IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 15-7136

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JEFFREY R. MACDONALD,

Defendant-Appellant.

JOINT APPENDIX
VOLUME I of VII

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

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TABLE OF CONTENTS

Volume I of VII

Appendix Page

Docket Entries 1

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

Testimony of Richard D. Tevere 42

Testimony of Kenneth C. Mica 80

Testimony of William F. Ivory 135

Testimony of Robert Shaw 396

Testimony of Dr. Edward Gammel 474

Testimony of Dr. George E. Hancock 514

Testimony of Michael Newman 548

Testimony of Paul Connolly 563

Testimony of Elizabeth Ramage 568

Testimony of Dr. Severt H. Jacobson 576

Testimony of Robert Caverly 594

Testimony of Dr. Frank Gemma 614

Testimony of Bennie Hawkins 617

Testimony of Hilyard Medlin 626

Testimony of Mildred Kassab 646

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

Testimony of Terry Laber.....690

Testimony of Janice Glisson.....702

TABLE OF CONTENTS

Volume II of VII

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

Testimony of Dillard Browning 745

Testimony of Charles Michael Hoffman.....798

Testimony of Paul Stombaugh 810

Testimony of Shirley Green 891

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

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

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

Testimony of Dr. George Podgorny 1040

Testimony of James Milne.....1041

Discussion on missing witnesses.....1047

Testimony of Helena Stoeckley.....1051

Argument to Court.....1342

Bench Conference.....1343

Testimony of P.E. Beasley 1359

Testimony of Jane Zillioux.....1404

Testimony of Charles Underhill 1426

TABLE OF CONTENTS

Volume III of VII

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

Testimony of Wendy Rouder 1465

Testimony of William Posey 1520

Testimony of Carmine Welch.....1569

Testimony of James Gaddis.....1572

Testimony of Jeffrey R. MacDonald 1582

Bench Conference.....1658

Government Exhibit 1153 marked 1693

Government Closing Argument.....1694

Defendant's Closing Argument 1699

Government Trial Exhibits

Exhibit 1 (photo).....1700

Exhibit 2 (photo).....1703

Exhibit 24 (photo).....1704

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

Exhibit 27 (photo).....1706

Exhibit 40 (photo).....1707

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

Exhibit 41 (photo).....1709

Exhibit 42 (photo).....1710

Exhibit 43 (photo).....1711

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

Exhibit 44 (photo).....1713

Exhibit 45 (photo).....1714

Exhibit 54 (photo).....1715

Exhibit 55 (photo).....1716

Exhibit 56 (photo).....1717

Exhibit 57 (photo).....1718

Exhibit 58 (photo).....1719

Exhibit 59 (photo).....1720

Exhibit 62 (photo).....1721

Exhibit 64 (photo).....1722

Exhibit 65 (photo).....1723

Exhibit 70 (photo).....1724

Exhibit 71 (photo).....1725

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

Exhibit 72 (photo).....1727

Exhibit 73 (photo).....1728

Exhibit 74 (photo).....1729

Exhibit 75 (photo).....1730

Exhibit 76 (photo).....1731

Exhibit 77 (photo).....1732

Exhibit 78 (photo).....1733

Exhibit 80 (photo).....1734

Exhibit 81 (photo).....1735

Exhibit 100 (photo).....1736

Exhibit 210 (photo).....1737

Exhibit 211 (photo).....1738

Exhibit 211a (photo) 1739

Exhibit 212 (photo) 1740

Exhibit 214 (photo) 1741

Exhibit 422 (photo) 1742

Exhibit 424 (photo) 1743

Exhibit 425 (photo) 1744

Exhibit 428 (photo) 1745

Exhibit 430 (photo) 1746

Exhibit 597 (photo) 1747

Exhibit 606a (photo) 1748

Exhibit 607 (photo) 1749

Exhibit 608a (photo) 1750

Exhibit 609 (photo) 1751

Exhibit 610 (photo) 1752

Exhibit 611 (photo) 1753

Exhibit 612 (photo) 1754

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

Exhibit 644 (Summary of Blood Analyses) 1756

Exhibit 654 (Location of Threads and Yarns) 1757

Exhibit 763 (photo).....1758

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

Exhibit 768 (photo).....1760

Exhibit 771 (photo).....1761

Exhibit 772 (photo).....1762

Exhibit 776 (photo).....1763

Exhibit 777 (photo).....1764

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

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

Exhibit 790 (photo).....1767

Exhibit 791 (photo).....1768

Exhibit 792 (photo).....1769

Exhibit 793 (photo).....1770

Exhibit 794 (photo).....1771

Exhibit 795 (photo).....1772

Exhibit 796 (photo).....1773

Exhibit 808 (photo).....1774

Exhibit 809 (photo).....1775

Exhibit 811 (photo).....1776

Exhibit 812 (photo).....1777

Exhibit 952 (photo).....1778

Exhibit 967 (Map of Corregidor Courts).....1779

Exhibit 968 (photo).....1780

Exhibit 978 (Items Found in Pile on Floor of Master Bedroom).....1781

Exhibit 983 (South Bedroom – Kimberly MacDonald).....1782

Exhibit 1070 (photo).....1783

Exhibit 1077 (photo).....1784

Exhibit 1078 (photo).....1785

Exhibit 1135 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume I).....1786

Exhibit 1136 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume II).....1887

Exhibit 1141 (Table of Contents Subject Matter of Statements).....1892

Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence, filed January 17, 2006.....1932

Memorandum in Support of Jeffrey R. MacDonald's Motion Under 28 U.S.C. Section 2255 To Set Aside His Sentence, filed January 17, 2006.....1954

Exhibit 1 (Affidavit of Jimmy Britt).....2006

Exhibit 3 (Affidavit of Lee Tart).....2010

Exhibit 7 (Affidavit of Everett Morse, Bryant Lane, Donald Buffkin).....2012

Petitioner's Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction – Namely Newly Discovered DNA Evidence, filed March 22, 2006 2020

Memorandum of Evidence and Points and Authorities in Support of Petitioner's Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction, filed March 22, 2006 2026

Petitioner's Motion, Pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, to Expand the Record to Include the Itemized Authenticated Evidence, filed March 23, 2006.....2033

Petitioner's Statement of Itemized Material Evidence- With Citations to the Record or to Authenticated Proofs- In Support of his Motion Under 28 U.S.C. § 2255 to Vacate his Sentence, filed March 23, 2006 2038

Excerpts of Reply in Response to Motion to Vacate, Set Aside or Correct Sentence, filed May 8, 2006 2064

Excerpt of Notice of Death, filed October 28, 2008.....2068

Excerpts of Order Denying Motion for Leave to File Successive 2255 Motion; Denying Motion to Amend or Correct; Denying Motion to Expand the Record; Granting Motion to; Denying Motion to Supplement Itemized Evidence, filed November 4, 2008 2069

Petitioner's Motion for Hearing Attachment, Letter from Lee Tart to Counsel, filed September 20, 2011.....2078

Order as to Petitioner's Motion Under the IPA, filed September 21, 2011 2079

Affidavit of Craig S. Chamberlain, filed December 12, 2011.....2081

Supplemental Affidavit of Craig S. Chamberlain, filed December 12, 2011.....2088

Affidavit of Dillard O. Browning, filed December 12, 2011 2098

Affidavit of Grant D. Graham, Sr., filed December 12, 2011 2105

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

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

Affidavit of Robert Fram, filed December 12, 2011 2145

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

TABLE OF CONTENTS

Volume IV of VII

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

Testimony of Wade Smith 2185

Testimony of Mary Britt.....2386

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

Testimony of Mary Britt.....2398

Testimony of Eugene Stoeckley 2431

Testimony of Wendy Rouder 2509

Testimony of Laura Redd 2565

Testimony of Sara McMann 2582

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

Testimony of Frank Mills 2635

Testimony of Dennis Meehan 2680

Testimony of Janice Meehan 2701

Testimony of Eddie R. Sigmon 2708

Testimony of William I. Berryhill, Jr. 2727

Testimony of Maddie Reddick 2736

Testimony of J. Rich Leonard 2748

Testimony of James L. Blackburn 2759

TABLE OF CONTENTS

Volume V of VII

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

Testimony of Jack B. Crawley, Jr. 2877

Testimony of William Ivory 2923

Testimony of Raymond Madden, Jr. 3045

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

Testimony of Raymond Madden, Jr. 3073

Testimony of Joe McGinniss. 3114

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

Testimony of Joe McGinniss. 3227

Testimony of Jerry Leonard. 3271

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

Petitioner's Closing Argument. 3408

Government's Closing Argument. 3462

Petitioner's Rebuttal. 3561

TABLE OF CONTENTS

Volume VI of VII

Government Exhibits Introduced at September 2012 Evidentiary Hearing

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

Government Exhibit 2001 (Wire Document of August 1979) 3589

Government Exhibit 2002 (FBI Report of August 14, 1979 Interview of Helena Stoeckley).....3592

Government Exhibit 2003 (Report of Arrest of Helena Stoeckley).....3595

Government Exhibit 2006 (Fingerprint Card).....3597

Government Exhibit 2007 (Fingerprint Card).....3599

Government Exhibit 2008 (Helena Stoeckley Booking Report).....3602

Government Exhibit 2009 (Helena Stoeckley Booking Photo).....3608

Government Exhibit 2010 (Sworn Statement of Vernoy Kennedy).....3609

Government Exhibit 2011 (Court Reporter Certification Vernoy Kennedy) 3624

Government Exhibit 2053 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3626

Government Exhibit 2054 (Helena Stoeckley Disposition Sheet).....3627

Government Exhibit 2055 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3628

Government Exhibit 2056 (Helena Stoeckley Commitment).....3629

Government Exhibit 2057 (Helena Stoeckley Commitment).....3630

Government Exhibit 2058 (Helena Stoeckley Commitment).....3631

Government Exhibit 2059 (Helena Stoeckley Release).....3632

Government Exhibit 2060 (Helena Stoeckley Release).....3633

Government Exhibit 2061 (Helena Stoeckley Release).....3634

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

Government Exhibit 2063 (Helena Stoeckley Disposition Sheet) 3636

Government Exhibit 2064 (Helena Stoeckley Commitment) 3637

Government Exhibit 2065 (Helena Stoeckley Commitment) 3638

Government Exhibit 2066 (Helena Stoeckley Release) 3639

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

Government Exhibit 2068 (1977 Jail Book) 3641

Government Exhibit 2069 (1977 Jail Book) 3642

Government Exhibit 2070 (1977 Jail Book) 3643

Government Exhibit 2071 (1977 Jail Book) 3644

Government Exhibit 2072 (1977 Jail Book) 3645

Government Exhibit 2073 (1977 Jail Book) 3646

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

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

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

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

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

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

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

Government Exhibit 2103a (Raleigh Map) 3695

Government Exhibit 2104 (South Carolina Map) 3696

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

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

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

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

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

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

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

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

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

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

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

Government Exhibit 4000 (MacDonald Handwritten Notes) 3935

Government Exhibit 4002 (Fatal Vision Book Excerpt) 3953

Government Exhibit 6001 (Military Police Receipt) 3958

Government Exhibit 6002 (Inventory) 3962

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

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

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

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

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

Government Exhibit 7015 (NC State Bar Ethics Inquiry) 4027

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

Petitioner's Exhibits Introduced at September 2012 Evidentiary Hearing

Petitioner's Exhibit 5004 (Candle Wax Trial Testimony) 4033

Petitioner's Exhibit 5021 (Declaration of Jimmy Friar) 4045

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

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

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

Petitioner's Exhibit 5027 (Affidavit of Ellen Dannelly) 4057

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

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

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

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

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

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

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

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

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

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

Petitioner's Exhibit 5115 (Letter from Judge Dupree to Wendy Rouder) … 4102

TABLE OF CONTENTS

Volume VII of VII

Stipulations, filed September 17, 2012 4103

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

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

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

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

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

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

Petitioner's Notice of Appeal, filed July 16, 2015 4631

2255,APPEAL,CLOSED,Exhibits

U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Old fayetteville Division)
CRIMINAL DOCKET FOR CASE #: 3:75-cr-00026-F-1

Case title: USA v. MacDonald

Date Filed: 01/24/1975
Date Terminated: 08/27/1979

Assigned to: Senior Judge James C. Fox

Appeals court case numbers: '08-8525',
14-7543 4th Circuit Court of Appeals,
15-7136 4th Circuit Court of Appeals

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Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

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Date Filed	#	Docket Text
10/27/1999	117	Docket Sheet as to Jeffrey MacDonald: (Attachments: # 1 Page 4 - 10# 2 Page 11 - 20# 3 pages 21 - 47) (Deputy Clerk, GM) (Entered: 03/09/2006)
10/27/2004	109	NOTICE of Appearance for Jeffrey MacDonald by Attorney Timothy D. Junkin and John C. Moffett (gm) (Entered: 11/08/2004)

04/08/2005	110	Document Filed by USA as to Jeffrey MacDonald Titled: Government's Documentation of Contractual and Financial Arrangements with AFIP cc to Judge Fox (gm) (Entered: 04/19/2005)
01/17/2006	111	MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.) by Jeffrey MacDonald. (Deputy Clerk, GM) Modified on 9/11/2012 to update remand. (McDowell, G.) (Entered: 01/23/2006)
01/17/2006	112	NOTICE OF ATTORNEY APPEARANCE of Out of State Counsel appearing for Jeffrey MacDonald (Deputy Clerk, GM) (Entered: 01/23/2006)
01/17/2006	113	MOTION for Leave to File Excess Pages regarding 111 Motion to Vacate by Jeffrey MacDonald. (Deputy Clerk, GM) (Entered: 01/23/2006)
01/17/2006		Motion Submission as to Jeffrey MacDonald re 111 MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.), 113 MOTION for Leave to File Excess Pages (Deputy Clerk, GM) (Entered: 01/23/2006)
01/19/2006	114	ORDER granting 113 Motion for Leave to File Excess Pages as to Jeffrey MacDonald (1). Signed by Judge James C. Fox on 1/19/2006. (Deputy Clerk, GM) (Entered: 01/23/2006)
01/19/2006	115	Memoradum in Support by Jeffrey MacDonald re 111 MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.) (Attachments: # 1 Exhibit 1 - 4pp5744# 2 Exhibit 4p5745 - 10# 3 Exhibit 6)(Deputy Clerk, GM) (Entered: 01/23/2006)
01/27/2006	116	ORDER as to Jeffrey MacDonald re 111 MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.) filed by Jeffrey MacDonald directing the US Attorney to file an answer; granting leave of government to exceed page limitation for its response up to 50 pages and Response due by 3/30/2006. Signed by Judge James C. Fox on 1/27/2006. (Deputy Clerk, GM) (Entered: 02/01/2006)
03/09/2006	118	NOTICE *of Substitution of Counsel* (Bruce, John) (Entered: 03/09/2006)
03/10/2006	119	NOTICE *of Filing* regarding 111 Motion to Vacate(Attachments: # 1 Letter from Nuclear DNA Section# 2 DNA Reports of Laboratory Examinations) (Murtagh, Brian) (Entered: 03/10/2006)
03/13/2006	120	Letter as to Jeffrey MacDonald regarding 111 Motion to Vacate (Attachments: # 1 Affidavit Donald Buffkin) (Deputy Clerk, GM) (Entered: 03/17/2006)
03/22/2006	122	MOTION to Add an additional predicate to his previously filed 111 motion under 28 USC Section 2255 to vacate his conviction-namely newly discovered DNA evidence by Jeffrey MacDonald. (Deputy Clerk, GM) (Entered: 03/23/2006)
03/22/2006	123	Memoradum of Evidence and Authorities in Support by Jeffrey MacDonald re 122 MOTION to Add an additional predicate to his previously filed 111 motion under 28 USC Section 2255 to vacate his conviction-namely newly discovered DNA evidence.... (Attachments: # 1 Appendix Tabs 1 - 3# 2 Appendix Tab 4 - 7 part 1# 3 Appendix Tab 4 - 7 cont)(Deputy Clerk, GM) (Entered: 03/23/2006)

03/23/2006	121	MOTION for Leave to File *Appendix to Response Conventionally* by USA as to Jeffrey MacDonald. (Attachments: # 1)(Bruce, John) (Entered: 03/23/2006)
03/23/2006	124	MOTION to expand the record to include the itemized authenticated evidence by Jeffrey MacDonald. (Deputy Clerk, GM) (Entered: 03/27/2006)
03/23/2006	125	Memoradum in Support by Jeffrey MacDonald re 124 MOTION to expand the record to include the itemized authenticated evidence (Deputy Clerk, GM) (Entered: 03/27/2006)
03/23/2006	126	Statement of Itemized Material Evidence by Jeffrey MacDonald re 124 MOTION to expand the record to include the itemized authenticated evidence (Attachments: # 1 Appendix 2 pp 1 - 100# 2 Appendix 2 pp 101 - 166# 3 Affidavit 3 pp 1 - 100# 4 Appendix 3 pp 101 - 175# 5 Appendix 3 pp 176 - 248)(Deputy Clerk, GM) (Entered: 03/27/2006)
03/29/2006	127	ORDER denying 121 Motion for Leave to File Appendix to Response Conventionally as to Jeffrey MacDonald (1). Signed by Judge James C. Fox on 3/29/2006. (Deputy Clerk, GM) (Entered: 03/29/2006)
03/30/2006	128	RESPONSE to Motion by USA as to Jeffrey MacDonald re 111 MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.) (Murtagh, Brian) (Entered: 03/30/2006)
03/30/2006	129	MOTION to Strike *Exhibits Submitted in Connection with Petition for Relief Under 28 U.S.C. 2255, and for Additional Relief* by USA as to Jeffrey MacDonald. (Attachments: # 1 Appendix Tab 1, part 1# 2 Appendix Tab 1, part 2# 3 Appendix Tab 1, part 3# 4 Appendix Tab 2 and Tab 3# 5 Appendix Tab 4 and Tab 5# 6 Appendix Tab 5, part B through Tab 9# 7 Appendix Tab 10 through Tab 15)(Murtagh, Brian) (Entered: 03/30/2006)
03/30/2006	130	NOTICE *of Filing [Appendix Volume III]* re 128 Response to Motion (Attachments: # 1 Appendix Volume III, Part 1 (pp 5508-5549)# 2 Appendix Volume III, Part 2 (pp 5550-5599)# 3 Appendix Volume III, Part 3 (pp 5600-5649)# 4 Appendix Volume III, Part 4 (pp 5650-5689)# 5 Appendix Volume III, Part 5 (pp 5690-5729)# 6 Appendix Volume III, Part 6 (pp 5760-5769)# 7 Appendix Volume III, Part 7 (pp 5770-5800))(Murtagh, Brian) (Entered: 03/30/2006)
03/30/2006	131	NOTICE *of Filing [Appendix Volume IV]* re 128 Response to Motion (Attachments: # 1 Appendix Volume IV, Part 1 (pp 5801-5839)# 2 Appendix Volume IV, Part 2 (pp 5840-5879)# 3 Appendix Volume IV, Part 3 (pp 5880-5919)# 4 Appendix Volume IV, Part 4 (pp 5920-5959)# 5 Appendix Volume IV, Part 5 (pp 5960-5999)# 6 Appendix Volume IV, Part 6 (pp 6000-6029)# 7 Appendix Volume IV, Part 7 (pp 6030-6056))(Murtagh, Brian) (Entered: 03/30/2006)
03/30/2006	132	NOTICE *of Filing [Appendix Volumes I, II, and VI]* re 128 Response to Motion (Attachments: # 1 Appendix Volume I, Tab 1 through Tab 4# 2 Appendix Volume I, Tab 5 through Tab 7# 3 Appendix Volume I, Tab 8 and Tab 9# 4 Appendix Volume 1, Tab 10# 5 Appendix Volume 1, Tab 11 through Tab 14# 6 Appendix Volume I, Tab 15 through Tab 20# 7 Appendix Volume II, Tab 1 (part 1)# 8 Appendix Volume II, Tab 1 (part 2)# 9 Appendix Volume

		II, Tab 1 (part 3)# 10 Appendix Volume II, Tab 1 (part 4)# 11 Appendix Volume II, Tab 1 (part 5)# 12 Appendix Volume II, Table of Contents# 13 Appendix Tab 2 through Tab 5# 14 Appendix Volume VI, Tab 1# 15 Appendix Volume VI, Tab 2 through Tab 6# 16 Appendix Volume VI, Tab 7 through Tab 11# 17 Appendix Volume VI, Tab 12# 18 Appendix Volume VI, Tab 13# 19 Appendix Volume VI, Tab 14 and Tab 15# 20 Appendix Volume VI, Tab 16)(Murtagh, Brian) (Entered: 03/30/2006)
04/06/2006	133	RESPONSE in Opposition by Jeffrey MacDonald re 129 MOTION to Strike *Exhibits Submitted in Connection with Petition for Relief Under 28 U.S.C. 2255, and for Additional Relief* (Deputy Clerk, GM) (Entered: 04/06/2006)
04/13/2006	134	RESPONSE to Motion by USA as to Jeffrey MacDonald re 122 MOTION to Amend/Correct (Bruce, John) (Entered: 04/13/2006)
04/13/2006	135	RESPONSE to Motion by USA as to Jeffrey MacDonald re 122 MOTION to Amend/Correct *Memorandum in Support of Response to Motion* (Attachments: # 1 Appendix Volume VII, Cover# 2 Appendix Volume VII, Table of Contents# 3 Appendix Volume VII, Tab 1# 4 Appendix Volume VII, Tab 2 (part 1)# 5 Appendix Volume VII, Tab 2 (part 2)# 6 Appendix Volume VII, Tab 3# 7 Appendix Volume VII, Tab 4 (part 1)# 8 Appendix Volume VII, Tab 4 (part 2)# 9 Appendix Volume VII, Tab 5# 10 Appendix Volume VII, Tab 6# 11 Appendix Volume VII, Tab 7)(Bruce, John) (Entered: 04/13/2006)
04/13/2006	137	MOTION for Extension of Time to File Reply as to 135 Response to Motion,, by Jeffrey MacDonald. (Deputy Clerk, GM) (Entered: 04/17/2006)
04/17/2006	136	NOTICE *of Filing* (Attachments: # 1 Appendix Volume XIII, Cover# 2 Appendix Volume XIII, Tab 1 (part 1)# 3 Appendix Volume XIII, Tab 1 (part 2)# 4 Appendix Volume XIII, Tab 1 (part 3)# 5 Appendix Volume XIII, Tab 1 (part 4)# 6 Appendix Volume XIII, Tab 1 (part 5)# 7 Appendix Volume XIII, Tab 2 (part 1)# 8 Appendix Volume XIII, Tab 2 (part 2)# 9 Appendix Volume IX, Cover# 10 Appendix Volume IX (part 1)# 11 Appendix Volume IX, (part 2)# 12 Appendix Volume IX (part 3)# 13 Appendix Volume IX (part 4)) (Murtagh, Brian) (Entered: 04/17/2006)
04/17/2006		Motion Submission as to Jeffrey MacDonald re 137 MOTION for Extension of Time to File Response/Reply as to 135 Response to Motion,, (Deputy Clerk, GM) (Entered: 04/17/2006)
04/17/2006	138	RESPONSE to Motion by USA as to Jeffrey MacDonald re 124 MOTION to expand the record to include the itemized authenticated evidence (Attachments: # 1 Appendix Volume X, Cover# 2 Appendix Volume X, Tab 1# 3 Appendix Volume X, Tab 2# 4 Appendix Volume X, Tab 3# 5 Appendix Volume X, Tab 4 (part 1)# 6 Appendix Volume X, Tab 4 (part 2)# 7 Appendix Volume X, Tab 5# 8 Appendix Volume X, Tab 6# 9 Appendix Volume X, Tab 7# 10 Appendix Volume X, Tab 8# 11 Appendix Volume X, Tab 9# 12 Appendix Volume X, Tab 10# 13 Appendix Volume X, Tab 11)(Murtagh, Brian) (Entered: 04/17/2006)
04/17/2006	139	RESPONSE to Motion by USA as to Jeffrey MacDonald re 124 MOTION to expand the record to include the itemized authenticated evidence *Memorandum*

		in Support of Response of the United States to Petitioner's Motion to Expand the Record (Murtagh, Brian) (Entered: 04/17/2006)
04/18/2006	140	NOTICE *of Filing* re 138 Response to Motion,, (Attachments: # 1 Appendix Appendix, Volume X Table of Contents)(Murtagh, Brian) (Entered: 04/18/2006)
04/18/2006	141	ORDER granting 137 Motion for Extension of Time to File Reply as to Jeffrey MacDonald (1) - Reply due by 5/8/2006. Signed by Judge James C. Fox on 4/18/2006. (Deputy Clerk, GM) (Entered: 04/19/2006)
05/08/2006	142	REPLY TO RESPONSE to Motion by Jeffrey MacDonald re 111 MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.) (Attachments: # 1 Exhibit 1 - 7# 2 Exhibit 8-14)(Deputy Clerk, GM) (Entered: 05/09/2006)
07/17/2006		Motion Submission as to Jeffrey MacDonald re 122 MOTION to Amend/Correct, 129 MOTION to Strike *Exhibits Submitted in Connection with Petition for Relief Under 28 U.S.C. 2255, and for Additional Relief*, 124 MOTION to expand the record to include the itemized authenticated evidence (Deputy Clerk, GM) (Entered: 07/17/2006)
05/03/2007	143	MOTION Supplement itemized material evidence by Jeffrey MacDonald. (Attachments: # 1 Affidavit Helena Stoeckley (senior))(Miles, Hart) (Entered: 05/03/2007)
05/03/2007		NOTICE OF DEFICIENCY by Jeffrey MacDonald re: 143 Motion for Miscellaneous Relief The Motion submitted does not bare the /s/ electronic signatures of the Attorney's. Please resubmit with the proper /s/ signatures. (Deputy Clerk - LKF,) (Entered: 05/04/2007)
05/06/2007	144	MOTION Supplement itemized material evidence by Jeffrey MacDonald. (Attachments: # 1 Affidavit Helena Stoeckley (senior))(Miles, Hart) (Entered: 05/06/2007)
05/07/2007	145	RESPONSE to Motion by USA as to Jeffrey MacDonald re 144 MOTION Supplement itemized material evidence (Attachments: # 1 Exhibit A)(Murtagh, Brian) (Entered: 05/07/2007)
05/08/2007		Motion Submission as to Jeffrey MacDonald re 144 MOTION Supplement itemized material evidence (Deputy Clerk - GM,) (Entered: 05/08/2007)
05/11/2007	146	REPLY TO RESPONSE to Motion by Jeffrey MacDonald re 144 MOTION Supplement itemized material evidence *Reply to Government's Response* (Miles, Hart) (Entered: 05/11/2007)
05/14/2007		SUBMITTED to Judge Fox Petitioners Reply to Response of the United States to Motion to Supplement Statement of itemized material evidence #146 as to Jeffrey MacDonald: (Deputy Clerk - FS,) (Entered: 05/14/2007)
09/06/2007	147	NOTICE *of Filing* (Attachments: # 1 Exhibit) (Murtagh, Brian) (Entered: 09/06/2007)
11/13/2007	148	NOTICE *Response of the United States to Request of Movant* (Attachments: # 1 Exhibit # 2 Exhibit) (Bruce, John) (Entered: 11/13/2007)

10/28/2008	149	NOTICE *of Death of Affiant* (Attachments: # 1 Attachment 1) (Bruce, John) (Entered: 10/28/2008)
11/04/2008	150	ORDER denying 111 Motion for for Leave to File Successive 2255 motion; denying 122 Motion to Amend/Correct as to Jeffrey MacDonald (1); denying 124 Motion to Expand the Record as to Jeffrey MacDonald (1); granting 129 Motion to Strike as to Jeffrey MacDonald (1); denying 144 Motion to Supplement Itemized Evidence as to Jeffrey MacDonald (1). Signed by Judge James C. Fox on 11/4/2008. (Indig, A.) (Entered: 11/04/2008)
11/04/2008	151	JUDGMENT ON 2255 MOTION as to Jeffrey MacDonald. Issued by Dennis Iavarone, Clerk. Signed by Clerk of Court on 11/4/2008. (Indig, A.) (Entered: 11/04/2008)
11/24/2008	152	MOTION for Publication and Modification of Order by USA as to Jeffrey MacDonald. (Attachments: # 1 Exhibit Affidavit of Jim Cheroke, # 2 Exhibit FBI Report, # 3 Exhibit FBI 302, # 4 Exhibit Commitment Order, # 5 Exhibit Fingerprint Card, # 6 Exhibit Jail Book, # 7 Exhibit FBI Report, # 8 Exhibit Obituary, # 9 Exhibit Newspaper Article, # 10 Exhibit Records Center Letter, # 11 Exhibit Release Order, # 12 Exhibit Sworn Statement, # 13 Errata Release & Commitment Order) (Bruce, John) (Entered: 11/24/2008)
12/01/2008	153	NOTICE OF ATTORNEY APPEARANCE: Joseph E. Zeszotarski, Jr appearing for Jeffrey MacDonald (Zeszotarski, Joseph) (Entered: 12/01/2008)
12/01/2008	154	RESPONSE in Opposition by Jeffrey MacDonald re 152 MOTION for Publication and Modification of Order *Movant's Opposition to Government's Motion* (Zeszotarski, Joseph) (Entered: 12/01/2008)
12/01/2008		Motion Submission as to Jeffrey MacDonald re 152 MOTION for Publication and Modification of Order (Indig, A.) (Entered: 12/01/2008)
12/04/2008	155	MOTION for Certificate of Appealability by Jeffrey MacDonald. (Zeszotarski, Joseph) (Entered: 12/04/2008)
12/04/2008	156	Memoradum in Support by Jeffrey MacDonald re 155 MOTION for Certificate of Appealability (Zeszotarski, Joseph) (Entered: 12/04/2008)
12/04/2008	157	NOTICE OF APPEAL by Jeffrey MacDonald Filing fee $ 455, receipt number RAL004373. (Zeszotarski, Joseph) (Entered: 12/04/2008)
12/04/2008	158	Transmission of Notice of Appeal and Docket Sheet as to Jeffrey MacDonald to US Court of Appeals re 157 Notice of Appeal - 2255 (McDowell, G.) (Entered: 12/04/2008)
12/11/2008		USCA Case Number as to Jeffrey MacDonald 08-8525 (Lisa Nesbitt) for 157 Notice of Appeal - Final Judgment filed by Jeffrey MacDonald. (Indig, A.) (Entered: 12/11/2008)
12/11/2008		Assembled Electronic Record on Appeal to 4CCA as to Jeffrey MacDonald to transmitted to 4CCA re 157 Notice of Appeal (McDowell, G.) (Entered: 12/11/2008)
12/29/2008	159	

		MOTION for Leave to Exceed Page Limit in its Response to Application For A Certificate of Appealability and Memorandum of Law by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order Proposed Order) (Bruce, John) (Entered: 12/29/2008)
12/29/2008	160	RESPONSE to Motion by USA as to Jeffrey MacDonald re 155 MOTION for Certificate of Appealability (Bruce, John) (Entered: 12/29/2008)
12/29/2008		Motion Submission as to Jeffrey MacDonald re 159 MOTION for Leave to Exceed Page Limit in its Response to Application For A Certificate of Appealability and Memorandum of Law, 155 MOTION for Certificate of Appealability (Indig, A.) (Entered: 12/29/2008)
01/08/2009	161	REPLY TO RESPONSE to Motion by Jeffrey MacDonald re 159 MOTION for Leave to Exceed Page Limit in its Response to Application For A Certificate of Appealability and Memorandum of Law *Movant's Reply to Government's Response to Application for Certificate of Appealability 160* (Zeszotarski, Joseph) (Entered: 01/08/2009)
01/09/2009	162	ORDER granting in part and denying in part 152 Motion as to Jeffrey MacDonald (1); denying 155 Motion for Certificate of Appealability as to Jeffrey MacDonald (1); granting 159 Motion for Leave to Exceed Page Limit as to Jeffrey MacDonald (1). Signed by Judge James C. Fox on 1/9/2009. (Indig, A.) (Entered: 01/09/2009)
02/12/2009	163	MOTION to Withdraw as Attorney *for Timothy Junkin and John Moffett* by Hart Miles, as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order Proposed order on motion to withdraw) (Miles, Hart) (Entered: 02/12/2009)
07/27/2010	164	ORDER granting 163 Motion to Withdraw as Attorney filed by Timothy Junkin and John Moffett. Signed by Senior Judge James C. Fox on 7/27/2010, nunc pro tunc, February 12, 2009. (Indig, A.) (Entered: 07/27/2010)
04/19/2011	165	Published Opinion from Fourth Circuit Court of Appeals as to Jeffrey MacDonald re 157 Notice of Appeal - Final Judgment (VACATED and REMANDED). (Indig, A.) (Entered: 04/19/2011)
04/19/2011	166	JUDGMENT of U.S. Court of Appeals (certified copy) as to Jeffrey MacDonald re 157 Notice of Appeal - Final Judgment. (Indig, A.) (Entered: 04/19/2011)
04/19/2011		Submitted the Opinion and Judgment from the Fourth Circuit Court of Appeals at docket entries 165 and 166 to Senior Judge James C. Fox. (Edwards, S.) (Entered: 04/19/2011)
06/13/2011	167	MANDATE of US Court of Appeals (certified copy) as to Jeffrey MacDonald re 165 Opinion from USCA. (Indig, A.) (Entered: 06/13/2011)
06/23/2011	168	Order Setting Hearings - as to Jeffrey MacDonald. Status Conference set for 7/28/2011 at 10:30 AM in Wilmington - Courtroom 1 before Senior US Judge James C. Fox. Signed by Senior US Judge James C. Fox on 6/23/2011. (McDowell, G.) (Entered: 06/23/2011)

07/15/2011	169	MOTION to Continue by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Miles, Hart) (Entered: 07/15/2011)
07/18/2011		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re: 169 MOTION to Continue. (McDowell, G.) (Entered: 07/18/2011)
07/18/2011	170	RESPONSE to Motion by USA as to Jeffrey MacDonald re 169 MOTION to Continue *Status Conference* (Bruce, John) (Entered: 07/18/2011)
07/19/2011	171	ORDER - GRANTING 169 Motion to Continue as to Jeffrey MacDonald (1). The Clerk of Court is DIRECTED to reschedule and notice a hearing for purposes of a status conference on September 21, 2011, at 10:30 a.m., Alton Lennon Federal Building, Wilmington, North Carolina. Signed by Senior Judge James C. Fox on 7/19/2011. (Indig, A.) (Entered: 07/19/2011)
07/19/2011	172	NOTICE OF RESCHEDULED HEARING as to Jeffrey MacDonald - Status Conference reset for 9/21/2011 at 10:30 AM in Wilmington before Senior Judge James C. Fox. (Indig, A.) (Entered: 07/19/2011)
09/16/2011	173	NOTICE OF ATTORNEY APPEARANCE: F. Hill Allen, IV appearing for Jeffrey MacDonald (Allen, F.) (Entered: 09/16/2011)
09/19/2011	174	NOTICE *Government's Memorandum for Status Conference* (Bruce, John) (Entered: 09/19/2011)
09/20/2011	175	MOTION for Hearing by Jeffrey MacDonald. (Attachments: # 1 Exhibit Letter from Lee Tart to counsel) (Miles, Hart) (Entered: 09/20/2011)
09/20/2011	176	MOTION for New Trial *pursuant to the Innocence Protection Act* by Jeffrey MacDonald. (Attachments: # 1 Affidavit Christine Mumma re: DNA) (Miles, Hart) (Entered: 09/20/2011)
09/20/2011		Motions Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re: 175 MOTION for Hearing and 176 MOTION for New Trial *pursuant to the Innocence Protection Act*. (McDowell, G.) (Entered: 09/20/2011)
09/20/2011	177	NOTICE OF ATTORNEY APPEARANCE: Christine C. Mumma appearing for Jeffrey MacDonald (Mumma, Christine) (Entered: 09/20/2011)
09/21/2011	178	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: Status Conference as to Jeffrey MacDonald held on 9/21/2011. Counsel for both parties present. The court heard arguments from the parties as to the motion for hearing and the motion for new trial pursuant to innocence protection act of 2004. The court will allow the parties to file briefs as to the motion for new trial. Additionally, an evidentiary hearing to be set on or about 10/31/2011. Counsel for the Defendant to provide a list of items requested for DNA testing and the Government will be allowed to respond to the request. Written order to follow. (Court Reporter Stacy Schwinn and FTR Gold) (Edwards, S.) (Entered: 09/21/2011)
09/21/2011	179	ORDER as to Jeffrey MacDonald re 176 MOTION for New Trial *pursuant to the Innocence Protection Act*. The Government is directed to respond to

		MacDonald's motion on or before 12/1/2011. Counsel is reminded to read the order in its entirety for critical deadlines and instructions. Signed by Senior Judge James C. Fox on 9/21/2011. (Edwards, S.) (Entered: 09/21/2011)
09/21/2011	180	ORDER as to Jeffrey MacDonald. MacDonald to file and serve on the Government on or before 10/10/2011, a list of the trial exhibits on which it seeks to conduct additional DNA testing pursuant to the IPA. The Government may respond thereto within its Response to the Motion for a New Trial on or before 12/1/2011. Pursuant to this court's Notice and Order 179 , the Government shall file its Response to MacDonald's Motion for a New Trial 176 on or before 12/1/2011. MacDonald may reply on or before 12/12/2011. The Clerk of Court is DIRECTED to schedule and notice an evidentiary hearing solely on the Britt § 2255 claim ("the Britt Claim") during the week of 10/31/2011, at 10:00 a.m., in Wilmington, North Carolina. Signed by Senior Judge James C. Fox on 9/21/2011. (Edwards, S.) (Entered: 09/21/2011)
09/21/2011	181	NOTICE OF HEARING as to Jeffrey MacDonald - Evidentiary Hearing set for 10/31/2011 at 10:00 AM in Wilmington - Courtroom 3 before Senior Judge James C. Fox. (Edwards, S.) (Entered: 09/21/2011)
09/21/2011	182	AMENDED NOTICE OF HEARING as to Jeffrey MacDonald - Evidentiary Hearing set for 10/31/2011 at 10:00 AM in Wilmington - Courtroom 3 before Senior Jude James C. Fox. Attachment of the original notice reflected the courtroom location as to the second floor. Courtroom 3 is located on the first floor. Amendment as to location only. (Edwards, S.) (Entered: 09/21/2011)
09/30/2011	183	MOTION to Withdraw as Attorney by Hart Miles as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Miles, Hart) (Entered: 09/30/2011)
09/30/2011	184	MOTION to Continue Evidentiary Hearing by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Miles, Hart) (Entered: 09/30/2011)
10/03/2011	185	RESPONSE to Motion by USA as to Jeffrey MacDonald re 184 MOTION to Continue Evidentiary Hearing. (Bruce, John) (Entered: 10/03/2011)
10/03/2011	186	ORDER - Granting 183 Motion to Withdraw as Attorney. Hart Miles withdrawn from case as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 10/3/2011. (Indig, A.) (Entered: 10/03/2011)
10/03/2011		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald re 184 MOTION to Continue Hearing. (Indig, A.) (Entered: 10/03/2011)
10/06/2011	187	ORDER - The evidentiary hearing in this matter is CONTINUED to 10:00 a.m. on November 28, 2011, in the Alton Lennon Federal Building, Wilmington, North Carolina. The court DIRECTS the United States Attorney to ensure MacDonald's transport, housing and attendance at the evidentiary hearing. Signed by Senior Judge James C. Fox on 10/6/2011. (Indig, A.) (Entered: 10/06/2011)
10/06/2011	188	NOTICE OF (RESCHEDULED) HEARING as to Jeffrey MacDonald - Evidentiary Hearing reset for 11/28/2011 at 10:00 AM in Wilmington - Courtroom 3 before Senior Judge James C. Fox. (Indig, A.) (Entered: 10/06/2011)

10/10/2011	189	RESPONSE TO ORDER by Jeffrey MacDonald (Attachments: # 1 List of Trial Exhibits For Additional DNA Testing Pursuant to the IPA) (Allen, F.) (Entered: 10/10/2011)
10/12/2011	190	Notice of Writ to Produce *Jeffrey R. MacDonald* on 11/28/2011 in Wilmington (Bruce, John) (Entered: 10/12/2011)
10/18/2011	191	MOTION to Appoint Counsel by Jeffrey MacDonald. (Attachments: # 1 Exhibit US v. McClaren (4th Cir., decided May 1, 1997), # 2 Exhibit US v. Lewsi (10th Cir., decided Oct. 24, 2001)) (Allen, F.) (Entered: 10/18/2011)
10/18/2011	192	MOTION to Withdraw as Attorney by Wade M. Smith & F. Hill Allen as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Allen, F.) (Entered: 10/18/2011)
10/18/2011	193	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/21/11, Status Conference, before Senior Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 11/11/2011. Redacted Transcript Deadline set for 11/21/2011. Release of Transcript Restriction set for 1/19/2012. (Schwinn, Stacy) (Entered: 10/18/2011)
10/18/2011		NOTICE of Filing of Official Transcript. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (Schwinn, Stacy) (Entered: 10/18/2011)
10/24/2011		Motions Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald re 191 MOTION to Appoint Counsel and 192 MOTION to Withdraw as Attorney by Wade M. Smith & F. Hill Allen. (Indig, A.) (Entered: 10/24/2011)
10/24/2011	194	RESPONSE to Motion by USA as to Jeffrey MacDonald re 191 MOTION to Appoint Counsel (Attachments: # 1 Exhibit MacDonald Web Page Re Defense Fund, # 2 Exhibit Guidestar Web Page Re Defense Fund, # 3 Exhibit MacDonald Web Page Re Defense Counsel, # 4 Exhibit MacDonald Web Page Re Update Letter, # 5 Exhibit Amici Curiae Brief Cover, # 6 Exhibit Blackburn Waiver Re Smith, # 7 Exhibit Emaiil Re Blackburn Waiver Re Allen) (Bruce, John) (Entered: 10/24/2011)
10/24/2011	195	MOTION to Withdraw as Attorney by Joseph E. Zeszotarski, Jr as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Zeszotarski, Joseph) (Entered: 10/24/2011)
10/25/2011	196	

		ORDER - Granting 195 Motion to Withdraw as Attorney. Joseph E. Zeszotarski, Jr. withdrawn from case. Signed by Senior Judge James C. Fox on 10/25/2011. (Indig, A.) (Entered: 10/25/2011)
11/01/2011	197	RESPONSE in Support by Jeffrey MacDonald re 191 MOTION to Appoint Counsel (Attachments: # 1 Exhibit 2-Affidavit of Raymond M. Shea, # 2 Exhibit 3-United States v. Maxwell, # 3 Exhibit 4-Email of 11/1/11 from J. Bruce to L. Jordan) (Allen, F.) (Entered: 11/01/2011)
11/01/2011	198	SEALED Exhibit by Jeffrey MacDonald (Allen, F.) Modified on 11/4/2011 to remove the word "proposed." (Indig, A.) (Entered: 11/01/2011)
11/01/2011	199	MOTION to Seal 198 PROPOSED SEALED Document *EXHIBIT 1 TO REPLY IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL [DE-197]* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Allen, F.) (Entered: 11/01/2011)
11/02/2011		Motion Submitted to Senior US District Judge as to Jeffrey MacDonald: MOTION to Seal 198 PROPOSED SEALED Document. (McDowell, G.) (Entered: 11/02/2011)
11/04/2011	200	ORDER - GRANTING 199 Motion to Seal as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 11/4/2011. (Indig, A.) (Entered: 11/04/2011)
11/08/2011	201	ORDER as to Jeffrey MacDonald re 191 MOTION to Appoint Counsel and 192 MOTION to Withdraw as Attorney by Wade M. Smith & F. Hill Allen are HELD IN ABEYANCE pending this court's review of (i) MacDonald's affidavit identifying his current counsel of record, and (ii) the MacDonald Defense Fund Administrator's affidavit declaring the availability of tax-exempt contributions and other asserts to reimburse the CJA program for appointed counsel's fees. Affidavits to be filed by 12/5/2011. The Clerk of Court further is DIRECTED to re-schedule and notice the evidentiary hearing pursuant to remand of this matter from the Fourth Circuit Court of Appeals, for the week of April 30, 2012.. Signed by Senior Judge James C. Fox on 11/8/2011. (McDowell, G.) (Entered: 11/08/2011)
11/09/2011	202	MOTION for Extension of Time *to File Response* by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Bruce, John) (Entered: 11/09/2011)
11/09/2011		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 202 MOTION for Extension of Time *to File Response*. (McDowell, G.) (Entered: 11/09/2011)
11/10/2011	203	NOTICE *Of Filing* re 201 Order (Attachments: # 1 Exhibit 1 - Affidavit of Jeffrey R. MacDonald, # 2 Exhibit 2 - Affidavit of Raymond M. Shea) (Allen, F.) (Entered: 11/10/2011)
11/10/2011	204	ORDER as to Jeffrey MacDonald - Upon Motion of the Government, and for good cause shown, the Court hereby extends the deadline for the filing of the Government's response to Movant's Motion for a Hearing [DE-175] and Motion for New Trial Pursuant to the Innocence Protection Act [DE176] to

		December 13, 2011, and the deadline for the Movant's reply to January 6, 2012. Signed by Senior Judge James C. Fox on 11/10/2011. (McDowell, G.) (Entered: 11/10/2011)
11/14/2011	205	ORDER - as to Jeffrey MacDonald re 191 MOTION to Appoint Counsel and 192 MOTION to Withdraw as Attorney. The motions to appoint counsel and to withdraw continue to be HELD IN ABEYANCE pending receipt, on or before December 5, 2011, of affidavits that respond authoritatively and affirmatively to the court's inquiries, as clarified herein. Signed by Senior Judge James C. Fox on 11/14/2011. (Indig, A.) (Entered: 11/14/2011)
11/18/2011	206	NOTICE *Of Filing* re 201 Order - (Attachments: # 1 Affidavit of Jeffrey R. MacDonald dated November 16, 2011, # 2 Affidavit of Kathryn MacDonald dated November 17, 2011, # 3 Affidavit of Raymond M. Shea dated November 17, 2011) (Allen, F.) (Entered: 11/18/2011)
11/18/2011	207	ORDER - GRANTING 192 Motion to Withdraw as Attorney filed by F. Hill Allen and Wade M. Smith. GRANTING 191 Motion to Appoint Counsel as to Jeffrey MacDonald. The Federal Public Defender is DIRECTED to appoint counsel pursuant to this district's CJA Plan. Appointed counsel is DIRECTED to file a Notice of Appearance within seven (7) days of such appointment. Signed by Senior Judge James C. Fox on 11/18/2011. (Indig, A.) (Entered: 11/18/2011)
11/30/2011	208	NOTICE OF ATTORNEY APPEARANCE: Sue A. Berry appearing for Jeffrey MacDonald (Berry, Sue) (Entered: 11/30/2011)
12/06/2011	209	MOTION *for copy of trial transcript at Government expense* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Berry, Sue) (Entered: 12/06/2011)
12/07/2011		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 209 MOTION copy of trial transcript at Government expense . (McDowell, G.) (Entered: 12/07/2011)
12/07/2011	210	ORDER - GRANTING 209 Motion for copy of trial transcripts at governemnt expense as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 12/7/2011. (Indig, A.) (Entered: 12/07/2011)
12/12/2011	211	MOTION *for Leave to File Oversized Responses* by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	212	RESPONSE to Motion by USA as to Jeffrey MacDonald re 176 MOTION for New Trial *pursuant to the Innocence Protection Act* (Attachments: # 1 Exhibit January 14, 2005 Letter signed by B. Murtagh and T. Junkin, # 2 Exhibit Excerpt from Senate Congressional Record) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	213	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Index of Exhibits, # 2 Exhibit Military Police Receipt for Property, # 3 Exhibit US Army Criminal Investigation Laboratory Inventory of Evidence, # 4 Exhibit Serology Test Results for Exhibit D-233, #

		5 Exhibit Serology Test Results for Exhibit D-234, # 6 Exhibit Serology Test Results for Exhibit D-235, # 7 Exhibit Serology Test Results for Exhibit D-236, # 8 Exhibit Serology Test Results for Exhibit D-237, # 9 Exhibit Serology Test Results for Exhibit D-238, # 10 Exhibit US Army Criminal Investigation Laboratory Chart Re: Results ofModified on 12/13/2011 (Lee, B.). (Entered: 12/12/2011)
12/12/2011	214	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Index Exhibits to C. Chamberlain Supplemental Affidavit, # 2 Exhibit Military Police Receipt for Property, # 3 Exhibit US Army Criminal Investigation Laboratory Inventory of Evidence, # 4 Exhibit Serology Test Results for Exhibit D-233, # 5 Exhibit Serology Test Results for Exhibit D-234, # 6 Exhibit Serology Test Results for Exhbit D-235, # 7 Exhibit Serology Test Results for Exhibit D-236, # 8 Exhibit Serology Test Results for Exhibit D-237, # 9 Exhibit Serology Test Results for Exhibit D-238, # 10 Exhibit Page from US Army Criminal Investigation Laboratory Chart Re: Results of Serology Tests, # 11 Exhibit US Army Criminal Investigation Laboratory Serology Bench Note, # 12 Exhibit US Army Criminal Investigation Laboratory Preliminary Lab Report) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	215	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Exhibit Photograph of Evidence, # 2 Exhibit Bench Notes, # 3 Exhibit Bench Notes, # 4 Exhibit Grand Jury Transcript Excerpts) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	216	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Exhibit Photographic Log, # 2 Exhibit Bench Notes, # 3 Exhibit Lab Examination Report) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	217	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Index of J. Glisson Exhibits, # 2 Exhibit US Army Criminal Investigation Laboratory Serology Bench Note, # 3 Exhibit US Army Criminal Investigation Laboratory Bench Notes, # 4 Exhibit Photo #311, # 5 Exhibit Photo #312, # 6 Exhibit US Army Criminal Investigation Laboratory Bench Note, # 7 Exhibit US Army Criminal Investigation Laboratory Inventory of Evidence, # 8 Exhibit Photo #314, # 9 Exhibit Photo #288, # 10 Exhibit Photo #289, # 11 Exhibit US Army Criminal Investigation Laboratory Bench Note, # 12 Exhibit USACIL Lab Report, # 13 Exhibit USACIL Preliminary Lab Report, # 14 Exhibit US Army Criminal Investigation Laboratory Consolidated Lab Report, # 15 Exhibit US Army Criminal Investigation Laboratory Serology Results Summary Chart, # 16 Exhibit US Army Criminal Investigation Laboratory Summary Chart of Exhibits, # 17 Exhibit Photo #156, # 18 Exhibit US Army Criminal Investigation Laboratory Bench Note) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	218	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Exhibit Confirmation Form, # 2 Exhibit Federal Bureau of Investigation Lab Report, # 3 Exhibit Bench Notes) (Bruce, John) (Entered: 12/12/2011)

12/12/2011	219	AFFIDAVIT by USA as to Jeffrey MacDonald 212 Response to Motion, filed by USA (Attachments: # 1 Index of Exhibits to R. Fram Affidavit, # 2 Exhibit US District Court Order filed December 11, 1998, # 3 Exhibit US District Court Order filed March 26, 1999, # 4 Exhibit Photo #39, Government Photographic Submissions, # 5 Exhibit Photo #153, Government Photographic Submissions, # 6 Exhibit Photo #156, Government Photographic Submissions, # 7 Exhibit Armed Forces DNA Identification Laboratory Photo, Roll 1, Slide 13, # 8 Exhibit Armed Forces DNA Identification Laboratory Photo, Roll 1, Slide 14, # 9 Exhibit Armed Forces DNA Identification Laboratory (Entered: 12/12/2011)
12/12/2011	220	ORDER - GRANTING 211 Motion to file two separate responses to Movant's Motion for New Trial. Signed by Senior Judge James C. Fox on 12/12/2011. (Indig, A.) (Entered: 12/12/2011)
12/12/2011	221	NOTICE *of Filing* re 219 Affidavit (Attachments: # 1 Index of Exhibits to R. Fram Affidavit, DE #219, # 2 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 3 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 4 Exhibit Photo #67, Government's Photographic Submissions, # 5 Exhibit Photo #68, Government's Photographic Submissions, # 6 Exhibit Photo #69, Government's Photographic Submissions, # 7 Exhibit Photo #70, Government's Photographic Submissions, # 8 Exhibit Armed Forces DNA Identification Laboratory Photo, # 9 Exhibit Armed Forces DNA Identification Labortory Photo) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	222	NOTICE *of Filing* re 219 Affidavit. (Attachments: # 1 Index of Exhibits to Robert Fram Affidavit, DE #219, # 2 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 3 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 4 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 5 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 6 Exhibit Armed DNA Identification Laboratory Photomicrograph, # 7 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 8 Exhibit Armed Forces DNA Identificatin Laboratory Photomicrograph) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	223	NOTICE *of Filing* re 219 Affidavit. (Attachments: # 1 Index of Exhibits to R. Fram Affidavit, DE #219, # 2 Exhibit Photo #74, Government's Photographic Submissions, # 3 Exhibit Photo #75, Government's Photo Submissions, # 4 Exhibit Photo #85, Government's Photographic Submissions, # 5 Exhibit Photo #86, Government's Photographic Submissions, # 6 Exhibit Armed Forces DNA Identification Laboratory Photo, # 7 Exhibit Armed Forces DNA Identification Laboratory Photo, # 8 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	224	NOTICE *of Filing* re 219 Affidavit. (Attachments: # 1 Index of Exhibits to R. Fram Affidavit, DE #219, # 2 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 3 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 4 Exhibit Photo #77, Government's Photographic Submissions, # 5 Exhibit Photo #178, Government's

		Photographic Submissions, # 6 Exhibit Photo #179, Government's Photographic Submissions, # 7 Exhibit Photo "Q125 JCF MPM" and Card "E-211/Q125", # 8 Exhibit Armed Forces DNA Identification Laboratory Photo, # 9 Exhibit Armed Forces DNA Identification Laboratory Photo, # 10 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 11 Exhibit AFDIL Photomicrograph, # 12 Exhibit Armed Forces DNA Identificatin Laboratory Photomicrograph, # 13 Exhibit Photo #90, Government's Photographic Submissions, # 14 Exhibit Photo #91, Government's Photographic Submissions, # 15 Exhibit Photo #92, Government's Photocraphic Submissions, # 16 Exhibit Photo #93, Government's Photographic Submissions) (Bruce, John) (Entered: 12/12/2011)
12/12/2011	225	NOTICE *of Filing* re 219 Affidavit. (Attachments: # 1 Index of Exhibits to R. Fram Affidavit, DE #219, # 2 Exhibit Photo #94, Government's Photographic Submissions, # 3 Exhibit Photo #78, Government's Photographic Submissions, # 4 Exhibit Photo #79, Government's Photographic Submissions, # 5 Exhibit Photo #80, Government's Photographic Submissions, # 6 Exhibit Photo #81, Government's Photographic Submissions, # 7 Exhibit Armed Forces DNA Identification Laboratory Photo, # 8 Exhibit Armed Forces DNA Identification Laboratory Photo, # 9 Exhibit Armed Forces DNA Identification Laboratory Photo, # 10 Exhibit Armed Forces DNA Identificaiton Laboratory Photo, # 11 Exhibit Armed Forces DNA Identification Laboratory Chart, # 12 Exhibit Armed Forces DNA Identification Laboratory Letter of April 2, 2001, # 13 Exhibit July 31, 2001, Letter from Defense Counsel, # 14 Exhibit September 13, 2001, Letter from Department of Justice Criminal Division, # 15 Exhibit October 1, 2001 Letter from Defense Counsel, # 16 Exhibit Armed Forces DNA Identification Laboratory Photo, # 17 Exhibit Armed Forces DNA Identification Laboratory Photo, # 18 Exhibit Federal Bureau of Investigation Lab Report, November 1, 2001, # 19 Exhibit Federal Bureau of Investigation Lab Report, May 19, 1999, # 20 Exhibit Armed Forces DNA Identification Laboratory Photo, # 21 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 22 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 23 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 24 Exhibit Armed Forces DNA Identification Laboratory Photomicrograph, # 25 Exhibit Armed Forces DNA Identificatin Laboratory Photomicrograph) (Bruce, John) (Entered: 12/12/2011)
12/13/2011	226	NOTICE *of Filing Amended Exhibit #12* re 217 Affidavit. (Attachments: # 1 Exhibit #12, Amended - US Army Criminal Investigation Laboratory Preliminary Lab Report) (Bruce, John) (Entered: 12/13/2011)
12/13/2011		NOTICE TO COUNSEL re: Docket Entries 213 - 226 - Counsel must not use abbreviations when describing exhibits. Clerk has corrected entries 213 through 226, so no need to refile this time. (Lee, B.) (Entered: 12/13/2011)
12/13/2011	227	RESPONSE to Motion by USA as to Jeffrey MacDonald re 176 MOTION for New Trial *pursuant to the Innocence Protection Act* (Attachments: # 1 Index Index of Exhibits, # 2 Exhibit #1 - MTC-Spreadsheet A-Hair, # 3 Exhibit #2 - MTC-Spreadsheet B-Blood, # 4 Exhibit #3 - MTC-Spreadsheet C-Known Exemplars, # 5 Exhibit #4 - Schedule A-MacDonald's Recommendations for DNA Testing-miniSTR and/or YSTR, # 6 Exhibit #5 - Schedule

		B-Eligibility/Suitability Issues Involving MacDonald Recommendations, # 7 Exhibit #6 - Schedule C-Location of Biological Evidence Type B blood from Jeffrey MacDonald Introduced at Trial, # 8 Exhibit #7 - AFDIL Contents of Vials Report, # 9 Exhibit #8 - USACIL Report on Exhibit I-21, # 10 Exhibit #9 - Ninhydrin: Basic to Advanced, # 11 Exhibit #10 - AFIP DNA Testing Costs, # 12 Exhibit #11 - AFDIL Suitability and Divisibility Assessment, # 13 Exhibit #12 - FBI YSTR Guidelines, # 14 Exhibit #13 - First Polish DNA Manhunt-An Application of Y Chromosomes STR's, # 15 Exhibit #14 - FAQ's About CODIS, # 16 Exhibit #15 - North Carolina Exoneration Cases) (Bruce, John) (Entered: 12/13/2011)
12/13/2011	228	AFFIDAVIT of Tina Delgado by USA as to Jeffrey MacDonald 227 Response to Motion filed by USA (Bruce, John) (Entered: 12/13/2011)
12/13/2011	229	RESPONSE to Motion by USA as to Jeffrey MacDonald re 175 MOTION for Hearing (Attachments: # 1 Exhibit 1-Correlation of Microscopic and Mitochondrial Hair Comparisons) (Bruce, John) (Entered: 12/13/2011)
12/27/2011	230	MOTION for Extension of Time Replies to Government's Response to Motion for New Trial Pursuant to 18 U.S.C. § 3600 and Government's Response to Motion for Additional DNA Testing 229 Response to Motion, 227 Response to Motion,,,, until February 17, 2012 by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Mumma, Christine) (Entered: 12/27/2011)
12/28/2011		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 230 MOTION for Extension of Time Replies to Government's Response to Motion for New Trial Pursuant to 18 U.S.C. § 3600 and Government's Response to Motion for Additional DNA Testing 229 Response to Motion, 227 Response. (McDowell, G.) (Entered: 12/28/2011)
12/28/2011	231	ORDER granting 230 Motion for Extension of Time as to Jeffrey MacDonald (1) until 2/17/2012.. Signed by Senior US District Judge James C. Fox on 12/28/2011. (McDowell, G.) (Entered: 12/28/2011)
02/05/2012	232	MOTION to Withdraw as Attorney by Sue Genrich Berry as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order allowing Sue Genrich Berry to withdraw as counsel of record) (Berry, Sue) (Entered: 02/05/2012)
02/06/2012	233	MOTION for Leave to File *Oversized Reply* by Jeffrey MacDonald. (Mumma, Christine) (Entered: 02/06/2012)
02/06/2012		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 233 MOTION for Leave to File *Oversized Reply*. (McDowell, G.) (Entered: 02/06/2012)
02/06/2012	234	ORDER - granting 233 Motion for Leave to File as to Jeffrey MacDonald (1). Signed by Senior US District Judge James C. Fox on 2/6/2012. (McDowell, G.) (Entered: 02/06/2012)
02/15/2012	235	RESPONSE to Motion by USA as to Jeffrey MacDonald re 232 MOTION to Withdraw as Attorney by Sue Genrich Berry. (Bruce, John) (Entered: 02/15/2012)

02/16/2012	236	MOTION for Extension of Time to File Response/Reply as to 229 Response to Motion *Entitled "Request for Hearing"* by Jeffrey MacDonald. (Mumma, Christine) (Entered: 02/16/2012)
02/16/2012		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 236 MOTION for Extension of Time to File Response/Reply as to 229 Response to Motion *Entitled "Request for Hearing"*. (McDowell, G.) (Entered: 02/16/2012)
02/17/2012	237	REPLY TO RESPONSE to Motion by Jeffrey MacDonald re 176 MOTION for New Trial *pursuant to the Innocence Protection Act* (Mumma, Christine) (Entered: 02/17/2012)
02/17/2012	238	REPLY TO RESPONSE to Motion by Jeffrey MacDonald re 176 MOTION for New Trial *pursuant to the Innocence Protection Act* (Attachments: # 1 Index Index of Exhibits, # 2 Exhibit Congressional Record November 19 2004, # 3 Exhibit Innocence Project Case Profiles, # 4 Exhibit Justice Department Acts to Clear DNA Backlog, # 5 Exhibit Congressional Record December 6 2000, # 6 Exhibit Convicted by Juries, # 7 Exhibit Man Freed After 6 Years, # 8 Exhibit Larry Peterson Case Profile, # 9 Exhibit Brandon Garrett Convicting the Innocent, # 10 Exhibit DNA Clears Inmate Too Late, # 11 Affidavit MacDonald Affidavit of Innocence, # 12 Exhibit What is Touch DNA, # 13 Exhibit DA Clears Ramsey Family, # 14 Exhibit DNA Technology Moves Forward, # 15 Exhibit Stringing Together the Clues of DNA, # 16 Exhibit New Science Panel Chief Fights DNA, # 17 Exhibit Morton Freed From Life Term, # 18 Exhibit DNA Evidence Leads to Morton's Release After 25 Years, # 19 Exhibit Michael Morton's Former Prosecutor Apologizes, # 20 Exhibit Greg Mitchell UVA Hospital Blood Bank Compatibility Label, # 21 Affidavit Affidavit of Meghan Clement, # 22 Exhibit DNA Initiative, # 23 Exhibit Cody Davis Case Profile) (Mumma, Christine) (Entered: 02/17/2012)
02/21/2012	239	ORDER - granting 236 Motion for Extension of Time to File Reply as to Jeffrey MacDonald (1); Reply due 30 days after ruling on the pending motion to withdraw [DE-232]. Signed by Senior US District Judge James C. Fox on 2/20/2012. (McDowell, G.) (Entered: 02/21/2012)
02/22/2012	240	ORDER - GRANTING 232 Motion to Withdraw as Attorney. Sue A. Berry withdrawn from case as to Jeffrey MacDonald (1). The Federal Public Defender is DIRECTED to appoint substitute counsel pursuant to this district's CJA Plan. Appointed counsel is DIRECTED to file a Notice of Appearance within seven (7) days of such appointment. Signed by Senior Judge James C. Fox on 2/22/2012. (Indig, A.) (Entered: 02/22/2012)
02/27/2012	241	NOTICE *of Waiver of Appointed Counsel* re 240 Order on Motion to Withdraw as Attorney, (Mumma, Christine) (Entered: 02/27/2012)
03/01/2012	242	ORDER as to Jeffrey MacDonald - In order to avoid any future misunderstanding concerning MacDonald's representation status, Ms. Mumma is DIRECTED to file within fourteen (14) days hereof, MacDonald's own affidavit. If MacDonald chooses to represent himself without an attorney as to any aspect of his pending litigation in this court, he shall so state under oath,

		identifying the issues for which he intends to proceed pro se. Signed by Senior Judge James C. Fox on 3/1/2012. (Indig, A.) (Entered: 03/01/2012)
03/14/2012	243	NOTICE *of Filing (Affidavit)* re 242 Order. (Attachments: # 1 Affidavit of Jeffrey MacDonald) (Mumma, Christine) (Entered: 03/14/2012)
03/14/2012	244	NOTICE OF ATTORNEY APPEARANCE: M. Gordon Widenhouse, Jr. appearing for Jeffrey MacDonald (Widenhouse, Jr., M.) (Entered: 03/14/2012)
03/16/2012	245	ORDER as to Jeffrey MacDonald - Counsel for MacDonald is DIRECTED to file with the court, under seal if appropriate, the affidavit of Raymond A. Shea, Fund Administrator of The MacDonald Defense Fund on or before 3/26/2012. Signed by Senior Judge James C. Fox on 3/15/2012. (Indig, A.) (Entered: 03/16/2012)
03/26/2012	246	SEALED Affidavit by Jeffrey MacDonald per 245 Order. (Mumma, Christine) Modified on 4/2/2012 to remove the word PROPOSED. (McDowell, G.). (Entered: 03/26/2012)
03/26/2012	247	MOTION to Seal Document 246 PROPOSED SEALED Affidavit *of Raymond Shea* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Mumma, Christine) (Entered: 03/26/2012)
03/26/2012	248	MOTION to be Permitted to Receive a Copy of the Trial Transcript Prepared in Compliance with DE-210 re 210 Order on Motion for Miscellaneous Relief by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Mumma, Christine) (Entered: 03/26/2012)
03/26/2012		Motions Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 248 MOTION to be Permitted to Receive a Copy of the Trial Transcript Prepared in Compliance with DE-210 re 210 Order on Motion for Miscellaneous Relief , 247 MOTION to Seal Document 246 PROPOSED SEALED Affidavit *of Raymond Shea*. (McDowell, G.) (Entered: 03/26/2012)
03/26/2012	249	ORDER - granting 248 Motion to be Permitted to Receive a Copy of the Trial Transcript Prepared in Compliance with DE-210 as to Jeffrey MacDonald (1). Signed by Senior US District Judge James C. Fox on 3/26/2012. (McDowell, G.) (Entered: 03/26/2012)
03/28/2012		NOTICE OF DEFICIENCY as to Jeffrey MacDonald re: 248 Motion for Miscellaneous Relief - Certificate of Service does not state the specific names of individuals to whom it is being served. Counsel must correct and refile Amended Certificate of Service. Do Not Refile Motion. (Lee, B.) (Entered: 03/28/2012)
03/28/2012	250	Certificate of Service by Jeffrey MacDonald re 248 MOTION to be Permitted to Receive a Copy of the Trial Transcript Prepared in Compliance with DE-210 re 210 Order on Motion for Miscellaneous Relief (Mumma, Christine) (Entered: 03/28/2012)
03/30/2012	251	MOTION to Continue *Evidentiary Hearing* by Jeffrey MacDonald. (Widenhouse, Jr., M.) (Entered: 03/30/2012)
03/30/2012	252	

		RESPONSE to Motion by USA as to Jeffrey MacDonald re 251 MOTION to Continue *Evidentiary Hearing* (Bruce, John) (Entered: 03/30/2012)
04/02/2012	253	ORDER - granting 247 Motion to Seal Document as to Jeffrey MacDonald (1). Signed by Senior US District Judge James C. Fox on 3/26/2012. (McDowell, G.) (Entered: 04/02/2012)
04/02/2012		NOTICE OF DEFICIENCY- Failure to File Proposed Order by Jeffrey MacDonald re: 251 Motion to Continue; Pursuant to Local Criminal Rule 47.1, or the judges practice preferences on the court's website, counsel must submit a proposed order. The order must be filed electronically using the event PROPOSED ORDER located in the RESPONSES AND REPLIES category. Additionally, the judge's practice preferences MAY require counsel to email the proposed order in a word processing format. (Lee, B.) (Entered: 04/02/2012)
04/02/2012	254	Proposed Order by Jeffrey MacDonald re 251 MOTION to Continue *Evidentiary Hearing* (Widenhouse, Jr., M.) (Entered: 04/02/2012)
04/02/2012	255	ORDER - GRANTING 251 Motion to Continue as to Jeffrey MacDonald (1). Within ten (10) days of this order, the Government and Mr. Widenhouse shall confer and select one of the two sets of dates proposed herein for MacDonald's evidentiary hearing on the "Britt Claim," and notify the court in writing of their selection; and Ms. Mumma shall file her affidavit stating whether she agrees to a hearing on MacDonald's IPA claim during the week of May 7, 2012, and if not, why not. Signed by Senior Judge James C. Fox on 4/2/2012. (Indig, A.) (Entered: 04/02/2012)
04/03/2012	256	Consent MOTION for Extension of Time to File Reply as to 229 Response to Motion *for Evidentiary Hearing* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 04/03/2012)
04/03/2012		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald re 256 Consent MOTION for Extension of Time to File Response/Reply as to 229 Response to Motion *for Evidentiary Hearing*. (Indig, A.) (Entered: 04/03/2012)
04/04/2012	257	ORDER - GRANTING 256 Motion for Extension of Time to File Response as to Jeffrey MacDonald (1). Defendant shall have until 13 April 2012 in which to file his reply to the government's response [DE-229]. Signed by Senior Judge James C. Fox on 4/4/2012. (Indig, A.) (Entered: 04/04/2012)
04/05/2012		NOTICE OF DEFICIENCY as to Jeffrey MacDonald re: 256 Motion for Extension of Time to File Reply - A proper certificate of service must include the specific individuals (names) to whom it is being served. Counsel must correct and file an Amended Certificate of Service. (Lee, B.) (Entered: 04/05/2012)
04/12/2012	258	AFFIDAVIT by Jeffrey MacDonald regarding 255 Order on Motion to Continue (Mumma, Christine) (Entered: 04/12/2012)
04/12/2012	259	NOTICE re 255 Order on Motion to Continue,, (Attachments: # 1 Text of Proposed Order for Leave to File) (Bruce, John) (Entered: 04/12/2012)

04/12/2012	260	NOTICE *of Filing* re 259 Notice (Other) (Attachments: # 1 Text of Proposed Order for Leave to File) (Bruce, John) (Entered: 04/12/2012)
04/13/2012	261	REPLY TO RESPONSE to Motion by Jeffrey MacDonald re 175 MOTION for Hearing (Widenhouse, Jr., M.) (Entered: 04/13/2012)
04/17/2012	262	ORDER as to Jeffrey MacDonald - The Government is granted leave to file a sur-reply to the Movant's "Reply in Support of Motion for Additional DNA Testing Pursuant to 18 U.S.C. § 3600," filed February 17, 2012 [DE-238], on or before May 10, 2012. Signed by Senior Judge James C. Fox on 4/17/2012. (Indig, A.) (Entered: 04/17/2012)
04/18/2012	263	Order Setting Hearing as to Jeffrey MacDonald - Evidentiary Hearing set for 8/20/2012 at 10:00 AM in Wilmington - Courtroom 1 before Senior Judge James C. Fox. Signed by Senior Judge James C. Fox on 4/18/2012. Counsel should read entire order for critical dates and deadlines. (Indig, A.) (Entered: 04/18/2012)
04/26/2012	264	NOTICE OF ATTORNEY APPEARANCE Leslie Katherine Cooley appearing for USA. (Cooley, Leslie) (Entered: 04/26/2012)
05/10/2012	265	SUR-REPLY To Moiton For Additional DNA Testing Under 18 USC 3600 by USA as to Jeffrey MacDonald regarding 176 MOTION for New Trial *pursuant to the Innocence Protection Act* (Attachments: # 1 Index of Exhibits, # 2 Exhibit Number 1-Article titled "Reliable Genotyping of Samples with Very Low DNA Quantities Using PCR", # 3 Exhibit Number 2-Article titled "DNA Fingerprints from Fingerprints", # 4 Exhibit Number 3-Article titled "DNA Fingerprinting from Single Cells", # 5 Exhibit Number 4-Article titled "Application of Low Copy Number DNA Profiling", # 6 Exhibit Number 5 - Bibliography, # 7 Exhibit Number 6-Articled titled "Sciende in Court: DNA's Identity Crisis", # 8 Exhibit Number 7-Article titled "Recent Developments in Y-Short Tandem Repeat and Y-Single Nucleotide Polymorphism Analysis", # 9 Exhibit Number 8-Article titled "Timeline of Events Surrounding Development and Use of MiniSTR Loci for Forensic DNA Typing", # 10 Exhibit Number 9-Article titled "Validity of Low Copy Number Typing and Applications to Forensic Science", # 11 Exhibit Number 10-Article titled "Low Copy Number Typing Still Lacks Robustness and Reliability", # 12 Exhibit Number 11-Photo depicting MacDonald kitchen sink and dish drainer, # 13 Exhibit Number 12-Photo depicting MacDonald kitchen counter and coffee maker, # 14 Exhibit Number 13-Photo depicting MacDonald kitchen dish drainer and stove, # 15 Exhibit No. 14-Photo depicting blood drops on MacDonald kitchen floor, # 16 Exhibit Number 15-Photo depicting phone off hook in MacDonald kitchen, # 17 Exhibit Number 16-Photo depicting MacDonald bathroom sink and blood drops, # 18 Exhibit Number 17-Photo depicting MacDonald hall linen closet door, # 19 Exhibit Number 18-Photo depicting Hilton bath mat on body of Colette MacDonald, # 20 Exhibit Number 19-Photo depicting Hilton bath mat, # 21 Exhibit Number 20-Photo depicting markings on Hilton bath mat made by knife and ice pick) (Bruce, John) (Entered: 05/10/2012)
05/23/2012		

		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald re 176 MOTION for New Trial *pursuant to the Innocence Protection Act*. (McDowell, G.) (Entered: 05/23/2012)
06/08/2012	266	ORDER as to Jeffrey MacDonald - That § 2255 counsel for MacDonald and for the Government are DIRECTED to file their individual affidavits on or before June 22, 2012. If either or both parties seek to take deposition(s), then counsel for the parties shall confer and file, on or before July 6, 2012, a joint proposed schedule. A pre-hearing conference will be conducted on Friday, August 10, 2012, at 9:00 a.m., with the evidentiary hearing to commence as scheduled at 10:00 a.m. on August 20, 2012. The parties are ORDERED to fully and carefully review and comply with the directions and orders contained herein. Signed by Senior Judge James C. Fox on 6/8/2012. (Indig, A.) (Entered: 06/08/2012)
06/21/2012	267	Consent MOTION for Extension of Time to File by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 06/21/2012)
06/22/2012		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 267 Consent MOTION for Extension of Time to File. (Indig, A.) (Entered: 06/22/2012)
06/22/2012	268	ORDER - GRANTING 267 Motion for Extension of Time to File affidavit regarding depositions as to Jeffrey MacDonald (1) until 6/27/2012 and the government is given until 6/29/2012 to file its affidavit. Signed by Senior Judge James C. Fox on 6/22/2012. (Indig, A.) (Entered: 06/22/2012)
06/27/2012	269	AFFIDAVIT by Jeffrey MacDonald 266 Order,, (Widenhouse, Jr., M.) (Entered: 06/27/2012)
06/29/2012	270	NOTICE *Of Government's Position Regarding Depositions* (Attachments: # 1 Exhibit 1 - United States v. Hollis, Number 3:04-cr-00140-HRH-JDR, 2010 Westlaw 892196, at *1 (District of Alaska March 10, 2010) [unpublished], # 2 Exhibit 2 - Wright v. United States, Criminal Number DKC 06-0038, Civil Action Number DKC 08-2830, 2010 Westlaw 2164469, at *4-5 (District of Maryland May 26, 2010) [unpublished], # 3 Exhibit 3 - Richard v. Girdich, Number 9:03-CV-0920 (FJS) (GJD), 2007 Westlaw 405863, at *1 (Northern District of New York February 1, 2007) [unpublished], # 4 Exhibit 4 - Petrick v. Thomas, Number 1:09CV551, 2011 Westlaw 113516, at *2 (Middle District of North Carolina March 24, 2011) [unpublished], # 5 Exhibit 5 - Affidavit Of John Stuart Bruce (Bruce, John) (Entered: 06/29/2012) (Entered: 06/29/2012)
07/05/2012	271	MOTION for Extension of Time to File *Joint Proposed Schedule* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 07/05/2012)
07/05/2012		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 271 MOTION for Extension of Time to File *Joint Proposed Schedule*. (McDowell, G.) (Entered: 07/05/2012)
07/05/2012	272	

		RESPONSE to Motion by USA as to Jeffrey MacDonald regarding 271 MOTION for Extension of Time to File *Joint Proposed Schedule* (Bruce, John) (Entered: 07/05/2012)
07/06/2012	273	ORDER - DENYING 271 Motion for Extension of Time to File as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 7/6/2012. Counsel is reminded to read the entire order for critical dates and deadlines. (Indig, A.) (Entered: 07/06/2012)
07/06/2012	274	NOTICE *Joint Proposed Schedule* (Cooley, Leslie) (Entered: 07/06/2012)
07/13/2012	275	MOTION Continue Evidentiary Hearing by Jeffrey MacDonald. (Attachments: # 1 Exhibit Text of Statute, # 2 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 07/13/2012)
07/16/2012	276	RESPONSE to Motion by USA as to Jeffrey MacDonald regarding 275 MOTION Continue Evidentiary Hearing (Bruce, John) (Entered: 07/16/2012)
07/16/2012		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 275 MOTION Continue Evidentiary Hearing. (McDowell, G.) (Entered: 07/16/2012)
07/16/2012	277	ORDER - GRANTING 275 Motion to Continue Evidentiary Hearing as to Jeffrey MacDonald (1). The evidentiary hearing in this matter is hereby CONTINUED until September 17, 2012 in Wilmington, North Carolina. Signed by Senior Judge James C. Fox on 7/16/2012. (Indig, A.) (Entered: 07/16/2012)
07/17/2012	278	ORDER as to Jeffrey MacDonald - The Clerk of Court is DIRECTED to cancel the pre-hearing conference previously scheduled herein [DE-266] on August 10, 2012. The evidentiary hearing with regard to "the Britt claim" and "the unsourced hairs claim" will begin, pursuant to this court's Order [DE-277], on September 17, 2012. In lieu of a pre-hearing conference, counsel for the parties are DIRECTED to confer and submit to the court in writing on or before September 10, 2012, a Joint Schedule. Signed by Senior Judge James C. Fox on 7/17/2012. Counsel is reminded to read the entire order for critical information. (Indig, A.) (Entered: 07/17/2012)
07/17/2012		Terminate Evidentiary Hearings as to Jeffrey MacDonald. (Indig, A.) (Entered: 07/17/2012)
07/17/2012		Reset Hearing as to Jeffrey MacDonald - Evidentiary Hearing reset for 9/17/2012 in Wilmington - Courtroom before Senior Judge James C. Fox. (Indig, A.) (Entered: 07/17/2012)
08/20/2012	279	Notice of Writ to Produce *for Jeffrey MacDonald* on 9/17/2012 in Wilmington (Bruce, John) (Entered: 08/20/2012)
09/04/2012	280	NOTICE *of Clarification of Notice of Appearance* (Mumma, Christine) (Entered: 09/04/2012)
09/06/2012	281	ORDER as to Jeffrey MacDonald - parameters listed in this order shall be implemented and shall remain in effect during the pendency of the evidentiary hearing in this matter, beginning on September 17,2012. These parameters

		shall be binding upon all participants and spectators and shall be adhered to until court is adjourned at the conclusion of this matter. All conditions herein shall be enforced by the United States Marshal. Signed by Senior US District Judge James C. Fox on 9/6/2012. (McDowell, G.) (Entered: 09/06/2012)
09/06/2012		Reset Hearing as to Jeffrey MacDonald: Evidentiary Hearing reset for 9/17/2012 at 9:00 AM in Wilmington - Courtroom 1 before Senior Judge James C. Fox. (Edwards, S.) (Entered: 09/07/2012)
09/07/2012	282	NOTICE OF ATTORNEY APPEARANCE: Keith A. Williams appearing for Jeffrey MacDonald (Williams, Keith) (Entered: 09/07/2012)
09/07/2012	283	MOTION for Extension of Time for filing Joint Schedule until September 12 by Jeffrey MacDonald. (Williams, Keith) (Entered: 09/07/2012)
09/07/2012	284	Proposed Order by Jeffrey MacDonald regarding 283 MOTION for Extension of Time for filing Joint Schedule until September 12 (Williams, Keith) (Entered: 09/07/2012)
09/07/2012		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 283 MOTION for Extension of Time for filing Joint Schedule until September 12, 2012. (McDowell, G.) (Entered: 09/07/2012)
09/07/2012	285	ORDER - GRANTING 283 Motion for Extension of Time as to Jeffrey MacDonald (1) on condition that the Movant provide to the Government by close of business Monday, September 10, 2012, the material required by Fed. R. Civ. P. 26(a)(2)(B) with respect to the expert the Movant is now proposing to call. Signed by Senior Judge James C. Fox on 9/7/2012. (Indig, A.) (Entered: 09/07/2012)
09/12/2012	286	**'REFILED ON 9/15/2012 AT 292 '** -Document by USA as to Jeffrey MacDonald (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, Hearing Stipulation, U.S. v. MacDonald, September 17, 2012, # 3 Exhibit 2, AFDIL Case No. 99C-0438 Continuation of DA Form 4137, pages 2-31, # 4 Exhibit 3, Suzanne M. Barritt Letter, dated July 28, 1999, # 5 Exhibit 4, Attachment to Barritt letter, list of vials for AFDIL Case No. 99C-0438, # 6 Exhibit 5, Jacqueline S. Raskin Letter, dated April 2, 2001, # 7 Exhibit 6, Handwritten Notes of Dr. Peter DeForest regarding 112A #1-9, 06-August-2001, # 8 Exhibit 7, Robert Fram Report of Examination, dated November 1, 2001, regarding Q96, # 9 Exhibit 8, Handwritten Notes of Robert Fram re: Examination of Q96, # 10 Exhibit 9, Robert Fram Report of Examination, dated May 19, 1999) (Bruce, John) Modified on 9/14/2012 to unseal as directed in the court's order. (Indig, A.) Modified on 9/15/2012 to include the refiled information. (Edwards, S.) (Entered: 09/12/2012)
09/12/2012	287	MOTION to Seal Document 286 PROPOSED SEALED Document by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order to Seal Pre-Hearing Order) (Bruce, John) (Entered: 09/12/2012)
09/12/2012	288	PROPOSED SEALED Memorandum in support as to Jeffrey MacDonald regarding 287 MOTION to Seal Document 286 PROPOSED SEALED Document. (Bruce, John) (Entered: 09/12/2012)

09/13/2012		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 287 MOTION to Seal Document 286 PROPOSED SEALED Document. (Edwards, S.) (Entered: 09/13/2012)
09/13/2012	289	ORDER - DENYING 287 Motion to Seal Document as to Jeffrey MacDonald (1). The Government or the Movant may (l) file a renewed motion to seal, which complies with the Local Rules of this court and Section T of the CM/ECF Policy manual, by Friday, September 14, 2012, at noon, or (2) file the document at Docket Entry 286 as a public document by that same time. Signed by Senior Judge James C. Fox on 9/13/2012. (Indig, A.) (Entered: 09/13/2012)
09/14/2012	290	MOTION to Withdraw Document 288 PROPOSED SEALED Memorandum in Support and 287 MOTION to Seal Document 286 PROPOSED SEALED Document by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Bruce, John) (Entered: 09/14/2012)
09/14/2012		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 290 MOTION to Withdraw Document 288 PROPOSED SEALED Memorandum in Support, 287 MOTION to Seal Document 286 PROPOSED SEALED Document. (Edwards, S.) (Entered: 09/14/2012)
09/14/2012	291	ORDER - GRANTING 290 Motion to Withdraw Document as to Jeffrey MacDonald (1). The Clerk of Court is directed to docket the Proposed Joint Pre-Hearing Order, DE-286, as a public document. Signed by Senior Judge James C. Fox on 9/14/2012. (Indig, A.) (Entered: 09/14/2012)
09/14/2012		NOTICE OF DEFICIENCY by Jeffrey MacDonald regarding: 286 Document. The document contains an incorrect signature block. The signature block is not properly signed using the filing attorneys signature either by /s/ or a graphical signature as required by Section J of the CM/ECF Policy Manual. Counsel is directed to re-file the document with the correct signature block. You may re-file the 'Corrected' document using 'Proposed Order' located under 'Responses and Replies'. (Edwards, S.) (Entered: 09/14/2012)
09/15/2012	292	*Corrected Proposed Joint Pre-Hearing Order* by USA as to Jeffrey MacDonald (Attachments: # 1 Index of Government's Exhibits, # 2 Exhibit 1, Hearing Stipulation-US v. MacDonald, September 17, 2012, # 3 Exhibit 2, AFDIL Case No. 99C-0438 Continuation of DA Form 4137, pages 2-31, # 4 Exhibit 3, Suzanne M. Barritt letter dated July 28, 1999, # 5 Exhibit 4, Attachment to Barritt letter, list of vials for AFDIL Case Number 99C-0438, # 6 Exhibit 5, Jacqueline S. Raskin letter dated April 2, 2001, # 7 Exhibit 6, Handwritten notes of Dr. Peter DeForest regarding 112A #1-9, 06-August-2001, # 8 Exhibit 7, Robert Fram Report of Examination dated November 1, 2001, regarding Q96, # 9 Exhibit 8, Handwritten notes of Robert Fram regarding examination of Q96, # 10 Exhibit 9, Robert Fram Report of Examination, dated May 19, 1999) (Bruce, John) Modified on 9/15/2012 to correct the naming convention (Edwards, S.). (Entered: 09/15/2012)
09/15/2012		Submitted the parties Proposed Corrected Order at 292 as to Jeffrey MacDonald to Senior Judge James C. Fox for his review and consideration. (Edwards, S.) (Entered: 09/15/2012)

09/17/2012	293	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 1* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/17/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Evidence for the Defendant/Movant begins and continues through the day. This matter recessed for the evening and is to reconvene at 9:00 a.m. on 9/18/2012 in Wilmington. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/17/2012)
09/17/2012	306	STIPULATIONS as to Jeffrey MacDonald: (Attachments: # 1 Index, # 2 Exhibit 2, AFDIL Case Number 99C-0438 Continuation of DA Form 4137, pages 2-31, # 3 Exhibit 3, Suzanne M. Barritt, letter dated 7/28/1999, # 4 Exhibit 4, Attachment to Barritt Letter, list of vials for AFDIL Case Number 99C-0438, # 5 Exhibit 5, Jacqueline S. Raskin letter dated 4/2/2001, # 6 Exhibit 6, Handwritten notes of Dr. Peter DeForest regarding 112A #1-9, 8/6/2001, # 7 Exhibit 7, Robert Fram Report of Examination, dated 11/1/2001, regarding Q96, # 8 Exhibit 8, Handwritten notes of Robert Fram regarding examination of Q96, # 9 Exhibit 9, Robert Fram Report of Examination, dated 5/19/1999) (Edwards, S.) (Entered: 09/27/2012)
09/17/2012	307	CORRECTED JOINT PRE-HEARING ORDER pursuant to L.R. 16.1(c) as to Jeffrey MacDonald. Signed by Senior Judge James C. Fox on 9/17/2012. (Attachments: # 1 Index, # 2 Exhibit 1, Hearing Stipulation -US v. MacDonald, 9/17/2012, # 3 Exhibit 2, AFDIL Case Number 99C-0438 Continuation of DA Form 4137, pages 2-31, # 4 Exhibit 3, Suzanne M. Barritt letter dated July 28, 1999, # 5 Exhibit 4, Attachment to Barritt letter, list of vials for AFDIL Case Number 99C-0438, # 6 Exhibit 5, Jacqueline S. Raskin letter dated April 2, 2001, # 7 Exhibit 6, Handwritten notes of Dr. Peter DeForest regarding 112A #1-9, 06-August-2001, # 8 Exhibit 7, Robert Fram Report of Examination dated November 1, 2001, # 9 Exhibit 8, Handwritten notes of Robert Fram regarding examination of Q96, # 10 Exhibit 9, Robert Fram Report of Examination, dated May 19, 1999) (Edwards, S.) (Entered: 09/27/2012)
09/18/2012	294	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 2* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/18/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Evidence for the Defendant/Movant continues from 9/17/2012 and throughout the day. This matter recessed for the evening and is to reconvene at 9:00 a.m. on 9/19/2012 in Wilmington. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/18/2012)
09/19/2012	295	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 3* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/19/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Evidence for the Defendant/Movant continues from 9/18/2012 and throughout the day. Evidence for Defanant/Movant concludes. Evidence for the Government/Respondent begins. This matter recessed for the evening and is to reconvene at 10:00 a.m. on 9/20/2012 in Wilmington. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/19/2012)

09/20/2012	296	ORDER as to Jeffrey MacDonald - it is ORDERED that Leonard submit to the Court, under seal, a signed Affidavit setting forth that which he may testify to regarding his communications with Stoeckley, if so Ordered to testify in this matter. Signed by Senior US District Judge James C. Fox on 9/20/2012. (McDowell, G.) (Entered: 09/20/2012)
09/20/2012		NOTICE: Affidavit filed by Edwin West pursuant to the Court's order at 296 for In Camera review. (Edwards, S.) (Entered: 09/20/2012)
09/20/2012	298	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 4* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/20/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Evidence for the Government/Respondent continues from 9/19/2012 and proceeds the entire day. This matter recessed for the evening and is to reconvene at 9:00 a.m. on 9/21/2012 in Wilmington. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/20/2012)
09/21/2012	300	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 5* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/21/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Evidence for the Government/Respondent continues from 9/20/2012 and proceeds the entire day. This matter recessed for the evening and is to reconvene at 9:00 a.m. on 9/24/2012 in Wilmington. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/21/2012)
09/24/2012	301	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 6* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/24/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Evidence for the Government/Respondent continues from 9/21/2012 and proceeds the entire day. This matter recessed for the evening and is to reconvene at 9:00 a.m. on 9/25/2012 in Wilmington. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/24/2012)
09/24/2012	302	AFFIDAVIT of Jerry W. Leonard (unsealed on 9/24/12). (Edwards, S.) (Entered: 09/24/2012)
09/25/2012	303	Minute Entry for proceedings held before Senior Judge James C. Fox in Wilmington: *DAY 7* - Evidentiary Hearing as to Jeffrey MacDonald held on 9/25/2012. Defendant/Movant present with counsel. Assistant US Attorney present for the Government/Respondent. Closing Arguments held by both parties. Counsel will be allowed to file additional briefing before the court makes a formal ruling on this matter. With nothing further, court adjourned at 4:15 p.m. (Court Reporter Stacy Schwinn/FTR Gold) (Edwards, S.) (Entered: 09/25/2012)
09/25/2012	304	EXHIBIT LIST from the Evidentiary Hearings held from 9/17/2012 to 9/25/2012 in Wilmington. (Edwards, S.) (Additional attachment(s) added on 9/27/2012: # 1 Corrected Exhibit List) (Edwards, S.). (Entered: 09/26/2012)

09/27/2012	305	ORDER - The movant, Jeffrey R. MacDonald, is DIRECTED to file his post-hearing memorandum within sixty (60) days of the filing of the official transcript of that hearing. The Government is DIRECTED to file its post-hearing memorandum within sixty (60) days of the date on which MacDonald's memorandum is filed. Signed by Senior Judge James C. Fox on 9/27/2012. (Indig, A.) (Entered: 09/27/2012)
10/05/2012	308	TRANSCRIPT REQUEST by Jeffrey MacDonald for proceedings held on September 17,18, 19, 20, 21, 24, 25 before Judge Fox. (Widenhouse, Jr., M.) (Entered: 10/05/2012)
10/09/2012		NOTICE OF DEFICIENCY regarding: 308 Transcript Request. Transcript Request event is not to be used. Counsel is directed to refile using the Non-Appeal-Proposed CJA-24 event. (Thuemmel Proctor, S.) (Entered: 10/09/2012)
10/09/2012	309	Non-Appeal Proposed CJA 24 (Widenhouse, Jr., M.) (Entered: 10/09/2012)
10/09/2012		NOTICE TO COUNSEL regarding: 309 Non-Appeal-Proposed CJA-24. The court recommends 'flattened' pdf fillable forms, as stated in Section B(3) of the Administrative Policies and Procedures Manual. In future filings be sure to "flatten" all documents. (Thuemmel Proctor, S.) (Entered: 10/09/2012)
11/19/2012	310	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/17/12, Evidentiary Hearing (Day One) before Senior United States District Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012	311	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/18/12, Evidentiary Hearing (Day Two) before Senior United States District Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012	312	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/19/12, Evidentiary Hearing (Day Three) before Senior United States District Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through

		PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012	313	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/20/12, Evidentiary Hearing (Day Four) before Senior United States District Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012	314	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/21/12, Evidentiary Hearing (Day Five) before Senior United States District Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012	315	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/24/12, Evidentiary Hearing (Day Six) before Senior United States District Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012	316	OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/25/12, Evidentiary Hearing (Day Seven) before Senior United States Disctrict Judge James C. Fox. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/13/2012. Redacted Transcript Deadline set

		for 12/23/2012. Release of Transcript Restriction set for 2/20/2013. (Schwinn, Stacy) (Entered: 11/19/2012)
11/19/2012		NOTICE of Filing of Official Transcript. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (Schwinn, Stacy) (Entered: 11/19/2012)
11/21/2012	317	*CORRECTED* OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/17/12, Evidentiary Hearing before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012	318	*CORRECTED* OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/18/12, Evidentiary Hearing, before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012	319	*CORRECTED* OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/19/12, Evidentiary Hearing, before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012	320	

		CORRECTED OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/20/12, Evidentiary Hearing before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012	321	*CORRECTED* OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/21/12, Evidentiary Hearing before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012	322	*CORRECTED* OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/24/12, Evidentiary Hearing before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012	323	*CORRECTED* OFFICIAL TRANSCRIPT of Proceedings as to Jeffrey MacDonald held on 9/25/12, Evidentiary Hearing before Senior United States District Judge James C. Fox. Corrected as to address of Brian M. Murtagh. Court Reporter/Transcriber Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 12/15/2012. Redacted Transcript Deadline set for 12/25/2012. Release of

		Transcript Restriction set for 2/22/2013. (Schwinn, Stacy) (Entered: 11/21/2012)
11/21/2012		NOTICE of Filing of Official Transcript. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (Schwinn, Stacy) (Entered: 11/21/2012)
11/26/2012	324	NOTICE of Intent to Request Redaction of 317 Transcript, 323 Transcript, 321 Transcript, 318 Transcript, 322 Transcript, 320 Transcript, 319 Transcript, by John S. Bruce in case as to Jeffrey MacDonald (Bruce, John) (Entered: 11/26/2012)
12/10/2012	325	Transcript Redaction Request in case as to Jeffrey MacDonald regarding 310 Transcript filed by attorney John S. Bruce (Bruce, John) (Entered: 12/10/2012)
12/19/2012	326	First MOTION *for Corrections to Hearing Transcript* by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Bruce, John) (Entered: 12/19/2012)
12/20/2012		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 326 First MOTION *for Corrections to Hearing Transcript*. (McDowell, G.) (Entered: 12/20/2012)
12/21/2012	327	ORDER - granting 326 Motion for Corrections to Hearing Transcript as to Jeffrey MacDonald (1). Signed by Senior US District Judge James C. Fox on 12/21/2012. (McDowell, G.) (Entered: 12/21/2012)
01/10/2013	328	Consent MOTION for Extension of Time To File Defendant's Post-Hearing Memorandum per 305 Order (until February 17, 2013) by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 01/10/2013)
01/10/2013		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 328 Consent MOTION for Extension of Time To File Defendant's Post-Hearing Memorandum 305 Order, until February 17, 2013. (McDowell, G.) (Entered: 01/10/2013)
01/10/2013	329	ORDER - GRANTING 328 Motion for Extension of Time as to Jeffrey MacDonald (1). The defendant shall file his post-hearing memorandum on or before 17 February 2013. Signed by Senior Judge James C. Fox on 1/10/2013. (Indig, A.) (Entered: 01/10/2013)
01/15/2013	330	REDACTED OFFICIAL TRANSCRIPT of Evidentiary Proceedings as to Jeffrey MacDonald held 9/17/12 before Senior United States District Judge James C. Fox regarding 317 Transcript 310 Transcript in case as to Jeffrey MacDonald. (Schwinn, Stacy) (Entered: 01/15/2013)
01/15/2013	331	***CORRECTED*** OFFICIAL TRANSCRIPT of Evidentiary Hearing Proceedings held on 9/25/12 before Senior United States District Judge James

		C. Fox (corrected pursuant to DE 327 - Order Granting Motion for Corrections to Transcript as to Jeffrey MacDonald. Court Reporter Stacy Schwinn, Telephone number 910-431-4502. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's website. Redaction Request due 2/8/2013. Redacted Transcript Deadline set for 2/18/2013. Release of Transcript Restriction set for 4/18/2013. (Schwinn, Stacy) (Entered: 01/15/2013)
01/15/2013		NOTICE of Filing of Official Transcript. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (Schwinn, Stacy) (Entered: 01/15/2013)
02/08/2013	332	Consent MOTION for Extension of Time to File *Supplemental Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 02/08/2013)
02/11/2013		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 332 Consent MOTION for Extension of Time to File *Supplemental Memorandum*. (McDowell, G.) (Entered: 02/11/2013)
02/11/2013	333	ORDER - GRANTING 332 Motion for Extension of Time to File as to Jeffrey MacDonald (1). The defendant shall file his post-hearing memorandum on or before 21 March 2013. Signed by Senior Judge James C. Fox on 2/11/2013. (Indig, A.) (Entered: 02/11/2013)
03/19/2013	334	MOTION for Extension of Time to File *Defendant's Supplemental Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 03/19/2013)
03/19/2013		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 334 MOTION for Extension of Time to File *Defendant's Supplemental Memorandum*. (McDowell, G.) (Entered: 03/19/2013)
03/19/2013	335	ORDER - GRANTING 334 Motion for Extension of Time to File as to Jeffrey MacDonald (1). The defendant shall file his post-hearing memorandum on or before 29 March 2013. Signed by Senior Judge James C. Fox on 3/19/2013. (Indig, A.) (Entered: 03/19/2013)
04/01/2013	336	RESPONSE TO ORDER by Jeffrey MacDonald (Widenhouse, Jr., M.) (Entered: 04/01/2013)
04/01/2013	337	MOTION for Extension of Time to File *Post-Hearing Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 04/01/2013)
04/01/2013		

		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 337 MOTION for Extension of Time to File *Post-Hearing Memorandum*. (McDowell, G.) (Entered: 04/01/2013)
04/01/2013	338	ORDER - granting 337 Motion for Extension of Time to File as to Jeffrey MacDonald (1); the petitioner shall file his post-hearing memorandum on or before 1 April 2013. Signed by Senior US District Judge James C. Fox on 4/1/2013. (McDowell, G.) (Entered: 04/01/2013)
05/28/2013	339	First MOTION for Extension of Time to File *Responsive Memorandum*, MOTION for Extension of Time to File Response/Reply by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order for Extension of TIme) (Bruce, John) (Entered: 05/28/2013)
05/28/2013	340	ORDER - GRANTING 339 Motion for Extension of Time. The deadline for the Government's responsive post-hearing memorandum is extended to July 1, 2013. Signed by Senior Judge James C. Fox on 5/28/2013. (Indig, A.) (Entered: 05/28/2013)
05/31/2013	341	Consent MOTION for Leave to File *Substitute Post-Hearing Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 05/31/2013)
06/03/2013		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 341 Consent MOTION for Leave to File *Substitute Post-Hearing Memorandum.* (Indig, A.) (Entered: 06/03/2013)
06/03/2013	342	ORDER - GRANTING 341 Motion for Leave to File a Substitute Post-Hearing Memorandum within five business days of the entry of this order. Signed by Senior Judge James C. Fox on 6/3/2013. (Indig, A.) (Entered: 06/03/2013)
06/10/2013	343	RESPONSE TO ORDER by Jeffrey MacDonald (Widenhouse, Jr., M.) (Entered: 06/10/2013)
07/01/2013	344	RESPONSE TO ORDER by USA as to Jeffrey MacDonald (Cooley, Leslie) (Entered: 07/01/2013)
07/08/2013	345	MOTION for Leave to File *Reply to Government's Post-Hearing Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 07/08/2013)
07/08/2013	346	ORDER - GRANTING 345 Motion for Leave to File as to Jeffrey MacDonald (1). Within thirty days of the filing of this order, MacDonald shall file his Reply. If the Government elects to file a Sur-Reply, it shall do so within thirty days thereafter. Signed by Senior Judge James C. Fox on 7/8/2013. (Indig, A.) (Entered: 07/08/2013)
08/05/2013	347	Consent MOTION for Extension of Time to File Response/Reply as to 344 Response to Order by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 08/05/2013)
08/05/2013		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 347 Consent MOTION for Extension of Time to File

		Response/Reply as to 344 Response to Order. (Indig, A.) (Entered: 08/05/2013)
08/05/2013	348	ORDER - GRANTING 347 Motion for Extension of Time to File Response as to Jeffrey MacDonald (1). On or before August 14, 2013, MacDonald shall file his Reply to the Government's Post-Hearing Memorandum. Signed by Senior Judge James C. Fox on 8/5/2013. (Indig, A.) (Entered: 08/05/2013)
08/13/2013	349	Consent MOTION for Extension of Time to File Response/Reply *to Government's Post-Hearing Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 08/13/2013)
08/13/2013		Motion Submitted to Senior US District Judge James C. Fox as to Jeffrey MacDonald regarding 349 Consent MOTION for Extension of Time to File Reply *to Government's Post-Hearing Memorandum*. (McDowell, G.) (Entered: 08/13/2013)
08/13/2013	350	ORDER - GRANTING 349 Motion for Extension of Time to File Reply to the Government's Post-Hearing Memorandum on or before 8/21/2013. Signed by Senior Judge James C. Fox on 8/13/2013. (Indig, A.) (Entered: 08/13/2013)
08/22/2013	351	REPLY TO RESPONSE to Motion by Jeffrey MacDonald regarding 345 MOTION for Leave to File *Reply to Government's Post-Hearing Memorandum* (Attachments: # 1 Exhibit Champion article, # 2 Exhibit Miles affidavit, # 3 Exhibit Smith affidavit, # 4 Exhibit Sadoff affidavit, # 5 Exhibit Article, # 6 Exhibit Article, # 7 Exhibit Article) (Widenhouse, Jr., M.) (Entered: 08/22/2013)
09/23/2013	352	REPLY TO RESPONSE to Motion by USA as to Jeffrey MacDonald regarding 345 MOTION for Leave to File *Reply to Government's Post-Hearing Memorandum Government's Post-Hearing Sur-Reply* (Attachments: # 1 Index Index of Exhibits to Reply, # 2 Exhibit No. 1 - Video Recording of "Fatal Vision" Miniseries-Relevant Excerpt, # 3 Exhibit No. 2 - Video Recording of "Fatal Vision" Miniseries-Complete Copy, # 4 Exhibit No. 3 - Report of Myers Interview of Leonard, 1/23/1980, # 5 Exhibit No. 4 - Demonstrative Exhibit: Chart of Leonard-Gunderson Comparison, # 6 Exhibit No. 5 - Demonstrative Exhibit: Chart of Leonard-Published Opinion Comparison, # 7 Exhibit No. 6 - "Witnesses Attest to MacDonald's Trust, Compassion," News & Observer, 8/22/1979, # 8 Exhibit No. 7 - Motion for Writ re: Jimmy Friar, 8/16/1979, # 9 Exhibit No. 8 - Affidavit of Myers in Support of Motion for Writ, 8/16/1979, # 10 Exhibit No. 9 - Report of Interview of Friar by FBI, 8/17/1979, # 11 Exhibit No. 10 - Affidavit of Raymond Madden, Jr., #5 re: Interview of and Letter from Friar, # 12 Exhibit No. 11 - Memorandum in Support of Jeffrey R. MacDonald's Motion for an Order Authorizing the District Court for the Eastern District of North Carolina to Consider a Successive Application for Relief Under 28 U.S.C. § 2255, 4th Cir. Docket No. 997-713) (Cooley, Leslie) (Entered: 09/23/2013)
04/17/2014	353	NOTICE *of Filing* (Attachments: # 1 Exhibit Trial Exhibit No. 1135) (Bruce, John) (Entered: 04/17/2014)

07/24/2014	354	ORDER as to Jeffrey MacDonald denying 111 MOTION to Vacate under 28 U.S.C. 2255 (Civil Action 5:06-CV-24-F.). Signed by Senior Judge James C. Fox on 7/24/2014. (Foell, S.) (Entered: 07/24/2014)
07/24/2014	355	JUDGMENT ON 2255 MOTION as to Jeffrey MacDonald. Signed by Julie A. Richards, Clerk of Court on 7/24/2014. (Foell, S.) (Entered: 07/24/2014)
08/08/2014	356	ORDER denying 176 Motion Pursuant to the Innocence Protection Act of 2004, 18 U.S.C. § 3600, for New Trial Based on DNA Testing Results and Other Relief filed by Jeffrey MacDonald. Signed by Senior Judge James C. Fox on 8/8/2014. (Foell, S.) (Entered: 08/08/2014)
08/21/2014	357	MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* by Jeffrey MacDonald. (Attachments: # 1 Exhibit DOJ Task Force Review of FBI Lab) (Williams, Keith) (Entered: 08/21/2014)
09/11/2014	358	RESPONSE to Motion by USA as to Jeffrey MacDonald regarding 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Bruce, John) (Entered: 09/11/2014)
09/15/2014	359	MOTION for Extension of Time to File a Notice of Appeal 356 Order on Motion for New Trial, until September 22, 2014 by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order Proposed Order) (Mumma, Christine) (Entered: 09/15/2014)
09/15/2014		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 359 MOTION for Extension of Time to File a Notice of Appeal 356 Order on Motion for New Trial, until September 22, 2014 (Foell, S.) (Entered: 09/15/2014)
09/15/2014		Motion No Longer Submitted to Senior Judge James C. Fox: 359 MOTION for Extension of Time to File a Notice of Appeal re: 356 Order as to Jeffrey MacDonald. USA will be filing a response. (Foell, S.) (Entered: 09/15/2014)
09/15/2014	360	RESPONSE to Motion by USA as to Jeffrey MacDonald regarding 359 MOTION for Extension of Time to File a Notice of Appeal 356 Order on Motion for New Trial, until September 22, 2014 (Cooley, Leslie) (Entered: 09/15/2014)
09/16/2014		USA's response 326 to Motion submitted to Senior Judge James C. Fox. (Foell, S.) (Entered: 09/16/2014)
09/16/2014	361	REPLY TO RESPONSE to Motion by Jeffrey MacDonald regarding 359 MOTION for Extension of Time to File a Notice of Appeal 356 Order on Motion for New Trial, until September 22, 2014 (Mumma, Christine) (Entered: 09/16/2014)
09/16/2014	362	ORDER denying as moot 359 Motion for Extension of Time to File Appeal as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 9/16/2014. (Foell, S.) (Entered: 09/16/2014)
09/23/2014	363	NOTICE *of Filing* regarding 358 Response to Motion, 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Attachments: # 1 Index of Exhibits, # 2 Exhibit No. 1-Letter dated September 17, 2014, from

		Norman Wong, Special Counsel, Executive Office for U.S. Attorneys, U.S. Department of Justice, # 3 Exhibit No. 2-"Microscopic Hair Comparison Analysis: Result of Review," August 15, 2014, # 4 Exhibit No. 3-Report of FBI Laboratory (Paul Stombaugh), November 5, 1974, # 5 Exhibit No. 4-Report of FBI Laboratory (Malone), December 31, 1990, # 6 Exhibit No. 5-Report of FBI Laboratory (Malone), February 4, 1991, # 7 Exhibit No. 6-Report of FBI Laboratory (Robert Fram), May 19, 1999, # 8 Exhibit No. 7-Page 4294 of Trial Transcript (Trial Day Fourteen, August 8, 1979)) (Bruce, John) (Entered: 09/23/2014)
09/25/2014	364	REPLY TO RESPONSE to Motion by Jeffrey MacDonald regarding 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Widenhouse, Jr., M.) (Entered: 09/25/2014)
09/26/2014	365	MOTION Motion for Supplemental Briefing regarding 358 Response to Motion, 364 Reply to Response, 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Cooley, Leslie) (Entered: 09/26/2014)
10/07/2014	366	NOTICE OF APPEAL by Jeffrey MacDonald regarding 356 Order on Motion for New Trial, (Mumma, Christine) (Entered: 10/07/2014)
10/07/2014	367	MOTION to Withdraw as Attorney by Christine Mumma. by Jeffrey MacDonald. (Mumma, Christine) (Entered: 10/07/2014)
10/07/2014	368	Transmission of Notice of Appeal and Docket Sheet as to Jeffrey MacDonald to US Court of Appeals regarding 366 Notice of Appeal - Final Judgment. NOTE: The Docketing Statement, Transcript Order Form and CJA-24 forms, if you are court appointed counsel, are available on our website at website. If CJA-24 forms are applicable, complete items 1-14, and 18 for each court reporter from whom you wish to order a transcript, and file each one separately in this case with the event Appeal-Proposed CJA-24. The CJA-24 forms will then be processed by the U.S.District Court Clerk's Office. (Fogle, L.) (Entered: 10/07/2014)
10/07/2014		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 367 MOTION to Withdraw as Attorney by Christine Mumma. (Foell, S.) (Entered: 10/07/2014)
10/08/2014	369	ORDER granting 367 Motion to Withdraw as Attorney. Christine Mumma withdrawn from case as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 10/8/2014. (Foell, S.)(order mailed to MacDonald) (Entered: 10/08/2014)
10/09/2014	370	Letter regarding pending disposition of DE# 357. (Fogle, L.) Modified on 10/9/2014. (Fogle, L.) (Entered: 10/09/2014)
10/09/2014	371	Response by USA to 370 Letter regarding 357 Notice of Appeal. (Richards, J.) (Entered: 10/10/2014)
10/17/2014		Notification to Appeals Court of Filing regarding 371 Response by USA. (Fogle, L.) (Entered: 10/17/2014)

10/17/2014	372	RESPONSE in Opposition by Jeffrey MacDonald regarding 365 MOTION Motion for Supplemental Briefing regarding 358 Response to Motion, 364 Reply to Response, 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Widenhouse, Jr., M.) (Entered: 10/17/2014)
10/21/2014	373	REPLY TO RESPONSE to Motion by USA as to Jeffrey MacDonald regarding 365 MOTION Motion for Supplemental Briefing regarding 358 Response to Motion, 364 Reply to Response, 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Cooley, Leslie) (Entered: 10/21/2014)
10/21/2014		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 365 MOTION Motion for Supplemental Briefing regarding 358 Response to Motion, 364 Reply to Response, 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Foell, S.) (Entered: 10/21/2014)
10/22/2014	374	US Court of Appeals Case Number as to Jeffrey MacDonald 14-7543, RJ Warren, Case Manager for 366 Notice of Appeal - Final Judgment filed by Jeffrey MacDonald. (Fogle, L.) (Entered: 10/22/2014)
10/22/2014	375	Assembled Electronic Record on Appeal to 4th Circuit Court of Appeals as to Jeffrey MacDonald regarding 366 Notice of Appeal - Final Judgment. (Attachments: # 1 Record Request) (Fogle, L.) (Entered: 10/22/2014)
11/13/2014	376	ORDER granting 365 Motion for Supplemental Briefing by USA as to Jeffrey MacDonald. The court agrees that because MacDonald, as the movant, bears the burden of proof, he should file his supplemental briefing, to which the Government may reply. Accordingly, the Government's Motion for Supplemental Briefing 373 is ALLOWED. MacDonald shall file his supplemental briefing within forty-five (45) days of the filing date of this order. The Government shall file its response within thirty (30) days of MacDonald's filing of his supplemental briefing. The court reserves ruling on the Motion to Alter or Amend Judgment 357 pending the supplemental briefing. Signed by Senior Judge James C. Fox on 11/13/2014. (Foell, S.) (Entered: 11/13/2014)
12/29/2014	377	Consent MOTION for Extension of Time to File *Supplemental Memorandum* by Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order) (Widenhouse, Jr., M.) (Entered: 12/29/2014)
12/30/2014		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 377 Consent MOTION for Extension of Time to File *Supplemental Memorandum*. (Lee, L.) (Entered: 12/30/2014)
12/30/2014	378	ORDER granting 377 Motion for Extension of Time to File Supplemental Brief on or before January 6, 2015 as to Jeffrey MacDonald (1). Signed by Senior Judge James C. Fox on 12/30/2014. (Lee, L.) (Entered: 12/30/2014)
01/06/2015	379	Memorandum in Support by Jeffrey MacDonald regarding 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Widenhouse, Jr., M.) (Entered: 01/06/2015)

01/30/2015	380	MOTION for Extension of Time to File Response/Reply as to 376 Order on Motion for Miscellaneous Relief,, 379 Memorandum in Support of Motion, 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* by USA as to Jeffrey MacDonald. (Attachments: # 1 Text of Proposed Order To Extend Time to File Response) (Cooley, Leslie) (Entered: 01/30/2015)
02/02/2015		Motion Submitted to Senior Judge James C. Fox as to Jeffrey MacDonald regarding 380 MOTION for Extension of Time to File Response. (Foell, S.) (Entered: 02/02/2015)
02/02/2015	381	ORDER granting USA's 380 Motion for Extension of Time to File Response to Movant's Supplemental Memorandum Supporting Rule 59(e) Motion. Response due by 2/17/15. Signed by Senior Judge James C. Fox on 2/2/2015. (Foell, S.) (Entered: 02/02/2015)
02/12/2015	382	Memorandum in Opposition by USA as to Jeffrey MacDonald regarding 357 MOTION to Alter Judgment *(Rule 59(e) Motion to Alter or Amend Judgment)* (Attachments: # 1 Index of Exhibits, # 2 Exhibit No. 1 - Explanatory chart regarding hairs, # 3 Exhibit No. 2 - Letter to FBI, dated June 7, 1971, from Colonel Henry H. Tufts, Commanding Officer of the U.S. Army CID, # 4 Exhibit No. 3 - Report of FBI Laboratory (Paul Stombaugh), July 2, 1971, # 5 Exhibit No. 4 - "Laboratory Work Sheet" and accompanying bench notes of Paul Stombaugh, 6/10/71, # 6 Exhibit No. 5 - GX 1076, FBI Laboratory "solution" of Shirley Green, # 7 Exhibit No. 6 - Handwritten notes from Jury from 1979 trial) (Bruce, John) Modified on 2/12/2015 (Foell, S.). (Entered: 02/12/2015)
05/18/2015	383	ORDER denying 357 Motion to Alter or Amend Judgment as to Jeffrey MacDonald. Signed by Senior Judge James C. Fox on 5/18/2015. (Foell, S.) (Entered: 05/18/2015)
06/01/2015	384	COPY REQUEST in case as to Jeffrey MacDonald. (Attachments: # 1 Envelope) (Foell, S.) (Entered: 06/02/2015)
07/16/2015	385	NOTICE OF APPEAL by Jeffrey MacDonald regarding 354 Order (Widenhouse, Jr., M.) (Entered: 07/16/2015)
07/17/2015	386	Transmission of Notice of Appeal and Docket Sheet as to Jeffrey MacDonald to US Court of Appeals regarding 385 Notice of Appeal. **NOTE: The Docketing Statement, Transcript Order Form and CJA-24 forms, if you are court appointed counsel, are available on our website at website. If CJA-24 forms are applicable, complete items 1-14, and 18 for each court reporter from whom you wish to order a transcript, and file each one separately in this case with the event Appeal-Proposed CJA-24. The CJA-24 forms will then be processed by the U.S.District Court Clerk's Office. (Foell, S.) (Entered: 07/17/2015)
07/20/2015	387	US Court of Appeals Case Number 15-7136, RJ Warren, Case Manager, for 385 Notice of Appeal - Final Judgment filed by Jeffrey MacDonald. (Tripp, S.) (Entered: 07/21/2015)
07/21/2015	388	

		Assembled Electronic Record on Appeal to 4th Circuit Court of Appeals as to Jeffrey MacDonald transmitted to 4th Circuit Court of Appeals regarding 385 Notice of Appeal - Final Judgment. (Attachments: # 1 Record Request) (Tripp, S.) (Entered: 07/21/2015)
03/31/2016	389	Unpublished Opinion from Fourth Circuit Court of Appeals as to Jeffrey MacDonald regarding 366 Notice of Appeal - Final Judgment. Affirmed by unpublished per curiam opinion. (Tripp, S.) (Entered: 03/31/2016)
03/31/2016	390	JUDGMENT of US Court of Appeals (certified copy) as to Jeffrey MacDonald regarding 366 Notice of Appeal - Final Judgment. In accordance with the decision of this court, the judgment of the district court is affirmed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41. (Tripp, S.) (Entered: 03/31/2016)
04/04/2016	391	ORDER of US Court of Appeals as to Jeffrey MacDonald regarding 385 Notice of Appeal (15-7136). MacDonald seeks to appeal the district court's orders and judgment denying his 28 U.S.C. § 2255 (2012) motion. We GRANT a certificate of appealability on the following issue: Whether the district court erred finding that MacDonald did not establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense. The Clerk will issue a separate order setting a briefing schedule. (Foell, S.) (Entered: 04/04/2016)
04/22/2016	392	MANDATE of U.S. Court of Appeals as to Jeffrey MacDonald regarding 366 Notice of Appeal - Final Judgment. The judgment of this court, entered March 31, 2016, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (Tripp, S.) (Entered: 04/22/2016)

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a crime scene, or a scene of a crime, to observe what we see, preserve all evidence, help the injured--if we were able to do so--and basically make sure that you did nothing to disturb or alter what you have seen.

BY MR. BLACKBURN:

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Q Directing your attention to the late evening of the 16th of February, 1970, as a result of your assignment at Fort Bragg as a military policeman, did you have occasion to be on duty as a military policeman that night?

A Yes, I did.

Q What was your duty that evening?

A I was assigned to a patrol on Fort Bragg, the 11:30-midnight shift to 7:30 in the morning.

Q What was the total area of patrol at Fort Bragg which you were to be conducting?

A The area that I was patrolling was about a two-mile square area of the main post of Fort Bragg.

Q What areas, if you know, were covered in that two-mile area?

A The Main Post, Corregidor Courts, and Anzio Acres.

Q Who, if anyone else, was present with you that night?

A My partner on patrol was Specialist Mario

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D'Amore.

Q You were riding together?

A Yes, we were. We were in an army jeep.

Q Who was driving?

A I was.

Q During your patrol from the time you came on duty up until about 3:00 o'clock a.m. on the 17th of February, what did you have occasion to observe?

A From 11:30 at night until approximately 3:00 or 3:30 in the morning, the Post was very quiet. The weather--it was a rainy, windy night, a cold, damp night--and there was very little activity on the Post.

Q By "little activity," what do you mean?

A Very few cars, no heavy traffic, virtually no one was walking around because of the intensity of the rain.

Q Now may I direct, Mr. Tevere, your attention to approximately quarter until four, or 3:45 a.m. on the 17th. Did you have occasion to receive a call over your car radio?

A Yes, we did.

Q What was the nature of that call?

A We were told there was a domestic disturbance at 544 Castle Drive, and another patrol was given the call. I answered and said that I would back them up,

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which is normal to do at a domestic disturbance.

Q And did you do that?

A Yes, we did.

Q Approximately how long, if you know, did it take you to get to Castle Drive?

A About four minutes--three or four minutes.

MR. BLACKBURN: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. BLACKBURN:

Q Mr. Tevere, let me, if I can, put on this easel an exhibit that has been marked--let me show you what has been marked as Government Exhibit 968, and ask you if you can identify that, sir.

(Government Exhibit 968 was marked for identification.)

A Yes, I can. That is Corregidor Courts and Anzio Acre housing area on Fort Bragg.

Q Let me hand you this marker and if you will, if you can, trace on that exhibit--trace on that exhibit, if you can Mr. Tevere--where you were when you got your call, the route you took to Castle Drive.

A Where I was at was not on the map, but I was in the area somewhat up on here which would be

Riley Road.

MR. SEGAL: Excuse me, Your Honor, could you have the witness perhaps, or the Government perhaps, give us some compass directions? Then we could understand further for the record better what we are talking about.

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THE COURT: Why don't we do that? I would also suggest that the map be oriented so that all of the jurors can see it. About half of them are not able to see it in its present position. Well, now you might put it back a little so the witness can see it too.

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BY MR. BLACKBURN:

Q Mr. Tevere, I am going to place on this easel over here Government Exhibit 967 and ask if you can identify that, please.

(Government Exhibit No. 967 was marked for identification.)

A Yes, I can. That is a housing view of Corregidor Courts on Fort Bragg.

Q Now, if you will on the exhibit which I just pointed out to you--will you point out the north-south direction, if you would.

A This would be north, south, west, east (indicating).

Q And, if you could, correlate Government Exhibit 967--the one over here on the right--to the photograph right next to you.

A Okay. I was in this area on Riley Road and proceeded south to Honeycutt Road. I then made a left, came across Honeycutt Road, which would be in an easterly direction, came east on Honeycutt Road. I then made a left and proceeded south on North Lucas. I made a right on Spear Drive, headed east on Spear Drive up to Castle Drive, at which point I made another right and headed east to 544 Castle Drive, which is right here.

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Q During the trip from where you were called to Castle Drive, how many moving vehicles did you see as you went to there?

A I saw no civilian vehicles. I only saw two military vehicles.

Q How many pedestrians or people walking around did you see?

A I saw nobody.

Q When you arrived at Castle Drive, what did you do?

A When I got to 544 Castle Drive, there was a military police lieutenant and another military policeman at the front door of Castle Drive. I went up to the front door with them and spoke for five seconds or so; and we found out we could not gain entry into the house through the front door.

Q Why was that?

A The front door was locked; so I took a flashlight from one of the other MP's and ran around the back of 544 Castle Drive and entered the house through a rear door, a screen door.

Q Was this the first or the second door that you came to as you went around the back of the house?

A It was the first door I came to.

Q Was the screen door opened or closed?

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A The screen door was closed, but the wooden door inside the house was open.

Q Proceed. What did you do next?

A I walked through a utility room.

Q Was the light on or off in the utility room?

A It was off.

MR. SEGAL: I could not hear what he said.

THE COURT: Off.

THE WITNESS: Off. I walked through the utility room into the master bedroom.

MR. SEGAL: Will Your Honor indulge us for a minute? I think we might be able to expedite something.

(Counsel confer.)

BY MR. BLACKBURN:

Q Mr. Trevere, if you would come down from the witness box to what has been marked as Government Exhibit Number 1, and bring the marker with you.

(Government Exhibit No. 1 was marked for identification.)

BY MR. BLACKBURN:

Q And, if you would, sir, point out to the jury the door that you went into through the back way.

A I came around from the front of the house

around the side and I entered through this door back here.

Q That is where the screen door was?

A Yes.

Q The first room, I take it then, is the utility room?

A Yes, this room right here.

Q What did you do after you went into the utility room?

A I proceeded into the bedroom.

Q What did you see when you went into the bedroom?

A I saw a male and a female lying on the floor, and the female was covered with blood.

Q What else did you observe at that time in that room, if anything?

A Nothing else.

Q Okay, who else, if anyone, was in the apartment at that time with you?

A Nobody.

Q I am speaking of MP's.

A There was nobody else in the apartment other than myself. I was alone.

Q What did you do after you saw the two bodies in the bedroom?

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A I ran out of the back of the house.

Q What did you do after you ran outside the back of the house?

A I ran out the same door I came in and went over to the side of the house where I saw another MP.

Q Do you know who that was?

A That's Lieutenant Paulk.

Q What did you say, if anything?

A I told him to call Womack Army Hospital and to call the CID and the PMI because I thought someone had been severely hurt or stabbed.

Q Then what did you do?

A I turned around and proceeded back into the house through the same door.

Q Were you the first or second one back in the house?

A I was the first one back in.

Q After you came back into the house--you may resume your seat--after you came back into the house the second time, where did you go?

A Back into the master bedroom.

Q How long did you stay there?

A Maybe a minute or two.

Q What did you do while you were in the master bedroom?

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A I observed Captain MacDonald, but I did not know at that time it was Captain MacDonald. I observed a male lying next to a female; and at that time Mr. MacDonald was lying on his side, laid back over on his back, and he said that intruders had come into his house.

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BY MR. BLACKBURN:

Q Okay, now, Mr. Tevere, at this point in the apartment what other M.P.'s, if any, were present?

A Spec 4 Mica came in behind me with Lieutenant Paulk and a third M.P. also. I think Spec 4 Morris--

MR. SEGAL: (Interposing) I am sorry. I beg your pardon. He is tending to drop his voice. Cannot get these names.

THE WITNESS: Specialist Morris.

BY MR. BLACKBURN:

Q Where were they located inside the house?

A They were behind me.

Q Were they all in the master bedroom?

A Mica, myself, and Lieutenant Paulk were. Morris, I think, was in the doorway or the utility room.

Q After you came into the master bedroom, where else, if anywhere, did you go in the house?

A Well, at that point I went down the hallway.

Q If you would come down and point at where you went.

A I proceeded through this doorway down the hall to see if there was anybody else in the apartment. I came down to the living room steps, looked around, and did not see anybody in the living room. Looked in

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the dining and kitchen area, and I proceeded back to the master bedroom.

Q During this trip down the hallway, what lights, if any, were on?

A There was a light on in the hall, and there was a light on in the dining room.

Q As a result of that, I take it you were able to see?

A Yes.

Q What, if anything, did you touch as you walked down the hall?

A I touched nothing.

Q What, if anything, at that point had you touched in the master bedroom?

A Nothing. I just touched the door at this point.

Q Which door are you referring to?

A The screen door.

MR. BLACKBURN: You may resume your seat.

Q After you had gone down the hallway and come back, did you go back to the master bedroom?

A Yes, I did.

Q When you got back there, what, if anything, did you observe?

A Lieutenant Paulk was standing in the master

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bedroom. Specialist Mica was in the master bedroom, and myself at that point. Captain MacDonald told us that he had been stabbed and that he thought he may go into shock and, if he went into shock, we should breathe into his mouth.

Q What, if anything, did you observe Specialist Mica do?

A At that point Specialist Mica started to give Captain MacDonald mouth-to-mouth resuscitation.

Q What were you doing at this time?

A I just lifted Captain MacDonald's feet slightly and loosened his pajama bottom to allow him to breathe.

Q Why did you raise his feet?

A Well, we were taught that if someone is going into shock, one of the things to do is to raise his feet, loosening anything around their neck and waist which would help a person to breathe more easily.

Q Did you hold his feet yourself or did you put his feet on something?

A No, I just elevated them a few inches and held them.

Q How long did you do that?

A Ten or 15 seconds.

Q After you did that, what did you do?

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A I then got up and picked up the phone in the master bedroom.

Q If you would, come back to the model and show us where that occurred?

A The phone in the master bedroom is right here on the dresser, on the end of the dresser.

Q If you would, Mr. Tevere, would you unhook the front of the model? Now, again, please, would you tell the jury where you picked up the telephone, where it was located?

A The telephone was located on the end of a bureau which was in the master bedroom. The receiver was lying at that time right next to the telephone--off the hook.

Q How did you pick up the telephone?

A I picked it up with my thumb and two fingers, like this (gesturing).

Q Did you put it to your ear?

A Yes.

Q What did you hear?

A Nothing. The phone was dead.

Q Why did you pick it up?

A I picked the phone up because the radio operator told us when we got the initial call to make sure that we got into the MacDonald house and call them

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from the phone inside the house because they believed somebody had been stabbed inside the house.

Q After you discovered that the phone was dead, what did you do with the phone?

A Put the phone back down on the dresser--the receiver back down next to the telephone.

Q Did you ever touch the main part of the phone--the main body of the phone?

A No, I did not.

MR. BLACKBURN: You may resume your seat.

Q Mr. Tevere, did you have an occasion to observe the top of the dresser in the master bedroom?

A Yes, I did.

Q That the phone was resting on?

A Yes.

Q What was on the top of that dresser, if you know?

A To the best of my knowledge, it was a glass top with a lamp and, I think, a can of hair spray, and a few other articles scattered about.

Q The glass top covered the whole of the top of the dresser?

A Yes.

Q Now, during this time, how long did you remain in the master bedroom?

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A Maybe about three minutes--four minutes.

Q During that time, what, if anything, did you observe as to the condition of that master bedroom?

A I had noticed a wet spot on the bed--on the sheet of the bed. I had noticed a knife with blood on it next to the dresser which I pointed out to Specialist Mica. I noticed that someone had written the word "Pig" on the dashboard--on the headboard, rather--of the bed and there was a pile of sheets and what-not just lying against the wall at the foot of the bed.

Q How about coming down here, if you would, Mr. Tevere? Mr. Tevere, if you would take those items that I have put on the back of that model--one item representing a pile of bedding, another one representing Colette MacDonald, and another representing Jeffrey MacDonald. If you would, sir, place them in the master bedroom in the position that you saw them when you went into the master bedroom.

(Witness complies.)

Q Mr. Tevere, what was the condition of the bed in the master bedroom if you had occasion to observe it?

A It just had a sheet on it which I said was wet, and it had nothing else.

Q Was the sheet on or off the bed?

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7

A Partially on and off the bed.

Q What, if anything, did you observe on the walls of that room?

A I noticed the wall--on the wall over the bed where the headboard was were some reddish-brown stains.

Q What, if anything, did you observe with respect to the ceiling of the master bedroom?

A The same thing. There was stains on the ceiling also.

Q Do you mean reddish-brown stains?

A Reddish-brown stains, yes.

MR. BLACKBURN: You may resume your seat.

BY MR. BLACKBURN:

Q I believe you testified earlier that while you were in the master bedroom, you heard the Defendant indicate that he had been stabbed; is that correct?

A Yes.

Q While you were in that master bedroom, what else, if anything, did you hear the Defendant say?

A He told us that a bunch of hippies--a band of hippies--had come into the house. He described that there were four hippies. One was a blond with muddy boots, floppy hat, and carrying a candle.

Q Excuse me. Who did you say was carrying the candle?

A The blond was carrying a candle saying, "Acid is groovy; kill the pigs." He said there were two white males--Caucasian--and one Negro with an army field jacket with sergeant stripes.

Q What, if anything, did the Defendant say with respect to his children?

A He kept asking to check his children and he kept asking how the children were.

Q As a result of that question or statement by the Defendant, what, if anything, did you do?

A Well, at that point, I told him they were okay because I didn't want to alarm him, and I got up to

see the condition of the children.

Q If you would come back down, sir. Okay, if you would proceed. You said that you went to see these children. Where did you go first?

A The first bedroom that I went into was the front bedroom right here (indicating).

Q Okay. If you would, Mr. Tevere, will you pick up one of those models and place it where you saw someone in that room?

(Witness complies.)

Q Where are you pointing to?

A The front bedroom where Kimberly MacDonald was.

Q You did not know her at that time to be Kimberly MacDonald?

A No.

Q She was in the bed?

A Yes, she was.

Q Now, how far did you go into that bedroom?

A About three or four steps.

Q What, if anything, did you touch as you walked into that bedroom?

A I didn't touch anything.

Q Was the light on or off?

A I don't remember. It was light in the room

because I was able to see the child without any problem.

Q Was there a light in the hall?

A Yes, there was.

Q I believe you testified earlier that the hall light was on?

A Yes.

Q Now, what use, if any, did you make of your flashlight during this time?

A I did not use it at all.

Q When you went in to observe the little girl in the bed, after you observed that, where did you go?

A I came back out of the room and I went to the door of the third bedroom--the north bedroom.

Q What did you observe in that bedroom?

A A child in the bed.

Q If you would, sir, put the other model where you saw it?

(Witness complies.)

Q Now, what else did you observe in that bedroom, if anything?

A I observed that the child seemed to have been hurt very badly. There was a puddle of blood. I could see that blood had dripped down the bed and there was a puddle of blood right in front of the bed.

Q On the floor?

A Yes.

Q What was the position of this child in the bed?

A She was lying on her left side facing the east side of the house--lying on her side. Her hand was over near the edge of the bed.

Q Were the bedcovers up or down?

A They were down.

Q Were they all the way down?

A I can't remember.

Q With respect to the other bedroom, when you saw the child in that bed, were the bedcovers up or down?

A They were up.

Q Do you recall whether the light was on or off in that other bedroom?

A I don't recall.

MR. BLACKBURN: You may resume the stand.

BY MR. BLACKBURN:

Q When you went into this back bedroom, what, if anything, did you touch when you went into it?

A I didn't touch a thing.

Q After you looked into those two bedrooms, what did you do then?

A Went back to the master bedroom.

Q What did you do when you got there?

A I think Mica was giving Captain MacDonald artificial respiration again. I stood there as Mica gave him mouth to mouth. Again, Captain MacDonald asked how his children were. I just told him, "It will be okay. Don't worry."

Q When you observed the Defendant, how was he dressed?

A With just a pajama bottom.

Q How was he dressed from the waist up?

A He had nothing on. He had a bare chest.

Q What, if anything, did you observe with respect to his chest area?

A Nothing. I didn't see anything out of the ordinary.

MR. SEGAL: I cannot hear your answer.

THE WITNESS: I did not see anything out of the ordinary.

BY MR. BLACKBURN:

Q What, if anything, did you observe with respect to his pajama bottom?

A There was just a couple of specks of blood on the bottom of them, I believe.

MR. BLACKBURN: Excuse me for just one moment, Your Honor.

(Pause.)

BY MR. BLACKBURN:

Q Mr. Tevere, as you were in the apartment, what wet or muddy spots, if any, did you observe?

A I didn't see any.

Q What blades of grass, if any, did you observe?

A I saw no grass.

Q What, if anything, did you say to the other MP's who were there with respect to observing the evidence at that particular house?

A I told the other MP's not to touch anything. I told them to watch where they walked and not to pick up anything, not to hit the walls, and not to disturb anything in the house.

Q What, if anything, did you see any of the other MP's touch?

A Nobody touched anything that I could see.

Q What, if anything, did you see those other MP's move?

A Nothing.

MR. SEGAL: Can we have some identification, Your Honor, of which military police

officer this witness is being questioned about? The record indicates that there are many, many more than so far we have had identified.

THE COURT: All right.

MR. BLACKBURN: Your Honor, the question went to the MP's. He has already mentioned several.

THE COURT: Yes. He named them. If there were others encompassed by your question, identify them, too.

BY MR. BLACKBURN:

Q Mr. Tevere, up to this point, while you were in the house, would you identify those MP's that you know that were in that house?

A There was Lieutenant Paulk, Spec. 4 Mica, Spec. 4 D'Amore, Specialist Dickerson, Specialist Cellic, Sergeant Hagney, and Sergeant Caldwell.

Q Is that all that you recall?

A Yes.

Q With respect to those MP's, who among those did you observe touch or move anything?

A None of the MP's touched anything or moved anything that I was able to see.

M12
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BY MR. BLACKBURN

Q Mr. Tevere, at this point how long, if you know, had you been in the house?

A Five minutes, maybe eight minutes.

Q Do you recall approximately what time you arrived at the house?

A Approximately 3:50 or 3:55 a.m.

Q After you were in the master bedroom at this time, did you have occasion to go back to the front part of the house?

A Yes, I did.

Q For what purpose did you do that?

A I went to the front of the house to see where Lieutenant Paulk was, and to check and see why the ambulances had not arrived as yet.

Q Where did you talk to Lieutenant Paulk?

A I spoke to Lieutenant Paulk in the living room or first I spoke to Lieutenant Paulk in the master bedroom because he was taking notes and taking down a description of what Captain MacDonald--of the people Captain MacDonald said were in the house.

Q If you would, sir, if you would come around here and point out to the Jury where you were talking to Lieutenant Paulk.

A Lieutenant Paulk was standing right here, and

I was standing in the doorway.

Q Would you repeat the answer.

A Lieutenant Paulk was standing right here, and I was standing in the doorway right here. (Indicating).

Q And what did you say to him, if you recall?

A Lieutenant Paulk got a description of the intruders that Captain MacDonald gave us. He said he was going to go outside and radio the Provost Marshal's office, or try to use a phone next door if he could get somebody to answer the door to call the descriptions in and also he would also check on the ambulance.

Q I believe that you have testified that you subsequently came back to the living room area, is that correct?

A Yes.

Q Why did you do that?

A Because Lieutenant Paulk went down the hall and into the living room.

Q Where did you talk with him in the living room?

A I spoke with Lieutenant Paulk here in the living room.

Q Did you have occasion to observe the

M12
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physical condition of the living room?

A Yes.

Q Would you describe what you saw?

A When I went into the living room there was a light on, and the coffee table was lying on its side; and I saw some magazines under the coffee table on one side of it.

Q What else, if anything, did you observe?

A I saw a little clothing, I think, in this area here, and a flower pot on the floor.

Q Was the flower pot standing up or on its side?

A It was lying on its side.

MR. BLACKBURN: You may resume your seat.

Q Did you see anything else in the living room overturned besides the coffee table and the flower pot?

A No, that was it. I saw nothing else.

Q Did you have an occasion to look into the dining room area?

A Yes, I did.

Q What if anything did you observe there with respect to the condition of the furniture?

A Nothing. I didn't observe anything out of the ordinary.

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Q By that I take it you mean everything was upright?

A Yes.

Q Did you have an occasion to observe the kitchen area?

A Yes. I looked into the kitchen area.

Q Was the light in the kitchen on or off?

A The light was on in the kitchen.

Q What, if anything, did you observe in the kitchen?

A I noticed little specks--reddish brown specks--on the floor that seemed to be blood. Then I noticed the telephone dangling--the telephone cord with the receiver hanging straight down to the floor.

Q If you, sir, would come over to this model and point out the location of the telephone.

A Right here on the wall. (Indicating).

Q And also the approximate area where you stated what appeared to be reddish brown stains.

A Right here. (Indicating).

Q Would you say for the record the relationship of those reddish-brown stains to the kitchen sink, for example?

A It was three feet in front of the kitchen sink.

Q Mr. Tevere, when you first went into the master bedroom and saw the male and female on the floor, were you able to see all of the female, or was the male laying next to her?

A The male was lying on his right side covering part of the female's left side.

Q Was the female dressed or not dressed?

A She had pajamas on.

Q Top and bottom?

A Yes.

Q What else, if anything, did you observe on the top of the female?

A Well, it looked like part of her chest was exposed, and I saw what appeared to be several wounds on her chest and her head and a bath mat near her feet or a white towel near the bottom part of her.

Q What else, if anything, did you see on her chest area?

A At that point, nothing else.

MR. BLACKBURN: Just a moment.

(Pause.)

Q If you would come down here to the model, Mr. Tevere, to the master bedroom area and point out where you saw what you stated to be a bathmat on Colette.

A Right here in this area.

MR. SEGAL: (Interposing).

Excuse me Your Honor. I'm sorry, I do not want to interfere with the Jury here, but at the same time, it is impossible to conduct this case when none of us sitting over here, Mr. Smith or myself, can see what is going on or what this witness is indicating. We need to have a better and fairer procedure for doing this.

THE COURT: Do you have any suggestions?

MR. SEGAL: Your Honor, I think perhaps we ought to talk with the COURT about how this trial can be conducted so that the DEFENSE can know what is going on over here.

THE COURT: If it is a matter of audibility and the witness is not talking loud enough I will tell him to raise his voice. If it is a matter of accessibility to the exhibit, I will just have to ask you to take a place over where you can see. That is customary in this courtroom.

MR. SEGAL: I think we need some rearrangement, Your Honor, to allow us to do that.

THE COURT: Just go right ahead. I am open to suggestions about it. Certainly everybody's got a right to see what is going on.

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MR. SEGAL: Indulge us for a moment, Your Honor, and let us talk with Counsel for the Government.

THE COURT: Very well.

(Counsel confer).

#13
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MR. MURTAGH: I wonder if you would inquire of the Jury if they can still see the model at this angle.

THE COURT: Can all the jurors see the Exhibit from where you are now? I think that to the extent that it is possible to do so--it might be helpful if when pointing out something with the pointer you stand to the rear of the Exhibit so as not to come between the Jury and what he is pointing to--if you can see over it.

MR. SEGAL: If your Honor pleases, if the members of the Jury will not be offended, we will have to probably stand back toward the wall here next to the Jury box.

THE COURT: It won't bother them in the slightest.

MR. BLACKBURN: Could you read back--I've forgotten where we were--the last question.

Q Mr. Tevere, **point out -- with respect to** the master bedroom--the location of the bath mat on Colette where you saw her?

A Right here(indicating).

Q Mr. Tevere, **stay there** for just a moment. Did have an occasion to be at the apartment when the ambulance from Womack Army Hospital arrived?

#13

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A Yes, I was.

Q Approximately, if you know, how long was that after you did, in fact, get to Castle Drive, that the ambulance came?

A Approximately 10 minutes.

Q And who did they take out, if you know?

A They took Captain MacDonald out.

Q Were you in the master bedroom when that occurred?

A Yes, I was.

Q What, if anything, did you do when they took him out?

A I assisted Mica and I believe one of the ambulance attendants in putting Captain MacDonald onto the stretcher.

Q How many people put him onto the stretcher?

A To the best of my knowledge, I think three.

Q What kind of stretcher was it, if you know? Was it one that rolls or one that you carry?

A It was one that rolled; yes.

Q After you all put Doctor MacDonald on the stretcher, what did you do?

A We began to wheel the stretcher toward the front of the house, down this hallway.

#13
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Q As you went down the hallway, what if anything unusual occurred?

A I was at the foot of the stretcher leading it and when we got near the front bedroom--the south bedroom--Mr. MacDonald--Captain MacDonald--grabbed the door jamb and proceeded to try to get off the stretcher.

Q Did he get all the way off the stretcher?

A No, about half way.

Q What, if anything, did you do?

A We tried to restrain him to put him back onto the stretcher.

Q What, if anything, did you touch at that point?

A The door jamb or the wall, I guess. That was it.

Q After you helped restrain the Defendant and put him back on the stretcher, where did you go?

A We wheeled the stretcher down the hallway and into the living room.

Q I notice on the model there is at least one step. Did you pick the stretcher up and place it down on the living room floor?

A Yes, we lifted the stretcher at this point where the steps are so it would not bang us as we went down the stairs.

#13
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Q And if you would, sir, with the pointer follow through the living room the direction that you took him out Castle Drive.

A We came down the stairs right here and out the front door which was right here.

Q Did you go out to the ambulance?

A No sir, I did not.

Q How far did you go?

A The front door.

Q After Doctor MacDonald left the apartment, where did you go and what did you do?

A I came back into the house--I came back into the living room and I again instructed everybody not to touch anything and I proceeded back into the master bedroom.

Q Approximately how long, if you know, did it take you all to get the Defendant out of the master bedroom onto the stretcher and out of the house?

A Maybe 2 minutes.

Q After you went back to the master bedroom what did you do?

A I believe the CID men came--CID Agent Ivory came in then Colonel Kriwanek came in.

Q You may resume your seat.

A Colonel Kriwanek came in and a photographer

#13
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also came into the house.

Q How long after these people came was it before you left Castle Drive?

A 3 or 4 minutes.

Q During this 3 or 4 minutes, what did you do?

A Colonel Kriwanek asked us what we had done -- asked us for a description of the people that we were given.

Q By "us"--to whom are you referring?

A Myself, Specialist Mica, and Lieutenant Paulk. He then instructed us to leave there and go back to the Provost Marshal's Office and write a complete statement.

Q And what did you do?

A I went to the Provost Marshal's Office.

Q After you went back to the Provost Marshal's Office, did you have an occasion to ever return to this apartment during this time?

A I don't think so--I don't remember.

MR. BLACKBURN: Your Honor, may I have just one moment?

(Pause.)

THE WITNESS: I think I may have gone back once because I remember there being a seal on the front door at 544 Castle Drive and I remember one of the Agents removing the seal and replacing it.

#13
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6

BY MR. BLACKBURN:

Q Mr. Tevere, do you recall in your testimony when you looked into the back bedroom where one of the little girls was--and I believe you testified that she was on her side?

A Yes.

Q Do you recall seeing anything else near her?

A I think there was a bottle in the bed with her.

Q Do you recall what kind of bottle it was?

A I don't.

Q You did not go to the bed?

A No, I didn't. I did not step into that room. Whatever I observed, I observed from the doorway.

BY MR. BLACKBURN:

Q If you know, were you the first MP to see the children?

A Yes.

MR. BLACKBURN: You may cross-examine.

#14
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C R O S S - E X A M I N A T I O N 12:25 p.m.

BY MR. SEGAL:

Q Mr. Tevere, these events that you have been describing took place, I think, nine years, five months, and two days ago; isn't that right?

A That is correct.

Q You have described for us the position of some piles of clothing that you say were in the house; is that right?

A Yes.

Q And some other details of this premise; is that right?

A That is correct.

Q By any chance, have you looked at any pictures depicting the way that house looked on the night that you were there in 1970, in any recent days?

A No.

Q All that you're telling us now is from your memory; is that correct?

#26
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A We came up Honeycutt Road.

Q (Interposing) Excuse me. If you would, if you would take the pointer, please: on the photograph would you point out where you were and where you went?

A On the photograph?

Q Yes, sir.

A We were down in this area right down here. It would be off this photo. I believe there is a fire house either right there at the intersection of Honeycutt and I don't recall the other street. I think it was Knox Street. But there is a fire house down there. We pulled off into the parking lot of the fire house. We responded down Honeycutt, past the intersection, down to North Dougherty, up North Dougherty, and, as I said, I think we went to a house number on North Dougherty first.

Q Where is Castle Drive on that photograph?

A This would be Castle Drive right in here.

MR. BLACKBURN: You may resume your seat.

Q While you were proceeding on that route, did you have an occasion to see anyone?

A Yes, sir.

Q Who did you see?

A I observed what I feel was a female standing on the corner of--it would have been

#26
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Honeycutt Road and South Lucas.

Q Would you point out to the jury where that is?

A That would be right over here at this intersection.

Q And on the photograph, would you also point out where that is?

A That would be right in here.

Q Where was this girl standing when you saw her?

A She was standing off on the side of the road I would say ten or 12 feet, possibly more, off the corner.

Q Approximately how far from where she was were you when you saw her, if you could guess?

A I don't recall.

Q Was it raining at that time?

A I believe it had just stopped raining just prior to that.

Q Was your window up or down?

A Jeeps don't have windows. They have a canvas side-curtain with heavy plastic.

Q Can you describe this girl that you saw for us?

A To the best of my recollection, she had on

#26
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4

a dark-colored raincoat and what appeared to be a type of a dark-colored rain hat, and I believe I could see part of her legs below the raincoat.

Q What boots, if any, did she have on?

A I don't recall seeing boots.

Q What color was her hair, if you know?

A I don't know, sir.

Q Can you describe the hat that she had on?

A As I recall, sir, the hat was sort of a wide, like a rain-type hat that the women wear. I don't know what it is called.

Q Was it a light or a dark hat or do you recall?

A It was dark. I believe it matched her raincoat.

Q When you saw this girl, was the Jeep going forward or had it stopped at the intersection?

A As we approached the intersection--again, I don't know the distance--but she caught my eye. We came to a slow stop and continued through.

Q How was your Jeep marked? Was it marked in any way?

A Right across the front window under the windshield there is a white sign with black letters approximately, I would say, five or six inches high

#26
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5

that state "Military Police." It has a red light mounted on the fender. It had a round plaque on the back that also said "Military Police."

Q Was the light on or off--the red light?

A I would believe it would have been on.

Q Did you have an occasion to observe this entire intersection?

A Yes, sir.

Q Would you describe to the jury what is located there or what was located there in 1970?

A Yes, sir. On the corner where I saw this girl, there is a gas station. Directly across the street is a small shopping center, a PX-type, and then on the opposite side is the Corregidor Courts Housing Area.

Q Approximately at what time, if you recall, did you arrive at 544 Castle Drive?

A I don't think it was any more than five minutes after we received the initial call.

Q When you got there, what did you do?

A When we got there, there were already several Military Police patrols ahead of us. Everybody seemed to be standing at the front door. We got out and we went up and asked what was going on.

Q Did you know any of those Military Police

#26
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6

in the front area?

A Yes.

Q Who were they?

A Lieutenant Paulk was there with his driver.

Q Do you know who his driver was?

A I believe it was someone called Dickerson. I don't know what his rank was. I don't recall what his rank was. Tevere was there with his partner.

Q Do you recall his partner's name?

A No, not at this time. There may have been one other patrol there, but I don't recall.

Q How many Military Police were there at that point, if you know?

A I know of at least four.

Q Besides you and your partner?

A Yes.

Q After you went to the front of the apartment, what did you do?

A We waited around for a minute and at that time I believe I heard Sergeant Tevere come around from the back of the house, come up along the side of the house, and he yelled something about "getting Womack ASAP."

Q After that occurred, what did you do?

A At that point, I was--I had started to

#26
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7

walk around to the side of the house. I ran into Sergeant Tevere and we both proceeded back around to the rear door of the house.

Q Now, Mr. Mica, if you would, come down. If you would for the jury, Mr. Mica, point out--assuming that this is the front--point out for the jury where you went after you got out of your Jeep until you went into the apartment.

THE COURT: Would it be for convenient for him to stand behind the exhibit and look over and reach over? That will accommodate the jury, I believe.

THE WITNESS: This is the front door. We came to the front door. The door was locked. There were several M.P.'s there. There was a little bit of light coming from the windows. We looked in the windows and that was it. I started to proceed around the side of the house and I heard Sergeant Tevere yell, "Get Womack ASAP." About that time I proceeded a little bit faster and I ran into Tevere on the side of the house. We then both proceeded around to the back door.

#27
tdb
1

BY MR. BLACKBURN:

Q When you got to the back door, what did you do?

A We went in.

Q Who went in first?

A Tevere.

Q Who went in second?

A I did.

Q After you got inside, where did you go?

A We went through, I guess, the little utility room, and we hit the doorway into the master bedroom.

Q Was the light in the utility room on or off?

A That light was off.

Q Was there any light in the master bedroom that you could see?

A Yes, sir.

Q When you went in to what is the master bedroom, what did you observe?

A I observed a white female, who I now know to be Colette MacDonald, lying on the floor. She appeared to be dead. Alongside of her, I observed her husband, who I also thought at the time was dead.

Q Was he moving at that time?

A No, sir.

#27
tdb
2

Q How long did you stay in the master bedroom at that point?

A At that point, I stood in the doorway. I can't give you the exact time. It seemed forever, but I would imagine it was a matter of seconds.

Q What was the position of Colette MacDonald?

A Colette MacDonald was lying on her back. She had her left arm raised over her. She was pretty well covered with blood.

Q Do you recall where her right arm was?

A Her right arm, I believe, was down by her side someplace.

Q Where was the Defendant, Jeffrey MacDonald?

A Jeffrey MacDonald was lying off to her side. It would have been her left side.

Q Was he on his back, or some other portion of his body?

A I believe he was on his stomach, with his head turned away from me.

Q I'm sorry?

A Turned away from me. I could not see his face.

Q Were you able to see all of the front of Colette?

A Yes.

#27
tdb
3

Q You may resume your seat. Mr. Mica, did there come a time when the Defendant, Jeffrey MacDonald, appeared to be alive to you?

A Yes, sir.

Q Would you describe that please?

A He began to move slightly, and he started to moan, at which time, I went over to him.

Q Did you say anything to him?

A He was moaning something about, "Check my kids"; "How are my kids?"

Q What, if anything, did you say to him?

A At that point, I don't recall saying anything.

Q As a result of what he said, what, if anything, did you do?

A At that time, I believe myself and Sergeant Tevere started down the hallway of the house.

Q Okay now, Mr. Mica, let me ask you, if you would, to come behind the model once again. And if you would, sir, using the pointer, point out where you first went when you left the master bedroom?

A I started down through the archway here, down the center hall of the house. I approached the front bedroom of the house.

Q Now you said you and Sergeant Tevere went

down. Who went first?

A I believe Tevere was ahead of me.

Q You went second?

A Yes.

Q What did you do as you went down the hallway?

#27
tdb
4

A I just went and looked into the door.

Q What, if anything, did you touch?

A Nothing.

Q Now you said you looked into the doorway?

A I stood in the doorway and just looked into the bedroom.

Q Did you go inside the bedroom?

A I don't recall stepping into the bedroom. I may have had my foot inside the door, but I don't recall actually walking around in the bedroom.

Q What, if anything, were you able to see?

A I saw what appeared to be a female child, dead, in the bed.

Q If you recall, sir, what was the position of the bedcovers?

A I believe they were pulled up on her chest, up in the chest area.

Q In that particular room, sir, was the light on or off?

