

VOLUME SIX OF ELEVEN

[PP. 2501-3000]

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY

JUN 13 2014

Court of Common Pleas

(Capital PCR: 2005-CP-18-1368)

S.C. Supreme Court

The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2014-000387

Kenneth Simmons, #5066,

Respondent/Petitioner,

v.

State of South Carolina,

Petitioner/Respondent.

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STATE’S EXHIBIT #18b (CD 2 OF 2) [VIDEO DEPOSITION]

THE COURT: CROSS?

MR. THEOS: THANK YOU.

CROSS-EXAMINATION

BY MR. THEOS:

Q. MRS. HILTON, WERE THERE SPECIAL ED CLASSES AT THE TIME IN '78-'79 AT SUMMERVILLE HIGH SCHOOL?

A. YES, SIR, THERE WERE.

Q. NOW, I'M GOING TO ASSUME SOMETHING FROM YOUR TESTIMONY. YOU CORRECT ME IF I'M WRONG. BUT I'M GOING TO ASSUME THAT YOU DON'T HAVE ANY INDEPENDENT RECOLLECTION OF MR. SIMMONS AND HIS PERFORMANCE IN HIGH SCHOOL WHEN YOU TAUGHT HIM DURING THAT NINE WEEK PERIOD AND THAT YOU WERE SIMPLY RELYING ON THESE RECORDS; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. NO RECOLLECTION AT ALL?

A. I HAVE A RECOLLECTION OF HIM BEING THERE. BUT TWENTY YEARS IS A LONG TIME TO REMEMBER A SPECIFIC PERFORMANCE.

Q. ALL YOU CAN TELL US APPARENTLY, BASED UPON YOUR RECORDS, IS THAT WHEN YOU HAD HIM INITIALLY HE WAS FAILING?

A. THAT'S CORRECT.

Q. BUT SUBSEQUENTLY HE WAS MOVED FROM THAT PARTICULAR CLASS INTO A REMEDIAL CLASS?

A. YES, SIR.

Q. CAN TELL US THE DIFFERENCE BETWEEN THE CLASS HE WAS IN THAT HE WAS FAILING AND THE REMEDIAL CLASS THAT HE WENT INTO?

A. IT WAS AN ELEVENTH GRADE ENGLISH CLASS. AND EVEN THOUGH IT WAS A LITTLE BIT BELOW LEVEL, I FELT AT THE TIME THAT HE MIGHT DO BETTER IN A REMEDIAL PROGRAM.

Q. AND YOU TAUGHT IN THE REGULAR CLASS?

A. YES, SIR.

Q. DID YOU ALSO TEACH THAT REMEDIAL CLASS?

A. NO, SIR, I DID NOT.

Q. DO YOU KNOW WHO THE TEACHER WAS IN THE REMEDIAL CLASS? CAN YOU TELL FROM THOSE RECORDS?

A. YES.

Q. WHO WOULD THAT HAVE BEEN?

A. LINDA SCHWEK.

Q. DO YOU HAVE ANY IDEA HOW TO SPELL THAT?

A. S-C-H-W-E-C.

Q. S-C-H-W-E-C?

A. YES.

Q. LINDA IS THE FIRST NAME?

A. YES, SIR.

Q. DO YOU KNOW IF SHE STILL TEACHES FOR THE SCHOOL DISTRICT?

JAN HILTON - CROSS/MR. THEOS

A. YES, SIR, SHE DOES.

Q. DO YOU KNOW IF SHE STILL TEACHES AT SUMMERVILLE HIGH SCHOOL?

A. YES, SIR, SHE DOES.

Q. DO YOU KNOW IF SHE STILL TEACHES ENGLISH?

A. AT THIS TIME SHE IS A RESOURCE TEACHER.

Q. DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH HER BEFORE YOU CAME IN HERE TODAY FOR YOUR TESTIMONY?

A. NO, I HAVE NOT.

Q. HAVE YOU SPOKEN WITH ANYBODY ABOUT YOUR TESTIMONY TODAY OTHER THAN FOR PURPOSES OF CONFIRMING THAT YOU HAD THESE RECORDS AND THAT KENNETH WAS IN YOUR CLASS?

A. I'VE ONLY SPOKEN TO MR. BAILEY. AND I SPOKE TO -- I'VE LOOKED AT THE RECORD WHEN I WENT OUT TO SUMMERVILLE HIGH SCHOOL.

Q. DID YOU SPEAK WITH ANY OF HIS TEACHERS?

A. NO, I HAVE NOT.

Q. NOW, I UNDERSTAND FROM YOUR TESTIMONY THAT HE IMPROVED FROM FAILING TO -- I DIDN'T HEAR YOUR TESTIMONY. WHAT GRADE WAS IT?

A. HE WENT FROM FAILING TO AN A IN REMEDIAL ENGLISH.

Q. AND AGAIN, BECAUSE YOU WEREN'T HIS TEACHER, YOU DON'T KNOW HOW HE WENT FROM THAT LEVEL, THE FAILING LEVEL, TO THIS A LEVEL; CORRECT?

JAN HILTON - CROSS/MR. THEOS

A. NO, SIR, I DO NOT.

Q. BUT IN ANY EVENT WHEN HE ULTIMATELY ACHIEVED THIS A LEVEL, HE WAS STILL FUNCTIONING IN THE FIFTH OR POSSIBLY SIXTH GRADE LEVEL IN THE ELEVENTH GRADE; IS THAT CORRECT?

A. YES, SIR, I WOULD SAY THAT.

Q. DO YOUR RECORDS REFLECT HOW OLD HE WOULD HAVE BEEN AT THAT TIME?

A. IT WAS THE '78-'79 SCHOOL YEAR. AND, SO, IF HE WAS BORN FEBRUARY THE ELEVENTH OF '61 WHICH THE RECORDS INDICATE, THAT WOULD HAVE PLACED HIM -- LET'S SEE---

THE COURT: SEVENTEEN AND SIXTY-ONE IS SEVENTY-EIGHT.

MRS. HILTON: RIGHT; SOUNDS GOOD.

Q. HE WAS 17 THEN?

A. YES, SIR.

Q. AGE AT AGE SEVENTEEN HE WOULD HAVE BEEN FUNCTIONING AT AN ELEVEN OR TWELVE YEAR OLD LEVEL; CORRECT?

A. GRADE EQUIVALENT; YES, SIR.

Q. GRADE EQUIVALENT. CAN TELL FROM THOSE RECORDS WHAT GRADE EQUIVALENT HE WAS FUNCTIONING AT WHEN HE GRADUATED FROM SUMMERVILLE HIGH SCHOOL?

A. THE LAST TESTING WAS IN THE ELEVENTH GRADE. SO I WOULDN'T BE ABLE TO STATE SPECIFICALLY IN THE

JAN HILTON - CROSS/MR. THEOS

TWELFTH GRADE.

Q. SO THE LAST RECORD THAT WE HAVE, FROM THE SCHOOL RECORDS ANYWAY RELATED TO HIS FUNCTIONING LEVEL PRIOR TO GRADUATION, WOULD BE FIFTH OR SIXTH GRADE LEVEL; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND HE GRADUATED?

A. YES, SIR, HE DID GRADUATE.

MR. THEOS: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ON RE-DIRECT?

MR. BAILEY: NO RE-DIRECT, YOUR HONOR.

THE COURT: NOW, DID YOU MAKE ANY OFFER OF THESE GRADES? YOU SAID MRS. WALSH HAD TAKEN THE ORIGINALS. I DIDN'T KNOW IF ANYONE WANTED THESE GRADES AS PART AND PARCEL OF THE RECORD. I DON'T MEAN TO BE SUGGESTIVE, BUT BEFORE SHE LEAVES.

MR. BAILEY: YES, SIR. I'VE GOT ANOTHER CORY OF THE RECORD I CAN PUT IN IF WE CAN'T GET MRS. WALSH TO BRING IT BACK. BUT I JUST WANTED THE WHOLE RECORD IN WHICH HAS THE GRADES, I.Q. TEST AND EVERYTHING.

THE COURT: RIGHT. BUT, I MEAN, IF WE HAVE A LEGIBLE COPY HERE, I WAS GOING TO ASK MR. THEOS IF HE WOULD HAVE ANY OBJECTION TO THIS

JAN HILTON - CROSS/MR. THEOS

GOING AHEAD AND BEING MADE AN EXHIBIT RATHER THAN CALLING THAT LADY TO COME BACK WHO APPARENTLY TOOK THE ORIGINALS WITH HER. YOU HAVE COPIES OF THIS?

MR. THEOS: I THOUGHT WE WERE USING COPIES OF THOSE ORIGINALS ANYWAY, JUDGE. AND WE HAD ALREADY BEEN PROVIDED COPIES BY WALTER.

THE COURT: WE ARE; BUT I DON'T THINK -- DID THE OTHER LADY HAVE COPIES OF THIS IN HER FILE?

MR. BAILEY: YES, SIR.

THE COURT: SO THIS IS IN THAT FIRST EXHIBIT?

MR. BAILEY: YES, SIR.

MR. THEOS: YOUR HONOR, MAYBE TO BE MADE CLEAR FOR THE RECORD; IS THIS, WALTER, THE SAME RECORDS THAT---

MR. BAILEY: AS FAR AS I KNOW, IT IS.

MR. THEOS: WHY DON'T WE LOOK AND MAKE SURE?

THE COURT: LOOK AND SEE. BEFORE THE LADY GETS AWAY, I JUST WANTED TO RESOLVE THAT SO YOU WON'T DISTURB HER. HERE ARE THE COPIES THAT WE HAD THE LADY MAKE.

MR. BAILEY: YES, SIR.

THE COURT: SO Y'ALL HAVE THESE COPIES, AND THAT'S A DUPLICATE ORIGINAL OF DEFENDANT'S

JAN HILTON - CROSS/MR. THEOS

ONE?

MR. BAILEY: YES, SIR.

THE COURT: AND HAS THE COURT REPORTER HAD AN OPPORTUNITY TO---

MR. BAILEY: I'M SORRY; THIS ISN'T DEFENDANT'S ONE.

THE COURT: STATE'S ONE; EXCUSE ME.

MR. BAILEY: NO; STATE'S ONE WAS THE ORIGINAL SCHOOL RECORD THAT MRS. WALSH TOOK. THIS IS THE ALCOHOL AND DRUG ABUSE COMMISSION RECORD THAT MRS. CHELLIS (PHONETICALLY SPELLED) PROVIDED.

THE COURT: SO YOU DON'T WANT TO MARK OR DEAL WITH THOSE AT THIS TIME?

MR. BAILEY: NO, SIR.

THE COURT: ALL RIGHT. BUT LET THE RECORD REFLECT THAT YOUR INVESTIGATOR HAS SHARED A COPY WITH COUNSEL, WITH YOU, ONE TO THE COURT; AND THEN WE HAVE WHAT'S CONSIDERED THE ORIGINAL LAYING THERE WITH THE COURT REPORTER. PERHAPS YOU WANT TO KEEP IT UNTIL YOU OFFER IT.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: DO YOU WANT TO JUST GET IT NOW? I'M SORRY. THAT WAY -- THANK YOU.

JAN HILTON - CROSS/MR. THEOS

MR. THEOS: YOUR HONOR, JUST BASED UPON WHAT WE'VE BEEN OVER; JUST A COUPLE OF FOLLOW-UP QUESTIONS.

CONTINUED CROSS-EXAMINATION

BY MR. THEOS:

- Q. MRS. HILTON, THOSE APPEAR TO BE THE SAME RECORDS THAT WE WERE PROVIDED BY MRS. WALSH. CAN TELL US WHERE YOU GOT THOSE RECORDS?
- A. I RECEIVED A COPY OF THE RECORDS FROM SOLICITOR BAILEY.
- Q. SO YOU DIDN'T GO YOURSELF TO THE SCHOOL DISTRICT, MRS. WALSH OR ANYBODY ELSE, TO TRY TO RETAIN COPIES OR VERIFY WHETHER THESE WERE COMPLETE COPIES OF THE RECORDS?
- A. I DID LOOK AT THE ORIGINAL COPY AT SUMMERVILLE HIGH SCHOOL.
- Q. DO THESE APPEAR TO BE THE COPY OF THOSE ORIGINAL RECORDS, EVERYTHING THAT YOU SAW?
- A. YES, SIR.
- Q. NOW I SAW ON THE BACK END; AND I ASKED YOU TO MARK IT WITH -- TO HOLD IT WITH YOUR HANDS -- THERE IS SOMETHING OTHER THAN THE SCHOOL RECORD IN YOUR HAND. CAN TELL US WHAT THAT IS?
- A. THIS IS A STATEMENT PROVIDED BY KENNETH SIMMONS.
- Q. ALL RIGHT. AND LET'S JUST READ THE TITLE OUT LOUD

JAN HILTON - CROSS/MR. THEOS

TO MAKE SURE.

A. IT'S A VOLUNTARY STATEMENT.

Q. IT'S A TWO PAGE STATEMENT, A VOLUNTARY STATEMENT, IT'S CAPTIONED, TITLED, AND IT APPEARS TO HAVE BEEN SIGNED AND IS DATED 3:05 P.M. ON THE FIFTH DAY OF '97; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. ALL RIGHT. AND THIS, OF COURSE, WASN'T ANYTHING IN THE SCHOOL RECORDS?

A. NO, SIR, IT WAS NOT.

Q. DO YOU KNOW WHY THIS WAS PROVIDED TO YOU?

A. MR. BAILEY WANTED ME TO READ THROUGH THIS TO DETERMINE, YOU KNOW, AS FAR AS WAS HE ABLE TO READ AND WRITE.

Q. HE WANTED YOU TO TRY TO DETERMINE THAT FROM READING THIS WRITTEN STATEMENT, OR DID HE GIVE YOU THAT AND ASK IF YOU COULD RECALL WHETHER OR NOT MR. SIMMONS COULD READ AND WRITE?

A. NO. HE ASKED ME TO DETERMINE THE READING AND WRITING BASED ON THE STATEMENT.

Q. JUST TO MAKE THAT DETERMINATION BASED UPON THAT WRITTEN STATEMENT ITSELF?

A. WELL, AND THE RECORDS; THE SCHOOL RECORDS ALSO.

Q. OF COURSE WITHOUT A SPECIFIC RECOLLECTION, YOU CAN'T MAKE THAT DETERMINATION, CAN YOU?

JAN HILTON - CROSS/MR. THEOS

A. I AM TRAINED AS A READING SPECIALIST. SO I CAN, YOU KNOW, DO READABILITY FORMULAS AND STUFF LIKE THAT. BUT I JUST TOOK A GENERAL VIEW OF THIS.

Q. BUT, OF COURSE, TO ASSESS THAT ISSUE, YOU WOULD HAVE TO SPEND TIME WITH MR. SIMMONS, GIVE HIM APPROPRIATE TESTING IN ORDER TO DETERMINE WHETHER IN FACT HE CAN READ AND WRITE AND AT WHAT LEVEL HE CAN READ AND WRITE; CORRECT?

A. AT THIS POINT IN TIME, YES, I WOULD.

Q. IN OTHER WORDS, YOU CERTAINLY DON'T HAVE SUFFICIENT INFORMATION TO MAKE AN EDUCATED, RELIABLE, DECISION; CORRECT?

A. I CAN ONLY SAY WHAT HE PERFORMED AT THIS TIME ACCORDING TO THE SCHOOL RECORDS.

MR. THEOS: THAT'S ALL, YOUR HONOR.

MR. BAILEY: YOUR HONOR, COULD I FOLLOW UP BRIEFLY?

THE COURT: CERTAINLY.

RE-DIRECT EXAMINATION

BY MR. BAILEY:

Q. MRS. HILTON, THE TWO PAGE STATEMENT THAT I PROVIDED TO YOU WHEN WE HAD OUR INTERVIEW.

A. YES, SIR.

Q. WOULD YOU STATE WHETHER OR NOT THE LANGUAGE USED IN THAT STATEMENT AND THE CONTENT AND ALL THAT IS

JAN HILTON - RE-DIRECT/MR. BAILEY

2511 36

CONSISTENT WAS YOUR EARLIER TESTIMONY ABOUT A FIFTH
OR SIXTH GRADE READING AND WRITING LEVEL?

A. YES, SIR, I WOULD.

Q. THANK YOU. THAT'S ALL I HAVE.

MR. THEOS: NO OTHER QUESTIONS.

THE COURT: ANY OBJECTION TO THIS LADY BEING
EXCUSED?

MR. BAILEY: NO, SIR, JUDGE.

THE COURT: THANK YOU, MA'AM, FOR COMING. AND
YOU HAVE A NICE DAY.

MR. BAILEY: YOUR HONOR, THE STATE WOULD NEXT
CALL PRISCILLA JOHNSON.

WHEREUPON,

PRISCILLA JOHNSON, WHO AFTER BEING FIRST
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MRS. JOHNSON, YOU'RE EMPLOYED BY THE DORCHESTER
COUNTY DETENTION CENTER; IS THAT CORRECT?

A. YES, SIR.

Q. HOW LONG HAVE YOU WORKED OVER AT THE JAIL?

A. SINCE '89.

Q. SINCE '89?

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

A. YES.

Q. WHAT'S YOUR RANK AT THIS TIME?

A. CORPORAL.

Q. WOULD YOU TELL THE COURT WHAT YOUR DUTIES AND RESPONSIBILITIES ARE?

A. YES, SIR. I DO PROGRAMMING. I DO THE INMATES' ACCOUNTS. I DO THE MAIL, COMMISSARY, AND LIBRARY.

Q. WHERE IS THE COMMISSARY PHYSICALLY LOCATED, AT THE PRISON, OR AT THE JAIL? IF AN INMATE AT THE JAIL WANTS TO ORDER SOMETHING FROM THE COMMISSARY, HOW DO THEY GO ABOUT DOING THAT?

A. ALL DORMS ARE GIVEN COMMISSARY SLIPS, AND THEY WRITE DOWN WHAT THEY NEED AND THEY GIVE IT TO NIGHT SHIFT, AND NIGHT SHIFT PUTS THE COMMISSARY SLIPS IN THE COMPUTER.

Q. AND THAT'S PART OF YOUR JOB TO PROCESS THAT PAPER WORK?

A. THEY PUT IT IN MY BOX. AND THE NEXT DAY, LIKE ON A TUESDAY AND A FRIDAY, I'M THE ONE THAT GIVES OUT THE COMMISSARY SLIPS TO THEM.

Q. OKAY. WHAT TYPE OF THINGS ARE AVAILABLE FROM THE COMMISSARY?

A. HYGIENES, CANDY, COOKIES, MAGAZINES, BOTTLES.

Q. I'M GOING TO HAND YOU TWO PIECES OF PAPER AND ASK WHETHER OR NOT TO YOUR KNOWLEDGE THESE CAME OUT OF

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

KENNETH SIMMONS' JAIL FILE. (WITNESS REVIEWS
DOCUMENT.)

A. YES.

Q. OKAY. AND THE FIRST PIECE OF PAPER YOU'RE LOOKING
AT IS A LITTLE PIECE OF PAPER. WHAT IS THAT?

A. THIS ONE?

Q. YES.

A. THIS IS SOME STUFF THAT HE ORDERED.

Q. WHEN YOU SAY "HE", WHO ARE YOU TALKING ABOUT?

A. KENNETH SIMMONS.

Q. FOR THE RECORD, POINT HIM OUT, PLEASE.

A. HE'S OVER THERE. (INDICATING.)

Q. OKAY. IN THE JUMPSUIT ON THE END OF THE TABLE?

A. YES, SIR.

Q. ALL RIGHT. NOW, YOU SAY THAT'S A PAPER INDICATING
THAT MR. SIMMONS ORDERED SOMETHING FROM THE
COMMISSARY?

A. YES.

Q. WHAT DOES THAT SAY THAT HE ORDERED?

A. SOAP, PEANUT BUTTER CUPS, JET, A FRIENDSHIP CARD,
AND A MOON PIE.

Q. WHAT IS JET?

A. IT'S A MAGAZINE.

MR. THEOS: EXCUSE ME, YOUR HONOR. BEFORE WE
CONTINUE CAN WE BE PROVIDED A COPY OF THAT OR

SHOWN THAT? WE'VE NEVER SEEN IT BEFORE. WE
DON'T KNOW ANYTHING ABOUT IT.

MR. BAILEY: CERTAINLY; WE'LL PROVIDE IT. YOUR
HONOR, COULD I HAVE THE COURT REPORTER MARK
THESE FOR THIS HEARING ONLY.

THE COURT: SURE. STATE'S NUMBER TWO FOR I.D.
UNLESS THERE'S NO OBJECTION.

MR. THEOS: NO OBJECTION FOR I.D. AT THIS
POINT, YOUR HONOR. I ASSUME HE'S GOING TO
ESTABLISH A FOUNDATION.

STATE'S EXHIBIT NOS. 2 & 3

MARKED FOR IDENTIFICATION

Q. MRS. JOHNSON, LET ME ASK YOU A FEW MORE QUESTIONS
ABOUT STATE'S NUMBER THREE WHICH IS A PIECE OF
PAPER WE WERE TALKING ABOUT A MINUTE AGO. NOW, YOU
HAD TESTIFIED THAT YOU HAD SOME INVOLVEMENT WHEN AN
INMATE WANTED TO ORDER SOMETHING FROM THE
COMMISSARY. TELL US AGAIN WHAT INVOLVEMENT YOU HAD
WITH THAT PARTICULAR FORM THERE.

A. WE JUST KEEP THE FORMS IN CASE SOMETHING AT THE
COMMISSARY DOESN'T COME IN.

Q. OKAY.

A. AND THEN WE HAVE TO CALL SWANSON AND FAX IT TO THEM
SO THEY CAN SEND THE STUFF BACK TO US THAT THEY
DIDN'T RECEIVE.

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

Q. ALL RIGHT. AND THE COMMISSARY IS LOCATED WHERE; AT THE DEPARTMENT OF CORRECTIONS?

A. IN COLUMBIA.

Q. IN COLUMBIA?

A. YES.

Q. SO SOME PAPERWORK IS GENERATED BY THE INMATE; THAT GOES THROUGH YOU; AND THAT GOES TO COLUMBIA; AND THEN THE ITEM COMES BACK TO THE JAIL?

A. YES, SIR.

Q. AND WHO DISTRIBUTES THOSE ITEMS TO THE INMATES?

A. I DO.

Q. OKAY. NOW, THIS OTHER PIECE OF PAPER, STATE'S TWO FOR I.D.; WHAT IS THAT?

A. THIS IS WHAT I FAXED TO THE SWANSON COMMISSARY WHEN THE INMATES ARE MISSING ANY ITEMS. I FAX IT TO THEM SO I CAN GET IT BACK.

Q. SO THAT'S A COPY OF SOMETHING YOU'D FAX YOURSELF, THE MISSING ITEMS THAT HAVE BEEN ORDERED FROM THE COMMISSARY?

A. YES.

Q. AND DOES KENNETH SIMMONS' NAME APPEAR ON THAT?

A. YES.

Q. OKAY. AND HIS IS WHAT, THE FIFTH NAME DOWN THERE?

A. YES, SIR.

Q. WHAT DOES THAT INDICATE THAT MR. SIMMONS ORDERED?

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

- A. THAT HE WAS MISSING A JET MAGAZINE.
- Q. OKAY. WOULD THAT BE THE JET MAGAZINE THAT HE HAD ORDERED WITH THAT OTHER FORM?
- A. YES, SIR.
- Q. HOW MANY TIMES TO YOUR KNOWLEDGE HAS MR. SIMMONS ORDERED A JET MAGAZINE FROM THE COMMISSARY?
- A. JUST ONCE.
- Q. OKAY. NOW, AT THE JAIL DO THE INMATES HAVE ACCESS TO NEWSPAPERS AND MAGAZINES OTHER THAN STUFF THAT COMES INTO FROM THE COMMISSARY?
- A. YES.
- Q. WHAT NEWSPAPER IS AVAILABLE AT THE JAIL?
- A. DIRECTOR BONDS, (PHONETICALLY SPELLED) HE ORDERED THE SUMMERVILLE JOURNAL.
- Q. OKAY.
- A. WE GET THAT OUT TWICE A WEEK.

THE COURT: WHAT KIND OF JOURNAL?

MRS. JOHNSON: THE SUMMERVILLE JOURNAL.

THE COURT: THE SUMMERVILLE JOURNAL? OKAY;
THANK YOU.

- Q. WHAT OTHER NEWSPAPERS DOES DIRECTOR BONDS ORDER FOR THE INMATES?
- A. THAT'S THE ONLY ONE. BUT SOME INMATES, THEY HAVE MONEY AND THEIR FAMILY SENDS THEM U.S.A. TODAY PAPERS.

Q. U.S.A. TODAY?

A. YES.

Q. NOW, WOULD YOU STATE WHETHER OR NOT YOU HAVE ANY KNOWLEDGE OF MR. SIMMONS ACQUIRING NEWSPAPERS AT THE JAIL?

A. WE GIVE THEM TO MAX, ON THAT SIDE.

Q. OKAY. HAVE YOU SEEN MR. SIMMONS WITH A NEWSPAPER?

A. YES.

Q. OKAY. WHAT TYPE NEWSPAPER HAVE YOU SEEN HIM WITH?

A. SUMMERVILLE AND U.S.A. TODAY.

Q. AND DID YOU GIVE THEM THOSE NEWSPAPERS?

A. YES, SIR.

Q. DID HE REQUEST THAT YOU GIVE HIM THE NEWSPAPERS?

A. FROM SUMMERVILLE; YES.

Q. HE ASKED YOU FOR THE SUMMERVILLE JOURNAL?

A. YES.

Q. I BELIEVE YOU SAID PART OF YOUR DUTIES AND RESPONSIBILITIES WERE TO HANDLE THE MAIL?

A. YES.

Q. THE INGOING AND OUTGOING MAIL?

A. YES.

Q. IS THERE A MAIL LOG THAT'S KEPT WHEN A PRISONER MAELS SOMETHING?

A. YES. WE KEEP ONE FOR PEOPLE THAT DON'T HAVE ANY MONEY AT THE TIME.

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

Q. OKAY.

A. AND WE GIVE THEM TWO LETTERS A WEEK, AND THE COUNTY PAYS FOR IT.

Q. ALL RIGHT.

A. SO I HAVE TO KEEP A RECORD OF IT.

Q. OKAY. I'M GOING TO HAND YOU TWO PAGES AND ASK IF THESE APPEAR TO BE TWO PAGES OF THE MAIL LOG FROM MR. SIMMONS' FILE? (WITNESS EXAMINES DOCUMENT.)

A. YES.

Q. FOR EACH INMATE THAT HAS THESE FREE MAILING PRIVILEGES, DO YOU PUT HIS NAME ON THE MAIL LOG?

A. YES.

Q. OKAY. DOES THE MAIL LOG GO IN HIS FILE?

A. IT DOESN'T GO IN HIS FILE. THE JAIL JUST KEEPS IT SO WE'LL KNOW THAT THEY DID SEND OUT A LETTER.

Q. AND YOU'RE FAMILIAR WITH THE METHOD OF PREPARATION OF THOSE DOCUMENTS INVOLVING THE MAIL LOG?

A. YES.

Q. DOES THAT APPEAR TO BE THE ORIGINAL OF THE TWO PAGES OF MAIL LOG WITH KENNETH SIMMONS' NAME ON IT?

A. YES.

Q. DOES THAT INDICATE THAT MR. SIMMONS WAS MAILING LETTERS TO PEOPLE?

A. YES.

Q. OKAY. LET ME ASK YOU A COUPLE MORE QUESTIONS, MRS.

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

JOHNSON. WHO PREPARES THESE MAIL LOGS?

A. (NO RESPONSE.)

Q. WHOSE HANDWRITING IS THIS?

A. IT'S MINE.

Q. YOUR HANDWRITING?

A. YES, SIR.

Q. ON BOTH OF THEM?

A. YES.

Q. SO YOU HAVE -- THIS IS YOUR WORK PRODUCT; IS THAT CORRECT?

A. YES.

Q. MADE IN THE NORMAL COURSE OF BUSINESS AT THE JAIL?

A. YES.

MR. BAILEY: YOUR HONOR, I WOULD MOVE TO INTRODUCE THESE FOR THIS HEARING ONLY.

THE COURT: THAT'S STATE'S TWO AND THREE?

MR. BAILEY: I THINK THREE AND FOUR.

THE COURT REPORTER: IT'S FOUR AND FIVE.

MR. BAILEY: IT'S FOUR AND FIVE. WE WERE BOTH WRONG.

THE COURT: WELL, LET ME GO BACK NOW. MA'AM, STATE'S NUMBER ONE, MADAM COURT REPORTER, THAT WAS MRS. WALSH'S?

THE COURT REPORTER: RIGHT; SCHOOL RECORDS.

THE COURT: SCHOOL RECORDS. AND WHAT DO YOU

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HAVE FOR STATE'S TWO?

THE COURT REPORTER: A CONTINUATION SHEET IS
NUMBER TWO.

THE COURT: A CONTINUATION SHEET?

THE COURT REPORTER: YES, SIR.

THE COURT: OF WHO?

MR. BAILEY: YOUR HONOR, THAT'S A DOCUMENT
THAT SHE TESTIFIED WAS THE FOLLOW-UP THAT SHE
WOULD FAX IF THEY DIDN'T THE GET STUFF FROM
THE COMMISSARY.

THE COURT: AND THAT'S WITHOUT OBJECTION, MR.
THEOS?

MR. THEOS: YES, SIR, YOUR HONOR.

THE COURT: THE FAX FOLLOW-UP IS STATE'S
NUMBER TWO. AND STATE'S THREE IS?

THE COURT REPORTER: THAT'S AN ORDER SHEET
WHERE HE ORDERED FROM THE COMMISSARY.

THE COURT: STATE'S THREE IS THE ORDER SHEET.
AND NUMBER FOUR?

THE COURT REPORTER: NUMBER FOUR IS -- IT'S
GOT THE INMATE'S NAME.

MR. BAILEY: THAT'S A PAGE OFF THE MAIL LOG.

THE COURT: THESE ARE MAIL LOG SHEETS. AND
FIVE?

THE COURT REPORTER: NUMBER FIVE IS PRISONER'S

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MAIL LOG.

THE COURT: WELL, WHAT'S THE DIFFERENCE IN
FOUR AND FIVE?

MR. BAILEY: IT APPEARS TO BE TWO DIFFERENT
SHEETS.

THE COURT: OF THE SAME THING?

MR. BAILEY: YES, SIR.

THE COURT: AND WHAT ARE THE DATES, THOUGH?

THE COURT REPORTER: NUMBER FOUR IS JULY THE
27TH OF '98 THROUGH AUGUST THE SECOND OF '98.

THE COURT: AND NUMBER FIVE?

THE COURT REPORTER: MAY THE 4TH OF '98
THROUGH 5/10/98.

THE COURT: ALL RIGHT. AND, GENTLEMEN, LET
ME, WITH THE PERMISSION OF THE COURT REPORTER,
OF COURSE; SO MANY TIMES IN A JURY TRIAL, THE
THIRTEENTH JUROR IS FORGOTTEN. LAWYERS TALK
ABOUT -- THEY INTRODUCE NUMBERS OF EXHIBITS,
AND THE COURT NEVER SEES THEM. BUT HERE TODAY
I SEE THE JUDGE AND JURY. SO IF YOU'RE
INTRODUCING THESE FOR THE BENEFIT OF THE COURT
FOR ME TO BE ABLE TO DISCERN AND DIGEST AND
UTILIZE THEM, OR WHATEVER, LET ME ASK Y'ALL
THAT AFTER YOU GET THESE IN EVIDENCE AND
YOU'RE THROUGH QUESTIONING THE WITNESS, COULD

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I GET YOU TO PASS THEM UP TO ME SO I COULD
HAVE A CHANCE TO LOOK AT THEM?

MR. BAILEY: YES, SIR.

THE COURT: AND, MA'AM, I'LL TRY NOT TO LOSE
ANY. I'VE GOT A LITTLE CLEAN PLACE HERE I'LL
PUT THEM. SO LET ME HOLD ONE, TWO, AND THREE,
IF YOU'RE THROUGH WITH THOSE. AND I'LL BE
LOOKING AT THEM. AND THEN WHEN YOU'RE
FINISHED WITH THE OTHER ONES, IF YOU'D PASS
THOSE UP TO ME. BUT ONLY AFTER YOU FINISH
WITH THEM, YOU AND THE DEFENDANT, WITH THE
EXAMINATION.

STATE'S EXHIBIT NOS. 4 & 5

MARKED FOR IDENTIFICATION

MR. BAILEY: ALL RIGHT. LET ME ASK HER A
COUPLE OF MORE QUESTIONS, JUDGE, BEFORE I DO
THAT.

THE COURT: SURE.

- Q. NOW, DO YOU RECALL MR. SIMMONS GIVING YOU LETTERS
TO MAIL?
- A. YES.
- Q. OKAY. AND WHEN HE WOULD GIVE YOU THE LETTERS WHERE
WAS HE?
- A. HE WAS IN HIS DORM.
- Q. IS HE GENERALLY IN A CELL BY HIMSELF?

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

A. YES.

Q. WOULD YOU STATE WHETHER OR NOT MR. SIMMONS WAS GIVING YOU LETTERS TO MAIL WHEN HE WAS IN HIS CELL?

A. YES, SIR.

Q. WAS ANYBODY ELSE IN THERE WITH HIM?

A. NO. THE ONLY TIME SOMEBODY WOULD HAVE BEEN IN HIS CELL WOULD HAVE BEEN WHEN WE'RE FULL.

Q. BUT JUST TO MAKE SURE I'M UNDERSTANDING; YOU HAVE RECEIVED LETTERS FROM HIM FROM THE JAIL CELL WHEN HE WAS THE ONLY ONE IN THE CELL?

A. YES.

Q. ALL RIGHT. IS THERE AN INFORMAL BIBLE CLASS AT THE JAIL?

A. YES.

Q. ARE YOU FAMILIAR WITH IT?

A. YES.

Q. WHO'S IN THE BIBLE CLASS?

A. DO YOU MEAN JUST WITH THEM, OR DO YOU MEAN---

Q. IS MR. SIMMONS HERE TO YOUR KNOWLEDGE IN A BIBLE CLASS AT THE JAIL?

A. YES.

Q. HAVE YOU SEEN HIM PARTICIPATING IN BIBLE DISCUSSIONS?

A. YES.

Q. HAVE YOU SEEN WRITTEN MATERIAL ON THE TABLE WHEN

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THEY WERE HAVING BIBLE DISCUSSIONS?

A. JUST THE BIBLE, YOU KNOW.

Q. WAS THE BIBLE OPENED OR CLOSED WHEN YOU SAW IT?

A. OPENED.

Q. WHO HAD THE BIBLE?

A. THEY ALL HAD THEIR OWN BIBLES.

Q. DID MR. SIMMONS HAVE A BIBLE OUT?

A. I CAN'T REALLY SAY, BUT THEY ALL HAVE BIBLES.

Q. ALL RIGHT. WOULD YOU STATE WHETHER OR NOT YOU'VE EVER OBSERVED MR. SIMMONS PLAYING CARDS AT THE JAIL IN THE DAY ROOM?

A. YES; HE PLAYS CARDS.

Q. DO YOU KNOW WHAT PARTICULAR CARD GAMES HE WAS PLAYING?

A. I THINK THEY PLAY SPADES.

MR. THEOS: I'M SORRY. I DIDN'T HEAR HER.

THE COURT: SPADES; S-P-A-D-E-S.

Q. NOW, ARE INMATES ALLOWED TO ORDER BOOKS FROM THE DORCHESTER COUNTY LIBRARY?

A. MAGAZINES, BIBLES, OR THE MUSLIM BOOK. I THINK THEY CALL IT CARARD (PHONETICALLY SPELLED).

Q. IS THERE A FORM THAT THEY HAVE TO FILL OUT IF THEY WANT TO GET A BOOK FROM THE LIBRARY OR A MAGAZINE, OR SOME WRITTEN MATERIAL FROM THE LIBRARY?

A. OH, FROM THE LIBRARY, YES.

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- Q. OKAY.
- A. THEY HAVE TO WRITE THEIR NAME DOWN IN THE BOOK.
- Q. LET ME HAND YOU A PAPER AND ASK IF YOU CAN IDENTIFY THAT?
- A. OKAY. (WITNESS EXAMINES DOCUMENT.)
- Q. WHAT IS THAT IN YOUR HAND?
- A. IT'S HIS LIST FOR HIS BOOKS.
- Q. OKAY.
- A. THEY HAVE THE OLD SHEET OF PAPER WHICH I WRITE THEIR NAME ON IT FOR THEIR BOOKS.
- Q. OKAY. IS THAT IN YOUR HANDWRITING?
- A. YES.
- Q. OKAY. AND YOU FILLED THAT OUT AT THE REQUEST OF MR. SIMMONS?
- A. YES.
- Q. AND THAT WAS BOOKS FROM THE LIBRARY?
- A. YES.
- Q. OKAY. WHAT DID MR. SIMMONS ORDER FROM THE LIBRARY?
- A. UNHOLY MATRIMONY AND DECEPTION IN THE PRISON.
- Q. OKAY.

THE COURT: I'M SORRY. I COULDN'T UNDERSTAND YOU. I APOLOGIZE, MA'AM. HE ORDERED WHAT?

MRS. JOHNSON: UNHOLY -- THIS IS FROM THE LIBRARY CART, FROM THE LIBRARY CART.

THE COURT: YES, MA'AM.

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

MRS. JOHNSON: UNHOLY MATRIMONY.

THE COURT: UNHOLY MATRIMONY?

MRS. JOHNSON: YES, SIR.

THE COURT: OKAY.

MRS. JOHNSON: AND DECEPTION IN THE PRISON.

THE COURT: AND WHAT?

MRS. JOHNSON: DECEPTION IN THE PRISON.

THE COURT: DESTRUCTION IN A PRISON?

MR. BAILEY: I THINK THAT'S DISCIPLINE IN THE PRISON, JUDGE.

THE COURT: DISCIPLINE IN THE PRISON? THAT'S TWO DIFFERENT BOOKS?

MRS. JOHNSON: YES, SIR.

MR. THEOS: YOUR HONOR, SHE SAID DECEPTION. IS IT DISCIPLINE OR -- IT DOESN'T MATTER TO ME WHICH ONE, BUT I JUST WANT TO BE CLEAR.

(COUNSEL REVIEWS DOCUMENT.) DISCIPLE.

MR. BAILEY: OKAY; WE'RE BOTH WRONG. OKAY.

THE COURT: DISCIPLE IN PRISON; IS THAT RIGHT?

MR. BAILEY: YES, SIR. DISCIPLE IN PRISON AND UNHOLY MATRIMONY.

THE COURT: THANK YOU.

MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS FOR PURPOSES OF THIS HEARING.

THE COURT: ALL RIGHT. ANY OBJECTION?

PRISCILLA JOHNSON - DIRECT/MR. BAILEY

MR. THEOS: NO, YOUR HONOR.

THE COURT: STATE'S NUMBER SIX, KATHI?

THE COURT REPORTER: YES, SIR.

THE COURT: OKAY.

STATE'S EXHIBIT NO. 6

MARKED FOR IDENTIFICATION

Q. MRS. JOHNSON, THE DISCIPLINE IN THE PRISONS BOOK
WAS ORDERED; WHAT'S THE DATE MR. SIMMONS ORDERED
THAT BOOK?

A. 1/06/99.

Q. AND THE UNHOLY MATRIMONY?

A. NO; IT'S NOT 1/06; THAT'S WHEN HE TURNED IT IN.
IT'S 12/31/98.

Q. OKAY. WHEN DID HE ORDER UNHOLY MATRIMONY?

A. 1/06/99.

MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE OF
THIS WITNESS AT THIS TIME.

THE COURT: YOU MAY CROSS.

CROSS-EXAMINATION

BY MR. THEOS:

Q. MRS. JOHNSON?

A. YES.

Q. I CAN'T REMEMBER WHAT NUMBER THE EXHIBIT IS; BUT
THE DOCUMENT -- DO YOU HAVE THE---

THE COURT: WELL, HAND IT TO HER. IF YOU

PRISCILLA JOHNSON - CROSS/MR. THEOS

CAN'T REMEMBER, HOW IS SHE SUPPOSED TO
REMEMBER? PUT IT IN HER HAND.

Q. I THINK THIS, STATE'S EXHIBIT TWO, RELATES TO THE
COMMISSARY; IS THAT CORRECT?

A. YES, IT DOES.

Q. AND YOU DON'T FILL THIS FORM OUT; IS THAT RIGHT?

A. I FILL THIS ONE OUT. THIS IS THE ONE WHENEVER THEY
ORDER FROM THE COMMISSARY, AND WHATEVER LIKE
SOMEBODY IS MISSING OR SOMEBODY WAS CHARGED FOR IT
AND THEY DIDN'T GIVE IT TO THEM, I HAVE TO FAX BACK
TO SWANSON SO THEY'LL KNOW THAT THEY TOOK THE MONEY
OUT OF THE INMATE'S ACCOUNT BUT THEY DIDN'T GIVE
THEM THE ITEMS.

Q. INMATES HAVE ACCOUNTS? THERE'S MONEY IN THOSE
ACCOUNTS?

A. YES.

Q. AND THOSE ACCOUNTS ARE MONIES WITHDRAWN DIRECTLY
FROM THOSE ACCOUNTS WHEN THEY ORDER SOMETHING?

A. YES, SIR.

Q. IS THAT RIGHT?

A. YES, SIR.

Q. AND WHAT I UNDERSTAND YOU'RE SAYING IS THAT MONEY
WAS WITHDRAWN FOR THESE THINGS, BUT THESE
PARTICULAR INMATES DIDN'T RECEIVE THOSE THINGS?

A. DIDN'T RECEIVE THEM; NO.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. AND YOU PREPARED THIS -- IT'S CALLED A CONTINUATION SHEET?

A. YES.

Q. --TO PUT THE COMMISSARY IN COLUMBIA ON NOTICE THAT Y'ALL NEEDED THOSE THINGS THAT YOU WERE MISSING?

A. YES, SIR.

Q. OKAY. NOW, DID YOU TAKE THE ORIGINAL ORDER?

A. THE NIGHT SHIFT PUTS THE ORDER IN.

Q. I'M SORRY.

A. THE NIGHT SHIFT; THEY PUT THE ORDERS IN AT THE NIGHT TIME.

Q. THE NIGHT SHIFT?

A. YEAH.

Q. OKAY.

A. I'M THE ONE THAT GIVES IT OUT TO THEM, OR IF ANYTHING'S MISSING I WRITE IT DOWN AND FAX IT TO THEM.

Q. IS THAT ORDER BY THE INMATES GIVEN BY THE INMATES IN WRITING, OR IS IT GIVEN VERBALLY TO THE NIGHT SHIFT PERSON IN CHARGE OF THE COMMISSARY?

A. THEY HAVE TO WRITE IT IN. IT'S LIKE A SLIP. YOU HAVE TO PICK ONE OR TWO IN IT, WHATEVER YOU WANT.

Q. WHO WRITES IT?

A. THE INMATES DO.

Q. DO YOU KNOW WHO THE NIGHT SHIFT PERSON WOULD HAVE

PRISCILLA JOHNSON - CROSS/MR. THEOS

BEEN RELATED TO THIS SPECIFIC ORDER?

A. NO.

Q. HOW DID YOU GET THE INFORMATION RELATED TO STATE'S EXHIBIT TWO THAT MR. SIMMONS DIDN'T RECEIVE THESE THINGS?

A. OH, WHEN I GO TO -- LIKE THIS ONE RIGHT HERE, THEY GET STUFF LIKE THAT. (INDICATING.)

Q. ALL RIGHT. LOOKING AT -- YOU SAID THIS SLIP RIGHT HERE; WE'RE TALKING ABOUT STATE'S EXHIBIT THREE?

A. YES.

Q. TELL ME HOW THAT RELATES TO STATE'S EXHIBIT TWO.

A. ALL RIGHT. I GO TO EACH INMATE AND OPEN THE BAG. AND, LIKE IF IT SAID SOUP, THEN I'LL CHECK OFF SOUP. WE GO TO -- I'LL BE LIKE WITH THEM, AND I CHECK IT OFF WITH THEM. AND WHATEVER ITEM THAT THEY DON'T HAVE, I'LL CIRCLE IT AND I WRITE "MISSING." AND THEN I HAVE TO WRITE ON THE PAPER TO SWANSON THAT THEY DIDN'T RECEIVE IT SO THEY CAN SEND IT BACK TO ME FOR THE NEXT CANTEEN ORDER.

Q. SO YOU ACTUALLY HAND OUT WHAT'S SENT BY THE COMMISSARY?

A. YES.

Q. AND AT THAT VERY MOMENT YOU FILL THIS OTHER SHEET UP, CONTINUATION SHEET, WITH WHATEVER'S MISSING?

A. YES, SIR.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. AND I THINK YOU ANSWERED MR. BAILEY'S QUESTION THAT MR. SIMMONS ORDERED JET MAGAZINE ONE TIME?

A. YES.

Q. DID HE EVER, TO YOUR KNOWLEDGE, OR BASED UPON THE RECORDS THAT YOU'VE HAD A CHANCE TO LOOK AT; DID HE EVER ORDER ANY OTHER MAGAZINES?

A. NO; THIS IS THE ONLY ONE; THIS ONE.

Q. YOU MAY NEED TO SPEAK UP A LITTLE BIT.

A. I THINK THIS IS THE ONLY ONE.

Q. AND YOU, OF COURSE, HAD A CHANCE TO LOOK OVER ALL THE RECORDS?

A. YES.

Q. AND MR. BAILEY ASKED YOU TO LOOK OVER THOSE RECORDS TO DETERMINE WHAT MR. SIMMONS MAY HAVE ORDERED; CORRECT?

A. YES.

Q. ANY OTHER RECORD AT THE JAIL PERTAINING TO OTHER MAGAZINES THAT MR. SIMMONS MAY HAVE ORDERED OTHER THAN JET?

A. THIS IS THE ONLY ONE.

Q. ANY OTHER JOURNALS OR NEWSPAPERS, ANY RECORD OF ORDERING THOSE THINGS BY MR. SIMMONS?

A. NO; JUST STUFF THAT COMES THROUGH THE MAIL, THAT'S IT, DIFFERENT CHURCHES, STUFF LIKE THAT.

Q. IS THERE ANY RECORD OF ANY OTHER WRITTEN MATERIAL

PRISCILLA JOHNSON - CROSS/MR. THEOS

THAT MR. SIMMONS MAY HAVE ASKED FOR?

A. NO.

Q. I UNDERSTAND YOU TESTIFIED THAT THERE WERE SOME NEWSPAPERS THAT HE MAY HAVE HAD?

A. YES.

Q. BUT IS THERE ANY WRITTEN RECORD OF ANY OF THOSE NEWSPAPERS OR JOURNALS THAT MR. SIMMONS MAY HAVE ORDERED?

A. NO.

Q. ARE THE INMATES REQUIRED TO ORDER THOSE THINGS?

A. YES.

Q. DO Y'ALL KEEP RECORDS OF THOSE ORDERS?

A. ONLY IF THEY ORDER FROM THE COMMISSARY.

Q. NOW, YOU SAID THAT AT LEAST TWO OTHER PAPERS THAT Y'ALL HAVE ARE THE SUMMERVILLE JOURNAL AND THE U.S.A. TODAY YOU THOUGHT YOU HAD?

A. YES.

Q. IS THAT RIGHT?

A. DIRECTOR BONDS ORDERED THE SUMMERVILLE JOURNAL. BUT THE U.S.A. TODAY IS PAPERS THAT PEOPLE, FAMILIES, BOUGHT FOR THEM AND THEY SENT IT THROUGH THE MAIL TO THE JAIL.

Q. OKAY. DO YOU KNOW WHETHER MR. SIMMONS HAS EVER RECEIVED A NEWSPAPER FROM OUTSIDE THE JAIL?

A. NOT OUTSIDE THE JAIL, NO; JUST FROM US GIVING IT TO

THEM.

Q. HAVE YOU EVER GIVEN MR. SIMMONS A U.S.A. TODAY?

A. YES.

Q. CAN TELL US WHEN YOU DID THAT?

A. I CAN'T GIVE YOU THE SPECIFIC DATE. BUT, YOU KNOW, I GIVE IT TO THEM TO READ, YES.

Q. I'M SORRY.

A. I CANNOT GIVE A SPECIFIC DATE, BUT I DO GIVE IT TO THEM.

Q. I UNDERSTAND THAT YOU GIVE IT TO THEM BECAUSE THAT'S PART OF YOUR JOB?

A. YES.

Q. BUT CAN YOU TELL US WHEN YOU GAVE IT TO MR. SIMMONS?

A. I CAN'T GIVE YOU A SPECIFIC DATE, BUT I DID---

Q. A MONTH, OR A YEAR?

A. IT WAS IN THIS MONTH I GAVE HIM ONE, YES.

Q. NOW, WHEN YOU GAVE IT TO HIM, WAS HE IN A CELL BY HIMSELF?

A. NO, THEY WAS IN THE DAY ROOM.

Q. AND THE DAY ROOM IS WHAT?

A. HIM AND OTHER, YOU KNOW, INMATES.

Q. NOW, YOU SAID BEFORE HE'S GENERALLY IN A CELL BY HIMSELF?

A. YES.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. CAN YOU TELL US HOW LONG HE'S BEEN IN A CELL BY HIMSELF, FROM WHAT DAY TO WHAT DAY? AS I UNDERSTAND THE STATUS CHANGED AT SOME POINT. CAN YOU TELL US HOW LONG HE WAS IN A JAIL CELL BY HIMSELF?

A. THE MAJORITY OF TIME HE'S IN A CELL BY HIMSELF. ONLY WHEN WE'RE LIKE FULL, LIKE A LOT OF PEOPLE, WE PUT HIM IN WITH SOMEBODY ELSE. BUT USUALLY HE'S IN A CELL BY HIMSELF.

Q. YOU SAY YOU'VE SEEN HIM IN THIS OTHER -- THIS DAY AREA?

A. YES; IT'S LIKE THE DORM, YOU KNOW, WHEN THEY COME OUT FOR REC TIME.

Q. HOW MUCH TIME DO THEY GET FOR REC TIME?

A. I THINK IT'S SUPPOSED TO BE LIKE AN HOUR AND A HALF.

Q. IS THAT WHEN YOU SAY YOU'VE SEEN KENNETH WITH SOME OF THE OTHER INMATES PLAYING CARDS?

A. YES.

Q. NOW, YOU SAID THAT WHEN ASKED WHAT TYPE OF CARD GAME OR CARDS THEY WERE PLAYING, YOU SAID "I THINK THEY PLAY SPADES?"

A. YES. I CAN'T REALLY SAY. TO ME IT LOOKED LIKE THEY WERE PLAYING SPADES. I DIDN'T ASK THEM WHAT THEY WERE PLAYING.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. SO YOU REALLY CAN'T TESTIFY THAT YOU KNOW EXACTLY WHAT THEY WERE PLAYING?

A. NO, SIR.

Q. THEY COULD HAVE BEEN PLAYING GO FISH FOR ALL YOU KNOW?

A. YES.

Q. AND I ASSUME, BECAUSE YOU DIDN'T PAY MUCH ATTENTION, YOU CAN'T TELL US WHO HE WAS PLAYING THOSE GAMES WITH, CAN YOU; THE NAMES?

A. I COULD TELL YOU THE NAMES OF THE PEOPLE THAT BE IN THE DORM WITH HIM.

Q. CAN YOU TELL US WHO YOU THINK HE WAS PLAYING CARDS WITH?

A. PROBABLY GEORGE---

Q. LET ME STOP YOU FOR A SECOND. CAN YOU TELL US WHO IT WAS WITHOUT TELLING US PROBABLY OR YOU ASSUME?

A. NO. I COULD JUST TELL YOU THE PEOPLE THAT USUALLY PLAY CARDS, BUT I CAN'T SPECIFICALLY TELL YOU AT THE TIME WHO HE'S PLAYING CARDS WITH.

Q. DO YOU EVER TALK TO ANY OF THOSE INMATES ABOUT KENNETH PLAYING CARDS?

A. NO; WE DON'T REALLY TALK ABOUT STUFF LIKE THAT.

Q. HAVE YOU EVER TALKED TO KENNETH ABOUT ANY OF THESE NEWSPAPERS THAT YOU SAY KENNETH RECEIVED?

A. THE ARTICLES; NO.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. AND YOU CAN'T TESTIFY THAT KENNETH HAS READ THOSE NEWSPAPERS?

A. NO; JUST THAT I GIVE THEM TO HIM; THAT'S ABOUT IT.

Q. OKAY. AND YOU DON'T KNOW WHAT HE DOES WITH THEM WHEN YOU GIVE THEM TO HIM?

A. NO.

Q. AND YOU'VE NEVER DISCUSSED ANY OF THE ARTICLES IN THOSE NEWSPAPERS WITH HIM?

A. NO.

Q. WITH RESPECT TO THE JET MAGAZINE; HAVE YOU EVER TALKED WITH HIM ABOUT WHAT'S IN THE JET MAGAZINE?

A. NO.

Q. HAVE YOU EVER TALKED WITH HIM ABOUT ANY OF THE ARTICLES IN THE JET MAGAZINE?

A. NO.

Q. HAVE YOU EVER SEEN HIM READ THE JET MAGAZINE?

A. NO.

Q. NOW, RELATED TO THESE BOOKS THAT WAS TALKED ABOUT, THAT YOU AND MR. BAILEY TALKED ABOUT -- AND I THINK THIS IS STATE'S EXHIBIT SIX. THIS IS YOUR DOCUMENT?

A. YES.

Q. IN OTHER WORDS, YOU PREPARED THIS?

A. YES.

Q. ARE THERE ANY OTHER DOCUMENTS LIKE THIS THAT WOULD

PRISCILLA JOHNSON - CROSS/MR. THEOS

REFLECT ANY OTHER BOOKS THAT MR. SIMMONS REQUESTED?

A. NO.

Q. TO YOUR KNOWLEDGE THESE ARE THE ONLY BOOKS THAT WERE EVER ASKED FOR BY MR. SIMMONS?

A. YES.

Q. AND IF THERE WERE OTHER BOOKS THEY WOULD BE RECORDS?

A. YES.

Q. YOU'VE REVIEWED THOSE RECORDS CAREFULLY, AND THIS IS IT?

A. YES.

Q. IS THAT RIGHT?

A. YES.

Q. NOW, DID YOU SPEAK WITH KENNETH -- DID YOU SPEAK WITH KENNETH BEFORE YOU FILLED THIS OUT ABOUT THESE BOOKS?

A. NO. THEY JUST COME UP AND PICK OUT WHATEVER THEY WANT, AND I JUST SIGN IT IN.

Q. DID HE ACTUALLY TELL YOU WHICH BOOKS HE WANTED?

A. HE JUST PICKED IT OUT, YOU KNOW. IT'S LIKE A LITTLE CART, AND THEY JUST PICK WHICH ONE THEY WANT, AND I JUST WRITE IT DOWN. I REALLY DON'T ASK ANY QUESTIONS, YOU KNOW.

Q. ALL RIGHT. AND ON 12/31 OF '98 WHICH WAS JUST A MONTH-AND-A-HALF OR SO AGO, CAN YOU TELL ME WHERE

PRISCILLA JOHNSON - CROSS/MR. THEOS

KENNETH WAS HOUSED WITHIN THE JAIL?

A. I THINK HE'S IN -- I THINK D-3, I THINK.

Q. WAS HE IN A CELL BY HIMSELF?

A. I WON'T SAY YES, AND I WON'T SAY NO.

Q. D-3; DO YOU KNOW WHETHER THAT'S A SINGLE---

A. D-3 IS A SINGLE CELL.

Q. THESE SINGLE CELLS ARE RIGHT NEXT TO OTHER CELLS?

A. YES.

Q. INMATES CAN SEE EACH OTHER?

A. NO.

Q. THEY CAN'T SEE EACH OTHER?

A. NO.

Q. OKAY. THE UNHOLY MATRIMONY THAT WAS APPARENTLY ORDERED ON 1/06/99; DO YOU KNOW WHERE MR. SIMMONS WAS AT THAT POINT; WHERE HE WAS HOUSED?

A. I THINK HE WAS IN A SINGLE CELL, YOU KNOW, BY HIMSELF.

Q. AND DID MR. SIMMONS; DID HE SAY ANYTHING TO YOU ABOUT WHY HE MAY HAVE WANTED THESE BOOKS?

A. NO; I DIDN'T ASK.

Q. OKAY; WHETHER THEY WERE FOR HIMSELF OR FOR SOMEBODY ELSE? DID HE SAY ANYTHING?

A. NO.

Q. DO INMATES SOMETIMES GET BOOKS FOR OTHER PEOPLE?

A. YES.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. AND THE REASON THEY DO THAT IS BECAUSE THEY'RE ONLY ENTITLED TO ONE BOOK EACH; RIGHT?

A. YES.

Q. YOU NEVER SAW MR. SIMMONS LOOKING AT THESE BOOKS OR ATTEMPTING TO READ THESE BOOKS, DID YOU?

A. NO. ONCE THEY GET THEIR BOOK, I GO TO THE NEXT CELL.

Q. SO YOU DON'T KNOW WHETHER HE GAVE THESE BOOKS TO SOMEBODY ELSE OR NOT?

A. NO, I DON'T.

Q. DO YOU KNOW WHEN THEY WERE RETURNED?

A. IT'S RIGHT HERE.

Q. THOSE DATES -- I'M NOT GOING TO ASK YOU THOSE DATES. BUT DO THOSE DATES OUT TO THE SIDE INDICATE WHEN THEY WERE RETURNED?

A. YES.

Q. AND LASTLY, RELATED TO THIS MAIL, I ASSUME THAT YOU ALSO LOOKED AT ALL YOUR MAIL RECORDS BEFORE YOU PICKED THESE TWO OUT TO BRING INTO COURT; IS THAT CORRECT?

A. YES.

Q. ARE THESE THE ONLY RECORDS OF MAIL?

A. THOSE ARE ONLY WHEN YOU DON'T HAVE ANY MONEY. IT WOULD BE LIKE NO MONEY FOR TWO WEEKS, AND THEN I GIVE YOU TWO ENVELOPES. BUT IF YOU HAVE MONEY, WE

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DON'T WRITE THE ONES DOWN THAT HAVE MONEY. WE JUST KEEP A JAIL LIST FOR THE ONES THAT DON'T HAVE ANY MONEY SO WE CAN KEEP UP, YOU KNOW, HOW MUCH MONEY WE'RE SPENDING, TWO LETTERS A WEEK.

Q. I DON'T UNDERSTAND. WHAT IS THE MONEY FOR; THE ENVELOPES, THE STAMPS? IS THAT---

A. OH, IT'S INDIGENT, WHEN THEY DON'T HAVE ANY MONEY AT ALL; WHEN YOU DON'T HAVE MONEY FOR LIKE TWO WEEKS AND YOU WANT TO WRITE A LETTER TO YOUR HOME, WE GIVE YOU TWO ENVELOPES A WEEK. THE COUNTY WILL ONLY PAY FOR TWO.

Q. ANYTHING ELSE YOU HAVE TO PAY FOR YOURSELF, IT WILL COME OUT OF YOUR ACCOUNT?

A. YOUR ACCOUNT; YES.

Q. DO YOU HAVE ANY OTHER RECORDS THAT MR. SIMMONS MAILED ANY OTHER LETTERS?

A. HE MAILED OTHER LETTERS, BUT WE DON'T KEEP INVOICES BECAUSE HE PAID IT OUT OF HIS ACCOUNT; IT CAME OUT OF HIS MONEY. SO HE HAD HIS OWN STAMP.

Q. WOULD YOU ACCOUNT -- WOULD THOSE ACCOUNT RECORDS REFLECT WHAT MONEY WAS DEDUCTED FOR? WOULD IT REFLECT IT WAS DEDUCTED FOR AN ENVELOPE OR A STAMP ON HIS ACCOUNT RECORDS?

A. YES.

Q. THEY WOULD?

PRISCILLA JOHNSON - CROSS/MR. THEOS

A. YES.

Q. SO WE'D BE ABLE TO LOOK AT THOSE AND SEE HOW MANY LETTERS MR. SIMMONS MAILED OUT?

A. NO; WE'D JUST TELL YOU -- THE COMMISSARY WOULD JUST TELL YOU HOW MANY ENVELOPES THAT HE ORDERED.

Q. THAT HE ORDERED?

A. YES.

Q. ALL RIGHT. SO THESE -- AND IT LOOKS LIKE -- IF YOU WOULD TELL ME -- IT LOOKS LIKE -- WHERE IT SAYS "DATE" ON STATE'S EXHIBIT FIVE, THERE IS NO DATE?

A. NO. I JUST WRITE ON HERE BETWEEN 5/04/98 AND 5/10. THEY HAVE TO SEND LETTERS OUT BETWEEN THAT TIME. IF NOT, THEN THEY CAN'T USE THEM BECAUSE WE'LL ONLY PAY FOR TWO A WEEK.

Q. ALL RIGHT. AND YOU CORRECT ME IF I'M WRONG NOW, BUT IT APPEARS THAT THERE WERE THREE LETTERS THAT WERE THREE SENT OUT BY MR. SIMMONS BETWEEN 5/04 OF '98 AND 5/10 OR '98?

A. YES.

Q. AND THE NAMES THAT YOU HAVE WRITTEN HERE AND THE ADDRESSES, I ASSUME ARE FOR HOW THE ENVELOPES WERE ADDRESSED?

A. YES.

Q. AND TO WHOM THE LETTERS WERE MAILED?

A. YES.

PRISCILLA JOHNSON - CROSS/MR. THEOS

Q. AND THE SAME THING WITH RESPECT TO STATE'S EXHIBIT FOUR?

A. YES, SIR.

Q. THERE APPEAR TO BE TWO?

A. YES.

Q. MR. RUPERT WILLIS AND MRS. V.F. PETERSON?

A. YES.

Q. WHAT IS THIS NOTATION HERE AT THE TOP?

A. THAT'S THE INMATE'S NUMBER. AND I COULDN'T SQUEEZE IT IN RIGHT THERE, SO I JUST PUT IT RIGHT THERE.

Q. ALL RIGHT. NOW, YOU DIDN'T SEE MR. SIMMONS WRITE THESE LETTERS?

A. NO.

Q. YOU DON'T KNOW WHETHER HE WROTE THEM OR SOMEBODY ELSE WROTE THEM FOR HIM?

A. THAT'S TRUE.

Q. THESE BIBLE STUDY GROUPS THAT YOU SAY ARE HELD OVER AT THE JAIL; WOULD THOSE BE IN THE DAY ROOM, THIS DAY ROOM YOU'RE TALKING ABOUT?

A. YES, SIR.

Q. ARE THERE SPECIAL CLASSES THAT ARE HELD?

A. WE HAVE CLASSES AT NIGHT TIME. THE MINISTER COMES IN. BUT THEY DON'T LET MAX GO, SO THEY HAVE THEIR OWN IN THE DAY ROOM.

Q. SO WE CAN UNDERSTAND WHAT YOU'RE SAYING, MR.

PRISCILLA JOHNSON - CROSS/MR. THEOS

SIMMONS WAS IN MAX?

A. YES.

Q. IS THAT THE TERMINOLOGY?

A. YES.

Q. THAT MEANS HE'S IN A CELL BY HIMSELF; IS THAT CORRECT?

A. WELL, HE'S JUST OVER THERE FOR P.C.

Q. WHAT IS P.C.?

A. PROTECTIVE CUSTODY.

Q. OKAY. BECAUSE HE'S IN THAT SPECIAL AREA, HE'S NOT ALLOWED TO PARTICIPATE IN THESE FORMAL BIBLE CLASSES AT NIGHT THAT ARE CONDUCTED BY THIS MINISTER?

A. YES.

Q. IS THAT RIGHT?

A. YES.

Q. SO THE BIBLE DISCUSSIONS YOU'RE TALKING ABOUT ARE INFORMAL DISCUSSIONS THAT TAKE PLACE IN THIS DAY ROOM?

A. YES.

Q. AND THAT'S AMONG THE INMATES?

A. YES, SIR.

Q. AND YOU CAN'T TELL US ANYTHING THAT MAY HAVE BEEN SAID IN THOSE?

A. NO.

Q. YOU JUST KNOW THAT THERE ARE BIBLES IN FRONT OF THEM AND THEY'RE TALKING?

A. YES.

Q. AND YOU CAN'T TELL US ANYTHING THAT MR. SIMMONS MAY HAVE SAID ABOUT THE BIBLE, CAN YOU?

A. NO.

Q. AND YOU CAN'T TELL US IF YOU ACTUALLY SAW HIM READING FROM THE BIBLE, CAN YOU?

A. NO.

MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO RE-DIRECT, YOUR HONOR.

THE COURT: ANY OBJECTION TO THIS LADY BEING EXCUSED?

MR. BAILEY: NOT FROM THE STATE, YOUR HONOR.

THE COURT: MA'AM, HAVE A NICE DAY.

MRS. JOHNSON: OKAY.

MR. BAILEY: THE STATE WOULD NEXT CALL SIDNEY JACKSON.

WHEREUPON,

SIDNEY JACKSON, WHO AFTER BEING FIRST
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

SIDNEY JACKSON - DIRECT/MR. BAILEY

- Q. MR. JACKSON, WOULD YOU SPELL YOUR NAME, PLEASE, FOR THE COURT REPORTER?
- A. YES, SIR, S-I-D-N-E-Y; MIDDLE NAME GEORGE, G-E-O-R-G-E; LAST NAME JACKSON, J-A-C-K-S-O-N.
- Q. AND YOU'RE A CORRECTIONAL OFFICER WITH THE DORCHESTER COUNTY DETENTION CENTER; IS THAT CORRECT?
- A. YES, SIR, I AM.
- Q. HOW LONG HAVE YOU WORKED AS A DETENTION OFFICER AT THE JAIL OVER HERE?
- A. APRIL OF '97.
- Q. AND ARE YOU FAMILIAR WITH KENNETH SIMMONS, THE DEFENDANT IN THIS CASE?
- A. YES, SIR, I AM.
- Q. FOR THE RECORD COULD YOU POINT HIM OUT?
- A. YES, SIR. IN THE RED JUMPSUIT OVER AT THE TABLE. (INDICATING.)
- Q. ALL RIGHT. YOU'RE INDICATING THE MAN IN THE RED JUMPSUIT AT THE END OF THE TABLE; IS THAT CORRECT?
- A. YES, SIR.
- Q. ALL RIGHT, SIR. NOW, WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT THE DETENTION CENTER, MR. JACKSON?
- A. I WORK ON THE FLOOR. I WALK AROUND AND MAKE SURE THAT EVERYTHING STAYS IN ORDER, THE ROOMS ARE

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BASICALLY KEPT IN ORDER, THAT NO FIGHTS BREAK OUT. I USUALLY WALK THROUGH B SIDE TO MAKE SURE EVERYTHING IS GOING SMOOTH OVER THERE, AND I'LL GO THROUGH MAX AND TALK WITH THEM, MAKE SURE EVERYTHING IS GOING ALL RIGHT WITH THE ROOMMATES AND TRY TO KEEP ORDER IN THE JAIL.

Q. OKAY. AND IS THERE A PART OF THE JAIL THAT YOU REFER TO AS A TOWER?

A. YES, SIR.

Q. WHAT IS THE TOWER?

A. THE TOWER IS WHERE THE CONTROL BOARD IS THAT CONTROLS ALL THE DOORS AND INTERCOM THROUGHOUT THE JAIL.

Q. HOW OFTEN DO YOU WORK IN THE TOWER?

A. USUALLY EVERY DAY WE WORK, WE PULL A THREE TO FOUR HOUR SHIFT.

Q. OKAY. AND FROM THE TOWER WHAT AREAS OF THE JAIL CAN YOU SEE?

A. YOU CAN SEE A, B, C, AND D DORMS.

Q. OKAY. IS THAT ALL THE DORMS THERE ARE?

A. NO, SIR. WE'VE GOT AN E AND F DORM WHICH IS BACK BEHIND US. OUR COUNTY AND STATE TRUSTEES STAY UP IN THOSE.

Q. WHICH DORMITORY WOULD KENNETH SIMMONS HAVE BEEN IN SINCE YOU'VE BEEN A CORRECTIONAL OFFICER THERE?

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- A. IN C.
- Q. C? AND YOU CAN SEE THAT FROM THE TOWER THAT YOU SPEND THREE OR FOUR HOURS A DAY IN?
- A. YES, SIR.
- Q. ALL RIGHT, SIR. WHEN AN INMATE IS PUT IN THE JAIL, ARE THEY GIVEN ANY WRITTEN MATERIAL ROUTINELY AS PART OF THE ADMISSION PROCESS?
- A. YES, SIR; THEY'RE GIVEN AN INMATE HANDBOOK.
- Q. OKAY. AND WHAT BASIC TYPE OF INFORMATION IS IN THAT INMATE HANDBOOK?
- A. IT WILL EXPLAIN MEAL PROCEDURES, PROCEDURES FOR GOING ABOUT GIVING QUESTS AND GRIEVANCES IN. IT HAS INFORMATION REGARDING DIFFERENT OFFENSES WITHIN THE JAIL THAT CAN LEAD TO SEGREGATION TIME. JUST BASICALLY EVERYTHING YOU NEED TO KNOW TO MAKE IT A DEFENDANT'S FACILITY.
- Q. ALL RIGHT. AND ROUGHLY WHAT GRADE LEVEL IS THAT BOOK ON?

MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT UNLESS THIS MAN IS -- I CAN'T IMAGINE HE'S QUALIFIED TO TESTIFY REGARDING THE GRADE LEVEL.

THE COURT: YES, SIR. YOU HAVE TO LAY A FOUNDATION FOR THAT, SOLICITOR.

MR. BAILEY: ALL RIGHT.

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Q. ABOUT HOW BIG IS THE BOOK WE'RE TALKING ABOUT?

A. I'M NOT SURE HOW MANY PAGES; PROBABLY BETWEEN 30 AND 40 PAGES. THAT'S A ROUGH GUESS.

Q. ALL RIGHT, SIR. AND DO YOU KNOW WHETHER OR NOT KENNETH SIMMONS GOT ISSUED AN INMATE BOOK WHEN HE WAS ADMITTED?

A. YES, SIR; EVERYONE IS ISSUED ONE.

Q. EVERYONE IS?

A. YES, SIR.

Q. AND HAVE YOU SEEN HIM USING THE BOOK, READING IT?

A. I'VE NEVER SEEN HIM USE IT; NO, SIR.

Q. HAVE YOU OBSERVED KENNETH SIMMONS WITH ANY OTHER WRITTEN MATERIAL?

A. YES, SIR. HE HAS A BIBLE. I'VE SEEN HIM WITH SEVERAL NEWSPAPERS. I'VE SEEN HIM WITH JET MAGAZINE. SEVERAL OF HIS LEGAL PAPERS HE'S HAD WITH JUST MOTIONS AND STUFF ON IT, I'VE SEEN HIM WITH THOSE.

Q. OKAY. NOW, TAKE THEM ONE AT A TIME. NEWSPAPERS. WHAT NEWSPAPERS HAVE YOU SEEN MR. SIMMONS WITH?

A. I'VE PERSONALLY ONLY SEEN HIM WITH THE SUMMERVILLE JOURNAL SCENE. I'VE PERSONALLY NEVER SEEN HIM WITH U.S.A. TODAY, BUT I HAVE SEEN HIM WITH THE SUMMERVILLE JOURNAL SCENE.

Q. OKAY. AND WHEN YOU SAW HIM WITH THE JOURNAL SCENE,

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WHAT WAS HE DOING WITH IT?

A. HE WAS SITTING WITH THE PAPER, AND HE APPEARED TO BE READING THE PAPER.

Q. OKAY. AND HAVE YOU EVER HAD ANY DISCUSSIONS WITH MR. SIMMONS ABOUT THE CONTENT OF THE MATERIAL HE WAS READING?

A. YES, SIR. ONCE IN A WHILE WE'LL TALK ABOUT AN ARTICLE. I CAN'T REMEMBER ANY SPECIFICALLY. THE ONLY ONE I SEEM TO REMEMBER SPECIFICALLY IS WE HAD A DISCUSSION ABOUT A FOOTBALL ARTICLE AROUND THE TIME OF THE PLAY-OFFS.

Q. OKAY. AND AS FAR AS THE BIBLE, WHAT INVOLVEMENT, TO YOUR OBSERVATION, HAS MR. SIMMONS HAD WITH THE BIBLE STUDY GROUP BEEN?

A. YES, SIR. HE PARTICIPATES IN THE BIBLE STUDY GROUP. THERE ARE FOUR OR FIVE INMATES, AND USUALLY SEVERAL TIMES A WEEK THEY'LL GET TOGETHER AND HAVE THEIR OWN DISCUSSION.

Q. IS THERE A HEAD OF THE GROUP OR A LEADER OF THE BIBLE STUDY GROUP?

A. IT SEEMS THEY KIND OF SWITCH OFF; BUT I KNOW SEVERAL TIMES IT SEEMS THAT HE WOULD REALLY GET INTO THE CONVERSATION AND APPEARED TO BE HEADING IT UP.

MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT.

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THE WITNESS IS SPECULATING AS TO WHO MAY HAVE BEEN LEADING WHATEVER. HE SAID IT SEEMED AND IT APPEARED. UNLESS HE KNOWS WHO WAS LEADING THE GROUP, I DON'T THINK IT'S APPROPRIATE FOR HIM TO COMMENT ON IT.

MR. BAILEY: I'LL REPHRASE IT, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

- Q. MR. JACKSON, WHAT SPECIFIC OBSERVATIONS, IF ANY, DID YOU MAKE WITH REGARD TO MR. SIMMONS' PARTICIPATION IN THE BIBLE GROUP THAT YOU OBSERVED?
- A. WHEN THEY WOULD CARRY ON DISCUSSIONS, HE WOULD ACTIVELY GET INTO THE DISCUSSIONS. WHEN THEY WOULD ALL BE IN READING GROUPS, HE WOULD SEEM TO BE LOOKING AT THE BIBLE, AND APPEARED THAT HE WAS READING. AS FAR AS BEING OVER THERE WHILE THEY WERE ACTUALLY HAVING THE STUDIES AND I COULD HEAR THEM DISCUSSING IT, I HAVE NOT WITNESSED IT FROM THE TOWER.
- Q. ALL RIGHT. WITH REGARD TO YOUR OBSERVATIONS, IF ANY, OF MR. SIMMONS' COMMUNICATIONS WITH OTHER INMATES, HAVE YOU MADE OBSERVATIONS THERE?
- A. YES, SIR. WHEN ANY OF THE INMATES SEEMED TO BE GETTING UPSET OR JUST LIFE SEEMS TO BE GETTING KIND OF STRESSFUL, MR. SIMMONS WILL USUALLY GO AND TALK TO THEM AND TRY TO CALM THEM DOWN; KIND OF VOICE A

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REASON FOR IT.

Q. WOULD YOU STATE WHETHER OR NOT YOU'VE EVER OVERHEARD ANY CONVERSATIONS BETWEEN MR. SIMMONS AND OTHER INMATES IN REGARDS TO LEGAL ISSUES?

A. YES, SIR. I CAN'T, ONCE AGAIN, BE SPECIFIC ON THEM. BUT SEVERAL OF THEM WILL COME IN AND THEY'LL JUST BE IN GENERAL SPEAKING OF BEING OFFERED PLEA BARGAINS OR SOMETHING LIKE THAT. AND HE WILL USUALLY TALK TO THEM---

MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT UNLESS HE HAS SPECIFIC RECOLLECTION AND SPECIFIC WORDS THAT WERE SAID BY MR. SIMMONS.

THE COURT: IF HE OVER-HEARD THE CONVERSATIONS, I WILL LET HIM TESTIFY. I'M NOT GOING TO REQUIRE HIM TO CITE SCRIPTURE, CHAPTER, VERSE, AND DOCKET NUMBER.

Q. MR. JACKSON, DO YOU HAVE ANY SPECIFIC RECOLLECTIONS OF THE CONTENT OF STATEMENTS THAT MR. SIMMONS MADE THROUGH OTHER INMATES IN REGARD TO LEGAL MATTERS?

A. NO, SIR, NOTHING SPECIFIC.

Q. OKAY. WOULD YOU STATE WHETHER OR NOT YOU'VE MADE ANY OBSERVATIONS OF MR. SIMMONS IN THE DAY ROOM PLAYING ANY KIND OF BOARD GAMES OR CARD GAMES?

A. I'VE SEEN HIM PLAYING CHESS -- CHECKERS; LET ME CORRECT THAT. I'VE SEEN HIM PLAYING CARDS ON

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SEVERAL OCCASIONS.

Q. DO YOU KNOW WHAT CARD GAMES YOU SAW HIM PLAYING?

A. NO, SIR. ONCE AGAIN I HAVEN'T BEEN OUT THERE.

I'VE BEEN OUT THERE WHEN THEY WERE PLAYING, BUT I'VE NEVER STAYED LONG ENOUGH TO ACTUALLY TELL WHAT THEY WERE PLAYING.

Q. AS FAR AS MR. SIMMONS' PERSONAL GROOMING, HYGIENES, CARING FOR HIMSELF; WHAT ARE YOUR OBSERVATIONS, IF ANY, ON THAT?

A. HE'S ALWAYS KEPT HIMSELF UP VERY NEAT. USUALLY EVERY TIME HE GOES OUT OF MAX, EVEN IF HE'S JUST GOING TO SPEAK TO HIS LAWYER, HE'LL ALWAYS HAVE HIS SHIRT TUCKED IN. HE ALWAYS PRESENTS HIMSELF VERY WELL. HE'S VERY ADAMANT ABOUT GETTING HIS SHOWER EVERY DAY. HE'S ALWAYS APPEARED TO KEEP HIMSELF UP VERY NEAT.

Q. ALL RIGHT, SIR. HAVE YOU TRANSPORTED, OR PARTICIPATED IN TRANSPORTING MR. SIMMONS TO DIFFERENT PLACES FOR COMPETENCY EVALUATIONS AND THINGS OF THAT NATURE?

A. YES, SIR.

Q. OKAY. AND DO YOU RECALL REMEMBER TAKING HIM OUT TO THE COASTAL CENTER FOR EVALUATIONS?

A. YES.

Q. HOW MANY TIMES HAVE YOU CARRIED HIM OUT THERE?

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A. I'VE CARRIED HIM TO THE COASTAL CENTER ONCE.

Q. OKAY. AS PART OF THE SECURITY DETAIL, DID YOU OBSERVE HOW MR. SIMMONS CONDUCTED HIMSELF DURING THOSE INTERVIEWS FROM THE PSYCHOLOGIST AT THE COASTAL CENTER?

A. YES, SIR, I HAVE.

Q. AND YOU'VE HAD AN OPPORTUNITY TO OBSERVE MR. SIMMONS AT THE JAIL; IS THAT CORRECT?

A. YES, SIR.

Q. WITHOUT GETTING INTO ANY SPECIFIC CONVERSATIONS OR ANYTHING OF THAT NATURE, CAN YOU COMPARE OR CONTRAST MR. SIMMONS' PRESENTATION THAT YOU OBSERVED AT THE COASTAL CENTER WITH THE PSYCHOLOGIST TO WHAT YOU'VE OBSERVED AS FAR AS HIS PRESENTATION AT THE JAIL IN GENERAL?

MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT.

I THINK THAT IT REQUIRES EXACTLY WHAT MR. BAILEY ASKED HIM NOT TO DO. IT REQUIRES SPECIFIC CONVERSATION AND PRESENTATION BY MR. SIMMONS. THAT'S A GENERAL CATEGORIZATION.

THE COURT: I'M GOING TO ALLOW IT.

A. THE DAY HE WAS AT THE COASTAL CENTER GOING FOR THE EVALUATION, HE SEEMED NOT TO UNDERSTAND VERY SIMPLE STRAIGHT-FORWARD QUESTIONS. HE ALMOST -- I'M NOT GOING TO SAY THAT -- HE SEEMED LIKE HE WAS DEFIANT

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OF THE SITUATION LIKE THERE WERE SEVERAL QUESTIONS THAT HE WAS INTENTIONALLY BEATING AROUND. AND ONCE AGAIN, I'M NO MEDICAL EXPERT, BUT IT SEEMED LIKE HE---

MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT.

HE CAN TESTIFY AS TO WHAT HE'S HEARD. BUT HE'S NOW SPECULATING AND OFFERING HIS OPINION.

THE COURT: OVER-RULED.

A. WHEN HE'S AT THE JAIL, ANY QUESTION YOU ASK HIM, HE CAN ALWAYS COME UP WITH A STRAIGHT-FORWARD ANSWER. HE'S A VERY INTELLIGENT PERSON FROM WHAT I'VE WITNESSED AT THE JAIL. HE'S GONE THROUGH THE INMATE HANDBOOK, OR I SAY HE'S GONE THROUGH THE INMATE HANDBOOK. HE'S VERY FAMILIAR WITH THE RULES.

THE COURT: MR. THEOS, NOW, LET'S GET STRAIGHT. I DON'T MIND YOUR OBJECTION. I WANT YOU TO DO YOUR JOB. BUT I'M NOT GOING TO PERMIT ANY MANNERISMS AND HUH AND SMILING AND SHAKING HEADS. THE JURY ISN'T HERE TODAY, BUT I'M SITTING AS JUDGE AND JURY, AND I DON'T NEED ANY THEATRICALS ON YOUR PART. IF YOU HAVE AN OBJECTION, YOU STATE IT, OKAY? BUT NO SHOW-BOATING IN MY COURT. THANK YOU.

MR. THEOS: YOUR HONOR, I'M NOT SHOW-BOATING.

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THE COURT: WELL, YOU'RE NOT GOING TO. SO YOU RESPOND APPROPRIATELY AS A PROFESSIONAL GENTLEMAN. THANK YOU, SIR.

MR. THEOS: I THOUGHT I WAS, YOUR HONOR. I APOLOGIZE.

THE COURT: I'M GOING TO REQUIRE YOU TO. STATE YOUR OBJECTION.

MR. THEOS: YOUR HONOR, I'M OBJECTING. HE'S ALREADY ANSWERED THE QUESTION THAT HE DID NOT SEE MR. SIMMONS READ THIS BOOK, AND HE HAS NO IDEA WHETHER HE WENT THROUGH IT. NOW HE'S TESTIFYING, OR BASING HIS OPINION, AS TO HIS INTELLIGENCE ON DIFFERENT TESTIMONY NOW THAT HE HAS IN FACT SEEN HIM GO THROUGH IT,

THE COURT: HOW DO YOU RESPOND TO THAT, SOLICITOR?

MR. BAILEY: YOUR HONOR, I'D HAVE TO FOLLOW-UP ON THAT AND JUST GET SOME CLARIFICATION IF I MIGHT.

THE COURT: GO AHEAD.

Q. MR. JACKSON, WHEN YOU WERE RELATING MR. SIMMONS Demeanor AT THE JAIL, YOU REFERENCED THE INMATE MANUAL. YOU PREVIOUSLY TESTIFIED THAT YOU DIDN'T ACTUALLY SEE HIM READING THAT MANUAL?

A. NO, SIR, I HAVEN'T.

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Q. CAN YOU---

A. THE REASON I SAID THAT IT APPEARED TO ME THAT HE HAD IS HE IS VERY FAMILIAR WITH THE RULES; A LOT OF LITTLE THINGS LIKE -- WELL, NOT LITTLE THINGS -- BUT AS FAR AS GETTING PAPERS UP FRONT AND STUFF LIKE THAT, HE CAN USUALLY GO THROUGH AND HE'LL ALMOST QUOTE THE PROPER PROCEDURE FOR GETTING THINGS DONE.

Q. HAVE YOU HAD CONVERSATIONS WITH MR. SIMMONS, JUST CASUAL CONVERSATIONS?

A. YES, SIR.

Q. CAN HE CARRY ON A CONVERSATION?

A. YES, SIR.

Q. ON THE OCCASION YOU TRANSPORTED MR. SIMMONS TO THE COASTAL CENTER FOR THE EVALUATION, DID YOU HAVE ANY CONVERSATION WITH HIM AFTER THE EVALUATION WAS OVER THAT YOU CAN RECALL?

A. A VERY BRIEF CONVERSATION.

Q. DO YOU RECALL THAT CONVERSATION?

A. REALLY ABOUT THE ONLY THING I REALLY REMEMBER OF IT WAS THAT HE JUST MADE THE STATEMENT THAT THEY WERE ASKING HIM STUPID QUESTIONS.

Q. OKAY. DID HE SAY ANYTHING AFTER THAT OTHER THAN THEY WERE ASKING HIM STUPID QUESTIONS?

A. NO, SIR.

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- Q. MR. JACKSON, PLEASE ANSWER ANY QUESTIONS THAT MR. THEOS MIGHT HAVE FOR YOU.

THE COURT: CROSS?

CROSS-EXAMINATION

BY MR. THEOS:

- Q. MR. JACKSON, YOU'VE BEEN WITH THE DORCHESTER COUNTY JAIL SINCE KENNETH CAME IN; IS THAT RIGHT?
- A. YES, SIR.
- Q. HAS HE BEEN HOUSED IN THE C DORM THE ENTIRE TIME?
- A. YES, SIR.
- Q. HAS HE BEEN HOUSED IN A CELL BY HIMSELF THIS ENTIRE TIME?
- A. AS POPULATION PERMITS. AS CORPORAL JOHNSON STATED EARLIER, WHEN POPULATION GETS UP HIGH, SOMETIMES IT IS REQUIRED THAT WE PUT TWO PEOPLE INTO A CELL.
- Q. HAS HE BEEN IN THE SAME CELL, BUT JUST OTHER PEOPLE BROUGHT IN BECAUSE OF THE POPULATION?
- A. NO, SIR. HE'S CHANGED CELLS SEVERAL TIMES.
- Q. NOW, ABOUT HOW FAR AWAY IS THIS TOWER FROM -- YOU'RE SPOTTING THE TOWER FROM MR. SIMMONS' CELL?
- A. RIGHT NOW?
- Q. IF YOU USED THIS COURTROOM TO GAUGE THE DISTANCE; CAN YOU JUST APPROXIMATE IT FOR US?
- A. RIGHT NOW THE CELL HE'S IN, IT'S PROBABLY AS FAR FROM HERE TO MAYBE THE DOORS, GOING OUT INTO THE --

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NOT THE---

Q. DOORS LEADING INTO THE?

A. FROM THE DOORS LEADING INTO THE---

Q. YES, SIR; RIGHT THERE. (INDICATING.) WHAT WOULD YOU GUESSTIMATE THAT AS BEING? HOW MANY FEET?

A. ABOUT FIFTEEN FEET.

Q. WERE YOU ABLE TO CONVERSE WITH MR. SIMMONS FROM YOUR SPOT IN THE TOWER?

A. NO, SIR. THE ONLY TIME YOU CAN CONVERSE WITH HIM WITHOUT GOING ONTO THE FLOOR IS WHEN HE MASHES THE INTERCOM BUTTON.

Q. IS THE CELL THAT MR. SIMMONS IS GENERALLY IN, IS IT A CLOSED CELL? IN OTHER WORDS IT DOESN'T HAVE THE BARS KIND OF LIKE THE OLD FASHIONED JAIL?

A. NO, SIR. IT'S A ROOM WITH A DOOR ON IT.

Q. SO IT'S A SEALED ROOM?

A. YES, SIR.

Q. THE ONLY WAY TO TALK TO MR. SIMMONS IS TO ACTUALLY OPEN THAT DOOR?

A. WELL, THERE'S A HATCH ON THE BOTTOM OF IT. IT'S PROBABLY A SIX BY EIGHTEEN INCH HATCH THAT YOU CAN OPEN FOR PUTTING TRAYS FOR FEEDING OR CHANGING MAIL OR TOILET PAPER, OR THINGS LIKE THAT.

Q. OKAY. AGAIN, JUST TO BE CLEAR ON THIS HANDBOOK THAT'S PASSED OUT. EVERY INMATE GETS IT?

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A. YES, SIR.

Q. AND MR. SIMMONS, OF COURSE, GOT HIS?

A. YES, SIR.

Q. AND, AGAIN, YOU'VE NEVER SEEN HIM READ THAT BOOK?

A. NO, SIR.

Q. YOU'VE NEVER QUESTIONED HIM ABOUT THE CONTENTS OF THAT BOOK?

A. NO, SIR.

Q. HE'S NEVER DISCUSSED WITH YOU THE CONTENTS OF THE BOOK?

A. NO, SIR, NOT AS FAR AS ACTUALLY ADDRESSING THE BOOK ITSELF. BUT AS FAR AS DISCUSSING RULES WITHIN THE FACILITY; YES, HE HAS.

Q. WHAT I MEAN BY DISCUSSING CONTENTS; HE'S NEVER BROUGHT THE BOOK TO YOU AND SAID "MR. JACKSON, WHAT DOES THIS MEAN" OR DISCUSSED A PARTICULAR RULE?

A. NO, SIR.

Q. WHEN YOU SAY HE'S QUESTIONED YOU; HE'S QUESTIONED YOU FROM TIME TO TIME ABOUT JAIL PROCEDURE?

A. YES, SIR.

Q. NOW, KENNETH HAS BEEN IN THERE SINCE DECEMBER OF '97; CORRECT?

A. YES, SIR.

Q. HOW MANY TIMES WOULD YOU SAY HE'S TALKED TO YOU ABOUT JAIL PROCEDURE?

SIDNEY JACKSON - CROSS/MR. THEOS

- A. REALLY THE ONLY TIME THAT ME AND HIM EVER GET INTO ANY CONVERSATION ABOUT JAIL PROCEDURE IS MAYBE IN THE MORNING IF SOMETHING IS GOING ON AND HE DOESN'T GET OUT TO GET HIS SHOWER EARLY IN THE MORNING. SOMETIMES THE FOOD TRAYS MIGHT BE LATE, AND HE'LL CALL AND WE'LL DISCUSS THAT FOR A LITTLE BIT. OTHER THAN THAT, REALLY THE ONLY TIME THAT HE'LL DISCUSS ABOUT ACTUAL JAIL GOINGS ON IS WHEN THERE'S A PROBLEM IN A CELL, THE INTERCOM STOPS WORKING, THE COMMODE WON'T STOP RUNNING, SOMETHING OF THAT NATURE.
- Q. YOU SAID THAT YOU'VE TALKED WITH KENNETH SEVERAL TIMES SINCE HE'S BEEN THERE?
- A. YES, SIR.
- Q. HE'S ALWAYS SEEMED TO BE ABLE TO COMMUNICATE WITH YOU?
- A. YES, SIR.
- Q. AND YOU'VE BEEN ABLE TO COMMUNICATE WITH HIM?
- A. YES, SIR.
- Q. HAS HE FOLLOWED ALL THE RULES?
- A. YES, SIR. HE'S NEVER HAD A DISCIPLINARY PROBLEM THAT I CAN THINK OF.
- Q. AND CERTAINLY HE'S BEEN THERE LONG ENOUGH, FROM DECEMBER OF '97 THROUGH TODAY'S DATE TO KNOW WHAT THE PROPER PROCEDURES ARE IN THE JAIL?

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A. YES, SIR.

Q. WITH RESPECT TO THE MAIL AND THE NEWSPAPERS AND THE ORDERING OF THINGS FROM THE COMMISSARY?

A. YES, SIR.

Q. WHETHER HE READ THE BOOK OR NOT?

A. YES, SIR.

Q. NOW, THE SUMMERVILLE JOURNAL THAT YOU SAID YOU SAW KENNETH WITH; HOW MANY TIMES DID YOU SEE HIM WITH THAT JOURNAL?

A. I CAN'T BE SPECIFIC WITH IT; JUST SOMETIMES WHEN YOU WALK THROUGH YOU MIGHT SEE HIM OUT WITH THE PAPER. I'M NOT GOING TO SAY IT'S AN EVERY DAY OCCURRENCE BECAUSE I COULDN'T SAY THAT.

Q. I'M UNFAMILIAR WITH IT. IS IT AN EVERY DAY PAPER? IS IT A ONCE A WEEK PAPER?

A. I DO BELIEVE THE SUMMERVILLE JOURNAL SCENE IS A DAILY PAPER.

Q. IT IS A DAILY PAPER?

A. I BELIEVE IT IS. I CAN'T SWEAR THAT IT IS. I DON'T LIVE IN SUMMERVILLE AND GET IT.

Q. IT'S MORE THAN ONCE YOU'VE SEEN HIM WITH THIS PAPER?

A. YES, SIR.

Q. BUT LESS THAN TEN, FIFTEEN, TWENTY? HOW MANY TIMES WOULD YOU SAY?

SIDNEY JACKSON - CROSS/MR. THEOS

A. I WOULD PROBABLY SAY TEN. AND ONCE AGAIN, THAT'S A ROUGH GUESS.

Q. WHEN YOU SAY YOU'VE SEEN HIM WITH THE PAPER, WHERE HAVE YOU SEEN HIM WITH THIS PAPER?

A. IN THE DAY ROOM.

Q. THAT PAPER -- THOSE PAPERS ARE KEPT IN THE DAY ROOM SO THAT INMATES CAN READ WHEN THEY'VE GOT THIS RECREATIONAL TIME?

A. YES, SIR.

Q. HAVE YOU SEEN MR. SIMMONS READING THAT PAPER?

A. I HAVEN'T VERBALLY HEARD HIM READING. BUT HE'LL SIT OVER THE PAPER WITH HIS HEAD DOWN. AND HE APPEARS TO BE READING. AND ONCE AGAIN, I'M NOT OUT THERE TO HEAR HIM ACTUALLY READING THE WORDS.

Q. SO YOU DON'T KNOW WHETHER HE'S ACTUALLY READING IT OR NOT?

A. NO, SIR; HE COULD JUST BE LOOKING AT THE WORDS.

Q. NOW, WITH RESPECT TO -- IS THERE A T.V. IN THAT ROOM?

A. NO, SIR.

Q. IS THERE A T.V. ANYWHERE FOR MR. SIMMONS TO WATCH?

A. NO, SIR.

Q. IS THERE A T.V. ANYWHERE FOR ANY INMATE TO WATCH?

A. YES, SIR. THERE ARE T.V.S ON B, A, AND D DORMS; ALSO E AND F.

SIDNEY JACKSON - CROSS/MR. THEOS

Q. I ASSUME THAT THERE'S NOT ONE IN C BECAUSE IT'S A MAX AREA?

A. YES, SIR.

Q. THERE'S NO ACCESS TO ONE IN THE DAY ROOM?

A. NO, SIR.

Q. EVEN FOR SPECIAL EVENTS LIKE THE SUPER BOWL OR THOSE THINGS?

A. NO, SIR.

Q. NOW, WITH RESPECT TO THE BIBLE IN THESE DISCUSSION GROUPS. YOU'VE HEARD -- I ASSUME YOU WERE IN HERE WHEN I WAS QUESTIONING MRS. JACKSON, OR MAYBE JOHNSON?

A. YES, SIR.

Q. THE BIBLE GROUP DISCUSSIONS THAT YOU'VE SEEN KENNETH IN, THOSE AREN'T THE FORMAL DISCUSSION GROUPS AT NIGHT?

A. NO, SIR.

Q. THESE BIBLE DISCUSSION GROUPS ARE INFORMAL AND THEY'RE IN THE DAY ROOM?

A. YES, SIR.

Q. ARE THEY HELD AT A CERTAIN TIME ON CERTAIN DAYS OF THE WEEK?

A. IF THEY ARE I NEVER PAID ATTENTION ENOUGH TO GET THE SCHEDULE ON IT. I KNOW THEY HAVE THEM.

Q. HOW MANY DAYS A WEEK DOES KENNETH GET INTO THAT DAY

ROOM?

A. HE'S IN THE DAY ROOM EVERY DAY. SUNDAY THEIR TIME IS USUALLY CUT DRAMATICALLY. BUT USUALLY EVERY DAY THEY'RE OUT FOR A FAIRLY GOOD WHILE.

Q. CAN YOU TELL US, IS IT TWO HOURS, FIVE HOURS?

A. WELL, SIR, THE WAY P.C. USUALLY WORKS -- AND I DO SAY USUALLY -- DIFFERENT CIRCUMSTANCES WILL BRING UP DIFFERENT SITUATIONS. WHEN P.C. WE'LL USUALLY COME OUT BETWEEN 6:00 AND 6:30 IN THE MORNING WHENEVER BREAKFAST IS SERVED, THEY'LL USUALLY STAY OUT THE ENTIRE DAY. AND REGARDING HOW MANY ACTUAL MAX INMATES THERE ARE OVER THERE, EACH INMATE IS REQUIRED BY LAW TO BE GIVEN ONE HOUR OF REC A DAY. WITH THE MAXIMUM SECURITY INMATES THAT WE HAVE OVER THERE, WE HAVE TO LET THEM OUT FOR THAT ONE HOUR A DAY. AND IF THEY COME OUT, WE HAVE TO LOCK P.C. DOWN SO THEY CAN BE OUT BY THEMSELVES SINCE THEY ARE MAXIMUM. AND REGARDING TO HOW MANY HOURS A DAY THEY GET OUT, IT DEPENDS ON HOW MANY MAXIMUM SECURITY INMATES THERE ARE OVER THERE, IF THERE IS ONE, THEN THEY'LL ONLY HAVE TO BE LOCKED OUT FOR ONE HOUR BETWEEN SIX TO SIX. AND THAT'S, ONCE AGAIN, ROUGHLY SPEAKING.

Q. SO THE RECREATIONAL TIME THAT'S PROVIDED FOR THE GENERAL POPULATION IS DIFFERENT FROM THAT PROVIDED

SIDNEY JACKSON - CROSS/MR. THEOS

FOR THE MAX INMATES?

A. YES, SIR.

Q. AND WHEN YOU BRING THE MAX INMATE OUT, THE GENERAL POPULATION IS SENT BACK?

A. NO, SIR. NOW, WE'RE TALKING ABOUT C DORM WHICH IS OUR MAXIMUM SECURITY UNIT. C IS OUR MAX LANE. IN MAX WE HAVE MAXIMUM SECURITY INMATES AND WE HAVE P.C. INMATES, PROTECTIVE CUSTODY.

Q. OKAY. I GUESS WHAT I'M TRYING TO FIND OUT; DOES KENNETH GO OUT DURING HIS RECREATIONAL TIME BY HIMSELF, OR IS HE WITH OTHER INMATES?

A. HE'S WITH OTHER INMATES FROM P.C.

Q. FROM THE C SECTION?

A. YES, SIR.

Q. AND THEY DON'T SHARE THAT TIME AND THAT SPACE WITH ANYBODY EXCEPT THE C PEOPLE?

A. EXACTLY; YES, SIR. WELL, I WILL SAY ONE THING. AFTER MEALS, THE CLEAN-UP CREW USUALLY COMES IN, AND THEY'LL SWEEP UP AND PICK UP TRASH AND STUFF LIKE THAT.

Q. CLEAN-UP CREW CONSISTING OF TRUSTEES?

A. TRUSTEES; YES, SIR.

Q. CAN YOU TELL US HOW MANY PEOPLE ARE GENERALLY IN THE DAY ROOM WHEN MR. SIMMONS IS IN THERE?

A. (NO RESPONSE.)

SIDNEY JACKSON - CROSS/MR. THEOS

- Q. AND I UNDERSTAND IT FLUCTUATES; BUT JUST---
- A. YES, SIR. RIGHT NOW IT'S PROBABLY SIX TO EIGHT.
- Q. NOW, GETTING BACK TO THESE BIBLE STUDY GROUPS. YOU SEE PEOPLE IN THERE WITH BIBLES?
- A. YES, SIR.
- Q. YOU DON'T KNOW WHETHER -- YOU HAVE NOT OBSERVED MR. SIMMONS ACTUALLY READING FROM THE BIBLE?
- A. NO, SIR. I'VE NEVER HEARD HIM VERBALLY READING FROM THE BIBLE.
- Q. AND YOU'VE NEVER HEARD HIM DISCUSSING THE BIBLE?
- A. YES, SIR, I HAVE HEARD HIM DISCUSSING IT.
- Q. YOU'VE HEARD WORDS COMING OUT OF HIS MOUTH AND CAN TELL US WHAT THOSE WORDS ARE?
- A. I DON'T RECALL SPECIFICALLY THE WORDS. I HEAR -- WE'VE GOT RIGHT NOW PROBABLY 140 INMATES; AND PROBABLY 80 PERCENT OF THEM WILL QUOTE THE BIBLE SEVERAL TIMES A DAY.
- Q. SO IT'S YOUR TESTIMONY THAT YOU JUST HEAR ALL THESE PEOPLE TALKING ABOUT THE BIBLE?
- A. YES, SIR.
- Q. HAVE YOU EVER SEEN MR. SIMMONS READ THE JET MAGAZINE, OR YOU JUST KNOW BECAUSE YOU'VE SEEN IT IN HIS CELL?
- A. I'VE SEEN HIM LOOKING THROUGH IT. ONCE AGAIN, I'VE NEVER HEARD HIM VERBALLY READ FROM IT.

SIDNEY JACKSON - CROSS/MR. THEOS

Q. NOW, YOU ALSO SAID YOU SAW HIM PLAYING SOME GAMES WHEN MR. BAILEY ASKED. YOU SAID CHESS, AND THEN YOU CORRECTED IT?

A. YES, SIR; I CORRECTED IT TO CHECKERS.

Q. ALL RIGHT. I JUST WANTED TO BE CLEAR. IT'S NOT CHESS?

A. I CAN'T EVER REMEMBER SEEING HIM PLAY CHESS; NO, SIR.

Q. THERE'S A BIG DIFFERENCE BETWEEN THE TWO GAMES?

A. YES, SIR.

Q. YOU'VE SEEN HIM PLAY CHECKERS?

A. YES, SIR.

Q. HOW MANY TIMES WOULD YOU SAY?

A. THAT I CAN RECALL, MAYBE TWICE.

Q. CAN TELL US ROUGHLY WHEN THAT WOULD HAVE BEEN? IN THE LAST MONTH? WITHIN THE LAST SIX MONTHS?

A. WITHIN THE LAST, I'LL SAY, TWO MONTHS.

Q. CAN YOU BE ANY MORE SPECIFIC THAN THAT?

A. I'LL PROBABLY -- MAYBE WITHIN THE LAST MONTH, BUT I CAN'T NARROW IT DOWN ANY MORE THAN THAT.

Q. ALL RIGHT. INMATES DON'T HAVE TO CHECK THESE GAME BOARDS OUT?

A. NO, SIR. THEY'RE LEFT IN THE ROOM.

Q. WITH RESPECT TO THE CARD GAMES; I THINK YOUR TESTIMONY WAS YOU REALLY NEVER STAYED LONG ENOUGH

SIDNEY JACKSON - CROSS/MR. THEOS

TO SEE WHAT THESE FELLOWS WERE PLAYING?

A. NO, SIR.

Q. DID YOU STAY LONG ENOUGH TO BE ABLE TO TELL US
WHETHER KENNETH WAS ONE OF THE FELLOWS PLAYING?

A. YES, SIR, HE WAS PLAYING.

Q. NOW, I REMEMBER YOUR FACE AND YOUR NAME BECAUSE YOU
BROUGHT MR. SIMMONS OVER ON ONE OF THE DAYS TO THE
EVALUATION.

A. YES, SIR.

Q. DO YOU REMEMBER WHICH DAY THAT WAS?

A. I BELIEVE IT WAS THURSDAY OF THE WEEK BEFORE LAST.

Q. AND HAVE YOU HAD A CHANCE TO SPEAK WITH DR. SANDLER
SINCE THAT DATE?

A. YES, SIR. I SPOKE WITH HIM TUESDAY OF THIS WEEK.

Q. DID YOU SPEAK WITH MR. MCABEE ALSO?

A. YES, SIR, VERY BRIEFLY.

Q. I'M SORRY; DR. SANDLER AND DR. MCABEE. DID YOU
SPEAK WITH THEM IN PERSON, OR DID YOU SPEAK WITH
THEM OVER THE PHONE?

A. I SPOKE WITH THEM IN PERSON.

Q. WHERE DID YOU SPEAK WITH THEM?

A. AT THE COASTAL CENTER.

Q. AND THAT WOULD HAVE BEEN ON THE SAME DAY THAT YOU
TOOK KENNETH?

A. I SPOKE WITH DR. SANDLER VERY BRIEFLY ON THAT DAY.

SIDNEY JACKSON - CROSS/MR. THEOS

BUT I WENT BACK THIS PAST TUESDAY AND SPOKE WITH THE TWO OF THEM. BOTH OF THEM WERE A VERY BRIEF DISCUSSION, A VERY BRIEF CONVERSATION. I PROBABLY SPOKE WITH DR. SANDLER A LITTLE BIT LONGER THAN DR. MCABEE.

Q. DID YOU SPEAK WITH THEM ON THE PHONE ALSO OR JUST THOSE TWO TIMES?

A. I'VE NEVER, THAT I CAN RECALL, SPOKEN TO DR. SANDLER. I MIGHT HAVE CARRIED ON A VERY BRIEF CONVERSATION WITH HIM THAT MORNING, JUST SETTING UP A TIME. BUT I MOSTLY DEALT WITH SECRETARIES ON THE PHONE.

Q. SO THIS LAST TIME WAS ACTUALLY A PRE-ARRANGED DATE FOR YOU SO TO SPEAK?

A. YES, SIR. I HAD GONE TO COLUMBIA THAT NIGHT, AND I GOT A CALL ABOUT 9:30 THAT THE SOLICITOR'S OFFICE HAD REQUESTED ME TO CONTACT DR. SANDLER. AND THAT MORNING I CAME IN AND WAS CONDUCTING A CLASS, AND DURING THAT CLASS THE SOLICITOR'S OFFICE CALLED AND SAID THAT I NEEDED TO CALL DR. SANDLER. AND I CALLED THAT MORNING, AND I GOT IN TOUCH WITH THE SECRETARY, AND THEY CONTACTED HIM WHILE HE WAS ON THE WAY TO SUMMERVILLE, AND I MET HIM IN SUMMERVILLE.

Q. HOW LONG DO YOU THINK YOU MET WITH HIM?

SIDNEY JACKSON - CROSS/MR. THEOS

A. SIR?

Q. HOW LONG DID YOU MEET WITH THEM, ROUGHLY?

A. ROUGHLY -- WELL, THE WHOLE TIME WASN'T A MEETING. I PROBABLY ARRIVED THERE AT 10:15. I PROBABLY LEFT AROUND 12:30. BUT A LOT OF THAT WAS DOWN TIME. I SPOKE WITH THEM PROBABLY THIRTY MINUTES IN TOTAL.

Q. WITHOUT ASKING YOU TO GET INTO THE SPECIFICS OF WHAT Y'ALL DISCUSSED; IS IT FAIR TO SAY THAT WHAT YOU TOLD THEM IS ESSENTIALLY WHAT YOU'VE TOLD US HERE TODAY?

A. YES, SIR.

Q. DID YOU TELL THEM ANYTHING ANY DIFFERENTLY THAN WHAT YOU'VE TOLD US HERE TODAY?

A. NOT THAT I CAN RECALL. THE ONLY THING I CAN THINK OF IS I MAY HAVE TOLD THEM THAT IT WAS A CHESS GAME THAT HE PLAYED INSTEAD OF CHECKERS. THAT'S THE ONLY THING I CAN THINK OF.

Q. NOW, YOU SAID THAT, IN ANSWER TO MR. BAILEY'S QUESTIONS, THAT MR. SIMMONS SEEMED TO NOT UNDERSTAND SIMPLE CONCEPTS WHEN HE WAS IN THIS EVALUATION---

A. YES, SIR.

Q. --WITH DR. SANDLER. NOW, THE EVALUATION THAT YOU WERE IN, WAS I PRESENT DURING THAT EVALUATION?

A. NO, SIR, YOU WERE OUTSIDE.

SIDNEY JACKSON - CROSS/MR. THEOS

Q. SO YOU WERE THE ONLY OTHER PERSON IN THERE BESIDES DR. SANDLER AND DR. MCABEE?

A. YES, SIR.

Q. WHAT CONCEPTS DID HE NOT UNDERSTAND?

A. THE ONE THAT REALLY STUCK OUT WAS THE FIRST RIGHTS, YOU HAVE THE RIGHT TO REMAIN SILENT.

Q. DO YOU RECALL WHAT IT WAS ABOUT HIS RIGHT TO REMAIN SILENT THAT HE DIDN'T UNDERSTAND?

A. THE WAY HE PERCEIVED IT WAS THAT IF THEY HAD CALLED HIM THERE TO ANSWER QUESTIONS, THEN HE WAS SUPPOSED TO ANSWER THE QUESTIONS. HE DIDN'T SEEM TO GRASP THE CONCEPT THAT IF THERE WAS A QUESTION ASKED THAT HE FELT MAYBE WOULD INCRIMINATE HIM OR THAT HE SIMPLY DIDN'T WANT TO ANSWER, THAT HE WAS NOT BOUND BY LAW TO ANSWER THAT QUESTION.

