WELL, BECAUSE IT WAS A FEMALE THAT MEANT THAT I HAD
8 TO GET A FEMALE GUARD. WE ALWAYS USED A FEMALE GUARD TO
9 TRANSPORT THE PRISONER.

10 AND YOU'LL RECALL ALSO FROM THE EVIDENCE THAT MR.
11 BRITT -- HE MADE INQUIRIES AS TO GERALDINE HOLDEN'S HEALTH AND
12 FOUND OUT THAT HER HEALTH WAS FAILING AND THAT SHE WOULD NOT
13 BE IN A POSITION TO CONTRADICT HIS STATEMENT BEFORE HE CAME
14 FORWARD.

15 NOW, ON PAGE SIX HE SAYS DURING TRANSPORTATION FROM
16 RALEIGH -- TO RALEIGH FROM SOUTH CAROLINA, STOECKLEY TOLD
17 BRITT OF THE PRESENCE -- STOECKLEY'S PRESENCE, ALLEGEDLY,
18 INSIDE THE MACDONALD HOME ON THE NIGHT OF THE MURDERS.

19 THIS IS IN GX-2086, INTERVIEW UNDER OATH, PAGE 14,
20 LINE 13; DURING THE COURSE OF THE TRAVELS FROM CHARLESTON,
21 SOUTH CAROLINA, TO RALEIGH, WITHOUT ANY PROMPTING FROM ME
22 WHATSOEVER, SHE BROUGHT UP THE MATTER OF THE TRIAL OF
23 MACDONALD.

24 AND WHAT DID SHE TELL YOU ABOUT THE TRIAL?

25 SHE SPECIFICALLY TOLD ME IN THE PRESENCE OF GERRY

September 25, 2012

1 HOLDEN, RIDING -- RIDING FROM CHARLESTON TO RALEIGH,
2 SPECIFICALLY MADE MENTION OF A HOBBY HORSE, THAT SHE WAS IN
3 FACT AT THE MACDONALD'S HOME OR APARTMENT, AND THAT SHE MADE
4 REFERENCE TO A HOBBY HORSE IN JEFFREY MACDONALD'S LIVING ROOM.

5 NOW, OF COURSE, YOU KNEW AS YOU WERE RIDING ALONG
6 THAT THIS WOULD BE IMPORTANT?

7 YES, SIR.

8 AND HE GOES ON TO DISCUSS THE IMPORTANCE OF THOSE
9 WORDS. NOW, LET'S SEE, IF WE GO UP TO -- OKAY. GX-2087, THE
10 AFFIDAVIT. THIS IS REPEATED AGAIN IN PARAGRAPH 15 AND ALSO
11 PARAGRAPH 22, ABOUT ON THE LONG TRIP FROM CHARLESTON TO
12 RALEIGH, MS. STOECKLEY BROUGHT UP THE MATTER OF THE TRIAL OF
13 JEFFREY MACDONALD AND TALKED ABOUT THE HORSE. AND IF YOU LOOK
14 AT PARAGRAPH 22, IT SAYS THE SAME THING. IT TALKS ABOUT THE
15 INTERVIEW THE NEXT DAY IN BLACKBURN'S OFFICE. IT REFERS BACK
16 TO THE TRIP FROM CHARLESTON TO RALEIGH IS WHERE HE FIRST HEARD
17 THE CONFESSION THAT WAS SUPPOSEDLY REPEATED IN BLACKBURN'S
18 OFFICE.

19 NOW, IF YOU LOOK AT 2088, THE SAME TWO PARAGRAPHS,
20 PARAGRAPHS 15 AND 22, IT CHANGES TO GREENVILLE, BUT THE IDEA
21 IS THE SAME, THAT ON THIS LONG TRIP FROM SOUTH CAROLINA IS
22 WHERE HELENA STOECKLEY DECIDED TO BEAR HER SOUL AND CONFESS TO
23 JIMMY BRITT AND THAT THAT'S WHAT HE HEARD REPEATED IN
24 BLACKBURN'S OFFICE THE NEXT DAY.

25 BUT WE KNOW FROM THE TESTIMONY OF DENNIS MEEHAN AND

September 25, 2012

1 JANICE MEEHAN AND FROM VERNON KENNEDY, 2010, PAGE NINE, LINE
2 12 THROUGH 25, THAT HE HAD -- THAT JIMMY BRITT HAD NOTHING TO
3 DO WITH THE TRANSPORTATION OF HELENA STOECKLEY FROM SOUTH
4 CAROLINA. AND, IN FACT, NO DEPUTY MARSHAL FROM NORTH CAROLINA
5 WENT TO THE STATE OF SOUTH CAROLINA TO GET HER. DENNIS MEEHAN
6 ONLY WENT AS FAR AS CHARLOTTE.

7 NOW, HE STATES -- WE'RE MOVING TO PAGE SEVEN NOW.
8 MR. BRITT ALSO STATED THAT UPON ARRIVAL IN RALEIGH FROM SOUTH
9 CAROLINA HE TOOK STOECKLEY AND ERNEST, THE BOYFRIEND, TO THE
10 HOLIDAY INN, AND THEY CHECKED IN AND STAYED THERE UNTIL HE
11 PICKED THEM UP THE NEXT MORNING. UNDER OATH IN WADE SMITH'S
12 OFFICE HE SAID I CHECKED HER IN AT THE HOLIDAY INN HOTEL OVER
13 ON HILLSBOROUGH STREET AND SHE AND ERNEST DEPARTED THE LOBBY.
14 I GAVE THEM THE KEY AND THEY DEPARTED THE LOBBY AND WENT UP TO
15 THEIR ROOMS. I DIDN'T SEE HELENA OR ERNEST UNTIL THE NEXT
16 MORNING WHEN I WENT OVER TO THE MOTEL -- OR, EXCUSE ME, THE
17 HOTEL, TO PICK THEM UP AND BRING THEM TO COURT.

18 NO AMBIGUITY ABOUT THAT. HE CLEARLY REMEMBERS
19 CHECKING HER AND HER BOYFRIEND INTO THE HOLIDAY INN AND THEN
20 GOING BACK AND PICKING THEM UP THE NEXT MORNING TO TRANSFER
21 HER -- TRANSPORT HER TO COURT.

22 BUT, IN FACT, WE KNOW THAT STOECKLEY WAS IN CUSTODY
23 AS A MATERIAL WITNESS, THAT UPON ARRIVAL IN RALEIGH, DEPUTY
24 U.S. MARSHAL MEEHAN PUT HER IN THE WAKE COUNTY JAIL. WE KNOW
25 THAT ERNEST WAS OBSERVED IN THE AREA OUTSIDE THE JAIL BY BOTH

September 25, 2012

1 OF THE MEEHANS. WE KNOW THAT BRITT AND HOLDEN ACTUALLY DID
2 TRANSPORT STOECKLEY, BUT IT WAS THE NEXT MORNING, FROM THE
3 WAKE COUNTY JAIL TO THE FEDERAL BUILDING AND PROBABLY BACK IN
4 THE AFTERNOON. WE KNOW THAT STOECKLEY DID NOT STAY AT THE
5 HOLIDAY INN DURING THE ENTIRE STAY IN RALEIGH. AND UPON
6 RELEASE ON AUGUST 17TH, 1979, HELENA STOECKLEY STAYED FIRST AT
7 THE DOWNTOWNER, THEN AT THE JOURNEY'S END AND THEN AT THE
8 HILTON INN ON THE OTHER END OF HILLSBOROUGH STREET. AND WE
9 KNOW THIS FROM THE TESTIMONY OF DENNIS MEEHAN, FROM THE
10 TESTIMONY OF JANICE MEEHAN, FROM THE ARREST ORDER OF HELENA
11 STOECKLEY.

12 NOW, LET'S LOOK AT TRIAL DAY 19, PAGE 16, LINE SEVEN
13 THROUGH TEN. AND, YOU KNOW, THE GREAT THING ABOUT THE COURT
14 RECORD, WHEN WE CAN FIND THINGS IN THE TRIAL RECORD IS IT WAS
15 PUT DOWN ON PAPER IN 1979 BY A COURT REPORTER, IT DOESN'T RELY
16 ON ANYONE'S MEMORY OF A 33 YEAR OLD EVENT. AND THIS IS -- IF
17 YOU RECALL, WE REFERRED TO THIS EARLIER IN THE HEARING, IT
18 SEEMS APPARENT FROM THE CONTEXT THAT HELENA STOECKLEY IS
19 HAVING AN INITIAL APPEARANCE BEFORE A MAGISTRATE JUDGE IN
20 SOUTH CAROLINA, AND IT'S ON THE MORNING OF AUGUST 15TH AND
21 JUDGE DUPREE IS ASKING THE PARTIES, WELL, WHAT DO YOU WANT TO
22 DO? AND BERNIE SEGAL SAYS, WELL, WE WANT HER TRANSPORTED TO
23 RALEIGH SO WE CAN INTERVIEW HER. AND JUDGE DUPREE SAYS THAT
24 IS ALL WE NEEDED TO KNOW, JUST TELL THE MAGISTRATE JUDGE THERE
25 IS NO BOND AND JUST BRING HER HERE AND MAKE HER AVAILABLE TO

September 25, 2012

1 DEFENSE COUNSEL. SO, THIS WAS AN IN CUSTODY TRANSFER AS A
2 MATERIAL WITNESS.

3 NOW, IN REGARD TO THE -- I THINK MR. WIDENHOUSE SAID
4 THIS MORNING THAT THERE WAS SOME CONFUSION ABOUT THE HOTELS.
5 THERE'S NO CONFUSION ABOUT THE HOTELS EXCEPT FOR JIMMY BRITT
6 FALSELY STATED THAT HELENA STOECKLEY STAYED AT THE HOLIDAY
7 INN, THE ONE WITH THE DISTINCTIVE ROUND ARCHITECTURE THAT WE
8 SHOWED PICTURES OF MANY TIMES BECAUSE WE CAN LOOK IN THE
9 RECORD AND SEE THAT MR. SEGAL EXPLAINS THAT -- AND WE'VE HAD
10 THIS ON THE SCREEN MANY TIMES DURING THE TRIAL. MAYBE IT'S
11 TRIAL DAY 21? MAYBE THIS IS IT. LET ME PUT IT UP.

12 WELL, FIRST OF ALL, LET ME GO IN ORDER. LET ME PUT
13 UP GX-2074, THE PHOTO. NOW, THIS IS -- DENNIS MEEHAN
14 TESTIFIED THAT AFTER HE TRANSPORTED HELENA STOECKLEY FROM
15 CHARLOTTE, AFTER HE MET VERNOY KENNEDY, AND PUT HER IN THE
16 WAKE COUNTY JAIL ON WEDNESDAY, AUGUST 15TH, IN THE LATE
17 AFTERNOON OR EARLY EVENING, HE TESTIFIED THAT, YES, HE WAS
18 AWARE THAT JIMMY BRITT AND GERALDINE HOLDEN HAD ACTUALLY
19 TRANSPORTED HELENA STOECKLEY ON THE MORNING OF THE 16TH,
20 COMING OVER TO THE FEDERAL BUILDING. WHAT ENDED UP HAPPENING,
21 OF COURSE, THAT DAY WAS THAT SHE WAS INTERVIEWED BY THE
22 DEFENSE AND THE PROSECUTION.

23 BUT HE ALSO TESTIFIED THAT THIS PHOTOGRAPH THAT YOU
24 SEE HERE IS COMING OUT OF THE FEDERAL BUILDING AND HE
25 IDENTIFIED HELENA STOECKLEY, JIMMY BRITT AND THE BOYFRIEND

September 25, 2012

1 ERNEST IN THE BACKGROUND. AND SINCE THIS PICTURE APPEARS ON
2 FRIDAY, AUGUST 17TH, 1979, IN THE *NEWS & OBSERVER*, THE MOST
3 LIKELY CONCLUSION IS THAT THIS PICTURE WAS TAKEN ON THE
4 AFTERNOON OF AUGUST 16TH, AFTER HELENA STOECKLEY HAD BEEN
5 INTERVIEWED BY BOTH THE PROSECUTION AND THE DEFENSE OR THE
6 DEFENSE AND PROSECUTION TO GET IT IN THE RIGHT ORDER, AND SHE
7 WAS BEING MOVED BACK TO THE WAKE COUNTY JAIL.

8 BUT, OF COURSE, BY THAT TIME THE INTERVIEWS HAD
9 ALREADY TAKEN PLACE. SO, THIS WOULD BE COMPLETELY IRRELEVANT
10 TO ANY INFORMATION THAT JIMMY BRITT WOULD GET FROM HELENA
11 STOECKLEY THAT WOULD THEN BE ALLEGEDLY REPEATED IN THE
12 INTERVIEWS.

13 SO, WHAT WE HAVE IS, FROM THE EVIDENCE, THE ONE
14 CONTACT THAT WE -- THAT THE EVIDENCE SHOWS THAT JIMMY BRITT
15 ACTUALLY HAD WITH HELENA STOECKLEY BEFORE THE DEFENSE AND THE
16 PROSECUTION INTERVIEWS ON AUGUST 16TH, 1979, WAS TRANSPORTING
17 HER ON THAT MORNING.

18 AND LET'S LOOK AT GX-2101.3, 2101.3. I THINK IT'S
19 2101.3. I'M TRYING TO SHOW DOWNTOWN RALEIGH. JUST A MOMENT,
20 PLEASE, YOUR HONOR. THERE WE GO. ALL RIGHT. HERE IT IS.
21 IT'S 2101.3. AND THIS SHOWS, AND MR. MEEHAN OUTLINED THIS FOR
22 US, YOU'VE GOT THE WAKE COUNTY COURTHOUSE OVER HERE ON THE
23 LEFT OF THE SCREEN. IT'S BOXED IN RED. AND ALL THE DEPUTY --
24 AFTER THEY COME OUT ONTO SALISBURY STREET, OUT OF THE BACK OF
25 THE JAIL THE WAY IT WAS THEN, AND THEY MAKE ONE LEFT-HAND TURN

September 25, 2012

1 ON DAVIE STREET. THAT'S A HALF A BLOCK TO GET TO DAVIE
2 STREET. THEN ONE, TWO, THREE BLOCKS ON DAVIE STREET -- FOUR
3 BLOCKS ACTUALLY TO GET TO BLOODWORTH AND THEN ONE, TWO, THREE
4 BLOCKS TO GET TO THE FEDERAL BUILDING. SO, THAT'S SEVEN AND A
5 HALF BLOCKS THAT YOU HAD TO TRANSPORT THE PRISONER TO GET THEM
6 FROM THE WAKE COUNTY JAIL TO THE FEDERAL BUILDING.

7 AND I'D SUBMIT THAT IT STRAINS ALL CREDULITY TO SAY
8 THAT DURING THAT SEVEN AND A HALF BLOCK RIDE THAT HELENA
9 STOECKLEY DECIDED TO BEAR HER SOUL AND CONFESS THE MACDONALD
10 MURDERS TO JIMMY BRITT, WHOM SHE HAD NEVER MET BEFORE THAT
11 DAY. AND BESIDES, THAT WON'T WORK TO EXPLAIN HIS STATEMENTS
12 ANYWAY.

13 GOING BACK TO PAGE SEVEN, WHERE WE WERE, LET'S LOOK
14 AT TRIAL DAY 21, PAGE 179, LINES 13 THROUGH 25.

15 THE COURT: EXCUSE ME JUST ONE SECOND.

16 (COURT CONFERS WITH CLERK.) (PAUSE.)

17 THE COURT: YES, SIR. GO AHEAD, MR. BRUCE.

18 MR. BRUCE: OKAY. THIS SHOWS, AS IS STATED IN
19 CONTRADICTION TO WHAT JIMMY BRITT SAYS, THAT BERNIE SEGAL IS
20 HAVING HER SERVED WITH A SUBPOENA AFTER SHE IS RELEASED FROM
21 CUSTODY AND THAT SHE WOULD BE -- BECOME A DEFENSE WITNESS AND
22 ONLY THEN WOULD SHE BE CHECKED INTO A HOTEL AND NOT AS JIMMY
23 BRITT SAID WHEN SHE FIRST ARRIVED.

24 AND AS I SAID, THERE'S NO CONFUSION ABOUT THE
25 HOTELS. IF YOU LOOK AT THE TRANSCRIPT, WHICH DOESN'T RELY ON

September 25, 2012

1 ANYBODY'S MEMORY, SHE WAS FIRST -- SHE FIRST CHECKED IN AT THE
2 DOWNTOWNER. MR. SEGAL INFORMED THE COURT THAT HE DIDN'T WANT
3 HER AT THE DOWNTOWNER BECAUSE THAT'S WHERE THE DEFENSE TEAM
4 WAS GOING TO STAY AFTER THEIR LEASE AT THE FRATERNITY HOUSE
5 HAD RUN OUT. SO, SHE MOVED TO THE JOURNEY'S END, WHICH WADE
6 SMITH IDENTIFIED CLEARLY FOR US FROM THE PHOTOGRAPH. AND IT
7 IS -- IN FACT, SHE WAS AT THE JOURNEY'S END ON SATURDAY AND
8 SATURDAY NIGHT AND SUNDAY BECAUSE IT WAS FROM THE JOURNEY'S
9 END THAT SHE CALLED JUDGE DUPREE.

10 THAT MAY BE THE NEXT REFERENCE OF TRANSCRIPT --
11 TRIAL DAY 22, PAGE 134. ALL RIGHT. THIS IS FROM WENDY
12 ROUDER'S TESTIMONY. AND MR. SEGAL SAYS, WELL, WHAT WAS THE
13 REASON MS. STOECKLEY LEFT THE JOURNEY'S END?