A The light was off.

#27
tdb
5

Q What illumination, if any, was there?

A The hall light was on, and I believe there was a light in the kitchen area someplace.

Q After you looked into what has been described as Kimberly's bedroom, what, if anything, did you do?

A I walked another few steps and I stood at the doorway of Kristen's bedroom.

Q How far in did you go?

A Again, I stood at the doorway.

Q What, if anything, did you touch?

A Nothing.

Q In that particular bedroom, what did you see?

A Again, I saw another female laying on her left side. Again, she appeared to be dead.

Q Did you look at the floor?

A There was a puddle of blood that had already dripped down the side of the bedding and onto the floor.

Q With respect to the female child, what else, if anything, did you notice about her?

A She still seemed to have the baby bottle in her mouth.

Q After you looked in that bedroom, what, if anything, did you do?

A Again, I proceeded to the end of the hallway. I looked around the living room area very quickly, and I went back to the master bedroom.

Q When you looked into the living room area, as you said, quickly, what did you see?

#27
tdb
6

A I observed a coffee table that was placed in front of the couch. It was over on its side, right here. Also, there was a flower pot that was turned over on its side, and right at the end of the hallway there was a small doll's head right at the top of the step. There was also a blanket, or some type of quilt, lying right in this area here.

Q You speak of the doll's head. Where was it again?

A The doll's head was right in the corner, right at the top of the step here in the hallway.

Q How long would you estimate, if you can, sir, you were in this area?

A I stood at the top of the step, I looked around the room quickly, I turned right around, and went back to the bedroom.

Q What illumination, if any, was there there?

A Again, I believe there was a light coming from the kitchen area of the house. This area right in here.

#27
tdb
7

Q Did you look anywhere else besides the living room area?

A Not at that time, no.

Q After you looked there, what did you do?

A I proceeded back down the hallway to the master bedroom.

Q What, if anything, did you touch on this trip down and back?

A Nothing.

Q When you got back to the master bedroom, what did you do?

A At that time, I got down between Dr. MacDonald and his wife.

Q Why did you do that?

A He was still moaning. I got down there to see if I could render first aid.

Q What training had you had in first aid, if any?

A Just the basic army training in first aid.

Q Does that include mouth-to-mouth resuscitation?

A Yes.

Q What, if any first aid, did you give to Dr. MacDonald?

A I gave Dr. MacDonald mouth-to-mouth.

#27
tdb
8

Q How many times?

A Three times.

Q How long, would you estimate, was the first time that you gave him mouth-to-mouth resuscitation?

A I would say about a minute.

Q You may resume your seat. During this time that you examined the Defendant, Jeffrey MacDonald, did you have occasion to observe his physical appearance?

A Yes.

Q How was he dressed, sir?

A He had on pajama bottoms; he was bare chested.

Q What, if anything, did you observe with respect to his chest area, arms and face?

A His face had a small amount of dried blood on the side, like the chin area, I believe. I observed a small, like a red welt, on his head. He had what appeared to be, it looked like at the time, somebody had dug their fingernails into his chest.

Q Okay, were you able to observe his color?

A Yes.

Q Can you relate to the jury, in your opinion, what it was?

A It was fairly good.

jblC28

BY MR. BLACKBURN:

Q Now, during this time that you gave the Defendant mouth-to-mouth resuscitation, what, if anything, did he say or do?

A I asked him--I said, you know, "What happened?" And he began to tell me, "Why did they do this to me? Look at my wife. I tried to find her pulse. I heard my children scream."

I was asking him what happened and he was asking me how his wife and children were.

Q What, if anything, did he say with respect to any medical assistance that you could give him?

A He stated he was having difficulty breathing and he needed a chest tube.

Q What description, if any, did the Defendant give to you concerning the people he said had done this to him?

A He told me there were four people: three males and a female. One of the males was black. He was wearing a fatigue jacket, and I believe he said it had Army stripes--Sergeant stripes.

He also said that he thought he may have hit the black Sergeant in the struggle. There were two male whites and a female white. The female white he described as having blond hair, muddy white boots, short

jb2C28

skirt, holding a candle.

Q What, if anything, did he indicate that these people had said?

A He stated that they kept saying, "Acid is groovy. Hit the pigs. Hit them again. Kill the pigs." I believe that was basically it.

Q During this time that you were giving the Defendant mouth-to-mouth resuscitation--strike that--the second time you gave him mouth-to-mouth resuscitation, how long was that if you can guess?

A It was a shorter period than the first time.

Q Less than a minute?

A Yes.

Q How about the third time?

A I believe that was even shorter than the second time.

Q Approximately how long if you can guess, sir, after you arrived at Castle Drive was it before medical assistance from Womack got there?

A I would say it was at least ten minutes.

Q Were you there when they came?

A Yes, sir.

Q Now, Mr. Mica, during this time that you were in the master bedroom, besides Colette and the

jb3C28

Defendant Jeffrey MacDonald, who else, if anyone, and if you know, was also in that room?

A Myself, Sergeant Tevere, John Sellick, Mario D'Amore, Sergeant Duffey, Lieutenant Paulk. I believe Sergeant Hagney came in. And I believe Spec. 4 Morris also came in for a short period.

Q During the time that you gave the Defendant mouth-to-mouth resuscitation, what assistance if any, did you receive from any other MP?

A Sergeant Tevere raised Captain MacDonald's legs--his feet.

Q Was that on all three occasions?

A I don't know if he did it on all three. I remember he did it the first time.

Q During this entire time up to this point that you were in the apartment, what, if anything, did you touch?

A I touched nothing that wasn't absolutely necessary. Basically I touched Captain MacDonald.

jblC29

BY MR. BLACKBURN:

Q Before you gave him mouth-to-mouth resuscitation, was he still in the same position physically that he was when you got there or had he moved?

A He was still to the left of his wife. But I believe at that time he had rolled over, either onto his side or onto his back. When I started to give him mouth-to-mouth, I rolled him over on his back.

Q You rolled him over?

A Well, he was three-quarters of the way over on his side. But he was placed on his back. And I administered mouth-to-mouth.

Q Where did you position yourself?

A I was between Captain MacDonald and his wife.

Q Approximately how far, if you know, sir, at that time was the Defendant from his wife when you gave him mouth-to-mouth resuscitation?

A I think it wasn't more than 18 inches or two feet because I was between the two of them.

Q Now, during the time you were in the master bedroom, what, if anything, did you observe any of the other MP's that you have so-named touch?

A The only thing I observed anyone touch in

jb2 C29

the master bedroom was Sergeant Tevere picked up the phone that was on the dresser.

Q When he did that, what, if anything, did you do?

A Told him to put it down.

Q What did he do?

A Put it down.

Q Were you physically present when the first ambulance arrived?

A Yes, sir.

Q Where were you located when the medics or the people who had come with the ambulance--where were you physically when they came into the house?

A I was right alongside Captain MacDonald.

Q And where was that?

A On the floor between the bed and the body of his wife.

Q In the master bedroom?

A Yes, sir.

Q Is it fair to say that the first time you saw the medics was in the master bedroom?

A Yes, sir.

Q How many medics did you see at that time?

A At first I believe there were just two of them. They brought the stretcher in.

jb3C29

Q What kind of a stretcher was it?

A I don't know what kind it was. We call them trundles in Nassau. It had wheels on it and it was wheeled down the hallway.

Q That was brought back to the master bedroom?

A Yes, sir.

Q Where was it positioned in the master bedroom, if you recall? And you may come down.

A Again, if I remember correctly, it was brought into the doorway and placed alongside--parallel to this wall here, right in here, right in that area.

Q Is that the position that it was in when the Defendant was placed on it?

A I believe it was, sir.

Q Who picked the Defendant up, if you know, sir, and put him on that stretcher?

A I believe Sergeant Tevere, the medics, and I know I had a hand on him. But whether it was an arm or a leg by just holding the stretcher, I don't recall.

Q You may resume your seat. What assistance, if any, did the Defendant give in getting on the stretcher?

A I am sorry; resistance or assistance?

Q Assistance?

jb4 C29

THE COURT: Assistance.

THE WITNESS: I don't recall.

BY MR. BLACKBURN:

Q After he was placed on the stretcher, what did you observe?

A At that point the medics began to wheel the stretcher down the hallway out towards the front door.

Q What did you do?

A I followed the stretcher up the hallway.

Q As you followed the stretcher into the hallway, sir, what, if anything, unusual did you observe?

A When we reached the doorway of the front bedroom---

Q (Interposing) Again, sir, if you would come down from the stand at this time and point.

A As the stretcher reached this approximate area, Captain MacDonald attempted to get up off the stretcher and wanted to see his children.

BY MR. BLACKBURN:

Q Now, again, sir, point out the bedroom that that occurred or where that specifically occurred?

A It was right in this area here (indicating). I believe it was the front bedroom.

Q After that incident occurred, what, if anything, happened that you saw?

A The medics, and I believe Sergeant Tevere, tried to restrain him and actually pushed him back down onto the stretcher and continued wheeling him out the hallway.

Q How many people did you observe restrain the Defendant?

A Two that I know of.

Q Who were they?

A I believe it was Tevere and one of the medics.

Q After the stretcher was taking him down the hall, where did you go?

A I went out into the living room.

Q In other words, you followed the stretcher?

A I followed it right down the hallway.

Q Did you observe the stretcher as it was taken out of the living room?

A Yes. I followed it right down the hallway,

and I went right into the living room.

Q Would you come, sir, to the back of the model and point out the direction the stretcher was taken?

A The stretcher was taken down the hallway and lifted down the two steps and wheeled out the front door.

Q After the Defendant was taken out of his apartment on the stretcher, what did you do then?

A At that point, I stayed in the living room of the house and waited for further instructions.

Q Was anybody else in the living room with you?

A Yes.

Q Do you know who any of those people were?

A I believe Lieutenant Paulk was there at the time. I believe Tevere was still around there. There were several others that I don't recall standing there.

Q Now, if you would, sir, come again to the back of the model and point out to the jury where in the living room you were standing?

A I stood in a position right basically over here (indicating)--right at the edge of carpet. There was a narrow strip of hardwood flooring, and I stood there.

Q Were you on or off the carpet?

A I was off it.

Q Were the other people in the room on or off the carpet?

A I believe that everybody had been instructed to stay off the carpet as much as possible. They were standing around on the outer perimeter of the carpet--on the hardwood floor.

Q What was the condition of the coffee table?

A The coffee table was over on its side, I think.

Q What else, if anything, did you observe on the floor?

A There was a flower pot lying on the floor. Also, there was a wallet lying on the floor.

Q How long did you stay in that area--in the living room area?

A I believe we stayed there for approximately ten minutes or so.

Q During the time that you were there--standing there--what, if anything, did you observe with respect to the flower pot?

A At that time, I believe the flower pot was still on its side.

Q Did it remain on its side while you were there?

A No, sir; it didn't.

BY MR. BLACKBURN:

Q What happened to it?

A A medic or an ambulance driver walked across and turned it up.

Q You say "a medic." How was he dressed?

A Again, he had on--I believe it was a field jacket. I think he had on dungarees. He may have had the white medic--I don't know what it is called--it is like a white shirt. He was what I consider out of uniform.

Q Was his hair long or short?

A It was longer than MP's hair.

Q And you say that he went over to the flower pot and did what?

A He picked it up.

Q And set it upright?

A I believe so, yes.

Q After he did that, what, if anything, did you observe him do?

A Somebody yelled, "Don't touch anything." He continued and he walked over and sat down at the couch.

Q What, if anything, did you say to him?

A I said, "Get up," you know. He walked back to where he was and just stood there.

Q Where is that that he walked back to?

A Back to over here (indicating). I believe this was a desk. He was standing right inside the doorway to the house.

Q Now, the flower pot when you first saw it was on its side; is that correct?

A Yes.

Q The medic came in and put it upright; is that correct?

A I believe so, yes, sir.

Q You or someone else said, "Don't touch anything"?

A Right.

Q During the remainder of your stay in that living room area, what was the physical position of the flower pot?

A As far as I remember, it was standing upright.

MR. BLACKBURN: You may resume your seat. Your Honor, may I have just a moment?

(Counsel confer.)

BY MR. BLACKBURN:

Q Mr. Mica, how many people, if you can recall, were present in the living room area while you were there this last time?

A I would say that there were at least six.

Q While you were there, do you recall whether or not a photographer came?

A I believe the photographer came just as I was leaving.

MR. BLACKBURN: Your Honor, just one more moment.

(Pause.)

BY MR. BLACKBURN:

Q Mr. Mica, going back to an earlier portion of your testimony when you stated that you saw a girl on the corner of the street on the way to Castle Drive, when you saw her, what movement, if any, did she make?

A None.

Q What, if anything, did she have in her hands that you could observe?

A Nothing that I could observe.

Q Do you know the approximate distance from that location to 544 Castle Drive?

A I would say it was in excess of half a mile.

jb1C32

BY MR. BLACKBURN:

Q On your way to Castle Drive or on patrol earlier that evening, did you at any time see any group of individuals wearing bedsheets?

A No, sir.

Q Or wearing sheets of any kind?

A No.

Q Did you see anybody carrying candles?

A No, sir.

Q After you were in the living room area this last time that you testified about, what did you do?

A I waited there for further instructions. We were informed that the Provost Marshal would be responding to the scene.

Q You say you waited for further instructions?

A Yes, sir.

Q When did those further instructions come to you?

A I would say it was approximately ten after 4:00--quarter after 4:00 that morning.

Q So, you had been at that point at Castle Drive approximately how long?

A I would say a good twenty-five, thirty minutes.

jb2C32

Q What were the instructions to you?

A The instructions were that I was to proceed back to the Provost Marshal's office where we were going to meet with Colonel Kriwanek and give him a basic run-down of what we knew and what we had done.

Q Did you in fact do that?

A Yes, sir.

Q Now, Mr. Mica, when did you leave Castle Drive for the last time on the morning of the 17th?

A I believe it wasn't any later than 4:15.

Q And during the entire time that you were there, what, if anything, besides the Defendant Dr. MacDonald did you touch?

A I touched nothing.

Q Besides Sergeant Tevere touching the telephone, with respect to any individuals whom you have mentioned, what, if anything, did you observe them touch?

A Nothing.

Q Or move?

A Nothing.

Q Except for the flower pot? What were you wearing on your feet that night, sir?

A Combat boots.

Q Is that what all the other MP's were

jb3C32

wearing that you saw?

A Yes, sir.

Q Now, after the 17th, did you ever have an occasion to return to Castle Drive?

A Yes, sir.

Q When was that, if you know, sir?

A It was after the 17th. I don't know if it was the 18th or the night of the 19th or 20th. But for several nights I guarded the scene outside the house.

Q Were you at the front door or the back door?

A We had different positions. I believe there were four or five MP's assigned to guard the house. We were stationed at points where we could see the perimeter of the house.

MR. BLACKBURN: You may cross-examine.

MR. SEGAL: If Your Honor please, I have a request to make of the Government. Should I come to the Bench?

THE COURT: Yes.

B E N C H C O N F E R E N C E

THE COURT: What was it you were going to request?

MR. SEGAL: I wanted to request,

jb4 C32

Your Honor, the Grand Jury testimony of this witness which I have not received and other statements of this witness.

MR. MURTAGH: You receipted or your associate receipted the Grand Jury testimony. But I will give it to them anyway. I will give them our file right now.

He says you have got it but he will give it to you one more time. In this trial, we do everything in duplicate.

MR. SEGAL: Your Honor, is it your pleasure that we recess now? I would not want to break my cross-examination once we have started.

THE COURT: Well, I usually keep fairly regular hours. But is there anything relating to keeping this witness here overtime?

MR. BLACKBURN: No, sir. He has been here. One more day won't matter.

THE COURT: We don't need him? All right. I will let you see if you can think up some questions between now and tomorrow morning at 9:00 o'clock.

(Bench conference terminated.)

THE COURT: Members of the jury, it appears that the cross-examination of this witness will

jb5C32

take more than the length of time remaining between now and our normal recess hour. So, I am going to let you retire now. The Marshal will show you a way out.

I will not recess Court. The people in the audience are not at liberty to go yet, but will be shortly. Let the jury go first.

Now, we will come back tomorrow morning at 9:00 o'clock, and we will go until tomorrow afternoon at 3:00 o'clock.

While you are out, remember what I said: you don't talk about the case among yourselves or with others. You don't let anybody talk about it anywhere in earshot. You do not read, look at, or listen to anything on the news media and you keep open minds about it.

Have a good night, a safe trip home and back. We will see you tomorrow morning at 9:00 o'clock.

(Jury exits at 4:57 p.m.)

THE COURT: Any other housekeeping chores?

MR. MURTAGH: A short one, Your Honor. The witness may not know, although I assume he does, but I would not like to be mistaken; would you instruct the witness, please?

jb6C32

THE COURT: Well, in this Court, as I say, this goes for witnesses for all sides and lawyers for all sides; that witnesses do not talk with Counsel for either side during the recess.

MR. SEGAL: In regard to Your Honor's ruling, I would like Your Honor to reserve ruling on that issue. We will not try to talk to this witness this evening.

But I would like an opportunity to brief the matter.

THE COURT: All right. And I will hear you and I will read your brief. But I will leave it to you to pick a time when that will be done when we won't be doing it on this jury's time.

MR. SEGAL: Yes, Your Honor. I understand that.

THE COURT: We are giving them a five-minute bonus this afternoon, which they don't necessarily want or need. But we will hear you on that.

Now, you may recess this Court until tomorrow morning at 9:00 o'clock.

(The proceeding was recessed at 4:58 p.m., to reconvene on Friday morning, July 20, 1979, at 9:00 a.m.)

CERTIFICATE

I, Ervin B. Bush, Jr., do hereby certify that the preceding 233 pages represent a true and accurate transcript of the proceedings held in Raleigh, North Carolina, on Thursday, July 19, 1979.

ERVIN B. BUSH, JR., CVR-CM
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

2

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

FILED
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TRIAL BEFORE

THE HONORABLE FRANKLIN T. DUPREE, JR.

UNITED STATES CHIEF DISTRICT JUDGE

AND A JURY

FILED
OCT 2 1979
U. S. COURT OF APPEALS
FOURTH CIRCUIT

AT RALEIGH: FRIDAY, JULY 20, 1979

PAGES 1434-1665 TRIAL DAY 2

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TABLE OF CONTENTS

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE GOVERNMENT				
KENNETH MICA (resumed)			1594-1597	
By Mr. Segal		1445-1594		1597-1599
WILLIAM F. IVORY				
By Mr. Blackburn	1600-1663			

BENCH CONFERENCES Pages 1439-1444, 1476-1477, 1541-1544, 1556-1560, 1631-1635, 1648

EXHIBITS

NUMBER	DESCRIPTION	MARKED	RECEIVED
DEFENDANT			
7	Male figure doll	1477	
8	Female figure doll	1477	
9	Doll-mali	1509	
10	Model of stretcher used to take MacDonald from house	1525	
GOVERNMENT			
75, 23, 24, 24(b) 25, 26	Photographs	1562	
652	Drawing of model of house	1600	1600

E X H I B I T S (Continued)

NUMBER	DESCRIPTION	MARKED	RECEIVED
161,162,163, 164	Photographs of outside of house	1609	1659
20,20(a),152, 157,156,158, 159,155,154, 153,160,144	Photographs	1639	1647
154(a)	Photograph	1652	1659
157(a)	Photograph	1653	1659
158(a)	Photograph	1654	1659
161(b), 162(a),164(b), 166(b),165(b)	Photographs	1655	1659
152(a)		1649	1659
160(a)		1649	1659
153(a)		1651	1659
156(a)		1653	1659

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FURTHER PROCEEDINGS 9:00 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Friday, July 20, 1979, at Raleigh, North Carolina.

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

THE COURT: Good morning, ladies and gentlemen.

MR. BLACKBURN: Judge, before we begin this morning, could Counsel approach the Bench?

THE COURT: Yes.

BENCH CONFERENCE

MR. BLACKBURN: We are concerned about the letter which Mr. Segal wrote to you a day or so ago concerning the advertisement in the Fayetteville paper. As I understood last Saturday's conference, you indicated that no ad was to be placed in the newspaper until certain conditions were met.

THE COURT: Yes; I thought that was a

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fair trade.

MR. BLACKBURN: Those conditions have not been met. I understood from Counsel this morning that they have, in fact, contacted the newspaper to place the ad. I think what we need is some clarification.

THE COURT: Let's hold up on that until we see what the record said. I can't remember exactly. Just hold up on everything.

MR. BLACKBURN: Would that mean the ad should not be run?

THE COURT: And this weekend Ervin can put somebody on that tape and find it for us.

MR. BLACKBURN: Is it fair to say the ad should not run until that?

THE COURT: Yes; if you think it is contrary. I have some recollection of it, and I may have it in my notes, but I just don't remember it. But I thought there were certain things that they were to do to get clearance on it. I just have that vague recollection.

MR. SEGAL: I have a matter, if I may. If Your Honor pleases, at this time, the Defense is withdrawing its stipulation to the use of the Government's model, because it is not as it was represented to us before trial. The representation made to us about this model---

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THE COURT: (Interposing) Are you talking about Government 1?

MR. SEGAL: Yes, Your Honor; the representation that was made to us before the trial was that the model would depict the building and its contents as they were at the time of the crime. Having looked at the model, and then having attempted to use the only evidence that the Government had to base its model on--the same pictures--since the Government has now told us in open court that the photographs do not represent the crime scene as the first military police found it.

Until the Government lays a foundation for the placement of the furniture in this building, we cannot agree to it. We were told something else. We know the source, because the Government has told us the source of where they placed the furniture and how they placed the furniture, which was named by these very photographs that we have sought to question the witnesses about.

Now, the Government says it isn't that way. They have an arrangement there which does not represent how the furniture was when the MP's arrived there. At this point, we will not stipulate to the contents of the building. We certainly agree that the building itself is, to the best of our knowledge, a fair representation of the rooms and the size in that regard.

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THE COURT: I understood you to say that your expert said it was the Rolls Royce of all models that he had ever seen.

MR. SEGAL: Absolutely, in terms of the way it was constructed and the details.

THE COURT: Your complaint is about the arrangement of furniture in it?

MR. SEGAL: Yes, Your Honor.

THE COURT: At the appropriate time, I will simply instruct the jury that they will have to-- they will not be governed by what the model says, but by what the witnesses say that things were. If it illustrates, it does; if it does not, it won't.

MR. SEGAL: Excuse me; that does not deal with the problem, Your Honor, because the Government has now placed in it these little figures; and they have witnesses pointing to the jury as if this is the way it was. The jury is being led---

THE COURT: (Interposing) You can bring all that out on cross-examination. If the witness says that is the way it was, even if it wasn't, it is that much evidence. It is bad evidence, maybe; but it is evidence.

MR. SEGAL: I would agree, Your Honor; but there are two problems. First of all, we have not

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been allowed to show the witnesses the photographs of the building and say, "Is this the way they were taken?" These are Government photographs taken within a couple of hours, and this is the basis on which they built the model. The model is not the same as the photographs; the photographs are not the same as the crime scene.

At this point, the jury is being shown as if it was a fact--this place. Now, all the Government has to do is now put on some witness at this juncture to authenticate that this, they think, is a reasonable placement.

THE COURT: I will cross that when they come to it. I will let you cross-examine the witnesses at such length as is necessary to bring out your side of it, and if it is not right, it is not right. If you can show it is not right, then that is what you are supposed to do. But the model--as far as it is concerned, it is in evidence without objection, and I am not going to disturb that. They have had it here for 24 hours in front of them, and I could not withdraw it if I wanted to, as far as their recollection.

MR. MURTAGH: Your Honor, may I respond?

THE COURT: Yes.

MR. MURTAGH: Your Honor, while we said that the furniture was an accurate scale model, and we do

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represent that some of it was made from the actual items that were still left in the crime scene--and the rest of the photographs we used for approximate representations; but Your Honor is correct. It is the testimony of the witnesses that we are relying upon. Mr. Segal is again trying to use the photographs which the Government does not maintain are the best evidence of what the crime scene looked like--the third set of photographs.

I would only inquire, does Your Honor's ruling as to photographs--that none be shown to the witness until---

THE COURT: (Interposing) It still stands.

MR. SEGAL: If Your Honor pleases, I don't understand how the Defendant can cross-examine witnesses using a model here which has never been authenticated as to the position of all its contents. We have not agreed to this, because we were represented something else. This model has not been introduced by way of a ruling; it was introduced by way of stipulation. We have withdrawn the stipulation, because we do not think it is as represented as to the contents. We don't object, Your Honor, as to the structure itself. Therefore, there is no basis.

(Bench Conference terminated.)

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THE COURT: All right. Members of the jury, with respect to the model that has been introduced into evidence here without objection, I am now told by Counsel for the Defendant that the Defendant does not agree that the placement of the furniture and other movable articles within this model, as shown to you, are correct. Therefore, I will instruct you that you will have to weigh the evidence of each witness who undertakes to place some object in this model with the same care and against the same standards as you judge or assess his testimony in all other respects.

Now, let's go on with the trial of this case. I believe you had a witness who had just been turned over for cross-examination, did you not?

(Whereupon,

KENNETH C. MICA

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

THE COURT: All right; proceed.

MR. SEGAL: Thank you, Your Honor.

C R O S S - E X A M I N A T I O N 9:10 a.m.

BY MR. SEGAL:

Q Officer Mica, have you been able to orient yourself by the use of those two charts up there as to

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the directions north, south, east and west; and if necessary, would you take a look at the charts to help yourself?

A Yes; I can.

Q Are you clear in your own mind today as to the north, south, east, west directions as far as the MacDonald house on Castle Drive is located?

A Yes; I am.

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(Pause.)

BY MR. SEGAL:

Q May I ask you to come and take a look at this interesting model over here and orient yourself again to this?

A Okay.

Q Now will you take a look--there is a compass rose that is located here on the lower right-hand corner of this model. Do you see the compass rose?

A Yes, sir.

Q The compass rose shows north by the letter "n," does it not?

A Yes, sir.

Q In which direction does this model indicate that north is located?

A More or less pointing up towards the rear of the house.

Q I am asking you to look at the compass rose where the letter "n" is.

A The letter "n" is down here, but I believe it is pointing in that direction.

Q Where is the longest part of the point in this compass rose?

A Towards the bottom.

Q Wouldn't that ordinarily indicate to you

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that the compass rose is pointing north by pointing to the south on this particular model? Take a look at it.

A I understand what you are saying, but to me it is clear which way north is.

Q I agree. Which way is north?

A That way.

Q On the far wall here, as a matter of fact, we have it marked with the letter "n" on the far wall.

A Yes.

Q The compass rose down here, of course, marks north at what you and I agree is the south end--is that right?

A Yes, I believe it is pointing that way.

Q Did you ever see a compass where north was pointed to by the back of the compass rose?

A No, but when I draw north I usually draw the letter "n" and put a line through it pointing in that direction. To me that is the configuration of this thing--the main part of the metal plate itself seems to be in that direction.

Q Let me ask you if you were to place this to orient north, wouldn't you put the end at the top here and point it toward the north end of the house?

A Yes, but the configuration of this piece itself is in more or less the shape of an arrow. I

figure north to be pointing that way.

Q There is some ambiguity, isn't there?

A I don't see any.

MR. MURTAGH: Your Honor, we object. The Government will stipulate if necessary to speed this up--that perhaps the plate was glued on in the wrong direction. I don't think the witness is being cross-examined as to something he did or he testified to.

MR. SEGAL: In view of the Government's stipulation to the fact that the compass rose can be recognized as pointing in the wrong direction---

MR. ANDERSON: OBJECTION to the comment.

THE COURT: I will SUSTAIN that. I did not under understand that to be encompassed in the stipulation. He just said that it "might have been" glued on in the wrong way--go ahead.

MR. SEGAL: All right, thank you. Officer Mica, would you return to your seat, please?

BY MR. SEGAL:

Q Now, on the morning of February 17, 1970, when you and Specialist Morris were headed for 544 Castle Drive---

A Yes, sir.

Q You were responding to a radio message you had received from a dispatcher at the MP Headquarters?

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A Yes, sir.

Q What did you believe was the nature of the emergency that you were responding to at that time?

A That was given over as a domestic disturbance.

Q You had no idea at that time that you were headed to what turned out to be a triple murder and a possible assault on a fourth person?

A No, sir.

Q But at the same time I assume it is fair to say that you and Morris were going there as expeditiously as possible?

A Yes, sir.

Q Domestic disturbances are obviously a matter that have to be dealt with promptly?

A Generally, yes, sir.

Q Now, when you arrived at the intersection of Honeycutt and North Lucas Road, you told us yesterday that you saw a female standing at that corner?

A Yes, sir.

Q Now considering the time in the morning--a little before four--and the weather--was this not unusual to have seen a person standing there---

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: Let him say whether or not he customarily saw people like this at that time in the morning. OVERRULED.

THE WITNESS: It was unusual--it was not uncommon.

BY MR. SEGAL:

Q There is no bus stop at that corner, is there?

A Not that I recall.

Q There is a commissary that is right close by the intersection, is there not?

A Yes, sir.

Q A commissary is in fact a supermarket for the families of military personnel?

A Yes, sir.

Q The commissary was not open at that time, was it?

A No, sir.

Q There is also a gasoline station located at one of the other parts of the intersection?

A Yes, sir.

Q Was that gasoline station open at that time of the morning?

A No, sir.

Q And across the street from where this woman

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was, was the beginning of the Corregidor Courts residential area, was it not?

A Yes, sir.

Q Considering all those things--the time, the weather, the places that were there--if you had not been responding to what you believed was an emergency call, would it have not been a usual practice to have probably checked out in some fashion the presence of this particular person?

A Yes, sir.

Q But in this instance because you had been advised by dispatchers of an emergency, you and Morris felt the necessity to go on and answer that call?

A Yes, sir.

Q I would gather from your testimony yesterday that the observations you were able to make of this woman were relatively brief?

A Yes, sir.

Q She was, I understood, a young person?

A I don't believe I mentioned her age.

Q Then let me rephrase that--did you have the impression that she was a young person--somewhere between the ages of 18 and 25 or so?

MR. MURTAGH: OBJECTION.

THE COURT: OVERRULED.

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BY MR. SEGAL:

Q You may answer.

A I was under the general impression that she was in the 20's to 30-year age.

Q And you also observed a hat that she was wearing at that time, did you not?

A Yes, sir.

Q And yesterday you characterized it as a rain-type hat.

A Yes, sir.

Q I don't mean to say that that isn't correct, but can I add to it and ask whether you agree that it was also a "floppy" hat.

A I believe I described it as a "wide-brimmed" hat. It was fairly large.

Q Would a full description of that hat on that lady you saw at that time be that you thought that it was a rain hat with a wide brim and that it was "floppy"?

A I would say it was wide-brimmed and it was full-sized--it appeared to be somewhat "floppy"--yes, sir.

Q You were also able to, I think, observe something of the hairdo on this woman?

A Yes, sir.

Q And that hair was shoulder-length, the best

you could observe?

A As best as I could observe, I believe that it was.

Q Now, after you made these observations at that corner--by the way--would you be able to come to a stop at that corner?

A I don't recall if we actually stopped--I know we slowed down pretty close to a stop--to check the intersection before we proceeded through.

Q Just simply because it was a large intersection and it was a cautious way to proceed through.

A Yes, sir, and I believe we had a red light facing in our direction.

Q I think you told us yesterday what the distance was from that intersection--where this young woman was standing--to the MacDonald house and it was something about 1/2 mile---

A That's right, I believe I said it was something in excess of a half mile.

Q If I were to convert that into blocks, would I be correct in saying that that was about five blocks from that corner where the young woman was to the MacDonald House at 544 Castle Drive?

A City blocks?

MR. MURTAGH: OBJECTION.

processing, which is a camera kit, evidence containers, and general processing equipment; and then Mr. Rossi and myself departed for the scene.

Q Who drove, if you recall?

A I believe I did, sir.

Q How long, if you can recall, did it take you to get to 544 Castle Drive?

A Less than five minutes.

Q Was it still raining, or had the rain stopped?

A It was still raining. It was raining very lightly when I arrived.

Q What pedestrian traffic did you see on the way to Castle Drive?

A I observed none.

Q What moving vehicles, if any, did you observe on your way to Castle Drive?

A I don't recall having seen any moving vehicles. I don't recall having seen any at all.

Q When you got to Castle Drive, where did you park your car?

A I parked the duty sedan--not directly in front of 544 Castle Drive, but a few parking slots down--but directly in front of the house in which 544 Castle Drive is included.

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MR. BLACKBURN: I would like marked for identification Government Exhibit Number 161, 162, 163 and 164.

(Government Exhibits 161, 162, 163 and 164 were marked for identification.)

MR. BLACKBURN: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked as Government Exhibit 161, 162, 163 and 164, and ask you to take a look at them, sir.

(Witness complies.)

Q Can you identify those?

A Yes; I can.

Q What are they?

A They are photographs of the building, and specifically the area of 544 Castle Drive.

Q Now, Mr. Ivory, after you pulled into--after you parked your car, what did you do?

A Mr. Rossi and myself went up to the house and entered the apartment of 544 Castle Drive through the front door.

Q Who, if anyone, did you observe on the outside on Castle Drive?

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A There were medical personnel wearing hospital whites and some uniformed military policemen.

Q Do you recall, sir, how many medical personnel there were?

A I believe two that I can recall.

Q How many ambulances were there at that time?

A There were two.

Q Do you recall, sir, how many military policemen were outside when you got there--outside the front?

A I think about four.

Q What did you do after you went in the front door?

A Upon entering the apartment, I saw Lieutenant Paulk, who was the military police duty officer. I approached him immediately and asked him what the situation was.

#22
pp-1

BY MR. BLACKBURN:

Q Was the light on or off in the living room?

A The light in the living room was on.

Q After you spoke with Lieutenant Paulk, what if anything did he say to you?

A He advised me that the story he had obtained to the occurrences in the house were that some people had come into a house--into the house--attacked the family and had killed some--had killed a woman as he directed my attention down a hallway. He said some people had been killed--someone had been killed; and that was basically the information he had at that time.

Q After he told you this, what did you do?

A Well, just at the time that he was describing to me the information that he had obtained, a hospital stretcher, the two medical personnel, and a military policemen were coming from the hallway into the living room area, and Lieutenant Paulk advised me that this was the person on the stretcher, which was a male, was the occupant of the house, and he was one of the persons that had been attacked.

Q Mr. Ivory, if you would, please come down behind the model and bring the pointer and point out, sir, to the jury where you were when the stretcher came out.

#22
p-2

A I was standing here in front of the television set.

Q Where was Lieutenant Paulk standing, if you recall?

A Directly to my left side, I think.

Q Did you stand there for the entire time until the stretcher was removed?

A Yes, I did.

Q You may resume your seat. After the stretcher was, in fact, removed from the living room, what did you do?

A I asked Lieutenant Paulk to show me what he had found at the scene, and then with Lieutenant Paulk went through the house and observed the crime scene as it was at that time.

Q Where did you go first?

A We went first to the master bedroom, the bedroom at the far end or the east end of the house. The light in that room was also on at that time.

Q How far inside that room did you go?

A Initially I went to the door, observed what was in the room, the lay of the furniture, the bodies were laying (sic) on the--on the floor, and then walked closer to the body, looked at it; and about that time Lieutenant Paulk said, "All right, now there are--," or

words to the effect that, "There are others down the hall."

Up to that point I was of the opinion that there was one, but then he advised me that there were at least some others in another part of the house.

Q How long did you stay in the master bedroom that first time?

A Perhaps a minute, two minutes.

Q Did you have an opportunity to observe a female on the floor?

A Yes, I did.

Q How was she dressed?

A In pajamas, pink pajamas, which were blood-soaked at the top and blood stained on the trousers. Also on the body was a white bathmat, as was found later, and also a blue--some blue material which was later found to be part of a blue pajama shirt--or a blue pajama shirt.

Q Where was the blue material when you first saw the female?

A On the lower chest area, the upper part of the body--the lower chest area.

Q Where was what you have described as the bathmat?

A The bathmat was laying (sic) across the

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abdominal region.

Q Were the pajamas that you saw on Colette one-piece or two pieces?

A The clothes that she was wearing were two-piece.

Q After Lieutenant Paulk advised you that there were other dead people in the house, what did you do?

A We went from the master bedroom--again, with Lieutenant Paulk--back down the hallway to a bedroom on the front or south side of the house, the bedroom of Kimberly MacDonald; and there Lieutenant Paulk pointed a--the room was not lit. He directed the beam of his flashlight into the room on to the bed, and I saw there was a figure laying (sic) on the bed.

I looked inside the doorway and found the light switch, and with a pen flipped the switch up, illuninated the room, and then entered to get a closer look at the body.

Q What did you observe?

A I observed the body of a small child--female child--laying (sic) on that bed.

Q Do you recall which side of the bed she was on?

A She was on the--just to the left of the

center of the bed, looking from the feet--from the foot up.

Q Were the bed covers, sir, up or down?

A The bed covers were up and, in fact, tucked underneath the body, from the--from the rear of the body.

Q How long did you stay in this bedroom?

A Again, perhaps a minute, perhaps a little longer--no more than that, before he--Lieutenant Paulk--advised me then that there was another body in the bedroom across the hallway.

Q Was that the first time you knew of that?

A Yes, sir.

Q After he advised you of that, what did you do?

A We went to the doorway of that bedroom. Again, he directed his flashlight into the room. I saw a body laying (sic) on the bed. Using the same procedure with a pen I found a light switch inside the door frame, illuminated the room, and then walked in deeper into the room to get a closer look at the body, and saw the body of a small female child laying (sic) on her side --on her left side--on the bed.

Q How did you illuminate that room?

A Again, in the same procedure as I did with Kimberly's room. As I entered the bedroom on the south

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side--or north side rather--which was Kristen's bedroom, using the ballpoint pen I flipped up the light switch and illuminated the room.

Q When you left Kimberly's room that first time, was the light on or off?

A When I left the room?

Q Yes.

A I think perhaps I shut the light off again. I'm not sure.

Q How long did you remain in Kristen's room?

A No longer than I had remained in the other rooms, perhaps a minute.

Q What did you observe that first time you went into Kristen's room, besides what you've already testified to?

A In addition to the body, there was blood on the floor just to the side of the bed, blood along the side edges of the bed, flecks of blood along the wall behind the bed or along the side of the bed; and I observed two bloody footprints leading out of the room--from the room to the hallway.

Q After you left that room, sir, where did you go?

A I went from that room back to the living room, had a few more words with Lieutenant Paulk.

#22
pp-7

Q What did you say to him?

A I asked him what security he had around the house, and he told me he had military policemen assigned around the perimeter of the house to keep unauthorized personnel out. I told him I was going to go next door to make a phone call, to get some investigative assistance, because that--at that point I saw that the situation was more than I was going to be able to take care of myself, and I---

Q Excuse me, when you went first back to the master bedroom with Lieutenant Paulk, how many other people were in the master bedroom while you were there?

A There was a military policeman stationed at the outer door of the utility room, which is just off of the master bedroom, but there were no other persons in the room itself.

Q With respect to Kimberly's bedroom--front bedroom--when you were in that room with Lieutenant Paulk how many other individuals were in that room?

A There were no others.

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BY MR. BLACKBURN:

Q And finally, sir, with respect to Kristen's room, when you went in that room with Lieutenant Paulk, how many people were in that room with you?

A There were no others.

Q After you told Lieutenant Paulk that you were going to go next door to make a telephone call, what did you do?

A I advised him to maintain control on people coming in and out of the building. To restrict access to the house is what, in essence, I told him. I asked him if he had seen anything in the house that was disturbed or had been moved by anybody that had been in the house. He said, "No." At that point, I went into the apartment of Warrant Officer Kalin who resided at 542 Castle Drive and asked permission to use his telephone to call for assistance.

Q When, if at any time, did you go into the dining room area or the kitchen area of the apartment?

A The dining room--it is a combination of a sort--dining room-living room area. I did observe the dining room area on my initial entry into the house. I was standing with Lieutenant Paulk and talking to him. I went into the kitchen probably the first time after returning. I did not go into the kitchen on my initial

visit to the house. Upon returning from the Kalin house, that had been my first visit to the kitchen.

Q During the first initial observations by you, what furniture, if any, did you observe in the dining room area?

A In the dining room, there was a dining room table which appeared to be a standard Army-issue table with straight back chairs, an old-looking china closet or crystal cabinet--whatever you care to call it--a folding table, a bookcase or a buffet-type of affair over in the far corner, and there was a small carpet on the floor.

Q With respect to the china closet, did you have an opportunity to look at it directly?

A Yes, sir, I did.

Q What, if anything, was inside of it?

A There was some crystalware. I believe there were some items of silverplate. That is what I recall.

Q Can you describe the position of the plates?

A No, not silver plates but silverplated objects--perhaps goblets or something.

Q Can you describe the position of these silverplated goblets?

A They were upright as were the glasses upright in a normal position in the cabinet for display.

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Q With respect to the buffet, what, if anything, was on it?

A There were greeting cards, I think, valentines or birthday cards or something to that effect.

Q Do you recall anything else?

A Not at present, no. Yes, I think there was a candle or something. I am not sure. The cards, I distinctly remember, were standing up and open, but the others are a bit foggy.

Q Now, I believe you earlier testified after you left Kristen's room, you talked with Lieutenant Paulk and you went next door; is that correct?

A Yes, that is correct.

Q What did you do when you went next door?

A I spoke with the Kalin family--Mr. and Mrs. Kalin. I asked them briefly if they had observed anything or knew what had happened next door. They said, "No." They knew that there was some commotion over there, but didn't know exactly what had happened. I asked permission to use their telephone as I did not want to disturb the phones in the apartment at 544 Castle Drive. Using that phone, I then called the Chief of Investigation for Fort Bragg--my boss.

Q Who is that?

A Joe Graebner--Franz Joseph Graebner--and

advised him of what I had found and advised him that I was going to call additional investigative assistance in. I suggested that he should also call some people in. I called also after Mr. Graebner a few other of the investigators from the office and then went back to the apartment.

Q Do you recall about what time this was?

A This, perhaps, was within ten minutes after my arrival at the house.

Q If you recall, sir, who did you specifically call besides Mr. Graebner?

A I called Special Agent Connolly, Special Agent Shaw, and Special Agent Black.

Q When you say "Special Agents," is that with the CID?

A Yes, CID agents.

Q When you first arrived at Castle Drive inside the apartment, how many military policemen did you see?

A There was one standing just inside the front door. There was another standing next to Lieutenant Paulk as I approached him at that TV set and the military policeman that I saw accompanying the stretcher in the hallway.

Q After you went back to the MacDonald

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apartment upon completing your telephone calls, what did you do?

A I made a longer assessment of what I had seen the first time. I went through the house again and took a longer look in each of the rooms and made a little bit more detailed observation of what was there and then returned to the front room and then back into the Kalin apartment and asked Mr. Kalin if he felt up to it could he accompany me through the house to make an identification of those bodies that were found in the house. He said, "Yes," he would and accompanied me back into the house.

Q Prior to that, sir, on your detailed observations that you have testified to in the house, what, if anything, did you observe with respect to the furniture in the living room area?

A In the living room, against the east wall or the wall farthest away---

Q (Interposing) How about if you will come on down here behind the model and point out where you are talking about?

A Against the east wall of the living room, a couch, much in the position as in this model, a table with a lamp as is depicted here. There is a coffee table that was turned up on its edge just as shown here next to

a rocking chair. There was a carpeted floor. There was a vinyl-covered lounge chair with a hassock, and as depicted here, this flower pot. There was also a flower pot--no, it wasn't here (indicating). It was over here (indicating).

MR. SEGAL: I can't hear what he said.

MR. BLACKBURN: Speak louder.

THE WITNESS: I said that the flower pot is not as shown here but was over toward the site of the table; however, the plant and the root ball were generally in this position as you see it here, the desk, a very ordinary Army-issue desk, the television set, a stereo set on a stand, very similar to this with the speakers on either side, and an arm-type chair--not an upholstered chair--a woodframe chair in this corner (indicating) by the entrance to the dining room.

BY MR. BLACKBURN:

Q Directing your attention to the hallway area, sir, at the top of the stairs, what, if anything, did you observe in the hallway area?

A Laying across or laying down across the stairs on this side of the stairs (indicating) which is the south side of the stairs were some items of clothing--apparently, child's clothing--it looked like pajamas or a

kind of--I think a child would slip into like a sleeping bag thing--a child would sleep in it--again laying down the stairs from the top stairs down.

Q On this trip back through the house and making the detailed observation, after you went to the living room, where did you next go?

A We are talking now about after Mr. Kalin has left?

Q No, sir, before Mr. Kalin was coming.

A Before he was coming. Back through the house to the side bedrooms. I can't recall which of the side bedrooms that I went into first and then back into the master bedroom and then into the utility room and to the back door where the military policeman was stationed.

BY MR. BLACKBURN:

Q With respect to the front bedroom--Kimberly's bedroom--what, if anything, did you observe with respect to the furniture that was in there?

A As shown here on the model, as I entered this room, the light switch was right here by the door frame. Directly across from the door was a bookcase filled with books and a child's games. There was a pink cat type of a bank that stood about 18 inches high. This chair--may I move this chair?

Q Yes. Move it where you think it was when you saw it.

A It is a wood frame chair with a vinyl leather covered arms and seat and was closer to the radiator here--probably positioned about like that. This was a small cabinet that had a record player and a doll.

Q Excuse me, can you see?

THE COURT: Can he stand behind?

MR. BLACKBURN: Yes.

THE COURT: All right.

THE WITNESS: The bed in a position very much like it is shown here, again with the body of the child in approximately that position and another book-case-type thing with some child's games and miscellaneous things here against this wall. A small purple--

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larger than what we call a throw rug--a small carpet between the door and this bookcase.

Q Now, going back to the master bedroom, sir, what, if anything did you observe besides Colette in that room?

A In entering the room, of course, my first observations were to try to make it in a clockwise manner--was to observe the door leading from the bedroom into the utility room again where I could see the Military Policeman standing in a position right by the door. A dresser with items obviously belonging to a woman--a jewelry box, perhaps some hair spray--the ordinary things you would find on a woman's dresser--a lamp, a telephone. The receiver -- may I move it?

Q Yes, as you saw it.

A The receiver was hanging down over the side of the dresser.

Q It could fall. The phone isn't magnetized.

A This is green vinyl-covered chair and perhaps in a position--it was closer to the body or the body was closer to it. The body was laying directly in front of this green vinyl-covered chair. A nightstand which matched the dresser and the bed and also this chest of drawers here--this lamp--the shade was tilted--I forget in which direction. The bed--the bedding had been

stripped down from it and all that was on it was the bottom sheet. There was a pillow there also, but the bottom sheet, and on the headboard--right here, if you can see where I am pointing--was the word "Pig" with the letters "P-i-g" written in this manner--not so you could read it looking straight at it, but you had to turn. It was written like this (indicating) in what appeared to be blood. There were blood splatters along the walls, along the baseboard of the wall, along this side. Between this bed and the wall--this, perhaps gives you an illusion of space. It is an illusion. It is a lot tighter in here than perhaps you would think.

There were items of military apparel. I think a pair of fatigues was lying down there and there were some throw pillows such as the type that you would put up on a bed and lean into while you were sitting up reading. This dresser was back here towards this wall where the cabinets were. Of course, these are sliding door cabinets. The door on this side or the side closest to the doorway leading back out to the hallway was open--not entirely open but maybe halfway sort of opened.

Right here where this piece of paper says "pile of bedding," there was a pile of bedding consisting

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of a bedspread and a sheet which apparently came from this bed. That is my observation.

Q With respect to the chest of drawers and other items that had drawers in them, were the drawers open or closed?

A There was one drawer--the second or third drawer down which was not open but was not completely closed. The edge of the drawer was protruding beyond the face of the chest of drawers.

Q What about with respect to the other drawers?

A They were firmly shut.

Q With respect to the utility room, what, if anything, did you observe in that room?

A It was a bit cluttered in there. There was a washer-dryer combination, there was some "Old Maid" shelving in there--that is, shelves separated by piles of red brick--a small filing cabinet where someone would keep their own personal documents in files--a two-drawer filing cabinet, I think it was. Again, off the utility room, is a small--not a bathroom but just a toilet.

Q With respect to the jewelry box in the master bedroom, was it opened or closed?

A It was closed.

Q With respect to the hall bathroom, did you go

in that room?

A Yes, sir; I did.

Q What, if anything, did you observe there if you recall?

A As I recall, the bathmats and the items on the toilet were pink. There was a small stepladder underneath the sink. Around the edges of the sink over which there was a mirror, there were numerous drops and specks of blood.

Q Was the hall light bathroom on or off (sic)?

A It was on.

Q With respect to Kristen's room, the back bedroom, besides Kristen and the pool of blood to which you have already testified, what else, if anything, did you observe?

A Just inside the door and immediately to the left along the wall, which, unfortunately, cannot be seen by you, was sort of a bookcase or shelving, I should say, which contained, again, children's toys. There was a small sewing machine there---

Q (Interposing) Excuse me. We can remove these walls.

A Again, as you can see, this portrays the position in which the shelves were which contained the child's toys. This would be the blue sewing machine in a

case. Between this case and the toys and the foot of the bed, I think there was a small hassock and some other items that you would find strewn underneath a child's room. The bed was covered in a green bedspread covering the body to about waist level.

In a position right about here by the head of the bed was a large stuffed animal--again, something you would find in a child's room--a small carpet, a multicolored carpet which also had blood stains on it, again, a sliding door to the closets. Inside the closet was a chest of drawers put in there for space-saving purposes, I am sure.

Q Excuse me. Were the closet doors open or closed in that room?

A They are fixed. I can't open them on the model, sir.

Q My question was not with respect to the model but with respect to the room itself. Were they open or closed?

A They were closed. In approximately this area here just in front of the door between this carpet and the door, I observed two partial bloody footprints leading out into the hallway.

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BY MR. BLACKBURN:

Q Finally, sir, before you resume your seat, with respect to Kimberly's room and the closet, were those doors open or shut?

A As I recall, they were shut.

MR. BLACKBURN: You may resume your seat. Your Honor, may we approach the bench?

THE COURT: Yes.

B E N C H C O N F E R E N C E

MR. BLACKBURN: We are getting very close to the point where we are going to seek to introduce photographs of the crime scene including the positions of the bodies as Mr. Ivory has just testified. We think that they are relevant simply to show the crime scene as it was when he was there.

THE COURT: What is the problem?

MR. SEGAL: If your Honor pleases, we want the Government to make an offer of proof at this time as to the relevance of showing the position of the bodies. I think when they have made their offer of proof, I will have an objection to state to it. I don't want to presume what they are going to do with them. I want to know the relevance of showing the pictures.

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MR. BLACKBURN: Well, the position of the bodies is extremely relevant. We have had testimony from two MP's, for example, how the two little girls were found. We've had testimony as to how Colette was found. We've had discussions with respect to how they were in the model, and these are photographs. We're not at that point quite yet, but we're getting close.

THE COURT: Well, there's no objection before the Court. If you have a witness who saw the scene and if you have a photograph which you allege is of the scene, I don't see any problem about proceeding in the normal fashion.

MR. SEGAL: Let me state my objection, if I may. It is our position that the photographs that the Government has now offered are irrelevant and, in fact, prejudicial.

THE COURT: Well, there has been no photograph offered.

MR. SEGAL: They are about to offer the specific photographs just of the bodies.

MR. BLACKBURN: Let me show you. These are two black-and-white photographs, the first two photographs taken--this being Colette after the Doctor was removed, this being the little girl, Kristen, who we've had testimony to was on her side in the bed.

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THE COURT: You are objecting to these two photographs?

MR. SEGAL: May I state my objection?

THE COURT: Yes.

MR. SEGAL: If the Government is merely offering the photographs to simply show us there were dead bodies in the room, that has already been testified to by now three of the witnesses. However, I've asked for an offer of proof that I don't think has been fully articulated. I think that the Government is doing what I anticipate based upon the opening statement of the Counsel.

They ultimately intend to call the former Chief of Chemistry Division of the FBI to then interpret, based upon the position of the blue pajama top, the position of other things on and about the body, the location of certain fibers in and about the body.

They intend to ask him to draw certain conclusions or inferences about how the injuries were received by these persons. This is predicate to that testimony. I suggest, your Honor, most seriously, most strenuously that it is a false predicate because we have had clear testimony from both Tevere and from Officer Mica that the various items on, in, and about the bodies, including the bodies themselves were moved

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or subject to change. The Government fully objected when I wanted to show them the pictures that are of the photos when this man arrived on the scene, that everything that this man has seen was the subject of alteration, and that unless and until, your Honor, the Government recalls the various Military Policemen and the medics who are all on call and are available and they have notified exist, that to clear up whether or not they in fact moved anything that this man saw and now having photographed, that that will be a totally false predicate for what follows thereafter.

It is not only false---

THE COURT: (Interposing) You seem to be anticipating that the testimony of this witness will be at variance with some witness who has already testified and, if it is, so be it.

MR. BLACKBURN: He can cross-examine.

MR. SEGAL: May I suggest that is not the issue? It is the right to introduce a photograph which does not represent the crime scene as it was found by the Government. They simply want to skip how they found it.

MR. BLACKBURN: It represents the crime as it was seen---

THE COURT: (Interposing) Ask your

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questions.

(Bench conference terminated.)

BY MR. BLACKBURN:

Q Mr. Ivory, you testified here earlier in your direct examination that you recall a Mr. James Alexander coming to the Castle Drive apartment. Is that correct?

A Yes, sir. I did.

Q When did he come?

A I would say around 4:20--somewhere between 4:20 and 4:30.

Q Was this before or after Mr. Kalin came over to the MacDonald apartment?

A It was at about the same time.

Q Well, then, with respect to Mr. Kalin, he then came over to the apartment about 4:20. Is that correct?

A Yes, sir.

Q When he got there, what did he do that you observed?

THE COURT: Which one--the photographer?

MR. BLACKBURN: Mr. Kalin.

THE WITNESS: Prior to entering the house, I advised him not to touch anything, and we were

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just going to walk through the house. We would have the opportunity to look at the bodies and then immediately leave the house, but, again, I stressed the point of not touching anything within the house. We went through the living room into the hallway to the bedroom on the left, Kristen's bedroom. He looked in and--well, the room was illuminated at this time. He looked in from the doorway, did not enter the room, and saw the body laying there and identified it as Kristen MacDonald but he did not call her "Kristen." He called her "Krissie."

I went to the bedroom across the hall on the north--on the south--side of the building, Kimberly's bedroom--looked in-- again, did not enter the room-- went just into the doorway--looked over to the bed, and he said, "That's--." I think he used the term "Kimmie."

He went from there to the doorway and entered no further than the doorway of the master bedroom and identified the body of Colette MacDonald.

I then immediately escorted him back to the front of the house and out.

Q How long would you estimate he was in that apartment?

A No more than two minutes.

Q What, if anything, did you observe

Mr. Kalin touch while he was inside the apartment?

A He touched absolutely nothing.

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BY MR. BLACKBURN:

Q I believe you testified that Mr. Alexander, the photographer, had arrived at approximately the same time; is that correct?

A Yes, sir.

Q After he got there, what, if anything, did you observe him do?

A Well, I instructed him that he was to take photographs of the crime scene; and immediately he began to set up his equipment, and began shooting in black and white film the house.

Q The inside?

A The inside of the house--the interior.

Q Where were you when he began shooting these pictures?

A In the living room area with him, because that is where he set up his camera equipment--right there.

Q How long did Mr. Alexander remain in the house?

A Not very long; he exposed--well, I don't know how many exposures he made in the house. He was ill that night and that, coupled with what he experienced when he walked in--the trauma of seeing it--he was not used to entering any crime scenes of this magnitude. He was usually shooting house breakings and larcenies and tire

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tracks and what not, so it took a toll on him; and about that time, I was looking for some other kind of film. So all things combined, I thought it best for him to exit the crime scene. There was perhaps half of a packet of sheet film.

MR. BLACKBURN: Let me mark some photographs--Government Exhibit Number 20, 20(a), 152, 157, 156, 158, 159, 155, 154, 153, 160 and 144.

(Government Exhibits 20, 20(a), 152, 157, 156, 158, 159, 155, 154, 153, 160 and 144 were marked for identification.)

MR. BLACKBURN: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit Number 20 and ask you if you can identify it?

A Yes, sir; I can.

Q What is it?

A It is a Polaroid exposure of the north bedroom or the bedroom of Kimberly MacDonald, showing the body of Kimberly MacDonald in the bed.

Q What relationship---

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A (Interposing) I am sorry; Kristen MacDonald.

Q What relationship, sir, is the position of that body in that bed to when you first observed Kristen MacDonald?

A That is as I first saw the body.

Q Let me hand you, sir, what has been marked for identification as Government Exhibit Number 20(a), and ask you if you can identify it?

A Yes, sir; I can.

Q What is it?

A It is a Polaroid exposure of the east bedroom and the floor of the east bedroom, showing the body of Colette MacDonald.

Q What relationship, sir, is the body of Colette MacDonald as to the position that you first saw her?

A It is in the same position. It is exactly as I first saw her.

Q With respect to what she is wearing in that picture, is that the same as you first saw her?

A Yes, sir; with the pajamas, the bath mat across the lower region of the body and the pajama shirt on top of the upper part. Again, it shows a trailing piece of cloth, which is also a part of the blue pajama

shirt.

Q Let me hand you, sir, what has been marked as Government Exhibit Number 144, and ask if you can identify it?

A Yes, sir; I can.

Q What is it?

A This is a photo taken from the doorway of the south bedroom, or the bedroom of Kimberly MacDonald, showing the bed and part of the body of Kimberly MacDonald.

Q What relationship, sir, is that photograph to that area of the room as to when you first saw it?

A It is exactly as I first saw it.

Q Let me hand you, sir, what has been marked for identification as Government Exhibit Number 152, and ask you if you can identify it?

A Yes, sir; I can.

Q What is it?

A It is a photograph taken from the living room along the hallway, and in the background of the photo is the east bedroom, or the master bedroom; and you can see part of the body of Colette MacDonald laying on the floor

Q What relationship, sir, is that picture to when you first saw that part of the house?

A It is as I first saw it.

Q Let me hand you what has been marked for identification as Government Exhibit 153, and ask you if you can identify it?

A Yes, sir; I can.

Q What is it?

A Another photograph taken from the doorway of the master bedroom, looking at the wall just adjacent to the doorway leading to the utility room, and shows the dresser with the mirror which was in the master bedroom; and just in the corner, you can see part of a blade of a knife that was laying partially under that dresser.

Q What relationship, sir, is that photograph to that part of the master bedroom as to when you first saw it?

A It is as I first saw it. I see no change.

Q Let me hand you what has been marked for identification as Government Exhibit 154 and ask you if you can identify it?

A Yes, sir; I can.

Q What is it?

A This is a continuation of what would have been a 360-degree photo coverage of the master bedroom. It picks up approximately where that last photo left off, and shows part of the dresser, the telephone with the receiver off the hook, and around to the east wall of the

bedroom. It shows the green vinyl chair and a kind of a plant hanger type of affair that was hanging from the ceiling over the chair.

Q What relationship, sir, is that picture to that part of that room when you first saw it?

A I see no change to the room as I first saw it.

Q Let me hand you what has been marked as Government Exhibit 160, and ask if you can identify it?

A Yes, sir; I can.

Q What is it?

A It is, again, a continuation of the 360-degree coverage, shooting from the doorway of the master bedroom directly ahead towards the east wall--a little bit lower view, showing the floor; the green vinyl chair with clothing on it; the body of Colette MacDonald; a small multi-colored throw rug;just at the foot of the body by the left foot and on the upturned corner of this throw rug was the small blue pocket of this pajama shirt.

You can see the nightstand, the lamp with the shade tilted, just a portion of the bed, and the headboard of the bed in the master bedroom, and then some blood specks on the wall. In the lower right-hand corner of the photograph, you can see part of that bundle of bedding, which was just inside and to the right of the doorway of the master bedroom.

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BY MR. BLACKBURN:

Q Let me hand you what has been marked as Government Exhibit 156, and ask if you can identify that, please?

A Yes, sir; I can.

Q What is it?

A The continuation of the coverage of the room picking up approximately where that last photo left off depicting the rest of the bed, the other night stand with lamp, the throw pillows that I described earlier, the south wall of the bedroom, the window, the small wicker stool, and a small overnight case which was right next to the dresser or the chest of drawers and the footboard of the bed.

Q What relationship, sir, is that photograph to that area of the room when you first saw it?

A That is as I first observed it.

Q Let me hand you what has been marked for identification as Government Exhibit 157, and ask if you can identify that?

A Yes, sir; I can.

Q What is it?

A It is another in the series of the coverages of the master bedroom showing the chest of drawers and a print--picture--which was against the south wall of the

master bedroom, and it also shows, as I mentioned earlier, this is the third drawer from the top which was just slightly open at the edge protruding from the flush of the drawers.

Q What relationship, sir, is that photograph to that portion of the room when you first saw it?

A It is as I first saw it.

Q Let me hand you what has been marked for identification as Government Exhibit Number 155, and ask if you can identify that photograph?

A Yes, sir; I can.

Q What is it?

A Another photograph in the coverage of the master bedroom showing more clearly the headboard of the bed with the writing "P-i-g" on the headboard. Again, you can see more clearly the blood stains on the wall. You can see the upper portion of the body of Colette MacDonald and the bedding and the stained shag carpet in the room.

Q What relationship, sir, is that photograph as to when you first saw that area of the room?

A Again, sir, I see no change.

Q Let me hand you what has been marked for identification as Government Exhibit 158, and ask if you can identify it?

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A Yes, sir; I can.

Q What is it?

A It is the photograph taken from the hallway into the south bedroom or Kimberly's bedroom--a direct line of sight shot from the door showing the bookcase with the books, child's games, and that pink cat bank.

Q What relationship is that photograph to that area of Kimberly's room when you first saw it?

A It is as I recall seeing it.

Q Finally, sir, let me hand you one last thing that has been marked as Government Exhibit 159, and ask if you can identify that?

A Yes, sir; I can.

Q What is it?

A It is another photograph of the coverage of the south bedroom or Kimberly's bedroom and continues from that bookcase in the last photograph onto the right showing the vinyl covered wood-frame chair, radiator, part of a doll's crib or a doll's bed, and just a portion of the footboard of the bed in the south bedroom.

Q What relationship is that photograph to the area of the room when you first saw it?

A It is as I recall first seeing it.

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MR. BLACKBURN: Your Honor, at this time, I would offer the following exhibits into evidence on behalf of the Government: Exhibit No. 20, 20(a), 155, 158, 159, 157, 153, 154, 152, 156, 160, and 144.

THE COURT: Very well.

(Government Exhibit Nos. 20, 20(a), 155, 158, 159, 157, 153, 154, 152, 156, 160, and 144 were received in evidence.)

MR. SEGAL: I'd like a chance to look at them a little more leisurely, Your Honor--perhaps after the Jury has retired at 3:00 o'clock.

MR. BLACKBURN: We're offering them now.

MR. SEGAL: I will look at them now, then in a non-leisurely pace.

THE COURT: Well, if he wants a chance to look at them. I thought you had provided him with these before.

MR. BLACKBURN: We have. The only pictures, Your Honor, that I am not sure Mr. Segal has previously seen are two small photographs. The others he has been provided.

THE COURT: All right, there will be plenty of time over the week-end for both of you to look

at them.

MR. SEGAL: Your Honor has my position in regard to this matter.

THE COURT: Yes.

MR. BLACKBURN: Your Honor, may we approach the bench just one second?

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B E N C H C O N F E R E N C E

MR. BLACKBURN: The reason that I was interested in introducing them this afternoon into evidence is because we have larger reproductions of those photographs we would like to put up on the easel and publish to the jury this afternoon.

THE COURT: Well, you have offered these and they have been admitted, and now what?

MR. BLACKBURN: That is all. I just wanted to make sure I was understood.

THE COURT: When I say, "Very well," that means that they come in unless I hear an objection.

MR. SEGAL: I have already made my position on the record. I did not assume it was necessary to repeat it, Your Honor.

(Bench conference terminated.)

MR. BLACKBURN: Your Honor, before we publish these to the jury, we would like to collate for

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the record these larger blow ups with the smaller pictures.

THE COURT: Do they have the same number?

MR. MURTAGH: Yes, Your Honor. They are modified by an "a:"

MR. BLACKBURN: Yes, they do; we have an "a" after them.

THE COURT: All right.

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, what has been marked for Government's identification as 152(a) and ask if you can identify it, sir?

A Yes, sir; I can.

Q And what is that?

A It is an enlargement of one of the photos I looked at just a few minutes ago. It shows the view from the living room, down the hallway, into the master bedroom, or the bedroom on the east side of the house.

Q Let me hand you what has been marked for identification as 160(a), and ask if you can identify that, sir?

A Yes, sir; I can.

Q Is it the same as the picture, 160, that you already saw?

A Yes, it is an enlargement of one of the photographs I have just seen.

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BY MR. BLACKBURN:

Q What does that depict?

A That depicts a view from the hallway door into the master bedroom, looking at the bottom, the body of Colette MacDonald, the multi-colored throw rug, the pocket from the pajama shirt that was described earlier, the vinyl chair, and a partial view of the bedding which was just inside and to the right of the doorway, and then the bed.

Q Let me hand you, sir, what has been marked for identification as Government Exhibit No. 153(a) and ask if you can identify that?

(Government Exhibit No. 153(a) was marked for identification.)

A Yes, sir, I can.

Q What is it? Excuse me, is that an enlargement of an earlier picture which you just saw a few minutes earlier?

A Yes, sir, it is.

Q And would you describe for the jury what is in that photograph?

A It's a photo, again, taken from the door of the master bedroom, looking to the left and then going in a clockwise method around the room, showing the door to the utility room and the dresser with the items of

feminine--articles that were there: the jewelry box--

Q Let me hand you what has been marked for Government's identification 154(a) and ask if you can identify that. Is that the same photograph, an enlargement of Government Exhibit Number 154?

(Government Exhibit No. 154(a) was marked for identification.)

A Yes, sir, it is.

Q And would you point out to the jury what is in that photograph?

A Let me take it from this lower left corner. This is the knife that was found laying (sic) partially--just the tip--under the edge of the dresser; the telephone, the receiver off the hook; jewelry box; the hanger-type plant, I guess you would call it a plant hanger; the vinyl chair; items of woman's apparel.

Q Why don't you use the pointer, if you feel free to do so?

A Okay--and just a part of the body of Colette MacDonald.

Q Let me hand you what has been marked as Government Exhibit Number 156(a) and ask you if that is not an enlargement of Government Exhibit 156, to which you have previously testified?

#29
pp-3

(Government Exhibit No. 156(a) was marked for identification.)

A That is an enlargement of a photo I just saw.

Q And if you would, sir, point out to the jury what is in that photograph?

A It is the continuation of that coverage of the room--the pillow, the bedding, the footboard. This is a smear of blood right here in this corner. The pillow--these are the Army fatigues I mentioned of the military uniform and the overnight case and the wicker stool.

Q Let me hand you what has been marked for identification as Government Exhibit 157 (a) and ask you if that is an enlargement of the photograph previously identified as 157?

A Yes, sir.

(Government Exhibit No. 157(a) was marked for identification.)

BY MR. BLACKBURN:

Q And would you, sir, point out again to the jury what is in that photograph?

A Again, taking it from the hallway, it shows the chest of drawers with the third drawer slightly open. These are items of shaving gear, socks and whatnot, obviously a masculine article, and that print that I described, a closer look at the wicker stool and the overnight case.

Q Let me hand you what has been marked as Government Exhibit 158(a), and ask you if that is an enlargement of photograph and Exhibit Number 158, to which you have previously testified?

A Yes, sir; it is an enlargement.

(Government Exhibit 158(a) was marked for identification.)

Q If you would, sir, point out to the jury what is in that photograph?

A It was taken from the doorway to the south bedroom, or the bedroom of Kimberly MacDonald. It is a straight-in exposure showing the bookcase with the books, toys and the bank.

MR. BLACKBURN: Your Honor, with respect to Government Exhibits Number 144 and 159, we do not have an enlargement of those, but since they are in evidence, we

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would like to pass those to the jury.

THE COURT: Very well.

MR. BLACKBURN: I am sorry; also Government Exhibit 155.

THE COURT: All right.

(Exhibits passed among the jury.)

THE COURT: Now, it is better if you let each one have an exhibit and then keep them moving, and we will get four done at one time.

MR. BLACKBURN: Let me first mark Exhibit 161(d), 162(a), 164(b), 165(b) and 166(b).

(Government Exhibits 161(d), 162(a), 164(b), 165(b) and 166(b) were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 161(b), and ask you if that is an enlargement of Government Exhibit 161, which you have earlier testified?

A It is an enlargement of the photograph I identified earlier.

Q If you would, sir, point out to the jury what is in that photograph.

A This is a photo of the building in which 544

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Castle Drive is a part, this door being the front door to 544 Castle Drive, or the MacDonald residence, and this the doorway to 542, or the residence of Warrant Officer Kalin. The apartment of the MacDonalds is a single floor on the first floor only, this portion of this apartment being the Kalin house.

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BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, what has been marked for identification as Government Exhibit 162(a), and ask you if that is not an enlargement of Government Exhibit 162?

A Yes, sir; it is.

Q Would you please, sir, relate to the jury what is in that photograph?

A In a more distant view of that same building, which includes this entryway here at 544 Castle Drive, it looks like that right there is my duty sedan; and 542, and going back that way.

Q Let me hand you, sir, what has been marked for identifcation as Government Exhibit Number 164(b), and ask you if that is not an enlargement of Government Exhibit Number 164?

A Yes, sir; it is.

Q Would you, sir, relate to the jury what is in that photograph?

A Another view from another direction of the building which includes 544 Castle Drive, which is this entryway here, this being the living room window; this the window of Kimberly's room; and behind these bushes, the window to the master bedroom. This is the south side of the building.

31km2

Q Let me hand you what is marked for identification as Government Exhibit Number 165(b), and ask if you can identify that?

A Yes, sir; I can.

Q What is it?

A This is a photo showing the rear of the building which includes 544 Castle Drive, and shows the doorway to the utility room, and the doorway to the kitchen; plus the windows on the north side of the building.

Q Using the pointer, sir, would you point that out to the jury?

A The military policeman was on perimeter duty that morning. This is the north side of the house, this doorway leading into the utility room here, and further into the master bedroom, which this is the window on the east side. This is the small lavatory, the bathroom, and the window to Kristen's bedroom. Let's see--this is the kitchen door here. These cones were placed there by the military police to assist in restricting access to the side of the house.

Q Finally, sir, let me hand you what has been marked for identification as Government Exhibit Number 166(b), and ask if you can identify that?

A Yes, sir; I can.

Q What is it?

A It is another view of the rear of the north side of the building, which includes 544 Castle Drive.

Q If you would, sir, point out what is in that photograph to the jury?

A It is a view from a different direction of the kitchen door, the windows--the windows of Kristen's bedroom--the utility room. These bushes were just outside of the utility room; and again, the military policeman on perimeter duty.

MR. BLACKBURN: Your Honor, at this time those photographs marked for identification by this witness not already in evidence, we would move into evidence.

THE COURT: Very well. That just adds the enlargements to the ones previously.

MR. BLACKBURN: Yes, sir. I might say, with respect to the last two or three enlargements, I don't think we have the smaller ones yet in evidence; but in those I believe he testified to what they were.

THE COURT: All right.

(Government Exhibits 152(a)-154(a), 156(a), 157(a), 161(b), 162(a), 164(b), 165(b), 166(b), were received into evidence.)

31km4

BY MR. BLACKBURN:

Q Mr. Ivory, how long was Mr. Alexander in the apartment, if you recall?

A Oh, goodness; he was in initially for perhaps 10 or 15 minutes; then he left the house and later on, he did re-enter the quarters. Altogether, I cannot say totally how long he was there.

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BY MR. BLACKBURN:

Q Do you recall approximately what time he left?

A Yes, he initially left around 4:30 or so for it was about that time or in that timeframe that I was calling for additional photographic assistance.

Q Who was that?

A Well, I wanted a photographer from the Post Photo Lab to come down because I was interested in shooting the house in color--Alexander didn't have any color film--I had to process a request through the post duty officer as it was not normal duty hours. He contacted for me Mr. Squires, who was the Chief of the Post Photo Laboratory, and within, well,10 minutes of my call, Mr. Squires arrived at the house. He lives very near by.

Q After he got there, what, if anything, did you observe him do?

A I gave him a general briefing of what had occurred in the house and instructed him that he was to make color photographic coverage of the entire house.

Q Did he do that?

A Yes, sir. I accompanied him as he made his photographs.

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Q What parts of the house did he photograph?

A He photographed the entire interior of the house from the living room and dining room area through the hallway, through Kristen's bedroom to the master bedroom and Kimberly's bedroom--and all parts of the house which were of interest to us. The bathroom.

Q Approximately how long did this photographing take place?

A Oh, God, it went on well, after shooting one photo or another, well after 5 or 6 o'clock.

Q You were with Mr. Squires this entire time he was doing the photographing?

A Not the entire time--I was with him the entire time while he was taking the major photographs. Then other photographs were taken and then either myself or one of the other agents who had arrived at the house was with him.

Q At about this time how many other people besides yourself and Mr. Squires were in the MacDonald apartment?

A Mr. Connolly, one of the Agents I called, had arrived. Some of the Agents started arriving--Mr. Shaw arrived during the photographic processing. Mr. Graebner arrived--other Agents arrived--got the drift of what the situation was and then they took off-

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to cover other aspects of the investigation. What was the question--how many people were actually in the house?

Q Yes. To your knowledge.

A Myself, Mr. Squires, Major Parsons who was a representative of the Provost Marshal, also arrived at the house--he stationed himself at the front door and was screening people also--coming in. Lieutenant Paulk was also in and out. Mr. Shaw when he arrived.

Q Besides Mr. Paulk, how many other MP's were in the house at that time?

A The MP's that were at the house at the time were in the doorways.

MR. SEGAL: I couldn't hear you.

THE COURT: He said they were in the doorways.

MR. SEGAL: Is it in or out of the house?

THE WITNESS: Either in, just inside of the doorway or else on the landing on the front or rear porch.

MR. BLACKBURN: Your Honor, we are getting ready to go into other areas and it might be a good place to stop.

THE COURT: Well, we were getting ready to go home. Members of the Jury, that brings us to the close of our abbreviated--not by very much--but somewhat abbreviated Friday schedule so we will take our recess

until Monday morning at 10:00 o'clock. We ask you to keep in mind all of the previous instructions of the Court. Don't talk about the case among yourselves or with others--don't let anybody talk about it in your presence. If somebody should attempt to do so accidentally, inform them that you are on the jury. That should suffice to bring to a halt any such conversation. Should anybody persist, though, and want to talk about it anyway, get that person's name, will you please, and let me know what it is Monday morning. And then there are some other things that I won't tell you about right now but they go into effect, affecting them, not you. You know you can't read, or look at, or listen to anything about it and you must, by all means, keep open minds about it. I'm going to let you go now and then we will take our recess as soon as the Jury has parted.

Have a good week-end. We'll see you Monday morning at 10:00 o'clock.

(Jury exits at 3:01 p.m.)

THE COURT: Now, recess this Court until Monday morning at 10:00 o'clock.

(The proceeding was recessed at 3:02 p.m. to reconvene at 10:00 a.m. on Monday, July 23, 1979.)

C E R T I F I C A T E

I, Ervin B. Bush, Jr., do hereby certify that the preceding 231 pages represent a true and accurate transcript of the proceedings held in Raleigh, North Carolina, on Friday, July 20, 1979.

ERVIN B. BUSH, JR., CVR-CM
OFFICIAL REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

3

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

FILED
OCT 1 1979
J. RICH LEONARD, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

TRIAL BEFORE

THE HONORABLE FRANKLIN T. DUPREE, JR.

UNITED STATES CHIEF DISTRICT JUDGE

AND A JURY

FILED
OCT 2 1979
U. S. COURT OF APPEALS
FOURTH CIRCUIT

AT RALEIGH: MONDAY, JULY 23, 1979

PAGES 1666-1853 TRIAL DAY THREE

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TABLE OF CONTENTS

WITNESSES	DIRECT	CROSS
FOR THE GOVERNMENT		
WILLIAM F. IVORY		
By Mr. Blackburn	1671-1790	
By Mr. Segal		1790-1851
BENCH CONFERENCE		Pages 1774-1775

EXHIBITS

NUMBER	DESCRIPTION	MARKED	RECEIVED
21 thru 24	Photographs and slides of interior of 544 Castle Dr.	1691	1692
24(b)	Photograph of interior of 544 Castle Dr.	1691	1692
25 thru 28	Photographs and slides of interior of 544 Castle Dr.	1691	1692
30	Photograph and slide of kitchen sink area	1698	1699
31	Photograph and slide of kitchen counter area	1699	1700
32	Photograph and slide of kitchen counter area	1699	1700
33	Photograph and slide of kitchen floor area	1698	1699
35	Photograph and slide of kitchen wall area	1699	1700
38	Photograph of hallway area	1691	1692
39	Photo and slide showing Colette from hallway	1693	1694
40 thru 44	Photographs and slides of body of Colette MacDonald	1693	1694
45 thru 52	Photographs and slides of rear area, incl. master br	1695	1696
53 thru 58	Photographs and slides of Kimberly's br area	1698	1698
59 thru 63	Photographs and slides of Kristen's br area	1691	1692
64 thru 65	Photographs and slides of bloody footprints	1697	1697

TABLE OF CONTENTS
(continued)

NUMBER	DESCRIPTION	MARKED	RECEIVED
70	Photo of Kristen	1694	1694
71-73	Photographs and slides of evidence from master br	1700	1701
74	Photograph and slide of footprint on floor	1697	1697
75	Photograph of living rm. couch	1691	1692
76	Photo of close-up of sink	1695	1696
77,78	Photos and slides of splinter found at scene	1700	1701
101	Pajama top of Colette MacDonald	1683	
102	Pocket from blue pajama shirt	1685	
103	Sheet from pile of bedding,MBR	1733	
104	Bedspread with stains found inside sheet	1734	
105	Piece of latex finger from surgical glove	1761	
109	Blood piece found near Colette's left hand	1735	
132	Vial	1771	
133	Pkg.containing surgeons gloves bearing red-brown stains-under kitchen sink	1760	
134	Gloves(3 pkgs.) Knoxn exemplars used for neutron activation analysis (NAA)	1760	
135	D-24k-Vial, stain on kitchen floor	1771	
136	D-25k-Vial,kitchen floor,Type B bl.	1771	
137	D-26K,stain,kitchen floor,Type B	1771	
138	I-213-vial,suspected portion of surgeon glove from e. br.	1761	
139	Esquire Magazine w/vial containing portion of magazine with stains	1768	
140	Children's Magazine-Wonders of A Kingdom	1769	
141	Bed slat A-12-Q-129	1758	1768
145	Photo,Kristen	1752	1753
145(a)	Enlargement of 145	1752	1753
146	Photo,Colette's handbag,etc.	1755	1755
146(a)	Enlargement of 146	1755	1755
147& (a)	Photo,dining rm. & Enlargement	1754	1754
151& (a)	Photo,kitchen & Enlargement	1672	1672
165	Photo,complex of houses,Castle Dr.	1672	1672
197	Photo,hallway to MBR	1740	1741
210-215	Photos	1740	1741

7-23-79 check

TABLE OF CONTENTS
(continued)

NUMBER	DESCRIPTION	MARKED	RECEIVED
219-221	Photos,Kristen's room	1740	1741
224	Photo,headboard marked "PIG"	1740	1741
270,271	Pajama top & Bottom,Collette's	1763	1768
273	Kristen's P.J. top	1764	1768
274,275	Kristen's P.J.bottom,undershirt	1765	1768
314	Bathmat on Collette's body	1684	
324	Vial,hairs & fibers,e. BR.	1779	
325-327	Vial,hairs & fibers	1769	
357	Green yarn, n. br.	1781	
358	Green rug,N. BR.	1781	
359-361	Vials, N. BR.	1779	
362	Vial & Slide,debris, bedspread	1769	
363	Vial & Slide,Debris,pink blanket	1785	
364	Green bedspread, N. BR.	1784	
368	Pink blanket, N. BR.	1788	
370	Vial,debris from topsheet	1781	
371	Topsheet, N. BR.	1783	
372	Vial,debris,b. sheet,Kristen's bed	1779	
373	Wht. b. sheet,blood types A&O	1783	
374		1785	
375		1785	
376,377	Vials,plastic sheet,K's. bed	1779	
378	N. BR west wall-stains	1785	
381	Hair ribbons, MBR	1781	
457,458	Items,Kitchen & N. BR	1739	1740
459-464	Photos, N. BR	1742	1743
465-474	Photos, N. BR	1749	1750
478	Photo, MBR	1749	1750
484	Photo, MBR	1759	1760
490	Photo, MBR	1759	1760
495	Photo, kitchen floor	1759	1760
509	Photo,living room, e. wall	1759	1760
516	Photo, NBR	1759	1760
518	Photo, med. supplies,hall closet	1759	1760
521	Photo, hall closet	1759	1760
531-534	Photos, bathroom sink & toilet	1759	1760
546,547	Photos, s. br.	1759	1760
550,551	Photos, hall floor	1759	1760
1058	Flip chart,female body outline	1690	1691
1123	2 vials w/debris, living rm.carpet	1779	

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FURTHER PROCEEDINGS 10:00 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Monday, July 23, 1979, at Raleigh, North Carolina.

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

THE COURT: Good morning, ladies and gentlemen. Any further evidence for the Government?

MR. BLACKBURN: Yes, sir; there is. We call Mr. Ivory back to the stand.

(Whereupon,

WILLIAM F. IVORY

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

MR. BLACKBURN: Excuse me just one second, Your Honor.

(Counsel confer.)

MR. BLACKBURN: Let me have two photographs marked.

THE COURT: All right.

lkm2

MR. BLACKBURN: 165 and 166.

(Government Exhibits 165 and 166 were marked for identification.)

MR. BLACKBURN: May I approach the witness, Your Honor?

THE COURT: Yes.

MR. SEGAL: May we see it, please?

MR. BLACKBURN: I have already shown it to Mr. Smith.

D I R E C T E X A M I N A T I O N (resumed) 10:01 a.m.

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit Number 165 and 166, and ask if you can identify those?

A Yes, sir; I can.

Q What are they?

A They are photographs of the building in which 544 Castle Drive is one of the apartments--a rear view. Both are rear views of that house.

MR. BLACKBURN: Your Honor, I would move for these to be admitted into evidence.

THE COURT: Very well.

(Government Exhibits 165 and 166 were received in evidence.)

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BY MR. BLACKBURN:

Q Mr. Ivory, as I recall, Friday afternoon you had previously testified that Mr. Squires, I believe, had done some photographing in the MacDonald apartment; is that correct?

A Yes, sir; that is correct.

Q Did there come a time, sir, when anyone came to examine medically the bodies of the three victims?

A Yes, sir; there was.

Q When was that?

A It was just shortly before 5:00 a.m.

Q Do you know who that was?

A Yes, sir; it was a Dr. Neal, N-e-a-l, from the Womack Army Hospital.

Q Where were you when Dr. Neal came into the MacDonald apartment?

A I was with Mr. Squires, photographing the crime scene.

Q Do you recall which room you were in?

A Either the master bedroom or the bedroom of Kimberly MacDonald. I am not quite sure which room.

Q When Dr. Neal came in, what if anything did you do?

A I was notified that he was at the front door, I think, by a Mr. Connolly. We finished up the series of

photographs we were working on at the time, and went directly to meet Dr. Neal and escorted him through the house to look at the bodies.

Q Where did you go first?

A Before entering any of the rooms, I asked him while he was there to make the official pronouncements of death. I asked him not to disturb anything. There were blood stains on the floor---

MR. SEGAL: (Interposing) Could you keep your voice up, please, Mr. Ivory?

THE WITNESS: I am sorry; I did not hear you.

MR. SEGAL: Could you please keep your voice up?

THE WITNESS: Yes.

BY MR. BLACKBURN:

Q If you would repeat your answer?

A I advised him that there were blood stains on the floor, and would he be careful where he was stepping and not to disturb anything. We went first to the bedroom of Kristen MacDonald.

He went to her, looked at her body; picked it up slightly; pulled it towards him, looking at the back where there were injuries on the back of the body; and then replaced it in generally the same position it was in.

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It upset me quite a bit, and I told Dr. Neal not to move the bodies unless it was absolutely necessary, unless he saw that there were some signs of life, and then of course the body should be moved. He said that he wanted to tell me, you know, what the cause of death was; and I said, "Doctor, at this point, I am really not interested in what caused the death, only that there is death present in the body," and that he should not move any of the other bodies. He said, "Fine."

We moved then to the bedroom of Kimberly MacDonald. He went over to the side of the bed--let me get my directions straight--on the south side of the bed, viewed the body, reached across, touched the inside of the left wrist searching for a pulse. I saw him looking down into the injuries--the head injuries and the throat injuries of the body--and pronounced that body dead.

We went from there to the master bedroom to the body of Colette MacDonald, where he kind of--he didn't kneel down, because his knees never really touched the floor--but he kind of stooped down, if I could use that word, and looked at the body. One eye was open, and he reached and lifted the eyelid of the other eye; looked into it; touched the outstretched left arm at the wrist searching for a pulse; stood up and went around so he was standing in a position above the head and shoulders area

of the body; again, kind of bent down; felt around the neck; didn't move the body--nor did he move the body of Kimberly--and made his announcement that Colette MacDonald was dead. Then he was escorted directly from the house.

Q Who escorted Dr. Neal directly from the house?

A I did. Excuse me, I think it was myself. I am not quite sure if Mr. Shaw was there, and Mr. Connolly was also present.

Q After Dr. Neal left the house, what if anything did you do?

A Well, he had moved the body of Kristen MacDonald. I then called Dr. Neal back into that room and rephotographed the body in the position where it had been after it had been moved by Dr. Neal.

Q Who rephotographed the body?

A Mr. Squires; I should say I caused the photograph to be made.

Q Okay; after that took place, what happened next?

A We finished the photographing of the miscellaneous items in the house. Again, at about this time, other investigative assistants were arriving.

Q Would you relate to the jury who they were?

lkm7

A Mr. Connolly had arrived prior to 4:30; Mr. Squires, of course, the second photographer to arrive, came about 4:30 or so--4:30 or 4:40; and between there and 5:00 Mr. Graebner arrived; Mr. Hawkins and several other investigators from the office--Mr. Black, I believe; Mr. Orr---

MR. SEGAL: (Interposing) I am sorry; I really must ask the witness to speak up.

THE COURT: You have to raise your volume a little, Mr. Ivory.

THE WITNESS: I did not see personally all the investigative assistants that arrived. They were being met at the door by either Mr. Graebner or somebody else from the office, and being dispatched from there to take up other aspects of the investigation, either at the office setting up the command post, or doing some neighborhood checks. I did not personally see all the investigative assistants that arrived.

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BY MR. BLACKBURN:

Q After Dr. Neal left the apartment and after these individuals arrived, what, if anything, did you do?

A We saw that there was too many investigators there to work at the house. That is why they were dispatched further. In the house, myself, Mr. Connolly, and Mr. Shaw began a further processing of the crime scene, sketching of the crime scene, collecting of fragile evidence. It was at about this time that it was determined that the scope of the investigation was going to call for a forensic team from the laboratory to come up and assist us on the scene. This was discussed, I believe, by Mr. Shaw and Mr. Graebner. Mr. Graebner made arrangements for the laboratory team to fly up, and in the interim we did collect some of the fragile evidence that was in the house. Excuse me. At about first light also I would cause a search to be made outside of the quarters and at that point during the search that there were some weapons found at the rear door, by the rear door of the utility room--outside.

Q Who did you ask to conduct that search?

A Mr. Shaw--Mr. Shaw and perhaps somebody from the MPI. I don't recall, but I know Mr. Shaw was in charge of that search.

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Q What, if anything, did you request Mr. Shaw to do inside the house?

A To more or less take charge of the processing of the master bedroom, Kimberly's bedroom, and the search for evidence and the collection of evidence.

Q What, if anything, did you ask Mr. Connolly to do?

A He--I asked him to take charge of the sketching and the searching for and collection of any fragile evidence within the north bedroom or the bedroom of Kristen MacDonald. He also made other cursory observations of the entire house.

Q Now, Friday afternoon, Mr. Ivory, you testified with respect to the various closets in the MacDonald apartment. Did you have occasion to view the hall closet near the hall bathroom?

A Yes, sir. I did.

Q Were the doors to that closet open or closed?

A The sliding door nearest to the main hallway was open.

Q What, if anything, did you see in that closet?

A Well, there were items of linen, towels,

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washcloths, and a large assortment of medical equipment--syringes, medicines--just general medical equipment was stored in there--professional medical equipment, not first aid equipment.

Q You spoke of Mr. Graebner coming to the MacDonald apartment. What, sir, if anything, did Mr. Graebner do in your presence?

A When he arrived, I gave him a briefing of what I had found and what I had been told to that point. I escorted him through the house, showed him each of the bedrooms, each of the bodies, what we had found to that point. During the walk through the house, Mr. Graebner observed, as we all did, the blood stains on the floor, the footprints. He took a magic marker, a felt tip ink marker, and circled some of the blood stains on the floor. He said he was doing that to draw attention to them so that people walking through the scene would be able to avoid them and not step on them.

Q In which rooms, if you know, sir, did that take place?

A He did that in Kristen's bedroom and in the hallway, the main hallway.

Q Is that all the rooms that you can recall he did that in?

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A At present, yes, sir.

Q At what time did the bodies of Colette, Kristen and Kimberly leave the MacDonald apartment?

A They were removed by a medical team at 8:00 o'clock in the morning.

Q Who was moved first?

A As I recall, the children were moved first. They were placed on a litter or stretcher by ambulance attendants, removed, placed in an ambulance, and then the body of Colette MacDonald was removed and placed in an ambulance.

Q Who was present of the investigative team, if anyone, when those bodies were removed?

A I was present, Mr. Shaw was present, and Mr. Connolly was also present.

Q Were Kimberly and Kristen placed on one stretcher or two?

A One stretcher, one being on the top end of the stretcher and the other on the lower part of the stretcher.

Q After they were removed, then Colette was removed. Is that correct?

A Yes.

Q Who was present when she was removed from the master bedroom?

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A Mr. Shaw and myself.

Q Prior to her being removed, what, if anything, did you do?

A Mr. Shaw and I--well, in the process of collecting the fragile evidence that was within the house caused the blue pajama shirt that was on her chest and the white bathmat which was on her abdomen--they were collected and placed in plastic bags.

(Pause)

Q Who collected them?

A Mr. Shaw and myself, acting as a team.

Q How did you pick them up?

A In the equipment that I brought with me when I first arrived at the house, there were some tongs or tweezers used for that purpose of picking up evidence. I used them to pick up first, I believe, the pajama shirt was picked up, I believe. I used one set of tweezers to take the sleeve that was sort of trailing off the body onto the floor and put that atop the rest of it, picked it up with tweezers. Mr. Shaw was holding a plastic bag, a large plastic bag, slid the bag underneath the pajama shirt, and then dropped it in. The same method was used in collecting the bathmat.

Q Now, prior to the removal of Colette, what

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other pieces of fragile evidence as you have described them, if any, did you collect?

A The pocket of that blue pajama shirt which was laying just at her foot on the upturned corner of that multicolored throw rug. That was collected and also put in a plastic bag.

Q It was collected in the same manner as you did the others?

A In the same manner. Yes, sir.

MR. BLACKBURN: Let me have this marked as Government Exhibit 102. Excuse me just a second. Excuse me--101.

(Government Exhibit 101 was marked for identification.)

MR. BLACKBURN: May I approach the witness, your Honor?

BY MR. BLACKBURN:

Q Mr. Ivory, let me show you what has been marked as Government Exhibit 101 and ask if you can identify it, sir.

A Yes, sir. I can

Q What is it?

A This is the blue pajama shirt that was found on the body of Colette MacDonald--on her chest area of Colette MacDonald.

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BY MR. BLACKBURN:

Q What is its general appearance and condition relative to the time you first saw it, sir?

A There are some holes that are cut in it by laboratory personnel for the examination of blood typing, etc. Other than that, it appears to be in the identical condition as when I picked it up. There are some laboratory markings also on it by some of the laboratory technicians, but the item itself is as it was found that morning.

MR. BLACKBURN: I hand you what is marked Government Exhibit 314.

(Government Exhibit 314 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked as Government Exhibit 314 and ask, sir, if you can identify that?

A Yes, sir; I can.

Q What is it?

A This is what we call the white bathmat, or the Hilton bathmat, marked with the word "Hilton" here, that was found lying across the abdomen of the body of Colette MacDonald.

Q What relationship, sir, and general

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characteristics and appearances is that bathmat, as you have described it, to the condition in which you first saw it?

A With the exception of markings made by the laboratory personnel when they examined it, and the initials and dates placed on it by myself and Mr. Shaw, as was done on the pajama shirt, it is in the same condition as when I first saw it.

MR. BLACKBURN: Let me have this marked as 102.

(Government Exhibit 102 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 102. Let's just leave it in there and see if you can identify it in there?

A May I open the bag?

Q Yes, go ahead.

A Yes, sir; I can identify this.

Q What is that?

A This is the pocket of the blue pajama shirt, which was found on the multi-colored throw rug at the foot of the body of Colette MacDonald.

MR. SEGAL: I could not hear where he

found it, Your Honor. I do not mean to interrupt, but I really cannot hear this witness because he drops his voice off consistently after the first few words.

THE COURT: Repeat that answer for him, please.

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THE WITNESS: It is the pocket of the blue pajama shirt which was found in the corner of the multi-colored throw rug at the foot of the body of Colette MacDonald.

BY MR. BLACKBURN:

Q What relationships in general appearance and characteristics is that, what you have described as a blue pocket, as to the time when you first saw it?

A Sir, it has portions cut from it again, by laboratory personnel in their examination. Other than that, it remains in the same condition. Of course, it has markings again of my initials and date, and also the markings of other laboratory examining personnel.

Q Mr. Ivory, I believe you have already testified that you were present when Colette was removed, is that correct?

A Yes, sir; I was.

Q When she was, in fact, removed from the master bedroom, what, if anything, did you observe?

A I was closely observing what the medical

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personnel were doing with the body. In fact, I was in a low position myself watching them lift the body from the floor to the ambulance litter, and as they did, I was towards the head area of the body. When the body was lifted, I noticed in a blood clot right directly under the head of Colette MacDonald, something sticking from it, and after they removed the body, I went directly to that, and looked to see what it was. I saw it was what appeared to be a dark thread sticking out of the blood clot.

Q Was it a long or a short thread?

A It was a relatively short thread.

Q How many people, if you can recall, removed Colette from that master bedroom?

A Two.

Q Where were they positioned when they picked her up?

A There was one at the feet, or at the lower extremities, and there was one that lifted the body from the shoulder area from standing above the head region, gripping under and grabbing the shoulders and up onto the stretcher.

Q What kind of stretcher was it, if you know?

A The stretcher that was used to remove the bodies of the children was a canvas-type field stretcher.

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The one they used to remove the body of Colette was the regular stretcher with wheels that you would find in an ambulance or in the emergency room.

Q Where was this stretcher that removed Colette located in the master bedroom?

A Between the body and the master bed.

Q Now where, precisely, when they picked Colette up, were you located and how far from her body were you?

A I was no more than two feet and I was in an area which was above the end of the stretcher and just about--could I demonstrate to you, perhaps, on the model or a photograph?

Q Yes, come down, if you would?

A The stretcher was in a position about like this right in there, and I was at a position right here.

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BY MR. BLACKBURN:

Q Now, after Colette was removed from the master bedroom, what, if anything, did you do next?

A After the body was removed?

Q Yes, sir.

A I then went back and looked at that thread, and then for the--I should say before the bodies were removed they were all outlined in the position where they lay: with Mr. Shaw outlining the body of Kimberly MacDonald in her bed, Mr. Connolly outlining the body of Kristen MacDonald in her bed, and Mr. Connolly and I together marking on the shag carpet--again using a felt tip ink marker--the position of the body of Colette MacDonald.

So, after the bodies had been removed, I went back and I looked at the puddle or clot of blood that was in the head area, and I saw that thread; and then I continued to look down through the rest of the body outline--within the body outline, where the position--where the body had been resting, and saw numerous other small dark threads laying (sic)--I don't want to say in a profusion--but a large number of them laying (sic) within the body outline.

I continued to look around the general area of the body outline and saw that there were threads both

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outside and inside the body outline, scattered throughout the general area of the body and the room itself.

Q Who else was in the master bedroom with you at this time, if anyone?

A Mr. Shaw.

Q What was he doing?

A He was making the same observations as I was, as I called his attention to the thread as I first observed it.

MR. BLACKBURN: May I have this marked as Government Exhibit 1058.

(Government Exhibit No. 1058 was marked for identification.)

BY MR BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked as Government's Exhibit 1058. Let me ask you, sir, if that exhibit generally depicts the manner in which Colette MacDonald was lying in the master bedroom?

A Yes, that generally depicts the position of the body.

MR. BLACKBURN: Your Honor, we would move that this exhibit be moved into evidence.

THE COURT: Very well.

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(Government Exhibit No. 1058 was received in evidence.)

(Counsel confer.)

MR. BLACKBURN: Your Honor, I wish to have marked for identification Government Exhibits 21, 22, 75, 23, 25, 26, 24, 24(b)---

THE COURT: (Interposing) I'm sorry, (b)?

MR. BLACKBURN: (b); 27, 28, 38, 59, 60, 61, 62, and 63.

(Government Exhibits 21, 22, 75, 23, 25, 26, 24, 24(b), 27, 28, 38, 59, 60, 61, 62, and 63 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, I hand you what has been marked as Government exhibits, which I have just previously enumerated and ask you if you can look at them, please?

(Witness complies.)

A Yes, sir.

Q Can you identify those?

A Yes, sir, I can.

Q What are they in general, sir?

A These are called photographs exposed by Mr. Squires at the house at 544 Castle Drive, the

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morning of 17 February 1970.

Q What relationship, sir, are those photographs to the way in which you saw the MacDonald apartment when you first arrived there?

A Sir, they depict the house at 544 Castle Drive, the MacDonald residence, as it was when I arrived there.

MR. BLACKBURN: Your Honor, I would move that these photographs be admitted into evidence.

THE COURT: Very well.

(Government Exhibits Nos. 21, 22, 75, 23, 25, 26, 24, 24(b), 27, 28, 38, 59, 60, 61, 62, and 63 were received in evidence.)

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MR. BLACKBURN: Your Honor, I would have marked the Government Exhibits Nos. 39, 40, 41, 42, 43, and 44.

(Government Exhibit Nos. 39, 40, 41, 42, 43, and 44 marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has just been marked the Government Exhibits which I ennumerated, and ask you to look at them and see if you can identify those.

A Yes, sir, I can identify them.

Q Generally, sir, what are they?

A They are photographs exposed by Mr. Squires on the morning of 17 February 1970, and show the master bedroom and the body of Colette MacDonald.

Q What relationship, sir, are those photographs to that area of the master bedroom and the body of Colette MacDonald as you saw that room and her when you first went to Castle Drive?

A Sir, these photographs depict that room and the body of Colette MacDonald as I first saw it that morning.

MR. BLACKBURN: Your Honor, I would move that these photographs be moved into evidence.

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THE COURT: Very well.

(Government Exhibits Nos. 39, 40, 41, 42, and 44 were received in evidence.)

MR. BLACKBURN: Your Honor, I would have this marked as Government Exhibit No. 70.

(Government Exhibit No. 70 marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked as Government Exhibit No. 70, and ask if you can identify that?

A Yes, sir, I can.

Q What is it?

A It is a photograph, again exposed by Mr. Squires the morning of 17 February 1970, which shows the body of Kristen MacDonald in the position it was placed after it had been moved by Dr. Neal.

MR. BLACKBURN: Your Honor, I would move that this Exhibit also be admitted into evidence.

(Government Exhibit No. 70 received in evidence.)

THE COURT: Very well.

MR. BLACKBURN: I have some more things to show the defense, Your Honor.

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(Pause.)

THE COURT: Have you gentlemen seen these photographs before today?

MR. SEGAL: Yes, Your Honor, but the Government has changed numbering systems so many times we were not able to follow which ones they are. We will now have to go through the different systems and find out what they are showing.

MR. BLACKBURN: Let me have marked Government Exhibits 45, 46, 47, 48, 49, 50, 51, 52, and 76.

(Government Exhibits Nos. 45, 46, 47, 48, 49, 50, 51, 52, and 76 marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, these items previously marked and ask if you can look at them and whether or not you can identify them?

A Yes, sir, I can.

Q What are they generally?

A They are additional photograhs exposed by Mr. Squires at 544 Castle Drive on the morning of 17 February 1970, that show the master bedroom, the body of Colette MacDonald, the utility room or part of the utility room, and the sink in the master bath of

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that house.

Q What relationships are those photographs to those areas of the MacDonald apartment when you first saw it on February 17?

A Sir, with the exception of the photograph of the utility room, the other photographs depict the house exactly as I saw it when I arrived. The difference in the photograph in the utility room is that when I arrived the outer door was open, and there was a Military Policeman standing in the doorway.

Q How is the door in that photograph?

A The door in this photograph is closed, and the Military Policeman is not there.

MR. BLACKBURN: Your Honor, I will move these into evidence.

THE COURT: Very well.

(Government Exhibits Nos. 45, 46, 47, 48, 49, 50, 51, 52, and 76 were received in evidence.)

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MR. BLACKBURN: Let me have marked for identification Government Exhibits 64, 65 and 74.

(Government Exhibits 64, 65 and 74 were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you these exhibits previously marked for identification, and ask you if you can identify them?

A Yes, sir; I can.

Q What are they?

A Photos of 544 Castle Drive, and specifically the floor of the north bedroom, or the bedroom of Kristen MacDonald, exposed by Mr. Squires on the morning of 17 February 1970, and show the footprints in blood leading from the bedroom into the hall, or the master hall in the house.

MR. BLACKBURN: Your Honor, I move these into evidence.

THE COURT: Very well.

(Government Exhibits 64, 65 and 74 were received in evidence.)

MR. BLACKBURN: Your Honor, let me have marked Government Exhibits Number 53, 54, 55, 56, 57 and 58.

(Go to the next page.)

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(Government Exhibits 53, 54, 55, 56, 57 and 58 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you these exhibits that have just been marked for identification, and ask if you can identify those, please, sir?

A Yes, sir; I can.

Q Generally, sir, what are they?

A These are photos exposed by Mr. Squires of the south bedroom, or the bedroom of Kimberly MacDonald. They show that bedroom and the body of Kimberly MacDonald as it was on the morning of 17 February 1970 when I arrived at the house.

MR. BLACKBURN: Thank you, sir. Your Honor, I move these be moved into evidence.

THE COURT: Very well.

(Government Exhibits 53, 54, 55, 56, 57 and 58 were received in evidence.)

MR. BLACKBURN: Let me have marked Government Exhibits 30 and 33.

(Government Exhibits 30 and 33 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what have been marked for identification as Government Exhibits Number 30 and 33, and ask you if you can identify those, sir?

A Yes, sir; I can.

Q What are they?

A These are photos made of the kitchen of the house at 544 Castle Drive, and show the kitchen floor and the general area in front of the sink in the kitchen, and blood stains on the floor.

Q What relationship, sir, are those photographs to that area of the kitchen when you first arrived at Castle Drive?

A The kitchen is in these photographs as I first observed it that morning.

MR. BLACKBURN: Thank you. Your Honor, I move for these two photographs to be moved into evidence.

THE COURT: Very well.

(Government Exhibits 30 and 33 were received in evidence.)

MR. BLACKBURN: If you would mark for identification Exhibits Number 32, 31 and 35.

(Government Exhibits 32, 31 and 35 were marked for identification.)

BY MR. BLACKBURN:

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Q Mr. Ivory, let me hand you these exhibits just marked for identification, and ask if you can identify them, please, sir?

A Yes, sir; I can.

Q What are they?

A These are photos exposed in the kitchen of 544 Castle Drive on the morning of 17 February 1970, and show the area and the counter of the sink in the kitchen, and the wall and part of the doorway leading into the dining area with the telephone on the wall.

Q What relationship, sir, are those photographs to that area of Castle Drive when you first saw it?

A Sir, these items in the photographs depict the room as I first saw it that morning.

MR. BLACKBURN: Your Honor, I would move these into evidence also.

THE COURT: Very well.

(Government Exhibits 32, 31 and 35 were received in evidence.)

MR. BLACKBURN: We would mark, Your Honor, Government Exhibits Number 71, 77, 78, 73 and 72.

(Government Exhibits 71, 77, 78, 73 and 72 were marked for identification.)

BY MR. BLACKBURN:

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Q Let me hand you, Mr. Ivory, these photographs, and ask, sir, if you can identify them?

A Yes, sir; I can.

Q Generally, sir, what are they?

A These are photos, again exposed on the morning of 17 February 1970, in the house at 544 Castle Drive, the MacDonald residence, and show the floor of the master bedroom, the bed of Kimberly MacDonald, and the bed of Kristen MacDonald, after the bodies had been removed by the medical personnel.

MR. BLACKBURN: Your Honor, we would move these into evidence.

THE COURT: Very well.

(Government Exhibits 71, 77, 78, 73 and 72 were received in evidence.)

MR. BLACKBURN: Your Honor, at this time, rather than passing these photographs to the jury, we have prepared a selected number of slides that we would seek to publish to the jury, and ask Mr. Ivory to come with his pointer down, so he could point out to the jury all at one time what is in those photographs.

MR. SEGAL: May I inquire, Your Honor, whether all the photographs are available on slides, so that we may examine them later on?

MR. BLACKBURN: No, sir; Your Honor, all

the photographs are not available on slides. Of course, they can be published to the jury in the other way. The vast majority of what I have just introduced are.

THE COURT: All right, sir.

MR. BLACKBURN: I wonder, sir, if we could dim those lights. Mr. Ivory, if you would--I might say, sir, for the record, that we tested this once before; and it is very difficult to see the photographs with those lights on. But I think there is still enough light in the courtroom with those off.

THE COURT: Let's turn off one set and see how that does. How is that?

MR. BLACKBURN: That is fine; if you will give me just one moment, please.

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MR. BLACKBURN: Your Honor, the power's off.

THE COURT: This is in line with our energy conservation procedure--the Presidential Order.

BY MR. BLACKBURN:

Q This is a slide, Your Honor, that is the equivalent of Government Exhibit No. 21. Mr. Ivory, if you would, sir, with the pointer, tell the court and the jury what is in that photograph?

A This is a photograph of the living room of the quarters at 544 Castle Drive--the MacDonald residence--taken from the front door, directly in, and showing the television set, and one of the speakers, and a part of the stereo unit that was in that room.

Q Your Honor, this is a slide that represents Government Exhibit No. 22. Mr. Ivory, what is in that photograph, sir?

A This is a continuation of coverage of the living room. It shows the entire stereo unit with speakers and a portion of the dining room area in the house at 544 Castle Drive.

Q This next slide, sir, is the equivalent of Government Exhibit No. 75. What, sir, is in that photograph?

A Another photograph of the living room of the MacDonald residence, taken from the area generally

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around the desk and television set, and shows the couch, part of the partially overturned coffee table, clothing laying on the stairs leading into the hallway, and the hallway into the master bedroom, and a partial view of the body of Colette MacDonald.

Q What is that on the sofa, if you know, sir?

A This is--what would you call it--an afghan.

Q This next slide is identical to Government Exhibit 23. What is in this slide, sir?

MR. SEGAL: Could you just wait a minute, Your Honor? We can't keep up with the changes in the Government's order. We just have to have a moment so we can find out where we are, all right?

(Pause.)

MR. SEGAL: Thank you very much.

BY MR. SEGAL:

Q Mr. Ivory, what is in this photograph, please, sir?

A Sir, another photograph of the living room of the MacDonald residence, showing the couch, end table with lamp, and again, a part of the coffee table laying on its edge, and a rocking chair.

Q This next slide would be Government Exhibit No. 25. Mr. Ivory, what is in that slide, sir?

A This is a photo of the floor and the rug

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area and the coffee table, again, in the living room of the MacDonald residence. It shows the coffee table laying on its edge; a pair of slippers laying across this leg of the table. This is a box containing a child's game--punch-out or paper doll game--something to that effect. You can see the letter "E-s." This is the magazine, Esquire magazine. These are other miscellaneous magazines and newspapers that were laying under the edge of the coffee table. A bottle of glue, probably to go with that punch-out game.

Q This next slide would be Government Exhibit No. 26. What, sir, is in this slide or photograph?

A This is a more distant shot of the coffee table as I just described it. It shows additionally the relationship between the coffee table and the couch, the rocking chair, and other items on the floor--the flower pot--generally depicting that area of the living room of the MacDonald residence.

Q This next slide would be the equivalent of Government Exhibit No. 24. What, sir, is in this slide or photograph?

A This slide is a photograph of the dining area of the MacDonald residence, showing generally the placement of the furniture as it was when I arrived at the house.

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Q What is that, if you know, sir, on the buffet?

A On the buffet are greeting cards. I believe they are valentine cards, a lamp, some flowers--I believe, that were plastic.

Q This next slide would be the equivalent of Government Exhibit 24(b). What, sir, is in this photograph or slide?

A Sir, this slide shows the view from the living room area of the MacDonald residence down the hallway, and into the master bedroom, and shows a partial view of the body of Colette MacDonald; the doorway to the bedroom of Kristen MacDonald; that to that of Kimberly MacDonald. This is the small hallway that leads into the master bath.

This is a part of those items of clothing that were on the stairs leading from the living room into the hallway.

Q What else, if anything, is in that hallway near that clothing?

A Up towards this clothing here, I believe there was a child's sneaker and there was the head of a child's--the small head of a child's--doll.

Q Can you see that anywhere in the photograph?

A I don't believe you can see it. It perhaps may be out of focus, but it was generally in this area right over here.

Q This next slide will be Exhibit No. 27. What, sir, does this photograph or slide represent?

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A This is a photo or a slide of the bedroom of Kristen MacDonald. It shows the throw rug, the bed, and the position of the body, and other items as I first saw it that morning.

Q What, if anything, is on the floor by the bed area, sir?

A These are a child's stuffed dolls, a large stuffed dog, this is a small shirt for doll's clothing--a doll's shirt--, and a spring rocking horse.

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BY MR. BLACKBURN:

Q This next slide would represent Government Exhibit Number 28. What, sir, does this slide or photograph represent?

A Here is a closer view of the body of Kristen MacDonald. It shows the body as it was when I arrived. There's a baby bottle positioned here in the mouth; the condition of the bedding, as I found it that morning.

Q Do you know, sir, what this is right here?

A Yes, sir, this is the upper sheet--a large blood stain on the upper sheet, just under the blanket and the bedspread--an upper sheet, top sheet, as opposed to the bottom sheet.

MR. BLACKBURN: Excuse me just one moment.

(Pause.)

BY MR. BLACKBURN:

Q This slide represents Government Exhibit Number 38. Mr. Ivory, what does this slide or photograph represent?

A This is another view taken generally from the door area by the hallway into the bedroom of Kristen MacDonald. It again shows the position of the body as it was first found. The stuffed animals, dolls' clothing, rocking chair, and other children's toys, and whatnot on the floor.

Q This next slide would represent Government Exhibit Number 59. What, sir, does this photograph represent?

A Another view of the bed in which the body of Kristen MacDonald was found, showing the lower portion of the bed, the footboard, folded bedspread, and the green bedspread which was atop of the body; the blood stain along the side of the bed, and the stuffed-- the dolls.

Q The next slide represents Government Exhibit Number 60. What, sir, does this photograph represent?

A The photograph of the floor of the bedroom of Kristen MacDonald. It shows a bloody smear and another one of the bloody footprints that was (sic) leading from the area of the body of Kristen MacDonald outwards to the hallway.

Q The next slide represents Government Exhibit Number 61. What, sir, if you can tell, does this slide or photograph represent?

A This is another--or a second--of the bloody footprints leading from the bedroom of Kristen MacDonald, from the area of the body outwards; and this is one closest to the hallway. You can see this is one of the lines that was (sic) drawn by Mr. Graebner with

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that felt-tip pen when he was outlining the blood stains.

Q The next slide represents Government Exhibit Number 62. What, sir, does this photograph represent?

A Sir, this is another view of that last footprint, the footprint closest to the hallway door, with the tape measure put in there for a size reference.

Q The next slide will be Government Exhibit Number 63. What, sir, does this photograph represent?

A This represents a photo taken from the hallway into the master bedroom, the east bedroom, and it shows the body of Colette MacDonald and the furnishings near her body--the green chair and night stand.

Q What does it show on the body, sir?

A This dark item trailing off on to the shag carpet is the blue pajama shirt on the table. This white item here on the lower region of the body, across the abdomen of the body, is the Hilton bathmat on the table; and this blue object right here on this upturned corner of this throw rug by the foot is the pocket there on the table of a blue pajama shirt.

Q This next slide represents Government Exhibit Number 64. What, sir, does this slide or photograph represent?

A It is another view in the master bedroom of

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the body of Colette MacDonald. It shows again part of the sleeve of the blue pajama shirt, the Hilton bathmat, the leg area of the body of Colette MacDonald, and the bed and sheets of the bed--the master bed.

Q The next slide represents Government Exhibit Number 65. What, sir, does this slide or photograph represent?

A Get another view of the body of Colette MacDonald, perhaps more clearly showing the position of the blue pajama shirt and the Hilton bathmat, the corner of the master bed, the upturned linen on the bed. The object here partly under the dresser was the knife with a curved blade with the inscription "Geneva Forge" stamped on the blade.

Q This next slide would represent Government Exhibit Number 74. What, sir, does this photograph or slide represent?

A Another view of the body of Colette MacDonald and the master bedroom, perhaps more clearly showing the relationship of the knife to the dresser, the telephone with the receiver off the hook--the receiver, of course, can't be seen; it is down along the side of the dresser--the green vinyl-covered chair, again the body, and the positions of the bathmat and the pajama shirt on the body, and the corner of the bed.

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Q This next slide would represent Government Exhibit Number 39. What, sir, does this slide or photograph show?

A Another close view of the body of Colette MacDonald showing the position of the body, the blood-stained upper shirt, the blue pajama shirt--again perhaps a good view of that position, the position of the right hand of the body, the bathmat, the chair. It shows blood stains along the baseboard and the lower part of the wall here.

This item here is a small piece of blood-stained latex. Generally, that is it.

Q The next slide would be Government Exhibit Number 40. What, sir, does this photograph or slide represent?

A It is a view of the body of Colette MacDonald, looking in a downward direction on to it, again showing the position of the blue pajama shirt and the positions of the arms and a general view of the head area of the body.

Q This next slide represents Government Exhibit Number 41. What, sir, does this slide or photograph represent?

A This is a photograph of the body of Kristen MacDonald after it had been moved by Dr. Neal. The arm had previously been laying (sic) on top of the sheet

here. After he moved the body, it was placed underneath the bedding.

Q This next slide would represent Government Exhibit Number 42. What, sir, does this slide or photograph represent?

A Another view of the master bedroom, the body of Colette MacDonald, the night stand. There are some yarns that she probably used to tie her hair, a lamp with a tilted lampshade, blood stains on the wall; and I don't know if it can be seen with this lighting but right here is (sic) the letters "p-i-g" written in that manner in blood.

It shows the bed pillow and absence of this one pillow here.

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BY MR. BLACKBURN:

Q This next slide will represent Government Exhibit Number 42.

MR. SEGAL: I cannot hear you, Mr. Blackburn.

MR. BLACKBURN: Number 42. I believe that's right--43. I am sorry. What, sir, does this slide or photograph represent?

A It is a closer view of the writing on the headboard of the word "Pig" written in blood. It again shows the absence of a pillow which was taken to the hospital with Dr. MacDonald when he was removed by the medical team.

Q This next slide will represent Government Exhibit Number 44. What, sir, does this slide or photograph represent?

A A closer view of the chair, part of the body of Colette MacDonald in the master bedroom, another view of the corner of the dresser, the knife, the telephone.

Q This next slide will represent Government Exhibit Number 70. What, sir, does this slide or photograph represent?

A It represents the dresser in the master bedroom, items--obviously feminine articles--perfume

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hair spray. There is a fabric-covered jewelry box, a lamp, telephone, and a plant, a hair brush, sunglasses here.

Q This next slide represents Government Exhibit Number 45. What, sir, does this slide or photograph represent?

A This is a closer view of the knife with the stamp "Geneva Forge" on the blade. This discoloration is a marking on the carpet with felt tip magic marker--the knife found on the floor of the master bedroom in the MacDonald residence.

Q This next slide represents Government Exhibit 46. What, sir, does this slide or photograph represent?

A This is the sink in the master bathroom. There is a small step ladder type of thing in front of the sink or under the sink. It shows drops of blood and a Kleenex in the sink.

Q The next slide will represent Government Exhibit Number 47. What, sir, does this slide or photograph represent?

A This is a view from the hallway--generally from the area of the master bathroom--looking in through--across the hall into the bedroom of Kimberly MacDonald. It shows the bookcase of children's games

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and books, a child's bank.

Q This next slide will represent Government Exhibit Number 48. What, sir, does this slide or photograph represent?

A This represents another view in general from the foot area of the bed in the bedroom of Kimberly MacDonald. It shows the small bookcase which was filled with children's articles, a lamp, the bed, and a partial view of the body of Kimberly MacDonald.

Q The next slide will represent Government Exhibit Number 49.

MR. SEGAL: I think these are out of sequence here.

(Counsel confer.)

THE COURT: It is a time for our morning recess. Do you want a few minutes?

MR. BLACKBURN: Yes.

THE COURT: All right. Members of the jury, we will take our morning recess now and we will come back at 11:45. Don't talk about the case.

(The proceeding was recessed at 11:27 a.m., to reconvene at 11:45 a.m., this same day.)

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FURTHER PROCEEDINGS 11:45 a.m.

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

THE COURT: All right; douse the lights again.

(Whereupon,

WILLIAM F. IVORY

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

DIRECT EXAMINATION (resumed) 11:46 a.m.

BY MR. BLACKBURN:

Q This next slide would represent Government Exhibit Number 55. What, sir, does this slide or photograph represent?

A This is another view of the bed of Kimberly MacDonald, again exposed from the area around the door to the hallway of the bedroom. It shows the general condition of the covers, and you can just barely see the tip of the head of Kimberly MacDonald as she lay in the bed. This is a phonograph and a child's record.

Q Okay; this next slide would represent Government Exhibit Number 56. What, sir, does that slide or photograph represent?

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A It is a photograph taken from the corner of the bed--the footboard of the bed--and it shows the condition of the body of Kimberly MacDonald, the position of her hair, the bloodstains on it there, the bedding being tucked underneath the body, and the position of the hand.

Q This next slide would represent Government Exhibit Number 57. What, sir, does this slide or photograph represent?

A It is a view of the body of Kimberly MacDonald, as taken from the side of the bed closest to the north wall of the bedroom, again shows the general position of the body and the injuries to the head region, the position of the arm, the condition of the bedding and the pillows.

Q This next slide would represent Government Exhibit 58. What, sir, does this slide or photograph represent?

A Another view of the body of Kimberly MacDonald, again showing the injured area, the bloodied area, the position of the hand, bloodstains on the hand up to a certain point there, and again the position of the arm and bedding.

Q This next slide would represent Government Exhibit Number 30. What, sir, does this slide or photograph represent?

A It is a slide taken from the dining area of the house into the kitchen, showing the sink, items on top of the counter in the sink, and this area here, which was circled by myself, showing drops of blood on the floor of the kitchen.

Q This next slide would represent Government Exhibit Number 33. What, sir, does this slide or photograph represent?

A It is a closer view of those areas circled by me on the tile floor of the kitchen, showing the drops--not splatters or smears--but drops of blood on the floor.

Q This next slide would represent Government Exhibit Number 32. What, sir, does this slide or photograph represent?

A This shows the items--there, the washed dishes--stove, and other items on the counter of the sink in the kitchen.

Q This next slide would represent Government Exhibit Number 31. What, sir, does this slide or photograph represent?

A Another in the photo coverage of the kitchen, showing the items on the right-hand side of the counter of the sink--a blender and other normal kitchen items.

Q This next slide represents Government Exhibit Number 35. What, sir, does this slide or photograph

10km4

represent?

A This is the wall of the kitchen by the doorway leading into the dining area. It shows a bulletin board that was in the kitchen posted with recipes and whatnot, phone numbers. It shows the wall telephone with the receiver and cord hanging down.

Q This next slide represents Government Exhibit Number 71. What, sir, does this slide or photograph represent?

A This is a photograph of the floor and the shag carpet in the master bedroom. A stuffed toy, a hairbrush, and--I can't describe it too much, because it is up here, but it shows generally the condition of the room after the removal of the body of Colette MacDonald. It was within this area right here that I first made an observation of the threads when the body was lifted up.

Q This next slide represents Government Exhibit Number 77. What, sir, does this slide or photograph represent?

A Sir, this is a close view of the shag carpet on the floor of the master bedroom. It shows the blood stain which was directly under the head region of the body. You can see this blue discoloration around here. That is the marking with the felt-tip ink marker. As you can imagine, it is quite difficult to mark on a shag

carpet here with a marker, so it is not a steady line; but I am sure you can see the outline here.

This is a splinter--a wooden splinter--which we found just below the head of the body; and this is one of the blue threads that I was talking about--another here and here. It is rather difficult with the lighting and whatnot to see it. The tape measure is inserted by ourselves for size reference.

Q This next slide would be Government Exhibit Number 78. What, sir, does this slide or photograph represent?

A Sir, this is another photograph, or a closer view of the shag carpet of the master bedroom, showing the blood stains that were in the vicinity of the body, the little piece of splinter, the thread, and again the tape measure put in for size reference.

Q This next slide represents Government Exhibit Number 73. What, sir, does this slide or photograph represent?

A This represents the bed of Kimberly MacDonald after the removal of the body by medical personnel, the outline of the body having been drawn again with felt-tip ink marker. It shows the blood stains, the wet stain there on the lower region of the body. This is a piece of knit material that was across the bedding by the body,

10km6

again with the markings and initials of Mr. Shaw. My own initials were over in the corner. You can't see them over here.

Q This next slide represents Government Exhibit Number 72. What, sir, does this slide or photograph represent?

A This shows the bed of Kristen MacDonald after removal of the body by medical personnel, and the outline of the body, around the blood stains and around here, the line where the bedding was drawn up to as made by Mr. Connolly.

MR. BLACKBURN: That, sir, is the last of the slides. You may resume your seat.

BY MR. BLACKBURN:

Q Mr. Ivory, I noticed you testified earlier this morning that a laboratory team from Fort Gordon was coming; is that correct?

A Yes, sir; that is correct.

Q For what purpose were they coming, sir?

A To assist in the processing of the crime scene, as it was seen by us that it was going to be quite an involved processing of the crime scene. It was going to take some time, and that we did need the expertise of the people at the lab in collecting the evidence which they were to process.

10km7

Q When did they come, if you know, sir?

A They arrived late morning of the morning of the 17th of February.

Q Who came, if you know, sir, from Fort Gordon?

A There was a photographer, Mr. Page; Mr. Medlin from the Fingerprint Division; Mr. Turbyfill arrived from the Fingerprint Division---

MR. SEGAL: (Interposing) I can't hear what you are saying.

THE WITNESS: Mr. Turbyfill arrived also from the Fingerprint Division; a gentlemen from the Chemistry Division, Mr. Chamberlain; and a Mr. Rowe arrived.

BY MR. BLACKBURN:

Q I believe you testified earlier this morning that military police were at the front and back door; is that correct?

A Yes, sir; that is correct.

Q How long did they remain there?

A Either they or replacements remained there for a number of days.

Q What steps, if any, during this day and subsequent days, were done to seal off the apartment, sir?

A We had the military policemen physically on duty around the perimeter of the entrances to the

10km8

quarters. We obtained assistance from the Post Engineers, or the post maintenance personnel, to come and install padlocks-- hasps and padlocks--to the house. After they were installed, which I believe was the second day, we began sealing the house using these padlocks, and additionally, using railway security seals each time we exited the apartment, breaking it each time, and maintaining a log as to time and date and seal number broken.

Q After the laboratory team from Fort Gordon arrived, what, if anything, did you and they do?

A Immediately upon their arrival, they were given a briefing of what we had found to that point, and generally what assistance we required from them.

Q What did Mr. Page do, if you know, sir?

A Mr. Page, from the Photography Division, went through the house and photographed again the crime scene, but of course, after the bodies had been removed.

Q If you know, sir, what did Mr. Medlin do?

A In addition to processing parts of the house for fingerprints, he also assisted me in some searches in the living room area for evidence, in the area of the couch and the upturned coffee table. This was done so that the chemistry people could proceed through parts of the house prior to the Fingerprint Division going through to eliminate the possibility of contamination of any

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blood stains with fingerprint powder.

Q What did Mr. Chamberlain do, if you know, sir?

A Mr. Chamberlain, from the Chemistry Division, was going with Mr. Shaw most of the time, and collecting evidence and processing evidence which would be viewed and examined in the Chemistry Division of the laboratory.

Q What did Mr. Rowe do, if you know, sir?

A Mr. Rowe, from the Chemistry Division, assisted me personally while we worked as a team in jointly processing and collecting evidence from the kitchen and the bedroom of Kristen MacDonald.

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BY MR. BLACKBURN:

Q What did Mr. Shaw do, if you know?

A Mr. Shaw, accompanied by Mr. Chamberlain, processed the master bedroom and the bedroom of Kimberly MacDonald for evidence, which would be processed by the Chemistry Division of the laboratory.

Q How long was the laboratory team from Fort Gordon present at Castle Drive?

A As I say, they arrived shortly before noon on the morning of the 17th and departed for Georgia by air on the 21st.

Q On the 17th, shortly after they arrived, after the briefing had taken place, what, if anything, did you do?

A I'm sorry, would you repeat that please?

Q Yes, sir. On the morning of the 17th or early afternoon shortly after the team had arrived, and the briefing had been given, what, if anything, did you do?

A I believe it was about that time that we were giving briefings to the Provost Marshal and Mr. Graebner, the Chief of Investigation for the CID, as to what we had found to that point, and then after actual arrival and working in the house--as I said Mr. Medlin and myself--processed or made a search of the

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area immediately in front of the couch of--not the master bedroom, excuse me--of the living room for evidence of a struggle, blood, signs of threads from the torn pajama shirt--which we felt should have been there--and any other items that would be of interest or evidential value.

Q Can you approximate how long you and Mr. Medlin remained in the living room area?

A In terms of time, no. It is very difficult to say. We did a very extensive search on the floor, to the extent of being on our hands and knees. It was a short-pile carpet, not like this, but a short-pile carpet. We were down on our hands and knees actually going through the piles with our fingers.

Mr. Medlin, in fact, using--not a microscope--had a magnifying glass, going through the piles of carpet looking for foreign objects.

Q What foreign objects did you find?

A Very little. We found what looks like some pieces of confetti or small little items, maybe seeds or something, but nothing of any evidentiary value.

MR. SEGAL: I can't hear you.

THE WITNESS: Nothing of what we thought was any evidentiary value.

BY MR. BLACKBURN:

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Q I take it then you found no fibers or threads?

A No, sir; none at all, no blood stains, no fibers.

Q When you say no blood stains and no fibers, what area are you covering in that description, sir?

A I am covering the living room from the mid part in the living room--the middle of the living room--to the east wall, and from the outer wall right into the dining room area. Again, sir, if I could demonstrate.

Q Yes, sir; if you would come down?

A May I move it?

Q Yes.

A The area, as I say, from about midpoint in the living room to this wall, and from this wall out to the dining area and a general area right around the doorway into the hallway. We concentrated, perhaps, most of our efforts in this area between the couch and the coffee table and the rocking chair--generally, this area right here.

Q How many splinters did you find in the living room?

A None, sir.

Q You may resume your seat. With respect to

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the master bedroom, did you participate in a similar search in the master bedroom through the carpet?

A Yes, sir; I did.

Q What, if anything, did you find?

A Well, as I stated earlier, around the head area of the body, we searched and found there were short blue, dark blue threads. Again, throughout the area where the body had been laying.

Q If you would, sir, when you are speaking as to what you did or did not find, if you would use the pointer and point at that Government's Exhibit?

A Yes, sir. Within the body outline where the body had been laying, in the head area, where I initially found that dark blue thread, we proceeded down the body outline. We found additional threads down around this area under where the body had been. There was a large splinter, perhaps an inch and a half or two inches long up over the head area, as was depicted in the photograph.

There was a hairbrush in here by the hand. This is approximately where that green chair would have been--a stuffed animal under there. In this area, also, we found some dark blue threads, short threads, and perhaps right around this area, a small piece--maybe the size of a quarter--of a piece of latex, piece of, perhaps,

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a rubber glove, which was bloodstained. And, again, down through this area, a general profusion, perhaps not as thick as around this area, but a profusion of those dark blue threads. The pocket, of course, was found here.

Q You may resume your seat. Besides the general body outline of Colette MacDonald, what other area in the master bedroom, if any, did you process, sir?

A The area between the green chair and the dresser, also looking for items. Again, we found a few little threads and some little pieces of grass there up by the headboard of the bed where the word "pig" was written. Later on, in processing around the bed to see what items of evidence may have been dropped down behind the headboard of the bed, we additionally found a dark blue thread down behind the headboard, just at the area where the word--the word "pig"--was written--on the headboard, between the headboard and the wall is what I am trying to describe.

Perhaps I have neglected to mention, there was a pile of bedding--a bedspread and a sheet--which I think I showed you in that photograph the other day, just inside the door of the bedroom. There was a bedspread and a sheet and we also processed that, and in looking through that again, after the bodies had been removed,

I looked at it, as it was blood-stained, and as I started to open it, I saw some threads and other items in it, and as I opened it further, I saw what appeared to me to be a whole finger section of a clear latex glove, blood-stained.

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I saw that and I knew right then that if I found this so far, there is probably something else in that bundle of bedding that will be of interest to us, and rather than open it there and chance losing it or contaminating it, I thought it would be best opened by a trained laboratory technician, and I closed it back up and we put it in a plastic bag and waited for the arrival of the laboratory team.

Q When you say "we," who do you mean besides yourself?

A Mr. Shaw and myself.

Q Can you describe how you picked the bedding up, if you would?

A This is obviously too large to be picked up with the forceps or the tweezers that I had. But as they were in a bundle, Mr. Shaw had the bag and I lifted the bundle up and placed the items in a large, clear, plastic bag.

Q You mentioned that you saw inside the sheet what appeared to be a finger section of a rubber

glove. What, if anything, did you do with that?

A That was put into a vial. We had some plastic vials we were using to collect some evidence, and I put that inside the vial and replaced it right back in with the bedding, closed it up, and put it in the plastic bag.

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MR. BLACKBURN: Let me have marked for identification Government Exhibit 103.

(Government Exhibit No. 103 was marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, sir, what has been marked for identification as Government Exhibit 103 and ask if you can identify that, sir.

A Yes, sir. I can.

Q What is it?

A This is a blue bedsheet and part of that bundle of bedding of the sheet and bedspread that I described as having been found inside the door.

Q What is its general appearance and condition now as to the relationship when you first saw it on the seventeenth of February?

A Sir, it is, of course, marked by myself and Mr. Shaw and some laboratory personnel. There are holes in it, cuttings which were made under laboratory conditions for analysis of the stains. Other than that--other than the markings and the cuttings from the laboratory, it appears that it is the same as when I first saw it.

MR. BLACKBURN: I would like marked for identification Government Exhibit 104.

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(Government Exhibit No. 104 was marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, what has been marked for identification as Government Exhibit Number 104 and ask you if you can take a look at it and whether or not you can identify it.

A Yes, sir. I can.

Q What is it?

A This is the bedspread which is the other item in that pile of bedding inside the doorway of the master bedroom.

Q What is its general appearance and condition as to when you first saw it?

A Sir, it is marked by myself and Mr. Shaw, marked by laboratory personnel, and there are cuts made in it again under laboratory conditions for analysis of stains and, other than that, it appears as I first saw it. Now, let me qualify this also by saying I did not open these things entirely upon my first observation, as I stated. But generally they are in the condition that I first found them. These are the items that I saw there.

MR. BLACKBURN: Just a minute, your Honor.

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(Pause.)

MR. BLACKBURN: I would like to mark for identification Government Exhibit Number 109.

(Government Exhibit No. 109 was marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you what has been marked for identification as Government Exhibit Number 109 and ask, sir, if you can identify it.

A Yes, sir. This is the vial into which was placed the bloody piece of clear latex that was up around the arm region of Colette MacDonald's body. This is an item that was--part of it taken to a laboratory under laboratory conditions and placed in this small container.

Q Mr. Ivory, what individual participation by you, if any--strike that question--what, if anything, did you do with respect to the processing of Kimberly's bedroom.

A Kimberly's bedroom--I made general observations. I assisted in the outlining of the sheet in relation to the edge of the bed, initialed the bottom sheet of the bed, assisted in a search of the area for evidence found up behind the pillow on the north side of the bed or the side closest to the

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hallway, another splinter that would appear to have blood stains on it.

Q With respect to Kristen's bedroom, what, if anything, did you personally do in the processing of that room?

A As a part of the team of myself and Mr. Rowe from the Chemistry Division of the laboratory, I would process the room, collected blood stains, collected bedding, made a search of the entire room for items of evidence, collected items such as the bedding, all things which were blood-stained, blood stains from the floor, made a search of the top of the bed for foreign objects--foreign articles--found again another one of those dark blue threads. In general, made--with Mr. Rowe--processed the entire room and collected all available evidence from that room.

Q With respect to the hallway, sir, what, if anything, did you personally do with respect to processing the hallway?

A With the initial processing and observations of the hallway, the locating of the blood stains, observations of the processing by the Chemistry Division personnel, and was present while parts of the floor was taken from the hallway. Parts of the wall

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were taken from the hallway and also the floor and parts of the walls which were cut out from in Kristen's bedroom, which were blood stained and sent to the laboratory for examination.

Q Would you describe, sir, if you can, the method of recording that you did with the collection of blood stains?

A Of recording?

Q Yes, sir. How that was done?

A In the kitchen, while processing--let me generally explain how we set the procedures up for the identification of the items that we picked up. As we knew we were going to be working in one or two or more teams, I wanted to keep some order to the numbering of items we were picking up. Just went through a numerical order of one through whatever with the exceptions of the kitchen which were numbered one and also used the letter "k" to indicate "kitchen." Other numbers that followed in the north bedroom were given a number and "nb" or "nbr" to indicate that the item came from the north bedroom or the bedroom of Kristen MacDonald and other items which were either tested or collected by the laboratory people were marked again in numerical sequence all the way through the house--through the hallways, the master bedroom,

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and into Kimberly's bedroom. In the kitchen, as I processed the kitchen with Mr. Rowe from the Chemistry Division of the laboratory. Again, we numbered them "1k," "2k," et cetera, with Mr. Rowe actually doing the collecting of the items and myself maintaining a handwritten log.

As we proceeded into the north bedroom, the situation was somewhat reversed, with myself collecting the items and Mr. Rowe maintaining a log of the items as they were picked up.

MR. BLACKBURN: Let me have marked for identification Government Exhibits 457 and 458.

(Government Exhibits 457 and 458 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you these Government Exhibits 457 and 458, and ask you, sir, if you can identify those?

A Yes, sir; I can.

Q What are they?

A These are the logs.

Q If you would, sir, refer to what each one is?

A Number 457 is the log that was written by me while Mr. Rowe and I were collecting items of evidence from the kitchen. I recognize my handwriting. 458 is that log that was maintained by Mr. Rowe as Mr. Rowe and I collected items of evidence from within the north bedroom or the bedroom of Kristen MacDonald.

Q Do you recognize the handwriting?

A Not specifically--the handwriting, no, sir, but I recognize the list. I recognize the numbering procedures, and generally, I have seen it quite often before, and I can identify it by that.

MR. BLACKBURN: Your Honor, we would move

Government Exhibits 457 and 458 into evidence.

THE COURT: They will be admitted.

(Government Exhibits 457 and 458 were received in evidence.)

MR. BLACKBURN: Your Honor, I have just handed some items to the defense.

(Pause.)

MR. BLACKBURN: Your Honor, I will mark for identification Government Exhibits Numbers 220, 221, 224, 210, 211, 212, 213, 214, 215, 197, and 219.

(Government Exhibits 220, 221, 224, 210, 211, 212, 213, 214, 215, 197, and 219 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, if I could, let me hand you these items just marked for identification, and ask if you can look through them and tell us what they are generally?

A Yes, sir; I can identify them.

Q Generally speaking, sir, what are they?

A These are photographs of the MacDonald residence exposed by Mr. Page from the laboratory team of the house on that morning of the 17th of February.

Q What relationship are those photographs to that scene of Castle Drive at the time later in the day of

the 17th?

A This is as the crime scene appeared after the removal of the bodies on the morning of 17 February.

MR. BLACKBURN: Your Honor, I would move these photographs into evidence.

THE COURT: Very well.

(Government Exhibits 220, 221, 224, 210, 211, 212, 213, 214, 215, 197, and 219 were received in evidence.)

#14
pp-1

MR. BLACKBURN: Your Honor, I would ask leave of the Court to publish certain exhibits already in evidence to the jury at this time.

THE COURT: All right, sir.

(Exhibits passed among the jury.)

MR. BLACKBURN: Your Honor, let me mark for identification Government Exhibits Numbers 459, 460, 461, 462, 463, and 464.

(Government Exhibits Nos. 459, 460, 461, 462, 463, and 464 were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you these, Mr. Ivory, and ask you if you can look at them and identify them, please, sir?

A Yes, sir, I can identify them.

Q What are they?

A These are photographs taken of the processing of the crime scene and show the method in which items were marked prior to being processed by the team. It shows where items had been removed for examination in the laboratory, shows the numbering and lettering of the floorboards of the bed--the floor of Kristen MacDonald's bedroom, and also the hallway where the bloody footprints were--markings on the wall, the

#14
pp-2

markings which in effect fixed the items by, perhaps, exhibit number, if we could call it that--exactly where we took samples and items of evidence.

MR. BLACKBURN: Your Honor, I would move these photographs into evidence.

THE COURT: Very well.

(Government Exhibits Nos. 459, 460, 461, 462, 463, and 464 were received in evidence.)

BY MR. BLACKBURN:

Q Mr. Ivory, with respect to the kitchen area, what part of that room, sir, did you personally process?

A I processed the entire room, the floor, where the drops of blood were, counter tops and the sink. I saw nothing of any interest to us. The drawers, the appliances. Underneath the sink was a cupboard-type thing--underneath the sink storage area--and within that area I found some traces of blood, and also a stack towards the rear of the storage area under the sink a stack of--I think about eight packages of Perry's latex surgeon's gloves.

Q Mr. Ivory, where were the blood drops that you have described located on the floor of the kitchen?

A They were directly in front of the doorway into the storage area underneath the sink.

#14
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Q I know that the jury can't see too well, but will you come to the model -- let me pull it closer-- and show us where that was?

A I don't know if you all can see down in there. Can I move this a certain way?

MR. BLACKBURN: Your Honor, could the jury perhaps stand up so they could see it?

THE COURT: Oh, yes.

THE WITNESS: The drops of blood, as I described, were right here directly in front; and within inches of the two little wooden doors that open up into the storage area underneath the sink, at a point right there, right about where the pointer is.

MR. BLACKBURN: Can everybody see? You may resume your seat.

BY MR. BLACKBURN:

Q Mr. Ivory, with respect to the utility room off the master bedroom, what portion of that room, sir, did you personally process?

A Processing per se, perhaps none, except for a general search of the room and found nothing of any interest to the cases we were processing in the house. There was nothing that appeared to be out of place, no blood stains.

Q With respect to the small bathroom that was

#14
pp-4

off the utility room, what if anything did you do, sir, for the purpose of processing that room?

A With the--just to make a search of the room for anything that may be of interest to us, any potential evidence,which we found none. It was just a search. There was no collection of anything in there. There was (sic) no items found to be of interest to us.

Q Finally, sir, with respect to the main or the hall bathroom--strike that question.

With respect to the hall bathroom, what if anything did you do in personally processing that room?

A Conducted a search for evidence, or potential evidence to us. I made no collection in that room. The collection in there was made by Mr. Chamberlain and Mr. Shaw. However, later on in the processing of the house, after all the fragile items and items that could have possibly been contaminated--after they had been collected or processed--we caused the post engineers or the post maintenance people to come to the house and search the plumbing for any items of potential evidence.

Q What did that search reveal?

A Nothing of interest to us at all.

Q With respect to the hall bathroom, what if anything did you observe in that room while you were there?

#14
p-5

A In the hall bathroom, sir?

Q Yes, sir.

A That which drew most of my attention was the sink area, and the blood stains and drops on the sink. Other items in there were--under the sink was a kind of a step ladder--a wicker or perhaps metal-framed step ladder--and the items you would normally find in a family bathroom.

BY MR. BLACKBURN:

Q With respect to the general closet area of the MacDonald apartment, what, if anything, did you do in personally processing all of the closets in the MacDonald apartment?

A Well, since we were by that bathroom, let me start with that particular closet. We made a search of that closet, again, finding items of professional medical equipment; hypodermic syringes; needles; medication; generally, a stockpile of medical equipment; but it was also the linen closet towels and what not in there. In the closet of the master bedroom--in fact, just inside of the partially opened sliding door of the closet--may I?

Q Yes, sir.

A In searching this closet in the master bedroom, this door was open. On the floor, there were some shoes on some homemade shelving. In the corner, there was a lever action .30-.30 rifle with ammunition in there. There was a chest, I believe, or a footlocker over on this part (indicating) of the closet. It had some firearms in it, I believe. This closet, again, had just clothing--nothing of any particular interest to us except in all the closets, there were pieces of homemade shelving as storage area. In this type of house, it is kind of restricted. Quite often, the people, as Dr.

MacDonald did perhaps, is make their own shelving for convenient storage. From those shelving, we took pieces of the legs of the shelving to send to the laboratory for comparison with a club that we found outside of the house which we believed at the time to be the murder weapon.

Q Excuse me, sir. Before you go on, how were the clothes hanging in the hall closet and the other closets?

A How were they hanging? Just in a normal manner as you would find in any household. There was no sign of anything being searched but just a normal closet hanging.

Q Continue, sir.

A Again, in this area here (indicating), there was a chest of drawers that were placed in there again for storage-- saving of storage space. We also searched some of the clothing there for hairs and fibers to be compared to other things we found throughout the house, but mainly, what I personally collected from the closets were those pieces of the shelving to be sent to the laboratory to compare it to the club that was found outside the rear door of the house.

Q With respect to the closet in Kimberly's bedroom---

A (Interposing) Yes, sir.

Q Did you participate in the processing of that closet?

A Yes, sir.

Q What, if anything, did you find?

A Again, the closet, again, pieces of the shelving, but that is all I recall right now that was there.

Q You may resume your seat.

MR. BLACKBURN: Let me mark for identification, Your Honor, Government Exhibits Number 465, 466, 467, 478, 474, 473, 472, 471, 470, 469, and 468.

(Government Exhibits 465, 466, 467, 478, 474, 473, 472, 471, 470, 469, and 468 were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, sir, these items previously marked for identification, and ask you if you can identify them?

A Yes, sir; I can.

Q What are they generally?

A These are more photographs exposed during the processing of the crime scene and depicts the location and the fixing of items of evidence that were found in the house and also shows the numerical sequence

in which they were numbered.

MR. BLACKBURN: Your Honor, I would move these into evidence.

THE COURT: Very well.

MR. BLACKBURN: And ask that they be published to the jury.

THE COURT: All right.

(Government Exhibits 465, 466, 467, 478, 474, 473, 472, 471, 470, 469, and 468 were received in evidence.)

(Exhibits passed among the jury.)

BY MR. BLACKBURN:

Q Mr. Ivory, during this first time that you spent in the MacDonald apartment, what evidence, if any, sir, did you find of people coming in from the outside?

A There were no signs of forced entry to the house, and within the house, the only items that I found which were indicative of someone coming from the outside were some wet spots and some grass in the hallway which I observed immediately on coming into the house.

MR. SEGAL: I can't hear your answer.

THE COURT: He said that he observed them immediately upon coming into the house--that was the wet spots and grass in the hallway.

THE WITNESS: I inquired to Lieutenant

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Paulk, the duty officer who met me at the door, if he knew where they came from. He indicated to me that those were the marks brought in by himself and military policemen and that they had observed no other grass or water when they had arrived. I made a point to ask those specific questions.

BY MR. BLACKBURN:

Q Mr. Ivory, how long did your personal involvement in processing of the MacDonald apartment continue?

A Oh, Lord. We continued with the laboratory team through that week--through the 21st. The house, to this very day, is still sealed with those railway seals. I continued going in and out of that house myself and Mr. Shaw for periods of months. I even went in there and picked up some items of evidence a year and two days, as I recall, from the day I first walked into the house.

Q What is it that you are referring to that you picked up a year and two days later?

A On the 19th of February, 1971, I removed from Kimberly's bedroom the bed slat supporting the mattress and the box spring and sent that to the laboratory to be compared again with the club that was found outside--the bloody club found outside the back door of the house as it appeared to me to be similar in appearance.

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BY MR. BLACKBURN:

Q Mr. Ivory, you spoke earlier in your testimony of Mr. Alexander, the photographer. Subsequent to his leaving the MacDonald apartment and becoming ill, did he ever return to the MacDonald apartment?

A Yes, sir; he did.

Q When was that?

A He was there again through that first morning, right up until perhaps the time of the removal of the bodies. I know he was around there for quite a while.

Q What did you personally observe him do when he returned?

A When he returned, after Mr. Squires had gotten there--Mr. Squires took over as the primary photographer of the scene; but Mr. Alexander did remain and he did expose some subsequent photographs while he was there.

MR. BLACKBURN: Your Honor, let me mark for identification number 145 and 145(a).

(Government Exhibits 145 and 145(a) were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, sir, Government Exhibit 145 and also Exhibit 145(a) and ask if you can identify what they are?

16km2

A Yes, sir; they are black and white photographs of the body of Kristen MacDonald, exposed subsequent to the examination of the body by Dr. Neal.

MR. BLACKBURN: Your Honor, I move these be introduced into evidence.

THE COURT: Very well.

(Government Exhibits 145 and 145(a) were received in evidence.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me point you, if I can, to Government Exhibit 145(a) and ask you if you can identify, if you know, sir, what this is right here?

A That, sir, is a large blood stain which was on the floor. I can't recall the exhibit number, but it was on the floor, right directly next to the bed.

Q And let me point to this area on the same exhibit, sir, and if you can, tell us what that is right there?

A Yes, sir; that area was also blood-stained.

Q This right here, if you can; just tell what that is?

A Yes, sir; right there, there was blood stains, again, leading off that carpet; but that particular item there is a thick piece of yarn.

MR. BLACKBURN: Your Honor, at this time, I

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would also publish Exhibit 71 to the jury.

THE COURT: All right.

(Exhibit passed among the jury.)

THE COURT: Now, when they finish looking at that, we may go to lunch.

MR. BLACKBURN: All right; I will just do one more, sir. Your Honor, I would mark for identification Government Exhibit Number 147 and 147(a).

(Government Exhibits 147 and 147(a) were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you these items, Mr. Ivory, and ask if you can identify them, sir?

A Yes, sir; I can.

Q What are they?

A Black and white photographs taken from the living room into the dining room area of the MacDonald residence.

MR. BLACKBURN: Your Honor, I would move these into evidence.

THE COURT: Very well.

(Government Exhibits 147 and 147(a) were received in evidence.)

MR. BLACKBURN: Your Honor, we would mark Government Exhibits 146 and 146(a).

16km4

(Government Exhibits 146 and 146(a) were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you these exhibits and ask, sir, if you can identify them?

A Yes, sir; I can.

Q What are they?

A Black and white photographs of the living room--desk, there the television, and stereo unit in the living room of the MacDonald residence.

MR. BLACKBURN: Your Honor, we move these into evidence.

THE COURT: Very well.

(Government Exhibits 146 and 146(a) were received in evidence.)

MR. BLACKBURN: Your Honor, we would mark exhibits number 151 and 151(a).

(Government Exhibits 151 and 151(a) were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you these two exhibits and ask you, sir, if you can identify them?

A Yes, sir; I can.

Q What are they?

A They are black and white photos of the

16km5

kitchen of the MacDonald residence and show the bulletin board and the telephone wire with the receiver hanging down to the floor.

MR. BLACKBURN: Your Honor, we would move these into evidence.

THE COURT: Very well.

(Government Exhibits 151 and 151(a) were received in evidence.)

THE COURT: Now, members of the jury, we will let you retire and then we will shortly take our recess and come back today at 2:30. Remember, we don't talk about the case. Don't read, look at, or listen to anything about it. Keep open minds about it. Have a good lunch and come back today at 2:30. The jury may retire and then we will take our recess.

(Jury exits at 12:58 p.m.)

THE COURT: All right, Mr. Coggins, you can recess us until 2:30.

(The proceeding was recessed at 12:59 p.m., to reconvene at 2:30 p.m., this same day.)

F U R T H E R P R O C E E D I N G S 2:30 p.m.

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

THE COURT: Good afternoon, ladies and gentlemen. Further questions?

MR. BLACKBURN: We would call Mr. Ivory back to the stand.

(Whereupon,

WILLIAM F. IVORY

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

D I R E C T E X A M I N A T I O N (resumed) 2:31 p.m.

BY MR. BLACKBURN:

Q Mr. Ivory, during the week that you were participating in the processing of the crime scene, what steps, if any, were taken by you to inventory the items in the house?

A You mean, sir, the items of evidence or the items of furniture and all?

Q Both?

A Well, the items that were selected to be retained or processed as items of possible evidence were inventoried in the manner as we showed this morning, with

the items from the kitchen and the north bedroom that Mr. Rowe and I took care of. And other items as they were picked up were listed in similar fashion and recorded on evidence receipts or military police receipts for property. Items of non-evidentiary value, which were left in the house, were all not inventoried, in that we knew they would not be removed from the house and the house would be sealed daily, or each time the evidence processing teams were leaving the building. So for that reason we did not inventory the entire contents of the house.

MR. BLACKBURN: I would mark this as Government Exhibit Number 141.

(Government Exhibit 141 was marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, what has been marked for identification as Government Exhibit Number 141, sir, and ask if you can identify it?

A Yes, sir; I can.

Q What is it?

A This is the bed slat, or the board that was supporting the box spring and mattress at the head portion of the bed of Kimberly MacDonald. This is the item that I retrieved from the house on the 19th of February,

1971.

MR. BLACKBURN: Your Honor, I would mark for identification at this time Government Exhibits Number 484, 490, 495, 509, 516, 518, 521, 531, 532, 533, 534, 551, 550, 546, and 547.

(Government Exhibits 484, 490, 495, 509, 516, 518, 521, 531, 532, 533, 534, 551, 550, 546 and 547 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you these items previously marked and ask you if you will look at them and tell us whether you can generally identify them, sir?

A (Witness examines exhibits.) Yes, sir; I can.

Q What are they?

A These are black and white photographs of the residence of the MacDonald family, exposed during the processing of the crime scene, and depicts--again, using our numerical sequence of identifying the exhibits that we removed from the house, and other items of evidence that were removed during the processing of the crime scene.

MR. BLACKBURN: Your Honor, we would move these into evidence.

THE COURT: Very well.

(Government Exhibits Number 484, 490, 495, 509, 516, 518, 521, 531, 532, 533, 534, 551, 550, 546 and 547 were received in evidence.)

MR. BLACKBURN: We have marked for identification Government Exhibit Number 133.

(Government Exhibit 133 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 133 and ask if you can identify that, sir?

A Yes, sir; I can.

Q What are they?

A This is a package of latex surgeon gloves, brand name Perry, size 8, which was found by me and obtained from underneath the sink in the kitchen of the MacDonald residence. I actually took it from the house on 9 March, '70.

MR. BLACKBURN: I would mark for identification Government Exhibit 134.

(Government Exhibit 134 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you Government Exhibit

134 and ask, sir, if you can identify what it is?

A Yes, sir; these are additional packages of Perry brand latex surgeon gloves that were taken by me from under the kitchen sink in that storage area. They were taken by me from the house on the 14th of July, 1971.

MR. SEGAL: May I have the year again, please?

THE WITNESS: 14th of July, 1971.

MR. SEGAL: Thank you.

MR. BLACKBURN: I would mark 105 and 138 for identification.