Q. HOW MANY TIMES WOULD YOU SAY DR. SANDLER AND DR. MCABEE WENT OVER THAT CONCEPT OF HIS RIGHT TO REMAIN SILENT WITH HIM?

A. PROBABLY THAT DAY BETWEEN FIVE AND TEN TIMES.

Q. ALL RIGHT. DID HE EVER SEEM TO GRASP AN UNDERSTANDING OF THE CONCEPT?

A. NO, SIR, NOT REALLY.

Q. DURING THAT ENTIRE TIME, HE SEEMED TO YOU NOT TO GRASP THAT CONCEPT; RIGHT?

A. YES, SIR.

SIDNEY JACKSON - CROSS/MR. THEOS

- Q. ANY OTHER CONCEPTS THAT YOU RECALL?
- A. THERE WERE A SERIES OF QUESTIONS THAT THEY WERE ASKING IN REFERENCE TO WHAT HE UNDERSTOOD OF COURT PROCEEDINGS. AND ONE OF THE QUESTIONS -- I DON'T REMEMBER EXACTLY HOW IT READ -- BUT IT WAS IN REFERENCE TO THE SOLICITOR AND HIS FUNCTION IN THE COURT. AND HE DIDN'T SEEM TO UNDERSTAND THAT AT ALL.
- Q. HOW MANY TIMES WOULD YOU SAY DR. SANDLER AND DR. MCABEE WENT OVER THAT WITH HIM?
- A. THEY DIDN'T DWELL ON THAT VERY LONG. I'D SAY MAYBE TWO OR THREE TIMES. AND HE SEEMED -- AFTER THEY WENT OVER IT SEVERAL TIMES, HE SEEMED TO KIND OF GET A GRASP ON THAT.
- Q. ANY OTHER CONCEPTS THAT YOU BELIEVE HE DIDN'T SEEM TO GRASP?
- A. WELL, ONCE AGAIN, GOING BACK TO THE SERIES OF QUESTIONS; IT WAS -- AND ONCE AGAIN, I DON'T REMEMBER THE SPECIFICS. THERE WERE JUST SEVERAL REGARDING PROCEEDINGS OF WHAT WOULD GO ON DURING THE TRIAL THAT HE DIDN'T SEEM TO TOTALLY GRASP.
- Q. WERE THERE QUESTIONS ASKED OF HIM REGARDING EVIDENCE AND THE INTRODUCTION OF EVIDENCE IN THE TRIAL?
- A. I DON'T RECALL SPECIFICALLY.

SIDNEY JACKSON - CROSS/MR. THEOS

Q. WERE THERE QUESTIONS ASKED OF HIM REGARDING MINE AND MR. BELL'S ROLES AS HIS LAWYERS?

A. YES, SIR.

Q. IS THAT ONE OF THE OTHER CONCEPTS HE DIDN'T GRASP?

A. HE UNDERSTOOD THAT, YES, SIR, HE UNDERSTOOD THE DEFENSE WAS TO HELP HIM.

Q. WAS HE QUESTIONED REGARDING THE ROLE OF THE JUDGE?

A. YES, SIR.

Q. WHAT WAS YOUR TAKE ON HIS UNDERSTANDING OR LACK OF UNDERSTANDING IN THAT?

A. I'M TRYING TO REMEMBER HIS EXCEPT. I DON'T REMEMBER THE EXACT COMMENT HE MADE. BUT THE REFERENCE THAT HE MADE WAS NOT TOTALLY TO THE FUNCTIONING OF THE JUDGE. IT WAS -- IF I HAD TO CATEGORIZE IT, I'D SAY IT WAS BLURRY, HIS CONCEPT OF THE JUDGE.

Q. IT DIDN'T APPEAR TO YOU THAT UNDERSTOOD THE ROLE OF THE JUDGE?

A. NOT COMPLETELY.

Q. HOW ABOUT THE ROLE OF WITNESSES? WAS THAT DISCUSSED WITH HIM?

A. YES, SIR, IT WAS. ONCE AGAIN I DON'T REMEMBER THE SPECIFIC QUESTION.

Q. ANY OTHER COURTROOM PROCEDURE DISCUSSED WITH HIM?

A. I REMEMBER THERE WAS A QUESTION REGARDING THE

JURY. I DON'T REMEMBER WHAT HIS CONCEPT OF THAT WAS, BUT IT WAS NOT ON LINE. IT WAS SOMETHING TO THE EFFECT THAT THEY WERE TO MAINTAIN -- NOT ORDER -- BUT MAINTAIN THE ORDER OF THINGS THAT WERE GOING ON AS FAR AS PAPERS OR SOMETHING. LIKE I SAY, I DON'T SPECIFICALLY REMEMBER WHAT HE SAID TO THAT.

Q. WELL, WERE CONCEPTS REGARDING GUILTY PLEAS AND NOT GUILTY PLEAS DISCUSSED?

A. I DON'T RECALL.

Q. WERE POTENTIAL SENTENCES DISCUSSED IF MR. SIMMONS WERE CONVICTED?

A. NO, SIR; I DON'T RECALL.

Q. WAS THE CONCEPT OF VERDICTS DISCUSSED?

A. NOT AS FAR AS TIME GIVEN. IT WAS DISCUSSED THAT THE JUDGE BE THE ONE TO PASS THE VERDICT, OR THE JURY WOULD PASS THE VERDICT, BUT I DON'T RECALL THE EXACT REFERENCING TO THE TIME THAT HE COULD BE GIVEN A SENTENCE.

Q. DID DRS. SANDLER AND MCABEE HAVE A WRITTEN FORM THAT THEY PRESENTED TO MR. SIMMONS FOR HIS SIGNATURE?

A. YES, SIR.

Q. AND WAS IT A MIRANDA WAIVER OF RIGHTS FORM?

A. YES, SIR.

SIDNEY JACKSON - CROSS/MR. THEOS

Q. DID THEY REVIEW THAT FORM WITH MR. SIMMONS?

A. YES, SIR, FOR A GOOD WHILE.

Q. A GOOD WHILE?

A. YES, SIR.

Q. HOW LONG WOULD YOU SAY THEY SPENT ON THAT FORM?

A. PROBABLY 30 OR 45 MINUTES.

Q. WHAT WOULD YOU SAY WAS THE SINGLE MOST CONCEPT IN RIGHT THAT HE HAD THE MOST DIFFICULTY IN COMPREHENDING?

A. THE RIGHT TO REMAIN SILENT.

Q. AND, AS YOU STATED BEFORE, HE NEVER DID UNDERSTAND THAT?

A. HE NEVER DID SEEM TO GRASP THE RIGHT. HE STATED TO THEM THAT HE UNDERSTOOD THAT HE DIDN'T HAVE TO ANSWER THE QUESTIONS. BUT THEN IN THE SAME BREATH HE WOULD SAY THEY BROUGHT HIM HERE, SO HE WAS SUPPOSED TO ANSWER THE QUESTIONS.

Q. DID HE SIGN THAT FORM?

A. YES, SIR, HE DID.

Q. DID IT APPEAR TO YOU THAT HE UNDERSTOOD ALL OF THOSE RIGHTS WHEN HE SIGNED THAT FORM?

A. HE APPEARED TO GET MAYBE THE BASIC CONCEPT; BUT TOTALLY UNDERSTAND THEM, NO, SIR.

Q. AGAIN, THE MOST TROUBLING CONCEPT WAS THAT RIGHT TO REMAIN SILENT?

SIDNEY JACKSON - CROSS/MR. THEOS

A. YES, SIR.

Q. AND HIS FEELING AND HIS VERBALIZATION THAT IF HE WAS PRESENTED IN A SITUATION OF PEOPLE QUESTIONING HIM, HE HAD TO ANSWER?

A. YES, SIR. THAT'S WHAT HE STATED IN THE MEETING.

MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ON RE-DIRECT?

MR. BAILEY: VERY BRIEFLY, YOUR HONOR.

RE-DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. JACKSON, WHEN MR. THEOS ASKED YOU ABOUT YOUR OBSERVATIONS OF MR. SIMMONS DURING THE EVALUATION AT THE COASTAL CENTER, ARE YOU TESTIFYING TO WHAT HE UNDERSTOOD AS FAR AS HIS MIRANDA RIGHTS AND SO FORTH OR WHAT HE APPEARED TO VERBALIZE TO THE DOCTOR?

A. WHAT HE APPEARED TO VERBALIZE.

Q. AND CONTRAST IN HIS ABILITY TO GRASP THESE CONCEPTS AT THE EVALUATION, COMPARING THAT WITH YOUR OBSERVATIONS, YOUR CONVERSATIONS WITH HIM, HIS INTERACTIONS WITH OTHER INMATES?

A. YES, SIR.

Q. WERE YOU SURPRISED AT THE ANSWERS HE GAVE THE DOCTORS?

A. YES, SIR, I WAS.

Q. ALL RIGHT, SIR. AND WHY IS THAT?

A. BECAUSE -- ONCE AGAIN I SAY THIS -- WHEN YOU CARRY ON A CONVERSATION WITH HIM AT THE JAIL, YOU UNDERSTAND THAT HE IS A VERY INTELLIGENT PERSON. I CAN'T SEE WHY HE WOULD HAVE A PROBLEM UNDERSTANDING THAT. ME AND HIM HAVE BRIEFLY DISCUSSED DIFFERENT, MAYBE PROCEDURES IN THE COURTROOM OR ANYTHING LIKE THAT, AND HE SEEMED TO HAVE A BASIC -- JUST ONCE AGAIN I SAY A VERY BASIC GRASP OF WHAT WAS GOING ON. BUT WHEN HE GOT THERE, IT WAS LIKE HE HAD NO GRASP OF WHAT WAS GOING ON WITH IT. AS FAR AS THE RIGHTS, THE TWO OF US HAD NEVER DISCUSSED RIGHTS. BUT IN MY OPINION -- AND ONCE AGAIN---

Q. DON'T GIVE AN OPINION.

A. OKAY.

Q. AS FAR AS HIS DEMEANOR, HIS FACIAL EXPRESSIONS, THE WAY HE CARRIED HIMSELF DURING THE INTERVIEW AT THE COASTAL CENTER, WAS THERE ANY DIFFERENCE THAT YOU OBSERVED BETWEEN THAT AND THAT WAY OF HIS DEMEANOR, HIS FACIAL EXPRESSIONS, AND SO FORTH?

A. HE SEEMED VERY AGITATED AT THE COASTAL CENTER LIKE HE WAS VERY AGGRAVATED WITH THE QUESTIONS THAT WERE BEING ASKED. I'M NOT GOING REALLY GOING TO SAY A DISGUSTED LOOK ON HIS FACE, BUT HE SEEMED VERY AGITATED.

Q. THANK YOU.

MR. BAILEY: THAT'S ALL I HAVE OF THIS
WITNESS, YOUR HONOR.

THE COURT: ANYTHING FURTHER, COUNSELOR?

MR. THEOS: NOTHING, YOUR HONOR.

THE COURT: ANY OBJECTION TO THIS WITNESS
BEING EXCUSED?

MR. BAILEY: NOT FROM THE STATE, YOUR HONOR.

MR. THEOS: NO, SIR.

THE COURT: STEP DOWN.

MR. BAILEY: YOUR HONOR, I'VE GOT ONE MORE
CORRECTIONAL OFFICER HERE, AND I'LL TRY TO BE
VERY BRIEF AND NOT COVER ANY GROUNDS WE'VE
ALREADY COVERED.

THE COURT: JUST A BRIEF ONE.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: OKAY.

MR. BAILEY: MR. MCKINNEY.

THE COURT: COME AROUND PLEASE, MR. MCKINNEY.

WHEREUPON,

EMMETT MCKINNEY, JR., WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

EMMETT MCKINNEY - DIRECT/MR. BAILEY

BY MR. BAILEY:

Q. MR. MCKINNEY, YOU'RE A CORRECTIONAL OFFICER AT THE DORCHESTER COUNTY DETENTION CENTER?

A. YES, SIR, I AM.

Q. HOW LONG HAVE YOU WORKED AT THE DETENTION CENTER?

A. SINCE AUGUST THE 24TH, 1998.

Q. ALL RIGHT, SIR. AND DURING THAT PERIOD OF TIME HAVE YOU COME IN CONTACT WITH THE DEFENDANT IN THIS CASE, KENNETH SIMMONS?

A. YES, SIR.

Q. HOW OFTEN DO YOU SEE MR. SIMMONS DURING THE COURSE OF YOUR WORK ON AVERAGE?

A. OH, I THINK I SEE HIM -- I HAVE CONTACT WITH KENNETH PROBABLY ONCE OR TWICE A WEEK.

Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT YOU'VE OBSERVED MR. SIMMONS WITH READING MATERIAL?

A. YES, SIR, I HAVE.

Q. CAN YOU RECALL SPECIFICALLY WHAT TYPE OF READING MATERIAL YOU'VE SEEN HIM WITH?

A. I'VE SEEN HIM WITH A BIBLE AND A NEWSPAPER.

Q. WHAT, IF ANYTHING, WAS HE DOING WITH THE BIBLE AND THE NEWSPAPER?

A. HE HAD THE BIBLE OPEN DURING A STUDY GROUP.

Q. HOW ABOUT THE NEWSPAPER?

A. THE NEWSPAPER WAS OPEN OUT ON THE TABLE WHILE I WAS

EMMETT MCKINNEY - DIRECT/MR. BAILEY

IN THE TOWER.

Q. OKAY. AND WHAT DIRECTION WAS HIS HEAD POINTED IN WHEN HE HAD THE NEWSPAPER OPEN?

A. HE WAS LOOKING DOWNWARD TOWARDS THE NEWSPAPER, TOWARDS THE BIBLE.

Q. AND DO YOU HAVE ANY KNOWLEDGE OF MR. SIMMONS EITHER MAILING OR RECEIVING LETTERS FROM THE JAIL?

A. MR. SIMMONS HAS HANDED ME LETTERS BEFORE TO BE MAILED.

Q. WHEN HE HANDED YOU THOSE LETTERS, WHERE WAS HE?

A. HE WAS IN THE DAY ROOM ON THE C SIDE, MAXIMUM SECURITY.

Q. ALL RIGHT, SIR. AND DO YOU RECALL TRANSPORTING OR ASSISTING OR ASSISTING IN TRANSPORTING MR. SIMMONS TO ONE OF THE EVALUATIONS OUT AT THE COASTAL CENTER?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND DID YOU TRANSPORT HIM BACK FROM THE COASTAL CENTER TO THE JAIL?

A. YES, SIR, I DID.

Q. DO YOU RECALL A CONVERSATION, IF ANY, THAT YOU HAD WITH MR. SIMMONS ON THE WAY BACK WHEN THE EVALUATION WAS COMPLETED?

A. WHEN THE EVALUATION WAS COMPLETED AS WE WERE WALKING OUT OF THE EVALUATION ROOM TOWARDS THE VAN,

EMMETT MCKINNEY - DIRECT/MR. BAILEY

THE TRANSPORT VAN, I SAID TO MR. SIMMONS; I SAID, "MAN, THEY TREATED YOU LIKE A LITTLE CHILD; YOU KNOW, THOSE ARE SOME PRETTY STUPID QUESTIONS." AND HE SAID, "WELL, IF THEY'RE GOING TO ASK ME STUPID QUESTIONS, THEN I'M GOING TO GIVE THEM STUPID ANSWERS."

Q. THANK YOU, SIR. PLEASE ANSWER ANYTHING THE DEFENSE MAY HAVE.

THE COURT: CROSS?

CROSS-EXAMINATION

BY MR. THEOS:

Q. OFFICER MCKINNEY, HAVE YOU SPOKEN WITH DR. SANDLER?

A. YES, SIR, I HAVE.

Q. HOW MANY TIMES?

A. WELL, JUST A BRIEF HELLO AT THE COASTAL CENTER. AND ON TUESDAY OF THIS WEEK I SPOKE WITH HIM ON THE PHONE BRIEFLY APPROXIMATELY 1:30 P.M.

Q. ANY OTHER FACE TO FACE MEETINGS WITH DR. SANDLER?

A. NO, SIR.

Q. ANY CONVERSATIONS OTHER THAN JUST HAILING EACH OTHER WITH DR. MCABEE?

A. NO, SIR.

Q. YOUR ONLY CONVERSATIONS ABOUT MR. SIMMONS HAVE BEEN WITH DR. SANDLER?

A. MR. SANDLER AND THE SOLICITOR.

EMMETT MCKINNEY - CROSS/MR. THEOS

Q. AND MR. BAILEY?

A. YES, SIR.

Q. WHAT DID YOU DISCUSS WITH DR. SANDLER?

A. I HAD RECEIVED A PHONE CALL WHEN I WASN'T HOME. MY MOM HAD GIVEN ME A MESSAGE THAT P.F.C. JACKSON HAD CONTACTED ME. AND UPON THAT, I HAD CALLED A BEEPER NUMBER. MR. JACKSON HAD TOLD ME THAT MR. SANDLER WOULD LIKE TO SPEAK WITH ME. AND I OBTAINED A PHONE NUMBER OF THE COASTAL CENTER. AND THERE I WAS ABLE TO GET AHOLD OF DR. SANDLER. AND DURING THAT CONVERSATION DR. SANDLER HAD ASKED ME IS IF ANYTHING WAS SAID AT THAT POINT CONCERNING THE PREVIOUS TESTIMONY I JUST GAVE OF WHAT MR. SIMMONS HAD SAID TO ME ABOUT ASKING STUPID QUESTIONS. I BORE THAT TESTIMONY TO HIM OVER THE PHONE AND THE TESTIMONY ALSO ABOUT HIM HAVING READING MATERIAL. AND THAT PHONE CONVERSATION TOOK ABOUT FOUR MINUTES.

Q. SO HE ASKED YOU IF YOU HAD ANY CONVERSATIONS WITH MR. SIMMONS OF ANY SIGNIFICANCE?

A. UM---

Q. OR RELATED TO THE EVALUATION?

A. (NO RESPONSE.)

Q. I JUST WANT TO MAKE SURE I UNDERSTAND EXACTLY WHAT DR. SANDLER SAID.

EMMETT MCKINNEY - CROSS/MR. THEOS

A. I'LL TRY TO FORMULATE IT IN MY HEAD, SIR. THE ONLY THING DR. SANDLER HAD ASKED ME IF I COULD TELL HIM OF ANYTHING THAT HAD OCCURRED AFTER THE MEETING, AFTER THE EVALUATION, AND THAT IF I HAD SEEN HIM READING ANY MATERIALS. THAT'S WHAT I RECALL.

Q. OKAY. AND I UNDERSTAND THAT YOU TOLD DR. SANDLER THE SAME THING YOU JUST TOLD US ABOUT YOUR CONVERSATION WITH MR. SIMMONS ON THE WAY TO THE TRANSPORT VAN?

A. YES, SIR.

Q. WITH RESPECT TO READING MATERIALS, TELL US EXACTLY WHAT YOU TOLD DR. SANDLER.

A. I TOLD DR. SANDLER THAT I HAVE NEVER VERBALLY HEARD MR. SIMMONS READ OUT OF THE BIBLE OR OUT OF THE NEWSPAPER; I HAVE JUST OBSERVED HIM LOOKING DOWN AT THE BIBLE OR NEWSPAPER, AND I DO KNOW HIM TO HAVE MAGAZINES IN HIS CELL. I ALSO KNOW THAT THE LETTERS HE'S GIVEN ME. I'VE NEVER SEEN HIM WRITE THEM. I DON'T KNOW IF HE'S, YOU KNOW, HAD ANYBODY ELSE DO THEM FOR HIM. BUT I KNOW THAT I'VE NEVER SEEN HIM WRITE THE LETTERS. I'VE NEVER SEEN HIM READ EXCEPT FOR ONE OCCASION, AND THAT WAS AT THE COASTAL CENTER.

Q. WE'LL GET TO THAT IN A SECOND. YOU TOLD DR. SANDLER YOU HAD ACTUALLY NEVER SEEN HIM READ;

CORRECT?

A. I BELIEVE SO, SIR; YES, SIR.

Q. EITHER THE BIBLE, A MAGAZINE, OR A NEWSPAPER?

A. NO, SIR, I HAVEN'T. I'VE NOT VERBALLY HEARD HIM READ EITHER.

Q. AND YOU TOLD THAT TO DR. SANDLER; CORRECT?

A. YES, SIR.

Q. AND THAT'S THE TRUTH? YOU HAVEN'T SEEN HIM READING ANY OF THOSE THINGS?

A. WELL, I HAVE SEEN HIM OPEN THE BOOK UP. HE'S GOT IT IN FRONT OF HIM, OKAY? BUT I HAVE NEVER VERBALLY HEARD HIM READ OUT OF THOSE BOOKS.

Q. AND WHEN YOU'VE SEEN HIM WITH THESE THINGS IN FRONT OF HIM, YOU'VE BEEN IN YOUR TOWER?

A. YES, SIR, I HAVE.

Q. AND JUST SO WE CAN BE CLEAR, WHERE IS THE TOWER POSITION WITH RESPECT TO THE DAY ROOM? WE'VE HEARD WHERE IT WAS WITH RESPECT TO MR. SIMMONS' CELL.

A. THE TOWER TO THE MAX DAY ROOM; THE DOORS ARE ALMOST -- I'D SAY THERE'S ABOUT A 16 INCH SPACE BETWEEN THE DOORS FROM THE TOWER DOOR TO THE MAX DOOR. IT'S EASY ACCESS TO GET OUT THE DOOR AND GO RIGHT INTO MAX. BUT THE TOWER ESSENTIALLY SITS THE CENTER LINE, I BELIEVE, SO YOU'RE ABLE TO SEE ALL DORMS AT ALL TIMES EXCEPT FOR E AND F DORM.

EMMETT MCKINNEY - CROSS/MR. THEOS

- Q. ABOUT HOW FAR AWAY WOULD YOU BE FROM THE DAY ROOM WHEN YOU'RE POSITIONED IN THE TOWER?
- A. I'D SAY ABOUT SIX OR SEVEN FEET.
- Q. CAN YOU HEAR WHAT'S BEING SAID IN THE DAY ROOM, OR YOU JUST HAVE VISUAL CONTACT?
- A. THERE'S VISUAL CONTACT, AND THE ONLY TIME YOU CAN HEAR ANYTHING IS BY INTERCOM.
- Q. IS IT A SEALED AREA LIKE THE CELLS?
- A. YES, SIR. IT'S SEALED OFF BY A SAFETY GLASS.
- Q. SO IN ORDER TO HEAR ANYTHING, YOU HAVE TO ACTUALLY BE IN THE ROOM?
- A. YOU HAVE TO BE IN THE ROOM OR ON THE INTERCOM.
- Q. AND THAT INTERCOM IS NOT GENERALLY ON UNLESS AN INMATE NEEDS TO SAY SOMETHING TO THE JAIL OR A JAILER NEEDS TO COMMUNICATE WITH---
- A. YES, SIR; THAT'S CORRECT.
- Q. YOU SAID THAT YOU'VE SEEN MR. SIMMONS WITH HIS BIBLE OPEN. THAT WOULD BE DURING THOSE TIMES THAT THEY'RE IN THESE GROUPS?
- A. YES; THE INFORMAL GROUP; JUST WITH THE FELLOWS THAT ARE ASSIGNED TO C SIDE.
- Q. YOU CERTAINLY CAN'T TELL IF HE'S PARTICIPATING IN ANY DISCUSSIONS?
- A. I KNOW THAT HE'S---
- Q. WELL, YOU'VE ALREADY SAID YOU CAN'T HEAR ANYTHING,

SO---

A. I CAN'T HEAR ANYTHING VERBALLY, NO. BUT IT APPEARS AS THOUGH HE'S CONVEYING A MESSAGE. BUT I DON'T KNOW WHAT HE'S SAYING.

Q. HOW DO YOU ARRIVE AT THE CONCLUSION THAT IT APPEARS THAT HE'S CONVEYING A MESSAGE?

A. USUALLY BODY LANGUAGE, THE WAY HE POSITIONS HIMSELF AT THE PICNIC TABLE. OR, I CALL IT THE PICNIC TABLE. IT'S WHERE THEY SIT DOWN AND EAT; AND HAND MOTIONS.

Q. HAND MOTIONS AND BODY LANGUAGE?

A. YES, SIR.

Q. OKAY. WHEN YOU WERE AT THE COASTAL CENTER ON THAT ONE DAY THAT YOU TRANSPORTED MR. SIMMONS, WAS THAT THE FIRST DAY OF TRANSPORT, I BELIEVE? THAT WAS THE FIRST TIME MR. SIMMONS HAD BEEN TAKEN TO THE COASTAL CENTER?

A. I BELIEVE THAT WAS THE COASTAL CENTER. I THINK THE DATE WAS JANUARY THE 29TH OR 28TH OF 1999.

Q. THE 28TH?

A. YES, SIR; ABOUT 10:30 A.M. IS WHEN WE SHOWED UP.

Q. OKAY. AND WHO ELSE WAS PRESENT IN THIS ROOM?

A. DR. SANDLER. THERE WAS A RECORDER THERE THAT WAS REQUESTED AT THAT TIME. AND I DON'T REMEMBER THE OTHER DOCTOR'S NAME. THERE WAS---

EMMETT MCKINNEY - CROSS/MR. THEOS

Q. MCABEE?

A. YES, SIR. AND MR. THEOS AND THE GENTLEMAN SITTING RIGHT NEXT TO YOU, MR. SIMMONS, AND MYSELF.

Q. ALL RIGHT. NOW, ONCE THE EVALUATION GOT STARTED, MR. BELL WAS NO LONGER THERE?

A. HE WAS GONE. HE WAS NO LONGER THERE.

Q. AND THE COURT REPORTER, WHOEVER SHE MAY HAVE BEEN, SHE WAS NO LONGER THERE?

A. SHE WAS NO LONGER THERE; THAT'S CORRECT.

Q. SO THE ONLY PEOPLE IN THE ROOM WERE DR. SANDLER, MC. MCABEE, WHO ARE SEATED ON THE FRONT ROW BEHIND MR. BAILEY?

A. YES, SIR.

Q. ALL RIGHT. MR. SIMMONS AND ME?

A. YES, SIR.

Q. AND YOU?

A. YES, SIR.

Q. YOU WERE SEATED SEVERAL FEET BEHIND MR. SIMMONS?

A. YES, I WAS. I WOULD SAY IT'S ABOUT TEN FEET. I WAS UP AGAINST THE SINK ON THE WALL, AND AT TIMES I WOULD CHANGE MY POSITION TO ABOUT SIX FEET AWAY FROM HIM.

Q. DID YOU WITNESS -- DID YOU SEE AND DID YOU HEAR DR. SANDLER AND DR. MCABEE GO OVER THE WAIVER OF RIGHTS FORM, THE MIRANDA FORM, WITH MR. SIMMONS?

EMMETT MCKINNEY - CROSS/MR. THEOS

A. YES, SIR, I DID.

Q. HOW LONG WOULD YOU SAY IT TOOK FOR THEM TO GO THROUGH THAT FORM BEFORE ULTIMATELY MR. SIMMONS SIGNED THAT FORM?

A. I'D HAVE TO GIVE IT ABOUT A GOOD FORTY MINUTES, SIR.

Q. WHY DID IT TAKE SO LONG?

A. AT THE BEGINNING OF THE RIGHTS WHEN THEY SAID YOU HAD THE RIGHT TO REMAIN SILENT, THEY HAD ASKED MR. SIMMONS DO YOU UNDERSTAND WHAT THIS MEANS. AND KENNETH HAD RESPONDED "I HAVE THE RIGHT TO SHUT UP." AND THEN THEY TRIED TO EXPLAIN TO HIM FURTHER THAT HE DIDN'T HAVE TO ANSWER ANY QUESTIONS IF HE DIDN'T WANT TO, THAT HE HAS THAT RIGHT TO REMAIN SILENT. AND HE DIDN'T SEEM TO BE GRASPING THAT CONCEPT. AND IT TOOK NEARLY FORTY MINUTES FOR THEM TO GET THROUGH THAT. AND I DON'T -- HE DID NOT APPEAR TO GRASP WHAT WAS BEING TOLD TO HIM AT THAT POINT. HE NEVER ACKNOWLEDGED THAT HE UNDERSTOOD HE DIDN'T HAVE TO SAY ANYTHING AT ALL.

Q. WHAT DID MR. SIMMONS INDICATE HE UNDERSTOOD WHEN BEING QUESTIONED?

A. WHEN THEY SAID "YOU HAVE THE RIGHT TO REMAIN SILENT," THEY ASKED HIM "DO YOU KNOW WHAT THAT MEANS." HE SAID, "I HAVE THE RIGHT TO SHUT UP."

EMMETT MCKINNEY - CROSS/MR. THEOS

AND LATER ON THEY ASKED HIM, WHILE THEY WERE STILL QUESTIONING HIM ABOUT THE MIRANDA RIGHTS, THEY HAD ASKED HIM---

Q. DID THEY ANSWER A FOLLOW-UP QUESTION SIMILAR TO THIS: "DO YOU UNDERSTAND THAT YOU DON'T HAVE TO ANSWER ANY QUESTIONS YOU'RE BEING ASKED?"

A. YES, SIR; THEY DID ASK THAT.

Q. DID HE UNDERSTAND THAT?

A. HE NEVER ACKNOWLEDGED THAT HE DID.

Q. WHAT DID HE INDICATE WHEN ASKED THAT QUESTION?

A. HE INDICATED THAT THEY WERE HERE TO ASK HIM QUESTIONS AND HE WAS GOING TO ANSWER THEM. AND THAT'S ALL HE SAID. HE SAID THAT, AS I RECALL, EVERY TIME THEY ASKED HIM THAT QUESTION.

Q. HOW MANY TIMES DO YOU THINK THEY WENT OVER THAT ONE QUESTION WITH HIM, HIS RIGHT TO REMAIN SILENT?

A. SIR, I CAN'T REALLY TELL YOU. IT WAS -- I WOULD SAY AT LEAST TEN OR ELEVEN TIMES.

Q. IS IT FAIR TO SAY THAT THE MAJORITY OF THAT FORTY MINUTE SPAN THAT YOU TALKED ABOUT FROM THE TIME THAT THEY STARTED UNTIL THE TIME THAT HE SIGNED, WAS SPENT ON THE CONCEPT OF HIS RIGHT TO SILENCE?

A. YES, SIR. IT WAS JUST ON THAT ONE CONCEPT.

Q. NOW, DID THEY GIVE OR ASK KENNETH TO READ THE MIRANDA FORM OUT LOUD?

A. YES, SIR, THEY DID.

Q. TELL US IN YOUR OWN WORDS WHETHER HE WAS ABLE TO READ IT.

MR. BAILEY: OBJECTION; FORM OF QUESTION. HE CAN'T TESTIFY TO WHAT HE WAS ABLE TO; JUST WHAT HE OBSERVED.

Q. WAS HE ABLE TO READ IT?

MR. BAILEY: OBJECTION.

THE COURT: SUSTAINED.

Q. DID HE READ IT?

A. YES, SIR, HE DID READ.

Q. HE READ THE WHOLE FORM?

A. HE DID NOT READ THE WHOLE FORM. HIS READING WAS CHOPPY. AT TIMES HE HAD PAUSED WHILE HE WAS LOOKING AT A WORD, AND HE HAD PROBLEMS FORMULATING THE WORDS THAT HE WAS READING.

Q. WAS IT NECESSARY FOR DR. -- I BELIEVE IT WAS DR. MCABEE -- TO ASSIST HIM IN READING THE BIGGER WORDS?

A. YES, SIR.

Q. SO KENNETH WAS ABLE TO READ THE SMALLER WORDS SUCH AS "THE" AND "AND" AND "IF"; THE SINGLE SYLLABLE WORDS?

A. YES, SIR.

Q. WOULD THAT BE FAIR?

A. YES, SIR.

Q. AND THE WORDS WITH MORE THAN ONE SYLLABLE, WOULD IT BE FAIR TO SAY THAT HE WASN'T ABLE TO READ THOSE?

MR. BAILEY: OBJECTION. WHAT HE'S ABLE TO DO HE CAN'T TESTIFY TO.

THE COURT: SUSTAINED.

Q. WOULD IT BE FAIR TO SAY THAT HE DID NOT READ THOSE WITHOUT ASSISTANCE?

A. THERE WERE SOME WORDS THAT HE COULD READ WITH MORE THAN ONE SYLLABLE WITHOUT ASSISTANCE, BUT WHEN IT CAME TO LARGER WORDS; NO, HE COULD NOT.

Q. DID KENNETH SIGN THE MIRANDA FORM AT THE CONCLUSION OF THIS FORTY MINUTES OR SO?

A. YES, SIR.

Q. AND I BELIEVE THAT DR. SANDLER ASKED BOTH YOU AND ME TO INITIAL THAT SIGNATURE, DID HE NOT?

A. YES, SIR, HE DID.

Q. AT THE END OF THAT FORTY MINUTES DID IT APPEAR TO YOU THAT MR. SIMMONS UNDERSTOOD THOSE MIRANDA RIGHTS?

A. NO, SIR.

MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ON RE-DIRECT?

MR. BAILEY: NO, SIR.

THE COURT: ALL RIGHT. ANY OBJECTION TO THIS

WITNESS BEING EXCUSED?

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

THE COURT: YOU MAY BE EXCUSED. THANK YOU.

MR. BAILEY: YOUR HONOR, DR. SANDLER IS MY NEXT WITNESS. HE'LL BE FAIRLY LENGTHY. I THINK YOU SAID EARLIER YOU WANTED TO BREAK AROUND TWELVE.

THE COURT: YES, BECAUSE I HAVE TO MEET WITH THE SECURITY PEOPLE. SO IT'S 12:30 AT THIS TIME. I'M USING THE CLOCK ON THE BACK WALL, GENTLEMEN. IS ONE HOUR SUFFICIENT FOR YOUR LUNCH? I'M JUST GOING TO ORDER A SANDWICH. I DO NEED TO CHECK WITH Y'ALL FOR ABOUT TWO OR THREE MINUTES BEFORE I MEET WITH THE OFFICERS ABOUT YOUR VIEWS ON CERTAIN THINGS. SO IF YOU WOULD, PLEASE STOP BY MY CHAMBERS FOR A MINUTE BEFORE YOU LEAVE FOR LUNCH. SO COURT WILL BE IN RECESS UNTIL 1:30, PLEASE MA'AM, LADIES AND GENTLEMEN.

(LUNCH RECESS.)

* * * * *

LESLIE SANDLER - DIRECT/MR. BAILEY

1 THE COURT: IS THERE ANYTHING FOR THE RECORD
2 BEFORE WE PROCEED, PLEASE, LADIES AND
3 GENTLEMEN?

4 MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

5 MR. THEOS: NOTHING FROM THE DEFENSE.

6 THE COURT: AND THE DEFENDANT IS PRESENT. YOU
7 MAY PROCEED.

8 MR. BAILEY: THANK YOU, YOUR HONOR. I'D CALL
9 LESLIE SANDLER.

10 THE COURT: COME AROUND, PLEASE, SIR.

11 - - - - -

12 WHEREUPON,

13 LESLIE SANDLER, WHO AFTER BEING FIRST
14 DULY SWORN TO TELL THE TRUTH, TESTIFIED
15 AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. WHERE ARE YOU EMPLOYED, DR. SANDLER?

19 A. AT THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES
20 AND SPECIAL NEEDS, HARDEN STREET, COLUMBIA, SOUTH
21 CAROLINA.

22 Q. ALL RIGHT, SIR. AND IN WHAT CAPACITY?

23 A. CHIEF PSYCHOLOGIST, FORENSIC SERVICES, LEAD
24 PSYCHOLOGICAL EXAMINER FOR THE DEPARTMENT OF
25 DISABILITIES AND SPECIAL NEEDS.

LESLIE SANDLER - DIRECT/MR. BAILEY

1 Q. HOW LONG HAVE YOU HELD THAT POSITION?

2 A. IT WILL BE A YEAR NEXT MONTH.

3 Q. I'M GOING TO HAND YOU A DOCUMENT AND ASK IF YOU CAN
4 IDENTIFY THIS AS YOUR C.V. (WITNESS REVIEWS
5 DOCUMENT.)

6 A. YES, SIR.

7 MR. BAILEY: YOUR HONOR, I WOULD OFFER DR.
8 SANDLER'S C.V.

9 THE COURT: ANY OBJECTION TO THE C.V.?

10 MR. THEOS: NONE, YOUR HONOR. MR. BAILEY
11 SAYS HE'LL PROVIDE US WITH A COPY OF IT.

12 THE COURT: SURE. AND THAT WILL BE STATE'S
13 NUMBER?

14 THE COURT REPORTER: SEVEN.

15 THE COURT: THANK YOU. WITHOUT OBJECTION.
16 WE'LL HAVE A COPY MADE AFTER YOU FINISH USING
17 IT.

18 STATE'S EXHIBIT NO. 7

19 MARKED FOR IDENTIFICATION

20 Q. DR. SANDLER, I KNOW THIS IS ALL COVERED IN THE
21 C.V.; BUT JUST BRIEFLY WHAT'S YOUR EDUCATIONAL
22 BACKGROUND?

23 A. AFTER COMPLETING MY DOCTORAL COURSE WORK AT TEMPLE
24 UNIVERSITY, I COMPLETED A CLINICAL PSYCHOLOGICAL
25 INTERNSHIP AT PHILADELPHIA GENERAL HOSPITAL IN

LESLIE SANDLER - DIRECT/MR. BAILEY

1 1970. FROM 1971 TO '72 I WAS CHIEF PSYCHOLOGIST
2 AND PSYCHOLOGICAL CONSULTANT, CLINICAL IN
3 STRUCTURE, IN THE DEPARTMENT OF PSYCHIATRY AT
4 TEMPLE UNIVERSITY MEDICAL SCHOOL IN PHILADELPHIA.
5 FROM 1972 TO 1976 I WAS THE DIRECTOR OF THE ONLY
6 PRIVATE METHADONE AND POLYSUBSTANCE ABUSE CLINIC IN
7 THE STATE OF PENNSYLVANIA. IN 1976 TO 1996, I WAS
8 IN FULL-TIME SOLO PRIVATE PRACTICE. FROM 1970 TO
9 1980 I WAS SENIOR DISABILITY EXAMINER, CONSULTING
10 FOR THE PENNSYLVANIA DEPARTMENT OF VOCATIONAL
11 REHABILITATION, AND WAS CHIEF PSYCHOLOGIST FOR THE
12 DEPARTMENT OF CORRECTIONS IN FLORIDA AT THE NORTH
13 FLORIDA RECEPTION CENTER FROM 1996 TO 1997. CAME
14 TO THE BEAUTIFUL STATE OF SOUTH CAROLINA. AND I'VE
15 WORKED FROM MARCH OF '98 TO THE PRESENT IN MY
16 CURRENT POSITION.

17 Q. ALL RIGHT, SIR. ARE YOU BOARD CERTIFIED IN
18 FORENSIC PSYCHOLOGY?

19 A. I AM, SIR, WITHIN THE AMERICAN COLLEGE OF FORENSIC
20 PSYCHOLOGY.

21 Q. ALL RIGHT, SIR. DO YOU HAVE ANY PARTICULAR
22 EXPERTISE IN NEUROPSYCHOLOGY?

23 A. I DO, SIR.

24 Q. ALL RIGHT. WILL YOU TELL US WHAT THAT IS?

25 A. MY STUDIES IN NEUROPSYCHOLOGY HAVE OCCURRED FROM

LESLIE SANDLER - DIRECT/MR. BAILEY

1 1980 TO THE PRESENT CONSISTING ESSENTIALLY OF WORK
2 WITH THE FATHER OF MODERN NEUROPSYCHOLOGY, RALPH
3 REITAN WITHIN INDIVIDUAL SEMINARS THAT HE HAS
4 CONDUCTED THROUGHOUT THE COUNTY. I HAVE PRESENTED
5 WITH HIM. I HAVE PRESENTED CONTINUING EDUCATION
6 COURSES IN NEUROPSYCHOLOGY. AND I HAVE DONE
7 SPECIALIZED NEUROPSYCHOLOGICAL CONSULTATIONS WITHIN
8 VARIOUS FORENSIC CONTEXTS.

9 Q. DO YOU HAVE ANY EXPERTISE IN PSYCHOPHARMACOLOGY?

10 A. YES, SIR.

11 Q. I MAY HAVE MIS-PRONOUNCED THAT. BUT CAN YOU TELL
12 US WHAT YOU'VE DONE IN THAT FIELD?

13 A. YES, SIR. SINCE 1974 WHEN I WAS DIRECTOR OF THE
14 REHABILITATION PROGRAM FOR OPIENTS (PHONETICALLY
15 SPELLED) AND POLYSUBSTANCE ABUSE, I HAVE BEEN
16 INVOLVED BOTH IN THE COURTS, IN LAW ENFORCEMENT,
17 AND IN PRIVATE CLINICAL PRACTICE OF TREATMENT AND
18 CONSULTATION AS WELL AS INDUSTRIAL TREATMENT AND
19 CONSULTATION FOR POLY-SUBSTANCE ABUSE, BOTH ALCOHOL
20 AND OTHER SUBSTANCES.

21 Q. ALL RIGHT, SIR. AND YOU'VE BEEN QUALIFIED AS AN
22 EXPERT WITNESS IN THE FIELD OF FORENSIC
23 PSYCHOLOGY IN THE COURTS OF THIS STATE AND OTHER
24 STATES?

25 A. THAT'S CORRECT, SIR.

LESLIE SANDLER - CROSS/MR. THEOS

1 Q. APPROXIMATELY HOW MANY TIMES?

2 A. IN THIS STATE, FIVE TIMES. IN PENNSYLVANIA,
3 NUMEROUS TIMES.

4 Q. ALL RIGHT, SIR. AND WITH RESPECT TO TESTIFYING AS
5 AN EXPERT IN NEUROPSYCHOLOGY, HAVE YOU BEEN
6 QUALIFIED IN COURTS OF ANY STATE?

7 A. IN SOUTH CAROLINA AND IN PENNSYLVANIA, SIR.

8 Q. ALL RIGHT, SIR. AND IN PSYCHOPHARMACOLOGY?

9 A. IN PENNSYLVANIA, SIR.

10 MR. BAILEY: YOUR HONOR, I WOULD TENDER DR.
11 SANDLER AS AN EXPERT IN FORENSIC PSYCHOLOGY
12 AND ALSO IN NEUROPSYCHOLOGY AND
13 PSYCHOPHARMACOLOGY.

14 THE COURT: ALL RIGHT. WOULD YOU LIKE TO
15 CROSS-EXAMINE HIS EXPERTISE?

16 MR. THEOS: YES, SIR, YOUR HONOR.

17 THE COURT: AND IF YOU WANT TO REFER TO HIS
18 C.V., YOU MAY DO SO.

19 CROSS-EXAMINATION

20 BY MR. THEOS:

21 Q. DR. SANDLER, WITH RESPECT TO NEUROPSYCHOLOGY, ARE
22 YOU BOARD CERTIFIED IN THAT FIELD?

23 A. NO.

24 Q. I UNDERSTAND YOU HAVE ATTENDED CERTAIN SEMINARS
25 GIVEN BY THE PERSON YOU DESCRIBED AS BEING THE

LESLIE SANDLER - CROSS/MR. THEOS

1 FATHER OF MODERN NEUROPSYCHOLOGY. YOU'VE ASSISTED
2 IN PRESENTATIONS. WHAT PRESENTATIONS HAVE YOU
3 ASSISTED IN?

4 A. I HAVE ATTENDED THE SEMINARS, AND I PRESENTED AT
5 THE SAME TIME WHEN HE PRESENTED AT THE FIRST
6 PSYCHOLOGICAL ASSESSMENT CONFERENCE THIS PAST --
7 LAST APRIL.

8 Q. SPECIFICALLY WHAT PRESENTATION DID YOU MAKE AT THAT
9 ONE SEMINAR LAST APRIL?

10 A. THERE WERE TWO OF THEM. ONE WAS A REVIEW OF
11 NEUROPSYCHOLOGICAL LITERATURE WITH CLINICAL
12 IMPLICATIONS FOR ASSESSMENT IN H.I.V. ASSOCIATED
13 DEMENTIA. THE OTHER ONE WAS PSYCHOLOGICAL TESTING
14 OF H.I.V. POSITIVE AIDS PRISONERS, CLINICAL,
15 ETHICAL, AND MORAL CONSEQUENCES.

16 Q. AND THOSE TWO TITLES THAT YOU JUST GAVE US WERE THE
17 TITLES OF YOUR PRESENTATION OR THE TITLES OF THE
18 SEMINARS?

19 A. THEY WERE THE TITLES OF MY PEER REVIEWED ACCEPTED
20 PRESENTATIONS THAT I MADE SOLELY.

21 Q. AND WERE THOSE PRESENTATIONS CONCERNED PRIMARILY
22 WITH PSYCHOLOGICAL ISSUES RELATED TO H.I.V.?

23 A. NO. THEY WERE CONCERNED WITH ASSESSMENT
24 PSYCHOLOGY. THAT WAS THE NAME OF THE AMERICAN
25 BOARD OF ASSESSMENT PSYCHOLOGY'S FIRST ANNUAL

LESLIE SANDLER - CROSS/MR. THEOS

1 CONFERENCE.

2 Q. ALL RIGHT. WHAT WAS THE NAME OF THE CONFERENCE?

3 DID THE CONFERENCE HAVE A NAME AS WELL?

4 A. I JUST TOLD YOU; THE AMERICAN BOARD OF ASSESSMENT
5 PSYCHOLOGY FIRST ANNUAL CONFERENCE.

6 Q. YOU SAID THAT YOU WERE QUALIFIED ONCE AS AN EXPERT
7 IN SOUTH CAROLINA IN NEUROPSYCHOLOGY?

8 A. THAT'S CORRECT.

9 Q. CAN YOU TELL US WHEN THAT WAS? WHICH CASE?

10 A. I DON'T REMEMBER THE NAME OF THE CASE OFFHAND. BUT
11 I CAN CERTAINLY PROVIDE THAT FOR YOU.

12 Q. OKAY. CAN YOU TELL US WHETHER IT WAS WITHIN THE
13 LAST FEW MONTHS? LET ME MAKE THIS EASY. IT WAS
14 SINCE MARCH OF '98?

15 A. YES. IT HAD TO BE SINCE MARCH OF '98.

16 Q. YOU DIDN'T TESTIFY HERE IN THIS STATE PRIOR TO YOUR
17 EMPLOYMENT WITH THE DISABILITIES AGENCY?

18 A. NO. I HAVEN'T BEEN HERE SINCE PRIOR TO MY
19 EMPLOYMENT WITH THE DISABILITY AGENCY.

20 Q. WELL, I ASSUME YOU'VE TESTIFIED IN OTHER STATES?

21 A. OH, YES.

22 Q. ALL RIGHT. SOUTH CAROLINA WAS NOT ONE OF THEM
23 BEFORE YOUR EMPLOYMENT HERE?

24 A. I'M NOT SURE WHAT YOU'RE ASKING, SIR.

25 Q. WHEN YOU WERE IN PENNSYLVANIA?

LESLIE SANDLER - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. I ASSUME YOU TRAVELED TO OTHER STATES TO TESTIFY,
3 OR YOUR TESTIMONY WAS RESTRICTED TO THAT STATE?

4 A. PRIMARILY TO THAT STATE, AND A FEW TIMES IN NEW
5 JERSEY.

6 Q. ALL RIGHT. IN THE AREA OF NEUROPSYCHOLOGY, ANY
7 SPECIFIC COURSES OR TRAINING THAT YOU'VE DONE IN
8 THAT PARTICULAR FIELD?

9 A. I HAVE OVER 160 HOURS OF COURSE WORK WITH RALPH
10 RATTAN AND IN ADDITION TO THAT HAVE PRESENTED WORK
11 ON IT. IN ADDITION TO THAT -- WHEN I STARTED
12 WORKING THE FIELD OF NEUROPSYCHOLOGY THERE WERE NOT
13 SPECIFIC COURSES IN IT. HOWEVER, IN RESPONSE TO
14 YOUR QUESTION, THE ADDITIONAL SPECIALIZED
15 POST-OPERAL (PHONETICALLY SPELLED) TRAINING THAT I
16 HAD IN ADDITION TO RATTAN AND WILSON INCLUDED THE
17 MAJOR EXPERT ON DEMENTIA WHO HAS SINCE PASSED AWAY,
18 NELSON BUTTERS. IN 1989 A CONFERENCE ON
19 NEUROPSYCHOLOGICAL ASSESSMENT OF DEMENTIA AND
20 AMNESIA, CHARLES GOLDEN, ANOTHER VERY PROMINENT
21 NAME IN NEUROPSYCHOLOGY; A COURSE WITH HIM, A
22 SEMINAR. IT WAS A ONE DAY COURSE, NEUROPSYCHOLOGY
23 OF THE NINETIES. EDITH KAPLAN FROM THE BOSTON
24 SCHOOL OF NEUROPSYCHOLOGY. IN THE PROCESS APPROACH
25 TO NEUROPSYCHOLOGICAL ASSESSMENT AT DEVON,

LESLIE SANDLER - CROSS/MR. THEOS

1 PENNSYLVANIA, THE DEVEREAUX INSTITUTE, THE
2 PSYCHOSOCIAL IMPLICATIONS OF HEAD TRAUMA; THE
3 MEDICAL COLLEGE OF VIRGINIA IN WILLIAMSBURG IN
4 1986. A WEEK'S WORTH OF REHABILITATION IN BRAIN
5 INJURED ADULT AND CHILD, AND---

6 Q. DR. SANDLER, LET ME STOP YOU FOR JUST ONE SECOND.
7 THESE ARE ALL CONTAINED IN YOUR C.V.?

8 A. THAT'S CORRECT.

9 Q. AND THESE THAT YOU'RE READING FROM ARE COURSES THAT
10 YOU'VE ATTENDED?

11 A. THAT'S CORRECT.

12 Q. THE ONLY TWO THAT YOU'VE PARTICIPATED IN AND MADE
13 PRESENTATIONS WERE THE TWO THAT YOU ADVISED US
14 ABOUT INITIALLY?

15 A. THAT IS INCORRECT.

16 Q. YOU MADE PRESENTATIONS IN OTHER NEUROPSYCHOLOGY
17 SEMINARS, CONFERENCES, OR TRAINING SCHOOLS?

18 A. I PRESENTED A CONTINUING EDUCATION COURSE FOR THE
19 NORTH FLORIDA RECEPTION MEDICAL CENTER IN JANUARY
20 OF 1997 AND FORENSIC NEUROPSYCHOLOGY. I HAVE
21 PRESENTED A PAPER IN 1985 AT THE FIFTH ANNUAL
22 MEETING OF THE NATIONAL ACADEMY OF
23 NEUROPSYCHOLOGISTS IN THE INTERPERSONAL NEEDS OF
24 PATIENTS WITH POST-TRAUMATIC CLOSED HEAD INJURIES.
25 I HAVE ALSO PRESENTED FOR THE PHILADELPHIA

LESLIE SANDLER - CROSS/MR. THEOS

1 CHIROPRACTIC SOCIETY SECOND ANNUAL PERSONAL INJURY
2 SYMPOSIUM IN 1986; PSYCHOLOGICAL ASSESSMENT AND
3 TREATMENT OF PATIENTS WITH HEAD INJURIES. DO YOU
4 WISH FOR ME TO GO ON?

5 Q. ARE THERE OTHERS? IF YOU'D JUST ANSWER THE
6 QUESTION. ARE THERE OTHERS? AND IF SO, ARE THEY
7 CONTAINED IN YOUR C.V.?

8 A. EVERYTHING IS CONTAINED IN MY C.V.

9 Q. DOES IT DISTINGUISH THOSE THAT YOU MADE
10 PRESENTATIONS AT FROM THOSE WHO SIMPLY ATTENDED?

11 A. I BELIEVE SO.

12 Q. NOW, RELATED TO THE FIELD OF PSYCHOPHARMACOLOGY,
13 ARE YOU BOARD CERTIFIED IN THAT AREA?

14 A. THERE IS NO BOARD CERTIFICATION THAT I'M AWARE OF
15 IN PSYCHOPHARMACOLOGY. HOWEVER, I DO HAVE A
16 PROFICIENCY CERTIFICATION FROM THE AMERICAN COLLEGE
17 OF PROFESSIONAL PSYCHOLOGY IN SUBSTANCE ABUSE AND
18 THE TREATMENT -- THE CERTIFICATE OF PROFICIENCY IN
19 THE TREATMENT OF ALCOHOL AND OTHER PSYCHOACTIVE
20 SUBSTANCE ABUSE DISORDERS SINCE 1996 FROM THE
21 AMERICAN PSYCHOLOGICAL ASSOCIATION COLLEGE OF
22 PROFESSIONAL PSYCHOLOGY WHICH IS A SPECIFIC
23 CERTIFICATION OF PROFICIENCY.

24 Q. DO YOU HOLD A DEGREE IN PHARMACOLOGY?

25 A. NO.

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1 Q. AND AS I UNDERSTAND IT YOU HAVE BEEN QUALIFIED AS
2 AN EXPERT IN THAT FIELD IN THE STATE OF
3 PENNSYLVANIA AND NOT IN THE STATE OF SOUTH
4 CAROLINA?

5 A. THAT IS CORRECT.

6 Q. AND CAN YOU TELL US WHEN AND HOW MANY TIMES IN THE
7 STATE OF PENNSYLVANIA? APPROXIMATELY IF IT'S MORE
8 THAN ONCE?

9 A. I WOULD SAY APPROXIMATELY A DOZEN TIMES SINCE 1976,
10 EASILY.

11 Q. THROUGH?

12 A. 1974. I BEG YOUR PARDON; FROM 1974 TO 1976 DURING
13 THAT TIME. THERE WERE NUMEROUS OCCASIONS WHERE I
14 APPEARED IN COURT IN CRIMINAL MATTERS AND CONSULTED
15 TO THE UNIVERSITY OF PENNSYLVANIA AND TO TEMPLE
16 UNIVERSITY MEDICAL SCHOOL AND THE PHILADELPHIA
17 POLICE DEPARTMENT IN SUBSTANCE ABUSE AND
18 PSYCHOACTIVE SUBSTANCE HABITUATION.

19 Q. SO THE ANSWER TO MY QUESTION WOULD BE THAT YOU WERE
20 QUALIFIED AS AN EXPERT APPROXIMATELY A DOZEN TIMES
21 IN THE STATE OF PENNSYLVANIA FROM 1974 TO '76?

22 A. THAT WAS THE AMOUNT.

23 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

24 THE COURT: ALL RIGHT. YOU MAY PROCEED.

25 MR. BAILEY: YOUR HONOR, I WOULD AGAIN TENDER

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HIM AS AN EXPERT IN THE THREE AREAS---

THE COURT: EXCUSE ME. DID YOU WANT TO BE
HEARD ON ANY OBJECTIONS TO HIS PROCEEDING AS
AN EXPERT IN THE FIELD?

MR. THEOS: YOUR HONOR, WE DON'T HAVE ANY
OBJECTION TO HIS PROCEEDING IN THE FIELD OF
FORENSIC PSYCHOLOGY. WITH RESPECT TO THE
FIELD OF NEUROPSYCHOLOGY, I UNDERSTAND HE'S
ALREADY BEEN QUALIFIED BY ONE COURT IN THIS
STATE. I DIDN'T ASK HIM WHICH COURT. I
ASSUME IT'S A STATE COURT. AND I STAND TO BE
CORRECTED IF IT'S NOT. WE WOULD OBJECT TO HIS
BEING QUALIFIED AS AN EXPERT IN THE FIELD OF
PSYCHOPHARMACOLOGY, YOUR HONOR.

THE COURT: ALL RIGHT. I'M GOING TO NOTE YOUR
OBJECTION AND OVER-RULE YOUR OBJECTION. YOU
MAY PROCEED, COUNSELOR.

MR. BAILEY: THANK YOU, YOUR HONOR.

DR. SANDLER: THANK YOU, YOUR HONOR.

THE COURT: YES, SIR.

RE-DIRECT EXAMINATION

BY MR. BAILEY:

Q. DOCTOR, IN THIS PARTICULAR CASE INVOLVING DEFENDANT
KENNETH SIMMONS, WAS THE SOUTH CAROLINA BOARD OF
DISABILITIES AND SPECIAL NEEDS REQUEST TO CONDUCT

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1 AN EVALUATION OF THIS PARTICULAR INDIVIDUAL AFTER
2 HE WAS AT THE HALL INSTITUTE?

3 A. YES, SIR; THAT'S CORRECT.

4 Q. AND IS IT YOUR UNDERSTANDING THE PROTOCOL THAT IF
5 THE HALL INSTITUTE FINDS SOMEBODY PROVISIONALLY
6 MENTALLY RETARDED, THEY DO NOT MAKE THAT
7 DIAGNOSIS? IT GOES TO YOUR AGENCY?

8 A. THAT IS MY GENERAL UNDERSTANDING; YES, SIR.

9 Q. ALL RIGHT, SIR. NOW, DOCTOR, WOULD YOU STATE
10 WHETHER OR NOT YOU WORKED WITH ANOTHER PH.D. LEVEL
11 PERSON AT YOUR AGENCY?

12 A. YES, SIR.

13 Q. WHO DID YOU WORK WITH?

14 A. THOMAS A. MCABEE, M-C-A-B-E-E, PH.D.

15 Q. ALL RIGHT, SIR. AND GENERALLY, HOW DID YOU AND DR.
16 MCABEE DIVIDE YOUR DUTIES UP IN THE EVALUATION OF
17 MR. SIMMONS?

18 A. WELL, WE HAVE WORKED TOGETHER IN ALMOST EVERY CASE
19 THAT WE'VE BEEN ON. AND WE'VE WORKED TOGETHER
20 RATHER INFORMALLY. IN A GENERAL SENSE, I WOULD SAY
21 THAT DR. MCABEE CONCENTRATED ON THE RIGHTS, THE
22 MIRANDA RIGHTS, AND THE UNDERSTANDING AND
23 EXPLANATION TO THE DEFENDANT. I CONCENTRATED MORE
24 ON THE TESTING PROCESS.

25 Q. ALL RIGHT, SIR.

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1 A. IF I HAD TO GENERALIZE, SIR.

2 Q. ALL RIGHT, SIR. AND WOULD YOU STATE WHETHER OR NOT
3 CERTAIN PSYCHOLOGICAL TYPE TESTS WERE GIVEN TO MR.
4 SIMMONS AS PART OF YOUR EVALUATION PROCESS?

5 A. YES, SIR, THEY WERE.

6 Q. WOULD YOU TELL US WHICH TESTS WERE ADMINISTERED TO
7 MR. SIMMONS AND WHAT THE RESULTS OF THOSE TESTS
8 WERE?

9 A. MAY I REFER TO MY REPORT, SIR?

10 Q. YES, SIR. DO YOU HAVE THAT IN FRONT OF YOU?

11 A. I BELIEVE I DO. (WITNESS EXAMINES DOCUMENTS.)

12 Q. LET ME WITHDRAW THAT QUESTION AT THIS TIME AND ASK
13 YOU A DIFFERENT QUESTION. I'LL COME BACK TO THAT.
14 WHAT DO YOU LOOK FOR WHEN DETERMINING WHETHER OR
15 NOT AN INDIVIDUAL YOU'RE EVALUATING IS MENTALLY
16 RETARDED?

17 A. ACCORDING TO THE AMERICAN PSYCHIATRIC
18 ASSOCIATION'S DIAGNOSTIC AND STATISTICAL
19 MANUAL OF MENTAL DISORDERS, THE APA DSM-IV
20 FOR A DIAGNOSIS OF MENTAL RETARDATION,
21 THREE CONDITIONS ARE NECESSARY. NUMBER (1) AN
22 INDIVIDUALLY ADMINISTERED I.Q. TEST WHICH IS
23 SIGNIFICANTLY SUB-AVERAGE. NUMBER (2) AT
24 LEAST TWO ADAPTIVE FUNCTIONING IMPAIRMENTS;
25 AND NUMBER (3) THE ONSET OF THE SIGNIFICANTLY

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1 IMPAIRED MENTAL FUNCTIONS BEFORE THE AGE OF
2 EIGHTEEN IN THE APA DSM-IV. IN SOUTH CAROLINA,
3 YOUR HONOR, IT IS AGE 22.

4 Q. DOCTOR, CAN YOU LEGITIMATELY EVALUATE SOMEBODY'S,
5 WHETHER OR NOT THEY'RE MENTALLY RETARDED, BY JUST
6 SIMPLY ADMINISTERING AN I.Q. TEST?

7 A. NO, SIR.

8 Q. ALL RIGHT, SIR. NOW, GETTING BACK TO MR. SIMMONS;
9 WHAT TEST DID YOU, OR DR. MCABEE, IN CONJUNCTION
10 WITH BEING ADMINISTERED TO MR. SIMMONS?

11 A. THE COMPETENCE ASSESSMENT FOR STANDING TRIAL FOR
12 DEFENDANTS WITH MENTAL RETARDATION.

13 DR. SANDLER: YOUR HONOR, MAY I REFER TO THESE
14 IN ABBREVIATED FORM?

15 THE COURT: I HAVE YOUR REPORT WHICH HAS THE
16 EVALUATION PROCEDURES IN IT. MR. SOLICITOR,
17 THE THOUGHT OCCURRED TO ME THAT WHILE THE
18 REPORT OF THE STATE DEPARTMENT OF MENTAL
19 HEALTH AS WELL AS THIS D.D.S.N. REPORT; IT HAS
20 BEEN SENT TO THE CLERK OF COURT. I THINK THAT
21 WE SHOULD SPECIFICALLY MARK EACH OF THOSE AS
22 EXHIBITS. WE DON'T NEED TO DO IT THIS
23 MOMENT. BUT BEFORE WE COMPLETE THIS HEARING I
24 THINK THOSE SHOULD BE MARKED AS EXHIBITS AND
25 WOULD HAVE ASK YOU TO MAKE THEM A STATE'S

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1 EXHIBIT. I MEAN, WE COULD MAKE IT A COURT'S
2 EXHIBIT. BUT---

3 MR. BAILEY: I WILL, YOUR HONOR.

4 THE COURT: PLEASE.

5 MR. BAILEY: THANK YOU.

6 THE COURT: EXCUSE ME. I DIDN'T MEAN TO
7 INTERRUPT YOU. GO AHEAD, SOLICITOR. USE THE
8 ABBREVIATION. THE CAST-M.R.?

9 DR. SANDLER: YES, SIR.

10 THE COURT: GO AHEAD.

11 Q. BRIEFLY, WHAT'S THAT TEST SUPPOSED TO DO; AND HOW
12 DID MR. SIMMONS DO ON IT?

13 A. THAT TEST IS SUPPOSED TO INDICATE WHETHER AN
14 INDIVIDUAL KNOWS THE BASIC INDIVIDUALS WHO INTERACT
15 IN THE COURTROOM AND CAN ASSIST COUNSEL AND KNOW
16 THE PROCESS. AND BASICALLY IT IS A MULTIPLE CHOICE
17 FORMAT FOR INDIVIDUALS WHO ARE SUSPECTED OF NOT
18 BEING ABLE TO COMPLETE OTHER MORE SOPHISTICATED
19 INSTRUMENTS. SO IT IS SPECIFICALLY DESIGNED FOR
20 INDIVIDUALS WHO MAY HAVE MENTAL RETARDATION, SIR.

21 Q. HOW DID MR. SIMMONS DO ON THAT TEST?

22 A. IF YOU'LL EXCUSE ME, SIR. (WITNESS REVIEWS
23 RECORDS.)

24 MR. THEOS: YOUR HONOR, WHILE DR. SANDLER IS
25 LOOKING, WHATEVER IT IS HE'S LOOKING FOR; WHEN

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1 HE RECEIVED THIS REPORT, I'M SURE HE NOTED
2 THAT THE -- AND I MAY BE WRONG; BUT I THOUGHT
3 THAT THE CAST-M.R. (PHONETICALLY SPELLED) WAS
4 ADMINISTERED BUT THE RESULTS WEREN'T
5 AVAILABLE. DO WE NOW HAVE THOSE RESULTS?

6 MR. BAILEY: I DON'T KNOW.

7 MR. THEOS: ISN'T THAT WHAT HE'S BEING
8 QUESTIONED ABOUT NOW?

9 THE COURT: THAT'S RIGHT. AND IT STATES ON
10 PAGE FOUR THAT THE CAST-M.R. WAS ALSO
11 ADMINISTERED; HOWEVER, THE RESULTS WERE NOT
12 AVAILABLE IN TIME FOR THE REPORT COMPOSITION.

13 MR. THEOS: I WOULD JUST ASK IF HE'S GOT THE
14 REPORTS NOW IF WE COULD BE PROVIDED A COPY.

15 THE COURT: YOU'RE FIXING TO FIND OUT. HE'S
16 LOOKING THROUGH HIS FILE, MR. THEOS; PLEASE.

17 DR. SANDLER: THANK YOU, YOUR HONOR. I BEG
18 THE COURT'S INDULGENCE. WE'VE GOT A LOT OF
19 INFORMATION, AND WE'RE TRYING TO GET A REPORT
20 OUT IN A TIMELY FASHION. I DO HAVE SOME OF
21 THE TEST RESULTS.

22 Q. ALL RIGHT, SIR. IF YOU COULD SUMMARIZE THOSE TO
23 US.

24 A. I WOULD SUMMARIZE THEM AS INDICATING THAT THERE WAS
25 A REMARKABLY LOW SCORE IN BASIC LEGAL CONCEPTS. HE

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1 ONLY SCORED 24 PERCENT CORRECT. THAT IS SIX OUT OF
2 TWENTY-FIVE. AND IN SKILLS TO ASSIST HIS DEFENSE,
3 HE ONLY SCORE A 12 PERCENT CORRECT. HE ONLY GOT
4 TWO OUT OF FIFTEEN RIGHT. AND IN UNDERSTANDING
5 CASE EVENTS, HIS ANSWERS WERE SO DISTORTED THAT WE
6 FELT THAT THEY WERE NOT EVEN ABLE TO BE SCORED.
7 THE SIGNIFICANCE OF THESE SCORES, YOUR HONOR, IS
8 THAT WHEN WE HAVE AN INDIVIDUAL WHO HAS ANSWERS
9 THAT THEY MAKE THAT ARE PREPOSTEROUS, THAT ARE SO
10 RIDICULOUS THAT THEY MAKE NO SENSE TO US AND
11 THEY'RE REPEATEDLY NONSENSICAL, ONE HAS TO WONDER
12 WHETHER THE INDIVIDUAL IS BEING CANDID.

13 DR. SANDLER: MAY I GIVE YOU AN EXAMPLE, YOUR
14 HONOR?

15 THE COURT: PLEASE!

16 A. WHAT DOES THE JUDGE DO? (A) DEFENDS YOU; (B)
17 DECIDES THE CASE; (C) WORKS FOR YOUR LAWYER. THE
18 ANSWER THAT MR. SIMMONS RESPONDED WITH WAS THAT THE
19 JUDGE DEFENDS YOU. WHAT DOES THE PROSECUTOR DO?
20 (A) ATTEMPTS TO DEFEND YOU IN COURT; (B) TRIES TO
21 PROVE YOU'RE GUILTY; (C) TRIES TO ARREST YOU ON THE
22 STREET. HIS ANSWER; C, TRIES TO ARREST YOU ON THE
23 STREET. WHAT IS A HEARING? (A) A MEDICAL PROCESS;
24 (B) A LEGAL PROCESS; (C) A TYPE OF ORGANIZATION.
25 HE SAID THAT THE HEARING IS A MEDICAL PROCESS. ONE

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1 MORE -- OR TWO MORE. WHAT IS A FELONY? (A) A WAY
2 TO GET OFF (B) A VERY SERIOUS CRIME; (C) A PERSON
3 WHO TALKS IN COURT. HE SAID A FELONY WAS A PERSON
4 THAT TALKS IN COURT.

5 DR. SANDLER: THESE ARE THE KIND OF ANSWERS,
6 YOUR HONOR, THAT WHEN THEY'RE SO REMARKABLY
7 LOW AND AN INDIVIDUAL WHO GRADUATED FROM HIGH
8 SCHOOL, WE HAVE CAUSE TO SUSPECT, AS PER THE
9 AMERICAN PSYCHIATRIC ASSOCIATION'S DIAGNOSTIC
10 AND STATISTICAL MANUAL OF MENTAL DISORDER,
11 THAT WHENEVER THERE'S A CASE WITHIN A FORENSIC
12 CONTEXT, ONE HAS TO CONSIDER MALINGERING.
13 MALINGERING, YOUR HONOR, AS DEFINED BY THE
14 AMERICAN PSYCHIATRIC ASSOCIATION, IS THE
15 INTENTIONAL PRODUCTION OF FALSE OR GROSSLY
16 EXAGGERATED RESPONSES BY AN INDIVIDUAL FOR
17 SECONDARY GAIN, FOR EXTERNAL INCENTIVE. AND
18 IN THIS CASE WE BELIEVE, SIR, WITHIN
19 REASONABLE SCIENTIFIC CERTAINTY TO EVADE
20 CRIMINAL PROSECUTION.

21 THE COURT: THANK YOU.

22 DR. SANDLER: YOU'RE WELCOME, SIR.

23 Q. NOW, DID YOU GET A PERSONAL HISTORY CHECKLIST FOR
24 ADULTS THAT WAS ALSO DONE?

25 A. YES, SIR.

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1 Q. ALL RIGHT, SIR. AND WHAT DOES THAT CONSIST OF?

2 A. THE PERSONAL HISTORY CHECKLIST CONSISTS OF A SERIES
3 OF QUESTIONS TO GET AN IDEA OF AN INDIVIDUAL'S
4 BACKGROUND HISTORY AS WELL AS THE INDIVIDUAL'S
5 CANDOR OR INTENT IN RESPONDING. IN THIS CASE IT IS
6 A SERIES OF QUESTIONS ABOUT FAMILY BACKGROUND;
7 OTHER KINDS OF THINGS. AND IF YOU'D LIKE ME TO GO
8 INTO SOME OF THE ANSWERS, I'D BE HAPPY TO.

9 Q. OKAY. IF YOU CAN JUST GIVE ME ONE OR TWO EXAMPLES.

10 A. YES, SIR. WE ASKED; OF THE CHILDREN IN YOUR
11 FAMILY, SINCE HE SAID HE HAD MORE THAN TEN
12 CHILDREN, AND HE SAID HE DIDN'T KNOW WHETHER THEY
13 WERE EIGHTEEN OR TWENTY BROTHERS AND SISTERS, WE
14 ASKED HOW MANY WERE STEPBROTHERS AND STEPSISTERS.
15 AND HE SAYS HE DOESN'T KNOW. WHAT DO YOU MEAN?
16 THAT'S A VERY UNUSUAL RESPONSE FOR A PERSON WITH
17 RETARDATION OR NOT. WHEN WE ASKED AS A CHILD WHERE
18 DID YOU PRIMARILY LIVE; IN A FARM, IN A RURAL AREA,
19 IN A SMALL TOWN, IN A SMALL CITY, IN A LARGE CITY,
20 IN A SUBURB, AND MANY DIFFERENT PLACES; HE SAID HE
21 COULDN'T REALLY SAY. HE SAID HE DOESN'T KNOW. AND
22 I'M QUOTING HERE: I DON'T KNOW. WE KILLED AND ATE
23 HOGS AND CHICKENS AND GOATS. DIDN'T KNOW HOW MUCH
24 EDUCATION HIS FATHER HAD. DIDN'T KNOW WHAT TYPE OF
25 WORK HIS FATHER DID. SAID HE WORKED IN THE

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1 FIELDS. WE HAD ANOTHER PIECE OF INFORMATION
2 INDICATING HE WORKED AT A COUNTRY CLUB. I DON'T
3 KNOW WHAT THE TRUE ANSWER IS, SIR.

4 Q. ALL RIGHT, SIR.

5 A. IN ADDITION, HE SAID HE DIDN'T KNOW APPROXIMATELY
6 HOW OLD HIS MOTHER WAS; DID NOT KNOW ISSUES SUCH AS
7 HIS EXPERIENCES IN GRADES ONE THROUGH EIGHT. DID
8 NOT KNOW WHETHER HIS PARENTS GOT ALONG OKAY OR NOT,
9 AND WAS SIMILARLY SO VAGUE AT THIS INITIAL ATTEMPT
10 TO GET A DECENT COMPREHENSIVE HISTORY THAT WE HAD
11 SOME SERIOUS QUESTIONS. WE ASKED HIM HIS
12 EMPLOYMENT STATUS. HE SAID "HOW DO YOU MEAN." WE
13 SAID, "WELL, ARE YOU EMPLOYED, RETIRED, WORKING
14 PART-TIME, DISABLED, UNEMPLOYED." AND HE JUST SAID
15 -- HE ASKED WHAT DO WE MEAN. HE SAID SELLING DOPE
16 AND BEING A CARPENTER. HE VERY OFTEN ASKED WHAT WE
17 MEANT IN RATHER STRAIGHT-FORWARD QUESTIONS AND
18 CHARACTERISTICALLY WOULD GRIMACE, CONSIDER THE
19 QUESTION VERY SERIOUSLY BEFORE HE ANSWERED IN SUCH
20 A FASHION THAT WE HAD THE FEELING AND THE THOUGHTS
21 THAT THE DEFENDANT WAS CHARACTERISTICALLY
22 ATTEMPTING TO FEIGN OR TO HAVE SOME SORT OF
23 DECEPTION AS OPPOSED TO SPONTANEOUS ANSWERING.

24 Q. DID YOU ADMINISTER AN I.Q. TEST?

25 A. YES, SIR, WE DID.

1 Q. WHICH I.Q. TEST DID YOU GIVE HIM?

2 A. THE WEXLER ADULT INTELLIGENCE SKILL REVISED WHICH
3 IS REFERRED TO, YOUR HONOR, AS THE WAIS-R.

4 Q. HOW DID HE SCORE ON THAT?

5 A. HIS OVERALL VERBAL SCORE, PLUS OR MINUS THE
6 STANDARD R OR THE MEAN PLUS OR MINUS 2.74 POINTS
7 WAS 70. HIS PERFORMANCE SCORE I.Q., PLUS OR MINUS
8 4.14 POINTS WAS 82. AND HIS FULL SCALE WAS, PLUS
9 OR MINUS 2.53 POINTS, 75, WHICH PLACES HIM IN THE
10 MID RANGE OF THE BORDERLINE I.Q. SCORE, BORDERLINE
11 CLASSIFICATION INDICATING 70 TO 79. I SHOULD
12 INDICATE, YOUR HONOR, THAT THIS TEST WAS SAID TO
13 HAVE BEEN ADMINISTERED BY A PSYCHOLOGIST WORKING
14 FOR THE DEFENSE AND WAS AT A SUBSEQUENT VERSION OF
15 IT, YOUR HONOR, THE WAIS-3, THE VERSION OF IT AFTER
16 THE WAIS-R WAS ADMINISTERED BY AN INTERN AND DR.
17 VIDIC, MY ESTEEMED COLLEAGUE FROM THE DEPARTMENT OF
18 MENTAL HEALTH, I BELIEVE IT WAS DECEMBER. SO THERE
19 WOULD BE THE POSSIBILITY OF SOME PRACTICE EFFECT IN
20 THAT THERE ARE SOME SIMILAR ITEMS IN IT. HOWEVER,
21 AT THE SAME TIME, BY LOOKING AT THE RANGE OF SCORES
22 WHICH RANGE FROM THE 50TH PERCENTILE WHICH IS A
23 VERY FINE SCORE TO THE SECOND SCALE SCORE WHICH IS
24 LESS THAN THE FIRST PERCENTILE, IT IS A REMARKABLE
25 RANGE WHICH IN MY UNDERSTANDING WOULD REPRESENT

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1 INTENTIONAL FEIGNING OF RESPONSES. THAT IS HE
2 WOULD BE RESPONDING CANDIDLY TO SOME, YOUR HONOR,
3 AND IN OTHERS PURPOSEFULLY, EITHER TAKING MORE TIME
4 THAN NECESSARY, OR NOT DOING HIS BEST.

5 Q. ALL RIGHT, SIR. DID YOU CONDUCT PERSONAL FACE TO
6 FACE INTERVIEWS WITH MR. SIMMONS AT THE COASTAL
7 CENTER?

8 A. YES, SIR, WE DID.

9 Q. HOW MANY INTERVIEWS, AND APPROXIMATELY HOW LONG
10 WERE THEY?

11 A. WE CONDUCTED FOUR INTERVIEWS APPROXIMATELY TWO
12 HOURS IN LENGTH, SIR.

13 Q. ALL RIGHT, SIR. AND I'M GOING TO COME BACK TO
14 THOSE INTERVIEWS; BUT LET ME ASK YOU A COUPLE OF
15 OTHER QUESTIONS.

16 A. YES, SIR.

17 Q. WHAT TYPE INFORMATION DO YOU LOOK FOR AS FAR AS
18 BACKGROUND INFORMATION IN ORDER TO FORM A BASIS FOR
19 YOUR OPINION ON COMPETENCY AND THE OTHER ISSUES YOU
20 WERE ASKED TO ADDRESS? JUST GENERALLY SPEAKING,
21 WHAT DO YOU LIKE TO HAVE TO BE ABLE TO ARRIVE AT AN
22 ACCURATE CONCLUSION?

23 A. GENERALLY WE FOLLOW THE DUSKY STANDARDS. OF COURSE
24 DUSKY, THE U.S. 1960, IN ATTEMPTING TO GET SOME
25 INFORMATION. WE LIKE TO KNOW ABOUT WHETHER THERE

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1 WAS A REGULAR GRADUATION FROM HIGH SCHOOL, WHETHER
2 THERE WAS SPECIAL EDUCATION, WHETHER THE INDIVIDUAL
3 WAS ABLE TO TAKE CARE OF HIMSELF OR HERSELF OR
4 NOT. IN THIS CASE THE DEFENDANT WAS A REGULAR HIGH
5 SCHOOL GRADUATE; SCORED WELL ENOUGH THAT HE
6 EXPLAINED TO US HOW WELL HE SCORED IN HIS FOOTBALL
7 CAREER; GOT MARRIED; HAD A COUPLE OF KIDS; WORKED
8 HERE AND THERE; SHOWED NO INDICATION OF IMPAIRMENT
9 WHATSOEVER WHICH WOULD LEAD ONE TO BELIEVE THAT HE
10 WOULD BE COMPETENT TO ASSIST HIS ATTORNEY AND TO
11 PARTICIPATE IN HIS DEFENSE AND TO KNOW THE CHARGES
12 WITH WHICH HAVE BEEN BROUGHT AGAINST HIM.

13 Q. DID YOU TALK TO THE CORRECTIONAL OFFICERS THAT
14 TESTIFIED THIS MORNING TO HELP FORM THE BASIS FOR
15 YOUR OPINION?

16 A. THE CORRECTIONAL OFFICERS WHO I SPOKE TO DID NOT
17 FORM THE BASIS OF MY OPINION. THEY MERELY ADDED,
18 IF YOU WILL YOUR HONOR, ICING TO THE CAKE IN A
19 SENSE THAT WE KIND OF SUSPECTED THERE WAS SOMETHING
20 UNUSUAL GOING ON. WE ASKED THE TRANSPORTATION
21 OFFICERS, AS I ALWAYS DO IN EVERY CASE THAT I'VE
22 DONE. IN THIS BEAUTIFUL STATE, I'VE DONE 50 OF
23 THEM, OR 60 OF THEM. AND IN EVERY CASE WE SAY THAT
24 WE'D LIKE TO KNOW WHETHER THE BEHAVIOR THAT THE
25 TRANSPORTATION OFFICER HAS NOTICED HAS BEEN

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1 CONSISTENT IN OUR EVALUATION WITH WHAT THEY'VE
2 NOTICED, IF THEY HAVE BEEN ABLE TO NOTICE THEM,
3 OUTSIDE THE EVALUATION CENTER, THUS BEING AWARE OF
4 THE TREMENDOUS VALUE OF THE CORRECTIONAL OFFICERS.
5 AND IN THIS CASE WE ASKED THEM. THEY TOLD US SOME
6 REMARKABLE THINGS, AND WE THOUGHT THAT WAS REALLY
7 QUITE INTERESTING; HOWEVER, IT CERTAINLY DID NOT
8 FORM A BASIS FOR OUR INFORMATION.

9 Q. ALL RIGHT, SIR. DID YOU ALSO GET SCHOOL RECORDS
10 THAT YOU REVIEWED?

11 A. YES, SIR.

12 Q. I'LL HAND YOU STATE'S ONE WHICH IS A COPY OF THE
13 SCHOOL RECORDS TESTIFIED TO PREVIOUSLY. HAVE YOU
14 REVIEWED THAT?

15 A. I HAVE REVIEWED SOME OF IT. AS WE HAD PRECIOUS
16 LITTLE TIME, MY LEARNED COLLEAGUE, DR. MCABEE, I
17 BELIEVE LOOKED AT IT MORE THOROUGHLY THAN I DID,
18 AND HE WAS WORKING ON THE SCHOOL RECORDS. I WAS
19 WORKING ON OTHER PIECES AS WELL AS TWO OTHER
20 CAPITAL CASES, YOUR HONOR, THAT I'M INVOLVED IN AT
21 PRESENT. SO WE WERE TRYING TO GET THIS TO YOU
22 BEFORE TODAY, AND THAT WAS ONE OF THE THINGS THAT
23 DR. MCABEE WORKED ON.

24 Q. ALL RIGHT, SIR. BUT YOU ARE FAMILIAR WITH THAT
25 RECORD TO SOME EXTENT?

1 A. I AM, SIR.

2 Q. ALL RIGHT, SIR. LET ME CALL YOUR ATTENTION TO
3 STATE'S ONE, TO PAGE TWO, THE TOP LEFT-HAND PART OF
4 PAGE TWO. (WITNESS EXAMINES DOCUMENT.) AND I'D ASK
5 YOU TO STATE WHETHER OR NOT THERE ARE SOME I.Q.
6 SCORES ON THAT SCHOOL RECORD?

7 A. THERE ARE, SIR.

8 Q. ALL RIGHT. AND ARE THOSE THE KIND OF THINGS THAT
9 YOU WOULD TAKE INTO CONSIDERATION WHEN FORMING A
10 CONCLUSION WITH REGARD TO WHETHER OR NOT MENTAL
11 RETARDATION EXISTS?

12 MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT TO
13 THE QUESTION. I HAVEN'T UP TO THIS POINT, BUT
14 HE'S ASKING FOR A CONCLUSION. HE'S LED HIM
15 RIGHT INTO IT. IT'S LEADING.

16 THE COURT: I'M GOING TO ALLOW IT. HE'S
17 ASKING IF THESE ARE FACTORS THAT ARE OR NOT
18 ENTERED INTO THE EQUATION OF THE CONCLUSION
19 WHICH HE REACHES. IT'S A PROPER QUESTION. I
20 OVERRULE YOUR OBJECTION.

21 A. WOULD YOU REPEAT YOUR QUESTION, PLEASE, SIR?

22 Q. I'LL TRY. IS THAT THE KIND OF INFORMATION THAT YOU
23 WOULD USE IN ORDER TO HELP FORM YOUR OPINIONS AND
24 CONCLUSIONS IN REGARDS TO WHETHER OR NOT A PERSON
25 IS MENTALLY RETARDED?

1 A. YES, SIR.

2 Q. ALL RIGHT, SIR. AND WHAT DO THOSE I.Q. SCORES
3 INDICATE ON THERE?

4 A. IT INDICATES, WITH A COLLECTION OF ABBREVIATIONS
5 THAT I'M NOT TREMENDOUSLY FAMILIAR WITH, YOUR HONOR
6 S.R.A., P.M.A.; I'M NOT SURE EXACTLY WHAT THAT
7 MEANS. BUT UNDER I.Q. 94, 104, 69, I.Q. SCORES.

8 Q. WHAT IS CONSIDERED A NORMAL I.Q. IF YOU'RE JUST
9 LOOKING AT THE TEST, OR A TEST?

10 A. WELL, ANY I.Q. TEST SHOULD REALLY ADDRESS THE
11 POPULATION INVOLVED FOR THE SOCIOECONOMIC LEVEL AND
12 THE GENERAL BACKGROUND OF THE INDIVIDUALS. I WOULD
13 SAY THAT IN THIS CASE AVERAGE I.Q. IN THE
14 THEORETICAL SENSE OF THE WEXLER ADULT INTELLIGENCE
15 SCALE IS NOTED IN THE MANUAL AS 90 TO 109 WHICH
16 THEORETICALLY HOLDS 68.275 PERCENT OF THE
17 THEORETICAL POPULATION. HOWEVER, SIMILAR TO THE
18 EARLIER TESTIMONY ABOUT THE FIFTH GRADE AS FAR AS
19 THE HIGH SCHOOL STANDARD IN TERMS OF READING, THAT
20 CAN BE A LOCALIZED ABERRATION, OR IT COULD BE
21 HIGHER OR LOWER DEFENDING ON THE LOCALE.

22 DR. SANDLER: SIMILARLY I.Q. CAN BE HIGHER OR
23 LOWER DEPENDING ON THE LOCALE, YOUR HONOR.

24 THE COURT: YES, SIR.

25 Q. DID YOU ALSO, FROM MY OFFICE, GET CERTAIN MATERIALS

1 IN REGARD TO THIS ACTUAL CASE?

2 A. I DID, SIR.

3 Q. BRIEFLY, WHAT DID YOU GET THAT HELPED YOU FORM THE
4 BASIS OF YOUR OPINION?

5 A. I RECEIVED COPIES OF A TRANSCRIPT OF RECORD OF THE
6 STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER, V.
7 KENNETH SIMMONS, DEFENDANT, BEFORE THE HONORABLE
8 LUKE N. BROWN, JUDGE, IN WHICH THE DEFENDANT ASKED
9 ABOUT -- WAS ASKED BY THE COURT A SERIES OF
10 QUESTIONS. I ALSO RECEIVED THREE AUDIO TAPES
11 CONTAINING A CONFESSION, AS WELL AS AN ALIBI
12 CONFESSION OF THE DEFENDANT. I ALSO RECEIVED THE
13 COMPETENCY EVALUATION THAT WAS PERFORMED BY LEARNED
14 COLLEAGUES, DR. BEHRMANN AND DR. VIDIC, FROM THE
15 DEPARTMENT OF MENTAL HEALTH. GOSH, I'M NOT SURE
16 WHAT ELSE IT WAS.

17 Q. DID YOU LISTEN TO THE THREE TAPES?

18 A. YES, I DID, REPEATEDLY.

19 Q. OKAY.

20 A. AS WELL AS READ THE TRANSCRIPT THAT YOU ALSO WERE
21 KIND ENOUGH TO ENCLOSE.

22 Q. ALL RIGHT, SIR. AND WAS A TWO PAGE HANDWRITTEN
23 STATEMENT DATED DECEMBER THE 5TH, 1997, IN THE
24 MATERIAL THAT YOU GOT?

25 A. I DON'T RECALL THAT ONE ESPECIALLY, SOLICITOR

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 BAILEY. BUT IF YOU'D BE SO KIND AS TO SHOW IT TO
2 ME, I'M SURE I'VE GOT IT IN THIS PILE SOMEWHERE.
3 WE WERE RUSHING DOWN FROM COLUMBIA THIS MORNING,
4 AND I MAY HAVE SOME OF THESE THINGS MIS-ARRANGED.

5 Q. I CAN'T LAY MY HANDS ON IT RIGHT NOW, DOCTOR.
6 WE'LL COME BACK TO THAT. WHILE YOU WERE HERE IN
7 COURT, MRS. CHELLIS PRODUCED SOME RECORDS FROM THE
8 DORCHESTER COUNTY ALCOHOL AND DRUG ABUSE
9 COMMISSION. DID YOU REVIEW THOSE RECORDS?

10 A. I REVIEWED THEM IN A PRELIMINARY FASHION; YES, SIR.

11 Q. ALL RIGHT, SIR. DID THAT ASSIST YOU IN ANY WAY --
12 THE REPORT WRITTEN PRIOR TO THAT; DID THOSE RECORDS
13 CHANGE YOUR OPINION?

14 A. NO, SIR. THEY ENFORCED MY OPINION BECAUSE THEY HAD
15 A SERIES OF QUESTIONS THAT APPEARED TO BE ANSWERED
16 BY THE DEFENDANT AND RESPONDED TO BY THE DEFENDANT
17 IN TERMS OF HIS CONFIDENTIALITY AND OTHER
18 HISTORICAL ISSUES AND SURE SEEMED LIKE THEY WERE
19 WITHIN NORMAL LIMITS FOR AN INDIVIDUAL TO RESPOND
20 TO TO ME, SIR.

21 Q. ALL RIGHT. AND GOING BACK TO THE TAPED STATEMENTS
22 THAT YOU LISTENED TO, DID YOU DRAW ANY CONCLUSIONS
23 AS A RESULT OF LISTENING TO THOSE STATEMENTS?

24 A. YES, SIR.

25 Q. WITH RESPECT TO WHETHER OR NOT THE VOICE YOU HEARD

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 ON THAT TAPE APPEARED TO BE THAT OF A MENTALLY
2 RETARDED PERSON?

3 A. YES, SIR. THE VOICE OF MR. SIMMONS WAS REMARKABLY
4 DIFFERENT IN THE TAPES THAN IT WAS WHEN WE SAW
5 HIM. THE RHYTHM OF THE VOICE WAS CLEAR AND
6 BALANCED. THE INFLECTIONS WERE SPONTANEOUS. THE
7 RESPONSES WERE QUICK.

8 Q. YOU'RE REFERRING TO THE TAPE, NOW; IS THAT CORRECT?

9 A. IN THE TAPE.

10 Q. ALL RIGHT, SIR.

11 A. WHEN WE SAW MR. SIMMONS, HE LOOKED A LITTLE
12 DISORIENTED. HE STARED A LITTLE EACH TIME HE CAME
13 INTO THE ROOM. AND BEFORE HE ANSWERED EACH
14 QUESTION, YOUR HONOR, HE SORT OF SQUIGGLED HIS
15 NOSE, WRINKLED HIS BROW, LOOKED LIKE HE WAS NOT
16 BEING SPONTANEOUS, AND LOOKED LIKE HE WAS TRYING TO
17 APPEAR LESS COMPETENT OR LESS INTELLIGENT THAN HE
18 WAS. AND IT WAS A TOTALLY DIFFERENT SET OF
19 AUDITORY RESPONSES THAN WHAT WE HEARD ON THE TAPE.

20 Q. WITH RESPECT TO YOUR OBSERVATIONS ON MR. SIMMONS'
21 HYGIENE AND GROOMING, WHAT DID YOU OBSERVE AS FAR
22 AS THAT GOES?

23 A. HIS HYGIENE AND GROOMING WERE VERY MUCH WITHIN
24 NORMAL LIMITS. I COMMENTED ON HIS BEARD; ASKED HIM
25 WHAT HE REFERRED TO IT AS, A VANDYKE, A GOATEE. HE

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 SAID, "WELL, HE CALLS IT BLOCKED;" BLOCKED AROUND
2 THE MOUTH. AND I ASKED HIM HOW HE WOULD REFER TO
3 HIS HAIR STYLE, AND HE SAID HE HAS SOME SPOTS OF
4 HAIR IN THE BACK OF HIS HEAD THAT DON'T LOOK VERY
5 GOOD SO HE SHAVES HIS HEAD ABOUT ONCE A WEEK, AND
6 CERTAINLY SEEMED TO BE AWARE OF HIS GROOMING AND
7 HIS HYGIENE. THERE WAS NO MALODOROUS SMELLS OF ANY
8 KIND EMANATING FROM HIM, AND THERE WAS NO REASON
9 THAT I COULD SEE TO SUSPECT THAT THERE WAS ANYTHING
10 ABNORMAL ABOUT HIS ABILITY TO GROOM AND TO HIS
11 PERSONAL HYGIENE.

12 Q. ALL RIGHT, SIR. AND DID THAT LEAD YOU TO ANY
13 CONCLUSIONS ABOUT MENTAL RETARDATION?

14 A. THE ABSENCE OF A PROBLEM IN HIS SELF-CARE. THE
15 ABSENCE OF -- ONE OF THE PROBLEMS WITH MENTAL
16 RETARDATION, YOUR HONOR, IS THAT PEOPLE WHO --
17 PERSONS WITH MENTAL RETARDATION -- HAVE TROUBLE
18 GROOMING THEMSELVES AND ATTENDING TO THEIR OWN
19 HYGIENE. WE SAW NONE OF THAT EVIDENCED BY THE
20 DEFENDANT, SIR.

21 Q. ALL RIGHT, SIR. DO YOU HAVE AN OPINION TO A
22 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY AS TO
23 WHETHER OR NOT MR. SIMMONS WAS ORIENTED TO PERSON,
24 PLACE, AND TIME AT THE TIME YOU SAW HIM?

25 A. I DO, SIR.

1 Q. WHAT'S THAT OPINION?

2 A. THE OPINION IS THAT HE WAS GENERALLY ORIENTED TO
3 PERSON, PLACE, TIME AND LOCATION, AND SITUATION.

4 Q. WITH RESPECT TO HIS ATTENTION SPAN, DID YOU OBSERVE
5 HIS ABILITY TO CONCENTRATE? DO YOU HAVE AN OPINION
6 ON THAT?

7 A. YES, SIR. IT WAS REALLY QUITE REMARKABLE. HE WAS
8 ABLE TO SIT WITHOUT FIDGETING. HE ACKNOWLEDGED AT
9 SOME POINTS THAT IT WAS KIND OF LATE AND THAT HE
10 MISSED LUNCH AND HE WAS HUNGRY BUT HE WAS GOING TO
11 KEEP ON GOING. AND HE SEEMED EAGER TO HAVE IT OVER
12 WITH. AS FAR AS THE AMOUNT OF ATTENTION IN TERMS
13 OF CONCENTRATION, IF THAT'S WHAT YOU'RE ASKING,
14 THERE WAS A SIGNIFICANT PAUCITY OR ABSENCE OF HIS
15 CONCENTRATION TO ISSUES THAT HE DID NOT WISH TO BE
16 INVOLVED WITH SUCH AS THE COMPREHENSION OF THE
17 MIRANDA RIGHTS. WE WOULD REPEAT ISSUES. WE WOULD
18 FORM THEM IN OTHER WAYS. WE WOULD SIMPLIFY THEM.
19 AND HE APPEARED TO BE PAYING ATTENTION BUT APPEARED
20 NOT TO BE ATTENDING TO THE COMMENTS AND THE WORDS
21 THAT WE WERE ATTEMPTING TO COMMUNICATE AFTER THEY
22 HAD BEEN COMMUNICATED BY DOCTORS BEHRMANN AND
23 OTHERS, AS WELL AS THE LAW ENFORCEMENT OFFICIALS.
24 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
25 SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT MR.

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

- 1 SIMMONS WAS MALINGERING IN HIS RESPONSES TO YOUR
2 MIRANDA TYPE QUESTIONS?
- 3 A. I DO, SIR.
- 4 Q. WHAT IS THAT OPINION?
- 5 A. MY OPINION IS THAT HE WAS MALINGERING.
- 6 Q. AND THAT'S BASED ON WHAT?
- 7 A. THAT IS BASED ON THE AMOUNT OF TIME THAT IT TOOK
8 FOR HIM TO RESPOND, THE DRAMATIC DIFFERENCE BETWEEN
9 HIS RESPONSES FOR SOME BEHAVIORS AND NOT FOR THE
10 RELATIVELY REPEATED, OFTEN REPEATED, COMMENTS OF
11 MIRANDA. I BELIEVE HE HAD BEEN MIRANDIZED
12 REPEATEDLY BY LAW ENFORCEMENT, YOUR HONOR; AND WE
13 FELT THAT THIS WAS A PURPOSEFUL ATTEMPT TO EVADE
14 CRIMINAL PROSECUTION, THAT THIS WAS AN INTENTIONAL
15 ATTEMPT TO NOT BE ABLE TO UNDERSTAND HIS RIGHTS.
- 16 Q. ALL RIGHT, SIR. WHAT ABOUT HIS MEMORY, REMOTE
17 MEMORY, AND HIS NEAR MEMORY?
- 18 A. WHEN HE WANTED TO, IT WAS REMARKABLE. HE
19 REMEMBERED WHEN HE PLAYED FOOTBALL ONE SEASON WAS
20 THIRTEEN AND ONE AND ANOTHER WAS FOURTEEN AND 0.
21 IT WAS REMARKABLE IN THAT HE REMEMBERED THAT HE WAS
22 ARRESTED FOR SHOPLIFTING IN COLUMBIA AT A FOOD LION
23 OR WINN-DIXIE. AND WE ASKED HIM FOR WHAT. HE SAID
24 MEAT. AND WE ASKED HOW MUCH, AND HE REMEMBERED IT
25 WAS FORTY DOLLARS WORTH. ON OTHER ISSUES, HE WOULD

1 SCRATCH HIS HEAD AND WRINKLE HIS NOSE, GRIMACE A
2 BIT, AND SAID "I DON'T KNOW; I DON'T REMEMBER."
3 AND THERE WAS A SIGNIFICANT AND DRAMATIC CONTRAST
4 BETWEEN HIS CONCENTRATION AND MEMORY ABILITIES
5 BASED ON THE MANNER IN WHICH HE CHOSE TO RESPOND.

6 Q. DID YOU FIND ANYTHING AT ALL IN MR. SIMMONS'
7 BACKGROUND THAT WOULD LEAD YOU TO BELIEVE THAT
8 THERE WERE ANY ADAPTIVE IMPAIRMENTS? YOU MENTIONED
9 THAT AS BEING ONE OF THE THREE TYPES, THE THREE
10 THINGS YOU LOOKED FOR WERE THE ONSET BEFORE AGE 22,
11 THE I.Q. TEST SCORE, AND ADAPTIVE IMPAIRMENTS?

12 A. THAT IS CORRECT, SIR.

13 Q. ANY INDICATION OF ANY ADAPTIVE PROBLEMS EXISTING
14 PRIOR TO THE AGE OF 22 IN MR. SIMMONS' HISTORY?

15 A. NO, SIR, I DID NOT; HOWEVER, THERE AGAIN DOCTOR
16 MCABEE ALSO WAS INVOLVED IN ASSESSING THAT, AND HE
17 MIGHT BE VALUABLE TO DISCUSS THAT WITH AS WELL.

18 Q. ALL RIGHT. WITH RESPECT TO THE ISSUE OF CRIMINAL
19 RESPONSIBILITY UNDER THE SOUTH CAROLINA STANDARD OF
20 THE ABILITY TO KNOW MORAL AND LEGAL RIGHT FROM
21 MORAL AND LEGAL WRONG AT THE TIME OF THE ALLEGED
22 OFFENSE, DO YOU HAVE AN OPINION ON THAT BASED ON
23 YOUR EXAMINATION OF MR. SIMMONS AS TO WHETHER OR
24 NOT HE HAD ANY MENTAL IMPAIRMENT THAT WOULD HAVE
25 PREVENTED HIM FROM DETERMINING THE DIFFERENCE

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 BETWEEN MORAL LEGAL RIGHT OR WRONG ON OR ABOUT
2 SEPTEMBER ONE, 1996?

3 MR. THEOS: YOUR HONOR, I'M GOING TO OBJECT.

4 I DON'T THINK A PROPER FOUNDATION HAS BEEN
5 LAID FOR THAT QUESTION.

6 THE COURT: I'M GOING TO ALLOW IT.

7 A. I DO HAVE AN OPINION, SIR.

8 Q. ALL RIGHT, SIR. WHAT IS THAT OPINION?

9 A. MY OPINION IS THAT I SEE NO EVIDENCE THAT THERE
10 WOULD BE ANY MENTAL DEFECT OR INABILITY BASED ON MY
11 RETROACTIVE ANALYSIS BASED ON THINKING ABOUT WHAT
12 HAPPENED AT A PREVIOUS TIME. I SEE NO EVIDENCE OF
13 ANY DISORDER OR IMPAIRMENT THAT WOULD HAVE
14 PREVENTED THE DEFENDANT FROM MEETING THE MCNAGHTEN
15 STANDARD OF KNOWING LEGAL AND MORAL RIGHT VERSUS
16 LEGAL AND MORAL WRONG.

17 Q. ALL RIGHT, SIR. AND WITH RESPECT TO AGAIN, ON OR
18 ABOUT SEPTEMBER THE FIRST, 1996, DID YOU FIND
19 EVIDENCE OF ANY IMPAIRMENT THAT WOULD HAVE ANY WAY
20 IMPACTED ON MR. SIMMONS' ABILITY, IN YOUR OPINION,
21 TO BE ABLE TO CONFORM HIS CONDUCT TO THE
22 REQUIREMENTS OF LAW?

23 A. I DID NOT.

24 MR. THEOS: I WAS GOING TO OBJECT THAT HE WAS
25 TOO QUICK, YOUR HONOR, BUT PLEASE NOTE MY

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

OBJECTION.

THE COURT: NOTE HIS OBJECTION, PLEASE.

Q. WHEN IS THE LAST TIME YOU TALKED WITH MR. SIMMONS?

A. FEBRUARY THE NINE, 1999.

Q. ALL RIGHT, SIR. AS OF THAT DATE -- YOU HAVE NOT TALKED TO HIM TODAY, HAVE YOU?

A. NO, SIR.

Q. AS OF THE DATE YOU LAST TALKED TO HIM WHICH WAS FEBRUARY THE NINTH, 1999, WAS THAT A TWO HOUR, ROUGHLY A TWO HOUR INTERVIEW, THAT YOU HAD WITH HIM; OR HOW LONG WAS IT?

A. MORE A LIKE THREE; ABOUT TWO-AND-A-HALF OR THREE HOURS. I THINK WE STARTED CLOSE TO ABOUT 10:15 OR 10:30. WE FINISHED ABOUT 1:00 OR 1:15; SOMEWHERE AROUND THERE.

Q. ALL RIGHT, SIR. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY WHETHER OR NOT ON THAT DAY MR. SIMMONS HAD THE ABILITY TO UNDERSTAND THE PROCEEDINGS AGAINST HIM, TO COOPERATE WITH HIS ATTORNEYS, TO KNOW THE ROLE OF COURT OFFICIALS, TO BE COMPETENT TO BE TRIED?

A. I HAVE AN OPINION, SIR.

Q. WHAT IS THAT OPINION?

A. THE OPINION IS THAT HE MOST LIKELY DOES HAVE THAT UNDERSTANDING.

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 Q. ALL RIGHT, SIR. AND I WANT TO ASK YOU ONE OTHER
2 QUESTION HERE, DOCTOR. DID YOU FIND EVIDENCE OF
3 ANY MENTAL IMPAIRMENT OR MENTAL CONDITION OR
4 ANYTHING ABOUT MR. SIMMONS' MENTAL STATUS THAT
5 WOULD HAVE IN YOUR OPINION IN ANY WAY PREVENTED MR.
6 SIMMONS FROM UNDERSTANDING MIRANDA WARNINGS AND
7 INTELLIGENTLY AND KNOWINGLY WAIVING THOSE WARNINGS
8 IN DECEMBER -- DECEMBER THE SEVENTH, DECEMBER THE
9 NINTH, 1997?

10 A. BASED ON THE IDEA THAT IT HAPPENED BEFORE I --
11 BASED UPON REASONABLE SCIENTIFIC CERTAINTY AND A
12 RETROSPECTIVE ANALYSIS, I SEE NO EVIDENCE
13 WHATSOEVER THAT THERE WOULD BE ANY IMPAIRMENT IN
14 HIS ABILITY TO UNDERSTOOD HIS MIRANDA RIGHTS.

15 Q. ALL RIGHT, SIR. AND ONE FINAL QUESTION. I THINK
16 THIS HAS BEEN COVERED BEFORE, BUT JUST TO MAKE SURE
17 IT'S CLEAR ON THE RECORD, DOCTOR; DO YOU HAVE AN
18 OPINION TO A REASONABLE DEGREE OF SCIENTIFIC
19 CERTAINTY AS TO WHETHER OR NOT THE TIMES THAT YOU
20 SAW MR. SIMMONS HE WAS MALINGERING SYMPTOMS OF
21 MENTAL RETARDATION?

22 A. I DO, SIR.

23 Q. WHAT IS THAT OPINION?

24 A. MY OPINION IS THAT HE WAS.

25 Q. ALL RIGHT, SIR. PLEASE ANSWER ANY QUESTIONS THE

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 DEFENSE MAY HAVE FOR YOU.

2 THE COURT: CROSS?

3 MR. THEOS: YES, SIR.

4 MR. BAILEY: JUDGE, CAN I GO AHEAD AND HAVE
5 THE COURT REPORTER MARK THE REPORT?

6 THE COURT: SURE. AND WHY DON'T WE MARK BOTH
7 OF THEM?

8 MR. BAILEY: ALL RIGHT, SIR.

9 THE COURT: IT MAY BE THAT THE CLERK'S FILE,
10 THE ORIGINALS, MAY BE IN THOSE.

11 MR. BAILEY: I'VE GOT A COPY I CAN GIVE THEM,
12 JUDGE.

13 THE COURT: OKAY.

14 MR. BAILEY: JUDGE, WITH MR. THEOS' CONSENT,
15 WE'LL GO AHEAD AND MARK THE ALCOHOL AND DRUG
16 ABUSE COMMISSION RECORDS.

17 THE COURT: ALL RIGHT. AND WHAT IS THE
18 EXHIBIT NUMBER, PLEASE, MADAM COURT REPORTER?

19 THE COURT REPORTER: NUMBER TEN ON THAT.

20 THE COURT: TEN WILL BE WHAT?

21 THE COURT REPORTER: THAT'S THE DRUG AND
22 ALCOHOL REPORT.

23 THE COURT: ALL RIGHT, MR. THEOS. YOU WERE
24 SAYING, PLEASE?

25 MR. THEOS: YOUR HONOR, FOR PURPOSES OF THIS

LESLIE SANDLER - RE-DIRECT/MR. BAILEY

1 HEARING, WE HAVE NO OBJECTION TO THE
2 INTRODUCTION OF THOSE TWO DOCUMENTS.

3 THE COURT: WELL, ACTUALLY, THERE WERE THREE
4 BECAUSE ONE WAS THE DORCHESTER DRUG AND
5 ALCOHOL REPORT.

6 MR. THEOS: WHAT WAS HIS C.V.?

7 THE COURT: COME UP AND LOOK AT THEM AND GET
8 THE NUMBER. THERE WERE FOUR IF WE INCLUDE HIS
9 C.V.; SEVEN, EIGHT, NINE, AND TEN. I HAVE THE
10 C.V. IN MY HAND.

11 MR. THEOS: ALL RIGHT. THE C.V., THE REPORT
12 WHICH WAS TEN; FORENSIC EVALUATION WHICH IS
13 EIGHT. I DIDN'T HEAR ANY REFERENCE TO THAT.
14 I MAY HAVE MISSED THAT. YOUR HONOR, WE WOULD
15 OBJECT TO THIS, TO STATE'S EXHIBIT NINE. I
16 DIDN'T HEAR ANY REFERENCE TO THIS. THIS IS A
17 REPORT OF THE STATE HOSPITAL, DR. BEHRMANN AND
18 VIDIC'S REPORT.

19 MR. BAILEY: JUDGE, UNDER STATE VS. FRANKLIN,
20 THE REPORT CAN COME IN. IT'S AN EXCEPTION TO
21 THE HEARSAY RULE, AND I WOULD TENDER IT---

22 THE COURT: I ACTUALLY ASKED HIM TO MAKE IT AN
23 EXHIBIT NUMBER BECAUSE SOMETIMES THE CLERK OF
24 COURT'S RECORDS ARE ONE THING, BUT THE COURT'S
25 RECORDS ARE ANOTHER OF A TRIAL, AND IT IS

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 BEING CONSIDERED IN THIS HEARING, IS IT NOT?

2 MR. THEOS: YES, SIR. DR. BEHRMANN AND VIDIC
3 ARE HERE. THIS DOCTOR SIMPLY HAD A COPY OF
4 IT, AND I ASSUME IS THE RECORDS THAT HE WAS
5 ASKED TO REVIEW.