14 SHE WAS ASKED TO LEAVE BY THE MANAGER.

15 AND AS A RESULT OF THAT, HOW DID IT COME ABOUT THAT
16 SHE WENT TO THE HILTON?

17 SHE WAS WORRIED ABOUT WHERE SHE WOULD GO AND I
18 ASSURED HER THERE MUST BE A PLACE. AND YOUR OWN SECRETARY --
19 MEANING MR. SEGAL'S SECRETARY -- ARRANGED FOR A MOTEL ROOM,
20 PHONED BACK AND SAID THE HILTON WILL ACCEPT YOU.

21 SHE STAYED AT THE DOWNTOWNER BRIEFLY UNTIL MR. SEGAL
22 INSISTED SHE MOVE. SHE MOVED TO THE JOURNEY'S END. SHE
23 STAYED THERE ON SATURDAY NIGHT. THE JOURNEY'S END WANTED --
24 PEOPLE WANTED -- SHE CALLED JUDGE DUPREE FROM THE JOURNEY'S
25 END ON SATURDAY NIGHT. HE PUT THAT IN THE RECORD. THEN ON

September 25, 2012

1 SUNDAY A FIGHT ENSUED OR WHATEVER WENT ON WITH HER BOYFRIEND,
2 THE HOTEL ASKED HER TO LEAVE, AND THE MACDONALD DEFENSE TEAM,
3 MR. SEGAL, MS. WENDY ROUDER AND THIS MAN RED UNDERHILL
4 ARRANGED FOR HER TO BE TRANSFERRED TO THE HILTON INN, WHICH
5 HAS BEEN CLEARLY IDENTIFIED AS NOW THE DOUBLETREE HILTON.
6 IT'S SEVEN OR EIGHT OR TEN BLOCKS FURTHER WEST OF DOWNTOWN.
7 AND THAT'S THE ONLY PLACES SHE STAYED.

8 THE ONLY PERSON THAT EVER SAID ANYTHING ABOUT HER
9 BEING AT THE HOLIDAY INN, THE ONE WITH THE DISTINCTIVE ROUND
10 ARCHITECTURE, IS JIMMY BRITT. AND HE'S WRONG ABOUT THAT JUST
11 LIKE HE'S WRONG ABOUT MOST EVERYTHING ELSE IN THIS CASE.

12 NOW, LET'S LOOK AT TRIAL DAY 22, PAGE 150, LINE 19
13 THROUGH 22. AGAIN, THIS IS WHAT I'VE BEEN REFERRING TO. THIS
14 IS THE ORIGINAL STATEMENT BY MR. SEGAL THAT THE FIRST PLACE
15 SHE WENT TO WAS THE DOWNTOWNER. HE DIDN'T WANT HER THERE SO
16 HE MOVED HER FIRST TO THE JOURNEY'S END AND THEN TO THE
17 HILTON.

18 OKAY. LET'S MOVE ON TO PAGE EIGHT. AT THE TIME OF
19 -- JIM BRITT STATED THAT AT THE TIME OF THE MACDONALD TRIAL
20 JIM BLACKBURN WAS THE U.S. ATTORNEY. HE SAID THIS IN GX-2086,
21 THE INTERVIEW UNDER OATH, AT PAGE 17, LINE 13 THROUGH 15.

22 HE SAID I ESCORTED HER TO THE EIGHTH FLOOR TO JIM
23 BLACKBURN'S OFFICE, WHO WAS AT THE TIME THE UNITED STATES
24 ATTORNEY.

25 WELL, THE TRUE FACTS, OF COURSE, ARE THAT JIM

September 25, 2012

1 BLACKBURN WAS NOT THE UNITED STATES ATTORNEY IN 1979. HE WAS
2 THE FIRST ASSISTANT U.S. ATTORNEY. GEORGE ANDERSON WAS THE
3 U.S. ATTORNEY. AND WE KNOW THAT IN THIS PROCEEDING FROM THE
4 TESTIMONY OF WADE SMITH, JACK CRAWLEY AND JIM BLACKBURN.

5 NOW, THE NEXT THING WE HAVE ON THIS PAGE IS AN
6 ASSERTION BY BRITT THAT AFTER THE DEFENSE INTERVIEW, BRITT
7 ESCORTED STOECKLEY TO THE U.S. ATTORNEY'S OFFICE AT
8 APPROXIMATELY 12:00 NOON. HE SAID THIS IN A SWORN STATEMENT
9 -- I'M SORRY, IN THE ADDENDUM, GX-2089, THAT HE EXECUTED ON
10 FEBRUARY 28TH, 2006, IN PARAGRAPH TWO.

11 HE SAYS AT APPROXIMATELY 12:00 NOON AT THE
12 CONCLUSION OF THEIR INTERVIEW -- MEANING THE DEFENSE -- I
13 ESCORTED MS. STOECKLEY TO THE U.S. ATTORNEY'S OFFICE.

14 IN FACT, THE DEFENSE INTERVIEW DID NOT CONCLUDE
15 UNTIL AT LEAST 2:00 P.M., AND PERHAPS LATER. AND ONLY AFTER
16 THE CONCLUSION OF THAT INTERVIEW WAS MS. STOECKLEY BROUGHT TO
17 THE UNITED STATES ATTORNEY'S OFFICE. AND WE KNOW THAT FROM
18 THE TESTIMONY OF WADE SMITH AND WE ALSO KNOW IT FROM TRIAL DAY
19 20, PAGE 13, LINES THREE THROUGH 18. AS YOUR HONOR WILL
20 RECALL, THE INTERVIEW FOR THE DEFENSE WAS DRAGGING ON AND
21 JUDGE DUPREE SUMMONED THE PARTIES BACK TO COURT AT ONE
22 O'CLOCK. HE DISMISSED THE JURY AND HE SAID THAT WE NEEDED TO
23 GET THE INTERVIEWS CONCLUDED THE REMAINDER OF THAT DAY. MR.
24 SMITH HAD SAID THAT THEY WOULD BE THROUGH WITH HELENA
25 STOECKLEY SHORTLY. MR. BLACKBURN ASKED WHAT DO YOU MEAN BY

September 25, 2012

1 SHORTLY? AND MR. SEGAL SAYS I NEED TO DEFINE A COUPLE OF
2 MATTERS, MR. BLACKBURN, BUT I WOULD SAY ABOUT TWO O'CLOCK.
3 AND THEN JUDGE DUPREE ADJOURNS COURT AT 1:17 P.M. TO RECONVENE
4 THE NEXT MORNING. SO, IT COULD HAVE BEEN LATER THAN TWO
5 O'CLOCK, BUT IT WASN'T ANY EARLIER THAN TWO O'CLOCK, AND IT
6 WAS WELL AFTER NOON. AND THIS BECOMES IMPORTANT, WE'RE GOING
7 TO SEE LATER, WHEN IT'S TALKED ABOUT A SANDWICH. WELL, THE
8 LUNCH HOUR HAD BEEN SPANNED BY THE DEFENSE INTERVIEW AND
9 THAT'S WHY HELENA STOECKLEY ACTUALLY ATE A BOLOGNA SANDWICH IN
10 THE DEFENSE INTERVIEW ROOM AS REPORTED BY -- AS REMEMBERED BY
11 WADE SMITH AND REMEMBERED BY JOE MCGINNISS AND REPORTED IN HIS
12 BOOK.

13 NOW, THE INTERVIEW -- JIM BRITT ALSO SAID THAT THE
14 INTERVIEW OF STOECKLEY BY THE PROSECUTION ON OCTOBER -- I'M
15 SORRY, AUGUST 16TH, 1979, TOOK PLACE IN BLACKBURN'S OFFICE.

16 HE SAID THIS IN GOVERNMENT EXHIBIT 2086, THE SWORN
17 STATEMENT, FEBRUARY 24TH, PAGE 17, LINE 13 THROUGH 15; I
18 ESCORTED HER TO THE EIGHTH FLOOR TO JIM BLACKBURN'S OFFICE WHO
19 WAS AT THE TIME THE UNITED STATES ATTORNEY.

20 AND IF YOU GO OVER TO PAGE 18, LINE TEN THROUGH 14,
21 HE DESCRIBES -- JUST REFERS BACK TO HIS CONVERSATION ABOUT
22 BLACKBURN'S OFFICE, TALKING ABOUT HIS OFFICE, HIS DESK AND SO
23 FORTH.

24 WELL, ACTUALLY, THE INTERVIEW TOOK PLACE IN THE
25 OFFICE OF U.S. ATTORNEY GEORGE ANDERSON. WE KNOW THAT FROM

September 25, 2012

1 THE TESTIMONY OF JACK CRAWLEY AND THE TESTIMONY OF JIM
2 BLACKBURN. AND WE HAVE THE CHART OF THE FLOOR PLAN, GX-
3 2082.A. AND WE HAVE MARKED INDIVIDUAL EXHIBITS, BUT I WON'T
4 CALL THOSE UP. BUT YOUR HONOR WILL RECALL THAT THE U.S.
5 ATTORNEY'S OFFICE WAS IDENTIFIED AS THE CORNER OFFICE IN THE
6 LOWER RIGHT-HAND PORTION OF THE SCREEN, WHICH IS THE NORTHWEST
7 CORNER OF THE OFFICE. AND THAT ACTUALLY MR. BLACKBURN'S
8 OFFICE WAS TWO OFFICES TOWARD THE TOP OF THE PAGE -- I CAN'T
9 READ THE NUMBER -- 836. ANDERSON'S OFFICE, THE EVIDENCE WOULD
10 SHOW, IS 839 AND BLACKBURN'S OFFICE WAS 836.

11 OKAY. JIM BRITT ALSO DESCRIBED HOW THE FURNITURE
12 WAS ARRANGED. IN THIS VERY IMPORTANT, DRAMATIC INTERVIEW THAT
13 HE WITNESSED, HE CLAIMED TO KNOW HOW THE FURNITURE WAS
14 ARRANGED. HE SAID THAT IT WAS IN THE U.S. -- IN THIS
15 PARTICULAR STATEMENT HE SAID IT WAS IN THE U.S. ATTORNEY'S
16 OFFICE AND THAT THE U.S. ATTORNEY'S DESK WAS SET AT AN ANGLE
17 IN THE NORTHEAST CORNER OF THE OFFICE. HE SAID THIS IN HIS
18 AFFIDAVIT ON OCTOBER 26TH. THIS WOULD BE PARAGRAPH 21; AS I
19 RECALL, BLACKBURN SAT BEHIND A DESK THAT WAS SET AT AN ANGLE
20 IN THE NORTHEAST CORNER OF THE OFFICE. THERE WERE SEVERAL
21 CHAIRS POSITIONED IN FRONT OF THE DESK. HELENA STOECKLEY SAT
22 IN THE CENTER CHAIR IN FRONT OF THE DESK AND I SAT OVER TO THE
23 SIDE NEXT TO THE WINDOW.

24 AND HE DESCRIBES THE SAME THING -- I WON'T BOTHER TO
25 PUT IT UP, BUT HE DESCRIBES IT THE SAME WAY IN THE NOVEMBER

September 25, 2012

1 3RD AFFIDAVIT, WHICH WAS FILED WITH THE 2255 PLEADING AND THAT
2 AFFIDAVIT WAS EXECUTED ON NOVEMBER 3RD.

3 NOW, ACTUALLY, FROM THE TESTIMONY OF JACK CRAWLEY
4 AND JIM BLACKBURN, WE KNOW -- AND IT'S HARD TO DESCRIBE IN
5 WORDS. I'VE TRIED TO DO IT HERE. BUT IT'S BEST TO PUT A
6 PICTURE UP. LET'S PUT UP 2082.A. CAN'T GET THAT ONE? OKAY.
7 WE DON'T HAVE THAT ONE ON THE SCREEN BECAUSE IT'S ONE OF THOSE
8 THAT THE WITNESS MARKED UP DURING THE TESTIMONY. BUT LET'S
9 ENLARGE THE PORTION AND WE'LL RECALL THE TESTIMONY.

10 BOTH BLACKBURN AND CRAWLEY TESTIFIED THAT THE DESK
11 WAS -- THAT THE DESK WAS -- WELL, IT'S NOT WORKING. THAT THE
12 DESK WAS ARRANGED SQUARELY. OF COURSE, IT WASN'T RIGHT UP
13 AGAINST THE WALL LIKE I'VE GOT IT, BUT IT WAS ARRANGED
14 SQUARELY, NOT AT AN ANGLE, AND THAT THE PERSON SITTING BEHIND
15 THE DESK WOULD BE LOOKING OUT TO THE WEST, TOWARDS PERSON
16 STREET. SO, JIMMY BRITT IS COMPLETELY WRONG ABOUT THAT.

17 HE SAID THAT BLACKBURN ASKED BRITT -- JIMMY BRITT
18 SAID THAT BLACKBURN ASKED HIM TO REMAIN IN THE ROOM DURING THE
19 PROSECUTION INTERVIEW OF STOECKLEY AND HE SAID THAT THIS WAS
20 NOT AN UNUSUAL OCCURRENCE.

21 HE SAID THIS AT GX-2086, THE INTERVIEW UNDER OATH,
22 PAGE 18, LINE FOUR THROUGH SIX; YES, SIR, HE ASKED ME TO
23 REMAIN IN THE ROOM AND HER BOYFRIEND ERNEST SAT OUTSIDE IN THE
24 ADJOINING OFFICE. PRESUMABLY, IN THE U.S. ATTORNEY'S OFFICE.

25 HE SAID THIS IN 2087, THE AFFIDAVIT ON OCTOBER 26TH,

September 25, 2012

1 IN PARAGRAPH 20; I HAD BEEN ASKED TO SIT IN THE ROOM BY
2 GOVERNMENT ATTORNEYS MANY TIMES IN MY CAREER HE CLAIMS THERE.
3 HE SAYS THE SAME THING IN HIS NOVEMBER 3RD AFFIDAVIT, 2088.

4 AND THEN IN 2089 AT PAGE ONE, PARAGRAPH TWO, THIS IS
5 THE ADDENDUM HE DID IN FEBRUARY OF '06, HE SAYS BLACKBURN
6 STATED TO ME, NO, COME IN AND CLOSE THE DOOR.

7 NOW, ACTUALLY, BLACKBURN DID NOT ASK BRITT TO SIT IN
8 ON THE INTERVIEW AND BRITT DID NOT DO SO. AND IT WAS NOT THE
9 CUSTOM AND PRACTICE IN THE U.S. ATTORNEY'S OFFICE TO HAVE
10 DEPUTY MARSHALS SIT IN ON WITNESS INTERVIEWS DURING TRIAL.
11 AND WE KNOW THIS FROM THE TESTIMONY OF JACK CRAWLEY AND THE
12 TESTIMONY OF JIM BLACKBURN AND ALSO THE TESTIMONY OF DENNIS
13 MEEHAN. AS YOU MAY RECALL, HE WAS ASKED ABOUT THIS AND SAID
14 THAT HE HAD NEVER IN HIS ENTIRE CAREER BEEN ASKED TO SIT IN ON
15 AN INTERVIEW BY AN AUSA DURING A TRIAL.

16 NOW, AT PAGE TEN, AT ONE POINT -- WELL, ACTUALLY, AT
17 EVERY POINT AS FAR AS I KNOW, JIMMY BRITT CLAIMED THAT NO ONE
18 OTHER THAN BLACKBURN, BRITT AND STOECKLEY WAS IN THE ROOM
19 DURING THE INTERVIEW OR AT LEAST DURING THE CRUCIAL PARTS OF
20 IT.

21 LET'S LOOK AT GX-2086, THE INTERVIEW UNDER OATH, AT
22 PAGE 18, LINE 15 THROUGH 18.

23 NOW, DO YOU REMEMBER ANYONE ELSE OTHER THAN
24 BLACKBURN AND STOECKLEY BEING IN THE ROOM?

25 NO, SIR, I DON'T RECALL ANYONE ELSE BEING IN THE

September 25, 2012

1 ROOM.

2 AND I THINK HE'S TALKING ABOUT DURING THE WHOLE
3 INTERVIEW. WE'RE GOING TO GET TO A MORE SPECIFIC REFERENCE, I
4 THINK, LATER ABOUT THE -- YES.

5 OKAY. SO, AT THAT POINT IN THE SWORN STATEMENT HE
6 GAVE IN FEBRUARY HE SAID NO ONE ELSE WAS IN THE ROOM, BUT WE
7 KNOW THAT PRESENT DURING THE INTERVIEW WERE BLACKBURN,
8 ANDERSON, JACK CRAWLEY AND BRIAN MURTAGH AS TESTIFIED TO BY
9 JACK CRAWLEY AND JIM BLACKBURN.

10 NOW, THIS IS VERY IMPORTANT. HE SAID DURING THE
11 INTERVIEW STOECKLEY TOLD BLACKBURN THE SAME THINGS THAT SHE
12 HAD TOLD BRITT DURING HER TRANSPORTATION FROM SOUTH CAROLINA.
13 WELL, THIS IS A CENTRAL POINT BECAUSE THE MOVANT, OF COURSE,
14 AT THIS POINT WANTS TO EXPLAIN AWAY THE PROBLEMS WITH JIMMY
15 BRITT'S STORY ABOUT THE TRANSPORTATION AND STILL SAY THAT
16 HELENA STOECKLEY CONFESSED DURING THE INTERVIEW BY JIM
17 BLACKBURN THAT HE THREATENED HER, BUT THE PROBLEM IS THAT
18 EVERY SINGLE TIME THAT JIMMY BRITT DESCRIBED WHAT HE SAYS HE
19 HEARD STOECKLEY TELL BLACKBURN, HE DESCRIBES IT IN TERMS OF IT
20 BEING THE SAME THING THAT WAS SAID TO HIM WHILE HE TRANSPORTED
21 STOECKLEY FROM SOUTH CAROLINA, WHICH HE DID NOT DO.