(Government Exhibits 105 and 138 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you Government Exhibit 105 and ask, sir, if you can tell us what it is?

A Sir, I hestitate to open it with this tag on here.

BY MR. BLACKBURN:

Q Go ahead and open it.

A Have you read this warning?

MR. BLACKBURN: Wait just one minute.

BY MR. BLACKBURN:

Q Now, sir, if you can look at that and identify what it is?

A Yes, sir. This is that piece of what appeared to be a latex glove--the finger section that I found as I was going through that bundle of bedding there in the master bedroom by the closet door.

Q Let me hand you what has also been marked as Government Exhibit 138. You may open the bag and tell us if you can, sir, what it is?

A Yes, sir. This is another portion or another little piece of latex similar to the other pieces that were picked up. It was found in the area of the dresser--by the dresser and where that knife was found on the floor of the master bedroom by that dresser there (indicating). It was placed in this vial. I found it and it was placed in this vial by, I believe, Mr. Chamberlain and Mr. Shaw.

MR. BLACKBURN: I would mark this as Government Exhibit 271.

(Government Exhibit 271 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit Number 271. Look at it and tell us whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A These are the pink pajama pants that were on the body of Colette MacDonald when I first observed it.

Q What is its general condition today as compared with when you first saw it, sir?

A As with some of the other exhibits that I have seen, there are cuts made in it by the laboratory personnel in analyzing the stains all over the pajamas. Other than that, they are stained and all as I first observed them.

MR. BLACKBURN: I would mark this as Government Exhibit Number 270.

(Government Exhibit 270 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked as Government Exhibit 270, and ask whether or not

you can identify it, sir?

A Yes, sir; I can.

Q What is it?

A This is the pink pajama shirt now discolored by the blood stains that were on the upper portion of the body of Colette MacDonald when I first observed the body.

Q What is the relationship in its general appearance today as to when you first saw it?

A In general appearance with the exception of those cuts being made and marks being made by laboratory technicians, it appears the same.

MR. BLACKBURN: I would mark Exhibit Number 273.

(Government Exhibit 273 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you Government Exhibit Number 273, and ask you, sir, whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A This is the pajama top that was on the body of Kristen MacDonald when I first observed it that morning.

Q In general characteristics, what is the

relationship between it today and when you first saw it?

A Again, with the exception of those cuts and markings made by laboratory technicians, it appears to be the same.

MR. BLACKBURN: This will be Number 274.

(Government Exhibit 274 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 274, and ask you, sir, whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A These are the bottoms or the pajama pants which were on the body of Kristen MacDonald.

Q In general appearances, sir, what is the relationship between the way it is today and the way you first saw it?

A As with the others, with the exception of laboratory markings and the cuts, the same.

MR. BLACKBURN: 275.

(Government Exhibit 275 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been

marked for identification as Government Exhibit 275, and ask you, sir, whether or not you can identify it?

A Yes, sir; I can.

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BY MR. BLACKBURN:

Q What is it?

A It is the undershirt removed from the body of Kristen MacDonald.

Q In general appearances, sir, what is the relationship between the time you first saw it and today?

A Again, with the same exceptions of the laboratory markings and cuttings, it appears the same as when I first saw it after it had been removed from the body.

MR. BLACKBURN: Your Honor, could I have just one moment?

(Counsel confer.)

MR. BLACKBURN: Your Honor, at this time we would move certain items into evidence--Government Exhibit Number 141, the bed slat, Government Exhibit 274, 273, 271, 270, 275.

MR. SEGAL: If Your Honor pleases, may I suggest we defer that matter until we have had a chance to cross-examine this witness in regard to those matters.

THE COURT: Well, he is offering them now unless there is some objection to their introduction---

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MR. SEGAL: (Interposing) In the absence of the opportunity to cross-examine, I will OBJECT at this time only. It is a question of timing.

THE COURT: I will let you, of course, at the proper time -- when you cross-examine-- renew your objection if you have one.

MR. SEGAL: All right, Your Honor.

(Government Exhibits Nos. 141, 274, 273, 271, 270, and 275 were received into evidence.)

MR. BLACKBURN: We would like Government Exhibit Number 139 marked for identification.

(Government Exhibit No. 139 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you Government Exhibit 139 and ask if you can identify it, sir.

A Yes, sir. I can.

Q What is it?

A This is the Esquire magazine that you saw in the photograph of the living room and the upturned coffee table. There was a child's game laying across sort of diagonally in this manner (gesturing), and you could see the first two letters "E-s" which are in the slide and the photograph. When the table was removed

and the game was removed, this magazine was found and collected.

MR. BLACKBURN: Mark 140.

(Government Exhibit No. 140 was marked for identification.)

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BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 140 and ask you whether or not you can identify it.

A Yes, sir. I can.

Q What is it?

A This is that box filled with that child's game I have just been describing which was laying on top of the Esquire magazine underneath the edge of the coffee table.

MR. BLACKBURN: Mark for identification Government Exhibit Number 362, 325, 326, and 327.

(Government Exhibits Nos. 362, 325, 326, and 327 were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, what has been marked for identification as Government Exhibit 362. You may open it and tell us whether or not you can identify it.

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A This was sealed at the lab. Do you have a knife or something? Perhaps I can see without it. Yes, sir. I can.

Q What is it?

A It is a vial containing debris that was picked up from the bed in Kristen's bedroom. It was picked up by myself and Mr. Rowe while processing that room.

Q Let me hand you Government Exhibit 325 and ask, sir, if you can identify it.

A Yes, sir. This is a vial that contains debris and fibers that were found on the floor of the master bedroom by the left hand of the body of Colette MacDonald.

Q Let me hand you Government Exhibit Number 326 and ask, sir, whether or not you can identify it.

A Yes, sir. This is the vial that was used to collect fibers and rug strands from the master bedroom rug by the footboard of the bed.

Q Finally, let me hand you Government Exhibit Number 327 and ask if you can identify it, please, sir.

A Yes, sir. Again, this is a vial that was used to pick up fibers and other debris from within that body outline. Hairs were found within, I say, within the body outline of Colette MacDonald.

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MR. BLACKBURN: We would mark, Your Honor, Government Exhibit 135, 136, 137, and 132.

(Government Exhibits 135, 136, 137, and 132 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me also hand you Government Exhibit 457, already in evidence and give you Government Exhibit 135 and ask you, sir, whether you can identify and tell us what it is?

A All right. 135 is also my exhibit or evidence collection item number 24-K, which, according to the notes I made at the time, is suspected blood sample from the floor, 3 foot, 4 1/2 inches northwest of the east corner of the stove front, 3 foot northeast of the west corner of the stove front. In essence, in front of the kitchen cabinet or sink cabinet.

MR. SMITH: I'm sorry, I didn't get the exhibit number.

MR. BLACKBURN: That was 135, the one we were showing him.

MR. SMITH: Thank you.

BY MR. BLACKBURN:

Q The next exhibit, Mr. Ivory, is 136. I ask you if you can identify that exhibit?

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A All right. This also bears my sequence number --my evidence number--25-k, which is a suspected blood sample from six spots in a marked block, 1 foot, 9 1/4 inches north of the west corner of the stove front. Again, that area where it was circled on the floor directly in front of the kitchen cabinet or sink cabinet.

MR. SMITH: May I confer with counsel for a moment, Your Honor, to see if we are together on exhibit numbers?

THE COURT: All right.

(Counsel confer.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, Government Exhibit Number 135, and ask, sir, if you can identify that?

A Yes, sir; I can.

Q What is it?

A It is a test tube, again, that was used to collect the item marked by me, 24-K.

Q That is the one you just did?

A Yes, I just did that. I did 24 and 25.

MR. BLACKBURN: Let me put it over here.

BY MR. BLACKBURN:

Q 132; I ask if you can identify it?

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A I'll have to open this in order to read this.

Q Yes.

A Do you have another piece of paper in case there is something that might spill out of this? Yes, sir, I can identify it.

Q What is it?

A This is a scraping that was made while a search was being made underneath the sink in the kitchen in the area where the rubber gloves were stored, or the latex surgeon gloves were stored. A stain was noticed on the underside of one of the sinks and this is a scraping made from the underside of the sink.

Q Let me hand you Government Exhibit 137 and ask if you can identify it, sir?

A Yes, sir; this is a test tube used to collect items marked by us, as 26-K, which is a suspected blood sample from the floor in a marked block, 2 foot, 6 1/2 inches north of the south wall, 2 inches east of sink cabinet. Again, scrapings from the floor and that area immediately in front of the kitchen sink cabinet.

Q Finally, sir, let me hand you Government Exhibit 136 and ask if you can identify that?

A Again, this is a test tube used to collect suspected blood drops from my exhibit 25-K, which is

suspected blood sample from six spots in that marked block, again, immediately in front of the kitchen cabinet.

MR. SEGAL: Your Honor, may we see you at sidebar?

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B E N C H C O N F E R E N C E

MR. BLACKBURN: Your Honor, we are getting ready to hand him some additional vials that came out of Kristen's room, the north bedroom. He testified this morning concerning these notes that Mr. Rowe made in his presence and that he looked at. They have already been admitted into evidence. I was going to allow him to use these to refresh his recollection just as he did the notes previously used in the kitchen.

THE COURT: He authenticated the notes, as I recall, this morning.

MR. BLACKBURN: Yes, sir.

THE COURT: All right.

MR. SEGAL: I OBJECT, Your Honor. There is no evidence from this witness that he read those notes at, or near, the time they were made, and concluded at that time that that was an accurate statement.

THE COURT: Well, you will have to qualify him then. Go ahead and ask him.

MR. BLACKBURN: Sure.

MR. SEGAL: Please, no leading questions this time.

MR. BLACKBURN: You are free to object.

(Bench conference terminated.)

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BY MR. BLACKBURN:

Q Let me hand you what you testified to this morning as Government Exhibit 458 and ask you again, sir, what those are?

A Yes, sir, these are the notes that were made by Mr. Rowe, the chemist, while processing the north bedroom or the bedroom of Kristen MacDonald, and indicates by our sequence number and the letters "nb" those items taken from the north bedroom for evaluation at the laboratory.

Q Where were you when those notes were made and what were you doing?

A With Mr. Rowe in the north bedroom collecting the items.

Q Who actually collected the items?

A We both collected some items. I collected most of the items while Mr. Rowe was making the actual notes.

Q Have you ever had an occasion prior to today to read those notes?

A Yes, sir, as they were transcribed on to other documents listing what we took from the north bedroom, yes.

Q What is the relationship, sir, between those notes and the items that you collected from the north

#21
pp-2

bedroom, Kristen's room?

A These describe by number and also description those items taken from the north bedroom.

MR. BLACKBURN: Your Honor, at this point we would ask that this witness be allowed to use those notes for purposes of refreshing his recollection.

THE COURT: Very well.

MR. SEGAL: Beg your pardon, Your Honor? I'm sorry, I could not hear you.

THE COURT: I said, "Very well." I've heard no objection to it.

MR. SEGAL: I was on my feet, if Your Honor pleases. I apologize. There is no indication that this man read those notes, saw them at or near the time in which they were made.

THE COURT: I thought he just asked him that. Did you not?

MR. BLACKBURN: Yes, sir.

THE COURT: Did you hear him?

MR. SEGAL: I did not hear that answer, Your Honor.

THE COURT: Well, let him say it again, then.

BY MR. BLACKBURN:

Q What is the relationship, sir, between those

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notes and the items that you and Mr. Rowe collected---

MR. SEGAL: (Interposing) Beg your pardon. Excuse me, go ahead and finish.

BY MR. BLACKBURN:

Q ---that you and Mr. Rowe collected in the north bedroom or Kristen's room?

MR. SEGAL: Excuse me, Mr. Ivory. That is not what I understood to what Your Honor was suggesting should be the question. The question Your Honor has stated was the one I thought would be the appropriate one to put to this witness.

THE COURT: Were you familiar with the existence of these notes at or about the time you were making this investigation?

THE WITNESS: Yes, sir.

THE COURT: Did you have occasion to look at them then?

THE WITNESS: Yes, sir.

THE COURT: Are you, by looking at them now able to refresh your recollection as to anything stated therein, or do they serve that purpose?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 359,

#21
pp-4

360 and 361, 377 and 376, 1123, 372, and 324.

(Government Exhibits No. 359, 360 and 361, 377 and 376, 1123, 372, and 324 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identificaiton as Government Exhibit 359, 360 and 361, and ask if you can identify it, sir?

A Yes, sir, I can.

Q What are they?

A These are vials used to collect the blood sample--the blood stains from the floor--of Kristen's rooms, the north bedroom, and bear the markings--or identification markings we put on them--of 48nb, 49nb, and 50nb.

Q Let me hand you what has been marked for identification as Government Exhibit Number 324, and ask, sir, whether or not you can identify it?

A Yes, sir, I can.

Q What is it?

A This is the vial used by me to collect a blue thread from the area in the master bedroom--not in the north bedroom but in the master bedroom--down behind the headboard of the bed around where the word "pig" was written.

#21
pp-5

Q Let me hand you what has been marked for identification as Government Exhibit 376 and 377, and ask whether or not you can identify it--identify both of them?

A Yes, sir, I can.

Q What are they?

A They are test tubes used to collect more blood evidence, more blood stains and blood crusts from areas identified by us as 65nb and 68nb, which were taken from the plastic sheet on the bottom--the contour sheet on the bottom mattress of the bed of Kristen MacDonald in the north bedroom.

Q Let me hand you what has been marked for identification as Government Exhibit 372, and ask whether or not you can identify that, sir?

A Yes, sir.

Q What is it?

A It is a vial used to collect hairs and fibers from the contour bottom sheet from the bed of the--in the north bedroom of Kristen MacDonald.

Q Finally, sir, let me hand you what has been marked for identification as Government Exhibit 1123, and ask whether or not you can identify that?

A Yes, sir.

Q What is it?

#21
pp-6

A These are vials containing debris that was found in the living room by Mr. Medlin and myself as we went through the pile of that carpet, down in--between the sofa and the upturned coffee table.

MR. BLACKBURN: Your Honor, at this time I would mark for identification Government Exhibits 357, 370, 381, and 358.

(Government Exhibits Nos. 357, 370, 381, and 358 were marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, what has been marked for identificaiton as Government Exhibit 357, and ask whether or not you can identify it?

A Yes, sir, I can.

Q What is it, if you would speak loudly?

A Yes, sir, I can; it is a vial, and also the strand of thick green yarn that was found on the floor in that throw rug, or that carpet, in the north bedroom. It bears our number 36nb.

22kml

BY MR. BLACKBURN:

Q Let me hand you what has been marked for identification as Government Exhibit 370, and ask whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A It is the vial that was used to collect evidence in the north bedroom. It bears our number 59nb, which is hairs, fibers and miscellaneous debris from the top sheet of the bed of Kristen MacDonald.

Q Let me hand you what has been marked for identification as Government Exhibit 381 and ask whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A This item, while it appears on the list from the north bedroom, actually has a number "mbr" for "master bedroom," and it appears out of sequence in the normal collection of items from the north bedroom. But these are colored yarns that were observed and found on the bedside table, or the nightstand by the bed in the master bedroom, and were similar in appearance to that strand of yarn that we found on the floor of the north bedroom.

For that reason, they were taken--after that

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was picked up and collected in the north bedroom, the single strand of yarn--these were obtained from the master bedroom and included with the others for ease--to make it easier for us in sorting the evidence out and sending them to the laboratory for comparison with the single strand of yarn.

Q Let me hand you, Mr. Ivory, what has been marked for identification as Government Exhibit 358, and ask you whether or not you can tell us what it is?

A Could I see that list again, please?

Q Certainly.

A But yes; I can identify it; yes. It is marked by me with the initials and date and again, that is how we mark the items--37nb--to indicate obtained from the north bedroom, by that sequence number. And it is the green throw rug obtained from the floor next to the bed of Kristen MacDonald.

MR. BLACKBURN: Your Honor, at this time, we would mark for identification Government Exhibits 371 and 373.

(Government Exhibits 371 and 373 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 371 and

ask, sir, whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A This is the item removed from the north bedroom by the number of 60nb, and is the top sheet from the bed of Kristen MacDonald. It is marked for identification by both myself and William Rowe, as we collected it on the 20th of February.

Q Let me hand you what has been marked for identification as Government Exhibit Number 373, and ask you whether or not you can identify it, sir?

A Yes, sir; I can.

Q What is it?

A The item removed from the north bedroom by our number 64nb, and is the contour bottom sheet from the bed of Kristen MacDonald, again with the body outline marked on it, and my initials and the initials of William Rowe, and the date we collected it of 20 February 1970.

MR. BLACKBURN: Your Honor, we would mark Government Exhibit Number 364.

(Government Exhibit 364 was marked for identification.)

BY MR. BLACKBURN:

Q Let me hand you, Mr. Ivory, Government Exhibit 364 and ask whether or not you can identify it?

22km4

A Yes, sir; I can.

Q What is it?

A This is the item obtained from the north bedroom with the number 56nb, which is the green bedspread with suspected blood stains which was on the bed of Kristen MacDonald, and again bears my initials and the initials of William Rowe when we collected it on the 20th of February, 1970.

MR. BLACKBURN: Your Honor, I would like to mark for identification Government Exhibits 375, 374, 363, and 378.

(Government Exhibits 375, 374, 363 and 378 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 375 and ask whether or not you can identify it, sir?

A Yes, sir; I can.

Q What is it?

A This is the item obtained from the north bedroom with our number 66nb, which is the plastic contour sheet from the upper mattress of the bed of Kristen MacDonald. Again, it bears my initials and the date of collection of 20 February 1970.

Q Mr. Ivory, let me hand you what has been

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marked for identification as Government Exhibit 363, and ask whether or not you can identify that exhibit?

A Yes, sir; this is the vial that was used to collect item 57nb, which is hairs, fibers and miscellaneous debris from the pink blanket on the bed of Kristen MacDonald.

BY MR. BLACKBURN:

Q Let me hand you what has been marked as Government Exhibit 374, and ask whether or not you can identify it, sir?

A This is item 67nb collected in the north bedroom. It is a portion of the contour or the plastic sheet on the lower mattress. 67nb is a rectangle cut from the northeast corner of plastic contour sheet from the lower mattress of the bed of Kristen MacDonald.

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit 378, and ask if you can identify that exhibit, sir?

A Yes, sir; I can.

Q What is it?

A These are items 69, 70, and 71nb, which are small portions of the wall directly over the side of the bed of Kristen MacDonald that bore blood stains that were splattered on the wall. These were collected for submission to the laboratory for analysis of the blood. Yes, as listed here, suspected blood stains from west wall of the bedroom--all three of them being the same.

Q Mr. Ivory, I wonder if you would come down from there to the model and point out on the model where it is on the model that you found the last exhibit?

A On the wall?

Q Yes, sir. If you would stand behind it, maybe the jurors can stand up if they cannot see.

A In the bedroom of Kristen MacDonald in this area (indicating) going diagonally in this direction (indicating). That is 69, 70, and 71.

MR. BLACKBURN: Your Honor, I would mark for identification Government Exhibit Number 368.

(Government Exhibit 368 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what has been marked for identification as Government Exhibit Number 368, and ask if you can identify it?

A Yes, sir; I can.

Q What is it?

A This is an item marked by us, 58nb, which is the pink blanket--a part of the bedding on the bed of Kristen MacDonald--again, obtained or marked by Mr. Rowe and myself on the date of collection, 20 February, 1970.

Q If you would, Mr. Ivory, on that photograph, would you point out on that photograph where the blood splattered or suspected blood splattered exhibit was that you were referring to a moment ago?

A On the wall right here (indicating).

MR. BLACKBURN: Your Honor, may I have just

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-23

a moment?

(Counsel confer.)

MR. BLACKBURN: Your Honor, at this time, I would like to move into evidence certain exhibits which I will read out--Exhibit Number 368, 373, 374--I am sorry--373, 364, 375, 371, 358, 381, 375 if I have not mentioned it.

THE COURT: You did one time.

MR. BLACKBURN: And also from this morning, Your Honor, Government Exhibit 101, 102, 103, and 104. At this time, Your Honor, along with the other items previously mentioned, we would move these into evidence.

MR. SEGAL: Your Honor, would you defer the ruling until after our afternoon recess so that Mr. Smith and I can figure out exactly what the Government is talking about.

THE COURT: All right. I will defer that ruling.

MR. BLACKBURN: Your Honor, at this point, that will conclude our Direct Examination. Defense may cross-examine.

THE COURT: All right. Do you want to cross-examine?

MR. SEGAL: Yes, Your Honor, certainly.

lm4
-23

CROSS-EXAMINATION 3:38 p.m.

BY MR. SEGAL:

Q Mr. Ivory, when did you first enter the Army?

A 1958.

Q What had you done prior to entering the Army?

A I was a student. I was a member of the Marine Corps Reserve prior to entering the Army.

Q You say that you were a student. You were a student at what kind of school or institution?

A High school.

Q Had you finished high school before entering the Army?

A Had I? No, sir.

Q How far had you gone in high school?

A Through my senior year.

Q But you did not finish your senior year?

A No, sir.

Q When you say that you were in the Marine Corps Reserve, does that mean that you would go once a week to a drill meeting?

A Yes, sir.

Q You went away in the summer time for two

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BY MR. SEGAL:

Q Mr. Ivory, did you mention at any time yesterday that you recall, that you saw or took through the house Chaplain Mulgeahy (phonetic), the Post-duty chaplain at Fort Bragg, that morning?

A No, sir; I don't think I did.

Q You did not mention it?

A No, sir.

Q Now, having my suggested this to you this morning, does that refresh your mind in any way?

A Yes, it does.

Q And what have you now thought of now that I have mentioned Chaplain Mulgeahy (phonetic) to you?

A I remember--it was so insignificant--that is why I did not recall it.

Q One more person walking through the crime scene was insignificant, right?

A He did not walk through the crime scene.

Q I beg your pardon?

A He did not walk through the crime scene.

Q Did he walk on water?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q This goes to the beginning. Let's go to

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the beginning. When did the chaplain arrive?

A It had to be around 8:00 o'clock, sir.

Q In the morning?

A Yes, sir.

Q Did you see him come in?

A No, sir; I did not.

Q When did you first become aware that the chaplain was there?

A He came in the hallway.

Q Pardon me. Where were you when you first observed him?

A I was back in the hallway. Yes, in the hallway by the doorways to the two bedrooms.

Q So, you were almost to where the master bedroom was?

A Yes, sir.

Q And how did you become aware that the chaplain was there?

A I saw him in the hallway, didn't recognize him, and I asked him who he was. He said he was the chaplain and that he heard--I think he was the Catholic chaplain--and that he had been notified by a neighbor, I think, who was a chaplain that a death had occurred in the house and that he wanted to perform some religious last rites on the bodies.

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Q When you noticed the chaplain there, was there anybody else standing with him?

A I don't recall, sir.

Q As a matter of fact, you don't recall any MP escorting him to the edge of the hallway where you first saw him?

A I don't recall, sir, because I asked him to leave.

Q You asked him to leave?

A Yes.

THE COURT: Now we are approaching our morning recess hour, and I inquire now of counsel, if we should forego our regular recess in the interest of allowing counsel to finish his interrogation, and allow the witness to catch his airplane.

MR. SEGAL: I fully expect to finish in adequate time before the luncheon recess, Your Honor.

THE COURT: Following our normal procedure?

MR. SEGAL: Yes, sir.

THE COURT: We'll take our morning recess now, members of the jury. We''ll come back at 11:30. Remember what I said--don't talk about the case.

(The proceeding was recessed at 11:10 a.m., to reconvene at 11:30 a.m., this same day.)

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F U R T H E R P R O C E E D I N G S 11:30 a.m.

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

THE COURT: All right. Let's go.

(Whereupon,

WILLIAM F. IVORY

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

C R O S S - E X A M I N A T I O N 11:31 a.m.
(resumed)

BY MR. SEGAL:

Q All right, Mr. Ivory, right before the break we were talking about the question of the bloody footprints in the MacDonald house. I want to ask you to examine two photographs which have not been previously referred to. They have been marked during the break as D-24 and D-25 for identification.

(Defendant Exhibit Nos. 24 and 25 were marked for identification.)

BY MR. SEGAL:

Q While Government Counsel is examining it, I will also show you G-30. All right. Let me show you, first of all, the photograph that has been marked D-24 for identification and ask whether you have ever

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2

seen that photograph and, if you have, do you know who took that picture?

MR. BLACKBURN: Your Honor, we would OBJECT at this time to the showing of any photograph of a footprint to this witness.

MR. SEGAL: I know of no reason why not. The Government had the witness testify about the footprints. I want to show him some photographs---

THE COURT: (Interposing) Do you want to be heard on that?

MR. BLACKBURN: Yes, sir.

THE COURT: All right. Come up.

B E N C H C O N F E R E N C E

MR. BLACKBURN: Your Honor, I don't know in what direction the Defendant is going but we want to bring it up. He is getting ready to go into the specific small-scale photographs of the footprint with the ruler beside it. This witness does not have any personal knowledge of the blood types or he is not a print man to measure footprints or fingerprints, and I just think any testimony by this witness with respect to those areas would be off limits.

THE COURT: Has he testified to seeing some footprints?

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MR. BLACKBURN: Yes, sir. He has.

THE COURT: I think he would be a competent witness to say whether or not the photograph illustrated his testimony.

MR. BLACKBURN: Okay.

MR. SEGAL: That is all I intend to go into, Your Honor.

THE COURT: Let's go.

(Bench conference terminated.)

BY MR. SEGAL:

Q Mr. Ivory, have you had a chance to look at D-24?

A Yes, sir.

Q Can you tell us whether you have ever seen that photograph before and, if you have, do you know who the photographer is?

A I recall having seen this photograph before, and I believe it was photographed by Mr. Page.

Q Mr. Page?

A Mr. Page. Yes, sir.

Q That is the third of the photographers?

A That is correct, sir.

Q Is it possible that Mr. Squires, the second photographer, who also took pictures in color might have made that photograph?

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A Not likely, sir.

Q You mean the subject matter indicates to you that probably Mr. Squires would not have been taking pictures of that type?

THE COURT: Do you know anything about this photograph at all, or when it was made, or anything about the photography involved in it?

THE WITNESS: No, sir.

THE COURT: I thought your questions were going to be directed to whether or not he saw a footprint and whether or not this illustrated that.

MR. SEGAL: I just need to establish if he knows which photographer took it.

THE COURT: He said Page to the best of his knowledge. Go ahead.

BY MR. SEGAL:

Q All right, but are you certain that that photo is Page's or can it also be Squires'?

A I think it is very unlikely that it was Squires, sir.

Q All right. What area of the MacDonald house is depicted in that photograph?

A The floor, according to the legend. The floor of the bedroom of Kristen MacDonald.

Q Were you supervising or directing the taking

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of photographs?

A Not this photograph. No, sir.

Q Not that one?

A No, sir.

Q Do you know what is depicted in that photograph which caused Mr. Page or whoever took it to make that particular picture?

A What is in the picture?

Q Yes.

A It is a photograph of a bloody footprint.

Q All right, and, if I may approach you, Mr. Ivory, on this matter--if you will permit me for a moment.

A Certainly.

Q There is a ruler that appears in this photograph. Do you know whether the ruler was actually placed down on the floor when the photograph was taken or whether that was done in the laboratory when the print was made?

A Sir, I was not present when the photo was exposed. I assume it was placed next to the footprint.

Q All right. Do you see in this matter certain ridge lines or marks here in what I would call directly beneath the seven-inch mark on the ruler about one-and-a-quarter inches below that? Do you see those

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lines?

A Yes, sir. If you hold the photo like that, it almost looks like it is in the configuration of the letter "H."

Q All right. Thank you very much. We will put that down, and I would like to have you examine the second of those two photographs. Have you had a chance to do that, Mr. Ivory?

A Yes, sir.

Q And have you seen that photograph before and do you know who took the picture?

A Yes, sir. I have seen the photograph before and I believe it was taken by Mr. Squires.

Q And what is depicted in that photograph?

A The floor of the kitchen of the MacDonald residence and it shows the telephone receiver hanging down at the end of the cord and a trash can.

Q What is on the floor, if anything?

A And two circled areas and in the circled areas was suspected blood stains.

Q Could you hold that picture up so that members of the jury could see it and point to the circled areas that you are referring to? As a matter of fact, I will hold it for you so that you will be free to point.

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A There is one here just by the entrance to the kitchen, and there is another one here on the left side of the photo near the center--the left center of the photo.

Q And in regard to the first of the circled items on the photo: that circle was actually drawn on the linoleum. Is that right?

A That is correct, sir.

Q Now, actually, you say, an inch to the left and about a quarter inch down there is also some other marks on the floor. Do you see those--some lines, some ridge lines?

A Sir, I think that is an imperfection in the print.

Q Are you certain that is an imperfection in the print or that is something on the floor that is not circled?

A If there is something on the floor, it would have been circled, sir. I believe it is something on the print.

Q You said you have seen this photograph, D-25, before?

A That is correct, sir.

Q I assume you have noticed those lines which appear here that I am pointing to that are not circled.

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You have noticed them before. Haven't you?

A I have made no specific note of them. No, sir. I am sure I have seen them by looking at the photograph.

Q Did you ever call it to the attention of Counsel for the Government or the photographer that you thought the picture had something on it that wasn't on the floor?

A No, sir.

MR. BLACKBURN: We would OBJECT.

THE COURT: I'll SUSTAIN it.

BY MR. SEGAL:

Q Let's go to a different matter if we may, Mr. Ivory. When you took charge of this investigation, you did not know what cause, what motive, what reason persons had to kill the members of the MacDonald family and caused Dr. MacDonald to be stabbed and injured. Is that right?

MR. BLACKBURN: OBJECTION, Your Honor.

THE COURT: I will SUSTAIN it as to the form of the question.

BY MR. SEGAL:

Q Mr. Ivory, when you took charge of this investigation, you did not know what were the circumstances under which the people in the MacDonald

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family were killed and the circumstances under which Dr. MacDonald received his injuries.

A I'm sorry, sir. Would you repeat that?

Q Did you know the circumstances---

A (Interposing) At what time, please.

Q At which they were killed--when you came upon the scene at 4:00 in the morning or so.

A Did I know the manner in which they had been killed?

Q Not the manner. The circumstances you know--why they had been killed.

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: No, sir.

BY MR. SEGAL:

Q Was there any possible reasons for these injuries or death--possibly a robbery; that is, a theft of property in the MacDonald house during which people may have been killed or injured?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did you or did you not consider in investigating this crime scene whether you might have to look for clues to indicate whether a robbery had

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taken place?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q What is your answer?

A Could you ask the question again, please?

Q When you examined the physical evidence in the crime scene, when you looked at it, were you considering the possibility that you might have to look for evidence of a robbery?

A Yes, sir.

Q When on that morning or that day did you make an inventory of the contents or the valuables in the MacDonald house?

A I think we were more at that time concerned with collecting the physical evidence because in looking at the house and around the house the items of apparent monetary value which were in plain, open view had not been molested--vandalized--the stereo set, the gun which was open to view within the closet, the silver items that were in the china cabinet, the purse and wallet which lay on the desk in the living room, other items of normal household items that would perhaps--that great store of medical equipment--the syringes, the medications, everything that was there

apparently to us unmolested, not vandalized, not torn apart. The house was not apparently searched for anything. It did not become apparent at that time in my mind that anything had been stolen, sir.

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pp-1

BY MR. SEGAL:

Q That is because you did not see any signs that the house had been ransacked, is that not a simple answer?

A That is correct, sir.

Q Of course--did it occur to you that perhaps the persons who had done this might have known where to go in the house for valuables and didn't have to ransack the house?

A Perhaps, sir, but that would have been a little inconsistent with what was told to us as the story of Dr. MacDonald as to what occurred.

Q Did Dr. MacDonald tell you whether or not he knew the intruders had taken anything from his house or not?

A I didn't speak to him at all, sir, but he had not mentioned that to other agents, no.

Q How would Dr. MacDonald have been a source to you of whether anything of value, any drug or medicine, any valuable ring had been taken, if he had not yet been back in the house to look for it?

A In my view as I observed the house and the things in the house, it did not appear to have been searched, ransacked, nor items of apparent value stolen or broken.

#12
pp-2

Q And you just assumed that the open drawer in the master bedroom could not have possibly been done by anybody looking for anything, is that right?

A Sir, the drawer wasn't open. It did occur that perhaps there was something in the drawer that needed scrutiny, which is why it was opened and looked into. But the circumstances as described by the people who interviewed Dr. MacDonald that morning in the hospital, as to these--description of the people, the manner in which he maintained he was attacked--it appeared more that it was people that were--that you would expect to be running through the house in a frenzy, vandalism-type method, breaking things, stealing things, perhaps going after those items in the medical cabinet or the medical storage area he had.

But it did not appear, sir, that from what we were told of what transpired with the initial interviews of Dr. MacDonald, that these were the type of persons who would come in and open a drawer, perhaps steal something and close it again, or avoid taking the weapons that were in open view, the valuable stereo equipment, the television set that could have been wheeled out.

The scene as it appeared to me and other investigators did not appear to have been--if we can call

#12
pp-3

the house the victim--the victim of being intruded into by these persons--these--a minimum of four persons --for the purpose of stealing something. If it had been I am sure that they would have taken more than what may have been hidden somewhere in the drawer.

To my mind, sir, in my opinion, at that time and now, that there was no larceny in that house, like persons coming in, attacking him and stealing things like that. I think their target would more readily have been the items of apparent value. That stereo set was a very nice stereo set; the television was nice; the gun was nice.

Other items around the house--the silver-plate--anything that would have been the obvious target of people coming in that house like that were still in place, not molested, not vandalised, not taken. That's all I can say about that subject, sir.

Q Are you finished?

A I'm quite finished.

Q All right, am I correct in saying that from all those words that your analysis was that people did not come into the house for the purpose of stealing anything, is that what you said?

A That is what I said, sir.

Q Did it ever occur to you in your analytical

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pp-4

approach to this crime that maybe they came in for a different purpose, that while they were there snatched, say, a ring off the top of the dresser or desk? Did that ever occur to you, sir?

MR. BLACKBURN: OBJECTION.

THE COURT: Well, I'll have to SUSTAIN the objection. I don't know that this witness has said himself that anybody did come in the house. Your question assumes that they did.

MR. SEGAL: If Your Honor pleases, his prior answer at length explained his thinking about how he theorized the case and why he approached the physical investigation in that way.

THE COURT: If you want to approach it on a theoretical basis, all right, but I sustained the objection to the form of this question which assumed that the witness was going to say that they did come in. Do you want to start over?

BY MR. SEGAL:

Q Mr. Ivory, did you at any time on that first day, February 17, consider the theory that perhaps someone had come into the house, not with the intention of stealing something but might have taken something while they were there, just spontaneously?

A I am sure it could have occurred to me,

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pp-5

which is--would have occurred to me at the same time that I was making these observations, that nothing of apparent value was stolen--of obvious value was stolen.

Q Did you, or any other investigator, go to Dr. MacDonald anytime between February 17, 1970 to April 6, 1970, and ask him to come back to the house with you to inventory small valuables such as rings, any cash, or for him to look at the medicine in the closet in the hall?

A No, sir.

Q That was because you had a preconceived notion about how or why this crime took place, isn't that true?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, one of the things that you did, Mr. Ivory, was to collect fibers in the house from what you believed to be the blue pajama top, is that correct?

A That is correct, sir.

Q Would you tell us how many fibers you found which you believe might have come from the blue pajama top? How many did you collect in the master bedroom?

A To give you an accurate account I would probably have to refer to some spread sheet or document

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pp-6

that may have been prepared, but I can give you perhaps some round figures of---

Q (Interposing) I would prefer an accurate count, Mr. Ivory. You may refer to whatever you need.

A I'd have to confer with Government counsel to find out where I could find such document or spread sheet, or whatever, sir.

MR. SEGAL: I have no objection to that, Your Honor. May we do that right now?

THE COURT: Well, how long will it take?

MR. SEGAL: All right, I have a simpler method, Mr. Blackburn.

MR. BLACKBURN: Excuse me. May we approach the bench?

THE COURT: No, let's see what the simpler method is.

BY MR. SEGAL:

Q Mr. Ivory, your recollection about these matters was fairly fresh, was it not, when you testified in July of 1970 at the Article 32 proceedings?

A Yes, sir, nine years ago it certainly was.

Q And would it refresh your recollection as to the number of fibers in the house if I were to read to you from a portion of your testimony in which you give

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us account?

A Please do, sir.

Q Do you think it would refresh your recollection?

A Perhaps.

Q Referring to page 662 of the Article 32 proceedings transcript, and I want to read to you from --a question was put to you by Captain Summers, military prosecuter, and then read you the answer and ask whether either you recall the question and answer or whether you accept the stenographer's version, all right?

A Yes, sir.

Q "Question: What does--"--and the subject matter is fibers--"What does 'numerous' mean to you? Would you say, more than ten?

Answer: Oh, yes."

Do you remember that, or do you accept the transcript?

A I accept the transcript, sir.

Q "Question: More than 20?

Answer: Yes."

A I accept it, sir.

Q Question by Colonel Rock, the Article 32 officer:

"Just tell us approximately what number?

#12
pp-8

Answer: I would say approximately 20, 25."

Do you accept the answer?

A Yes, sir.

Q "Question: Do you realize it is an approximation?" Going on by Captain Summers, "You said, as I understand it --how many did you say were found in the hall?

Answer: One, sir."

Now, with that in mind, would you accept the transcript that as far as the bed was concerned that you found apparently not less than 20 nor more than 25 fibers?

A No, sir.

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BY MR. SEGAL:

Q You would not accept the transcript?

A I believe it said that it was an approximation, and at the time, I was speaking in approximate terms.

Q Well, since you were very much engaged in the collection of the scientific and physical evidence in this case, did you not keep account--an actual accurate account of the number of fibers found in the master bedroom that you believe came from the blue pajama top?

A Yes, sir, along with the evidence collection and with the people at the lab making account of them; yes, sir. I can give you an approximate figure.

Q Oh, no, you gave us the approximate figure when your memory was pretty good in 1970. You would not want to suggest that your memory is better on that subject today; do you?

MR. BLACKBURN: OBJECTION, Your Honor.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Is your memory different today on the subject than it was in 1970 when you testified?

A Perhaps, sir.

Q Now, you say in your testimony that you also

found fibers in some other place besides the master bedroom--blue fibers that you believe came from the blue pajama top?

A They were found in other rooms, yes, sir.

Q How about in or around the living room or near the living room?

A No, sir.

Q Does that include the steps to the hallway? Did you find any fibers there?

A No, sir.

Q Did you tell us yesterday that you and Mr. Medlin searched for fibers there?

A Yes, sir; quite closely.

Q Beg your pardon?

A Quite closely; yes, sir.

Q I believe you told us that you and he were down on the floor together looking for fibers; is that right?

A That is correct, sir.

Q Were you down on your hands and knees parting the fibers in the carpet to do so?

A I believe I stated that; yes, sir.

Q Mr. Medlin used a magnifying glass; correct?

A I believe I said that; yes, sir.

Q What about you?

A I did not.

Q Where was your magnifying glass?

A I did not have a magnifying glass with me down on that floor.

Q Did you have one out in the car?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: Well, he said yesterday that he carried his kit with him--one of the pieces of paraphernalia being a magnifying glass, so apparently, it was somewhere. You have established that he didn't have it with him down there on the floor. I will SUSTAIN the OBJECTION.

BY MR. SEGAL:

Q Was there some reason why you did not use a magnifying glass when you were looking at the living room floor?

A I felt no need to at the time, sir, as I recall.

Q You believed that you could adequately find fibers by just looking with your naked eye?

A It was very easy to find them in that deep-pile carpet in the master bedroom. I saw no reason why it shouldn't be just as easy to find them in a very short-pile carpet.

Q Well, what you found in the master bedroom were fibers that were lying on the surface of the shag rug; is that correct?

A That is correct.

Q Now, Mr. Ivory, there are scientific methods for collecting evidence such as fibers and hairs that you are aware of; aren't there?

A I am afraid I don't know what you mean, sir.

Q In the courses you have taken and the manuals that you have read, have you never become aware that there is equipment specially-designed and not terribly expensive for the collection of fibers and hairs and things that are in rugs and on floors? Are you aware of such material?

A I don't know specifically what you are speaking of, sir.

Q Do you have anything at all in your mind that you know of that can be used and designed for scientific crime investigation?

A Scientific crime investigation? Sir, I wish you would be more specific and say, "Do you know of this particular item?" I could perhaps answer you better in that manner.

Q Did you ever hear of a thing called a trap vacuum cleaner?

A Trap vacuum cleaner?

Q Yes.

A Not in those terms. Of course, I have heard of a vacuum cleaner.

Q All right, let me describe a trap vacuum cleaner. It is a device which is just like a vacuum cleaner only it has a filter in it. It does not take the particles sucked up on the floor into the cannister for debris. It is caught in a white filter paper for a scientific investigator to recover them. Have you ever heard of that device by any name?

A Yes, sir, by the name of vacuum cleaner with a clean bag in it.

Q All right. What about just using a good old clean bag vacuum cleaner to recover hairs and fibers on the floor there?

A Because of the close examination we gave to that carpet, we did not feel it was necessary to do that.

Q I see. Scientific investigators who use trap vacuum cleaners are wasting their time in your judgment?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Do you think that is a useful tool that would have helped you in recovering hairs and fibers from the MacDonald house?

A No, sir.

Q It wouldn't have helped you. Do you believe that you got all the fibers up that were related to this case--all the blue fibers?

A Sir, I thought we were referring to that area in the living room.

Q Yes, sir. Did you get all the blue fibers that were there?

A Yes, sir.

Q You say that you got none?

A Exactly, sir.

Q Did you get all the blue fibers off the rug in the master bedroom back in 1970?

A No, sir. I am sure if you go there right now, you could probably find more.

Q Today, nine years later, we could still go back and pick up physical evidence in this case is your statement; right?

A That is correct, sir.

Q Blue fibers that you think came from the pajama top on Mrs. MacDonald's body?

A Correct, sir.

Q Will you tell us why they were not collected by you or the team of investigators from Fort Gordon in 1970, and processed for evidence in this case?

A We felt that we collected enough of the sample to represent those fibers that were spread throughout the entire room; and again, us going down in that deep-pile carpet at subsequent times, you could see more fibers still there. I am sure if you were to go right now to the house, you would probably find somewhere in that deep-pile carpet additional threads as were found within the body outline and around the body.

Q Are we talking about the same carpet that we have had marked for the Government as 1124? Is this the carpet you are talking about?

A Yes, sir.

Q That somehow deeper and deeper into the pile of this carpet if we just keep on digging, there is likely there are blue fibers sitting back there right this minute in the master bedroom of the MacDonald house?

MR. BLACKBURN: Your Honor, we would OBJECT. He has answered that question.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Those fibers you say are still at 544 Castle Drive to this day in the master bedroom, they are not all

in the body outline that you found of Mrs. MacDonald; are they?

A No, sir; they are not.

Q They are all over that room; right?

A That is correct.

Q That does not fit with your theory of the case, does it, however, to collect those?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: I will SUSTAIN that one.

BY MR. SEGAL:

Q I thought I understood you to say that you exercised great care to tell everyone not to step on things like the blood spots on the floor and fibers on the floor; is that right?

A That is correct.

Q But then when you gathered up the fibers that you say were in or near the body outline, you stopped collecting; is that right?

A That is correct.

Q So, people that had been walking through that as part of the Government's investigation since 1970, stepping into whatever fibers are there; is that right also?

A That is correct.

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Q Is that your idea of how to process this crime consistent with the training and the manuals you have read and the books you know about in this field; is that what your training told you?

MR. BLACKBURN: OBJECTION.

THE COURT: OBJECTION SUSTAINED.

BY MR. SEGAL:

Q Would you tell us why you did not collect the balance of those fibers lying in that room?

MR. BLACKBURN: OBJECTION. He has answered that question.

THE COURT: I will SUSTAIN it.

BY MR. SEGAL:

Q Now, Mr. Ivory, you were shown when you first testified on Friday a great many pieces of physical evidence by the Government. Do you recall that?

A Yes, sir.

Q And piece after piece, you told us, was today nine years after you first collected in the same condition as when you originally collected it except for what some laboratory people did; is that right?

A Laboratory people, markings that were placed on it, the cuttings that were made: it appeared in the general condition as when I first saw it except, of course, when I first saw it, the fabric was wet--not dry.

The color is different, perhaps, in a shade of the blood being dried a darker brown than it was at the time, but in general appearance, yes, sir, those items appear to me as I first observed them.

#14
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BY MR. SEGAL:

Q You mean the color is different on some of these items?

A Where the blood has dried; yes, sir.

Q It is all marked up by laboratory technicians, you say?

A That is correct. I should say not all areas of the item are discolored.

Q Let's take a look at one of those. May we have the blue pajama top, please, if you know the number?

MR. MURTAGH: Government 101.

MR. SEGAL: I would not want to rummage around in the Government's evidence.

MR. BLACKBURN: I think it is right there; I believe that is it.

BY MR. SEGAL:

Q Mr. Ivory, did you pick up this pajama top off of Mrs. MacDonald's body and actually hold it up for examination?

A No, sir.

Q Do you know which of the holes in this garment today were made by the laboratory technicians and which may have come from some other source?

A Sir, that is probably better asked of the

#14
tdb
2

laboratory technicians.

Q No, no, I am asking you how you purport to testify last Friday that this garment is in the same condition as you saw it except for the markings of the lab people, and where they cut some items and circled some items. How do you know that it is otherwise in the same condition?

A It was not opened and held up in that room. It was held up and inspected in other areas, not in the house, but in the evidence room at Fort Bragg. There were no square cuts in it at that time.

Q Do you have reason to believe that the various circled items on this garment--the items circled--were made by laboratory technicians?

A Yes, sir.

Q What about other holes or marks that are not circled on this garment. Do you know how they got there?

A I assume they are the laboratory cuts or the square cuts, if that is what you are referring to, sir.

Q I don't know what we were referring to, I just asked whether or not there are holes here that do not have numbers on them and are not circled, and I asked you whether you know, of your own personal

#14
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3

knowledge, how they got there.

A Sir, I think that is better asked of the laboratory personnel than myself.

Q I only want to know, then, how you could sit there last Friday and tell us that this garment is in the same condition, if you cannot account for some of the holes that are not marked by technicians' marks.

MR. BLACKBURN: Your Honor, we would OBJECT.

THE WITNESS: Would you show me one of the holes, please?

MR. SEGAL: I will.

(Counsel confer.)

BY MR. SEGAL:

Q Now there is down in what I would describe as the right side, about mid-section, down about two inches from the bottom, I'm sorry--I've got the wrong hole here. Let me just put this down and spread it out for a minute.

You have made reference to certain square holes, here is one of them. I've got my thumb on it--can you take a look at this please, Mr. Ivory? Was this present in the garment, that square hole, when you picked it up on February 17th, 1970?

A Sir, would you point to which one you were

#14
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4

talking about ?

Q I'm sorry, Mr. Ivory. Let me show you again. This square hole. The question was: was that present when you picked up the garment on February 17, 1970?

A In my mind; no, sir.

Q Could you tell us again how you actually picked that garment up from the body of Mrs. MacDonald?

A Let's make a general approximation of this being the gathered up material.

Q All right, an approximation of that?

A That was on the body, and this be the part that was off to the side.

Q Yes?

A I lifted this in that manner, and with the tweezers, in a manner like this, and into a plastic bag, which Mr. Shaw slid underneath. I put it in there.

Q Now you say you used tweezers to do that?

A Yes, sir.

Q How many tweezers did you use, sir?

A Two, sir.

Q Let me offer you a pair of tweezers and see whether you could show us.

A Those are real tweezers. I am talking about the long ones.

#14
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5

Q Tongs?

A Forceps, they call them.

Q Forceps?

A The longer---

Q (Interposing) I see, would you do it just one more time for us? Using your fingers, if you will, as you would use the tongs or forceps?

A I thought I just did.

Q A little more slowly, please, arrange the garment?

(Witness complies.)

Q You picked up the extended arm and you fold it over the pajama top; is that right?

A That is correct.

Q Now are you using your forceps again?

A Yes, sir.

Q To do that, you have gathered together some of the material; is that right? Between your fingers, which are the forceps; is that right?

A Yes, sir.

Q How many folds have you gathered together?

A I have no idea, sir.

Q You were just trying to lift it, right?

A That is correct.

Q You weren't concerned with how many folds

#14
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6

you had within the tongs; is that right?

A That is correct, sir.

Q How long are those tongs, or forceps, whatever they are?

A Four or five inches long. Longer than my fingers; perhaps this long.

Q It looks more like six or eight inches, would you say?

A I would say five to six inches perhaps; I don't know. Give me a ruler and I can give you an approximation. They were the standard--I call them tweezers, perhaps they're called forceps.

Q Now if you will hold the ruler as if it were a pair of tongs and tell us how you grabbed hold of the pajama top?

A If I can give you the approximation of the length, I would say approximately six inches, six or six and a half inches. I am sure he could tell you how long they are--they are medical equipment.

Q Go ahead and do that.

A I can't do it with that.

Q I imagine your fingers are somewhat longer. You pick it up, and I will hold this bag for you, and ask you to show us how you dropped it into the bag. Was the bag as large as the one I am holding here?

or smaller?

A It is about the same size.

Q All right, if the members of the jury will excuse me. Show us what you did. Was this how close Mr. Shaw was?

#14
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7

A No, Mr. Shaw slid under me as I lifted it up. Slide the bag under me.

Q I don't imagine there was any desk there?

A There was a body there.

Q Let's do it here, if we may, Your Honor. Shall we do it here? I think it will be helpful, Mr. Ivory. Now we are to imagine the body is where, please?

A Let's imagine the body is here.

Q The same as Steve was lying on the floor?

A No, this would be the head area up here.

Q Why don't we do it as we just saw the young man?

A I don't know.

Q Mr. Shaw was on the same side as you?

A Yes, sir.

Q We have Steve in approximately the right position? All right, and the arm was extended here; is that right?

A Yes.

#14
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8

Q You had folded that over?

A Yes.

Q Mr. Shaw got down on the floor?

A Yes; gathered it like this, yes, on the body.

Q Why don't you take it and show me what he did with it?

A He did it like that.

Q And then what?

A And then put it to the side.

Q Did he close it?

A Yes.

Q Show me what he did.

(Witness complies.)

Q Closed it like that? And where did he put it?

A Off to the side. I don't recall specifically where he put it.

Q Near other evidence?

A It was collected in a like manner.

Q You put it down like that?

A Sir, I did not see him put it down. I don't know where he put it down. I would assume he put it down like that.

Q At that time, you had no idea that what you

were doing in terms of the folds of the pajamas together and whatever blood touched each other, had any importance in this case; did you?

A No, sir.

MR. BLACKBURN: OBJECTION, Your Honor.

#14
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9

MR. SEGAL: Asked and answered.

THE COURT: He answered it, did he not?

jb1C15

BY MR. SEGAL:

Q I wanted to clear up something else from yesterday. I asked you when we had the lights out whether or not you had been checking for fibers in the living room around 8:00 a.m. in the morning. My recollection was you said when we had the lights out that I was wrong in that regard?

A That is correct, sir.

Q Do you recall that question and answer, and do you recall telling me I was wrong and you believed you were looking for fibers at 8:00 a.m.?

A At that area of the living room; that is correct, sir.

Q Did you collect fibers at any place at 8:00 a.m.?

A No, sir. I don't believe so.

Q When do you think that you collected the fibers; that is, what hour you collected the fibers in the living room--not the living room; I beg your pardon--in the master bedroom?

A Shortly after 8:00 a.m. Excuse me.

Q Shortly after 8:00 a.m.?

A They were first observed there shortly after 8:00 a.m.

Q When did you start the collection of the

jb2Cl5

fibers?

A I don't recall if we collected them immediately thereafter or if we waited until the lab team--I don't recall at this moment, sir.

Q Well, did you start looking for fibers about 8:00 a.m. in the morning?

A Yes, sir.

Q Did you find them at 8:00 a.m. in the morning?

A Yes, sir.

Q Did you collect them at 8:00 a.m. in the morning?

A I don't recall, sir, if we collected them then or if we opted to wait for the laboratory team. I don't recall at this time.

Q Well, Mr. Ivory, how about the blood in the living room? When did you look for blood spots in the living room? What time was that?

A It was a constant search from the time the room was first looked at until the laboratory team left and beyond.

Q I can't hear you, Mr. Ivory.

A Until the time the laboratory team departed for Georgia and beyond.

Q How could you be looking for blood spots

jb3C15

after the team had already walked through the house so often? There was a time when you went through the house, collected the blood and said, "Okay, let's do the next part of the processing," wasn't there? Wasn't there a time when you arrived at the decision you had finished the blood collection and now you were ready to do something else in the house?

A No, sir. It was a constant effort all the time.

Q I see.

A Of fingerprinting, collecting blood evidence, Mr. Page with his photographic equipment.

Q Was there any other blood found in the living room besides the blood on Dr. MacDonald's glasses that we saw yesterday when the photograph was projected on the screen?

A Yes, sir; there was.

Q Yesterday when I suggested that to you, you told me I was wrong; didn't you?

A No, sir. I have had time now to stop and think about it, because I know the way you ask questions that you have got something behind your question.

Q I hope there is, Mr. Ivory. I hope there is really a point to some of this.

jb4C15

A Me too.

Q What did you recall since I asked you this question yesterday?

A That again where the coffee table was upturned, that Esquire magazine that I looked at earlier--perhaps I should have brought it up at that time when I was looking at the magazine. But it did not occur to me to at that time. The magazine--of course, you cannot see it from the photograph because the magazine was covered all but the letters "E-s." But over the letters "q-u" there was in probably a configuration of a finger--the size of a finger--a bloody smear on the upper edges of the pages.

Q All right, sir. That is the second place that there was blood in the MacDonald living room; is that right? On the glasses and on the magazine?

A Yes, sir.

Q Now, was there a third place that there was blood found in the MacDonald living room?

A No, sir; not that I recall.

Q Mr. Ivory, wasn't there some blood found on the steps here? You can come down if you like, Mr. Ivory.

A As I recall, sir, the closest blood stains on the floor to the living room were on the upper stair,

jb5C15

or not the stair, but in the hallway itself.

Q You were putting your finger, I guess, somewhere inside the doorjamb, if there had been a door--that opening in the wall where there would have been a door? You were putting your finger there; is that right?

A Yes.

Q But you didn't consider that to be a blood spot in the living room but actually in the hallway?

A The hallway; yes, sir.

Q All right. Then there are at least three blood spots that you know of that are certainly--two in the living room and one close by here on the jamb--on the top step leading into this hallway; is that right?

A It is in the hallway, not leading into the hallway.

Q How far back--now, you were investigating--how far back from the rise of the step into the hallway?

MR. BLACKBURN: Your Honor, we would OBJECT. He has already testified where he saw it.

MR. SEGAL: Not in measurements.

THE COURT: Let him tell us one more time.

jb6C15

THE WITNESS: Can I see a photograph of the upper landing?

MR. SEGAL: Which photograph would you like?

THE WITNESS: The change in the pattern of the wood.

MR. SEGAL: The Squires photographs or Page?

THE WITNESS: It makes absolutely no difference.

MR. BLACKBURN: Your Honor, may I suggest while Mr. Segal is showing the photographs to the witness that Mr. Segal and I approach the Bench?

THE COURT: All right.

B E N C H C O N F E R E N C E

MR. BLACKBURN: I just wanted to inquire a little bit about the time because we are going to have a little redirect but not much.

MR. SEGAL: There will be time for that.

THE COURT: Well, I am going to keep him here until it is over.

MR. SEGAL: Judge, no problem with time.

jb7C15

MR. BLACKBURN: I just wanted to say that if we could---

THE COURT: (Interposing) So that you can examine my comminication with this witness as to its relevancy to this case and the tennis shoes that I want him to look for in Germany. I want Counsel to see the entire thing.

MR. BLACKBURN: I might also say--this is off the record. (Discussion off the record.)

MR. SEGAL: I will say, Your Honor, I expect we will finish within fifteen or twenty minutes. There should be at least twenty minutes for the Government. I will stop at quarter of 1:00 at least.

THE COURT: All right. We are going to finish with this witness before we go to lunch.

MR. BLACKBURN: Okay.

(Bench conference terminated.)

THE COURT: Any further questions of this witness?

BY MR. SEGAL:

Q Mr. Ivory, have you had a chance to look at the photographs?

A Sir, I did not find the photograph that I was looking for in those. But as I recall, the stairs or the step going up to the landing to the hallway--

jb8C15

I believe there was a strip of wood at the end of the hallway running in this direction from wall to wall, and then immediately the boards running up the hallway, as I recall.

Q All right. And in reference to those boards--that is the one that runs parallel to the living room wall--with reference to that board, how far or where was that spot located?

A I would say just beyond that strip of wood that runs parallel with the wall there.

Q All right. Thank you. Now, the bedroom contained this pile of bedclothes that you have described for us that is marked by the white little plastic shield in the model there. Do you recall that--the pile of bedclothes in the bedroom?

A Yes, sir.

Q Do you know which of the Government Exhibits contain all the clothes that were in that pile?

A No, sir.

#16
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(Counsel confer.)

BY MR. SEGAL:

Q With the assistance of Mr. Murtagh, he has produced for us the bedspread and sheet. Now, the only thing that is not going to be in here is the plastic vial with the piece of latex.

A I understand.

Q It is easier to work that way. Otherwise, this represents the items that you believe were in that pile on the floor of the master bedroom?

A Yes, sir.

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Would you please come down here, Mr. Ivory? We're almost really finished with the questioning in this matter. And if you will try to arrange these bedclothes as you recall them, it will be helpful, and you may make reference to any photographs, if necessary. Mr. Ivory, I think that there is a photo here that may be helpful to you.

A I have one here--Government Exhibit 211. I'm sure I can't arrange it the same---

Q (Interposing) I'm sorry.

A I can't arrange the sheets so that the

#16
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stains are the same.

Q Just show us approximately how the sheet and the bedspread were arranged. Now you are using Government photo 211 to assist you in that regard.

A (Witness complies.) I would have to say that is approximately.

Q All right. I am holding you to an approximation really. I think that is representational enough for the purpose. If you would stay there, Mr. Ivory. You then determined after you had seen this in the house for a while that it ought to be collected for the purpose of laboratory examination. Will you please now show us using your fingers as the tongs you used how you collected these pieces of evidence? And I will hold the bag as Mr. Shaw must have done then.

MR. SEGAL: Excuse me. May I just move this model back?

MR. BLACKBURN: Mr. Segal, I might be able to clarify something.

(Counsel confer.)

BY MR. SEGAL:

Q Mr. Ivory, the plastic bag that I am using--do you have one? Counsel for the Government suggests that I use what has been marked for identification previously as 355.

#16
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MR. MURTAGH: That is the exhibit that is in it.

MR. SEGAL: All right.

BY MR. SEGAL:

Q Does this look like--I'm sorry. We have put you in an awkward position, Mr. Ivory. Does this position look like the type and size bag Mr. Shaw used to help you recover these items?

A Yes, sir.

Q In fact, it may even be the very bag or do you know?

A I have no idea.

Q Did Mr. Shaw hold the bag open in some fashion like I am?

A Yes.

Q Now, show us which item you recovered first and, if you would, illustrate with your fingers again how you did it and I will try and assist subject to your direction.

A Tweezers were not used on these items.

Q All right. What did you use?

A My hands.

Q All right.

A If you would get down.

Q You want me as Mr. Shaw to get down on the

#16
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4

floor as I am now?

A If you could position right about there.

Q All right.

(Witness complies.)

Q Now let me describe. You have compressed between your hands the sheet and the bedspread. Is that right?

A Well, sir, they were together.

Q When you say "together," I am not sure I understand what that means.

A Well, there were overlapping parts of one being over the other perhaps like this. They were not two separate and distinct piles. They were together.

Q Right. You compressed your hands and gathered them up. Is that right?

A That is correct.

Q Now, you go ahead and do that. We will try to describe it.

A (Witness complies.) I know I took pains to avoid the blood stains, picked them up in clean areas.

Q You lifted it up slightly off the floor and did Mr. Shaw then slide the bag underneath?

A Slid the bag underneath.

Q All right.

A All right. Slide it underneath.

#16
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Q All right. Will you take the bag and show us what Mr. Shaw did?

A Something approximately like this.

Q All right. Put it up here on the table. And that was how it was collected and put aside?

A That is right.

Q Thank you very much. Now, in addition to fibers being found in the house, Mr. Ivory, there were also some human hairs found in places that were considered to be potentially of evidential value. Is that right?

A Would you go over that again, please, sir?

Q Yes. In addition to fibers, there were human hairs found in the house at places where you thought they might have some evidential value?

A Yes, sir.

Q And you realized that you wanted to be able to make a comparison between these hairs that were found in the house and, say, hairs of the members of the MacDonald family. Did you realize that you wanted to do that?

A Yes, sir.

Q Did you have any CID agent or did you yourself have samples cut from the hair of Colette, Kristen, or Kimberly MacDonald for the purpose of making

#16
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6

hair comparisons?

A Sir, I did not personally have it done nor did I personally request it. That is usually a part of the normal procedure in an autopsy of a violent death--to obtain fingernail scrapings and samples of hair.

Q First of all, I'm talking about hair samples so that you knew whose hair it came from so you can compare it with unidentified hairs in the house.

A Yes, sir. That is what I am talking about.

Q Did you ask anyone or direct anyone to make sure they were at the autopsy or at the hospital and get samples of hair from the bodies of Colette, Kristen, and Kimberly MacDonald?

A I did not feel it was necessary to ask that as it was considered normal procedure.

Q Was it done, in fact, at the autopsy of these people?

A I believe so, sir.

Q In 1970 you had some reason to believe that someone took hair samples from the bodies of Colette, Kimberly, and Kristen MacDonald?

A My memory is foggy in that area.

Q May I suggest it was not until the bodies were exhumed by the Government in 1974 that anybody had a sample from the bodies of those people?

#16
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A Again, my recollection is foggy in that area. I know we got fingernail scrapings. I am positive of that. I thought we had some hair samples.

Q You just assumed that somebody at the autopsy would get a sample from the head of, say, Mrs. MacDonald and they could then put it in some container and say we know where this came from. You assumed they were going to do that?

MR. BLACKBURN: Your Honor, we OBJECT. He has already answered that question.

MR. SEGAL: Not whether he made that assumption, Your Honor.

THE COURT: OVERRULED.

THE WITNESS: Ask the question again, please, sir.

BY MR. SEGAL:

Q You assumed someone was going to do that-- that is, take samples from the bodies of those persons at the autopsy?

A Yes, sir.

Q But it was not in fact done at the autopsy?

A I am relying on your word on that, sir.

Q All right. What about Dr. MacDonald? You ordered samples of his hair to compare to these unidentified hairs found in the house. Didn't you?

#16
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8

A That is correct, sir.

Q When was that sample taken from Dr. MacDonald?

A I don't remember the date, sir.

Q Would it have been in the middle of the Article 32 proceedings in July of 1970?

A It was around that time because I remember you were there.

Q Were you present when the hair samples were taken from Dr. MacDonald?

A No, sir. I was not.

Q So it was not until at least two months after the military proceedings had started that any arrangements were made to try and get hair samples from Dr. MacDonald?

A That is correct, sir, but you have to take into consideration the scope of the examinations that were being done by the forensic people in our crime laboratory. Everything could not have been done within a matter of days or weeks. All the examinations that were scheduled in this case, you can be sure, that they were calling from time to time saying we may need this; we may need that. That could have been the occurrences during that time.

BY MR. SEGAL:

Q Oh, Mr. Ivory, you know that the CID Consolidated Laboratory Report which represents the findings of the laboratory for all the physical evidence was done on March 29th--March of 1970?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did you see the Consolidated Lab Report from the CID Laboratory?

A Sir, that is the Consolidated Report of the reports to that date.

Q They were just too busy to get around to doing it before; is that what you are telling us?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Mr. Ivory, under what circumstances were the hair samples obtained from Dr. MacDonald in 1970?

A Please go over that again, please.

Q Under what circumstances were the hair samples obtained from Dr. MacDonald in 1970?

A Subsequent to a search warrant issued by

some official at Fort Bragg.

Q Yes, what happened?

A There was resistance to the taking of the samples.

Q By whom? Dr. MacDonald?

A As I recall.

Q Do you recall?

A As I recall.

Q Let me refresh your recollection and ask you the following question. Were you present when a military police officer stopped an automobile---

MR. BLACKBURN: (Interposing) OBJECTION.

MR. SEGAL: I am asking if he was present at a scene.

BY MR. SEGAL:

Q In which Dr. MacDonald was riding with myself, Attorney Dennis Eisman, and his military escort officer; were you present?

A No, sir. I simply heard of the report of the incident at the car and the assault upon the CID agent by Dr. MacDonald, but I was not there---

Q (Interposing) Stop right there, Mr. Ivory. I ask you once more---

THE COURT: (Interposing) Wait a minute.

MR. SEGAL: Your Honor---

THE COURT: (Interposing) Were you through with your answer?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, you may ask him.

BY MR. SEGAL:

Q Are you telling us that you have evidence that Dr. MacDonald assaulted a CID agent when the hair samples were taken from his body?

A It was reported to me, sir, that he gave-- as he was going into the car, gave a back kick and kicked the agent in the leg. I think he subsequently received medical examination of that injury.

Q Did you find out what happened to me---

MR. BLACKBURN: (Interposing) OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did you find out that Dr. MacDonald's new attorney, Mr. Eisman---

THE COURT: (Interposing) SUSTAINED.

BY MR. SEGAL:

Q ---and Segal were taken to the hospital that day?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Who is the agent that you say was assaulted by Dr. MacDonald?

MR. BLACKBURN: OBJECTION.

THE COURT: I will SUSTAIN the OBJECTION to that, too. I ruled that this line of questioning at this time is irrelevant to this case. Proceed to something else.

MR. SEGAL: May I suggest, Your Honor, that we strike from the record the gratuitous suggestion by Mr. Ivory of a fact that does not exist?

THE COURT: I would be amenable to this suggestion were it not for the fact that it was elicited by you.

MR. SEGAL: I would appreciate it, Your Honor, if I am the one who elicited it, to be able to follow up to establish what I think is an error in Mr. Ivory's testimony.

THE COURT: Well, no. I will accede to counsel's request and instruct the jury not to consider matters of any altercations or whatever incident to the taking of a hair sample from Dr. MacDonald.

BY MR. SEGAL:

Q Regardless of how the hair samples were gotten from Dr. MacDonald, they were compared, were they not, by the CID Laboratory to the hair samples that you thought or that you took from the bodies of the members of the MacDonald family; weren't they?

A Yes, sir; that is correct.

Q They turned out to be not the same as Dr. MacDonald's hair; isn't that also correct?

A I don't recall the exact wording of the report, sir, but I believe that is generally correct.

Q Now, I asked you yesterday about the wax that was found in the MacDonald family house and you said that you would try and look up reports to see whether or not to this very day some of the wax that was found in the living room has not been identified as having come from the MacDonald house. Did you do that?

A Yes, sir.

Q All right. What did you look at in that regard?

A I looked at the military police property receipt of the items we sent along with questioned areas such as there was the old-looking wax that was on the coffee table and also some wax that looked like it had been for a considerable period on the arm of a chair in Kimberly's bedroom of which I have a photograph here as

compared visually to some candle wax that was found from within the house.

Q Excuse me, Mr. Ivory. In that regard, are you referring to items that are identified as G-131 and G-201 in the lab reports?

A As I recall from reviewing the lab report last night---

Q (Interposing) It ought to make it easier if I could give you the report. Will that help you to make that review?

A The numbering sounds correct, sir.

Q Let me, to make sure that we don't have any difficulty in that regard, show you first and have it marked.

MR. BLACKBURN: Your Honor, if at this point, Mr. Segal purports to show this witness a portion of the laboratory report, we would also ask that the entire report be furnished to this witness as well.

THE COURT: Is there any OBJECTION to his showing the report?

MR. BLACKBURN: No, sir.

THE COURT: Of course, he would be entitled to see it all.

MR. SEGAL: Certainly, Your Honor.

THE COURT: But if this witness did not

see the report himself or did not prepare the report, I mean, then it would seem to me that the report speaks for itself; and presumably, these are matters, if the report was prepared by somebody else, that can be the subject of testimony by somebody else without keeping this witness here until he misses his plane.

MR. BLACKBURN: Your Honor, on that basis, if this witness--I don't want to testify, of course--but if this witness did not prepare these reports, we would suggest that we would OBJECT on that basis.

THE COURT: I will not rule blanket. I will let counsel ask his question, and then if there is an OBJECTION, I will rule. If there is not, we will go on just like we have been doing.

BY MR. SEGAL:

Q Mr. Ivory, will it help you to take a look at copies of two documents I have here that I would like to have marked?

(Defendant Exhibits 26 and 27 were marked for identification.)

BY MR. SEGAL:

Q I show you two documents over the stationery of the Criminal Investigation Laboratory at Fort Gordon, Georgia, and ask whether or not these are perhaps documents that you had occasion to review before coming

back to the stand this morning?

A I could see--what I could recall, it was in here. This appears to be the report of it. I am having difficulty with all these entries finding that particular comment.

Q Perhaps I can assist you, Mr. Ivory.

A Beg your pardon?

Q Perhaps I can assist you.

A Please. I found the list of exhibits in here. I think it is G-1 through G-10. I don't recall having looked at this particular item, sir. I think this is the one I looked at. This is that, sir, as I recall looking at the list of exhibits that were submitted, which in this laboratory report, they are listed G-1 through 8, and G-9, and G-10, to be compared with the questioned wax which was found on the chair in Kimberly's bedroom, Exhibit G-131, and again, that wax, the sample of which was taken from the coffee table in the living room, Exhibit G-201.

#18
pp-1

BY MR. SEGAL:

Q Did you ever find out whether the suspicious wax, G-131 and G-201--did you ever find out what the lab said as to whether they came or seemed to have an origin within the MacDonald house?

MR. BLACKBURN: Your Honor, we would OBJECT on the basis, I don't know this witness has proved his prior entry.

MR. SEGAL: All right, Your Honor, we will have to finish this when the Government provides the laboratory technician. I am not going to waste your time any further with this at this time.

MR. SEGAL: May I have the document, please?

THE WITNESS: Thank you very much.

BY MR. SEGAL:

Q You believed that fingerprints were important to this investigation back in February 17, 1970, Mr. Ivory?

A Yes, sir, I did.

Q Did you cause to have taken a set of fingerprints of Colette, Kristen, and Kimberly MacDonald on or about that date?

A No, sir, I did not.

Q Why did you not have a set of what we call

*18
pp-2

record prints taken of those persons taken on that date?

A They were taken by someone else, sir, or they were to be taken by someone else.

Q They were to be taken by someone else?

A Yes, sir.

Q Another CID agent?

A That is correct, sir.

Q Would that be Mr. Connolly that was supposed to do that?

A No, sir, not--no, not specifically, no.

Q Well, who specifically was supposed to get fingerprints of Colette, Kimberly, and Kristen MacDonald so they could be compared to fingerprints that may have been found in the house?

A That was another one of the investigative aspects of the investigation which was to be controlled by the operation center at the CID office.

Q Under the direction of Franz Joseph Graebner, right?

A That's correct, sir.

Q And was that done in February of 1970?

A Yes, sir.

Q The prints were taken from all three of those persons?

#18
pp-2

A As best I recall, yes, sir.

Q Do you know or do you not know whether it was done in February of 1970, prior to burial of the family?

A I believe they were taken in the mortuary, sir.

Q But that's not of your own personal knowledge?

A No, sir, it just has been related to me.

Q Did you ever cause to have the white flower pot that was lying in the living room of the MacDonald house examined for fingerprints?

A Yes, sir, I believe it was.

Q Did you reclaim it, pick it up and put it in evidence bag to do that?

A No, sir, the fingerprint technician was at the scene, as I previously testified. That is his area of expertise.

Q That is not anything you did of your own personal knowledge?

A No, sir.

Q There is one last thing that I think was supposed to be within your realm: did you ever make a list of all the persons who were in the MacDonald house prior to your arrival on February 17, 1970?

#18
pp-4

MR. BLACKBURN: OBJECTION, Your Honor, that has been covered in this Cross Examination.

THE COURT: Well, let's let him say it one more time in the interest of time.

THE WITNESS: No, sir, I did not personally compile a list of all those persons that were in the house at my arrival or prior to my arrival.

BY MR. SEGAL:

Q Did you make a list of all those persons who came into the house between the time you arrived to the removal of the bodies?

A No, sir, I did not.

Q Did you make a list of all the persons who were in the house after the bodies were arrived (sic) and prior to its being sealed by the CID?

A No, sir, I did not.

Q Do you have personal knowledge of who has ever made such a list of the persons who were in that house at that time?

A No, sir, I have no personal knowledge of that.

Q Do you know the number of people who, on the morning of February 17, 1970, walked into the MacDonald house, up the steps, down the hallway, and into the living room, or came into the utility room from the same

#18
pp-6

path?

A No, sir, I do not.

MR. SEGAL: I have no further questions at this time of this witness.

THE COURT: Any Redirect Examination?

MR. BLACKBURN: Just a very brief one, Your Honor.

THE COURT: I want to commend counsel for finishing right on the minute when he said he would.

R E D I R E C T E X A M I N A T I O N (12:45 p.m.)

BY MR. BLACKBURN:

Q Mr. Ivory, at the risk of going through this one more time, with respect to the taking of photographs who was the first photographer into the MacDonald apartment that you know of?

A Staff Sergeant Alexander, sir.

Q Who was the second photographer, if you know, sir, into that apartment?

A Mr. Squires from the Photo lab.

Q Approximately when did he come, if you know?

A Between 4:30--within a five or ten minute period--4:30 or so.

Q Who was the third photographer to come into the MacDonald apartment, if you know, sir?

#18 pp-b

A Mr. Harold Page from the crime laboratory in Georgia--from Augusta, Georgia.

Q With respect to Mr. Alexander, how many times did he come to the MacDonald apartment?

A Sir, after he--his initial visit he went outside and he wasn't feeling well, and he did come back in the house, several times, and take some other exposures.

Q Mr. Ivory, with respect to your testimony this morning concerning the placement of the body on the floor and the drawing of the body outline, where, when the body of Colette MacDonald was first picked up, did you see that blue thread you have previously testified about?

A Yes, sir, I did. As the body was being lifted and I saw under it, that dark spot on the rug was readily visible as a large--I think I described it as a blood clot--a large dark puddle of blood, and I saw something coming from that. That drew my attention to it. After the body was on the stretcher, I went to it and got a closer look at it, and saw it was what appeared to be a thread.

Q Mr. Ivory, let me hand you what is marked as Government Exhibit 1124, and ask if you would, sir--where on that piece of carpet was that thread, and hold

#18

it up so the jury can see?

A This dark area here, in this dark area right there.

Q Was that under the body of Colette MacDonald?

A Yes, sir, it was.

Q With respect to the other threads and fibers that were found or first observed by you, where, if any, were those found on that piece of carpet, sir?

A I'm sorry, sir, can you go over that again? I was a little bit distracted.

Q With respect to the fibers, blue fibers that you previously testified about that you observed when her body was removed---

A (Interposing) Yes sir.

Q ---where if at all on that piece of carpet were they located?

A There were some above the head, I think, as it showed in the photograph.

Q Excuse me, if you would hold it up so the jury can see?

A As seen in one of the photographs where there was a splinter in this area, there was one in the photograph there, and others were found, say, from this area down--from within the body outline--from the center

#18
pp-2

outwards--not just around the edges, but within the center portion of that area of the carpet on which the body had been resting.

Q That would have been under her body?

A Yes, sir.

Q Finally, sir, you testified on Cross Examination that you collected a number of fibers and that in 1970, at least, when your memory was fresh, you collected approximately 25, is that right?

A Yes, sir.

Q Who else, if anyone, besides you were collecting threads or fibers in that room?

A Mr. Chamberlain, Mr. Shaw, that combined team from the CID office and the CID laboratory.

Q You did not collect all the fibers and threads?

A No, sir, I did not.

MR. BLACKBURN: If I may have just a moment, Your Honor.

(Counsel confer.)

#19
tdb
1

BY MR. BLACKBURN:

Q Mr. Ivory, let me hand you what was this morning marked as Defendant's Exhibit 24 and 25, and ask you, sir, if you know, where is the picture taken which purports to show a bloody footprint?

A That is Defendant Exhibit Number 24--you mean where, physically, it was taken?

Q Yes, sir?

A Sir, I cannot, by looking at this, tell if it was taken in place at the house or under laboratory conditions.

Q Excuse me, is that picture part of the kitchen?

A No, sir; it is part of the north bedroom. The bedroom of Kristen MacDonald.

Q Mr. Ivory, let me show you what I believe is Government Exhibit 146(a), and ask you if, on cross-examination by Mr. Segal yesterday, is this the feather to which you were referring?

A Yes, sir; it is.

Q Let me hand you also Government Exhibit 158(a), and ask you, sir, if you can, to point out the feathers to which you compared that feather in the living room.

A Sir, they are on this first shelf over on

#19
tdb
2

right hand side, over that box that says "Fingerpaint." There is another one on the second shelf from the bottom. There is another type of feather up here, but not at all similar. This is the type on the second shelf there and on that top shelf.

MR. BLACKBURN: Your Honor, that concludes our re-direct examination.

THE COURT: All right, Mr. Ivory, it looks like you are going to get to go to Germany after all.

THE WITNESS: I appreciate it, sir.

(Witness excused.)

THE COURT: Do you have a witness that you can finish with in three or four minutes?

MR. BLACKBURN: I don't believe so, sir.

THE COURT: Well, that gives us a little bonus time for lunch then today. Let's don't just identify one and then have the break. Let's take our lunch recess, members of the jury. You may retire now, and then we will recess the court for the remainder.

Remember, we don't talk about the case among yourself or with others. Don't let anybody talk about it around you. Keep open minds about it. Be back today at 2:30 please.

#19
tdb
3

(Jury exits at 12:55 p.m.)

THE COURT: Now I have a request to make of counsel.

MR. BLACKBURN: Yes, sir.

THE COURT: May I approach the witness?

MR. BLACKBURN: You may, sir.

THE COURT: This is just a matter relating to something--nothing whatever to do with this case--but counsel know about it. He's going to see if he can find me a pair of tennis shoes in Germany.

MR. BLACKBURN: Your Honor, there is one further matter that we need to bring to the court's attention and to counsel for the other side's attention. There has been a tremendous amount of bandying-about in the press the last two or three days concerning the advertisements and the police artist.

I know from my own personal observations of the newspapers that the most recent ad, and the photographs therein, at least to me, do not appear to be the identical ones as the one to which I earlier knew about in 1970. So I do not know, of course, whether or not the police artist that originally did these drawings in 1970 is the police artist who did this most recent group.

#19
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4

However, I should advise the court and counsel from the other side that the Government now knows who was the police artist in 1970 and if they are in fact the same police artist, then of course that will fulfill those conditions. If they are not, of course, then I don't think that they would--but I thought I would bring that to the court's attention.

THE COURT: Any response?

MR. SEGAL: I have no response, Your Honor.

THE COURT: Well, tell him whether or not you used the same artist on both occasions.

MR. SEGAL: We did not, Your Honor.

MR. BLACKBURN: That is all we needed to know.

THE COURT: All right, we will take a recess until 2:30.

(The proceeding was recessed at 12:58 p.m., to reconvene at 2:30 p.m., this same day.)

FURTHER PROCEEDINGS: 2:30 p.m.

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

THE COURT: All right, call your next witness, please.

MR. BLACKBURN: Your Honor, immediately before we do that, if you recall, I believe on Monday at the conclusion of the direct evidence of Mr. Ivory, the Government moved certain exhibits into evidence. That was not completed subject to the Cross-Examination as I understand by the defense, so we would renew that at this time.

THE COURT: Very well. Your motion is allowed.

MR. BLACKBURN: Just for the record, I am not positive that I included it Monday afternoon. If I did, this will just be a redundant exhibit--314, the white Hilton bathmat, whichever number that is--I think it is 314.

(All previous Government exhibits marked during examination of witness Ivory were received in evidence.)

dm2
C-20

(Government Exhibit 314 was received in evidence.)

(Whereupon,

ROBERT B. SHAW

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

XXX

D I R E C T E X A M I N A T I O N 2:34 p.m.

BY MR. BLACKBURN:

Q Please state your name and tell us where you presently reside, sir?

A My name is Robert B. Shaw. I reside in Mainz, Germany.

Q How are you employed at the present time?

A I am a member of the Army.

Q In what capacity?

A I am a Special Agent in charge of the CID office located in Mainz.

Q How long have you been with the CID, sir?

A Since about 1962.

Q When you first went with the CID in 1962, what did you do?

A Well, I was first with the CID in 1962, as a Provost Marshal Investigator which meant that I was not accredited by the Department of the Army as an investiga-

tor. I was a military policeman, but I conducted minor investigations on my own, and I assisted accredited criminal investigators in the more major cases.

Q How long did you remain in that particular capacity, sir?

A Until 1965, when I was transferred to Fort Bragg, North Carolina.

Q When you went to Fort Bragg in 1965, in what capacity did you go and what did you do?

A I was assigned as a Squad Leader with the 503rd Military Police Battalion. I had a 14-man squad which was a part of the company. It was my duty to be the leader of those people in whatever mission we were assigned.

Q After that specific responsibility was concluded, what did you do next?

A Well, while I was assigned to the 503rd Military Police Battalion, we were sent on operational missions twice. One was to Selma, Alabama, in connection with some civil rights marches and demonstrations, and then again, we were sent to the Dominican Republic when the 82nd Airborne Division was sent down there by President Johnson. While I was there, I was chosen to be the chief of the bodyguard assigned to the United States Ambassador. I stayed there for one year.

dm4
C-20

Q Where did you go next?

A I was assigned to Livorno, Italy, Camp Darby, Italy. I was assigned there as a platoon sergeant with the military police company. While I was there, I was chosen to go into the CID officially and become an accredited agent.

Q Now, as you became an accredited agent, what training, if any, did you receive in order to become an accredited agent with the CID, sir?

A Well, there were several prerequisites--one being formal education, military experience, and after a person was assigned to the unit, until such time as he could be sent to various schools that they were interested in, their agents having received on-the-job training, which means, again, that you worked with accredited investigators who were more experienced than you and you gained experience from them.

Q After you became a CID investigator as you stated that year, where did you go next?

A My next assignment was to Fort Bragg, North Carolina. I arrived there in 1969.

Q What were your responsibilities at Fort Bragg?

A Well, at Fort Bragg, I was an investigator and I had a team of investigators who worked for me. I think we were a three-man team. It was a small team, but

it was a team. We worked general criminal investigations, any felony crime that was reported to us or that we discovered in the pursuance of our other duties.

Q At this time, sir, do you recall the names of the other men of the three-man team?

A I recall one. His name was Jimmy Reeves. He was a Specialist 6 or a Sergeant E-6 at the time.

Q Prior to the 17th of February, 1970, how many, if any, death investigations did you participate in?

A Well, between 1962 and 1970, I was involved to one degree or another with probably 15 or 20 homicide investigations.

Q Directing your attention, sir, to the early morning of the 17th of February, 1970, as a result of your official capacity with the CID, did you receive a telephone call from Special Agent Ivory?

A Yes, sir; I did.

Q What was the nature of that call, sir?

A Well, I was at my quarters. He called me at about 20 minutes after 4:00 in the morning of the 17th. He told me that he was at the scene of a killing and that there were three bodies there and he gave me the address as 544 Castle Drive on Fort Bragg. He asked if I would come to the scene and assist him. He told me

that he had called other investigators also.

Q As a result of that telephone call, what did you do?

A Well, I got dressed and went into the office and picked up my investigator's kit. I got a CID sedan. Investigator Carl Black was also there--apparently had also been called, and he and I went to the scene of the crime.

Q You speak of the investigator's kit. What, if you know, sir, did that kit contain?

A That was a brief case. In that brief case, I kept tweezers and knives and rulers and plastic bags and pieces of string and marking pencils and that sort of thing. It was all the equipment utilized to collect evidence.

#21
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BY MR. BLACKBURN:

Q From the time you first received the telephone call from Mr. Ivory until you got to the address at 544 Castle Drive, how much time, if you know, sir, elapsed?

A Well, according to my watch, I arrived at the crime scene at 0450 hours which is ten minutes to 5:00 in the morning.

Q As you and Mr. Black were driving to the crime scene, how many moving vehicles, if any, did you observe?

A I don't remember, but it wasn't many.

Q How many pedestrians did you observe?

A I don't recall seeing any pedestrians at all.

Q Who was driving?

A I was driving.

Q When you arrived at the crime scene, what did you do?

A Well, I parked my sedan across the street from the house.

Q If you would, sir, look at photographs 161(d), 162(a), and 164(b) and, if you would, select the photograph that you think best depicts where you parked, if that is possible.

#21
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2

A Well, none of these show the other side of the street--the other side of Castle Drive across from 544. I did not park in any of these scenes depicted here.

Q So, you parked across the street. Is that correct?

A Yes, sir.

Q After you got out of your automobile, what did you do? Where did you go?

A Well, after I got out I parked very close to the U.S. Army ambulance that was there, and I looked into the driver's side of the car, and I saw what I took to be a medic. It was a man with a white coat on sitting inside the ambulance.

I approached the front door and, as I did, a military policeman who was standing there approached me as though to stop me.

Q Now, where precisely, if you recall, sir, did this take place?

A This was ten or 15 feet in front of the door of 554 (sic) Castle Drive, and he was standing in about that area. He stepped out into my path as though to stop me. I showed him my badge and credentials and identified myself and at the same time I looked beyond him and at the corner of the building I could see

#21
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3

another military policeman standing over there. I don't recall now that any words passed between us. I went on up the steps and into the house and there I met Major Parsons who was the Deputy Provost Marshal of the 18th Airborne Corps.

Q Where was Major Parsons standing, if you know?

A He was standing just inside the door of the living room of the house. Along side of him was a military police sergeant who was in uniform. I believe his name was Hagney.

MR. SEGAL: I could not hear that name, Mr. Shaw.

THE WITNESS: Hagney.

BY MR. BLACKBURN:

Q Would you spell it, sir?

A I believe that is H-a-g-n-e-y.

Q After you saw these two individuals, what did you do?

A I asked Major Parsons if the scene was being protected. He said, "Did you see a military policeman outside?" I said, "Yes, I did. I saw two of them," or something like that. He said, "Well, that is what they are doing there." I said, "All right." And I turned to the sergeant who was standing there

#21
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4

alongside of him and I said, "Sergeant, go outside and identify all the military policemen who are here on guard duty."

He may have asked me what for. I don't remember, but I did tell him eventually, "You will probably have to testify about it or we will need the list of names or something." I explained my directions to him.

Q As a result of that instruction to the sergeant, what did you observe him do?

A He left the quarters and went outside.

Q After this took place, what did you do next and where did you go?

A I asked Major Parsons where Ivory was. That is William Ivory who was the investigator that called me. He pointed out to his left and he said, "He is back in the bedroom at the end of the hall."

Q How long did you stay in this living room area?

A Well, I approached the hallway and when I did I was looking around me to see what was there and who was there and so forth. I saw Sergeant Alexander who was an Army photographer there who I knew.

Q Where was he physically located, sir, if you can recall?

A Yes. He was standing between the dining

#21
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5

room and the living room doing something with his camera that he had. I walked towards him and I looked around the living room and I looked off to my left in the dining room, and I stopped for a moment and I looked into the kitchen.

The light was on. I could see that and then I looked down the hallway and I could see Mr. Ivory standing in the bedroom at the end of the hallway. So, I went up a couple of steps and I walked down the hallway and there was a bedroom on my left. I stopped and I looked in the door.

I saw the body of a young girl laying on the bed.

Q When you observed the young girl in the bed, which bedroom are you referring to?

A Well, I am talking about the north bedroom or Kristen's bedroom. I later found out that was Kristen MacDonald laying on the bed.

Q If you would, sir, let's move the model and I would ask you to come and stand behind it, if you would, and use the pointer if you need it. Would you point out, sir, where you were standing when you first observed the little girl in the bed?

A Yes. I was standing right here in the doorway. I did not enter the room at all. I looked in

#21
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6

there. Then I stepped across the hall, and I looked into the south bedroom which was Kimberly's bedroom, and again I put my head and shoulders through the door and I looked in there, and I saw another little girl laying in this bed.

Q At this point, sir, what, if anything, had you touched in the house?

A Nothing.

Q Continue.

A I turned around again and I noted there was a short hallway here and a bathroom, so I stepped into this hallway and noticed that there was a piece of tissue laying on the floor, and I didn't go beyond that at all. I just looked into the bathroom through this door.

Q What did you observe when you looked into that bathroom, if anything?

A Nothing of significance at that point in time. I saw that this closet door was open a little bit. Then I stepped back into the hall, and I walked into the master bedroom where I found Mr. Ivory, Mr. Connolly who was an investigator, and Mr. Rossi.

Q Besides those individuals, who was in the master bedroom? You may resume your seat. Besides those individuals, who else was in the master bedroom

at that time?

A Only the body of Colette MacDonald.

#21
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7

#22
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BY MR. BLACKBURN:

Q When you first went into the living room the first time, besides the individuals whom you have already named, how many other people were present in that living room at that time?

A No one that I remember.

Q When you went into that living room the first time, what, if anything, did you observe with respect to the furniture?

A Well, there was a lot of furniture in the room. There was a rug on the floor. There was an overturned coffee table; some things had spilled off the coffee table. There was a desk, an aquarium on the desk; there were some stereo components, a speaker that I remember--two speakers--a couch, an end table, and some things on the end table.

Q Mr. Shaw, if you would, sir, I'm going to ask you to look at the first dozen photographs in this book marked "Squires" and ask, sir, if you would, for the record, tell us which photograph you look at and whether or not it depicts the scene as you saw it when you went there?

A Well, the first photograph in the book is P-45.

Q If you would, sir, rather than using the

numbers with P, for the alphabet, use the other numbers. And after you have looked at those, if you would, again, tell us which photograph it is and whether or not it does portray the scene at the time you saw it.

A After I have looked at all of them?

Q Yes, sir.

(Witness examines exhibits.)

#22
tdb
2

A I have looked at all these photographs. The first one is number 21.

Q Maybe I can cut it short. With respect to the photographs in that book that you have looked at, what is the relationship, sir, of those photographs to the crime scene when you saw it that morning?

A They depict the crime scene the way I saw it.

Q Thank you, sir. After you first saw Mr. Ivory in the master bedroom, I believe, what, if anything, did you say to him and what did he say to you, if anything?

A I asked him what was going on and he said--I don't recall his exact words--but he gave me a briefing of what he knew up to that point and what he had been told and basically what he had seen with respect to the three bodies, and so forth.

I said, "What do you want me to do?"

and he said, "Well, I'd like you to take one of the bedrooms and start processing it." While I was there, he and Mr. Connolly were outlining the body of Colette MacDonald with a blue felt tip pen--at that point.

I was looking around the room myself and I saw a knife laying on the floor, over against the dresser. I said, "You guys know about that, don't you?" He said, "Oh, yeah." So, I took the pen from Connolly and I went over and I outlined that knife on the floor.

#22
tdb
3

I am not sure why I did that at that point but I just knew that it could easily be moved and I wanted to know where it was--its position. I gave the pen back to Connolly and I walked out of that room and into the south bedroom.

Q Which was Kimberly's room?

A Kimberly's room.

Q When you walked into that room, what did you do?

A Well, of course, I knew there was a body of a young girl there. First of all, I was interested to see if she was alive. That is part of my basic training is to check for signs of life. I walked across the foot of the bed and onto the south side of the bed, which would be towards the front of the house.

I leaned over the bed and I was leaning

#22
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right over the little girl's face and neck and shoulder. She was lying on her left cheek and on her left side. I looked down into the open wounds that were in her throat that I could see very readily. I didn't see any signs of blood moving, pumping, or anything like that.

I put my ear down close to her face and her nose and mouth to try to detect signs of breath. I could feel the heat from her body, but I could not see or feel any signs of motion--no breath, nothing.

Q At this point, sir, what, if anything, had you touched?

A Still, nothing. So I decided that she was dead. I knew that there was a doctor coming and I am not sure how I knew that, but I knew that there was a doctor coming. Somebody had told me. I knew that the medics had been there already.

So, I began to process that room as a crime scene, and by processing at that point, I mean that I was making observations of the room around me.

Q How long did this take you at this time?

A Well, it was a process that went on, but it was interrupted a number of times. The first time was by the arrival of a Dr. Neal, N-e-a-l.

Q Excuse me, before we go to that, you say

#22
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that was the first interruption. How long, at that point, had you remained in Kimberly's bedroom?

A I may have been there five or ten minutes.

Q Besides making the observations of the room and checking Kimberly, what else, if anything, at that time had you done when Dr. Neal arrived?

A I had made some, or began to make some, preliminary rough sketches of the bed, the placement of the furniture--that sort of thing.

Q Now proceed, sir. At the first interruption, how were you first interrupted?

A Dr. Neal came into the quarters and Ivory went by the door of the south bedroom, or Kimberly's room and said, "The doctor is here," as I recall. He went out into the living room. He got Dr. Neal, and he led him into the hallway, back toward the bedroom, from the living room.

Q Where were you standing at this time?

A I had left the bedroom and I was standing in the hallway. I heard Ivory telling Neal that it was a crime scene and please don't move anything that he did not have to move but to check the bodies to see if they were alive.

Q Which room did Dr. Neal go into first?

A They went into Kristen's room first, the

north bedroom.

Q Where were you standing when they went into Kristen's bedroom?

A Well, I was in the hallway, and as they moved into the bedroom, I moved to the doorway of the bedroom where I could see what was going on. I did not enter the room.

#22
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6

#23
p-1

BY MR. BLACKBURN:

Q What did you observe?

A Well, Ivory was pointing out places on the floor that had what were later found to be blood stains or puddles of blood, and he was pointing those out to Dr. Neal, telling him not to step in them. Dr. Neal went to the side of the bed, and he took Kristen's body by the shoulders and I believe he turned her over or moved her. And he looked at her and rolled her back to the way she had been when he came in the room, and he said, "She's dead"; and he turned around and he left the room. And they walked in there and went into the master bedroom.

Q Let me hand you Government Exhibit Number 60, and ask you whether or not that depicts Kristen MacDonald when you first saw her?

A Yes, it does.

Q Let me hand you Government Exhibit Number 70, and ask you whether or not that depicts Kristen MacDonald after she had been moved by Dr. Neal?

A Yes, it does.

Q Let me hand you what has been marked as Government Exhibit Number 57, and ask you if you can identify that photograph, sir--what it represents?

A Yes, that's a picture a Kimberly MacDonald

#23
pp-2

laying (sic) in the bed as I first saw her on the morning of the 17th.

Q You spoke, sir, that after the doctor left Kristen's room, he then went to the master bedroom, is that correct?

A That's correct.

Q What did you do at that point?

A Well, Ivory was still leading to where he wanted him to go. He cautioned the doctor again, saying, "Please, if you don't have to move anything, don't move it. Don't do anything you don't have to do to determine if there is life."

They went into the master bedroom. As I remember, Neal approached Mrs. MacDonald. He went between her body and the bed, and he crouched down next to her, and he reached out and he thumbed open one of her eyes, which was closed.

Then he stood up, he walked around behind her head, he crouched down again--I don't remember if he bent down or he stooped down, but anyway he crouched down; and he put his hands under her throat here--or on her throat.

He stood up and he said, "She's dead, too."

Q What part of Colette MacDonald did he move?

A He moved her eyelid, and that's all. He

#23
pp-3

touched her under the chin here.

Q Where were you standing, sir, when Dr. Neal was in the master bedroom with Colette MacDonald?

A I believe I was in the doorway.

Q Who else was in the master bedroom besides Dr. Neal?

A Mr. Ivory was there, and Mr. Connolly may have been there. I don't specifically remember him being there.

Q In Kristen's bedroom who else besides Dr. Neal and Mr. Ivory was in that room?

A Connolly was there.

Q After Dr. Neal checked Colette MacDonald, where did you observe him go next?

A Well, he left the master bedroom, went down the hall, and went into Kimberly's room. He went to the south side of the bed, and at that point I cautioned him again. Much as I had done, he leaned down over Kimberly and reached out and he touched her on the cheek with his --with the fingers of his left hand. Then he reached over and touched her left wrist, which was exposed. We could see that.

He straightened up and he left the bedroom.

Q What, sir, did you observe Dr. Neal touch besides Kimberly MacDonald?

#28 pp-16

A Nothing else.

Q During this entire time that Dr. Neal was in the house, what medical instruments if any did you observe Dr. Neal to use?

A None at all.

Q After Dr. Neal left Kimberly's room, what did you do?

A Well, I followed him down--part way down the hall and Ivory took him on out. I didn't see them leave entirely. I turned around and went back into the--into Kimberly's room, and I continued the observations and the sketches and notes that I had begun to take before he arrived.

Q Now, this second time--or I guess it was the third time--in Kimberly's room, how long did you remain there at that time?

A Well, Dr. Neal was in the house about ten minutes, I think, so probably at that time it was another ten or 15 minutes that I remained in that room. That's when I began to trace the body outline that I could see--the outline of the covers that were pulled up around her.

I knew that eventually we would be pulling the covers back, but I wanted to be able to recreate where they had been lying. I was in the process of doing that when I became aware that Mr. Graebner, who was the

#29 pp-6

chief of CID at Fort Bragg at that time, had arrived at the house.

Q And as a result of learning that, what did you do?

A Well, I left the south bedroom and I went out into the living room to talk to him.

Q What did you say to him, if you can recall?

A I recall telling him that it was a very complicated and involved crime scene, and that we should attempt to get a lab team--a laboratory team--from Fort Gordon, a team to made up of forensic specialists who would come and help us process the crime scene.

He agreed that that was a good idea and that he would see if he could get it accomplished.

Q After that conversation with Mr. Graebner, sir, what did you do next?

A I returned to the south bedroom and continued my processing in that room.

Q Continued drawing the body outline?

A Yes, sir.

Q How long did you remain in the bedroom at that point?

A Until just about 6:30, and Bill Ivory came to me and he said, "It's getting light outside, and we're organizing a search. Would you help us out?"

#23
pp-6

I said, "Of course," and I left the south bedroom, walked down the hall through the living room and outside.

Q When you got outside, what did you do first?

A Well, I got my flashlight out of the MP sedan--excuse me, out of the CID sedan. That's not correct, I mis-spoke myself. I had my flashlight all along. I had it with me.

I took my flashlight out and I began to look around the premises and around the perimeter of the apartment itself. There was a rather wide sandy strip of dirt that ran all the way around the house--three sides--and I was looking in that specifically for foot-prints or pieces of evidence or anything that looked like it might be out of the ordinary.

Q What did you observe?

A Well, I was making that search and I heard an MP say, "Here's something." The voice was coming from around behind the house. So I walked around the house---

Q (Interposing) Before you go that far, sir, how many footprints, if any, did you find in the sand?

A None at all. I didn't find any footprints.

Q Do you know whether or not a footprint could have been made in the sand?

A Yes, I had occasion to make a test print

#23
pp-7

myself. I stepped into the sandy soil and I left a footprint.

BY MR. BLACKBURN:

Q You may continue.

A The MP was pointing down on the ground. He had said, "Here is something." Close to the utility room entrance to the house, I saw a long piece of wood lying on the ground in the grass there. I played my flashlight around that area to see if there was anything else. I didn't see anything else. I approached the piece of wood. I crouched down by it and put the light over it. I saw red stains and what looked to me like hairs and fibers.

Q Where did you see these red stains and fibers?

A All over the club.

Q What was the weather like at this time?

A It was still raining. It was cold. It was in the low 40's. It had been raining off and on for some time. I gather that it was raining at that moment--not heavy, but it was raining. At any rate, I examined this piece of wood. I sent for a photographer because I wanted to get a picture of it in place. I got the word back that the photographer didn't have any flashbulbs and he had either gone to get some or he was going to go get some. Because of the rain and because of what I could see on this piece of wood, I decided that it needed

to be collected right away because of the fragile nature of this evidence. I got some tongue depressors out of my investigator's kit and I pushed them into the ground around this piece of wood so that I could keep track of where the thing had been. I took a ballpoint pen out of my pocket and I put an arrow on the top side of the club. I drew an arrow on there to indicate which side was up and more or less the direction north. I decided that I needed to collect it right then. I got a clean cardboard box. I picked the club up by the ends with my fingers and put it into the cardboard box and carried it to my CID sedan. I opened up the trunk when I got this thing out of the weather. Then, I marked the club in another position with my initials and the date and then I locked it in the trunk.

Q When you opened up the trunk, what did you do with the club?

A I had it in a box with one hand. I opened up the trunk, the light came on, and I could see pretty well what I was doing. As I say, I marked it with my initials and the date and put it into the trunk and locked the trunk.

MR. BLACKBURN: Your Honor, I would mark for identification Government Exhibit 306.

(Government Exhibit 306 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, if you would, sir, look at that exhibit and tell us whether or not you can identify it?

A Yes, sir; I can.

Q What is it?

A This is the piece of wood that I picked up outside of the utility room entrance that morning.

Q How can you identify it?

A It has my initials "RBS" and the date "17/2/70." There is the arrow I put on it while it was lying on the ground.

Q Mr. Shaw, after you put that club into your car and locked the trunk, what did you do next?

A Well, I was continuing with the search. I had reached the point--I went back to where I had stopped searching this sandy strip and had reached the point where there was a big bush at the corner of the house--the back corner. As my flashlight was playing across the ground, something caught my eye. At the same time, an MP who was standing close to there said, "There is something" or "Here is something else." This MP saw it at the same time I did, in other words. I played my flashlight under the bush and I could see a paring knife

and an ice pick lying on the ground underneath the foliage.

Q The weather was still raining at this time?

A It was still raining, but anyway, I got down there and I looked at it. I could see some stains on the knife that I remember, but it was under this fairly thick foliage on this bush. I tried to find out if the photographer had come back with the flashbulbs yet. He hadn't, but because it was under the bush, I decided that I did not have to collect that right away. What I did was get another box.

Q Where did you get the box from?

A In the trunk of the car. I think I had some in the back seat of the car and so forth. Anyway, I got one of these boxes or sent for a box and put it down over the knife and the ice pick. The MP standing with me there--I told him to guard that box at that place. I said, "Don't let anybody touch that but me," because I wanted to continue this search until the photographer came; and at the same time, of course, I wanted this protected. Well, I didn't get out of sight of it as it turned out until the photographer came. I lifted up the box. He took a couple of pictures of it. I collected the evidence. I marked it with my initials and the date, put it in plastic bags, sealed the plastic bags, and took them

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in the house.

Q When you took them in the house, where did you take them or place them?

A I took them to the living room. Ivory was there and maybe Mr. Graebner was there. I am not certain, but I showed these things to Ivory. I remember that. We put them down in the living room because that was an area that we had designated as a safe area. We had already looked at it. When I say the "living room," I mean the area close to the dining room and the stereo speakers.

Q If you would, sir, come down to the model and tell us precisely where you regarded as a safe area?

A We put things down here by this chair that was there (indicating).

Q You may resume your seat.

MR. BLACKBURN: Your Honor, we would like to mark for identification Government Exhibit Number 312.

(Government Exhibit 312 was marked for identification.)

#25
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1

BY MR. BLACKBURN:

Q I hand you what has been marked for identification as Government Exhibit 312 and ask you, sir, whether or not you can identify it.

A Yes. My initials and the date are scratched into the metal part of the ice pick. That is the ice pick I found under the bush by the northeast corner of the house.

MR. BLACKBURN: Your Honor, we will mark it on this bag and keep it in here.

Your Honor, we would mark for identification at this time Government Exhibit Number 313.

(Government Exhibit No. 313 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you what has been marked for identification as Government Exhibit 313 and ask you, sir, whether or not you can identify it.

A Yes, sir. I can. That is the paring knife that I found under the bush with the ice pick.

Q Can you read on the handle, sir?

A It says "Old Hickory" on one side and on the other it says "RBS" "17/2/70."

MR. BLACKBURN: Your Honor, if I could have just one moment.

#25
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2

(Pause.)

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit Number 79 and 981.

(Government Exhibits Nos. 79 and 981 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you these two exhibits and ask you to take a look at them and tell me what similarities, if any, there are.

A They are identical.

Q Can you identify what Government Exhibit 79 and 981 are?

A Yes. This is a black-and-white photograph of the area outside the utility room door.

MR. BLACKBURN: Your Honor, I would move these be moved into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 79 and 981 were received in evidence.)

THE WITNESS: They show the area from which I picked up that piece of wood and the tongue depressors that I put into the ground.

BY MR. BLACKBURN:

#25
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3

Q Would you point, sir, to the tongue depressors that you are referring to?

A Yes. It is these sticks here. One was on one end; one was on the other; and there were two or three on each side just to place it on the ground to fix its location.

MR. BLACKBURN: Your Honor, we have marked for identification Government Exhibit Number 82.

(Government Exhibit No. 82 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you this photograph and ask you, sir, whether or not you can identify it and tell us what it is, if you can, sir.

A Yes. This is a color photograph depicting the entire utility room door at the rear of the quarters and the area that the club was laying in.

MR. BLACKBURN: Your Honor, we would move this exhibit into evidence and ask to pass it to the jury.

THE COURT: Very well.

(Government Exhibit No. 82 was received in evidence.)

MR. BLACKBURN: It might speed things up if two members of the jury could look at the photograph

#25
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4

at the same time. Your Honor, at this time we would mark for identification Government Exhibit 81 and 987.

(Government Exhibit Nos. 81 and 987 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, I hand you those two exhibits and ask you, first, whether or not you can identify them and what the relationship is between the two.

A Well, I can identify them. This is an enlargement of the small photograph that I have.

Q What is it, sir?

A This is the area under the bush, and it depicts the ice pick and the "Old Hickory" paring knife exactly as I found them.

MR. BLACKBURN: Your Honor, we would move these into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 81 and 987 were received in evidence.)

BY MR. BLACKBURN:

Q Would you point out, sir, where the ice pick is and where the "Old Hickory"--where the other knife is?

A This is the ice pick, and this is the "Old

#25
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Hickory" paring knife.

Q What is this right here, if you can tell?

A That is a piece of foliage or vegetation that was laying over it just like that.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit Number 80 and 986.

(Government Exhibit Nos. 80 and 986 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me ask, sir, with respect to these two exhibits, first, whether or not you can identify them and, if you can, the relationship between the two pictures.

A Yes. One is an enlargement of the small one that I hold in my hand and I can identify it.

Q What is it, sir?

A This is a longer view showing the bush, telephone pole, and the ice pick and the paring knife laying on the ground and part of the house.

MR. BLACKBURN: Your Honor, we would move these exhibits into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 80 and 986 were received in evidence.)

#26
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BY MR. BLACKBURN:

Q If you would, sir, on this photograph, point out where the ice pick and the paring knife were located?

A Here is the paring knife, and here is the ice pick.

Q Thank you, sir. After you collected the ice pick and the paring knife, what did you do next, sir?

A Well, I continued my search of the perimenter of the house and the yard, and finding nothing more, I re-entered the quarters.

Q Through the front door or the back door?

A Through the front door.

Q After you went into the front door at that time, where did you go?

A I went back to the south bedroom.

Q That is Kimberly's room?

A Kimberly's room; right, and continued what I had been doing. The search was still going on outside.

Q Who else, at this point, can you recall, was participating in the search?

A The only people I remember for sure were some uniformed Military Policemen who were looking on

roofs and looking in trash cans, and spread out through the neighborhood. The search had moved far beyond where I was at that point, that is why I went back in the house and did not continue with any of the outside search.

#26
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Q When you went into the living room area, who did you see, if anyone?

A I believe that Major Parsons was there, and perhaps Mr. Graebner was there. Ivory was inside, Connolly was still inside--they were still in the house.

Q After you went back to Kimberly's bedroom, what did you do?

A I continued making observations and drawing the outline of the exposed body, and the blankets, and so forth.

Q Now where were you standing, or where were you, when you were drawing the body outline of Kimberly?

A I was moving from one side of the bed to the other.

Q What part of the bed were you on, if any part?

A On the bed?

Q Yes, sir?

A Not at all. I was standing alongside the

#26
tdb
3

bed.

Q During the outlining of Kimberly's body, what part of her body did you touch?

A Well, I was touching her back, her head, her neck, her exposed left arm--anything that was above the covers--the blanket, and the sheet that was on the bed. This is a slow process and it takes quite a bit of time to do it properly.

Q About how long did it take you to do the outline of Kimberly's body?

A Well, I don't remember anymore, but I think it took as much as 20 minutes. And, of course, at the same time, I was making observations about what I could see around me on the bed. There were a number of blood spots, and there were things like that on the bed that I was looking at also while I was making this outline.

Q After you continued making the outline, what did you do next?

A At about 8:00 o'clock, I was told that the bodies were going to be moved--taken out of the house--so I went out into the hallway and I saw Ivory coming up the hallway with two medics and a stretcher.

Q What kind of stretcher was it?

A It was a wheeled stretcher. They were rolling it along the hallway floor. There was some kind

of mattress on it, I remember that. Followed by Ivory, they rolled that into the master bedroom. Yes, sir; rolled it into the master bedroom.

Ivory and I decided at that point that we needed to collect some evidence that was on top of Colette MacDonald's body.

#26
tdb
4

Q Which was what?

A Which consisted of a torn pajama top and a bathmat--a white bathmat. The pajama top was up in her chest area. The bathmat was lower down--across her abdomen. So before we let the medics get in there and move the body, I got a couple of plastic bags and Ivory got his tongs.

He collected the pajama top first. I held the bag under it. He lifted it up; I held the bag under it. He dropped it in it. I closed the bag and sealed it and got another bag. He picked up the bathmat the same way. I held the bag under the bathmat; he dropped it into it; I closed it up and sealed it.

We set the two bags aside. There was nothing else obvious there that was evidence laying on her except her clothing, of course. So that is when they picked up the body and put it on the stretcher.

Q Now you speak about holding the bag for Mr. Ivory. How close to Colette MacDonald's body did

#26
tdb
5

you hold that bag when he placed those items into them? In other words, was it over her body, or away from her body?

A Well, he lifted with his tongs--he lifted the evidence straight up and I put the bag under the evidence, so the bag was right over her body both times.

Q After you sealed these two bags, what did you do with those bags?

A I set them aside and that would have been at the foot of the bed, not on the bed, but the foot of the bed.

Q In the master bedroom?

A Yes, sir. One of the medics went to Colette MacDonald's shoulder area and the other went to her feet and they lifted her up and put her over onto the stretcher. They wheeled her out through the door down the hallway, through the living room and outside.

Q Where were you during the time she was removed from the house?

A I believe I followed them to the living room and into the hallway.

Q You observed them leave the apartment, is that correct?

A Well, I remember them going down the steps. There were one or two steps down from the hallway to the

#26
tdb
6

living room level. I remember that clearly. I don't remember them going out of the house. I know that they went out at that time, but I don't remember seeing them do it.

Q After that, where did you go next, and what did you do?

A As soon as they were gone, two other medics came in with another stretcher. That was not a wheeled stretcher, that was a folding canvas type field stretcher, I think is what they call it. They brought that up the hallway and set it down on the hallway floor.

Either Ivory or myself told them that, "There is a body in this room and a body in that room," indicating Kristen's room and Kimberly's room.

Q Excuse me, what part of the hall did they place the stretcher in?

A Well, the stretcher was---

Q (Interposing) You might, if you want to, come down and point that out?

A All right. Well, that yellow piece of paper there is pretty close to where that stretcher was, but it was not that far towards the master bedroom. It was a little more towards the living room. I think the end of the stretcher just extended beyond the doorway.

Q You may resume your seat. Did you have an

#26
tdb
7

occasion to observe anything on the floor in the steps area of the hallway?

A Yes, I did. There were a pile of clothing there, and that was right at the steps from the living room, and there was a pile of clothes there. There was a doll's head and I remember seeing some hair curlers and bobby pins, I think--all there on the floor.

When they wheeled Colette MacDonald's body out, I saw Joe Graebner, who was standing down there, reach over and pick those up and put them on the end of the couch.

Q All of those items?

A I remember the clothing. I could see him picking up the clothing and putting them on the couch. If he picked up the other things at that point, I don't know.

Q Going back to the stretcher in the hallway, which child was placed on the stretcher first; if you recall?

A Yes. They went into Kristen's room and, of course, they were escorted by Ivory who was telling them, "This is blood on the floor; don't step in it," et cetera. The two medics picked her up, one by her feet and one by her shoulders and carried her out and laid her on the stretcher towards the living room end of the

#26
tdb
8

stretcher.

Q The head was facing toward the living room?

A Yes, sir.

Q What happened?

A One of the medics asked, "Can we put the other little girl on the same stretcher?" I believe it was me that said, "Yes, you can."

Q Why did you say that?

A Well, because they were small and they didn't fill up the stretcher, and I didn't know if they had any other stretchers. I gave them permission to do it. But I said, "You're going to have to wait a minute."

I went into the bedroom and I went to the south side of the bed and I pulled the bedding back, all the way to the foot of the bed, and I exposed her body.

Q You're speaking of Kimberly's bedroom, now?

A Yes, and I continued with the outline of the body--that part that I had not been able to see before. That went fairly quickly. Once I had that finished, then I allowed them to move around to the south side of the bed--the two medics--pick her up,

#26
tdb
9

carry her out, and put her on the stretcher.

Q Which way was her head pointing on the stretcher, if you recall?

A I think it was in the same direction, to the best of my recollection. In other words, towards the living room.

Q Do you recall whether or not Kristen and Kimberly touched each other on the stretcher?

A I'm sure there was some contact, yes. They weren't laid on top of each other, or anything like that, but there was some contact, perhaps Kimberly's shoulder touched Kristen's leg, or something like that.

Q Besides the bodies of Kimberly and Kristen, what, if anything, did you observe the medics touch in that house? And the bed, I suppose, in Kimberly's room?

A Well, I am sure they touched the bottom sheets in both rooms, but they didn't touch any of the furniture, or anything like that.

Q When the bedding was pulled back off Kimberly's bed by you, what, sir, if anything, did you observe?

A Well, I saw a large blood stain under her body, and I saw what later turned out to be a urine stain under her body. I saw some wood splinters that

were on the bed. I saw some hairs and fibers.

Q By fibers, what do you mean?

A I mean---

THE COURT: (Interposing) Tell us about the fibers when we come back at 4:00 o'clock. Members of the jury, don't talk about the case. This is the afternoon recess.

(The proceeding was recessed at 3:45 p.m., to reconvene at 4:00 p.m., this same day.)

#26
tdb
10

F U R T H E R P R O C E E D I N G S 4:00 p.m.

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

THE COURT: Any further questions of this witness?

MR. BLACKBURN: Yes, sir.

THE COURT: Proceed.

(Whereupon,

ROBERT B. SHAW

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

D I R E C T E X A M I N A T I O N 4:01 p.m.
(resumed)

BY MR. BLACKBURN:

Q Mr. Shaw, immediately before the break, I believe you were discussing fibers?

A Yes, sir.

Q I think, correct me if I am wrong, you stated you had observed some fibers on the bed after the bedding was pulled back; is that correct?

A That is correct.

Q By "fibers," do you mean threads and things of that nature?

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A That is correct.

MR. BLACKBURN: Your Honor, we would mark for identification at this time Government Exhibit 354.

(Government Exhibit 354 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you what has been marked for identification as Government Exhibit 354, and ask, sir, whether or not you can identify it?

A Yes, sir. This is the bottom sheet from the bed in the south bedroom that Kimberly MacDonald was lying on. I can tell that by my initials that I put on it--"RBS" and the date "17 February, '70" and the time "0715 hours."

MR. BLACKBURN: Your Honor, we would mark at this time Government Exhibit 353.

(Government Exhibit 353 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you what has been marked as Government Exhibit 353, and ask you, sir, whether or not you can identify it?

A Yes, sir. That is the other sheet from the bed--the same bed--Kimberly's bed--with my initials and

the date I collected it.

MR. BLACKBURN: Your Honor, we would mark for identification Government Exhibit 1125.

(Government Exhibit 1125 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you what has been marked as Government Exhibit 1125, and ask you, sir, whether or not you can identify it?

A Yes, sir. This is a purple quilt that was on the bed in the south bedroom in Kimberly's bedroom. There are my initials and the date that I collected it.

MR. BLACKBURN: Your Honor, I would mark---

THE COURT: (Interposing) Let me see one lawyer from each side.

B E N C H C O N F E R E N C E

THE COURT: It seems that we are taking an unnecessary amount of time to identify things. Why don't you just get a series. They can't slip anything by you I am sure.

MR. SMITH: No, we are watching them.

THE COURT: But just say, "We now offer these exhibits which I represent to the Court and jury would be identified."

dm4
C-27

MR. SMITH: Fine. That is fine.

THE COURT: Just do it en masse.

MR. BLACKBURN: That will be fine. Let me tell you what I have the rest of this afternoon like that as I can recall. This thing I have got next and the paring knife, the Geneva Forge knife that was found in the master bedroom.

MR. SMITH: All right.

THE COURT: I think all he needs to do is just take the item up and get it marked, and as he announces or hands it to the witness, we will write down what it is. That will work.

MR. BLACKBURN: Let me ask you this, Wade, while you are here. One of the things we are contemplating doing is having our own demonstration to some degree. What I propose to do is use this big table right in front of the Clerk to spread, you know, generally, the sheet on there and the bedding and have him show us how he moved the bedding back.

MR. SMITH: We would welcome that. That will be fine. We have no OBJECTION to that. We don't go in much for experimentation, Judge, but we would be willing to have him do it.

(Bench Conference--terminated.)

MR. BLACKBURN: Your Honor, at this time,

I would mark for identification Government Exhibit 1126, and state to the Court that this witness could identify this as the top bedspread of Kimberly MacDonald, and Your Honor, these previous bedding that I have just had marked, I would also move those into evidence.

THE COURT: All right, sir, they will be received.

MR. BLACKBURN: As I understand, I left out Government Exhibit Number 80, which is a small photograph.

THE COURT: All right.

(Government Exhibit 1126 was marked for identification.)

(Government Exhibits 80, 353, 354, and 1125 were received in evidence.)

MR. BLACKBURN: Your Honor, we would also mark for identification and move into evidence Government Exhibit 311, which is the Geneva Forge paring knife found in the master bedroom.

(Government Exhibit 311 was marked for identification and received in evidence.)

MR. BLACKBURN: Your Honor, Government Exhibit 322, the throw rug found near the feet of Colette MacDonald in the master bedroom, we would also mark it and

move it into evidence.

THE COURT: All right.

(Government Exhibit 322 was marked for identification and received in evidence.)

MR. BLACKBURN: Your Honor, Government Exhibit 309, we would move into evidence, part of the carpet and some debris from the master bedroom.

(Government Exhibit 309 was marked for identification and received in evidence.)

MR. BLACKBURN: Government Exhibit 306, we would also move into evidence as a piece of carpet from the master bedroom.

(Government Exhibit 306 was marked for identification.)

MR. BLACKBURN: And an exhibit previously marked this morning, Government Exhibit 1124, a piece of carpet from the master bedroom, we would move into evidence.

(Government Exhibit 1124 was received in evidence.)

#28
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MR. BLACKBURN: Your Honor, Government Exhibit 331, a piece of wood which came from a locked storage shed of the MacDonald apartment we would move into evidence.

(Government Exhibit No. 331 was marked for identification and received into evidence.)

MR. BLACKBURN: Also, Government Exhibit 328 which came from the locked storage shed of the MacDonald apartment.

(Government Exhibit No. 328 was marked for identification and received into evidence.)

MR. BLACKBURN: Government Exhibit 330 which came from the south bedroom--a piece of wood.

(Government Exhibit No. 330 was marked for identification and received into evidence.)

MR. BLACKBURN: Also, Your Honor, Government Exhibit 320 and 329, latex gloves, Government Exhibit 329 having some indication of paint on them.

(Government Exhibit Nos. 320 and 329 were marked for identification and received into evidence.)

#28
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MR. BLACKBURN: The paint-stained gloves had come from the locked storage shed. That completes that portion, Your Honor.

THE COURT: These exhibits will be received subject to your representation to the Court and jury that this witness or some witness who is readily available would identify them as the objects which you have described them as being without objection.

MR. BLACKBURN: Yes, sir. I would represent to the Court Mr. Shaw.

THE COURT: Very well. Members of the jury, rather than have each exhibit laboriously identified by the witness, where there has been no objection to the line of exhibits, I suggested that this method be employed instead, and I believe it would save us all some time. Proceed.

BY MR. BLACKBURN:

Q Mr. Shaw, after Kimberly and Kristen were placed on the stretcher in the hallway, what next, sir, did you observe?

A At that time a U.S. Army chaplain was allowed to come into the hallway, and he did, and he approached the stretcher. He stood over it and he leaned down and I think he administered the last rites

#28
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3

of the Catholic Church I believe is what he did. At any rate, he made a gesture that appeared to be the sign of the Cross over their foreheads. He did not touch them. He straightened up and he turned around and he was taken out. At that time---

Q (Interposing) Excuse me. Did you observe the chaplain come into the hallway?

A Yes, I did. He was brought to the entrance of the hallway by Major Parsons, I believe.

Q Continue, sir.

A He turned around and walked back to the end of the hallway where he was met by Major Parsons and taken out.

Q What did you do next?

A I stood aside. I was not standing next to the stretcher. I was a bit away from it in the doorway of the south bedroom. The medics picked up the stretcher and they carried it out of the house. Mr. Connolly was assigned to go with the bodies and the medics to the hospital to continue the processing for evidence there which would have been the collection of the clothing.

Q After that what did you do?

A When Colette MacDonald was moved and put onto the stretcher, Mr. Ivory had called my attention to something that was in the body outline under Colette

#28
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MacDonald. I didn't know what he was talking about. He and I returned to the master bedroom and he showed me something that was sticking up out of the pool of blood that was under her head. To the best of my recollection, that was a wooden splinter. I am not certain but I think it was.

There were two or three wooden splinters in that area. There was also--I remember very well--there were some fibers or threads in that pool of blood, and he pointed those out to me and we got down on our hands and knees and we looked at them and we found that these fibers or threads were spread out all over that shag carpet in that area.

So, we looked at those and we had the photographer who was there photograph some of those or part of that area showing some of these items.

Q How long did you remain in the master bedroom at this time?

A I stayed there with Ivory at that time until the laboratory team arrived at about 11:00 o'clock that morning.

Q Now, from that time when you went back after the bodies had been removed until about 11:00 o'clock that morning, what were you doing in the master bedroom?

A Well, we were searching for evidence and that

#28
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5

included looking over the floor and looking over the furniture that was there, the walls, and the ceilings for anything that we could find. We looked through the dresser that was on the wall--on the outside wall of the quarters--I think it was the south wall.

Q What did you find there?

A At that time I didn't find anything that was unusual and, of course, we really didn't know what we were looking for either. It could have been anything. It could have been another weapon. It is difficult to say. We were searching for evidence.

We were marking or noting the presence of fragile evidence so that it could be collected by the laboratory team. That pretty much occupied our time until they got there.

Q Who was there besides yourself at that time during this three-hour period?

A Mr. Rossi may have been periodically, but it was Mr. Ivory and myself.

Q You spoke of the ceiling a moment ago. What, if anything, did you observe about the ceiling?

A There were blood spots on the ceiling. There were several spots and they ran in a line more or less a north-south axis of blood spots.

Q Is what you testified now approximately the

#28
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6

best you can recall all that you were doing during this three-hour period until 11:00 o'clock?

A Yes, sir.

Q Going back to Kimberly's bedroom, can you describe more specifically, if you can, the general location of the threads or fibers that you observed when you pulled back the bedding?

A Well, earlier I had observed some on the pillows. They were exposed; they were not under the bedding.

Q Which pillow, if you can recall?

A Well, I know I saw some on the north side of the bed on the pillow.

Q Was that the pillow---

A (Interposing) That would be closest to the hallway rather than the outside pillow.

Q That was not the pillow on which Kimberly's head was on. Is that correct?

A No; her head was on the south pillow, and when I pulled back the bedding, there were some of these threads and fibers on the bottom sheet.

BY MR. BLACKBURN:

Q Directing your attention to about 11:00 o'clock on that morning, what, if anything, happened at that time?

A At about 11:00 o'clock, the laboratory team arrived. That consisted of two fingerprint examiners, a photographer, and a chemist.

Q Do you recall the names of those individuals?

A Yes, sir; I do.

Q Who were they?

A There was Mr. Medlin and Mr. Turbyfill who were fingerprint examiners. Mr. Page was the photographer. Mr. Chamberlain was the chemist.

Q When they arrived at 11:00 o'clock, what happened next?

A Well, when they arrived, we briefed them on what we knew to that point--showed them through the house to acquaint them with the magnitude of the problem that we had and discussed ways and means of collecting all of the blood spots and hairs and fibers and splinters and powders and other things that we knew we were going to have to collect. We devised methods. We set up more or less an organization to do this.

Q Besides you and Mr. Ivory and these four people from Fort Gordon, who else, if anyone, was in the

house at that time?

A I think when they arrived, Major Parsons was gone and he had been replaced by a military policeman who was at the front door. There were still military policemen around the outside of the house. I think when they arrived, we were then alone in the house. In other words, the six of us, or shortly after they arrived--I don't remember at that moment.

Q After the organizational part of your first meeting, what did you do?

A Well, the first thing I did was accompany Mr. Page while he took pictures. I was taking notes for him as he took pictures. He took pictures throughout the house. When he was finished with that or thought he was finished inside the house just taking overall pictures, he went outside and took some exterior views.

Q Did you go with him outside?

A No, sir; I didn't.

Q You spoke of the notes that you took while Mr. Page was taking photographs. What did you do with those notes?

A I gave them to him. They were his notes. I was just writing them for him.

Q About how long did it take, sir, for you to accompany Mr. Page on this round of photography?

A We were in the house doing that probably 30 or 40 minutes.

Q After you did that, what did you do next?

A Then, Chamberlain and I, the chemist, went to work in the master bedroom. We began collecting the fragile evidence.

Q Were you all the first or second group to go into the master bedroom after the Fort Gordon team arrived?

A Well, we were the first because I recall that Mr. Chamberlain was concerned about fingerprint powder interfering with his blood analysis, so he had someone or he called the Fort Gordon laboratory. He talked to his Chief Chemist. The Chief Chemist said, well, or indicated that it would be better if he collected the blood evidence first and not get any fingerprint powder in it. As I recall, he was not absolutely certain whether it would interfere with his testing or not. Anyway, he said, "Collect the blood evidence first." We did that. In those areas where there was blood evidence to be collected, we collected it and then the fingerprint people followed us. Where there was no indication that there was blood to be collected or other body fluids, the fingerprint people went ahead.

Q When you went into the master bedroom, which

dm4
C-29

portion of that room did you start processing first?

A We started on the south wall which would be the front wall of the quarters--on the side of the bed. I think that the first places we took evidence from or blood from was the radio that was there under the window.

Q I take it that your major responsibility was to take the notes for Mr. Chamberlain; is that correct?

A That is correct; yes. I took notes and when we would find a spot, I would draw a circle around it on the wall or a square around it and give it a number so that later on, we could come back and say that spot number 10 was taken from spot number 10 on the wall that I had numbered. That was the system that we devised.

Q How long did you remain in the master bedroom with Mr. Chamberlain?

A I think we were there that day until about 10:30 that night and then we stopped for the evening. We took what he had collected and we had collected so far. We all got in the CID sedan. We went to the CID office and the evidence custodian was there waiting for us. What he did was give us access to a large bin that we could secure in the evidence room so that we could take this evidence that we had collected and put it in that bin and that way, nobody would have access to it but

us. We did that, as a matter of fact, each day at the end of the day whenever we stopped at night. The evidence we had collected, we would take to the evidence room.

Q After you left the master bedroom, as far as processing the crime scene was concerned, which room did you go into next if you can recall?

A I am not certain whether we did the hallway next or the main bathroom, but we went from room to room. It may well have been the hallway next and then the main bathroom. I am not certain.

Q After you did the hallway and the main bathroom, what did you do next?

A It would have been the south bedroom.

Q How long did you remain there?

A I think it was all day. Yes, on the 20th of February, the laboratory team was in the house all week.

Q After the processing by you and Mr. Chamberlain of Kimberly's bedroom, where did you go next?

A Somewhere in that period, we did some work and not much because there wasn't much there. We did some work in the living room, but what day that was, I don't recall right at this moment, but there were a couple of spots on the living room wall that we thought

might be blood. We went in there and collected those. There was a magazine lying there--an Esquire magazine that had some apparent blood on it. We collected that or we looked at it. I think Mr. Ivory collected that finally. There was a pair of eyeglasses laying on the floor. We looked at that. There was a spot on it. Mr. Chamberlain took that spot off. We put the glasses back.

Q Who picked the glasses up?

A I did.

Q For what purpose?

A Well, to look at them and besides, there was a spot on one of the lenses that looked like blood.

Q You put the glasses back down after he took the spot of blood?

A Yes, sir.

Q Besides the glasses, where in the living room, sir, if you can recall, did you take or did Mr. Chamberlain take any blood samples?

A Besides the glasses, there were some spots on the wall behind the couch. I don't know that they were blood, but they looked like they might have been so we collected them. There was a spot on the entrance to the hallway--that would really be the hallway floor. There was a spot there we collected. That's what I remember.

#30
pp-1

BY MR. BLACKBURN:

Q After you processed the living room area with the blood with Mr. Chamberlain, what did you do next?

A I think by that time we had collected just about everything that we saw that there was to collect, and they were ready to go through all this evidence and inventory it, and make sure that we had made our notes correctly, and so forth.

We spent a good deal of time on Saturday, the 21st, doing that; and also we had had to spend some time getting the engineers to come to the house and bring us a power saw because we had to cut up some portions of the floor in the hallway and in the north bedroom--the entrance to the north bedroom.

So our time then was spent doing that, and also, like I say, inventorying this evidence, because Mr. Chamberlain was going to sign for everything that he had collected, and we had to go over it piece by piece.

During that week sometime, we had obtained the services of another chemist, who happened to be at Fort Bragg on a court martial; and he worked with Mr. Ivory. So they were going through their inventories and so forth.

We called or arranged for the services of

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pp-2

some plumbers to come out and take the sink traps out, to look at them during that week. We had the sewer lines dug up outside the quarters either Friday or Saturday, I'm not sure which.

But it was organizational type things--wrapping it up, in other words.

MR. BLACKBURN: Your Honor, may I have just a moment.

(Pause.)

MR. BLACKBURN: I have some exhibits which I will move in, in just a moment.

THE COURT: All right.

MR. BLACKBURN: Your Honor, at this time I would mark first for identification a photograph, Number 480, to which Mr. Shaw has just testified concerning some suspected blood spots in the living room.

(Government Exhibit Number 480 was marked for identification and received in evidence.)

MR. BLACKBURN: Exhibit 316 marked for identification and moved into evidence the eyeglasses of Dr. MacDonald found in the living room.

(Government Exhibit Number 316 was marked for identification and received in evidence.)

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pp-3

MR. BLACKBURN: Also, sir, an expanded set of blueprints of the MacDonald apartment that were verified by Mr. Shaw as representing suspected blood stain areas that would be Government Exhibit 579.

(Government Exhibit No. 579 was marked for identification and received in evidence.)

MR. BLACKBURN: 580, 581, 582, 583 through 588.

(Government Exhibits Nos. 580, 581, 582, 583, 584, 585, 586, 587, and 588 were marked for identification and received in evidence.)

#31
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MR. BLACKBURN: Also, with agreement of counsel, we will mark for identification and move into evidence Exhibit 335, which is the footboard of Kimberly MacDonald's bed. We can have the clerk mark those. They are not in the courtroom at this time; they are upstairs.

(Government Exhibit 335 was marked for identification and received in evidence.)

MR. BLACKBURN: Also, Exhibit 637, which is the headboard of Kimberly's bed.

(Government Exhibit 637 was marked for identification and received in evidence.)

MR. BLACKBURN: Your Honor, Government Exhibit 317, which is the door lock assembly and dead-bolt from the kitchen.

(Government Exhibit 317 was marked for identification and received in evidence.)

MR. BLACKBURN: Government Exhibit 318 from the utility room.

(Government Exhibit 318 was marked for identification and received in evidence.)

#31
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MR. BLACKBURN: And from the front door, Government Exhibit 319.

(Government Exhibit 319 was marked for identification and received in evidence.)

MR. BLACKBURN: Your Honor, we would move all of these into evidence.

THE COURT: Very well.

MR. BLACKBURN: I would represent to the court that this witness would testify, with respect to those items.

THE COURT: Very well.

BY MR. BLACKBURN:

Q Mr. Shaw, after this first week period, at the MacDonald apartment, what did you do next, with respect to this crime scene?

A Well, we devised a way to lock it and secure it, which amounted to putting hasps and locks on the door so that we could call off the 24-hour Military Police guard that had been on it. We devised a system whereby we could use railway seals that people would have to sign for and break in order to enter the quarters.

We spent a good deal of our time after that organizing our notes and our files on what we had,

looking at property receipts, trying to get some grasp of all of the evidence that we had taken out of there. We had nearly 400 items that went out of that house.

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Q When you speak of property receipts, what do you mean?

A Well at that time, there was a Department of the Army form 19-31. It is a form that lists the item and then it has signature blocks for the item to be released from one person and accepted by signature by another person, and so forth--oftentimes called a chain of custody form.

MR. BLACKBURN: Excuse me just one moment, Your Honor.

(Pause.)

#32
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MR. BLACKBURN: Your Honor, we have marked for identification Government Exhibit 1126.

(Government Exhibit No. 1126 was marked for identification.)

MR. SEGAL: What is the number on that, please?

MR. BLACKBURN: 1126. Excuse me.

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you what has been marked for identification as Government Exhibit 1126 and ask you if you can identify what it is, sir.

A Yes, sir; I can.

Q What is it?

A Mr. Rossi, who I mentioned earlier, was given the detail of going into the closet that I mentioned being in a small hallway just outside of the main bath and inventorying the items that were in there. I helped him do that to a certain extent.

We went through it and we spent off and on a couple of hours together--maybe three hours. While he was doing this, I was assisting him as I had time.

Q How did you assist him do this?

A I would pull items out, read labels or descriptions or what have you, and he would write it down. We would look at it and put it into a box.

#32
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Q Did you see him write descriptions down?

A Yes; I did, and I saw him initial and date each page.

Q Did you ever verify what is on those pages with what was in the boxes?

A Well, most of these things, if not all of them, I pulled them out of the closet myself.

Q One at a time?

A Yes.

Q Read off what was on them?

A Yes, and what was on the label and watched him write it down.

MR. BLACKBURN: Your Honor, at this time we would move this into evidence. I would state to the Court that this is a Xerox copy. The original is somewhere in this courtroom, and we will locate and substitute it later.

THE COURT: All right, sir.

(Government Exhibit No. 1126 was received in evidence.)

MR. BLACKBURN: Your Honor, at this time we would like to ask the witness to come down and, if he could, on the table here at the foot of the clerk to place the sheet and the top sheet and the blanket, if he could, on that table and demonstrate the manner in

which he pulled the bedding back and first saw the fibers.

THE COURT: Can you do that?

THE WITNESS: I think so. Yes, sir.

THE COURT: All right, go ahead.

(Witness complies.)

#32
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MR. BLACKBURN: Your Honor, while we are waiting, I will introduce the original which we had all along, and substitute that for the Xerox copy.

THE COURT: All right.

BY MR. BLACKBURN:

Q What does this right now represent, sir?

A Well, it represents the--Kimberly's bed, more or less as I found it, except of course she was in it. The back of her head is marked here and the left arm is marked. The blanket line was marked. This was fluffed, of course, because she was under it.

Q Where was the northern pillow?

A The north pillow was on this side. This was the dividing line between the pillows. This was the top of the pillow. This was the bottom of one pillow; and this was the bottom of the other. There is an area marked here for her right elbow, left arm, and the blanket line.

Q What are those markings on the top of the bedspread?

A These marks represent marks that the chemist put on this piece of bedding at the laboratory after it was already collected. My markings show down here and also Mr. Chamberlain's markings. They were put on at the crime scene.

#33
pp-2

Q Okay, now, if you would, sir--recognizing the difficulty with the table--as best you can, would you demonstrate to us how you pulled that covering back from the bedding and what you saw when you did?

A Well, this--it is difficult to set this up exactly as it was. Part of this was wrapped under her body something like this.

Q You mean it was tucked in?

A Yes, from about her left underarm area to her left hip, which wasn't very far, but it was about like that--partially under her body.

Now, when I came into the room with the medics they stayed by this door which would be here, and I approached the bed from this side, which would be the exterior wall to my back, and grasped it more or less like this, leaning across the bed, and pulled it back, pulled it out like that with my left hand, and pulled it back.

I moved her around the bed as best I could and pulled it back far enough so that her entire body was exposed.

Q And then that is when you drew the rest of the body outline?

A That is correct.

Q If you would, sir, point out where you first

#33
pp-3

observed threads or fibers? The jury could stand up to see a little better.

A As I said earlier, I first observed threads and fibers--and/or fibers--on the pillow, the north pillow; but after as I had pulled this back, I saw debris in this area.

BY MR. BLACKBURN:

Q By "debris," what do you mean?

A Well, things on the sheet--hairs, fibers, threads. I do not know what all. I just knew there was something there. I did see some fibers or threads. After I got that pulled back, I moved over to this area here (indicating) at the foot of the bed. The medics came in here. One took her by the shoulder area and one brought her ankles together. They picked her up and they carried her out of the bedroom.

Q Did either of the medics get on the bed?

A Not at all. One stood approximately where I am and the other stood here (indicating).

MR. BLACKBURN: Thank you, sir.

(Counsel confer.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you Government Exhibit 73, and ask you, sir, to take a look at it and ask whether or not you can identify it, sir?

A Yes, sir; I can. This is Kimberly's bed after the body was moved, and you see in here, there is a piece of knitted material--a garment of some kind that was left on the bed after she was moved. Immediately, I called Squires in and had him take a picture of this bed the way it was.

Q How long, sir, if you know, did this pink knitted material remain there?

A Not very long because I picked it up and put it in a bag and I had him take another picture of it without it in order to see the markings and all of that that was on it--a few minutes, perhaps, or a half hour.

MR. BLACKBURN: Just one moment.

(Pause.)

BY MR. BLACKBURN:

Q Mr. Shaw, let me hand you what has been marked as Government Exhibit 215, and ask you, sir, whether or not you can identify that?

A Yes. That is the second picture that was taken of the bed after the body was removed and after the knitted garment that I spoke of was removed.

Q Where is the knitted garment in that photograph, sir?

A It is on the top pillow up here--excuse me--not on the pillow--on the bedding.

Q Do you know who placed it there?

A I think that I did.

Q Finally, sir, let me hand you Government Exhibit 214, and ask you whether you can identify that?

A Yes, I can. That is just a broader view of

dm3
C-35

the bedroom. Again, it shows Kimberly's bed after her body has been removed and after the knitted garment has been placed upon the bedding.

MR. BLACKBURN: Your Honor, that concludes our Direct Examination of Mr. Shaw. The defense may cross-examine.

THE COURT: Do you feel like you can finish by 5:00 o'clock?

MR. SEGAL: I think not, Your Honor.

THE COURT: Suppose we take our overnight recess then and reconvene tomorrow morning at 9:30. Members of the jury, we will let you retire now. Please remember the cautions and instructions of the Court. I will be asking you from time to time if anybody has disobeyed. Have a good night, a safe trip home and back, and come back tomorrow morning at 9:30. Let the jury retire, please.

(Jury exits at 4:57 p.m.)

MR. BLACKBURN: I just wanted to make sure that we had moved that into evidence so the Clerk could take care of it.

THE COURT: You have got your reporter here and they will be received. Anything else before we recess?

MR. SEGAL: Yes, Your Honor. I have a

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Q The last thing I want to ask you about this morning--you are also aware that the April 6, 1970, interview started when Dr. MacDonald voluntarily came down to the CID to talk about matters on his mind. Is that not how it commenced?

A I think Mr. Graebner called his unit and asked him to come over.

Q Do you know whether he ever spoke to Dr. MacDonald to come down on April 6?

A I just gave you my best recollection.

MR. SEGAL: All right; I have nothing further, Mr. Shaw. Thank you very much.

THE COURT: Call your next witness.

MR. BLACKBURN: Your Honor, we would call Dr. George Gammel.

(Whereupon,

DR. GEORGE E. GAMMEL

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

D I R E C T E X A M I N A T I O N

BY MR. BLACKBURN:

Q Please state your name.

A George E. Gammel.

Q Where do you presently live, Dr. Gammel?

#11
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A Lincoln, Nebraska.

Q What do you do for a living, sir?

A I am a pathologist in private practice in pathology there in Lincoln, Nebraska.

Q How long have you been a pathologist?

A Nine years--ten years.

Q Where did you attend undergraduate school or college?

A At Doane College in Crete, Nebraska, a small congregational college.

Q What degree, if any, did you receive from there?

A A Bachelor of Arts degree.

Q What additional training beyond college have you had, sir, in the field of medicine or pathology?

A I took my medical school training at the University of Nebraska for four years, and I took one year of a rotating internship at Saint Elizabeth Hospital in Lincoln, Nebraska, and then four years of pathology training, both anatomic and clinical training, at the University of Missouri in Columbia, Missouri.

Q Have you ever been certified in any way in pathology?

A Yes; I have been certified both in anatomic and clinical pathology.

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Q By whom?

A By the American Board of Pathology.

Q You are currently licensed to practice medicine where?

A Nebraska, Missouri, and North Carolina.

MR. BLACKBURN: Your Honor, at this time we would offer this witness as an expert in the field of pathology.

THE COURT: Very well.

BY MR. BLACKBURN:

Q Dr. Gammel, directing your attention to the 17th of February, 1970, did you have an occasion to be working at Womack Army Hospital?

A Yes.

Q How long had you been working there, sir?

A About six months, I think. I came in August.

Q You were working as a pathologist?

A Yes.

Q Now, directing your attention to early that morning on the 17th, did you have an occasion as a result of working at Womack Army Hospital to conduct an autopsy on the body of Colette MacDonald?

A Yes; I did.

Q When and where did you first see the body of

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Colette MacDonald?

A It was in the basement in the morgue where we do all autopsies at approximately 9:00 or 9:20 in the morning.

Q And how was she dressed when you first saw her?

A She was nude--no clothing.

Q After you first saw her, I take it, that you began the autopsy. Is that correct?

A Yes; that is true.

Q Where did the autopsy take place?

A In that same morgue area at Womack Army Hospital.

Q Now, besides yourself, who else was present when the autopsy of Colette MacDonald was conducted?

A Dr. Charles Davis who was Chief of Laboratories and my direct superior was there, and Dr. Frank Hancock who was another physician working in the laboratory was there. There were two CID agents, Hawkins and King were there. I think there was a photographer. MacAfree (phonetic) was there.

Q Were pictures taken of the body?

A Yes; there were.

Q Now, approximately, sir, if you can recall, at what time was the autopsy first begun?

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A It would be shortly after 9:30 in the morning.

Q Approximately how long did it last?

A It lasted well up until noon, as I remember.

Q Would you state, sir, what you first did in conducting the autopsy?

A First would be the examination of the external body surfaces and collection of any kind of physical evidence--for instance, fingernail scrapings or evidence for the laboratory.

Q Did you do that?

A Yes; the first thing that was done was fingernail scrapings and I think there was a strand of hair that I found on the right small finger and some other particles underneath the fingernails, and I think at that same time I took a vaginal swab for examination.

Q After you did that, what did you do next?

A Next was a detailed examination of the external surface of the body in order to categorize and record the evidence of injury.

Q Which injuries did you first observe, sir?

A The first that I really studied in any depth would be, I would classify them as blunt force injuries. There were more--well, there were two types

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9

of injuries that I saw. One you could classify as a blunt force injury, and the other type would be the incisional or stab wound injuries so I guess the first one I examined closely would be the blunt force injuries that would be caused by a blunt force of some type or a blunt object of some type.

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BY MR. BLACKBURN

Q Where, sir, were those injuries that you have so described as blunt force injuries, located?

A There were two major locations for the blunt force injuries. The first to be described, I guess, would be the ones that occurred on the arms, forearms, and hands.

Q Let's take the right arm first. What did you observe on the right arm?

A Okay, the right arm was broken and there were lacerations or cuts that were from this blunt force, plus, there were bruises and scrapes all over the entire--I guess we call this surface of the arm the volar or the ulna, or the lower surface of the arm, which would be where the ulna connects from the elbow to the wrist.

On the surface, there were multiple bruises, one laceration, and then obviously, the arm was broken about at the mid-point between the wrist and the elbow. Both bones of this right arm were broken and could be seen through the laceration as they were both broken.

Q If you would, sir, define what you mean when you speak of the term "laceration."

A A laceration would be like a tear where

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the skin is actually torn, and you differentiate this from, say, a cut or a slash or an incisional cut. Because it has a ragged, irregular edge, there is bruising and it is different. It is a blunt force type of tear of the skin.

Q Is that all that you observed on the right arm?

A Yes.

Q What did you observe, if anything, on the left arm?

A Similar bruises and on this arm, there were two lacerations--one just above the wrist and one just below the elbow. Under these lacerations or tears in the skin, again, I could feel a broken bone. This time it was just the single bone of the arm, the ulna, which is a rather large bone, but again, it is on the outer surface of the arm.

It was broken in two places. Again, there were multiple bruises and scrapes on this arm and hand.

Q What, if anything, did you observe, sir, with respect to the left hand?

A On the back surface of the hand, there was a sharp laceration, or one that would fit into the other category. It would have been an incisional wound of some type, where the edges were sharp and it looked

like they had been caused by a sharp instrument of some type. It was not particularly the blunt force injury. There was another defect on the dorsal surface of the left hand.

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Q Dr. Gammel, based on your experience and training as a pathologist, do you have an opinion, sir, satisfactory to yourself as to the types of wounds these wounds to the arms were?

A Yes.

Q What is that?

A There are known as defensive wounds, and they get that name in that the arms are placed in front of the face and body to defend or to ward away any kind of blows. This is where the blows lit instead of the body, so they would be classified as defensive-type wounds.

Q After you examined the arms of the body of Colette MacDonald, what did you observe next, sir?

A Next, I would go to the next major location of the blunt force injury which would be the head. The head had sustained multiple blows and in categorizing them, I found five separate lacerations where, again, a laceration would be a tear in the skin. These lacerations were on the forehead and top of the head or in the scalp area.

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The lacerations were quite extensive. Some were four or five inches long and the skin was widely separated and gaping. The skull was easy to see. The skull bone was easy to see underneath these lacerations, and there was a lot of bruising and hemorrhage around in the soft tissues around the laceration.

There was also a bruise, a rather extensive bruise, across the chin and then some more down into the right temple area.

Q What, if anything, did you observe in the center portion of Colette's head?

A Again, starting from the eyebrow and going up toward the hairline was another laceration, associated with bruising. The eye was--with this one there was another laceration. At this time, what I saw was a laceration in the soft tissue.

Q Do you know whether or not the skull of Colette was fractured in any way?

A Not at this time. That would require--actually where I found this was when I actually took the brain out and looked inside. Then I detected this. I could go into that now.

Q Yes, sir; if you would.

A In going through the evidence of injury,

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we like to follow it through, to bring it together. The next part of the examination was, then, the reflecting of the scalp, the removal of the top of the skull. We took the brain out and then examined the skull, itself, from the inside.

At this time, I found a fracture line in the skull. It was a very small fracture line, so far as skull fracture goes. It went about three inches in length. The brain itself had shown a little bit of superficial hemorrhage on the membranes covering the brain.

This was especially observed at the back surface of the brain. Again, what that means is that when the head is hit by a flow of some kind, the brain is propelled against the back side of the skull and it bounces off of it, so to speak, causing damage to the brain in this manner.

So I did see, then, there was a bruise of the brain, some hemorrhage, and the fractured skull.

Q Dr. Gammel, I will hand you Government Exhibit 306, sir, and ask you just to take a look at it. Do you have an opinion, sir, based upon your education, experience and training, do you have an opinion satisfactory to yourself, whether or not the blunt force injuries to the head and chin area of Colette could have

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been caused by a club such as that exhibit?

A Yes.

Q What is that opinion?

A The injuries that I saw on Colette could well have been caused by this type of an instrument--blunt instrument.

Q Now with respect to the chest area of Colette, what, if any, bruising did you observe on the chest area?

A It was a so-called pattern bruise, or a defect or a bruise on the chest that had sort of sharp margins and angulations, which I did observe. Again, it would fit into the category of blunt force injury.

The skin wasn't broken but it was a definite bruise of a pattern type, with kind of a flat surface, and sharp kind of edge and angle.

Q Again, Dr. Gammel, do you have an opinion satisfactory to yourself whether or not that bruising area could have been caused by any portion of that club?

A Yes, I think it could; definitely.

Q Which portion are you referring to?

A Well, it would either be the edges on the side or the end itself, where there are good sharp

margins and angles.

Q Dr. Gammel, do you have an opinion satisfactory to yourself as to the angles that that club could have used to inflict the wounds on Colette's head or chin area?

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A Most or all of the blunt force injuries that I saw, I felt were delivered from a frontal position or assault position, in that they struck the head from the front and glanced to one side from the top or the chin across the front. So it would be a frontal type--direct.

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BY MR. BLACKBURN:

Q What about the chest area?

A Again, it is straight on in some manner, whether straight this way or this way (indicating).

Q Dr. Gammel, after you examined the blunt force injuries that you have described, what portion of Colette did you examine next, sir?

A The next would be--I went to the examination of the stab wound injuries that I saw on the skin surface. These I categorized into two types. One would be an incisional stab wound that is caused by a knife, and then another type was a very small pinpoint or puncture wound. So there were two types of stab wounds that I saw: the knife-like stab wounds and the puncture wounds.

Q With respect to the stab wounds that you described, where were they located?

A Two major locations: they were on the front part of the chest and on the front part of the neck. There were--I counted seven on the front part of the chest, nine on the neck.

Q With respect to the nine on the neck--what did your autopsy of Colette reveal with respect to what internal organs, if any, those stab wounds struck?

A The wounds did go through the skin

#13
pp-2

and went into the soft tissues of the neck, and two of them had actually gone into the trachea or the windpipe--the pipe that leads from the mouth to the lungs--so that that trachea or the windpipe was penetrated in two places by these knife tracks.

Also, the thyroid had been lacerated a couple times--again, had been cut. And then the soft tissues of the neck, there was quite a bit of hemorrhage or blood--blood clot present in the soft tissue.

Q With respect, sir, to the stab wounds--seven stab wounds in the chest area--what internal organs, if any, did your autopsy reveal that those wounds struck?

A The knife wounds, again, in this case went through the skin and also the chest wall and entered in the chest cavity; and there were lacerations or cuts of both lungs, and also of the pulmonary artery. The pulmonary artery is a major artery that comes out of the heart and goes to the lung. The knife--or the knife wound had gone down and nicked the--actually cut this pulmonary artery, which would cause quite a bit of bleeding.

It also went through the soft tissues in the center of the chest. We call that medically the mediastinum, and there was a lot of bleeding because of the soft tissue and vessels that were cut in this

#13
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area as well.

Q Dr. Gammel, do you have an opinion satisfactory to yourself as to the direction from which these stab wounds could have been inflicted--or the angle at which they were inflicted?

A I felt they were all fairly perpendicular. In other words, I did not think there was any significant angulation--perpendicular to the body--and would place the body flat on the floor facing me straight so they would be straight into the body in a perpendicular right angle method--angle.

Q Do you have an opinion, Dr. Gammel, satisfactory to yourself, as to what type of instrument could have caused these stabbing wounds?

A Yes, I--I believe it would be a single-edged knife of some form.

Q A sharp or a dull knife?

A Should be fairly sharp.

Q Dr. Gammel, let me hand you Government Exhibit 313, and ask if you would take a look at it for a moment?

(Witness complies.)

Q Have you had an opportunity to observe it?

A Yes.

Q Dr. Gammel, do you have an opinion

#13
pp-4

satisfactory to yourself as to whether or not that knife could have inflicted the stabbing wounds into the body of Colette MacDonald?

A I think it could well have been--it would be very consistent with that.

Q Dr. Gammel, with respect to the other wounds I think you referred to as puncture-type wounds--is that correct?

A Yes.

Q Where did you observe those wounds, sir.?

A Most around the anterior chest, again.