6 THE COURT: ALL RIGHT. WELL, NOTE HIS
7 OBJECTION. IT'S CLEARLY ADMISSIBLE. WE'VE
8 TALKED ABOUT IT A MONTH AGO, TWO WEEKS AGO,
9 AND AGAIN TODAY. BUT NOTE HIS OBJECTION TO
10 STATE'S NUMBER NINE. PROCEED.

11 RE-CROSS EXAMINATION

12 BY MR. THEOS:

13 Q. DR. SANDLER, WHEN YOU ME WITH MR. SIMMONS ON EACH
14 AND EVERY DAY, DID YOU REVIEW THE MIRANDA WARNINGS
15 WITH HIM?

16 A. DID YOU ASK A QUESTION?

17 Q. I DID. I SAID DID YOU REVIEW THE MIRANDA WARNINGS
18 WITH HIM? I BELIEVE THAT'S A QUESTION.

19 THE COURT: ON EACH OCCASION THAT YOU MET WITH
20 HIM; THE FOUR MEETINGS OF TWO HOURS EACH.

21 A. EITHER I DID OR DR. MCABEE DID.

22 Q. ALL RIGHT. AND DID YOU HAVE A WRITTEN MIRANDA FORM
23 WITH YOU WHEN YOU DID THAT?

24 A. YES, SIR.

25 Q. DO YOU HAVE THOSE WRITTEN MIRANDA RIGHTS THAT YOU

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 REVIEWED WITH MR. SIMMONS HERE WITH YOU TODAY?

2 A. I BELIEVE SO, SIR.

3 Q. DO YOU HAVE THEM WITH YOU AT THE STAND, OR DO YOU
4 NEED TO GET THEM FROM DR. MCABEE?

5 A. I THINK I HAVE THEM WITH ME AT THE STAND.

6 Q. OKAY. (WITNESS REVIEWS RECORDS.)

7 A. DID YOU WANT THEM?

8 Q. YES, SIR; I'M SORRY. I THOUGHT DR. MCABEE WAS
9 LOOKING FOR THEM. WE WOULD LIKE THEM, PLEASE. I'M
10 SORRY, DR. SANDLER; DO YOU HAVE ALL FOUR OF THEM?

11 A. YES, SIR.

12 Q. AND ARE THESE THE ORIGINALS?

13 A. YES, THEY ARE, SIR.

14 Q. AND THESE ARE EACH TWO PAGE DOCUMENTS; IS THAT
15 CORRECT?

16 A. THAT IS CORRECT. I BELIEVE WE JUST USED THE FIRST
17 PAGE OF THEM.

18 Q. THE SECOND PAGE, I BELIEVE, IS BLANK IN EACH OF
19 THESE?

20 A. YES. THE SECOND PAGE CONSISTS OF A WAIVER OF THE
21 DEFENDANT OR THE INTERVIEWEE TO CONDUCT THE
22 EXAMINATION WITHOUT THEIR LAWYER PRESENT. SINCE
23 YOU WERE PRESENT IN THE ROOM, IF NOT THE AREA EACH
24 TIME, AND MR. SIMMONS DID NOT WISH TO WAIVE THOSE
25 RIGHTS, THE SECOND PAGE WAS NOT COMPLETED.

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 Q. AND THIS IS MR. SIMMONS' SIGNATURE?

2 A. IT IS, SIR.

3 MR. THEOS: YOUR HONOR, IF WE COULD MARK THESE
4 AS DEFENDANT'S EXHIBITS ONE THROUGH FOUR,
5 PLEASE?

6 THE COURT: IS THERE ANY REASON, DOCTOR, THAT
7 YOU NEED THOSE BACK FOR YOUR FILE?

8 DR. SANDLER: I WOULD CERTAINLY APPRECIATE A
9 COPY OF IT.

10 THE COURT: SO A COPY WOULD BE FINE FOR YOUR
11 FILE?

12 DR. SANDLER: YES, SIR.

13 THE COURT: OKAY. SO AFTER, ASSUMING THEY'RE
14 ADMITTED INTO EVIDENCE, WE CAN HAVE THE
15 BAILIFF GO MAKE A COPY AND GIVE IT TO HIM TO
16 PUT IN HIS FILE.

17 MR. BAILEY: NO OBJECTION, JUDGE.

18 THE COURT: WITHOUT OBJECTION; LET THE COURT
19 REPORTER MARK THEM DELTA 1, 2, 3, AND 4.

20 MR. THEOS: YOUR HONOR, I THINK WHAT WE'LL DO
21 IS MARK THEM IN JUST CHRONOLOGICAL ORDER.

22 DEFENDANT'S EXHIBIT NOS. 1-4

23 MARKED FOR IDENTIFICATION

24 Q. DR. SANDLER, I BELIEVE I'VE MARKED THESE IN
25 CHRONOLOGICAL ORDER, DEFENDANT'S EXHIBIT ONE, AND

1 THE DATE APPEARS 1/28/99?

2 A. YES, SIR.

3 Q. DEFENDANT'S NUMBER TWO BEING DATED 2/2/99?

4 A. YES, SIR.

5 Q. DEFENDANT'S -- IT'S DATED 2/3/99, AND THEN ABOVE
6 THE THREE THERE'S A FOUR?

7 A. THAT'S CORRECT, SIR.

8 Q. THAT'S DEFENDANT'S THREE?

9 A. YES, SIR.

10 Q. DEFENDANT'S EXHIBIT FOUR IS -- ACTUALLY IN THE DATE
11 SLOT IS THE TIME, BUT IN THE TIME SLOT IS THE DATE
12 OF 2/9/99?

13 A. THAT'S CORRECT, SIR.

14 Q. I ASK YOU TO HOLD ON TO THOSE. I'M GOING TO ASK
15 YOU A COUPLE OF QUESTIONS ABOUT THOSE. WERE THOSE
16 FORMS USED IN QUESTIONING MR. SIMMONS REGARDING HIS
17 UNDERSTANDING OF HIS MIRANDA WARNINGS?

18 A. AMONG OTHER THINGS, YES. THEY WERE USED -- WE USED
19 THEM NOT BECAUSE -- IF WE'RE NOT, OF COURSE,
20 REQUIRED TO HAVE HIS MIRANDA RIGHTS MET; HOWEVER,
21 WE FEEL THAT ONE OF THE INTEGRAL PARTS OF AN
22 EVALUATION IS A SERIES OF COMMENTS WHICH HAVE
23 GENERALLY BEEN ACCEPTED BY THE LEGAL AND MEDICAL
24 PROFESSION AS ADEQUATE FOR MOST INDIVIDUALS TO
25 MEET. SO WHAT WE'RE BASICALLY DOING WHEN WE SHOW

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 THESE TO AN INDIVIDUAL THAT WE'RE EXAMINING IS TO
2 SEE WHAT TYPE OF RESPONSE WE'RE GOING TO GET
3 CONSIDERING THAT AN INDIVIDUAL HAS SEEN THEM
4 BEFORE, HEARD THEM BEFORE. I DON'T MEAN TO
5 DIGRESS, BUT THAT'S THE ANSWER TO YOUR QUESTION.

6 Q. YOU USED THIS FORM, BUT YOU DID OTHER THINGS?

7 A. WE DON'T USE IT AS LAW ENFORCEMENT DOES PRIOR TO A
8 DISCUSSION FOR CRIMINAL CHARGES SINCE OBVIOUSLY
9 WE'RE NOT GOING TO HAVE AN INDIVIDUAL INCRIMINATE
10 THEMSELVES OR VIOLATE THE STATE VS. HITOPOUIS LAW
11 OR ANYTHING OF THAT NATURE. WE MERELY ATTEMPT TO
12 USE IT AS SORT OF A CONTROL TO SEE WHETHER AN
13 INDIVIDUAL WHO HAS CERTAINLY HEARD THEM BEFORE AND
14 BEEN ASKED TO SIGN THEM BEFORE RESPONDS IN AN
15 EXPECTED WAY OF SAYING YES, I'VE HEARD THAT BEFORE;
16 IT'S BEEN EXPLAINED TO ME BEFORE OR NOT.

17 Q. BASED UPON THAT LIMITED PURPOSE, OR FOR THAT
18 LIMITED PURPOSE, YOU USED THEM WITH MR. SIMMONS;
19 CORRECT?

20 A. INDEED SO.

21 Q. NOW, WITH RESPECT TO THE FIRST DAY, 1/28/99; CAN
22 YOU TELL US HOW LONG IT TOOK FOR YOU TO GO THROUGH
23 THIS MIRANDA FORM NOTICE OF RIGHTS WITH MR.
24 SIMMONS?

25 A. NO, I CAN'T.

1 Q. APPROXIMATELY?

2 A. I CAN TELL YOU IT WAS APPROXIMATELY -- I THINK WHEN
3 THE LAW ENFORCEMENT -- THE CORRECTIONAL OFFICER WHO
4 WAS HERE EARLIER SAID IT WAS FORTY MINUTES. I
5 REALLY DOUBT THAT WE WOULD SPEND FORTY MINUTES OF
6 PRECIOUS TIME INTERVIEWING DOING THAT. I THINK
7 PROBABLY A HALF AN HOUR MIGHT BE ABOUT IT, TOPS.

8 Q. OKAY. AND WITH RESPECT TO ITEM NUMBER ONE, THE
9 DEFENDANT'S RIGHT TO REMAIN SILENT; WHAT WERE MR.
10 SIMMONS' RESPONSES RELATED TO THAT? THAT WAS READ
11 TO HIM; CORRECT?

12 A. IT WAS READ TO HIM. FIRST OF ALL WE ASKED HIM TO
13 READ IT. WE ALWAYS ASK PEOPLE TO READ IT. IN EACH
14 SUCCESSIVE TIME THAT WE SAW HIM, HE READ IT
15 BETTER. AND IN THE INITIAL TIMES HE WOULD SAY "IT
16 MEANS I HAVE TO ANSWER ALL THE QUESTIONS THAT YOU
17 ASK ME."

18 Q. LET'S BACK UP FOR A SECOND. YOU SAID HE READ IT.
19 HE WAS ASKED TO READ THIS FORM?

20 A. YES, SIR.

21 Q. TO YOU AS BEST HE COULD?

22 A. YES, SIR.

23 Q. THE FIRST TIME THAT HE READ THE FORM, WAS HE ABLE
24 TO READ ALL OF THE WORDS IN THE FORM?

25 A. I HONESTLY DON'T RECALL.

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 Q. WAS HE ABLE TO READ ONLY THE---

2 A. PRIMARILY THE MONOSYLLABIC WORDS, AND PROBABLY HAD
3 SOME PROBLEM WITH SILENT, AND PROBABLY HAD SOME
4 PROBLEM WITH EXAMINATION.

5 Q. WOULD IT BE FAIR TO SAY THAT GENERALLY THE
6 POLYSYLLABIC WORDS HE HAD DIFFICULTY READING?

7 A. HE APPEARED TO HAVE DIFFICULTY READING; THAT IS
8 CORRECT, SIR.

9 Q. HE WAS ASSISTED WITH READING THOSE WORDS BY
10 PRIMARILY DR. MCABEE?

11 A. THAT IS CORRECT, SIR.

12 Q. ALL RIGHT. WHAT WERE HIS RESPONSES -- AND I DON'T
13 WANT EVERY RESPONSE ON EVERY DAY, BUT JUST THE
14 FIRST DAY. WHAT WERE HIS RESPONSES RELATED TO HIS
15 RIGHT TO REMAIN SILENT -- YOU WERE ABOUT TO TELL?

16 A. IT WAS -- YOU GOT TO -- I DIDN'T WRITE THEM DOWN,
17 AND I'M ONLY DOING IT FROM MEMORY. BUT BASICALLY
18 WHAT THE RESPONSES WERE IS THAT "I'VE GOT TO TELL
19 YOU WHATEVER YOU ASK." AND WE WOULD EXPLAIN "NO,
20 YOU DON'T. IT'S UP TO YOU AS A CITIZEN TO DECIDE
21 WHAT YOU WANT TO BE QUITE ABOUT AND WHAT YOU
22 DON'T." AND HE WOULD SHRUG HIS SHOULDERS AND SAY
23 "WHATEVER." WE SAID "WHATEVER" WASN'T A GOOD
24 ENOUGH ANSWER. AND WHEN HE KEPT GOING OVER IT, AND
25 HE WOULD SHRUG HIS SHOULDERS AND SAY "WHATEVER,"

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1 AND WE WOULD ATTEMPT TO MAKE CLEAR UNTIL IT BECAME
2 EVIDENT TO US THAT IT WAS A LITTLE PREPOSTEROUS FOR
3 HIM TO CONTINUE SAYING HE DIDN'T UNDERSTAND THAT.

4 Q. SPECIFICALLY THE CONCEPT THAT HE DIDN'T UNDERSTAND,
5 WASN'T IT THAT WHEN QUESTIONED THAT HE HAD TO
6 RESPOND; THAT HE DIDN'T HAVE A RIGHT TO REMAIN
7 SILENT, WHEN QUESTIONED BY OTHER PEOPLE? WEREN'T
8 THOSE HIS RESPONSES GENERALLY THAT WHENEVER
9 QUESTIONED HE HAD A DUTY TO RESPOND?

10 A. YES. THAT WAS GENERALLY HIS INITIAL RESPONSE.

11 Q. DID HE EVER HAVE ANY OTHER RESPONSE?

12 A. OH, YES. THE LAST TWO TIMES WHEN DR. MCABEE ASKED
13 HIM; I BELIEVE THAT HE GAVE THE RESPONSE THAT HE
14 COULD ANSWER OR HE COULD NOT ANSWER. BUT I WOULD
15 DEFER TO DR. MCABEE ABOUT THAT. I DON'T RECALL.
16 WE DIDN'T WRITE IT DOWN. WE DON'T USUALLY WRITE
17 DOWN ALL THE RESPONSES TO THAT BECAUSE WE SELDOM
18 HAVE PEOPLE WHO'LL TAKE THIS LONG OR IN THIS
19 FASHION TO NOT ANSWER THE QUESTION.

20 Q. WELL, LET ME ASK YOU THE QUESTION. IN YOUR OPINION
21 DID MR. SIMMONS INDICATE TO YOU THAT HE UNDERSTOOD
22 THESE RIGHTS WHEN YOU FINISHED REVIEWING THEM WITH
23 HIM?

24 A. HE SAID THAT YES, HE UNDERSTOOD; WHATEVER. IN THE
25 FIRST TWO EVALUATIONS THAT I CAN RECALL, IN THE

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 SECOND TWO, I BELIEVE HE SAID YES, HE UNDERSTOOD.
2 AND I'M ALMOST POSITIVE -- AGAIN, YOU'D HAVE TO ASK
3 DR. MCABEE. BUT I'M ALMOST POSITIVE THAT HE
4 CLEARLY UNDERSTOOD THE FIRST RIGHT IN TERMS OF
5 REMAINING SILENT.

6 Q. IS IT FAIR TO SAY THAT YOUR OPINION REGARDING HIS
7 RESPONSES TO HIS RIGHT TO REMAIN SILENT IS THAT HE
8 WAS MALINGERING?

9 A. THAT IS CORRECT, SIR.

10 Q. YOU DON'T BELIEVE THAT HE DIDN'T UNDERSTAND THAT
11 LEGAL CONCEPT OF HIS RIGHT TO REMAIN SILENT; HIS
12 RIGHT NOT TO HAVE TO ANSWER QUESTIONS?

13 A. THAT IS CORRECT. I BELIEVE THAT HE DID UNDERSTAND
14 IT BUT TOLD US THAT HE DID NOT UNDERSTAND IT;
15 WHATEVER; AND JUST SHRUGGED HIS SHOULDERS AND
16 SEEMED TO BE MALINGERING.

17 Q. CLEARLY HE STATED HE DIDN'T UNDERSTAND IT. BUT,
18 AGAIN, YOUR CONCLUSION---

19 A. IT WAS NOT CLEAR THAT HE DID NOT; THAT HE STATED HE
20 DIDN'T UNDERSTAND IT. HE WOULD MAKE ATTEMPTS TO
21 SAY, "WELL, IF SOMEBODY ASKS ME A QUESTION, I'VE
22 GOT TO ANSWER IT." WE WOULD REPEATEDLY SAY,
23 THOUGH, YOU DON'T. AND HE WOULD SAY "WHATEVER" IN
24 A WAY THAT SOUNDED TO US AS IF HE WAS GOING TO
25 RESPOND IN THAT FASHION NO MATTER HOW CAREFULLY AND

1 PATIENTLY HE WAS EXPLAINED IN TERMS OF THE CORRECT
2 INTERPRETATION.

3 Q. AND BECAUSE OF THOSE RESPONSES, Y'ALL CHOSE TO STOP
4 THOSE PARTICULAR LINES OF QUESTIONING AND MOVE ON
5 TO OTHER THINGS; CORRECT?

6 A. NO. WE COMPLETED ALL OF THE RIGHTS ABOUT TALKING
7 WITH YOUR LAWYER; AND WE REGULARLY, THROUGHOUT THE
8 EVALUATION, WOULD SAY "MR. SIMMONS, WOULD YOU LIKE
9 TO TALK TO YOUR LAWYER ABOUT ANY OF THIS STUFF."
10 EVERY FORTY-FIVE MINUTES OR EVERY HOUR WE WOULD SAY
11 TO HIM "MR. SIMMONS, DO YOU HAVE ANY QUESTIONS OR
12 WOULD YOU LIKE TO TALK TO YOUR LAWYER, HE'S RIGHT
13 OUT HERE." AT NO TIME DID HE ACCEPT THAT OFFER.

14 Q. AT NO TIME DID HE ASK IF HE COULD TALK WITH ME OR
15 MR. BELL; IS THAT CORRECT?

16 A. MR. WHO?

17 Q. MR. BELL.

18 A. OH, OF COURSE NOT, NO. I BEG YOUR PARDON, MR.
19 BELL.

20 Q. NOW, YOU'VE INDICATED THAT IN ADDITION TO THE TEST
21 SCORES THAT YOU'VE REVIEWED WITH US AND THE TESTS
22 THAT YOU'VE CONDUCTED, YOU INDICATED THAT YOU
23 RELIED ON SOME OTHER THINGS?

24 A. YES, SIR.

25 Q. ALL RIGHT. AND I JUST WANT TO MAKE SURE THAT I

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 UNDERSTAND WHAT THOSE THINGS ARE. DID YOU TALK TO
2 ANY OTHER PEOPLE OTHER THAN THE TWO SHERIFF'S
3 DEPUTIES THAT WERE HERE?

4 A. I DID NOT TALK TO EDUCATORS, BUT DR. MCABEE SPOKE
5 TO SOME FOLKS IN THE DEPARTMENT OF EDUCATION IN
6 SUMMERVILLE AND THE DEPARTMENT OF MOTOR VEHICLES TO
7 TRY AND GET INFORMATION IN TERMS OF HIS ABILITY TO
8 PASS A DRIVER'S LICENSE WHICH WE WERE INFORMED THAT
9 HE HAD PRIOR TO IT BEING SUSPENDED AND HIS
10 EDUCATIONAL ACHIEVEMENT.

11 Q. DID YOU SPEAK WITH ANY OF HIS FAMILY MEMBERS?

12 A. NO, SIR.

13 Q. DID DR. MCABEE TO YOUR KNOWLEDGE?

14 A. NOT TO MY KNOWLEDGE, SIR.

15 Q. DID YOU SPEAK WITH DR. BEHRMANN OR DR. VIDIC?

16 A. I SPOKE BRIEFLY WITH DR. VIDIC.

17 Q. CAN TELL US WHAT THE SUBSTANCE OF THAT CONVERSATION
18 WAS?

19 A. I MENTIONED TO DR. VIDIC THAT WE WERE FINALLY GOING
20 TO MEET; I HAD HEARD VERY GOOD THINGS ABOUT HIS
21 WORK AND HAD NEVER HAD THE PLEASURE OF MEETING THE
22 GENTLEMAN. I ASKED HIM ABOUT THE REY, R-E-Y TEST,
23 IN TERMS OF ITS ABILITY TO DETECT MALINGERING.

24 Q. LET ME ASK YOU ABOUT THAT TEST. WHAT WAS YOUR
25 UNDERSTANDING FROM TALKING TO DR. VIDIC AS TO THE

1 RESULTS OF THAT TEST?

2 A. I DON'T RECALL WHAT DR. VIDIC SAID. HE MENTIONED
3 THAT IT'S OFTEN USED AND INDEED WE ATTEMPTED TO
4 ADMINISTER IT. WE DID ADMINISTER IT. IT IS NOT
5 LISTED, YOUR HONOR, AS WELL AS TWO OTHER TESTS
6 WHICH ARE NOT LISTED IN THE REPORT. AGAIN, IN OUR
7 -- FORGIVE ME; MAY I EXPLAIN THIS?

8 Q. SURE.

9 A. THANK YOU. THERE WERE THREE TESTS THAT ARE NOT
10 INCLUDED IN THE REPORT UNDER THE PRESSURE OF TRYING
11 TO GET A COMPREHENSIVE REPORT TO YOU, YOUR HONOR,
12 BEFORE TODAY. WE DID NOT HAVE THE CAST*MR SCORES.
13 WE DID NOT HAVE THE SCORES FOR TWO OF THE THREE
14 NEUROPSYCHOLOGICAL TESTS, THE TRAIL MAKING TEST,
15 PARTS A AND B; THE GRIP STRENGTH TEST, AND THE
16 FINGER OSCILLATION TEST WHICH WE DO HAVE NOW; AND
17 THE REY TEST. THESE WERE ALL THINGS THAT WE JUST
18 WEREN'T ABLE TO ACCOMMODATE INTO THE REPORT IN TIME
19 TO GET IT TO YOUR HONOR'S CHAMBERS.

20 THE COURT: AS I UNDERSTAND, THE TESTS WERE
21 CONDUCTED. THE RESULTS WERE JUST NOT IN IN A
22 TIMELY FASHION SUCH THAT THEY COULD BE
23 INCORPORATED INTO YOUR REPORT.

24 DR. SANDLER: EXACTLY RIGHT, SIR.

25 THE COURT: YOU DID CONDUCT THE TESTS?

LADEN STUCK FORM FMU

1 DR. SANDLER: WE DID CONDUCT THE TESTS.

2 THE COURT: SURE. I UNDERSTAND.

3 DR. SANDLER: YES, SIR.

4 Q. ALL RIGHT. AND I'LL GO BACK INTO THOSE TESTS IN A
5 MINUTE. BUT THE OTHER THINGS THAT YOU RELIED UPON;
6 YOU SAID THERE WERE OTHER FACTORS OTHER THAN THE
7 TEST, THE RAW TEST DATA, THE RESULTS THAT THOSE
8 GENERATED?

9 A. OH, YES.

10 Q. YOU TOLD US ABOUT A FEW THINGS?

11 A. YES.

12 Q. AND I WON'T GO BACK INTO EACH ONE.

13 A. OKAY.

14 Q. WERE THERE ANY OTHER THINGS THAT YOU RELIED UPON IN
15 FORMULATING YOUR OPINION?

16 A. YES. THE FACT THAT FOR A YEAR AND A HALF I WAS
17 CHIEF PSYCHOLOGIST FOR THE DEPARTMENT OF
18 CORRECTIONS, AND IT WAS MY JOB TO DETERMINE
19 MALINGERING OR NOT FOR LITERALLY HUNDREDS OF
20 INMATES WITHIN THE FLORIDA CORRECTION SYSTEM.
21 THROUGH THE PSYCHOLOGICAL TESTING PROCESS OF THE
22 WAIS-R AND THROUGH INTERVIEWS.

23 Q. WHAT IS YOUR DEFINITION OF MALINGERING?

24 A. THE SAME DEFINITION THAT THE AMERICAN PSYCHIATRIC
25 ASSOCIATION HAS WHICH IS THE INTENTIONAL PRODUCTION

1 OF FALSE OR GROSSLY EXAGGERATED RESPONSES BY AN
2 INDIVIDUAL FOR THE PURPOSE OF EXTERNAL
3 RE-ENFORCEMENT OR MOTIVATION AND THE COMMENT WITHIN
4 THE DIAGNOSTIC AND STATISTICAL MANUAL IS THAT
5 WHENEVER ONE IS MAKING AN ASSESSMENT WITHIN A
6 MEDICAL LEGAL FRAME WORK THAT, MALINGERING BE
7 CONSIDERED AS A POSSIBILITY.

8 Q. DID YOU REPLY ON, OR DO YOU RELY ON ANY OTHER
9 TREATISES?

10 A. OH, YES.

11 Q. OR ARTICLES OR PUBLICATIONS IN FRAMING THAT
12 OPINION?

13 A. YES.

14 Q. CAN TELL ME WHAT THOSE ARE? IS THERE ANY
15 AUTHORITATIVE TEXT ON MALINGERING THAT YOU MAY HAVE
16 RELIED ON?

17 A. REITAN AND WOLFSON'S 1988 BOOK ON MALINGERING IN
18 NEUROPSYCHOLOGICAL TESTING. THAT IS ONE OF THEM.
19 ANOTHER IS THE MALINGERING AND DECEPTION IN
20 ADOLESCENCE BY JOSEPH T. MCCANN PUBLISHED BY THE
21 AMERICAN PSYCHOLOGICAL ASSOCIATION ASSESSING
22 CREDIBILITY IN CREDIBLE AND FORENSIC SETTINGS. I
23 HAD AN OPPORTUNITY TO WORK WITH RICHARD ROGERS, A
24 SPECIALIST IN MALINGERING, WHO'S AUTHORED THE
25 STRUCTURED INTERVIEW FOR THE CALLED THE SIRS TEST

1 WHICH IS A NOTABLE TEST FOR MALINGERING. AND I HAD
2 A WORK SHOP WITH HIM IN NEW YORK SOME YEARS AGO.
3 AND THERE ARE A SERIES OF OTHER PAPERS THAT I HAVE
4 THAT I'D BE HAPPY TO GIVE YOU A LIST OF THAT ARE
5 SORT OF HITHER AND YON HERE, AS WELL AS MY OWN
6 UPCOMING PRESENTATION TO THE AMERICAN COLLEGE OF
7 FORENSIC PSYCHOLOGY THIS SPRING IN THE DETECTION OF
8 MALINGERING.

9 Q. THE REASON I'M ASKING THESE QUESTIONS, DR. SANDLER,
10 IS BECAUSE YOUR OPINION REALLY IS BASED UPON YOUR
11 BELIEF THAT MR. SIMMONS WAS MALINGERING THROUGHOUT
12 WITH YOU AND DR. MCABEE IN YOUR EXAMINATION
13 SESSIONS; CORRECT?

14 A. I WOULD SAY, MR. THEOS, THAT HE WAS PROBABLY NOT
15 MALINGERING CONSTANTLY. HE WAS MALINGERING
16 SELECTIVELY. THERE WERE TIMES WHEN I THINK HIS
17 RESPONSES WERE QUITE CLEAR AND ABSENCE OF
18 MALINGERING. SOME OF THE TEST RESPONSES THAT HE
19 HAD IN SOME OF THE PRODUCTION SEEMED TO BE VERY
20 CANDID. AT OTHER TIMES THEY SEEMED TO BE
21 REMARKABLY IMPAIRED WITHOUT ANY REASON.

22 Q. AS I UNDERSTAND YOUR TESTIMONY ON DIRECT, THE
23 OPINIONS YOU'VE FORMULATED RELATED TO THE ISSUES OF
24 COMPETENCY AND THE ABILITY TO COMPREHEND HIS
25 MIRANDA WARNINGS, AS WELL AS MOST OF THE TEST

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 RESULTS, HINGE ON YOUR OPINION OF HIS MALINGERING,
2 SELECTIVELY MALINGERING?

3 A. ONLY AS PART OF THE TOTAL CLINICAL IMPRESSION OF
4 ALL AVAILABLE RECORDS AND ALL OF THE INFORMATION MY
5 CLINICAL EXPERIENCE AND THE ASSIMILATION OF
6 EVERYTHING THAT THERE WAS TO DETERMINE A CONCLUSION
7 UPON. IT'S MERELY PART -- THAT WAS PART OF THE
8 TOTAL EQUATION THAT THIS MAN WAS NOT BEING CANDID
9 AND SPONTANEOUS THROUGHOUT BUT FEINING OR DECEIVING
10 OR PURPOSEFULLY AND INTENTIONALLY ANSWERING IN A
11 GROSSLY EXAGGERATED FASHION.

12 Q. NOW, DID YOU ALSO -- AND I DON'T KNOW THE NAMES OF
13 THESE TESTS. I WAS ONLY IN THERE WITH YOU AND DR.
14 MCABEE FOR ONE DAY. BUT DID YOU ALSO HAVE MR.
15 SIMMONS CONDUCT OR DO CERTAIN THINGS WITH RESPECT
16 TO A CLOCK?

17 A. YES, SIR.

18 Q. AND PHOTO COPIES OF CURRENCY?

19 A. YES, SIR.

20 Q. AND SOME SIMPLE MATH, ARITHMETIC, AND SOME OTHER
21 ACCOUNTING TYPE THINGS?

22 A. YES, SIR.

23 Q. WOULD THAT DATA BE INCLUDED? I DON'T WANT TO ASK
24 YOU THESE QUESTIONS IF IT IS INCLUDED. WOULD THAT
25 DATA BE INCLUDED IN YOUR TEST RECORDS?

1 A. I BELIEVE IT WOULD BE.

2 Q. OKAY.

3 A. AGAIN, MR. THEOS, WITH UTMOST RESPECT, I DID SOME
4 OF THE THINGS, DR. MCABEE DID SOME OF THE THINGS.
5 WE HAVE TWO SETS OF ALL OF OUR RECORDS. DR. MCABEE
6 DID THE ITEMS WITH THE BODY AND THE CLOCK. AND I'M
7 SURE HE WOULD BE ABLE TO HAVE THAT AVAILABLE. THAT
8 WAS SOMETHING THAT I DIDN'T DO PERSONALLY. I WAS
9 LOOKING AT OTHER THINGS. AND SO, THAT'S SOMETHING
10 THAT I BELIEVE WE HAVE. BUT IT IS NOT SOMETHING
11 THAT I HAVE SEPARATELY, SIR.

12 Q. WAS MR. SIMMONS ABLE TO TELL TIME ON A TRADITIONAL
13 CLOCK OR WATCH?

14 A. IN VARYING DEGREES. AGAIN, I WOULD HAVE TO REFER
15 TO DR. MCABEE WHO COULD ANSWER THAT MORE
16 THOROUGHLY.

17 Q. WAS MR. SIMMONS ABLE TO COUNT PROPERLY? I THINK
18 YOU HAD HIM COUNT BACKWARDS ON ONE OCCASION FROM 19
19 DOWN TO 0?

20 A. YES; AND HE MISSED ONE NUMBER ELEVEN.

21 Q. DID YOU NOTICE HOW HE WAS COUNTING?

22 A. UM---

23 Q. WAS THERE ANYTHING UNUSUAL ABOUT THE WAY HE WAS
24 DOING IT TO COME UP WITH THE NEXT NUMBER DOWN FROM
25 THE 19 TO THE 18 AND THE 18 TO THE 17 AND SO ON?

LESLIE SANDLER - RE-CROSS/MR. THEOS

- 1 A. ALL I NOTICED WAS THAT IT SEEMED LIKE HE WAS --
2 THERE SEEMED TO BE SOME LACK AGAIN OF SPONTANEITY
3 OR CANDOR IN HIS RESPONSES. AS OPPOSED TO SAYING
4 THEM QUICKLY, IT WAS ALMOST THE WAY HE RESPONDED
5 WITH THE AMERICAN FLAG; RED, WHITE, BLUE, YELLOW.
6 HE ADDED YELLOW AT THE END. AND WHEN HE COUNTED
7 BACKWARDS FROM TWENTY, HE WOULD COUNT SLOWLY AND
8 THEN CONVENIENTLY LEFT OUT ELEVEN. TO ME THAT
9 DIDN'T SOUND CORRECT.
- 10 Q. YOU DIDN'T -- SO I GUESS THE ANSWER TO MY QUESTION
11 IS YOU DIDN'T NOTICE WHAT HE WAS DOING WITH HIS
12 HANDS TO DO THAT COUNTING, OR DID YOU NOTICE?
- 13 A. HE MIGHT HAVE BEEN DOING SOMETHING WITH HIS HANDS,
14 BUT IT WAS NOT A NOTABLE FEATURE THAT I RECORDED,
15 SIR.
- 16 Q. NOW, WHEN YOU SPOKE WITH MR. SIMMONS ABOUT HIS
17 HISTORY, SPECIFICALLY HIS WORK HISTORY, AND YOU
18 NOTED IT IN YOUR REPORT, WHAT DID HE TELL YOU
19 SPECIFICALLY ABOUT THE CARPENTRY WORK? WHAT DID HE
20 DO WHEN Y'ALL ASKED FOR AN EXPLANATION AS TO THAT
21 CARPENTRY WORK?
- 22 A. HE TOLD US THAT HE DID SOME WORK FROM TIME TO TIME
23 AND THAT HE NEVER WAS REALLY ENGAGED IN A
24 CONSISTENT OCCUPATIONAL SETTING. AND WE ASKED HIM,
25 I BELIEVE, AT THAT FIRST TIME WHEN YOU WERE

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 PRESENT, WELL WHO DID THE MEASURING FOR THE
2 CARPENTRY AND THE FRAMING. AND AGAIN, ATTEMPTING
3 TO GET AN IDEA OF WHETHER WE WERE DEALING WITH
4 SOMEBODY WHO WAS BEING FORTHRIGHT OR EVASIVE; AND
5 HE EXPLAINED THAT OTHER PEOPLE DID THE MEASURING
6 FOR HIM, I THINK, AND HE DID THE HAMMERING.

7 Q. YOU REFERENCE IN YOUR REPORT THAT HE ALSO LISTED
8 HIS PREVIOUS WORK AS A BRICK LAYER?

9 A. YES, SIR.

10 Q. DID HE PROVIDE A DESCRIPTION OF HIS BRICK LAYING
11 WORK?

12 A. THERE AGAIN, THE DESCRIPTION AS I RECALL IT WAS NOT
13 DOING THE BRICK LAYING WORK TO A DEGREE, THAT HE
14 WOULD BE ABLE TO FUNCTION INDEPENDENTLY AS A BRICK
15 LAYER BUT AS MORE OF A HELPER. WHEN HE DID THE
16 WORK OR WHEN SOMEBODY CALLED HIM, HE WOULD TRY AND
17 GET WORK IN LANDSCAPING, BRICK LAYING, AND
18 CARPENTRY.

19 Q. AND THESE ARE THINGS THAT YOU CONSIDERED AS
20 ADDITIONAL FACTORS RELATED TO THE ISSUE OF ADAPTIVE
21 FUNCTIONING; CORRECT?

22 A. THESE ARE ISSUES THAT HAVE REMAINED UNRESOLVED,
23 ESPECIALLY IN THE LIGHT OF DATA SAYING THAT HE WAS
24 WORKING CONSISTENTLY VERSUS HIM SAYING THAT HE
25 NEVER REALLY HAD A REGULAR JOB.

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 Q. I DON'T WANT TO GO OVER INFORMATION THAT WASN'T
2 RELEVANT TO YOUR FINDING. THIS IS INFORMATION THAT
3 YOU CONSIDER TO BE RELEVANT; HIS EMPLOYMENT, HIS
4 EDUCATIONAL HISTORY; CORRECT?

5 A. THAT IS CORRECT.

6 Q. I RECALL SINCE I WAS THERE AT THE ONE THE WORD
7 "ROLLER" WHEN Y'ALL PRESSED HIM. WELL, EXACTLY
8 WHAT DO YOU DO; DO YOU MIX THE MORTAR?

9 A. YES.

10 Q. HIS DESCRIPTION WAS HE WAS A ROLLER?

11 A. YES.

12 Q. MEANING HE WAS THE ONE THAT ROLLED THE WHEELBARROW?

13 A. YES.

14 Q. WITH THE BRICKS AND WITH THE MORTAR?

15 A. YES, SIR.

16 Q. ALL RIGHT. HE DIDN'T ACTUALLY DO ANY OF THE MIXING
17 OR ANY OF THE LAYING; CORRECT?

18 A. THAT'S WHAT HE SAID.

19 Q. AND YOU HAVEN'T SPOKEN WITH ANYBODY THAT SAID
20 ANYTHING DIFFERENTLY?

21 A. WELL, ON THE DRUG BACKGROUND INFORMATION THAT WE
22 SAW TODAY, IT DOES INDICATE THAT HE WAS WORKING AT
23 \$6.50 AN HOUR FOR APPROXIMATELY THIRTY HOURS A WEEK
24 DOING CARPENTRY. THAT IS A DIVERSION FROM THE
25 IMPRESSION THAT HE GAVE THAT HE DID A LITTLE WORK

1 HERE AND THERE WHENEVER HE COULD DO IT. BUT HIS
2 MAJOR VOCATION, AS HE DESCRIBED IT, WAS SELLING
3 DOPE.

4 Q. LET'S TALK ABOUT THE DOPE SELLING FOR A SECOND.
5 Y'ALL PRESSED HIM. AGAIN, THIS IS WHEN I WAS
6 PRESENT. Y'ALL PRESSED HIM RELATED TO THAT DOPE
7 SALE. CAN YOU DESCRIBE WHAT HE SAID ABOUT HIS ROLE
8 IN THIS DOPE SELLING?

9 A. YES. WE WERE ATTEMPTING TO FIND OUT IF AGAIN WE
10 WERE DEALING WITH SOMEBODY WHO WAS BEING FORTHRIGHT
11 IN SOME REASONABLE FASHION. WE ASKED HIM, WELL, IF
12 SOMEBODY GIVES YOU FIFTY DOLLARS FOR SOME CRACK
13 COCAINE THAT'S \$20, WHAT WOULD YOU DO IN TERMS OF
14 CHANGE. AND HE SAID THAT WAS ALWAYS A PROBLEM;
15 THAT HE WOULD GO BACK TO THE PEOPLE WHO GAVE HIM
16 THE DRUGS, AND HE WOULD GET MORE DRUGS OR LESS
17 DRUGS. AND HE GAVE US THE IMPRESSION THAT HE HAD
18 SOME TROUBLE WITH CALCULATIONS; HOWEVER, LATER WHEN
19 I ADMINISTERED THE WAIS-R IN THE ARITHMETIC
20 SECTION, HE WAS PRETTY SHARP.

21 Q. HIS RESPONSES RELATED TO THE DRUG DEALING WERE THAT
22 HE ACTED AS -- HE RECEIVED THE MONEY FROM ONE
23 PERSON, TOOK IT TO SOMEBODY ELSE WITH THE DRUGS,
24 AND THEN TOOK THE DRUGS BACK TO THE BUYER ALONG
25 WITH WHATEVER CHANGE THAT PERSON MAY HAVE BEEN

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 ENTITLED TO?

2 A. THAT IS WHAT HE SAID THE FIRST TIME, SIR; YES.

3 Q. DID HE EVER SAY ANYTHING ANY DIFFERENTLY RELATED TO
4 HIS DRUG DEALING?

5 A. WE DID NOT REVISIT THE ISSUE. WE THOUGHT IT WAS
6 NOT A VERY PLAUSIBLE COMMENT IN TERMS OF WHAT I'M
7 AWARE OF IN TERMS OF DRUG DEALING. THE CLIENTELE
8 OF SUBSTANCE DEPENDENT PEOPLE DOES NOT HAVE A GREAT
9 DEAL OF TOLERANCE FOR PROBLEMS, MAKING CHANGE. AND
10 I DON'T THINK HE WOULD HAVE BEEN IN BUSINESS FOR AS
11 LONG AS HE SAID THAT HE WAS.

12 Q. OKAY. WITH RESPECT TO HIS SUBSTANCE ABUSE, YOU
13 NOTE IN YOUR REPORT THAT THERE WAS LONG-TERM USE OF
14 ALCOHOL, MARIJUANA, AND COCAINE. CAN YOU RECALL
15 THE DURATION OF THAT ABUSE OR ADDICTION?

16 A. I RECALL THAT HE SAID IT HAPPENED TOWARDS THE END
17 OF HIS HIGH SCHOOL PERIOD.

18 Q. WHICH WOULD HAVE BEEN?

19 A. AROUND 17 OR 18 YEARS OF AGE, I RECALL.

20 Q. DID IT CONTINUE FOR A LONG PERIOD OF TIME, OR IS IT
21 SOMETHING THAT WAS FAIRLY SHORT LIVED?

22 A. NO.

23 Q. ACCORDING TO MR. SIMMONS.

24 A. ACCORDING TO MR. SIMMONS, I'D HAVE TO LOOK AT THE
25 NOTES, IF SUCH EXIST. BUT IT WAS THEN -- MY

1 IMPRESSION WAS THAT IT WAS ACTIVE AFTER HIGH
2 SCHOOL. THEN HE GOT MARRIED, HAD A COUPLE OF KIDS,
3 WAS DOING SOME WORK, AND THEN IN HIS THIRTIES
4 BECAME MORE ACTIVE WITH CRACK COCAINE AND OTHER
5 SUBSTANCES MORE.

6 Q. SO, WAS IT YOUR UNDERSTANDING, THEN, THAT THIS WAS
7 SOMETHING -- THIS CRACK AND THESE OTHER HEAVIER
8 SUBSTANCES, THAT HE BECAME INVOLVED WITH THOSE IN
9 HIS THIRTIES?

10 A. WELL, IT'S SPOTTEDLY WHICH IS QUITE TYPICAL IN
11 TERMS OF SUBSTANCE ABUSE. THE AGE FUNCTION AND THE
12 RELATIONSHIP OF SUBSTANCE ABUSE VARIES IN TERMS OF
13 LATE TEENS AND EARLY TWENTIES, AND THEN MAY START
14 UP LATER AND MAY NOT. BUT THERE ARE VARIOUS
15 PATTERNS TO IT.

16 Q. HOW ABOUT WITH RESPECT TO THE ALCOHOL ABUSE? WHEN
17 DID THAT START? WHEN IS YOUR UNDERSTANDING IT
18 STARTED? AND WHEN DID IT END? AND WHAT DID IT
19 CONSIST OF?

20 A. MY IMPRESSION IS THAT IT STARTED AROUND HIGH
21 SCHOOL. AND WE DID NOT EVER GET REALLY INTO
22 EXACTLY THE NATURE OR WHAT HE DRANK, HOW OFTEN HE
23 DRANK, AND---

24 Q. OR OVER WHAT PERIOD OF TIME?

25 A. ONLY GENERALLY THAT IT WAS FOR A CONSIDERABLE

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 PERIOD OF TIME. SINCE THIS WAS NOT AN EVALUATION
2 FOR SUBSTANCE ABUSE TREATMENT, IT WAS A COMPETENCY
3 EVALUATION. WE WERE LOOKING FOR A WAY TO MEET THE
4 DUSKY STANDARD AS OPPOSED TO HIS TREATMENT
5 READINESS FOR SUBSTANCE ABUSE.

6 Q. WAS IT THEN A FACTOR THAT Y'ALL DIDN'T PLACE MUCH
7 EMPHASIS ON IN YOUR ULTIMATE CONCLUSION RELATED TO
8 COMPETENCY?

9 A. I THINK THAT IT WOULD BE FAIR TO SAY IT WAS A
10 FACTOR THAT WE DID NOT PLACE A GREAT DEAL OF
11 EMPHASIS ON FOR THE REASON BEING THAT HE WAS INDEED
12 PRESUMABLY DETOXIFIED IN THE SENSE THAT HE WAS
13 INCARCERATED SINCE SEPTEMBER OF '97. HE SHOWED NO
14 REMARKABLE ABNORMALITIES. THERE WAS AN M.R.I. DONE
15 BY OUR FRIENDS AT THE DEPARTMENT OF MENTAL HEALTH.
16 IT DID NOT SHOW CORTICAL ATROPHY OR LESIONS THAT
17 ARE USUALLY ASSOCIATED WITH LONG-TERM ALCOHOL ABUSE
18 OR DRUG ABUSE, PARTICULARLY OF COCAINE. AND THE
19 TESTING DID NOT SHOW SIGNIFICANT PIECES OF
20 SUBSTANCE ABUSE EVIDENCE. THEREFORE, IT DID NOT
21 SEEM LIKE SOMETHING THAT WE WOULD PURSUE SINCE WE
22 WERE THERE BASICALLY TO ADDRESS THE COMPETENCY
23 ISSUES.

24 Q. RELATED TO HIS EDUCATION AND HIS GRADUATION FROM
25 HIGH SCHOOL, I THINK YOU SAID YOU SPOKE WITH

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 SOMEBODY IN THE EDUCATIONAL SYSTEM?

2 A. DR. MCABEE DID.

3 Q. DR. MCABEE DID. DO YOU KNOW IF ANY RELEVANT
4 INFORMATION WAS OBTAINED OTHER THAN THE RECORDS
5 THAT WE'VE ALREADY SEEN?

6 A. OTHER THAN THE RECORDS THAT HAVE ALREADY BEEN
7 MENTIONED, I DO NOT KNOW.

8 Q. AND YOU PLACE SOME EMPHASIS BECAUSE OF THE AGE THAT
9 COMES INTO PLAY WITH THE MENTAL RETARDATION
10 DIAGNOSIS; YOU PLACE SOME EMPHASIS, I ASSUME, ON
11 HIS EDUCATION AND THE FACT THAT HE GRADUATED;
12 CORRECT?

13 A. SOME SIGNIFICANCE.

14 Q. AND APPARENTLY YOU PLACE SOME SIGNIFICANCE ON THE
15 STANDARDIZED ACHIEVEMENT TESTING IN THOSE SCHOOL
16 RECORDS AS WELL?

17 A. WE COULD NOT IGNORE IT.

18 Q. AND DO YOU HAVE THOSE RECORDS IN FRONT OF YOU?

19 A. I DO NOT.

20 Q. LET ME HAND THEM TO YOU. THIS WAS MARKED AS
21 STATE'S EXHIBIT ONE; CORRECT?

22 A. CORRECT.

23 Q. AND THIS IS WHAT YOU WERE REFERRING TO BEFORE?

24 A. YES, SIR.

25 Q. AND YOU'VE ALREADY INDICATED SOME OF THE TEST

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 SCORES WHEN ASKED BY MR. BAILEY WHICH YOU RELIED
2 UPON IN FORMULATING YOUR OPINION; CORRECT?

3 A. I DID NOT RELY UPON THEM EXCLUSIVELY. I RELIED
4 UPON THEM AS SECONDARY OR TERTIARY PIECES OF
5 INFORMATION SINCE I WAS NOT FAMILIAR WITH THE
6 SPECIFIC TESTS OR THEIR NORMS.

7 Q. THERE ARE OTHER I.Q. SCORES REFLECTED IN THESE
8 SCHOOL RECORDS, ARE THERE NOT? (WITNESS REVIEWS
9 DOCUMENT.)

10 DR. SANDLER: YOUR HONOR, I WAS JUST GIVEN
11 THESE. I MUST SAY THAT I AM NOT AS FAMILIAR
12 WITH THEM AS DR. MCABEE. IF MR. THEOS WOULD
13 TELL ME WHAT HE'S TALKING ABOUT, THEN IT WOULD
14 MAKE IT A LITTLE EASIER.

15 THE COURT: ALL RIGHT. HONE IN, MR. THEOS.
16 TELL HIM WHAT YOU'RE LOOKING FOR.

17 Q. IF YOU LOOK AT THE PAGE WITH THE PHOTOS, SMALL
18 PHOTOS. (WITNESS REVIEWS DOCUMENT.)

19 A. YES, SIR.

20 Q. MY COPY SHOWS DIFFERENT I.Q. SCORES.

21 A. YOURS SHOWS DIFFERENT ONES?

22 Q. MY SHEET SHOWS I.Q. SCORES THAT ARE DIFFERENT THAN
23 THE ONES THAT YOU PREVIOUSLY TESTIFIED ABOUT. CAN
24 YOU TELL US WHAT THESE I.Q.S ARE?

25 A. OH; OF COURSE, SIR. THIS SAYS I.Q. 69.

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 Q. CAN YOU TELL ME WHAT YEAR THAT WAS; WHAT AGE THAT
2 WAS; AND YEAR?

3 A. I CAN'T TELL YOU WITH A DEGREE OF CERTAINTY. I CAN
4 ONLY RESPOND TO THIS IS AN ELEMENTARY SCHOOL
5 RECORD. I CANNOT VERIFY IT. BUT IT SAYS AGE 9.8,
6 I.Q. 69. AND THEN UNDERNEATH IT IT SAYS I.Q.
7 EQUALS 104. AND IT LOOKS LIKE THAT MAY HAVE BEEN
8 IN FIFTH GRADE, '71 TO '72. AND THEN UNDERNEATH,
9 IF THIS IS WHAT YOU'RE REFERRING TO, SIR, AT AGE
10 ELEVEN, EIGHT; AND SIXTH GRADE YEARS '72 AND 73; AN
11 I.Q. OF 69.

12 Q. ALL RIGHT. AND DID YOU CONSIDER THOSE I.Q.S AND
13 THE NOTATIONS MADE PLACED IN SIXTH GRADE, PLACED IN
14 SEVENTH GRADE. THEN ON THE TWO PAGES, SOME OF THE
15 OTHER PAGES WHERE IT SAYS THAT MR. SIMMONS WAS
16 PROMOTED. DID YOU TAKE THOSE OTHER I.Q. SCORES AND
17 THE PROMOTIONS; DID YOU TAKE THOSE THINGS INTO
18 CONSIDERATION AS WELL?

19 A. INTO A SECONDARY OR TERTIARY CONSIDERATION. AS I
20 SAID, AN I.Q., YOUR HONOR, IN MANY SCHOOL DISTRICTS
21 IS PERFORMED BY A GROUP TESTING. AND I DON'T KNOW
22 WHAT THE TEST WAS. I DON'T KNOW WHETHER IT WAS
23 ADMINISTERED IN A GROUP OR NOT. I CAN ONLY RESPOND
24 TO MR. THEOS' COMMENT THAT THEY EXIST ON THIS PIECE
25 OF PAPER ON AN ELEMENTARY SCHOOL RECORD, AND THEY

- 1 WERE NOT PRIME CONSIDERATIONS IN OUR DELIBERATIONS.
- 2 Q. ON PAGE FOUR -- IT ACTUALLY LOOKS LIKE PAGE THREE
- 3 OF YOUR EVALUATION, YOU REFERENCE ADDITIONAL
- 4 PERTINENT INFORMATION PERTAINING TO CONVERSATIONS
- 5 WITH THE CORRECTIONAL OFFICERS, JACKSON AND
- 6 MCKINNEY?
- 7 A. YES, SIR.
- 8 Q. DID YOU SPEAK WITH ANY OTHER OFFICERS?
- 9 A. YES. I SPOKE BRIEFLY WITH CAPTAIN MAJOR ON THE
- 10 9TH, AND EXPLAINED TO HIM THAT HAVING BEEN IN
- 11 CORRECTIONS I APPRECIATED THE INFORMATION THAT
- 12 CORRECTIONS COULD SUPPLY, AND WOULD HE TALK WITH
- 13 MR. BAILEY AS TO THE PROPRIETY OF FURNISHING ANY
- 14 INFORMATION THAT WAS AVAILABLE TO THE CORRECTIONS
- 15 DEPARTMENT.
- 16 Q. SO IN ANSWER TO MY QUESTION, YOU SPOKE WITH OFFICER
- 17 MAJOR?
- 18 A. CAPTAIN MAJOR.
- 19 Q. DID YOU SPEAK TO ANYBODY ELSE OTHER THAN JACKSON
- 20 AND MCKINNEY?
- 21 A. NOT IN ANY SUBSTANTIVE WAY. AND BY THAT I MEAN
- 22 THERE WERE TWO CORRECTIONS OFFICERS IN THERE AND A
- 23 PLAIN CLOTHES DETECTIVE. AND YOUR COMMENT WHICH
- 24 SEEMED REASONABLE TO ME ABOUT NOT HAVING AN ARMY IN
- 25 THERE, I CONCURRED, AND WE ASKED THE OTHER

1 CORRECTIONAL OFFICER IF HE WOULD LEAVE US SO THERE
2 WOULD ONLY BE ONE THERE BUT OTHER THAN THAT; NO.

3 Q. LET ME NARROW MY QUESTION. DID YOU RECEIVE ANY
4 OTHER ADDITIONAL PERTINENT INFORMATION FROM ANY
5 OTHER JAIL OR DETENTION CENTER PERSONNEL OTHER THAN
6 WHAT IS REFLECTED IN YOUR REPORT?

7 A. NO, SIR.

8 Q. ALL RIGHT. AND OTHER THAN THE PRIOR PSYCHOLOGICAL
9 TESTING RESULTS THAT ARE REFLECTED IN THE SECTION
10 THAT FOLLOWS THAT, DID YOU RECEIVE ANY OTHER TEST
11 RESULTS?

12 A. I DID, SIR.

13 Q. CAN TELL US WHAT THOSE WOULD HAVE BEEN? I'M NOT
14 GOING TO ASK YOU ABOUT THESE THAT ARE IN HERE.
15 WHAT OTHER TESTS RESULTS WOULD YOU HAVE RECEIVED?

16 A. I RECEIVED A FAX LATE YESTERDAY INDICATING THAT
17 SOME TESTS HAD BEEN PERFORMED BY DR. KEYS, AND IT
18 WAS A ONE PAGE SUMMARY OF TEST RESULTS.

19 Q. ALL RIGHT. AND THAT WAS PROVIDED BY MR. BAILEY?

20 A. YES, SIR.

21 Q. AND I ASSUME THAT'S WHAT WAS SENT BY ME TO MR.
22 BAILEY?

23 A. I PRESUME SO, SIR.

24 Q. CAN YOU IDENTIFY THAT?

25 A. YES, SIR. I HAVE IT BEFORE ME, SIR.

- 1 Q. IS THERE A TITLE, OR IS IT CAPTIONED IN ANY WAY?
- 2 A. SUMMARY SCORE SHEET.
- 3 Q. ALL RIGHT. CAN YOU IDENTIFY WHAT TESTS WERE
- 4 CONDUCTED BASED UPON THAT SUMMARY SCORE SHEET?
- 5 A. YES, SIR.
- 6 Q. AND RATHER THAN GOING INTO WHAT THEY ARE, IF YOU
- 7 COULD JUST IDENTIFY SIMPLY WHAT THOSE TESTS WERE.
- 8 A. THE KAUFMAN, K-A-U-F-M-A-N ADULT INTELLIGENCE
- 9 SCALE. THE WOODCOCK, W-O-O-D-C-O-C-K - JOHNSON,
- 10 J-O-H-N-S-O-N PSYCHO-EDUCATIONAL BATTERY REVISED.
- 11 THE PERCEPTUAL/VISUAL MOTOR DEVELOPMENTAL TEST OF
- 12 VISUAL MOTOR INTEGRATION. THE COMPETENCY
- 13 ASSESSMENT TO STAND TRIAL FOR PERSONS WITH MENTAL
- 14 RETARDATION. THE BEARY ADAPTIVE BEHAVIOR SCALES
- 15 AND HUMAN FIGURE DRAWING.
- 16 Q. YOU DIDN'T HAVE THAT UNTIL AFTER THIS WAS OFFERED,
- 17 YOU REPORT WAS OFFERED; CORRECT?
- 18 A. THAT IS CORRECT, SIR.
- 19 Q. AND HAVING THOSE TEST SCORES IN FRONT OF YOU, DOES
- 20 THAT AFFECT OR IMPACT UPON YOUR OPINION AS
- 21 EXPRESSED IN YOUR REPORT?
- 22 A. NO, SIR. THE KAUFMAN IS AN UNTIMED INDIVIDUALLY
- 23 ADMINISTERED MEASURE OF SCHOOL ACHIEVEMENT FOR KIDS
- 24 SIX THROUGH EIGHTEEN. IT DOESN'T RELATE. THE
- 25 WOODCOCK JOHNSON IS A COGNITIVE ABILITY FULL SCALE

1 SCORE WHICH SHOULD NOT BE USED AS A PLACEMENT FOR
2 OTHER STANDARDIZED MEASURES OF INTELLIGENCE. SUCH
3 ARE SCORES OF THE WECHSLER SCALE OR STANDFORD-BINET
4 INTELLIGENCE SCALE, FOURTH EDITION. I DON'T KNOW
5 HOW ANYBODY COULD HAVE DONE A VIOLENT ADAPTIVE
6 BEHAVIOR SCALE WITHOUT AN INFORMANT. AND I---

7 Q. CAN YOU EXPLAIN WHAT THAT MEANS? WHAT DO YOU MEAN
8 BY THAT STATEMENT?

9 A. YES.

10 DR. SANDLER: YOUR HONOR, THE VIOLENT ADAPTIVE
11 BEHAVIOR SCALES ARE A SERIES OF WAYS TO
12 MEASURE AN INDIVIDUAL'S ABILITY FOR
13 INTERACTION WITH THEIR ENVIRONMENT ALONG THE
14 LINES OF COMMUNICATION, DAILY LIVING,
15 SOCIALIZATION, DOMAINS, AREAS. THE AUTHOR OF
16 THE VINELAND HAS COMMUNICATED WITH US THAT IT
17 CAN'T REALLY BE DONE VERY THOROUGHLY. THAT'S
18 WHY WE WEREN'T ABLE TO COMPLETE IT WITHOUT AN
19 INFORMANT. THAT IS IF YOU'RE ASKING HOW OFTEN
20 AN INDIVIDUAL BRUSHES THEIR TEETH, AND YOU
21 DON'T LIVE WITH THEM, YOU DON'T REALLY KNOW.
22 SO IN CLINICAL PRACTICE, YOU GENERALLY DO NOT
23 USE A VITELLIN UNLESS YOU HAVE AN INFORMANT
24 WHO CAN GIVE YOU THIS INFORMATION IN ADDITION
25 TO THE SUBJECT THAT YOU ARE DOING THE TESTING

LASER STOCK FORM FMU

וילי המטו ומחולל: 01-7233-000

1 ON.

2 Q. YOU NEED AN INDEPENDENT PERSON TO CORROBORATE THE

3 INFORMATION GIVEN BY THE SUBJECT?

4 A. THAT IS CORRECT, SIR.

5 Q. OKAY. AND IF THERE IS NO SUCH PERSON, THEN IT'S

6 YOUR OPINION THIS TEST SHOULD NOT BE, OR COULD NOT

7 BE, CONDUCTED PROPERLY?

8 A. MY OPINION IS THAT IT MAY HAVE SOME LEGITIMACY BUT

9 NOT AS IT SHOULD BE.

10 Q. OKAY.

11 A. IT MAY HAVE SOME LEGITIMACY, AND IT MAY HAVE SOME

12 RELEVANCE. BUT IT IS NOT THE WAY THAT IT IS

13 SUPPOSED TO BE DONE ACCORDING TO THE MANUAL.

14 Q. AND OF COURSE IF THERE IS SUCH CORROBORATION FROM

15 AN INDEPENDENT SOURCE, THEN IT WOULD BE PROPERLY

16 PERFORMED, AND IT WOULD BE RELEVANT?

17 A. I WOULD THINK SO, SIR. I DO NOT HAVE THAT

18 INFORMATION ON THIS SUMMARY SHEET, SIR.

19 Q. ARE THERE ANY TESTS THAT ARE INDICATED ON THAT

20 SUMMARY SHEET THAT ARE THE SAME AS THE ONES YOU AND

21 DR. MCABEE PERFORMED?

22 A. YES, SIR.

23 Q. WHICH ONE OR ONES WOULD THOSE BE?

24 A. THE CAST M.R. AND THE HUMAN FIGURE DRAWING. AND WE

25 ATTEMPTED TO DO THE VITELLIN ADAPTIVE BEHAVIOR

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 SKILLS.

2 Q. AND YOU'VE ALREADY ADDRESSED THE VITELLIN?

3 A. YES.

4 Q. YOU WERE NOT ABLE TO PERFORM THAT TEST?

5 A. WE WERE NOT ABLE TO COMPLETE THAT TEST, SIR.

6 Q. WITH RESPECT TO THE OTHER TWO; IF YOU COULD TAKE
7 THEM ONE AT A TIME AND INDICATE WHETHER YOUR TEST
8 RESULTS ARE CONSISTENT WITH DR. KEYS' TEST
9 RESULTS.

10 A. SINCE I DON'T HAVE THE ACTUAL TEST RESULTS, I'M
11 DOING THIS WITH THE ASSUMPTION THAT THIS SUMMARY
12 HAS A REPORT WITH IT THAT I'M NOT SEEING. SO I'M
13 NOT ABLE TO BE 100 PERCENT SURE, YOUR HONOR, AS TO
14 WHAT I'M TESTIFYING TO. I CAN ONLY MAKE A
15 GENERALIZATION. THAT GENERALIZATION IS THAT,
16 ASSUMING ARGUENDO, THE CAST M.R. WAS ADMINISTERED
17 THE SAME WAY -- AND I BELIEVE THAT THERE'S EVERY
18 REASON TO SUSPECT THAT THERE IS -- DR. KEYS' SCORE
19 WAS THAT IN BASIC LEGAL CONCEPTS MR. SIMMONS
20 ANSWERED 17 CORRECT OUT OF 25 TO GET A COURT OF
21 68. WHEN WE ADMINISTERED IT, WE GOT 6 CORRECT OUT
22 OF 25 FOR A SCORE OF 24 PERCENT WHICH IS REMARKABLY
23 AND SIGNIFICANTLY LOWER. SIMILARLY, OUT A SECOND
24 SECTION OF SKILLS TO ASSIST THE DEFENSE---

25 Q. I'M SORRY. LET ME -- LOWER, WHEN YOU DID THE TEST,

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 AND THEN THE SECOND TIME THE TEST WAS DONE, IT WAS
2 HIGHER?

3 A. WELL, I DON'T KNOW WHEN HE DID IT.

4 Q. ASSUMING THIS WAS DONE SUBSEQUENT TO YOUR TESTING?

5 A. ASSUMING THAT, SIR, YES.

6 Q. ALL RIGHT.

7 A. SO INDEED PRACTICE EFFECTS COULD BE RELEVANT THERE,
8 TOO. I DON'T KNOW.

9 Q. WITH RESPECT TO HIS ABILITY TO ASSIST IN HIS
10 DEFENSE?

11 A. WITH HIS ABILITY TO ASSIST IN HIS DEFENSE, IT
12 APPEARS THAT DR. KEYS' RECORDED SCORE WAS 15 OUT OF
13 17. OURS WAS 2 OUT OF 15 WHICH IS A MERE 13.3
14 PERCENT WHICH AGAIN IS TREMENDOUSLY LOW FOR AN
15 INDIVIDUAL THAT'S GRADUATED HIGH SCHOOL AND WHO HAS
16 BEEN THROUGH THE LEGAL SYSTEM IN PRIOR MATTERS IN A
17 COURT OF GENERAL SESSIONS WHERE HE KNOWS WHO THE
18 JUDGE IS. HE'S BEEN IN FRONT OF THE JUDGE. HE'S
19 HAD AN ATTORNEY. AND, SO, THOSE WERE OTHER
20 CONSIDERATIONS THAT WE HAD.

21 Q. WITH RESPECT TO THE ISSUE OF UNDERSTANDING CASE
22 EVENTS, YOU SAID THAT YOU COULD NOT SCORE. WAS DR.
23 KEYS ABLE TO SCORE?

24 A. DR. KEYS -- THE SUMMARY SHEET THAT IS SAID TO BE
25 THAT OF DR. KEYS, STATES THAT UNDERSTANDING CASE

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 EVENTS DEFICIENT. WE WERE NOT ABLE TO SCORE, AND
2 IT WAS SO LACKING IN VORACITY AND INFORMATIONAL
3 DATA.

4 Q. RATHER THAN ASKING YOU QUESTIONS RELATED TO THE
5 OTHER TESTS, AND JUST TO MAKE SURE WE'RE CLEAR;
6 WERE THE OTHER TESTS IN ADDITION TO THE CAST M.R.
7 PERSONAL HISTORY CHECKLIST FOR ADULTS; CORRECT?

8 A. SIR.

9 Q. ANOTHER TEST THAT YOU CONDUCTED?

10 A. IT'S NOT REALLY A TEST. IT'S MORE OF A
11 QUESTIONNAIRE, SIR. IT'S NOT SCORED.

12 Q. DO YOU HAVE THAT WITH YOU?

13 A. I DO, SIR.

14 Q. ALL RIGHT. AND I UNDERSTAND THAT YOU DIDN'T MAKE
15 ANY NOTES; IS THAT CORRECT?

16 A. I MADE NOTES IN IT WHILE I WAS DOING IT.

17 Q. LET ME CORRECT THAT. YOU DIDN'T MAKE ANY NOTES
18 OTHER THAN WHAT MAY BE REFLECTED IN THE PERSONAL
19 HISTORY CHECK-LIST?

20 A. IN THE REPORT, SIR?

21 Q. OTHER THAN WHAT'S REFLECTED IN THE REPORT AND THE
22 PERSONAL HISTORY CHECKLIST. IT WAS MY
23 UNDERSTANDING YOU DIDN'T HAVE ANY OTHER NOTES, ANY
24 OTHER SEPARATE NOTES?

25 A. YEAH; IN THE PERSONAL HISTORY CHECK-LIST, SIR, I

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 HAVE NOTES AFTER HIS RESPONSES WHERE RESPONSES
2 WEREN'T MADE. THERE ARE A SERIES OF NOTES IN
3 THERE.

4 Q. IS THAT PART OF THE TEST DATA?

5 A. WELL, IT'S PART OF THE QUESTIONNAIRE DATA. IT'S
6 NOT A TEST IN THE SENSE THAT THERE'S NO SCORE
7 INVOLVED.

8 Q. THE TRAIL-MAKING TEST, PARTS A AND B. DO YOU HAVE
9 THAT TEST DATA HERE?

10 A. I DO, SIR.

11 Q. DO YOU HAVE THE RESULTS OF THAT TESTING?

12 A. I DO, SIR.

13 Q. THE WAIS-R; YOU'VE GOT THAT AS WELL?

14 A. I DO, SIR.

15 Q. AND YOU READ FROM A COUPLE OF THESE BEFORE. I
16 DON'T WANT TO GO INTO EACH ONE AND ASK THE SPECIFIC
17 QUESTIONS.

18 MR. THEOS: BUT WHAT I'D LIKE TO DO IS MAKE
19 COPIES OF THOSE, YOUR HONOR, MARK THEM AS
20 DEFENSE EXHIBITS OF EACH TEST THAT WAS
21 CONDUCTED, THE TEST DATA AND THE TEST RESULTS,
22 MARK THEM AS DEFENSE EXHIBITS RATHER THAN
23 GOING INTO EACH ONE AND ASKING FOR HIS
24 RESPONSES.

25 THE COURT: ANY OBJECTION FROM THE STATE?

1 MR. BAILEY: JUDGE, I HAVE NO OBJECTION AT ALL
2 TO THAT. I WOULD LIKE SIMILAR INFORMATION
3 FROM THE DEFENSE WHEN IT'S AVAILABLE. BUT I
4 HAVE NO OBJECTION TO MARKING THEM.

5 THE COURT: YOU'D BE ENTITLED TO IT.

6 MR. THEOS: CERTAINLY, YOUR HONOR. WE
7 PROVIDED HIM YESTERDAY WITH THE REPORT FROM
8 ONE OF THE PSYCHOLOGISTS. WE'VE PROVIDED HIM
9 WITH TEST SCORES FROM---

10 THE COURT: LET'S MOVE ALONG, MR. THEOS.
11 YOU'RE BURNING DAYLIGHT, SIR.

12 MR. THEOS: AND WE DON'T HAVE TO STOP THIS
13 PROCEEDING. BUT IF YOU WILL AGREE TO DO THAT,
14 YOUR HONOR, I DON'T MIND IF WE MARK THAT. I
15 WOULD ASK THAT THOSE BE ADMITTED INTO EVIDENCE
16 IN SEQUENCE. AND WE CAN MARK THEM -- WALTER
17 AND I CAN AGREE AFTER THE HEARING TO MARK THEM
18 APPROPRIATELY.

19 MR. BAILEY: SURE.

20 Q. DR. SANDLER, DID YOU PROVIDE THOSE DOCUMENTS TO THE
21 COURT REPORTER?

22 A. NO, I PROVIDED SOME OTHER DOCUMENTS. BUT I WILL BE
23 HAPPY TO PROVIDE THEM BEFORE WE DEPART.

24 Q. OKAY. AND IF YOU CAN JUST EXPLAIN TWO TERMS FOR
25 ME, AND THEN I'LL SIT DOWN. ONE IS RETROACTIVE

1 SPECULATION THAT YOU HAVE INCLUDED IN YOUR REPORT
2 SEVERAL TIMES.

3 A. YES. THERE ARE BASICALLY TWO SCHOOLS OF THOUGHT IN
4 TERMS OF MENTAL HEALTH PROFESSIONALS WITHIN THE
5 LEGAL SYSTEM ADDRESSING PAST BEHAVIOR THAT HAPPENED
6 A YEAR OR TWO OR FIVE EARLIER. SOME INDIVIDUALS
7 FEEL THAT THAT SHOULD BE THE DECISION OF THE TRIER
8 OF FACT AND THAT MENTAL HEALTH PROFESSIONALS SHOULD
9 NOT ADDRESS THAT. OTHERS FEEL THAT IT SHOULD BE
10 ADDRESSED. MY THOUGHTS, AND THAT OF LEGAL COUNSEL
11 FOR THE DEPARTMENT IN WHICH I'M EMPLOYED, IS THAT
12 RATHER THAN TO NOT OPINE ON IT, OR RATHER THAN TO
13 MAKE A PRESUMPTUOUS DETERMINATION THAT THE TRIER OF
14 FACT OUGHT TO MAKE, ONE WOULD RATHER SAY THAT IT
15 WAS A RETROSPECTIVE SPECULATION. I CAN GUESS. I
16 CAN MAKE AN INFORMED INTELLIGENT ESTIMATE OF WHAT
17 WAS OCCURRING, BUT I CAN'T SAY FOR SURE WHAT
18 HAPPENED A YEAR OR TWO OR FIVE EARLIER. THAT'S WHY
19 I'VE INCLUDED THAT TERM TO SAY THAT BASED ON ALL
20 THE INFORMATION, BASED ON MY CLINICAL EXPERIENCE,
21 BASED ON THE RESULTS OF THE EXAMINATION, I AM
22 SAYING THAT IT CERTAINLY APPEARS FOR THERE TO BE A
23 CERTAIN CONCLUSION.

24 Q. WHAT IS YOUR OPINION OF -- IF YOU HAVE ONE -- OF
25 MR. SIMMONS' LEVEL OF COGNITIVE FUNCTIONING?

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 A. MY OPINION OF MR. SIMMONS, ABSOLUTE OR TRUE LEVEL
2 OF COGNITIVE FUNCTIONING BASED ON ALL INFORMATION
3 THAT I HAVE AT THIS TIME, IS THAT IT'S PROBABLY
4 SOMEWHERE IN THE MID BORDERLINE TO LOW AVERAGE
5 INTELLECTUAL CATEGORY.

6 Q. IS THERE ANY WAY TO QUANTIFY THAT FOR US?

7 A. WELL, 75 TO 87 IF YOU'D LIKE; HOWEVER, IT SHOULD BE
8 ACKNOWLEDGE THAT I'M DOING THIS AT YOUR REQUEST, I
9 CAN ONLY SAY THAT ONE OF THE BASES THAT I'M MAKING
10 IS THAT IF YOU LOOK AT THE PERFORMANCE TEST ON THE
11 WAIS-R, AND YOU TAKE THE TWO THAT ARE REMARKABLY
12 LOW AT LESS THAN ONE PERCENTILE, AND THEN YOU LOOK
13 AT THE THREE THAT ARE FAIRLY HIGH, AT THE 37TH AND
14 50TH PERCENTILE, YOU GET PRETTY MUCH OF A LOW
15 AVERAGE TO AVERAGE INTELLECTUAL LEVEL AND THAT'S
16 WHAT I BELIEVE WOULD BE A TRUE MEASUREMENT OF HIS
17 COGNITIVE LEVEL OF FUNCTIONING.

18 Q. AND IF YOU HAD TO EQUATE HIM TO A SPECIFIC GRADE
19 LEVEL OF PERFORMANCE, WHAT WOULD THAT BE? WE HEARD
20 EARLIER FROM ONE OF THE EDUCATIONAL PEOPLE THAT HIS
21 RECORDS REFLECTED FIFTH OR SIXTH GRADE READING.
22 WHAT WOULD YOU EQUATE HIS INTELLECTUAL CAPACITY TO
23 IN TERMS OF AGE?

24 A. THAT CALLS FOR AN ANSWER BEYOND MY COMPETENCE,
25 SIR. I REALLY COULD NOT SAY.

1 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

2 THE COURT: ANYTHING ON RE-DIRECT?

3 MR. BAILEY: YOUR HONOR, I HAVE NO RE-DIRECT.
4 IN REGARD TO ANY OTHER WITNESSES, THE REPORT
5 FROM THE HALL INSTITUTE IS IN EVIDENCE, YOUR
6 HONOR PURSUANT, AS I UNDERSTAND IT, TO STATE
7 VS. FRANKLIN.

8 THE COURT: OVER THE OBJECTION OF DEFENSE
9 COUNSEL; CORRECT?

10 MR. BAILEY: YES, SIR. AND DR. MCABEE HAS
11 CO-SIGNED THE REPORT THAT IS ALSO IN EVIDENCE
12 FROM DISABILITIES AND SPECIAL NEEDS. SO I'LL
13 GO AHEAD AND REST ON THOSE REPORTS. DR.
14 MCABEE IS PRESENT FOR CROSS-EXAMINATION IF MR.
15 THEOS DESIRES AS WELL AS DR. VIDIC AND DR.
16 BEHRMANN WHO OFFERED THE FIRST REPORT.

17 THE COURT: ALL THREE OF THOSE ARE HERE?

18 MR. BAILEY: YES, SIR.

19 THE COURT: ALL RIGHT. NOW, ONE THOUGHT
20 OCCURRED TO ME, MR. SOLICITOR. BEFORE THIS
21 GENTLEMAN LEAVES, WE NEED TO, AT SUCH TIME AS
22 WE CAN GET IT ON THE RECORD, WE MAY NEED HIM
23 HERE.

24 MR. BAILEY: I'M GOING TO ASK HIM TO STAY.

25 THE COURT: HE TOOK PART IN THAT CONVERSATION

LESLIE SANDLER - RE-CROSS/MR. THEOS

1 AND BASED UPON HIS OBSERVATIONS HAD AN
2 INTEGRAL PART IN MY DIRECTION OR MY DECISION
3 AS TO WHAT COULD OR COULDN'T BE DONE. SO WE
4 MIGHT NEED YOU FOR THAT, PLEASE, SIR.
5 DR. SANDLER: OF COURSE, YOUR HONOR. IT WOULD
6 BE A PLEASURE, SIR.
7 THE COURT: THANK YOU. SO, YOU MAY STEP DOWN.
8 DR. SANDLER: THANK YOU, YOUR HONOR.
9 THE COURT: ALL RIGHT, GENTLEMEN. WE'LL TAKE
10 ABOUT A TEN OR FIFTEEN MINUTE RECESS.
11 (BRIEF RECESS.)
12 THE COURT: ALL RIGHT, GENTLEMEN. ANYTHING ON
13 THE RECORD BEFORE WE PROCEED, PLEASE?
14 MR. BAILEY: NOT FROM THE STATE, YOUR HONOR.
15 MR. THEOS: NOTHING, YOUR HONOR.
16 THE COURT: OKAY. YOU MAY CALL YOUR
17 WITNESSES.
18 MR. THEOS: YOUR HONOR, WE WOULD CALL DR.
19 MCABEE, PLEASE.
20 THE COURT: COME AROUND, PLEASE.
21 - - - - -
22 WHEREUPON,
23 THOMAS A. MCABEE, WHO AFTER BEING FIRST
24 DULY SWORN TO TELL THE TRUTH, TESTIFIED
25 AS FOLLOWS:

DIRECT EXAMINATION

BY MR. THEOS:

Q. DR. MCABEE, WOULD YOU PLEASE STATE YOUR FULL NAME?

A. THOMAS MCABEE; T-H-O-M-A-S, M-C-A-B-E-E.

Q. CAN YOU TELL US WHERE YOU'RE EMPLOYED?

A. AT THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES
AND SPECIAL NEEDS.

Q. IN WHAT CAPACITY, PLEASE?

A. PSYCHOLOGIST.

Q. DO YOU HAVE ANY AREA OF EXPERTISE?

A. THE WORK I'VE DONE WITH THE DEPARTMENT HAS BEEN
MOSTLY IN THE FIELD OF MENTAL RETARDATION INCLUDING
BEHAVIORAL ANALYSIS AND TREATMENT. I'VE SERVED AS
A SUPERVISING PSYCHOLOGIST. ALSO I DID DIAGNOSTIC
EVALUATIONS AND TESTING TO DETERMINE IF PEOPLE HAVE
MENTAL RETARDATION OR NOT FOR ONE OF THE REGIONS.
ALSO WORK ON A STATE-WIDE BEHAVIORAL CONSULTING
TEAM AS WELL AS FORENSIC EVALUATIONS.

Q. DO YOU HAVE YOUR C.V. WITH YOU?

A. YES.

Q. DO YOU HAVE AN EXTRA COPY OF IT WE CAN MARK AS AN
EXHIBIT?

A. YES.

MR. THEOS: YOUR HONOR, IF WE CAN MARK THIS AS
DEFENDANT'S EXHIBIT FIVE, PLEASE?

THOMAS MCABEE -DIRECT/MR. THEOS

1 THE COURT: WITHOUT OBJECTION?

2 MR. BAILEY: WITHOUT OBJECTION, YOUR HONOR.

3 DEFENDANT'S EXHIBIT NO. 5

4 MARKED FOR IDENTIFICATION

5 Q. IS THIS, I ASSUME, ACCURATE AND UP TO DATE?

6 A. CORRECT.

7 Q. DR. MCABEE, HAVE YOU PREVIOUSLY BEEN QUALIFIED AS
8 AN EXPERT IN THE STATE?

9 A. YES.

10 Q. IN WHAT AREAS OF EXPERTISE?

11 A. IN PSYCHOLOGY, FOR COMPETENCY TO STAND TRIAL,
12 EVALUATIONS FOR PEOPLE WITH MENTAL RETARDATION.

13 Q. HOW MANY TESTS WOULD YOU SAY YOU'VE CONDUCTED;
14 COMPETENCY EVALUATIONS, I MEAN?

15 A. MORE THAN 70.

16 Q. HOW LONG HAVE YOU BEEN WITH THE DEPARTMENT OF
17 DISABILITIES?

18 A. SINCE 1982.

19 Q. HOW MANY TESTS HAVE YOU PERFORMED THIS YEAR?

20 A. FORENSIC EVALUATIONS?

21 Q. YES. AND WE AREN'T TOO FAR INTO THIS YEAR. BUT
22 THROUGH TODAY'S DATE OF 1999?

23 A. I DON'T REMEMBER THE EXACT NUMBER, BUT I WOULD
24 ESTIMATE APPROXIMATELY FIVE.

25 Q. CAN YOU APPROXIMATE FOR US ON AVERAGE EACH YEAR?

1 A. SAY THAT AGAIN.

2 Q. THE YEARS THAT YOU'VE BEEN WITH THE DEPARTMENT; CAN
3 YOU APPROXIMATE FOR US ON AVERAGE EACH YEAR HOW
4 MANY YOU CONDUCTED?

5 A. FORENSIC EVALUATIONS?

6 Q. YES, SIR?

7 A. PROBABLY LAST YEAR WOULD BE THE MOST IMPORTANT.

8 AND I WOULD ESTIMATE 60 LAST YEAR; 50 TO 60.

9 Q. AND DR. SANDLER STATED THAT YOU TWO GENERALLY WORK
10 TOGETHER WITH RESPECT TO THESE EVALUATIONS; IS THAT
11 TRUE?

12 A. WE DO THE MAJORITY OF THEM TOGETHER; HOWEVER,
13 SOMETIMES I AM THE LEAD EXAMINER AND WILL DO THEM
14 WITH OTHER PSYCHOLOGISTS AROUND THE STATE; AND THE
15 SAME FOR DR. SANDLER. BUT WE DO A GREAT DEAL OF
16 THEM TOGETHER.

17 Q. ALL RIGHT. YOU MET WITH MR. SIMMONS THE SAME
18 NUMBER OF TIMES AS DR. SANDLER; CORRECT?

19 A. CORRECT.

20 Q. IN YOUR OPINION IS MR. SIMMONS ABLE TO MAKE
21 DECISIONS BASED UPON WELL EXPLAINED ALTERNATIVES?
22 IS HE ABLE TO MAKE DECISIONS WHEN PRESENTED WITH
23 VARIOUS ALTERNATIVES?

24 A. WHAT TYPE OF DECISIONS?

25 Q. JUST ANY DECISIONS; DECISIONS IN GENERAL.

THOMAS MCABEE -DIRECT/MR. THEOS

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- 1 A. I THINK IT WOULD DEPEND ON THE NATURE AND TYPE OF
2 DECISION.
- 3 Q. LEGAL DECISIONS?
- 4 A. I THINK HE WOULD MEET THE DUSKY STANDARD AND WHAT'S
5 REQUIRED FOR IT WITHIN A REASONABLE DEGREE OF
6 SCIENTIFIC CERTAINTY.
- 7 Q. LET'S SET DUSKY STANDARDS ASIDE FOR A SECOND. DO
8 YOU THINK THAT HE CAN MAKE WELL REASONED DECISIONS
9 WHEN PRESENTED WITH VARIOUS OPTIONS IN THE LEGAL
10 ARENA?
- 11 A. I WOULD NEED MORE INFORMATION TO BE ABLE TO ANSWER
12 THAT QUESTION. I'M SORRY.
- 13 Q. WHAT INFORMATION DO YOU NEED?
- 14 A. WHAT EXACTLY; WHAT DECISIONS; WHAT ARE THE NATURE
15 OF THE DECISIONS; WHAT INFORMATION NEEDS TO BE
16 CONSIDERED; WHAT LEVEL OF LANGUAGE IS BEING
17 PROVIDED; MANY FACTORS.
- 18 Q. DECISIONS RELATED TO THE ENTERING OF GUILTY PLEA
19 VERSUS A NOT GUILTY PLEA.
- 20 A. OKAY. PART OF DUSKY STANDARD IS ASKING IF SOMEONE
21 KNOWS WHAT THE MEANING OF GUILTY IS, WHAT THE
22 MEANING OF NOT GUILTY IS; WHAT'S THE CONSEQUENCES
23 OF THAT. WE ALSO ASK ABOUT, FOR EXAMPLE, PLEA
24 BARGAINING PROCESS. WOULD YOU LIKE TO KNOW SOME
25 DETAILS OF HIS ANSWERS?

- 1 Q. WELL, ANSWER MY QUESTION FIRST. IS HE ABLE TO MAKE
2 WELL REASONED DECISIONS RELATED TO THOSE LEGAL
3 ISSUES?
- 4 THE COURT: OF A GUILTY VERSUS NOT GUILTY?
- 5 MR. THEOS: GUILTY VERSUS NOT GUILTY,
6 TESTIFYING VERSUS NOT TESTIFYING, THE CRITERIA
7 THAT MAKE UP YOUR---
- 8 A. HE DEMONSTRATED THE UNDERSTANDING OF THE MEANING OF
9 GUILTY. HE DEMONSTRATED UNDERSTANDING THE MEANING
10 OF NOT GUILTY. HE UNDERSTOOD THAT AFTER EDUCATION
11 THAT HE COULD TESTIFY IF HE SO CHOSE BUT HE COULD
12 NOT BE COMPELLED TO TESTIFY AGAINST HIS WISHES.
- 13 Q. WHEN YOU SAY AFTER EDUCATION BECAUSE THAT APPEARS
14 THROUGHOUT THE REPORT?
- 15 A. YES; THAT'S RIGHT.
- 16 Q. IN THE CONCLUSIONS RELATED TO THE -- LET ME FIND IT
17 EXACTLY. FROM THE COMPETENCY EVALUATION ON THE
18 SECOND TO THE LAST PAGE, LET'S JUST TAKE IT IN THE
19 ORDER THAT IT'S PRESENTED. WITH RESPECT TO HIS
20 RIGHT TO REMAIN SILENT?
- 21 A. YES.
- 22 Q. AND HIS ABILITY TO MAKE DECISIONS RELATED TO THAT
23 CONCEPT, CAN KENNETH SIMMONS MAKE A WELL REASONED
24 DECISION?
- 25 A. REGARDING THE RIGHT TO REMAIN SILENT?

1 Q. YES.

2 A. DURING THE BEGINNING OF EACH INTERVIEW, WE WENT
3 THROUGH HIS LEGAL RIGHTS, THE MIRANDA RIGHTS, IN
4 SOME DETAIL AND AT LENGTH. AND WHEN I ASKED HIM TO
5 EXPLAIN BACK TO ME HIS UNDERSTANDING OF THOSE
6 RIGHTS, HE DID NOT THROUGH HIS EXPLICIT STATEMENTS
7 SAY BACK TO ME INFORMATION THAT WOULD BE SUFFICIENT
8 FOR ME TO BELIEVE JUST FROM THOSE STATEMENTS ON
9 THEIR FACE VALUE THAT HE HAD VERIFIED AN
10 UNDERSTANDING OF THE MEANING OF THAT RIGHT.

11 Q. SO BASED ON---

12 A. HOWEVER, DURING THE ACTUAL INTERVIEW, HE DID
13 SELECTIVELY NOT ANSWER CERTAIN QUESTIONS. SO IN
14 PRACTICE HE DEMONSTRATED SELECTIVELY GIVING CERTAIN
15 INFORMATION. BUT HE WOULD NOT VERIFY THROUGH
16 EXPLICIT VERBAL STATEMENTS THAT HE ACTUALLY
17 UNDERSTOOD THAT WHEN ASKED.

18 Q. SO WHEN YOU USE THE WORD SELECTIVELY, THIS IS YOUR
19 OPINION THAT HE WAS BEING SELECTIVE AND GUARDED IN
20 CERTAIN RESPONSES TO CERTAIN QUESTIONS; CORRECT?

21 A. (NO RESPONSE.)

22 Q. I MEAN, IS THAT AN OPINION WHEN YOU STATE THAT HE
23 WAS BEING SELECTIVE IN HIS RESPONSES?

24 A. I OBSERVED HIM NOT ANSWERING CERTAIN QUESTIONS
25 PERTAINING TO TOPICS THAT HE APPARENTLY DID NOT

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1 WANT TO TALK ABOUT IN TERMS OF THE INCIDENT ON THE
2 DAY OF THE ALLEGED OFFENSE WHICH IS OF COURSE HIS
3 PREROGATIVE. AND HE DID SELECTIVELY DECLINE TO
4 PROVIDE MUCH INFORMATION ABOUT THAT. AND, OF
5 COURSE, WE HAD EXPLAINED SEVERAL TIMES HE DID HAVE
6 THE RIGHT NOT TO ANSWER THOSE QUESTIONS. SO IN
7 PRACTICE HE DID NOT ANSWER CERTAIN QUESTIONS ON
8 CERTAIN TOPICS EVEN THOUGH HE WOULD NEVER COME OUT
9 AND EXACTLY STATE BACK TO US HIS UNDERSTANDING OF
10 THE MEANING OF THE RIGHT TO REMAIN SILENT.

11 Q. DID HE INDICATE THAT HE EITHER DIDN'T KNOW THE
12 ANSWERS OR COULDN'T REMEMBER CERTAIN EVENTS? OR
13 DID HE INDICATE THAT HE DID NOT WANT TO ANSWER
14 THOSE QUESTIONS?

15 A. HE DENIED KNOWLEDGE OF THE INCIDENTS OR THAT THEY
16 EVER HAPPENED.

17 Q. SO HE DID NOT INDICATE THAT HE WAS NOT GOING TO
18 ANSWER THOSE QUESTIONS?

19 A. CORRECT.

20 Q. HE DID NOT EXERCISE HIS RIGHT TO REMAIN SILENT?

21 A. HE DID NOT SAY "I REFUSE TO ANSWER" OR "I DECLINE
22 TO ANSWER." HE JUST IN PRACTICE DID NOT PROVIDE
23 THE INFORMATION.

24 Q. OKAY. NOW---

25 A. AND, OF COURSE, WE DID NOT PRESSURE HIM TO PROVIDE

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1 IT IN HONORING HIS RIGHTS.

2 Q. ALL RIGHT. WITH RESPECT TO THE ENTRY RELATED TO
3 ME?

4 A. YES, SIR.

5 Q. WHETHER OR NOT HE UNDERSTOOD THAT HIS ATTORNEY WAS
6 TRYING TO HELP HIM AND INDICATED THAT HE COULD TALK
7 CANDIDLY WITH HIM ABOUT THE CHARGES; YOU STATE IN
8 -- IT IS STATED IN THAT THAT HE DIDN'T UNDERSTAND
9 THESE THINGS INITIALLY, BUT AFTER EDUCATION HE
10 REASONED CERTAIN THINGS. CAN YOU TELL US WHAT
11 EDUCATION?

12 A. THE PROCESS I USED IN INTERVIEWING HIM WAS TO ASK
13 HIS UNDERSTANDING ABOUT THE TRIAL PROCESS, HIS
14 PARTICIPANTS, THE ROLES, WHAT HE COULD DO UNDER
15 CERTAIN CIRCUMSTANCES. FOR EXAMPLE, IF HE HEARD
16 WORDS IN COURT HE'D UNDERSTAND; OR IF HE THOUGHT A
17 WITNESS WAS TELLING A LIE ON HIM TO GET HIM IN
18 TROUBLE. AND THOSE PARTS HE DID NOT INDICATE HE
19 UNDERSTOOD, WE DISCUSSED THOSE IN DETAIL. AND THEN
20 I RE-ASSESSED AFTER EDUCATION DID HE UNDERSTAND
21 THOSE THINGS. AND I'D ASK HIM TO EXPLAIN THEM BACK
22 TO ME IN HIS WORDS, OR I'D ASK OTHER QUESTIONS TO
23 TEST HIS KNOWLEDGE. SO I TRIED TO MAKE CLEAR IN
24 THE REPORT WHAT HE KNEW INITIALLY VERSUS WHAT HE
25 COULD DEMONSTRATE AFTER I EXPLAINED IT TO HIM.

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1 Q. SO IF I UNDERSTAND CORRECTLY, HE DID NOT INITIALLY
2 UNDERSTAND THIS CONCEPT OF ATTORNEY ASSISTANCE.
3 YOU EXPLAINED IT TO HIM, AND IMMEDIATELY THEREAFTER
4 HE UNDERSTOOD IT, OR HE INDICATED HE UNDERSTOOD IT;
5 IS THAT RIGHT?

6 A. MORE PRECISELY, EITHER HE WOULD SAY ASK HIM WHAT,
7 OR NOT INDICATE THAT HE WANTED TO TALK. WE SAW HIM
8 FOUR TIMES. BY THE THIRD AND THE FOURTH
9 EVALUATIONS WE'D ASK HIM "DOES HE KNOW IF HIS
10 ATTORNEY IS HERE?" "YES." "DO YOU KNOW HIS NAME?"
11 "YES." "WHY IS HE HERE?" "TO HELP ME." "HOW?" AND
12 WE TALKED SPECIFICALLY THAT YOU WERE THERE TO HELP
13 ANSWER ANY QUESTION HE HAD. AND WE WOULD ASK HIM
14 BEFORE WE STARTED IF HE WANTED TO TALK WITH YOU
15 BEFORE WE DID THE EVALUATION. HE USUALLY
16 DECLINED. DURING THE EVALUATION I WOULD STOP AND
17 ASK HIM "DO YOU WANT TO TALK TO YOUR ATTORNEY ABOUT
18 ANYTHING." AND HE WOULD DECLINE, OR SOMETIMES
19 WOULD SAY -- KIND OF SHRUG AND SAY "ASK HIM WHAT."
20 ONLY ONCE, AT THE END OF THE FOURTH SESSION, DID HE
21 ASK TO SPEAK WITH YOU. AND, OF COURSE, WE ARRANGED
22 FOR THAT.

23 Q. ALL RIGHT. WERE THOSE PROCEDURES REPEATED WITH
24 EACH SESSION? IN OTHER WORDS -- I'M NOT SURE.
25 WHEN YOU SAY HE INITIALLY DIDN'T UNDERSTAND, AND

1 THEN THERE WAS SOME TEACHING INVOLVED, AND THEN HE
2 SEEMED TO UNDERSTAND. MY QUESTION IS: WAS THIS
3 INITIALLY, THIS INITIAL LACK OF UNDERSTANDING, THE
4 FIRST MEETING AND THEN THE LAST MEETING HE WAS ABLE
5 TO UNDERSTAND, OR DID THIS TAKE PLACE WITHIN EACH
6 EVALUATION?

7 A. AND YOU'RE REFERRING -- THIS REFERS TO HIS
8 UNDERSTANDING THAT HE COULD TALK WITH YOU?

9 Q. YES, SIR.

10 A. OKAY. BY THE THIRD AND FOURTH EVALUATIONS, HE
11 INDICATED HE KNEW THE NAME OF HIS ATTORNEY; HE
12 COULD IDENTIFY HIM IN PERSON; AND WHEN I ASKED HIM
13 WHY YOU WERE THERE, HE WOULD SAY SOMETHING LIKE "TO
14 HELP ME." BUT I WOULD GO ON AND MAKE SURE THAT HE
15 UNDERSTOOD THAT MEANT HE COULD STOP AT ANY TIME AND
16 ASK YOU A QUESTION, THAT IN FACT WE WOULD LEAVE AND
17 LET YOU COME AND TALK WITH HIM.

18 Q. ALL RIGHT.

19 A. SO HE CLEARLY UNDERSTOOD YOU WERE THERE TO HELP
20 HIM.

21 Q. NOW, WITH REGARD TO THE CONCEPT OF HIS RIGHT TO
22 REMAIN SILENT AND WHETHER OR NOT HE HAD TO ANSWER
23 QUESTIONS, HIS RESPONSES WERE THE SAME IN ALL FOUR
24 SESSIONS, WERE THEY NOT?

25 A. I COULD GO BACK AND CHECK THE NOTES. HE DID NOT

1 VERIFY TO MY SATISFACTION THROUGH HIS EXPLICIT
2 STATEMENTS AT THEIR FACE VALUE; HE NEVER
3 ACKNOWLEDGED HIS UNDERSTANDING THAT HE COULD PICK
4 AND CHOOSE OR REFUSE TO ANSWER. HE NEVER SAID THAT
5 EXPLICITLY.

6 Q. AND THAT WAS TRUE IN EACH OF THE FOUR SESSIONS;
7 CORRECT?

8 A. THAT IS CORRECT.

9 Q. NOW, YOU GO ON; AND WE'RE ON THE LAST PAGE NOW. IN
10 THE PICTURE OF THE COURTROOM HE COULD IDENTIFY MOST
11 TRIAL PARTICIPANTS. AND WHEN YOU ASKED HIM
12 SPECIFICALLY ABOUT THE PROSECUTOR'S ROLE, YOU STATE
13 THAT HE INITIALLY DID NOT UNDERSTAND, BUT AFTER
14 EDUCATION AND REASON. WAS THIS -- WHAT DIDN'T HE
15 UNDERSTAND INITIALLY, AND HOW WAS HE EDUCATED TO
16 UNDERSTAND?

17 A. OKAY. THIS IS IN REFERENCE TO THE INTERVIEW AND
18 TRAINING I DID WITH HIM DURING SESSIONS THREE AND
19 FOUR.

20 Q. IT DOESN'T SPECIFY WHICH SESSIONS. I'M JUST---

21 A. I'M JUST SPECIFYING THAT.

22 Q. OKAY.

23 A. AND IN THE THIRD SESSION WHICH WAS FEBRUARY THE
24 FOURTH, 1999, I WILL CHECK MY NOTES AND GIVE YOU
25 MORE DETAILS. YOUR QUESTION, DID HE UNDERSTAND

1 ABOUT THE ROLE OF THE SOLICITOR?

2 Q. YES.

3 A. OKAY. DURING SESSION THREE, THE FIRST TIME I DID
4 THE INTERVIEW WITH HIM, I ASKED HIM WHAT'S THE JOB
5 OF THE SOLICITOR. AND MR. SIMMONS SAID "TO JUDGE
6 AND SEE WHAT'S GOING ON IN THE CASE." WHEN I ASKED
7 HIM "WELL, IS HE WORKING FOR YOU OR AGAINST YOU,"
8 AND HE UNDERSTOOD AGAINST ME. AND I SAID, "HOW
9 DOES HE WANT YOU TO BE FOUND?" AND HE UNDERSTOOD
10 GUILTY. AND I SAID, "WHAT DOES HE WANT TO HAPPEN
11 TO YOU?" AND HIS WORDS WERE "SEND ME TO PRISON."
12 HOWEVER, WHEN I ASKED A MORE REASONABLE QUESTION
13 "WHAT SHOULD YOU DO IF THE SOLICITOR SHOULD HAPPEN
14 TO ASK YOU A QUESTION AND YOU DON'T UNDERSTAND WHAT
15 THOSE WORDS MEAN; WHAT CAN YOU DO?" HE ANSWERED
16 "ANSWER THE BEST WAY I KNOW HOW." AFTER
17 EDUCATION, HE COULD LATER EXPLAIN "ASK MR. THEOS
18 BEFORE ANSWERING THE QUESTION."

19 Q. AND THAT WAS IN THE THIRD AND FOURTH SESSIONS?

20 A. THAT'S THIRD.

21 Q. DID YOU DELVE INTO THAT?

22 A. OH, YES.

23 Q. AREA IN THE FOURTH?

24 A. YES, SIR; RE-CHECKED THAT.

25 Q. AND?

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1 A. JUST A MINUTE, PLEASE. (WITNESS REVIEWS NOTES.) ON
2 THE FOURTH HE COULD IDENTIFY WHERE THE SOLICITOR
3 WOULD BE IN THE COURTROOM. IN OTHER WORDS, AT A
4 TABLE NOT PART OF THE DEFENSE COUNSEL. WHEN I
5 ASKED HIM "WHAT'S THE JOB," HE SAID "ASK." AND I
6 PROBED A LITTLE MORE. AND HE SAID "TO GIVE YOU
7 SOME TIME" IS WHAT HE WAS TRYING TO DO. AND HE
8 AGAIN UNDERSTOOD THAT THE SOLICITOR IS WORKING
9 AGAINST HIM TO FIND HIM GUILTY. SO HE UNDERSTOOD
10 THERE WAS AN ADVERSARIAL PROCESS IS WHAT I INFERRED
11 FROM HIS ANSWERS. HOWEVER, WHEN I ASKED WHAT WOULD
12 HAPPEN IF, SAY, THE SOLICITOR SHOULD ASK YOU A
13 QUESTION AND YOU DON'T UNDERSTAND WHAT HE'S ASKING
14 YOU, DOESN'T UNDERSTAND WHAT THE WORDS ARE, WHAT
15 COULD YOU DO; HE AGAIN SAID "ANSWER THE BEST WAY I
16 KNOW HOW." WHEN WE REVIEWED THAT, HE RECALLED WITH
17 LESS TRAINING THAN THE FIRST TIME "ASK MR. THEOS."

18 Q. THEN SIMILAR QUESTIONING RELATED TO THE ROLES OF
19 WITNESSES, INITIALLY MR. SIMMONS, ACCORDING TO YOUR
20 REPORT, THE FIRST TIME YOU DISCUSSED THE ROLE OF
21 THE WITNESSES WITH HIM, HE DID NOT UNDERSTAND. AND
22 YOU OFFERED EXPLANATIONS. AND ULTIMATELY HE SEEMED
23 TO UNDERSTAND?

24 A. LET ME DOUBLE CHECK. (WITNESS EXAMINES RECORDS.)
25 INITIALLY, WITHOUT EDUCATION, HE EXPLAINED THE ROLE

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1 OF A WITNESS AS "TELL WHAT THEY KNOW." HE COULD
2 ALSO GIVE EXAMPLES OF A WITNESS IN A HYPOTHETICAL
3 CRIME. WHAT HE DID NOT KNOW; BUT AFTER EDUCATION
4 HE COULD INDICATE HIS UNDERSTANDING THAT HE COULD
5 TESTIFY AT HIS TRIAL IF HE CHOSE, BUT HE COULD NOT
6 BE COMPELLED TO TESTIFY AGAINST HIS WILL.

7 Q. AND AS I READ YOUR REPORT, HE DID NOT UNDERSTAND
8 THAT INITIALLY THAT HE HAD THE PREROGATIVE OF NOT
9 TESTIFYING?

10 MR. BAILEY: OBJECTION, YOUR HONOR. THAT'S
11 NOT WHAT HE SAID. HE SAID HE COULDN'T
12 UNDERSTAND.

13 THE COURT: YES, SIR. REPHRASE IT.

14 Q. WHAT DID MR. SIMMONS STATE REGARDING WHETHER OR NOT
15 HE COULD BE COMPELLED TO TESTIFY PRIOR TO
16 EDUCATION?

17 A. I DON'T HAVE HIS EXACT WORDS. BUT THEY WERE NOT TO
18 MY SATISFACTION THAT HE UNDERSTOOD THAT CONCEPT.
19 SO AFTER DISCUSSING IT, HE DID DEMONSTRATE THAT HE
20 UNDERSTOOD THAT HE COULD TESTIFY IF HE CHOSE AND
21 NOT BE COMPELLED TO TESTIFY. HOWEVER, ON THE NINTH
22 WHEN I WENT BACK AND CHECKED -- THIS IS SESSION
23 FOUR -- HOW MUCH HE RETAINED FROM THE THIRD
24 SESSION, THE FIRST TIME WE DID THIS EVALUATION,
25 THIS INTERVIEW; HOWEVER, AT THAT TIME WHEN I ASKED

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1 HIM "CAN YOU TESTIFY AND TELL YOUR SIDE OF THE
2 STORY IF YOU WISH" WITHOUT EDUCATION -- THOSE ARE
3 REMINDERS -- HE REMEMBERED THAT HE COULD.

4 Q. OKAY.

5 A. SO HE HAD RETAINED IT FROM SESSION THREE TO SESSION
6 FOUR.

7 Q. AT THE OUTSET, HOWEVER, IN THE THIRD SESSION, IT
8 WAS CLEAR TO YOU THAT HE DID NOT UNDERSTAND THAT HE
9 COULD NOT BE COMPELLED TO TESTIFY?

10 A. HIS EXPLICIT STATEMENTS ON THEIR FACE VALUE, HE DID
11 NOT VERIFY THAT HE UNDERSTOOD. AND, THEREFORE, I
12 PROCEEDED TO EXPLAIN IT TO HIM AND HAVE HIM VERIFY
13 THAT HE DID UNDERSTAND.

14 Q. AND BECAUSE HE INDICATED HE COULDN'T UNDERSTAND,
15 YOU EDUCATED HIM?

16 A. CORRECT.

17 Q. AND YOU WERE ULTIMATELY SATISFIED AT SOME POINT IN
18 THE FOURTH SESSION THAT---

19 A. THIRD AND---

20 Q. THE THIRD SESSION, AND THEN THE FOURTH, THAT HE---

21 A. RIGHT. AND THE DIFFERENCE ON THE THIRD WAS WITH
22 EDUCATION. THE FOURTH WAS WITHOUT EDUCATION HE
23 REMEMBERED WHICH IS WHAT WE WANTED TO VERIFY IS
24 THAT HE DIDN'T UNDERSTAND THAT.

25 Q. IN YOUR OPINION DOES MR. SIMMONS UNDERSTAND HIS

1 RIGHT TO REMAIN SILENT?

2 A. THROUGH HIS EXPLICIT VERBAL STATEMENTS TO ME ON
3 THEIR FACE VALUE, HE DID NOT VERIFY, OR CONFIRM,
4 HIS UNDERSTANDING DURING THE FOUR SESSIONS.
5 HOWEVER, IN ACTUAL PRACTICE HE DID NOT PROVIDE
6 ANSWERS TO SOME QUESTIONS SAYING THAT IT DIDN'T
7 HAPPEN.

8 Q. WHAT IS YOUR OPINION, THEN, AS TO WHETHER OR NOT HE
9 UNDERSTANDS HIS RIGHT TO REMAIN SILENT?

10 A. I SUSPECT HE DOES BECAUSE I SUSPECT THAT THERE WAS
11 SOME MALINGERING IN SAYING THE STATEMENTS BACK.
12 PLUS, MORE IMPORTANTLY, IS AN ACTUAL PRACTICE WHAT
13 HE DID.

14 Q. SO IS IT, THEN, YOUR OPINION THAT HE DOES
15 UNDERSTAND HIS RIGHT TO REMAIN SILENT?

16 A. THE PREPONDERANCE OF THE EVIDENCE I'M AWARE OF
17 WOULD SUGGEST THAT.

18 Q. I'M NOT ASKING YOU TO DETERMINE THIS BASED ON LEGAL
19 STANDARDS AND BURDENS OR PROOF. I'M ASKING YOUR
20 OPINION AS AN EXPERT WHETHER OR NOT IN YOUR OPINION
21 MR. SIMMONS UNDERSTANDS HIS RIGHT TO REMAIN
22 SILENT?

23 THE COURT: I DON'T BELIEVE YOU'VE QUALIFIED
24 HIM AS AN EXPERT YET, HAVE YOU, MR. THEOS?

25 MR. THEOS: YOU'RE RIGHT, YOUR HONOR. WE

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1 WOULD OFFER AT THIS TIME DR. MCABEE AS AN
2 EXPERT IN FORENSIC PSYCHOLOGY THAT HAS
3 CONDUCTED OVER 60 TO 70 EVALUATIONS BASED UPON
4 HIS OWN TESTIMONY, COMPETENCY EVALUATIONS OF
5 CRIMINAL DEFENDANTS, AND HAS PREVIOUSLY BEEN
6 QUALIFIED IN THIS STATE TO RENDER AN EXPERT
7 OPINION IN THE FIELD OF PSYCHOLOGY.

8 THE COURT: ALL RIGHT, MR. SOLICITOR. WOULD
9 YOU LIKE TO CROSS-EXAMINE AS TO HIS EXPERTISE?

10 MR. BAILEY: NO, SIR, YOUR HONOR. I CONCEDE
11 TO HIS QUALIFICATIONS AS AN EXPERT.

12 THE COURT: ALL RIGHT. THANK YOU.

13 Q. NOW, DO YOU HAVE AN OPINION BASED UPON YOUR
14 EXPERTISE, YOUR TRAINING, YOUR EXPERIENCE, ETC.---

15 THE COURT: TO A REASONABLE DEGREE OF.

16 Q. TO A REASONABLE DEGREE OF SCIENTIFIC MEDICAL
17 CERTAINTY---

18 MR. BAILEY: NOT MEDICAL CERTAINTY.

19 THE COURT: I THINK YOU NEED TO REPHRASE THAT.
20 MEDICAL AND SCIENTIFIC IS---

21 Q. DO YOU HAVE AN OPINION BASED UPON YOUR EDUCATION,
22 TRAINING, EXPERIENCE, IN YOUR AREA OF EXPERTISE TO
23 A REASONABLE DEGREE OF MEDICAL CERTAINTY WHETHER
24 MR. SIMMONS UNDERSTANDS HIS RIGHT TO REMAIN SILENT?

25 A. WELL, AS A PSYCHOLOGIST, IT WOULD BE WITHIN A

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1 REASONABLE DEGREE OF SCIENTIFIC SINCE I DON'T HAVE
2 FORMAL MEDICAL TRAINING.

3 MR. THEOS: I WAS CORRECTED BY THE COURT.

4 A. WELL, I UNDERSTAND. BUT JUST FOR THE RECORD---

5 THE COURT: NO, SIR, YOU WEREN'T CORRECTED.

6 YOU WERE INTERRUPTED BECAUSE YOU WERE USING
7 TWO DIFFERENT THINGS WHEN YOU ONLY SHOULD USE
8 ONE. THANK YOU. PROCEED.

9 Q. WHAT IS YOUR ANSWER, SIR?

10 A. SUCH AN OPINION HAS TO BE BASED ON THE PERSON'S
11 VERBAL STATEMENTS OR THEIR ACTIONS. SINCE I
12 CANNOT, OF COURSE, READ SOMEONE'S MIND AS TO WHAT
13 THEY KNOW, I CAN ONLY BASE IT ON WHAT THEY'RE
14 WILLING TO SAY OR WHAT THEY DO. THEREFORE, I
15 CANNOT SAY DEFINITELY THAT HE DOES OR DOES NOT.
16 IN MY OPINION THE PREPONDERANCE OF THE EVIDENCE I'M
17 AWARE OF SUGGESTS THAT HE DOES. BUT I CANNOT SAY
18 DEFINITELY ONE WAY OR THE OTHER.