22 LET'S LOOK AT GX-2086, AN INTERVIEW UNDER OATH AT
23 19, PAGE FOUR THROUGH NINE; DO YOU RECALL WHETHER MS.
24 STOECKLEY TOLD MR. BLACKBURN THE SAME THINGS, EXPRESSED THE
25 SAME IDEAS THAT SHE HAD EXPRESSED TO YOU ON THE WAY TO NORTH

September 25, 2012

1 CAROLINA FROM SOUTH CAROLINA?

2 YES, SIR. SHE SPOKE FREELY.

3 LET'S LOOK AT GX-2087, THE AFFIDAVIT OF OCTOBER 26TH
4 AT PARAGRAPH 22; AFTER MS. STOECKLEY -- NOW, THIS IS GOING TO
5 BE THE SAME THING IN 2087 AND 2088, THE OCTOBER 26TH INTERVIEW
6 AND THE NOVEMBER 3RD INTERVIEW, WHICH IS THE ONE AFFIDAVIT
7 THAT HE FILED WITH THE 2255.

8 AND IT SAID AFTER MS. STOECKLEY WAS SETTLED IN THE
9 ROOM, MR. BLACKBURN BEGAN TO INTERVIEW HER. MS. STOECKLEY
10 TOLD MR. BLACKBURN THE SAME THINGS THAT SHE HAD STATED TO ME
11 ON THE TRIP FROM CHARLESTON TO RALEIGH. SHE SPECIFICALLY
12 MENTIONED THE HOBBY HORSE, SO FORTH AND SO ON.

13 NOW, LET'S GO TO GX-2088, PARAGRAPH 22, AFTER THEY
14 CHANGED IT FROM CHARLESTON TO GREENVILLE. AND, AGAIN, SOMEHOW
15 JIMMY BRITT LEARNS THAT CHARLESTON IS NOT GOING TO WORK THAT
16 AT LEAST GREENVILLE IS A LITTLE BIT CLOSER TO WHERE SHE WAS AT
17 ONE TIME. AND SO HE SAYS -- AND THIS IS THE AFFIDAVIT THAT
18 WAS FILED WITH THE 2255 PETITION -- AFTER MS. STOECKLEY WAS
19 SETTLED IN THE ROOM, MR. BLACKBURN BEGAN TO INTERVIEW HER.
20 MS. STOECKLEY TOLD MR. BLACKBURN THE SAME THINGS SHE STATED TO
21 ME ON THE TRIP FROM GREENVILLE TO RALEIGH.

22 SO, THE MOVANT DOESN'T HAVE ANY EVIDENCE WHATSOEVER
23 THAT BRITT WITNESSED A CONFESSION BY STOECKLEY TO BLACKBURN
24 OTHER THAN BRITT'S STATEMENTS ON PAPER THAT SAY THAT STOECKLEY
25 TOLD BLACKBURN THE SAME THING THAT SHE TOLD HIM ON THE TRIP

September 25, 2012

1 FROM SOUTH CAROLINA. NO SUCH TRIP EVER TOOK PLACE.
2 THEREFORE, THEY HAVE NO EVIDENCE THAT ANY CONFESSION WAS EVER
3 MADE BY STOECKLEY TO BLACKBURN. AND I WON'T GO THROUGH THESE
4 -- THE TESTIMONIES AND EXHIBITS TO PROVE THIS, BUT WE'VE SEEN
5 THEM BEFORE IN PREVIOUS INSTANCES.

6 NOW, ON PAGE 11, AFTER STOECKLEY ADMITTED PRESENCE
7 IN THE MACDONALD HOME ON THE NIGHT OF THE MURDERS DURING THE
8 INTERVIEW BLACKBURN THREATENED TO PROSECUTE HER FOR MURDER IF
9 SHE SO TESTIFIED. AND BLACKBURN SAID THIS -- I'M SORRY --
10 BRITT SAID THIS AT PAGE 21 OF GX-2086; IF YOU GO DOWNSTAIRS
11 AND TESTIFY BEFORE THE JURY, I WILL INDICT YOU. NOW, HE SAYS
12 IT AT 2087, PARAGRAPH 24, AND HE SAYS IT IN 2088, PARAGRAPH
13 24, AND HE SAYS IT AT 2089, WHICH IS THE ADDENDUM, AT
14 PARAGRAPH THREE.

15 OKAY. WELL, WHAT DO WE KNOW ABOUT THIS? WELL, WE
16 KNOW THAT BLACKBURN DID NOT THREATEN STOECKLEY WITH
17 PROSECUTION BECAUSE SHE HADN'T ADMITTED TO ANYTHING THAT WOULD
18 HAVE PROVOKED SUCH A THREAT EVEN IF HE WAS INCLINED TO MAKE IT
19 AND THAT THE PROSECUTION HAD GRAVE DOUBTS ABOUT ITS ABILITY
20 TO BRING ANY NEW PROSECUTION NINE YEARS AFTER THE MURDERS AND
21 WE KNOW THAT FROM THE TESTIMONY OF JACK CRAWLEY, FROM THE
22 TESTIMONY OF JIM BLACKBURN. WE PUT UP ON THE SCREEN THE
23 RELEVANT STATUTES, 18 U.S. CODE 1111, WHICH IS THE MURDER
24 STATUTE, WHICH SAID THE PENALTY WAS DEATH, BUT THERE WAS NO
25 DEATH PENALTY AVAILABLE AND, THEREFORE, IT REVERTED PROBABLY

September 25, 2012

1 TO THE STATUTE OF LIMITATIONS -- THE REGULAR STATUTE OF
2 LIMITATIONS REFLECTED AT 3281 AND 3282, WHICH WAS FIVE YEARS,
3 NOT TEN YEARS, BUT FIVE YEARS.

4 AND WE ALSO KNOW FROM *FATAL VISION* AND FROM THE
5 TESTIMONY OF JOE MCGINNISS AT GOVERNMENT EXHIBIT 2201.4,
6 PARAGRAPH SEVEN, WHICH STARTS HELENA BELIEVE ME, THAT EVEN
7 BERNIE SEGAL -- NO, THAT'S NOT THE RIGHT PARAGRAPH. IT'S THE
8 NEXT ONE. EVEN BERNIE SEGAL WAS MAKING THAT INTERPRETATION OF
9 THE LAW BECAUSE HE HAD TOLD HELENA STOECKLEY DURING THE
10 DEFENSE INTERVIEW NOTHING WILL HAPPEN TO YOU. THAT I CAN
11 PROMISE YOU. THE STATUTE OF LIMITATIONS EXPIRED. THIS IS THE
12 END. SO, YOU WON'T BE PROSECUTED.

13 NOW, JIMMY BRITT ALSO -- IF YOU TURN TO PAGE 12,
14 JIMMY BRITT --

15 THE COURT: LET'S TAKE A RECESS.

16 MR. BRUCE: THANK YOU, YOUR HONOR.

17 THE COURT: TAKE A RECESS TILL THREE O'CLOCK.

18 (RECESS TAKEN FROM 2:44 P.M., UNTIL 3:05 P.M.)

19 (DEFENDANT PRESENT.)

20 THE COURT: PLEASE BE SEATED. WE'LL CONTINUE. ALL
21 RIGHT, MR. BRUCE.

22 MR. BRUCE: THANK YOU, YOUR HONOR. YOUR HONOR, I'M
23 GOING TO DEPART FROM MY CHAIR ON THE FALSE ASSERTIONS OF JIMMY
24 BRITT IN THE INTEREST OF TIME. I MAY GET BACK TO IT IF I HAVE
25 TIME, BUT THERE'S SOME OTHER MATTERS I WANT TO MAKE SURE I

September 25, 2012

1 COVER, IF THAT'S ALL RIGHT WITH THE COURT.

2 THE COURT: CERTAINLY.

3 MR. BRUCE: I WANTED TO RESPOND TO A FEW THINGS THAT
4 WERE SAID ABOUT THE JIMMY BRITT CLAIM THIS MORNING. I THINK I
5 UNDERSTOOD COUNSEL TO SAY THAT IT DOESN'T REALLY MATTER
6 WHETHER HELENA STOECKLEY MADE ANY STATEMENTS TO JIMMY BRITT.

7 WELL, WE CONTEND IT CERTAINLY DOES MATTER. THIS IS
8 THE CLAIM. THIS IS THE BRITT CLAIM, THAT STOECKLEY CONFESSED
9 TO JIMMY BRITT AND THEN REPEATED THE SAME CONFESSION MADE IN
10 THE LONG DRIVE FROM SOUTH CAROLINA IN BLACKBURN'S PRESENCE,
11 AND THEN BLACKBURN REACTED TO THAT BY SAYING IF YOU TESTIFY TO
12 THAT I WILL PROSECUTE YOU.

13 ALL THE EVIDENCE AS A WHOLE IN THE WORLD WON'T MAKE
14 ANY DIFFERENCE IF THE MOVANT CAN'T PROVE HIS 2255 BRITT CLAIM.
15 SO, IT MAKES A GREAT DEAL OF DIFFERENCE THAT THE EVIDENCE HERE
16 TODAY HAS SHOWN -- OR IN THIS PROCEEDING HAS SHOWN THAT HELENA
17 STOECKLEY DID NOT CONFESS TO JIMMY BRITT AND THAT CONFESSION
18 MADE IN THE LONG TRIP FROM SOUTH CAROLINA WAS NOT REPEATED TO
19 JIM BLACKBURN AND SO FORTH.

20 SOMETHING WAS SAID THIS MORNING ABOUT ONE OF THE
21 WITNESSES FOR THE GOVERNMENT BEING A SELF-PROMOTER. WELL, WE
22 CONTEND THAT'S EXACTLY WHAT THE GOVERNMENT'S EVIDENCE SHOWED
23 ABOUT JIMMY BRITT.

24 WE PUT ON HIS LONG-TIME SUPERVISOR CHIEF DEPUTY
25 EDDIE SIGMON AND ALSO MARSHAL WILLIAM BERRYHILL WHO SUPERVISED

September 25, 2012

1 HIM FOR A TIME PRIOR TO HIS RETIREMENT AND THEY STATED THAT HE
2 WAS AN ATTENTION SEEKER. AND THAT'S WHAT APPARENTLY WAS GOING
3 ON HERE LATE IN HIS LIFE AS HE SOUGHT TO INTERJECT HIMSELF
4 INTO THE MACDONALD CASE.

5 IN FACT, MR. LEE TART DID NOT APPEAR AS A WITNESS IN
6 THIS PROCEEDING, BUT HIS STATEMENTS ARE IN THE RECORD OF THIS
7 CASE AND THEY REVEAL THAT WHEN JIM BRITT FIRST TOLD THIS STORY
8 TO LEE TART AND ANOTHER FELLOW DEPUTY IT WAS WHEN HE WAS
9 TRAVELING WITH THEM TO MISSISSIPPI, WHERE THE OTHER DEPUTIES
10 WERE GOING TO BE HONORED FOR THEIR PARTICIPATION BACK IN THE
11 '60S IN THE INTEGRATION OF THE UNIVERSITY OF MISSISSIPPI. AND
12 I WOULD SUBMIT THAT HE DIDN'T HAVE ANYTHING TO BRAG ABOUT LIKE
13 THEY DID AND SO HE CAME UP WITH THIS STORY ABOUT MACDONALD.

14 AND, OF COURSE, THE EVIDENCE HAS SHOWN IN THIS CASE
15 THAT HE WAITED UNTIL GERALDINE HOLDEN COULD NOT CONTRADICT
16 HIM. HE INQUIRED ABOUT HER HEALTH. AND THEN ONLY CAME -- HE
17 SAYS HE WAITED OUT OF RESPECT FOR JUDGE DUPREE, BUT JUDGE
18 DUPREE DIED IN 1995, AND JIM BRITT DOES NOT COME FORWARD UNTIL
19 2005, TEN YEARS LATER.

20 AS TO THE POLYGRAPH EVIDENCE, EVERYTHING'S COMING IN
21 IN THIS PROCEEDING, BUT WE SUBMIT THAT THE COURT SHOULD GIVE
22 NO WEIGHT TO THE POLYGRAPH. WE ONLY HAVE THE SKIMPIEST OF
23 REPORTS. WE HAVE NO BACKUP INFORMATION. WE HAVE NO CHARTS TO
24 SHOW TO ANY OTHER EXPERT. WE DON'T KNOW THE CIRCUMSTANCES
25 UNDER WHICH THIS POLYGRAPH WAS GIVEN AND WE CONTEND THAT THE

September 25, 2012

1 COURT SHOULD GIVE IT NO WEIGHT.

2 NOW, WITH RESPECT TO THE TESTIMONY OF MARY BRITT,
3 THE GOVERNMENT DOES NOT CONTEND IN ANY WAY THAT MARY BRITT
4 CAME INTO THIS COURT AND LIED. SHE WAS ONLY REPORTING WHAT
5 HER HUSBAND, JIM BRITT, TOLD HER. IT IS OUR CONTENTION THAT
6 HE IS THE ONE THAT WAS LYING.

7 FOR INSTANCE, HE TOLD HER THAT MACDONALD AND HE, JIM
8 BRITT, SERVED TOGETHER AT FORT BRAGG, WHICH WE DEMONSTRATED ON
9 CROSS-EXAMINATION WAS IMPOSSIBLE.

10 AND SHE ALSO STATED THAT WHEN THE *FATAL VISION* MOVIE
11 OR TELEVISION MINI-SERIES, IT REALLY WAS, WAS AIRED, THAT JIM
12 BRITT PROMPTLY STATED THAT IT WAS IN ERROR BECAUSE HE WAS NOT
13 DEPICTED AS BEING IN THE INTERVIEW ROOM, SHE SAID, WHEN
14 STOECKLEY WAS BEING INTERVIEWED BY THE DISTRICT ATTORNEY.

15 WELL, AS JOE MCGINNISS TESTIFIED, THERE IS NO DEPICTION
16 OF THE PROSECUTION INTERVIEW IN THE MOVIE BECAUSE HE DIDN'T
17 PARTICIPATE IN IT AND HE -- HE, JOE MCGINNISS, AND HE KNEW
18 NOTHING ABOUT IT AND, THEREFORE, HE DIDN'T WRITE ABOUT IT IN
19 HIS BOOK AND THE MOVIE BASED ON HIS BOOK DOES NOT CONTAIN
20 ANYTHING ABOUT A PROSECUTION INTERVIEW.

21 IT DOES, OF COURSE, HAVE A DEPICTION OF THE DEFENSE
22 INTERVIEW ABOUT WHICH MR. MCGINNISS TESTIFIED AND MR. SMITH
23 TESTIFIED, AND THE PARTICIPANTS IN THAT INTERVIEW WERE MR.
24 WADE SMITH, BERNIE SEGAL, THE WITNESS STOECKLEY, AND JOE
25 MCGINNISS AND JIM BRITT WAS NOT A PART OF THAT EITHER.

September 25, 2012

1 BUT IN ANY CASE, HE WAS LYING WHEN HE TOLD HIS WIFE
2 THAT HE SHOULD HAVE BEEN DEPICTED IN THAT INTERVIEW AND HE WAS
3 LYING WHEN HE TOLD HIS WIFE THAT THE INTERVIEW BEING DEPICTED
4 WAS THAT OF THE PROSECUTION AS OPPOSED TO THE DEFENSE.

5 NOW, IT WAS STATED THIS MORNING THAT MR. WADE SMITH
6 DECIDED THE BEST IDEA WAS TO TAKE THE CAKE EPISODE OUT OF THE
7 FINAL AFFIDAVIT THAT WAS -- THAT ENDED UP BEING ATTACHED TO
8 THE 2255 PLEADING, AND THAT HE THOUGHT IT WAS UNIMPORTANT.
9 WELL, WE ALL AGREE, I THINK, IN THIS ROOM THAT IT WAS
10 UNIMPORTANT, BUT THAT'S NOT WHAT JIMMY BRITT THOUGHT. JIMMY
11 BRITT THOUGHT IT WAS VERY IMPORTANT BECAUSE HE SAID IN HIS
12 VARIOUS STATEMENTS THAT THIS WAS EVIDENCE OF A WIDESPREAD
13 CORRUPTION THAT WAS ASSOCIATED WITH THE MACDONALD TRIAL.

14 AND YOUR HONOR WILL REMEMBER THAT HE ALSO SPUN THIS
15 INTRICATE PLOT, WHICH IS COVERED LATER IN MY CHART, ABOUT JIM
16 BLACKBURN SUPPOSEDLY GOING DOWN AFTER THE STOECKLEY INTERVIEW
17 AND HAVING -- DUCKING INTO JUDGE DUPREE'S OFFICE AND HAVING AN
18 EX PARTE COMMUNICATION JUST BEFORE THEY WENT BACK INTO COURT.
19 AND, OF COURSE, THIS STORY IS IMPOSSIBLE BECAUSE THERE WAS NO
20 MORE COURT THAT DAY. COURT HAD BEEN ADJOURNED FOR THE DAY FOR
21 THE INTERVIEWS. AND AS RICH LEONARD TESTIFIED THAT JUDGE
22 DUPREE WOULD NOT ENTERTAIN SUCH EX PARTE COMMUNICATION.