Q By "anterior" you mean the---

A The front, front of the chest; and then there are--I think there were--there were three on the left upper arm as well, but in all the total count was 21 that I counted at the time I did the autopsy on the front chest, and three on the upper arm, making a total of 24.

Q Dr. Gammel, do you have an opinion satisfactory to yourself as to whether or not these puncture-type wounds were a major cause of death of Colette MacDonald?

A I don't believe so. Most of them were fairly superficial. I think I could see where at least five went through the anterior chest wall, but I could see no real significant damage to the underlying organs from these--from these puncture wounds.

#13
pp-5

Q Dr. Gammel, let me hand you Government Exhibit 312, and ask, sir, if you would take a look at it?

(Witness complies.)

Q Have you had an opportunity to observe it?

A Yes.

Q Dr. Gammel, do you have an opinion satisfactory to yourself as to whether or not the puncture wounds in the body of Colette MacDonald could have been caused by an ice pick such as that?

A Yes, they could have been caused by an ice pick such as this.

Q Now, in examining the puncture holes in Colette's body, did you have an occasion to use a microscope?

A No, I did not.

Q In your examination of those puncture holes, how many blue fibers, if any, did you find?

A I just did a gross--I just looked grossly at the puncture wounds, and I observed no blue fibers in the wounds.

Q By the term "grossly," what do you mean?

A That's just by my eye--eyesight alone.

Q Dr. Gammel, do you have an opinion satisfactory to yourself as to whether or not any clothing

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pp-6

threads of whatever kind would have been found in those puncture holes, if those holes had been made by an instrument such as that ice pick?

A Because it is so sharp, I would think it would be unlikely that a fiber would be taken into the wound with that. More blunt objects, they are, but it-- I would think it would be unlikely.

BY MR. BLACKBURN:

Q Dr. Gammel, after you observed the puncture holes in the body of Colette, what did you do next?

A The next part would be actually the removal of all the organs of the body and examining them for other diseases or other injuries.

Q Did you do that?

A Yes, I did.

Q What did that examination reveal?

A There was not any other significant disease processes. I did find a normal pregnancy of approximately four to five months gestation. I did find some evidence of thyroid disease which most likely I would suspect was completely asymptomatic, or that is, was not a problem with her at this moment. If she would have lived, she might have had some thyroid problems in the future and have to take thyroid medication. Other than that, I found no other significant disease processes or injuries.

Q In your autopsy, sir, what evidence did you find of any sexual assault on the body of Colette?

A None whatsoever. I did say that I took vaginal swabs and then I would stain those with some stains in the laboratory, and I did find evidence of some spermatozoa there. They were very degenerate and would

mean that sexual intercourse had occurred sometime in the past day to week. So, as far as I could tell from other examination, there was no evidence of a rape or anything.

Q You spoke of four to five months gestation; is that correct?

A Yes.

Q Was it a boy or a girl?

A It was a boy.

Q After you completed your autopsy, what did you do with the organs that you had removed from the body?

A They were placed back inside the body and the body was sewn up.

Q That included the baby boy?

A Yes, sir.

Q Dr. Gammel, do you have an opinion satisfactory to yourself as to the cause of death of Colette MacDonald?

A Yes.

Q What is that opinion, sir?

A I think the cause of death was stab wounds with subsequent hemorrhage and bleeding.

Q In other words, it is your opinion then that the stabbing wounds to the chest area or the neck area

caused the death of Colette?

A Most likely the chest area; yes, that is my opinion.

Q Do you have an opinion satisfactory to yourself as to whether or not Colette MacDonald could have survived the blunt force injuries to her body?

A Yes.

Q What is that opinion?

A I think she could have survived those; yes.

Q Now, during the course of this autopsy or prior to this autopsy, do you know whether or not any blood typing was done for Colette MacDonald?

A Yes, I did take some blood samples at the time of the autopsy. We sent them up to the laboratory in the Womack Army Hospital Laboratory for blood typing purposes and this was done there.

Q Was this done in the course of the autopsy proceedings?

A Yes.

Q Under whose general direction was this blood typing done, sir?

A This was done in the clinical laboratory so it would have been both under my direction and also Colonel Davis, the chief of the laboratory's direction.

Q He was the man also in the autopsy area?

A Right.

Q Was this blood type ever recorded anywhere, sir?

A On my autopsy protocol, I did record it. I had a slip of paper at one time that was a report from the Blood Bank Section. All I have now in my possession is the autopsy report, but I did see that.

Q What, if you can recall, was the blood type of Colette MacDonald.

A She was a blood Type A-positive.

MR. BLACKBURN: Just a moment, Your Honor.

(Pause.)

BY MR. BLACKBURN:

Q Dr. Gammel, during the course of the autopsy, did you have an occasion to take any hair samples from the body of Colette MacDonald?

A I took the hair sample from the right finger where this hair was present. I did not take it apparently from the hair of the head.

Q Now, Dr. Gammel, you, in 1970, you were not a forensic pathologist; is that correct?

A No.

Q Since 1970, sir, how much training or education, if any, have you had in the field of forensic pathology?

A After I got out of the Army, I went into a private practice in pathology in Columbia, Missouri, and was elected coroner there, and then we changed the system to a medical examiner system. I was Chief Medical Examiner for Boone and Callaway Counties in Missouri, and then I moved up to Lincoln, Nebraska, and I am now coroner's physician in that area. So I kept, active in this field and have taken one or two courses--week-long courses at the Chicago Center for the College of Pathology on forensic pathology. I have not pursued becoming a forensic pathologist.

Q Based on what you now know in the field of forensic pathology, what changes or differences would that have made with respect to the autopsy that you performed on the body of Colette MacDonald in 1970, if any?

A I really don't believe there would be any changes.

MR. BLACKBURN: Your Honor, at this time, doing it the way we did yesterday, I tender to the Court Government Exhibit 418, which is a certified copy of a Certificate of Death of Colette MacDonald, which I will move into evidence.

THE COURT: Very well.

(Government Exhibit 418 was marked for identification and received in evidence.)

MR. BLACKBURN: That would be Government Exhibit 418. Also, Government Exhibit 398, which is an autopsy report and protocol on Colette MacDonald from which this witness will testify.

(Government Exhibit 398 was marked for identification and received in evidence.)

MR. BLACKBURN: And also, Government Exhibit 401, which is a Consultation Report with the Department of Army in Washington, D.C., to which this witness could authenticate. I move these into evidence at this time, sir.

THE COURT: Very well.

(Government Exhibit 401 was marked for identification and received in evidence.)

BY MR. BLACKBURN:

Q Dr. Gammel, with respect to Government Exhibit 401, the Consultation Report, could you tell us briefly, sir, what that is and what the purpose of it is?

A Yes. Autopsies such as this or as far as that

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goes, any interesting or surgical case that we observed at Fort Bragg was sent up to the AFIP for their review. This would be placed in their registry as a case, and by that way, a large number of cases can be collected for education purposes and consultation. So this case, then, was sent up to them for their review. In fact, I went up there and spent some time interviewing with them on this case and that is their report--their wording.

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MR. BLACKBURN: Your Honor, at this time, we would mark several exhibits. These are all photographs--Government Exhibits 760, 761, 762, 763, 764, 765, 766, 767, 770, 771, 772, and 813.

(Government Exhibit Nos. 760, 761, 762, 763, 764, 765, 766, 767, 770, 771, 772, and 813 were marked for identification.)

MR. BLACKBURN: In addition, sir, 770(a), 761(b), 762(b), 763(c), and 764(c).

(Government Exhibit Nos. 770(a), 761(b), 762(b), 763(c), and 764(c) were marked for identification.)

MR. BLACKBURN: I might say, sir, that these are not pleasant photographs.

BY MR. BLACKBURN:

Q Would you, sir, look at these exhibits generally, sir, and tell us whether or not you can identify those, sir--just in general.

(Witness examines exhibits.)

A Yes; I can.

Q What are they?

A They are photographs that were taken at the time of the autopsy on Colette MacDonald.

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Q Do they correctly depict what you observed?

A Yes.

Q I ask you, sir, to look at Government Exhibit 761 and 761(b) and ask you whether or not there is any relationship between the two.

A Yes; the larger one is a blow-up or an enlargement of the smaller one.

MR. BLACKBURN: Your Honor, I would move these two exhibits into evidence at this time.

THE COURT: Very well.

(Government Exhibit Nos. 761 and 761(b) were received in evidence.)

BY MR. BLACKBURN:

Q Dr. Gammel, if you will use the pointer, sir, and looking at --this pointer right here--looking at Exhibit 761(b), what, sir, does that photograph indicate to you, sir?

A From my previous descriptions I think this will point out the chest and neck injuries as well as the bruise to the chin which are the blunt force injuries. The one across the chin and under the neck is the easiest one to see here. The long gaping wounds here would be the stab wounds and the knife wounds, and

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then in the neck there are several clusters of stab wounds totaling nine.

Q This one right here--is this one that you spoke of that could have been inflicted with a club?

A Yes; this would be a blunt force type of injury or basically what we have here is a bruising and abrasions or scraping. There is no actual lacerations on this--just bruising and scraping. The other lesions that you can see here are the puncture wounds. There are a cluster of three right there--one there, one there, and over here on this side, one here and one here.

The puncture wounds are difficult to really tell here on the photographs and, in order to count them to be sure it was a puncture wound and not just a fleck of blood or some dried blood, I had to actually probe them and make sure there was a defect in the skin, which I did.

Q Let me hand you, sir, Government Exhibit Number 770 and 770(a) and ask, sir, whether or not there is any relationship between these two exhibits.

A Yes; again the larger one is a blow-up or enlargement of the smaller one.

Q You can identify these exhibits, sir?

A Yes.

MR. BLACKBURN: Your Honor, at this time,

we would move these into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 770 and 770(a) were received in evidence.)

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BY MR. BLACKBURN:

Q Dr. Gammel, would you point at what you observed in photograph 770(a)?

A I think again you can still see the elliptical laceration and incisional stab wounds inflicted by the knife and also the puncture wounds. The significant one in this picture is the patterned bruise we have in the chest.

Here's is what I am talking about--a kind of a sharp margin with an angle and another sharp margin with an angle coming up this way sort of forming a square-like patterned arrangement.

Q Let me hand you Government Exhibit 762 and 762(b) and ask, sir, if you can tell us, sir, the relationship between these two photographs.

A Yes; I can. It is the same picture only with an enlargement.

Q Can you identify them?

A Yes, sir.

MR. BLACKBURN: Your Honor, we would move

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these into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 762 and 762(b) were received in evidence.)

BY MR. BLACKBURN:

Q What, sir, does Government Exhibit 762(b) show to you, sir?

A This picture demonstrates the front part of the chest and takes care of most of the puncture wounds that I have been describing. This was before the blood had actually been cleaned away so you can actually look at the various defects.

This would be the anterior part of the chest and lower part of the neck.

Q Let me hand you Government Exhibit 764 and 764(c) and ask you, sir, the relationship between these two photographs.

A Again, the larger is an enlargement of the same smaller picture.

Q And you can identify them?

A Yes.

MR. BLACKBURN: Your Honor, we would move these into evidence.

THE COURT: They will be admitted.

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(Government Exhibit Nos. 764 and 764(c) were received in evidence.)

BY MR. BLACKBURN:

Q Dr. Gammel, what do you see in Government Exhibit 764(c)?

A I think with this one you can point out the actual puncture wounds now.

Q Would you do that?

A All right; there were 21 on the chest, five on the right side, 16 on the left side, and five--again I will have to point them out. You will have to take my word that these are the puncture wounds. There are one, two, three, four, five, and then on the left side there is a cluster of three--three--and another cluster of four--four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, and 16.

Q Would you count, sir, the stab wounds that you observe on Government Exhibit 764(c)?

A There are a cluster of four right over the center of the chest, one down on the right side, and two on the left side.

Q Finally, sir, let me show you Government Exhibit 763 and 763(c) and ask, sir, if you can tell us the relationship between these two photographs.

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A Yes; they are the same only with an enlargement of the one.

Q You can identify them?

A Yes.

MR. BLACKBURN: Your Honor, we would move these into evidence.

(Government Exhibit Nos. 763 and 763(c) were received in evidence.)

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BY MR. BLACKBURN:

Q What, sir, do you observe in Government Exhibit 763(c)?

A This is very similar to the previous one that was just shown. Perhaps with a little different lighting on it, so again the puncture wounds will stand out. You can again count the 5 on the side and the 16 on this side.

MR. BLACKBURN: Your Honor, at this time, we would move all these photographs that have been shown to this witness into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 760, 765, 766, 767, 771, 772, 813, were marked for identification, received in evidence.)

MR. BLACKBURN: Your Honor, also at this time, I might say that we have a selected number of slides that we would seek to show this witness.

THE COURT: All right.

MR. BLACKBURN: Dr. Gammel, if you would, sir, bring the pointer and come down by the screen area. Your Honor, I believe that this is a slide representing Government Exhibit 760. Dr. Gammel,

#16
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what does this slide represent to you, sir?

A This would be the forehead in the right forehead area of Colette MacDonald.

Q What do you observe in that photo and can you speak up?

A This demonstrates how big this laceration was on the left side of the temple. There is a large defect in the skin, and again, it demonstrates the skin margins are irregular and torn. This in the center would be, actually, the skull, which you can see underneath this. The skin was pulled out of the way.

Q This next slide, sir, would represent Government Exhibit 761. What, sir, does this slide represent?

A This represents the chin, neck, and the anterior chest area. Again, demonstrating the pattern bruising on the chest and chin, the incisional knife wounds in the neck and the chest and some of the puncture wounds on the chest.

Q This next slide, I believe, represents Government Exhibit 763. What, sir, does this slide represent?

A The anterior chest area. This would again be the pattern bruise, the incisional wounds, the puncture wounds. There are some incisional wounds on

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the lower neck.

Q This next slide represents Government Exhibit 765. What, sir, does this slide represent?

A This is to demonstrate the arms, to show you the defensive wounds; this is the right arm. It demonstrates the areas midway between the wrist and the elbow, where there was a large defect there. It shows an irregular, jagged laceration or tear in the skin. Both bones were broken in these arms; shows you some more scrapes and bruises in other areas on the same surface of this arm.

Q Is that the right arm or the left arm?

A That is the right arm.

Q This next arm would represent Government Exhibit 766. What, sir, does this slide represent?

A This is the left arm, again demonstrating the many bruises, and on this arm, there were two tears in the skin--one just below the elbow and one down in this end. There is another laceration--I am not sure which it is--where I could feel through the lacerations and again, the ulna, or the one major bone of the wrist, or the arm, was broken in two different places.

Here are more bruises of the hand in this volar or ulnar surface of the arm.

Q This next slide would represent Government

#16
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Exhibit 772. What, sir, does this slide represent?

A This is to demonstrate the sharp, incisional wound in the back, on the dorsal surface, or the back side of the left hand. We have a sharp-type of a laceration there. And it also demonstrates other bruises on the arm.

Q This next slide is a representation of Government Exhibit 813. What, sir, does this slide represent?

A This is designed to try to summarize all the lesions, or all the trauma we had. We had the forehead region, the neck bruise, the neck lacerations, the chest bruises, and the various stab and puncture wounds.

Q What, sir, does this slide represent?

A This is a try at representing what the lungs actually looked like. Of course I took them out of the body. I think you can see on the right lung there would be a laceration that did go into the lung itself.

There are two that I noted on my protocol in the left side. Now, while these now are not readily identifiable, I would imagine they are in this area. I think you cannot really demonstrate these on this slide, but at least it does demonstrate the one on the

#16
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right very well.

MR. BLACKBURN: For the record, sir, I misquoted myself. This slide is representative of Government Exhibit 813. The previous slide represented Government Exhibit 772. You may go back to the stand.

Your Honor, at this time, we would move into evidence and mark for identification Government Exhibit 972.

THE COURT: What is it?

MR. BLACKBURN: It is a poster with photographs of two knives, an ice pick, and a club on it, and two other photographs of Colette MacDonald--all of which have previously been moved into evidence.

THE COURT: Very well.

(Government Exhibit No. 972 was marked for identification and received in evidence.)

BY MR. BLACKBURN:

Q Dr. Gammel, let me give you this marker. If you would, sir, take a look at Government Exhibit 972 and in these spaces marked "wounds, contusions, lacerations, cuts and punctures," would you write in, sir, the summary of what you found in the autopsy that you conducted on the body of Colette MacDonald?

A I will start from the bottom and work up.

Q If you could speak up, sir?

THE COURT: He said he would start at the bottom and work up.

#16
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6

THE WITNESS: I will start with puncture wounds. There were 21 in the chest and 3 in the upper arm, so there would be 24. Cuts would mean the incisional or sharp cuts. There were 9 in the neck, 7 in the chest, 16 plus 1 in the left hand--that would be 17.

Lacerations. There were 5 in the head, 2 in the left arm, 1 on the right, 5, 6, 7, 8. And for the wounds and the contusions, I would just have to put "multiple." I can't really count those.

MR. BLACKBURN: Your Honor, at this time, if we haven't done so, we would move this exhibit into evidence.

THE COURT: All right.

MR. BLACKBURN: I believe that would complete, sir, the direct examination of this witness.

THE COURT: All right, sir. Any cross-examination?

#19
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close together because I think bleeding inside the chest--it was massive.

Q Dr. Gammel, were there any tears at the surface of the skin on the puncture wounds? That is, were the holes elongated or were they perfectly round holes?

A As I remember, they were perfectly round holes. There might have been some bruising on one side but there were, as far as I am concerned, no tears.

Q Dr. Gammel, as a pathologist, can you tell us whether that would indicate that the body of Colette MacDonald was not moving when the puncture wounds were inflicted?

A I would think that would be a reasonable thing to conclude because there is no angulation, and there was no tearing at all. The body should have been still.

Q Then it would be reasonable to conclude that at the time the puncture wounds were inflicted, her body had come to rest even though you can't say whether she was at that moment dead. Is that correct?

A Yes; I think that is reasonable.

Q You have also indicated that those wounds were perpendicular.

A Yes.

#21
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MR. BLACKBURN: Your Honor, just one moment. No further questions, Your Honor.

MR. SMITH: No questions.

THE COURT: Call your next witness.

MR. BLACKBURN: Your Honor, we would call Dr. William Hancock.

(Witness excused.)

(Whereupon,

DR. WILLIAM FRANKLIN HANCOCK, JR.

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

D I R E C T E X A M I N A T I O N 2:42 p.m.

BY MR. BLACKBURN:

Q Please state your name.

A William Franklin Hancock, Jr.

Q If you would, sir, speak loudly enough so everyone can hear you. Dr. Hancock, where do you presently reside?

A I presently reside in Glendon, North Carolina.

Q How are you presently employed?

A Pardon me, sir?

Q How are you presently employed?

A I am just presently terminating an

#21
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2

association with Chatham Hospital in Siler City. I have been there approximately five years. I am scheduled to start as pathologist in Halifax Memorial Hospital in Roanoke Rapids the first week in August of this year.

Q What position did you hold in Siler City at the hospital?

A I was the pathologist and laboratory director.

Q Where did you receive your undergraduate education, sir?

A I completed it at the University of North Carolina at Chapel Hill.

Q After you completed your training at the University of North Carolina at Chapel Hill, where did you go to school next?

A I attended the University of North Carolina Medical School in Chapel Hill. I received an M.D. degree in 1968.

Q Where did you receive any training in the field of pathology?

A My training as a pathologist?

Q Yes, sir?

A I went to the Medical College of Virginia in Richmond, Virginia, and completed the standard

#21
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training program for general pathologists there.

Q What certification, if any, did you get, sir?

A I am certified as an anatomic and clinical pathologist by the American Board of Pathology. I obtained that in 1973.

Q Now directing your attention to February, 1970. Did you have an occasion at that time to be employed at Womack General Hospital?

A I did.

Q What did you do there, sir?

A I was a pathologist at the hospital.

Q How long had you been working there as a pathologist?

A As a pathologist--I was there in the latter part of 1969, and began at Womack in the latter part of 1969 and was on a two-year tour of duty with the Army at that time. So 1970 was about the midpoint, I suppose.

Q Directing your attention to the 17th of February, 1970, did you have an occasion to conduct autopsies on the bodies of Kimberly and Kristen MacDonald?

A I did.

Q When did those autopsies begin, sir?

#21
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A I'm sorry?

Q What time did those autopsies begin?

A They were begun in the morning, approximately 9:30 or so.

Q When and where did you first see the bodies of Kimberly and Kristen MacDonald?

A They were in the morgue refrigerator and I observed them approximately 9:00 to 9:30 that morning. That was the first instance that I saw them.

Q When you saw them, sir, how were they dressed?

A How were they---

Q (Interposing) How were they dressed?

A They were not dressed. They were basically in the morgue refrigerator and I believe covered with a sheet, as is the usual protocol.

Q Who else besides yourself, sir, were present when the autopsies of Kimberly and Kristen were performed?

A The other pathologists who were at the hospital at that time? Dr. Gammel was there and also Colonel Charles Davis, who was Director of the Pathology Department at that time. There may have been other pathologists, I think, but those were the two main ones to whom I was answerable. They were in and

#21
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out.

MR. BLACKBURN: Your Honor, at this time, we would offer Dr. Hancock, as an expert in the field of pathology.

THE COURT: Very well.

BY MR. BLACKBURN:

Q Dr. Hancock, with respect to the autopsy of Kimberly MacDonald, what did you first do in conducting that autopsy, sir?

A The first portion is an external examination to define and describe any wounds or abnormalities. That was the first order of business, and to collect any tissue or items needed at that moment.

Q Did you collect any items or tissue from her body?

A I was working with Dr. Gammel at that time. We collected various things like fingernail scrapings--that was the item that I distinctly remember. Those were collected separately and turned over to investigators, as I recall.

Q After you did that, what did you do next, sir?

A Proceeded to do the standard autopsy examination, which is basically after one has described the external appearance of the body, one opens the body

#21
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6

and examines the internal organs. That was the next order of business.

Q With respect to the head area of Kimberly MacDonald, what, if anything, did you observe?

A What did I observe?

Q Yes, sir.

A She had rather extensive injuries to the head area, a fair amount of bruising, the skin was abraded. That was the external.

Q Which side of the face are you talking about?

A I am talking about the right side. Now some of these things I would want to refer to my protocol and description. But as I recall, that was the right side, where the most extensive bruising was done. There was some bruising on the opposite side, but it was more extensive on the right, to my recollection.

MR. BLACKBURN: Your Honor, at this time, we would offer Exhibit 399, which is the autopsy report of Kimberly MacDonald.

THE COURT: Very well.

MR. BLACKBURN: And move it into evidence and let the witness have it to refresh his recollection.

THE COURT: Very well.

(Government Exhibit No. 399 was marked for identification and received in evidence.)

#21
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#22
pp-1

BY MR. BLACKBURN:

Q Dr. Hancock, you may have said it and I overlooked it, but with respect to the right portion of the head of Kimberly MacDonald, what did you observe?

A The area had multiple bruises and some bleeding inside the tissues, and one could feel broken bones underneath the skin in this area. This involved the right side of the head basically over the ear and in front and behind the ear.

There were multiple bruises covering the cheekbone, the ear, and one could feel broken bones underneath the scalp and skin in that area.

Q What did you observe with respect to the front of the face?

A The front of the face?

Q Yes, sir.

A The nose, as I recall, appeared to be fractured but was not measurably dislocated. There was a break in the skin on the opposite side, which I have noted on the left side of the face, and a little, small portion of the bone was protruding through that area. This was the opposite side from the major bruising.

Q What, sir, did you observe with respect to the neck area of Kimberly MacDonald?

A She had multiple incised wounds in the neck,

#22
pp-2

which predominantly, I think, were on the right side--right side of the neck, in the anterior frontal portion. There were approximately eight to ten of these incisional wounds which, without referring specifically to the protocol, were approximately--maybe I should refer to it as to how large they were.

These wounds were approximately three-quarters of an inch, I would suppose, in width. There were eight to ten of these, which had penetrated the skin, and there was a lot--some bleeding around that area. They were all grouped closely together.

Q Dr. Hancock, based on your training and experience as a pathologist, do you have an opinion satisfactory to yourself as to what type of instrument could have caused the injuries to the neck of Kimberly MacDonald?

A A sharp pointed instrument similar to a knife.

Q Dr. Hancock, let me show you Exhibit Number 313 for the Government, and ask you, sir, to take a look at it.

(Witness complies.)

Q Dr. Gammel, do you have--Dr. Hancock, I'm sorry. These names run together.

Dr. Hancock, do you have an opinion

#22
pp-3

satisfactory to yourself as to whether or not that knife could have inflicted the wounds on the neck of Kimberly MacDonald?

A It could have.

Q Dr. Hancock, do you have an opinion satisfactory to yourself as to approximately how many wounds Kimberly MacDonald had to her head area--how many?

A To the head area?

Q Yes, sir.

A At least two.

Q Do you have an opinion, sir, satisfactory to yourself as to what could have caused those injuries to the head area?

A It would be my opinion that the--a blunt object struck the head on the right side.

Q Dr. Hancock, let me hand you Government Exhibit 306, sir, and ask you to take a look at it.

(Witness complies.)

Q Dr. Hancock, in your opinion--or do you have an opinion satisfactory to yourself as to whether or not that exhibit could have inflicted the head injuries to the body or head of Kimberly MacDonald?

A It could have.

Q After you observed the head injuries and the neck injuries to the body of Kimberly MacDonald, what

#22
pp-4

did you do next with respect to her autopsy?

A I proceeded to do the internal examination, where the body was open and the body cavities and internal organs were examined.

Q Did you have an occasion to examine the head area of Kimberly MacDonald?

A Yes, including the head area. The head, basically, is opened and the brain and the contents thereof were examined.

Q What did that examination reveal to you?

A It confirmed the fracture that I had felt beneath the skin and showed additional fractures that included fractures over what is generally referred to as the base of the skull. The base of the skull had ramifying fractures within it; and when such happens to the bones in the base of the skull, the brain next to it becomes bruised. That was basically the finding there--a confirmation of the multiple fractures of the skull and some associated bruising of the brain.

Q Dr. Hancock, do you have an opinion, sir, satisfactory to yourself as to the cause of death of Kimberly MacDonald?

A I think there could be two factors, the most prominent one being the brain injury, which could have resulted in immediate, or shortly thereafter, death,

#22
pp-5

that being the most severe injury. The wounds to the neck did cause some bleeding and did transect the windpipe, and may have contributed, or certainly have assisted in causing the death.

Q Dr. Hancock, do you have an opinion satisfactory to yourself as to whether or not Kimberly MacDonald could have been alive when she received the wounds to her neck?

A It would be my opinion, based on the extensive bleeding and bruising that occurred with the head wounds, that these occurred first, and there would be some possibility that even though the brain might have been severely jarred, and she would have been perhaps unconscious, the heart could have still been beating; and, depending on how one defines life, that would be basically the question at that point in time.

The wounds to the neck did show less bleeding than the wounds to the head but did show some bleeding--a suggestion that the heart was perhaps still beating some at the time the wounds to the neck were sustained.

MR. BLACKBURN: Your Honor, if I may have just one moment.

(Pause.)

#23
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MR. BLACKBURN: Your Honor, at this time, I would mark for identification Government Exhibit 420 which is a certificate of death of Kimberly MacDonald.

(Government Exhibit No. 420 was marked for identification and received in evidence.)

MR. BLACKBURN: Three photographs, Government Exhibit 811, 812, 809. I would move into evidence Government Exhibit 420, the certificate of death.

THE COURT: All right.

(Government Exhibit Nos. 811, 812, and 809 were marked for identification.)

BY MR. BLACKBURN:

Q Dr. Hancock, let me hand you, sir, these three photographs and ask whether or not you can generally identify what they are.

A Yes.

Q Generally speaking, sir, what are they?

A These represent photographs taken at and during the time the autopsy was performed on Kimberly MacDonald.

MR. BLACKBURN: Your Honor, I would move

#23
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these photographs into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 811, 812, and 809 were received in evidence.)

BY MR. BLACKBURN:

Q Dr. Hancock, during the autopsy of Kimberly MacDonald, do you know whether or not her blood was ever typed, sir?

A Yes; it was typed.

Q Under whose direction was this generally done?

A It was typed under the director of the laboratory at that time, under his official certification--Lieutenant Colonel Charles Davis who was the chief pathologist at that point in time. The blood itself was typed by the chief technologist in the blood bank at Womack Army Hospital.

Q Is that blood typing included in the autopsy report, sir?

A Yes; it is.

Q What is it?

A It is AB-positive.

Q Dr. Hancock, do you have an opinion, sir, satisfactory to yourself as to the direction or angle

#23
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that whatever instrument caused those blows was coming from?

A To the head?

Q Yes, sir.

A They occurred at approximately a horizontal position to the side of the head--a horizontal position referable to the floor. There was some angulation in it but basically it was a blow that came on at a horizontal angle to the side of the head.

Q Do you have an opinion as to whether or not she was standing up when she received those injuries?

A She could have been.

Q Dr. Hancock, do you have an opinion, sir, satisfactory to yourself as to the similar angle or direction with respect to the wounds to her neck?

A If the body were in the flat position or the prone position, these wounds seem to have occurred at a right angle or, as one would say, perpendicular to the flat body.

Q With respect, Dr. Hancock, to the autopsy of Kristen MacDonald, what did you do first, sir, with respect to that autopsy?

A Similar to Kimberly, the first order was to examine the body externally and to observe any abnormalities and so record those and collect evidence

#23
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which was basically done in the same fashion as has been described for Kimberly.

Q What did you observe, sir, with respect to the front side of Kristen MacDonald?

A Which area?

Q The chest area.

A The chest area. She had multiple incisional stab wounds to the chest area. As the major abnormality, there were some small circular wounds that were also present. There were multiple portions of these. I could perhaps more accurately describe from the protocol.

MR. BLACKBURN: Your Honor, at this time, I would mark for identification Government Exhibit Number 400, the autopsy report of Kristen MacDonald, and move it into evidence, and let the witness have it.

(Government Exhibit No. 400 was marked for identification and received in evidence.)

BY MR. BLACKBURN:

Q Dr. Hancock, again, sir, with reference to the chest area of Kristen MacDonald, how many, sir, of what you would call these stab wounds did you observe on her body during the autopsy?

A From the external examination there were

#23
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four stab wounds that were clustered around the center of the chest. Then there was a fifth stab wound which is in the neck area. These were described basically as gaping incised wounds.

The other lesions that I described--the significant ones--were small, maybe less than a quarter of an inch circular kind of bruises that--a few of these occurred under the nipples, and then there was sort of an ill-defined pattern extending along, I think, the right side of the chest in sort of an "s-shaped" pattern.

There were approximately ten of these circular small wounds, a few of which appeared to penetrate through the skin. The others seemed to cause superficial skin penetration with some bruising around them. The major wounds were the central gaping incised wounds.

Q With respect to the hands of Kristen MacDonald, what, if anything, did you observe there, sir?

A There was multiple minor lacerations--cuts basically--on both hands if I recall from reading my protocol and, in addition, there was a more significant wound. I think it was on the right hand--the right hand on either the ring or middle finger. There was a fairly large--it looked like an incised or cut wound--approximately an inch and a half or so on the side of

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the finger. But the hand also had some minor cuts on it in other places which basically did not cause any bleeding, but the large wound that I described was down basically to the bone.

Q Do you have an opinion, sir, satisfactory to yourself, as to the type or classification of the wound that was on her finger?

A I would say as a general reference these could be defined as defensive wounds or these could be wounds incurred in the process of other type of wounds happening. As a general statement, I would say that.

Q With respect to the back and shoulder area of Kristen MacDonald, what did you observe there, sir, during the autopsy?

A On the back and in the approximate mid-back area, she had similar incised, slightly gaping wounds. There were ten of these grouped in the center of the back, and there were two others which were slightly off, I believe, it was the left side, but there were ten in the approximate central area of the back.

Then there were two incised wounds which were sort of over one of the shoulder blades. A total of 12 of these incised wounds were on the back. There was some minor other wounds. I cannot say definitely that these occurred with the incised wounds. It might just

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7

have been some scratches or something from a mosquito bite around in the area, but the significant wounds were these ten plus two gaping deep incised penetrating wounds.

Q Were there any stabbing wounds in the back area that you observed?

A In the back area?

Q Yes, sir.

A Yes; these ten plus two were basically stabbing incised wounds.

Q After you observed these wounds of Kristen MacDonald, what did you do next?

A Again, the standard procedure--the body cavities were opened, the internal organs examined, and any injuries noted in the diseased state. That would be basically.

Q What injuries, if any, did you observe?

A These corresponded basically to what was observed externally. The one stab wound to the neck showed internally some cutting across the thyroid gland and part of the wind pipe.

The stabbing wounds to the chest on the front portion penetrated the associated tissues and entered the heart on its right side in two instances. The stab wounds received from the back of her body also

penetrated the chest wall and entered the left side of the heart in two instances. These penetrated the wall of the heart front and back.

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BY MR. BLACKBURN:

Q Dr. Hancock, do you have an opinion satisfactory to yourself as to the cause of death of Kristen MacDonald?

A I would consider it to be loss of blood from the heart as the heart would normally pump. There was considerable blood that had collected around and in the body cavities associated with the heart. The heart may have lost its electrical beating capabilities due to these incised wounds, but it also--there was also a considerable amount of blood loss there which could have accounted for it.

MR. BLACKBURN: Your Honor, at this time, I would mark for identification Government Exhibit 419, which is the Certificate of Death of Kristen MacDonald and move it into evidence.

THE COURT: Very well.

(Government Exhibit 419 was marked for identification and received in evidence.)

MR. BLACKBURN: Also, I would mark for identification at this time some photographs--Government Exhibit Number 773, 774, 775, 776, 777, 778, 779, and 780.

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C-24

(Government Exhibits Numbers 773, 774, 775, 776, 777, 778, 779, and 780 were marked for identification.)

BY MR. BLACKBURN:

Q Dr. Hancock, I wish you would look at those exhibits marked for identification and tell us whether or not you can generally identify them, sir?

(Witness examines exhibits.)

A Yes. These represent photographs of various segments of the autopsy on Kristen MacDonald.

MR. BLACKBURN: Your Honor, I would move these into evidence.

THE COURT: Very well.

(Government Exhibits Numbers 773, 774, 775, 776, 777, 778, 779, and 780 were received in evidence.)

MR. BLACKBURN: Your Honor, if I could have just one moment.

(Pause.)

BY MR. BLACKBURN:

Q Dr. Hancock, with respect to the blunt injuries of Kimberly MacDonald, I believe you testified that they damaged the brain; is that correct?

A That is correct.

Q What injuries did the brain receive if you know, sir, as a result of the blunt injuries?

A As I recall, it was basically a bruising of the brain. The brain, being very soft, and as these bones are fractured and when a head is hit like that, the brain tends to slide and move over these rough edges and it causes some minor cuts and some bruising to the brain itself.

Q Dr. Hancock, do you have an opinion satisfactory to yourself with respect to Kimberly MacDonald as to whether or not she would have been able to walk after she first received the blows to the head?

A It would be very unlikely in my opinion--very unlikely; although, there are situations where you can never say "never," but I would not expect it to be the situation.

Q Do you have an opinion, sir, satisfactory to yourself as to whether or not Kimberly MacDonald could have talked after she received the blows to the head?

A I would answer basically the same way as I responded to the previous question.

MR. BLACKBURN: Your Honor, just one moment.

(Counsel confer.)

BY MR. BLACKBURN:

Q Dr. Hancock, do you have an opinion satisfactory to yourself as to the angle or direction from which the wounds to Kristen MacDonald came?

A The younger child? If we assume she was in the flat or prone position, these would have entered perpendicular to that position.

Q With respect to the autopsy of Kristen MacDonald, do you know whether or not any blood typing of Kristen MacDonald was, in fact, ever done?

A Yes, it was done.

Q Was that done pursuant to the autopsy of Kristen MacDonald?

A It was, sir.

Q Do you know what that blood typing is, sir?

A Yes, it was O-negative and further tested to make sure it was negative, it was called an O-negative, Du negative.

MR. BLACKBURN: Your Honor, at this time, I would ask this witness to come down to the screen with the pointer and show a selected number of photographs.

THE COURT: All right.

BY MR. BLACKBURN:

Q For the record, this first slide represents the Government Exhibit 811. Dr. Hancock, would you point out the significant aspects of this slide, sir?

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A This is Kimberly MacDonald. It shows basically the two major wounds that she received. This represents washing of the skin and removing of the blood that was there. What you see underneath is--this is the cheek bone with this bruising and these areas of bruising and the ear with considerable bruising in that area. The second group of wounds is in this side of the neck area and these are basically the incised stab wounds in this area--eight to ten in that area.

Q This next exhibit represents Government Exhibit 812. What, sir, does this photograph represent?

A This represents the standard procedure at autopsy where one arrives at a position to examine the brain. In order to do that, one has to cut the scalp and get it out of the way, so what has been done is the scalp has been cut. This sort of rounded, folded area and this area here represents the inside of the scalp and the hair on the backside. You see some of the hair in this position and you are looking--if the body were projected that way, you are looking right directly on top of the skull. The ear would be down in this position and this would be the right side. This area right here is a thin membrane that covers the bone. This is actually the skull itself, and this represents one of the major fractures that was sustained to the skull--this

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fracture extending approximately the full length of the skull.

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BY MR. BLACKBURN:

Q This next photograph represents Government Exhibit 773. What, sir, does this photograph represent?

A This represents the body of Kristen MacDonald and shows her basically as I originally viewed her, without any blood being washed. This shows the bleeding, that the blood sort of drained around different portions. In a washed state, one could see it better, but this represents the grouping of the stabbing incisional wounds. There is also one in the neck area.

Q This next slide represents Government Exhibit 774. What, sir, does this slide represent?

A This, again, is Kristen MacDonald. This is her back area and shows the incised stab wounds that occurred there, and bleeding--some of the bleeding--that came from that. In this area are approximately the ten incised stab wounds and the two additional ones over to the side.

Q This next slide represents Government Exhibit 775. What, sir, does this slide represent?

A This is a photograph after the blood has been washed so that one could see the wounds more exactly. Again, you can see the incised stab wounds, which are at a slight angle here. But over the chest area, there is the one in the neck with some minor

bruising on the neck and around in this area.

The smaller circular wounds that are described, one can see at this point approximately ten of these; they proceed in roughly an "s-shaped" fashion.

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Q This next slide represents Government Exhibit 777. What, sir, does this slide represent?

A That is again, Kristen MacDonald, on the back side after the blood had been washed off and one sees the group. This is the area I am calling that has approximately ten incised stab wounds and then the two over here.

Q This next slide represents Government Exhibit 778. What, sir, does this slide or photograph represent?

A This is Kristen MacDonald's hand, showing some minor areas on the hand, and maybe, perhaps, some small bruising there. It shows basically this large incised lesion on the ring finger that extends for approximately about an inch and a half. It extends down to the bone. This is the major hand wound.

Q This next slide represents Government Exhibit 779. What, sir, does this slide represent?

A This is inside the chest cavity of Kristen MacDonald. What you are seeing right here is

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where we have cut through the rib cage, at this point, and exposed the frontal portion of the chest cavity, and observe directly the heart. These instruments are just placed in to show you where the incised stab wounds were as they penetrated the chest wall.

They also entered into the heart, in this slide in two instances. The opposite side of the heart also had two incised areas in it.

Q This final slide is Government Exhibit 780. What, sir, does this slide or photograph represent?

A This is basically--the heart and lungs have been pulled up out of the way and you are looking down into an area where the lungs and heart normally lay. This represents the rib area, and this cavity here. It is showing two incised areas. These represent two of the stab wounds that came through the chest wall, through the area between the ribs and through these areas that the heart-- which it entered into.

MR. BLACKBURN: Your may resume your seat. Your Honor, just one moment.

(Pause.)

BY MR. BLACKBURN:

Q Dr. Hancock, with respect to the incisional wounds on Kristen MacDonald, do you have an opinion,

sir, satisfactory to yourself, as to the type of instrument that could have caused those wounds?

A Yes.

Q What is that opinion, sir?

A It would be again, perhaps, a single-edged sharp pointed knife-like instrument.

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Q Do you have an opinion, sir, satisfactory to yourself, as to what could have caused any of the puncture wounds on Kristen MacDonald?

A Any fairly firm object, presumably metal in nature, that would have had a point on it, at some point.

Q Dr. Hancock, let me hand you Government Exhibit 313 and 312, and ask you, sir, to take a look at both of them.

(Witness complies.)

Q Dr. Hancock, do you have an opinion, sir, satisfactory to yourself, as to whether or not the ice pick could have caused the puncture wounds in the body of Kristen MacDonald?

A It could have.

Q Do you have an opinion, satisfactory to yourself, as to whether the knife could have caused the incisional wounds in the body of Kristen MacDonald?

A It could have.

BY MR. BLACKBURN:

Q Dr. Hancock, let me ask you a hypothetical question. Assume, sir, that Kristen MacDonald had lived, and also assume, sir, that as you have stated, she received puncture wounds that could have been made with an ice pick. Do you have an opinion, sir, satisfactory to yourself as to whether or not those puncture wounds would have left any scar tissue?

MR. SMITH: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: Two of them would have left minor scars and perhaps a scar from the others would have been rather transient as one gets older and the skin stretches and grows. These scars may have been rather ill-defined, but I think within a frame of time after that, there would have been relative scarring.

MR. BLACKBURN: Your Honor, at this time, I would mark for identification Government Exhibits 970 and 971. What they are, sir, Government Exhibit 970 are two photographs of Kristen MacDonald already in evidence and photographs of the weapons that have already been placed into evidence--the ice pick, two knives, and a wooden club. With respect to Government Exhibit 971, they are two photographs of Kimberly MacDonald already in evidence and also four photographs--two photographs--one

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-26

of an ice pick and one of a wooden club, sir.

(Government Exhibits 970 and 971 were marked for identification.)

BY MR. BLACKBURN:

Q Dr. Hancock, with respect to Government Exhibit 970, sir, would you take this blue marker, sir, and if you need your protocol to refer to, I wish that you would fill in the blank, sir, with respect to the number of wounds, punctures, and cuts as closely as you can on Kristen MacDonald?

A These two blanks? Do you want front and back in the same?

Q Yes, sir, just the total as close as you can approximate.

A Your wounds refer to---

Q (Interposing) Why don't you write on there whatever it is that you are referring to. Use your own terminology.

A These are understood to be approximate?

Q Yes, sir.

(Witness complies.)

MR. BLACKBURN: Your Honor, at this time, we would move Government Exhibit 970 into evidence.

(Government Exhibit 970 was received in evidence.)

BY MR. BLACKBURN:

Q Now, sir, I wish you would do the same thing with respect to Government Exhibit 971. Here is the protocol for Kimberly MacDonald.

(Witness complies.)

MR. BLACKBURN: Your Honor, at this time, I would move that exhibit into evidence.

(Government Exhibit 971 was received in evidence.)

THE COURT: Very well.

BY MR. BLACKBURN:

Q For the record, sir, so that it will reflect, would you read into the record what you have written down with respect to Kimberly MacDonald--just read it for the record, sir?

A These represent approximations, but they are relatively accurate. There are some minor changes. One cannot absolutely put down in a short space, but this represents the two major blunt wounds to the head. Under "fractures," I am identifying multiple fractures to the skull area. You cannot really identify single ones because this was a ramifying fracture and there were multiple fractures to that area. The one laceration I am referring to is to the face where the bone protruded through and apparently cut the skin--with the bone

cutting the skin. There are no significant puncture wounds that I recall, and the eight to ten cuts are the incised stab wounds in the neck area.

Q Would you also do the same thing with respect to the exhibit of Kristen MacDonald?

A Again, these represent, in my opinion, reasonable approximations. The 17 wounds are referring to the incised stab wounds and represent the ones on the front and the back. The puncture wounds represent primarily the small circular wounds in the front part of the chest, and the cuts represent--the five cuts represent the cuts on the hands with actually one of these five being the major cut.

Q Dr. Hancock, with respect to both Kimberly and Kristen MacDonald, do you have an opinion, sir, as to the time of death of either one?

A I would not be able to state it any more specifically than I am sure the records show--last time seen alive until observed dead. It would certainly fit that time frame, and I would not be able to pinpoint it any more precisely than that which was in the range of--I observed them at 9:30. I presume they had died within the previous 12 hours.

MR. BLACKBURN: Your Honor, that would conclude our Direct Examination. The defense can

lkm2

Q Please state your name?

A Michael Douglas Newman.

Q Mr. Newman, if you would, sir, speak loudly enough so everyone can hear you. Where do you presently live, Mr. Newman?

A I am currently residing in Fayetteville.

Q Where are you employed?

A I am stationed at Womack Army Hospital, Fort Bragg.

Q In what capacity do you work there?

A I am now a Physician's Assistant.

Q How long have you been a Physician's Assistant?

A About four and a half years.

Q Would you tell us briefly, sir, what that is?

A Well, I am a highly-skilled technician. I work very closely with the doctor. I do triage on patients, follow-up care on chronic long-term patients. I take care of a lot of minor illnesses and injuries.

Q Now, directing your attention to February of 1970, where were you employed?

A I was currently working in the emergency room as a Senior Clinical Technician at Womack Army Hospital.

Q And how long had you been working there?

A For approximately nine and a half months at

that time.

Q Where had you been prior to that time?

A Prior to that, I had been in Vietnam with a clearing company.

Q What did you do while you were in Vietnam?

A I worked in the triage section--the clearing company. We were with the First Cavalry Division. We received casualties straight from the field. We did rapid treatment, resuscitation.

Q Can you explain to the jury what you mean by the term "triage"?

A We did an evaluation of the--evaluations on the patients. The ones that we took care of, we took care of; and if we could not, we transferred them on out to hospitals.

Q Now, directing your attention to the 17th of February, 1970, did you have an occasion to be on duty that day?

A Yes, sir; I was.

Q And do you recall the time period around 4:00 or 4:30 on the early morning of the 17th?

A Yes, sir.

Q Did you have an occasion, as a result of your responsibilities in the emergency room, to see the Defendant, Jeffrey MacDonald?

lkm4

A Yes, sir; I did.

Q When did you first see him?

A As he was brought in from the ambulance to the emergency room. It was sometime between 4:00 and 4:30 that morning.

Q Now, where were you when you first saw him?

A I was inside the emergency room itself.

Q How did Dr. MacDonald come into the emergency room?

A He came in on a litter, and he was brought in by our ambulance there from the hospital.

Q Was he laying down or sitting up?

A He was laying down on the stretcher.

Q Was he uncovered or was he covered?

A I believe he had a sheet over him when he came in.

Q Now, when he came into the hospital, where was he taken?

A He was immediately taken around towards the treatment room. We have a little area off the treatment room called the crash room. He was taken into the crash room.

Q Where were you during this time?

A I was with him.

Q Besides yourself, once he went into the crash

Appeal: 15-7136 Doc: 30-1 Filed: 08/16/2016 Pg: 569 of 763 Total Pages:(569 of 1502)

lkm5

room, who else was with him?

A There were two corpsmen working with me that night. There was also a nurse, and I believe the night supervisor came down and went in with us then.

Q Now, what did you do, if anything, once he came into the crash room, sir?

A Well, he was initially brought in. He was transferred over to the litter in the crash room, and we checked him out for wounds, took vital signs on him and got him ready for the doctor. I believe the doctor came in very shortly after we carried him into the crash room.

Q Approximately how long were you with him before a doctor came in, if you can recall?

A Probably no more than four to five minutes before the doctor was in there with him.

Q If you would, sir, tell us, if you can recall, what his vital signs were?

A I cannot recall the exact figures on his blood pressure. As I recall, though, it was stable and his pulse rate was also stable. I don't remember the exact numbers.

Q Now, you say you checked him out for wounds; is that correct?

A Yes, sir.

Q What exactly did you do?

lkm6

A On the initial exam that I did on him, I saw three wounds on him. There was one on the upper left arm, one on the right chest---

Q (Interposing) Excuse me; would you point to the location on your own body where you saw these?

A Somewhere in this area there was one wound (indicating). There was one on the right chest and one on the upper left abdomen, right at the border of the thorax.

Q Okay; stand up if you would. Where was the third wound?

A The third wound was somewhere on the right chest.

Q With respect to the wound on the left arm, how would you describe that wound, sir?

A In my opinion, it was a superficial laceration.

Q What, if anything, did you do to treat that wound?

A The only thing that I did to those were to wash them up. Now, the one that was on his chest, I did place a Vaseline gauze pad over it.

Q Which one?

A The one on the right chest.

Q How large an area did that wound cover, if

lkm7

you recall, sir?

A As I recall, it was just a small laceration there on the chest, perhaps an inch long. I really don't recall the exact length of it.

Q What treatment, if any, did you do to the third wound that you mentioned this morning?

A As I recall, the only thing I did to it was clean it up. He also had an abrasion on the left forehead, I believe, and there was a lump there; and I cleaned it up, washed his face down.

Q Was that lump bleeding or non-bleeding?

A No; there was a little bit of fluid was seeping from it. It was not bleeding.

Q Was the skin broken or unbroken?

A Yes, sir; the skin was broken.

Q Now, Mr. Newman, during the time that you worked in the emergency room prior to this date, and when you were in Vietnam, have you ever had an occasion to see wounds or puncture wounds that were caused by an ice pick, or could have been caused by an ice pick?

A Very probably; I had put a lot of time in in the emergency room, and we used to get a lot of stabbing injuries in.

Q How many ice pick wounds did you observe on the Defendant Jeffrey MacDonald?

lkm8

A I did not see any ice pick wounds.

Q During this four or five minute period, what, if anything, did you say to the Defendant?

A I did not say anything during the first few minutes he was there.

Q What, if anything, did he say to you?

A Well, he was talking about what had happened there to the family, and I don't recall whether any of the CID people were in there or not; but he was talking about what had happened, and he was asking how his wife and children were.

Q What did you say in response?

A Well, I told him that they were all right, if I recall. I did not tell him that they were dead at the time. We had already been informed that they were dead.

Q Now, you say that the doctors came in four to five minutes after you were with him; is that correct?

A Yes, sir.

Q Which doctors are you referring to, if you recall?

A Sir, I really don't remember which doctor was there in the emergency room that night.

Q Well, how many doctors came in?

A Initially there was one, and then the surgeon

was called down and there were two doctors there; and I don't recall whether it was Dr. Straub or Dr. Jacobson that came down first.

Q Okay; after whichever doctor came in first, did you stay there while the doctor was there?

A Yes, sir.

Q And how long did Dr. MacDonald remain in the crash room?

A I believe he stayed in there probably between 15 and 30 minutes before we carried him over to x-ray.

Q How was the Defendant Jeffrey MacDonald dressed during this time?

A When he initially came in, he had on a pair of pajama pants, which were taken off of him immediately after he got there so that he could be checked out for further wounds on the lower extremities. Other than that he had on nothing.

Q Did you observe his entire body?

A Yes, sir; I very quickly looked over him to see if there were any other wounds on him.

Q How many wounds did you observe on his back area?

A I did not see any on his back.

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BY MR. BLACKBURN:

Q Now after one of the doctors returned or came to the crash room, what if anything did you observe occur?

A Beg your pardon, sir?

Q What happened after the doctor came to the crash room?

A The doctor came in and he did an examination on him and ordered the chest films.

Q When you speak of chest films, what do you mean?

A He was sent over to x-ray for x-rays of his chest.

Q Was that in regard to any particular wound?

A Probably the one on his right chest.

Q Did you go over to x-rays with him?

A Yes, sir, I did go over to x-ray with him.

Q How long did that take?

A I think he was over there probably about 10 to 15 minutes. I left the x-ray, went back over to the emergency room and got some syringes and test tubes to draw off some blood for some further lab tests that the doctor wanted to get.

Q After he returned from x-rays, what happened?

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A He was sent upstairs to the ward.

Q Did you go with him up to the ward?

A Yes, sir, I did go up to the ward with him.

Q Now, during any of this conversation with the defendant, that he had in the crash room, did he make any statements as to who he thought had done these things to him?

A Yes, sir, he did.

Q Would you please state to the jury what he said?

A He said that there was a white woman, two black males, and one white male. The woman was stating, "Acid is groovy; kill the pigs." He continued to ask how the wife and children were, and he also asked why would they do that to his wife, that she had never hurt anyone.

Q Now, during this time that you examined or were around Dr. MacDonald in the crash room, were you able to examine or observe his breathing?

A Yes, sir. While I was washing off his face, he started to breathe a little bit rapidly, and I told him to slow it down and he did.

Q Now, when he was taken over to x-ray, how did he go over to x-ray? Was he carried or did he walk or what?

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pp-3

A He went over by litter.

Q Was he lying down or sitting up?

A Yes, sir, he was laying (sic) flat.

Q When you took him up to the ward was he still on the litter?

A Yes, sir, he was.

Q And he was lying down at that time?

A Yes, sir.

Q During your experience in the emergency room and in Vietnam prior to that time, have you ever had occasion to observe individuals who have been in physical shock?

A Yes, sir, I have.

Q Do you have an opinion, sir, satisfactory to yourself as to whether or not the Defendant, Jeffrey MacDonald, was in physical shock at that time?

A I did not consider him to be in shock.

Q What were the conditions of his eyes, if you can recall, sir?

A Sir, I really don't remember. I can't give a clear statement on that.

Q Now, do you recall who the doctor was who was going up to the surgical ward?

A I believe it was Dr. Jacobson.

Q And where were you when this was going on?

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A I was helping transport the litter up to the ward with him.

Q Do you recall whether or not any conversation within your hearing ability between Dr. Jacobson and the Defendant took place?

A Yes, sir, he and Dr. Jacobson were talking about the possibility of putting in a chest tube. They were also talking about a kid that they had both worked on some time prior in the emergency room, that had had to have some chest tubes put.

Q Do you recall any names that they were speaking about?

A No, sir, it was a kid who had been on a bad LSD trip, and he had gotten away from the staff and gone up to the ninth floor and he jumped out the ninth floor window. He landed on top of the laboratory, was brought into the emergency room, and was worked on there. The kid did not live very long.

I understand that Dr. MacDonald and Dr. Straub had both worked on him and--in the emergency room.

Q In overhearing this conversation, did you have an occasion to hear what treatment, if any, was given to this young man?

A Well, they had had to put chest tubes into

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pp-5

this young man, and Dr. MacDonald was a little apprehensive about having a chest tube put into himself.

MR. BLACKBURN: Just one second, Your Honor.

(Pause.)

MR. BLACKBURN: Your Honor, that will complete our direct examination. The Defense may cross examine.

THE COURT: Very well.

C R O S S E X A M I N A T I O N (9:16 a.m.)

BY MR. SMITH:

Q Mr. Newman, you testified at the Article 32 proceedings in this matter, did you not?

A Yes, sir, I did.

Q And the information which you have given us today is basically the same information you gave to the Article 32 proceedings?

A Yes, sir, I believe so.

Q You also testified at the Grand Jury, did you not?

A Yes, sir, I did.

Q Now, I believe you testified to the Grand Jury that Dr. MacDonald was very cooperative with you, is that correct?

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BY MR. SMITH:

Q What parts of his face, if you recall?

A If I recall correctly, it was on his forehead and I believe there was some smeared on the cheeks.

Q On both cheeks?

A Sir, I really don't recall about the cheeks. I think there was some smeared on the cheeks. It appeared the blood had been smeared with his hands. His hands were also bloody.

Q Mr. Newman, unfortunately, the pajama bottoms were thrown away; weren't they?

A Yes, sir; they were.

Q I know that you regret that. Would you describe the pajama bottoms as you last remember seeing them?

A Sir, as I recall, there was blood on the pajama bottoms. The inseam of the pajama bottoms was ripped out from about mid-thigh all the way across. I was the one who went ahead and threw them away, and when we started cleaning up, the CID had been there and everybody else had been around, and no one had picked them up.

They were left in the crash room, and I picked them up and threw them away.

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Q You assumed, I take it, that if anyone had wanted them at that point, something would have been done to preserve them or store them.

A Yes, sir.

Q Were they just tossed in the trash basket or what happened to them?

A Yes, sir; they were thrown into the garbage can.

Q Do you know whether any effort was made to retrieve them?

A Sir, I really don't know.

Q Do you know whether any sample was taken or any cutting was taken from the pajamas of any blood on the pajama bottoms?

A I really don't believe there was because they were thrown on the floor there in the crash room and I don't think anyone bothered them until they were picked up and thrown out.

Q Do you know how long Dr. MacDonald was in the hospital recuperating?

A No, sir; I really don't know exactly.

Q How many times did you take his blood pressure or his temperature?

A I really don't recall whether I took his blood pressure or not. I had two corpsmen working with

Q Can you more specifically describe the bandage to which you refer?

A Well, he had like a square bandage, and he had a tube running into the underside of the bandage.

Q What did you observe with respect to his hands?

A His hands--there was no marks on his hands.

Q How long did you stay in the room with Dr. MacDonald?

A I would say about 30 minutes, sir.

Q During this entire time, who was present?

A The doctor, the nurse, Captain MacDonald and myself.

Q What did you first say to Dr. MacDonald, if you recall, sir?

A I told the Captain who I was. I asked him--I told him the reason I was there was to try to identify and get better descriptions of the assailants that had allegedly come into the house that night. And I asked him if he would be willing to help us in giving us a better description of the people.

Q What did he say?

A He said he would.

Q What did you say next?

A I asked him, I said, "Well, would you tell me

what happened?" And he proceeded to give me a statement as to what happened the night of the incident.

Q As best you can recall, sir, what did Dr. MacDonald say to you?

A After I asked him what happened, he stated that he was lying on the couch in the living room and he was awoke (sic) by a scream. He woke up and there was four people standing over him. He said the one man was a Negro about 5'8", plus two other Caucasians with him; and there was a girl standing behind him.

I asked him, "Well, what happened?" And he said when he heard the scream he woke up. As he started to get up, he said the black man hit him--or the Negro hit him--with a club---

Q (Interposing) Excuse me; where did he say he hit him with the club?

A He just said he hit him with the club. He was getting up and he hit him with a club. I said, "Well, can you describe it?" And he said, "Well, I think it was a baseball bat." He said, "When I reached up to grab it, it was slippery like, you know, it had blood on it."

And I asked him again, I said, "Well, are you sure it was a baseball bat?" He said, "Well, I am not sure." He said, "I thought it was a baseball bat." He said, "I wrestled with him, and as we started to get up,"

he said, "I hit the man." He said, "No; I really didn't hit him." He said, "I more or less grabbed him in the face."

He said, "About this time, I felt a real sharp pain in my side," he said, "and I thought this was when I got hit; but that is when I must have gotten stabbed with the ice pick." He said, "We wrestled to the hallway." He said, "And that is the last thing I remember; I passed out."

Q What did he say with respect to any description of these four individuals?

A Later on in the interview, we went back to getting a better description of the people, and he said that the Negro was dressed in a fatigue jacket with E-6 stripes on it. He had a close military haircut. The two men behind him were approximately the same size, except that one had a mustache and one was wearing a red hooded jacket.

He said the female was blond and was approximately the same size as the assailants. But he said she could have been shorter, because she may have been standing on the first step leading up into the hallway.

Q What did he say with respect to their faces, if anything?

A He would never really give a real good

description of the faces. He was very vague about the description of the faces.

Q What, if anything, did he say the girl was wearing?

A When I asked him about the girl--or what she was wearing--he said that when he was knocked down, he remembered looking over. And he saw that she had on--he described them as black leather boots, but then he changed it. He said, "No; they weren't black leather boots. They were brown boots; but they were wet and they appeared to be black." He said, "You know, like she had just walked in out of rain and the water was coming down on them, and that they had turned black."

He further said that he thought she had either a mini-dress or shorts on, because he could see a lot of leg between the top of the boot and the material of the dress.

Q What did the Defendant Dr. MacDonald say, if anything, with respect to what these people were saying?

A He stated that the girl in the back kept saying, "Acid and rain; acid is groovy; kill the pigs."

Q Okay; after the struggle took place, what, if anything, did Dr. MacDonald say happened next?

A He said that he woke up. He was laying in the hallway, and he looked down and he could see his wife

laying in the bedroom; and she had a knife sticking out of her chest. He got up, and he also heard a gurgling sound, so he went to the master bedroom. He said he took the knife out of his wife's chest.

And at this point I asked him, I said, "What did you do with the knife?" He said, "I don't know; I just threw it." He said he gave his wife mouth-to-mouth resuscitation, but he continued to hear this gurgling sound. He said he realized it was coming from the bedroom of the girl.

He left the master bedroom and went to the bedroom of the youngest girl and there he found Kimberly, and she was--he kept saying, "You know--gurgling--like she had blood in her lungs. You know the sound."

And he said he tried to give her mouth-to-mouth resuscitation. He said he had picked her up and tried to give her mouth-to-mouth resuscitation.

Q Are you speaking of the youngest child?

A Yes, sir.

Q After he stated he went to see the youngest child, what did he say he did next?

A He did not really want to talk about the youngest child. After he said he gave mouth-to-mouth resuscitation, he said he got up and left and went over to Kimberly, I believe is the eldest girl's bedroom. He

#19
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Q Where, at Fort Bragg, specifically, if you can recall, did you live?

A I lived in a housing development on Fort Bragg. It was Corregidor Courts, I believe it was called, on Spear Drive.

Q How close to Castle Drive was that?

A I think it was about a block and a half. It intersected Castle Drive, I believe, the street did.

Q What was your husband doing at Fort Bragg?

A My husband, at the time, was a captain in Headquarters Special Forces.

Q Now during this period of time, did you come to know an individual by the name of Colette MacDonald?

A Yes, I did.

Q If you can recall, approximately when did you first meet her and under what circumstances?

A It was around the end of January, maybe early February, 1970, and we were taking a night school course in the University of North Carolina on base, in child psychology.

Q Did you all meet at class, is that how you met?

A Yes, we did.

#19
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3

Q When did the class meet--on what days is what I'm getting at?

A I believe it was on Monday and Thursday evenings.

Q Do you recall the approximate time that the class met?

A It was about 6:30 in the evening, and it ended around 9:30 in the evening.

Q Now as a result of your meeting Colette MacDonald, did you ever have an occasion to travel to class together?

A Yes, we shared a ride on several occasions.

Q By sharing a ride, do you mean the two of you went together?

A Yes, yes; we did.

Q In which one would drive one time, and another would drive another time?

A Yes.

Q Now approximately prior to the 16th of February, how many times had you all driven to class together, if you recall?

A I believe it was about three, maybe four times that we went to class together.

Q Now, directing your attention to the 16th

#19
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4

of February, 1970, did you have an occasion to go to the child psychology class that night?

A Yes.

Q And with whom did you go?

A I went with Colette.

Q Who drove that night?

A She did.

Q About how long does it take from where you lived to get to the place where the child psychology class was being taught?

A I think it took about ten minutes to get there.

Q Now during this trip, what, if anything, did you say to her that you can recall?

A On the way to the class?

Q Yes.

A I don't recall on that particular evening what conversation we had on the way to the class.

Q Well now, during any of the conversations, during any of the trips to or from the class, what conversations, or what statements, if any, can you recall that you and she had together?

A I don't believe I know what you want--what kind of a question?

#19
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5

Q Well, did there ever come a time when you discussed--you were expecting a child at that time, were you not?

A Yes, I was.

Q Did there ever come a time when you discussed your pregnancy and that of Colette?

A Yes.

Q And what, if anything, did Colette say about that?

A That was not on the way to the class, though.

Q When was it?

A It was sometime before class one evening we were talking. We were around the same--pregnant about the same amount. I was due in June and I believe she was due around the beginning of the summer, sometime.

In the conversation--I can't recall exactly how it came about--but anyway, she told me that she got pregnant by mistake. She forgot to take a birth control pill, and I sort of, you know, made a joke about it because you hear about that, but not very many people really have that happen to them that you know.

Q Did she ever say anything to you

#19
tdb
6

concerning her husband, Jeffrey MacDonald?

A Yes, his name came up in conversation. It was that evening, but I can't remember at what time the conversation took place--about her husband. She had mentioned that he had been moonlighting the night before in a small town nearby and he was really tired that night when she left for class.

She said the people had been really nice to him at this place where he had moonlighted. I believe she told me he had been asleep when she left to come to class because he was so tired from working the night before and then working at the hospital on Fort Bragg the next day.

Q Now you spoke a moment ago about Colette's pregnancy. Did she ever say anything to you concerning any possible apprehension of that pregnancy?

A No, I don't remember that she did.

Q Do you recall whether or not she ever made any statement concerning whether or not her husband would be present when the child was due?

A I don't remember.

Q Did Colette ever say anything to you concerning her husband's involvement with the boxing team at Fort Bragg?

A We were talking one evening about being

#19
tdb
7

separated from our husbands for various reasons. She had told me when her husband first went into the Army, that he had gone for training somewhere--I think it was Sam Houston, or one of the army posts down south--and she had been separated and she didn't like it.

She indicated that there was going to be a separation coming up in the future and I can't remember if it was for the boxing team, but she said something about his going away somewhere.

BY MR. BLACKBURN:

Q Now, directing your attention to the night of the 16th, you attended that class?

A Yes.

Q What, if anything, did Colette say that night at class?

A We were having a discussion in the class. She asked the question, "What would happen if someone had a child that liked coming in bed with the parents?" Apparently, the two-year old child had been coming into bed with the mom and dad, and I believe the little girl wanted the mother to leave the bed so she could stay with the dad. The mother, Colette, would leave the bed and go and sleep on the couch some nights. She didn't seem to feel very happy about doing that.

Q Now, during the time that you and Colette were in class together, how many other times did Colette ever speak up or ask questions?

A I don't recall that she ever brought up any subject for discussion in class.

Q After Colette asked the question or made the statement in the class, what, if anything, happened?

A Well, we had a class discussion. We just used it as sort of a subject discussion after that, and the class concensus was that the little girl should be

put back to bed and told, "This is your bed, and this is mommy and daddy's bed. We stay here and you go into your own bed." She appeared to be quite happy with that.

Q Now, after the class ended, did you and Colette go straight home?

A We went straight home except we did stop off at a small shopping center on post. I think it was Melony Village. I am not sure. It is a little commissary just across from where we lived. It was raining that night, so she went into the commissary by herself and came back out to the car. I stayed in the car.

Q About what time did you get home?

A It is hard to say. It was between quarter till 10:00 and 10:00 o'clock, I believe. We were just a few minutes late coming because we stopped.

Q Is that the last time you saw Colette?

A Yes, it was.

Q During the brief time that you knew Colette, in your own opinion, would you describe her as loud spoken or soft spoken?

A Very soft spoken.

MR. BLACKBURN: No further questions. Defense may cross-examine.

#23
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BY MR. BLACKBURN:

Q Now, after you first observed the Defendant, what if anything did you do?

A Well, I recall he was excited at that time. I examined him and kept trying to ask him questions and trying to keep him talking, because at the time I had the feeling that he was going to leave the area and find out what was going on with his family.

Q Just get up and leave the area?

A Just get up and leave.

Q You say he was excited at that time, is that correct?

A Yes, very excited.

Q In your opinion, sir, was he in any distress --medical distress--at that time?

A Well, he was in emotional distress, but physically I do not feel that he was in distress. He was certainly able to talk. He was sitting up. We would have to try to get him to lay (sic) down again. He was going over details about things back home. He was, I think, trying to answer in his own mind what had happened, trying to figure out what, you know, what has happened to me in this situation--like he was having a great deal of difficulty at that time coping with the reality of the situation, understandably.

#22
pp-2

Q Dr. Jacobson, you say that now you are a neurosurgeon?

A Yes.

Q What is that practice, sir?

A Well, it is a surgical practice directed toward the diagnosis and treatment of neurologic disorders of a surgical nature--brain, spine, peripheral nerves.

Q Do you have an opinion, sir, satisfactory to yourself as to the neurological condition of the Defendant at that time?

A Very excited; perhaps delirious in the sense that some of the data that he was bringing out was--for example, he remarked that he had checked the pulses on the children and I don't recall it specifically about his wife--and he said there were no pulses.

Another question he would ask, "When is the ambulance bringing them in"--something to the effect that there was a contradiction there. They appeared as though they were pulseless, lifeless probably--making an assumption. Yet, on the other hand, why aren't they bringing them in.

That is the only part of it that seemed hysterical. The other made sense.

Q Did the Defendant appear to know where he

#22 pp-3

was, and did he appear to be alert?

A Yes, he did.

Q Alert as to time and place?

A Yes.

Q How can you tell whether or not someone is neurologically intact, so to speak?

A Well, number one, by their level of consciousness. If they are sleepy, drowsy or you can't arouse them, obviously there is something wrong. If they are able to move all their extremities, if they are able to--if their movements are symmetric, if their actions are purposeful, their thought processes are relatively logical--one can tell an awful lot simply by that observation.

You go from that point to doing a formal neurologic examination--checking pupils, checking for areas of trauma, checking reflexes, checking for evidence of pressure in the head.

Q What did you check with respect to the Defendant in that regard?

A Well, to the best of my recall, I know that I checked his pupils and they were equal. I know that I checked his extraocular muscle movements. I'm rather sure that I checked his reflexes. I observed him moving on the stretcher and almost ready to leave. His thought

#22
pp-8

patterns were organized, although some of them were tried because of the events.

His thought processes were organized in the sense that he did mention something about, he saw some bubbling in his chest, or coming from the wound in his chest and right side.

That, an observation of somebody who is pretty much with it.

Q Now, did you have an occasion, sir, to check his vital signs?

A Yes.

Q What were they?

A I believe his blood pressure was like 120 something--125, 120--well, something in the 120's over 80; and his pulse was about 88.

Q Were those acceptable?

A Those were very acceptable.

MR. BLACKBURN: Your Honor, excuse me for just a moment.

(Counsel confer.)

MR. BLACKBURN: Your Honor, at this time we would mark for identification and move into evidence Government Exhibit 973, which are drawings of male bodies.

THE COURT: Very well.

#22
pp-4

(Government Exhibit No. 973 was marked for identification and received in evidence.)

BY MR. BLACKBURN:

Q Dr. Jacobson, after you first observed Jeffrey MacDonald, what was the first part of his body that you examined?

A Most likely the head. My habit is that unless there's something that needs obvious attention at the time, is to start at the head and go down. It is something that I had gotten used to doing flight physicals day after day.

Q Can you describe to us, sir, how you checked his head?

A Well, first observation, then palpation. You usually palpate the scalp, feel for any depressions, swelling, look for lacerations. You can feel them.

Q How much of his scalp did you check?

A Well, again, the recall I would have to make is that I checked all of his scalp. Now, that is nine years ago, and I am hard put to say with a hundred percent absolution that that's so.

Q That would have been your normal practice?

A That would have been my normal practice, and that being my area of interest, I would feel that

#22
pp-6

that is what I did.

Q What did your examination of Dr. MacDonald's head reveal, sir?

A He had a contused area of his left forehead, slightly raised, the skin abraded, but not particularly broken, no indentations in that area--this was in the left forehead just off the midline.

Q Would you take the the grease pencil, sir, and I think you will probably have to hold on to that chart because it is sort of flimsy, and mark where you observed that.

(Witness complies.)

Q Would you explain, sir, what you mean by the term "contused" that you have used.

A "Contused" means basically that there has been a blow to the area. The area remains intact as far as its general morphology, as far as its general form.

Q Explain what you mean by the term "abraded," if you would?

A That sort of skin response one would expect from a floor burn, from a falling on the sidewalk where the skin surface is rubbed off.

#24
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BY MR. BLACKBURN:

Q Besides that one contused area on his forehead, what else, if anything, did you observe with respect to the head area of Dr. MacDonald?

A I believe he had a little blood around his mouth.

Q Was there any injury around his mouth that you observed?

A No.

Q What other injuries or wounds or bumps to his head besides that one contused area did you observe, sir?

A That is the only area.

Q What was the next part of his body that you examined?

A Well, the head; that would include the throat, mouth, and things like that. Then probably the neck and chest.

Q Now, with respect to his left chest area, what, if anything, did you observe?

A Left chest area--there were punctate wounds in the left pectoral area.

Q Would you take that grease pencil, sir, and mark what you observed?

A Again, this is the general area. He also

#24
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2

had another cut on his arm along here which is rather in that area, I believe.

Q With respect to those what you have described as punctate areas, how many did you observe?

A Four.

Q Do you have an opinion, sir, what could have caused that?

A No; just a very sharp object--something that did not have a lot of width or breadth.

Q With respect to the cut area on, I believe, the left arm, how would you classify that cut, sir?

A Superficial. It did not go to subcutaneous tissue.

Q Okay, with respect to the other part of his chest, what, if anything, did you observe?

A Well, he had a laceration type of wound on the right chest about the seventh intercostal space area.

Q Would you draw that on the diagram, sir?

A I would put that about right here.

Q How would you classify that wound, sir?

A That was a laceration type of injury. It was long--longer. I would say three-quarters of an inch. It was wider at one end of it than at the other end of it. There was, in fact, some bubbling from that wound.

#24
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3

Q Do you have an opinion, sir, what could have caused that particular injury?

A Again, I would think that something with a sharper point on it--more tapered, obviously narrow in breadth.

Q Now, with respect to the lower part of his front body, what, if anything, did you observe?

A He had a laceration on the left upper quadrant about an inch and a quarter long.

Q Would you draw that in, sir?

(Witness complies.)

Q How would you classify that particular injury?

A Well, that was deeper than the one on the left arm. It was down to the rectus muscle. I did not probe it. I do not know the actual depth of it per se, but it was deeper than the one in the arm.

Q What medical treatment, if any, did you give to that particular wound?

A I cleaned it up.

Q Was it bleeding or non-bleeding?

A Not bleeding significantly--just minimally.

Q With respect to his right arm, what, if anything, did you observe with respect to that?

A His right arm?

#24
cks
4

Q Yes, sir.

A I don't recall anything on his right arm. He had something on one of his hands, but I don't recall anything on the right arm.

Q You speak of something on his hands--what was that?

A He had a cut between two of the fingers which he mentioned and he said, "Gee, I must have caught the knife there, or something there. My finger is cut." It was superficial again, like almost shaving off some of the skin.

Q Like a paper cut?

A My opinion would be that it would be a little more than a paper cut.

Q With respect to the area--the area with the punctates--would you describe that a little more specifically? I know you can't see it a little too well from here.

A Those punctures were in a line, and they were close together. They were like, say, two or three millimeters apart, almost like the tines of a fork would be spaced--almost.

Q Besides those injuries which you have already described, what other injuries did you observe, if any, on the Defendant?

#24
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5

A That is all I can recall, and that is all I have recorded. I looked at my physical exam.

Q Now, how would you classify, sir, Dr. MacDonald's general condition after you observed him?

A Well, his general condition was good. His blood pressure was okay; his pulse was 88 which is probably normal for us but for him that is probably a little fast. He moved around well on the guerney. Good, I would have to say.

Q Now, I believe you testified at the Article 32 proceedings; is that correct?

A Yes; I did.

Q And I believe--well, let me get the exact question--page 603 of the Article 32 proceedings.

MR. BLACKBURN: Your Honor, at this point, we would offer this witness as of 1970 as an expert in the field of medical science.

THE COURT: Very well.

MR. SMITH: We do not object, Your Honor.

BY MR. BLACKBURN:

Q "Question: Would a person, and I will add another detail which might make it a little more palatable to the Prosecution, would a doctor who inflicted a pneumothorax of this

#24
cks
6

nature on himself know what the final medical consequences of that wound would be at the time he inflicted it, or could he know?

Answer: Not this type of pneumothorax; he couldn't."

Do you recall that, sir?

A Yes.

Q Now, Dr. Jacobson, let me ask you another question, sir. Do you have an opinion satisfactory to yourself, based on your experience in medical science, as to whether a doctor who inflicted a pneumothorax of this nature on himself could reasonably estimate or guess what the final medical consequences of that wound would be at the time he inflicted it?

A Statistically he could guess. It would be a statistical guess.

BY MR. BLACKBURN:

Q Would you explain your answer a little more clearly?

A There are a number of procedures that are done in medicine knowing that there can be side effects from doing that particular procedure--any operative procedure. We take biopsies of the liver with a needle, we take biopsies of the lung with a needle. We know that in both those cases--in fact, we take biopsies of the brain with a needle. We know that in those three cases, there is a chance of hemorrhage or secondary problem. We, however, also know that statistically the risk is relatively small compared to the possible yield. I don't know if one can honestly carry that over, but statistically, one can do--figure--that the potential for disaster is a reasonably low one.

Q What, sir, is a pneumothorax?

A That is air between the lung itself and the inner wall of the chest.

Q What is a hemothorax?

A That is blood in the same space.

Q Which of the two, in your opinion, sir, is the more serious?

A I don't really have an opinion on that.

Q After you examined Dr. MacDonald--well, how

long did you examine him in the Emergency Room?

A Well, I would say probably for eight minutes or so--five to eight minutes.

Q Now, after that examination took place, what did you do next?

A I believe we took him to the x-ray suite.

Q Now, by "we," who do you mean?

A Dr. Straub was there. He was on call in the Emergency Room. He is a radiologist. We went down to the x-ray suite particularly pertinent to the business with his right chest--the bubbling that we were concerned about in the thorax.

Q He was given x-rays; is that correct?

A Uh-huh.

Q What did the x-rays at first reveal?

A Well, I believe they revealed a small pneumothorax in the percentage area of 15 to 20 percent or something like that--relative to that area. I believe we may have taken two x-rays at that time. I can't recall that specifically. I can't recall that.

Q Well, let me ask you this question. You say 15 to 20 percent pneumothorax?

A Yes.

Q Did there ever come a time when you changed your estimate as to what percentage of pneumothorax Dr.

MacDonald suffered?

A By the following morning, this had evolved into about an estimated 40 percent. Now, that percentage is, again, personal opinion. Is it 40 percent of the total volume of the chest or 40 percent of the pneumothorax. Those are two different---

Q (Interposing) What, in your opinion, sir, what is the degree of seriousness between a 20 percent and a 40 percent pneumothorax?

A Well, for somebody like Dr. MacDonald, there probably is not an awful lot of difference physiologically. A gentlemen of his relative good health, size, robustness, 40 percent is probably well-tolerated. The fact that it was getting larger was the reason for doing tube thoracostomy which was done later.

Q What is that?

A Well, that is placing a tube between the ribs in order to take out the air from between the lung and the chest wall.

Q After Dr. MacDonald was x-rayed, did you have an occasion to go with him, sir, up to his room?

A Yes.

Q During that trip from the x-ray area to his room, did you have an occasion to have any conversation with Dr. MacDonald?

A Yes. We talked about it. He and I had had a young troop from the Special Forces, I believe, in common in the sense that I had put a chest tube in him in a pneumothorax that he had sustained in a fall out of a second or third story window or something like that and Jeff was the surgeon for, I believe, that group. He had contacted me on behalf of his commander and personal concern about the young man also as to how he was doing. I believe, as I remember, he came over to the hospital when we had to put the chest tube in this young fellow. Chest tubes are not comfortable to get put in your chest. They are relatively uncomfortable when they are being placed. I think we talked about that--him anticipating that perhaps that would come up possibly.

Q What medication, if any, do you give someone who is to have a chest tube inserted into his body?

A Would you repeat that question?

Q What medication or anesthesia or anything, if any at all, do you give to an individual who is to have a chest tube inserted into his body?

A Well, if they don't have an allergy to medications, we usually put some Xylocaine, which is local anesthetic that is used like a dentist would use. We usually give them a pre-medication or something like

Demerol, Phenegran, or Vistaril which are a narcotic and a tranqualizer which seems to help with pain problems.

Q During the entire time that you examined Dr. MacDonald in the Emergency Room, what medical treatment, if any, did you give to the injuries which he received?

A We washed up his wounds probably with Phisohex, and I believe that he had a Vaseline gauze over the suspect area, the puncture in the chest--the one that had the bubbling.

Q How many of his wounds besides this area in the chest required suturing or anything of that kind?

A None of them. They were not in cosmetic areas, and they were not gaping, large wounds.

MR. BLACKBURN: Your Honor, may I have just one moment.

(Pause.)

#26
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BY MR. BLACKBURN:

Q How many pneumothoraxes, Dr. Jacobson, did Dr. MacDonald have, if you recall, sir?

A Well, he had one, but it was a persistent pneumothorax.

Q He did not have any on the other side of his chest?

A No, he did not.

MR. BLACKBURN: That would conclude our direct examination. The Defense may cross-examine.

C R O S S - E X A M I N A T I O N 2:20 p.m.

BY MR. SMITH:

Q Dr. Jacobson, you testified, I believe at the Article 32 proceedings in 1970, didn't you?

A Yes, I did.

Q All the medical facts that you have provided the jury today were provided at that hearing by you; is that correct? That is, you said the same things there that you said today, basically?

A Well, not really.

Q In what way did you change your testimony for today?

A My opinion has changed a little bit about

#28
pp-1

(Whereupon,

ROBERT H. CAVERLY

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

D I R E C T E X A M I N A T I O N 2:36 p.m.

BY MR. BLACKBURN:

Q Please state your name, sir?

A Robert H. Caverly.

Q Mr. Caverly, where do you presently reside?

A In Fayetteville, North Carolina.

Q And what do you now do, sir, for a living?

A I retired in December of 1978, as a special agent with the Federal Bureau of Investigation.

Q How long had you been associated with the FBI?

A Twenty-four years and three months.

Q Where were you stationed at the last?

A The last 17 years in Fayetteville.

Q As a special agent for the FBI?

A Yes, sir.

Q Now, directing your attention to the 17th of February, 1970, did you have an occasion to become involved in the MacDonald investigation?

A Yes, sir, I did.

#28
pp-2

Q How did that take place, sir?

A I was instructed by my agent-in-charge to proceed to Womack Army Hospital to interview Dr. Jeffrey MacDonald. I proceeded to the hospital with an investigator from the Criminal Investigation Division at Fort Bragg, John Hodges.

We went to the doctor in charge of the intensive care unit. I cannot remember his name.

Q What time of day was this, morning or afternoon?

A Now, this was about 2:15 in the afternoon, or 2:15 p.m.

Q And after you got to Womack Hospital, you went up to the ward where Dr. MacDonald was, is that correct?

A Yes, sir.

Q Before you went into the room where Dr. MacDonald was, did you have occasion to talk with any of his doctors?

A We talked to the doctor who was in charge of the ward. I can't remember his name.

Q What was the purpose of your talking with him?

A To find out if Dr. MacDonald was under any type of sedation or was in a position where he could not

#28
pp-3

be interviewed. We tried to find out if he was in a position physically to be interviewed concerning the assault on himself and his family.

Q What did the doctor say to you, as best you can recall?

A Best I recall, he said he was under sedation but he was--he could be interviewed.

Q As a result of that, what did you do?

A We went--myself and John Hodges went into the room. After identifying ourselves by use of credentials, we talked to Captain MacDonald, and we told him what the purpose of the interview was to be concerning the assault on him and his family.

Q Excuse me, who else besides yourself and Mr. Hodges was present in the room at this time?

A Dr. MacDonald.

Q No medical people were in the room?

A Not at that time, no, sir.

Q Were you all standing up or sitting down?

A To the best of my recollection, Mr. Hodges was in a chair at the foot of the bed. I sat down in a chair to the left side of the bed at about Dr. MacDonald's head. I subsequently moved to the foot of the bed at his request.

Q Was Dr. MacDonald lying down or sitting up?

#28
pp-4

A The bed was raised--the head of the bed was raised up, where he was on a slant. I remember the top portion of his body was raised.

Q How was he dressed?

A He was--he had nothing on from the waist up, and I believe from the waist down he had a white sheet over bottom, or bottom part of his body.

Q What if anything did you observe with respect to his body from the waist up?

A I observed a bandage--gauze bandage right on the--I would say at the bottom of the rib cage on the right side; and the bandaging had, to the best of my recollection, two pieces of tape on it.

Q What else did you observe?

A There were some scratches and marks on him on the left side of his body.

Q How many other bandages, if any, did you observe on his body?

A I am trying to recall whether there was a band-aid or not, I'm not sure. I did not see any other gauze bandages, to the best of my recollection.

Q His entire chest area was exposed, is that correct?

A Yes, sir, and except for this one gauze bandage with the tape, right below his breast to the ribs.

BY MR. BLACKBURN:

Q What did you observe with respect to his right and left arms?

A There were some scratches on it or what appeared to be scratches--marks.

Q Now, Mr. Caverly, I believe you stated just a moment ago that you informed Dr. MacDonald of what was to be the purpose of your interview; is that correct?

A Yes, sir.

Q What was the purpose of your interview?

A The purpose of the interview was to determine the chronological sequence of events that happened earlier that morning, and we were interviewing him as a witness or as a victim to an assault.

Q What did he say to you after you informed him?

A He agreed to be interviewed. He said that he was under some type of sedation and that he was emotionally upset over the recent events involving himself and his family.

Q Did he appear to you to be coherent and alert?

A Yes, sir.

Q During this interview, did you have occasion to take notes?

A Yes, sir; I took detailed notes from questions

that Dr. MacDonald had answered at my request.

Q After you took those notes, what did you do with them?

A I returned to the office, and it was the policy at the FBI at that time to transcribe these notes, which I did, and I sent the transcription to the stenographer's pool in Charlotte where it was typed and the finished product was returned to me.

Q What happened to your original notes?

A They were destroyed.

Q Is that the general policy?

A That was the general policy; yes, sir.

Q Now, proceeding, sir, to your interview with Dr. MacDonald, what did he first say to you?

A He told me that he arrived back at his residence somewhere between 5:00 and 5:30 p.m. on Monday, February 16th, from work after he had played basketball with other members of his office. He stated that he had eaten supper, and then his wife, Colette, left to attend classes at North Carolina State University Extension at Fort Bragg. He stated that after his wife returned from school, they watched television, and shortly before the Johnny Carson Show came on at approximately 11:30 p.m., he stated that his wife had taken some medication so she was able to sleep better inasmuch as she was some

three to four months pregnant.

He stated that he and his wife were laying on the floor in the living room watching television when their youngest daughter, Kristen, started crying. Dr. MacDonald went to her room. The child said that she did not want to sleep alone. He told me at this time, or in the meantime, his wife had gone to the bed, and he believed that he went to the kitchen and got his daughter a bottle of chocolate milk and went back to her room and took both the daughter and the bottle to the master bedroom where he placed the child in the bed with his wife.

Q What were you doing during this time that he was telling you this? Was this done in a narrative form?

A This was done--I asked Dr. MacDonald to give a logical sequence of events of what had happened from the time he arrived home that evening.

Q I see. What did he say happened next as best he could recall?

A The best he could recall, he stated that it was somewhere between 12:30 to 12:45 a.m. on the 17th of February, 1970. After he put his daughter in the bed with his wife , he returned to the living room and he again watched television. After the show was over

somewhere around 1:00 a.m., he read about 50 pages of a novel and then went in and did the dishes in the kitchen. He stated that at approximately 2:00 to 2:30 a.m., he went to the master bedroom and noticed that his daughter had wet the side or had wet the bed on his side. He picked up the daughter and took her back to her room, and then he went in the living room where he prepared the sofa to sleep for the night. He stated to the best of his recollection that he believed the time was approximately 2:30 a.m. when he laid down.

#30
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BY MR. BLACKBURN:

Q What did he say happened next, that he could recall?

A He stated at the time, some time unknown--he was unable to give me a time of morning--he was awakened when he heard his wife screaming something to the effect,

"Jeff, Jeff, help me. Why are they doing this to me?"

He stated at about the same time he heard his oldest daughter, Kimberly, screaming,

"Daddy, Daddy, Daddy,"

over and over again. Dr. MacDonald stated he got up from the couch on his elbows. Apparent, he was lying flat. He got up, put his elbows on the couch, at which time he told me he saw people standing at the foot of the couch.

There was one black male on the far side left, at his left side walking toward him. He observed two white males at the foot of his couch, and one of these white males moved to the side and he saw what he believed, or what appeared to be, a white female standing behind the two males holding what appeared to be to him a lighted candle in front of her.

#30
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Q What did he say happened next?

A He said that before he could even say anything to any of the people that the black male that was coming toward him had a club in his hand and raised it up over his head.

Dr. MacDonald stated the black male raised his hands over his head, and that Dr. MacDonald put his own arms up to defend himself and was hit on the arm and across the forehead. He recalled, at that time, just before he was hit on the forehead that the Negro, or that he was hit on the head by the Negro male, he heard the white female chanting in what he said was a monotone voice:

"Kill the pigs; acid and rain are groovy, man; acid is groovy."

He said she repeated these over and over.

Dr. MacDonald stated he was then hit on the forehead and he fell back onto the couch, and the white female continued this monotone chanting.

Q After that chanting had occurred, what did he say he did next?

A He stated he began fighting with the black male and he recalls that one of the white males started to hit him in the side and he remembers grabbing the club in the black male's hands in order not

#30
tdb
3

to be hit again. As he did, he grabbed the club and pulled it toward him, at which time he observed the black male was wearing an Army fatigue jacket with sergeant E-6 stripes.

He said that the hands of the Negro were wet, slippery, and while he was fighting this black male, he continued getting hit in the side and shortly thereafter, he felt a severe pain in his side and in his chest.

He said that the Negro and white male continued fighting with him and he pushed him away from the couch toward the hallway, with both the black and the white male tearing at his pajama top. He said that the pain in his side became quite severe, and he fell to the floor in the hallway.

Q After that, what did he say happened?

A Dr. MacDonald stated that he recalls as he was falling to the floor in the hallway, he saw the female that he described had high-topped brown or dark fake leather boots, and he saw her white knees showing above the boots.

He said that he noticed the knees and the boots were wet, but they were not bloody. Then he passed out in the hallway. He also recalled while he was fighting with the black and white males in the

#30
tdb
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hallway that the white male had what appeared to him to be a knife, or an ice pick, in his hands.

Dr. MacDonald stated he observed the shining blade, but he could not say what type of instrument it was. He also told me subsequently that he did not know how long he was unconscious, but when he awoke, he was on the floor in the hallway with the pajama top torn, bloody, and twisted around his wrist.

At this time, if I recall, he showed me how he had his hands up like this, and said they were twisted around his wrist (indicating).

Q Okay, specifically right there, as best you can recall, demonstrate that again precisely where did he say the pajama top was?

A He said they were tied around his wrist, twisted around his wrist.

#31
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BY MR. BLACKBURN:

Q Would you describe--well, that is okay--go ahead. What did Dr. MacDonald state that he did next after that?

A After he woke up, Dr. MacDonald said that he got up from the hallway floor and went into his daughter Kimberly's room and he saw blood all over the bed. He felt her pulse and her heartbeat and could find neither. He then went to the other daughter Kristen's room and also found no pulse or heartbeat.

Q What did he say he did next?

A Dr. MacDonald stated he then used the telephone in the bedroom and called the Fayetteville telephone operator, stating that he needed an MP at 544 Castle Drive. He said that the operator started asking him questions such as his social security number, the reason for the ambulance, et cetera. Then he said he laid the telephone down and returned to his daughter's room where, again, he checked both of them and was unable to find any signs of life.

He stated he then went into the kitchen and again called the operator and repeated his previous comments about sending an ambulance to 544 Castle Drive. He stated he talked for about five minutes when he heard a male voice on the telephone and he heard other voices

#31
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2

in the background, and he heard the male voice say, "Make it ASAP," which in Army terminology is "Make it as soon as possible."

He then returned to his wife in the bedroom and pulled a small knife from her chest and threw it to the side and attempted mouth-to-mouth resuscitation. He stated that he could find no life in his wife's body and then he covered her with his pajama top and a towel.

The next thing he remembered was being awakened by military policemen as he was laying over his wife's body.

Q During this first interview with Dr. MacDonald, did he give you any descriptions at all of the people who he said were the assailants?

A Yes, sir.

Q Would you describe, sir, for the record, what those descriptions were?

A Dr. MacDonald furnished the following descriptions of the four individuals he observed in his residence on the evening or morning of February 17: one was a black male approximately 18 to 24, approximately 5'11", weight 170 pounds, build medium, complexion medium brown, hair was black and close cut to the head. He was wearing an Army fatigue jacket with

#31
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3

sergeant E6 stripes. The next was a white female, 16 to 25 of age, 5'6"; she had long, light blond hair hanging down to the middle of her back.

He said that she was wearing a large floppy hat, dark-colored, with high top brown or black fake leather boots, had on either a short skirt or shorts.

The third man--the third person--he described as a white male, age 18 to 25, 5'11", and wearing a sweatshirt with a gray or with a hood hanging down the back.

The fourth individual was a white male, 18 to 25, 5'8", and wearing a mustache.

Q In his giving you these descriptions, did he say anything at all about the assailants wearing bedsheets or sheets of any kind?

A Not to my recollection; no, sir.

Q How long did this interview take, sir?

A From approximately 2:25 p.m. until 4:10.

Q During this interview, sir, what was Dr. MacDonald's emotional condition?

A During part of the time, he became emotionally upset. He started crying especially when he was describing the scenes with the children and the wife. At one point during the interview, he requested a doctor which we went out and got the doctor that was

#31
cks
4

on duty. He came in and settled Dr. MacDonald down. He did not, to the best of my recollection, give him any type of medication.

Q You were in the room during this time?

A Yes, sir.

Q Now, after this particular interview, did you ever have an occasion to go back and see Dr. MacDonald again?

A Yes, sir; I went back the next day.

Q Who went with you the next day?

A John Hodges, the same individual who was with me on the 17th. We went back on February 18th.

Q Do you recall what time of day it was that you went back? Was it morning or afternoon, if you can recall?

A I am fairly sure it was in the afternoon.

BY MR. BLACKBURN:

Q When you went back the second day, did you have an occasion to see any of his doctors prior to going into the room, or did you just go in?

A Well, we had to ask permission to go into the room first, yes.

Q And permission was granted?

A Yes. I don't recall talking to any doctor about his condition to the best of my recollection.

Q Now, during this second interview, who was present besides yourself and Mr. Hodges and Dr. MacDonald in the room?

A Just the three of us.

Q On the second day, was Dr. MacDonald laying down, or was he sitting up as best you can recall?

A To the best of my recollection, he was in the same position he was the day before.

Q Did he appear to be alert and coherent?

A More so than he was on the 17th; yes, sir.

Q Did you ask him whether or not he agreed to be interviewed the second day?

A Yes, sir; I did. I asked him or he told me that he was not under sedation and would try to be more coherent during the interview on this date than he was on the 17th. What I meant by "coherent" is--getting back

into sequence, I wanted to find out exactly what happened. The first day, Dr. MacDonald would jump from one thing to the other--say from one room and then he would go to the telephone and then he would come back to finding the bodies. I was trying to get it in a logical sequence. He basically furnished the same information on the second day that he did on the previous interview on the 17th. The only exceptions that he recalled was that he and his wife had a drink of orange liqueur prior to her retiring for the evening. His wife went to bed prior to the end of the Johnny Carson Show and that his youngest daughter started crying after his wife had retired for the evening.

He stated that he went to the daughter's room. She said that she didn't want to sleep alone, so he went to the kitchen and got her a bottle and carried her and the bottle back to the room where he put her in bed. He furnished the same information substantially that he finished watching the show, did the dishes, and then started to bed when he noticed that the child had wet his side of the bed. He carried her back to her own room and then he went to bed on the couch in the living room. He did state that he checked the windows in the house during the evening of the 17th prior to his return to be sure that the children's bedroom windows were not open too

far as he did not want it to be too cold for the children. He told me that he did not believe that he checked either the front or the back door as his family very seldom--he or his family ever used the back exit or back door to the house. He also recalled turning the light on in the hall bathroom as well as the light in the kitchen prior to his retiring, which he has done, he stated, many times in the past for his children's safety when they get up at night in the event they got out of bed.

He also told me that he believed that after the fight with the black male and the white male and after being hit on the forehead and suffering the pain in the right side in the chest, that after he awakened, apparently, he looked into the hall bathroom to see how badly he was hurt and see if it was necessary to put any compress on his forehead to stop the bleeding. He stated that he also believed that he looked into the bathroom after he checked his wife and children. He made the first telephone call from the master bedroom and later went to the kitchen.

Then, he said on the second interview, he said that he now recalls that he did not dial the operator on the second call, but he heard voices--first the female and then the male voice. He also recalled

that on the evening of February 17th, he said that he believed that he heard his wife and daughters screaming while he was being hit and fighting with the white and black male. He remembers when the struggle was started. He saw the four people standing over him in the living room, but he does not believe that he saw all four of these people together while he was fighting and struggling with the white and black male.

He also recalled that the shorter white male with the ice pick or the knife in his hands and the one that he was fighting with was wearing what he thought were lightweight gloves--stating they might have been surgical gloves. Captain MacDonald stated that he had several pairs of surgical gloves at his residence as his wife used them while washing hands or cleaning up to protect her hands.

MR. BLACKBURN: Thank you, Mr. Caverly. We are not through. We are just stopping.

THE COURT: Yes, we are. Mr. Caverly, you may not be acquainted with our Friday schedule, but this is where we came in for today. Members of the jury, in line with our Friday schedule, we will now take our weekend recess. We will reconvene Monday morning at 10:00 o'clock. I ask you again, please, not to talk about this case among yourselves or with

#17
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6

of the skull to where that shock causes unconsciousness, and I have seen many blows that were much worse than this one that the individual was not rendered unconscious and many lesser ones that the patient remained unconscious for days. So, it's almost impossible to take this particular or any particular injury and say that the patient could have been unconscious for a certain number of hours.

Q Okay. Let me ask you this way. If I have already asked you, you can correct me. Do you know how long or do you have an opinion as to how long after someone gets such a blow on the head it will be before he goes unconscious?

A I would say usually the unconsciousness will ensue immediately upon the blow on the head in almost all instances, but there are exceptions to that.

Q Now, when you placed the chest tubes into Dr. MacDonald I think that you had to make an incision of some sort?

A Certainly.

Q How large an incision did you make?

A Usually about two centimeters--about an inch or less. It can be done through a trochare which is a rather brutal-looking instrument but is quite efficient and that is a sharp pointed instrument with a

#17
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7

hole in it that will allow you to insert a tube through an even smaller opening. In other words, it has a sharp point and it goes through just the skin and you control the depth of entry so you don't damage anything, but once you are through with that you sort of puncture a hole. Then you slide the tube through that hole and withdraw the instrument to take it away, and this allows you to insert the tube in a much smaller incision, if you will--puncture wound--than you would otherwise. But, even with using that trochare, we will usually make a small--at least one centimeter--incision for a tube that size.

MR. BLACKBURN: Your Honor, may I approach the witness?

MR. BLACKBURN: Your Honor, at this time we would put into evidence and mark for identification Government Exhibit 404, which this witness has previously testified to--the medical records.

MR. SMITH: We have no objection.

MR. BLACKBURN: We move them into evidence.

(Government Exhibit No. 404 was marked for identification and received in evidence.)

BY MR. BLACKBURN:

Q Dr. Gemma, when you made the insertion of the chest tube into Dr. MacDonald, do you recall how you made the incision and with what instrument you made the incision into his body?

A I do not recall specifically, but I recall in general that I would recall if I did not use a scalpel, so I--now, if you ask me whether it was a disposable scalpel or one of the old iron-handled ones that we had to put the blade on myself, I can't recall; but it was a scalpel I am sure.

Q Then I take it you were able to control the depth of the incision?

A Yes.

MR. BLACKBURN: No further questions.

THE COURT: Very well. Call your next witness.

#18
pp-4

(Bench conference terminated.)

(Whereupon,

BENNIE J. HAWKINS

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

D I R E C T E X A M I N A T I O N (2:46 p.m.)

BY MR. MURTAGH:

Q Please state your name, sir, and spell it for the record?

A It is Bennie J. Hawkins, B-e-n-n-i-e, middle initial J., H-a-w-k-i-n-s.

Q Where are you employed, Mr. Hawkins?

A I am in the U. S. Army, sir.

Q And in what capacity are you in the U. S. Army, sir?

A I am a special agent with the United States Army, from Investigation Command.

Q Okay, and where are you assigned at the present time, sir?

A Hawaii District, Schofield Barracks, Hawaii.

Q And drawing your attention to February 17, 1970, where were you assigned, please, sir?

A I was assigned to Fort Bragg--field office in Fort Bragg, North Carolina.

#18
pp-5

Q Okay, and on the morning of February 17, 1970, did you have occasion to go to Womack Army Hospital?

A Yes, sir, I did.

Q Would you please tell us where you went first?

A I went to the morgue at Womack Army Hospital for the purpose of obtaining fingerprints of the victims.

MR. MURTAGH: Your Honor, at this time, pursuant to our previous practice, the Government will mark and ask that they be received in evidence, various record prints based on representation to the Court that Mr. Hawkins could elucidate further on the identity of these prints.

THE COURT: All right.

MR. MURTAGH: Your Honor, at this time the Government would mark Exhibit Number 679 of the record prints of Mrs. Colette MacDonald, and ask that they be received.

THE COURT: Very well.

(Government Exhibit No. 679 was marked for identification and received in evidence.)

BY MR. MURTAGH:

Q Mr. Hawkins, I take it you took those prints yourself?

A Yes, sir, I did.

#18
pp-6

Q After you took the prints from Mrs. MacDonald at the morgue, what was the next thing you did, if you recall, in the morgue?

A The next thing I did in the morgue, sir, was pick up some items that had been collected from the bodies of the victims.

Q And do you recall what these items were generally?

A These items were the clothing, fingernail scrapings, hairs and fibers collected from the bodies.

MR. MURTAGH: Your Honor, at this time the Government would ask that we be able to mark and receive various vials which Mr. Hawkins has just testified about and which he will identify further. We would offer Government Exhibits 278, as described on the exhibit list, Government 279 to 281, three slides, 282.

(Government Exhibits Nos. 278, and 279 to 282 were marked for identification and received in evidence.)

MR. MURTAGH: Government 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, and 294.

(Government Exhibits Nos. 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, and 294 were marked for identification and received in evidence.)

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-19

BY MR. MURTAGH:

Q Let me ask you, Mr. Hawkins, do you recognize that object, sir?

A Yes, sir. This is a ring--wedding band type that I picked up among some of the other items from the morgue personnel.

MR. MURTAGH: 294. Your Honor, we would ask that those exhibits be received.

THE COURT: Very well.

MR. SEGAL: May we have a chance to examine some of this evidence, Your Honor, instead of having it dumped on our table?

THE COURT: Yes, take as long as it takes for you to examine it. I just understood that you had already seen it, but if you haven't, take the time and look.

(Pause.)

MR. MURTAGH: Your Honor, may I proceed on another matter?

THE COURT: I don't know. He can't look and listen at the same time.

MR. MURTAGH: Your Honor, these items have been previously made available.

THE COURT: Yes, but he says that he wants to see them again, and I am going to let him see

them again.

(Pause.)

BY MR. MURTAGH:

Q Mr. Hawkins, after you collected the items you removed from the bodies at the morgue, where did you go next, sir?

A I proceeded over to the ward where Dr. MacDonald was a patient.

Q What, if anything, did you do when you arrived at the ward?

A I obtained fingerprints and footprints of Dr. MacDonald.

MR. MURTAGH: Your Honor, at this time, I would like to have marked and offer a series of record prints which Mr. Hawkins would testify about.

THE COURT: Very well.

BY MR. MURTAGH:

Q Before I ask you that, Mr. Hawkins, did you return at a subsequent time or did you ever have another occasion to take prints from Dr. MacDonald?

A Yes, sir.

MR. MURTAGH: At this time, we would offer Government 661, 662, 663, 659, 660, 668, 664, 669, 666, 656, 657, and 667, and ask that they be received.

THE COURT: All right.

(Government Exhibits 661, 662, 663, 659, 660, 668, 664, 669, 666, 656, 657, and 667 were marked for identification and received in evidence.

BY MR. MURTAGH:

Q Mr. Hawkins, did you ever have occasion to meet an individual by the name of Lieutenant Ronald Harrison?

A Yes, sir; I did.

Q What was the purpose of meeting Lieutenant Harrison if you recall?

MR. SEGAL: Your Honor, may we have an offer of proof in this matter; and also, may we finish looking at the last 12 exhibits handed to you by the Government?

THE COURT: Come up.

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BENCH CONFERENCE

MR. MURTAGH: Your Honor, we are going to have Mr. Hawkins identify the record prints of Lieutenant Harrison. If we could get a stipulation, sir, I have got more witnesses exactly like Mr. Hawkins. They are here and they are ready to testify---

THE COURT: (Interposing) You have offered them and they have been received in evidence without OBJECTION. What is the problem?

MR. SEGAL: I asked for an offer of proof, Your Honor. It was unclear whether he was going to elicit testimony from what this man said which would be hearsay.

MR. MURTAGH: No.

MR. SEGAL: I did not know whether he was going to try to elicit testimony from the witness. I am not OBJECTING to prints from the man. That is not an issue.

THE COURT: Anything else?

MR. MURTAGH: No, sir.

(Bench Conference--terminated.)

BY MR. MURTAGH:

Q Mr. Hawkins, I believe before the request for an offer of proof, you stated that your purpose in

talking to Lieutenant Harrison was what, sir?

A The purpose for talking to Lieutenant Harrison was because he was a friend and acquaintance of Dr. MacDonald's and had been a visitor in Dr. MacDonald's residence.

Q Did you have occasion to request and obtain from Lieutenant Harrison his footprints?

A Yes, sir; I did.

MR. MURTAGH: Your Honor, at this time, the Government would offer and ask that they be received--Government Exhibit 1130 and 1131.

(Government Exhibits 1130 and 1131 were marked for identification and received in evidence.)

BY MR. MURTAGH:

Q Mr. Hawkins, let me ask you--have you ever had occasion---

MR. SEGAL: (Interposing) Excuse me, may we see it, please?

BY MR. MURTAGH:

Q Mr. Hawkins, have you ever had occasion during 1971, to go the residence at 544 Castle Drive?

A Yes, sir.

Q May I ask you, sir, what was the purpose of that visit?

A It really was to make a sketch of the chair, the couch, and the coffee table in the living room area of the quarters.

Q Okay, did you have occasion to measure those items?

A Yes, sir; I did.

Q Okay, did you record those measurements accurately?

A Yes, sir.

Q Mr. Hawkins, I am going to show you 1127, 1128, and 1129, and ask you if you recognize those, sir?

(Government Exhibits 1127, 1128, and 1129 were marked for identification.)

A Yes, sir; I do.

Q What are they, please?

A 1127 is a diagram of a coffee table. 1128 is a diagram of a front view of a couch. 1129 is showing the end of the couch.

MR. MURTAGH: Your Honor, we would ask that these exhibits be received.

THE COURT: Very well.

(Government Exhibits 1127, 1128, and 1129 were received in evidence.)

MR. MURTAGH: The defense may cross-

#28
pp-1

BY MR. BLACKBURN:

Q Who else was with you in the room at that time, if you remember?

A I was by myself at the time, but Mr. Page in the other part.

Q By "viewing glass," you mean magnifying glass?

A Yes, sir. May I show the jury what I am talking about?

Q Yes, sir.

A This is the type of glass that we use when comparing record prints with latent prints. It is a magnifying glass which is a Bausch-Lombe and one of the best made.

Q Mr. Medlin, can you speak up just a little bit louder?

A The method which I used at that particular time was to set the glass over the footprint on the floor in blood in this fashion because the light was from this direction. I looked for certain characteristics to give me a starting point in this footprint.

I found what is a bifurcation, which is a forking of two ridges. The upper ridge continued, but the second ridge or the lower ridge was what we call a spur. It ended very abruptly. Below that was a ridge which curved and which sometimes I mistakenly call a

#28
pp-2

fish-hook type ridge. It is a slightly curved ridge.

Seeing this in the latent print, and seeing other characteristics in that area, I searched in the same general area, which was the ball pattern zone of the left foot, which is this area right below the big toe, and could not find any matching chacteristics in Colette's record footprint--that which we had--or Lieutenant Harrison's footprint which we had.

However, I found more than 14 points of comparison between the fixed footprint in the blood and the record footprint of Jeffrey MacDonald's left foot. I so told Mr. Murphy, and he thanked me very much.

Q Is it your opinion, then, that the left footprint exiting the bedroom of Kristen's belonged to Jeffrey MacDonald, is that correct?

A Yes, sir.

Q Once you made that finding, sir, what if anything did you do with respect to that footprint?

A I called Mr. Page in and asked him to photograph the footprint so that we could make a record of it, and he attempted to do this using Polaroid film to see if he could do it, as my eyes had seen; but every time he would get the camera in the same position that my nose and my eyes was (sic)--which as you can see is quite close to the floor--the light would shine directly

#28
op-3

into the lens of the camera. Every time he would snap the shutter, it would pick up the light bulb.

Therefore, he was not able to take a photograph of the different characteristics in the formation of the foot as I was viewing it through my glass. He had no magnifying lens for his camera, and therefore he did the best he could.

Q Well, now, did there ever come a time when photographs were in fact made of that footprint?

A Yes, sir.

Q When was that?

A Mr. Page made negatives, made a overdraft, overview, of both the latent print and the record print so that we might be able to show definitely whose print it was.

Q As a result of taking those photographs, were you ever able to subsequently tell whose print it was from the pictures?

A The only thing--may I explain how the laboratory works?

Q Yes, sir.

MR. SEGAL: Could we have a "yes" or "no" answer to that question first, Your Honor?

THE COURT: I thought he said "yes." Did you not say you could do so?

#28
pp-4

THE WITNESS: Yes, sir; however, I said, "may I explain the workings of our lab?"

MR. SEGAL: I want to hear what the answer is before we hear the explanation.

THE COURT: What answer did you want, a "yes" or "no"?

MR. SEGAL: He asked the question, and as I understood it he called for a "yes" or "no" answer. He then wanted to tell us the explanation before we heard which one we were getting explained, "yes" or "no."

MR. BLACKBURN: Your Honor, I will ask the question again.

THE COURT: All right, let's start over and do it that way.

BY MR. BLACKBURN:

#29 tdb 1

Q Mr. Medlin, I believe you said that subsequently pictures were in fact made of the footprint?

A Yes, sir; they were.

Q Now from those photographs, or from the pictures, and not from your original examination, only from the pictures were you ever able to subsequently identify whose print it was?

A From the design, shape, and position; yes, sir. May I go into a further explanation now, Your Honor?

THE COURT: Well, that depends. Hearing no objection, I will let you start. Go ahead; explain your answer. You are entitled to do so.

THE WITNESS: In the CID laboratory, we may not perform our duties as some other federal laboratories, but we are just as competent, in my very humble opinion--moreso, sometimes. I am not taking away from anybody.

One examiner does not say "This is the

answer." Another examiner does the same comparing of the same latent prints with the same record prints. Sometimes we have as many as five examiners to give their opinions. Everybody sees the same thing.

#29
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2

We look for similarities and dissimilarities. Some of those who do the comparing are other individuals who are merely practicing. Even though they are examiners they like to see how a print in that particular pattern would turn out, so therefore, on the footprint, more than one person would have to look at it--not just myself.

I was the only one who could see the footprint as it was in the room at that time because I was the only examiner there. So later, when the planks were sawed up to be removed to the laboratory, they come apart. The photographs that were taken did not show all of the ridge detail which I could see myself.

Therefore, the other examiners, when they looked at the print, could see only one or two characteristics, but they did not see the 14 or more that I saw. So therefore, I believe the way that the chief of the section said that the report would be written was that the size, design, and shape of the foot was that of Jeffrey MacDonald.

However, because they themselves did not

see the ridge detail and characteristics that I had seen, then they themselves could not say that it was the same print.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 567 and 1132.

#29
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THE COURT: Very well.

(Government Exhibit Nos. 567 and 1132 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Medlin, let me hand you these exhibits I have just mentioned and ask you, sir, to take a look at them and tell us whether or not you can identify what they are?

A Yes, sir.

BY MR. BLACKBURN:

Q What are they, sir?

A They are photographs of the print in blood that was in Kristen's room, sir.

MR. BLACKBURN: Your Honor, I would move these into evidence and ask that they be passed to the jury.

THE COURT: Very well.

(Government Exhibits 567 and 1132 were received in evidence.)

(Exhibits passed among the jury.)

MR. BLACKBURN: Your Honor, if I could have just one moment.

(Pause.)

MR. BLACKBURN: Your Honor, at this time, I would mark for identification Government Exhibits 569 and 670.

(Government Exhibits 569 and 670 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Medlin, let me hand you those two exhibits and also Government Exhibit 669, and ask you to take a look at them and tell us whether or not you can tell us what they are?

A Yes, sir. These are the overlay-type prints

that I had Mr. Page prepare. This is an enlargement of the footprint in blood and this is the enlargement to scale of the record print which I used.

Q Would you show us, sir, how you did that if you can?

A We have a viewing box which is nothing more than a light with a plain piece of glass on top--non-glare type. First, I laid this print down and then I took this print and laid over the top of it in this fashion here. The outline follows perfectly--the outline of the print in blood that you are just looking at. This is an enlargement--it is not to scale--but it is scaled one to the other. The record footprint was made by the same person. It is not the same footprint, but it is the same footprint that made this transparency. This is the record left footprint of Jeffrey MacDonald.

MR. BLACKBURN: Your Honor, we would move those exhibits into evidence and also ask that they be passed to the jury.

(Government Exhibits 569 and 670 were received in evidence.)

(Exhibits passed among the jury.)

MR. BLACKBURN: Your Honor, at this time, we would mark for identification Government Exhibit 1085.

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(Government Exhibit 1085 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Medlin, let me put Government Exhibit 1085 up here and ask you, sir, to take a look at it and tell us what that is?

A That is an enlargement of the same pictures that they are looking at there. This is an enlargement of the print in blood and this is an enlargement of the record print of the left foot of Jeffrey MacDonald.

Q Mr. Medlin, first of all, how long did you remain at Fort Bragg?

A Until Saturday about noon--Saturday afternoon.

Q Of that week of the 17th?

A Yes, sir.

Q Now, during that time, did you ever have an occasion to work with Mr. Bill Ivory in the living room area, sir?

A Yes, sir; I did.

Q What were you doing with Mr. Ivory in the living room?

A During an area of time when Mr. Shaw and Mr. Chamberlain were processing a particular part of the building in which we could not get into, Mr. Ivory and

#31
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BY MR. BLACKBURN:

Q Did you ever have an occasion to search the carpet area of the living room for anything?

A In what respect did you mean, sir?

Q Did you ever check the nap of the carpet in the living room area for any debris or anything of that nature?

A Yes, sir. Actually we were looking for-- in processing the coffee table, we did not want to contaminate any blood which might be in the area. Therefore we searched the area for blood before we did much of anything else with our black powder, sir.

Q Now during the entire time that you were at the MacDonald apartment, how many prints--finger, palm, and footprints, sir--did you seek to obtain?

A At the particular time that we were there, on the final debriefing, I gave a report of 44 latent fingerprints, 29 latent palmprints, and 2 footprints. Later, it was found that two latent fingerprints were actually the left foot of Mrs. Colette MacDonald.

Q Where were they located?

A On the edge of the coffee table, sir.

Q Now of these prints that were taken, how many did you initially identify as belonging to someone, if you can recall?

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latent print on. There was a pair of eyeglasses laying against the wall, which when I first noticed had what appeared to be a red speck or so on the lens. I picked them up by the earpiece and offered them to the chemist for him to remove the specks in the event they were blood.

Q What identification, if any, were you able to make on the drinking glass?

A I did not identify the latent fingerprint on the drinking glass.

Q Well, with respect to other items in the living room, were there any other items that you dusted for that you can recall, sir?

A We dusted the ledges, the back of the coffee table--the edge of it at that particular time, because it was laying on its side. We dusted in the area where we felt that adults would grasp the door facing as they struggled down the hallway, and in that general vicinity.

Q What about the kitchen, sir?

A We dusted the different items in the drain--the saucers we developed latent prints on identified as belonging to--predominantly, but not all of them--belonging to Captain MacDonald. We dusted other items--coffee cups--returned these items to the laboratory for further analysis, and developed some fingerprints on them.

Q When you say that you took these to the

laboratory for further analysis, how did you transport them from where you found them to the laboratory?

A We secured boxes, and through means of use of sticks and strings, we suspended these items so that they would not touch anything or each other, nor in any manner detract from the physical characteristics at that particular moment when I first picked them up.

We picked them up using a pencil or stick through the handle--this is the cups--and we picked the saucers up by the use of the edges and suspended them in a manner inside of a box. We would mark it "fragile" and we would hand carry it from one place to the other.

Q Mr. Medlin, let me hand you what has been marked as Government Exhibit 139. These are sort of together as one exhibit, sir. Have you ever seen that before?

A Yes, sir; I have.

Q When did you first see it?

A It was on top---

Q (Interposing) First of all, if you would tell us what it is?

A I beg your pardon--an Esquire magazine which was on top of, or a part of, a stack of magazines that was located under the edge of the coffee table. There were two stacks of magazines or books in this fashion,

and the coffee table was laying across them.

This is one of the magazines from the stack that was situated underneath the edge of the coffee table.

Q Did you ever have an occasion, sir, to dust any of the pages of that magazine for prints?

A Yes, sir; I did.

Q What, sir, did your testing show, and in respect to what pages, if you can recall, sir?

A The question was, "Did I dust them?" And I said, "Yes; I did." The word "dust" infers using black powder or some other type of method of dusting for a latent print.

In this particular instance, we returned this magazine to the laboratory where we processed it chemically, using ninhydrin spray.

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BY MR. BLACKBURN:

Q Well, after you used that spray, what, if anything, did it reveal to you with respect to fingerprints?

A It developed certain latent fingerprints on the magazine.

Q Were you able to identify these prints?

A Yes, sir; we identified that there were eleven fingerprints developed. Ten of them were identified and one is not identified.

Q To whom, sir, if you recall, did these prints belong?

A They belonged to Captain MacDonald, Mrs. Colette MacDonald and Lieutenant Harrison predominantly.

Q Did you recall, sir, which pages of the magazine on which some of these prints were found?

A May I refer to a note, sir?

Q Yes, sir; if it will refresh your recollection.

(Pause.)

A For the record, may I go from my notes, sir?

Q Yes, sir.

A In the Esquire magazine one fingerprint on the advertising page belonged to Captain Jeffrey MacDonald.

Q If you would, sir, just tell us the page

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number without anything more.

A Page 99, page 100, page 101, 102, 104, 109, 114.

Q The prints on these pages belonged to whom?

A Excuse me; I've got more pages, sir.

Q I'm sorry.

A Page 114, 116, a back cover is all the pages that we found latent prints on, sir.

Q Now, on which of those pages which you have read out were there prints belonging to Jeffrey MacDonald?

A The advertisement page--page 99--page 101, page 100, 102, 104, 109.

Q With respect to the master bedroom, sir, can you recall whether any of the unidentified prints were located in the master bedroom, sir?

A Yes, sir; I do.

Q Where were they?

A Eight of them were on the venetian blinds in the master bedroom and were not full latent fingerprints but appeared to be partial and were partial--latent prints that could have come from the side of a person's finger.

Q With respect, sir, to the hall closet, did there ever come an occasion to dust for prints on the

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hall closet doors?

A Yes, sir; we did.

Q What was the result of your examination?

A We developed certain latent prints that were identified as belonging either to Captain MacDonald or Mrs. Colette MacDonald.

Q With respect to your last response, are you saying that the prints that you found on that hall closet door belonged to either Captain MacDonald or his wife or you found prints of each person?

A Of each person, sir.

MR. BLACKBURN: Your Honor, at this time, I would mark for identification Government Exhibit 685.

(Government Exhibit No. 685 was marked for identification.)

BY MR. BLACKBURN:

Q Now, Mr. Medlin, let me hand you what has been marked as Government Exhibit 685 and ask you to take a look at it, sir, and tell us whether or not you have ever seen that.

A Yes, sir; I have.

Q What is it?

A It is a record fingerprint card on a person named Helena--no middle initial--Foster.

Q Are there any other names on that exhibit?

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A Helena Warling Stoeckley--alias, Margie Worlie Raynor.

Q In your investigation, sir, or in your analysis of the prints that were inside the MacDonald apartment, did you ever have occasion to examine those prints, sir, with the prints that you dusted for in the MacDonald apartment?

A Yes, sir.

Q What was the result of that examination?

A I could find no matching impressions, sir.

MR. BLACKBURN: Your Honor, at this time, we would move Government Exhibit 685 into evidence.

THE COURT: All right.

(Government Exhibit No. 685 was received in evidence.)

MR. BLACKBURN: Just one second.

(Pause.)

BY MR. BLACKBURN:

Q Mr. Medlin, during the entire time that you were at the MacDonald apartment dusting for prints, did you ever have an occasion to come across any prints that were bloody in nature--fingerprints?

A There was a print that was on the foot of the bed in the master bedroom which was in a red substance and which, according to Mr. Chamberlain, was

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blood.

Q Now, how long after this first week, sir, when you were at the MacDonald apartment, did you involve yourself with checking for prints or matching the prints to the MacDonald apartment? How long did you stay on the case in your capacity as fingerprint examiner?

A It was the only case that was left open when I retired in 1971 that had my name on it.

Q What do you mean by that--by "left open"?

A Every time that we received a fingerprint card that was part of the fingerprint case FT-82 which had become finally known as the "damn MacDonald case," we stopped what we were doing, regardless of what we were involved in--begging the Court's pardon--regardless of what we were involved in and made a comparison of all the latent prints with the record prints that we had just received.

There was an order from the command in Washington and that is exactly the way we treated it. It was a priority case, and that is how we handled it.

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BY MR. BLACKBURN:

Q Mr. Medlin, with respect to the time that you finally left the Army, of the prints that you dusted or tested at the MacDonald apartment, if you would tell us, sir, how many fingerprints and palmprints you were able to identify as belonging to some named individual?

A May I refer to my notes here? And this time these are the correct notes, sir.

Of the latent prints that we developed and processed in the apartment, we identified 26 fingerprints and 11 palmprints. Not identified were 17 fingerprints and 14 palmprints. Of the 17 prints and 14 prints not identified were those that were partial prints from the venetian blinds and other places in the apartment.

Q How many prints that you tested for in the MacDonald apartment were deemed by you to be unidentifiable, as opposed to identified or not identified?

A You mean insufficient?

Q Insufficient, yes, sir?

A Twenty-four fingerprints and seven palmprints were insufficient.

MR. BLACKBURN: Your Honor, that concludes our direct examination of Mr. Medlin. The Defense may cross-examine.

THE COURT: All right.

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idea about children going out together. And at any time--if they went to a movie--he insisted that either he take them or Mrs. MacDonald take them, and the other pick them up and bring them home. I don't think they actually dated until after Colette was 16, as far as going out alone.

Q Now, did they date steady through high school, or off and on?

A No; I think perhaps a couple of years, but there was always another girl that was sharing a girl-friend, if you know what I mean. And about the third year in high school they broke up temporarily, and Colette was going with another boy, and Jeff with another girl.

Q Now, when it came time for each of these people to go to college, what effect, if any, to your knowledge did that have on their relationship?

A I believe it was toward the end of the first year of college--perhaps the summer of the second year--that they met again and began to go out again.

Q Where did Colette begin her college?

A Colette went to Skidmore and Jeff went to Princeton.

Q When did they become married?

A September 14th of, I believe, '63.

Q This was while Colette was at Skidmore?

pp-1

BY MR. BLACKBURN:

Q During the time that they remained in Chicago, did they ever have, to your knowledge, any difficulty with respect to break-ins or thefts or anything of that nature?

A Not in Chicago, not through the front way actually. Colette kept the doors locked at all times, because the first time they left to come home for a visit all of their clothing was stolen out of the car, everything they owned including the babies' clothes.

Then when they moved to the next house, Colette put all of the new clothes out on the fire escape right at the kitchen door to be taken down to the cellar, and they were also taken. She always kept the doors locked as I did when I lived in New York. In a city you always lock your doors like that.

Q Now, after they left Chicago, where did they go next to live?

A The next stop was in New Jersey.

Q Which city in New Jersey, if you can recall?

A It won't come to mind at the moment. It is just across the bridge from the hospital, so that Jeff could take the car and be there in a very short time.

Q For what purpose did they go?

A Bergenfield.

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because if Colette loved him, no one is perfect, it was all right.

One time I did mention--I thought this was a little bit too much--when the car my sister had paid for went with Jeff all the time, and Colette did her shopping with an express wagon.

Q Now, directing your attention to December of 1969, did you and your husband have an occasion to visit Jeff and Colette at Christmas?

A Yes, we went down at Christmastime. Colette wasn't herself. I thought it was because of her pregnancy. She was very subdued and quiet. As a matter of fact, little by little Colette ceased to be the bouncy, happy person she had been at the beginning; but with all of the money problems--one can only help to a certain extent--I thought it was that--but she wasn't herself.

Then Christmas morning when the gifts were opened, Jeff said with his mother's gifts, "Didn't she send money? I told her not to buy gifts; why didn't she send money?" So, I thought perhaps there was a new emergency.

I went inside and wrote a check and put it on the Christmas tree, thinking that if something is wrong--it wasn't for much. It was for $100, but I had already bought the gifts and things and that is what I could

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BY MR. BLACKBURN:

Q During the time that you were in the kitchen area this Christmas occasion, did you ever have occasion to go in the refrigerator or the ice part?

A Definitely; I made some puff pastry, hors-d'oevres and I brought them down and, finding no place that was cold enough, I had to use an ice pick to jimmy some ice trays out.

Q Now, where did you get the ice pick?

A Out of the kitchen drawer.

Q Now, during this time, did you ever have occasion to see the pony that was bought for the children for Christmas?

A Yes; the following morning--Christmas morning--there was a big surprise. We waited anxiously to see what it was. We went down a few miles from the house. It was a little Shetland pony that Jeff had bought from one of his officers who was transferred. There was a little shack to keep it in. I remarked to Colette, "This is the first part of your dream of the big old house with the dogs, cats, ponies, and so forth." She burst into tears

I thought it was tears of joy, but mothers always look for the best.

Q Now, when did you all leave to go back home?

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A Very early; I believe it was Friday morning--no Saturday morning.

Q It would have been two days after?

A Yes; the day after Christmas Colette was going to take me on a ride around to see the Fort and so on, but Jeff asked to have her stop and pick up some angelfish for his fish tank. So, we didn't get any further than that because they were so crowded. I said, "Let the fish go," but Colette insisted "No."

She would wait. We waited there all afternoon to get the two fish.

Q When was the last time you ever talked to Colette?

A I called her 48 hours before she was dead. I called her the day after Valentine's Day for one reason: I wanted to know if they had received my valentines. My husband called her on his WATS line every week so we didn't write letters at that time.

Before that we always had letters every week, but at this particular time he was calling and telling me what she said. He said she didn't sound herself. Perhaps she was hurt over something, so I called her on Sunday afternoon.

Q This would be February 15th?

A That was the 15th. She said the children

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had gotten their valentines and loved them. It was the first time she had never sent valentines--always valentines with the children's little scrawl on it and so forth. And Freddie's birthday, for the first time, the 19th of January--she had never forgotten that even if she had to just knit some little thing for him or something.

Q Who was Freddie?

A She had forgotten his birthday.

Q Who was Freddie?

A Mr. Kassab.

Q That was Colette's stepfather?

A Yes; she was very close, very fond of him, so she didn't send a card that year. We thought it odd but "She is pregnant, she is worried, she is upset--forget it." That has to be the reason.

Q What, if anything, during that phone conversation, did she say to you about coming to visit?

A First of all, I asked her how she was. She said, "Not too well." Jeff was working at Hamlet, I believe. She was home alone with the children. And I said, "Well, have you taken yourself to a doctor yet?" No, she had not been to a doctor. She was waiting because--she was going to have to have an Army doctor. Of course, I said that was out of the question to have

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an Army doctor. She said, "Well, that isn't the only thing. Jeff won't be here. They are going to take him and send him to Russia, possibly behind the Iron Curtain, and I won't even be able to get in touch with him, and he won't be back until four months--probably the end of July." Her time was supposed to be the 18th.

Q The 18th of what?

A Of July. She was very worried about it because she would be alone. She asked me, "Will you be there, Mom?" I said, "Nothing will ever keep me from being there." I was there on the 18th, too. However, she said, "I would like to come home. We took someone yesterday. We went to the airport, and Kimmie said, 'When are we going to see Grandma?'"

She said, "I would have given anything to get on that plane and come home." My answer was, "No, wait until spring," because we had just had--before we had this huge 40-foot pool dug. They dig it much bigger than ordinarily when they are just going to let it settle.

Looking at that great hole, I just had a feeling that someone was going to be hurt in that. And then, the day before I called Colette, we had about 24 hours of heavy snow, and all the hills and mounds in the back yard were covered and they looked like wonderful

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sleigh ride hills, and the top of the pool just had-- it was a piece of netting. It was completely covered. I said, "Colette, you can't come home because something will happen to the children. They can't possibly miss or avoid that."

She said, "Well, we can keep them in the house." I said, "No, it would be impossible. They would get out. They couldn't possibly avoid falling. Wait and come in spring."

At that time the two children came on-- before that I asked, "Have you gotten your records from Dr. Barnow (phonetic)? Have you gotten any records of your last delivery?"

She said, "No, we don't know where Barnow is." Now, the children came on, one on each phone. We talked for a moment and then gaily hung up; said, "Bye, Gram." I didn't speak to Colette again. I thought we would discuss this doctor thing and call her back.

Q Why was there some concern about the doctor?

A Well, the doctor had said at the time perhaps he should tie off her tubes when Kimmie was born--Kristie, rather. But Jeff said, "No." He and Colette would not want that because she wanted to have

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(Government Exhibit 19 was received in evidence.)

MR. BLACKBURN: Your Honor, at this time we would mark Government Exhibit Number 12.

THE COURT: All right.

(Government Exhibit 12 was marked for identification.)

BY MR. BLACKBURN:

Q Mrs. Kassab, let me hand you what has been marked for identification as Government Exhibit Number 12, and ask if you can tell us what it is?

A This would be a letter to Freddie from Jeff in regard to the Army--what they were doing. However, he says---

Q (Interposing) Excuse me; let me interrupt. What I would like for you to do---

MR. BLACKBURN: Your Honor, I would move that letter into evidence at this time.

THE COURT: All right.

(Government Exhibit 12 was received in evidence.)

BY MR. BLACKBURN:

Q What I would like for you to do, Mrs. Kassab, in as loud a voice as you can muster, if you would read that letter, please?

A "Fred, enclosed is the first draft of Malley's request for investigation leading to charges is Kriwanek,Thompson"--

I don't get the next name---

Q (Interposing) Let me do this, Mrs. Kassab.

THE COURT: Can you read it?

MR. BLACKBURN: Yes.

THE COURT: Why don't you read it, then?

MR. BLACKBURN: I think I can short-circuit this whole thing.

THE COURT: All right.

BY MR. BLACKBURN:

Q Turn to page four of the letter--the first full paragraph--if you could, read that, please?

A Oh, yes.

"...The time will come, and it will only fall on death"--

Oh, I am sorry. You see, this isn't the original, and I can't read it--

"...to get maximum exposure, in other words"---

Q (Interposing) This right here.

A "...I will deny our phone conversation of today."

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That refers to the tape we took; right?

Q If you would read that paragraph?

A "...In regard to the phone call of today, if anyone ever asks, I will say--and I am sure you can figure out why what must be done, must be done."

Q Mrs. Kassab, do you know to what Jeff MacDonald was referring when he said he would deny the phone conversation of today?

A Yes.

Q What is that, please?

A On several occasions, Jeff told us that he--rather he said, "We always go out on Saturday night, looking to find the murderers." Our answer to that was, "Don't be silly. You won't pick them up on the street, and you may be hurt yourself."

One night he called and he said, "One down, three to go." Freddie heard that and talked right over it, because we had become a bit paranoid at that point. Jeff told us our phone was tapped. His was tapped. Everybody's was tapped-- "Let's not discuss things," and so forth.

So Freddie said, "Don't tell me anything." He said, "Did you get what I said?" Freddie said, "Yes; call me tomorrow at the office, where we have many

phones, and tell me."

Q Do you know--when he says, "One down, three to go"--do you know what that means?

A We knew at once he was talking about four people. Freddie--you know, I was frightened and I thought, "What is he going to tell me on the phone?" if it is tapped. In his office, with the trunk lines coming in, he would be quite free to talk, so he said, "Call me at the office tomorrow."

So he took his tape recorder along. He always taped everything, because that way I could hear whatever Jeff was saying. I was terribly anxious to hear and to know what was going on, so he took the tape along. And when he came back, he played the tape for me. We played it over a few times, because it was rather horrendous.

Jeff had gone out--"We went out. We found one of them, and we killed him." Freddie asked what happened--"What did you do?"--or "Where was it?" He said, "It was in the papers, and they said it was robbery. We threw his wallet away."

Freddie asked him what happened. He said, "Well, I just beat him and then shot him." Freddie said, "Well, if you thought, why didn't you find out something else?" He said, "Well, on the spur of the moment, what

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must be done, must be done."

We waited--in fact, we let one neighbor hear it, and then we decided we would speak to Jeff about it the next time he came out. We were quite worried. The next time he came out, it was a stopover. My sister-in-law had sent a donation. They were running a fund for Jeff for money in Patchogue.

Q When did these phone conversations take place, if you recall? What time of year?

A It was just before he was released from the Army. He had been cleared of--I wouldn't say "cleared"--I mean, they dropped the investigation for lack of evidence, was the way they put it. It was right after that before his release.

Q This was in 1970?

A Right.

Q Did you ever, subsequent to this time period, have a conversation with Jeff MacDonald himself concerning this?

A Yes.

Q When did that take place?

A This time that he came over to pick up the check---

Q (Interposing) You say, "when he came over." Where are you referring to?

A To my house. He was visiting his mother on a weekend away from Fort Bragg. He came over, and he also brought all of his slides, so that we could have them copied. I wanted to know more about this. In fact, I supposed it was still my feeling of getting these people.

I said, "Jeff, tell me about it. I want to know about what happened. What did you do?" And he looked around the room a bit and said, "Oh, this guy--he really didn't know what it was all about. He was so full of drugs. He said he heard the shouting, he was there in the house, but he doesn't know why or what went on."

I said, "How about the woman?" He said, "Oh, she is called, 'Willie the Witch.'"

Q Called who?

THE COURT: I'm sorry?

THE WITNESS: "Willie the Witch."

BY MR. BLACKBURN:

Q "Willie the Witch."

A The woman was called "Willie and Witch." And she had left town. She was no longer there. And I believe the mustache went with her--the mustached man of the pictures.

At any rate, I said, "What did you do?" He said, "Oh, we killed him, because it was just one of

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those things. You couldn't get anything more. By the time we got through with him, he would have told on his own mother. But he didn't know anything."

#7
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BY MR. BLACKBURN:

Q Did he say what they had done to him?

A They beat him. He said they beat him and shot him, and they made it look like a robbery.

Q Where was this supposed to have taken place?

A Fort Bragg; and he said, "They think it is a robbery." About a week or two past, with us trying to digest it, we believed it at first; but it was unsettling to think of one deliberately killing someone who could lead to the others.

Freddie took a plane down to Fort Bragg, to Fayetteville, and went through all the back issues and went through a couple of other newspapers in other towns; and he only found one murder that day. It was an Army man.

We came back and talked it over, and he decided that he would let the Army know about it without involving Jeff, because we still did not have a transcript or anything, only the daily conversations. We phoned Fort Bragg, spoke to Jeff daily.

Q Now, this visit that you spoke of when Jeff MacDonald came to your house--what year was this in?

A That would still be '70, just before he got out of the Army.

MR. BLACKBURN: Your Honor, may I have just

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family, you are not too concerned with the person who has done them.

Q You mean you are not concerned what happens to them?

A It depends on what happened to them--who has done it. We did not want him to be in trouble. He had had enough trouble,we assumed.

Q Mrs. Kassab, you and Freddie pretty soon decided you really did not believe that story; did you?

A No.

Q That Jeff or his friends had done anything to anybody?

A Correct.

Q It pretty much did not take much to figure out that that was just a story to get you and Freddie to stop harassing Jeff to live in the past; isn't that what you concluded?

A No, sir; we did not conclude that. We thought it should be investigated, and we did. We found---

Q (Interposing) I want to ask you if you remember receiving this letter addressed to "Dear Mildred," March 22, 1973.

"Dear Mildred, I am sorry to be writing to you under such distressing circumstances

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again. Needless to say, the recent press, T.V. and radio inquiries have again ruined any chance I had for some small measure of privacy and/or sanity. Knowing the source of publicity, The New York Daily News, of all cheap places, via Freddie, of course, only add to my distress. Of all people, I thought you would be the one who would understand my move out to California. You and I talked about it and it, in effect, is simply a logical extension of 'getting away from it all' as was your around-the-world cruise after your personal tragedy many years ago. I don't wish to re-discuss the whole case again and again. I live it all the time. But please let me say several things to you. They are true, I mean them, and I hope you reflect upon them. The first thing is that I was a good husband and father. Colette and I shared a love that was truly great. Few people ever had the fun and contentment we had together. The second thing is that I did not commit any crimes or sins; that is, I did not have any part in the murders on Fort Bragg. Believe

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what you will, but that is the only truth. I loved Colette, Kim, and Kris with all my heart. The garbage and crap that keeps coming up does not mean that I was involved in the killings. There are some confusing aspects of the case. None are as confused as me when you ask why. But please don't decide that because they are confusing things, that I must be guilty. I did tell Freddie some things after I left the Army that were not 100 percent true. If these things were partly true, I magnified them too, and I guess helped my own feelings of inadequacy and also I hoped to isolate myself from these comments and allow my mental status to clear. Unfortunately, Freddie has mis-read the importance of these comments. He is striking out in any direction and willing to hurt anyone and everyone with no thought of what is important and what is not important. I tried to find solutions, could not, and also discovered that, no matter what happened, Colette was not coming back. So, I moved down here and began working for a living,

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giving up a career Colette and I had both hoped for at Yale. Mildred, I was going to go on and on, but I don't think it is any use. The letter doesn't read well. I guess I never do communicate well except in medicine. I truly hope that those absurd tales Fred told me on the plane about girls are daydreams. They certainly are not true facts. I never lied to you about extramarital affairs. I never had an affair, but I did see, date, sleep with a very rare girl away from home. You knew that because we discussed it. Freddie knew it also. The rest is complete garbage. No one else ever mattered to me except Colette. I was going to write letters to Helen and Fred tonight also, but it seems extraneous. My mind is really in a turmoil again. Please take care of yourself. I do love you. I know I don't exhibit it well, but even my mother complains of that. I love Fred also. I do feel extremely tense and anxious and too plus mildly hurt about him showing transcripts and letters and phone calls to any creep who will listen.

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We all express our grief in different ways, and I think Fred feels I am wrong because I don't show it exactly like him. If there was a legitimate point to be gained, fine, but the record is clear now. The second CID again, if you remember, investigation nicely dove-tailed into the first fiasco except it made even clearer that I was not involved in the crimes. Do I now have to spend another year in purgatory for $50,000 or $100,000 to finally be left with memories of my departed family."

MR. SMITH: Your Honor, may I continue reading for counsel or may we take just a moment?

(Pause.)

THE COURT: What is the problem?

BY MR. SEGAL:

Q "What price do I have to pay to be left to exist? Please give my love to Helen. Helen was the light of Colette's eyes, probably her very favorite person of all time. Try to tell Fred that I am in agony also. I just don't think shouting at the press will solve anything at this stage. I hope your health is good. Love, Jeff."

you received that letter and you read it; didn't you?

A I thought it was a masterpiece. I did read it; and it has served its purpose evidently.

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to that. But I am sure I didn't bother to give Colette little five and dime things. They could buy those.

Q Lastly, Mrs. Kassab, you were aware that your husband Freddie flew down from New York to Fort Bragg in the summer of 1970, to testify at the Article 32 proceedings, is that right?

A Correct.

Q Your husband told you, as you described to us, what he's testified to in the proceedings?

A That is right.

Q And he said that if he had another daughter--stepdaughter--that he would want that daughter---

A (Interposing) I think that is high-handed.

Q Beg your pardon?

A I thought that a little high-handed.

Q "A little high-handed"?

A Yes, to give my second, non-existent daughter.

Q In other words, you didn't agree with Freddie when he---

A (Interposing) No, because even though I wouldn't believe Jeff, I wouldn't take anyone's word for it that he was guilty.

I was not enamored with him to the point of

A That was incorrect. I meant "clumping" or agglutination.

Q Now, Dr. Chamberlain, are you familiar with the relationship of those antibodies and antigens in the clumping process to the ABO Blood Group? Do you understand my question?

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A Yes, sir.

Q Sir, would it help you to explain that relationship to use the chart?

A Yes, sir; it would be very helpful.

Q Have you had an occasion to review what is marked for identification as Government Exhibit 638?

A I think I have. I am not really sure of what the number is on the chart.

(Government Exhibit No. 638 was marked for identification.

BY MR. MURTAGH:

Q Dr. Chamberlain, if I may, I am going to ask you to assume that the information reflected in the first two columns of Government Exhibit 638, that is the family member and group are true; those facts are in evidence.

Now, assuming that Colette has Type A, Kimberly has Type AB, Jeffrey has B, and Kristen has O; you don't have any personal knowledge of that, do

you, sir?

A No, no direct knowledge.

Q Okay. But, assuming those facts to be true, do you agree with the distribution of antibodies and antigens as reflected on that chart?

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A Yes, sir.

MR. MURTAGH: Your Honor, at this time, we would move into evidence and ask that it be received, Government 638.

THE COURT: Very well.

(Government Exhibit No. 638 was received in evidence.)

BY MR. MURTAGH:

Q Now Dr. Chamberlain, you talked, I believe, about the clumping for agglutination process.

A Yes, sir.

Q Now could you explain, and would it help you to explain that process, by using that chart?

A Yes, sir.

Q Okay. For example, is there a clumping process--does a clumping process occur when a stain containing the antibody B comes in contact with the substance containing the antigen B?

A Yes, sir.

Q Okay. Would you please explain how that

#21
pp-2

(Government Exhibit No. 118 was marked for identification and received in evidence.)

MR. MURTAGH: Government Exhibit 117 CSC #17, a vial marked, "Heater under east window."

All of these exhibits I believe Mr. Chamberlain will testify he collected in the master bedroom on or about the 17th of February.

Government 119, a vial marked, "Articles removed from sheet off master bed."

(Government Exhibit Nos. 117 and 119 were marked for identification and received in evidence.)

BY MR. MURTAGH:

Q Dr. Chamberlain, does that refer to the bottom sheet of the master bed?

A There was only one sheet on the bed.

Q When you arrived at the scene?

A Yes.

MR. MURTAGH: Government 120(a), which appears to be a pillowcase marked D-20 bearing the legend, "Pillowcase removed from pillow on bed in master bedroom."

#21
p-3

(Government Exhibit No. 120(a) was marked for identification and received in evidence.)

MR. MURTAGH: Government Exhibit 121, also identified as E-20(a), bearing the legend, "Particles removed from pillowcase."

BY MR. MURTAGH:

Q Dr. Chamberlain, does this refer to this pillowcase which I have just identified. Let me show it to you?

A Yes, let me see it, please. Yes, sir.

Q Dr. Chamberlain, at this time I would ask you to look at Government 105, which I believe is already in evidence. I would ask you to take a look at it anyway. It is a vial containing what appears to be a piece of rubber, bearing the legend, CSC-21, "Portion of a rubber glove with hair affixed (enclosed) in sheet on floor." I ask you to take a look at that a second, sir.

At this time, Dr. Chamberlain, I also ask you to look at Government 103, the sheet, and I believe this is Government 104, the bedspread, and I ask you, sir, what relationship if any that vial has to these objects?

A Could I see those, please?

Q Surely.

#21
pp-4

A This exhibit labeled---

Q (Interposing) I'm sorry, could you speak up?

A This exhibit labeled I-21 was found within these.

Q At what time did you find it, sir, approximately?

A I believe it was on about the first day I got there, the 17th of February.

Q At the crime scene?

A Yes, sir.

MR. MURTAGH: Your Honor, at this time, if we have not already done so, I would offer Government 105 in evidence and ask that it be received.

THE COURT: Very well.

(Government Exhibit No. 105 was marked for identification and received in evidence.)

BY MR. MURTAGH:

Q Dr. Chamberlain, at this time let me show you Government 125, a vial marked CSC #3, and ask you if you recognize that?

A This is marked CSC #23? Yes I recognize it.

(Government Exhibit No. 125 was marked for identification.)

#21 pp-5

Q Okay, and if you can, sir, can you tell us what object if any is in the vial?

A Yes, there are several wooden splinters apparently.

Q And is there any one that is larger than the rest?

A Yes.

Q Approximately how large?

A Approximately three, there-and-a-half inches long.

Q At this time I will show you Government photograph 439, which we would mark, and ask you if you recognize the object depicted in that photograph?

A This looks the same as the object. The phtotgraph looks the same as the object in the vial.

(Government Exhibit No. 439 was marked for identification.)

MR. MURTAGH: Your Honor, at this time we would offer Government 125 in evidence, as well as Government 439, a photograph.

THE COURT: Very well.

(Government Exhibits Nos. 125 and 439 were received in evidence.)

MR. MURTAGH: We would mark Government 126, a vial marked CSC #24, "Debris found under head

Q Are you referring to the hall bath?

A Sir, I'm sorry; it's a little hard for me. Right here. Okay, here we have the bathroom. Adjacent to the bathroom we have the two doors to the linen closet, I found a set of blood stains about six feet high at the junction of the two doors. It looked like a striped pattern--three small stripes.

#22
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Q Okay. Did you collect those, sir?

A Yes, sir.

MR. MURTAGH: Your Honor, at this time the Government would mark and offer Government 344, a vial also identified as CSC number 114, about which Dr. Chamberlain has just testified.

THE COURT: Very well.

(Government Exhibit No. 344 was marked for identification and received in evidence.)

BY MR. MURTAGH:

Q Dr. Chamberlain, did you participate in the collection of any evidence for analysis in the south bedroom?

A Yes, sir; I did.

Q Would you point out the south bedroom, sir?

A Right here; this room.

Q And that has been identified in previous

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testimony as Kimberly's bedroom. Dr. Chamberlain, can you describe the condition of the bedding as you first observed it in that room?

A The bedding had some apparent blood stains on it, an outline with magic marker apparent, and most of the bedding--except for the bottom sheet--was folded back towards the back of the bed.

Q Okay. Would you describe, sir, what efforts, if any, you spent in collection of items in that room?

A Yes, sir. I collected debris such as fibers, splinters, off of the bed, in various areas. I collected the bedding itself, and I collected several suspected blood stains from the walls.

Q What areas of the walls did you recall, sir, that you collected blood stains from?

A I can't recall all the areas, but there were apparent blood stains, I believe,---

Q (Interposing) Would you point to the area where you are referring? Oh, I have taken the wall away. All right?

A On this wall here, which is adjacent to the hall, I believe, also, on this wall here.

Q Dr. Chamberlain, are you pointing to--is that the north wall of Kimberly's room?

A The one, first of all, that I referred to was the north wall.

MR. MURTAGH: Your Honor, at this time, the Government would mark and offer Government 348, the vial also identified as CSC-134, and Government 349, the vial also identified as D-136, and ask that they be received.

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THE COURT: They will be received.

(Government Exhibit Nos. 348 and 349 were marked for identification and received in evidence.)

BY MR. MURTAGH:

Q Now Dr. Chamberlain, I believe you testified you collected items off the area of the bed; is that correct?

A Yes, it is.

Q Okay, and you mentioned a splinter?

A Yes, I did.

Q If you recall, sir, do you know where that splinter was found?

A I believe it was found in one of the pillows, but I will have to take a look at my notes.

MR. MURTAGH: Your Honor, at this time the Government would mark and offer Government 346, the vial also identified as CSC No. 118, and ask that that

BY MR. MURTAGH:

Q Dr. Chamberlain, with respect to Government Exhibit 306, which, I believe, is depicted in the photograph on the chart, let me just show it to you for the sake of the record. Did you have the occasion to perform tests on that exhibit?

A Yes; I did.

Q Are those results reflected on that chart?

A Yes, they are, sir.

Q Could you please tell us what your results were?

A On an area designated as area 7, I performed the precipitin test which was positive. I did the crust test which I found the presence of anti B. In the area designated area 8, I again performed the precipitin test which was positive. I performed the crust test for antibodies and found no antibodies.

Q Now, Dr. Chamberlain, with respect to Government Exhibit 313, which has also been referred to as the "Old Hickory" knife and which Mr. Shaw testified to finding outside of the house, did you have an occasion to analyze that?

A Yes, sir.

Q Okay, would you describe what you did to the object physically?

A I tested the blade with the benzidine test. This was negative for blood. I then removed both handles and observed red-brown crusty stains. This gave a positive benzidine test. I then performed the precipitin test. That was positive. I performed the crust test and found the presence of anti B and then performed the absorption-elution test and found the A antigen.

Q With respect to Government 312, which has been referred to as the ice pick also found outside the house near by the "Old Hickory" knife, what did you do with that exhibit, sir?

A I examined it visually. I tested the pick portion with the benzidine reagent and got a negative reaction indicating the presence of no blood. I then removed this metal fitting and underneath found red crust or stains on the wood portion. This gave a positive benzidine test and a positive precipitin test and did not reveal the presence of any antibodies.

MR. MURTAGH: Your Honor, at this time, we would move Government Exhibit 639 as it refers to Dr. Chamberlain's testimony into evidence and ask that it be received.

THE COURT: Very well.

BY MR. MURTAGH:

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Mr. Ivory?

A I believe I did.

Q And was it in essentially the same condition then as when you first turned it over to him?

A Yes, sir.

MR. MURTAGH: Your Honor, the Government would offer, with respect to Dr. Chamberlain's testimony, Government 641 and asked that that be received.

THE COURT: Very well.

(Government Exhibit No. 641 was received in evidence.)

BY MR. MURTAGH:

Q Dr. Chamberlain, at this time I will show you another chart, Government Exhibit 642, and ask you to take a look at that.

(Government Exhibit No. 642 was marked for identification.)

BY MR. MURTAGH:

Q Now, sir, a few moments ago I asked you to take a look at Government Exhibit 125, specifically a splinter which I believe you testified was about three inches long; do you remember that, sir?

A Yes, sir; I do.

Q With respect to Government Exhibit 125 and that portion which I believe has been denominated as

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D-23(a), would you tell us what that is, sir?

A Yes, sir; this is the longest splinter that was contained in that vial.

Q And with respect to the middle photograph there, and I can't read the number, sir, so I will ask you to.

A That is Government Exhibit 77.

Q What relationship does that splinter have to that photograph?

A This is the splinter that is in the vial.

Q Now, what test did you perform on that splinter?

A I performed the anti-human precipitin test.

Q I'm sorry, sir. I can't hear you.

A I performed the anti-human precipitin test which was positive for the splinter, and then I tested four areas on the splinter which I designated one, two, three, and four with the crust test. In each case the results of the crust test were the finding of anti B.

Q With respect to the second stain which is marked D-23(b), I believe, what does that pertain to, sir?

A This is another small splinter or piece of wood contained in that same vial.

Q And was it collected in approximately the

same area?

A Yes; approximately.

Q And what test did you perform on that, sir?

A On that I performed the anti-human precipitin test that was positive and I also performed the crust test which revealed the presence of anti B.

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MR. MURTAGH: Your Honor, at this time we would offer Government 642 and ask that it be received.

(Government Exhibit No. 642 was received in evidence.)

(Counsel confer.)

MR. MURTAGH: Your Honor, at this time, we would mark Government Exhibit 643, another chart.

(Government Exhibit No. 643 was marked for identification.)

F U R T H E R P R O C E E D I N G S 9:30 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Thursday, August 2, 1979, at Raleigh, North Carolina.

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

THE COURT: Good morning, ladies and gentlemen. Were there further questions of this witness? I believe you had redirect examination.

MR. MURTAGH: Just a few, Your Honor.

(Whereupon,

DR. CRAIG S. CHAMBERLAIN

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

R E D I R E C T E X A M I N A T I O N 9:31 a.m.

BY MR. MURTAGH:

Q Dr. Chamberlain, yesterday, I believe, on cross-examination you were asked by Defense Counsel about who went first with relationship to the chemistry or

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fingerprint processing of the crime scene. Do you recall that?

A Yes.

Q My question, sir, is--as I understood your testimony to Mr. Segal, it was that you and Mr. Medlin first went into a room. I think you said the master bedroom; is that correct?

A Yes; we did first go into a room.

Q Is it correct, or was it your testimony that you, as the chemistry technician--well what did you do first as the chemistry technician?

A Well, first I examined the area with the other people.

Q What did you examine it for?

A To locate potential blood stains.

Q What did you do to those areas at that time which you thought contained potential blood stains?

A They were marked.

Q Did you do a number of areas like that in the room?

A Yes, sir.