19 Q. THE QUESTION WAS: CAN YOU STATE IT TO A REASONABLE
20 DEGREE OF SCIENTIFIC CERTAINTY?

21 A. I COULDN'T STATE IT ANY OTHER WAY THAN WHAT I JUST
22 DID.

23 Q. SO IS IT, THEN, YOUR TESTIMONY THAT YOU CANNOT
24 STATE IT TO A REASONABLE DEGREE OF SCIENTIFIC
25 CERTAINTY THAT MR. SIMMONS UNDERSTANDS HIS RIGHT TO

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1 REMAIN SILENT?

2 THE COURT: HE'S ASKED THE QUESTION. HE SAYS
3 HE CANNOT DEFINITELY STATE YEA OR NAY, BUT
4 THE EVIDENCE CERTAINLY SUGGESTS THAT BY A
5 PREPONDERANCE OF THE EVIDENCE. HE'S ANSWERED
6 THE QUESTION TWICE.

7 MR. THEOS: YOUR HONOR, IF I COULD JUST NOTE
8 MY OBJECTION.

9 THE COURT: PLEASE.

10 MR. THEOS: I TAKE EXCEPTION TO YOUR RULING.
11 THE QUESTION THAT I WAS POSING WAS WHETHER OR
12 NOT HE COULD STATE IT TO A REASONABLE DEGREE
13 OF SCIENTIFIC CERTAINTY. AND HE'S NOT
14 ANSWERED THAT QUESTION. HE'S ANSWERED IT
15 BASED UPON SOME OTHER STANDARD. AND I THINK
16 THAT BECAUSE HE'S AN EXPERT HE SHOULD BE
17 CALLED UPON TO ANSWER---

18 THE COURT: NOTE HIS OBJECTION. HE'S ANSWERED
19 IT TWICE.

20 Q. DO YOU HAVE AN OPINION AS TO WHETHER THE DEFENDANT
21 COMPREHENDS, AGAIN, TO A REASONABLE DEGREE OF
22 SCIENTIFIC CERTAINTY, WHETHER HE COMPREHENDS THE
23 CONCEPTS THAT ANY STATEMENTS MADE BY HIM CAN, AND
24 WILL BE, USED AS EVIDENCE AGAINST HIM IN A COURT OF
25 LAW?

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1 A. YES.

2 Q. WHAT IS THAT OPINION?

3 A. BY THE FOURTH SESSION, HE WAS STATING EXPLICITLY
4 BACK THAT HE UNDERSTOOD THAT WE WOULD BE WRITING A
5 REPORT, INCLUDING THE THINGS HE TOLD US, AND THAT
6 YOU, THE SOLICITOR, AND THE JUDGE WOULD RECEIVE A
7 COPY OF THAT. SO HE WAS VERIFYING THROUGH HIS
8 STATEMENTS THAT HE UNDERSTOOD THAT.

9 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
10 SCIENTIFIC CERTAINTY WHETHER OR NOT HE UNDERSTOOD
11 THE CONCEPT THAT ANY STATEMENTS MADE BY HIM COULD
12 BE USED AGAINST HIM IN A COURT OF LAW IN THE FIRST
13 SESSION AND THE SECOND SESSION PRIOR TO EDUCATION?

14 A. I NEED TO CHECK MY NOTES. (WITNESS REVIEWS
15 DOCUMENT.) NOT TO MY SATISFACTION IN SESSION ONE.
16 LET ME CHECK SESSION TWO NOW. (WITNESS REVIEWS
17 DOCUMENT.) NOT TO MY SATISFACTION FOR SESSION TWO.

18 Q. OKAY. DO YOU HAVE AN OPINION TO A REASONABLE
19 DEGREE OF SCIENTIFIC CERTAINTY AS TO WHETHER MR.
20 SIMMONS UNDERSTOOD THE CONCEPT THAT HE HAS A RIGHT
21 TO HAVE AN ATTORNEY PRESENT BEFORE ANY QUESTIONS
22 ARE ASKED AND/OR DURING QUESTIONING?

23 A. YES.

24 Q. AND WHAT IS THAT OPINION?

25 A. HE DEMONSTRATED AN UNDERSTANDING BY SESSIONS THREE

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1 AND FOUR THROUGH HIS VERBAL STATEMENTS.

2 Q. WITH RESPECT TO SESSIONS ONE AND TWO, WHAT WOULD
3 THAT OPINION BE?

4 A. HE DID NOT THROUGH HIS -- HIS VERBAL STATEMENTS,
5 HIS EXPLICIT VERBAL STATEMENTS ON THEIR FACE VALUE
6 DID NOT SATISFY THAT FOR SESSIONS ONE AND TWO.

7 Q. SO, WOULD IT BE YOUR OPINION IN SESSIONS ONE AND
8 TWO, TO A REASONABLE DEGREE OF SCIENTIFIC
9 CERTAINTY, THAT HE DID NOT UNDERSTAND HIS RIGHT TO
10 HAVE AN ATTORNEY PRESENT BEFORE AND DURING
11 QUESTIONING?

12 A. WELL, AGAIN, I CAN ONLY JUDGE FROM HIS WILLINGNESS
13 TO MAKE THE STATEMENTS OR FROM HIS ACTIONS. AND IF
14 HE DID NOT DO THAT -- THAT'S WHAT I HAVE TO GO BY
15 -- WHETHER THAT IN FACT SHOWS WHAT WAS IN HIS
16 MIND. IT'S SOMETHING I HAVE NO WAY OF MEASURING.
17 I CAN ONLY VERIFY WHAT SOMEONE IS WILLING TO SAY OR
18 DO.

19 Q. IN ANY EVENT---

20 A. SO HE DIDN'T DEMONSTRATE IT. HE DIDN'T SAY IT.
21 BUT WHETHER HE IN FACT KNOWS THAT, I HAVE NO METHOD
22 TO VERIFY OR TO CONFIRM OR DIS-CONFIRM THAT.

23 Q. I UNDERSTAND. BUT DO YOU HAVE AN OPINION? I
24 UNDERSTAND EVERYTHING THAT YOU'VE SAID. MY
25 QUESTION IS: WHAT IS YOUR OPINION RELATED TO THE

THOMAS MCABEE -DIRECT/MR. THEOS

1 FIRST AND SECOND SESSIONS? DID HE UNDERSTAND OR
2 DID HE NOT?

3 A. I CANNOT SAY DEFINITELY. I SUSPECT HE MAY HAVE
4 DUE TO THE FACTOR OF MALINGERING THAT I OBSERVED
5 DURING THE EVALUATION.

6 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
7 SCIENTIFIC CERTAINTY WHETHER MR. SIMMONS UNDERSTOOD
8 IN THE FIRST AND SECOND SESSIONS WHETHER OR NOT THE
9 QUESTIONING COULD BE STOPPED SO THAT HE COULD; IF
10 HE DIDN'T WANT TO ANSWER ANY MORE QUESTIONS, THEN
11 IT COULD BE STOPPED AND HE COULD COME GET HIS
12 ATTORNEYS?

13 A. HE DID NOT, THROUGH HIS STATEMENTS, INDICATE
14 EXPLICITLY SUCH AN UNDERSTANDING.

15 Q. AND I SUSPECT, BASED UPON YOUR PREVIOUS ANSWERS,
16 THAT YOUR OPINION RELATED TO THE THIRD AND FOURTH
17 SESSIONS TO A REASONABLE DEGREE OF SCIENTIFIC
18 CERTAINTY WOULD BE THAT AT THAT POINT HE WAS
19 CAPABLE OF UNDERSTANDING?

20 A. THAT HE COULD STOP AND---

21 Q. THAT HE COULD STOP THE QUESTIONING AND GO GET HIS
22 LAWYER. WAS IT ANY DIFFERENT IN THE THIRD AND
23 FOURTH SESSIONS?

24 A. YES; A BETTER UNDERSTANDING; YES

25 Q. IS IT YOUR OPINION TO A REASONABLE DEGREE OF

THOMAS MCABEE -DIRECT/MR. THEOS

1 SCIENTIFIC CERTAINTY THAT HE UNDERSTOOD IN THE
2 THIRD AND FOURTH SESSIONS?

3 A. YES.

4 Q. DO YOU HAVE---

5 A. AND, IN FACT, HE DID ASK FOR YOU AT THE END OF THE
6 FOURTH SESSION.

7 Q. OKAY.

8 A. SO WE SAW IT IN HIS ACTIONS AS WELL AS HIS WORDS.

9 Q. DO YOU HAVE AN OPINION AS TO WHETHER THE DEFENDANT,
10 MR. SIMMONS, TO A REASONABLE DEGREE OF SCIENTIFIC
11 CERTAINTY, COULD READ THE STATEMENT, THE MIRANDA
12 STATEMENT THAT YOU PLACED IN FRONT OF HIM, IN EACH
13 OF THE FOUR INTERVIEWS?

14 A. IT VARIED SOMEWHAT FROM TIME TO TIME. BUT HE WAS
15 NOT READING THE WORDS, MANY OF THE WORDS. HE WAS
16 NOT READING THE LONGER WORDS OF MULTIPLE
17 SYLLABLES. HE WAS NOT READING SOME OF THE SIMPLE
18 ONE SYLLABLE WORDS. AND I ASSISTED HIM A GREAT
19 DEAL MOST OF THE TIME. ONE TIME HE DID READ IT
20 WITH MINIMAL ASSISTANCE.

21 Q. OKAY. AND THAT WOULD HAVE BEEN THE FOURTH TIME?

22 A. NO, SIR. ACTUALLY IT WAS THE SECOND READING ON THE
23 FIRST SESSION.

24 Q. NOW, DO YOU HAVE AN OPINION TO A REASONABLE DEGREE
25 OF SCIENTIFIC CERTAINTY WHETHER OR NOT MR. SIMMONS

THOMAS MCABEE -DIRECT/MR. THEOS

1 WAS CAPABLE IN THE FIRST AND SECOND SESSIONS OF
2 MAKING A KNOWING AND INTELLIGENT WAIVER OF THOSE
3 RIGHTS, THOSE MIRANDA RIGHTS?

4 A. WOULD YOU STATE THAT AGAIN, PLEASE?

5 Q. YES. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE
6 OF SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT MR.
7 SIMMONS WAS CAPABLE OF MAKING A KNOWING AND
8 INTELLIGENT WAIVER OF HIS MIRANDA RIGHTS?

9 A. AGAIN, THROUGH HIS EXPLICIT STATEMENTS, HE DID NOT
10 VERIFY IT. WHEN I TAKE INTO ACCOUNT THE LIKELIHOOD
11 OF MALINGERING, I SUSPECT HE DID TO A GREATER
12 DEGREE THAN HE WAS WILLING TO SHOW. BUT I CAN ONLY
13 GO ON WHAT SOMEBODY SAYS AND WHAT SOMEBODY DOES TO
14 VERIFY WHAT SOMEBODY KNOWS. I HAVE NO METHODS OF
15 READING WHAT'S IN SOMEBODY'S MIND.

16 Q. BASED UPON HIS RESPONSES ALONE, WHAT WOULD THAT
17 OPINION BE?

18 MR. BAILEY: YOUR HONOR, I OBJECT TO THAT
19 QUESTION BECAUSE HE'S ALREADY SAID HE CAN'T
20 BASE THAT ON RESPONSES ALONE; THAT HE HAS TO
21 CONSIDER OTHER FACTORS.

22 THE COURT: I CAN'T QUITE HEAR YOU, MR.
23 BAILEY.

24 MR. BAILEY: I OBJECT TO THE QUESTION BECAUSE
25 HE'S ASKING HIM TO BASE HIS ANSWER ON MR.

THOMAS MCABEE -DIRECT/MR. THEOS

1 SIMMONS' RESPONSES ALONE WHEN I THINK HE'S
2 PREVIOUSLY TESTIFIED HE CAN'T BASE IT ON THE
3 RESPONSES ALONE; HE'S GOT TO CONSIDER THE
4 WHOLE THING.

5 MR. THEOS: YOUR HONOR, I DON'T THINK THAT'S
6 WHAT HE SAID.

7 THE COURT: WELL, LET ME GET HIM TO REPEAT HIS
8 ANSWER. EXCUSE ME.

9 DR. MCABEE: NO PROBLEM.

10 A. HIS STATEMENTS ALONE DID NOT VERIFY AN
11 UNDERSTANDING. YOUR QUESTION IS IN MY OPINION DID
12 HE UNDERSTAND.

13 Q. OKAY.

14 A. WHICH IS A DIFFERENT QUESTION.

15 THE COURT: AND YOUR ANSWER IS?

16 A. THAT I SUSPECT HE COULD UNDERSTAND IT TO A GREATER
17 DEGREE THAN HE WAS REVEALING WHEN YOU TAKE INTO
18 ACCOUNT THE LIKELIHOOD OF MALINGERING. BUT I HAVE
19 NO WAY OF DEFINITELY SAYING THAT. IT'S JUST A
20 REASON TO SUSPECT OR BELIEVE.

21 Q. IF WE WERE TO REMOVE THE ELEMENT OF MALINGERING; IN
22 OTHER WORDS, I UNDERSTAND YOUR OPINION AND DR.
23 SANDLER'S, IS THAT MR. SIMMONS WAS MALINGERING; IS
24 THAT CORRECT?

25 A. THAT IS CORRECT.

THOMAS MCABEE - CROSS-MR. BAILEY

1 Q. IF MR. SIMMONS -- IF WE ASSUME FOR ARGUMENT SAKE,
2 THAT MR. SIMMONS WAS NOT MALINGERING, HOW THEN
3 WOULD THAT AFFECT YOUR OPINION?

4 A. IT WOULD BE AN ILLOGICAL SITUATION BECAUSE THOSE
5 WHO HAVE ABILITIES EVEN LOWER THAN MR. SIMMONS'
6 HAVE DEMONSTRATED IN THE EVALUATIONS I'VE DONE THE
7 ABILITY TO UNDERSTAND THAT. SO IT'S ALMOST AN
8 ILLOGICAL SITUATION.

9 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
10 SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT MR.
11 SIMMONS MADE A KNOWING AND INTELLIGENT WAIVER OF
12 HIS MIRANDA RIGHTS IN DECEMBER OF '97?

13 A. I'M AWARE OF INFORMATION THAT WOULD BE RELEVANT TO
14 THAT QUESTION; BUT I DO NOT HAVE A DEFINITIVE
15 OPINION THAT IT'S RETROACTIVE SPECULATION.

16 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

17 THE COURT: CROSS?

18 MR. BAILEY: THANK YOU, YOUR HONOR.

19 CROSS-EXAMINATION

20 BY MR. BAILEY:

21 Q. DR. MCABEE, YOU CO-SIGNED THE REPORT ALONG WITH DR.
22 SANDLER; IS THAT CORRECT?

23 A. THAT'S CORRECT.

24 Q. AND WOULD IT BE FAIR TO SAY THAT YOU'VE READ THE
25 ENTIRE REPORT BEFORE YOU SIGNED YOUR NAME TO IT?

THOMAS MCABEE - CROSS-MR. BAILEY

1 A. READ THE ENTIRE REPORT, AND WROTE MOST OF IT.

2 Q. ALL RIGHT, SIR. DO YOU CONCUR WITH THE SUMMARY OF
3 EVALUATION RESULTS FROM THE FIRST PAGE OF THE
4 REPORT?

5 A. YES.

6 Q. ALL RIGHT, SIR. NOW, IN REGARD TO WHETHER OR NOT
7 MR. SIMMONS IS MENTALLY RETARDED, WHAT ARE THE
8 CRITERIA, BRIEFLY, THAT YOU LOOK AT WHEN YOU
9 ASSESS WHETHER OR NOT SOMEBODY IS IN FACT MENTALLY
10 ILL OR NOT MENTALLY RETARDED? WHAT ARE THE THINGS
11 YOU LOOK FOR?

12 A. WE FOLLOW THE CRITERIA IN DIAGNOSTIC AND
13 STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH
14 EDITION, AS WELL AS WHAT'S IN STATE LAW AND LOOK
15 FOR THREE CRITERIA; SIGNIFICANCE OF AVERAGE
16 INTELLECTUAL FUNCTIONING AS MEASURED BY THE
17 INDIVIDUAL INTELLIGENCE TEST; SIGNIFICANT ADAPTIVE
18 DEFICITS WITH ONSET BEFORE THE AGE OF EIGHTEEN.
19 THAT DSN-4. STATE LAW IS A LITTLE MORE LIBERAL.
20 IT'S BEFORE THE AGE OF 22.

21 Q. LET'S TAKE THEM ONE AT A TIME. THE TESTING THAT
22 Y'ALL ADMINISTERED AT THE DEPARTMENT OF
23 DISABILITIES AND SPECIAL NEEDS, IF YOU LOOK AT THE
24 TEST SCORE BY ITSELF, DOES THAT INDICATE MENTAL
25 RETARDATION?

THOMAS MCABEE - CROSS-MR. BAILEY

1 A. THE ONE THAT---

2 Q. THE I.Q. TEST THAT Y'ALL GAVE HIM.

3 A. ON FEBRUARY THE NINTH?

4 Q. ON THE NINTH, I BELIEVE.

5 A. THOSE SCORES ARE ABOVE THE RANGE OF MENTAL
6 REDARDATION.

7 Q. ALL RIGHT, SIR. AND TAKING THE ADAPTIVE DEFICIT
8 FACTOR, BASED ON THE HISTORY THAT YOU GOT, THE
9 SCHOOL REPORTS, THE PEOPLE YOU TALKED TO AT THE
10 SCHOOL, THE OTHER INFORMATION THAT YOU'VE ACQUIRED
11 UP UNTIL THIS MOMENT IN TIME; DID YOU FIND ANY
12 EVIDENCE OF ANY DEFICITS IN MR. SIMMONS' ADOPTIVE
13 BEHAVIOR WHEN HE WAS BELOW THE AGE OF EIGHTEEN OR
14 TWENTY-TWO YEARS, SOMEWHERE IN THAT TIME FRAME?

15 A. OR EARLIER? I DID NOT SEE DEFICITS OF THE SEVERITY
16 THAT WOULD REACH THE MENTAL CRITERIA.

17 Q. ALL RIGHT.

18 A. THERE WERE SOME FUNCTIONAL DEFICITS IN READING
19 ABILITIES THAT THE TEACHERS TESTIFIED TO EARLIER.
20 BUT THAT CERTAINLY WOULD NOT BE AT THE LOW LEVEL OF
21 MENTAL RETARDATION.

22 Q. ALL RIGHT, SIR. AS FAR AS WHAT YOU DETERMINED
23 ABOUT HIS ABILITY TO TAKE CARE OF HIS OWN NEEDS TO
24 FUNCTION IN SOCIETY, DID YOU FIND THAT HE DID HAVE
25 THE ABILITY TO DO THAT, OR THAT HE DID NOT HAVE THE

THOMAS MCABEE - CROSS-MR. BAILEY

1 ABILITY TO DO THAT?

2 A. I DID NOT SEE ANY EVIDENCE THAT WOULD SUGGEST
3 OTHERWISE BEFORE THE AGE OF TWENTY-TWO OR EIGHTEEN.

4 Q. ALL RIGHT, SIR. NOW, MENTAL RETARDATION HAS TO BE
5 ACQUIRED PRIOR TO THE AGE OF EIGHTEEN OR
6 TWENTY-TWO; IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. IS IT THERE SOMETHING THAT COMES AND GOES? OR ARE
9 YOU EITHER MENTALLY RETARDED OR NOT MENTALLY
10 RETARDED?

11 A. WITHIN THE DEVELOPMENTAL PERIOD BEFORE TURNING 22
12 OR 18; OR DO YOU MEAN AFTER?

13 Q. IF YOU ARE MENTALLY RETARDED AT THE AGE OF 17, DOES
14 THAT MEAN THAT YOU ARE GOING TO BE MENTALLY
15 RETARDED AT THE AGE OF 30 OR 35 OR 40?

16 A. USUALLY IT IS PREDICTIVE OF THAT; YES.

17 Q. ALL RIGHT, SIR.

18 A. NOW FROM A STRICTLY SCIENTIFIC POINT OF VIEW,
19 PEOPLE CAN LEARN AND, FOR EXAMPLE, CAN OVERCOME
20 ADAPTIVE DEFICITS. SO THEORETICALLY SOMEONE COULD
21 IMPROVE TO WHERE THOSE DEFICITS NO LONGER EXIST.
22 ALSO I.Q. SCORES ARE NOT PERFECTLY FIXED OVER
23 TIME. THEY CAN CHANGE.

24 Q. OKAY.

25 A. SO FROM A SCIENTIFIC POINT OF VIEW THERE IS

THOMAS MCABEE - CROSS-MR. BAILEY

1 POSSIBILITIES OF CHANGE. BUT THERE IS A PRETTY
2 HIGH CORRELATION OF SOMEONE AT 17 ALSO BEING AT AGE
3 THIRTY. IT'S A GOOD PREDICTOR, BUT NOT A PERFECT
4 PREDICTOR.

5 Q. ALL RIGHT, SIR. DO YOU HAVE AN OPINION TO A
6 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY AS TO
7 WHETHER OR NOT KENNETH SIMMONS, AS HE SITS HERE
8 TODAY, IS OR IS NOT MENTALLY RETARDED?

9 A. ALL THE AVAILABLE INFORMATION AND RESULTS OF OUR
10 EXAMINATION AND WITHIN A DEGREE OF SCIENTIFIC
11 CERTAINTY, I DID NOT FIND EVIDENCE OF MENTAL
12 RETARDATION.

13 Q. DO YOU HAVE AN OPINION AGAIN TO A REASONABLE DEGREE
14 OF SCIENTIFIC CERTAINTY AS TO HIS APPROXIMATE LEVEL
15 OF MENTAL FUNCTIONING?

16 A. I KNOW IT'S ABOVE THE RANGE OF MENTAL RETARDATION.
17 BUT TO PROVIDE AN ACCURATE ANSWER TO THAT, WE'D
18 NEED TO DO AN INTELLIGENCE TEST WITH HIS FULL
19 COOPERATION. IN OTHER WORDS, A PERSON WOULD HAVE
20 TO BE TRYING THEIR VERY BEST. AND SINCE I SUSPECT
21 THAT WAS NOT THE CASE, I DON'T HAVE THE TEST
22 PERFORMANCE ON WHICH TO BASE SUCH A SCORE ON. BUT
23 FROM WHAT I SEE, IT SHOULD BE ABOVE THE RANGE OF
24 MENTALLY RETARDATION.

25 Q. ALL RIGHT, SIR. AND IN YOUR EVALUATION OF MR.

THOMAS MCABEE - CROSS-MR. BAILEY

1 SIMMONS, DID YOU FIND ANY MENTAL CONDITION,
2 EVIDENCE OF ANY MENTAL CONDITION THAT WOULD HAVE
3 IMPAIRED HIS ABILITY TO UNDERSTAND HIS MIRANDA
4 RIGHTS AT ANY POINT IN TIME?

5 A. HE HAS A HISTORY OF POLY-SUBSTANCE ABUSE.

6 Q. WELL, ASSUMING THAT HE WAS NOT UNDER THE IMMEDIATE
7 INFLUENCE OF ALCOHOL OR DRUGS; DID YOU FIND ANY
8 OTHER CONDITION IN MR. SIMMONS THAT WOULD PREVENT
9 HIM WITH THE I.Q. THAT YOU TESTIFIED HE WAS
10 DEMONSTRATING, AND HAVING THE ABILITY TO COMPREHEND
11 MIRANDA RIGHTS AND TO INTELLIGENTLY AND KNOWINGLY
12 WAIVE THOSE?

13 A. I'M NOT AWARE OF SUCH A CONDITION FROM OUR
14 EVALUATION.

15 Q. ALL RIGHT, SIR. AND IN SUMMARY, DO YOU CONCUR IN
16 THE RESULT OF THE REPORT THAT YOU SIGNED OFF ON
17 THAT MR. SIMMONS IS COMPETENT TO STAND TRIAL AT
18 THIS POINT IN TIME?

19 A. WITHIN A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY,
20 I BELIEVE HE MEETS THE DUSKY STANDARDS; AND HE'S
21 COMPETENT TO STAND TRIAL.

22 MR. BAILEY: THAT'S ALL I HAVE AT THIS TIME,
23 YOUR HONOR.

24 THE COURT: ANYTHING ON RE-DIRECT, MR. THEOS?

25 MR. THEOS: NO, SIR, YOUR HONOR.

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 THE COURT: ALL RIGHT. STEP DOWN. NEXT
2 WITNESS.

3 MR. THEOS: YOUR HONOR, WE CALL DR. BEHRMANN.

4 THE COURT: COME AROUND, PLEASE, DR. BEHRMANN.

5 - - - - -

6 WHEREUPON,

7 THOMAS W. BEHRMANN, WHO AFTER BEING FIRST
8 DULY SWORN TO TELL THE TRUTH, TESTIFIED
9 AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. THEOS:

12 Q. DR. BEHRMANN, WHERE ARE YOU EMPLOYED?

13 A. I'M EMPLOYED AT THE WILLIAM S. HALL PSYCHIATRIC
14 INSTITUTE, IN THE FORENSIC DIVISION.

15 Q. HOW LONG HAVE YOU BEEN THERE?

16 A. SINCE 1993.

17 Q. ALL RIGHT. AND DO YOU HAVE A C.V. WITH YOU?

18 A. YES, I DO.

19 Q. COULD WE HAVE THAT? AND I ASSUME WITHOUT
20 OBJECTION?

21 MR. BAILEY: WITHOUT OBJECTION.

22 MR. THEOS: WE'D MOVE IT INTO EVIDENCE, YOUR
23 HONOR.

24 THE COURT: WITHOUT OBJECTION. THAT WILL BE
25 STATE'S NUMBER?

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 THE COURT REPORTER: DEFENDANT'S NUMBER SIX.

2 THE COURT: EXCUSE ME. I'LL LET YOU BE IN
3 CHARGE OF THOSE NUMBERS.

4 DEFENDANT'S EXHIBIT NO. 6

5 ADMITTED AS EVIDENCE

6 Q. WHAT DO YOU DO FOR THE HALL INSTITUTE?

7 A. I'M THE DIRECTOR OF THE FORENSIC DIVISION.

8 Q. AND DO YOU CONDUCT FORENSIC PSYCHOLOGICAL
9 EVALUATIONS?

10 A. AMONG OTHER THINGS. I HAVE ADMINISTRATIVE
11 RESPONSIBILITY FOR THE OPERATION OF THE PRE-TRIAL
12 FORENSIC UNIT WHICH INCLUDES DELIVERING CARE TO
13 PEOPLE WHO ARE INCARCERATED, ANY OF A NUMBER OF
14 SERIOUS FELONY LEVEL CHARGES WHO ARE INCARCERATED
15 IN NEED OF PSYCHIATRIC TREATMENT IN AN INPATIENT
16 FACILITY. AND I ALSO SUPERVISE OUR EVALUATION
17 OPERATION WHICH INCLUDES BOTH INPATIENT AND
18 OUTPATIENT EVALUATIONS.

19 Q. JUST A GENERAL APPROXIMATION; HOW MANY EVALUATIONS
20 SUCH AS THE ONE YOU PERFORMED ON MR. SIMMONS HAVE
21 YOU PERFORMED AT THE HALL INSTITUTE?

22 A. PERSONALLY?

23 Q. YES, SIR.

24 A. I WOULD SAY BETWEEN FIVE AND SIX HUNDRED.

25 Q. AND THAT'S BEEN OVER WHAT PERIOD OF TIME?

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 A. PRIMARILY SINCE 1991.

2 Q. AND I UNDERSTAND DR. VIDIC ASSISTED YOU IN YOUR
3 EVALUATION OF MR. SIMMONS?

4 A. THAT IS CORRECT; YES.

5 Q. YOU'VE BEEN QUALIFIED AS AN EXPERT IN THIS STATE?

6 A. YES, SIR.

7 Q. IN WHAT AREA OF EXPERTISE?

8 A. FORENSIC PSYCHIATRY.

9 MR. THEOS: YOUR HONOR, AT THIS TIME I'D OFFER
10 DR. BEHRMANN AS AN EXPERT IN THE FIELD OF
11 FORENSIC PSYCHIATRY.

12 MR. BAILEY: WITHOUT OBJECTION, YOUR HONOR.

13 THE COURT: WITHOUT OBJECTION. THANK YOU.

14 Q. DR. BEHRMANN, HOW MANY TIMES DID YOU SEE MR.
15 SIMMONS?

16 A. WE SAW HIM TWICE FOR THE PURPOSE OF FORENSIC
17 EVALUATION.

18 Q. AND THE FIRST EVALUATION WAS CONDUCTED ON DECEMBER
19 THE 23RD?

20 A. NOVEMBER THE 23RD.

21 Q. I'M SORRY; NOVEMBER THE 23RD?

22 A. YES, SIR.

23 Q. THEN THERE WAS SOME ADDITIONAL TESTING DONE ON
24 DECEMBER THE FIRST?

25 A. AROUND THAT TIME.

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 Q. AND THEN THE FINAL EVALUATION WAS CONDUCTED ON
2 JANUARY THE EIGHTH?

3 A. CORRECT.

4 Q. ALL RIGHT. YOUR REPORT HAS ALREADY BEEN MARKED AS
5 AN EXHIBIT. DO YOU HAVE A COPY OF THAT REPORT WITH
6 YOU?

7 A. YES.

8 Q. THIS REPORT WAS GENERATED AS A RESULT OF BOTH
9 EVALUATIONS; IS THAT CORRECT?

10 A. RIGHT. THIS IS THE RESULT OF BOTH PERIODS OF
11 EVALUATION.

12 Q. THE 23RD OF NOVEMBER OF '98, AND JANUARY THE 8TH OF
13 1999. WHAT WAS THE DIAGNOSIS OF MR. SIMMONS?

14 A. THE DIAGNOSIS THAT WE RENDERED ON THE REPORT WERE
15 AXIS (PHONETICALLY SPELLED) ONE, POLY-SUBSTANCE
16 DEPENDENCE; AXIS TWO, MENTAL RETARDATION COMMON
17 MILD, AND IN PARENTHESIS PROVISIONAL. WE ALSO
18 DIAGNOSED A COUPLE OF HIS MEDICAL CONDITIONS,
19 PEPTIC-ULCER DISEASE AND MIGRAINE HEADACHES.

20 Q. CAN YOU EXPLAIN, PLEASE, WITHOUT GOING INTO THE
21 PEPTIC ULCER AND THE MIGRAINE HEADACHES. IF WE
22 COULD FOCUS ON THE POLY-SUBSTANCE DEPENDENCE?

23 A. SURE.

24 Q. CAN YOU EXPLAIN WHAT THAT IS, PLEASE?

25 A. WELL, WE HAD A HISTORY BOTH FROM MR. SIMMONS

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 HIMSELF AND ALSO IN THE SOCIAL HISTORY OF A PATTERN
2 OF HEAVY AND CONTINUOUS USE OF SEVERAL SUBSTANCES,
3 PRIMARILY ALCOHOL, COCAINE, AND HEROIN THAT DATED
4 BACK REALLY TO HIS CHILDHOOD STARTING WITH
5 ALCOHOL. AND THE PATTERN OF HIS USAGE AND HIS
6 BEHAVIORS ASSOCIATED WITH THAT MET THE CRITERIA FOR
7 A DIAGNOSES OF POLY-SUBSTANCE DEPENDENCE.

8 Q. AND THE MENTAL RETARDATION DIAGNOSIS. CAN YOU
9 PLEASE EXPLAIN THAT DIAGNOSIS?

10 A. THIS WAS A RESULT OF THE PSYCHOLOGICAL TESTING
11 PERFORMED BY DR. VIDIC IN WHICH ON TWO OCCASIONS
12 MR. SIMMONS' FULL SCALE I.Q. HAD BEEN SCORED IN THE
13 HIGH SIXTIES, BETWEEN 65 AND 70. I THINK IT WAS 66
14 AND 69, BUT I'M NOT PRECISELY CERTAIN OF THE TWO
15 SCORES. AND SINCE WE HAD AN INDICATION OF MENTAL
16 RETARDATION, MAINLY THE I.Q. SCORES ON TESTING, BY
17 STATUTE WE ARE REQUIRED TO RECOGNIZE THAT AND ALSO
18 ASK FOR AN EVALUATION BY THE DEPARTMENT OF
19 DISABILITIES AND SPECIAL NEEDS.

20 Q. AND THAT IS ULTIMATELY WHAT PROMPTED THE EVALUATION
21 BY THAT DEPARTMENT, DRS. SANDLER AND MCABEE?

22 A. YES. WE STATED IN OUR REPORTS THAT IN OUR OPINION
23 MR. SIMMONS WOULD REQUIRE AN EVALUATION BY THE
24 DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS DUE TO
25 THE POSSIBILITY OF MILD MENTAL RETARDATION.

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 Q. WHAT WAS YOUR DIAGNOSIS OF MENTAL RETARDATION BASED
2 UPON?

3 A. THE I.Q. TEST.

4 Q. DID YOU CONSIDER ANY OTHER FACTORS IN DETERMINING
5 THAT DIAGNOSIS?

6 A. NOT REALLY. I THINK WE HAD HAD A DISCUSSION WITH
7 YOU ON THE FIRST SESSION WHERE WE SAW MR. SIMMONS
8 THAT THERE WERE SEVERAL FACTORS THAT WENT INTO THE
9 DIAGNOSIS OF MENTAL RETARDATION INCLUDING HIS LEVEL
10 OF ADAPTIVE FUNCTIONING. AND MY RECOLLECTION IS
11 THAT I HAD CONCERNS AS TO WHETHER OR NOT HE WOULD
12 MEET THAT CRITERIA FOR THE DIAGNOSIS OF MENTAL
13 RETARDATION.

14 Q. ALL RIGHT. SO THE TEST SCORES, ADAPTIVE
15 FUNCTIONING. ANY OTHER FACTORS THAT YOU
16 CONSIDERED?

17 A. NO. THAT WAS IT.

18 Q. WOULD THE SCHOOL RECORDS -- YOU HAD THE SCHOOL
19 RECORDS, I ASSUME?

20 A. THE SCHOOL RECORDS CAME SOMEWHAT LATER.

21 Q. PRIOR TO THE DIAGNOSE?

22 A. ACTUALLY, I DON'T KNOW. WE SUPPOSEDLY GOT A SET ON
23 JANUARY THE FOURTH. BUT TO MY RECOLLECTION I NEVER
24 SAW THOSE, AND ANOTHER SET WAS SENT. LET'S SEE IF
25 I CAN FIND THE DATE. (WITNESS REVIEWS RECORDS.)

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 THOSE WERE SENT TO ME ON THE FIFTEENTH; AND I GUESS
2 OF JANUARY. AND I THINK THIS ONE PRIOR TO -- FINAL
3 TYPE WAS ON THE 13TH. AND I REMEMBER THERE WAS A
4 RUSH TO GET THE REPORT OUT. SO IT WAS SIGNED ON
5 THE 13TH. SO I DID NOT CONSIDER THE SCHOOL RECORDS
6 IN THIS REPORT.

7 Q. YOU'VE ALREADY PROVIDED BOTH ME AND THE SOLICITOR'S
8 OFFICE WITH FULL COPIES OF THE STATE HOSPITAL'S
9 FILE INCLUDING DR. VIDIC'S PERSONAL FILE; CORRECT?

10 A. WELL, I DON'T HAVE DR. VIDIC'S PERSONAL FILE. THAT
11 WOULD BE UP TO HIM TO SUPPLY SEPARATELY. WE
12 REFERRED THE REQUEST FOR THE MEDICAL RECORD TO OUR
13 MEDICAL RECORDS DEPARTMENT. AND THEY ARE THE ONES
14 WHO CUSTOMARILY HANDLE THAT OPERATION. I DON'T DO
15 THAT PERSONALLY.

16 Q. NOW, THE NOVEMBER 23RD EVALUATION WAS ADJOURNED?

17 A. CORRECT.

18 Q. IT WAS NOT COMPLETED; IS THAT CORRECT?

19 A. THAT IS CORRECT.

20 Q. AND WHY WAS THAT?

21 A. FOR A COUPLE OF REASONS. ACTUALLY, THAT EVALUATION
22 WENT THROUGH, TO MY RECOLLECTION, WENT THROUGH
23 THREE DIFFERENT PHASES. THE FIRST PHASE WAS THE
24 ONE OF TRYING TO ASSESS MR. SIMMONS' UNDERSTANDING
25 OF HIS MIRANDA WARNINGS. AND IT WAS OUR OPINION AT

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 THAT TIME, BASED ON HIS RESPONSES TO OUR
2 QUESTIONING AND/OR ATTEMPTS TO TRY TO EDUCATE HIM
3 ABOUT THAT, THAT WE COULD NOT SAY DEFINITELY THAT
4 HE UNDERSTOOD THEM AND WERE CONCERNED THAT HE MAY
5 NOT. HOWEVER, BASED ON THE NATURE OF HIS
6 RESPONSES, THERE WAS ALSO CONCERN AS TO HOW SINCERE
7 HE WAS IN TERMS OF HIS RESPONSE TO THE
8 QUESTIONING. THIS WAS FURTHER RAISED IN MY MIND
9 BASED ON HIS RESPONSES TO THE INITIAL QUESTIONING
10 RELATED TO AREAS OF COMPETENCY. AND IT WAS AT THAT
11 POINT THAT I STOPPED THE EVALUATION AND CONFRONTED
12 HIM ABOUT THE FACT THAT HIS ANSWERS TO MY QUESTIONS
13 IN THAT SESSION WERE IN MARKED CONTRAST TO
14 INFORMATION THAT WAS DOCUMENTED IN THE CHART ABOUT
15 HIS PERFORMANCE IN COMPETENCY GROUP WHERE IT WAS
16 CLEARLY DOCUMENTED THAT HE KNEW THE INFORMATION BUT
17 NOW FOR SOME REASON WAS UNABLE TO PRODUCE THAT
18 INFORMATION IN THE EVALUATION SETTING. AFTER THAT
19 HIATUS, WE CONTINUED ON WITH THE QUESTIONING ABOUT
20 COMPETENCY ISSUES AT WHICH TIME MR. SIMMONS'
21 PERFORMANCE WAS MUCH IMPROVED. AND THAT REALLY
22 WENT ON UNTIL NEARLY THE END OF THE COMPETENCY
23 PHASE WHEN HE BEGAN TO DEMONSTRATE SOME
24 DIFFICULTIES WITH CONCENTRATION, STAYING ON TASK
25 WITH QUESTIONING. AND BECAUSE OF THE FACT THAT WE

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 HAD NOT SATISFACTORILY CLEARED HIM ON HIS MIRANDA
2 QUESTIONING, AND BECAUSE OF THE FACT THAT HE WAS
3 NOW DEMONSTRATING THIS OTHER APPARENT DIFFICULTY
4 WITH HIS SPOT, AND ALSO BECAUSE OF THE QUESTION OF
5 MALINGERING, AT THAT POINT WE HAD A DISCUSSION
6 WHICH I THINK GOT A LITTLE BIT HEATED AT ONE POINT
7 ABOUT WHETHER OR NOT MALINGERING MAY HAVE IN FACT
8 BEEN OCCURRING. AND WE ALL DECIDED THAT PROBABLY
9 THE MOST ADVANTAGEOUS WAY TO PROCEED FROM THAT
10 POINT WAS TO PROCEED WITH SOME ADDITIONAL
11 PSYCHOLOGICAL TESTING TO TRY TO ADDRESS THAT ISSUE.

12 Q. AND THAT IS INDEED WHAT HAPPENED ON DECEMBER THE
13 FIRST?

14 A. CORRECT; RIGHT.

15 Q. SO THE ADDITIONAL TESTING WAS CONDUCTED IN ORDER TO
16 DETERMINE WHETHER OR NOT MR. SIMMONS WAS
17 MALINGERING?

18 A. WELL, TO GET MORE DATA ABOUT IT.

19 Q. AND THERE WAS ANOTHER I.Q. TEST THAT WAS CONDUCTED
20 IN ORDER TO VERIFY THE I.Q. SCORE THAT YOU HAD BEEN
21 PROVIDED BY ME?

22 A. CORRECT.

23 Q. AND DR. VIDIC; IS THAT RIGHT?

24 A. RIGHT. THAT'S WHAT I RECALL; YES.

25 Q. WHAT WERE THE RESULTS OF THE TEST RELATED TO THE

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 ISSUE OF MALINGERING?

2 A. I DON'T HAVE THOSE IN FRONT OF ME, BUT DR. VIDIC
3 COULD PROBABLY SPEAK TO THOSE MORE SPECIFICALLY.

4 Q. IT'S ADDRESSED, IS IT NOT, IN YOUR REPORT ON PAGE
5 TWO? THE SECOND FULL SENTENCE? (WITNESS EXAMINES
6 RECORDS.)

7 A. RIGHT. WE SAID THERE THAT IT WAS ALSO FELT THAT
8 GIVEN HIS PRESENTATION THAT ADDITIONAL
9 PSYCHOLOGICAL TESTING WOULD BE REQUIRED TO FURTHER
10 CLARIFY HIS MENTAL STATUS. IT WAS AGREED AT THAT
11 TIME THAT THE PATIENT WOULD BE SEEN SUBSEQUENTLY TO
12 COMPLETE THE EVALUATION.

13 Q. ALL RIGHT. AND IF YOU WOULD READ THE NEXT
14 SENTENCE? IN ADDITION THE PATIENT WAS---

15 A. THE PATIENT SUBSEQUENTLY UNDERWENT AN ADDITIONAL
16 PSYCHOLOGICAL TESTING WHICH CONFIRMED PRIOR
17 PSYCHOLOGICAL TESTING OF FULL SCALE I.Q. SCORES IN
18 THE RANGE OF MILD MENTAL RETARDATION.

19 Q. ALL RIGHT.

20 A. IN ADDITION, THE PATIENT WAS ASSESSED ON
21 MALINGERING, AND BASED ON THAT TESTING IT WAS FELT
22 THAT THE PATIENT'S PRESENTATION DID NOT REPRESENT A
23 MALINGERED PRESENTATION OF MENTAL ILLNESS OR
24 DEFECT.

25 Q. SO AT THAT TIME WHAT WAS YOUR CONCLUSION BASED UPON

1 THE ADDITIONAL TESTING RELATED TO THE ISSUE OF
2 MALINGERING?

3 A. MY CONCLUSION AT THAT TIME WAS THAT DURING THOSE
4 TESTS THAT HE DID NOT SHOW ANY EVIDENCE OF
5 MALINGERING.

6 Q. WHAT WAS YOUR CONCLUSION AT THAT TIME RELATED TO
7 THE ISSUE OF MENTAL RETARDATION?

8 A. I FELT THAT THERE WAS AT LEAST THE POSSIBLY THAT
9 MENTAL RETARDATION WAS PRESENT IN HIS CASE BASED ON
10 THE TWO INDEPENDENT TESTS. IN OTHER WORDS, THE
11 TESTS BY DR. SANDLER AND THE TEST BY DR. VIDIC,
12 BOTH FAILING IN THE UPPER SIXTIES RANGE. AND THAT
13 WAS WHY WE FELT THAT A REFERRAL TO D.D.S.N. WAS IN
14 ORDER TO FURTHER ADDRESS THAT ISSUE.

15 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
16 SCIENTIFIC CERTAINTY BASED UPON YOUR EDUCATION,
17 YOUR TRAINING, AND YOUR EXPERIENCE AS TO WHETHER
18 MR. SIMMONS AT THE TIME THAT YOU EVALUATED HIM --
19 LET ME QUALIFY; AT THE TIME THAT YOU EVALUATED HIM.

20 A. SURE.

21 Q. HAD A RATIONALE, AS WELL AS A FACTUAL
22 UNDERSTANDING, OF THE PROCEEDINGS AGAINST HIM?

23 A. IN MY OPINION HE DOES; YES.

24 Q. IN THE INITIAL INTERVIEW OF THE 23RD OF NOVEMBER,
25 DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 SCIENTIFIC CERTAINTY AS OF WHETHER OR NOT MR.
2 SIMMONS WAS ABLE TO CONSULT WITH MR. BELL OR
3 MYSELF, HIS ATTORNEYS, WITH A REASONABLE DEGREE OF
4 RATIONAL UNDERSTANDING?

5 A. AT THE TIME OF THE FIRST EVALUATION?

6 Q. YES, SIR.

7 A. YES. IN MY OPINION HE DID.

8 Q. AT THE TIME OF YOUR FIRST EVALUATION ON NOVEMBER
9 THE 23RD, DO YOU HAVE AN OPINION AS TO WHETHER OR
10 NOT MR. SIMMONS WAS COMPETENT AT THAT TIME TO STAND
11 TRIAL?

12 A. I HAD NO OPINION AT THAT TIME.

13 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
14 SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT MR.
15 SIMMONS UNDERSTOOD IN YOUR FIRST EVALUATION HIS
16 RIGHT TO REMAIN SILENT?

17 A. ONCE AGAIN I HAD NO OPINION AT THAT TIME BECAUSE OF
18 THE QUESTION OF MALINGERING.

19 Q. I'M SORRY. I JUST DIDN'T HEAR YOU.

20 A. BECAUSE OF THE QUESTION OF MALINGERING AT THAT
21 SESSION, I HAD NO OPINION AS TO WHETHER OR NOT HE
22 TRULY UNDERSTOOD THAT ISSUE OR NOT.

23 Q. ACCORDING TO MR. SIMMONS' RESPONSES DID HE
24 UNDERSTAND?

25 A. HIS RESPONSES WERE THAT HE DID NOT. BUT I DID NOT

1 KNOW IN MY OWN MIND HOW RELIABLE THOSE RESPONSES
2 WERE.

3 Q. DID YOU ASK MR. SIMMONS -- YOU READ THE MIRANDA
4 FORM TO HIM; IS THAT CORRECT

5 A. YES; SURE.

6 Q. WAS MR. SIMMONS ASKED TO SIGN THAT MIRANDA FORM?

7 A. NO.

8 Q. WHY IS IT THAT HE WAS NOT ASKED TO SIGN THAT FORM?

9 A. BECAUSE I DID NOT THINK THAT WE HAD SATISFACTORILY
10 ANSWERED THE QUESTION OF WHETHER OR NOT HE COULD
11 ADEQUATELY WAIVE HIS MIRANDA RIGHTS FOR THE PURPOSE
12 OF THE EVALUATION.

13 Q. OKAY.

14 A. IF I FELT THAT HE COULD, I WOULD HAVE ASKED HIM TO
15 SIGN THE FORM. IF I WASN'T SURE, IF I FELT THAT HE
16 COULDN'T, THEN I WOULD NOT HAVE ASKED HIM TO SIGN
17 THE FORM.

18 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
19 SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT MR.
20 SIMMONS UNDERSTOOD THE CONCEPT OF HIS RIGHT TO
21 REMAIN SILENT IN THE JANUARY THE EIGHTH EVALUATION?

22 A. YES, SIR.

23 Q. AND WHAT IS THAT OPINION?

24 A. YES.

25 Q. WHAT WAS THAT BASED UPON?

- 1 A. WELL, ACTUALLY IT WAS BASED UPON THE FACT THAT HE
2 HAD SHOWN A PATTERN OF BEING VERY GUARDED IN HIS
3 RESPONSES. HE HAD, DURING THE COURSE OF
4 PSYCHOLOGICAL TESTING, EXERCISED HIS RIGHT TO NOT
5 PARTICIPATE IN THAT TESTING UNTIL HE HAD CONSULTED
6 WITH YOU. IN QUESTIONING BY VARIOUS STAFF ON THE
7 WARD, HE HAD EXERCISED HIS RIGHT TO NOT DISCUSS
8 LEGAL ISSUES WAS THEM. SO IT WAS CLEAR TO ME,
9 BASED ON HIS PERFORMANCE ON THE WARD, THAT HE IN
10 FACT DID UNDERSTAND HIS RIGHT TO REMAIN SILENT.
- 11 Q. IN THE EVALUATION OF JANUARY THE EIGHTH OF '99;
12 CORRECT? IN THAT SECOND EVALUATION?
- 13 A. THE SECOND EVALUATION IT WAS MY OPINION THAT HE DID
14 UNDERSTAND THAT.
- 15 Q. YOU MENTIONED COMPETENCY GROUPS A SECOND AGO, AND
16 YOU SAID THAT THERE WERE SOME THINGS THAT YOU
17 LEARNED RELATED TO THOSE COMPETENCY GROUPS. CAN
18 YOU TELL US WHAT THINGS YOU LEARNED ABOUT MR.
19 SIMMONS IN THOSE COMPETENCY GROUPS?
- 20 A. WELL, THE COMPETENCY GROUPS ARE GROUPS THAT ARE
21 EDUCATIONAL IN NATURE. IN OTHER WORDS, A HANDBOOK
22 IS SUPPLIED TO THE PATIENT WHEN THEY ARE ENROLLED
23 IN THE COMPETENCY GROUP THAT TALKS ABOUT
24 COURT-RELATED ISSUES, OR ISSUES RELATED TO
25 COMPETENCY, REALLY, IN FAIRLY BASIC LANGUAGE. I

1 THINK THE READING LEVEL OF THE HANDBOOK IS PROBABLY
2 WRITTEN AT ABOUT THE FOURTH GRADE LEVEL WHICH IS
3 ABOUT THE SAME LEVEL THAT THE MIRANDA RIGHTS FORM
4 IS WRITTEN AT AS WELL. THAT IS SUPPLIED TO THE
5 PATIENT. AND THEN THE GROUPS ADDRESS VARIOUS
6 ASPECTS OF COMPETENCY IN THEIR MEETINGS. THEY
7 MIGHT TALK ABOUT THE ROLES OF VARIOUS COURT
8 PERSONNEL OR THEIR UNDERSTANDING OF AVAILABLE
9 PLEAS, SENTENCING, DIFFERENT ASPECTS OF COMPETENCY
10 AT DIFFERENT SESSIONS.

11 Q. THE REASON I ASKED THE QUESTION IS YOU MENTIONED
12 EARLIER THAT THERE WERE SOME THINGS THAT YOU FOUND
13 THAT CAME OUT OF THESE COMPETENCY GROUPS THAT
14 CONCERNED YOU IN THE EVALUATION. AND I JUST WANT
15 TO KNOW WHAT THOSE THINGS WERE AND HOW THEY
16 FACTORED INTO YOUR EVALUATION.

17 A. WELL, IT WAS JUST THE NOTES THAT WERE MADE ABOUT
18 COMPETENCY GROUP---

19 Q. CAN YOU TELL US SPECIFICALLY WHAT THOSE -- WHICH
20 ENTRIES CONCERNED YOU. (WITNESS REVIEWS RECORDS.)

21 A. EVIDENTLY IT WAS NOT NOTES FROM THE COMPETENCY
22 GROUP AT THE TIME OF THE FIRST EVALUATION BUT
23 RATHER NOTES MADE BY THE NURSING STAFF. FOR
24 INSTANCE ON THE 19TH HE WAS ABLE TO STATE CORRECTLY
25 THE ROLE OF THE DEFENSE LAWYER.

THOMAS BEHRMANN - DIRECT/MR. THEOS

- 1 Q. THE NINETEENTH OF?
- 2 A. NOVEMBER.
- 3 Q. LET ME ASK YOU THIS: WERE THERE ANY REFERENCES IN
- 4 THOSE NOTES RELATED TO HIS ABILITY TO UNDERSTAND
- 5 HIS MIRANDA WARNINGS?
- 6 A. NOT SPECIFICALLY TO MY RECOLLECTION, NO.
- 7 Q. IF YOU'LL LOOK AT 11/24/98.
- 8 A. AT 11/24; OKAY.
- 9 Q. 11/24 AT 9:30 A.M.
- 10 A. YES, SIR.
- 11 Q. I'M NOT GOING TO READ THE WHOLE THING TODAY.
- 12 A. THAT'S OKAY. LET ME FIND IT.
- 13 Q. THE THIRD LINE DOWN AT THE END OF THE THIRD LINE?
- 14 A. I'VE GOT IT HERE. OKAY.
- 15 Q. DOESN'T IT INDICATE THE PATIENT APPEARED TO HAVE
- 16 SOME DIFFICULTY UNDERSTANDING HIS MIRANDA RIGHTS?
- 17 A. THIS WAS 11/24?
- 18 Q. YES, SIR. (WITNESS CONTINUES TO REVIEW RECORDS.) I
- 19 CAN SHOW YOU MY COPY.
- 20 A. PLEASE DO. I'M HAVING DIFFICULTY IDENTIFYING IT.
- 21 Q. IT DOES SAY THAT?
- 22 A. YES. THAT'S A TREATMENT PLAN UPDATE NOTE.
- 23 Q. AND IT'S TITLED "TREATMENT PLANNING NOTES?"
- 24 A. RIGHT. I WAS LOOKING IN A DIFFERENT SECTION;
- 25 THAT'S WHY I COULDN'T FIND IT.

- 1 Q. I'M SORRY. AND ON 12/01/98. DOES IT NOT ALSO
2 STATE THAT -- I'LL LET YOU LOOK ALONG WITH ME. THE
3 THIRD LINE DOWN; THAT MR. SIMMONS HAD SOME
4 DIFFICULTY UNDERSTANDING HIS MIRANDA RIGHTS?
5 A. CORRECT.
6 Q. ON 12/08/98, THE NEXT PAGE; MR. SIMMONS UNDERSTANDS
7 THE BASIC ROLES OF COURT OFFICERS BUT DOES NOT SEEM
8 TO CURRENTLY GRASP MORE COMPLICATED ISSUES?
9 A. RIGHT.
10 Q. DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF
11 SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT MR.
12 SIMMONS UNDERSTOOD THAT ANY STATEMENTS MADE BY HIM
13 COULD BE USED AGAINST HIM AS EVIDENCE IN A COURT OF
14 LAW?
15 A. I BELIEVE HE DID. YES.
16 Q. ON WHICH DAY, THE 23RD OR THE---
17 A. ACTUALLY ON BOTH DATES BECAUSE HE WAS VERY GUARDED
18 ON BOTH OCCASIONS IN TERMS OF HIS RESPONSES. HE
19 WAS MORE FORTHCOMING ON THE SECOND OCCASION THAN ON
20 THE FIRST. BUT ON THE FIRST HE WAS CLEARLY VERY
21 GUARDED ABOUT GIVING INFORMATION OUT. AND I THINK
22 THAT IT WAS NOT REALLY UNTIL AFTER HE WAS
23 CONFRONTED ABOUT THAT ISSUE AND ABOUT THE NATURE OF
24 THE INFORMATION HE WAS GIVING OUT, THAT HE BECAME
25 MORE COMPLIANT OR MORE RESPONSIVE TO THE

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 QUESTIONING. SO I THINK THAT BASED ON THAT, THAT
2 HE RECOGNIZED THAT WHAT HE TOLD US WAS POTENTIALLY
3 HARMFUL TO HIM. ALSO BASED ON THE FACT THAT HE
4 DEFERRED ON DOING PSYCHOLOGICAL TESTING UNTIL HE
5 TALKED TO YOU.

6 Q. WAS MR. SIMMONS ABLE TO READ HIS MIRANDA RIGHTS?

7 A. I THINK I READ THEM TO HIM ON BOTH OCCASIONS.

8 Q. DO YOU HAVE AN OPINION AT THE PRESENT TIME AS TO
9 WHETHER OR NOT MR. SIMMONS IS CAPABLE OF MAKING A
10 KNOWING AND INTELLIGENT WAIVER OF HIS RIGHTS TO A
11 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY?

12 A. AS OF JANUARY THE EIGHTH WHICH WAS THE LAST TIME
13 THAT I EVALUATED HIM, I FELT THAT HE HAD THE
14 ABILITY TO MAKE A KNOWING -- I'M SORRY; I FORGOT
15 THE END OF YOUR QUESTION.

16 Q. A KNOWING AND INTELLIGENT WAIVER OF HIS RIGHTS?

17 A. OF HIS RIGHTS; YES.

18 Q. AND WITH RESPECT TO NOVEMBER THE 23RD?

19 A. I ONCE AGAIN HAD NO OPINION ABOUT THAT. I WAS
20 CONCERNED AS TO WHETHER HE DID OR NOT, BUT I DIDN'T
21 FEEL THE QUESTION COULD BE ASKED AT THAT TIME.

22 Q. DO YOU HAVE AN OPINION AS TO WHETHER OR NOT MR.
23 SIMMONS MADE A KNOWING AND INTELLIGENT WAIVER OF
24 HIS MIRANDA RIGHTS IN DECEMBER OF 1997?

25 A. WELL, NOT HAVING BEEN THERE, THAT'S DIFFICULT TO

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 GIVE ANY SORT OF SIGNIFICANT OPINION ABOUT THAT.
2 BUT WHAT I WOULD SAY IS THAT I'M NOT AWARE, BASED
3 ON MY EVALUATION OF ANY MENTAL ILLNESS OR DEFECT
4 THAT WOULD HAVE PREVENTED HIM FROM WAIVING HIS
5 RIGHTS ON THAT DATE. NOW, THERE MAY HAVE BEEN SOME
6 OTHER FACTOR GOING ON. BUT IN TERMS OF A MENTAL
7 ILLNESS OR DEFECT, I'M NOT AWARE OF ANY THAT WAS
8 OPERATING AT THAT TIME THAT WOULD HAVE PREVENTED
9 HIM FROM MAKING A KNOWING WAIVER OF HIS RIGHTS IN
10 DECEMBER OF '97.

11 Q. AND YOU SAY IN TERMS OF MENTAL ILLNESS OR DEFECT.
12 WHAT ABOUT IN TERMS OF POLY-SUBSTANCE ABUSE AND
13 MENTAL RETARDATION WHICH YOU DIAGNOSED?

14 MR. BAILEY: OBJECTION. HE DIDN'T SAY HE
15 DIAGNOSED MENTAL RETARDATION. HE SAID HE
16 COULDN'T DIAGNOSE IT.

17 THE COURT: REPHRASE THE QUESTION, PLEASE.

18 MR. THEOS: THAT'S MY MISTAKE, YOUR HONOR. I
19 UNDERSTOOD THAT THERE WAS A DIAGNOSIS.

20 Q. LET'S MAKE THAT CLEAR. IS THERE A DIAGNOSIS?

21 A. THERE IS A PROVISIONAL DIAGNOSIS OF MENTAL
22 RETARDATION. IN OTHER WORDS, I HAVE MADE THAT
23 DIAGNOSIS ACKNOWLEDGING HIS I.Q. SCORES BUT HAVE
24 NOT RENDERED THAT AS A FIRM DIAGNOSIS. A
25 PROVISIONAL DIAGNOSIS IS NOT A FIRM DIAGNOSIS IN

THOMAS BEHRMANN - DIRECT/MR. THEOS

1 OTHER WORDS. IT'S ONE THAT IS MADE BASED ON
2 CERTAIN FINDINGS. BUT THERE ARE NOT ENOUGH
3 FINDINGS TO MAKE IT WITH CERTAINTY.

4 Q. BUT THERE WERE ENOUGH FINDINGS TO MAKE THE
5 POLY-SUBSTANCE DEPENDENCE DIAGNOSIS?

6 A. OH, YES; SURE.

7 Q. AND IF YOU FACTOR THOSE TWO THINGS IN; YOU SAID IN
8 TERMS OF HIS OTHER TWO, MENTAL ILLNESS OR DEFECT;
9 THE ANSWER WAS NO. BUT IF YOU FACTOR IN THESE TWO,
10 THE DIAGNOSIS OF POLY-SUBSTANCE DEPENDENCE IN THE
11 MENTAL RETARDATION DIAGNOSIS, ALBEIT PROVISIONAL?

12 A. WELL, ONCE AGAIN, I HAVE NO INFORMATION THAT THERE
13 WAS ANYTHING ABOUT HIS POLY-SUBSTANCE DEPENDENCE ON
14 THAT DATE THAT WOULD HAVE PREVENTED HIM FROM DOING
15 THAT. THERE'S NO EVIDENCE THAT I HAVE THAT HE WAS
16 EITHER INTOXICATED OR IN A STATE OF WITHDRAWAL
17 DURING THAT PERIOD OF TIME EITHER FROM THE PATIENT
18 OR FROM ANY OTHER SOURCE. SO IF THAT'S THE CASE,
19 THEN POLY-SUBSTANCE DEPENDENCE DOESN'T ENTER INTO
20 THE PICTURE. AS FAR AS MENTAL RETARDATION GOES,
21 FRANKLY EVEN IF HE WERE MENTALLY RETARDED, AT HIS
22 INTELLECTUAL LEVEL, THE VAST MAJORITY OF PEOPLE
23 THAT WE SEE WHO FUNCTION AT THAT INTELLECTUAL
24 LEVEL, ARE IN FACT ABLE TO COMPETENTLY WAIVE THEIR
25 MIRANDA RIGHTS BASED ON MY PERSONAL EXPERIENCE IN

THOMAS BEHRMANN - CROSS/MR. BAILEY

1 500 INTERVIEWS.

2 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

3 MR. BAILEY: VERY BRIEFLY IF I MIGHT.

4 THE COURT: EXCUSE ME?

5 MR. BAILEY: I HAVE A FEW VERY BRIEF
6 QUESTIONS, YOUR HONOR.

7 THE COURT: SURE.

8 CROSS-EXAMINATION

9 BY MR. BAILEY:

10 Q. DR. BEHRMANN, WAS THERE ANY REFERENCE TO YOU BY
11 ANYONE THAT MR. SIMMONS COULD NOT READ AND WRITE
12 WHEN YOU CONDUCTED YOUR EVALUATION?

13 A. I ASKED MR. SIMMONS IF HE COULD READ, AND HE SAID
14 THAT HE HAD DIFFICULTY READING. AND IN THAT
15 SITUATION, I NORMALLY WILL READ THE RIGHTS AND ASK
16 THE PATIENT TO FOLLOW ALONG WITH ME.

17 Q. ALL RIGHT, SIR. NOW IN REGARD TO THE PROTOCOL AT
18 YOUR AGENCY WHEN YOU, BASED ON AN I.Q. SCORE, GET A
19 PROVISIONAL DIAGNOSIS OF MENTAL RETARDATION; UNDER
20 THE STATUTE CAN YOU GO FURTHER WITH IT, OR DOES
21 THAT HAVE TO GO TO THE DEPARTMENT OF DISABILITIES
22 AND SPECIAL NEEDS?

23 A. IT DEPENDS. IF WE GIVE AN AXIS ONE DIAGNOSIS, THEN
24 WE CAN RENDER AN OPINION. IF THERE'S NO AXIS ONE
25 DIAGNOSIS TO BE RENDERED, THEN WE ARE PROHIBITED BY

THOMAS BEHRMANN - CROSS/MR. BAILEY

1 STATUTE FROM RENDERING AN OPINION, AND ALL OPINIONS
2 WOULD NECESSARILY NEED TO COME FROM D.D.S.N. IF IN
3 FACT THEY'VE CONCLUDED THAT THE PERSON WAS IN FACT
4 MENTALLY RETARDED.

5 Q. ALL RIGHT, SIR. AND THE PROVISIONAL, AFTER THIS
6 MENTAL RETARDATION MILD; AGAIN, WHAT DOES THAT
7 MEAN?

8 A. THAT MEANS IT WAS NOT A DIAGNOSIS MADE WITH
9 CERTAINTY.

10 Q. ALL RIGHT, SIR. AND IN ORDER TO DIAGNOSE MENTAL
11 RETARDATION, DO YOU AGREE THAT YOU HAVE TO LOOK AT
12 THE ONSET DATE AND ADAPTIVE FUNCTIONING AS WELL AS
13 YOUR I.Q. TEST SCORES?

14 A. WELL, THOSE ARE THE GUIDELINES THAT WE OPERATE
15 UNDER IN A D.S.N.4.

16 Q. ALL RIGHT. AND IN MAKING A PROVISIONAL DIAGNOSIS,
17 AS I UNDERSTAND YOUR TESTIMONY, YOU BASE THAT
18 STRICTLY ON THE TEST SCORE?

19 A. YES. THAT WAS THE MEANING OF PUTTING THE WORD
20 "PROVISIONAL" AFTER THE DIAGNOSIS ON THAT REPORT.

21 Q. THANK YOU, SIR. AND YOU FOUND, OTHER THAN THE
22 POLY-SUBSTANCE DEPENDENCE, YOU FOUND NO MENTAL
23 DISORDER THAT WOULD HAVE IMPACTED ON MR. SIMMONS'
24 ABILITY TO COMPREHEND MIRANDA RIGHTS AT ANY ONE
25 TIME?

THOMAS BEHRMANN - CROSS/MR. BAILEY

1 A. WE FOUND NO EVIDENCE OF ANY OTHER SIGNIFICANT
2 PHYSICAL DISORDER OR MENTAL DISORDER THAT WE HAD
3 ANY EVIDENCE WAS ACTIVE AT THAT TIME WHICH WOULD
4 HAVE IMPACTED UPON HIS ABILITY TO UNDERSTAND HIS
5 MIRANDA RIGHTS. ARE WE TALKING ABOUT DECEMBER OF
6 '97?

7 Q. YES, SIR?

8 A. YEAH; AT THAT TIME.

9 Q. THANK YOU, SIR.

10 MR. BAILEY: THAT'S ALL I HAVE.

11 THE COURT: ANYTHING ON RE-DIRECT?

12 MR. THEOS: NO, SIR.

13 THE COURT: THANK YOU, SIR. YOU MAY STEP
14 DOWN. NEXT WITNESS, PLEASE.

15 MR. THEOS: YOUR HONOR, CAN I HAVE ONE SECOND
16 WITH MR. BELL, PLEASE?

17 THE COURT: YES, SIR.

18 MR. THEOS: YOUR HONOR, WE WOULD CALL DR.
19 VIDIC.

20 THE COURT: DR. VIDIC, COME AROUND, PLEASE.

21 - - - - -

22 WHEREUPON,

23 JEFFREY JON VIDIC, WHO AFTER BEING FIRST
24 DULY SWORN TO TELL THE TRUTH, TESTIFIED
25 AS FOLLOWS:

JEFFREY VIDIC - DIRECT/MR. THEOS

DIRECT EXAMINATION

BY MR. THEOS:

Q. DR. VIDIC, WHERE ARE YOU EMPLOYED?

A. I'M EMPLOYED AT THE WILLIAM S. HALL PSYCHIATRIC INSTITUTE.

Q. HOW LONG HAVE YOU BEEN THERE?

A. I'VE BEEN THERE FOR A LITTLE OVER FIVE YEARS. I STARTED IN DECEMBER OF 1993.

Q. AND IN WHAT CAPACITY DO YOU WORK?

A. I AM A LICENSED CLINICAL PSYCHOLOGIST, AND I WORK AS A PSYCHOLOGIST.

Q. DOES THAT ENTAIL COMPETENCY EVALUATIONS?

A. YES, IT DOES.

Q. HOW MANY EVALUATIONS HAVE YOU PERFORMED IN YOUR FIVE YEARS?

A. I WOULD ESTIMATE THAT IN THE TIME I'VE BEEN THERE, I'VE PROBABLY PARTICIPATED IN 500 TO 600 COMPETENCY EVALUATIONS.

Q. DO YOU NORMALLY DO THEM WITH SOMEBODY ELSE?

A. NORMALLY; YES.

Q. IS DR. BEHRMANN THE PERSON YOU NORMALLY DO THEM WITH?

A. IT'S BEEN DR. BEHRMANN. IT COULD BE OTHER PHYSICIANS THAT ARE THERE AS WELL.

Q. DID YOU BRING US A C.V. WITH YOU?

JEFFREY VIDIC - DIRECT/MR. THEOS

1 A. NO, I DID NOT.

2 Q. HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT IN
3 THE STATE OF SOUTH CAROLINA IN THE FIELD OF
4 FORENSIC PSYCHOLOGY?

5 A. YES, SIR.

6 Q. HOW MANY TIMES?

7 A. APPROXIMATELY TWELVE TO FIFTEEN TIMES.

8 Q. THAT WOULD BE OVER THE COURSE OF THE LAST FIVE
9 YEARS?

10 A. YES.

11 MR. THEOS: YOUR HONOR, AT THIS TIME I WOULD
12 OFF MR. VIDIC, DR. VIDIC, AS AN EXPERT IN THAT
13 FIELD.

14 MR. BAILEY: WITHOUT OBJECTION, YOUR HONOR.

15 THE COURT: IN THE FIELD OF CLINICAL
16 PSYCHOLOGY?

17 MR. THEOS: IN THE FIELD OF, I BELIEVE HE
18 STATED, FORENSIC PSYCHOLOGY?

19 DR. VIDIC: YES, SIR. I'M NOT BOARD CERTIFIED
20 IN FORENSIC PSYCHOLOGY, BUT I HAVE RECEIVED
21 TRAINING IN THAT AREA AS PART OF MY INTERNSHIP
22 WHEN I WAS AT HALL INSTITUTE IN 1986 UNDER
23 DOCTOR MCKEE. AND THEN I WAS---

24 THE COURT: NO PROBLEM. THE FACT THAT YOU'RE
25 NOT BOARD CERTIFIED DOESN'T MAKE YOU LESS OF

1 AN EXPERT. I UNDERSTAND.

2 Q. WHEN YOU WERE PREVIOUSLY QUALIFIED THESE OTHER
3 TWELVE TIMES, WAS IT IN THE FIELD OF FORENSIC
4 PSYCHOLOGY OR CLINICAL PSYCHOLOGY?

5 A. IT WAS IN THE FIELD OF FORENSIC PSYCHOLOGY.

6 Q. OKAY. DO YOU HAVE AN OPINION TO A REASONABLE
7 DEGREE OF SCIENTIFIC CERTAINTY AS TO WHETHER OR NOT
8 MR. SIMMONS UNDERSTOOD HIS MIRANDA RIGHTS ON
9 NOVEMBER THE -- AS TO WHETHER OR NOT MR. SIMMONS
10 UNDERSTOOD HIS RIGHT TO REMAIN SILENT ON NOVEMBER
11 THE 23RD '98?

12 A. I DON'T HAVE AN OPINION ABOUT THAT ON NOVEMBER THE
13 23RD.

14 Q. WHY IS THAT?

15 A. BECAUSE OF THE NATURE OF HIS ANSWERS AND THE FACT
16 THAT I SUSPECTED THAT THERE MIGHT BE A COMPONENT OF
17 MALINGERING AND OTHER THINGS THAT WERE GOING ON AT
18 THAT TIME. I CHOSE NOT TO FORMULATE AN OPINION AT
19 THAT TIME AND TO GATHER MORE INFORMATION.

20 Q. WHEN QUESTIONED REGARDING HIS RIGHT TO REMAIN
21 SILENT, WHAT WERE MR. SIMMONS' RESPONSES?

22 A. I WOULD HAVE TO GET MY NOTES. WE'RE SPECIFICALLY
23 TALKING ABOUT THE 23RD?

24 Q. YES, SIR; NOVEMBER THE 23RD.

25 A. YES, SIR. (WITNESS REVIEWS NOTES.) AT THAT TIME

JEFFREY VIDIC - DIRECT/MR. THEOS

1 WE ASKED HIM IF HE COULD READ, AND HE SAID NO, THAT
2 HE HAD TROUBLE READING. SO HIS MIRANDA RIGHTS WERE
3 READ TO HIM. WHEN WE ASKED HIM "YOU HAVE THE RIGHT
4 TO REMAIN SILENT; WHAT DOES THAT MEAN?" HE SAID,
5 "BE QUIET." AND WE ASKED HIM "DO YOU HAVE TO
6 ANSWER IF YOU DON'T WANT TO?" AND HIS RESPONSE WAS
7 "I GUESS SO."

8 Q. DID HE EVER RESPOND AFFIRMATIVELY THAT HE
9 UNDERSTOOD THAT HE HAD A RIGHT NOT TO ANSWER
10 QUESTIONS?

11 A. NOT DURING THAT FIRST EVALUATION; NO, SIR.

12 Q. IS THAT WHY HE WAS NOT ASKED TO SIGN THE MIRANDA
13 FORM?

14 A. THAT'S CORRECT.

15 Q. NOW DO YOU HAVE AN OPINION, BASED UPON A REASONABLE
16 DEGREE OF SCIENTIFIC CERTAINTY, AS TO WHETHER OR
17 NOT MR. SIMMONS UNDERSTOOD HIS RIGHT TO REMAIN
18 SILENT ON THE JANUARY EIGHTH EVALUATION DATE?

19 A. YES, SIR, I DO.

20 Q. WHAT IS THAT OPINION?

21 A. MY OPINION TO A REASONABLE DEGREE OF SCIENTIFIC
22 CERTAINTY IS HE DID UNDERSTAND HIS RIGHT TO REMAIN
23 SILENT ON JANUARY THE EIGHTH.

24 Q. AND WHAT IS THAT BASED UPON?

25 A. THAT'S BASED UPON SEVERAL THINGS. THE

JEFFREY VIDIC - DIRECT/MR. THEOS

1 PSYCHOLOGICAL TESTING THAT WE DID WITH HIM WHICH
2 INDICATED HIS I.Q. WAS IN THE HIGH ENDS OF THE
3 INTELLECTUALLY DEFICIENT RANGE. WE ALSO DID
4 SOME---

5 Q. LET ME STOP YOU RIGHT THERE. WHAT'S THAT I.Q.?

6 A. I BELIEVE IT WAS AN I.Q. OF 69. I NEED TO LOOK AT
7 THE -- HE HAD AN OVERALL FULL SCALE I.Q. ON THE
8 WAIS-3 OF 66, A VERBAL OF 65, AND A PERFORMANCE OF
9 74.

10 Q. HOW DID YOU ARRIVE AT THAT CONCLUSION BASED UPON
11 THAT I.Q. SCORE?

12 A. IN MY EXPERIENCE, DOING THE 500 OR SO COMPETENCY
13 EVALUATIONS THAT I'VE DONE HERE, AND ALSO I WORKED
14 FOR EIGHTEEN MONTHS AT PATTON STATE HOSPITAL IN
15 CALIFORNIA; I WORKED EXCLUSIVELY ON A COMPETENCY TO
16 STAND TRIAL UNIT. AND SO I HAVE DONE SEVERAL
17 HUNDRED MORE EVALUATIONS OUT THERE OF COMPETENCY TO
18 STAND TRIAL. AND IT WOULD BE MY OPINION THAT THE
19 MAJORITY OF PEOPLE THAT HAVE I.Q.S IN THE UPPER END
20 OF THE SIXTIES, LOW SEVENTIES, CAN COMPREHEND BASIC
21 THINGS SUCH AS MIRANDA RIGHTS. IT'S A RARE PERSON
22 WITH THAT I.Q. WHO CANNOT COMPREHEND THAT.

23 Q. BUT, OF COURSE, YOU CONSIDER OTHER FACTORS?

24 A. OH, YES.

25 Q. WHAT OTHER FACTOR---

JEFFREY VIDIC - DIRECT/MR. THEOS

1 A. THAT WAS ONE FACTOR THAT I CONSIDERED.

2 Q. WHAT OTHER FACTORS DID YOU CONSIDER WITH MR.
3 SIMMONS?

4 A. THE OTHER FACTORS THAT I CONSIDERED WITH MR.
5 SIMMONS INCLUDED; I HAD REVIEWED HOW HE HAD BEEN
6 DOING ON THE WARD, HOW HE HAD BEEN DOING IN
7 COMPETENCY GROUP, WHAT KIND OF ANSWERS HE HAD BEEN
8 GIVING AT THAT TIME WHEN HE WAS IN THE GROUPS.

9 Q. I MAY HAVE MISSED SOMETHING IN THOSE NOTES; BUT IS
10 THERE ANYTHING IN THOSE NOTES THAT REFLECT THAT HE
11 EVER UNDERSTOOD HIS MIRANDA WARNINGS?

12 A. NOT SPECIFICALLY. BUT, AGAIN, BASED ON HIS ABILITY
13 TO UNDERSTAND OTHER THINGS IT WOULD BE VERY UNUSUAL
14 FOR A PERSON NOT TO BE ABLE TO COMPREHEND THAT ONE
15 SPECIFIC THING BUT BE ABLE TO COMPREHEND MANY
16 OTHER, MUCH MORE COMPLEX, MUCH MORE DETAILED TYPES
17 OF STATEMENTS, THINGS OF THAT NATURE.

18 Q. ALL RIGHT. DO YOU HAVE AN OPINION -- IF YOU COULD
19 STATE TO A REASONABLE DEGREE OF SCIENTIFIC
20 CERTAINTY AS TO WHETHER OR NOT MR. SIMMONS
21 COMPREHENDED THIS CONCEPT THAT ANYTHING HE SAID
22 COULD BE USED AGAINST HIM IN A COURT OF LAW?

23 A. WHICH DATE?

24 Q. ON NOVEMBER THE 23RD.

25 A. AGAIN, I HAD NO OPINION ABOUT THAT ON NOVEMBER THE

JEFFREY VIDIC - DIRECT/MR. THEOS

1 23RD.

2 Q. RATHER THAN GO BACK THROUGH THE BASIS FOR IT, WOULD
3 IT BE THE SAME AS THAT BASIS RELATED TO THE RIGHT
4 TO REMAIN SILENT?

5 A. YES, SIR.

6 Q. AND DO YOU HAVE AN OPINION AS TO WHETHER OR NOT --
7 AGAIN, TO A REASONABLE DEGREE OF SCIENTIFIC
8 CERTAINTY, AS TO WHETHER OR NOT MR. SIMMONS
9 UNDERSTOOD THE CONCEPT THAT HE HAD THE RIGHT TO
10 HAVE AN ATTORNEY PRESENT EITHER BEFORE QUESTIONS
11 WERE ASKED OR DURING QUESTIONING ON NOVEMBER THE
12 23RD?

13 A. AGAIN I HAVE NO OPINION ABOUT THAT AS OF NOVEMBER
14 THE 23RD. I HAD NOT FORMED ANY OPINIONS AT THAT
15 POINT.

16 Q. AND, AGAIN, THE BASIS FOR THAT STATEMENT WOULD BE
17 THE SAME AS WHAT YOU PREVIOUSLY ANSWERED?

18 A. YES, SIR.

19 Q. WITH RESPECT TO JANUARY THE EIGHTH, WHAT IS THAT
20 OPINION?

21 A. MY OPINION WOULD BE THAT HE DID HAVE THE ABILITY TO
22 UNDERSTAND HIS RIGHT TO REMAIN SILENT. AND I THINK
23 THIS ONE---

24 Q. NO; I ASKED YOU ABOUT THE RIGHT TO HAVE AN ATTORNEY
25 PRESENT.

JEFFREY VIDIC - DIRECT/MR. THEOS

1 A. THE RIGHT TO HAVE AN ATTORNEY PRESENT; YES, SIR.

2 Q. WHAT IS THAT OPINION BASED UPON?

3 A. THAT AGAIN IS BASED UPON THE NURSING NOTES,
4 OBSERVATIONS, HOW HE PERFORMED ON THE TEST, AND THE
5 ANSWER THAT HE GAVE TO US ON JANUARY THE EIGHTH.

6 Q. OKAY. WITH RESPECT TO MR. SIMMONS' RIGHT TO STOP
7 ANSWERING QUESTIONS AT ANY POINT AND CONSULT WITH
8 HIS LAWYER, DO YOU HAVE AN OPINION THAT YOU CAN
9 STATE WITH A REASONABLE DEGREE OF SCIENTIFIC
10 CERTAINTY AS TO WHETHER OR NOT HE UNDERSTOOD THAT
11 CONCEPT?

12 A. ON WHICH DATE, SIR?

13 Q. ON THE 23RD.

14 A. AGAIN, I HAVE NO OPINION. I HAD NOT FORMED ANY
15 OPINIONS AS OF THE 23RD.

16 Q. AND, AGAIN, THAT BASIS WOULD BE THE SAME AS
17 PREVIOUSLY STATED?

18 A. YES.

19 Q. WITH RESPECT TO JANUARY THE EIGHTH?

20 A. MY OPINION WAS THAT HE DID UNDERSTAND THAT HE COULD
21 NOT ANSWER CERTAIN QUESTIONS AND COULD STOP AT ANY
22 TIME. AND THAT WAS ESPECIALLY DEMONSTRATED BY THE
23 FACT THAT HE REFUSED TO DO ANY PSYCHOLOGICAL
24 TESTING UNTIL HE HAD CONSULTED WITH YOU AND MADE
25 ARRANGEMENTS THERE TO OBSERVE THAT.

JEFFREY VIDIC - DIRECT/MR. THEOS

1 THE COURT: AND THAT WAS ON JANUARY THE EIGHTH
2 THAT HE DECLINED TO DO THE PSYCHOLOGICAL
3 TESTING?

4 DR. VIDIC: NO, YOUR HONOR, THAT WAS IN EARLY
5 DECEMBER.

6 THE COURT: EARLY DECEMBER?

7 DR. VIDIC: THAT WAS, I BELIEVE, DECEMBER THE
8 FIRST, OR SOMETHING OF THAT NATURE. I CAN
9 LOOK IT UP IN MY NOTES. I HAVE MY HANDWRITTEN
10 NOTE TO MY INTERN HERE.

11 THE COURT: THAT'S ALL RIGHT.

12 Q. DECEMBER THE FIRST WAS THE DATE OF THAT TESTING.
13 WOULD IT HAVE BEEN ON THAT SAME DATE?

14 A. I BELIEVE THAT HE REFUSED PRIOR TO THAT BECAUSE WE
15 HAD TO ARRANGE -- I BELIEVE THE DAY THAT WE TRIED
16 TO TEST HIM WAS ON THE 23RD.

17 Q. THE 23RD OF NOVEMBER?

18 A. I HAVE A HANDWRITTEN NOTE HERE; 11/23/98 TO THE
19 INTERN, MRS. MONICA SCAGGS.

20 Q. SO THAT WOULD HAVE BEEN---

21 A. "PLEASE GO TO WARD 174." SHE WENT TO THE WARD.
22 SHE ATTEMPTED TO TEST MR. SIMMONS. AND AT THAT
23 TIME HE TOLD HER THAT HE DID NOT WISH TO DO ANY
24 PSYCHOLOGICAL TESTING; THAT HE WAS INVOKING HIS
25 RIGHT TO NOT ANSWER ANY QUESTIONS UNTIL HE COULD

JEFFREY VIDIC - DIRECT/MR. THEOS

1 SPEAK WITH YOU FIRST.

2 Q. IS THAT WHAT HE SAID?

3 A. YES, SIR; THAT WAS WHAT HE SAID TO MY INTERN.

4 Q. HE SAID HE WAS INVOKING HIS RIGHT NOT TO ANSWER
5 YOUR QUESTIONS?

6 A. HE SAID "I HAVE THE RIGHT NOT TO ANSWER YOUR
7 QUESTIONS UNTIL I TALK TO MR. THEOS."

8 Q. THAT WOULD HAVE BEEN ON THE 23RD?

9 A. THAT WOULD HAVE BEEN ON THE 23RD.

10 Q. I ASSUME THAT WOULD HAVE BEEN AFTER THIS FIRST
11 EVALUATION?

12 A. YES, SIR.

13 Q. DO YOU HAVE AN OPINION AS TO WHETHER OR NOT MR.
14 SIMMONS MADE A KNOWING AND INTELLIGENT WAIVER OF
15 HIS RIGHTS IN DECEMBER OF 1997? AND, AGAIN, TO A
16 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY?

17 A. YES, SIR, I DO.

18 Q. YOU DO?

19 A. YES, SIR.

20 Q. WHAT IS THAT OPINION?

21 A. MY OPINION WOULD BE IN DECEMBER OF 1997, BASED ON
22 ALL OF THE INFORMATION THAT I HAVE REVIEWED AND
23 GATHERED AND THE RESULTS OF HIS TESTING, THAT THERE
24 DID NOT APPEAR TO BE ANY MENTAL ILLNESS OR MENTAL
25 DEFECT THAT WOULD HAVE INTERFERED WITH THAT

JEFFREY VIDIC - DIRECT/MR. THEOS

1 ABILITY. AND, SO, MY OPINION WOULD BE THAT HE
2 WOULD HAVE BEEN ABLE TO COMPREHEND AND COMPETENTLY
3 WAIVE HIS MIRANDA RIGHTS AT THAT TIME.

4 Q. AND YOU SAY THAT IN THE FACE OF HIS RESPONSES, OR
5 IN SPITE OF HIS RESPONSES, TO YOUR QUESTIONING OF
6 HIM ON THE 23RD RELATED TO HIS MIRANDA WARNINGS?

7 A. YES, SIR. IT'S MY OPINION THAT LOOKING BACK IN
8 RETROSPECT AND AGAIN LOOKING AT EVERYTHING, MY
9 OPINION WOULD BE THAT IN THAT INITIAL EVALUATION HE
10 WAS MALINGERING AN INABILITY TO UNDERSTAND HIS
11 MIRANDA RIGHTS.

12 Q. AND THAT OPINION RELATED TO MALINGERING; YOU GIVE
13 THAT IN THE FACE OF THE TEST YOU CONDUCTED WHICH
14 LED YOU TO CONCLUDE HE WAS NOT MALINGERING; IS THAT
15 CORRECT?

16 A. LET ME BE PERFECTLY CLEAR HERE. IN ORDER TO
17 DIAGNOSE SOMEONE WITH MALINGERING, THERE HAS TO BE
18 EVIDENCE OF GROSSLY OUT OF THE ORDINARY RESPONSES
19 IN COMPARISON TO OTHER FACTORS AND CLINICAL
20 PRESENTATION. MR. SIMMONS, ON FORMAL TESTS OF
21 MALINGERING SUCH AS THE REYS 15 ITEM TEST
22 (PHONETICALLY SPELLED), THE TEST OF MEMORY
23 MALINGERING, AND EVEN ON THE WEXLER ADULT
24 INTELLIGENCE SCALE WHICH CAN BE USED AS A VERY GOOD
25 INDICATOR IF A PERSON IS MALINGERING. MR. SIMMONS

JEFFREY VIDIC - DIRECT/MR. THEOS

1 DID NOT ATTEMPT TO MALINGER ANY MEMORY PROBLEMS.
2 AND IT WAS CLEAR THAT HE HAS IN FACT GOOD MEMORY
3 SKILLS. AND BASED ON THAT, I FOUND THE FACT THAT
4 WHEN WE WOULD TRY TO EDUCATE HIM ABOUT HIS MIRANDA
5 RIGHTS, HE JUST COULDN'T SEEM TO REMEMBER IT. AND
6 YET WHEN YOU GIVE HIM A FORMAL TEST OF MALINGERING
7 OF MEMORY DEFICITS, HE HASN'T SHOWN MALINGERING.
8 SO PEOPLE DON'T MALINGER ALL THE TIME. PEOPLE ONLY
9 MALINGER WHEN THERE'S A SPECIFIC SECONDARY GAIN FOR
10 THAT PARTICULAR THING. THEY'RE MALINGERING. IN
11 OTHER WORDS, FOR EXAMPLE, PEOPLE MAY MALINGER AN
12 ILLNESS SO THAT THEIR CHILDREN WILL TAKE CARE OF
13 THEM AND WAIT ON THEM AND BRING THEM THEIR FOOD AND
14 DO THE HOUSE CLEANING. THERE'S AN OBVIOUS
15 SECONDARY GAIN THERE FOR THE PERSON. AND, AGAIN,
16 THE PRESENTATION OF SYMPTOMS WHICH YOU CAN FIND NO
17 CLINICAL BASIS FOR.

18 Q. AND IN YOUR OPINION THIS INABILITY TO COMPREHEND,
19 OR THIS VERBALIZATION OF AND INABILITY TO
20 COMPREHEND THE CONCEPT OF HIS RIGHT TO REMAIN
21 SILENT FOCUSED ON THE ISSUE OF MEMORY RATHER THAN
22 UNDERSTANDING?

23 A. NO, I DIDN'T SAY THAT. I SAID THAT ANOTHER REASON
24 THAT I THINK HE MALINGERS IS THAT WHEN YOU ATTEMPT
25 TO EDUCATE HIM ABOUT HIS MIRANDA RIGHTS AND THEN

JEFFREY VIDIC - DIRECT/MR. THEOS

1 ASK HIM TO EXPLAIN TO YOU WHAT YOU JUST SAID, HE
2 CONTINUES TO DEMONSTRATE AT TIMES AN INABILITY TO
3 UNDERSTAND IT. I THINK THAT'S BEEN TESTIFIED TO
4 EARLIER TODAY. AND YET WHEN YOU GIVE HIM A FORMAL
5 TEST OF SHORT TERM MEMORY THAT HAS NOTHING TO DO
6 WITH HIS MIRANDA RIGHTS, HE'S ABLE TO PERFORM AT AN
7 ADEQUATE LEVEL AND NOT SHOW EVIDENCE OF
8 MALINGERING. AND, AGAIN, MALINGERING IS
9 SELECTIVE. THE SECOND THING THAT YOU HAVE TO HAVE;
10 ONE, YOU HAVE TO HAVE A SYMPTOM THAT IS NOT
11 SUPPORTED BY CLINICAL FINDINGS; AND NUMBER TWO, YOU
12 HAVE TO HAVE AN OBVIOUS SECONDARY GAIN OR AN
13 OBVIOUS REASON THAT YOU'RE MALINGERING.

14 Q. WHAT WOULD HAVE BEEN THE SECONDARY GAIN FOR MR.
15 SIMMONS IN THE EVALUATION?

16 A. I THINK THE SECONDARY GAIN FOR MR. SIMMONS WOULD BE
17 THE SAME FOR ANY PERSON THAT IF YOU CAN'T
18 UNDERSTAND YOUR RIGHTS, THEN WE CAN'T ASK YOU
19 QUESTIONS. AND IF YOU CAN'T UNDERSTAND YOUR RIGHTS
20 -- I MEAN, I THINK MOST PEOPLE KNOW THAT WHEN YOU
21 DON'T UNDERSTAND YOUR RIGHTS, THEN IT'S POSSIBLE
22 THAT THAT MAY WORK IN YOUR FAVOR IN A TRIAL.

23 Q. DIDN'T MR. SIMMONS INDICATE THAT HE WAS WILLING TO
24 ANSWER ALL OF YOUR QUESTIONS IN BOTH SESSIONS?

25 A. NO, HE DID NOT.

JEFFREY VIDIC - DIRECT/MR. THEOS

1 Q. AND ON NOVEMBER THE 23RD, DIDN'T HE INDICATE THAT
2 HE WAS WILLING TO SIGN A MIRANDA FORM AND ANSWER
3 QUESTIONS?

4 A. AT THAT POINT, YES. BUT WE WEREN'T SATISFIED THAT
5 HE UNDERSTOOD COMPLETELY WHAT WAS GOING ON. BUT I
6 WOULD CONSIDER THAT THE PSYCHOLOGICAL TESTING THAT
7 WAS ATTEMPTED LATER ON THAT AFTERNOON WAS A
8 CONTINUATION OF OUR ATTEMPT TO ASK HIM QUESTIONS.
9 AND AT THAT POINT HE CLEARLY STATED TO MY INTERN,
10 AND IT WAS REPORTED TO ME, MR. SIMMONS DOES NOT
11 WANT TO DO ANY TESTING. HE SAID HE HAS THE RIGHT
12 NOT TO ANSWER QUESTIONS, AND HE WANTS TO TALK TO
13 HIS ATTORNEY BEFORE WE DO PSYCHOLOGICAL TESTING.

14 MR. THEOS: I DON'T HAVE ANY OTHER QUESTIONS,
15 YOUR HONOR.

16 THE COURT: CROSS?

17 MR. BAILEY: NO QUESTIONS, YOUR HONOR.

18 THE COURT: THANK YOU, SIR. YOU MAY STEP
19 DOWN. NEXT WITNESS?

20 MR. BAILEY: YOUR HONOR, THAT'S ALL THAT THE
21 STATE HAS AS FAR AS THE BLAIR HEARING.

22 THE COURT: NEXT WITNESS, MR. THEOS.

23 MR. THEOS: YES, SIR. YOUR HONOR, WE DON'T
24 HAVE ANY OTHER WITNESSES RELATED TO THE BLAIR
25 HEARING.

JEFFREY VIDIC - DIRECT/MR. THEOS

1 THE COURT: ALL RIGHT, ANYTHING IN REPLY FROM
2 THE BLAIR HEARING?

3 MR. BAILEY: NO, SIR, NOT OF THE BLAIR
4 HEARING, YOUR HONOR.

5 THE COURT: ALL RIGHT, GENTLEMEN. I WOULD
6 PROPOSE THAT WE AT THIS TIME PUT ON THE RECORD
7 THE MOTION OF THE DEFENDANT FOR
8 RECONSIDERATION OF MY ORDER PERTAINING TO THE
9 EVALUATION BY THE DISABILITIES AND SPECIAL
10 NEEDS SO THAT IF YOU NEED DR. SANDLER OR ANY
11 OF THESE OTHER GENTLEMEN OR LADIES THAT WE
12 COULD USE THEM, THEN LET THEM GO IF THEY'D
13 LIKE, THEN I CAN HEAR Y'ALL IN ARGUMENT ON THE
14 BLAIR MATTER. THEN I'LL RULE ON THE BLAIR
15 MATTER, AND WE'LL GO FROM THERE. WOULD THAT
16 MEET WITH YOUR APPROVAL, MR. THEOS?

17 MR. THEOS: YES, SIR.

18 THE COURT: LET'S TAKE A FIVE MINUTE LEG
19 STRETCH.

20 (BRIEF RECESS.)

21

22 THE COURT: MADAM COURT REPORTER, LET THE
23 RECORD REFLECT THAT IN REGARD TO THE MATTER
24 NOW UNDER CONSIDERATION BY THE COURT THAT
25 THERE WAS ON JANUARY THE 15TH OF 1998 A MOTION

MARGARET BUSH - DIRECT/MR. BAILEY

1 FOR PSYCHIATRIC EVALUATION FILED, SERVED BY
2 THE SOLICITOR UPON MR. SIMMONS' THEN ATTORNEY,
3 GENE DUKES, FOR A PSYCHIATRIC EVALUATION AT
4 THE WILLIAM S. HALL PSYCHIATRIC INSTITUTE.
5 THAT WAS JANUARY THE 15TH OF 1998. THAT
6 MOTION IS A PROPER SERVICE. AND I'M LOOKING
7 AT MY COPIES OF THAT WHICH HAS CLOCKED IN FILE
8 COPIES WITH THE CLERK OF COURT. THEN THE
9 HONORABLE LUKE N. BROWN, JR., ON JANUARY THE
10 22ND, 1998, SIGNED AN ORDER FOR EVALUATION.
11 "SO MOVED, WALTER M. BAILEY, JR., SOLICITOR
12 AND CONSENT OF GENE DUKES, ATTORNEY."
13 UNFORTUNATELY THAT EVALUATION WAS NOT TIMELY
14 CONDUCTED. I'LL RECITE THIS IN THE RECORD
15 BECAUSE THIS COURT RECOGNIZES -- SHALL WE CALL
16 IT THE CRUNCH OF PRESSING BUSINESS AT THE
17 WILLIAM S. HALL INSTITUTE OR THE DEPARTMENT OF
18 MENTAL HEALTH OR THE DEPARTMENT OF
19 DISABILITIES AND SPECIAL NEEDS. I'M ALWAYS
20 RELUCTANT OR CONCERNED THAT VARIOUS OTHER
21 STATE AGENCIES MIGHT FEEL THAT THE COURT IS
22 BEING DICTATORIAL OR OPPRESSIVE IN INSISTING
23 THAT THINGS BE DONE YESTERDAY OR WHEN IT SUITS
24 THE COURT AS OPPOSED TO WHEN IT WOULD BE DONE
25 IN A NORMAL ORDER OF BUSINESS. AND I SHARE

1 THAT IN THE RECORD BY WAY OF EXPLANATION THAT
2 THEREAFTER THERE WAS AN ORDER FOR EVALUATION
3 ON SEPTEMBER THE 10TH OF 1998 WHICH I SIGNED
4 AS THE PRESIDING JUDGE, AN ORDER FOR
5 EVALUATION AS TO COMPETENCY AND CRIMINAL
6 RESPONSIBILITY. MR. DUKES WAS EXCUSED FROM
7 FURTHER REPRESENTATION IN THIS CASE. AND, MR.
8 THEOS, YOU WERE APPOINTED. DO YOU HAVE THAT
9 DATE IN YOUR RECOLLECTION? I SEE HERE -- WELL
10 ALLEN TOPOREK, JANUARY THE 22ND OF '98; BUT ON
11 JANUARY THE 26TH OF '98 THAT YOU WERE
12 APPOINTED INSTEAD OF MR. TOPOREK, YOUR
13 PARTNER?

14 MR. THEOS: YES, SIR.

15 THE COURT: THEN I WAS ASSIGNED TO THIS CASE
16 FEBRUARY THE 19TH OF '98 BY THE CHIEF
17 JUSTICE'S ORDER. AND THEN THERE WAS AN ORDER
18 SUBSTITUTING JAMES A. BELL AS THE SECOND
19 CHAIR; MR. THEOS AS THE LEAD COUNSEL FIRST
20 CHAIR TO TAKE THE PLACE OF MR. DUKES. DO YOU
21 HAVE A RECOLLECTION OF THAT MOMENTOUS
22 OCCASION, MR. BELL? I CAN LOOK IT UP.

23 MR. BELL: I RECALL IT; BUT I DON'T KNOW THE
24 DATE, YOUR HONOR.

25 THE COURT: WELL, LET ME LOOK UNDER TAB FOUR

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1 HERE, THEN, AND SEE IF MY ORDER APPOINTING YOU
2 HAS A DATE THEREON. SEPTEMBER THE THIRD OF
3 1998 MR. THEOS SO MOVED, AND SOLICITOR BAILEY
4 CONSENTED AS DID GENE DUKES WHO HAS BEEN
5 RELIEVED. AND THEN THERE WAS AN ORDER FOR
6 PROTECTION. BUT NO NEED TO -- THAT'S NOT
7 PERTINENT TO THAT WHICH IS NOW BEFORE THE
8 COURT. THEREAFTER, MADAM COURT REPORTER,
9 THERE WAS AN ORDER BY THIS COURT FOR ANOTHER
10 COMPETENCY -- WELL, THERE'S ANOTHER ORDER BY
11 THIS COURT FOR A COMPETENCY EVALUATION. AND
12 THERE WAS SOME VERBIAGE ADDED AT THE BOTTOM OF
13 THAT ORDER THAT THERE WOULD BE NO
14 INCRIMINATING STATEMENTS THAT HAD BEEN
15 REVEALED DURING THE EVALUATION THAT COULD BE
16 USED. AND LET ME JUST BE MORE SPECIFIC. BY
17 DATE OF JANUARY THE 14TH OF 1999, SOME ONE
18 YEAR AFTER JUDGE BROWN HAD SIGNED THE ORIGINAL
19 STATEMENT, THIS COURT SIGNED ANOTHER ORDER FOR
20 COMPETENCY EVALUATION CRIMINAL RESPONSIBILITY.
21 AND THERE'S VERBIAGE THAT THE ATTORNEYS FOR
22 THE DEFENDANT SHOULD BE NOTIFIED IN ADVANCE OF
23 THE DATE, TIME, AND PLACE OF THE EVALUATION
24 GIVEN THE OPPORTUNITY TO BE PRESENT IF SO
25 DESIRED, AND FURTHER ANYTHING DEFENDANT SAYS

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1 REGARDING THE FACTS OF THIS CASE ARE NOT
2 ADMISSIBLE IN COURT. AND THEN I WROTE IN THE
3 VERBIAGE "AND NO INCULPATORY STATEMENTS OF THE
4 DEFENDANT REVEALED IN THE EXAM ARE TO BE
5 REVEALED." SO WE'VE GOTTEN KIND OF INTO A
6 SITUATION HERE, UNFORTUNATELY, OF ONE THING OF
7 WHERE THE INTENT OF THE ORDER FOR THE CRIMINAL
8 RESPONSIBILITY AND THE MCNAGHTEN RULE AND
9 KNOWING LEGAL AND MORAL RIGHT FROM MORAL AND
10 LEGAL WRONG. IN ANY EVENT, BECAUSE A TRIAL
11 DATE HAD BEEN SET FOR FEBRUARY THE 22ND, AND
12 BECAUSE THERE WAS SOME LACK OF PAYMENT FROM
13 THE OFFICE OF INDIGENT EXPENSE TO SOME OF THE
14 EXPERTS THAT THE COURT HAD APPROVED MONTHS AGO
15 FOR THE DEFENDANT, AND BECAUSE THIS COURT
16 TRYING TO BE A CAREFUL STEWARD OF THE TAX
17 PAYER'S MONEY, DECLINES TO GIVE \$2,000 AND
18 \$5,000, OR WHATEVER RETAINERS TO PEOPLE, I
19 JUST DON'T BELIEVE IN PAYING FOR THE WORK
20 UNTIL THE WORK IS DONE BECAUSE EVEN THOUGH THE
21 COURT MAY APPROVE AN HOURLY RATE, THE COURT
22 STILL HAS TO SATISFY ITSELF AS TO THE
23 PROPRIETY AND CORRECTNESS OF THE BILLS. BUT
24 AFTER A MEETING WITH THE SOLICITOR AND DEFENSE
25 COUNSEL AND SEVERAL TELEPHONE CALLS, EVERYONE

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1 HAS ENTERED INTO A SPIRIT OF COOPERATION TO
2 TRY TO DO THAT WHICH WAS NECESSARY PREPARATORY
3 TO MEETING THE TIME SCHEDULE FOR THE FEBRUARY
4 THE 22ND TRIAL DATE. BUT UPON THE COURT
5 RECEIVING -- AND, AGAIN, FOR YOU GENTLEMEN
6 WITH THE HALL INSTITUTE; I HOPE Y'ALL
7 UNDERSTAND THAT AS I SAT AND LISTENED TO YOUR
8 TESTIMONY TODAY ABOUT YOU ISSUED THIS REPORT
9 BEFORE YOU HAD THE RESULTS OF SOME OF THE
10 TESTS, PLEASE UNDERSTAND THAT WE WERE NOT
11 INTENTIONALLY TRYING TO PRESSURE YOU INTO A
12 REPORT. WE WERE JUST UNDER SOME TIME
13 CONSTRAINTS, PARTICULARLY WHICH WAS THROUGH
14 THE FAULT OF NO ONE. I'M NOT TRYING TO POINT
15 FINGERS AT ANYONE, CERTAINLY. BUT WHEN IT WAS
16 LEARNED THAT THE HALL INSTITUTE HAD PROPERLY
17 DIRECTED THAT THEY WERE OF THE VIEW THAT THERE
18 BE AN EVALUATION BY THE DEPARTMENT OF
19 DISABILITIES AND SPECIAL NEEDS RELATIVE TO A
20 DIAGNOSIS OR CONSIDERATION OF MENTAL
21 RETARDATION, THE SOLICITOR WAS ABLE TO REASON
22 WITH THAT DEPARTMENT, TRY TO EXPEDITE THE
23 EXAMINATIONS BECAUSE WE HAD THIS FEBRUARY 22ND
24 TRIAL DATE. FRANKLY THIS COURT WAS UNAWARE
25 THAT MR. THEOS HAD HAD A COURT REPORTER THAT

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1 WAS PRESENT DURING THE HALL INSTITUTE
2 EXAMINATIONS AND WAS UNAWARE THAT THAT WAS
3 GOING TO BE DONE AT THE DEPARTMENT OF
4 DISABILITIES AND SPECIAL NEEDS. IT CERTAINLY
5 CAME TO MY ATTENTION, THOUGH, ON JANUARY THE
6 28TH WHEN I WAS PRESIDING IN LEXINGTON COUNTY.
7 AND I RECEIVED A TELEPHONE CALL THAT RENDERED
8 IT NECESSARY THAT A CONFERENCE CALL BE SET UP.
9 AND THERE WAS A CONFERENCE CALL ON JANUARY THE
10 28TH OF 1999. AND MR. JIM HILL, LEGAL COUNSEL
11 FOR S.C.D.D.S.N., DR. LESLIE SANDLER WHO HAS
12 TESTIFIED HERE TODAY, SOLICITOR BAILEY,
13 ATTORNEY JERRY THEOS, AND ATTORNEY JIM BELL,
14 ALL PARTICIPATED IN THAT CONFERENCE CALL.
15 GENTLEMEN, I'M -- RATHER THAN EACH OF YOU
16 GIVING YOUR VIEWS OF WHAT TRANSPIRED, I'M
17 GOING TO DICTATE INTO THE RECORD AS I'M DOING
18 NOW MY RECOLLECTION. AND CERTAINLY I INVITE
19 YOU TO COMMENT THEREON IN AN EFFORT TO MAKE
20 SURE THAT WE DO HAVE A CORRECT RECITATION OF
21 THE FACTS IN THE RECORD. BUT IT WAS REVEALED
22 TO THE COURT AT THAT TIME THAT MR. THEOS --
23 AND, MR. BELL, I BELIEVE YOU WERE THERE ALSO?
24 MR. BELL: YES, SIR.

25 THE COURT: AND THE STENOGRAPHER OR COURT

1 REPORTER; AND THAT DR. SANDEL, WHILE IN THE
2 LETTER OF JANUARY THE 29TH FROM MR. THEOS TO
3 THE COURT WHICH HE COPIED TO SOLICITOR BAILEY
4 AND DR. SANDLER AND JIM BELL. AND I WILL
5 REMIND YOU, MICHAEL, TO GIVE THIS TO THE CLERK
6 TO MAKE A PART OF THE -- WELL, I'LL JUST GIVE
7 IT TO THE COURT REPORTER TO MAKE IT A PART OF
8 THE RECORD. EVEN THOUGH YOUR MOTION FOR
9 RECONSIDERATION -- I TRUST YOU'VE FILED THAT,
10 MR. THEOS, WITH THE CLERK?