23 SO, THE CAKE EPISODE IS IMPORTANT BECAUSE IT'S
24 ANOTHER FABRICATION OF JIMMY BRITT SPINNING THIS SORT OF WEB
25 OF CORRUPTION THAT HE ALLEGES TOOK PLACE DURING THE MACDONALD

September 25, 2012

1 TRIAL.

2 NOW, DEPARTING FROM JIMMY BRITT FOR A MINUTE, IN
3 PREPARING THIS ARGUMENT I WAS TRYING TO ANALYZE, WELL, WHAT
4 HAS THE MOVANT COME FORWARD WITH IN TERMS OF EVIDENCE AS A
5 WHOLE TO EITHER HELP WITH THEIR GATEKEEPING, CLEAR AND
6 CONVINCING BURDEN, OR TO HELP PERSUADE SOMEHOW THAT THE BRITT
7 CLAIM HAS SOME TRUTH TO IT. AND I CAN ONLY COME UP WITH FOUR
8 THINGS THAT ARE IN EVIDENCE AT THIS HEARING; HELENA
9 STOECKLEY'S MOTHER'S AFFIDAVIT AND THE TESTIMONY ABOUT THAT;
10 SARA MCMANN'S TESTIMONY; AN AFFIDAVIT BY A WOMAN BY THE NAME
11 OF KAY REIBOLD, WHICH HAS BEEN PUT IN THE RECORD BY THE
12 DEFENSE, BUT HAS NOT BEEN REFERRED TO IN THIS ENTIRE HEARING;
13 AND THEN JERRY LEONARD'S TESTIMONY.

14 SO, LET ME TRY TO ADDRESS THOSE ONE BY ONE. AS TO
15 HELENA STOECKLEY'S MOTHER, THIS AFFIDAVIT HAS BEEN ADMITTED AS
16 PART OF THE EVIDENCE AS A WHOLE UNDER THE RELAXED EVIDENTIARY
17 STANDARDS WE HAVE HERE, BUT I SUBMIT THAT THE COURT SHOULD NOT
18 GIVE IT VERY MUCH WEIGHT.

19 THE CIRCUMSTANCES UNDER WHICH IT WAS TAKEN, THIS
20 LADY WAS IN AN ASSISTED LIVING OR NURSING HOME SITUATION. THE
21 PERSONS WHO WERE GETTING THIS AFFIDAVIT FROM HER HAD BEEN WITH
22 HER ALL AFTERNOON AND INTO THE EVENING. KATHRYN MACDONALD HAD
23 A BIG HAND IN THE PREPARATION OF THIS AFFIDAVIT. AND THE
24 AFFIDAVIT ITSELF IS IRREGULAR IN FORM. IT HAS A SIGNATURE
25 PAGE THAT IS DISJOINTED FROM THE REST OF THE DOCUMENT AND MR.

September 25, 2012

1 STOECKLEY, GENE STOECKLEY, WHO TESTIFIED ADMITTED THAT HE
2 DIDN'T -- HE WAS NOT EVEN FURNISHED A COPY OF THE SIGNED
3 AFFIDAVIT. HE LATER GOT IT BY EMAIL. AND I DON'T THINK WE
4 CAN REALLY BE SURE THAT THAT'S WHAT SHE ACTUALLY SIGNED.

5 BUT THE MAIN REASON THAT THE COURT SHOULD ATTACH
6 VERY LITTLE, IF ANY, WEIGHT TO THIS LATE IN LIFE AFFIDAVIT IS
7 BECAUSE IT'S SO FLATLY AT ODDS WITH MRS. STOECKLEY SENIOR'S
8 STATEMENTS GIVEN ON PREVIOUS OCCASIONS. AND THERE ARE TWO
9 THAT I THINK ARE VERY SIGNIFICANT. ONE IS THE ONE THAT SHE
10 GAVE IN 1979 TO THE DEFENSE, THE MACDONALD DEFENSE TEAM, WHICH
11 WAS RECOUNTED IN *FATAL VISION* AND TESTIFIED TO IN THIS
12 PROCEEDING BY JOE MCGINNISS. AND THIS WAS DURING THE TRIAL.
13 REMEMBER, THEY HAD SUBPOENAED HER -- STOECKLEY'S PARENTS IN AN
14 EFFORT TO LOCATE STOECKLEY AND SO THEY INTERVIEWED HER. AND
15 SHE SAID -- LET ME PUT THIS ON THE SCREEN, 2201.2. I DON'T
16 KNOW HER ADDRESS -- MEANING HELENA'S ADDRESS -- AND I DON'T
17 WANT TO KNOW. GOING ON TO 2201.3. SHE GOES ON -- MRS.
18 STOECKLEY TALKING ABOUT HER DAUGHTER, RECOUNTS AN EPISODE
19 ABOUT LOSING HER CAR KEYS AND THAT HELENA, YOUNG HELENA, WAS A
20 VEGETABLE. SHE COULDN'T TALK. SHE COULDN'T EAT. HER FACE
21 QUIVERED. SALIVA WOULD RUN OUT OF HER MOUTH. WE PUT HER ON A
22 STRICT DIET, BUT SHE WAS NOT QUITE RIGHT. GOING ON DOWN TO
23 THE THIRD FULL PARAGRAPH, SHE'S NOT AT ALL LIKE SHE USED TO
24 BE, SPEAKING OF HER DAUGHTER NOW, SHE'S A PHYSICAL AND MENTAL
25 WRECK. SHE'S NOT EVEN A HUMAN BEING ANYMORE. YOU FIND HER

September 25, 2012

1 NOW, SURE, SHE'LL TALK, SHE'LL ALWAYS TALK, BUT I'M TELLING
2 YOU SHE'S GOING TO TALK ALL KINDS OF NONSENSE.

3 GOING ON, THIS IS A MOTHER TALKING ABOUT HER
4 DAUGHTER, IT REALLY HURT -- TALKING ABOUT THE MACDONALD
5 MURDERS -- IT REALLY HURT. SHE WAS A VERY SOFT HEARTED PERSON
6 AND SHE ESPECIALLY LOVED LITTLE CHILDREN. SHE SAID RIGHT AWAY
7 NOT A HIPPIE AROUND HERE WOULD DO A THING LIKE THAT.
8 EVERYBODY IS GOING TO PITCH IN AND FIND OUT WHAT HAPPENED.
9 WE'VE GOT TO FIND OUT WHO DID THIS. I REALLY BELIEVE IT WAS
10 BEASLEY WHO FIRST PUT THE IDEA IN HER HEAD. BEASLEY WAS HER
11 DADDY IMAGE. SHE GOES ON TO SAY I JUST KNEW RIGHT THEN THAT
12 BEASLEY HAD TALKED HER INTO IT.

13 SO, THAT'S WHAT SHE SAID IN 1979, MRS. STOECKLEY,
14 ABOUT HER DAUGHTER. AND THEN -- SO, WE'RE LED TO BELIEVE IN
15 THE EVIDENCE THAT WAS PRESENTED HERE THAT, WELL, THIS ALL
16 CHANGED BECAUSE OF THE DAUGHTER STOECKLEY SAID SOME THINGS
17 NEAR HER -- AT THE TIME OF HER DEATH AND THIS CHANGED THE
18 MOTHER STOECKLEY'S ATTITUDE ABOUT EVERYTHING.

19 WELL, WE HAVE IN EVIDENCE, AND I'M GOING TO PUT IT
20 ON THE SCREEN, GX-2332. THIS IS A TYPEWRITTEN 302, FBI-302,
21 FROM THE HANDWRITTEN NOTES OF BUTCH MADDEN, WHO INTERVIEWED
22 HELENA STOECKLEY SENIOR ON JULY 19TH, 1984, AND HE TESTIFIED
23 TO IT IN THIS PROCEEDING. AND REMEMBER, THIS IS AFTER THE
24 DEATH OF THE YOUNG GIRL HELENA STOECKLEY. SHE DIED IN MARCH
25 OF --

September 25, 2012

1 MR. MURTAGH: JANUARY 1983.

2 MR. BRUCE: JANUARY OF 1983, AND THIS INTERVIEW WAS
3 IN JULY -- ON JULY 19TH, 1984. AND IN THE INTERVIEW, THE
4 THIRD PARAGRAPH DOWN, THE ELDER MRS. STOECKLEY IS THE SHE
5 REFERRED TO, SHE RECALLED THAT HER DAUGHTER HELENA CAME HOME
6 AFTER THE MACDONALD MURDERS, HELENA TOLD HER IN A PERFECTLY
7 SOBER AND NON-DRUGGED STATE THAT HELENA KNEW ABSOLUTELY
8 NOTHING ABOUT THE MACDONALD MURDERS. SHE GOES ON TO DESCRIBE
9 HER RELATIONSHIP WITH THE DRUG PEOPLE THERE IN FAYETTEVILLE.
10 AND THEN GOING ON TO PAGE TWO, SHE STATES THAT MS. STOECKLEY
11 WAS OF THE OPINION THAT HELENA COULD NOT HAVE BEEN PRESENT OR
12 COMMITTED THE MURDERS AS SHE WAS NOT VIOLENT AND LOVED
13 CHILDREN. THE ELDER MRS. STOECKLEY WAS RELUCTANT TO DISCUSS
14 ADDITIONAL INFORMATION BECAUSE HELENA WAS NOT TREATED FAIRLY
15 BY BEASLEY OR TED GUNDERSON, A PRIVATE INVESTIGATOR. SHE WAS
16 OF THE OPINION THAT HELENA -- THAT'S THE ELDER MRS. STOECKLEY
17 WAS OF THE OPINION THAT HELENA'S MIND WAS GONE, ESPECIALLY
18 WHEN UNDER THE INFLUENCE OF DRUGS OR ALCOHOL. WHEN DOING
19 DRUGS HELENA THOUGHT ABOUT THE MACDONALD CASE, BUT SHE WAS NOT
20 INVOLVED.

21 SO, THIS IS WHAT THE ELDER MRS. STOECKLEY THOUGHT
22 WHEN SHE WAS IN THE PRIME OF LIFE, EVEN AFTER HER DAUGHTER HAD
23 DIED. AND I SUBMIT THAT THE AFFIDAVIT SHE GAVE FROM THE
24 NURSING HOME, IF IT IS AN ACCURATE RENDITION OF WHAT SHE SAID,
25 IT SHOULD NOT BE GIVEN ANY WEIGHT.

September 25, 2012

1 NOW, LET'S TALK ABOUT SARA MCMANN. SHE SEEMS LIKE A
2 NICE LADY AND SHE HAS A STRONG OPINION THAT MACDONALD IS
3 INNOCENT. IT'S A STRONGLY HELD OPINION, BUT IT'S NOT BASED ON
4 ANY KNOWLEDGE OF THE CASE. I BELIEVE AND, OF COURSE, THE
5 TRANSCRIPT WILL BEAR ME OUT WHEN I TRY TO RECALL THINGS FROM
6 THE TESTIMONY, BUT I RECALL THAT ON CROSS-EXAMINATION THAT SHE
7 SAID SOMETHING LIKE THAT SHE REALLY DIDN'T KNOW ANYTHING ABOUT
8 THE FACTS OF THE CASE AND THAT IS A VERY TRUE STATEMENT. AND
9 HER TESTIMONY, WE CONTEND, SHOULD NOT BE GIVEN ANY WEIGHT.

10 NOW, THIS EXHIBIT THAT I REFERRED TO IS DEFENSE
11 EXHIBIT 5084 AND I'M NOT GOING TO CALL IT UP ON THE SCREEN OR
12 ANYTHING BECAUSE IT HASN'T BEEN MENTIONED IN THIS ENTIRE
13 PROCEEDING AND THE ONLY REASON I'M MENTIONING IT NOW IS
14 BECAUSE WHEN THE COURT IS REVIEWING THE EVIDENCE AND PREPARING
15 THE ORDER THE COURT MIGHT COME ACROSS IT.

16 WELL, IT'S FROM AN INDIVIDUAL BY THE NAME OF KAY
17 REIBOLD AND IT'S UNSIGNED AND IT'S UNSWORN. WE DON'T EVEN
18 KNOW IF SHE EVER READ IT. NO EVIDENCE HAS BEEN PRODUCED ABOUT
19 IT HERE. SHE, KAY REIBOLD, WAS NOT CALLED TO TESTIFY IN THIS
20 PROCEEDING. THEY HAD JERRY LEONARD ON THE STAND. SHE WAS
21 SUPPOSED TO BE AN ASSOCIATE OF HIS. I DON'T MEAN A LEGAL
22 ASSOCIATE, BUT A FRIEND AND WAS INVOLVED WITH HIM SOMEHOW.

23 ANYWAY, THEY HAD JERRY LEONARD ON THE STAND AND THEY
24 DID NOT ASK ONE QUESTION ABOUT KAY REIBOLD. SO, EVEN THOUGH
25 IT'S COMING IN UNDER THE EVIDENCE AS A WHOLE STANDARD, WE

September 25, 2012

1 SUBMIT THAT NO WEIGHT SHOULD BE ATTACHED TO THIS STATEMENT.

2 NOW, LET ME ADDRESS THE TESTIMONY OF JERRY LEONARD.
3 THE CONCERN THAT THE GOVERNMENT HAS ABOUT MR. LEONARD'S
4 TESTIMONY IS, WE SUBMIT, A MEMORY PROBLEM. HE CANDIDLY
5 ADMITTED ON CROSS-EXAMINATION -- THIS IS THE WAY WE HAVE IT.
6 THE TRANSCRIPT WILL BE THE FINAL ARBITER OF THAT. BUT HE MADE
7 A COUPLE OF STATEMENTS ON CROSS-EXAMINATION; WHAT HAPPENS IS
8 YOU FIND OUT STUFF LATER AND CONFUSE THAT WITH WHAT HAPPENED
9 AT THE TIME. HE ALSO STATED ON CROSS-EXAMINATION; THAT'S THE
10 DANGER. I TRY REALLY HARD NOT TO TALK TO PEOPLE ABOUT THIS.
11 WHAT HAPPENS IS YOU HEAR STUFF AT A LATER DATE AND IT ALL
12 BECOMES PART OF WHAT YOU KNOW AND IT'S HARD TO PEEL AWAY THE
13 CONTEXT THAT YOU HEARD ONE THING OR ANOTHER.

14 AND I THINK THAT'S EXACTLY WHAT HAS HAPPENED IN MR.
15 LEONARD'S CASE. HE WAS AT A GREAT DISADVANTAGE COMPARED TO
16 THE OTHER WITNESSES IN THIS CASE WHO WERE INVOLVED IN THE CASE
17 IN '79, BECAUSE ALL OF THEM, WHETHER IT BE AGENTS OR JOE
18 MCGINNISS OR THE LAWYERS OR WADE SMITH AND SO FORTH, THEY HAD
19 THINGS DOWN ON PAPER, THEY WERE PUT DOWN CONTEMPORANEOUSLY,
20 FROM WHICH THEY COULD REFRESH THEIR RECOLLECTION NOW IN 2012,
21 33 YEARS AFTER THE TRIAL.

22 JERRY LEONARD HAD NO SUCH THING. HE HAD NOTHING
23 DOWN ON PAPER. HE HAD TO CALL EVERYTHING UP FROM MEMORY AND
24 FIRST PUT IT DOWN ON PAPER JUST A FEW DAYS, APPARENTLY, BEFORE
25 THIS HEARING BEGAN.

September 25, 2012

1 AND THERE WAS -- WE TRIED TO DEMONSTRATE, AND I
2 THINK WE SUCCESSFULLY DEMONSTRATED ON CROSS-EXAMINATION, THAT
3 HE HAD A LOT OF MEMORY PROBLEMS CONCERNING IMPORTANT FACTS OF
4 THE CASE.

5 ONE EXAMPLE OF THAT IS THAT HE WAS SO UNCERTAIN IN
6 HIS VARIOUS STATEMENTS AS TO WHETHER HELENA STOECKLEY HAD
7 TESTIFIED BEFORE THE JURY, AS TO WHETHER HELENA STOECKLEY HAD
8 TESTIFIED IN OPEN COURT, OR WHETHER SHE HAD TESTIFIED AT ALL.

9 IN FACT, WE SHOWED HIM THE QUOTES FROM HIM IN MR.
10 MORRIS' BOOK, WHICH IS IN EVIDENCE AS EXHIBIT 7000. AND AS I
11 RECALL, HE ADMITTED TO MAKING THESE STATEMENTS TO MR. MORRIS
12 AND HE SAYS -- WE CAN PUT THIS ON THE SCREEN, 7000.8, THE
13 FIFTH LINE FROM THE TOP. HE SAYS I DIDN'T EVEN KNOW THAT SHE
14 HAD TESTIFIED, MEANING STOECKLEY. AND THEN LATER, I CAN'T
15 IMAGINE THAT I WAS NOT TOLD THAT SHE TESTIFIED. I WOULD HAVE
16 THOUGHT I WOULD HAVE ORDERED A TRANSCRIPT OF HER TESTIMONY
17 RIGHT AWAY. I DIDN'T. I JUST REMEMBER SITTING THERE AND IT
18 SEEMED PRETTY BORING TO ME.

19 I JUST DON'T THINK -- A LOT HAS HAPPENED SINCE 1979.
20 I'M SURE MR. LEONARD HAS HAD HUNDREDS OF CASES AND THERE HAVE
21 BEEN HUNDREDS OF EVENTS IN HIS LIFE THAT HAVE OCCURRED SINCE
22 1979, AND I JUST DON'T THINK THAT HIS MEMORY OF THESE EVENTS
23 IS CLEAR. SO, I WOULD RESPECTFULLY SUBMIT THAT THE COURT
24 SHOULD DISCOUNT HIS TESTIMONY ON THAT BASIS.

25 AND ANOTHER THING I WOULD LIKE TO POINT OUT TO THE

September 25, 2012

1 COURT IS THAT THE CONFESSION OF HELENA STOECKLEY THAT JERRY
2 LEONARD HAS REPORTED IN HIS AFFIDAVIT AND IN HIS TESTIMONY
3 HERE, THE AFFIDAVIT OF SEPTEMBER 20TH, 2012, WE SUBMIT IS NOT
4 PROBABLY RELIABLE, AS THE STANDARD IS, BECAUSE OF THE PASSAGE
5 OF TIME, THE QUALITY OF HIS MEMORY AND THE LIKELIHOOD THAT HE
6 IS CONFLATING WHAT HIS ACTUAL MEMORY IS WITH LATER EVENTS.