Q After those areas were marked--let me ask you, did you mark all areas of potential blood stains in the master bedroom that you saw at that time?

A Yes, sir; I believe so.

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Q If you know, sir, what did Mr. Medlin do next?

A Well, I wasn't with him, but I assume---

MR. SEGAL: (Interposing) That is OBJECTED to, Your Honor. We don't need assumptions.

THE COURT: Medlin has testified. Go on to something else.

BY MR. MURTAGH:

Q Dr. Chamberlain, on cross-examination you were asked about the eyeglasses from which you collected a suspected blood stain. Do you recall that, sir?

A Yes, sir.

Q Could I ask you, please, do you recall collecting a stain from the eyeglasses?

A Yes, sir; I did.

Q Okay; did you subsequently transport that stain to the laboratory?

A Yes, sir; I did.

Q Did you perform any tests on that stain?

A Yes, sir; I did.

Q Do you recall what the results of those tests were?

A Yes, sir.

Q Would you please tell the Court and jury what you found?

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A I performed the crust test and found a weak indication of anti A, a weak indication of anti B.

Q You found both, sir?

A Yes, sir.

Q Now, also on cross-examination--and if I may approach the witness, Your Honor--I believe at the time the chart 651 was up on the board, you were asked with respect to Government Exhibit 341, 342 and 343, which I believe you testified were suspected stains--or suspected blood stains--that you collected from the living room wall. Do you recall that?

A Yes, sir.

Q I believe on direct examination you had testified to the results as indicated on that chart. Do you recall that?

A Yes, sir.

Q Okay; now, my question is--on cross-examination, Mr. Segal asked you whether the benzidine test was specific for blood. Do you recall that?

A Yes, sir; I do.

Q Please explain to the Court and jury what your understanding is of the term "specific for the presence of blood"?

A It means if the test is positive, it is extremely likely that the stain was blood.

A Right.

Q You heard no indication of any disturbance?

A No.

Q Now, you spoke of the relationship between Dr. and Mrs. MacDonald during the fall of 1969. Did you have an occasion to observe their relationship after the first of the year of 1970?

A Yes.

Q How would you describe that, please?

A They didn't smile much to each other.

Q Was that a difference or a change between what you had seen before?

A Yes.

Q Now, in keeping the little children, did either one of them ever have an occasion to get out of the bed and go somewhere else, to another bed or anything like that?

A Yes.

Q Who was that?

A Kimberly most of the time, but sometimes Kris would want to sleep in her bed, or she would want Kris to sleep in her bed.

Q Okay; let's make sure I get that straight. You said Kimberly most of the time--where would she want to go?

A In her parents' bed.

Q What about Kristen--where would she want to go?

A In Kim's bed.

Q What would you do when that would happen?

A Sometimes I would let Kris come in the bed with Kim. I don't think Colette liked Kim to sleep in her bed very often, so I tried to talk her out of it.

Q Now, during the time that you babysat for them in the apartment, did you have an occasion to generally go throughout the apartment?

A Yes.

Q You are familiar with the utility room; is that correct?

A Yes.

Q What, if anything, did you observe with respect to the utility room?

A They had a washer and dryer, tools, and some wood.

Q Pieces of wood?

A Yeah; old scraps.

Q When you were keeping the children, did you ever have an occasion to fix them a little snack or anything like that?

A Yes.

Q You would get something out of the kitchen?
A Yes.
Q What would be something you normally might get them, if you recall?
A Spoons and forks and knives.
Q Did you ever have an occasion to get them a popsicle, or anything like that?
A Yes.
Q In doing so, where were they kept in general--the popsicles?
A The freezer.
Q What, if anything, did you have to do to get the popsicles out?
A They used to keep a lot of food in the freezer. It would always be packed, and because of it, the frost would get over the food. And I would have to, once in a while, get the ice pick to chop away the ice to get my popsicles for the kids or food for me to eat--the ice cream.
Q Where was this ice pick kept?
A I don't know where it was always kept. I remember reaching for it on top of the refrigerator.
Q Can you describe it?
A It was a smooth-handled ice pick in a light color.

appropriate.

THE COURT: I will OVERRULE that OBJECTION at this time, but any time that you have something that you want to bring up, then don't hesitate to bring it up because a lot of times, I just miss the significance of it, but this thing here, I believe it is completely innocuous--at least, it is from my standpoint, and I have been paying attention. Go ahead.

(Bench Conference terminated.)

BY MR. MURTAGH:

Q Mr. Laber, have you had occasion to examine the stains on the pajama pocket, Government 102?

A Yes, I have.

Q As a result of that examination, are you able to state an opinion and do you have an opinion satisfactory to yourself, sir, as to the type, and I don't mean the blood type, of some of those stains? That is to say, do you have an opinion as to the manner in which some of those stains came to be on that pocket?

A Yes, I do.

Q Now, if you would use the pointer in back of you, sir, would you tell us and refer to the area by number--first, with respect to area one--if you would point to that, sir. What is your opinion with regard to that stain, sir?

A Stains number one, which I have designated number one, was just a small smear located on the side of the pocket on this edge of the pocket.

Q Let me ask you that, sir, when you say "smear," does that term have significance in the Laboratory context?

A When I am referring to a smear, it defines several different types of nomenclature which are used. A smear would be a thin, small amount of blood which one would possibly get from having a finger rubbed across and leaving a light smear of blood or other bloody object. You have a soaking stain which is a larger stain which requires more than a couple of drops of blood and it is soaked into the garment. We could also have spatters of blood. Spatters of blood are droplets smaller than a single drop. These are in the neighborhood of the size of a head of a pin which occur oftentimes when blows are struck or blood is being shed and small quantities come off and these are smaller than drop size. So, the nature of the stain on the pocket will be described in terms of this type of language.

BY MR. MURTAGH:

Q Okay, Mr. Laber, what relationship, if any, is there to that nomenclature and whether the stain got there as the result of a contact as opposed to a spattering?

A Well, the spattering type effect, as I mentioned, would be pinhead-type droplets. They would be small droplets. A wiping or a contact would be more of a smear-type, as opposed to round, small spots.

Q Okay; with respect to area one, sir, do you have an opinion satisfactory to yourself as to whether the stain that you refer to as area one got there as the result of some stained object coming in contact with area one?

A It is my opinion that it was not of the spatter-type, but it was of the smearing-type of stain, and it was a light stain.

Q Okay; sir; now, with respect to area two, would you point that out on the chart, please?

A Area two is an area along this white--what I am calling a rib of the pocket.

Q Would it be accurate to also refer to it as a beading?

A Yes; I believe so.

Q So area two, then, is what you see as

darkened spots on the fringe areas of the bead of the pocket.

Q Now, sir, with respect to area two, do you have an opinion satisfactory to yourself as to the manner in which the stain got on area two?

A Area two has areas of sort of both characteristics. There are some relatively small spatter-type, and there are also some smear-type ones; and I could not say for sure, because there are not spatters on either side, that something rubbed across the bead, hitting the high part of the beading, leaving this particular smear-type pattern.

Q Now, with respect to area three, would you point that out, please, on the chart?

A Area three is this large stain, and this appears to be a continuous stain. And this would be more of a soaking variety that took more than a few drops of blood, or more than a drop of blood, to make this particular stain. And it has soaked into the garment itself. The soaking stain could not, however, penetrate through-- there is a double layer of cloth down at the edge of the pocket, where it was sewed on. It penetrated the outer layer, but in areas did not totally penetrate the inner double layer of cloth.

Q Now, sir, do you have an opinion satisfactory to yourself as to which direction, if any, that stain

came from?

A Well, in the case of area three--and also, I could include areas one and two--the stains were made from the outside in, as opposed to having come from the inside of the pocket. The stains were made from the outside. We know that they were made from the outside, because the soaking did not penetrate the second layer underneath. Had it come from the inside, the inner layer would have been soaked as well as the outer side.

Q Okay, sir; now, what about area four?

A Okay; area four is another area of fairly heavy blood staining--more than a drop of blood. And again, there is a soaking, but it does not penetrate this double layer on this edge, indicating also that this stain was made from the outside.

Q Okay, sir; how about area five?

A Area five, again, is a relatively heavy stain and again, of the soaking variety. This particular stain also, because this is double cloth on the upper part of the pocket, an area did not soak through the second layer of cloth, indicating also that this was made from the outside.

Q How about area six, sir?

A In area six there was a smallish stain near the bottom. This also was made from the outside.

Q Now, sir, did you have occasion to examine Government Exhibit 101, the blue pajama top found on the chest of Mrs. Colette MacDonald? Do you recognize that, sir?

A Yes; I do.

Q Did you examine any particular area of that garment?

A Yes; I did.

Q And could you describe that, sir, please, to the jury and the Court?

A Okay; I examined a portion of the shirt or pajama top which was directly underneath and around the pocket area.

Q Is that as depicted in that photograph?

A Yes; it is.

Q Which is Government 613(a)? Okay; now, at this time, Mr. Laber, let me show you Government 614, an additional enlargement, and ask you to tell us, please, what that is, sir?

Now, sir--if you can tell us, please--what relationship does that photograph have to the area of the pajama top, Government 101, that you examined?

A Okay; this appears to be a photograph of the area where the pocket outline you can see on the pajama top. This appears to be the shirt or the pajama top with

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the pocket no longer intact on the pajama top.

Q Okay, sir; now, in the approximate middle of the right-hand portion of that photograph--and perhaps I ought to point it out to you--if you know, sir, can you tell us what this object is here, and over here?

A I don't know what you are referring to.

Q Okay; you referred earlier to the outline. To what were you referring, sir?

A When I referred to the outline of the shirt, I was referring to an outline which we can see, I guess, by the nature of the holes in the pocket. This area up here would be the top area of the pocket.

Q Would it be accurate to refer to that area that you have just testified as stitching?

A Yes.

Q Can you tell us, please, about your examination of that area of the pajama top?

A I noted that the pajama top was soaked with blood over the entire area where the pocket had been.

Q Now, sir--if you can tell us--do you have an opinion satisfactory to yourself as to whether the areas on Government 102 which you have referred to as areas one through six were stained prior to the pocket being detached? Do you have such an opinion, sir?

A I have an opinion as to the staining of the

14km6

shirt in relationship to the pocket.

Q Okay; would you tell us what that is, sir?

A The pocket--due to lack of staining on the back of the pocket--had to have been detached before the pajama top became soaked with blood.

Q Now, Mr. Laber, did you have occasion to test--again, referring to the pocket of the pajama top, if we will replace that photograph--did you have occasion to perform blood analyses on these areas?

A I had occasion to perform blood analyses on various areas of the pocket.

you Government Exhibit 647. Now, sir, in addition to the pocket, did you have occasion to perform blood tests on Government Exhibit 332, 333, and 334 which have been identified as the various pieces of the hallway of the MacDonald quarters?

A Yes.

Q Would you tell us, please, with respect to Government 332, which is also identified as D-145, and I believe there has been testimony that that was a stain coming from the area outside Kristen's bedroom. Could you tell us, sir, what you tested and what you found?

A I performed the benzidine test, the precipitin test, and I performed the crust test for the presence of antibodies. I had no reaction or did not find the presence of any antibodies. The absorption-elution--that is the test for antigens--I found both A antigen and B antigen.

Q Okay, now, let me ask you with respect to the crust test, when you say "no reaction," and directing your attention to the chart, I guess my question is: is the absence of antibodies significant or does that indicate that the test is inconclusive or incomplete?

A I guess I used a poor choice of words in

saying "no reaction," and that I should have said no agglutination as we have been discussing it up to this point. When I did the crust test or the Lattes test, I did not observe any agglutination indicating that no antibodies were present.

Q Is it accurate to say that when performing the crust test and you get no reaction, that means that there are no antibodies present?

A This is what the test indicates, yes.

Q Now, sir, based on the results which you obtained, do you have an opinion satisfactory to yourself as to what ABO blood group, if any, that stain exiting or at the hallway opposite Kristen's bedroom was?

A Yes, I do.

Q Could you tell us, please, what that is, sir?

A It is my opinion that this blood stain is of the International Blood Group Type AB.

Q I ask you to assume hypothetically that Kimberly MacDonald had Type AB blood. Do you have an opinion, sir, as to whether the results demonstrated that blood was of the same group as Kimberly MacDonald?

A Yes, I do.

Q Okay, what is that, sir? What is your opinion?

A My opinion is that the blood on the floor in Exhibit 332 is of the same blood group type as Kimberly.

Q Okay, sir, can you point out the area to which we are referring on the photograph?

A I believe from the photograph, it will be the area marked 145 since this is laboratory number 145, but I have no way of knowing that.

Q You were not at the crime scene?

A That is correct.

Q Okay, thank you.

MR. MURTAGH: Your Honor, may the record reflect that the area numbered 145 on the plexiglass covering the hall floorway which Dr. Chamberlain testified about is opposite the entrance to Kristen's or the north bedroom.

THE COURT: Very well.

BY MR. MURTAGH:

Q Now, Mr. Laber, with respect to Government 333, a piece of wood marked D-156, from the floor near the entrance to the east or master bedroom, did you have occasion to test that?

A Yes, I did.

Q Okay, sir, and do you see the area identified as 156 on the lower photograph?

A Yes, I do.

Q Would you point it out to the jury, please?

A Area 156--this area in the bottom, middle portion of the photo.

Q Now, sir, what tests did you perform and what results did you get?

A I performed a benzidine test, a precipitin test, and I performed the crust test for the presence of antibodies in which I found anti A. I performed the absorption-elution test for the presence of antigens. I found antigen B.

Q Now, sir, based on those results, what is your opinion as to the ABO blood group?

A It is my opinion that the blood on the floor and area which we designated as 156 is of the International Blood Group Type B.

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Q Had you trained all three of those individuals?

A Yes, sir.

Q Did you supervise them?

A Yes, sir.

Q Mrs. Glisson, I have put up there Government chart, I believe, 639, with an additional acetate sheet bearing the initials "JSG." Let me ask you, with respect to Government Exhibit 306--the club about which Mr. Shaw testified to finding outside the rear door of the MacDonald quarters--did you have occasion to perform any tests on that exhibit?

A Yes, sir.

Q And would you tell us, please, what tests you performed? I think there is a pointer there.

A I performed the absorption-elution examinations on this court exhibit 306 in two different areas.

Q Mrs. Glisson, have you been present in the courtroom during the testimony of the other chemists?

A Yes; I have.

Q Have you heard their testimony with respect to these exhibits?

A Yes.

Q Mrs. Glisson, I believe you pointed to the column on area seven and indicated that you obtained the

antigen A; and with respect to area eight, I believe you pointed to the column which reflects A and B; is that correct, ma'am?

A That is right.

Q Okay, now; with respect to area seven, based on the tests that you performed and on the tests which Dr. Chamberlain has testified to, are you able to state an opinion satifactory to yourself?

A Yes, sir.

Q As to what blood group that is?

A Yes, sir.

Q Would you tell us, please?

A It is Type A.

Q And hypothetically, if Colette MacDonald has Type A blood---

A (Interposing) It is the same group as Colette.

Q You cannot say it is Colette's blood, I take it?

A No.

Q Can you eliminate any members of the family?

A Yes, sir; we can eliminate Kimberly, Jeffrey, and Kris.

Q Now, with respect to area eight on the same exhibit, are you able to state an opinion, based on Dr.

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Chamberlain's results or your own, as to what group?

A Yes, sir; I found both the A and the B blood factors and with no results with the crust test, it is type AB.

Q What type is that?

A It is the same as Kimberly's; Type AB.

Q Kimberly's; and you can eliminate as the source of that particular stain which members of the family?

A Colette, Jeff and Kris.

Q Would it be correct to say that, as to areas seven and eight, you can eliminate Kristen and Jeffrey as possible sources of the blood stains on that exhibit?

A That is right.

Q Now, with respect to Government's Exhibit 313, the "Old Hickory" knife--which Mr. Shaw found underneath the bush not far from the entrance to the utility room door--what tests did you perform?

A I did the absorption-elution.

Q And on what portion?

A Excuse me; I did not.

Q You did not? I am sorry; I believe Dr. Chamberlain testified to that.

A That is right.

Q Okay; based on Dr. Chamberlain's results,

which are indicated on the chart, are you able to state an opinion as to what blood group that is?

A Yes; sir; that is Type A.

Q Okay; that would be the same type as which member?

A As Colette.

Q Which members can you eliminate?

A I can eliminate Kimberly, Jeffrey and Kristen.

Q Now, I believe with respect to Government Exhibit 312, the ice pick, Dr. Chamberlain did all the tests. Are you able to state an opinion, based on those tests, as to what conclusions, if any, you would draw?

A Okay; with the absence--the benzidine test was negative--did not indicate any blood---

Q Okay; you indicated the pick portion, I believe?

A That is right; this part right here.

Q What about the portion under the metal fitting?

A Under the metal fitting, inside--I know he took the handle off and he found--he did the benzidine and he got the A. He also did a precipitin test, which shows that it is human. All we could say to that would be human blood. We could not get any blood typing results.

Q Mrs. Glisson, the first thing I would ask you is to speak up a little bit, and also ask you a question with respect to the relationship, if any, between the benzidine test and the precipitin test. Do you know what I mean, ma'am?

A Yes.

Q Could you please tell us what that relationship is?

A Okay; the way we do it in Criminal Investigation Laboratory--if the benzidine test is positive, then we go further and do a precipitin test to see or to make sure it is human blood.

The precipitin test is a confirmatory test, actually, for the presence of blood or human tissue--and blood is a tissue. So if I find positive benzidine--you will notice that we say "indicate blood"--and if you find a positive benzidine plus a positive precipitin, it is human blood. This is a definite test for human blood.

Q Mrs. Glisson, based on your opinion, is there sometimes a danger of a false positive with the benzidine test?

A Very rarely; I haven't found any. I found one one time.

Q How about a false negative?

A I haven't seen a false negative that I know

about.

THE COURT: Are you at a place where you would like for us to go to lunch?

MR. MURTAGH: Your Honor, I am at a place where I would love for us to go to lunch.

THE COURT: All right; members of the jury, I will let you retire now. We will come back today at 2:30. Please don't talk about the case, and remember all those other no-no's and comply, please.

(Jury exits at 1:00 p.m.)

THE COURT: All right; recess the court until 2:30, please.

(The proceeding was recessed at 1:01 p.m., to reconvene at 2:30 p.m., this same day.)

#20
p-1

FURTHER PROCEEDINGS (2:30 p.m.)

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

THE COURT: Good afternoon, ladies and gentlemen. Any further questions for this witness?

MR. BLACKBURN: I believe we do.

THE COURT: All right.

(Whereupon,

JANICE S. GLISSON,

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

DIRECT EXAMINATION (2:31 p.m.)

BY MR. MURTAGH:

Q Mrs. Glisson, let me ask you with respect to Government Exhibit 314, the Hilton bathmat, that was collected from the abdomen of Colette MacDonald, whether you had occasion to perform any tests on that?

A Yes, sir.

Q And what test did you perform, please?

A I performed the absorption-elution test.

Q Okay, and I take it Dr. Chamberlain had done the crust test?

A That's right.

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pp-2

Q What were your results with respect to stain area B?

A Stain area B, I found both the A antigen and the B antigen.

Q And what conclusion did you draw from that?

A That the stain was Type AB.

Q And that would be the same group as?

A Kimberly.

Q Now, let me just ask you to take a look at 314 and see if you can tell us where stain area B is?

A Right here.

Q Would you point that out, please, to the jury?

A It is this long stain, approximately two-and-a-half inches long right here.

Q Mrs. Glisson, what other members of the family can you eliminate, if any, as a possible source?

A I can eliminate Jeffrey, Colette, and Kristen.

Q How about stain area D?

A In stain area D, I found the antigen A and antigen B.

Q Is that basically the same as in area B?

A Yes, sir.

Q How about L?

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A In stain area L, I found only the A antigen.

Q Okay, and that would be the same group as?

A As Colette.

Q Let me hand you this and see if you can find stain area L?

THE COURT: You just asked that.

MR. MURTAGH: Sir?

THE COURT: Didn't you just ask about L?

MR. MURTAGH: No, Your Honor, I believe it was B that she had pointed out. It's on the reverse side.

(Pause.)

MR. MURTAGH: I'm sorry, I misunderstood you.

THE COURT: I was just wondering if I was getting a little off--what the error factor in my court reporting was. I had never missed one before.

MR. MURTAGH: I am sure you haven't, sir. Let me start all over again, if I could, please.

BY MR. MURTAGH:

Q With respect to stain area L, you performed what test, please?

A I did the absorption-elution.

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pp-4

Q And you found?

A The antigen A.

Q And from that you conclude?

A This is Type A.

Q It is the same group as?

A As Colette.

Q And you can eliminate?

A I can eliminate Kimberly and Jeffrey and Kris.

Q And do you see stain area L on there?

A This is the area here.

Q Okay, Mrs. Glisson, let me hand you Government Exhibit 101, the Defendant's pajama top which was recovered from the chest area of Colette MacDonald, and ask if you had occasion to test that?

A Yes, sir.

Q Let me see if I can speed this up. What tests did you perform?

A I did both the crust test and the absorption-elution test.

Q With respect to the crust test for area 1, what was your result?

A I found anti B.

Q And did you do the elution test?

A Yes, sir.

Q What was your conclusion?

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pp-5

A I indicated A.

Q Now, when you say "indicated," will you please explain to the court and jury what you mean by that?

A Since I checked so many areas, I only did the crust test myself, because the absorption-elution test is a very tedious test to do; and with a fresh stain like this--it was less than a couple of weeks old--I just went through the crust test on many of the areas, and just finding anti B--that is consistent with Type A.

However, I really don't have a check on myself since I didn't do the antibodies, and so I still call it "indicated A," but it is most likely A.

Q Based on the results that you did get, can you eliminate any members of the family as a source of that stain?

A Yes, I can eliminate Kimberly and Jeff.

Q As a source of that stain?

A That's right.

Q How about area 2?

A Area 2, I got no antibodies, no reaction from when I did the crust test. I found no agglutination. However, when I did absorption-elution, I found the blood factors A and B; and this tells me that the blood is Type AB.

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pp-6

Q That would be the same group as?

A As Kimberly.

Q And you can eliminate?

A I can eliminate Colette, Jeff and Kris.

Q Mrs. Glisson, can you point out either on the photograph or on the garment itself where that area is, please?

A The area I got AB was down here on the left front.

Q Are you referring to the front side of the garment?

A Yes, sir, it was on the left front.

Q I'm sorry?

A Yes, sir.

Q All right, how about areas 3 through 15, did you perform the crust test?

A Yes, sir.

Q And what did you get?

A I found anti B.

Q And with respect to 3 through 7, what conclusion did you draw from that?

A I concluded that was indication of Type A.

Q And that would be consistent with?

A Colette.

Q And you could eliminate?

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A Kimberly and Jeff.

Q How about stain number 8?

A Stain number 8 I did both the crust test and the absorption-elution.

Q And what were your results?

A My result was it was Type A.

Q Okay, and that would be the same group as?

A As Colette.

Q And you could eliminate?

A Kimberly, Jeffrey, and Kristen.

Q How about stains 9 and 10?

A 9 and 10 I only did the crust test, which indicates Type A.

Q And that is consistent with?

A With Colette, and eliminates Kimberly and Jeff.

Q Okay, how about area 11?

A Area 11, I did both the crust test and absorption-elution, resulting in Type A, same group as Colette.

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BY MR. MURTAGH:

Q And you can eliminate?

A Kim, Jeffrey and Kristen.

Q How about areas 12 through 15?

A I did only the crust test.

Q With the result?

A Indicates Type A.

Q And that is consistent?

A It is consistent with Colette and it would eliminate Jeffrey and Kimberly.

Q How about area 16?

A Area 16--I did the crust test and also absorption-elution and I found anti A showing Type B and I also found antigen B which tells me that it's Type B.

Q Is that your conclusion?

A Yes, sir.

Q That would be the same group as?

A Jeffrey.

Q And you can eliminate?

A Colette, Kimberly, and Kristen.

Q Would you please point out either on the photograph or on the garment where area 16 was, please?

A Area 16 was on the left sleeve and the front part.

#21
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Q On the front part of the garment?

A Yes, sir.

Q How about stains 17 through 23?

A I did only the crust test and I was still finding anti B which indicates Type A.

Q And that is consistent?

A Consistent with Colette, and it would not be Kimberly's or Jeffrey's blood.

Q Now, Dr. Chamberlain, I believe, testified to the results on stain 24R and, based on his testimony, what would your conclusion be?

A He did only the crust test which would indicate A.

Q And that would be?

A Consistent with Colette.

Q And would eliminate?

A Kimberly and Jeffrey.

Q How about stains 25R and 26R?

A He did both the crust test and the absorption-elution and found results to show that it was Type A.

Q And that would be the same group as?

A The same group as Colette and that would eliminate the other three--Kimberly, Jeffrey, and Kristen.

Q And 27R?

#21
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A He only did the crust test and found anti B which would indicate A, consistent with Colette's.

Q Mrs. Glisson, to sum that up, would it be accurate to say that you found how many blood groups on that garment?

A I found three blood groups--AB, A, and B.

Q And do you have an opinion satisfactory to yourself as to what the predominant blood group, if any, is on that garment?

A Yes, sir.

Q What is it?

A It is Type A.

Q Type A?

A (Witness nods affirmatively.)

MR. MURTAGH: Your Honor, at this time, the Government would offer chart 640 as it now is.

THE COURT: Very well.

(Government Exhibit No. 640 was received in evidence.)

BY MR. MURTAGH:

Q Mrs. Glisson, let me show you Government Exhibit 641. Now, with respect to Government Exhibit 270, the pajama top of Colette MacDonald, did you have occasion to perform some tests on that?

A Yes, sir.

#21
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Q Okay, let me ask you first, with respect to areas 1R through 4R, which Dr. Chamberlain testified to the results, what conclusions do you draw with respect to each stain?

A Well, in areas 1R, 2R, and 4R, he did both the crust test and absorption-elution, and he came out with Type A which is the same group as Colette and eliminates the other three people--Jeffrey, Kristen, and Kimberly. On one of the areas he just did the crust test which also indicates Type A.

Q Okay, now, with respect to areas 1 through 4, did you test those?

A Yes, sir.

Q And what did you get?

A I just did the crust test. I found anti B which shows me it is consistent with Type A.

Q Okay, and your conclusion there would be that it is consistent with which member?

A With Colette.

Q Okay, and you can eliminate?

A Kimberly and Jeffrey.

Q All right, now, how about the pajama bottoms, Government 271, with respect to those areas Dr. Chamberlain examined?

A In six areas he did the crust test and got

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the indication for Type A which would be the same as Colette's blood. In one area he did both the crust test and absorption-elution and he came out with results that show it as Type A, the same as Colette's blood.

Q Okay, and what areas did you personally test?

A I tested 14 areas on the pajama bottoms. In every area that I checked I found in the crust test to show anti B which is consistent with A. So, then I just took some of the samples and did the absorption-elution and I found antigen A.

Q And you would conclude from that?

A That the blood type was consistent with Colette's blood.

Q Let's see. How about area 14?

A Area 14--I did both the crust test and the absorption-elution and I recorded that it was Type A, the same type as Colette's.

MR. MURTAGH: The Government would offer 641 in evidence.

THE COURT: Very well.

(Government Exhibit No. 641 was received in evidence.)

BY MR. MURTAGH:

Q Mrs. Glisson, I show you Government Exhibit

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642 and ask you with respect to Government Exhibit 125 on that chart which, I believe, has been identified as CID number D-23(a). Did you have occasion to test that?

A Yes, sir.

Q And what did you get?

A I did the absorption-elution and found the antigen A. I may say antigen or blood specific factor. They mean the same as far as blood typing goes, and I found A and my conclusion was it was Type A, the same as Colette's blood.

MR. MURTAGH: Your Honor, at this time, we would mark Government Exhibit 439(a), an enlargement of a photograph that was introduced into evidence yesterday which reflects the splinter D-23(a).

(Government Exhibit No. 439(a) was marked for identification.)

BY MR. MURTAGH:

Q Mrs. Glisson, I would ask you just for a second, is that the splinter which you just have testified about?

A I got a gauze that I think that Craig Chamberlain had wiped off, so I am not sure.

Q I see. With respect to D-23(b)--let me ask you with respect to the splinter D-23(a). I believe you testified that you found the antigen A and from that you

concluded that it was Type A blood.

A That's right.

Q Who can you eliminate?

A I can eliminate Kimberly, Jeffrey, and Kristen.

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BY MR. MURTAGH:

Q Okay, and with the other areas?

A The other areas, just the crust test was done. This would just be an indication for A.

Q And that would be consistent with---

A (Interposing) With Colette's blood.

Q Okay, and you can eliminate---

A (Interposing) Kimberly and Jeffrey.

Q Okay, how about the other splinter, D-23(b)?

A I did absorption-elution on this blood, and I found the blood specific factor A, and I concluded that the blood was Type A, which is the same as Colette's blood.

Q And, again, you can eliminate---

A (Interposing) Can eliminate Kimberly, Jeffrey, and Kristen.

MR. MURTAGH: Your Honor, the Government offers 642.

(Government Exhibit 642 was received in evidence.)

BY MR. MURTAGH:

Q Mrs. Glisson, let me show you 643 with an additional acetate here. Now, can you please tell us--can you see that properly?

A Yes.

Q Now, with respect to Government Exhibit 322 and its corresponding vial, 323, can you tell us, please, what tests, if any, you did and what the results are?

A I did the absorption-elution test and I found antigen A, and that, along with the crust test of anti B shows me that the type was A, the same as Colette's blood.

Q That exhibit which I think the jury is probably having trouble seeing on the chart is the multi-colored throw rug from the master bedroom; is that correct?

A That is right. I checked area one.

Q Now, how about Government Exhibit 102--I am sorry--Mr. Laber has testified to that.

A That is right.

Q How about 115?

A I can only make the conclusion on that exhibit.

Q Okay, and that refers to the scrapings from the "Geneva Forge" knife, I believe?

A That is right.

Q Okay, what would your conclusion be based on those tests?

A With weak indications like that, we would say indicate A.

Q How about Government 113, a stain from the south radiator in the master bedroom?

A I did the absorption-elution and found A, which tells me the blood is Type A, the same group as Colette's.

Q Okay, now, you can eliminate---

A (Interposing) I can eliminate Kimberly, Jeffrey, and Kris.

Q Is it accurate to say that if you did the elution test, you can eliminate any of the other three members?

A That is right.

Q Now, with respect to 114, a stain from the south closet door, what did you get there?

A I got the antigen A. That, along with anti B, tells me that the blood is Type A, which is the same as Colette's blood and it eliminates the other three people, Kimberly, Jeffrey, and Kris.

Q How about 352, Mrs. Glisson, stain number 141?

A I did both the crust test and absorption-elution and found anti B and antigen A resulting in Type A, the same type as Colette and would eliminate

Jeffrey, Kristen, and Kimberly.

Q And, 117, the stain from the east radiator, and 118, the stain from the east wall over the northeast corner of the headboard, what did you get from those two?

A Okay, I did the absorption-elution and found antigen A, telling me it is Type A since anti B had been found in both of these exhibits--it is the same as Colette's blood.

Q Okay, how about Government 350, an additional stain from the east wall over the northeast corner of the headboard?

A I did both the crust test and absorption-elution resulting in Type A blood, the same as Colette's blood and eliminating Kimberly, Jeffrey, and Kris.

MR. MURTAGH: Your Honor, the Government would move in 643.

(Government Exhibit 643 was received in evidence.)

BY MR. MURTAGH:

Q Mrs. Glisson, let me show you another chart, Government 644, and at the same time, let me show you what has been received as Government 103, the sheet and the pile of bedding on the floor of the master bedroom. Let me ask you to take a look at that and tell us if

you recognize it?

A Yes, sir; I recognize it.

Q Now, with respect to this sheet, did you have occasion to perform any tests on areas one through 10?

A Yes, sir.

Q What did you get, please?

A I only did the crust test and I found anti B in all these areas which indicates Type A.

Q That would be consistent with---

A (Interposing) Colette's blood.

Q And can you eliminate anybody?

A Yes. I can eliminate Kimberly and Jeffrey.

Q How about area 11?

A Area 11, I did the crust test and did not get any agglutination. I did the absorption-elution and I found both the A blood factor and the B blood factor which tells me the blood is AB.

Q That would be the same type as---

A (Interposing) As Kimberly.

Q Now, let me ask you to take a look at an area on the sheet which appears to be numbered 11, and ask you whether that area corresponds to the area which you have just testified about as having Type AB blood?

A Yes, sir. I marked this area 11.

Q Would you describe where that is approximately on the sheet?

A It is on the side.

Q Would it be accurate to say that that is at the edge of the sheet?

A At the edge of the sheet.

Q All right, let me ask you about area 12. Did you test that?

A Yes, sir.

Q What did you get, please?

A I found anti B in the crust test which indicates A which is consistent with Colette's blood.

Q And you can eliminate---

A (Interposing) Kimberly and Jeffrey.

Q Okay, how about area 13?

A Area 13, I got no agglutination when I did the crust test; and when I did absorption-elution, I found both the blood factor A and the blood factor B which tells me the blood is of Type AB.

Q That would be the same type as?

A As Kimberly.

Q And you can eliminate---

A (Interposing) I can eliminate Colette, Jeffrey, and Kristen.

Q Can you find area 13 on that sheet, please, and would you show that to the jury, please?

A This is at the bottom of the sheet.

Q How would you characterize the stains in that area, Mrs. Glisson?

A This number 13?

Q Yes.

A These are blood drops.

Q Blood drops?

A They are not smears. They are drops of blood.

Q Okay, now, with respect to area 14, what did you get, please?

A Area 14, I found anti B which indicates Type A and which would be consistent with Colette's blood and inconsistent with Kimberly's and Jeffrey's.

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BY MR. MURTAGH:

Q Okay; now, what about area 15?

A I performed the crust test. I found anti B. I also did the absorption-elution, confirming that the blood is Type A, which is the same as Colette's blood. It cannot be Kimberly or Jeffrey or Kristen's blood.

Q Let me ask you, Mrs. Glisson, at that time, approximately how long did it take to perform the elution test?

A It took--it would probably take at least four hours.

Q I see; now, with respect to area 16 through 28, what did you do, please?

A I did only the crust test, and I got anti B; and I indicate A.

Q Okay; that would be consistent with---

A (Interposing) Colette.

Q Okay; you can eliminate---

A (Interposing) Kimberly and Jeffrey.

Q Now, Mrs. Glisson, with respect to Government Exhibit 105, which has been identified as the piece of latex rubber found inside this sheet at the crime scene, what tests, if any, did you perform?

A I did the absorption-elution test, and I found the antigen A. That, in combination with anti B,

types the blood as A, which is the same as Colette's blood. It would eliminate Kimberly, Jeffrey and Kris.

Q Now, with respect to Government 104--the bedspread and its corresponding vial identified as Government 108--what tests did you do, please?

A I did the absorption-elution and found the antigen A, and that in combination with anti B, types the blood as Type A, which is the same as Colette's blood, and eliminates Jeffrey, Kristen and Kimberly.

Q That refers to the bedspread which was found inside the sheet?

A That is right.

MR. MURTAGH: Your Honor, at this time, we would move in Government 644.

THE COURT: Very well.

(Government Exhibit 644 was received in evidence.)

BY MR. MURTAGH:

Q All right; let me show you Government Exhibit 645. Now, with respect to Government 128--the stains from the ceiling of the master bedroom near the light fixture--what did you do with that, please?

A I did absorption-elution, and I found the antigen A, typing the blood as Type A, along with the antibody anti B, which is the same as Colette.

Q And you can eliminate---

A (Interposing) I can eliminate Kimberly, Jeffrey and Kristen.

Q Did you have occasion to test two other stains from that same area, Government 351 and 129?

A Yes; I did.

Q What were your results?

A On one of the areas, I did both the crust test and absorption-elution. In the other area, I just did absorption-elution. Both areas, in combination with the crust test, type of blood is Type A, which is the same as Colette's blood.

Q And you can eliminate the others, I take it?

A Yes; I can eliminate the other three.

Q Okay; how about with respect to Government Exhibit 130--the scrapings from the letters "Pig" on the headboard on the master bed?

A I did absorption-elution and I found the antigen A. That, in combination with anti B type of blood, types the blood as A--the same as Colette--and eliminates the other three people.

Q Okay; and how about Government 309--the piece of rug identified as D-207(b)?

A I did absorption-elution and found both the antigen A and B, which types the blood as AB, in

combination with the no agglutination in the crust test. This is the same as Kimberly's blood.

Q Okay; and you can eliminate---

A (Interposing) Colette, Jeffrey and Kris.

Q The same results apply for Government 310?

A That is right.

MR. MURTAGH: Your Honor, at this time the Government will move in 645.

(Government Exhibit 645 was received in evidence.)

BY MR. MURTAGH:

Q I show you Government Exhibit 646. Now, Mrs. Glisson, with respect to Government 336--a stain removed from the stepladder next to the sink in the hall bathroom, what tests did you perform?

A I performed the absorption-elution--excuse me, I didn't do that one. I did not do the stepladder.

Q I am sorry; that is Dr. Chamberlain's test; but what conclusion would you draw from that.

A That the blood was Type B, and the same type as Jeffrey.

Q Can you eliminate?

A I can eliminate Colette, Kimberly and Kristen.

Q Okay; how about the wicker stool--Government

Exhibit 337?

A The wicker stool--I did the absorption-elution, and that--in combination with anti A--types the blood as B, which is the same as Jeffrey.

Q Okay; and 338, which is identified as stains from the front and right side of the sink, what did you do?

A I did absorption-elution, and I found antigen B in combination with anti A, that types the blood as Type B, the same type as Jeffrey.

Q Okay; and you can eliminate whom?

A Colette, Kimberly, and Kristen.

Q How about Government Exhibit 339--more stains from the right side of the sink?

A I did absorption-elution and found Type B by combining anti A with antigen B, and it is the same as Jeffrey's blood.

Q Okay; how about the linen closet--Government 344?

A I did both the crust test and absorption-elution, resulting in Type B, the same as Jeffrey's blood.

Q Okay; and you can eliminate---

A (Interposing) I can eliminate Colette, Kristen and Kimberly.

Q Okay; how about the south bedroom and

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Government 346--which is a stain removed--I am sorry, it is a splinter removed from the north pillow?

A A precipitin test was done, and apparently--a crust test was also done--and it was insufficient for absorption-elution. With this type of result, we can only conclude it is human blood.

Q All right; how about Government 348, which is a stain from the north wall of the south bedroom--and I don't whether you can see it or not in that lower photograph--but if you can, I would like for you to point out area 134, please--or on the model?

Mrs. Glisson, if you could, you could step down here. This might be easier for the jury to see. Now--if you can read it from here--can you tell us, please, what results you got for 134?

A There was no reaction with the crust test, and I found both antigens A and B, resulting in Blood Type AB, the same type as Kimberly.

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BY MR. MURTAGH:

Q Okay, now, that is Kimberly's room. I believe that has been identified as the south bedroom. You can eliminate the other members of the family; is that correct?

A Yes, sir.

Q Okay, now, would you point to stain 136 which has been identified as Government Exhibit 349 and tell us what you got for that, please? I think perhaps if you stood to the side and used the pointer, the jury could see better.

A Okay, stain 136 is right here in the south bedroom. It is about seven feet over the bed.

Q What did you get for that, please?

A On that stain, I did absorption-elution and found antigen A and then a combination of anti B or the type of blood is Type A, which is the same as Colette's blood.

MR. MURTAGH: Your Honor, at this time, the Government would offer 646.

(Government Exhibit No. 646 was received in evidence.)

MR. MURTAGH: Your Honor, if I have not done so with Mr. Laber, I would move into evidence Government Exhibit 647 which is the chart that he has

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testified to.

THE COURT: Very well.

(Government Exhibit No. 647 was received in evidence.)

BY MR. MURTAGH:

Q Mrs. Glisson, I show you Government 648 and, with respect to the Government Exhibit 357 which has been identified as a green yarn from the throw rug in the north bedroom, Kristen's room, would you tell us, please, what you found?

A When I did the crust test, I found anti A and anti B and that in conjunction with finding H in doing absorption-elution, I concluded the blood was Type O which is the same as Kristen's blood.

Q And you can eliminate?

A And I can eliminate Colette, Kimberly, and Jeffrey.

Q All right, and what about the green throw rug, number 358?

A That gave the same results. I had anti A, anti B, and H and in combination it types it as Type O which is Kristen's blood--the same as Kristen.

Q Now, let me ask you with respect to one of the stained areas found near Kristen's bed, Government 359, also identified as D-48NB, and ask you what you got

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for that.

A I did only absorption-elution on this and I found H and that, in combination with anti A and anti B types of blood is O, which is the same as Kristen's blood.

Q And you can eliminate?

A And I can eliminate Colette, Kimberly, and Jeffrey.

Q Okay, and how about Government 360 and 361, some additional stains from the floor near the bed in Kristen's room?

A Well, I only did absorption-elution, and I found H and that, in combination with the anti A and anti B that somebody else had done, I concluded that was Type O which was Kristen's blood and it is inconsistent with Colette, Kimberly, and Jeffrey.

Q Okay, now, let me ask you with respect to Government 304 and its corresponding vial 305, what did you do?

A I did absorption-elution.

Q Okay, and what conclusions do you draw based on your--I'm sorry. What did you get?

A I found the antigen A.

Q Okay, now, what conclusion do you draw based on that in conjunction with Dr. Chamberlain's

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results?

A He apparently got a weak anti B and in repeating he got no reaction, so instead of calling it Type A, I only indicated A. It's most likely A.

Q All right, and that's consistent with the same group as?

A As Colette.

Q And inconsistent?

A With Jeffrey and Kristen.

Q Okay, let me ask you, based on your findings alone, can you eliminate Kristen MacDonald as a possible source of that blood type?

A Yes.

Q Okay.

A It can't be Kristen because Kristen is Type O. She would not have any antigens at all.

Q All right, now, with respect to Government 301, the portion of the floor bearing a footprint and identified as Dr. MacDonald's and its corresponding vial, Government 303, what results did you get?

A I found the antigen A and, in combination with the crust test of anti B, identified the blood as Type A which is the same type as Colette. You can eliminate Kimberly, Jeffrey, and Kristen.

MR. MURTAGH: Your Honor, the Government

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would move in 648.

THE COURT: Very well.

(Government Exhibit No. 648 was received in evidence.)

MR. MURTAGH: Government 649.

BY MR. MURTAGH:

Q Okay, now, with respect to Government 371 also identified by the CID as D-60NB, the top sheet from Kristen's bed, specifically with regard to areas four and five--by the way, can you point those out on the second photograph?

A No; I would have to see the exhibit.

Q Let me show you the exhibit.

A It was in the corner of the sheet--area four down here.

Q How would you characterize area four?

A These were drops.

Q How about area five?

A Area five was a large stain--splatters--a soaked through stain.

Q Now, with respect to those areas, would you please tell us what you did and what you got?

A On these areas I did the crust test and found anti B, and I also did absorption-elution and found the A antigen, concluding that the blood is Type A,

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the same group as Colette.

Q Which members of the family, if any, can you eliminate as a possible source of this stain?

A I can eliminate Jeffrey, Kimberly, and Kristen.

Q Now, with respect to Government 373, which I believe is D-64NB, the bottom sheet of that bed, specifically stain area two, can you see two in the photograph?

A No, sir.

Q All right, let me show you the sheet, Government Exhibit 373.

A Area two is toward the end--somewhat toward the end of the sheet.

Q Now, what tests did you perform on that and what results did you get?

A I did absorption-elution and I also did a crust test, concluding that the blood is Type A, the same blood group as Colette, and it eliminates Jeffrey, Kristen, and Kimberly's.

Q Okay, how about Government 378--I'm sorry. 375 I skipped; 375 is D-66NB, the plastic sheet from the upper mattress--areas one--well, let me take them one at a time--area one; what did you do on that?

A Area one--I did the crust test and I didn't

find any antibodies, and I did absorption-elution and I found the antigens A and B, concluding that the blood is Type AB, which is the same as Kimberly.

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pp-1

BY MR. MURTAGH:

Q Okay, who else can you eliminate?

A I can eliminate Jeffrey, Colette and Kristen.

Q Area 2?

A Area 2, I found anti B, and I found the antigen A, concluding that the blood is Type A, the same type as Colette, eliminating Jeffrey, Kristen and Kimberly.

Q How about Government 378, the stains from the west wall?

A I did a crust test and I found anti B and the antigen A, concluding the blood is Type A, which is the same as Colette, and I'm eliminating Jeffrey, Kristen, and Kimberly.

Q Now, that's also identified as D-69NB, is that correct?

A That's right.

Q Why don't I also ask you about 379, also known as D-70NB, and then ask you to step down and indicate on the wall of the north bedroom?

A Okay. On 379 I got the same result. I found anti B and the A, which tells me the blood is Type A. It is the same as Colette and eliminates Jeffrey, Kristen and Kimberly.

Q Now, Mrs. Glisson, if you would, please,

#25
pp-2

taking the pointer and stepping down to the--what I believe is the west wall of the north bedroom--Kristen's room--if you would point out those corresponding areas for the two stains, 69NB and 70NB.

A This is 69NB and 70NB is right below it.

Q And that is Type A blood?

A Yes, this is all Type A blood.

MR. MURTAGH: The Government would offer 649 and ask that it be received.

(Government Exhibit No. 649 was received in evidence.)

BY MR. MURTAGH:

Q Government 364 is the green bedspread from Kristen's bed, and 365, 366, and 367 are cuttings from that same bedspread. Now, what did you do with regard to those cuttings?

A I did absorption-elution on these three areas. In area 1, I found the antigen A in combination with anti B types of blood is A, which is the same as Colette's; and in area 3 I found the same thing--Type A which is the same as Colette's was.

This A eliminates Kimberly and Jeff and Kristen. In another area, area 5, I found both the antigen A and the antigen B, typing the blood as AB, in combination with no antibodies from the crust test, and

#25
p-3

this is the same as Kimberly's blood, which eliminates Colette, Jeffrey and Kristen.

Q Now, Mrs. Glisson, with respect to Government's 368, otherwise known as the pink blanket D-58NB, what tests did you perform on those three areas?

A I didn't do these areas.

Q I'm sorry. What conclusions would you draw?

A The same conclusions as---

Q (Interposing) I believe Mr. Laber testified to that?

A Yes.

Q Okay.

MR. MURTAGH: Your Honor, the Government would offer 650.

(Government Exhibit No. 650 was received in evidence.)

MR. MURTAGH: Your Honor, I will show the witness Government Exhibit 651, which it promises is its last blood chart for the afternoon.

BY MR. MURTAGH:

Q Okay, Mrs. Glisson, now, let me ask you with respect to Government Exhibit 341, 342, and 343, the stains from the wall over the couch in the living room, from which Dr. Chamberlain testified he got a negative benzidine. What conclusion, if any, would you draw

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 15-7136

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JEFFREY R. MACDONALD,

Defendant-Appellant.

JOINT APPENDIX
VOLUME II of VII

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

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TABLE OF CONTENTS

Volume I of VII

Appendix Page

Docket Entries 1

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

Testimony of Richard D. Tevere 42

Testimony of Kenneth C. Mica 80

Testimony of William F. Ivory 135

Testimony of Robert Shaw 396

Testimony of Dr. Edward Gammel 474

Testimony of Dr. George E. Hancock 514

Testimony of Michael Newman 548

Testimony of Paul Connolly 563

Testimony of Elizabeth Ramage 568

Testimony of Dr. Severt H. Jacobson 576

Testimony of Robert Caverly 594

Testimony of Dr. Frank Gemma 614

Testimony of Bennie Hawkins 617

Testimony of Hilyard Medlin 626

Testimony of Mildred Kassab 646

Testimony of Dr. Craig Stanley Chamberlain 669

Testimony of Terry Laber 690

Testimony of Janice Glisson 702

TABLE OF CONTENTS

Volume II of VII

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

Testimony of Dillard Browning 745

Testimony of Charles Michael Hoffman 798

Testimony of Paul Stombaugh 810

Testimony of Shirley Green 891

Testimony of Jack B. Crawley, Jr. 945

Testimony of Vincent P. Guinn 982

Testimony of John I. Thorton 1023

Testimony of Dr. George Podgorny 1040

Testimony of James Milne 1041

Discussion on missing witnesses 1047

Testimony of Helena Stoeckley.....1051

Argument to Court.....1342

Bench Conference.....1343

Testimony of P.E. Beasley 1359

Testimony of Jane Zillioux.....1404

Testimony of Charles Underhill 1426

TABLE OF CONTENTS

Volume III of VII

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

Testimony of Wendy Rouder 1465

Testimony of William Posey 1520

Testimony of Carmine Welch.....1569

Testimony of James Gaddis.....1572

Testimony of Jeffrey R. MacDonald 1582

Bench Conference.....1658

Government Exhibit 1153 marked 1693

Government Closing Argument.....1694

Defendant's Closing Argument 1699

Government Trial Exhibits

Exhibit 1 (photo).....1700

Exhibit 2 (photo).....1703

Exhibit 24 (photo).....1704

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

Exhibit 27 (photo).....1706

Exhibit 40 (photo).....1707

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

Exhibit 41 (photo).....1709

Exhibit 42 (photo).....1710

Exhibit 43 (photo).....1711

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

Exhibit 44 (photo).....1713

Exhibit 45 (photo).....1714

Exhibit 54 (photo).....1715

Exhibit 55 (photo).....1716

Exhibit 56 (photo).....1717

Exhibit 57 (photo).....1718

Exhibit 58 (photo).....1719

Exhibit 59 (photo).....1720

Exhibit 62 (photo).....1721

Exhibit 64 (photo).....1722

Exhibit 65 (photo).....1723

Exhibit 70 (photo).....1724

Exhibit 71 (photo).....1725

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

Exhibit 72 (photo).....1727

Exhibit 73 (photo).....1728

Exhibit 74 (photo).....1729

Exhibit 75 (photo).....1730

Exhibit 76 (photo).....1731

Exhibit 77 (photo).....1732

Exhibit 78 (photo).....1733

Exhibit 80 (photo).....1734

Exhibit 81 (photo).....1735

Exhibit 100 (photo).....1736

Exhibit 210 (photo).....1737

Exhibit 211 (photo).....1738

Exhibit 211a (photo) 1739

Exhibit 212 (photo) 1740

Exhibit 214 (photo) 1741

Exhibit 422 (photo) 1742

Exhibit 424 (photo) 1743

Exhibit 425 (photo) 1744

Exhibit 428 (photo) 1745

Exhibit 430 (photo) 1746

Exhibit 597 (photo) 1747

Exhibit 606a (photo) 1748

Exhibit 607 (photo) 1749

Exhibit 608a (photo) 1750

Exhibit 609 (photo) 1751

Exhibit 610 (photo) 1752

Exhibit 611 (photo) 1753

Exhibit 612 (photo) 1754

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

Exhibit 644 (Summary of Blood Analyses) 1756

Exhibit 654 (Location of Threads and Yarns) 1757

Exhibit 763 (photo).....1758

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

Exhibit 768 (photo).....1760

Exhibit 771 (photo).....1761

Exhibit 772 (photo).....1762

Exhibit 776 (photo).....1763

Exhibit 777 (photo).....1764

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

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

Exhibit 790 (photo).....1767

Exhibit 791 (photo).....1768

Exhibit 792 (photo).....1769

Exhibit 793 (photo).....1770

Exhibit 794 (photo).....1771

Exhibit 795 (photo).....1772

Exhibit 796 (photo).....1773

Exhibit 808 (photo).....1774

Exhibit 809 (photo).....1775

Exhibit 811 (photo).....1776

Exhibit 812 (photo).....1777

Exhibit 952 (photo).....1778

Exhibit 967 (Map of Corregidor Courts).....1779

Exhibit 968 (photo).....1780

Exhibit 978 (Items Found in Pile on Floor of Master Bedroom).....1781

Exhibit 983 (South Bedroom – Kimberly MacDonald).....1782

Exhibit 1070 (photo).....1783

Exhibit 1077 (photo).....1784

Exhibit 1078 (photo).....1785

Exhibit 1135 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume I).....1786

Exhibit 1136 (Transcription of Interview of Jeffrey MacDonald, April 6, 1970, Volume II).....1887

Exhibit 1141 (Table of Contents Subject Matter of Statements).....1892

Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence, filed January 17, 2006.....1932

Memorandum in Support of Jeffrey R. MacDonald's Motion Under 28 U.S.C. Section 2255 To Set Aside His Sentence, filed January 17, 2006.....1954

Exhibit 1 (Affidavit of Jimmy Britt).....2006

Exhibit 3 (Affidavit of Lee Tart).....2010

Exhibit 7 (Affidavit of Everett Morse, Bryant Lane, Donald Buffkin).....2012

Petitioner's Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction – Namely Newly Discovered DNA Evidence, filed March 22, 2006 2020

Memorandum of Evidence and Points and Authorities in Support of Petitioner's Motion to Add an Additional Predicate to his Previously Filed Motion Under 28 U.S.C. § 2255 to Vacate his Conviction, filed March 22, 2006 2026

Petitioner's Motion, Pursuant to Rule 7 of the Federal Rules Governing Section 2255 Proceedings, to Expand the Record to Include the Itemized Authenticated Evidence, filed March 23, 2006.....2033

Petitioner's Statement of Itemized Material Evidence- With Citations to the Record or to Authenticated Proofs- In Support of his Motion Under 28 U.S.C. § 2255 to Vacate his Sentence, filed March 23, 2006 2038

Excerpts of Reply in Response to Motion to Vacate, Set Aside or Correct Sentence, filed May 8, 2006 2064

Excerpt of Notice of Death, filed October 28, 2008.....2068

Excerpts of Order Denying Motion for Leave to File Successive 2255 Motion; Denying Motion to Amend or Correct; Denying Motion to Expand the Record; Granting Motion to; Denying Motion to Supplement Itemized Evidence, filed November 4, 2008 2069

Petitioner's Motion for Hearing Attachment, Letter from Lee Tart to Counsel, filed September 20, 2011.....2078

Order as to Petitioner's Motion Under the IPA, filed September 21, 2011 2079

Affidavit of Craig S. Chamberlain, filed December 12, 2011.....2081

Supplemental Affidavit of Craig S. Chamberlain, filed December 12, 2011.....2088

Affidavit of Dillard O. Browning, filed December 12, 2011 2098

Affidavit of Grant D. Graham, Sr., filed December 12, 2011 2105

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

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

Affidavit of Robert Fram, filed December 12, 2011 2145

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

TABLE OF CONTENTS

Volume IV of VII

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

Testimony of Wade Smith 2185

Testimony of Mary Britt.....2386

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

Testimony of Mary Britt.....2398

Testimony of Eugene Stoeckley 2431

Testimony of Wendy Rouder 2509

Testimony of Laura Redd 2565

Testimony of Sara McMann 2582

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

Testimony of Frank Mills.....2635

Testimony of Dennis Meehan.....2680

Testimony of Janice Meehan.....2701

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

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

Testimony of Maddie Reddick.....2736

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

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

TABLE OF CONTENTS

Volume V of VII

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

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

Testimony of William Ivory.....2923

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

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

Testimony of Raymond Madden, Jr. 3073

Testimony of Joe McGinniss. 3114

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

Testimony of Joe McGinniss. 3227

Testimony of Jerry Leonard. 3271

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

Petitioner's Closing Argument. 3408

Government's Closing Argument. 3462

Petitioner's Rebuttal. 3561

TABLE OF CONTENTS

Volume VI of VII

Government Exhibits Introduced at September 2012 Evidentiary Hearing

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

Government Exhibit 2001 (Wire Document of August 1979) 3589

Government Exhibit 2002 (FBI Report of August 14, 1979 Interview of Helena Stoeckley).....3592

Government Exhibit 2003 (Report of Arrest of Helena Stoeckley).....3595

Government Exhibit 2006 (Fingerprint Card).....3597

Government Exhibit 2007 (Fingerprint Card).....3599

Government Exhibit 2008 (Helena Stoeckley Booking Report).....3602

Government Exhibit 2009 (Helena Stoeckley Booking Photo).....3608

Government Exhibit 2010 (Sworn Statement of Vernoy Kennedy).....3609

Government Exhibit 2011 (Court Reporter Certification Vernoy Kennedy) 3624

Government Exhibit 2053 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3626

Government Exhibit 2054 (Helena Stoeckley Disposition Sheet).....3627

Government Exhibit 2055 (Helena Stoeckley Prisoner, Detention and Disposition Record).....3628

Government Exhibit 2056 (Helena Stoeckley Commitment).....3629

Government Exhibit 2057 (Helena Stoeckley Commitment).....3630

Government Exhibit 2058 (Helena Stoeckley Commitment).....3631

Government Exhibit 2059 (Helena Stoeckley Release).....3632

Government Exhibit 2060 (Helena Stoeckley Release).....3633

Government Exhibit 2061 (Helena Stoeckley Release).....3634

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

Government Exhibit 2063 (Helena Stoeckley Disposition Sheet) 3636

Government Exhibit 2064 (Helena Stoeckley Commitment) 3637

Government Exhibit 2065 (Helena Stoeckley Commitment) 3638

Government Exhibit 2066 (Helena Stoeckley Release) 3639

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

Government Exhibit 2068 (1977 Jail Book) 3641

Government Exhibit 2069 (1977 Jail Book) 3642

Government Exhibit 2070 (1977 Jail Book) 3643

Government Exhibit 2071 (1977 Jail Book) 3644

Government Exhibit 2072 (1977 Jail Book) 3645

Government Exhibit 2073 (1977 Jail Book) 3646

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

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

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

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

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

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

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

Government Exhibit 2103a (Raleigh Map) 3695

Government Exhibit 2104 (South Carolina Map) 3696

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

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

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

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

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

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

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

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

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

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

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

Government Exhibit 4000 (MacDonald Handwritten Notes) 3935

Government Exhibit 4002 (Fatal Vision Book Excerpt) 3953

Government Exhibit 6001 (Military Police Receipt) 3958

Government Exhibit 6002 (Inventory) 3962

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

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

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

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

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

Government Exhibit 7015 (NC State Bar Ethics Inquiry) 4027

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

Petitioner's Exhibits Introduced at September 2012 Evidentiary Hearing

Petitioner's Exhibit 5004 (Candle Wax Trial Testimony) 4033

Petitioner's Exhibit 5021 (Declaration of Jimmy Friar) 4045

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

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

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

Petitioner's Exhibit 5027 (Affidavit of Ellen Dannelly) 4057

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

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

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

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

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

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

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

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

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

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

Petitioner's Exhibit 5115 (Letter from Judge Dupree to Wendy Rouder) … 4102

TABLE OF CONTENTS

Volume VII of VII

Stipulations, filed September 17, 2012 4103

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

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

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

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

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

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

Petitioner's Notice of Appeal, filed July 16, 2015 4631

#5
cks
5

wanted to make sure. There is another chart.

THE COURT: We are doing everything in duplicate including the overruling of objections.

(Bench conference terminated.)

MR. MURTAGH: Your Honor, at this time, the Government would mark Government Exhibit 653, a chart.

(Government Exhibit No. 653 was marked for identification.)

MR. MURTAGH: And Government Exhibit 654, another chart.

(Government Exhibit No. 654 was marked for identification.)

BY MR. MURTAGH:

Q Now, Mr. Browning, I am going to show you two charts here, Government 653. Mr. Browning, I am going to ask you about a number of exhibits and perhaps if you would step down and with the aid of the pointer, it might speed this up a bit.

Okay, Mr. Browning, I believe you testified a minute ago that with respect to Government Exhibit 307, the debris removed from what has been identified as the club, you found two purple cotton threads; is that correct, sir?

A Yes; that is correct.

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Q Okay, now, would you step back just a little bit so the jury could see and would you indicate where on Government 653 and 654 you have indicated those results with respect to the pajama top? This is Government 653.

A I see. Here I found the two purple cotton threads from Exhibit E-101.

Q Okay, and on 654, have you indicated those same results in a similar column?

A It is a little confusing with these numbers.

Q Well, in other words, if you would look at the left-hand column on 654 which describes Exhibit 101--I think you are on the wrong chart--now, where with respect to Government 306 and its companion exhibit 307, have you indicated those results?

A Here (indicating).

Q Okay, Mr. Browning, let me ask you with respect to Government Exhibit 125 which has been identified as the splinter removed from near the largest blood stain in the master bedroom--do you see that there, sir?

A Yes; I do.

#6
pp-1

BY MR. MURTAGH:

Q Now, did you conduct an examination with respect to that splinter?

A Yes, I did.

Q Let me also ask you, did you examine the contents of the vial in which that splinter was contained for the presence of any threads or yarns?

A Yes, I did.

Q Okay, and what did you find, sir?

A I found purple cotton threads, similar to the thread used to sew the pajama jacket--Exhibit 101.

Q What conclusion, if any, do you draw from your comparison of those threads with the pajama top?

A The threads in Exhibit 125 were identical to and could have originated from Exhibit 101.

Q Okay, now, you have indicated that on 654---

A (Interposing) 654.

Q ---654; and how about on 653? Point that out, sir, with respect to Government 125?

A Yes, this is the same exhibit here where it is recorded again.

Q Okay, let me ask you, Mr. Browning, did these exhibits, these vials, did they contain a multitude of different types of exhibits?

A Yes, each vial contains multiple debris that

could include anything--wood, fibers, hairs, anything of this nature.

Q With respect to thosevials, did you look for one thing at a time, or did you compare them with one exhibit at a time?

A No, I took one particular item, such as fibers, at a time and examined these.

Q And did you examine them with respect to the pajama top?

A Yes, I did.

Q All right, now, did you conduct such an examination with respect to Government Exhibit 116--I believe it is CID Number E-16--the fibers from the underside of the throw rug, and do you see that on the chart?

A Yes.

Q Now, with respect to Government 116, what did you find?

A On this exhibit I found the blue polyester cotton yarn.

Q And what did you compare that with, sir?

A I compared that with the blue cotton-polyester yarn from the pajama jacket.

Q Okay, and what were your results?

A They were identical, and the two fibers could have originated from a common source.

#6
pp=3

Q And that would be the fabric of the pajama top?

A Yes, the fabric or material of the pajama top.

Q Okay, and have you indicated that on 653-- I'm sorry, it is 654?

A 654, yes.

Q Okay, would you point that out, please, to the jury?

A Yes, the underside of the throw rug here, and the jacket here.

Q Where on the column have you indicated the results?

A Here (indicating).

Q That corresponds to---

A (Interposing) The blue polyester cotton yarn.

Q Let me ask you if you conducted such an examination with respect to Government Exhibit 325, or E-301, as it is identified by the CID, that is the debris from the vicinity of the left hand and arm of the body outline in the master bedroom?

A Yes, I have.

Q Okay, and what did you find, sir?

A In this exhibit I found purple cotton threads

#6
p-4

similar to the threads used to sew the seams of the jacket.

Q And what conclusion do you draw from that, sir?

A It is my opinion that they could have originated from a common source.

Q Okay, and you have indicated that on 653 and 654?

A Yes.

Q Well, let's see, are you talking about Government 125 or 325?

A 325, yes, it is here at this point.

Q Okay, now, with respect to 325 on the other chart, where have you indicated that?

A 325 is this exhibit here, as indicated here.

Q Did you conduct such an examination with respect to Government 126 or CID E-24, that is debris from under the head region of the body outline in the master bedroom?

A Yes, I did.

Q Would you point it out, please, on the chart?

A This is indicated here.

Q Okay, what did you find, sir?

A I found purple cotton threads, similar

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in all respects to the purple cotton threads used to sew the pajama jacket.

Q Mr. Browning, if I could ask you, sir, to keep your voice up a little bit.

A Yes, I stated I found purple cotton threads here similar in all respects to the purple cotton threads used to sew the jacket, Exhibit 101.

Q Okay, and you have indicated that on one chart, and how about on the other?

A Yes, and indicated here on this chart.

Q Now, did you conduct such an examination with respect to Government 327 or E-303, that is the debris from under the trunk and legs area of the body outline of Mrs. MacDonald on the master bedroom floor?

A Yes, I did. That is indicated here and I found both the purple cotton threads and the blue polyester cotton threads that were similar in both respects to the threads of the pajama jacket, Exhibit 101.

Q Okay, and you have indicated that on 654?

A Here, yes.

Q And how about on 653? Do you see Exhibit 327 there on 653, sir?

A 327? Yes, here. I have noted the purple cotton threads. I don't believe there's a place for the polyester.

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Q Well, sir, as I understand your testimony, did you find any blue yarns--that is, polyester yarns--in the debris removed from the club?

A In the debris removed from the club? No, I did not.

Q All right, how about Government 326, or CID E-302, that is the fibers from the rug area at the north corner of the footboard. Do you see that on the chart, sir?

A Yes.

Q Okay, what did you find with respect to that exhibit?

A In this exhibit I found purple cotton threads that were identical to the thread used to put the seams on Exhibit 101.

Q And what is your opinion with that, sir?

A That the threads could have originated from a common source.

Q All right, let me ask you with respect to Government 324, that is E-300, blue fiber found on the floor by the east wall by the headboard of the bed. Do you see that on the chart?

A Yes, I do.

Q What were the results of your examination there, sir?

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A I found purple cotton threads similar to those used to sew the seams of the jacket, Exhibit 101.

Q And what is your opinion with respect to that, sir?

A My opinion is that they could have originated from a common source.

Q Did you conduct such an examination with respect to Government 119, or E-19(a), that is debris from what has been identified as the bottom sheet on the master bed?

A Yes, I did.

Q And what were your results, sir?

A In this exhibit, I found both purple cotton threads and the polyester cotton yarn, similar to those used to manufacture the jacket, Exhibit 101.

Q And your opinion, sir?

A That they were similar and could have originated from a common source.

Q Now, let me ask you with respect to Government Exhibit 121, that is E-28, debris from the pillowcase on the bed? I don't believe that is depicted in in the photograph?

A Yes, in this exhibit, the debris from the pillowcase on the bed, I found both the purple cotton threads used to sew the seams of the jacket and the

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blue polyester cotton yarn used to manufacture the fabric part. Itis my opinion that they could have originated from a common source.

Q With respect to Government Exhibit 107, or E-229, that is the debris removed from the multi-colored bedspread found inside the sheet on the floor of the master bedroom, did you examine that, sir?

A Yes, I did.

Q And what were the results of that examination.

A In that exhibit, once again, I found both purple cotton threads and blue polyester cotton yarns, and they were both similar to the yarnsand the thread used to sew the jacket of Exhibit 101; and it is my opinion that they could have originated from a common source.

Q Okay, let's move to the south or Kimberly's bedroom, and let me ask you with respect to Government Exhibit 346, or D-118, what has been described as a splinter removed from the north pillow of Kimberly's bed; did you examine that, sir?

A Yes, I did.

Q And what examination did you conduct with respect to the pajama top?

A On the pajama top I determined the presence

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of purple cotton threads and blue polyester cotton yarns. Once again, in this case they were both identical to the yarn and the thread used to manufacture the jacket, and it is my opinion that they could have originated from the same source.

Q Okay, now, how about Government 345, or E-116, the debris from the pulled-back bedding of Kimberly's bed?

A Yes, the same thing applies there. I found both the purple cotton threads and the blue polyester cotton yarn in this exhibit.

Q Now, how about Government Exhibit--is that it; 347--that is the debris from the bottom sheet of Kimberly's bed. What did you find with respect to that exhibit, sir?

A On this exhibit I found the purple cotton threads that were identical to the cotton thread used to sew the pajama jacket, E-101.

Q And what is your opinion, sir?

A It is my opinion that they could have originated from a common source.

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BY MR. MURTAGH:

Q Okay, now, with respect to Government Exhibit 356--that is the debris from the purple bed cover of Kimberly's bed--what did you find with respect to that exhibit, sir?

A On that exhibit I found both the purple cotton threads and the blue polyester cotton yarns. They were similar to the yarn and thread used to manufacture the jacket, and it is my opinion that they could have originated from a common source.

Q Okay, now, with respect to Kristen's--the north--bedroom, what examination did you conduct with respect to Government 362 or D-52NB, the debris from the green bedspread in Kristen's room?

A On this exhibit, once again, I found both the purple cotton thread and the blue polyester cotton yarn similar to that used in the manufacture of the jacket, and it is my opinion that they originated from a common source.

Q Okay, now, Mr. Browning, have you indicated those results on both charts where there is a common---

A (Interposing) Yes; I have. Where they were listed on both charts I have so indicated.

Q Now, let me ask you with respect to Government 653, did you also examine some of these

exhibits with respect to any wood that might be contained therein?

A Yes; I did.

Q Okay, now, let me ask you with respect to Government Exhibit 125 or D-23, the splinters and threads from near the large blood stain, could you tell us, sir, what you found on your initial examination of that exhibit?

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A On my initial examination I found that the color, texture and the cell structure was identical to that of the weapon 306, and it was my opinion at that time that the splinter could have originated from this 306.

Q Okay, now, Mr. Browning, let me ask you with respect to that examination--was it your opinion that it could have originated from the piece of wood, Exhibit 306, based on those characteristics which you have testified about?

A Yes; I did.

MR. MURTAGH: Your Honor, if you would indulge me for a second.

(Pause.)

BY MR. MURTAGH:

Q Mr. Browning, at this time, let me show you what has been previously received as Government 439(a),

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enlargement, and let me ask you, sir, what that depicts. Please, after you have told us, show the jury, sir.

A This appears to be a splinter--a blown-up picture of the splinter present here in this exhibit near the largest blood stain.

Q You are referring to Government 125, sir?

A Yes; I am.

MR. MURTAGH: Your Honor, at this time, the Government would mark Government Exhibit 438 and Government Exhibit 435, two photo enlargements.

(Government Exhibit Nos. 438 and 435 were marked for identification.)

BY MR. MURTAGH:

Q Now, Mr. Browning, let me ask you if you have recently had an occasion to perform any additional examinations with respect to that splinter and Exhibit 306, the club.

A Yes; I have.

Q Okay, would you tell us, please, what those examinations entailed?

A It was determined that the splinter made a perfect physical match into the murder weapon E-306--by "physical match," I mean that all physical

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characteristics of the splinter fit perfectly into the indentations in the murder weapon.

Q Let me show you Government Exhibit 438 and 435. Would you please tell us, sir, if you recognize the areas depicted?

A Yes; I do. These simply show two views of the splinter that was fit into the exhibit.

Q The exhibit?

A Exhibit 306. Both sections of the splinter are indicated in the center.

Q Let me show you Government Exhibit 438 and ask you, sir, what that depicts.

A This is the same thing with different views showing the splinter as it is fit into the main part of the Exhibit 306.

Q Okay, sir, if you could tell us, please, if you know, what the object appearing on Exhibit 306 on the left-hand side is?

A This?

Q Yes.

A That is a paint stain.

MR. MURTAGH: Your Honor, at this time, the Government would offer 438 and 435 in evidence.

THE COURT: Very well.

(Government Exhibit Nos. 438 and 435 were received in evidence.)

BY MR. MURTAGH:

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Q Now, Mr. Browning, let me ask you again with reference to Government Exhibit 653 whether you examined vial 325--that is, the debris from the vicinity of the left hand and arm area of the rug which you previously testified contained, I believe, purple cotton threads. Did you examine that vial with respect to Exhibit 306, the piece of wood?

A Yes; I did.

Q Would you tell us, please, the results of that examination?

A On that exhibit I found wood splinters that were identical in color, texture, and cell structure to the wood of Exhibit 306. It is my opinion that they could have originated from a common source.

Q Okay, were you able to fit those back in as you were with Government 125?

A No; I was not.

Q Now, Mr. Browning, let me ask you with respect to Government 126--that is, your number E-24, the debris from under the head of the cadaver--have you examined that vial with respect to splinters in addition

to your examination with respect to threads?

A Yes; I did.

Q Okay, what did you find, sir?

A I don't believe, to the best of my knowledge, there were splinters in that exhibit.

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Q Okay, you have indicated on the chart nothing with respect to splinters, but you have indicated---

A (Interposing) Purple cotton threads.

Q How about Government 327 or E-303, that is, the debris from under the trunk and leg area under the body?

A Yes; on that exhibit I found wood splinters which were identical in color, texture, and cell structure to the wood on Exhibit 306. Once again, in my opinion, they could have originated from a common source.

Q Okay, now, with respect to the north bedroom--that is, Kristen's bedroom--did you have occasion to examine Government 372 or E- 63NB--that is, the debris removed from the bottom sheet of Kristen's bed?

A Yes; I did.

Q Would you tell us, please, what you found?

A On this exhibit I found splinters that were

identical to the wood of Exhibit 303 in color, texture, and cell structure. Once again, it is my opinion they could have originated from a common source.

Q Now, with respect to Government 362 or E-52 north bedroom, did you examine that with respect to splinters?

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A Yes; I did.

Q Did you find any?

A No splinters were found.

Q But what have you testified previously with respect to that exhibit?

A That purple cotton threads were found on this exhibit.

THE COURT: Mr. Murtagh, what was your previous question previous to this last one? Which bedroom was that?

MR. MURTAGH: Sir, we are in the north bedroom, Kristen's bedroom.

THE COURT: I know that was the last question. Now, about the one previous; was that Kristen's too?

MR. MURTAGH: Your Honor, Government 362 is Kristen's bedroom; yes, sir.

THE COURT: All right.

BY MR. MURTAGH:

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Q Okay, now, Mr. Browning, if I understand your testimony, are you saying that in the debris removed from the bottom sheet you found splinters?

A Yes; I did.

Q You did not find threads?

A No; I did not.

Q And in the debris removed from the bedspread you found threads?

A No splinters.

Q No splinters?

A Yes.

Q Mr. Browning, moving on to the south or Kimberly's bedroom, did you have occasion to examine Government 346 or your number D-118, the splinter and the debris from the north pillow?

A Yes; I did.

Q What did you find, sir?

A I found wood splinters.

Q Okay, and what was the result of that examination?

A The splinters were identical in the three characteristics--color, texture and cell structure--to that of the Exhibit 306. In my opinion, once again, they could have originated from a common source.

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BY MR. MURTAGH:

Q Okay, now, with respect to that same exhibit, did you find on your previous examination any threads or yarns, and I direct you to the other chart, sir? In other words, 346 on this chart--would you look at the corresponding area on that chart?

A Yes, and that is indicated here--I found purple cotton threads and the blue polyester cotton yarn. Obviously, I have left the cotton thread marking off this chart.

Q Okay, Mr. Browning, let me give you this pen and ask you to mark that on there, please, in the appropriate column. Sir, let me give you a grease pencil.

A I have one here, I think. I believe this will mark.

Q Now, Mr. Browning, if I could ask you, for the sake of time, did you--with respect to Government 345, the debris from the pulled-back bedding, would you transfer your results as to the threads and yarns if any on to this chart?

A Yes.

Q Okay, how about Government 347?

A The same applies there.

Q Okay, let me back up now and ask you with

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respect to Government 346, what examination you conducted with respect to the wood in that exhibit?

A The wood splinters present in that exhibit were identical in color, texture, and cell structure to the wood of exhibit 306. In my opinion they could have originated from a common source.

Q Okay, and you also found in that exhibit?

A Purple cotton threads.

Q Now, with respect to Government 345, E-116, the debris from the pulled-back bedding, would you tell us, sir, with respect to wood, if any?

A Once again, wood splinters were present, and they were identical in the color, texture, and cell composition with the murder weapon, or to the Exhibit 306, and in my opinion they could have originated from a common source.

Q Okay, now, sir, with respect to the threads, if any?

A Yes, purple cotton threads were present.

Q Now, with respect to Government 347 or E-119, that is the debris from the bottom sheet of Kimberly's bed, what, with respect to wood, sir?

A Wood splinters were present in this exhibit also, and they were identical in color, texture, and cell structure to the wood of Exhibit 306. Once again,

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in my opinion they could have originated from a common source.

Q Okay, now, Mr. Browning, let me ask you with respect to these vials, did you compare each and every item found in those vials with each and every item submitted to you from the laboratory?

A No, I did not.

Q Would you describe generally how you worked your comparisons?

A Well, if a vial contained 15 or 20 fibers, I would select two or three at random and compare those two or three with the known pajama jacket. Same way with splinters: I would take a sample from a vial containing three or four--I would take probably one or two and examine these against the weapon, 306.

Q Did you return the residual portion to the vial?

A Yes, I did.

MR. MURTAGH: Your Honor, at this time the Government would offer 653 and 654 in evidence.

THE COURT: Very well.

(Government Exhibits Nos. 653 and 654 were received in evidence.)

BY MR. MURTAGH:

Q Mr. Browning, let me hand you an additional

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piece of wood which is in evidence as Government 141, that has been identified as a bed slat from Kimberly's bed in the south bedroom. Let me show you that, sir, and ask you if you recognize it? Do you recognize it?

A Yes, I do.

Q Now, Mr. Browning, let me ask you, did you have occasion to conduct an examination with respect to the bed slat and exhibit 306, the piece of wood found outside the house?

A Yes, I did.

Q Would you tell us, please, what that examination was?

A It was a physical examination of the grain and of the annual growth rings between the two exhibits.

Q And what was the result of that examination?

A I found that the annual growth rings and the grain of this exhibit were perfectly matched.

Q Okay, and what conclusions, if any, did you draw satisfactory to yourself, sir, based on that match?

A It is my opinion that Exhibit 306 was at one time a part of this exhibit. I don't believe I know the number.

Q I think it is on the tag marked Government Exhibit, sir. I think it is 141?

A 141, yes, sir.

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Q Mr. Browning, at this time let me show you--or let me mark first Government 427 and Government 427(a),a photo enlargement; Government 426 and 426(a)--(a) being the enlargement; Government 425 and 425(a)--(a) being the enlargement; Government 424 and 424(a).

(Government Exhibits Nos. 427, 427(a), 426, 426(a), 425, 425(a), 424, and 424(a) were marked for identification.)

Q Mr. Browning, let me hand you these exhibits and ask you to look at them and see if you recognize them?

A Yes, I do.

Q And would you tell us, please, what those are, sir?

A They are enlarged photographs of matching work that I did with the grain and the annual growth rings on these two exhibits.

MR. MURTAGH: Your Honor, at this time the Government would also mark Government 440 and 440(a), another photo enlargement.

(Government Exhibits Nos. 440 and 440(a) were marked for identification.)

BY MR. MURTAGH:

Q Sir, will you please exhibit those to the jury. You can step down, sir, and perhaps putting them

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on one of the easels--and would you please tell us with respect to Government 424(a) what that photo depicts?

A This is my Exhibit A-12 or Exhibit 141.

Q Is that the bed slat?

A The bed slat, yes. This is a clear sanded area at one end of the slat. It is indicated on this end here. The other portion is Exhibit A.

Q Is that Government 306?

A Government 306, and indicates the other sanded end of Exhibit 306 as shown here. This is a blown-up photo showing the matching grain pattern, how it corresponds--both pieces correspond with the various grain and color, width, size and so forth.

Q Okay, Mr. Browning, let me show you Government 440(a), which I think the jury might be able to see better. Now, what does that photo depict, sir?

A This appears to be the same thing, but it is just a larger blow up; and what were compared were the various annual--various grain effect on the sides of the two pieces of wood.

Q Mr. Browning, let me ask you, with respect to that grain pattern, what affects the annual growth rings--or are there variations in the annual growth rings due to the weather and climate, and such things as

that?

A Yes, definite effects in annual growth rings. These are not the annual growth rings here. This is the grain of the wood itself. The annual growth rings are depicted in other photographs.

MR. MURTAGH: Your Honor, at this time may I publish this to the jury.

THE COURT: Yes.

BY MR. MURTGAH:

Q Mr. Browning, let me ask you if you could step over here. I am placing Government Exhibit 141, which hopefully doesn't fall off?

A They were joined in this manner, joined in all the characteristics. Even the minor characteristics are identical, both the size, width, grain effect, style: everything is identical in the two exhibits, indicating this piece is a continuation of this grain pattern here.

Q Mr. Browning, I note that with respect to Government Exhibit 306, it is not painted, is that correct?

A 306, no, it is not.

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BY MR. MURTAGH:

Q Although it has paint stains on it?

A Yes; it does.

Q And Government 141 appears to be painted and have you sanded off that area?

A Yes; I sanded this area.

Q Let me move this down so the other jurors can see, sir.

(Exhibit published to the jury.)

BY MR. MURTAGH:

Q Okay, Mr. Browning, would you now please remove the large photograph and tell us what you mean with respect to the annual growth rings?

A Well, the annual growth rings are rings that are formed each year as the tree grows. Some years, if there is a good bit of rain and much more moisture, the difference is larger. The two different colorations is due to a very rapid growth in the spring and this slows down in the later part of the year, changing the color and the style of both rings.

Each one of these rings is a year's growth, and, as you can see here, they correspond with the two exhibits--correspond with this photograph here.

Q Would you describe, sir, for the record, what exhibit appears on the left and right-hand sides of

the photograph?

A This is Exhibit 306, and this is Exhibit 141.

Q Okay, and would you describe, sir, please, what portions of those exhibits we are looking at?

A We are looking at the end of the exhibits.

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Q And has one exhibit been placed on top of the other?

A Yes; it has.

Q Now, sir, let me ask you with respect to the next photograph?

A Were you looking at the grain pattern here?

Q Either one, sir. Go ahead.

A This is just another photograph showing another side of the grain pattern, showing the continuation of the formation here.

Q Okay, and is there another photograph there, sir?

A It's underneath. This is, I guess, a similar photograph to this.

Q Is that the reverse side, sir?

A Yes; this would be the reverse side; yes. This would be the reverse side of this photograph here, showing once again the matching patterns on the opposite side.

MR. MURTAGH: Your Honor, at this time,

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the Government would offer 426 and 426(a) in evidence, 424 and 424(a) in evidence, 427 and 427(a) in evidence, and 425 and 425(a) as well as Government 440(a) and ask that they be received.

THE COURT: Very well.

(Government Exhibit Nos. 426, 426(a), 424, 424(a), 427, 427(a), 425, 425(a), and 440(a) were received in evidence.)

BY MR. MURTAGH:

Q Mr. Browning, let me ask you with respect to two more pieces of wood--Government 330 which, I believe, was identified by the CID as A-1, and bearing on it the legend "From handmade shelving, closet, south bedroom" and bearing the initials "RBS 16/30/70"--and ask if you recognize that, sir.

A Yes; I do.

Q Okay, so now, with respect to the end nearest the tag, let me ask you to describe, sir, for the record, what you see.

A This is a sawed end showing the annual growth rings of this piece of wood.

Q Are there any holes in that end, sir?

A Yes; there are.

Q Let me show you Government 331, identified

by the CID as A-2, bearing the initials "RBS 16/30/70" which, I believe, has been testified to was removed from the locked storage shed behind the house. Did you have occasion to examine those, sir?

A Yes; I did.

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MR. MURTAGH: Your Honor, at this time, the Government would mark Government 436, a photo enlargement.

(Government Exhibit No. 436 was marked for identification.)

BY MR. MURTAGH:

Q Now, Mr. Browning, let me show you Government 436 and ask if you recognize the objects depicted there.

A Yes; these are other pieces of wood found in the house.

Q Now, with respect to Government A-1--I believe it also bears the FBI lab number Q127--would you point out on the chart where that's depicted?

A This is here (indicating).

Q Okay, and the lower portion?

A Yes; here (indicating).

Q And is that the area which you described as having holes in it?

A Holes in the end; yes.

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Q Okay, now, with respect to Government A-2--I believe that bears the FBI lab number K43.

A Yes; it does.

Q Would you point that out?

A That's the wood on the right side.

Q So, based on your own examination as well as the examination depicted in the photograph, let me ask you--do you have an opinion satisfactory to yourself as to whether those two pieces of wood, the one being the shelving and the other being the piece of wood from the storage shed, were once part of the same piece of wood?

A Yes; they give an excellent physical match and indicate that they were at one time a part of the same piece of wood.

THE COURT: All right, now we will take our morning recess. We will come back at 11:45. Members of the jury, remember all those things, and don't talk about the case. Today we will be recessing our Monday schedule at 12:45 and back at 2:15 today.

(Jury exits at 11:30 a.m.)

(The proceeding was recessed at 11:30 a.m., to reconvene at 11:45 a.m., this same day.)

FURTHER PROCEEDINGS 11:45 a.m.

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

(Whereupon,

DILLARD O. BROWNING

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

DIRECT EXAMINATION
(Resumed)

BY MR. MURTAGH:

Q Mr. Browning, let me show you Government Exhibit 328, a piece of wood which Mr. Shaw found in the locked storage shed behind the house, which is identified by the CID Number Exhibit A-4, and ask you if you recognize that?

A Yes, I do.

Q And I have shown you Exhibit 306. Let me show it to you again and let me show you Government 329, a pair of what appear to be rubber gloves which Mr. Shaw found in the locked storage shed bearing the manufacturer's imprint "Perry" and the number "8." Let me show you those and ask you if you recognize them?

A Yes, I can.

Q How do you recognize them, sir?

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A By my initials, case number, and so forth on the items themselves.

Q Okay. Now Mr. Browning, let me ask you if you conducted an examination with respect to the paint, or what appears to be paint, on Exhibit 306, the piece of wood; the other piece of wood, A-4, which is 328, I believe; and the gloves?

A Yes, I did.

Q And what were the results of that examination?

A The paints on Exhibit 328 and 306 were a two-layered type. They had a white underlayer, then over the top of this layer and the same configuration was a cream-colored paint. They were identical on the two. The gloves contained only cream-colored paint.

The physical and chemical composition of these paints in all three cases were identical. In the case of Exhibit 328 and 306, I examined both the white layer and the cream-colored layer, and in both instances, the paints were identical.

In the case of the rubber gloves, I examined the cream-colored paint as compared to the cream-color of 306 and 328. In that case, all three cream-colored paints were identical.

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MR. MURTAGH: Your Honor, at this time, the Government would mark Government Exhibit 100 and 100(a), a photograph depicting the rubber gloves and an enlargement. Let me show those to the witness.

(Government Exhibit No. 100 and 100(a) were marked for identification.)

BY MR. MURTAGH:

Q Would you hold those up to the jury, sir?

(Witness complies.)

BY MR. MURTAGH:

Q Mr. Browning, let me also mark Government 423(a), a photo enlargement, as well as Government Exhibit 428 and 428(a), a photo enlargement, and Government 430 and 430(a), a photo enlargement, and 429(a), as well as Government Chart 655.

MR. SEGAL: May we see Your Honor?

(Government Exhibit Nos. 423(a), 428, 428(a), 430, 430(a), 429(a), and 655 were marked for identification.)

B E N C H C O N F E R E N C E

MR. SEGAL: If Your Honor pleases, on

this particular chart, there is a photograph which the Government has never introduced in evidence and is not authenticated in any way, and I OBJECT to it.

MR. MURTAGH: Which one is that?

MR. SEGAL: Colette MacDonald, purportedly.

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MR. MURTAGH: Mrs. Kassab was shown, and I believe it was authenticated--the photo of Colette was passed.

MR. BLACKBURN: I believe it was passed to the jury.

MR. MURTAGH: I believe it was, sir.

MR. SEGAL: It's not in evidence. Show me some evidence and I will withdraw my objection.

THE COURT: I remember a photograph of Colette being identified by Mrs. Kassab. Whether it is the same one or not, of course, I would not know.

MR. MURTAGH: It is the one, Your Honor, where she is wearing a pair of panties and apparently she is painting shelves.

THE COURT: Okay.

(Bench conference terminated.)

(Counsel confer.)

MR. SEGAL: I will withdraw the objection.

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THE COURT: The objection is withdrawn. Go ahead.

MR. MURTAGH: Thank you, Your Honor. I will replace these photographs at a more convenient time.

BY MR. MURTAGH:

Q Let me show you Government 655, Mr. Browning. Let me show you some additional photographs which have been marked--Government 421(a). I would like you to tell us, please, what that is?

(Government Exhibit No. 421(a) was marked for identification.)

A This is a picture of Exhibit 306.

Q And is that reflected on the chart?

A Yes, it is. Here and here.

Q How about the lefthand side?

A Here (indicating).

Q Let me show you Government 428(a), and ask you whether a portion of that photograph appears on the chart?

A Yes, a portion of this photograph appears here.

Q What has been deleted, sir?

A It appears the bottom portion.

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Q In the photo on the chart, has some object on the lefthand side been deleted?

A Oh, I see. Exhibit 306.

Q Okay. All right, let me also show you Government 429(a) and 430(a) and would you tell us, please, whether A-4 appears in one of those pictures? Could you turn it around, sir?

A A-4 appears again here.

Q Okay. And how about Government 432(a)? Could you tell us, please, whether A-4 appears in that one?

(Government Exhibit No. 432(a) was marked for identification.)

A This corresponds with this photograph here.

Q Mr. Browning, by "A-4," I am referring to Government Exhibit 328.

A Yes. This one?

Q Does Exhibit A appear in that one?

A Exhibit A, once again, appears here and here.

Q Now Mr. Browning, if I could ask you to step over here, please, perhaps if the counsel would also, I would like to show you Government 335, which has been admitted as the footboard of Kimberly's bed. Do

you recognize that, sir?

A Yes, I do.

Q And I ask you whether the portion which is upright now--the leg that you are exhibiting to the jury, appears in any of those photographs?

A Yes, it does.

#10
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#11
pp-1

BY MR. MURTAGH:

Q We will go back to the photographs in a minute. Let me just ask you about Government 637, which has been admitted as the headboard of Kimberly's bed. Would you turn that around, and directing your attention to this end which I have in my hand, ask you if you recognize that?

A Yes, I can. This is all from the photos on the board.

Q Okay, now, Mr. Browning, let me ask you to return over here to the chart. With respect to the paint examinations that you conducted on Exhibits 329, that is the pair of Perry latex gloves, where you have indicated your results on the chart?

A I have indicated here, cream paint on it.

Q And that refers to a match with what cream paint?

A With the cream paint present on Exhibit A-4, and also on the Exhibit 306.

Q Now, with respect to the paint on Exhibit 328, the piece of wood, where have you indicated the results, sir?

A I have indicated here that both white paint--single area white paint and the cream paint--white paint--was present on that exhibit.

#11
p-2

Q Okay, and--now, Mr. Browning, let me ask you whether you have an opinion satisfactory to yourself, sir, as to how the paint on Exhibit 328 or A-4, and the paint on Exhibit 306, that is the piece of wood found outside the house--and I am referring to the square configuration in the photograph--do you have an opinion, sir, as to how that paint got there?

A Yes, it appears that when Exhibit 637 was painted, the leg was resting on Exhibit 306 to keep it off the ground while painting.

Q Okay, and how about the paint on Exhibit 328?

A The same thing applies. It appears that Exhibit 335 was resting on the flat part of Exhibit 328 when it was painted.

MR. MURTAGH: Your Honor, if I may have a second.

(Counsel confer.)

MR. MURTAGH: Your Honor, at this time the Government would offer 655 in evidence.

THE COURT: Very well.

(Government Exhibit No. 655 was received in evidence.)

MR. MURTAGH: As well as 429, 429(a), 432(a), 430 and 430(a), 428 and 428(a), 421 and 421(a), 100 and 100(a), and ask that they be received.

#11
pp-3

(Government Exhibits Nos. 429, 429(a), 432(a), 430, 430(a), 428, 428(a), 421, 421(a), 100, and 100(a) were received in evidence.)

BY MR. MURTAGH:

Q Mr. Browning, with respect to the paint which appears on Government 637, which I believe is the headboard in Government Exhibit 306 as well as Government Exhibit 335, the footboard, and Government 328: was an examination conducted of that paint under your supervision?

A Yes, it was.

Q And who conducted that examination?

A Mr. Robert Vogenthaler.

Q And if you know, sir, what were the results of that examination?

A The results as reported to me were identical to the paints on Exhibits A-4 and 306 -- A-4 being Government Exhibit 328.

Q Okay, and is that indicated on the chart, sir?

A I believe so.

Q Now, Mr. Browning, approximately how many exhibits, over what period--well, let me just ask you: over what period of time did you participate in the

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BY MR. SEGAL:

Q Mr. Browning, again, you were asked--were you not--to make some comparisons of other matters other than the threads and fibers, wood and paint back in 1970; is that right?

A Yes; I was.

Q And you enumerated several of them including wax, I think you said.

A Yes.

Q Did you receive a briefing from anyone as to the general circumstances of the crime or general facts of the crime that the lab team was operating with when they brought the evidence back?

A I'm not quite sure I understand what you mean by "general facts." I understood the same things that I've heard in this courtroom--that Dr. MacDonald was attacked by hippies and this evidence was collected--and I was looking for certain things that would prove or disprove that.

Q Did anybody tell you why they were interested in seeing whether or not the wax that was found in the house could be traced to any other wax that belonged to the MacDonald family?

A No; I don't remember being asked that at the time. I was requested to examine the wax found on, I

#12
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believe, three locations and see if it matched six candles, I think it was, sent to me from the MacDonald house.

Q All right, now, first of all, if you could tell us please, where in the MacDonald house were these three unidentified wax samples taken from; do you have anything in your records, sir, that would indicate to us where they came from?

A Yes; I do. Let me check. I have listed D-123, purple bedspread, Kimberly's bedroom; G-131, chair, Kimberly's bedroom; and G-201, coffee table, living room.

Q So you were given, I understand, wax that was scraped or lifted from them by Mr. Chamberlain; is that right?

A Yes; Mr. Chamberlain.

Q And what did Mr. Chamberlain do with the unidentified wax found in the house? Did he put in a vial of some sort?

A No; it was cut out on the--I remember the chair--I received a piece of the leather upholstery or the plastic upholstery from the chair with the stain attached and the bedspread still had the wax on it when received in the laboratory. As I remember, Mr. Laber removed that and gave it to me.

#12
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Q And the wax from the coffee table--how did you obtain that unidentified wax?

A Let me check this again. That was received in a vial.

Q Received in a vial; and did it have collected by whom?

A It doesn't say. Let's see if there is anything else on that. I'm sorry the number I was looking at is 211.

Q Now, 211 is the identifying number for which one of these three samples of wax?

A It's 201 is the identifying sample of the wax. From my notes here I just referred to, it was not 201; it was 211. I don't---

Q (Interposing) Pardon me. Just so we have the record clear. Which of these unidentified samples of wax should be referred to as 211?

A Neither; 201 is the sample of wax which occurred on the table in the living room.

Q That's the coffee table in the living room?

A The coffee table in the living room; in my records of examination here I don't have any record of 201 being examined in this group so, obviously, I got it at a later date. I have it listed here again as "wax substance Exhibit G-201, wax substance taken from

#12
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coffee table in living room."

Q Does that later note indicate to you who collected the wax substance from the living room?

A No, sir; it doesn't. In most cases I received evidence with one or two exceptions from Mr. Chamberlain--the one or two exceptions being one exhibit from Mr. Laber and one or two exhibits from Mr. Ivory.

Q Based upon those general circumstances, would you conclude that it was Mr. Chamberlain who collected this unidentified wax off the coffee table in the living room?

A Well, as I said earlier, I really don't know, but this would be a possibility.

Q Now, you were given, as I understand, a number of wax candles and wax samples that were found in the MacDonald house; were you not?

A Yes; originally I received six candles.

Q Now, could you tell us when you received those six candles and who provided those to you?

A Well, I received those from Mr. Chamberlain. They were obviously picked up during the initial working at the house.

Q And these were household candles?

A Yes; in most cases, household candles.

#12
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6

Shortly later thereafter, I received two candles, I believe, in wine bottles, to make a total of eight at that time.

Q When you say two candles in wine bottles, you mean that somewhere someone had sort of fastened the candle, pushed it into the top of the wine bottle and let it melt down around it a little bit?

A Yes; it is one of these wine bottles where the material had run down the side and it formed a pattern.

Q So that, ultimately, you had, I gather, eight different candles taken from the MacDonald house to make a comparison against these three unidentified candles; is that right?

A At the time of the initial examination; yes.

Q And as a result of the comparision that you made, were you able to establish that, first of all, the wax that was found on the chair in Kimberly's room, was that wax the same as or similar to the wax that was found elsewhere in the MacDonald house?

A No; it was not.

Q It was not. What about the wax that was found on the bedspread in Kimberly's room? Was that the same as the known samples of wax taken from the MacDonald house?

#12
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7

A No; it was not.

Q What about the wax that was found in the living room? Was that the same as the known samples of wax in the MacDonald house?

A No; all three samples differed.

Q Now, were the three samples--the three unknowns--were they identical to each other; that is, did they come from the same single source, a single candle, or some single paraffin source?

A No; they did not.

Q How many different types of wax were there in these three different unknowns?

A Well, wax itself is pretty much the same. It's very difficult to distinguish, but there were three different types of wax. One of the unknowns was a multicolored type of wax that physically matched beautifully with the candle in the bottle.

However, on analysis, I received some fluorescence under ultraviolet light in the unknown that I did not receive in the known, so I eliminated it and said it did not have a common source. The other two as I remember, I believe one was a pale green color. I just don't remember the color of the other.

Q The conclusion was, Mr. Browning, was that the three unknowns were, first of all, unlike the eight

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8

known wax samples in the MacDonald house; is that right, first of all?

A Yes.

Q And that the three unknowns were not similar to each other; is that also true?

A This is correct.

Q Now, later on, after this initial examination of wax, were you not asked to make some further comparisons of these three unknowns with other samples that may have been taken in the MacDonald house?

A Yes; I received six more candles. If I remember correctly, three of those were unburned candles or unused candles. The other three had been used.

#13
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difficult to go through all of them. If you have any particular exhibit, I can give you that information.

Q Did you get a piece of hair sent to you by the CID that they reported was taken from the hand of Mrs. Colette MacDonald?

A Yes, I have that under Exhibit E-5, I think. "Debris removed from Mrs. MacDonald's left hand."

Q Now, did you receive any sample hair taken from either the hand or near the hand of either of the two MacDonald children?

A I don't believe so; I don't recall.

Q Now, how many hairs were there in that sample called E-5 taken from Mrs. MacDonald's hand?

A In E-5, one short medium brown hair, two fine blond, apparently head hairs, bloodstained, and that's it.

Q While we're talking about hair, it would be correct to say, would it not, Mr. Browning, that human hairs do not have unique individual characteristics the same way as fingerprints have unique individual characteristics?

A They have unique individual characteristics, but not sufficient unique individual characteristics that you can give a specific determination, like fingerprints.

#13
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Q When you say "specific determination," you mean with fingerprints you find a fingerprint and it matches that which comes from a given individual. You know there is no one else in the world that is going to have that print?

A That's right, yes.

Q When it comes to hair, what is the most you can say when you find a sample of hair that you compare with one known to come from a person?

A Once again, we use the could have opinion.

Q You could say it generally resembles the hair of a known person; is that right?

A Well, I never used that term generally. I would say "grossly similar" or microscopically identical. In that case, I would give the report that they could have originated from a common source.

Q But you're not able, from such a gross examination, to make a specific identification of whose hair it actually is as you are looking at it?

A No, there would have to be many unique abnormalities or something very unique to the two samples to say definitely that one hair originated from the head of a certain individual.

Q All right, now you described this debris taken from Mrs. MacDonald's left hand, a short medium

#13
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brown hair; is that right?

A Yes.

Q You also described two blond hairs and an adjective and I missed that. Two what?

A Two short blond hairs.

Q Were you asked to ascertain whether those three hairs taken from Mrs. MacDonald were grossly similar to the hairs of any other member of the family?

A Yes, I believe I ran that portion of the examination.

Q Of course in order to know whether they were similar to either Mrs. MacDonald's own hair, Kristen's, Kimberly's, or Dr. MacDonald's hair, you would have had to have known samples of the hair of those four other persons, wouldn't you?

A Yes, you need something for comparison.

Q And did you, in fact, receive a sample of, say, Mrs. MacDonald's hair that was cut from her head or another part of her body in the presence of a CID agent, or some pathologist who could say this is positively from her person?

A No, I did not.

Q Did you get a known sample of the hair of Kristen MacDonald, cut in the presence of a CID agent or a pathologist who that person could say this

#18
pp-7

THE COURT: Well, that is so, but this is sort of in the nature of cross-examination this second.

MR. SEGAL: That was his witness, Your Honor.

THE COURT: I thought I ruled that he was your witness as to these new subjects. He says that he is just bringing out his cross-examination as to those subjects.

MR. SEGAL: That doesn't give him the right to cross-examine---

THE COURT: (Interposing) All right, this is over. Ask your question.

BY MR. MURTAGH:

Q Mr. Browning, you testified with respect to Exhibit E-5, which I believe was the hair or the debris removed from the left hand of Mrs. MacDonald, do you recall that, sir?

A Yes, I did.

Q And other than hair, what debris or matter, if any, did you find in that exhibit?

A I need to refer to my notes.

Q Would you please do that, sir?

A My synopsis is, "Vial contains one green single strand nylon green fiber identical

#18
pp-8

to the green fiber of the multi-colored rug in the north bedroom. It is heavily blood stained.

One short, medium-brown hair; two fine blond human head hairs, blood stained; and one wooden splinter similar to the wood of the club," meaning Exhibit 306.

Q Okay, now, Mr. Browning, I believe--let me ask you if we are talking about the same exhibit. With respect to the green single-strand fiber, let me show you what has been marked and I believe received in evidence as Government 358, and I believe this is also referred to as D-37NB, multi-colored throw rug from the north bedroom?

A D-37?

Q NB. My question, sir, is the throw rug the throw rug from which you compared the green fiber found in Mrs. MacDonald's hand?

A Yes, it is.

Q Okay, and your testimony was?

A That the fiber in her hand was identical to the fiber present or similar to that rug.

Q Okay, and did I also understand you to testify that you also found a piece of wood in that vial?

A Yes, I did.

#19
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one with the penciled corrections so I think you will be able to follow that all right.

MR. MURTAGH: Your Honor, they were advised some weeks ago.

THE COURT: I understand.

(Bench conference terminated.)

MR. MURTAGH: Your Honor, the Government calls Mr. C. Michael Hoffman.

(Whereupon,

CHARLES MICHAEL HOFFMAN

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

D I R E C T E X A M I N A T I O N 3:02 p.m.

BY MR. MURTAGH:

Q Please state your name, sir, and spell it for the reporter.

A Charles Michael Hoffman. That's H-o-f-f-m-a-n.

Q Are you employed, sir?

A Yes.

Q And where are you employed?

A In Washington, D.C. with the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms.

Q If I might ask you, what position do you

hold at present with the ATF?

A I am the Assistant Director for Technical and Scientific Services.

Q And what are your duties, sir?

A Basically, I am a manager of technical and scientific service functions, one of which is managing the ATF laboratory system.

#19
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11

BY MR. MURTAGH:

Q And what is your education, sir?

A I have a bachelor of science degree and a master of science degree in chemistry from the George Washington University which is in Washington.

#20 tdb 1

Q And when did you get that, sir?

A I got the master's degree in 1968. Also, I have had some additional post-graduate courses in forensic science.

Q Does George Washington University, if you know, sir, have a master's program in forensic sciences?

A Yes, they do.

Q So is it accurate to say that you are pursuing a second master's?

A No, I was at the time.

Q Let me ask you, sir, have you ever served as a forensic chemist with ATF?

A Yes, I have.

Q From when to when, sir?

A Since October of 1964 until January of 1978.

Q Okay, and what positions as a forensic scientist did you hold?

A During the period of 1964 through about 1973, I was a senior forensic chemist with ATF. In the latter part of 1973, I was selected as chief of the

laboratory.

Q Okay. Then subsequent to that you became the Assistant Director; is that correct?

A That is correct.

Q All right. Mr. Hoffman, have you been qualified as an expert in the field of analytical chemistry in any federal or state courts?

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A Yes, several times.

Q Okay. Did you ever appear in this court--the United States District Court for the Eastern District of North Carolina?

A Yes, as I recall, two or three times.

Q Is that when the court was sitting in the old building?

A Yes.

Q Have you authored any publications, sir?

A Yes, about 20 to 25, something like that.

Q Okay, and in what fields generally were those publications?

A Basically what would be termed forensic chemistry or forensic science.

Q Any professional affiliations?

A Yes.

Q Would you tell us, please, what those are, sir?

A The International Association for Identification, the American Academy of Forensic Sciences, the Association of Official Analytical Chemists, the Southern Association of Forensic Scientists.

#20 tdb 3

Q Are you familiar, sir, with a term called "neutron activation analysis"?

A Yes, I am.

Q Would you please tell us, sir, what that is?

A Basically it is a method of chemical analysis, or more specifically, it is a method for determining the elemental composition of various materials.

Q Okay, and how does it work, basically, sir?

A Well, using very simple terms, a sample of the material to be examined is first made radioactive by placing it usually in the core of a nuclear reactor. The elements that make up that sample give up radiation which can be detected and having done this, it can be determined what elements make up the sample and how much of those elements are present.

An analogy that is sometimes used to help people who are not totally familiar with the process understand it is that it is rather like turning on a series of radio stations and a sample of what each one

of which broadcasts on its own frequency. The detection equipment is at least loosely analogous to a radio receiver that you can tune in and determine what stations are on the band.

The stronger the signal given off, the more of the element present, so it permits us to do what is known as a quantitative and a qualitative analysis, not only identifying what is there but how much is there as well.

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Q With respect to how much is there, sir, how much of a sample do you need for analysis purposes?

A The method is very, very sensitive so you don't need very much of the sample to work with. Again, to give you an idea of the sensitivity of the method, if someone has done a calculation that says if you had a thimbleful of arsenic and poured that in to ten railroad tank cars of water and thoroughly mixed these up, that you could detect the arsenic. So that is quite a sensitive technique.

Q Okay, and what are the applications of neutron activation analysis other than in this case, to the field of criminalistics?

A It can be used for many things, primarily examining almost any solid or liquid material, metals, plastics, adhesive tapes, soil samples, all sorts of

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things.

Q Okay, now, Mr. Hoffman, directing your attention to 1971, at that time approximately how many cases had the ATF laboratory examined using one aspect or the other of neutron activation analysis?

A About 3500.

Q Thirty-five hundred?

A About that; yes.

Q Approximately how many samples, within those 3500 cases, if you know, sir?

A Somewhere around 25,000, give or take a couple thousand.

Q And that is as of 1971?

A Yes, sir.

Q Okay, and what percentage or proportion of those cases did you participate in, if you know, sir?

A A substantial portion. It would be very difficult to say, perhaps 80 or 85 percent of the cases.

MR. MURTAGH: Your Honor, at this time, we would offer Mr. Hoffman as an expert in the field of analytical chemistry and its application to neutron activation analysis.

THE COURT: Very well.

MR. MURTAGH: We offer him for cross-examination.

#21
p-1

BY MR. MURTAGH:

Q Mr. Hoffman, at this time, I am going to show you Government Exhibit 134, which has been identified as three packages of Perry Pure Latex Disposable Surgeon's Gloves, size 8, which were removed from the area underneath the sink in the kitchen of the MacDonald household, and ask if you recognize that, sir?

A Yes.

Q Did you have occasion to take cuttings from those gloves, sir?

A Yes, I did.

Q And would it be accurate to say that those were known exemplars?

A That is what is--that's the term commonly applied, yes.

Q Were the packages sealed, if you recall, at the time you received them?

A I do not recall.

Q Do you have any reason to recall they were not sealed?

A No, I don't recall that either.

Q Okay, let me show you Government Exhibit 106, which has been identified by Dr. Chamberlain as a piece of rubber he removed from the sheet, pile of bedding on the master bedroom floor, at the laboratory; as well as

#21
pp-2

Government Exhibit 105, which has been identified as a finger-like section, piece of rubber glove, also removed from the sheet on the floor of the master bedroom, and ask you if you recognize those exhibits?

A Yes.

Q Let me also show you Government Exhibit 138, a piece of rubber which was found on the floor of the master bedroom near the dresser, and ask if you recognize that?

A Yes, I do.

Q Let me also show you Government 109, a piece of rubber which was collected from the floor of the master bedroom near the body of Colette MacDonald, and ask if you recognize that?

A Yes.

Q What examination did you conduct with respect to the packages of rubber gloves in relationship to the pieces of rubber which are in those vials?

A I did two basic kinds of examinations. The first was a microscopic examination; the second was a neutron activation analysis.

Q First, with respect to the microscopic examination, what did you observe, if anything, sir?

A I observed that all of the specimens were microscopically indistinguishable. The thickness, the

#21
pp-3

pliability, the general surface color and texture, all of the physical factors that could be observed under a microscope appeared to be the same.

Q Now, would you tell us, please, about your neutron activation analysis of those exhibits?

A Yes, some of the samples contained blood, and it was necessary to remove some of the blood from those that had blood smears on them. This was done with certain of the samples. Also, some of the bloody portions were also examined as they were received.

The activation process was used, as I have mentioned, and all that is required is that the specimen be placed into a small plastic vial,numbered, sealed, placed into a larger plastic container, which is called a "rabbit."

This is taken to the reactor, shot into the core of the reactor, retrieved after a sufficient period of time when the samples are radioactive, and then counted by a process I have previously described to determine what elements are present; and that was done in this case.

Q Based on that examination, what were the results, sir?

A The samples all had the same elements. Those elements were sodium, copper, zinc, and gold--traces of

#21
pp-4

gold--in generally similar concentrations. This, of course, was corrected for weight of the sample.

Q With reference to those elements that you just described, is that in addition to the composition of the items themselves?

A Yes, it would be because these were the elements that would be incorporated into the latex or plastic material, so they would be what would be termed as trace constituents or trace elements.

Q Now, let me ask you with respect to the known exemplars, that is the three packages of rubber gloves, what variation if any existed as to the trace elements in the known exemplars?

A There was some slight variation between the three samples which represent the sample from each of the three packages contained in this item. But one must understand that in any analysis, you are going to have a certain natural variation in your results. This is rather typical in analytical work.

Q Now, Mr. Hoffman, what conclusion, if any, did you draw from the results of your examination?

A The conclusions that I drew, based on my findings and my microscopic observations, were that the samples had no significant differences and that they were consistent with products of the same manufacturer.

#21
p-5

Q When you say "significant differences," are you referring to the concentration of the trace elements?

A Well, there was some variation there, as I have explained. When I say "significant," I mean that one, for example, didn't have an element such as chromium, that they others did not. They all had the same elements and generally similar concentrations.

They looked the same; they had all the microscopic and visual characteristics, so there was a good deal of similarity between them.

Q Now, sir, do you have an opinion based on the results of your examination satisfactory to yourself as to whether the questioned samples of rubber could have originated from the Perry Pure-Brand Latex Disposable Surgeon's Gloves?

A Yes, I do.

Q What is that opinion, sir?

A It is that they could have been that brand, ergo, they could have originated from that source.

MR. MURTAGH: That concludes direct examination, Your Honor. Counsel may cross-examine.

THE COURT: Very well.

C R O S S E X A M I N A T I O N (3:10 p.m.)

#15jb3

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 597.

(Government Exhibit No. 597 was marked for identification.)

Your Honor, I would represent to the Court that the photographs on this chart have already been introduced into evidence.

THE COURT: Very well.

BY MR. BLACKBURN:

Q Mr. Stombaugh, I am going to hand you a red pen if I can, sir, and if you would, using your notes if you need to, fill in the appropriate blanks, the numbers--the total numbers of punctures and cuts with respect to the items you have testified about: the pajama top and the T-shirt, using the columns on the left for the front and the columns on the right for the back.

(Witness complies.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, so the record would indicate, would you read again what you have written?

A On the front view of Exhibit 273, I have put zero punctures and 18 cuts. On the back view I have put zero punctures and seven cuts. On the front view of

#15jb4

Exhibit 275 I have put seven punctures and three cuts, and on the back view of Exhibit 275, four punctures and six cuts.

Q If you would, sir, using that pen, would you draw a line with respect to the numbers and which weapon you testified they could have come from?

(Witness complies.)

MR. BLACKBURN: Your Honor, I misspoke myself a moment ago. And I want to mark several photographs for identification at this time: Government Exhibit 591 through 595.

(Government Exhibits Nos. 591 thru 595 were marked for identification.)

BY MR. BLACKBURN:

Q First of all, sir, if you would, take a look at 591 through 594 and tell us whether or not you can identify those and what they are and what they represent?

A 591 is the same photograph as the front view of Exhibit 273. 592 is the same photograph as the back view of 273. 593 is the back view--same photograph--back view of Exhibit 275. And Exhibit 594 is the same photograph--is a front view of Exhibit 275.

Q Let me hand you Exhibit 595 and ask you to take a look at it also and tell us whether or not you

#15jb5

can identify it, sir?

A Yes, sir. This is a photograph of the adult pajama top delivered to me as allegedly being that of Colette MacDonald.

MR. BLACKBURN: Your Honor, at this point we would move Government Exhibits 597 and 591 through 595 into evidence.

THE COURT: Very well.

(Government Exhibits 597 and 591 through 595 were received in evidence.)

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pick going all the way up to the hilt.

Q When you speak of the hilt, would you show us what you are talking about?

A It's this area up here (indicating).

Q In other words, it's your testimony that the puncture holes appeared to be made all the way by that entire length of the blade.

A The entire length of the blade; yes, sir.

Q With respect to the cuttings or the cuts on that pajama top, what, if anything, did your examination reveal as to whether or not they were sharp cuts or dull cuts or what?

A The cuts were made by a very sharp cutting instrument with a single cutting edge.

Q Well, based upon your examination and your analysis of the weapons, do you have an opinion, sir, satisfactory to yourself as to whether or not any of the three weapons which you received could have made those cuts in that pajama top?

A Yes, sir; in my opinion, comparing the test cuts made in the laboratory and examining the cuts in the pajama top, these cuts could have been made with the Old Hickory knife.

Q What is the basis for that opinion, sir?

A The cleanness of the cuts in the fabric

#16
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itself.

Q Is that the same basis with respect to Kristen's clothing as well?

A That is correct.

Q What did your examination reveal with respect to the other weapon, the Geneva Forge Knife?

A The other weapon--the test cuts made produced dull cuts and, in my opinion, it would be extremely doubtful that the cuts could have been made with this weapon, the Geneva Forge knife.

Q Did your examination reveal anything with respect to the size of the cuts in the clothing?

A Yes, sir; these cuts ranged in size from an eighth of an inch up to an inch and a half.

MR. BLACKBURN: At this time, we would mark for identification Government Exhibit 598 which is a chart bearing the three photographs on the right side of that particular chart and a photograph which this witness has previously identified.

THE COURT: Very well.

(Government Exhibit No. 598 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, taking this black pen--it may show up a little better--would you fill in the total, sir,

#16
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of the number of punctures and cuts that you found and after that, if you would, draw a line to the particular weapon to which you refer could have made those punctures and cuts?

(Witness complies.)

Q For the record, sir, would you tell us what you have filled in the blanks with respect to punctures and cuts?

A I have filled in 30 punctures and 18 cuts.

Q And to where did you draw the line, sir?

A The 30 punctures I have drawn the line to Exhibit 312, the ice pick, and the cuts I have drawn the line to the Old Hickory knife, Exhibit 313.

Q Mr. Stombaugh, let me hand you Government Exhibit 101 and ask you, sir, to take a look at it, and tell us whether or not you have ever seen it and can identify it.

A Yes, sir; this is the torn pajama top delivered to me with the other items in this case by Special Agent Ivory on June 10, 1971.

Q What examination in 1971, if any, did you conduct with respect to that blue pajama top? First, with respect to any holes that might appear in it.

A The request was to determine the number of holes and their locations, and they wanted the exhibit

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photographed, which I had photographed.

Q First with respect to the back of the pajama top, what, if anything, did your examination reveal with respect to the back, sir?

A The back of the pajama top I found a total of 17 puncture holes.

Q Okay, with respect to the back, do you have an opinion, sir, satisfactory to yourself as to what of the three weapons which you examined could have caused the 17 puncture holes in the back?

A Yes, sir; the puncture holes could have been caused by the ice pick.

Q With respect to the other portions of the blue pajama top, what did your examination reveal with respect to any other puncture holes?

A On the panel---

Q (Interposing) Which panel?

A I'm trying to interpret my notes on that, sir. It would be the right panel--the right front panel--found a total of 9 puncture holes. In the shoulder area of the right sleeve, I found a total of eight puncture holes, and in the opposite slide of the right sleeve I found 13 additional puncture holes, and in the shoulder area of the left sleeve I found one puncture hole.

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BY MR. BLACKBURN:

Q Where in the left sleeve area are you talking about, if you recall?

A It would be the upper area, near the shoulder.

Q When you were talking about the front panel, where on your body were you speaking of, sir?

A It would be easier if I found the holes.

MR. BLACKBURN: If we could have just a moment, sir.

(Pause.)

MR. BLACKBURN: Your Honor, at this time we would mark and move into evidence mannequin 1084.

(Government Exhibit No. 1084 was marked for identification and received in evidence.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, using this tape would you take just a moment to come down and put the pajama top on it and maybe you can better illustrate your testimony?

(Witness complies.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me ask you this question.

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During the time in 1971 that you examined that pajama top, at that time, did you cause a numbering system to be given to any of the holes that you found in that?

A Yes, sir. Each puncture hole, I circled with a white marking pencil and gave it a number.

Q How many were the total number of puncture holes in that pajama top?

A I totalled 48.

Q With respect to the 48 puncture holes in that blue pajama top, do you have an opinion, sir, satisfactory to yourself, as to which of the three weapons, if any, could have caused these puncture holes?

A Yes, sir. The ice pick could have caused these puncture holes.

Q In the examination which you conducted, what, if anything, did you find out about the size of the holes?

A The holes varied slightly in size. The biggest holes measured at that time 1/8th of an inch across, which conforms to the width of this blade at the hilt.

Q In other words, it is your testimony that some of the holes could have been made by the ice pick going into the hilt; is that correct?

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A That is correct.

Q Now if you would, sir, come down, maybe using the pointer, turning the mannequin and this pajama top around, point out to the jury where the puncture holes are located on that pajama top. First, maybe, with respect to the back.

A On the back, this area here and here over in this area.

Q Okay, there were a total of 17 in the back; is that correct?

A Yes, sir.

Q If you would, sir, turn maybe the mannequin around so they can see where the other puncture holes were found.

MR. SEGAL: Could I make a suggestion? Perhaps put the mannequin up on the witness pedestal so we could all sit down and the jury could see it, and we could have a better view of it.

THE COURT: Can you lift it up there, Mr. Stombaugh?

(Witness complies.)

THE COURT: Is that better?

MR. SEGAL: Fine, thank you.

THE WITNESS: On the outside of the right sleeve area, there were eight puncture holes. Up in

this area on the underside of the sleeve area, and up along the seam area right in around here, in this area in particular, there were 13 additional puncture holes.

There were no puncture holes in the front left panel. I believe I have covered the front right panel.

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BY MR. BLACKBURN:

Q With respect to the front right panel, what did your examination reveal with respect to either punctures or cuts there, sir?

A There was a 5/8th inch long tearing cut.

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BY MR. BLACKBURN:

Q Where is that located?

A Right here.

Q For the record, would you say where "here" is?

A It would be---

Q (Interposing) About how far from the bottom of the pajama top?

A I would estimate approximately five inches, and approximately,maybe, eight to ten inches from the torn--

Q Other than that particular cut which you just described, what other punctures or cuts did you find on the right panel--the front panel of the pajama top?

A I found nine punctures up in this area.

Q What about, sir, with respect to the area of the right breast--that would be on the right panel of the pajama top--what did you find, sir?

A In the area of the right breast?

Q Yes, sir.

A The only thing I found in this entire area up here, which would include the area of the right breast,would be puncture holes.

Q No cuts?

#18
pp-2

A No cuts.

Q Continue then, please.

A All right, as I mentioned, there were no puntures on the left front panel, and the only puncture in the left torn sleeve was located right here.

Q Where is "here" sir?

A Best as I can describe it, sir, it would be to the back of the arm right at the shoulder.

Q With respect to the left sleeve--the whole left sleeve: what if anything did your examination reveal with respect to cuts or punctures; first with respect to punctures in the left sleeve, besides the one you just testified about?

A I found no holes or cuts in the left sleeve, with the exception of that hole, number 48, which I described as being up the shoulder and in the back.

Q Now, you have already testified to 48 puncture holes and one cut, I believe, is that correct?

A That's correct.

Q What other cuts, if any, on the pajama top did your examination reveal?

A There was one small tearing cut in the upper left back shoulder area--this area right here.

Q Were there any other cuts on the left sleeve besides the one you have already testified about?

#18
pp-3

A No, sir, I didn't find any.

Q Now, Mr. Stombaugh, based upon your examination of the cuts in the pajama top and your analysis of the weapons, do you have an opinion, sir, satisfactory to yourself as to which of the three weapons, if any, could have caused those cuts?

A Yes, sir, I do.

Q What is that opinion?

A From the test cuts made in the laboratory, the two cuts on his pajama top could have been made by the Geneva Forge knife, the dull knife.

Q What about the Old Hickory, the sharp knife?

A Well, here again it could have, but it is doubtful because these cuts aren't clean; they are more or less tearing cuts.

MR. BLACKBURN: Your Honor, at this time I would mark for identification Government Exhibit Number 600.

THE COURT: Very well.

(Government Exhibit No. 600 was marked for identification.)

#19jbl

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you this first, and ask you if you can identify it?

A Yes. That is a photograph of the inside of the back panel of this pajama top.

Q If you would, sir, these circles--what do they represent?

A These circles were the ones I made around the punctures. And each circle has a number whereby I numbered each puncture.

MR. BLACKBURN: Your Honor, let me mark for identification Government Exhibit 600(b).

THE COURT: Very well.

(Government Exhibit 600(b) was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you this and ask if you can tell us what it is?

A Yes, sir. This is an enlargement of a certain area on that pajama top taken from the inside.

Q These are what--puncture holes?

A These are puncture holes; yes, sir.

MR. BLACKBURN: Your Honor, at this time we would mark Government Exhibit 601(a).

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(Government Exhibit 601(a) was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you this Exhibit and ask you if you can tell us what it is?

A Yes, sir. That is a view of the right sleeve of the pajama top.

Q Now, what portion of this is this right here?

A That is up in the shoulder area.

Q And these represent what?

A They represent puncture holes.

Q In the right shoulder area of the pajama top, how many puncture holes did you find in total?

A A total of 21.

MR. BLACKBURN: Your Honor, I would mark for identification Government Exhibit 602(a).

(Government Exhibit 602(a) was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you this and ask you if you can identify it, sir?

A Yes, sir. That is the inside portion of the panel of the pajama top.

Q Now, if you would, stand up and unbutton your coat and when you talk about that, what part are

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you talking about?

A Well, the garment was turned inside out, because I put my markings on the inside. So, if you take the coat off, you have to turn it inside out. So, the portion I am talking about is the right side of it.

MR. BLACKBURN: Your Honor, we would mark Government Exhibits 600 and 602.

(Government Exhibits 600 and 602 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, I hand you these and ask whether you can identify them?

A Yes, sir. These are photographs of the front right panel and the back panel of the pajama top.

MR. BLACKBURN: Your Honor, with respect to the photographs we have marked, we would move those into evidence.

THE COURT: Very well.

(Government Exhibits 600, 600(b),601(a), 602 and 602(a) were received in evidence.)

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 966, which again is a similar chart. It has the three photographs of the weapons on the right-hand side, and

two black and white photographs which the witness has just identified.

(Government Exhibit 966 was marked for identification.)

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BY MR. BLACKBURN:

Q Mr. Stombaugh, if you would, sir, taking the black grease pen, fill in the appropriate blanks there, if you would, and draw lines after you have done so to the weapons that could have caused those cuts or punctures.

A Do you want the total of punctures, sir, or just the---

Q (Interposing) If you would, just put the total number of punctures and the total number of cuts.

(Witness complies.)

BY MR. BLACKBURN:

Q If you would, sir, for the record, please tell us what you have done.

A I have put a total of two cuts and drew an arrow to the Geneva Forge knife, Exhibit 311. I put 48 punctures and drew an arrow to the icepick, Exhibit 312.

Q Now, Mr. Stombaugh, when you received this pajama top in 1971, in what condition was it, sir? Was it all together or was it in a torn condition?

A It was in the torn condition as you see it now.

Q What examination, if any, did you do with respect to the pajama top to determine the manner in

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which it was torn or could have been torn?

A That was another of the questions that was posed, if we could determine how the pajama top could have been torn in this condition.

Q If you would, sir, if you would maybe put the mannequin back up before you start the rest of your answer and show us to illustrate your testimony what you are talking about?

A They wanted to know if we could determine the manner in which the pajama top suffered the torn damage; in other words, from what area the force originated.

Q Okay. And what did your examination reveal, sir?

A The nature of the tears indicated that the pajama top was grabbed here and pulled down.

Q (Interposing) Again, where is "here"?

A This would be the left portion of the yoke in the front and pulled down in a way that would tear down here, and also pull this seam and tear this seam.

Q (Interposing) Which seams are you referring to?

A I am talking about the left sleeve now. Tear the left shoulder and sleeve down.

Q Now, you say---

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A (Interposing) Well, this is assuming that it is being worn. And this is also assuming that the garment is stationary and the force is exerted this way.

Now, if someone grasps this here and an individual wearing this garment spun to his right, you would get a similar tearing action.

MR. SEGAL: Your Honor, I Move to Strike all this testimony. There is no evidence whatsoever of anything at all that this man has assumed to be a fact in this case.

THE COURT: I will OVERRULE that objection.

MR. SEGAL: May we have an appropriate instruction, Your Honor, that the assumptions that they are based upon--I suppose some time the Government is going to provide some facts to support them. And he has made a calculation here, sir.

THE COURT: Don't argue your case. Do you want to be heard on this? If so, come up.

MR. SEGAL: Certainly, Your Honor.

#21
pp-1

B E N C H C O N F E R E N C E

MR. SEGAL: Your Honor, we are getting to the point now where the motion that we have made, the memoranda that we have submitted are appropriate. This man is now testifying as to a hypothetical fact for which there is no basis in the record.

Now, every case that I know of, every rule of law that I know says that, you know, when an expert gives an opinion, if it is not based on facts in this case, there is no standing for it. Now, he said, "assume he was this way and assume he was that way"--well, assuming I could fly around the room, so what. What has that got to do with this case?

There must be a factual foundation for his testimony, Your Honor. I don't understand how we can have him stand here---

THE COURT: The reason I let it stand is because I thought his answer was favorable to you.

MR. SEGAL: Your Honor, I---

MR. BLACKBURN: There is already testimony in evidence that the Defendant was wearing a blue pajama top that night. There is evidence that he said it was ripped or torn in the living room. This witness has said--this was in 1971, this examination. The reconstruction did

#21 ·2

not take place until four years later in 1974. We are not anywhere close to reconstruction---

THE COURT: Well, you just asked him how--if he had an opinion as to how--he says, well, it could have been either way.

MR. BLACKBURN: He said it could have been one or two ways.

THE COURT: I don't see how it hurts you at all.

MR. SEGAL: He makes the assumptions--where did the assumptions come from?

MR. BLACKBURN: Where the pajama top was on.

THE COURT: I know; I hear what you say about assumptions, but how does it hurt you? That is what I don't see.

MR. SEGAL: My feeling is, Your Honor, that having read this witness' testimony, his assumptions lead him nowhere but into deep water, and I don't intend to join him in that deep water.

THE COURT: Yes, you will; if he ever gets in there, I guarantee you will hold his head under for three days.

MR. SEGAL: That's possible, Your Honor. Maybe we would be better off without his

#21
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assumptions, Judge.

MR. BLACKBURN: He has been qualified as an expert.

THE COURT: Proceed with your questioning.

(Bench conference terminated.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, if you would, move the sleeve; I can't see you.

Have you completed your answer with respect to the tearing of the pajama top?

THE COURT: Now the jury can't see him.

MR. BLACKBURN: Why don't you put it back down on the table, if you don't mind.

THE COURT: He's got Ms. Barbour sewed up now.

MR. BLACKBURN: Maybe I have a solution.

THE COURT: Let it take a recess.

(Pause.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, had you completed your answer with respect to the tearing of the pajama top?

A Yes, sir, with the exception, if it was not being worn it could be torn like this (indicating)--

pulled apart.

Q Did you examination reveal anything with respect to whether it was torn in the back area?

A No, sir, it was just down the left side area, down the left side sleeve, and down the front from the yoke down.

Q Now, Mr. Stombaugh, in 1971, what analysis or examination did you conduct with respect to any of the stained areas on the pajama top? And for this you are going to have to put it back up.

Let me back up one question, Mr. Stombaugh, if we could. With respect to the puncture hole areas--the 48 puncture hole areas to which you have testified--what examination of those holes if any did you make with respect to whether or not they were stationary or non-stationary?

A In examining the puncture holes, we noted there was no tearing. The holes were clean, and it was my conclusion that the holes had been placed into this garment while the garment itself was in a stationary condition.

MR. SEGAL: Do we have any basis for the Witness' opinion, Your Honor?

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THE COURT: Well, he just gave it.

MR. SEGAL: We just got his opinion. I wanted to hear if it would be appropriate at this time to hear the basis of that opinion.

THE COURT: Tell him the basis again. I thought I heard one, but tell him again.

THE WITNESS: Had the garment been in motion when a sharp instrument was stuck into it, the holes would not be perfectly symmetrical like they are. There would be tearing of the yarns in the area from the force of the garment being moved.

I found no such tearing and therefore concluded that the garment itself was stationary at the time the punctures were made.

BY MR. BLACKBURN:

Q Now would you assume, sir, that the pajama top was around an individual's wrists, like that. The pajama top was folded around his wrists, and he was moving his wrists. Do you have an opinion, sir, satisfactory to yourself, as to whether any holes placed in the pajama top at that time would have been stationary or non-stationary?

A Well, if he was moving his wrists like this, there would be tearing in these holes. If he was holding it perfectly still like this, not moving

anything and the thrusts were straight into it, then you would get a similar hole.

Q Now your opinion with respect to the stationary holes, is that with respect to one ice pick puncture hole or with respect to all 48?

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A No, that is with respect to all 48. I found no tearing in any of the holes.

Q Okay. Now, if you would, sir, maybe place it back up on the stand a little bit higher so everyone can see. Now, what examination, if any, did you conduct with respect to the blood-stained areas on that pajama top?

THE COURT: Let me suggest, Mr. Stombaugh, if you can give your testimony from a standing position for these next six and a half minutes. You probably will be able to be seen better by the jury. Just stand there. Now everybody has a full view.

THE WITNESS: The next question the CID wanted answered was whether or not this pajama top was torn before or after bloodstains were placed on it. In examinating the torn areas to determine this, you look for a stain that has been placed on an object and then torn through.

The contours of the edges would be the same.

We found stained areas where such had occurred. In other words, there had been some blood on the stain on the pajama top prior to its being torn and then torn through. These areas were up here in the left shoulder and down the sleeve area down at the cuff, and the cuff area, and in the left seam.

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These stains had been placed on there and then later on more blood added, but the stains were heavier and were easily visible at the time of examination.

BY MR. BLACKBURN:

Q I wonder, sir, if in the remaining five minutes that we have if you could maybe move the little table over here in front of the jury and maybe take the pajama top off the mannequin, or leave it on, whichever is best, and point out the areas to which you are referring.

(Witness complies.)

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MR. BLACKBURN: Maybe the jury could stand up.

THE WITNESS: I am going to have to locate them first, Mr. Blackburn.

(Pause.)

THE WITNESS: One of the stains is located right here. It is a continuation. There is a larger stain on this side. Here is a small stain that was on there before it was torn.

MR. SEGAL: Could we have some identification for the record about what we are talking about, please?

MR. BLACKBURN: Yes, Mr. Segal. Would you point out, Mr. Stombaugh, when you say "here," say where "here" is.

THE WITNESS: Here is in the cuff area of the left sleeve slightly up from the cuff area, I would say 2 to 3 inches. Up about 5 inches above that is another one, and then up in the shoulder area in this area here you can see a continuation of the stain from this portion which would be the left portion of the sleeve to the back portion where it was torn through. I found another area. This stain continues---

BY MR. BLACKBURN:

Q (Interposing) Before you start, for the

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record tell us.

A This is on the left side seam between the front left panel and the left side of the back panel.

Q Okay, if you would, point out to the jury where it is?

A The continuation of this stain here, the heavier stain, and it comes around to here. At the time I examined it, I put some white marks on it, and another stain is just below that near the base of the stain and is a continuation of this stain here.

Q So it is your testimony that the blood got on the pajama top in those areas prior to its being torn; is that correct?

A That is correct.

THE COURT: Is this a good stopping place?

MR. BLACKBURN: It is, Your Honor.

THE COURT: All right, we will let the jury retire then to come back tomorrow morning at 9:30. Have a good night, a safe trip home and back. We will see you at 9:30 and remember all the things that you can't do and don't do them. Have a good night.

(Jury exits at 4:58 p.m.)

MR. BLACKBURN: As we indicated at the

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in fact, been torn from the pajama top; and through alignment of the stitches and stitch holes with the pajama top, we were able to fit it back in.

Q So what opinion do you have, sir?

A My opinion was that this pocket had, in fact, been torn from the pajama top.

Q Now when, if at any time, you examined the blue pajama top, did you ever conduct any analysis to determine what the fabric made of? Was that in 1971 or did that come in 1974?

A No, sir; that came in 1974.

Q Let me hand you the blue pajama top again. When did you recieve it back in 1974, sir?

A In September of 1974.

Q For what purpose did you get it back?

A This item was brought back, along with many other items, to be examined for various examinations.

Q Well, what examination, if any, did you make with respect to the pajama top in order to determine what it was made of?

A Along with the blue pajama top, they delivered many yarns and sewing threads, and the request was to determine whether or not the yarns and sewing threads could have originated from this particular item. In examining the item, it was necessary to determine the

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composition of it. The label states it is 65 percent polyester Dacron and 35 percent cotton. The yarns are a blend. Examination of it in the laboratory confirmed this with our tests. We also confirmed that the sewing threads were composed of cotton.

Q On the pajama top, what color were the sewing threads?

A They were purple in most of the seams, but in one area they were blue-black.

Q Where were they blue-black?

A The thread used to sew the seam which appeared underneath--it would have been the bobbin--was blue-black, and in sewing the piping on the sleeves--this piping here--and underneath, there was a blue-black. The rest of the sewing threads were purple in color.

Q Well, speaking of the sewing threads as being purple in color, were these the seam threads? Is that what you were speaking of?

A Yes, sir.

Q Now, with respect to the polyester, was that the general make-up of the fabric itself, not including the sewing threads?

A The polyester is contained in the yarns used in the construction of this fabric. It is a blend of polyester fibers and cotton fibers.

Q What color were the yarns?

A The yarns are blue.

Q Now, when you received this pajama top in 1974--aside from its torn condition to which you testified yesterday--do you have an opinion, sir, satisfactory to yourself, as to whether this was an old or a new pajama top, based on your examination?

A I could not tell you the definite age. The garment itself had been subjected to laundering many, many times.

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BY MR. BLACKBURN:

Q With respect, sir, to Government Exhibit 362, which has a Q number of 87 and is defined as "Debris from the bedspread in Kristen's room," did you have an occasion, sir, to examine that particular exhibit?

A Yes, sir; that exhibit consisted of one filling yarn and one sewing thread.

Q Okay, if you would, sir, write in the appropriate spaces what you found?

(Witness complies.)

Q Mr. Stombaugh, with respect to that particular exhibit, do you have an opinion, sir, satisfactory to yourself as to whether or not the yarn and thread could have originated from the blue pajama top?

A Yes, sir; the yarn and thread could have originated from the pajama top.

Q And is the basis for your opinion the same as you just previously gave?

A Yes, sir; it is.

Q With respect to Government Exhibit 306 which also has a Q number of 14 and is defined as the "piece of wood and items removed from it," did you have an occasion, sir, to examine that particular exhibit--Q-89? I'm sorry.

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A Yes, sir; I did.

Q What was the result of your examination, sir?

A The exhibit consisted of two purple sewing threads.

Q Okay, if you would, sir, under the column marked, I think, "Outside rear," would you mark in the appropriate blank the result of your findings?

(Witness complies.)

Q Mr. Stombaugh, do you have an opinion, sir, satisfactory to yourself as to whether or not those sewing threads could have originated from the blue pajama top?

A Yes, sir; in my opinion, they could have originated from the pajama top.

Q And the basis for your opinion is the same as you have previously given?

A That is correct.

Q With respect, sir, to Government Exhibit 125 which has a Q number of 84 and is defined on the chart as "Splinters and threads from near the large blood stain," did you have an occasion, sir, to examine that particular exhibit?

A Yes, sir; I did.

Q What was the result of your examination?

A That consisted of three purple sewing threads.

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appropriate blank.

A (Witness complies.)

Q Now, with respect to Government Exhibit 326 which has a Q number of 101 and is defined on the chart as being "Fibers from the rug area in the north corner, footboard," did you have an occasion to examine that particular exhibit?

A Yes, sir; I did.

Q What were the results of your examination, sir?

A That consisted of two purple sewing threads.

Q If you would fill in the appropriate blank.

(Witness complies.)

Q With respect to Government Exhibit 324 which has a Q number of 98 and is defined as "Fiber found on the floor by the east wall by the headboard of the bed," did you have an occasion, sir, to examine that particular exhibit?

A Yes, sir; that consisted of one purple sewing thread.

Q Okay, would you fill that in, sir?

(Witness complies.)

Q With respect to Government Exhibit 119 which has a Q number of 85 and is defined on the chart as being "Debris from the sheet on the bed," did you have an

occasion to examine that particular exhibit?

A Yes, sir; I did.

Q What were the results of your examination?

A It consisted of seven yarns, five of which were filling yarns, two of which were warp warns, and 15 purple sewing threads.

Q Fill in the appropriate blank, please, sir.

(Witness complies.)

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BY MR. BLACKBURN:

Q With respect to Government Exhibit 121, which has a Q number of 97 and is defined on the chart as being "Debris from the pillowcase on the bed in the master bedroom," did you have an occasion to examine that particular exhibit?

A Yes, sir; I did.

Q What were the results of your examination?

A That consisted of two filling yarns and four purple sewing threads.

Q Okay; if you would fill that in, please?

(Witness complies.)

Q Finally, sir, with respect to Government Exhibit 107--which has a Q number of 96, and is defined on the chart as being "Debris from the multicolored bedspread on the floor in the master bedroom"--did you have an occasion to examine that particular exhibit?

A Yes, sir; that consisted of one yarn fragment and two purple sewing threads.

Q Okay; if you would fill that in, please?

(Witness complies.)

Q Mr. Stombaugh, with respect to these yarns and fragments and threads that you just filled in in the master bedroom--and which you testified you examined in 1974--do you have an opinion, sir, satisfactory to

yourself, as to whether or not these yarns and fragments could have come from the blue pajama top?

A Yes, sir; in my opinion, these yarns and sewing threads could have originated from this pajama top.

Q And the basis for your opinion is that which you earlier gave; is that correct?

A Yes, sir; that is correct.

Q Now, if you would, sir--at the conclusion of each of the bedrooms there is a blank space marked "room total." Would you take just a minute and add up your figures and put in the total for each room, sir, in the appropriate blanks?

(Witness complies.)

Q For the record, sir, would you read in the totals you gave--first, for the master bedroom?

A Yes, sir; for the master bedroom, I give a total of 60 purple cotton sewing threads and 18 yarns.

Q What about the one up there--exhibit 325--the blue-black sewing thread? Where did you include that?

A I did not include that, sir. That would be added in here--one blue-black cotton sewing thread.

Q With respect to Kimberly's bedroom, what was the total, sir, for the record?

A I show a total of 14 purple cotton sewing threads and five yarns.

#6jbl

BY MR. BLACKBURN:

Q It is fair, then, to say that your testimony with respect to that is that those particular yarns and threads, while you cannot say positively that they came from that blue pajama top, they came from one like it or in its like condition; is that correct?

A That is correct.

Q What do you mean by "similar condition"?

A Well, for instance, this pajama top has been laundered many, many times. It might have been hung out in the sun. And an identical pajama top that was purchased about the same time as this one and subjected to approximately the same number of washings and also hung out in the sun.

MR. BLACKBURN: Your Honor, just now we would mark for identification Government Exhibits 604(a), 607(a), 608(a), 606(a), 605(a), 610(a), and 612(a).

(Government Exhibits Nos. 604(a),607(a),608(a), 606(a),605(a),610(a) and 612(a), were marked for identification.

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you, first of all, Government Exhibit 604(a), and ask you whether or not you can identify it, sir?

A Yes, sir. This is a photograph of the torn

#6jb2

pajama top.

Q What are these white things and what do they represent, if you know?

A Some of the white numbers represent the puncture holes in the garment. Others represent---

MR. SEGAL: (Interposing) Could we have Mr. Stombaugh stand back and perhaps point to what is going on.

THE WITNESS: Excuse me. Some of these holes represent--they are marked with the number of the corresponding puncture mark in the garment.

BY MR. BLACKBURN:

Q These that you have pointed to, those represent puncture marks; is that correct?

A Yes, sir.

Q Puncture holes?

A Yes, sir. They have the same numbers as the puncture holes in the garment.

Q Okay. With respect to Government Exhibit 605(a), can you take a look at that and identify that, sir?

A Yes, sir. This is the torn pajama top with similar markings on it.

Q Let me hand you Government Exhibit 606(a). Take a look at it and tell us whether or not you can identify it.

#6jb3

A Yes, sir. This is the torn pajama top with puncture marks marked.

Q Is it correct to say, sir, that where there are circles that these represent puncture holes in the pajama top?

A Where there are white circles.

Q If you would, sir, come down here and point them out so everyone can see.

MR. SEGAL: Could we have Mr. Stombaugh please use the pointer so we can see what he is pointing to?

THE WITNESS: These four here represent puncture holes. These represent puncture holes--these in these area here (indicating.)

BY MR. BLACKBURN:

Q Let me hand you Government 607(a) and tell us whether or not you can identify it.

A Yes. This is another photograph of the torn pajama top.

Q Would you place it up there and point out the puncture holes on it, if you would?

A The puncture holes are here and up in this area.

Q Let me hand you Government Exhibit 608(a) and ask you to take a look at it, sir.

#6jb4

A Yes, sir. This is the back of the torn pajama top.

Q If you would, place it up there and point out the puncture holes on it, sir.

A There are two puncture holes down here. These are puncture holes and these are puncture holes.

Q Let me hand you Government Exhibit 610(a) and ask you to take a look at it and tell us whether or not you can identify it?

A Yes. I can identify it. It is the right back panel and right sleeve area of the torn pajama top.

Q Okay. Put it up there if you would, sir, and point out if you would the puncture holes.

A The puncture holes extend from this area up around and down.

Q Okay. Finally, sir, let me hand you Government Exhibit 612(a) and ask you whether or not you can identify that?

A Yes, sir. This is also a photograph of the torn pajama top.

Q Put it up there, sir, if you would, and point out the puncture holes on it.

A The puncture holes extend in this area.

MR. BLACKBURN: You may resume your seat.

#6jb5

Your Honor, at this time we would move these particular Exhibits into evidence.

THE COURT: Very well.

(Government Exhibits Nos. 604(a),607(a),608(a), 606(a), 605(a), 610(a), and 612(a) were received in evidence.)

MR. BLACKBURN: Your Honor, we would mark for identification Government Exhibit 604, 607, 608, 610 and 612.

(Government Exhibits Nos. 604,607,608,610 and 612 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you these and ask you, sir, to take a look at them and tell us if you can tell us what they are?

A Yes, sir. These are small photographs of the ones I have just testified to.

MR. BLACKBURN: Your Honor, we would move these into evidence.

THE COURT: Very well.

(Government Exhibits Nos. 604,607,608,610 and 612 were received in evidence.)

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BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you Government Exhibit 314, and ask you, sir, to take a look at it and tell us whether or not you can identify it?

A Yes, sir, I can identify this.

Q What is it?

A It is a bathmat with the word "Hilton" on it.

Q When did you first see it, if you know, approximately?

A September 24 of 1974.

Q For what purpose did you receive it?

A It had some stained areas on it that they desired analyzed to determine whether or not we could identify what had caused the stained areas.

Q Well, after you got that request, what examination, if any, did you conduct with respect to the bathmat?

A In the stained areas we formed what we call a fabric impression test to determine what could have caused these various stains, and if they could have been caused by certain other items they had brought in.

Q I know you testified about this yesterday afternoon, but so we can all remember, tell us again when you talk about fabric impression tests, to what are you referring?

#7
p-2

A Well, when an item such as a hard object has a liquid medium on it, such as dye or ink--a good example of this would be a rubber stamp--you take the rubber stamp and you put it on an ink pad and then stamp it on another item, and the ink will transfer the impression of the rubber stamp.

The same holds true of various items. For instance, if I took this pair of scissors and put ink on the scissors and placed it on this towel in such a manner, then the impression of the scissors would be transferred to the towel.

This is the type of examination we conducted.

MR. BLACKBURN: At this time we would mark for identification Government Exhibits 1065 and 1066.

(Government Exhibits 1065 and 1066 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you these two exhibits. Take a look at them, sir, and let me know whether you can tell us what it is?

A Yes, sir, this is a photograph of this area.

Q How about holding it up, if you don't mind?

A This area marked with a red "A" and a red "B" on this exhibit.

#7
p-3

Q Is that "B" you said--does it have an area name or number?

A I designated it area "A" and area "B". The other photograph photographed this area on the bathmat, I have designated with a "C."

Q That's what that photograph represents, is that correct?

A Yes, sir.

MR. BLACKBURN: Your Honor, we would move those two photographs into evidence.

THE COURT: Very well.

(Government Exhibits Nos. 1065 and 1066 were received in evidence.)

BY MR. BLACKBURN:

Q Now, Mr. Stombaugh, in conducting your analysis of that bathmat, how did you go about it in order to determine what you wanted?

A The first thing you do, you study the stain to determine what the general appearance of it is; and once you determine what the general appearance of it is, then you compare the stain itself with a particular item which it looks like.

Q Well, did you ever take any measurements of any of the stain areas or anything like that?

#7
p-4

A Yes, sir, I did.

Q Tell us what you did?

A This stained area here, I measured and it conformed in length, size and shape to a knife blade. This area here, in measuring it, has the same configuration as the area on a knife similar to where the sharp edge of the blade fits into the handle.

MR. SEGAL: If Your Honor--could we have Mr. Stombaugh put that over the chart so everyone can see?

MR. BLACKBURN: We are going to do something else.

MR. SEGAL: I'd like to have him do it so we can all see it first.

THE COURT: Well, just come right up and take a look.

MR. SEGAL: I think the Defendant and everyone else is entitled to see what he's been pointing to, Your Honor, and I don't think we have to stand behind his back. I'd like for him to do it publicly.

MR. BLACKBURN: Your Honor, I was getting ready to move the table from the jury so everyone could see what he is talking about.

THE COURT: All right. Everybody has a right to look at it.

#7
p-5

BY MR. BLACKBURN:

Q Mr. Stombaugh, how about, if you would, sir, bring the bathmat down---

MR. SEGAL: (Interposing) Your Honor, my request is that that be draped over one of those cards so it holds itself and let him point to it. I do not---

THE COURT: (Interposing) Well, I'll tell you what I'm going to do about that, I'm going to let the United States attorney try his case, and then I'm going to let you try yours.

You go ahead and proceed. Ask your questions. If you need to look at anything, you and the Defendant, and anybody who needs to--it is a public trial, everybody can see everything that goes on. But I cannot direct a lawyer--that means you or the United States attorney--how to try his case. Go ahead.

BY MR. BLACKBURN:

Q Mr. Stombaugh, how about bringing the bathmat over here and lay it out, and tell us to what you are referring? Would it help you, sir, to give you these items?

A Yes, sir, it would.

Q I am handing you the Old Hickory knife and the ice pick. If the jury would stand up and if you would, as you do this, for the record, tell us what you

17
p-6

are doing at every point?

A This stain here has the general shape and configuration of a knife blade. This portion here has the general configuration of where the blade of the knife comes into a handle. Since we had two knives submitted in this case, I fit them in and they conformed in both the length and the general shape.

It was my conclusion that this knife could have caused this impression and been held causing it like that--the handle here is rounded--this is rounded. The length from here to here is the same, and it fits in there rather good.

BY MR. BLACKBURN:

Q And this is the Old Hickory knife to which you are referring?

A Yes, sir.

Q What about these stains?

A This portion right here conforms to the handle, and would have been made by this, and the little indentation in here could have been made where the blade itself attaches to the handle, such as that.

Q What about with respect to this stain right here? How is this marked?

A This is marked stain number "C" and has the general impression of an ice pick being wiped like that, and when you extend the pick out, it is the same distance from the tip of the point back to the edge of the stain. You will never get a perfect transfer stain, because you are limited by the amount of transferable substance that would have been on the items themselves.

Q Mr. Stombaugh, what is your opinion then, sir, for the record, as to how this stain got there and how this stain got there--how stain "A" got there and how stain "C" got there?

A The other side of this garment has what appear to be smudges. I could not identify them, but the general appearance of the items would appear as if the

8km2

items were either placed on here or the garment was used to wipe the items off.

MR. BLACKBURN: Okay; you may return to your seat. Your Honor, at this time, we would mark for identification Government Exhibit 1067.

(Government Exhibit 1067 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you what has been marked as Government Exhibit 1067, and ask you, sir, to take a look at it and tell us whether or not you can identify what it is?

A Yes, sir; these are photographs of the areas on the Hilton bathmat that I just testified to.

Q Point out the areas to which you just referred on the bathmat, using the pointer?

A This area marked area "A" and this area marked area "B," and this area here marked area "C."

MR. BLACKBURN: Your Honor, may we approach the Bench a minute?

B E N C H C O N F E R E N C E

MR. BLACKBURN: We have another exhibit similar to this one, except that it has a photograph already in evidence of Colette on it, showing the bathmat.

10kml

BY MR. BLACKBURN:

Q What did you use, sir?

A I used the pajama top of Colette MacDonald and the torn pajama top.

Q Well, now, is this the pajama top of Colette MacDonald that you used?

A Yes, sir; I did.

Q Okay; tell us what you did with respect to this area which you have marked "F"?

A Here again we have a fabric impression and here we are trying to determine what caused the fabric impression. In this particular instance, area "F," I was able to identify as having been made by the back of the left sleeve of this pajama top.

And the manner in which the examination was done--by finding the area on here in a stain that conforms to the area in the cuff. The cuff area was measured and was identical to the area of this cuff.

Q Do you recall, sir, the width?

A The width?

Q Yes; or just that it was identical?

A It was identical and the blood pattern was the same.

Q How about putting your pointer and the notes down and sort of hold the sleeve up, if you can, sir, and

show us?

(Witness complies.)

A This area right here, coming down (indicating).

Q Which sleeve of Colette's pajama top are you referring to?

A That was the left sleeve, sir.

Q With respect to Area "G," what, if anything, did you do?

A I conducted the same type of examination and found that Area "G" conformed to the back of the sleeve of the pajama top--the cuff area, in here (indicating)--and extends slightly up to about this area. This is Area "G."

Q Was the width of the sleeve the same as the area here?

A Yes, sir; the width was the same, and the length of the blood stain conformed to the heavy blood stain on the back of this cuff.

Q Now, this cuff which you are talking about--right here? Which side of the cuff are you referring to?

A This area here, sir (indicating).

Q Okay; let me show it to the jury, if you would, what you are talking about.

MR. SEGAL: May we ask whether the

Government has any photographs of this alleged match, so we can see it, or do we have to do it this way, Your Honor? Are there any photographs?

THE COURT: Ask him.

MR. BLACKBURN: Yes, sir; we do have photographs. We are going to introduce those photographs. But before we do this, we would seek to use this sheet.

MR. SEGAL: All right; develop it.

MR. BLACKBURN: Well, if you will just be patient.

THE WITNESS: This stained portion in here conforms in length and width to this portion here.

BY MR. BLACKBURN:

Q Now, which sleeve are you referring to of Colette's pajama top?

A This was the right sleeve.

Q Is that all you did with respect to that pajama top?

A Yes, sir; in searching this area up in here, there were some areas that had the general appearance of some of the lace on this collar, but I had to come to no conclusion as to whether they were actually made by the collar.

Q Now, what other item of clothing, if any, did you use to conduct your analysis of the stains on that

10km4

bedsheet?

A The torn pajama top.

Q By the "torn pajama top," are you referring to this blue pajama top; is that correct?

A That is correct.

Q What, if anything, did you do with respect to that, sir?

A This stain right here, which I have designated stain "E" and a black line drawn around it---

Q (Interposing) Is that your drawing of the line?

A Yes, sir; I drew this black line around it.

Q Okay.

A I don't recall this being cut out. Was that cut out?

Q Well, just go ahead.