11 MR. THEOS: YES, SIR. I SENT IT THE SAME DAY
12 I FAXED YOU---

13 THE COURT: WELL, YOUR LETTER DOES NOT SHOW A
14 COPY TO THEM.

15 MR. THEOS: I'M SORRY? MY LETTER DOESN'T SHOW
16 A COPY TO WHERE, JUDGE?

17 THE COURT: TO THE CLERK OF COURT.

18 MR. THEOS: I THINK WE SENT A COPY THAT SAME
19 DAY. AND IF WE DIDN'T, I WILL CERTAINLY DO
20 THAT.

21 THE COURT: WELL, MAKE SURE THAT YOUR MOTION
22 FOR RECONSIDERATION -- YOU RECEIVED IT,
23 SOLICITOR, DIDN'T YOU?

24 MR. BAILEY: YES, SIR.

25 THE COURT: AND MAKE SURE THAT THAT IS FILED

MARGARET BUSH - DIRECT/MR. BAILEY

1 WITH THE CLERK OF COURT, PLEASE.

2 MR. BAILEY: YES, SIR.

3 THE COURT: IN ANY EVENT, THE LETTER WHICH WAS
4 FAXED TO ME ON JANUARY THE 29TH AT 1420
5 MILITARY -- I SUPPOSED THAT WOULD BE 2:20 LAY
6 PERSON TIME -- ASKING FOR RECONSIDERATION OF
7 MY RULING. AND IT'S STATED IN THAT LETTER
8 "YOUR RULING WAS SEEMINGLY BASED ON DR.
9 SANDLER'S ASSERTIONS THAT THE PRESENCE OF A
10 STENOGRAPHER MIGHT INTERFERE WITH THE
11 INTEGRITY OF THE EVALUATION AND FURTHER
12 COUNSEL'S PRESENCE DURING PHASE TWO MIGHT DO
13 THE SAME." AND WHILE IT MAY BE A SEMANTICAL
14 DIFFERENCE, MY CLEAR UNDERSTANDING FROM DR.
15 SANDEL IS NOT THAT IT MIGHT BUT THAT IT WOULD
16 INTERFERE WITH THE NECESSARY EVALUATION AND/OR
17 TESTING. AND OBVIOUSLY, GENTLEMEN AND LADIES,
18 THIS COURT FELT COMPELLED TO YIELD TO THE
19 JUDGMENT OF DR. SANDEL AS I WOULD YIELD -- AS
20 I DID YIELD TO MY ENDODONTIST WHEN I HAD A
21 ROOT CANAL A MONTH AGO. I LOOKED FOR
22 PROFESSIONAL EXPERTISE, AND I WAS OF THE VIEW
23 THAT BASED ON WHAT DR. SANDEL STATED TO ME
24 THAT IT WOULD, I DID RULE THAT MR. BELL --
25 EXCUSE ME -- BELL AND/OR THEOS COULD BE

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1 OUTSIDE THE DOOR ON THE PREMISES BUT NOT IN
2 THE SAME ROOM WITH, OR IN ANY WAY TO INTERFERE
3 WITH THE APPROPRIATE TESTING. NOW, THIS
4 MOTION FOR RECONSIDERATION, GENTLEMEN; THE
5 LINE OF CASES THAT ARE CITED THEREIN, ESTELL
6 VS. SMITH AND SATTERWHITE VS. TEXAS, PYLE VS.
7 TEXAS; YOU HAVE TO START WITH THE PREMISE THAT
8 IN THE STATE OF TEXAS THERE IS -- AND THIS IS
9 CITED IN FOOTNOTE ONE OF THE UNITED STATES
10 SUPREME COURT OPINION OF SATTERWHITE VS. TEXAS
11 REPORT AT 108 SUPREME COURT 1792 DECIDED MAY
12 31, 1998; THERE IS A STATUTE IN TEXAS RELATIVE
13 TO THEIR PROCEEDING IN A CAPITAL OR DEATH
14 PENALTY CASE. AND I QUOTE FOOTNOTE ONE UNDER
15 TEXAS LAW "A CAPITAL DEFENDANT MAY NOT BE
16 SENTENCED TO DEATH UNLESS THE STATE PROVES
17 BEYOND A REASONABLE DOUBT THAT 'THERE IS A
18 PROBABILITY THAT THE DEFENDANT WILL COMMIT
19 CRIMINAL ACTS OF VIOLENCE THAT WILL CONSTITUTE
20 A CONTINUING THREAT TO SOCIETY.'" AND THEY
21 STATE THE TEXAS CODE THERE. IN OTHER WORDS,
22 THE STATE HAS TO PROVE FUTURE DANGEROUSNESS OF
23 A DEFENDANT IN THE STATE OF TEXAS IN ORDER FOR
24 THE STATE, BEYOND A REASONABLE DOUBT, TO FIND
25 A DEFENDANT GUILTY OF CAPITAL MURDER. THAT'S

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1 NOT THE STATUTE LAW IN SOUTH CAROLINA. THAT'S
2 NOT THE CASE LAW IN SOUTH CAROLINA. IT IS NOT
3 A PREREQUISITE. AND, SOLICITOR, IF YOU
4 DISAGREE WITH WHAT I'M SAYING, OR MR. THEOS,
5 IF YOU DO, I'M CERTAINLY GOING TO GIVE YOU THE
6 OPPORTUNITY TO BE HEARD. BUT CERTAINLY THIS
7 COURT WOULD NOT QUESTION THE RATIONALE OR THE
8 RESULT OR THE REASONING OF THE UNITED STATES
9 SUPREME COURT BECAUSE THAT IS THE ULTIMATE
10 AUTHORITY. AND IN THAT SATTERWHITE CASE, THE
11 DEFENSE COUNSEL HAD NOT BEEN MADE AWARE THAT A
12 PSYCHIATRIST WOULD EXAMINE THE DEFENDANT AND
13 ASSESS FUTURE DANGERS. AND, THEREFORE, THE
14 USE OF HIS TESTIMONY IN A CAPITAL SENTENCING,
15 WAS THERE ANY FUTURE DANGEROUS DID IN FACT
16 VIOLATE THE SIXTH AMENDMENT RIGHT TO COUNSEL
17 OF THE SUBJECT. AGAIN ESTELLE VS. TEXAS, A
18 MAY 18, 1981 DECISION AND 101 SUPREME COURT
19 1866, THERE AGAIN, THAT WAS CHIEF JUSTICE
20 BERGER WHO STATED THE SAME RATIONALE AS I'VE
21 JUST EXPLAINED; THAT THAT SIXTH AMENDMENT
22 RIGHT TO COUNSEL, WAS VIOLATED; WHETHER
23 DEFENSE COUNSEL WASN'T NOTIFIED IN ADVANCE OF
24 THE PSYCHIATRIC EXAMINATION WOULD ENCOMPASS
25 THE ISSUE OF FUTURE DANGEROUS AND BE ADMITTED

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1 INTO EVIDENCE DURING A PROCEEDING ON THE
2 PENALTY PHASE. BUT HERE IT WAS STATED IN MY
3 ORDER, IN THE COURT'S ORDER. AND EVERYONE
4 UNDERSTOOD THAT ANY STATEMENT THAT THIS
5 DEFENDANT MADE WOULD NOT IN ANY WAY, ANY
6 INCULPATORY STATEMENT, WOULD NOT IN ANY WAY BE
7 ALLOWED AS WE SHARED WITH THE STATE, TO BE
8 ALLOWED INTO EVIDENCE. NOW, IF YOU GET INTO
9 REBUTTAL OF REPLY TESTIMONY, THAT PERHAPS
10 BRINGS UP A DIFFERENT SITUATION. I'M NOT
11 GOING TO JUMP OFF THAT BRIDGE UNTIL I GET TO
12 WHERE I HAVE TO CROSS IT. BUT I THINK THAT
13 WE'VE MIXED APPLES AND ORANGES HERE. BUT,
14 AGAIN, THAT'S MY VIEW. MR. SOLICITOR, MAY I
15 INVITE YOU, PLEASE, TO ATTEMPT TO AMEND OR
16 CORRECT ANYTHING RELATIVE TO THE FACTUAL
17 SCENARIO THAT EXISTED. AND I DID, OF COURSE,
18 ON THE TELEPHONE DENY THE MOTION FOR
19 RECONSIDERATION BECAUSE TIME WAS OF THE
20 ESSENCE. WE HAD THESE FOLKS THAT THE
21 DISABILITIES AND SPECIAL NEEDS BOARD THAT WERE
22 COMING DOWN HERE TO TRY TO GET THE RESULTS OF
23 THE TESTS COMPLETED. AND WE JUST DIDN'T HAVE
24 TIME TO CONVENE THE CHURCH CHOIR TO HEAR IT ON
25 THE RECORD AND TO MAKE A RECORD, AND WHATEVER,

1 AND WHATEVER. SO I DID IT ON THE TELEPHONE.
2 AND EVERYBODY WAS ADVISED OF THAT, AND THE
3 TESTS WENT FORWARD. SO I HAVE DENIED THE
4 MOTION FOR RECONSIDERATION. BUT I WANTED TO
5 INVITE YOU, MR. SOLICITOR, IF YOU WANT TO
6 PLEASE AMEND MY STATEMENT OR COMMENT FURTHER
7 THEREUPON.

8 MR. BAILEY: JUDGE, I DON'T HAVE ANY
9 AMENDMENTS TO MAKE. AT THE APPROPRIATE TIME
10 I WOULD LIKE TO GET INTO BRIEFLY WHAT
11 OCCURRED AT THE HALL INSTITUTE WHEN MR. THEOS
12 WAS THERE WITH THE RECORDER, WITH THE COURT
13 REPORTER, TO TRY TO SHOW, YOU KNOW, THE
14 APPELLATE RECORD WHAT DR. SANDLER WAS TRYING
15 TO AVOID HAPPENING IN HIS EVALUATION.

16 THE COURT: I'LL LET YOU MAKE A PROFFER AT
17 THIS TIME. BUT LET ME DISPOSE OF DR. SANDEL
18 BEFORE WE GET BACK TO THE HALL INSTITUTE IF WE
19 MAY.

20 MR. BAILEY: YES, SIR.

21 THE COURT: ALL RIGHT, MR. THEOS. I'LL BE
22 GLAD TO HEAR ANY POLITE SUGGESTIONS OR
23 IMPOLITE SUGGESTIONS THAT YOU MAY HAVE AS TO
24 THAT WHICH I'VE STATED. YOU SAID YOU WANTED
25 THIS IN THE RECORD; AND I'VE ATTEMPTED TO

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1 PLACE IT THERE. I HOPE I DID SO FAIRLY.

2 MR. THEOS: YES, SIR. I DON'T HAVE ANY
3 ADDITIONS, YOUR HONOR, OR MODIFICATIONS OF
4 WHAT YOU SAID. IT DID OCCUR IN THAT FASHION
5 CHRONOLOGICALLY. WE DID FILE A MOTION FOR
6 RECONSIDERATION. I DON'T HAVE ANYTHING TO ADD
7 FACTUALLY TO WHAT HAPPENED, YOUR HONOR.

8 THE COURT: ALL RIGHT, SIR. AND LEGALLY
9 REASONABLE MEN AND WOMEN DISAGREE. AND THAT'S
10 WHY WE HAVE THE APPELLATE COURTS AND WHY WE
11 HAVE ERASERS ON ALL MY PENCILS. LET THOSE
12 CHIPS FALL WHERE THEY WILL. BUT I JUST WANTED
13 YOU TO BE PROTECTED IN THE RECORD AS FAR AS
14 YOUR CLIENT'S POSITION AND YOUR CONTENTION AS
15 IF THIS MOTION FOR RECONSIDERATION WERE MADE
16 BEFORE WE WENT INTO THE BLAIR HEARING. BUT I
17 WAS TRYING TO ACCOMMODATE WITNESSES. AND
18 Y'ALL AGREED TO NUNC PRO TUNC NOW -- FOR WHAT
19 WE'RE DOING NOW CONSIDERED TO HAVE BEEN PUT IN
20 THE RECORD EARLY THIS MORNING BEFORE WE
21 COMMENCED THE BLAIR HEARING.

22 MR. THEOS: YOUR HONOR, I THINK THAT THE
23 FACTUAL BASIS IS AS YOU'VE STATED, BUT IT'S
24 ALSO CONTAINED IN MY MOTION FOR
25 RECONSIDERATION WHICH IF IT HAS NOT BEEN FILED

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1 WITH THE COURT, WE WILL FILE IT; AND IT ALSO
2 CONTAINED THE LEGAL ARGUMENTS. IN THAT YOU'VE
3 ALREADY RULED, I ASSUME THAT YOU DO NOT WANT
4 TO HEAR THOSE ARGUMENTS. BUT THEY ARE
5 ESSENTIALLY AS THEY APPEAR IN THE MOTION
6 ITSELF.

7 THE COURT: YES, SIR. I HAVE NO DESIRE TO
8 HEAR FURTHER LEGAL ARGUMENT. I HAVE RULED.
9 ALL RIGHT. NOW, MR. SOLICITOR, DID YOU WANT
10 TO -- BECAUSE WE'RE STILL KEEPING SOME OF
11 THESE GENTLEMEN AND LADIES WAITING HERE. AND
12 I KNOW IT'S 75 MILES THEREABOUTS BACK TO
13 COLUMBIA. DID YOU WANT TO MAKE A PROFFER
14 RELATIVE TO THAT WHICH YOU SAY OCCURRED?

15 MR. BAILEY: I DON'T NEED TO DO THAT WHILE THE
16 WITNESSES ARE STILL -- WHILE DR. BEHRMAN AND
17 ALL ARE STILL HERE. BUT I WOULD JUST LIKE TO
18 MAKE THE TRANSCRIPT THAT MR. THEOS PROVIDED TO
19 ME OF WHAT HAPPENED AT THE HALL INSTITUTE A
20 PART OF THE RECORD AND JUST POINT OUT ONE
21 THING IN THE TRANSCRIPT THAT CAUSED ME CONCERN
22 AND I THINK WOULD JUSTIFY WHY DR. SANDLER TOOK
23 THE POSITION THAT HE TOOK THAT HE DID NOT WANT
24 MR. THEOS AND MR. BELL IN THE ROOM WHEN THIS
25 EVALUATION WAS GOING ON.

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1 THE COURT: I WASN'T AWARE THAT THE RECORD HAD
2 BEEN TYPED UP. I DON'T KNOW WHETHER IT WAS --
3 I ASSUME IT WAS A PRIVATE COURT REPORTER.

4 MR. BAILEY: YES, SIR.

5 THE COURT: WELL, THE TAX PAYERS PAY FOR THE
6 COURT REPORTER. BUT IF Y'ALL WANT TO PUT THE
7 ORIGINAL TRANSCRIPT OF THAT IN THE RECORD, YOU
8 CERTAINLY MAY DO SO. AND, SOLICITOR, THE
9 COURT RECOGNIZES JUST AS I MENTIONED EARLIER
10 THIS MORNING, THAT WHERE A PERSON IS BEING
11 TREATED FOR WHETHER IT'S VENEREAL DISEASE OR
12 WHETHER IT'S ALCOHOLISM OR MENTAL DISABILITY
13 OR WHATEVER THAT, YOU KNOW, THAT THERE'S A
14 DISTINCT NEED FOR CANDOR AND HONESTY ON THE
15 PART OF THE PERSON BEING TREATED SO THAT THE
16 TREATING PHYSICIAN OR PSYCHIATRIST, OR
17 WHOMEVER, WILL HAVE ALL THE ACCURATE FACTS.
18 AND THAT'S WHY YOU DON'T WANT TO INTERFERE
19 WITH ANY TESTS THAT MIGHT BE GIVEN TO
20 DETERMINE YOUR INTELLIGENCE QUOTA. THERE'S A
21 REASON WHY. AND I CAN APPRECIATE THE VALIDITY
22 OF WHAT DR. SANDEL INDICATED THAT THERE COULD
23 BE -- THAT IT WOULD BE A DISRUPTION; NOT THAT
24 IT MIGHT BE. I MEAN, HE WAS FIRM IN HIS VIEW.
25 AND HE'S HERE NOW IF ANYBODY WANTS TO PUT HIM

1 UNDER OATH AND IF ANYBODY QUESTIONS THE
2 CORRECTNESS OF WHAT I RECALL HE TOLD ME OVER
3 THE TELEPHONE, THAT IT JUST -- THAT THAT DOG
4 WOULDN'T HUNT. YES, SIR?

5 MR. THEOS: YOUR HONOR, HERE ARE THE ORIGINAL
6 TRANSCRIPTS OF DECEMBER THE FIRST AND JANUARY
7 THE EIGHTH. THEY ARE SEALED.

8 THE COURT: SURE. AND Y'ALL PLACE THOSE WITH
9 THE COURT REPORTER HERE BECAUSE THE CLERK; I
10 HAD TO EXCUSE HER. IT'S WAY AFTER HOURS. AND
11 DO YOU WANT TO MAKE THOSE EXHIBITS OF THE
12 STATE, MR. BAILEY?

13 MR. BAILEY: YES, SIR.

14 THE COURT: I HAVEN'T SEEN THEM. WITHOUT
15 OBJECTION?

16 MR. THEOS: WITHOUT OBJECTION.

17 THE COURT: IS THERE ANYTHING OTHER BY WAY OF
18 PROFFER?

19 MR. BAILEY: YES, SIR, JUDGE. I JUST WANT TO
20 POINT OUT ONE THING. YOUR HONOR, I DON'T MEAN
21 THIS AS ANY CRITICISM OF MR. THEOS AND MR.
22 BELL. I'M JUST TRYING TO---

23 THE COURT: WHY NOT? GO AHEAD.

24 MR. BAILEY: I'M REFERRING TO PAGE 59 OF THE
25 TRANSCRIPT. AND IT APPEARS THAT MR. THEOS WAS

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1 ACTUALLY PARTICIPATING IN THE EVALUATION.
2 THERE'S A QUESTION FROM ONE OF THE DOCTORS
3 THAT WAS EXAMINING MR. SIMMONS, DR. BEHRMAN.
4 AT ONE POINT MR. THEOS SAYS "CAN I ASK YOU WHY
5 HAVE YOU TALKED TO THE POLICE AT ALL?" MR.
6 SIMMONS "I DON'T KNOW; DON'T KNOW." MR. THEOS
7 "DID THEY TELL YOU YOU HAD TO TALK TO THEM?"
8 SO IT WASN'T ABOUT MR. THEOS JUST BEING THERE.
9 HE WAS ACTUALLY QUESTIONING HIS CLIENT AS PART
10 OF THE EVALUATION. AND I JUST THINK THIS IS
11 SORT OF AN EXAMPLE OF WHY DR. SANDLER DIDN'T
12 WANT THIS TO REOCCUR.
13 THE COURT: WELL, OF COURSE, BEING AN
14 ATTORNEY, I CAN APPRECIATE THE RIGHT OF
15 EVERYONE TO HAVE AN ATTORNEY AND TO MAXIMIZE
16 THE USE OF THEM. BUT WHEN YOU HAVE AN
17 EXAMINATION FOR AN EVALUATION OF MENTAL
18 COMPETENCY, ETCETERA, YOU NEED THAT SUBJECT TO
19 BE ABLE TO FREELY AND CANDIDLY SPEAK AND
20 RESPOND TO THE QUESTIONS RATHER THAN -- NOT
21 THAT MR. THEOS WOULD DARE THAT HE WOULDN'T
22 SUGGEST AN ANSWER OR ANYTHING OF THAT NATURE.
23 AND I HAVEN'T READ THE TRANSCRIPT, SO I CAN'T
24 BE POINTING FINGERS. BUT I JUST THINK THAT
25 HAVE THEM IN AS MUCH A VACUUM AS YOU CAN HAVE

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1 THAT IT WOULD BE A MORE CORRECT RESULT. SO,
2 ANYTHING ELSE ON THAT POINT?

3 MR. BAILEY: NO, SIR.

4 THE COURT: THE RECORD WILL SPEAK FOR ITSELF.
5 MR. THEOS, WOULD YOU LIKE TO BE HEARD ON THAT?

6 MR. THEOS: THE ONLY THING I WOULD LIKE TO
7 SAY, YOUR HONOR, IS THAT THE FIRST EVALUATION
8 ON THE 23RD, DR. SPEARMAN HAD ACTUALLY CALLED
9 UPON ME TO ASK CERTAIN QUESTIONS AND TALK WITH
10 MY CLIENT. SO CERTAINLY THERE WAS NO INTENT
11 ON MY PART TO DO ANYTHING THAT WOULD BE DEEMED
12 INAPPROPRIATE OR APPEARING IN ANY WAY---

13 THE COURT: WE ALL WOULD HOPE NOT. BUT WHY --
14 LET ME ASK YOU THIS: AND I DON'T WANT TO GET
15 INTO ANY SECRET STRATEGY. BUT IN VIEW OF THE
16 FACT THAT YOU KNEW, FUTURE DANGEROUSNESS FOR
17 EXAMPLE WAS NOT GOING TO BE AN ISSUE; WHAT IS
18 THE COMPELLING NEED TO HAVE A COURT REPORTER
19 THERE OR FOR YOU TO BE THERE? BECAUSE THERE
20 WAS NOT GOING TO BE ANY INCULPATORY; NOT GOING
21 TO BE ANY DAMAGING TESTIMONY TO COME OUT THAT
22 COULD BE REVEALED TO THE STATE.

23 MR. THEOS: YOUR HONOR, IN THE ORDER OF THE
24 HALL INSTITUTE -- AND I DON'T HAVE IT IN FRONT
25 OF ME. BUT WITH RESPECT TO THE HALL INSTITUTE

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1 ORDER, I BELIEVE THAT INCULPATORY STATEMENTS
2 WOULD BE ADMISSIBLE AT THE PENALTY PHASE OF
3 THE TRIAL. SO CLEARLY AS SUCH, THIS CERTAINLY
4 WOULD HAVE BEEN DEEMED A CRITICAL STAGE OF THE
5 PROCEEDING, AND STATEMENTS THAT HE USED COULD
6 HAVE BEEN USED AGAINST HIM AND STILL COULD BE
7 IN THE PENALTY PHASE. AND AS SUCH, CERTAINLY
8 I HAD A RIGHT TO BE PRESENT AND HAVE A---

9 THE COURT: I DISAGREE. MR. SOLICITOR, DO YOU
10 AGREE WITH THAT STATEMENT OF THE LAW?

11 MR. BAILEY: MY UNDERSTANDING IS I CAN'T USE
12 ANY INCULPATORY STATEMENTS THAT ANYBODY MADE
13 DURING EITHER EVALUATION AT ANY POINT IN THE
14 TRIAL.

15 THE COURT: THAT'S MY UNDERSTANDING.

16 MR. THEOS: YOUR HONOR, I THINK IT'S IN -- I
17 MIGHT BE WRONG, BUT I THINK THE ORDER
18 SPECIFIES THAT DURING THE PENALTY PHASE THAT
19 IT CAN BE USED.

20 THE COURT: WELL, HE DOESN'T PLAN ON USING IT.
21 IF YOU HAD JUST ASKED HIM THAT, HE WOULD HAVE
22 TOLD YOU.

23 MR. BAILEY: IF I COULD JUST STATE FOR THE
24 RECORD, YOUR HONOR, I WON'T USE ANYTHING AT
25 EITHER STAGE.

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1 MR. THEOS: YOUR HONOR, THERE WASN'T ANY
2 SECRET THAT THEY DID THAT EXCEPT THAT THE
3 FIRST DAY, ON THE 23RD, I TOOK PROBABLY 30
4 PAGES OF NOTES. AND I JUST FELT THAT IT WAS A
5 LOT BETTER TO HAVE SOMEBODY ELSE DOING IT.
6 THEY WOULDN'T ALLOW A RECORDING DEVICE. I
7 DIDN'T WANT TO TAKE THOSE NOTES. I PREFERRED
8 TO HAVE SOMEBODY STENOGRAPHICALLY RECORD IT.
9 THEY WERE KIND ENOUGH TO OBLIGE. AND I THAT'S
10 THE---

11 THE COURT: SUFFICE IT TO SAY A BURNT CHILD IS
12 SCARED OF FIRE. THE NEXT ORDER I SIGN FOR
13 MENTAL EVALUATION, THERE SHALL BE A CLARITY OF
14 PURPOSE AND PRESENCE OF COUNSEL AND/OR A COURT
15 REPORTER. ALL RIGHT. ANYTHING OTHER OR
16 FURTHER?

17 MR. BAILEY: NOT FROM THE STATE, YOUR HONOR.

18 THE COURT: ALL RIGHT, GENTLEMEN. MAY I HEAR
19 YOU IN ANY CLOSING ARGUMENT THAT YOU MAY HAVE
20 RELATIVE TO THE RULING ON THE BLAIR HEARING?
21 IT'S THE COURT'S RESPONSIBILITY THEREUNDER TO
22 MAKE CERTAIN DETERMINATIONS. I ASSUME, MR.
23 THEOS, THAT THESE MOTIONS THAT -- LET'S SEE.
24 THEY'RE DATED FEBRUARY THE 10TH. THAT WAS
25 YESTERDAY. YOU FAXED TO ME A MOTION THAT

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1 DECLARED THE DEFENDANT INCOMPETENT TO STAND
2 TRIAL. ARE YOU CONSIDERING THAT TO BE
3 ENCOMPASSED WITHIN THIS BLAIR HEARING, OR DO
4 YOU WANT TO HAVE A SEPARATE HEARING ON THAT?
5 MR. THEOS: NO, SIR.
6 THE COURT: AND I HAVE, OF COURSE, YOUR
7 MEMORANDUM IN SUPPORT OF YOUR POSITION THAT
8 THE COURT SHOULD DECLARE A DEFENDANT
9 INCOMPETENT TO STAND TRIAL. AND I TRUST UNDER
10 THE SUPREME COURT RULING OF ELLIS VS. DREW
11 THAT WHATEVER YOU SEND TO THE COURT, YOU SHARE
12 TO OPPOSING COUNSEL. WHEN YOU SENT THIS TO
13 ME, YOU SENT IT TO SOLICITOR BAILEY?
14 MR. BAILEY: I GOT IT TODAY, YOUR HONOR.
15 THE COURT: WELL, I GOT IT YESTERDAY. BUT,
16 YOU KNOW, IT WAS NO PROBLEM AS LONG AS YOU HAD
17 IT. I JUST WANTED -- AND THEN THERE'S A
18 MOTION TO SUPPRESS DEFENDANT'S STATEMENT.
19 WELL, THAT WILL COME UP TOMORROW IN THE DINNO
20 VS. JACKSON ASSUMING THAT I FIND MY RULING ON
21 THE BLAIR IS CONSISTENT THEREWITH.
22 MR. THEOS: YES, SIR. THAT'S MY
23 UNDERSTANDING.
24 THE COURT: AND THEN THERE'S A MEMORANDUM
25 THERE THAT YOU HAVE. ALL RIGHT. I'LL BE GLAD

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1 TO HEAR FROM YOU, GENTLEMEN. DO YOU AGREE
2 THAT THE STANDARD OF PROOF IS BY A
3 PREPONDERANCE OF THE EVIDENCE?

4 MR. THEOS: YES, SIR.

5 THE COURT: INSOFAR AS THE DEFENDANT PROVES
6 THAT HE IS INCOMPETENT. BUT FIRST LET ME HEAR
7 FROM THE STATE.

8 MR. BAILEY: YOUR HONOR, I'LL BE VERY BRIEF.
9 I THINK THE TESTIMONY SPEAKS FOR ITSELF.
10 THERE WERE FOUR EXPERT WITNESSES THAT
11 TESTIFIED, YOUR HONOR. ALL FOUR OF THEM -- IF
12 YOU LOOK AT ALL FOUR OF THEM TOGETHER, THERE'S
13 NO EVIDENCE IN THE RECORD THERE'S MENTAL
14 RETARDATION. ALL OF THEM GAVE AN OPINION THAT
15 HE WAS NOT MENTALLY RETARDED. DR. VIDIC
16 STATES THAT EVEN IF HE DID -- HE WAS MILDLY
17 MENTALLY RETARDED AS THE I.Q. SCORES AT THE
18 HALL INSTITUTE INDICATED THAT AT THAT LEVEL OF
19 RETARDATION HE WOULD STILL HAVE THE ABILITY TO
20 COMPREHEND HIS MIRANDA RIGHTS TO COOPERATE
21 WITH COUNSEL AND DO ALL THE OTHER THINGS THAT
22 WOULD HAVE RENDERED HIM COMPETENT. THERE'S NO
23 PROOF IN THE RECORD THAT HE HAD A MAJOR MENTAL
24 DISORDER OR ANY OTHER CONDITION THAT WOULD
25 IMPAIR HIS ABILITY TO KNOW RIGHT FROM WRONG,

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1 TO CONTROL HIS IMPULSES, OR TO SHOW ANY
2 CONCERN REGARDING HIS ABILITY TO COOPERATE
3 WITH HIS LAWYERS, TO UNDERSTAND THE ROLE OF
4 THE COURT OFFICIALS, TO UNDERSTAND THE
5 JUDICIAL PROCESS, YOUR HONOR. I JUST THINK
6 IT'S CLEAR ON ITS FACE THAT MR. SIMMONS IS
7 COMPETENT TO STAND TRIAL.

8 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR
9 FROM YOU, MR. THEOS AND/OR MR. BELL. YOU CAN
10 BOTH ARGUE, OR ONE ARGUE, WHATEVER SUITS YOUR
11 PLEASURE.

12 MR. THEOS: YES, SIR, YOUR HONOR. WE DON'T
13 THINK IT'S QUITE AS CLEAR AS MR. BAILEY
14 STATES. WE THINK THAT IF YOU TAKE -- YOUR
15 HONOR, IT'S OUR CONTENTION THAT IF YOU LOOK AT
16 ALL OF THE EVIDENCE THAT WAS PRESENTED, THE
17 TEST SCORES, THE TEST DATA, THE SPECIFIC
18 REFERENCES BY ALL OF THE DOCTORS FROM THE
19 STATE WHO EVALUATED MR. SIMMONS, THE SCHOOL
20 RECORDS; IT'S CLEAR THAT MR. SIMMONS HAS A
21 LONG HISTORY OF BOTH MENTAL RETARDATION AND
22 POLY-SUBSTANCE ABUSE AND THAT THE MENTAL
23 RETARDATION AND THE POLY-SUBSTANCE ABUSE AND
24 DEPENDENCY AND THE LONG-TERM ALCOHOL ABUSE;
25 THAT THOSE THINGS INDEED HAVE RENDERED HIM

1 INCOMPETENT TO STAND TRIAL. HE DOESN'T---

2 THE COURT: LET ME INTERRUPT YOU, NOW. YOU'RE
3 SAYING THE AGGREGATE, BECAUSE OF HIS ALLEGED
4 MENTAL RETARDATION WHEN YOU ADD TO THAT THE
5 POLY-SUBSTANCE ABUSE, YOU'RE NOT TRYING TO
6 TELL ME THAT THE POLY-SUBSTANCE ABUSE
7 OCCASIONED HIS MENTAL RETARDATION OR
8 DIMINISHED HIS BASIC CAPACITY, ARE YOU?

9 MR. THEOS: MY STATEMENT, YOUR HONOR, IS THAT
10 IN THE AGGREGATE WHEN YOU CONSIDER ALL OF
11 THOSE FACTORS THAT CAME INTO EVIDENCE; THE
12 HISTORY OF MENTAL RETARDATION AND LOW I.Q.
13 SCORES, THE HISTORY OF POLY-SUBSTANCE ABUSE,
14 THE HISTORY OF ALCOHOL ABUSE, AND WHEN YOU
15 FURTHERMORE CONSIDER THE SPECIFIC RECORDS OF
16 BOTH HALL INSTITUTE THAT WERE TESTIFIED TO BY
17 DR. BEHRMAN AS WELL AS THE SPECIFIC REFERENCES
18 THAT DRS. SANDLER AND MCABEE MADE RELATED TO
19 MR. SIMMONS' DIRECT AND PARTICULAR RESPONSES
20 TO VARIOUS QUESTIONS, AGAIN RELATED TO THE
21 JUDICIAL PROCEEDINGS, THAT ADDITIONAL
22 PROCEDURE, THE ROLES OF THE VARIOUS JUDICIAL
23 OFFICERS, JUDGE, JURY, WITNESSES, EVIDENCE,
24 PROSECUTOR, DEFENSE ATTORNEY; THAT WHEN YOU
25 CONSIDER ALL OF THOSE THINGS -- AND I

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1 UNDERSTAND WHAT THEIR OPINION IS TODAY. BUT
2 WHEN YOU CONSIDER ALL OF THOSE THINGS, YOUR
3 HONOR, IT'S CLEAR THAT MR. SIMMONS LACKS AN
4 ABILITY TO MAKE A FACTUAL -- TO HAVE A FACTUAL
5 UNDERSTANDING AS TO THE PROCEEDINGS OF THE
6 COURT AND THE JUDICIAL SYSTEM ITSELF, THE
7 PROCEEDINGS WITHIN THE COURTROOM, AND HE
8 CERTAINLY LACKS THE PRESENT INABILITY TO
9 EFFECTIVELY CONSULT WITH HIS ATTORNEYS. AND AS
10 SUCH, YOUR HONOR, WE THINK THAT THERE HAS NOT
11 BEEN A CLEAR SHOWING THAT HE IS COMPETENT TO
12 STAND TRIAL. IN FACT, WE THINK THAT IT'S
13 SUSPECT AT BEST. AND THIS IS A SERIOUS CASE.
14 MR. SIMMONS' LIFE IS LITERALLY ON THE LINE.
15 AND IN LIGHT OF THOSE QUESTIONS, AND IN LIGHT
16 OF THE EVIDENCE AS IT WAS PRESENTED, WE WOULD
17 URGE YOU TO DEEM HIM INCOMPETENT TO STAND
18 TRIAL.

19 THE COURT: ALL RIGHT. AND, MR. THEOS,
20 UNDERSTAND THAT THIS COURT WOULD NOT DICTATE
21 STRATEGY TO YOU OR MR. BELL. I KNOW THAT
22 YOU'RE VERY COMPETENT -- AS AN ATTORNEY IN A
23 CAPITAL CASE. YOU'VE BEEN SO RECOGNIZED AND
24 CERTIFIED BEFORE THE SUPREME COURT. BUT I
25 KEPT PUSHING TODAY TO KEEP ON WORKING BECAUSE

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1 I ANTICIPATED THAT -- AND I DON'T WANT TO
2 REVEAL ANY OF YOUR EX PARTE EXPERT THINGS.
3 BUT I WAS -- I TRUST YOU'VE CONSIDERED WHETHER
4 OR NOT YOU WERE GOING TO PRESENT ANY EVIDENCE
5 ON THIS ISSUE OTHER THAN THE STATE -- THE
6 WITNESSES THAT DID THE HALL EXAMINATION.

7 MR. THEOS: I'M SORRY. IS THAT A QUESTION?

8 THE COURT: YES, SIR. I MEAN, THE RECORD'S
9 CLOSED. BUT I CAN OPEN IT. YOU HAVE NO
10 EVIDENCE OTHER THAN WHAT YOU'VE PRESENTED.
11 YOU HAVE NO EXPERTS OF YOUR OWN, BECAUSE THERE
12 WAS ONE PERSON IN SEPTEMBER, SOMEBODY THAT
13 CONDUCTED---

14 MR. THEOS: YOUR HONOR, WE HAVE SEVERAL
15 EXPERTS. AND THAT'S NO SECRET. WE'VE GIVEN
16 THE NAMES OF THOSE EXPERTS TO MR. BAILEY.

17 THE COURT: I UNDERSTAND. BUT IT WOULDN'T
18 BEAR ON THE ISSUES NOW BEFORE THE COURT?

19 MR. THEOS: YOUR HONOR, WE'VE CHOSEN NOT TO
20 CALL THEM AS WITNESSES FOR PURPOSES OF THE
21 BLAIR HEARING.

22 THE COURT: FINE. WELL, YOU KNOW, WE ALL
23 PRACTICE DEFENSIVE MEDICINE. AND, SO, THAT
24 WAS A CONSIDERATION, AND YOU OPTED NOT TO
25 DO IT FOR PURPOSES OF THE BLAIR HEARING?

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1 MR. THEOS: WE'VE MADE A DECISION NOT TO PUT
2 ANY OF THOSE EXPERTS IN THE BLAIR HEARING.
3 THE COURT: ALL RIGHT. MADAM COURT REPORTER,
4 THIS COURT DOES RECOGNIZE THE SERIOUSNESS OF A
5 CAPITAL MURDER CASE AS WELL AS THE IMPORTANCE
6 AND SIGNIFICANCE OF THIS PARTICULAR HEARING.
7 I HAVE ATTEMPTED TO REFRESH MY MEMORY AND TO
8 PREPARE AS BEST I COULD TO BE UP TO SPEED ON
9 THIS MATTER. I HAVE READ 69 A.L.R.2D
10 COMMENCING AT PAGE 348, THE AMERICAN LAW
11 REPORTS, A.L.R. ANNOTATED; AN ANNOTATION ON
12 MENTAL SUBNORMALITY OF ACCUSED AS AFFECTING
13 VOLUNTARINESS OR ADMISSIBILITY OF CONFESSION
14 REALIZING THAT WE HAVEN'T GOTTEN INTO THE
15 DINNO V. JACKSON HEARING AS YET AND WENT BACK
16 AND READ SOME U.S. SUPREME COURT AND SOUTH
17 CAROLINA SUPREME COURT CASES, FORD VS.
18 WAYNEWRIGHT, JUNE 26TH OF 1986 IN WHICH OUR
19 SUPREME COURT HELD "THE FACT FINDER --
20 UNFORTUNATELY I SIT HERE AS A FACT FINDER IN
21 THIS HEARING -- MUST RESOLVE DIFFERENCES OF
22 OPINION WITHIN THE PSYCHIATRIC PROFESSION.
23 AND, OF COURSE, THAT CASE TURNED ON THE EIGHTH
24 AMENDMENT PROHIBITION. THIS WAS A FLORIDA
25 CASE WHICH PROHIBITED THE STATE FROM

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1 INFLECTING THE PENALTY OF DEATH UPON A
2 PRISONER WHO WAS INSANE. AND THEN, MADAM
3 COURT REPORTER -- AND I HAVE THESE SOMEWHAT
4 OUT OF ORDER FROM THEIR CHRONOLOGICAL SEQUENCE
5 BUT THERE'S A SOUTH CAROLINA CASE OF STATE VS.
6 CALLAHAN, AUGUST 28TH, 1974. JUSTICE
7 LITTLEJOHN WRITING FOR THE COURT RELATIVE TO A
8 BORDERLINE MENTAL RETARDATION CASE AND THE
9 VOLUNTARINESS OF THE CONFESSION. AND THE
10 STATEMENT THAT A LACK OF MENTAL CAPACITY IS AN
11 IMPORTANT FACTOR TO BE CONSIDERED WITH OTHER
12 FACTORS IN DETERMINING WHETHER IN FACT A
13 PURPORTED CONFESSION WAS VOLUNTARY. BECAUSE
14 OF THE LATENESS OF THE HOUR, I WILL NOT GO
15 INTO FURTHER EXPLANATION OR DETAIL OF THE
16 CASE. STATE VS. CAINE WHERE THE LACK OF
17 MENTAL CAPACITY AFFECTING A VOLUNTARY WAIVER.
18 THAT REALLY TURNED ON THE FAILURE OF JUDGE
19 GRINNICKER BACK -- THIS IS A NOVEMBER FIRST, A
20 1965 CASE. I WAS PRACTICING LAW BEFORE I WENT
21 ON THE BENCH. HE FAILED TO GIVE AN
22 INSTRUCTION TO THE JURY ON THE VOLUNTARINESS
23 OF THE PURPORTED CONFESSION BECAUSE OF A LACK
24 OF MENTAL CAPACITY. AND THEN AUGUST THE 28TH
25 OF 1974, STATE VS. CALLAHAN, 208 S.E.2D 284.

1 AGAIN THE MENTAL CAPACITY AFFECTING THE WEIGHT
2 OF MIRANDA RIGHTS. AND, MOVING ALONG, THE
3 STATE VS. DOBIE, BORDERLINE MENTAL
4 RETARDATION, VOLUNTARINESS OF CONFESSION
5 OCTOBER THE THIRD OF 1979 OPINION 258 S.E.2D
6 AT PAGE 896. THERE IS A UNITED STATES SUPREME
7 COURT OPINION. AGAIN, THIS IS CHIEF JUSTICE
8 BERGER DROPE, D-R-O-P-E VS. MISSOURI, A
9 FEBRUARY 19 OF 1975. AND, AGAIN, A PERSON WHO
10 DID NOT HAVE THE CAPACITY TO UNDERSTAND THE
11 NATURE AND OBJECT OF PROCEEDING AGAINST HIM OR
12 CONSULT WITH HIS COUNSEL OR ASSIST IN
13 PREPARING HIS DEFENSE MAY NOT BE SUBJECTED TO
14 A TRIAL. FURTHER, PATE VS. ROBERSON, MARCH
15 THE SEVENTH, 1966, U.S. SUPREME COURT; WHERE
16 THE ILLINOIS COURT FAILED TO HOLD A HEARING ON
17 COMPETENCY DEPRIVED HIM OF HIS CONSTITUTIONAL
18 RIGHT TO A FAIR TRIAL. THE STATE VS. TANNER;
19 WHILE THERE WAS NO I.Q. STATED, THAT WAS A
20 BORDERLINE MENTAL RETARDATION SITUATION OF THE
21 DEFENDANT. AND THE RESULTS OF THE DEFENDANT'S
22 BRAIN SCAN PERFORMED ON THE DEFENDANT TWELVE
23 YEARS PRIOR TO CRIME WERE TWO REMOTE IN TIME
24 TO BE RELEVANT. THERE IS A U.S. DISTRICT
25 COURT IN ALABAMA BOULDEN, B-O-U-L-D-E-N VS.

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1 HALLMAN, 257 FED.SUP AT 1013, A 1966 CASE.
2 THAT HAD TO DO WITH A DULL, NORMAL
3 INTELLIGENCE QUOTA OF 83. THE COURT HAS
4 REVIEWED THAT CASE. AND THE HOLDING THERE,
5 WHERE BOULDEN WAS BELOW AVERAGE IN SCHOOL IN
6 HIS GRADE LEVEL BETWEEN GRADES FIVE AND SIX AT
7 THE TIME OF OR SHORTLY
8 BEFORE THE ALLEGED KILLING. UNITED STATE VS.
9 YOUNG, LOW INTELLIGENCE AFFECTIO VOLUNTARINESS
10 OF WAIVER OR MIRANDA RIGHTS. THAT WAS A NORTH
11 CAROLINA CASE; WENT TO OUR FOURTH CIRCUIT
12 COURT OF APPEALS NOVEMBER THE THIRD OF 1975;
13 529 F.2D AT 193. "WHILE DEFENDANT YOUNG HAD A
14 BELOW AVERAGE I.Q.-- AND IT NEVER DID STATE IT
15 IN A QUANTIFIED NUMERICAL 68, 50, OR WHATEVER;
16 THEY JUST SAID A BELOW AVERAGE I.Q. -- LIMITED
17 EDUCATION AND READING PROBLEMS." THESE
18 FACTORS ARE NOT IN THEMSELVES DETERMINATIVE OF
19 THE VOLUNTARINESS OF A WAIVER FOR ONE MUST
20 EXAMINE THE TOTALITY OF CIRCUMSTANCES
21 SURROUNDING THE WAIVER. AND IN THAT
22 PARTICULAR CASE THEY FOUND THE DEFENDANT HAD
23 WAIVED HIS RIGHTS AND KNOWINGLY AND
24 VOLUNTARILY WAIVED THOSE RIGHTS. THE COURT
25 FURTHER REVIEWED PENRY, P-E-N-R-Y, VS.

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1 LYNAUGH, L-Y-N-A-U-G-H. AND THIS IS A U.S.
2 SUPREME COURT RELATIVE TO THE EXECUTION OF A
3 MENTALLY RETARDED PERSON AND THE PROHIBITION
4 OF THE EIGHTH AMENDMENT. MILLER VS. THE
5 STATE. I EVEN WENT OVER TO GEORGIA. IN THERE
6 WAS A SIXTEEN YEAR OLD WHO HAD BORDERLINE
7 INTELLIGENCE. AND IT WAS FOUND THAT HE KNEW
8 THE DIFFERENCE IN RIGHT AND WRONG. SINGLETON
9 VS. STATE, OUR SOUTH CAROLINA SUPREME COURT
10 OPINION WHERE JUSTICE TOAL ARTICULATED THE
11 TWO-PRONG ANALYSIS TO DETERMINE A CONVICTED
12 DEFENDANT'S COMPETENCY TO BE EXECUTED, WHETHER
13 PETITIONER WAS INCOMPETENT TO BE EXECUTED AND
14 CERTAIN THINGS RELATIVE TO THE P.C.R.
15 PROCEEDING. AND I'M ALMOST AT THE END, MRS.
16 KATHI; BECAUSE THERE WAS A 68 I.Q. IN A
17 BORDERLINE MENTAL RETARDATION IN STATE VS.
18 MIDDLETON DECIDED FEBRUARY THE 22ND, 1988 BY
19 OUR SOUTH CAROLINA SUPREME COURT. THAT WAS A
20 CHARLESTON COUNTY CASE WHERE THE IMPOSITION OF
21 THE DEATH PENALTY WAS NOT CRUEL AND UNUSUAL
22 PUNISHMENT THE REASON OF DEFENDANT'S
23 BORDERLINE MENTAL RETARDATION GIVEN HIS
24 APPRECIATION OF REASON FOR PENALTY. AGAIN,
25 GENTLEMEN AND LADIES, I EMPHASIZE THE TOTALITY

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1 OF THE CIRCUMSTANCES THAT MUST BE CONSIDERED
2 IN ANY CASE. AND THERE IS NOT A BRIGHT LINE
3 DEFINITIVE IF YOU'RE ABOVE 70, YOU PASS; IF
4 YOU'RE BELOW 70, YOU FAIL. THERE ARE MANY
5 CONSIDERATIONS THAT ENTER INTO THE EQUATION.
6 AGAIN, STATE VS. EVANS, OCTOBER THE 26TH OF
7 1992; AND THIS WAS A 68 I.Q. CASE WHICH FALLS
8 UNDER MILDLY MENTALLY RETARDED RANGE. BUT
9 THAT CASE WAS COMPOUNDED BY A DUAL DIAGNOSIS
10 OF MENTAL ILLNESS AND MENTAL RETARDATION. AND
11 THEY CITE THE LAW REVIEW ARTICLE THAT "A LOW
12 I.Q. SCORE IS A SIGN OR INDICATION OF POSSIBLE
13 MENTAL RETARDATION;" WASHINGTON LAW REVIEW OF
14 1985; STATE VS. ELMORE, NOVEMBER ONE OF 1983;
15 OUR SUPREME COURT. TRIAL JUDGE DID NOT ERR IN
16 HOLDING A HEARING TO DETERMINE DEFENDANT'S
17 COMPETENCY TO STAND TRIAL. AND WE'VE GONE
18 THROUGH THAT LITANY HERE TODAY. OBVIOUSLY
19 THE COURT HAS READ AND RE-READ THE CODE
20 SECTIONS. AND 44-23-410 ET SEQ. RELATIVE TO
21 THE LEGISLATIVE PRONOUNCEMENT ON THE FITNESS
22 TO STAND TRIAL. STATE VS. OLAR (PHONETICALLY
23 SPELLED), APRIL 1 OF 1999. THAT'S A SOUTH
24 CAROLINA SUPREME COURT CASE WHERE THE I.Q. WAS
25 53 TO 59. AND BECAUSE OF THAT MENTAL

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1 RETARDATION, THE TRIAL COURT'S INQUIRY AS TO
2 HIS SITUATION WAS INSUFFICIENT, AND IT WAS
3 REVERSED BECAUSE THEY CONCLUDED THAT THE
4 WAIVER WAS NOT KNOWING AND VOLUNTARY. AND,
5 FINALLY, OF COURSE THE STATE VS. BLAIR,
6 JANUARY 5, A 1981 CASE, WHERE OUR SUPREME
7 COURT SPEAKING TO MR. JUSTICE GREGORY, SET
8 FORTH THE STANDARD FOR DETERMINING WHETHER AN
9 ACCUSED IS ENTITLED TO A COMPETENCY TO STAND
10 TRIAL HEARING HAS BEEN SET IN THE PAGE VS.
11 ROBERSON CASE. AND THEN THEY GO INTO DROPE
12 VS. MISSOURI, ANOTHER CASE I HAD ALREADY
13 CITED. I HAVE READ, OF COURSE, THAT WHICH WAS
14 FORWARDED TO ME BY MR. THEOS. AND I
15 APPRECIATE HIM AND MR. BELL'S PREPARATION. I
16 FIND SOME DISPUTE WITH THE STATEMENT THAT THE
17 DEFENDANT CAN'T READ OR WRITE. I DIDN'T HEAR
18 ANY TESTIMONY ABOUT SOMEBODY ELSE WRITING THE
19 LETTERS FOR HIM. HE WAS SENDING OUT MAIL. SO
20 IT APPEARS THAT HE DID HAVE SOME ABILITY IN
21 THAT REGARD. AND I NOTE THAT JOHN BOONE WHO'S
22 -- I THINK HE'S TEACHING NOW AT CORNELL
23 UNIVERSITY -- IS A RECOGNIZED EXPERT. BUT IN
24 REGARD TO HIS ARTICLE ON CAPITAL CASES AND
25 REPRESENTED THE MENTALLY RETARDED DEFENDANT,

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AS WELL AS THE ARTICLE OF JOHN BOONE AND DAVID BUCK. AND CERTAINLY DAVID BUCK IS NATIONALLY RECOGNIZED FOR HIS ADVOCACY POSITION RELATIVE TO CAPITAL PUNISHMENT. THERE ARE ARKANSAS LAW REVIEW ARTICLES SENTENCING THE MENTALLY RETARDED TO DEATH, AN EIGHTH AMENDMENT ANALYSIS. AND CERTAINLY, JUST AS SOLICITOR BAILEY IS AN ADVOCATE FOR THE STATE, THOSE GENTLEMEN ARE CERTAINLY ADVOCATES TO A CONTRARY POSITION. AND THEY TALK ABOUT A TENNESSEE CASE WITH AN I.Q. OF 47. AND SOMEONE WHO HAD AN ABILITY OF AN AVERAGE FIVE OR SIX YEAR OLD. AND I CAN APPRECIATE DISTINCT PROBLEMS WITH THAT SITUATION. BUT HERE YOU HAVE A SUBJECT -- I HAVE GREAT RESPECT FOR SUMMERVILLE HIGH SCHOOL, PROBABLY MORE FOR THEIR ATHLETIC PROWESS. COACHMAN MCKISSICK IS THE WINNINGEST COACH IN FOOTBALL AT THE COLLEGE OR HIGH SCHOOL LEVEL IN THE HISTORY OF THE UNITED STATES OF AMERICA. AND I REMEMBER GETTING 55 TO NOTHING AND 66 TO NOTHING. THEY HAD BIG AND SMART FOOTBALL PLAYERS, AND THEY STILL DO, AND IT'S A WONDERFUL RECORD. BUT HERE'S SOMEONE, ALBEIT THAT IN THE 11TH GRADE THEY PUT HIM IN A

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1 REMEDIAL ENGLISH. BUT IT'S VERY QUESTIONABLE
2 TO THIS COURT THAT THIS -- ALLEGEDLY THAT MR.
3 SIMMONS CANNOT TELL TIME ON A CLOCK, BUT YET
4 HE CAN PASS A SOUTH CAROLINA STATE HIGHWAY
5 DEPARTMENT DRIVER'S LICENSE TEST. THAT'S JUST
6 AMAZING GRACE TO COMPREHEND THAT. HE'S GOT A
7 HIGH SCHOOL DIPLOMA. I KNOW SOMETHING ABOUT
8 REMEDIAL COURSES. I HAD A DAUGHTER THAT WENT
9 TO COLUMBIA COLLEGE AND HAD TO TAKE REMEDIAL
10 MATH HER FIRST SEMESTER AT COLUMBIA COLLEGE.
11 AND I'M PROUD TO TELL YOU THAT THEREAFTER SHE
12 WAS ON THE DEAN'S LIST AND GRADUATED CUM LAUDE
13 AND A GRADUATE OF COLUMBIA COLLEGE AND WAS
14 ADMITTED TO THE UNIVERSITY OF SOUTH CAROLINA
15 WHERE SHE GRADUATED MAGNA CUM LAUDE IN SPEAK
16 LANGUAGE PATHOLOGY. BUT, YET, SHE HAD TO TAKE
17 REMEDIAL MATH HER FIRST SEMESTER AT COLUMBIA
18 COLLEGE. SO IT'S NOT A DISGRACE, CERTAINLY
19 NOT IN MY BOOK, FOR SOMEBODY TO PUT THEM IN
20 REMEDIAL MATH. I COMMEND THE REMEDIAL ENGLISH
21 IN THIS INSTANCE. IN BARNWELL WE HAD A GREAT
22 BASKETBALL PLAYER. HE WAS MR. BASKETBALL IN
23 SOUTH CAROLINA ABOUT NINE, TEN, TWELVE YEARS
24 AGO. AND HE FLUNKED NINTH GRADE ENGLISH, AND
25 THE POWERS THAT BE THERE PUT HIM IN SPANISH IN

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1 THE TENTH GRADE. YOU KNOW, HE COULDN'T CARRY
2 HIS BOOKS. EVERYBODY WAS RECRUITING HIM. BUT
3 THANKFULLY THERE ARE PEOPLE THAT -- GUIDANCE
4 COUNSELORS AND THROUGH THE TESTING, IF THEY
5 SEE SOMEONE THAT'S NOT DOING WELL IN A REGULAR
6 ENGLISH, YOU CAN PUT THEM IN A GOOD PLACE
7 WHERE THEY'RE CAPABLE OF PERFORMING RATHER
8 THAN BEING TRAMPLED BY PEOPLE RUNNING THEM
9 INTO THE GROUND OR GIVING THEM A SENSE OF
10 WORTHLESSNESS BECAUSE THEY CAN'T COMPREHEND
11 THAT THEY'RE IN A REGULAR ENGLISH COURSE TO
12 PUT THEM IN A SPECIAL REMEDIAL ENGLISH COURSE.
13 THAT WAS THE APPROPRIATE THING FOR ANY SCHOOL
14 TO DO WHETHER HARLEYVILLE RIDGEVILLE OR ST.
15 PAUL'S OR ST. GEORGE. THE COURT HAS OBSERVED
16 THE BODY LANGUAGE OF THE DEFENDANT DURING THIS
17 CASE. HE'S APPEARED ALERT AND ATTENTIVE.
18 HE'S EVEN BEEN CONFERRING WITH HIS LAWYERS
19 FROM TIME TO TIME. HE DIDN'T HAVE HIS GLASSES
20 ON DURING THE HEARING THIS MORNING, BUT HE'S
21 HAD HIS GLASSES ON FOR THE BALANCE OF THE DAY.
22 BUT CONSIDERING THE TOTALITY OF THE
23 CIRCUMSTANCES, LADIES AND GENTLEMEN, AND
24 HAVING OBSERVED THE DEMEANOR OR LISTENING TO
25 THE WITNESSES THAT HAVE TESTIFIED IN THE TRIAL

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1 OF THE CASE, THIS COURT IS OF THE OPINION AND
2 SO RULES THAT THE DEFENDANT, MR. KENNETH
3 SIMMONS, DOES HAVE THE MENTAL CAPACITY TO
4 STAND TRIAL; THAT HE DOES AND CAN
5 DIFFERENTIATE MORAL AND LEGAL
6 RIGHT FROM MORAL AND LEGAL WRONG. AND
7 PURSUANT TO MCNAGHTEN STANDARDS THAT HE IS
8 CRIMINALLY RESPONSIBLE FOR THE CHARGES. AND I
9 UNDERSTAND THAT THERE'S A DIVERGENCE OF
10 TESTIMONY AS TO WHETHER AT CERTAIN TIMES THAT
11 THERE WAS INDICATION OF MALINGERING AND THAT
12 HE JUST COULDN'T -- WASN'T CERTAIN THAT HE
13 COULD UNDERSTAND HIS MIRANDA WARNINGS. BUT
14 APPARENTLY -- AND I DON'T KNOW WHETHER THROUGH
15 REPETITION THAT HE GOT EDUCATED. BUT AS WAS
16 TESTIFIED BY DR. VIDIC -- AND I WROTE IT DOWN
17 "I HAVE THE RIGHT NOT TO ANSWER YOUR
18 QUESTIONS, AND I WANT TO TALK TO MY ATTORNEY"
19 WHEN THEY SENT SOMEONE TO DO -- AN INTERN TO
20 DO A PSYCHOLOGICAL TESTING. SO TO ME THAT'S
21 CLEAR EVIDENCE OF THE FACT THAT HE DID
22 UNDERSTAND THOSE WARNINGS BECAUSE THAT'S AN
23 EXAMPLE OF HIS HAVING INVOKED HIS MIRANDA
24 WARNINGS. SO THE COURT FINDS THAT THE SUBJECT
25 SHALL PROCEED TO TRIAL PURSUANT TO BLAIR AND

1 PURSUANT TO THE STATUTES. IS THERE ANYTHING
2 OTHER OR FURTHER, GENTLEMEN, IN THAT REGARD?
3 MR. BAILEY: NO, SIR, YOUR HONOR.
4 THE COURT: FOR THE DEFENSE?
5 MR. THEOS: NOT WITH RESPECT TO THAT.
6 THE COURT: ALL RIGHT. NOW, GENTLEMEN, AGAIN
7 I DON'T WANT TO PUT YOU UNDER ANY TIME
8 CONSTRAINT. BUT, MR. THEOS, YOU HAD TOLD ME
9 THAT YOU COULDN'T BE AVAILABLE TOMORROW. AND
10 I SAID, "OH, SURE YOU CAN; I'VE PROTECTED YOU
11 FOR THIRTY DAYS, NOT TEN DAYS BEFORE FEBRUARY
12 THE 22ND." YOU HAD A CONFLICT TOMORROW
13 EVENING. AND I TOLD YOU WE'D WORK TOWARD YOUR
14 BEING IN DOWNTOWN CHARLESTON BY SIX O'CLOCK, I
15 BELIEVE IT IS?
16 MR. THEOS: YES, YOUR HONOR.
17 THE COURT: AND, SO, WITH THAT IN MIND, THE
18 COURT REPORTER IS STAYING HERE OVERNIGHT AND
19 IS NOT GOING BACK TO COLUMBIA TONIGHT. AND I
20 DON'T KNOW THAT WE NEED ANY OF THESE LADIES
21 AND GENTLEMEN OUT HERE, DO WE SOLICITOR, FROM
22 COLUMBIA?
23 MR. BAILEY: NO, SIR.
24 THE COURT: AND---
25 MR. BAILEY: IF YOU'RE GOING TO GET INTO THE

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1 JACKSON VS. DINNO HEARING TONIGHT, YOUR HONOR,
2 I HAVE A---

3 THE COURT: NO, SIR. LISTEN! IT'S SEVEN
4 O'CLOCK. YOU DON'T REALLY WANT ME TO, DO YOU?

5 MR. BAILEY: WELL, I'VE GOT A SITUATION WITH
6 TWO OF THE CORRECTIONAL OFFICERS WHO HAVE
7 CONFLICTS TOMORROW.

8 THE COURT: FROM WHERE; CORRECTIONAL OFFICERS
9 FROM ST. GEORGE?

10 MR. BAILEY: RICHLAND COUNTY, JUDGE.

11 THE COURT: THEY CAME FROM COLUMBIA?

12 MR. BAILEY: YES, SIR.

13 THE COURT: OH, MY GOODNESS. AND HOW LONG
14 WOULD THEIR TESTIMONY TAKE?

15 MR. BAILEY: IT SHOULDN'T TAKE -- I HESITATE
16 TO GIVE AN OPINION ON THAT BECAUSE I'VE BEEN
17 WRONG SO MANY TIMES. BUT---

18 THE COURT: WELL, NO. YOUR CASE WAS GOING TO
19 TAKE TWO HOURS. AND I DON'T SAY THIS
20 CRITICALLY. BUT YOU KNOW, WE WERE THERE
21 FOUR-AND-A-HALF. BUT YOU CAN'T CONTROL THE
22 CROSS-EXAMINATION. I UNDERSTAND THAT. AND I
23 DON'T MIND WORKING. ONE REASON I WANTED TO
24 FINISH THE BLAIR HEARING TODAY IS SO THESE
25 LADIES AND GENTLEMEN WITH THE DEPARTMENT OF

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1 MENTAL HEALTH COULD GET BACK TO THEIR REGULAR
2 JOBS AND APPOINTMENTS. BUT YOU'VE GOT TWO
3 PEOPLE FROM COLUMBIA YOU WANT TO TAKE UP? HOW
4 LONG WILL IT TAKE? AN HOUR? THIRTY MINUTES?
5 TEN MINUTES?

6 MR. BAILEY: I THINK MR. HOWARD IS THE LONGEST
7 ONE. HE'S PROBABLY GOING TO TAKE ROUGHLY AN
8 HOUR IN CROSS-EXAMINATION. HE CAN'T BE HERE
9 TOMORROW, BUT---

10 THE COURT: WAIT A MINUTE. TELL ME WHY HE
11 CAN'T BE HERE TOMORROW. I MEAN, IS HIS MOTHER
12 ON HER DEATH BED?

13 MR. BAILEY: YOUR HONOR, I'LL LET HIM ADDRESS
14 THAT IF I COULD.

15 THE COURT: WHERE IS MR. HOWARD?

16 MR. HOWARD: RIGHT HERE. NO, SIR; IT'S
17 NOTHING QUITE THAT SERIOUS. WE HAD -- I HAD
18 PREVIOUS PLANS TO BE OUT OF TOWN TOMORROW.

19 THE COURT: WELL, DO Y'ALL MIND IF HE COMES UP
20 HERE AND WHISPERS TO ME A MINUTE? DO Y'ALL
21 MIND THAT?

22 MR. THEOS: NO, SIR.

23 THE COURT: BECAUSE I'LL ACCOMMODATE ANYBODY I
24 CAN. BUT I CAN TELL YOU, I'M NOT GOING TO
25 STAY HERE ANOTHER HOUR TONIGHT. I DROVE TWO

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1 HOURS TO GET HERE.

2 (AT THIS TIME OFF-THE-RECORD DISCUSSION IS HELD BETWEEN
3 THE COURT AND MR. HOWARD.)

4 THE COURT: YOU KNOW, I'VE BEEN AT THIS FOR 25
5 YEARS. ONE DAY I'M GOING TO LEARN TO RUN A
6 RAILROAD. I'M SORRY, KATHI, TO KEEP YOU HERE
7 THIS LATE. I'M JUST TRYING TO ACCOMMODATE
8 EVERYBODY I CAN. AND, SO, I'LL GO AHEAD AND
9 HEAR FROM THE SERGEANT WHO'S GOT TO GO VISIT
10 HIS ILL MOTHER IN ALABAMA. AND THERE ARE TWO
11 MORE VERY SHORT WITNESSES FROM RICHLAND. BUT
12 INVESTIGATOR HOWARD IS GOING TO HAVE TO BE
13 BACK IN THE MORNING BECAUSE HIS MIGHT TAKE AN
14 HOUR. AND I JUST DON'T FEEL THAT IT'S FAIR TO
15 ALL CONCERNED TO STAY FURTHER THAN THAT.
16 KATHI, CAN YOU HELP ME ACCOMMODATE THESE THREE
17 FOLKS?

18 THE COURT REPORTER: I SURE CAN.

19 THE COURT: PLEASE. I APPRECIATE IT. I'M
20 SORRY TO HAVE TO ASK YOU TO DO THAT. MR.
21 THEOS, MR. BELL; CAN I ASK YOU -- WE'VE STILL
22 GOT TO GO OVER ALL THOSE JURY EXCUSES AND --
23 WE'VE GOT PLENTY TO DO TOMORROW. BUT, YOU
24 KNOW, WE'RE GOING TO BE BUSY TOMORROW. ALL
25 RIGHT. ALL RIGHT; DINNO HEARING. SO SHALL WE

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1 PROCEED? LET THE RECORD REFLECT THAT THE
2 DEFENDANT AND HIS COUNSEL ARE PRESENT;
3 SOLICITOR REPRESENTING THE STATE. YOU MAY
4 PROCEED, MR. SOLICITOR.

5 MR. BAILEY: THANK YOU, YOUR HONOR. WE WOULD
6 CALL MARGARET BUSH.

7 THE COURT: MARGARET BUSH. COME AROUND,
8 PLEASE. PUT YOUR LEFT HAND ON THE BIBLE.

9 JACKSON V. DINNO HEARING

10 - - - - -

11 WHEREUPON,

12 MARGARET BUSH, WHO AFTER BEING FIRST DULY
13 SWORN TO TELL THE TRUTH, TESTIFIED AS
14 FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. MRS. BUSH, YOU'RE A CORRECTIONAL OFFICER WITH THE
18 RICHLAND COUNTY DETENTION CENTER; IS THAT CORRECT?

19 A. YES, SIR.

20 Q. WERE YOU WORKING AT THE DETENTION CENTER ON
21 DECEMBER THE THIRD, 1997?

22 A. YES, SIR.

23 Q. I WANT TO CALL YOUR ATTENTION TO ABOUT 2:55 P.M. ON
24 DECEMBER THE THIRD, 1997, AND ASK WHETHER OR NOT
25 KENNETH SIMMONS WAS AN INMATE AT THE DETENTION

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1 CENTER?

2 A. YES, SIR.

3 Q. AND DID YOU SEE HIM THAT AFTERNOON AT ABOUT 2:55?

4 A. I DID.

5 Q. WHERE DID YOU SEE HIM?

6 A. HE APPROACHED THE DESK IN THE DORM WHERE I WAS
7 WORKING.

8 Q. WHEN HE APPROACHED THE DESK, WAS THERE A
9 CONVERSATION THAT YOU HAD WITH HIM?

10 A. WHEN HE APPROACHED THE DESK, HE HANDED ME A YELLOW
11 PIECE OF PAPER AND STATED THAT HE WANTED TO CONFESS
12 TO A MURDER.

13 Q. ALL RIGHT. NOW, WHEN HE SAID THAT HE WANTED TO
14 CONFESS TO A MURDER, WAS THAT IN RESPONSE TO A
15 QUESTION YOU WERE ASKING HIM?

16 A. NO, SIR.

17 Q. OKAY. DID YOU ASK TO SEE HIM, OR DID HE ASK TO SEE
18 YOU?

19 A. HE ASKED TO SEE ME.

20 Q. OKAY. I'M GOING TO HAND YOU A YELLOW PIECE OF
21 PAPER AND ASK IF YOU CAN IDENTIFY THAT AS BEING THE
22 PAPER THAT MR. SIMMONS GAVE YOU? (WITNESS REVIEWS
23 NOTE.)

24 A. I BELIEVE THAT IT IS.

25 Q. OKAY.

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1 THE COURT: MA'AM, HE WAS AN INMATE, A
2 DETAINEE, IN THE RICHLAND COUNTY DETENTION
3 CENTER?

4 MRS. BUSH: YES, SIR, A DETAINEE.

5 THE COURT: THANK YOU. KATHI, PLEASE START
6 OVER WITH STATE'S ONE OR DEFENSE ONE BECAUSE
7 THIS IS A SEPARATE HEARING.

8 THE COURT REPORTER: OKAY.

9 MR. BAILEY: YOUR HONOR, THIS IS STATE'S ONE
10 FOR THIS HEARING ONLY.

11 THE COURT: ANY OBJECTION?

12 MR. THEOS: NONE, YOUR HONOR.

13 THE COURT: AND OBVIOUSLY, GENTLEMEN, THESE
14 EXHIBITS ARE FOR PURPOSES OF THIS HEARING, NOT
15 FOR TRIAL. WE ALL KNOW THAT. STATE'S NUMBER
16 ONE. THANK YOU. WITHOUT OBJECTION.

17 STATE'S EXHIBIT NO. 1

18 ADMITTED AS EVIDENCE

19 Q. I'M GOING TO HAND YOU THAT BACK. NOW, AFTER
20 KENNETH SIMMONS HANDED YOU THAT NOTE ON THE YELLOW
21 PAPER AND SAID THAT HE HAD KILLED SOMEBODY, WHAT,
22 IF ANYTHING, DID YOU DO?

23 A. AFTER HE HANDED ME THE NOTE, I GLANCED AT IT, READ
24 IT OVER. AND I ASKED HIM TO GO BACK TO HIS BUNK.

25 Q. ALL RIGHT AND WHAT---

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1 A. FIRST, WHEN I READ THE NOTE, HE STATED TO ME THAT
2 HE WANTED TO TALK TO SOMEONE ABOUT IT.

3 Q. ALL RIGHT. AND DID YOU MAKE ARRANGEMENTS FOR HIM
4 TO TALK TO SOMEBODY?

5 A. I DID.

6 Q. WHAT DID YOU DO?

7 A. I CALLED MY SUPERVISOR.

8 Q. ALL RIGHT. WHO WAS THAT AT THAT TIME?

9 A. SGT. PERRYMAN.

10 Q. BASED ON THE CONVERSATION YOU HAD WITH SGT.
11 PERRYMAN, WHAT DID YOU DO AT THAT POINT WITH THE
12 NOTE?

13 A. WELL, I KEPT THE NOTE AT THE DESK UNTIL THE
14 SERGEANT TOLD ME TO SEND IT UP WITH THE INMATE.

15 Q. DID YOU SEND THE NOTE AND THE INMATE UP TO SGT.
16 PERRYMAN, OR DID YOU GET SOMEBODY ELSE TO DO THAT?

17 A. SOMEONE ELSE TOOK IT UP.

18 Q. WAS THAT SAMUEL JACKSON?

19 A. YES, SIR.

20 Q. ALL RIGHT. MRS. BUSH, PLEASE ANSWER ANY QUESTIONS
21 THAT MR. THEOS OR MR. BELL MAY HAVE FOR YOU.

22 THE COURT: CROSS?

23 MR. THEOS: JUST A COUPLE OF QUESTIONS.

24 CROSS-EXAMINATION

25 BY MR. THEOS:

MARGARET BUSH - CROSS/MR. THEOS

- 1 Q. DID YOU HAVE ANY CONTACT WITH THAT BEFORE WITH MR.
2 SIMMONS?
3 A. NO, SIR, I DIDN'T.
4 Q. YOU'VE NEVER HAD A CONVERSATION WITH HIM BEFORE
5 THAT?
6 A. NEVER.
7 Q. AND WHERE WERE YOU STATIONED WHEN HE CAME UP TO
8 YOU?
9 A. I WAS SITTING AT THE FRONT OF THE DORM AT A DESK.
10 Q. WHAT SORT OF CELL WAS HE IN TO ENABLE HIM TO COME
11 TO YOU?
12 A. IT WAS AN OPEN DORM WITH CUBICLES. LIKE HALF WALLS
13 BETWEEN THE BUNKS.
14 Q. THERE WAS NO PHYSICAL OBSTRUCTIONS BETWEEN YOU AND
15 THE INMATES IN THIS DORM?
16 A. NO, SIR, JUST A DESK WHERE HE WAS STANDING.
17 Q. AND DID HE SAY ANYTHING -- TELL ME AGAIN HIS EXACT
18 WORDS.
19 A. WHEN HE WALKED UP TO THE DESK, HE HANDED ME THE
20 PAPER. AT THE SAME TIME HE SAID, "I WANT TO
21 CONFESS TO SOME MURDERS."
22 Q. SOME MURDERS?
23 A. THAT'S WHAT HE SAID.
24 Q. OKAY. AND DID HE OFFER ANYTHING ELSE? DID HE SAY
25 ANYTHING ELSE?

1 A. HE DIDN'T. AND I GLANCED DOWN, AND I READ THE
2 NOTE. AND I SAID, "WELL, WHAT DO YOU WANT ME TO DO
3 WITH THIS?" AND HE SAID, "I NEED TO TALK TO
4 SOMEONE."

5 Q. DID HE SAY ANYTHING BEYOND THAT?

6 A. NO. I TOLD HIM THAT I WOULD CONTACT MY SUPERVISOR,
7 AND ASKED HIM TO GO BACK TO HIS BUNK.

8 Q. DID HE DO THAT?

9 A. YES, SIR, HE DID.

10 Q. WHAT TIME WAS THIS?

11 A. IT WAS APPROXIMATELY THREE O'CLOCK IN THE
12 AFTERNOON.

13 Q. ON DECEMBER THE THIRD?

14 A. DECEMBER THE THIRD.

15 Q. HOW MANY PEOPLE WERE IN THAT CELL?

16 THE COURT: IN THE OPEN DORM AREA.

17 Q. IN THAT OPEN DORM AREA?

18 A. YES, SIR. APPROXIMATELY 55.

19 Q. OF COURSE YOU DIDN'T SEE MR. SIMMONS WRITE THE
20 NOTE?

21 A. I DIDN'T.

22 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.
23 DOWN.

24 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
25 DOWN. YOU MAY COME DOWN.

SAMUEL JACKSON - DIRECT/MR. BAILEY

1 MR. BAILEY: THE STATE WOULD CALL SAMUEL
2 JACKSON.

3 - - - - -

4 WHEREUPON,
5 SAMUEL JACKSON, WHO AFTER BEING FIRST
6 DULY SWORN TO TELL THE TRUTH, TESTIFIED
7 AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q. MR. JACKSON, YOU'RE A CORRECTIONAL OFFICER WITH THE
11 RICHLAND COUNTY DETENTION CENTER; IS THAT CORRECT?

12 A. YES, SIR.

13 Q. BACK ON DECEMBER THE THIRD, 1997, WERE YOU AT WORK
14 THAT DAY?

15 A. YES, SIR.

16 Q. THAT AFTERNOON DID YOU HAVE OCCASION TO SEE OFFICER
17 MARGARET BUSH WHO JUST TESTIFIED?

18 A. YES, SIR.

19 Q. AND I'M GOING TO HAND YOU A NOTE MARKED STATE'S
20 NUMBER ONE AND ASK WHETHER OR NOT MRS. BUSH GAVE
21 YOU THAT NOTE? (WITNESS EXAMINES NOTE.)

22 A. YES, THIS IS IT.

23 Q. DID YOU SEE KENNETH SIMMONS THAT DAY?

24 A. YES, I DID.

25 Q. WHAT DID YOU DO WITH THAT NOTE AND MR. SIMMONS?

SAMUEL JACKSON - CROSS/MR. THEOS

1 A. I ESCORTED THIS NOTE AND THE DETAINEE UP TO THE
2 SUPERVISOR'S OFFICE. THEN I GAVE IT TO MY
3 SUPERVISOR, TO SGT. PERRYMAN THAT DAY.

4 Q. ALL RIGHT. SGT. PERRYMAN WAS THE SUPERVISOR, AND
5 YOU TOOK MR. SIMMONS TO HIM, AND YOU GAVE THAT NOTE
6 TO MR. PERRYMAN?

7 A. YES, SIR.

8 Q. PLEASE ANSWER ANY QUESTIONS THAT MR. THEOS MAY HAVE
9 FOR YOU.

10 THE COURT: CROSS?

11 MR. THEOS: YES, SIR.

12 CROSS-EXAMINATION

13 BY MR. THEOS:

14 Q. MR. JACKSON, DID YOU AND MR. SIMMONS TALK ON THE
15 WAY WHEN YOU WERE ESCORTING HIM TO MR. PERRYMAN?

16 A. NO, SIR.

17 Q. DID YOU ASK MR. SIMMONS ANY QUESTIONS?

18 A. NO, SIR.

19 Q. DID MR. SIMMONS OFFER ANY STATEMENTS TO YOU?

20 A. NO, SIR.

21 Q. DID HE SAY ANYTHING AT ALL?

22 A. HE JUST FOLLOWED INSTRUCTIONS.

23 Q. DID YOU HEAR HIM TALK WITH MRS. BUSH?

24 A. NO, SIR.

25 Q. DID YOU HEAR HIM TALK WITH MR. PERRYMAN?

NATHAN PERRYMAN - DIRECT/MR. BAILEY

1 A. NO, SIR.

2 Q. WHAT YOU'VE JUST TESTIFIED TO IS THE EXTENT OF YOUR
3 INVOLVEMENT WITH MR. SIMMONS?

4 A. THAT'S IT.

5 Q. THANK YOU.

6 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

7 THE COURT: THANK YOU. STEP DOWN. NEXT
8 WITNESS.

9 MR. BAILEY: SGT. PERRYMAN.

10 - - - - -

11 WHEREUPON,

12 SGT. NATHAN PERRYMAN, WHO AFTER BEING
13 FIRST DULY SWORN TO TELL THE TRUTH,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q. YOU'RE SGT. NATHAN PERRYMAN?

18 A. YES, SIR.

19 Q. AND YOU'RE EMPLOYED AT THE RICHLAND COUNTY
20 DETENTION CENTER?

21 A. YES, I AM.

22 Q. WERE YOU EMPLOYED THERE ON DECEMBER THE THIRD,
23 1997?

24 A. YES, I WAS.

25 Q. ABOUT THREE O'CLOCK THAT AFTERNOON, WOULD YOU STATE

NATHAN PERRYMAN - DIRECT/MR. BAILEY

1 WHETHER OR NOT YOU GOT A CALL FROM MARGARET BUSH?

2 A. I SURE DID. SHE CALLED AND SAID SHE HAD AN INMATE
3 THAT WANTED TO CONFESS TO A MURDER.

4 Q. DID YOU GIVE HER ANY INSTRUCTIONS?

5 A. I TOLD HER NOT TO SAY ANTHING ELSE TO THE INMATE
6 AND TO SEND HIM TO MY OFFICE.

7 Q. OKAY. AND DID SOMEBODY BRING MR. SIMMONS TO YOUR
8 OFFICE?

9 A. OFFICER JACKSON.

10 Q. AT THE TIME OFFICER JACKSON BROUGHT MR. SIMMONS TO
11 YOUR OFFICE, DID HE HAND YOU SOMETHING? AND I'LL
12 SHOW YOU STATE'S ONE AND SEE IF YOU CAN RECOGNIZE
13 THAT (WITNESS REVIEWS NOTE.)

14 A. YES. THIS APPEARS TO BE THE NOTE THAT HE BROUGHT
15 TO ME ALONG WITH THE DETAINEE.

16 Q. OKAY. AFTER MR. SIMMONS WAS BROUGHT TO YOU BY
17 OFFICER JACKSON ALONG WITH THAT NOTE, WAS THERE ANY
18 COMMUNICATION BACK AND FORTH BETWEEN YOU AND MR.
19 SIMMONS?

20 A. YES, SIR. HE CAME INTO THE OFFICE, AND I ASKED HIM
21 WHAT COULD I DO FOR HIM. HE SAID HE WANTED TO
22 ADMIT TO KILLING TWO PEOPLE HE HAD TOLD ME.

23 Q. ALL RIGHT.

24 A. AT THAT TIME HE TRIED TO GO ON WITH THE
25 CONVERSATION. I STOPPED HIM AND TOLD HIM HE NEEDED

NATHAN PERRYMAN - DIRECT/MR. BAILEY

1 TO TALK TO THE INVESTIGATOR.

2 Q. ALL RIGHT. AND WHO WAS THE INVESTIGATOR AT THAT
3 TIME?

4 A. LT. HOWARD.

5 Q. AND DID YOU TAKE HIM TO MR. HOWARD'S OFFICE?

6 A. I DID.

7 Q. IMMEDIATELY?

8 A. I DID.

9 Q. WHAT ABOUT THE NOTE, THAT YELLOW NOTE, STATE'S
10 NUMBER ONE?

11 A. I GAVE THAT TO LT. HOWARD. I GAVE IT TO HIM THE
12 NEXT DAY.

13 Q. THAT WOULD HAVE BEEN DECEMBER THE FOURTH; IS THAT
14 CORRECT?

15 A. RIGHT.

16 Q. OKAY. MR. PERRYMAN, PLEASE ANSWER ANY QUESTIONS
17 THAT THE DEFENDANT MAY HAVE FOR YOU.

18 A. OKAY.

19 THE COURT: CROSS?

20 MR. THEOS: YES, SIR.

21 CROSS-EXAMINATION

22 BY MR. THEOS:

23 Q. SGT. PERRYMAN, YOU SAID THAT WHEN MR. SIMMONS CAME
24 TO YOU THAT HE TOLD YOU HE WANTED TO ADMIT TO
25 KILLING TWO PEOPLE?

NATHAN PERRYMAN - CROSS/MR. THEOS

- 1 A. YES, HE DID.
- 2 Q. WERE THOSE HIS EXACT WORDS?
- 3 A. HIS EXACT WORDS.
- 4 Q. I WANT TO ADMIT TO KILLING TWO PEOPLE?
- 5 A. I ASKED HIM WHAT COULD I DO FOR HIM. AND HE SAID
- 6 "I WANT TO CONFESS TO KILLING TWO PEOPLE."
- 7 Q. I WANT TO CONFESS TO KILLING TWO PEOPLE?
- 8 A. RIGHT.
- 9 Q. DID HE SAY ANYTHING BEYOND THAT?
- 10 A. I STOPPED HIM AT THAT TIME.
- 11 Q. WHY DID YOU DO THAT?
- 12 A. BECAUSE I DIDN'T WANT TO HEAR IT. THAT'S WHAT I'VE
- 13 GOT THE INVESTIGATOR FOR.
- 14 Q. IS THAT STANDARD PROCEDURE?
- 15 A. THAT'S STANDARD PROCEDURE.
- 16 Q. WITHIN THE RICHLAND COUNTY DETENTION CENTER?
- 17 A. YES, SIR.
- 18 Q. DID YOU ADVISE HIM OF HIS MIRANDA WARNINGS AT THAT
- 19 TIME?
- 20 A. NO; THAT'S WHY I DIDN'T HAVE ANY CONVERSATION ABOUT
- 21 THAT.
- 22 Q. DID YOU HEAR MR. SIMMONS SPEAK WITH MRS. BUSH?
- 23 A. NO, I DIDN'T.
- 24 Q. DID YOU HEAR ANY CONVERSATION THAT HE MAY HAVE HAD
- 25 WITH MR. JACKSON?

NATHAN PERRYMAN - CROSS/MR. THEOS

1 A. NO, SIR.

2 Q. WERE YOU PRESENT WHEN HE SPOKE WITH INVESTIGATOR
3 HOWARD?

4 A. NO, I WASN'T.

5 Q. IS THAT THE EXTENT OF YOUR INVOLVEMENT?

6 A. THAT'S THE EXTENT OF MY INVOLVEMENT.

7 Q. AND PRIOR TO THAT TIME YOU HAD HAD NO CONVERSATIONS
8 WITH MR. SIMMONS?

9 A. WELL, IT MIGHT HAVE BEEN SOMETHING ELSE. I GO
10 THROUGHOUT THE DORMS, AND I SEE EVERYBODY IN THE
11 JAIL.

12 Q. OTHER THAN---

13 A. NO.

14 Q. --IN PASSING, SAYING HELLO, OR WHATEVER?

15 A. NO.

16 Q. NO OTHER SIGNIFICANT CONVERSATIONS WITH MR.
17 SIMMONS?

18 A. NO.

19 Q. EITHER BEFORE THAT TIME OR AFTER THAT TIME?

20 A. RIGHT.

21 MR. THEOS: NO OTHER QUESTIONS, JUDGE.

22 MR. BAILEY: NO RE-DIRECT, JUDGE.

23 THE COURT: STEP DOWN, PLEASE. NOW,

24 GENTLEMEN, YOU HAVE NO FURTHER SHORT

25 WITNESSES?

NATHAN PERRYMAN - CROSS/MR. THEOS

1 MR. BAILEY: NO, SIR.

2 THE COURT: I'VE APOLOGIZED TO THE
3 INVESTIGATOR FOR HAVING TO COME BACK TOMORROW,
4 BUT IF IT TAKES AN HOUR OR LONGER, IT'S TWENTY
5 MINUTES AFTER SEVEN, AND THAT IS -- WE JUST
6 SHOULDN'T GO FURTHER, MR. BAILEY. I'M SORRY.

7 MR. BAILEY: YES, SIR.

8 THE COURT: AND THE INVESTIGATOR'S NAME IS?

9 MR. BAILEY: EDWARD HOWARD.

10 THE COURT: MR. HOWARD, IS 9:30 -- YOU HAVE TO
11 COME FROM COLUMBIA. YOU CAN'T SPEND THE
12 NIGHT?

13 MR. HOWARD: NO, SIR. I DIDN'T BRING ANYTHING
14 WITH ME TO SPEND THE NIGHT, BUT I'LL START AS
15 EARLY AS YOU'D LIKE TO.

16 THE COURT: NO. BUT IS 9:30 -- YOU'VE GOT TO
17 COME FROM CHARLESTON, MR. THEOS?

18 MR. THEOS: YES, SIR.

19 THE COURT: IS 9:30 CONVENIENT TO YOU?

20 MR. THEOS: THAT'S FINE, JUDGE.

21 THE COURT: I MEAN, DOES ANYBODY WANT TO START
22 BEFORE THEN?

23 MR. BAILEY: YOUR HONOR, WHENEVER YOU WANT TO
24 START IS FINE WITH ME.

25 THE COURT: YOU COME FROM SUMMERVILLE, WALTER?

NATHAN PERRYMAN - CROSS/MR. THEOS

1 MR. BAILEY: YES, SIR; A HALF AN HOUR.

2 MR. THEOS: JUDGE, IF YOU WANT TO START A
3 LITTLE EARLIER, THAT'S FINE. IF YOU WANT TO
4 START AT NINE INSTEAD.

5

6

7

(WHEREUPON AT 7:30 P.M. COURT WAS ADJOURNED FOR THE
8 DAY.)

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1 FRIDAY, FEBRUARY 12, 1999

2 CONTINUATION OF JACKSON V. DINNO HEARING

3
4
5 THE COURT: GOOD MORNING, LADIES. GOOD
6 MORNING, GENTLEMEN. LET THE RECORD REFLECT
7 THAT THE DEFENDANT IS PRESENT WITH HIS
8 COUNSEL. THE SOLICITOR IS HERE. AND WE ARE
9 PROCEEDING AT THIS TIME WITH OTHER AND FURTHER
10 TESTIMONY.

11 MR. BAILEY: YOUR HONOR, THE STATE CALLS
12 EVERETT HOWARD.

13 THE COURT: COME AROUND, PLEASE, MR. EVERETT
14 HOWARD. PUT YOUR LEFT HAND ON THE BIBLE AND
15 RAISE YOUR RIGHT.

16 - - - - -
17 WHEREUPON,

18 EVERETT HOWARD, WHO AFTER BEING FIRST
19 DULY SWORN TO TELL THE TRUTH, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. MR. HOWARD, WHERE ARE YOU EMPLOYED?

24 A. I WORK FOR THE RICHLAND COUNTY DETENTION CENTER.

25 Q. IN WHAT CAPACITY?

1 A. I AM AN INVESTIGATOR.

2 Q. HOW LONG HAVE YOU WORKED AT THE DETENTION CENTER?

3 A. I WAS EMPLOYED THERE IN DECEMBER OF 1995.

4 Q. AND WERE YOU WORKING AS AN INVESTIGATOR AT THE
5 DETENTION CENTER IN DECEMBER OF 1997?

6 A. YES, SIR, I WAS.

7 Q. AND WOULD YOU STATE WHETHER OR NOT KENNETH SIMMONS
8 WAS AN INMATE AT THE DETENTION CENTER IN DECEMBER
9 OF '97?

10 A. YES, SIR, HE WAS.

11 Q. HOW LONG HAD HE BEEN AN INMATE?

12 A. HE WAS BOOKED IN ON NOVEMBER THE 22ND OF 1997.

13 Q. ALL RIGHT, SIR. AND IN YOUR CAPACITY AS AN
14 INVESTIGATOR, DID YOU HAVE OCCASION TO TALK WITH
15 MR. SIMMONS ON SEVERAL OCCASIONS?

16 A. YES, SIR, I DID.

17 Q. FOR THE RECORD, COULD YOU POINT HIM OUT, PLEASE?

18 A. YES, SIR. HE'S SEATED IN THE RED JUMPSUIT AT THE
19 DEFENSE TABLE.

20 Q. ALL RIGHT, SIR. I WANT TO CALL YOUR ATTENTION
21 FIRST OF ALL TO DECEMBER THE SECOND, 1997, AND ASK
22 WHETHER YOU RECALL SEEING MR. SIMMONS ON THAT DAY?

23 A. YES, SIR, I DID.

24 Q. WHERE DID YOU SEE HIM?

25 A. I SAW HIM AT THE DETENTION CENTER.

1 Q. DO YOU RECALL WHAT PART OF THE DETENTION CENTER YOU
2 WERE IN?

3 A. YES, SIR; I TALKED TO HIM IN MY OFFICE.

4 Q. HOW DID THAT MEETING COME ABOUT?

5 A. I HAD BEEN INFORMED THAT I NEEDED TO TALK WITH HIM
6 ABOUT A MATTER THAT HE WISHED TO DISCUSS WITH AN
7 INVESTIGATOR.

8 Q. ALL RIGHT, SIR. SO YOU AGREED TO MEET WITH MR.
9 SIMMONS?

10 A. YES, SIR, I DID.

11 Q. ALL RIGHT, SIR. AND THIS WAS AT HIS INITIATION?

12 A. YES, SIR.

13 Q. WOULD YOU STATE WHETHER OR NOT PRIOR TO ANY
14 CONVERSATION WITH MR. SIMMONS THAT YOU GAVE HIM HIS
15 MIRANDA RIGHTS?

16 A. YES, SIR, I DID.

17 Q. HOW DID YOU GO ABOUT DOING THAT?

18 A. I READ FROM A CARD.

19 Q. DO YOU HAVE THAT SAME CARD WITH YOU?

20 A. YES, SIR.

21 Q. WOULD YOU GO AHEAD AND JUST READ THE CARD INTO THE
22 RECORD THE WAY YOU READ IT TO MR. SIMMONS?

23 A. YES, SIR.

24 Q. "YOU HAVE THE RIGHT TO REMAIN SILENT; ANYTHING YOU
25 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF

1 LAW; YOU HAVE THE RIGHT TO TALK TO A LAWYER AND
2 HAVE HIM PRESENT WITH YOU WHILE YOU'RE BEING
3 QUESTIONED; IF YOU CANNOT AFFORD TO HIRE A LAWYER,
4 ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY
5 QUESTIONING IF YOU WISH ONE." THEN AFTER THAT
6 THERE ARE TWO QUESTIONS THAT I ASK THAT ARE ALSO ON
7 THE CARD. "DO YOU UNDERSTAND EACH OF THESE RIGHTS
8 I HAVE EXPLAINED TO YOU?" AND MR. SIMMONS SAID
9 YES. THEN I ASKED "HAVING THESE RIGHTS IN MIND, DO
10 YOU WISH TO TALK TO ME NOW?" AND AGAIN HE SAID
11 YES.

12 Q. DO YOU RECALL WHAT MR. SIMMONS' DEMEANOR WAS AT
13 THAT TIME; THE WAY HE WAS ACTING OR ANYTHING?

14 A. HE SPOKE VERY COHERENTLY; APPEARED ANXIOUS TO WANT
15 TO TALK TO SOMEONE; WAS VERY TALKATIVE. THINGS HE
16 TOLD ME MADE SENSE. I CAN'T SAY THAT I BELIEVED
17 EVERYTHING AT THE TIME THAT HE WAS TELLING ME.

18 Q. ALL RIGHT, SIR. AND HE HAD BEEN IN JAIL FOR SOME
19 PERIOD OF TIME ON DECEMBER THE SECOND; IS THAT
20 CORRECT?

21 A. YES, SIR; SINCE NOVEMBER THE 22ND OF '97.

22 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY KIND
23 OF DRUGS, NARCOTICS, ALCOHOL, OR ANYTHING OF THAT
24 NATURE THAT WOULD HAVE IMPAIRED HIS ABILITY TO
25 UNDERSTAND THE RIGHTS YOU HAD GIVEN HIM?

1 A. ABSOLUTELY NOT, SIR.

2 Q. DID YOU OFFER MR. SIMMONS ANY---

3 THE COURT: EXCUSE ME. LET ME INTERRUPT YOU.

4 FOR THE RECORD ARE THERE ANY MEMBERS OF THE

5 PRESS, NEWSPRINT, TELEVISION MEDIA, PRESENT?

6 IF SO PLEASE STAND. (NO RESPONSE.) THANK

7 YOU. AND GENTLEMEN, PLEASE, THIS IS A PUBLIC

8 TRIAL. OBVIOUSLY THE PRESS IS WELCOME. BUT I

9 THINK BECAUSE OF THIS PROCEEDING IF WE HAVE

10 PRESS IN ATTENDANCE, WE NEED TO BE AWARE OF

11 THAT. ARE WE IN AGREEMENT THAT THERE ARE NO

12 PRESS PRESENT?

13 MR. BAILEY: YES, SIR.

14 THE COURT: I'M NOT FROM THIS AREA.

15 MR. BAILEY: I DON'T SEE ANYBODY.

16 THE COURT: NO FOLKS IN THE COURTROOM? (NO

17 RESPONSE.) THANK YOU.

18 MR. BAILEY: THANK YOU, YOUR HONOR.

19 THE COURT: EXCUSE ME FOR INTERRUPTING.

20 MR. BAILEY: CERTAINLY.

21 Q. DID YOU OFFER ANYTHING OF VALUE TO MR. SIMMONS IF

22 HE WOULD TALK TO YOU?

23 A. NO, SIR.

24 Q. DID YOU THREATEN HIM IN ANY WAY TO GET HIM TO GIVE

25 YOU A VERBAL STATEMENT?

1 A. NO, SIR.

2 Q. AND AFTER YOU GAVE THE MIRANDA RIGHTS TO MR.
3 SIMMONS, DID HE MAKE ANY STATEMENTS TO YOU?

4 A. YES, SIR, HE DID.

5 Q. ALL RIGHT, SIR. AND TO THE BEST OF YOUR KNOWLEDGE,
6 WERE THE STATEMENTS HE MADE FREE AND VOLUNTARY?

7 A. ABSOLUTELY; YES, SIR.

8 Q. THIS WAS AFTER YOU GAVE HIM THE MIRANDA RIGHTS; IS
9 THAT CORRECT?

10 A. YES, SIR, IT WAS.

11 Q. ALL RIGHT, SIR. REFERRING TO YOUR NOTES, IF YOU
12 NEED TO REFRESH YOUR MEMORY, WHAT, IF ANYTHING, DID
13 MR. SIMMONS TELL YOU?

14 A. HE TOLD ME THAT HE KNEW ABOUT A MURDER THAT HAD
15 HAPPENED ABOUT A YEAR AGO. HE TOLD ME IT HAPPENED
16 SOMEWHERE BETWEEN GREENVILLE AND GEORGIA. HE TOLD
17 ME ABOUT A GIRLFRIEND BY THE NAME OF BRENDA
18 STEVENSON THAT HE TOLD ME HAD BEEN DEALING DRUGS
19 FOR A GUY NAMED SHORTY. I ASKED HIM IF HE KNEW
20 SHORTY'S REAL NAME. HE TOLD ME THAT HE DIDN'T.
21 AND MR. SIMMONS ALSO TOLD ME THAT HE AND MRS.
22 STEVENSON TOGETHER HAVE A SON, AND THAT BRENDA HAD
23 COME TO HIM AND TOLD THAT SHE HAD BORROWED \$20,000
24 FROM SHORTY AND COULDN'T PAY IT BACK TO HIM.
25 SIMMONS ALSO TOLD ME THAT BRENDA HAD TOLD HIM THAT

1 SHORTY HAD SUPPOSEDLY COME TO HER AND TOLD HER THAT
2 HE WAS GOING DO KILL HER AND SIMMONS' SON FOR NOT
3 PAYING THE MONEY BACK. HE WENT ON TO TELL ME THAT
4 HIS GIRLFRIEND, BRENDA, HAD HIRED TWO GUYS WHO WERE
5 TO KILL SHORTY AND THAT SHE HAD ASKED MR. SIMMONS
6 TO PAY FOR PART OF IT, TO HELP PAY FOR IT. MR.
7 SIMMONS TOLD ME HE GAVE HER SIX HUNDRED DOLLARS FOR
8 THAT PURPOSE. SIMMONS TOLD ME THAT ON THE DAY THAT
9 SHORTY WAS KILLED THAT HE AND BRENDA WERE WAITING
10 DOWN THE ROAD WHILE THESE TWO GUYS THAT BRENDA HAD
11 HIRED MET WITH SHORTY. I ASKED HIM AGAIN WHERE
12 THIS WAS AT, AND HE SAID HE WASN'T SURE BUT IT WAS
13 SOMEWHERE OUT IN THE COUNTRY AROUND TRAVELERS REST
14 ON THE OTHER SIDE OF CLEMSON. HE MENTIONED TO ME
15 AT THAT TIME THAT HE HAD SEEN SOME TRAILERS ON THE
16 ROAD. HE SAID THAT IN A LITTLE WHILE THE TWO GUYS
17 CAME BACK TO WHERE HE AND BRENDA WERE WAITING, AND
18 THE TWO GUYS TOLD THEM THAT THEY HAD KILLED SHORTY.
19 THESE TWO GUYS THEN LEFT, AND THEN HE AND BRENDA
20 LEFT. HE SAID THAT SHORTLY AFTER THIS HAD HAPPENED
21 THAT BRENDA WENT TO MIAMI, FLORIDA, AND HE DOESN'T
22 KNOW HOW TO CONTACT HER. BECAUSE I ASKED WHERE SHE
23 WAS AND WHAT SHE WAS DOING; AND HE SAID HE HAD NO
24 WAY OF GETTING IN TOUCH WITH HER. I ASKED HIM AT
25 THIS TIME IF HE WAS PRESENT WHEN SHORTY WAS KILLED,

1 AND HE SAID NO. I ASKED HIM TO TELL ME ABOUT
2 SHORTY, AND AGAIN HE SAID HE DIDN'T KNOW SHORTY'S
3 REAL NAME. AND I ASKED HIM TO DESCRIBE SHORTY TO
4 ME. HE SAID HE WAS A BLACK MAN ABOUT 31 OR 32
5 YEARS, SHORTER THAN HIM, CLEAN CUT WITH A LITTLE
6 MUSTACHE, AND HAD SOME GOLD TEETH ON THE TOP
7 FRONT. HE TOLD ME THAT SHORTY WORE A LOT OF GOLD
8 JEWELRY AND WAS FROM GEORGIA, BUT HE DIDN'T KNOW
9 EXACTLY WHERE IN GEORGIA WHEN I ASKED HIM. I ASKED
10 HIM HOW SHORTY WAS KILLED, AND HE SAID WITH A GUN.
11 AND I ASKED HIM HOW HE KNEW SHORTY WAS KILLED WITH
12 A GUN, AND HE SAID THAT THE TWO MEN HAD TOLD HIM.
13 I ASKED HIM ABOUT THE TWO MEN. HE SAID HE DIDN'T
14 KNOW THEM AT ALL BUT BRENDA DID. HE SAID HE HAD
15 SEEN THEM BEFORE. HE DESCRIBED ONE AS A BLACK MAN
16 THAT THEY CALL BLACKIE. HE WAS A HEAVY SET MAN
17 ABOUT 6'1", 250 TO 260 POUNDS, AND HE WAS FROM
18 SOMEWHERE IN GEORGIA. BUT, AGAIN, HE DIDN'T KNOW
19 WHERE. HE TOLD ME THAT BLACKIE DROVE A RED BMW.
20 HE SAID THAT THE OTHER MAN THAT WAS WITH BLACKIE
21 WAS ALSO A BLACK MAN, BUT HE GAVE NO FURTHER
22 DESCRIPTION AT ALL OF HIM. AND HE ALSO SAID THAT
23 THIS MAN WAS FROM GEORGIA. I CONTINUED TALKING
24 WITH SIMMONS. HE TOLD ME AT ONE POINT THAT HE
25 HIMSELF USED TO LIVE ON [REDACTED] [REDACTED] [REDACTED] IN

1 TRAVELERS REST, SOUTH CAROLINA. AND SIMMONS TOLD
2 ME THAT HE WORKED FOR A CONTRACTOR BY THE NAME OF
3 BEN SHIVERS. I ASKED HIM TO TELL ME A LITTLE BIT
4 ABOUT BRENDA. HE TOLD ME THAT BRENDA LIVED IN
5 [REDACTED] [REDACTED] [REDACTED] WHICH WAS SUPPOSED TO BE
6 BETWEEN TRAVELERS REST AND GREENVILLE. I ASKED MR.
7 SIMMONS IF HE REMEMBERED ANYTHING ELSE ABOUT THIS
8 INCIDENT. HE SAID NO, BUT THAT THIS WAS BOTHERING
9 HIM AND HE HAD TO TELL SOMEBODY. A FEW MINUTES
10 AFTER THIS, I CONCLUDED MY INTERVIEW WITH MR.
11 SIMMONS, AND HE LEFT.

12 Q. ALL RIGHT, SIR. I WANT TO CALL YOUR ATTENTION NEXT
13 TO THE FOLLOWING DAY, DECEMBER THE THIRD, 1997, AND
14 ASK IF YOU AGAIN SAW MR. SIMMONS AT THE DETENTION
15 CENTER?

16 A. YES, SIR, I DID.

17 Q. HOW DID THAT COME ABOUT?

18 A. SGT. PERRYMAN CAME TO MY OFFICE WITH MR. SIMMONS
19 WITH HIM; AND SGT. PERRYMAN, WHEN HE WALKED IN THE
20 OFFICE, SAID "THIS MAN WANTS TO CONFESS TO A
21 MURDER."

22 Q. ALL RIGHT, SIR. AND AT THAT TIME WHEN YOU HAD MR.
23 SIMMONS IN YOUR OFFICE, WAS THIS AT YOUR REQUEST OR
24 MR. SIMMONS' REQUEST THAT HE CAME TO YOUR OFFICE?

25 A. IT CERTAINLY WASN'T AT MY REQUEST. SGT. PERRYMAN

1 BROUGHT HIM AND SAID THAT THIS MAN WANTED TO
2 CONFESS TO A MURDER.

3 Q. ALL RIGHT, SIR. WOULD YOU STATE WHETHER OR NOT YOU
4 AGAIN GAVE MIRANDA RIGHTS TO MR. SIMMONS?

5 A. YES, SIR, I DID.

6 Q. DID YOU USE THAT SAME CARD THAT YOU DID BEFORE?

7 A. YES, SIR, I DID.

8 Q. I WON'T ASK YOU TO GO THROUGH IT AGAIN IN THE
9 INTEREST OF TIME. BUT DID YOU READ THAT TO HIM
10 EXACTLY THE SAME WAY YOU READ HIM THE RECORD
11 BEFORE?

12 A. YES, SIR, I READ IT FROM THE CARD.

13 Q. WHEN YOU DID THAT, DID MR. SIMMONS GIVE ANY VERBAL
14 RESPONSE TO YOU?

15 A. YES, SIR. HE SAID HE UNDERSTOOD HIS RIGHTS AND
16 AGAIN THAT HE WANTED TO TALK TO ME.

17 Q. WAS THERE ANYTHING ABOUT MR. SIMMONS' DEMEANOR THAT
18 WOULD LEAD YOU TO CONCLUDE THAT HE DID NOT
19 UNDERSTAND THE RIGHTS THAT YOU HAD GIVEN TO HIM?

20 A. NO, SIR. I HAD NO REASON AT ALL TO BELIEVE HE
21 DIDN'T UNDERSTAND THEM.

22 Q. AGAIN, DID YOU OFFER ANY INDUCEMENT TO MR. SIMMONS
23 TO TALK TO YOU ON THAT OCCASION?

24 A. NO, SIR, I DID NOT.

25 Q. WERE THERE ANY THREATS OR ANYTHING OF THAT NATURE?

1 A. NO, SIR, I DID NOT.

2 Q. WAS HE SEEKING ANYTHING FROM YOU TO TALK?

3 A. NO, SIR.

4 Q. ALL RIGHT, SIR. AND AS FAR AS YOU KNOW, DID THE
5 STATEMENT HE GAVE YOU AFTER THAT; WAS THAT GIVEN
6 FREELY AND VOLUNTARILY?

7 A. YES, SIR, IT WAS.

8 Q. WILL YOU TELL THE COURT, PLEASE, WHAT MR. SIMMONS
9 TOLD YOU ON DECEMBER THE THIRD, 1997?

10 A. YES, SIR. AT THAT POINT WHEN SGT. PERRYMAN MADE
11 THE STATEMENT HE DID, I ASKED MR. SIMMONS TO TAKE A
12 SEAT AND AFTER I HAD MIRANDIZED HIM, I ASKED HIM
13 WHAT HE WANTED TO TELL ME. AND THE FIRST WORDS OUT
14 OF HIS MOUTH WERE "I KILLED SHORTY." I ASKED HIM
15 "WHEN DID THIS HAPPEN?" AND HE ANSWERED
16 "SEPTEMBER OF THIS YEAR." I ASKED HIM WHERE IT
17 HAPPENED. HE SAID "ON [REDACTED] [REDACTED] [REDACTED] IN
18 TRAVELERS REST." AND AS HE WENT ON TO TELL ME
19 ABOUT IT, HE SAID TO ME "I HAD TO DO IT TO PROTECT
20 MY SON." I ASKED HIM HOW HE DID IT, REFERRING TO
21 THE MURDER, AND HE SAID "I SHOT HIM WITH A .38; I
22 SHOT HIM IN THE CHEST TWO TIMES." I ASKED MR.
23 SIMMONS WHERE THE BODY WAS. HE SAID THAT THE TWO
24 GUYS PUT IT IN THE TRUCK OF SHORTY'S CAR. MR.
25 SIMMONS SAID HE PUT THE PISTOL IN THE TRUNK ALONG

1 WITH THE BODY. MR. SIMMONS TOLD ME HE THEN PAID
2 THE TWO MEN SIX HUNDRED DOLLARS TO TAKE THE BODY
3 OFF, BUT HE DIDN'T KNOW WHERE THEY TOOK IT. HE
4 SAID THAT ONE OF THE MEN, WHICH HE COULDN'T REALLY
5 TELL ME WHICH ONE WAS DRIVING WHAT; BUT HE SAID ONE
6 OF MEN DROVE AWAY IN SHORTY'S CAR AND THE OTHER ONE
7 DROVE AWAY IN THE BMW. AT THIS TIME HE TOLD HE
8 DIDN'T KNOW THESE TWO MEN'S NAMES. HE TOLD ME THAT
9 SHORTY'S NAME WAS SOMEONE NAMED JAMES NELSON OR
10 NEILSON; HE WASN'T SURE WHICH IT WAS. HE DESCRIBED
11 HIM AS BEING A BLACK MAN ABOUT 150 TO 175 POUNDS.
12 AS HE WAS TELLING ME THE STORY, MR. SIMMONS ONCE
13 TOLD ME THAT BRENDA WAS DOWN THE ROAD WHEN HE SHOT
14 SHORTY. AND AT ANOTHER TIME, AS HE WAS TELLING THE
15 STORY TO ME, HE TOLD ME THAT BRENDA WAS WITH HIM AT
16 THE TIME THAT HE SHOT SHORTY. I ASKED HIM WHERE HE
17 GOT THE GUN FROM. HE SAID THAT BRENDA HAD GIVEN IT
18 TO HIM AND THAT BRENDA HAD TOLD HIM THAT THE GUN
19 WAS HOT. HE SAID THAT BRENDA HAD LEFT, AND THAT
20 SOON AFTER THIS INCIDENT HAPPENED THAT SHE WENT TO
21 MIAMI. AGAIN HE DIDN'T KNOW WHERE SHE WAS AT OR
22 HOW TO CONTACT HER, HE TOLD ME THAT BRENDA KNOWS
23 THE TWO GUYS THAT WERE THE ONES THAT TOOK THE BODY
24 AWAY THIS TIME, AND HE TOLD ME THAT WAS ALL THAT HE
25 KNEW ABOUT IT. AGAIN I ASKED HIM IF HE KNEW WHERE

1 THE BODY HAD BEEN TAKEN, AND HE TOLD ME THAT HE DID
2 NOT KNOW. SHORTLY AFTER THIS I TERMINATED THIS
3 INTERVIEW WITH MR. SIMMONS.

4 Q. I WANT TO CALL YOUR ATTENTION TO THE FOLLOWING DAY,
5 DECEMBER THE FOURTH, AND ASK WHETHER OR NOT YOU HAD
6 OCCASION TO SEE SGT. NATHAN PERRYMAN AT THE
7 DETENTION CENTER?

8 A. YES, SIR, I DID.

9 Q. DID HE GIVE YOU SOMETHING?

10 A. YES, SIR, HE DID.

11 Q. LET ME HAND YOU STATE'S NUMBER ONE AND ASK IF YOU
12 CAN IDENTIFY THAT, PLEASE? (WITNESS EXAMINES
13 DOCUMENT.)

14 A. YES, SIR. YES, SIR. THIS IS THE NOTE THAT SGT.
15 PERRYMAN GAVE ME THAT DAY.

16 Q. ALL RIGHT, SIR. AND AFTER GETTING THAT NOTE, DID
17 YOU AGAIN SPEAK WITH MR. SIMMONS?

18 A. WELL, ACTUALLY I HAD SPOKEN TO MR. SIMMONS THAT DAY
19 BEFORE I GOT THE NOTE.

20 Q. OKAY.

21 A. BUT, YES, I DID TALK TO HIM THAT DAY.

22 Q. HOW DID THAT THIRD MEETING COME ABOUT?

23 A. WHEN I HAD COME INTO WORK THAT MORNING, I WAS TOLD
24 THAT MR. SIMMONS WANTED TO SEE ME. SO I WENT
25 STRAIGHT ON DOWN TO THE DORM THAT HE WAS BEING

1 HOUSED IN. AND IN THE LITTLE HALLWAY OUTSIDE THE
2 DORM, THERE'S A LITTLE INTERVIEW MEETING TYPE ROOM
3 THERE, AND WE MET IN THERE.

4 Q. ON THAT OCCASION, DECEMBER THE FOURTH, DID YOU GIVE
5 THE MIRANDA RIGHTS TO MR. SIMMONS BEFORE ANY
6 CONVERSATION?

7 A. YES, SIR, I DID.

8 Q. AND, AGAIN, USING THAT SAME CARD?

9 A. YES, SIR, I DID.

10 Q. DID HE VERBALLY RESPOND TO YOU?

11 A. YES, SIR. HE SAID THAT HE UNDERSTOOD.

12 Q. DID YOU MAKE ANY THREATS TO HIM IF HE WOULDN'T TALK
13 TO YOU?

14 A. NO, SIR, I DID NOT.

15 Q. OFFER HIM ANY INCENTIVE?

16 A. NO, SIR.

17 Q. WAS ANYTHING ABOUT HIS DEMEANOR OR HIS ACTIONS
18 WHICH WOULD LEAD YOU TO BELIEVE THAT HE DID NOT
19 UNDERSTAND WHAT YOU WERE SAYING WHEN YOU GAVE THE
20 MIRANDA RIGHTS TO HIM?