7 AND THERE ARE A COUPLE OF KEY INDICATORS OF THAT AND
8 ONE OF THEM IS THAT THE RECITED CONFESSION THAT'S SET FORTH IN
9 DETAIL IN HIS AFFIDAVIT CLOSELY RESEMBLES THE POST-TRIAL
10 CONFESSIONS OF HELENA STOECKLEY THAT WERE GIVEN TO MR. TED
11 GUNDERSON AND THE PEOPLE WORKING WITH HIM WHEN THEY WERE
12 WORKING ON BEHALF OF MACDONALD TO TRY TO GET A NEW TRIAL AND
13 THIS ULTIMATELY BECAME THE BASIS OR MUCH OF THE BASIS OF
14 MACDONALD'S FIRST 2255. AND BASICALLY, THIS IS WHERE YOU SEE
15 FOR THE FIRST TIME THIS DISCUSSION OF A CULT THAT ALLEGEDLY
16 WAS ANGRY WITH DR. MACDONALD ABOUT HIS TREATMENT OF DRUG
17 OFFENDERS AND THE DESIRE OF THE MEMBERS OF THE CULT TO WANT TO
18 CONFRONT HIM OR PERSUADE HIM.

19 THERE'S EVEN ONE VERSION OF THIS CONFESSION THAT SHE
20 GAVE TO GUNDERSON THAT SAYS THAT THEY WENT TO MACDONALD'S
21 HOUSE AND ENGAGED HIM IN DISCUSSION FOR ABOUT 20 MINUTES OVER
22 THIS DRUG ISSUE BEFORE ANY FIGHT STARTED. AND, OF COURSE,
23 THIS IS TOTALLY AT ODDS WITH MACDONALD'S TESTIMONY AND
24 STATEMENTS ABOUT THE CASE. SO, IT DOESN'T MAKE ANY SENSE.

25 MS. STOECKLEY'S SO-CALLED CONFESSIONS PRIOR TO THE

September 25, 2012

1 1979 TRIAL WERE NOT OF THIS TYPE. THE STOECKLEY WITNESSES WHO
2 TESTIFIED ON VOIR DIRE AT THE TRIAL ALL TESTIFIED TO SORT OF
3 MISTY MEMORIES LIKE I REMEMBER BLOOD ON MY HANDS OR
4 KRISTEN'S FACE LOOKS FAMILIAR OR I FEEL LIKE I MIGHT HAVE BEEN
5 THERE. YOU DON'T SEE ANYTHING IN THEIR TESTIMONY ABOUT AN
6 ORGANIZED CULT GOING TO THE HOUSE BECAUSE THEY WERE MAD AT DR.
7 MACDONALD BECAUSE OF HIS TREATMENT OF DRUG ADDICTS. THAT ONLY
8 COMES UP LATER.

9 AND SO -- AND ALL OF THAT, OF COURSE, WAS IN THE
10 PUBLIC RECORD WHEN THEY FILED THEIR 2255 IN 1984. IT WAS THE
11 SUBJECT OF A LONG HEARING BEFORE JUDGE DUPREE. AND IT'S BEEN
12 ON THE INTERNET AND EVERYBODY KNOWS ABOUT IT. AND I SUBMIT
13 THAT JERRY LEONARD HAS HEARD ABOUT THAT OVER THE YEARS AND
14 THOSE ARE THE DETAILS THAT GOT STUCK IN HIS HEAD WHEN HE SAT
15 DOWN TO THINK OF WHAT HELENA STOECKLEY MIGHT HAVE TOLD HIM AND
16 THAT'S WHAT HE PUT DOWN.

17 AND I WOULD CITE TWO SOURCES ABOUT THIS TO THE
18 COURT. AND THAT IS TO GO BACK AND LOOK AT THE TESTIMONY OF
19 THE SO-CALLED STOECKLEY WITNESSES AT THE MACDONALD TRIAL IN
20 1979, AND YOU'LL SEE THAT IT SOUNDS NOTHING LIKE WHAT JERRY
21 LEONARD WAS SAYING THAT HELENA STOECKLEY WAS SAYING TO HIM IN
22 1979. AND, ALSO, IF THE COURT LOOKS AT JUDGE DUPREE'S OPINION
23 IN 1985 AT 640 F. SUPP 286, DENYING MACDONALD'S 2255, WHICH
24 WAS BASED IN LARGE PART ON HELENA STOECKLEY'S POST-TRIAL
25 CONFESSIONS, AT PAGES 315 THROUGH 317 OF THAT OPINION, JUDGE

September 25, 2012

1 DUPREE -- BY THE WAY, THERE'S ALSO AN EXCELLENT DISCUSSION IN
2 THIS OPINION ABOUT THE TRIAL EVIDENCE AND THE EVIDENCE THAT
3 THE GOVERNMENT SUCCESSFULLY CONVICTED DR. MACDONALD ON.

4 BUT AT PAGES 315 THROUGH 317 THERE IS -- JUDGE
5 DUPREE SKETCHES OUT WHAT THE SO-CALLED STOECKLEY WITNESSES HAD
6 SAID AT THE TIME OF THE '79 TRIAL. AND, AGAIN, I SUBMIT --
7 I'M SUMMARIZING, BUT IT'S THESE MISTY MEMORY TYPE THINGS THAT
8 SHE HAD SAID OVER THE YEARS.

9 BUT AT PAGES 321 THROUGH 323, THAT'S WHERE YOU SEE
10 THE -- WHAT I WOULD CALL THE GUNDERSON CONFESSIONS THAT WERE
11 MADE AFTER THE '79 TRIAL, WHEN THEY TOOK HER OUT TO CALIFORNIA
12 AND THEY WINED HER AND THEY DINED HER AND AS BUTCH MADDEN SAID
13 THEY QUESTIONED HER FOR HOURS ON END AND THAT'S WHERE YOU SEE
14 THESE THINGS. AND I'M READING FROM JUDGE DUPREE'S OPINION,
15 STOECKLEY WAS A MEMBER OF A SATANIC CULT, WHICH WAS ANGRY WITH
16 MILITARY PHYSICIANS, MACDONALD AMONG THEM, BECAUSE THEY
17 REFUSED TO HELP DRUG USERS WITH THEIR PROBLEMS. THE LEADERS
18 OF THE CULT DECIDED TO APPROACH MACDONALD IN AN ATTEMPT TO
19 OBTAIN DRUGS FROM HIM AND PERSUADE HIM TO TREAT DRUG ADDICTS.

20 NONE OF THIS HAD EVER BEEN PART OF THE PARLANCE OF
21 HELENA STOECKLEY UNTIL THE GUNDERSON INVESTIGATION, WHICH WAS
22 WELL AFTER THE TRIAL.

23 AND SO I THINK THAT, JUDGE, JERRY LEONARD HAS HEARD
24 ABOUT THAT OVER THE YEARS AND HAS CONFLATED THAT IN HIS MIND
25 WITH SOMETHING THAT WAS A MEMORY IN 1979. SO, WE WOULD URGE

September 25, 2012

1 THE COURT TO DISCOUNT THAT TESTIMONY.

2 SO, HERE'S WHERE WE THINK WE ARE. MR. MURTAGH HAS
3 OUTLINED TO YOU WHY THE UNSOURCED HAIRS CLAIM FAILS ON THE
4 MERITS, IF THE COURT GETS TO THE MERITS, BECAUSE IT'S NOT
5 EXCULPATORY. THE FINAL ANALYSIS, IT'S JUST MORE DEBRIS. IT
6 WAS JUST LIKE THAT WAS KNOWN AT THE TRIAL. LOTS OF
7 UNIDENTIFIED THINGS AT THE TRIAL; CANDLE WAX, HAIR, SURGICAL
8 GLOVE PART, YOU NAME IT. ANY HOUSEHOLD, ESPECIALLY ONE LIKE
9 THIS ON BASE HOUSING THAT HAD MANY OCCUPANTS IN AND OUT, WOULD
10 HAVE THIS TYPE OF DEBRIS. SO, IT DOESN'T ADVANCE THE BALL AT
11 ALL.

12 AS TO THE BRITT CLAIM, THEREFORE, THEY HAVEN'T
13 PROVED ANY EXCULPATORY EVIDENCE TO MEET THEIR BURDEN. AND IF
14 YOU CONSIDER IT IN THE LIGHT OF THE EVIDENCE AS A WHOLE, IT
15 DOES NOT SURVIVE GATEKEEPING.

16 NOW, AS TO THE BRITT CLAIM, AGAIN, I'M TALKING ABOUT
17 THE MERITS FIRST WHEN GATEKEEPING REALLY COMES FIRST, BUT I
18 WOULD CONTEND TO YOUR HONOR THAT IF THIS -- IF THIS HEARING
19 THAT WE HAVE HAD THE LAST TWO WEEKS HAD BEEN A CRIMINAL TRIAL
20 FOR PERJURY OF JIMMY BRITT, WE WOULD HAVE PROVEN IT BEYOND A
21 REASONABLE DOUBT, BUT WE DON'T HAVE TO PROVE ANYTHING. THE
22 OTHER SIDE HAS THE BURDEN OF PROOF AND THEY HAVE FAILED TO
23 MEET THEIR BURDEN OF PROOF TO PROVE THE VERACITY OF THE BRITT
24 CLAIM.

25 AND, ALSO, EVEN IF -- YOUR HONOR IN 2008 SAID EVEN

September 25, 2012

1 IF BRITT'S CLAIM IS TRUE IT DOESN'T SURVIVE THE GATEKEEPING
2 STANDARD BECAUSE TAKEN WITH THE OTHER EVIDENCE IT DOES NOT
3 ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT NO REASONABLE
4 FACT FINDER COULD FIND MACDONALD GUILTY.

5 NOW, YOUR HONOR HAS HEARD ALL THE EVIDENCE AS A
6 WHOLE AND I WOULD CONTEND ON GATEKEEPING NOTHING HAS CHANGED.
7 YOUR HONOR CAN REACH THE SAME DECISION THAT THE COURT REACHED
8 IN 2008. SO, THE BRITT CLAIM FAILS ON BOTH COUNTS, BOTH
9 PRONGS, ON GATEKEEPING AND ON THE MERITS.

10 AND IN SUMMATION, I WOULD SAY TO THE COURT, JUDGE --
11 I MEAN, MR. MURTAGH QUOTED EARLIER FROM A FOURTH CIRCUIT
12 OPINION AND IT'S AT 966 FED. 2ND 854 AT PAGE 861. AND THE
13 PANEL -- THIS WAS IN 1992. AND IT WAS JUDGE RUSSELL WRITING
14 WITH JUDGE BUTZNER AND MURNAGHAN JOINING IN AND THIS WAS
15 TURNING DOWN THE -- I GUESS THE SECOND HABEAS AND FINDING
16 THERE WAS AN ABUSE OF THE WRIT AND AFFIRMING JUDGE DUPREE ON
17 THAT FINDING. AND THIS IS WHAT JUDGE RUSSELL SAID, WHILE WE
18 ARE KEENLY AWARE OF MACDONALD'S INSISTENCE AS TO HIS
19 INNOCENCE, AT SOME POINT -- AT SOME POINT WE MUST ACCEPT THIS
20 CASE AS FINAL.

21 YOUR HONOR, WE HAVE REACHED THAT POINT. JEFFREY
22 MACDONALD IS NEVER GOING TO ADMIT HIS GUILT, HIS LOYAL BAND OF
23 FOLLOWERS ARE NEVER GOING TO BE SATISFIED NO MATTER HOW MANY
24 HEARINGS WE HAVE, BUT HIS CLAIMS FAIL AND WE MUST END THIS
25 CASE AND MAKE IT FINAL. THANK YOU, YOUR HONOR.

September 25, 2012

1 THE COURT: MR. WIDENHOUSE.

2 MR. WIDENHOUSE: THANK YOU, YOUR HONOR. I'M GOING
3 TO RESPOND TO THE CLAIMS SORT OF IN THE ORDER THAT THEY TALKED
4 ABOUT THEM AND I'M ONLY GOING TO TAKE ABOUT 15 MINUTES. I
5 DON'T THINK I NEED TO DRONE ON AND ON IN RESPONSE TO WHAT
6 THESE CLAIMS ARE ALL ABOUT.

7 WITH RESPECT TO THE UNSOURCED HAIRS CLAIM, THE
8 GOVERNMENT'S CONTENTION SEEMS TO BE THAT NATURALLY SHED HAIRS
9 AT A CRIME SCENE ARE NOT FORENSICALLY SIGNIFICANT -- ARE NOT
10 FORENSICALLY SIGNIFICANT. THAT SOUNDS LIKE AGENT IVORY ON THE
11 STAND THE OTHER DAY SAYING FINGERPRINTS AT A CRIME SCENE WHERE
12 THERE'S AN ALLEGATION OF INTRUDERS AREN'T SIGNIFICANT BECAUSE
13 THEY COULD HAVE BEEN PLACED THERE TWO, THREE, FOUR MONTHS
14 EARLIER. THAT'S, OF COURSE, TRUE. THEY COULD ALSO HAVE BEEN
15 PLACED THERE WHEN THE INTRUDERS WERE COMMITTING THE CRIME.
16 SO, IF THERE ARE UNSOURCED HAIRS THAT ARE PRESENT AT THE CRIME
17 SCENE THAT IS SOME CIRCUMSTANTIAL EVIDENCE OF INTRUDERS THAT
18 WAS NOT AVAILABLE AT TRIAL.

19 THE COURT: WELL, EXCUSE ME. I UNDERSTOOD THE
20 GOVERNMENT'S DISCUSSION -- MR. MURTAGH'S DISCUSSION OF THE
21 UNSOURCED HAIRS TO BE THAT THEY WEREN'T AS PROBATIVE AS THEY
22 WOULD BE IF THEY HAD BEEN DEMONSTRATIVELY FORCIBLY REMOVED AND
23 HAD BLOOD ON THEM.

24 MR. WIDENHOUSE: WELL, CERTAINLY, IF THEY WERE
25 FORCIBLY REMOVED THEY'RE MORE PROBATIVE THAN THEY WOULD BE IF

September 25, 2012

1 THEY'RE NOT.

2 THE COURT: ALL RIGHT. DO YOU SAY THAT THE EVIDENCE
3 STILL SUPPORTS THAT?

4 MR. WIDENHOUSE: YES. THE EVIDENCE SUPPORTS THAT
5 THEY'RE AN UNSOURCED --

6 THE COURT: YOU HAVE READ THE AFFIDAVITS ATTACHED --

7 MR. WIDENHOUSE: I'M NOT SAYING THEY'RE FORCIBLY
8 REMOVED.

9 THE COURT: WELL, THAT'S WHAT I'M ASKING YOU.

10 MR. WIDENHOUSE: NO. I'M SAYING THAT THE EVIDENCE
11 FROM THE DNA --

12 THE COURT: I'M ASKING YOU WHETHER THEY HAVE BLOOD
13 ON THEM.

14 MR. WIDENHOUSE: NO, THEY DON'T SEEM TO HAVE BLOOD
15 ON THEM.

16 THE COURT: ALL RIGHT. NOW, THAT'S TWO BIG ISSUES.
17 IF THEY HAD THOSE, I THINK IT WOULD BE MORE IN YOUR FAVOR AND
18 I THINK THAT THAT WAS MR. BRUCE'S POINT.

19 MR. WIDENHOUSE: OKAY. AND MY RESPONSE IS I DON'T
20 DISPUTE THAT THAT WOULD BE MORE FAVORABLE, BUT --

21 THE COURT: WELL, THAT'S DIFFERENT FROM WHAT MR.
22 SEGAL REPRESENTED AT THE ARGUMENT AS I RECALL.

23 MR. WIDENHOUSE: THAT'S CORRECT.

24 THE COURT: ALL RIGHT.

25 MR. WIDENHOUSE: WE'RE NOT THERE. WE'RE HERE. AND

September 25, 2012

1 MY POINT IS THAT THE FOURTH CIRCUIT SAID THERE ARE THESE
2 HAIRS, TAKE A LOOK AT THEM AT A HEARING.

3 THE COURT: I UNDERSTAND. AND I APPRECIATE YOUR
4 POINT.

5 MR. WIDENHOUSE: ALL RIGHT. AND I SIMPLY AM SAYING
6 THAT IT IS SOME CIRCUMSTANTIAL EVIDENCE OF INTRUDERS THAT WAS
7 NOT AVAILABLE AT TRIAL.

8 WITH RESPECT TO THE GOVERNMENT'S CONTENTION THAT
9 SOMEHOW THIS HAIR THAT WE THINK WAS IN THE FINGERNAIL
10 SCRAPINGS FROM KRISTEN'S HAND DIDN'T APPEAR AT SOME POINT IN
11 TIME THEY'RE CLAIMING IT'S CONTAMINATION.

12 WELL, THEY'RE THE ONES WITH THE EXHIBITS AND IF
13 THERE'S CONTAMINATION, YOU CAN'T HOLD THAT AGAINST THE
14 DEFENSE. ALL WE CAN EXAMINE -- ALL WE CAN HAVE LOOKED AT ARE
15 THE EXHIBITS AS THEY EXIST IN THE GOVERNMENT'S POSSESSION.

16 MY ARGUMENT IS WHEN YOU LOOK AT ALL OF THE EVIDENCE
17 IN THE CASE, THE QUESTION IS DO THE UNSOURCED HAIRS,
18 PARTICULARLY THE ONE THAT WE CLAIM WAS IN THE FINGERNAIL
19 SCRAPINGS FROM KRISTEN, IS THAT SOME CIRCUMSTANTIAL EVIDENCE
20 OF AN INTRUDER THAT WAS NOT AVAILABLE TO THE DEFENSE AT TRIAL?
21 AND I THINK THE ANSWER TO THAT QUESTION IS YES.