A This stain beveled down. There is a straight line across, and down to the straight line out this way, and what appears to be torn fabric trailing off. The stain continues on over into this area here. The stain was compared to the torn left cuff of this pajama top, and conformed in size and shape and blood to the cuff area of the torn pajama top.

Immediately above this area is a rounded portion that has the general appearance of a bare left

10km5

shoulder.

Q Okay; is that all you did on this side with respect to the blue pajama top?

A Yes, sir.

Q What other stains on this side of the blue bedsheet did you examine, sir, if any?

THE COURT: Let's take our recess, if he is going to start a new subject right now, and we will come back at 11:30.

Members of the jury, don't talk about the case.

(The proceeding was recessed at 11:08 a.m., to reconvene at 11:30 a.m., this same day.)

#11
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F U R T H E R P R O C E E D I N G S (11:30 a.m.)

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

MR. BLACKBURN: Your Honor, Mr. Stombaugh may resume his standing position.

THE COURT: All right.

(Whereupon,

PAUL M. STOMBAUGH

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

D I R E C T E X A M I N A T I O N (11:31 a.m.)
(Resumed)

BY MR. BLACKBURN:

Q Mr. Stombaugh, right before the break we were just getting into other areas on this side of the blue bedsheet for any analysis that you might have done. What other areas, if any, sir, did you examine in 1974?

A Area "C" and area "D."

Q With respect to area "C," what did your examination reveal?

A Area "C" has the configuration of a bloody left hand.

Q And what about with respect to area "D"?

A Area "D" has the configuration of a bloody

#11
p-2

right hand.

Q With respect, sir, to this side of the blue bedsheet, what other fabric impressions, if any, did you observe?

A None other, sir.

Q Well, if you would resume the stand.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibits 819, 820, and 821.

(Government Exhibits Nos. 819, 820, and 821 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me ask you to take a look at these and tell me whether or not you can identify them?

A Yes, sir, I can; this is a photograph of the sheet I have just testified regarding, and these are blown-up areas--certain areas on the sheet--area "C" and area "D."

MR. BLACKBURN: Your Honor, we would move those into evidence at this time.

THE COURT: Very well.

#11
p-3

(Government Exhibits Nos. 819, 820, and 821 were received in evidence.)

MR. BLACKBURN: We would also mark for identification 819(a), 820(a), 821(a), 822, 823, and 824.

(Government Exhibits Nos. 819(a), 820(a), 821(a), 822, 823 and 824 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you what has been marked for identification as Government Exhibit 819(a) and ask you to take a look at it, sir, and let us know whether or not you can tell what it is?

A Yes, sir; this is a photograph of a sheet I have just testified regarding.

Q Okay, if you would, sir, using that photograph, would you point out the areas on it that you referred to a moment ago on the sheet?

A Area "E."

Q Which is what?

A Area "E" is the appearance of a bare left shoulder and the bottom of it has the appearance of a torn left cuff of a pajama top, the trailing out portion here.

Area "G" and area "F" correspond to the cuff

#11
pg 4

areas of the sleeve of Colette MacDonald's pajama top; and areas "G"--area "D" and "C" conform to bloody hand prints, these areas here.

Q Okay, let me hand you what has been marked as Government Exhibit 820(a) and ask, sir, whether or not you can identify that?

A Yes, sir, this is Area "C" on the sheet.

Q Let me put it up, if you would.

A And it conforms to a bloody left hand--the two portions of it, here, here and here.

Q Let me hand you what has been marked as Government Exhibit 821(a) and ask you whether or not you can identify that, sir?

A Yes, this is the area "D" right here, and it conforms to the---

Q (Interposing) I'm sorry, let me put it up.

A ---to a bloody right hand.

Q Let me hand you what has been marked as Government Exhibit 822, and ask you whether or not you can identify it, sir?

A This is Area "G" and it conforms to the right cuff of Colette MacDonald's pajama top.

Q Let me hand you Government Exhibit 823 and ask you to take a look at it, sir?

A This is a blow-up of Area "F" which conforms

#11
pp-5

to the left sleeve of Colette MacDonald's pajama top.

Q Have I got it the right way?

A It should go this way.

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BY MR. BLACKBURN:

Q Finally, sir, let me hand you Government Exhibit 824 and ask you whether or not you can identify that.

A Yes, sir; this is the top portion of the area designated "E." It conforms to a left bare shoulder.

MR. BLACKBURN: Your Honor, at this time, we would mark Government Exhibit 1075.

(Government Exhibit No. 1075 was marked for identification.)

BY MR. BLACKBURN:

Q Let me hand this to you and ask if you can tell us what it is, sir.

A This is a photograph of the cuff area of the left sleeve of the pajama top. The photograph has been reversed.

Q Why was it reversed?

A It was reversed to show this portion conforming with a similar portion on the sheet down through here and then up slightly.

Q Did you reach an opinion satisfactory to yourself as to whether or not this did in fact conform to this portion of the sheet?

A In my opinion, yes; it did.

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MR. SEGAL: Could I hear what that opinion was?

MR. BLACKBURN: He said his opinion was that he did.

MR. SEGAL: It conformed?

MR. BLACKBURN: Let me ask the question again.

THE COURT: That was his answer.

MR. SEGAL: I did not hear it, Your Honor.

THE COURT: He said that in his opinion it conformed.

MR. SEGAL: I did not hear the question to which he was responding.

THE COURT: He asked if he had an opinion as to whether or not it conformed. The answer was "Yes," and that it did.

MR. SEGAL: All right, thank you, Your Honor.

MR. BLACKBURN: Your Honor, at this point, we would mark for identification Government Exhibit 781 through 785.

(Government Exhibit Nos. 781 through 785 were marked for identification.)

#12
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BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you these exhibits and ask you to take a look at them and let us know whether you can tell us what they are.

A 781 is a photograph of the back of the left sleeve of Colette MacDonald's pajama top; 782 is a photograph of the back of the right sleeve of Colette MacDonald's pajama top; 783 is a photograph of the cuff area of the left sleeve of the torn blue pajama top; 784 is a photograph of the right sleeve of the blue pajama top; and 785 is another photograph of the right sleeve of the pajama top.

MR. BLACKBURN: Your Honor, we would move these photographs and all other photographs so marked into evidence at this time.

(Government Exhibit Nos. 819(a), 820(a), 821(a), 822, 823, 824, 781 through 785, and 1075 were received in evidence.)

MR. BLACKBURN: And we would ask, sir, Your Honor, if we could publish these photographs to the jury.

THE COURT: Very well.

(Exhibits passed among the jury.)

MR. BLACKBURN: Your Honor, if you would

#12
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4

give us just a minute, we need to move this back and reverse the sheet.

THE COURT: All right.

(Pause.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, if you would, sir, bring the pointer and whatever else you need and come down here. Mr. Segal, if you want to come around. Now, with respect to this other side of the blue bedsheet, did you conduct any analysis of this side, sir?

A Yes, sir; I did.

Q In conducting an analysis of this side of the bedsheet, what articles of clothing, if any, did you use?

A I used here again the torn blue pajama top.

Q Let me hand you that, sir. Now, on this side of the blue bedsheet, what areas, if any, did you examine?

A I examined Area "A" and Area "B."

Q Well, tell us what you did.

A I conducted the same type of examination I did on the other side of this exhibit, particularly in regard to this large stain here as to what might have caused it and to the areas of the blood, their location, the length of them, the absence of blood in

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areas. I determined that this stain was made by the right sleeve cuff area of this pajama top--this area here which I have designated "B" on the pajama top itself.

Q What relationship, sir, did the blood on the stain area "A" here on the bedsheet have to the area which you have marked as "B" on the blue pajama top?

A The configuration of the blood pattern itself, plus the piping that is apparent on the stain.

Q If you would, sir, hold the piping up to the stained area, if you can?

A (Witness complies.)

Q Okay, now what about with respect to the area you have marked as "B" on the bedsheet?

A I found another area. The cuff of the sleeve conforms in blood pattern to this area here. That would be this area.

Q Now, when you say "this area here," what are you referring to?

A I am referring to Area "B."

Q Okay, the length of the blood?

A The length of the blood and the blood on the piping which was very little here conforms in length and distance and absence or presence of blood on this item.

#12
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Q In other words, where there is no blood on Area "B" of the bedsheet, there is no blood on that area of the blue pajama top?

A That is correct.

Q And where there was blood on the blue pajama top, there was blood---

A (Interposing) There was blood on Area "B."

Q Is that true with respect to Area "A" as well?

A Yes, sir.

MR. BLACKBURN: You may resume your seat.

#13

BY MR. BLACKBURN:

Q Mr. Stombaugh, I'm sorry, could you come back down one more time? I noticed that there are obviously two areas which you say were made by that same part of the pajama top. Do you have an opinion, sir, satisfactory to yourself as to why there is more than one area?

A Yes, sir, the sheet could have been folded.

MR. BLACKBURN: Thank you. You may resume your seat.

(Counsel confer.)

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 817(a), 818, 1077(a), 1078(a), and also 1077, and 1078, and 817.

(Government Exhibits Nos. 817(a), 818, 1077(a), 1078(a),1077, 1078 and 817 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me first hand you what has been marked as 817 and ask you whether or not you can identify it, sir?

A Yes, sir, this is a photograph of a sheet I just testified regarding.

#13
p-2

Q Okay, with respect to Government Exhibit 817(a), can you identify that?

A It's a photograph of the same sheet.

Q The side that you just testified to about?

A That is correct.

Q Okay, these areas "A" and "B" right here on the right side of that photograph--are these the areas which you have testified about?

A Yes, sir, they are.

Q Okay,let me hand you Government Exhibit 818 and ask you whether or not you can identify it?

A Yes, I can. This is a photograph of Area "A" and Area "B" on the sheet that I just testified regarding.

Q Let me hand you Government Exhibit 1077 and 1078, and ask you to take a look at them and let me know whether you can tell me what they are?

A These are copies of notes in my file here--photographs of them.

Q Well, with respect to--okay, let me hand you 1077(a), and ask you what that is?

A This is a blow-up photograph of notes made at the time of the examination.

Q Whose writing is that, sir?

A That is my aide's writing.

#13
pp-3

Q And who was your aide?

A Ms. Shirley Green.

Q She worked under your direction?

A Yes, sir.

Q Okay, tell us if you can what this represents?

A It represents the manner in which the right sleeve of the pajama top could have come into contact with the sheet to leave the stain that was left.

Q Would you read for the record, sir, the rest of this on this?

A "Area 'B' stain on Q-15 folded up to Area 'A' stain. Together these stains correspond in shape to the lower bottom front area of the Q-12 right sleeve if it is placed on Q-15 sheet in above manner, and the sleeve extending partially over Area 'B.'"

Q Okay, finally, sir, let me hand you Government Exhibit 1078(a) and ask you whether or not you can identify that?

A Yes, sir, this also is a photograph of notes made at the time of the examinations.

Q Whose writing is that, sir?

A Here again, that is my aide, Ms. Green.

Q What does that exhibit represent, sir?

#13
pp-4

A It represents a drawing of the right sleeve of the torn pajama top and the blood stain in that area is drawn out in length showing--and it shows the comparison made with the stain on the blue sheet. It matched in length and the piping--small blood stain here and there; and then it trails on out, and this trails on out--the same type.

MR. BLACKBURN: Your Honor, at this point we would move these photographic exhibits into evidence.

THE COURT: Very well.

MR. BLACKBURN: If I could have just a moment, Your Honor.

BY MR. BLACKBURN:

Q Based upon your examination of all of the clothing--the pajama top--the blue pajama top and the other pajama top belonging to Colette MacDonald, and the analysis of both sides of the blue bedsheet, and further based upon your training, skill and experience, do you have an opinion, sir, satisfactory to yourself as to how those stains could have gotten on that blue bedsheet?

A Through physical contact with the bedsheet.

Q Okay. Well, now, you testified this morning with respect to certain fabric impressions, or configurations, I suppose. What do those impressions or configurations indicate to you, sir, in your opinion?

#19
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MR. BLACKBURN: Your Honor, at this time, we would mark for identification Government Exhibit 1137 and 1138 and 1139.

(Government Exhibit Nos. 1137, 1138, and 1139 were marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you first Government Exhibit 1137 and ask you whether or not you can identify what it is.

A Yes, sir; this is a photograph that was delivered to me along with the other ones.

Q After you received these photographs, Mr. Stombaugh, pertaining to the--well, let me ask you this question first--what does that photograph portray?

A It portrays the body of Colette MacDonald lying on her back in front of a chair with a pajama top over the top of it and a bath mat on top of the body.

Q With respect to that pajama top that was over her body, what, if anything, did you do in analyzing that particular photograph?

A In analyzing this particular photograph, we determined where the various seams were which was the left sleeve seam, determined it was inside-out; the

#19
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2

bottom hem of the right front panel, the right shoulder seam which was inside-out and its location, the front V-flap on the pajama top, the cuff area of the left sleeve, the left sleeve, and the left front panel.

Q Does that particular picture show the left sleeve area?

A Yes, sir; but not all of the left front panel.

Q Where is that portion of the left sleeve area?

A It is to the left of the body trailing out on the floor.

Q Now, I believe you testified yesterday afternoon that you found no puncture holes in that portion of the left sleeve; is that correct?

A That is correct.

Q Let me hand you Government Exhibit 1138 and 1139, ask you to take a look at them, and tell us whether or not you can identify what they are.

A 1138 is a duplication of the photograph I have just looked at. 1139 is another view of the body showing the pajama top on the body.

Q Now, I believe you testified with respect to the right sleeve and how you appeared to find it

#19
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3

from the photograph; is that correct?

A Yes, sir.

Q And it was inside-out?

A It was inside-out; yes, sir.

MR. BLACKBURN: Your Honor, I would move these photographs into evidence.

THE COURT: Very well.

(Government Exhibit Nos. 1137, 1138, and 1139 were received in evidence.)

MR. BLACKBURN: And seek to publish these to the jury as well.

THE COURT: Very well.

(The exhibits were distributed among the jury.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, what was the purpose of trying to determine the manner in which the pajama top was located on top of the chest of Colette MacDonald?

A We had been requested to ascertain whether or not the puncture marks, puncture wounds, to Colette could have been made through this pajama top--if it were in fact on top of her body. So, the purpose of using the photographs was to fold the pajama top as near as possible to the way it was folded on top of the

#20
pp-2

A Yes, sir; numbers 17, 18, 19, 20 and 21.

Q And then 1 through 16 were those found in the left chest, is that correct?

A That is correct.

Q Now, Mr. Stombaugh, after that was done--you say you and Ms. Green were working side by side--what did you do next with attempting to find out about the pajama top in its relationship to the puncture holes in Colette's body?

A Through the use of the photograph, we refolded the pajama top as close as we could to conform with the position it was at the time the photographs were taken; and upon conclusion of that we found that there were 21 holes visible on the top--top layer of the pajama top.

And these were in two groups--one group of five and one group of 16.

Q Now, did these match up or were these consistent with, I should say, with the puncture holes in Colette's chest?

A They were consistent in the fact that there were five which would have been in the right chest area, and 16 which would have been in the left chest area.

Q What was their consistency or inconsistency with respect to groupings, say, in the left chest area?

#20
p-3

A I don't believe I understand your question, sir.

Q Well, let me just withdraw.

I think you testified yesterday that there were 48 puncture holes in Colette's chest---

A (Interposing) That is correct.

Q ---I mean in the pajama top, is that correct?

A In the pajama top.

Q And I take it that you and Ms. Green then folded the pajama top in the approximate way that you saw from the photograph to see whether or not they could match up with the 21 puncture holes, is that correct?

A Yes, sir, that was what the request had been.

Q How do you account for all the 48 puncture holes?

A After we got it folded, it was then necessary to line up the holes in underneath and account for each and every one of the holes.

Q Well, were you able to do that?

A After a lengthy period of time, Ms. Green succeeded in lining up all the holes; yes, sir.

MR. BLACKBURN: Your Honor, we would have marked for identification at this time Government Exhibit 787(a).

#20
pp-4

(Government Exhibit No. 787(a) was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you this photograph, sir, and ask you whether or not you can identify it?

A Yes, sir, I can.

Q How about telling us what it is?

A It is a photograph of the pajama top after the pajama top had been folded and lined up as near as could be in the photograph; and we had determined what holes would have had to have passed through in the pajama top to account for 48 of them; and then we put probes through the holes, into all the holes they had to have passed through, and into a soft cushion to support it.

Q What is this portion of the pajama top right here?

A That is the left sleeve and left front panel area.

Q What is this portion right here?

A That is the right sleeve turned inside out.

Q Now, how many probes did you actually use?

A There were 21 probes.

Q And that is reflected by this green on here--

#20
bp-5

why don't you come down here and tell us what it is rather than my saying it?

A The green numbers correspond to the number of holes in the chest of Colette.

Q What do the white---

A (Interposing) The white tags contain the numbers of the holes in the pajama top through which that thrust would have passed.

Q So, in other words, 48 thrusts, you are saying, could have made 21 holes, is that right?

A No, sir; I'm saying 21 thrusts could have made 48 holes in passing through the folds in the fabric.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 1140.

(Government Exhibit No. 1140 was marked for identification.)

BY MR. BLACKBURN:

Q Mr. Stombaugh, let me hand you this exhibit and ask you whether or not you can identify it?

A Yes, sir, I can.

Q What is it?

A These are the 21 probes with the green flags on the little white tags that were used in this exhibit.

MR. BLACKBURN: Your Honor, at this point

#10
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OBJECT to the form of the question unless he is referring to that particular pajama top.

THE COURT: Well, I will let the witness answer this question. Can 48 holes be fitted into 21 holes in any way other than the way you did it in this case?

THE WITNESS: It is possible--of course, there are other combinations.

BY MR. SEGAL:

Q And how many other combinations are there possible of fitting 48 holes into 21?

A Sir, I have no idea. All I'm saying is that we used up all 48 holes with 21 thrusts, and we're just saying that it can be done. We are not saying this actually took place. We are saying this can be done. It could have taken place, and that's all this demonstration represents.

Q You mean this is one way it could be done.

A That is correct.

Q And that you do agree that there are numerous other ways it could be done?

A I have no idea how many other combinations.

Q That's the second question. The first question is: you do agree that there are other ways it can be done?

#11
p-2

A That is correct.

Q Now, when you made this little demonstration here, did you or did you not account for the fact that you might have been pushing a steel rod through a hole which, in fact, was going to come in contact with a place on Mrs. MacDonald's body where the autopsy said she had a very tiny or superficial mark; did you account for that?

A Sir, we were just trying to account for the--all 48 holes.

Q In view of that answer, I would be correct in stating you did not try to account for the fact that some holes are larger than other holes, but you didn't try to figure that out and try to put these various rods through the fabric and against what you thought were the holes in the body?

A No, sir; we lined the--we were only interested in a pattern--accounting for all 48 holes--and a pattern. We came up with a pattern of five holes, which would have been in the right chest, and 16 which would have been in the left chest.

Q Now, if we had a situation--and I will do this in rather magnified form so that we can all follow it. Let's assume that we had a situation where the hole in the pajama top was really made only by a weapon like this,

#17
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A Yes, sir.

Q It could be?

A Yes, sir.

THE COURT: Now, I understood that to be your answer and now I will let counsel for both sides re-explore that if they have anything.

MR. SEGAL: I have nothing further.

MR. BLACKBURN: No, sir.

THE COURT: All right, any further evidence for the Government?

MR. BLACKBURN: Yes, sir. We call Shirley Green.

(Witness excused.)

(Whereupon,

SHIRLEY GREEN

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

D I R E C T E X A M I N A T I O N 12:35 p.m.

BY MR. MURTAGH:

Q Please spell your name for the reporter.

A The full name?

Q Yes, please.

A S-h-i-r-l-e-y G-r-e-e-n.

Q Ms. Green, what is your occupation, please?

#17
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4

A I am a physical science technician in the Microscopic Analysis Unit of the FBI Laboratory.

Q Okay, Ms. Green, could you either speak up a little bit, please, or lean towards the microphone. Let me ask you: have you ever testified before in court?

A No, sir.

Q Are you a little nervous?

A Yes.

Q How long have you been employed by the FBI?

A For over 28 years.

Q And in the Microscopic Analysis Unit?

A Over 25 years.

Q Now, let me ask you: what is your educational background, please?

A I received a Bachelor's degree with a chemistry major from McMurray College in Jacksonville, Illinois.

Q When did you get that, please?

A 1950.

Q 1950. Okay, have you taken any refresher courses since 1950?

A Yes; I have taken a few refresher courses in subjects relating to my work including in-service---

Q (Interposing) Excuse me. Would you explain

#17
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to the jury what the term "in-service" means?

A It's just--we have refresher courses in the laboratory or courses to keep you informed of updated materials in the field.

Q Would it be accurate to say that "in-service" is the FBI's terminology for continuing education?

A Yes.

Q And where are these courses given?

A At the Bureau and also at the training academy down at Quantico, Virginia.

Q Do you attend any other seminars or lectures at all?

A Yes; when I have the opportunity, I try to.

Q Now, would you please tell us what the nature of your work is?

A Well, I examine evidence in federal cases concerning hairs, fibers, fabrics, and related items. I deal mainly with the identification and comparison of fibrous materials which includes the comparison and matching of fabrics, tapes, cordage, other related items; the stab holes, knife holes; other types of tears, cuts, stitching holes in fabrics.

I spend much of my time assisting the Special Agent Examiners in their examinations. I've

#17
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6

spent a lot of time in the training of laboratory technicians and the Special Agent Examiners. I teach class at Quantico, Virginia, which concerns the identification and comparisons of textile fibers and fibrous materials.

I conduct some studies and prepare materials for use in the Microscopic Analysis Unit and at the fiber classes at Quantico.

Q What portion of your work day is devoted to this type of work, please?

A All of it.

Q Have you received any specialized training in this field in the FBI?

A For several years I worked in a trainee capacity under the qualified experts in the Microscopic Analysis Unit.

Q Is a fair amount or a great deal of clothing submitted to the FBI Laboratory for examination?

A Yes, sir.

Q And from what sources do these items of clothing come? Let me rephrase that. Are we talking only about Federal cases or State cases?

A From all over--both Federal and State.

Q And is the FBI Laboratory available to any

police department or investigative agency in the country?

A Yes; I believe we work both criminal and civil cases for the Federal government and U.S. attorneys and criminal matters for the state, county.

#17
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7

#18
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BY MR. MURTAGH:

Q Could you give us some examples of your work involving the examination of holes, cuts, or tears in fibers, stitching and things like that in fabrics?

A Some examples of other cases, or different cases?

Q The types of cases, yes.

A The types of cases were, for instance, if a label patch or some sort of thing were torn from a garment, or a garment were torn apart at the seam, it is sometimes possible to positively identify one portion as having one seam stitched to the other portion.

This would be by aligning--it would be from the pattern, the stitching holes, and of course, it would always help if you had a fragment of the other material, patch, or stitching hole on the other side to make a positive identification that way.

But sometimes it is possible to positively identify it from the stitching, but not in all cases. I remember one case where belt loops were torn from a garment and we could positively say that those belt loops came from that jacket.

Q How about bullet holes?

A Bullet holes--we do the alignment. Sometimes

#18
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2

they want to know if two garments were worn at the same time the victim was shot, and we can line up the bullet holes.

Q What two types of garments would you be talking about?

A Say a t-shirt or undershirt, plus another shirt, or a jacket over a shirt.

Q How many, if you can recall, approximately how many cases like this have you worked on in your 25 years in the Microscopic Analysis Unit?

A I would say thousands.

Q Ms. Green, directing your attention to the fall of 1974, were you employed then at the Microscopic Analysis Unit?

A Yes, sir.

Q If you could tell us, please, where was your particular desk or laboratory bench located at that time?

A I believe that was in the attic of the old building.

Q When you say "the old building" are you referring to the Department of Justice Building?

A Yes, sir.

Q Okay. Did there come a time in the fall of 1974 when Mr. Paul Stombaugh moved into your office

#18
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3

space, so to speak?

A Yes, sir.

Q Did you assist him in any fashion, as an aide, in conducting laboratory examinations in this case?

A Yes.

Q Ms. Green, at this time, I direct your attention to the photograph there, which I believe is Government 787(a). Let me just hand it to you and let you take a look at it. Do you recognize that photograph?

A Yes.

Q Okay. Do you recognize the items depicted in that photograph?

A The Q12 pajama top.

Q Q12. Is that the pajama top?

A Yes, this pajama top.

Q And how about the probes?

A Yes, sir. Those probes, we had made up to demonstrate the alignment of the holes.

Q Okay, let me show you Government Exhibit 1140 and ask if you recognize that?

A Yes, these are the probes.

Q Did you either prepare those or were they prepared under your directions?

A Yes, sir. I believe we had someone make up the metal part and I added the paper tabs.

Q And are the numbers on those paper tabs your own?

A Yes.

#18 tdb 4

Q Now, Ms. Green, with respect to the reconstruction, as it has been termed, depicted in that photograph, did you actually do that?

A Yes.

Q Do each one of the 21 probes pass through the holes as numbered on the little white tags?

A Yes.

Q Would you place that on the easel, please?

(Witness complies.)

MR. MURTAGH: Your Honor, at this time, we would mark Government Exhibit 1142.

(Government Exhibit No. 1142 was marked for identification.)

BY MR. MURTAGH:

Q Ms. Green, let me show you Government Exhibit 1142 which is a chart, also containing a photograph--an enlarged copy--of which is in evidence. 764(c), I believe, is the one that is in evidence. This one contains 764(b). Yes, that is correct. 764(c) is the

#18
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one that is in evidence.

Now, Ms. Green, let me ask you what this chart reflects?

A This shows the patterns, the holes in the pajama top---

Q (Interposing) Let me just interrupt you there. With respect to this chart, let me describe, if I may further, that the chart has various members which appear to go from 1 through 48; is that correct?

A Yes.

Q What do those numbers correspond to?

A Those numbers correspond to the puncture holes in the pajama top.

Q Are the puncture holes represented by a dot next to the number?

A Yes.

Q And are they depicted accurately on this chart, with respect to Q12, the pajama top?

A Well, it isn't drawn exactly to scale. It is an estimate as far as the pajama top itself, but it is pretty accurate as to locations.

MR. SEGAL: Could we have it marked on the chart that it is not to scale then, please?

THE WITNESS: No it is not exactly on scale.

#18
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THE COURT: The record will show that.

MR. SEGAL: All right, Your Honor.

BY MR. MURTAGH:

Q With respect to the numbers, are there little arrows appearing?

A Yes.

Q Let me to say to you, with respect to the numbers 1 through 12; are those color-coded in any way for the record?

A Yes.

Q And how about, it looks like 13 is the lowest number and 45 is the highest number; and are they color-coded?

A Yes.

Q Okay. And how about this group of three up here, 30, 31, and 32; are they color-coded?

A Yes.

Q We have another group over here which the low number is 20; is that color-coded?

A Yes.

Q We have a last group here--excuse me, the next to the last group--in which the low number is 18; is that color-coded?

A Yes.

#18
tdb
7

Q And we have a single hole up here, and by "up here" I am referring to, I believe it has been described as the upper left shoulder area of the back of the left sleeve, that is 48?

A Yes.

Q Now, Ms. Green, in aligning, in doing this reconstruction, what relationship does the color coding of the numbers as presented in the chart have to the way these probes were aligned in the pajama top? Do you understand my question?

A I am not exactly sure.

Q With respect to one group, which is color-coded in red, and specifically within that group, with respect to numbers 1, 2, and 3, what relationship did those holes have to each other?

A One, two and three would align up to make one thrust.

#19
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BY MR. MURTAGH:

Q I see. And if I can find that on this other chart here, you have the flag number 21 and below that the numbers 1, 2, and 3.

A Yes.

Q So, my question is: does this Chart 1142 reflect the location of the holes 1, 2, and 3 as depicted on Government 787 by probe 21?

A That's right.

Q Did you fold those holes in that fashion?

A Yes.

Q And did you put a probe through?

A Yes.

Q Now, let's take another group--4, 5, and 6--and you did the same there?

A The same thing.

Q How about 10 and 8?

A Yes; the same thing.

Q Is that the same with respect to all of these groups in which you see an arrow?

A Yes.

Q Now, and I take it you folded the pajama top in what fashion?

A It was folded with the right sleeve folded inside-out, the inside of the pajama top facing upward,

#19
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the right collar area over to the right, which would be to the victim's left, according to how you are looking at it--over to the right, and the right shoulder seam is over to the right, and the rest of the sleeve coming over to the left.

Q And in this fashion, were you able to align all 48 holes?

A Yes.

Q Now, let me draw your attention here to Government Exhibit 764(b), the small photograph which appears on Government Chart 1142. Let me turn this around a little bit, and ask if the jury can see that. Now, with respect to the color-coded areas as represented on the pajama top that is depicted on the chart, is there a relationship to the numbered areas on the photograph which is in evidence as the chest of Colette MacDonald?

A Yes.

Q And what is that relationship, please?

A Well, all of the holes in the left center area of the back panel---

Q (Interposing) Would you please come down and point to the areas? Let me find the pointer.

A The holes in the center or the left of center area of the back panel---

#19
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Q (Interposing) Would you describe the color for the record, please?

A With the colors in orange would correspond to these five holes marked orange, numbers 17 through 21.

Q Now, let me ask you: would it be accurate to say, then, that holes 1 through 12---

A (Interposing) Yes.

Q ---can be aligned with five probes?

A That's right.

Q And the grouping that you get when you align them, in other words?

A The grouping is pointed out by the orange circles around the holes here. Those would be the bottom holes.

Q I see.

A So, when you come through 1, 2, and 3, you end up at 3 on the bottom, and so these --3, 6, 7, 8, and 9 holes in the pajama top would form 17, 18, 19, 20, and 21 in this picture.

Q Okay, now, Ms. Green, let me ask you: did you start from the bottom hole up or from the top hole down, if you know?

A To put the probes in?

Q Yes.

#19
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4

A From the top hole down.

Q In putting probes through, did you force any of them?

A No; these---

Q (Interposing) You are talking about 1140?

A Yes; these probes were approximately the same diameter as the holes in the pajama top so that they could be put through without forcing them. These are a little smaller probably than the ice pick--the largest part of the ice pick.

Q Now, okay, so that was done with the group in orange as you described it. How about the group in--is that yellow--on the chart?

A Yes.

Q And would you point out the corresponding area to the photograph of Colette MacDonald's chest?

A It would be these---

Q (Interposing) Would you describe the numbers for the record?

A It would be number 8, 9, 10, 14, and I believe a number's been left off here which should be 16.

Q Why don't you put that in here in pen?

(Witness complies.)

Q And did you do the same with respect to

#19
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each group?

A Yes.

Q Now, please resume the stand.

MR. MURTAGH: Your Honor, at this time, I wonder if I might move this over so the jury may see it a little better?

THE COURT: Very well.

(Exhibit shown to the jury.)

THE COURT: Maybe you should do a third showing down here because these jurors could not see it.

MR. MURTAGH: Yes, sir.

THE COURT: This seems to me to be a good breaking point to go to lunch. We will let the jury retire, and we will come back at our regular hour of 2:30 this afternoon. Members of the jury, now don't talk about the case.

(Jury exits at 12:57 p.m.)

THE COURT: All right, let's take a recess until 2:30.

(The proceeding was recessed at 12:59 p.m., to reconvene at 2:30 p.m., this same day.)

FURTHER PROCEEDINGS 2:30 p.m.

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

MR. BLACKBURN: Your Honor, before we begin, may we approach the bench?

#20
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THE COURT: That's a good way to start the afternoon; come on up.

BENCH CONFERENCE

MR. BLACKBURN: Your Honor, it has come to the Government's attention that the advertisement which you had ruled upon concerning these four alleged intruders has run again in today's paper in both the morning and the afternoon paper in Fayetteville.

The first time this was done, we did not make an issue out of it in court because we thought we would leave well enough alone, and just not muddy the water.

THE COURT: I had understood it would be run only once.

MR. BLACKBURN: This is the second time this had occurred. We believe, as Mr. Segal told the court, I remember, one time, after the jury had left, that the first artist was not the same as the second artist. We know who the first artist was, but he is not

#20
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2

the man who did these latest drawings.

We thought we would bring it to the court's attention that we think the running of these advertisements is in direct contradiction of an order of this court.

MR. SEGAL: Your Honor, I am not under the impression --and we've talked about this--that after we had that hearing that Your Honor was prohibiting us from running them. I would say, Your Honor, we always had the intention of running it twice. We had the procedure to run it a Thursday and a Sunday.

THE COURT: How did I get the impression it would only be run once?

MR. SEGAL: I beg your pardon?

THE COURT: How did I get the impression it would only be run once?

MR. SEGAL: I am not sure.

THE COURT: Something Wade Smith said? I am pretty sure he was the one that said it.

MR. SMITH: If Your Honor pleases, that is not my recollection about it. He may have said that.

THE COURT: I was also under the impression that some kind of final clearance was going to be obtained before it was run the first time, but maybe my recollection is faulty about that.

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tdb
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MR. BLACKBURN: That is correct. We believe that the first time it was run was in contradiction of that order of the Saturday preceding court. The Government chose not to make an issue out of it since it was stopped.

THE COURT: There are two things involved as I see them. First, what is the duty and responsibility and authority of the court to prohibit such a thing.

MR. BLACKBURN: Well, as we told the court, on the Saturday preceding the Monday that court began, that we would object, of course, to the introduction of those photographs without a qualifying witness who would authenticate those.

We were simply asking that we be given---

THE COURT: (Interposing) I understand--you mean these drawings?

MR. BLACKBURN: Yes, sir.

THE COURT: That somebody is going to seek to introduce those in evidence?

MR. SEGAL: If and when that should happen.

MR. BLACKBURN: Your Honor, it happened at the Article 32.

MR. SEGAL: They would be authenticated

if we do that, Your Honor. I don't know what the advertisement has to do with what we offer in court. Certainly we will try to do whatever is necessary to authenticate them, if I think it is necessary to use them.

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THE COURT: You will tell them who the artist was?

MR. SEGAL: Certainly.

THE COURT: Just tell him right now who he is.

MR. BLACKBURN: We want the name and address of the artist.

MR. SEGAL: If we decide to use them in court, that is our position. At this point, I will tell you, it is not at all certain that we will do that.

THE COURT: Well, he needs to know in advance. If you decide at the last moment, and say, "Okay, I am going to do it," then the name and address won't do him any good. He will get that from the record when you ask him the question.

What is the objection to telling him right here and now?

MR. SEGAL: I wrote to Mr. Blackburn a letter fully stating what our position was. I

would be glad to give him the name and address, which was in the letter I wrote a week and a half ago. But this man was my employee, and under the attorney-client privilege that he was not free to interview him unless he had my permission to do it.

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THE COURT: He has not said anything about interviewing him.

MR. SEGAL: I wrote him that letter a week and a half ago.

THE COURT: Well, he doesn't have the name and address. He just wants the name and address.

MR. BLACKBURN: The reason I did not raise it again was because the ad had not been run again. But now the ads have been run again and that is, in our opinion, a direct contradiction of the Judge's order.

MR. SEGAL: There are two separate issues here. One is whether you think the ad and I think the ad is in contradiction to the Judge's order. That is one issue we can discuss, if you like. My recollection is that Your Honor, when Mr. Smith said it at our Saturday pre-trial conference held on the 13th, "Your Honor has banned us from doing that," you said, no, you had not done that. You were very

specific.

THE COURT: I believe I either said this or I would have ruled if there had been any suggestion that you were going to do it in advance of the selection of the jury, I would have prohibited it.

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MR. SEGAL: That's right; I agree with that.

THE COURT: Just like I put a damper on these press conferences--which at least you, maybe you do too,maybe; I know all of you have been quoted in the paper--prior to the trial.

MR. SEGAL: We agree to that.

THE COURT: Now, I am having some problem with that as to whether or not that comports with the professional responsibility requirements. For whatever it is worth, I say this to both of you: when lawyers give interviews with the press, it has been my observation over the years that lawyers who are entirely confident of their position and who believe in the correctness of their cause, eschew that kind of thing.

To me, it just telegraphs some weakness. As far as the jury is concerned, I am hoping that they are observing their oath and are not reading anything. Now there is always the possibility, though, that they

will, therefore I find that while I don't want to muzzle anybody, I don't see why we can't stick to our knitting there in the Courtroom and let the press hear and see everything that I do. That is all that I see and hear and read about it.

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7

I don't give a damn what appears in the paper, myself. But when it is on the front page, they can't escape it. They had on yesterday's front page quotations, verbatim, as to how the defense was going to destroy some witness--this Stombaugh, probably, and all that stuff.

Of course, as far as the ad is concerned, I don't know whether you were present or not, but just the way it struck me as being an exercise in futility; it must have some background value other than the prospect that somebody would ever turn up this late date that would know anything about this, who would not be subject to be utterly destroyed by a competent cross-examination.

But here again, I don't run lawsuits for them. I sat out there 34 years and I saw a lot of judges that came to town and professed to know more about my case in two hours than I had been able to learn in three or four years of living with it. So, I wouldn't do that.

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8

I will let you run your case, but for whatever it is worth, I'll say to both of you that I think that running ads and talking to newspapers while the trial is in progress as to what you are going to do with your evidence and so forth, I think it may come very close to transgressing the rules of professional responsibility in insuring a fair trial for both sides.

Here again, I don't want to drag up an issue. We have enough dead dogs that we have beat in this case already, and I don't want to do that. But for whatever value, if any, that it may have, if you are interested in knowing how this court feels about it--I have just told you.

MR. SEGAL: I, for one, appreciate what Your Honor says and then I do not take what Your Honor says lightly by any means. I want to just make two fact representations, Your Honor.

It has always been our intention, because of my prior experience with this case, to run the ad in the Fayetteville newspaper only twice, because we knew that there were things to be learned. I will tell Your Honor that in fact, running the ad has produced material matters for us which will, in due course, come out in court.

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9

I am also aware that when facts come out late, one may question it. In each and every instance, the explanation why, in my own judgment, is worthy of the jury to decide whether they think it is credible or not. So I don't apologize for people coming up late in the day. There are very good reasons.

Secondly, the ad in itself says nothing more than that it wants information about these people who resemble this in connection with the 1970 murders. It does not say anything beyond that. It gives the name of our investigator, and that is all that it asks.

Because we did, in fact, develop some information that is very valuable, we want to complete--we were advised by those who have better knowledge than I do that the two insertions would be valuable. That is what we have done.

I do not have any reason at all to believe that we will be running beyond--it is in Thursday's paper, whatever paper it is now. That is the last time because we are now too close to the defense case. We won't have the energy to pursue anything beyond that.

We are following all the leads we have got. Now on the second matter, in regard to any press conferences--I appreciate what Your Honor says. We tried, through the pre-trial, to honor and respect that.

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10

We do get lots and lots of inquiries here in court and papers.

THE COURT: I used to get a lot. But I don't get any any more. And the simple answer is this: I do not give press interviews. I do not hold press conferences. You are welcome to come; sit as close to the front seat as you can at the witness stand, and report verbatim everything that comes from anybody's lips in this courtroom.

It is public information. They can have it and do whatever they want to. If I am good, indifferent, or stupid, and they want to report it, as long as I am here in this courtroom, they are going to do it. But, I am not talking to any of them afterwards.

One young fellow hollered at me out here the other day and I stopped and explained it to him. He was from New York. I said "Perhaps you didn't know know." He said, "Yes, I did know it; but I have to tell my managing editor, or somebody, that I tried."

I said, "You tell him that you made a nice try, but with the same results."

MR. BLACKBURN: Before we go, our concern is not running the ad again, but we did think---

THE COURT: (Interposing) If it is already run, that is a fait accompli.

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11

MR. SEGAL: I should tell you about that. Mr. Blackburn had been willing to give Mr. Smith and I advance notice in several instances several days in advance of any witnesses. We will most assuredly reciprocate fully and completely in that regard. We will give them advance notices of our witnesses so they can get ready and don't have to run around like chickens with their heads cut off.

I will tell you, as a matter of fact, at the end of today, who our witnesses will be tomorrow.

MR. BLACKBURN: Our only concern in bringing this to the court's attention was not to beat a dead horse, certainly, but just for the record to indicate that we had still not gotten the police artist.

THE COURT: If you don't get a conviction, maybe you can appeal.

MR. MURTAGH: One other matter. The Government, at this time, would renew, or reassert, its motion on the psychiatric testimony on the issue of whether it comes into the case or not.

THE COURT: Well, now there is a motion outstanding in writing on that, that has never been ruled on. Is it probable that we will reach that this afternoon?

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12

MR. MURTAGH: Your Honor, we are at a juncture where if the psychiatric testimony is not going to come in, then perhaps we might rest either late this afternoon or early tomorrow morning.

If it is going to be an issue in the case, and to date the Government has offered no expert testimony that this guy is the type of defendant who would commit that type of crime---

THE COURT: (Interposing) How long do you think you will go this afternoon? I can't see getting through with this witness before 5:00 o'clock. Mr. Segal might have two questions to ask her.

MR. MURTAGH: I don't know.

MR. SEGAL: I do have some questions, but it will not in any way be as long as Mr. Stombaugh, Your Honor.

MR. BLACKBURN: What we are getting at, Your Honor, we would like if possible to either have a ruling or a hearing or something on that question prior to the Government's resting its case.

THE COURT: I will do that for you, but maybe I want to hear some more about it. What we can do is to go as far as we can this afternoon. Let the jury go home, and then I will hear you until suppertime.

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13

MR. MURTAGH: Your Honor, the logistical problem that is involved is the defendant was examined by army psychiatrists in 1970. He was not examined by forensic psychiatrists, and we anticipate that since he was examined by a forensic psychiatrist for the defense, that that would be an issue.

We are prepared to offer testimony both from the army psychiatrists and from forensic psychiatrists and psychologists. However, the forensic psychologist tells us that the Rorschach Test that Dr. MacDonald took in 1970, for the Defense--which was furnished to the Army--is inadequate.

I don't know the specifics, but apparently he didn't react to the ink blots or whatever. In that regard, Your Honor, if psychiatric testimony is going to be offered by the defense, we would move the court to order the defendant to submit after court, perhaps on Monday, to any and all psychiatric or psychological tests.

I don't think it would be lengthy, they are what the experts would require.

MR. SEGAL: May I make a suggestion, Your Honor?

THE COURT: You are not going to offer any such evidence as that?

MR. SEGAL: That Rorschach test?

THE COURT: You are not going to offer any psychiatric evidence?

MR. SEGAL: We may, Your Honor.

THE COURT: You may.

#20 tdb 14

MR. SEGAL: I have ample authority on the point. Let me make a practical suggestion. If the Government is concerned that somehow, because we may offer this testimony in this case, that somehow that has placed the burden on them in their case-in-chief to put on something to the contrary.

I will be glad, at the conclusion of today, in the presence of the defendant and with his acquiescence, to put on the record a waiver of any obligation of the Government to produce in their case-in-chief any such evidence.

I have here a substantial memorandum of law on our right--if we decide to go ahead with that--to produce it. It is not something Your Honor can rule from the bench. There are at least three different possible grounds that if we do it, Your Honor has to consider our right to do it.

But at the immediate point, we would like to get to the point where we can close the Government's case because we have witnesses waiting. We cannot hold

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tdb
15

them indefinitely. To have an argument on a legal motion when we have been told repeatedly the Government is going to finish this week and we have got to put people on who have been sitting around, Your Honor, it seems to me is the wrong way to do it. As I said before, I am certainly agreeable -- I don't think the Government has any burden in its case-in-chief in this regard.

MR. MURTAGH: Your Honor, we just don't think the testimony is admissible. Period.

THE COURT: Okay, but his suggestion is that your can resume your case-in-chief even after he has put it on, rather than having to come just from a rebuttal standpoint.

MR. MURTAGH: Yes, Your Honor. If we have to do it, that is something we can live with. It does not change, Your Honor, the fact that if there is going to be psychiatric testimony, we have got to have him examined at the earliest possible time.

MR. SEGAL: Then make a motion in writing, for God's sake. These are serious questions. Why don't you put it in writing with some authorities for it? I want to see what the result is, Your Honor. I may agree or may disagree. I won't know until I see it and read it.

MR. MURTAGH: Your Honor, the authorities

cited in our original written motion as to why this should not be an issue in the case, we would stand on. Now, if it is to be an issue in the case, the court has ample authority to order the defendant to submit to psychiatric testing.

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16

THE COURT: Well, you would not contest that, would you?

MR. SEGAL: That what, Judge, that they have a right to have him examined? I want to think about it, Your Honor. I probably would agree with it, but I will want to think about it and talk to Wade Smith about it.

THE COURT: I think you ought to just go on and set up and prepare to have him examined at the first available time.

MR. MURTAGH: Your Honor, we will bring our people down Monday if the defendant will be available.

MR. SEGAL: I don't think he is going anyplace else.

MR. MURTAGH: I don't want to get them here---

MR. SEGAL: (Interposing) Why don't you talk to us about planning it, if you want to do that. But I do suggest--please put it in writing.

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17

(Bench conference terminated.)

THE COURT: All right, I think we have had the jury long enough now while we talk about procedural matters and things. These are not matters with which you are in the slightest concerned. They have to do with scheduling more than anything else, members of the jury.

What I am going to do is let you hear testimony of the stuff you are interested in. If I have to hear any more of that, I will let you go home and you won't have to wait around. That is the way I will resolve this issue.

MR. MURTAGH: Your Honor, we have some more questions for Ms. Green.

THE COURT: All right. You would not limit it to just two, would you--I mean, two of your kind.

MR. MURTAGH: Two of my kind, with A's and B's; yes, sir.

#21
pp-1

(Whereupon,

SHIRLEY GREEN

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

D I R E C T E X A M I N A T I O N (2:50 p.m.)
(resumed)

BY MR. MURTAGH:

Q Ms. Green, I believe before the break, or luncheon recess, rather, I had asked you with respect to Government chart 1122 whether this was the methodology you used, as illustrated graphically on this chart, in doing the reconstruction which is illustrated in Government 787(a); do you remember that?

A Yes.

Q I believe you testified that it was, is that correct?

A Yes, that is correct.

Q Have you ever had occasion to redo this reconstruction at any time?

A Yes.

Q Did you employ the same realignment procedure in redoing the reconstruction?

A Yes.

Q The same probes through the same holes?

MR. SEGAL: May I ask a suggestion that

#21 p-2

he not lead this witness. We are here to hear this witness' direct testimony.

BY MR. MURTAGH:

Q Were you ever able to align all 48 holes, or all the holes in the pajama top, with 21 probes going through any other holes? Do you understand my question?

A Yes. No, I was not. It could probably over---

MR. SEGAL: I'm sorry, I couldn't hear your answer.

THE COURT: Yeah, you will have to talk a little louder, please.

THE WITNESS: I'm sorry. It took over a week just to find one solution, to find this solution.

BY MR. MURTAGH:

Q Did you ever find another solution?

A No.

MR. MURTAGH: Your Honor, at this time we would move in Government 1142 and ask that it be received.

(Government Exhibit No. 1142 was received in evidence.)

MR. MURTAGH: Your Honor, we would also offer the smaller photograph on the chart, 764(b).

#21
p-3

THE COURT: All right, sir.

(Government Exhibit No. 764(b) was marked for identification and received in evidence.)

MR. MURTAGH: Your Honor, at this time we would mark Government Exhibit 1070, which consists of a series of eight photographs which we all also offer enlargements of.

(Government Exhibit No. 1070 was marked for identification.)

BY MR. MURTAGH:

Q Ms. Green, let me show you Government Exhibit, marked for identification as 1070, ask you if you recognize the photographs on that chart?

A Yes.

Q Okay, and with the pointer, would you please step down and tell us what photograph one depicts?

A Photograph number one is where I realized the 48 holes of the pajama top, with 21 thrusts--I believe using push pins with numbers on the tops, and forming the 21 holes on top of this box with graph paper over it.

MR. MURTAGH: Your Honor, at this time the Government---

THE COURT: (Interposing) One moment,

#21
p-4

please. We have a volume trouble with your back turned to him, Ms. Green. You must talk a little louder. It is all right to look at what you are talking about, but just get the volume up some. He has to take it down.

THE WITNESS: Okay.

BY MR. MURTAGH:

Q Ms. Green, would you repeat your answer for the reporter?

A Photograph number one is the pajama top, refolded in the manner in which it was found on the victim, placed over a box with a piece of graph paper on it, with 21 pushpins put through, making 21 thrusts into the box.

Q Now, Ms. Green, would you describe with respect to the left and right sleeves of the pajama top which portion is where in photograph number one?

A The left sleeve is coming out here on the side with the left panel. The right sleeve--shoulder--is right in here, and the right sleeve is going down here to the cuff.

BY MR. MURTAGH:

Q Is the right sleeve right side out or inside out?

A Inside out.

MR. MURTAGH: Your Honor, at this time the Government would mark Government Exhibit 1143 which consists of 21 pins numbered sequentially; Government 797, a box with a piece of graph paper on it; Government 798, an additional piece of graph paper and Government 1144, an additional group of 21 pins.

(Government Exhibits 1143, 797, 798 and 1144 were marked for identification.)

BY MR. MURTAGH:

Q Ms. Green, let me give you Government Exhibit 797 and ask if you recognize it?

A Yes. This was the box.

Q Okay, which box are you referring to?

A This is the box which I pinned the pajama top to in photograph number one.

Q There appears to be some writing by the exhibit tag. Could you tell us what that is, please?

A This is the Laboratory number, PCL-208-2-JB Q12.

Q Does Q12 refer to Government Exhibit 101?

A Yes, it does.

Q Let me give you Government Exhibit 1143, and ask you if those are the pins?

A Yes, these are the pins that I put through the pajama top.

MR. MURTAGH: Your Honor, at this time the Government would move to admit Government Exhibit 797 and Government Exhibit 1143, and ask if we may pass them to the jury.

THE COURT: Very well.

(Exhibits passed among the jury.)

(Government Exhibits 797 and 1143 were received in evidence.)

MR. MURTAGH: Why don't you resume your seat, please? Your Honor, may it please the Court, at this time we would mark, while the jury is looking at the exhibit, Government Exhibit 789(a) which corresponds to Photograph Number one on the chart; Government Exhibit 790(a) which corresponds to Photo number two; 791(a) which corresponds to Photo three; 793(a) which corresponds to Photo four; 794(a) which corresponds to Photo five; 796(a) which corresponds to Photo six; 792(a) which corresponds to Photo seven and 795(a) which corresponds to Photo eight.

(Government Exhibits 789(a), 790(a), 791(a), 793(a), 794(a), 796(a), 792(a) and 795(a) were marked for identification.)

MR. MURTAGH: Your Honor, at this time we have offered Government Exhibit 789(a) and seek to publish it.

THE COURT: Very well.

(Government Exhibit 789(a) was received in evidence.)

(Exhibit passed among the jury.)

BY MR. MURTAGH:

Q Now, Ms. Green, for the record, with respect to the graph paper on which you placed the pajama top and put the pins through it--did the pins puncture the graph paper?

A Yes.

Q Did they leave a pattern?

A Yes.

Q Are there any puncture holes that were not made by the reconstruction using the 21 pins?

A In the graph paper?

Q Yes.

A No.

Q Okay, now. With respect Government's Photo

Number two up there, which I believe, for the record, would be Government Exhibit 790(a). Maybe for the benefit of the jury, we could hold these up as you are talking. Do you recognize the photograph which appears in that photograph?

A Yes. It is a photograph that Mr. Stombaugh marked the numbers of the puncture holes.

Q Ms. Green, could you speak up a little bit, please?

A I'm sorry. The photograph in this picture is the photograph which Mr. Stombaugh marked with numbers the 21 puncture holes in the victim's chest.

#23
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BY MR. MURTAGH:

Q Let me hand you Government Exhibit 786 in evidence and ask you if that is the same photograph.

A Yes.

Q And are there 21 areas numbered in that photograph?

A Yes; there are.

Q Would you tell us, please, with respect to the left and right areas of the chest depicted there what numbers appear or how many numbers?

A There are five numbers on the left chest area and 16 on the right.

Q Now, I take it--what did you do with respect to that photograph that appears in that photograph? Do you understand my question?

A Well, in this particular photograph, it was just laid beside this for--to see the comparison.

Q Would it be accurate to say that photo number 1 and photo number 2 are exactly the same with the exception that photo number 2 has that additional photograph of the victim's chest?

A Yes.

Q And could you tell us, please, what photograph number 3 is?

A Number 3 would be the same thing as this

#23
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2

last one with the exception of a different photograph of the victim's chest.

Q Okay.

A An unmarked one.

Q All right, now, with respect to--is that 764(b)?

A This photograph here?

Q Yes.

A Yes.

Q Now, with respect to Government photo number 4, what did you do there, please?

A I took the pajama top off of the box and placed the pins back into the holes that I made so that it just shows the pins--the numbered pins--from the pajama top placed next to the photograph.

Q Now, let me ask you: are the numbers which appear in photo number 1--that is, the numbers appearing on the pins--the same numbers which appear in photo number 4?

A Yes.

Q Now, would you tell us, please, what photograph number 5 depicts?

A That has the same pins from the pajama top in the box, and pins have been placed through the puncture holes in the pictures of the victim's breast

#23
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3

to show the two patterns.

Q Now, let me hand you Government 1144 marked for identification and 798 marked for identification and direct your attention to the photograph 764(b). Now, would you explain, please, what the relationship of those three objects is?

A This is the piece of cardboard with graph paper on it that I put the photograph on to put these pins through the photograph at the puncture areas.

Q Now, let me ask you: is the scale the same as between Government Exhibit 764(b), photograph of Colette MacDonald's chest, and the scale in Government photo 1 appearing on that chart, the reconstruction of the pajama top?

A No; they are not.

Q All right, now, would you tell us, please, with respect to--perhaps if we could skip down to photograph number 8--would you tell us what that is?

A That is the cardboard and the pushpins that were where the photograph is pinned to this, and the photograph removed, the pushpins remaining in the areas--in the holes.

Q For the record, when you say "this," are you referring to Government 798, the piece of cardboard?

#23
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4

A Yes; Government 798 and the pins Government Exhibit 1144.

Q And did you take those pins and after you removed the photograph, placed them in the same holes?

A Yes.

Q And do the numbers correspond?

A Yes.

Q All right, let me show you--and if you would perhaps show to the jury Government 795(a). Are you holding that photo right side up?

A Yes.

Q And would you describe, please, what appears on the left side and the right side of the piece of graph paper?

A There are five holes in the left side and 16 holes in the right side.

MR. MURTAGH: Your Honor, the Government would move in 795(a) and ask to publish it the jury.

THE COURT: Very well.

(Government Exhibit No. 795(a) was received in evidence.)

(Exhibit passed among the jury.)

BY MR. MURTAGH:

Q Now, Ms. Green, with respect to photograph

#23
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5

number 7, let me ask you: is that the same piece of graph paper as depicted in photograph number 4, less the insertion of an additional photograph?

A Yes.

Q You didn't realign the pins?

A No.

Q And is that the same as 792(a)?

A Yes.

Q All right, now, is that photo--if you might describe for the record--appearing in the bottom part of the graph paper is the laboratory number in Q-12. Now, you just turned the photograph upside down as far as the writing is concerned. The question is: is the photograph right side up as it relates to the reconstruction?

A It is now right side up with the writing upside down.

Q Okay, it's perfectly clear.

MR. MURTAGH: Your Honor, at this time, we would turn this back so that we can read it and offer 792(a) in evidence and ask to publish it.

THE COURT: Very well.

(Government Exhibit No. 792(a) was received in evidence.)

THE COURT: Right side up or down?

MR. MURTAGH: Judge, I'll let the jury hold it any way they want.

(Exhibit passed among the jury.)

BY MR. MURTAGH:

#23
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6

Q Okay, now, with respect to photograph number 8--I'm sorry--6, what does that photograph depict?

A That shows both of the--the cardboard box and this cardboard--I don't remember the exhibit number of the box--this exhibit number 798 which is the cardboard from the photograph with the pins in the holes.

Q Does it also depict 797, the piece of graph paper with the identifying number Q-12 on it?

A Yes.

Q Now, the two are placed side-by-side in the photograph?

A Yes; they are.

Q And are they right side up in relation to each other?

A Yes; I believe they are.

Q And let me show you Government 796(a) and ask you if that---

A (Interposing) Yes; this is the same photograph.

#23
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7

MR. MURTAGH: Your Honor, at this time, the Government would move in 796(a), 793(a), 791(a), 794(a), 790(a), and ask to publish them to the jury.

THE COURT: Very well.

(Government Exhibit Nos. 796(a), 793(a), 791(a), 794(a), and 790(a) were received in evidence.)

(Exhibits passed among the jury.)

MR. MURTAGH: And, if I have not already done so, let me move in Government 798, 1144, 1143, and 797, and 789(a).

(Government Exhibit Nos. 798, 1144, 1143, 797, and 789(a) were received in evidence.)

#24
p-1

BY MR. MURTAGH:

Q Now, Ms. Green, with respect to the two pieces of graph paper, the one from the photo and the one from the reconstruction of the pajama top, and as depicted in photo number six on the chart, which is the Government Exhibit 1070, are the scales the same?

A Of the graph paper itself?

Q Yes, is the graph paper scale the same?

A Yes.

Q Are the scales the same as between the photo reconstruction and the pajama top reconstruction?

A I'm not sure if I understand, but the scale would be the same as--with the photograph after it was done, but the photograph is reduced size as to the actual size of the victim's chest; so there's a difference as far as actual size.

Q Now, Ms. Green, did you observe any grouping with respect to the pins that were placed in the photo reconstruction--well, first with respect to the photo reconstruction?

A Is there a grouping?

Q Yes, could you describe any grouping that appears in the photograph, perhaps using the pointer?

A There is a--from the photograph, there is a grouping of five holes over to the left. There is a

#24
pp-2

group of 16 over to the right. Within this grouping there is always a grouping of--three certain ones always seem to group together.

MR. SEGAL: Your Honor, I am not hearing what the witness is saying.

THE WITNESS: There is a grouping of three to the left and 16 to the right, and within this grouping there are smaller groups.

BY MR. MURTAGH:

Q Ms. Green, with respect to--would it be accurate to say there is a sub-grouping on the right grouping, is that correct?

A Yes.

Q Okay, what are the numbers of that sub-grouping?

A Holes 1, 2, and 3 always come in together as a group of three.

Q Okay, now, you are pointing to the photo reconstruction?

A Yes.

Q Okay, does that same sub-grouping appear in the pajama top reconstruction?

A Yes, it does; 1, 2, and 3 are together.

Q Are there any other groups which are common to the--or subgroups, rather, which are common

#24
p-3

to the photo reconstruction and the pajama top reconstruction?

A Holes 4 and 5 are always exactly--or very close together; and 6 and 7 are fairly close to those, making a group of four.

Q And does that appear in the pajama top reconstruction as well?

A Yes, 4 and 5 are close together, and 5-- 6 is fairly close; 7 is slightly further away but close. Do you want me to go through any others?

Q Well, if there are any others that you see there?

A There's the group 11, 12, and 13--those three are together, and they are together up in here on --from the pajama top.

The--7, 8, 9 and 10--8, 9, and 10--we have already covered 7--but they are together in a line fairly close together in both of them; and the numbers 14, 15, and 16 fall below the other groups in both of them.

MR. MURTAGH: Your Honor, at this time that concludes direct examination. Counsel may cross-examine.

THE COURT: All right.

#27
p-3

are G-1139 and G-1137.

A Her own pajama top.

Q That is the pink pajama top, is that right?

A Yes.

Q Now, at any time, did you ever attempt to take a--and we'll call it the dummy here that you were using back in 1974--this foam rubber pad?

A Yes.

Q Did you ever attempt to do this little experiment: first putting on the pink pajama top across the dummy, then putting on the blue pajama top, and then trying to put through--these skewers through it all?

A No.

Q In view of the fact that you had the picture in front of you, that shows the body was not naked above the waist but had a pink pajama top, did you ever ask anyone as to whether or not the experiment should be conducted that way, with the pajama top on?

A I possibly did. I don't recall.

Q Do you recall an answer of any sort you may have gotten?

A No, I think we didn't think it was necessary.

Q And who made that decision, if you recall--Mr. Stombaugh?

#27 p-4

A Probably.

Q Did you ever examine the pink pajama top in detail?

A No, I don't recall--I remember looking at it but I didn't examine it particularly.

Q I'm sorry, you examined it and what?

A I didn't particularly examine it myself. For what reason?

Q You have no idea, then, of the relationship of the pink pajama top to the injuries on the body, to the blue pajama top--if it has any relationship whatsoever?

A Well, I don't recall specifically. I know that there were a certain number of puncture holes through the--through her pajama top; but there again, if there more than 21 it would mean those could be caused by folding---

Q (Interposing) Would you---

MR. MURTAGH: (Interposing) The witness is not finished.

THE WITNESS: They could be caused by folding in the same manner as the other pajama top, but I didn't try to figure out how it was folded. It didn't seem to have much point.

BY MR. SEGAL:

#12 1

FURTHER PROCEEDINGS 11:05 a.m.

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

THE COURT: All right. Now, you had some further evidence?

MR. MURTAGH: Yes, sir.

MR. CRAWLEY: Your Honor, we would now like to read some articles from the Esquire Magazine.

MR. SEGAL: Your Honor, may we have the witness read it from the witness box? We can all hear it better. With his back turned, it is a little difficult.

THE COURT: Let's do it that way.

MR. CRAWLEY: The first article is entitled, "California Evil," at page 99 of Government Exhibit 139:

". . .Ramon Navarro: Dead in California. Alprentice "Bunchy" Carter: Dead in California. Robert Kennedy: Dead in California. Voityck Frykowski: Dead in California. Abigail Folger: Dead in California. Jay Sebring: Dead in California. Steven Parent: Dead in California. Sharon Tate: Dead in California. James Rector: Dead in California. Diane Linkletter: Dead in

"California. Little Bobby Hutton: Dead in California. William Lennon: Dead in California. Private Richard Bunch: Dead in California. The Girl in the Polka Dot Dress: Dead in California.

There is so much more attention to the quality of death in California--at death-styles, to dying the good death, to all-electric dying. Why is the suicide rate in San Francisco so high, asked the Time reporter. 'People kill themselves,' replied the San Franciscan, 'in the most attractive environments.'

And kill each other. Following snowbanked California 39 through the San Gabriel mountains east of L.A. to the edge of the infrared desert, you pull off the road at a service station. As the pump jockey squeegees your windshield, he asks, 'Goin' to Big Bear?' and, blankly, 'Be careful.' You wonder if somewhere between you and the horizon another Family crouches, chanting in circle, scratching another death list in the glowing dust.

Death is most attractive in California.

'I like killing people because it is more fun than killing wild game in the forest because man is the moat dangerue anamal of all to kill something gives me the most thrilling expeerence...the best part of it ia thae when I die I will be reborn in paradice and all the'

"I have killed will become my slaves I will not give you my name because you will trs to sloi down or stop my collecting of slaves for my afterlife....'

At the bottom of the letter, a circle bisected by a cross, its arms extending beyond the circle: 'This is the Zodiac speaking....'

What is the agency of this aberration--madness? drugs? or is it simply California? There are plenty of homegrown omens: Burntout hippies station themselves along Sunset Boulevard like Burma Shave signs, human husks hawking the Los Angeles Free Press to drivers who never stop. The Iron Cross Motorcycle Club, hell's angels who have taken on the mission of ending ideology, vamp on longhairs with brass knuckles. The rain falls in the hills, refuses to stop, and the mud that underpins the cantilevered houses slides. The Santa Anas, which the Indians called 'devil winds,' exhale down canyons, fanning the brush fires, making men, it is said, lazy, crazy, suicidal, criminal: The former host of Death Valley Days and straight man to a chimpanzee in Bedtime for Bonzo, governor of 16,000,000, flees [and we continue on page 100] a firetrap executive mansion."

#13
p-1

MR. CRAWLEY: (Continuing)

"The clubs slam down at Century City, cracking the skulls of demonstrators who don't run fast enough. Sirhan puts a pot of water on his hot plate for coffee, and the guard yawns and looks at his watch. Housewives quiver in apocalyptic terror over a novel, The Last Days of the Late, Great State of California, certain that the state will soon slide into the sea. The plant that spewed molten plastic on hundreds of homes takes away from Dow, the contract for manufacturing napalm. Guards at Camp Pendelton hog-tie Marine brig rats and beat them senseless. The fish float to the surface in the oil-fouled Santa Barbara Channel, and the twitching carcasses of tar-feathered birds. The San Andreas fault, which runs through some people's backyards and other people's minds, slides, and impulses race up the Richter Scale. The freaks turn---"

I am not able to read the remainder of this paragraph because of something that has been placed here; so I will skip to the next paragraph.

"Hostile vibes in California."

MR. SEGAL: Excuse me.

MR. MURTAGH: Jack, why don't you peel back the piece of tape? Mr. Crawley, would you describe for the record what you have just removed there?

#13
p-2

MR. CRAWLEY: It appears to be a paper ruler scale.

MR. MURTAGH: Scale?

MR. CRAWLEY: Yes.

BY MR. CRAWLEY:

"The freaks turn the east side of the avenue in Berkeley into a bazaar, whispering acid? grass? speed? THC? STP? mescaline? to Instamatic rubber-neckers. A storefront dancing school waits for another James Earl Ray who wants to learn the cha-cha. Smogged-in Hollywood Hills astrologers, who never see the actual stars, puzzle over their charts. Someone asks the Hell's Angels to keep order at The Rolling Stones' free concert, and they proceeded to do so by stabbing a black to man to death. A helicopter gasses a school and a hospital during the battle of People's Park. An oak-tag sign fades over one of the eyes of a dead store in Haight Street: 'Closed Due to Hostile Vibes.'

Hostile vibes in California.

One hundred twenty-two years ago men gold-rushed past the frontier, trampling each other in search of the mother lode. Those who had survived the hardships of life on the edge told newcomers this story:

'The farmer heard one day that the circus would be coming to a neighboring city, and with the "

#13
p-3

"circus would be real elephant. All his life he had heard of this fabulous beast, and the desire to see one grew in him and troubled him mightily. He set out for town with his wagon loaded with goods for the market. As he neared the town, he came upon the circus menagerie traveling toward him.

His horses reared in fright, his wagon turned over in the ditch, his eggs were smashed and he himself was battered and bruised. But he rose from the ruins triumphant.

'"A fig for the damage," he cried, "for I have seen the elephant."'

Now in 1970 the gold rush is on again. Only this time Leary's brain is the Sutter's Mill and some Californians are breaching the inward frontier, panning the tailraces of consciousness for a pinch of the precious stuff inside."

It is necessary to remove one of the ruled spaces.

MR. MURTAGH: Mr. Crawley, for the record, is there some number or identifying sign where those tags are?

MR. CRAWLEY: Yes, the one I just moved, FAD-TC, FRA 270.

MR. MURTAGH: Do you see any initials

#13
p-4

near that?

MR. CRAWLEY: Yes, but I can't read them.

MR. MURTAGH: Would it be HOM?

MR. CRAWLEY: That's right, HOM.

BY MR. CRAWLEY:

"And of course there is mental claim jumping, and of course there is psychic fool's gold. But what is that against the premonition of the mother lode? A fig for the damage: they have seen the elephant.

But if the sight of the elephant cauterizes the retina, fries the vitreous humor? If it suddenly becomes too clear, that the whole California trip is tainted with strychnine, that it's Death Valley Days for real now, and ain't no twenty-mule train gonna haul our asses out of here nohow? If it suddenly becomes clear into the heaviest tetrahydrocannabinol Sparkle-Plenty Peace Pills daylight buzz that it's bedtime for Bonzo all over the late great state of California? What then?

Suddenly the notion jells that what is going down in California might really be part of a diabolical plan that is working, that is hurtling toward its malignant culmination on the West Coast in 1970? What if this Walpurgistag of death and degradation and "

#13
o-5

"disaster suddenly resolves itself into a vision of inexpressibly painful beauty? Would not one develop, out in the Valley, up in the Hollywood HIlls, along the canyons, down the Peninsula, up the Coast, more than a passing sympathy for the Devil?

Worship Him? Suffer for Him? Die for Him? Kill for Him?

Because that is what some of them are doing out there, Satan help them. The next twenty-three pages make that clear.

'I know of several cases in which LSD has touched off psychic states of the most alarming and unpleasant kind,' writes Alan Watts, one of the first California acid voyagers. 'More than once I have invited such states under LSD by looking at images ordinarily suggestive of "the creeps"--the mandibles of spiders, and the barbs and spines of dangerous fish and insects. Yet they evoked only a sense of beauty and exuberance, for our normal projection of malice into these creatures was entirely withdrawn, so that their organs of destruction became no more evil than the teeth of a beautiful woman.'

The acid vision bends the illusory vector from good to evil into a circle. M'Naghten's Rule, a courtroom test of sanity, does not enter into it. Acid "

#13
p-6

"heads know very well the difference between right and wrong: it is the same as the difference between up and down, in and out, clockwise and counter, a direction rather than a directive. That is why the leader of the Family that is up for offing Tate, Sebring, Folger, Frykowski and Parent could be called, interchangeably, God, Satan, and Jesus by his zombies. There are few acid moralists. What is, is good; and what isn't, why that's groovy too.

Acid etches a state of mind, not a state of the Union. But though infatuation with evil is possible anywhere, only Californians could have contrived to fashion it into a life-style. So the celebration of evil has begun in California with a flair for accouterment and ceremony that will be merchandised to all of us in time, as everything Californian eventually is. Already the beautiful New York ladies of Women's Wear Daily are wearing diamond-crusted crucifixes to ward off the fiend. One only wonders how long it will be before they take to wearing them upside down.

We must even face the possibility that California has allowed itself to become a principality of the Devil, and that the rest of the country is not far behind.

To Ronald Reagan, California is Rome "

#13
p-7

"declining.

To the Black Panthers, it is Babylon.

To Michelangelo Antonioni, it is the lowest point in North America.

To the Pentecostal sects who left more than a year ago, it is Sodom and Gomorrah.

To Jake Ehrlich defending a black-killing cop, it is 'a hellhole with...hyenas living in there.'

California is the minutes of the next meeting. 'And California dreamin' is becomin' a re-a-li-tyyy,' sang Michelle and John and Cass and Denny. And if the dreamin' is a nightmare? How do we know it will not persist when we are shaken awake?

MR. CRAWLEY: The next article is on page 104, "Princess Leda's Castle in the Air."

"On Santa Monica Boulevard in West Hollywood, the manager of the Happyshop (frozen delicacies, prescriptions filled, choice wines and liquors) has hurried the Mexican sweep-up boys through closing time (good boys, really, they wear gold crosses outside their aprons), has changed quickly into his blue suit and Sacred Heart tie clasp and is now traveling fast in his Toyota because Saturday (sic) night sabbath at the Chapel of Jesus Christ of the True Believers begins in eight minutes and if he is very late there won't even be standing room. The chapel, the second floor of a poodle-grooming salon, used to be adequate enough, but this year the congregation has burgeoned, inexplicably. To everyone's horror, these newest True Believers wear neither blue suits nor tiepins, nor, indeed, ties, but flowered semitransparent shirts and curly, pageboys: on the other hand, they do not (sic) display the largest, most baroque crucifixes in the entire congregation and can quote from memory almost the entire Book of Revelation, a chapel favorite. Moreover, they set out on foot after the service into the Inferno, which is Sunset Boulevard, where, it"

#14 cks 1

#14
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"is said, they stride up and down most of the night brandishing their Bibles and shouting, "Stamp out Satan!" and "Death to the demon worshipers!" in the very faces of the demon worshipers themselves. The rest are the True Believers, of course, drive straight home with locked doors, and get inside with dispatch, barked at by their own guard dogs, because up in the Hollywood Hills, and in Benedict, Laurel and Topanga Canyons, the Satanists, warlocks and devil brides are just rubbing the sleep from their eyes, rising from their coffins, and dropping their wake-up acid caps.

Though the murder of Sharon Tate affected Los Angeles profoundly, that terror decidedly did not manifest itself full-bloomed at dawn (as certain deadly herbs are said to do) the morning the bodies were found. The Happyshop and Kuick-Karwash managers had begun noting, perhaps two full years ago, a new and even more sobering offspring of the drug culture; they had just become grudgingly accustomed to the beared, barefoot boy-girl and the wistful, ironed-hair girl-boy, when in came a ... (sic) more worrisome sort of hippie, in handmade seventeenth-century breeches, or in gold-painted eyes and rare white peacock feathers; persons with assured, mocking"

#14
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"laughter and lightly commanding airs, who requested not Gallo port but obscure, foreign Champagnes, or who drove up to the car wash not in serviceable, dented Impalas but antique silver Packards with black satin window curtains. They seemed easily able to pay, but it was this thing about them: a frightening, fancy malevolence. Then the papers began implying that marijuana, that witches' weed, scourge of the decade, was considered by many to be not only harmless but boring; that the affluent up in the hills have taken to drinking cups full of acid instead, certain chemical combinations which afford them special knowledge of Satan and the Black Arts, and that decent Christians everywhere were now prey to these new sorcerers in Bentleys and feather, who could apparently cast spells upon you if you short-changed or otherwise annoyed them.

The flower children, of course, have more sophisticated information, but their reaction to the new Hollywood is markedly similar. Lonny, a Bible salesman whom one meets Sunday morning on the Strip, and who carries a half-dozen black plastic Old Testaments and wears a gold cross embossed with symbols of Catholicism ('No, man, I'm not Catholic, never was, but I know a lot of Jews out here who"

#14
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4

"are blessing themselves pretty regularly these days'), is one of the few persons now residing within the Los Angeles County limits who does not claim to have once been a guest at the Tate-Sebring-Folger-Frykowski establishment. 'But I've been around that scene, man, cats who have given themselves up to the Lord Satan. If you sense an evil here, you are right, and I'll tell you what it is: too many people turned on to acid. If you make a habit of tripping--well, acid is so spiritual, so, uh, metaphysical, that you are going to be forced into making a choice, between opting for good, staying on a goodness or Christian trip, and tripping with the Lord Satan. That's the whole heavy thing about too many people turned on to acid: to most of them, the devil just looks groovier. Acid is incredible--I've been on one hundred and seventy-two trips now--but it shouldn't be available to everybody and anybody.'

If the California evil is just a matter of drugs, then why is he wearing the corss? He considers. 'Acid does expand the mind. I believe in powers you can't explain. And if these sick Hollywood heads are into these powers--well, I want some protection. It freaks them to see a cross--if they're wearing a cross upside down. Suppose"

"they are into black magic, weaving of spells? They can't touch you, wearing the mark of the Lord Jesus.'

He asks if I might be interested in purchasing a Bible. I ask if he knows of a local woman, the Princess, Princess Leda Amun Ra.

'Oh, wow. Her. Take care man. Wear a cross. . . .'

One sees her first dancing a salute to Satan in the Climax. An enormous private nightclub on La Cienega Boulevard, it is mecca for young persons with visible wealth but invisible sources of income, Hollywood's anonymous seekers-after-lasciviousness (as opposed to patrons of The Factory, who are movie stars and tourists). Climax members lie about on velveteen divans solemnly viewing antique vampire films, or making convulsive movements before the twenty-foot Satan's head, its foolish eyes painted with Day-Glo. The ambience is so conscientiously wanton that, after twenty minutes, one prepares to leave. Then she materializes, dancing alone, as is her habit. One first supposes that she has been hired by the management to lend some credibility to the place; amid so much papier-mache debauchery, she is overwhelmingly authentic."

#14
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#14
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"Her body is covered with black feathers, which seem to grow from her chalk-white skin; her bare breasts are loosely held with gold fishnet. Her hair is blacker than the feathers; her huge mad eyes are ringed with black smudges of sleeplessness, but bright as if lit from behind with bulbs."

MR. CRAWLEY: Here, we continue on page 105: "Her dance is a definition of lust. She is Salome undulating with the severed head. She is the Eumenides, and Theda Bara; she is totally magnificient.

My companion, a native, knows of her; yes, everyone knows of her. In subterranean Hollywood, she is the acid goddess, the Princess Leda Amun Ra, a legend, supposedly a witch. She lives in a sort of castle somewhere in the hills. Her chariot is said to be a golden Jaguar. Possibly she is thirty, but in daylight, she looks twenty-one.

The young man sitting at the table near her, the Prince Valiant in red tights and swashbuckler boots, with a sword in a scabbard at his hip, and a dueling shirt open to expose his carefully defined pectoral muscles, is her King, the Young King of her mythic world. One of the tales that surround him is that he owns a gold Jaguar, with a television set on its dashboard, so that he may view old movies as he drives. Supposedly, he is an astrologist who commands thousand-dollar fees for a basic reading. No one has the vaguest idea where they come from, or what their real names are; in a city which avoids last names, they do not even have first ones. They are simply the Princess and the King:"

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"their titles are undisputed.

One asks a waiter to ask her to join our table for a soda (the Climax serves no liquor). He approaches her tremulously and waits; when she is ready, she listens to him, then stares over at us and whispers to him briefly. He reports that, instead, she would like us to join her at her castle for a little post-midnight gathering; nothing spectacular, apparently, it is only Tuesday and 'she says to tell you she has been in, uh, a heavy trance since Saturday noon and is a little tired. To get there, she said, you go up La Cienega and....' By the time my native guide has understood the directions, shouted over the music, the King's table is empty, and both he and the castle (sic) have vanished.

The castle is actually a sort of mosque, white stone, not really large; but it is so perfectly placed upon its hill that it appears to float above Hollywood, tenuously anchored: a house in the Casbah as it is imagined by persons who have read about, but not actually visited Tangier. The narrow windows are covered by rococo shutters, hand-carved. There is no moat, but there is a high cement wall and an iron gate. Behind the house is a dank, foul-smelling garden, choked with untended tropical trees, guarded by a stone Satan's head,"

"with moss hanging from jowls and eye sockets.

Our knock is unanswered; we try the knob, which is unlocked. Facing us in the vaulted foyer, lit with a dim amber spot, a round dais, on which wait five tall wooden dolls, dressed in shrouds; their skin looks decayed, their eyes alert. To the right, a long medieval dining room; beyond it, a circular alcove, containing another dais. This one supports a four-foot wooden coffin. In it, resting uneasily on the remains of rotting hyacinths, a doll looking like an infant corpse of, perhaps, a four-year-old of indeterminate sex. Its face is shockingly convulsed; the little teeth have bitten the lower lip almost in two, drawing blood apparently long-dried. It wears a plain linen nightgown and a tiny, blood-splattered nightcap, with embroidered frills.

Turning sharply away, one notices a young man who has apparently been standing behind us, in the alcove entrance, for some time. His white crepe jumpsuit is unzipped from the neck to the fly, to expose a shadow of pubic hair. On his hairless chest is tattooed, in red, TRANSPLANT THIS HEART. His smile is oddly fixed, as though he had slapped it there hours ago, in the morning, and then forgotten it, like a piece of tissue on a shaving cut."

" 'Welcome,' he says gently, exposing broken teeth. 'Welcome to the temple.' There is something curiously insinuating in his pleasant voice, an unspoken threat. 'The Princess is preparing herself, she will be down to receive you soon. There is no smoking of cigarettes in the temple.' Obligingly, he reaches out and takes the cigarette I have lit; it disappears, apparently into his sleeve. 'Otherwise, you are at liberty. Go here, go there, go everywhere. Go out, come back; the doors of the temple are never locked.'

Never? 'Why would a god need to lock her doors?' We move into the living room, where the music seems to be loudest: Daphnis and Chloe, from multiple, unseen speakers. Above a sofa of genuine tiger skins, a huge red damask canopy hovers like an apathetic fate. A long, low table holds perhaps fifty lighted candles, attached to the table's surface by a sea of melted wax. In the huge fireplace, gas flames char but never quite consume a large toy replica of a Jaguar sedan. A dusty love seat is occupied by another doll, a plaster gentlewoman in silks and a Regency wig, one stiff, pale hand raised to her bleeding mouth. Near the waxy table, a ponderous damask throne; the King half-reclines on it, his eyes dilated, distant."

"The other guests--there are at least a dozen--move through the rooms as if halfheartedly rehearsing a choreographic pattern that has not been made quite clear to them: a tall, pathetically thin girl, nearly nude, with a helmet of milkweed-pod hair; a dark lovely girl who chatters incessantly to herself; a black boy in green leather pants, who wears two chains, one holding a silver pentagram, or magus medallion, the other holding a silver crucifix on which an agonized Christ hangs nailed upside down. They eye the newcomers, strangers to the temple, with interest; and when I wander into the dining room, they follow silently, and surround me in a stifling little triangle. They all smile. The black boy has a perfect silver star for a left front molar.

'You have the time, man?' asks the blond girl, grabbing one's wrist to see if there is a watch. 'You must be a Capricorn, because your eyebrows fluff out at the ends,' the dark girl says suddenly.

'You a native of Chicago, man?' says the colored boy loudly, grinning. 'Well, whether you are or you ain't, we are going to do a number on you."

MR. SMITH: Your Honor, may we approach the Bench while he is turning the page?

THE COURT: Yes.

BENCH CONFERENCE

MR. SMITH: We just want to, again, raise the issue of relevance. I mean, it just, it never connects up in any way to the case. It is just way out, the most out left field stuff I have ever heard in my life.

THE COURT: Well, I think you are too far into it to raise it again. The thing came in without OBJECTION and you are down this far. I am just going to let him go on. If it is not relevant, I will instruct the jury on it, but I am not going to do anything about it at this stage.

MR. SMITH: Well, Judge, let me remind you that we OBJECTED to it originally, and we thought it was going to be relevant because they said it was. We kept listening to see if it would be and it never was.

MR. MURTAGH: Well, let me say for the record, I think the relevance is apparent. It is the imagery, the "acid," "ring," "groovey," "hippies," doing a number, a "black," a "blond," "two males." I think it speaks for itself.

THE COURT: Go ahead.

(Bench Conference--terminated.)

MR. CRAWLEY: Continuing on page 107.

#16
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"'Number, number!' they all shout. 'Listen carefully!' They speak simultaneously, thus:

--'The hands of your watch say twelve and two, the little hand on the former, the big one on the latter, the second hand is sweeping past six, now tell me, quick, without looking, what's the time?'

--'The eyebrows of Capricorn always fluff out, the nature of Capricorn tends to cop out, but you're safe if your rising sign's Leo or Cancer. Come on, man, tell me your rising sign!'

--'You come from Chi, where my mama did washing, and was often beat up by snotty ofays. Do you deny whipping my mother?'

Somehow, they contrive to come to the ends of their separate speeches at the same moment, and stand glaring, silently demanding their answers. Of course it is ridiculous. One attempts a casual smile. Perhaps it is their physical presence that is so unnerving. We have backed up into the alcove, against the dais with the coffin.

'Try just answering the questions one at a time, beginning with the first, progressing to the"

#16
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"last,' the Negro demands, leaning close. Then they begin to laugh, uncontrollably, on and on. The laughter does not help. Feigning laughter, one wedges between them, with difficulty--they do not budge--and through the dining room into the hall. Somewhere beyond the top of the central stairway, a rich contralto voice is singing wordlessly. The King is halfway up the stairs; one follows him, into the Princess' bedchamber.

It cannot be happening, it cannot be taking place. The boudoir, painted predominantly black, is large, but the bed is almost too large for it--wide as two Y.W.C.A. rooms side by side, canopied in black bombazine. In the bed, the Princess Leda Amun Ra, doe naked, her skin dusted with pumice, or volcanic ash. She lies on her back, her legs splayed. Her thighs are firm as a girl's. Between her thighs is a full-grown black swan, its neck arched like a cobra's, its yellow eyes fixed, amazed. It makes one harsh, comic noise, like an echo from a rain forest.

'I will conceive,' the Princess shouts, heaving joyously. Half a dozen people have come into the room by now. No one else makes a sound. No one laughs; no one even smiles."

#16
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"'Swan or no swan, these people, man, are dangerous.' The girl, a singer of some note, asks not to be identified, 'Because I am not about to make enemies in that crowd.' We are eating salads in The Source, a health-food bar on the Strip, which, like the temple, forbids smoking. The restaurant is crowded, and she speaks softly, glancing around to see who is listening. 'I've studied the occult in depth, as a hobby. I suspect Leda's power is spelled L-S-D. At the same time--well, don't quote me so I could be identified. I know the scene at the temple. I don't go there anymore, at least not alone.'

But nobody has actually been . . . hurt there, have they?

She smiles, somewhat patronizingly, and says it, the expected: 'Nobody had actually been hurt at Sharon Tate's. Listen, man, I could tell you about another place. This party, about eight months ago, where you were greeted at the door with a glass of their special hallucinogenic formula: acids and a pinch of strychnine. Rat poison. Makes the trip very physical. You went in and there were three altars. On two of them, these boys were tied with leather thongs. They were sobbing. These two"

#16
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4

"faggots dressed as nuns--one had a goatee--were beating them with big black rosaries. On the middle altar there was a very young girl. This guy wearing a goat's head had crushed a live frog on her privates. When I came in, he had just cut a little cross on her stomach; not deep, but the party had just started. I don't know how deep the cuts got, because, man, I split from there like Wonder Woman. Okay, that was one California party, and I've been to them all. Very few heads are that messed up. So far. But that's where it's all going. Of course it's acid. First you're Christ, then you're Lord of the Underworld. Ken Kesey finally saw what would happen as a result of daily tripping. Even Leary has begun to dig it. . . .'

I asked why she thinks demons seem to abound in California, and not in New York, where just as much acid is available.

'Maybe it's the San Andreas fault. Maybe it's the goddamned sun, always hanging in there, like somebody reading over your shoulder.' She laughs, trying to swallow a chunk of avocado, and gestures with her fork. 'New York is a together place. You've got to take care of business, or get out. People come here purposely to freak. They do things here"

#16
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5

"they'd never have dreamed of back in St. Paul or somewhere. They come with the idea that it's one long Malibu Beach. They find out that what it is is one big freeway smashup, and they can't get it together. This is Leisureland, they're supposed to be grooving, and they just keep looking for new ways to groove, until. . . .'

When the waitres has left the check, she says, 'You want another scary thought? Well, L.A.'s major export is style: life-styles. It's very good at developing externals and getting the rest of the country interested in them. What's happening here today, that's what will be very big in Manhattan in, say, eighteen months. Scary.'

Does she know anyone whom she believes to be a bona fide witch? She laughs. 'Sure, a couple, but they loathe publicity. And they're about as sinister as Donald Duck. They've always been here. They're nice, harmless people who got disillusioned with churches and started reading the Book of the Dead at home. And none of them are heads! They get their kicks from prescribed ritual--spreading rings of salt, and like that. Acid freaks make up their own rituals as they go along. That's their danger.'

But if I must meet a magus; okay, she"

#16
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6

"does know somebody who knows Samson De Brier, believed to be a powerful warlock. Four phone calls, and an appointment is made. It turns out that his home is quite close to Leda's; and while it is much smaller, it is nearly as remarkable, but in a significantly different way: the temple is a monument to California's new directions; the sanctuary of Samson De Brier is a gentle junkyard, a repository of rotting portiers, chipped gilt frames, Regency ball gowns on wooden dress dummies, disintegrating first editions stack on floors, tables and love seats; of dusty whorehouse mirrors; of gold-plated peacocks with zircon wings; of photographs of Gide, who was Samson's closet companion; of death masks, including one of James Dean, with rouged cheeks and lips, as if it had been executed by a mediocre undertaker; and of Samson De Brier himself, sometimes indistinguishable from his surroundings, a tiny, tremulous man of perhaps seventy-five, swathed in black, with grey bangs and wet, vulnerable eyes.

'See here,' he says cordially, rummaging in a box of tintypes. 'Here I am in Paris, with Anais Nin. Isn't that a remarkable likeness?'

'Yes, it is. Could you explain, at all, about your powers?'"

#16
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7

"'Umm. I suppose you want to look at talismans, and amulets. No serious witch would discuss those things to strangers.'

Do you use talismans and amulets?

'Um , I became aware of my powers at a very early age. I was about twelve.'

How did you become aware of them?

'Ummmm. Powers are dissipated if they are defined or made public. But I have always used my powers as a force of good. There are both good and evil witches. . . .'

But don't the words 'witch' and 'warlock' imply the worship of Satan, the denial of Christ? And if Satan is an evil force. . . .

'I don't recognize the difference between good and evil. Here, let me show you this: a cigarette holder that belonged to Valentino."

MR. CRAWLEY: Continuing on on page 109.

"See the lovely red lacquer and the serpent curling around it?'

You're acquainted with the Princess Leda Amun. . . .

'Oh, Lord! You're seeing her? Well, I mean, I wouldn't want to be quoted as saying anything"

#16
cks
8

"against her. I admire her. . . daring. But you see, you've got to understand the difference between true witches, and people who take drugs. For instance, the murder. No serious witch could have done such a thing as that. . . .'

The Beverly Hills policeman dissents. He is not over thirty; he has the nose, hair and jaw of Edward Kennedy. His eyes are subtly, perpetually frightened. As he talks, he bites incessantly at his thumbnail. I have begun by asking him only about a possible increase in crimes of special or elaborate violence, but he isn't fooled. 'Friend, I can state this as a fact, and you can quote me, this used to be a nice town, Los Angeles, and then you had this influx of Satanist dope fiends, and now you don't like to go out alone anymore.'

I was speaking to him several weeks before arrests were made in the Tate case, and the policeman said, 'When they find the killer, they'll find him to be a doper and a hellhound. They're one and the same thing. What the eastern papers are calling our witches, they're our drug takers. There was a case back in May, this fellow, a war veteran, he'd built himself this cross out of planks, and then leaned it on a telephone pole and chained himself"

"to it, and he had stayed there for days. . . . Now, picture it--the mess he made. Lord almighty. Of course, he was questioned.' Questioned? 'About the murder!' Why, exactly?

#16 cks 9

'Dope, friend. People like him are always on dope, and if he done that to himself, what might he've done to her. . . .'

Her. To most of southern California, she is now simply Sharon (as to Wilkes Barre, Mary Jo Kopechne is just plain Mary Jo). Like all martyrs, her talent was an excellence at dying. Dead, she is meaningful, serviceable to all, the first bona fide martyr to the evils of the New Hollywood (as opposed to Marilyn and Judy, martyrs to the old).

'Sharon,' says Leda, 'will eventually speak to me of the terror.' I have come to the castle in the afternoon, to talk to her alone. One somehow expects to find her singular house less singular by day, but that is not the case. It still has the look of something imagined during a high fever. Inside, where the sun never penetrates, the melting candles, still lit, continue to ooze across the tabletop and the Princess waits on the throne, wrapped in white peacock feathers, her long hair secured by a silver uraeus, the sacred serpent of Egyptian divinities."

#16
cks
10

"Her eyes are still formidable, but her lovely face is ashen, and she is clawing furiously at her onyx rings. There is unrest in the temple. A cataclysm has occurred. The black swan has died.

Of exhaustion?

Actually, one says nothing, and waits. 'The bird was not sacrificed,' she announces, as if issuing a decree, 'though I must soon sacrifice a black swan. I have already sacrificed a peacock. The flesh, feathers and blood of the peacock are sacred to me.'

Any particular reason? She glares. 'Because I am Leda, Leda Amun Ra, and these are my sacred relics.' Well, uh, how, exactly, was the peacock sacrificed? She smiles distantly, ignoring the question. One longs to light a cigarette. Instead, one asks about the significance of her names, the first Greek, the last two Egyptian. Again she smiles, and tilts her head regally. Then what about the name on her birth certificate? One means, to whom is the telephone bill addressed?

'I have no telephone bill, because I have no telephone. When I wish to communicate with a disciple, I summon him by thought. I have no birth certificate. I was reborn here, in this temple, two years ago, by your measurement of time. Reborn!"

#17
p-1

MR. CRAWLEY:

"And did this rebirth have any connection with drugs? She is silent, somber; then, very abruptly, she throws back her head and guffaws, a rich, coarse, comfortable laugh, and says, as if delivering a ribald punch line, 'What else, baby? Would you believe, darling, that three years ago the Princess Leda was a homemaker? A Clairol-blonded housefrau? A blonde who wasn't having any fun?' Grinning, she winks broadly. I am unable to wink, and no other response seems adequate. Where did she live as a housefrau? She only laughs again; but her inflection, when not regal or ribald, is solid, educated Middle America, that of a thoughtful, protected girl, the daughter of an Indiana scholar.

She is drinking from a silver cup: 'My private hallucinatory formula. I cannot reveal it. Yes, dear, I drop acid daily. I prayed for a special formula of drugs to be brought to me, to further open my mind, and within fourteen hours, a boy--uh, this Hollywood dealer--arrived with it at the door of my temple.' I ask again about her names. She seems momentarily puzzled. 'My soul...came to me, and entered me in the form of a swan. In a previous manifestation, you see, I was Leda! My legend has lived on, through the ages. But first, before all other things, I was-- "

#17
p-2

"--am--Amun Ra, the sun god, the god of Thebes. What you see sitting here before you is simply Amun Ra in his present mortal form. I have taken many forms in many ages. I have been both perfect male and perfect female. I have reason to believe that I was a high priest in Atlantis. In a later manifestation, I was Sarah Bernhardt. The book about me, by that woman, what's her name, Cornelia Skinner--full of misrepresentations! But in the beginning I was the sun god. I have only recently understood that the sun takes energy from man, and transmits it to the moon. The moon then refines it and gives it back.'

She glances toward the hall and claps her hands, adding, as if parenthetically, 'I was also Nephthys, sister of Isis and Osiris. During that manifestation, I learned the ancient Egyptian recipe for alligator beer.' A corpulent Negro boy with a silver dog's leash around his neck steps quickly in to the throne and kneels to kiss her bare, rather soiled left foot. He whispers to her, then retreats rapidly. The Princess' eyes darken. 'The swan's grave is not yet properly dug. My slave recalls me from other lives; from the eighteenth Egyptian dynasty, when I ruled Thebes.' A sudden, coarse, familiar laugh. 'I turned him onto acid. He lives in a dungeon under the house and eats

#17
p-3

"raw chuck steak.' Then, with cool dignity: 'But I'm considering selling him. He persists in thinking of me as his social equal, and of course I can not accept that. There is so little sense of...propriety these days. I have also considered human sacrifice. I feel more and more, each day, that it is somehow required of me, to consummate my rebirth.'

Have you considered the legal repercussions?

She twists the onyx ring, annoyed. 'Listen, I don't think I'm getting through to you, baby! You must understand! I am totally evolved spiritually! Why, baby, should I fear the law? I mean, how can the fuzz hassle a god?'

She is on her feet, pacing, sipping from her goblet. 'This town is full of stenographers and file clerks trying to call up spirits. The fashionable one this year is Sharon, naturally. Those stupid assholes! I am the manifestation of a deity; I am able both to capture and to receive souls. No, I can't explain how, because I don't know myself. But I swear to you, the norning that Sharon died, I got up early, which I never do, and I began rolling on the floor, screaming in pain. Wolf teeth biting into my guts! Sharon had been here just once, while alive, brought here, incidentally, by the worst degenerate homocidal homosexual in the "

"county. She was very sweet and gentle, though; she followed me around this house all evening, and she said, over and over, I swear, "I'm going to come back here in another life, I'm going--" ' "--and then to page 181.

(Counsel confer.)

MR. MURTAGH: Your Honor, in the interest of time, there are certain references that we can either read into the record as counsel desires, or read the entire article.

THE COURT: If there is anything you can do to shorten it, I think it would be welcomed by everybody.

MR. MURTAGH: Your Honor, Mr. Crawley will just read the page reference and the words in italics.

THE COURT: All right.

MR. CRAWLEY: From page 112, article entitled, "The Art of Evil": ". . .The moaning cross, at left, can be placed outside the house; it wards off evil influences, especially during rainy periods."

Again, on page 112, "Blood doesn't mean death; it means life...even ice can be made to appear bleed... Humans enter the other four...dummies (sic)."

And further from page 112, "Suddenly, hatchets decapitate the dummies and flexible plastic poles wave bloody heads about, spattering walls and ceilings."

#17
p-5

And then to page 115, "Banality of the New Evil." "The six or seven people have taken mescaline several hours earlier...a bearded man with long blond hair...The others nod but do not speak...a thin blond girl...the young blond...a candle burning by a hearth... a kitchen knife carelessly left on a table can become ominous symbols of impending doom to people high on mescaline...mescaline engenders bizarre frictions."

Also from page 115, "...Terror sends people flying to their telephones...murderers of Sharon Tate mutilated the victims grostesquely."

Then, from page 116, "On the night Sharon Tate was murdered, someone is said to have smeared the word PIG on the wall in the victims' blood."

And another reference, "The pale blond starlet gasps...the blond girl stares...He is dressed in a black satin robe...a retinue of four...faded jeans... the blond hair...catches the erratic light..."

Also from page 116, "...The street people clustered three and four to a block...First time I ever saw bunny rabbits hassling the pigs."

MR. MURTAGH: Your Honor, at this time that concludes the reading of the Esquire magazine into evidence.

#2
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1

THE COURT: All right, I understand the Government has one more series of exhibits to introduce.

MR. MURTAGH: Yes, Your Honor. Your Honor, at this time, the Government would move in exhibits previously marked--Government 1147, which is a 14 Stylex-brand disposable hypodermic syringes with needles which were removed from the linen closet in the hallway of the MacDonald quarters; Government Exhibit 1148, eight boxes, each of them containing 12 23-gauge hypodermic needles, boxes in foil wrappers also removed from the linen closet; Government Exhibit 1149, which is 19 surgical knife blades, each containing a foil wrapper bearing the name Sterry-Sharpes and each marked for identification, also removed from the linen closet.

(Government Exhibit Nos. 1147, 1148, and 1149 were received in evidence.)

MR. BLACKBURN: Your Honor, that concludes the evidence for the Government.

THE COURT: The Government rests?

MR. BLACKBURN: Yes, sir.

THE COURT: Any evidence for the Defendant?

MR. SEGAL: Yes, Your Honor. There are

Secondly, we have here, under subpoena, the parents of Helena Stoeckley. We have been trying to locate her. In our effort to locate her, which has been futile up until now, we have subpoenaed them as to their knowledge of her whereabouts.

I am not particularly anxious to make them do necessarily all that explanation about what they don't know about their daughter necessarily in front of the crowd. I just have a feeling, having talked to them--on the other hand, I do need to put their testimony of record either before or after the luncheon break as to their knowledge or lack of knowledge of her whereabouts because, if we cannot find her, after such a diligent search, we will seek to have her deemed unavailable for the purpose of various 800 rules.

I only want some guidance, Your Honor, as to how you would think best we should proceed to take their testimony--certainly not done in the presence of the jury, I would think. That is a preliminary foundational matter Your Honor has to rule on.

THE COURT: You say you don't want the press to hear it either?

MR. SEGAL: I don't care. It is their feelings. I don't care, Your Honor. Probably it would be better if the world heard about it. Maybe somebody

would go out and find her.

MR. BLACKBURN: Your Honor, may I respond to that? I gave Wade this morning at 8:30 the newest address which we had. It may be that all of this is rendered academic if they do find her.

#11 cks 9

MR. SEGAL: We have someone working on that. I would say there is some difficulty with the address that was given. There is some problem with whether that number exists. We are working on it. All I want to say is that we have an obligation to make a record as to our efforts.

One of them is, of course, we have made repeated efforts at her home, and we need to preserve that, and I am only asking some guidance. As a matter of fact, Your Honor, I don't care whether we do it in open court. I don't care if we do it in an informal session where we show up a few minutes early or later.

I am just asking for the Court to give me some direction, but I must do it. I want to release these people when we are through with them so that they can go back to their home.

THE COURT: How long will it take you to produce that evidence?

MR. SEGAL: I think five or six minutes questioning. They say they have not seen her

but once in months and where they thought she was or give us the address--and a couple of questions of whether they have sent her mail or money some places.

MR. MURTAGH: Your Honor, it would seem that whether the parents know where she is or not is irrelevant as to whether the Defense has been able to locate her and serve her with a subpoena.

MR. SEGAL: That is not our whole problem.

THE COURT: Well, now what he wants me to do--he wants me to do for him what I have just done for you. You want to accommodate your psychiatrists; he wants to accommodate two witnesses.

MR. MURTAGH: We have no problem with the accommodation of the witnesses, Judge.

MR. SEGAL: I might say, by the way, the only reason they are here is because that is the address that the Government gave us with their list three days before trial which is her parents' address. That is why they are being brought here.

MR. MURTAGH: That is the last place I saw her, Judge--was her parents' address.

THE COURT: Well, is this woman under subpoena?

MR. MURTAGH: Not by us.

#11
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11

THE COURT: Why not?

MR. MURTAGH: Judge, she can't testify to anything. She thinks she was involved and that's it.

THE COURT: But you have been aware for five years that the Defendant was going to try to get her testimony in if she was not available.

MR. BLACKBURN: We have been trying to locate her. Because of that very reason, we are not going to stand up and argue we cannot locate her and not have her in the trial. We know that two weeks ago--because Wade himself remarked to me a couple of days ago that she was in Dorothea Dix Hospital at some time.

She simply moves around. We had the FBI looking most of last week trying to locate her solely for this reason. In other words, a subpoena issued maybe three months ago might not have helped because God knows where she is recently.

MR. SEGAL: I don't think anybody is hiding her out. I think she is a difficult witness to find. There is no question about it. I think the address we had been given in '75 and '79 was her parents' address; that is the best anybody has.

We have her brother's address now. We have been up to his home. She's been in and out of there. All I want to do is simply--I think we have to make

BY MR. SMITH:

Q Dr. Guinn, if you will, describe for the Court and the jury the method you used to analyze the samples you received by the Defense in this case.

#17 ks 6

A Yes; well, they are handled much like any types of physical evidence are in criminal investigations. The first thing that you do is to look at the samples, being very careful to look at them just one at a time so there is no possibility of mixing them up or anything--look at them one at a time with just some magnification that they are solid samples to see if they appear to be what they are supposed to be and they don't appear to be obviously dirty or muddy or whatever so you get some general information of the condition.

The next thing that you do with solid samples that can very well have surface contamination--you don't know what's--maybe people have picked them up with their fingers, for example, which will put some oil and some salt on them right away--and they may have picked up dust on the surface, so you go about to clean them--clean them in a way that will clean off external surface-type contamination but not run the risk of actually dissolving out anything that's inside.

In this particular case, I used the same technique that we use on hair samples which are when

they are involved in criminal cases, and this is alternate washings with very high purity water and very high purity acetone--the water taking away water-soluble things like salt; the acetone taking away oily or organic materials--and at the same time the particles are not taken away.

#17
cks
7

After you have cleaned the sample, then, of course, they have to be dried and, since some things are sensitive to temperature, you usually air dry them just at room temperature in a--depending on the material--in a dust-free location and then you have to weigh the samples on an analytical balance so you know how much you are dealing with, and finally, put it in a little, specially cleaned, polyethylene container which is the one that goes into the reactor.

Q All right, continuing, if you will, describing what you did in this case, tell us what you did next.

A The first thing I did with these samples, after preparing them already for irradiation, I gave each of them--I did these one at a time now--gave each of them a one minute--60 second--irradiation in the what's called the pneumatic tube, the high speed tube there, position in the reactor. After the sample came back out, after its irradiation, I opened the vial,

transferred it to a fresh vial because, even fairly pure polyethylene has some impurities in it and I didn't want to be measuring those--I wanted to measure what is in the sample--so each one was then transferred to a fresh container, already labeled, then put into--

#17
cks
8

and that was one minute allowed for that--then put in the counter that I showed and counted it for one minute, and the spectrum was stored.

The next sample was treated the same way--went right down the series.

BY MR. SMITH:

Q Now, Dr. Guinn, you indicated that it took, I believe you said one minute to get the samples out of the reactor before you started counting them; is that correct?

A It didn't take--it only took three seconds to get it out, but we deliberately allowed one minute of decay to also give time to transfer it to the fresh container.

Q Will you describe what you mean by the word "decay"?

A Yes. All the radio isotopes--radioactive isotopes--are decaying. That is, they are emitting radiation and changing from one isotope to another in the process, so while you are looking at them, they are disappearing. Different isotopes disappear at tremendously different rates. There are some radio isotopes that have what we call half-lives of millions of years. In other words, it might take a million years for half of them to have gone away by decay. There are others that we deal with that will decay away in just a matter of seconds. One of the things that I measured in these samples was silver. In the radioactive silver that we measured, it has a half-live of 24.4 seconds, so you have to move fairly

quickly or else it is all gone.

Q Would it be fair to say then, Dr. Guinn, that if you don't move quickly, you will lose maybe some of the elements or at least evidence of some of the elements which could be present in the sample?

A Yes. Whenever you are analyzing samples where you are trying to find as many elements as possible and which is often the case like hair analyses and so on, it is essential that you use conditions where you work quickly so that you see those elements that only form the short-lived isotopes. Then afterwards, after those are all gone, then you can re-irradiate the samples but now for a longer period of time so that you build up more of the long-lived things and then you deliberately wait a longer time like an hour maybe so that all these short-lived things that you have already looked at will go away so they don't clutter up the spectrum, and then you count for a longer period of time and then you may count them again a day later and again a week later. In this way, you see more and more elements.

Q Yes. I interrupted your description. I believe you have indicated that you irradiate the samples for a minute and then retrieve them from the reactor. What did you do next?

A Well, during the one-minute period where we transferred them to a fresh container, then we were ready to start the count. Then, each was counted for one minute and the data stored while we went ahead with the next one.

Q What did you do next?

A Then, as soon as I had gone through the whole series, then I took the data for each of them and searched it. The way we do that--on the spectrometer, I showed there was an oscilloscope where you can see the whole spectrum there with peaks superimposed on it now with a curving background but various size peaks at different locations, but then what you do, you can expand that scale electronically so it is like stretching it way out and then you just start at one end and you search through it with an illuminated period, and as soon as you come to a peak, you see it now spread out--you can actually see the shape of the peak--and then through the computer, you just say what is the energy of this peak and it prints it out for you. That tells you what the radio isotope is and you go ahead and look for the next peak.

What we did here is just go through--I just went through and searched for all of the peaks that I could find and identified them all and then printed out

the whole region, so we have the numerical values to work with--data--numerical data.

Q After that, would you state whether or not you irradiated the samples again?

A Yes. Actually, the irradiations were done on July 10th--first, the short irradiation and then a few hours later, a one-hour irradiation this time in that rotating rack so we could put them all in at the same time instead of doing one at the time. They were irradiated then for one hour this time instead of just a minute and then deliberately allowed to decay for one hour and again transferring them to a fresh container. Then, each sample was counted for--I think the first time was a one-minute count again because they were fairly accurate and the data obtained and stored the same way.

Then, I counted them again the following day so they got roughly 24 hours decay--counting them a longer period this time because they weren't so radioactive now and got all of that data. Then, finally, a week later--actually, it was eight days after the activation, I counted them again for a longer period of time yet and processed the data the same way.

Q Yes, sir. Dr. Guinn, you used the word

15
-18

"exemplar" from time to time. What does the word "exemplar" mean?

A The way it is used in this connotation usually means comparison samples. You would want to compare evidence samples with some other kinds of samples of known origin. You knew who had manufactured it, let's say, or in the case of natural materials, you know for sure that it was removed from somebody--some particular person's head--to compare with the unknown ones which perhaps were associated with the scene of the crime.

Q All right, sir, so would it be true then that you used two kinds of samples--one being evidence and the other being an exemplar to compare the others with?

A Yes, sir. There were actually eight exemplar samples and there were three evidence samples.

Q Yes, sir. Now, Dr. Guinn, would it be a fair statement if I said that the more elements you find in the samples, the better chance there would be that you could make a good comparison?

Q Well, it depends on what you mean by a "good comparison." If you are trying to establish that the, let's say the evidence samples, had the same origin, let's say we are talking here about manufacturing

origin--that they really were manufactured by the same manufacturer as the exemplars and in the same production run, et cetera, then, it doesn't do much good to just measure a few elements because you might find many different manufacturers would have about that much of this element or that element; but the more elements that you can detect and measure, the less likely or less probable is it that two different sources could magically turn out with just almost indistinguishable concentrations of all these elements.

Q Dr. Guinn, how many elements did you find in the evidence samples?

A I think I found 11. I can double check that. Eleven elements, yes, sir.

Q How many elements did you find in the exemplar? That is, the samples that you were comparing the evidence samples with.

A Ten of those 11, I found in those also.

Q Now, did you record any numbers that would help us to understand the concentrations of those elements?

A Yes, because it is not a significant thing just to say that I detected this element in this sample and the same element in this one. You might have 100 times as much in this one as this one and that

is equally important. You must measure the concentrations because if they really had a common origin, they will not only show the same elements, but they will also show pretty closely the same concentrations.

Q How do you express concentrations? By what words do you use to express that?

A Well, I think the most common way for most things--of course, if you are dealing with higher concentrations, it would be to record them in percent--weight percent--and say this thing is three percent or 4.2 percent or whatever it is. Here, the concentrations, in most instances, are much lower than that. We can see things that are very low. In the common unit of measurement, there are parts per million by weight. One part per million means that you have one part in a million parts by weight of the overall material, so a part per million is the same as .00001 of one percent. It is .00001 percent. That is one part per million.

Q Directing your attention, Dr. Guinn, to the evidence samples first, what elements did you find in the evidence samples?

A In the evidence samples -- sodium, magnesium, aluminum, sulphur, chlorine, calcium, manganeze, copper, zinc, silver, and I will say gold although it is right

#19
p-1

on the borderline of detection.

Q And what elements did you find in the exemplar?

A Exactly the same except there was no silver detectable, and again the gold was right on the borderline of detection. It was there but you couldn't measure it accurately--but no silver. I could not find any silver in any of the exemplar samples.

Q In comparing those samples, Dr. Guinn, the exemplars in the evidence, are there any particular elements that you feel you could express better by the use of a chart; that is, to show the differences between the exemplars and the evidence?

A Well, one could take the numbers that I submitted in my report and show them on a drawing. Some on these boards, for example, might be a little easier than just talking about the numbers, yes.

Q I wonder, Dr. Guinn, if you would then come down from the witness stand and go over to the easel. May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. SMITH:

Q Using any kind of marker that you may have with you that you think would be helpful, and show the

#19
p-2

jury the differences in any of the elements that you found in the exemplars and the evidence which you think would be useful to the jury--that is, in seeing the difference?

A All right, fine. Well, I will pick one of these, which happens to be the first one on the list there: sodium, a very--relatively common element, and so you do see it in lots of things.

Q If you could speak a little more loudly, please, Dr. Guinn?

A All right. It is a little hard for me to print with this thing wobbling, but if you can see this all right, I am just going to show you what the numbers look like for the element sodium.

Now, in this scale here I am just going to plot parts per million--PPM--of sodium found in the exemplar samples.I am just going to give you the average value with the--showing somewhat the spread of the value, since not every sample is exactly the same.

And the exemplar samples--let's see--I'll have to put a scale on here. Let's see, can I do it this way: if this is 100, 200, 300, 400, 500.

You probably can't read back there, but I'll point them out a little better. If we put a scale this way, going from zero parts per million to 500, we

#19
p-3

look at the exemplar samples. They average 114 right here; but there was a spread of values, plus or minus about 21, so that would take it up to about 135, and down to about 90 something here.

So we can say that essentially all or most of the exemplars--these are the exemplar samples--fell in this range here.

Now, the three evidence samples that I also analyzed for sodium--they also showed sodium, but the mean value here--average value--was 327, about here; but more spread in those values, plus or minus 113, so that would take this one down to about 220.

I will have to show it as a broad distribution here, and up to about 400 something here. They showed a wider spread of values.

Q And that is the evidence samples?

A These are the evidence samples.

Q Is there any other element that you think maybe you could select that would illustrate to the jury the difference in the concentrations of elements in the evidence in the exemplars?

A Yes, I'll put another one on; but let me just point out here that there are some elements where when you do exactly what I did here--just readjusting the scale because it is for a different element--the two

:19
p-4

distributions overlap with one another. There is no gap in between them.

What that really means is they are very closely the same, and we really can't say whether they are different and the same--different or the same--they are so close together.

But when there is a sizable gap in between, you can say there is a very measurable difference between this one and this one.

The values, by the way--the mean one here--was 114; and this was 327, something two-and-a-half or so times that.

All right, I will take another one that shows a sizable difference here. Magnesium would be another one you could use. I won't do this for all of them, so don't worry about that. I'll just do it for a few illustrative ones.

Now, magnesium, the concentrations are quite a bit higher and they go out here to a couple of thousand, so I have to adjust my scale accordingly here, and see if this is about--this time this is zero, and this is 1000 parts per million, and this is 2000 parts per million.

The concentrations of magnesium are considerably higher in general in these samples than of the

#19
p-5

sodium. All right, the exemplars--this time it is the other way around. The exemplars have the higher concentration.

They average 2130, which is out about here somewhere, plus or minus enough that it will go off the scale on my little drawing a little bit here. I will show it about like this.

These are the exemplar samples this time, and they average 2130. The evidence samples for magnesium, however, only average 330, which is way down here, plus or minus spread values there of 79, so that goes up about--let's see, 330--they cover about this range.

Now, these are the evidence samples, and the average is 330. Now, here the difference between the two is far wider than it was for the sodium, so very clearly the exemplar samples have a lot more magnesium by a factor of six or so times as much as the evidence samples here.

Now, I don't know whether you want to draw any more or not. One can draw this for several more.

Q Why don't we, Dr. Guinn, have you to describe from the witness stand the differences you observed in the exemplars and evidence samples, and if you would do that now, I think it would help.

What differences did you observe in the exemplar samples and the evidence samples, other than the sodium and magnesium you have indicated on the chart?

A All right, I will first of all mention the ones where there seemed to be a quite measureable difference there. Chlorine is another one where the evidence samples have about--average about 2.1 times as much chlorine as the exemplar samples, which if you plotted in the same way, again, there would be a sizable gap in between.

Copper, there is a large difference. The evidence sample is running 4.6 times as much copper as the exemplar samples.

Zinc, the difference is not so large, but there is so much of it to measure that I could measure it very precisely, and the difference in the two is quite significant. In this case the exemplars had 1.5 times as much on the average as the evidence samples.

And then, of course, silver was there and could be measured in the evidence samples, and I couldn't measure it at all in the others, so I can't express it as a ratio because I don't know what the other one is. It is below the limit of detection.

Then there were a few elements that, as I mentioned, if I drew them the same way the two groups,

#19
p-7

if I would do it, each with this width are close enough that they would overlap, and therefore we would say, "Well, those are about the same in the two different batches of material."

Aluminum would be one of those. Sulfur would be another. Calcium and manganese would be the others. So there are some that are nearly the same, and there is a larger number that show sizable differences.

BY MR. SMITH:

Q You were requested to give an opinion as to whether the evidence samples could or might have been made by the same manufacturer as the exemplar samples; is that correct?

A Yes.

Q And based on your analysis and your efforts in this regard, did you arrive at any conclusions or any opinion as to the answer to that question?

A Yes, I did.

Q And what is your opinion as to whether the evidence samples could or might have been manufactured by the same manufacturer as the exemplar samples?

A As I stated in the written report, there is not, to my knowledge, a broad background of information in the literature, or in my own experience or anybody else's experience, about what all different kinds of rubber latex samples look like when they are analyzed this way.

~~So, we don't know all samples, all~~ different manufacturers, like we do on some other materials. But, interpreting these results from the background of having looked at many other kinds of manufactured materials, where the manufacturer is trying to make a uniform product, it usually has quality control, et cetera.

They control things rather well, in general, and so a particular kind brand that they make for a long period of time, even one production batch after the other--if it's a batch process--will look very, very similar. You really couldn't distinguish one from the other.

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You can distinguish his product from some other manufacturer, because he will have different sources of raw materials, which will introduce different trace impurities. Most of these elements here are not added deliberately by the manufacturer. They come as impurities in the things that he is adding.

So, if a given manufacturer then changes either his method of production significantly or the source of supply, of one or more of these raw materials, then there will be a change in composition that you will see.

Now, with that kind of a background that we have applied to many kinds of manufactured materials, I would say that if we compare two, or in this case, two groups of samples of latex rubber, and we find differences such as this, and repeated with several elements, I would say it would be extremely unlikely--I can't say it's impossible--but it is extremely unlikely, that those samples--the exemplars and the

evidence, in this case, could possibly have been made by the same manufacturer in the same production batch.

Very, very unlikely. The members are too far apart. If you say, well, could it be made by the same manufacturer--well, who knows. Maybe in one year he might be making it with a sufficiently different thing--there might be those differences--but that would be productions far apart, even though they happened to be by the same manufacturer, accidentally.

Q Would it be fair, then, to say, Dr. Guinn, that it is your opinion that it is unlikely that these evidence samples and exemplar samples were even made by the same manufacturer?

A I would say it was unlikely--at least in any reasonable period of time.

Q Now, Dr. Guinn, have you had an opportunity to look at the reports submitted by Dr. Hoffman, for the Government, on this same subject?

A Yes, yes; that's Mr. Michael Hoffman.

Q Yes, sir. Did you observe, Dr. Guinn, that Mr. Hoffman found four elements--that is zinc, sodium, copper, and gold.

A Yes.

Q Is there any explanation, Dr. Guinn, for

the difference between the number of elements you found and the number of elements found in the Government's report?

A Yes, very definitely. In the longer radiation lung decay, I found the same four elements. The other elements are all ones that form short-lived species, which he quite apparently didn't look for. It would have been possible for him to do, but apparently he did not.

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I said he could have looked for them, but he did not.

Q Now Dr. Guinn, had you examined any numbers that were given by Mr. Hoffman in court concerning zinc, sodium, copper and gold?

A Yes, I have the numbers jotted down here.

Q And were those numbers furnished to you by me?

A Yes, uh-huh.

Q Based on those numbers that were supplied by Mr. Hoffman here in the courtroom, do you have an opinion--not using your numbers, but his numbers--as to whether the evidence samples and the exemplar samples could or might have been manufactured by the same company?

A Yes, I do.

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Q What is your opinion?

A My opinion is that just looking at the numbers that he submitted, I would come to the same conclusion--that it would be extremely unlikely that the evidence in the exemplar samples were made by the same manufacturer.

His numbers show the same large differences that mine do.

Q In other words, using his figures, would you reach the same opinion that you have rendered in the courtroom today, based on your own figures?

A Yes, I can reach that conclusion more firmly with mine because I have more elements. But the situation, so far as it goes there, is the same. The gold figures don't help a great deal in his case either.

His copper figures show the same trend, although I might add that his copper numbers are erroneous. It is a more complicated thing to determine that than he apparently realized. The sodium values show the same thing--there is much more in the evidence samples than there is in the exemplar sample.

They say the same as mine do, except that in a couple of his samples, quite clearly, they manage to contaminate, such as maybe by picking it up with their fingers

because they have gross amounts in two cases. The zinc numbers are generally in line with what I find.

Again, the exemplar in that case being something like twice what the evidence samples are.

Q Dr. Guinn, you indicated that one of the merits of this approach to analysis is that the evidence is not destroyed; is that correct?

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A That's correct; yes.

Q I take it--I have what you are looking for right here.

A I was wondering whether it evaporated.

Q I take it that you did not, then, destroy the evidence you analyzed?

A No. The samples are there. They weigh the same, they have the same composition they did before.

Q Could these samples be reanalyzed if anyone wished to use them for reanalysis now?

A Yes. All the radioactivity that was generated in the samples is gone except for just a trace of the long-lived radioactive zinc, just a little bit of that.

MR. SMITH: Your Honor, I would like to have this marked for identification and let me get the number on this chart also, if it would help him. This chart is Defendant 25; that should be, I believe,

Defendant 57; is that correct?

(Defendant Exhibit Nos. 56 and 57 were marked for identification.)

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MR. SMITH: Your Honor, we offer into evidence the chart which Dr. Guinn has prepared from the witness stand as Defendant Exhibit 56. We offer into evidence the samples which Dr. Guinn used in making his analysis, as Defendant Exhibit 57. That is all the questions we wish to ask of this witness, and we would now turn him over to the Government for cross-examination.

(Defendant Exhibit Nos. 56 and 57 were received in evidence.)

THE COURT: Any questions?

MR. MURTAGH: Yes, Your Honor. A few. I wonder if I might request of the court that Dr. Guinn be allowed to continue supplying the number values that he was doing before he began to testify. It would speed up the process.

THE COURT: Just ask him the questions.

C R O S S - E X A M I N A T I O N 3:08 p.m.

BY MR. MURTAGH:

Q Dr. Guinn, could I hand you back these two pieces of paper.

A Yes, I will continue copying if you would like. It will take quite a while, however, I may caution you-- if you want to do it during recess.

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MR. MURTAGH: Your Honor, I feel that in order to cross-examine effectively I do need the values. Why don't we just go ahead for this one.

THE COURT: For the five samples that he did not give values on?

MR. MURTAGH: Yes, Your Honor. My question is directed more toward the eight exemplar samples and those values and then subsequently the evidence.

THE WITNESS: I have all the numbers here.

THE COURT: I am referring to elements. I thought he gave us six and he had eleven.

MR. MURTAGH: Yes, sir. It is the additional ones.

THE COURT: The additional five.

(Witness complies.)

MR. MURTAGH: Your Honor, at this time we would like to mark Government Exhibit 1151 for identification.

(Government Exhibit No. 1151 was marked for identification.)

21ibl

(Pause.)

THE WITNESS: Okay. You took the other sheet back; did you?

MR. MURTAGH: Yes.

THE WITNESS: These are all the exemplars.

MR. MURTAGH: Let me give you one with the evidence.

(Pause.)

BY MR. MURTAGH:

Q Dr. Guinn, directing your attention to the chart on the easel which I believe has been marked as Government 1151, I ask you to take a look at that, sir, and tell me if you recognize it?

A I would have to compare the numbers one by one. But they look offhand to be about the average values, for example, the ones that I plotted plus or minus this one and so on. This is wrong. Put another zero after the decimal. After the decimal it should be .0001.

Q Okay. Where should I put it, sir?

A Well, insert it in between those two zeros.

Q All right. Now is it correct?

#22jbl

A Something got left out here. Something that is supposed to be "nondetected." It says "nondected."

Q I am sorry.

A I will check the numbers as we discuss them. But as far as I can tell, they are a copy of my report.

Q Okay; thank you, sir.

THE COURT: Let's let him assume that that is what they are.

MR. MURTAGH: Yes, sir.

THE COURT: And if you find any difference, of course, you can say so.

BY MR. MURTAGH:

Q Dr. Guinn, if I could ask you to explain how you came by the values which you placed on the chart? Do you understand my question, sir?

A Yes. Each sample was analyzed for each of the elements. So, for example, the exemplar samples--there were eight different values for sodium, because they are not all exactly the same. The average value or mean as we call it was 114. If you take the average of

the eight values, you get 114. If you see how much they scatter above and below that, there is a regular statistical method of doing that which calculates what is called the standard deviation. And that is what the plus or minus 20 means.

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Statistically that means that approximately two-thirds, about 67 or 68 percent, of the values fall within the range of 114, plus 21 or that high are as low as 114 minus 21. Then a smaller number can be a little beyond that or a little in either direction. That is what the plus or minus means in each case.

It is not the measurement precision for an individual sample, which is what I just gave you there, because I gave you the individual ones there. This is the average of all eight.

Q Okay. Now, let me ask you with respect to the individual samples, and since we are talking about sodium, let me ask you about exemplar number one and exemplar number three. Would you tell us, please, sir, what your actual reading was for number one and number three?

A Yes. Exemplar number one had 145 uncertainty. That is plus or minus 5 parts per million of sodium, and exemplar number three had 91 plus or minus 3 parts per million. In other words, they did not have

exactly the same within the measurement precision.

Q So, would it be accurate to say that as between number one and number three--are those the two samples with the greatest spread, if you know, sir, on that?

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A Yes. The 91 is the lowest one. The 145 is the highest; yes.

Q Okay. So, we would be talking about an actual difference in reading of some 34; is that correct?

A 54.

Q I am sorry; 54. Okay. Now, with respect to magnesium, which I believe was the next element you talked about, you indicated that for the exemplar you have a value of 2130, with a plus or minus of 570. Would that mean that you have a possible spread of 1,140?

A What do you mean, twice that value?

Q Yes?

A Well, if you take twice that, that is a so-called two sigma one, and that would mean that it would be the statistical possibility that if you had enough samples that 5 percent could be--2 1/2 percent could be beyond twice that number added on. Five percent could be beyond twice that number subtracted from it.

Statistically that is what it means.

Q Well, I guess what I am asking you is is it possible that you could have between two exemplars of the same manufacture a variation in the reading of as much as 1,140 between those two exemplars--those two known exemplars?

A So far as I can tell, yes. In their processing, it would appear from the numbers that some variation clearly exists. Sometimes you get a moderately big one. And most times they are smaller.

Q Okay. Now, Dr. Guinn, with respect to magnesium, would you please give us the high value that you got on the actual reading on the exemplars and the low values, sir?

A These are on individual samples?

Q Yes, sir.

A Yes. The highest magnesium value was on the number one sample, 2,940 plus or minus 220, and the lowest value that we found was on exemplar number seven which was 1,020 plus or minus 70. Those two had different magnesium concentrations--quite measurable.

Q Okay. Would it be accurate to say that your actual readings then vary on known portions of the Perry latex glove as much as 920 parts per million--I am sorry--1,920 parts per million, for the known

exemplars?

A Yes; that is correct.

Q Let me ask you first, or before we go on to the comparison, what happened with sample number eight of the known exemplar?

#22jb5

A Yes. The sample number eight on the pneumatic tube--the rapid measurements, the analysis--the sample wasn't spoiled, but the analysis was spoiled. We shot the thing in and then when it was supposed to come back out, it hung up in the tube and didn't come out. It stayed in there. Instead of having been in the reactor for one minute, it was in the reactor for we don't know just how long, something between one and a half and two minutes. So, we couldn't make an accurate measurement.

Q Did that happen, by the way, on any other samples?

A No. That was the only one, and only on the pneumatic tube. You notice for the other elements, that sample eight--we did get numbers, because that was from the longer radiation. There was no problem.

Q I guess my question is with regard to sample number eight. Did this similar result occur with respect to any other elements?

A Well, the sample didn't come back. So, that

means we couldn't analyze it for magnesium or aluminum or any of the short-lived ones. There was no measurement to be made.

Q Okay. Now, with respect to magnesium sample number one, you got a reading of 2,940; is that correct, sir?

A Yes.

Q Sample number seven--what was your reading there?

A 1,020.

Q In other words, is it possible to say, then, sir, that as between two known samples of Perry brand latex gloves you could have a difference of 1,920 parts per million?

A As extreme values?

Q As extreme values; yes?

A All of the others cluster very closely. You picked the very highest and the very lowest--the extreme range.

BY MR. MURTAGH:

Q Okay, now, if we were to ask you with respect to the evidence samples that you got for magnesium, I believe the chart reflects--was it 330 parts per million?

A Yes.

Q Okay, and if you were to add 1,920 to that, we would come out with what--2,250?

A On what basis would you add 1,920 to that?

Q Well, I'm just wondering--let's assume hypothetically that were to add a variation---

A (Interposing) No, the most you could add would be whatever the plus or minus is that's shown--shown here--or take the highest value which was 380 which had an uncertainty of 270. You could add that to it; 380 plus 270 is 580--650. That's still far short of the lowest of the other values which was 1,020.

Q Well, I don't understand, I guess, why you would go to a statistical value which is smaller than the actual variation between two known samples of Perry brand latex gloves.

A The very lowest value of the exemplars for that particular element--this is the extreme case--magnesium--was 1,020 plus or minus 70 on that particular sample. That means that the true value, whatever that

may be, must be pretty close to the 1,020 by only that small margin on that sample. The two of the evidence samples, which I was able to measure for magnesium, had considerably lower values. The uncertainty was somewhat larger because they were smaller samples. I couldn't get the kind of measurement precision. But, even so, they were down around 300--both of them, whereas the exemplar samples started at 1,020 and went on up as high as 2,093.

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You are trying to establish whether this group of samples is measurably, statistically, significantly different than this group of samples or whether there is no significant difference, and these numbers show a significant difference.

Q Let me ask you: what--and in your terms, Doctor--is a significant variation? And let me preface that by saying I believe in direct examination you said something to the effect that if one element appears a hundred times the amount in question as the known , then that is obviously significant.

A No, I was taking an extremely obvious case--it had nothing to do with these particular data--no.

Q Well, let me ask you then: what is the low border, if you will, of the significant variation?

A It isn't anything as simple as a ratio like

twice, and three times, and so on. It is illustrated by the two diagrams that I showed. If you analyze variants of these samples--exemplars--you get a bunch of numbers for one element, and you do the same thing for some evidence samples, and then you put them on paper or graph them like we did here, and you look at this group, and you say, "Do all of these numbers that I get, say, in the exemplar sample--are they all consistently higher?"

We are then allowing for the measurement of uncertainty. Are they all higher than all these or are they all lower than all these? In other words, as I plot them, if there is a gap in between--and we could use a set of plus or minus one standard deviation--if you want to have a higher confidence level, you could use plus or minus two standard deviations, if you want to. If there still is a gap between those distributions, then it means that statistically it is extremely unlikely that they came from the same source.

That's what you would mean. That's a better way to put it.

Q Well, let me ask you this: with respect to the eight known exemplars that you analyzed, did you find any two samples which had exactly the same trace elements in the same concentrations?

A No, no.

Q Would it be accurate to say that, since there were, I believe, three rubber gloves that were used as the exemplars and eight samples were taken, that obviously there must have been more than one sample from each of the gloves; would that be correct?

A I think there was one sample per glove so there were eight gloves--four pairs as I recall were involved.

Q Four pairs of gloves you say. Okay, well, then, as between these gloves, is it accurate to say that between one glove and another glove in the same package there would be some variation?

A There is bound to be some variation. That is the whole point of it; yes. That is why we made as many measurements as we did.

Q All right, now, let me ask you: with respect to the state of the art in 1971, was it the same, if you know, sir, as it is today?

A Not precisely, but the same kind of equipment that I showed in the slide and which I did use here we purchased in 1970 at the university so it was commercially available at that time.

Q Well, do you know, sir, whether the same equipment and exactly the same methodology and exactly

#32
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BY MR. MURTAGH:

Q Dr. Thornton, I am going to hand you what I would now mark as Government Exhibit 1081.

MR. SEGAL: What is the number of that?

MR. MURTAGH: 1081.

(Government Exhibit No. 1081 was marked for identification.)

BY MR. MURTAGH:

Q I would ask you whether that pajama top is a reasonable facsimile of the pajama tops that you used in any of your experiments?

A Reasonable, yes.

Q Dr. Thornton, if I could, I am going to stand in front of you placing great trust in Mr. Blackburn. I am going to ask him to flail away at me with an ice pick. (Experiment is performed.)

That was a certain amount of realism. That wasn't part of the act, Judge.

THE COURT: Okay, anybody got a bandaid?

MR. MURTAGH: That's okay.

BY MR. MURTAGH:

Q Dr. Thornton, I'll ask you to take a look at this pajama top and tell us what you see?

A I see a number of tears, and they do

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appear to be, in fact, tears.

Q Yes, sir. Are they straight puncture-type holes?

A One of them appears to be fairly--well, yes, several of them are, but not all of them. I can count --you understand this is an approximation.

Q Yes, sir.

A This is not an atmosphere conducive to good work; but there are three areas here that are circular in their appearance. There is one here that's slightly elongated, and the remainder appear to be tears.

Q Okay, thank you.

MR. MURTAGH: Your Honor, may I publish this to the jury?

THE COURT: Yes, if they haven't already seen it.

(Exhibit passed among the jury.)

MR. SEGAL: Do you need a doctor, Mr. Murtagh?

MR. MURTAGH: Thank you, no.

BY MR. MURTAGH:

Q I take it, Dr. Thornton, that you conducted no experiments such as the one we have just done here in court?

A No.

#32
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THE COURT: He's still here, isn't he?

MR. MURTAGH: Judge, that is our point.

THE WITNESS: No, I considered it and rejected it. I think it would be a little bit silly from a number of standpoints--scientifically silly being something other than--

THE COURT: (Interposing) Than silly-silly.

THE WITNESS: Yes, Your Honor.

BY MR. MURTAGH:

Q. Would it be accurate to say that that's---

MR. SEGAL: (Interposing) The witness did not finish his answer. I OBJECT, Your Honor.

THE COURT: Yes, let him finish his answer.

MR. MURTAGH: I'm sorry.

THE WITNESS: My interpretation of Dr. MacDonald's statement is that it incorporates so much vagueness, so much undertainty, that I really would not know how to desigh what I would consider to be a scientifically valid experiment.

I think this is interesting, but I don't think that it is scientifically reliable.

BY MR. MURTAGH:

Q Well, would you say that this experiment has no controls?

A It involves so many assumptions that I think it is defective from that standpoint. It involves an assumption of the position of the pajama top, and it involves an assumption of the weapon. Now, I am convinced that there is an ice pick involved in this crime, but I have no way of determining that there is an ice pick involved in that particular aspect of the case. It may be, but it may not be. I do not know---

Q (Interposing) Do you have any reason to believe---

A (Interposing) Let me finish. It would be inappropriate for me to guess as to all of these variables. The guesswork that may be involved may compound all of the imprecision in it--all of the errors. I don't feel that way about the sled experiment where I can control my variables.

Q Dr. Thornton, based on your review of the testimony, do you have any reason to believe that the puncture holes in the pajama top got in the pajama top other than when it was on some portion of Dr. MacDonald's body?

A I think that is plausible. There is another aspect of my answer, too, that I did not give you before. If you still want it---

Q (Interposing) Please.

A That is, we don't know the manner in which these thrusts were made. I think the likelihood of tearing would be much greater in the overhand method that Mr. Blackburn has used than in a jabbing-type of action. It is questions such as this that makes me shy away from devising some sort of ricky-tick experiment, if I can use that terminology---

MR. MURTAGH: (Interposing) I will Move to Strike that.

THE COURT: I am sorry?

MR. MURTAGH: I said I will Move to Strike that.

THE COURT: Let him continue--finish his answer. Did you finish, sir?

THE WITNESS: And try to derive some validity from any experimentation process.

BY MR. MURTAGH:

Q Dr. Thornton, you have been in the crime scene; have you not?

A Yes.

Q Have you examined the couch in the living

room?

A Yes.

Q Do you know the approximate height of the couch in the living room?

A Not off-hand; no.

Q We have a diagram that is in evidence, but would it be accurate to say that it is a fairly low couch?

A Yes.

Q Would it be accurate to say that if someone were approximately 5'8", 5'9"--in that range--and was trying to kill somebody who was in a semi-sitting position on that couch, they would be more likely to stab overhand with an ice pick as opposed to stoop down and stab underhand?

A I don't know.

THE COURT: Are you about at the end of that particular series?

MR. MURTAGH: Yes, sir.

THE COURT: Well, we are about at the end of this day, so we will let the jury retire. Did you finish looking at the Murtagh experiment? If you did, we will take a recess now until tomorrow morning at 9:30. So far as I know, they haven't filed any new motions today, but we will reassemble tomorrow

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A Certainly punctured areas. Torn areas--I don't know. I really can't speculate as to the factors that would be involved in something like that.

Q Would it, in your opinion, sir, produce puncture areas in the back of the person that was wearing it?

A Again, I don't have any way to tell--of making a determination.

Q Now--excuse me--let me get back here with the pointer. Dr. Thornton, with regard to your test prints of the handprints of which you showed the slides.

THE COURT: Mr. Murtagh, if you are going to another subject, I was going to call a little bench conference myself right now. We haven't had one this morning.

B E N C H C O N F E R E N C E

THE COURT: Gentlemen, first off, and this is not why I got you up here but it is something that is on my mind so I am going to tell you: all these experiments and all this examining and cross-examining and so forth--it is interesting and it is technical and it may be going somewhere. But, for whatever it is worth, I think this case is going

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to rise or fall on one thing and one thing alone, and that is whether or not this jury buys the Defendant's story as to what happened.

That is all there is in this case. We have been here five weeks, and that is still all there is in this case. I just make that as an observation. The jury--I have done my best to keep them in line and up to now they seem pretty good and happy, but I warn you that somebody could be prejudiced by unnecessary dragging of the case out.

That is not to say I won't let everybody have his full say. I will do it if I can. What I really got you up here for is to talk about this Stoeckley problem. I understand she is in custody. I understand that she can be kept like that for 72 hours without being let out.

Now, as far as finding her and making her available is concerned, I think the Court has done about all it can do. I suggest to you that you ought to get your evidence so scheduled as to accommodate this particular thing rather than run the risk the next time she goes that she can't be found by anybody.

So, now that she is available, I think that moots the question of whether or not we can take up secondary evidence of what she would have said, and I don't

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think in this kind of case—if she is available—it ought to be done. My feeling about that is that, having made her available, that you must now avail yourself of her availability.

MR. SEGAL: I absolutely agree that it is our desire to do that. We need to know, however, Your Honor--you say she is in custody. Is she in custody here in Raleigh, or is she in Greenville?

LAW CLERK: She is in custody in Greenville---

THE COURT: (Interposing) Greenville, South Carolina.

LAW CLERK: ---and they are ready to transport her here.

MR. BLACKBURN: Pickens County jail is what I have been told.

MR. SEGAL: Well, Greenville is about three hours--two and a half hours.

THE COURT: More than that. It is three hours comfortably to Charlotte, and Greenville is almost that same distance the other side.

MR. MURTAGH: Do you know who runs the Police Department in Greenville? Paul Stombaugh.

MR. SEGAL: Maybe he will drive her down for us. Your Honor, I understand she has been

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taken into custody pursuant to a warrant as a material witness in this case. I would request that she be brought here forthwith to Raleigh and, as soon as she is here and we have a chance to interview her, we intend to call her as a witness. That is my request and if I can be notified---

THE COURT: That is all we needed to know. Just tell the magistrate that there is no bond and just bring her here and make her available to the Defense counsel.

LAW CLERK: He is awaiting word from our office.

MR. MURTAGH: I will try and be brief, Your Honor.

(Bench conference terminated.)

BY MR. MURTAGH:

Q Dr. Thornton, let me repeat my question. With respect to your test handprints on the fabric that you used. What position, sir, was the cloth in when you put your handprint on it?

A In various configurations. Some of the series--several series of the experiments were conducted with the cloth on a flat surface with my hand pressed down on it. Other series were conducted in which I would put my hand over the cloth which was

conclusion was?

MR. MURTAGH: OBJECTION, Your Honor.

THE COURT: SUSTAINED.

MR. SEGAL: May we see Your Honor?

THE COURT: I understood that you wanted to go into some new matters. This is a matter you covered yesterday.

MR. SEGAL: I had covered the impressions and had neglected to ask a question about the cuff impression. I had neglected to ask Dr. Thornton the basis for the opinion.

THE COURT: All right, let him say what his basis was.

BY MR. SEGAL:

Q Would you tell us: what is the basis for your conclusion about Ms. Green's experiment?

A Yes, it would help me if I could use some of the Government's exhibits.

Q Do you have them there?

A I think they are close at hand; yes.

Q All right.

A May I proceed?

Q Yes, please, Dr. Thornton, if you would tell us the basis of your conclusion.

A I used two different documents really to

make this determination. The first consists of a laboratory work sheet of Mr. Stombaugh which appears to be a 1971 document, and I used Government Exhibit 1076(a) which is purported to be a worksheet of Shirley Green consisting of--which indicates a direction of travel of the ice pick thrusts in the blue pajama top.

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In examining these documents, I find that Mrs. Green has designated hole number 9 as originating from the outside of the garment extending to the inside. This is outside to inside. Mr. Stombaugh's original notes designate this thrust from an examination of the direction in which the fibers are pointing as an inside to the outside.

That is a discrepancy and, on the basis of that, I would conclude that thrust 20 which appears in this reconstruction is in error. In my mind, that contravenes the entire reconstruction---

Q (Interposing) Did I understand you to say "in error"? Again, putting it in lay terms, you mean Mr. Stombaugh says the hole was what--an exit hole--and Ms. Green arranged it in a way that it became an entry hole?

A That's right. With respect to hole number 12 originally designated by Mr. Stombaugh in 1971, he

has designated this as from the outside in. Ms. Green's reconstruction has it as inside-out. Again, that is a second discrepancy, and on the basis of that I would eliminate this as being a possible reconstruction.

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Q Putting that again in lay terms, Mr. Stombaugh had it as what--an exit hole again?

A As an entrance.

Q Entrance hole, and the way Ms. Green did the reconstruction, she did it as a?

A Exit.

Q Is there anything further that you based your opinion on?

A Oh, yes. Hole 16--Mr. Stombaugh originally designated this as outside to inside--an entrance hole. This all is relative, of course, to the normal outside of the garment. Mrs. Green's reconstruction designates this hole as an inside to outside, and that is the third discrepancy--again eliminating this reconstruction.

On thrust or hole 22, originally designated by Mr. Stombaugh in 1971 from an examination of the garment at that time as outside in---

(please turn page)

#10jbl

BY MR. SEGAL:

Q (Interposing) Meaning it was an entrance hole?

A Yes. Ms. Green's reconstruction assumes that this is an inside-out or an exit hole. The significance of this is that thrust 22--not 22--I beg your pardon--1.

Q Thrust number 1?

A Thrust number 1 is in error.

MR. MURTAGH: I OBJECT to that, Your Honor.

THE COURT: Yes. I will SUSTAIN the objection. I will let him tell what he found.

BY MR. SEGAL:

Q Let's put the answer.-- the question to you this way: having found that Ms. Green has done it the way she had done it, does that appear to be using the holes in the same fashion that Mr. Stombaugh identified them; that is, did she make the exit holes exit holes in her construction, or did she make the entrace holes the entrance holes in her construction on that particular probe?

A I don't understand that question.

Q Well, what I am trying to ascertain is what is the basis of concluding that she--what is the error that she made in your examination of the probe ?

#J0jb2

A Well, is is inconsistent. The hole either is an inside-out or an outside-in. Mr. Stombaugh originally designates it as outside-in. She--in deriving this reconstruction--she denies that it is an outside-in, and---

MR. MURTAGH: We OBJECT to that, Your Honor.

MR. SEGAL: It is a technical term, Your Honor.

MR. MURTAGH: There is nothing technical about it at all. I think---

THE COURT: I will SUSTAIN the objection. I will let him rephrase his answer.

BY MR. SEGAL:

Q When you say "denies," what do you mean, Dr. Thornton?

A She contravenes the information provided by Mr. Stombaugh.

Q Would you say she did it differently from---

MR. MURTAGH: (Interposing) We Move to Strike that, Your Honor.

MR. SEGAL: I had not asked the question.

THE COURT: OVERRULED.

BY MR. SEGAL:

#10jb3

Q Can we say in lay person's terms that she did it differently than the way he described the holes?

A Yes.

Q All right. Hereafter, let's use my terms and then see if that will work better. What, if anything else, did you base your opinion on?

A Hole 36 was originally designated by Mr. Stombaugh as inside-out or an exit hole. In Ms. Green's reconstruction, it is designated as outside-in or an entrance hole. Again, just with respect to that one particular discrepancy, I think that it negates the validity of this reconstruction.

MR. MURTAGH: Move to Strike that, Your Honor.

THE COURT: OVERRULED. He has testified that the thing was impossible. So, that is just in furtherance of that same answer.

Go ahead.

Isn't that what you say is your opinion?

THE WITNESS: Yes, Your Honor.

BY MR. SEGAL:

Q Any further basis for your opinion in this regard?

A No. I think that is sufficient. With

respect to hole number 48, Mr. Strombaugh hasn't designated that as being one way or the other or whether he cannot determine that. So, I can't properly evaluate that particular hole in the pajama top.

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But on the basis of the six foregoing discrepancies, I think that this is impossible.

MR. SEGAL: I have no further questions.

You may cross-examine.

xxx

F U R T H E R C R O S S - E X A M I N A T I O N 11:05 a.m.

BY MR. MURTAGH:

Q Dr. Thornton, you read Mr. Stombaugh's report of 1971; did you not?

A Yes.

MR. SEGAL: I neglected to mark that, Mr. Murtagh. If I may at this point?

MR. MURTAGH: Mark what?

MR. SEGAL: The report that you are talking about.

May we borrow your copy, Dr. Thornton? We would just have Mr. Stombaugh's report marked as a Defendant's Exhibit. That will be D-68.

(Defendant Exhibit No. 68 was marked for identification.)

underneath the right diaphragm and a little portion goes on the left. This is the portion that protrudes higher than the left. Here is the level of the scar (indicating).

Q Now, for the record, Dr. Podgorny, would it be correct to say that you have located the wound in Dr. MacDonald's body on the grid as block I-5?

A Yes.

MR. SMITH: All right, you may return to the witness stand. Thank you, sir.

BY MR. SMITH:

Q Dr. Podgorny, assuming that the jury should find from the evidence and beyond a reasonable doubt that the Defendant suffered a penetrating stab wound in his right chest area at the seventh intercostal space, mid-clavicular, which produced a 40 percent pneumothorax and required insertion at separate times of number 36 and number 34 Argyle chest tubes, do you have an opinion based upon reasonable medical certainty as to whether such injury could or might be life-threatening?

A Yes, I do.

Q What is your opinion, sir?

A That under the circumstances that you have just enumerated, such an injury could be life-threatening.

toxic from that standpoint but just nasty to smell are one which I did not care to smell nor did my wife who is really the commandant of that outfit. She did not like that either. I had to cross-ventilate.

My window in the bedroom was open and the rear door was open. The bedroom door to her bedroom was closed at that time. The cross-ventilation I would get would take the fumes right on out the window and the reverse would go right on out the back door, so the reasoning of the interjection here is that the back door was open. At this particular point in time is when I heard voices. They did not come up from a distance. They just initiated.

Prior experience, particularly in Viet Nam and so forth, an instinct--an alarm system went off within me. I immediately rushed to the rear door. I didn't know what it was. It was unusual to have anybody at that late an hour in the rear of the house. I arrived at the door two or three seconds later and cracked it somewhat. It was approximately a foot open at the time. I pulled open and looked out and three people are standing ten or 15 feet from me going up the walk--up the chart away from me but out far enough so I could kind of see abreast of them.

These three individuals were wearing white

sheets, and I specifically saw the center individual to be a girl and two males on either side and they were all carrying candles. The girl, I specifically saw holding a candle. She was holding it in her right hand and cupping it from the movement of walking up the walk with her left.

These three individuals continued to talk, and I distinctively respond to that visual effect when I opened that door what I saw. Looking to the left, "Gee, where is the parade?" I looked back to the left, "No, not a parade, choir practice." I thought and it didn't fit, so I continued to watch them. They walked up the walk and turned left at the end of the building which is the other end of the duplex and proceeded past my line of sight.

From that point, I returned back to my hobby room and saw these people emerge and continued walking out from the end of that building in the same direction they had initiated when they left my line of sight. At that particular point, I did not pay too much attention to what they were doing except walking. I sat back down and glanced up again. They continued to walk.

I started back working again. I recall the last instance I glanced again to see what had happened

and they were near the end of the courtyard on the walkway approaching Dougherty Street. That is the last that I ever saw of these individuals.

Q Now, Mr. Milne, would you state whether or not the last time you saw the three individuals they were closer to the MacDonald house than they were when you first observed them?

A What I understand you to say is the observation that I made initially of being roughly ten to 15 feet was closer than the distance at which I last saw them. Is that what you are saying?

Q Let me re-phrase my question. I think I can make it a little better. Were they walking in the direction of the MacDonald house when you last saw them?

A Yes, sir. The walkway which they were proceeding down virtually almost would extend into the side bedroom of the MacDonald home.

Q How far would they have been, in your opinion, from the MacDonald home when you last observed them?

A I would estimate about 40 yards from the MacDonald home.

Q All right, how long was the woman's hair, if you can give us a better description?

A Yes, sir. The woman's hair that I recall was

slightly below shoulder-blade length in the middle of the back, straight, very light--light blond--brown, excuse me--light brown--almost to a blondish color down the middle of her back.

Q Now, if I could ask you to please go to the easel one more time and show the ladies and gentlemen of the jury, if you can, where you first observed these people and where they were when you last observed them? Let's move it back over.

A The duplex in which we lived is this duplex here (indicating). The three individuals from slightly north or slightly above the back steps were proceeding in a direction up the walk and then left at the end of that building, straight down the walkway here (indicating) which runs into Dougherty. This walkway is a straight--almost virtually a straight line towards the MacDonald house. The walkway runs in front of these buildings (indicating). This is the front of these buildings (indicating). The front faces this courtyard (indicating), and the walkway runs straight down toward the MacDonald house.

Q Mr. Milne, what things were behind your house at the time you lived there?

A The only structure other than a few plants, bushes, trees, telephone poles--the only structure was a

had anything to do with the MacDonalds out of fear that it might happen to you the next night or to some other family in that area?

A No, sir. The thought never really entered my mind; no, sir. I just merely locked the door the next night.

Q These people that you saw--I think you described them as three people?

A Three people.

Q One girl with long brown-blondish straight hair; is that correct?

A Yes, sir; that is correct.

Q And each of them--were they wearing a sheet?

A Yes, sir.

Q What color was the sheet?

A The sheet, the best I can remember, was white.

Q Was it like a bed sheet?

A Yes, sir.

Q Or like a choir robe?

A It resembled a choir robe with folds in the back--that could have possibly been.

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BY MR. BLACKBURN:

Q Of course, I don't want to put words in your mouth. Were they wearing it, you know, like a choir robe--have them with sleeves going through the right and left arm. Was it like that type of thing? Or was it more or less a sheet draped and wrapped around them?

A It wasn't really wrapped around them, no, sir. It was just draped over them. The girl's hair was out, down the back.

Q They didn't have hoods on, did they?

A No, sir.

Q What race, if you know, were these three people?

A They were white.

Q No blacks?

A No, sir.

Q All three were carrying candles?

A Yes, sir.

Q All three candles were lit?

A Yes, sir.

Q What was the weather like--I know it was raining during part of the evening--I think there's been testimony to this. Was it raining at this particular time?

A No, sir, not at the time I saw these

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FURTHER PROCEEDINGS 1:00 p.m.

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

THE COURT: Good afternoon, ladies and gentlemen. Where is Murtagh?

MR. BLACKBURN: He left the legal document in the restaurant and had to go back and retrieve it.

THE COURT: Gentlemen, I will entertain a report from you on the status of your interrogation of a witness who was not available to either side until this morning at 9:00 o'clock and the question of which witness now apparently by one side or the other or both seems to be in and about its third hour. Are you ready to proceed in this case?

MR. SMITH: Your Honor, let me express the thanks of the defense for the Court's indulgence and the jury's indulgence this morning as we have had an opportunity to talk with this witness who has, indeed, been unavailable to either side for a long period of time.

We have almost concluded our discussions with the witness and will be in a position very shortly to turn the witness over to the Government if the

Government desires to talk with the witness. We will leave any remarks to Mr. Blackburn about that.

THE COURT: Will it take any particular degree in education in the guess that you would want to talk to her?

MR. BLACKBURN: No, sir; I don't think it would.

THE COURT: Members of the jury, counsel have conferred with the Court since you were released this morning, and because of the situation which they have stated here just briefly, it appears that this witness who was just the first time in Raleigh this morning around 9:00 o'clock as I understand it and considered by both sides to be a very important witness in the case--I know nothing about the witness--but I have acceded to the request of counsel for both sides that they be entitled to continue and complete their interrogation of this particular witness before any other evidence, which I understand was, in fact, dependent upon the foundation to be established by this particular witness. Is that so, Mr. Smith?

MR. SMITH: Yes, sir.

THE COURT: I know you were not paying attention, but is that so?

MR. SMITH: Whatever you say, Your

did not want to come here--including, I might say, hiding out in the physical structure in which she was supposed to be residing. Taking that into account with the fact that Mr. Beasley--of course, whom I have never met before and don't mean to imply anything by this--is as I understand it, a potential witness for the Defendant. Based on what this witness might or might not say or have said in the past, that at the very least, we would appreciate a deferral of your ruling until after we have talked with the witness. I think the Government is concerned that so much trouble was spent in locating her and bringing her in the first place. We are very skeptical of releasing her at this time.

THE COURT: I will not release her at this time.

MR. BLACKBURN: Thank you.

THE COURT: I will let you question the witness, and it may be that it will be resolved by releasing her from a subpoena. It could be--I don't know anything about it--but conceivably, she might not even be a witness in the case, but I am not going to release her until both sides have had a chance to talk to her and then you may let me know not later than 4:15 this afternoon.

MR. BLACKBURN: I might ask counsel, I know

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you have said that I could see her shortly, but can you be more specific as to when "shortly" might come?

MR. SEGAL: I need to define a couple of matters, Mr. Blackburn, but I would say by 2:00 o'clock. I just want to add for the record, Your Honor, the request in regard to whether Ms. Stoeckley should be released or not was the request that I conveyed at her instance. It is not necessarily my request, Your Honor.