21 A. NO, SIR; NOTHING AT ALL.

22 Q. DID HE VOLUNTARILY WAIVE THOSE RIGHTS AND TELL YOU
23 SOMETHING ELSE?

24 A. YES, SIR, HE DID.

25 Q. WHAT DID HE TELL YOU ON THAT OCCASION?

1 A. WHEN I CAME IN THERE, I TOLD HIM THAT I HEARD THAT
2 HE WANTED TO SEE ME. AND HE TOLD ME THAT HE HAD
3 WRITTEN A NOTE AND HAD GIVEN IT TO A SERGEANT LAST
4 NIGHT. AND I ASKED HIM WHO THE SERGEANT WAS. AND
5 HE DIDN'T KNOW HIS NAME, BUT HE SAID IT WAS THE
6 SAME SERGEANT THAT HAD BROUGHT HIM BY MY OFFICE
7 YESTERDAY WHICH I KNEW THAT WAS SGT. PERRYMAN. AND
8 I TOLD MR. SIMMONS I WOULD GET THE NOTE FROM HIM
9 AFTER WE TALKED. AND I ASKED MR. SIMMONS WHAT THE
10 NOTE WAS ABOUT. MR. SIMMONS TOLD ME THAT THE NOTE
11 WAS ABOUT AN OLD WOMAN WHO WAS KILLED IN
12 SUMMERVILLE LAST YEAR. AND HE SAID THAT THE TWO
13 GUYS HAD KILLED HER. AND HE NAMED BLACKIE AND THE
14 OTHER GUY THAT HE HAD TOLD ME ABOUT. I ASKED HIM
15 IF THIS LADY WAS KILLED IN THE CITY OF SUMMERVILLE,
16 AND HE SAID YES. I ASKED HIM HOW WAS SHE KILLED.
17 MR. SIMMONS SAID SHE WAS STRANGLED AND BEAT IN THE
18 HEAD. I ASKED MR. SIMMONS HAD ANYBODY BEEN
19 ARRESTED IN THAT CASE, AND HE SAID NO. I ASKED HIM
20 IF HE KNEW THE NAMES OF THE TWO PEOPLE THAT HE WAS
21 SAYING WERE INVOLVED. HE SAID NO. AND SHORTLY
22 AFTER THAT, THIS MEETING ENDED.

23 Q. ALL RIGHT, SIR. AND AFTER THAT DID YOU MAKE ANY
24 TELEPHONE CALLS?

25 A. YES, SIR, I DID.

EVERETT HOWARD - CROSS/MR. THEOS

1 Q. DID YOU CALL SUMMERVILLE AND TALK TO DETECTIVE RON
2 THOMASON?

3 A. YES, SIR, I DID.

4 Q. DID YOU RELATE TO MR. TOMASON WHAT MR. SIMMONS HAD
5 TOLD YOU HAD OCCURRED IN SUMMERVILLE?

6 A. YES, SIR, I DID.

7 Q. MR. HOWARD, PLEASE ANSWER ANY QUESTIONS MR. BELL OR
8 MR. THEOS MAY HAVE FOR YOU.

9 A. YES, SIR.

10 THE COURT: CROSS?

11 CROSS-EXAMINATION

12 BY MR. THEOS:

13 Q. YOU'VE BEEN WITH THE DORCHESTER COUNTY DETENTION
14 CENTER SINCE NOVEMBER OF '95, AND YOU'RE STILL
15 THERE?

16 A. NO, SIR, I WORK FOR THE RICHLAND COUNTY DETENTION
17 CENTER.

18 Q. I APOLOGIZE; RICHLAND. YES, SIR, SINCE DECEMBER OF
19 '95.

20 Q. AND YOU'RE STILL THERE?

21 A. YES, SIR.

22 Q. AND DOES THE RICHLAND COUNTY DETENTION CENTER HAVE
23 A POLICY OR A RECEIPT THAT IS REQUIRED FOR VISITS
24 TO INMATES WHEN SOMEBODY FROM THE OUTSIDE COMES IN
25 TO VISIT THE INMATES?

EVERETT HOWARD - CROSS/MR. THEOS

1 A. YES, SIR, IT IS.

2 Q. IS THAT LOGGED IN SOMEWHERE?

3 A. YES, SIR, IT IS.

4 Q. WHETHER IT'S FAMILY, FRIENDS, LAWYERS,
5 INVESTIGATORS, LAW ENFORCEMENT?

6 A. THEIR VISITATION IS LOGGED IN; YES, SIR.

7 Q. IS THAT A REQUIREMENT THAT EACH AND EVERY PERSON
8 THAT SEES AN INMATE SIGN IN?

9 A. VISITORS DO. I DON'T THINK THEY RECORD LIKE A LAW
10 ENFORCEMENT OFFICER GOING IN.

11 Q. DO YOU KNOW WHETHER THAT IS REQUIRED OF LAW
12 ENFORCEMENT?

13 A. NO, SIR; I'M PRETTY SURE IT'S NOT REQUIRED.

14 Q. NOW, DO YOU HAVE ANY RECORDS OF YOUR INTERVIEWS
15 WITH MR. SIMMONS ON THE SECOND, THIRD, AND FOURTH
16 OF DECEMBER OTHER THAN -- I'VE GOT A COPY OF YOUR
17 REPORT YOU PREPARED ON -- IT LOOKS LIKE THE FIFTH.
18 DO YOU HAVE ANY OTHER RECORDS OF THAT INTERVIEW?

19 A. NO, SIR.

20 Q. ARE YOU REQUIRED WHEN YOU REMOVE MR. SIMMONS FROM
21 HIS CELL TO MAKE NOTE OF IT, MAKE A RECORD OF IT?

22 A. NO, SIR.

23 Q. DO YOU HAVE ANY NOTES THAT YOU MAY HAVE TAKEN FROM
24 ANY OF THOSE MEETINGS?

25 A. I HAVE SOME NOTES; YES, SIR.

EVERETT HOWARD - CROSS/MR. THEOS

1 Q. DO YOU HAVE THOSE NOTES WITH YOU?

2 A. NO, SIR, I DO NOT.

3 Q. IS THAT SOMETHING THAT YOU CAN PUT YOUR HANDS ON
4 AND PROVIDE TO MR. BAILEY?

5 A. YES, SIR.

6 Q. IS THAT SOMETHING -- WOULD YOU DO THAT?

7 A. SURE.

8 Q. DO YOU HAVE -- THESE MEETINGS THAT YOU HAD WITH MR.
9 SIMMONS ON THE SECOND, THIRD, AND FOURTH; WERE THEY
10 RECORDED EITHER BY WAY OF AUDIO TAPE OR VIDEO TAPE?

11 A. NO, SIR.

12 Q. WHERE WERE THESE MEETINGS HELD? WERE THEY ALL HELD
13 IN THE SAME PLACE?

14 A. NO, SIR.

15 Q. CAN TELL US ON THE SECOND WHERE THAT MEETING WAS
16 HELD?

17 A. AS WELL AS I REMEMBER, THAT WAS MY OFFICE.

18 Q. AND DO YOU HAVE AN OFFICE BY YOURSELF?

19 A. I SHARE IT WITH THE OTHER INVESTIGATOR.

20 Q. WHO IS THAT?

21 A. CHRISTOPHER MONTJOY.

22 Q. WAS THAT INVESTIGATOR PRESENT DURING THE INTERVIEW
23 OF MR. SIMMONS?

24 A. NOT TO MY RECOLLECTION; NO, SIR.

25 Q. ON THE SECOND I'M TALKING ABOUT?

EVERETT HOWARD - CROSS/MR. THEOS

2816 341

- 1 A. NO, SIR, HE WAS NOT PRESENT.
- 2 Q. WAS ANYBODY ELSE PRESENT DURING THE INTERVIEW OF
- 3 MR. SIMMONS ON THE SECOND?
- 4 A. NO, SIR.
- 5 Q. AND CAN YOU TELL ME WHAT TIME THAT INTERVIEW
- 6 STARTED? I DON'T SEE IT IN YOUR REPORT, AND YOU
- 7 SAID YOU DON'T HAVE YOUR NOTES. CAN YOU RECALL
- 8 WHAT TIME THE INTERVIEW STARTED AND WHAT TIME IT
- 9 ENDED?
- 10 A. NO, SIR. IT WAS IN THE MORNING HOURS. IT WOULD
- 11 HAVE BEEN BEFORE NOON. AND AS WELL AS I REMEMBER,
- 12 IT LASTED ABOUT AN HOUR AND A HALF TO ABOUT TWO
- 13 HOURS WAS ALL.
- 14 Q. AN HOUR AND A HALF TO TWO HOURS?
- 15 A. YES, SIR.
- 16 Q. THE INTERVIEW ON DECEMBER THE THIRD; CAN TELL ME
- 17 WHERE THAT TOOK PLACE?
- 18 A. THAT WAS IN MY OFFICE ALSO. THAT'S WHEN SGT.
- 19 PERRYMAN BROUGHT HIM BY MY OFFICE.
- 20 Q. ALL RIGHT. DID SGT. PERRYMAN STAY IN YOUR OFFICE
- 21 DURING THE COURSE OF THE INTERVIEW?
- 22 A. NO, SIR.
- 23 Q. WAS ANYBODY PRESENT DURING THE INTERVIEW OF MR.
- 24 SIMMONS ON THE THIRD?
- 25 A. I DON'T RECALL ANYBODY ELSE BEING THERE; NO, SIR.

EVERETT HOWARD - CROSS/MR. THEOS

- 1 Q. WAS THE INTERVIEW OF THE THIRD RECORDED BY WAY OF
2 AUDIO TAPE OR VIDEO TAPE?
- 3 A. NO, SIR, IT WAS NOT.
- 4 Q. WAS ANYTHING WRITTEN AT THE TIME OF INTERVIEW ON
5 THE THIRD AS MR. SIMMONS WAS BEING INTERVIEWED?
- 6 A. OTHER THAN JUST ME JOTTING DOWN SOME NOTES.
- 7 Q. AND AGAIN, YOU'LL PRODUCE THOSE NOTES FOR MR.
8 BAILEY?
- 9 A. YES, SIR.
- 10 Q. AND JUST SO WE CAN BE CLEAR; THIS REPORT THAT WAS
11 PREPARED ON THE FIFTH; WAS THIS REPORT PREPARED
12 USING THOSE NOTES THAT YOU HAVE?
- 13 A. YES, SIR; THAT AND MY MEMORY; YES, SIR.
- 14 Q. WAS MR. SIMMONS ASKED TO WRITE ANYTHING ON THE
15 SECOND?
- 16 A. NO, SIR.
- 17 Q. THE FIRST INTERVIEW. WAS MR. SIMMONS ASKED TO
18 WRITE ANYTHING ON THE SECOND INTERVIEW?
- 19 A. NO, SIR.
- 20 Q. WAS MR. SIMMONS ASKED TO READ ANYTHING; THE MIRANDA
21 CARD, OR ANYTHING ELSE DURING THE INTERVIEW OF THE
22 SECOND?
- 23 A. I DON'T RECALL ANYTHING; NO, SIR.
- 24 Q. WAS MR. SIMMONS ASKED TO READ THE MIRANDA CARD THAT
25 YOU READ FROM EARLIER OR ANYTHING ELSE ON THE

1 THIRD?

2 A. NO, SIR. I DON'T RECALL ASKING HIM TO READ
3 ANYTHING.

4 Q. WAS MR. SIMMONS QUESTIONED ON THE SECOND OR THE
5 THIRD ABOUT WHETHER HE HAD THE ABILITY TO READ?

6 A. NO, SIR.

7 Q. OR THE ABILITY TO WRITE?

8 A. NO, SIR.

9 Q. AND WOULD THOSE ANSWERS BE THE SAME WITH RESPECT TO
10 THE INTERVIEW ON THE FOURTH, THAT HE WAS NOT ASKED
11 ABOUT HIS ABILITY TO READ OR WRITE ON THE FOURTH AS
12 WELL?

13 A. NO, SIR. I'M SURE I DIDN'T ASK HIM.

14 Q. ON THE FOURTH, WAS HE ASKED TO READ A MIRANDA CARD
15 OR ANY OTHER DOCUMENT?

16 A. NO, SIR.

17 Q. OKAY. ON THE FOURTH CAN TELL ME WHERE THAT
18 INTERVIEW TOOK PLACE?

19 A. THAT TOOK PLACE IN THE LITTLE MEETING ROOM RIGHT
20 OUTSIDE THE DORM THAT HE WAS HOUSED IN.

21 Q. ALL RIGHT. AND IS THAT MEETING ROOM AN ENCLOSED
22 AREA, OR IS IT A CELL WITH KIND OF THE OLD BARS AND
23 IT'S OPEN?

24 A. IT'S JUST A ROOM WITH A WINDOW IN THE DOOR THAT'S
25 OFF THE HALLWAY OUTSIDE OF THE OTHER DETAINEES.

1 Q. IS IT A SECURE AREA?

2 A. THE ROOM ITSELF YOU COULD HAVE WALKED OUT THE DOOR
3 ANY TIME YOU WANTED TO. BUT THERE'S A SECURITY
4 DOOR ON BOTH ENDS OF THE HALLWAY THAT HE WOULD HAVE
5 WALKED INTO.

6 Q. I MEAN FROM A SOUND STANDPOINT, WAS IT SECURE SO
7 THAT NOBODY ELSE COULD HEAR WHAT WAS BEING SAID
8 INSIDE THE ROOM?

9 A. YES, SIR. THERE'S NO MICROPHONES OR ANYTHING LIKE
10 THAT. IT'S JUST A LITTLE CONCRETE BLOCK WALL
11 ROOM.

12 Q. IS WHAT ROOM EQUIPPED WITH AN AUDIO TAPE OR A VIDEO
13 TAPE MACHINE?

14 A. NO, SIR.

15 Q. AND YOUR OFFICE; IS IT EQUIPPED WITH A VIDEO
16 MACHINE OR AN AUDIO TAPE MACHINE?

17 A. I HAVE A RECORDER IN THERE; YES, SIR.

18 Q. OKAY. BUT, AGAIN, ON THE SECOND AND THIRD YOU
19 DIDN'T USE THAT?

20 A. NO, SIR, I DIDN'T USE IT. BUT THERE'S AN AUDIO
21 RECORDER IN MY OFFICE.

22 Q. ALL RIGHT. AND ON THE FOURTH YOU DIDN'T TAKE YOUR
23 RECORDER INTO THAT ROOM?

24 A. NO, SIR, I DID NOT.

25 Q. ON THE FOURTH -- AGAIN, I ASSUME THAT WHEN YOU --

EVERETT HOWARD - CROSS/MR. THEOS

1 WELL, TELL ME; WHEN YOU MET WITH MR. SIMMONS, DID
2 YOU MAKE NOTES OF THAT INTERVIEW AS YOU WERE
3 QUESTIONING MR. SIMMONS AND AS HE WAS TELLING YOU
4 THINGS THAT YOU'VE DESCRIBED FOR US?

5 A. YES, SIR. I THINK I JUST ADDED TO MY EXISTING
6 NOTES; YES, SIR.

7 Q. OKAY. AND, AGAIN, THOSE NOTES WERE UTILIZED
8 RELATED TO THE ENTRY OF DECEMBER THE FOURTH?

9 A. YES, SIR.

10 Q. I DON'T KNOW THAT I ASKED YOU THIS. ON THE
11 INTERVIEW OF THE FOURTH, WAS ANYBODY ELSE PRESENT?

12 A. NO, SIR.

13 MR. THEOS: YOUR HONOR, IF WE COULD MARK THE
14 REPORT. LET ME ASK INVESTIGATOR HOWARD TO
15 LOOK AT THIS REPORT.

16 Q. DOES THIS APPEAR TO BE A TRUE AND ACCURATE COPY OF
17 YOUR REPORT OF DECEMBER THE FIFTH? (WITNESS
18 REVIEWS DOCUMENT.)

19 A. YES, SIR, IT DOES.

20 MR. THEOS: YOUR HONOR, WE WOULD MOVE TO
21 INTRODUCE THIS INTO EVIDENCE, THIS DEFENDANT'S
22 NUMBER ONE FOR PURPOSES OF THIS. IT IS
23 EVERETT HOWARD'S REPORT THAT HE PREPARED AND
24 HE'S TESTIFYING FROM.

25 MR. BAILEY: WITHOUT OBJECTION, YOUR HONOR.

1 THE COURT: WITHOUT OBJECTION; DELTA ONE.

2 DEFENDANT'S EXHIBIT NO. 1

3 MARKED FOR IDENTIFICATION

4 Q. INVESTIGATOR HOWARD, WHEN WAS THAT REPORT PREPARED?

5 A. ON DECEMBER THE FIFTH, 1997.

6 Q. ALL RIGHT. IS THIS A FORM THAT Y'ALL HAD WHEN IN
7 THE RICHLAND COUNTY JAIL?

8 A. NO, SIR. I PREPARED THIS STATEMENT ON STATE LAW
9 ENFORCEMENT DIVISION'S FORM.

10 Q. IS THIS A REPORT THAT WAS PREPARED FOR THE RICHLAND
11 COUNTY JAIL, OR WAS IT PREPARED AT THE REQUEST OF
12 SLED?

13 A. IT WAS PREPARED AT THE REQUEST OF SLED, SIR.

14 Q. AND MRS. ANN REESE HAS CITED AT THE BOTTOM---

15 MR. THEOS: AND, YOUR HONOR, I DON'T KNOW IF
16 THAT COPY THAT WE HAVE -- WE MAY HAVE TO
17 SUBSTITUTE ANOTHER PAGE ON THE BACK FOR THE
18 LAST -- I'M SORRY.

19 Q. ON THE FIRST PAGE THAT YOU HAVE, WAS MRS. ANN
20 REESE; WAS SHE PRESENT WHEN YOU WROTE THIS?

21 A. YES, SIR.

22 Q. AND WAS DETECTIVE HENDRICKS, IT APPEARS, IS ALSO A
23 WITNESS. WAS HE PRESENT WHEN YOU WROTE IT?

24 A. SHE WAS PRESENT; YES, SIR.

25 Q. DETECTIVE HENDRICKS IS ALSO A WOMAN?

EVERETT HOWARD - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. THEY WERE BOTH PRESENT WHEN YOU WROTE IT AND SIGNED
3 IT?

4 A. YES, SIR. AS WELL AS I REMEMBER THEY WERE BOTH
5 THERE. I KNOW THEY WERE BOTH THERE WHEN I SIGNED
6 IT. I THINK BOTH OF THEM WERE THERE AS I WAS
7 PREPARING IT.

8 Q. CAN YOU TELL ME -- IT APPEARS THAT THIS WAS
9 PREPARED OR COMPLETED AT 3:25 P.M. ON DECEMBER THE
10 FIFTH OF '97?

11 A. YES, SIR. THAT'S WHEN I WOULD HAVE FINISHED
12 WRITING IT.

13 Q. CAN YOU TELL ME ABOUT HOW LONG YOU THINK IT TOOK TO
14 WRITE THIS?

15 A. SIR, I PROBABLY SPENT 45 MINUTES OR SO WRITING IT.

16 Q. WOULD THAT HAVE BEEN -- WHEN YOU BEGAN PREPARING
17 THE STATEMENT, WOULD THAT HAVE BEEN AFTER MR.
18 SIMMONS WAS SEEN FOR THE FIRST TIME BY SLED OR
19 BEFORE?

20 A. IT WOULD HAVE HAD TO HAVE BEEN EITHER AFTER OR AS
21 THEY WERE FINISHING WITH HIM. I DON'T BELIEVE IT
22 WOULD HAVE BEEN BEFORE. I DON'T THINK IT WAS
23 BEFORE. I THINK IT WAS AFTER OR WHILE THEY WERE
24 FINISHING TALKING TO HIM.

25 Q. OKAY. AND I UNDERSTOOD THEY MET WITH HIM A FEW

EVERETT HOWARD - CROSS/MR. THEOS

1 DIFFERENT TIMES. BUT YOU BELIEVE IT WAS AFTER --
2 AT LEAST AFTER THE FIRST TIME THEY MET WITH HIM?

3 A. I THINK SO; YES, SIR. I DON'T REALLY HAVE A GOOD
4 TIME FRAME TO PUT THIS IN IN REGARDS TO THAT; BUT I
5 THINK SO.

6 Q. ALL RIGHT. AND YOUR REPORT REFLECTS THAT ON
7 11/28/97 THAT'S WHEN YOU FIRST RECEIVED INFORMATION
8 THAT MR. SIMMONS WANTED TO TALK WITH YOU?

9 A. YES, SIR.

10 Q. IS THAT RIGHT? AND YOU RECEIVED THAT INFORMATION
11 FROM LT. HIGGINS WHO PAGED YOU?

12 A. YES, SIR, THAT'S CORRECT.

13 Q. OTHER THAN WHAT'S IN YOUR REPORT, WAS IT DESCRIBED
14 IN ANY MORE PARTICULARITY BY LT. HIGGINS?

15 A. NO. IN FACT IT WASN'T DESCRIBED SPECIFICALLY. HE
16 JUST TOLD ME AS I WROTE IN THE REPORT THAT MR.
17 SIMMONS WANTED TO TALK TO SOMEONE ABOUT A CRIME HE
18 HAD COMMITTED. HE DIDN'T NAME WHAT CRIME THAT WAS.

19 Q. ALL RIGHT. AND ON DECEMBER THE SECOND -- AGAIN,
20 JUST TO MAKE SURE WE'RE CLEAR -- THE DECEMBER
21 SECOND MEETING, HOW DID YOU GET WORD THAT MR.
22 SIMMONS WANTED TO TALK WITH YOU?

23 A. FROM THE CONVERSATION THAT YOU JUST TALKED ABOUT;
24 FROM NOVEMBER THE 28TH WHEN LT. HIGGINS PAGED ME.

25 Q. OKAY. AND THEN WHEN YOU GOT IN THAT DAY, YOU WENT

EVERETT HOWARD - CROSS/MR. THEOS

1 AND TOOK MR. SIMMONS OUT OF HIS CELL AND TOOK HIM
2 TO YOUR OFFICE?

3 A. YES, SIR.

4 Q. AND THEN THE MEETING ON THE THIRD; CAN YOU TELL ME
5 AGAIN WHAT PROMPTED THAT?

6 A. THAT WAS WHEN SGT. PERRYMAN BROUGHT HIM TO MY
7 OFFICE BECAUSE MR. SIMMONS WANTED TO TALK.

8 Q. THAT WAS ON THE THIRD?

9 A. YES, SIR.

10 Q. THEN WHAT PROMPTED THE MEETING OF THE FOURTH?

11 A. WHEN I CAME TO WORK THAT MORNING, I WAS TOLD BY A
12 CORRECTIONAL OFFICER THAT MR. SIMMONS HAD SENT A
13 NOTE UP FOR ME. AND I WENT STRAIGHT TO MR.
14 SIMMONS' DORM AND SPOKE TO HIM THERE.

15 Q. AND, AGAIN, THE NOTE THAT WAS SENT UP TO YOU WAS
16 THE ONE THAT WAS PREVIOUSLY REFERRED TO -- IF YOU
17 COULD TELL US WHAT EXHIBIT THAT IS, PLEASE, SIR.

18 A. IT'S STATE'S EXHIBIT NUMBER ONE.

19 Q. JUST A COUPLE OF MORE QUESTIONS. YOU SAID THE
20 MEETING OF DECEMBER THE SECOND LASTED APPROXIMATELY
21 AN HOUR AND A HALF TO TWO HOURS?

22 A. YES, SIR.

23 Q. HOW LONG DID THE MEETING OF THE THIRD LAST?

24 A. ABOUT THE SAME AS WELL AS I REMEMBER.

25 Q. ALL RIGHT.

EVERETT HOWARD - CROSS/MR. THEOS

1 A. THAT WAS IN THE AFTERNOON, THOUGH; THE OTHER ONE
2 WAS DURING THE MORNING HOURS.

3 Q. THE THIRD WAS IN THE AFTERNOON?

4 A. YES, SIR.

5 Q. AND THE MEETING OF DECEMBER THE FOURTH?

6 A. THAT WAS IN THE MORNING.

7 Q. AND ABOUT HOW LONG DID THAT ONE TAKE?

8 A. THAT ONE WAS MUCH SHORTER. I'D SAY PROBABLY THIRTY
9 TO FORTY MINUTES; SOMEWHERE IN THAT NEIGHBORHOOD.

10 Q. DO YOU THINK YOUR NOTES WOULD REFLECT WHAT TIME
11 THOSE MEETINGS STARTED AND ENDED?

12 A. NO, SIR; I'M QUITE SURE THEY DON'T.

13 Q. THEY'RE AT LEAST DATED, THOUGH?

14 A. YES, SIR.

15 Q. DID YOU SPEAK WITH MR. SIMMONS ANY MORE AFTER THE
16 FOURTH?

17 A. YES, SIR.

18 Q. CAN TELL ME WHEN YOU SPOKE WITH HIM?

19 A. WHEN THE SLED AGENTS AND THE INVESTIGATOR FROM
20 SUMMERVILLE CAME DOWN TO SEE HIM, I HAD MR. SIMMONS
21 BROUGHT TO MY OFFICE, AND I INTRODUCED MR. SIMMONS
22 TO THE AGENTS.

23 Q. WHEN WOULD THAT HAVE BEEN?

24 A. THAT WOULD HAVE BEEN, I BELIEVE, ON DECEMBER THE
25 FOURTH. JUST A MOMENT. (WITNESS REVIEWS DOCUMENT.)

EVERETT HOWARD - CROSS/MR. THEOS

1 THAT WOULD HAVE BEEN ON DECEMBER THE FIFTH.

2 Q. DO YOU NOTE ROUGHLY WHAT TIME THAT WAS THAT YOU
3 INTRODUCED MR. SIMMONS TO THE SLED AGENTS?

4 A. NO, SIR, I DON'T.

5 Q. DO YOU HAVE NOTES OF THAT MEETING?

6 A. NO, SIR.

7 Q. WOULD IT HAVE BEEN IN THE MORNING OR AFTERNOON OR
8 MIDDAY; DO YOU RECALL?

9 A. SIR, I'M NOT REAL SURE.

10 Q. ALL RIGHT. WHERE WAS THAT MEETING?

11 A. THEY MET WITH HIM IN MY OFFICE.

12 Q. DID YOU STAY IN THE OFFICE WHEN THE SLED AGENTS MET
13 WITH MR. SIMMONS?

14 A. NO, SIR, I DID NOT.

15 Q. WHICH SLED AGENTS DID YOU INTRODUCE HIM TO?

16 A. AGENTS REESE, AGENT MEANS, AND INVESTIGATOR
17 HENDRICKS FROM SUMMERVILLE.

18 Q. YOU INTRODUCED THEM TO ALL THREE?

19 A. RIGHT.

20 Q. AND ONCE YOU MADE THAT INTRODUCTION, WHAT DID YOU
21 THEN DO?

22 A. I LEFT THE OFFICE AND WENT TO AN OFFICE ACROSS THE
23 HALL.

24 Q. ALL RIGHT. AND TO THE BEST OF YOUR KNOWLEDGE, WAS
25 ANYBODY ELSE IN THAT ROOM WITH THE THREE LAW

EVERETT HOWARD - CROSS/MR. THEOS

1 ENFORCEMENT OFFICERS AND MR. SIMMONS?

2 A. NO, SIR. I DON'T RECALL SEEING ANYBODY ELSE OVER
3 THERE.

4 Q. CAN YOU RECALL THAT FIRST MEETING THAT THEY HAD
5 WITH MR. SIMMONS ABOUT HOW LONG THEY WERE IN THERE
6 WITH HIM?

7 A. NO, SIR, I DON'T KNOW.

8 Q. DID YOU REMAIN OUTSIDE THE DOOR WHILE IT WAS TAKING
9 PLACE?

10 A. I WAS IN THE HALLWAY. MOST OF THE TIME I SPENT IN
11 THEIR OFFICE ACROSS THE HALL WORKING WHILE THEY
12 WERE OVER THERE.

13 Q. DID THEY MEET WITH HIM MORE ONCE ON THAT FIRST DAY?

14 A. SIR, I DON'T RECALL.

15 Q. DID THEY STAY WITH HIM DURING THE ENTIRE DAY, THE
16 DURATION OF THE DAY?

17 A. SIR, I'M NOT REAL SURE, BUT I DON'T THINK SO.

18 Q. WOULD THERE BE ANY RECORD OF THESE OFFICERS COMING
19 INTO THE JAIL THE TIME THAT THEY CAME INTO THE
20 JAIL?

21 A. THERE SHOULD HAVE BEEN AN ENTRY MADE AT THE FRONT
22 DESK ABOUT THEM COMING IN.

23 Q. IS THAT SOMETHING THAT YOU CAN CHECK ON AND PROVIDE
24 TO MR. BAILEY? DO YOU HAVE ACCESS TO THOSE
25 RECORDS?

EVERETT HOWARD - CROSS/MR. THEOS

- 1 A. YES, SIR, I CAN.
- 2 Q. WOULD THAT BE IN COMPLIANCE WITH STANDARD PROCEDURE
- 3 AT THE RICHLAND COUNTY JAIL THAT THERE IS SOME
- 4 CHECK-IN BY LAW ENFORCEMENT?
- 5 A. YES, SIR. TYPICALLY THERE'S AN ENTRY MADE THAT A
- 6 LAW ENFORCEMENT OFFICER CAME IN.
- 7 Q. WOULD THAT BE KEPT IN A SEPARATE LOG THAN THE
- 8 VISITORS TO INMATES?
- 9 A. SIR, I DON'T KNOW HOW THEY DO THAT.
- 10 Q. OKAY. AND WOULD THERE ALSO BE AN ENTRY AT THE TIME
- 11 THAT THOSE LAW ENFORCEMENT OFFICERS LEFT THE
- 12 RICHLAND COUNTY JAIL?
- 13 A. SIR, I DON'T KNOW IF THEY ANNOTATE A TIME WHEN THEY
- 14 LEAVE OR NOT; I REALLY DON'T KNOW.
- 15 Q. CAN YOU APPROXIMATE FOR US HOW LONG THOSE OFFICERS
- 16 WERE WITH MR. SIMMONS THAT FIRST DAY?
- 17 A. NO, SIR, I REALLY CAN'T BECAUSE I WASN'T PRESENT.
- 18 Q. WERE YOU REQUESTED TO COME BACK INTO THE ROOM AT
- 19 ANY TIME DURING THE INTERVIEW THAT THESE OFFICERS
- 20 HAD WITH MR. SIMMONS?
- 21 A. I CAN RECALL GOING BACK INTO MY OFFICE ONE TIME
- 22 WHILE THEY WERE THERE; YES, SIR.
- 23 Q. DO YOU KNOW WHAT PROMPTED YOUR GOING INTO YOUR
- 24 OFFICE? WERE YOU ASKED TO GO IN THERE BY ANYBODY?
- 25 A. NO, SIR. I THINK I ASKED HIM IF I COULD GET

EVERETT HOWARD - CROSS/MR. THEOS

1 SOMETHING OUT OF MY OFFICE. AND WHEN I WALKED IN,
2 IT LOOKED LIKE MR. SIMMONS WAS WRITING SOMETHING.

3 Q. WHAT STARTED THIS LINE OF QUESTIONING WAS MY
4 QUESTION TO YOU AS TO WHETHER OR NOT YOU HAD ANY
5 OTHER CONVERSATIONS WITH MR. SIMMONS? ON THAT
6 PARTICULAR DAY WHEN YOU INTRODUCED HIM TO THESE LAW
7 ENFORCEMENT OFFICERS, DID YOU DISCUSS ANYTHING AT
8 ALL WITH HIM OTHER THAN THE INTRODUCTION?

9 A. NO, SIR. I DON'T RECALL HAVING ANY OTHER
10 CONVERSATION WITH HIM.

11 Q. DID MR. SIMMONS SAY ANYTHING RELATED TO ANY CRIMES?

12 A. TO ME THAT DAY?

13 Q. THAT DAY ON THE FIFTH?

14 A. NO, SIR. I DON'T RECALL ANYTHING BEING SAID TO ME.

15 Q. DID YOU ASK HIM ANY QUESTIONS RELATED TO THESE
16 STATEMENTS HE HAD MADE TO YOU ON THE SECOND, FROM
17 THE SECOND, THIRD, AND FOURTH?

18 A. ON SEPTEMBER THE FIFTH DID I ASK HIM ANY OF THOSE
19 QUESTIONS?

20 Q. ANY OF THOSE QUESTIONS RELATED TO THOSE STATEMENTS?

21 A. NO, SIR, I DID NOT.

22 Q. DID YOU SPEAK WITH MR. SIMMONS ANY TIME AFTER THE
23 FIFTH?

24 A. NO, SIR. I DON'T RECALL US EVER SPEAKING. AGAIN,
25 I'M NOT SURE I EVER SAW HIM AGAIN UNTIL YESTERDAY.

EVERETT HOWARD - CROSS/MR. THEOS

1 Q. OKAY. AND THE LAW ENFORCEMENT, SLED, INTERVIEWED
2 MR. SIMMONS AGAIN ON THE NINTH. WERE YOU INVOLVED
3 AT ALL IN ANY WAY IN THAT INTERVIEW?

4 A. OH, NO, SIR; I KNOW I WASN'T INVOLVED IN THE
5 INTERVIEW.

6 Q. WERE YOU INVOLVED IN TAKING MR. SIMMONS FROM HIS
7 CELL AREA OR DORM AREA TO THE INTERVIEW ROOM?

8 A. I DON'T RECALL BEING INVOLVED; NO, SIR.

9 Q. OKAY. DO YOU KNOW WHETHER THAT INTERVIEW OF THE
10 NINTH WAS IN YOUR OFFICE AS WELL?

11 A. SIR, I DON'T RECALL THAT EITHER.

12 Q. DO YOU KNOW WHETHER THE INTERVIEWS THAT WERE TAKEN
13 THAT WERE HAD WITH MR. SIMMONS ON THE FIFTH AND THE
14 NINTH, WHETHER IT WAS YOUR TAPE RECORDER THAT WAS
15 USED?

16 A. YES, SIR. I'M PRETTY SURE IT WAS MY RECORDER THAT
17 WAS USED ON THE FIFTH. I'M NOT SURE ABOUT THE
18 NINTH.

19 Q. OKAY. AND DO YOU KNOW HOW MANY TIMES MR. SIMMONS
20 WAS MET WITH BY SLED OR THESE LAW ENFORCEMENT
21 OFFICERS ON THE FIFTH?

22 A. NO, SIR, I DO NOT.

23 MR. THEOS: NOTHING FURTHER, YOUR HONOR.

24 MR. BAILEY: NO RE-DIRECT, YOUR HONOR.

25 THE COURT: THANK YOU, SIR. STEP DOWN. AND

EVERETT HOWARD - CROSS/MR. THEOS

1 GENTLEMEN, MAY THIS WITNESS BE EXCUSED?

2 MR. THEOS: NO OBJECTION.

3 MR. BAILEY: THAT'S FINE, YOUR HONOR.

4 THE COURT: NOW, WHEN ARE YOU GOING TO GET
5 YOUR NOTES TO SOLICITOR BAILEY, PLEASE, SIR?

6 MR. HOWARD: WELL, I'M OFF ON MONDAY. IF IT
7 COULD WAIT UNTIL TUESDAY OR WEDNESDAY, I WOULD
8 BE VERY GRATEFUL.

9 THE COURT: WELL, OUR PROBLEM, SEE, IS THIS
10 TRIAL IS TO COMMENCE MONDAY A WEEK. AND WE'RE
11 MEETING NEXT WEDNESDAY ABOUT JUROR EXCUSES. I
12 JUST DON'T KNOW IF THE GENTLEMEN FEEL THAT.

13 MR. THEOS: THAT'S FINE WITH US, YOUR HONOR.
14 AS LONG AS WE GET THEM BY WEDNESDAY, THAT'S
15 FINE. AND THEY CAN BE FAXED TO US; AND THEN
16 HE CAN PROVIDE THE ORIGINALS TO MR. BAILEY.

17 THE COURT: AND YOU GAVE HIM YOUR FAX NUMBER?

18 MR. THEOS: I'LL GIVE HIM A CARD THAT'S GOT MY
19 FAX NUMBER ON IT.

20 THE COURT: SO YOU CAN FAX IT TO HIM ON
21 TUESDAY AND PUT THEM IN THE MAIL TO SOLICITOR
22 BAILEY ON WEDNESDAY?

23 MR. HOWARD: YES, SIR, I CAN DO THAT.

24 THE COURT: I WOULDN'T WANT TO INTERFERE WITH
25 YOUR VACATION.

ANN REESE - DIRECT/MR. BAILEY

1 MR. THEOS: AND BEFORE INVESTIGATOR HOWARD
2 LEAVES, I WOULD LIKE TO INTRODUCE THE COPY OF
3 THE CARD THAT HE READ FROM. WE COPIED BOTH
4 SIDES OF IT.

5 THE COURT: WITHOUT OBJECTION.

6 DEFENDANT'S EXHIBIT NO. 2
7 MARKED FOR IDENTIFICATION

8 THE COURT: NEXT WITNESS, PLEASE.

9 MR. BAILEY: ANN REESE.

10 THE COURT: COME AROUND, PLEASE, MRS. REESE.

11 - - - - -

12 WHEREUPON,

13 ANN REESE, WHO AFTER BEING FIRST DULY AT
14 THE DETENTION SWORN TO TELL THE TRUTH,
15 TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. MRS. REESE, YOU'RE EMPLOYED AS A SLED AGENT; IS
19 THAT CORRECT?

20 A. YES, SIR.

21 Q. WHAT DO YOU DO FOR SLED?

22 A. I'M AN INVESTIGATOR.

23 Q. ALL RIGHT, MA'AM. AND WHAT OFFICE DO YOU WORK OUT
24 OF?

25 A. THE LOW COUNTRY REGION.

ANN REESE - DIRECT/MR. BAILEY

- 1 Q. NOW, WAS THERE A TASK FORCE ORGANIZED AFTER THE
2 HOMICIDE INVOLVING LILLIE BELL BOYD?
- 3 A. YES, SIR.
- 4 Q. DID SLED ASSIGN YOU TO THAT TASK FORCE?
- 5 A. YES, SIR.
- 6 Q. MS. REESE, I WANT TO CALL YOUR ATTENTION TO EARLY
7 AFTERNOON OR MIDDAY OF DECEMBER THE FIFTH, 1997,
8 AND ASK WHETHER OR NOT YOU HAD OCCASION TO GO TO
9 THE RICHLAND COUNTY DETENTION CENTER IN THE COURSE
10 OF YOUR DUTIES AS A SLED AGENT?
- 11 A. YES, SIR.
- 12 Q. WHO DID YOU GO WITH?
- 13 A. KENNY MEARS, AGENT KENNY MEARS, AND DETECTIVE
14 MAYBELLE HENDRICKS, ST. GEORGE POLICE DEPARTMENT.
- 15 Q. ALL RIGHT. AND WOULD YOU STATE WHETHER OR NOT YOU
16 SAW KENNETH SIMMONS AT THE DETENTION CENTER?
- 17 A. YES, SIR.
- 18 Q. COULD YOU POINT HIM OUT FOR THE RECORD, PLEASE?
- 19 A. HE'S THE GENTLEMAN SITTING TO MY LEFT WITH THE RED
20 JUMPSUIT AND THE GLASSES.
- 21 Q. WHERE DID Y'ALL MEET WITH MR. SIMMONS? WHAT PART
22 OF THE DETENTION CENTER DID YOU GO TO?
- 23 A. WE WENT TO INVESTIGATOR HOWARD'S OFFICE.
- 24 Q. COULD YOU DESCRIBE INVESTIGATOR HOWARD'S OFFICE
25 BRIEFLY AS FAR AS ROUGHLY HOW BIG IT IS AND THE

1 FURNISHINGS IN THERE?

2 A. WELL, I'M JUST GOING TO HAVE TO TRY AND SEE IF I
3 CAN REMEMBER EXACTLY WHAT WAS IN THERE. I THINK
4 WHEN YOU WALK IN THE DOOR THERE WAS A DESK DIRECTLY
5 IN FRONT OF YOU. AND I THINK IT WAS LIKE THREE
6 DESKS INCLUDING THE ONE I JUST MENTIONED IN THE
7 ROOM AND SOME FILE CABINETS AND SOME CHAIRS. I
8 WOULD IMAGE THE ROOM WAS PROBABLY ABOUT -- I WOULD
9 GUESS FROM THIS BACK DOOR TO PROBABLY WHERE THE
10 PODIUM IS RIGHT THERE. (INDICATING.) PROBABLY
11 ABOUT 14'X20' OR SOMETHING LIKE THAT. IT MIGHT NOT
12 EVEN BE THAT LARGE. I'M NOT TOO GOOD WITH ROOM
13 FIGURES.

14 Q. WHAT DO YOU RECALL MR. SIMMONS' DEMEANOR ON
15 DECEMBER THE 5TH, 1997?

16 A. HE SEEMED TO BE CALM. AND HE JUST ACTED AVERAGE,
17 LIKE AN AVERAGE PERSON WOULD ACT.

18 Q. DID YOU SEE ANY INDICATION THAT HE WAS UNDER THE
19 INFLUENCE OF ALCOHOL OR DRUGS OR ANYTHING THAT
20 WOULD HAVE IMPAIRED HIS ABILITY TO TALK WITH Y'ALL?

21 A. NO, SIR.

22 Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT IN YOUR
23 PRESENCE MIRANDA RIGHTS WERE GIVEN TO MR. SIMMONS?

24 A. YES, SIR.

25 Q. WHO DID THAT?

1 A. AGENT MEARS.

2 Q. YOU WERE PRESENT WHEN THE MIRANDA RIGHTS WERE GIVEN
3 BY MR. MEARS?

4 A. YES, SIR.

5 Q. HOW DID HE GO ABOUT DOING THAT?

6 A. WE HAVE A SHEET THAT HAS THE MIRANDA WARNINGS ON
7 THEM. IT'S A SLED FORM THAT WE USE.

8 Q. OKAY. AND I'M GOING TO HAND YOU A PIECE OF PAPER
9 AND ASK IF YOU CAN IDENTIFY THIS AS BEING THE
10 MIRANDA RIGHTS FORM THAT WAS USED ON DECEMBER THE
11 5TH, 1997. (WITNESS EXAMINES DOCUMENT.)

12 A. YES, SIR.

13 Q. ALL RIGHT. AND DID YOU OBSERVE KENNETH SIMMONS
14 SIGN THE MIRANDA RIGHTS AFTER THEY WERE GIVEN TO
15 HIM BY AGENT MEARS?

16 A. YES, SIR.

17 Q. THERE'S A WAIVER DOWN AT THE BOTTOM. DID YOU
18 OBSERVED HIM SIGNING THAT?

19 A. YES, SIR.

20 Q. DID YOU SIGN THAT AS A WITNESS?

21 A. YES, SIR.

22 Q. THAT'S YOUR SIGNATURE DOWN IN THE BOTTOM LEFT-HAND
23 CORNER, THE SECOND LINE?

24 A. THAT'S CORRECT.

25 MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS

1 FOR THIS HEARING.

2 THE COURT: ANY OBJECTION?

3 MR. THEOS: NO, SIR, YOUR HONOR.

4 THE COURT: THAT, MA'AM, WILL BE STATE'S
5 NUMBER WHAT?

6 THE COURT REPORTER: TWO.

7 STATE'S EXHIBIT NO. 2

8 MARKED FOR IDENTIFICATION

9 Q. LET ME HAND YOU THIS BACK IN CASE YOU NEED TO REFER
10 TO IT. THERE ARE SOME INITIALS THERE TO THE LEFT
11 OF EACH ONE OF THOSE RIGHTS. DO YOU SEE THAT?

12 A. YES, SIR.

13 Q. AND WHOSE INITIALS ARE THOSE?

14 A. KENNETH SIMMONS.

15 Q. DID YOU SEE HIM DO THOSE INITIALS ON THERE?

16 A. YES, SIR.

17 Q. ALL RIGHT. NOW, AFTER MR. SIMMONS -- OR DURING THE
18 TIME MR. SIMMONS WAS BEING GIVEN THE MIRANDA RIGHTS
19 AND ACKNOWLEDGING THOSE RIGHTS BY INITIALING EACH
20 ONE AND THEN SIGNING THE RIGHTS OF WAIVER, WAS THAT
21 BEING TAPED; THAT PROCESS?

22 A. YES, SIR.

23 Q. OKAY. AND WAS THE GIVING OF MIRANDA RIGHTS
24 FOLLOWED BY AN INTERVIEW?

25 A. YES, SIR.

1 Q. WAS THAT INTERVIEW TAPED?

2 A. YES, SIR.

3 Q. WERE YOU PRESENT DURING TO ENTIRE TAPED INTERVIEW?

4 A. YES, SIR.

5 Q. DID YOU PARTICIPATE? DID YOU ASK ANY QUESTIONS?

6 A. I BELIEVE I ASKED HIM ONE QUESTION.

7 Q. NOW, MS. REESE, AT ANY POINT AND TIME DURING THIS

8 INITIAL DECEMBER THE 5TH, 1997 INTERVIEW, DID YOU

9 OR DETECTIVE MAYBELLE HENDRICKS OR AGENT KENNY

10 MEARS OR ANYBODY ELSE OFFER ANY PROMISES OR

11 INCENTIVE OR INDUCEMENT TO MR. SIMMONS TO GET HIM

12 TO GIVE Y'ALL A STATEMENT?

13 A. NO, SIR.

14 Q. WERE ANY THREATS MADE AGAINST MR. SIMMONS IF HE DID

15 NOT GIVE YOU A STATEMENT?

16 A. NO, SIR.

17 Q. AND WHEN QUESTIONS WERE ASK OF MR. SIMMONS, DID HE

18 APPEAR TO UNDERSTAND THOSE QUESTIONS?

19 A. YES, SIR.

20 Q. WHEN HE RESPONDED TO THE QUESTIONS, DID YOU HAVE

21 ANY DIFFICULTY IN UNDERSTANDING HIS RESPONSES TO

22 THOSE QUESTIONS?

23 A. NO, SIR.

24 Q. TO THE BEST OF YOUR KNOWLEDGE WAS THE TAPED

25 STATEMENT THAT WAS TAKEN FROM MR. SIMMONS FREELY

ANN REESE - DIRECT/MR. BAILEY

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- 1 AND VOLUNTARILY GIVEN BY HIM?
- 2 A. YES, SIR.
- 3 Q. AND HAVE YOU READ A TRANSCRIPT OF THE TAPE WHILE
- 4 LISTENING TO THE TAPE AT THE SAME TIME?
- 5 A. PARDON ME?
- 6 Q. HAVE YOU READ OVER A TRANSCRIPT OF THAT TAPE
- 7 PREPARED BY SLED?
- 8 A. YES, SIR.
- 9 Q. IS THAT TRANSCRIPT A REASONABLY ACCURATE
- 10 REPRODUCTION OF WHAT'S IN THE TAPE?
- 11 A. YES, SIR.
- 12 Q. ALL RIGHT. I'M GOING TO ASK YOU NEXT WHETHER OR
- 13 NOT YOU RECALL GOING TO MR. SIMMONS' BOND HEARING
- 14 SOME TIME AFTER THAT?
- 15 A. YES, SIR.
- 16 Q. AND DO YOU RECALL ANY FAMILY MEMBERS OF MR.
- 17 SIMMONS' BEING PRESENT?
- 18 A. YES, SIR.
- 19 Q. DO YOU RECALL ANY CONVERSATION BETWEEN MR. SIMMONS
- 20 AND A FEMALE FAMILY MEMBER?
- 21 A. YES, SIR.
- 22 Q. WOULD YOU RELATE THAT, PLEASE?
- 23 A. MYSELF AND DETECTIVE HENDRICKS WERE AT THE BOND
- 24 HEARING WITH MR. SIMMONS. AS WE WERE ABOUT TO
- 25 BEGIN THE BOND HEARING, SOME OF HIS RELATIVES CAME

1 IN. AND I LATER LEARNED THAT THIS FEMALE THAT CAME
2 IN, AND SHE WAS SITTING BEHIND US, WAS HIS SISTER.

3 Q. KENNETH SIMMONS' SISTER; IS THAT CORRECT?

4 A. YES, SIR. I DON'T KNOW WHAT HER NAME WAS. AND SHE
5 ASKED HIM; SHE SPOKE TO HIM. AND I THINK SHE TOLD
6 HIM THAT SHE LOVED HIM, OR WHATEVER. AND SHE ASKED
7 HIM ALSO DID YOU DO THIS. AND HE SAID YES. SHE
8 SAID, "DID YOU KILL THAT OLD LADY?" AND HE SAID,
9 "YES, I KILLED THAT OLD LADY."

10 Q. LET ME GO BACK TO THE MIRANDA FORM THERE AND ASK
11 YOU A COUPLE OF OTHER QUESTIONS I NEGLECTED TO ASK
12 YOU BEFORE THERE. THE DATE UP HERE AT THE TOP AND
13 THE TIME, 12:50 P.M.; IS THAT WHEN MR. MEARS BEGAN
14 TO GIVE THE MIRANDA RIGHTS?

15 A. YES, SIR, I BELIEVE SO.

16 Q. OKAY. AND THE TIME DOWN AT THE BOTTOM AFTER YOUR
17 SIGNATURE, 3:00 P.M. IS THAT WHEN THAT WAS
18 COMPLETED?

19 A. YES, SIR.

20 Q. THAT'S ALL I HAVE, MS. REESE. PLEASE ANSWER ANY
21 QUESTIONS DEFENSE MAY HAVE.

22 THE COURT: YOU MAY CROSS.

23 MR. THEOS: YES, SIR.

24 CROSS-EXAMINATION

25 BY MR. THEOS:

- 1 Q. MS. REESE, HOW LONG HAVE YOU BEEN WITH SLED?
- 2 A. I'VE WORKED FOR SLED SINCE JULY OF 1993.
- 3 Q. AND IN WHAT CAPACITY?
- 4 A. MY FIRST YEAR AT SLED I WORKED IN THE ALCOHOL
- 5 UNIT. IN 1994, IN JULY OF 1994, I WAS ASSIGNED TO
- 6 THE LOW COUNTRY REGION CRIMINAL INVESTIGATIONS.
- 7 Q. AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH SLED
- 8 NOW?
- 9 A. I'M IN THAT SAME CAPACITY THAT I WENT INTO IN 1994
- 10 AS A CRIMINAL AGENT.
- 11 Q. WHAT IS YOUR RANK?
- 12 A. I'M A SENIOR AGENT.
- 13 Q. AND WHAT ABOUT YOUR TRAINING AND EXPERIENCE PRIOR
- 14 TO YOUR WORK WITH SLED?
- 15 A. I WORKED FOR THE ALCOHOL BEVERAGE CONTROL
- 16 COMMISSION AS AN AGENT WITH THEM.
- 17 Q. HOW LONG DID YOU DO THAT?
- 18 A. FROM 1978 UNTIL 1993.
- 19 Q. ALL RIGHT. IF YOU CAN RECALL, AND IF YOU KNOW,
- 20 WHAT PROMPTED YOUR TRAVELING TO THE RICHLAND COUNTY
- 21 JAIL ON THE FIFTH?
- 22 A. WE HAD RECEIVED INFORMATION FROM THE RICHLAND
- 23 COUNTY DETENTION CENTER THAT MR. SIMMONS WAS THERE,
- 24 BEING DETAINED THERE, FOR SHOPLIFTING CHARGES. AND
- 25 ALSO BECAUSE HE HAD BEEN ENTERED INTO THE N.C.I.C.

1 COMPUTER. AND I WOULD IMAGE THAT WHENEVER HE WAS
2 ARRESTED, THEY CHECKED AND HE WAS THERE. AND THEY
3 NOTIFIED SUMMERVILLE POLICE DEPARTMENT. AND, OF
4 COURSE, LIKE MR. BAILEY SAID EARLIER WE WERE ON THE
5 TASK FORCE, AND WE WERE NOTIFIED THAT HE WAS THERE
6 BECAUSE WE HAD BEEN LOOKING FOR HIM. AND SO WE
7 CALLED THE DETENTION CENTER AND ASKED THEM TO SET
8 UP AN INTERVIEW WITH MR. SIMMONS ON THE FIFTH OF
9 DECEMBER.

10 Q. ALL RIGHT. WHEN WAS THIS TASK FORCE FORMED?

11 A. I BELIEVE IT WAS FORMED IN SEPTEMBER OF '97, IF I
12 I'M NOT MISTAKEN. I DON'T HAVE MY NOTES IN FRONT
13 OF ME.

14 Q. WHAT WAS THE PURPOSE OF THE TASK FORCE?

15 A. TO TRY TO SOLVE THIS HOMICIDE.

16 Q. AND YOU SAID THAT YOU HAD BEEN LOOKING FOR MR.
17 SIMMONS?

18 A. YES, SIR.

19 Q. AND WAS THAT IN RELATIONSHIP FOR THE PURPOSE OF THE
20 WORK OF THE TASK FORCE OF MRS. BOYD'S DEATH?

21 A. YES, SIR.

22 Q. WHY WERE YOU LOOKING FOR MR. SIMMONS?

23 A. HIS NAME CAME UP AS A SUSPECT, AND WE HAD -- ONE OF
24 THE SUMMERVILLE POLICE OFFICERS THAT HAD COME INTO
25 WORK ON THE TASK FORCE WITH US LATER, WE HAD ASKED

1 HIM TO SEE IF HE COULD CONTACT MR. SIMMONS AND
2 ASKED HIM IF HE WOULD COME IN AND TALK TO US. AND
3 THIS WAS DONE. AND HE WAS SUPPOSED TO COME IN TO
4 BE INTERVIEWED BY US, AND HE NEVER SHOWED UP. WE
5 JUST RECEIVED INFORMATION THAT HE WAS NOWHERE IN
6 THE SUMMERVILLE AREA.

7 Q. DO YOU KNOW ROUGHLY WHEN THAT WOULD HAVE BEEN? OR
8 EXACTLY IF YOU HAVE YOUR FILE.

9 A. I BELIEVE THAT THAT WAS SOME TIME IN THE LATTER
10 PART OF OCTOBER, I BELIEVE. I'M NOT SURE. I DON'T
11 HAVE THE CASE FILE IN FRONT OF ME.

12 Q. IT WAS SEVERAL WEEKS PRIOR TO YOUR INTERVIEW OF MR.
13 SIMMONS ON THE FIFTH?

14 A. OH, YES. I THINK IT WAS PROBABLY ABOUT MAYBE THREE
15 WEEKS, MAYBE GOING INTO A MONTH, BEFORE WE LOCATED
16 HIM AFTER, YOU KNOW, WE GOT NOTIFICATION THAT HE
17 WAS NO LONGER IN THE AREA.

18 Q. DURING THAT TIME FRAME WERE YOU AND OTHER AGENTS
19 WITH THE TASK FORCE ATTEMPTING TO LOCATE MR.
20 SIMMONS?

21 A. YES, SIR.

22 Q. DO YOU KNOW WHY HE WAS A SUSPECT?

23 MR. BAILEY: JUDGE, I'M GOING TO OBJECT AT
24 THIS POINT. I DON'T KNOW WHAT IT'S GOT TO DO
25 WITH MIRANDA, VOLUNTARINESS, THOSE TYPES OF

1 THINGS IN A JACKSON V. DINNO.

2 THE COURT: YOUR QUESTION WAS IF SHE KNEW HE
3 WAS A SUSPECT?

4 MR. THEOS: YES, SIR, YOUR HONOR. IF SHE KNEW
5 WHY MR. SIMMONS WAS A SUSPECT. I THINK IT
6 RELATES TO THE CIRCUMSTANCES SURROUNDING THE
7 INTERVIEW, YOUR HONOR. IT WASN'T AS IT
8 APPEARED ON DIRECT.

9 THE COURT: WELL, WE'RE NON JURY. I'M GOING
10 TO ALLOW THE QUESTION. I WON'T NECESSARILY
11 ALLOW IT THE NEXT TIME, BUT I'M GOING TO ALLOW
12 IT.

13 A. WE WERE JUST -- YOU KNOW, WE HAD JUST GONE IN AND
14 JUST PULLED SOME OF THE RECORDS OF SOME OF THE
15 NAMES THAT HAD COME UP WHILE WE WERE WORKING IN
16 THIS TASK FORCE. AND MR. SIMMONS' NAME WAS ONE OF
17 THE ONES THAT CAME UP THAT COULD HAVE BEEN A
18 POSSIBLE SUSPECT. AND SO WE DID A RECORD CHECK ON
19 HIM. AND, LIKE I SAID EARLIER, WE ASKED ONE OF THE
20 OFFICERS THAT CAME IN TO WORK WITH US ON THE TASK
21 FORCE IF HE COULD JUST LOCATE HIM AND SEE IF HE
22 WOULD COME IN AND SIT DOWN AND TALK WITH US TO SEE
23 IF HE MAY BE ABLE TO TELL US ANYTHING, YOU KNOW, IN
24 REFERENCE TO MRS. BOYD'S MURDER.

25 Q. DO YOU KNOW WHETHER YOU CONTACTED THE RICHLAND

1 COUNTY JAIL BEFORE OR AFTER YOU RECEIVED
2 INFORMATION THAT MR. SIMMONS WAS DESIROUS OF
3 CONFESSING TO A MURDER?

4 A. NO, SIR.

5 Q. DO YOU KNOW WHEN IT WAS THAT YOU OR ANYBODY ELSE
6 FROM SLED CONTACTED THE RICHLAND COUNTY JAIL TO TRY
7 TO INTERVIEW MR. SIMMONS?

8 A. I WAS THE LEAD INVESTIGATOR. I WAS IN COURT IN
9 ANOTHER COUNTY. RON THOMASON FROM THE SUMMERVILLE
10 POLICE DEPARTMENT AND MAYBELLE HENDRICKS OF THE ST.
11 GEORGE POLICE DEPARTMENT WERE STILL WORKING ON THE
12 TASK FORCE WHILE I WAS IN COURT. AND AS STATED
13 EARLIER, THE INFORMATION CAME FROM RICHLAND COUNTY
14 THAT HE WAS THERE AND HAD CONFESSED TO SOME
15 MURDERS. AND SO THAT'S WHEN I WAS NOTIFIED BY THE
16 OTHER MEMBERS OF THIS CONFESSION.

17 Q. OKAY. AS A RESULT OF THAT, DID YOU -- YOU SAID YOU
18 WENT TO THE RICHLAND COUNTY JAIL. YOU SAID YOU
19 WERE WITH AGENT MEARS; IS THAT CORRECT?

20 A. AGENT MEARS AND DETECTIVE HENDRICKS.

21 Q. I'M SORRY; DETECTIVE---

22 A. DETECTIVE HENDRICKS.

23 Q. MAYBELLE HENDRICKS?

24 A. YES, SIR.

25 Q. OF THE ST. GEORGE POLICE DEPARTMENT?

1 A. YES, SIR.

2 Q. DO YOU RECALL WHAT TIME Y'ALL BEGAN YOUR INTERVIEW
3 WAS MR. SIMMONS?

4 A. IT WAS SOMEWHERE AROUND NOON, OR MAYBE A LITTLE BIT
5 AFTER NOON; SOMEWHERE IN THERE. WELL, IN FACT, IT
6 WAS RIGHT AFTER WE GAVE HIM HIS MIRANDA RIGHTS.

7 Q. THE MIRANDA RIGHTS FORM THAT I THINK IS MARKED AS
8 STATE'S EXHIBIT TWO; IS THAT RIGHT?

9 A. YES, SIR.

10 Q. THE TIME AT THE UPPER RIGHT-HAND CORNER REFLECTS
11 12:50 P.M.

12 A. YES, SIR.

13 Q. WHAT WOULD THAT BE INDICATIVE OF?

14 A. WHAT DO YOU MEAN?

15 Q. IS THAT THE TIME THAT YOU BEGAN -- AGENT MEARS --
16 BEGAN READING THOSE RIGHTS?

17 A. YES, SIR.

18 Q. OKAY. AND THEN THE INTERVIEW BEGAN IMMEDIATELY
19 AFTER THAT?

20 A. YES, SIR.

21 Q. NOW, BEFORE THAT, HOW LONG HAD YOU BEEN WITH MR.
22 SIMMONS PRIOR TO THE READING OF THESE RIGHTS?

23 A. PROBABLY JUST A MINUTE OR TWO. THEY BROUGHT HIM IN
24 AND GOT HIM TO SIT DOWN, AND HE WAS INTRODUCED TO
25 US, AND WE IMMEDIATELY WENT RIGHT INTO IT.

ANN REESE - CROSS/MR. THEOS

1 Q. DO YOU RECALL WHETHER YOU OR AGENT MEARS OR OFFICER
2 HENDRICKS WERE REQUIRED TO SIGN IN AT THE RICHLAND
3 COUNTY JAIL?

4 A. YES, SIR.

5 Q. YOU WERE?

6 A. YES, SIR.

7 Q. DO YOU RECALL WHETHER YOU ALL WERE REQUIRED TO SIGN
8 OUT WHEN YOU LEFT?

9 A. YES, SIR, I BELIEVE SO.

10 Q. HOW LONG DID THAT FIRST MEETING WITH MR. SIMMONS
11 LAST? FROM APPROXIMATELY A COUPLE OF MINUTES
12 BEFORE 12:50 UNTIL WHAT TIME?

13 A. IT WAS AFTER THREE; THREE O'CLOCK IN THE AFTERNOON.

14 Q. ALL RIGHT. NOW, DURING THAT INTERVIEW, I
15 UNDERSTAND IT WAS RECORDED?

16 A. YES, SIR.

17 Q. AS YOU TESTIFIED -- AND WE'VE ALL SEEN THE
18 TRANSCRIPT -- DID YOU MAKE ANY NOTES DURING THAT
19 INTERVIEW?

20 A. I MADE NOTES. BUT ONCE I DID THE -- PUT THE CASE
21 FILE TOGETHER, USUALLY YOUR LITTLE NOTES THAT YOU
22 HAVE MAY BE SHREDDED BECAUSE MOSTLY EVERYTHING THAT
23 I NEED TO REFER BACK TO IS IN THE CASE FILE. SO I
24 DON'T HAVE ANY NOTES.

25 Q. THAT'S MY QUESTION. DO YOU HAVE ANY NOTES TODAY?

1 A. NO, SIR.

2 Q. NOW, DURING THIS INTERVIEW, WHO ELSE WAS PRESENT
3 DURING THE ENTIRE INTERVIEW?

4 A. AGENT KENNY MEARS AND DETECTIVE MAYBELLE HENDRICKS.

5 Q. SHE WAS PRESENT DURING THE ENTIRE INTERVIEW?

6 A. YES, SIR.

7 Q. INVESTIGATOR HOWARD SAID AT ONE POINT HE THOUGHT HE
8 CAME BACK IN TO GET SOMETHING. DO YOU RECALL THAT?

9 A. I RECALL SOMEONE COMING BACK INTO THE ROOM. BUT I
10 DON'T REMEMBER IF IT WAS DETECTIVE HOWARD OR THE
11 OFFICER THAT SHARED THE OFFICE WITH HIM.

12 Q. ALL RIGHT. WERE YOU INVOLVED IN ANY OF THE
13 SUBSEQUENT INTERVIEWS WITH MR. SIMMONS? I BELIEVE
14 THERE WAS ANOTHER ONE THE AFTERNOON OF THE FIFTH.
15 WERE YOU PRESENT DURING THAT INTERVIEW?

16 A. NO, SIR.

17 Q. WHY WEREN'T YOU PRESENT DURING THAT ONE?

18 A. BECAUSE WHEN WE WENT BACK, WE LEFT THE DETENTION
19 CENTER THAT AFTERNOON TO FOLLOW UP INFORMATION THAT
20 MR. SIMMONS HAD GIVEN US. WHEN WE CAME BACK TO THE
21 DETENTION CENTER, MR. SIMMONS WAS BROUGHT BACK TO
22 THE OFFICE THAT WE HAD PREVIOUSLY INTERVIEWED HIM
23 IN. AND AGENT MEARS, YOU KNOW, STARTED TALKING TO
24 HIM AND STARTED TELLING HIM THAT THE INFORMATION
25 THAT HE HAD GIVEN US IN THE PREVIOUS STATEMENT, ALL

ANN REESE - CROSS/MR. THEOS

1 OF IT DIDN'T ADD UP. AND AT THAT POINT, MR.
2 SIMMONS DID NOT WANT MYSELF AND DETECTIVE HENDRICKS
3 IN THE ROOM BECAUSE HE SAID THAT HE WAS GOING TO
4 TELL AGENT MEARS WHAT REALLY HAPPENED. AND, SO,
5 AGENT MEARS ASKED HIM IF HE WOULD FEEL BETTER IF WE
6 LEFT THE ROOM. AND HE SAID YES. SO WE LEFT THE
7 ROOM WHILE THAT INTERVIEW WAS BEING TAPED.

8 Q. SO YOU WERE NOT IN THE ROOM DURING ANY OF THE
9 SECOND INTERVIEW?

10 A. NO, SIR.

11 Q. WERE YOU IN THE ROOM ON DECEMBER THE NINTH WHEN
12 THERE WAS A THIRD INTERVIEW WITH MR. SIMMONS?

13 A. NO, SIR.

14 Q. DID YOU EVER SPEAK WITH MR. SIMMONS AGAIN -- AND I
15 UNDERSTAND YOU MAY HAVE ASKED A COUPLE OF QUESTIONS
16 DURING THE FIRST INTERVIEW ON THE FIFTH. DID YOU
17 SPEAK WITH MR. SIMMONS AGAIN AFTER THE FIFTH?

18 A. YOU MEAN AS PART OF AN INTERVIEW?

19 Q. AS PART OF AN INTERVIEW RELATED TO THE COMMISSION
20 OF ANY CRIMES?

21 A. NO, SIR.

22 Q. YOU SAID THAT THE THREE OF YOU LEFT THE DETENTION
23 CENTER BETWEEN THE TWO INTERVIEWS?

24 A. YES, SIR.

25 Q. AND DO YOU KNOW HOW LONG YOU WERE GONE BEFORE YOU

ANN REESE - CROSS/MR. THEOS

1 CAME BACK?

2 A. WE CAME BACK SOME TIME AROUND -- HERE AGAIN, I'M
3 NOT LOOKING AT MY NOTES. IT WAS AROUND 8:00 OR
4 8:30; SOMEWHERE IN BETWEEN THERE.

5 Q. THAT EVENING?

6 A. AS FAR AS I CAN RECOLLECT.

7 Q. THAT WOULD HAVE BEEN IN THE EVENING OF THE SAME
8 DAY; THE FIFTH?

9 A. YES, SIR.

10 Q. ALL RIGHT. AND WERE YOU PRESENT WHEN MR. SIMMONS
11 WAS ADVISED OF HIS MIRANDA WARNINGS IN A SECOND
12 INTERVIEW ON THE FIFTH?

13 A. NO, SIR.

14 Q. AND DURING THE INTERVIEW OF THE FIFTH THAT YOU WERE
15 PRESENT FOR, WAS MR. SIMMONS ASKED TO READ THOSE
16 MIRANDA WARNINGS?

17 A. PARDON ME?

18 Q. WAS MR. SIMMONS ASKED TO READ THOSE MIRANDA
19 WARNINGS HIMSELF?

20 A. ON THE SECOND INTERVIEW.

21 Q. NO; I'M SORRY; ON THE FIFTH?

22 A. ON THE FIFTH, ON THE SECOND INTERVIEW OR THE FIRST
23 INTERVIEW.

24 Q. WELL, YOU WOULD ONLY KNOW ABOUT THE ONE YOU WERE
25 PRESENT AT, THE FIRST INTERVIEW?

1 A. YES, SIR.

2 Q. WAS HE ASKED TO READ THOSE ALOUD?

3 A. NO, SIR.

4 Q. DID HE READ THOSE ALOUD?

5 A. NO, SIR.

6 Q. OKAY. ALL RIGHT. NOW, WITH RESPECT TO THE BOND
7 HEARING, DO YOU HAVE ANY NOTES THAT YOU MADE AS A
8 RESULT OF THAT BOND HEARING?

9 A. NO, SIR.

10 Q. DID YOU PREPARE ANY SORT OF INCIDENT REPORT RELATED
11 TO THAT BOND HEARING?

12 A. NO, SIR.

13 Q. OR SUPPLEMENTAL REPORT?

14 A. NO, SIR.

15 Q. DO YOU RECALL ROUGHLY WHEN THAT BOND HEARING WOULD
16 HAVE BEEN?

17 A. WE BROUGHT HIM BACK ON THE NINTH OF DECEMBER. I'M
18 NOT SURE WHAT DATE IT WAS, BUT IT WAS EITHER THE
19 NEXT DAY OR THE FOLLOWING DAY.

20 Q. ALL RIGHT. AND WHO BROUGHT HIM BACK?

21 A. MYSELF, DETECTIVE HENDRICKS, AGENT MEARS, AND
22 DETECTIVE RON THOMASON.

23 Q. OKAY. AND WHEN YOU SAY "BROUGHT HIM BACK," Y'ALL
24 TRANSPORTED HIM FROM THE RICHLAND COUNTY DETENTION
25 CENTER TO HERE IN ST. GEORGE, OR TO SUMMERVILLE?

ANN REESE - CROSS/MR. THEOS

1 WHICH?

2 A. TO SUMMERVILLE.

3 Q. TO THE COURT HOUSE IN SUMMERVILLE FOR THE BOND
4 HEARING?

5 A. NO, SIR.

6 Q. WHERE IN SUMMERVILLE?

7 A. WE TOOK HIM TO THE POLICE DEPARTMENT IN
8 SUMMERVILLE.

9 Q. NOW, WAS THIS IN A NORMAL POLICE CAR?

10 A. WE HAD CAR TROUBLE ON THE WAY COMING BACK. MYSELF
11 AND KENNETH MEARS AND RON THOMASON, WE WERE IN HIS
12 CAR -- AND MAYBELLE HENDRICKS -- WERE IN DETECTIVE
13 THOMASON'S CAR, AND HE HAD CAR TROUBLE. AGENT
14 MEARS WAS FOLLOWING US IN HIS CAR.

15 Q. WHERE WAS MR. SIMMONS?

16 A. HE WAS IN THE CAR WITH ME AND THE OTHER OFFICERS.

17 Q. AND I JUST WANT TO MAKE SURE I'M CLEAR. IT WAS YOU
18 AND OFFICER HENDRICKS IN THE CAR WITH---

19 A. MYSELF, OFFICER HENDRICKS, AND OFFICER THOMASON
20 WERE IN THE CAR WITH MR. SIMMONS. AGENT MEARS WAS
21 IN THE CAR FOLLOWING US.

22 Q. BY HIMSELF?

23 A. YES, SIR.

24 Q. AND I ASSUME MR. SIMMONS WAS IN THE BACK SEAT WITH
25 ONE OF THE OFFICERS?

ANN REESE - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. ALL RIGHT. ULTIMATELY Y'ALL MADE IT TO THE
3 SUMMERVILLE JAIL?

4 A. YES, SIR.

5 Q. AND HOW LONG WAS MR. SIMMONS IN THE SUMMERVILLE
6 JAIL BEFORE HE WAS TAKEN IN FRONT OF THE JUDGE FOR
7 A BOND HEARING?

8 A. IT'S LIKE I JUST STATED. I DON'T REMEMBER. HE HAD
9 A BOND HEARING. I'M NOT EXACTLY SURE. I'D HAVE TO
10 GO BACK AND REFER BACK TO THE CASE FILE.

11 Q. WAS IT THAT SAME DAY?

12 A. I WOULD HAVE TO REFER BACK TO THE CASE FILE.

13 Q. YOU DON'T KNOW WHETHER YOU CAME BACK TO SUMMERVILLE
14 ON ANOTHER DAY?

15 A. WE CAME BACK TO SUMMERVILLE ON THE NINTH, THE SAME
16 DAY THE THIRD INTERVIEW WAS DONE. WE BROUGHT HIM
17 BACK AFTER THAT INTERVIEW.

18 Q. I UNDERSTAND. BUT WHAT I'M TRYING TO CLARIFY IS
19 WAS IT THAT SAME DAY THAT THERE WAS A BOND HEARING,
20 OR DID YOU COME BACK ANOTHER TIME FOR THE BOND
21 HEARING?

22 A. I WOULD HAVE TO LOOK AT MY NOTES IN THE CASE FILE.

23 Q. OKAY. DO YOU RECALL WHO THE JUDGE WAS?

24 A. I WOULD HAVE TO LOOK AT MY NOTES IN THE CASE FILE.

25 Q. DO YOU HAVE YOUR NOTES?

ANN REESE - CROSS/MR. THEOS

1 A. THE CASE FILE IS BACK THERE. (INDICATING.)

2 Q. I APOLOGIZE, MS. REESE, BUT I JUST FOUND OUT WITHIN
3 THE LAST THREE OR FOUR DAYS THAT YOU RECALL THIS
4 CONVERSATION. SO I WANT TO TRY TO FIND OUT EXACTLY
5 WHAT HAPPENED AND HOW IT HAPPENED AND WHAT MR.
6 SIMMONS SAID.

7 A. OKAY; THAT'S FINE.

8 Q. IF YOU HAVE NOTES, THAT WOULD BE---

9 A. I DON'T HAVE ANY NOTES REFERRING TO WHAT MR.
10 SIMMONS -- THE CONVERSATION BETWEEN MR. SIMMONS AND
11 THE SOLICITOR. I KNOW WHEN THE BOND HEARING WAS
12 BECAUSE OF THE PAPERWORK THAT WE HAVE IN THE CASE
13 FILE.

14 Q. AND YOU DON'T BELIEVE YOU MADE ANY NOTES OR
15 SUPPLEMENTAL REPORT RELATED TO THAT STATEMENT?

16 A. I KNOW I DIDN'T.

17 Q. DO YOU KNOW WHY YOU WOULD NOT HAVE?

18 A. AT THAT POINT I DIDN'T -- IT WAS JUST SO MUCH GOING
19 ON; I DIDN'T REALLY THINK ABOUT IT THAT MUCH. IN
20 FACT, I REMEMBERED IT WHEN WE WERE REVIEWING FOR
21 THIS HEARING TODAY WHEN I WAS AT THE SOLICITOR'S
22 OFFICE.

23 Q. LAST WEEK?

24 A. NO. IT WASN'T LAST WEEK.

25 Q. WHEN WAS IT?

ANN REESE - CROSS/MR. THEOS

1 A. IT WAS JANUARY; I THINK THE 26TH.

2 Q. AND UP UNTIL JANUARY THE 26TH OF 1999, YOU DIDN'T
3 TELL ANYBODY ABOUT THIS STATEMENT YOU SAID YOU
4 HEARD MR. SIMMONS MAKE?

5 A. NO, SIR.

6 Q. DIDN'T YOU THINK IT WAS AN IMPORTANT STATEMENT TO
7 INFORM THE SOLICITOR OF; MR. SIMMONS ADMITTING THAT
8 HE KILLED MRS. BOYD?

9 A. AS I STATED, SO MUCH WAS GOING ON; AND I HAVE OTHER
10 CASES THAT I WORK BESIDES THIS ONE. I KNOW THAT
11 THIS WAS A VERY IMPORTANT CASE ALSO. BUT I DID NOT
12 RECALL THAT CONVERSATION UNTIL WE STARTED GOING
13 BACK THROUGH THE CASE FILE AGAIN AND TALKING TO MR.
14 BAILEY, AND I REMEMBERED THAT. IF ANYTHING WAS
15 DISCUSSED, IT WAS DISCUSSED BETWEEN MYSELF AND
16 DETECTIVE HENDRICKS BECAUSE SHE WAS ALSO THERE AND
17 HEARD HIS SISTER, THE CONVERSATION BETWEEN HIM AND
18 HIS SISTER AT THE BOND HEARING.

19 Q. AND DID YOU DISCUSS THAT, WHAT YOU CLAIM NOW THAT
20 YOU OVERHEARD; DID YOU DISCUSS THAT WITH MS.
21 HENDRICKS AFTER THE BOND HEARING?

22 A. NO MORE THAN JUST SAYING THAT -- YOU KNOW, WE JUST
23 SAID, YOU KNOW, HE SAID THIS TO HIS SISTER; NO
24 DETAILS OR ANYTHING LIKE THAT.

25 Q. WHERE WERE YOU IN THE BOND HEARING? IS IT A BIG

ANN REESE - CROSS/MR. THEOS

1 COURTROOM? IS IT A SMALL ROOM?

2 A. NO; IT'S A VERY SMALL COURTROOM.

3 Q. WHERE WERE YOU POSITIONED RELATED TO MR. SIMMONS
4 AND HIS SISTER?

5 A. AS WE WERE SITTING THERE, I WAS TO MR. SIMMONS'
6 RIGHT. AND I BELIEVE DETECTIVE HENDRICKS WAS TO
7 HIS LEFT. AND HIS SISTER WAS SITTING ON A SEAT
8 BEHIND US.

9 Q. WAS THIS IN A TRADITIONAL SORT OF COURTROOM WITH
10 BENCH SEATS, OR WAS THIS WITH CHAIRS?

11 A. I THINK IT WAS CHAIRS, BUT I'M NOT CERTAIN ABOUT
12 THAT.

13 Q. ALL RIGHT. AND HOW CLOSE -- YOU WERE STANDING
14 RIGHT NEXT TO MR. SIMMONS?

15 A. I WAS SITTING RIGHT NEXT TO MR. SIMMONS.

16 Q. WHERE WAS THE JUDGE AT THIS TIME?

17 A. HE HAD NOT COME OUT INTO THE COURTROOM. COURT HAD
18 NOT STARTED YET. THE BOND HEARING HAD NOT STARTED.

19 Q. HOW LONG WERE YOU WAITING?

20 A. WELL, WE PROBABLY WAITED ABOUT MAYBE FIVE, MAYBE
21 TEN MINUTES, BEFORE COURT STARTED.

22 Q. NOW, YOU SAID BEFORE THAT MR. SIMMONS AND HIS
23 SISTER WERE TALKING ABOUT SOME OTHER THINGS BEFORE
24 YOU CLAIM SHE ASKED HIM THIS QUESTION?

25 A. ALL SHE DID WAS JUST ASK HIM HOW HE WAS DOING. AND

ANN REESE - CROSS/MR. THEOS

1 I THINK SHE SAID THAT SHE LOVED HIM, AND HE SAID
2 THAT HE LOVED HER.

3 Q. DO YOU RECALL ANYTHING ELSE SPECIFICALLY THEY MAY
4 HAVE TALKED ABOUT?

5 A. THEY DIDN'T TALK ABOUT ANYTHING ELSE EXCEPT THE
6 OTHER STATEMENT THAT I JUST TOLD YOU WHEN SHE ASKED
7 HIM THE QUESTION "DID YOU DO THIS; DID YOU KILL
8 THIS OLD LADY?" HE SAID, "I KILLED THE OLD LADY."
9 THAT'S WHAT HE TOLD HER.

10 Q. HOW LONG AFTER THAT WAS IT THAT THE BOND HEARING
11 WAS HELD?

12 A. PROBABLY MAYBE FIVE MINUTES OR SO LATER; MAYBE TEN;
13 IT WASN'T VERY LONG.

14 Q. JUST ONE OTHER QUESTION. AGENT REESE, WERE THERE
15 ANY OTHER STATEMENTS MADE BY MR. SIMMONS THAT YOU
16 NOW RECALL, EITHER IN THE RIDE DOWN TO SUMMERVILLE
17 OR DURING THE BOND HEARING OR AFTER THE BOND
18 HEARING?

19 A. NO, SIR.

20 Q. AND, AGAIN, AFTER THAT BOND HEARING, YOU NEVER
21 MENTIONED THIS PURPORTED CONFESSION OR ADMISSION OF
22 MR. SIMMONS TO ANYBODY?

23 A. NO, SIR.

24 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

25 THE COURT: ANY RE-DIRECT?

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 MR. BAILEY: NO RE-DIRECT, YOUR HONOR.

2 THE COURT: STEP DOWN, PLEASE. NEXT WITNESS.

3 MR. BAILEY: MAYBELLE HENDRICKS.

4 - - - - -

5 WHEREUPON,

6 MAYBELLE HENDRICKS, WHO AFTER BEING FIRST
7 DULY SWORN TO TELL THE TRUTH, TESTIFIED
8 AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. WHERE ARE YOU EMPLOYED, MS. HENDRICKS?

12 A. ST. GEORGE POLICE DEPARTMENT.

13 Q. WHAT'S YOUR RANK AT THE POLICE DEPARTMENT?

14 A. DETECTIVE SERGEANT.

15 Q. NOW, WERE YOU ASSIGNED TO THE TASK FORCE AFTER MRS.
16 LILLIE BOYD'S MURDER?

17 A. YES, SIR.

18 Q. AND I WANT TO CALL YOUR ATTENTION TO DECEMBER THE
19 FIFTH, 1997, AND ASK WHETHER OR NOT YOU RECALL
20 GOING TO THE RICHLAND COUNTY DETENTION CENTER ALONG
21 WITH SOME OTHER LAW ENFORCEMENT OFFICERS?

22 A. YES, SIR.

23 Q. WHO DID YOU GO WITH?

24 A. AGENT KENNY MEARS AND ANN REESE WITH SLED.

25 Q. OKAY. WHEN YOU GOT TO THE DETENTION CENTER, DID

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 YOU SEE THE DEFENDANT IN THIS CASE, KENNETH
2 SIMMONS?

3 A. YES, SIR.

4 Q. AND FOR THE RECORD COULD YOU POINT HIM OUT?

5 A. YES, SIR. HE'S SITTING AT THE END OF TABLE WITH
6 THE ORANGE JUMPSUIT ON.

7 Q. WHAT PART OF THE DETENTION CENTER WAS IT THAT Y'ALL
8 FIRST SAW MR. SIMMONS?

9 A. IN THE INVESTIGATOR'S OFFICE.

10 Q. WHAT DO YOU RECALL AT THIS TIME OF MR. SIMMONS'
11 APPEARANCE AND DEMEANOR; THE WAY HE WAS ACTING?

12 A. IT APPEARED TO BE GOOD OR A LITTLE NERVOUS.

13 Q. OKAY. WERE YOU PRESENT WHEN KENNY MEARS GAVE
14 MIRANDA RIGHTS TO MR. SIMMONS?

15 A. YES, I WAS.

16 Q. AND WAS THAT TAPED, THE GIVING OF THOSE MIRANDA
17 RIGHTS?

18 A. YES, SIR.

19 Q. WERE YOU PRESENT WHEN THAT OCCURRED?

20 A. YES, SIR.

21 Q. NOW, I WANT TO CALL YOUR ATTENTION TO STATE'S TWO
22 AND ASK IF THIS APPEARS TO BE THE MIRANDA RIGHTS
23 FORM THAT MR. SIMMONS SIGNED?

24 A. YES, SIR.

25 Q. AND DID YOU OBSERVE MR. SIMMONS PUT HIS INITIALS

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

1 BESIDE EACH ONE OF THOSE RIGHTS THERE?

2 A. YES, I DID.

3 Q. DID YOU OBSERVE HIM SIGN HIS NAME AFTER ALL THE
4 RIGHTS?

5 A. YES, SIR.

6 Q. AND DID YOU OBSERVE HIM SIGN THAT WAIVER OF RIGHTS?

7 A. YES, SIR, I DID.

8 Q. DID YOU SEE ANN REESE WITNESS THAT?

9 A. YES, SIR.

10 Q. DID YOU ALSO WITNESS THAT ON THE LEFT-HAND BOTTOM
11 PART?

12 A. YES, SIR.

13 Q. OKAY. NOW, TO THE BEST OF YOUR KNOWLEDGE, DID MR.
14 SIMMONS APPEAR TO UNDERSTAND THOSE MIRANDA RIGHTS
15 THAT WERE GIVEN TO HIM BY MR. MEARS?

16 A. YES, SIR, HE SURE DID.

17 Q. WAS THERE A TAPED INTERVIEW WITH MR. SIMMONS AFTER
18 THE TAPED MIRANDA? WAS THAT ALL PART OF THE SAME
19 TAPE?

20 A. YES, SIR.

21 Q. OKAY. AND WERE YOU PRESENT DURING THAT ENTIRE
22 TAPED INTERVIEW?

23 A. YES, SIR.

24 Q. NOW, AT ANY POINT IN TIME AT ALL ON DECEMBER THE
25 5TH, 1997, DID EITHER YOU OR AGENT ANN REESE OR

MAYBELLE HENDRICKS - DIRECT/MR. BAILEY

- 1 KENNY MEARS, OR ANYBODY ELSE THAT WAS PRESENT,
2 OFFER KENNETH SIMMONS ANY INDUCEMENT, PROMISES,
3 INCENTIVE, ANYTHING TO TALK TO Y'ALL?
4 A. NO, SIR.
5 Q. DID ANYBODY THREATEN MR. SIMMONS IF HE REFUSED TO
6 GIVE Y'ALL A STATEMENT?
7 A. NO, SIR.
8 Q. AND THE STATEMENT THAT WAS TAPED; TO THE BEST OF
9 YOUR KNOWLEDGE WAS THAT FREELY AND VOLUNTARILY MADE
10 BY MR. SIMMONS?
11 A. YES, SIR.
12 Q. DID YOU PARTICIPATE IN ASKING THE QUESTIONS, OR
13 WERE YOU JUST THERE LISTENING?
14 A. I WAS JUST THERE LISTENING.
15 Q. OKAY. AND YOU WERE THERE THE ENTIRE TIME THE TAPE
16 WAS ON?
17 A. YES, SIR.
18 Q. AND WHEN QUESTIONS WERE ASKED OF MR. SIMMONS, DID
19 HE APPEAR TO UNDERSTAND THOSE QUESTIONS?
20 A. YES, SIR. IN MY OPINION HE DID.
21 Q. WHEN HE WOULD RESPOND COULD YOU UNDERSTAND THE
22 RESPONSES HE WAS MAKING TO AGENT MEARS?
23 A. YES, SIR.
24 Q. DID YOU LISTEN TO THE ORIGINAL TAPE AND FOLLOW
25 ALONG WITH THAT ON A TRANSCRIPT OF THE TAPE?

MAYBELLE HENDRICKS - CROSS/MR. THEOS

1 A. DID I?

2 Q. YES, MA'AM.

3 A. NO, SIR, I DIDN'T.

4 Q. HAVE YOU LISTENED TO THE TAPE?

5 A. YES, SIR.

6 Q. OKAY. AND IS THE TAPE THAT YOU LISTENED TO AN
7 ACCURATE REPRESENTATION OF THE INTERVIEW THAT
8 OCCURRED ON DECEMBER THE 5TH, 1997, TO THE BEST OF
9 YOUR RECOLLECTION?

10 A. YES, SIR.

11 Q. NOW, DO YOU RECALL SEVERAL DAYS AFTER DECEMBER THE
12 NINTH GOING TO A BOND HEARING THAT MR. SIMMONS WAS
13 AT?

14 A. YES, SIR.

15 Q. AND DO YOU RECALL ANY CONVERSATION THAT OCCURRED
16 BETWEEN SOME FEMALE FAMILY MEMBER OF MR. SIMMONS'
17 AND MR. SIMMONS?

18 A. YES, SIR. IN THE BOND HEARING, HIS SISTER WAS
19 SITTING BEHIND HIM AND TAPPED HIM ON THE SHOULDER
20 AND ASKED HIM DID HE KILL THAT OLD LADY. AND HIS
21 RESPONSE WAS YES.

22 Q. ALL RIGHT. MS. HENDRICKS, PLEASE ANSWER ANY
23 QUESTIONS THAT MR. THEOS MIGHT HAVE FOR YOU.

24 THE COURT: CROSS?

25 CROSS-EXAMINATION

MAYBELLE HENDRICKS - CROSS/MR. THEOS

BY MR. THEOS:

Q. OFFICER HENDRICKS. DO YOU GO BY DETECTIVE
HENDRICKS OR SGT. HENDRICKS?

A. THAT'S FINE; IT DOESN'T MATTER.

Q. HOW LONG HAVE YOU BEEN A POLICE OFFICER WITH ST.
GEORGE?

A. I'VE BEEN A POLICE OFFICER FOR EIGHTEEN YEARS, BUT
I'VE BEEN WITH ST. GEORGE APPROXIMATELY THREE YEARS
NOW.

Q. WHO WERE YOU BEFORE ST. GEORGE?

A. I WAS WITH THE DORCHESTER COUNTY SHERIFF'S OFFICE.

Q. AND WHAT CAPACITY DID YOU WORK THERE?

A. I WAS THE SERGEANT FOR THE WARRANTS DIVISION.

Q. DID YOU WORK THERE IN ANY OTHER CAPACITY?

A. I JUST DID THE WARRANTS. I WAS A DEPUTY. BUT I'M
SERGEANT IN THE WARRANTS DIVISION.

Q. SINCE YOU'VE BEEN WITH ST. GEORGE FOR THE LAST
THREE YEARS, WHAT HAVE BEEN YOUR DUTIES?

A. INVESTIGATIONS AND PATROL.

Q. ALL RIGHT. AND HOW MANY CASES WOULD YOU SAY YOU'VE
BEEN INVOLVED IN IN THE LAST THREE YEARS WITH ST.
GEORGE?

A. I DON'T HAVE ANY IDEA. I CAN'T GIVE YOU A NUMBER.
SEVERAL.

Q. SEVERAL CASES?

MAYBELLE HENDRICKS - CROSS/MR. THEOS

- 1 A. THAT'S IT. I CAN'T GIVE YOU A NUMBER. I DON'T
2 REALLY KNOW.
- 3 Q. CAN TELL ME ON A YEARLY BASIS, IS IT MORE THAN TEN?
- 4 A. SIR, I CAN'T GIVE YOU A NUMBER. I DON'T KNOW. I
5 REALLY DON'T KNOW OFF THE TOP OF MY HEAD.
- 6 Q. DID YOU PREPARE ANY REPORTS RELATED TO THIS?
- 7 A. YES, SIR, I DID.
- 8 Q. AND YOU PROVIDED THOSE TO MR. BAILEY?
- 9 A. YOU MEAN REPORTS RELATIVE -- RICHLAND COUNTY, OR---
- 10 Q. RELATIVE TO THE DECEMBER THE FIFTH INTERVIEW?
- 11 A. OH, NO, SIR, I DIDN'T; NO, SIR.
- 12 Q. I UNDERSTAND YOU MAY HAVE PREPARED REPORTS RELATED
13 TO THE INVESTIGATION?
- 14 A. NO, SIR. I DID NOT AT RICHLAND COUNTY; NO, SIR.
- 15 Q. DID YOU PREPARE REPORTS RELATED TO THE
16 INVESTIGATION?
- 17 A. REPORTS?
- 18 Q. DID YOU PREPARE ANY REPORTS?
- 19 A. NO, SIR, I DIDN'T. I DIDN'T PREPARE ANY REPORTS.
- 20 Q. I THOUGHT I UNDERSTOOD YOU TO SAY YOU DID?
- 21 A. YOU GOT ME CONFUSED.
- 22 Q. WELL, LET'S START OVER. HAVE YOU PREPARED ANY
23 REPORTS RELATED TO THE INVESTIGATION OF MRS. BOYD'S
24 DEATH?
- 25 A. NO, I DIDN'T.

MAYBELLE HENDRICKS - CROSS/MR. THEOS

1 Q. DID YOU SERVE ON THE TASK FORCE?

2 A. YES, I DID.

3 Q. DID YOU PREPARE ANY REPORTS RELATED TO YOUR WORK ON
4 THE TASK FORCE?

5 A. INVESTIGATOR SHEETS, YES.

6 Q. ISN'T THAT IN RELATIONSHIP TO THE INVESTIGATION OF
7 MRS. BOYD'S DEATH?

8 A. YES, IT IS; I'M SORRY. YES, IT IS.

9 Q. SO YOU HAVE PREPARED THE REPORTS?

10 A. YES, SIR.

11 Q. DID YOU PREPARE ANY REPORTS RELATED TO THE DECEMBER
12 THE FIFTH INTERVIEW AT THE RICHLAND COUNTY JAIL
13 WITH MR. SIMMONS?

14 A. NO, SIR.

15 Q. WHY DIDN'T YOU PREPARE ANY REPORTS RELATED TO THAT?

16 A. SLED DID THE REPORTS. I WAS JUST SITTING IN.

17 Q. DID YOU PREPARE ANY REPORTS -- WERE YOU PRESENT ON
18 THE NINTH WHEN MR. SIMMONS WAS INTERVIEWED THE
19 THIRD TIME BY SLED?

20 A. I BELIEVE I WAS. I'M NOT SURE. I CAN'T REMEMBER.

21 Q. WERE YOU PRESENT DURING THE INTERVIEW ON THE NINTH?

22 A. I WOULD SAY I WAS THERE. I BELIEVE I WAS.

23 Q. OKAY. WERE YOU PRESENT ON DECEMBER THE -- YOU SAID
24 YOU WERE PRESENT ON DECEMBER THE FIFTH DURING THE
25 FIRST INTERVIEW; CORRECT?

MAYBELLE HENDRICKS - CROSS/MR. THEOS

- 1 A. YES, SIR.
- 2 Q. THAT ONE TOOK PLACE ABOUT NOON?
- 3 A. YES, SIR.
- 4 Q. WERE YOU PRESENT ON THE FIFTH DURING THE SECOND
- 5 INTERVIEW WHICH TOOK PLACE SOME TIME LATER THAT
- 6 EVENING?
- 7 A. YES, SIR, I WAS THERE.
- 8 Q. WERE YOU THERE DURING THE INTERVIEW ITSELF?
- 9 A. YES, SIR, I WAS THERE.
- 10 Q. AND YOU'VE JUST TOLD US YOU BELIEVE YOU WERE
- 11 PRESENT ON THE NINTH AS WELL DURING THAT INTERVIEW;
- 12 IS THAT CORRECT?
- 13 A. YES; THAT'S CORRECT.
- 14 Q. ALL RIGHT. NOW, HOW MANY DAYS AFTER THE NINTH WAS
- 15 THE BOND HEARING OF MR. SIMMONS? OR WAS IT ON THE
- 16 SAME DAY?
- 17 A. I DON'T RECALL. I REMEMBER BEING AT THE BOND
- 18 HEARING. I DON'T REMEMBER WHAT THE DATE WAS. IT
- 19 WAS LIKE A DAY OR TWO AFTER HE WAS BROUGHT BACK
- 20 FROM RICHLAND COUNTY.
- 21 Q. WAS HE BROUGHT BACK FROM RICHLAND COUNTY BY OTHER
- 22 PEOPLE, OR WERE YOU INVOLVED IN THAT TRANSPORTATION
- 23 OF MR. SIMMONS?
- 24 A. I WAS INVOLVED.
- 25 Q. WERE YOU IN THE CAR WITH MR. SIMMONS?

MAYBELLE HENDRICKS - CROSS/MR. THEOS

1 A. YES, SIR.

2 Q. WAS MR. SIMMONS ASKED ANY QUESTIONS RELATED TO YOUR
3 INVESTIGATION AND TO MRS. BOYD'S DEATH?

4 A. NO, SIR.

5 Q. DURING THE RIDE DOWN?

6 A. NO, SIR, HE WASN'T.

7 Q. WAS MR. SIMMONS ASKED ANY QUESTIONS AT THE RICHLAND
8 COUNTY JAIL BEFORE YOUR DEPARTURE TO BRING HIM BACK
9 TO DORCHESTER COUNTY?

10 A. I DIDN'T ASK HIM ANY QUESTIONS.

11 Q. DID YOU HEAR MR. SIMMONS AT ANY TIME, THE DAY HE
12 WAS BROUGHT BACK FROM THE RICHLAND COUNTY JAIL TO
13 THE SUMMERVILLE POLICE DEPARTMENT; DID YOU HEAR MR.
14 SIMMONS MAKE ANY STATEMENTS PRIOR TO THE BOND
15 HEARING?

16 A. NO, SIR, I DIDN'T.

17 Q. WAS MR. SIMMONS ASKED ANY QUESTIONS AT ANY TIME
18 ONCE YOU GOT TO THE SUMMERVILLE POLICE DEPARTMENT
19 ABOUT THE INCIDENT?

20 A. NOT IN MY PRESENCE.

21 Q. NOW, DID YOU PREPARE A REPORT RELATED TO WHAT YOU
22 NOW CLAIM YOU OVERHEARD ON THE DAY OF THE BOND
23 HEARING?

24 A. NO, SIR. I DIDN'T DO A REPORT ON IT.

25 Q. WHY DIDN'T YOU?

MAYBELLE HENDRICKS - CROSS/MR. THEOS

1 A. I JUST DIDN'T DO A REPORT ON IT.

2 Q. DID YOU TALK WITH ANYBODY ABOUT WHAT YOU SAY YOU
3 OVERHEARD? ANYBODY MEANING AGENT MEARS WHO IS THE
4 SLED AGENT IN CHARGE AT THIS POINT, OR MR. BAILEY,
5 ABOUT WHAT YOU NOW CLAIM YOU OVERHEARD MR. SIMMONS
6 SAY? DID YOU TALK WITH EITHER ONE OF THEM AFTER
7 THE BOND HEARING?

8 A. NO, I DIDN'T.

9 Q. DID YOU SPEAK WITH ANYBODY AT LAW ENFORCEMENT ABOUT
10 WHAT YOU CLAIMED YOU OVERHEARD MR. SIMMONS SAY THE
11 DAY OF THE BOND HEARING?

12 A. NO, I DIDN'T.

13 Q. DID YOU MAKE ANY RECORD OF IT AT ALL?

14 A. YES, IN MY HEAD. I REMEMBER WHAT HE SAID.

15 Q. AND YOU JUST MADE A DECISION TO SAVE THAT UNTIL A
16 WEEK OR TWO AGO?

17 A. NO, I DIDN'T MAKE A DECISION TO SAVE THAT. IT'S UP
18 HERE. I KEEP MY NOTES -- I TRY TO KEEP MY NOTES IN
19 MY HEAD.

20 Q. WELL, LET'S GO OVER YOUR NOTES A LITTLE BIT, THE
21 NOTES YOU KEPT IN YOUR HEAD.

22 A. OKAY.

23 Q. WHAT EXACTLY DID THIS WOMAN SITTING BEHIND MR.
24 SIMMONS SAY TO MR. SIMMONS? JUST TELL US
25 EVERYTHING YOU HEARD HER SAY.

1 A. I'LL REPEAT IT AGAIN.

2 Q. I DON'T MEAN JUST THAT. DID YOU HEAR OTHER---

3 A. THAT'S ALL I HEARD BECAUSE I WALKED AWAY. AND THEN
4 AGENT REESE WAS SITTING THERE BEHIND HIM. AND I
5 THINK I WENT UP FRONT AT THE MAGISTRATE'S OFFICE
6 FOR SOME REASON OR ANOTHER.

7 Q. SO YOU DIDN'T HEAR ANY CONVERSATION BETWEEN MR.
8 SIMMONS EITHER BEFORE OR AFTER THOSE TWO STATEMENTS
9 THAT YOU TESTIFIED TO ON DIRECT?

10 A. NO; I DIDN'T HEAR ANYTHING ELSE. I WASN'T IN
11 THERE. I WENT UP FRONT TO THE MAGISTRATE'S OFFICE.
12 I CAN'T REMEMBER WHAT I WENT UP FRONT FOR, BUT I
13 DID.

14 Q. DID YOU SEE THEM TALKING AND YOU JUST DIDN'T HEAR
15 IT, OR THEY WEREN'T TALKING AT ALL EXCEPT TO SAY
16 THOSE TWO THINGS?

17 A. I SAID I WENT UP FRONT. AND I DON'T KNOW WHAT THEY
18 WERE SAYING AFTER I LEFT THE ROOM.

19 Q. I KNOW. BUT I DIDN'T ASK YOU IF YOU KNEW WHAT THEY
20 WERE SAYING. WERE THEY TALKING?

21 A. WHEN SHE TAPPED HIM ON THE SHOULDER, HE LOOKED
22 AROUND AND SHE SAID, "DID YOU KILL THE OLD LADY?"
23 AND HIS REPLY WAS "YES." AND AT THAT POINT I
24 WALKED UP FRONT.

25 Q. YOU DIDN'T HEAR HER SAY ANYTHING ELSE WITH RESPECT

1 TO THAT QUESTION?

2 A. NO, SIR. I DIDN'T.

3 Q. THOSE WERE HER EXACT WORDS?

4 A. IF I REMEMBER CORRECTLY.

5 Q. AND THOSE WERE MR. SIMMONS' EXACT WORDS IN
6 RESPONSE?

7 A. IF I REMEMBER CORRECTLY, YES, SIR.

8 Q. AND, CORRECT ME IF I'M WRONG NOW; BUT THEY WERE
9 TALKING ABOUT OTHER THINGS BOTH BEFORE AND AFTER
10 THAT. YOU JUST DIDN'T HEAR WHAT THEY WERE SAYING?

11 A. I DIDN'T SAY THEY WERE TALKING BECAUSE I WASN'T IN
12 THE ROOM. I COULDN'T TELL YOU WHETHER THEY WERE
13 TALKING OR NOT BECAUSE I WASN'T IN THE ROOM. I
14 LEFT AFTER THAT STATEMENT WAS MADE.

15 Q. WERE YOU IN THE ROOM BEFORE THE STATEMENT WAS MADE?

16 A. YES.

17 Q. DID YOU HEAR THEM TALKING AT ALL BEFORE THAT?

18 A. THE ONLY THING I HEARD IS WHAT I JUST GOT THROUGH
19 TELLING YOU. I DIDN'T HEAR ANYTHING ELSE.

20 Q. DO I YOU SEE THEM TALKING BEFORE THAT?

21 A. I WASN'T IN THE ROOM.

22 Q. BEFORE THAT YOU SAID YOU WERE IN THE ROOM. DID YOU
23 SEE THEM TALKING?

24 A. WHEN HE MADE THE STATEMENT; YES.

25 Q. WHERE WERE YOU POSITIONED WHEN YOU HEARD THE

1 QUESTION ASKED BY HIS SISTER AND HIS RESPONSE?

2 A. STANDING RIGHT THERE BEHIND -- THE CHAIRS WERE
3 LINED UP. SHE WAS SITTING IN THE BACK OF THE
4 CHAIRS HERE, AND I WAS STANDING HERE. AND AGENT
5 REESE WAS STANDING NEXT TO ME.

6 Q. WERE YOU STANDING BEHIND MR. SIMMONS?

7 A. YES, SIR. I WAS STANDING BEHIND HIM. HE WAS
8 SITTING LIKE IN THE FRONT.

9 Q. WHERE WAS AGENT REESE POSITIONED? RIGHT NEXT TO
10 YOU?

11 A. YES; SHE WAS BEHIND ME.

12 Q. SO YOU WERE BOTH STANDING BEHIND MR. SIMMONS?

13 A. YES, SIR.

14 Q. AND MR. SIMMONS' SISTER WAS SEATED BEHIND YOU?

15 A. NO; I WAS STANDING. SHE WAS SITTING BEHIND HIM.

16 Q. I JUST WANT TO MAKE SURE I HAVE THE LAYOUT
17 CORRECT.

18 A. OKAY.

19 Q. MR. SIMMONS WAS SEATED IN A CHAIR?

20 A. YES.

21 Q. YOU WERE STANDING ALONG WITH AGENT REESE DIRECTLY
22 BEHIND HIS CHAIR?

23 A. I DON'T REMEMBER IF IT WAS DIRECTLY BEHIND HIS
24 CHAIR; BUT I WAS STANDING.

25 Q. AND THEN MR. SIMMONS' SISTER WAS BEHIND YOU AND

MAYBELLE HENDRICKS - CROSS/MR. THEOS

1 AGENT REESE SEATED?

2 A. YES.

3 Q. WAS ANYBODY ELSE IN THE ROOM THAT YOU CAN RECALL?

4 A. YES. THERE WAS OTHER PEOPLE IN THE ROOM. I CAN'T
5 REMEMBER NOW WHO WAS IN THERE; BUT IT WAS A BOND
6 HEARING.

7 Q. SINCE YOU'RE FAMILIAR WITH THIS AREA AND AGENT
8 REESE COULDN'T RECALL, CAN YOU TELL US WHERE THE
9 BOND HEARING WAS?

10 A. THE BOND HEARING?

11 Q. YES, MA'AM.

12 A. OVER AT THE MAGISTRATE'S OFFICE.

13 Q. COULD YOU TELL US WHO THE MAGISTRATE WAS?

14 A. I BELIEVE IT WAS JUDGE STEVENSON; I BELIEVE. I'M
15 NOT SURE.

16 Q. IT WAS IN SUMMERVILLE?

17 A. NO; THE BOND HEARING WAS HERE.

18 Q. IT WAS NOT IN ST. GEORGE?

19 A. THE ONE I ATTENDED WAS HERE AT THE MAGISTRATE'S
20 OFFICE.

21 Q. AND WHO TRANSPORTED MR. SIMMONS FROM THE
22 SUMMERVILLE POLICE DEPARTMENT TO THE BOND HEARING
23 HERE IN ST. GEORGE?

24 A. MR. SIMMONS WAS OVER HERE AT THE JAIL.

25 Q. DO YOU KNOW HOW HE GOT FROM THE SUMMERVILLE POLICE

KENNY MEARS - DIRECT/MR. BAILEY

1 DEPARTMENT -- LET ME BACK UP A MINUTE. WAS HE
2 TRANSPORTED FROM THE RICHLAND COUNTY DETENTION
3 CENTER TO THE SUMMERVILLE POLICE DEPARTMENT OR TO
4 ST. GEORGE?

5 A. TO THE SUMMERVILLE POLICE DEPARTMENT.

6 Q. DO YOU KNOW WHO TRANSPORTED HIM FROM THE
7 SUMMERVILLE POLICE DEPARTMENT TO SAINT GEORGE?

8 A. I DON'T HAVE ANY IDEA.

9 MR. THEOS: NO OTHER QUESTIONS, YOUR HONOR.

10 MR. BAILEY: NO RE-DIRECT.

11 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
12 DOWN.

13 MR. BAILEY: JUDGE, MY NEXT WITNESS IS KENNY
14 MEARS. HE SHOULD BE FAIRLY LENGTHY. CAN WE
15 TAKE ABOUT FIVE MINUTES?

16 THE COURT: SURE. ALL RIGHT. LET'S STAND AT
17 EASE A FEW MINUTES.

18 (BRIEF RECESS.)

19 THE COURT: THE DEFENDANT IS PRESENT. ALL
20 COUNSEL. SHALL WE PROCEED?

21 MR. BAILEY: THE STATE WOULD CALL KENNY MEARS.

22 THE COURT: COME AROUND, PLEASE.

23 - - - - -

24 WHEREUPON,

25 KENNY MEARS, WHO AFTER BEING FIRST DULY

KENNY MEARS - DIRECT/MR. BAILEY

SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. YOU'RE SLED AGENT, KENNY MEARS?

A. YES, SIR.

Q. M-E-A-R-S?

A. THAT'S CORRECT.

Q. MR. MEARS, HOW LONG HAVE YOU WORKED WITH SLED?

A. I'VE BEEN WORKING FOR SLED GOING ON SIX YEARS.

Q. AND PRIOR TO THAT WERE YOU IN LAW ENFORCEMENT?

A. YES, SIR.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. RECEIVED A BACHELOR OF SCIENCE DEGREE FROM SOUTH
CAROLINA STATE AND A MASTER'S OF ART FROM WEBSTER
UNIVERSITY. I ALSO ATTENDED THE CITADEL AND THE
F.B.I. ACADEMY.

Q. WHERE ARE YOU PRESENTLY ASSIGNED TO SLED?

A. I'M PRESENTLY ASSIGNED TO LOW COUNTRY OFFICE IN
CHARLESTON WITH THE CRIMINAL INVESTIGATION
DIVISION.

Q. AND I WANT TO ASK WHETHER OR NOT YOU WORKED WITH
THE TASK FORCE THAT WAS FORMED AFTER THE MURDER OF
LILLIE BELL BOYD?

A. YES, SIR. I WAS ASSIGNED THAT TEMPORARILY.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. I CALL YOUR ATTENTION TO DECEMBER THE FIFTH, 1997,
2 AND ASK WHETHER OR NOT YOU WENT TO THE RICHLAND
3 COUNTY DETENTION CENTER ALONG WITH SOME OTHER LAW
4 ENFORCEMENT OFFICERS?