22 NOW, IT'S NOT AS GOOD, I ADMIT, AS IF IT'S A
23 FORCIBLY REMOVED HAIR IF SOMETHING LIKE THAT EXISTS OR IF
24 THERE'S BLOOD ON IT OR WHATEVER, BUT IT IS STILL POSITIVE
25 CIRCUMSTANTIAL EVIDENCE OF AN INTRUDER AND I DON'T THINK

September 25, 2012

1 THERE'S ANY WAY AROUND THAT PARTICULAR POINT.

2 WITH RESPECT TO THE DISCUSSION ABOUT THE CRIME
3 SCENE, CERTAINLY THE EVIDENCE HERE WAS SUFFICIENT TO GO TO A
4 JURY. THERE WERE THREE MURDERS COMMITTED. THERE IS NO DOUBT
5 ABOUT THAT. BUT I WOULD DRAW THE COURT'S ATTENTION -- I'M NOT
6 GOING TO READ IT TO YOUR HONOR, YOU CAN READ IT YOURSELF -- TO
7 DOCKET ENTRY 126, WHICH IS A PREVIOUS FILING BY THE DEFENSE
8 THAT CATALOGS IN ORDER POST-TRIAL DEVELOPMENTS OF EVIDENCE
9 THAT CHALLENGES OR CONTRADICTS THE EVIDENCE THAT WAS PRESENTED
10 AT TRIAL, EVIDENCE THAT THE JURY DIDN'T HEAR, WE THINK
11 EVIDENCE THAT WHEN CONSIDERED IN LIGHT OF THE EVIDENCE AS A
12 WHOLE IS IMPORTANT AND WOULD HAVE CAUSED A REASONABLE JURY NOT
13 TO CONVICT DR. MACDONALD.

14 FOR EXAMPLE, THERE'S A LOT OF DISCUSSION ABOUT BLUE
15 PAJAMA FIBERS AND WHY IF HIS PAJAMA SHIRT IS OFF WERE THERE
16 FIBERS OTHER PLACES IN THE HOUSE.

17 YOU HAVE TO REMEMBER THAT IF YOU GO TO PAGE 2061 OF
18 THE TRANSCRIPT, THERE'S TESTIMONY FROM A MEDIC AT THE HOSPITAL
19 THAT DR. MACDONALD'S PAJAMA BOTTOMS WERE RIPPED COMPLETELY
20 APART. THERE WERE -- THERE WOULD HAVE BEEN THREADS THAT WOULD
21 HAVE BEEN FALLING OFF OF THOSE. AND IF HE MOVED AROUND THE
22 HOUSE FROM ROOM TO ROOM, AS HE SAID HE DID, THE FIBERS COULD
23 EASILY HAVE COME FROM THE PAJAMA BOTTOMS WHICH WERE PART OF A
24 SET LIKE THE PAJAMA TOP.

25 SO, ALL OF THE DISCUSSION ABOUT, WELL, THERE ARE

September 25, 2012

1 THESE PAJAMA FIBERS HERE, PAJAMA FIBERS THERE, AND HE DOESN'T
2 HAVE HIS PAJAMA SHIRT ON ANYMORE, THERE'S NO EXPLANATION FOR
3 THAT. WELL, THE EXPLANATION IS THEY'RE ON THE PAJAMA BOTTOMS
4 THAT WERE RIPPED APART THAT WOULD HAVE BEEN LEAVING THREADS AS
5 HE MOVED FROM PLACE TO PLACE, PAJAMA BOTTOMS THAT WERE -- HE
6 HAD ON WHEN HE GOT TO THE HOSPITAL THAT WERE SINCE DESTROYED
7 AND NOT AVAILABLE AT THE TIME OF TRIAL.

8 SO, THAT'S ONE EXAMPLE OF EVIDENCE THAT WOULD HAVE
9 SUGGESTED AN EXPLANATION FOR SOME OF THE GOVERNMENT'S EVIDENCE
10 AT TRIAL.

11 WE'VE ALREADY HEARD TESTIMONY DURING AGENT IVORY'S
12 TIME ON THE STAND ABOUT AN EXPLANATION FOR WHY THERE WAS BLOOD
13 TYPE O ON HIS GLASSES. HE TREATED FIVE PATIENTS THE WEEKEND
14 BEFORE AT THE EMERGENCY ROOM THAT HAD TYPE O.

15 I QUESTIONED HIM ABOUT WHETHER A PINK FIBER IN DR.
16 MACDONALD'S GLASSES WOULD BE SOME EVIDENCE OF A STRUGGLE WITH
17 AN INTRUDER WHEN THOSE PINK -- THAT PINK FIBER DIDN'T MATCH
18 ANYTHING IN THE MACDONALD HOUSE.

19 THE COURT: MR. WIDENHOUSE, LET ME ASK YOU AND I
20 APOLOGIZE, BUT AS YOU KNOW, I'M NOT FAMILIAR WITH THE TRIAL.
21 I WASN'T THERE. WAS THERE EVIDENCE AT THE TRIAL THAT HE HAD
22 TREATED PEOPLE WITH BLOOD TYPE O, FIVE, AT THE HOSPITAL?

23 MR. WIDENHOUSE: NO. THAT'S POST-TRIAL EVIDENCE.
24 IT'S POST-TRIAL EVIDENCE ABOUT HE TREATED TYPE O PATIENTS.

25 THE COURT: WHEN DID THAT COME IN POST-TRIAL?

September 25, 2012

1 MR. WIDENHOUSE: THERE WAS A FOIA REQUEST AT SOME
2 POINT AFTER THE TRIAL, A FREEDOM OF INFORMATION ACT REQUEST,
3 AND THAT DEVELOPED THAT AT THAT POINT. WE'LL BRING THAT TO
4 THE COURT'S ATTENTION --

5 THE COURT: THANK YOU.

6 MR. WIDENHOUSE: -- WITH SPECIFICITY IN THE POST-
7 TRIAL MEMORANDUM. I MEAN, AGAIN, MY POINT IS SIMPLY THERE'S A
8 LOT OF POST-TRIAL DEVELOPMENT WITH REGARD TO WIG HAIRS AND
9 HUMAN HAIRS AND THINGS LIKE THAT, AND FIBERS, BLOOD, THAT WILL
10 BE PART OF THE EVIDENCE AS A WHOLE, THAT CREATES A SCENARIO
11 WHERE THIS NEW EVIDENCE THAT WE'RE TALKING ABOUT THAT CAME OUT
12 AT THIS HEARING, YOU KNOW, WOULD HAVE BEEN IMPORTANT AND WOULD
13 HAVE CAUSED A JURY -- WOULD HAVE LESSENERED THE IMPACT OF THE
14 TRIAL EVIDENCE TO THE EXTENT THAT IF THE NEW EVIDENCE HAD BEEN
15 AVAILABLE A REASONABLE JURY WOULD NOT NECESSARILY HAVE FOUND
16 HIM GUILTY. AND AGAIN --

17 THE COURT: EXCUSE ME. I THOUGHT THE BURDEN WAS YOU
18 HAD TO PROVE THAT NO REASONABLE JUROR.

19 MR. WIDENHOUSE: YES, AND THAT'S WHAT I THINK THE
20 EVIDENCE WILL SHOW IS THAT NO REASONABLE JUROR WOULD HAVE
21 CONVICTED HIM.

22 THE COURT: YOU HAVE TO PROVE THAT NO JUROR.

23 MR. WIDENHOUSE: CORRECT.

24 THE COURT: THANK YOU.

25 MR. WIDENHOUSE: I THOUGHT THAT -- THAT'S WHAT I

September 25, 2012

1 MEANT TO SAY. I DIDN'T MEAN TO SUGGEST A DIFFERENT KIND OF
2 BURDEN.

3 THE COURT: THANK YOU.

4 MR. WIDENHOUSE: AND THE LAST ARGUMENT -- POINT I'D
5 LIKE TO MAKE WITH RESPECT TO THE BRITT CLAIM, I DON'T THINK WE
6 HAVE TO PROVE JIMMY BRITT'S VERACITY. WE DON'T HAVE TO PROVE
7 HIS ALLEGATIONS.

8 THE POINT OF THE BRITT CLAIM, AS I'VE TRIED TO
9 EXPLAIN IN OPENING STATEMENT AND IN THE BEGINNING OF MY
10 ARGUMENT IS THAT THE SUBSTANCE OF THE BRITT CLAIM IS THAT
11 HELENA STOECKLEY MADE AN ADMISSION THAT SHE WAS IN THE HOUSE
12 AND THAT THERE WAS A THREAT TO HER BY THE PROSECUTOR. WE CAN
13 PROVE HER ADMISSION WITHOUT JIMMY BRITT'S ALLEGATION. WE
14 PROVED THAT WITH JERRY LEONARD'S TESTIMONY. WE PROVED THAT
15 WITH HELENA STOECKLEY'S DYING DECLARATION TO HER MOTHER. NOW,
16 THE GOVERNMENT WANTS TO SAY DON'T ACCEPT THAT AFFIDAVIT.
17 WELL, I DON'T KNOW WHAT I CAN DO OTHER THAN PUT THE NOTARY ON
18 THE STAND WHO SAID I WAS THERE, I HEARD HIM READ THE AFFIDAVIT
19 TO HIS MOTHER, I SAW HER SIGN IT, THIS IS WHAT I NOTARIZED,
20 THIS DOCUMENT HERE. IT LOOKS IRREGULAR, I ACKNOWLEDGE, BUT
21 WE'VE GOT GENE STOECKLEY AND THE NOTARY VERIFYING THAT HER
22 MOTHER KNEW EXACTLY WHAT WAS IN THE AFFIDAVIT, KNEW EXACTLY
23 WHAT SHE WAS DOING AND SIGNED IT. SO, I THINK YOU CAN TAKE
24 THAT AFFIDAVIT AT THE VALUE, AT FACE VALUE, FOR WHAT IS
25 CONTAINED IN THE AFFIDAVIT ITSELF.

September 25, 2012

1 AND MR. BRUCE MAKES THE POINT THAT, WELL, MAMA
2 STOECKLEY HAD MADE DIFFERENT STATEMENTS AT OTHER TIMES ABOUT
3 HELENA AND WHAT SHE MIGHT SAY. ONE OF THOSE WAS AT TRIAL.
4 WELL, AT TRIAL SHE WOULD BE SAYING SOMETHING TO KEEP HER
5 DAUGHTER FROM NECESSARILY BEING INVOLVED. I THINK THE MORE --
6 THE MORE CREDIBLE STATEMENT SHE WOULD MAKE WOULD BE A
7 STATEMENT SHE MADE UNDER OATH, WHICH IS WHAT YOU DO WHEN
8 YOU'RE HAVING SOMETHING NOTARIZED. AND HER SON, WHO I THINK
9 WAS AN EXTRAORDINARILY CREDIBLE WITNESS, WOULDN'T HAVE LET HIS
10 MOTHER BE PUSHED AROUND AND WOULDN'T HAVE LET PEOPLE PUT WORDS
11 IN HER MOUTH, SAID THIS IS WHAT SHE SAID AND SHE WANTED TO
12 COME FORWARD AT THIS TIME.

13 THE FACT THAT IT'S AT ODDS WITH SOMETHING SHE SAID
14 NOT UNDER OATH TO A DEFENSE INVESTIGATOR AND TO AN FBI AGENT
15 YEARS BEFORE, I DON'T THINK MEANS THAT YOU SHOULD NOT TAKE
16 WHAT SHE SAYS IN THE AFFIDAVIT, WHICH SHE MAKES UNDER OATH.

17 NOW, THERE'S A SUGGESTION, IT SEEMS TO ME, THAT --
18 AND I THINK IT BECAME CLEARER NEAR THE END OF MR. BRUCE'S
19 ARGUMENT, THAT, WELL, JIMMY BRITT DIDN'T HAVE ANYTHING TO BE
20 PROUD OF LIKE THESE MARSHALS THAT HE WAS GOING DOWN TO
21 MISSISSIPPI WITH WHO WERE GOING TO GET SOME AWARD AND SOMEHOW
22 HE THEN CREATED THIS STATEMENT ABOUT HAVING DONE THE TRANSPORT
23 AND SEEN THE THREAT IN THE PROSECUTOR'S OFFICE.

24 WELL, THAT, AGAIN, BEGS THE QUESTION OF WHAT I
25 MENTIONED IN MY OPENING ARGUMENT EARLIER TODAY. HE WOULD HAVE

September 25, 2012

1 TO HAVE HAD THAT PLAN IN 1979, BECAUSE HE TELLS MARY BRITT,
2 I'M GOING TO PICK UP THE WITNESS. HE THEN COMES BACK AND SAID
3 SHE SAID SHE WAS IN THE HOUSE.

4 NOW, IF HE WANTS TO MAKE UP SOMETHING IN 2005, HOW
5 IN THE WORLD DID HE KNOW TO TELL HIS THEN WIFE ABOUT THE TRIP
6 AND WHAT HELENA STOECKLEY SAID? I MEAN, THERE'S JUST NO WAY
7 THAT THOSE TWO THINGS HANG TOGETHER.

8 EVEN IF YOU DON'T BELIEVE WHAT JIM BRITT SAID, THE
9 POINT IS THE BRITT CLAIM IS THE SUBSTANCE THAT HELENA
10 STOECKLEY WOULD HAVE MADE A STATEMENT AND, IN FACT, MADE
11 STATEMENTS THAT SHE WAS IN THE MACDONALD HOUSE. THAT'S
12 WHAT'S IMPORTANT. IT REALLY DOESN'T MATTER IF SHE WAS IN A
13 CULT, DOESN'T MATTER WHY SHE'S THERE, WHAT MATTERS IS SHE MADE
14 THAT STATEMENT.

15 WHICH TAKES US, I THINK, TO JERRY LEONARD'S
16 TESTIMONY. AND, AGAIN, IT SEEMED TO ME HE HELD ON TO WHAT SHE
17 WOULD HAVE TOLD HIM FOR 33 YEARS. HE MADE YOU LIFT THE
18 ATTORNEY-CLIENT PRIVILEGE BEFORE HE REVEALED WHAT HE SAID.
19 AND THE IMPORTANCE OF WHAT HE SAID IS SHE TOLD ME WHEN I TOLD
20 HER I WOULD DO WHATEVER SHE NEEDED ME TO DO, SHE TOLD ME SHE
21 WAS THERE. AND HIS EXPLANATION OF HOW THAT HAPPENED, I THINK,
22 IS PARTICULARLY IMPORTANT. SHE FIRST SAYS, I DON'T REMEMBER.
23 HE ACCEPTS THAT. AND SHE THEN COMES BACK TO HIM LATER THAT
24 DAY OR THE NEXT DAY AND SAYS, WHAT IF IT'S WORSE THAN I SAID?
25 WHAT IF IT'S WORSE THAN I SAID? AND HE SAID, IT DOESN'T

September 25, 2012

1 MATTER, YOU JUST NEED TO TELL ME THE TRUTH.

2 NOW, I SUPPOSE ONE COULD SAY FADED MEMORIES,
3 CONFABULATED MEMORIES. BUT HE WAS VERY CLEAR THAT THIS WAS A
4 SIGNIFICANTLY UNUSUAL COURT APPOINTMENT. HE WASN'T APPOINTED
5 TO REPRESENT SOMEBODY CHARGED WITH A CRIME. HE WAS APPOINTED
6 TO REPRESENT A WITNESS. THE PURPOSE OF REPRESENTING THE
7 WITNESS WAS TO PROTECT HER. IN OTHER WORDS, DON'T LET HER
8 TESTIFY AND MAKE INCRIMINATING STATEMENTS. HE WOULD THEN,
9 DISCHARGING THAT DUTY, WANT TO BE CAREFUL AND CLEAR ABOUT WHAT
10 SHE TOLD HIM. AND I WOULD THINK, I WOULD THINK, AND AS A
11 LAWYER, IN THAT SITUATION, HER SAYING -- COMING BACK TO HIM
12 AND SAYING IT'S NOT THAT I DON'T REMEMBER, IT'S THAT I WAS
13 THERE, HE WOULD REMEMBER THAT. THAT WOULD BE ONE OF THOSE,
14 FOR LACK OF A BETTER EXPRESSION, KODAK MOMENTS. I MEAN, HE
15 MIGHT NOT REMEMBER ALL THE DETAILS OF WHY SHE WAS THERE.
16 THAT'S NOT WHAT'S SIGNIFICANT. WHAT'S SIGNIFICANT IS THOSE
17 THREE WORDS, I WAS THERE.

18 NOW, THE LAST POINT I WANT TO MAKE IS ABOUT THE
19 THREAT THAT MR. BRITT SAID HE HEARD. YOU HAVE MR. BRITT
20 PASSING A POLYGRAPH. NOW, THEY DON'T WANT YOU TO ACCEPT THAT
21 POLYGRAPH, JUST ACCEPT THE GOVERNMENT POLYGRAPHS, NOT THE
22 DEFENSE POLYGRAPHS. BUT YOU'VE GOT A POLYGRAPH THAT'S NOT
23 DISPUTED THAT IT OCCURRED. AND WHAT HE ASKED -- AND I TAKE
24 THE COURT JUST TO THE FIRST QUESTION. WHAT HE WAS ASKED IS
25 DID YOU HEAR HELENA STOECKLEY TELL JIM BLACKBURN SHE HAD SEEN

September 25, 2012

1 A BROKEN HOBBY HORSE WHILE SHE WAS INSIDE THE MACDONALD HOUSE?

2 MR. BRUCE WAS TRYING TO SUGGEST THAT THE ONLY PART
3 OF THE BRITT CLAIM, THE ONLY TIME HE HEARD OR IT SAID ABOUT
4 SHE SAID SHE WAS INSIDE THE HOUSE WAS ON THIS TRANSPORT THAT
5 THEY CLAIM DIDN'T OCCUR, WHICH I THINK IS DISPUTED WHETHER JIM
6 BRITT COULD HAVE DONE THE TRANSPORT OR NOT AND I'VE MADE MY
7 ARGUMENT TO THAT EFFECT.