THE COURT: All right, I didn't identify you with the request. You were just communicating a request by the witness and her boyfriend.

MR. SEGAL: Yes, Your Honor.

THE COURT: Take a recess until tomorrow morning at 9:00 o'clock.

(The proceeding was adjourned at 1:17 p.m., to reconvene at 9:00 a.m. on Friday, August 17, 1979.)

21

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

FILED
OCT 1 1979
J. RICH LEONARD, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

TRIAL BEFORE

THE HONORABLE FRANKLIN T. DUPREE, JR.

UNITED STATES CHIEF DISTRICT JUDGE

AND A JURY

AT RALEIGH: FRIDAY, AUGUST 17, 1979

PAGES 5508-5800 TRIAL DAY TWENTY-ONE

FILED
OCT 31 1979
U. S. COURT OF APPEALS
FOURTH CIRCUIT

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TABLE OF CONTENTS

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
FOR THE DEFENDANT					
HELENA STOECKLEY					
By Mr. Segal	5513-5642		5672-5676		
By Mr. Blackburn		5642-5671		5676	
VOIR DIRE EXAMINATIONS					
JANE ZILLIOUX					
By Mr. Smith	5689-5692				
By Mr. Segal	5692-5700				
By Mr. Blackburn		5701-5702			
JAMES GADDIS					
By Mr. Smith	5704-5707				
By Mr. Blackburn		5707-5709			
CHARLES UNDERHILL					
By Mr. Segal	5711-5713				
By Mr. Blackburn		5713-5715			
ROBERT BRISENTINE, JR.					
By Mr. Smith	5715-5723		5736		
By Mr. Murtagh		5724-5736		5737	
P. E. BEASLEY					
By Mr. Smith	5738-5745		5749-5750		
By Mr. Blackburn		5746-5749			

TABLE OF CONTENTS (Continued)

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
WILLIAM POSEY					
By Mr. Segal	5751-5764		5772-5774		
By Mr. Blackburn		5764-5772			

Argument Presented to the Court Pages 5774-5799

BENCH CONFERENCES Pages 5513, 5538-5540, 5549-5551, 5584-5588, 5614-5618, 5619-5620, 5639-5641, 5677-5682, 5594-5598

EXHIBITS

NUMBER	DESCRIPTION	MARKED	RECEIVED
DEFENDANT			
86		5590	5592
87		5599	5599
88		5753	
89		5607	5610
GOVERNMENT			
952		5661	5662

F U R T H E R P R O C E E D I N G S 9:00 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Friday, August 17, 1979, at Raleigh, North Carolina.

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

THE COURT: Good morning, ladies and gentlemen for what we hope will be the last meeting of the TGIF Club. Any further evidence for the Defendant in this case?

MR. SEGAL: Yes, Your Honor.

THE COURT: Call your witness, please.

MR. SEGAL: If Your Honor pleases, the Defense calls Helena Stoeckley.

MR. BLACKBURN: Your Honor, while we are waiting, may we approach the Bench?

THE COURT: Yes; approach. Get us off to a good start.

(Go to the next page.)

BENCH CONFERENCE

MR. BLACKBURN: This is the one, of course, we all talked to yesterday. I remember you talking about a voir dire. I know that Wade mentioned this morning that she had commented on the necessity of wanting an attorney. I just wanted to be sure, before we got started, how we are going to go.

MR. SMITH: I think our position, Judge--of course, we will do whatever Your Honor wishes to do--but I feel that we will just go ahead with her, if we can, and see what happens.

MR. BLACKBURN: I think that is fine.

THE COURT: Well, let's go.

(Bench conference terminated.)

(Whereupon,

HELENA STOECKLEY

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

DIRECT EXAMINATION 9:03 a.m.

BY MR. SEGAL:

Q Ms. Stoeckley, would you spell your full name, please, for the record?

A H-e-l-e-n-a S-t-o-e-c-k-l-e-y.

Q And where do you currently reside?

A I have no permanent address right now.

Q How long has it been since you have had a permanent address?

A Approximately one month.

Q Prior to then, where were you living?

A In Columbia, South Carolina.

Q Were you living in an institution of some sort at that time?

A Not an institution--it was a Quarterway House.

Q What is a Quarterway House?

A The one I was staying in was just for people who were looking for jobs at that time, and they were furnished with meals and a place to stay and charged a small rent until they could get a job.

Q Was it a place also especially designed to help people who had had drug problems in the past?

A Yes, sir.

Q Have you yourself been a user of drugs in the past?

A Yes, sir.

Q Before we get into anything else, I think we ought to find out how you are feeling today, and what your situation is; is that all right?

(Witness nods affirmatively)

Q I will have to ask you, Ms. Stoeckley, not to nod. Just say "yes" or "no."

A Yes, sir.

Q Are you at the present time, within the last 48 or 76 hours--have you taken any medication or drugs of any sort?

A No, sir.

Q When is the last time that you have taken or you did take any drugs or medication?

A Approximately one week ago, when I broke my arm. It was prescribed by the emergency room doctor.

Q And your arm now--is that in some sort of a cast?

A Yes, sir; it is in fiberglass.

Q I'm sorry?

A It is in a fiberglass cast.

Q Which arm are you talking about, please?

A My left arm.

Q And at that time, when you had your arm treated, what sort of medication or drugs did you receive?

A Demerol.

Q 50 milligrams of Demerol?

A Yes, sir.

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Q Intravenously received?

A One was by intramuscular injection. Then I received five tablets to take with me.

Q Have you ever been committed to any mental institution for either being mentally ill, having a mental defect, or in any way being--in a layperson's word--being "crazy"?

A No, sir.

Q To your knowledge, has any psychiatrist ever told you, or ever made a finding that you are crazy or mentally ill or mentally defective?

A No, sir.

Q You can read and write the English language, in fact, can't you?

A Yes, sir.

Q You graduated from high school?

A Yes, sir.

Q That was in Fayetteville, North Carolina, wasn't it?

A Yes, sir.

Q How old were you when you graduated from high school?

A 15.

Q Fifteen--would that mean you skipped a couple of grades in school?

A Two years in France.

Q Did you ever go to school after you had graduated from high school at the age of 15?

A Several different schools.

Q Could you tell us a little bit about the kind of schooling you have had--better tell me what year it was you graduated from high school in Fayetteville?

A 1969. Since then I have been to Aquinas Junior College in Nashville, Tennessee, for Police Science for one year.

Q You say in what year?

A That was about '71-'72.

Q You were at the St. Thomas Aquinas Junior College?

A Yes, sir.

Q In Nashville, Tennessee? And what kind of course were you enrolled in?

A Police Science.

Q How many months did you attend that college?

A About seven months.

Q Did you drop out at the end of that program or quit?

A I had some drug problems again, and I just dropped out.

Q Have you been to any other school besides the

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college you mentioned in Nashville?

A Yes, sir; I took Operating Room Technician training in Fayetteville, North Carolina.

Q When did you do that?

A About 1974.

Q How long was that course that you took?

A That was a six-month course.

Q Were you able to finish that particular program?

A Yes, sir.

Q That qualified you to be a technician to assist---

A (Interposing) In surgery.

Q Any other schooling that you had besides high school and the schools you have told us about?

A In 1975, I attended Daytona Beach Junior College, and took nursing.

Q You took nursing to actually be a nurse or a nurse's aid?

A Nurse.

Q How long did you stay there?

A One year--it was a one-year program.

Q Did you finish that program?

A I finished, but I never took my State Boards.

Q Was it because of some problems you were

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having?

A It was a health problem.

Q All right; where were you living in 1969 and 1970?

A In Fayetteville, North Carolina.

Q Did your parents also live in Fayetteville in that period of time?

A Yes, sir.

Q As a matter of fact, your mother and father still live there today; isn't that right?

A Yes, sir.

Q I gather you have not been in regular contact with your parents for some time?

A No, sir.

Q Did you actually move out of your family's home some time after high school?

A Immediately after graduation.

Q Whose decision was that?

A Mine.

Q Was there some particular reason why you left your family at that point?

A It is a close family, and I was already involved with drugs; and I did not want to hurt the family any, so I moved out.

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BY MR. SEGAL:

Q Now, you lived in Fayetteville until what year, if you remember, after leaving high school?

A Off and on I lived there through the latter part of '71.

Q And at that time did you move to Nashville, Tennessee?

A Yes, sir.

Q If you weren't living at home with your family, where were you living after high school between the time you went to Nashville?

A I had an apartment in the section called Haymont Hill in Fayetteville.

Q Could you tell us a little bit about what the Haymont section of Fayetteville was like back in '69 and '70?

A It was a miniature version of Greenwich Village; had the head shops and the pizza shops, and things like that.

Q When you say a "head shop," just to make sure that we are all talking about the same thing, would you tell us what a "head shop" was?

A A small store sort of like a boutique where they sold what you would call at that time what hippies were buying. I mean---

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Q (Interposing) Did they sell water pipes?
A Paraphernalia and stuff like that.
Q "Paraphernalia"--you mean paper you roll marihuana cigarettes in?
A Yes, sir.
Q Little rolling devices for marihuana--little rolling machines?
A Yes, sir.
Q Did they sell pipes you smoke hashish with?
A Yes, sir.
Q Incense candles?
A Yes, sir.
Q In fact, that was--incense candles and paraphernalia usually was a stock in trade at a head shop; is that right?
A That was the major extent of their stock; yes.
Q You could buy posters, I think, and sometimes psychedelic lights?
A Yes, sir.
Q You lived in the Haymont section from 1969 until 1971. Were there people who were connected with the Army--soldiers or recent ex-soldiers--who also were living in that area at that time?
A A majority of that section was comprised of

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a lot of soldiers.

Q Were, to your personal knowledge, some of those persons people who were absent without leave from their units?

A Some of them were.

Q Some of them were hiding out from the police?

A Yes, sir.

Q Now, I want to talk a little more about that subject--but I guess I better ask, to make sure that we all know what we are talking about--from your own experiences with drugs back in 1969-1970; you told us that contributed to your leaving your family home; am I correct in that regard?

A Yes, sir.

Q Ms. Stoeckley, in that period of time--'69-'70, what drugs were you yourself using regularly?

A At that time I was addicted to heroin and opium. I used a number of other drugs.

Q All right, let me ask you, before we get to those drugs, you say you were addicted to heroin and opium. How were you using heroin? What form were you taking it in?

A I was mainlining--intravenous.

Q And that expression "mainlining" means you

were taking it through intravenous injection; is that correct?

A Yes, sir.

Q As opposed to what--sniffing it or?

A Snorting it.

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Q Snorting it, all right. And how about opium--what form were you taking it in?

A It was liquid opium. I was injecting that too.

Q You injected that also?

A Yes, sir.

Q How often would you say during that period were you using heroin--let's talk about on a daily or weekly basis so we can get a better fix on it?

A During the day maybe six or seven times.

Q You would take an intravenous injection of heroin and/or opium six or seven times a day?

A Yes, sir.

Q That went on for how long--how long did you remain addicted to the use of heroin and opium?

A Off and on about nine years.

Q During the period of time that we are most talking about now--'69-'70--you were not off; you were on; is that right?

A Yes, sir.

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Q I think you said something about other drugs that were also involved. Did you ever use, say, any barbiturates?

A Frequently; yes.

Q And barbiturates--are they known by the street term of "downers"?

A Yes, sir.

Q Not to get technical but they essentially make you sleepy or depress your central nervous system?

A Yes, sir.

Q Why would you use barbiturates if you were also using opium and heroin at that time?

A Just as a substitute sometimes.

Q You mean you couldn't get opium or heroin?

A If there was none available, I would go and get some barbiturates instead.

Q And how would you take those drugs back then?

A Usually I would inject them also--break them down and mix them up and shoot them.

Q Now, did you have occasion in that same period of time to use a drug known as "angel dust"?

A Yes, sir.

Q And angel dust is also known by what other name--what other more technical name?

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A It depends on what it consists of. It can be PCP, anything else. It can be cut with heroin, different drugs.

Q To your knowledge, what is angel dust or PCP?

A It's just marihuana mixed with some other drug to smoke.

Q Are you talking about PCP or THC?

A PCP is a horse tranquilizer.

Q That's what I am talking about. Angel dust is also known as PCP and that's a horse tranquilizer?

A Yes, sir.

Q What kind of an effect did that have?

A It just tranquilizes you.

Q Now, did you also have occasion to use LSD during '69-'70?

A Yes, sir.

Q What is LSD?

A You mean the technical name or what?

Q No, I don't mean the technical name but what did you know it to be at that time?

A Just acid, a hallucinogenic.

Q And when you say "a hallucinogenic," what would a person using LSD experience? What is a hallucinogenic? What kind of effect did it have?

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A You just used it to take trips; that's all. You would see colors and distorted images and things like that.

Q How often did you use LSD in '69 and '70?

A Almost daily.

Q Almost daily. That's also in addition to the heroin and opium that you were taking; is that right?

A Yes, sir.

Q And what quantities of LSD would you be taking?

A One tablet, depending on what it was--a blotter, one blotter--something like that.

Q You say a "blotter." Is that a procedure where LSD was in liquid form and someone---

A (Interposing) Dropped onto a blotter.

Q Could it have been dropped from an eye dropper onto a blotter?

A Yes, sir.

Q And then what would you do with that blotter?

A You would eat it.

Q You would eat the piece of blotter?

A Stick it on your tongue and you keep it on your tongue or go ahead and chew it up and swallow it.

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Q How long would you feel yourself in '69 and '70 the effects of having taken this hallucinogenic LSD?

MR. BLACKBURN: Your Honor, we would OBJECT to this line of questioning. It is clear that the witness has been on drugs during this time.

THE COURT: It would appear to the Court that you have explored that about far enough. Maybe you are about through.

MR. SEGAL: I would be glad to make an offer, Your Honor, about why we want to pursue this a bit. It is not going to go on forever.

THE COURT: Ask your question. It will be quicker.

BY MR. SEGAL:

Q The question I think I asked you--let me back it up. Did different people get affected by LSD at that time in different ways?

A Yes, sir.

Q There was no single, uniform reaction as far as you knew from people using LSD; was there?

A Never.

Q Now, I would like to ask you: how long would you experience the effects of LSD when you took it?

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A Eight or nine hours.

Q And during that eight or nine hours, you would see colors. What else would you see? How was the world seen by you when you were taking LSD?

A It would just distort everything.

Q How about if you looked at a carpet on the floor? When you yourself were taking LSD, what would you see--would you see just the carpet?

A If I looked at one, it usually looked a lot like a flying carpet. It would be like riveted and everything.

Q You mean it actually was going up to the ceiling or was it wavy?

A No; it was just kind of furled-like.

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BY MR. SEGAL:

Q Did you also have occasion to use in '69-'70 a drug known as mescaline?

A Yes, sir.

Q Is that also another hallucinogen like LSD?

A It is milder.

Q It is a milder hallucinogen. Did you yourself have occasion to use it in '69 and '70?

A Yes, sir.

Q How often would you say, Ms. Stoeckley, you know, you would use mescaline?

A Maybe twice a week.

Q Why would you use that as opposed to LSD? Was there any difference; would it have a different meaning to you?

A I just didn't like LSD that much. It was too heavy for me. Mescaline was a lot easier.

Q When you say that LSD was too heavy for you, are you saying that the experiences that you had when you took LSD were too disturbing or upsetting--would it be fair to say that?

A I didn't like the drug taking me, and that's what it would do. With mescaline I could handle it usually.

Q You say "drug taking me." I guess I have to

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ask you: what do you mean you didn't like the "drug taking me"? What was it that was taking you when you took LSD?

A I didn't like losing control.

Q And was that an effect that you experienced when you used LSD?

A Yes, sir.

Q Did you find you were acting differently than you would like to act when you took LSD?

A Yes, sir.

Q Now, not to go on forever with the catalog of a drugstore, but I want to ask you about a couple of drugs. Did you have--I want to ask you about, did you have occasion to use any other drug frequently--why don't you just tell me that? Did you use any other drug frequently in 1969, or '70, other than the ones that we're talking about now?

A Well, we would smoke marihuana daily, and hash.

Q Hashish?

A Cocaine infrequently.

Q Did you ever use the drug known as THC?

A Yes, sir.

Q THC is the extract of the most potent part of marihuana.

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A Marihuana, yes, sir.

MR. BLACKBURN: Your Honor, we would OJBECT to the leading questions.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q How would you use THC?

A It was usually in tablet form, too.

Q Now, did you ever have occasion during 1969 and '70 to go up to Fort Bragg military reservation?

A I frequently went into Frot Bragg, as I was a service dependent.

Q Was your father still in the Armed Forces at that time?

A He was retired.

Q Retired?

A But I still had use of the facilities.

Q And you would go on to Fort Bragg to the Womack Army Hospital for instance?

A Yes, sir.

Q That was the primary place you went to?

A Generally, yes, sir.

Q Were you familiar with some of the housing areas that were on Fort Bragg at that time?

A Most of them.

Q Did you know Anzio Acres?

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A I had friends there, yes, sir.

Q Did you know Corregidor Courts?

A Somewhat. I cut through there a lot.

Q Let me show you, if I may, a photograph--a photograph marked Defendant Exhibit 80, which was given to us in court the other day.

First of all, let me show you the photograph and ask you to take a look at it, please, Ms. Stoeckley.

(Witness complies.)

Q Have you seen this photograph before, by the way? Is this one that I showed you yesterday?

A Yes, sir.

Q I just have to ask you--you have a quiet voice--but I have to ask you to keep it up so the members of the jury here can hear you.

I showed you this photograph yesterday?

A Yes, sir.

Q Do you recognize what housing area is shown in this area, or any housing area that you have ever seen?

A It looks like any number of the Army housing areas on Fort Bragg.

Q When you looked at it yesterday, what housing area did you say--and I am asking you now--if you recognize any specific housing area?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q May I ask---

THE COURT: (Interposing) Just interrogate the witness as to what her recollection is about anything that has to do with the case.

MR. SEGAL: Yes, sir.

BY MR. SEGAL:

Q I ask you to look at the photograph and see if you can indicate whether you have a specific recollection as to what housing area is depicted here?

A When I first saw it I said it did look like Corregidor Court.

Q It did look like Corregidor Court. Did you also recognize a street or two streets in this photograph?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED as to the form.

BY MR. SEGAL:

Q Looking at it now do you recognize one or two of the streets that are shown in this photograph?

A Not by name.

Q I ask you to think back then as to when you were shown this photograph yesterday and ask you

#3 p6

whether a t that time you recalled the name of the street?

MR. BLACKBURN: OBJECTION.

MR. SEGAL: If Your Honor, please---

THE COURT: (Interposing) OVERRULED.

BY MR. SEGAL:

Q Would you try to think of it, Ms. Stoeckley, and see if you recall the name of the street?

A When I first saw it I said it looked like Castle Drive.

Q Did you also indicate the name of another street there that you recognize?

A No.

Q Did you recognize any building that is shown in that picture as belonging in 1969 or '70 to anybody who lived in Corregidor Court?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Do you know---

THE COURT: (Interposing) Why don't you ask her what she knows this morning, not what you asked her yesterday or she told you yesterday?

MR. SEGAL: I'm asking her whether in '69 she recognized--or '70--she recognized--I will

rephrase the question.

THE COURT: Yes.

BY MR. SEGAL:

Q Do you recognize any home there and do you know who has lived in the home that is depicted in that picture?

A Not a specific home.

Q All right. Le t me just move this away.

Now, in 1969 and 1970, did you ever hear the word spoken by other people and used by yourself perhaps, called "pig"?

A Yes, sir.

Q Is that a word commonly used in the Haymont Section by--let's say other people?

A Yes, sir.

Q You had occasion to use that word, also, sometimes, is that right?

A Pretty often.

Q Pretty often, all right. Was the word "acid" spoken frequently on the streets of the Haymont Section in '69 and '70?

A Yes, sir.

Q There are a number of words that were used in '69 and '70, weren't there, for people when they liked something--people who lived in that section of

#3 p8

town, when they liked something, they had kind of a special word to express liking something, is that right?

A Yes, sir.

Q Something that you would like would be--well, I guess people said the word "good" sometimes didn't they?

A Yes, sir.

Q Was the word "cool" ever used to indicate approval?

A Yes, sir.

Q Was the word--was "hip" as indicating it was good ever used?

A Yes, sir.

MR. BLACKBURN: We would OBJECT to the leading questions.

THE COURT: Yes, I will SUSTAIN the objection.

MR. SEGAL: Might I make an offer, Your Honor. We have been subjected to two hours of reading a magazine---

MR. ANDERSON: (Interposing) OBJECTION to comments, Your Honor.

THE COURT: If you have any comments, you can make those at the bench. I will SUSTAIN the

#3 p9

objection as the form of the question. I will let the witness answer. You have established she is not under the influence of drugs or anything this morning.

MR. SEGAL: May we see Your Honor; I think we will speed it up a little bit?

THE COURT: Come up.

BENCH CONFERENCE

MR. SEGAL: Your Honor, I want to formally ask with a caveat for leave to examine this witness as on cross, although I will make every attempt to conduct the examination in critical matters where I can as on direct, because I think it is the best way to go. But this is a witness whom I have caused to be arrested; who has been in prison because of me; who knows that her interest is contrary to my client.

And I think it is not asking too much under the rules for leave to proceed that her interest is adverse to that of the Defendant. Now, again--I will say that I basically don't expect to do that much, but when we get to a point to move it along or get to gut issues, I would like to do that.

THE COURT: I have detected nothing in the demeanor or answers or anything else in this witness to indicate any hostility whatever to your questioning. She has answered the questions forthrightly and intelligently, and I see no reason to vary the rule in this particular instance.

MR. SEGAL: My point would be---

THE COURT: (Interposing) Mr. Segal, look--you spent virtually all day yesterday at the

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expense of the Court and the jury with leave to examine this witness. You wanted 30 minutes. You extended it to 45, an hour and 15 minutes, and finally it ran the gamut of the whole day. We did nothing yesterday while you could explore this thing.

Now, I don't think it is fair for you to come now and to establish her version of the testimony through the witness, who has exhibited no hostility at all, and I am not going to let you do it.

MR. SEGAL: Let me say this---

THE COURT: (Interposing) I will say, if something else comes up--but in its present posture, that is all you have. And I will not vary the rule.

MR. SEGAL: I think that the rule permits on what must be non-critical matters, but which are important to the Defendant--I mean, for God's sakes, for me to have to say to her, "Will you now please state all the words you remember from people saying good things?"

This case will not rise or fall on that, although it may be necessary fact. The rule permits the Court--and in my experience it has always been that on matters that are not central to the issues, then that was favored to move the case along.

I don't want to take the whole morning with this witness. I want to get to my point. And I have an

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obligation to respond to some of this--you know--hours of reading that we were subjected to, that we were led to believe that Jeffrey MacDonald could have only learned and nobody else knew about, unless you read this Esquire magazine.

THE COURT: You have a witness who apparently is doing a pretty good job at it. You are up here just to see if you may vary the form of the questioning, so that you may give her the answers in the question, and that is what I am precluding your doing right now under the present circumstances, so ask your questions.

(Bench conference terminated.)

BY MR. SEGAL:

Q Ms. Stoeckley, were there any other words that were used by people you knew at that time when they wanted to say that they liked something--something was good--that they liked it? Could you give us some of the other words?

A "Far out."

Q Anything else?

A A lot of the younger kids, like in junior high and stuff, were saying "groovy" and things like that.

Q In 1969 and '70, had you heard of Charles Manson?

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A Yes, sir.

Q And at that time, did you have an opinion about him--what you thought about him as a person?

MR. MURTAGH: OBJECTION, Your Honor.

THE COURT: SUSTAINED.

MR. SEGAL: Your Honor, it goes to matters raised by the Government, not anything I have introduced in this trial. We were subjected---

THE COURT: (Interposing) I SUSTAINED the objection.

BY MR. SEGAL:

Q Did you read about Charles Manson?

A Yes, sir.

Q Where did you learn about him and his activities?

A Just from the newspapers.

Q Did you have occasion to learn or see anything about him on television?

A On the news and on the radio and things like that.

Q Did you believe that he was a person who had any kind of special power over other people?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: I will OVERRULE that.

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THE WITNESS: Any special power?

BY MR. SEGAL:

Q Was he a person who, in your opinion, possessed special powers?

A I am not sure if you would call it "powers." He had some kind of something over those people. I don't know what.

Q Did you know of him in connection with any cult or cult-type activity that you were familiar with?

A No; not specifically.

Q Well, were you interested yourself in 1969 and '70 in the subject of witchcraft?

A Yes, sir.

Q Did you know--and have a friend, as a matter of fact--who visited you whom you considered to be a witch?

A Yes, sir.

Q What was her first name?

A Sheila.

Q Was it because of Sheila that you became interested in 1969 and '70 in witchcraft?

A I was already interested. She just informed me more on the subject.

Q Did you own some books at that time on witchcraft yourself?

A Yes, sir.

Q What were the names of those books?

A It was A Treasury of Witchcraft--several different volumes of it.

Q Two volumes?

A Yes, sir.

Q Did you learn at that time about the rituals that are performed by, say the high priests or priestesses of witchcraft?

A From these books.

Q Yes?

A From the books; yes, sir.

Q Did you also learn in talking to Sheila about it?

A Yes, sir.

Q Was there any ritual that you learned about and knew about at that time involving the killing of animals?

A A lot of the rituals involved killing the animals and using their blood.

Q What was the most commonly used animal that was killed?

A A cat.

Q Beg your pardon?

A A cat.

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Q Cat? Was there some special relationship that you believed between cats and witchcraft?

A A cat is generally the familiar in witchcraft.

MR. MURTAGH: Your Honor, we would OBJECT.

THE COURT: Relevancy grounds?

MR. MURTAGH: Relevancy.

THE COURT: I fail to see it. Let him proceed. Sometimes the Court does not perceive immediately the direction in which the questioning is going. Go ahead.

BY MR. SEGAL:

Q What would be done, to your knowledge, at that time with the blood of an animal such as a cat that was killed by a priestess?

A It depends on what type of ritual you were using at that time. It could be sprinkled on a person or thing or anything.

Q The blood could be sprinkled on a person or a thing, you say?

A Yes, sir.

Q That could be done for both good and bad purposes, as witches would see that?

A There is two separate types of witchcraft--

4km8

black and white. White is for benevolent purposes.

Q Black is for what?

A Usually for doing harm to someone.

Q In your knowledge and experience at that time, did the priestesses wear any particular clothing when they performed ceremonies or rites?

A If it was really a high priestess, yes.

Q I should say, "a high priestess." What did the high priestess wear? What was the custom and what was the practice in that regard?

MR. MURTAGH: OBJECTION, Your Honor.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Yes; go ahead?

A Generally, some type of robe--like a vestment of some sort.

THE COURT: Like a what?

THE WITNESS: A vestment.

BY MR. SEGAL:

Q If a robe or vestment wasn't available, what else, if anything, might a priestess wear?

A Anything.

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BY MR. SEGAL:

Q To your knowledge, was a sheet ever worn?

A Sometimes.

Q What color might these vestments be?

A The witches in the coven generally wore black. The high priest would wear black, and the high priestess just usually wore white.

Q Now, does a candle play any part in the ritual of the high priestess?

A Yes, sir.

Q And what role would a candle play?

A The candle generally signifies death or growing old or something like that.

Q Is there any reason why the priestess--the high priestess--would use a candle as opposed to some other kind of illumination--a flashlight or some mechanical light?

A It's just a belief that the Devil is afraid of any kind of artificial light, and they use candles or torches or something like that.

Q When the high priestess was to perform such as go to a ceremony--have a ceremonial--might they ever walk outdoors in their robes?

MR. MURTAGH: OBJECTION, Your Honor.

THE COURT: I'll SUSTAIN that as to

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the form.

BY MR. SEGAL:

Q All right, were there some ceremonies in which the high priestess was engaged--were they indoors or outdoors at all times?

A They were generally indoors.

Q Did they ever, to your knowledge, take place outdoors?

A Occasionally in like a State Park or something like that. Nowhere in public, though.

Q What, in going to a ritual--would a priestess carry anything in the way of a light?

A Generally a candle.

Q Would that be lit or unlit?

A Lit.

Q Now, how long would you say you were involved in witchcraft yourself?

A About three years.

Q When did you give it up?

A Well, at the end of that three years, I ran into a bad experience with some people in Florida and I decided I didn't want to have anything else to do with it.

Q Would that be around what--1972 or 1973?

A Yes, sir.

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Q Now, I want to direct your attention to February of 1970, Ms. Stoeckley. I want to ask you about the early morning hours of February 17th of 1970; all right?

A Yes, sir.

Q Well, just to give us a little context--let me back it up. Late on the evening of February 16, 1970, what were you doing if you recall?

A In the evening, I don't know.

Q What is the last thing you remember doing on February 16, 1970--that's Monday--Monday evening?

A The last thing I remember doing is talking to a friend of mine in my driveway.

Q And who would that person have been? Do you remember the first name?

A Greg.

Q About what time of the day or night was it when you spoke to him?

A It was around midnight.

Q That means it would be February 16th if it was 11:59 p.m. and if it was midnight, it was February 17th?

MR. MURTAGH: OBJECTION, Your Honor.

MR. SEGAL: Can we not get the times straight in this case, Your Honor, without an objection

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from the Government? I can't understand why that should be a subject of any objection to anybody in this court that would want to know.

THE COURT: Is it all right if they object, and the objection is OVERRULED?

MR. SEGAL: It is not that question, Your Honor---

THE COURT: (Interposing) It is that question. Now, you ask your next one.

MR. SEGAL: Thank you. May I have Your Honor's indulgence for one second?

(Pause.)

MR. SMITH: Your Honor, may we approach the Bench just for a brief moment to straighten out something that may speed this up?

B E N C H C O N F E R E N C E

MR. SMITH: Judge, we sat as patiently as we could for three weeks while the Government put on their evidence. We sat through two hours of their reading about a black swan having sexual intercourse with a woman on a bed, and we didn't object but one time when we came up here and asked Your Honor to review it. But now, Your Honor, I fear that the attitude of the Government and the way Your Honor

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is answering their questions makes it appear that we are idiots for asking these questions of the witness.

I think we have a right to explore these things, and you know, we are not getting to do it. The objections---

THE COURT: (Interposing) I am absolutely amazed that you would make this statement, Wade. They made an objection, and I just overruled it, and then Mr. Segal just comes along and wants to give a lecture. You know that I do not permit that.

MR. SMITH: I know.

THE COURT: And I also try to handle it in a way that will not reflect on him or your client.

MR. SMITH: I know.

THE COURT: I have tried repeatedly to do that. I don't see what the problem is.

MR. SMITH: We appreciate that, but I wanted Your Honor to know---

THE COURT: (Interposing) I can't keep them from objecting and, if they do, then the duty devolves on me to rule.

MR. SMITH: All right, we will proceed. Thank you, sir.

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THE COURT: Well, go ahead.

(Bench conference terminated.)

THE COURT: Any further questions of this witness?

MR. SEGAL: Yes, Your Honor.

THE COURT: Go ahead.

BY MR. SEGAL:

Q Now, you say you recall standing in your driveway about midnight either at the end of February 16th or the beginning of February 17th; is that right--1970?

A Yes, sir.

Q Where did you live? What was your address at that time?

A I'm not sure of the number, but it was on Clark Street.

Q Did you have a neighbor by the name of Bill Posey--William Posey--at that time?

A Yes, sir.

Q And did you know Mr. Posey--who he was?

A Yes, sir.

Q Was this a whole house or an apartment that you were living in?

A It was a house made into several different apartments.

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Q Was there anything that was--well, what you would call--unusual going on that night inside the apartment?

A Not inside my apartment; no, sir.

Q All right, inside the house? Was there any painting going on at that time?

A Not at that time.

Q At some later time?

A Yes, sir.

Q When was that?

A When I returned to the house.

Q When you returned--I see. Now, how long did this conversation that you were having with this man in your driveway take place?

A I don't know how long it took, but I know when he left.

Q When did he leave?

A At exactly midnight. He had to get back to Fort Bragg for guard duty or something.

Q Do you know who that man was with at that time?

A He was with the 82nd Airborne Division.

Q And was he in uniform or out of uniform at that time?

A He was out of uniform.

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Q Now, I ask you: after he left, what did you do?

A I'm not sure what I did after he left. I went back in the house and I don't remember what I did.

Q Had you had any drugs during the day of February 16, 1970?

A Yes, sir.

Q Would you tell us, to the best of your recollection, Ms. Stoeckley, what you had taken--what type of drugs you had taken that day?

A Well, I had taken for sure the opium and the heroin. I had smoked grass all day, and then, when Greg left, he left me with a hit of mescaline which I swallowed there at the car before he backed out.

Q Right before he left you say you received some mescaline or took some mescaline?

A Yes, sir.

Q Again, your voice is quiet and soft so it is a little hard for me to hear the details. I did not hear how you got that. Was it from him?

A He gave it to me and I swallowed it while he was still standing there.

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BY MR. SEGAL:

Q What form did you take that mescaline in?

A Tablet.

Q Do you remember how many you took?

A One.

Q How soon thereafter did you start feeling any of the effects of the mescaline?

A It was good mescaline; I guess pretty soon afterwards. I am not sure about the time.

Q Is it hard to judge time when you are using a drug like that?

A Not usually.

Q Just so that I don't misunderstand you, were you using a quantity of heroin and opium on that day--February 16th--that you previously described this morning--about six or seven intravenous injections?

A Yes, sir.

Q Besides that, and the mescaline and the marihuana, do you have any recollection of any other drugs you used that day?

A No, sir.

Q Do you have any recollection--what is your next recollection after taking mescaline?

A Returning to the house later that morning.

Q Can you pinpoint in any way what time it

#6 p2

was that you came back to the house?

A About 4:30 or 5:00 o'clock.

Q In the morning?

A Yes, sir.

Q How did you--when you say you came back--I guess it is fair to assume you were awake. How did you come back. What form of transportation did you use?

A In a car.

Q You have a recollection of coming back to that address around 4:30 or 5:00 in the morning?

A Yes, sir.

Q Were you a passenger in the car or were you driving the car?

A I was a passenger.

Q Do you offhand know what kind of car it was?

A Not what kind--it was a blue car. That's all I know.

Q It was a blue car. The make or model you have no knowledge of?

A It was a smaller-type car. I don't know what kind.

Q Do you know whether or not it was a Mustang, Ford Mustang?

#6 p3

MR. BLACKBURN: OBJECTION, Your Honor.

THE WITNESS: Not for sure, no, sir.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Who else was in the car, Ms. Stoeckley, when this recollection comes back to you?

A I can't remember their names. Just some soldiers from Fort Bragg.

Q How many were there?

A Two or three--I don't know.

Q Do you know what race these other men were?

A Not for sure, no.

Q When you say "not for sure," that means you would be guessing if you were to try to identify the race of each and every one of the three men in that car?

A Yes, sir.

Q Is there any explanation you can give us as to why you can recall coming back--or how you are able to recall coming back in the car, but cannot recall who the persons were who were in the car with you?

A 'Cause they just dropped me off and I got out and went in the house.

Q Do you have a specific recollection of where you were between midnight or shortly after midnight and 4:35 in the morning?

#6 p4

A No, sir.

Q Do you have a specific recollection as to what you did at that time, between midnight and a little bit after 4:35 in the morning?

A No, sir.

Q Do you remember in the months after February 17th, the first few days after February 17th, having some conversation with your neighbor, Bill Posey?

A Yes, sir.

Q Do you recall talking with him about the subject of the MacDonald murders at Fort Bragg?

A The subject came up but I don't remember what was said.

Q Let me break the question, if I can, into two parts. Do you or don't you recall at least talking about the MacDonald murders with Bill Posey within the week after February 17th, 1970?

A Yes, sir.

Q Do you have a recollection of anything that you said to him at that time about the MacDonald family and murders that had taken place?

A Only one conversation that I do remember having.

Q Okay, can you tell us about that

#6 p5

conversation? First of all, do you remember approximately when after February 17th, 1970, that that conversation took place?

A It was about a week and a half later I would say. He was up on Haymont Hill, and I ran into him up there; and I was just fooling around. I knew--you know, he seemed to be trying to put me on the spot or something.

So, I don't remember the extent of the conversation, but it ended up by my telling him to tell his wife to keep her door locked.

Q May I ask, do you recall talking about the MacDonald murders before this remark was made?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q What was the subject matter that you were talking about before you made this comment to Mr. Posey?

A I'm not sure.

Q Did you have some other conversation with Bill Posey between February of 1970 and say August of 1970?

A Several times.

Q Did the subject of the MacDonald murders

#6 p6

come up in those conversations?

A Usually.

MR. BLACKBURN: I would OBJECT to this line of questioning.

THE COURT: Well, I cannot rule on an objection to a line of questioning . If there is a question I will try to rule on that.

MR. SEGAL: I'm sorry; I could not hear Your Honor's ruling.

MR. BLACKBURN: I WITHDRAW the objection.

THE COURT: That one is over. I will tell you though, he apparently wanted to object to a line of questioning and it is a little bit difficult for the Court to make a ruling on that kind of an objection; but I said if you made a specific question and there was a specific objection to that question, I would undertake to rule on that. That is what I told him.

MR. SEGAL: Thank you. I gather the Government has withdrawn the objection?

THE COURT: They did.

BY MR. SEGAL:

Q What I was asking, Ms. Stoeckley, was, you did tell us of having some conversations with Bill Posey, other than the one you mentioned between then

#6 p7

and August of 1970, right?

A Yes, sir.

Q I would ask you, did any of those conversations involve the subject of the MacDonald murders?

A Yes, sir.

Q Did any of those conversations involve where you were and what you had done between midnight and 5:00 a.m. on February 17th?

MR. BLACKBURN: Your Honor, we would OBJECT to leading in the questioning of the witness.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Did they involve that subject matter?

A Yes, sir.

Q Do you remember now what you said to Mr. Posey about those matters?

A Not specifically, no.

Q Do you recall anything that you told him during that period of time as to where you were between midnight and 5:00 a.m. on February 17, 1970?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you recall what you said to him?

A I just told him I did not know where I was.

Q Did you tell him anything else that you now remember saying about where you were between midnight and 5:00 a.m.?

A No, sir.

Q Later on in 1970, you moved to Nashville, Tennessee, didn't you?

A Yes, sir.

Q Did the MacDonald murders have anything to do with your decision to move to Nashville?

A To some extent, yes.

Q What was the extent. Tell us about that, please?

A The police harrassment and things like that, and involvement of the family name. I just thought it would be best to move away.

Q And when you were in Nashville, where did you live?

A When I first moved there I lived in a dormitory. Then I moved out into an apartment.

Q Do you know what street that apartment was located on?

A Portland Avenue.

Q Portland Avenue?

A Yes, sir.

Q Did you have a neighbor when you lived on

#6 p9

Portland Avenue by the name of Jane Zillioux? Did you know a lady by that name?

A She was Jane McCampbell, yes, sir.

Q Jane---

A (Interposing) McCampbell.

Q Jane McCampbell, but you now know her by her married name of Zillioux?

A Yes, sir.

Q Do you recall having a conversation in the latter part of 1970 with Jane McCampbell Zillioux about the MacDonald murders?

A Yes, sir.

BY MR. SEGAL:

Q Do you remember approximately when that took place?

A No; I was real sick that day when she came over to check on me. She was sort of afraid of me, anyway. She was not used to being around drug addicts and things like that. She was not sure what was wrong with me, so she was sort of in a hurry to leave.

Q Is that the latter of part of 1970, though?

A Yes, sir.

Q You say you were "sick." What were you suffering from at that time?

A Hepatitis.

Q Have you suffered from chronic hepatitis for some years?

A Nine years now; yes, sir.

Q When did you first become a victim of hepatitis?

A 1969.

Q Do you recall Mrs. Zillioux talking to you about your condition at that time--about the way you were feeling, the sickness you were having?

A Yes, sir.

Q Is that clear in your mind?

A Not real clear; no.

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Q Do you recall the subject of the MacDonald murders coming up at that time when you were talking to Mrs. Zillioux?

A No; I don't.

Q Are you saying you don't recall it being talked about, or you don't recall what was said, if it was talked about?

A I don't recall what was said.

Q Again, I am going to break the question into two parts. First of all, I just want to know if you can recall the subject matter coming up? I don't ask you to say yet whether you remember what was said; all right?

A Yes, sir.

Q Do you recall, Ms. Stoeckley, that the subject of the MacDonald murders came up on that visit when Mrs. Zillioux came over to your apartment?

A Yes, sir.

Q Do you recall what you said to her at that time?

A No, sir.

Q Did you also know in Nashville in 1970 a man by the name of Red Underhill?

A Yes, sir.

Q Who is Red?

A He was a friend of Jane's and Bonnie Hudgins,

another friend of mine in Nashville.

Q Would it be fair to say that you, Jane, Bonnie and Red all lived, first of all, very close together, did you not?

A We did not live close together. Bonnie had a store on the corner and Jane lived across the street from me, and Red was just a frequent visitor in the area.

Q Do you recall in late 1970 Red Underhill coming to your apartment? Do you remember such a visit by him?

A I remember him knocking on the door; yeah.

Q Do you recall talking with him at that time? I am not asking whether you recall the contents again, but I only want to ask you whether you recall talking to Red Underhill at that time?

A All I recall is when I finally answered the door to him and seeing who it was, and then I went back in and sat down.

Q Do you remember Red Underhill coming in?

(Witness nods affirmatively.)

Q Again, I have to ask you to say "yes" or "no."

A Yes, sir.

Q Do you have any recollection at all--well, first of all, do you recall the subject of the MacDonald murders coming up at that time when Red Underhill came

7km4

there?

A No, sir.

Q Do you recall Red Underhill leaving your apartment, though?

A Yes, sir.

Q Am I correct in understanding that you do not have any recollection of what was said, though?

A No; because when Red came to the apartment I was sort of upset, which was one of the reasons he left.

Q I am sorry?

A That was one of the reasons he left so quick, because he wanted to go get Bonnie to see what was wrong with me.

Q He wanted to get Bonnie Hudgins to help you?

(Witness nods affirmatively.)

Q Yes?

A Yes, sir.

Q Just to finish that discussion--do you remember that during the time that Red was there and came to your apartment, the subject of the murders at Fort Bragg--do you remember that subject coming up?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED. She answered that.

MR. SEGAL: I thought it was not clear,

Your Honor; I am sorry.

BY MR. SEGAL:

Q Do you recall in 1970 and '71, while you were in Nashville--do you remember meeting a man by the name of Jim Gaddis?

A Yes, sir.

Q Who is or who was Jim Gaddis?

A He was a Metro patrolman at that time when I met him.

Q When you say "Metro," you mean Metropolitan Nashville Police Department?

A Yes, sir.

Q Was he a uniformed patrolmen, or was he on some sort of special assignment?

A He was on special assignment with Internal Affairs.

Q He was on special assignment with what?

A With Internal Affairs.

Q How long did you know Jim Gaddis?

A About a year and a half, I guess.

Q Do you recall at some time during the period when you were an acquaintance of Jim Gaddis the subject of the MacDonald murders at Fort Bragg coming up?

A Several times.

Q Several times? Do you recall what you said,

the words you said about where you were and what you did on February 17, 1970, when you spoke to Jim Gaddis?

A Not specifically.

Q Did I ask you when I talked to you yesterday to try and think of the words that you said at those times you spoke to Mr. Gaddis?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Did I ask you to try and think of those?

A You asked me, but I can't remember anything that was said.

Q That was the next question. Did I ask you to think about it? Have you tried?

A I have tried, but I don't remember what was said.

Q Do you recall talking to a CID Agent in 1970 and '71?

A I talked to several CID Agents.

Q Do you remember one particular CID Agent by the name of Mr. Brisentine? Does that name at all sound familiar to you?

A The name does; yes, sir.

Q Do you remember the name of any other CID Agent?

A Mahon.

Q Mr. Mahon? Is it your recollection that Mr. Mahon and Mr. Brisentine saw you at the same time?

A Yes, sir.

Q If I were to suggest to you that this was about April 24th of 1971, would you have any reason to disagree with that?

A No, sir.

Q Was that discussion about--or in that discussion, did the subject of the MacDonald murders come up when you were asked questions about that?

A That was the topic of conversation.

Q If you recall the conversation right, do you remember what you told Mr. Brisentine at that time?

A No, sir.

Q And that includes--I will go into the whole question. Do you recall what you told Mr. Brisentine, if anything, about what you may have done on the early morning hours of February 17, 1970?

A All I told the CID whenever I talked to them was I didn't know where I was at that time.

Q The conversation with Mr. Brisentine--did it last more than about 30 seconds?

A Yes, sir.

Q About how long did it last, would you say?

A Approximately an hour, I would say.

Q Do you recall anything else that you said to Mr. Brisentine on April 24, 1971, about the MacDonald murders?

A No, sir.

Q Did you know a policeman--actually, a detective--in Fayetteville in 1969-1970, by the name of P. E. Beasley?

A Yes, sir.

Q How old a man was Mr. Beasley at that time?

A About 50 years old.

Q About 50 years old? And what was Mr. Beasley's work in the police department at Fayetteville at that time, if you know?

A He was with the Inter-Agency Bureau of Narcotics and Dangerous Drugs.

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BY MR. SEGAL:

Q When you say the Inter-Agency Bureau of Narcotics and Drugs, do you know what that was? What is the Inter-Agency Bureau?

A It was made up of CID and city police and different agencies.

Q When did you first meet Mr. Beasley?

A I guess the first time he busted me.

Q That was your introduction; right?

A Yes, sir.

Q Well, when did that first contact with Beasley take place?

A Late 1969.

Q Was that an arrest for a narcotics law violation against you?

A Not the first one; no, sir. Not the first time he busted me; no, sir.

Q What was it for?

A I think it was for trespassing.

Q Did you and Mr. Beasley have other similar contacts afterwards?

A Only in narcotics.

Q Did he bust you again?

A Yes, sir.

Q Did you continue to know Mr. Beasley all

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2

the time that you remained living in Fayetteville?

A Yes, sir.

Q What was your relationship with him? Was he an enemy, a stranger to you? Just describe in your own words.

A I considered him a very good friend.

Q Was Mr. Beasley somebody you trusted?

A Yes, sir.

Q Did Mr. Beasley express some trust in you?

A Yes, sir.

Q Did you ever know Mr. Beasley ever to do anything as far as you were concerned that you couldn't depend upon or rely upon in your own experiences with him?

A Never.

Q Do you consider Mr. Beasley today, here--August 1979--to still be a friend of yours?

A Yes, sir.

Q Did you stay in contact with Mr. Beasley after you left Fayetteville?

A Yes, sir.

Q How did you do that, Ms. Stoeckley?

A Well, if I was visiting Fayetteville, I would call him at the station. One time he was in the hospital. I went to see him when he was at home.

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3

Q Did you ever have occasion to write Mr. Beasley?

A I think I did; yes, sir.

Q You talked to him over the years; is that right?

A Well, he came to Nashville too.

Q He came to Nashville too. Do you recall when he came to Nashville?

A Sure do.

Q About when?

A About 1972. He came up there with a CID agent, Dick Mahon.

Q And at that time did the subject of the MacDonald murders come up?

A That was his reason for being there; yes, sir.

Q If I were to suggest to you that that was probably more like between February 27th of 1971, and March the 1st of 1971, would you have any reason to think otherwise as far as the dates?

A No, sir.

Q Did you not talk to Mr. Beasley on several occasions between those three dates--the 27th through the 1st of March? Did you have more than one conversation with him during that period of time?

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4

A Yes, sir.

Q And were the conversations about the MacDonald killing at Fort Bragg in February of 1970?

A Yes, sir.

Q You recall exactly the subject matter of those conversations; is that right?

A Yes, sir.

Q Do you have a recollection--a clear recollection in mind--of what you said at that time?

A No; I just asked him to see where I stood, if I was in any trouble or what.

Q Do you have any other recollection of what you said to him about the events of February 17, 1970?

A Not specifically.

Q Now, did you have occasion to talk with Mr. Beasley anytime recently?

A Recently?

Q Yes.

A Well, yesterday.

Q Yesterday. Now, I guess we ought to make it clear. Was yesterday the first time that you and I had ever met and talked to each other?

A Yes, sir.

Q When I talked to you, was Mr. Smith, my

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5

colleague over here--was he present when we talked yesterday?

A Yes, sir.

Q When I told you that Mr. Beasley was also around, what did you say?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: Well, yes, I think you better ask her a more specific question.

MR. SEGAL: All right, Your Honor.

BY MR. SEGAL:

Q Would you describe where you and Mr. Smith and I first met? Was it in a room here in the courthouse?

A Yes, sir.

Q And was there anybody else who was in that room when you and I and Mr. Smith met the first time?

A Well, Beasley came in and you also asked me if I wanted someone there to take notes.

Q Yes.

A And I said, "Yes," and you had someone come in. You also gave me permission to re-read the notes when we were done.

Q All right, let me ask you this: Mr. Beasley came in right after you and I met?

A Yes, sir.

Q Was that with your approval or disapproval that Mr. Beasley was there?

A A little bit of both.

Q A little bit of both. Did you not want him there?

MR. BLACKBURN: Your Honor, we would OBJECT to this.

THE COURT: Well, OVERRULED.

THE WITNESS: Well, I had been given some misguided information on him and I was sort of---

BY MR. SEGAL:

Q (Interposing) Did you and he talk it over?

A We cleared it up and then I was happy to see him.

Q As far as you were concerned, was Mr. Beasley present as a friend yesterday?

A Yes, sir.

Q Did you also see Jane McCampbell Zillioux yesterday?

A Yes, sir.

Q Did she come in and talk with you?

A Yes, sir.

Q Did you see Red Underhill yesterday?

A Yes, sir.

#8
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Q Did he also talk with you?

A Yes, sir.

Q Did Bill Posey also talk with you yesterday?

A Yes, sir.

Q By the way, was there anybody else who you knew who was a friend of yours present at any of these times?

A My fiance was allowed to come in and sit down.

Q What is his name?

A Ernest Davis.

Q He was sitting right next to you?

A Yes, sir.

Q All right, now, did each of those people I have mentioned to you--Jane and Red and Bill Posey--each tell you what they remembered of their conversations of the various dates that I have been talking about this morning?

A Yes, sir.

Q And, after they told you what they remembered, did it in any way revive or bring back a memory of what you have said?

A Only pieces of the conversation.

Q Did it revive your memory fully as to

#8
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8

what you said to those persons about the MacDonald murders?

A No, sir.

Q Now, at that time when we were meeting yesterday and talking, do you recall me showing some photographs to you?

A Yes, sir.

Q In fact, we looked at quite a few photographs; didn't we?

A Yes, sir.

Q I want to show you these photos, please, to see whether we are talking about the same photos. They have previously been identified in the record as Government Exhibits G-775, 776, 773, 771.

BY MR. SEGAL:

Q Do you recall me showing you a group of photographs, of which the four I am about to show you now were part of them? Please take a look those, if you will, Ms. Stoeckley?

A Yes, sir.

MR. SEGAL: For the record, may it be indicated that the photographs I have exhibited to the witness are autopsy photographs, three of them of Kristen MacDonald and one of Colette MacDonald?

BY MR. SEGAL:

Q Now, when you looked at those three photographs of Kristen MacDonald, do you recall what, if anything, you said as far as any recognition of the person depicted there?

A No.

MR. ANDERSON: I could not hear her answer, Your Honor.

THE COURT: I understood her to say "no." Is there another question?

MR. SEGAL: Yes.

BY MR. SEGAL:

Q You are still examining those pictures, Ms. Stoeckley?

A No, sir.

9km2

Q Will you look at the picture that is marked G-771 of Mrs. Colette MacDonald? Do you recall what, if anything, you said when you saw that photograph yesterday?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: May I have the basis of the objection, Your Honor, for the ruling?

THE COURT: Yes; you may ask this witness today if she recognizes it. It is not a question of what she told you during some private conference with her.

MR. SEGAL: It is only preliminary foundation, Your Honor.

BY MR. SEGAL:

Q Do you recognize---

THE COURT: (Interposing) What do you say about that picture today?

THE WITNESS: I don't recognize her.

BY MR. SEGAL:

Q All right; let me show you some other pictures. Do you recall looking through several large books of photographs yesterday, such as the one I am holding in my hand?

A Yes, sir.

Q I want to show you a series of five photographs from one of those books.

MR. SEGAL: For the record, let me indicate I am showing to the witness photographs taken from the crime scene at the MacDonald house prior to removal of the bodies, identified heretofore as Government 59, Government 70, Defendant Exhibit 22, Defendant Exhibit 84, Government Exhibit 145--these photographs having been identified as taken in the bedroom of Kristen MacDonald.

BY MR. SEGAL:

Q Ms. Stoeckley, will you please take a look at these photographs and first of all tell me if they seem familiar as among those you saw yesterday?

A I saw these yesterday.

Q Beg your pardon?

A I did see these yesterday.

Q Does anything in that last group of photos I have just showed you seem familiar to you?

A No, sir.

Q Does the picture of the person in the bed in any way seem familiar to you?

MR. BLACKBURN: Your Honor, we would OBJECT She has answered the question.

THE COURT: Yes; she said nothing in

9km4

any of the photos--was that your answer?

THE WITNESS: Yes, sir.

THE COURT: Nothing seems familiar to you?

(Witness nods affirmatively.)

MR. SEGAL: I need to ask one specific matter that I want her to look at and ask her whether that refreshes any recollection, or has any recollection.

MR. ANDERSON: We OBJECT.

THE COURT: I will let him ask her.

THE WITNESS: No, sir.

BY MR. SEGAL:

Q Let me just ask you about an item in the photos that are marked G-59 and G-145. I want to hold them up, please, if I may, and ask you if you see first of all an item in the foreground here, in the left corner of both of these photographs? Can you see that, Ms. Stoeckley?

A A hobby horse.

Q Beg your pardon?

A A hobby horse.

Q Does that item seem familiar to you in any way?

A No.

Q It does not?

(Witness nods negatively.)

Q Sometime after February 17, 1970, did you stop using LSD?

A Yes, sir.

Q Was there a specific reason why you did that?

A Only the reason I explained earlier.

Q Was there a reason that had anything to do with the MacDonald murders?

MR. BLACKBURN: OBJECTION.

THE WITNESS: No, sir.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q In February of 1970, did you own a hat of any sort?

A Yes, sir.

Q How would you describe that hat?

A Just an old, floppy hat.

MR. SEGAL: Your Honor, indulge me for a moment.

(Counsel confer.)

MR. SEGAL: May we ask how long it would take to get this matter?

MR. BLACKBURN: Your Honor, may we approach the Bench?

#10p-1

BENCH CONFERENCE

MR. SEGAL: Three days ago, Your Honor, I tendered a subpoena in which the Government said was unnecessary and they accepted from me a request that they produce certain exhibits from the Article 32 proceeding, in 1970, which had been in their possession.

I asked for that to be here in court yesterday. This is the moment when I precisely need those. They are not here, and I am just saying that, you know, I am going to go on to other questions; but I do think that we could do better in cooperation when things like that are agreed upon that we should have them available.

Now, I don't know what the delay is. I wanted to show this lady a picture, you know, of the hat precisely we are talking about at this time.

THE COURT: Picture of what hat? Her hat?

MR. SEGAL: The hat which we believe is a replica of a hat she wore at that time. It depicts it exactly.

MR. MURTAGH: Your Honor, may I respond as to--Mr. Segal did offer a subpoena complete with a

#10 p2

check for all of the exhibits that were introduced in the Article 32.

MR. SEGAL: We did not ask for all the exhibits.

MR. MURTAGH: By the exhibits I mean some notebooks or photographs and things like that that were part of the investigating officer's report.

I told Mr. Segal I was not going to give them to them. I would make them available. As you know, Your Honor, yesterday's schedule was sort of thrown into chaos.

Since that time no one has come--you know, I expected someone to come around and get something. They certainly haven't been hesitant in the past.

They are in the counsel room, but as to the photographs, Your Honor, we would object anyway; because what this is, is a photograph that apparently was taken at the direction of the Defense during the Article 32 investigation of a floppy hat.

Then it was introduced into their record during the Article 32 investigation. It is not wholly Ms. Stoeckley's hat. I think that's another one of these deals where the--it may appear that the witness is identifying a photograph of an exhibit which in fact is--it is not an exhibit.

#10 p3

There is no---

THE COURT: (Interposing) Well, I don't know where we would go, but I noticed on the shelf in the closet of the master bedroom at Fort Bragg yesterday that there was a floppy hat there.

I suppose if you showed her that that she would say, "Yeah, mine was like that one too."

I will let her describe the hat.

MR. SEGAL: Your Honor, there is a specific need, really, for the Defense. Now, I think it is cooperation in the spirit---

THE COURT: (Interposing) You got a picture of the hat?

MR. MURTAGH: Yes, sir.

THE COURT: Let him have the picture of the hat.

MR. SEGAL: I want the other exhibits that we subpoenaed and you said you would give them. You would bring them to the courtroom. Why can't we have them? Why do we have to fool around with this trial; why can't we get on it with it?

MR. MURTAGH: Why didn't you ask for them this morning?

Well, anyway, Judge,let me ask this as to the hat: where we are going with the hat is then the

#10 p3

artist's drawing of a girl wearing a floppy hat, and we would most violently object to that photograph being shown to the witness without a proper foundation.

MR. SEGAL: Why don't you find out whether I---

THE COURT: (Interposing) Wait a minute--listen. We are not up here for you to argue with him in my presence. You just present whatever you've got here to the Court, and if it involves a ruling I will make it.

MR. SEGAL: I do think, Your Honor---

THE COURT: (Interposing) I told him to get the picture of the hat---

MR. MURTAGH: (Interposing) I will get the whole thing.

MR. SEGAL: But, Mr. Murtagh, my objection---

THE COURT: (Interposing) He said he would get the whole thing.

MR. SEGAL: My objection is two-fold --if we can take 30 seconds maybe it would go more smoothly; you know, somehow the Defendant never does anything right in this case. He issued a subpoena---

THE COURT: (Interposing) Listen, listen, we can't try that. We can't try that. I have

#10 p5

been trying to avoid it for five weeks now, and I'm not going to resurrect it here.

You said you'd get the exhibits: get them.

(Bench conference terminated.)

MR. SEGAL: While we are waiting for a matter to brought in, I can proceed with certain other questions.

THE COURT: Please do.

MR. SEGAL: Thank you, Your Honor.

BY MR. SEGAL:

Q In 1970, Ms. Stoeckley, was your hair similar to the way it looks today?

A Yes, sir.

Q Was it always the color that it is now?

A Yes, sir.

Q It has been that way for some years?

A Yes, sir.

Q Again, you've got a very quiet voice. I have to ask you to keep it up a little.

Did you ever wear anything over your hair in 1970?

A Only as a joke sometimes.

Q Well, whether it was serious or a joke, did you wear anything over your head?

A Yes, sir.

#10 p6

Q What was that?

A A blond wig.

Q And what was the length of the hair on the blond wig?

A Just a little bit longer than my own hair.

Q I'm sorry?

A A little bit longer than my own hair.

Q Does that mean about shoulder length?

A Yes, sir.

Q How long had you owned the blond wig?

A About three months, I guess.

Q Did you in the--January, February, 1970, own any boots?

A Several pairs.

Q Did you have both short and long ones?

A Yes, sir.

Q Well, now, when you say "short boot," I guess we should get our definitions right. How far up on the leg did you consider a boot to go before it was short?

A Ankle-high.

Q Did you have any boots at that time that were higher than that?

A Two other pairs. Two other pairs.

Q And how far up your leg did they go?

#10 p7

A One went up the calf and one went all the way up to the knee.

Q Were each of those boots the kind with the zipper on the side--you could slide into them?

A Both of them had zippers on the inside.

Q What color were each of those boots?

A The ones that went to the thigh were white, and the ones that went to the knee were brown.

Q Do you recall how tall you were in 1970?

A About 5'5".

Q Did you weigh about what you weigh today?

A No.

Q Were you heavier or lighter than that?

A Lighter.

Q What was your weight in 1970, approximately?

A About 115.

Q 115 pounds?

A Uh-huh (yes).

Q I don't mean to pry, but I need to ask you, about what do you weigh now?

A About 138, 140.

(Defendant Exhibit No. 86 was marked for identification.)

BY MR. SEGAL:

Q Let me show you , Ms. Stoeckley, a

photograph marked D-86 for identification, and ask if you recognize this picture?

A Yes, sir.

Q What does this picture show--you've got to keep your voice up, please?

A It is just my picture.

Q Is that a picture of yourself?

A Yes, sir.

Q Do you know when that picture was taken approximately?

A Yes, sir.

Q When was that?

A 1970.

Q Would that be about August of 1970? Does that sound about right?

A Yes, sir.

Q Is there anything unusual about your condition in this photograph when it was taken, or anything about your condition?

A Physical condition, you mean?

Q Well, physical or emotional condition?

A Well, I was definitely on drugs at that time it was taken.

Q I'm sorry. Go ahead--keep your voice up. Let me stand back a little bit. So you were definitely

#10 p9

on drugs at the time that picture was taken?

A Yes, sir.

Q Do you know what drugs you were on at the time that picture was taken?

MR. BLACKBURN: Your Honor, we would OBJECT. She has testified that she was on drugs during this time and which drugs it was.

THE COURT: OVERRULED.

THE WITNESS: Judging from my eyes I'd say some kind of--well, the usual heroin and probably some barbiturates.

BY MR. SEGAL:

Q Who took that photograph if you know?

A Police department.

Q And what police department took that photograph?

A Fayetteville.

Q Fayetteville. Is that connected with an arrest at that time?

A Yes, sir.

MR. SEGAL: May the photograph be published to the jury, Your Honor.

THE COURT: Yes, sir.

(Defendant Exhibit No. 86 was received in evidence.)

#10 pkc

#11 p1

(Exhibit passed among the jury.)

MR. SEGAL: Your Honor, indulge us for one moment while we look at some of the material the Government produced a few minutes ago for us.

THE COURT: All right, sir.

(Pause.)

THE COURT: If you think it will take very long, we could take our recess now.

MR. SEGAL: That would be appropriate now since the material was just delivered a few minutes ago. I would appreciate the opportunity.

THE COURT: All right, suppose we take our morning recess and come back at 11:00 o'clock.

Members of the jury, don't talk about the case.

(The proceeding was recessed at 10:42 a.m., to reconvene at 11:00 a.m., this same day.)

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1

FURTHER PROCEEDINGS 11:00 a.m.

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

THE COURT: Because of our crowded condition this morning, those of you who cannot find seats or those of you who are seated, we are going to have to reinvoke the 15 minute rule. If you are going to want to go at any time before 15 minutes, please leave now.

If anyone is outside and wants to come in, the next entry will be 15 minutes. It will be 11:15. We will just do it on that schedule.

MR. BLACKBURN: Your Honor, I think we need to see you at the Bench.

THE COURT: Yes, come up. We can't start a session without a bench conference.

BENCH CONFERENCE

MR. MURTAGH: Your Honor, at the recess, Mr. Segal marked with the clerk the photograph of the floppy hat which we gave to him and also a new artist's conception drawing which we will anticipate that he is about to show to Ms. Stoeckley.

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Now, this is the artist's conception drawing that has been done in 1979. It is radically different from the artist's conception drawing in 1970. It was done after photographs of Ms. Stoeckley were published in the press, and it bears a striking resemblance to her.

I think without a proper foundation---

MR. SEGAL: May I answer that, Your Honor? Before we get to that, Judge, I hate to be a pain in the neck and I guess I am, but I am going to say something about procedure. I don't understand. Before I have offered any evidence, the first thing the Court hears is the Government's argument about why I can't even go to that.

Now, I would like an objection or offer of Proof request and I will answer and respond. I now have to respond to the garbage which is not part of this record. Now, what I propose to do is very simply: this lady has testified that she wore a floppy hat and a blond wig at that time.

I am going to show her--I am going to ask her whether there is any photograph extant that she knows of that shows her with a floppy hat and blond wig. I have reason to believe, based upon the interviews, that she will say no.

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I propose to show you an artist's conception and ask whether you feel this is a fair representation of the way you looked when you wore a floppy hat and blond wig, and I cannot find anything that could be wrong with asking this witness, and I have reason to believe, based on my interview, that she will say it is a fair representation.

Now, since there is no photo extant from it--the Government never tried to do it--there is nothing wrong with the Defendant trying to do it. To the contrary, there are plenty of instances where defendants have been made to stand up, put on clothing and wear things -- artists' drawings made of how the defendant looks if he wore such a thing so that people can say, "Does that resemble or not resemble a certain matter?"

THE COURT: Have you got the artist present?

MR. SEGAL: No, sir; I don't need the artist present to lay a foundation for it.

THE COURT: But for cross-examination purposes---

MR. SEGAL: (Interposing) He can be produced if necessary; certainly, Your Honor. But the point is: it is just like they laid a

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foundation. They never brought a single photographer in. They never brought a single photographer in. All we have to say is: "I want to show you a visual exhibit. Does this exhibit"---

THE COURT: (Interposing) What you are proposing to do is to show the jury an artist's conception which is strikingly like the witness herself and he is suggesting, in all probability made after looking at her or a photograph of her--is that what you want to do?

MR. SEGAL: What's wrong with that if it is the purpose--the purpose which I am offering at this time is to say, "Is this the way you looked?" In other ways, nobody bothered to show the way she looked in 1970. As a matter of fact, I will go further in my Offer of Proof.

THE COURT: Ask your question.

MR. MURTAGH: It appears that Mr. Segal is conceding that the artist's conception drawing was made while looking at a photograph of Ms. Stoeckley. This is the same artist's conception drawing that has run in the paper.

MR. SEGAL: He is wrong.

MR. MURTAGH: Oh, come on.

MR. SEGAL: Once again, he is as wrong

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as he is on other things in this case--on facts.

THE COURT: All right, ask your questions. We are taking too much time.

(Bench conference terminated.)

(Whereupon,

HELENA STOECKLEY

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

THE COURT: I will have to ask the audience also because of complaints of whispering and so forth that we will have to have absolute quiet in the courtroom because this witness talks in a rather low tone of voice, and she is difficult to hear. So, if you are going to stay in here, then you have got to be quiet. Proceed.

MR. SEGAL: Thank you, Your Honor.

D I R E C T E X A M I N A T I O N 11:07 a.m.
(resumed)

THE COURT: Try to keep your voice up so everybody can hear you.

BY MR. SEGAL:

Q Ms. Stoeckley, prior to our recess, I had asked you about a hat that you had owned in 1970; do you recall that?

A Yes, sir.

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Q And can you try to give us a little bit better verbal description of the way it looked?

A It was just an old, floppy, brimless (sic) hat.

Q Let me show you a photograph that has been marked as Defendant Exhibit 87 for identification and ask whether the hat that is depicted in that photograph in some way resembles the hat that you owned in 1970?

A Yes, sir.

(Government Exhibit No. 87 was marked for identification and received in evidence.)

Q It does?

A Yes, sir.

MR. SEGAL: May that be published to the jury, Your Honor?

THE COURT: Yes, sir.

(Exhibit passed among the jury.)

BY MR. SEGAL:

Q Now, on February the 18th of 1970--I want to direct your attention to that date--did you have occasion to give your floppy hat to anyone?

A No, sir.

Q Did you see Detective Beasley on that date--February the 18th, 1970?

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A I'm not sure. I probably did.

Q Did have any occasion in mid-February--after February 17, 1970--to show or give your floppy hat to anyone else, including Detective Beasley?

A I didn't give it away; no.

Q Well, I didn't mean to give it away.

A Well, I wore it all the time.

Q Did you see Detective Beasley on or about the early morning hours of February 18, 1970, at the Hickory Trailer Court?

A Yes, sir.

Q What happened, if anything, at that time involving yourself and Detective Beasley?

A There was a drug bust.

Q Were you taken into custody at that time?

A More or less.

Q Yes?

A Yes, sir.

Q Do you know whether or not you were detained for the CID to meet with you on that date or on a subsequent date?

A I was, but they never showed up so I was released.

Q What date was that that we are talking about--that you were held for the CID?

#12
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8

A It should have been about the 18th.

Q Now, you were picked up, you say, at the Hickory Trailer Park; is that right?

A Yes, sir.

Q And that is located where?

A In Spring Lake.

Q Spring Lake is near Fayetteville; is that right?

A Yes, sir.

Q Just a few miles outside of Fayetteville?

A Yes, sir.

Q You were taken down to the police station in Fayetteville?

A Yes, sir.

Q Did Detective Beasley take custody of you at some time there?

A Yes, sir.

Q Do you know why the CID was called in connection with an arrest that had been made in Spring Lake which was not on military property?

A It involved several Fort Bragg soldiers.

13kml

BY MR. SEGAL:

Q Do you know whether or not at that time you were being held for investigation in connection with possible involvement in the MacDonald murders?

A Only what I assumed.

Q You only assumed that?

(Witness nods affirmatively.)

Q Let me ask you--how long did you continue to own the floppy hat after February 17th, 1970?

A Maybe six or seven months. And it was stolen and I got another one.

Q You say, six or seven months, and then it was stolen?

A I started to wear it less and less frequently.

Q You started to wear it less and less frequently after February 17th, 1970?

A Yes, sir.

Q And for what reason was that?

A Because of the connection that people were coming up to me and assuming that, since I wore the floppy hat, I was the girl in question. And I stopped wearing the hat.

Q What about your blond wig? Did you wear that very much after February 17, 1970?

13km2

A Not at all; I got rid of it.

Q What's that?

A I got rid of the blond wig.

Q You got rid of the blond wig? What date did you get rid of the blond wig?

A 19th or 20th--somewhere around there.

Q 19th or 20th of February, 1970; is that right?

(Witness nods affirmatively.)

Q It is fair to say you got rid of it, again, because it connected you possibly with the MacDonald murders?

A Yes.

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q What was the reason you got rid of it?

A Because it connected me with the murder.

Q What about your boots? What happened to them?

A The heel came off of one of them, and I just got rid of them.

Q Got what?

A The heel came off and I got rid of the boots.

13km3

Q Didn't bother to fix it; right?

A No.

Q What pair of boots did the heel come off?

A The white ones.

Q The white ones? Where did you get rid of them?

A I threw the boots in the trash can and I burned the wig.

Q Did that happen around the 18th or 19th of February that you got rid of them?

A Yes, sir.

Q Where is it that you broke the heel on those boots?

A I am not sure. I just put them on one morning and found out the heel was broken. I don't know where I broke it at.

Q This arrest that you were taken in custody for on the 18th of February--did any CID Agents show up to talk to you about that--whatever matter it was that you were being held in custody for?

MR. BLACKBURN: OBJECTION.

THE WITNESS: Not at that time.

BY MR. SEGAL:

Q Not at that time? At any time in February, 1970, did any CID Agent come up to you and talk to you

3km4

about it?

A It was either February or March. I am not sure. I was in jail, and two came down to see me.

Q You are talking about the drug arrest, or some other matter?

A It was a drug arrest.

Q They did not talk to you anything about the MacDonald case, did they?

A That was what they came and talked to me about.

Q I am sorry; I misunderstood you. They came and talked to you about what, then?

A About the MacDonald murders.

Q Did you talk to them about that?

A Yes, sir.

Q Do you know what you told them at that time?

A No, sir.

Q Do you have any recollection at all about what you said at that time?

A No, sir. I just went through the same thing about not knowing where I was that night and that was all I could tell them.

Q Ms. Stoeckley, do you know what your blood type is?

A Not offhand.

13km5

Q Not offhand? I want to ask you one question slightly out of order. I neglected to get to it before, but you told us you went to Fort Bragg a number of times because you went to Womack Army Hospital; is that right?

A Yes, sir.

Q Did you also visit other areas at Fort Bragg?

A On occasion.

Q Do you know any shopping center at Fort Bragg--any shopping area at Fort Bragg?

A Yes, sir.

Q Where is the shopping area located?

A I used to stop at one on my way to Womack sometimes, or going back home.

Q Which one was that?

A Melony Village.

Q Melony Village? Do you know what the name of the streets were where that intersected?

A One is Honeycutt.

Q Now, to your knowledge, is there a picture that now exists that shows the way you looked in 1970 with the blond wig on, or with the blond wig and your floppy hat on?

A I never had a picture taken with that wig on.

13km6

MR. SEGAL: At this time, I propose to show her an exhibit.

MR. BLACKBURN: Your Honor, we would OBJECT to this.

MR. SEGAL: That figures.

MR. MURTAGH: We OBJECT to that comment, Your Honor.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q I want to show you an exhibit which is marked D-89 for identification.

(Defendant Exhibit 89 was marked for identification.)

I would like for you to take a look at this exhibit, which I think it is fair to describe to you as an artist's representation. Does this exhibit, first of all, appear to be a representation--a fair representation, as an artist might view it--of the way you would look in February of 1970 or January, 1970, with your hat and wig on?

A Not completely; no.

Q All right; in what way would you think it was different--it would be different to more correctly reflect the way you look?

A The chin is not that square.

13km7

Q You say the chin--your actual chin--is, you don't think, quite as square as the artist has shown it?

(Witness nods negatively.)

Q You have to say "yes" or "no," please.

A No, sir.

Q Anything else?

A The hat was square at the top, instead of rounded like this one.

Q A little squarer at the top? Would that be correct? Or a lot squarer? I don't mean to give you the value.

A Just a little bit.

Q A little squarer? Aside from those two items does that picture fairly represent the way you looked if you wore your floppy hat and wig at that time?

A Yes, sir.

MR. SEGAL: May it be published to the jury, Your Honor?

MR. ANDERSON: OBJECTION.

MR. BLACKBURN: OBJECTION.

THE COURT: Well, I suppose that it is objectionable, in that this witness says that if you are trying to show how she would have looked, I don't get the impression that this witness agrees that that is the way she would have looked. She says the hat is different and

13km8

the chin is different.

MR. SEGAL: Well, Your Honor, the statement about the hat as slightly squarer--we can correct that---

THE COURT: (Interposing) Well, now, the word "slightly squarer" was your word.

MR. SEGAL: I asked her if that was her words. Did she accept that, or was I wrong? Let me put it back to you.

THE COURT: Take a look at this photograph (sic) and see whether or not you think that it looks like you would have looked with your hat on and your chin at that time?

THE WITNESS: My hat on and my chin?

THE COURT: Yeah; your hat on and your chin. It is a fair representation of how you would have looked at that time? Just say "yes" or "no."

THE WITNESS: Yes, sir.

THE COURT: All right, now; I will let you proceed.

MR. SEGAL: If Your Honor please, I would like to publish it in fairness with the square hat, the original--the squared hat in the drawing here.

THE COURT: All right.

(Go to the next page.)

13km9

(Defendant Exhibit 89 was received in evidence.)

(Exhibit passed among the jury.)

BY MR. SEGAL:

Q After you were interviewed in Nashville, Tennessee, in 1971, when did you have occasion to leave there--what year or month, if you recall?

A I am not sure of the month. It was sometime I think in late '73 or early '74.

Q At that time was anyone contacting you or had anyone contacted you about the MacDonald case again?

A While I was in Nashville?

Q Yes.

A Yes, sir.

Q Who was that?

A Detective Beasley and Dick Mahon from the CID.

Q We know about an early contact, you know, in 1971. Are you talking about a second time he came to see you?

A No, sir.

Q Did your leaving Nashville at that time have anything to do with the fact that there was any investigation pending in the MacDonald case?

A No, sir.

Q Where have you lived? Just tell us the cities where you have lived since that time until you were brought here the other day?

#14 p2

A Well, I went back to Fayetteville; Cincinatti, Ohio; Daytona Beach; Deland, Florida; Greenville, South Carolina; Columbia, South Carolina; up to Wahalla, South Carolina. That's where I was picked up.

Q And you told us before that you didn't have any permanent address during that period of time after you left Nashville?

A No, I never stayed in those places.

Q Did you know that anyone was trying to locate you to interview you in connection with the MacDonald case?

A Yes, sir.

Q And what if anything did you do when you found out that they were looking to interview you?

A I just didn't want to be bothered so I moved again.

Q How many times did you move to avoid being interviewed?

A About three times.

Q Were you present in that house in Wahalla last week, when a woman lawyer came to that house in the evening?

A When a woman lawyer?

Q Yes, a black woman?

#14 p3

A No, sir.

Q You were not, all right.

I want to show you some photographs that you may have seen yesterday also.

MR. SEGAL: They are marked for the record Government Exhibits 23, 24, and 75? These have been previously described in this case as being some of the photos taken of the MacDonald living room.

I ask you to look at all three of them first please.

(Witness complies.)

BY MR. SEGAL:

Q Have you done that, Ms. Stoeckley?

A Yes, sir.

Q I ask you to give particular attention, if you will, please, to the photograph which is marked G-75, which shows sofa, coffee table, and part of the hallway and some clothing in the MacDonald house. Would you look at that, please?

Do you have any reason to believe that you have seen that scene before prior to being shown the photographs yesterday and today?

A No, sir.

Q Do you have any reason to believe that you were ever standing in that place?

#14 p4

A No, sir.

MR. SEGAL: May we approach the bench, Your Honor?

B E N C H C O N F E R E N C E

MR. SEGAL: At this time, Your Honor, I ask for leave of Court to take this witness as on cross, because she is a surprise and hostile witness.

I represent to the Court that during the interviews with me and with other persons present she stated that when she looked at the picture she had a recollection of standing over a body holding a candle, seeing a man's body on the floor.

I also may say, Your Honor, we are now down to the bottom five or six critical things that she revealed yesterday. I have a feeling, based upon her answer to this one now, that when and if I ask her in direct fashion, that I may get negative answers.

I had no anticipation of that, because yesterday throughout the time that she made these statements, we accepted them, did not expect contrary.

We have not had any different statements from her and we feel that we are entitled to the plea of surprise as well as the fact, I think, at this point-- the extent of her hostile relationship not in terms

#14 p5

of manner but the hostility of her interest to the Defendant.

I am going to tell Your Honor the other things that she has said. Would that be appropriate now to expedite, or should we do it one at a time?

THE COURT: Well, if it will save any trips up here maybe you should tell us now.

MR. SEGAL: She has already actually said something, and I did not want to raise a surprise question. I want to do it all at one time. The photograph that I showed her of the bedroom of Kristen MacDonald: during the interview yesterday, she stated that she remembered riding the rocking horse when she looked at that picture.

She also stated yesterday she remembered standing at the end of the sofa holding a candle. She also said when she saw the body of Kristen MacDonald--the one when she was clothed, with the baby bottle--that that picture looked familiar to her.

That scene looked familiar. She also said when she was shown the photograph of Colette MacDonald--the same one I showed her today--that she said that the face in that picture looked familiar, except that the chin was broken and made it a little hard.

She also stated--and I'm going to get to it--

#14 p 6

she's gotten to the point where she does not sound like she is going to cooperate further--that she was standing of the corner of Honeycutt across from Melony Village.

She has a recollection of standing there during the early morning hours of February 17th, 1970. She further stated yesterday, and I intend to ask her now, that she has a recollection of standing outside the house looking at her hands and saying, "My God, the blood; oh my God, the blood."

She said that took place February 17, 1970. There are witnesses to each of these things. I must say, Your Honor, there were persons present the entire time this took place.

I intend to now ask her directly each of these questions. If she refuses or denies her statements I ask for leave to confront her:

"Did you not say that yesterday when you were confronted with these photos?"

If she persists in denying it we will of course impeach her as we have the right to impeach her under the rules. Although we have called her as a witness, there are rules that permit that to be done.

When I am done with that I intend to turn her over for cross-examination.

#14 p7

MR. BLACKBURN: Of course, I was not there when she talked with the Defense yesterday, but in her interview with the Government none of those statements were made. She specifically told us---

THE COURT: (Interposing) Did you ask her any?

MR. BLACKBURN: Yes, sir. She specifically told us that she had been shown the photographs and we asked her, "Did you recognize any of the scenes in those photographs?"

The answer was no. I asked her, "Have you ever been in that house?" She said no. I said, "Do you know anything about that?" "No." "Who do you think did it?" "Dr. MacDonald." You know, it just went one right after the other.

I discussed--I told Mr. Smith last night what she told us. I was under the impression to this very moment that what she told us was essentially what she told them.

It is difficult for me--you know--I am not saying that they are not saying what she said. I just don't know which way it is, because she has not indicated anything to the Government.

MR. SMITH: Judge, here I think is where we are. Generally, she said to us the same thing

#14 p8

and that is, "I don't remember." But in two or three or four instances--whatever the list would reveal--she says something which would give an interesting insight into her mind.

I would submit that we have a right to cross her on those; if she denies them then they have a right to impeach her on the statements or show that she did not say anything like that.

THE COURT: I am not going to cross the hostility thing until there is a reason shown to indicate it; but I am going to ask the witness a question myself.

(Bench conference terminated.)

THE COURT: Ms. Stoeckley, how long did you spend yesterday talking to Defense counsel in this case--Mr. Segal, Mr. Smith, and others?

THE WITNESS: About three and a half to four hours.

THE COURT: Did you thereafter talk to the Government's attorneys?

THE WITNESS: Yes, sir.

THE COURT: Had you ever seen them and talked to them before?

THE WITNESS: No, sir. One member I had before.

#14 p9

THE COURT: Now, did you tell both sides the same story?

THE WITNESS: As far as I know, yes, sir.

THE COURT: All right, that was the question I was going to ask.

B E N C H C O N F E R E N C E

THE SEGAL: The point--each of the things that I am representing to the court were said in the presence of other witnesses. It is not a question of my saying it. It is not going to be counsel and the witness.

I intend to fully call those people.

THE COURT: I am confident of that. You would not stand here and tell me that she said one thing unless she said it.

MR. SEGAL: And not be able to back it up.

THE COURT: But I tell you what, if Blackburn tells me that she told him that, I am going to say that too. I don't know where you are going with this kind of testimony, but go on. I am not going to, on the 25th day of the trial-- I ain't going to stop now just because it don't make any sense to me.

#14 p 10

MR. BLACKBURN: Judge, does that mean that he can ask as on cross?

THE COURT: No, I have not said that. I said I would make that decision when we come to it.

(Bench conference terminated.)

15kml

THE COURT: Any further questions of this witness?

MR. SEGAL: Yes, Your Honor--a few basic matters. We are getting to the end of this.

BY MR. SEGAL:

Q Ms. Stoeckley, I asked you before to take a look at some photographs of what we have had identified here at the trial as the body of Kristen MacDonald--Government 60, 70, 59 and 84. Do you recall these photographs?

A Yes, sir.

Q When I asked you before whether they seemed familiar to you, do you recall saying that the scene did not seem familiar to you as your answer today in court?

A Yes, sir.

Q Do you not recall at this time that yesterday, as you were sitting in the room outside the courtroom, when you were shown---

MR. BLACKBURN: (Interposing) Your Honor, excuse me. We would OBJECT to this type of question.

THE COURT: Let me just ask the question. Were you asked that same question by this lawyer yesterday?

THE WITNESS: Yes, sir.

THE COURT: What did you say then?

L5km2

THE WITNESS: Well, I studied the picture for a while, and I don't know. I just don't recognize it.

THE COURT: Is that what you told him, or did you tell him something different?

THE WITNESS: Well, the younger girl just looked like--I don't know. She looked like a little girl I had seen before. That's all.

BY MR. SEGAL:

Q Do you recall talking, when I was not in the room, in the presence of Jane, about those pictures?

A I was just trying to see if I had ever seen any members of the family before.

Q I understand that, Ms. Stoeckley, but I am asking you, though---

A (Interposing) I said I could have seen Colette somewhere on Post.

Q Let's back up a second, though, please. We've got two subjects together and I need to do one at a time. Do you recall yesterday that when I was not asking you any questions, but you were talking with Jane Zillioux, the lady from Nashville--do you recall that when you sat there looking at that picture you said---

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: Yes; I will SUSTAIN that.

MR. SEGAL: Your Honor, there is a plea of surprise in this matter in regard to the answer. I think we are entitled to present the question in this form---

THE COURT: (Interposing) Let me ask her one more time.

MR. SEGAL: Yes, Your Honor.

THE COURT: Have you told anybody else when this lawyer was not there any different story about whether or not you recognized these pictures or anybody in them?

THE WITNESS: What I just said about Colette and the youngest girl.

THE COURT: He wants to know, though, have you looked at these pictures and told somebody else that you did, in fact, recognize this scene, or that you had been there, or something of that nature?

THE WITNESS: Not that scene.

BY MR. SEGAL:

Q Let me hand the group of photos back to you again. Ms. Stoeckley, do you recall, just as you are now, sitting on the stand, looking at those photos--do you recall staring at those photos at some length when Jane Zillioux was sitting just about next to you in that

15km4

room in this building?

A I mentioned something about the rocking horse.

Q Yes; all right, will you tell us about the rocking horse--what you recall saying about it?

A I made some comment about it being broken or something.

Q Does the picture show anything about a broken rocking horse?

A I can't tell if it is broken or not. It looks like it is.

Q Beg your pardon?

A It looks like it is broken.

Q It looks like it is broken? Let's take a look, and if you can show us, perhaps--may I hold up this photo, please--the photo that is marked G-59? As a matter of fact, we even have a larger one of this. May we use that, please? Well, in this cornucopia of photos, we are having a little trouble finding it. Mr. Murtagh, do you know where it is?

MR. MURTAGH: No; I don't.

MR. SEGAL: You wouldn't know where it is; all right.

(Pause.)

BY MR. SEGAL:

15km5

Q Ms. Stoeckley, I am going to put here on the easel, so that the members of the jury can also look with you the first of two photos. One is an enlargement marked G-982; then the other is marked G-145(a). Can I impose upon you, please, to perhaps step down here next to the witness stand, look at the photograph and tell me, how does it appear to be broken in any fashion?

A The part going to the spring.

Q That looks broken to you; is that right?

(Witness nods affirmatively.)

Q Now, let me show you the photograph that is marked 145(a). You also see in the lower left-hand corner the rocking horse; is that right?

A Yes, sir.

Q Does that look broken to you there also?

A No.

MR. SEGAL: You may go back to the stand, please.

#16
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1

BY MR. SEGAL:

Q Now, do you recall what you first said when you first observed that photo yesterday in the book that I showed you--the black one?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Please, Ms. Stoeckley, what did you say about the rocking horse?

A That was the first thing I muttered is that it was broken, and when you asked me what I said, I just said nothing.

Q Beg your pardon?

A You asked me what I said, and I said nothing and shrugged it off.

Q Did you say anything at all about your having touched or used that rocking horse at the time?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: Not at that time; no.

BY MR. SEGAL:

Q At what time?

A I don't even remember saying that yesterday at all.

Q At what time did you ever say anything

#16
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2

about touching the broken rocking horse?

MR. BLACKBURN: Your Honor, we OBJECT.

THE COURT: I SUSTAIN that.

MR. SEGAL: I thought the witness said, "Not at that time."

BY MR. SEGAL:

Q What did you mean, Ms. Stoeckley, when you said "Not at that time"?

A Just that I didn't say it yesterday; no.

Q Did you ever say it?

A Not that I recall.

Q Ms. Stoeckley, do you have a recollection of standing or of ever being outside of 544 Castle Drive late at night?

MR. BLACKBURN: Your Honor, we OBJECT.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you have such a recollection?

A No, sir.

Q Do you have a recollection of weather conditions in the vicinity of 544 Castle Drive on February 17, 1970?

A No, sir.

MR. SEGAL: If Your Honor pleases, I plead surprise for the reasons I have already stated.

#16
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3

THE COURT: Ask your question.

BY MR. SEGAL:

Q Did you not say yesterday when you were sitting in the witness room that you recalled standing outside on February 17th in the early morning hours in the rain and looking at your hand?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you not recall saying that?

A No, sir.

Q Do you recall looking at your hands at any time time on February the 17th, 1970, in the early morning hours?

A Not on that day; no.

Q Well, I am concerned about that early morning.

A No, sir.

Q Did you not say yesterday when you were in the witness room that you had a recollection of looking at your hands and seeing something on them? Do you recall that?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

#16
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4

Q What's your answer, Ms. Stoeckley?

A No, sir.

Q Are you saying you did not say that yesterday?

A I don't remember saying it; no.

Q Do you recall saying it to Jane Zillioux? Do you want me to bring her in?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

MR. SEGAL: It is a question of recognition of who she was talking to. It ought to be an issue here.

THE COURT: Well, I believe the witness has indicated that she talked to somebody named Jane. I don't know what that last name is. I can't hear it. Did you talk to somebody named Jane yesterday?

THE WITNESS: Yes, sir.

THE COURT: What did you tell her about looking at your hands?

THE WITNESS: I don't remember saying anything about my hands.

THE COURT: All right.

BY MR. SEGAL:

Q Did you say anything to Mr. Beasley about

#16
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5

it?

A No, sir.

Q To Mr. Underhill yesterday?

A No, sir.

Q Were you on the corner of Honeycutt and Lucas near Melony Village on the morning of February 17, 1970?

A Not that I know of.

Q Do you recall being asked about that yesterday?

A Yes, sir.

Q Do you recall what you said about that yesterday?

A I said I had been on that corner before, but I couldn't have been there that morning.

Q How do you know that you couldn't have been there on that morning if you don't know where you were?

MR. BLACKBURN: OBJECTION.

THE COURT: I will SUSTAIN your objection. You can't argue with this witness.

BY MR. SEGAL:

Q All I want to know is: I thought you told us before that you did not know where you were between midnight and 4:35 on February 17; that was

your testimony; wasn't it?

A That's true.

Q Can you say for certain that you were not on the corner of Melony (sic) and Honeycutt that morning?

#16
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6

A No; I can't.

Q Now, I asked you a few minutes ago to look at the pictures--

MR. SEGAL: Your Honor, indulge me for a second.

(Pause.)

BY MR. SEGAL:

Q Ms. Stoeckley, I asked you a few minutes ago to look at those pictures of what we now know to be the living room of the MacDonald house; do you recall that?

A Yes, sir.

Q I particularly asked you to look at one photograph which depicts both the sofa and the coffee table--that would be G-75; do you recall that?

A Yes, sir.

Q Was that not one of the photographs that I showed you yesterday in the books of photographs?

A Yes, sir.

Q Do you recall now what you said about

#16
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7

what knowledge or do you recall what you said about having been there or not been there back on February 17, 1970?

A I said the sofa looked familiar, but I've seen a lot of sofas that looked like that.

Q Do you recall saying something about seeing a body there?

A I said there was nothing on there.

Q Do you recall yesterday saying in the witness room you recalled seeing a body there on the sofa or the floor when you were holding a candle; do you recall making that statement?

A That was only like in a dream or something like that.

Q Well, first of all, let's find out: do you recall making that statement? We need to know whether we are talking about the same thing.

MR. BLACKBURN: Your Honor, I think we would OBJECT. I think she has answered that.

THE COURT: Yes, I will SUSTAIN the objection. Ask her another question.

BY MR. SEGAL:

Q Do you recall the day that the MacDonald family funerals were taking place at Fayetteville at Fort Bragg, North Carolina?

#16
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8

A More or less; yeah.

Q What color clothing did you put on--wait a minute. Before I get to that--had you heard about the funeral on the radio or read in the newspaper about the funeral that was taking place?

A I wasn't really paying attention to it; no.

Q You were not. Did you know what was happening, though--what was taking place at Fort Bragg? Were you aware of that?

A No; I wasn't aware of it.

Q Well, let me ask you: the week after--during the week of February 17th through February 21st of 1970, did you have occasion to get a floral wreath from a florist?

A Yes, sir; several of them.

Q Several of them. They were funeral wreaths; were they not?

A Yes, sir.

Q Where did you set these funeral wreaths up?

A Along a fence between mine and Mr. Posey's house.

Q As a matter of fact, what color clothing were you wearing on the day that you set up these

#16
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9

funeral wreaths outside your house?

A Black.

Q Black. Funeral black?

A No; I always wore black or purple.

Q As a matter of fact, what was your usual color of clothes that you wore?

A Black or purple.

Q A purple vest, a purple skirt--was that your usual clothing?

A (No response.)

Q How many funeral wreaths did you have outside your house on that day?

A I don't know--five, six.

Q Why did you set up funeral wreaths during that week after the MacDonald family murders?

A It wasn't just at that time. There was a florist up the street from us, and they used to throw them out all the time, and they were good flowers and stuff, and we used to just pick them up and take them home.

Q It was just a coincidence you are saying?

A Probably; yes.

Q Now, I would like to know something about the people you were associating with in 1970; all right?

#16
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10

A Yes, sir.

Q Did you have a friend by the name of Allen?

A Allen?

Q Yes.

A I may have at that time.

BY MR. SEGAL:

Q Well, let me put it to you this way: you had a number of acquaintances in the Haymont Community; is that right?

A Yes, sir.

Q Were there among your acquaintances any persons that you believe, based upon your knowledge of them, who were capable of doing the kinds of things you knew happened to the MacDonald family?

MR. BLACKBURN: OBJECTION.

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: Just one second, Your Honor.

(Pause.)

BY MR. SEGAL:

Q Didn't you know Allen Mazzarole in 1970?

MR. BLACKBURN: OBJECTION, Your Honor.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Did you know him?

A Yes, sir.

Q How would you describe his appearance?

A Very clean-cut, well-dressed.

Q A nice-looking man?

17km2

A Yes.

Q About approximately what age?

A About 24 or 25.

Q In what connection did you know Allen Mazzarole?

A I used to deal for him.

Q You used to do what?

A I used to deal for him.

Q You mean, you worked for him in the selling of drugs?

A Yes, sir.

Q Did you also have a personal relationship with Allen Mazzarole?

A Yes, sir.

Q Was Allen Mazzarole a man--well, do you know who Allen Mazzarole worked for?

A He was in the Army.

Q He was in the Army at the time?

(Witness nods affirmatively.)

Q What kind--what was his connection with the drugs that you were dealing? Did he supply them to you?

A Yes, sir.

Q What kind of drugs were they?

A Usually LSD.

Q Was Mr. Mazzelrole engaged in transporting

17km3

drugs?

A Yes, sir.

Q Transported them from where to where?

A I don't know from where, but I got them.

Q Got them off of Fort Bragg?

A (Witness nods negatively) No.

Q Was there any quantity of drugs you were handling at that time coming from soldiers who were arriving from Vietnam?

A Through him?

Q Not necessarily through him, but generally speaking at that time?

A Yes, sir.

Q Did Allen Mazzarole ever strike or do violence to you?

MR. BLACKBURN: OBJECTION, Your Honor.

MR. SEGAL: I think we have a right to show the nature of her acquaintances, given the context of this total case and the facts we have, Your Honor.

MR. BLACKBURN: Your Honor, may we approach the Bench?

THE COURT: Yes; I don't what the purpose of this is.

MR. SEGAL: I will make an offer, Your Honor.

THE COURT: Come up.

B E N C H C O N F E R E N C E

MR. SEGAL: My offer of proof, Your Honor, in this final area of questioning--or next to the last area of questioning here--is not only do we believe--we are in the process of building a considerable amount of circumstantial evidence as to her involvement and potential involvement in this case, but it is to show that her associates--the people she was close with, lived with, dealt with--were capable of the kind of violence, as opposed to say, a bunch of flower children who would not lift a finger to hurt a fly.

It would be inconsistent with the Defendant's response to these accusations to show that her friends were peaceful and lovable. It would prove it is not likely that she had associates who were capable of the monstrous kind of beatings here. On the contrary, we have reason to believe, based upon our interviews with her--it is not speculation--that this Mazzarole and several others were people capable of considerable violence.

It is circumstantial evidence in response to the Government's accusations that there was no group and if they were her friends, they were not capable of this.

MR. BLACKBURN: Your Honor, we just don't

think it is relevant to go into all the friends she might have had. She doesn't know whether they were capable of violence or not. She is not competent to testify.

THE COURT: He just wants to show that Mazzarole beat her up.

MR. BLACKBURN: I anticipate he is probably going to go to some of the other friends after we get through with Mazzarole.

MR. SEGAL: I will tell you what. I can short-cut it, perhaps. Rather than going into a myriad of names, to avoid that, I intend to ask her whether she has suffered various injuries from '69 all the way up to the present injury, and who inflicted these injuries. We will not go into names of the friends, were they related to drugs.

She has been hospitalized, beaten, broken--she deals with a fairly heavy-handed, violent crowd. That is all that I ask. I think that will probably save the objections.

MR. BLACKBURN: We would OBJECT on the grounds of relevance that she has been beaten up by her friends, and still what he says is circumstantial evidence. There is still no connection between her and this crime, other than the fact she doesn't know where she

17km6

was.

THE COURT: He wants to make an argument, for whatever it is worth, that she ran around with a bunch of people who were capable of brutality.

MR. SEGAL: We have other evidence. The Defense does not rest on this alone. Please understand that. On this subject matter---

THE COURT: (Interposing) Well, let's go.

(Bench Conference terminated.)

THE COURT: Did Mazzarole beat you up on some time?

THE WITNESS: Yes.

THE COURT: He would sometimes beat you up?

THE WITNESS: Yes, sir.

THE COURT: All right; do you want to ask her any more about that?

MR. SEGAL: Not Mazzarole, Your Honor. Bear with me one second.

THE COURT: All right.

(Pause.)

BY MR. SEGAL:

Q During 1969 and 1970, Ms. Stoeckley, were you ever beaten up by other members of the groups of people

17km7

you dealt with and related with in Fayetteville?

A No, sir.

Q Have you suffered other injuries since that time from people that you have been dealing with and working with in drugs?

A Yes, sir.

Q Your present injury now--your arm injury--is that a result of a beating someone gave you with a steel bar recently?

A Yes, sir.

Q Was that about drugs, too?

A Yes, sir.

MR. SEGAL: I have no further questions.

THE COURT: Any cross-examination?

MR. BLACKBURN: Yes, sir; I believe a few questions.

THE COURT: All right, sir.

C R O S S - E X A M I N A T I O N 11:57 a.m.

BY MR. BLACKBURN:

Q Ms. Stoeckley, directing your attention to, I guess, the 16th or 17th of February, at 12:00 midnight, I believe you testified on direct examination you were standing in your driveway; is that correct?

A Yes, sir.

Q Where was your house?

A Clark Street.

Q You were with Greg Mitchell?

A Yes, sir.

Q How long did you stand in the driveway with him? Do you recall?

A Not really.

Q I'm sorry?

A Not really; I don't know how long it was.

Q He gave you a hit of mescaline, which you took at that time?

A Yes, sir.

Q Now, how far is Clark Street from Fort Bragg, if you know?

A I don't know how many miles. I would say about 20 minutes away.

Q About 20 minutes away?

A Yes, sir.

Q Let me hand you Defendant Exhibit Number 80 and ask you to take a look at it?

(Witness complies.)

Q Have you had a chance to look at it?

A Yes, sir.

Q Would it be fair to say that at 12:00

17km9

midnight on the 16th of February, 1970, you were not in that location?

A Yes, sir.

Q You were on Clark Street in your driveway?

A Yes, sir.

BY MR. BLACKBURN:

Q Now, you have testified that you had a blond wig; is that correct?

A Yes, sir.

Q Where did you usually keep the blond wig?

A In a closet in my apartment.

Q On Clark Street?

A Yes, sir.

Q Did you wear it very frequently?

A Infrequently.

Q You wore it sort of as a joke as I understand you?

A Yes, sir.

Q When you were talking with Greg Mitchell in the driveway, do you recall whether or not you had the blond wig on or off?

A I did not have it on. He did not like it.

Q He didn't like it? And, if you didn't have it on, it would be in the closet; is that correct?

A Yes, sir.

Q I believe you testified that you had two or three pairs of boots?

A Yes, sir.

Q You wore those frequently?

A When I wore shoes, that is what I wore--was

the boots.

Q You don't recall which pair of boots you had on that night; do you?

A No, sir.

Q Now, the ankle boots that I think you said you had, what color were they?

A Black.

Q Black?

A Yes, sir.

Q Did they zip up or did they lace up or what?

A The black ones were just slip on and then they buckled around the ankle.

Q It is fair to say that you just don't know where you were between 12:00 o'clock midnight and about 4:30 or 5:00 o'clock the next morning; is that correct?

A Yes, sir.

Q Directing your attention to that photograph and assuming for a moment, if you will, that the MacDonald apartment is this one right here (indicating), to your own personal knowledge, Ms. Stoeckley, have you ever been inside the MacDonald apartment before?

A No, sir.

Q At any time?

A Not that type; no, sir.

Q I am sorry?

A Not that type of apartment; no, sir.

Q It is fair then to say that it is your testimony that to your own personal knowledge, you have never been in that particular apartment at any time?

A Yes, sir.

Q When was the first time you have seen Dr. MacDonald?

A To my knowledge, this morning.

Q This morning?

(Witness nods affirmatively.)

Q It is the first time to your knowledge that you have ever seen him; is that correct?

A Yes, sir.

Q Let me show you this picture of Kristen MacDonald again. Do you need to look at it again?

A No. I have got one.

Q You have got one, okay. Besides seeing that scene in those photographs, to your own knowledge, when was the first time you have ever seen that scene?

A Yesterday.

Q And how did you see it?

A In the pictures.

Q You were shown a number of photographs yesterday; were you not?

A Yes, sir.

Q And those photographs purported to be the crime scene of the MacDonald apartment; is that true?

A Yes, sir.

Q Do you recall ever seeing any of those scenes prior to yesterday?

A Not these particular scenes; no, sir.

Q Now, you testified that the little girl in that bed--you had seen a little girl like that; is that your testimony?

A Yes, sir.

Q Where might you have seen such a little girl?

A I worked a lot with children. I could have seen one like that anywhere.

Q I believe you testified that you might have seen Colette on post; is that correct?

A Yes, sir.

Q To your own knowledge, did you participate in the killings of the MacDonald family?

A No, sir.

Q How do you feel towards children?

A I love children.

Q Of your own personal knowledge, did you kill Colette MacDonald?

A No, sir.
Q How about Kristen?
A No, sir.
Q How about Kimberly?
A No, sir.
Q Did you try to kill Dr. MacDonald?
A No, sir.
Q Do you know who did?
A No, sir.
Q Do you recall ever being in the MacDonald apartment carrying a candle?
A No, sir.
Q Now, I believe you testified on Direct that you have been through Corregidor Courts before; is that correct?
A I cut through there quite a bit.
Q That was sometimes on the way to Womack?
A Either Womack or over to the Officers' Club or anything. I used to take Extension Courses at the college over there, too, and cut through there.
Q That would have been prior to 1970; is that correct?
A Yes, sir.
Q Did you ever have occasion that you can specifically recall to go on Castle Drive by the

MacDonald apartment?

A Not until after the murders.

Q Not until after the murders? Well, how long after--do you remember?

A About a year later.

Q About a year later? Why did you go back, if you recall?

A Just to see if anything would look familiar or jolt something in my memory or something.

Q To see if anything looked familiar? Did it?

A No, sir.

Q Did it jolt anything in your memory?

A No, sir.

Q Now, after the 17th of February, 1970, I believe you testified that you were arrested or picked up or questioned concerning this matter; is that correct?

A Yes, sir.

Q Did your picture ever appear in the paper in the Fayetteville newspaper to your knowledge?

A I don't think my picture did; no, sir.

Q Has your picture ever been in the paper to your knowledge?

A Not until yesterday.

Q How long did you live in Fayetteville after

the murders?

A About a year.

Q About a year? Were you questioned quite a bit concerning the MacDonald murders after they occurred?

A I wasn't the only one.

Q I don't mean to imply that you were, but were you personally questioned?

A Yes, sir.

Q Were you ever hassled by the police concerning this situation?

A The City Police; yes, sir.

Q Is it fair then to say that in your opinion the City Police of Fayetteville hassled you about this; is that correct?

A Yes, sir.

Q You testified that you got rid of the blond wig; is that right?

A Yes, sir.

Q Tell us again why you did that?

A Well, I already had people coming up to me and making comments concerning the murders and everything. I just wanted to get rid of anything that might look like I had anything to do with it.

Q That was to keep you from being hassled by

the police; isn't it?

A Yes.

MR. SEGAL: That is what she said. It is OBJECTED TO, Your Honor.

BY MR. BLACKBURN:

Q I am sorry--what did you say?

A Yes.

THE COURT: I think she had answered the question, too, but we have a way of doing everything in duplicate, so I will let him ask it twice.

MR. SEGAL: All right, Your Honor.

BY MR. BLACKBURN:

Q For the second time, what was your answer?

A What was the question?

Q I take it then that at some occasion, you got rid of the hat because you felt you were being hassled by the police; is that correct--I mean the wig?

A The wig; yes.

Q Now, is it a fair statement to say that what you know of the MacDonald killings is a result of what you have been told by somebody else?

A As far as I know.

Q Let me ask you this question: the fact that you did not know where you were for the five hours or four and a half hours from 12:00 until 5:00 o'clock

that morning and the constant comments that you testified that you got from other people concerning the murders, did that cause you to have some concern yourself?

A Yes, sir.

Q In other words, you did not have an alibi for where you were; did you?

A No, sir.

Q Did you ever wear gloves very often?

A No, sir.

Q Did you ever wear gloves at all?

A Very rarely. It had to be pretty cold.

Q Do you know what the weather was like at about midnight or do you recall?

A No.

Q I am sorry?

A Not really.

Q You don't recall if it was raining or not?

A No. As far as I know, it wasn't raining.

Q What about the weather at about 4:30 or 5:00 that morning--do you recall the weather at that time?

A I didn't pay that much attention; no, I don't remember.

Q When was the first time on the 17th of

February, 1970, that you heard of the MacDonald killings?

A After I had been in my apartment for about 30 minutes.

Q How did you hear?

A There was a news bulletion on the radio.

Q That was the first time you had heard about it?

A Yes, sir.

Q You testified that you were into witchcraft; is that correct.

A Yes, sir.

Q And there were high priestesses--were you a high priestess?

A There weren't any as far as I knew. There were no other--well, I wasn't a witch anyway. There wasn't anyone interested in witchcraft in that area.

Q I am sorry. You will have to speak up.

A There wasn't anyone interested in witchcraft in that area where I lived.

BY MR. BLACKBURN:

Q Is it fair to say you were reading about witchcraft?

A Right.

Q But you were not a witch yourself?

A No.

Q Did you ever wear white sheets or white robes around?

A No.

Q You never wore choir robes or anything like that?

A No.

Q You spoke of the term "pig," talked about pigs; and I assume you talked aboutthat frequently or usedthat term frequently?

(Witness nods affirmatively)

Q Whom did you refer to as pigs in 1970?

(Witness looks at the Court.)

THE COURT: Does that answer your question?

MR. SEGAL: We OBJECT, Your Honor.

MR. MURTAGH: We were surprised.

MR. BLACKBURN: Your Honor, that was a surprise answer.

THE WITNESS: I did not mean that. That

#19 p2

wasn't towards you.

THE COURT: She is trying to retract it now, but it is recorded for all history.

MR. BLACKBURN: I think she should be given every opportunity to retract, if that is her answer.

THE WITNESS: It is the law enforcement---

THE COURT: (Interposing) All right, she is going to answer your question now. Go ahead.

THE WITNESS: Any law enforcement agent.

BY MR. BLACKBURN:

Q In other words, you called the police "pigs"?

A Right.

Q You didn't think of children as being pigs?

A No.

Q Or ladies as pigs?

A No.

Q You didn't think of Colette, Kristen and Kimberly as pigs, did you?

A No, sir.

Q Now, about floral wreaths--you said that you said that you put four or five floral wreaths on---

A (Interposing) On a fence.

Q Where was the florist?

#19 p3

A About half a block up the street in Haymount.

Q Was this the first time you'd ever put floral wreaths on your lawn or the fence?

A To be honest, it is about the first time they put floral wreaths like that out.

Q Who else--did anyone else go with you to get the wreaths?

A Several people.

Q More than one?

A Yes, sir.

Q Did you ever go to this floral shop and get flowers when they would throw them out?

A All the time.

Q By "all the time," you mean once a week or---

A (Interposing) Any time that they would throw them out. We used to cut through the back there anyway on our way to the pizza shop, so anytime there was fresh flowers thrown out we would take them back home with us.

Q In your mind, was there any connection at all between the MacDonald murders and the funerals, and the fact that you all went to get the funeral wreaths?

A No, sir.

Q You got them because they were available?

A Right.

Q Now, you said that you wore black, is that correct, or dark purple?

A Yes, sir.

Q Was that unusual for you?

A No, sir.

Q You normally wore that?

A Yes, sir.

Q Did you wear dark purple or black because the MacDonald family had been murdered?

A No, sir.

Q Did you wear dark purple or black because the MacDonald family was being buried at that particular time?

A No, sir.

Q Have you ever been violent before in your life?

A Never.

Q At any time--I believe you said "never," is that correct?

A Yes, sir.

MR. BLACKBURN: Just a second, Your Honor.

(Pause.)

BY MR. BLACKBURN:

Q You know, you have testified on direct

#19 p5

examination this morning that a number of people in Fayetteville and Nashville, Tennessee, talked to you about the MacDonald murders?

A Yes, sir.

Q And you testified whether it was on direct or cross that you did not remember where you were, and that you had been picked up and questioned on a number of occasions.

As a result of not knowing where you were and not having an alibi, and as a further result of being questioned a number of times, did there come a time in your own mind when you began to worry yourself about your involvement in this killing?

A Yes, sir.

Q And is it fair to say that that is the reason that you became concerned, because of what I have just stated?

A It was more the reason of what I was talking about: these people.

Q One of the reasons that you were talking about were these people?

(Witness nods affirmatively.)

Q Because you didn't know where you were in answer to their questions?

A Yes, sir.

#19 p 6

Q Let me hand you what has been marked for identification as Government Exhibit 306, a club. Prior to right now, have you ever seen that club before?

A No, sir.

MR. BLACKBURN: Your Honor, if we could have just one more moment.

(Pause.)

BY MR. BLACKBURN:

Q I think you testified on direct examination you were out in a car with some folks about 4:30 or 5:00 o'clock, is that right?

A Yes, sir.

Q And you don't remember who they were?

A No, sir.

Q Was it unusual for you to come in, in the morning at 4:30 and 5:00 o'clock?

A Not at all.

Q You had done that before?

A All the time.

Q Isn't it true that you might have been at a place called Dunkin' Donuts that morning?

A That is where I was coming in from at that time.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 952,

#19 p7

which purports to be a photograph.

(Government Exhibit No. 952 was marked for identification.)

BY MR. BLACKBURN:

Q Ms. Stoeckley, let me hand you this and ask you if you can take a look at it. Do you recognize the person?

(Witness nods affirmatively.)

Q Who is it?

A Me.

Q Could you speak up a little louder?

A It is me.

Q Do you know when that photograph was taken?

A I think it was a few weeks after the murder, downtown in the police station.

MR. BLACKBURN: Your Honor, we would ask to publish this to the jury.

THE COURT: Very well.

(Government Exhibit 952 was received in evidence.)

(Exhibit passed among the jury.)

BY MR. BLACKBURN:

Q Do you know whether or not the photograph I was just showing to you--do you know whether or not that photograph was ever shown to Dr. MacDonald before?

A No, sir; I don't.

Q With respect to the mescaline that you took, I think you said one hit; is that correct?

A Yes, sir.

Q What would one hit do to you?

A Put you on a mild trip.

Q I think you have also testified that you had a lot of drugs in your body that day; is that correct--the 16th?

A Yes, sir.

Q Was that unusual for you to do that?

A No, sir.

Q That was fairly normal; is that correct?

(Witness nods affirmatively.)

Q Isn't it true that during this period of

time in 1970, when you were taking these drugs, that days sort of ran together; is that correct?

A Yes, sir.

Q And at times, you would not know where or remember where you had been or what you had done; is that correct?

A Yes, sir.

Q This is not the first time in your life that you have not ever remembered where you were one night; is it?

A No, sir.

Q Now, I think they brought out that you had a neighbor named Mr. Posey; is that correct?

A Yes, sir.

Q And you testified, I believe, on Direct that you once told him somewhere that he had better tell his wife---

A (Interposing) To keep her door locked. That was a joke.

Q It was a joke? Why did you say that to him if you can recall?

A He was leading me on in this conversation, and I felt like he was trying to make me say things that I didn't want to say, and I just threw that in there.

Q Do you recall ever having a conversation with

Mr. Posey when he offered to give you an alibi for where you were?

A Yes, sir.

Q He did? Did anybody else ever offer to give you an alibi?

A Yes, sir.

Q Did you ever take them up on it?

A No, sir.

Q When you talked to Ms. Zillioux, Mr. Underhill, Mr. Beasley, Mr. Gaddis, Brisentine, Mr. Posey--other than yesterday in Raleigh--is it fair to say that during this period of time in your life that you were still taking drugs?

A Yes, sir.

Q Did Mr. Beasley ever tell you that you had better come up with some kind of story?

A He said it would be to my advantage to try to figure out where I was that night.

Q You never made up any story as to where you were; did you?

A I tried.

Q You don't know who killed the MacDonald family; do you?

A No, sir.

Q Do you know of anybody who you think killed

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the MacDonald family?

A No, sir.

Q Now, the floppy hat which you said you had--and you liked your hat because you wore it almost all the time; is that correct?

A Yes, sir.

Q You kept that after the murders; didn't you?

A But I didn't wear it as frequently as I used to.

Q That is because you were being talked to, I suppose?

(Witness nods affirmatively.)

Q These words that you testified in 1970--'69 and '70--the words "pig," "acid," "groovy," I think; were those common words at that time?

A Yes, sir.

Q You were not the only person that said those words?

A No, sir.

Q They asked you about Mr. Manson; do you recall that this morning?

A Yes, sir.

Q Did he have any power over you?

A No, sir.

Q Did anybody have any power like that over you?

A No, sir.

Q I believe you testified that when you got home in your apartment, some painting had been going on; is that correct?

A Yes, sir.

Q Was that an unusual occurrence at your house?

A Nothing was an unusual occurrence in my house.

Q Let me ask you this question, Ms. Stoeckley: is it fair to say that as a result of the MacDonald murders and the questions which you were asked in 1970, and because of the clothing that you owned, that you got a fair amount of attention from folks about this crime?

A Not especially attention--just harassment.

Q With respect to this hobby horse in the photograph, prior to seeing that horse in that photograph, have you ever seen that hobby horse before?

A Plenty of times.

Q When you were talking about a hobby horse being broken this morning--and I guess, maybe yesterday--which one were you referring to?

A Well, when I first looked at the picture yesterday, I thought it was broken.

Q That is the only significance that has to you?

A That is the only reason I said that.

Q Did it appear to you to be broken in the picture; is that correct?

A Yes, sir.

Q Now, I believe you said that on the 18th of February, 1970, you were detained by the Fayetteville police; is that correct?

A Yes, sir.

Q And you were expected to be interviewed by the CID?

A Yes, sir.

Q They did not show up?

A No, sir.

Q Isn't it true that there did come a time subsequent to that as I believe you testified that the CID did, in fact, interview you?

A Yes, sir.

Q Concerning the MacDonald killings?

A Yes, sir.

Q To your knowledge, were a lot of people being interviewed or questioned?

A Yes, sir.

Q By the CID or by the Fayetteville police?

A By someone--some law enforcement.

Q By law enforcement?

(Witness nods affirmatively.)

Q I believe you were asked a number of questions concerning the fact that you had moved as a result of the MacDonald killings; is that correct?

A It was one of the reasons; yes.

Q What were some other reasons?

A I had been to North Carolina Memorial and taken methadone and everything and I wanted to move away into another area where I could stay clean.

Q Is it fair to say that you were not particularly anxious to come to North Carolina this week?

A Yes, sir.

Q Prior to leaving North Carolina in 1970, you had cooperated in some ways with the Fayetteville Police Department; is that not correct?

A Yes, sir.

Q And as a result of that cooperation, is it not true to say that even today, you are still fearful for your safety?

A Yes, sir.

Q Isn't it true that that is the primary reason you did not want to come here and testify?

A It was one of the reasons; yes, sir.

Q You have no reason to believe, do you, that you were standing on a street corner at 4:00 o'clock in the morning on the 17th of February, near Fort Bragg; do you?

A I don't have any reason to believe that; no.

THE COURT: Mr. Blackburn, may I inquire---

MR. BLACKBURN: (Interposing) It would be a few more minutes, Your Honor.

THE COURT: Well, then, it is time for us to go to lunch on our Friday schedule and that is what we will do now. We will come back today at 1:30. You know, we only get one hour on Friday. If you will come back at 1:30. Don't talk about the case. Take a recess until 1:30.

(The proceeding was recessed at 12:32 p.m., to reconvene at 1:30 p.m., this same day.)

FURTHER PROCEEDINGS 1:30 p.m.

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

#21
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THE COURT: Any further questions of this witness?

MR. BLACKBURN: Yes, Your Honor.

(Whereupon,

HELENA STOECKLEY

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

CROSS-EXAMINATION (resumed) 1:31 p.m.

BY MR. BLACKBURN:

Q Ms. Stoeckley, let me hand you Defendant Exhibit Number 86 and 89. With respect to Defendant Exhibit 86--that's a photograph of you I take it?

A Yes, sir.

Q Okay, if you don't mind, would you speak up a little bit louder?

A Yes, sir.

Q Do you know when that photograph was taken or what year it was taken?

A I think it was taken in 1970.

Q In 1970. Now, this drawing that was done

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is the Defendant Exhibit 89. Taking that drawing in its totality, is that you?

A No, sir.

Q You didn't sit for that drawing; did you?

A No, sir.

Q You don't know who drew it?

A No, sir.

Q I take it that you don't know then whether or not whoever drew it--this drawing--also had this photograph?

A No, sir.

Q Now, when you came home at about 4:30 or 5:00 o'clock that morning on the 17th, you got out of the car; you recall that?

A Yes, sir.

Q Did you see any blood on your hands?

A No, sir.

Q Did you see any blood on your clothes?

A No, sir.

MR. BLACKBURN: No further questions, Your Honor.

MR. SEGAL: I have a few questions on redirect, Your Honor.

THE COURT: All right, sir.

REDIRECT EXAMINATION 1:33 p.m.

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BY MR. SEGAL:

Q Ms. Stoeckley, do you remember hearing about the funerals of the MacDonald family that were being planned; do you recall that?

A Being planned?

Q Yes; you heard that there was going to be a funeral of the MacDonald family; hadn't you?You heard that in 1970?

A Yes, sir.

Q Didn't you want to attend that funeral?

A I made mention of that fact at one time.

Q Does that mean that you did or not want to go to the funeral of the MacDonald family?

A At one point I did.

Q I can't hear you.

A Yes, sir.

Q And did you talk to some other people about going to the MacDonald funeral?

A Just about getting a way to it or if I would be allowed to go to it or something like that.

Q And was the only reason why you didn't go to the funeral was because you couldn't get anybody to take you out there?

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A No.

Q What was the reason why you didn't go?

A I just changed my mind.

Q Who was it that you talked to about the fact that you wanted to go to the MacDonald funeral?

A I'm not even sure.

Q Was it people that you lived with in the house?

A Probably someone who frequented being at the house quite a bit.

Q What did you mean when you said you weren't sure you would be allowed to go?

A Well, I didn't know if it was for family members or what.

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BY MR. SEGAL:

Q Now, your testimony is that you had never met the MacDonald family prior to February 17, 1970; correct?

A Yes, sir.

MR. BLACKBURN: Your Honor, I would OBJECT.

THE COURT: Yes; I don't see that this--it is what you went into, I think, on direct examination. And on cross-examination, I don't think that there has been anything new brought out about this, has there?

MR. SEGAL: I thought it related to some issue. I have nothing further on that point, Your Honor.

THE COURT: All right.

BY MR. SEGAL:

Q You were asked by the Government's attorney whether anybody had power over you. Do you recall being asked that?

A Yes, sir.

Q And was your answer—your answer was that nobody had power over you; is that right?

A Yes, sir.

Q In 1969 and 1970, did some drug have power over you when you used it?

A A drug did; yes, sir.

Q What was the drug that most had power over you when you took it?

A Heroin.

Q What about LSD?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Yes, Ms. Stoeckley?

A It didn't really have any power--well, I couldn't control it.

Q Can you tell us a little more clearly, when you say you couldn't control it?

A I mean, I couldn't control my actions when I was on it. That is why I discontinued using it.

Q You discontinued--finally discontinued using LSD in what year?

A About '71.

Q And when you discontinued using it, was it because when you used it, you had thoughts that were related to the MacDonald case?

A Not necessarily; no.

Q Not necessarily?

A No.

Q Did you have thoughts relating to the murders of the MacDonald family when you were using LSD between

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February 17, 1970, and when you stopped in 1971?

A I don't know what I would be thinking when I was using LSD.

Q Well, what is it, if you can tell us more precisely, that finally made you stop using LSD regularly.

A It wasn't any one thing. I just got tired of the drug taking me.

MR. SEGAL: Bear with me just one second, please.

(Pause.)

MR. SEGAL: I have no further questions of this witness at this time, Your Honor.

MR. BLACKBURN: Your Honor, I would like to have one question, if I might.

THE COURT: All right.

R E C R O S S - E X A M I N A T I O N 1:33 p.m.

BY MR. BLACKBURN:

Q Ms. Stoeckley, have you ever been formally accused or convicted of any crime of violence?

A Of violence?

Q Yes, ma'am.

A No, sir.

MR. BLACKBURN: No further questions.

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THE COURT: All right; call your next witness. You may stand down.

(Witness excused.)

MR. SEGAL: Your Honor, the Defense calls Mrs. Jane Zillioux. While she is being brought forward, may we speak to you about some matters?

THE COURT: Yes.

MR. BLACKBURN: I assume this witness can be excused.

MR. SEGAL: That is part of the matter. Not until we have a chance to talk to Your Honor.

THE COURT: Don't let her be excused yet.

B E N C H C O N F E R E N C E

MR. SEGAL: In regard to this witness, Your Honor, I at this time wish to place her under subpoena, because I wish to retain her. I do not want her to be held in custody as a material witness.

THE COURT: I thought she was under subpoena.

MR. SMITH: I don't know that we ever got her served.

THE COURT: Well, the warrant you had issued for her arrest had the effect of a subpoena.

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MR. SEGAL: All I would like to have, Your Honor, is the witness be advised that we have not released her. She is under subpoena. We will tender the witness fee immediately to her, so that she, you know, will be able to stay.

THE COURT: Do you want some time to do that, or have you already got it prepared?

MR. SEGAL: We don't have it prepared, Your Honor, but we will do it this afternoon.

THE COURT: Get it done right away. You see the girl has done what she came here to do. I am not after holding people in jail.

MR. SEGAL: I agree entirely. It will take us less than a half hour to have a subpoena for her. I would just ask, out of the hearing of the jury, of course, that Your Honor tell her that the subpoena means what it says, and that she had best not run off. I don't think she will, if she hears it from Your Honor. Everything you know about her says despite her looking up at the Court, that she would listen.

THE COURT: What do you want me to do, go in yonder jail right now and tell her?

MR. SEGAL: If we are going to have a voir dire--I don't know whether we are going to have a hearing out of the presence of the jury or not.

THE COURT: On these other witnesses?

MR. SEGAL: Yes, Your Honor.

THE COURT: That was going to be--we didn't have time for me to tell you, but that was going to be my solution to that. I don't see how I can rule without knowing where you are going and what the witnesses are going to say. In that connection, how many of this type witness do you have?

MR. SEGAL: There are five.

MR. SMITH: There are five.

MR. SEGAL: Let me call the first one and Your Honor will get an idea of what their testimony is like. That may help you. Then you may see whether you want to hear the rest of them.

MR. SMITH: They are different kinds of people.

THE COURT: Got any Stoeckleys in the crowd?

MR. SMITH: We have changed all the Stoeckleys' names.

THE COURT: Tell me about the length of testimony for these witnesses.

MR. SMITH: I would say direct---

THE COURT: (Interposing) You are looking at an hour and 15 minutes of remaining trial time

for this day.

MR. SMITH: My feeling is the direct examination of those witness would take 20 minutes to 30 apiece.

MR. SEGAL: That is correct.

THE COURT: Well, would it profit anything just to let this jury go? How long would your voir dires last?

MR. SEGAL: Probably shorter--there'd be less objections that are made for the purpose of the jury. We will just hear what they have to say.

THE COURT: That is 50 minutes, and if there is any cross-examination--I was going to say I might just give the jury the afternoon off and get all of that behind us this afternoon.

MR. SEGAL: We have some other administrative matters to discuss with Your Honor that could also be profitably discussed at this time after the jury leaves, if you wanted to do that. We are ready to go either way. We have witnesses here.

MR. SMITH: We are primed and ready.

THE COURT: Of course, doubtless, you could finish with one witness this afternoon or maybe two, but if we can't finish with all of them, then there is not a whole lot to be gained by just doing one or two,

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it would seem to me. If we can get all these things, then I anticipate that what they say may be different. This statement may be in one category, say, lacking admission against interest--the other just purely a state of mind, or something like that, which might invoke a different rule.

MR. SMITH: Yes, sir.

THE COURT: Does the Government have any suggestions about the thing?

MR. MURTAGH: Since each one of these things is going to have to be ruled on, I think by the Court, because they are all inter-mixed--I think that the best thing, Judge, is to perhaps let the jury go. And if Defense Counsel would omit some of the foundation questions and just cut right to the meat of it, we could get the matter solved--get them all done today.

THE COURT: Did you say you had something else to bring up this afternoon?

MR. SEGAL: Yes, Your Honor. There are a couple. We have a motion for a writ of habeas corpus ad testificandum.

MR. SMITH: That is being moved on, I understand, now.

THE COURT: That was handed to me yesterday afternoon with an affidavit. I did not consider that

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affidavit sufficient, and so I need to know some more on that. Maybe I ought to explain why I don't.

I get these things all the time. Everybody who is in Marion in jail would rather be in Raleigh testifying.

MR. MURTAGH: There are two that are in there right now. They confessed years ago.

THE COURT: I can get you any witness in the world who'll say anything, but when we are talking about going halfway across the street--it is over 200 miles to Marion to get a witness out of jail to have him come here. I would want to know a little bit more.

MR. SEGAL: Certainly, Your Honor. We can supplement that with other testimony.

MR. SMITH: I talked with an FBI man this morning with Mr. Anderson in regard to making a little further discussion with Mr. Frier, and I talked with Mr. Frier on the telephone with FBI people there, so I think we are underway on completing some investigation.

(Bench conference terminated.)

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THE COURT: Members of the jury, it's got so we have at least one goody for you every day. Yesterday, we gave you virtually the whole day off. Also, you got a bonus yesterday. We raised your pay by $5.00 a day. I heard no objections to that.

Now, it appears that the next five witnesses who will be called to testify will--it is believed by counsel--undertake to offer testimony about matters which will involve some decisions as to the admissibility of the evidence, perhaps some close questions of evidentiary law.

The normal way to handle this is let you go back here and wait while we educate ourselves and hear all of this; but I have proposed that since we obviously cannot finish today and these all have to be gotten rid of, that we take all five of these witnesses and hear their testimony in your absence, and let you take the rest of the day off.

Then when you come back, we will have the witnesses ready to testify and you can hear them and you won't be going in and out, and they won't be parading up here for these bench conferences.

So with the consent of counsel for all parties and at the suggestion of the Court, we are going to let the jury retire for the remainder of this

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trial day, and of course for the week.

We will reconvene Monday morning at 10:00 o'clock, our usual Monday reconvening hour. I pause at this time to remind you again of the instructions which remain in force and effect at all times. They are briefly that you are not to discuss this case among yourselves.

Don't let anybody discuss it in your presence. Do not read, look at, or listen to anything that may appear in any of the news media. I will be asking you about that Monday morning.

That is particularly binding at this time for that. Testimony, it is anticipated, will be given from this witness stand this afternoon while you are not here, which you may never hear.

And it's just too much to ask of you that weed out that which came to you from some outside source from that which you have heard in here; so I caution you not to let anything of that nature come to your attention from any source whatsoever.

Finally, members of the jury, you must keep open minds about the case. Although it may seem to you that there is hardly anything else that could be said about it, I am informed that you have not heard it quite all yet.

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So please keep open minds about it. I commend you again for the manner in which you have been discharging this responsibility. I just don't think I have ever seen a better jury than this one, from the standpoint of your promptness and the attention which you have paid to the witnesses and to the counsel and to the Court.

I express this for them because they can't talk to you; but I can--that all of us are grateful for the attitudes that you have so admirably demonstrated in the hearing of this case.

I am going to let you retire now. Have a good weekend, a safe trip home and back, and we will see you Monday morning at 10:00 o'clock.

(Jury exits at 1:52 p.m.)

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

THE COURT: All right, call your first witness.

MR. SEGAL: Your Honor, could we dispose of the administrative matter in regard to the subpoena that I have prepared?

THE COURT: Oh, yes.

MR. SEGAL: May we ask the Marshal to bring Ms. Stoeckley back to the Court, please. It will just take a moment, Your Honor.

(Ms. Stoeckley enters at 1:55 p.m.)

MR. SEGAL: Your Honor, Ms. Stoeckley has been present in the Court pursuant to a warrant of arrest issued for her as a material witness in this matter after I had filed an affidavit with this Court and made an oral motion in that regard. I believe at this time, it is appropriate to discharge the warrant of arrest. It would expire, I think, this evening anyway However,becauseit is not certain in my mind that Ms. Stoeckley's testimony may not be needed further in this case-- at this time, I am going to tender her a subpoena as a witness--a subpoena to be here at 2:00 o'clock this afternoon. I will ask that thereafter--she can be excused, and I will just make arrangements to locate

her.

I am also going to tender her the statutory witness fees in that regard. My request to the Court, though, in view of the fact that Ms. Stoeckley has frankly stated that she did not want to be here and that she was so difficult to locate, I would ask the Court to advise Ms. Stoeckley of the importance of honoring the subpoena and the fact that the Court does fully expect her to return here as needed pursuant to this subpoena.

THE COURT: Well, I will say to the witness, Ms. Stoeckley, first of all, I hope you will understand that the Court, when called upon to do so in a case of a witness who is apparently reluctant to come to Court or is evading process of the Court, had to, in this instance, take some necessary action to insure your presence here.

Insofar as the Court is concerned, of course, you have discharged that duty and you will be free from further arrest at this time. What counsel is telling you, though, is that conceivably he might want you to testify further at some later time in the trial, and in that event, he is serving you with a subpoena at this time for your continued appearance or at such time as he will let you know. Of course, that is the

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process of the Court and failure to comply with it could result in sanctions of one kind or another against you, so you will understand that. I am sure that counsel will not call you unless he feels that it is essential to the defense of his client, but if he does, of course, you will be expected to comply.

MR. SEGAL: Is that clear, Ms. Stoeckley?

MS. STOECKLEY: Yes, sir.

MR. SEGAL: Do we have your word that you will appear as required?

MS. STOECKLEY: Yes, sir.

MR. SEGAL: Thank you, Your Honor.

THE COURT: All right, you have an hour and two minutes in which to do your voir dire examination. I am not suggesting that you use it all, but you, at least, have that much available right now. Call your first witness.

MR. SMITH: Jane Zillioux.

(Whereupon,

JANE ZILLIOUX

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

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THE COURT: Get right on with it.

MR. SMITH: Your Honor, Mr. Segal and I have divided these witnesses, and Ms. Zillioux is his witness. If I begin that examination, could you permit him to take over.

THE COURT: All right, why don't you just make a statement as to who she is and then go right on into the questioning.

MR. SMITH: All right, Your Honor. This witness is Jane Zillioux. You already have the spelling of her last name. Let me get her address and so forth.

D I R E C T E X A M I N A T I O N 1:59 p.m.

BY MR. SMITH:

Q Where do you live, Ms. Zillioux?

A Miami, Florida.

Q How long have you lived in Miami?

A Since 1972.

Q Where did you live before you moved to Miami?

THE COURT: She lived across the street from this Stoeckley witness. I said get right on into the thing.

MR. SMITH: I am moving right to it

Your Honor.

THE COURT: All right.

BY MR. SMITH:

Q Did you live near Ms. Stoeckley?

A Across the street.

Q In what city was that?

A Nashville, Tennessee.

Q Did you ever talk with Helena?

A Many times.

Q Could you state whether or not you ever talked with Helena any about the MacDonald murders which you have heard had occurred in Fayetteville, North Carolina, in 1970?

A Yes, sir.

Q Do you remember any of the statements she made to you about that?

A Yes; I do.

Q Would you state for the Court the circumstances under which she made the statements and what she said?

A Yes; I will.

Q Okay.

A Helena lived across the street from me in Nashville, Tennessee. She lived in a very small, white house, and the house was--a lot of hippies

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lived there. I lived across the street. I was making a living as a freelance artist, and the rent was cheap there. Helena and I both sometimes worked for a small shoe store named Bonnie Shoetique.

It was on the corner of Belmont and Portland Avenue. There was a vacant lot between the hippie house and Bonnie Shoetique. Helena was around the neighborhood. I had known her for several months and I had seen her on many occasions.

On occasion, we had worked together for Bonnie on Saturdays maybe when Bonnie would have a sale--a big shoe sale. And I had--my first meeting came--I had a great big, yellow cat, and he used to wander out of the apartment, and she retrieved him for me one day.

That's how I got to meet her, and I thought she was a runaway. You know, she seemed very young to me. I didn't know how old she was. I never asked her. I just--she looked too young to be away from home.

She was sick. She had hepatitis. On a lot of occasions when I would see her, she would be yellow. Even her eyeballs would be yellow, and one day--I hadn't seen her for a few days and I thought, "Well, I better check on her." So I went over there.

It was in the evening. I don't know what day it was. I can't remember. It's been that long ago.

BY MR. SEGAL:

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Q Can I just ask you one question: do you know approximately what month that would be in?

A Yes, sir; I met Helena first in September, and this was probably before Thanksgiving.

Q 1970?

A Yes, sir.

Q All right, go ahead and tell us about that evening.

A I went to her house to see if she was all right, because I was worried about her. I hadn't seen her for a few days and I didn't know if those hippies were feeding her or not or how she was getting her food.

So, I went over and I knocked on the door and I called and I said, "Helena, are you there?" And she said, "Yes." She came to the door. It took her a few minutes, and, as she opened the door, she turned around, and I followed her into the house.

I went into her room. It was the front room right on the street. And she went over. She was weak and she was shaky and she sat down on the

bed, and I sat down beside of her, and I said--you know--"I haven't seen you for a few days and I was worried about you--you know--are you all right?"

She said, "I've been sick," and I said, "Well, Helena, why don't you go home. You know, why don't you go home to your family and let them take care of you?" And she said, "I can't. I can't ever go home again."

I said, "Well, why?" She said, "Because I was involved in some murders," and she said, "My family don't want me around."

Q What did you say or do when she said she was involved in some murders?

A I didn't say anything. I was just too shocked. You know, I expected a teenage confession like "I hate my mother," you know, or "I'm a runaway." I didn't expect that. I was horrified. I---

Q (Interposing) Did you do or say anything to express your shock?

A I did. I said, "Well, did you do it?" She said--I'm trying to remember the exact words--she said, "I don't know whether I did or not." She said, "I've been a heavy drug user and when you are on drugs, you do funny things." She said, "Drugs make you--when you are on drugs, you do things that

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you don't think you did. Things you think you didn't do, you really did." She said, "I don't know." So, I said, "Well, why don't you tell me about it?" She said, "I can't remember."

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But she said, "When I came to myself"--she skipped, you know, a whole--whatever it was--I didn't want to hear it anyway. She said, "When I came to myself, I was in the rain," and she said, "It was raining," and she said, "I was terrified."

And when she said "I was terrified," she took her arms like this and she hunched her body over like this and the tears were running down her face and the mucous was dripping from her nose, and she was hysterical, and she was just crying.

I was trying to calm her down. I wanted to get out of there because I didn't know if she was on drugs or not, but I wanted to get out of her apartment because I was--I didn't want to be there. I didn't want to hear that.

So, anyway, I said, "Well, who were you with?" She said, "I was with three boys." I said, "Did you know them?" She said, "No, I didn't know them." I said, "Well, why were you with them?" She said, "I was with them for the drugs." She may have said the name of the drug but, if she did, it didn't

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mean anything to me because I have never been around drug addicts, and I don't know anything or how they act. I don't know anything about that.

So, anyway, about that time, after I said, "Well, if you knew the names of these people, you could tell." She said, "But I don't know their names." I personally thought she did know their names but she said she didn't.

So, she grabbed hold of my arm--my forearm--and she said, "You won't tell; will you?" I said, "No, I won't." And just as quickly as I could, I got out of there, and I went back to my little apartment, and I thought about it for a few days, and I discussed it with Bonnie Hudgins, the lady who owns Bonnie Shoetique, and I said, "Did you know Helena was involved in some murders?"

She said, "Yes, I knew that." She said--I said, "You know, I don't know much about it. She just told me it was in Carolina," and she said, "It was the Green Beret murders." I said, "Oh." She said, "Did you know Helena was working for the FBI as a narc?" I said, "I had heard rumors, but I am not sure."

#26 pl

THE WITNESS: (Continuing) So, I called the FBI. I picked up the telephone after about three days, and I called the FBI, because I had thought about it and I was convinced that Helena had had something to do with this; and I thought, "Well, if I call the FBI, I'll have been doing 'my duty.'" You know, I didn't want to live in the neighborhood with her, and I didn't want to be around her, because I didn't know when she might not freak out again.

So when I called the FBI I got the royal "Yes, ma'am, thank you, ma'am; we'll check it out, ma'am," and that was all.

I avoided Helena after that because I didn't want her to know that I had called the FBI, and I felt guilty because I told her I wouldn't tell--but I did call the FBI.

BY MR. SEGAL:

Q Ms. Zillioux, when you called the FBI, did you give the name of the person that you were talking about?

A I told them that her name was Helena and she was involved in those murders in Carolina--the Green Beret murders.

Q Did you give them an address as to where she was?

A Yes, I did.

#26 p2

Q Now, let me go back if I can for a minute over the conversation. You were describing where Helena was crying, that she was talking about standing in the rain, and she hugged herself?

A Yes.

Q Did she at any time look at her hands or say anything about her hands?

A Oh, well, I'm sorry. I just--I'm not accustomed to speaking in front of people.

When she leaned over and she hugged herself like this, and she was telling me about standing out in front of the rain when she came to herself--she was speaking with her hands.

So she flipped her hands like this, and she said, "So much blood," she said, "So much blood. I couldn't see or think of anything except blood," and she said, "I asked the boys to take me home. I had to get home."

I did ask her at that time, "What did you do with your clothes?" She said, "I got rid of them." I didn't ask her how she got rid of them. She just got rid of them. I didn't ask her any questions, you know.

Q Did she say anything about not wanting any more connection with those clothes?

A Yes, she did.

#26 p3

Q What were her words, if you can remember?

A I said, "Well, why--you know, why did you get rid of them?" She said, "Because they were the same clothes that the woman in the case was supposed to have been wearing."

Q Now, did she say who were the persons murdered either not by name or---

A (Interposing) She said a woman and two small children.

Q Did she ever mention something about her wig?

A Yes, she had--she told me she had on her blond wig and her white boots. I know that they were white plastic-leather boots because before that when we had been working in Bonnie's Shoetique, she pointed the boots out to me--a pair that was in the store; and she said, "I had a pair of boots like these, and I loved them, but I had to get rid of them."

Q Did she say anything about whether she was wearing the wig while she was standing out there in the rain?

A Yes, she did, because she didn't know--it was--from her account it was raining heavily; and she was afraid her wig would be ruined, and she was worried about the wet wig.

#27 p4

Q Now, you said that during the time that she was telling you these things she was crying, is that right?

A She was hysterical, and then she would pause, and then she would get herself under control; and then she would lose control again. It was very bad for her and me too. It was heavy. It--you know, it was hard for me to handle.

Q And when you say "lose control," what do you mean---

A (Interposing) Sobbing, crying, you know--holding herself, grasping her arms, her stomach, you know, tears coming down her face--blubbering, incoherent.

Q What was her--I'm sorry; are you through?

A That's all right.

Q What was her condition when you left; I mean what was she doing?

A She was laying on the bed crying when I left. There were people who came in. This was a hippie house, and the bed was like this. The front door was where the judge was sitting, and there was another door directly over at this side.

The two of us were sitting on the bed, and on at least two occasions that I know of hippies came

#26 p5

to the door and she screamed at them, "Get out of here, get out of here." And she was screaming, you know, for them to get out, you know.

Q In other words, she did see other people when they came in and she reacted to their being there?

A Yes, sir.

MR. SEGAL: I have nothing further on the witness at this time. That is the offer we make in this regard.

MR. BLACKBURN: Let me ask just a small number of questions, Your Honor.

C R O S S - E X A M I N A T I O N 2:12 p.m.

BY MR. BLACKBURN:

Q Ms. Zillioux, I think you stated that she was almost incoherent while she was talking to you?

A At times periodically.

Q When you went in to see her at first, what was her condition?

A Shaky. She was sick with hepatitis.

Q You don't know whether or not she was taking any drugs at that time?

A I am sorry, sir. I have never been around people on drugs, and I have no idea what they are like. Even today, I couldn't tell you. If you were on drugs, I couldn't say to anyone that you were on drugs because I really don't know.

Q She said that she was involved with the murders; did she?

A Yes, sir. She said, "I was involved in some murders and my family don't want me around."

Q Did she actually say that she killed somebody or just say that she was involved?

A She was involved.

Q She did not define what the term "involved" meant?

A No, sir, and I didn't ask.

Q You said something--I am not sure I got the full thrust of this, but she said that drugs make you think---

A (Interposing) Drugs do funny things to you.

Q Tell that very slowly.

A Okay. I may have gotten my words mixed up. "Drugs do funny things to you. When you are on drugs, things happen you think didn't. Other things that did happen, you think didn't happen that you think did." It is kind of a tongue twister, but those were her exact words, you know.

Q You may have answered this, but let me ask it anyway with respect to that remark: did she ever say anything like, "Sometimes drugs make you think that you did something---

A (Interposing) That was not what she said.

Q She never said that?

A No, sir.

MR. BLACKBURN: No further questions, Your Honor.

MR. SEGAL: Thank you, Ms. Zillioux.

You may step down.

THE COURT: Did I understand you to say that she stated that she did not know whether she committed a crime or not?

THE WITNESS: Well, this morning in the Courtroom---

THE COURT: (Interposing) Listen, I want to know what she told you--did I get this down right--"I don't know whether I did it or not," is that what you said?

THE WITNESS: Yes, sir.

THE COURT: That is what she said to you?

THE WITNESS: Yes, sir.

THE COURT: Call your next witness.

(Witness excused.)

MR. SMITH: Jim Gaddis is the next witness we would call.

(Whereupon,

JAMES T. GADDIS

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

MR. SMITH: Mr. Gaddis, take the witness stand, please, sir.

THE COURT: Just go ahead and tell us

who he is and then ask the questions, will you, please?

MR. SMITH: Your Honor, this witness is named Jim Gaddis. He is a police officer in Nashville, Tennessee.

D I R E C T E X A M I N A T I O N 2:13 p.m.

BY MR. SMITH:

Q Mr. Gaddis, do you know Helena Stoeckley?

A Yes, sir; I do.

Q Did she ever make any statements to you about any murders which took place in Fayetteville, North Carolina, in February, 1970?

A Yes, sir; she did.

Q If you will move as quickly as you can, skip any of the preliminaries, and tell the Court exactly as you recall what she told you?

A I talked with her on several occasions about the murders. She said that she thought she had been there when the murders took place. The night that the murders took place, she had tripped out on some mescaline and some LSD and she remembered being there. On other occasions, she would say that she knew who had done it, but that she wasn't there. She would get very depressed when she talked about it. In fact, on several occasions, she would become so depressed that we could

not even talk with her. It led me to believe that she did talk--it led me to believe that she was there and had been there.

Q Mr. Gaddis, did she seek you out or did you seek her out?

A She sought me out.

Q Would you tell the Court how that happened?

A I had been working a special assignment hunting for a person who was assaulting women in the area where she lived. I had driven by her house one night and she stopped me. After talking several minutes with her, she said that she had some information she wanted to give me concerning some drugs that were being used in the area and also about a police officer on our department who was selling drugs to children.

BY MR. SMITH:

Q How did she get into the subject of the MacDonald murders?

A After about two or three days of talking with her about the police officer and the other drugs being used in the area, she asked me if I could find out if she was still wanted for questioning in the MacDonald murders, and explained to me that she thought she was, but she wasn't sure, and told me who to contact, which I did.

Q Did she then give you specific names?

A She gave me the names of a boy named Greg. She did not know his last name at the time--but also a gentlemen named Bruce Fowler whom she had been with the night that she took the mescaline and the LSD, and who had a blue Ford Mustang.

Q Did she ever make any further description to you about what occurred, giving you any specific examples or any other specific information?

A The only information that she related to me was that she had been at the scene. She felt she had been there, and that the clothes she wore while she was in Nashville fit the exact description of the clothes of the female that was involved in the murders themselves.

Q When you talked with her, Mr. Gaddis, in your opinion, was she under the influence of any narcotic

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drugs?

A At times she was and at times she wasn't. I knew that she was dealing some. I knew that she was using heroin at the time.

Q During the times that she gave you information about the MacDonald case, was it your opinion she was under the influence of narcotic drugs?

A She gave me information on several occasions. At times, she was under the influence. Most of the time when she gave me the information about the MacDonald murders, she was not.

MR. SMITH: You may examine.

C R O S S - E X A M I N A T I O N 2:18 p.m.

BY MR. BLACKBURN:

Q Mr. Gaddis, is it true that Ms. Stoeckley has told you that on the 17th of February, she took LSD but that it had no effect on her?

A That is correct.

Q Is it not true that she has told you at one time that she remembers nothing about that evening, but that she does remember coming home in a blue automobile?

A That is correct also.

Q Isn't it true that at one time, since you have met her, she said that she cannot remember who she

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was with or where she went?

A That is correct also.

Q And she has told you, I believe, that at one time she knew who was involved, but did not give you any names?

A That is correct also.

Q And at another time, she said she only had suspicions of who was involved?

A That's true.

Q Isn't it true that at other times she said Dr. MacDonald did the killings?

A That is true also.

Q In your opinion, has she ever simply said things to you but refused to explain them any further?

A Yes, sir; she has.

Q Has she ever described the inside of the MacDonald apartment to you?

A No, sir; she didn't.

Q Now, on the 23rd of April, 1971, did you have occasion to see her?

A Yes, sir.

Q At that time, did she say to you that she was not involved, but that she knew who was?

A Yes, sir.

Q And that on the same day, she said that she

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was there, and she witnessed the murders?

A That is correct, but she had not been involved in the actual killings themselves.

Q Right; and she has given you the name of at least two people, but no others?

A That is correct.

Q Has she ever said anything to you about any of the weapons that were used?

A No, sir.

Q Anything about candles?

A No, sir.

MR. BLACKBURN: Your Honor, that concludes our questioning.

THE COURT: All right. Call your next witness.

MR. SEGAL: Mr. Underhill, please.

THE COURT: While he is coming, let me ask Mr. Gaddis just one question. On the basis of what this girl told you--these murders--had these murders happened in Nashville, would you have issued or signed a warrant for her?

THE WITNESS: I am not sure, sir. I have a feeling--like I say, I would have tried to have her indicted.

THE COURT: You would have investigated

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further?

THE WITNESS: I would have investigated further, and I would have indicted her; yes, sir.

THE COURT: All right; call your next.

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(Whereupon,

CHARLES EDWARD UNDERHILL

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

D I R E C T E X A M I N A T I O N 2:20 p.m.

BY MR. SEGAL:

Q Mr. Underhill, were you living in Nashville in late 1970?

A Yes, I was.

Q Did you know Bonnie Hudgins, a lady now known as Jane Zillioux, and Helena Stoeckley?

A Yes, sir; I did.

Q Did you have an occasion in late 1970, to go to Helena Stoeckley's apartment where she was living?

A Yes, I did.

Q Do you recall what month that was?

A It was in the month of December.

Q What happened when you got to the door of her apartment?

A Well, I just walked up and knocked on the door. After I had knocked--of course, this was like in the same second, really, or two seconds, and I heard someone crying--more or less, just into a hysterical sob instead of a normal cry. I asked, "Helena?" The

voice that came back was, "Get away."

I asked again--I said, "Helena, is that you in there crying?" She said, "Get away. I don't want to see you or nobody," so I said, "Well, I will go down and get Bonnie and she can come down here and maybe straighten you out."

She said, "Who is it?" I said, "It is Underhill." She said, "Red?" I said, "That is right. I am going to get Bonnie," which the lady had been working with her and helping her along and so forth. Then, she said, "Wait a minute. Don't go get Bonnie. I will let you in," which she came to the door and unlocked the door and I walked in--the first and only time I have ever been in her apartment.

I asked her--I said, "What in the world is wrong with you carrying on like this--something happen to you? What is wrong? Tell me." She just started sobbing worse and just terrible. The next thing that came from her mouth was, "They killed her and the two children."

I said, "What is wrong with you, you goofy fool, are you on dope or something?"

BY MR. SEGAL:

Q What did she say?

A And then, at that minute, she reversed it for

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some reason--why, I don't know--and said, "They killed," and sobbing just hysterically at the same time getting these words out, "they killed the two children and her," so it is stated one way and then reversed. I said, "Ah, you are just as goofy as hell. Something is wrong with you, so I am going to get Bonnie right now, and Jane, and see if they can't take you somewhere or do something for you or help you or do something." She begged me not to go get them, so I just left and went across the street where Jane was living and told Jane--I said, "She is over there crying and screaming and carrying on. You better go check on her or something." That is the end of that situation.

Q All right, did you ever find out from her about what woman and two children she was talking about?

A Well, I never did ask her as to names--what could be the names of these two people, just where they lived, or whatever. I never did ask her those questions.

Q Did she indicate where they took place?

A Only North Carolina is the only thing she said--did not name a city--just North Carolina.

MR. SEGAL: Cross-examine?

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C R O S S - E X A M I N A T I O N 2:24 p.m.

BY MR. BLACKBURN:

Q Mr. Underhill, I believe you testified that she was crying hysterically; is that correct, when you saw her?

A Right. You are correct.

Q Do you know whether or not she was on drugs or anything like that?

A Well, I don't fool with drugs. I wouldn't give you a dollar if this room were full of them. I don't fool around with drunkards, liars, and dopeheads, and stuff of this nature; so naturally, whether she could be on drugs or not, I would not know because I am not qualified to know.

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BY MR. BLACKBURN:

Q She was not in a calm state of mind?

A Well, whatever had got her in the state of crying or whatever had built--got her built up to get in this state, I don't know.

Q Is it correct to say that what she told you was that, "They killed her and the two children," and that, "They killed the two children and her," is that correct?

A That is correct.

Q And that this took place in North Carolina?

A Right.

MR. BLACKBURN: No further questions.

MR. SEGAL: Thank you, Mr. Underhill.

(Witness excused.)

MR. SMITH: Robert A. Brisentine. Your Honor, while Mr. Brisentine is coming in, let me state for the court that his name is Robert A. Brisentine, Jr., and he lives on Cheseney Lane in Bowie, Maryland.

(Whereupon,

ROBERT A. BRISENTINE, JR.

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

D I R E C T E X A M I N A T I O N 2:28 p.m.

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BY MR. SMITH:

Q Mr. Bristentine, have you ever interviewed Helena Stoeckley?

A I have, sir.

Q Do you recall about when that was?

A Yes.

Q When was it?

A On the 23rd and 24th of April, 1971, sir.

Q Where were you when you interviewed her?

A In Nashville, Tennessee, sir.

Q Did you retain any notes from that interview?

A I did, sir.

Q Do those notes refresh your recollection as to statements she made to you?

A Yes, sir, they would.

Q Do you have any of the notes with you on the witness stand?

A Yes, sir.

Q Would it help you to refer to those notes---

A (Interposing) It would, sir.

Q ---in stating to the court what she said to you?

A It would, sir.

Q If you will use those notes to refresh your

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recollection, state to the court what Helena Stoeckley told you, if anything, relating to any murders that took place in Fayetteville, North Carolina, in February of 1970?

A Helena Stoeckley--I interviewed her on the 23rd for a period of four hours and 20 minutes, sir; and on the 24th of April--23rd of April for four hours and 20 minutes, and the 24th of April for six hours and six minutes.

She stated on the 23rd, during that particular interview, that due to a mental block--and that is the terms that Ms. Stoeckley used--she does not remember her activities or whereabouts between 00--well, that's 12:30 a.m., to 4:00 o'clock a.m. on the 17th of February; that during a period of three to four months subsequent to the homicides in the MacDonald residence, she was convinced that she participated in the murder of Mrs. MacDonald and her two children; that she presently is of the opinion that she personally did not actively participate in these homicides, but may have been physically present at the time of the murders; that prior to the homicide she had heard that the hippie element was angry with Captain MacDonald as he would not treat them by prescribing methadone for their addiction to drugs.