5 A. YES, SIR, I DID.

6 Q. WAS THAT MAYBELLE HENDRICKS AND ANN REESE?

7 A. THAT'S CORRECT.

8 Q. DID YOU SEE KENNETH SIMMONS AT THE RICHLAND COUNTY
9 DETENTION CENTER?

10 A. YES, SIR, I DID.

11 Q. FOR THE RECORD, WOULD YOU POINT HIM OUT, PLEASE?

12 A. HE'S THE BLACK MALE SITTING TO MY LEFT WITH THE
13 ORANGE JUMPSUIT ON (INDICATING.)

14 Q. DID YOU SEE HIM IN THE INVESTIGATOR'S OFFICE?

15 A. YES, SIR.

16 Q. OKAY. NOW, AT THE TIME THAT YOU SPOKE WITH MR.
17 SIMMONS IN INVESTIGATOR HOWARD'S OFFICE, WAS HE
18 SHACKLED, HANDCUFFED, OR ANYTHING OF THAT NATURE?

19 A. HE WAS BROUGHT FROM WHEREVER HE WAS, HIS CELL, I
20 ASSUME, UP TO THE OFFICE, AND THE SHACKLES AND THE
21 HANDCUFFS WERE REMOVED.

22 Q. WERE THEY WERE REMOVED PRIOR TO THE TIME YOU
23 INTERVIEWED HIM?

24 A. YES, SIR.

25 Q. AND WHAT DO YOU RECALL MR. SIMMONS' APPEARANCE AND

KENNY MEARS - DIRECT/MR. BAILEY

1 DEMEANOR WHEN YOU FIRST SAW HIM THAT DAY, ON
2 DECEMBER THE FIFTH, 1997?

3 A. HE WAS CLEAN CUT AND SORT OF ANXIOUS TO TALK.

4 Q. ALL RIGHT. DID YOU NOTICE ANYTHING ABOUT HIS
5 APPEARANCE OR HIS DEMEANOR THAT WOULD LEAD YOU TO
6 BELIEVE THAT HE MIGHT HAVE BEEN UNDER THE INFLUENCE
7 OF ANY DRUGS OR ALCOHOL OR ANYTHING OF THAT NATURE
8 THAT MIGHT IMPAIR HIS ABILITY TO UNDERSTAND THE
9 MIRANDA RIGHTS AND TO KNOWINGLY AND VOLUNTARILY
10 WAIVE THOSE RIGHTS?

11 A. NO, SIR. THERE WERE NO INDICATIONS OF ANY.

12 Q. ALL RIGHT, SIR. DID YOU GIVE THE MIRANDA RIGHTS TO
13 MR. SIMMONS?

14 A. YES, SIR, I DID.

15 Q. AND WE HAVE IN EVIDENCE STATE'S TWO; AND I'LL ASK
16 IF YOU CAN IDENTIFY THAT?

17 A. YES, SIR. THESE ARE THE MIRANDA RIGHTS.

18 Q. ALL RIGHT, SIR. WHEN YOU GAVE THESE MIRANDA RIGHTS
19 TO MR. SIMMONS, WAS THE TAPE PLAYER ON THAT YOU HAD
20 WITH YOU?

21 A. YES, SIR.

22 Q. WHEN YOU READ THOSE RIGHTS TO MR. SIMMONS, DID YOU
23 REQUEST THAT HE INITIAL EACH RIGHT AS YOU GAVE IT
24 TO HIM?

25 A. YES, SIR, I DID. AS A FACT I GAVE HIM A COPY OF

1 THE MIRANDA RIGHTS, AND I KEPT A COPY AND ASKED HIM
2 TO READ ALONG WITH ME AS I READ THEM TO HIM.

3 Q. DID HE APPEAR TO BE READING THAT ALONG WITH YOU?

4 A. HE APPEARED TO BE READING ALONG WITH ME.

5 Q. OKAY. DID HE INDICATE ANY LACK OF UNDERSTANDING OF
6 THOSE MIRANDA RIGHTS AT ANY POINT AND TIME?

7 A. NO, SIR. HE WAS ASKED SEVERAL TIMES IF HE
8 UNDERSTOOD. AT THE END OF EACH SENTENCE HE WAS
9 ASKED IF HE UNDERSTOOD, AND HE INDICATED THAT HE
10 DID.

11 Q. DID YOU OBSERVE HIM SIGN THE ACKNOWLEDGMENT OF
12 RIGHTS AND INITIAL EACH RIGHT AND ALSO SIGN THE
13 WAIVER OF MIRANDA RIGHTS AFTER THAT?

14 A. YES, SIR, I DID.

15 Q. DID HE DO THAT IN THE PRESENCE OF YOU AND MS.
16 HENDRICKS AND MS. REESE?

17 A. THAT'S CORRECT.

18 Q. NOW, AFTER THE MIRANDA RIGHTS WERE GIVEN, WAS THE
19 ENTIRE INTERVIEW TAPED?

20 A. YES, SIR.

21 Q. ON THE DECEMBER THE FIFTH?

22 A. YES, SIR.

23 Q. OKAY. AT ANY POINT AND TIME DID EITHER YOU OR
24 AGENT REESE OR OFFICER HENDRICKS THREATEN MR.
25 SIMMONS OR DO ANYTHING TO COERCE HIM INTO GIVING

1 YOU A STATEMENT?

2 A. NO, SIR.

3 Q. DID YOU MAKE HIM ANY PROMISES IF HE WOULD GIVE YOU
4 A STATEMENT?

5 A. NO, SIR; NO PROMISES, THREATS, OR ANYTHING.

6 Q. AND WHEN YOU QUESTIONED MR. SIMMONS IN THAT
7 STATEMENT, DID HE APPEAR TO UNDERSTAND THE
8 QUESTIONS THAT YOU ASKED HIM?

9 A. HE APPEARED TO UNDERSTAND EVERYTHING THAT I ASKED
10 HIM.

11 Q. WHEN HE RESPONDED, DID YOU HAVE ANY DIFFICULTY IN
12 FOLLOWING HIM?

13 A. NO, SIR, I DID NOT.

14 Q. WAS THE TAPED INTERVIEW TRANSCRIBED BY SLED'S
15 SECRETARY?

16 A. YES, SIR.

17 Q. MR. MEARS, I'M GOING TO HAND YOU A CASSETTE TAPE
18 AND ASK IF YOU CAN IDENTIFY THIS? (WITNESS REVIEWS
19 TAPE.)

20 A. YES, SIR, I CAN.

21 Q. WHAT IS THAT?

22 A. THIS IS THE CASSETTE THAT I RECORDED OF KENNETH
23 SIMMONS' INTERVIEW ON THE FIFTH OF DECEMBER.

24 Q. OKAY. AND JUST TO CLARIFY IT, YOU RECORDED IT
25 TWICE ON THE FIFTH OF DECEMBER. IS THAT THE FIRST

1 OR THE SECOND?

2 A. THIS IS THE FIRST STATEMENT.

3 Q. AT THAT'S THE ONE WE'RE TALKING ABOUT NOW?

4 A. YES, SIR; THIS IS THE FIRST ONE.

5 Q. DID YOU LISTEN TO THAT TAPE IS ITS ENTIRETY?

6 A. YES, SIR, I DID.

7 Q. ARE YOUR INITIALS ON THAT TAPE?

8 A. YES, SIR.

9 MR. BAILEY: YOUR HONOR, I WOULD OFFER THE
10 TAPE AT THIS TIME.

11 THE COURT: ANY OBJECTION?

12 MR. THEOS: NO, SIR. IS THIS A COPY, WALTER?

13 MR. BAILEY: NO; THIS IS THE ORIGINAL.

14 MR. THEOS: THE ORIGINAL? OKAY.

15 STATE'S EXHIBIT NO. 3

16 MARKED FOR IDENTIFICATION.

17 Q. MR. MEARS, I'M GOING TO HAND YOU A PACKAGE OF PAPER
18 HERE AND ASK IF YOU CAN IDENTIFY THAT (WITNESS
19 EXAMINES DOCUMENT.)

20 A. YES, SIR. THIS IS THE TRANSCRIBED STATEMENT OF THE
21 INTERVIEW OF DECEMBER THE FIFTH WITH KENNETH
22 SIMMONS.

23 Q. DID CAN READ THAT TRANSCRIPT WHILE LISTENING TO THE
24 TAPE?

25 A. YES, SIR, I DID.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. IS THAT TRANSCRIPTION A REASONABLY ACCURATELY
2 REPRESENTATION OF WHAT'S ON THE TAPE.

3 A. THAT'S CORRECT; IT IS.

4 MR. BAILEY: YOUR HONOR, I WOULD OFFER THE
5 TRANSCRIPT ALSO AT THIS TIME.

6 THE COURT: AND THIS IS ONLY OF DECEMBER THE
7 FIFTH, NOT OF DECEMBER THE NINTH?

8 MR. BAILEY: THIS IS THE FIRST ONE ON DECEMBER
9 THE FIFTH.

10 THE COURT: ALL RIGHT. NOW, MA'AM, I HAVE
11 STATE'S NUMBER TWO AS BEING THE MIRANDA
12 WARNINGS. SO THAT LAST EXHIBIT WAS THREE.

13 THE COURT REPORTER: I'M SORRY; I PUT IT IN
14 THE WRONG SLOT.

15 THE COURT: THAT'S ALL RIGHT. AND THIS WILL
16 BE FOUR?

17 THE COURT REPORTER: YES, SIR; I'M SORRY.

18 STATE'S EXHIBIT NO. 4

19 ADMITTED AS EVIDENCE

20 Q. MR. MEARS, LET ME HAND YOU THE TRANSCRIPT WHICH IS
21 STATE'S FOUR. (WITNESS REVIEWS DOCUMENT.) I CALL
22 YOUR ATTENTION TO PAGE 23 OF THAT TRANSCRIPT.
23 (WITNESS REVIEWS DOCUMENT.) DO YOU HAVE IT?

24 A. YES, SIR.

25 Q. IS THERE AN INDICATION THAT WAS TAPE WAS TURNED OFF

1 AT THAT POINT AND TIME?

2 A. YES, SIR. EIGHT LINES ON THE BOTTOM. IT STATES
3 "I'M GOING TO CUT THE TAPE OFF FOR A MINUTE."

4 Q. WHAT OCCURRED THEN? WHY DID YOU CUT THE TAPE OFF
5 ON THAT OCCASION?

6 A. AT THAT TIME I THINK THAT MR. HOWARD CAME BACK INTO
7 THE OFFICE AND HIS OFFICE WHERE THE INTERVIEW WAS
8 BEING CONDUCTED TO GET SOMETHING FROM HIS OFFICE
9 DESK.

10 Q. OKAY. AND DURING THE TIME THAT TAPE WAS CUT OFF,
11 WAS THERE ANY SUBSTANTIVE CONVERSATION WITH MR.
12 SIMMONS IN REGARDS TO THE MURDER OF MRS. BOYD?

13 A. NO, SIR, NONE.

14 Q. ALL RIGHT. NOW AFTER THE TAPE WAS COMPLETED, I
15 THINK THE ENDING TIME THAT'S IN THE TRANSCRIPT AND
16 ON THE TAPE IS 2:50 P.M. ON DECEMBER THE FIFTH?

17 A. ALL RIGHT. THE ENDING TIME IS 2:00 P.M. ON
18 DECEMBER THE FIFTH.

19 Q. I BEG YOUR PARDON; 2:00 P.M.?

20 A. YES, SIR.

21 Q. WHEN THE TAPE WAS COMPLETED, THAT INITIALED TAPE,
22 DID YOU THEN ASK MR. SIMMONS TO GIVE YOU A WRITTEN
23 STATEMENT?

24 A. YES, SIR, I DID.

25 Q. A HANDWRITTEN STATEMENT?

1 A. YES, SIR.

2 Q. WHY DID YOU MAKE THAT REQUEST IF YOU ALREADY HAD IT
3 ON TAPE?

4 A. IN CASE IF THE TAPE DIDN'T COMPLETE THE WHOLE
5 STATEMENT, I ASKED HIM TO DO A HANDWRITTEN
6 STATEMENT FOR ME.

7 Q. I'M GOING TO HAND YOU A TWO PAGE DOCUMENT AND ASK
8 IF YOU CAN IDENTIFY THIS? (WITNESS REVIEWS
9 DOCUMENT.)

10 A. YES, SIR, I CAN.

11 Q. WHAT IS THAT?

12 A. THIS IS THE HANDWRITTEN STATEMENT OF KENNETH
13 SIMMONS OF THE INTERVIEW ON THE FIFTH, THE FIRST
14 INTERVIEW.

15 MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS.

16 THE COURT: OKAY.

17 MR. THEOS: AGAIN, YOUR HONOR, FOR PURPOSES OF
18 THIS HEARING, WE HAVE NO OBJECTION.

19 THE COURT: THAT IS HIS HANDWRITTEN STATEMENT?

20 MR. BAILEY: YES, SIR, MR. SIMMONS'
21 HANDWRITTEN STATEMENT.

22 THE COURT: FOR PURPOSES OF THIS PROCEEDING,
23 WITHOUT OBJECTION.

24 STATE'S EXHIBIT NO. 5

25 MARKED FOR IDENTIFICATION

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. I'M GOING TO HAND YOU WHAT'S NOW BEEN MARKED AS
2 STATE'S NUMBER FIVE FOR THIS HEARING. AND
3 REFERRING TO THAT STATEMENT, MR. MEARS, WHAT TIME
4 DID MR. SIMMONS BEGIN TO WRITE THAT STATEMENT OUT?
5 OR WHAT TIME DID YOU START TO DISCUSS THAT WRITTEN
6 STATEMENT WITH HIM?

7 A. THE BEGINNING, IT DOES NOT STATE. BUT IT WOULD
8 HAVE TO BE AFTER 2:00 P.M. BECAUSE THE TAPED
9 STATEMENT ENDED AT 2:00 P.M.

10 Q. OKAY.

11 A. IT WAS COMPLETED AT 3:05 P.M.

12 Q. WHAT WAS HAPPENING BETWEEN THE TIME THE TAPE WAS
13 TURNED OFF, THE INITIAL TAPED STATEMENT, AND THE
14 TIME THAT YOU BEGAN TO GET WITH MR. SIMMONS ON THE
15 HANDWRITTEN STATEMENT?

16 A. WE WERE TALKING WITH MR. SIMMONS, AND HE WAS ASKED
17 IF HE COULD WRITE A WRITTEN STATEMENT FOR US. AND
18 AT FIRST HE HAD ASKED ME TO WRITE IT, AND I
19 SUGGESTED THAT HE WRITE IT IN HIS OWN HANDWRITING,
20 AND SO HE DID. IT TOOK HIM ROUGHLY A HALF AN HOUR,
21 45 MINUTES.

22 Q. WERE YOU PRESENT WHEN KENNETH SIMMONS WROTE THAT
23 STATEMENT OUT IN HIS OWN HANDWRITING?

24 A. YES, SIR.

25 Q. YOU SAW HIM DO IT?

1 A. YES, SIR; I SAW HIM DO IT.

2 Q. NOW, AGAIN, AS FAR AS MIRANDA, DOES THAT WRITTEN
3 STATEMENT HAVE A MIRANDA WARNING AT THE TOP OF IT?

4 A. YES, SIR. BEFORE ANY STATEMENT STARTED TO BE
5 WRITTEN ON HERE, THERE IS A MIRANDA STATEMENT UP
6 TOP.

7 Q. OKAY. IS THERE A PLACE TO DETERMINE WHAT THE
8 PERSON'S EDUCATIONAL LEVEL IS IN GIVING THAT
9 STATEMENT?

10 A. YES, SIR, IT IS.

11 Q. OKAY. AND WHAT IS THAT DOWN THERE?

12 A. HE INDICATED THAT HE COMPLETED THE TWELFTH GRADE.

13 Q. IS THERE A PLACE IN THAT STATEMENT TO INDICATE
14 WHETHER OR NOT THE PERSON CAN READ OR WRITE?

15 A. YES, SIR, IT IS. AND HE INDICATED ON HERE THAT HE
16 COULD READ.

17 Q. OKAY. AND WHO IS THE ONE THAT FILLED OUT THE
18 PORTION OF THE STATEMENT ABOUT THE EDUCATIONAL
19 LEVEL AND WHETHER OR NOT THE PERSON THAT WAS GIVEN
20 THE STATEMENT COULD READ OR WRITE?

21 A. THE TOP OF THE STATEMENT WAS FILLED OUT BY AGENT
22 ANN REESE.

23 Q. WAS THAT DONE IN YOUR PRESENCE?

24 A. YES, SIR.

25 Q. AND THE EDUCATIONAL LEVEL AND THE ABILITY TO READ

1 AND WRITE, WAS THAT BASED ON INFORMATION PROVIDED
2 BY MR. SIMMONS AT THAT TIME?

3 A. IT WAS; YES, SIR.

4 Q. YOU WERE PRESENT AND HEARD HIM SAY IT?

5 A. THAT'S CORRECT.

6 Q. DID YOU OFFER MR. SIMMONS ANY ASSISTANCE IN DOING
7 THAT HANDWRITTEN STATEMENT?

8 A. I TOLD HIM I WOULD SPELL WORDS FOR HIM IF HE NEEDED
9 ME TO SPELL SOME WORDS. HE SAID HE HAD TROUBLE
10 SPELLING SOMETIMES.

11 Q. DID YOU DO THAT; HELP HIM SPELL SOME WORDS?

12 A. YES, SIR.

13 Q. OTHER THAN THAT, DID YOU OFFER ANY ASSISTANCE TO
14 HIM?

15 A. NO, SIR. I JUST TOLD HIM TO WRITE.

16 Q. OKAY.

17 A. TO SORT OF SUMMARIZE WHAT HE TOLD ME ON THE TAPE.

18 Q. WERE MS. HENDRICKS AND MS. REESE PRESENT?

19 A. YES, SIR, THEY WERE.

20 Q. DID THEY OFFER HIM ANY ASSISTANCE?

21 A. NO, SIR.

22 Q. DID YOU WITNESS MR. SIMMONS SIGN THAT TWO-PAGE
23 STATEMENT AFTER HE COMPLETED WRITING IT OUT?

24 A. YES, SIR, I DID.

25 Q. DID ANN REESE AND MAYBELLE HENDRICKS ALSO WITNESS

1 THAT STATEMENT?

2 A. YES, SIR, THEY DID.

3 Q. AFTER MR. SIMMONS COMPLETED THE STATEMENT AND
4 SIGNED IT AND IT WAS WITNESSED BY THE THREE OF
5 Y'ALL, DID HE RECEIVE A COPY OF THE STATEMENT?

6 A. YES, SIR, HE RECEIVED A COPY.

7 Q. WITH REGARD TO THAT HANDWRITTEN STATEMENT, WOULD
8 YOU STATE WHETHER OR NOT YOU OR MS. REESE OR MS.
9 HENDRICKS MADE ANY PROMISES TO GET HIM TO GIVE YOU
10 THE HANDWRITTEN STATEMENT?

11 A. WE DID NOT MAKE ANY PROMISES AT ALL.

12 Q. DID YOU THREATEN HIM IN ANY WAY OR COERCE HIM OR DO
13 ANYTHING TO INDUCE HIM TO GIVE YOU THAT HANDWRITTEN
14 STATEMENT?

15 A. NO, SIR, WE DID NOT.

16 Q. WAS IT GIVEN FREELY AND VOLUNTARILY BY MR. SIMMONS
17 TO THE BEST OF YOUR KNOWLEDGE AND BELIEF?

18 A. YES, SIR.

19 Q. WHAT OCCURRED BETWEEN 3:05 P.M. WHICH IS THE TIME
20 THE SECOND STATEMENT WAS COMPLETED AND 8:26 P.M. ON
21 DECEMBER THE 5TH, 1997? WHAT WERE Y'ALL DOING?

22 A. SHORTLY AFTER WE FINISHED THE INTERVIEW, WE LEFT
23 THE RICHLAND COUNTY DETENTION CENTER AND WENT TO
24 DOWNTOWN COLUMBIA TO INTERVIEW A LADY THAT KENNETH
25 HAD TOLD US ABOUT TO VERIFY THE STATEMENT THAT HE

1 HAD GIVEN US UPON INTERVIEWING THE LADY. THEN WE
2 RETURNED BACK TO THE PRISON.

3 Q. WHO WAS THE WOMAN'S NAME?

4 A. ROSE. I CAN'T REMEMBER THE SECOND NAME. BUT HER
5 FIRST NAME I REMEMBER WAS ROSE.

6 Q. OKAY. SO HER NAME CAME UP IN THE STATEMENT THAT
7 HAD BEEN GIVEN TO YOU BY MR. SIMMONS, AND Y'ALL
8 WENT AND CHECKED THAT OUT?

9 A. YES, SIR; THAT'S CORRECT.

10 Q. DID ALL THREE OF YOU LEAVE?

11 A. YES, SIR; ALL THREE OF US LEFT.

12 Q. WAS THIS INDIVIDUAL AT THE ADDRESS THAT MR. SIMMONS
13 TOLD YOU SHE WAS AT?

14 A. YES, SIR, SHE WAS.

15 Q. DID YOU HAVE AN INTERVIEW WITH HER?

16 A. YES, SIR, WE INTERVIEWED.

17 Q. AFTER YOU COMPLETED THE INTERVIEW, WHERE DID YOU GO
18 THEN?

19 A. AFTER THE COMPLETION OF THE INTERVIEW, WE RETURNED
20 BACK TO THE RICHLAND COUNTY DETENTION CENTER AND
21 INTERVIEWED MR. SIMMONS AGAIN.

22 Q. ALL RIGHT. APPROXIMATELY WHAT TIME DID YOU GET
23 BACK TO THE DETENTION CENTER?

24 A. APPROXIMATELY 7:30; SOMEWHERE IN THERE.

25 Q. NOW, DID YOU HAVE ANOTHER INTERVIEW THAT EVENING

1 WITH MR. SIMMONS?

2 A. YES, SIR.

3 Q. OKAY. DID YOU GIVE HIM HIS MIRANDA RIGHTS AGAIN?

4 A. YES, SIR, HE WAS READ HIS RIGHTS AGAIN.

5 Q. LET ME HAND YOU A SECOND MIRANDA RIGHTS FORM, OR A
6 THIRD MIRANDA RIGHTS FORM, COUNTING THE TWO PAGE
7 STATEMENT---

8 A. ALL RIGHT.

9 Q. --AND ASK IF YOU CAN IDENTIFY THAT? (WITNESS
10 REVIEWS DOCUMENT.)

11 A. YES, SIR. THIS IS THE SECOND MIRANDA THAT HE WAS
12 READ.

13 MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS, I
14 BELIEVE WITHOUT OBJECTION FOR THIS HEARING.

15 STATE'S EXHIBIT NO. 6

16 MARKED FOR IDENTIFICATION

17 Q. I HAND YOU STATE'S SIX. WAS THIS DONE IN
18 CONJUNCTION WITH ANOTHER TAPED INTERVIEW, A SECOND
19 TAPED?

20 A. THIS WAS READ IN THE BEGINNING OF SECOND INTERVIEW
21 ON THE FIFTH OF FEBRUARY.

22 Q. OKAY. NOW, PRIOR TO TURNING THE TAPE ON AND GIVING
23 THE MIRANDA RIGHTS, DID YOU HAVE A CONVERSATION
24 WITH MR. SIMMONS AFTER YOU RETURNED FROM VISITING
25 THE PERSON WHOSE NAME HE HAD GIVEN YOU?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. YES, SIR.

2 Q. WHAT DID YOU TELL MR. SIMMONS?

3 A. IT WAS A VERY BRIEF, MAYBE FIVE OR TEN MINUTES. I
4 STATED TO HIM THAT THE FIRST INTERVIEW WITH HIM AND
5 THE NAME THAT HE GAVE US TO CHECK OUT, THAT IT
6 DIDN'T -- I'D SAY JIBE, OR DIDN'T CORRESPOND WITH
7 WHAT HE TOLD US IN THE FIRST INTERVIEW; THAT WE
8 WOULD LIKE TO GET A SECOND INTERVIEW WITH HIM.

9 Q. DID YOU TELL MR. SIMMONS YOU DIDN'T BELIEVE SOME OF
10 THE FIRST INTERVIEW?

11 A. YES, SIR. HE WAS TOLD THAT SOME OF THE THINGS HE
12 TOLD US THAT WE DID NOT BELIEVE.

13 Q. DID HE RESPOND TO THAT?

14 A. YES, SIR. HE RESPONDED TO THAT. IN FACT, HE SAID
15 "I'LL TALK WITH YOU, BUT I DON'T WANT NOBODY ELSE
16 IN THE ROOM. I DON'T WANT THE TWO LADIES IN THE
17 ROOM WITH ME."

18 Q. THE TWO LADIES; YOU'RE REFERRING TO ANN REESE AND
19 MAYBELLE HENDRICKS?

20 A. THAT'S CORRECT.

21 Q. WHEN HE SAID HE DIDN'T WANT THESE TWO WOMEN IN
22 THERE TO HEAR WHAT HE WAS GOING TO SAY, WHAT
23 HAPPENED THEN?

24 A. AT THAT TIME AGENT REESE AND DETECTIVE MAYBELLE WAS
25 ASKED TO LEAVE THE ROOM.

1 Q. AND DID THEY LEAVE THE ROOM?

2 A. YES, SIR, THEY DID.

3 Q. DID THEY STAY IN THE BUILDING, IN THE VICINITY, BUT
4 OUT OF THE ROOM?

5 A. I WOULD ASSUME THEY STAYED WITHIN THE BUILDING.
6 BUT THEY WERE NOT IN THE INTERVIEW ROOM.

7 Q. ALL RIGHT. NOW, PRIOR TO THE TIME THAT YOU TURNED
8 THE TAPE ON AND WENT THROUGH THE MIRANDA RIGHTS AND
9 GOT THE SECOND TAPED STATEMENT; AGAIN, ANY
10 PROMISES, ANY THREATS, ANY COERCION?

11 A. NO, SIR; NONE.

12 Q. ANY INDICATION THAT MR. SIMMONS WAS LABORING UNDER
13 ANY KIND OF MENTAL DISABILITY OR ALCOHOL, DRUGS;
14 ANYTHING THAT WOULD IMPAIR HIS ABILITY TO
15 UNDERSTAND THE RIGHTS AND TO WAIVE THOSE RIGHTS AND
16 TALK TO YOU IN AN INTELLIGENT MANNER?

17 A. HE APPEARED TO BE NORMAL AND NOT UNDER THE
18 INFLUENCE OF ANYTHING.

19 Q. ALL RIGHT, SIR. SO, DID YOU THEN TURN THE TAPE ON
20 AND GO THROUGH THE MIRANDA RIGHTS AGAIN WITH HIM?

21 A. YES, SIR; THAT'S CORRECT.

22 Q. AND WITHOUT GOING THROUGH ALL THAT AGAIN, WHAT'S ON
23 THE TAPE FOR THE RECORD, DID HE APPEAR TO
24 UNDERSTAND THOSE RIGHTS WHEN YOU GAVE THEM TO HIM?

25 A. YES, SIR. HE SO INDICATED THAT HE UNDERSTOOD THEM.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. DID HE SIGN THE MIRANDA RIGHTS?

2 A. YES, SIR; HE SIGNED THEM.

3 Q. DID YOU WITNESS HIM SIGN THAT?

4 A. YES, SIR, I DID.

5 Q. DID HE SIGN THE WAIVER?

6 A. YES, SIR.

7 Q. DID YOU WITNESS THAT?

8 A. YES, SIR, I DID.

9 Q. NOW, WAS ANYBODY PRESENT DURING THAT SECOND TAPED
10 INTERVIEW, DECEMBER THE 5TH, 1997, BESIDE YOU AND
11 MR. SIMMONS?

12 A. NO ONE WAS IN THE ROOM BUT THE TWO OF US.

13 Q. AND THAT WAS AT HIS REQUEST?

14 A. THAT'S CORRECT; AT HIS REQUEST.

15 Q. LET ME HAND YOU THIS AND ASK IF YOU CAN IDENTIFY
16 IT. (WITNESS REVIEWS TAPE.)

17 A. YES, SIR, I CAN.

18 Q. WHAT IS THAT?

19 A. THIS IS A TAPE OF THE SECOND INTERVIEW OF KENNETH
20 SIMMONS.

21 Q. DID YOU LISTEN TO THAT TAPE IN ITS ENTIRETY AFTER
22 IT WAS TAPED?

23 A. YES, SIR, I DID.

24 Q. AND AT THE SAME TIME YOU LISTENED TO THE TAPE, DID
25 YOU FOLLOW ALONG WITH THE TRANSCRIPT?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. I DID.

2 Q. IS THAT TAPE AN ACCURATE REPRESENTATION OR
3 RECORDING OF THE CONVERSATION YOU HAD WITH MR.
4 SIMMONS AS YOU RECALL?

5 A. YES, SIR, IT IS.

6 MR. BAILEY: YOUR HONOR, I WOULD OFFER THE
7 TAPE, THE SECOND TAPE, INTO EVIDENCE.

8 THE COURT: WITHOUT OBJECTION?

9 MR. THEOS: YES, SIR, YOUR HONOR.

10 STATE'S EXHIBIT NO. 7

11 ADMITTED AS EVIDENCE

12 Q. MR. MEARS, I'M GOING TO HAND YOU SOME MORE
13 DOCUMENTS AND ASK IF YOU CAN IDENTIFY THOSE.
14 (WITNESS EXAMINES DOCUMENT.)

15 A. YES, SIR, I CAN. THIS IS A TRANSCRIPT TRANSCRIBED
16 FROM THE TAPE OF THE SECOND INTERVIEW WITH KENNETH
17 SIMMONS.

18 Q. DID YOU READ THAT TRANSCRIPT TO YOURSELF AS YOU
19 LISTENED TO THE TAPE?

20 A. YES, SIR, I DID.

21 Q. DOES THAT TRANSCRIPT REASONABLY REPRESENT WHAT'S ON
22 THE TAPE?

23 A. IT DOES.

24 MR. BAILEY: YOUR HONOR, I WOULD OFFER THE
25 TRANSCRIPT.

KENNY MEARS - DIRECT/MR. BAILEY

1 THE COURT: WITHOUT OBJECTION FOR THIS
2 HEARING, STATE'S NUMBER EIGHT.

3 STATE'S EXHIBIT NO. 8
4 ADMITTED AS EVIDENCE

5 Q. MR. MEARS, I WANT TO CALL YOUR ATTENTION NOW TO
6 DECEMBER THE NINTH, 1997, AND ASK WHETHER OR NOT
7 YOU AGAIN WENT TO THE RICHLAND COUNTY DETENTION
8 CENTER?

9 A. ON THE NINTH OF FEBRUARY; YES, SIR.

10 Q. WHO ACCOMPANIED YOU ON THAT OCCASION?

11 A. IT WAS DETECTIVE MAYBELLE, AGENT REESE, AND ANOTHER
12 DETECTIVE FROM SUMMERVILLE P.D.; I THINK RON - I
13 CAN'T REMEMBER HIS LAST NAME.

14 Q. RON THOMASON?

15 A. THOMASON.

16 Q. NOW, WHEN YOU WENT TO THE DETENTION CENTER ON
17 DECEMBER THE NINTH, DID YOU AGAIN SEE MR. SIMMONS?

18 A. YES, SIR, I DID.

19 Q. WHERE DID YOU SEE HIM?

20 A. I SAW HIM IN THE INVESTIGATOR'S OFFICE AT THE
21 DETENTION CENTER IN INVESTIGATOR HOWARD'S OFFICE.

22 Q. AND WHAT YOUR PURPOSE IN TALKING, OR GOING UP THERE
23 TO TALK TO MR. SIMMONS AGAIN ON THE NINTH?

24 A. THE PURPOSE OF THAT TRIP WAS TO GET HIM TO SIGN A
25 COPY OF THE TRANSCRIPT AND ALSO TO TRANSFER HIM

1 BACK TO SUMMERVILLE.

2 Q. WAS THIS THE TRANSCRIPT OF THE SECOND INTERVIEW OF
3 DECEMBER THE FIFTH?

4 A. THAT'S RIGHT; THE TRANSCRIPT OF THE SECOND TAPE I
5 TOOK BACK UP THERE.

6 Q. DID YOU PRESENT THAT TRANSCRIPT TO MR. SIMMONS?

7 A. YES, SIR.

8 Q. AND WHAT DID HE DO WITH IT?

9 A. AGAIN, IT WAS ON TAPE; AND HE READ IT ALONG WITH
10 ME. I ASKED HIM IF IT WAS WHAT HE HAD STATED AND
11 IS IT FAIRLY ACCURATE; GAVE HIM TIME TO READ IT. I
12 READ OVER IT WITH HIM. AND HE SAID IT WAS
13 ACCURATE; AND HE SIGNED IT.

14 Q. HIS SIGNATURE APPEARS ON THE SECOND TRANSCRIPT
15 THAT'S IN EVIDENCE; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. NOW, ON DECEMBER THE NINTH DID YOU AGAIN
18 GIVE MIRANDA RIGHTS TO HIM FOR A FOURTH TIME?

19 A. YES, SIR, I DID.

20 Q. I'M GOING TO HAND YOU A DOCUMENT AND ASK IF THESE
21 ARE THE MIRANDA RIGHTS YOU GAVE HIM. (WITNESS
22 EXAMINES DOCUMENT.)

23 A. YES, SIR, THIS IS THE RIGHTS I GAVE HIM.

24 Q. WAS THE TAPE PLAYER ON WHEN YOU GAVE HIM THOSE
25 MIRANDA RIGHTS?

- 1 A. I'M ALMOST CERTAIN IT WAS.
- 2 Q. OKAY. DID YOU GIVE HIM THE MIRANDA RIGHTS AS
- 3 INDICATED THERE? DID YOU READ THAT ALOUD TO HIM?
- 4 A. YES, SIR. AGAIN, I GAVE HIM A COPY, AND I RETAINED
- 5 A COPY. I READ ALONG WITH HIM READING FROM HIS
- 6 CARD.
- 7 Q. OKAY. NOW, THE DATE UP THERE, DECEMBER THE NINTH;
- 8 DID YOU FILL THAT IN?
- 9 A. YES, SIR.
- 10 Q. AND THE TIME?
- 11 A. YES, SIR.
- 12 Q. OF 11:36?
- 13 A. THAT'S CORRECT; 11:36 A.M.
- 14 Q. AND THE INITIALS IN THE LEFT-HAND COLUMN; WHOSE
- 15 INITIALS ARE THOSE?
- 16 A. THAT'S WHERE I WITNESSED---
- 17 Q. THOSE IN THE LEFT-HAND TOP THERE.
- 18 A. OKAY.
- 19 Q. BESIDE THE---
- 20 A. THEY ARE KENNETH SIMMONS' WHERE HE INITIALLED EACH
- 21 SENTENCE AFTER HIS RIGHTS WERE READ TO HIM.
- 22 Q. AND YOU OBSERVED HIM SIGN THAT?
- 23 A. YES, SIR.
- 24 Q. DID YOU OBSERVE HIM SIGN THE ACKNOWLEDGMENT OF
- 25 MIRANDA RIGHTS?

1 A. I DID.

2 Q. AND IN REGARD TO THE WAIVER, DID YOU READ THAT TO
3 HIM?

4 A. I READ THE WAIVER TO HIM ALSO, AND HE ALSO SIGNED.

5 Q. DID WHEN APPEAR TO UNDERSTAND THE RIGHTS AND THE
6 WAIVER?

7 A. HE APPEARED TO UNDERSTAND IT, AND HE SO STATED THE
8 HE UNDERSTOOD.

9 Q. IS THAT YOUR SIGNATURE DOWN IN THE BOTTOM LEFT?

10 A. YES, SIR, IT IS.

11 MR. BAILEY: WE WOULD OFFER THIS, YOUR HONOR.

12 THE COURT: STATE'S NINE?

13 THE COURT REPORTER: YES, SIR.

14 STATE'S EXHIBIT NO. 9

15 ADMITTED AS EVIDENCE

16 Q. WAS ANYBODY ELSE PRESENT BESIDES THE TWO OF YOU? I
17 MIGHT HAVE ASKED YOU THIS BEFORE. BUT IT WAS JUST
18 YOU AND MR. SIMMONS ON THIS OCCASION?

19 A. JUST THE TWO OF US WERE IN THE ROOM; THAT'S
20 CORRECT.

21 Q. WHERE WERE MS. HENDRICKS AND MR. THOMASON AND MS.
22 REESE?

23 A. THEY WERE AT THE FACILITY, BUT THEY WERE NOT
24 PRESENT DURING THIS INTERVIEW.

25 Q. AGAIN, ANY THREATS, ANY COERCION, ANYTHING TO

KENNY MEARS - DIRECT/MR. BAILEY

1 INDUCE HIM TO GIVE YOU THE STATEMENT, OR ANY
2 PROMISES MADE TO GIVE YOU THE STATEMENT?

3 A. NO, SIR; NO PROMISES, THREATS, OR COERCION OF ANY
4 KIND.

5 Q. TO THE BEST OF YOUR KNOWLEDGE, DID HE GIVE YOU THE
6 TAPED STATEMENT FREELY AND VOLUNTARILY OF HIS OWN
7 FREE WILL AND ACCORD?

8 A. YES, SIR, IT WAS.

9 Q. DID HE AT ANY TIME INDICATE TO YOU THAT HE DID NOT
10 UNDERSTAND THE RIGHTS THAT YOU HAD GIVEN HIM, OR
11 DIDN'T UNDERSTAND WHAT WAS HAPPENING, OR DIDN'T
12 UNDERSTAND YOUR QUESTIONS?

13 A. HE CLEARLY STATED THAT HE UNDERSTOOD EVERYTHING.

14 Q. I'M GOING TO HAND YOU A THIRD TAPE AND ASK IF YOU
15 CAN IDENTIFY THIS. (WITNESS EXAMINES DOCUMENT.)

16 A. YES, SIR.

17 Q. WHAT IS THAT?

18 A. THIS IS A COPY OF THE THIRD TAPE THAT WAS TAPED ON
19 THE NINTH OF DECEMBER.

20 Q. IS THAT THE ORIGINAL TAPE, OR IS IT A COPY?

21 A. THIS IS THE ORIGINAL. IT'S SEALED.

22 Q. OKAY. DID YOU LISTEN TO THE TAPE IN ITS ENTIRETY?

23 A. YES, SIR, I DID.

24 Q. DID YOU INITIAL THAT WHEN YOU LISTENED TO IT?

25 A. YES, SIR, I DID.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. DOES THAT TAPE REFLECT YOUR RECOLLECTION AS AN
2 ACCURATE RECORDING OF THE CONVERSATION YOU HAD WITH
3 MR. SIMMONS ON DECEMBER THE NINTH OF '97?

4 A. IT IS.

5 MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS
6 TAPE.

7 THE COURT: WITHOUT OBJECTION; STATE'S TEN.

8 STATE'S EXHIBIT NO. 10

9 ADMITTED AS EVIDENCE

10 Q. I HAND YOU SOME ADDITIONAL PAPERWORK AND ASK IF YOU
11 CAN IDENTIFY THAT. (WITNESS EXAMINES DOCUMENT.)

12 A. THIS IS A TRANSCRIPT OF THE THIRD TAPE THAT WAS
13 TAKEN ON 12/09 OF '97 OF KENNETH SIMMONS.

14 Q. AND THAT WAS PREPARED BY SLED'S SECRETARY?

15 A. YES, SIR, IT WAS.

16 Q. DID YOU READ THAT TRANSCRIPT AS YOU LISTENED TO THE
17 TAPE?

18 A. I DID.

19 Q. IS THAT TRANSCRIPT A REASONABLY ACCURATE
20 REPRESENTATION OF WHAT'S ON THE TAPE?

21 A. YES, SIR, IT IS.

22 MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS.

23 THE COURT: WITHOUT OBJECTION.

24 STATE'S EXHIBIT NO. 11

25 ADMITTED AS EVIDENCE.

KENNY MEARS - DIRECT/MR. BAILEY

1 THE COURT: MR. SOLICITOR, YOU HAD SENT ME A
2 COPY OF THE DISCOVERY MOTIONS AND THE
3 RESPONSES; AND I HAVE A COPY OF THE FIRST
4 TAPED INTERVIEW OF KENNETH SIMMONS AS
5 12/05/97. AND THEN I HAVE ANOTHER TAPED
6 INTERVIEW ON 12/05/97, AND THEN A THIRD TAPED
7 INTERVIEW ON 12/09?

8 MR. BAILEY: YES, SIR.

9 THE COURT: SO THERE ARE THREE TRANSCRIPTS?

10 MR. BAILEY: THREE TAPES, AND THEN THE ONE
11 HANDWRITTEN STATEMENT OF DECEMBER THE FIFTH.

12 THE COURT: ALL RIGHT. I HAVE ALL THOSE.
13 THANK YOU.

14 MR. BAILEY: I BELIEVE THAT'S ALL I HAVE, YOUR
15 HONOR, OF MR. MEARS AT THIS TIME. PLEASE
16 ANSWER ANY QUESTIONS MR. THEOS MAY HAVE.

17 THE COURT: CROSS?

18 CROSS-EXAMINATION

19 BY MR. THEOS:

20 Q. AGENT MEARS, WERE YOU A PART OF THE TASK FORCE?

21 A. YES, SIR. I WAS ASKED TO DO THE INTERVIEW. I WAS
22 NOT ORIGINALLY ASSIGNED TO IT.

23 Q. WERE ARE ASSIGNED THAT SAME DAY THAT YOU
24 INTERVIEWED MR. SIMMONS?

25 A. NO, SIR. I WAS ASSIGNED EARLIER TO GO WITH AGENT

KENNY MEARS - DIRECT/MR. BAILEY

1 REESE AND DETECTIVE HENDRICKS TO DO THE INTERVIEW.

2 Q. PRIOR TO YOUR INTERVIEWING MR. SIMMONS, DID YOU
3 PERFORM ANY OTHER TASKS RELATED TO THE
4 INVESTIGATION?

5 A. I TALKED TO THREE OR FOUR OTHER PEOPLE.

6 Q. SUSPECTS? OR, WHEN YOU SAY PEOPLE, OTHER OFFICERS?

7 A. I WOULD SAY WITNESSES.

8 Q. PRIOR TO YOUR INTERVIEW OF MR. SIMMONS, DID HIS
9 NAME COME UP IN THE INVESTIGATION TO YOUR
10 KNOWLEDGE?

11 A. I WAS ASKED -- WHEN I WAS ASKED TO BE A PART OF THE
12 TASK FORCE TEMPORARILY, IT WAS TO INTERVIEW MR.
13 SIMMONS. THAT'S HOW I KNEW THAT I WAS SUPPOSED TO
14 INTERVIEW MR. SIMMONS.

15 Q. WAS THAT PRIOR TO RECEIVING ANY INFORMATION FROM
16 THE RICHLAND COUNTY JAIL THAT HE WANTED TO CONFESS
17 TO THESE MURDERS?

18 A. I DIDN'T RECEIVE ANY INFORMATION FROM THE RICHLAND
19 COUNTY JAIL.

20 Q. SO YOUR INTENT -- IT WAS YOUR INTENTION TO GO
21 INTERVIEW MR. SIMMONS AT THE RICHLAND COUNTY JAIL?

22 A. I WAS ASSIGNED BY MY SUPERVISOR TO INTERVIEW MR.
23 SIMMONS.

24 Q. AND THAT DIDN'T HAVE ANYTHING TO DO WITH MR.
25 SIMMONS' DESIRE TO CONFESS TO THESE OTHER MURDERS?

1 A. I DON'T KNOW WHAT YOU'RE TALKING ABOUT. I DON'T
2 THINK I UNDERSTAND YOUR QUESTION.

3 Q. WHEN YOU RECEIVED THAT ASSIGNMENT TO GO INTERVIEW
4 MR. SIMMONS, WAS THAT BEFORE MR. SIMMONS SPOKE WITH
5 INVESTIGATOR HOWARD REGARDING HIS DESIRE TO CONFESS
6 TO TWO MURDERS?

7 A. I WAS ASSIGNED AFTER INVESTIGATOR HOWARD GOT IN
8 TOUCH WITH THE TASK FORCE ABOUT A SUBJECT HE HAD.

9 Q. I GUESS MY QUESTION IS WERE YOU ASSIGNED TO GO
10 INTERVIEW MR. SIMMONS AS A RESULT OF WHAT HE TOLD
11 INVESTIGATOR HOWARD?

12 A. I WOULD ASSUME SO. I WAS JUST ASKED TO INTERVIEW.
13 AND I DON'T KNOW WHEN MR. HOWARD GOT IN TOUCH WITH
14 THE TASK FORCE OR ANYTHING.

15 Q. OKAY. NOW, HAD YOU EVER TALKED TO MR. SIMMONS FOR
16 ANY OTHER REASON BEFORE THE FIFTH?

17 A. NO, SIR.

18 Q. HAD YOU EVER MET MR. SIMMONS BEFORE THAT?

19 A. NO, SIR.

20 Q. DID YOU KNOW ANYTHING ABOUT MR. SIMMONS?

21 A. NOTHING.

22 Q. DID YOU KNOW ANYTHING ABOUT HIS BACKGROUND?

23 A. NO, SIR.

24 Q. DID YOU KNOW ANYTHING ABOUT HIS EDUCATION?

25 A. NO, SIR.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. DID YOU KNOW ANYTHING ABOUT HIS LIFE AT ALL?

2 A. I DIDN'T EVEN KNOW MR. SIMMONS.

3 Q. DID YOU TALK WITH ANYBODY ABOUT MR. SIMMONS BEFORE
4 YOU INTERVIEWED HIM ON THE FIFTH?

5 A. BRIEFLY I READ SOME OF THE NOTES THAT WAS COLLECTED
6 BY THE TASK FORCE.

7 Q. RELATED TO MR. SIMMONS?

8 A. RIGHT.

9 Q. AND THOSE NOTES WOULD HAVE BEEN PERTAINING TO HIM
10 BEING A POSSIBLE SUSPECT IN THIS MATTER?

11 A. WHATEVER THE NOTES INDICATED IN THE TASK FORCE.

12 Q. DO YOU RECALL WHAT THOSE NOTES WERE?

13 A. I WAS JUST GETTING MYSELF FAMILIARIZED WITH KENNETH
14 AND WHAT THE CRIME WAS TO SORT OF TRY TO FIND OUT
15 SO I COULD INTERVIEW HIM PROPERLY.

16 Q. OKAY. SO YOU WERE FAMILIARIZING YOURSELF WITH THE
17 BOYD MATTER?

18 A. YES, SIR; THAT'S CORRECT.

19 Q. PRIOR TO INTERVIEWING HIM ON THE FIFTH?

20 A. THAT'S CORRECT.

21 Q. WHEN DID YOU RECEIVE THAT ASSIGNMENT?

22 A. I'M NOT CERTAIN, BUT IT WAS MAYBE A WEEK OR SO
23 BEFORE THE FIFTH.

24 Q. OKAY. BUT YOU DIDN'T SPEAK WITH ANY FAMILY MEMBERS
25 OR FRIENDS OR OTHER WITNESSES, POTENTIAL WITNESSES,

KENNY MEARS - DIRECT/MR. BAILEY

1 OR EVEN SUSPECTS RELATED TO MR. SIMMONS?

2 A. I TALKED WITH SOME, BUT NOT DIRECTLY ABOUT MR.
3 SIMMONS. IT WAS JUST SOME PEOPLE I HAD TALKED
4 WITH, AND MR. SIMMONS' NAME MAY HAVE COME UP.

5 Q. AGAIN, YOU HAD NO INFORMATION RELATED TO MR.
6 SIMMONS' BACKGROUND?

7 A. NO, SIR.

8 Q. BEFORE YOU TALKED WITH THEM?

9 A. ONLY WHAT I'VE GOTTEN FROM THE TASK FORCE.

10 Q. DO YOU HAVE THAT WITH YOU?

11 A. THE ONLY THING I HAVE IS WHAT'S IN THE FILE FROM
12 THE TASK FORCE.

13 Q. NOW, ON THE FIFTH YOU SAID THAT IT WAS YOU, MRS.
14 HENDRICKS, AND MS. REESE ALL WENT TO THE RICHLAND
15 COUNTY JAIL TOGETHER?

16 A. THAT'S CORRECT.

17 Q. IS THAT RIGHT?

18 A. YES, SIR.

19 Q. AND Y'ALL MET WITH MR. SIMMONS IN THIS ROOM,
20 INVESTIGATOR HOWARD'S OFFICE?

21 A. THAT'S RIGHT.

22 Q. AND WAS INVESTIGATOR HOWARD CORRECT WHEN HE STATED
23 BEFORE THAT Y'ALL USED HIS TAPE RECORDER?

24 A. THAT'S CORRECT. WE DID USE HIS TAPE RECORDER.

25 Q. ALL RIGHT. WAS THAT TAPE RECORDER TURNED ON AS

KENNY MEARS - DIRECT/MR. BAILEY

- 1 SOON AS YOU WENT INTO THE ROOM?
- 2 A. NO, SIR; IT WAS NOT.
- 3 Q. WAS IT TURNED ON AS SOON AS YOU BEGAN TALKING WITH
- 4 MR. SIMMONS?
- 5 A. IT WAS TURNED ON SHORTLY AFTER HE WAS INTRODUCED TO
- 6 US, AND WE TOLD HIM THAT WE WANTED TO TALK WITH HIM
- 7 ABOUT THE SITUATION HE HAD ASKED US TO TALK ABOUT.
- 8 Q. HOW LONG WOULD YOU SAY YOU WERE IN THE ROOM BEFORE
- 9 YOU TURNED THE TAPE RECORDER ON?
- 10 A. FOR FIVE MINUTES.
- 11 Q. WAS MR. SIMMONS ASKED ANY QUESTIONS ABOUT THE BOYD
- 12 MATTER DURING THAT TIME?
- 13 A. ARE TALKING ABOUT BEFORE THE TAPE WAS TURNED ON?
- 14 Q. BEFORE THE TAPE RECORDER WAS TURNED ON.
- 15 A. NO, SIR.
- 16 Q. DID HE OFFER ANY INFORMATION RELATED TO THE BOYD
- 17 MATTER BEFORE IT WAS TURNED ON?
- 18 A. HE INDICATED THAT HE WANTED TO TALK WITH US ABOUT
- 19 THE BOYD MATTER.
- 20 Q. IN THE FIRST INTERVIEW OF THE FIFTH?
- 21 A. THAT'S CORRECT.
- 22 Q. AND YOU TURNED THE TAPE RECORDER ON?
- 23 A. THAT'S CORRECT.
- 24 Q. AND IT'S MY UNDERSTANDING THAT -- AND I'M NOT GOING
- 25 TO GO BACK THROUGH IT BECAUSE THE TRANSCRIPT WILL

KENNY MEARS - DIRECT/MR. BAILEY

1 SPEAK FOR ITSELF; BUT THE ADVISEMENT OF MIRANDA ON
2 THE FIFTH IN YOUR FIRST INTERVIEW; THAT'S CONTAINED
3 ON THE TAPE; CORRECT?

4 A. YES, SIR, I BELIEVE IT IS.

5 Q. AND RATHER THAN ASKING YOU WHAT YOUR RECOLLECTION
6 IS OF HOW YOU ASKED QUESTIONS, OR WHAT HIS
7 RESPONSES WERE, IS IT ACCURATE TO SAY THAT
8 EVERYTHING YOU HAD ADVISED HIM OF AND HIS RESPONSES
9 IS CONTAINED ON THAT TAPE?

10 A. YES, SIR.

11 Q. AND REFLECTED IN THE TRANSCRIPT?

12 A. IT IS.

13 Q. OKAY. NOW ONCE THAT TAPE RECORDER WAS TURNED OFF
14 AT THE CONCLUSION, AT TWO O'CLOCK, DID YOU SPEAK
15 WITH MR. SIMMONS AT THAT POINT ABOUT THE BOYD
16 MATTER?

17 A. I MAY HAVE ASKED HIM IF THERE'S ANYTHING ELSE OF
18 THAT NATURE; BUT NOTHING ELSE.

19 Q. WHAT WERE HIS RESPONSES WHEN YOU THINK YOU MAY HAVE
20 ASKED HIM SOME OTHER QUESTIONS?

21 A. HE SAID THAT WAS IT.

22 Q. NOW, THIS HANDWRITTEN STATEMENT OF THE FIFTH, THE
23 ONE THAT IS -- I DON'T RECALL WHICH EXHIBIT NUMBER
24 IT IS, BUT I'LL SHOW IT TO YOU. YOU MAY HAVE THAT
25 IN FRONT OF YOU.

KENNY MEARS - DIRECT/MR. BAILEY

- 1 A. EXHIBIT NUMBER FIVE.
- 2 Q. OKAY. IF YOU'D JUST LOOK AT THAT, PLEASE.
- 3 (WITNESS EXAMINES DOCUMENT.) YOU TESTIFIED THAT YOU
- 4 BELIEVE THAT TOOK APPROXIMATELY 45 MINUTES FOR HIM
- 5 TO COMPLETE?
- 6 A. THIRTY TO FORTY MINUTES; YES, SIR.
- 7 Q. YOU SAID IT WAS DONE SOME TIME AFTER TWO; RIGHT?
- 8 A. IT WOULD HAVE TO BE BECAUSE THE TAPED INTERVIEW
- 9 ENDED AT TWO.
- 10 Q. AND THEN IT WAS COMPLETED AT 3:05?
- 11 A. YES, SIR; THAT'S CORRECT.
- 12 Q. AND THAT'S THE TIME THAT IS REFLECTED AT THE BOTTOM
- 13 OF THE FIRST PAGE OF THIS STATEMENT; IS THAT
- 14 CORRECT?
- 15 A. YES, SIR; THAT'S CORRECT.
- 16 Q. AND WAS AGENT REESE, AND WAS OFFICER HENDRICKS IN
- 17 THE ROOM DURING THE ENTIRE TIME THIS WRITTEN
- 18 STATEMENT WAS BEING MADE BY MR. SIMMONS, OR DID
- 19 THEY SIMPLY WITNESS THE SIGNATURE?
- 20 A. I KNOW THEY WERE IN THERE WHEN HE BEGAN WRITING. I
- 21 DON'T RECALL IF THEY LEFT OUT AND CAME BACK OR NOT.
- 22 BUT THEY WERE IN THERE WHEN HE BEGAN WRITING THE
- 23 STATEMENT.
- 24 Q. THEY SIGNED AS WITNESSES TO THIS STATEMENT; IS THAT
- 25 CORRECT?

1 A. THAT'S CORRECT.

2 Q. AND I BELIEVE YOU SAID EARLIER THAT THE TOP PORTION
3 OF THIS VOLUNTARY STATEMENT WAS COMPLETED, FILLED
4 OUT, BY AGENT REESE?

5 A. THAT'S CORRECT.

6 Q. NOW, DURING TIME THAT MR. SIMMONS WAS WRITING THIS
7 STATEMENT, WERE YOU SPEAKING WITH HIM?

8 A. NO, SIR, ONLY IF HE ASKED ME A QUESTION.

9 Q. WERE YOU ASKING HIM QUESTIONS AS HE WAS WRITING IT?

10 A. NO, SIR. I TOLD HIM TO WRITE A STATEMENT, AND IF
11 HE HAD ANY PROBLEMS WITH SPELLING OF WORDS OR
12 ANYTHING I WOULD TRY TO HELP HIM SPELL THE WORD.

13 Q. HOW MANY TIMES WOULD YOU SAY YOU HELPED HIM, IF YOU
14 CAN RECALL?

15 A. I DON'T HAVE THE SLIGHTEST IDEA.

16 Q. NUMEROUS TIMES?

17 A. NOT TOO OFTEN.

18 Q. ALL RIGHT. DID YOU ASK MR. SIMMONS TO READ THIS
19 STATEMENT OUT LOUD WHEN HE FINISHED IT?

20 A. I DON'T RECALL ASKING HIM TO READ IT OUT LOUD; NO,
21 SIR.

22 Q. WITH RESPECT TO THE MIRANDA WARNINGS AT THE TOP
23 PORTION OF THIS FORM, I HEARD YOU SAY YOU READ
24 THOSE WARNINGS OUT LOUD AGAIN TO MR. SIMMONS; IS
25 THAT CORRECT?

1 A. THAT'S CORRECT.

2 Q. DID YOU ASK MR. SIMMONS TO READ ALOUD THOSE
3 WARNINGS?

4 A. NO, SIR. I GAVE HIM A COPY AND TOLD HIM HE COULD
5 READ ALONG AS I READ THEM TO HIM.

6 Q. OKAY. NOW, I UNDERSTAND FROM YOUR TESTIMONY ON
7 DIRECT EXAMINATION THAT THE REASON YOU HAD MR.
8 SIMMONS WRITE THIS WAS BECAUSE IT WAS JUST IN CASE
9 THE TAPE DIDN'T WORK OR DIDN'T COME OUT CLEARLY,
10 SORT OF AS BACK-UP; IS THAT RIGHT?

11 A. SORT OF TO SUMMARIZE IN HTE CASE AND EVERYTHING, IF
12 THE TAPE ACTED UP OR SOMETHING, TO SORT OF
13 SUMMARIZE WHAT HE HAD PREVIOUSLY STATED TO US.

14 Q. ANY OTHER REASON FOR HAVING HIM WRITE THIS OUT THAT
15 YOU CAN THINK OF?

16 A. NO, SIR; THAT'S IT.

17 Q. DO YOU REMEMBER WHETHER MR. SIMMONS TOOK ANY BREAKS
18 DURING THE WRITING OF THIS STATEMENT TO ASK YOU
19 QUESTIONS?

20 A. HE ASKED---

21 Q. OTHER THAN FOR ASSISTANCE WITH SPELLING?

22 A. NO, SIR.

23 Q. NOW, WITH RESPECT TO THE DECEMBER THE FIFTH, THE
24 SECOND RECORDED STATEMENT, WAS THERE ANY
25 CONVERSATION THAT TOOK PLACE PRIOR TO THE RECORDER

1 BEING TURNED ON?

2 A. WERE ANY CONVERSATIONS, YOU'RE ASKING?

3 Q. WITH MR. SIMMONS?

4 A. I STATED TO HIM THAT I DIDN'T BELIEVE EVERYTHING
5 THAT HE HAD TOLD ME IN THE INITIAL INTERVIEW AND
6 THAT I WOULD LIKE TO GET A SECOND INTERVIEW.

7 Q. AND THEN YOU'VE ALREADY TESTIFIED THAT HE ASKED AT
8 THAT POINT THAT AGENT REESE AND MS. HENDRICKS LEAVE
9 THE ROOM?

10 A. THAT'S CORRECT.

11 Q. WAS THERE ANYTHING ELSE THAT WAS SAID OTHER THAN
12 YOUR TELLING HIM THAT YOU DIDN'T BELIEVE EVERYTHING
13 AND HIM TELLING YOU THAT HE WOULD PREFER THAT THEY
14 NOT REMAIN IN THE ROOM?

15 A. EVERYTHING ELSE THAT WAS SAID IS IN THE TAPE.

16 Q. OKAY. INCLUDING, I ASSUME, EVERYTHING PERTAINING
17 TO THE MIRANDA WARNINGS? THAT'S ALL ON TAPE?

18 A. MIRANDA AND ALL; YES.

19 Q. THERE WASN'T ANY ADVISEMENT OF MIRANDA WARNINGS
20 PRIOR TO THE TAPE RECORDER BEING TURNED ON?

21 A. IT MAY HAVE. I DON'T RECALL IF HE DID THIS FIRST
22 OR WE DID IT IN CONJUNCTION WITH THE TAPE. BUT THE
23 MIRANDA WARNINGS WERE READ TO HIM.

24 Q. IF YOU'D LOOK AT THE TRANSCRIPT. I JUST WANT TO
25 MAKE SURE WE'RE CLEAR ON THIS.

1 A. WHICH TRANSCRIPT?

2 Q. THE TRANSCRIPT OF THE SECOND INTERVIEW OF DECEMBER
3 THE FIFTH, THE FIRST PAGE, I BELIEVE. (WITNESS
4 REVIEWS DOCUMENT.) IF YOU'D LOOK DOWN TO YOUR NAME
5 AS IT APPEARS ON THAT FIRST PAGE FOR THE FIFTH TIME
6 WHERE YOU RECITE THE DATE AND THE TIME.

7 A. CORRECT.

8 Q. THE DATE AND THE TIME THAT YOU RECITED WAS DECEMBER
9 THE FIFTH, 1997, AT 8:26 P.M.; IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND THEN IF WE LOOK BACK AT THE ADVISEMENT OF
12 RIGHTS THAT CORRELATES WITH TRANSCRIPT. AND I
13 BELIEVE THAT'S AT THE END OF THE TRANSCRIPT; RIGHT?

14 A. YES, SIR; THAT'S CORRECT.

15 Q. AND THAT REFLECTS THAT THE TIME WAS 8:26 P.M.

16 A. THAT'S CORRECT.

17 Q. SO WITH THOSE TWO THINGS IN HAND, AND HAVING
18 REFRESHED YOUR RECOLLECTION, IS IT FAIR TO SAY THAT
19 EVERYTHING PERTAINING TO THE MIRANDA WARNINGS IS ON
20 TAPE?

21 A. YES, SIR.

22 Q. NO OTHER DISCUSSIONS RELATED TO MIRANDA WARNINGS
23 ARE NOT ON TAPE; CORRECT?

24 A. JUST A BRIEF CONVERSATION. IT SAID "THESE MIRANDA
25 RIGHTS THAT I INTERVIEWED YOU EARLIER, AND I READ

1 YOU YOUR RIGHT; DO YOU REMEMBER; AND I'M GOING TO
2 READ YOU YOUR RIGHTS AGAIN."

3 Q. BUT THAT WAS REFERENCING THE FIRST INTERVIEW
4 EARLIER THAT DAY THAT WE HAVE TRANSCRIBED AS WELL?

5 A. THAT'S CORRECT.

6 Q. AND THEN THAT INTERVIEW OF DECEMBER THE FIFTH,
7 EVERYTHING PERTAINING TO MIRANDA WARNINGS YOU'VE
8 ALREADY TESTIFIED TO WAS TAPED?

9 A. YES, SIR.

10 Q. AND ARE YOU SATISFIED NOW THAT EVERYTHING
11 PERTAINING TO THE ADVISEMENT OF MIRANDA WAS TAPED
12 IN THE SECOND INTERVIEW AS WELL?

13 A. YES, SIR.

14 Q. OKAY. AT THE CONCLUSION -- I THINK IT CONCLUDED AT
15 8:55 P.M.; IS THAT RIGHT?

16 A. THAT'S WHAT---

17 Q. THE SECOND INTERVIEW?

18 A. YES, SIR; THAT'S WHAT IS ON THE TRANSCRIPT, 8:55.

19 Q. AT THE CONCLUSION OF THAT, BEFORE YOU ALL LEFT THE
20 RICHLAND COUNTY JAIL, DID MR. SIMMONS SAY ANYTHING
21 ELSE RELATED TO THIS MATTER THAT'S NOT ON THE TAPE?

22 A. NO, SIR. I DID NOT TALK WITH HIM AFTER THE TAPE
23 WAS CONCLUDED.

24 Q. YOU DIDN'T ASK ANY QUESTIONS AND HE DIDN'T OFFER
25 ANY STATEMENTS?

KENNY MEARS - DIRECT/MR. BAILEY

1 A. THAT'S CORRECT.

2 Q. NOW, THE DECEMBER THE NINTH MEETING; DO YOU HAVE
3 THAT TRANSCRIPT IN FRONT OF YOU AND THOSE MIRANDA
4 WARNINGS?

5 A. YES, SIR, I DO.

6 Q. ALL RIGHT. THAT WAS BEGUN, IT APPEARS, IF YOU LOOK
7 AT THE FIRST LINE OF THE TRANSCRIPT, AT 11:34 A.M.

8 A. THAT'S CORRECT.

9 Q. OKAY. WAS THERE ANYTHING THAT WAS SAID PRIOR TO
10 THAT THAT IS NOT ON THE TAPE BY EITHER YOU OR MR.
11 SIMMONS?

12 A. I MAY HAVE TOLD HIM THE REASON THAT I HAD COME BACK
13 AGAIN WAS TO KIND OF EXPLAIN TO HIM THE REASON.

14 Q. CAN YOU GO AHEAD AND TELL US WHAT YOU BELIEVE YOU
15 MAY HAVE TOLD HIM?

16 A. THAT I'M GOING TO ASK HIM TO SIGN THIS TRANSCRIPT
17 OF THE FIFTH, AND THAT I WAS GOING TO PUT IT ON
18 TAPE.

19 Q. WAS ANYTHING ELSE SAID OTHER THAN---

20 A. NOT THAT I CAN RECALL.

21 Q. AND THEN THE ADVISEMENT THAT YOU GAVE HIM BEFORE
22 YOU TURNED THE TAPE ON WOULD THUS BE THE SAME AS IT
23 APPEARS IN THE TRANSCRIPT. YOU JUST REPEATED IT
24 FOR THE AUDIO TAPE?

25 A. THAT'S CORRECT.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. DID YOU SAY ANYTHING ELSE TO HIM BEFORE THAT?

2 A. EVERYTHING HE SAID IS ON THE TAPE.

3 Q. OKAY. AND WAS THE TAPE TURNED OFF AT ANY TIME TO
4 YOUR KNOWLEDGE ON DECEMBER THE NINTH?

5 A. I CAN RECALL THE TAPE BEING TURNED OFF AT SOME
6 POINT.

7 Q. MR. BAILEY ASKED YOU IF THE TAPE WAS TURNED OFF AT
8 ONE POINT DURING THE FIRST INTERVIEW AND REFERRED
9 YOU TO PAGE 23, I BELIEVE, TOWARDS THE BOTTOM. AND
10 YOU SAID THAT WAS INVESTIGATOR HOWARD COMING IN?

11 A. RIGHT.

12 Q. DO YOU RECALL IT BEING TURNED OFF IN THIS INTERVIEW
13 OF DECEMBER THE NINTH?

14 A. I'D HAVE TO LOOK BACK THROUGH THE TRANSCRIPT TO
15 REFRESH MY MEMORY.

16 Q. IF IT HAD BEEN TURNED OFF, WOULD YOU HAVE INDICATED
17 ON TAPE THAT IT WAS BEING TURNED OFF AS YOU DID IN
18 THE FIRST INTERVIEW?

19 A. I DON'T RECALL IF I DID OR NOT, BUT USUALLY I DO.
20 I CAN'T RECALL IF I ACTUALLY DID THAT IN THIS ONE
21 OR NOT.

22 Q. WOULD YOU LOOK IT OVER, PLEASE, AND SEE IF YOU CAN
23 TELL US. (WITNESS REVIEWS DOCUMENT.)

24 A. I DON'T SEE JUST BY BRIEFING THROUGH IT WHERE I
25 TURNED THE TAPE OFF, OR STATED WHERE I TURNED THE

1 TAPE OFF.

2 Q. CAN WE ASSUME THAT SINCE YOU DIDN'T MAKE ANY
3 REFERENCE TO TURNING THE TAPE OFF DURING THE
4 INTERVIEW THAT IT WAS NOT IN FACT TURNED OFF?

5 A. NO, SIR. I WOULDN'T SAY THAT, BUT I DON'T RECALL
6 IT. IF IT'S NOT IN THE STATEMENT, I DON'T BELIEVE
7 I TURNED IT OFF FOR ANY REASON OR NOT.

8 Q. YOU CAN'T THINK OF ANY REASON WHY YOU WOULDN'T HAVE
9 TURNED IT OFF?

10 A. NO, SIR.

11 Q. AND TO BEST OF YOUR RECOLLECTION, IT WAS NOT TURNED
12 OFF?

13 A. I DON'T SEE THAT IT BY BRIEFING IT IN MY STATEMENT
14 HERE THAT IT WAS TURNED OFF. SO, I DON'T RECALL.

15 Q. AND JUST TO BE CLEAR, WAS ANYBODY ELSE PRESENT
16 DURING THIS INTERVIEW ON THE NINTH?

17 A. NO, SIR; JUST THE TWO OF US WERE IN THE OFFICE.

18 Q. OKAY. NOW, WHEN THE STATEMENT WAS COMPLETED AND
19 THE TAPE TURNED OFF AT 12:13 P.M., DID YOU HAVE ANY
20 ADDITIONAL CONVERSATIONS WITH MR. SIMMONS?

21 A. NO, SIR, I DIDN'T.

22 Q. DID YOU ASK HIM ANY MORE QUESTIONS?

23 A. NO, SIR, I DIDN'T.

24 Q. DID HE OFFER ANY STATEMENTS FREELY OR SPONTANEOUSLY
25 WITHOUT YOUR QUESTIONS?

1 A. AT SOME POINT HE REQUESTED A BIBLE.

2 Q. DO YOU KNOW WHEN THAT WOULD HAVE BEEN?

3 A. I DON'T RECALL. BUT HE ASKED ME IF I COULD GET HIM
4 A BIBLE.

5 Q. WAS THAT ON THE NINTH?

6 A. I BELIEVE THAT WAS ON THE FIFTH BECAUSE I THINK ON
7 THE NINTH I BROUGHT THE BIBLE BACK TO HIM.

8 Q. SO THE ENTIRE CONVERSATION THAT YOU HAD WITH MR.
9 SIMMONS ON THE NINTH WAS RECORDED?

10 A. YES, SIR.

11 Q. DID YOU HAVE ANY FURTHER DISCUSSIONS AFTER THE
12 NINTH WITH MR. SIMMONS?

13 A. NO, SIR. AFTER THE END OF THE TAPE, THAT WAS ALL.
14 I HAD NO OTHER CONVERSATION WITH HIM.

15 Q. HAVE YOU SEEN MR. SIMMONS SINCE THE NINTH EXCEPT
16 HERE IN THE COURTROOM OVER THE LAST COUPLE OF DAYS?

17 A. I DON'T BELIEVE SO.

18 Q. WERE YOU PRESENT AT THE BOND HEARING THAT WE'VE
19 HEARD ABOUT TODAY?

20 A. NO, SIR, I WASN'T PRESENT.

21 Q. I UNDERSTAND THAT YOU FOLLOWED THE VEHICLE THAT WAS
22 TRANSPORTING MR. SIMMONS FROM THE RICHLAND COUNTY
23 JAIL TO THE SUMMERVILLE POLICE DEPARTMENT; IS THAT
24 CORRECT?

25 A. YES, SIR; THAT'S CORRECT.

KENNY MEARS - DIRECT/MR. BAILEY

1 Q. DID YOU SPEAK WITH MR. SIMMONS ON THAT DAY?

2 A. THAT MORNING WHEN I WAS DOING THE INTERVIEW.

3 Q. THAT WAS THE NINTH, THEN?

4 A. THAT WAS THE NINTH.

5 Q. DID YOU SPEAK WITH HIM AT ALL DURING HIS
6 TRANSPORTATION?

7 A. NO, SIR.

8 Q. DID YOU SPEAK WITH HIM AT ALL ONCE YOU GOT HIM TO
9 THE SUMMERVILLE POLICE DEPARTMENT?

10 A. NO, SIR.

11 Q. TO THE BEST OF YOUR KNOWLEDGE, DID HE MAKE ANY
12 STATEMENTS EITHER EN ROUTE OR AT THE SUMMERVILLE
13 POLICE DEPARTMENT?

14 A. I DIDN'T HEAR HIM MAKE ANY.

15 Q. WERE YOU EVER ADVISED BY MS. HENDRICKS OR MS. REESE
16 ABOUT THE STATEMENT THAT HE PURPORTEDLY MADE AT THE
17 BOND HEARING?

18 A. I LEARNED OF THAT STATEMENT MAYBE A WEEK, YOU KNOW,
19 A FEW DAYS AGO THAT HE MADE A STATEMENT.

20 Q. AT NO TIME BEFORE THAT WERE YOU EVER TOLD?

21 A. NO, SIR.

22 MR. THEOS: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: ANYTHING ON RE-DIRECT?

24 MR. BAILEY: NO RE-DIRECT, YOUR HONOR. THE
25 ONLY THING THAT I COULD BRING UP, IF YOUR

MOTIONS

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1 HONOR NEEDS TO HEAR IT, IS THAT MS. REESE AND
2 MS. HENDRICKS WERE PRESENT, AND THEY CAN
3 ATTEST TO THE FACT THAT THEY WITNESSED THE
4 HANDWRITTEN STATEMENT ON DECEMBER THE FIFTH.
5 BUT THAT'S ALREADY IN EVIDENCE, SO I DON'T SEE
6 ANY NEED TO CALL THEM AT THIS POINT.

7 THE COURT: ALL RIGHT, SIR. YOU MAY PROCEED,
8 PLEASE, SIR.

9 MR. THEOS: YOUR HONOR, CAN I ASK MR. BAILEY
10 ONE QUESTION RELATED TO THAT SO WE CAN BE
11 CLEAR? WERE THEY PRESENT DURING THE ENTIRE
12 TIME WHEN MR. SIMMONS WAS WRITING THE
13 STATEMENT, OR DID THEY JUST WITNESS THE
14 SIGNATURE?

15 MR. BAILEY: YOUR HONOR, I CAN'T SPEAK FOR
16 THEM. JUDGE, JUST FOR THE RECORD, THEY
17 ADVISED ME THEY WERE THERE WHEN THE STATEMENT
18 STARTED. THEY LEFT THE ROOM, AND THEY CAME
19 BACK AND OBSERVED HIM SIGNING THE STATEMENT.
20 BUT THEY WERE NOT THERE IN THE MIDDLE.

21 THE COURT: AND YOU WOULD OFFER THEM FOR CROSS
22 IF YOU'D LIKE TO CROSS?

23 MR. THEOS: NO, SIR.

24 THE COURT: THEY'RE STILL UNDER OATH. NO
25 PROBLEM.

MOTIONS

1 MR. THEOS: NO, SIR; THAT'S SUFFICIENT.

2 THE COURT: OKAY.

3 MR. BAILEY: YOUR HONOR, THE ONLY OTHER THING
4 THAT I HAVE THAT COULD POSSIBLY, I GUESS,
5 RELATE TO JACKSON V. DINNO WOULD BE SGT. EARL
6 WORSHAM. SGT. WORSHAM IS A TOWN POLICE OFFICE
7 WHO WAS REFERENCED BY ONE OF THE WITNESSES WHO
8 WAS---

9 THE COURT: THE TOWN OF SUMMERVILLE OR ST.
10 GEORGE?

11 MR. BAILEY: THE TOWN OF SUMMERVILLE.

12 THE COURT: YES, SIR.

13 MR. BAILEY: HE WAS ON THE TASK FORCE, AND
14 HIS TESTIMONY WOULD BE THAT ON OCTOBER THE
15 17TH, 1997, ABOUT 5:30, HE ENCOUNTERED MR.
16 SIMMONS IN SUMMERVILLE, HAD A BRIEF
17 CONVERSATION WITH HIM, AND ASKED HIM IF HE
18 WOULD COME TO THE POLICE STATION THE FOLLOWING
19 MONDAY TO BE INTERVIEWED. HE AGREED TO COME
20 IN; SAID "I'LL BE THERE," AND NEVER SHOWED UP.

21 THE COURT: WHAT'S THE DATE WAS THAT?

22 MR. BAILEY: THAT WAS OCTOBER THE 17TH, 1997.
23 AND IF YOU THINK IT'S JACKSON V. DINNO TYPE
24 STUFF, HE WAS NOT IN CUSTODY. I CAN BRING HIM
25 HERE WEDNESDAY.

MOTIONS

1 MR. THEOS: YOUR HONOR, WE'LL ACCEPT THAT BY
2 WAY OF PROFFER OF MR. BAILEY IF THAT'S THE
3 EXTENT OF THE STATEMENT THAT WAS MADE BY MR.
4 SIMMONS.

5 THE COURT: THAT HE ASKED HIM TO COME IN THE
6 NEXT DAY TO BE INTERVIEWED AND DID NOT?

7 MR. BAILEY: NOT THE NEXT DAY. I THINK THIS
8 WAS LIKE ON A THURSDAY OR FRIDAY. HE ASKED
9 HIM TO COME IN THE FOLLOWING MONDAY. THERE
10 WERE SOME OTHER CONVERSATIONS, YOUR HONOR,
11 REGARDING DRUG DEALINGS AND ALL THAT THAT I
12 WOULD NOT ASK HIM TO GET INTO. BUT AS FAR AS
13 WHAT WE'RE TALKING ABOUT HERE, THAT WOULD BE
14 IT.

15 MR. THEOS: AND YOU WOULD NOT ASK HIM THOSE
16 THINGS AT THE TIME OF TRIAL?

17 MR. BAILEY: NO; I WOULDN'T GET INTO THAT.
18 AND THEN AFTER HE SAID I'LL DO THAT IS WHAT
19 HIS RESPONSE WAS, AND THEN REALIZED HE DIDN'T
20 SHOW UP. WORSHAM WOULD TESTIFY HE WENT OUT
21 LOOKING FOR HIM, COULDN'T FIND HIM, AND HE HAD
22 APPARENTLY HAD LEFT TOWN.

23 THE COURT: LET ME ASK YOU. WHAT IS THE
24 SIGNIFICANCE OR RELEVANCE OF THAT?

25 MR. BAILEY: YOUR HONOR, THE FACT THAT HE

MOTIONS

1 AGREED TO COME IN AND BE INTERVIEWED AND THEN
2 LEFT TOWN. HE NEXT APPEARED AT THE RICHLAND
3 COUNTY JAIL WHERE HE IS ARRESTED FOR
4 SHOPLIFTING. THERE'S SOME EVIDENCE OF A
5 FLIGHT RISK. HE AGREED TO TALK TO POLICE,
6 DIDN'T SHOW, AND LEAVES HOME AND GOES TO
7 COLUMBIA.

8 THE COURT: THAT'S MARGINAL AT BEST.

9 MR. BAILEY: JUDGE, I'VE BEEN NOTICED WITH AN
10 INSANITY DEFENSE, AND THAT WOULD CERTAINLY
11 SHOW KNOWLEDGE OF CONSCIOUS WRONGDOING IF HE
12 FEARED TELLING THE POLICE WHAT HE KNEW AFTER
13 HE HAD AGREED TO SHOW UP. AND I'M NOT SURE
14 HOW SERIOUS THEY ARE ABOUT AN INSANITY
15 DEFENSE. I DON'T HAVE ANY REPORTS OR
16 ANYTHING. BUT THEY HAVE NOTICED ME ON THAT.
17 AND I THINK I---

18 THE COURT: WELL, WE'RE IN CAMERA OUTSIDE THE
19 PRESENCE OF THE JURY, AND I TELL YOU TO PUT
20 YOUR BEST FOOT FORWARD JUST AS I TELL THE
21 DEFENDANT TO PUT THEIR BEST FOOT FORWARD. I'M
22 GOING TO LET YOU TRY YOUR CASE IF YOU WANT TO
23 PRESENT THEM. BUT THEY'RE NOT AVAILABLE
24 TODAY.

25 MR. BAILEY: HE'S NOT HERE TODAY. AND,

1 OBVIOUSLY, SIMMONS WAS NOT IN CUSTODY AT THAT
2 TIME, SO I DON'T THINK IT'S A MIRANDA
3 SITUATION AT ALL. BUT IT IS SOMETHING THAT
4 THE DEFENDANT SAID TO LAW ENFORCEMENT.

5 THE COURT: YES, SIR.

6 MR. THEOS: YOUR HONOR, OUR POSITION WOULD BE
7 THAT IT REALLY IS IRRELEVANT, AND I UNDERSTAND
8 WHY MR. BAILEY WOULD WANT TO OFFER IT. BUT
9 CERTAINLY ANY PREJUDICIAL EFFECT THAT IT MIGHT
10 HAVE WOULD FAR OUTWEIGH ANY PROBATIVE VALUE
11 THAT MAY BE THERE. AND I DON'T SEE ANY
12 PROBATIVE VALUE BECAUSE IT IS NOT RELEVANT.

13 THE COURT: I WASN'T AWARE THAT Y'ALL HAD
14 SERVED HIM NOTICE OF AN INSANITY DEFENSE.

15 MR. THEOS: YOUR HONOR, WE ARE NOT GOING TO
16 PURSUE AN INSANITY DEFENSE. SO IF MR.
17 BAILEY'S CONTENTION IS THAT IT SOMEHOW RELATES
18 TO THAT, I DON'T THINK IT'S RELEVANT ANYWAY.

19 MR. BAILEY: IT'S CERTAINLY LESS RELEVANT,
20 JUDGE, IF THERE'S GOING TO BE NO INSANITY
21 DEFENSE. THIS IS THE FIRST I'VE HEARD THAT
22 THERE ISN'T GOING TO BE ONE. I'VE ALSO BEEN
23 NOTICED OF A G.V.M.I. (PHONETICALLY SPELLED),
24 AND I DON'T KNOW WHETHER YOU -- WELL, WE'RE A
25 WEEK AWAY FROM COURT; AND I NEED TO KNOW

MOTIONS

1 BECAUSE I DON'T HAVE ANY REPORTS WHICH WOULD
2 INDICATE THAT FROM YOU.
3 MR. THEOS: YOU DO HAVE A REPORT.
4 MR. BAILEY: THAT WOULD INDICATE G.V.M.I.?
5 MR. THEOS: WELL, YOU'VE GOT A REPORT FROM DR.
6 MORTON THAT I'VE PROVIDED. YOU'VE GOT DR.
7 SAYLOR'S TEST RECORDS, AND YOU'VE GOT DR.
8 KEY'S TEST RECORDS.
9 MR. BAILEY: OKAY. BUT I DON'T SEE ANYTHING
10 IN THERE THAT WOULD INDICATE ANY IRRESISTIBLE
11 IMPULSE, ANY BASIS TO G.V.M.I. AND TO OTHER
12 REPORTS THAT ARE COMING THAT WE PROBABLY NEED
13 TO---
14 MR. THEOS: IF THERE ARE OTHER REPORTS, I'LL
15 CERTAINLY TURN THEM OVER. BUT WE'VE COMPLIED
16 WITH THE RULE BY PROVIDING NOTICE.
17 THE COURT: ALL RIGHT. SO, AGAIN, MR. THEOS
18 AND BELL, IS IT YOUR DECLARED INTENT NOT TO
19 INTERJECT A DEFENSE OF INSANITY?
20 MR. THEOS: THAT'S OUR INTENT, YOUR HONOR. AND
21 IF SOMETHING CHANGES BETWEEN NOW AND MONDAY OR
22 WEDNESDAY, WE'LL CERTAINLY NOTIFY MR. BELL.
23 BUT IT IS NOT OUR INTENT TO PURSUE THAT
24 DEFENSE AT THIS POINT.
25 THE COURT: NOTIFY MR. BELL?

1 MR. THEOS: I'M SORRY; MR. BAILEY.

2 THE COURT: YES, SIR.

3 MR. BAILEY: I WAS JUST SAYING I'D CERTAINLY
4 LIKE TO KNOW FOR SURE AT SOME POINT AND TIME
5 BEFORE I OPEN, ANYWAY, SO I'LL KNOW HOW TO
6 HANDLE THAT IF IT'S THERE.

7 THE COURT: WELL, I WAS JUST ASKING TO PLEASE;
8 A TRIAL IS A SEARCH FOR THE TRUTH, AND EACH
9 SIDE HAS THEIR OWN STRATEGY AND REASONS
10 THEREFOR WHICH YOU'RE PRIVILEGED TO DO. BUT
11 JUST IN A SPIRIT OF COOPERATION, PLEASE
12 COMMUNICATE EACH WITH THE OTHER. WHAT ELSE,
13 PLEASE?

14 MR. BAILEY: NOTHING WITH REGARD TO THE
15 JACKSON V. DINNO.

16 THE COURT: ALL RIGHT. YOU MAY PROCEED WITH
17 SUCH TESTIMONY, IF ANY, THAT YOU DEEM PROPER
18 IN REGARD TO THIS HEARING.

19 MR. THEOS: YOUR HONOR, WE'RE NOT GOING TO
20 PRESENT ANY WITNESSES FOR TESTIMONY IN THIS
21 HEARING.

22 THE COURT: ALL RIGHT. WELL, THEN, SHALL I
23 HEAR ANY CLOSING ARGUMENTS?

24 MR. BAILEY: YOUR HONOR, JUST VERY BRIEFLY.
25 THE RECORD INDICATES THAT MR. SIMMONS IN EARLY

1 DECEMBER, 1997, WAS GIVEN MIRANDA RIGHTS SEVEN
2 TIMES; THREE TIMES BY INVESTIGATOR HOWARD;
3 FOUR TIMES BY INVESTIGATOR MEARS. HE'S A HIGH
4 SCHOOL GRADUATE. IT'S APPARENT FROM THE
5 TESTIMONY THAT HE CAN READ, THAT HE HAS SOME
6 DEGREE OF INTELLIGENCE, AND THAT THE RIGHTS
7 WERE EXTENSIVE. AND WE THINK THAT EVERYTHING
8 WAS COMPLIED WITH, AND THE ONLY REASONABLE
9 CONCLUSIONS TO BE DRAWN IS THAT HE UNDERSTOOD
10 THOSE RIGHTS AND FREELY AND VOLUNTARILY WAIVED
11 THEM ON EACH OCCASION THAT HE GAVE STATEMENTS
12 TO LAW ENFORCEMENT.

13 THE COURT: YES, SIR.

14 MR. THEOS: THANK YOU, YOUR HONOR. YOUR HONOR,
15 I'VE HEARD THE TESTIMONY OF THE OFFICERS TODAY
16 THAT SLED AGENT MEARS AND THE OTHER OFFICERS
17 RELATED TO THE ADVISEMENT OF THOSE RIGHTS.
18 BUT I ALSO THINK BACK YESTERDAY TO THE
19 TESTIMONY OF ALL OF THE DOCTORS THAT WORK FOR
20 THE STATE DEPARTMENT OF DISABILITIES AND
21 SPECIAL NEEDS AND THE STATE HOSPITAL HALL
22 INSTITUTE. IT'S CLEAR FROM THEIR TESTIMONY
23 THAT MR. SIMMONS DID NOT COMPREHEND HIS
24 MIRANDA WARNINGS AT THE TIME OF THE NOVEMBER
25 THE 23RD EVALUATION, THE DECEMBER FIRST

1 EVALUATION AT THE HALL INSTITUTE, AND
2 THROUGHOUT HIS STAY AT THE HALL INSTITUTE. IN
3 FACT THERE ARE ENTRIES IN THE RECORDS THAT
4 REFLECT THAT HE HAD DIFFICULTY COMPREHENDING
5 HIS MIRANDA WARNINGS. THERE'S A TRANSCRIPT
6 THAT REFLECTS THE SAME THING RELATED TO THE
7 JANUARY THE EIGHTH---

8 THE COURT: I'VE NOT SEEN THAT; AND IT'S NOT
9 IN EVIDENCE.

10 MR. THEOS: IT IS IN EVIDENCE, YOUR HONOR.
11 BUT IT'S SEALED AND YOU HAVE NOT SEEN IT.
12 YOU'RE CORRECT. BUT IF I COULD SUMMARIZE WHAT
13 -- IT WAS ABOUT, PROBABLY ABOUT FORTY MINUTES
14 ACCORDING TO THE DOCTOR'S TESTIMONY THAT WAS
15 TAKEN TO ATTEMPT TO EXPLAIN THOSE MIRANDA
16 WARNINGS TO MR. SIMMONS PRIOR TO HAVING HIM
17 SIGN THE ACKNOWLEDGMENT OF THOSE MIRANDA
18 WARNINGS. YOUR HONOR, IT'S OUR CONTENTION
19 THAT EVEN THOUGH THE STATE HOSPITAL CONCLUDED
20 THAT THE END OF THAT FORTY MINUTES THAT IN
21 THEIR OPINION HE UNDERSTOOD THOSE RIGHTS, THAT
22 ON NOVEMBER THE 23RD OF 1997, THE FIRST
23 EVALUATION, CLEARLY HE DID NOT AND THE
24 EVALUATION WAS ADJOURNED. THEREAFTER THERE
25 WERE TESTS CONDUCTED TO DETERMINE WHETHER OR

1 NOT HE WAS MALINGERING AND TO VERIFY THE I.Q.
2 IN THE UPPER SIXTIES THAT HAD BEEN DIAGNOSED
3 BY DR. SAYLOR. THOSE TESTS WERE CONDUCTED ON
4 DECEMBER THE FIRST. IT WAS DETERMINED AS A
5 RESULT OF THOSE TESTS THAT MR. SIMMONS WAS NOT
6 MALINGERING. AND IT WAS FURTHER -- HIS I.Q.
7 WAS FURTHER CONFIRMED AS BEING IN THE UPPER
8 SIXTIES. AND IT WAS 66, HIS COMBINED I.Q.
9 ALSO, YOUR HONOR, WHEN YOU LOOK AT THOSE
10 SCHOOL RECORDS THAT WERE INTRODUCED YESTERDAY,
11 THE SCHOOL RECORDS REFLECT, ALTHOUGH THERE IS
12 A SCORE OF 104 ON SOMETHING, AND THEN THERE'S
13 A NINETY SOMETHING SCORE ON SOMETHING; IT
14 CONSISTENTLY REFLECTS THAT MR. SIMMONS' I.Q.
15 IS IN THE SIXTY RANGE. THERE WERE A SERIES OF
16 PROMOTIONS IN SCHOOL. THERE WERE A SERIES
17 OF---

18 THE COURT: YOU MEAN BESIDES THE ELEVENTH
19 GRADE? THAT'S THE ONLY ONE THAT I REMEMBER.
20 BUT SOCIAL PROMOTIONS, WE'LL CALL IT?

21 MR. THEOS: YES, SIR.

22 THE COURT: HE REPEATED THE ELEVENTH GRADE?

23 MR. THEOS: HE REPEATED THE ELEVENTH GRADE.

24 AND THERE WERE A SERIES OF PROMOTIONS THROUGH
25 THE SCHOOL RECORDS. AND, YOUR HONOR, IT'S OUR

1 POSITION THAT -- EVEN IN THE ELEVENTH GRADE,
2 ACCORDING TO THE RECORDS CUSTODIAN WHO
3 TESTIFIED -- AND I CAN'T RECALL HER NAME. IT
4 MAY HAVE BEEN BUSH.

5 THE COURT: PAULA WALSH, THE REGISTRAR AND
6 RECORDS CUSTODIAN?

7 MR. THEOS: ACTUALLY IT WAS MRS. WALSH AND
8 MRS. HILTON. BUT I THINK MRS. WALSH IS THE
9 ONE THAT MAY HAVE INDICATED -- WELL, IT MAY
10 HAVE BEEN MRS. HILTON, YOUR HONOR. I DIDN'T
11 WRITE WHICH ONE DOWN. BUT CLEARLY I THINK WE
12 CAN ALL RECALL THAT HIS GRADE EQUIVALENCY
13 LEVEL WAS A FIFTH OR SIXTH GRADE LEVEL.

14 THE COURT: THAT WAS MRS. HILTON.

15 MR. THEOS: AND, YOUR HONOR, BASED UPON THE
16 TOTALITY OF THAT INFORMATION AND THOSE
17 CIRCUMSTANCES RELATED, CLEARLY HIS RESPONSES
18 TO THE MIRANDA WARNINGS AS GIVEN TO HIM BY,
19 NOT ONLY THE DOCTORS AT THE HALL INSTITUTE,
20 BUT BY THE DOCTORS MOREOVER AT THE SOUTH
21 CAROLINA DEPARTMENT OF DISABILITIES AND
22 SPECIAL NEEDS. MR. SIMMONS' RESPONSES WERE
23 CONSISTENT WITH HIS LACK OF UNDERSTANDING OF
24 HIS MIRANDA WARNINGS; AND IN PARTICULAR HIS
25 RIGHT TO REMAIN SILENT AND HIS UNDERSTANDING

OR MISUNDERSTANDING THAT WHEN CONFRONTED WITH
AUTHORITY FIGURES, HE HAD TO ANSWER QUESTIONS.
YOUR HONOR, THE DOCTORS' OPINIONS RELATED TO
THAT ALL HINGED ON THIS PREMISE THAT THEY
BELIEVE, OR THIS BELIEF THEY HAVE THAT MR.
SIMMONS IS MALINGERING. AND, OF COURSE, THAT
IS AN OPINION. BUT CLEARLY THE EVIDENCE AND
THE FACTS CONVEY THAT THERE IS A LACK OF
UNDERSTANDING, A LACK OF VOICE UNDERSTANDING.
AND ALL WE HAVE FROM THE RECORDS RELATED TO
THESE STATEMENTS, THE THREE RECORDED
STATEMENTS AND THEN THE OTHER STATEMENTS, ARE
THAT THEY WERE SIMPLY READ TO HIM, AND HE MAY
HAVE PROVIDED SOME RESPONSE AFFIRMING HIS
UNDERSTANDING. BUT THEY WERE NEVER REALLY
EXPLAINED, AND HE WAS NEVER ASKED TO PROVIDE
AN EXPLANATION, OR HIS OWN EXPLANATION OF WHAT
THEY MEANT. BASED UPON THAT, YOUR HONOR, WE
FEEL THAT THE STATE HAS NOT MET ITS BURDEN BY
SHOWING BY A PREPONDERANCE OF THE EVIDENCE
THAT HE WAS CAPABLE AND DID IN FACT MAKE A
KNOWING AND INTELLIGENT WAIVER OF HIS MIRANDA
RIGHTS SUCH THAT THESE STATEMENTS OUGHT TO BE
INTRODUCED. WITH RESPECT TO THE FOUR
STATEMENTS, THE THREE TAPE RECORDED STATEMENTS

1 AND THE SINGLE HANDWRITTEN STATEMENT OF, I
2 BELIEVE IT WAS THE FIFTH ALSO. WITH RESPECT
3 TO THE STATEMENT THAT WAS REPORTEDLY MADE AT
4 THE TIME OF THE BOND HEARING. I FIND THAT TO
5 BE EXTREMELY SUSPECT, YOUR HONOR. THERE WAS
6 NO REPORT MADE OF IT. THERE WAS NO
7 TRANSCRIPTION IN ANY WAY. THERE WERE NO NOTES
8 MADE OF IT. THERE WAS NO REFERENCE MADE TO
9 IT. IT WASN'T REPEATED TO ANYBODY. CERTAINLY
10 IT WAS A CRUCIAL PIECE OF INFORMATION.

11 THE COURT: WELL, YOU CAN ARGUE THAT TO THE
12 JURY.

13 MR. THEOS: I UNDERSTAND WE CAN, YOUR HONOR.
14 BUT IT'S AN EXTREMELY PREJUDICIAL STATEMENT.
15 AND TO COME FORWARD TWO WEEKS BEFORE TRIAL AND
16 SAY "BY THE WAY, WE RECALL THIS STATEMENT
17 BEING MADE; WE NEVER TOLD ANYBODY ABOUT IT;
18 BUT WE NOW RECALL IT" IS EXTREMELY
19 PREJUDICIAL. I DON'T KNOW -- THERE WAS NO
20 TESTIMONY REGARDING ANY PROCEDURAL SAFEGUARDS.
21 YOU MAY THINK THIS SOUNDS MORE LIKE A JURY
22 ARGUMENT, BUT---

23 THE COURT: WELL, IT DOES, BECAUSE THAT WAS --
24 I'M NOT GOING TO SAY IT WAS A SPONTANEOUS
25 UTTERANCE, BUT FOR CERTAIN IT WAS NOT IN

1 RESPONSE TO ANY CUSTODIAL INTERROGATION OR
2 PLANNED QUESTIONING. SO I DON'T SEE WHERE
3 THAT COMES UNDER YOUR DINNO JACKSON. BUT THE
4 RESPONSE TO THE SISTER'S QUESTION "DID YOU
5 KILL THE OLD LADY." BUT GO AHEAD.

6 MR. THEOS: THAT'S IT, YOUR HONOR. OUR
7 POSITION IS THAT IT'S SUSPECT AT BEST. THERE
8 IS NO RECORDING OF IT IN ANY WAY AND A REPORT
9 MADE AS A RESULT OF IT. AND IT IS EXTREMELY
10 PREJUDICIAL. AND WE DID JUST RECEIVE NOTICE
11 OF IT. AND, YOUR HONOR, I WOULD ALSO JUST
12 INCORPORATE THE ARGUMENTS THAT WERE MADE IN
13 THE MEMORANDUM IN SUPPORT OF OUR MOTION TO
14 SUPPRESS MR. SIMMONS' STATEMENTS AS PART OF
15 OUR ARGUMENT THAT WE HAVE PROVIDED TO YOU AS
16 WELL AS MR. BAILEY.

17 THE COURT: WHICH I HAVE READ. ANYTHING IN
18 REPLY, MR. SOLICITOR?

19 MR. BAILEY: YOUR HONOR, I DON'T REALLY THINK
20 I NEED TO. BUT JUST IN RESPONSE TO THIS THING
21 ABOUT THE BOND HEARING. THOSE STATEMENTS WERE
22 REPORTED TO THE NEWSPAPER. THE NEWSPAPER
23 REPORTER PUBLISHED THIS. AND I SHOWED THAT TO
24 MR. THEOS. SO HE KNOWS THAT WASN'T SOMETHING
25 THESE LAW ENFORCEMENT OFFICERS MADE UP.

1 THE COURT: PASS IT UP. (AT THIS TIME THE
2 COURT EXAMINES DOCUMENT.) MR. SOLICITOR, I SEE
3 IN EACH OF THESE ARTICLES WHERE ALLEGEDLY THE
4 DEFENDANT, SIMMONS, SAID "I'D LIKE TO
5 APOLOGIZE TO THE FAMILY;" BUT I DON'T SEE THE
6 STATEMENT -- MAYBE I OVERLOOKED IT -- THAT
7 "DID YOU KILL THE OLD LADY?" AND "YES, I
8 KILLED THE OLD LADY." DID I MISS IT?
9 MR. ROBBINS: IT'S NOT QUOTED IN THERE,
10 JUDGE. IN THE OPENING PARAGRAPH, I BELIEVE
11 THE ONE IN YOUR RIGHT HAND, SHE STATES THAT HE
12 ADMITTED TO DOING IT. AND SHE JUST DIDN'T
13 PUBLISH THE STATEMENT. BUT THE ADMISSION THAT
14 HE---
15 THE COURT: WELL, LET ME GIVE YOU THESE
16 ARTICLES BACK. IF YOU WANT THEM IN EVIDENCE
17 FOR I.D., YOU CAN GET THEM. BUT I DON'T SEE
18 THAT REVELATION IN THAT EPISTLE. IS THERE
19 ANYTHING ELSE ON THIS MATTER, GENTLEMEN?
20 MR. BAILEY: NO, SIR; NOT REGARDING JACKSON
21 VS. DINNO.
22 MR. THEOS: YOUR HONOR, THE ONLY OTHER THING
23 IS THAT YESTERDAY WE FORGOT TO MARK THE TEST
24 DATA AND RESULTS OF DR. SANDLER. IF WE COULD
25 JUST MARK THOSE. AND I THINK IT'S WITHOUT

1 OBJECTION.

2 THE COURT: THAT WERE IN FROM THE OTHER---

3 MR. THEOS: FROM THE---

4 THE COURT: FROM THE HEARING?

5 MR. THEOS: RIGHT. THEY WERE FROM THE BLAIR
6 HEARING. BUT AS YOU RECALL, WE DISCUSSED
7 PRIOR TO THAT SOME OF THE TESTIMONY OF THE
8 EXPERTS MIGHT OVERLAP AND WOULD BE USED FOR
9 PURPOSES OF THE JACKSON VS. DINNO HEARING AS
10 WELL.

11 THE COURT: SO WHY DON'T WE JUST CRAVE
12 REFERENCE TO THAT EXHIBIT NUMBER? I MEAN,
13 ONLY WITH ONE NUMBER FOR THE BLAIR HEARING.
14 BUT WE CAN CRAVE REFERENCE TO IT'S ALSO PART
15 AND PARCEL TO THIS RECORD.

16 MR. THEOS: THAT'S FINE, YOUR HONOR.

17 THE COURT: I DON'T WANT TO HAVE TWO EXHIBIT
18 NUMBERS ON IT IS WHAT I'M SAYING.

19 MR. THEOS: I AGREE.

20 THE COURT: I WOULDN'T THINK THAT MRS. KATHI
21 WOULD EITHER. IT'S CONFUSING ENOUGH. YES,
22 SIR. THAT'S PART AND PARCEL TO THE RECORD.

23 MR. THEOS: AND, YOUR HONOR, JUST TO BE CLEAR;
24 I GUESS WE DIDN'T MAKE THAT STATEMENT AT THE
25 OUTSET THAT SOME OF THE TESTIMONY OF SOME OF

1 THE WITNESSES IN THE BLAIR HEARING WOULD
2 OVERLAP.

3 THE COURT: JUST PUT THAT IN THE RECORD, MR.
4 THEOS.

5 MR. THEOS: WELL, WE WERE TALKING ABOUT THAT
6 ONE EXHIBIT WITH REFERENCE TO ALL OF THE
7 EXHIBITS.

8 THE COURT: GO AHEAD. KEEP TALKING. WHAT
9 ELSE DO YOU WANT---

10 MR. THEOS: I SIMPLY JUST WANT TO MENTION THE
11 RECORD WAS CLEAR RELATED TO ALL EXHIBITS AND
12 NOT JUST THIS ONE.

13 THE COURT: I THINK THAT WAS CLEAR FROM
14 YESTERDAY. ALL RIGHT, MADAM COURT REPORTER,
15 LET THE RECORD REFLECT THE COURT HAS OBSERVED
16 THE DEMEANOR OF THE WITNESSES, LISTENED
17 CAREFULLY, MADE COPIOUS NOTES. THE COURT
18 FINDS THAT THE MIRANDA WARNINGS WERE GIVEN TO
19 THE SUBJECT, MR. SIMMONS; THAT IT'S CLEAR TO
20 THE COURT FROM THE READING OF THE TAPE
21 TRANSCRIPTS AND HIS INITIALING THEM THAT HE
22 DID IN FACT UNDERSTAND THEM. THERE'S NO
23 EVIDENCE OF ANY DURESS OR ANY COMPULSION OR
24 ANY COERCION; THAT HE KNOWINGLY AND
25 VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND THAT

1 NO PROMISES OR THREATS OR HOPE OR PROMISE OF
2 REWARD. AND THE COURT FINDS THAT THESE
3 STATEMENTS, ETC., ARE ADMISSIBLE; WILL BE
4 ALLOWED IN EVIDENCE. OKAY. ANYTHING ELSE,
5 GENTLEMEN, ON THAT ISSUE?

6 MR. BAILEY: NOT THAT ISSUE, YOUR HONOR.

7 MR. THEOS: NOTHING, YOUR HONOR.

8 THE COURT: ALL RIGHT. THEN OFF THE RECORD,
9 MA'AM.

10 (AT THIS TIME OFF-THE-RECORD DISCUSSION WAS HELD
11 REGARDING JURY REQUESTS.)

12 (BRIEF RECESS.)

13 -----
14 THE COURT: ALL RIGHT, GENTLEMEN; ARE WE
15 READY?

16 MR. BAILEY: YES, SIR. I'M READY IF MR. THEOS
17 IS.

18 MR. THEOS: YOUR HONOR, YOU MENTIONED THAT YOU
19 WERE SETTING ASIDE NEXT WEDNESDAY TO DO SOME
20 MOTION HEARINGS IN THIS CASE.

21 THE COURT: NO, SIR. I SAID NEXT WEDNESDAY
22 I'M COMING DOWN TO ST. GEORGE FOR THE PURPOSE
23 OF GOING OVER ANY ADDITIONAL JURY INFORMATION
24 SO THAT WE'LL -- BECAUSE I'M NOT GOING TO WAIT
25 TO DO THESE HERE THEN. WHY?

1 MR. THEOS: WELL, I UNDERSTAND. I WAS JUST
2 GOING TO ASK THAT SINCE NEXT WEDNESDAY
3 APPARENTLY IS MORE OF FINAL HOUSEKEEPING
4 RELATED TO THE JURY INFORMATION, WE HAVE THE
5 BRUNT OF IT NOW. IF WE COULD HEAR THESE
6 MOTIONS NEXT WEDNESDAY RATHER THAN---

7 THE COURT: NO, SIR. WE'RE GOING TO HEAR ANY
8 MOTIONS YOU HAVE TODAY; ANY MOTIONS HE HAS;
9 BECAUSE, GENTLEMEN, WE'RE LESS THAN TEN DAYS
10 FROM TRIAL. WE CAN'T WAIT UNTIL NEXT
11 WEDNESDAY TO BE HEARING MOTIONS.

12 MR. THEOS: YOUR HONOR, I THINK SOME OF HIS
13 MOTIONS ARE MORE APPROPRIATELY HEARD DURING
14 THE TRIAL, ACTUALLY.

15 THE COURT: WELL, I DON'T KNOW. I'LL HAVE TO
16 DECIDE THAT. I'M SURE YOU HAVE A VIEW ON
17 THAT, MR. THEOS. I DON'T KNOW WHAT MOTIONS
18 THEY ARE, BUT I'M NOT GOING TO LET YOU
19 DETERMINE THAT. I HAVE TO DETERMINE THAT.

20 MR. THEOS: I UNDERSTAND. FOR THE RECORD I'D
21 LIKE THE MOTIONS TO BE HEARD NEXT WEDNESDAY
22 WHEN APPARENTLY WE'LL MEET AGAIN RATHER
23 THAN TODAY. I MEAN, I'M NOT PREPARED TO
24 GO---

25 THE COURT: LET ME HOLD THE MOTIONS; AND I'LL

1 GO BACK IN CHAMBERS AND LOOK AT THEM WHILE WE
2 GET THE CLERK UP HERE FOR THESE JUROR
3 THINGS.

4 (BRIEF RECESS.)

5 THE COURT: ALL RIGHT. ALL RIGHT. WE'RE
6 GOING TO HOLD THE MOTIONS IN ABEYANCE. WE'VE
7 GOT THE CLERK AND HER DEPUTY HERE. AND I
8 DON'T WANT TO DELAY THEM. SO WE'LL KEEP THAT
9 ON THE AGENDA. AND, NOW, MR. SOLICITOR, YOU
10 HANDED MY LAW CLERK A NOTEBOOK HERE. AND
11 YOU'VE SHARED -- IS THERE ANYTHING IN HERE
12 THAT HAS NOT BEEN SHARED WITH THE DEFENDANT
13 OR THEIR COUNSEL?

14 MR. BAILEY: JUDGE, THE ONLY THING I HAD IN
15 THERE PREVIOUSLY WAS SOME MEMORANDUMS THAT
16 RELATE PRIMARILY TO THE PENALTY PHASE ISSUE.
17 BUT THEY'VE GOT THAT NOW.

18 THE COURT: OH! YOU'VE GIVEN IT TO THEM NOW?

19 MR. BAILEY: YES, SIR.

20 THE COURT: ALL RIGHT. AND, MR. THEOS, MY
21 SECRETARY SAID I HAD RECEIVED A THICK PACKAGE
22 FROM YOU TODAY. I ASSUME THAT'S THE SAME
23 THING THAT YOU HAD MAILED TO ME ABOUT YOUR
24 OBJECTION AND YOUR MEMORANDUMS IN REGARD TO
25 THE -- IT WAS DATED FEBRUARY NINE WHICH WAS

1 TUESDAY.

2 MR. THEOS: I WOULD ASSUME, JUDGE, THAT'S JUST
3 THE HARD COPY OF WHAT WE HAVE---

4 THE COURT: OKAY. I JUST DIDN'T KNOW IF THERE
5 WAS SOME ADDITIONAL INFORMATION THAT YOU HAD
6 SENT ME THAT I HAD NOT SEEN. MADAM COURT
7 REPORTER, LET THE RECORD REFLECT THAT THE
8 DEFENDANT IS PRESENT. MESSRS. THEOS AND BELL
9 ARE PRESENT, AND THE SOLICITORS ARE PRESENT.
10 AND AT THIS TIME -- AND I THANK Y'ALL FOR
11 MAKING THESE COPIES AND FOR PREPARING THIS
12 INFORMATION SO WE CAN REVIEW THE MATTERS
13 RELATIVE TO THE JURORS WHO CANNOT BE LOCATED
14 OR WHO CAN BE AGREED THAT PERHAPS CAN BE
15 EXCUSED. NOW, MADAM CLERK, YOU DON'T HAVE A
16 COMPUTER PRINTOUT THAT SHOWS THE RACE AND
17 GENDER?