8 BUT THE POINT ABOUT WHETHER HE WOULD HAVE HEARD THAT
9 AT SOME OTHER TIME IS CLARIFIED BY HIM SAYING THAT AND
10 ANSWERING THAT QUESTION IN THE POLYGRAPH, THAT HE HEARD HER
11 SAY THAT AND HE HEARD HER SAY IT IN THE PROSECUTION ROOM.

12 AGAIN, I THINK THIS DISCUSSION ABOUT *FATAL VISION* IS
13 REALLY THE JEDI MIND TRICK. THERE IS NO WAY THAT SOMEONE
14 WATCHING THAT MOVIE AND SEEING A MARSHAL STANDING OUTSIDE A
15 ROOM WOULD KNOW WHETHER IT WAS THE DEFENSE ROOM OR THE
16 PROSECUTION ROOM. AND IF JIM BRITT SAID, I WAS INSIDE THE
17 ROOM, WHICH MARY BRITT SAID HE DID. HE SAID -- YOU KNOW, HE
18 SAID I WASN'T OUTSIDE THE ROOM, I WAS INSIDE THE ROOM. HE
19 COULD NOT HAVE THOUGHT IT WAS THE DEFENSE ROOM BECAUSE NO ONE
20 EVER SUGGESTED HE WAS IN THE DEFENSE ROOM. AND I THINK MARY
21 BRITT'S RECOLLECTION OF THAT IS UNIMPEACHABLE. AND, AGAIN, IT
22 BEGS THE QUESTION THAT SOMEHOW JIM BRITT WAS DIVINING THIS
23 PLAN IN 1984 TO SPRING IT 20 YEARS LATER IN 2005.

24 I THINK WE HAVE PROVED THE RELEVANT FACTS BY A
25 PREPONDERANCE OF THE EVIDENCE. AND I THINK WHEN YOU LOOK AT

September 25, 2012

1 THOSE FACTS THAT HELENA STOECKLEY MADE THESE STATEMENTS THAT
2 SHE WAS IN THE -- THAT SHE WAS IN THE MACDONALD HOUSE AND THAT
3 WE NOW HAVE THAT FOLDED IN WITH SOME UNSOURCED HAIRS, WHETHER
4 NATURALLY SHED OR OTHERWISE, IS ADDED EVIDENCE THAT WAS NOT
5 AVAILABLE AT TRIAL, NEWLY DISCOVERED EVIDENCE, THAT WHEN
6 CONSIDERED IN THE EVIDENCE AS A WHOLE, NO REASONABLE JUROR
7 WOULD HAVE CONVICTED AND WE ASK YOU TO GRANT THE MOTION TO
8 VACATE.

9 THE COURT: ARE ONE OF YOU GOING TO ORDER A
10 TRANSCRIPT OF THIS?

11 MR. WIDENHOUSE: WELL, YEAH, I THINK WE WOULD
12 CERTAINLY.

13 THE COURT: WELL, YOU SAID YOU WANTED TO BRIEF THIS.

14 MR. WIDENHOUSE: YES, I'D LIKE 60 DAYS AFTER THE
15 TRANSCRIPT IS DELIVERED IF THAT'S ACCEPTABLE.

16 THE COURT: SURELY. AND YOU WANT SOME MORE TIME
17 THAN THAT, MR. BRUCE?

18 MR. BRUCE: WELL, WE WOULD LIKE A SHORTER TIME
19 PERIOD. WE'D LIKE TO BRING THIS THING TO A CLOSE. BUT, OF
20 COURSE, WE'LL GO BY WHATEVER THE COURT WANTS TO DO.

21 THE COURT: WELL, I WANT EVERYBODY TO HAVE AS MUCH
22 TIME AS THEY WANT.

23 MR. BRUCE: ALL RIGHT. BUT ONE THING WE WOULD LIKE
24 TO VERY MUCH REQUEST THE COURT TO MAKE CLEAR AND TO CLARIFY,
25 THIS IS OUR UNDERSTANDING AND SEE IF THE COURT AGREES, THE

September 25, 2012

1 PARTIES ARE GOING TO BRIEF IT, THE PURPOSE OF WHICH WILL BE TO
2 RECALL ALL OF THE EVIDENCE THAT'S BEEN PRESENTED HERE TO THE
3 COURT AND TO MAYBE EXPLAIN SOME LEGAL POINTS. BUT THE
4 EVIDENCE, WE UNDERSTAND, AT THE CLOSE OF THIS HEARING IS
5 CLOSED BECAUSE WE'VE GOT TO BRING THIS TO SOME SORT OF
6 CLOSURE.

7 THE COURT: I THINK THAT'S REASONABLE. DON'T YOU
8 THINK SO, MR. WIDENHOUSE?

9 MR. WIDENHOUSE: WELL, I'D HATE TO STAKE THAT OUT
10 BECAUSE I NEVER KNOW WHAT'S GOING TO CROP UP TOMORROW AND IF
11 IT WAS SOMETHING EXTREMELY SIGNIFICANT, I WOULD SEEK LEAVE OF
12 THE COURT TO PRESENT IT. I DON'T THINK AS A LAWYER I COULD
13 SAY --

14 THE COURT: WELL, DEPENDING IF IT WAS SOMETHING NEW.

15 MR. WIDENHOUSE: YES.

16 THE COURT: I MEAN, WE WOULDN'T WANT TO GO OVER THE
17 SAME STUFF WE'VE GONE OVER.

18 MR. WIDENHOUSE: OH, CORRECT.

19 THE COURT: OR ANYTHING THAT COULD HAVE BEEN
20 PRESENTED AT THIS TIME.

21 MR. BRUCE: YOUR HONOR, MY POINT IS THAT THE PARTIES
22 HAVE HAD SIX AND A HALF YEARS SINCE THIS CLAIM WAS FILED TO
23 GET READY. WE'VE HAD A YEAR AND A HALF SINCE THE CASE CAME
24 BACK FROM THE FOURTH CIRCUIT. THE COURT WAS NOT OBLIGATED TO
25 HAVE AN EVIDENTIARY HEARING. THE COURT SET ASIDE TWO WEEKS OF

September 25, 2012

1 ITS BUSY SCHEDULE. AND WE SUBMIT THAT IF THE PARTIES HAVE NOT
2 PRESENTED IT BY NOW IN ALL THE REAMS OF PAPER THAT HAVE BEEN
3 FILED UP TILL NOW AND IN THIS TWO WEEK HEARING THAT SHOULD BE
4 THE END OF OPENING THE GATES FOR EVIDENCE AS A WHOLE.

5 THE COURT: WELL, I DON'T KNOW THAT I DISAGREE WITH
6 YOU, BUT I DON'T KNOW THAT I AGREE WITH YOU. I THINK THAT MR.
7 WIDENHOUSE'S VIEW POINT IS THAT SOMETHING CAN ALWAYS COME UP.
8 YOU NEVER KNOW WHAT'S GOING TO HAPPEN THAT MIGHT WARRANT SOME
9 OPENING. I WOULD HOPE NOTHING FURTHER COMES UP.

10 I'M GOING TO GIVE YOU 60 DAYS AFTER THE TRANSCRIPT
11 AND YOU CAN HAVE AS MUCH TIME -- UP TO 60 DAYS AFTER THAT IF
12 YOU WANT, MR. BRUCE.

13 MR. BRUCE: THANK YOU, YOUR HONOR.

14 THE COURT: NOW, COUNSEL, I TALKED TO YOU EARLIER
15 AND SUMMARIZED WHAT I THOUGHT THE GATEKEEPING STANDARD WAS FOR
16 THE SECOND GATEKEEPING FOR A SUCCESSIVE MOTION HABEAS.

17 I'D LIKE FOR YOU BOTH TO ADDRESS THAT AND SEE IF YOU
18 AGREE AS TO WHAT THE STANDARD IS AND I'D ALSO LIKE TO KNOW
19 WHAT YOU THINK THE STANDARD IS ON THE HABEAS -- FULL HABEAS
20 CLAIM.

21 NOW, THAT RAISES ANOTHER ISSUE. THE EVIDENCE AS A
22 WHOLE, AS I UNDERSTAND IT, WAS TO BE CONSIDERED IN DETERMINING
23 WHETHER OR NOT A SUCCESSIVE MOTION WOULD BE ALLOWED. IT IS
24 NOT THE EVIDENCE AS A WHOLE AS TO THE MERITS OF THE CLAIM.

25 DO YOU THINK IT IS, MR. WIDENHOUSE? DO YOU SEE MY

September 25, 2012

1 POINT?

2 MR. WIDENHOUSE: I DO AND I DON'T KNOW THE ANSWER TO
3 THAT.

4 THE COURT: I DON'T KNOW EITHER. THANK YOU. I'D
5 LIKE FOR BOTH OF YOU TO ADDRESS THAT IF YOU WOULD. I THINK
6 THAT MIGHT BE VERY SIGNIFICANT.

7 NOW, OBVIOUSLY, WE HAVE PARTICIPATED IN A HEARING
8 WITH NO RULES. NO RULES. I THINK THAT IF WE TRIED THE CASE,
9 WE'D TRY IT ACCORDING TO RULES. DO YOU ALL DISAGREE WITH
10 THAT?

11 MR. BRUCE: (SHAKES HEAD.)

12 MR. WIDENHOUSE: (SHAKES HEAD.)

13 THE COURT: I JUST DON'T KNOW -- IT SEEMS TO BE
14 SOMEWHAT INCONGRUOUS IN MY MIND THAT YOU COULD HAVE DIFFERENT
15 STANDARDS APPLY BECAUSE YOU COULD HAVE A PASSING OF THE SECOND
16 GATEKEEPING AND HAVE AN ISSUE FAIL ON THE MERITS. CERTAINLY
17 IF YOU HAD YOUR USUAL RULES OF EVIDENCE IN PLACE, I THINK
18 THERE'S A LOT OF THINGS THAT WOULD NOT HAVE COME IN AT THE
19 TRIAL.

20 DO YOU AGREE WITH THAT, MR. BRUCE?

21 MR. BRUCE: YOU MEAN A TRIAL OF A CRIMINAL CASE?
22 OBVIOUSLY, A LOT OF THE EVIDENCE THAT WAS PRESENTED HERE WOULD
23 NOT HAVE BEEN ADMISSIBLE IN A TRIAL OF A CRIMINAL CASE OR A
24 TRIAL OF A CIVIL CASE.

25 THE COURT: THAT'S WHAT I'M SAYING.

September 25, 2012

1 MR. BRUCE: BUT, YOUR HONOR, I THINK THAT WE'RE
2 STUCK WITH THE EVIDENCE AS A WHOLE STANDARD AS THE FOURTH
3 CIRCUIT HAS GIVEN IT TO US. I THINK THE COURT WAS RIGHT TO
4 ALLOW --

5 THE COURT: BUT FOR BOTH? BOTH THE SECOND
6 GATEKEEPING FUNCTION AND ON THE MERITS?

7 MR. BRUCE: WELL, I HADN'T THOUGHT ABOUT THAT.

8 THE COURT: WELL, I HAVE, AND I'M LIKE MR.
9 WIDENHOUSE, I DON'T KNOW WHAT THE ANSWER TO IT IS.

10 MR. BRUCE: I WOULD SAY THAT I THINK OUR POSITION IS
11 GOING TO BE THAT EVEN IF THE COURT CONSIDERS EVERYTHING
12 PRESENTED AT THIS HEARING AS EVIDENCE BEARING ON THE MERITS, I
13 DON'T THINK THAT MACDONALD WILL CARRY HIS BURDEN ANYWAY TO
14 PROVE THE BRITT CLAIM.

15 AND BY THE WAY, THIS IS THE BRITT CLAIM AND THE
16 UNSOURCED HAIRS CLAIM. IT'S NOT THE JERRY LEONARD CLAIM.
17 IT'S NOT THE HELENA STOECKLEY SENIOR CLAIM. THEY'VE GOT TO
18 PROVE THE BRITT CLAIM. THEY'VE GOT TO PROVE THE UNSOURCED
19 HAIRS CLAIM.

20 SO, WE'LL ADDRESS THAT IN OUR BRIEF, BUT MY INITIAL
21 REACTION IS I DON'T THINK WE'RE GOING TO OBJECT TO THE COURT
22 CONSIDERING THE EVIDENCE AS A WHOLE BOTH ON GATEKEEPING AND ON
23 THE MERITS.

24 THE COURT: WELL, I DON'T KNOW IF THAT WOULD BE
25 PROPER.

September 25, 2012

1 MR. BRUCE: WELL, I'M JUST -- WHAT I'M TRYING TO SAY
2 IS IT SEEMS TO ME THAT GIVES HIM -- MACDONALD THE BIGGEST
3 BENEFIT HE COULD GET IN TRYING TO PROVE HIS CLAIM AND THAT WAY
4 IF HE STILL FAILS TO PROVE IT --

5 THE COURT: I DON'T KNOW WHETHER I WOULD WANT TO
6 APPROVE IT AS A MATTER OF PRECEDENT.

7 MR. BRUCE: I UNDERSTAND, YOUR HONOR.

8 (PAUSE.)

9 THE COURT: NOW, I'D LIKE FOR BOTH OF YOU TO SEE IF
10 YOU AGREE ON THE STANDARD THAT'S TO BE APPLIED IN THE SECOND
11 GATEKEEPING FUNCTION OF THIS COURT IN DETERMINING WHETHER
12 SUCCESSIVE MOTIONS SHOULD BE ALLOWED. THERE'S SOME CONFUSION
13 IN MY MIND ABOUT THAT. ALTHOUGH, I THOUGHT I UNDERSTOOD IT.
14 AS I UNDERSTOOD IT, AND MAYBE I'M INCORRECT ABOUT THIS, BUT
15 YOU HAVE TO PROVE A CONSTITUTIONAL VIOLATION IN ORDER FOR --
16 TO CONSIDER ALL OF THE EVIDENCE AS A WHOLE. IS THAT
17 INCORRECT?

18 MR. WIDENHOUSE: AT THE RISK OF SPEAKING TOO
19 QUICKLY, I DON'T THINK IT'S INCORRECT. AND THE WAY I READ THE
20 FOURTH CIRCUIT OPINION, THEY TALK ABOUT THE GATEKEEPING IS
21 THIS AND THEN THE SECOND STEP IS PROVING CONSTITUTIONAL
22 VIOLATION.

23 NOW, YOU HAVE TO SORT OF SCRATCH YOUR HEAD AND SAY,
24 WELL, IF I PROVE NEWLY DISCOVERED EVIDENCE THAT WILL CONVINC
25 NO REASONABLE JUROR WOULD HAVE CONVICTED, HOW IN THE WORLD

September 25, 2012

1 HAVE I NOT PROVEN CONSTITUTIONAL VIOLATION? BUT THAT'S WHAT
2 IT READS LIKE TO ME.

3 THE COURT: IT READ TO ME LIKE YOU HAD TO PROVE THE
4 CONSTITUTIONAL VIOLATION FIRST AND THEN YOU LET EVERYTHING IN.
5 DO YOU DISAGREE WITH THAT, MR. BRUCE?

6 MR. BRUCE: YOUR HONOR, I THINK I DO DISAGREE WITH
7 THAT, ALTHOUGH I'M NOT THAT SURE OF MYSELF, BUT LET ME TRY TO
8 EXPLAIN THE WAY I UNDERSTAND THIS AND I THINK THE PEOPLE AT
9 THE GOVERNMENT TABLE UNDERSTAND THIS.

10 THE COURT IS OBLIGED TO CONSIDER THE PROFFERED
11 EVIDENCE. NOW, THAT, I THINK, IF YOU READ THE FOURTH CIRCUIT
12 OPINION, IS EVIDENCE AS A WHOLE WITH DUE REGARD FOR THE LIKELY
13 CREDIBILITY AND PROBABLE RELIABLE TO DETERMINE IF, IN
14 COMBINATION WITH THE NEWLY DISCOVERED EVIDENCE, THE BRITT
15 CLAIM, IF PROVEN, WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR
16 AND CONVINCING EVIDENCE THAT NO REASONABLE JUROR WOULD HAVE
17 FOUND MACDONALD GUILTY.

18 THE WAY I INTERPRET THIS IS THAT WHEN -- IS YOUR
19 HONOR WAS TRYING TO APPLY THIS WHEN THIS CASE WAS BEFORE THIS
20 COURT BEFORE. AND WHAT THE COURT DID, JUST LIKE IS TYPICALLY
21 DONE IN CIVIL CASES, IS YOU ASSUME FOR PURPOSES OF ARGUMENT
22 THAT THEY COULD PROVE THEIR BRITT CLAIM, AND YOU SAID EVEN IF
23 THEY COULD PROVE THEIR BRITT CLAIM, CONSIDERING THAT IN THE
24 LIGHT OF THE PROFFERED EVIDENCE, IT DOESN'T ESTABLISH BY CLEAR
25 AND CONVINCING EVIDENCE THAT NO REASONABLE JUROR WOULD HAVE

September 25, 2012

1 FOUND MACDONALD GUILTY.

2 NOW, THE FOURTH CIRCUIT SAID, WELL, WHEN YOUR HONOR
3 DID THAT YOU DIDN'T CONSIDER THE EVIDENCE AS A WHOLE.

4 SO, THIS CASE HAS COME BACK FOR THE COURT TO DO
5 GATEKEEPING, CONSIDERING A BROADER RANGE OF EVIDENCE, WHICH
6 THEY PRESENTED AT THIS HEARING, BUT THE PARTIES HAVE ALSO
7 ASKED THE COURT TO LOOK AT THE MERITS AT THE SAME TIME. WE'VE
8 GOT A CONFLATED HEARING THAT'S LOOKING AT BOTH.