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Ms. Stoeckley later retracted this statement and said that she only thinks she heard of Captain MacDonald before the murders; that she had never been to Captain MacDonald's residence prior to the homicide; that prior to the homicide she had visited Castle Drive, Fort Bragg, North Carolina, for the purpose of delivering illicit drugs to an officer she knows only as Bob; that approximately 24--12:00 p.m.--12:00 o'clock p.m., 16th of February, 1970, she and a man named Greg Mitchell consumed LSD and mescaline; that she was using all types of drugs--opiates, heroin, marihuana, depressants, stimulants, and hallucinogenics prior to and immediately following the homicides.

That during April, 1970, she was admitted to the University of North Carolina hospital for hepatitis and drug addiction; that as a result of excessive drug use during the time of the homicides, she was not always oriented as regards time, dates, and surroundings; that since the deaths of Mrs. MacDonald and her children, she, Helena Stoeckley, has suffered nightmares whenever she sleeps, and that due to these frightening dreams she is afraid to sleep, causing insomnia.

That her original dreams portrayed the word "pig" in blood on the headboard of Mrs. MacDonald's

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bed.

Ms. Stoeckley described her dream by printing the word "pig" horizontally on the left side of a drawn picture of a bed headboard. She asserted that in her dreams the word "pig" is always on the left side of the headboard.

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THE WITNESS: (Continuing) That during the past three or four months her dream places her on the couch in Captain MacDonald's living room and that Captain MacDonald is pointing at her with one hand while holding an ice pick that is dripping blood with the other hand.

That during February, 1970, she possessed and occasionally wore a pair of white boots, a floppy type, white hat, and a blond wig. That following the homicide, she discarded the boots, wig, and hat. That about the same time as the homicide, she stole some floral wreaths from the florist in Fayetteville, North Carolina, and displayed them in the front of her residence.

That one of the wreaths had the word "Mother" written on its ribbon while one or more of the other wreaths had the word "Sister" written on them. That immediately following the homicide, she wore black clothing and the day of the funeral of Mrs. MacDonald and her children, she--Ms. Stoeckley--meditated and wore black clothing.

That she desired to attend the MacDonald funerals but did not attend as none of her friends would accompany her. That she went into hiding to evade police arrest subsequent to the homicides and

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considered fleeing from Fayetteville, North Carolina. That she knew the identity of the persons who killed Mrs. MacDonald and her children. That if the Army would give her immunity from prosecution, she would furnish the identity of those offenders who committed the murder and explain the circumstances surrounding the homicides.

BY MR. SMITH:

Q That concludes the gist of the statement she made to you; is that correct, Mr. Brisentine?

A On the 23rd; yes, sir. That's not the 24th.

Q All right, now, did she make a statement to you on the 24th?

A She did.

Q What did she say?

A On the 24th Ms. Stoeckley related she had been incorrect in her statements and had and I quote "talked too much" and that she only suspected some people of committing the homicides. At this time, Ms. Stoeckley stated that she suspected Don Harris, a Caucasian male, who told her after the homicide that he must leave Fayetteville, North Carolina, as he could not find an alibi for the time of the murders; Bruce Fowler, the owner of a blue

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Mustang automobile in which she, Ms. Stoeckley, was a passenger or a driver on the night of the homicides; Janet Fowler, wife of Bruce Fowler and who was employed as a go-go dancer in Fayetteville, North Carolina, at the time of the homicides.

I should digress here, sir. I later learned this lady's name was Janice Fowler--not Janet Fowler.

Q All right.

A Joe Kelley, a Negro soldier who was assigned to a medical holding detachment at Womack Army Hospital, Fort Bragg, North Carolina, at the time of the homicides, and a Negro male she knew only as "Eddie" who introduced her--Ms. Stoeckley--to heroin.

At one time during the interview on 24 April, Ms. Stoeckley asserted that she had been lying when she admitted knowing who committed the homicides and stated that Captain MacDonald had killed his family. Further, that her rationale was based on the fact that four hippies could not have entered Captain MacDonald's home without being observed by neighbors or causing dogs to bark.

Ms. Stoeckley further explained that it had been drizzling rain during the night but that it

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did not start to rain hard until after the homicides. On inquiry from me, Ms. Stoeckley explained, "I've already said too much." Later, during the interview, Ms. Stoeckley again repeated her previous statement about saying she suspected hippie-type individuals of the crime.

Q Does that conclude her statements to you?

A Basically. That is all the notes that I took during the statement.

MR. SMITH: You may examine.

BY MR. MURTAGH:

Q Mr. Brisentine, were you ever in the Army?

A Yes, sir.

Q How long, please?

A I was on military active duty for 22 years, sir.

Q During the course of your active duty in the military and subsequent to that time, have you observed many people under the influence of narcotics?

A Yes, sir.

Q Would it be accurate to say that you would recognize an addict or a junkie when you see one?

A I would say in a lot of instances, if not in most instances, if an individual is on drugs at the time, I probably could recognize it as being some type of intoxicant.

Q Would you describe your observations, sir, if any, of Ms. Stoeckley on the 23rd of April and the 24th of April?

A On the 23rd of April, sir, Ms. Stoeckley, in my opinion, was under the influence of narcotics.

Q And on the 24th of April, which is, I believe you testified, the time at which she retracted her previous statement?

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A Yes, sir. Well, Ms. Stoeckley would retract, and then she would again say, yes; that she was there. "No; I was not there." "I am involved." "I am not involved." Basically, though, generally speaking, on the 23rd she contended that she was involved in these homicides. On the 24th she did change originally, but then later said she did know something about it.

Q Would it be accurate to say that the overall situation would be that she was all over the lot, whether she was involved or not involved?

A She certainly changed her statements during the two days; yes, sir.

Q Did she ramble at any time?

A On the 23rd, she rambled some; on the 24th, she was in much better mental condition.

Q Did she seem, at any time, out of touch with reality?

A She was very nervous, somewhat depressed occasionally, on the 23rd. And she made statements that would indicate that she may not be completely oriented at that time on the 23rd.

Q Let me ask you, have you ever been at the crime scene?

A Yes, sir.

Q Was that prior to interviewing Ms. Stoeckley?

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A Yes; that was a year prior, in April of '70, I believe, sir.

Q Okay; would it be accurate to say that you were generally familiar with this investigation?

A I was generally familiar with the crime scene and I had a general familiarization of the investigation. I did not know all aspects of the investigation.

Q Okay; and I believe you testified that she described the letters as "pig" on the headboard; is that correct?

A She drew it on the headboard. Well, she drew it on a photograph of the headboard.

Q Had you seen that headboard previously?

A No, sir; I had not seen the headboard. I had seen a photograph of the headboard.

Q Let me ask you, do you know which way the letters "pig" go on the headboard?

MR. SEGAL: Your Honor, I don't think this goes to the question of voir dire. It is really general cross.

THE COURT: I rather think it does. I will OVERRULE this, if it is an objection.

MR. SEGAL: All right, sir.

BY MR. MURTAGH:

Q On the actual headboard, which I believe you

saw a photograph of, which way?

A Horizontal, if I recall, sir--I mean, vertical.

Q Which way did Ms. Stoeckley do it?

A Horizontal.

Q Do you know whether the fact that the letters "pig" were written in blood on the headbaord had ever appeared in any of the Fayetteville papers?

A I can't tell you, sir, what was in the Fayetteville paper.

Q Would you agree, if I were to suggest to you that it was published in the paper?

MR. SMITH: OBJECTION. How could he possibly know?

THE COURT: OVERRULED. I don't think the question is going to prove anything, but this is voir dire. There is no jury here.

MR. SMITH: The basis of my objection is the previous answer made it impossible for him to know.

BY MR. MURTAGH:

Q Now, in her statement in which she said she had a dream or nightmare about being in the living room, who was holding the ice pick?

A Captain MacDonald.

32km5

Q Captain MacDonald was holding it? Okay; was she able to describe the house to you in any way--the interior of the house?

A No; that was part of--that was the reason I was trying to get some information, to find out what she knew about the interior of the house. That is why I asked these questions.

BY MR. MURTAGH:

Q Did she tell you anything that wasn't common knowledge, if you know, sir?

A She did not tell me anything that I didn't know, sir.

Q Did she tell you anything which indicated insider's knowledge of the crime scene?

A No, other than she knew about the blood on the bed. I can't recall anything else that she told me.

Q All right, now, she named some individuals; did she not?

A Yes, sir.

Q Did you conduct an investigation or are you aware of the results of the investigation, if any, of those individuals?

A Yes, sir. I am aware of the interviews and some portions of investigation of the other individuals, and I personally interviewed some of them.

Q If you know, sir, other than Helena Stoeckley's statement, is there anything that ties those people to the commission of this crime, whether they were fingerprinted or anything like that?

A I would have to answer those about each one, sir. I cannot answer that in one. As to the names that Ms. Stoeckley---

MR. SEGAL: (Interposing) Excuse me, Your Honor. The question before it is our right to introduce what Ms. Stoeckley said about herself. The fact that we are now going off on some collateral pursuit about what the Government did or did not do in regard to following it up does not seem to me to go to the admissibility of our problem. We have got two more witnesses.

THE COURT: I think it does. You are going to want me to hold that this woman made a reasonable statement, and I think to show whether or not what she said was so or not so tends to throw some light on that. I will OVERRULE your OBJECTION.

MR. SEGAL: I would like to be heard if I could for a moment because--let me--I don't mean to presume upon the Court, but I think we are mis-allocating the issue at this point. The first point is is it admissible against her? The fact that the Government might want to attack her statement does not deny the Defendant the right to introduce it in the first instance. I only ask Your Honor to consider one aspect of this thing. If it was the United States prosecuting someone for murder and it had these kinds of statements and so-called admissions by that Defendant, would the Court for a moment hesitate to let

the Government introduce it?

I find it difficult not only that this Court but that any Court would hesitate to let the Government put it in. The fact that someone is crying and weeping when they are talking about a murder that is horrendous does not make it inadmissible. The fact that later on, they say, "I would like to pull it back and withdraw it" can't affect admissibility. It goes to weight, I think. That is the issue. It just seems to me that we have established already beyond any reasonable argument the right to put this forward. The Government has shown through none of these witnesses that she was insane, incompetent. We have confessions all the time from people who say, "Gee, I was drinking when they took the confession," or "Gee, I had taken drugs." That goes only to the issue of voluntariness of the statement.

In this instance, there is no such problem in this case. It never goes to the admissibility. It seems to me that the pursuit here that we are now engaged in as to whether or not the Government checking out about some people that she named and not always the very first person but the persons she changed to cannot affect the initial question which is: can we offer it at all?

I draw the Court to my first point. If the prosecutors wanted this to try someone on a murder, has circumstantial evidence, sometimes she says, "Yes, I was there. Sometime I had the clothing and I threw it away." Other times, "I didn't actually do it." I cannot conceive of any Court that would deny the prosecution.

I have been in many cases where I wished the Court would do that, and I have never yet seen one that would. I point out to Your Honor the fact that a statement is contradicted by the person later on does not make it inadmissible. It again goes to weight. I would point out also to the Court her statements about throwing the clothes away were never contradicted. That is consciousness of guilt in the first instance. Why are we now going into this issue which has nothing to do with admissibility. I mean, I think that perhaps at the time of the hearing, if the Court rules that this witness may testify, that it is probably cross-examination on that issue; although, I doubt most of it is admissible, but it would go to the weight of those statements.

I cannot understand how on voir dire we must have this issue battered out. There are still two more witnesses that we have to offer and there is other corroboration. For that reason, I would ask Your Honor

to cut off the particular line of questions.

THE COURT: Do you want to respond to that?

MR. MURTAGH: Your Honor, I would only say that it goes to the trustworthiness of the statement, which, under Rule 804(5), is one of the things that the Court should take into---

MR. SEGAL: (Interposing) We are not offering it under that rule. The Government misunderstands.

MR. MURTAGH: I don't know what rule he is offering it under.

THE COURT: He is offering it under 804(b)(3).

MR. MURTAGH: Your Honor, I think that if these statements fall into anything, they fall into the "other exceptions" category of Rule 804, and I think trustworthiness does go to the issue of admissibility, and I think that what they are trying to do is bring out bits and pieces of Ms. Stoeckley's various statements and they don't want the whole thing to come out.

MR. SEGAL: It is called circumstantial evidence, Your Honor. We want everything that she said to come out. The fact that she both admits and

denies, in my judgment and in my experience, has never precluded a confession or admission from being put into evidence.

Many a Defendant has said, you know, only to the police officer being taken to the station, "Yeah, I was involved." He gets to the station and they get a formal statement, "Oh, no, I will not admit that on paper." The Defendant screams, "You cannot let that thing in. I mean, I said that I didn't do it." The Court says what--"It's for the jury to decide which statements are admissible."

Why is the Defendant being told now that when he has done the job that should have been done by somebody else, he can't offer the evidence?

#34
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THE COURT: The objection is OVERRULED.

THE WITNESS: Don Harris--I can't answer as relates to him as to what the investigative effort was pursued. Bruce Fowler--from what I could determine during my part of the investigation was not involved.

Janice Fowler--I couldn't determine during any part of my investigation that she was involved. Joe Kelley--I do not know about or the individual that Ms. Stoeckley identified as "Eddie" I do not know about.

BY MR. MURTAGH:

Q Mr. Brisentine, would it be accurate to say that all of Helena's statements that she made to you at various times pertained to her state of mind or her beliefs?

A I'm sorry, sir. I didn't hear your last part.

Q In other words, would it be accurate to say that all of Helena's statements--the "I did it; I didn't do it"--wouldn't this pertain to her state of mind or her belief?

MR. SEGAL: That's OBJECTED to. It goes to statements of fact that she has testified.

#34
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2

THE COURT: OVERRULED. Do you understand the question?

THE WITNESS: Yes, I understand the question.

THE COURT: Answer it, please.

THE WITNESS: It could be a state of mind, of course.

MR. MURTAGH: No further questions.

MR. SMITH: I would like to ask one additional one if I may.

THE COURT: All right.

REDIRECT EXAMINATION 2:47 p.m.

BY MR. SMITH:

Q As a matter of fact, Mr. Brisentine, you were very impressed with the sincerity of Helena Stoeckley with you; weren't you?

A I was impressed with the fact that she made such admissions; yes.

Q And based on everything that you could observe about it, you had to figure that she was making those statements to you with some conviction; didn't you?

A That's true, sir.

MR. SMITH: All right. No further

#34
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questions.

THE COURT: That is that she honestly believed that these things were true.

THE WITNESS: I would have to say, Your Honor, that she honestly believed in her mind that what she was telling me was true.

MR. MURTAGH: One question.

R E C R O S S - E X A M I N A T I O N 2:48 p.m.

BY MR. MURTAGH:

Q Would that be all of it? I mean, "I did it; I didn't do it."

A No; I would have to say, based on my investigation, that when she said she was physically present that she thought in her mind that she was.

Q Do you know for a fact whether she was present?

A No, sir.

MR. SMITH: OBJECTION.

THE COURT: I believe there was an objection. SUSTAINED. Call your next witness. And incidentally, of the five that you said you were going to call, he makes the fourth one in my count.

MR. SEGAL: There are two more. There are six then.

#34
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THE COURT: Okay, in this league, five means six.

THE WITNESS: I am excused, Your Honor?

THE COURT: As far as I am concerned, you are.

(Witness excused.)

(Whereupon,

P. E. BEASLEY

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

D I R E C T E X A M I N A T I O N 2:49 p.m.

BY MR. SMITH:

Q Your name, please, sir.

A P. E. Beasley.

Q Where do you live?

A Fayetteville.

Q What do you do, Mr. Beasley?

A I'm retired.

Q What did you do before you retired?

A I was a Fayetteville police detective.

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BY MR. SMITH:

Q During the period of time in which you were a Fayetteville police detective, would you say whether or not you ever knew Helena Stoeckley?

A Yes; I did.

Q When did you first meet her?

A 1968.

Q Could you state whether or not, during the period of time in which you knew Helena Stoeckley, you ever had conversations with her about the MacDonald murders--what took place in February of 1970?

A Yes; I did.

Q Do you recall on about what date it was when you had your first conversation with Helena about that?

A On the morning of February 17th, I believe.

Q All right; and where were you when you had that conversation?

A In the driveway of an apartment where she was going into.

Q Mr. Beasley, would you tell the Court in your own words what you recall about that conversation?

A I had gotten off work prior to the incident that we are discussing and went home and went to bed about 2:00 o'clock that morning. I was called at home at approximately 7:30 or 8:00 o'clock and advised of this

35km2

and gave descriptions of the suspects that was given out.

I got dressed and went downtown, or to the office and pulled out my notes and got some information that Ms. Stoeckley had given me on a trailer near Fort Bragg.

Q Let me interrupt you just for a moment, if I may, Mr. Beasley. I take it you had had many conversations with Ms. Stoeckley prior to that day?

A Yes; I did.

Q Had you found her to be a reliable person?

A The most reliable informant I ever had.

Q All right; you may proceed.

A Then, after I received descriptions of the suspects, I went to this trailer I knew she had been living at, and there was no one there. So I proceeded to look for her that day, and I couldn't find her or anyone else--the ones I was looking for.

So I went back home and went to bed. During the time I was at home, some other officers got my warrant and went back to the trailer, but we had searched this trailer prior to this--and recovered a large amount of drugs that she had told us was there, and they were there. We confiscated these drugs and we returned to the police station. I signed a warrant--I believe I signed

it, and they went back later that afternoon and arrested one man.

And when I went to work, I found out that this had been done, so I went back to the apartment house where Helena was supposed to have been living. There was no one there, so I staked the place out, I guess, until 2:30 or 3:00 that morning.

She drove into the driveway with a group of people in--I believe it was an old convertible, Plymouth-looking car.

Q All right; Mr. Beasley, at this time it would be the 18th of February?

A Yes, sir; I believe it would.

Q All right; go ahead. What happened?

A I was driving an unmarked car and I was dressed in dungarees and leather jacket. I walked up behind the car and I called her to me, and as I called her she came towards me and the other subjects in the car also came toward me.

She turned around and told them it would be all right to sit down. So I took her to my car and asked her had she heard about this incident at Fort Bragg. She said she had, and I said, "Well, Helena, according to the information we've got, you and these people you are with fit the description that was given out." I said, "Now,

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I am going to ask you straight out, I know you and you know me. I want to ask you to tell me the truth."

She backed off and hung her head. She says, "In my mind, it seems that I saw this thing happen"; but she says, "I was heavy on mescaline." And she would not commit herself any further.

Q All right; what happened next?

A I got names of the other people that was in the car with her. I called CID at Fort Bragg and told them that I had some suspects in custody that fit the description--would the police come down?

I believe that was about 2:30 and at 4:30, or almost daylight, nobody had ever come or either returned my call. I released these people and let them go.

Q Did you ever see any of them again, other than Helena Stoeckley?

A Never.

Q Did you ever see Helena Stoeckley again?

A Yes; I did.

#36
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BY MR. SMITH:

Q When did you next see her?

A I can't recall the time, but it wasn't long after that. Later, I went up to her apartment, tried to locate her again, and I believe the last time I saw her there was a bunch of wreaths out in the front yard, and I believe there was also one hanging on the front door.

Q Did you ever talk with Helena about that?

A Yes; I did.

Q What did she say?

A She said that she was in mourning.

Q In mourning?

A Yes, sir.

Q What was she in mourning about?

A In reference to the MacDonald murders.

Q Did she tell she was in mourning about the MacDonald murders?

A Yes; she did, and she was wearing black, and I might add that she would not--I was really wanting some information really--and she would not even talk to me about it.

Q When did you next talk to Helena?

A I can't remember, Mr. Smith. I don't know.

#36
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2

Q Did you ever talk with her out in Nashville?

A Oh, yeah, yeah. That was a year later--about a year later.

Q Why did you go out to Nashville to see her?

A An agent--I believe his name was Mr. Mahon--from Washington, D.C., came around the police station and contacted me; asked me about the situation and, of course, I told him what I knew and he asked me would I assist him in locating her and I said, "Sure, be glad to."

Q When you were out in Nashville talking to Helena, did you talk with her any about the MacDonald murders?

A Yes; I did.

Q Do you remember anything she told you out there?

A Basically the same thing she told me in Fayetteville.

Q Now, I take it that during the time you knew Helena in 1969-1970, you knew that she was a drug user?

A Yes, I did.

Q Nevertheless, did you find you could rely upon Helena to tell you the truth?

#36
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A Yes, sir.

Q When Helena told you she was going to be somewhere, would she be there?

A She would always be there. She was never late. She was always on time. If anything, she was early.

Q When Helena told you that you could find drugs at a location, did you find the drugs there?

A I found the drugs there.

Q Mr. Beasley, was that always the case?

A Always.

Q Did you feel that Helena was under the influence of drugs at times when she gave you information?

A At times I had suspicions. I didn't know for sure, but I did have suspicions that she might be.

Q Even under those circumstances when you had the feeling she was under the influence of drugs, did you find you could rely upon her---

A (Interposing) Yes, sir.

Q ---to tell you the truth?

A Yes, sir.

MR. SMITH: You may examine.

C R O S S - E X A M I N A T I O N 2:58 p.m.

#36
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BY MR. BLACKBURN:

Q Mr. Beasley, when you were in Nashville, Tennessee, do you recall making a statement dated March the 1st, 1971, concerning this?

A Any statements--I don't recall. It has been a long time. The files on this case have been misplaced. I have no idea where they are. I have all my statements in this folder, and if I could refer to them, I could tell you that.

Q I'll be happy to show you what I am talking about.

A All right, sir.

Q It may speed it up. Take a look at this, Mr. Beasley, and see if you recognize it. Do you recognize this as your statement?

A Yeah.

MR. BLACKBURN: For the record, Your Honor, he has identified a four-page statement.

BY MR. BLACKBURN:

Q Is that your signature?

A This is my signature.

Q Could you speak up, sir? We want to hear

A That is my signature there.

#36
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5

Q Directing your attention, if you would, sir, to the second paragraph on the first page of a statement dated March the 1st, 1971, if you would read right there that sentence, sir?

A "She stated that she did not remember anything that happened on the night of the murders except that she did remember getting into a blue car she thought was a Mustang and it belonged to one Bruce Fowler."

Q Now, if you would read the sentence--let me see--the same statement, the third page, the second paragraph, the sentence which I have underlined, sir.

A "She again told me she had no knowledge of this night after 12:30 a.m. and that she does not know for sure what happened."

Q On the last page, the last sentence, sir.

A "It is my conviction that she is involved in the MacDonald case or at least she thinks she is or that she is doing this just to get all the attention she possibly can."

Q Now, I believe that you stated on the 17th or 18th, when you picked her up, the CID did

not come or return the call; is that correct?

A No, sir.

Q Do you know whether or not the CID ever subsequently interviewed her?

A No; I don't.

#36
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6

BY MR. BLACKBURN:

Q With respect to your first interview with Helena Stoeckley on the evening of the 17th of February, do you recall making a statement that, "Ms. Stoeckley did not indicate involvement in the murders at that time, nor did she indicate that she could recall her activities on that day in question"?

A I don't recall.

Q You don't recall making that statement?

A No, sir.

Q Do you recall ever making the statement that during the investigation of the MacDonald murders, she was interviewed by the FBI and the CID and nothing concrete was established regarding her involvement?

A I don't know that either.

MR. BLACKBURN: No further questions.

MR. SMITH: May I ask one additional question?

THE COURT: Yes, sir.

R E D I R E C T E X A M I N A T I O N 3:02 p.m.

BY MR. SMITH:

Q On page 2, I believe--on the material that has been given you, Mr. Beasley--if you will turn to the second page--do you have any material up there now?

A I don't have anything.

Q Let me hand it to you.

THE COURT: Just read it to him.

BY MR. SMITH:

Q Mr. Beasley, do you recall making this statement or writing this statement down?

"...After the night of the MacDonald incident I picked Helena Stoeckley up for questioning. I talked with her in reference to the case. She was in a joyful mood and joked about her ice pick."

Do you remember that?

A Your Honor--I mean Mr. Smith--she said so many--if I put it down there, she said it, because I didn't make it up.

Q All right, then; you do recall writing the material down in this statement that you have been furnished?

A Yes, sir; I wrote everything down that I could get.

Q Do you recall that what you wrote down in this statement was true at the time you wrote it down?

A Yes, sir.

MR. SMITH: That is all the questions we have.

MR. SEGAL: Thank you, Mr. Beasley. You may step down.

(Witness excused.)

THE COURT: Call your fifth witness for the second time.

(Whereupon,

WILLIAM EDWARD POSEY

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

D I R E C T E X A M I N A T I O N 3:03 p.m.

BY MR. SEGAL:

Q Mr. Posey, did you know Helena Stoeckley in 1970?

A Yes; I did.

Q Where did you live and where did she live?

A I lived right next door to her.

Q What street was that?

A Clark.

Q Do you remember the evening or early morning hours of February 17, 1970?

A Yes; I do.

Q Anything unusual happen that morning that attracted your attention?

A Well, I had got up to go to the rest room

somewhere around 4:00 o'clock, and I heard a car whip into the driveway next door, and a lot of laughter and stuff going on, and I walked to the door to see what was going on.

Two of the girls--there was three of them that lived together in the apartment--two of the girls were inside painting the apartment. You know, they had the front door there, and Helena was coming from the car, you know--headed towards the apartment. And the car backed out.

Q Okay; you say two girls were in the apartment?

A Yeah.

Q Helena was not one of those girls?

A No; she was coming from the car.

Q Do you know what kind of car that was?

A I know it was a Mustang, you know.

Q Do you remember what color it was?

A It was blue.

Q Let me show you a catalogue piece which has been previously marked as Defendant Exhibit 88, provided by the Ford Motor Company in 1970. It depicts a number of models of Mustang. Do you recognize any of those cars as being the car?

(Go to the next page.)

37km5

(Defendant Exhibit 88 was marked for identification.)

A The one circled.

Q The one circled is Mustang Mach Number One. As a matter of fact, you have seen this particular diagram before, have you not?

A Yeah; years ago.

Q Years ago--in 1970, when you testified at the Article 32 proceeding?

(Witness nods affirmatively.)

Q The car depicted here you say resembles the Mustang you saw in the driveway that evening?

A Yes (Witness nods affirmatively).

Q Was there anything in particular about that episode that stood out in your mind besides the car pulling up and Helena getting out?

A Well, it was unusual for them to be painting the apartment at that time, but she acted like she was in a hurry to get inside. She kind of walked real fast getting inside.

Q How long had you lived next door to Helena at that point?

A About two or three months.

Q Did she wear any kind of special clothing that you were aware of?

A Yes; she wore a white hat all the time--you know--it was part of her, you know, character.

Q Let me show you a picture that has been marked D-87 and ask whether this looks familiar in any way?

A Yes.

Q You say "yes"? Does that look like the hat she was wearing?

A Similar.

Q You have to keep your voice up, please?

A Yes.

#38 pl

BY MR. SEGAL:

Q Did she wear anything else regularly as part of her clothing?

A She wore a purple-type shirt and she wore white boots a lot. I don't what type they are but she wore high-topped white boots, you know, kind of like they were real shiny, like patent leather - type things.

Q You have seen her in the last two days around court, haven't you?

A Yes.

Q Her hair is pitch black, I believe?

A Yes.

Q Did you ever see her when her hair was any other color?

A Yeah; her hair used to be longer and she used to be a lot skinnier than what she is now; and she used to have burgundy (sic) hair but she wore a blond wig a lot, you know. She had a wig she wore quite a bit.

Q And what length was that wig?

A Down to about right here.

Q A little above shoulder level?

A Right.

Q Did you learn about the murders that took place at Fort Bragg involving the MacDonald family; did you hear about that?

#38 p2

A Yes, the next day.

Q Did you have occasion to see or talk to Helena Stoeckley in connection with those murders at that time or any time shortly thereafter?

A A couple of days later I did.

Q Tell us about that, please?

A Well, Paul Bowman lived in the apartment right behind hers. You know, hers was like in the back of a big house and his was a separate little apartment; and he had a telephone and I used to use his telephone, you know, to make long distance calls and stuff.

And at the first of the month I would, you know, pay him for the calls and stuff. Well, he had got out of the service and he was going back to Oklahoma City, and I owed him for some telephone calls, and he came up one afternoon.

And I saw him out there and I went out there to talk to him, you know, about paying him for the calls. Well, Paul was a friend of Helena's, and we were standing there talking, and he said that the police had questioned Helena about her whereabouts.

And I said, "Well, I saw her that morning," you know. I said, "I could be an alibi for her,"because I had seen when she come in that morning, you know.

Q Was she around when you made that statement?

#37 p3

A She walked--you know, she walked up and was talking with us, you know.

Q What if anything did she say or do when you made the statement that you had seen her come up that morning and you could be her alibi for her?

A Well, she kind of--you know, the word to use--backed off from me. You know, she kind of--you know, they had to leave then. They wanted to leave. They didn't talk no more.

Q Did you talk anymore at that time with Helena about the murders?

A No.

Q Were you aware of the time when the MacDonald funerals took place over at Fort Bragg?

A Well, I didn't know, you know, exactly what day, you know, that it happened; but my wife and I--we were going somewhere one day, and Helena was dressed in a solid black dress, you know, a long one.

And she had a black thing over her face.

Q You mean a veil?

A Yeah; and she went and got some wreaths like you see at a graveyard, and placed them along by her door and stuff; and she was setting there like she was crying all day, you know.

Q Sitting where?

A By her door; by her front door. And that evening on the news it showed Dr. MacDonald in his uniform and it said that he had just come from the funeral thing; you know, they had had services that day.

Q Did you talk to Helena about why she was sitting there in black?

A No, she wouldn't talk to nobody. Her boyfriend come up in the afternoon, and was trying to get her to go off; and, you know, they got in a big argument because she wouldn't leave.

She just sat there real quiet like all day.

Q At some point thereafter, did you talk to her about whether she was involved in the murders at the MacDonald house?

A Yeah, I talked to her--well, she left shortly after that, and I didn't see her no more for a while; and then about two days before I testified I went to Haymont.

I had already talked to you and you wanted to know what her name was--her full name--and I didn't know what her full name was, so I went to Haymont to try to find out.

You know, I knew that people up there knew her and I could find out her name. Well, when I went up there she was there, you know. Haymont's a section

of town that everybody hung out in; and I talked to her then, and, you know, I'd asked her where she had been and everything, and she said, "Just around."

And I asked--you know, we started talking about the murder and everything, and we got into that.

Q And what did she say about the MacDonald murders?

A Well, when you talked to her--it is like--one--I don't know how to say it--one minute she's with you--you know, like in a normal conversation; then the next minute she's, you know, she was referring back to the murder.

You know, like she said that all she did, you know, was like hold the light; you know, that she didn't--she wouldn't kill anybody because she wasn't a hostile person, you know.

Q What about this light she was talking about?

A Holding the light would be the only thing she would do, you know. But she--you know, I said something to the reference that some policemen had seen them that morning, and she named the street, you know--Honeycutt--said that, you know, yes, she remembered, you know.

But it was like one minute she was there, you know, at the thing; then the next minute she was

#38 p6

drifting back.

Q Back where you were?

(Witness nods affirmatively.)

Q Now, did she ever talk to you about seeing anything inside of any of the bedrooms in that house?

A She said that there was a kid's horse thing, but it wouldn't--it wouldn't roll. It would just stay still. It wouldn't roll, you know.

Q It was a hobby horse thing?

A Yeah, like, you know, like a little kid has, you know.

Q Yes; what did she say about that?

A It wouldn't move; you know, it wouldn't--

Q Rock?

A No. It wouldn't roll, you know; it was broke or something, it wouldn't move.

Q And when you talked to her about the house, did she say anything else that she remembered seeing there or any other thing that she remembered doing there?

A No.

Q Do you know whom that blue Mustang belonged to?

A No, I didn't know the guy's name, but, you know, I know what he looked like.

#38 p7

Q Who was that person--that is without his name? Was that somebody that Helena Stoeckley was connected with?

A Yeah, it was a friend of hers.

Q Had you seen that blue Mustang at the house before on other occasions?

A Yes, sir.

Q What is the last thing you ever said to Helena Stoeckley?

A The last occasion in Fayetteville?

Q That's right.

A I asked her what she did with her hat and boots and, you know, stuff; and she said she had got rid of them, you know.

But she kept--the whole conversation--two or three times during the conversation, she kept asking me--you know, I told her I had moved, you know; and she kept asking me what my new address was.

And I told her that, you know, the reason I had moved--that it was getting too rough in there; and she kept asking me over and over what my address was.

And when I was leaving the last thing she said to me was, "Tell your wife to lock the door," that "I'll be by to see you."

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BY MR. SEGAL:

Q Was that said in jest or in seriousness as far as you could tell?

A To me, it was serious because it was like one minute, Helena was with you, and I don't know, it was like she was in another world the next minute, but I took it as serious; yeah. I didn't give her my real address.

Q You saw Helena yesterday when she was here in the Courthouse; did you not?

A Yeah.

Q Was that the first time since August of 1970, that you have seen her?

A Yeah.

Q Say "yes" or "no."

A Yes.

Q When you walked into the room--the conference room where we were sitting, what was the first thing that was said between you and Helena Stoeckley?

A You asked her if she knew me and she said, "Yes, that is Bill Posey. I told you to lock your doors and I would be by to see you." That is the last thing she said to me. Then, yesterday, after not seeing her all these years, that was the first thing she

said to me.

Q Now, did anything happen back in August of 1970, to give you concern about not letting out your address?

A Well, my wife and I and her mother and husband, we went out to eat. Well, we had a cat and we had locked the cat inside the house, and I had a Doberman Pinscher. When we came back, my cat was outside, you know, wanting to go inside with us. I looked at Myer, which was my wife, and said, "We locked the cat inside. What is he doing outside," you know, and we stopped there and we went back out and on the side of my house, the first window going into the bedroom, you could see where somebody had opened it, you know, and went in that way.

We didn't go in the house. We went and got the police, you know, and they come up there and searched through it--searched through my house and everything.

Q Did Helena Stoeckley ever talk to you about being involved in witchcraft?

A Yeah.

Q Did she tell you that she was, herself, involved in witchcraft?

A She was a good witch.

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Q That is what she said?

(Witness nods affirmatively.)

Q Was she ever involved in any rituals involving animals?

A Paul Bowman, to which I referred to a while ago, his wife--I can't remember her name now--but she was more or less the head of them. She was a witch, you know. She said she was a witch. They had a bunch of books on witchcraft. Like one time, my wife's sister and her boyfriend had a big fight--dispute. They went out in the woods and dug up herbs and spices to make them a love potion---

Q (Interposing) I have got to ask you, Mr. Posey, did it work?

A They were married.

Q One last question, Mr. Posey, did Helena Stoeckley ever conduct any ritual involving a cat?

A Yeah. They had a thing one time where they had like a seance-type thing and they crucified--well, I don't know--they killed a cat for part of their ritual thing or whatever it was.

MR. SEGAL: Cross-examine.

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C R O S S - E X A M I N A T I O N 3:16 p.m.

BY MR. BLACKBURN:

Q Mr. Posey, I believe you testified at the Article 32; did you not?

A Yes, sir; the Government thing.

Q The military proceedings?

A Yes, sir.

Q When that was taking place in 1970, you were working at the Heart of Fayetteville Motor Inn; is that correct?

A No, sir.

Q Where were you working?

A When the crime happened?

Q No, when the Article 32, the military proceeding?

A I was working for Fayetteville Linen. It is a linen company.

Q You had occasion to go to the Heart of Fayetteville Motor Inn; is that right?

A Yes; we delivered linen.

Q You saw Mr. Segal and Mr. Eismann at that time there?

A No. I had called, you know, they had a hotline in Fayetteville where you call and you ask them about if you have got a problem or something and it comes out in the paper and they answered it. Well, I had called the hotline, you know, and told them what I

knew, and if I should, you know, go forth with my information.So one day, we were there and the man that was showing the route and everything had mentioned that Mr. Eismann and Mr. Segal were staying there. I just decided to go forth and tell them what I knew.

Q And you did that?

A Yes, sir.

Q You never told the law enforcement agency, though, did you?

A No, sir. After I talked to Mr. Segal, there was a military man that came to my job one day and talked to me.

Q He did?

A Yes, sir; kind of a tall guy.

Q Do you recall that person's name?

A He was at the military hearing.

Q Could it have been Lieutenant Malley?

A He was a tall man. I can't remember if that was his name, though. He was on the, you know, prosecuting side.

Q Captain Malley?

A That might have been.

Q Did you ever recall being told by anyone prior to your testimony at the Article 32 that there was a reward being offered by anyone for testimony relating

to this?

A They had mentioned it; yes.

Q Who mentioned it?

A Well, I had read about it in the paper and then--if it was Mr. Eismann or not that mentioned it--but the day that I talked to Mr. Segal, I told him that I was not interested in the reward money--that I was not there for that.

Q Now, the night that it happened or that you say that you went to the window---

A (Interposing) I went to my front door.

Q Do you recall whether or not she was wearing the hat?

A No. She didn't have the hat on. She had something in her hand.

Q You didn't see her hat?

MR. SEGAL: Let him finish. I OBJECT, Your Honor.

MR. BLACKBURN: I thought he was through. Finish your answer by all means.

THE WITNESS: She was in a hurry to get to the door. No, I did not see her with a hat on that morning, but I know she had a purple vest and stuff on.

BY MR. BLACKBURN:

Q Did she have a sheet on or anything like that?

A I didn't see her with a sheet; no.

Q Isn't it true that Helena has told you during that time that she was on drugs and did not know where she had been at that time?

A Yeah. She said she was tripping that night; yes, sir.

Q She didn't know where she had been?

A No. She said that she didn't know where she had been.

Q That was one of the reasons you suggested that you could perhaps give her an alibi because you had seen her?

A I had seen her that morning; yes.

Q Now, isn't it true that with respect to "pigs"--the term "pigs" that Helena had always told you that she called the police "pigs"?

A Yeah. Well, in the section, you know, like when people back then referred to "pigs," it didn't necessarily mean policemen, but it meant people in society--the Establishment--however you refer to it.

Q Has Helena ever told you that she was in the MacDonald apartment?

A She never point-blank said that she was in the apartment, but she did say like one minute like I was explaining a while ago, one minute, she would be in a

normal conversation and then the next minute she would be like she was right there. But like she told me about trying to ride the toy and like she said about holding the light and things like that.

Q She told you that she held the light?

A She said, you know, that she would hold the light, but she wouldn't kill nobody because she wasn't a hostile---

Q (Interposing) I am sorry--are you through?

A Yes, sir.

Q Isn't it true that she said that that would have been what she would have done if she had been there because she couldn't kill anybody?

A I don't know how to answer that. She never said it like you just said it--I mean like she said--she never said, "If I had been there, that is what I would have done." She didn't say it like that.

Q Tell us what she did say.

A She would say that like---

Q (Interposing) Let me make it easier for you. Did she ever suggest to you that she could have been holding the light?

A Yes.

Q Is that a fair statement?

A That is the way.

Q Isn't it true that she said to you that she could not have killed anyone?

A Yeah. She would emphasize that she did not have hostile tendencies.

Q Did she seem concerned to you that she did not know where she had been during that time period?

A You know, what I never understood was that like when she talked to me, she would be concerned that she didn't know where she was; but then like the day that they had the funeral service and everything, she mourned all day, you know--I couldn't understand.

Q You said she wore black, I believe?

A She wore a long black dress and a thing over her face. She had them flowers.

Q Do you recall reading anything in the newspaper about a child's hobby horse in connection with this crime?

A No. She mentioned that to me the night out by Haymont. I had never read that.

Q Now, the time when you went to the door, did you happen to look at the clock to see what time it was?

A Yeah. I got up to go to the bathroom, you know, I have a--I don't know if it is a habit or what, but for the longest I can remember, around 4:00,

4:30, or 5:00 o'clock, I get up and go to the bathroom. I mean, I do it all the time, you know. See, let me explain something. The reason that I went to the door to look out--we were having trouble with people blocking our driveways and stuff like this. Like a couple of mornings I got up to go to work and there would be people staying over there and they would have our driveway blocked and they would have, you know--they partied all the time and it was just, you know, you couldn't get any rest.

Q How long after you testified at the Article 32 did you remain in the Fayetteville area?

A Only a couple of days.

Q You left rather quickly?

A Yeah.

Q Do you recall being given $150 by Lieutenant Malley when you left?

A It was between $100 and $150; yes.

Q Did you know that he was a friend of Dr. MacDonald's; is that correct?

A No. All I knew was that he was with the military. That is all. That was for moving expenses, you know, that is all.

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BY MR. BLACKBURN:

Q Do you recall ever talking to Mr. Brisentine?

A Who is he?

Q Prior to yesterday?

A I don't know who you are talking about.

Q He's the tall fellow--the tall thin fellow with sort of silvery hair. He has been here this afternoon. Do you recall seeing him prior?

A One man that I have seen before, yeah, years ago.

Q Do you recall ever telling Mr. Brisentine in the past that perhaps you were mistaken as to the night that you saw Helena?

A No.

MR. BLACKBURN: No further questions.

MR. SMITH: Any questions for the court?

MR. SEGAL: Just on your redirect very briefly to clarify a matter, Your Honor. May I?

REDIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. Posey, you said that very shortly after you testified at the military proceeding that you left Fayetteville, is that right?

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A They broke into my house, you know; somebody broke into my house; and when the police came, in my bedroom, there was a knife behind the door.

It was--oh, never mind.

Q Were you scared?

A Yeah, I was scared.

Q Where did you move to after you left?

A My home, Alabama.

Q Did you feel that the episode at your home was in any way related to the fact you had testified at the military proceedings?

A Well, that night when John and all of us went to the police there was a dirt alley about a block and a half from our house.

Jim, one of the guys that used to come over to Helena's, was in his yellow Plymouth sitting right there. We went down to the police station. He was right behind us following us down there, you know.

So I felt like I wasn't safe there, no.

Q What did you use the $150.00 for?

A To get a moving truck, you know; rent one of them U-Haul trucks to move with.

Q You moved down to Alabama?

A Yes.

Q Do you live there now?

#40 p3

A Yes, sir.

MR. SEGAL: Thank you very much.

THE WITNESS: I had a good job going and everything too.

MR. SEGAL: You left a good job in Fayetteville?

(Witness nods affirmatively.)

MR. SEGAL: Thank you, Mr. Posey.

THE COURT: Is there perhaps a sixth witness?

MR. SEGAL: No, Your Honor, I could look, I suppose, but I don't think it will do any good. No, Your Honor, that is the evidence on voir dire. I should say that there are obviously additional facts that these witnesses possess, but that is the basic outline.

All of these witnesses, in fact, spoke with--I shouldn't say all of them. Mr. Posey, Ms. Zillioux, Mr. Underhill have all spoken--Mr. Beasley--to Ms. Stoeckley yesterday.

There are things that were said there, but that is not germane to the main part of the testimony. I would only say in support of our offer to call these witnesses that, again, that, one: if it was a prosecution for a homicide, if witnesses who possessed

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information which contained both inculpatory and perhaps exculpatory information, that that would not prevent that information from being heard by the jury. It would go to the question of weight only.

THE COURT: Does the posture of this case at this moment equate with a criminal prosecution in which the Government might seek to introduce a so-called admission, confession or admission of guilt, knowing at the same time that they would be obliged to introduce a retraction or explanation of it?

MR. SEGAL: Your Honor, I don't think the Defendant has less of a right to show that another person has made statements that reasonably inculpate him in the crime. Our points in our memorandum of law here that we filed with the Court--it is perfectly clear under the cases that a statement does not have to be a straight out-and-out confession--"I done did it"--without any retraction to get it to be admitted into the record.

The cases stand that where evidence could be useful to show both the person's knowledge of the crime, acts of consciousness of guilt, acts relating to state of mind; the fact that that person also contradicts that, and wishes others to disregard that, does not prevent its admissibility.

This is very similar, I think, to the case of

Chambers v. Mississippi in the United States Supreme Court, in which a Defendant was denied, as I recall the case, an opportunity to introduce a declaration against interest by some other party. Essentially, a Defendant proceeds under his Fifth Amendment right to offer a jury any reasonable defense that he has.

His burdens of proof are different, Your Honor, but that does not give the prosecution greater latitude to do this. Some of our evidence is circumstantial. Some of it is much more direct and conclusive. I will simply say that we don't rest on any one piece of evidence, although I think certain pieces of evidence that we have offered today are total and complete in terms of what they show about Ms. Stoeckley's involvement, about such acts as getting rid of clothing that is identified with the crime.

Yes; it is both capable of both innocent and a guilty motive. Innocent motive, I suppose, would be, "People were hassling me." A guilty motive is consciousness that this links the person to the crime. But the issue is only a foundational one for Your Honor. Your Honor is proceeding under Rule 103 to determine only whether or not the jury should hear this. The Court cannot make a decision as to anything more than, I think, that this evidence bears reasonably on the issues in the

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case, that this evidence is not incredible at all.

And I think the only thrust that I can sense from the Government's arguments here is that perhaps Ms. Stoeckley was under the influence of drugs at times that she made some of these statements.

THE COURT: You may be getting a little ahead of the game. Are you resisting the introduction of this thing? We could go home real early if you say "no" to that.

MR. MURTAGH: Your Honor, it seems to me that the Court is not bound only by Rule 103, which the Defense would---

MR. SEGAL: (Interposing) And 104.

MR. MURTAGH: I am sorry; what we are talking about, I believe, are hearsay statements. It seems to me, Your Honor, that the rule that is directly in point is Rule 804, and if I could just skip to the last sentence of it--perhaps I shan't. On 804(3):

> "...A statement which was, at the time of its making, so far contrary to the declarant's pecuniary or proprietary interests, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the

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statement, unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement."

I think that is exactly what they have shown by their witnesses, Your Honor. First of all, Ms. Stoeckley's statements are not clearly admissions of guilt. If anything, what they are is what has been brought out on direct and cross, that the woman doesn't know where she was that night; that she was being constantly interrogated by the police; and that she began to, you know, have fears about not being able to account for where she was.

And all of these statements cannot be taken out of that context and out of the context that the woman has been a drug addict, has had hepatitis, has been incoherent--to use the statements of one of the witnesses--has been hysterical. So it seems to me that these statements are not trustworthy, and they certainly are being offered to exculpate the accused.

What Mr. Segal is trying to say is, if the Government was trying to introduce these statements,

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the rule would be different. That is irrelevant because the Government is not trying to introduce these statements, nor has it sought to introduce any statements like this coming from the Defendant at any time during its case.

THE COURT: That was the reason that I asked Counsel if this situation presently before this Court equated with the situation where you were prosecuting this witness here, Stoeckley, and were trying to get this stuff into evidence against her. I didn't exactly get a "yes" or "no" to that, but maybe he wants to tell me now.

MR. SEGAL: Your Honor, my view is that the right of the Defendant is precisely the same as the Government. As a matter of fact, the right of the Defendant is probably even stronger, because I suggest that under Chambers v. Mississippi that---

THE COURT: (Interposing) Give me the citation of that, please.

MR. SEGAL: I am sorry; I do not have it. It is 1960's, United States Supreme Court case, Your Honor.

THE COURT: 1960's?

MR. SEGAL: My recollection of Chambers is a case in which the Defendant sought to introduce a

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declaration against interest by somebody else, and under Mississippi law he was precluded from doing that. The Supreme Court indicated that the Fifth Amendment gave the Defendant a right to assert his defense. And that case has been read so broadly in so many cases, it says, there are even times a defendant can assert a defense that maybe as a matter of law could excuse him.

But you can't stop him from at least asserting it. So I say, in a certain sense, we are in a stronger position than the Government is, because our right stands upon the Fifth Amendment. The Government putting on a case--the only difference between them and us is that the amount of proof they have to offer, when it is weighed at the end of the case, must be beyond a reasonable doubt. But that doesn't make a piece of evidence more admissible or less admissible as to the quantity you have to wind up with at the end.

THE COURT: What do you say to his argument based upon the second sentence to subsection (3) of subsection (b) of 804?

MR. SEGAL: Your Honor, I'm sorry; I did not catch the predicate to that sentence?

THE COURT: Counsel has called the attention of the Court and yourself to the second sentence of 804(b)(3).

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MR. SEGAL: 804(b)(3), Your Honor?

THE COURT: Yes; he maintains that in order to let this evidence come in, there must be some showing of its trustworthiness in advance--this being the position the case is in at the moment, to determine whether or not the Court will let it in, in compliance with its duty under 104.

MR. SEGAL: Let me tell Your Honor, I have studied the history of the section at some considerable length--and I mean, not for this case--it was in regard to other responsibilities that I have, and on other occasions.

And I would say the history of this section makes it perfectly clear that what the Federal Rules drafters were doing was saying, "We don't think that an accused in a criminal case should be able to bring in somebody off the street and say, 'Oh, yeah; some fellow who is now dead and long gone and can't be found--he once confessed to this crime that the Defendant has been charged with,' and then sit down."

What that section says is, there has to be some circumstances of corroboration that give us a sense that this is other than contrived testimony. It is for that reason the Federal Rules have a provision that does not exist in any other state ruling in the United States,

other than those states which have adopted the Federal Rules. And that is the rule that where declarations against penal interest are admissible, the Federal Rules have said some corroboration is necessary.

That is why we have six witnesses to that fact, because we understand the rules direct us. The question is, though, how strong or clear must each statement be? That is what I gather Mr. Murtagh is arguing.

I commend to the Court the statement of the Court of Appeals in United States v. Thomas in a brief that we filed. The United States Court of Appeals says,

> "...We do not read Rule 804(b)(3) to be limited to direct confessions of guilt. Rather, by referring to statements that 'tend' [that word is in quotations] to subject the declarant to criminal liability..."

The emphasis, as the Court of Appeals reads it, is on the tendency to subject to liability:

> "...the Rule encompasses disserving statements by a declarant that would have probative value in a trial..."

And that is our first part. It is very difficult, I think, to escape the feeling--the logic, I think--that the statements made by Ms. Stoeckley from each of these witnesses would have that tendency. It

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doesn't say that they have to have proof beyond a reasonable doubt in and of themselves.

The same view has been stated by the United States Court of Appeals for the First Circuit in the Barrett case.

THE COURT: When you give me a case name, give me the citation?

MR. SEGAL: Yes, Your Honor; first of all the Thomas case I have cited is quite new, 571 F.2d 285 at page 288, Your Honor--1978 case for the Eighth Circuit. There is a similar view in another circuit opinion--1976--called United States v. Barrett, B-a-r-r-e-t-t. The Barrett case is found, if Your Honor pleases, at 539 F.2d 244.

If I may just read, because I think there is a relevant section here:

"...The Court of Appeals noted that the statement offered by the defendant contained no direct confession of guilt by the unavailable declarant. But, said the court, '[a] reasonable person would have realized that remarks of the sort attributed to the [declarant] . . . strongly imply his personal participation in the . . . crimes and hence would tend to subject him to criminal

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liability. Though by no means conclusive, the statement would be important evidence against the [declarant]...'"

THE COURT: Now, let me ask you this: I have noted the word "reasonable" in your reading it, and you have read it there. Does the admissibility presuppose that the statement was made by a reasonable person? Or, to go further, is it one that could be made by anybody--but if made by a reasonable person--that is, drunk or sober--but, if made by a reasonable person, would be admissible?

MR. SEGAL: If Your Honor pleases, I think the answer to that is contained in the statement of the Federal Rule 601. I would say it this way: we are dealing with what is conventionally called a double-hearsay problem.

If, in fact, Ms. Stoeckley was not unavailable--i.e., she had memory, could she testify to these things. The answer is, obviously she could testify to what she said. We are one step removed. She made these statements to other persons.

But the fundamental question is, could she have testified to these things? Could she say these things? Rule 601 says, as to competency of witnesses:

"...Every person is competent to be a witness except as otherwise provided in the rules."

There is an exception in civil actions, where state law is made applicable.

So the threshold is under 601 everyone is

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presumed competent. The evidence that we have introduced on behalf of our offer here in no way shows that she is incompetent. The cross-examination, which is their burden to try to show, I suppose, or to offer extrinsic evidence on the subject of incompetence, is nonexistent.

THE COURT: You established her competency here today.

MR. SEGAL: I think so.

THE COURT: I think her incompetency at the time she made at least some of the statements has been more than adequately established.

MR. SEGAL: Your Honor, I dare to disagree, and say this: incompetency in the legal sense--the evidentiary sense--says a person did not know--have the capacity to make the statement. That is as defined in the rules. The lack of capacity means they did not know the subject matter which they were talking about--didn't have an understanding of the subject matter they were talking about.

It is a different standard than some of the conventional common law rules on capacity. The standards in the Federal rules are much broader, because the whole thrust of these rules is to do what we are doing here, which says, "Let the evidence"--as I think Your Honor has

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said to us at one time--"Let it hang out."

These rules are designed to bring out evidence. Many of us were raised--I certainly was raised in a traditional common law state. I practice in California, which is a modified evidence code. None of them are like the Federal rules. The Federal rules say, "Let it come out."

We make everyone competent. We don't bar people, Your Honor. When you bring in a patient from a state mental hospital who is certified as insane, and if she is sexually molested by a guard or an attendant, she is competent under the Federal rules to get up there and say that that man assaulted her or molested her, even though there is a certificate hanging around her neck that she is literally non compos.

Now, there is no such thing here. We regularly, Your Honor, arrest people for drunk drivers. We have people who ring the bell on the breathalyzer. They also said, "I had 12 beers and six shots." And that is admissible evidence against them.

If we were to say in this case, because maybe somebody thinks that Helena was using some drugs that her statements are inadmissible, what are we saying about statements we take all the time in connection with the criminal process? We have worse things.

I, in my own experience, Your Honor, in trying all types of criminal cases, in about 50 percent of all the cases I have ever seen, alcohol is a factor. Defendants claim--there is evidence of intoxication to varying degrees, Except for those Defendants who are unconscious, I have never yet really seen that as a barrier to when he says, "Well, I think I was there."

What it does go to, Your Honor, perhaps at best, is to weight. Your task is under 104. It is only to say not whether you, Your Honor, accepts it. You, perhaps, with your own sophisicated view, would form an opinion about this testimony. What we are saying is that under that test, we only have to say, "Would it be unreasonable for the jury, as a matter of law, to use it for the purpose the Defendant offers?" I think it not.

Is the jury incapable of understanding that Helena Stoeckley, on some occasions at least, was under the influence of drugs? Perhaps; but also, if Your Honor will note, her testimony about drugs is not that all the time that she was talking, nobody listened to her. Mr. Beasley makes that point preeminently.

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MR. SEGAL: (Continuing) If her word is good enough, smashed on heroin and opium, to then justify a Fourth Amendment search, having someone's home ripped open, having someone seized, some car halted--and I think her word is good enough--then why in the name of the rules of this court must the Defendant here have to prove more about it?

If she is good enough to tear down the Fourth Amendment for somebody else, then she is good enough for our Fifth Amendment right to let us hear this testimony.

I don't think it is so outlandish what we are offering, Your Honor, on balance. Just perhaps if we were lay people instead of lawyers, would lay people actually say, "This is ridiculous." It's not. I mean, the behavior is bizarre.

As a matter of fact, there is a certain internal consistency that always has impressed me about what she said. I truthfully do not think there is any evidence that Helena Stoeckley inflicted an injury. There is clearly evidence in my mind from all these witnesses that she carried a candle and was present that is good enough to indict her in murder as a conspirator under the felony murder rule.

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I mean the fact that she did not lift the weapon, if that is true, that she did not pick up the club, if that is true, that she did not have the ice pick or the knife, the fact that she loved little children and didn't lay a knife on them does not keep her from being indicted, if it were possible for felony murder.

If that is true--and in her own caution some of the words she said, "I don't think I better say that"--she tries to pull it back. All that says to us is: I think a reasonable jury can understand that and can sort that out as to the weight to be given to it.

In my view, it is not in any way improper under the rules.

THE COURT: All right, what says the Government?

MR. MURTAGH: Your Honor, I would again reiterate--and I think Mr. Segal is missing the point--that we are talking about whether a reasonable person making this statement at the time would so appreciate the gravity of the statement that they wouldn't make it unless they meant it.

I don't think we have that in this case. What we are talking about is somebody who is

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hysterical, perhaps hallucinating, certainly at times I think going through withdrawal, has hepatitis, is completely in a drug-oriented state and suffering continually from the effects of drugs.

At this time, she makes various statements. Now, those statements are never of an unequivocal nature. It can all be drawn back to her lack of an alibi and the fact that she is constantly being interviewed, picked up, hassled by the police, and having to account for her whereabouts. So that, I think that you can't take it out of that context.

I'm somewhat confused by Mr. Segal taking on the role of prosecutor in this case and arguing that Helena Stoeckley, based on this evidence, could be indicted and I assume, if indicted, could be convicted or if a search warrant was based on her various statements, that the search warrant would be valid.

I think that that is somewhat stretching the point. I still think, Judge, that the issue here is that these statements are being offered not by the Government but by the Defendant to exculpate the Defendant, and then I think the rule mandates that the statements should not be admitted unless there are corrobative circumstances which clearly indicate

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the trustworthiness of the statement. I just don't see how Mr. Segal can argue that these various statements which are all over the lot are trustworthy or unequivocal or, for that matter, are really statements against interest.

THE COURT: What do you say about Rule 403? Does that have any pertinency here?

MR. MURTAGH: Your Honor, if you would indulge me for a second.

MR. SEGAL: If Your Honor means confusing---

THE COURT: (Interposing) I mean Rule 403. There is a little more in it than that.

MR. SEGAL: If Your Honor is saying, on balance, the Government is going to be more prejudiced than the probative value of this-- if that is the part of 403 Your Honor is raising now, then I am prepared to respond to that.

There are several parts of 403: one, the probative value is outweighed by the prejudice. Secondly, the so-called time-wasting factor. Thirdly, the cumulative factor. I perhaps will address them in reverse order.

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THE COURT: Well, we have suspended the operation of the time wasting factor for this particular trial, so you need not address that issue.

MR. SEGAL: I understand Your Honor's admonition in that regard.

MR. MURTAGH: Your Honor, I believe-- I don't know who is up at bat at this time.

THE COURT: Well, you get to go last. I think you were the one who is making the objection to the testimony, are you not?

MR. MURTAGH: Yes, Your Honor.

THE COURT: Well, I will hear you last.

MR. MURTAGH: Okay, Judge.

THE COURT: I'll hear him first.

MR. SEGAL: As far as 403 is concerned, Your Honor, here you really do have, I think, several issues, one of which is of constitutional dimensions.

We are talking about the denial of the right of the Defendant to show that there is evidence that could raise a reasonable doubt on his behalf, because it tends to show the involvement of someone else.

Remember, that is all his burden is. I think that it would be sad beyond measure to think that

#43 p2

the teachings of Chambers v. Mississippi--the general sense of what a defendant is entitled to say in his own behalf to one, to not only affirmatively prove his innocence, but to perhaps do more than raise a reasonable doubt.

Now, 403 is a rule which says that when a court has really little doubt that prejudice is going to be so great and probative value is so small, that it ought to be kept out.

But we have several things that contravene such a conclusion, Your Honor. First of all, evidence of a person being involved in these homicides could not under any test be viewed as being of little probative value.

Evidence that a person--that the Defendant says and the Defendant offers with great, I think, range of witnesses coming from every side--police officers, persons who do not know the person, persons who want to help this person--a range of persons come forward and say she has made statements which have the tendency to involve her, to incriminate her in the crime.

In fact, Mr. Brisentine's statement goes far beyond that, sir. Mr. Brisentine's statement--but we do not rely on that entirely because we want corroboration to meet the test of the rules.

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So, how, I think, can the Government truthfully argue under 403 there is not very much probative value to evidence that someone else committed the crime.

On the other hand, what is the prejudice? The interesting thing here is that there is most assuredly no trial by ambush.

Mr. Posey's testimony has been known to the Government since 1970. He was cross-examined then. Mr. Posey has been interviewed since that time.

Some of these persons are police officers whose statements have been given to the Government recently.

Ms. Zillioux who came to--I must tell Your Honor--perhaps you want the source of that. We do have some disagreements at times about the role of the members of the press. Ms. Zillioux came to the attention of the Defense because she read a press account that this trial was about to happen.

She called the newspaper. The newpaper in turn passed it over to an editor who made two calls: one to the Defendant and one to the Government. And we have both known of her testimony for many months.

And Mr. Underhill has also been similarly disclosed to the Government.

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So we are not talking about prejudice as a sense of surprise, unfairness. We are talking about how unfair is it. Well, if we test the Government's case and say, "Look, your theory is not as credible as you want it because there is some evidence that a reasonable person would have to really consider another person," that can't be so prejudicial as to keep this out.

I do say as my last observation in this regard--these crimes were not committed by reasonable persons. These acts are unreasonable. The testimony--these acts are so consistent with the kind of culture, the kind of persons that Ms. Stoeckley was involved with, that they in themselves tend to be corroborative.

I think we have a tendency in our own sanity, to lose sight of the fact that we are dealing with truly acts of monstrous insanity.

I think that the Constitution would say to us--under Chambers, on the Fifth Amendment--that the 403 Rule cannot be used as a basis of denying a defendant his right to be heard.

THE COURT: Do you give up under 403?

MR. MURTAGH: No, Your Honor. I would say that the portion of the Rule clearly relevant here is in its cumulative value. I think, you know,

#43 p5

they've had Helena Stoeckley on the stand for the better part of the day.

I think that she was more than cooperative with both sides. Your Honor, the picture that we showed Ms. Stoeckley taken of her in 1970 was shown to the Defendant at the Article 32 investigation. He did not identify her at that time or at any subsequent time when he has been shown other pictures of her as the girl with the candle.

I think that Mr. Segal's observations that the crime must be the product of an insane act is pure argument. We don't agree with that at all.

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MR. MURTAGH: (Continuing) I think the basic issue here is that the Defendant has not been prejudiced by the exclusion of having the witness testify. She was asked point-blank on the stand the sixty-four dollar question about whether she was there or whether she did it.

She certainly was subject to searching cross-examination. I think we have more than satisfied the Fifth Amendment requirements of due process in this regard. I think that 403 would be applicable in addition to 804(b)(3), and that would be our position, Your Honor.

MR. SEGAL: I must say if I could ask Your Honor's brief indulgence: Mr. Murtagh has reminded me of one of the other changes in the rule that I neglected to mention. We are entitled to impeach Ms. Stoeckley. She has in fact denied her involvement.

We are entitled to offer all of this testimony Your Honor heard as impeaching evidence against her. Under the Federal rules, that may be received both as impeaching and substantive evidence. The jury, in fact, can find that, but we are only offering it even as impeaching evidence. I do not understand then why under that simpler theory perhaps

that avoids some of the knottier constitutional questions we have been talking about, that we cannot offer it simply as impeachment and have these witnesses heard promptly on Monday morning.

MR. MURTAGH: Your Honor, I don't believe these are her statements. These are statements of witnesses as opposed to the witness' prior statement, and I don't think his observations about impeachment are at all in point. And besides he had the opportunity, if there were prior statements by the witness, to impeach her at that time.

I think that we are now mixing apples and oranges, Judge.

THE COURT: The Court will rule on this motion Monday morning, the 20th of August, at 10:00 a.m. Take a recess until that hour, please.

(The proceeding was adjourned at 3:58 p.m., to reconvene at 10:00 a.m. on Monday, August 20, 1979.)

F U R T H E R P R O C E E D I N G S 10:00 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Monday, July 20, 1979, at Raleigh, North Carolina.

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

THE COURT: Good morning, ladies and gentlemen. Let me see Counsel at the Bench briefly.

B E N C H C O N F E R E N C E

THE COURT: Since court adjourned on Friday afternoon, I have spent a substantial portion of my waking hours researching and deciding the rather interesting evidentiary question which was posed, the question being whether statements tending to be against the penal interests of the witness Stoeckley should be admissible through other witnesses--statements made outside of court in far distant times.

In that connection, I have studied the transcript of the witnesses' testimony--Stoeckley's and the

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six witnesses whose out-of-court statements are proposed to be offered--the briefs of both sides, and all of the case law--relevant case law--that I could find, which includes the Advance Sheet of the Federal Second, which came Sunday and which, oddly enough, contained a case involving 804(b)(3), but unhappily not directly in point.

I will rule that these proposed statements do not comply with the trustworthy requisites of 804(b)(3) or (b)(5); that far from being clearly corroborated and trustworthy, that they are about as unclearly trustworthy--or clearly untrustworthy, let me say--as any statements that I have ever seen or heard.

Chambers v. Mississippi, of course, is a far cry from this. There we had an absolute confession by a person who was in his right mind, and various other distinguishing features. On the question of impeachment, of course the prerequisite for a prior inconsistent statement is one that is, in fact, inconsistent.

Weinstein has said that any statement is inconsistent if, under any rational theory it might lead to any relevant conclusion different from any other relevant conclusion resulting from anything the witness has said. This witness, in her examination here in court--and cross-examination--has been, to use the Government Counsel's terminology, "all over the lot."

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The statements which she has made out of court were "all over the lot," so it can't really be said that the hearing of those statements would lead to any different conclusion than what the jurors got while she was here in open court.

The case most nearly like this one that I was able to find and not cited by either side is United States v. Satterfield in the 500 F.2d 687, cert. denied 99 Supreme Court 128. That is a Ninth Circuit case from 1978. That case, as many others do, including cases that were cited--such as Thomas and Barrett and others--states that this matter of determining trustworthiness is committed in the first instance to discretion of the Court. In that case there was a finding of untrustworthiness by the District Court, although there were some factors in evidence which tended to substantiate the statements or lend credibility to them, and statements which were pointed in the opposite direction.

As I stated, this testimony, I think, has no trustworthiness at all. Here you have a girl who, when she made the statements, was in most instances heavily drugged, if not hallucinating. And she has told us all that herself. She has stated that in person.

But I would get over the unavailability question. I would get past that and, in some aspects of it,

I think they could have been held to be against her penal interests. But on the question of trustworthiness, I just can't see it.

Now, on the question of impeachment, as I stated, I don't think it is admissible on that theory for the reason that I don't think it is impeaching. There are other reasons which I won't elaborate on right now.

Finally, I think that this evidence ought to be excluded as a matter of discretion by the Court under Rule 403, because its probative value is substantially outweighed by the danger of unfair prejudice. It would tend to confuse the issues, mislead the jury. It would cause undue delay and a waste of time.

I am thinking now that I took a day of this jury's time and gave it to Counsel, most of which was taken by Counsel for the Defendant to interview Ms. Stoeckley, and to have her apparently interviewed in company with several of these six witnesses. And anything that would come in by this way now would still be cumulative.

She has told everything--she told this jury everything that you proposed to show by these witnesses that she told them. So I think in the interest of time--having devoted two days to this subject--that that is enough; and for the additional reason that it ought to be

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excluded under 403, I will hold that it is not admissible.

Now I have a different subject, and one that is frankly very, very disturbing to me. And I want to ask Counsel for the Defendant now, were the members of this jury panel, prior to the convening of this Court on the 16th of July, 1979, contacted by anyone by or on behalf of the Defendant and interrogated on any subject whatever?

MR. SEGAL: Not knowingly, Your Honor. In no way did we make any attempt to contact the jury panel.

THE COURT: Did you have someone employed at Duke University?

MR. SEGAL: Let me say there were two jury studies going on in this area at the same time. We accidentally learned that there was another homicide case here that was being tried in Superior Court, that persons were calling various persons at random.

Let me just tell you what we did, Your Honor. The jury study that we did took a random sample from the telephone book. No record was ever made of the name, because it was not important to us. It was done by a mechanical method of taking from column one on page 20, the 12th name; column two on page 15, the tenth name; and a

sequence like that.

Nobody was ever asked a name, no name was ever recorded, and nobody ever indicated--first of all, no one ever indicated they had been summoned as a juror. If they did, it would have been discontinued immediately. We made no effort to investigate any person on the jury panel or make any contact with them directly.

If such a thing ever happened that way, it would have been accidental that a person was a sheer random choice, that someone's name would have been picked up. However, if you tell me the date on which this happened, it may not even be the date we are talking about, Your Honor.

MR. SMITH: Let me make a more precise answer to your question. At no time did anyone ever take a list of the prospective jurors of the pool and contact them; no. If that ever happened once--one time--it would be the most outrageous act I have ever heard of. That never happened.

We never said to anybody, "Here is the list of jurors. Call them up and see how they feel. Here is a list of jurors. Contact them in any way." I got a list of the jurors from the Clerk's Office and I passed that list around to lawyers I know and said, "Do you know any of these people--ever met them?" I checked them out

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with any other citizens I knew who might know them. But never was any contact made personally.

THE COURT: I could not conceive of your doing such a thing---

MR. SMITH: (Interposing) Oh, no.

THE COURT: ---unless you told me. If somebody else did, I would disbelieve them. But I would say this: if it happened, although we are beginning our sixth week, and although I have never been more physically and mentally burdened with court in my life, I would mistry this case so quickly that it would make your head swim.

MR. SMITH: I agree. It ought to be. Let me ask you this: it is disturbing that anyone has suggested it to you, and I think we ought to run it down.

THE COURT: Well, I will do that at this time, because it was just a chance remark at a wedding reception late Saturday afternoon. But I dropped my upper plate when it was mentioned.

MR. SMITH: Judge, we made a very, very careful, thorough examination into the attitudes of people who live in our area, so that we would have an understanding of the kind of jury we wanted. It was scientific. It was well done. It was in good taste. And I liked it. I was impressed with it. I had never

seen it done before.

THE COURT: Questions were asked by telephone?

MR. SMITH: Yes; it was a telephone survey.

THE COURT: Just as a part of my continuing education, let me have your list, then.

MR. SMITH: Of people?

THE COURT: No; of questions.

MR. SMITH: Oh, sure; we would be happy to. We have no list of people--have no way to know what people were called. As I recall, we don't have any names of anyone.

MR. SEGAL: No names.

THE COURT: I will ponder and decide whether or not I should question this jury panel as to whether or not any of them were contacted.

MR. SMITH: We would have no objection to that at all--not in the least.

MR. SEGAL: I would like to return, if I may, to the first subject matter of our bench conference, which is the Defendant's offer in this regard. I must say, I am deeply distressed--in a criminal case, as opposed to a civil case, where the burdens are different--that a Defendant on, I think---

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THE COURT: (Interposing) Mr. Segal, let me interrupt you to say this: I did not reach this decision lightly. I spent roughly seven hours on this thing on Saturday. I spent the entire day Sunday until 11:30 last night, wrestling with this thing myself. And I have done this--and I do this routinely in criminal cases --I lean over backwards to make sure that no criminal defendant is ever deprived of a defense.

In evidentiary rulings, if there is the slightest question in the world, I will go with the defendant every time. After all, as I have said many times, there is not enough time to try the case one time, and God knows, we don't want to have to try it twice.

But I am thoroughly convinced in my own mind that your position is without merit with respect to this particular evidence. I have ruled on it, and as I say, I did not reach that lightly--because I am risking a terrible lot of judge time and juror time down the road if I make an error and it has to be retried.

But I am confident of my position on that one. Let me say further that I will reduce all these--I have just given sketchily my opinion--but I will reduce it to writing, so that you and the appellate court, should it reach that--of course, if your man goes free, then we are all home free. But I will do that, because

they would be entitled to a more detailed explanation of my thinking about it.

MR. SEGAL: May we stay here at the Bench for one minute and permit Mr. Smith and I to discuss something? We may need to share it with you immediately.

THE COURT: All right; that's okay.

(Bench conference terminated.)

BENCH CONFERENCE

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MR. SMITH: Judge, two of those six witnesses, Beasley--and there is one who is not one of the original six, as you might say--and a Mr. Gowen will testify not as to statements made by this young lady but to show where she was soon after this occurred.

I would assume that Your Honor will find that admissible; that is, that we can put witnesses on to show where Helena Stoeckley was, what she was doing, who she was with, what she looked like, and what happened to her.

MR. MURTAGH: That is uncontested.

MR. SMITH: It doesn't make any difference if it is uncontested. We submit the jury is entitled to hear it whether it is uncontested or not.

MR. BLACKBURN: Excuse me. Gowen was not one of the six.

MR. SMITH: No, Gowen is a new witness. Gowen will put her at a trailer park in Fayetteville at a place where Beasley, our officer, saw her. Gowen is not one of the original six but will put her at a specific location in Fayetteville soon after this event occurred.

MR. MURTAGH: When?

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MR. SMITH: The same night, 5:00 o'clock in the morning.

MR. BLACKBURN: Are you talking about Beasley going into what he said to her?

MR. SMITH: No, under the Judge's ruling, I assume that he could not.

MR. MURTAGH: Gowen will contradict Posey.

MR. SEGAL: Let me expand if I may our Offer of Proof, Your Honor. We intend now, in view of Your Honor's ruling, I still think we will call Mr. Posey. Mr. Posey will describe that floppy hat, blond wig, and boots were characteristic of her prior to the crime.

He will testify that she discarded them immediately after the crime.

MR. MURTAGH: That is her statement.

MR. SEGAL: That is not her statement. These are acts which she did which are acts that we suggest, Your Honor---

MR. BLACKBURN: That is her statement.

MR. MURTAGH: That is her statement. That is what he said.

MR. SEGAL: Would you please just let me make that---

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THE COURT: (Interposing) She has testified to that and given the reason for it.

MR. SEGAL: I think we are clearly entitled to show first of all additional evidence that she discarded it. Actually, this evidence is contrary to her statement in the regard as to how frequently she wore it, and we also believe that we are entitled to the inconsistent explanation; that is, not--her explanation is different. She says people were harassing her.

His explanation for it is different and, for that purposes, we have a right to show that she did it. Secondly, Your Honor, we intend to show--impeach her further--where she--without a transcript I can't recall whether she admitted--I'll have to ask Mr. Posey about that.

We would show her arrival at home at the time which is consistent with the crime--the time that she came home. We would show the vehicle which she was in which we think we can show through other circumstantial evidence is relevant to this case.

So, I want to make clear that that is what we intend to offer Mr. Posey. Secondly (sic), in a different regard, we have admissions that were made in the last 72 hours to Mr. Posey by Ms. Stoeckley and at that time she was not under the influence of any drugs.

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She made those admissions. They are contrary to her statements on the stand here as to what she said when she saw the crime scene photographs. We think Mr. Posey, Ms. Zillioux and Mr. Beasley may testify as to those current admissions which impeach her statements when I examined her at the very end of the direct examination as to whether or not she did not agree to recognizing the hobby horse, whether or not she did not admit to recognizing the scene in the living room, and stated at that time that she has a recollection of standing over the body.

There are other statements that she has made as to recognizing that are different than her in-court testimony, and I do intend to offer that in place of any prior statements that we have had these witnesses testify to on the voir dire on Friday.

Mr. Smith has already made the Offer of Proof in the regard to Beasley's testimony. We think that we ought to lay that out at this juncture while we are still at the Bench.

MR. MURTAGH: Your Honor, may I respond? Your Honor, on Friday at a bench conference, Mr. Segal, by way of a representation of counsel, said that these witnesses would testify to these latter statements. No such statements ever came out on voir dire. I think we

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are--assuming for the sake of argument that such statements were later made to these various witnesses. What we understand happened is that Ms. Stoeckley was in the counsel room and these various witnesses were paraded in to her and, in effect, "Don't you recall, Helena, saying this to me?" You know--the Jane Zillioux business, the episode with hepatitis and the blood on her hands.

I think it gets back to the same thing, Your Honor. It goes back to the untrustworthiness of her original statements and this is simply an attempt to go in the back door after the Court has ruled otherwise. As to this new witness, we have had no voir dire on him.

As to Mr. Posey's explanation of why she disposed of this stuff--if, in fact, she disposed of it--he is not competent to testify as to an explanation. He can say what he saw and that is uncontroverted. She did come home that morning. She apparently came home most mornings at this time.

I think, Your Honor, if these witnesses do get on the stand, we are going to get right back into the area in which the Court has already ruled, and we would object to it.

THE COURT: What you are suggesting is that the Defendant now proposes to be permitted to show

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inconsistent statements, to use Judge Widener's language, as a mere subterfuge to get before the jury evidence not otherwise admissible?

MR. MURTAGH: Because the statement-- in other words, if Zillioux were to testify as to what Helena may have said to her on Friday, she would bring out the fact of Helena's prior statement to her under the influence of hepatitis and God knows what else---

MR. SEGAL: (Interposing) I think I am capable of conducting examination properly, Your Honor. I do not think it should be suggested and advanced that I cannot do that.

THE COURT: The only way I see this thing can be resolved is to send the jury out and let you bring your folks in for another voir dire. Of course, I anticipated that what transpired in the witness room on Thursday between these various witnesses--you avoided that in your voir dire--that you would be coming back.

And, now you say that you are going to come back with that. Look, I spent all the time I think this case can spare to this particular thing. Call your witnesses and, if there is an objection, I will rule.

(Bench conference terminated.)

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THE COURT: Any further evidence for the Defendant?

MR. SMITH: Yes, sir, Your Honor.

THE COURT: Call your witness.

MR. SMITH: The Defense calls P. E. Beasley to the stand.

THE CLERK: Mr. Beasley, you have previously been sworn, so if you will go on and take the stand.

MR. SMITH: Your Honor, may I consult with this witness just a moment?

THE COURT: Yes.

(Pause.)

(Whereupon,

P. E. BEASLEY

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

D I R E C T E X A M I N A T I O N 10:30 a.m.

BY MR. SMITH:

Q State your name, please, sir?

A P. E. Beasley.

Q Mr. Beasley, where do you live?

A Fayetteville.

Q How long have you lived in Fayetteville?

#3 p2

A About 45 years.

Q What do you do, sir?

A I am retired.

Q And what did you do before you retired?

A Police officer.

Q How long did you serve as a police officer in Fayetteville?

A Twenty years.

Q How old were you when you started your police work?

A Twenty-six.

Q What were your assignments during the period of time you were a police officer; that is, what were your duties?

A I was a walking--walked the beat--car patrol; narcotics; detective division.

Q When you walked a beat, did you ever walk the Hay Street beat?

A Yes, I did.

Q And approximately what year did you walk that beat?

A '53, '54, up to about--quite a few years. I can't remember.

Q And then when you were a patrolman, did you ever patrol the Hay Street area?

#3 p3

A Yes, I did.

Q What is the Hay Street area of Fayetteville?

A It is known mostly for its bars,prostitutes, drugs.

Q What year did you start to work with narcotics in Fayetteville?

A 1968, I believe.

Q What was Fayetteville like in 1968 and 1969 and 1970, with respect to the use of narcotic drugs?

A There was quite a bit of it there--quite a bit.

Q Have you read any of the Esquire magazine article which had been introduced by the Government in this case at my request?

A Yes, I have.

Q Would you say, Mr. Beasley, that Fayetteville, North Carolina--in some parts of Fayetteville--would compare with the descriptions of California made in the Esquire magazine article?

A Yes, I would.

Q Mr. Beasley, when you were working in narcotics, would you state whether or not you ever used informants?

A I did.

Q What is an informant?

A It is a person that supplies you information that you can't ordinarily get yourself.

Q How may informants would you say you had when you were working narcotics?

A I had quite a few, but I--yeah, I had quite a few. I don't know just how many.

Q How do you work with an informant? What is required?

A First thing, you don't reveal their identity.

Q You keep that confidential?

A Yes, you do.

Q What kind of relationship would you normally have with an informant?

A You try to have a close relationship, and first you have to really gain their trust. That's the biggest thing, getting them to trust you.

Q How often would you contact them?

A Well, it's according to what the need would be--most times they would contact me.

Q How many informants would a narcotics officer normally have?

A It is according to who the narcotics officer was.

Q How many would you have had at any one

#3 p5

particular time?

A Any one time, I had--well, two good ones would keep you working eight hours, sometimes 12; but I have had as high as four at one time.

Q Now, what did you do with the information provided you by informants?

A Well, we would take the information and, like, if we got any particular location where there may be drugs or who may be dealing drugs, we would stake it out and watch it.

We tried to get this informant to make an undercover buy from this place, and the information we got out of it, we would obtain a search warrant and go search the place.

Q Then using information provided you by informants, would you get search warrants?

A Yes, we would.

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BY MR. SMITH:

Q Would you test out an informant, first, to see if that informant was reliable; is that part of your procedure?

A Yes, sir.

Q How would you do that?

A Find out who he was, where he came from, what he was doing there, for what purpose were they giving us this information.

Q Would you get search warrants based on information provided you by informants on the first information given you, or would you test out informants first to see if the informant was reliable?

A We would have to know he was reliable before we did anything.

Q Now, Mr. Beasley, would you state whether or not you ever met Helena Stoeckley?

A Yes, sir.

Q And do you recall about when you met her?

A It was in 1968, within that year.

Q How did you meet Helena?

A I was introduced to Helena by another officer that was not working drugs, and he advised me that she was heavily involved with drugs and knew all the dealers and what we needed to know.

#4 p2

Q Let me interrupt you and ask you this: what did Helena look like in 1968?

A Helena was--she was young-looking. She was a slender-type looking girl, had black hair, approximately 5'5", I guess, somewhere in there.

Q And what kind of group of people did she run around with, if you know?

A Hippie group of people all the time.

Q You say "Hippie group"; what did a hippie look like to you at that time?

A Well, at that time we was just getting into drugs--beginning to work drugs there in Fayetteville--getting into it good. They were dungarees,cut out sleeves out of jackets, long hair, beards.

Q Were there a lot of hippies in Fayetteville in '68, '69, and '70?

Q Yes, sir.

A Would you state whether or not Helena Stoeckley ever became an informant for you?

A She did.

Q About what year?

A '68.

Q And how long did Helena serve as an informant for you?

A Until about 1970, the latter part of 1970.

#4 p3

Q In your work as a narcotics agent, and especially working with Helena, would you state whether or not you ever had any information about cults in Fayetteville?

A Yes, sir, I did. Yes, sir.

Q What information did you have about cults?

A We had received information that these type of people had moved into the Fayetteville area, and we were trying to locate them; and I asked her if she knew of any and she said she did.

And she said, in fact, she was almost a member of a group that they called the Black Cult, I believe she stated they were. And I asked her to explain what she meant by that, because we didn't really know.

And she said it was a group of these people--would go to a certain location that they--they would have the rooms painted probably black--strobelights going--flashing lights.

And they would all get to dropping LSD, and they would get into a frenzy that they got into, and chanting and going on--this type thing; and that they would string a black cat up among these people after they had formed a circle--by the lower part of the body with his head hanging down, and cut his throat.

And the blood would come down into the

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floor and they'd get in the blood and rub it on them--all over them--and that type of thing.

Q Now, what year would that information have come to you?

MR. BLACKBURN: Your Honor, we would OBJECT on the grounds of relevancy.

MR. SMITH: Your Honor, may I continue with this line of questioning, and I can connect it up and I will abide by the Court's ruling this morning, and not get into any information that you have ruled is not proper?

THE COURT: Very well. Proceed.

BY MR. SMITH:

Q Mr. Beasley, what drugs were used in Fayetteville, as far as the prevalent use is concerned, in '68, '69, and '70?

A You mean all the drugs?

Q Just some of them?

A LSD, heroin, mescaline, marihuana, opium--any type that you can mention, it was there.

Q Was there any other name for LSD that was popular?

A Acid.

Q Now, Mr. Beasley, do you recall where you were at the time you heard about the MacDonald murders?

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A Yes, sir.

Q Where were you?

A I was at home.

Q What time of the day or night was it?

A I had gotten off work that morning about 2:00 o'clock and went home to bed, and I was called at home about 7:30 by my supervisor. He advised me what happened and gave me a description.

Q Now, do you recall what kind of description he gave you?

A Yes, sir.

Q What did he say?

A He said there was a white female with blond hair with a floppy hat, and a black male described as having on an Army fatigue jacket, I believe, with E-6 stripes.

Q All right, sir?

A And two white males.

Q Now, Mr. Beasley, had you ever seen a blond-headed woman with a floppy hat with a black male and with two white males?

A On many occasions.

Q Sir?

A Many occasions.

Q And when you would see a blond-headed

5km2

woman with a floppy hat, and with a black male and two white males, would you recognize the blond-headed woman?

A Yes, sir.

Q Who was the blond-headed woman?

A Helena Stoeckley.

Q How often would you say you had seen Helena Stoeckley with blond hair and a floppy hat with a black male and two white males?

A Numerous times. I don't know exactly, but numerous times.

Q And over what period of time--that is, the months or years?

A Oh, probably two months.

Q Where would you see them, Mr. Beasley, if you recall any of those occasions?

A Mostly, it would be what we used to call--it was in the Haymont Section of Fayetteville. It was a place where the hippies hang out, mostly. It was the Goody's Shop, I believe they called it.

Q What was sold at the Goody's Shop, if you know?

A Well, it was malts and cokes and things like that. I don't recall whether beer was being sold there or not.

Q Did you know whether the blond hair that

Helena Stoeckley had on those occasions was her real hair?

A No, sir; it was not her real hair.

Q What was it?

A It was a wig.

Q How did you know?

A I had it in my hands. She gave it to me.

Q When did she give it to you?

A After the killings.

Q Did you know that it was a blond wig before the killings?

A Oh, yes; I knew it was a wig.

Q How did you know it was a wig before then?

A Because I knew she had black hair.

Q Did you know the names of any of the three males that she was with on occasion when you saw her?

A No, I didn't; not at that time I didn't.

Q Did you ever see any E-6 stripes on any of those males?

A Yes, sir; the black male had a fatigue jacket on. He always wore it, and it had E-6 stripes--I believe, three on top and one underneath--a rocking chair type underneath.

Q When you heard about the MacDonald murders, would you state whether or not you thought about Helena

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Stoeckley?

A Yes, sir; I told my supervisor then that I knew somebody that fit the description--that I would get dressed and come to the office and go to work and try to locate her.

Q What did you do?

A I dressed and went down to the office. I had information that had been given to me prior to this--about two days prior to this incident--and I had information on this trailer, that there were drugs there. And I knew that she lived there with these people.

Q Now, where was the trailer? What trailer park in what part of Fayetteville?

A It was Hickory Trailer Park, I believe, out near Fort Bragg.

Q What information did you have about drugs?

A Well, she had told me that they had a large amount of drugs there. She described all kinds. If she told me, I knew it was true, because everything she told me was.

Q Did she give you enough information for you to obtain a search warrant, if you wanted it?

A Yes, sir; I went down and drew the search warrant on this information.

Q What did you do?

A Got the search warrant, and I, along with a CID Agent, a Deputy Sheriff, and an SBI Agent, went to this trailer and raided the trailer.

Q What did you find?

A We found almost a suitcase full of drugs.

Q Did you find the drugs where she told you you would find them?

A Yes, sir; went right to it, pulled out the partition in the wall, and it was right where she said it was.

Q Did you find the kind of drugs that she told you you would find?

A Yes, sir.

Q Based on that find of drugs, what did you do, Mr. Beasley?

A We obtained the renter's name, and I went back to the police station and drew a warrant for William Murray Sanders. At that time, there was no one at the trailer, so I went back home, I guess, that afternoon, and got me three or four hours of sleep.

When I came back to the police station, this boy had already been arrested. And the other three boys had come back to the trailer -- I found out later. They didn't go to the trailer -- when they saw what was happening, they left. And I haven't seen them since.

Q What did you do next, Mr. Beasley, in connection with your investigation of the MacDonald murders?

A What did I do next?

Q Yes, sir?

A Oh, yeah; I went to Helena's apartment, staked it out, and there was no one there.

Q Let me ask you, Mr. Beasley, if you recall about what day that would have been?

A That was on the 18th, I believe.

Q What happened next?

A Well, in the day--let's see--on the 17th, she was not there. And on the early morning--I believe it was about 3:30 or 4:00 o'clock, somewhere in there--Helena returned to her apartment. There was a black male in her car with her. It was an old convertible-looking car. I believe it was a Plymouth, but I'm not sure.

There was at least three white males in the car with her. I was parked out on the side of the street. I walked up in back of the car and called her back to me.

Q Mr. Beasley, did you say what time of the day or night that was?

A It was around 3:30 or 4:00 o'clock--somewhere in there. The files on this case that I had has been misplaced and I can't find them.

Q When you say, "3:30 or 4:00 o'clock," do you mean in the morning?

A In the morning of the 18th, I believe it was.

Q If you will, please proceed and tell us what happened next?

A I called Helena back to the back of the car, and of course, the way I was dressed, these people in the car came back like they was coming back after me. So I pulled my jacket back from my pistol and she told them to, "Sit down. It was all right."

Q Go ahead?

A They sat down, and I took her into my car and I talked to her.

Q Mr. Beasley, I want you to tell us what you said to her, but do not tell us what she said to you.

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: Yes; I will let you ask him a question, but I will not let you ask it in that way.

BY MR. SMITH:

Q Mr. Beasley, what happened next?

A I asked Helena if she had heard about the MacDonald incident at Fort Bragg, and she said that she had.

MR. MURTAGH: OBJECTION.

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MR. BLACKBURN: OBJECTION.

THE COURT: I will OVERRULE that.

BY MR. SMITH:

Q And please answer my questions precisely, Mr. Beasley?

A All right, sir.

Q What question did you next ask her?

A I asked her if she was involved in this incident at Fort Bragg.

Q All right; don't go any further. Now, Mr. Beasley, how long did you talk with her that day?

A That morning?

Q Yes, sir.

A About maybe--I don't know. I guess I was within her presence about an hour or hour and a half, maybe.

Q Did you see any blond wig on that occasion?

A Not then.

Q Did you ever see a blond wig after that?

A Yes, sir.

Q Did you see a floppy hat on that occasion?

A Not that night; no, sir.

Q Did you ever see the floppy hat?

A Yes; I did.

Q Did you see any boots on that occasion?

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A She had a pair of boots on; yes, sir.

Q What did you do next, Mr. Beasley?

A Called the CID at Fort Bragg and had my radio dispatcher to call.

Q What did you tell the CID--let me back up. Please answer my question again, precisely. Did you make any request of the CID?

A Yes, sir.

Q What did you request that they do?

A Come down and look at some suspects that I had picked up in reference to the MacDonald case at Fort Bragg.

Q What happened then?

A I never got any reply at all.

Q How long did you wait?

A I suppose maybe an hour, maybe a little more.

Q What happened next?

A I released them. I had to let them go, and it was getting early and I was tired. But I knew later I could get up with Helena, but the other three I didn't know.

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BY MR. SMITH:

Q Did you ever see the other three again?

A Never again.

Q Do you know what happened to them?

A No, sir.

Q What happened to Helena after that?

A Shortly after that, she left and went to Nashville, Tennessee.

Q Before she left and went to Nashville, Tennessee,did you have that conversation you told us about about the wig?

A Yes, sir; I talked with her again; yes, sir. I talked with her a couple of times.

Q Where were you when you saw that wig and floppy hat?

A I was sitting near her house in another unmarked car. She gave it to me--the hat and the wig.

Q How often, Mr. Beasley, did you talk with her about the MacDonald case after that?

A On two occasions after that.

Q And how long was---

A (Interposing) Maybe more. I can remember a couple times.

Q How many days had passed from the 17th of February, 1970, when you had those other conversations

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you described?

A Well, on the 18th she didn't have the wig and the hat with her. I believe she brought me the hat and the wig on the 19th or the 20th.

Q Did she leave those with you?

A She did for a while.

Q How long did you keep them?

A I can't really recall just how long I kept them, but she came back and asked me if she could have them back, and I gave them back to her, and she told me she burned them. She wanted to get rid of them.

Q How long was the wig?

A When she had it on, it would hang--oh--way down to here (indicating).

Q Have you had an opportunity to see any photographs in this courtroom of the floppy hat?

A No, sir.

Q Tell us, in your own words, how you recall what that hat looked like.

A It had a broad brim, and it would drop down a little on the front, a little on the side, and a little in the back, and it was sort of rounded off on the top. But that wasn't the only hat she had like that. She had several hats. That wasn't the only one she had.

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3

Q Did you ever go to Nashville to see her?

A Yes; I did.

Q State whether or not Helena would write you occasionally.

A She had written me on occasion. After she got to Nashville, she wrote to me then.

Q When she would write you letters, Mr. Beasley, would she ever use the word "pig"?

THE COURT: Do you have the letters that she wrote you?

THE WITNESS: Your Honor, I had the letters.

THE COURT: I say have you got them with you?

THE WITNESS: I don't have them now; no, sir.

THE COURT: Go ahead.

BY MR. SMITH:

Q Do you ever recall that she used the word "pig"?

A That was one of Helena's favorite words--was pig.

Q Do you recall in what context she would use it with you, Mr. Beasley?

A Referring to other officers.

Q Did you have conversations with her that night?

A Yes, sir.

Q Would you state whether or not you went out to Nashville to talk to her about the MacDonald murders?

#6
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4

A Yes, sir.

Q Did you ask her questions about the MacDonald murders?

A Yes, sir.

Q Did she give you answers?

A She did.

MR. SMITH: You may examine.

C R O S S - E X A M I N A T I O N 10:53 a.m.

BY MR. BLACKBURN:

Q Mr. Beasley, you stated on direct examination that Ms. Stoeckley was one of your informants; is that correct?

A That is correct, sir.

Q And, again, how long did she remain an informant with you?

A I--well, I know she was regular until 1970. After that---

Q (Interposing) When--excuse me; go ahead.

A ---after that, I would pick up pieces. She

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5

would even call me.

Q And she became an informant for you in 1968?

A Approximately; yes.

Q Did you ever have an occasion to pay her any money?

A She would never accept any money whatsoever.

Q She did it totally free; is that correct?

A Totally free; I tried to pay her and she wouldn't accept.

Q Now, you say she remained an informant for you into 1970; is that correct?

A Yes, sir; and on past that too.

Q All right, now, how long into 1970 did she remain an informant for you--a regular informant is what I am getting at?

A Well, she left town shortly after this--I guess maybe a week or two later--and then I didn't have contact with her--only by telephone or letter or something, and I would say the end of 1970.

Q Now, I believe you testified that you on occasion had seen her with a black and a couple of white males; is that correct?

A Yes, sir; on several occasions.

Q Would it be just the four of them? Would there be more than four?

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A Well, on occasions there has been more than four; yes, sir.

Q Would those be whites, blacks, females?

A There would always be a black. There was always this one black man.

Q He had a fatigue jacket?

A Every time I saw him he had a fatigue jacket on.

Q Did you ever have occasion at Fort Bragg to see other people with fatigue jackets on?

A Oh, yes.

Q With E-6 stripes on the sleeves?

A Yes, sir.

Q In fact, that is probably fairly common at Fort Bragg; isn't it?

A Well, can I explain?

Q Well, if you would, why don't you answer yes or no and then explain?

A Well, yes, sir.

Q You may explain.

A The fatigue jacket--if we ever would see a guy running around with just a fatigue jacket on or with the stripes or whatever, we would always check him for being AWOL. A special uniform man would or a detective would, but if you were Narcotics like us, you'd not do that.

But we would try to get another officer to do it to see if he might be AWOL. In this case, we was watching--we had a drug deal going and we didn't want to blow what we were doing, so we didn't.

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7

Q Now, I believe you testified that in the early morning hours of the 18th of February you had occasion to visit her apartment; is that correct? Or outside the apartment?

A Yes.

Q And that's on Clark Avenue?

A Clark Avenue, and she also had one--I believe shortly after that she moved to Arsenel Avenue. This was another known drug location.

Q Now, I believe you testified she came out to the car and got in and sat down next to you.

A She didn't sit down; no, sir. She came back to the car, and I talked to her outside the car.

Q Was she very friendly to you at that time?

A She always has been.

Q She didn't run from you when she say you; did she?

A No, sir; she came to me.

Q Came to you. This is 24 hours after the MacDonald killings--approximately.

A Well, approximately I would say.

#6
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8

Q Now, when was it that she gave you the blond wig, if you can recall?

A I believe it was a day or two later. I asked her if she had it and she said she didn't have it right on, and I asked her if I could have it.

Q She didn't hesitate to give it to you; did she?

A No; she brought it to me.

Q Now, do you recall the color of boots that she had on when you saw her?

A The best I can recall--that night--it was pretty dark--but I believe they were black boots.

Q This is which night now to get specific?

A The night that I picked her up--on the 17th.

Q You mean the early morning of the 18th?

A Yes, sir; the early morning of the 18th; that's right.

Q To the best you can recall they were black boots?

A To the best that I can recall they were--I believe they were black boots.

Q Now, you said that you saw her on several occasions with her blond wig on; is that correct?

A Yes, sir.

Q I assume, though, that because you knew she

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9

had black hair that you saw her on many occasions without the blond wig; is that correct?

A Yes, sir.

Q And I believe that you testified that she had several floppy hats?

A Well, I've seen her with different hats. I've seen her with purple hats on, and that was another one of her favorite colors--purple. And I've seen her on occasion with a purple one on; yes, sir---

Q (Interposing) What--excuse me. Go ahead.

A ---and then, the black is the most prevalent I believe that I have ever seen her with.

Q Did she ever wear black very often?

A Yes, sir---

Q (Interposing) Well--excuse me. Go ahead.

A ---well, I was going to refer to the black she wears?

Q Yes. She wore black fairly regularly and dark purple?

A Yes, sir.

Q And the floppy hat that she gave to you--did she give you a floppy hat?

A She gave that to me too; yes, sir.

Q What color was it?

A That was black.

#6
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10

Q It was black?

A Yes, sir.

Q Now, you testified that the CID--you had called them and waited an hour for them to come; is that correct?

A Probably a little more; I believe it was a little more than that.

Q Do you know whether or not the CID ever subsequently interviewed Helena Stoeckley?

A Yeah; I believe it was in 1971 when I accompanied a CID agent out of Washington into Nashville.

Q Do you know whether or not he ever interviewed her in 1970?

A No, sir; they didn't that night, and I had the hat and the wig and nobody ever came for that.

Q I believe you testified that on the early morning of the 18th you saw her return to her house on Clark Avenue with three males; is that correct?

A There was at least three with her.

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BY MR. BLACKBURN:

Q Now, did you ever have an occasion during the time that you were on Narcotics, back in 1970, to see other people having floppy hats besides Helena Stoeckley?

A Oh, yes; yes, sir.

Q Was that a fairly common thing to wear in the hippie community?

A With those hippies; yes, sir.

Q So the fact that Helena Stoeckley had a floppy hat wasn't particularly unusual; was it?

A Well, no, sir. I would not say it was unusual.

Q Was it unusual that she wore boots?

A No.

Q And if you saw her in black on the day that she--on the 18th--you didn't think anything particularly unusual about the fact that you saw her in black, did you?

A No, sir, I didn't, huh-uh (no).

MR. BLACKBURN: Just a second.

(Pause.)

BY MR. BLACKBURN:

Q With respect to the time that you held Helena Stoeckley for an hour and the three males for an

hour--is that correct? Which date was that?

A Well, I didn't exactly hold, really--I detained them moreor less. I didn't never--I never arrested them.

Q Did you ever consider arresting them?

A I did--if I had--at Fort Bragg--if I had had a reason--I had no reason, but I would--if they would---

Q (Interposing) At the time you held them you had no reason to arrest them, is that correct?

A No, sir; I had no reason.

MR. BLACKBURN: No further questions, Your Honor, of this witness.

MR. SMITH: Your Honor, may I ask one additional question I did not go into on direct that I would like to? It will just be for one matter.

THE COURT: Yes.

MR. BLACKBURN: Your Honor, may we approach the bench?

THE COURT: Yes.

B E N C H C O N F E R E N C E

MR. BLACKBURN: It seems to us the Defense is getting in the back door what they cannot get in the front door, that those are police drawings--

recent ones. These are the most recent police artist drawings.

They have not been authenticated and I assume what Mr. Smith is going to do is show his witness and ask him if that looks like him?

MR. SMITH: That is what I am going to do. I don't have in mind offering it in evidence, but asking him if he has ever seen that person.

MR. MURTAGH: Judge, showing someone a picture like that is like asking a jury not to think of a big white fuzzy bear, because at the time you say it they are going to think it.

It is something that I think is not properly offered in this matter -- I think especially when we have the original artist's conception drawings, which are radically different from these four.

I mean, why did they have new ones made on the eve of trial, and who made them, and how was it done?

THE COURT: Well, to begin with, I have detected in this witness a--I may be mistaken--and it is some hostility toward the CID, both in his voir dire examination and again here this morning.

I have assumed that because they did not come down there on the double and arrest those people and

#7 p4

check it out that he disagreed that it's good police tactics. Actually, he never called them himself. He's assuming that some radio operator did contact them.

MR. MURTAGH: The only person on duty, other than the people who were probably running around checking out leads--if there was ever a time when the Fort Bragg CID was strapped, it was then.

MR. SMITH: But that is speculation.

THE COURT: Well, I don't know about that; but in any event, this recent drawing here--you want to ask him about it?

MR. SMITH: Judge, yes. Here is the thing:I think I have a right to take that book and hand it up to him and ask him if he has ever seen it before.

I don't know why I've got to authenticate a photo. I'm not going to publish it to the jury at this point. It may be published at a later point, but I think I've got a right to hand him up a photograph of Genghis Khan, and ask him if he's ever seen it?

And it will be tied in later, but at this point all I intend to do is hand him a photograph, identify just whatever it is, and ask him if he has had an opportunity to examine the photograph before--which he has--and then ask him if he can identify---

#7 p5

THE COURT: (Interposing) It is not a photograph, is it?

MR. SMITH: I will call it a drawing.

MR. MURTAGH: Your Honor, the implication in the minds of the jury is that it is obviously a police artist-type drawing, and they are not properly authenticated.

THE COURT: What is he going to say?

MR. SMITH: He is going to say that yes, he has seen that photograph before and that it does--that the photograph or the drawing does look like one of the individuals he saw with Helena Stoeckley.

MR. SEGAL: We will tie it up, Your Honor.

THE COURT: Well, if that's got any probative force, I can't see it. I will let you ask him the question, if you are not going to publish it.

MR. BLACKBURN: Before we go back, since we're here--where are you going next--the next one?

THE COURT: Listen, you don't have to take that down--it's just some scheduling matters.

MR. BLACKBURN: What I am getting at--could some of these six people--this Jane Zillioux and Gaddis and Brisentine--their entire relationship with Helena was statements as opposed to visual. That is

#7 p6

what we are concerened about.

MR. SMITH: Not necessarily. For example, Jane Zillioux could certainly attest to the fact that she was in Nashville and what she looked like --you know, her physical condition.

MR. MURTAGH: Your Honor, as to that witness, I don't think that witness is capable of following the Court's instructions. I really don't think she understands the difference between what she saw and what she thinks.

I think in particular that witness could not be examined.

THE COURT: Who?

MR. MURTAGH: Zillioux, the woman from Nashville -- without her blurting out.

MR. SMITH: Let me ask you this. I assume that the Court feels that we handled Mr. Beasley very well within Your Honor's instructions?

THE COURT: I don't think you transgressed any ruling I have made about that.

MR. SMITH: I would say the way to handle that is to let us try, and if we get out of line, ojbect and the Court can rule.

I don't see why we should take the judge's time.

#7 p7

THE COURT: Will you caution her?

MR. SMITH: Sure.

MR. MURTAGH: The business of her looking down at her hands--in other words, if she wants to testify that Helena lived in a little house and she worked at Bonnie's Shoetique and the rest of this, and that she had hepatitis---

THE COURT: (Interposing) I have ruled all that out. All that mess is out.

MR. MURTAGH: Your Honor--well, I am concerned that she is capable of following the instructions.

THE COURT: Go ahead.

(Bench conference terminated.)

THE COURT: Ask your question.

R E D I R E C T E X A M I N A T I O N 11:08 a.m.

BY MR. SMITH:

Q Mr. Beasley, I have what is marked for identification as Defendant Exhibit Number 90; and first, I will ask you, Mr. Beasley, if you have ever examined that object before?

(Defendant Exhibit No. 90 was marked for identification.)

A I have seen one like this.

#7 p8

THE COURT: I thought you were not going to publish this to the jury? He is publishing it.

MR. SMITH: Don't hold it so anyone can see it, Mr. Beasley.

THE WITNESS: I'm sorry.

THE COURT: That's all right. Now, that you have already done it, show it to them again if you want to.

MR. SMITH: If Your Honor pleases, I would hasten to inform the Court---

THE COURT: (Interposing) That was not your fault.

MR. SMITH: I am sure Mr. Beasley did not intend to do it.

BY MR. SMITH:

Q Mr. Beasley, have you examined that photograph, or whatever it is, before?

A Yes, sir.

Q When did you have a chance to look at it?

A I saw one in the newspaper like this.

Q Have you had an opportunity to examine that particular item in the past few days?

A Yes, sir; back in the interview room with Ms. Stoeckley and Mr. Segal.

#7 p9

Q All right, now, Mr. Beasley, I will ask you if you will to describe what this object is that you have examined?

A It is a picture of one of the suspects.

Q Is it a drawing?

A Drawing of one of the suspects.

Q Mr. Beasley, does that drawing portray fairly any individual that you ever saw with Helena Stoeckley?

A Yes, sir.

BY MR. SMITH:

Q Do you know the name of that individual?

A Yes, sir.

Q What was his name?

A His last name was Mazzarole.

Q Mazzarole?

A Yes, sir.

Q Do you know his first name?

A Yes, sir; I've got it here.

Q Would it refresh your recollection if I asked you if his name was Allen?

A That's it; Allen P. Mazzarole.

Q Allen Mazzarole?

A Yes, sir.

MR. SMITH: No further questions, Your Honor.

MR. BLACKBURN: Just a moment, Your Honor.

R E C R O S S - E X A M I N A T I O N 11:12 a.m.

BY MR. BLACKBURN:

Q When was the last time you saw Mr. Mazzarole?

A I can look at my records and tell you.

Q Approximately?

A About 1970--'69 or '70. I arrested him with about $15,000 worth of LSD.

Q How many times did you see him in your career?

A In my career--about half a dozen times.

Q Do you have a picture of him?

A No, sir; I don't have one with me. The records don't have them in Fayetteville. They are all misplaced. I don't know where they are. I tried to get one, but I could not find it.

Q The drawing that was exhibited to you by Mr. Smith--do you know when it was made?

A No, sir.

Q Do you know who made it?

A No, sir; I don't.

Q Well, the time that you had Helena and the three friends in with you at the police station, did you take any pictures of them?

A No, sir; they were never arrested. They do not---

Q (Interposing) I don't want to cut you off. Are you through, or were you through?

A Yeah; I'm through. I was just going to explain why.

Q Yes; go ahead?

A We don't take pictures unless we arrest them.

MR. BLACKBURN: No further questions.

THE COURT: Any further?

MR. SMITH: No, sir.

E X A M I N A T I O N 11:13 a.m.

BY THE COURT:

Q Let me ask you, Mr. Beasley, about several matters that either I didn't hear your answers, or you were not asked. You say you didn't arrest these people? Where did you detain them?

A At Helena's house.

Q Just out there in the driveway?

A Yes, sir; I stayed right out there. We was right out there in the street.

Q You kept them there for about an hour?

A Yes, sir.

Q You called in to the police department and asked them to get somebody on the radio, to get these people to come out there?

A That is correct.

Q After an hour, nobody showed up?

A Nobody showed up.

Q So you let them go?

A That is correct.

Q I assume you did get their names, didn't you?

A Yes, sir; I've got their names in the folder

that is missing, Your Honor. We can't locate it anyplace. We have located these records, but that folder is missing.

Q Did you ever turn that folder over to the investigators?

A Yes, sir; it was turned over--well, turned over to our office. Now, it was 1971 before I got any further contact with the CID and this folder was never requested. Had it been, they could have had it easily.

Q You never volunteered to let them have it?

A No, sir.

Q I see. And do you know whether or not any of these people were ever interviewed by the CID?

A To my knowledge, not one of them. The only one was Helena.

Q I say, do you know whether or not?

A To my knowledge; no, sir, except Helena Stoeckley.

Q Can you recall the names of any of the people that were with her that night?

A There was one name that I can remember--his name was Greg Mitchell. And the other two I cannot. That name sounds familiar because he was one of the boys that was sort of in charge of a group of the hippie-type people there, and we had a special lookout on him. He

lived somewhere here in North Carolina, but we can't find any records on him anywhere in our office.

Q As a result of any investigation that you ever made, do you know whether or not anyone was ever arrested or charged with anything in connection with these crimes?

A Not with the crimes, Your Honor, but the black man--I signed a warrant for him and he was arrested and released on a $2,000 bond, and we have not seen him since. He never showed up and the case was nol pros'd in Superior Court.

Q What was he charged with?

A Possession of drugs. He was one of the men that I was looking for the day we hit the trailer with the other people that were supposed to have been there. The other three was not there--or he wasn't there when we raided the trailer.

THE COURT: Do the lawyers on either side of this case want to ask this witness anything in consequence of what the Court has asked him?

MR. BLACKBURN: Your Honor, I have one. I don't know if Mr. Smith does.

MR. SMITH: I have one.

THE COURT: You may sit there, because you are just before being asked several questions by each

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side.

MR. SMITH: We will let the Government proceed if they wish.

THE COURT: He is your witness. I will let you go first.

MR. SMITH: I was just trying to be kind to the Government, Your Honor.

FURTHER REDIRECT EXAMINATION 11:16 a.m.

BY MR. SMITH:

Q Mr. Beasley, what efforts have you made to locate your records?

A We have had two subpoenas issued for my records with the Narcotics Bureau and with the Identification Bureau in Fayetteville, and we have not come up with anything except one name, and that is on the Sanders man. And the only thing we have is the records in the court, and nothing else. That is all.

Q When is the last time you saw your records?

A When I retired in 1975, I believe I left my records intact. I asked my supervisor if I ever needed them again--or could I have them or could I take them with me. They said, "no," that if I ever needed them, that they would be there.

Q And have you been actually to look for them?

A Myself? Yes, sir. I have been down, along with Mr. Myers, I believe his name is, and along with an SBI agent. We went through the files and we cannot find them.

MR. SMITH: No further questions.

F U R T H E R R E C R O S S - E X A M I N A T I O N

11:18 a.m.

BY MR. BLACKBURN:

Q Mr. Beasley, you testified when you detained these folks, you were in the driveway of Helena's?

A Yes, sir; the vicinity. Yes, sir.

Q You went to your car and called the police department and told them to call CID?

A That is correct.

Q You never yourself called CID directly, did you?

A No, sir; I stayed with these people and had my dispatcher to call.

MR. BLACKBURN: No further questions.

MR. SMITH: Any questions by the Court?

THE COURT: One more. Did you ever thereafter undertake, during 1970, to communicate with the CID relative to this thing?

THE WITNESS: Prior to '71, or during 1970?

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THE COURT: Just like the question said--1970.

THE WITNESS: Yes, sir. I had a CID agent riding around with me one night. Helena was in the back seat and he was in the front seat, and no questions were ever asked regarding this.

THE COURT: That answered my one question. Anyone else got any?

(No response.)

THE COURT: Call your next witness.

MR. SMITH: Come down, please, Mr. Beasley.

(Witness excused.)

MR. SEGAL: The Defendant calls Mrs. Jane Zillioux, Your Honor.

THE CLERK: Ms. Zillioux, would you come around, please and take the witness stand? You have previously been sworn in this matter.

(Whereupon,

JANE ZILLIOUX

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

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D I R E C T E X A M I N A T I O N 11:20 a.m.

BY MR. SEGAL:

Q Would you state your full name and address for the record, please?

A Jane Zillioux; 6495 Southwest 83rd Street, Miami, Florida.

Q And would you spell your last name, Ms. Zillioux?

A Capital Z, like in zebra-i-l-l-i-o-u-x.

Q And are you employed?

A I handed in my resignation the 9th of this month to the Department of Corrections to the State of Florida.

Q How long have you worked with the Department of Corrections in Florida?

A Slightly over a year as Staff Assistant to the Regional Director.

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Q Did you ever live in Nashville, Tennessee, Mrs. Zillioux?

A Yes, sir; I did.

Q And from when until when approximately were you living in Nashville?

A I lived in Nashville from September, 1970, until about March, 1971.

Q And at that time were you married to Mr. Zillioux?

A No, sir; I was single.

Q And what was your maiden name?

A McCampbell.

Q And would you spell that for us?

A Capital M-small c-capital C-a-m-p like in Paul-b like in Bill-e-l-l.

Q Where did you live in Nashville, Mrs. Zillioux?

A 119 Portland Avenue.

Q What kind of neighborhood was that? Could you give us a little description of the area?

A It was a very poor neighborhood. It was a lot of people on social security and welfare who lived there. It was a hippie area. The rent was low--55 dollars a month for unfurnished apartments.

Q Did you meet a lady by the name of Helena

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Stoeckley sometime while you were living in Nashville?

A Yes, sir.

Q Do you recall when you first met Helena Stoeckley?

A Yes, sir; I had a great big, yellow Persian cat and he used to stroll out for air. He strolled into the street one day and Helena retrieved him for me, and that's how I got to know her.

Q About what month and in what year was that?

A September, 1970.

Q September, 1970. Do you know how long that Helena Stoeckley had been living in the neighborhood prior to that time?

A No, sir.

Q Did you find out after a while where she actually lived in Nashville?

A She lived right across the street from me in a little white house. I called it the hippie house because there were all kinds of hippies in there--you know--from 15 to 22.

Q How many people would you say lived in that house at any one time?

A I don't know, but they had bunks stacked up in the back--you know--all along the walls.

Q Now, did you ever find out that Helena

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Stoeckley had once lived in Fayetteville, North Carolina, or that she lived in North Carolina at all?

A Yes, sir.

Q When did you find that out?

A Shortly after I met her; she used to come to my apartment to take a shower because that hippie house didn't have very good facilities, and the shower didn't always work, and she asked me if she could come to my apartment to take a shower so she could keep herself clean because she was clean. I said, "Sure, bring your own towel."

Q Now, during one or more of those visits--is that when you learned that she was from the Fayetteville area?

A Yes; she told me that her father was an officer at the base, and I knew that she had had advantages. I thought that she was a runaway because she looked so young--you know--she was sick. She had hepatitis.

Q And when you say that her father was an officer at the base, did you learn that was Fort Bragg, North Carolina?

A Yes, sir; it was Fort Bragg.

Q Now, did you ever find out or ever discuss with her the reasons why she left Fayetteville, North

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Carolina?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: May I not ascertain whether or not she learned it without the conversation being stated?

THE COURT: I will let her say yes or no.

BY MR. SEGAL:

Q Did you ever learn the reason why Ms. Stoeckley said she left North Carolina?

A Yes.

Q You cannot tell us that, however.

MR. MURTAGH: OB---

MR. SEGAL: Do you want me to have her tell us?

THE COURT: Ask your question.

BY MR. SEGAL:

Q About what month, if you can pinpoint it, Mrs. Zillioux, did you hear from Helena Stoeckley the reasons for her leaving North Carolina?

A It was right around the last of October or November. It was right around Thanksgiving time--somewhere around that.

Q 1970?

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A Yes, sir.

Q When was the last time you saw Ms. Stoeckley in Nashville?

A Well, I don't remember when the last time I saw her--the last time I spoke to her I remember very well.

Q Okay, when was the last time you spoke to Helena Stoeckley?

A When I went to her apartment to check on her because she was sick, and I hadn't seen her for a few days.

Q Again, you cannot tell us what was said. Do you recall a date or a month in which that conversation took place?

A Around Thanksgiving.

Q Of 1970?

A Yes, sir.

Q And that was the last time you had occasion to talk with Helena; is that right?

A Yes, sir.

Q Have you seen Helena Stoeckley during any time in the last week?

A Yes.

Q Could you tell the members of the jury where and under what circumstances you had occasion to see Ms.

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Stoeckley?

A I was in the witness room Friday--Thursday afternoon--the first time I had seen Helena in ten years, and I recognized her immediately. I said, "Hello, Helena."

Q Were you present in the witness room when Helena Stoeckley was shown a series of photographs in a book similar to the one that I am holding in my hand?

A Yes, sir; I was.

Q Were you seated in the room when that was taking place?

A I was seated right beside her.

Q And who was the person who showed her those photographs?

A I believe Mr. Beasley probably.

Q Did Ms. Stoeckley continue to look at those photographs more than once?

A At least four times she kept going back to the photograph of the smallest MacDonald child--the one that the baby was laying in bed in a pool of blood and had its little bottle.

Q Now, let me show you some photographs that have previously been marked in evidence and see perhaps if you can tell us which one of the photographs Ms. Stoeckley returned to. I have, just to make it a little

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easier, put some paperclips on some photos here.

A It was this one.

MR. SEGAL: The witness has indicated the photo that has been marked for identification as Government Exhibit G-60, Your Honor, which has previously been identified here in court as a photograph of Kristen MacDonald in her pajamas on the bed.

BY MR. SEGAL:

Q Now, what, if anything, did Helena Stoeckley say--well, did she say anything the first time she looked at the picture?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did Helena Stoeckley ever indicate to you that she had ever seen the scene or the person depicted in that picture previous to the time that she looked at that book?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did Helena Stoeckley in any way indicate familiarity with the materials there?

MR. BLACKBURN: OBJECTION.

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THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Was there anything else in that book that Ms. Stoeckley had occasion to look at and took some particular note of during the time that you were present?

MR. ANDERSON: OBJECTION to the question.

MR. SEGAL: I am not asking for conversation, Your Honor--only reactions.

THE COURT: I will let her say yes or no to that one.

THE WITNESS: Yes.

BY MR. SEGAL:

Q And was it in regard to some other picture in that book?

A Two.

Q Would you look through the book again--well, do you know what was depicted in the first of those two pictures? We will do them one at a time. What is depicted in the picture that you say something was said about?

A A child's rocking horse.

Q All right, would you look again at the pictures and again either the paperclips may be of some help in the back of the book or you may find them yourself?

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A This one.

MR. SEGAL: May the record reflect that the witness has indicated a photograph previously marked as G-59 which would be a longer range photograph of the bed of Kristen MacDonald showing the child in the bed and in the left foreground, a rocking horse.

BY MR. SEGAL:

Q Now, in regard to this particular photo, what, if anything, did Ms. Stoeckley say to you about that photo?

MR. ANDERSON: OBJECTION.

MR. MURTAGH: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did in any way Ms. Stoeckley indicate that she recognized seeing that scene herself?

MR. ANDERSON: OBJECTION.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, you mentioned there was a third photograph, Mrs. Zillioux, that Ms. Stoeckley stopped and looked at. What did that scene depict?

A There was one--an artist's rendition of her own face from Dr. MacDonald's police---

MR. MURTAGH: (Interposing) OBJECTION, Your Honor.

THE COURT: She has stopped in the middle. She has answered part of the question. I will OVERRULE it as to that. Ask your next question.

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BY MR. SEGAL:

Q Let me show you what has been marked previously as Defendant Exhibit 89, artist's rendition of a female and ask whether this is the picture that Ms. Stoeckley stopped and looked at?

A Yes, sir.

Q What if anything did she say when she saw that picture?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did she indicate that she recognized the face of the person depicted in that drawing?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, was Ms. Stoeckley shown some other artist-type drawings like the one you have up there?

A Yes, sir.

Q I want to show you one that has been marked for identification as Defendant Exhibit D-90.

MR. BLACKBURN: That has not been published.

THE WITNESS: This is the one.

MR. SEGAL: You are about one step

#10 p2

ahead of me.

BY MR. SEGAL:

Q What if anything happened when that--well, first of all, was that picture shown to Ms. Stoeckley?

A This was the picture.

MR. BLACKBURN: Your Honor--

BY MR. SEGAL:

Q When you say, "This is the picture," though, we don't have the context. What if anything happened when that picture was shown to Ms. Stoeckley?

A She identified it.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Without telling us what she said---

MR. MURTAGH: (Interposing) OBJECTION.

MR. SEGAL: I don't know what--without telling us what she said--is an objectionable statement, but I will wait for a ruling on that, Your Honor.

MR. BLACKBURN: Your Honor, may we approach the bench?

THE COURT: Yeah, come up.

B E N C H C O N F E R E N C E

MR. BLACKBURN: Your Honor, this is nothing

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but going in the back door with what they couldn't get in the front door with this type of question. We object to it of course, but they are asking questions that they know are going to be sustained because of the rulings.

I think it is prejudicial to the Government in that regard, to have to go through each of these six witnesses and ask the questions.

THE COURT: I don't think it is proper to ask a question if you know it is going to be sustained, simply to get in the evidence by the way of question; but I would hate to say that I could delve into counsel's mind and say that he knows what is going to be sustained and what ain't.

MR. SEGAL: I will also say, Your Honor, we have--I mean, assuming that Your Honor is going to rule the same on similar questions, we have not by my question tried to put the contents in.

That would clearly be--you know--I think that I should anticipate has to wait for a ruling. I also want to say, Your Honor, I don't understand how the Court can rule on my question when Mr. Murtagh insists upon objecting when I have said three words which haven't framed it.

My whole--maybe I was trained wrong, but

#10 p4

I was always told unless the questioner was saying something that was totally outrageous---

THE COURT: (Interposing) Look, let him get his question out.

MR. BLACKBURN: The basis of our problem is this: we have told Your Honor before this witness started that you can say barely say "Objection" before she is giving the answer.

MR. SEGAL: I will instruct her. That is fair. I will ask her.

MR. BLACKBURN: We also think it is objectionable to keep on saying two or three times every five minutes, "you can't answer that," because everybody knows that.

MR. SEGAL: I will ask the witness to wait before she answers any questions and see if the Government is going to object, and I won't say it again.

THE COURT: You think that is a form of evidence, too, don't you?

MR. BLACKBURN: It doesn't take much for the jury to figure out what somebody is going to say.

THE COURT: Let's go.

(Bench conference terminated.)

THE COURT: Ms. Zillioux, the lawyers exercising their prerogative in compliance with the

#10 p5

duty to represent fully their clients occasionally interpose objections to questions.

I verily anticipate, in view of the past performances in this trial, that that will be repeated before you leave the stand.

I ask you, please, at the end of every question to wait until--and see whether or not there is an objection. If there's not, go ahead and answer it; and if there is, don't say anything until I can rule on it.

THE WITNESS: Thank you.

BY MR. SEGAL:

Q Now, in regard to the artist's rendition of the man that you have up there in front of you, when that particular drawing was shown to Ms. Stoeckley, did she indicate in any physical way a reaction to that drawing?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did she indicate in any way that she knew the person depicted there?

MR. BLACKBURN: OBJECTION.

THE COURT: I will OVERRULE that.

BY MR. SEGAL:

Q Did she indicate whether she knew the person who is depicted there?

A Yes, sir.

Q Did she state the name of the person that she believed is depicted in that photograph--that drawing?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you recall the name that she gave?

A Mazzarole.

Q Mazzarole? Did she state at that time the first name, or do you recall a first name?

A She called him--she said, "This is Mazzarole."

Q Did she say anything else about her knowledge of that man at that time?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, I would also like you to take a look at one other series of photographs that are contained in this book. I would ask you to look at the photographs that are marked Government 23, 24, 24(b), 26, which are four photographs which have been previously identified

#10 p7

here in this trial as photographs of the MacDonald living room. Would you look at those photographs, and they have been marked with a clip?

(Witness complies.)

Q Have you had a chance to look at it?

(Witness nods affirmatively.)

Q I will have to ask you to say "yes" or "no" for the stenographer?

A Yes, sir.

Q Did, at any time, if you recall, Ms. Stoeckley examine that particular grouping of photographs of the MacDonald living room?

A Yes, sir.

Q Did she in any way indicate that she recognized anything depicted in those photographs?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did she say anything indicating that she had knowledge about the physical facts depicted in that scene?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did Ms. Stoeckley say whether she had ever

been at the scene depicted in those photographs?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, after Ms. Stoeckley looked at those photographs--can you tell us perhaps for how long she had the photographs and, you know, looked at them?

A Approximately an hour.

Q At the end of that period of time, were the photographs taken away or put aside in some fashion?

A Put aside.

Q Did Ms. Stoeckley say anything at that time about the totality of the scenes depicted in there; that is, did she say anything indicating recognition and prior knowledge of the places and events depicted in those photographs?

MR. ANDERSON: OBJECTION.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did Ms. Stoeckley say anything to you within the time that you were in the room--witness room with her--about having carried a lighted candle in February of 1970?

MR. BLACKBURN: OBJECTION.

#10 p9

THE COURT: SUSTAINED.

MR. SEGAL: I have no further questions of Ms. Zillioux at this time, Your Honor.

MR. BLACKBURN: Just a moment, Your Honor.

(Pause.)

C R O S S E X A M I N A T I O N 11:40 a.m.

BY MR. BLACKBURN:

Q Ms. Zillioux, do you recall how long you were in the witness room--the Defendant's witness room--with Ms. Stoeckley?

A Sir, I never wear a watch, but it was several hours.

Q Several hours?

A Yes, sir.

Q That was on Thursday of last week?

A Yes, sir.

Q Who else was in the witness room with you, if you recall?

A Various people at different times.

Q Mr. Beasley?

A Yes, sir.

Q At whose request were you there in the room?

A Helena's.

#10 p10

Q At Helena's. What about Mr. Beasley, do you know?

A I never saw Mr. Beasley before the other day.

Q Besides the two of you, who else if anyone was in the witness room with you?

A Various people at various times, in and out.

Q Was either Mr. Segal or one of his assistants there in the room during this time?

A Not always.

Q Some of the time?

A Some of the time.

MR. BLACKBURN: No further questions, Your Honor.

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

(No response.)

MR. SEGAL: Thank you very much, Ms. Zillioux, you may step down.

(Witness excused.)

THE COURT: All right, now we will go take our recess and we will come back at 12:00 noon today. Members of the jury, don't talk about the case.

(The proceeding was recessed at 11:42 a.m., to reconvene at 12:00 noon this same day.)

F U R T H E R P R O C E E D I N G S 12:00 Noon

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

THE COURT: Any further evidence for the Defendant?

MR. SEGAL: I am ready to call the next witness.

THE COURT: Call him.

MR. SEGAL: Charles Underhill, please.

MR. BLACKBURN: Your Honor, while we are waiting, may we approach the Bench?

THE COURT: By all means.

THE CLERK: Mr. Underhill, you have been previously sworn. You may just go around and take a seat on the witness stand.

B E N C H C O N F E R E N C E

MR. BLACKBURN: At this time, we would request, based on the examination of this previous witness, that the Court instruct counsel for the Defendant not to ask questions that he knows objections are going to be sustained.

THE COURT: All right, I will so

instruct him. Don't ask a question if you know that the OBJECTION is going to be SUSTAINED.

MR. SEGAL: I was not here for part of the earliest ruling. I gather Your Honor does not-- would not permit a witness to answer as to the contents of a statement that Ms. Stoeckley made to him in December of 1970, in Nashville. I may say he had a conversation?

THE COURT: Yes.

MR. SEGAL: I have other matters.

MR. MURTAGH: Our OBJECTION would be to questions in which photographs were shown because they are obviously going to be OBJECTED to.

MR. SEGAL: There are no questions about the photographs of this witness anyway.

MR. MURTAGH: Or any witness.

MR. SEGAL: We will get to that.

(Bench Conference terminated.)

(Whereupon,

CHARLES EDWARD UNDERHILL

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

XXX

D I R E C T E X A M I N A T I O N 12:02 p.m.

BY MR. SEGAL:

Q Would you state your full name and address for the record, please, Mr. Underhill?

A Certainly; Charles Edward Underhill; 2699 Lowell Avenue; Jacksonville; Florida 32205.

Q Mr. Underhill, did you ever live in Nashville, Tennessee, in the year 1970, or '71?

A Yes, sir; I certainly did.

Q Would you tell us what were the years of your residence in Nashville?

A 1967 through 1973.

Q In what particular part of town did you live in when you were in Nashville particularly in the year 1970?

A I lived over in the Belle Meade College area, which Belmont Boulevard runs parallel north and south to this college. That is, I would say, two and a half miles from right downtown in Nashville, Tennessee.

Q Could you tell us what kind of neighborhood that was in 1970?

A Well, that is really hard to describe because it is just like any older neighborhood. You get just the best of the first class citizen, you know, at this corner and then maybe the next corner, you have got what you call just plain-out trash. I know it sounds kind of confusing, but it is a mediocre

neighborhood.

Q What was your address in 1970?

A Well, I lived out on Franklin Road, which is, I think, it was 26--this sounds awful ridiculous. I think it is 2615, I believe.

Q Did you know Jane McCampbell who is now Jane Zillioux in 1970?

A Yes, sir; I certainly did.

Q Did she live anywhere near you?

A Well, she lived about a mile and a half from where I lived on Portland Avenue.

Q Did you happen to meet at any time in 1970, a lady by the name of Helena Stoeckley?

A Yes, sir; I did.

Q Would you tell us under what circumstances you came to meet her--you know, when and where and how that took place?

A Well, I met her at the corner of Belmont Boulevard and Portland Avenue in the latter part of September, 1970, in a ladies' shoe store named Bonnie Hudgins. Bonnie and Helena were in the store whenever I walked in, and this is the first time I ever saw her. Bonnie Hudgins, the lady that owned the store, introduced me to her.

Q Did you know where Helena Stoeckley lived at

that time?

A No, sir; I did not.

Q Did you ever find out where she lived?

A Yes, sir; I certainly did.

Q How did you learn that, and tell us if you ever had occasion to go to her apartment or her place of residence?

A Well, I went to her apartment one time in the 15th or the 16th--approximately the middle of December, 1970. I had been out of town and had returned to Nashville and asked this lady, Jane, and Bonnie about Helena because she had been sick with hepatitis.

Q You say that Helena had been sick with hepatitis?

A Helena, yes. They said, "Well, we haven't seen her for a couple of days. I guess she may be mad at us for some unknown reason," so I walked down and knocked on her door and I heard a crying that was more than normal. I knocked again and the voice that came said, "Get away."

I said, "Helena, is that you in there crying?" She said, "Get away. I don't want to see nobody." I said, "Helena, open this door and let me in." She said, "Who is it?" I said, "It is Underhill." She said,

"No, go away." I said, "I am going to go down and get Bonnie and Jane to see if they can't talk to you or just see what is wrong with you or whatever, you know, the problem is." She said, "No, don't get Bonnie." She said, "I will let you in." She came to the door and let me in, still crying, and sat down on the side of her bed. Her bedroom was right in the very front of this particular apartment, and just sobbing, just like as if maybe a member of her family had just got run over or something very drastically (sic) had happened even to her best friend or something.

I asked her, I said, "What in the Lord's world is wrong with you?"

MR. BLACKBURN: Your Honor, we would OBJECT to anything the witness may have said.

THE COURT: I assume that he does not propose to say what she said. If you do, then don't say it.

BY MR. SEGAL:

Q Did you find out from her what was the matter with her at that time?

A No, sir; I didn't find out at that time just exactly what had her upset or what she was crying about; at this time, no, sir, I did not.

Q Did you have a conversation with her,

however, in that visit to her apartment?

A Well, I did have a very short conversation at this particular time; yes, sir, I did.

Q Did it relate to anything that happened in the State of North Carolina in Fayetteville, North Carolina?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Is that the one and only time that you had ever been in her place of residence?

A Yes, sir.

Q Did you stay in contact with Helena Stoeckley after that particular episode in mid-December of 1970?

A Yes, sir; I certainly did--not by the means of seeking her out on a continuous basis, but I just saw her at various times because I visited Bonnie, this lady that had the shoe store, and Bonnie was working with Helena to help her in this drug program and so forth; so naturally, if Helena was there present all the time whenever I would visit Bonnie, naturally, I would usually see Helena when I would stop by to visit with Bonnie Hudgins.

Q Did Helena Stoeckley eventually move away

from Nashville, Tennessee?

A Yes, sir; she did.

Q Do you know when approximately the month or the season and what year that happened in?

A Well, I am not sure. I think she left there in the very first of '73, or the last of '72. I would say in the winter area.

Q Had you seen her off and on after that one time you were at her apartment in December of '70, until the time you left in '73?

A No, sir; I did not see her at her apartment. I was only there one time at her apartment. I did see her in the area, you know, as the neighborhood at this particular block on Portland Avenue or inside of Bonnie Hudgins' store.

#13
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1

BY MR. SEGAL:

Q Now, did you ever have any contact with Helena Stoeckley after '73 when she left Nashville?

A Yes, sir; I did--just by telephone. I did not visit with her in person. I was thinking about her, wondering what become of her, what happened to her, what her health turned out to be, and her dope problem--whatever--so, I made a long distance call from Jacksonville, Florida, to Nashville, Tennessee, and talked to Bonnie about how she was doing, how her mother was doing and so forth, then asked her about Helena, and she said, "Well, Red"--said, "I thought I told you"--

MR. MURTAGH: (Interposing) OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q When did this conversation take place with Bonnie Hudgins?

A In '74.

Q As a result of anything that you learned in that conversation, did you locate or find out where Helena Stoeckley was living?

A Yes, sir; I talked to her on the telephone in Daytona Beach, Florida.

Q You talked with Helena Stoeckley in Daytona?

#13
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2

A Yes, sir; certainly did.

Q And about what year was that?

A That was in '74.

Q Did you have occasion to talk to her some other time after that?

A No, sir; I never have.

Q Did you have occasion to see her last week here in this courthouse?

A Yes, sir; I did.

Q And where was that?

A Well, just right on the seventh floor here in one of them rooms back there, room number--whatever I said would be a guess.

Q Now, did you have occasion to see Helena Stoeckley this weekend outside of the courthouse?

A Yes, sir; I certainly did.

Q All right, when was the first time you came in contact with Helena Stoeckley this weekend?

A I guess it was Saturday, about 1:00 o'clock.

Q In the morning or afternoon?

A In the afternoon--p.m.

Q And where did you see Ms. Stoeckley?

A When I first saw her, she was--it looks like an old Travelodge motel. It's been renamed.

Q It was here in downtown Raleigh?

#13
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3

A Yes, sir; it was, but I just can't remember the name of the motel. I think Journey's End or Journey's Way or something of this nature.

Q And where was she when you saw her at that motel?

A She was in Room 104.

Q What, if anything, did you observe about her condition at that time?

A Well, she had a black eye.

MR. ANDERSON: OBJECTION, Your Honor.

MR. BLACKBURN: Your Honor, we would OBJECT to this on grounds of relevancy.

MR. SEGAL: We'll get to the things she said very shortly.

THE COURT: Well, I guess it is like trying to unring a bell. He said she had a black eye before there was any objection. I will let that stand. Now, ask another question, and, Mr. Witness, I will let you wait until after the question is asked against the possibility that one of those lawyers out there may say "Objection."

THE WITNESS: Yes, sir.

THE COURT: And if he does, then I have to rule before you can answer.

THE WITNESS: Yes, sir.

#13
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4

BY MR. SEGAL:

Q Now, did you observe anything else about her physical condition at that time that was unusual besides the black eye?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q In any way that you could observe, did she appear to be injured?

MR. BLACKBURN: OBJECTION.

THE COURT: Well, I believe he has answered that. SUSTAINED.

BY MR. SEGAL:

Q Did you have any conversation with Helena Stoeckley about how she came to be injured at that time?

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Now, did you see Helena Stoeckley on Sunday; that is, yesterday?

A Yes, sir; I certainly did.

Q And where did you see her? At that same motel?

A No, sir; at the Hilton on--I believe that's West Hillsborough. Of course, I don't live here so I'm

not that familiar with the streets. I believe that's the street where the Hilton is.

Q The Hilton Inn is not far from this courthouse right here.

#13
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5

A Yes, sir; that's true.

Q And how long did you spend with Helena Stoeckley?

A Well, I spent all day Sunday with her.

Q And at whose request was that? Was that yours or hers?

A Well, it was hers.

Q Did she tell you why she wanted you to stay with her?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: I think it is unfair to leave the implication of something--you know--improper going on. I'll make an Offer of Proof if Your Honor pleases. I would like to be heard on this matter at the Bench.

THE COURT: All right, come up. I will hear your Offer of Proof.

B E N C H C O N F E R E N C E

MR. SEGAL: If Your Honor pleases,

this witness will testify that her injuries--that she was assaulted this weekend--Ms. Stoeckley was assaulted not by him but by another person--and that he will--because she was in such fear from the assault, she asked him to stay with her because he is her friend.

#13
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6

THE COURT: Where was her boyfriend?

MR. BLACKBURN: It was her boyfriend.

MR. SEGAL: It was not her boyfriend.

MR. BLACKBURN: Wade Smith told me it was her boyfriend.

MR. SEGAL: There was more than one assault. Let me finish the Offer of Proof. She was assaulted more than once. There are at least two incidents over this weekend, one of which was her boyfriend, and we chased him away, and told him to get away and leave her alone.

The other was by a person whom she claimed she did not know, who walked up and struck her.

THE COURT: What's this got to do with this law suit?

MR. SEGAL: As a result of that, she was in fear. She asked Mr. Underhill to stay with her. While he was staying with her--and there is no sexual connotation or anything--she said she knew the names of the people who committed the MacDonald murders.

#13
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7

But when he said, "Why don't you tell them that in court," she offered the explanation of why she was afraid to say it in here. Now she testified here when she was a witness that she did not know where she was or what happened that night or who she was with.

She has made this statement. She has said that she knew the names. We are entitled to impeach her on that, Your Honor. Nothing could be more central to her testimony than her claim she didn't know where she was or what happened at the MacDonald house.

This man was with her at her request. I want these questions as preliminary. They are foundational that he wasn't there on some unreasonable basis--because she was in fear. He will also testify she was not under the influence of drugs, that she was sober when she said these things.

I think it is about time we were allowed to get to that issue in this case.

MR. BLACKBURN: Your Honor, we would OBJECT totally on the grounds: one, it is already clear that she has been with the Defense team and the Defense witnesses all weekend. We know that she, as you said this morning, has gone all over the lot on these things. We don't think what happened or who assaulted her is relevant. This goes right back to what you ruled this

#13
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8

morning--that those statements by Helena--she has spoken for herself and anything she has said to anybody else ought to be excluded.

MR. SEGAL: She says that she knows who committed the crimes and the Government stands here.

MR. BLACKBURN: She has said that before.

MR. ANDERSON: She is still available.

MR. SEGAL: She did not. When we asked her did she know what she was or who she was with---

MR. ANDERSON: (Interposing) Now he is talking to the jury.

(Bench conference terminated.)

THE COURT: I would like to hear what you have to say to the jury so let's don't all talk at once. Have you been talking to the jury?

THE WITNESS: Yes, sir; I asked them if they was ready for a rest home. I certainly did. I know they are awful tired and give out. I know I shouldn't have said it but I did.

THE COURT: Look at me, please.

THE WITNESS: Yes, sir.

THE COURT: Don't you say anything else to this jury unless it is in response to a question asked by some lawyer appearing in the case.

THE WITNESS: Yes, sir.

#13
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9

BENCH CONFERENCE

MR. BLACKBURN: Regardless of whether she said this yesterday, from her testimony that you read from her it is clear that she said before that she knew who did it and another time she said she only suspected that she knew who did it. This goes right back--flipflopping back and forth.

She has testified in court. It is a matter of her own credibility.

MR. SEGAL: I thought that part of the basis of Your Honor's excluding the statements made to Gaddis was you were not certain in your mind at that time whether she was under the influence of drugs or not or whether what her condition was.

Now, this witness--we will question him on this thing, but I was only trying to lay my first step foundation as to why he was with her--her fear. That is critical to explain why a witness has withheld information. If she lives in fear, that explains her equivocation. That explains why she vacillates a little bit. But here, knowing why she is in this town, the explanation has to do with the Government, Your Honor, as to why she is afraid to make her statement and they don't want to hear that.

#13
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10

MR. BLACKBURN: Your Honor, I would also say in response to that: it is not just on the basis of the drugs but also on the basis of trustworthiness. She has gone both ways on this issue.

MR. SEGAL: That is the weight--for the jury to decide.

MR. BLACKBURN: The Judge has already ruled on that.

THE COURT: All right, take your seat back out there.

(Bench conference terminated.)

(Pause.)

#14 pl

THE COURT: Members of the jury, we have another one of these knotty evidentiary questions that has come up. We let you go Friday afternoon so you would not have to be cooped up while they were being decided, but another one of a similar kind--not the same one, but a similar kind--has come up.

So I am going to let you retire a little early today and come back today at 2:30, while we go into this battle here that has arisen.

Let me say that while it may appear to you that there is a lot of foot dragging in this case, these things are important; and when points are raised, they are doing so in the discharge of their duties and responsibilities to leave no stone unturned because the case is important.

Then you say additionally that you are really not wasting all this much time because except for the matters which were handled in your absence Friday afternoon, and the rulings which had been made subsequent to that, you were perhaps looking about two days of testimony in the face, which you will not have to hear now.

So, it is not--I just say this by way of letting you know that it is not a waste of time. It is important. So I am going to let you retire now and go

quietly to your lunch, and come back today at 2:30, and we will try to have these matters resolved so it'll run a little smoother when you do get back.

Remember, in the meantime, you don't talk about the case among yourselves or with others. Don't let anything come to your attention from any outside source concerning this case until you have heard it all. Keep open minds about it. Come back at 2:30, please.

(The jury exits at 12:26 p.m.)

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

THE COURT: Now, gentlemen, with the jury having retired and in their absence, under the duty imposed upon the Court under Rule 104 of the Federal Rules of Evidence, the Court will permit this witness now to be examined on voir dire as to the admissibility of the evidence, as to which there has been an Offer of Proof here in the bench conference.

BY MR. SEGAL:

Q All right, Mr. Underhill?

A Yes, sir.

Q Let's go back if we may to the first motel you saw Ms. Stoeckley at on Sunday. Now, when you saw her there, you say she had a black eye?

#14 p3

A Yes,sir.

Q Did she have any other injuries at that time that you could see?

A When I first saw her, only the black eye.

Q That was in room 104 you saw her?

A Yes, sir.

Q Was anybody else around at that time, in her room or with her?

A There was a lady there--Ms. Rowder--Wendy Rowder.

Q An attorney that works with me?

A Yes, that's true.

Q And was anybody else around at that point?

A Well, her boyfriend that she was supposed to get married to, Ernest--whatever his name is.

Q I think his name is Ernest Davis?

A Ernest, or something.

Q What was her emotional state--what was Helena Stoeckley's emotional state at that time?

A Well, she seemed to be very, very upset, and I guess probably five to seven minutes after I first saw her I went out--I was outside at the drink machine and Ernest--this fellow Ernest--came running out there, "Oh, my lord, she's trying to this, trying todo that."

So I had a bottle of Coke, and I setit down and

#14 p4

I run in there, and she had fell. She told me she had fell in the bathroom.

Anyway, she just bled all over the bed, and it had dripped from the bathroom to the bed.

Q Did you question her about that injury--whether she'd got it by falling or whether it happened some other way?

A Well, she told me she fell, and she was in there by herself at this particular time. She was by herself. There was no one else in there with her.

And she--you know--I didn't question her about her falling, because she had a couple of things she was trying to rinse out on the shower-tub, you know, and so---

THE COURT: (Interposing) Where was she bleeding from?

THE WITNESS: From the nose, sir.

BY MR. SEGAL:

Q Now, let me ask you, did she move later on that afternoon to the Hilton Inn down at the corner of Hillsborough?

A Yes, sir, she did.

Q And do you know why she moved out there?

A Well, the lady from the motel said that she didn't want her staying there any longer.

#14 p5

Q And did you hear why--did you talk to the lady at the motel about that?

A Yes, I did.

Q What did the lady at the motel say?

A She just said she couldn't have this kind of carrying ons, you know, at the--that's a country saying--at the motel, and she preferred under all the circumstances--she preferred Helena not to be there in general.

Q Did she tell you what the circumstances were--the carrying on was--that took place?

A Well, one of the maids reported to her that in the room whenever she passed through the hallway there was--you know, she was hollering and carrying on like they was in a, you know, an argument, and a slight tussle, or something of this nature.

Q That is, talking about Helena and Ernest Davis?

A Right; yes, sir.

BY MR. SEGAL:

Q All right, sir, she then moved out because the management asked her to leave that motel?

A Well, after this maid brought this to her attention, he and her was in the swimming pool and she had on a full-length shirt and a pair of cut-off jeans and he had on a pair of cut-off jeans and no shirt. Now, I was not there to see any of this, but the lady told me that it appeared that he was ducking her under the water and holding her under the water--this Ernest was.

Q All right, as a result of all this---

MR. SEGAL: (Interposing) Your Honor, I really resent the Government's suggestion--we are trying to lay a foundation of the context--that Mr. Murtagh has to carry on like this is ridiculous.

THE COURT: How is he carrying on?

MR. SEGAL: I think leaning back and laughing about the witness' testimony. If I were a witness, I would resent it very much being dragged into Court and being made to come back---

THE COURT: (Interposing) All right, now, look, you just sit down and ask your questions. That hasn't anything to do with it. There is no jury here. The rules of evidence don't apply, and I will let

you ask your questions, but that is it.

MR. SEGAL: I appreciate that, Your Honor. I want it understood that one rule still applied even when the jury was not still here and that was a rule called decorum, and I resent the treatment of a witness being laughed at.

THE COURT: I will just say that I have not observed any decorum which was unprofessional, and I think you are mistaken to say so. I think you are reading more into it than it was. Go ahead with your questions.

BY MR. SEGAL:

Q Ms. Stoeckley went over to the Hilton Inn. Did you take her over there or do you know who took her over there?

A Well, I rode in the vehicle that Ms. Rowder drove over there, which Helena Stoeckley and I were both in the vehicle. I went because Helena asked me to go.

Q Why did she want you along, Mr. Underhill?

A Well, she told Ms. Rowder that she trusted me and that she would feel much safer if I was in the near whereabouts. As possible--the adjoining room, if possible, would even be better--she felt more safer (sic) if I was around.

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Q Did she tell you what she was worried about--what made her think that she needed to be concerned about her safety?

A Well, the girl was just scared to death--not just yesterday afternoon but last night and this morning--not one time but many times. She has repeated time after time that her life is not worth five cents out on the streets after this now. She is scared to death.

Q These statements about Helena being scared--they were made at the Hilton Inn last night and during the night and in the morning?

A Yes, sir.

Q Were you staying in a room next to hers?

A Adjoining room; yes, sir.

Q Did you talk to her about what she was afraid about--why she thought her life was not worth anything on the streets here?

A Well, I don't know who the scum of the earth scoundrels could be that she is referring to. I would like to know them because I have got an axe handle that would fit their head, I believe, but anyway, that is another story.

THE COURT: I did not hear it the first time. You have got a what?

THE WITNESS: An axe handle I ought to hit them in the head with. The way she talked about them, she is scared to death--you know, I don't know who these people could be, Your Honor, folks, but she is scared to death that there are some many people somewhere that said that her life was not worth five cents once she leaves this building and gets out on the streets. Now, who these people are, I can't tell you because I don't know.

BY MR. SEGAL:

Q Let me ask you this: did you talk with her last night and this morning about whether she knew who the persons were who killed the MacDonald family on February 17th, 1970?

A Well, let me say this, sir: last night and again this morning, she told me very distinctly and very plainly, she said, "I can name three people."

Q Did she say whether she would do it or not in Court?

A She said she would not because it would mean automatically death for her if she did.

Q She was talking about the names of the persons who killed the MacDonald family when she was saying that she could name three people?

A She did not say identically as these three

people that I am talking about done this, but the questions and the conversation---

Q (Interposing) The subject---

THE COURT: (Interposing) Wait a minute. Let him answer the question now. It is a voir dire.

THE WITNESS: The conversation between her and I, you would not have to be too bright to realize who she is talking about.

THE COURT: I don't want to get into this thing, but it is my responsibility to make this ruling, and I want this witness' testimony and not that of counsel on the basis of which I make my ruling.

MR. SEGAL: I agree, Your Honor.

THE COURT: Just ask the next question, then.

BY MR. SEGAL:

Q Did this morning she mention to you the name of a man by the name of Greg Mitchell?

A Yes, sir; she did.

Q What did she tell you about Greg Mitchell?

A She made reference to Greg Mitchell that some years back--and she didn't name the year and I don't know myself--that the Government started a drug program pertaining to people in service and she said that

this Mitchell fellow was the first one that they treated in this drug program and he was in Time magazine or U.S. News or something and this was at Fort Bragg.

Q Did she in any way connect Greg Mitchell with Dr. Jeffrey MacDonald, the Defendant in this case?

A Yes, sir. She said that Dr. MacDonald knew this Mitchell fellow.

Q Did she tell you in what way Dr. MacDonald knew Greg Mitchell or had come in contact with Greg Mitchell?

A In this treating of this program, the particular ward or hospital or whatever they had down there, I don't have any idea.

Q Did she tell you that Greg Mitchell was or was not a friend of hers?

A Oh, yes, sir. She wears a ring on her right hand that he gave her many years ago. She was engaged to him to get married at one time she told me, so she must have knew him pretty well.

MR. SEGAL: That is what we propose to offer, Your Honor.

THE COURT: Do you have any questions?

MR. MURTAGH: Yes, sir.

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CROSS-EXAMINATION 12:37 p.m.

BY MR. MURTAGH:

Q Mr. Underhill, let me ask you: after you left Court on Friday afternoon, where did you go next?

A I went to the Downtowner Hotel.

Q Okay. Who had arranged for you to stay at the Downtowner?

A Who?

Q Yes.

A Well, I guess the defense here.

Q Were the other witnesses staying at the Downtowner?

A Other witnesses?

Q Yes; Ms. Zillioux who was here?

A I am the only one who stayed over this weekend. I think everybody else went to their respective homes, you know.

Q In other words, let me ask you: as of Friday or Friday morning, were the other witnesses staying at the Downtowner to your knowledge?

A What other witnesses?

Q Let's just take Ms. Zillioux, for example?

A Oh, she was not there Saturday---

MR. SEGAL: (Interposing) Pardon me.

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If the Government wants an answer, I can state exactly the answer to that question. If you want the answer from the witness, that's something else. Do you want the answer to that?

MR. MURTAGH: Your Honor, I was questioning the witness.

THE COURT: He prefers to get it from the witness.

MR. MURTAGH: Yes, sir.

MR. SEGAL: All right.

BY MR. MURTAGH:

Q Let me ask you: at any rate, Mr. Underhill, Ms. Stoeckley was not staying at the Downtowner on Saturday morning; is that correct?

A I saw her late Friday afternoon over there. She made the remark that she was staying there.

Q What was the name of the motel other than the Hilton that you saw her at this weekend?

A It is on North McDowell here.

THE COURT: Journey's End. Go on.

THE WITNESS: Journey's End; yeah.

BY MR. MURTAGH:

Q My question is, Mr. Underhill, under what circumstances you came to go from your motel, the Downtowner, over to the motel, the Journey's End, where

Ms. Stoeckley was staying? How did that come about?

A Well, I was staying at the Downtowner and they were not open Sunday for anyone to get anything to eat. Old Red right here was on foot. I seeked the nearest restaurant. I walked to the restaurant adjoining the motel, and in there, I heard the name "Helena Stoeckley" mentioned, and she was staying there.

Q That is basically my question, Mr. Underhill. Who told you where Helena Stoeckley was staying?

A Who?

Q Yes, sir.

A My friend, I have no idea. It was just somebody sitting there next to me while I was having breakfast. That consisted of a waffle and two eggs and coffee.

#16 pl

BY MR. MURTAGH:

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

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

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

A Certainly, I eventually went over there.

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

A Ernest.

Q When did Ms. Rowder come?

A She and I went together.

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

MR. SEGAL: The second time.

BY MR. MURTAGH:

Q Is that correct?

A That's right, yes.

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

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

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

in the vicinity?

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

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

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

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

Q Yes, I do.

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

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

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

#16 p3

maybe a little---

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

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

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

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

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

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

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

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

A Well, she made that statement more than one

time.

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

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

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

A Yes, sir; she said that this morning.

Q Do you know that to be true?

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

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

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

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

#16 p5

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

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

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

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

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

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

Q Was she crying at any time?

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

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

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

THE COURT: Yes, sir.

REDIRECT EXAMINATION 12:47 p.m.

BY MR. SEGAL:

#16 p6

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

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

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

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

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

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

A Yes, sir. That happened at the Downtowner.

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

THE COURT: Anything else?

RECROSS EXAMINATION 12:48 p.m.

BY MR. MURTAGH:

Q Mr. Underhill, did you see her struck?

A No, I did not.

Q Do you know who did it?

#16 p7

A No, sir, I do not.

Q Did she say who did it?

A No, sir.

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

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

Q Do you know who made the arrangements for that?

A Who made the arrangements?

Q Uh-huh (yes).

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

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

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

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

(Witness excused.)

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

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

#16 p8

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

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

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

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

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

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

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