18 MS. FOOTMAN: I DON'T HAVE IT HERE, BUT I CAN
19 GO GET IT.

20 THE COURT: AND THE DATE OF BIRTH. ISN'T THAT
21 ON THE COMPUTER THING?

22 MS. FOOTMAN: YES.

23 THE COURT: DID YOU JUST WHITE IT OUT?

24 MS. FOOTMAN: NO. WE DON'T GIVE THAT TO THE
25 PUBLIC.

1 THE COURT: WELL, I KNOW. BUT WHAT GOOD DOES
2 IT DO FOR YOU TO HAVE IT IF I DON'T HAVE IT.

3 MS. FOOTMAN: WELL, IF YOU WANT IT, I CAN GET
4 IT.

5 THE COURT: WELL, I DON'T WANT TO DELAY
6 ANYTHING. BUT IF YOU'VE GOT A COPY OF THAT
7 WITH THESE NUMBERS ON IT, THAT WOULD BE
8 HELPFUL BECAUSE, SEE, THOSE ARE
9 THINGS WE HAVE TO KEEP UP WITH DURING THE
10 TRIAL. SO IF YOU'VE GOT IT, IT DOESN'T HELP
11 FOR THE COPY TO BE DOWNSTAIRS. IF YOU COULD
12 GET THAT FOR ME, THAT WOULD---

13 MR. BAILEY: JUDGE, I'VE GOT A COPY WHILE
14 WE'RE WAITING.

15 MR. BELL: AND I WOULD LIKE THAT INFORMATION,
16 TOO, BECAUSE THE ONLY ONE I'VE GOT IS JUST
17 NAMES.

18 THE COURT: IS THAT IT RIGHT THERE?
19 (INDICATING.)

20 MR. BAILEY: YES, SIR.

21 THE COURT: IF THAT'S IT, LET'S JUST RUN SOME
22 QUICK COPIES AND SHE WON'T HAVE TO GO
23 DOWNSTAIRS.

24 MR. BAILEY: IT'S GOT MY NOTES IN THE MARGIN
25 HERE, JUDGE.

1 THE COURT: WELL, NO, SIR, WE NEED A CLEAN
2 COPY. I DON'T WANT A COPY. AND I'M SORRY.
3 GENTLEMEN, AGAIN I REITERATE TO YOU THE FACT
4 THAT EVERY EFFORT MUST BE MADE BY THE COURT
5 AND COUNSEL AND ALL CONCERNED TO ACCOMMODATE
6 THE JURORS AND WHEN AND IF AT POSSIBLE,
7 PURSUANT TO AN ORDER SIGNED BY THIS COURT, THE
8 CLERK WAS DIRECTED TO DRAW 350 JURORS. AND
9 THAT WAS DONE, I BELIEVE, ON JANUARY THE 25TH,
10 MADAM CLERK, WITHIN THE THIRTY DAYS FOR THE
11 FEBRUARY THE 22ND TERM. AND I WOULD ASK
12 DURING THIS PROCEEDING HERE FOR YOU GENTLEMEN
13 TO ADVISE THAT WHICH YOU CAN AGREE UPON AS
14 BEING ACCEPTABLE FOR JURORS TO BE EXCUSED
15 BECAUSE I'VE DIRECTED THE CLERK NOT TO EXCUSE
16 ANY JURORS; THAT ONLY THE COURT CAN DO THAT.
17 AND I WOULD DO IT ONLY ON THE RECORD WITH YOU
18 GENTLEMEN HAVING AN OPPORTUNITY TO BE HEARD IN
19 THE MATTER. SO SHALL WE JUST PROCEED TO GO
20 DOWN THE LIST?

21 MR. BAILEY: YES, SIR. JUDGE, I'VE RUN RAP
22 SHEETS ON ALL THE JURORS. I'VE GIVEN MR.
23 THEOS A COPY JUST NOW. HE HASN'T HAD A CHANCE
24 TO LOOK AT IT, OBVIOUSLY. BUT SOME OF THEM
25 HAVE DISQUALIFYING RECORDS. DO YOU WANT ME TO

1 BRING THAT TO YOUR ATTENTION WHEN YOU GET TO
2 IT?

3 THE COURT: IF YOU'D LIKE TO. WE CAN
4 CERTAINLY DO THAT TODAY. I WANT TO DO
5 EVERYTHING WE CAN TODAY BECAUSE I'M GOING TO
6 BE BACK DOWN HERE WEDNESDAY MORNING. BUT
7 AGAIN, WE MAY HAVE ANOTHER FULL DAY OF
8 HEARINGS THEN. AND I WANT YOU GENTLEMEN TO BE
9 ABLE TO DEVOTE YOUR TIME TO YOUR TRIAL
10 PREPARATION. YOU GENTLEMEN EACH HAVE THE
11 PRINTOUT FROM THE CLERK REFLECTING THE NAME OF
12 EACH OF THE 350 JURORS, THEIR DATES OF BIRTH,
13 THEIR SOCIAL SECURITY NUMBER, THEIR VOTER
14 REGISTRATION DATE, AND THEIR SEX AND THEIR
15 RACE. AND I WOULD ASK YOU GENTLEMEN -- AND,
16 MADAM CLERK, I COMMEND YOU FOR NOT SHARING
17 WITH THE PUBLIC INFORMATION ABOUT SOCIAL
18 SECURITY NUMBERS AND THINGS OF THAT -- AND
19 REALLY THE BIRTH DATES. BUT I DEEM IT PROPER
20 FOR THE STATE AND THE DEFENSE AND THE COURT TO
21 HAVE THAT INFORMATION. AND I WOULD ASK YOU
22 GENTLEMEN AS OFFICERS OF THE COURT NOT TO
23 REVEAL THOSE SOCIAL SECURITY NUMBERS OR
24 PICTURES ON DRIVER'S LICENSES OR WHATEVER.
25 AND I'M SURE THAT YOU UNDERSTAND THE REASON

1 FOR THAT. I'M JUST TRYING TO BE PROTECTIVE OF THE
2 JURORS. SO, MADAM CLERK, SUPPOSE WE JUST GO DOWN
3 THIS LIST, AND YOU TELL ME THE ONES THAT WE HAVE --
4 LIKE NUMBER ONE, FOR EXAMPLE, THEY DIDN'T RETURN
5 THAT LITTLE WHITE FORM THAT YOU SENT OUT. BUT
6 NUMBER THREE DID -- THIS FORM HERE. (INDICATING)
7 WE GOT THE QUESTIONNAIRE, BUT WE DIDN'T GET THIS
8 FORM BACK.

9 MS. FOOTMAN: YES, SIR.

10 THE COURT: OR IF IT WAS RETURNED---

11 THE CLERK: WE HAVE A RECOUNT HERE.

12 (INDICATING.)

13 THE COURT: WELL, HERE'S THE ORIGINAL OF
14 WHAT I HAVE, MA'AM. AND ALL THAT IS IS THE
15 QUESTIONNAIRE. AND I ASKED YOU IF THAT SHEET
16 THAT'S ON THE FRONT OF NUMBER THREE, IF THAT WAS
17 RETURNED ON NUMBER ONE AND IF SO, THEN IT NEEDS TO
18 BE ATTACHED.

19 MS. FOOTMAN: THIS SHEET HERE. OKAY.
20 NUMBER ONE DIDN'T SEND IT. WHATEVER YOU HAVE A
21 COPY OF IS WHAT THEY SENT ME.

22 THE COURT: IT IS WITH THIS. SO,
23 GENTLEMEN, DO YOU UNDERSTAND WHAT I'M SAYING THAT
24 THE USUAL LITTLE JUROR RESPONSE FORM, IF IT'S NOT
25 ATTACHED TO THE QUESTIONNAIRE, IT WAS NOT RETURNED

1 BECAUSE I AGAIN REITERATE TO THE CLERK, THERE'S NO
2 NEED TO HAVE IT DOWNSTAIRS, WHEREVER IT IS. THE
3 LAWYERS AND THE COURT NEED IT. SO DO Y'ALL
4 UNDERSTAND WHAT I'M SAYING?

5 MR. BAILEY: YES, SIR.

6 MR. THEOS: YES, SIR.

7 THE COURT: ALL RIGHT. SO WE HAVE A
8 RETURN ON NUMBER ONE?

9 THE CLERK: YES, SIR.

10 THE COURT: ALL RIGHT. NUMBER TWO,
11 GENTLEMEN, WAS SENT TO THE SHERIFF'S DEPARTMENT
12 BECAUSE THERE WAS NO RETURN. AND I'M PUTTING
13 RETURNED AS OF TODAY. TODAY IS FEBRUARY THE 12TH.
14 AND, MA'AM, YOU'VE OPENED TODAY'S -- YOU'VE GOTTEN
15 TODAY'S MAIL FROM THE POST OFFICE. AND ANYTHING
16 THAT'S BEEN RETURNED THROUGH TODAY'S MAIL IN PERSON
17 OR BY MAIL IS INCORPORATED WITH WHAT EACH PERSON
18 HAS.

19 MS. FOOTMAN: YES, SIR.

20 THE COURT: SO, GENTLEMEN, WHAT IS YOUR
21 POSITION ON THE FAILURE TO LOCATE BY THE SHERIFF?
22 DO YOU THINK WE NEED TO GET THE DEPUTIES IN CHARGE
23 OF SERVING WARRANTS OR SERVING SUMMONS TO BE SWORN
24 AND UNDER OATH, BE QUESTIONED AS TO THEIR EFFORTS
25 TO LOCATE THEM AND THEIR FAILURE TO LOCATE? I'LL

1 GO THE EXTRA MILE WITH YOU. WE JUST WANT TO
2 PROTECT THIS RECORD AND BE ACCURATE IN WHAT WE'RE
3 DOING.

4 MR. BAILEY: JUDGE, I'M PERSONALLY
5 SATISFIED. IF THE SHERIFF SAYS HE CAN'T FIND THEM
6 AND THEY CAN'T BE LOCATED, I'LL DEFER TO THE
7 DEFENSE IF THEY NEED SOMETHING MORE THAN THAT TO
8 MAKE A RECORD.

9 MR. THEOS: WE DON'T NEED ANY MORE THAN
10 THAT, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO, MADAM COURT
12 REPORTER, YOU'RE MAKING A RECORD OF THIS SO IF THE
13 CLERK STATES THAT THEY HAVE NOT RECEIVED THE
14 RETURN, THE ENVELOPE WAS SENT BACK FOR FAILURE TO
15 PICK UP OR NO ONE AT THAT ADDRESS, AND IF THE CLERK
16 STATES THAT SHE TURNED IT OVER TO THE SHERIFF FOR
17 SERVICE, ALL PARTIES WILL BE SATISFIED THAT HAS
18 ADMINISTRATIVELY BEEN DONE AND THAT THE SHERIFF'S
19 DEPARTMENT NOT ONLY HAS MADE EFFORTS TO LOCATE THEM
20 BUT CONTINUES -- I ASSUME, MADAM CLERK, THE
21 SHERIFF'S DEPARTMENT IS CONTINUING TO TRY TO LOCATE
22 THEM.

23 MS. FOOTMAN: YES, SIR. WE'VE HAD SOME
24 RETURNED; HOWEVER, SOME HAVE NOT BEEN RETURNED.

25 THE COURT: I UNDERSTAND. IS THAT

1 AGREEABLE, SOLICITOR?

2 MR. BAILEY: THAT'S AGREEABLE, YOUR
3 HONOR.

4 THE COURT: MR. THEOS?

5 MR. THEOS: YES, SIR, YOUR HONOR; THAT'S
6 FINE.

7 THE COURT: ALL RIGHT. SO NUMBER TWO,
8 THE JUROR ROBERT ALLEN, IS NO RETURN. ON NUMBER
9 THREE. THERE IS A RETURN -- ON NUMBER FOUR THERE
10 IS A RETURN. NUMBER FIVE THERE IS A RETURN.
11 NUMBER SIX IS A FAILURE TO LOCATE, MA'AM?

12 MS. FOOTMAN: YES, SIR.

13 MS. MCKISSICK: JUDGE, GOING BACK TO
14 NUMBER FIVE; WE JUST PUT DOWN THERE THAT THEY
15 CALLED US AND HAVE WORK PROBLEMS. DO YOU WANT THEM
16 TO COME RIGHT ON?

17 THE COURT: WELL, IF THE LAWYERS DON'T
18 AGREE TODAY OR NEXT WEDNESDAY ON WHAT TO DO ABOUT
19 THAT WORK PROBLEM, I SEE HERE THE STATEMENT
20 "FINANCIAL SELF-EMPLOYED AND SOUL SUPPORT OF MY
21 FAMILY." BUT IT'S -- WHAT DO YOU PAY YOUR JURORS;
22 TEN OR FIFTEEN?

23 MS. MCKISSICK: TWENTY-FIVE.

24 THE COURT: TWENTY-FIVE?

25 MS. MCKISSICK: THAT INCLUDES MILEAGE.

1 THE COURT: BARNWELL IS TWENTY-FIVE. I
2 COMMEND YOU. CHARLESTON STILL PAYS TEN. BUT
3 EVERYBODY HAS A PROBLEM WITH SERVING ON A JURY
4 BECAUSE OF THE CONFLICTS THAT THEY HAVE, WHETHER
5 WITH WORK OR WHATEVER. AND I'M OPEN FOR
6 SUGGESTIONS FROM YOU. WHEN SOMEONE SAYS THEY HAVE
7 A WORK HARDSHIP.

8 MR. BAILEY: JUDGE, I PREFER TO HAVE HIM
9 COME IN UNLESS IT'S JUST ON IT'S FACE AN OBVIOUS
10 UNDUE HARDSHIP BECAUSE THERE ARE SO MANY DIFFERENT
11 DEGREES OF HARDSHIP.

12 THE COURT: THAT IS CERTAINLY AGREEABLE
13 TO ME. WHAT SAY THE DEFENSE?

14 MR. THEOS: WE FEEL THE SAME WAY, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. SO, MA'AM, IS
17 SOMEONE, WHILE THEY DESIRE TO BE EXCUSED, DO YOU
18 SEND THEM ANY TYPE NOTICE THAT SAYS THAT THEY STILL
19 MUST APPEAR?

20 MRS. MCKISSICK: YES, SIR. AND WE CALL
21 THEM ALSO.

22 THE COURT: VERY GOOD. SO WE'LL EXPECT
23 TO TAKE THAT UP DURING THE VOIR DIRE QUALIFICATION,
24 ANY WORK HARDSHIPS, BECAUSE I DON'T WANT TO TAKE UP
25 INDIVIDUAL REQUESTS WHILE WE'RE KEEPING ANOTHER 100

1 PEOPLE WAITING. SO NUMBER SIX IS A FAILURE TO
2 LOCATE?

3 MRS. MCKISSICK: WE HAVE GIVEN THAT TO
4 THE SHERIFF'S DEPARTMENT, AND THEY HAVE RETURNED IT
5 TO US THAT THEY COULD NOT LOCATE THIS PERSON.

6 THE COURT: AND, GENTLEMEN, YOU HEARD
7 WHAT THE CLERK SAID. AND THERE'S A NOTATION THAT
8 THEY'VE MOVED. AND I'VE GOT A NOTE HERE FOR THE
9 MAILING ADDRESS AS NORTH CHARLESTON. I DON'T THINK
10 ANY NORTH CHARLESTON MAILING ADDRESS WOULD BE FOR
11 A DORCHESTER COUNTY RESIDENT.

12 MRS. MCKISSICK: YES, SIR.

13 THE COURT: OH, THERE IS?

14 MR. BAILEY: YES, SIR.

15 THE COURT: OH, I'M SO SORRY. I STAND
16 CORRECTED. SO WE'LL JUST PUT THAT IN THE FAILURE
17 TO LOCATE STACK FOR NOW. IS THAT AGREEABLE,
18 GENTLEMEN?

19 MR. BAILEY: YES, SIR.

20 MR. THEOS: YES, YOUR HONOR.

21 THE COURT: BECAUSE THE SHERIFF IS
22 CONTINUING THE EFFORTS TO LOCATE THEM. NUMBER
23 SEVEN, ANOTHER FAILURE TO LOCATE.

24 MRS. MCKISSICK: WE'VE NOT RECEIVED A
25 RETURN FROM THE SHERIFF'S DEPARTMENT.

1 THE COURT: OKAY. NUMBER EIGHT; ANOTHER
2 FAILURE TO LOCATE.

3 MRS. MCKISSICK: THEY'VE MOVED.

4 MR. BAILEY: YOUR HONOR, SHE ALSO HAS A
5 DISQUALIFYING RECORD.

6 THE COURT: WELL, ON THAT SHEET THE CLERK
7 HAD GIVEN ME HERE, IT SAYS MOVED. I RECKON THAT
8 NINE IS ONE THAT LIVES IN CHARLESTON COUNTY. WHAT
9 IS THE DISQUALIFYING RECORD, PLEASE?

10 MR. BAILEY: FRAUDULENT CHECKS APPARENTLY
11 OVER FIVE HUNDRED DOLLARS. SHE GOT ELEVEN MONTHS
12 AND WENT TO PRISON.

13 THE COURT: SO SHE COULD HAVE BEEN
14 SENTENCED TO MORE THAN ONE YEAR. BUT HOW DO YOU
15 KNOW SHE HASN'T BEEN PARDONED?

16 MR. BAILEY: WELL, I DON'T. I'M JUST
17 GOING ON RAP SHEETS. I DON'T KNOW THAT FOR---

18 THE COURT: SO WHAT DO YOU SAY,
19 GENTLEMEN?

20 MR. THEOS: WELL, YOUR HONOR, I DON'T
21 KNOW THAT WE'LL EVEN GET TO THAT ISSUE SINCE SHE'S
22 MOVED AND THERE'S NO RESPONSE.

23 THE COURT: WELL, I DIDN'T KNOW IF SHE
24 WANTED THE SHERIFF TO CONTINUE THE EFFORTS TO TRY
25 TO LOCATE HER. THAT'S MY QUESTION. AND I'LL BE

1 HAPPY FOR THEM TO CONTINUE THEIR EFFORTS TO LOCATE
2 HER.

3 MR. THEOS: YES, SIR.

4 THE COURT: BUT NUMBER EIGHT, YOU SAY,
5 HAS A CRIMINAL RECORD, MR. SOLICITOR?

6 MR. BAILEY: YES, SIR. A 1992 CONVICTION
7 FOR NUMEROUS FRAUDULENT CHECKS.

8 THE COURT: ALL RIGHT. AND YOU HAVE
9 GIVEN ALL RAP SHEETS TO THE DEFENDANT?

10 MR. BAILEY: YES, SIR.

11 THE COURT: ALL RIGHT, SIR. NUMBER
12 NINE. I DON'T HAVE ANYTHING. I DON'T EVEN HAVE A
13 COPY HERE. I'VE GOT A NOTE ON YOUR MASTER SHEET
14 "LIVES IN CHARLESTON COUNTY," MADAM CLERK.
15 GENTLEMEN, COME FORWARD AND LOOK AT THIS, PLEASE.

16 MR. BAILEY: I'VE GOT IT, JUDGE, BACK
17 HERE.

18 THE COURT: OH, DO YOU HAVE IT?

19 MR. THEOS: I DON'T HAVE THAT, YOUR
20 HONOR.

21 THE COURT: I DON'T KNOW WHAT IT IS, BUT
22 ANYTHING I SEE, I WANT YOU TO SEE.

23 MR. THEOS: I'VE SEEN IT, YOUR HONOR.
24 I'M SATISFIED BASED ON THAT.

25 THE COURT: MAY I SEE IT, MA'AM?

1 MRS. MCKISSICK: I'M SORRY.

2 THE COURT: THAT'S ALL RIGHT. MADAM
3 COURT REPORTER, THERE'S A NOTARIZED STATEMENT HERE
4 FROM JUROR NUMBER NINE. MALOY ANTOINE IS THE
5 MOTHER OF HEATHER ANTOINE. AND THEY NO LONGER LIVE
6 IN DORCHESTER COUNTY. THEY RESIDE AT [REDACTED]
7 [REDACTED], CHARLESTON, S.C. THERE'S A LETTER TO THAT
8 EFFECT AND NOTARIZED. AND THE STATE AND THE
9 DEFENDANT AGREE THAT THAT JUROR WILL BE EXCUSED
10 FROM THIS CASE BECAUSE THEY'RE NOT A RESIDENT OF
11 THE COUNTY.

12 MR. BAILEY: CORRECT, YOUR HONOR.

13 THE COURT: CORRECT, MR. THEOS?

14 MR. THEOS: YES, YOUR HONOR.

15 THE COURT: NUMBER TEN THERE'S A RETURN
16 ON. ELEVEN, TWELVE. AND, GENTLEMEN, IF THERE'S
17 ANYTHING WE SHOULD DISCUSS AS WE'RE MOVING ALONG,
18 PLEASE INTERRUPT ME, OR PLEASE BRING IT TO MY
19 ATTENTION, OR WHATEVER. THEN NUMBER THIRTEEN,
20 THERE'S A STATEMENT THERE FROM MRS. VERNON ASHLEY
21 THAT SHE IS 83 YEARS OLD, OR FROM HIM, THAT HIS
22 WIFE IS 83, AND SHE IS PRACTICALLY IMMOBILE DUE TO
23 A SERIES OF STROKES. "I HAVE TO TAKE CARE OF HER
24 COMPLETELY. I WISH TO BE EXCUSED AND TRUST YOU
25 WILL GRANT ME THIS FAVOR." SO I WOULD INQUIRE IF

1 THE STATE WILL AGREE FOR THAT JUROR TO BE EXCUSED?

2 MR. BAILEY: THE STATE AGREES, YOUR
3 HONOR.

4 THE COURT: DEFENSE?

5 MR. THEOS: YES, SIR.

6 THE COURT: AND, MADAM CLERK, HAVE YOU
7 NOTIFIED THEM?

8 MRS. MCKISSICK: NOT YET. WE TOLD THEM
9 WE HAD TO TALK TO YOU FIRST.

10 THE COURT: SURE. WELL, MAKE THE NOTE
11 AND PROMPTLY TODAY, OR AS SOON AS YOU CAN, NOTIFY
12 THEM BECAUSE I DON'T WANT THEM HAVING ANXIETY
13 WORRYING ABOUT JURY SERVICE.

14 MRS. MCKISSICK: I TOLD THEM THAT. I
15 SAID AS SOON AS WE---

16 THE COURT: SURE. AND I APOLOGIZE THAT I
17 CAN'T VEST YOU WITH THAT AUTHORITY, BUT IN A DEATH
18 PENALTY I DEEM IT NECESSARY TO DO IT THIS WAY. AND
19 NUMBER FOURTEEN, FAILURE TO LOCATE. NUMBER
20 FIFTEEN, FAILURE TO LOCATE.

21 MRS. MCKISSICK: THOSE ARE SOME THAT WE
22 SENT TO THE SHERIFF'S OFFICE AND WE HAVE NO RETURN;
23 CANNOT LOCATE THEM.

24 THE COURT: AND THEY CANNOT FIND THEM.
25 SO, GENTLEMEN, IF THE SHERIFF HAS ALREADY EXHAUSTED

1 THEIR EFFORTS AND SAY THEY CANNOT FIND THEM, JUST
2 TO TRY TO NARROW YOUR LIST DOWN AND YOUR FURTHER
3 INVESTIGATION, WOULD IT BE APPROPRIATE TO GO AHEAD
4 AND MARK THEM OFF THIS LIST IF THE SHERIFF IS NOT
5 LOOKING FOR THEM ANY LONGER?

6 MR. THEOS: THAT'S FINE WITH US, YOUR
7 HONOR.

8 MR. BAILEY: THAT'S FINE, JUDGE.

9 THE COURT: ALL RIGHT. SO THAT WOULD BE
10 -- NUMBER FOURTEEN WOULD BE EXCUSED, THEN, AND
11 NUMBER FIFTEEN. IS THAT CORRECT, GENTLEMEN?

12 MR. BAILEY: YES, SIR.

13 MR. THEOS: YES, SIR.

14 THE COURT: ALL RIGHT. YOU HAVE A RETURN
15 ON NUMBER 16. NUMBER 17, THEY WERE UNABLE SO FAR
16 TO SERVE THEM. CALL TO MY ATTENTION, MADAM CLERK,
17 IF THE SHERIFF HAS EXHAUSTED THEIR EFFORTS?

18 MRS. MCKISSICK: YES, SIR. ON THIS ONE
19 THEY HAVE.

20 THE COURT: THEY HAVE?

21 MRS. MCKISSICK: YES, SIR.

22 THE COURT: HAVE WHAT?

23 MRS. MCKISSICK: THEY HAVE TRIED TO
24 LOCATE THEM.

25 THE COURT: AND CANNOT? SO, GENTLEMEN,

1 THEN NUMBER 17 BY AGREEMENT, THE SHERIFF -- F.T.L.
2 IS WHAT I'M WRITING ON HERE; FAILING TO LOCATE
3 BECAUSE THEY HAVE TRIED AND CANNOT FIND THEM. AND
4 THEY'RE NOT CONTINUING TO LOOK. NUMBER 18, THERE'S
5 A RETURN ON.

6 MR. BAILEY: YOUR HONOR, NUMBER EIGHTEEN
7 AND RESPONSE TO 21 SAID THAT SHE HAS SMALL
8 CHILDREN, NO ONE TO CARE FOR THEM. SHE DIDN'T ASK
9 FOR THE EXCUSAL ON THE FORM, BUT SHE DID IN
10 RESPONSE TO THAT QUESTION.

11 THE COURT: ALL RIGHT, SIR. WELL, SHE
12 SAYS "MY CHILDREN, ESPECIALLY MY 24 MONTH OLD, HAVE
13 ALWAYS BEEN WITH ME; THEY'VE NEVER BEEN IN DAY CARE
14 AND I HAVE NO ONE AVAILABLE TO KEEP THEM FOR MORE
15 THAN ONE OR TWO DAYS." SO, AGAIN, GENTLEMEN, I'LL
16 BE BOUND BY YOUR WISH IN THIS MATTER IF YOU STILL
17 WANT THAT JUROR TO COME FOR RELIGION -- SHE'S A
18 JEHOVAH'S WITNESS. SHE ATTENDS THREE MEETINGS A
19 WEEK, AND SHE'S GOT A 24 MONTH OLD AND NO ONE TO
20 KEEP THEM. AND I'LL BE HAPPY -- I SAY I'LL BE
21 HAPPY. I WILL REQUIRE HER TO BE HERE IF YOU INSIST
22 ON IT, OR I'LL EXCUSE HER AT THIS TIME IF YOU'RE
23 AGREEABLE.

24 MR. BAILEY: YOUR HONOR, SHE ALSO
25 INDICATED SHE'S AN UNEMPLOYED HOUSEWIFE. SO I

1 THINK SHE'S ENTITLED TO EXCUSAL BASED ON THAT;
2 CHILDREN UNDER SEVEN.

3 MR. THEOS: YOUR HONOR, IT'S MY
4 UNDERSTANDING THAT WHAT WE WERE DOING TODAY WAS TO
5 TRY TO AGREE ON THOSE PEOPLE THAT WERE OBVIOUSLY OR
6 ARE LEGALLY DISQUALIFIED AND THAT WE WEREN'T GOING
7 TO -- LIKE, FOR INSTANCE, ON NUMBER FIVE WHERE IT
8 HAS SOME WORK PROBLEM. WE'RE BRINGING HIM IN. MR.
9 BAILEY WANTS TO BRING HIM IN. I THINK WE OUGHT TO
10 MAINTAIN UNIFORMITY. AND THOSE PEOPLE THAT ARE
11 OBVIOUSLY NOT STATUTORILY EXEMPTED, WE OUGHT TO
12 JUST MAKE THEM COME IF THEY'RE STATUTORILY
13 EXEMPTED. AND IF IT'S NOT A DISCRETIONARY MATTER,
14 THEN I THINK FROM THE DEFENSE STANDPOINT, WE WOULD
15 AGREE TO EXCUSE ALL OF THOSE JURORS THAT YOU FELT
16 WERE STATUTORILY EXEMPT. WE'LL REST IT ON YOUR
17 DISCRETION, BUT WE PREFER FOR THOSE PEOPLE TO COME
18 IN.

19 THE COURT: 14-7-860 PERTAINS TO EXCUSE
20 OF WOMEN WHO HAVE CHILDREN UNDER AGE SEVEN. THAT
21 IS A DISCRETIONARY MATTER WITH THE PRESIDING
22 JUDGE. ALTHOUGH IT DOES PROVIDE THAT ANY WOMAN
23 HAVING A CHILD UNDER SEVEN YEARS OF AGE FOR WHOM
24 SHE HAS LEGAL CUSTODY AND THE DUTY OF CARE WHO
25 DESIRES TO BE EXCUSED FROM JURY DUTY SHALL FURNISH

1 AN AFFIDAVIT TO THE CLERK STATING THAT SHE'S UNABLE
2 TO PROVIDE ADEQUATE CARE FOR THE CHILD WHILE
3 PERFORMING JURY DUTY AND SHALL BE EXCUSED FROM SUCH
4 DUTY. SO WHILE THE SECTION STARTS OUT THAT THE
5 PRESIDING JUDGE FOR CAUSE SHOWN MAY EXCUSE;
6 THEREAFTER IT SAYS THAT THEY SHALL BE EXCUSED IF
7 THEY PROVIDE THAT AFFIDAVIT. AND LOOKING AT THIS
8 JURY QUESTIONNAIRE RETURN, IT IS NOT NOTARIZED, SO
9 IT IS NOT AN AFFIDAVIT ALBEIT IT HAS A STATEMENT "I
10 DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE
11 ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE." WHAT
12 THIS WILL MEAN, GENTLEMEN AND LADIES -- WELL, YOU
13 KNOW, I CAN'T ON MONDAY OF OPENING OF COURT TAKE UP
14 THESE YOUNG CHILDREN THINGS. BUT, YOU KNOW, LIKE
15 WORK HARDSHIPS, RATHER THAN REQUIRE 100 PEOPLE TO
16 SIT AND LISTEN TO THESE OTHERS, SOME ANSWERS OF
17 WHICH MAY BE SUGGESTIVE FOR BEING EXCUSED OR NOT; I
18 JUST DON'T THINK THAT'S THE BEST USE OF OUR TIME ON
19 A WORK HARDSHIP EXCUSE. I THINK THAT SHOULD BE
20 DONE DURING VOIR DIRE INDIVIDUALLY. DO YOU HAVE
21 ANY PROBLEM WITH THAT, MR. SOLICITOR?

22 MR. BAILEY: NO, SIR.

23 THE COURT: DO YOU AGREE WITH THAT?

24 MR. THEOS: I AGREE WITH THAT, YOUR
25 HONOR.

1 THE COURT: BUT IF THIS LADY; IF SHE'S
2 REQUIRED TO COME WITH A TWO YEAR OLD CHILD AND
3 SHE'S NEVER BEEN AWAY FOR MORE THAN TWO DAYS AND
4 SHE'S THE SOUL -- I DON'T KNOW IF SHE'S A SINGLE
5 PARENT. BUT SHE INDICATES IN HERE THAT SHE'S THE
6 ONLY PERSON THAT KEEPS THE CHILD. AND I JUST HATE
7 TO MAKE THIS LADY---

8 MR. THEOS: YOUR HONOR, THE DEFENSE -- I
9 DON'T KNOW IF I WAS CLEAR. WE'RE NOT ASKING THAT
10 SHE BE REQUIRED TO COME. OUR POSITION IS IF IT'S
11 -- JUST SO WE CAN SIMPLIFY MATTERS, IF IT'S
12 STATUTORILY EXEMPT AS SHE IS, ASSUMING WE ACCEPT
13 THIS IN LIEU OF AN AFFIDAVIT---

14 THE COURT: AS IF IT WERE---

15 MR. THEOS: --A WORD AFFIDAVIT; THAT'S
16 FINE WITH US. AND I THINK THAT'S THE NOTICE THAT'S
17 PROVIDED ON THE BACK OF THE SLIP THAT THEY GET.
18 EXCUSES -- I'M JUST READING FROM IT. IF YOU'RE
19 EXCUSED FOR ANY REASON OTHER THAN PERMANENT
20 DISABILITY OR REQUIRE THE MATERNAL CARE OF A CHILD
21 LESS THAN SEVEN YEARS OF AGE, YOU ARE OBLIGATED TO
22 ATTEND. SO I THINK SHE FALLS IN THAT CATEGORY.
23 THAT'S FINE WITH US.

24 THE COURT: WELL, IS IT AGREEABLE TO
25 EXCUSE EIGHTEEN, THEN, GENTLEMEN?

1 MR. BAILEY: YES, SIR.

2 THE COURT: THANK YOU. I NEED TO HEAR
3 FROM THE DEFENSE.

4 MR. THEOS: YES, SIR.

5 THE COURT: NUMBER NINETEEN; FAILURE TO
6 LOCATE. IS THE SHERIFF STILL LOOKING, MA'AM?

7 MS. FOOTMAN: YES, SIR.

8 THE COURT: TWENTY; WE HAVE A RETURN. I
9 DON'T HAVE ANYTHING ON 21.

10 MS. FOOTMAN: NO RESPONSE.

11 THE COURT: ONE WAY OR THE OTHER, HUH?

12 MS. FOOTMAN: RIGHT.

13 THE COURT: NUMBER 22, FAILURE TO
14 LOCATE. 23, IT SAYS "MOVED." DOES ANYONE HAVE ANY
15 FURTHER INFORMATION THAN THAT?

16 MS. FOOTMAN: CORRECT; NOTHING EXCEPT
17 WHAT WE HAD FROM THE SHERIFF'S DEPARTMENT THAT IT
18 WAS RETURNED.

19 THE COURT: BUT THE SHERIFF'S DEPARTMENT
20 IS STILL LOOKING?

21 MS. FOOTMAN: NO, SIR.

22 THE COURT: THEY'RE NOT? THEY'VE GIVEN
23 UP?

24 MS. FOOTMAN: YES, SIR; UNABLE TO LOCATE.

25 THE COURT: ALL RIGHT. SO, GENTLEMEN, ON

1 NUMBER 23, THE SHERIFF'S DEPARTMENT IS NO LONGER
2 LOOKING. MAY WE EXCUSE THAT ONE?

3 MR. THEOS: YES, SIR.

4 MR. BAILEY: YES, SIR.

5 MS. MCKISSICK: I'LL CHECK AND MAKE SURE
6 THAT---

7 THE COURT: BUT I DON'T WANT TO HAVE TO
8 GO THROUGH -- I'VE GOT THREE LISTS HERE. AND I'M
9 JUST GOING TO GO WITH ONE LIST BECAUSE ONE OF THEM
10 IS BLANK WITHOUT CERTAIN INFORMATION, AND ONE HAS
11 CHECKS AND X'S LIMITED INFORMATION. BUT I'M JUST
12 STARTING WITH A NEW ONE HERE. THANK YOU, THOUGH.
13 SO NUMBER 24 IS JUST NOTHING AT THIS TIME.

14 MS. FOOTMAN: NO RESPONSE.

15 THE COURT: AND NUMBER 25, GENTLEMEN; WE
16 HAVE THE RETURN. THEN 26; "OUR DAUGHTER, JENNIFER,
17 NOW RESIDES IN CHARLOTTE. PLEASE REMOVE HER NAME
18 FROM THE LIST." "IT'S INTERESTING THAT IN RANDOM
19 DRAWINGS BOTH OUR DAUGHTERS HAVE BEEN SUMMONED FOR
20 JURY DUTY WITHIN THE PAST WEEK." SO, GENTLEMEN,
21 CAN WE AGREE THAT NUMBER 26 LIVES OUT OF THE
22 COUNTY?

23 MR. BAILEY: THE STATE AGREES, YOUR
24 HONOR.

25 MR. THEOS: THE DEFENSE AGREES, YOUR

1 HONOR.

2 THE COURT: 26 LIVES OUT OF STATE;
3 EXCUSED. WE HAVE A RETURN ON 27. GENTLEMEN, FOR
4 THE STATE AND THE DEFENSE, IF THERE'S ANYTHING THAT
5 YOU HAVE IN YOUR POSSESSION WHICH WOULD SHED LIGHT
6 ON ANY ACTION THAT SHOULD BE TAKEN RELATIVE TO
7 THESE PEOPLE BECAUSE IT'S HELPING Y'ALL TO NARROW
8 THE LIST FROM 350 TO 150. I DON'T KNOW THAT YOU'LL
9 OBTAIN THAT. BUT PLEASE SHARE INFORMATION.

10 MR. BAILEY: GOING BACK TO 24. HE'S GOT
11 A BURGLARY THIRD CONVICTION.

12 THE COURT: TWENTY-FOUR HAS WHAT?

13 MR. BAILEY: A BURGLARY THIRD
14 CONVICTION.

15 THE COURT: AND WHAT SAY THE DEFENSE?

16 MR. THEOS: YOUR HONOR, WE HAVEN'T HAD A
17 CHANCE TO LOOK AT THESE RAP SHEETS SINCE WE WERE
18 JUST GIVEN THEM.

19 THE COURT: WELL, DO DID YOU HAVE IT THAT
20 YOU CAN SHOW TO HIM?

21 MR. BAILEY: I GAVE IT TO HIM TODAY. I
22 TRIED TO GIVE IT TO HIM YESTERDAY, BUT HE DIDN'T
23 WANT IT.

24 MR. THEOS: I JUST GOT IT TEN MINUTES
25 AGO. I HAVEN'T HAD A CHANCE TO LOOK AT IT, AND I

1 DON'T KNOW WHETHER HE'S BEEN PARDONED, YOUR HONOR.
2 I MEAN, OUR POSITION WOULD BE THAT ANYBODY WITH
3 CONVICTIONS, UNLESS MR. BAILEY HAS GOT INFORMATION
4 ABOUT PARDONING THAT HE BE REQUIRED TO COME IN.
5 NOT FOR PURPOSES OF---

6 THE COURT: TWENTY-FOUR IS THE ONE THAT
7 YOU SAY HAS A BURGLARY THIRD?

8 MR. BAILEY: YES, SIR.

9 THE COURT: WELL, WE DON'T HAVE ANY
10 RETURN ON HIM. MR. SOLICITOR, HE DECLINES TO AGREE
11 THAT THAT SCRAMS. SO WE'LL LEAVE 24 ON THE LIST.
12 TWENTY-EIGHT, NO RETURN. SHERIFF STILL LOOKING,
13 MA'AM?

14 MS. FOOTMAN: NO, SIR.

15 THE COURT: THE SHERIFF HAS GIVEN UP?

16 MS. FOOTMAN: UNABLE TO LOCATE FROM WHAT
17 THEY'VE ALREADY SENT BACK TO US. YES, SIR.

18 THE COURT: I'VE GOT TO GET YOU TO TELL
19 ME THAT ON THE RECORD ON EACH ONE. SO GENTLEMEN,
20 AGREED THAT 28 IS EXCUSED?

21 MR. BAILEY: YES, SIR.

22 MR. THEOS: YES, SIR.

23 THE COURT: TWENTY-NINE, NOTHING, MADAM
24 CLERK?

25 MS. FOOTMAN: NO RESPONSE.

1 THE COURT: THIRTY; FAILURE TO LOCATE.
2 HAS THE SHERIFF GIVEN UP?

3 MRS. MCKISSICK: THIS ONE SHOWS NO
4 RESPONSE.

5 THE COURT: NUMBER 30 SAYS NOT AT THIS
6 ADDRESS. SO YOU TURNED IT OVER TO THE SHERIFF.
7 HAS THE SHERIFF GIVEN UP, OR ARE THEY STILL TRYING
8 TO SERVE THEM? THAT'S MY QUESTION. WHAT IS YOUR
9 ANSWER?

10 MS. FOOTMAN: NO, SIR. UNABLE TO
11 LOCATE.

12 THE COURT: ALL RIGHT. SO EXCUSED,
13 GENTLEMEN. AGREED?

14 MR. BAILEY: YES, SIR.

15 MR. THEOS: YES, SIR.

16 THE COURT: NUMBER 31. HAS THE SHERIFF
17 GIVEN UP, MA'AM?

18 MS. FOOTMAN: YES, SIR.

19 THE COURT: WHAT YOU SAY, GENTLEMEN?

20 MR. BAILEY: I AGREE THEY SHOULD BE
21 EXCUSED, YOUR HONOR.

22 MR. THEOS: AGREED, YOUR HONOR.

23 THE COURT: ALL RIGHT. NUMBER 32; HAS
24 THE SHERIFF EXHAUSTED ALL HIS EFFORTS, MA'AM?

25 MS. FOOTMAN: YES, SIR.

1 THE COURT: AGREE TO EXCUSE, SOLICITOR?

2 MR. BAILEY: AGREED, YOUR HONOR.

3 THE COURT: AGREED, DEFENSE?

4 MR. THEOS: YES, SIR.

5 THE COURT: NUMBER 33. THERE IS A
6 RETURN. ON 34 THERE IS A RETURN.

7 MR. BAILEY: NOW, 34 HAS GOT A NOTE THAT
8 SHE HAS AN AUTISTIC CHILD THAT SHE HAS TO BE WITH.

9 THE COURT: "I HAVE NO ONE ELSE TO BE AT
10 HOME WHEN MY CHILD COMES HOME FROM SCHOOL." AND
11 FOR AGE OF CHILDREN -- HER HUSBAND IS A
12 CORRECTIONAL OFFICER. SHE HAS FOUR CHILDREN. BUT
13 I DON'T SEE THE SCHOOL AGE FOR THE AUTISTIC CHILD.
14 WHAT SAY THE STATE?

15 MR. BAILEY: YOUR HONOR, I DON'T SEE ANY
16 REASON TO BRING HER IN UNLESS THE DEFENSE INSISTS
17 ON IT.

18 MR. BELL: WE HAVE NO PROBLEM WITH
19 EXCUSING HER.

20 THE COURT: ALL RIGHT. NUMBER 34 IS
21 EXCUSED. NUMBER 35 IS A RETURN. NUMBER 36 IS A
22 RETURN. NUMBER 37 IS A RETURN. NUMBER 38---

23 MRS. MCKISSICK: THAT'S BEEN SENT TO THE
24 SHERIFF'S DEPARTMENT.

25 THE COURT: SO THE SHERIFF STILL HAS

1 THAT?

2 MRS. MCKISSICK: YES, SIR.

3 MR. BAILEY: JUST FOR -- I KNOW THEY NEED
4 TO COME IN. BUT HE'S GOT A POSSESSION OF CRACK
5 CONVICTION.

6 THE COURT: AND YOU STILL DESIRE FOR HIM
7 TO BE BROUGHT IN, MR. BELL.

8 MR. BELL: YES, YOUR HONOR.

9 THE COURT: YOU DON'T RECKON HE'S IN THE
10 PENTENTIARY? WHAT WAS THE DATE OF HIS SENTENCE?

11 MR. BAILEY: LET'S SEE.

12 THE COURT: OR MAYBE I SHOULD ASK WHO WAS
13 THE JUDGE?

14 MR. BAILEY: A JANUARY '98 CONVICTION.
15 HE GOT FIVE YEARS; SUSPENDED, PROBATION. SO HE'S
16 STILL AROUND.

17 THE COURT: MAYBE THE PROBATION OFFICE
18 CAN HELP THEM FIND HIM. NUMBER 39.

19 MR. ROBBINS: SHE WANTS OUT, YOUR HONOR.

20 MRS. MCKISSICK: MEDICAL PROBLEMS.

21 THE COURT: AND DIDN'T RECEIVE PAGES
22 THREE OR FOUR. AND HER AGE; SHE WAS BORN IN '51.
23 SHE CAN'T HEAR OUT OF THE LEFT EAR. HANDICAPPED
24 AND CANNOT HARDLY WALK. GOT MARRIED AT AGE
25 FIFTEEN; FIVE CHILDREN. WHAT SAY THE STATE?

1 MR. BAILEY: YOUR HONOR, I KNOW THAT
2 SHE'S ALSO GOT A FOURTH GRADE EDUCATION. SO I'D
3 JUST AS SOON EXCUSE HER IF THE DEFENSE GOES ALONG
4 WITH THAT. ALSO SAYS SHE'S GOT A DRINKING PROBLEM,
5 TOO, I BELIEVE.

6 MR. BELL: YOUR HONOR, WE'D LIKE THE
7 JUROR TO COME IN.

8 THE COURT: ALL RIGHT. WE'LL HAVE TO
9 BRING THEM IN. NUMBER 40. AGAIN, WE USUALLY TRY
10 AND TRANSFER TEACHERS TO THE SUMMER MONTHS. BUT
11 FRANKLY I WANT TO KEEP AS MANY TEACHERS AS WE CAN
12 GET BECAUSE THEY'RE OBVIOUSLY EDUCATED PEOPLE. AND
13 WE JUST NEED TO BE UNIFORM IN WHAT WE DO,
14 GENTLEMEN. IF Y'ALL WANT THEM TO COME IN, LET'S
15 BRING THEM ALL IN. BUT IF YOU'RE AGREEABLE TO
16 AUTOMATICALLY TRANSFER THE TEACHERS, THEN THAT
17 WOULD AVOID THE STATE PAYING THEM \$25 OR THEM
18 MISSING WORK, OR WHATEVER.

19 THE COURT: I'D PREFER FOR THEM TO COME
20 IN UNLESS THEY CLEARLY INDICATE THEY WANT TO
21 EXERCISE THE RIGHT TO BE POSTPONED.

22 THE COURT: DO YOU AGREE WITH THAT?

23 MR. BELL: YES, YOUR HONOR.

24 THE COURT: SO NUMBER 40, I'LL PUT
25 "QUESTION, TEACHER" ON MY MASTER LIST, BUT SHE

1 MUST REPORT. NUMBER 41, DECEASED [REDACTED]/98. DO YOU
2 AGREE ON THAT, GENTLEMEN?

3 MR. BAILEY: YES, SIR.

4 MR. BELL: YES, SIR.

5 THE COURT: NUMBER 42 IS A RETURN ON.
6 NUMBER 43 IS A RETURN. NUMBER 44 THERE IS A
7 RETURN. NUMBER 45 " NO LONGER LIVES HERE; CURRENT
8 ADDRESS [REDACTED] [REDACTED] IN CHARLESTON." WHAT SAYS THE
9 STATE?

10 MR. BAILEY: I SEE NO REASON TO BRING HIM
11 IN.

12 MR. BELL: AGREED, YOUR HONOR.

13 THE COURT: ALL RIGHT. NUMBER 45 IS A
14 CHARLESTON RESIDENT; EXCUSED. NUMBER 46, WE HAVE A
15 RETURN. NUMBER 47 WE HAVE A RETURN AND THAT IS A
16 TEACHER. NUMBER 48? HAS THE SHERIFF GIVEN UP?

17 MS. FOOTMAN: YES, SIR.

18 THE COURT: WHAT SAYS THE STATE?

19 MR. BAILEY: EXCUSED.

20 THE COURT: DEFENSE?

21 MR. BELL: EXCUSED.

22 THE COURT: NUMBER 49. HAS THE SHERIFF
23 REFER GIVEN UP?

24 MS. FOOTMAN: YES, SIR.

25 THE COURT: WHAT SAYS THE STATE?

1 MR. BAILEY: EXCUSED, YOUR HONOR.

2 THE COURT: DEFENSE?

3 MR. BELL: EXCUSED, YOUR HONOR.

4 THE COURT: FIFTY, THERE IS A RETURN. WE
5 HAVE NOTHING ON 51.

6 MS. FOOTMAN: NO RESPONSE.

7 THE COURT: NO RESPONSE? IS THE SHERIFF
8 STILL TRYING?

9 MS. FOOTMAN: WE DIDN'T SEND THAT TO THE
10 SHERIFF. WE DIDN'T GET ANY RESPONSE AT ALL?

11 THE COURT: ALL RIGHT, GENTLEMEN. WHAT
12 DO YOU SAY WE DO WHEN THERE'S NO RESPONSE AT ALL.
13 YOU KNOW, LIKE THE ENVELOPE THAT WAS MAILED WAS
14 RETURNED. THEY HAVEN'T SENT ANYTHING IN. THE
15 SHERIFF HAS NOT MADE AN EFFORT TO FIND THOSE PEOPLE
16 BECAUSE WE HAVEN'T GIVEN THEM THE NAMES YET.
17 WHAT'S THE STATE'S POSITION?

18 MR. BAILEY: JUDGE, I DEFER TO THE
19 DEFENSE ON THAT.

20 THE COURT: WE CAN LEAVE IT IN LIMBO IF
21 YOU'D LIKE. BUT I DIDN'T KNOW IF YOU WANTED THOSE
22 THAT HAVE NOT BEEN RETURNED FOR THOSE TO BE TURNED
23 OVER TO THE SHERIFF. THAT'S THE QUESTION. WHAT
24 SAY THE DEFENSE?

25 MR. BELL: YOUR HONOR, I THINK THAT IF

1 THEY DIDN'T COME BACK, THEN I THINK THE SHERIFF
2 SHOULD ATTEMPT THAT. I THINK EVERYONE WHO HAS
3 RETURNED OR DOES NOT COME BACK, THE SHERIFF SHOULD
4 ATTEMPT TO LOCATE THEM. THEY DON'T HAVE TO BREAK
5 THEIR NECK, BUT RIDE IN THOSE AREAS A LOT AND TRY
6 TO FIND THEM AND SEE IF THEY'RE STILL THERE.

7 THE COURT: ALL RIGHT. THAT WILL BE
8 DONE. SO, MADAM CLERK, IF YOU WOULD, LIKE ON
9 NUMBER 51, TURN THOSE OVER TO THE SHERIFF.

10 MRS. MCKISSICK: WE NEED TO SEND ANOTHER
11 ONE BECAUSE THE PERSON THAT RECEIVED IT DID NOT
12 RESPOND.

13 THE COURT: ALL RIGHT.

14 MRS. MCKISSICK: WE HAVE A LOT OF THAT;
15 AND THEN THEY SHOW UP ON THE DAY OF COURT.

16 THE COURT: ALL RIGHT. WELL WE'RE GOING
17 TO DOUBLE-DIP THEM IT SOUNDS LIKE. SORRY. NUMBER
18 52, THERE IS A RETURN. NUMBER 53 THERE IS A
19 RETURN.

20 MS. FOOTMAN: I HAVE NO RESPONSE TO 53.

21 THE COURT: AM I READING THE NUMBERS
22 WRONG? PERHAPS I AM. ALL RIGHT. WE WENT FROM A
23 52 TO 55. I APOLOGIZE. SO YOU HAVE A RETURN ON 52
24 AND 55. SO NUMBER 53 YOU HAVE NOTHING. SO YOU'RE
25 GOING TO PRINT ANOTHER SUMMONS AND GIVE IT TO THE

1 SHERIFF?

2 MS. FOOTMAN: YES, SIR.

3 THE COURT: AND 54, THE SAME?

4 MS. FOOTMAN: NUMBER 54; WE HAVE A NOTE
5 THAT SHE LIVES IN TEXAS.

6 THE COURT: I DON'T HAVE ANYTHING ON 54,
7 MA'AM. I GO FROM 52 TO 55. SO WOULD YOU SHOW WHAT
8 YOU HAVE TO THESE GENTLEMEN, PLEASE? Y'ALL
9 APPROACH THE BENCH AND LOOK AT IT. SHE SAID SHE
10 LIVES IN TEXAS NOW. I HAVEN'T SEEN IT. BUT I
11 DON'T NEED TO SEE IT. IF Y'ALL ARE SATISFIED, I
12 AM.

13 MRS. MCKISSICK: SHE CALLED, AND SHE SAID
14 THAT SHE LIVED IN TEXAS. THAT'S WHY I TOLD HER TO
15 SEND THE PAPERWORK.

16 THE COURT: AND YOU HAVEN'T RECEIVED IT?

17 MR. BAILEY: IF SHE CALLED FROM TEXAS,
18 JUDGE, I'M SATISFIED.

19 THE COURT: I DON'T KNOW IF SHE CALLED
20 FROM TEXAS. HOW ARE---

21 MS. FOOTMAN: THERE'S A TEXAS COMMUNITY.

22 MR. ROBBINS: YES, YOUR HONOR, WE DO HAVE
23 A COMMUNITY OUT HERE CALLED TEXAS.

24 THE COURT: AND THERE'S AN [REDACTED] [REDACTED] [REDACTED]
25 UP NEAR GREENVILLE AND SIMPSONVILLE ACCORDING TO

1 THE TRANSCRIPT OF THE ALLEGED CONFESSION. WHAT DO
2 YOU SAY, MR. THEOS AND MR. BELL?

3 MR. BELL: IF THEY'RE OUT OF STATE,
4 THEY'RE OUT OF STATE, JUDGE.

5 THE COURT: YES, SIR. BUT HOW ARE WE---

6 MR. BELL: WE NEED SOMETHING IN WRITING.
7 IT MIGHT BE IN THE TEXAS COMMUNITY AGAIN.

8 MRS. MCKISSICK: WELL, SHE SAID SHE WAS
9 IN THE MILITARY AND THAT SHE WAS STATIONED IN
10 TEXAS.

11 THE COURT: GENTLEMEN, SHE SAID SHE WAS
12 IN THE MILITARY AND STATIONED IN TEXAS. SO WE'LL
13 JUST HAVE TO WAIT FOR SOMETHING IN WRITING FROM HER
14 OR EITHER FOR HER TO APPEAR; RIGHT?

15 MR. BAILEY: YES, YOUR HONOR.

16 MR. BELL: YES, SIR.

17 THE COURT: ALL RIGHT. AND THERE'S A
18 RETURN ON 55? THAT WAS DEMETRIA CARTER WAS THE
19 LADY ABOUT THE MILITARY?

20 MS. FOOTMAN: YES, SIR.

21 THE COURT: AND THEN, YOU HAVE A RETURN.
22 NUMBER 56 HAS A RETURN; 57 A RETURN.

23 MR. BAILEY: YOUR HONOR, 56 IS A LAW
24 ENFORCEMENT OFFICER, I BELIEVE.

25 THE COURT: ALL RIGHT, GENTLEMEN. WILL

1 Y'ALL AGREE TO EXCUSE BECAUSE OF LAW ENFORCEMENT,
2 OR DO YOU WANT HIM TO COME IN? OR IS HE JUST A --
3 IN LAW ENFORCEMENT WITH, WHAT, WITH SECURITY?

4 MR. BAILEY: STATE PORT AUTHORITY.

5 THE COURT: HE'S A POLICE OFFICER WITH
6 THE STATE PORT AUTHORITY. WHAT SAY THE DEFENDANT?

7 MR. THEOS: EXCUSED.

8 THE COURT: AGREE, GENTLEMEN?

9 MR. BAILEY: YES, SIR.

10 THE COURT: SO, MA'AM, DO YOU KNOW TO
11 NOTIFY HIM, OR DO I NEED TO TELL YOU THAT EACH
12 TIME?

13 MS. FOOTMAN: NO, SIR.

14 THE COURT: IF WE SAY HE'S EXCUSED, WELL
15 THEN THAT MEANS Y'ALL ARE GOING TO NOTIFY HIM?

16 MS. FOOTMAN: WE'LL NOTIFY HIM.

17 THE COURT: PLEASE. NUMBER 57, WE HAVE A
18 RETURN. NUMBER 58, THERE IS A RETURN.

19 MR. BAILEY: YOUR HONOR, 57 WANTS OFF FOR
20 A SMALL CHILD, BUT SHE WORKS.

21 THE COURT: ALL RIGHT. BACKING UP TO
22 NUMBER 57. HER PRESENT MARITAL STATUS IS SHE IS
23 SINGLE. AND SHE IS TWENTY -- OR SHE'S BEEN
24 RESIDING THERE FOR TWENTY YEARS. SHE HAS TWO
25 CHILDREN AGES THREE YEARS FOR ONE AND EIGHT YEARS

1 FOR THE OTHER. SHE'S A SINGLE MOTHER WITH A CHILD
2 THAT HAS SEIZURES AND THE SOUL FINANCIAL PROVIDER.
3 WHAT SAY THE STATE?

4 MR. BAILEY: YOUR HONOR, I DON'T SEE HOW
5 YOU CAN SEQUESTER A SINGLE MOTHER THAT'S GOT A
6 CHILD WITH SEIZURES.

7 THE COURT: I DON'T EITHER. BUT AGAIN, I
8 HAVE TO YIELD TO THE WISHES OF THE DEFENDANT. WHAT
9 SAY THE DEFENDANT?

10 MR. BELL: EXCUSE HER, YOUR HONOR.

11 THE COURT: HOW ARE Y'ALL GOING TO
12 REHABILITATE SOMEBODY LIKE THAT AND TALK THEM INTO
13 STAYING OTHER THAN PAY THEIR BABYSITTERS WHICH
14 Y'ALL ARE NOT ALLOWED TO DO.

15 MR. BELL: WE'LL EXCUSE HER, YOUR HONOR.

16 THE COURT: ALL RIGHT. SO THAT'S NUMBER
17 57 IS EXCUSED. THREE YEAR OLD CHILD WITH
18 SEIZURES. THANK YOU. MR. BELL, DON'T LET ME TALK
19 YOU INTO ANYTHING. I MEAN, IF YOU WANT THEM
20 BROUGHT IN, WE'LL BRING THEM IN. I'M JUST TRYING
21 TO MINIMIZE THE INCONVENIENCE TO PEOPLE. SO 57 IS
22 EXCUSED. NUMBER 58 WE HAVE A RETURN ON. NUMBER 59
23 WE HAVE A RETURN ON. NUMBER 60; HAS THE SHERIFF
24 GIVEN UP ON THAT?

25 MS. FOOTMAN: YES, SIR.

1 THE COURT: ALL RIGHT. WHAT SAY THE
2 STATE?

3 MR. BAILEY: EXCUSED, YOUR HONOR.

4 MR. BELL: EXCUSED, YOUR HONOR.

5 THE COURT: NUMBER 61. HAS THE SHERIFF
6 GIVEN UP?

7 MS. FOOTMAN: YES, SIR.

8 THE COURT: WE'LL JUST PUT A QUESTION
9 MARK BY THAT. AND YOU ARE GOING TO MAKE A COPY OF
10 THE -- OH! THAT WAS RETURNED.

11 MS. FOOTMAN: YES, SIR.

12 THE COURT: INAPPROPRIATE ADDRESS?

13 MS. FOOTMAN: IT'S BEEN SENT TO THE
14 SHERIFF'S DEPARTMENT.

15 THE COURT: BUT THE SHERIFF HASN'T GIVEN
16 UP YET?

17 MS. FOOTMAN: NO. I DON'T HAVE ANYTHING
18 BACK FROM THEM.

19 THE COURT: ALL RIGHT. NUMBER 62.

20 MS. FOOTMAN: SHERIFF HAS GIVEN UP.

21 THE COURT: WHAT SAYS THE STATE?

22 MR. BAILEY: EXCUSED, YOUR HONOR.

23 THE COURT: DEFENSE?

24 MR. BELL: EXCUSED, YOUR HONOR.

25 THE COURT: NUMBER 63. HAS THE SHERIFF

1 GIVEN UP?

2 MS. FOOTMAN: YES, SIR.

3 THE COURT: WHAT SAYS THE STATE?

4 MR. BELL: EXCUSED, YOUR HONOR.

5 THE COURT: GENTLEMEN AND LADIES, IT IS
6 TWENTY MINUTES UNTIL TWO. I THOUGHT I WAS GOING TO
7 TAKE ABOUT THIRTY OR FORTY-FIVE MINUTES, BUT IT'S
8 GOING TO TAKE MORE LIKE TWO TO THREE HOURS. COULD
9 I SUGGEST WE JUST ORDER A PIZZA? DOES EVERYBODY
10 EAT PIZZA?

11 MR. BAILEY: THAT SOUNDS GOOD.

12 THE COURT: WE NEED TO EAT SOMETHING.
13 THERE'S NO NEED TO WAIT UNTIL 3:30 TO EAT. I JUST
14 SAY PIZZA, MARGIE. YOU LIVE DOWN HERE. WHAT DO
15 YOU SUGGEST?

16 MRS. MCKISSICK: THAT'S FINE.

17 THE COURT: KATHI?

18 THE COURT REPORTER: THAT SOUNDS GREAT.

19 THE COURT: MA'AM? MADAM DEPUTY, WOULD
20 YOU EAT A SLICE OF PIZZA WITH US?

21 THE BAILIFF: YES, SIR.

22 THE COURT: WALTER; ROBBIE?

23 MR. BAILEY: THAT'S FINE.

24 THE COURT: DEFENSE?

25 MR. BELL: THAT'S FINE, YOUR HONOR.

1 THE COURT: AND WE'VE GOT TO FEED MR.
2 SIMMONS.

3 MR. MOULTRIE: HE'S GOT A LUNCH COMING
4 OVER, YOUR HONOR.

5 THE COURT: OKAY. SO, MARGIE, I DON'T
6 CARE WHAT KIND YOU ORDER OR WHERE YOU ORDER IT FROM
7 BECAUSE IT WILL TAKE THEM A WHILE TO GET IT HERE.
8 BUT CAN YOU GET---

9 MRS. MCKISSICK: I'LL GET DOROTHY TO
10 ORDER IT.

11 THE COURT: ALL RIGHT. NUMBER 64, NO
12 INFORMATION, MA'AM?

13 MS. FOOTMAN: THEY SENT A RETURN BACK.

14 THE COURT: I'M SORRY.

15 MS. FOOTMAN: NUMBER 64 WAS A JUROR WHO
16 SENT IN A RESPONSE.

17 THE COURT: I'M SORRY. I JUST DON'T HAVE
18 ANYTHING ON HIM.

19 MR. FOOTMAN: OKAY.

20 THE COURT: DO YOU, SOLICITOR?

21 MR. BAILEY: NO, SIR.

22 THE COURT: ALL RIGHT. SO THERE'S A
23 QUESTIONNAIRE THERE?

24 MS. FOOTMAN: YES, SIR.

25 THE COURT: ALL RIGHT. WELL, LET'S HAND

1 IT TO MY BAILIFF OVER HERE AND GET HIM TO GO -- GO
2 AHEAD AND WRITE NUMBER 64 ON IT. AND THEN HE'LL
3 NEED TO MAKE THREE COPIES BECAUSE YOU KEEP THE
4 ORIGINAL, MA'AM. I GET A COPY. WILL THAT DO IT?

5 MR. BAILEY: YES, SIR.

6 THE COURT: SO I'M JUST GOING TO CHECK
7 THAT AS WE HAVE A RETURN. THEN THE NEXT ONE IS 65;
8 WE HAVE A RETURN. NUMBER 66; HAS THE SHERIFF GIVEN
9 UP?

10 MS. FOOTMAN: YES, SIR.

11 THE COURT: WHAT SAY THE STATE?

12 MR. BAILEY: EXCUSED, YOUR HONOR.

13 MR. BELL: EXCUSED, YOUR HONOR.

14 THE COURT: MR. SOLICITOR, DO YOU KNOW
15 ANY WAY TO SHORTEN THIS PROCESS?

16 MR. BAILEY: NO, SIR.

17 THE COURT: I DON'T EITHER. DO YOU, MR.
18 THEOS?

19 MR. THEOS: IF I COULD THINK OF ONE,
20 JUDGE---

21 THE COURT: WELL, I KNOW IT'S TEDIOUS,
22 BUT YOU KNOW; IT'S DARK AND DIRTY BUSINESS AS THEY
23 SAY; BUT SOMEBODY HAS GOT TO DO IT. ALL RIGHT, A
24 RETURN ON 67. RETURN ON 68. AGAIN, GENTLEMEN,
25 CALLING TO MY ATTENTION ANYTHING THAT YOU THINK

1 SHOULD---

2 MR. ROBBINS: YOUR HONOR, THERE WAS A
3 LETTER ON 67.

4 THE COURT: "I'M RESPONSIBLE FOR SETUP
5 OPERATIONS AT RESEARCH PROJECTS WITH EQUIPMENT
6 MANUFACTURERS WHICH MUST BE SCHEDULED WHEN PILOT
7 UNITS ARE AVAILABLE THE WEEK OF FEBRUARY THE 22ND.
8 A PROJECT HAS BEEN SCHEDULED." IS THAT WHAT YOU'RE
9 SPEAKING OF?

10 MR. ROBBINS: YES, SIR. A LETTER FROM
11 THE C.P.W. DATED JANUARY THE 26TH 1999.

12 THE COURT: THAT'S THE HANNAHAN WATER
13 TREATMENT? I KNOW MR. THEOS DOESN'T LIVE IN
14 HANNAHAN. SO WHAT SAY THE STATE?

15 MR. BAILEY: JUDGE, I THINK JUST TO BE
16 CONSISTENT, THOSE PEOPLE WITH WORK CONFLICTS OUGHT
17 TO COME IN.

18 THE COURT: AGREED WITH THE DEFENDANT?

19 MR. BELL: AGREED, YOUR HONOR.

20 THE COURT: WELL, I'M GOING TO NOTE ON MY
21 MASTER SHEET A WORK CONFLICT SO WHEN WE DO GET THEM
22 IN VOIR DIRE, WE'LL KNOW THAT. NUMBER 68,
23 ATTENDING THE COLLEGE OF CHARLESTON. I DON'T KNOW
24 IF Y'ALL KNOW MR. THEOS IS A CLEMSON MAN. AND
25 Y'ALL STILL AGREE THAT THE STUDENTS SHOULD COME

1 IN?

2 MR. BAILEY: JUDGE, I THOUGHT THE
3 STUDENTS, IF THEY CLAIMED THAT EXEMPTION, THEY
4 SHOULD BE EXCUSED. I THOUGHT WE WERE JUST TALKING
5 ABOUT TEACHERS.

6 THE COURT: WELL, LET ME LOOK AT THE
7 STATUTE HERE. WHAT SAY THE DEFENDANT?

8 MR. THEOS: (NO RESPONSE.)

9 THE COURT: I'M LOOKING AT 14-7-845 "IF A
10 STUDENT SELECTED FOR JURY SERVICE DURING A SCHOOL
11 TERM REQUEST, HIS SERVICE MUST BE POSTPONED TO A
12 DATE THAT DOES NOT CONFLICT WITH THE SCHOOL TERM."
13 THE PURPOSE OF THIS SECTION IS IF A STUDENT IS
14 ENROLLED IN HIGH SCHOOL OR AN INSTITUTION OF HIGHER
15 LEARNING INCLUDING TECHNICAL COLLEGE.

16 MR. BELL: EXCUSED.

17 THE COURT: WHAT SAY THE STATE?

18 MR. BAILEY: EXCUSED OR POSTPONED, YOUR
19 HONOR.

20 THE COURT: WHAT SAY THE DEFENSE?

21 MR. BELL: EXCUSED. YOUR HONOR.

22 THE COURT: THANK YOU. SO, MADAM CLERK,
23 PLEASE BE SURE TO NOTIFY THEM BECAUSE WE WANT TO
24 SAVE THAT \$25 AND ANY INCONVENIENCE.

25 MS. FOOTMAN: YES, SIR.

1 THE COURT: YES, SIR? (AT THIS TIME
2 OFF-THE-RECORD DISCUSSION IS HELD.) SURE.
3 GENTLEMEN, THE CASE LAW IS SUCH THAT THE DEFENDANT
4 DOESN'T HAVE TO BE PRESENT FOR THIS. I WANTED HIM
5 TO BE AVAILABLE, AND WE CAN LET HIM COME HERE AND
6 EAT IN THE COURTROOM OR LET HIM GO OUTSIDE AND EAT.

7 MR. THEOS: YOUR HONOR, HE ASKED THE
8 COURT IF HE COULD GO BACK, AND WE ASKED HIM TO STAY
9 BECAUSE OF OUR DISCUSSION. BUT WE WILL WAIVE HIS
10 PRESENCE. HE DOESN'T DESIRE TO BE HERE FOR THIS.
11 AND HIS FOOD IS HERE. SO ONCE HE EATS, WE DON'T
12 MIND HIM GOING BACK TO---

13 THE COURT: ONCE HE EATS, BRING HIM BACK
14 IN.

15 MR. BAILEY: JUDGE?

16 THE COURT: SIR?

17 MR. BAILEY: COULD WE GET A WAIVER FROM
18 MR. SIMMONS HIMSELF, A PERSONAL WAIVER, JUST TO
19 PROTECT THE RECORD NOT TO BE HERE?

20 THE COURT: MR. SIMMONS, WOULD YOU STAND,
21 PLEASE? (DEFENDANT COMPLIES.) MR. SIMMONS, WE'RE
22 REVIEWING THESE JUROR RETURNS AND TO SEE WHICH ARE
23 EXCUSED, WHICH POSSIBLY SHOULD BE EXCUSED. DO YOU
24 UNDERSTAND THAT?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: AND YOUR LAWYERS HAVE
2 INDICATED THAT YOU HAD ASKED THEM IF YOU COULD GO
3 BACK TO THE DETENTION CENTER. IS THAT CORRECT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: YOU UNDERSTAND YOU HAVE A
6 RIGHT TO BE HERE IF YOU'D LIKE TO BE. AND WE'LL
7 STOP WHILE YOU EAT OR EITHER WAIT AND LET YOU EAT
8 WHEN WE DO. BUT---

9 THE DEFENDANT: IT'S UP TO YOU.

10 THE COURT: WELL, NO, SIR. WOULD YOU
11 LIKE TO LEAVE THIS PROCEEDING LONG ENOUGH TO GO
12 EAT; OR DO YOU WANT WAIT AND EAT WHEN WE EAT?
13 WHAT'S YOUR PLEASURE?

14 THE DEFENDANT: I CAN GO.

15 THE COURT: NOW, IT'S NOT THAT I WANT YOU
16 TO. I WANT YOU TO STAY. BUT IF YOU WANT TO GO EAT
17 NOW, I HAVE NO PROBLEM WITH YOUR GOING TO EAT NOW.
18 I'LL LEAVE IT UP TO YOU.

19 THE DEFENDANT: I'D RATHER GO BACK.

20 THE COURT: WELL, NOW, I'M GOING TO KEEP
21 YOU OVER HERE FOR THE HEARING. I'M NOT GOING TO
22 SEND YOU BACK TO THE DETENTION CENTER IN CASE YOUR
23 LAWYERS NEED TO CONFER WITH YOU.

24 THE DEFENDANT: I'LL GO EAT.

25 THE COURT: ALL RIGHT. GO AHEAD. WHEN

1 HE FINISHES EATING, BRING HIM BACK IN HERE.

2 MR. MOULTRIE: ALL RIGHT, SIR.

3 THE COURT: ALL RIGHT. SO 67, WE'VE GOT
4 A WORK CONFLICT. NUMBER 68 WAS EXCUSED. NUMBER 67
5 WILL BE HERE. THEN WE GET TO NUMBER 69. HAS THE
6 SHERIFF GIVEN UP?

7 MS. FOOTMAN: YES, SIR.

8 THE COURT: WHAT SAY THE STATE?

9 MR. BAILEY: EXCUSED, YOUR HONOR.

10 MR. BELL: EXCUSED, YOUR HONOR.

11 THE COURT: NUMBER 70; AT THE PRESENT
12 TIME UNABLE TO ATTEND. I WILL BE OUT OF STATE AT
13 THAT TIME. GOSH! THAT'S TERRIBLE. ALREADY
14 PURCHASED MY AIRLINE TICKETS AND THEY'RE
15 NON-REFUNDABLE. AND HE DIDN'T EVEN SEND THE RETURN
16 IN. MADAM CLERK, I SURE HATE FOR YOU TO CALL HIM
17 AND TELL HIM HE'S GOT TO BE HERE. BUT THAT'S NOT
18 AN EXCUSE.

19 MS. FOOTMAN: ALL RIGHT.

20 THE COURT: WHAT SAY THE STATE?

21 MR. BAILEY: I'D BE WILLING IF THE
22 DEFENSE -- IF HE'S GOT PRE-PLANNED TICKETS AND A
23 VACATION OUT OF TOWN, JUST TO LET HIM GO.

24 THE COURT: I DON'T KNOW THAT HE'S GOT
25 VACATION OUT OF TOWN.

1 MR. BELL: YOUR HONOR, IF HE'S GOT
2 AIRLINE TICKETS, WE'LL EXCUSE HIM. WE HAVE NO
3 PROBLEM WITH THAT.

4 MR. BAILEY: HE WOULDN'T BE HAPPY IF HE
5 SHOWED UP.

6 THE COURT: ALL RIGHT. IF PEOPLE FIND
7 OUT THEY CAN BUY A NON-REFUNDABLE TICKET AND
8 THEY'RE EXCUSED THEN -- ALL RIGHT. NUMBER 70 IS --
9 BY CONSENT, MR. SOLICITOR, YOU AGREE?

10 MR. BAILEY: YES, SIR, YOUR HONOR.

11 THE COURT: FOR THE DEFENSE?

12 MR. BELL: YES, SIR.

13 THE COURT: NUMBER 71. HAS THE SHERIFF
14 GIVEN UP?

15 THE CLERK: YES, SIR.

16 THE COURT: WHAT SAY THE STATE?

17 MR. BAILEY: EXCUSED, YOUR HONOR.

18 THE COURT: DEFENSE?

19 MR. BELL: EXCUSED, YOUR HONOR.

20 THE COURT: NUMBER 72, DECEASED. AGREED,
21 GENTLEMEN?

22 MR. BAILEY: YES, SIR.

23 MR. BELL: YES, SIR.

24 THE COURT: NUMBER 73 IS A RETURN.

25 MR. ROBBINS: YOUR HONOR, THERE'S A

1 LETTER ATTACHED TO THE BACK OF 73.

2 THE COURT: TROUBLE SITTING AND STANDING
3 FOR LONG PERIODS. IS THAT BALL SYNDROME; GILLAM?

4 MR. ROBBINS: I THINK IT'S BARRE, YOUR
5 HONOR; I BELIEVE B-A-R-R-E, I THINK.

6 THE COURT: NOW TAKING ZYLAN FOR
7 DEPRESSION. HARD TIME CONCENTRATING. SLOW IN
8 MEMORY. WHAT SAY THE STATE?

9 MR. BAILEY: MY VOTE WOULD BE TO EXCUSE
10 HER, JUDGE.

11 THE COURT: WHAT SAY THE DEFENSE?

12 MR. BELL: EXCUSE THE JUROR.

13 THE COURT: BY AGREEMENT, 73 IS EXCUSED.
14 AND, PLEASE, MADAM CLERK; BE SURE TO NOTIFY THESE.
15 NUMBER, THERE IS A RETURN. NUMBER 75. HAS THE
16 SHERIFF GIVEN UP?

17 MS. FOOTMAN: YES, SIR.

18 THE COURT: WHAT SAY THE STATE?

19 MR. BAILEY: EXCUSED, YOUR HONOR.

20 THE COURT: DEFENSE?

21 MR. BELL: EXCUSED, YOUR HONOR.

22 THE COURT: NUMBER 76 IS A RETURN ON?
23 NUMBER 77. HAS THE SHERIFF GIVEN UP?

24 MS. FOOTMAN: YES, SIR.

25 THE COURT: NUMBER 78; HAS THE SHERIFF

1 GIVEN UP?

2 MS. FOOTMAN: YES, SIR.

3 THE COURT: WHAT SAYS THE STATE AS TO 77
4 AND 78?

5 MR. BAILEY: EXCUSED ON BOTH OF THEM,
6 YOUR HONOR.

7 MR. BELL: EXCUSE BOTH, YOUR HONOR.

8 THE COURT: WE HAVE NOTHING ON NUMBER
9 79?

10 MS. FOOTMAN: NO, SIR.

11 THE COURT: AND THAT'S THE TYPE THAT
12 YOU'RE GOING TO PRINT ANOTHER SUMMONS; GIVE IT TO
13 THE SHERIFF? PLEASE; THANK YOU.

14 MS. FOOTMAN: YES, SIR

15 THE COURT: NUMBER 80. HAS THE SHERIFF
16 GIVEN UP?

17 MS. FOOTMAN: YES, SIR.

18 THE COURT: WHAT SAY THE STATE?

19 MR. BAILEY: EXCUSED, YOUR HONOR.

20 THE COURT: DEFENSE?

21 MR. BELL: EXCUSED, YOUR HONOR.

22 THE COURT: NUMBER 81 IS A RETURN.

23 NUMBER 82, SHERIFF CONCEDED?

24 MS. FOOTMAN: YES, SIR.

25 THE COURT: STATE?

1 MR. BAILEY: EXCUSED, YOUR HONOR.

2 THE COURT: DEFENSE?

3 MR. BELL: EXCUSED, YOUR HONOR.

4 THE COURT: GENTLEMEN, WOULD IT BE OF ANY
5 HELP IF WE TOOK A TEN MINUTE RECESS AND LET THE
6 CLERK GO THROUGH THEM AND PULL OUT THE ONES THAT
7 HAVE BEEN RETURNED THAT THE SHERIFF HAS NOT BEEN
8 ABLE TO FIND, AND THEN WE CAN JUST MAYBE TAKE CARE
9 OF ABOUT EIGHTY OR A HUNDRED OF THEM RATHER THAN ON
10 EACH ONE PUTTING "WHAT SAY THE STATE; WHAT SAY THE
11 DEFENSE?" WOULDN'T THAT SPEED THE PROCESS?

12 MR. BELL: YES, YOUR HONOR. ALL RIGHT.
13 SO, MADAM CLERK, DO YOU MIND GOING THROUGH THE
14 REMAINDER? WE'RE NOW AT -- NUMBER 82 IS THE LAST
15 ONE I HAVE HERE. PULL OUT THE ONES THEREAFTER
16 WHERE THE SHERIFF HAS GIVEN UP, THEY'VE BEEN
17 RETURNED TO YOU, AND YOU'VE TURNED THEM OVER TO THE
18 SHERIFF AND THE SHERIFF HAS GIVEN UP ON THEM? AND
19 YOU MIGHT, WHILE YOU'RE GOING THROUGH THAT, FIX
20 ANOTHER STACK ON THE ONES THAT WE HAVE RETURNS ON
21 AND THEN ANOTHER STACK ON THE ONES THAT YOU HAVE NO
22 RESPONSE TO THAT YOU'RE GOING TO MAKE A COPY OF AND
23 SEND TO THE SHERIFF?

24 MS. FOOTMAN: OKAY. I HAVE THE ONES WITH
25 THE PROBLEMS. I HAVE THE ONES THAT ARE---

1 THE COURT: ALREADY SEPARATED?

2 MS. FOOTMAN: RIGHT. AND THE ONES THAT
3 THE SHERIFF'S DEPARTMENT; I HAVE THEM SEPARATED.

4 THE COURT: ALREADY?

5 MS. FOOTMAN: I HAVE TO PULL THOSE PEOPLE
6 OUT.

7 THE COURT: ALL RIGHT. WELL, PULL A FEW
8 MORE OUT. AND YOU GENTLEMEN COME UP HERE AND LOOK
9 AT THEM, AND THEN WE'LL READ INTO THE RECORD THE
10 ONES -- THANK YOU. I WASN'T AWARE THAT YOU HAD
11 THEM SEPARATED LIKE THAT. THAT'S GOOD.

12 MS. FOOTMAN: YES, SIR.

13 (BRIEF RECESS.)

14 THE COURT: NOTE FOR THE RECORD WE'RE IN
15 AGREEMENT, MA'AM. THANK YOU FOR THE LUNCH, MADAM
16 CLERK.

17 MRS. MCKISSICK: YES, SIR.

18 THE COURT: MADAM CLERK, YOU'RE GOING TO
19 ASK ME ULTIMATELY TO SIGN THAT JURY LIST THAT THIS
20 IS WHO YOU'VE DRAWN AND THIS IS WHO WAS EXCUSED, OR
21 WHATEVER? WE NEED TO HAVE THE APPROPRIATE
22 NOTATIONS ON THESE, OKAY, ON YOUR MASTER THAT I'LL
23 SIGN. BUT, I MEAN, WE CAN DO THAT TEN DAYS FROM
24 NOW. THAT'S JUST A FRIENDLY REMINDER THAT THAT IS
25 SOMETHING THAT WILL HAVE TO BE DONE. ALL RIGHT.

1 MADAM COURT REPORTER, PLEASE MA'AM, LET ME THANK
2 SOLICITOR BAILEY AND ATTORNEYS THEOS AND BELL AND
3 THANK FLO FOOTMAN AND ALL OTHERS CONCERNED FOR
4 TAKING THE TIME. RATHER THAN FOR EACH INDIVIDUAL
5 JURY NUMBER AND IN ESSENCE OF TIME, BECAUSE IT IS A
6 FRIDAY AFTERNOON AT 3:30, AND WE HAVE SEVERAL HOURS
7 YET TO GO. THE ATTORNEYS HAVE GONE THROUGH WITH
8 THE CLERK, MS. FOOTMAN, THE DEPUTY CLERK, AND MRS.
9 MARGIE, THE REAL CLERK, OF THESE VARIOUS JUROR
10 RETURNS. AND IN THE RECORD, MADAM COURT REPORTER,
11 I HAVE HANDED TO YOU A COPY OF A DOCUMENT WHICH
12 SAYS "EXCUSED BY LAW AND/OR BY AGREEMENT OF
13 COUNSEL." AND THAT HAS BEEN SIGNED BY THE
14 SOLICITOR, THE DEFENSE ATTORNEYS, AND BY MR.
15 SIMMONS. AND THE ATTORNEYS -- I WOULD ASK YOU TO
16 CRAVE REFERENCE TO YOUR LIST AT THIS TIME TO MAKE
17 SURE THE CORRECTNESS OF WHAT I'M SAYING. THOSE WHO
18 THE SUMMONSES THAT WERE MAILED TO THEM WERE
19 RETURNED BY THE POST OFFICE, UNABLE TO LOCATE,
20 MOVED, ADDRESSEE UNKNOWN. AND THOSE SUMMONS HAVE
21 BEEN TURNED OVER TO THE SHERIFF'S DEPARTMENT IN THE
22 LAST FEW WEEKS. AND THE SHERIFF'S DEPARTMENT HAS
23 NOW NOTIFIED THE CLERK THAT THEY HAVE EXHAUSTED
24 THEIR GOOD FAITH EFFORTS TO ATTEMPT TO PERFECT
25 SERVICE OF THE JURY SUMMONS UPON THE FOLLOWING

1 NUMBERS. 86, 87, 89, 92, 96, 101, 103, 108, 109,
2 113, 114, 117, 118, 119, 123, 124, 126, 131, 134,
3 136, 138, 141, 145, 151, 160, 161, 163, 167, 168,
4 174, 175, 180, 182, 183, 184, 185, 186, 189, 192,
5 196, 200, 202, 207, 209, 210, 212, 214, 217, 218,
6 222, 225, 235, 238, 243, 244, 248, 250, 252, 257,
7 259, 260, 262, 265, 267, 272, 273, 275, 286, 290,
8 291, 298, 305, 321, 323, 324, 325, 326, 329, 332,
9 342, 343, 344. THOSE, IT IS AGREED, THAT THEY WILL
10 NOT APPEAR BECAUSE AS A MATTER OF LAW THEY CANNOT
11 BE NOTICED TO APPEAR. YES, MR. BELL?

12 MR. BELL: THREE OTHER NUMBERS, YOUR
13 HONOR, ON THE RIGHT-HAND SIDE; 47, 48, AND 49.

14 THE COURT: I BEG YOUR PARDON. ADD TO
15 THAT 347, 348, 349. THANK YOU FOR BEING ALERT,
16 JIM. THEN, MADAM COURT REPORTER, FOR THOSE THAT
17 ARE OVER AGE 65 AND ARE EXEMPT BY LAW IF THEY CLAIM
18 IT, AND THESE HAVE CLAIMED IT, 121, 127, 130, 135,
19 142, 147, 153, 156, 170, 177; AND YOU'RE KEEPING
20 190; IS THAT RIGHT? THE PLUS MEANS YOU'RE GOING TO
21 KEEP THEM? OH, YOU COULDN'T PULL OUT OF THE FILE?
22 ALL RIGHT. NUMBER 190, 208, 215, 220, 236, 280,
23 287, 288, 292, 295, 340, 345, AND 296. THREE
24 STUDENTS, 120, 233, 262. THREE WITH MEDICAL
25 PROBLEMS WHICH WOULD PRECLUDE THEIR ABILITY TO

1 SERVE. NUMBERS 158, 310, 339. TWO WITH CRIMINAL
2 RECORDS SATISFACTORY TO THE DEFENDANT THAT THEY
3 WOULD NOT HAVE RECEIVED A PARDON AND BE OTHERWISE
4 AVAILABLE, 203, AND 246. THEN THOSE PERSONS WHO
5 HAVE MOVED OUT OF THE COUNTY OR OUT OF THE STATE,
6 85, 91, 99, 150, 163, 166, 176, 178, 188, 206, 232,
7 241, 252, 278, 286, 306, 308, 331, AND 349. AND,
8 OBVIOUSLY, MA'AM, THOSE ARE HUNDREDS, TWO HUNDREDS
9 AND THREE HUNDREDS. I WAS JUST BEING BRIEF. THOSE
10 WHO ARE DECEASED, 94, 152, 174, 181, 191, 193, 229.
11 LAW ENFORCEMENT OR WORKS WITHIN THE WALLS OF THE
12 COURT HOUSE, 231 AND 251. MOTHER OF YOUNG CHILDREN
13 UNDER SIX AND THE SOUL CARE FOR THEM AND EXEMPT,
14 277, 293, 315, 317, AND 337. MY ROUGH TALLY,
15 GENTLEMEN AND LADIES, IS 149 BUT WE HAD ALREADY, ON
16 THE RECORD, REVIEWED THOSE UP TO NUMBER 86. SO,
17 MR. SOLICITOR, AGAIN I ASK YOU IF THIS IS CORRECT
18 AND THE STATE IS IN COMPLETE AGREEMENT THAT THEY
19 WILL NOT APPEAR AND SHOULD BE EXCUSED?

20 MR. BAILEY: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: AND MR. THEOS AND MR. BELL
22 AND MR. SIMMONS. ARE YOU IN COMPLETE AGREEMENT
23 THAT THESE ARE NOT EXPECTED TO BE HERE, CANNOT BE
24 FOUND, ARE EXCUSED BY LAW OR OTHERWISE?

25 MR. BELL: YES, SIR.

1 MR. THEOS: YES, SIR.

2 THE COURT: MR. SIMMONS?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: THANK YOU. SO, GENTLEMEN, I
5 HAVE NOT HAD A CHANCE TO MARK OFF MY LIST HERE. SO
6 Y'ALL CALL TO MY ATTENTION IF WE LEAVE ANY OUT.
7 WHAT I'M GOING TO DO IS GO OVER THOSE. AND I'M
8 PLACING WITH YOU, MADAM COURT REPORTER, THE RETURNS
9 OR THE STAMPED ENVELOPE PHOTOCOPY WHERE THEY
10 COULDN'T BE FOUND, AND THOSE THAT WE'VE DISCUSSED
11 EARLIER TODAY AND DISMISSED WILL BE MADE PART AND
12 PARCEL OF THE RECORD, PLEASE. AND, GENTLEMEN,
13 AGAIN GIVE CAREFUL ATTENTION TO THIS LIST AND
14 CORRECT ANY MISSTATEMENT THAT THE COURT MAKES. BUT
15 THOSE THAT WE HAVE RETURNS ON THAT WOULD BE
16 EXPECTED TO APPEAR, NUMBER 83, NUMBER 84---

17 MS. FOOTMAN: YOUR HONOR?

18 THE COURT: YES, MA'AM?

19 MS. FOOTMAN: NUMBER 83 HAD A MEDICAL
20 PROBLEM. I DON'T KNOW WHETHER WE WENT OVER THAT.

21 MR. BAILEY: WE DID NOT, I DON'T THINK.

22 THE COURT: THIS LADY, MARSHELLE DEWEESE,
23 JUROR NUMBER 83 STATES THAT SHE'S HAD FIFTEEN
24 OPERATIONS OVER THE LAST TWENTY YEARS, STILL HAVING
25 PAIN. 1998, INVOLVED IN A TWO CAR ACCIDENT;

1 ALREADY HAVE A LAWYER. SEVERE BACK PROBLEMS;
2 UNABLE TO WORK FOR ALMOST A YEAR. HAD TO RE-LEARN
3 TO WALK. THEN IT GOES ON AND ON. UNCONTROLLABLE
4 SEIZURES. WHAT DO YOU SAY, MR. SOLICITOR?

5 MR. BAILEY: EXCUSE HER, YOUR HONOR.

6 THE COURT: FOR THE DEFENSE?

7 MR. BELL: EXCUSE HER, YOUR HONOR.

8 THE COURT: ALL RIGHT; NUMBER 83. AND,
9 FLO, THANK YOU FOR CALLING THAT TO MY ATTENTION.
10 AND I INVITE EACH OF YOU BECAUSE THE MORE WE CAN
11 NARROW THIS LIST, WE'RE HELPING THESE GOOD CITIZENS
12 AND REGISTERED VOTERS OF DORCHESTER COUNTY WHICH
13 THE CLERK APPRECIATES YOU HELPING. NUMBER 84, WE
14 HAVE A RETURN ON.

15 MS. FOOTMAN: SHE HAS A TRANSPORTATION
16 PROBLEM.

17 THE COURT: ALL RIGHT. ANY OBJECTION TO
18 THE SHERIFF'S DEPARTMENT HELPING THIS JUROR, NUMBER
19 84, GET HERE WHO HAS A TRANSPORTATION PROBLEM?

20 MR. BAILEY: NO, SIR.

21 THE COURT: DEFENSE?

22 MR. THEOS: NO, SIR.

23 MR. BAILEY: JUDGE, SHE ALSO INDICATES
24 SHE'S GOT A THREE YEAR OLD CHILD.

25 THE COURT: WELL, HAS SHE ASKED TO BE

1 EXCUSED. IS SHE THE SOUL CARE TAKER?

2 MR. BAILEY: SHE DOESN'T INDICATE THAT

3 SHE'S WORKING OUTSIDE THE HOME.

4 MR. BELL: SHE DIDN'T REQUEST IT AT ALL.

5 AND ANYONE WHO SEMI-REQUESTS IT -- YOU'VE GOT A

6 REQUEST FORM FROM HER?

7 MS. FOOTMAN: SHE SAYS PLEASE EXCUSE.

8 THE COURT: WE DON'T HAVE THAT. SHOW IT

9 TO THEM. LET MR. BELL LOOK AT IT.

10 MR. THEOS: I THOUGHT WE WENT OVER ALL

11 THAT.

12 MS. FOOTMAN: YES, WE DID. BUT SOME OF

13 THEM---

14 THE COURT: SOME OF THESE CAME IN LATE

15 APPARENTLY, FLO; IS THAT RIGHT?

16 MS. FOOTMAN: NO. THEY WERE HERE, BUT WE

17 JUST DIDN'T REALLY GET INTO SOME OF THEM. WE KIND

18 OF SCANNED OVER THEM.

19 THE COURT: DATE OF BIRTH IS '45. SO

20 THAT MAKES HER 53. AND SHE HAS A THREE YEAR OLD

21 CHILD? WE MIGHT NEED HER ENERGY AND ENTHUSIASM.

22 I'M LOOKING AT NUMBER 90. I'M READING THE WRONG

23 THING. I'M SORRY. YOU'RE TALKING ABOUT NUMBER 84?

24 MS. FOOTMAN: YES, SIR.

25 THE COURT: WHAT SAY THE STATE?

1 MR. BAILEY: JUDGE, I DEFER TO THE
2 DEFENSE ON THAT. I'D JUST AS SOON LEAVE HER AT
3 HOME. BUT IF THEY WANT HER TO COME IN, THAT'S
4 FINE.

5 THE COURT: STAY-AT-HOME MOM WITH NO
6 HELP. NO ONE TO KEEP MY THREE YEAR OLD DAUGHTER.

7 MR. BELL: LET HER STAY AT HOME, YOUR
8 HONOR.

9 THE COURT: ALL RIGHT. WE'LL EXCUSE
10 NUMBER 84. NUMBER 84 IS EXCUSED; YOUNG CHILDREN.
11 WE HAVE A RETURN ON 90. IF I'M SKIPPING OVER ANY,
12 Y'ALL LET ME KNOW. NUMBER 92, THE SHERIFF IS STILL
13 LOOKING. OH! THAT'S FAILURE TO LOCATE.

14 MR. BAILEY: EXCUSED.

15 MS. FOOTMAN: EXCUSED.

16 THE COURT: NUMBER 93, WE HAVE A RETURN.
17 NUMBER 95, WE HAVE A RETURN. NUMBER 102, THE JUROR
18 SAYS -- MRS. DEBORAH ERVIN SAYS SHE HAS AN
19 OVERACTIVE BLADDER AND HAS TO USE THE BATHROOM
20 FACILITIES CONTINUOUSLY. WHAT SAY THE STATE?

21 MR. BAILEY: YOUR HONOR, SHE SAID SEVERAL
22 TIMES AN HOUR. I THINK IF THAT'S CORRECT THAT WILL
23 BE DISRUPTIVE OF THE TRIAL. WE WOULD EXCUSE HER.

24 MR. BELL: EXCUSE HER, YOUR HONOR.

25 THE COURT: NUMBER 102, BY AGREEMENT, IS

1 EXCUSED. WE HAVE A RETURN ON 104. NUMBER 105. I
2 HAVE A LETTER CONCERNING HIS EMPLOYMENT.

3 MS. FOOTMAN: WE'RE ASKING HIM TO COME
4 IN.

5 THE COURT: DO Y'ALL WANT HIM TO COME
6 IN?

7 MR. BAILEY: YES, SIR.

8 THE COURT: AND I'LL MAKE NOTE HERE "WORK
9 CONFLICT" SO WHEN WE GET TO HIM, WE'LL KNOW THAT.
10 NUMBER 106 IS A RETURN. NUMBER 107 THERE IS A
11 RETURN. NUMBER 115. I DON'T HAVE A RETURN, BUT
12 THERE IS SOMETHING FROM THE SCHOOL DISTRICT TWO
13 THERE. SHE'S A GUIDANCE COUNSELOR AND WANTS TO
14 WAIT UNTIL THE SUMMER.

15 THE COURT: WHAT SAY THE STATE?

16 MR. BAILEY: YOUR HONOR, WE'VE BEEN
17 MAKING SCHOOL PEOPLE COME IN. AND I THINK---

18 THE COURT: IT SUITS ME. DOES IT SUIT
19 THE DEFENDANT?

20 MR. BELL: YES, SIR.

21 THE COURT: Y'ALL JUST TELL ME YOUR
22 PLEASURE. NUMBER 116, WE HAVE A RETURN. AGAIN,
23 THAT'S A TEACHER. BUT WE'RE GOING TO HAVE THEM
24 COME IN. AND 122, WE HAVE A RETURN. NUMBER 129 A
25 RETURN. NUMBER 135, A RETURN.

1 MR. BAILEY: WE HAD EXCUSED 135 FOR BEING
2 OVER 65, YOUR HONOR.

3 THE COURT: OVER 65? ALL RIGHT. THANK
4 YOU. AS I SAID, I HAVEN'T HAD TIME TO MARK MY
5 LIST. SO Y'ALL ARE BEING HELPFUL TO SHARE THAT
6 WITH ME. NUMBER 137, A RETURN. NUMBER 139, A
7 RETURN.

8 MRS. MCKISSICK: NUMBER 139 HAS A SICK
9 HUSBAND.

10 THE COURT: ALL RIGHT, GENTLEMEN. Y'ALL
11 HAVE READ THAT ATTACHED LETTER TO 139. NO DRIVER'S
12 LICENSE. MY HUSBAND JUST HAD SURGERY, A HEART
13 ATTACK. HAD TO TAKE THE SURGERY AGAIN IN FOUR OR
14 FIVE WEEKS. NEEDS ME AT HOME. THE NEXT SURGERY TO
15 UNCLOG AN ARTERY, O-R-T-I-A-R-Y. AND THEY'VE GOT
16 TO GO BACK FOR FURTHER SURGERY.

17 MR. BELL: WE'D LIKE HER TO COME IN, YOUR
18 HONOR.

19 THE COURT: ALL RIGHT, MA'AM. ALL RIGHT,
20 NUMBER 144; SAYS WRONG ADDRESS. DID Y'ALL DO
21 ANYTHING WITH 144 BECAUSE WE DON'T HAVE A
22 QUESTIONNAIRE?

23 MR. BAILEY: NO, SIR.

24 THE COURT: AND, MA'AM, YOU'RE GOING TO
25 TURN THAT OVER TO THE SHERIFF?

1 MS. FOOTMAN: I THINK IT HAS BEEN.

2 THE COURT: DOUBLE CHECK, PLEASE. NUMBER
3 154, THERE'S A RETURN. NUMBER 157 WAS A STUDENT.

4 THE COURT: NUMBER 157 IS A STUDENT AT
5 TRIDENT TECHNICAL COLLEGE; GRADUATE IN MAY OF 2000.
6 WHAT DO YOU SAY, FELLOWS?

7 MR. BAILEY: JUDGE, WE'VE BEEN AGREEING
8 TO EXCUSE FULL-TIME STUDENTS. WE HAVEN'T SEEN
9 HERS.

10 MR. BELL: WE HAVEN'T SEEN THAT.

11 THE COURT: I DON'T HAVE ANYTHING ON.

12 MS. FOOTMAN: THEY EXCUSED HER, YOUR
13 HONOR.

14 THE COURT: NUMBER 158 IS EXCUSED;
15 DISABILITY?

16 MS. FOOTMAN: YES, SIR.

17 THE COURT: I HAVEN'T HAD TIME, AS I
18 MENTIONED, TO POST MINE. NUMBER 164, WE HAVE A
19 RETURN. NUMBER 165 IS A RETURN.

20 MS. FOOTMAN: NUMBER 164 HAD VACATION
21 PLANS. DID THEY DO ANYTHING WITH HER?

22 MR. BAILEY: WE DIDN'T LOOK AT HERS, I
23 DON'T BELIEVE.

24 THE COURT: WELL, ALL SHE'S GOT TO DO IS
25 GO BUY A NON-REFUNDABLE TICKET. OUT OF STATE FOR

1 VACATION. HAS BEEN PAID FOR SEVERAL MONTHS. WHAT
2 SAY THE STATE?

3 MR. BAILEY: JUDGE, IF SHE'S GOT
4 OUT-OF-STATE PLANS PAID FOR, I'D JUST AS SOON LET
5 HER.

6 MR. BELL: YES, SIR.

7 THE COURT: EXCUSE 164. GENTLEMEN, I
8 THANK YOU FOR YOUR COOPERATION. BECAUSE WE NEED TO
9 CREATE GOODWILL AMONG JURORS, NOT FURTHER ILL WILL.
10 NUMBER 165, FULL-TIME SCHOOL COUNSELOR EMPLOYED AT
11 THE SCHOOL. SO THEY'RE GOING TO HAVE TO SHOW,
12 RIGHT?

13 MR. BAILEY: YES, SIR.

14 MR. BELL: YES, SIR.

15 THE COURT: NUMBER 169, WE HAVE A RETURN.
16 NUMBER 171, "DUE TO A BACK INJURY I GOT AT WORK, AM
17 NOW UNDER A DOCTOR'S CARE. WHAT SAY THE STATE?

18 MR. BAILEY: IF SHE SENDS A DOCTOR'S
19 EXCUSE IN, I'LL AGREE TO EXCUSE HER.

20 THE COURT: GOT A DISK OUT OF PLACE. SO,
21 MADAM CLERK, YOU'RE GOING TO CALL HER AND TELL HER
22 THAT THEY'RE GOING TO HAVE TO GET A DOCTOR'S EXCUSE
23 FOR US TO CONSIDER BY WEDNESDAY. IF THEY DON'T
24 HAVE IT BY WEDNESDAY, I THINK WE'LL JUST MAKE THEM
25 COME IN ON MONDAY, FELLOWS, BECAUSE I DON'T SEE HOW

1 WE CAN MEET AGAIN ON THURSDAY AND FRIDAY. Y'ALL
2 NEED TO BE GETTING READY IF WE CAN AVOID IT. SO
3 I'M GOING TO PUT 171 WITH A CHECK "QUESTION MED;"
4 OKAY? AND, MARGIE, I KNOW THIS PUTS A GREAT BURDEN
5 AND STRAIN ON YOUR OFFICE, BUT I DON'T KNOW HOW TO
6 GET AROUND IT, DO YOU?

7 MRS. MCKISSICK: NO, I SURELY DON'T.

8 THE COURT: NUMBER 172, WE HAVE A
9 RETURN. NUMBER 173, WE HAVE A RETURN.

10 MS. FOOTMAN: NUMBER 173 HAS GOT PROBLEMS
11 WITH LIMITED COMPREHENSION AND HAS SOMEONE SICK OUT
12 OF STATE; 173.

13 THE COURT: YES, MA'AM. I'M LOOKING AT
14 THAT.

15 MRS. MCKISSICK: SHE SAID SHE'S HAD A
16 SEVERE HEART ATTACK AND HAS CANCER, AND SHE DOESN'T
17 COMPREHEND.

18 THE COURT: "IT WON'T AFFECT ME TO SERVE
19 AS A JUROR, BUT I JUST FINISHED CHEMO THERAPY AND
20 CANCER IS IN REMISSION." WHAT SAY THE STATE?

21 MR. BAILEY: JUDGE, I DON'T HAVE THAT
22 RESPONSE. DO YOU HAVE THAT?

23 MR. THEOS: NO, SIR. DID SHE REQUEST TO
24 BE EXCUSED?

25 THE COURT: WELL, ACTUALLY, THAT HAS

1 JUROR 254 ON THE BOTTOM PART OF IT, MA'AM.

2 MS. FOOTMAN: WELL, 173 IS THE NUMBER.

3 THE COURT: ALL RIGHT. SO WE NEED TO THE
4 SEPARATE THIS. Y'ALL CHECK AND SEE IF YOU'VE GOT
5 173 STAPLED TO 254. THE ONLY THING I HAVE ON
6 NUMBER 173 SAYS LIMITED TECHNICAL FOR JUDICIAL
7 COMPREHENSION.

8 MR. THEOS: YOUR HONOR, IT LOOKS FROM HER
9 LETTER THAT SHE'S OUT OF STATE NOW AND IS NOT DUE
10 TO RETURN UNTIL---

11 THE COURT: I DON'T HAVE HER LETTER. BUT
12 IF Y'ALL ARE SATISFIED, I AM.

13 MR. THEOS: THE DEFENSE IS SATISFIED.

14 MR. BAILEY: WE'RE SATISFIED.

15 THE COURT: IF Y'ALL ARE AGREEABLE TO
16 EXCUSE HER, THAT'S ALL I NEED TO KNOW.

17 MR. BAILEY: YES, SIR. SHE'S ALREADY
18 GONE.

19 THE COURT: SO 173 IS EXCUSED BECAUSE OUT
20 OF STATE; IS THAT RIGHT, GENTLEMEN?

21 MR. BAILEY: YES, SIR.

22 MR. BELL: YES, SIR.

23 THE COURT: SO THEN WE MOVE TO 187. WE
24 HAVE A RETURN ON 187. I HAVE A RETURN ON 194.
25 SPEAK OUT IF ANYONE IS AWARE OF ANY HARDSHIP OR

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1 MEDICAL OR AGE OR WHATEVER.

2 MS. FOOTMAN: WORK RELATED.

3 THE COURT: WHICH ONE?

4 MS. FOOTMAN: NUMBER 194.

5 THE COURT: NUMBER 194. BUT AREN'T WE
6 REQUIRING THE WORK RELATED TO COME IN?

7 MR. BELL: YES, SIR.

8 THE COURT: ALL RIGHT. SO NUMBER 194,
9 I'LL MAKE A NOTE HERE "WORK PROBLEM." BUT WE WILL
10 REQUIRE NUMBER 194 TO COME IN. NUMBER 198 IS A
11 RETURN. NUMBER 199, THERE IS A RETURN. NUMBER
12 201, THERE IS A RETURN. NUMBER 204, THERE IS A
13 RETURN.

14 MS. FOOTMAN: NUMBER 203 HAS A CRIMINAL
15 RECORD; EXCUSED.

16 THE COURT: NUMBER 203 IS EXCUSED,
17 CRIMINAL RECORD. AGREED, GENTLEMEN?

18 MR. BAILEY: YES, SIR.

19 MR. BELL: AGREED, YOUR HONOR.

20 THE COURT: NUMBER 204, THERE'S A
21 RETURN. NUMBER 205, A RETURN. NUMBER 211 IS A
22 RETURN. NUMBER 216, A RETURN. HIGH BLOOD
23 PRESSURE; LETTER ENCLOSED WITH QUESTIONNAIRE.

24 MR. FOOTMAN: DO YOU WANT THAT ONE TO
25 COME IN?

1 THE COURT: THAT ONE WILL HAVE TO COME
2 IN. NUMBER, CHECK, BUT A MEDICAL. OKAY. NUMBER
3 219, RETURN. NUMBER 227, RETURN. NUMBER 230,
4 RETURN. NUMBER 234, A RETURN. NUMBER 240. IS
5 THAT ONE THAT Y'ALL GAVE UP; THE SHERIFF GAVE UP
6 ON?

7 MS. FOOTMAN: NO. WE HAVEN'T GOTTEN TO
8 THAT YET.

9 THE COURT: THE SHERIFF HAS THAT?

10 MS. FOOTMAN: YES, SIR.

11 THE COURT: SO I'LL KEEP THAT. NUMBER
12 242, RETURNED. NUMBER 247, RETURNED. NUMBER 249,
13 RETURNED. NUMBER 253, RETURNED.

14 MS. FOOTMAN: SHE WAS EXCUSED.

15 THE COURT: NUMBER 253 IS EXCUSED?

16 MRS. MCKISSICK: YES, SIR. SHE WORKS IN
17 THE RMC OFFICE.

18 MS. FOOTMAN: NO; 251.

19 THE COURT: NUMBER 251, MRS. PERKINS?

20 MS. FOOTMAN: RIGHT. SHE WORKS IN THE
21 COURT HOUSE.

22 THE COURT: SHE'S EXCUSED BECAUSE SHE
23 WORKS WITHIN THE WALLS OF THE COURT HOUSE. AGREED,
24 GENTLEMEN?

25 MR. BAILEY: YES, SIR.

1 MR. BELL: YES, SIR.

2 THE COURT: WE HAVE A RETURN ON 253, 254,
3 255, 256, 258, 261, 263, 264, 266. NOT AT THIS
4 ADDRESS. THAT'S ONE THE SHERIFF IS LOOKING FOR?

5 MS. FOOTMAN: WE'RE GOING TO SEND IT BACK
6 FOR HIM TO LOOK FOR.

7 THE COURT: SURE. THANK YOU. NUMBER
8 270, WE HAVE A RETURN. NUMBER 271, WE HAVE A
9 RETURN. 274, WE HAVE A RETURN. NUMBER 279 AND 281
10 AND 282 ARE RETURNS. NUMBER 283, A RETURN. NUMBER
11 284 AND 285 AND 289, A RETURN. NUMBER 294, A
12 RETURN. NUMBER 299, A RETURN. NUMBER 300, A
13 RETURN. NUMBER 301, 302, 303, 307, 309, RETURNS.
14 A RETURN ON 311, 312, 313, 314, 316, 318, 319, 320,
15 322, 328, 334, 336, 341. NUMBER 345 IS ONE THEY'RE
16 TURNING OVER TO THE SHERIFF LIVES IN CHARLESTON,
17 LIVED IN DORCHESTER COUNTY FOR ONE MONTH; MOVED
18 OCTOBER THE 30TH OF '98.

19 MS. FOOTMAN: NUMBER 345?

20 THE COURT: YES, MA'AM?

21 MS. FOOTMAN: THEY EXCUSED HIM.

22 THE COURT: NUMBER 346, THERE IS A
23 RETURN.

24 MS. FOOTMAN: SHE HAD A MEDICAL PROBLEM,
25 YOUR HONOR.

1 THE COURT: HAVE YOU LOOKED AT THAT,
2 GENTLEMEN, THE MEDICAL REQUEST?

3 MR. BAILEY: NO, SIR.

4 THE COURT: WOULD Y'ALL COME FORWARD AND
5 LOOK AT IT, PLEASE?

6 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

7 THE COURT: "I'M PREGNANT AND FEELING
8 SICK. ALSO I HAVE NO CHILD CARE FOR MY TWO YEAR
9 OLD."

10 MR. BAILEY: I THINK WE CAN AGREE ON
11 THAT.

12 MR. BELL: YES, SIR

13 THE COURT: ALL RIGHT. NUMBER 346 IS
14 EXCUSED BECAUSE OF A TWO YEAR OLD CHILD, AND THE
15 LADY IS PREGNANT AND SICK. THERE IS A RETURN FOR
16 NUMBER 350. SO GENTLEMEN, DO I HAVE ANY OTHER OR
17 FURTHER SUGGESTIONS BY THE STATE?

18 MR. BAILEY: NO, SIR.

19 THE COURT: BY THE DEFENDANT?

20 MR. BELL: NO, SIR.

21 THE COURT: MADAM CLERK, WOULD YOU ON
22 MONDAY AS YOU GET ANYTHING IN THE MAIL FROM THE
23 WEEKEND, COULD YOU -- IS THERE A LITTLE BOX FOR THE
24 SOLICITOR DOWNSTAIRS?

25 MRS. MCKISSICK: WE'RE CLOSED MONDAY.