9 AND SO I THINK THE COURT IS DOING BOTH SIMULTANEOUS
10 ESSENTIALLY, LOOKING AT THE EVIDENCE AS A WHOLE TO SEE IF --
11 IF THEY COULD PROVE THE BRITT CLAIM THAT WOULD ESTABLISH
12 GATEKEEPING AND HAVE THEY PROVEN THE BRITT CLAIM.

13 THE COURT: WELL, WHAT DOES THE BRITT CLAIM HAVE TO
14 DO WITH GATEKEEPING?

15 MR. BRUCE: NOTHING, EXCEPT IT HAS TO SURVIVE.

16 THE COURT: I'M SORRY. I'LL CONFESS CONSIDERABLE
17 CONFUSION IN MY MIND, BUT I ALWAYS THOUGHT THE GATEKEEPING
18 FUNCTION WAS YOU PROVED A CONSTITUTIONAL VIOLATION AND THEN
19 YOU CONSIDERED -- YOU DISREGARD THAT AND CONSIDERED ALL THE
20 EVIDENCE AS A WHOLE. THAT WAS WHAT GOT YOU THROUGH THE GATE
21 TO AT LEAST CONSIDER ALL OF THE EVIDENCE AS A WHOLE. YOU
22 DON'T AGREE WITH THAT?

23 MR. BRUCE: RESPECTFULLY, I DON'T. I THINK THAT THE
24 CONSTITUTIONAL VIOLATION -- IT SAYS CONSTITUTIONAL VIOLATION
25 ALLEGED IN THE CLAIM. AND I THINK THE CONSTITUTIONAL

September 25, 2012

1 VIOLATION THAT THE MACDONALD SIDE OF THIS CASE HAS ALLEGED IS
2 THE BRITT CLAIM, THAT IS, THAT THERE WAS A CONFESSION THAT THE
3 GOVERNMENT SUPPRESSED AND THERE WAS A THREAT FROM THE
4 PROSECUTOR TO THE POTENTIAL DEFENSE WITNESS.

5 THE COURT: AND THAT WAS A DENIAL OF DUE PROCESS OF
6 LAW.

7 MR. BRUCE: RIGHT. AND YOUR HONOR ANALYZED THAT IN
8 THE 2008 ORDER, IN FACT, BROKE IT INTO THREE PARTS, THE
9 CONFESSION CLAIM, THE THREAT CLAIM AND THE --

10 MR. MURTAGH: FRAUD.

11 MR. BRUCE: -- FRAUD CLAIM BECAUSE THEY ALLEGED THAT
12 BLACKBURN LIED TO JUDGE DUPREE ABOUT THE HELENA STOECKLEY
13 INTERVIEW. AND SO THOSE WERE THE CONSTITUTIONAL CLAIMS. YOU
14 CAN DIVIDE THEM INTO THREE PARTS, BUT THEY CAN ALSO BE LOOKED
15 AT AS ONE. THAT WAS THE CONSTITUTIONAL VIOLATION OR THE
16 CONSTITUTIONAL VIOLATIONS THAT THEY WERE ALLEGING THAT
17 CONSTITUTE THE BRITT CLAIM.

18 SO, THEY'VE GOT TO GET THROUGH GATEKEEPING. IF THEY
19 GET THROUGH GATEKEEPING THEY WOULD YET BE OBLIGED TO PROVE THE
20 CONSTITUTIONAL VIOLATION. AND THAT'S WHAT -- THAT REFERS BACK
21 TO THE IF PROVEN.

22 AND WHAT I THINK WHAT THIS COURT DID -- AND, OF
23 COURSE, WE AGREED WITH WHAT THE COURT DID. THE FOURTH CIRCUIT
24 SAID YOU NEED TO CONSIDER MORE EVIDENCE. BUT WHAT THE COURT
25 DID IN 2008, WAS ASSUME THAT THE BRITT CLAIM, WHICH WAS A

September 25, 2012

1 CONSTITUTIONAL CLAIM, COULD BE PROVEN AND DID IT PASS
2 GATEKEEPING AND THE COURT SAID NO.

3 SO, NOW, WE THINK WE'VE ESTABLISHED, AFTER ALL THE
4 EVIDENCE AS A WHOLE IS CONSIDERED, THAT IT DOESN'T PASS
5 GATEKEEPING, BUT EVEN IF IT DOES, THEY CAN'T PROVE THE BRITT
6 CLAIM, WHICH IS THE CONSTITUTIONAL VIOLATION THEY ALLEGE. THE
7 BRITT CLAIM IS THE CONSTITUTIONAL VIOLATION THAT THEY ALLEGE.

8 AND THAT'S THE PROBLEM, AS MR. MURTAGH SAID, THAT
9 THEY HAVE WITH THE UNSOURCED HAIRS CLAIM BECAUSE EVEN IF THEY
10 COULD PROVE NEWLY DISCOVERED EXCULPATORY EVIDENCE IS PRESENT
11 IN THESE UNSOURCED HAIRS, THERE'S NO CONSTITUTIONAL VIOLATION
12 TO PROVE, AND THAT'S WHERE THE *HERRERA V. COLLINS* PROBLEMS
13 COME IN.

14 THE COURT: WELL, COUNSEL, I'M GOING TO ASK THAT YOU
15 ALL -- SEE IF YOU ALL CAN AGREE ON WHAT THE PROPER -- WHAT THE
16 SECOND GATEWAY CLAIM IS AND COME UP WITH THE -- PUT IN THE
17 ORDER OF PROOF WHERE THE CONSTITUTIONAL VIOLATIONS ARE PROVEN
18 FIRST TO ADMIT THE EVIDENCE OR THE EVIDENCE IS PROVEN FIRST TO
19 ADMIT EVIDENCE OF THE CONSTITUTIONAL VIOLATION. THERE SEEMS
20 TO BE TWO DIFFERENT VIEWS PRESENTED HERE.

21 I ALSO -- IF THE SECOND GATEKEEPING FUNCTION HAS A
22 REASON, AND I PRESUME IT DOES, IF IT FAILED, WHY WOULD YOU GO
23 AHEAD AND HEAR THE MOTION -- HEAR IT ON THE MERITS? I DON'T
24 KNOW. I MEAN, WHAT'S THE FUNCTION OF THE SECOND GATEKEEPING
25 MOTION -- GATEKEEPING PURPOSE -- FUNCTION?

September 25, 2012

1 MR. BRUCE: WELL, YOUR HONOR, I THINK IT PRESENTS
2 THIS HIGH THRESHOLD THAT CONGRESS CREATED TO KEEP US FROM
3 HAVING THESE REPETITIVE HABEAS MOTIONS, THAT HE'S GOT TO GET
4 OVER, THAT HE'S NEVER GOTTEN OVER, WHICH IS TO SHOW BY CLEAR
5 AND CONVINCING EVIDENCE, CONSIDERING THE EVIDENCE AS A WHOLE,
6 THAT THIS IS NEW EVIDENCE, IF HE COULD PROVE IT, WOULD
7 ESTABLISH THAT NO REASONABLE JUROR COULD FIND HIM GUILTY. AND
8 I DON'T THINK WE CAN JUST BLINK THAT AWAY. HE'S GOT TO PASS
9 THAT.

10 BUT WHAT WE'RE HOPEFUL FOR IS THAT THE COURT WILL
11 DETERMINE THAT HE COULDN'T -- HE CAN'T PASS GATEKEEPING TO GET
12 TO THE MERITS, BUT SINCE THE PARTIES HAVE ALREADY ADDRESSED
13 THE MERITS, THE COURT COULD MAKE AN ALTERNATIVE HOLDING THAT
14 HE HASN'T PROVEN HIS CONSTITUTIONAL BRITT CLAIM.

15 THE COURT: WELL, HAVE YOU PRESENTED, MR.
16 WIDENHOUSE, EVERYTHING THAT YOU'D WANT TO PRESENT AT A HEARING
17 ON THE MERITS? IS IT PROPER FOR ME TO REACH THE MERITS AT
18 THIS TIME?

19 IN OTHER WORDS, I DON'T KNOW WHETHER YOU'VE GOT --
20 THERE ARE ISSUES IN THIS CASE, SOME OF THEM I REMEMBER, THE
21 DOLL HAIR, YOU KNOW, AND THE WAX AND MAYBE OTHER THINGS THAT
22 I'M OVERLOOKING. THERE MAY BE OTHER EVIDENCE THAT YOU WOULD
23 WANT TO PRESENT IF THE CASE WAS BEING HEARD ON THE MERITS.

24 MR. WIDENHOUSE: I DON'T KNOW THE ANSWER TO THAT
25 QUESTION.

September 25, 2012

1 THE COURT: WELL, I DON'T EITHER, BUT YOU SEE IT HAS
2 TO -- IN A SENSE, YOU ALL ARE AGREEING THAT I CAN SKIP THE
3 SECOND GATEKEEPING OR MR. BRUCE IS, JUST SKIP IT. IF IT'S
4 REQUIRED BY LAW, I DON'T KNOW HOW I CAN JUST SKIP IT.

5 I THINK WE'VE GOT TO GET -- I THINK THAT YOU AND I
6 AND MR. BRUCE AND POSSIBLY MR. WILLIAMS AND MR. MURTAGH AND
7 MS. COOLEY -- I WANT TO GET IT SETTLED ON WHAT WE'RE DOING AND
8 WHERE WE'RE GOING. AND IT'S NOT CLEAR IN MY MIND. I WISH I
9 COULD TELL YOU THAT IT WAS.

10 MR. WIDENHOUSE: AND I WISH I COULD CLARIFY IT FOR
11 YOU. AT THIS POINT, I CAN'T. IT'S VERY CONFUSING.

12 THE COURT: IT IS. AND I'VE GOT TO GO TO WORK ON
13 THAT AND I'M GOING TO HAVE TO READ A GOOD BIT OF MATERIAL.
14 AND I DON'T -- THAT ISSUE IS NOT EXACTLY IN FOCUS FOR ME.
15 AGAIN, I'M NOT -- I'M JUST MAKING A STATEMENT AS A MATTER OF
16 FACT.

17 AS YOU GENTLEMEN KNOW, I DIDN'T TRY THE CASE, AND I
18 CAN ASSURE YOU THAT I'VE TRIED TO GO BACK AND START IN ON THE
19 TRANSCRIPT. AS I TOLD YOU, YOU CAN'T READ A TRANSCRIPT WHEN
20 THE LAWYERS ARE SHOWING A MAN A PHYSICAL ITEM AND THE WITNESS
21 IS TESTIFYING, THE TRANSCRIPT DOESN'T MEAN ANYTHING TO YOU.
22 IT CAN'T BE DONE. I COULDN'T DO IT. AND THAT'S A HANDICAP
23 THAT, AS FAR AS I'M CONCERNED, THAT I'M GOING TO BE STUCK WITH
24 FOR THE REST OF THIS THING. AND I'D LIKE -- MAYBE WE'LL HAVE
25 ANOTHER MEETING, AFTER YOU ALL HAVE GIVEN IT SOME FURTHER

September 25, 2012

1 THOUGHT, TO TRY TO GET THIS IN FOCUS AND GET THE GROUND RULES
2 AGREED UPON. I DON'T WANT TO APPROACH THE THING WITH A
3 MISTAKEN IDEA OF WHAT WE'RE TRYING TO DO.

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

5 THE COURT: AND I THINK THAT WE, AS LAWYERS, OUGHT
6 TO BE ABLE TO RESOLVE THAT ISSUE AMONGST US.

7 YOU KNOW, I'M GOING TO TELL YOU ALL SOMETHING THAT I
8 FREQUENTLY SAY BECAUSE I FIND IT COMFORTING AND AMUSING, JUDGE
9 GILLIAM, BLESS HIS HEART, USED TO SAY WHEN HE WAS REVERSED, HE
10 SAYS, I WASN'T WRONG, IT JUST MEANS THE FOURTH CIRCUIT
11 DISAGREED WITH ME.

12 BUT I'D LIKE FOR US TO TRY TO GET TOGETHER AND GET
13 THIS THING WORKED OUT. I MAY HAVE A CONFERENCE WITH YOU ALL
14 AGAIN BEFORE WE TRY TO GET THIS THING FINALLY MESHED OUT.

15 BUT MAYBE YOU ALL CAN AGREE UPON IT OR DISCUSS IT
16 TOGETHER AND PUT IT IN SOME SORT OF AGREED FORM FOR YOUR
17 BRIEFS TO APPROACH IT. I DON'T KNOW WHETHER YOU CAN OR NOT,
18 BUT YOU CAN TRY.

19 MR. BRUCE: WELL, YOUR HONOR, I THINK THAT THE COURT
20 -- IF WE GO BACK AND LOOK AT THE COURT'S ORDERS IN THE RUN UP
21 TO THIS HEARING, I THINK WHAT THE COURT WAS SAYING TO THE
22 PARTIES IS SORT OF IT'S NOW OR NEVER, THAT THIS HEARING WAS
23 GOING TO BE ON THE BRITT CLAIM AND THE UNSOURCED HAIRS CLAIM
24 AND IMPLICITLY ON THE EVIDENCE AS A WHOLE BECAUSE THAT'S WHAT
25 THE COURT -- THE FOURTH CIRCUIT SAID YOU HAD TO CONSIDER AND

September 25, 2012

1 THAT'S WHAT YOU ALLOWED PRESENTED.

2 THE COURT: WELL, NOW, YOU UNDERSTAND THAT THIS
3 COURT HAS NOT SEEN ALL OF THE EVIDENCE AS A WHOLE. I HAVE NOT
4 SEEN ALL OF THE EVIDENCE AS A WHOLE.

5 MR. BRUCE: RIGHT.

6 THE COURT: YOU ALL -- I'M JUST EXPRESSING A
7 FRUSTRATION.

8 MR. BRUCE: WELL, YOUR HONOR, WHAT I'M SAYING IS
9 THAT'S THE PARTIES' RESPONSIBILITY. IT'S OUR RESPONSIBILITY
10 AND THEIR RESPONSIBILITY. IF THERE'S SOMETHING THAT THE
11 PARTIES WANTED THE COURT TO CONSIDER AS THE EVIDENCE AS A
12 WHOLE, THIS WAS OUR OPPORTUNITY, THESE TWO WEEKS THAT THE
13 COURT GAVE US.

14 THE COURT: I AGREE. I AGREE WITH THAT.

15 MR. BRUCE: AND, I THINK, YOU KNOW, THE PARTIES
16 CONCENTRATED ON WHAT THEY THOUGHT WAS STRONG. IF SARAN DOLL
17 HAIR WAS MENTIONED IN THE FOURTH CIRCUIT'S OPINION AND
18 SOMEBODY THOUGHT IT WAS WORTHWHILE BRINGING IT UP HERE THEY
19 SHOULD HAVE INTRODUCED SOMETHING ABOUT SARAN DOLL HAIR.

20 THE COURT: I THINK IT WAS MENTIONED.

21 MR. BRUCE: BUT WHAT I'M SAYING IS, THIS WOULD HAVE
22 BEEN THE TIME FOR EITHER PARTY TO ADDRESS THE SARAN HAIR ISSUE
23 IF THEY HAD ANYTHING MORE TO SAY THAN WHAT'S IN THE RECORD OF
24 THIS CASE GOING BACK 30 YEARS.

25 AND ANOTHER THING -- AND AS I SAID, IT'S THE

September 25, 2012

1 RESPONSIBILITY OF THE PARTIES. IF WE HAVEN'T GIVEN YOU A
2 CLEAR ENOUGH PICTURE OF WHAT WENT ON IN THE TRIAL THEN THAT'S
3 WHAT WE NEED TO DO IN OUR NEXT BRIEF.

4 AND ANOTHER THING THAT WE WILL POINT OUT TO THE
5 COURT IS -- IN OUR BRIEF, IS TO GO BACK TO THESE OTHER
6 OPINIONS WRITTEN BY JUDGE DUPREE AND THE FOURTH CIRCUIT AND
7 THEY RECITE THE TRIAL EVIDENCE AS A WHOLE, BUT IT'S UP TO THE
8 PARTIES TO GET TO THE COURT WHAT THEY WANT THE COURT TO
9 CONSIDER ON THESE ISSUES AND THE EVIDENCE AS A WHOLE.

10 THE COURT HAS BENT OVER BACKWARDS TO GIVE THE
11 PARTIES AN OPPORTUNITY, CUT TWO WEEKS OUT OF ITS SCHEDULE,
12 GIVEN THE PARTIES MANY CONTINUANCES TO GET READY FOR THIS
13 HEARING. AND WE SAY IF IT HASN'T BEEN PRESENTED BY NOW, IT'S
14 PROBABLY NOT IMPORTANT, YOUR HONOR. THANK YOU.

15 THE COURT: WELL, YOU CERTAINLY GOT A GOOD POINT,
16 MR. BRUCE. WELL, I'LL LOOK FORWARD TO GETTING YOUR BRIEFS,
17 COUNSEL.

18 MR. BRUCE: THANK YOU.

19 THE COURT: AND IN YOUR BRIEFS IF YOU THINK ANYTHING
20 IS IMPORTANT FROM THE TRIAL YOU SHOULD PUT IT IN YOUR BRIEFS
21 BECAUSE YOU CAN'T ASSUME THAT I KNOW ABOUT IT.

22 I WOULD JUST ALSO LIKE TO SAY THAT JUDGE DUPREE WAS
23 A COLLEAGUE OF MINE AND I HAD THE GREATEST ADMIRATION FOR HIM.

24 ALL RIGHT, ADJOURN COURT.

25 (WHEREUPON, THESE PROCEEDINGS ADJOURNED AT 4:12 P.M.)

September 25, 2012

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT OF SAID PROCEEDINGS.

/s/ STACY SCHWINN, CCR, CVR-M
STACY SCHWINN, CCR, CVR-M

11/19/12
DATE

September 25, 2012